Decision **PROPOSED DECISION OF COMMISSIONER PEEVEY**
(Mailed 3/20/2008)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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)

OPINION GRANTING IN PART PETITION BY FUELCELL ENERGY TO MODIFY DECISION 04-12-045

1. Summary

In Rulemaking (R.) 08-03-008, the Commission transferred the petition of FuelCell Energy (FCE) to modify Decision (D.) 04-12-045 to the Commission's new distributed generation rulemaking to be handled in the above-captioned proceeding.

This decision grants in part the petition by FCE to raise the cap on incentives to individual projects that apply for incentives through the Commission Self-Generation Incentive Program (SGIP). During 2008 and 2009 only, this decision allows program administrators of SGIP to use any carryover funds from prior budget years to pay incentives up to 3 megawatts (MW) for qualifying fuel cell or wind distributed generation (DG) projects. Incentives over 1 MW will be paid at a lower rate.

2. Background

In D.01-03-073, the Commission authorized the SGIP to encourage the development and commercialization of new DG technologies.[1] Under the SGIP, certain entities qualify for financial incentives to install DG to serve some portion of a customer's onsite load. In subsequent orders, the Commission refined the program, taking actions such as adopting a reliability requirement, developing renewable fuel criteria, and increasing the maximum project size eligible for incentives.

With regard to project size, the Commission initially limited both the size of eligible projects and incentives to 1 MW, reasoning that the size limit "represents a fairly large installation for a single customer site and, at the same time, will not use up an unreasonable amount of program funding." (D.01-03-073, at 29.) In a subsequent order, the Commission increased the project size eligible to participate up to 5 MW to "allow developers, customers, utilities and ratepayers to receive cost savings achieved by larger projects." (D.04-12-045 at 9.) Despite raising this maximum project size, the Commission retained the cap on incentives at 1 MW due to concerns about depleting limited SGIP budgets. (*Id.*)

[1] "Self-generation" refers to distributed generation technologies (microturbines, small gas turbines, wind turbines, photovoltaics, fuel cells and internal combustion engines) installed on the customer's side of the utility meter that provide electricity for a portion or all of that customer's electric load. In D.06-01-024, the Commission directed that starting in 2007, photovoltaic self-generation projects would be separately funded through the California Solar Initiative, rather than the SGIP.

For 2008, the SGIP budget is $ 83 million, as set forth by the Commission in D.08-01-029. In addition, the SGIP is limited by Pub. Util. Code § 379.6 to funding only wind and fuel cell DG projects, effective January 1, 2008.

3. Petition for Modification

On July 25, 2007, FCE filed its petition requesting the Commission modify D.04-12-045 to increase the limit of incentive payments available under the SGIP program from the current cap of 1 MW to 3 MW.[2] Although projects up to 5 MW are eligible for participation in SGIP, incentives are limited to 1 MW. FCE contends this has suppressed participation by larger fuel cell projects in the program. FCE argues an increase in the incentive cap to 3 MW is needed to stimulate the much needed market transformation for affordable fuel cell technology and other renewable distributed generation applications that are only economic at a larger scale. FCE also maintains that the modification would result in new projects that would deliver substantial reductions in greenhouse gases.

In its petition, FCE contends the market for fuel cells in California is significantly constrained, particularly in the waste treatment market, by the 1 MW limit. Based on feedback from operators of industrial facilities and wastewater treatment plants, FCE reasons the modification will result in significant deployments of new fuel cell power plants at these sites. The most

[2] FCE's petition was filed in R.04-03-017, the docket in which D.04-12-045 was issued, and also served on parties to R.06-03-004. Service to both lists was completed on July 31, 2007, which extended the filing date for comments on the petition to August 30, 2007. The two dockets, R.04-03-017 and R.06-03-004, were consolidated for purposes of resolving this petition. The petition was transferred to this docket by R.08-03-008 and is resolved herein.

prominent emerging market sector is municipal wastewater treatment. Specifically, FCE contends that fuel cells' high electrical efficiency enables them to deliver almost twice the electrical output for each unit of gas consumed. In a declaration filed with its petition, FCE's witness states that wastewater treatment plant operators have expressed an interest in fuel cell technology as an alternative to combustion technologies. Further, the witness states that he has had conversations with wastewater treatment plant owners who have tried but failed to cost-justify installation of fuel cells at larger facilities without incentives.

FCE further justifies its modification request with the reasoning that raising the incentive cap will result in new projects that would deliver substantial greenhouse gas (GHG) reductions in addition to peak electricity demand reductions. According to FCE, renewable fuel cells can provide high GHG reduction by capturing and using biogas in lieu of its use in either flares or combustion. Thus, FCE argues, larger fuel cell projects, particularly at municipal wastewater plants, could benefit ratepayers by maximizing returns on local tax dollars and increasing the reduction in combustion emissions, with associated environmental benefits. Moreover, FCE contends that increasing the cap on SGIP incentives from 1 to 3 MW could lead to reduced product costs via larger production volumes, thus enabling market transformation for fuel cells.

FCE maintains the only down side to its request is the potential that program funds could be depleted more rapidly than they would otherwise. To offset this concern, FCE suggests the Commission authorize additional SGIP funding to support more projects, or consider other measures to ensure participation by small projects.

According to Rule 16.4(d) of the Commission's Rules of Practice and Procedure, petitions for modification must be filed within one year of a

Commission decision. FCE states that its petition, filed more than two years after issuance of D.04-12-045, is based on experience gained, particularly with larger customers, over the six-year history of SGIP, and therefore could not have been filed earlier. UTC Power Corporation (UTC) objects to FCE's late-filed petition to modify, asserting that FCE has not adequately justified its late submission because potential customers of every size have existed since SGIP's inception. We find that FCE has adequately justified the late filing of its petition because information pertaining to larger customers and the market demand for fuel cells is newly available. Thus, we will address FCE's petition on its merits.

4. Comments on Petition

Responses to the petition were filed by California Center for Sustainable Energy (CCSE), Center for Energy Efficiency and Renewable Technologies (CEERT), Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), and UTC. In addition, responses were filed by Alliance Power Inc., ApolloPower Inc., California State University Northridge, Carollo Engineers P.C., Chevron Energy Solutions Company (CES), Gills Onions Rio Farms, HydroGen Corporation, Manuel Bros., Inc., Marubeni Corporation, MISCO, National Fuel Cell Research Center, Powerhouse Energy LLC, Silverwood Energy Inc., and Starwood Hotels and Resorts Worldwide Inc. We refer to this latter group collectively as the "fuel cell supporters" because though the comments were filed individually, they were strikingly similar, and in some cases identical to each other.

The fuel cell supporters state strong support for the petition, contending the increase in project size eligible for incentives is needed to cost-effectively develop the biogas market for fuel cell technology at waste treatment plants, landfills, and other host facilities that need larger scale projects. They allege that

raising the incentive cap for both natural gas and renewable biogas supplied fuel cell technologies will allow larger users of electric and thermal energy to implement more efficient technologies which utilize less fuel. They contend there is an increasing market demand for DG between 1 and 3 MW to meet the requirements of end user customers. According to the fuel cell supporters, if the Commission raised the incentive cap to 3 MW, this would help encourage innovation and expansion of DG applications at a time when the state needs renewable DG and efficient use of fuel stocks. These parties claim the current 1 MW cap on incentives deters larger installations because they are uneconomic and too risky to develop.

Moreover, these parties contend that large fuel cell projects provide benefits to utility systems in California such as decreasing GHG emissions per megawatt hour of baseload electricity and thermal load supplied, reducing transmission and distribution grid constraints, reducing the need for new generation capacity, and eliminating emissions from combustion-fired power generation that would otherwise be used if renewable biogas or natural gas supplied fuel cell projects are not implemented. The fuel cell supporters further contend that if the Commission is concerned that raising the incentive cap will negatively affect SGIP participation by smaller DG projects, the Commission can monitor this, allocate money between large and small projects, or increase the SGIP budget.

UTC opposes FCE's petition, arguing that the Commission has denied past requests to raise the 1 MW cap on the basis that an increase might cause large projects to deplete the SGIP budget. UTC contends the 1 MW cap should be maintained to ensure the broad distribution of SGIP funds. According to UTC, increasing the cap beyond 1 MW would minimize the overall number of projects

funded by SGIP, in opposition to the Commission's earlier stated goal of making SGIP funds available to a broad range of projects and customers.

Moreover, UTC contends the SGIP is successful at current incentive levels, with program data provided by FCE in its petition indicating that 2006 saw the highest level of fuel cell participation in SGIP to date.[3] Thus, UTC concludes that maintaining current incentive levels will support more projects and increase fuel cell market penetration. UTC argues that the overall number of fuel cells manufactured promotes economies of scale that lead to price reductions. Thus, a higher number of smaller projects promote competition and innovation in clean energy more than incentives limited to a few large projects.

CEERT supports the petition as it relates to renewable fuel cells, and supports the recommendation for increased SGIP funding. CEERT also proposes that to ensure smaller installations receive incentives, the Commission could require installations over 1 MW to wait until the close of the fiscal year to receive incentives for the portion of their project over 1 MW. In reply, FCE opposes this request as creating too much uncertainty for fuel cell developers and undermining the ability to obtain project financing.

CCSE, PG&E and SCE support the petition, but only with respect to fuel cells operating on renewable fuel. SCE contends that raising the incentive cap for non-renewable technologies risks depleting program funds. PG&E suggests a lower incentive level of $2.50/watt for incentives over the first MW to extend the SGIP budget, and it also recommends permitting the increased incentive cap

[3] UTC cites statistics provided by FCE on p. 4 of its July 25, 2007 petition.

on a two-year pilot basis. CCSE also supports a tiered incentive approach to prevent a small group of large customers from monopolizing program funds.

In response to UTC, FCE states that the current 1 MW cap inhibits development of the market for larger installations. FCE proposes consideration of conditions to ensure funds are fairly allocated to large and small DG, such as budget allocations between large and small customer classes with corresponding discretion to shift funds, or scaled incentives as suggested by PG&E and CCSE. FCE supports the suggestion that any increase in the incentive cap should apply to renewable projects only.

5. Amended Petition

On February 8, 2008, FCE filed an amended petition containing further information in support of its petition and amending its initial request. FCE now asks that the Commission raise the 1 MW incentive cap solely for renewable fuel projects, establish tiered incentives for capacity over 1 MW, and approve the increased incentives on a two-year pilot basis, with extension only upon Commission review.

The amended petition includes two additional declarations containing financial information and analysis on the need for incentives to encourage development of larger fuel cell projects, the efficiencies and economies of scale of fuel cell projects larger than 1 MW, GHG emissions benefits, and financial impacts of tiered incentives. In its amended petition, FCE provides information on two potential projects larger than 1 MW it is working to develop, and it claims incentives are required up to 3 MW to make the payback period for these projects acceptable to potential customers. FCE contends larger projects are better able to deliver cost-effective solutions for wastewater treatment operators because the cost of the fuel treatment system and other external costs of the fuel

cell, including mechanical and electric systems and installation, become less significant as project size increases. (FCE Amended Petition, 2/8/08, Declaration of Jeff Cox.) The amended petition also includes data from the SGIP Sixth Year Impact Evaluation, dated August 2007, to support FCE's contention that renewable fuel cells attain the highest net GHG reductions of any participating SGIP technology. (*Id.*, p. 13.)

The following parties filed comments on the amended petition: Californians for Renewable Energy (CARE), CCSE, Debenham Energy LLC (Debenham), SCE, TechNet,[4] and UTC. SCE and CCSE support FCE's amended petition, although SCE suggests the Commission dedicate a percentage of SGIP funds to projects below 1 MW.

CARE, TechNet and UTC oppose the amended petition. UTC comments that the benefits claimed by FCE in its amended petition are inaccurate. UTC disputes FCE's claim that increased funding to large projects will result in market transformation for fuel cell technology. In addition, UTC maintains the mechanisms suggested in the amended petition to preserve funds do not mitigate UTC's concern about budget depletion and lack of funding for small DG projects. CARE echoes this concern that raising the incentive cap to 3 MW will deplete SGIP funds more quickly and benefit a few large companies rather than encourage development of the industry as a whole. TechNet contends that retaining the 1 MW cap on incentives will allow more Californians to benefit from the program, fostering greater competition, innovation, and cost reduction. TechNet urges the Commission to promote fuel cell competition in a technology

[4] TechNet is a bipartisan political network of chief executive officers and senior executives that promote the growth of technology and innovation in the economy.

neutral fashion rather than allowing a vast portion of the SGIP budget to benefit only a few large projects.

In a ruling dated February 14, 2008, the Administrative Law Judge (ALJ) asked for comment on whether the Commission should consider increasing the cap on incentives for eligible wind DG projects as well as renewable fuel cells, as requested in the amended petition. SCE opposes increasing the incentive cap for wind projects without additional information. Debenham, a renewable energy consulting firm, supports the idea, arguing that wind projects need a higher incentive cap for technology-specific reasons. Specifically, Debenham contends the intermittent nature of wind technology is constrained by the 1 MW incentive cap designed to favor to photovoltaics, and this has put a damper on wind participation in SGIP. Further, Debenham supports an incentive cap increase so that fuel cells and wind can share equally in SGIP benefits. CCSE echoes the comments of Debenham that wind projects have experienced difficulty in the below 1 MW sizing range and raising the incentive cap could stimulate projects greater than 1 MW.

6. Discussion

The key issue raised by FCE's petition is whether the Commission should deviate from prior decisions that created and retained a 1 MW cap on incentives to any one project. If we raise the incentive limit beyond 1 MW, as FCE requests, this could allow a large portion of each utility's SGIP budget to go towards a single project, or at most, a few large projects. On the other hand, parties suggest mechanisms to preserve program funds, such as raising the incentive cap for only renewable fuel cell projects, reducing incentives for projects over 1 MW, and lifting the 1 MW cap on a pilot basis.

FCE and CCSE, point out that the SGIP currently has $96 million in unused funds from prior years.[5] CCSE contends that unused funds indicate potential shortcomings in the eligible technology market, the incentive rates, and/or program execution. PG&E and CCSE note that fuel cell participation in SGIP has not been high. CCSE states it has funded only $21.1 of $506.7 million in incentives to wind and fuel cell projects, or just 4%, and only 8.9 MW of 278.1 MW, or 3.2% of installed capacity. PG&E claims the renewable fuel cell market needs stimulation because no renewable fuel cell projects have been completed in its service territory, although five such projects (representing 4.7 MW in capacity) are currently pending. Our Energy Division reviewed SGIP data and found that although SGIP funded a total of 233.8 MW in 2005 through 2007, there were only 32 fuel cell project applications in SGIP in those years. Nine of the 32 projects have been completed, with a capacity of 5.7 MW. Three of the 32 applications pertained to renewable fuel cells, for a total capacity of 2.62 MW. There were five wind turbine project applications over the same period, for 3.8 MW in capacity, and none have been completed. Moreover, only six fuel cell and wind SGIP applications during that period were for projects over 1 MW, with a maximum size of 1.5 MW, and none have been completed. The fact that SGIP has not funded a completed wind or fuel cell project greater than 1 MW from 2005 to the present is consistent with the notion that the existing incentive cap is effectively functioning as a cap on wind and fuel cell project size, despite the fact that projects up to 5 MW are eligible to participate in SGIP.

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[5] FCE and CCSE cite the SGIP administrators' website as the source of this figure. The Commission's Energy Division has corroborated this figure.

CCSE maintains that providing incentives to larger installations, coupled with a tiered incentive structure that pays less than the full incentive over 1 MW, can provide for the installation of more MW of renewable fuel cell DG projects for fewer incentive dollars. In their example, the current 1 MW cap for CCSE allows them to fund 5.4 MW of renewable fuel projects. If the incentive cap were raised to 3 MW, coupled with tiered incentives, CCSE's budget could fund 8.6 MW with the same budget of $23.4 million.

In support of its petition, FCE argues the market for fuel cells is constrained by the 1 MW limit and that "larger projects are better able to deliver cost-effective solutions to the wastewater operator." (FCE Petition, 7/25/07, p. 6.) FCE also suggests that increasing the incentive cap will allow fuel cell manufacturers to reduce product costs via larger production volumes as they realize economies of scale in raw material procurement and production labor when a higher volume of fuel cells are manufactured and sold. (*Id.*, p. 8.) FCE's amended petition attempts to bolster these assertions with additional data about fuel cell project costs and production efficiencies. UTC disputes FCE's assertions regarding production efficiencies and economies of scale.

Without relying on the disputed claims of production efficiencies and economies of scale, we find the argument by CCSE compelling that unspent funds and the low participation rates for fuel cell and wind projects suggests modifications to the current SGIP structure may be warranted. If we increase the incentive cap for both wind and fuel cell DG projects, coupled with decreased incentives for installations over 1 MW, we can attempt to install more MW with the same budget. Moreover, the existence of $96 million in unspent funds allows us to test FCE's assertions on a pilot basis. The possibility that the 1 MW incentive cap is inhibiting larger scale wind and fuel cell project development,

coupled with significant unspent SGIP funds, provides sufficient reason to raise the incentive cap on a trial basis for 2008 and 2009 using carryover funds. As noted above, the original reason for the incentive cap was to prevent a few large projects from depleting SGIP funds, thus excluding broad program participation. At this juncture, given the magnitude of unsubscribed funds, it is reasonable to allow carryover funds to be used to fund larger projects.

Moreover, to the extent there is latent demand that may have been suppressed due to a lack of incentives above 1 MW, we believe it is reasonable to raise the incentive cap for all SGIP-qualifying technologies. Although FCE requests increasing the cap for renewable technologies only, we see no reason not to extend this proposal to all technologies currently supported by SGIP. Policy preferences for a given technology, as well as differences in the underlying economics, are currently reflected in SGIP through the incentive levels and Commission rules on allocation of funds between renewable and non-renewable projects. (See D.01-03-073.) We will allow all SGIP eligible technologies to apply for carryover funds, and prior Commission orders regarding allocation of funds between renewable and non-renewable (i.e., Level 2 and Level 3) incentive categories are unchanged and apply equally to carryover funds.

Thus, we will grant FCE's petition in part and allow the SGIP administrators to use carryover funds from prior budget years to provide incentives up to 3 MW to qualifying projects up to 5 MW during 2008 and 2009. We will not grant a permanent change to SGIP rules, and we will only allow projects to receive incentives over 1 MW to the extent carryover funding is available. Program administrators should adhere to all prior Commission orders regarding allocation of funds between renewable and non-renewable incentive

levels. Projects applying for incentives up to a maximum of 1 MW will be funded according to standard SGIP rules from each program administrator's annual budget allocation.[6] Projects applying for incentives greater than 1 MW, if approved, will receive all of their funding from carryover funds, as available. This preserves the current year's SGIP budget of $83 million for projects receiving incentives up to 1 MW. Any incentives paid over 1 MW will decline in tiers, as suggested in the amended petition. We will adopt CCSE's proposed tiering structure, because it is most conservative and will maximize the use of the carryover funds. Plus, CCSE's proposal is easily applicable to all current SGIP incentives, which vary by technology, as the tiers are based on a percentage of the current incentive. We adopt incentive levels for projects that receive incentives up to 3 MW as follows:

Table 1: Tiered Incentive Rates[7]

Capacity	Incentive Rate
0-1 MW	100%
1 MW – 2 MW	50%
2 MW – 3 MW	25%

In addition, we will allow eligible projects under review larger than 1 MW to be deemed eligible to apply for carryover incentive funding as set forth in this

[6] If the annual budget is fully subscribed with applications meeting standard program rules, the SGIP program administrators may use carryover funds to support these projects as well.

[7] Current SGIP incentive levels were set by Commission order and are $1.50/watt for Level 2 renewable wind projects, $4.50/watt for Level 2 renewable fuel cell projects, and $2.50/watt for Level 3 non-renewable fuel cell projects.

order, up to 3 MW, without the need to reapply. The program administrators should notify all such applicants to whom this might apply to determine if they wish to be considered for additional incentives. Completed projects that seek additional funding for an expansion will need to reapply.

Although we initially issued a proposed decision to deny FCE's petition, the new information regarding unspent SGIP funds and low participation rates for fuel cells and wind convinces us that we should consider testing program modifications. Therefore, we will grant FCE's amended petition in part, for all qualifying wind and fuel cell DG projects, with tiered incentives as set forth in Table 1. The increase in the incentive cap to 3 MW and tiered incentives shall apply on a pilot basis for two years, i.e., SGIP program years 2008 and 2009, and projects that apply for incentives over 1 MW, if approved, will be funded entirely from SGIP carryover funds, as available. The increased incentive cap may continue past 2009 only upon further order of this Commission, which we expect would follow a review of program participation and budgets.

Some parties suggest raising the SGIP total budget. We will not consider an increase in the annual SGIP budget at this time, in light of recent legislative restrictions that limit us to funding only wind and fuel cell DG projects through SGIP. Rather, we will use SGIP carryover funds to allow expanded program eligibility.

7. Motion for Confidentiality

Along with its Amended Petition, FCE filed a motion requesting confidential treatment of Appendix C, Attachment 1 to its filing. According to FCE, this document contains commercially sensitive production cost data and cost projections associated with FCE's products, that qualify as "trade secrets" under Government Code Section 6254.7(d). This information involves

production data known only to certain individuals and which gives its user an opportunity to obtain a business advantage over its competitors, as discussed in the Government Code defining trade secrets. If revealed, this information would subject FCE to competitive disadvantage with respect to other fuel cell manufacturers. FCE contends the competitive retail environment in which FCE competes necessitates confidential treatment of this information. Debenham opposes the motion for confidentiality, arguing FCE has failed to state any valid legal reason for granting the motion.

We disagree with Debenham and find FCE has stated a valid legal reason to grant confidentiality. FCE's production cost data and cost projections in its filing are commercially sensitive trade secrets under Government Code Section 6254.7(d) and would place FCE at a disadvantage if revealed to competitors. We have granted similar requests for confidential treatment of commercially sensitive business data, and will do so here as well.

8. Comments on Proposed Decision

The proposed decision of Commissioner Michael R. Peevey in this matter was initially mailed to the parties on January 15, 2008, in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed by FCE, PG&E, SCE, and UTC. Reply comments were filed by CCSE, SCE, and UTC. The proposed decision was subsequently withdrawn from the Commission's agenda following the filing of FCE's amended petition.

The proposed decision was mailed for comment a second time, following the filing of FCE's amended petition on February 8, 2008. Comments were filed by CCSE, Debenham, FCE, PG&E, SCE, jointly by San Diego Gas & Electric Company and Southern California Gas Company (SDG&E/SoCalGas), and UTC.

Reply comments were filed by CCSE, Debenham, FCE, SCE, and UTC. The comments generally support the proposed decision, and minor modifications as suggested by the comments have been incorporated into the decision. Specifically, PG&E and CCSE request that the Commission clarify that eligible projects larger than 1 MW that are currently under review should not have to cancel their application and reapply to be considered for additional incentives. This clarification has been added to the order.

UTC requests that the augmented incentives be limited to the current $96 million in carryover funds. We decline this suggestion, preferring to allow any additional SGIP carryover funds that may become available over the course of 2008 and 2009 to be used as described in this order. SDG&E/SoCalGas ask for several clarifications on administration of carryover funding, such as how to handle add-ons to existing projects, roll-over of the budget if insufficient to fund a project greater than 1 MW, guidelines for budget transfers, a cap on the amount of carryover funds spent in one year, and wording to allow all eligible technologies to receive augmented incentives. We specifically decline to limit the amount of carryover funding spent in one year, and we decline the wording change to refer to "all eligible technologies." If legislation changes the SGIP eligibility, we can address extension of this program at that time. With regard to the other proposals, we will not address this level of administrative detail in the order, preferring to let our Energy Division work with the SGIP program administrators on appropriate resolution of issues such as these, as they arise, in keeping with the overall guidance set forth in this order.

9. Assignment of Proceeding

President Michael R. Peevey is the assigned Commissioner and Dorothy J. Duda is the assigned ALJ for this portion of this proceeding.

Findings of Fact

1. Under the SGIP, projects up to 5 MW in size can apply for incentives, but incentives will be given only up to 1 MW.

2. The Commission has denied requests to increase the 1 MW incentive limit on the basis that this could deplete the SGIP budget.

3. There are $96 million in unspent SGIP funds from prior program years.

4. There has been low participation by fuel cells and wind projects in the SGIP.

Conclusions of Law

1. Increasing the SGIP 1 MW incentive limit without restriction would decrease the number of projects funded by SGIP.

2. Raising the incentive cap to 3 MW for qualifying SGIP wind and fuel cell projects, coupled with tiered incentives over 1 MW, will allow more MW of DG to be installed for the same dollars.

3. Given the large amount of unspent SGIP funds from prior years, the Commission should raise the cap for incentives to 3 MW for qualifying wind and fuel cell projects. Projects applying for incentives up to a maximum of 1 MW will be funded from the annual SGIP budget. Projects applying for incentives greater than 1 MW, if approved, will be funded entirely from SGIP carryover funds, as available.

4. Incentives paid beyond 1 MW should be reduced according to Table 1 and available only for 2008 and 2009.

5. Production cost data and cost projections in Appendix C, Attachment 1 to FCE's filing should be granted confidentiality as trade secrets under Government Code Section 6254.7(d).

O R D E R

IT IS ORDERED that:

1. The petition to modify Decision (D.) 04-12-045 filed by FuelCell Energy (FCE) on July 25, 2007, and amended on February 8, 2008 is granted in part as set forth herein.

2. D.04-12-045 is modified to allow Self-Generation Incentive Program administrators to pay qualifying distributed generation projects incentives up to 3 megawatts (MW) from prior years' carryover funds, with incentives over 1 MW reduced as set forth in Table 1, and with all prior Commission orders regarding allocation of funds to renewable and non-renewable incentive categories applying to the use of carryover funds.

3. This modification shall apply for the SGIP in 2008 and 2009 only, unless modified by further order of this Commission.

4. The motion for confidentiality filed by FCE on February 8, 2008 is granted for two years from the date of this order. During that period, the information shall not be made accessible or disclosed to anyone other than Commission staff, except upon execution of an appropriate non-disclosure agreement with FCE, or on the further order or ruling of the Commission, the assigned Commissioner, the assigned Administrative Law Judge (ALJ), or the ALJ then designated as Law and Motion Judge.

5. If FCE believes that further protection of the information filed under seal is needed, it may file a motion stating the justification for further withholding of the information from public inspection, or for such other relief as the Commission rules may then provide. This motion shall be filed no later than one month before the expiration date of today's order.

6. This decision shall be served on the service list for Rulemaking (R.) 04-03-017 and R.06-03-004.

7. This order is effective today.

Dated _____, at San Francisco, California.