

JUNE 2012

CPUC EXPANDS CALIFORNIA NET METERING CAP AND APPROVES CHANGES TO RENEWABLE FEED-IN TARIFF

On May 24, 2012, the California Public Utilities Commission (CPUC or commission) approved two decisions that significantly expand incentives for the distributed generation of clean energy in California. The first decision changes the method for calculating the statewide capacity cap for the net metering program, and could have the effect of increasing the total capacity of distributed renewable energy generation eligible for this program by more than 2 GW. The final version of the decision approved by the CPUC, however, provided that the net metering program will be suspended temporarily on January 1, 2015, unless the CPUC issues new policy rules for the program before that date. The second decision approves a new pricing methodology and key program design features for California's Feed-In Tariff (FIT), expands the program to include projects up to 3 MW, and sets a new statewide capacity cap of 750 MW under the program.

Decision on Net Metering California Statewide Capacity Cap

Net energy metering (NEM) is an important incentive program that enables utility customers who produce electricity on their side of the meter to receive a credit for generation in excess of electricity consumed

from the grid at retail electricity rates. The California Public Utilities Code obligates the state's three investor-owned utilities (IOUs) to allow eligible customers to participate in their net metering tariff until the total generating capacity under the program exceeds 5 percent of each IOU's¹ "aggregate customer peak demand."² Previously, the IOUs calculated aggregate customer peak demand based on the highest recorded peak demand in their service territories (i.e., a "coincident peak") using different demand intervals.

The CPUC's recent decision, Decision 12-05-036,³ finds that "aggregate customer peak demand" means the sum of all individual customer peak demands, rather than a coincident system peak demand. Individual customer peaks in demand may occur at different times of the day, whereas the coincident peak demand figure proposed by the utilities was the highest peak load at one point in time. The sum of such individual customer peaks is expected to be significantly larger than a utility's historical system-wide peak. The decision could double the total capacity of distributed generation eligible for the net metering tariff, increasing such capacity by more than 2 GW.

The final version of the decision approved by the CPUC on May 24, 2012, ordered the

CPUC's Energy Division to oversee the preparation of a report on the cost-effectiveness of the net metering program, including an analysis of the costs and benefits of NEM to participants and non-participants (disaggregated by utility, customer class, and income level), as well as data on the income distribution of NEM participants.⁴ This report must be completed by October 1, 2013. The decision envisions that new rules relating to the net metering program and reflecting the results of the study will be developed by the CPUC. Importantly, the decision provided that unless the CPUC issues new policy rules for the net metering program by January 1, 2015, the program will be suspended until such new rules are adopted. These provisions were not included in the prior versions of the decision circulated for public comment.

On June 25, 2012, the CPUC will hold a workshop with the IOUs and other interested parties to discuss methods for calculating individual customer peak demand, and then will issue a ruling on the methodology to be used in calculating peak demand by August 21, 2012. The IOUs will be required to conform their NEM tariffs to the new methodology set forth in the ruling by September 20, 2012.

¹California's IOUs include Pacific Gas & Electric Company (PG&E), Southern California Edison (SCE), and San Diego Gas & Electric Company (SDG&E).

²Cal. Pub. Util. Code §2827(c)(1).

³Decision 12-05-036 is available at http://docs.cpuc.ca.gov/word_pdf/FINAL_DECISION/167591.pdf.

⁴Note that pending legislation, AB 2514 (Bradford), which passed in the California Assembly, also would require the CPUC to conduct a study regarding the extent to which each class of ratepayers and each region of the state participating in the NEM tariff is paying the full cost of services provided by utilities and their share of public purpose programs, as well as the benefit of NEM. For the purposes of this study, this bill would define "aggregate customer peak demand" as the peak demand reported by utilities on FERC Form No. 1 (as opposed to the non-coincident aggregate of individual customer peak demand definition set forth in D. 12-05-035).

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Approval of California Feed-In Tariff Pricing Methodology and Program Design

Also on May 24, 2012, the CPUC approved Decision 12-05-035,⁵ which makes various changes to California's Feed-In Tariff to reflect amendments to California Public Utilities Code §399.20. In addition to making numerous other program changes, the decision significantly revises the pricing under this program from the Market Price Referent (MPR) to a variable price adjusted based on the willingness of renewable power producers to sell at a given price.

Originally, California's FIT program required the IOUs to file fixed-price tariffs for the purchase of electricity from public water and wastewater facilities on a first-come, first-served basis until utility-specific procurement limits were reached. This program subsequently was extended to include retail utility customers generating electricity from renewable sources in the service territories of the IOUs, up to a maximum project size of 1.5 MW.

Decision 12-05-035 implements a statutory change set forth in SB 32 (Negrete McLeod, Stats. 2009, ch. 328, §3.5) that expanded the maximum nameplate capacity for project eligibility under the FIT from 1.5 MW to 3 MW. The decision contains an anti-"daisy-chaining rule": each seller will be required to represent in a FIT power purchase agreement (PPA) that the project is the only project being developed by such seller on "any single or contiguous piece of property."⁶ The utilities also will have the authority to deny a tariff request if the project "appears to be part of a larger overall installation by the same company or consortium in the same general location,"⁷ and generators will have a right to contest such a denial.

Under prior CPUC precedent, the price of the

FIT was set at the MPR, which was calculated by the CPUC for each annual Renewable Portfolio Standard (RPS) solicitation.⁸ Statutory changes set forth in SB 2 1X (Simitian, Stats. 2011, ch. 1) removed the requirement that the FIT price be tied to the MPR. In response to this legislative change, Decision 12-05-035 establishes a new pricing methodology for the FIT called the "Renewable Market Adjusting Tariff," or "Re-MAT." The decision distinguishes three product types under the FIT: baseload (i.e., firm energy deliveries, such as bioenergy and geothermal), peaking as-available (i.e., non-firm energy deliveries during peak demand, such as solar), and non-peaking as-available (i.e., non-firm energy deliveries during non-peak hours, such as wind and small hydro). The Re-MAT price for each product category begins with the weighted average of the IOUs' highest executed contract price under the Renewable Auction Mechanism (RAM) held in November 2011 (anticipated to be \$89.23/MWh). This starting price then is adjusted on a contract-by-contract basis by time-of-delivery factors for the electricity generator's actual delivery profile. In addition, the starting price is adjusted every two months based on the willingness of eligible generators to sell at the current price.

More specifically, interested generators that meet the FIT project viability criteria, which are summarized below, enter the FIT queue on a first-come, first-served basis by submitting a program participation request form to the applicable IOU. Every two months, each IOU must offer eligible generators in the order of the queue the opportunity to enter into the standard FIT contract at the current price. If the generator accepts this price, it then will enter into a PPA at that price, fixed for the term of the contract. If the generator rejects the price, it retains its queue position, but the

IOU moves on and offers the contract to the next eligible generator in the queue. For each product type (baseload, peaking as-available, and non-peaking as-available), if, at the end of a two-month period, at least five eligible projects offered by different project developers remain in the queue and either (i) no projects agree to enter into a contract at the current price, or (ii) program subscription is less than 50 percent of the initial starting capacity for that project type, then the price will increase from the current price by \$4, \$8, \$12, \$16, \$20, and so on in subsequent two-month periods. Correspondingly, for each product type, if, at the end of a two-month period, subscription equals at least 100 percent of the initial capacity for that product type, then the current price decreases by \$4, \$8, \$12, \$16, \$20, and so on in subsequent two-month periods. Each IOU must make the current FIT prices available on its website on the first business day of the month in which the price adjustment occurs.

The total statewide capacity of renewable energy for which the FIT must be offered is 750 MW, allocated among the IOUs as follows: PG&E (218.8 MW), SCE (226 MW), and SDG&E (48.8 MW).⁹ The decision requires each IOU to assign one-third of its total program capacity to each product type (baseload, peaking as-available, and non-peaking as-available). Unsubscribed capacity for each product category during each 24-month period then will be reallocated after the end of two years. The commission declined to adopt a price adder to reflect the environmental benefits of certain technologies, such as greenhouse gas emissions reductions resulting from biogas projects, and declined to establish set-asides of capacity for specific technologies. The decision does not restrict eligibility to commercialized technologies, thereby enabling projects using emerging technologies to sell

⁵Decision 12-05-035 is available at http://docs.cpuc.ca.gov/word_pdf/FINAL_DECISION/167679.pdf.

⁶D.12-05-035 at 67.

⁷*Id.*

⁸For example, the 2011 MPR was \$93.75/MWh.

⁹All capacity under the existing FIT program (i.e., prior to this decision) counts towards each utility's capacity allocation. The decision does not specify the allocation of the remaining 256.4 MW among the publicly owned electric utilities. It also provides that the FIT program does not apply to electrical corporations with less than 100,000 service connections in California. Utilities are not prohibited from entering into contracts under the FIT tariff for total capacity that exceeds their proportionate share of the statewide cap.

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under the FIT tariff.

Decision 12-05-035 contains additional project viability and other requirements for the FIT program, including the following:

- A generator need not be a retail customer of the utility in order to participate in the FIT program
- A generator must interconnect to the distribution system (as opposed to the higher-voltage transmission system) and must be sited near load, i.e., where interconnection requires a maximum of \$300,000 in upgrades to the transmission system
- A generator must register with FERC as a Qualifying Facility
- A \$2/kW bid fee applies
- Interconnection status: System Impact Study, Phase I study, or passed Fast Track screens or supplemental review¹⁰
- Seller must attest to 100 percent site control through direct ownership, lease or option to lease, or purchase exercisable upon execution of PPA
- Online date must be within 24 months with one 6-month extension for regulatory delays
- An individual seller may not subscribe to

more than 10 MW of capacity across the FIT program

- Beginning after the May 2012 RAM auction, generators with nameplate capacities of 3 MW or less may not participate in the RAM if they meet the eligibility criteria for the FIT and capacity for their product type under the FIT has not yet been reached
- Within 10 days of the execution date and the effective date of a PPA, the PPA and key information about the PPA, including the contract price, must be posted on the IOU's website
- Generators that received California Solar Initiative or Self Generation Incentive Program incentives can sell electricity under the FIT once the project has been online and operational for 10 years; Net Energy Metering customers can participate in the FIT only if they first terminate their participation in the NEM program

Looking ahead, the IOUs must submit to the CPUC proposed FIT tariff changes and changes to the form of FIT PPA incorporating the provisions of Decision 12-05-035. The CPUC will address these changes in a separate decision. Decision 12-05-035 gives the IOUs the authority to suspend all or part of the FIT program if evidence of market manipulation exists. It also requires a

stakeholder conference within the first year of the modified FIT program, calls for an online feedback forum, and expresses an openness to consider changes to the program in the future based on stakeholder input.

For further information on California's net metering or feed-in tariff programs, or for other advice pertaining to energy regulation, please contact Sheridan Pauker or Todd Glass in Wilson Sonsini Goodrich & Rosati's energy and clean technology practice.



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¹⁰Decision 12-05-035 provides that until the Rule 21 settlement process is resolved in the CPUC's Rulemaking Proceeding 11-09-011, generators may choose whether or not to use the existing Tariff Rule 21 or FERC Wholesale Distribution Access Tariff (WDAT) interconnection procedures. The decision anticipates that once the Rule 21 settlement is resolved, it will no longer permit use of the WDAT procedures.