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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Continue Implementation and Administration of California Renewables Portfolio Standard Program.

Rulemaking 06-05-027
(Filed May 25, 2006)

AMENDED SCOPING MEMO AND RULING OF ASSIGNED COMMISSIONER REGARDING PHASE 2 OF TARIFF AND STANDARD CONTRACT IMPLEMENTATION FOR RPS GENERATORS

1. Summary

Decision (D.) 07-07-027 adopts tariffs and standard contracts for the sale to electrical corporations of electricity generated by water, wastewater and other customers using eligible renewable resource facilities. It also provides for further study of certain issues considering the recommendations of respondents and parties. (D.07-07-027, p. 50.) This Amended Scoping Memo and Ruling establishes the scope and schedule for this additional work.

2. Background

In D.07-07-027, the Commission directed the filing of advice letters by electrical corporations of tariffs and standard contracts for the sale to those electrical corporations of electricity generated by customers using certain eligible facilities. It also indicated there may be further inquiry on some matters. The Commission declined to establish specific process or state issues that might merit further study, but delegated that task to the assigned Commissioner and/or Administrative Law Judge (ALJ). In doing so, the Commission noted that:

“Respondents and parties should present the relevant factual, legal and public policy questions for consideration.” (*Id.*)

On August 1, 2007, ALJ Mattson set a schedule for respondents and parties to file and serve comments and reply comments proposing issues for further consideration. On August 16, 2007, comments were filed and served by Southern California Edison Company (SCE), San Diego Gas & Electric Company (SDG&E) and jointly by Sustainable Conservation, California Farm Bureau Federation, Inland Empire Utilities Agency, Green Power Institute, and RCM International (Joint Parties). On August 21, 2007, reply comments were filed and served by Pacific Gas and Electric Company (PG&E). Also in August 2007, two applications for rehearing of D.07-07-027 were filed, and electrical corporations filed advice letters in compliance with D.07-07-027 for the purpose of implementing the required tariffs and standard contracts.

On February 14, 2008, the Commission modified D.07-07-027, and denied rehearing of D.07-07-027, as modified. (D.08-02-010.) Also on February 14, 2008, the Commission adopted limited modifications to tariffs and standard contracts submitted by advice letters in compliance with D.07-07-027. (Resolution E-4137.) Revised advice letters in conformance with Resolution E-4137 have now been filed by most, if not all, electrical corporations.

3. Issues, Pleadings and Schedule

3.1. Issues

Five issues are stated in Attachment A. Respondents shall, and parties may, comment on each issue. A brief explanation follows regarding some particular matters raised in comments.

3.1.1. Staff White Paper on Tariff Expansion

D.07-07-027 expands the availability of the tariff/standard contract approach to other (non-water, non-wastewater) customers of PG&E and SCE. It does not do so for the remaining five electrical corporations: SDG&E, PacifiCorp, Sierra Pacific Power Company, Bear Valley Electric Service and Mountain Utilities. Before further expansion, if any, SDG&E recommends that Commission staff prepare a white paper addressing the impact of extending tariffs/standard contracts to other customers of the five electrical corporations, followed by workshops, comments, reply comments, a proposed decision, comments, reply comments, and a final decision.

A staff white paper is not ordered here. Expansion of these tariffs/standard contracts to other customers, if ordered, will be a relatively modest amount. Parties can and will provide necessary and appropriate information via comments and reply comments.

3.1.2. Interconnection

Joint Parties seek further work on interconnection. In particular, Joint Parties seek clarification that, absent extraordinary circumstances, Commission Rule 21 controls interconnection rather than federal interconnection rules administered by the Federal Energy Regulatory Commission (FERC). This item is not included as an issue here.

The Commission determined that utilities shall use the interconnection rule that applies to each particular project. Depending upon the specifics of a project, this might be Rule 21 administered by the Commission or an interconnection rule administered by FERC. (D.07-07-027, Ordering Paragraph (OP) 1, Appendix A, Item 10, p. 3.) Joint Parties essentially seek modification of this decision but provide insufficient reason.

Parties should first undertake all reasonable efforts to make existing rules work. It is premature for the Commission to pursue this matter further absent more specific information regarding problems, if any.

3.1.3. Definition and Ownership of Green Attributes

Joint Parties seek further work relative to the definition of Green Attributes (see Standard Term and Condition (STC) 2: Renewable Energy Credits (RECs) and Green Attributes). In particular, they assert that the definition adopted in D.07-02-011 conflicts with the language of Senate Bill (SB) 107. They specifically recommend consideration here of substituting “biogas” for “landfill” in the fifth sentence of STC 2. Further, Joint Parties assert that there is ambiguity related to how a facility is defined for purposes of ensuring ownership of green attributes.

The issue will not be addressed here. With regard to definition and language in SB 107, PG&E correctly points out that the issue was already thoroughly litigated. An ALJ Ruling (dated November 9, 2006) asked parties to address changes necessitated by SB 107. Parties responded, and the Commission made necessary changes. (See D.07-02-011, pp. 5 and 38-46, as further modified by D.07-05-057.)

Further, Joint Parties correctly note that the issue is being considered in Rulemaking (R.) 06-02-012. REC ownership and treatment are specifically at issue there, and parties are engaged in ongoing discussions regarding the definition of STCs, RECs and Green Attributes.¹ In this context, R.06-02-012 provides the forum for a relatively broad examination of Green Attributes and

¹ See D.08-04-009, p. 3 and Reply Comments of Sustainable Conservation, the California Farm Bureau Federation and the Green Power Institute on the Interim Opinion Compiling Standard Terms and Conditions, April 1, 2008, p. 1.

RECs, and parties should first focus their efforts there. To the extent changes to STC 2 may result, respondents and parties should help the Commission complete one comprehensive update and change to STC 2 in R.06-02-012, if and as needed, rather than engage in separate and sequential changes in more than one docket.

3.1.4. Excess Sales, Capacity Amounts and Resource Adequacy

The Commission requires the three largest utilities (PG&E, SCE and SDG&E) to offer, at the customer's option, the choice of selling electricity under provisions of either (a) full buy/sell or (b) excess sales. The other four utilities must offer full buy/sell and may offer excess sales. (D.07-07-027, pp. 33-38.) SCE and PG&E ask for further consideration of how electricity sold under an excess sales tariff/standard contract counts towards program maximum capacity and resource adequacy requirements.

Program maximum capacity amounts are part of this proceeding. How electricity sold under an excess sales arrangement counts toward capacity limits should be considered here, and the issue with respect to capacity amounts is included.

Resource adequacy requirements, however, are being addressed in another proceeding (*see*, R.08-01-025). Resource adequacy treatment should be considered in one place, so that all interrelated elements may be considered at the same time. The issue of how excess sales are treated for purposes of resource adequacy is not included here.

3.1.5. Commission-adopted Controls and Program Limits

The Commission noted that an automatic "stop" of the program occurs at the maximum capacity limits (i.e., 250 MW for water/wastewater customers, 228.4 MW for other customers). (D.07-07-027, p. 51.) The Commission suggested

that further study of this program might include the question of additional Commission-adopted controls and program limits, if any. (*Id.*, pp. 50-1.) No party raises this as an issue. No reason is now known why other controls or program limits are necessary or should be addressed.

3.2. Pleadings and Decision

Five issues are identified in Attachment A. Respondents shall, and parties may, file comments on the five issues. Respondents and parties may file reply comments.

Respondents and parties must use the same outline for their pleadings. (*See*, Scoping Memo dated August 21, 2006, OP 6.) Disputes, if any, must be brought to the attention of ALJ Mattson with adequate time before the filing date to permit reasonable resolution. (*Id.*, p. 5.) All pleadings must be verified. (*Id.*, OP 5; also see December 6, 2006 ALJ Ruling, OP 1 regarding corporations.)

The proposed decision, if any, resulting from this additional work will address issues as necessary and appropriate to advance and improve the program. Depending upon the record created here, this may or may not include any or all of five issues. It may or may not include discussion of any or all questions or items identified below each issue. Finally, any or all of the five issues identified here may be addressed in this proceeding, or in a subsequent proceeding, as necessary and reasonable.

3.3. Schedule

Only Joint Parties propose a schedule. Joint Parties recommend that comments be due 18 days after the Amended Scoping Memo, reply comments be due seven days after comments, and a proposed decision be filed about five weeks after reply comments.

No party convincingly argues for hearing, and none is scheduled. If comments or reply comments reveal a dispute over a material factual issue, parties may file motions for hearing. Motions must include specific information. (See August 21, 2006 Scoping Memo, p. 4.)

The adopted schedule is shown in Attachment B. The adopted schedule includes dates to file motions for hearing. It also provides additional time commensurate with the scope of issues.

IT IS RULED that respondents shall, and parties may, file and serve opening comments on the issues stated in Attachment A. Respondents and parties may file reply comments. Pleadings shall be filed and served by the dates in Attachment B. Respondents and parties shall use the same outline for pleadings, and pleadings shall be verified.

Dated June 5, 2008, at San Francisco, California.

/s/ MICHAEL R. PEEVEY

Michael R. Peevey
Assigned Commissioner

ATTACHMENT A

ISSUES REGARDING PHASE 2 OF TARIFF AND STANDARD CONTRACT IMPLEMENTATION FOR RPS GENERATORS

1. **Extend tariff to other customers of five utilities:** Should the existing program for other (non-water/non-wastewater) customers of Pacific Gas and Electric Company (PG&E) and Southern California Edison Company (SCE) be extended for other customers of San Diego Gas & Electric Company (SDG&E)?

The Commission extended the tariff/standard contract opportunity from water/wastewater customers to all other customers for PG&E and SCE, but declined to do so for SDG&E, PacifiCorp, Sierra Pacific Power Company, Bear Valley Electric Service and Mountain Utilities. (Decision (D.) 07-07-027, pp. 43-49.) The following questions are identified to assist the Commission in considering this issue further, and parties may comment:

- 1.1. Should the tariff/standard contract opportunity available to water/wastewater customers be extended to other (non-water/non-wastewater) customers of SDG&E?
- 1.2. If so, should the extension be on the same basic terms and conditions as employed for water/wastewater customers, and as extended for PG&E and SCE?
- 1.3. Is there anything else the Commission should consider when deciding whether or not to expand the opportunity to other customers of SDG&E?

2. Increase Project Size to 20 MW: Should the project size eligible for the tariffs/standard contract be increased from 1.5 MW to 20 MW?

Tariffs/standard contracts are now required in the Renewables Portfolio Standard (RPS) Program for eligible facilities up to 1.5 MW.¹ (D.07-07-027.) It may be reasonable and appropriate to use a tariff/standard contract, or feed-in tariff, for projects up to 20 MW. This recognizes the following considerations:

- In establishing an integrated energy policy, the California Energy Commission (CEC) has adopted the following recommendation: “Implement a feed-in tariff, set initially at the market price referent, for all RPS-eligible renewables up to 20 megawatts in size.” (California Energy Commission 2007, 2007 Integrated Energy Policy Report, CEC-100-2007-008-CMF, page 6; also see 2006 IEPR Update, January 2007, p. E-7.)
- The CEC has urged “consideration by our two agencies [CEC and Commission] of a feed-in tariff for all renewable energy projects to replace the cumbersome, opaque contracting process that renewable developers face.” (2008 Energy Action Plan Update, p. 13.) The Commission has noted: “We seek resource programs that are relatively simple, transparent, efficient and cost-effective, while pursuing growth in a LCBF [least cost, best fit] order. A program of tariffs/standard contracts may be particularly appropriate, and satisfy [these] considerations...” (D.07-07-027, p. 45.)
- Many RPS projects are eligible for status as Qualifying Facilities (QFs) under the Public Utilities Regulatory Policies Act (PURPA). California has a “must purchase” obligation for electricity generated by QFs up to 20 MW under PURPA. (D.07-09-040, p. 20, citing Federal Energy Regulatory Commission Order 688, 71 Fed. Reg. 64352.) The Commission has established certain contract provisions for small QFs

¹ Some utilities may limit the size to 1.0 MW. See previous footnote.

(under 20 MW) “because a small QF is unable to bid in a utility RFO [and] generally does not have the resources or expertise required to negotiate and enter into a bilateral contract with a utility ...”

(D.07-09-040, pp. 118-9.) D.07-09-040 establishes the new contract price terms and conditions for both existing and new qualifying facilities.

- Electrical corporations are required to have a tariff/standard contract for the purchase of electricity from certain customers up to 20 MW (Public Utilities Code § 2840 et seq.; Assembly Bill 1613, effective January 1, 2008, requiring an electrical corporation to file a tariff/standard contract for the purchase of electricity delivered by a combined heat and power system up to 20 MW). The Commission has not yet acted on this new section of code.
- In furtherance of the Governor’s Executive Order S-06-06, SCE offers to purchase electricity from biomass projects pursuant to a tariff/standard contract at a price equal to the market price referent for projects up to 20 MW. According to SCE, the standard contract addresses difficulties smaller projects have had participating in annual solicitations, and eliminates the complex negotiation process required for other projects. (D.08-02-008, pp. 42-44.)
- Certain customers have expressed interest in standard contracts. For example, GreenVolts, Cleantech America and Community Environmental recently commented upon the desirability of a standard contract for solar photovoltaic facilities. (Pre-Workshop Comments on the 2008 Market Price Referent, March 6, 2008, p. 17.) This is also true for certain dairy customers. The Commission has expressed interest in giving this reasonable consideration. (D.07-03-042.)
- The existing RPS Project List identifies that there are 51 RPS projects that have a minimum size of 20 MW or less and have been procured without a feed-in tariff. (See <http://www.cpuc.ca.gov/PUC/energy/electric/RenewableEnergy/rpsprojects.htm>.)

In this context, the Commission would like to consider expansion of the tariff/standard contract here to all eligible projects up to 20 MW. The following items are identified to assist the Commission in considering this further, and parties may comment:

- 2.1. Identify and, where possible, quantify the advantages and disadvantages of expanding the minimum size for projects which may qualify for this tariff/standard contract from 1.5 MW to a higher MW amount, up to and including 20 MW.
- 2.2. Recommend whether or not to increase the maximum size here from 1.5 MW to a higher amount, and state the specific MW amount.
- 2.3. If the minimum size of projects that may qualify for tariffs/standard contracts is increased, address whether or not this should be implemented within (a) the existing program (250 MW for water/wastewater, 228.4 MW for other) or (b) as a separate new program. If a separate new program, please state specifics (e.g., program limits, proportional allocations, if any).
- 2.4. If the minimum size of projects that may qualify for tariffs/standard contracts is increased above 1.5 MW within the existing program, address whether or not existing overall program limits and proportional allocations should continue or be modified (i.e., program limits of 250 MW for water/wastewater customers and 228.4 MW for other customers; proportional allocations of 123.8 MW for SCE, 104.6 MW for PG&E, 20.1 MW for SDG&E, and so on). Please state specific reasons in support of either continuation or modification. If modified, please state specific recommended modifications, with support.
- 2.5. If the minimum size of projects that may qualify for tariffs/standard contracts is increased above 1.5 MW within the existing program, should projects above 1.5 MW be required to use a feed-in tariff or should they also be allowed to participate in the standard RPS solicitations?

2.6. How does the price, terms and conditions offered under the feed-in tariff compare to the following:

2.6.01. The price paid for the 51 RPS projects selected that are under 20 MW?

2.6.02. The price paid for RPS projects over 20 MW?

2.6.03. The price paid for qualifying facility projects in D.07-09-040?

2.6.04. The price paid for customer sited solar and wind resources that is offered as a combination of (1) the incentives offered through the California Solar Initiative of Self-Generation Incentive Program and (2) the incentives offered through full retail net metering that provides an ongoing customer incentive for onsite renewable generation?

2.7. State anything else the Commission should consider when deciding whether or not to expand the maximum size for facilities eligible to use the tariffs/standard contracts from 1.5 MW to another amount, up to and including 20 MW.

3. **Excess Sales**: How should electricity purchased pursuant to an excess sales arrangement be counted toward program limits?

The Commission requires PG&E, SCE and SDG&E to offer, at the customer's option, the choice of selling electricity under either full buy/sell or excess sales. The other four utilities must offer full buy/sell and may offer excess sales. (D.07-07-027, pp. 33-38.) SCE and PG&E ask for further consideration of how electricity sold under an excess sales tariff/standard contract counts towards program maximum capacity. The following questions are identified to assist the Commission in considering this issue further, and parties may comment:

- 3.1. How should an electrical corporation count electricity sold under an excess sales tariff and/or standard contract toward its allocated share of the 250 MW program limit?
 - 3.2. The Commission requires that “standard contracts for full buy/sell and excess sales must ensure that metering is consistent with the CEC RPS accounting requirements in order to accurately track renewable energy.” (D.07-07-027, p. 35, footnote 31.) Is anything else necessary to accomplish appropriate tracking of energy, capacity and/or RECs under either a full buy/sell or excess sales transaction for the purposes of measuring capacity toward total program capacity limits?
 - 3.3. State anything else the Commission should consider in deciding this issue.
4. **Third-Party Ownership**: What changes, if any, are necessary to permit third party ownership?

Electric generation facilities eligible for the tariff/standard contract opportunity here must be owned and operated by the retail customer of the electrical corporation, and be located on property owned or under the control of the retail customer. (Pub. Util. Code § 399.20(b); D.07-07-027, Conclusion of Law 25, Ordering Paragraph 2.) The Commission is interested in the potential of utility ownership of RPS facilities in some cases. (D.08-02-008, pp. 32-35.) In particular, the Commission has noted that there may be unique circumstances where an electric utility may be part or full owner of the eligible RPS facility. (*Id.*, p. 34, footnote 14.) The Commission is also interested in other, third-party partial or full ownership of the facility at the retail customer site. To further consider this issue, the following items are identified, and parties may comment:

- 4.1. In order to permit the option of partial or full ownership of an eligible facility at the retail customer site by either a utility and/or another entity, please identify changes, if any, that are needed in (a) tariffs/standard contracts or (b) the law. Please be specific.

- 4.2. Please make a recommendation regarding whether or not changes should be adopted to permit partial or full ownership by either a utility and/or a third party.
- 4.3. If your recommendation is that changes should be adopted to permit partial or full third-party ownership, please be specific, including specific necessary alternate language.
- 4.4. State anything else the Commission should consider when deciding this issue.

5. Other Modifications

The goal here is to now complete all necessary implementation of this tariff/standard contract opportunity for RPS projects. Please state anything else the Commission should consider before completing this implementation. Please include recommended action, if and as necessary, to complete this implementation. Please include necessary facts and law that must be considered. Please be specific.

(END OF ATTACHMENT A)

ATTACHMENT B

SCHEDULE

LINE NO	ITEM	DAY	DATE
1	Amended Scoping Memo	0	6/5/08
2	Opening Comments filed and served	+28	7/3/08
3	Reply comments filed and served	+11	7/14/08
4	Motions for hearing filed and served (for contents of motions see August 21, 2006 Scoping Memo)	+4	7/18/08
5	Responses to motions for hearing filed and served	+4	7/22/08
6	Projected submission of Phase 2 issues (if no motions for hearing)		7/18/08

(END OF ATTACHMENT B)

INFORMATION REGARDING SERVICE

I have provided notification of filing to the electronic mail addresses on the attached service list.

Upon confirmation of this document's acceptance for filing, I will cause a Notice of Availability of the filed document to be served upon the service list to this proceeding by U.S. mail. The service list I will use to serve the Notice of Availability of the filed document is current as of today's date.

Dated June 5, 2008, at San Francisco, California.

/s/ ELIZABETH LEWIS

Elizabeth Lewis