



FILED

08-27-09

09:25 AM

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)

**ADMINISTRATIVE LAW JUDGE'S RULING REGARDING
PRICING APPROACHES AND STRUCTURES FOR A FEED-IN TARIFF**

Each respondent shall, and each party may, file and serve comments and reply comments, and may file motions for hearing, as provided below. For the purpose of this ruling, respondents are Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), and San Diego Gas & Electric Company (SDG&E).¹

1. Background

A feed-in tariff (FIT) is one element of the California Renewables Portfolio Standard (RPS) Program. (*See* Pub. Util. Code § 399.20, Decision (D.) 07-07-027, D.08-02-010, D.08-09-033.) The current RPS FIT is for the purchase of electricity up to 1.5 megawatts (MW) per customer, limited to 498.5 MW statewide, and at a price equal to the market price referent (MPR).

On March 27, 2009, I filed a ruling regarding possible expansion of the FIT program. Attached to the ruling was an Energy Division Staff Proposal titled "Feed-in Tariff for Renewable Generators Greater than 1.5 MW." The Energy

¹ References herein to (a) party also includes respondent, and (b) price also includes rate.

Division proposed expanding FIT eligibility from 1.5 MW to 10 MW per customer; limiting the expansion to 1,000 MW statewide; and including additional terms and conditions in the applicable standard contract. Energy Division proposed no change in the use of MPR for setting the price. Staff stated its recognition that price level and rate structure of the proposed FIT are essential elements to program success, and proposed that a future phase of this proceeding give further consideration to price issues. (See March 27, 2009 Ruling, Attachment A, at 9 and Appendix A.)

On April 10, 2009, comments were filed by 19 parties. On April 17, 2009, reply comments were filed by 9 parties. Some parties stated that price cannot be separated from FIT terms and conditions. Some stated that price is a critical element and its consideration should not be deferred. Others questioned the Commission's jurisdiction to set an FIT price.

On May 28, 2009, I directed the filing of briefs on the jurisdiction issue. Opening briefs were filed by 14 parties. Reply briefs were filed by 10 parties. Consistent with various views about jurisdiction, parties recommended a range of approaches upon which the Commission might set the FIT price. These approaches include, but are not necessarily limited to, basing the price on (a) seller's cost, (b) seller's cost plus or minus an adjustment, (c) buyer's avoided cost, (d) buyer's avoided cost plus or minus an adjustment,² and (e) market-based (e.g., auction, bi-lateral negotiation, bid solicitation, MPR). Some parties

² For example, some parties suggest the item to be subtracted or added might be a renewable energy credit, or REC.

stated they would provide more complete comments on the pricing details to be used with their recommended pricing approach during a later pricing phase.³

2. Further Inquiry

Further comments and replies on FIT pricing, in particular on the following areas, should complete the record with regard to pricing approaches for an expanded FIT.

2.1. Pricing Approach

Respondents shall, and parties may, file comments and reply comments on anything they have not already addressed regarding the setting of an FIT price consistent with the party's preferred or recommended pricing approach. This may include details on how to determine the price level. It should include anything else material and relevant for Commission consideration of FIT pricing in order to permit the Commission to address expansion of the FIT. Respondents and parties need not repeat anything already said, other than refer to prior statements as necessary.

2.2. Energy Division Pricing Proposal

Energy Division has continued to work on the pricing question and has prepared an FIT pricing proposal. (*See* Attachment A.) The proposal uses a Renewable Auction Mechanism (RAM) to determine FIT prices to be paid for electricity from wholesale renewable distributed generation projects. Respondents shall, and parties may, file and serve comments and reply comments on the Energy Division pricing proposal. Comments and replies shall

³ See, for example, Opening Brief of Solar Alliance and the Vote Solar Initiative dated June 18, 2009, p. 9.

also include answers to the questions posed by Energy Division at the end of its pricing proposal.

2.3. Pricing Structure

The pricing structure, or rate design, used for the purchase of electricity under an FIT may have implications that should be considered by the Commission. (*See* Attachment B.) Respondents shall, and parties may, address this to help the Commission consider the matter and possible effects. In particular, comments should provide information and discussion on the items and examples identified in Attachment B.

2.4. Goals

The Commission may wish, in reaching its final decision on an FIT, to consider pricing-related goals for an FIT. There may be various goals, and some may be complementary while others may be mutually exclusive. (*See* Attachment C.) Respondents shall, and parties may, comment on goals as they relate to FIT prices, and may propose additional goals which they recommend be used by the Commission in deciding upon an FIT pricing approach, structure (rate design) and components.

2.5. Assessment

The selected FIT pricing approach, price structure (rate design) and price components should meet most, if not all, of the relevant pricing-related goals.⁴ It

⁴ As used in this ruling, examples of price approaches are seller's cost, buyer's avoided cost, or market mechanisms; examples of price components are energy rates (cents/kWh), demand rates (dollars/kW/Mo) or fixed payments (e.g., dollars per month); examples of price structures (rate design) are (a) a design that uses energy rates only or (b) a design that uses energy rates, demand rates and fixed payments. (*See* Attachment B for more on price components and structures.)

will assist the Commission reach its decision if each party assesses its recommendation on FIT pricing approach, price structure and price components using the pricing-related goals stated in Attachment C, as amended by additional goals, if any, recommended by the party. It will also assist the Commission if each party compares and contrasts its pricing recommendation against other candidate recommendations.

Each respondent shall, and each party may, include this assessment in its comments. Each party should consider using the matrix in Attachment D regarding pricing approaches, and Attachment E for pricing structure and components, adding columns and rows as necessary, or may use another approach that effectively presents its views.

Parties are encouraged to coordinate this assessment of how the different pricing approaches perform across the pricing-related goals, and attempt to make a consolidated showing. Respondents are asked to take the lead to assist in that coordination. If the coordination is unsuccessful, each respondent's comments shall include a brief summary of its work to facilitate that coordination and state any significant reasons why the coordination was unsuccessful.

2.6. Official Notice

It is proposed that official notice be taken of the Final Consultant Report prepared by KEMA, Inc., for the California Energy Commission titled "California Feed-In Tariff Design and Policy Options." (CEC-300-2008-009F.) (Rule 13.9 of the Commission's Rules of Practice and Procedure.) The proposed official notice would be of the material and information contained in the document, but not to the truth of anything stated in the document. Respondents and parties may comment.

2.7. Other Material and Relevant Matters

Comments and reply comments should also identify and discuss any other material and relevant matters a party believes must be considered by the Commission at this time before reaching a decision on the issue of setting the FIT price. In particular, comments must state and discuss all relevant facts and law asserted by a party to be material and relevant.

2.8. Motions for Hearing

Motions for hearing may be filed and served by the dates in the schedule stated below.

2.9. Pleadings and Service of This Ruling

Respondents and parties are reminded that pleadings (e.g., comments, replies, motions) must be verified; respondents and parties must use their best efforts to employ the same outline in their pleadings (in order to facilitate understandability, consistency and completeness); and motions for hearing must include certain specific information. (*See* September 26, 2008 Scoping Memo and Ruling, pages 7-9 and Ordering Paragraphs (OPs) 2, 3, 5 and 6.)

Parties are encouraged to coordinate their comments to the fullest extent feasible and present one coordinated pleading. Respondents should take the lead in assisting parties determine if such coordination is possible, and report on the outcome in their comments.

In addition to the service list for this proceeding, this ruling will also be served on the service list of three other proceedings: Application (A.) 08-03-015 (SCE Solar Photovoltaic Program), A.08-07-017 (SDG&E Solar Energy Project), and A.09-02-019 (PG&E Photovoltaic Program). Some issues in these other proceedings may be the same as, or overlap with, the issues identified in this ruling. If interested, a party in another proceeding may file a motion to become a

party in this proceeding. (See September 26, 2008 Scoping Memo and Ruling, page 11, OP 8.) If the motion is granted, the party may file comments, reply comments and other pleadings to help inform the record in Rulemaking 08-08-009.

3. Next Steps

The record is composed (with limited exceptions) of filed and served documents and pleading. (September 26, 2008 Scoping Memo and Ruling, pages 8-9 and OP 5.) This ruling provides the opportunity for parties to complete the record on pricing issues, including approaches, components and structures (rate design).

After receipt of these comments and replies (and receipt of the evidentiary record if motion is made and granted for hearing), I anticipate preparing a proposed decision based on the complete record (*e.g.*, comments and reply comments from parties in July 2008; the March 2009 Energy Division FIT Proposal; comments and reply comments on the March 2009 Energy Division FIT Proposal; opening and reply briefs on Commission jurisdiction; comments and reply comments on pricing approaches and structures (including the Energy Division pricing proposal attached to this ruling); documents of which official notice is taken; evidentiary record, if any). I may later ask each respondent to prepare a draft FIT and standard contract to permit consideration of more specific or exact language, if necessary.⁵

⁵ For example, *see* March 12, 2007 Amended Scoping Memo and Ruling of Assigned Commissioner Regarding Implementation of Pub. Util. Code § 399.20 (Assembly Bill 1969). Also *see* November 18, 2008 Administrative Law Judge's Ruling Requiring Draft Revised Tariffs Based on Senate Bill 380.

IT IS RULED that:

1. For the purpose of this ruling, respondents are Southern California Edison Company (SCE), Pacific Gas and Electric Company and San Diego Gas & Electric Company.

2. Respondents shall, and parties may, file and serve comments and reply comments on (a) anything not already addressed regarding the setting of a feed-in tariff (FIT) price, including details on how to determine the price level; (b) the Energy Division “System-Side Renewable Distributed Generation Pricing Proposal” (Attachment A), including (but not limited to) the questions posed by Energy Division at the end of its proposal; (c) price structure issues (Attachment B); (d) pricing-related goals of an FIT (Attachment C); (e) an assessment of the party’s recommendation on FIT pricing, including a comparison and contrast with other recommendations on pricing (Attachments D and E); (f) taking official notice of a document prepared for the California Energy Commission identified in the body of the ruling; and (g) anything else material, relevant and necessary for full consideration of price level, price structure and other price issues presented in the body of this ruling and the attachments.

3. To the extent feasible, parties shall prepare a coordinated showing on the assessment of FIT pricing, and on any other parts of the comments parties are able to coordinate. Respondents shall take the lead to assist parties assess the feasibility of a coordinated showing, and assist in its preparation. If the coordination is unsuccessful, each respondent’s comments shall include a brief summary of its work to facilitate that coordination and state any significant reasons why the coordination was unsuccessful.

4. Comments shall be filed and served within 21 days of the date of the date of this ruling. Reply comments shall be filed and served within 7 days of the

date of comments. Motions for hearing shall be filed and served within 5 days of the date reply comments are filed, and responses to motions within 3 days of motions.

5. This ruling shall also be served on the service lists for Application (A.) 08-03-015, A.08-07-017 and A.09-02-019.

Dated August 27, 2009, at San Francisco, California.

/s/ BURTON W. MATTSON

Burton W. Mattson
Administrative Law Judge

INFORMATION REGARDING SERVICE

I have provided notification of filing to the electronic mail addresses on the attached service list.

Upon confirmation of this document's acceptance for filing, I will cause a Notice of Availability of the filed document to be served upon the service list to this proceeding by U.S. mail. The service list I will use to serve the Notice of Availability of the filed document is current as of today's date.

Dated August 27, 2009, at San Francisco, California.

/s/ TERESITA C. GALLARDO
Teresita C. Gallardo