



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

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Order Instituting Rulemaking on the
Commission's Own Motion into combined
heat and power Pursuant to Assembly Bill
1613.

Rulemaking 08-06-024
(Filed June 26, 2008)

**COMMENTS OF THE CALIFORNIA CLEAN DG COALITION
REGARDING ENERGY DIVISION FINAL STAFF PROPOSAL**

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Pursuant to the August 4, 2009 Administrative Law Judge's Ruling Incorporating Energy Division Final Staff Proposal into the Record and Providing for Comments Thereon, the California Clean DG Coalition ("CCDC") submits these comments.

INTRODUCTION

CCDC is an ad hoc group interested in promoting the ability of distributed generation ("DG") system manufacturers, distributors, marketers and investors, and electric customers, to deploy DG. Its members represent a variety of DG technologies including combined heat and power ("CHP"), renewables, gas turbines, microturbines, and reciprocating engines.¹ CCDC is committed to electricity markets that enable the best solutions for consumers, the environment, and the investor owned utilities. CCDC's members operate in all 50 states. CCDC has consistently encouraged implementation of a policy and regulatory framework for CHP DG in California that sets the stage for the rest of the nation.

CCDC supports the Guiding Principles that Energy Division staff proposes that the Commission apply in adopting standard contracts and pricing terms pursuant to AB 1613. They provide a practical, reasonable framework for considering both of the AB 1613 contracts currently before the Commission for review. CCDC also supports Energy Division staff's recommendation that the Commission establish two separate contracts, one for eligible CHP ≤ 20 megawatts ("MW"), and another simplified contract for CHP systems that export no more than 5 MW. CCDC strongly believes a simplified contract for smaller exports is vital to creating a

¹ CCDC is currently comprised of Capstone Turbine Corporation, Cummins Inc., DE Solutions, EPS Corporation, Hawthorne Power Systems, Holt of California, Johnson Power Systems, Peterson Power Systems, RealEnergy, LLC, SDP Energy, Solar Turbines Incorporated, and Tecogen, Inc.

meaningful opportunity to achieve the benefits of CHP that the Legislature identified in AB 1613. CCDC supports Energy Division’s pricing Option 1, because it satisfies the requirements of AB 1613 and affords at least some of the certainty that lending institutions require. Finally, CCDC requests that the Commission require that the Self Generation Incentive Program (“SGIP”) Handbook be modified to clarify and confirm that there is no prohibition against a CHP system participating in the AB 1613 program and receiving incentives from the SGIP, assuming the CHP system meets the applicable requirements of both programs. CCDC’s specific comments and responses to Energy Division’s questions are set forth below, following the outline in the Energy Division Staff Proposal.

I. CONTRACT TERMS AND CONDITIONS

CCDC supports Energy Division staff’s recommendation that the Commission establish two separate contracts, one for eligible CHP ≤ 20 megawatts (“MW”), and another simplified contract for CHP systems that export no more than 5 MW.²

A. Simplified Contract for CHP Exporting up to 5 MW

CCDC agrees with staff that the proposed simplified contract meets the Guiding Principles identified by staff to the greatest extent possible. CCDC appreciates staff’s consideration of the positions and rationales for the various provisions of the simplified contract where parties were not able to reach agreement, and subject to a minor clarification, agrees with all but one of staff’s recommendations for modifications and clarifications.³

1. Size Limitation

All parties except for Southern California Edison agree that the as-available contract capacity for CHP systems eligible for the simplified contract must be “no more than 5 MW” and “shall never exceed 5 MW.”⁴ In the Energy Division Staff Proposal, staff characterizes the simplified contract as available to CHP exporting “up to 5 MW.”⁵ CCDC is concerned that staff’s use of “up to 5 MW” may inadvertently be construed as suggesting sales of excess energy under the simplified contract may never exceed 4 MW. CCDC requests that the Commission

² Although CCDC understands some parties believe additional, more complex terms and conditions should be included in a contract for systems exporting more than 5 MW, CCDC remains concerned that the pending contract for larger exports may be too complicated for meaningful participation.

³ CCDC’s detailed comments regarding the simplified AB 1613 contract are set forth in its July 10, 2009 comments.

⁴ Simplified Contract, Sections 1.02 and 1.03.

⁵ Energy Division Staff Proposal, p. 4.

clarify that the simplified contract will be available to exports that are no more than 5 MW (*i.e.*, equal to or less than 5 MW).

2. Additional Contract or Simplification for Systems Less Than 500 kW

As noted in CCDC's opening and reply comments, some of CCDC's members operate CHP systems that are 500 kilowatts ("kW") or less ("very small CHP").⁶ Such systems have minimal, if any, effect on the distribution system, and are not even required to be scheduled with the California Independent System Operator ("CAISO"). CHP systems from 20 kW to 20 MW that meet applicable eligibility criteria should be allowed to sell excess energy pursuant to AB 1613 without undue costs and operating burdens. Accordingly, CCDC has requested that the Commission adopt an even simpler AB 1613 contract, or identify specific provisions of the simplified contract that do not apply to very small CHP, to efficiently and equitably address the concerns of very small CHP customers and the utilities.⁷

Staff does not recommend establishing a third, even simpler contract for very small CHP at this time.⁸ Staff notes that the proposed simplified contract contains exemptions from certain fees and other requirements for systems less than 1 MW.⁹

CCDC appreciates the added flexibility in the simplified contract for systems under 1 MW. However, if the Commission chooses not to adopt an even further simplified contract, CCDC continues to request that the Commission provide that additional terms of the simplified contract do not apply to very small CHP. At a minimum, CCDC proposes that the following requirements not apply to very small CHP, any one of which would make participation in an excess sales arrangement unduly burdensome and cost-prohibitive for very small CHP: compliance with CAISO tariff, metering, fees and charges, and other requirements (Sections 2.01, 3.07, 3.09(a), 3.11(h) and Exhibit E); outage scheduling and reporting requirements (Section 3.16 and Exhibit D); requirement for device to limit export amount (Section 3.18); excessive insurance requirements (Section 7.10); and forecasting requirements (Exhibit C).

⁶ CCDC Comments, 6/1/09, p. 6; CCDC Reply Comments, 6/15/09, p. 3.

⁷ CCDC Comments, 6/1/09, p. 6. *See also* CCDC Comments Regarding Simplified AB 1613 Contract, 7/10/09, pp. 9-10.

⁸ Energy Division Staff Proposal, p. 4.

⁹ *Id.*

3. Green Attributes, Section 3.01

CCDC addresses green attributes below, in response to staff's Questions for Further Comment.

II. PRICING

CCDC addresses pricing below, in response to staff's Questions for Further Comment.

III. ADDITIONAL ISSUES

A. Total Program Capacity Size Cap/Wait-List

AB 1613 provides that the Commission *may* establish a maximum kilowatthour limit on the amount of excess electricity that an investor owned utility ("IOU") is required to purchase only "*if the commission finds that the anticipated excess electricity generated has an adverse effect on long-term resource planning or reliable operation of the grid.*"¹⁰ AB 1613 does not mandate a cap on AB 1613 purchases.

To date, the IOU arguments supporting a limit appear to be driven by a concern that without a kilowatthour limit, there will be so much excess energy available from small CHP that the IOUs may end up "assum[ing] hundreds of megawatts of contracts that may not meet the utility's resource needs," and/or may find themselves with power that is not needed in the event significant load is lost, through re-opening of direct access or through community choice aggregation or municipalization.¹¹ This concern is hypothetical. AB 1613 includes safeguards against the scenarios conceived by the IOUs. For example, small CHP systems eligible to sell excess power under AB 1613 must be no greater than 20 MW and "sized to meet the eligible customer-generator's onsite thermal demand."¹² AB 1613 also states the Legislature's unambiguous intent that customers not be permitted to "operate as de facto wholesale generators with guaranteed purchasers for their electricity."¹³

Until a tariff and standard form power purchase contracts providing for the sale of excess electricity by CHP eligible under AB 1613 are in place, *and* CHP customers or developers actually are selling excess electricity under such a tariff and contracts, the Commission has no basis for determining the impact of such sales – positive or adverse – on resource planning or reliable operation of the grid. CCDC submits that it is premature to establish at this time a

¹⁰ Pub. Util. Code, § 2841(a) (emphasis added).

¹¹ See, e.g., Opening Comments of PG&E, 7/31/08, p. 5.

¹² Pub. Util. Code, § 2840.2(a)(2).

¹³ Pub. Util. Code, § 2843(b).

maximum kilowatthour limit on the amount of excess electricity that an IOU is required to purchase and requests that the Commission defer consideration of a limit until it has sufficient information so support such an analysis.

Staff recommends that the Commission implement a statewide *cap* of 500 MW on AB 1613 contract export capacity, to be allocated proportionally between the utilities based on 2008 peak demand.¹⁴ Staff further recommends that the Commission adopt a program capacity *goal*, based on long-term planning.¹⁵ The interim program *cap* should be adjusted based on the program capacity *goal* developed through long-term planning.¹⁶ If the Commission believes it appropriate to set an interim cap now, then 500 MW, allocated proportionally among the IOUs, and subject to adjustment based on long-term planning goals, as proposed by staff, appears reasonable. CCDC suggests that the Commission closely monitor purchases of excess energy pursuant to AB 1613 so that it may adjust the interim cap, as appropriate, well before purchases meet the interim cap. For example, the Commission could provide that it will evaluate the cap whenever AB 1613 purchases come within 20% of an IOU's allocation under the cap, regardless of the status of consideration of a goal being developed through long-term planning.

B. Ratepayer Funded Incentives

Eligible customer generators should be allowed to sell excess energy under AB 1613 and receive incentives under the SGIP. AB 1613 calls for purchases of excess electricity generated by new, small CHP systems designed to advance efficient use of natural gas through improved capture of unused waste heat, thereby helping to offset the growing crisis in electricity supply and transmission and reducing emissions of greenhouse gases.¹⁷ In other words, by allowing CHP systems to be sized to meet thermal demand and sell the related excess energy, AB 1613 alleviates existing sizing constraints, thereby maximizing the benefits of CHP for all California ratepayers. SGIP incentives offset the capital costs of on-site generation that enhances reliability, promoting different, yet complementary, state policies than those addressed by AB 1613.¹⁸ Notably, the Legislature did not preclude customers eligible to sell excess energy under AB 1613 from also receiving incentives under SGIP or any other program. Forcing CHP owners

¹⁴ Energy Division Staff Proposal, p. 13.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Pub. Util. Code, § 2840.6(a) and (b).

¹⁸ Pub. Util. Code, § 379.5(b).

to choose between AB 1613 and SGIP will add a significant barrier to CHP, contrary to state policy and legislative intent.

Staff appropriately clarifies “that nothing about this AB 1613 program would prohibit a CHP system from receiving incentives from a ratepayer funded program such as the Self Generation Incentive Program as long as the system meets all requirements of such a program.”¹⁹ In order to provide important clarification and certainty to CHP customers, CCDC urges the Commission to require that the SGIP Handbook be modified to provide that a CHP system may participate in the AB 1613 program and also receive incentives from the SGIP, assuming the CHP system meets the applicable requirements of both programs.

C. Reporting Requirements.

CCDC supports staff’s recommendations. As discussed in earlier comments, CCDC also recommends that the Commission establish an annual review process to consider whether any contracts it adopts to implement AB 1613 are achieving the results intended by the Legislature, and make any adjustments required to better align the program with state goals.²⁰

D. Utility Owned CHP.

CCDC supports staff’s recommendations.

IV. QUESTIONS FOR FURTHER COMMENT

A. Contract Terms and Conditions

1. Terms and Conditions Not Addressed in Staff Proposal

Staff has addressed the important terms and conditions that were not agreed to by all parties.

2. Green Attributes (Section 3.02)

Staff proposes that the buyer under an AB 1613 contract shall reimburse the seller for all greenhouse gas (“GHG”) compliance costs for GHGs associated with the CHP unit.²¹ Given the substantial uncertainties associated with the pending GHG regulatory structure, CCDC supports use of a compliance cost pass-through as proposed by staff. This provision of the AB 1613 contracts should be subject to review and modification, as appropriate, depending on the outcome of the proceedings to develop the GHG regulatory structure. It simply is not possible to

¹⁹ Energy Division Staff Proposal, p. 13.

²⁰ CCDC Comments, 6/1/09, p. 7.

²¹ Energy Division Staff Proposal (Section 3.02), p. 6

develop a GHG contract term now that anticipates with any certainty the ultimate GHG regulatory framework.

With respect to treatment of green attributes associated with CHP using an eligible renewable fuel, CCDC observes that AB 1613 seeks to achieve greater efficiency through the recovery and use of waste heat. CHP may achieve such greater efficiency using natural gas or renewable fuel. Thus, CCDC suggests that the overriding consideration regarding renewable energy credits and other non-generation activities (*i.e.*, methane capture, fuel clean-up, etc.) should be to ensure that a seller either keeps or is paid for *all* green attributes.

CCDC recommends excluding renewable energy credits and any other non-generation activities and benefits from the definition of green attributes. If an AB 1613-eligible system uses a renewable fuel, then the renewable energy credits create additional value for the seller, which the seller should retain or for which the seller should receive additional compensation from the buyer. Similarly, the seller should retain or be compensated for the value of any other non-generation activities or benefits associated with the use of renewable fuel. This approach would also provide incentive to develop additional renewable resources.

If the Commission determines that all of the benefits associated with the use of renewable fuel should be conveyed by seller to buyer, then CCDC requests that the contract provide that buyer must compensate seller for such benefits at market prices, or contain some other mechanism to ensure that the seller is fully compensated for using renewable fuel.

B. Pricing

CCDC appreciates staff's careful consideration of the various pricing issues, comments, and proposals parties have provided in this proceeding. CCDC generally supports staff pricing Option 1 compared to Option 2 because Option 1 satisfies the pricing-related requirements of AB 1613, is consistent with the Guiding Principles proposed by staff, provides certainty, and creates an incentive for customers to take the risk of sizing a CHP system to meet thermal load, thereby allowing the state to realize the benefits of putting otherwise wasted heat to productive use.

1. Option 1

Option 1 incorporates many of the inputs from the 2008 Market Price Referent ("MPR"), as modified by some of the inputs from the February 27, 2009 California Cogeneration Council proposal. Thus, under Option 1 the price to be paid under AB 1613 is based on the estimated cost of a marginal generating unit, which satisfies the ratepayer indifference requirement of

Public Utilities Code section 2841(b)(4). The price is modified to provide variability based on the bidweek price of natural gas at the California border, plus intrastate transportation to the burnertip. This satisfies Public Utilities Code section 2841(b)(3). The Option 1 price also includes time-of-delivery (“TOD”) factors that encourage peak production, consistent with Public Utilities Code section 2841(c). Because the MPR is an established pricing mechanism, already calculated for the Renewable Portfolio Standard Program, it meets the Guiding Principles of simplicity, transparency, and reduced transaction costs. Finally, tying the price paid for excess energy under AB 1613 to readily available natural gas index prices provides lending institutions with a level of certainty.

Pricing Option 1 uses the MPR TOD factors. CCDC supports this approach, but requests that the Commission establish a process for updating those factors over time.

2. Option 2

While CCDC believes Option 1 is preferable to Option 2, CCDC provides the following comments regarding Option 2. Under Option 2, the price to be paid is based on the generation component of utility retail rates. Staff asserts that the generation component of retail rates reflect average generation costs and, therefore, provide ratepayer indifference. CCDC disagrees. In considering qualifying facility pricing issues, the Commission has consistently assumed that marginal or avoided costs – not average costs – result in ratepayer indifference.

Additionally, contrary to the Guiding Principles, CCDC believes that Option 2 will result in significant complexity and substantially increased transaction costs for CHP customers. CHP customers will have to routinely participate in the rate cases of each of the three IOUs to ensure the component(s) of utility rates used as the basis for AB 1613 pricing meet the criteria of AB 1613. For the most part, customers seeking to use the simplified contract do not have the expertise or the resources to undertake this level of effort. Also contrary to the Guiding Principles, Option 2 is uncertain. For instance, CCDC assumes that by referring to the customer’s otherwise applicable tariff, staff intends for the Option 2 price to update over time, creating ambiguity for customers.

Notwithstanding CCDC’s concerns regarding rate case participation, CCDC suggests that Option 2 could be improved by including generation-related demand charges. These charges are a significant part of utility rates, and must be added to generation-related energy charges in order to fully reflect utility generation costs. Further, because utility rate cases can result in the

reallocation of revenue between the energy and demand components, adding the two for purposes of AB 1613 pricing would be simpler and more transparent, and would be most likely to encourage peak production.

3. 10% Location Bonus

CCDC agrees with staff that a 10% generation location bonus is appropriate for the avoided distribution and transmission capacity provided by CHP. Such a bonus will encourage CHP systems at locations that most benefit the grid. CCDC suggests that such a bonus should not be limited to distribution and transmission constrained areas. For example, CHP may avoid capacity at the distribution circuit level. To signal constrained transmission, the Commission could consider applying the 10% location bonus any place where the nodal locational marginal price is higher than the zonal price. The Commission could also consider holding a workshop to further evaluate a methodology for determining areas where a location bonus should be applied.

C. Additional Issues (Capacity Goal)

Staff asks parties to identify the appropriate long-term planning mechanism or venue for establishing the capacity goal for the AB 1613 program. CCDC suggests that the capacity goal could be considered during the annual review process recommended by CCDC²², or during the long-term procurement planning process.

V. CONCLUSION

CCDC commends Energy Division staff for a proposal that strives to create a meaningful opportunity for CHP, including CHP exporting no more than 5 MW, to participate in an AB 1613 program. CCDC respectfully requests that the Commission make the minor modifications and clarifications to the staff proposal that are set forth herein. Additionally, CCDC reiterates its request that the Commission establish an annual review process to consider whether any tariff and contracts it approves to implement AB 1613 are achieving the results intended by the Legislature, and whether any adjustments are appropriate.

DATED: August 24, 2009

DAY CARTER & MURPHY LLP

By: /s/ Ann L. Trowbridge
Ann L. Trowbridge

²² CCDC Comments, 6/1/09, p. 7.

CERTIFICATE OF SERVICE

I, Paula S. Hefley, hereby certify that I served a copy of the **COMMENTS OF CALIFORNIA CLEAN DG COALITION REGARDING ENERGY DIVISION'S FINAL STAFF PROPOSAL** on August 24, 2009, on all known parties to Service List forr.08-06-024 via electronic mail to those whose addresses are available and via U.S. mail to those who do not have an electronic address as follows:

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Copies were also sent by first-class mail with postage prepaid to Commissioner Michael R. Peevey and Administrative Law Judge Amy C. Yip-Kikugawa as follows:

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I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on this 24th day of August, 2009, at Sacramento, California.

/s/ Paula S. Hefley

PAULA S. HEFLEY