

AMENDED IN ASSEMBLY JULY 3, 2003

AMENDED IN ASSEMBLY JUNE 26, 2003

**SENATE BILL**

**No. 67**

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**Introduced by Senator Bowen**

January 17, 2003

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An act to amend ~~Sections 399.12 and~~ *Section* 399.14 of the Public Utilities Code, relating to energy.

LEGISLATIVE COUNSEL'S DIGEST

SB 67, as amended, Bowen. Energy: California Renewables Portfolio Standard Program.

Existing law establishes the California Renewables Portfolio Standard Program. The program requires 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). ~~Existing law defines the term “eligible renewable energy resource” to include an electric generating facility that meets an existing definition of “in-state renewable electricity generation technology” and the output of a small hydroelectric generation facility of 30 megawatts or less procured or owned by an electrical corporation as of January 1, 2003, for purposes of establishing the baseline of an electrical corporation for purposes of the program.~~ Under existing law, the Public Utilities Commission may not require an electrical corporation to conduct procurement to fulfill the renewables portfolio standard until it is deemed creditworthy by the

commission. Existing law requires the commission 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. Existing law requires the commission 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 commission.

This bill would ~~modify the definition of the term “eligible renewable energy resource” to include an electric generating facility that meets that existing definition of “in-state renewable electricity generation facility,” subject to certain limitations. Included in those limitations, the bill would make eligible the output of an existing hydroelectric generation facility of 30 megawatts or less only if it was owned, or its output was procured, by an electrical corporation as of January 1, 2003, and would further limit that eligibility to the establishment of the baseline of an electrical corporation for purposes of the program. The bill would prohibit the commission from requiring an electrical corporation to conduct procurement to fulfill the renewables portfolio standard until (1) the commission determines either that the electrical corporation has attained an investment grade credit rating or (2) that the electrical corporation is able to procure eligible renewable energy resources on reasonable terms, those resources can be financed if necessary, and the procurement will not impair the restoration of an electrical corporation’s creditworthiness. *The second provision would not apply before April 1, 2004 to an electrical corporation that is in federal court under Chapter 11 of the federal bankruptcy law.* The bill would clarify that the provision allowing an electrical corporation to recover, in rates, electricity procurement and administrative costs associated with long-term contracts applies to contracts entered into pursuant to the California Renewables Portfolio Standard Program. The bill would make other clarifying changes.~~

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

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

1 ~~SECTION 1. Section 399.12 of the Public Utilities Code is~~  
2 ~~amended to read:~~



1 399.12.— For purposes of this article, the following terms have  
2 the following meanings:

3 (a) “Eligible renewable energy resource” means an electric  
4 generating facility that meets the definition of “in-state renewable  
5 electricity generation technology” in Section 383.5, subject to the  
6 following limitations:

7 (1) A geothermal generation facility originally commencing  
8 operation prior to September 26, 1996, shall be eligible for  
9 purposes of adjusting a retail seller’s baseline quantity of eligible  
10 renewable energy resources except for output certified as  
11 incremental geothermal production by the State Energy Resources  
12 Conservation and Development Commission, provided that the  
13 incremental output is not sold to an electrical corporation under a  
14 contract entered into prior to September 26, 1996. For each facility  
15 seeking certification, the State Energy Resources Conservation  
16 and Development Commission shall determine historical  
17 production trends and establish criteria for measuring incremental  
18 geothermal production that recognizes the declining output of  
19 existing steamfields and the contribution of capital investments in  
20 the facility or wellfield.

21 (2) The output of an existing hydroelectric generation facility  
22 of 30 megawatts or less shall be eligible only if it was owned, or  
23 its output was procured, by an electrical corporation as of January  
24 1, 2003, and that eligibility shall be limited to the establishment of  
25 the baseline of an electrical corporation pursuant to paragraph (3)  
26 of subdivision (a) of Section 399.15. A new hydroelectric facility  
27 is not an eligible renewable energy resource if it will require a new  
28 or increased appropriation or diversion of water under Part 2  
29 (commencing with Section 1200) of Division 2 of the Water Code.

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

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

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

39 (2) A community choice aggregator. The commission shall  
40 institute a rulemaking to determine the manner in which a



1 ~~community choice aggregator will participate in the renewables~~  
2 ~~portfolio standard subject to the same terms and conditions~~  
3 ~~applicable to an electrical corporation.~~

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

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

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

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

24 ~~(4) “Retail seller” does not include any of the following:~~

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

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

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

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

37 ~~SEC. 2.—~~

38 ~~SECTION 1. Section 399.14 of the Public Utilities Code is~~  
39 ~~amended to read:~~



1 399.14. (a) The commission shall direct each electrical  
2 corporation to prepare renewable energy procurement plans as  
3 described in paragraph (3) to satisfy its obligations under the  
4 renewables portfolio standard. To the extent feasible, this  
5 procurement plan shall be proposed, reviewed, and adopted by the  
6 commission as part of, and pursuant to, a general procurement plan  
7 process. The commission shall require each electrical corporation  
8 to review and update its renewable energy procurement plan as it  
9 determines to be necessary.

10 (1) (A) The commission shall not require an electrical  
11 corporation to conduct procurement to fulfill the renewables  
12 portfolio standard until the commission determines either of the  
13 following:

14 (i) The electrical corporation has attained an investment grade  
15 credit rating as determined by at least two major rating agencies.

16 (ii) The electrical corporation is able to procure eligible  
17 renewable energy resources on reasonable terms, those resources  
18 can be financed if necessary, and the procurement will not impair  
19 the restoration of an electrical corporation's creditworthiness. *This*  
20 *provision shall not apply before April 1, 2004, for any electrical*  
21 *corporation that on June 30, 2003, is in federal court under*  
22 *Chapter 11 of the federal bankruptcy law.*

23 (B) Within 90 days of the commission's determination as  
24 provided in subparagraph (A), an electrical corporation shall  
25 conduct solicitations to implement a renewable energy  
26 procurement plan. The determination required by this paragraph  
27 shall apply only to the requirements established pursuant to this  
28 article. The requirements established for an electrical corporation  
29 pursuant to Section 454.5 shall be governed by that section.

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

33 (A) A process for determining market prices pursuant to  
34 subdivision (c) of Section 399.15. The commission shall make  
35 specific determinations of market prices after the closing date of  
36 a competitive solicitation conducted by an electrical corporation  
37 for eligible renewable energy resources. In order to ensure that the  
38 market price established by the commission pursuant to  
39 subdivision (c) of Section 399.15 does not influence the amount  
40 of a bid submitted through the competitive solicitation in a manner



1 that would increase the amount ratepayers are obligated to pay for  
2 renewable energy, and in order to ensure that the bid price does not  
3 influence the establishment of the market price, the electrical  
4 corporation shall not transmit or share the results of any  
5 competitive solicitation for eligible renewable energy resources  
6 until the commission has established market prices pursuant to  
7 subdivision (c) of Section 399.15.

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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



1 parties in a wholesale transaction is the preferred method of  
2 fulfilling a retail seller’s obligation to comply with this article.

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

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

