Decision 05-10-025 October 27, 2005

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking Regarding Policies, Procedures and Incentives for Distributed Generation and Distributed Energy Resources.	Rulemaking 04-03-017 (Filed March 16, 2004)

OPINION RESPONDING TO THE PETITION OF THE CALIFORNIA INDEPENDENT PETROLEUM ASSOCIATION TO MODIFY DECISION 04-12-045

This decision denies the petition to modify Decision (D.) 04-12-045 filed by California Independent Petroleum Association (CIPA) alleging the Commission has failed to implement the provisions of Assembly Bill (AB) 1684, Chapter 675, Stats. 2004 with regard to the eligibility of "waste gas" for Level 1 distributed generation (DG) subsidies.

1. Background

AB 1685 was signed by the Governor on October 12, 2003 and took effect January 1, 2005. In general, the bill extended the Commission's Self-Generation Incentives Program (SGIP) through 2008 and set forth air quality standards for certain DG technologies. AB 1684, signed into law on September 22, 2004, exempted DG projects using waste gas from the air quality standards under certain conditions. AB 1684 amended § 379.6 of the Pub. Util. Code, to address the eligibility of certain waste gas providers for Level 3 incentives. In relevant part, § 379.6 provides as follows:

(b) Eligibility for the self-generation incentive program's Level 3 incentive category shall be subject to the following conditions:

(1)…

(2)…

(3)…

(4) Notwithstanding paragraphs (1) and (2), a project that does not meet the applicable (NOx) emission standard is eligible if it meets both of the following requirements:

(A) The project operates solely on waste gas. The commission shall require a customer that applies for an incentive pursuant to this paragraph to provide an affidavit or other form of proof that specifies that the project shall be operated solely on waste gas. Incentives awarded pursuant to this paragraph shall be subject to refund and shall be refunded by the recipient to the extent the project does not operate on waste gas. As used in this paragraph, "waste gas" means natural gas that is generated as a byproduct of petroleum production operations and is not eligible for delivery to the utility pipeline system.

(B) The air quality management district or air pollution control district, in issuing a permit to operate the project, determines that operation of the project will produce an onsite net air emissions benefit, compared to permitted onsite emissions if the project does not operate. The commission shall require the customer to secure the permit prior to receiving incentives.

(C) In administering the self-generation incentive program, the commission may adjust the amount of rebates, include other ultraclean and low-emission distributed generation technologies, as defined in Section 353.2, and evaluate other public policy interests,

> including, but not limited to, ratepayers, and energy efficiency and environmental interests.

D.04-12-045 adopted the air quality requirements set forth in AB 1685, among other things, but did not specifically address the issue of waste gas projects. The scoping memo in this proceeding was issued on August 6, 2004, and therefore did not address an approach to implement the provisions of AB 1684.

CIPA filed the instant petition to modify D.04-12-045 on January 18, 2005. Southern California Edison Company, Southern California Gas Company, Pacific Gas and Electric Company and San Diego Gas & Electric Company and the San Diego Regional Energy Office (referred to collectively as the program administrators) jointly filed a timely response in opposition to CIPA's petition.

2. CIPA's Petition to Modify

CIPA asks the Commission to find that DG projects using "waste gas," as that term is defined in AB 1684, qualify for Level 1 incentive payments offered in the SGIP. It believes the Commission failed to address this element of AB 1684 in D.04-12-045 and has therefore failed to implement the provisions of the bill. CIPA states that the Commission may address this issue by initiating a new rulemaking, addressing the issue later in this proceeding or granting the subject petition. CIPA believes, however, that the Commission must take action immediately to meet its legal obligation so that "waste gas" (which CIPA refers to as "stranded gas") may qualify as a resource for DG subsidies.

CIPA believes there are numerous social and public policy benefits to maximizing the use of stranded gas. It explains that oilfield operations require intensive amounts of electricity, placing a heavy strain on the state's electricity grid. When the waste gas is disposed of through DG, it can reduce the burden

on the grid and in some cases provide power to the utility. If the oilfield and DG unit are located on the right of the grid bottleneck, the operation can help relieve grid congestion as well.

CIPA believes that while the use of DG in oilfield operations is growing, a number of hurdles limit use of the technology and lead producers to continue relying on more traditional disposal methods of stranded gas such as flares or re-injection. In many cases, exit fees, standby charges, co-generation requirements, and net metering may offset any potential benefit the producer has to installing DG equipment on their lease.

CIPA believes precedent exists for extending renewable status to stranded gas. Digester gas from agricultural waste, land fill gas, and gas from biomass projects are already considered renewable fuels by the California Energy Commission. It states these fuels are chemically very much the same as stranded gas from oil field production. In addition, as noted above, the legislature's resolute passage of AB 1684 seems to provide a clear signal that the state's policy makers recognize the important energy contribution these types of resources can provide. Accordingly, CIPA requests the Commission modify D.04-12-045 to include stranded gas as a renewable technology that qualifies for the Level 1 technology incentives in the Commission's SGIP.

3. Response of the Program Administrators

The program administrators oppose CIPA's petition. They argue that AB 1684 has been fully implemented and incorporated into the 2005 SGIP Handbook. Specifically, they state that waste gas qualifies for Level 3-R incentives, as AB 1684 requires. The program administrators also observe that AB 1684 does not provide for waste gas to qualify for Level 1 incentives in the SGIP program, which are offered to renewable technologies only. The program

administrators state that waste gas in not a renewable fuel and that CIPA has not provided any evidence or argument to suggest that it is.

4. Discussion

AB 1684 requires that certain technologies be eligible for Level 3 SGIP incentives if they meet certain air quality requirements. AB 1684 exempts waste gas projects from those air quality requirements and makes such projects eligible for Level 3 incentives if they meet certain other criteria. Although CIPA alleges that the Commission has not complied with AB 1684 because it failed to require incentives for waste gas projects, the SGIP manual incorporates the requirements of AB 1684 by providing for Level 3 incentives, as the program administrators state. CIPA's real request is for the Commission to re-classify waste gas as a "renewable" that qualifies for Level 1 funding.

As the program administrators observe, waste gas has not been determined to be a renewable fuel. Neither AB 1684 nor any Commission decision classifies it as renewable. While waste gas projects may provide system benefits, we believe those benefits are recognized in the existing incentive levels. Moreover, AB 1684 clearly states its intent for waste gas projects to receive Level 3 incentives. While arguably the Commission has authority under Pub. Util. Code § 379.6(c) to classify additional technologies as renewable, CIPA provides no compelling justification for reclassifying waste gas as a renewable resource.

We herein deny CIPA's petition to modify D.04-12-025 and direct the program administrators to continue to provide Level 3 incentives to DG projects employing waste gas. There is no compelling reason to open a rulemaking on this subject or consider this matter further in this proceeding.

5. Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and Kim Malcolm is the assigned Administrative Law Judge in this proceeding.

6. Comments on Draft Decision

The draft decision of the 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. The Commission received comments from SGIP Program Administrators (jointly, SCE, PG&E, SOCalGas, SDG&E and San Diego Regional Energy Office) in support of the proposed order. We have made no changes to the ALJ's decision.

Findings of Fact

1. DG projects using waste gas are not now designated as renewable resource projects and there is no factual support for re-classifying them as renewable resources.

2. DG projects using waste gas qualify for Level 3 incentives in the SGIP program.

3. Level 1 incentives in the SGIP projects are intended for projects using renewable energy resources.

Conclusions of Law

1. AB 1684 requires the Commission's SGIP to offer Level 3 incentives to qualifying waste gas DG projects.

2. Because the SGIP program offers Level 3 incentives to qualifying waste gas DG projects, the Commission is in compliance with AB 1684.

O R D E R

IT IS ORDERED that:

1. The petition of the California Independent Producers Association to modify Decision 04-12-045, dated January 18, 2005, is denied.

2. Consistent with Assembly Bill (AB) 1684 and Section 379.6 of the Public Utilities Code, the Commission's Self-Generation Incentives Program shall continue to offer Level 3 incentives to distributed generation projects using waste gas, as that term is defined in AB 1684 and Section 379.6.

This order is effective today.

Dated October 27, 2005, at San Francisco, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
SUSAN P. KENNEDY
DIAN M. GRUENEICH
Commissioners

Commissioner John A. Bohn recused himself
from this agenda item and was not
part of the quorum in its consideration.