

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA



**FILED**

5-22-15  
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)

**COMMENTS OF THE  
CENTER FOR ENERGY EFFICIENCY AND RENEWABLE TECHNOLOGIES  
ON ASSIGNED COMMISSIONER'S RULING ON SB 861 COMPLIANCE AND  
REVIEW OF SELF-GENERATION INCENTIVE PROGRAM**

May 22, 2015

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The Center for Energy Efficiency and Renewable Technologies (CEERT) respectfully submits these Comments in response to the Assigned Commissioner’s Ruling (ACR) Requesting Comments on Senate Bill (SB) 861 Compliance and Review of Self-Generation Incentive Program (SGIP) issued in this proceeding on April 29, 2015 (April 29 ACR). These Comments are timely filed and served pursuant to the Commission’s Rules of Practice and Procedure and the April 29 ACR.

**I.  
INTRODUCTION**

The April 29 ACR lists those changes to Public Utilities (PU) Code Section 379.6, which governs the SGIP, resulting from the enactment of SB 861 (Stats 2014, Ch. 35) and Assembly Bill (AB) 1478 (Stats. 2014, Ch. 664) (introduced by the Senate and Assembly Budget Committees, respectively).<sup>1</sup> In response, the ACR seeks comments on revisions to SGIP to comply with those statutory provisions, “excluding greenhouse gas (GHG) factor updates,” which are being considered pursuant to an earlier ACR issued in this proceeding on March 27,

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<sup>1</sup> April 29 ACR, at p. 2.

2015 (March 27 ACR).<sup>2</sup> The April 29 ACR also asks for party comment “on other possible program revisions that may improve the SGIP that are not required by SB 861 or AB 1478.”<sup>3</sup>

The April 29 ACR poses questions for party comment “organized under six broad topics:” (1) program goals; (2) program evaluation; (3) eligibility criteria and eligible technologies; (4) program design; (5) advanced energy storage (AES), and (6) miscellaneous. CEERT does respond here to certain of these questions, and reserves the right for further comment in reply to party responses. CEERT’s primary interest is the appropriate implementation of statutory amendments that are clearly designed to advance technologies that reduce carbon emissions and criteria pollutants, while improving local and system reliability.

#### **A. PROGRAM GOALS**

The April 29 ACR proposes six SGIP “Program Goals” that it states are based on the “language” of Section 379.6 (subsections (a), (e), and (l)), but also Decision (D.) 11-09-015 as a basis to include “market transformation for DER technologies...not mentioned in statute.”<sup>4</sup>

These goals include: “1. Reduce GHGs; 2. Reduce criteria air pollutants; 3. Reduce customer peak demand; 4. Improve efficiency and reliability of the distribution and transmission system; 5. Promote market transformation of emerging technologies that have the potential to provide valuable grid services cost-effectively; and 6. Maximize the value to ratepayers from SGIP incentives, and provide for an equitable distribution of the costs and benefits of the program.”<sup>5</sup>

Based on this proposed list, the April 29 ACR poses the following question for party comment:

*“Q.1. Do you agree or disagree with the proposed program goals, and why? In addition to the goals enumerated above, should SGIP include any other goals? If so, describe the*

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<sup>2</sup> April 29 ACR, at p. 1.

<sup>3</sup> April 29 ACR, at p. 1.

<sup>4</sup> April 29 ACR, at p. 5.

<sup>5</sup> April 29 ACR, at p. 5.

*additional goals and explain why they should be included. How should the reduction of customer peak demand weigh reductions of coincident peak demand at the system and local levels? Should the Commission give some goals greater or lesser weight? If so, describe how the goals should be ranked and discuss your rationale for the ranking you propose.”*<sup>6</sup>

While CEERT does not take issue with the goals that are listed, CEERT does believe that there must be a priority ranking of these goals, especially as to their application in revising SGIP consistent with the express language of SB 861. In this regard, CEERT has an overarching concern with the approach that the Assigned Commissioner has taken to what should be a straightforward proposition of implementing several significant changes to PU Code §379.6. Specifically, the Assigned Commissioner has elected to segregate one of the revisions to PU Code §379.6 resulting from the enactment of SB 861 (updating of the SGIP GHG factors (subsection (b)(2) of Section 379.6)) for a separate decision. However, in doing so, the Commission must not ignore the significance of subsection (b), as a whole, and (b)(1), in particular, that limits SGIP incentive eligibility, in the first instance, to distributed energy resources (DER) that “will achieve reductions” in GHG emissions.<sup>7</sup> A key principle applicable to any statutory construction undertaken by this Commission is to consider *all* words used in a statute and give them a plain and common sense meaning consistent with the statute’s legislative purpose.<sup>8</sup> A piecemeal or segregated interpretation of a statute runs the danger of undermining the legislative purpose for those amendments or additions in the first place.

On that point, a review of SB 861 makes clear that Climate Change and air quality are priority SGIP criteria, not just goals, and must be factored into any revisions of SGIP considered here, regardless of the separate consideration of GHG factor updates pursuant to the March 27

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<sup>6</sup> April 29 ACR, at pp. 5-6.

<sup>7</sup> PU Code §379.6(b)(1).

<sup>8</sup> D.12-05-035, at pp. 13-15 (citing to multiple judicial decisions in support).

ACR.<sup>9</sup> In this regard, on April 17, 2015, CEERT filed Comments in response to the previous March 27 ACR, indicating that it had been an early supporter of “revisions to SGIP that would require that SGIP-eligible technologies make a positive contribution to reducing GHG emissions” and further recognized the particular contribution of specific SGIP technologies to “reducing peak demand and GHG emissions.”<sup>10</sup> For those reasons, CEERT had, in turn, supported the Commission’s D.11-09-015, especially for making “the GHG emission reduction requirement the primary screen for establishing technology eligibility for the SGIP.”<sup>11</sup>

In its April 17 Comments, CEERT observed that these objectives have “added significance given the Governor’s call in 2014 to continue the reduction of ‘carbon pollution’ and to limit ‘the emissions of heat-trapping gases’ beyond the 2020 Climate Change goals set by AB 32.”<sup>12</sup> In fact, Footnote 5 of the April 29 ACR should be removed as in conflict with this goal, especially given the statement made by Commissioner Picker at the Commission’s Business Meeting of May 22, 2015, indicating his intent for the Commission to embrace the Governor’s goal in energy procurement and planning.

Specific to the statutory construction and implementation here of the legislative revisions of PU Code §379.6 resulting from SB 861 and AB 1478 as a whole, it is clear that the Legislature has also intended to ensure that SGIP incentives are extended to those technologies that, in the first instance, can reduce both GHG emissions and criteria pollutants consistent with the Governor’s goal. In this regard, SB 861 sets as a *first*, stand-alone limitation on eligibility for SGIP incentives the requirement that the DER “will achieve” GHG emission reductions (Section

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<sup>9</sup> PU Code §379.6(b)(1) and (e)(4).

<sup>10</sup> CEERT Comments on March 27 ACR (April 17, 2015), at p. 2, citing R.10-05-004 (DG) CEERT Comments on Proposed Decision (August 8, 2011), at p. 2.

<sup>11</sup> *Id.*; see, D.11-09-015, at p. 12.

<sup>12</sup> CEERT Comments on March 27 ACR (April 17, 2015), at p. 2, citing Governor Brown’s Inaugural Address (January 5, 2015) at <http://gov.ca.gov/news.php?id=18828>.

379.6(b)(1)). This statutory mandate is followed by the legislation requiring the DER to reduce demand from the grid by offsetting some or all of the customer’s onsite energy load, to use a technology that is commercially viable and safely utilizes the existing transmission and distribution system, *and* to “improv[e] air quality by reducing criteria air pollutants.”<sup>13</sup> Statutorily mandated “performance measures” to be used by the Commission to evaluate the “overall success and impact” of SGIP further start with “the amount of reductions of emissions of greenhouse gases” followed by “the amount of reductions of emissions of criteria air pollutants.”<sup>14</sup>

These statutory mandates make clear that reductions in GHG emissions and criteria air pollutions are priority considerations in undertaking any revisions to SGIP, especially in terms of technology eligibility and incentives. Further, on doing so, the Commission should not, as suggested by the April 29 ACR, consider the “GHG reduction criterion,” that was the subject of the earlier ACR (March 27), separately,<sup>15</sup> but instead should provide for the holistic incorporation of that criterion with other SGIP eligibility criteria considered here to ensure that the goals and purpose of SB 861 are achieved.

## **B. PROGRAM EVALUATION, ELIGIBILITY CRITERIA, PROGRAM DESIGN, AND AES.**

Of the remaining “topic areas” beyond “Program Goals,” CEERT has a central concern common to each. Namely, in several instances, the April 29 ACR has posed questions that are not based on, but rather seek to add to and may even conflict with the express statutory direction and intent of SB 861. Specifically, questions are posed asking parties to provide or consider “other measures” or technologies that are not part of the statute or seek to exclude currently

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<sup>13</sup> PU Code §379.6 (e), subsections (1) – (4).

<sup>14</sup> PU Code §379.6 (l), subsections (1) – (2).

<sup>15</sup> See, e.g., April 29 ACR, at p. 8.

eligible technologies or alter incentives with no reference to any statutory criteria or even the priority goals that now exist by virtue of SB 861.<sup>16</sup> A further key principle applicable to statutory construction is the understanding that the “judicial role” in a democratic society is “to interpret laws, not to write them,” a power reserved to the legislative branch, and, in turn, to interpret statutes in accordance with the “expressed” intention of the Legislature.<sup>17</sup> Similarly, administrative regulations that seek to alter a statute or “enlarge” its scope are void.<sup>18</sup>

CEERT, therefore, urges the Commission to be mindful of the legislative direction it has received in undertaking revisions to SGIP, including, again, the primacy of the Climate Change, air quality, and reliability criteria enacted in SB 861 for SGIP. CEERT is concerned that the April 29 ACR does not focus sufficiently on the specific task at hand – implementation of revisions to SGIP resulting from SB 861, as a first order of business. Further, in extending consideration to issues related to, e.g., “DC micro-grids” or Advanced Energy Storage (AES) *separate* from other SGIP technologies, the Commission has taken on issues that are not called out by statute or address technologies that could receive other incentives or may be impacted by other pending Commission rulemakings.

In this regard, it is important to ensure that decisions made here do not burden or create conflicts in the implementation of SB 861. CEERT does support AES and other technologies that can facilitate reduction in GHG emissions and criteria pollutants and increase reliance on renewable generation. However, the issue here is the application of limited incentives to facilitate specific technologies that achieve identified outcomes and might otherwise not be encouraged or developed without such funding.

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<sup>16</sup> April 29 ACR, at pp. 8-17.

<sup>17</sup> *California Teachers Assn. v. Governing Bd. Of Rialto United School Dist.* (1997) 14 Cal.4<sup>th</sup> 627, 633.

<sup>18</sup> *Dyna-Med, Inc. v. Fair Employment Housing Com.* (1987) 43 Cal.3<sup>rd</sup> 1379, 1389.

It is, therefore, important to focus on the specific revisions required to SGIP by SB 861 and other incentives or costs that impact specific technologies. In this regard, R.15-03-011 continues its implementation of AB 2514, which has resulted in the establishment of the Energy Storage Procurement Framework and Program that mandates specific levels of procurement of eligible storage resources by each Investor Owned Utility (IOU) and maintains “guiding principles” that mirror the Program Goals identified in the April 29 ACR for SGIP (i.e., GHG emission reductions and improved grid reliability).<sup>19</sup> This rulemaking is on course to consider measurement and evaluation measures and storage technology eligibility, among other things. Given that the April 29 ACR has identified AES incentives and eligibility as a separate topic area, those considerations should also be informed by the existence and availability of this separate procurement program and coordinated with evaluation metrics adopted for that program to ensure consistent treatment and equitable distribution of incentives among all eligible SGIP technologies.

Similarly, any changes in incentive levels should account for increased cost burdens to eligible technologies that may have resulted from changes in applicable operational standards, as in the case of biogas, a technology that has high value in achieving California’s goals of reducing methane emissions. Further, the Commission should not presume the existence of “over-generous” incentives without first exploring whether any such outcome was due to program rules or eligibility criteria that unfairly or “over-generously” advantaged only a limited group of manufacturers.<sup>20</sup> To that end, the April 29 ACR is correct in revisiting, as an example, whether

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<sup>19</sup> R.15-03-011, at pp. 2-3.

<sup>20</sup> April 29 ACR, at pp. 11-12.

the “40 percent individual manufacturer cap [is] working ...to allow robust participation” as opposed to “squeezing out other participants.”<sup>21</sup>

SGIP remains a valuable program for incentivizing the development of technologies that have and will continue to play a significant role in reducing GHG emissions and criteria pollutants, maintaining reliability, and integrating renewable resources. SB 861 is the Legislature’s direction to the Commission on how to revise SGIP to further those goals today and must be fully accounted for in any changes made by the Commission to SGIP.

## **II. CONCLUSION**

CEERT asks that the Commission consider and incorporate CEERT’s recommendations here in its implementation of SB 861. CEERT looks forward to reviewing and replying to the responses of other parties.

Respectfully submitted,

May 22, 2015

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<sup>21</sup> April 29 ACR, at p. 18.