

M e m o r a n d u m

Date: June 2, 2010

To: The Commission
(Meeting of June 3, 2010)

From: Edward F. Randolph, Director
Office of Governmental Affairs (OGA) — Sacramento

Subject: **AB 1954 (Skinner & V. Manuel Perez) – Electrical transmission: renewable energy resources. As Amended: April 12, 2010**

LEGISLATIVE SUBCOMMITTEE RECOMMENDATION: OPPOSE UNLESS AMENDED

SUMMARY OF BILL:

This bill revises Public Utilities (PU) Code 399.2.5 to lower the legal standard that is used to determine if a transmission line is subject to backstop cost recovery under California's Renewable Portfolio Standard (RPS) from "necessary to facilitate" to "facilitate" such that any transmission line that the California Public Utilities Commission (CPUC) found to "facilitate" the RPS would be deemed eligible for retail rate recovery.

This bill adds new subdivisions (c) and (d) to PU Code 399.2.5 to permit the CPUC to determine that certain proposed lines would be eligible for backstop rate recovery and that certain preapplication costs are eligible for retail rate recovery prior to a CPUC determination of need for the line.

This bill revises the definition of a Renewable Energy Credit (RECs) in PU Code 399.12 to allow the California Energy Commission (CEC) to determine that certain generators may burn up to 10% non-renewable fuels and still earn RECs for all of their generation.

SUMMARY OF SUGGESTED AMENDMENTS:

The revisions made to PU Code 399.2.5 do two significant things. First, revisions to Sec. 399.2.5(a) would lower the legal standard for finding a line "necessary" such that almost any line could be justified as "facilitating" the RPS, including network upgrades that do not directly reach RPS facilities. Second, subdivisions (c) and (d) would codify authority the CPUC already has under its general ratemaking authority. These provisions of the bill would create the potential for the CPUC to pre-judge the outcome

of transmission certification proceedings by predetermining that certain projects and costs are eligible for backstop rate recovery prior to conducting a complete review of the proposed project.

Additionally, AB 1954's revisions to PU Code 399.12 could interfere with the CEC's authority by revising the definition of "renewable energy credit" such that solar facilities with up to 10% of gas assistance could remain RPS eligible.

Staff suggests the following amendments:

- 1) The revisions to PU Code Sec. 399.2.5(a) should be deleted. The bills current language which states the lines would be subject to backstop cost recovery if the CPUC finds the line will "facilitate" the RPS does not set a high enough bar to allow appropriate Commission discretion, and should be returned to the current statute's requirement that the line be found "*necessary to facilitate.*" Every transmission proposal could be found to facilitate the RPS. This revision is also carried through to other parts of the bill that refer to the standard.
- 2) Proposed Sec. 399.2.5(c)(1) should be revised. It describes process where the CPUC can deem a proposed line eligible for backstop cost recovery prior to the submission of a CPCN application. It should be revised to ensure that a finding that a proposed line is eligible for backstop cost recovery is sufficient to meet renewable developer financing needs, yet does not leave the CPUC vulnerable to a claim that it has "prejudged" the outcome of the final CPCN application for the proposed line.
- 3) Proposed Sec. 399.2.5(c)(2)(A) should be deleted as duplicative of language already in 399.2.5(b)(4).
- 4) Proposed Sec. 399.2.5(c)(2)(B) describes processes that allow an electrical corporation to request approval of backstop cost recovery for preapplication costs, prior to the submission of a CPCN application. The proposed language is not necessary because it codifies existing CPUC authority. However, to the extent revisions are determined to be necessary, CPUC approval for backstop cost recovery could be made expressly available for certain "preapplication costs" and the standard for such CPUC approval could be different from, and lower than, the standard in 399.2.5(a) which determines need for the project. The proposed revisions below seek to enable expedited CPUC approval of backstop cost recovery for some preapplication costs, while at the same time not prejudging any future determination of need in the ultimate transmission line application.
- 4) The revisions to Section 399.12 regarding renewable energy credits should be deleted. The current statutory language allows the CEC to determine de minimis quantities of electricity from nonrenewable fuels that could result in the creation of renewable energy credits. The proposed changes would set the de minimis

standards at 2% or 10%, effectively allowing some renewable facilities to generate up to 10% of their output from fossil fuels and earn renewable energy credits for that fossil generation. Any fossil-fueled power generated at a renewable energy facility, beyond a truly de minimis amount, should not be counted as RPS-eligible power, and CEC is the appropriate agency to determine what the de minimis threshold should be.

EXPLANATION OF BILL'S IMPACT ON CPUC PROGRAMS, PRACTICE & POLICY:

The existing backstop cost recovery provisions of PU Code 399.2.5 were designed to resolve the “chicken and egg” problem presented by renewable transmission projects. Traditionally, generation developers fund costs up front for transmission construction necessary for their projects to sell energy to the market. The generation developer is then paid back over time. This historic process has created problems in financing transmission line that are primarily needed for new renewable generation development. A number of factors make it difficult for the generation developer to provide the upfront financing for the transmission line. Instead the electric utility needs to pay the upfront costs; but, the utility does not want to be on the hook for these costs if the generation is never built. To address this problem the Legislature adopted PU Code 399.2.5 to accelerate the development of renewable transmission by allowing the CPUC to guarantee that a utility that constructs a renewable transmission project can obtain retail rate recovery for projects where the Federal Energy Regulator Commission (FERC) does not allow wholesale rate recovery.

The CPUC has already begun to implement Sec. 399.2.5, and has issued decisions on cost recovery for renewables transmission development. The decisions establish: a) criteria for eligibility for backstop cost recovery, b) criteria for a finding of need under the RPS, c) the process for applying for eligibility for backstop cost recovery by advice letter or application, and d) the process for tracking and recovering eligible costs.¹ Energy Division staff are currently considering ways in which backstop cost recovery rules could be further clarified and streamlined.

PU Code 399.2.5 currently provides that where a transmission project (and related facilities) is found “necessary to facilitate” state RPS goals, then the project is “deemed to be necessary to the provision of electric service” and the CPUC will allow recovery in retail rates of “any increase in transmission costs ... that are not approved for recovery in transmission rates by” by FERC. The sponsors of this bill are concerned that the “necessary to facilitate” requirement is too high of burden to meet since in most transmission cases there is always some alternative to the specific transmission line, even if that option is far more expensive. The sponsor are also concerned that the current rules do not address costs that a utility may incur prior to filing for a needs assessment at the CPUC, such as generally planning costs.

¹ See for example D.06-06-034 and D. 07-03-012

LEGISLATIVE HISTORY:

None

STATUS:

The bill is currently in the Senate awaiting policy committee referral.

SUPPORT/OPPOSITION:

Support: BrightSource Energy
 Large-scale Solar Association

Opposition: None on file.

STAFF CONTACTS:

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Date: June 2, 2010

BILL LANGUAGE:

BILL NUMBER: AB 1954 AMENDED
BILL TEXT

AMENDED IN ASSEMBLY APRIL 12, 2010

INTRODUCED BY Assembly Members Skinner and V. Manuel Perez

FEBRUARY 17, 2010

An act to amend Sections 399.2.5 and 399.12 of the Public Utilities Code, relating to electricity.

LEGISLATIVE COUNSEL'S DIGEST

AB 1954, as amended, Skinner. Electrical transmission: renewable energy resources.

Under existing law, the Public Utilities Commission (CPUC) has regulatory authority over public utilities, including electrical corporations, as defined. Existing law, the Public Utilities Act, prohibits any electrical corporation from beginning the construction of, among other things, a line, plant, or system, or of any extension thereof, without having first obtained from the CPUC a certificate that the present or future public convenience and necessity require or will require that construction (certificate of public convenience and necessity). Existing law requires the CPUC, in acting upon an application by an electrical corporation for a certificate of public convenience and necessity, to deem new transmission facilities necessary to the provision of electric service if the CPUC finds that new transmission facilities are necessary to facilitate achievement of the renewable power goals established under the renewables portfolio standard. That law additionally requires the CPUC, upon finding that new transmission facilities are necessary to facilitate achievement of the renewable power goals established under the renewables portfolio standard, 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.

This bill would ~~require the CPUC, in acting upon~~ provide that an application by an electrical corporation for a certificate of public convenience and necessity ~~, to deem~~ for new transmission facilities is necessary to the provision of electric service if the CPUC finds that new transmission facilities are reasonably necessary or appropriate to facilitate achievement of the renewables portfolio standard. The bill would ~~require the CPUC to provide assurance of the eligibility for recovery in retail rates of any increase in transmission costs incurred by an electrical corporation resulting from the construction of transmission facilities in certain circumstances and to allow recovery in retail rates of any increase in transmission costs if not approved by the Federal Energy Regulatory Commission if the CPUC determines the costs were prudently incurred pursuant to a specified~~

~~law~~ authorize the CPUC to approve the recovery in retail rates by an electrical corporation of certain costs for transmission facilities that are incurred in certain circumstances if not approved for recovery in transmission rates by the Federal Energy Regulatory Commission .

This bill would revise and recast certain of the definitions applicable to the California Renewables Portfolio Standard Program.

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

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 399.2.5 of the Public Utilities Code is amended to read:

399.2.5. (a) Notwithstanding Sections 1001 to 1013, inclusive, an application of an electrical corporation for a certificate authorizing the construction of new transmission facilities is necessary to the provision of electric service ~~for purposes of Section 1003~~ if the commission finds that the new facility ~~is reasonably necessary or appropriate to facilitate~~ facilitates achievement of the renewables portfolio standard 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 all of the following:

(1) Making findings, where supported by an evidentiary record, that those transmission facilities provide benefit to the transmission network and ~~are reasonably necessary or appropriate 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) Providing assurance, prior to a determination of rate recovery by the Federal Energy Regulatory Commission (FERC) of those costs that are subject to FERC jurisdiction, of the eligibility for recovery in retail rates of any increase in transmission costs incurred by an electrical corporation resulting from the construction of the transmission facilities. This assurance shall be conditioned upon the commission's subsequent determination that the requirements of paragraph (5) have been met.~~

~~(5) Allowing recovery in retail rates of any increase in transmission costs if the FERC does not approve recovery of those costs in the rates that are subject to FERC jurisdiction after the commission determines that the costs were prudently incurred in accordance with subdivision (a) of Section 454.~~

~~(c) (1) The commission shall approve an advice letter seeking~~

~~assurance of cost recovery pursuant to paragraph (4) of subdivision (b), if either of the following is true:~~

~~— (A) The new transmission line or facility will primarily deliver electricity generated within a competitive renewable energy zone identified in the public collaborative stakeholder planning process known as the Renewable Energy Transmission Initiative (RETI).~~

~~— (B) The new transmission line or facility is needed to deliver electricity to load that is to be generated by generation facilities for which the electrical corporation has received interconnection requests if not less than 50 percent of the capacity is for delivery of electricity generated by eligible renewable energy resources and all of the interconnection requests are for generation facilities that are designed to comply with the greenhouse gases emission performance standard established by the commission pursuant to Chapter 3 (commencing with Section 8340) of Division 4.1.~~

~~— (2) Approval of an advice letter pursuant to paragraph (1) is not binding upon the commission in making its determination whether or not to approve an application for a certificate of public convenience and necessity pursuant to Chapter 5 (commencing with Section 1001).~~

(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.*

(c) (1) *The commission, prior to making a finding pursuant to subdivision (a), may approve an advice letter from an electrical corporation seeking, for a specific transmission project, a finding of eligibility for cost recovery pursuant to paragraph (4) of subdivision (b). Ultimate recovery of construction costs shall be contingent upon the commission finding, pursuant to subdivision (a), that the facility facilitates achievement of the renewables portfolio standard established pursuant to Article 16 (commencing with Section 399.11), and upon a determination by the commission that the costs were prudently incurred pursuant to subdivision (a) of Section 454.*

(2) (A) *The commission may approve cost recovery, in retail rates, for preconstruction costs if requested in an application of an electrical corporation for a certificate authorizing the construction of new transmission facilities if the commission finds that the new facility facilitates achievement of the renewables portfolio standard established in Article 16 (commencing with Section 399.11).*

(B) *The commission may approve cost recovery, in retail rates, for preconstruction costs if requested in an application or advice letter of an electrical corporation that seeks approval for preconstruction costs for a potential transmission facility if the utility certifies, at the time of filing the application, that it expects that the facility will facilitate achievement of the renewables portfolio standard established in Article 16 (commencing with Section 399.11). If the request for recovery of preconstruction costs is made in an application that the commission finds contains an adequate showing that the costs to be incurred are reasonable, the*

commission may approve recovery in retail rates without a subsequent reasonableness review. If the request for recovery of preconstruction costs is made in an advice letter, retail rate recovery is contingent upon a subsequent reasonableness review, unless otherwise ordered by the commission.

(3) The commission's determination that transmission facilities are eligible for cost recovery pursuant to paragraph (1) or (2) is not binding upon the commission when determining the need for the transmission facilities pursuant to Chapter 5 (commencing with Section 1001) or upon the commission's determination whether the facility will facilitate achievement of the renewables portfolio standard established in Article 16 (commencing with Section 399.11).

(d) Any cost recovery pursuant to subdivision (b) or (c) shall be limited to costs that are not approved for recovery in transmission rates by the Federal Energy Regulatory Commission.

SEC. 2. Section 399.12 of the Public Utilities Code is amended to read:

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

(a) "Conduit hydroelectric facility" means a facility for the generation of electricity that uses only the hydroelectric potential of an existing pipe, ditch, flume, siphon, tunnel, canal, or other manmade conduit that is operated to distribute water for a beneficial use.

(b) "Delivered" and "delivery" have the same meaning as provided in subdivision (a) of Section 25741 of the Public Resources Code.

(c) "Eligible renewable energy resource" means an electrical generating facility that meets the definition of an "in-state renewable electricity generation facility" in Section 25741 of the Public Resources Code, subject to the following limitations:

(1) (A) An existing small hydroelectric generation facility of 30 megawatts or less shall be eligible only if a retail seller or local publicly owned electric utility owned or procured the electricity from the facility as of December 31, 2005. A new hydroelectric facility is not an eligible renewable energy resource if it will cause an adverse impact on instream beneficial uses or cause a change in the volume or timing of streamflow.

(B) Notwithstanding subparagraph (A), a conduit hydroelectric facility of 30 megawatts or less that commenced operation before January 1, 2006, is an eligible renewable energy resource. A conduit hydroelectric facility of 30 megawatts or less that commences operation after December 31, 2005, is an eligible renewable energy resource so long as it does not cause an adverse impact on instream beneficial uses or cause a change in the volume or timing of streamflow.

(2) 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.

(d) "Procure" means to acquire through ownership or contract. For purposes of meeting the renewables portfolio standard procurement requirements, a retail seller or local publicly owned electric utility may procure either delivered electricity generated by an eligible renewable energy resource that it owns or for which it has entered into an electricity purchase agreement. 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 or the obligation of a local publicly owned electric utility to meet its renewables portfolio standard implemented pursuant to Section 387.

(e) (1) "Renewable energy credit" means a certificate of proof associated with the generation of electricity from an eligible renewable energy resource, issued through the accounting system established by the Energy Commission pursuant to Section 399.13, that one unit of electricity was generated and delivered by an eligible renewable energy resource.

(2) "Renewable energy credit" includes all renewable and environmental attributes associated with the production of electricity from the eligible renewable energy resource, except for an emissions reduction credit issued pursuant to Section 40709 of the Health and Safety Code and any credits or payments associated with the reduction of solid waste and treatment benefits created by the utilization of biomass or biogas fuels.

(3) No electricity generated by an eligible renewable energy resource attributable to the use of nonrenewable fuels, beyond a de minimis quantity ~~—, as determined by the Energy Commission for each renewable energy technology, to optimize reliable integration and efficiency of electrical production from eligible renewable energy resources, shall result in the creation of a renewable energy credit.~~ *used to generate electricity in the same process through which the facility converts renewable fuel to electricity, shall result in the creation of a renewable energy credit. The Energy Commission shall set the de minimis quantity of nonrenewable fuels for each renewable energy technology at a level of no more than 2 percent of the total quantity of fuel used by the technology to generate electricity. If, however, a specific facility demonstrates that a higher de minimis quantity will permit it to significantly increase its utilization of renewable fuel and reduce the variability of its electrical output, the Energy Commission may set the de minimis quantity for that facility at a level of no more than 10 percent of the total quantity of energy used by the facility to generate electricity.*

(f) "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 this article or the obligation of a local publicly owned electric utility to meet its renewables portfolio standard implemented pursuant to Section 387.

(g) "Retail seller" means an entity engaged in the retail sale of electricity to end-use customers located within the state, 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 program subject to the same terms and conditions applicable to an electrical corporation.

(3) An electric service provider, as defined in Section 218.3, for all sales of electricity to customers beginning January 1, 2006. The commission shall institute a rulemaking to determine the manner in which electric service providers will participate in the renewables portfolio standard program. 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 electricity 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 electric utility.