

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: **SB 411 (Simitian) – Energy: renewable energy resources.
As Amended: April 18, 2007**

LEGISLATIVE SUBCOMMITTEE RECOMMENDATION: Support, if Amended
The Commission previously took a Support position on SB 411 at the April 12, 2007 meeting – however, recent amendments necessitate an updated position.

SUMMARY OF BILL: This bill would create a new Renewables Portfolio Standard (RPS) requirement that obligated load-serving entities (LSEs) meet renewable energy targets of at least 33% of retail sales no later than December 31, 2020, while keeping the 20% by 2010 target in place. The bill states that the 33% requirement is in furtherance of the greenhouse gas emissions limits adopted in 2006's AB 32.

SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION:

CPUC supports the goal of increasing the state's RPS targets beyond 20%, as a key tool for driving the further development of renewable generation and reducing the state's greenhouse gas emissions. However, the Commission believes that analysis is needed to determine whether meeting 33% by 2020 is feasible given transmission constraints and the amount of funds available to cover the above-market costs of renewable procurement. In addition, the Commission believes additional analysis is needed to determine if mandating a 33% RPS by 2020 is a cost-effective and advisable strategy for reaching GHG emissions limits.

SUMMARY OF SUGGESTED AMENDMENTS:

- Rather than mandate a 33% by 2020 RPS target, the bill should allow CPUC to set Renewables Portfolio Standard (RPS) targets beyond 20%, as was included in the previous version of SB 411.

- The bill should also delegate to CPUC the determination of the extent to which ratepayer-funded monies can be used to pay above-market costs associated with increased RPS targets.

DIVISION ANALYSIS (Energy Division):

- SB 411 would amend the state's current RPS statute (PU Code Sections 387 and 399.11-399.16) to remove the current limitation that the Commission may not require LSEs to meet annual RPS targets of greater than 20% of retail sales, which would be an improvement to the RPS program.
- Since the state's three large IOUs plan to reach 20% renewables by 2012 at the latest, a ramp-up of the targets is probably necessary to stimulate further market demand that will result in new renewable generation. Studies show that there is a large amount of additional renewable capacity that could be developed in or near California.
- Studies have also shown that an increase in the RPS targets will be an essential strategy, one of the most effective available, for reaching the state's ambitious greenhouse gas emissions reductions goals.
- Legislation is necessary to allow RPS targets to increase beyond 20%, since the 20% limitation is currently in statute.
- It is prudent that the Commission be allowed to do adequate analysis on the feasibility, economics and impacts of increasing RPS targets before a decision is made regarding whether and how much to increase those targets.

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. 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. 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, the Commission 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.
- Many other states with RPS policies have delegated the ability to increase targets to their regulatory commissions, including Arizona, New Jersey, New York and Massachusetts. There is currently no federal RPS.

LEGISLATIVE HISTORY:

SB 1078 [Chapter 516, Stats. 2002 (Sher)] created the Renewable Portfolio Standard.

SB 107 [Chapter 464, Stats. 2006 (Simitian)] made modifications to the RPS program and set the maximum RPS goal at 20%.

AB 94 (Levine, 2006), also moving in the current legislative session, eliminates the current 20% by 2010 requirement and replaces it with a 33% by 2020 requirement.

SB 410 (Simitian, 2006) is an RPS-related bill which addresses some inconsistencies in previous legislation including 2006's SB 107.

FISCAL IMPACT:

Reaching the 33% target will require CPUC staff to do significant additional work including review of more renewable procurement associated with a higher RPS target, proactive transmission planning to ensure that renewable projects entering RPS contracts have access to transmission, validation of renewable resource potential, determination of cost-effectiveness, and rate impact analysis.

As such CPUC would incur approximately \$289,140 and 3 PYs in costs. The positions required to carry out the additional work required by this bill would be two Public Utilities Regulatory Analyst (PURA) V and one Public Utilities Regulatory Analyst (PURA) IV.

Total fiscal impact is \$289,140 per year.

STATUS:

SB 411 is presently on the Senate Floor.

SUPPORT/OPPOSITION: (5/11/07)

Support: Southern California Edison
Union of Concerned Scientists
Clean Power Campaign

Opposition: California Chamber of Commerce
Pacific Gas and Electric Company
Sempra Energy

STAFF CONTACTS:

Delaney L. Hunter
Director, Office of Governmental Affairs

dlh@cpuc.ca.gov
(916) 327-7788

Sean Gallagher
Director, Energy Division

SHG@cpuc.ca.gov
(415) 703-2059

Paul Douglas
Senior Analyst, Energy Division

PSD@cpuc.ca.gov
(415) 355-5579

Susannah Churchill
Analyst, Energy Division

SC1@cpuc.ca.gov
(415) 703-2557

Date: May 16, 2007

BILL LANGUAGE:

BILL NUMBER: SB 411 AMENDED
BILL TEXT

AMENDED IN SENATE APRIL 18, 2007

INTRODUCED BY ~~Senator~~ ~~Simitian~~
 Senators Simitian and Perata

FEBRUARY 21, 2007

An act to amend Section 399.15 of the Public Utilities Code,
relating to energy.

LEGISLATIVE COUNSEL'S DIGEST

SB 411, as amended, Simitian. Energy: renewable energy resources.

The Public Utilities Act imposes various duties and responsibilities on the California Public Utilities Commission (CPUC) with respect to the purchase of electricity and requires the CPUC 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, as defined, of electricity, 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 retail seller to increase its total procurement of eligible renewable energy resources by at least an additional 1% of retail sales per year so that 20% of its retail sales are procured from eligible renewable energy resources no later than December 31, 2010. Existing law prohibits the CPUC from requiring a retail seller with 20% of retail sales procured from eligible renewable energy resources in any year to increase its procurement of renewable energy resources in the following year.

The existing California Global Warming Solutions Act of 2006 requires the State Air Resources Board to adopt regulations to require the reporting and verification of emissions of greenhouse gases and to monitor and enforce compliance with the reporting and verification program, and requires the state board to adopt a statewide greenhouse gas emissions limit equivalent to the statewide greenhouse gas emissions levels in 1990 to be achieved by 2020.

~~This bill would prohibit the CPUC from requiring a retail seller with 20% of retail sales procured from eligible renewable energy resources in any year to increase its procurement of renewable energy resources in the following year, unless the CPUC determines that additional procurement of eligible renewable energy resources, of up to 33% of retail sales, would facilitate achievement of~~

require a retail seller to increase its total procurement of eligible renewable resources so that at least 33% of its retail sales are procured from eligible renewable energy

resources no later than December 31, 2020, in furtherance of achieving the greenhouse gas emissions limit adopted pursuant to the California Global Warming Solutions Act of 2006.

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 399.15 of the Public Utilities Code is amended to read:

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 electricity generated by 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 Section 399.6 and Chapter 8.6 (commencing with Section 25740) of Division 15 of the Public Resources Code, to cover the above-market costs of eligible renewable energy resources.

(b) The commission shall implement annual procurement targets for each retail seller as follows:

(1) Each retail seller 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, 2010 ~~— A retail seller with 20 percent of retail sales procured from eligible renewable energy resources in any year shall not be required to increase its procurement of renewable energy resources in the following year, unless the commission determines that additional procurement of eligible renewable energy resources, of up to 33 percent of retail sales, would facilitate achievement of the greenhouse gas emissions limit adopted~~ , and at least 33 percent of its retail sales are procured from eligible renewable energy resources no later than December 31, 2020, in furtherance of achieving the greenhouse gas emissions reductions required pursuant to Part 3 (commencing with Section 38550) of Division 25.5 of the Health and Safety Code.

(2) For purposes of setting annual procurement targets, the commission shall establish an initial baseline for each retail seller 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 Section 399.12.

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

(4) In the event that a retail seller fails to procure sufficient eligible renewable energy resources in a given year to meet any annual target established pursuant to this subdivision, the retail seller shall procure additional eligible renewable energy resources in subsequent years to compensate for the shortfall if sufficient funds are made available pursuant to Section 399.6 and Chapter 8.6 (commencing with Section 25740) of Division 15 of the Public Resources Code, to cover any above-market costs of eligible renewable

energy resources.

(5) If supplemental energy payments from the Energy Commission, in combination with the market prices approved by the commission, are insufficient to cover any above-market costs of electricity procured from eligible renewable energy resources through an electricity purchase agreement of at least 10 years' duration, the commission shall allow a retail seller to limit its annual procurement obligation to the quantity of eligible renewable energy resources that can be procured with available supplemental energy payments. A retail seller shall not be required to enter into long-term contracts with operators of eligible renewable energy resources that exceed the market prices established pursuant to subdivision (c).

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

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

(d) The Energy Commission shall provide supplemental energy payments from funds in the New Renewable Resources Account of the Renewable Resource Trust Fund to eligible renewable energy resources pursuant to Chapter 8.6 (commencing with Section 25740) of Division 15 of the Public Resources Code, consistent with this article, for any above-market costs. Indirect costs associated with the purchase of eligible renewable energy resources by an electrical corporation, including imbalance energy charges, sale of excess energy, decreased generation from existing resources, or transmission upgrades, shall not be eligible for supplemental energy payments, but are recoverable in rates, as authorized by the commission. The Energy Commission shall not award supplemental energy payments to service load that is not subject to the renewable energy public goods charge.

(e) 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).

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