

DOCKETED

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| Project Title: | Appeal by Los Angeles Department of Water & Power re Renewables Portfolio Standard Certification Eligibility |
| TN #: | 213453 |
| Document Title: | 394 AB 2196 Legislative History Senate Floor Analysis 08.31.12 (Bates Nos. LA002901-LA002909) |
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SENATE RULES COMMITTEE

AB 2196

Office of Senate Floor Analyses

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THIRD READING

Bill No: AB 2196

Author: Chesbro (D), et al.

Amended: 8/31/12 in Senate

Vote: 21

SENATE ENERGY, UTILITIES & COMMUNIC. COMM: 11-1, 6/25/12

AYES: Padilla, Fuller, Berryhill, Corbett, De León, DeSaulnier, Emmerson,
Kehoe, Pavley, Rubio, Wright

NOES: Simitian

NO VOTE RECORDED: Strickland

SENATE ENVIRONMENTAL QUALITY COMMITTEE: 6-1, 7/2/12

AYES: Simitian, Blakeslee, Hancock, Kehoe, Lowenthal, Pavley

NOES: Strickland

SENATE APPROPRIATIONS COMMITTEE: 4-1, 8/16/12

AYES: Kehoe, Alquist, Price, Steinberg

NOES: Lieu

NO VOTE RECORDED: Walters, Dutton

SENATE FLOOR: 12-21, 8/23/12 (FAIL)

AYES: Alquist, Corbett, DeSaulnier, Evans, Hancock, Kehoe, Leno,
Pavley, Simitian, Steinberg, Wolk, Yee

NOES: Anderson, Berryhill, Calderon, Cannella, Correa, Dutton, Fuller,
Gaines, Harman, Hernandez, Huff, La Malfa, Lieu, Liu, Negrete

McLeod, Rubio, Runner, Strickland, Walters, Wright, Wyland

NO VOTE RECORDED: Blakeslee, De León, Emmerson, Lowenthal,
Padilla, Price, Vargas

ASSEMBLY FLOOR: 66-1, 5/25/12 - See last page for vote

LA002901

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SUBJECT: Renewable energy resources

SOURCE: Author

DIGEST: This bill clarifies the definition of an eligible renewable electrical generation facility to include a facility that generates electricity utilizing biomethane delivered through a common carrier pipeline if the source and delivery of the fuel can be verified by the State Energy Resources Conservation and Development Commission (Energy Commission). This bill counts in full, as eligible generation for purpose of complying with the Renewable Portfolio Standard (RPS), electric generation that relies on procurement of biomethane from a contract executed, by a retail seller or local publicly owned utility and reported to the Energy Commission, prior to March 29, 2012. This bill contingent on AB 1900 (Chesbro).

ANALYSIS: Existing law:

1. Requires investor-owned utilities, community choice aggregators, and electric service providers (collectively referred to as retail sellers) and local publicly owned utilities (POUs), to increase purchases of renewable energy such that at least 33% of total retail sales are procured from renewable energy resources by December 31, 2020. In the interim each entity is be required to procure an average of 20% of renewable energy for the period of January 1, 2011 through December 31, 2013 and 25% by December 31, 2016. This is known as the RPS.
2. Requires all renewable electricity products to meet the requirements of a “loading order” that mandates minimum and maximum quantities of three product categories (or “buckets”) which includes renewable resources directly connected to a California balancing authority or provided in real time without substitution from another energy source, energy not connected or delivered in real time yet still delivering electricity, and unbundled renewable energy credits.
3. Requires the CEC to certify generating facilities for purposes of establishing eligibility under the RPS and to design and implement an accounting system to verify compliance with the RPS by retail sellers and POUs.

4. Defines a renewable electrical generation facility and includes in that definition a facility that uses landfill gas or digester gas (biomethane).
5. Permits procurement from contracts for renewable generation executed prior to June 1, 2010 to “count in full” toward a retail seller’s or POU’s RPS requirements and further exempts those contracts from the three product categories or “bucket” requirements.

This bill clarifies the definition of an eligible renewable electrical generation facility to include a facility that generates electricity utilizing biomethane delivered through a common carrier pipeline if the source and delivery of the fuel can be verified by the Energy Commission. This bill counts in full, as eligible generation for purpose of complying with RPS, electric generation that relies on procurement of biomethane from a contract executed, by a retail seller or local publicly owned utility and reported to the Energy Commission, prior to March 29, 2012 the CEC must certify that the fuel source:

1. Is injected into a pipeline that physically flows toward the generating facility that will use the fuel;
2. The source was newly developed after March 29, 2012 or increased deliveries after March 29, 2012 to meet the new contract;
3. The seller or purchaser of the biomethane demonstrates that the capture and injection of biomethane into a common carrier pipeline directly results in at least one of the following environmental benefits to California:
 - A. The reduction or avoidance of the emission of any criteria air pollutant in California.
 - B. The reduction or avoidance of pollutants that could have an adverse impact on waters of the state.
 - C. The alleviation of a local nuisance within California that is associated with the emission of odors.
4. Renewable and environmental attributes are transferred to the retail seller or POU that uses the biomethane for compliance with the RPS to ensure that the electric generation is carbon neutral;

5. The seller and purchaser comply with a tracking system to verify deliveries of biomethane; and
6. The source of the biomethane causes a direct reduction of air or water pollution in the state or alleviates a local nuisance related to the emission of odors.

Background

Eligible Renewable Generation. Procurement from a renewable facility cannot be counted for purposes of complying with the RPS unless that facility has been certified as RPS-eligible by the CEC. Facilities interested in obtaining a bilateral contract or competing in a load-serving entity's RPS solicitation generally certify the facility with the CEC.

There are two types of certification: (1) RPS Certification, and, (2) RPS Pre-Certification. Renewable facilities that are under development may seek "pre-certification," with the understanding that the CEC will verify the information submitted in the pre-certification application once the facility has been completed and is delivering electricity. All certified and pre-certified facilities are subject to audit. The Western Renewable Energy Generation Information System has been developed to satisfy current RPS tracking requirements. All RPS-certified facilities must register with the System.

The fourth edition of the CEC's RPS eligibility guidebook, released in January 2011, introduced a number of changes to the treatment of biomethane injected into the natural gas pipeline system. Some of the more noteworthy changes were the creation of the biogas section as a stand-alone section, the introduction of the term "pipeline biomethane," and clarifying the delivery requirements for delivering biogas (now called pipeline biomethane, or biomethane) for use in an RPS-eligible electric generating facility.

The CEC certifies an "eligible renewable facility." In the case of pipeline biomethane, the CEC will certify a natural gas plant that will receive pipeline biomethane. The CEC does not and has not considered the execution date of a contract in its certification process.

Pipeline biomethane stands out in the portfolio of eligible RPS resources because it is transported to a natural gas facility and it is the natural gas facility that gets certified as RPS-eligible because some portion of the generation from the facility is considered renewable based on the fuel source. Other RPS-eligible facilities have the fuel source and generating facility at the same site. Consequently, in trying to define as eligible pipeline biomethane, the CEC had to try and fit a square peg into a round hole and in so doing may have not acted consistent with the purposes of the RPS program particularly as it was amended by SB x1 2 (Simitian), Chapter 1, Statutes of 2011-12 First Extraordinary Session

Pipeline Biomethane Suspension . After the release of the 2011 eligibility guidebook by the CEC, controversy ensued over the new classification of “pipeline biomethane.” The adoption of SB x1 2 with its product categories, delivery requirements, and environmental objectives raised further question as to whether pipeline biomethane as defined as eligible in the guidebook was consistent with the RPS program. The guidelines for pipeline landfill and digester gas do not require displacement of fossil fuel consumption, the reduction of air pollution, or other environmental benefits to California. Additionally the contracts being signed by some California retail sellers and POUs were with landfills from as far away as Pennsylvania, Ohio and Tennessee, locales which make it physically impossible to verify delivery of the fuel to California particularly because the flow of those pipelines passes through pipelines flowing in the opposite direction of California. The RPS also intends that the program achieve “additionality,” that new development of renewables occurs, but in the case of many of the contracts, the biomethane had been flowing for quite some time so that there appears to be no new capture or incremental capture occurring. Additionally, the current guidebook lacks vigorous requirements to verify that the claimed quantity of biomethane was actually used by the designated power plant or that the necessary biomethane attributes were transferred to the power plant operator for purposes of the RPS and not double-counted for other purposes.

The CEC recognized that its guidebook was inconsistent with the requirements of SB x1 2 and on March 28, 2012, voted to suspend the RPS eligibility guidelines relative to biomethane with specified conditions. The resolution adopted by the CEC provided that it would not accept applications for pre-certification of facilities after 5:00 p.m. on that date. The existence or execution of a contract was irrelevant to that action. Power plants that were pre-certified for the RPS by the CEC will remain pre-certified. Complete applications for RPS certification and RPS pre-certification for

power plants seeking to use biomethane that were received by the CEC prior to the deadline “will be processed in accordance with the eligibility guidelines in effect on that date.”

Contract Eligibility under Suspension. As a result of the suspension, some POUs and retail sellers have executed contracts for which they are not certain that they will be able to obtain certification of the generating facility. The CEC did not and does not consider the execution of contracts in their certification process and the suspension did not consider contract execution either. As a result, if there is a contract for the purchase of biomethane and the facility has been certified as eligible then the generation will be RPS eligible. If a facility that planned to receive biomethane filed for final or pre-certification with the CEC by March 28 at 5:00 p.m. the CEC indicates that those applications will be processed in accordance 2011 RPS guidebook. If a facility did not file a pre-certification with the CEC before the deadline, regardless of a contract, that generation and contract has no legal status before the CEC at this time.

Grandfathered Contracts. To finesse the transition from the 20% by 2010 RPS program to the 33% by 2020 program, SB x1 2 grandfathered all RPS contracts entered into prior to June 1, 2010 and provided that those contracts will “count in full” under the new program requirements. Under rules adopted by the California Public Utilities Commission, this means that generation from contracts executed prior to June 1, 2010 will be netted out from the total RPS obligation; the remaining retail sales requirement under the RPS will be required to meet the new product content categories, commonly referred to as buckets, under the new program. Buckets are a critical new feature required for compliance in the RPS program. Retail sellers and POUs have interim procurement obligations leading up to 33% by 2020. The program defines three product categories, the “buckets”, and sets limitations on the quantity of electricity products for each of the three buckets in each compliance period with an emphasis on electric generation delivered directly to a California balancing authority. Because the biomethane and the generating facility are geographically separate, usually by thousands of miles, it is not clear under the law or CEC or the Public Utilities Commission policy into which bucket the resulting generation would be eligible.

Comments

According to the author's office, the RPS is the centerpiece of the state's effort to develop a clean energy system and reduce pollution and greenhouse gas emissions associated with electricity consumption. Over the past ten years, the RPS statutes have evolved to include very specific eligibility conditions and limits for various renewable electricity technologies and products. Under the RPS, renewable fuels must be "used" to generate electricity to be eligible for the RPS. The 2011 legislation which codified the current 33 percent by 2020 RPS goal (SB x1 2) also established very carefully negotiated product content categories (or "buckets"), which place the highest value on renewable energy that is directly delivered into California because it has the greatest economic, environmental and reliability benefits.

Related Legislation

AB 1900 (Gatto), 2012, would require the Office of Health Hazard Assessment, the California Energy Commission and the Public Utilities Commission to take actions related to the delivery of biomethane gas within the state for the purposes of electricity generation.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

According to the Senate Appropriations Committee:

- \$75,000 from the Public Utilities Reimbursement Account in 2012-12 and 2013-14 for the partial cost of a proceeding to modify existing Public Utilities Commission rules related to RPS eligibility.
- Up to \$75,000 from the Energy Resources Programs Account (General Fund) annually to verify source and delivery of biomethane.

SUPPORT: (Verified 8/22/12) (unable to reverify at time of writing)

California State Association of Electrical Workers
California State Pipe Trades Council
California Wind Energy Association
Californians Against Waste
Clean Power Campaign
Coalition of California Utility Employees
Large-Scale Solar Association
Natural Resources Defense Council

The Utility Reform Network
Union of Concerned Scientists
Western States Council of Sheet Metal Workers

OPPOSITION: (Verified 8/22/12) (unable to reverify at time of writing)

Coalition For Renewable Natural Gas (unless amended)
Shell Energy North America
Waste Management (unless amended)

ARGUMENTS IN SUPPORT: Natural Resources Defense Council states in support that, “This legislation would resolve many of the issues surrounding the use of biomethane to comply with the RPS. By doing so, AB 2196 will ensure that future investment in RPS-eligible biomethane will result in new projects that provide tangible local air quality benefits and greenhouse gas emission reductions. Resolution of these issues will facilitate the development of an environmentally and socially beneficial biomethane industry.

“The adoption of appropriate RPS eligibility criteria requires thoughtful judgement, particularly given the nascent state of many renewable technologies. NRDC believes that the author has found a reasonable balance between the competing interests and objectives. We urge you to support AB 2196.

“AB 2196 also provides guidance to ensure that biomethane used for RPS compliance can be counted as a carbon neutral resource. We support this objective, but are concerned that the current language would require biomethane projects to credit to purchasers more reductions than are needed to offset all of the greenhouse gas emissions. We look forward to working with the author to ensure that the language fairly apportions emission reductions between buyers and sellers.”

ARGUMENTS IN OPPOSITION: Waste Management states in opposition, “For months Waste Management has supported AB 2196, provided it could be amended to protect the essential elements of the contracts it entered into more than a year ago with the cities of Burbank and Pasadena. Those contracts were entered into with the full expectation by both parties that the delivered gas would be counted by the CA Energy Commission under the procurement content requirements (the ‘bucket system’) in the new RPS law that was enacted in early 2011. The contracts

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fully comply with guidelines promulgated by the CEC, which describe in detail the conditions that must be met by providers of biomethane from out-of-state sources. There has been no dispute that the WM contracts meet all guideline requirements. Our contracts were executed last August, more than seven months before the CEC imposed a moratorium on certifying new projects, and our projects began delivering gas in early October, almost six months before the moratorium.

“The language in AB 2196, which allows biomethane contracts only to ‘count in full’ toward RPS procurement requirements, consigns all biomethane contracts to an accounting system that predates the current RPS law and reduces the value of the gas significantly below its contracted value. But for Waste Management the outcome is even worse, because our contracts require the biomethane to be recognized by the state as qualifying for ‘bucket one’ under the current RPS law. If AB 2196 is enacted in its current form, the biomethane we are under contract to deliver will not even receive the reduced ‘count in full’ value.”

ASSEMBLY FLOOR: 66-1, 5/25/12

AYES: Achadjian, Alejo, Allen, Ammiano, Beall, Block, Blumenfield, Bonilla, Bradford, Brownley, Buchanan, Butler, Charles Calderon, Campos, Carter, Cedillo, Chesbro, Cook, Davis, Dickinson, Eng, Feuer, Fong, Fuentes, Furutani, Beth Gaines, Galgiani, Garrick, Gatto, Gordon, Gorell, Hagman, Hayashi, Hill, Huber, Hueso, Huffman, Jeffries, Jones, Lara, Logue, Bonnie Lowenthal, Mansoor, Mendoza, Miller, Mitchell, Monning, Morrell, Nestande, Nielsen, Norby, Olsen, Pan, V. Manuel Pérez, Portantino, Skinner, Smyth, Solorio, Swanson, Torres, Valadao, Wagner, Wieckowski, Williams, Yamada, John A. Pérez

NOES: Donnelly

NO VOTE RECORDED: Atkins, Bill Berryhill, Conway, Fletcher, Grove, Halderman, Hall, Harkey, Roger Hernández, Knight, Ma, Perea, Silva

RM:n 8/31/12 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

**** **END** ****