



**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

**FILED**  
12-23-13  
04:59 PM

Order Instituting Rulemaking Regarding Policies, Procedures and Rules for the California Solar Initiative, the Self-Generation Incentive Program and Other Distributed Generation Issues.

RULEMAKING 12-11-005  
(Filed November 8, 2012)

**REPLY COMMENTS OF THE CALIFORNIA CLIMATE AND AGRICULTURE NETWORK ON THE ASSIGNED COMMISSIONER'S RULING REGARDING THE ESTABLISHMENT OF A NET ENERGY METERING TRANSITION PERIOD**

**ADAM KOTIN**  
Policy Associate  
California Climate and Agriculture Network  
1029 K Street, Suite 37  
Sacramento, CA 95814  
Telephone: (510) 333-9005  
Facsimile: (916) 448-7176  
E-mail: calcan.filings@gmail.com

Dated: December 23, 2013

**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 12-11-005  
(Filed November 8, 2012)

---

**REPLY COMMENTS OF THE CALIFORNIA CLIMATE AND AGRICULTURE NETWORK ON THE ASSIGNED COMMISSIONER’S RULING REGARDING THE ESTABLISHMENT OF A NET ENERGY METERING TRANSITION PERIOD**

California Climate and Agriculture Network (CalCAN) has reviewed the parties’ opening comments responding to the ACR Regarding a NEM Transition Period and respectfully submits the following reply to the California Public Utilities Commission.

**I. INTRODUCTION**

CalCAN wishes to loudly echo the comment of the California Farm Bureau Federation that the Commission, in making a decision in this ruling, should recognize that “there will be limited customer interest in investment of projects that are subject to significant regulatory uncertainty” and should first and foremost “utilize this opportunity to provide...regulatory assurances.”<sup>1</sup>

In their transition period proposals to the Commission, the Investor-Owned Utilities (PG&E, SDG&E, and SCE), as well as the Office of Ratepayer Advocates and TURN, fail to

---

<sup>1</sup> California Farm Bureau Federation at 3.

adequately offer the level of long-term regulatory certainty to current and future NEM 1.0 customer-generators that is clearly intended by the Legislature and the State of California in numerous goals, directives, and pieces of legislation.<sup>2</sup>

Customer-generators always expected rates to change; they often considered this fact in designing and deciding to install their systems. What they did not expect was that the very structure of the tariff under which they signed their contracts — in essence, the core of their relationship with the utility, and therefore the very functioning of their system for its intended purpose — might be subject to change during the life of their system.

To claim, as some parties have, that it was not ‘reasonable’ to assume that NEM contracts would span the life of a system — given the information available at the time, and in some cases the information disseminated by the CPUC itself<sup>3</sup> — is to undermine the fundamentals of thousands of contracts with California residents and businesses who have installed renewable energy (RE) systems since the NEM tariff first became available.

The Commission has been asked to “consider” basing the NEM transition period on “reasonable expected payback period based on the year the customer initially took service.”<sup>4</sup> It is clear from the disparate proposals put forth in parties’ opening comments to the Commission that any determination based primarily on payback period will by necessity be either: (a) overly simplistic; (b) arbitrarily determined; or (c) extremely

---

<sup>2</sup> Among these, Section 2827(a) of the Public Utilities Code describes this intent of long-term objectives and mechanisms. Summarized and expanded by IREC in their Opening Comments at 4-5.

<sup>3</sup> CalSEIA notes, at 6, that the CPUC website entitled “Net Energy Metering” (<http://www.cpuc.ca.gov/PUC/energy/DistGen/netmetering.htm>) tells potential customer-generators that “NEM rates are typically available for the lifetime of the system.”

<sup>4</sup> PUC Section 2827.1(b)(6)

burdensome to administer; and above all, a violation of customer-generators' reasonable expectations in pursuing the priorities of the State of California.

Conversely, party comments have shown a well-established, fair, and justifiable measure of expected system life — on the order of, at minimum, 25-30 years — upon which the grandfathering period might be based.<sup>5</sup>

We therefore reaffirm our support for a Commission determination based on Governor Brown's request that customers be protected under current rules for "the expected life of their systems".<sup>6</sup> An elaboration of our replies to the parties on these and other issues related to the NEM transition period follows.

## **II. REPLIES TO PARTIES' OPENING COMMENTS ON THE MATTER OF A NEM TRANSITION PERIOD.**

### **A. 'VINTAGE' GRANDFATHERING WILL CREATE UNCERTAINTY AND DISCOURAGE RENEWABLE ENERGY INVESTMENT.**

In their opening comments to the Commission, PG&E, SCE, and TURN all submit that a grandfathering period longer than five or ten years will result in a "gold rush" of RE installations seeking to lock in the NEM 1.0 contract before NEM 2.0 comes into effect. This fear is used to justify giving those signing NEM contracts between April 1, 2014 and the commencement of NEM 2.0 contracts a shortened grandfathering period.

We refute the validity of this argument. The number of NEM installations allowable under NEM 1.0 is already subject to the 5% aggregate customer peak demand cap for each electric utility, or July 1, 2017 deadline, set by the Legislature. Any "rush" for these

---

<sup>5</sup> See opening comments from: The Alliance for Solar Choice; CalSEIA; California Energy Storage Alliance; California Farm Bureau Federation; Interstate Renewable Energy Council; NEM-PAC; and SEIA and Vote Solar.

<sup>6</sup> Signing statement viewable at: [http://gov.ca.gov/docs/AB\\_327\\_2013\\_Signing\\_Message.pdf](http://gov.ca.gov/docs/AB_327_2013_Signing_Message.pdf)

remaining contracts would simply accomplish the Legislature's intent when it created that cap.

Furthermore, the PG&E and SCE proposals to "taper" the period under NEM 1.0 for more recent adopters creates a significant degree of regulatory uncertainty and would surely destabilize the logic of many RE investments under NEM for the period between April 1, 2014, and January 1, 2016.

Under these proposals, the hypothetical prospective customer-generator would only know the terms of his or her system's engagement in Net Energy Metering for the first six or seven years of its life. Following that period, those terms would be entirely uncertain until the Commission decides how NEM 2.0 will function by December 31, 2015. This uncertainty will provide an extreme disincentive to renewable energy installations for a full twenty-one-month period (04/01/2014 - 01/01/2016). Any projects with a financial horizon longer than six or seven years would simply vanish.

The grandfathering terms of NEM 1.0 must be universal across all customer-generators, regardless of when the NEM contract was signed. Assembly Bill 327 does not suggest different terms for 'late adopters' and we strongly urge the Commission not to create this clear disincentive to renewable energy investment.

**B. NO MEASURE OF PAYBACK PERIOD CAN ADEQUATELY ADDRESS THE REASONABLE EXPECTATIONS OF CUSTOMER-GENERATORS.**

Parties have proposed several measures of 'expected payback period', culled from sources as varied as advertising materials and newspaper articles, and all based upon the mistaken belief that an 'average' or 'median' payback period would sufficiently address the expectations of all NEM customer-generators in California. As CalCAN and numerous other

parties have noted in their comments, actual payback periods are based upon a dizzying array of factors and variables. Simply ignoring the expectations of those customer-generators whose payback periods are above the median is an unacceptable solution. Policy that *only* supports renewable energy installations with average or shorter payback periods sets a dangerous precedent and will greatly diminish the scale and scope of investment in renewable energy in California.

The only ‘reasonable’ expectation that all customer-generators had when making investments was that their NEM contracts would be valid for the lifetime of their systems. We recommend that the Commission’s decision recognize this, and move beyond any tests related to “payback period”.

**C. THE COMMISSION IS FULLY JUSTIFIED IN CONSIDERING EXPECTED SYSTEM LIFE IN DETERMINING THE LENGTH OF THE GRANDFATHERING PERIOD.**

The language in statute says the Commission “*shall consider* reasonable expected payback period” in establishing a transition period. As discussed above, “payback period” is an inadequate tool in this context, as the superseding intent of the Legislature in creating the Net Energy Metering program is to spur long-term investment and confidence in distributed renewable energy generation. We therefore encourage the Commission to consider and then dispense with “payback period” as a rationale for the transition period.

Fortunately, the Governor has presented an alternative, more reasonable, simplified and superior approach to determining the transition period in his signing message, which is also a directive to the Commission. As was discussed and elaborated upon by the majority of parties in their opening comments, the lifetime of a system is a fully justifiable alternative measure on which to base the length of the transition period. Using Original

Equipment Manufacturer’s Warranties, as well as the results of meta-analyses from NREL<sup>7</sup> and the Rocky Mountain Institute<sup>8</sup>, we can very confidently place the expected system life for solar PV installations to be around 25-30 years *at minimum*. Since 96% of energy production through NEM and 99% of NEM contracts are associated with PV installations, we consider it prudent and fair to use solar PV characteristics for administrative simplicity.

Therefore, the Governor’s intention in his signing message that the Commission should consider “the expected life of their systems” should not be disregarded, as some parties request,<sup>9</sup> but should be used as another, more relevant test for making a determination regarding the transition period.

#### **D. GRANDFATHERING STATUS SHOULD STAY WITH THE SYSTEM.**

Several parties argue that grandfathering rights should be eliminated upon ownership transfer of a system. They also acknowledge that renewable energy system installations have been shown to increase the value of a home for resale, and that customers have made the decision to invest in renewable energy generation in part *because of* the resulting increased value to their home or property.

These customers were certainly working under the ‘reasonable’ expectation that this increased value to their home or property would survive a transfer of ownership. Because a renewable energy system using Net Energy Metering derives its intended function and value from access to the NEM 1.0 tariff, to deprive a system of this due to

---

<sup>7</sup> NREL, Nov. 2012. “Life Cycle Greenhouse Gas Emissions from Solar Photovoltaics.” Accessible online at: <http://www.nrel.gov/docs/fy13osti/56487.pdf>

<sup>8</sup> Rocky Mountain Institute, 2013. “A Review of Solar PV Benefit & Cost Studies.” Accessible online at: [http://www.rmi.org/Knowledge-Center/Library/2013-13\\_eLabDERCostValueN](http://www.rmi.org/Knowledge-Center/Library/2013-13_eLabDERCostValueN)

<sup>9</sup> Notably, SDG&E at 3, footnote 6.

transfer of ownership would unfairly devalue an investment made with entirely 'reasonable' expectations. The value of grid access through the NEM 1.0 tariff is vested in the value of the renewable energy system, and there is no legitimate reason why a transfer of ownership should alter this equation.

Therefore, the Commission should clarify that grandfathering rights stay with the system for the entirety of the established transition period, regardless of any ownership transfers that may occur.

### **III. CONCLUSION**

On behalf of agricultural businesses in California who have made good-faith renewable energy investments for their sustainability and energy independence, we again urge the Commission to pursue regulatory certainty in issuing its decision.

California farmers are proud of their status as leaders in on-farm renewable energy installations, as well as the contributions they have made toward reducing greenhouse gas emissions and meeting the State's environmental goals. But, like all businesses, they have a bottom line to look out for. A NEM 1.0 grandfathering period that violates their reasonable expectations would disrupt this delicate financial calculus and strongly discourage future investment in renewable technologies. This would be a tremendous loss in an industry that is ripe with potential for diversified, distributed renewable energy generation in the State.

We therefore reiterate the following requests of the Commission:

- **Consider and dispense with 'payback period' as a rationale for the transition period, utilizing system life instead;**
- **Treat all NEM 1.0 customer-generators the same way, regardless of their date of system interconnection;** and

- **Clarify that grandfathering rights stay with the system, regardless of ownership status.**

Thank you for the opportunity to provide comments on this most important matter. We look forward to a swift determination by the Commission.

Executed December 23, 2013 in Sacramento, CA

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Adam Kotin", is written over a horizontal line.

**Adam Kotin**

Policy Associate

California Climate and Agriculture Network

1029 K Street, Suite 37

Sacramento, CA 95814