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(Section 2827),¹ to compensate net energy metering (NEM) customer-generators for the value of any generated net surplus electricity at the end of the year.

The Alternate PD correctly concludes that NSC pricing should not exceed the utility's avoided cost.² SDG&E agrees that (1) the Commission should set an avoided cost NSR under the limited jurisdiction conferred on it by the federal Public Utility Regulatory Policies Act (PURPA);³ (2) PURPA requires that the selling entity be a Qualifying Facility (QF); (3) and that the state-adopted rate for QF energy or capacity not exceed the purchasing utility's avoided cost.⁴ SDG&E also agrees that the eligible customer-generators in this case may be considered essentially *de facto* QFs,⁵ following a recent Federal Energy Regulatory Commission (FERC) rule change.

The Alternate PD is incorrect, however, in its findings on what constitutes avoided cost in this case. The Alternate PD accepts as an avoided cost proxy the Commission's Market Price Referent (MPR), "which is the all-in cost of a new 500 MW central station combined-cycle plant built in California, and includes costs to mitigate the plant's GHG [(Greenhouse Gas)] emissions."⁶ SDG&E finds two overarching flaws with this result: (1) the MPR is a long-run price being used as a proxy for a short-run avoided cost, and as such does not represent a true "avoided cost" in this case; (2) the record in this case does not support compensation for capacity value, such that MPR is not an

¹ All statutory references herein are to the Public Utilities Code unless otherwise noted.

² Alternate PD at p. 10, 58, Conclusion of Law #1 ("The Commission may adopt an NSC rate that does not exceed avoided costs consistent with PURPA.").

³ 16 United States Code (USC) Sec. 8241-3(d), *et seq.*

⁴ Avoided cost is defined as "the incremental costs to an electric utility of electric energy or capacity or both which, but for the purchase from the qualifying facility or qualifying facilities, such utility would generate itself or purchase from another source." 18 C.F.R. Sec. 292.101 (b)(6).

⁵ Alternate PD at pp. 10-11 (citing FERC Order 732, 130 FERC ¶ 61, 214 (March 19, 2010) and 18 C.F.R. §292.203(d).

⁶ Alternate PD at p. 18, 58, Conclusion of Law #7 ("The MPR is a reasonable and efficient source for an avoided cost value for renewable electricity as required by Section 2827.").

accurate proxy for the avoided cost of the utility. For these reasons, the Alternate PD risks running afoul of both federal and state law. These flaws and the inherent legal difficulties are explained in further detail below.

To correct this error, SDG&E recommends the Commission adopt either: (1) SDG&E's pricing proposal or (2) the pricing proposal stated in the Modified Proposed Decision of the Administrative Law Judge (ALJ's Modified PD, published April 12, 2011). As stated in previous comments,⁷ SDG&E's proposal was designed to comply with applicable state and federal law, ensure transparency and ease of customer understanding, and keep implementation costs low. The ALJ's Modified PD pricing proposals would also accomplish these important goals. Adopting one of these proposals would be consistent with AB 920 and could serve as a reasonable proxy for avoided cost, consistent with PURPA.

II. THE MPR IS NOT A REASONABLE PROXY FOR AVOIDED COST IN THIS CASE.

The FERC's *Clarification Order*, cited in the Alternate PD, explains that the factors to be considered in determining avoided costs include:

(1) the utility's system cost data; (2) the terms of any contract including the duration of the obligation; (3) the availability of capacity or energy from a QF during the system daily and seasonal peak periods; (4) the relationship of the availability of energy or capacity from the QF to the ability of the electric utility to avoid costs; and (5) the costs or savings resulting from variations in line losses from those that would have existed in the absence of purchases from the QF.⁸

The Alternate PD does not analyze the MPR as an avoided cost under the criteria described above. Instead, the Alternate PD errs in failing to recognize disparate contract term length, by converting a levelized cost over 20 years to a short-term single year

⁷ SDG&E Application at p. 3 (filed March 15, 2010).

⁸ 133 FERC ¶61,059 (2010) at para. 23 (citing 18 C.F.R. § 292.304(e) (2010)).

avoided cost. Oddly, the Alternate PD correctly assesses that the NSCR should be a short-term avoided cost, while ignoring the fact that the MPR is a long-term levelized price.⁹ A 20-year levelized price by construction significantly exceeds the avoided cost in the first year, the year in which it is applied.¹⁰ Further, the Alternate PD fails to take into account the record showing that the net surplus energy at issue here offers no capacity value. Because the MPR does compensate for capacity, it does not represent an appropriate avoided cost proxy in this case.

A. The MPR is a long-run price referent that is not an appropriate proxy for the short-run costs that would be avoided in this case.

The record reflects SDG&E's position that AB 920 contemplated compensation based on short-run avoided costs for two compelling reasons.

First, the NEM program is a *tariff* with *no long-term commitment* from the customer. The surplus compensation at issue here adds no capacity value,¹¹ and cannot be relied upon for resource adequacy (RA) purposes.¹² This stands in sharp contrast to Power Purchase Agreements (PPAs) for RPS-eligible energy, where there would be a long-term *contractual obligation* to deliver power and the utility takes all of the output of the facility. In such an agreement, capacity and RA value would add to the value of the long-term RPS-eligible contract. Conceivably, an IOU could rely in part on the

⁹ Alternate PD at p. 37 (“[N]et surplus generators should not receive long-term fixed NSC rates based on the date that the generator’s system becomes operational.”); *compare with* R.08-06-024, 1996 Cal. PUC LEXIS 903 at * 9 (“The MPR is set annually by the Commission in accordance with Pub. Util. Code § 399.15(c) and represents the long-term market price of electricity.”).

¹⁰ See Resolution E-4298 comparison of Short-term contracts and Long-term contracts in Appendix A, pages 13-14 or the spreadsheet 2009 MPR R4298 Public.xls.

¹¹ See Subsection II.B, *infra*.

¹² SDG&E Reply to Responses/Protests at 6 (May 3, 2010).

obligation to sell created by long-term RPS-eligible PPAs in determining generation needs in the future, such that “the all-in cost of a new 500 MW central station combined-cycle plant built in California” might be a relevant concept in determining avoided cost here.

However, the long-term concepts associated with the MPR are not relevant here. The net surplus energy at issue here represents, by definition, *excess* energy that is left over at the end of the year. This excess energy is, by AB 920’s terms, generated by a facility with capacity *sized to meet the customer’s load*.¹³ Any excess energy thus would be expected to be small, intermittent, or non-existent. The energy is also by its very nature highly dependent upon fluctuating annual variables such as weather and customer usage. Thus, by the very terms of AB 920, this excess energy simply cannot be relied upon to exist in either the short- or long-term – not by the customer, and certainly not for purposes of forecasting a utility’s capacity and RA needs.¹⁴

Second, the Commission’s previously adopted feed-in-tariff for small renewable energy facilities, for which the Commission established a TOD-adjusted MPR price, is not analogous here, as the Alternate PD claims.¹⁵ The excess energy at issue here is calculated at the end of the year, *after* the NEM customer potentially has enjoyed a full year of bill credits based on current year *retail rates*. This represents a potentially significant subsidy for NEM customers – with or without NSC. In contrast, the Commission’s comparison AB 1969 feed-in tariff, represents a long-term stream of fixed prices, and presents a better argument for pricing at the long-term MPR rate.¹⁶

¹³ Section 2827(b)(4).

¹⁴ SDG&E Reply to Responses/Protests at 6 (May 3, 2010).

¹⁵ Alternate PD, p. 35.

¹⁶ SDG&E Reply Comments at p. 4 (Aug. 6, 2010).

Notably, as the Alternate PD agrees, NEM subsidies are not permissible for NSC pricing under AB 920 and PURPA, which both require price-setting that *does not exceed* a utility's true avoided cost.¹⁷ Here, the record facts show that a long-run price cannot possibly serve as a proxy for the IOUs' true avoided cost for purchasing the excess, intermittent energy at issue in this case. The true avoided cost of purchasing such energy could only be determined at a short-term rate.

B. The record in this case shows that the NSCR should not compensate for capacity value, such that MPR is not an accurate proxy for the avoided cost of the utility.

In addition to the fact that MPR represents a long-run rather than a short-run cost, the record further demonstrates why MPR (with embedded capacity value) is not an appropriate proxy for a utility's avoided cost in this case. While distributed generation on the NEM tariff provides for capacity costs during peak periods, that capacity is fully compensated by receiving the full retail rate for each excess kWh exported to the grid during that billing cycle, as noted above. But any annual surplus for which the NSCR would apply is likely to have come from months outside SDG&E's peak months of July through October, based on the CPUC California Solar Initiative 2009 Impact Evaluation data.¹⁸ Data analysis for a typical SDG&E NEM customer with air conditioning, under extreme summer weather conditions, showed that annual excess generation is likely to occur in March through June.¹⁹ The analysis showed the most common month for customers to have an overall generation excess occurred in April for SDG&E.²⁰

¹⁷ See, e.g., Alternate PD at pp. 58-59, Conclusions of Law #4, #6, and #10.

¹⁸ SDG&E Reply Comments at pp. 5-7 (Aug. 6, 2010).

¹⁹ *Id.* For RPS time of delivery periods, April through June are not peak months; the peak period is July through October. Chart below is from ITRON, *CPUC California Solar Initiative 2009 Impact Evaluation*, pp. 7-56.

²⁰ SDG&E Reply Comments at p. 6 (Aug. 6, 2010) (citing *CPUC California Solar Initiative 2009 Impact Evaluation*, pp. 7-14).

Table 7-7: Most Common Month with Negative Billing Data

IOU	Month	Count	Percent of Total	Mean Monthly Negative Utility Usage (kWh)
PG&E	May	218	17.8%	-194
SCE	Apr	84	18.6%	-234
SDG&E	Apr	65	14.5%	-248

The CPUC California Solar Initiative 2009 Impact Evaluation Report states that at system peak, NEM customer-generators are not likely to produce any uncompensated excess generation:

Based on this and the CAISO peak in September 3, 2009, as well as the IOU peaks of September 3, 2009 for SDG&E and SCE and July 14, 2009 for PG&E, it may be likely that the most PV systems were not net exporting during that month.²¹

The NSCR provided under AB 920 will only compensate customer-generators for a small number of hours where electricity was exported to the grid but not later consumed, determined on an annual true-up date. At that point, the majority of electricity exported to the grid throughout the year would already have been paid for, at the full retail rate, when the customer's consumption equals or exceeds generation in a monthly billing period.

Applying the MPR in this case fails to appreciate the importance of distinguishing between distributed generation that sells all generation to the grid, distributed generation that sells all excess generation to the grid, and the NEM program itself, through which most excess generation is paid the full retail rate. In months where consumption matches or exceeds generation, customer-generators already receive a value that fully

²¹ SDG&E Reply Comments at p. 6 (Aug. 6, 2010) (citing *CPUC California Solar Initiative 2009 Impact Evaluation*, pp. 7-16).

compensates for avoided capacity costs. The findings above further demonstrate that there is no basis for the NSCR to provide compensation for capacity.

III. SDG&E CONTINUES TO SUPPORT AN SRAC-BASED RATE

SDG&E continues to support a short-run avoided cost at SRAC rates,²² in compliance with the law and in order to reduce the implementation costs of net surplus compensation.²³ SDG&E proposed to base the NSCR on the Commission-adopted Short-run Avoided Cost (“SRAC”) energy rate differentiated by time of delivery plus a separate value for the REC.²⁴ SDG&E’s approach used the existing SRAC as adopted in D.07-09-040 (as modified once the QF Settlement goes into effect) to be consistent with paying avoided costs for excess generation that is the equivalent of brown power. As SDG&E pointed out, SRAC is consistent with the short run nature of the power delivered to the utility without contractual agreement.²⁵ The Alternate PD also found the NSCR should be a short-run payment.²⁶ In addition, SDG&E proposed to pay for the renewable attributes as soon as the RECs could be used for RPS compliance. FERC has determined that the value paid for RECs is strictly in the jurisdiction of the State. Thus, the combined payment for brown power and the renewable attribute would be consistent with FERC regulations without adopting a new renewable energy avoided cost.²⁷

²² The Alternate PD notes that Wal-Mart and CARE also supported SDG&E’s proposal (at pp. 17-18).

²³ As noted above, SDG&E would also support the price stated in the ALJ’s Modified PD, which established an NSCR based on a DLAP short-term “avoided cost” price.

²⁴ Alternate PD, pp. 15-16.

²⁵ SDG&E Testimony of Lisa C. Davidson at pp. 5-6 (March 15, 2010).

²⁶ Alternate PD, p. 37.

²⁷ In *American Ref-Fuel Co.*, 105 FERC ¶61,004 (2003), at para. 23, the FERC states:

If avoided cost rates are not intended to compensate a QF for more than capacity and energy, it follows that other attributes associated with the facilities such as renewable attributes] are separate from, and may be sold separately from the capacity and energy....

...RECs are created by the States. They exist outside the confines of PURPA...States, in creating RECs have the power to determine who owns the REC in the initial instance and how they may be sold or traded; it is not an issue controlled by PURPA.

The Alternate PD rejects the SDG&E proposal on faulty grounds. The Alternate PD states “Although SRAC QF pricing sounds simple and straightforward, it is not. SRAC QF rates are frequently subject to litigation and adjustment in regulatory proceedings.”²⁸ However, this statement ignores the recent QF Settlement, which would set SRAC energy rates for an extended period into the future.²⁹

The Alternate PD also incorrectly states: “Plus, there are many different settlements and rates for QFs, depending on whether they are renewable or non-renewable.”³⁰ In actual fact, there is a single SRAC energy rate for all brown power that represents the utility’s avoided costs. Bilateral contracts and historical settlements may have different rates that were voluntarily agreed to by the parties, but they do not replace SRAC.

For all of the reasons previously offered, the Commission should adopt SDG&E’s proposed use of SRAC as its measure of the short-run avoided costs of energy without the renewable attributes.

IV. ALTERNATIVELY, SDG&E WILL VOLUNTARILY OFFER A MODIFIED MPR NSC RATE

In the interest of implementing an NSCR without delay, and because the expected amount of net surplus energy at issue here is expected to be small, SDG&E is willing to voluntarily pay the MPR as an NSCR, with modifications. Specifically, if the Commission wants to use the MPR as a short-term rate, the value must be adjusted to minimize the effects of levelization of fixed costs. The 20-year MPR price is a levelized value over 20 years. Lower cost early years are averaged with higher cost out years to

²⁸ Alternate PD, p. 42.

²⁹ See D.10-12-035, 2010 Cal. PUC LEXIS 467, as modified by D.11-03-051, 2011 Cal. PUC LEXIS 184.

³⁰ Alternate PD, p. 42.

generate the levelized price that stays fixed for the duration of the contract. In contrast, the Alternate PD would adjust the NSCR upward as inflation and GHG costs increase the MPR price over time. There are two ways this problem could be fixed. First, the MPR could be recalculated with the same data to assume an escalation factor consistent with projected costs changes or a shorter term contract term that reduces the impact of levelization on costs could be used. For simplicity, SDG&E would recommend the latter approach.

If the Commission uses the MPR for a short-term rate, SDG&E recommends using the shortest term for MPR contracts (five years), as contained in Resolution E-4298, to most transparently minimize the effect of levelization. Appendix tables in Resolution E-4298 show the five year levelized MPR to be 7.713 cents per kWh in contrast to the 20-year contract levelized cost of 9.674 cents per kWh. The value is lower because the effect of inflation compounding is much less over five years compared to 20 years. This value could change with the next adopted MPR or appropriately be adjusted to the higher value associated with a 2015 five year contract, 10.168, in 2016 if the MPR is no longer calculated.

V. CONCLUSION

For the above reasons, the Alternate PD is flawed. SDG&E requests Commission approval of its Net Surplus Compensation proposal, designed in accordance with Section 2827 and federal law, or approval of the ALJ's Modified PD. Either approach would provide a compensation mechanism that is a reasonable proxy for short-term avoided cost, and is viable, transparent, low-cost, and easy for customers to understand.



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PROCEEDING: A1003013 - EDISON - APPLICATION
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