

Decision **DRAFT DECISION OF ALJ GRAU** (Mailed 5/24/2005)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking Regarding Cost Responsibility Surcharges for County and Municipal Water Districts Which Generate Their Own Electricity Pursuant To SB 1755.

Rulemaking 03-09-029  
(Filed September 18, 2003)

**OPINION ADOPTING A COST RESPONSIBILITY SURCHARGE FOR COUNTY AND MUNICIPAL WATER DISTRICT'S SELF-GENERATION**

**I. Summary**

Today's decision adopts a cost responsibility surcharge (CRS) applicable to county and municipal water districts' electric self-generation in the service territories of California's three major electric investor-owned utilities: Southern California Edison Company (SCE), Pacific Gas and Electric Company (PG&E), and San Diego Gas & Electric Company (SDG&E). Decision (D.) 03-04-030's mechanism for determining a CRS and exceptions to imposing that mechanism shall apply to county and municipal water districts that generate their own electricity.

**II. Background**

We opened this rulemaking to implement Senate Bill (SB) 1755 (Stats. 2002, ch. 848). SB 1755 adds §§ 31149.7 and 71663.5 to the Water Code relating to electric power. SB 1755 authorizes county water districts and municipal water districts to provide, generate and deliver electricity, for their own purposes or for sale to wholesale customers if there is surplus. SB 1755 does not grant the authority for retail sales.

If a district elects to provide for its own generation of electricity, SB 1755 requires us to determine a cost-recovery mechanism to be imposed through a nonbypassable charge. This charge reimburses the Department of Water Resources (DWR) and the electrical corporation for certain electricity purchase costs to prevent a shifting of costs to an electrical corporation's bundled customers. In the Order Instituting Rulemaking (OIR), we proposed that self-generating water districts pay the CRS now applied to other customer generation departing load customers, that is, those customers who purchase or consume electricity supplied and delivered by what we term "customer generation" to replace all or part of the utility or direct access purchases.

In the OIR, we determined the CRS adopted in this proceeding would include DWR bond charges, DWR power charges, and utility-incurred charges, including but not limited to Utility Retained Generation (URG) charges, and tail-CTC costs, in a manner consistent with the methodologies and modeling principles discussed in D.02-11-022 and related decisions in Rulemaking (R.) 02-01-011.

The Association of California Water Agencies (ACWA), PG&E, the Marin Municipal Water District (MMWD),<sup>1</sup> the Contra Costa Water District (CCWD), SDG&E, SCE, the Modesto Irrigation District (Modesto), and the Chino Basin Coalition (Chino Basin)<sup>2</sup> filed opening comments on November 3, 2003. PG&E, the Office of Ratepayer Advocates (ORA), Chino Basin, CCWD, and SDG&E filed reply comments on November 17, 2003. A prehearing conference (PHC) was held on January 8, 2004.

---

<sup>1</sup> MMWD's motion for leave to file its comments late is granted.

### III. Discussion

We adopt the CRS found in D.03-04-030 for county and municipal water districts that self-generate. That CRS shall apply to both onsite and offsite generation. The exceptions contained in D.03-04-030 also shall apply to water districts' self-generation. We decline to address other issues raised by parties in this proceeding.

#### **A. The CRS Adopted for Customer Generation Departing Load in D.03-04-030 Shall Apply to Water Districts' On-Site Generation**

SB 1755 provides that any water district “that has purchased electricity from an electrical corporation on or after February 1, 2001...bear a pro rata share of the DWR’s electricity purchase costs, that are recoverable from electrical corporation customers in commission-approved rates.” (Water Code §§ 31149.7 (e)(1), 71663.5(e)(1).) A district generating its own electricity shall pay “[a] charge equivalent to the charges that would otherwise be imposed on the district by the [C]ommission to recover bond related costs pursuant to any agreement between the commission and the DWR.” (Water Code §§ 31149.7(f)(1), 71663.5(f)(1).) We must determine whether existing decisions establish an appropriate framework for a CRS applicable to water districts.

Most parties agree that the CRS adopted in D.03-04-030 for customer generation departing load should apply to county and municipal water district customer generation on-site departing load. D.03-04-030 defines departing load as the customer’s reduction in load purchased from the utility that is saved by customer generation. D.03-04-030 defines customer generation as any type of

---

<sup>2</sup> The Coalition includes water agencies and dairy producers in the Chino Basin region.

generation dedicated to serve a specific customer's load in reliance on non-utility or dedicated utility distribution wires. SB 1755 similarly permits a water district to generate power for its own purposes. (Water Code §§ 31149.7(a) & (b), 71663.5(a) & (b).) D.03-04-030 provides an established methodology for applying a CRS to the self-generation permitted by SB 1755.

SDG&E recommends first considering the differences between SB 1755 and prior CRS decisions through further proceedings before applying D.03-04-030 to county and municipal water district customer generation. As discussed *infra*, SDG&E's recommendations need not be addressed in this proceeding.

The CRS adopted in D.03-04-030 for customer generation departing load shall apply to county and municipal water districts on-site generation.

**B. The CRS Shall Apply to Water Districts' Offsite Self-Generation**

SB 1755 provides that districts are responsible for bond related costs. (Water Code §§ 31149.7 (f)(1), 71663.5(f)(1).) SB 1755 further provides “[i]f a district generates new offsite power, it shall be responsible for the additional costs of the DWR, equal to the share of the DWR's estimated net unavoidable electricity purchase contract costs attributable to the district . . . ”

The parties agree that the CRS adopted for municipal departing load in D.03-07-028 does not automatically apply to county and municipal water district off-site generation. D.03-07-028 applies to retail customers of publicly owned utilities. SB 1755 expressly excludes districts from providing or selling electric power at retail. (Water Code §§ 31149.7(c), 71663(c).) Therefore, D.03-07-028 does not strictly apply to water districts' off-site generation.

PG&E, SCE , Chino Basin, and ORA concur that SB 1755 requires districts to pay a CRS, including both the DWR bond and power charges, for

districts' offsite generation. SCE proposes we adopt an alternative CRS mechanism for off-site generation. PG&E states its municipal departing load tariff would not apply to water districts' offsite generation. ORA, Chino Basin, and Modesto agree that the CRS applicable to municipal departing load cannot apply to water districts' offsite generation. Instead, the CRS applicable to customer generation departing load should apply.

Pub. Util. Code § 9604(d) defines local publicly owned utility as a municipality or municipal corporation operating as a public utility furnishing electric service. D.03-07-028 by its terms applies to municipal departing load served by a publicly owned utility as defined under § 9604(d). County and municipal water districts cannot provide electricity at retail. Thus, D.03-07-028 does not apply. However, no party presented any reason why the CRS adopted in D.03-04-030 for customer generation departing load could not apply to county and municipal water districts' offsite self-generation. Therefore, we shall apply the CRS adopted in D.03-04-030 for county and municipal water districts' off-site generation.

**C. D.03-04-030's Definitions of Customers  
Generation and Departing Load Apply to  
Water Districts' Self-Generation**

D.03-04-030 provides that a customer generation unit serving new and incremental load would not be considered departing if it passed the physical test adopted in D.98-12-067. (D.03-04-030, Conclusion of Law 14.) As discussed above, D.03-04-030's definition of customer generation departing load applies to county and municipal water districts that self-generate. In this proceeding, a number of parties oppose applying the CRS to new and incremental load. Reasons in support of this exception are encouragement of new water supplies, including desalination plants, and the fact that no cost-shifting occurs for new

load at new facilities. Other parties find no basis for authorizing a specific exception for new and incremental load, since D.03-04-030 governs the applicability of a CRS to new and incremental load.

We agree that D.03-04-030's definition of customer generation departing load applies to water districts that self-generate. It is not necessary to authorize specific exceptions for new and incremental load in this proceeding.

**D. Exceptions Should Be Limited to Those Provided in D.03-04-030**

Several parties recommend that exceptions from the CRS beyond those contained in D.03-04-030 should apply to water districts. D.03-04-030 provides an exception for clean systems under 1 Megawatt (MW) and a partial exception for clean and low-emission systems over 1 MW. ACWA, CCWD, Chino Basin, and MMWD recommend that we expand the exceptions contained in D.03-04-030 to include new load and clean systems over 1 MW. ORA, PG&E, and SCE oppose expansion of those exceptions. ORA further states off-site self-generation is not eligible for the exception to the power charge portion of the CRS extended to the first 3000 MW of departing load or for the exception for clean off-site generation up to 1 MW.

SB 1755 neither authorizes exemptions for new load nor expands the 1 MW exception. SB 1755 explicitly requires water districts to pay applicable DWR and electrical company charges. SB delegates to us the authority to determine the CRS applicable to offsite power. In D.03-04-030 we determined that the 3000 MW exception for DWR power charges would not result in cost-shifting. (D.03-04-030, Finding of Fact 20.) Thus, we will apply the

exceptions contained in D.03-04-030 without modification to county and municipal water districts' self-generation.<sup>3</sup>

#### **IV. Other Issues**

Several parties raise issues, in filed comments and at the PHC, that are outside the scope of this rulemaking. We find no basis for expanding the scope of the proceeding to consider those issues.

SDG&E objects to the preliminary scope of this proceeding, because it asserts implementation of SB 1755 requires resolution of additional issues. Specifically, SDG&E requests that this proceeding ensure power generated under the authority granted by SB 1755 be used for the Districts' own purposes and constructed facilities meet safety and reliability standards and other applicable regulations. SDG&E further requests that responsible costs include public purpose programs, nuclear decommissioning, fixed transmission amount and restructuring implementation. SDG&E also raises concerns about its interconnection obligations and distribution planning. ACWA echoes the concerns about interconnection, stating it has never been able to arrange wheeling and comply with interconnection requirements when generation is located at a site different from where electricity is consumed.

SB 1755 limits use of power generated by the districts for their own pumping, water treatment, barrier intrusion, desalination and other operations. (Cal. Water Code §§ 31149.7(b), 71663.5 (b).) Although districts may sell surplus

---

<sup>3</sup> Implementing SB 1755 by applying D.03-04-030's exceptions to county and municipal water districts' self-generation will result in an unanticipated increase in customer generation. That increase might necessitate an earlier review of the 3000 MW cap than the three-year review contemplated in that decision. (*See* D.03-04-030, Ordering Paragraph 12.)

power to entities engaged in the distribution or sale of electricity, they may not sell power at retail. We need take no action to implement these statutory limitations. Further, proposed projects must conform to existing regulations and procedures, including, for example, interconnections rules. The approval processes for those projects will ensure conformance with those regulations and procedures. Finally, transmission and distribution rates include recovery for public purpose programs, nuclear decommissioning, and other charges. There is no need to address recovery of those items in this proceeding.

#### **V. Tariff Filing Implementation**

Within ten business days of the effective date of this decision, SCE, PG&E, and SDG&E shall file compliance advice letters to add county and municipal water districts' self-generation to the applicability of their CG CRS Tariffs as set forth in this decision. The advice letters implementing the CRS pursuant to this decision shall be effective on filing, subject to post-filing review by the Energy Division.

#### **VI. Comments on Draft Decision**

The draft decision of the Administrative Law Judge (ALJ) in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. Comments were filed on \_\_\_\_\_, and reply comments were filed on \_\_\_\_\_.

#### **VII. Assignment of Proceeding**

Geoffrey F. Brown is the Assigned Commissioner, and Janice Grau is the assigned ALJ in this proceeding.

#### **Findings of Fact**

1. SB 1755 requires the Commission to establish a “nonbypassable” surcharge for water districts that elect to generate their own power.

2. The CRS costs at issue are DWR bond charges, DWR power charges, utility-incurred charges, and tail-CTC costs.
3. D.03-04-030 adopted a CRS for customer generation departing load.
4. D.03-07-028 adopted a CRS for municipal departing load of publicly owned utilities as defined by Pub. Util. Code § 9604(d).
5. D.03-04-030 defines customer generation departing load.
6. D.03-04-030 contains exceptions for net metered customers under 1 MW, clean self-generation under 1 MW and partial exceptions for clean customer generation, low-emission systems and other customer generation.

### **Conclusions of Law**

1. It is reasonable to apply the CRS adopted in D.03-04-030 to county and municipal water districts that generate their own electricity.
2. The CRS adopted for locally owned publicly utilities in D.03-07-028 does not apply to county and municipal water districts that generate their own power.
3. It is reasonable to apply the definition of customer generation departing load found in D.03-04-030 to county and municipal water districts that generate their own electricity.
4. It is reasonable to apply the exceptions found in D.03-04-030 to county and municipal water districts that generate their own electricity.
5. This order should be effective today in order to provide guidance to the county and municipal water districts.

**O R D E R**

**IT IS ORDERED** that:

1. This order shall apply to the service territories of Southern California Edison Company (SCE), Pacific Gas and Electric Company (PG&E), and San Diego Gas & Electric Company (SDG&E).
2. Decision (D.) 03-04-030's mechanism for determining a Cost Responsibility Surcharge (CRS) shall apply to county and municipal water districts that generate their own electricity.
3. D.03-04-030's exceptions to imposing the CRS shall apply to county and municipal water districts that generate their own electricity.
4. PG&E, SCE, and SDG&E shall file necessary tariff revisions in compliance advice letters within 10 days of the effective date of this order. The advice letters shall be effective on filing, subject to post-filing review by the Energy Division.
5. The utilities shall report to the Energy Division and the California Energy Commission, on a quarterly basis, the amount of customer generation installed under the provisions of this order.
6. Rulemaking 03-09-029 is closed.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.