

STATE OF CALIFORNIA

Public Utilities Commission
San Francisco

M e m o r a n d u m

Date: May 16, 2007

To: The Commission
(Meeting of May 24, 2007)

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

Subject: **AB 809 (Blakeslee) Energy: renewable energy resources**
As amended: May 2, 2007

LEGISLATIVE SUBCOMMITTEE RECOMMENDATION: SUPPORT

SUMMARY OF BILL: This bill would expand RPS eligibility of hydroelectric power to include new procurement from an existing hydro facility, regardless of the facility's size if the new procurement is the result of efficiency improvements and does not require "a new or increased appropriation or diversion of water."

SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION:

The CPUC supports the goal to develop additional hydroelectric energy that does not place further burden on river ecosystems, thereby encouraging efficiency upgrades at large hydro facilities.

DIVISION ANALYSIS (Energy Division):

- This bill changes 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.

- The bill provides that the eligibility can only be obtained if the incremental increase is the result of efficiency improvements from a retrofit that does not result in any new or increased appropriation or diversion of water from a watercourse. Further, the efficiency improvements can not be the result of routine maintenance, and all of the incremental increase in electricity resulting from the efficiency improvements has to be demonstrated to result from a long-term financial commitment by the retail seller.
- This bill impacts the CPUC's RPS program by making incremental power from large hydro facilities RPS-eligible.
- The bill could broaden the impact of the RPS program by encouraging owners of hydro projects to implement efficiency upgrades that allow greater electricity production.
- Renewables advocates are concerned that the bill waters RPS eligibility by allowing efficiencies on otherwise ineligible resources to count as an eligible renewable resource.

PROGRAM BACKGROUND:

SB 1078, effective January 1, 2003, established the California RPS program (and SB 107, effective January 1, 2007, made certain adjustments to SB 1078). The Program's objective is to increase the amount of California's electricity generated from renewable resources to meet several identified purposes.¹ To achieve these purposes, each obligated load-serving entity (LSE) is required each year to procure a minimum quantity of electricity from eligible renewable energy resources.² The quantity is a specific percentage of total annual retail energy sales. The quantity must increase annually by at least 1% of retail sales compared to the procurement in the prior year, reaching 20% by 2010.

Pursuant to statute, CPUC is responsible for most RPS program administration and implementation, including establishing compliance targets and flexible compliance rules, approving or rejecting the IOUs' RPS procurement plans and proposed contracts, overseeing LSEs' renewable procurement processes, determining compliance and administering enforcement for noncompliance. The California Energy Commission (CEC) is responsible for certifying renewable facilities as RPS-eligible, verifying RPS procurement levels, and allocating Supplemental Energy Payment for-above market costs of renewable procurement.

¹ These purposes include increasing generation resource diversity, enhancing electric reliability, protecting and improving public health, improving environmental quality and benefits, promoting stable electricity prices, stimulating economic development, creating new employment opportunities, and reducing reliance on foreign fuels. (§ 399.11.)

² LSEs are electrical corporations, electric service providers (ESPs), or community choice aggregators (CCAs). (§ 380(j).) LSEs, including ESPs and CCAs, are subject to the same basic RPS Program requirements as applicable to electrical corporations, even if the manner of their participation may vary. (§§ 380(e) and 399.11 et seq.; also see Decision (D.) 05-11-025, Finding of Fact 4, Conclusion of Law 2.) Eligible renewable resources are determined by the California Energy Commission (CEC) and may include (but are not limited to) wind, geothermal, bioenergy, small hydro, solar thermal, and photovoltaic.

The 2005 Energy Policy Act provided increased tax incentives for hydro power and incremental hydro power qualifies for the federal green power purchase program:

- Production Tax Credit
Incremental hydropower (new energy at existing facilities through additions of capacity and efficiency improvements) and “qualified” (run-of-river hydropower at existing FERC-licensed non-hydropower dams) are now eligible for a production tax credit (PTC) for renewable energy outlined in Section 45 of the IRS code.

A ten-year tax credit of 0.9 cents per Kwh is available for hydropower placed in service by Jan. 1, 2008

- Federal Purchase Program
Incremental hydropower is now included in the federal power purchase program for renewable energy. The program requires the federal government to purchase a certain percentage of its electricity from renewable energy sources.

LEGISLATIVE HISTORY:

SB 1078 (Sher) of 2002 established the California Renewables Portfolio Standard (RPS). The RPS requires a retail seller of electricity to increase its total amount of eligible renewable resources by at least one percent per year, until 20 percent of its retail sales are procured from renewables, provided sufficient public goods charge (PGC) funds are available to cover any above-market costs of renewables.

AB 2189 (Blakeslee), signed into law in 2006, made a marginal expansion in the California RPS hydro eligibility standards, allowing small hydro facilities (of 30 MW or less) to retain RPS eligibility if efficiency improvements pushed them over 30 MW, as long as the facility did not require an increased appropriation of water.

FISCAL IMPACT:

None. This bill would not require significant new work at the CPUC. The CEC is responsible for developing RPS eligibility guidelines and determining power facilities' RPS eligibility.

STATUS:

AB 809 has passed out of both the Assembly Utilities and Commerce Committee (Ayes 11. Noes 0) and Assembly Natural Resources Committee (Ayes 9. Noes 0) and is pending hearing in the Assembly Appropriations Committee.

SUPPORT/OPPOSITION: (as of April 23, 2007)

SUPPORT: Pacific Gas and Electric Company (sponsor)
Southern California Edison

OPPOSITION: California Hydropower Reform Coalition
California Trout
Clean Power Campaign
Environment California
Sierra Club California
The Utility Reform Network
Union of Concerned Scientists

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Date: May 16, 2007

BILL LANGUAGE:

BILL NUMBER: AB 809 AMENDED
BILL TEXT

AMENDED IN ASSEMBLY MAY 2, 2007
AMENDED IN ASSEMBLY APRIL 11, 2007

INTRODUCED BY Assembly Member Blakeslee

FEBRUARY 22, 2007

An act to amend Section 399.12.5 of the Public Utilities Code, relating to energy.

LEGISLATIVE COUNSEL'S DIGEST

AB 809, 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 existing definition of an "eligible renewable energy resource," includes 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. An exception to this provision provides that a small hydroelectric generation facility that is an eligible renewable energy resource retains eligibility if efficiency improvements at the facility undertaken after January 1, 2003, cause the generating capacity of the facility to exceed 30 megawatts, and the efficiency improvements do not result in a new or increased appropriation or diversion of water from a watercourse.

Under existing law, the State Water Resources Control Board is required to consider and act upon all applications for permits to appropriate water. Existing law requires the board to expedite processing of applications for certain small hydroelectric powerplants and applications or petitions for retrofit of hydroelectric plants at existing dams, canals, or conduits where the streamflow regime will not be changed and where there will be no significant adverse environmental impacts.

Under existing law, the Porter-Cologne Water Quality Control Act, the State Water Resources Control Board and the California regional

water quality control boards are the principal state agencies with authority over matters relating to water quality. Existing law provides for the issuance by the state board, or by a regional board to which the state board has delegated authority, of a water quality certification pursuant to the federal Clean Water Act.

This bill would provide that the incremental increase in the amount of electricity generated from a hydroelectric generation facility as a result of efficiency improvements at the facility is electricity from an eligible renewable energy resource, without regard to the electrical output of the facility, if the incremental increase is the result of efficiency improvements from a retrofit that do not result in ~~any~~ any new or increased appropriation or diversion of water from a watercourse, the hydroelectric generation facility has received a water quality certification ~~or exemption~~ from the board or a regional board *or is exempted from the certification requirement for a specified reason*, ~~and~~ the hydroelectric generation facility was operational prior to January 1, 2007, *the efficiency improvements are initiated on or after January 1, 2008, the efficiency improvements are not the result of routine maintenance, and all of the incremental increase in electricity resulting from the efficiency improvements are demonstrated to result from a long-term financial commitment, as defined, by the retail seller*. The bill would provide that a retrofit does not result in a new or increased appropriation or diversion of water if the state board determines the retrofit is eligible for expedited processing pursuant to the above described application provision.

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 399.12.5 of the Public Utilities Code is amended to read:

399.12.5. (a) Notwithstanding *subdivision (b) of* Section 399.12, a small hydroelectric generation facility that satisfies the criteria for an eligible renewable energy resource pursuant to Section 399.12 shall not lose its eligibility if efficiency improvements undertaken after January 1, 2003, cause the generating capacity of the facility to exceed 30 megawatts, and the efficiency improvements do not result in a new or increased appropriation or diversion of water from a watercourse. The entire generating capacity of the facility shall be eligible.

(b) Notwithstanding *subdivision (b) of* Section 399.12, the incremental increase in the amount of electricity generated from a hydroelectric generation facility as a result of efficiency improvements at the facility, is electricity from an eligible renewable energy resource, without regard to the electrical output of the facility, if all of the following conditions are met:

(1) The incremental increase is the result of efficiency improvements from a retrofit that do not result in ~~any~~ any new or increased appropriation or diversion of water from a watercourse. For purposes of this paragraph, a retrofit does not result in a new or increased appropriation or diversion of water if the State Water Resources Control Board

determines that the retrofit is eligible for expedited processing pursuant to Section 1490 of the Water Code.

(2) The hydroelectric generation facility has, within the immediately preceding 15 years, received ~~an exemption or~~ certification from the State Water Resources Control Board pursuant to Section 401 of the Clean Water Act (33 U.S.C. Sec. 1341), or has received certification from a regional board to which the state board has delegated authority to issue certification , unless the facility is exempt from certification because there is no potential for discharge into waters of the United States .

(3) The hydroelectric generation facility was operational prior to January 1, 2007 , the efficiency improvements are initiated on or after January 1, 2008, the efficiency improvements are not the result of routine maintenance activities, as determined by the Energy Commission, and the efficiency improvements were not included in any resource plan sponsored by the facility owner prior to January 1, 2008 .

(4) All of the incremental increase in electricity resulting from the efficiency improvements are demonstrated to result from a long-term financial commitment by the retail seller. For purposes of this paragraph, "long-term financial commitment" means either new ownership investment in the facility by the retail seller or a new or renewed contract with a term of 10 or more years, which includes procurement of the incremental generation.

SEC. 2. The Legislature declares both of the following:

(a) It is the intent of the Legislature to promote efficiency improvement projects at hydroelectric generation facilities located in California by requiring that the incremental electricity resulting from the efficiency improvements be owned by, or committed to, a retail seller for a period of no less than 10 years since those contracts principally exist for hydroelectric generation facilities owned by California's electrical corporations.

(b) It is the intent of the Legislature to promote new efficiency improvement projects at hydroelectric generation facilities located in California by excluding eligibility of projects identified in procurement plans prior to January 1, 2008.