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.	FILED PUBLIC UTILITIES COMMISSION JUNE 26, 2008 SAN FRANCISCO, CALIFORNIA RULEMAKING 08-06-024

ORDER INSTITUTING RULEMAKING

1. Summary

This Order Instituting Rulemaking (OIR) is being opened to implement the provisions of Assembly Bill 1613 (AB 1613). (Stats. 2007, ch. 713.) Specifically, the OIR will establish the policies and procedures for purchase of electricity from new combined heat and power (CHP) systems, as that term is defined in Public Utilities Code Section 2840.2(a).[1] A copy of AB 1613 is included as A.

[1] For purposes of this OIR, the term "CHP systems" means a system of not more than 20 megawatts (MW) that commences operation on or after January 1, 2008 and produces both electricity and thermal energy for heating or cooling from a single fuel input that meets all of the following:

(1) Is interconnected to, and operates in parallel with, the electric transmission and distribution grid.

(2) Is sized to meet the eligible customer-generator's onsite thermal demand.

(3) Meets the efficiency standards of subdivisions (a) and (d), and the greenhouse gases emissions performance standard of subdivision (f) of Section 2843.

(Pub. Util. Code, §§ 2840, subd. (b)(1) and 2840.2, subd. (a).)

2. AB 1613

On October 14, 2007 the Governor signed into law AB 1613, which added Sections 2840 *et seq.* to the Public Utilities Code.[2] AB 1613 established the Waste Heat and Carbon Emissions Reduction Act which relates to the utilization of excess waste heat through CHP technologies. AB 1613 finds that CHP systems produce both electricity and thermal energy from a single fuel input, thus achieving greater energy efficiency. It establishes legislative intent that state policies to: (a) dramatically advance the efficiency of the use of natural gas by capturing unused waste heat, and (b) reduce wasteful consumption of energy via improved residential, commercial, institutional, industrial and manufacturer utilization of waste heat whenever it is cost effective, technologically feasible, and environmentally beneficial to do so, especially with respect to reducing greenhouse gas (GHG) emissions. The legislation expresses the intent to support and facilitate both consumer and utility owned CHP systems. Consequently, AB 1613 imposes certain requirements on the Commission, the California Energy Commission (CEC), the State Air Resources Board (ARB) and electric corporations.

Section 2841(a) authorizes the Commission to require an electrical corporation to purchase excess electricity delivered by a new CHP system of not more than 20 MW that complies with certain sizing, energy efficiency, and air pollution control requirements and to establish limitations on the amount of excess electricity that an electrical corporation is required to purchase from CHP systems. This section also requires the Commission to establish, in consultation

[2] Unless otherwise specified, all statutory references are to the Public Utilities Code.

with the California Independent System Operator (CAISO), tariff provisions that facilitate the purchase of excess electricity from a CHP system by electric corporations.

Section 2842 requires the Commission, in approving an electrical corporation's procurement plan, to require the plan to incorporate combined heat and power solutions to the maximum degree that is cost effective compared to other competing forms of wholesale generation. Section 2842.2 further requires the Commission to ensure that any planning and upgrades to transmission and distribution systems proposed by the utilities are not inconsistent with promoting CHP systems. Finally, Section 2842.4 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 non-profit organizations of CHP systems that meet specified criteria.[3]

Section 2843 requires the CEC to adopt guidelines that require CHP systems to be designed to reduce waste energy, be sized to meet eligible customer-generator's thermal load, operate continuously in a manner that meets the expected thermal load and optimizes the efficient use of waste heat, and are cost effective, technologically feasible, and environmentally beneficial. Section 2845 requires the ARB to report to the Governor and the Legislature by December 31, 2011, on the reduction in emissions of GHG resulting from the

[3] Pursuant to AB 1613, the "pay-as-you-save" pilot program would enable a prospective CHP customer that is a non-profit organization to finance all of the upfront costs for the purchase and installation of a CHP system by repaying those costs over time through on-bill financing at the difference between what the customer would have paid for electricity and the actual savings derived for a period of ten years.

increase of new electrical generation that utilizes excess waste heat through CHP systems and recommend policies that further the legislation's goals.

Section 2841(b) and (c) requires every electrical corporation to file a standard tariff with the Commission for the purchase of excess electricity from a CHP system, and would authorize the electrical corporation to make the terms of the tariff available in the form of a standard contract. The obligations of publicly-owned utilities are specified in Section 2841.5.

3. Decisions That May Have Addressed Issues Raised in AB 1613

On September 20, 2007, the Commission adopted Decision (D.) 07-09-040, which addressed specific policies and pricing mechanisms applicable to the purchase of energy from qualifying facilities (QFs), including cogeneration facilities, by Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE) and San Diego Gas & Electric Company (SDG&E).[4] Among other things, D.07-09-040 adopted certain provisions for "small" QFs (defined as less than 20 MW) with the goal of encouraging the development of new distributed generation.[5] This included the development of a simplified contract for small QFs.

In December 2007, the Commission issued D.07-12-052 adopting the electric utilities' long-term procurement plans (LTPP). In that decision, the Commission reiterated that "we do not want to see erosion of the utilities' QF supplies; therefore, we expect that as old QF contracts expire, new or renewed

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[4] Similar to the CHP systems under consideration in AB 1613, cogeneration facilities produce both electricity and thermal energy. The criteria for cogeneration QFs are specified at §18 C.F.R. § 292.205.

[5] D.07-09-040 at pp. 121-124 (*slip op*.).

QF contracts will replace them."[6] Thus, in D.07-12-052, the Commission required the utilities to at least maintain their current level of QF capacity over the next decade. Furthermore, D.07-12-052 made note that the Commission anticipates that any changes in QF development and/or re-contracting policy the utilities experience and anticipate will be addressed in their subsequent LTPP filings.[7]

We recognize that the determinations in D.07-09-040 and D.07-12-052 apply to QFs, and not necessarily to the CHP systems under consideration in this OIR. However, we believe it is appropriate to consider the extent to which policies and procedures adopted for small QFs in these decisions address issues raised in AB 1613 and, thus, should be extended to CHP systems.

One of the Legislature's intents in AB 1613 is to reduce wasteful consumption of energy through improved utilization of waste heat whenever it is cost-effective, technologically feasible, and environmentally beneficial, and particularly when it reduces GHG emissions. In Rulemaking (R.) 06-04-009, our GHG rulemaking, the Commission, together with the CEC, is issuing a series of joint recommendations to the ARB for purposes of implementing AB 32 for the electricity sector. In the most recent decision, D.08-03-018, the Commission indicated it planned to further consider the treatment of CHP emissions in the next portion of R.06-04-009:

> "Finally, in response to comments on the proposed decision, we plan to consider further the treatment of combined heat and power (CHP) facilities under this policy framework. We want to avoid unintended negative consequences for CHP, which may be a valuable source of additional GHG emissions

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[6] D.07-09-040 at p. 122 (*slip op.*).

[7] D.07-12-052 at p. 75 (*slip op.*).

> reductions in California. Therefore, we intend to consider further the treatment of emissions from CHP facilities in the next portion of this proceeding, and plan to include recommendations on this issue to ARB in our next decision."[8]

A May 1, 2008 ruling issued in R.06-04-009 requested comments from the parties on many CHP issues. These issues include how to regulate GHG emissions for CHP, and more broadly, whether this Commission, the CEC, and/or the ARB should consider policies or programs to encourage installations of CHP for GHG purposes.

The Commission anticipates issuing its next decision in R.06-04-009 in late summer. Therefore, we will coordinate this rulemaking with our GHG rulemaking to avoid duplication and ensure consistency; issues being resolved in the GHG rulemaking will not be addressed in this rulemaking.

4. Preliminary Scoping Memo

The scope of this proceeding is to implement the policy directives stated in AB 1613. The issues to be considered include:

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 by the investor owned utilities (IOUs).
3. Adopt rates, charges and tariffs for excess electricity purchased from an eligible CHP system by the IOU.
4. Adopt procedures for each IOU to establish a "pay-as-you-save" pilot program for eligible CHP systems.

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[8] D.08-03-018 at p. 10 (*slip op.*).

As a preliminary matter, the Commission must consider whether and to what extent policies and procedures adopted for QFs in D.07-09-040 and D.07-12-052 satisfy the requirements of AB 1613. This will permit the Commission to better define the scope of this proceeding, and to identify the extent to which rate, tariff, or policy changes are needed in order to facilitate the development of CHP systems. Accordingly, we seek comments from parties on the following questions:

1. To what extent can the current policies and provisions adopted for small QFs in D.07-09-040 be extended to CHP systems? Parties are requested to specifically state what additional or further policies are required.
2. Should there be a kilowatt-hour limit on the amount of excess electricity that utilities are required to purchase? Why or why not? If so, what factors should enter into consideration of such a cap?
3. Can a simplified contract adopted for small distributed generation QFs be applied to CHP systems? If not, what provisions should be included in a standard contract for CHP systems?
4. Can and should the tariffs for small QFs be extended to CHP systems? Why or why not?
5. Does the provision in D.07-12-052 that any changes in QF development and/or re-contracting policy the utilities experience and anticipate be addressed in utility LTPP filings satisfy the requirements of Section 2842? Why or why not?

6. Should a repowered CHP facility meeting the requirements of Section 2840.2(a) be considered a "new" CHP system?[9]

We also seek proposals from parties on the "pay-as-you-save" pilot program to finance all the upfront costs for the purchase and installation of CHP systems, pursuant to Section 2842.4.

Parties may also include in their comments any additional issues they believe should be included as part of the implementation of AB 1613.

5. Category of Proceeding and Need for Hearings

Rule 7.1(d) of the Commission's "Rules of Practice and Procedure" requires that an OIR preliminarily determine the category and need for hearing, and contain a preliminary scoping memo. We determine that this proceeding is quasi-legislative, as that term is defined in Rule 1.3(d).[10] It appears that the issues may be resolved through comments and possible workshops, without the need for evidentiary hearings.

Any person who objects to the preliminary categorization of this rulemaking and hearing determination shall raise such objection no later than in their opening comments as set forth below.

6. Schedule

Parties wishing to file opening comments on the issues identified and questions raised in this OIR shall file their comments no later than 30 calendar

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[9] A repowered CHP facility is an existing facility retrofitted or upgraded with new technology. As a result of making this retrofit or upgrade, the existing facility would now meet the sizing and efficiency standards required under AB 1613.

days after the date this OIR is issued; reply comments shall be filed 15 calendar days after opening comments are due.

In their comments, parties should file any objections to the preliminary categorization of this proceeding and hearing determination. Any party who believes that a hearing is required in this rulemaking should, in its comments, identify and describe (1) each disputed material issue of fact requiring hearing and (2) the evidence the party proposes to introduce on each material issue. Any right that a party may otherwise have to a hearing will be waived if the party does not submit such information in its comments. A prehearing conference to discuss the scope of issues and schedule shall be set once opening comments and replies have been received and considered by the assigned Commissioner and Administrative Law Judge (ALJ).

We anticipate that this proceeding will conform to the statutory case management deadline for quasi-legislative matters set forth in Pub. Util. Code § 1701.5, and will be resolved within 18 months of the issuance of the Scoping Memo in this rulemaking.

7. Parties and Service List

The Respondents to this rulemaking are electrical corporations as defined by Pub. Util. Code § 218. Respondents are listed as Attachment B to this proceeding. Respondents shall be parties to the proceeding by virtue of the fact that they are respondents. (See Rule 1.4(d).) This OIR shall also be served on the CEC and CAISO.

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[10] The preliminary determination is not appealable, but shall be confirmed or changed by assigned Commissioner's Ruling pursuant to Rule 7.3, and such ruling as to the category is subject to appeal under Rule 7.6.

We will also serve this OIR on the service lists of R.04-04-003, R.04-04-025, and R.06-02-013 (the QF related OIRs and the LTPP OIR). Such service does not confer party status in this proceeding upon any person or entity, and does not result in that person or entity being placed on the service list for this proceeding. The following procedures regarding party status (except for respondents who are automatically made parties as set forth above) shall be followed.

The service list for this rulemaking shall be established as follows:

(1) Within 15 days of the date of the issuance of this order, any individual or representative of an organization who wishes to be placed on the service list in this rulemaking must send a request to the Commission's Process Office.

(2) The request must be sent both electronically to the Process Office (Process_office@cpuc.ca.gov) and by hard copy to the Process Office at 505 Van Ness Avenue, Room 2000, San Francisco, California 94102.

(3) The request must include the following: (a) this proceeding number, (b) the name of the individual/representative and organization (as appropriate), (c) mailing address, (d) e-mail address[11], (e) telephone number, and (f) where to be listed on the service list (under the "parties," "state service," or "information-only" categories). Only one representative for each entity shall be placed on the party category. All other representatives for that same entity shall request and be placed on the information only category.

(4) As soon as practicable thereafter, the Process Office will post the service list on the Commission's website, at www.cpuc.ca.gov.

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[11] By providing an e-mail address for the official service list in this proceeding, a person consents to e-mail service in any proceeding in which the person is on an official service. (Commission's Rules of Practice and Procedure, Rule 1.10(b).)

Anyone interested in participating in this rulemaking who is unfamiliar with the Commission's procedures should contact the Commission's Public Advisor in Los Angeles at (213) 649-4782 or in San Francisco at (415) 703-7074, (866) 836-7875 (TTY – toll free), or (415) 703-5282 (TTY), or send an e-mail to public.advisor@cpuc.ca.gov. Service of documents in this proceeding shall be made by electronic service pursuant to the Electronic Service Protocols consistent with the Commission's Rules of Practice and Procedure, Rules 1.9 and 1.10. In addition, a hard copy of all documents shall be mailed to the assigned ALJ(s) and Commissioner.

The CEC also has certain requirements under AB 1613, and AB 1613 requires the Commission consult with the CAISO on certain instances (see, e.g., Section 2841(a)). We invite the CEC to join us in this proceeding by continuing the successful collaborative approach that we have pursued in other proceedings. We also welcome the active participation of the CAISO in this rulemaking, as close and careful coordination is indispensable in implementing AB 1613.

8. *Ex Parte* Communications

This proceeding is subject to Rule 8, which specifies standards for engaging in *ex parte* communications and the reporting of such communications. Pursuant to Rule 8.2(a), *ex parte* communications are allowed without restriction or reporting. This *ex parte* requirement may change if the categorization is changed.

9. Intervenor Compensation

Any party that expects to claim intervenor compensation for its participation in this rulemaking shall file its notice of intent to claim intervenor compensation no later than 30 days following the first PHC.

IT IS ORDERED that:

1. A rulemaking is instituted on the Commission's own motion to implement the provisions of Assembly Bill 1613.
2. The Respondents to this rulemaking are electrical corporations as defined by Pub. Util. Code § 218.
3. This rulemaking is preliminarily determined to be quasi-legislative, as that term is defined in Rule 1.3(d) and that hearings are not required.
4. Any person who objects to the preliminary categorization of this rulemaking or determination regarding hearings shall raise such objection in their opening comments to this rulemaking. Any request for hearing shall specifically state: (1) each disputed material issue of fact requiring hearing and (2) the evidence the party proposes to introduce on each material issue.
5. The Executive Director shall cause this OIR to be served on Respondents listed in Attachment B, the California Energy Commission, the California Independent System Operator, and the service lists for R.04-04-003, R.04-04-025, R.06-02-013 and R.08-02-007.

6. The service list in this rulemaking shall be established in accordance with the directives of this order.

7. Service of documents in this proceeding shall be made by electronic service pursuant to the Electronic Service Protocols contained in Commission's Rules of Practice and Procedure, Rules 1.9 and 1.10. In addition, a hard copy of all documents shall be mailed to the assigned Administrative Law Judge(s) (ALJ) and assigned Commissioner.

8. Parties may file opening comments addressing the questions listed in Section 4 above no later than 30 calendar days after the date this OIR issues. Replies shall be filed 15 calendar days after opening comments are due.

9. The assigned Commissioner or ALJ(s) shall schedule a prehearing conference in this rulemaking once opening comments and replies are received and considered.

10. Any party that expects to claim intervenor compensation for its participation in this rulemaking shall file its notice of intent to claim intervenor compensation no later than 30 days following the first PHC.

This order is effective today.

Dated June 26, 2008, at San Francisco, California.

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
TIMOTHY ALAN SIMON
Commissioners