

**PUBLIC UTILITIES COMMISSION**505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3298**FILED**4-17-14  
08:00 AM

April 17, 2014

Agenda ID #12947  
Ratesetting

TO PARTIES OF RECORD IN APPLICATION 11-03-001, ET AL.:

This is the proposed decision of Administrative Law Judge Hymes. Until and unless the Commission hears the item and votes to approve it, the proposed decision has no legal effect. This item may be heard, at the earliest, at the Commission's June 12, 2014 Business Meeting. To confirm when the item will be heard, please see the Business Meeting agenda, which is posted on the Commission's website 10 days before each Business Meeting.

Parties of record may file comments on the proposed decision as provided in Rule 14.3 of the Commission's Rules of Practice and Procedure.

The Commission may hold a Ratesetting Deliberative Meeting to consider this item in closed session in advance of the Business Meeting at which the item will be heard. In such event, notice of the Ratesetting Deliberative Meeting will appear in the Daily Calendar, which is posted on the Commission's website. If a Ratesetting Deliberative Meeting is scheduled, ex parte communications are prohibited pursuant to Rule 8.3(c)(4)(B).

/s/ TIMOTHY J. SULLIVANTimothy J. Sullivan,  
Chief Administrative Law Judge (Acting)

TJS:dc3

Attachment

Decision **PROPOSED DECISION OF ALJ HYMES** (Mailed 4/17/2014)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of Pacific Gas and Electric Company (U39E) for Approval of Demand Response Programs, Pilots and Budgets for 2012-2014.	Application 11-03-001 (Filed March 1, 2011)
And Related Matters.	Application 11-03-002 Application 11-03-003

**DECISION DENYING CALIFORNIA ENERGY STORAGE ALLIANCE'S  
PETITION FOR MODIFICATION OF DECISION 12-04-045****1. Summary**

This decision denies the California Energy Storage Alliance's request to modify Decision 12-04-045 to revise the categorization of small thermal energy storage systems from mature technology to emerging technology. The petition did not comply with the Commission Rules of Practice and Procedure 16.4(b) in that it did not adequately support its allegations of new or changed facts. This proceeding is closed.

**2. Procedural Background**

On August 12, 2013, the California Energy Storage Alliance (CESA) filed a petition for modification of Decision (D.)12-04-045 (Petition).<sup>1</sup> CESA claims that

---

<sup>1</sup> D.12-04-045 approved budgets and activities for the four investor-owned utilities' demand response programs.

the Petition complies with Commission Rule 16.4(d)<sup>2</sup> because the Permanent Load Shifting (PLS) program<sup>3</sup> was not implemented until May 2013 and the Petition relies on statements contained in Resolution E-4586, which approved the PLS program.<sup>4</sup>

In its Petition, CESA requests that the California Public Utilities Commission (Commission) modify D.12-04-045 by revising the categorization of small thermal energy storage systems integrated with direct expansion refrigerant based air conditioning units sized at 20 tons or less to offset on-peak energy consumption (small TES) from mature technology to emerging technology. Furthermore, CESA requests the Commission to modify D.12-04-045 in order to confirm that small TES are not eligible for incentives under the Commission's PLS program.

CESA makes the following assertions in its Petition to prove that small TES are emerging technologies rather than mature technologies:<sup>5</sup>

---

<sup>2</sup> Rule 16.4(d) states, "Except as provided in this subsection, a petition for modification must be filed and served within one year of the effective date of the decision proposed to be modified. If more than one year has elapsed, the petition must also explain why the petition could not have been presented within one year of the effective date of the decision. If the Commission determines that the late submission has not been justified, it may on that ground issue a summary denial of the petition."

<sup>3</sup> PLS involves storing electricity produced during off peak hours and using the stored energy during peak hours to support loads. (See D.12-04-045 at 146.) The PLS program, approved initially by the Commission in April 2012, provides incentives for customers to invest in PLS technology.

<sup>4</sup> Resolution E-4586, approved by the Commission on May 9, 2013, implements a standardized statewide PLS Program for the territories of the Utilities. See the Utilities Response at Attachment C.)

<sup>5</sup> The assertions are provided in the Petition in the Declaration of Janice Lin at 2-3.

- Small TES have only become commercially available since 2005 and remain commercially available only for commercial and industrial applications.
- Small TES are only commercially available factory-direct.
- Potential customers of small TES have no readily available mechanism to finance project costs, such as an on-bill repay programs.
- The return on investment in small TES typically exceeds 20 years, which cannot support commercially meaningful small TES market expansion in California.

CESA notes that, simultaneous to the deliberations regarding the PLS program, the Commission approved D.11-09-015, modifying the Self Generation Incentive Program (SGIP) and granting eligibility to stand-alone advanced energy storage technologies on an interim basis.<sup>6</sup> CESA points out that in D.11-09-015, the Commission concluded that market transformation is promoted by incentivizing adoption of relatively new technologies that have the potential to achieve sufficient market adoption to realize substantial cost reductions through economies of scale.<sup>7</sup>

Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company (jointly, the Utilities), and the Office of

---

<sup>6</sup> D.11-09-015 also clarified that “if a future Commission decision in another proceeding provides comparable funding for incentives to customer-sited advanced energy storage, or a particular subcategory of TES, the incentives provided to TES (or subcategory thereof) under the SGIP should be removed as to prevent multiple incentives encouraging the same resource.” (See Utilities Response at 4 citing D.11-09-015 at 19-20.)

<sup>7</sup> Petition at 3 citing D.11-09-015 at Conclusion of Law No. 3.

Ratepayer Advocates (ORA)<sup>8</sup> filed protests on (respectively) September 10, 2013 and September 11, 2013.

In its response, the Utilities contend that the CESA Petition is untimely in that it was filed after the 12-month period permitted by Rule 16.4. However, if the Commission finds that the Petition is timely, the Utilities claim the Petition should be denied because the record in Application (A.) 11-03-001 et al. is contrary to the assertions of the Petition and the Lin testimony. Furthermore, the Utilities contend that the Lin testimony does not support the relief requested by CESA. Lastly, the Utilities claim that Advice Letters (ALs), filed by the Utilities as directed by Resolution E-4586, include examples of small TES listed as types of mature TES systems eligible for PLS.<sup>9</sup> The Utilities assert that the “inclusion of these technologies in the PLS program, including small [TES] integrated with air conditioning systems, reflect the fact that they are mature technologies which are commercially available.”<sup>10</sup>

ORA does not oppose the request to classify small TES as an emerging technology. However, ORA recommends that the Commission consider the impact of the classification on the PLS program and the SGIP. Furthermore ORA

---

<sup>8</sup> At the initiation of this Petition, the Division of Ratepayer Advocates (DRA) filed the protest. In September 2013, the California Governor signed legislation renaming DRA the Office of Ratepayer Advocates (ORA). All pleadings filed under the name of DRA will be considered as filed by ORA.

<sup>9</sup> Utilities Response at 10.

<sup>10</sup> *Ibid.*

cautions the Commission to assess the combined ramifications of this Petition and the AL 40<sup>11</sup> for the SGIP.

Pursuant to Rule 16.4 (g), after receiving permission from the assigned Administrative Law Judge (ALJ), CESA filed a reply to the protests on September 23, 2013. Any relevant additional information provided by CESA in this reply is referenced in the discussion below.

### **3. Discussion**

Before addressing the merits of any petition for modification, the Commission must determine: 1) whether the Petition is timely and, if the Petition is timely; and 2) whether the Petition provides ample support of allegations of new or changed facts.<sup>12</sup> As discussed below, we find that CESA did not provide any new or changed facts and therefore we deny its Petition.

The Utilities contend that because the issue of mature versus emerging PLS technology was directly addressed in D.12-04-045 and Resolution E-4586, CESA has no justification for delaying its petition and the Commission should issue a summary denial.<sup>13</sup>

---

<sup>11</sup> On August 14, 2013, the California Center for Sustainable Energy (CCSE) filed an AL proposing to modify the eligibility and metering requirements and the incentive calculation methodology in the SGIP Handbook for Advanced Energy Storage technologies. CCSE also proposes to modify the eligibility requirements for emerging small TES projects so that if they meet the California Energy Commission Title 24 Building Energy Efficiency Compliance Option eligibility requirements, TES systems may qualify as a building energy savings measure and thereby meet the SGIP minimum operating efficiency and related greenhouse gas emission reduction criteria. (See ORA Response at 2.)

<sup>12</sup> Here, the Commission intends that “new” facts are those facts that would not have been available at the time the Commission deliberated D.12-04-045.

<sup>13</sup> Utilities Response at 2.

In its reply to the Utilities' response, CESA states that it had initially filed a Petition for Modification of D.11-09-015 but the Commission's Docket Office rejected it because it should have been properly filed in the successor proceeding. CESA explains that, upon guidance by Commission Staff, CESA refiled the Petition in A.11-03-001 et al., noting that the policy question of the program eligibility of emerging versus mature was dealt with in both proceedings.<sup>14</sup> Furthermore, CESA contends that since the PLS program was not implemented until May 2013 and because the Petition relies on statements from the resolution approving the PLS program, E-4586, the late submission of the Petition is justified. We find that the Petition complies with Commission Rule 16.4(d) in that the Petition provides an adequate explanation of why the petition could not have been presented within one year. We now discuss whether CESA adequately supports its allegations of new or changed facts.

CESA does not dispute that the issue of mature versus emerging was addressed in D.12-04-045. Rather, CESA requests to modify the language based upon alleged change of circumstances brought about in Resolution E-4586. Both the Utilities and ORA argue that CESA is only seeking a change because it is dissatisfied with the PLS incentives provided for small TES through Resolution E-4586.<sup>15</sup> Neither party provides evidence, only conjecture, of this motive.

In the Petition, CESA describes the three inter-related documents: D.12-04-045, D.11-09-015, and Resolution E-4586, providing citations from all

---

<sup>14</sup> CESA reply at 3.

<sup>15</sup> ORA Response at 1-2 and Utilities Response at 2-4.

three. In addition, CESA discusses the assertions made in the Declaration of Janice Lin. However, we find that none of the facts presented by CESA are new or changed since the adoption of D.12-04-045.

First, D.11-09-015 was adopted by the Commission prior to the adoption of D.12-04-045, so we disregard any information provided by CESA from this document as new or changed facts. Furthermore, CESA's discussion regarding the PLS resolution, E-4586, reference policy adopted in D.12-04-045 and thus also provides no new or changed facts. Finally, the statements provided in the Lin Declaration are neither new nor changed facts since the adoption of D.12-04-045. For example, the declaration states that small TES is only commercially available today for commercial and industrial applications and is only commercially available factory direct. These facts are neither new nor changed since the adoption of D.12-04-045.

As pointed out by the Utilities,<sup>16</sup> CESA has had four opportunities to provide the Commission with this information in order to support its contention that small TES is an emerging technology: 1) in comment to the proposed decision in A.11-03-001 et al, which included the language stating that PLS was for mature TES; 2) in protest to the Utilities ALs 4177-E, 2837-E, and 2445-E, which included a list of mature technologies; 3) in comment to E-4586; and 4) when the Utilities filed the ALs as directed by E-4586. CESA has been afforded its due process. It is reasonable to deny the Petition for Modification of D.12-04-045 based on a lack of new or changed facts.

---

<sup>16</sup> Utilities Response at 3.

We note that the Commission has provided little guidance regarding the criteria for emerging or mature technologies. Hence, the assigned Commissioner in Rulemaking 12-11-005 (the Self Generation Incentive Program proceeding) may issue a ruling seeking information regarding the criteria useful for determining whether a technology is emerging or mature.

#### **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 \_\_\_\_\_.

#### **5. Assignment of Proceeding**

Michael R. Peevey is the assigned Commissioner and Kelly A. Hymes is the assigned ALJ in this proceeding.

#### **Findings of Fact**

1. CESA claims that since the PLS program was not implemented until May 2013 and because the Petition relies on statements from the resolution approving the PLS program, E-4586, the late submission of the Petition is justified.
2. None of the facts presented by CESA are new or changed since the adoption of D.12-04-045.
3. CESA has had four opportunities to provide the Commission with information to support its contention that small TES is an emerging technology.

**Conclusions of Law**

1. The Petition complies with Commission Rule 16.4(d) in that CESA provides an adequate explanation of why the petition could not have been presented within one year.
2. The Petition does not comply with Commission Rule 16.4(b) in that CESA presents no new facts or allegations.
3. CESA has been afforded its due process.
4. It is reasonable to deny CESA's petition.

**O R D E R**

**IT IS ORDERED** that:

1. The Petition for Modification of Decision 12-04-045 by the California Energy Storage Alliance is denied.
2. Application (A.) 11-03-001, A.11-03-002, and A.11-03-003 are closed.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.