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Decision 07-05-006 May 3, 2007

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking Regarding the Implementation of the Suspension of Direct Access Pursuant to Assembly Bill 1X and Decision 01-09-060.	Rulemaking 02-01-011 (Filed January 9, 2002)

OPINION GRANTING, IN PART, PETITION FOR MODIFICATION OF DECISION 03-04-030: OPINION ON COST RESPONSIBILITY SURCHARGE MECHANISMS FOR CUSTOMER GENERATION DEPARTING LOAD

By this order, we grant, in part, the California Clean DG Coalition (CCDC)[1] Petition for Modification of Decision (D.) 03-04-030: Opinion on Cost Responsibility Surcharge (CRS) Mechanisms for Customer Generation Departing Load (Petition).

In D.03-04-030, the Commission established policies and mechanisms for CRS for departing load in the form of customer generation (also referred to as "Distributed Generation (DG)). The Commission also, however, granted an

[1] CCDC is an ad hoc group interested in promoting the ability of distributed generation system manufacturers, distributors, marketers and investors, and electric customers to deploy DG. CCDC is comprised of Capstone Turbine Corporation, Caterpillar, Inc., Chevron Energy Solutions Company, Cummins, Inc., Cummins West, Inc., DE Solutions, Inc., Hawthorne Power Systems, Holt of California, Johnson Power Systems, next>edge, Inc., Northern Power Systems, Peterson Power Systems, Quinn Power Systems, RealEnergy, LLC, Simmax Energy, Solar Turbines Incorporated, and Tecogen, Inc.

exception from the requirement to pay any portion of CRS for small, clean DG, limited to systems under 1 megawatt (MW) in size. When D.03-04-030 was adopted, the DG size limit applicable to the Self-Generation Incentive Program (SGIP) and the net metering program was 1 MW.[2] In order to be consistent with these programs, the Commission limited the small, clean DG exceptions to systems under 1 MW in size that are eligible to participate in either the SGIP or a California Energy Commission (CEC) incentive program. The Commission, however, stated its "intent to revisit the 1 MW limit to exceptions to the CRS no later than three years from the date of issuance of this decision, in order to take into account any technological advances or economies of scale in customer generation production and scale." Through its petition, CCDC requests that the Commission modify D.03-04-030 to increase the CRS exception eligibility limit for small, clean DG systems up to 5 MW in size (with the exception applying to the total eligible capacity). CCDC argues that this modification is consistent with the Commission's stated intent to consider such an increase in connection with DG technological advances and economies of scale that have occurred since issuance of D.03-04-030.

1. Timeliness of Filing

CCDC filed its petition on November 14, 2006. Commission Rule 16.4(d) provides that, in general, a petition for modification must be filed within one year of the effective date of the decision proposed to be modified. If more than one year has passed, a petition must explain why the petition could not have

[2] See Pub. Util. Code § 2827.

been presented within one year of the effective date of the decision. D.03-04-030 became effective over three years ago, on April 3, 2003.

D.03-04-030 expressly addressed various size limit proposals for small, clean DG systems eligible for CRS exceptions, and determined that only small, clean DG systems under 1 MW are eligible for the adopted CRS exceptions. The Commission stated its intent, however, to revisit that limit within three years of issuance of D.03-04-030 to take into account technological developments and economies of scale. CCDC states that this direction from the Commission effectively precluded the filing of a petition for modification regarding the size limit applicable to small, clean DG systems eligible for CRS exceptions for at least three years after issuance of D.03-04-030.

Three years have now passed since D.03-04-030 was issued and CCDC asserts that substantial developments in technologies have occurred during that time, which in turn are expected to result in economies of scale. Accordingly, consistent with the express terms of D.03-04-030, we conclude that the petition is timely filed.

2. Parties' Positions

CCDC asserts, that since issuance of D.03-04-030, there have been technological advances likely to result in economies of scale that warrant increasing the size limit for small, clean DG systems eligible for CRS exceptions to 5 MW (with the exception applying to the total eligible capacity). Specifically, the ability of small combined heat and power (CHP) systems to recover thermal energy for conversion into chilled water, steam or hot water has increased significantly. CCDC states that these recent technological advancements in turn have expanded the market reach for CHP systems in the 1 to 5 MW size range. Most of these advanced products are aimed at commercial and institutional

markets that lack sufficient traditional thermal loads found in many industrial applications.

CCDC further argues that not only is a 5 MW limit appropriate in light of the technological advances described above, it is also consistent with Commission policy decisions setting size limits for other DG incentives. For example, in D.04-12-045 (as modified by D.05-02-042), the Commission increased the maximum eligible capacity size for SGIP incentives to 5 MW. Additionally, eligible DG units that are 5 MW or smaller qualify for the standby charge waivers enacted by Senate Bill 28. A recent CEC-sponsored assessment of CHP concluded that approximately 2,000 MW of incremental CHP would come on line between now and 2020 if existing incentives were continued and another approximately 1,000 MW if incentives were extended to systems 5 MW in size.

Pacific Gas and Electric Company (PG&E) filed a response to the petition on December 14, 2006, opposing a complete CRS exemption beyond 1 MW for such DG units. PG&E, however, did not oppose providing the 1 MW CRS exemption to clean DG units not exceeding 5 MW in capacity. PG&E stated that providing the 1 MW CRS exemption to clean DG not exceeding 5 MW in capacity strikes the right balance between encouraging DG and avoiding cost shifting. PG&E also argues that the 1 MW exemption would be consistent with the current state of the SGIP, which makes financial incentives for up to 1 MW available to DG systems with up to 5 MW of capacity.

Southern California Edison (SCE) filed a response on December 22, 2006. SCE does not oppose PG&E's suggestion, but believes it provides for a reasonable modification to D.03-04-030 to allow for a 1 MW CRS exemption for the larger, more technologically advanced clean DG units, while at the same time ensuring that significant CRS costs are not shifted onto remaining customers.

SCE thus opposes CCDG's proposal to modify D.03-04-030 to increase the CRS exemption for clean DG units to 5 MW, and instead, supports PG&E's compromise alternative to modify D.03-04-030 to provide the 1 MW CRS exemption to clean DG units not exceeding 5 MW in capacity.

CCDC filed a third-round reply, disagreeing with PG&E and SCE's assertion that a DG exemption up to 5 MW in size would cause cost shifting. CCDC argues that a cost-benefit analysis will show that the benefits of DG outweigh its costs. Although the Commission has yet to complete the cost-benefit phase of the current DG Rulemaking (R.06-03-004), the Commission found in D.03-04-030 that "[o]n the basis of the policy preferences already articulated by the Legislature, as codified in recently enacted statutes, and by this Commission, however, we believe that there is sufficient policy basis to believe that customer generation confers a positive public benefit."[3] CCDC thus argues that customers will realize system benefits, not costs, from additional installations of small, clean DG.

In adopting CRS exemptions for ultra-clean, low emission DG *over* 1 MW in size, the Commission noted that it would not be appropriate to except such DG from the DWR Bond Charge because collections of the DWR Bond Charge in connection with "larger systems" would have a "noticeable impact" on collection amounts. CCDC does not believe the Commission intended to include DG systems up to 5 MW among "larger systems" as that term was used in D.03-04-030, given the Commission's stated intent to revisit exceptions from *all* CRS components from small, clean DG over 1 MW.

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[3] D.03-04-030, p. 44.

3. Discussion

We grant the Petition to Modify, in part, by extending applicability of the 1 MW exemption to clean DG units not exceeding 5 MW in capacity. No party opposes this limited modification, and we agree that extending the eligibility for the 1 MW exemption to apply to clean DG units up to 5 MW in capacity is reasonable. We agree that technological advances have occurred since issuance of D.03-04-030 that have increased economies of scale and expanded the market reach of clean DG systems. In light of these advances, we conclude that increasing the size limitation up to 5 MW on qualifying clean DG units is appropriate. Since we have already increased the maximum eligible capacity size for SGIP incentives to apply to DG units up to 5 MW, as discussed above, it is consistent with our treatment of these incentives to increase the threshold for eligibility for the CRS exemption to include units up to 5 MW in capacity. In this manner, a larger number of clean DG units will qualify for the CRS exemption, which will promote the goal of encouraging development of clean DG. We decline, however, to increase the per-unit exemption beyond the 1 MW level, as explained below.

In D.03-04-030, we stated that any system that meets the specified criteria and is less than 1 MW in size would not be required to pay any CRS charges. For systems over 1 MW in size, however, we stated that their scale dictates that they should be responsible for a fair share of the DWR bond charges. We further concluded that while making exception for systems under 1 MW from bond charges would not make a recognizable difference in collection amounts, collections on larger systems would have a noticeable impact. Therefore, we required that systems meeting the Public Utilities Code Section 353.2 criteria which are over 1 MW in size pay the DWR bond charge.

Thus, in D.03-04-030, we interpreted any system over 1 MW in size as constituting a "larger system" that could noticeably impact the collection of DWR bond charges. CCDC has provided insufficient empirical support to convince us that extending CRS exemption beyond 1 MW for all such units would not noticeably impact collections of DWR bond charge. As CCDC concedes, the Commission has not yet completed the cost-benefit phase of the DG Rulemaking (R.06-03-004). Without the benefit of a record concerning the relative cost/benefit comparison, we cannot determine the cost impacts resulting from expanding the CRS exemption above 1 MW per unit. Therefore, in the interests of avoiding cost shifting and maintaining support for collection of DWR bond charges, we conclude that granting a full 5 MW exemption would not be appropriate. Although we concluded in D.03-04-030 that as a general policy, customer generation confers a positive public benefit, we made that assessment within the context of the limited CRS exceptions granted at that time. The positive public benefit provided by customer generation, however, must be weighed in context with other relevant goals including continued support for collection of DWR bond charges.

We conclude that granting a 1 MW exemption for all clean DG units up to 5 MW in capacity strikes the appropriate balance between encouraging clean DG and avoiding cost shifting.

4. Comments on Proposed Decision

The proposed decision of the ALJ in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and Rule 14.2(a) of the Commission's Rules of Practice and Procedure. Comments were filed on April 19, 2007, and reply comments were filed on April 23, 2007. We have

reviewed the comments, and find no basis to revise the disposition reached in the proposed decision.

5. Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and Thomas R. Pulsifer is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. In D.03-04-030, the Commission granted an exception from the requirement to pay any portion of the CRS for small, clean DG, limited to systems under 1 MW in size.

2. The Commission stated, however, its intent to consider an increase in the 1 MW exception in connection with DG technological advances and economies of scale occurring subsequent to the issuance of D.03-04-030.

3. Extending the eligibility criteria for the CRS exemption to apply to clean DG units up to 5 MW would be consistent with the threshold limits previously applied for SGIP incentives.

4. Technological developments since D.03-04-030 was issued have expanded the market reach for combined heat and power DG systems in the 1 MW to 5 MW range.

5. The technological developments since D.03-04-030 justify increasing the size threshold for eligibility to claim the CRS exemption per clean DG unit from 1 MW up to 5 MW in capacity.

6. There is insufficient evidence, however, to justify increasing the amount of the exemption per clean DG unit above 1 MW up to 5 MW.

7. CCDC has provided insufficient empirical support to show that extending CRS exemption beyond 1 MW for all clean DG units would not noticeably impact collections of DWR bond charge, and lead to cost shifting.

Conclusions of Law

1. The Commission has previously authorized a limited exemption from the CRS for clean DG units in recognition of the positive public benefit provided by such alternative sources of electric generation.

2. The positive public benefit provided by customer generation, however, must be weighed in context with other relevant goals including avoiding cost shifting and continued support for collection of DWR bond charges.

3. A limited increase in size threshold for clean DG units to qualify for the exemption from the CRS is warranted in view of technological developments increasing economies of scale since the issuance of D.03-04-030.

4. The 1 MW exemption from the CRS applicable to each qualifying clean DG unit should not be expanded at this time, given the Commission's goals of avoiding cost shifting and supporting DWR bond charges.

5. The Petition for Modification of D.03-04-030 should be granted, in part, and denied, in part, in accordance with the order below.

O R D E R

IT IS ORDERED that:

1. The Petition for Modification of Decision 03-04-030 is granted, in part, and denied, in part, as set forth below.

2. The 1 megawatt (MW) exemption from the Cost Responsibility Surcharge previously granted to clean distributed generation (DG) units not exceeding 1 MW in size is hereby extended to apply to clean DG units up to 5 MW in size.

3. The Petition is denied to the extent that it seeks to increase the per-MW exemption per clean DG unit above 1 MW.

This order is effective today.

Dated May 3, 2007, at San Francisco, California.

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
TIMOTHY ALAN SIMON
Commissioners