

STATE OF CALIFORNIA

Public Utilities Commission
San Francisco

M e m o r a n d u m

Date: July 31, 2012

To: The Commission
(Meeting of August 2, 2012)

From: Lynn Sadler, Director
Office of Governmental Affairs (OGA) — Sacramento

Subject: **AB 2390 (Chesbro) – Electricity: biomass: incentive programs.
As amended: June 26, 2012**

**LEGISLATIVE SUBCOMMITTEE RECOMMENDATION: OPPOSE UNLESS
AMENDED**

SUMMARY OF BILL:

This bill would earmark \$20 million annually from the monies authorized under the D.11-12-035 and D.12-05-037 to create a California Energy Commission (CEC) administered incentive program to support the collection of biomass materials generated from forestry management activities associated with fire prevention in areas deemed subject to significant fire risk by the Department of Forestry and Fire Protection. Eligibility for the incentives is based both on the source of the biomass fuel, as well as the type of facility in which the biomass is used.

SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION:

The Energy Division staff finds that there is insufficient basis for earmarking the amount of funding identified in the bill for purposes of capturing those benefits that may accrue to ratepayers above and beyond the renewable benefits biomass is currently recognized as providing via existing programs. Staff recognizes the broader public benefits biomass usage may provide specifically in the context of forestry management and fire reduction efforts and would support additional funding to enhance the economics of biomass associated with forestry management/fire prevention activities provided such funding was provided from a non-ratepayer source, for example the monies being collected into the Air Pollution Control Fund pursuant to the cap and trade program.

SUMMARY OF SUGGESTED AMENDMENTS:

- 1) The bill should be amended to earmark monies from the Air Pollution Control Fund in lieu of funding collected pursuant to D.11-12-035 and D.12-05-037, which established the Electric Program Investment Charge (EPIC).

Given the limited benefits, or proof thereof, the use of biomass fuels derived from forestry management activities to reduce fire risk provides to ratepayers, but recognizing the compelling broader social benefits utilization of this biomass fuel stream may provide, the Air Pollution Control Fund monies appear to be a more appropriate source of funding for this effort. Staff is opposed to using ratepayer monies for purposes that do not clearly provide ratepayer benefits. The bill proposes to use monies collected via the EPIC, at odds with the explicit requirement pursuant to the CPUC decision establishing the EPIC program that any monies collected be used for purposes that clearly provide ratepayer benefits. Under the cap and trade program, monies associated with the sale of those greenhouse gas allowances that are unallocated by the Air Resources Board will accrue to the Air Pollution Control Fund. These monies are then available for use on appropriation by the legislature, for purposes to be determined. Staff's current understanding is that these monies must be used for purposes that further the goals of Assembly Bill 32. Given these monies come from a broader pool of California interests and thus cannot be reasonably deemed to be "ratepayer monies", they represent a more appropriate source of funding to capture the broader, societal benefits this bill is intended to promote.

- 2) The requirement that the biomass fuel must be used in an "eligible biomass facility" appears unnecessary to advance the objectives of the bill.

The bill requires the creation of an incentive program to compensate the "producers and collectors" of biomass materials generated from forestry management activities associated with fire prevention. The bill appears to be focused principally on reducing the cost of this particular stream of biomass fuel and thus enhancing the economics of using this fuel source, thus facilitating forestry management practices that reduce fire risk in risk-prone areas. However, in addition to the requirement regarding the source of the biomass materials, the bill also requires that the fuel be used in an "eligible biomass facility", defined as facilities that use biomass fuels associated with fire prevention activities on land deemed to be of medium or high fire risk by the Department of Forestry and Fire Protection, and that meet specified management practices. To the degree the intent, fundamentally, is to enhance the economics of the collection and use of a particular biomass waste stream, it seems unnecessary to include the requirement that the fuel be used in the particular type of biomass facility defined in the bill. To the degree the economics of this source of biomass fuels are made compelling the market can determine in what type of facility the materials are used. Furthermore, to staff's knowledge nothing currently precludes the type of facilities identified in the bill from being pursued.

The language of the bill should be modified to eliminate the requirement that the biomass fuel source be used in an eligible biomass facility, as defined. However the

requirements regarding management practices identified in 25990(b)(2) should be retained and applied to the collectors and producers of biomass materials in order to be eligible for the incentive program the bill directs the Energy Commission to create.

- 3) The requirement that the CEC spend the full \$20 million per year should be modified to allow spending to reflect demand in the program subject to an annual budget of \$20 million.

The bill requires the CEC to spend the full \$20 million amount annually pursuant to the incentive program the bill established irrespective of the level/structure of the incentives the CEC establishes and demand for those incentives. This would seem to limit the ability of the CEC to establish incentives that reasonably reflect the economics of biomass fuels sufficient to make the particular source of biomass material targeted by this bill cost effective. As drafted the language could result in excessive incentives being provided to support this particular fuel source.

To address this, the language should be modified to establish an annual budget of \$20 million, and eliminate the requirement that the CEC spend the full \$20 million each year. Annual expenditures should be determined by demand in the program, given the establishment of incentives sufficient to make the targeted fuel source cost competitive, as determined by the CEC and subject to the program's overall budget.

- 4) To the degree ratepayers remain the funding source for this program under the premise that utilization of the targeted biomass resource reduces fire-related costs ratepayers would otherwise be exposed to, the bill should limit eligibility to biomass feedstocks associated with fire management activities taking place in localities where IOU infrastructure is at risk.

The rationale provided in Section 1 of the bill includes language regarding the benefits to ratepayers in terms of reduced fire risk and damage to IOU infrastructure. However, the incentives the bill mandates target biomass feedstocks "associated with forest fuel reduction and fire prevention activities..." without targeting fire prevention activities in areas where IOU infrastructure is at risk. To be consistent with one of the bill's primary rationales, and help ensure ratepayer benefits, the language should be amended such that the incentives target biomass associated with fire prevention activities on lands where IOU infrastructure is at risk to fire.

DIVISION ANALYSIS (Energy Division):

- 1) This bill would earmark a significant share, approximately 12%, of the overall EPIC budget established pursuant to D.11-12-035 and D.12-05-037, to facilitate demand for biomass fuels generated from forestry management activities associated with fire risk reduction in fire prone areas. Use of these monies for this purpose appears inconsistent with the objectives and framework of the EPIC program insofar as the

activities being supported do not clearly provide ratepayer benefits, an essential requirement of the program, and also appears inconsistent with the primary focus of the program which is to facilitate the development of next generation energy technologies.

- 2) In establishing the EPIC program, the CPUC determined not to use EPIC funding as a vehicle to provide subsidies to support commercially proven renewable technologies, including biomass facilities on the grounds that other programs, specifically the renewables portfolio standard program and the various procurement pathways available thereunder (e.g., Renewable Auction Mechanism, annual RPS Solicitations, Feed-In-Tariff, etc.) appropriately recognize the benefits that specifically accrue to ratepayers and provide sufficient market opportunity. Additionally, to the extent these programs do not appropriately recognize those benefits, modifications to the evaluation criteria used in project selection are best considered in the relevant policy or program proceeding. Furthermore, the CPUC established a robust process for developing and considering the specific uses of funds collected under the EPIC. The bill would prejudge the outcome of this process.
- 3) Existing law requires the IOUs to meet specific renewable energy targets, in terms of the amount of renewable energy they need to procure as a percent of retail sales. Senate Bill 2(1X), chaptered in April of 2011 requires the IOUs to procure an average of 20% renewable energy for the 2011-2013 compliance period, 25% by December 31, 2016 and 33% by December 31, 2020, as well as establishes "portfolio content categories", and directs the CPUC to establish a cost-containment mechanism encompassing RPS related procurement costs.
- 4) As implemented, the RPS program has generally been technology neutral, although the CPUC has approved a number of renewable procurement programs that specifically target solar projects. Despite these exceptions, as a general matter, staff believes that rather than "picking winners", in meeting the state's renewable energy mandates, renewable projects should compete via a competitive process where the overall value to ratepayers of projects are considered, recognizing the energy benefits (inclusive of avoided GHG costs), capacity benefits, and other benefits projects provide that accrue specifically to ratepayers, with those projects that offer the greatest value at least cost being selected. This approach helps ensure that the RPS goals are achieved in a cost effective manner. This bill appears to run counter to this "value based" orientation of the CPUC's approach to implementing the RPS program by earmarking ratepayer monies to support a particular technological solution/resource type without sufficient justification, thus potentially increasing the cost of overall RPS compliance. An open question is whether or not the ratepayer incentives provided pursuant to this bill would be included in the cost-containment mechanism the CPUC is required to develop pursuant to statute. While the bill posits that utilization of biomass resources derived from forestry fire risk reduction activities provide benefits to ratepayers by encouraging better forestry management and therefore reducing fire risk which can threaten electricity system infrastructure, these benefits are highly speculative.

- 5) While staff believes the extent of any benefits that may accrue to ratepayers as a result of increased usage of biomass fuels associated with fire reduction activities is highly speculative, we have no basis to reject the notion that increased reliance on these biomass feedstocks would result in enhanced forestry management and reduced risk of fires. Staff's view is merely that this is not a benefit to ratepayers so much as to society writ large. In light of the broad public benefits that are being advanced by this bill, staff believes funding should come from a more broad-based source of funding. To that end, staff suggests that a more appropriate funding source would be the monies collected into the Air Pollution Control Fund. Because the source of these monies is broad-based, generated from the sale of unallocated GHG allowances under the cap and trade program, we find this would be a more appropriate means of supporting this program rather than exclusive reliance on ratepayer dollars to the detriment of the goals of other programs like EPIC.

PROGRAM BACKGROUND:

- 1) In May, 2012, the CPUC established the EPIC program as the primary ratepayer supported vehicle to promote the development of next generation clean energy technologies. D.12-05-037 established the anticipated annual budget for the program, adopted a framework for determining the types of projects to be supported using these monies, as well as identified the program administrators, specifically the IOUs and the CEC, responsible for implementing the program pursuant to triennial investment plans they file with the CPUC.
- 2) RPS program is the primary vehicle for supporting wholesale renewable energy development in California. The California RPS program was established by Senate Bill (SB) 1078 (Sher, 2002), and has been subsequently modified by SB 107 (Simitian, 2006), SB 1036 (Perata, 2007), and SB 2 (1X) (Simitian, 2011). The RPS program is codified in Public Utilities Code Sections 399.11-399.31. Pursuant to SB 2 (1X), the CPUC requires each retail seller of electricity to procure eligible renewable energy resources so that the amount of electricity generated from eligible renewable resources be an amount that equals 33 percent of the total electricity sold to retail customers in California per year by December 31, 2020.
- 3) Historically, the RPS program has not focused on a particular renewable technology because the RPS procurement process accounts for the value of various technologies through the least-cost, best-fit evaluation process. This process quantifies the costs and benefits of various renewable energy technologies without according any given technology special status.
- 4) Decision (D.) 11-12-035 (EPIC Phase 1) and D.12-05-037 (EPIC Phase 2) are two decisions setting forth the the EPIC program adopted by the CPUC. Southern California Edison Company timely filed an application for rehearing of both

decisions. The application for rehearing of the EPIC Phase 1 decision was filed on January 19, 2012, and a separate application for rehearing of the EPIC Phase 2 decision was filed on July 2, 2012. Among the issues is the CPUC's authority to approve the EPIC program. The two decisions are not stayed. These rehearing applications are pending before the CPUC.

LEGISLATIVE HISTORY:

None.

FISCAL IMPACT:

Unknown.

STATUS:

AB 2390 is pending consideration in the Senate Appropriations Committee.

SUPPORT/OPPOSITION:

Support: California Biomass Energy Alliance
Covanta Energy
Regional Council of Rural Counties
Trinity Public Utilities District
Western Wood Preservers Institute

Opposition: Division of Ratepayer Advocates (DRA)
Southern California Edison (SCE)

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BILL LANGUAGE:

BILL NUMBER: AB 2390 AMENDED
BILL TEXT

AMENDED IN SENATE JUNE 26, 2012
AMENDED IN ASSEMBLY MAY 1, 2012
AMENDED IN ASSEMBLY MARCH 29, 2012

INTRODUCED BY Assembly Member Chesbro
(Coauthors: Assembly Members Huffman and Ma)

FEBRUARY 24, 2012

An act to add Chapter 13 (commencing with Section 25990) to Division 15 of the Public Resources Code, *and to add Sections 399.5 and 399.6 to the Public Utilities Code*, relating to electricity.

LEGISLATIVE COUNSEL'S DIGEST

AB 2390, as amended, Chesbro. Electricity: biomass: incentive ~~programs.~~ *programs: Electric Program Investment Charge.*

~~Existing~~

(1) *Existing* law authorizes the Public Utilities Commission (PUC), in consultation with the State Energy Resources Conservation and Development Commission (Energy Commission), to authorize electrical corporations to collect moneys for the self-generation incentive program (SGIP) at 2008 calendar year levels through December 31, 2014. Existing law requires the PUC to require electrical corporations to administer the SGIP, until January 1, 2016. Existing law limits eligibility for SGIP incentives to distributed energy resources that the PUC, in consultation with the State Air Resources Board, determines will achieve reductions in emissions of greenhouse gases pursuant to the California Global Warming Solutions Act of 2006.

This bill would state legislative findings and declarations regarding the use of waste products from forest thinning and fire prevention activities to generate electricity at biomass facilities. The bill would require the Energy Commission, in consultation with the Department of Forestry and Fire Protection, to establish an incentive program to compensate producers and collectors of biomass material associated with forest fuel reduction and fire prevention activities that are delivered to eligible biomass facilities, as defined, for use as a fuel source.

(2) *The Reliable Electric Service Investments Act required the PUC to require the state's 3 largest electrical corporations, until January 1, 2012, to identify a separate electrical rate component, commonly referred to as the "public goods charge," to collect specified amounts to fund energy efficiency, renewable energy, and research, development, and demonstration programs that enhance system reliability and provide in-state benefits. An existing decision of*

the PUC institutes an Electric Program Investment Charge (EPIC), subject to refund, to fund renewable energy and research, development, and demonstration programs.

This bill would require the Energy Commission to expend moneys lawfully collected pursuant to the EPIC charge to provide incentives to the producers and collectors of biomass materials associated with forest fuel reduction and fire prevention activities, if the biomass materials are delivered to an eligible biomass facility, as specified.

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. The Legislature finds and declares all of the following:

(a) Prudent forest thinning and fire prevention activities are important for protecting public safety.

(b) The utility of fire prevention activities can be supplemented by harnessing the energy potential of waste products in the form of woody biomass material from forest fuels reduction activities and generating renewable electricity at biomass generation facilities.

(c) Several large fires have resulted in significant costs to California investor-owned utilities that affect electric rates. These costs include actual cost settlements with homeowners, fire suppression cost reimbursement to the state and federal emergency service agencies, transmission and distribution equipment replacement, and ever increasing costs of insuring utility infrastructure.

(d) The Department of Forestry and Fire Protection estimates that almost 25 million acres of forest are considered high- and medium-priority landscapes at risk to wildfire.

(e) Ratepayers will benefit by reducing the risk and associated costs of fire related to the electric infrastructure.

SEC. 2. Chapter 13 (commencing with Section 25990) is added to Division 15 of the Public Resources Code, to read:

CHAPTER 13. BIOMASS INCENTIVE PROGRAM

25990. For the purposes of this section, the following terms have the following meanings:

(a) "Community scale biomass facilities" means an electric generation facility that uses biomass that has a generation capacity of under three megawatts and meets both of the following criteria:

(1) The facility is located in an area identified by the Department of Forestry and Fire Protection as high- and medium-priority landscapes at risk to wildfire.

(2) The facility uses as a fuel source only forest biomass materials, such as shrubs, limbs, and small trees, collected from a high- or medium-priority landscape considered at risk to wildfire, as determined by the Department of Forestry and Fire Protection, pursuant to a project consistent with the California Environmental Quality Act (Division 13 (commencing with Section 21000) or the federal National Environmental Policy Act (42 U.S.C. Sec. 4321 et seq.), as applicable.

(b) "Eligible biomass facility" means an electric generation

facility that meets both of the following:

(1) Uses as a fuel source forest biomass materials, such as shrubs, limbs, and small trees, collected from a high- or medium-priority landscape considered at risk to wildfire, as determined by the Department of Forestry and Fire Protection.

(2) Uses best management standards to ensure that biomass fuel use does not adversely impact water quality, soil productivity, biodiversity, and wildlife *and is in material compliance with all applicable laws and regulations for forest management on state, federal, or private lands that are intended to protect water quality, wildlife habitat, and other public trust resources* .

25991. The commission shall, in consultation with the Department of Forestry and Fire Protection, establish an incentive program to compensate producers and collectors of biomass ~~material~~ *materials* associated with forest fuel reduction and fire prevention activities that are delivered to eligible biomass facilities , *including community scale biomass facilities*, for use as a fuel source.

25992. In implementing the program, the commission shall encourage the maximum amount of hazardous forest fuels removal.

SEC. 3. Section 399.5 is added to the Public Utilities Code , to read:

399.5. (a) *Twenty million dollars (\$20,000,000) of any money the commission orders to be collected and transferred to the Energy Commission pursuant to Decision 11-12-035 (Phase 1 Decision Establishing Interim Research, Development and Demonstration and Renewable Program funding Levels, dated December 15, 2011) and Decision 12-05-037 (Phase 2 Decision Establishing Purposes and Governance for Electric Program Investment Charge and Establishing Funding Collections for 2013-2020) shall be expended annually by the Energy Commission to provide incentives to the producers and collectors of biomass materials associated with forest fuel reduction and fire prevention activities, if those biomass materials are delivered to an eligible biomass facility, as specified in Chapter 13 (commencing with Section 25990) of Division 15 of the Public Resources Code.*

(b) *This section does not authorize the commission to order the collection of moneys pursuant to either Decision 11-12-035 or Decision 12-05-037 or to increase the amount collected through the Electric Program Investment Charge (EPIC).*

SEC. 4. Section 399.6 is added to the Public Utilities Code , to read:

399.6. *The Energy Commission shall only spend funds pursuant to Section 399.5 if funds are lawfully collected pursuant to either Decision 11-12-035 or Decision 12-05-037.*