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4-07-16
04:59 PM

**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.

R.12-11-005
Filed November 8, 2012

**STEM, INC.'S RESPONSE TO MAAS ENERGY WORKS
PETITION FOR MODIFICATION OF DECISION 15-12-027**

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April 7, 2016

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I. INTRODUCTION AND SUMMARY

Stem, Inc. (“Stem”) hereby submits this response to Maas Energy Work, Inc’s (“Maas”) Petition for Modification of Decision 15-12-027 to Address Irregularities in 2016 Applications Received for the Self-Generation Incentive Program filed on March 8, 2016 (the “Maas Petition”). The Maas Petition should be denied because it fails to meet the Commission’s standards for a Petition for Modification and is otherwise procedurally improper. The Maas Petition provides no justification for modification of the Commission’s Decision D.15-12-027 to move forward with disbursing 50% of the 2016 Self-Generation Incentive Program (“SGIP”) budget under existing program rules. Rather, Maas seeks information and Program Administrator (“PA”) actions relating to the technical details of the February 23, 2016 SGIP application submission process, an event that occurred well after D.15-12-027 was issued. As discussed below, a Petition for Modification is not the proper procedural vehicle for Maas’s requests. Furthermore, the information sought by the Maas Petition has now been provided to interested parties at the March 21, 2016 Staff Workshop on the Self-Generation Incentive Program Launch of Feb. 23, 2016. Accordingly, Stem requests that the Commission deny the Mass Petition, instruct the PA’s to immediately re-start processing of the February 23 applications, and focus its efforts on moving forward to improve SGIP for the second 50% of 2016 funds and future years’ budgets.

Stem recognizes that the evolution of the SGIP implementation has not been without controversy or diverse opinion. The Commission has received extensive public comment on recommended changes to the structure of the SGIP and incentive disbursement process in response

to the April 29, 2015 and November 23, 2015 Assigned Commissioner’s Rulings (“ACR”). In addition, interested stakeholders had the opportunity to express views on how the SGIP incentives should be allocated and the program improved at the March 21 workshop in light of the February 23 application submission process. The Commission should now take all of this thoughtful record and workshop commentary into account and expeditiously move to issue a Proposed Decision modifying the SGIP program on a going-forward basis to comply with SB 861 and other state energy policy. Any changes to SGIP program regulations must be prospective and may not apply retroactively to funds for which customers already applied based on existing rules.

II. BACKGROUND

A. Commission Decision to Release 50% of 2016 Funds Under Current Rules

The California Legislature passed SB 861 in 2014 to revise the SGIP program in several ways. On April 29, 2015, President Picker issued an Assigned Commissioner Ruling (“ACR”) requesting comments on S.B. 861 compliance and potential changes to the SGIP program, including program goals, eligibility and program design. Over 20 parties filed comments, expressing a wide range of views on how the SGIP should be modified to better implement its goals. Many of these comments specifically addressed the incentive disbursement process, the manufacturer cap and many other policy issues.

On November 3, 2015, President Picker issued a subsequent ACR requesting party comment on whether the \$77 million of 2016 SGIP funds should be made available under current SGIP rules and incentive levels, whether the SGIP should be fully suspended until the Commission implemented new rules, or whether only a portion of 2016 SGIP funds should be made available under existing rules. Twenty-two parties filed comments in response to this ACR.

On November 17, 2015, the Commission issued a Proposed Decision to release 50% of the 2016 SGIP program funds at the beginning of 2016 under existing rules (taking into account the updated greenhouse gas factor approved previously in D.15-11-027), and the remainder of the 2016 funds subject to future revised program rules pursuant to an expected forthcoming Commission decision. Numerous parties commented on this Proposed Decision and it was subject to a full public process. On November 23, 2015, President Picker issued another ACR seeking public comment on an Energy Division staff proposal (the “Staff Proposal”) to modify the SGIP to

address SB 861 and other changes.¹ Over 20 parties filed extensive comments on this proposal, including recommendations regarding the design of the incentive disbursement process.

Meanwhile, on December 1, 2015, PG&E made available \$10 million in Level 2 (renewables and emerging technologies) SGIP funds to new applications. PG&E received over 160 applications, but only had available funding to incentivize approximately 20 of these projects.² Due to the high number of applications submitted extremely quickly via email, the application submission process experienced technical irregularities attributable to one party rapidly submitting many multiple applications for each valid project. The result was that a single participant was awarded over 60% of available SGIP funds. Despite these irregularities and the seemingly unbalanced allocation of funds, the resulting allocation was not reconsidered. The Program Administrators reacted to improve the SGIP prospectively by instituting a new rule regarding duplicate submissions for future program openings.

On December 17, 2015, the Commission issued D.15-12-027 adopting the Proposed Decision. This decision ordered the PAs to release 50% of 2016 SGIP funds at the start of 2016, and to hold the remainder until the Commission revises the SGIP pursuant to S.B. 861. The Commission's stated rationale for releasing 50% of the budget was to prevent market disruption that would ensue from withholding funds pending the forthcoming decision on broader program changes.³ D.15-12-027 reiterated that the existing 40% manufacturer cap, which had been set in D.11-09-015 in order to provide for an equitable distribution of SGIP funds, would apply to the first 50% of 2016 funds disbursed.⁴

B. February 23rd SGIP Program Opening

Following the issuance of D.15-12-027, the SGIP Program Administrators (PAs) hired Energy Solutions to design and administer a website portal for the submission of applications for incentive reservations (*selfgenca.com* or the "Portal"). On February 1, 2016, SoCalGas sent a

¹ Assigned Commissioner's Ruling (1) Issuing An Energy Division Proposal On Senate Bill 861 Modifications To The Self-Generation Incentive Program (2) Entering The Staff Proposal Into The Record (November 23, 2015).

² Brian Bishop, PG&E "Comments: Program Openings & Modifications" at 3 presented at All-Party Meeting in R.12-11-005 and available at: <http://www.cpuc.ca.gov/General.aspx?id=10601> ("PG&E March 21st Slides")

³ D.15-12-027 at 6, 10.

⁴ *Id.* at 8.

message to the service list for R.12-11-005 announcing the opening of the first 50% of the 2016 SGIP program funds to applications on February 23, 2016, per D.15-12-027. The email message provided that the “2016 applications are subject to the rules according to the 2016 Handbook and must be submitted through the new application portal at www.selfgenca.com.” The 2016 SGIP Handbook further required all applications for the 2016 program year to be submitted via the Portal and that applications would be reviewed in the order they were received on a first-come, first-served basis.

The February 1 email announcement and *selfgenca.com* provided the following schedule:

1. The application portal will be opened from 12:00 p.m. on February 8 through 6:00 p.m. February 22. During this time, parties will be able to create an account, register users, and prepare applications for submission.
2. On February 22 at 6:00 p.m. the portal will be closed to applicants. All applications should be prepared prior to this time.
3. On February 23 at 8:00 a.m. the portal will open for application submissions.

As planned and communicated, the Portal began accepting submissions of applications at 8:00 am on February 23 with approximately \$44.5 million in available incentives. From February 24 to March 1, two of the PAs processed the applications in accordance with the Program Handbook. On March 1, 2016, the PAs published the full list of applications submitted to all four PAs, including the submission timestamp for each application. This list included the applicable manufacturer and reservation amount for each application.

On March 8, 2016, Maas filed the Maas Petition. On March 21, 2016, the Energy Division hosted an all-party meeting/workshop to discuss parties’ views on the February 23 application process. At the meeting, presentations were given by the PAs, Energy Solutions, applicants who participated in the February 23 opening, and other interested parties. Tim O’Keefe, Director of Energy Solutions and the person in charge of the design and operation of the Portal, outlined the Portal functionality, submission process, and the results. Mr. O’Keefe explained that demand for incentives during the Feb 23 opening was extremely high, with submissions of renewable and emerging technologies incentive applications of more than six times the available budget.⁵ Mr.

⁵ Tim O’Keefe, Director, Energy Solutions, “SGIP Program Portal Intent, Observations, and Technical Limitations” presented at March 21, 2016 All-Party Meeting in R.12-11-005 at 6, *available at*: <http://www.cpuc.ca.gov/General.aspx?id=10601> (“Energy Solutions March 21st Slides”); *see also id.* at 16 (explaining that there were over 28,000 server requests in the first 10 minutes of the program opening); Rebecca Feuerlicht, Center for Sustainable Energy, “SGIP Program Opening 2016 Policy Perspectives from the Center for Sustainable Energy” at 4, 6 presented at March 21, 2016 All-Party Meeting in R.12-11-005 ,

O’Keefe walked through every step of the application submittal process and various submission techniques used by multiple parties. Energy Solutions explained that in some cases participants using standardized submission processes reduced “database load” and helped the system to process applications more efficiently.⁶ Importantly, Mr. O’Keefe stated that the Portal “operated as it was intended to operate,” that “the system did not crash” and that “the system did not fail.” Similarly, PG&E explained that “[i]mmense demand slowed but did not break the portal.”⁷

Energy Solutions responded to Maas and other parties’ complaints regarding slow performance, error messages and time stamps.⁸ For example, Mr. O’Keefe explained typical Internet latency and its impact on the submission process.⁹ Mr. O’Keefe stated that the location of the Rackspace server for *selfgenca.com* was publicly available information, and that multiple companies made the choice to submit applications from a physical location close to the server in order to avoid standard latency.¹⁰ Mr. O’Keefe further explained how Internet latency caused the difference between when an applicant submitted an application and when the time stamp was given, indicating when the application was received by *selfgenca.com*.¹¹ Mr. O’Keefe also explained the impact of “server congestion,” and analogized to being in line in a grocery store behind a person with many items in their cart.¹²

Energy Solutions made clear in their presentation that the various techniques used by parties to submit applications were normal and anticipated uses of the Portal as it was designed and not malicious or outside the site’s terms of use. O’Keefe explicitly stated that the system was neither hacked, attacked, nor the victim of a denial of service attempt by any user. According to Energy Solutions, “***all access was authorized and intended.***”¹³ Following presentations by various parties, including Stem, the Energy Division encouraged parties to file comments on the record in response to the Maas Petition.

available at: <http://www.cpuc.ca.gov/General.aspx?id=10601> (demonstrating steep spike in applications in December 2015 and February 23rd, 2016, at 896, up from well under 300 going back to 2013).

⁶ Energy Solutions March 21 Slides at 9-11.

⁷ PG&E March 21st Slides at 4.

⁸ Energy Solutions March 21 Slides at 13.

⁹ *Id.* at 23-27.

¹⁰ *Id.* at 27.

¹¹ *Id.* at 28-30.

¹² *Id.* at 29.

¹³ *Id.* at 19.

III. THE MAAS PETITION FAILS TO MEET THE COMMISSION'S STANDARDS FOR A PETITION FOR MODIFICATION AND IS PROCEDURALLY IMPROPER

The Maas Petition asks the Commission to modify its Decision 15-12-027 to:

- 1) Require the Program Administrators and/or their subcontractor, Energy Solution, to release certain information...relating to the February 23, 2016 SGIP submissions process and applications received using a new application Portal managed by Energy Solution
- 2) Require the Program Administrators and/or their subcontractor, Energy Solution, to determine the cause of irregularities in the 2016 SGIP applications received
- 3) Clarify that any SGIP Conditional Reservation Letters from the February 23, 2016 application round may be revoked if warranted by irregularities in projects' applications, with funds awarded to the next eligible applicants.¹⁴

The Maas Petition must be denied because it fails to meet the requirements for a Petition for Modification under the Commission's Rules of Practice and Procedure.

First, Rule 16.4(b) requires a Petition for Modification to "concisely state the justification for the requested relief." The Maas Petition does not make any argument that justifies modifying the Commission's December 17, 2015 decision to release 50% of the 2016 SGIP funds in order to prevent market disruption. Instead, the Maas Petition uses a Petition for Modification to seek (1) information regarding the February 23 program opening, (2) a determination of the cause of what it characterized as irregularities associated with the February 23rd program opening, and (3) clarification regarding the treatment of Conditional Reservation Letters based on the purported "irregularities" in the February 23 opening. These requested actions all relate to an event that occurred more than two months *after* the issuance of D.15-12-027. A Petition for Modification is simply not the proper vehicle to achieve what Maas desires. It would be illogical and improper for the Commission to modify its previous decision that spoke prospectively to the percentage of the 2016 budget to be released to order the disclosure of information, an investigation or consequences relating to technical details of program implementation that occurred months after the issuance of such decision. It does not logically follow that because there were delays observed by several parties in submitting applications, the Decision to release only half of the 2016 budget should be

¹⁴ Maas Petition at 2.

modified.¹⁵ The website Portal design and technical specifications were not within the scope of the Commission's decision and were not in any way addressed in D. 15-12-027. *Post-hoc* facts that pertain to incentive disbursement processes cannot be the basis for modification of a broader regulatory decision that authorized the amount of funding to be disbursed. The Maas Petition does not even attempt to explain why the Commission's actual order to hold back 50% of the funds and release the other 50% in order to balance program improvements against the risk of market disruption should be changed.

Further, Rule 16.4(b) requires that "[a]ny factual allegations must be supported with specific citations to the record in the proceeding or to matters that may be officially noticed. Allegations of new or changed facts must be supported by an appropriate declaration of affidavit." The Maas Petition does not and cannot cite to the record, because none of the facts that are the basis for its requested relief took place on the record before the Commission in making its decision. Maas does not provide a declaration or affidavit supporting new or changed facts either. Nor does the petition cite facts that are logically relevant to the decision in D.15-12-027.

Clearly, a Petition for Modification is not the proper vehicle for Maas's requests, and so it should be swiftly denied by the Commission.

IV. RESPONSE TO ALLEGATIONS IN THE PETITION FOR MODIFICATION

As stated above, the Maas Petition is procedurally improper and thus should be summarily denied. Stem offers these responses to the allegations raised in the Maas Petition, however, in response to the Energy Division's request at the March 21 All-Party Meeting that parties file comments on the Maas Petition.

A. Maas Allegations Are Unsupported and Were Refuted by Energy Solutions

As a basis for modifying D.15-12-027, Maas asserts that "the identities of the successful [Reservation Request Form] submissions should have been relatively random, spread over a large number of applicants all arriving very close in time to each other."¹⁶ Maas goes on to state that only Stem was able to submit applications for over 2 minutes after the program opened on February 23.

¹⁵ See, e.g., D.14-06-034 Decision Denying Petition for Modification of Decision 10-04-027 (June 26, 2014) at 3, 5 (reasoning that "it does not logically follow that, because of these subsequent events, SCG's AMI deployment can no longer be sustained. Petitioner's reasoning is flawed and somewhat misleading for several reasons.").

¹⁶ Maas Petition at 3.

Yet, Maas acknowledges that Stem submitted “a large percentage of the overall total of applications” submitted, and thus had a better chance of receiving funding, but argues that the timing of Stem’s applications “was not at all statistically explainable.”¹⁷ Maas alleges, citing no evidence, that a denial of service may have occurred and posits, based on speculation, that Stem had “preferential access” that allowed Stem to log on before other users.¹⁸ (For the record, Stem rejects Maas’s allegation that it had “preferential access”.)

As discussed above, Energy Solutions thoroughly explained the various login and submittal processes used by applicants on the morning of February 23 at the March 21 All-Party Meeting and clarified that there was no malfeasance, and submittal processes used were normal and expected. For example, Tim O’Keefe described a “bookmarked” workflow process used by “a large number of applicants” that allowed for faster login and fewer page clicks. Mr. O’Keefe stated that this method placed a far lighter load burden on the Portal and that the Portal would have operated more efficiently if all applicants had used this process.¹⁹ According to Energy Solutions “some companies used this workflow, made a plan, and submitted applications in a more efficient manner than others.”

Energy Solutions stated clearly at the All-Party Meeting that the Portal was not hacked or attacked with a denial of service attempt or anything malicious that was designed to slow down the system. As also explained above, Mr. O’Keefe walked all participants through the concept of Internet latency, and described how the number of “hops” and physical distance between a user and the server used by *selfgenca.com* could explain a great deal of the time difference observed under the strain of so many applicants. Energy Solutions stated that multiple applicants “used computers within the Rackspace physical network where the SGIP online portal is hosted to submit their applications, eliminating the effects of internet latency for their submissions.”²⁰ Companies that did this saw “vastly faster service,” according to Mr. O’Keefe. Mr. O’Keefe also stated at the All-Party Meeting that the location of the Rackspace server was publicly available information. Again, Energy Solutions stated in their presentation that “all access was authorized and intended.”²¹

Thus, in sum, none of the unsupported allegations in the Maas Petition provide a justification for modification of D.15-12-027. Even if they were somehow relevant to the ordering

¹⁷ *Id.* at 4.

¹⁸ *Id.* at 8.

¹⁹ Energy Solutions March 21st Slides at 8-10.

²⁰ *Id.* at 27.

²¹ *Id.* at 19.

paragraphs in that decision (which they are not), these speculative comments do not provide an evidentiary basis for the change requested. Stem has provided information regarding its application submission process to Energy Division on a confidential basis, and has offered to provide the Commission with any other information it needs to further confirm the clear explanation and conclusion regarding the February 23 program opening by Energy Solutions. Further, even if the Commission were to initiate an investigation into the Portal submission process, any violation of the SGIP rules would be handled in a separate investigation proceeding and would not be germane to a Petition for Modification of D.15-12-027.

B. Maas's Requests Have Been Addressed by the Energy Division

As stated above, the actual requests made by Maas in their petition are as follows:

1. Require the Program Administrators and/or their subcontractor, Energy Solution, to release certain information...relating to the February 23, 2016 SGIP submissions process and applications received using a new application Portal managed by Energy Solution
2. Require the Program Administrators and/or their subcontractor, Energy Solution, to determine the cause of irregularities in the 2016 SGIP applications received
3. Clarify that any SGIP Conditional Reservation Letters from the February 23, 2016 application round may be revoked if warranted by irregularities in projects' applications, with funds awarded to the next eligible applicants.²²

With respect to (1) and (2) above, the Energy Division has already met this request by hosting the All-Party Meeting on March 21st and requiring the PAs and Energy Solution to present the factual information and data they provided. Energy Division clearly stated that the system did not fail and “operated as it was intended to operate” and the causes of the delays experienced by many users were explained.

With respect to (3) above, Section 7 of the 2016 SGIP Handbook already adequately handles program infractions. Upon a determination that an infraction has been committed, the applicable PA has the discretion to determine and impose a “reasonable sanction.” A sanction “may result in a suspension from the SGIP Program for a minimum of six months” and may be applicable to parties other than the Host Customer.²³ If any violation of SGIP rules is legally determined to

²² Maas Petition at 2.

²³ 2016 SGIP Handbook §7.

have been committed via an investigation, the applicable PA will have discretion to impose reasonable sanctions such as these.²⁴

Maas also requests a release of the following information:

1. The precise time, origin IP address, username, and company affiliation of all successful and unsuccessful logins to the Portal server on February 23, 2016.
2. The total number of simultaneous users that the Portal was configured to accept, and the actual number of users that were online during each one-minute interval during each the first 10 minutes of the application cycle on February 23.
3. An explanation why a single entity was able to gain access to the Portal and/or submit applications before all others.²⁵

As noted, much of this information was already released at the March 21st All-Party Meeting and thus the Maas Petition should be denied.²⁶ Further, Maas's request that the PAs or Energy Solutions release certain information is not properly raised via a Petition for Modification to a Commission Decision determining to release 50% of the 2016 budget. If determined to be warranted, the release of this information would be ordered as part of a formal investigation into violations of program rules. Any such violations or fact-finding are outside the scope of a Petition for Modification.

V. BROADER POLICY ISSUES RAISED IN ALL PARTY MEETING

The March 21 All-Party Meeting was designed as a forum for parties to raise concerns more broadly than those relevant to the Maas Petition and to discuss ideas for how the program can be designed better in the future. At the meeting, the Energy Division posed the question whether a change should be made to the Feb 23rd results and even whether the results should be completely cancelled. Absent any evidence of wrongdoing or system failure, the Energy Division offered that an option on the table was that the results might be subject to *ex post facto* change to make them

²⁴ We add that if the Commission were to order the opening of an investigation, all users of the Portal on February 23rd should be investigated for program rule violations, and all Conditional Reservations should be held equally, since there is no evidence that any one party violated SGIP rules, and Energy Solutions has stated that multiple applicants utilized the standard techniques discussed at the March 21 All Party Meeting. It would be patently unfair and inappropriate to investigate only the actions of one competitor.

²⁵ Maas Petition at 8.

²⁶ *See, e.g.*, D.12-05-035 Decision Revising Feed-In Tariff Program, Implementing Amendments to Public Utilities Code Section 399.20 Enacted by Senate Bill 380, Senate Bill 32, and Senate Bill 2 1x and Denying Petitions for Modification of Decision 07-07-027 by Sustainable Conservation and Solutions For Utilities, Inc. (May 24, 2012) at 107 (“all issues framed by Solutions for Utilities’ petition for modification either have been addressed or are scheduled to be addressed in either this proceeding or in R.11-09-011, the petition is denied.”).

more “equitable.” The Commission should make clear that any such option is not permissible within Commission rulemaking nor is it justified based on facts.

Based on Commission precedent and regulation, the results were equitable. The Commission previously exercised its authority to provide for equitable distribution of SGIP benefits by limiting any one manufacturer from receiving more than 40% of the annual statewide budget.²⁷ In D.11-09-015, the Commission expressly stated that “[we] believe a percentage-based cap is an appropriate mechanism to ensure diversity of the portfolio and will equitably distribute SGIP funds.”²⁸ As stated above, in D.15-12-027 the Commission made clear that the 40% rule would still apply to the distribution of the first 50% of 2016 funds.²⁹ Thus any Conditional Reservations obtained at the February 23 opening, including Stem’s, would be subject to the 40% cap pursuant to Commission decision.

Moreover, numerous prior SGIP budget allocations have been dominated by one or two successful applicants under the 40% rule, and these results have not be re-done. If the Commission decides revise its prior rule, it would need to take that action based on record evidence and provide public stakeholders with an opportunity to comment and be heard. The Commission has a near-term opportunity to do so in the anticipated Proposed Decision in this docket that the Commission has already determined will apply prospectively to the second 50% of 2016 program year funds.³⁰ The Commission has already received voluminous public comment on the changes to the program in response to the April 29, 2015 and November 23, 2015 ACRs. The Commission has the opportunity to make this change going forward to apply to the second 50% of 2016 funds and future years’ budgets.

The Energy Division and PAs cannot and should not, however, apply new rules that are contrary to Commission orders in a *post hoc* fashion. Any such retroactive regulatory change based on evidence outside the record would be vigorously challenged, would result in potential legal claims, and would cause more delays and the very market disruption that D.15-12-027 expressly sought to avoid by releasing half of the 2016 funds under the existing program rules.³¹ Applicants,

²⁷ CPUC Decision 11-09-015 Decision Modifying the Self-Generation Incentive Program and Implementing Senate Bill 412 at 47-48, 69, Attachment A (September 16, 2011); SGIP Handbook §3.3.9.

²⁸ *Id.* at 48; *see also id.* at 47 (stating that the 40% cap would “facilitate a more equitable distribution of funds.”).

²⁹ D.15-12-027 at 8.

³⁰ D.15-12-027 at 6-7.

³¹ D.15-12-027 at 8.

including Stem, relied on the existing SGIP rules in place and invested substantial resources in competing fairly under such rules. It would be patently unfair to nullify the results after the fact simply because some parties were more successful than others. Parties in the meeting expressed opinions in critique of the established incentive disbursement process, but such subjective statements and party positions are only applicable to prospective policy design for the SGIP. The implementation of Commission regulations by the Energy Division and legal determinations must be based on the Commission's established legal standards and requirements, not the number of voices in a stakeholder meeting. We are aware of no Commission precedent for changing the results of a competitive incentive distribution program that was conducted in accordance with the rules. Doing so would set an extremely unreasonable and damaging precedent for any current or future incentive program authorized by the Commission. If competitive incentive distributions could be cancelled or redistributed by the Commission with no legal justification, this would have a devastating and destabilizing effect on California markets, investments and customers.

Thus, the suggestions made by the Energy Division that either the February 23 program opening could be cancelled and redone, or that Conditional Reservations that resulted from such opening might be retroactively redistributed to other unsuccessful applicants, should be clearly rejected and not considered further. Instead, as we discuss in more detail below, the Commission should move forward expeditiously to issue a Proposed Decision to modify the SGIP program holistically along the lines of the Staff Proposal, including potential modifications to the incentive distribution process, taking into account the comments thereon by over 20 parties to this docket. The fact that improvements to the SGIP are expected in a future decision in this proceeding is further reason for the Commission to reject the Maas Petition.³²

VI. RECOMMENDATIONS FOR FUTURE PROGRAM DESIGN

The Commission has a near-term, procedurally-appropriate opportunity to improve the SGIP program through the issuance of the expected new proposed decision in this docket on SB 861 implementation. Considerable useful ideas and discussion on the future design of the SGIP process were provided at the March 21st All-Party Meeting, as well as in the record comments in response to the April 29, 2015 and November 23, 2015 ACRs. Given that input, and Stem's extensive experience in other program design variations such as the RAM and the RE-MAT, Stem

³² See, e.g., D.12-05-035 at 107.

here again describes its recommendations for an improved application submittal and incentive award process.

Stem continues to support the movement away from the “first come, first serve” timestamp application process as a way to distribute SGIP funding. As Stem has previously stated in comments prior to the February 23rd opening, this structure is one of the main contributors to the opening day stampede issues that continue to plague SGIP.³³

At the March 21, 2016 All Party Meeting, there was discussion about a variety of alternatives to the current time stamp structure, including a lottery system or a reverse auction mechanism. What was clear is that all parties are seeking a solution that solves the opening day stampede issues while also resolving issues around speculative projects and fair distribution of funding.

In regards to a reverse auction mechanism, this structure is challenging because, though it may solve the opening day stampede issue, it does not resolve issues with fair distribution of funding or reducing the number of speculative projects submitted. A reverse auction may exactly exacerbate those issues as the structure rewards funding based on lowest cost bid, which creates a “race to the bottom” approach, similar to what was experienced in the early days of the Renewable Auction Mechanism. Such a program would likely experience an increase in speculative projects and failures rates due to this approach. These types of mechanisms will also create high barriers to new entrants and smaller companies, as those participants are usually less able to compete against larger, more established developers who can drive down their bid price through economies of scale.

Along these same lines, the larger systems will in general have the lowest costs per kW, which will lead to a greater proportion of funding being awarded to a small set of projects with larger system sizes. A reverse auction mechanism would not work well for a program like SGIP that includes extremely diverse technologies (wind, AES, CHP) with grossly different price points. Even within the AES category, it would be nearly impossible to compare bids due to technology diversity as well as the diversity of project configurations for different use cases (*e.g.*, a project configured to peak shave and participate in DR markets vs. a storage system paired with solar). There are additional complexities in implementing this type of structure, especially in regards to the specific customer segments (residential and commercial) that SGIP serves. A reverse auction

³³ R. 12-11-005 Reply Comments of Stem of the ED Proposal on Modifications to the SGIP (January 22, 2016) at 3-4, *available at*: <http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M158/K734/158734631.PDF>.

mechanism has complicated timelines and higher transaction costs versus other structures, and this may disenfranchise less sophisticated customers from participation.

For these reasons, Stem strongly supports the implementation of a lottery mechanism that includes a merit-based weighting factor as the best solution for more effectively distributing SGIP funding. This merit-based weighting factor should be calculated based on both historical performance of an individual developer (*e.g.*, total number of applications submitted versus total amount of projects seen to completion) as well individual project viability per application (*e.g.*, signed customer contract, letter of intent, etc.). This weighting factor will encourage better overall program performance and discourage the continued submission of speculative projects that unfairly tie up program funding. It is essential that a lottery-based system include a weighting structure. Otherwise the program could be fraught with poor practices of “stuffing the ballot box” by developers simply submitting as many total applications as possible in order to reserve more funding within the lottery process.

Stem believes that implementing this structure, combined with other recommended modifications, such as moving from a manufacturer’s cap towards a developer’s cap and raising the application fee, will lead to a more sustainable and fair program that provides greater benefits to all ratepayers.

Stem further recommends that the Energy Division hold one more workshop specifically on the design of the application process and incentive award mechanism so that comments made can be a part of the record to this proceeding. Information generated at this workshop would then be able to inform the anticipated Proposed Decision to modify SGIP in compliance with SB 861.

VII. CONCLUSION

Stem appreciates this opportunity to respond to the Maas Petition. The Maas Petition should be quickly and summarily denied because it fails to meet the Commission’s standards for a Petition for Modification, and does not request relief that is relevant to or within the scope of the order it seeks to modify. Moreover, the requests contained in the Maas Petition are for information that has already been provided to all parties by the PAs and Energy Solutions at the March 21st All-Party Meeting. The data and explanations provided at the All-Party Meeting answered questions raised by the Maas Petition and removed any potential legal basis for modifying D.15-12-027.

Further, the Commission should make clear in its order that it would be inappropriate for the Energy Division or any PA to alter the results of the February 23rd program opening absent an infraction as defined by the 2016 SGIP Handbook. There has been no evidence of an infraction or other facts that would justify a retroactive change to the February 23 results. In denying the Maas Petition, the Commission should instruct the PAs to immediately re-start the processing of applications and reservations that would result from the February 23rd opening in order to prevent further market disruption and harm to applicants.

Finally, as discussed above, the February 23rd experience inspired additional thinking on SGIP design, including useful ideas proposed at the March 21st All-Party Meeting. Stem recommends that the Energy Division hold one more workshop specifically on the design of the application process and incentive award mechanism so that comments made can be a part of the record to this proceeding and can inform the anticipated Proposed Decision to improve the SGIP going forward.

Respectfully submitted,



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April 7, 2016