AMENDED IN ASSEMBLY APRIL 14, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL No. 1348

Introduced by Assembly Member Blakeslee

February 27, 2009

An act to amend Section ~~399.13 of~~ *399.15 of, and to add Article 2 (commencing with Section 2846) to Chapter 8 of Part 2 of Division 1 of,* the Public Utilities Code, relating to energy.

LEGISLATIVE COUNSEL'S DIGEST

AB 1348, as amended, Blakeslee. Renewable energy ~~resources.~~ *resources: combined heat and power systems.*

Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical corporations, as defined. The Public Utilities Act imposes various duties and responsibilities on the ~~Public Utilities Commission~~ *commission* with respect to the purchase of electricity and requires the commission to review and adopt a procurement plan and a renewable energy procurement plan for each electrical corporation pursuant to the California Renewables Portfolio Standard Program *(RPS program)*. ~~Existing law requires the State Energy Resources Conservation and Development Commission (Energy Commission) to (1) certify eligible renewable energy resources, (2) design and implement an accounting system to verify compliance with the renewables portfolio standard by retail sellers, (3) establish a system for tracking and verifying renewable energy credits (RECs) that verifies the generation and delivery of electricity associated with RECs, and (4) certify the eligibility of RECs associated with deliveries of electricity to a local publicly owned electric utility~~ *The RPS program requires, in order to fulfill unmet long-term*

resource needs, that the commission establish a renewables portfolio standard requiring all electrical corporations to procure a minimum quantity of electricity generated by eligible renewable energy resources as a specified percentage of total kilowatthours sold to their retail end-use customers each calendar year, subject to certain cost limitations, so that 20% of its retail sales are procured from eligible renewable energy resources no later than December 31, 2010.

~~This bill would make technical, nonsubstantive changes to the provision that requires the Energy Commission to design and implement an accounting system to verify compliance with the renewables portfolio standard by retail sellers.~~

This bill would require, in order to fulfill unmet long-term resource needs and to achieve the reductions in emissions of greenhouse gases required by the California Global Warming Solutions Act of 2006, that the commission establish a renewables portfolio standard requiring all electrical corporations to procure a minimum quantity of electricity generated by eligible renewable energy resources as a specified percentage of total weighted kilowatthours sold to their retail end-use customers each calendar year, subject to certain cost limitations, so that 20% of its retail sales are procured from eligible renewable energy resources no later than December 31, 2010. The bill would require that total kilowatthours sold to retail end-use customers that are generated using fossil fuels be weighted linearly based upon a rating of the emissions of greenhouse gases per megawatthour with a base, used for comparison, based upon the greenhouse gases emission performance standard. The bill would provide a methodology for weighting of electricity generated by a combined heat and power system that is an eligible facility, as defined.

The bill would require the commission to credit electricity generated by an eligible facility for onsite use as energy efficiency for the purposes of an electrical corporation's procurement plan. The bill would require the commission to prohibit the imposition of certain charges on (1) the electricity generated by an eligible facility to meet an eligible customer-generator's onsite electrical load, if the eligible facility commences operation after January 1, 2010, and (2) the increased amount of electricity generated as a result of efficiency improvements to meet an eligible customer-generator's onsite electrical load, undertaken after January 1, 2010, on an eligible facility that commenced operation prior to that date. The bill would authorize an eligible customer-generator to construct and operate private electrical

distribution facilities that are owned and operated by the eligible customer-generator and to sell excess electricity from an eligible facility to up to three other corporations within a 3-mile radius of the eligible facility without subjecting the eligible facility and the distribution system to regulation as a public utility, and would require the commission to accord the distribution facilities the same treatment for safety, zoning, land use, and other legal privileges as apply or would apply to the facilities of the electrical corporation, with certain exceptions. The bill would require the commission to prohibit an electrical corporation from imposing certain charges on the electricity generated by the eligible facility and sold to other corporations. The bill would require that any standby rates or charges maintained by the commission for customers receiving electricity from an eligible facility, are based only upon assumptions that are supported by factual data.

Under existing law, a violation of any order, decision, rule, direction, demand, or requirement of the commission is a crime.

Because the provisions of this bill require action by the commission to implement its requirements, a violation of these provisions would impose a state-mandated local program by creating a new crime.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ *yes*. State-mandated local program: ~~no~~ *yes*.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) Combined heat and power systems are recognized by the state, the nation, and across the world as clean energy resources that greatly reduce emissions of greenhouse gases through the efficient use of fuel to produce thermal energy and electricity.

(b) The State Air Resources Board acknowledges that combined heat and power systems will substantially contribute to reducing emissions of greenhouse gases and recommends an additional 4,000 megawatts of installed combined heat and power capacity

by 2020, in order to achieve 6.7 million metric tons of emissions reductions.

(c) The Economic and Technology Advancement Advisory Committee concluded that California has yet to tap the full potential of combined heat and power facilities to decrease emissions of greenhouse gases and that, while combined heat and power is not a new technology, barriers exist that prevent full deployment of cost-effective combined heat and power into the industrial and commercial sectors.

(d) The Energy Commission supports combined heat and power projects because they offer low levels of greenhouse gas emissions for electricity generation, taking advantage of fuel that is already being used for other purposes and recommends the state adopt measures to reduce emissions of greenhouse gases and regulations that fully reflect the benefits of combined heat and power.

(e) The Public Utilities Commission and the Energy Commission jointly advocate that new combined heat and power applications could play a large part in avoiding future emissions of greenhouse gases due to the combined efficiency of the heat and power portions of the systems.

(f) Despite broad support by public and private entities, the development of new combined heat and power resources has slowed dramatically over the past decade, and existing resources may terminate their operations in the next few years absent improvements to existing policy.

(g) In the absence of legislative action to encourage the retention and expansion of combined heat and power systems, commercial and industrial energy requirements may be served using less efficient, separate thermal and electricity production facilities resulting in greater emissions of greenhouse gases.

SEC. 2. Section 399.15 of the Public Utilities Code is amended to read:

399.15. (a) *(1)* In order to fulfill unmet long-term resource needs *and to achieve the reductions in emissions of greenhouse gases required by the California Global Warming Solutions Act of 2006 (Division 25.5 (commencing with Section 38500) of the Health and Safety Code*, the commission shall establish a renewables portfolio standard requiring all electrical corporations to procure a minimum quantity of electricity generated by eligible renewable energy resources as a specified percentage of total

weighted kilowatthours sold to their retail end-use customers each calendar year, subject to limits on the total amount of costs expended above the market prices determined in subdivision (c), to achieve the targets established under this article.

(2) The total kilowatthours sold to retail end-use customers that are generated using fossil fuels shall be weighted linearly based upon a rating of the emissions of greenhouse gases per megawatthour. The greenhouse gases emission performance standard established pursuant to Section 8341 shall serve as the base, or point for comparison, for calculating the total weighted megawatthours.

(3) For a combined heat and power system that is an eligible facility, as defined in Section 2846, emissions of greenhouse gases associated with the thermal output of the combined heat and power system, determined by calculating the rate of emissions of greenhouse gases per British thermal unit for an 85 percent boiler, multiplying the thermal output of the combined heat and power system by this rate, and subtracting the result from the total emissions of greenhouse gases produced by the combined heat and power system, shall not be counted for the purposes of paragraph (2).

(b) The commission shall implement annual procurement targets for each retail seller as follows:

(1) Each retail seller shall, pursuant to subdivision (a), increase its total procurement of eligible renewable energy resources by at least an additional 1 percent of retail sales per year so that 20 percent of its retail sales are procured from eligible renewable energy resources no later than December 31, 2010. A retail seller with 20 percent of retail sales procured from eligible renewable energy resources in any year shall not be required to increase its procurement of renewable energy resources in the following year.

(2) For purposes of setting annual procurement targets, the commission shall establish an initial baseline for each retail seller based on the actual percentage of retail sales procured from eligible renewable energy resources in 2001, and to the extent applicable, adjusted going forward pursuant to Section 399.12.

(3) Only for purposes of establishing these targets, the commission shall include all electricity sold to retail customers by the Department of Water Resources pursuant to Section 80100 of

the Water Code in the calculation of retail sales by an electrical corporation.

(4) In the event that a retail seller fails to procure sufficient eligible renewable energy resources in a given year to meet any annual target established pursuant to this subdivision, the retail seller shall procure additional eligible renewable energy resources in subsequent years to compensate for the shortfall, subject to the limitation on costs for electrical corporations established pursuant to subdivision (d).

(c) The commission shall establish a methodology to determine the market price of electricity for terms corresponding to the length of contracts with eligible renewable energy resources, in consideration of the following:

(1) The long-term market price of electricity for fixed price contracts, determined pursuant to an electrical corporation's general procurement activities as authorized by the commission.

(2) The long-term ownership, operating, and fixed-price fuel costs associated with fixed-price electricity from new generating facilities.

(3) The value of different products including baseload, peaking, and as-available electricity.

(d) The commission shall establish, for each electrical corporation, a limitation on the total costs expended above the market prices determined in subdivision (c) for the procurement of eligible renewable energy resources to achieve the annual procurement targets established under this article.

(1) The cost limitation shall be equal to the amount of funds transferred to each electrical corporation by the Energy Commission pursuant to subdivision (b) of Section 25743 of the Public Resources Code and the 51.5 percent of the funds which would have been collected through January 1, 2012, from the customers of the electrical corporation based on the renewable energy public goods charge in effect as of January 1, 2007.

(2) The above-market costs of a contract selected by an electrical corporation may be counted toward the cost limitation if all of the following conditions are satisfied:

(A) The contract has been approved by the commission and was selected through a competitive solicitation pursuant to the requirements of subdivision (d) of Section 399.14.

(B) The contract covers a duration of no less than 10 years.

(C) The contracted project is a new or repowered facility commencing commercial operations on or after January 1, 2005.

(D) No purchases of renewable energy credits may be eligible for consideration as an above-market cost.

(E) The above-market costs of a contract do not include any indirect expenses including imbalance energy charges, sale of excess energy, decreased generation from existing resources, or transmission upgrades.

(3) If the cost limitation for an electrical corporation is insufficient to support the total costs expended above the market prices determined in subdivision (c) for the procurement of eligible renewable energy resources satisfying the conditions of paragraph (2), the commission shall allow the electrical corporation to limit its procurement to the quantity of eligible renewable energy resources that can be procured at or below the market prices established in subdivision (c).

(4) Nothing in this section prevents an electrical corporation from voluntarily proposing to procure eligible renewable energy resources at above-market prices that are not counted toward the cost limitation. Any voluntary procurement involving above-market costs shall be subject to commission approval prior to the expense being recovered in rates.

(e) The establishment of a renewables portfolio standard shall not constitute implementation by the commission of the federal Public Utility Regulatory Policies Act of 1978 (Public Law 95-617).

(f) The commission shall consult with the Energy Commission in calculating market prices under subdivision (c) and establishing other renewables portfolio standard policies.

SEC. 2. Article 2 (commencing with Section 2846) is added to Chapter 8 of Part 2 of Division 1 of the Public Utilities Code, to read:

Article 2. Fuel Consumption Efficiency

2846. For purposes of this article, the following terms have the following meanings:

(a) "Eligible customer-generator" means a customer of an electrical corporation that uses a combined heat and power system with a generating capacity of at least 20 megawatts.

(b) "Eligible facility" means a combined heat and power system that produces both electricity and thermal energy from a single fuel input that meets both of the following:

(1) Is interconnected to the electrical transmission and distribution grid.

(2) Is sized to meet the onsite thermal load.

2847. The Legislature finds and declares all of the following:

(a) Efficient combined heat and power generation is a form of energy efficiency that can benefit the state by:

(1) Reducing greenhouse gas emissions and natural gas use.

(2) Reducing the need for transmission and distribution investment.

(3) Reducing transmission line losses on the state's electricity grid.

(4) Providing a stable and reliable source of in-state baseload generation.

(5) Enabling commercial and industrial consumers to control their energy costs.

(6) Supporting the economy with in-state investment and jobs.

(b) The state has encouraged the use of combined heat and power technology since the enactment of the Warren-Alquist State Energy Resources Conservation and Development Act and assumed an early leadership position nationally in promoting these and other efficient resources.

(c) The State Air Resources Board has determined that the widespread development of efficient combined heat and power systems would help displace the need to develop new, or expand existing, power plants and has set a target of an additional 4,000 megawatts of installed combined heat and power generation capacity by 2020, enough to displace approximately 30,000 gigawatthours of generation from other generation resources.

2848. (a) It is the intent of the Legislature to enact policies that incorporate the recommendations of the state's energy and environmental agencies, commissions, and departments to more fully capture the energy efficiency and greenhouse gases emissions benefits of combined heat and power systems.

(b) It is the intent of the Legislature to encourage the addition of new combined heat and power facilities and the repowering of existing combined heat facilities to achieve greater efficiencies

wherever cost-effective, technologically feasible, and environmentally beneficial.

(c) It is the intent of the Legislature to support and facilitate both customer-owned and utility-owned combined heat and power systems.

2849. (a) The commission shall credit electricity generated by an eligible facility for onsite use as energy efficiency for the purposes of Section 454.5 and shall prohibit the imposition of departing load charges on either of the following:

(1) Electricity generated by an eligible facility that commences operation after January 1, 2010, to meet an eligible customer-generator's onsite electrical load.

(2) Electricity generated by an eligible facility that commenced operation prior to January 1, 2010, the increased amount of electricity generated as a result of efficiency improvements to meet an eligible customer-generator's onsite electrical load.

(b) The commission shall adopt or maintain standby rates or charges for eligible facilities that are based only upon assumptions that are supported by factual data, and shall not assume that forced outages or other reductions in electricity generation by combined heat and power systems will occur simultaneously on multiple systems, or during periods of peak electrical system demand, or both.

2849.5. (a) Notwithstanding subdivision (b) of Section 218, an eligible customer-generator may construct and operate private electrical distribution facilities to be owned and operated by the customer-generator to sell excess electricity from an eligible facility to up to three other corporations within a three-mile radius of the eligible facility without subjecting the project to regulation as a public utility, and according the distribution facilities the same treatment for safety, zoning, land use, and other legal privileges as apply or would apply to the facilities of the utility, subject to both of the following:

(1) There shall be no grant of any power of eminent domain to take or cross private property for the facilities.

(2) The facilities shall be physically segregated and not interconnected with any portion of the electrical transmission and distribution system of the electrical corporation, except on the customer side of the revenue meter of the utility and in a manner that precludes any possible export of electricity onto the electrical

corporation's electrical transmission and distribution system, or disruption of the system.

(b) The commission shall prohibit the imposition of departing load charges on a corporation for electricity purchased from an eligible customer-generator pursuant to paragraph (a).

(c) The commission shall adopt or maintain standby rates or charges for corporations that purchase electricity from an eligible customer-generator pursuant to paragraph (a) that are based only upon assumptions that are supported by factual data, and shall not assume that forced outages or other reductions in electricity generation by combined heat and power systems will occur simultaneously on multiple systems, or during periods of peak electrical system demand, or both.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

~~SECTION 1. Section 399.13 of the Public Utilities Code is amended to read:~~

~~399.13. The Energy Commission shall do all of the following:~~

~~(a) Certify eligible renewable energy resources that it determines meet the criteria described in subdivision (b) of Section 399.12.~~

~~(b) Design and implement an accounting system to verify compliance with the renewables portfolio standard by retail sellers, to ensure that electricity generated by an eligible renewable energy resource is counted only once for the purpose of meeting the renewables portfolio standard of this state or any other state, to certify renewable energy credits produced by eligible renewable energy resources, and to verify retail product claims in this state or any other state. In establishing the guidelines governing this accounting system, the Energy Commission shall collect data from electricity market participants that it deems necessary to verify compliance of retail sellers, in accordance with the requirements of this article and the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the~~

~~Government Code). The Energy Commission shall, in seeking data for electrical corporations, request data from the commission. The commission shall collect data from electrical corporations and remit the data to the Energy Commission within 90 days of the request.~~

~~(c) Establish a system for tracking and verifying renewable energy credits that, through the use of independently audited data, verifies the generation and delivery of electricity associated with each renewable energy credit and protects against multiple counting of the same renewable energy credit. The Energy Commission shall consult with other western states and with the Western Electricity Coordinating Council in the development of this system.~~

~~(d) Certify, for purposes of compliance with the renewable portfolio standard requirements by a retail seller, the eligibility of renewable energy credits associated with deliveries of electricity by an eligible renewable energy resource to a local publicly owned electric utility, if the Energy Commission determines that the following conditions have been satisfied:~~

~~(1) The local publicly owned electric utility that is procuring the electricity is in compliance with the requirements of Section 387.~~

~~(2) The local publicly owned electric utility has established an annual renewables portfolio standard target comparable to those applicable to an electrical corporation, is procuring sufficient eligible renewable energy resources to satisfy the targets, and will not fail to satisfy the targets in the event that the renewable energy credit is sold to another retail seller.~~

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