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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)**

RESPONSE OF PACIFIC GAS AND ELECTRIC COMPANY (U 39 E), SAN DIEGO GAS & ELECTRIC COMPANY (U 902 E), AND SOUTHERN CALIFORNIA EDISON COMPANY (U 338 E) TO PETITION TO MODIFY DECISION NO. 12-05-036 FILED BY SOLAR ENERGY INDUSTRIES ASSOCIATION

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I. INTRODUCTION

Pursuant to Rule 16.4 of the California Public Utilities Commission's (CPUC) Rules of Practice and Procedure, Pacific Gas and Electric Company (PG&E) submits this Response, on behalf of Southern California Edison Company (SCE), San Diego Gas & Electric Company (SDG&E) and itself (Joint Parties), to the Petition to Modify Decision 12-05-036 filed by the Solar Energy Industries Association (SEIA) on July 2, 2012 (Petition). As discussed in more detail below, the Joint Parties oppose the Petition for several reasons. First, the Petition would effectively negate the suspension of the Net Energy Metering (NEM) program provided by Decision (D.)12-05-036 (the "Decision"). Second, the Petition broadly overreaches in seeking a claimed "clarification" of the Decision without citing to any new or changed facts required to support a petition for modification.[1/] Finally, the Petition's arguments would wrongly exacerbate the Decision's significant errors, illegality and expeditious need for correction (which is

1/ *The Petition is an untimely and incorrectly styled application for rehearing. SEIA cites no new, changed, or record facts to support its arguments, as Rule 16.4(b) requires. See D.11-10-034 at 19 (Oct. 20, 2011) (rejecting petition for* modification arguments where "[t]here are no new facts or circumstances to justify a modification."). Instead, the Petition improperly raises legal arguments more appropriate for a Rule 16.1 application for rehearing. "The Commission has consistently stated that a Petition for Modification is not a substitute for the legal issues which may be raised in an Application for Rehearing." *Id.* at 5; *see also* D.11-10-016 at 10, n.19 ("Since assertions of legal error should be raised via applications for rehearing and not petitions for modification, we focus on the factual assertions made by the Joint Petitioners.")

explained in the Joint Parties' pending June 29, 2012, applications for rehearing.[2/]) There is no justification in law, fact,[3/] or policy for the Petition's requested changes and it must be rejected.

II. BACKGROUND

In the Decision, the Commission set a method to calculate the NEM cap, noted concerns about the cost shift associated with net metering in particular and rooftop solar in general,[4/] and ordered the Energy Division to supervise the preparation of a study of those costs shifts and then follow-up with a reassessment of the NEM program. The Commission found that it "lacks updated empirical information about the extent and impact of cross-subsidies of the NEM program on non-participating ratepayers"[5/] and stated its intent to explore the costs of NEM and alternative mechanisms for compensating customer-sited generation.[6/] It also concluded that the availability of NEM may be suspended on January 1, 2015, and that the CPUC will launch a new Rulemaking to set NEM policy rules.[7/] It concluded that "to ensure that our policy appropriately reflects what we learn from this study, we 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. . . . ."[8/] It further concluded:

> 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[s] CSI target should continue to offer full-retail NEM to renewable customer-sited generation until its CSI solar PV target has been reached.[9/]

2/ *See* pending June 29, 2012, applications for rehearing of D.12-05-036 filed jointly by PG&E, SCE, Energy Producers & Users Coalition (EPUC) and the California Large Energy Consumers Association (CLECA) and individually by both SDG&E and The Utility Reform Network (TURN).

3/ Because SEIA alleges no new or changed facts, the CPUC would have no basis on which to reach a decision based on factual findings in support of SEIA's requested relief, as required. *See* Cal. Pub. Util. Code § 1705 ("[A] decision shall contain separately stated, findings of fact and conclusions of law by the commission on all issues material to the order or decision. . . ."); D.06-05-019 (Section 1705 requires "sufficient findings and conclusions in order to assist the Court in ascertaining the principles relied upon by the Commission, and assist the parties in preparing for rehearing or court review."). The Petition should be denied for this reason as well.

4/ D.12-05-036, Finding of Fact (FOF) 8 & 9, p. 17.

5/ D.12-05-036, FOF 9, p. 17.

6/ D.12-05-036, p. 15.

7/ *Id*.

8/ *Id*.

9/ *Id*. p.15-16.

SEIA has joined with other parties as part of an application for rehearing to challenge the Commission's authority to suspend the NEM program at all.[10/] In the Petition, under the guise of seeking to avoid "prematurely" suspending NEM, SEIA makes a bold bid to essentially achieve the same outcome and thus thwart the Commission's stated plan to "explore the costs of NEM, and alternative mechanisms for compensating customer-sited renewable generation,"[11/] based on an updated study. SEIA appears to oppose the plan to take the study of the costs of NEM into account in modifying NEM and to evaluate alternatives to NEM. Most importantly, SEIA effectively opposes any suspension and subsequent replacement of NEM with an improved mechanism that better balances interests of participating and nonparticipating customers. The CSI goal adopted by the CPUC was 1940 Megawatts (MW) divided between the three investor owned utilities (IOUs) and covering both general market and low income programs.[12/] By arguing that the target for each and every program element needs to be reached for each and every utility before any suspension could occur, SEIA's Petition would almost double the trigger before NEM can be suspended and replaced.[13/] Indeed, it is possible that, even if the 5625 MW level adopted in the Decision is reached, NEM could not be suspended. The SEIA Petition should be rejected in its entirety.

III. THE SEIA PETITION SEEKS TO DISMANTLE A KEY ASPECT OF THE DECISION, NOT TO CLARIFY THE COMMISSION'S INTENT

SEIA claims that changes are needed to the Decision "to ensure that the NEM program is not prematurely suspended in contravention of the Commission's intent."[14/] It proposes four changes (with no justification in law or fact) that would dramatically increase the MW installed before NEM is suspended. These proposed changes are the following:

First, SEIA seeks to change the prerequisite for suspension from each individual IOU's

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10/ *See*, *Application of SEIA, California Solar Energy Industries Association, Sierra Club and Vote Solar Initiative for Rehearing of Decision 12-05-036* filed on June 29, 2012.
11/ D.12-05-036, p. 15.
12/ D.06-12-033, p. 29.
13/ Petition, p. 6. Requesting as one proposal that no suspension be permitted until the NEM program has reached 3,450 MW. As discussed herein, other proposals by SEIA could inflate that number further.
14/ Petition, p. 1.

MW target obligation to a provision that "an IOU's obligation to offer NEM will not be suspended until installation of all three IOUs' currently existing allocated MW targets … has been reached."[15/]

Second, SEIA proposes that the MW target be changed so that it must be reached for each component of the CSI, which it describes as "a 1,750 MW general market program, a combined 190 MW for the Multi-family Affordable Solar Housing (MASH) and Single-family Affordable Solar Homes (SASH) programs, and a 360 MW New Solar Homes Partnership program."[16/] It proposes that NEM will not be suspended for any customer until all MW targets for all four components are installed for all three utilities.[17/] Third, SEIA adds 50 percent on top of the already adopted CSI goals, for each utility, for each component.[18/] It makes no effort to argue that this "clarifies" the actual intent expressed by the Commission to make sure a study and evaluation of NEM are complete by January 2015. Instead, SEIA is quite clear that it wants full retail net metering to continue well beyond January 1, 2015.[19/] It overlooks the Commission plan to study NEM and determine whether this type of subsidy is needed, what the costs and benefits are, and the economic impact of these policy choices on all classes of customers.[20/] SEIA estimates that the MW to be installed under this version adds up to 3,450 MW.[21/] However, the three IOUs have varying rates of customer participation in the CSI program. While SCE is currently on track to meet its CSI program goals, PG&E and SDG&E have experienced a higher rate of customer participation in their respective service territories to date. SEIA's proposal would require PG&E and SDG&E to keep their NEM programs open until SCE completes its CSI goals.[22/] The combination of this change, along with SEIA's proposal that

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15/ Petition, p. 3.
16/ Petition, p. 4.
17/ *Id*.
18/ Petition, p. 6.
19/ *Id*.
20/ D. 12-05-036, Conclusions of Law 8 and 9, p. 19.
21/ Petition, p. 8.
22/ SCE is currently issuing incentive reservations in Step 8 in both the residential and non-residential sectors while PG&E is now in Step 10 for both. (www.csi-trigger.com). The current status of program goals for each Program Administrator (PA) can be found at: http://www.californiasolarstatistics.ca.gov/reports/agency_goals/.

these goals must be met in all three IOUs' service territories before NEM is suspended for a single customer, could easily increase the NEM participation to an amount that approaches the maximum NEM cap established for PG&E under D. 12-05-036.[23/] SEIA requests these significant changes without any legislative action or change in fact – support required by Rule 16.4 (b) when making a request for a petition for modification.[24/]

Finally, in addition to requiring sufficient projects installed to meet all the MW goals of all CSI components for all three utilities plus 50 percent, SEIA proposes that all projects with NEM applications submitted with the IOUs at that time would also qualify for NEM. The CPUC has frequently seen "gold rushes" for participation in subsidized programs in the past. So, if the end of full-retail NEM is approaching, literally thousands of MWs of new projects could be submitted, all of which would be eligible for the current form of NEM under SEIA's proposal. If this occurs, NEM might not be suspended until long after the total NEM cap of 5,265 MW provided for in the Decision is reached.

Although SEIA's introduction says that this Petition is needed to "clarify" the Commission's intent, instead with these disingenuous and one-sided adjustments, it seeks to effectively delete the portion of the Decision that would suspend the availability[25/] of NEM at the end of 2014 until the Commission issues new NEM policy rules.

IV. THE PETITION ATTEMPTS TO EXPAND THE DECISION'S NEM CAP EFFECT WITH NO FACTUAL OR LEGAL JUSTIFICATION AND SHOULD BE REJECTED

The intent of the Commission to accommodate the current CSI goals was quite clear, and no modifications are needed to this aspect of the Decision.[26/] Projects that fit under each IOU's

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PG&E and SCE are the PAs in their respective service areas and the California Center for Sustainable Energy (CCSE) administers the CSI Program in SDG&E's service territory.

23/ D.12-05-036 established an overall NEM cap of 5,625 MW. The legality of the cap calculation method authorized by D.12-05-036 is under challenge by several parties including PG&E, SCE, SDG&E, EPUC, CLECA and TURN.

24/ *See*, CPUC Rules of Practice and Procedure Rule 16.4(b). D.11-10-034, p. 5 (October 20, 2011) ("To the extent that [petitioner] has provided new or changed facts, properly supported by the appropriate declaration or affidavit, we will consider issues raised in the Petition.")

25/ D.12-05-036, Ordering Paragraph 6, p. 21.

26/ Separately, PG&E and other parties have sought rehearing of the Commission's method of calculating the

CSI goals will be eligible for NEM. General Market CSI projects should be administered utility by utility. The proposal that the NEM suspension should not take effect for years after CSI is no longer available in some utilities' service areas because they reached their program goals early, while CSI remains available in another utility's service area, should be rejected. Again, SEIA presents no change in law, fact, or circumstance to justify its Rule 16.4 request.[27/] In 2006, after many difficulties with trying to determine how to set CSI incentives, and whether the incentives should decrease as "trigger" figures were met, the CPUC rejected the old idea that CSI program elements must be identical in each utility service area:

> [W]e are persuaded to modify our concept of one incentive level statewide in favor of allowing each utility territory to reduce its incentive level when conditional reservations for solar incentives in that territory reach pro rata shares of the MW targets. While it would certainly be administratively simpler to have only one statewide incentive level that adjusts everywhere at the same time, this ignores the unique characteristics of the solar market in the different geographic regions of the state. If installations in Southern California are booming and cause the first MW target to be reached, but installations in Northern California are moving more slowly, an incentive level reduction statewide to respond to demand conditions in the south could negatively impact the economics of the solar market in the north. Essentially, we must now trade the goal of program simplicity for a more complex program design that has a better chance of accomplishing the Commission's long-term solar goals.[28/]

The same rationale should apply to the NEM cap. As noted earlier, both PG&E and SDG&E are well ahead of their scheduled CSI program goals, while SCE's CSI program currently tracks the CSI program's ten-year plan. There is no reason that PG&E customers who are not participating in solar programs should continue to bear higher cost shifts long after PG&E's CSI goals are met just because the CSI program remains open in other areas of California.

Similarly, the proposal that NEM will not be suspended until all program components have been completed should be rejected. For instance, if PG&E's general market CSI goals are

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NEM cap. PG&E's proposal, submitted along with EPUC, CLECA and SCE, proposes a voluntary and legally permissible approach that would achieve the Commission's objectives in the decision.

27/ Rule 16.4(b); *see, e.g.,* D.06-12-026, p. 4, FOF 1 (December 14, 2006) (denying a petition for modification where petitioner showed "no new or changed facts that justify granting the relief requested in [the] petition to modify").

28/ D.06-08-028, pp. 89-90.

not met by January 1, 2015, new PG&E CSI general market customers would continue to be eligible for full retail NEM until the CSI general market program is closed. Even after that, NEM would still be available to any new PG&E MASH or SASH or New Solar Homes Partnership (NSHP) customers until those components of the CSI program are no longer available.[29/] However the NEM program would be suspended on January 1, 2015, for any program element for which the target has been reached. This is particularly significant since there has been considerable uncertainty about the availability of funding for the NSHP. If funding sufficient to meet the NSHP goals does not exist or is limited,[30/] that should not result in the NEM program remaining open to everyone in contravention of the Commission's suspension — and perhaps even Legislative limits.

Even if SEIA's core proposal was not egregious enough, the proposal that a 50 percent buffer should be added to the CSI goals is directly at odds with what the CPUC adopted and how it interpreted the Legislative limit. This arbitrary and illogical proposal has no justification in law or changed fact or circumstance, as required by Rule 16.4.[31/] The Decision based the NEM suspension on achieving the CSI goals. However, the Decision also ordered a careful evaluation of NEM subsidies, allowing plenty of time for that — more than two years — prior to any possibility of suspension. The proposal to add 50 percent to the CSI goals simply puts the impetus for the study and evaluation of NEM further off.

Finally, the proposal that the NEM program should be available to anyone who simply submits an application before the suspension occurs should be rejected. This could result in numerous project applications flooding in at the last moment. The Commission understands the

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29/ Authorization for the New Solar Homes program was included in SB1 (2006) Section 7 (PUC section 2851(e) (3)).

30/ The NSHP program was at a standstill due to lack of funding earlier this year. Now some funding was made available and the passage of urgency legislation (SB 1018, signed by the Governor on June 27, 2012), may allow for consideration of a process to provide additional funding going forward.

31/ D.08-09-024, p. 3 (September 18, 2008) ("[A] petition for modification must justify the requested modifications, as required by Rule 16.4(b) of the Commission's Rules of Practice and Procedure. . . . It is not the Commission's responsibility to guess why a party believes a proposed modification to one of its decisions is justified. Rather, the petitioning party bears the burden of justifying its requested modification.").

negative impact of "gold rushes" and has taken care to prevent them in the past. For instance, this has included development of the trigger mechanism for CSI incentives. Joint Parties note that even under the trigger mechanism, there is a significant up-tick in applications before every reduction in rebate levels. The Commission should reject the proposal to allow an unlimited gold rush opportunity to be added to the thousands of extra MW already available.

V. THE FIGURES IN THE SEIA PETITION HIGHLIGHT WHY THE NEM CAP DECISION WAS ILLEGAL

Joint Parties note the connection between this Petition and the ongoing dispute regarding the CPUC's determination of the NEM cap calculations. The SEIA Petition includes a table showing its calculation of the CSI goals (Table), which is nearly identical to the NEM cap using the IOU's coincident aggregate peak demand methodology.[32/] That Table reveals that the NEM cap calculated using the methodology adopted in D.12-05-036 is over twice the CSI level. This Table highlights why the Decision was illegal. The Legislature, in increasing the NEM cap to 5 percent, relied on repeated reports from the CPUC that the increase in the NEM cap was needed to meet the CSI goals,[33/] as well as consistent statements from the Solar Alliance (now part of SEIA) to the same extent. The Legislature did not disregard these reports: instead it explicitly relied on the words of the Commission representatives.[34/]

The Petition Table vividly illustrates the flaw in the Decision adopted by the CPUC. As argued by SEIA, the NEM cap using the utility method approximately equals the CSI goals in the 2,400 MW range (if SASH, MASH, and NSHP are included). The Decision's conclusion that the Legislature really intended to increase the NEM cap for the three IOUs to 5,265 MW to

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32/ Petition, p. 7.

33/ Update on Determining the Costs and Benefits of California's Net Metering Program as Required by Assembly Bill 58," which is available on the CPUC web site at http://docs.cpuc.ca.gov/WORD_PDF/REPORT/45133.PDF.

34/ The Senate Floor Analysis of SB 489 dated August 30, 2011 can be found at http://www.leginfo.ca.gov/pub/11-12/bill/sen/sb_0451-0500/sb_489_cfa_20110830_101610_sen_floor.html. See also the Assembly Committee Analysis of SB 489 dated June 24, 2011, for additional discussion of the Legislature's understanding of the cap calculation: http://www.leginfo.ca.gov/pub/11-12/bill/sen/sb_0451-0500/sb_489_cfa_20110624_173030_asm_comm.html

meet the CSI goal is without basis and is incorrect.[35/]

VI. THE JOINT PARTIES LOOK FORWARD TO WORKING WITH THE COMMISSION AND SOLAR PARTIES TO FIND NEW WAYS TO SUPPORT THE EXPANSION OF SOLAR POWER

Although the NEM Cap Decision contains multiple significant legal errors and should be corrected, it does adopt a laudable goal to support continued customer-side renewable generation growth in California, as well as the need to consider and address the issues of shifting costs between solar and other customers. The Commission should correct the Decision and advance its goals through a deliberate and methodical review of the cost-shift, as well as the means of mitigating it.

While that work is underway, the SEIA Petition should be denied. The continued growth of roof-top solar generation should create sustainable benefits without placing an undue burden on nonparticipating customers.

VII. CONCLUSION

The Joint Parties urge the Commission to reject the SEIA Petition and move forward to find new ways to compensate solar and other renewable projects for the power they export to the grid.

35/ *See* AFRs filed on June 29, 2012 jointly by PG&E, SCE, EEPUC and CLECA and individually by both SDG&E and TURN, for complete details regarding this legal error.

Respectfully submitted,

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