

STATE OF CALIFORNIA

Public Utilities Commission
San Francisco

M e m o r a n d u m

Date: April 19, 2006

To: The Commission
(Meeting of April 27, 2006)

From: Delaney Hunter, Director
Office of Governmental Affairs (OGA) — Sacramento

Subject: **AB 2189 (Blakeslee) - Energy: renewable energy resources**
As Amended April 6, 2006

LEGISLATIVE SUBCOMMITTEE RECOMMENDATION: Support with Technical Amendments

SUMMARY OF BILL: This bill would amend the definition of “in-state renewable electricity generation facility” in Section 25471 of the Public Resources Code to do the following:

- Change the eligibility of hydroelectric facilities under the California Renewables Portfolio Standard (“RPS”) in two ways. Currently, any hydro facility with a capacity of greater than 30 MW is ineligible under the RPS, procurement from facilities of less than 30 MW that were under contract as of September 12, 2002, (this date according to California Energy Commission (CEC)-promulgated eligibility rules) are eligible only as baseline procurement under the RPS, and therefore ineligible to meet incremental procurement targets, and a hydro facility that requires a new appropriation or diversion of water is ineligible. This bill says:
 - That if a small hydro facility under 30 MW undergoes efficiency upgrades that cause its capacity to be over 30 MW but that don’t require a new appropriation of water, the facility would remain RPS-eligible (it is assumed that this means its generation aside from the new, efficiency-created generation would continue to be counted as baseline procurement under the RPS).
 - That new procurement from an existing hydro facility, regardless of the facility’s size, can be counted as procurement under the RPS if the new procurement is the result of efficiency improvements and does not require “a new or increased appropriation or diversion of water.” (It is assumed here that the new incremental procurement as a result of efficiency upgrades

could be counted as “incremental” for purposes of meeting incremental RPS procurement targets.)

- Allow energy from “man-made conduit resources” to be RPS-eligible. Existing conduit hydro facilities would qualify only as RPS baseline procurement, while new ones would be “eligible” if they do not require a new or increased appropriation or diversion of water under Part 2 (commencing with Section 1200) of Division 2 of the Water Code. (This type of energy is already implicitly allowed by current RPS rules, since the facilities would presumably qualify as small hydro under 30 MW that do not trigger a new appropriation of water, but the bill would make this allowance explicit.)

SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION: The intent of the bill seems to be to allow the California RPS program to promote more energy procurement from small hydroelectric facilities gained purely from efficiency improvements.

SUMMARY OF SUGGESTED AMENDMENTS:

1. The bill’s author should clarify, where necessary, which type of RPS-eligible procurement each type of energy would be: baseline procurement or incremental procurement. This should be clarified for the additional procurement from efficiency gains on existing hydro facilities, for the non-additional procurement from the same facilities, and for procurement from new and existing man-made conduit hydro facilities. We recommend that for these purposes, the rule should be that any procurement gained as a result of new capital expenditures may be counted as incremental procurement, while any procurement that is not the result of new capital expenditures should be counted as baseline procurement.
2. The bill’s authors should investigate whether the Water Code may have a definition of “require a new or increased appropriation or diversion of water” that would prevent both efficiency upgrades and new generation from man-made conduits from qualifying as RPS-eligible under SB 1078’s Section 399.12(a)(3), which states “... 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.
3. The bill’s authors should consult CEC about which is the correct date to use for pg.3, line 13, which is the date on or before which any small hydro facility owned may only count as baseline. CEC rules currently consider this date to be September 12, 2002, while this bill lists it as January 1, 2003.

DIVISION ANALYSIS (Energy Division):

This bill could make it more complicated for the CEC to determine which hydro facilities are RPS-eligible and what is considered incremental vs. baseline procurement from those facilities, since it says new procurement from hydro facilities of any size can be

eligible if it is a result of efficiency improvements and removes the currently “clean” provision that hydro facilities over 30 MW capacity are RPS-ineligible. CEC should be consulted on the ramifications of these changes.

The bill could broaden the impact of the RPS program by supporting the development of hydroelectric energy from man-made conduits, and by encouraging owners of hydro projects to implement efficiency upgrades that allow greater electricity production.

It appears the legislation’s objectives could also be achieved by broadening and elaborating upon the definitions of eligible hydro facilities in the CEC’s Renewables Portfolio Standard Eligibility Guidebook.

PROGRAM BACKGROUND: None.

LEGISLATIVE HISTORY: None.

FISCAL IMPACT: None.

STATUS: The bill passed the Assembly U&C Committee on April 17th. The bill will next be heard in the Assembly Natural Resources Committee (no date has been set).

SUPPORT/OPPOSITION:

Support

Pacific Gas & Electric (PG&E)
Southern California Edison (SCE)
Southern California Public Power Authority (SCPPA)

Opposition

California Hydropower Reform Coalition (CHRC)
California Trout
Friends of the River
Sierra Club California

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BILL LANGUAGE:

BILL NUMBER: AB 2189 AMENDED
BILL TEXT

AMENDED IN ASSEMBLY APRIL 6, 2006

INTRODUCED BY Assembly Member Blakeslee

FEBRUARY 22, 2006

An act to amend Section 399.12 of the Public Utilities Code, relating to energy.

LEGISLATIVE COUNSEL'S DIGEST

AB 2189, as amended, Blakeslee Energy: renewable energy resources.

Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical corporations. The Public Utilities Act imposes various duties and responsibilities on the 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. The program requires that a retail seller of electricity, including electrical corporations, community choice aggregators, and electric service providers, but not including local publicly owned electric utilities, 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 renewables portfolio standard requires each electrical corporation to increase its total procurement of eligible renewable energy resources by at least an additional 1% of retail sales per year over its baseline amount so that 20% of its retail sales are procured from eligible renewable energy resources no later than December 31, 2017. Pursuant to the existing definition of an "eligible renewable energy resource," the electricity generated by a small hydroelectric generation facility of 30 megawatts or less procured or owned by an electrical corporation as of January 1, 2003, is eligible only for purposes of establishing the baseline of renewable energy resources procured by the electrical corporation and not for purposes of meeting the renewables portfolio standard.

This bill would make the incremental amount of electricity generated by an existing small hydroelectric generation facility resulting from efficiency improvements at the facility undertaken after January 1, 2003, eligible to meet the renewables portfolio standard. The bill would provide that a small hydroelectric generation facility that is an eligible renewable energy resource ~~retain~~ retains eligibility if, as a result of efficiency improvements at the facility undertaken after January 1, 2003, the ~~peak~~ generating capacity of

the facility exceeds 30 megawatts. *The bill would provide that the incremental increase in the amount of electricity generated from an existing hydroelectric generation facility, regardless of size, that results from efficiency improvements for which there is no new or increased appropriation or diversion of water, is electricity from an "eligible renewable energy resource." The bill would provide that an existing conduit hydroelectric facility, as defined, of 30 megawatts or less is eligible for purposes of establishing a retail seller's baseline quantity of eligible renewable energy resources and that a new conduit hydroelectric facility of 30 megawatts or less is an "eligible renewable energy resource" if it does not require a new or increased appropriation or diversion of water pursuant to a specified law. The bill would make other technical, nonsubstantive changes.*

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

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

SECTION 1. 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) "Eligible renewable energy resource" means an electric generating facility that meets the definition of "in-state renewable electricity generation facility" in Section 25741 of the Public Resources Code, subject to the following conditions or exceptions :

(1) 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 electricity certified as incremental geothermal production by the Energy Commission, if the incremental electricity 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 geothermal output of existing steamfields and the contribution of capital investments in the facility or wellfield.

(2) ~~The electricity generated by an existing~~

(A) A small hydroelectric generation facility of 30 megawatts or less ~~peak~~ generating capacity that is procured or owned by a retail seller as of January 1, 2003, shall be eligible for purposes of ~~establishing~~ *generating electricity that contributes to the* baseline of the retail seller pursuant to this article. ~~The incremental amount of electricity generated by an existing small hydroelectric generation facility resulting from efficiency improvements at the facility undertaken after January 1, 2003, is eligible to meet the renewables portfolio standard.~~ A small hydroelectric generation facility that is an eligible renewable energy resource shall retain eligibility if, as a result of efficiency improvements at the facility undertaken after January 1,

2003, the ~~peak~~ generating capacity of the facility exceeds 30 megawatts. ~~A~~

(B) 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.

(C) *The incremental increase in the amount of electricity generated from an existing hydroelectric generation facility, regardless of size, that results from efficiency improvements for which there is no new or increased appropriation or diversion of water, is electricity from an "eligible renewable energy resource," and shall be eligible for purposes of meeting the procurement requirements of this article.*

(D) *Notwithstanding subparagraph (A), an existing conduit hydroelectric facility of 30 megawatts or less, as defined by Section 823a of Title 16 of the United States Code, shall be eligible for the purposes of establishing a retail seller's baseline quantity of eligible renewable energy resources. A new conduit hydroelectric facility of 30 megawatts or less, as defined by Section 823a of Title 16 of the United States Code, shall be an eligible renewable energy resource if it does not require a new or increased appropriation or diversion of water under Part 2 (commencing with Section 1200) of Division 2 of the Water Code.*

(3) 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. Electricity generated by a facility meeting these requirements shall be eligible only for the purpose of adjusting a retail seller's baseline quantity of eligible renewable energy resources.

(b) "Energy Commission" means the State Energy Resources Conservation and Development Commission.

(c) "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 in 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 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 as defined in subdivision (d) of Section 9604.

(d) "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.