

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

RESOLUTION E-4137  
February 14, 2008

R E S O L U T I O N

Resolution E-4137. Pacific Gas and Electric Company (PG&E), Southern California Edison (SCE), San Diego Gas and Electric Company (SDG&E), Pacific Power, Sierra Pacific, Mountain Utilities (MU), and Golden State Water Company (GSWC) operating as Bear Valley Electric Service (BVES) (collectively the "respondents") seek approval for their proposed Tariffs for Purchase of Eligible Renewable Generation. **Approved with Modifications**

By PG&E Advice Letter 3100-E and 3098-E (filed on August 3, 2007), SCE Advice Letter 2148-E (filed on August 2, 2007), SDG&E Advice Letter 1918-E (submitted August 2, 2007), Pacific Power Advice Letter 350-E (filed August 3, 2007.), Sierra Pacific Advice Letter 331-E (filed August 3, 2007), MU Advice Letter 73-E (filed August 14, 2007), and BVES Advice Letter 219-E (filed August 13, 2007).

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SUMMARY

In compliance with Assembly Bill (AB) 1969 (Yee, 2006), Public Utilities Code (PU Code) Section 399.20, and Ordering Paragraph (OP) 1 of Decision (D.) 07-07-027, the respondents submitted Advice Letters with tariffs and standard contracts for the purchase of eligible renewable generation from public water and wastewater facilities. D.07-07-027 authorized two expansions of the tariffs. As directed in OP 2, PG&E and SCE also submitted separate tariffs for the purchase of eligible renewable generation from entities other than public water and wastewater agencies. In addition, PG&E, SCE and SDG&E were all required to offer both a *full buy/sell* option and an *excess sale* option in each tariff submitted for approval. Other respondents were only required to offer the *full buy/sell* option, but could choose to offer both. Under the *full buy/sell* option, the utility purchases all eligible renewable generation, net of station use, produced by the facility. The *excess sale* option allows the eligible facility to use some of the renewable energy produced to meet onsite load and sell the rest to the utility.

The **rate** used must be stated in each tariff or standard contract and is determined by the current **Market Price Referent (MPR)** table in effect on the date the contract is signed. However, the specific MPR rate *within* the table is based on the date of actual

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commercial operation. The rates are set for a period of 10, 15, or 20 years and adjusted by Time of Use (TOU)<sup>1</sup> factors as authorized by the Commission. PU Code Section 399.20 requires that the tariffs for water and wastewater facilities be made available until the statewide cumulative rated capacity of eligible sellers reaches **250 megawatts (MW)**. Each utility received a proportionate share of the **250MW** as the **Allocation** they are expected to offer service to, based on the ratio of its peak demand to the total statewide peak demand of all electrical corporations. The Commission's voluntary expansion of the tariffs to non-water and -wastewater facilities is limited to **228.447 MW** statewide, representing the sum of PG&E's and SCE's original allocation. The Commission declined to extend the allocation for non-water and wastewater facilities to the other respondents, which meant that the expanded allocation is not a whole number because the two affected utilities statewide proportional share of peak demand is not a whole number. The statewide total for both sets of tariffs is **478.447 MW**.

**Interconnection** may be accomplished using Commission-approved Rule 21, or FERC-Small Generator Interconnection Procedures (SGIP), as long as the process follows the principles of timely review and disposition, and does not present a barrier to project completion.<sup>2</sup>

The Advice Letters are approved with the following modifications:

- PG&E will amend section 2.7 of the Power Purchase Agreement (PPA) accompanying the tariff in both AL 3100-E and AL 3098-E to comply with D.07-07-027, OP 1 and 2, and to more narrowly limit participation in other California ratepayer subsidized programs related to energy production.
- SCE will amend section 6.3 of both WATER Excess Agreement and CREST Excess Agreement in AL 2148-E to limit transfer of Green Attributes to those Attributes associated with energy sold to SCE as required by D.07-07-027, OP 1 and 2.
- SCE's Substitute Sheets for AL 2148-E will be included in the master AL 2148-E as per SCE's September 4, 2007 filing which includes the current MPR table in the tariff/PPA, as required by D.07-07-027, OP 1 and 2.

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<sup>1</sup> Alternatively, these are referred to as Time of Delivery (TOD) factors. In either case, this means adjusting the MPR for both the time of day (e.g. peak, off-peak, shoulder) and season (e.g. winter, summer)

<sup>2</sup> D.07-07-027, p. 39-40.

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- SDG&E will amend Section 6.3 of its Public Water and Wastewater Agency Agreement (Form 160-1000) in AL 1918-E to limit the transfer of Green Attributes only to those Attributes associated with the actual sale of energy to SDG&E, as required by D.07-07-027, OP 1.
- Pacific Power will amend Appendix C: Contract Pricing, section C.3 to limit the transfer of Green Attributes to those Attributes associated with energy sold to Pacific Power, as required by D.07-07-027, OP 1.
- Both Mountain Utilities (MU) and BVES will include a table with the current MPR in the appropriate section of their filing to comply with D.07-07-027, OP 1. As indicated in D.07-07-027, this may be in the tariff, but is required in the associated PPA.
- All other Respondents will substitute the current (2007) MPR table for the 2006 MPR table currently in their ALs.
- All Respondents will change the definition of eligible electric generation facility to match the language in PU Code Section 399.20 as amended by AB 946 (Krekorian, 2007).
- All tariffs will have an effective date of February 14th, 2008 and will be available for use from that day forward.

**BACKGROUND**

AB 1969, approved on September 29, 2006, adds PU Code Section 399.20, which requires all electrical corporations to file with the California Public Utilities Commission (Commission) a standard tariff to provide for payment for every kilowatthour (kWh) of renewable energy output produced at an eligible electric generation facility, as specified, at the market price determined by the Commission pursuant to PU Code Section 399.15 for a period of 10, 15 or 20 years. For purposes of PU Code Section 399.20, the electric generation facility must be an eligible renewable energy resource<sup>3</sup> owned and operated by a public water or wastewater agency that is a retail customer of the electrical corporation, interconnected and operated in parallel

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<sup>3</sup> As defined in PU Code Section 399.12

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with the electrical corporation's transmission and distribution system and be sized to offset part or all of the electric demand of the public agency.

On May 25, 2006, the Commission established Order Instituting Rulemaking (OIR) (R)06-05-027 to *Continue Implementation and Administration of California Renewable Portfolio Standard Program*. On March 12, 2007, the assigned Commissioner in R.06-05-027 issued an Amended Scoping Memo and Ruling setting forth the process to implement PU Code Section 399.20. The Amended Scoping Memo and Ruling ordered the utilities to submit draft tariffs in compliance with PU Code Section 399.20 and consider expansion of the availability of its provisions to customers who are not a public water or wastewater agency. The Utilities duly filed their proposals on or about April 11<sup>th</sup>, 2007. The proceeding ran its course, with comments, reply comments and identification of various other issues. The Commission held a workshop with all the parties on June 5<sup>th</sup>, 2007.

On July 26, 2007, the Commission adopted D.07-07-027 ordering each utility to file an advice letter to include tariff provisions implementing PU Code Section 399.20. Additionally, D.07-07-027 ordered PG&E and SCE to file tariffs to expand the purchase of renewable generation to customers who are not a public water or wastewater agency.<sup>4</sup> The Order included a requirement that PG&E, SCE and SDG&E offer both a *full buy/sell option* (as interpreted by SCE and SDG&E) and an *excess sales option* (as interpreted by PG&E) to customers, while the other utilities are not required to offer the *excess sales option*, but may if they so choose. The Decision emphasizes the Commission's preference for a simple, streamlined program<sup>5</sup>, and that principle carries over to Orders in D.07-07-027 regarding: the inclusion of Rates in each tariff or standard contract; the use of the uniform statewide Market Price Referent (MPR) as the basis for those rates; the use of Standard Terms and Conditions; and existing Interconnection agreements.<sup>6</sup>

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<sup>4</sup> Eligible customer generation must meet the same requirements as those applicable to water and wastewater agencies pursuant to Section 399.20.

<sup>5</sup> See, for example, D.07-07-027 p. 7-8, "...while the proposed tariff/standard contract package requires each seller to select limited items (e.g., term of contract), the package is otherwise on a 'take it or leave it' basis. We agree with this approach. The fundamental principle here is a simple, streamlined program. A potential seller can review the tariff, standard contract and rates; perform its own analysis; and make necessary decisions (e.g., contract length, whether to sign the contract). The seller does not need to incur potentially substantial time and expense in lengthy or complex negotiations."

<sup>6</sup> Appendix A of D.07-07-027 contains a summary discussion of the major changes and inclusions required in the tariffs.

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The tariffs must be made available until the combined statewide cumulative rated capacity of eligible generation installed in water and wastewater facilities reaches **250 MW**. The Commission's expansion of the program for non-water and -wastewater facilities includes an additional **228.447 MW** of capacity, for a total of **478.447 MW** in the program. The selection of such an odd number is based explicitly on the primary allocations for PG&E and SCE, the only two respondents effected by the Commission's expansion. **Capacity allocations** may be updated as needed and appropriate. SCE, PG&E and SDG&E should provide service for projects up to **1.5 MW** effective capacity, while the other respondents are only required to provide service up to **1.0 MW** of effective capacity. The table below shows each utility's allocated capacity in kilowatts (kW).

**Table 1. Allocated Capacity per Utility**

<b>Electrical Corporation</b>	<b>Share of 2005 Coincident Peak Demand (%)</b>	<b>Water and Wastewater Capacity Allocation (MW)</b>	<b>Expanded Capacity Allocation - Non-water and -wastewater (MW)</b>
SCE	49.538	123.844	123.844
PG&E	41.841	104.603	104.603
SDG&E	8.022	20.055	-
PacifiCorp	0.405	1.013	-
Sierra	0.162	0.404	-
BVES	0.031	0.077	-
MU	0.001	0.003	-
<b>TOTAL</b>	<b>100.000</b>	<b>250.000</b>	<b>228.447</b>

The Decision agreed with comments that timely response to **interconnection** requests is essential, but also agreed that adequate protocols already exist in Commission-approved **Rule 21** and **FERC-SGIP** procedures and processes. D.07-07-027 does not specify which protocol should be used, only that the principles of orderly and timely interconnection hold in all cases. Complaints and enforcement will be considered as needed, and the matter can be reconsidered if the Commission is presented with convincing evidence of a problem or systematic pattern of abuse.

The **rate** that sellers will receive for their eligible renewable generation sold onto the grid will be the market price as determined by the Commission. Each year, the

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Commission updates the **Market Price Referent (MPR)** for use in 10, 15, and 20 year long term contracts for the purchase of renewable generation under its Renewable Portfolio Standard (RPS). PU Code Section 399.20(d) clearly states that the MPR will be the basis for the tariff rate in this program, and D.07-07-027 further instructs that the rate will be time differentiated, as is established practice at the Commission.<sup>7</sup> The MPR is the predicted annual average cost of production for a baseload proxy plant. Energy produced during utility peak hours should command a higher price reflecting the higher cost of generation during those hours. Conversely, energy produced during off-peak hours is less valuable to the utility and the tariff should vary accordingly. Using Time of Delivery (TOD) adjustment factors will result in annual payments under this program that better match with the MPR.

The current MPR table and the TOD adjustment factors must be readily available in the Tariff or PPA. The date that a contract is signed or that service under one of the tariffs is requested will determine which MPR table is applicable, but the date of actual commercial operation will determine which specific MPR rate is applicable. Only BVES, Sierra Pacific and MU may use an annual average if they choose. Below is the current 2007 MPR table, adopted October 4, 2007 in Resolution E-4118.

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<sup>7</sup> D.07-07-027, pp. 23-24.

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<b>Adopted 2007 Market Price Referents<sup>8</sup></b> (Nominal - dollars/kWh)			
<b>Resource Type</b>	<b>10-Year</b>	<b>15-Year</b>	<b>20-Year</b>
2008 Baseload MPR	0.09271	0.09383	0.09572
2009 Baseload MPR	0.09302	0.09475	0.09696
2010 Baseload MPR	0.09357	0.09591	0.09840
2011 Baseload MPR	0.09412	0.09696	0.09969
2012 Baseload MPR	0.09518	0.09844	0.10139
2013 Baseload MPR	0.09605	0.09965	0.10275
2014 Baseload MPR	0.09722	0.10107	0.10430
2015 Baseload MPR	0.09872	0.10274	0.10606
2016 Baseload MPR	0.10053	0.10466	0.10804
2017 Baseload MPR	0.10269	0.10685	0.11143
2018 Baseload MPR	0.10478	0.11016	0.11489
2019 Baseload MPR	0.10818	0.11370	0.11720
2020 Baseload MPR	0.11172	0.11603	0.11954

To calculate the actual price paid for eligible renewable power under this program, the metered energy production at the point of interconnection is multiplied by the applicable MPR and then by the applicable TOD adjustment factor. So if:

**$A_t$  = kWh of energy distributed onto the utility grid at time "t"**

**$B$  = MPR fixed at time of actual commercial operation**

**$C_t$  = TOD adjustment factor for time "t"**

then the price paid in \$/kWh ( $P_t$ ) for any given kWh produced and sold to the utility at time "t" would be calculated by the formula

$$A_t * B * C_t = P_t$$

<sup>8</sup> Note: using 2008 as the base year, Staff calculates MPRs for 2008-2020 that reflect different project online dates. Link to 2007 MPR Model: [http://docs.cpuc.ca.gov/word\\_pdf/FINAL\\_RESOLUTION/73594.PDF](http://docs.cpuc.ca.gov/word_pdf/FINAL_RESOLUTION/73594.PDF)

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Respondents filed Advice Letters in early August to establish their respective tariffs and agreements for purchase of eligible renewable generation from public water and wastewater facilities with a limited expansion to eligible renewable generation from non-water and waste-water facilities.

**Table 3. Time Dependent Value for kWh Sold Under the Feed-In Tariffs (\$/kWh)**

IOU	Summer Weekday (\$/kWh)			Winter Weekday (\$/kWh)		
	Peak	Shoulder	Off-Peak	Peak	Shoulder	Off-Peak
PG&E	\$0.18	\$0.08	\$0.06	\$0.14	\$0.10	\$0.07
SCE	\$0.31	\$0.12	\$0.06	\$0.10	\$0.08	\$0.06
SDG&E	\$0.15	\$0.10	\$0.08	\$0.11	\$0.10	\$0.07

Table 3 is a representative sample of the prices available for the purchase of renewable generation under the tariffs filed by the major IOUs. These prices would be for a 15 year contract at a facility that starts operation in 2008. The fixed MPR would be \$0.09383/kWh, and this would be adjusted for actual time of delivery according to the schedule in the tariff under which service was requested.

**Table 4. Average Weekday Price for Selected Generation Profiles (\$/kWh)**

IOU	Summer Weekday (\$/kWh)			Winter Weekday (\$/kWh)		
	24 hr. Avg*	Solar **	Off-peak***	24 hr. Avg*	Solar**	Off Peak***
PG&E	\$0.11	\$0.15	\$0.07	\$0.10	\$0.12	\$0.08
SCE	\$0.15	\$0.22	\$0.09	\$0.08	\$0.10	\$0.07
SDG&E	\$0.11	\$0.14	\$0.09	\$0.10	\$0.11	\$0.09

\*Average daily price for constant generation or random, intermittent generation with no storage, like a wind installation.

\*\*For sale of kWh between the hours of 8am and 6pm, or roughly the time when solar PV can be expected to provide power.

\*\*\*For generation from 6pm to noon, generally listed as off-peak.

Table 4 presents some representative prices for different generation profiles. These do not represent a full analysis. Refer to the individual tariffs for more detail. In general, the kWh price offered under these tariffs varies widely from an off-peak low of \$0.06/kWh to a high of \$0.31/kWh in SCE's service territory for summer peak period production.

In August and September, several Interested Parties filed Protests addressing multiple concerns with the Advice Letters.

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On August 30, 2007, CPUC Energy Division Staff suspended all of the Respondents' Advice Letters pending review.

In a parallel development, AB 946 amended the definition of eligible water and wastewater facility in PU Code Section 399.20, effective January 1, 2008.

In October, the Commission approved the 2007 MPR table in Resolution E-4118, updating the 2006 MPR table used in the ALs.

This resolution modifies the Advice Letters based in part on protests and responses filed under D.07-07-027 and in part on staff reading of the Advice Letters as non-compliant with the intent of that decision and subsequent rulings and decisions relevant to these Advice Letters.

### **Summary of Proposed Tariffs/Standard Contracts**

#### PG&E AL 3098-E

This AL establishes **SCHEDULE E-PWF** and a **Section 399.20 PPA** (Form 79-1102) for purchases of eligible renewable generation from Public Water and Wastewater facilities as defined in the tariff. The **Allocation** for this tariff is 104.603 MW of rated generation capacity. There is a *full buy/sell* and an *excess sales* option, and all Green Attributes *associated with the energy sold* transfer with the sale. **Interconnection** is accomplished through the FERC Small Generator Interconnection Procedures (SGIP). The current MPR is included in both the tariff and the PPA, and is adjusted by the Time of Delivery (TOD) Factors in Appendix C of the PPA to establish the actual **Rate** at which generation will be purchased.

#### PG&E AL 3100-E

This AL establishes **SCHEDULE E-SRG** and a **Small Renewable Generator PPA** (Form 79-1103) for purchases of renewable generation from eligible facilities as defined in the tariff. The **Allocation** for this tariff is 104.603 MW of rated generation capacity. There is a *full buy/sell* and an *excess sales* option, and all Green Attributes *associated with the energy sold* transfer with the sale. **Interconnection** is accomplished through the FERC Small Generator Interconnection Procedures (SGIP). The current MPR is included in both the tariff and the PPA, and is adjusted by the TOD Factors in Appendix C of the PPA to establish the actual **Rate** at which generation will be purchased.

#### SCE AL 2148-E

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This AL establishes **SCHEDULE WATER** (for public water and wastewater facilities) and **SCHEDULE CREST** (for other types of facilities) and associated **WATER** and **CREST PPAs** for the purchase of renewable generation from eligible facilities as defined in each tariff. The **Allocation** for CREST is 123.8 MW of rated generation capacity in the SCE service territory and for WATER it is 123.9 MW. There is a *full buy/sell* and an *excess sales* option, each with its own PPA, and all Green Attributes *associated with net generation* transfer with the sale regardless of which option is taken. **Interconnection** is accomplished through a Commission approved process, such as Rule 21, but is not specified. The **Rate** is determined by the current MPR and TOD Factors which are included in the Substitute Sheets for both SCHEDULE CREST and SCHEDULE WATER submitted by SCE September 4, 2007.

## Pacific Power AL 350-E

This AL establishes **SCHEDULE ERWW-1** for eligible Public Water Agencies as defined in the tariff for the purchase of renewable generation and a standard **PPA**. The **Allocation** for ERWW-1 is 1.013 MW of rated generation capacity in the Pacific Power service territory. The Seller may choose to be compensated for *capacity and energy*, or may choose to be compensated for *energy only(non-firm)*, and all Green Attributes *associated with net generation* transfer with the sale regardless of which option is taken. **Interconnection** is accomplished through a Commission approved process, such as Rule 21, but is not specified. The **Rate** for sale of *energy and capacity* adjusted for TOD is presented in a table in the tariff and in Appendix C of the PPA. The **Rate** for sale of *energy only* is the applicable Off-Peak price for all net output and associated Green Attributes.

## SDG&amp;E AL 1918-E

This AL establishes **SCHEDULE WATER** and a **PPA** (Form 160-1000) for purchases of eligible renewable generation from Public Water and Wastewater facilities as defined in the tariff. The **Allocation** for this tariff is 20.055 MW of rated generation capacity. There is a *full buy/sell* and an *excess sales* option, and all Green Attributes *associated with the Generating Facility* transfer with the sale. **Interconnection** is accomplished through a Commission approved process, such as Rule 21, but is not specified. The current MPR is referenced but *not included* in either the tariff or Appendix H of the PPA, and is adjusted by the Time of Delivery (TOD) Factors in Appendix G of the PPA to establish the actual **Rate** at which generation will be purchased.

## BVES AL 219-E

This AL establishes **SCHEDULE RET** and a **Renewable and Alternative Power - Public Water and Wastewater Agency Agreement (PPA)** (Form 27) for purchases of eligible renewable generation from Public Water and Wastewater facilities as defined in the tariff. The **Allocation** for this tariff is 77 kW of rated

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generation capacity. This is a *full buy/sell* tariff, and all Green Attributes *associated with the Generating Facility* transfer with the sale. **Interconnection** is accomplished through a Commission approved process, such as Rule 21, but is not specified. The current MPR is referenced but *not included* in either the tariff or Appendices F or G of the PPA, and is adjusted by the Time of Delivery (TOD) Factors in Appendix F of the PPA to establish the actual **Rate** at which generation will be purchased.

## Sierra Pacific AL 331-E

This AL establishes **SCHEDULE WATER** for purchases of eligible renewable generation from Public Water and Wastewater facilities as defined in the tariff. The **Allocation** for this tariff is 404 kW of rated generation capacity. This is a *full buy/sell* tariff, and all Green Attributes *associated with the Generating Facility* transfer with the sale. **Interconnection** is accomplished through a Commission approved process, such as Rule 21, but is not specified. The **Rate** is the current MPR and is *included* in the tariff.

## MU AL 73-E

This AL establishes **SCHEDULE WATER** and a **Public Water and Wastewater Agency Agreement (PPA) (Form 07-100)** for purchases of eligible renewable generation from Public Water and Wastewater facilities as defined in the tariff. The **Allocation** for this tariff is 3 kW of rated generation capacity. There is a *full buy/sell* and an *excess sales* option, and all Green Attributes *associated with the Generating Facility* transfer with the sale. **Interconnection** is accomplished through a Commission approved process, such as Rule 21, but is not specified. The current MPR is referenced but *not included* in either the tariff or Appendix G of the PPA, and is adjusted by the Time of Delivery (TOD) Factors in Appendix G of the PPA to establish the actual **Rate** at which generation will be purchased.

**NOTICE**

Notice of AL 3098-E, 3100-E, 2148-E, 350-E, 1918-E, 219-E, 331-E and 73-E was made by publication in the Commission's Daily Calendar. PG&E, SCE, SDG&E and Pacific Power state that a copy of their respective Advice Letters was mailed and distributed electronically in accordance with Section IV of General Order 96-B, and served to parties on Service List R.06-05-027. Mountain Utilities and Sierra Pacific state that notice was given in accordance with Section III, Paragraph G of General Order No. 96-A to Service List R.06-05-027. BVES states that copies were sent to Service List R.06-05-027 and that notice to the Public was in accordance with PU Code Section 491.

**PROTESTS****1) California Water Service Company (CWSC) Protest of PG&E AL 3098-E (August 7<sup>th</sup>, 2007)**

CWSC requested that the definition of eligible “Public Water or Wastewater Agencies” be expanded to include private water and wastewater utilities, regulated by the CPUC.

**2) Association of California Water Agencies (ACWA) Protest of SCE Advice Letter 2148-E (August 21<sup>st</sup>, 2007)**

ACWA argues that D.07-07-027 requires the utilities to include actual rates in their AL filings, finding that SCE needs to include the MPR table in the tariff in order for potential generators to perform their threshold evaluations and decide whether to pursue the development of additional renewable resources.

**3) [Joint] Protest of California Farm Bureau Federation (CFBF), Sustainable Conservation, and Western United Dairymen to SCE Advice Letter 2148-E (August 22, 2007)**

Sustainable Conservation, CFBF, and Western United Dairymen cited concerns about the Excess Sales option of the SCHEDULE CREST, and by extension SCHEDULE WATER, tariff filing by SCE. They also expressed concern about the “overly broad” definitions of “*Generating Facility*”, “*Renewable Generating Facility*”, and “*Green Attributes*”. Finally, they asserted that departing load charges are not appropriate for these tariffs, and ask that Section 6.6 of both CREST and WATER be deleted.

**4) [Joint] Protest of California Farm Bureau Federation, Sustainable Conservation, and Western United Dairymen to PG&E Advice Letter 3100-E (August 23, 2007)**

Protestants identified three main concerns with the PG&E Advice Letters: 1) Interconnection Procedures; 2) “No Additional Incentive” clause; 3) Definition of Green Attributes. The protestants argue that Rule 21 should govern all interconnection procedures, rather than the FERC-Small Generator Interconnection Process (SGIP) as indicated by PG&E filing. Regarding the restriction on participation in other California Incentive Programs, they argue that the clause used by PG&E is overly broad and could severely limit the ability of dairymen or other parties to participate in appropriate programs to improve energy efficiency, for example. The final issue is raised in connection with the difference between the GHG benefits of capturing methane gas (a “treatment” benefit) and then of using that methane gas (or any other renewable fuel) to generate electricity (generation benefit).

**5) Sustainable Conservation Protest of PG&E Advice Letter 3100-E (September 6<sup>th</sup>, 2007)**

As a follow-up to their earlier joint protest (see 4 above), Sustainable Conservation filed a protest detailing protestants concerns with the interconnection agreement (FERC-

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SGIP) used by PG&E in its AL filing. They argue that Rule 21 was standard practice, SGIP-FERC imposed additional costs and complications, and that FERC-SGIP removed the process from CPUC jurisdiction and denied customers access to the governing regulatory process. They recommend requiring Rule 21.

**DISCUSSION**

In D.07-07-027, the Commission set forth specific guidelines for the tariffs required by AB 1969. The respondents all filed tariffs for the purchase of eligible renewable energy from public water and wastewater agencies as well as other eligible facilities. Even without the protests filed, CPUC staff noted several instances where the Advice Letters did not conform exactly to the guidance provided in D.07-07-027. The protests highlighted some of these discrepancies, as well as bringing up additional questions. Some of the protests have already been resolved or do not rise to the level that would require a resolution. Other protests are denied on the basis of jurisdiction or scope. A final subset raises issues that require changes to the tariffs, usually a minor text change, but with some significant implications for the parties.

The CPUC staff directed changes (those not raised in a protest) are largely to comply with a directive in D.07-07-027 to provide the public with easy access to data necessary to evaluate the tariffs and to bring the tariffs into compliance with PU Code Section 399.20 as amended by AB 946. The 2007 MPR table has also been approved by the Commission since the ALs were filed, so the respondents will have to include the new table in their amended filings under this Resolution. This Resolution, while approving of the general structure and design of the proposed tariffs, makes several modifications as described above in the Summary.

Energy Division staff interpret D.07-07-027 to expect the following characteristics of each tariff and associated PPA:

- Simple and with all relevant information directly available (e.g. MPR tables)
- Flexible, but orderly and timely, interconnection process
- A Full Buy/Sell option as interpreted by SCE and SDG&E
- An Excess Sales option (only required for SCE and PG&E) as interpreted by PG&E (i.e. only transfer Green Attributes associated with the energy *sold* to the utility)
- A Tariff/Standard Contract only available to Public Water and Wastewater Agencies
- A separate Tariff/Standard Contract available to other eligible renewable energy generation facilities in PG&E and SCE service territories
- Generation facilities that have received or will receive subsidies from the CSI, SGIP, net energy metering or other *similar* California program are prohibited from receiving service under these proposed tariffs

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AB 946, signed into law July 20, 2007 and effective January 1, 2008, also modified the definition of eligible facility in PU Code Section 399.20. The existing definition of an "electric generation facility" includes a requirement that the facility be owned and operated by a public water or wastewater agency that is a retail customer of an electrical corporation, that the facility have an effective capacity of not more than one megawatt and is located on or adjacent to a water or wastewater facility owned and operated by the public water or wastewater agency. AB 946 would amend the definition of an "electric generation facility" to require that the facility be owned and operated by a public water or wastewater agency that is a retail customer of an electrical corporation, that the facility have an effective capacity of not more than one megawatt, and that the facility is located *on property owned or under the control of the public water or wastewater agency*.<sup>9</sup> The tariffs must reflect this change in any amended filings.

Other important requirements are listed in Appendix A of D.07-07-027, but those requirements (Standard Terms and Conditions, Date of Actual Commercial Operation, Allocations, MW capacity, etc.) are met by the various respondents' filings and are not in dispute here.

All of the tariffs had previously stated an effective date on or about September 1<sup>st</sup>, 2007. Given all the required changes, and in the interest of a uniform approach, all the tariffs will have an effective date of January 1<sup>st</sup>, 2008.

With the points above in mind, a discussion of the specific protests to each Advice Letter follows.

### **Discussion of Protests**

#### **1) California Water Service Company**

California Water Service Company filed a comment regarding the inclusion of non-Public Water and Wastewater facilities. This concern is obviated by the Commission's expansion of the tariffs to all other eligible facilities, including water and wastewater facilities. No further resolution is required for this comment.

#### **2) Association of California Water Agencies**

ACWA filed a protest to SCE's Advice Letter recommending that SCE include an MPR table in the proposed tariff. They cite **Section 3.5.2 Rates Must Be Stated** of D.07-07-027, that allows for applicable rates to be included in either the tariff or the standard

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<sup>9</sup> Assembly Bill 946, "An act to amend Section 399.20 of the Public Utilities Code relating to electricity," Krekorian, July 20, 2007. Emphasis added.

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contract. Ordering Paragraphs 1 and 2 call for consistency with “the discussion in the body of this order, findings of fact and conclusions of law.” Conclusion of Law 12, on page 57 reads, “PacificCorp should be permitted to include rates in its tariff, Sierra should be required to include rates in its tariff (because it does not propose a standard contract), and other respondents should be required to include rates in their standard contracts.”

In their response on August 29<sup>th</sup>, 2007, SCE asserted that they could comply with D.07-07-027 by posting the MPR on the web but nonetheless submitted substitute sheets to include the MPR in the tariff. Thus no further resolution is required, but it is clear to CPUC staff that the intent of the decision was that the information be available in either the tariff or the associated PPA. ACWA’s protest is correct on this point, and if necessary, staff would have directed SCE to include the table in its filing, consistent with the language cited above.

### **3) CFBF, Sustainable Conservation and Western United Dairymen**

The August 22, 2007 protest of AL 2148-E by CFBF, Sustainable Conservation and Western United Dairymen also identified three issues of concern with the SCE filing: 1) Transfer of Green Attributes under the *Excess Sales* Option; 2) Overly broad definitions of “*Generating Facility*”, “*Renewable Generating Facility*”, and “*Green Attributes*”; and 3) Departing Load Charges. SCE responded on August 29, 2007 in a letter addressing both this protest and the protest filed by ACWA.

#### **Excess Sales**

In its discussion of the Excess Sales provision, the protest again brings up the distinction between “treatment” benefits from biogas and biomass facilities, and the Green Attributes defined by SCE that transfer to the utility with the sale of energy under this tariff. SCE responds that the language is in fact consistent with “the plain language of AB 1969 and SB 107.” They further assert that this issue is outside of the scope of D.07-07-027. CPUC staff find that although the distinction has merit, the issue is not unique to this proceeding. It is more appropriately decided in a different forum.

Additionally, the protestants argue that SCE is “claiming more uncompensated attributes than PG&E by requiring all green attributes accrue to SCE, not just those proportionate to electricity sales.” PG&E's proposal on purchasing "excess sales" pursuant to AB 1969 provided that PG&E only acquire the Green Attributes related to the electricity purchased by PG&E. The seller keeps the Green Attributes related to electricity it generates and uses to meet onsite demand. PG&E's proposal was adopted. (D.07-07-027, pp 35-36, citing PG&E's April 11 proposal at page 7.) This was the only proposal made on the record on this point. Its application was extended to SCE and SDG&E via OP 1. That is, there is no discussion in the decision of any contrary

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interpretation or application of this treatment. Absent a stated reason otherwise, the Commission-adopted "excess sales" approach is expected to be the same for all three IOUs. SCE is therefore ordered to come into compliance with the PG&E treatment.

This same argument applies to SDG&E and to Pacific Power, so their *Excess Sales* option should be revised as ordered in this Resolution to conform to the PG&E interpretation. This is also consistent with D.07-01-018 in Rulemaking (R.) 06-03-004 for Distributed Generation (DG) facilities concerning ownership of Renewable Energy Credits (RECs).

**Definition of Terms**

CFBF et al claim in their protest that the "overly broad" definitions of "Generating Facility", "Renewable Generating Facility", and "Green Attributes" could be "construed to encompass standby generators for irrigation pumps, the manure management (fuel) systems including manure conveyance infrastructure and storage ponds, the fuel generators (cows), and the structures that house them (barns), etc."<sup>10</sup> Again, they raise the issue of claims of ownership to certain Green Attributes, using similar arguments to the protest they filed of PG&E's Advice Letter.<sup>11</sup> SCE responds that its definition of generating facility was proposed in its April 11, 2007 proposal and that the language is the same as that used in D.07-02-011, the Decision cited by the Protestants. SCE further argues that this issue "has continually been brought up by Sustainable in this context" and that "D.07-07-027 found this topic to be out of the scope of this proceeding."<sup>12</sup>

Protestants have indeed raised issues about RECs and what facilities were involved. In D.07-07-027, the Commission explicitly indicated that the GHG proceeding was the correct venue for this issue.<sup>13</sup> It is untimely and inappropriate for CFBF to raise it as a Protest to a compliance Advice Letter. In addition, *Appendix A: Description of Renewable and Non-Renewable Generating Facility and Single-Line Diagram* of each of the four PPAs filed by SCE allows the seller to fully describe and diagram the facility, and therefore to exclude any of the systems or buildings as described by the protestants. SCE has properly filed its AL in conformance with its proposal as directed to do so by the Commission, subject only to the changes/amendments required by Attachment A to D.07-07-027. Further clarification or alteration is not warranted here.

**Departing Load Charges**

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<sup>10</sup> CFBF, et al., August 22<sup>nd</sup>, 2007, p. 3

<sup>11</sup> Ibid., p. 4

<sup>12</sup> SCE, August 29<sup>th</sup>, 2007 Response to CFBF et al., p. 3.

<sup>13</sup> D.07-07-027, Section 4.4 Net Greenhouse Gas Emissions from Projects Using Biomass Fuels, pp. 48-49

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Protestants are concerned that Section 6.6 of both SCE's SCHEDULE WATER and SCHEDULE CREST contains a provision that "SCE shall use net generation output amounts measured by the NGOM for purposes of billing the Producer in accordance with SCE's applicable departing load Tariff rate schedule(s), if applicable." They argue that this is inconsistent with SCE's own relevant tariffs (Schedule CGDL-CRS) and the determination in D.03-04-030 that excludes certain types of generation from Departing Load charges. SCE counters that no determination is made in this tariff regarding whether Departing Load charges are applicable, only how Departing Load is measured. They argue that other tariffs and Commission decisions control that applicability. While agreeing with the protestants that this type of generation is exempt from Departing Load tariffs, CPUC staff find that there is no compelling reason to remove Section 6.6 of SCE's filing.

### **4) CFBF, Sustainable Conservation and Western United Dairymen and 5) Sustainable Conservation**

The August 23, 2007 protest of AL 3100-E by CFBF, Sustainable Conservation and Western United Dairymen identified three issues of concern: 1) Interconnection Procedures; 2) Restrictions on participation in other California Incentive Programs; 3) Definition of Green Attributes. An additional protest by Sustainable Conservation on September 6<sup>th</sup>, 2007 elaborated on the Interconnection issue. PG&E responded in a letter on September 19<sup>th</sup>, 2007 and Sustainable Conservation filed a reply to that response on October 12<sup>th</sup>, 2007. Each issue is discussed separately below.

#### **Interconnection Procedures**

Both the August 23<sup>rd</sup> and September 6<sup>th</sup> protests discuss the issue of FERC-SGIP interconnection procedures versus the CPUC-approved Rule 21. This issue was discussed in the record on D.07-07-027 and the conclusion is clearly indicated in the Findings of Fact from that decision:

22. Timely response to an interconnection request is important to prevent interconnection becoming a barrier to project completion, and FERC-approved SGIP *and* Commission-approved Rule 21 provide orderly and timely interconnection procedures and processes. [emphasis added]<sup>14</sup>

The decision goes on to state in the Conclusions of Law that "[t]he *principles* of orderly and timely interconnection procedures and processes in Rule 21..." [emphasis added] should be enforced by the Commission.<sup>15</sup> Taken together, these two passages indicate

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<sup>14</sup> D.07-07-027, p. 55

<sup>15</sup> D.07-07-027, p. 59

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that the Commission felt that both frameworks provided the required level of 'orderly and timely' procedures and processes and would be acceptable to the Commission.

Protestants initially argued that the SGIP-FERC process does not adhere to 'principles' indicated by the decision. Additionally they argued that Rule 21 was standard practice, SGIP-FERC imposed additional costs and complications, and that SGIP-FERC removed the process from CPUC jurisdiction and denied customers access to the governing regulatory process, all of which would be "antithetical to the premise of developing a standardized small renewable generator power purchasing agreement that any Californian utility customer could access and offer for sale their resource for the benefit of the State and its citizens."<sup>16</sup>

In the supplemental protest filed on Sept. 6<sup>th</sup>, Sustainable Conservation elaborates that the "Advice Letter is legally flawed because it: (a) fails to comply with the Decision's direction regarding interconnection, (b) imposes unnecessary burdens on small customers and (c) contravenes applicable Commission and FERC precedent." The reply from PG&E addresses each of these points as well.

Sustainable Conservation et al argue that AL 3100-E inappropriately requires small customers to submit to FERC-SGIP rules, instead of allowing them to choose what is "appropriate and applicable."<sup>17</sup> In any event, they submit, "[a]ll small (<1MW) renewable generators in the State of California are interconnected under Rule 21, and thus use of FERC-SGIP goes against established 'standard practice'.<sup>18</sup> PG&E responds that the choice was in fact given to the utilities ("Respondents") in deciding between SGIP and Rule 21 and further that not all comparable facilities are interconnected under Rule 21.

Both the August and September Protests suggest that the FERC-SGIP rules impose additional burdens and costs. According to Sustainable Conservation, the FERC-SGIP is "inappropriate because it: (a) is far more complex and will require assistance of expert consultants to assure compliance, (b) will be unreasonably burdensome to administer for small businesses, and (c) will expose small customers to imbalance penalties and charges imposed by the CAISO."<sup>19</sup> PG&E responds that customers who

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<sup>16</sup> CFBF, August 23<sup>rd</sup>, 2007 Protest to AL 3100-E, p. 2.

<sup>17</sup> Ibid., p. 2.

<sup>18</sup> Sustainable Conservation, September 6<sup>th</sup>, 2007, p. 3.

<sup>19</sup> Ibid., pp. 3-4.

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need expert assistance for FERC-SGIP will probably also need it for Rule 21 compliance, that the claim “unreasonably burdensome to administer” is unexplained and unsupported, and the only CAISO penalties “to which the seller is exposed are those the seller causes.”<sup>20</sup>[emphasis in original]

Both protests also emphasized that the exclusive use of FERC-SGIP violates precedent, and inappropriately removes jurisdiction from CPUC (State) level to the Federal level. Importantly, they assert that the absence of any dispute on this matter in the record supported D.07-07-027 is a result of a late argument by PG&E that FERC-SGIP should be the governing tariff.<sup>21</sup> They argue that the “[i]nterconnection of distributed generators, . . . , has been considered within the exclusive jurisdiction of the Commission for many years.”<sup>22</sup> They cite two cases as precedent, *Exxon Mobil v. Entergy* and *PJM Interconnection, LLC* to assert a difference between interconnection at the local distribution level and “wholesale” electricity in interstate commerce as determining the correct process.<sup>23</sup><sup>24</sup> PG&E responds that its intent to use FERC-SGIP was part of the public record earlier than claimed by Sustainable Conservation and that this issue was considered non-controversial previously. They cite *National Ass’n of Regulatory Utility Commissioners v. FERC*, 475 F.3d 1277, 1282 (D.C. Cir. 2007) as supporting the use of FERC rules for the interconnection under consideration here.<sup>25</sup> They further argue that D.03-02-068, as cited by the protestants does not support the rejection of the AL because the sale of power here can not be considered ‘incidental’ and that the decision actually upholds FERC jurisdiction in some cases.<sup>26</sup>

The detailed legal arguments on both sides notwithstanding, the essential argument is whether or not FERC-SGIP rules meet the requirements of D.07-07-027 to provide “orderly and timely interconnection procedures and processes” and who gets to decide what is “appropriate and applicable.” On these points, the Decision is clear. Both FERC-SGIP and Commission-approved Rule 21 procedures are potentially appropriate

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<sup>20</sup> PG&E, September 19<sup>th</sup>, 2007 Reply to Protests of AL 3100-E, p. 4.

<sup>21</sup> Sustainable Conservation, September 6<sup>th</sup>, 2007 Protest of AL 3100-E, p. 4, footnote 10.

<sup>22</sup> *Ibid.*, p. 5.

<sup>23</sup> *Ibid.*, p. 7

<sup>24</sup> Sustainable Conservation, October 12, 2007 Response to PG&E’s response to protests of AL 3100-E, p. 1.

<sup>25</sup> PG&E, September 19<sup>th</sup>, 2007 Reply to Protests of AL 3100-E, p. 7.

<sup>26</sup> *Ibid.*, p. 8.

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and applicable, and the “Respondents”, in this case the utilities, get to decide. If there is a problem, the Commission expects to deal with them on a case by case basis, declining to require one or the other.<sup>27</sup> PG&E is correct that the protests do not cite sufficient evidence that the FERC-SGIP rules would be “unnecessarily burdensome” or manifestly unfair. This Protest is denied based on a narrow reading of D.07-07-027.

**Restrictions on Additional Incentives**

Protestants assert that the language in AL 3100-E restricting the eligibility of a customer for funding through other incentive programs is “overly broad and could interpreted to preclude appropriate use of existing programs.”<sup>28</sup> They cite for example, the installation of efficient lightbulbs or insulation using ratepayer subsidized, utility-sponsored rebate programs as being an example of an appropriate action that could be curtailed as a result of the phrase “or any other California ratepayer program.”<sup>29</sup> PG&E responds that the “language in the proposed contract is identical to the language in PG&E’s proposed “Section 399.20 PPA,” first filed on April 11, 2007,” and that the “concerns are exaggerated” and that PG&E has “no reason or incentive” to prevent such participation.

CPUC staff concede PG&E’s points, but notes that the language referenced is not, in fact, precisely identical to the language in D.07-07-027 which reads:

We agree. We approve proposed tariffs/standard contracts which make clear that participants may not simultaneously obtain benefits from both this tariff and the SGIP, net metering programs, California Solar Initiative, or other *similar* programs. [emphasis added]<sup>30</sup>

Staff draws the distinction between generation related programs and energy efficiency programs as cited by the protestant. This is the correct intent of the Decision, as PG&E agrees, and it is not unreasonable, as noted in Sustainable Conservation’s response to PG&E, to simply “modify the existing language so it is narrowly written to include only what is disqualifying rather than have language that covers every apparent incentive

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<sup>27</sup> D.07-07-027, p. 59

<sup>28</sup> CFBE, August 23<sup>rd</sup>, 2007 Protest to AL 3100-E, p. 3.

<sup>29</sup> Ibid., p. 3.

<sup>30</sup> D.07-07-027. **Section 3.7 SGIP and Net Metering**, p. 26, and repeated in **Conclusions of Law no. 18**, p. 58.

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program that is being offered.”<sup>31</sup> PG&E is correct about the language and their presumed good will, but they provide no compelling reason not to insert the word “similar” into the text, as ordered by this resolution. This protest is upheld and PG&E is ordered to make the necessary changes in AL 3100-E and AL 3098-E.

**Green Attributes**

The protestants argue that the language in the PG&E tariff is not a correct interpretation of PU Code 399.12 (g) (2)<sup>32</sup> and that exemptions for “treatment benefits” must be defined. Under D.07-02-011<sup>33</sup>, they assert, PG&E is entitled not to all Green Attributes, but to carbon neutral electricity. They argue that this is “provided by biogas projects without conveying the greenhouse gas reduction benefit of methane destruction.”<sup>34</sup> In their follow-up protest of September 6<sup>th</sup>, 2007, Sustainable Conservation further states that requiring PG&E, and by extension the other utilities, to “incorporate the language of the statute in [their] PPA,”<sup>35</sup> would respond to their protest, as would a clarification that the language transferring Green Attributes “does not extend IOU ownership to methane or other greenhouse gases that are destroyed in the process of generating renewable energy.”<sup>36</sup>

The salient issue here is the difference between “treatment” benefits and generation benefits. Sustainable and the other parties in this protest seek to differentiate between the greenhouse gas emission reduction benefits of capturing methane that would have been emitted anyway and the RECs and other Green Attributes associated with energy generation using that same gas. CPUC staff are sympathetic to this distinction, and it is

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<sup>31</sup> Sustainable Conservation, October 12, 2007 Response to PG&E’s response to protests of AL 3100-E, p.2.

<sup>32</sup> PU Code Section 399.12 (g) (2): “Renewable energy credit” includes all renewable and environmental attributes associated with the production of electricity from the eligible renewable energy resource, except for an emissions reduction credit issued pursuant to Section 40709 of the Health and Safety Code and any credits or payments associated with the reduction of solid waste and treatment benefits created by the utilization of biomass or biogas fuels. [as amended by SB107 (Simitian, 2005)].

<sup>33</sup> They quote from D.07-02-011, Feb. 15, 2007, pp. 42-43., “if the Project is a biomass or landfill gas facility and Seller receives any tradable Green Attributes based on greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Buyer with sufficient Green Attributes to ensure that there are zero net emissions associated with the production of electricity from the Project.”

<sup>34</sup> California Farm Bureau Federation et al., August 23, 2007 Protest to AL 3100-E, p. 5.

<sup>35</sup> Sustainable Conservation, October 12, 2007 response to PG&E’s reply to Sustainable Conservation’s Protest of AL 3100-E, p. 2.

<sup>36</sup> Ibid., p. 2.

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clear that the benefits are separable and distinct. This issue is best resolved in the appropriate forum, but is outside the scope of D.07-07-027.

However, as PG&E responds, the language used by PG&E in this AL is consistent with D.07-07-027 and has been in PG&E's proposed Section 399.20 PPA since it was first filed on April 11, 2007 as part of the rulemaking process. PG&E further argues that this issue is outside of the scope of D.07-07-027. D.04-06-014 is the relevant decision and the procedurally proper approach is to file a petition to modify that decision.<sup>37</sup> The protest to change the definition of Green Attributes is denied here, with the caveat that the issue should be addressed in the appropriate venue.

**COMMENTS AND REPLY COMMENTS TO DRAFT RESOLUTION**

- 1) **PG&E Comments on Draft Resolution E-4137 (Dec. 7, 2007).** PG&E submitted comments supporting the Draft Resolution and stating PG&E's willingness to further modify its proposed contracts to take into account D.07-11-025. PG&E also asked for clarification and guidance on how the modifications ordered in the Draft Resolution should be submitted to the Commission.
- 2) **SCE Comments on Draft Resolution E-4137 (Dec. 7, 2007).** SCE submitted comments asserting that D.07-07-027, and by extension Draft Resolution E-4137, committed legal error by creating an excess sales option and by expanding the AB 1969 program to allow non-water and -wastewater facilities to participate and setting an additional allocation for them. They argue that the Commission compounded the error by failing to apply the additional requirements equally to all electrical corporations. SCE argues that the Resolution is simply a *post hoc* rewriting of D.07-07-027. They ask the Commission to defer action on the Draft Resolution if possible or to allow SCE an exemption from the modifications limiting transfer of Green Attributes, Capacity Attributes, and Resource Adequacy Benefits to those attributes associated only with the energy sold to SCE.
- 3) **Sustainable Conservation (Sustainable) and California Farm Bureau Federation (CFBF) Comments on Draft Resolution E-4137 (Dec. 7, 2007).** Sustainable and CFBF comment that R.06-02-012 is currently considering the definitions of "renewable energy credits" (RECs) and "green attributes" and that the tariffs and contracts in this proceeding should be amended if the Commission authorized changes to those definitions and any accompanying terms. They also note that the Federal Energy Regulatory Commission (FERC) on Nov. 16, 2007

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<sup>37</sup> As argued by PG&E, September 19, 2007 Reply to Protest of AL 3100-E by CFBF, et al., p. 9.

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issued an order in Docket No. ER05-1319-000 approving in part and rejecting in part the California Independent System Operator's (CAISO) Small Generator Interconnection Procedure (SGIP) that PG&E requires in its tariffs submitted in this proceeding. They argue that in the current state of confusion over what procedure to use for interconnection, the Commission should not endorse an SGIP requirement for PG&E that may not pass legal muster.

- 4) **PG&E Reply Comments on Draft Resolution E-4137 (Dec. 12, 2007).** In its reply to SCE's comments on the Draft Resolution, PG&E takes no position on the merits of SCE's proposals and arguments, but specifically asks to be allowed to make PG&E tariffs and standard contracts for the AB 1969 program available January 1, 2008, regardless of the decision regarding SCE.
- 5) **Sustainable and CFBF Reply Comments on Draft Resolution E-4137 (Dec. 12, 2007).** Sustainable and CFBF argue, in response to SCE's comments, that the Draft Resolution is consistent in implementing the language of D.07-07-027 regarding green attributes. They also argue that there is no need to implement changes to take D.07-11-025 into account as PG&E suggested they would be willing to do.

### Discussion of Comments

PG&E's comments and reply comments as a whole support the Draft Resolution and do not require any modification or extensive discussion. The language from D.07-11-025 does not require any changes in the AB 1969 tariffs or contracts at this time. The decision to allow PG&E to go forward with its AB 1969 tariffs will be handled in conjunction with the discussion on SCE's comments. There should be clarity regarding how the utilities will modify tariffs (as necessary) per this Resolution. D.07-07-027 called for updates to the MPR tables to be made through the Advice Letter process as that would not be burdensome to respondents and that argument holds here as well. Respondents can submit any other relevant tariff modifications as a compliance filing in the form of an Advice Letter.

Sustainable and CFBF make a specific suggestion that the Findings presented in the Draft Resolution be modified to include reference to R.06-02-012 and any changes that might be required by the proceeding. In effect, this change expands on the original finding that the "[d]efinitions of Green Attributes and the ownership of tradable GHG emission reduction credits are outside of the scope of this decision." Such an expansion is not without merit, as it clarifies where the decision will be made and indicates that tariffs and contracts in the AB 1969 program should be consistent with other relevant Commission decisions. At this time, no accommodations are necessary, but the possibility is rightly noted in the Findings.

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Sustainable and CFBF further argue that the FERC SGIP is inappropriate given the current legal status. This is not sufficient to curtail PG&E's decision to use SGIP over Rule 21. Furthermore, the protest seeks to modify a Commission order and a Resolution is the inappropriate procedural vehicle to modify a Commission's order.

SCE's comments posed substantive concerns regarding implementation of the AB 1969 program. In fact, SCE's primary conflict is with the Decision itself, not with the Draft Resolution. As such, the appropriate venue for protest is an Application for Rehearing, which SCE has duly filed. Absent a Commission decision staying the order, this Draft Resolution is consistent with D.07-07-027.

SCE raises a relevant point concerning Resource Adequacy Benefits. PG&E's filings, for example, specifically call for the Seller to convey "to PG&E all Resource Adequacy Benefits attributable to the physical generating capacity of Seller's Facility to enable PG&E to count such capacity towards PG&E's resource adequacy requirement for purposes of PUC Section 380." (see Section 3.3 of the standard PPA for both AL 3098-E and AL 3100-E) This is consistent with the language in D.07-07-027 and with the modifications required by this Resolution. All respondents may choose to clarify the treatment of Resource Adequacy benefits in their respective tariffs and contracts, consistent with that portion of D.07-07-027 (page 34).

**FINDINGS**

1. In compliance with Public Utilities Code (PU Code) Section 399.20, and D. 07-07-027, the respondents submitted Advice Letters with tariffs and standard contracts for the purchase of eligible renewable generation from public water and wastewater facilities.
2. As directed, PG&E and SCE also submitted separate tariffs for the purchase of eligible renewable generation from entities other than public water and wastewater agencies and their tariffs comply with D.07-07-027.
3. In addition, PG&E, SCE and SDG&E were all required to offer both a *full buy/sell* option and an *excess sale* option and all the tariffs comply with the requirement.
4. D.07-07-027 ruled that the *full buy/sell* option should conform to the energy and green attribute purchase requirement as described by SCE in its proposed tariffs.
5. D.07-07-027 ruled that the *excess sale* option should conform to the energy and green attribute purchase requirement as described by PG&E in its proposed tariffs.
6. No other purchase requirement or model was presented, so all tariffs should offer consistent *full buy/sell* or *excess sales* options.
7. For the purposes PU Code Section 380 as it applies to tariffs pursuant to PU Code 399.20, all Resource Adequacy Benefits attributable to the physical generating capacity of a seller's facility may be counted towards the purchasing utility's

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resource adequacy requirement. This finding is consistent with D.07-07-027, page 34.

8. FERC-approved SGIP *and* Commission-approved Rule 21 provide orderly and timely interconnection procedures and processes, and both are acceptable frameworks under the narrow reading and scope of D.07-07-027.
9. Utilities shall use SGIP or Rule 21 as appropriate and applicable for each situation, but in all cases must adhere to principles of orderly and timely processing of interconnection requests.
10. Definitions of Green Attributes and the ownership of tradable GHG emission reduction credits are outside of the scope of this decision, but are being considered by the Commission in R.06-02-012 and tariffs may need to be revised to accommodate any modifications ordered in that proceeding.
11. Restrictions on customer participation in other ratepayer funded incentive programs should not be unduly restricted beyond the intent of D.07-07-027.
12. Tariffs should include all information necessary to calculate the applicable rates for the purchase of eligible renewable energy, including the statewide MPR table currently applicable.
13. AB 946 amends PU Code Section 399.20 to require that an eligible "electric generation facility" be owned and operated by a public water or wastewater agency that is a retail customer of an electrical corporation, that the facility have an effective capacity of not more than one megawatt, and that the facility is located *on property owned or under the control of the public water or wastewater agency*.
14. The utilities all requested effective dates on or about the first of the month after their filings, but this resolution delayed their approval.
15. The Advice Letter process is the appropriate method for submitting updates or changes to the tariffs filed in compliance with D.07-07-027, unless, the update or change seeks to modify the order itself.

**THEREFORE IT IS ORDERED THAT:**

- 1) PG&E Advice Letters 3100-E, 3098-E, SCE Advice Letter 2148-E , SDG&E Advice Letter 1918-E , Pacific Power Advice Letter 350-E, Sierra Pacific Advice Letter 331-E, MU Advice Letter 73-E, and BVES Advice Letter 219-E are approved with modifications described herein.
- 2) All tariffs as approved herein will be effective and available as of February 14<sup>th</sup>, 2008.
- 3) PG&E will amend section 2.7 of the Power Purchase Agreement (PPA) accompanying the tariff in both **AL 3100-E** and **AL 3098-E** by inserting the word "similar" before the word "California" in that section. The new section 2.7 should read as follows:

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2.7 No Additional Incentives. Seller agrees that during the Term of this Agreement, Seller shall not seek additional compensation or other benefits pursuant to the Self-Generation Incentive Program, as defined in CPUC Decision ("D.") 01-03-073, the California Solar Initiative, as defined in CPUC D.06-01-024, PG&E's net energy metering tariff, or other **similar** California ratepayer **subsidized** program **relating to energy production** with respect to the Facility.

- 4) SCE will amend section 6.3 of both WATER Excess Agreement and CREST Excess Agreement in **AL 2148-E** to read as follows:

6.3 Producer agrees to sell all Excess electric energy produced by the Renewable Generating Facility as specified herein in Section 6.4 below and all Green Attributes, Capacity Attributes and Resource Adequacy Benefits (collectively, the "Attributes") **associated with the energy sold to SCE.**

- 5) SCE's Substitute Sheets for **AL 2148-E** will be included in the master 2148-E as per SCE's September 4, 2007 filing. The substitute sheets include the MPR table current at the time of filing, bringing the AL into compliance with Ordering Paragraphs 1 and 2 of D.07-07-027.

- 6) SDG&E will amend section 6.3 of its Public Water and Wastewater Agency Agreement (Form 160-1000) as included in **AL 1918-E** to read as follows:

6.3 Producer agrees to sell electric energy produced by the renewable energy Generating Facility as specified below together with all Green Attributes, Capacity Attributes and Resource Adequacy Benefits (collectively, the "Attributes") **associated with the energy sold to SDG&E:**

Option A (Full Buy/Sell) Producer agrees to sell all of the electrical energy produced from the Generating Facility, net of Station Use, as measured by the Net Generation Output Meter as shown in Appendix A.

Option B (Sale of Excess) Producer agrees to sell all of the energy produced, net of Station Use, in excess of the Producer's load at the Service Account(s) listed in Section 2.2 as such excess is measured by SDG&E at the Point of Common Coupling

- 7) Pacific Power will amend Appendix C: Contract Pricing, section C.2 in **AL 350-E** to read as follows:

Establishment of Tariffs for Purchase of Eligible Renewable Generation (AB1969)  
/SCO

C.3 Green Attributes. Seller waives any claim to Seller's ownership of Green Attributes **associated with the generation of electrical energy sold to PacifiCorp.**

- 8) Both Mountain Utilities and BVES will include a table with the current Market Price Referent in the appropriate section of **AL 73-E** and **AL 219-E**. As indicated in D.07-07-027, this may be in the tariff, but is required in the associated PPA.
- 9) All other respondents will substitute the Commission-approved 2007 MPR table for the 2006 table currently used in their Advice Letters.
- 10) All respondents will modify the definition of eligible electric generation facility to comply with PU Code Section 399.20 as amended by AB 946 and discussed in the Findings above.
- 11) All respondents may clarify through addition or modification to their tariffs and standard contracts the disposition of Resource Adequacy Benefits, consistent with other provisions of this Resolution.
- 12) All respondents will file modified tariffs and standard contracts as a simple compliance filing in the form of an Advice Letter.

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on February 14, 2008; the following Commissioners voting favorably thereon:

/s/ Paul Clanon

Paul Clanon  
Executive Director

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