

Senate Bill No. 1078

CHAPTER 516

An act to add Sections 387, 390.1, and 399.25 to, and to add Article 16 (commencing with Section 399.11) to Chapter 2.3 of Part 1 of Division 1 of, the Public Utilities Code, relating to renewable energy.

[Approved by Governor September 12, 2002. Filed
with Secretary of State September 12, 2002.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1078, Sher. Renewable energy: California Renewables Portfolio Standard Program.

(1) Under the Public Utilities Act, the Public Utilities Commission (PUC) has regulatory authority over public utilities, including electrical corporations, and authorizes the commission to establish just and reasonable rates and charges. The act requires retail suppliers of electric services to disclose sources of electrical generation and requires that those retail suppliers report information to the State Energy Resources Conservation and Development Commission (Energy Commission).

This bill would establish the California Renewables Portfolio Standard Program. The program would require that a retail seller of electricity, including electrical corporations, community choice aggregators, and electric service providers, purchase a specified minimum percentage of electricity generated by eligible renewable energy resources, as defined, in any given year as a specified percentage of total kilowatthours sold to retail end-use customers each calendar year (renewables portfolio standard).

The bill would require the PUC to implement the renewables portfolio standard for electrical corporations, if funds are made available as described. Each electrical corporation would be required to increase its total procurement of eligible renewable energy resources by at least 1% per year so that 20% of its retail sales are procured from eligible renewable energy resources. If an electrical corporation fails to procure sufficient eligible renewable energy resources in a given year to meet an annual target, the electrical corporation would be required to procure additional eligible renewable resources in subsequent years to compensate for the shortfall, if funds are made available as described. An electrical corporation with at least 20% of retail sales procured from eligible renewable energy resources in any year would not be required to increase its procurement in the following year.



This bill would require the PUC to direct electrical corporations to prepare within 90 days of being deemed creditworthy, and to review and update as necessary, renewable energy procurement plans that are sufficient to satisfy its obligations under the renewables portfolio standard. The PUC would be required to adopt rules, within 6 months of the effective date of these provisions, for electrical corporations establishing a process for determining market prices of electricity from renewable generators pursuant to specified criteria, a process for rank ordering and selection of least-cost and best-fit renewable resources to fulfill program obligations, flexible rules for compliance that permit electrical corporations to apply excess procurement in one year to subsequent years, or inadequate procurement in one year to the following 3 years, and standard terms and conditions to be used by electrical corporations in contracting with renewable electricity generators. The PUC would be required to review and accept, modify, or reject each electrical corporation's renewable procurement plan 90 days prior to the commencement of renewable procurement by the electrical corporation. The PUC would be required to review and accept, modify, or reject renewable solicitations by electrical corporations and proposed contracts by electrical corporations with renewable electricity generators. The PUC would be required to allow an electrical corporation to recover, in rates, electricity procurement and administrative costs associated with long-term contracts reasonably incurred consistent with a renewable energy procurement plan approved by the PUC.

Because a violation of the Public Utilities Act or an order of the PUC is a crime under existing law, the bill would impose a state-mandated local program by creating a new crime.

The bill would require the Energy Commission to certify eligible renewable energy resources, to design and implement an accounting system to verify compliance with the renewables portfolio standard by retail sellers, and to allocate and award supplemental energy payments to cover above-market costs of renewable energy.

(2) Existing law, the Warren-Alquist State Energy Resources Conservation and Development Act, requires the Energy Commission to certify sufficient sites and related facilities that are required to provide a supply of electricity sufficient to accommodate projected demand for power statewide. Under existing law, the PUC must grant a certificate of public convenience and necessity, upon application by a public utility, for the construction of a new transmission facility or electric transmission line within the state. As a basis for granting a certificate of public convenience and necessity, the PUC is required to give consideration to community values, recreational and park areas,



historical and aesthetic values, and influence on the environment. No certificate of public convenience and necessity may be granted for an electrical transmission line without certification by the Energy Commission, and the decision by the Energy Commission is conclusive as to all matters determined thereby and take the place of consideration by the PUC.

This bill would provide that an application of an electrical corporation for a certificate for the construction of new transmission facilities, that are necessary to facilitate achievement of the renewable power goals, shall be deemed to be necessary by the PUC in determining to issue a certificate of public necessity and convenience. The bill would require the PUC to take all feasible actions to ensure that the transmission rates established by the Federal Energy Regulatory Commission are fully reflected in any retail rates established by the commission.

(3) Existing law requires each local publicly owned utility to establish a nonbypassable usage based charge to fund investments in specified public purpose programs, including cost-effective demand-side management services to promote energy efficiency and energy conservation, investment in renewable energy resources and technologies, and services for low-income electricity consumers. The charge is required to be not less than the lowest expenditure of the 3 largest electrical corporations in California based on a percentage of revenue.

This bill would require the governing board of a local publicly owned electric utility to be responsible for implementing and enforcing a renewables portfolio standard, as described, and to annually report to its customers upon expenditures of public goods funds on public purpose programs, thereby imposing a state-mandated local program. Because a violation of this provision would be a crime, this bill would also impose a state-mandated local program by creating a new crime.

(4) Existing law provides that subject to applicable contractual terms, energy prices paid to nonutility power generators by a public utility electrical corporation based on the commission's "short run avoided cost energy methodology" are required to be determined by specified law.

This bill would authorize any nonutility power generator using renewable fuels that entered into a contract with an electrical corporation specifying fixed energy prices for output prior to December 31, 2001, to elect an additional 5 years of fixed energy payments at a level to be determined by the PUC.

(5) 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, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

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

SECTION 1. Section 387 is added to the Public Utilities Code, to read:

387. (a) Each governing body of a local publicly owned electric utility, as defined in Section 9604, shall be responsible for implementing and enforcing a renewables portfolio standard that recognizes the intent of the Legislature to encourage renewable resources, while taking into consideration the effect of the standard on rates, reliability, and financial resources and the goal of environmental improvement.

(b) Each local publicly owned electric utility shall report, on an annual basis, to its customers, the following:

(1) Expenditures of public goods funds collected pursuant to Section 385 for renewable energy resource development. Reports shall contain a description of programs, expenditures, and expected or actual results.

(2) The resource mix used to serve its customers by fuel type. Reports shall contain the contribution of each type of renewable energy resource with separate categories for those fuels considered eligible renewable energy resources as defined by Section 399.12.

SEC. 2. Section 390.1 is added to the Public Utilities Code, to read:

390.1. Any nonutility power generator using renewable fuels that has entered into a contract with an electrical corporation prior to December 31, 2001, specifying fixed energy prices for five years of output may negotiate a contract for an additional five years of fixed energy payments upon expiration of the initial five-year term, at a price to be determined by the commission.

SEC. 3. Article 16 (commencing with Section 399.11) is added to Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code, to read:

Article 16. California Renewables Portfolio Standard Program

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



(a) In order to attain a target of 20 percent renewable energy for the State of California and for the purposes of increasing the diversity, reliability, public health and environmental benefits of the energy mix, it is the intent of the Legislature that the California Public Utilities Commission and the State Energy Resources Conservation and Development Commission implement the California Renewables Portfolio Standard Program described in this article.

(b) Increasing California’s reliance on renewable energy resources may promote stable electricity prices, protect public health, improve environmental quality, stimulate sustainable economic development, create new employment opportunities, and reduce reliance on imported fuels.

(c) The development of renewable energy resources may ameliorate air quality problems throughout the state and improve public health by reducing the burning of fossil fuels and the associated environmental impacts.

(d) The California Renewables Portfolio Standard Program is intended to complement the Renewable Energy Program administered by the State Energy Resources Conservation and Development Commission and established pursuant to Sections 383.5 and 445.

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

(a) (1) “Eligible renewable energy resource” means an electric generating facility that is one of the following:

(1) The facility meets the definition of “in-state renewable electricity generation technology” in Section 383.5.

(2) A geothermal generation facility originally commencing operation prior to September 26, 1996, shall be eligible for purposes of adjusting a retail seller’s baseline quantity of eligible renewable energy resources except for output certified as incremental geothermal production by the Energy Commission, provided that the incremental output was not sold to an electrical corporation under contract entered into prior to September 26, 1996. For each facility seeking certification, the Energy Commission shall determine historical production trends and establish criteria for measuring incremental geothermal production that recognizes the declining output of existing steamfields and the contribution of capital investments in the facility or wellfield.

(3) The output of a small hydroelectric generation facility of 30 megawatts or less procured or owned by an electrical corporation as of the date of enactment of this article shall be eligible only for purposes of establishing the baseline of an electrical corporation pursuant to paragraph (3) of subdivision (a) of Section 399.15. A new hydroelectric facility is not an eligible renewable energy resource if it will require a



new or increased appropriation or diversion of water under Part 2 (commencing with Section 1200) of Division 2 of the Water Code.

(4) A facility engaged in the combustion of municipal solid waste shall not be considered an eligible renewable resource unless it is located in Stanislaus County and was operational prior to September 26, 1996. Output from such facilities shall be eligible only for the purpose of adjusting a retail seller's baseline quantity of eligible renewable energy resources.

(b) "Retail seller" means an entity engaged in the retail sale of electricity to end-use customers, including any of the following:

(1) An electrical corporation, as defined in Section 218.

(2) A community choice aggregator. The commission shall institute a rulemaking to determine the manner in which a community choice aggregator will participate in the renewables portfolio standard subject to the same terms and conditions applicable to an electrical corporation.

(3) An electric service provider, as defined in Section 218.3 subject to the following conditions:

(A) An electric service provider shall be considered a retail seller under this article for sales to any customer acquiring service after January 1, 2003.

(B) An electric service provider shall be considered a retail seller under this article for sales to all its customers beginning on the earlier of January 1, 2006, or the date on which a contract between an electric service provider and a retail customer expires. Nothing on this subdivision may require an electric service provider to disclose the terms of the contract to the commission.

(C) The commission shall institute a rulemaking to determine the manner in which electric service providers will participate in the renewables portfolio standard. The electric service provider shall be subject to the same terms and conditions applicable to an electrical corporation pursuant to this article. Nothing in this paragraph shall impair a contract entered into between an electric service provider and a retail customer prior to the suspension of direct access by the commission pursuant to Section 80110 of the Water Code.

(4) "Retail seller" does not include any of the following:

(A) A corporation or person employing cogeneration technology or producing power consistent with subdivision (b) of Section 218.

(B) The Department of Water Resources acting in its capacity pursuant to Division 27 (commencing with Section 80000) of the Water Code.

(C) A local publicly owned electrical utility as defined in subdivision (d) of Section 9604.



(c) “Renewables portfolio standard” means the specified percentage of electricity generated by eligible renewable energy resources that a retail seller is required to procure pursuant to Sections 399.13 and 399.15.

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 (a) 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 renewable energy output is counted only once for the purpose of meeting the renewables portfolio standard of this state or any other state, and for verifying retail product claims in this state or any other state. In establishing the guidelines governing this 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). In seeking data from electrical corporations, the Energy Commission shall 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) Allocate and award supplemental energy payments pursuant to Section 383.5 to eligible renewable energy resources to cover above-market costs of renewable energy.

399.14. (a) The commission shall direct each electrical corporation to prepare renewable energy procurement plans as described in paragraph (3) to satisfy its obligations under the renewables portfolio standard. To the extent feasible, this procurement plan shall be proposed, reviewed, and adopted by the commission as part of, and pursuant to, a general procurement plan process. The commission shall require each electrical corporation to review and update its renewable energy procurement plan as it determines to be necessary.

(1) The commission shall not require an electrical corporation to conduct procurement to fulfill the renewables portfolio standard until it is deemed creditworthy by the commission upon it having attained an investment grade rating as determined by at least two major rating agencies. Within 90 days of being deemed creditworthy, an electrical corporation shall conduct solicitations to implement a renewable energy procurement plan. The creditworthiness determination required by this paragraph shall apply only to the requirements established pursuant to this article. The requirements established for an electrical corporation pursuant to Section 454.5 shall be governed by that section.



(2) Not later than six months after the effective date of this section, the commission shall adopt, by rule, for all electrical corporations, all of the following:

(A) A process for determining market prices pursuant to subdivision (c) of Section 399.15. The commission shall make specific determinations of market prices after the closing date of a competitive solicitation conducted by an electrical corporation for eligible renewable energy resources. In order to ensure that the market price established by the commission pursuant to subdivision (c) of Section 399.15 does not influence the amount of a bid submitted through the competitive solicitation in a manner that would increase the amount ratepayers are obligated to pay for renewable energy, and in order to ensure that the bid price does not influence the establishment of the market price, the electrical corporation shall not transmit or share the results of any competitive solicitation for eligible renewable energy resources until the commission has established market prices pursuant to subdivision (c) of Section 399.15.

(B) A process that provides criteria for the rank ordering and selection of least-cost and best-fit renewable resources to comply with the annual California Renewables Portfolio Standard Program obligations on a total cost basis. This process shall consider estimates of indirect costs associated with needed transmission investments and ongoing utility expenses resulting from integrating and operating eligible renewable energy resources.

(C) Flexible rules for compliance including, but not limited to, permitting electrical corporations to apply excess procurement in one year to subsequent years or inadequate procurement in one year to no more than the following three years.

(D) Standard terms and conditions to be used by all electrical corporations in contracting for eligible renewable energy resources, including performance requirements for renewable generators.

(3) Consistent with the goal of procuring the least-cost and best-fit eligible renewable energy resources, the renewable energy procurement plan submitted by an electrical corporation shall include, but is not limited to, all of the following:

(A) An assessment of annual or multiyear portfolio supplies and demand to determine the optimal mix of renewable generation resources with deliverability characteristics that may include peaking, dispatchable, baseload, firm, and as-available capacity.

(B) Provisions for employing available compliance flexibility mechanisms established by the commission.



(C) A bid solicitation setting forth the need for renewable generation of each deliverability characteristic, required online dates, and locational preferences, if any.

(4) In soliciting and procuring eligible renewable energy resources, each electrical corporation shall offer contracts of no less than 10 years in duration, unless the commission approves of a contract of shorter duration.

(5) In soliciting and procuring eligible renewable energy resources, each electrical corporation may give preference to projects that provide tangible demonstrable benefits to communities with a plurality of minority or low-income populations.

(b) The commission shall review and accept, modify, or reject each electrical corporation's renewable procurement plan 90 days prior to the commencement of renewable procurement pursuant to this article by the electrical corporation.

(c) The commission shall review the results of a renewable energy resources solicitation submitted for approval by an electrical corporation and accept or reject proposed contracts with eligible renewable energy resources based on consistency with the approved renewable procurement plan. If the commission determines that the bid prices are elevated due to a lack of effective competition amongst the bidders, the commission shall direct the electrical corporation to renegotiate such contracts or conduct a new solicitation.

(d) If an electrical corporation fails to comply with a commission order adopting a renewable procurement plan, the commission shall exercise its authority pursuant to Section 2113 to require compliance.

(e) Upon application by an electrical corporation, the commission may authorize another entity to enter into contracts on behalf of customers of the electrical corporation for deliveries of eligible renewable energy resources to satisfy the annual portfolio standard obligations, subject to similar terms and conditions applicable to an electrical corporation. The commission shall allow the procurement entity to recover reasonable costs through retail rates subject to review and approval.

(f) Procurement and administrative costs associated with long-term contracts entered into by an electrical corporation for eligible renewable resources, at or below the market price determined by the commission pursuant to subdivision (c) of Section 399.15, shall be deemed reasonable per se, and shall be recoverable in rates.

(g) For purposes of this article, "procure" means that a utility may acquire the renewable output of electric generation facilities that it owns or for which it has contracted. Nothing in this article is intended to imply that the purchase of electricity from third parties in a wholesale



transaction is the preferred method of fulfilling a retail seller's obligation to comply with this article.

(h) Construction, alteration, demolition, installation, and repair work on an eligible renewable energy resource that receives production incentives or supplemental energy payments pursuant to Section 383.5, including, but not limited to, work performed to qualify, receive, or maintain production incentives or supplemental energy payments is "public works" for the purposes of Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code.

399.15. (a) In order to fulfill unmet long-term resource needs, the commission shall establish a renewables portfolio standard requiring all electrical corporations to procure a minimum quantity of output from eligible renewable energy resources as a specified percentage of total kilowatthours sold to their retail end-use customers each calendar year, if sufficient funds are made available pursuant to paragraph (2), and Sections 399.6 and 383.5 to cover the above-market costs of eligible renewables, and subject to all of the following:

(1) An electric corporation shall not be required to enter into long-term contracts with eligible renewable energy resources that exceed the market prices established pursuant to subdivision (c) of this section.

(2) The Energy Commission shall provide supplemental energy payments from funds in the New Renewable Resources Account in the Renewable Resource Trust Fund to eligible renewable energy resources pursuant to Section 383.5., consistent with this article, for above-market costs. Indirect costs associated with the purchase of eligible renewable energy resources, such as imbalance energy charges, sale of excess energy, decreased generation from existing resources, or transmission upgrades shall not be eligible for supplemental energy payments, but shall be recoverable by an electrical corporation in rates, as authorized by the commission.

(3) For purposes of setting annual procurement targets, the commission shall establish an initial baseline for each electrical corporation 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 subdivision (a) of Section 399.12.

(b) The commission shall implement annual procurement targets for each electrical corporation as follows:

(1) Beginning on January 1, 2003, each electrical corporation 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, 2017. An electrical corporation with 20 percent of retail sales procured from eligible renewable energy resources in any year shall not be required to increase its procurement of such resources in the following year.

(2) Only for purposes of establishing these targets, the commission shall include all power 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.

(3) In the event that an electrical corporation fails to procure sufficient eligible renewable energy resources in a given year to meet any annual target established pursuant to this subdivision, the electrical corporation shall procure additional eligible renewable energy resources in subsequent years to compensate for the shortfall if sufficient funds are made available pursuant to paragraph (2), and Sections 399.6 and 383.5 to cover the above-market costs of eligible renewables.

(4) If supplemental energy payments from the Energy Commission, in combination with the market prices approved by the commission, are insufficient to cover the above-market costs of eligible renewable energy resources, the commission shall allow an electrical corporation to limit its annual procurement obligation to the quantity of eligible renewable energy resources that can be procured with available supplemental energy payments.

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

(1) The long-term market price of electricity for fixed price contracts, determined pursuant to the 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 output.

(d) 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).

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

SEC. 4. Section 399.25 is added to the Public Utilities Code, immediately following Section 399.2, to read:

399.25. (a) Notwithstanding any other provision in Sections 1001 to 1013, inclusive, an application of an electrical corporation for a certificate authorizing the construction of new transmission facilities



shall be deemed to be necessary to the provision of electric service for purposes of any determination made under Section 1003 if the commission finds that the new facility is necessary to facilitate achievement of the renewable power goals established in Article 16 (commencing with Section 399.11).

(b) With respect to a transmission facility described in subdivision (a), the commission shall take all feasible actions to ensure that the transmission rates established by the Federal Energy Regulatory Commission are fully reflected in any retail rates established by the commission. These actions shall include, but are not limited to:

(1) Making findings, where supported by an evidentiary record, that those transmission facilities provide benefit to the transmission network and are necessary to facilitate the achievement of the renewables portfolio standard established in Article 16 (commencing with Section 399.11).

(2) Directing the utility to which the generator will be interconnected, where the direction is not preempted by federal law, to seek the recovery through general transmission rates of the costs associated with the transmission facilities.

(3) Asserting the positions described in paragraphs (1) and (2) to the Federal Energy Regulatory Commission in appropriate proceedings.

(4) Allowing recovery in retail rates of any increase in transmission costs incurred by an electrical corporation resulting from the construction of the transmission facilities that are not approved for recovery in transmission rates by the Federal Energy Regulatory Commission after the commission determines that the costs were prudently incurred in accordance with subdivision (a) of Section 454.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because in that regard 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.

However, notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement



does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

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