Highly Charged Utilities Commission Decision Will Aid Alternative-Energy Generation

Forum Column
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In the continuing saga of the state's efforts to allocate financial responsibility for the 2000-01 energy crisis, the state Public Utilities Commission has approved a decision that bodes well for the future of clean, alternative-energy generation.

For the last three years, the state has been trying to decide how to recover billions of dollars for past overpayments of electricity costs occasioned by excessive long-term energy contracts entered into by the Department of Water Resources in 2001 and 2002.

One thing that always has been clear is that basic utility customers will pay. In the jargon of the utilities commission, basic utility customers are referred to as "bundled customers" - those receiving their power from the electricity grid. Bundled customers will pay through increased electricity rates over the next 10 years.

What has not been clear until now and what the recent commission deliberations have focused on is how much, if any, of the overpayments should be borne by so-called "direct access" customers - those who obtain their electricity from nonutility merchant energy providers - and customers who generate their own electricity on-site and therefore are not dependent on the utility-managed electricity grid. These are called "departing-load" customers.

In what has been described in a previous article as a "zero sum game," the commission engaged in a balancing act to ensure that the costs of the water department's overpayments would not be shifted unfairly to bundled customers.

This principle - prevention of cost-shifting - meant that "bundled service customers are indifferent" and was elucidated in the utilities commission's D.02-04-067. The "indifference principle" has driven the push to make sure that "direct-access" and "departing-load" customers pay their fair share.

In November 2002, the commission determined that a cap of 2.7 cents per kilowatt/hour should apply to direct-access customers. This is not insignificant, given that many direct-access long-term contracts were negotiated in the 5-to-7 cent per kilowatt/hour range.

This cap is being reconsidered and could go to 4 cents per kilowatt/hour or higher. This surcharge on direct-access customers will help to fund the state's overpayments for electricity. Resolution of this issue left one unresolved major issue: how much to charge "departing-load" customers so that the bundled customers would remain "indifferent."

On April 3, the commission approved a significant decision on departing-load fees. See "Opinion on Cost Responsibility Surcharge Mechanisms for Customer Generation Departing Load," Cal. Pub. Utilities Comm'n Rulemaking 02-01-011 (Jan. 9, 2002), dated April 3, 2003. On May 3, the decision became unappealable. Most significantly, the commission provides exemptions for small systems (under 1 megawatt) and certain ultra-clean and low-emission systems.

On Jan. 17, 2001, in a state of crisis, the governor ordered the department to begin procuring electricity on behalf of all utility customers. Utilities could no longer acquire needed electricity because of price spikes in the cost of power being charged by wholesale electric-power merchants.

These price spikes, in retrospect, are seen as a symptom of a general breakdown in implementation of the state's deregulation policy.

In order to pay for this expensive breakdown, electricity prices for all bundled customers have been increased. In addition, the commission has developed the concept of an energy surcharge, referred to as a cost-responsibility surcharge, to be paid by customers who have opted out of the state's power grid.

The rationale for the surcharge is that the department anticipated purchasing power for all customers in the system and the fact that a customer leaves the system should not preclude that customer from continuing to pay its fair share of the surcharge.

This rationale is well-grounded when applied to direct-access customers. After all, direct access is principally employed by large electricity consumers who satisfy their energy needs through long-term contracts with merchant power producers, generally on the basis of price.

No policy imperative would exempt such customers from the surcharge. The lower costs to be obtained from merchant power providers are not the result of true competition but are caused by an anomaly in a failed experiment at deregulation. No one consumer should avoid the costs of this failed experiment.

Departing-load customers, however - those who generate their own electricity on-site - are in a different category and therefore are treated differently by the commission.

Over the years, the Legislature has enacted laws designed to encourage customer electricity generation, especially customer generation using "cleaner," alternative technologies, such as solar, wind and fuel cells. The commission, on Sept. 1, 2002, recognized these considerations and exempted such customers from most surcharges.

The surcharge opinion deals with a number of components. First are the costs associated with procurement of power by the department, which are broken into two segments. The department financed, and intends to finance, large portions of its energy purchases by floating investment-grade bonds (allegedly totaling $12 billion).

A continuing charge to electricity customers will repay these bonds and help keep the financing costs low. In addition, the department has continuing power costs that will not be financed by a bond issuance.

Another component of the surcharge opinion is so-called "tail" competition transition charges, which are charges imposed by legislation to provide for an orderly transition to deregulation. These charges are not attributable directly to the energy crisis but rather are charges imposed on the system as a whole as it converts to a deregulated environment.

Finally, certain historical procurement charges apply to customers in the Southern California Edison utility district.

The commission decision breaks down the departing-load exemptions as follows:

- Fully exempted from all commission surcharges are customer self-generation systems that participate in the state net metering program (limited to 1 megawatt in size) and systems under 1 megawatt that are eligible for participation in either the commission self-generation program or a state energy commission program.

The self-generation program encourages clean, high-efficiency self-generation systems by providing a customer rebate. The cleaner and more renewable systems receive a higher rebate. The net metering program allows customers to sell their electricity back to the grid when they are not using it, causing the electric meter literally to spin backwards.

- Required to pay the department bond charge but exempt from all other surcharges are ultra-clean and low-emission systems over 1 megawatt. These are defined as systems using technologies that begin initial operations before December 31, 2005, and that meet or exceed the standards set by the state's Air Resources Board for 2007, including solar, wind, fuel cells and certain combustion technologies in combined heat and power applications.

These exemptions further are subject to an overall cap of 3,000 megawatts of combined total installed customer self-generation, which represents the cumulative total projected by the department for distributed generation in the next 10 years.

The commission pledged to revisit the 1-megawatt limit in the first category within three years to consider "technological advances or economies of scale in customer generation production and sale."

At minimum, the commission decision portends increased transactional activity in the area of on-site power projects when large and medium energy users re-evaluate how their electricity needs will be provided.

Distributed generation in any form - clean, ultra-clean or dirty - almost by definition reduces demand for grid, central powerplant-generated electricity. The decision provides an economic incentive for businesses and government electricity users to opt for less reliance on the grid, in the form of internal combustion with combined heat and power, solar, wind, fuel cells or bio-gas.

The decision goes further, however, by providing even more economic incentives for certain types of ultra-clean or renewable generation, providing end users with a choice between polluting and nonpolluting distributed generation.

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