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Quasi-Legislative
5/24/2012 Item 33

Decision **PROPOSED DECISION OF COMMISSIONER PEEVEY** (Mailed 4/11/2012)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking Regarding Policies, Procedures and Rules for the California Solar Initiative, the Self-Generation Incentive Program and Other Distributed Generation Issues.	Rulemaking 10-05-004 (Filed May 6, 2010)

DECISION REGARDING CALCULATION OF
THE NET ENERGY METERING CAP

1. Summary

The "Net Energy Metering cap," as established in Public Utilities Code Section 2827(c)(1), limits the availability of electric utility Net Energy Metering programs to eligible customer-generators in the utility service territory on a first-come-first-served basis until the total rated generating capacity used by eligible customer-generators exceeds five percent of the utility's "aggregate customer peak demand." This decision clarifies the denominator of the equation, defined in the statute as "aggregate customer peak demand," that Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas and Electric Company should use to calculate the five percent net energy metering cap.

By this decision, the Commission clarifies that "aggregate customer peak demand" means the aggregation, or sum, of individual customers' peak demands, i.e., their non-coincident peak demands.

2. Background

The Net Energy Metering (NEM) program was established by Senate Bill (SB) 656 in 1995 (Stats. 1995, ch. 369). At that time, the NEM program cap was defined by statute as "0.1 percent of the utility's peak electricity demand forecast for 1996" and the statute included the exact figures for the 1996 system peak forecast for each utility. The statute has been modified on numerous occasions since 1995. Currently, the language regarding a cap on participation in the NEM program is contained in Pub. Util. Code § 2827(c)(1), which provides that:

> Every electric utility shall develop a standard contract or tariff providing for net energy metering, and shall make this standard contract or tariff available to eligible customer-generators, upon request, on a first-come-first-served basis until the time that the total rated generating capacity used by eligible customer-generators exceeds 5 percent of the electric utility's aggregate customer peak demand.

In essence, a utility's progress toward reaching the NEM cap can be expressed by the following equation:

$$\frac{\text{Total Rated Generating Capacity of Eligible Customer Generators}}{\text{Aggregate Customer Peak Demand}} \text{ x } 100 = \% \text{ of NEM cap}$$

In July 2011, the Interstate Renewable Energy Council (IREC) filed a motion requesting clarification that the scope of this rulemaking include the issue of how to calculate the NEM cap. IREC maintains that the three investor-owned utilities (IOUs) use different methods of calculating the NEM cap due to a lack of clarity in the definition of the term "aggregate customer peak demand," which appears in § 2827(c)(1).

A ruling dated December 14, 2011 granted IREC's motion and allowed parties to file suggested methodologies for calculation of the NEM cap. The

ruling noted the variation in the methods currently used by Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE) and San Diego Gas and Electric Company (SDG&E) to calculate aggregate customer peak demand, which is the denominator of the NEM cap equation. As described in the ruling, each utility currently uses a different demand interval – either 5, 30 or 60 minutes – to calculate aggregate customer peak demand.

Comments containing NEM cap calculation proposals were filed on January 17, 2012 by Distributed Energy Consumer Advocates (DECA),[1] PG&E, SCE, and jointly by IREC, the Vote Solar Initiative, the California Solar Energy Industries Association (CALSEIA), the Solar Energy Industries Association (SEIA), and the Sierra Club (collectively, the Joint NEM Parties). Reply comments on these proposals were filed on January 27, 2012 by DECA, the Commission's Division of Ratepayer Advocates (DRA), PG&E, SCE, SDG&E, and the Joint NEM Parties.

3.   NEM Cap Calculation Proposals

3.1.   Utility proposals

PG&E describes how it currently calculates the NEM cap and suggests the Commission adopt PG&E's methodology as the single statewide method to calculate the NEM cap because it is both practical to administer and consistent with the statute. PG&E notes that its current NEM tariff specifies the details of how PG&E calculates its NEM cap. As set forth in the tariff, the numerator of the

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[1] On March 23, 2012, DECA filed a motion to withdraw its comments and its Notice of Intent to Claim Compensation in this proceeding, stating it was no longer able to participate in this phase of the proceeding. DECA's motion is granted and its comments on the NEM cap methodology will not be considered at this time, although the comments will remain in the formal file of this proceeding.

equation is the capacity of the NEM-eligible generation, based on California Energy Commission (CEC) "AC ratings." According to PG&E, capacity based on these CEC AC ratings provides the best measure of what generation is actually interconnected to the grid. PG&E explains that the numerator is not based on total customer demand or electricity usage by eligible customers, as both customer demand and usage can vary substantially from year to year.

For the denominator of the equation, PG&E uses the highest peak demand ever achieved in the utility service territory, which includes demand from Community Choice Aggregation and Direct Access customers. PG&E uses the peak demand reported in Federal Energy Regulatory Commission (FERC) Form 1, and PG&E's highest recorded peak demand was 20,883 megawatts on July 25, 2006.

SCE agrees with PG&E's proposed method, even though it differs slightly from SCE's current method to calculate the NEM cap. SCE notes that the PG&E method uses system peak demand based on a 60 minute interval, whereas SCE currently uses a system peak demand based on a 30 minute demand interval. SCE states it is willing to switch to the 60 minute interval system peak demand reported in FERC Form 1 for consistency between the utilities. Further, SCE asserts that the appropriate measure of aggregate customer peak demand is coincident system peak demand, as proposed by the utilities, since the goal of NEM is to encourage installation of renewable customer generation to reduce system peak demand and to reduce the need for California IOUs to invest in more generating capacity to meet peak load.

3.2. Joint NEM Parties' Proposal

In contrast, the Joint NEM Parties propose a new method for calculating the NEM cap. While they agree with PG&E and SCE on the numerator of the

equation (total generating capacity of NEM eligible customers), they propose a change in the denominator. The Joint NEM Parties contend that aggregate customer peak demand should be derived by adding together individual customer peak demand, and should account for the non-coincident nature of customer peak demand (i.e., that demand peaks for different customers at different times). They maintain that it is incorrect for the utilities to interpret "aggregate customer peak demand" as the highest historical system peak demand in their service territories, also known as "coincident peak demand."

As support for their recommendation, the Joint NEM Parties contend that the plain language of § 2827(c)(1) and fundamental principles of statutory construction require that aggregate customer peak demand be interpreted as a summing of individual customers' peak demand. According to the Joint NEM Parties, "aggregate customer peak demand" is not the same as "utility peak demand" or "system peak demand." Utility peak and system peak are terms with commonly understood meaning and significance as coincident peak demand, or the point in time at which the utility's total system demand reaches its highest single point of demand. In contrast, customer peak demand suggests measuring the maximum peak of individual customers, which may occur at different times and may not occur coincident with system peak. Thus, aggregate customer peak demand is the summation of each individual customer's peak demand.

Moreover, the Joint NEM Parties contend that the Legislature has regularly used "peak demand" in other statutes to mean coincident peak demand at either

the utility or statewide level.[2] The Joint NEM Parties indicate that the Legislature amended § 2827 by Assembly Bill (AB) 1755 (Stats. 1998, ch. 855) to specifically depart from existing language referring to "utility's peak electricity demand" and instead inserted the term "aggregate customer peak demand." Thus, they contend that since the Legislature chose different terminology here, it is inaccurate to assume aggregate customer peak demand is equivalent to system or coincident peak demand. Additionally, they assert that interpreting aggregate customer peak demand identical to utility or system peak demand creates confusion by using inconsistent terminology and renders the modifier "aggregate customer" superfluous. According to the Joint NEM Parties, a cardinal principle of statutory interpretation is that a statute ought to be construed in a way that creates internal consistency and avoids making any "clause, sentence or word superfluous, void, or insignificant." Thus, they maintain that the term "aggregate customer peak demand" refers to measuring the sum of each individual customer's non-coincident peak demand.

PG&E, SCE, SDG&E and DRA disagree with the Joint NEM Parties' proposal to interpret aggregate customer peak demand as the sum of individual customers' non-coincident peak demand. According to PG&E, the Joint NEM Parties attempt a strained interpretation of the phrase "aggregate customer peak demand" which is not reasonable or sensible. As PG&E and SDG&E explain, the first NEM cap, as established by SB 656, was a specific number based on system peak demand. That statute specifically referred to the NEM cap as ".1% of a utility's peak electricity demand forecast for 1996." In 1998, the NEM statutes

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[2] Joint NEM Parties' comments 1/17/12 at 5, fn 10.

were modified by AB 1755 to the language still used today. Although the new language refers to an "electric service provider's aggregate customer peak demand," PG&E and SDG&E claim this language was introduced as a result of utility deregulation in order to acknowledge that some customers may now be served by electric service providers (ESPs) separate from the utility. Thus, they contend the term "aggregate customer" was added to reflect the fact that with newly deregulated markets, some customers were served by ESPs providing service within the electric utility's service territory. As SDG&E states, an ESP's peak demand was not the same as the utility service area peak demand, so the new term "aggregate customer peak demand" was introduced to refer to the peak demands of both ESPs and the incumbent utilities.[3]

Moreover, SDG&E and PG&E assert that language in various committee and floor analyses related to several bills that have modified § 2827 since the passage of SB 656, including Senate committee analysis of AB 1755, use terms such as "each seller's peak demand," "aggregate peak demand," "utility peak demand," "total peak load," and "electric utility's peak load" when referring to the NEM cap methodology, with no mention of "non-coincident peak demand."[4] Thus, SDG&E and PG&E maintain that the term "aggregate customer peak demand" has consistently been interpreted by the Legislature throughout the last decade as coincident peak demand.

In addition, PG&E notes that various Commission reports on progress toward the cap and California Solar Initiative (CSI) goals have consistently been

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[3] SDG&E comments 1/27/12 at 3.

[4] PG&E comments 1/27/12 at 6. SDG&E comments 1/27/12 at 2 – 5.

based on using coincident peak demand as the denominator.[5] PG&E also points out that Senate floor analysis of SB 1 (Stats. 2006, ch. 132) asserts that NEM creates an additional, substantial subsidy so it is unlikely the Legislature would have intended a denominator as suggested by the Joint NEM Parties that would markedly increase the subsidy without careful consideration of the consequences.[6]

PG&E states that the Joint NEM Parties' proposed denominator relies on data that was non-existent for millions of customers in 1998, when the Legislature first used the phrase "aggregate customer peak demand." At that time, individual peak demand was only measured for medium and large commercial and industrial customers. PG&E adds that the statute gives no indication the utilities should try to determine the peak load of millions of their individual customers, and PG&E asserts this would be a difficult undertaking. PG&E notes that the deployment of smart meters will enable the collection of peak load data for residential and small commercial and industrial customers but even then, due to the opt-out provision, individual peak load data will not be available for all customers. PG&E raises an additional point regarding the administrative complexity of measuring aggregate non-coincident customer peak demand: even if it could be measured, it would change frequently as there are likely to be some customers who reach new individual peak demands on any

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[5] PG&E comments 1/27/12 at 4 – 6. PG&E cites the 2005 Commission report to the Legislature on the costs and benefits of NEM, Commission bill analysis of AB 560 in 2009, the 2010 report to the Legislature on the costs and benefits of NEM, and an April 2011 evaluation of the CSI program provided to the Legislature by the Commission.

[6] PG&E comments 1/27/12 at 4 – 5.

given day. Moreover, it is unclear whether or how the aggregate non-coincident customer peak demand value would be adjusted when customers move or go out of business.[7]

DRA agrees with PG&E and SCE that the cap should be based on transparent, publicly available data as the two utilities propose. With regard to the Joint NEM Parties' proposal to sum non-coincident peak load data, DRA states it is unclear if such data exists or can be measured, or what the cost might be of obtaining this data. DRA recognizes that NEM is an important incentive for distributed generation. Therefore, it recommends the Commission consider what it intends to do when the five percent cap is reached, rather than changing the methodology for calculating the cap.

The Joint NEM Parties contend that the sum of individual non-coincident peak demands will be available for virtually all customers by the end of 2012. They claim the data is available for some customers on rate schedules that contain demand charges. For customers without demand charges, Joint NEM Parties claim the installation of smart meters will allow measurement of most customers' peak demand. The Joint NEM Parties assert that for remaining customers without smart meters estimates can be accomplished by using load research data or extrapolating where smart meter data or peak demand data exists for a majority of customers in a class.

4. Discussion

We first address the issue of whether the denominator in the NEM cap calculation should be based on each utility's coincident system peak demand or,

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[7] PG&E comments 1/27/12 at 6 – 7.

as the Joint NEM Parties propose, on the sum of each customer's non-coincident peak demand. The Joint NEM Parties' argument rests largely on the interpretation of the phrase "aggregate customer peak demand." Section 2827 does not provide a definition of "aggregate customer peak demand," but the Joint NEM Parties contend that three principles of statutory construction support their position that "aggregate customer peak demand" must not be equivalent in meaning to coincident peak demand. First, the Legislature revised the language in § 2827 from "peak electricity demand" to "aggregate customer peak demand" with the passage of AB 1755. Where the Legislature modifies statutory language with new terminology, it is generally presumed that the Legislature intended a substantive change. Second, the Joint NEM Parties note that "aggregate customer peak demand" is used exclusively in § 2827, whereas the phrase "peak demand" is used in several other instances where it is understood to mean coincident peak demand.[8] The Joint NEM Parties argue that the Legislature intended to signify something other than coincident peak demand given that the Legislature's use of the modifying phrase "aggregate customer" is unique to § 2827, and the Legislature ~~avoided~~generally avoids the use of inconsistent terminology in order to prevent confusion. Third, the Joint NEM Parties argue that if the Legislature had intended "aggregate customer peak demand" to simply mean coincident peak demand, the words "aggregate customer" would constitute surplusage, a result that statutory interpretation should avoid. Additionally, the Joint NEM Parties suggest that the phrase "aggregate customer

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[8] Joint NEM Parties comments 1/17/12 at 5, fn 10.

peak demand" is most plainly interpreted as the aggregation of each "customer peak demand," which is each customer's non-coincident peak.

In contrast to the arguments based on the textual principles of statutory construction made by the Joint NEM Parties, PG&E and SDG&E generally look to legislative staff analysis for evidence of legislative intent. However, statutory interpretation should begin with an examination of the statutory language itself. PG&E and SDG&E do not refute the Joint NEM Parties' observation that the words "aggregate customer" would constitute surplusage if the Legislature had intended "aggregate customer peak demand" to mean peak demand.

~~Taken together, we find the Joint NEM Parties' arguments to be persuasive. It is clear~~As an initial matter, we find the language of the statute itself to be ambiguous as to whether coincident or non-coincident peak demand should be used as the denominator for purposes of calculating the cap on NEM for the various utilities. We agree with The Utility Reform Network (TURN) that the words of the statute are "inherently ambiguous" in this regard.[9] However, we agree with the Joint NEM Parties that it seems unlikely, given the choice of words, that the Legislature ~~did not intend~~intended the words "aggregate customer peak demand" to simply mean coincident peak demand. ~~The~~As the Joint NEM Parties point out, the phrase "peak demand" is used in multiple instances in the ~~Pub. Util.~~Public Utilities Code to signify coincident peak demand. If the Legislature ~~had~~ intended the language in § 2827 to mean coincident peak demand, ~~it would have used~~as distinct from non-coincident peak demand, it could have chosen the term "peak demand~~"~~," as used elsewhere

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[9] TURN comments 5/1/12 at 4.

in the Pub. Util. Code, to avoid surplusage and internal inconsistency in the Pub. Util. Code.

In short, we are presented with a statute that is concededly ambiguous with respect to the particular question at hand. But, on balance, the statutory language itself tips in favor of the interpretation proposed by the Joint NEM Parties, and against the interpretation proposed by TURN and the utilities.

Since § 2827 does not provide a definition ofGiven the inherent ambiguity in the statutory term "aggregate customer peak demand," it is ourthe responsibility falls upon this Commission to interpret and clarify the meaning of this phrase in the context of a program the Legislature's intent. has entrusted this agency to administer. The Commission, as the regulatory agency with access to relevant data and specialized expertise in this field, must consider a variety factors to interpret this provision.

In the legislative history of AB 1755, the bill that enacted the change to "aggregate customer peak demand," the Senate Committee notes brought to light the lack of information regarding NEM at that time to impose a relevant cap that would not become obsolete in the face of growing electricity demand. The previous cap was set at a specified quantity for each utility service area. The fixed cap, however, did not take into consideration the fact that demand changes over time, and thus would become obsolete over time.

We note that § 2827(a) enumerates several goals of the NEM program, including encouraging substantial private investment in renewable energy resources and stimulating in-state economic growth. In light of thesethe NEM program goals and the language of the statute itself, we conclude that the Joint NEM Parties' interpretation of "aggregate customer peak demand" to mean the sum of all customers' non-coincident peak demands is reasonable and we hereby

adopt it. The electric utilities should use the highest recorded sum of non-coincident peak demands in a calendar year as the denominator for their NEM cap calculations.

PG&E explains in comments that calculating the non-coincident aggregate customer peak demand poses some difficulty due to the lack of data for many customers who have not yet received smart meters. However, using estimation techniques, such as extrapolating from available smart meter data or using load research data for these customers is a reasonable interim solution. Within 45 days of the effective date of this decision, the Energy Division should convene a public workshop with SCE, PG&E, and SDG&E and other interested parties to discuss methods for estimating the individual peak demands of the customers for which the utilities lack demand data and establishing a consistent methodology for calculating non-coincident aggregate customer peak demand. Within 60 days of the effective date of this decision, Energy Division should provide the Administrative Law Judge (ALJ) and assigned Commissioner a recommendation on a methodology for calculating non-coincident aggregate customer peak demand. Within 90 days of the effective date of this decision, the assigned Commissioner, in consultation with the ALJ and Energy Division, shall issue a ruling with instructions to the utilities on the methodology the utilities must use to calculate non-coincident aggregate customer peak demand. Within 120 days of the effective date of this decision, the utilities must file Tier 2 advice letters with revised NEM tariffs that conform to the assigned Commissioner's ruling. The assigned Commissioner or ALJ may modify these dates as necessary.

5.   Need for Updated NEM Cost-Effectiveness Data and Temporary Pause in the NEM Program Effective January 1, 2015

An overarching issue with respect to the NEM program, quite apart from the instant controversy over calculation of the cap on the quantity of resources the utilities are obligated to take, is the level of cross-subsidization of NEM customers by other customers on the utility systems, a concern expressed by the utilities and DRA in their comments. As noted in the joint reply comments of SEIA, CALSEIA, and Constellation New Energy, a 2010 Commission report to the Legislature on the cost-effectiveness of NEM estimated that the total net cost of NEM once the CSI Megawatt goals were reached would equal $137 million (2008 dollars) per year.[10] However, that report included sensitivity analyses of some parameter values, such as interconnection and standby service costs, that were not incorporated in the main analysis. If accurate, the excluded costs would substantially raise the net cost of NEM. The Commission is concerned about the lack of empirical information regarding the extent and nature of this cross-subsidization, and how complex aspects of rate-setting for the various rate tiers in the residential class compound or otherwise affect these cross-subsidies.

For these reasons, the Commission in this decision will order an updated, comprehensive study of the NEM program, to commence immediately. The goal of the study will be to provide the Commission and all interested parties, including the Legislature, with a better understanding of who benefits, and who bears the economic burden, if any, of the NEM program. The report should

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[10] Joint reply comments of SEIA, CALSEIA, and Constellation New Energy, 5/7/12 at 4.

quantify the costs and benefits of NEM to participants and non-participants and should further disaggregate the results by utility, customer class, and household income groups within the residential class. The study should also seek to gather and present data on the income distribution of residential NEM participants. In order to assess the costs and benefits at various levels of NEM implementation, the above analyses should be conducted using multiple NEM penetration scenarios, including at minimum, the capacity needed to reach the solar photovoltaic (PV) goals of the CSI and the estimated NEM capacity under the five percent cap as defined in this decision. The results of such a study then can be used by the Commission to set future policy for the NEM program, with full awareness of the economic impacts of any policy choices on all classes of ratepayers. This study should be completed no later than October 1, 2013.

Further, to ensure that our policy appropriately reflects what we learn from this study, we hereby put all parties on notice that the Commission will suspend the NEM program for new customer-generators at the end of calendar year 2014, pending the outcome of further Commission proceedings to be undertaken in the wake of the study. Existing customers receiving service under NEM tariffs prior to January 1, 2015 will not be affected by this suspension. We anticipate this temporary suspension in the NEM program, effective January 1, 2015, will remain in place pending the issuance of new rules at the conclusion of a rulemaking proceeding we will commence once the study described above is completed. Of course, if the study can be completed and the new rules are issued prior to December 31, 2014, then the suspension of the program in 2015 will not be necessary. But if the post-study rulemaking remains open and incomplete on January 1, 2015, then under the terms of today's decision the

program will be suspended thereafter, and the utilities will not accept any new NEM applications, until the new rules are issued and take effect.

The purpose of the new rulemaking proceeding will be to reassess the NEM program in light of the study results. In the policy-setting phase, we intend to explore the costs of NEM, and alternative mechanisms for compensating customer-sited renewable generation. The updated NEM study will inform our consideration of the most cost-effective path forward to achieve the state's renewable energy distributed generation goals.

In order to ensure that each utility achieves its CSI solar PV targets, the suspension of the NEM obligation should not apply to any utility if the CSI target has not been met. Any utility that has not yet reached it CSI target should continue to offer full-retail NEM to renewable customer-sited generation until its CSI solar PV target has been reached.

6. 5. Comments on Proposed Decision

The proposed decision of Commissioner Michael R. Peevey 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 by the California Center for Sustainable Energy, Constellation New Energy, DRA, the Joint NEM Parties, PG&E, SCE, SDG&E, and TURN, on May 1, 2012 and reply comments were filed by on IREC, PG&E, SCE, SDG&E, jointly by the Sierra Club and Vote Solar Initiative, and jointly by the SEIA, CALSEIA, and Constellation New Energy, on May 7, 2012. Where the comments suggested minor adjustments or clarifications to the decision, these changes have been incorporated throughout the decision. Where comments reargued earlier positions or attempted to present new arguments or facts, they were not considered.

7. 6. Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and Dorothy J. Duda is the assigned ALJ in this proceeding.

Findings of Fact

1. SB 656, which added § 2827 to the Pub. Util. Code, established the NEM program and provided that each utility was not obligated to offer NEM to new customers once the rated generating capacity of NEM generation reached 0.1 percent of the "utility's peak demand forecast for 1996."

2. Section 2827(a) enumerates several goals for the NEM Program, including encouraging substantial private investment in renewable energy resources and stimulating in-state economic growth.

3. AB 1755 modified § 2827 in several respects. Among other changes, AB 1755 revised the description of the NEM cap calculation from 0.1 percent of each utility's "peak demand" to 0.1 percent of each ESP's "aggregate customer peak demand."

4. Section 2827 does not define whether "aggregate customer peak demand" refers to coincident peak demand or the aggregation of individual customers' non-coincident peak demands.

5. The Pub. Util. Code includes multiple instances of "peak demand" in reference to coincident peak demand at either the utility or statewide level. However, the phrase "aggregate customer peak demand" only appears in § 2827.

6. Data on individual customer peak demand is not available for all customers, but it will be available for the vast majority of customers once the deployment of smart meters has been completed. Deployment of smart meters is currently scheduled to be completed by the end of 2012.

7. In 2010, the Commission issued the NEM Cost-Effectiveness Evaluation consultant report to the Legislature, which estimated the total costs and benefits of NEM. That report found that the net cost of NEM to non-participants would equal approximately $137 million per year once the CSI goals were reached.

8. The 2010 NEM Cost-Effectiveness Evaluation did not account for all cost associated with NEM, such as interconnection costs and the cost of providing standby service.

9. The Commission lacks updated empirical information about the extent and impact of cross-subsidies of the NEM program on non-participating ratepayers.

Conclusions of Law

1. In enacting AB 1755, the Legislature intended a substantive change in the NEM cap calculation when it revised the term "peak demand" to "aggregate customer peak demand."

2. Because the phrase "peak demand" is used to refer to coincident peak demand in multiple occurrences in the Pub. Util. Code, the words "aggregate customer" would be superfluous if the Legislature had intended "aggregate customer peak demand" to mean coincident peak demand.

3. Use of the phrase "aggregate customer peak demand" in § 2827 of the Pub. Util. Code to mean coincident peak demand when the phrase "peak demand" is used elsewhere in the Pub. Util. Code for that purpose would constitute the use of inconsistent and confusing terminology by the Legislature.

4. The Legislature did not intend "aggregate customer peak demand" to mean coincident peak demand.

5. While the statutory text leans in favor of using non-coincident peak demand as the denominator in the formula used to calculate the NEM program cap, it is conceded that the statute is ambiguous, and in this circumstance it is the

Commission's responsibility to resolve the ambiguity by rendering an authoritative interpretation of the statute.

6. 5. It is reasonable to interpret "aggregate customer peak demand" as meaning the aggregation of individual customer peak demands, i.e., customers' non-coincident peak demands.

7. 6. SCE, SDG&E, and PG&E should use the aggregation of customers' non-coincident peak demands to calculate their caps on NEM participation as set forth in § 2827(c)(1).

8. In order to provide the Commission with better and more current information, the Energy Division should oversee the preparation of an updated NEM cost-effectiveness report to be completed no later than October 1, 2013. The report should quantify the costs and benefits of NEM to participants and non-participants and should further disaggregate the results by utility, customer class, and household income groups within the residential class. The study should also seek to gather and present data on the income distribution of residential NEM participants. In order to assess the costs and benefits at various levels of NEM implementation, the above analyses should be conducted using multiple NEM penetration scenarios, including at minimum, the capacity needed to reach the solar PV goals of the CSI program and the estimated NEM capacity under the 5 percent cap as defined in this decision. The results of such a study can then be used by the Commission to set future policy for the NEM program, with full awareness of the economic impacts of any policy choices on all classes of ratepayers.

9. In order to ensure our policy appropriately reflects the findings from the updated NEM cost-effectiveness study, the utilities should suspend the NEM program for new customer-generators at the end of calendar year 2014, pending

the issuance of new rules in a rulemaking proceeding to be undertaken in the wake of the study. This temporary suspension of the NEM program for new customers, effective January 1, 2015, will remain in effect until such new rules are issued. If new rules are issued by December 31, 2014, then no suspension of the program need occur.

10. Notwithstanding the preceding conclusion of law, no utility should be relieved of its obligation to offer full-retail NEM to renewable customer-sited generation until it has reached its CSI program target for solar PV capacity.

O R D E R

IT IS ORDERED that:

1. Southern California Edison Company, San Diego Gas & Electric Company, and Pacific Gas and Electric Company shall calculate their respective caps on participation in the net energy metering program as five percent of aggregate customer peak demand, which is defined as the highest sum of all customers' non-coincident peak demands that occurs in any calendar year.

2. Within 45 days of the effective date of this decision, the Energy Division shall convene a public workshop with Southern California Edison Company, San Diego Gas & Electric Company, and Pacific Gas and Electric Company, noticed to all parties in this proceeding, to discuss methods for estimating the individual peak demands of the customers for which the utilities lack demand data and establishing a consistent methodology for calculating non-coincident aggregate customer peak demand. Within 60 days of the effective date of this decision, Energy Division should provide the Administrative Law Judge and assigned Commissioner a recommendation on a methodology for calculating non-coincident aggregate customer peak demand.

3. Within 90 days of the effective date of this decision, the assigned Commissioner, in consultation with the Administrative Law Judge and Energy Division, shall issue a ruling with instructions to Southern California Edison Company, San Diego Gas & Electric Company, and Pacific Gas and Electric Company on the methodology they must use to calculate non-coincident aggregate customer peak demand.

4. Within 120 days of the effective date of this decision, Southern California Edison Company, San Diego Gas & Electric Company, and Pacific Gas and Electric Company shall file Tier 2 advice letters with revised net energy metering tariffs that conform to Ordering Paragraph 1 and the instructions that will be issued by the assigned Commissioner in Ordering Paragraph 3 on the methodology for calculating non-coincident aggregate customer peak demand.

5. The Energy Division shall oversee the preparation of an updated Net Energy Metering (NEM) cost-effectiveness report to be completed no later than October 1, 2013. The report shall quantify the costs and benefits of NEM to participants and non-participants and shall further disaggregate the results by utility, customer class, and household income groups within the residential class. The study should also seek to gather and present data on the income distribution of residential NEM participants. In order to assess the costs and benefits at various levels of NEM implementation, the above analyses shall be conducted using multiple NEM penetration scenarios, including at minimum, the capacity needed to reach the solar photovoltaic capacity goals of the California Solar Initiative and the estimated net energy metering capacity under the five percent cap as defined in Ordering Paragraph 1 of this decision.

6. Unless the Commission issues new policy rules for the Net Energy Metering (NEM) Program by January 1, 2015, Pacific Gas and Electric Company,

Southern California Edison Company, and San Diego Gas and Electric Company shall suspend the NEM program for new customer-generators effective January 1, 2015. During the period of suspension, the utilities shall not offer net energy metering service to new customer-generators. The suspension will remain in effect until such rules are adopted.

7. Notwithstanding the preceding Ordering Paragraph, no utility shall be relieved of its obligation to offer net energy metering to renewable customer-sited generation until it has reached its target for solar photovoltaic capacity under the California Solar Initiative.

8. 5. The assigned Commissioner or Administrative Law Judge may modify the compliance dates set forth in this order for good cause and as needed to ensure effective implementation of this decision.

9. 6. Rulemaking 10-05-004 remains open.

This order is effective today.

Dated _____, at San Francisco, California.

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~~Deletion~~	
~~Moved from~~	
Moved to	
Style change	
Format change	
~~Moved deletion~~	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	57
Deletions	23
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	80