

Decision 08-09-033 September 18, 2008

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Continue Implementation and Administration of California Renewables Portfolio Standard Program.

Rulemaking 08-08-009
(Filed August 21, 2008)

**INTERIM DECISION REGARDING
EXTENSION OF TARIFF/STANDARD CONTRACT
TO OTHER CUSTOMERS OF SDG&E**

1. Summary

An existing San Diego Gas & Electric Company (SDG&E) tariff and standard contract provide for the purchase by SDG&E of electricity generated by public water or wastewater agency customers using eligible facilities. Facilities eligible for this tariff/standard contract are relatively small generation projects powered by renewable energy resources pursuant to California's renewable portfolio standard (RPS) program. This decision authorizes an unopposed extension of the existing tariff/standard contract from public water and wastewater agency customers to all other customers of SDG&E on the same basic terms and conditions. This proceeding remains open.

2. Background

California law requires that every electrical corporation have a specific tariff available for its public water and wastewater agency customers. The tariff must provide for the electrical corporation's purchase of electricity generated by those customers when they use relatively small facilities powered by renewable

energy resources. The law permits the tariff to be offered in the form of a standard contract.¹

The Commission implemented this new law in July 2007. (Decision (D.) 07-07-027.) We also ordered a limited expansion of this tariff/standard contract to other customers² on the same terms and conditions in the service areas of Pacific Gas and Electric Company (PG&E) and Southern California Edison Company (SCE). We declined to do so for SDG&E, however, based on SDG&E's objections at that time. (D.07-07-027, p. 49.) We did not close the inquiry, but directed that further consideration be given to limited issues for the purpose of completing implementation of the law.

We resolved applications for rehearing in February 2008. (D.08-02-010.) The tariffs/standard contracts became effective over the course of the next few months. SDG&E's tariff is titled: "Schedule Water: Water Agency Tariff for Eligible Renewables."

The Administrative Law Judge (ALJ) sought parties' comments regarding remaining issues in order to complete implementation. After considering those comments, an Amended Scoping Memo and Ruling was filed on June 5, 2008. The assigned Commissioner identified five issues, and set a schedule for comments, reply comments and motions.

¹ Assembly Bill (AB) 1969 (Stats. 2006, Ch. 731, effective January 1, 2007), which added Pub. Util. Code § 399.20.

² That is, customers other than public water and wastewater agency customers, also referred to herein as "non-water/non-wastewater" customers.

On or about July 3, 2007, comments were filed by 17 entities.³ On July 14, 2008, reply comments were filed by 11 entities.⁴ Motions for evidentiary hearing were due by July 18, 2008.⁵ No motions were filed. No hearing was held.

The first of five issues is whether or not the existing program for other (non-water/non-wastewater) customers of PG&E and SCE should be extended to other customers of SDG&E. We address that issue in this decision. The remaining four issues will be addressed in a subsequent decision, to the extent later determined necessary or appropriate.

3. Discussion

On the question of whether the SDG&E's tariff/standard contract for water/wastewater customers should be extended to other (non-water/non-wastewater) customers, SDG&E now says: "Yes."⁶ No party opposes, and several parties support, the extension.⁷

³ The 17 entities are: PG&E, SCE, SDG&E, PacifiCorp, Sierra Pacific Power Company (Sierra), Division of Ratepayer Advocates, Green Power Institute (GPI), Independent Energy Producers Association, Alliance for Retail Energy Markets (AReM), Sempra Energy Solutions LLC, California Farm Bureau Federation, Sustainable Conservation, The Vote Solar Initiative, Recurrent Energy, Inc., Solar Alliance, The California Solar Energy Industries Association, and Greenvolts.

⁴ The 11 entities are: PG&E, SCE, Sierra, GPI, AReM, The Vote Solar Initiative, Recurrent Energy, Inc., Solar Alliance, The California Solar Energy Industries Association, and Greenvolts, and The Utility Reform Network.

⁵ This would be, for example, if a party wished to cross-examine another party on an alleged material but disputed fact stated in comments or reply comments.

⁶ SDG&E Comments, p. 5.

⁷ PacifiCorp and Sierra express concerns, but their concerns are in the context of whether the extension should apply in their service areas. Such extension was not intended to be part of Issue 1. The shortened title of Issue 1 ("Extend tariff to other customers of five utilities") may have created confusion. The intended limitation to

Footnote continued on next page

We authorize the unopposed extension for several reasons, including those stated by parties. For example, SDG&E says:

Such non-water/wastewater customers should be eligible to participate in SDG&E's AB 1969 tariff/standard contract subject to basic terms and conditions that are identical to those applicable to water/wastewater customers. Such consistency will ensure administrative simplicity and will prevent the delay associated with development of a second set of eligibility criteria applicable to non-water/wastewater customers.⁸

The Vote Solar Initiative and Recurrent Energy, Inc. (collectively "The Joint Solar Parties") recommend extension and state:

The Joint Solar Parties believe that the basic terms and conditions for the tariff/standard contracts developed in this proceeding should be consistent across the IOUs' [investor-owned utilities] service territories. Consistency, simplicity, and transparency in program requirements will facilitate participation by small renewable developers.⁹

In addition to consistency, California Farm Bureau Federation and Sustainable Conservation (collectively "Joint Parties") assert that extending the tariffs on the same basic terms is necessary to create a level playing field. Otherwise, for example, Joint Parties say a dairy with a digester system used to generate electricity in the service area of PG&E or SCE may have a competitive

SDG&E, however, is clear from the specifically stated issue immediately after the shortened title, and the three specific questions identified for comment under Issue 1.

⁸ SDG&E Comments, pp. 2-3.

⁹ The Joint Solar Parties Comments, p. 3.

advantage in managing its costs compared to a similar dairy in the service area of SDG&E.

Some parties raise issues which might result in authorizing the extension of the tariff/standard contract but with modifications for some or all customers. We decline to make modifications for the reasons discussed more below. Rather, we authorize the extension to other customers of SDG&E on the same basic terms and conditions as now permitted for public water and wastewater agency customers of SDG&E, just as we did for the expansion to other customers for PG&E and SCE.¹⁰ This makes a parallel program for each of the three largest IOUs.

For example, we adopt both a tariff and standard contract. (D.07-07-027, pp. 46-47.) We employ the same capacity allocations and limits (i.e., 20.1 megawatt (MW) for SDG&E). The capacity allocation may be updated on an as-needed basis. The purchase rate is the market price referent, without reduction for administrative or other fees. We limit eligible projects to 1.5 MW or less. Participants in this expanded availability are not simultaneously eligible for the self-generation incentive program (SGIP), net metering program, California Solar Initiative (CSI), or other similar programs. The tariff must provide for full buy/sell, with an option for the seller to select sales of excess only. The buyer may elect to terminate the agreement if commercial operation has not commenced within 18 months of the date of the agreement, or if the project makes no sales for a period of 12 consecutive months (subject to a reasonable opportunity for the seller to cure delays or non-operation).

¹⁰ See, for example, Ordering Paragraph 2 and Attachment A of D.07-07-027.

Regarding possible modifications, SDG&E makes three recommendations in its discussion of the program extension to other customers, and recommends that these modifications apply to all customers (i.e., water/wastewater as well as non-water/non-wastewater).¹¹ First, SDG&E urges that we revisit the advisability of including the excess sales option, and reverse this choice.¹² Second, SDG&E recommends reversal of the provision that makes customers using the § 399.20 tariff/standard contract ineligible to also participate in other incentive programs, such as the SGIP or CSI. Third, SDG&E supports modification to permit increased ownership options.¹³ Also regarding possible modification, Joint Parties recommend reconsideration of an issue regarding payments to renewable generators as it applies specifically to SDG&E.¹⁴

We do not adopt these modifications. We decline to consider more extensive program changes here, including changes to the existing program for water and wastewater customers. Rather, we decide the more limited issue of

¹¹ SDG&E Comments, p. 5.

¹² Unless specifically raised as an issue by the Commission (e.g., in a decision) or assigned Commissioner (e.g., in the Amended Scoping Memo and Ruling), we do not revisit issues here. The additional work on § 399.20 tariffs/standard contracts is to complete program implementation based on D.07-07-027, D.08-02-010 and issues identified in the Amended Scoping Memo and Ruling. It is not for parties to seek review and reversal of a previous decision. Other vehicles are used to revisit and seek reversal of a decided matter (e.g., an application for rehearing).

¹³ This is specifically raised in Issue 4, and is not addressed here.

¹⁴ Joint Parties Comments, p. 6. Joint Parties contend that payment by SDG&E should be made for purchases of excess generation when the amount payable reaches \$50, not \$1,000 as is now in SDG&E's tariff/standard contract for water/wastewater customers. We considered that recommendation for SDG&E, but did not adopt it in July 2007. (D.07-07-027, p. 42.) As noted in a previous footnote, this is not the place for a party to seek to revisit a decided issue.

extending or not extending the program to other customers of SDG&E. We are persuaded by the unopposed support to adopt program extension to other customers, and to do so on the same basic terms and conditions. We do this based on the principles of consistency, simplicity, avoidance of delay, transparency and level playing field. We may or may not consider more extensive program changes if and when we examine the other four issues in the Amended Scoping Memo, but do not do so now. We also do not address payment mechanics already addressed for SDG&E in July 2007.

4. Comments on Proposed Decision

On September 3, 2008, the proposed decision of ALJ Burton W. Mattson in this matter was mailed to parties in accordance with Section 311 of the Public Utilities Code and Rule 14.3 of the Commission's Rules of Practice and Procedure (Rules). The Commission may reduce or waive the period for public review and comment in proceedings wherein no hearing was conducted, the matter is uncontested and the decision grants the relief requested. (Rule 14.6(c)(2).) No hearing was conducted on the issue addressed in this decision, and on that issue the matter is uncontested. The relief was identified in the June 5, 2008 Amended Scoping Memo and Ruling. SDG&E affirmatively requests the relief in its July 3, 2008 Comments, and this decision grants that relief. As a result, comments were shortened to five days, and reply comments to two days.

Comments in support of the proposed decision were filed on September 8, 2008 by California Farm Bureau Federation. No reply comments were filed.

5. Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner, and Anne E. Simon and Burton W. Mattson are the assigned ALJs for this proceeding.

Finding of Fact

1. SDG&E supports extending eligibility for its existing tariff/standard contract (available to public water/wastewater agency customers in “Schedule Water: Water Agency Tariff for Eligible Renewables,”) to all other (non-water/non-wastewater) customers on the same basic terms and conditions.
2. No party opposes, and several parties support, the extension.
3. No reason is known to decline authorizing the unopposed extension.
4. An extension on the same basic terms and conditions promotes the principles of consistency, simplicity, avoidance of delay, transparency and level playing field, and does not revisit an already decided issue.

Conclusion of Law

1. No hearing is necessary, no party contests the requested relief, and SDG&E affirmatively supports extension to all other customers.
2. The unopposed extension within SDG&E’s service area of the existing tariff and standard contract for public water and wastewater agency customers to all other customers on the same basic terms and conditions should be adopted.
3. The comment period should be reduced to five days from the date the proposed decision was filed, and the reply comment period to two days from the date comments were filed.
4. This order should be effective today to permit speedy implementation of unopposed relief in furtherance of RPS Program goals.

INTERIM ORDER

IT IS ORDERED that:

1. Within seven days of the date this order is mailed, San Diego Gas & Electric Company (SDG&E) shall file and serve an advice letter. The advice letter

shall transmit a tariff and standard contract. The advice letter, tariff and standard contract shall be in compliance with General Order 96-B. The advice letter may be filed pursuant to either Tier 1 or Tier 2. The advice letter, tariff and standard contract shall extend eligibility for SDG&E's current tariff and standard contract regarding certain purchases by SDG&E of electricity from public water or wastewater agency customers to all other SDG&E customers on the same basic terms and conditions. This shall be done in a manner the same as, or similar to, the parallel extension for customers other than public water and wastewater agency customers in the service areas of Pacific Gas and Electric Company and Southern California Edison Company ordered in Ordering Paragraph (OP) 2 of Decision (D.) 07-07-027. The tariff and standard contract shall be separate and distinct from any other similar SDG&E tariff and standard contract, such as SDG&E's "Schedule Water: Water Agency Tariff for Eligible Renewables."

2. Consistent with the provisions of OP 3 of D.07-07-027, SDG&E shall provide information on this new tariff, standard contract and this expansion as and when required by the Commission.

3. Consistent with the provisions of OP 4 of D.07-07-027, SDG&E shall, upon the new tariff/standard contract becoming effective, notify, to the extent reasonable, its potentially interested or affected customers of the availability of this new opportunity. SDG&E shall maintain current information about this opportunity on its web page. Before its issuance or publication, SDG&E shall provide the Commissions' Public Advisor and the Energy Division Director an opportunity to comment on the specifics of the notice and web page. SDG&E shall modify the notice and web page to the extent directed by the Public Advisor and/or Energy Division Director.

4. Rulemaking 08-08-009 remains open.

This order is effective today.

Dated September 18, 2008, at San Francisco, California.

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