



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

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Order Instituting Rulemaking Regarding
Policies, Procedures and Rules for the
California Solar Initiative, the Self-
Generation Incentive Program and Other
Distributed Generation Issues.

Rulemaking 08-03-008
(Filed March 13, 2008)

**PETITION FOR MODIFICATION OF SGIP HANDBOOK
PURSUANT TO D.08-11-044 AND TO D.01-03-073**

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May 26, 2009

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I. INTRODUCTION

In accordance with processes adopted in Appendix A of Decision (“D.”) 08-11-044 and Rule 16.4 of the California Public Utilities Commission (“Commission”) Rules of Practice and Procedure, Bloom Energy Corporation (“Petitioner”) respectfully submits this Petition for Modification of D.01-03-073 (“Petition”).¹ Petitioner submits this Petition to amend the Self-Generation Incentive Program (“SGIP”) Handbook consistent with the SGIP Working Group’s recommendation to submit a Petition to Modify D.01-03-073. The proposed amendments, set forth in Appendix A and described in greater detail below, make a discrete, technical revision to the SGIP program by clarifying that fuel cell and other projects fueled by renewable fuels are eligible for Level 2 incentive funding irrespective of whether renewable fuel is delivered via an onsite production or storage approach or whether the fuel is delivered via trucking or the existing natural gas pipeline network. The proposed amendments are consistent with Commission precedent regarding the mode of delivery for such renewable fuels and will help fulfill the intent of the SGIP program. Additionally, the SGIP Working Group has reviewed this proposal in the

¹ D.08-11-044 established the process for updating the SGIP Handbook whereby “substantive” modifications are to be presented via the Petition for Modification processes. The SGIP Handbook was developed pursuant to D.01-03-073. Although the Petition is not recommending specific modifications to D.01-03-073, that decision is referenced here as the Commission’s foundation for the policies underlying the Self-Generation Incentive Program (“SGIP”) as the recommendation of the SGIP Working Group.

form of an SGIP Program Modification Request (“PMR”), which it unanimously supported.² Petitioner has incorporated into its proposal most of the Working Group’s specific suggestions regarding the PMR (see Appendix B), and has addressed in Appendix C the rationale for any variation from the Working Group’s suggestions. Accordingly, the changes requested in this Petition should be granted as it will help advance the commercial deployment of renewable, ultra-clean onsite generation.

Because the requested changes are technical clarifications that have previously been vetted and approved by the SGIP Working Group, and because adoption of the changes will accelerate the deployment of pending renewable SGIP funded generation, Petitioner requests expedited treatment of the Petition as described in section VI, below.

II. PROCEDURAL BACKGROUND

A. The Commission has Determined that a Petition for Modification is the Appropriate Mechanism for Requesting Substantive Changes to the SGIP Handbook.

Decision 08-11-044 governs the process whereby parties may seek modifications to the SGIP. According to the process established in that decision, proposed changes to the SGIP program that require modification to a prior Commission order or that address “large programmatic or substantive issues” are to be presented first to the SGIP Working Group and then, at the proponent’s option, to the Commission via the Petition for Modification process.³ Petitioner submits this Petition in accordance with the processes described in D.08-11-044.

Additionally, this Petition is submitted pursuant to direction from Commission Staff. Petitioner initially identified the need for Commission action in order for pipeline-delivered

² See Appendix B.

³ D.08-11-044, Appendix A. D.08-11-044 revised the SGIP modification process previously established in D.03-08-013.

offsite renewable fueled fuel cells to explicitly qualify for Level 2 SGIP funding as a result of an SGIP reservation request submitted in December 2008.⁴ As a result of consultations with PG&E and Commission Staff, Petitioner came to the conclusion that Commission approval was necessary to achieve the requested clarifications to the SGIP Handbook. A detailed timeline of Petitioner's efforts over the last eight months to gain approval of modifications to the SGIP Handbook is included as Appendix D to this Petition. At the request of the SGIP Working Group, Petitioner submitted a PMR at the April 17, 2009 SGIP Working Group meeting. The meetings included members from the Commission's Energy Division Staff. The SGIP Working Group and the Program Administrators ("PAs") voted to support Petitioner's PMR and Commission Staff directed Petitioner to submit a petition for modification to effectuate their proposed modifications to the SGIP Handbook.⁵ Thus, this Petition is submitted consistent with the suggestion of the SGIP Working Group and instruction from Commission Staff.⁶ In accordance with that directive, as well as Appendix A of Decision 08-11-044, Petitioner submits this Petition.

B. The Petition is Consistent with the Requirements of Rule 16.4

Petitioner respectfully requests leave under Rule 16.4(d) of the Commission's Rules of Practice and Procedure to file this Petition more than a year following issuance of D.01-03-073, the decision underlying the development of the SGIP program. Specifically, changes in the marketplace in terms of availability of renewable fuels transported via pipeline have only

⁴ Petitioner's participation coincided with the first proposal to allow a pipeline-delivered renewable fueled fuel cell project to receive Level 2 funding, when a Level 2 SGIP application was submitted to Pacific Gas & Electric Company ("PG&E") for a customer who wished to generate onsite renewable electricity using offsite renewable fuels. The application proposed using the same model to procure and verify renewable fuel as PG&E already uses to generate RPS-eligible electricity in California. The SGIP Working Group has already approved granting Level 2 SGIP incentives to a fuel cell project using offsite renewable fuels delivered by tanker truck.

⁵ Appendix E, Declaration of Peter Light, ¶¶ 7-8.

⁶ A summary identifying how the SGIP Working Group's suggestions are incorporated into the Petition is included as Appendix C.

recently developed.⁷ Accordingly, this Petition could not have been filed within a year of D.01-03-073.

In accordance with Rule 16.4(b), Petitioner provides a detailed justification for this Petition below. As a company actively engaged in the manufacture and sale of fuel cells, Petitioner is directly affected by D.01-03-073 generally, and specifically by the current ambiguity in the SGIP Handbook that this Petition would clarify.⁸ Presently, the SGIP Handbook can be read to imply that in order to qualify for Level 2 incentive funding, a fuel cell must be fueled by onsite renewable fuel. However, fuel cell projects using offsite renewable fuel shipped in by truck have already been approved to receive Level 2 incentive funding. Approving Petitioner's proposed modifications to the SGIP Handbook that explicitly define the terms by which offsite renewable fueled projects are eligible for Level 2 incentives will not only clarify the program for all participants, it will also help encourage the proliferation of clean onsite generation, reduce emissions, and help meet California's renewable goals. Permitting this pipeline-based option for the delivery of renewable fuel will also help reduce SGIP administrative costs as verification of renewable fuel use can be tracked remotely. Additionally, as recommended by the SGIP Working Group, this same renewable fuel opportunity should be applicable to other eligible generators besides fuel cells.⁹ This approach will also help reduce SGIP administrative costs as verification of fuel use can be tracked remotely.

⁷ Appendix E, ¶ 9.

⁸ Petitioner is a party in Rulemaking ("R.") 08-03-008. Pursuant to Rule 1.4(a)(2) of the Commission's Rules of Practice and Procedure, by filing comments in R.08-03-008, Petitioner is now a party. Petitioner has filed comments on two separate occasions in R.08-03-008: on October 7, 2008, and on January 6, 2009. Those comments are available at <http://docs.cpuc.ca.gov/efile/CM/91988.pdf> and <http://docs.cpuc.ca.gov/efile/CM/95998.pdf>, respectively.

⁹ See Appendix B.

III. BACKGROUND ON SGIP AND THE CURRENT AMBIGUITY IMPLYING THAT THE USE OF OFFSITE RENEWABLE FUELS BY FUEL CELLS SEEKING LEVEL 2 INCENTIVE FUNDING IS RESTRICTED

On March 29, 2001, the Commission issued D.01-03-073 authorizing \$125 million for the Self-Generation Incentive Program. SGIP enables customers to deploy new, clean onsite generation technologies that offer a myriad of ratepayer benefits, including reductions in peak electric demand, deferral of transmission and distribution upgrade expenditures, reductions of greenhouse gas emissions, reductions in criteria pollutants, and improvement of local air quality. SGIP is complementary to subsequent regulations encouraging clean energy, including Assembly Bill (“AB”) 32 which adopted policies regarding the reduction of greenhouse gas emissions in the state.

Today, SGIP incentive funding is underutilized. In 2008, the program was able to deploy only a fraction of the authorized budget to support qualifying projects.¹⁰ Consequently, ratepayers are not yet fully realizing the benefits of the program.

D.01-03-073, which created the SGIP in 2001, created an incentive for renewable-fueled fuel cell projects. When the initial SGIP Handbook (which guides execution of the SGIP) was developed, it did not contemplate alternative methods for obtaining renewable fuels. Specifically, the SGIP Handbook was written before pipeline-delivered renewable fuels became a commercially available mode of renewable fuel delivery. Accordingly, while the SGIP Handbook does not explicitly require the renewable fuel to be onsite, it does make sporadic mention of “onsite” when referring to renewable fuels. This has led to confusion for potential SGIP customers and necessitates the clarifications sought by this Petition to provide certainty around eligibility for the incentive program.

¹⁰ Appendix E, ¶ 3.

Under current program rules, projects using offsite renewable fuels are already eligible to receive Level 2 SGIP funding. The SGIP Working Group has already approved fuel cell projects to receive Level 2 SGIP funding where the renewable fuel is delivered from offsite using fossil-fueled semi-trucks that physically deliver the renewable fuel to the project site.¹¹ This Petition submits that in light of existing precedent identified below, using the existing natural gas pipeline network as a mode of fuel delivery is an equivalent if not more efficient and cost-effective method to deliver renewable fuels used to generate new onsite renewable electricity in California and fulfill the intentions of the SGIP. Such renewable facilities are not limited to fuel cells, as other eligible technologies that use the same type of fuels will benefit from greater options for the mode of fuel delivery.

Today, the SGIP provides a Level 2 incentive to customers who run fuel cell installations on a renewable fuel. Appendix A to the Petition identifies the specific clarifications to the SGIP Handbook that will enable otherwise-eligible customer-sited fuel cell systems to utilize renewable fuels delivered via the existing network of natural gas pipelines, as well as onsite renewable fuels. This fuel delivery method should cost the same or less to administer for SGIP, and will provide the same or greater benefits to California ratepayers.

The SGIP Working Group has received multiple proposals to utilize off-site renewable fuels for projects to qualify for Level 2 SGIP incentives. Following Petitioner's Program Modification Request, the SGIP Working Group determined that these projects can work within the existing framework and intentions of the SGIP.¹² Moreover, the program structure described herein utilizes the same Commission-approved method already utilized by PG&E to procure

¹¹ Id. at ¶ 5.

¹² Id. at ¶ 7.

renewable fuel delivered by natural gas pipelines from out-of-state renewable facilities to generate RPS-eligible electricity in California.

IV. THE COMMISSION SHOULD ALLOW SGIP-ELIGIBLE PROJECTS TO RECEIVE LEVEL 2 SGIP FUNDING WHEN THE RENEWABLE FUEL IS DELIVERED TO CUSTOMERS VIA THE NATURAL GAS PIPELINE

This Petition seeks to enable SGIP-eligible fuel cell projects to receive Level 2 SGIP funding when powered by renewable fuels delivered to customers via the natural gas pipeline. Petitioner refers to this mode of renewable fuel delivery as “Directed Biogas”. As described below, the deliveries of renewable fuel are fully verifiable over the life of the SGIP project and should accordingly be allowed by the Commission.

A. Petitioner’s Proposed Revisions to the SGIP Handbook are Consistent with Commission Precedent.

The concept of generating renewable electricity in California by utilizing pipeline-delivered renewable fuels is not new. It has already been approved by the Commission and utilized by PG&E to generate RPS-eligible renewable electricity. As described in Resolution E-4193, the Commission granted PG&E the ability to procure biogas from a facility that creates agricultural methane out-of-state (e.g. Texas), injects it into the natural gas pipeline, and nominates it for consumption at PG&E’s Humboldt Bay Generation Facility in California.¹³ PG&E is able to count the megawatt hours (“MWh”) generated from this facility toward its RPS requirements.

¹³ Energy Division Resolution E-4193, October 2, 2008, approving PG&E Advice Letter 3132-E, filed October 9, 2007, without modification. This document can be found at: http://docs.cpuc.ca.gov/Published/Final_resolution/91790.htm

B. Directed Biogas Works Within the Existing SGIP Process

Directed Biogas can use the same tracking, verifying, and auditing methods that PG&E and the Commission use for PG&E's biogas transactions with pipeline-delivered renewable fuel.

Appendix A contains a complete set of specific updates and proposed modifications to the SGIP Handbook requested by Petitioner. These revisions will provide clear rules that will be easy for SGIP participants to utilize and will ensure that a project's use of renewable fuel can be easily verified over the life of the project. To summarize, the following steps will happen as a Level 2 SGIP fuel cell project running on Directed Biogas moves from concept to completion:

1. Host Customer chooses to pursue a 100% renewable SGIP-eligible fuel cell project.
2. Renewable Fuel Supplier provides written commitment to Customer that Supplier has allocated renewable fuel supply for at least five years – the same period required for approved Level 2 SGIP projects today – for 100% of the Customer Generator's forecasted consumption.

Note: 100% is a higher renewable fuel requirement than exists for current Level 2 SGIP projects, which enables customers to use up to 25% fossil fuel, as measured annually (Section 2.6.1 of the SGIP Handbook). Additionally, many customers prefer to voluntarily procure 10+ years of renewable fuel to maximize the green benefits of their onsite energy project.

3. Supplier also demonstrates its ability to provide renewable fuel into the natural gas pipeline.
4. Customer submits SGIP application, including written renewable fuel supply commitment, and is granted a Level 2 Conditional SGIP Reservation.
5. Renewable Fuel Supplier & Customer enter into a verifiable renewable fuel supply contract for a minimum of five years.¹⁴
6. Renewable fuel is created & injected into the natural gas pipeline.

¹⁴ Commission Staff would be able to verify the supply contract commitment, but because of market sensitivities, terms and conditions of the contract should be eligible for confidential treatment to protect against public disclosure.

7. At the point of injection, a specific quantity of renewable fuel is metered using a revenue-grade meter & nominated for delivery along the pipeline to the Customer Generator.
8. At the customer site, fuel is consumed and renewable electricity is generated in California.
9. Fuel consumption for the fuel cells is exclusively metered using a revenue-grade, Net-Generation Output Meter (“NGOM”) that is readable – often remotely over the internet – by the utility.
10. Customer compensates local utility for gas transportation service.
11. Supplier bills customer periodically, and will true up on a regular basis.
12. Following the SGIP Field Verification, Host Customer is granted incentive only if project meets all other SGIP eligibility criteria and SGIP can verify the current and future deliveries of renewable fuel using nomination chains and/or invoices (described in detail below).
13. SGIP can verify the renewable fuel deliveries at any time over the life of the renewable fuel contract.

From the perspective of the gas system operators, the investor-owned utilities (“IOUs”) will relate to the SGIP customer in the same manner as it does any other “unbundled” non-core gas customer who buys natural gas commodity from a third party.¹⁵ The customer will purchase the renewable fuel from a Renewable Fuel Supplier, who will nominate the appropriate volumes for transportation to the Customer to match 100% of the fuel cell project’s forecast consumption. The Customer will pay the IOU for the gas transportation from City Gate to the Host Customer facility, just as happens when utility customers purchase conventional natural gas from a third party under the current natural gas service framework.

¹⁵ Note that most fuel cell projects consume more than 20,800 therms on a monthly basis.

C. Directed Biogas will Ensure Renewable Fuel is Used in accordance with SGIP

1. Renewable Fuel Sources are Available

The market for pipeline-transmitted renewable fuels is growing quickly, and is served by a small but growing base of suppliers.¹⁶ Today, there is more demand than local supply for pipeline-transmitted renewable fuels. However, as evidenced by PG&E's purchases of pipeline-delivered renewable fuels from Texas, other renewable fuel suppliers are available today to deliver pipeline-quality renewable fuel to generate new renewable electricity in California.

As more suppliers seize the opportunity to supplement the currently inadequate in-state supply of pipeline quality renewable biogas, Host Customers can be expected to move to the California-based supplies over time. The added costs to transmit renewable fuels from outside of California to a Host Customer site in California can be significant, and the economics should therefore encourage a Host Customer to use California-developed, pipeline-delivered renewable fuel as it becomes available in sufficient commercial quantities.

2. Directed Biogas will Ensure that Fuel is Renewable

If Petitioner's proposal is adopted, Directed Biogas projects will only qualify for Level 2 SGIP funding if the fuel is determined to be renewable according to the 2009 SGIP Handbook, Section 2.6.1, which limits renewable fuel to be "gas derived from biomass, digester gas, or landfill gas." Thus, the state's interest in encouraging use of renewable fuels, and prioritizing development and dispatch of renewably-fueled generation will be served.

3. Directed Biogas Renewable Fuel Consumption Is Readily Verifiable Over the Life of the SGIP Project

All natural gas pipeline fuel deliveries can be readily tracked through the gas nominations process and the associated electronic receipts for all gas transactions through inter- and intra-

¹⁶ Appendix E, ¶ 11.

state pipelines.¹⁷ Gas nominations are the industry standard accounting mechanism for tracking natural gas purchases. Accordingly, the renewable fuel transactions delivered to the SGIP projects can be similarly verified via customer invoices from a renewable fuel supplier.

For Directed Biogas, the delivery verification process would work in the same way as PG&E's existing Commission-approved processes for nomination, delivery and invoicing for transportation of customer owned gas. Both the Host Customer and Renewable Fuel Supplier will utilize revenue-grade meters that measure all gas flows in and out of their facilities. The provisions in Appendix A outline the key aspects of ensuring that Directed Biogas projects undertaken pursuant to the SGIP Handbook are successful, and embody the intent of the SGIP program over the full project life.

4. To Meet SGIP Program Requirements, Commercial Renewable Fuel Arrangements Will be Structured to Ensure Compliance

The Customer will enter into a renewable fuel supply contract with Supplier to procure 100% of the fuel needed by the fuel cell installation for at least five years. The contract will contain a schedule of estimated fuel consumption from the fuel cell systems. In accordance with this schedule, Supplier will nominate 100% of the renewable fuel needed for Host Customer, and inject that renewable fuel into the pipeline for delivery at the relevant City Gate, which will then be distributed by the local utility to the Host Customer.¹⁸

Supplier and Customer will true-up on actual deliveries on a regular basis, likely quarterly, to be determined in their final contract. This arrangement will satisfy—by a wide margin—the requirement of Section 2.6.1 of the current SGIP Handbook which stipulates that Level 2 SGIP projects never operate on more than 25% fossil fuel, on an annual basis, for a

¹⁷ Id. at ¶ 10.

¹⁸ Note: integration of these tracking mechanisms already exists today for each IOU, subject to Commission-approved balancing rules.

minimum of 5 years. The renewable fuel contract will specifically designate the fuel consumption for the SGIP fuel cell system only. The contract between the biogas supplier and the host customer will also include provisions for a failure to perform by either party.

5. Gas Nominations: Tool to Verify Deliveries of Renewable Fuel

SGIP PAs will be able to verify the gas nominations and consumption at any time over the life of the project. SGIP projects can elect to use the same methods that an IOU uses to verify and audit its biogas purchases from out-of-state biogas facilities. Accordingly, the verification process can work as follows:

- I. Renewable Fuel Supplier nominates fuel for consumption by Customer.
 - a. If the Supplier's facility is located within California, the Supplier will nominate directly to the relevant City Gate. The Customer's gas utility will then track deliveries from the City Gate to the Customer site.
 - b. If the Supplier's facility is located outside California, the Supplier will first nominate to the nearest gas transmission interconnection point (e.g. Topock), and then from that point along a suitable route to the Host Customer facility. In the instance of the Commission-approved biogas transaction from Texas, the biogas is nominated on the El Paso gas line to Topock, and then on PG&E's lines to the PG&E City Gate, and finally delivered to the electric generator.
 - c. The complete "Nomination Chain" can be tracked by the relevant IOU. The intra-state portion occurs on the relevant IOU's gas nomination system.
 - d. In the event that SGIP PAs have difficulty gaining access to the out-of-state nomination chain, the Host Customer will be accountable for providing the actual invoices upon request to the SGIP Administrator.

As evidenced by the SGIP Working Groups unanimous approval of Petitioner's previously filed PMR, the SGIP PAs have determined that this process is sufficient to verify actual deliveries of renewable fuel from third party suppliers to customers.

6. The Directed Biogas Model Anticipates and Accommodates Potential Renewable Fuel Supply Disruption or Provider Changes

The commercial renewable fuel arrangements between the Supplier and Customer will explicitly include a fuel delivery schedule designed to provide renewable fuel for 100% of the

fuel cell system's consumption. The contracts will contain binding financial obligations that (a) the Supplier delivers the full quantity of renewable fuel, and (b) the Customer buys the full quantity of renewable fuel.

In the event that the Supplier experiences a supply disruption or fails to deliver the full quantity of renewable fuel in the schedule, the Customer will have the contractual right to procure an alternative source of renewable fuel to maintain compliance with the threshold for renewable fuel use by Level 2 projects: at least 75% renewable fuel consumption, measured annually, per SGIP Handbook Section 2.6.1. This equates to a potential buffer of about 90 days over a year period. If the Customer cannot or does not procure adequate renewable fuel, and thus consumes more than 25% non-renewable fuel in an annual period, then SGIP PAs will have the right to request a refund of the difference between the Level 2 and 3 incentive payments as currently contemplated under the existing SGIP procedures. Explicit mechanisms are presented in detail in Appendix A.

Finally, as previously noted, and as recommended by the SGIP Working Group, this same renewable fuel opportunity should be applicable to any other generators operating on biogas – not just fuel cells. In other words, Petitioner recommends that the policy be applied to all eligible participants. In this way, the change adopted now will not discriminate against other generation technologies that may be added to the program in the future.

V. RATEPAYERS WILL BE INDIFFERENT TO, AND MAY BENEFIT FROM, PERMITTING USE OF PIPELINE-DELIVERED RENEWABLE FUELS IN SGIP-ELIGIBLE PROJECTS

California ratepayers will be indifferent to the clarifications to the SGIP program recommended in this Petition as the requested changes do not alter the existing scope of SGIP other than allowing another mode of renewable fuel delivery. No new funds will be needed or

administrative expenses incurred as a result of this modification.¹⁹ SGIP already explicitly supports providing incentives to otherwise-eligible fuel cell projects that are fueled by renewable fuels, and SGIP has already approved providing Level 2 incentives to projects that utilize offsite renewable fuel. Funds have already been committed to SGIP by ratepayers through the SGIP completion date of December 31, 2011. Making the updates to the SGIP Handbook described in Appendix A will not increase the amount of ratepayer dollars that go to the SGIP program.

In fact, should the Commission adopt the modest Directed Biogas clarification proposed in this Petition, the revisions may actually provide net benefits to ratepayers. Directed Biogas projects may result in lower SGIP administrative costs over the life of a given SGIP project to the extent that the verification of fuel deliveries will not require periodic physical site visits by a third party consultant to SGIP PAs. Directed Biogas projects also offer California significantly greater reductions in electricity-derived greenhouse gas emissions, as not only is their electricity carbon-neutral, but they also create market demand for methane destruction. Furthermore, clarifying the SGIP eligibility of Directed Biogas may avoid truck deliveries and associated tailpipe emissions. These results are consistent with the intent of AB 32 and California's clean energy goals. Finally, development of Directed Biogas projects under the SGIP program will facilitate the generation of new, additional high capacity-factor renewable electricity to serve California demand in 2009 and beyond.

VI. REQUEST FOR EXPEDITED APPROVAL

Petitioner requests that the Commission approve this Petition on an expedited basis. Not only has the proposal been vetted in advance as contemplated by D.08-11-044, but the SGIP Working Group unanimously supports the PMR that preceded this Petition. Additionally, it is in

¹⁹ Appendix E, ¶ 12.

the public interest to make the requested clarification. Expediting the Petition will enable new renewable electricity generation in California to commence operation imminently, fostering new green jobs and helping California reduce its greenhouse gas and particulate emissions. Similarly, Petitioner requests a truncated protest period in light of the SGIP Working Group's unanimous support and the likelihood that the Petition will not be opposed by other stakeholders. In light of this request, Petitioner suggests the following schedule that will shorten the period for Responses to the Petition and provide expeditious relief:

| | |
|--------------------|---|
| May 26, 2009 | Petition Filed |
| June 10, 2009 | Responses to the Petition [15 days after Petition] |
| June 15, 2009 | Replies to Responses, if needed [3 business days after Responses] |
| August 10, 2009 | ALJ's Proposed Decision on Petition |
| August 31, 2009 | Comments on Proposed Decision |
| September 7, 2009 | Reply Comments on Proposed Decision |
| September 10, 2009 | Commission Meeting Adopting Decision |

VII. CONCLUSION

Petitioner requests that the Commission approve this Petition expeditiously, and direct the SGIP Working Group to make the changes to the SGIP Handbook based on the parameters outlined in Appendix A below, without requiring a further Advice Letter for Commission approval. By making a set of minor clarifications to the SGIP Handbook regarding permissible modes of transporting renewable fuels, California can instantly realize the benefits of an immediate deployment of new, 100% renewable distributed generation in California under the SGIP program. Adoption of the Directed Biogas model will result in no new incremental costs for California ratepayers or society, and the likely benefits include increasing deliveries of

renewable electricity to California consumers, advancing the development and deployment of biogas and ultra-clean distributed generation technologies, promoting destruction of methane, a potent greenhouse gas, and spurring the addition of green jobs in California.

Petitioners anticipate that the Directed Biogas model may cost less for SGIP to administer than some current Level 2 projects, as it can be structured to avoid costs associated with periodic field visits by third party contracted engineering firms. Under Directed Biogas, the renewable fuel transactions can be audited remotely over the internet, or by invoices, thereby reducing administration costs for the SGIP program.

Multiple “shovel-ready” Directed Biogas customers await these updates to the SGIP Handbook. These California customers saw the PG&E precedent, understood that SGIP supported renewable fueled fuel cell projects, and are now eager to move forward. Accordingly, the Commission should grant this Petition expeditiously.

Respectfully submitted,

By: _____/s/_____

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Appendix A

PROPOSED AMENDMENTS TO THE SGIP HANDBOOK

The SGIP Program Administrators manage the SGIP Handbook, and changes are normally made to the Handbook by obtaining the agreement of the SGIP Working Group. The proposed revisions to the 2009 SGIP Handbook to enable Directed Biogas are provided below:

1) Remove all references to “onsite” that are superfluous

Affected Sections:

- **Section 2.5.6.5** (System Sizing Based on Future Load Growth or Availability of Renewable Fuel)
- **Section 4.3.2** (Proof of Adequate Renewable Fuel)

2) Insert gas verification protocols:

Add the following language to section 2.6.1

If the renewable fuel is delivered from off-site, the following conditions and verification protocols must be utilized:

- 1) **Project Guidelines:**
 - a. Host Customer should design the fuel cell project to be powered by 100% renewable fuel for at least 5 years.
 - b. Renewable Fuel Supplier facility must produce fuel that meets the SGIP definition of renewable fuels.
 - c. Fuel cell installation must exclusively use a revenue-grade, net generation output meter (NGOM) that can be remotely monitored by the utility.
- 2) **Reservation Request.** SGIP Reservation Requests for Level 2 incentive using off-site renewable fuels must include:
 - a. Forecasted fuel consumption of fuel cell generator over the life of project. If multiple periods apply, then the consumption in each period should be identified.
 - b. Documentation that shows that the third party gas provider can inject the renewable fuel into the utility pipeline.
 - c. Confirmation that the fuel cell project is designed to include a revenue-grade NGOM meter that will exclusively measure input fuel to the fuel cell system.
- 3) Once the above materials are deemed adequate by the relevant SGIP PA, SGIP will grant a Conditional Reservation to the Host Customer.
- 4) The customer will then work in parallel to advance the fuel cell project and work with the Supplier to develop and execute a binding renewable fuel contract.

5) **Renewable Fuel Contract.** A copy of the executed renewable fuel contract is provided to SGIP at the proof of project milestone. The following criteria must be included in the contract:

- a. Contract should at a minimum include term (minimum of 5 years), cost, amount of renewable fuel injected on a monthly basis for the length of the contract, address of renewable fuel facility, and facility address of Host Customer.
- b. SGIP has the right to audit & verify Customer Generator’s consumption of renewable fuel consumption upon request over the life of the contract.
- c. The Host Customer will consume the contracted renewable fuel for the sole purpose of powering the SGIP fuel cell systems.
- d. The contract includes a forecast for 100% of the fuel cell system’s anticipated fuel consumption. One possible schedule:

| Fuel Demand Schedule for SGIP Fuel Cell | | | | |
|---|-----------|------|-------------|------------|
| | Starts | Ends | MMBtu/month | MMBtu/year |
| Period 1 | Date Date | | X | M |
| Period 2 | Date Date | | Y | N |
| Period 3 | Date Date | | Z | O |

- e. True-up Mechanism. The Supplier & Customer will handle variations in actual consumption vs. the contract as follows:
 - A. True ups will occur quarterly, or as otherwise specified, based on actual consumption of the fuel cell over the preceding quarter.
 - B. Customer and Renewable Fuel Supplier will agree to true up based on actual deliveries of renewable fuel. Note that the fleet of fuel cell systems will have its own revenue-grade, NGOM meter that is readable – often remotely over the internet – by the utility.
 - i. If less onsite fuel is consumed than renewable fuel is nominated into the pipeline, then parties can agree to a financial make-whole provision.
 - ii. If more onsite fuel is consumed than renewable fuel is nominated into the pipeline, then parties can agree to a make-whole provision, such that Customer Generator consumes at least 75% renewable fuel, as measured annually, per SGIP Handbook section 2.6.1.
 - C. Customer & Supplier recognize that the final SGIP Incentive Payment will not be made until the renewable fuel contract is executed and the renewable fuel is being supplied to the Customer.

- 6) **Incentive Claim Stage.** The following information must be submitted at the Incentive Claim stage:
 - a. Documentation for the Supplier showing that the fuel is renewable, and that it meets the quality standards to be injected into the local natural gas pipeline.
 - b. Documentation showing that the contract has commenced, and the Supplier has begun nominating the renewable fuel into the pipeline.

- 7) **Verification, Audits, & Refund Terms.** After the incentive is issued, SGIP requires a yearly audit process for five years after the renewable fuel contract commences. The audit process works as follows: at the completion of each year, the Customer must provide the SGIP Program Administrator with the preceding 12 months of invoices for renewable fuel purchases. The Program Administrator will review the invoices to ensure that the Customer is satisfying the intent to procure renewable fuel to meet 100% of the fuel cell generator's consumption. Audits can be conducted remotely, thereby reducing costs for the SGIP program.
 - a. If invoices show that nominated renewable fuel deliveries fell below 75% of the generator's fuel demand over the same period, and the generator is not malfunctioning such that it consumes more fuel than originally forecast for the nomination, then the SGIP Program Administrators have the right to request that the Customer refund the difference between the higher renewable Level 2 SGIP incentive and the lower, non-renewable Level 3 SGIP incentive.

- 8) If the Host Customer decides to change their renewable fuel Supplier, or if the Customer's current renewable fuel Supplier cannot meet the obligations to perform as set forth in their contract, then the Customer is allowed to find a new supplier within 90 days, so long as they remain in compliance with the standard Level 2 SGIP requirement (section 2.6.1) that at least 75% renewable fuel is consumed on an annual basis during this period of transition. Once Customer finds a new Supplier, then they must enter into a new contract that provides for 100% of the fuel cell system's anticipated consumption.

Appendix B

SGIP WORKING GROUP SUMMARY

----- Forwarded Message

From: "Yip, Andrew" <AXY4@pge.com>

Date: Fri, 22 May 2009 09:58:22 -0700

To: Peter Light <plight@bloomenergy.com>

Cc: Ryan Amador <ryan.amador@energycenter.org>, <Michael.Tomlin@sce.com>, <James.Stevenson@sce.com>, "Smet, Dale" <DSmet@semprautilities.com>, "Roberts, Chris H." <CRoberts@semprautilities.com>, "Hornbrook, Charles" <CLHS@pge.com>, "Jaffe, Steven" <SJaffe@semprautilities.com>, "Lee, Janine" <J3L0@pge.com>, "Reardon, Neal" <nmr@cpuc.ca.gov>, "Sterkel, Merideth \"Molly\" <MTS@cpuc.ca.gov>

Subject: RE: SGIP WG Support of PMR

Peter,

The Self Generation Incentive Program (SGIP) Working Group (WG), including Energy Division staff, has discussed the Program Modification Request (PMR) that Bloom Energy presented to the SGIP WG on April 17th, 2009. While we believe this PMR is substantive, we support this PMR, and would like to expeditiously include offsite renewable fuel as an eligible technology in the SGIP.

Per D.0811044, Appendix A (

http://docs.cpuc.ca.gov/published/FINAL_DECISION/94275.htm

<BLOCKED:http://docs.cpuc.ca.gov/published/FINAL_DECISION/94275.htm>), we now advise you to file a Petition to Modify (PTM) and use this notice as support from the SGIP WG . This will enable the SGIP Program Administrators to make the requested clarifications to the SGIP Handbook, thus explicitly clarifying the terms by which otherwise-eligible fuel cell projects can receive Level 2 incentives when fueled by offsite renewable fuels.

In support of the PTM, the SGIP WG offers these suggested requirements, if not included already, to what Bloom Energy has proposed in the PMR document that was presented at the April 17th, 2009 SGIP WG meeting:

- The nomination of renewable gas should remain at 100% of the generator's forecasted consumption for 5 years
- Documentation at the Reservation stage showing that the third party gas provider can inject the gas into the Utility pipeline (gas pipeline map)
- Executed directed biogas contract provided at proof of project milestone
- - Contract should at a minimum include term (minimum of 5 years), cost, amount of biogas injected on a monthly basis for the length of

the contract, facility address of directed biogas, and facility address of Host Customer

- Documentation at the Incentive Claim stage showing that the CEC has approved the injection of the directed biogas
- Documentation at the Incentive Claim stage to show that the contract has started and the customer has begun nominating the directed biogas
- After the incentive is issued, require a yearly process for five years to check invoices from directed biogas providers to ensure that the gas nominated is at 100% of the generator's forecasted consumption
- - If invoices show that the biogas purchased is below 100% for any given month, the SGIP Program Administrators have the right to request incentive \$s back from the Customer (difference between the renewable incentive vs. non-renewable incentive)
- If the Host Customer decides to change their directed biogas supplier, then they would follow Bloom Energy's proposal of finding a new supplier within 90 days
- Provide in more detail what the timeline/implementation schedule for California biogas suppliers coming online will be (your argument is based on the assumption that starting with TX biogas will spur the supply of CA biogas - but how, by who, etc)
- Add a safeguard to prevent out of state suppliers continuing into the far future (i.e. 'By 2012, if the SGIP is still available, all biogas must come from in state sources')
- Compare CO2 reduction to the emissions intensity of the 3 IOUs in CA, instead of comparing it to 100% coal which you guys have used
- Make this applicable to other gas generators besides fuel cells, if they are allowed to apply for SGIP incentives at a later date

If you have any questions, please let me know.

Thanks,

Andrew Yip

Pacific Gas and Electric Company

Supervisor - Solar and Customer Generation

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www.pge.com/selfgen <<http://www.pge.com/selfgen>> / www.pge.com/csi
<<http://www.pge.com/csi>>

----- End of Forwarded Message

Appendix C

SUMMARY DESCRIPTION OF HOW THE SGIP WORKING GROUP'S SUGGESTIONS ARE INCORPORATED INTO THE PETITION

The SGIP Working Group supports the Program Modification Request (“PMR”) for Directed Biogas, as they communicated to Petitioner on May 22, 2009 (see Appendix B). Consistent with the process adopted in Appendix A of D.08-11-044, the SGIP Working Group provided suggestions to Petitioner for potential inclusion in this Petition for Modification based upon the PMR originally presented to the SGIP Working Group.

Petitioner appreciates and has incorporated into this Petition the majority of the suggestions offered by the SGIP Working Group. The paragraphs below explicitly identify all SGIP Working Group suggestions (replacing bullets with numbering for clarity) and identify those suggestions Petitioner has incorporated into the Petition. In some cases the Petition presents modifications that differ from the SGIP Working Group’s suggestions, and below the Petitioner provides the rationale for this differing treatment.

Working Group Suggestions Incorporated in Petition Without Modification:

1. SGIP Working Group: “The nomination of renewable gas should remain at 100% of the generator's forecasted consumption for 5 years”

[REFLECTED IN PETITION]

2. SGIP Working Group: “Documentation at the Reservation stage showing that the third party gas provider can inject the gas into the Utility pipeline (gas pipeline map)”

[REFLECTED IN PETITION]

3. SGIP Working Group: “Executed directed biogas contract provided at proof of project milestone

- a. Contract should at a minimum include term (minimum of 5 years), cost, amount of biogas injected on a monthly basis for the length of the contract, facility address of directed biogas, and facility address of Host Customer”

[REFLECTED IN PETITION]

4. SGIP Working Group: “Documentation at the Incentive Claim stage to show that the contract has started and the customer has begun nominating the directed biogas “

[REFLECTED IN PETITION]

5. SGIP Working Group: “After the incentive is issued, require a yearly process for five years to check invoices from directed biogas providers to ensure that the gas nominated is at 100% of the generator's forecasted consumption”

[REFLECTED IN PETITION]

6. SGIP Working Group: “If the Host Customer decides to change their directed biogas supplier, then they would follow Bloom Energy's proposal of finding a new supplier within 90 days”

[REFLECTED IN PETITION]

7. SGIP Working Group: “Make this applicable to other gas generators besides fuel cells, if they are allowed to apply for SGIP incentives at a later date”

[REFLECTED IN PETITION]

Working Group Suggestions Modified or Excluded from Petition:

1. SGIP Working Group: “Documentation at the Incentive Claim stage showing that the CEC has approved the injection of the directed biogas.”

RATIONALE FOR EXCLUSION OR MODIFICATION: Petitioner understands that the California Energy Commission (“CEC”) does not have authority or jurisdiction to approve injections of renewable fuels into natural gas pipelines, and therefore has omitted a CEC-certification requirement. Nonetheless, the project must comply with SGIP Handbook requirements with respect to permissible renewable fuel types.

2. SGIP Working Group: “If invoices show that the biogas purchased is below 100% for any given month, the SGIP Program Administrators have the right to request

incentive \$s back from the Customer (difference between the renewable incentive vs. non-renewable incentive)”

RATIONALE FOR EXCLUSION OR MODIFICATION: This proposal for a monthly balancing and true-up requirement conflicts with, and could therefore be seen as a change to, the existing SGIP requirement that Level 2 projects use at least 75% renewable fuel, as measured annually (Section 2.6.1). Note that the Petition already includes a more stringent renewable fuel consumption requirement that requires that Directed Biogas projects contract for 100% of the generator’s anticipated fuel demand before they are found eligible to receive incentives. Petitioner further notes that SGIP Working Group’s proposed requirement of 100% fuel deliveries on a monthly basis may conflict with its other program suggestion, reflected in the Petition, that Host Customers be given a 90 day window to switch or modify renewable fuel suppliers should there be a supply disruption. The Petition as presented already envisions scenarios where a Host Customer’s renewable fuel consumption could fall below 100% for one month due to a supply problem, with the Host Customer curing the deficiency by switching or modifying suppliers, while maintaining eligibility with Section 2.6.1 of the SGIP Handbook on an annual basis.

3. Add a safeguard to prevent out of state suppliers continuing into the far future (i.e. ”By 2012, if the SGIP is still available, all biogas must come from in state sources”)

RATIONALE FOR EXCLUSION OR MODIFICATION: The Petition does not reflect this suggestion for myriad reasons. First, market forces should, over time, drive Host Customers to procure locally developed renewable fuels assuming competitive commodity costs and lower gas transportation costs. Today, demand for these fuels outstrips local supply of in-state renewable fuels delivered via the natural gas pipeline. The Commission implicitly acknowledges this fact by its approval for PG&E to generate RPS-eligible power in California when using out-of-state renewable fuel delivered from a plant in Texas. As a result, market forces will likely increase the amount of in-state renewable fuels, making the explicit sourcing restriction unnecessary.

The Petition notes that, as in the case of the Commission-approved PG&E precedent noted above, under the Directed Biogas model for renewable fuel delivery to SGIP projects, the primary concern is that the renewable electricity will be generated in California. Importing renewable fuels from out-of-state enables California to generate more renewable electricity in-state, thereby displacing fossil generation that the Host Customer would have otherwise consumed.

Moreover, as with all SGIP projects, SGIP incentives can only be paid to eligible California customers.

Lastly, the Petition does not include the geographic restriction on the sourcing of the renewable fuels due to concerns about potential complications with claims of Commerce Clause violations.

4. Provide in more detail what the timeline/implementation schedule for California biogas suppliers coming online will be (your argument is based on the assumption that starting with TX biogas will spur the supply of CA biogas - but how, by who, etc)

RATIONALE FOR EXCLUSION OR MODIFICATION: The Petition does not include the requested survey of in-state biogas market development. Petitioner's resources are focused on the deployment of renewable generation consistent with the SGIP program and seeks removal of ambiguities regarding perceived limitations on the mode of gas transportation. Details regarding the forecast of market transformation are beyond the scope of this Petition. Moreover, Petitioner believes that the CEC's work regarding renewable fuels, including the April 21, 2009 workshop on biofuels for electric generation,²⁰ may be much more thorough and dispositive than a survey developed by Petitioner pursuant to this SGIP Working Group suggestion.

5. Compare CO2 reduction to the emissions intensity of the 3 IOUs in CA, instead of comparing it to 100% coal which you guys have used

RATIONALE FOR EXCLUSION OR MODIFICATION: The Petition does not attempt to quantify claims of CO2 reductions in this Petition. While potential benefits associated with GHG avoidance or destruction of methane are consistent with California's energy and environmental policies, the core issue presented by the Petition is the removal of certain ambiguities in the SGIP Handbook that may be perceived to restrict the mode of renewable fuel transportation.

²⁰ See, *Notice of Joint Integrated Energy Policy Report and Renewables Committee Workshop on Biopower in California*, available at http://www.energy.ca.gov/2009_energypolicy/notices/2009-04-21_joint_workshop.html

Appendix D

TIMELINE OF BLOOM ENERGY CORPORATION'S EFFORTS TO MODIFY THE SGIP HANDBOOK

- Fall 2008: Bloom Customers see that (a) SGIP supports the deployment of renewable-fueled fuel cell projects, and (b) Precedent exists in a Commission approved contract for PG&E to obtain RPS credit for using out-of-state pipeline renewable fuel (ENERGY DIVISION RESOLUTION E-4083). Customers assume Directed Biogas fits within program.
- 12/31/08: Bloom submits initial Reservation Request for a Level 2 fuel cell project operating on renewable directed biogas.
- 1/28/09: PG&E requests additional information on waste heat calculations & renewable fuel availability. After receiving that information from Bloom Energy, PG&E commented via email: "The application was found to be very detailed and complete, therefore, we do not need any additional documentation at this time."
- 2/13/09: AESC, a third party engineering firm hired by PG&E, requests that Bloom provides further information on biogas supply. Bloom responds to AESC's questions. AESC requests further information on 2/17/09, and Bloom responds in full.
- 2/27/09: Bloom provides further information to PG&E's SGIP administrator, on the gas nomination process that verifies a biogas transaction – the same one already used by PG&E. Bloom also provides reference to PG&E precedent & Commission approval of using pipeline biogas for RPS-eligible electricity.
- 3/2/09: PG&E proposes further review of the application materials with the SGIP Working Group, and proposes providing further information to Bloom during the last week in March.
- 3/20/09: PG&E brings this Reservation Request to the SGIP Working Group on Bloom's behalf. They determine that they need more information.
- 4/6/09: Bloom submits detailed Program Modification Request ("PMR") to the SGIP Working Group.
- 4/17/09: Bloom presents PMR to the SGIP Working Group in San Diego. Energy Division Staff participates in this meeting.

- 4/27/09: Bloom is informed SGIP Working Group agrees to support formally approving Directed Biogas.
- Week of 5/4/09: Bloom submits two other SGIP applications for systems operating on renewable fuel.
- 5/5/09: PG&E, on behalf of SGIP Working Group, provides additional suggestions for Bloom to consider adding to a Petition to Modify (“PTM”) based on the PMR.
- 5/6/09: Bloom sends a draft of a proposed Advice Letter to SGIP Working Group for its consideration to submit to the Commission.
- 5/14/09: Bloom is advised by Commission Energy Staff to pursue a PTM to modify original SGIP decision (D.01-03-073 from 2001) rather than submit an Advice Letter.
- 5/26/09: Bloom Energy submits PTM.

Appendix E

Declaration of Peter Light

1. My name is Peter Light. I am a Product Manager for Bloom Energy Corporation (“Bloom”). My business address is 1252 Orleans Drive, Sunnyvale, CA 94089.
2. Bloom was incorporated on January 18th, 2001.
3. In 2008, the Self-Generation Incentive Program (“SGIP”) deployed only a fraction of the authorized budget to support qualifying projects.
4. The SGIP Working Group has authorized facilities generating onsite renewable electricity using offsite renewable fuels to receive Level 2 incentive funding.
5. To date, the SGIP Working Group has only authorized Level 2 incentive funding when offsite renewable fuels are delivered via truck.
6. The timeline included as Appendix D accurately reflects the actions to date taken by Bloom in an effort to clarify the SGIP Handbook.
7. The SGIP Working Group, including SGIP Program Administrators, determined that projects using off-site renewable fuels should qualify for Level 2 SGIP incentives and unanimously supports Bloom’s Program Modification Request to allow fuel cells using renewable fuels delivered to customers via the natural gas pipeline to receive Level 2 SGIP funding.
8. Commission Staff directed Bloom to submit a Petition to Modify Decision 01-03-073 in order to effectuate the proposed revisions to modify the SGIP Handbook to allow Level 2 incentive funding for projects fueled by renewable fuel delivered via pipeline.

9. The commercial availability of renewable fuels transported via pipeline has only recently developed.
10. Renewable fuel delivered to customers via the natural gas pipeline can be tracked and verified through the gas nomination process. Additionally, investor-owned utilities already have tracking mechanisms to verify the gas nomination process. These verification and tracking mechanisms can be done remotely and do not require a physical site visit for confirmation.
11. The market for pipeline-transmitted renewable fuels is growing quickly in California.
12. The modifications to the SGIP Handbook proposed in Appendix A will not result in new incremental costs or administrative expenses under SGIP.
13. I have reviewed the Petition for Modification of SGIP Handbook Pursuant to D.08-11-044 and to D.01-03-073 ("Petition") to be filed with the Commission on May 26th, 2009.
14. By this declaration I verify those statements made in the Petition supporting the authorization of Level 2 SGIP incentive funding for projects fueled by renewable fuel delivered via pipeline.

I hereby affirm, under penalty of perjury, that the above statements are true and correct to the best of my knowledge, and I would be willing to testify to the above if called upon to do so.

Dated this 26th day of May, 2009, at Sunnyvale, California.

Peter Light

Peter Light

Certificate of Service

I hereby certify that I have this day served a copy of the “Petition for Modification of SGIP Handbook Pursuant to D.08-11-044 and D.01-03-073 on behalf of Bloom Energy Corporation” on all known parties to R.08-03-008 and R.98-07-037 by transmitting an e-mail message with the document attached to each party named in the official service list pursuant to Commission Rule of Practice and Procedure number 8.3(b).

Executed on May 26, 2009 at Sacramento, California

/s/ 

Deric

J. Wittenborn

Rulemaking 08-03-008
CSI, SGIP, and Other
Distributed Generation Issues
May 26, 2009

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