



**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

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In the matter of the Application of PacifiCorp (U901E) for approval to implement a Net Surplus Compensation Rate.

Application 10-03-001
(Filed March 1, 2010)

In the Matter of the Application of Sierra Pacific Power Company (U903E) for Approval of a Net Surplus Compensation Rate.

Application 10-03-010
(Filed March 15, 2010)

Application of Pacific Gas and Electric Company To Implement Assembly Bill 920 (2009) Setting Terms and Conditions For Compensation For Excess Energy Deliveries By Net Metered Customers. (U 39 E)

Application 10-03-012
(Filed March 15, 2010)

Application of Southern California Edison Company (U338E) in Response to Assigned Commissioner's Ruling Directing Electric Utilities to File Applications Proposing a Net Surplus Compensation Rate Pursuant to Assembly Bill 920.

Application 10-03-013
(Filed March 15, 2010)

Application of San Diego Gas & Electric Company (U902E) Proposing a Net Surplus Compensation Rate Pursuant to Assembly Bill 920.

Application 10-03-017
(Filed March 15, 2010)

**COMMENTS OF CALIFORNIANS FOR RENEWABLE ENERGY ON THE
ALTERNATIVE PROPOSED DECISION**

In accord with Rule 14.3 of the Rules of Practice and Procedure of the California Public Utilities Commission (Commission), CALifornians for Renewable Energy, Inc. (CARE) respectfully provides reply comments on the Alternative Proposed Decision of President Michael R. Peevey Adopting Net Surplus Compensation Rate Pursuant to Assembly Bill 920 issued in the above captioned proceedings on April 5, 2011 (APD).

Comments

The alternative proposed decision of President Michael R. Peevey is a vast improvement over the PD; providing a more equitable compensation rate to current net metered “customer-generators”, letting the electric utilities count the net surplus generation toward their Renewable Portfolio Standard (RPS) targets “This Alternate Proposed Decision (Alternate) adopts a Net Surplus Compensation (NSC) rate for net energy metering customers who produce excess power over a 12-month period, pursuant to Assembly Bill 920. The Alternate differs from the Proposed Decision (PD) in the following substantive ways:

- The Alternate approves an NSC rate based on the Commission-adopted Market Price Referent (MPR), adjusted by time of delivery factors. *The resulting NSC rate in the Alternate ranges from 10.8 to 12.7 cents per kilowatt hour.* This rate includes payment for the renewable attributes of the net surplus generation. The PD adopts a rate based on daytime wholesale electric market prices, which averaged 4 cents per kilowatt hour in 2009. The PD does not include payment for renewable attributes at this time, finding it is premature until Renewable Energy Credits (RECs) are certified and tracked by net surplus generators.
- The Alternate *allows the electric utilities to count the net surplus generation toward their Renewable Portfolio Standard (RPS) targets* once the utilities devise a process to verify the

ownership status of RECs from net surplus generation. The PD does not allow utilities to count net surplus toward RPS at this time because net surplus generation must meet certain preconditions, namely RPS certification by the California Energy Commission and Western Renewable Energy Generation Information System metering and tracking requirements.

- The Alternate directs the utilities to pay an “energy-only” NSC rate until a process for verifying REC ownership status is approved. The energy-only rate is the MPR (adjusted for time of delivery) minus a renewable premium published by the Department of Energy. Once a process to verify REC ownership is approved through the Commission’s advice letter process, the utilities may count net surplus generation toward their RPS targets and pay the fully bundled NSC rate. The PD directs an NSC rate based on energy only and does not establish a renewable value for net surplus generation. The PD finds that adopting a value for renewable attributes is premature until net surplus generation is certified as RPS eligible by the CEC and meets WREGIS metering and tracking requirements.”

The methodology is based on a “market” price referent but the CPUC lacks the statutory authority to determine a “market” based price in the first instance since CPUC’s

ratemaking authority is limited to the “*state commission may, pursuant to PURPA, determine avoided cost rates for QFs*”.¹

CARE’s recommended Net Surplus Compensation Rate Pursuant to Assembly Bill 920 is that it be based on the utility’s avoided cost as specified under the authority of the FERC² (See 18 C.F.R. §§ 292.303 and 292.304) with the actual avoided cost rates established under State authority (See 18 C.F.R. §§ 292.302 and 292.304). That is the utility’s avoided cost as specified under the authority of the Federal Energy Regulatory Commission (FERC) which delegates their authority over the Qualified Facility (QF) price paid to this form of FERC regulated wholesale Seller of energy and ancillary services to the California Public Utilities Commission (CPUC).

Since the legislation clearly states “any renewable energy credit...counts toward the electric utility’s renewables portfolio standard purchasing requirements” therefore it is clear that once the utility enters in to a standard offer QF contract “*negotiated*” between the utility and the NSCR seller the signing utility is entitled to RECs based on the full name plate capacity of the QF seller’s energy generation facility, not just RECs that are produced due to excess generation.

Additionally to be consistent with PURPA QFs have the right to sell energy and capacity to a utility (see 18 C.F.R. § 304), provided the purchasing utility has not been relieved from its QF purchase obligation (see 18 C.F.R. § 309-311). With limited exceptions, QFs generally have the option of selling to a utility either *at the utility’s avoided cost or at a negotiated rate*. Avoided cost is the incremental cost to an electric utility of electric *energy and/or capacity* which, but for the purchase from the QF, such

¹ See paragraphs 65 of 132 FERC ¶ 61,047.

² See <http://www.ferc.gov/industries/electric/gen-info/qual-fac/benefits.asp>

utility would generate itself or purchase from another source (see 18 C.F.R. § 292.101(b)(6)). QFs also generally have the option to sell energy either "as-available" (i.e., as the QF determines such energy to be available for such purchases) or as part of a legally enforceable obligation for delivery of energy or capacity over a specified term.

In regards to the requirement to provide customer-generators a standard contract for their energy and nameplate capacity Assembly Bill 920 provides [with *emphasis added*]: “*Existing law provides ...where the electricity generated by the eligible customer-generator exceeds the electricity supplied by the electric distribution utility ... during a 12-month period, the eligible customer-generator is a net electricity producer and the electric distribution utility or cooperative retains any excess kilowatthours generated and the customer-generator is not owed compensation for those excess kilowatthours unless the electric distribution utility or cooperative enters into a purchase agreement with the eligible customer-generator for those excess kilowatthours.*” [AB 920 at 1 to 2]

The bill would require the electric utility to offer a standard contract or tariff to eligible customer-generators that includes compensation for the value of net surplus electricity. [AB920 at 2]

The APD fails to require the electric utility to offer a standard QF contract.

Conclusion

Unfortunately the methodology advanced by the APD for determining the NSCR must also be rejected. Instead, consistent with the FPA, PURPA, and AB 920, the Commission should adopt a methodology for determining the NSCR comparable to that used to value other renewable generation resources that are already QFs, i.e., establish an

avoided cost NSC rate *employing time-of-use rates* under a standard contract as required by statute.

Respectfully Submitted,



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April 25, 2011

Verification

I am an officer of the Intervening Corporation herein, and am authorized to make this verification on its behalf. The statements in the foregoing document are true of my own knowledge, except matters, which are therein stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 25th day of April 2011, at San Francisco, California.



Lynne Brown Vice-President
CALifornians for Renewable Energy,
Inc. (CARE)

Certificate of Service

I hereby certify that I have this day served the foregoing document “*COMMENTS OF CALIFORNIANS FOR RENEWABLE ENERGY ON THE ALTERNATIVE PROPOSED DECISION*” under CPUC Dockets A.10-03-001, A.10-03-010, A.10-03-012, A.10-03-013, and A.10-03-017. Each person designated on the official service list, has been provided a copy via e-mail, to all persons on the attached service list on April 25, 2011, for the proceedings, A.10-03-001, A.10-03-010, A.10-03-012, A.10-03-013, A.10-03-017, with a copy to the List, transmitting the copies via e-mail to all parties who have provided an e-mail address. First class mail will be used if electronic service cannot be effectuated.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 25th day of April 2011, at Soquel, California.

Michael E. Boyd

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