**Mailed 4/18/2003**

Decision 03-04-060 April 17, 2003

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

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| Order Instituting Rulemaking into Distributed Generation. | Rulemaking 99-10-025 (Filed October 21, 1999) |

# FINAL OPINION

## Summary

For purposes of fulfilling the requirements of Pub. Util. Code § 353.13(a) on an interim basis, combined heat and power applications and renewable resources, as defined in Decision (D.) 02-10-062, sized 5 megawatts or smaller, installed between May 2001 and December 31, 2004, shall be served under the same rates as customers with similar load profiles that do not install distributed generation. The same rate treatment shall be extended to ultra-clean resources, as defined in Pub. Util. Code § 353.2(a), sized 5 megawatts or smaller, installed between January 1, 2003 and December 31, 2005.

## Background

On December 27, 2002, the administrative law judge (ALJ) issued a ruling regarding implementation of Pub. Util. Code § 353.13. As described in D.02-09-037, which dismissed the standby rate applications by Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), and San Diego Gas & Electric Company (SDG&E) without prejudice, modifications to rates of one set of customers inherently carries with it tradeoffs for other customer classes. For that reason, we indicated that implementation of the distributed generation standby rate design policies adopted in D.01-07-027

should be implemented concurrent with comprehensive rate design changes. Thus, a temporary step to implement § 353.13 is necessary because the Commission has not yet completed the process of setting new rates for distributed generation customers as required by § 353.13(a)(1). The ALJ ruling proposed a limited extension of availability of tariffs under § 353.13 to provide certainty of ratemaking treatment for customers considering installing distributed generation after the statutory rates expire, but before the Commission has implemented the standby rate design policies adopted in D.01-07-027.

## ALJ Proposal

The ALJ ruling proposed the following approach:

- gas-fired combined heat and power applications, 5 megawatt (MW) and smaller, installed prior to December 31, 2004 that meet all other criteria set forth in § 353.1 would be served under the same rates as customers with similar load profiles that do not install distributed generation;
- renewable resources, as defined in D.02-10-062, 20 MW and smaller, installed prior to December 31, 2004 that meet all other criteria set forth in § 353.1 would be served under the same rates as customers with similar load profiles that do not install distributed generation;
- the tariffs would be in effect until June 1, 2011; and
- the actual costs and benefits of the distributed generation customers receiving these tariffs would be tracked consistent with Resolutions E-3777, E-3778, and E-3779 to achieve appropriate assignment of net costs.

## Comments on ALJ Proposal

Several parties filed opening comments in response to the ALJ ruling: PG&E, SCE, SDG&E, Center for Energy Efficiency and Renewable Technologies

(CEERT), and Joint Parties Interested in Distributed Generation (JPinDG). Reply comments were filed by Department of General Services (DGS), JPinDG, Clarus Energy Partners, L.P. (Clarus), and California Independent Petroleum Association (CIPA).[1]

PG&E and SCE raise concerns that the approach proposed is not required by § 353.13, but concede that it is within the Commission's discretion to extend availability of the rates specified in the statute. SDG&E states that it is unsure if extension is permissible under the statute, but does not further pursue this point. PG&E believes that the extension envisioned by the ALJ ruling is inconsistent with the standby rate design policies adopted in D.01-07-027.

PG&E, SCE, and SDG&E suggest various modifications to the approach proposed by the ALJ ruling, if the Commission chooses to implement an extension. For example, PG&E argues that the ALJ ruling would expand availability of the statutory rates to units that came online prior to May 2001 and that the tariffs would extend through June 2011 for units that do not use combined heat and power technology. SDG&E recommends that the tariffs not be extended to renewable generators greater than 10 MW because that is generally the largest size unit that can be accommodated on its distribution circuits. SCE would limit any extension to renewable distributed generators of 5 MW or less and only for units installed before December 31, 2003.

[1] Clarus concurrently filed a Motion to Intervene. The Motion is granted. CIPA has not previously participated or appeared in this proceeding and did not file a motion to intervene. Because CIPA's reply comments raise no new arguments we accept them for filing, but caution CIPA that should it wish to remain active in the future it should formally request party status.

Those parties who generally support the ALJ ruling's approach likewise suggest modifications. JPinDG would provide for extension of an additional six months in the event that the rate design applications were not decided by December 31, 2004. JPinDG would also clarify that any combined heat and power unit, not just gas fired combined heat and power units, would be eligible for the extension. CEERT would extend availability of the tariffs to ultra-clean distributed generators that go online through December 31, 2005, in an effort to coordinate with the requirements of § 353.2. Clarus suggests that the tariffs should be available for 12 months after the rate design applications are decided.

## Discussion

Section 353.13 clearly does not require that the Commission extend eligibility for the same rates for customers utilizing distributed generation as customers with similar load profiles that do not install distributed generation beyond the dates prescribed therein. However, the statute contemplates that the Commission will have completed several activities, among them revising rates for customers utilizing distributed generation, before availability of these tariffs expires. Because it is clear that this activity will not be completed on the timeline anticipated by the legislation, we must take steps to provide certainty to this industry while we complete our review of the utilities' rate design applications. It is for this reason that we adopt an extension similar to that recommended in the ALJ ruling.

We do not believe that the ALJ intended to expand availability of these tariffs to units installed prior to May 2001 as PG&E argues. In addition, we clarify that the tariffs in existence under § 353.3 for gas-fired installations that do not operate in a combined heat and power application expire on June 1, 2006. We are also convinced that expanding the availability of these tariffs beyond the

units defined by the Legislature in § 353.1 with the exception of the initial operation date would be inappropriate at this time. Although we intend to act promptly on utility rate design applications, it is certainly possible that no decision will have issued for a particular utility by the December 31, 2004 date set forth in the ALJ ruling. We agree with JPinDG that a six-month extension is appropriate in those cases.

Thus, we limit availability of these tariffs to combined heat and power applications and renewable resources, as defined in D.02-10-062, to those 5 MW and under, installed between May 2001 and December 31, 2004. Extensions of six months should be automatic if revised rates, implementing D.01-07-027, have not been adopted by December 31, 2004 or every six months thereafter. This will allow for a clear understanding of the rates in effect for these customers, should there be delay in a decision on the utilities' rate design proposals. For ultra-clean resources that meet the definitions set forth in § 353.2(a), we extend availability of these tariffs through December 31, 2005, with six-month extensions automatically enacted if no decision has been issued on utility rate design applications. This approach allows the Commission and the parties to focus on implementing the rate design requirements set forth in D.01-07-027 in the utilities' rate design applications and § 353.13 while providing clarity to the distributed generation industry about the rates in effect while those applications are pending.

In order to implement § 353.9, we have required the utilities to track the actual costs and benefits of distributed generation units receiving rates under § 353.3 and will do so also for customers eligible for the extension we authorize today. With this information, we can ensure that in each utility's rate design proceeding any costs are recovered within the customer class and that any net

costs or benefits are properly assigned. In this manner, we will achieve compliance with § 353.13(a).

## Procedural Matters

This decision resolves the last issue we intend to consider in this proceeding. D.02-02-068 indicated that the Commission intends to open a new rulemaking to allow for ongoing monitoring and modification of policies pertaining to distributed generation. Any unresolved issues that have been identified during the course of this proceeding shall be considered there.

## Comments on Draft Decision

The draft decision of the ALJ in this matter was mailed to the parties in accordance with § 311(g)(1) of the Pub. Util. Code and Rule 77.7 of the Rules of Practice and Procedure. Comments were filed on April 7, 2003 by PG&E, SCE, DGS, and JpinDG.[2] Reply comments were filed on April 14, 2003 by SCE, DGS, and JpinDG. Minor changes have been made throughout the decision as a result of the comments.

## Assignment of Proceeding

Loretta M. Lynch is the Assigned Commissioner and Michelle Cooke and Timothy Sullivan are the ALJs assigned in this proceeding.

[2] The County Sanitation Districts of Los Angeles County (Districts) also submitted comments on April 7, 2003 although they were not a party to the proceeding. Districts subsequently filed a petition to intervene in the proceeding. Districts should be granted party status and their comments accepted for filing on April 7, 2003.

## Findings of Fact

1. A temporary step to implement § 353.13 is necessary because the Commission has not yet completed the process of setting new rates for distributed generation customers as required by § 353.13(a)(1).

2. Availability of these tariffs is not extended to units installed prior to May 2001.

3. The tariffs in existence under § 353.3 for installations that do not operate in a combined heat and power application expire on June 1, 2006.

4. It is possible that no decision implementing D.01-07-027 will have been issued for a particular utility by December 31, 2004.

## Conclusions of Law

1. Because it is clear that revised rates for customers utilizing distributed generation will not be completed on the timeline anticipated by § 353.13, we must take steps to provide certainty to this industry while we complete our review of the utilities' rate design applications.

2. Expanding availability of these tariffs beyond the units defined by the Legislature would be inappropriate at this time.

3. Availability of these tariffs should be limited to combined heat and power applications and renewable resources, as defined in D.02-10-062, to those 5 MW and under, installed between May 2001 and December 31, 2004.

4. Extensions of six months should be automatic if revised rates implementing D.01-07-027 have not been adopted by December 31, 2004, or every six months thereafter.

5. For ultra-clean resources that meet the definitions set forth in §353.2(a), we should extend availability of these tariffs through December 31, 2005, with

six-month extensions of availability enacted if no decision has been issued on utility rate design applications.

6. By tracking the actual costs and benefits of distributed generation units receiving rates under §§ 353.3 and 353.13, we can ensure that in each utility's rate design proceeding, any costs are recovered within the customer class and any net costs or benefits are properly assigned, achieving compliance with § 353.13(a).

## FINAL ORDER

Therefore, **IT IS ORDERED** that:

1. Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), and San Diego Gas & Electric Company (SDG&E) shall modify their tariffs to allow combined heat and power applications and renewable resources, as defined in Decision (D.) 02-10-062, sized 5 megawatts (MW) or smaller, installed between May 2001 and December 31, 2004, that meet all other criteria in § 353.1, to be served under the same rates as customers with similar load profiles that do not install distributed generation. The tariffs shall be in effect until June 1, 2011.

2. PG&E, SCE, and SDG&E shall modify their tariffs to allow ultra-clean resources, as defined in Pub. Util. Code § 353.2(a), sized 5 MW or smaller, installed between January 1, 2003 and December 31, 2005, that meet all other criteria in § 353.1, to be served under the same rates as customers with similar load profiles that do not install distributed generation. The tariffs shall be in effect until June 1, 2011.

3. The revised tariffs shall reflect that eligibility for the rates will automatically continue in effect for additional six-month periods in the event that no decision has been adopted to revise rates consistent with the policies adopted in D.01-07-027, prior to the dates set forth in Ordering Paragraphs 1 and 2, or every six months thereafter.

4. Actual costs and benefits of the distributed generation customers receiving these tariffs shall be tracked consistent with Resolutions E-3777, E-3778, and E-3779 to achieve appropriate assignment of any net costs or benefits.

5. Any unresolved issues identified during the course of this proceeding shall be considered in a successor rulemaking.

6. This proceeding is closed.

This order is effective today.

Dated April 17, 2003, at San Francisco, California.

MICHAEL R. PEEVEY
President
CARL W. WOOD
LORETTA M. LYNCH
GEOFFREY F. BROWN
SUSAN P. KENNEDY
Commissioners