

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.

FILED
PUBLIC UTILITIES COMMISSION
NOVEMBER 8, 2012
SAN FRANCISCO, CALIFORNIA
RULEMAKING 12-11-005

**ORDER INSTITUTING RULEMAKING
REGARDING POLICIES, PROCEDURES AND RULES FOR THE
CALIFORNIA SOLAR INITIATIVE, THE SELF-GENERATION INCENTIVE
PROGRAM AND OTHER DISTRIBUTED GENERATION ISSUES**

1. Summary

This rulemaking is initiated to continue the work from Rulemaking (R.) 10-05-004 for the purpose of development and refinement of policies, rules and programs for the California Solar Initiative and the Self-Generation Incentive Program and to continue our consideration more generally of policies for the development of cost-effective, clean and reliable distributed generation. As in our previous rulemakings, we intend to continue to collaborate with the California Energy Commission on these matters to ensure our programs and policies are coordinated to the maximum extent practicable. R.10-05-004 is closed for purposes of Pub. Util. Code § 1701.5, and all outstanding matters are transferred to this new Rulemaking, with one exception. We note that there is a pending application for rehearing of Decision 12-05-036 and that matter will be considered and addressed in R.10-05-004.

2. Background

Over the past several years, this Commission has made a substantial effort to stimulate development of distributed generation (DG) projects and technologies by providing financial incentives to project developers. When our efforts to promote DG began in 2001, the term DG generally referred to customer-owned electric generating facilities, sized up to 5 megawatts (MW), such as solar photovoltaics (PV), wind turbines, biogas, fuel cells, microturbines, small gas turbines, internal combustion engines, and combined heat and power cogeneration plants. Over the last twelve years, as technologies, legislation, and public policy have evolved, our incentive programs have evolved as well to focus on promoting these various technologies in different ways. This rulemaking evolves from and builds on the work we began in previous proceedings, including Rulemaking (R.) 98-12-015, R.99-10-025, R.04-03-017, R.06-03-004, R.08-03-008, and R.10-05-004. These previous rulemaking orders describe our fundamental view of customer-side DG and its role in providing the state with clean, reliable energy resources and remain useful as background documents guiding our work here. The joint agency Energy Action Plan II, the Integrated Energy Policy Report issued by the California Energy Commission (CEC), and our own orders emphasize the state's commitment to DG development.

Notable achievements in these prior rulemakings include our California Solar Initiative (CSI), created in 2006 with a total budget of \$2.16 billion, which provides a long-term commitment to a solar incentive program for solar PV and non-PV solar projects, and our Self-Generation Incentive Program (SGIP), which began in 2001 and has provided a sustained endeavor to promote DG technologies other than solar, with a current annual budget of \$83 million.

In our previous DG rulemakings, the Commission established and refined policies and incentives to promote SGIP and CSI.¹ In our most recent CSI/DG rulemaking, R.10-05-004, we expanded the solar program by issuing key decisions that modified the CSI and SGIP programs and established the low income component of the CSI-Thermal solar water heating program, as well as certifying standards for solar water heating systems. We continued to assess and refine the incentives for the CSI program and for the SGIP program, in addition to implementing Senate Bill (SB) 412 (Stats. 2009, ch. 182).

Although we have performed a vast quantity of work in our six prior rulemakings to develop policies and implement the SGIP and CSI incentive programs, we must continue to monitor and modify the programs as new issues arise and as the technologies and legislation continually evolve. This proceeding will continue the Commission's policymaking and implementation surrounding DG and solar incentives by addressing the following broad categories of issues:

- CSI Review, Evaluation and Program Oversight: Ongoing review, evaluation, and consideration of modification to policies and program rules for CSI and its many sub-programs including, but not limited to, the general market CSI program, the Single Family Affordable Solar Housing (SASH) and the Multifamily Affordable Solar Housing (MASH) programs, the CSI Research, Development, and Demonstration (RD&D) Program, and the CSI Thermal Program that provides solar water heating incentives.
- SGIP Review, Evaluation, and Program Oversight: Ongoing review, evaluation, and consideration of modification to the

¹ See R.08-03-008 and R.10-05-004 for background on the key decisions in the prior DG rulemakings.

SGIP with emphasis on consideration of ongoing implementation to comply with legislative directives.

- Ongoing review, evaluation and consideration of DG policy issues generally, again with a particular emphasis on DG on the customer-side of the meter, including not but limited to net energy metering (NEM) policies and issues, continued implementation of the NEM cap calculation, as directed in D.12-05-036, and consideration of the Solar Energy Industries Alliance (SEIA) petition to modify Decision (D.) 12-05-036.²

We describe each of these in more detail below. We hope to resolve these issues expeditiously in order to assure the continued operations of comprehensive, efficient, and effective CSI and SGIP.

3. Preliminary Scoping Memo: Scope of the Proceeding

This new Rulemaking divides the critical tasks into three issue areas:

3.1. CSI Review, Evaluation, and Program Oversight

This proceeding will be the vehicle for the Commission to carry on its work implementing all prior CSI orders from R.10-05-004 and earlier rulemakings. This work will include the general market CSI incentive program as well as the MASH, SASH, RD&D, and CSI Thermal Programs. The Commission has accomplished the tasks it outlined for itself in R.06-03-004 and R.08-03-008, relating to CSI. The Commission's CSI general market program has, since 2007, allocated slightly more than \$700 million in incentives to over 29,000

² San Diego Gas & Electric Company and The Utility Reform Network have filed applications for rehearing of D.12-05-036. The applications for rehearing will be resolved in due course in R.10-05-004 and we do not prejudge the outcome of those matters here.

installed solar projects representing 320 MW of new solar capacity.³ We have also addressed many of the issues delineated in Phase 1 of R.10-05-004.

We will continue to focus and refine these programs. In July 2010, Staff issued proposed modifications to the CSI Program and parties filed comments on issues to be addressed in Phases 2 and 3 of R.10-05-004.⁴ We will address those issues in this Rulemaking and briefly outline them here.

1. Solar Tariff Modifications, including NEM, Virtual Net Metering (VNM), and Bill Credit Transfer Tariffs, with a focus on NEM billing costs and billing simplification. We will also address the petition for modification of D.11-07-031 to expand VNM, filed by ClearEdge Power and Bloom Energy Corporation on July 20, 2012. In that pleading, petitioners seek to expand VNM to all technologies such that the respondents would establish a VNM tariff that provides both full retail credit for renewable energy resources that meet the requirements of Pub. Util. Code § 2827 and a separate VNM tariff that would provide “generation only” credit for fuel cell technologies that meet the requirements of § 2827.10.
2. General Market Program Modifications, including program administrator reporting requirements, design factor for calculating payment to Expected Performance-Based Buydown (EPBB) projects, eligibility of multiple EPBB projects, revising the application processing program database and confidentiality, coordination of CSI program applications with utility interconnection applications, tax exempt documentation for non-profit agencies, whether the five percent metering accuracy standards for performance monitoring and reporting services meters should be modified, and whether the warranty requirements should be clarified.

³ See California Solar Statistics at: <http://www.californiasolarstatistics.ca.gov>.

⁴ See Administrative Law Judge (ALJ) Duda’s Ruling of December 14, 2011 and parties’ comments filed on January 24, 2012 and February 3, 2012.

3. Measurement and Evaluation (M&E) Program Modifications, including the M&E Plan annual review, M&E expenditures and reimbursement requirements, and the scope of CSI M&E studies.
4. Low Income Program Modifications, including review of the MW goals of the MASH and SASH programs, SASH workforce development, SASH program manager contract administration, and whether to allow power purchase agreement providers to receive SASH program incentives.
5. Public Reporting of CSI Statistics, including ongoing development of the California Solar Statistics website, and transition of data collection responsibilities from the CSI Program to utility interconnection departments once CSI Program incentives are no longer available.
6. Program budgets and rate collection modifications, including gas program rate collections and whether a balancing account should be established to record annual actual expenditures for the gas-displacing CSI-thermal program. We will also address the California Center for Sustainable Energy (CCSE) petition for modification of D.10-09-046, D.08-10-036, D.11-07-031 and D.06-08-028 to address certain General Market program administration and incentive budget issues within CCSE's program territory.

The assigned ALJ will work closely with the assigned Commissioner to prioritize those issues based on parties' comments and staff input, and these will be discussed at the prehearing conference that will soon be scheduled, as we discuss below. We will also consider whether to provide incentives for non-solar water heating thermal technologies that displace gas usage and meet all other program requirements, as described in D.10-01-022, and on which we received comments from the parties.⁵

⁵ See ALJ Duda's Ruling of January 27, 2012 and parties' comments filed on February 23, 2012 and March 5, 2012.

3.2. SGIP Review, Evaluation, and Program Oversight

This rulemaking will be the vehicle for the Commission to carry on its work implementing all prior SGIP orders from R.10-05-004 and earlier rulemakings. The SGIP was adopted by the Commission in D.01-03-073 and provides incentives to business and individuals who invest in DG. The Commission's SGIP has so far encumbered more than \$747 million in incentives and motivated more than 430 MW of DG capacity through 1,447 projects since 2001. These projects represent approximately \$2.1 billion in private investment in DG technologies. In our previous DG rulemakings, we refined our interconnection rules, revised incentive payments, and addressed budgetary and policy issues surrounding SGIP. Most recently, in R.08-03-008, we allowed incentives for advanced energy storage technologies coupled with wind and fuel cell projects (D.08-11-044) and allowed directed biogas to qualify as a renewable fuel for SGIP eligible facilities (D.09-09-048).

In D.11-09-015, we modified SGIP to conform the program to the requirements of SB 412. We also modified several aspects of the SGIP to improve program outcomes and facilitate program implementation, including, e.g., the eligibility criteria for participation in the program, incentive amounts and payment structures for eligible technologies, metering and warranty requirements, and budget allocation among eligible technologies. Eligibility for participation in the SGIP is now based on greenhouse gas emissions reductions. We will continue to assess whether changes are needed to SGIP to comply with SB 412, and, as needed, any policy, legal, or administrative issues that arise in the broad context of DG or within the ongoing SGIP. For example, on February 8, 2012, Rightcycle LLC filed a Petition to Modify D.11-09-015 to allow a biogas adder in SGIP for pressure reduction turbines. We will consider this issue in this

new Rulemaking. We note that our ongoing collaboration with the CEC will help us to understand and incorporate new DG technologies when and if they become viable, and if they comply with the program guidelines in Pub. Util. Code § 379.6.

3.3. Modification, Review, Evaluation, Oversight and Development of the CSI-Thermal Program

This rulemaking will be the vehicle for the Commission to carry on its work implementing all prior CSI-Thermal orders from R.10-05-004 and earlier rulemakings. The CSI-Thermal Program was authorized by the Commission in D.10-01-022 and provides up to \$350.8 million for the promotion of solar water heaters and other solar thermal devices that offset natural gas and electricity usage. In our previous DG rulemaking, we established the program rules and modified the program several times, as we summarize briefly below.

In D.12-08-008, we increased the incentive rates available to single-family and multi-family/commercial customers. In D.11-10-015, we established a low income program providing \$25 million in incentives at a higher incentive rate for single family and multi-family host customers displacing natural gas. D.11-11-004 expanded the listing agencies eligible to provide ratings for equipment used in the program. Finally, D.11-11-005 allowed incentives to be paid for installations that displace propane.

In this proceeding, we intend to further address program eligibility and incentive payment methodology. On January 27, 2012, the assigned ALJ in R.10-05-004 issued a Ruling⁶ seeking comment on an Energy Division Staff

⁶ <http://docs.cpuc.ca.gov/PublishedDocs/EFILE/RULINGS/158262.PDF>.

Proposal for Program Modification⁷ recommending a new payment structure and the inclusion of new technologies into the CSI-Thermal program. In that document, Staff noted that several otherwise qualifying technologies had been excluded from the program due to concerns about how to model expected energy output for the purpose of paying up-front incentives. To alleviate this barrier, Staff proposed the creation of a new performance-based incentive payment structure that would pay applicants based on actual energy delivered from the solar thermal system to the end-use application. We will address these proposals and the associated comments in this Rulemaking.

In addition to considering the issues raised by the Energy Division Staff Proposal, this proceeding will also consider how best to implement legislation recently signed into law that further modifies the CSI-Thermal Program. Assembly Bill 2249 (Stats. 2012, ch. 607,) amends Pub. Util. Code §§ 2861, 2862, 2863, 2864, and 2867.1. Among other requirements, we must address the expansion of program eligibility to allow solar pool heating systems (other than single-family pools) to qualify for incentives, determine the proper division of funding for incentives between pool heating and other systems, and conduct an analysis of incentive levels to determine whether they are sufficient to meet CSI-Thermal program goals.

Finally, the proceeding will consider ongoing issues related to the CSI-Thermal program, including M&E, marketing and outreach, technology eligibility, standards and other topics relevant to improving program implementation.

⁷ <http://docs.cpuc.ca.gov/PublishedDocs/EFILE/RULINGS/158263.PDF>.

3.4. Ongoing DG Policy Development and Review

In this proceeding, the Commission will continue its work begun in prior DG rulemakings to implement NEM issues as they arise and DG interconnection for customer-side of the meter projects. We intend to address several issues associated with NEM in this category, including the directives provided in the Assigned Commissioner's Ruling issued on September 4, 2012 and the petition for modification of D.12-05-036 filed by SEIA on July 2, 2012. SEIA proposes to modify D.12-05-036 to ensure that any suspension of the NEM program that is slated to occur on the later of January 1, 2015 or when a particular investor-owned utility has reached its solar PV target, if the Commission does not issue new policy rules for the NEM program prior to January 1, 2015, is considered on a statewide basis rather than by individual IOU territory.

4. Proceeding Schedule

The assigned ALJ will schedule a prehearing conference (PHC) in this matter as soon as practicable. Following the PHC, the assigned Commissioner and ALJ in this proceeding will issue a scoping memo, including a schedule for the proceeding. The Commission will schedule workshops, hearings and testimony, and/or comment filing dates, as appropriate.

This proceeding will conform to the statutory case management deadline for quasi-legislative matters set forth in § 1701.5. In particular, it is our intention to resolve all relevant issues within 24 months of the date of the assigned Commissioner's Scoping Memo. In using the authority granted in § 1701.5(b) to set a time longer than 18 months, we consider the number and complexity of the tasks, the many parties involved, the need for outreach to many stakeholders, and the need to coordinate certain aspects of this proceeding with the CEC.

5. Parties, Service List, and Subscription Service

This Order Instituting Rulemaking (OIR) is served on the parties to R.10-05-004, which we close today. The service list for today's OIR shall be the list for R.10-05-004 and all entities on that list will automatically be transferred to the service list for this new OIR. Within 20 days from the mailing date of this order, any person or representative of an entity interested in monitoring or participating in this proceeding that is not already on the list for R.10-05-004 should send a letter to the Commission's Process Office (process_office@cpuc.ca.gov), with a copy to ALJ Katherine MacDonald (kk3@cpuc.ca.gov). Hard copies of letters should be sent to 505 Van Ness Avenue, San Francisco, California 94102. The letter should specify the docket number of this rulemaking in the subject line, and must include the name, address, phone number, organization and e-mail address of those who wish to be added to the service list.

When individuals write to the Process Office, their letter should specify whether they wish to be a "Party" (i.e., actively participate in the proceeding by filing comments or appearing at workshops or hearings) or "Information Only" (i.e., not participate, but simply receive electronic service of all documents in this rulemaking). Those who seek to be a "party" should indicate how they intend to participate in the proceeding. Letters may be sent either by electronic mail or regular mail, but must be received by the Commission within 20 days of the mailing of this order.

The Process Office will then combine the existing service list for R.10-05-004 plus any correspondence it receives to create a new service list for this OIR and the new service list will be posted on the Commission's web site, www.cpuc.ca.gov soon thereafter.

In accordance with Commission practice, by entering an appearance at a hearing or by other appropriate means, an interested party or protestant gains “party” status, as set forth in Commission Rule 1.4. A party to a Commission proceeding has certain rights that non-parties (those in “state service” and “information only” service categories) do not have. For example, a party has the right to participate in evidentiary hearings, file comments on a proposed decision, and appeal a final decision. A party also has the ability to consent to waive or reduce a comment period. Non-parties do not have these rights, even though they are included on the service list for the proceeding and receive copies of some or all documents.

Any party interested in participating in this rulemaking who is unfamiliar with the Commission’s procedures should contact the Public Advisor’s Office in Los Angeles at (866) 849-8391, or in San Francisco at (415) 703-2074, or toll free at (866) 849-8390.

Parties are encouraged to serve documents electronically, in accordance with Rule 1.10 of the Commission’s Rules of Practice and Procedure.

This proceeding can also be monitored by subscribing in order to receive electronic copies of documents in this proceeding that are published on the Commission’s website. There is no need to be on the service list in order to use the subscription service. Instructions for enrolling in the subscription service are available on the Commission’s website at <http://subscribecpuc.cpuc.ca.gov/>.

6. Preliminary Categorization of the Proceeding

Rule 7.1(d) requires that an OIR preliminarily determine the category of the proceeding and the need for hearing. As a preliminary matter, we determine that this proceeding is “quasi-legislative,” as defined in Rule 1.3(d). We anticipate that the issues in this proceeding may be resolved through a

combination of workshops and formal comments, and that evidentiary hearings will not be necessary. Any person who objects to the preliminary categorization of this rulemaking as “quasi-legislative” or to the preliminary hearing determination, shall state the objections at the PHC, which the ALJ will schedule in this proceeding as soon as practicable. After considering any comments on the preliminary scoping memo, the assigned Commissioner will issue a scoping ruling making a final category determination; this final determination is subject to appeal as specified in Rule 7.6(a).

7. Intervenor Compensation

Parties that were previously granted eligibility to request compensation in R.10-05-004 and have no material changes to their by-laws or financial status shall remain eligible for compensation in this proceeding and do not need to file a new notice of intent to claim compensation for this rulemaking. Otherwise, any party that expects to request intervenor compensation for its participation in this rulemaking shall file its notice of intent to claim intervenor compensation in accordance with Rule 17.1 of the Commission’s Rules of Practice and Procedure.

8. *Ex Parte* Communications

In accordance with Rule 8.2, *ex parte* communications⁸ in this proceeding are allowed without restriction or reporting requirement.

⁸ An *ex parte* communication is defined in Rule 8.1(c) as:

... a written communication (including a communication by letter or electronic medium) or oral communication (including a communication by telephone or in person) that: concerns any substantive issue in a formal proceeding, including categorization of a proceeding, or assignment or reassignment of a proceeding to an Administrative Law Judge,

Footnote continued on next page

Findings of Fact

1. The Commission has expressed its support for the development and adoption of DG technologies, including solar, wind and fuel cells, by utilities and customers.
2. State policy and utility rules will affect the development of DG.

Conclusions of Law

1. The Commission should initiate a new rulemaking to continue to consider policies, rules and practices that would promote the development of cost-effective DG in California.
2. R.10-05-004 should be closed for purposes of Pub. Util. Code § 1701.5, and the record in R.10-05-004 should be incorporated in this new docket. All outstanding matters should be transferred to this new Rulemaking, with one exception. The pending applications for rehearing of D.12-05-036 will be considered and addressed in R.10-05-004.

O R D E R

Therefore, **IT IS ORDERED** that:

1. A rulemaking is instituted on the Commission's own motion to establish policies and rules regarding distributed generation and distributed energy resources, to implement the provisions of the California Solar Initiative as set

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- (1) takes place between an interested person and a decisionmaker, and
 - (2) does not occur in a public hearing, workshop, or other public setting, or on the record of the proceeding.

forth in previous Commission orders, and to address ongoing issues associated with the Self-Generation Incentive Program.

2. Pacific Gas and Electric Company, Southern California Edison Company, Southern California Gas Company, and San Diego Gas & Electric Company are made respondents to this proceeding.

3. The record in Rulemaking 10-05-004 is incorporated in this proceeding by reference, and any pending matters in that former rulemaking will be addressed in this new proceeding under the new caption, with one exception. The applications for rehearing of Decision 12-05-036 shall be addressed in Rulemaking 10-05-004. Any future petitions to modify decisions in prior distributed generation rulemakings should be filed in this new proceeding and served on the service list of both this docket and the docket of the original order.

4. The Executive Director shall cause this Order Instituting Rulemaking to be served on the respondents, the Executive Director of the California Energy Commission, the California Independent System Operator, the California Air Resources Board, and on the parties to Rulemaking 10-05-004.

5. Within 20 days from the date of mailing of this order, any person or representative of an entity interested in monitoring or participating in this rulemaking that is not already on the service list for Rulemaking 10-05-004 should send a letter to the Commission's Process Office, 505 Van Ness Avenue, San Francisco, California 94102, or electronically to process_office@cpuc.ca.gov, asking that his or her name be placed on the service list for this rulemaking. A copy of the letter should be sent to Administrative Law Judge Katherine MacDonald (kk3@cpuc.ca.gov) at the Commission.

6. The category of this rulemaking is preliminarily determined to be "quasi-legislative." Any persons objecting to the preliminary categorization of

this rulemaking as “quasi-legislative” or to the preliminary determination that limited evidentiary hearings are not necessary shall state their objections at the prehearing conference to be scheduled by the assigned Administrative Law Judge.

7. The assigned Administrative Law Judge shall conduct proceedings in this rulemaking to effect the Commission’s policy and direction as set forth herein; in that capacity the assigned Administrative Law Judge, in consultation with the assigned Commissioner, may make any adjustments to the schedule and service list for this proceeding.

8. Any party that expects to request intervenor compensation for its participation in this rulemaking shall file its notice of intent to claim intervenor compensation in accordance with Rule 17.1 of the Commission’s Rules of Practice and Procedure, unless they were previously granted eligibility to request compensation in Rulemaking 10-05-004 and there are no material changes to their by-laws or financial status.

9. For purposes of Pub. Util. Code § 1701.5, Rulemaking 10-05-004 is closed.

This order is effective today.

Dated November 8, 2012, at San Francisco, California.

MICHAEL R. PEEVEY
President
TIMOTHY ALAN SIMON
MICHEL PETER FLORIO
CATHERINE J.K. SANDOVAL
MARK J. FERRON
Commissioners