

Feed-In Tariff for Sale of Customer Sited Generation to SMUD

Questions and Answers (12/13/2011)

The following answers are for information purposes only and are not intended as legal advice. If you have questions about the legal nature of your rights and obligations under the tariff and/or contract, you should consult your attorney.

Q1. What is the purpose for a Feed-In Tariff?

A1. Under a Feed-In Tariff, a utility offers published rates and standard contract terms to customers or third parties selling generation from qualifying (typically renewable) resources. SMUD is offering the Feed-In Tariff effective January 1, 2010 in accordance with Board Resolution 09-06-05. SMUD's Feed-In Tariff complies with SB32, which was recently signed by the governor.

Q2. What are the qualifications for SMUD's Feed-In Tariff?

A2. The primary criteria to qualify for SMUD's Feed-In Tariff are: 1) The project must be located within SMUD's service area; 2) The project must be 5 MW or smaller; 3) The project must be an eligible renewable energy project, or a qualifying combined heat and power installation, certified as such by the CEC.

Q3. How are SMUD Feed-In Tariff rates determined?

A3. The Feed-In Tariff rates reflect SMUD's marginal cost (market price, ancillary services, generation capacity, transmission and sub-transmission capacity); and for eligible renewable resources, the costs of avoided greenhouse gas mitigation and risk avoidance of future natural gas prices. The Feed-In Tariff rates are also adjusted for time of delivery periods. The Feed-In Tariff rates are published on SMUD's website. SMUD will review and adjust its Feed-In Tariff rates periodically, but not less than one time per calendar year, based on the above criteria.

Q4. How will SMUD's adjustment of Feed-In Tariff rates impact the price that an Applicant receives for its power?

- A4. Applicants holding either a Reserved Position in the Queue or on the Waiting List for the Queue prior to August 4, 2010, at which time SMUD suspended acceptance of new applications, will be eligible for rates approved and effective as of January 1, 2010. Should SMUD again accept new applications at any time after August 4, 2010, new Applicants assigned Reserved Positions in the Queue will receive the price in effect at the time the Applicant secures its Reserved Position. For example, if SMUD adjusts its Feed-In Tariff rates effective January 1, 2011, any new Applicant that secures a Reserved Position after January 1, 2011 but before SMUD makes any further rate revisions will be subject to the January 2011 rates.
- Q5. Feed-In Tariff Capacity. How much capacity does SMUD plan to interconnect under the Feed-In Tariff; and how will qualifying systems be interconnected with SMUD?
- A5. Service under the tariff will be provided on a first-come, first-served basis until the combined rated generation capacity within SMUD's service territory reaches 100 MW. Eligible systems will be interconnected using SMUD's Rule 21 process. A copy of SMUD's Rule 21 is available for viewing on SMUD's website.
- Q6. Allocation between Pools. Does it make a difference whether my Facility is shown under Pool A or Pool B?
- A6. No, the allocation between pools is for SMUD's purposes, and does not impact the Applicant's Facility. Reference Section 6.3.3 of Procedure 8-04.
- Q7. Seller's Decision Not to Proceed with Facility. What happens if an Applicant determines that it does not wish to proceed with its proposed Facility, after the Applicant has executed the Power Purchase Agreement with SMUD, but before the Project achieves Commercial Operation?
- A7. In such a case, Applicant may provide SMUD with a notice of termination, but in doing so it will lose a portion of its Reservation Deposit as specified in Section 7.3.4 of SMUD's Feed-In Tariff PPA.
- Q8. Request for Decrease in Contract Capacity. Can an Applicant request a decrease in the contract capacity after the PPA is signed?
- A8. Yes, a decrease is allowed, either due to the choice of the Applicant, or due to constraints arising during the permitting or construction process. In any case,

there will be associated charges, dependent on the timing and magnitude of the request for reduction, in accordance with the formula specified in Section 7.3.4 of SMUD's Feed-In Tariff PPA. SMUD would additionally charge an administrative fee of \$1,500. The Applicant would be refunded that portion of the reservation deposit associated with the reduction, less the charges and administrative fee. If the charges and administrative fee are greater than the refund, the Applicant would be billed the additional amount.

Q9. Event of Force Majeure Prior to Commercial Operation Date. Section 10.1 of the Power Purchase Agreement excuses both parties from performance in an event of Force Majeure. Achieving Commercial Operation within 90 days of the scheduled Commercial Operation Date is a performance requirement that could be excused if impacted by an event of Force Majeure, and not trigger termination under Section 14.2(a). If an event of Force Majeure prevents Applicant from achieving the Commercial Operation within 90 days of the Commercial Operation Date, how much additional time would be provided to Applicant for it to achieve Commercial Operation?

A9. In the event of a Force Majeure prior to the Commercial Operation Date, the timeline for achieving Commercial Operation would be extended for such reasonable period of delay directly resulting from such Force Majeure event. For example, suppose an Applicant has a Scheduled Commercial Operation Date of September 1, 2010. If the Applicant does not achieve Commercial Operation by November 29, 2010 (90 days after the Scheduled Commercial Operation Date), SMUD may terminate the Agreement. If on August 1, 2010, an event of Force Majeure causes damage to the Facility that takes the Applicant 45 days to fix, the Applicant notifies SMUD promptly of the event of Force Majeure and uses due diligence to overcome its effects. Under these circumstances, the deadline for achieving Commercial Operation would be extended by 45 days (until January 13, 2011).

Q10. Facility Not Fully Installed at COD. What happens if the Scheduled Commercial Operation Date is reached with the full Facility not installed, such that the full contracted capacity is not available?

A10. The terms of the PPA would not be met under these conditions. The Applicant should request a reduction in contract capacity if the expectation is that the full capacity will not be installed.

Q11. Facility Ready for Commercial Operation except for CEC Certification. If the Facility does not receive CEC certification, would the Facility's Commercial Operation be impacted?

A11. CEC certification is a requirement of Commercial Operation. If CEC certification is the only requirement not met at the Scheduled Commercial Operation Date, the Facility would receive indexed pricing for energy produced. Note that the CEC certification process can take a number of months, and Applicants are encouraged to factor this into their schedule.

Q12. Payment for Energy Produced prior to Commercial Operation. If a system is partially or fully energized prior to the Commercial Operation Date, does the Applicant receive payment for the energy produced?

A12. Yes. Prior to COD, payment will be made for energy produced based on indexed pricing.

Q13. Monthly vs. One-time Payment for Ongoing O&M of Interconnection Facilities. Can you explain the payment options for O&M of the interconnection facilities? When does the selection between options need to be made, and is there a time period associated with the monthly option?

A13. The Applicant has the choice of payment for ongoing O&M of Interconnection Facilities through a one-time up-front charge, or a monthly charge, as described in Exhibit B of the IA. Either payment option selected will be based on the "Actual" rather than "Estimated" cost of interconnection. With the monthly option, the payments are for the term of the contract. Note that Section 4.7 of the IA discusses the case of discontinuance of use of the Interconnection Facilities due to early termination, or otherwise.

The Applicant's selection between the monthly and one-time payment option will be made at the time at which the Actual SMUD Design and Construction Cost is known. In the event the Applicant does not make a choice, the default will be the monthly payment option.

Q14. Timing of Invoicing for O&M of Interconnection Facilities. When does SMUD invoice for the one-time charge, or begin the monthly invoicing, for costs related to ongoing operations, maintenance, and replacement of the Interconnection Facilities?

A14. Invoicing will take place once the facility has reached Commercial Operation.

Q15. Refund of Unused Advanced Funds under the Interconnection Agreement. Section 4.2 of the Interconnection Agreement requires the Applicant to pay in

advance and in full for all estimated SMUD design and construction costs of the Interconnection Facilities. Will the Applicant receive a refund of the funds that it submitted for design and construction costs under the Interconnection Agreement, in the event the Interconnection Agreement terminates prior to the Project achieving Commercial Operation?

A15. Yes. Section 4.2(a) of the Interconnection Agreement provides that SMUD will refund the funds advanced by the Applicant in excess of the actual design and construction costs incurred by SMUD for the Interconnection Facilities. To the extent that the Interconnection Agreement terminates before the design and construction work is completed on the Interconnection Facilities, SMUD will refund to Applicant any remaining funds without interest in excess of the costs incurred by SMUD, including any costs incurred by SMUD associated with the termination.

Q16. Is it acceptable for a single company to hold multiple PPAs for projects co-located at a single site?

A16. Yes.

Q17 How will the following Section 2.3, third sentence, be applied to a situation in which the initial scheduled COD of October 31, 2011 is moved back 90 days for a revised scheduled COD of January 31, 2012; and subsequently, all of the requirements for commercial operation are completed prior to the end of 2011? Also, what rates apply to the project's energy output?

"The Commercial Operation Date shall occur on the latest date on which the following conditions have been satisfied, with the exception that in no event shall the Commercial Operation Date be prior to January 1 of the year of the Scheduled Commercial Operation Date."

A17 Given that that intent of the language was to maintain the association between the Commercial Operation Date and the applicable rates in the PPA, the statement will be interpreted to mean that, "in no event shall the Commercial Operation Date be prior to January 1 of the year of the (Initial) Scheduled Commercial Operation Date."

Q18 Exhibit A of the PPA allows SMUD to revise the exhibit as appropriate, giving written notice to the Facility Owner regarding the revision, and issuing a new exhibit which shall then become part of the Agreement, in the event of changes to the information contained within the exhibit. Under what conditions would SMUD modify Exhibit A, "Description and Location of Facility," and is there

provision to first obtain the consent or participation of the Facility Owner when making the change?

- A18 Exhibit A contains information regarding the Facility components, location, expected energy output, interconnection voltage, Initial Scheduled Commercial Operation Date, and Feed-In Tariff Reservation Deposit. Where Exhibit A contains information pertaining to the Facility as originally provided by the Facility Owner, SMUD would not expect to unilaterally change that information. SMUD would revise Exhibit A to document any correction or change to the information contained in the exhibit; or to add a revised Scheduled Commercial Operation Date, where applicable and as allowed per Section 7.2 of the PPA. Facility Owner should notify SMUD of any known change to the information contained in Exhibit A.