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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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)

**SCOPING MEMO AND RULING OF ASSIGNED COMMISSIONER
AND ADMINISTRATIVE LAW JUDGE**

1. Summary

This scoping memo identifies the issues to be considered in this proceeding, sets a procedural schedule and determines the category of the proceeding and the need for hearings pursuant to Rule 7.3 of the Commission's Rules of Practice and Procedure.¹

2. Background

On June 26, 2008, the Commission opened this rulemaking to implement the provisions of Assembly Bill (AB) 1613. (Stats. 2007, ch. 713.) AB 1613 established the Waste Heat and Carbon Emissions Reduction Act which relates to the utilization of excess waste heat through combined heat and power (CHP) technologies.² The legislation expresses the intent to support and facilitate both

¹ All subsequent references to "Rules" or "Rule" are to the Commission's Rules of Practice and Procedure. The full text of the Commission's Rules may be found on the Commission's website at www.cpuc.ca.gov.

² CHP (sometimes referred to as cogeneration) is the production of two kinds of energy – electricity and thermal heat – from a single source of fuel.

consumer and utility owned CHP systems and imposes certain requirements on the Commission, the California Energy Commission (CEC), the State Air Resources Board and electrical corporations.

Among other things, AB 1613 requires the Commission to require an electrical corporation to purchase excess electricity delivered from a new CHP system of not more than 20 Megawatts that complies with certain sizing, energy efficiency, and air pollution control requirements. (Pub. Util. Code, § 2841(a).)³ To this end, every electrical corporation is required to file with the Commission, a standard tariff for the purchase of excess electricity from an eligible CHP system. (§ 2841(b).) Section 2842.4 further requires the Commission to establish a “pay-as-you-save” pilot program for each electrical corporation to finance all the upfront costs for the purchase and installation by eligible customers. An “eligible customer” for purposes of § 2842.4 is defined as either a nonprofit organization exempt from taxation pursuant to Section 501 of the Internal Revenue Code (26 U.S.C., § 501(a)) or a federal, state or local government facility.⁴

On October 15, 2008, the Commission held a duly noticed prehearing conference (PHC) to identify issues and consider the schedule to implement AB 1613.

³ Unless otherwise specified, all statutory references are to the Public Utilities Code.

³ Section 2842.4 was amended by AB 2791 (Stats. 2008, ch. 253) to include a federal, state or local government facility within the definition of “eligible customer” for purposes of the pay-as-you-save pilot program.

3. Role of California Energy Commission

The CEC staff has previously participated as collaborative State Agency staff in a number of Commission proceedings concerning distributed generation, including Rulemaking (R.) 04-03-017, R.06-03-004 and R.08-03-008. CEC staff will also act in a collaborative role in this proceeding. Part of this collaborative role may include the CEC staff providing written comments, proposals, or “white papers” to the assigned Commissioner or Administrative Law Judge (ALJ) in this proceeding. Since the CEC is collaborative staff and not a party to this proceeding, the CEC staff will not file any written comments or proposals that it provides to the ALJ or assigned Commissioner. Instead, the CEC may, but is not required to, serve such written comments or proposals on the service list of the proceeding, and the ALJ will ensure that any CEC written comments and/or proposals that are served will be included in the record of the proceeding by ruling. Parties may respond to the CEC’s views in their filings, and CEC comments and proposals may be discussed at workshops in the same way that parties’ views are discussed.

4. Categorization and *Ex Parte* Rules

This scoping memo confirms the Commission’s preliminary categorization in the Order Instituting Rulemaking (OIR) that the category of this proceeding is quasi-legislative and that hearings are not necessary.

This ruling, only as to category, is appealable under the procedures in Rule 7.6. As set forth in Rule 8.2, *ex parte* communications are allowed without restriction or reporting obligation in this proceeding.

5. Scope and Schedule

The preliminary scoping memo in the OIR described the main issues to be addressed in this rulemaking. These issues are:

- (1) Determine what is a “new” CHP system under AB 1613.
- (2) Establish the policies and procedures for purchase of excess electricity from an eligible CHP system.
- (3) Adopt rates, charges and tariffs for excess electricity purchased from an eligible CHP system.
- (4) Adopt procedures for each electrical corporation to establish a pay-as-you-save pilot program for eligible CHP systems.

The OIR also sought comments from parties on six questions to better define the scope of the proceeding. In particular, the OIR sought comments on the extent to which existing policies and procedures adopted for small qualifying facilities (QF) in prior Commission decisions have already addressed the issues in AB 1613.

After considering the comments filed in response to these questions and made at the PHC, there is no change to the scope. We shall resolve this proceeding in two parts. The first part will consider the policies and procedures for purchase of excess electricity from an eligible CHP system by an electrical corporation, including the rates, charges and tariffs for purchase of this electricity (issues 1 – 3 above). The second part will consider the policies and procedures for the pay-as-you-save pilot program (issue 4 above). Although we shall be considering the issues in two parts, we intend to resolve the proceeding within 18 months of the issuance of this Scoping Memo. (*See* § 1701.5.)

5.1. Policies and Procedures for Purchase of Electricity from an Eligible CHP System

5.1.1. Issues

As noted above, this part of the proceeding will address issues 1-3 listed above.

Parties noted that the Commission has established policies and procedures for purchase of electricity from small QFs (R.04-04-025) and for purchase of excess electricity from electric generation facilities owned by public water and wastewater agencies (R.06-05-027). Parties generally support utilizing these existing policies and procedures as the basis for developing the policies and procedures for purchase of electricity from eligible CHP systems under AB 1613. We agree that this approach would both reduce duplication of effort and help ensure uniformity among the various programs available to small generators.

To facilitate this process, we believe a common proposal should be presented for parties' consideration. Therefore, we direct Energy Division to prepare and serve a proposal to implement the policies and procedures for purchase of excess electricity from eligible CHP systems under AB 1613 to the ALJ. The ALJ will include this proposal in the record by ruling. Energy Division's proposal shall include the following:

- (1) Tariffs and standard contracts containing standard contract terms and conditions applicable to all electrical corporations. It is likely that the proposed tariffs and standard contracts will need to be modified to meet an individual electrical corporation's requirements, but we expect these modifications to be minor.
- (2) Methodology to calculate the price to be paid for power received from eligible CHP systems, including time of delivery rates to encourage demand management and net generation of electricity during periods of peak demand.

- (3) Procedures to ensure that ratepayers who are not utilizing CHP systems are held indifferent and that costs associated with any tariff or contract are allocated to all benefiting customers.
- (4) Recommendation of whether different pricing and procedures should be adopted for customer-owned and utility-owned CHP systems.

5.1.2. Schedule

The schedule for this part of the proceeding is as follows:

Event	Date
PHC	October 15, 2008
Energy Division Proposal	January 16, 2009
Pre-Workshop Comments	February 9, 2009
Workshop	February 17, 2009, 9:00 a.m. – 4:00 p.m. Commission’s Courtroom State Office Building 505 Van Ness Avenue San Francisco, CA 94102
Post-Workshop Comments	March 6, 2009
Post-Workshop Replies	March 20, 2009
ALJ Proposed Decision (PD)	June/July, 2009
Initial Comments on PD	20 days after PD
Reply Comments on PD	5 days after Comments
Final Decision	August, 2009

The ALJ may make modifications to this schedule as needed.

5.2. Policies and Procedures for Pay-as-you-Save Pilot Program

5.2.1. Issues

Parties' comments raised a variety of sub-issues concerning development of a pay-as-you-save pilot program (issue 4 above) and recommended that a workshop be held regarding the pay-as-you-save program. Among other things, the following shall be considered:

- (1) Will the pay-as-you-save pilot program mean that the electrical corporations are functioning as lending institutions? If so, would the program be subject to state and federal lending laws?
- (2) Can the on-bill financing program for energy efficiency programs serve as a model for the pay-as-you-save pilot program?
- (3) Should electrical corporations that are unable to finance CHP projects be required to participate in the pilot program?

5.2.2. Schedule

We expect to hold a workshop to address this part of the proceeding during the second quarter of 2009, with a decision issued by the end of 2009. A subsequent ALJ ruling shall be issued to further define the sub-issues and schedule for this part of the proceeding.

6. Intervenor Compensation

A party who intends to seek an award of compensation pursuant to Pub. Util. Code §§ 1801-1812 should file and serve a notice of intent to claim compensation no later than 30 days after the October 15, 2008 PHC. (Pub. Util. Code § 1804(a)(1)). Under the Rules, future opportunities may arise for such filings but such an opportunity is not guaranteed.

In this proceeding, parties intending to seek an award of intervenor compensation must maintain daily record keeping for all hours charged and a sufficient description for each time entry. Sufficient means more detail than just “review correspondence” or “research” or “attend meeting.” In addition, intervenors must classify time by issue. When submitting requests for compensation, the hourly data should be presented in an Excel spreadsheet.

As reflected in the provisions set forth in Pub. Util. Code § 1801.3(f) and § 1802.5, all parties seeking an award of intervenor compensation must coordinate their analysis and presentation with other parties to avoid duplication.

7. Filing, Service and Service List

The official service list was created at the October 15, 2008 PHC and is now on the Commission’s website. Parties should confirm that their information on the service list is correct, and serve notice of any errors on the Commission’s Process office, the service list, and the ALJ. Prior to serving any document, each party must ensure that it is using the most up-to-date service list. The list on the Commission’s web site meets that definition.

Electronic service is now the standard under Rule 1.10. All parties to this proceeding shall serve documents and pleadings using electronic mail, whenever possible, transmitted no later than 5:00 p.m. on the date scheduled for service to occur. Parties are reminded that, when serving copies of documents, the document format must be consistent with the requirements set forth in Rule 1.10(a).

Rules 1.9 and 1.10 govern service of documents only and do not change the Rules regarding the tendering of documents for filing. Parties can find information about electronic filing of documents at the Commission’s Docket

Office at www.cpuc.ca.gov/PUC/efiling. All documents formally filed with the Commission's Docket Office must include the caption approved by the Docket Office and this caption must be accurate.

Other documents, including prepared testimony, are served on the service list but not filed with the Docket Office. We will follow the electronic service protocols adopted by the Commission in Rule 1.10 of the Commission's Rules of Practice and Procedure for all documents, whether formally filed or just served. This Rule provides for electronic service of documents, in a searchable format, unless the appearance or state service list member did not provide an e-mail address. If no e-mail address was provided, service should be made by United States mail. In this proceeding, we require concurrent email service to ALL persons on the service list for whom an e-mail address is available, including those listed under "Information Only." Parties are expected to provide paper copies of served documents upon request.

E-mail communication about this case should include, at a minimum, the following information on the subject line of the e-mail: R.08-06-024 (AB 1613 Order Instituting Rulemaking). In addition, the party sending the e-mail should briefly describe the attached communication; for example, *Pre-Workshop Comments*. Paper format copies, in addition to electronic copies, shall be served on the assigned Commissioner and the ALJ.

Any person interested in participating in this proceeding who is unfamiliar with the Commission's procedures or who has questions about the electronic filing procedures should contact the Commission's Public Advisor at (866) 849-8390 or (415) 703-2074, or (866) 836-7825 (TTY-toll free), or send an e-mail to public.advisor@cpuc.ca.gov.

8. Presiding Officer

Pursuant to Pub. Util. Code § 1701.1, ALJ Amy Yip-Kikugawa is designated as the presiding officer in this rulemaking.

IT IS RULED that:

1. This proceeding is categorized as quasi-legislative. This ruling is appealable within 10 days under Rule 7.6.
2. The Commission's preliminary determination that hearings are not necessary is confirmed.
3. The timetable for the proceeding is as set forth herein.
4. Rule 8.2 governing *ex parte* communications applies to this proceeding.
5. The issues to be considered are as follows:
 - (1) Determine what is a "new" CHP system under AB 1613.
 - (2) Establish the policies and procedures for purchase of excess electricity from an eligible CHP system.
 - (3) Adopt rates, charges and tariffs for excess electricity purchased from an eligible CHP system.
 - (4) Adopt procedures for each electrical corporation to establish a pay-as-you-save pilot program for eligible CHP systems.
6. While this scoping memo provides guidance regarding the manner in which each identified issue will be considered, the assigned ALJ may make any revisions or provide further direction regarding the manner in which the issues are to be addressed, as necessary for a full and complete development of the record.
7. The assigned ALJ may make any revisions to the schedule necessary to ensure the fair and efficient management of the proceeding.

8. ALJ Amy Yip-Kikugawa is designated as the presiding officer.

Dated November 4, 2008, at San Francisco, California.

/s/ MICHAEL R. PEEVEY

Michael R. Peevey
Assigned Commissioner

/s/ AMY YIP-KIKUGAWA

Amy Yip-Kikugawa
Administrative Law Judge

INFORMATION REGARDING SERVICE

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

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

Dated November 4, 2008, at San Francisco, California.

/s/ JEANNIE CHANG

Jeannie Chang