

**PUBLIC UTILITIES COMMISSION**505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298**FILED**09-28-10
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September 28, 2010

Agenda ID #9822

TO PARTIES OF RECORD IN PETITION 10-07-016

This is the proposed decision of Administrative Law Judge (ALJ) Maryam Ebke. It will not appear on the Commission's agenda sooner than 30 days from the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the proposed decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the proposed decision as provided in Article 14 of the Commission's Rules of Practice and Procedure (Rules), accessible on the Commission's website at www.cpuc.ca.gov. Pursuant to Rule 14.3, opening comments shall not exceed 15 pages.

Comments must be filed pursuant to Rule 1.13 either electronically or in hard copy. Comments should be served on parties to this proceeding in accordance with Rules 1.9 and 1.10. Electronic and hard copies of comments should be sent to ALJ Ebke at meb@cpuc.ca.gov and the assigned Commissioner. The current service list for this proceeding is available on the Commission's website at www.cpuc.ca.gov.

/s/ KAREN V. CLOPTONKaren V. Clopton, Chief
Administrative Law Judge

KVC:oma

Attachment

Decision **PROPOSED DECISION OF ALJ EBKE** (Mailed 9/28/2010)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Petition to adopt, amend, or repeal a regulation pursuant to Pub. Util. Code Sec. 1708.5 by Lite Solar, Inc., a Calif. Corporation to amend California Public Utility Code Section 780.5 to permit master-meter installation on multi-unit residential apartment buildings or similar multi-unit residential structure, condominium, and mobile home parks when an owner is installing solar solely for the use of the tenants and common area.

Petition 10-07-016
(Filed July 14, 2010)

**DECISION DENYING PETITION TO AMEND
PUBLIC UTILITIES CODE SECTION 780.5**

1. Summary

This decision denies the petition of Lite Solar, Inc., a Calif. Corporation to amend Section 780.5 of the Public Utilities Code.

2. Procedural Background

On July 14, 2010, Lite Solar, Inc., a Calif. Corporation (Lite Solar) filed a petition requesting that the Commission amend Section 780.5 of the Public Utilities Code to:

- 1) Allow owners of individual meter multifamily residential properties that install net metered renewable energy systems to install a master-meter and convert the existing individual meters to sub-meters and bill tenants based on the actual measured-sub-metered usage of that tenant.

- 2) Establish that owners that install, own, and operate renewable energy equipment, such as solar panels, on their property and bill the tenants for actual usage are not considered public utilities.

Lite Solar states installation of master meters on multiunit properties built after 1978 is prohibited pursuant to the Public Utility Regulatory Policy Act (PURPA) of 1978, and claims existing rules promulgated by PURPA effectively inhibit multiunit properties with individual electric meters from installing solar photovoltaic systems. Lite Solar characterizes the problem as part of an overall master metering issue addressed in Section 780.5 of the Public Utilities Code and urges us to amend Section 780.5 to allow master metering in multitenant buildings to encourage installation of solar photovoltaic on rooftops.

On August 13, 2010, the Attorney General of California (Attorney General) filed a response to the petition. While the Attorney General is generally supportive of Lite Solar's petition to remove the barriers or disincentives for all multiunit buildings in order for the owners of such buildings to participate in the California Solar Initiative (CSI), it acknowledges that the Commission cannot grant Lite Solar's petition without additional legislative enactments. The Attorney General however, believes the Commission can exercise other options that do not require legislative action to achieve the same results. Accordingly, the Attorney General recommends the Commission expand virtual net metering (VNM), which was established as a pilot for multifamily affordable solar housing in Decision (D.) 08-10-036, to all multitenant properties to solve the problem of

allocating benefits from a single solar energy system to multiple individually metered tenants.¹

The Attorney General recognizes that D.08-10-036 has already directed the assigned Administrative Law Judge (ALJ) in the Distributed Generation (DG) and CSI rulemaking (Rulemaking (R.) 10-05-004) to issue a ruling to explore expansion of VNM to all multitenant properties that install solar energy systems, and urges the Commission to take immediate action as directed in D.08-10-036 by issuing a proposed rule regarding expansion of VNM.

San Diego Gas & Electric Company (SDG&E) and Southern California Gas Company (SoCalGas) also filed a timely joint response to Lite Solar's petition stating that the petition should be denied because it is contrary to law and beyond the Commission's jurisdiction. In SDG&E's and SoCalGas's view, Lite Solar's petition requires amending a statute which is something that only the Legislature can do. As a result, SDG&E and SoCalGas believe it is a waste of Commission resources to initiate such a rulemaking.

3. Discussion

Lite Solar's request that the Commission amend Section 780.5 of the Public Utilities Code is denied because the Commission lacks authority to amend statutes.

Lite Solar requests that the Commission open a rulemaking to allow master metering and to establish that owners are not considered public utilities if

¹ VNM pilot tariffs allow projects that participate in the CSI Multifamily Affordable Solar Housing (MASH) Program to allocate the kilowatt hour credits from a single solar system to multiple utility accounts without requiring the system to be physically interconnected to each tenant's meter. For more information on the pilot VNM tariffs, see: <http://www.cpuc.ca.gov/PUC/energy/DistGen/vnm.htm>.

they install, own, and operate renewable energy generation facilities.

Section 780.5 of the Public Utilities Code clearly states that:

“The Commission shall require every residential unit in an apartment house or similar multiunit residential structure, condominium, and mobilehome park for which a building permit has been obtained on or after July 1, 1982, other than a dormitory or other housing accommodation provided by any postsecondary educational institution for its students or employees and other than farmworker housing, to be individually metered for electrical and gas service,”²

The requested relief requires amendments to the above statute to allow master metering. As noted by the parties, amendments to statutes are the exclusive domain of the Legislature. Because the Commission lacks authority over such matters, the Commission is unable to grant Lite Solar’s petition.

However, as stated by the Attorney General, the Commission is engaged in a related issue in R.10-05-004. The Commission in D.08-10-036 established VNM for qualifying affordable housing multitenant properties within the MASH program, but also stated its interest in considering expanding VNM to all multitenant properties, and directed the ALJ to issue a ruling to take comments on the expansion of VNM within the proceeding. In response to the Commission directives, the ALJ issued a ruling on July 26, 2010 with a proposal by the Commission’s Energy Division staff (Staff Proposal). The Staff Proposal, among other proposed program modifications to the CSI, contains a recommendation to

² Section 780.5 provides a small exception to the general rule for residential units which are not equipped with natural gas appliances requiring venting or which are equipped with only vented decorative appliances or which receive the majority of energy used for water or space heating from a solar energy system or through cogeneration technology. This exception is not applicable here, nor does Lite Solar argue that it is.

expand the VNM.³ Specifically, the Staff Proposal recommends that VNM be expanded to all multitenant customers that are all behind the same utility service delivery point.

The July 26, 2010 ruling asked interested stakeholders and parties to review the Staff Proposal and provide recommendations to the Commission for establishing the priority level and the timing of the various issues in the Staff Proposal.⁴ The ALJ ruling stated that the Commission will provide a future date for opening and reply comments to obtain parties' detailed substantive views on the recommendations in the Staff Proposal. A scoping memo is expected to be issued in R.10-05-004 in the near future providing guidance on the level of priority and the timing of the various issues in the Staff Proposal, including the expansion of VNM. Thus, Lite Solar may wish to participate in the CSI proceeding to be informed of future activities related to VNM expansion issues.

4. Comments on Proposed Decision

The proposed decision of the ALJ in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on _____, and reply comments were filed on _____ by _____.

³ <http://docs.cpuc.ca.gov/efile/RULINGS/121093.pdf>.

⁴ <http://docs.cpuc.ca.gov/EFILE/RULINGS/121092.htm>.

5. Assignment of Proceeding

President Michael R. Peevey is the assigned Commissioner and Maryam Ebke is the assigned ALJ in this proceeding.

Findings of Fact

1. Amending statutes is the exclusive domain of the Legislature.
2. The Commission lacks the authority to enact statutory amendments.

Conclusion of Law

1. Because the Commission lacks authority to enact statutory amendments, Lite Solar's petition to open a rulemaking to amend Section 780.5 of the Public Utilities Code should be denied.

O R D E R

IT IS ORDERED that:

1. The Petition of Lite Solar, Inc., a Calif. Corporation to amend Public Utilities Code Section 780.5 is denied.
2. Petition 10-07-016 is closed.

This order is effective today.

Dated _____, at San Francisco, California.

