

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Develop a Successor to Existing Net Energy Metering Tariffs Pursuant to Public Utilities Code Section 2827.1, and to Address Other Issues Related to Net Energy Metering.

FILED
PUBLIC UTILITIES COMMISSION
JULY 10, 2014
SAN FRANCISCO OFFICE
RULEMAKING 14-07-002

**ORDER INSTITUTING RULEMAKING TO DEVELOP
A SUCCESSOR TO EXISTING NET ENERGY METERING TARIFFS
PURSUANT TO PUBLIC UTILITIES CODE SECTION 2827.1,
AND TO ADDRESS OTHER ISSUES RELATED TO NET ENERGY METERING**

1. Summary

This rulemaking is initiated for two main purposes: 1) to develop a successor to existing net energy metering (NEM) tariffs as required in Assembly Bill 327 (Perea, 2013); and 2) to review and refine existing NEM tariffs, as necessary. In the past, NEM issues have been addressed in rulemakings focused on customer distributed energy resources more broadly, but with the current mandate to adopt a successor to existing NEM tariffs by December 31, 2015, it is reasonable to move issues related to NEM to a separate stand-alone rulemaking. Issues that may arise in the future related to NEM, including petitions for modification of decisions affecting NEM tariff provisions,¹ should be raised in the context of this proceeding. We intend to coordinate this rulemaking closely with

¹ Including but not necessarily limited to Decision (D.) 14-03-041.

other related proceedings including Rulemaking (R.) 12-11-005 on renewable distributed generation programs, R.12-06-013 on residential rate redesign, and R.11-09-011 on Rule 21 and the interconnection of distributed generation resources. Parties may file comments on the preliminary scope and schedule established in this rulemaking according to the schedule set forth in Section 6, below.

2. Background

The net energy metering (NEM) program is an electricity tariff billing mechanism designed to facilitate the installation of customer-side renewable generation. It was originally established in California with the adoption of Senate Bill 656 (Alquist, Stats. 1995, ch. 369), codified in § 2827 of the Public Utilities Code. Currently, customers who install and operate small (1 megawatt (MW) or less) renewable generation facilities (referred to as “customer-generators”) that meet certain technical requirements may choose to participate in a NEM tariff. Under NEM, customer-generators receive a full retail-rate bill credit for power generated by their on-site system that is fed back into the power grid during times when generation exceeds onsite energy demand. The credit is used to offset the customers’ electricity bills, and may be rolled over to subsequent bills for up to a year.

NEM is an important element of the policy framework supporting customer and third-party investment in grid-tied distributed renewable energy generation, including customer-sited solar photovoltaic (PV) systems. The majority of NEM customers use on-site photovoltaic solar generators to provide some or all of their electricity, and feed power back to the power grid when they generate more than they need at a given time.

2.1. Legislative Background

Since its creation, the NEM program has been modified numerous times by legislation. Modifications have generally focused on the number of MW of renewable distributed generation that may participate in the program, as well as changes to the terms and eligibility requirements for participation. For example, Pub. Util. Code § 2827(c)(4)(B)² sets the limit for enrollment in the large investor-owned utilities' currently existing NEM tariff structures as 5 percent of the aggregate customer peak demand of those utilities, but also specifies that this enrollment limit cannot be lower than absolute megawatt levels specified in the statute. Consistent with this mandate, the Commission has adopted a standardized method for the calculation of the transition trigger level and requires the utilities to make public their progress towards this level. Similarly, on October 11, 2009, Governor Schwarzenegger signed into law Assembly Bill (AB) 920,³ requiring California utilities to compensate NEM customers for electricity produced in excess of on-site load over a 12-month period ("net surplus compensation"). Consistent with this mandate, the Commission established a net surplus compensation rate representative of the amount paid by utilities per kilowatt-hour to procure power at peak times, to be paid to NEM customers who produce more electricity than they consume over a 12-month period. The Commission has implemented these changes pursuant to statute.⁴

The most recent legislation affecting the NEM program is AB 327 (Perea, 2013), which was signed into law by Governor Brown on October 7, 2013.

² Unless otherwise stated, all references are to the California Public Utilities Code.

³ Ch 376, Stats. 2009.

⁴ D.11-06-016 adopted a net surplus compensation rate consistent with AB 920.

According to the Governor's signing statement, the goal of AB 327 is to give the Commission the ability to "address current electricity rate inequities, protect low income energy users and maintain robust incentives for renewable energy investments."⁵ Among the provisions of the bill is a mandate that the Commission adopt a successor to the existing NEM tariffs, to be implemented on July 1, 2017, or when a utility reaches the NEM enrollment limit for its territory (referred to here as the "transition trigger level" or "trigger limit"), whichever comes first.⁶ With reference to developing a successor to the NEM tariff, AB 327 provides that the Commission should meet several objectives. Three of the main objectives are to ensure that customer-sited renewable generation "continues to grow sustainably,"⁷ to ensure that the new tariff "is based on the costs and benefits of the renewable electrical generation facility,"⁸ and to "[e]nsure that the total benefits of the standard contract or tariff to all customers and the electrical system are approximately equal to the total costs."⁹

In addition, AB 327 provides that customers who took service under NEM before July 1, 2017, or prior to reaching the statutory net metering transition trigger level, whichever is earlier, may continue to take service on existing NEM

⁵ Letter to State Assembly Members regarding AB 327, from Governor Edmund G. Brown Jr., October 7, 2013. (Governor's Signing Statement.)

⁶ Many parties to this proceeding refer to existing NEM tariff structures as NEM 1.0 and to the successor tariffs required in AB 327 as NEM 2.0. We decline to refer to the new tariffs required by AB 327 as NEM 2.0 at this time because the details of that tariff have not yet been established. Instead, this decision refers to existing NEM tariff structures as "the current NEM tariff" and to the yet-to-be-developed replacement tariff as "the NEM successor tariff," or simply "the successor tariff."

⁷ Pub. Util. Code § 2827.1(b)(1).

⁸ Pub. Util. Code § 2827.1(b)(3).

tariffs for a transition period to be determined by the Commission. The Commission adopted such a transition period in Decision 14-03-041. AB 327 also contains provisions related to the redesign of electric rates for residential and low-income customers, which are being addressed in Rulemaking (R.) 12-06-021, among several other electricity related issues. The Commission is addressing these issues in a variety of Commission proceedings.

2.2. Procedural Background

Until now, the Commission has addressed the development and modification of NEM tariffs in proceedings focused on policy and programs related to customer-side distributed generation in general, along with issues related to the Self-Generation Incentives Program (SGIP) and the California Solar Initiative (CSI). Over the past several years, this Commission has taken actions that support the development of customer distributed energy resources and related technologies by providing financial incentives to customers and project developers. When our efforts to support customer distributed energy resources began in 2001, technologies were limited to solar PV, wind turbines, fuel cells, and combined heat and power cogeneration facilities. Over the last thirteen years, as technologies, legislation, and public policy have evolved, our incentive programs have evolved as well to focus on promoting these and other developing technologies in different ways, with NEM as one method for promoting distributed generation. Previous rulemaking orders¹⁰ describe our view of these energy resources and their role in providing the state with clean,

⁹ Pub. Util. Code § 2827.1(b)(4).

¹⁰ See 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.

reliable energy. These orders remain useful today as background documents guiding our work here. Taken together, these documents, along with the Integrated Energy Policy Report issued by the California Energy Commission (CEC) and the joint Commission and CEC Energy Action Plan II, emphasize the state's commitment to supporting the development of customer distributed energy resources.

The Commission has issued decisions on NEM-related issues, including the transition period for existing NEM customers to remain on their previously applicable NEM tariff upon implementation of a successor tariff, in the ongoing R.12-11-005.¹¹ On June 9, 2014, the assigned Commissioner in that proceeding released a scoping memo noting that "Issues related to the electric utilities' tariffs for NEM currently fall within the scope of [that] proceeding... However, due to the volume and complexity of ... issues related to NEM, I anticipate that these issues will be addressed in a separate proceeding to be initiated by the Commission shortly."¹²

At this time, given the statutory mandate in AB 327 directing the Commission to develop a successor to the existing NEM tariff, it is reasonable to move issues related to NEM to a new rulemaking. With the initiation of this rulemaking, the issues described in the Preliminary Scoping Memo below are removed from R.12-11-005 and will instead be addressed in this proceeding.

¹¹ Prior rulemakings include 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.

¹² Assigned Commissioner's Scoping Memo and Ruling in R.12-11-005, issued on June 9, 2014, at 7.

3. Preliminary Scoping Memo

We divide the work of this rulemaking into two major categories:

1) development of a successor to existing NEM tariffs pursuant to the requirements of AB 327, and 2) issues related to existing NEM tariffs, including but not limited to questions about or modifications to specific provisions of the NEM tariffs. Section 3.1 discusses the issues and questions that we anticipate addressing related to the development of a successor to the existing NEM tariff, and Section 3.2 outlines other NEM-related issues that may be addressed in this proceeding.

3.1. Development of a Successor to Existing NEM Tariffs

Pursuant to AB 327, by December 31, 2015, the Commission must adopt a successor to the existing NEM tariffs authorized in Code Section 2827,¹³ to be implemented on July 1, 2017, or when a utility reaches its transition trigger level, whichever comes first. AB 327 provides, among other things, that:

In developing the standard contract or tariff, the commission shall do all of the following:

- (1) Ensure that the standard contract or tariff made available to eligible customer-generators ensures that customer-sited renewable distributed generation continues to grow sustainably and include specific alternatives designed for growth among residential customers in disadvantaged communities.
- (2) Establish terms of service and billing rules for eligible customer-generators.

¹³ The NEM tariffs authorized in Code Section 2827 provide a credit of the full rate for electricity generated on site that is fed back into the power grid, in contrast to the tariff specific to fuel cells authorized under that provides that authorized under Pub. Util. Code § 2827.10, which provides a credit at the wholesale rate.

- (3) Ensure that the standard contract or tariff made available to eligible customer-generators is based on the costs and benefits of the renewable electrical generation facility.
- (4) Ensure that the total benefits of the standard contract or tariff to all customers and the electrical system are approximately equal to the total costs.¹⁴

The scope of this proceeding encompasses any and all information necessary to develop one or more successor tariffs or contracts that meet the requirements of AB 327. Specifically, the major focus of this proceeding will be on the development of a mechanism for providing customer-generators with credit or compensation for electricity generated by their renewable facilities that balances the costs and benefits of the renewable electrical generation facility and allows customer-sited renewable distributed generation to grow sustainably among different types of customers and throughout California's diverse communities.

As part of the development of a successor tariff or contract, this proceeding will include an examination of possible tariff or contract provisions, and an evaluation of how those provisions meet the goals of AB 327 and other guiding principles consistent with California's energy policy goals, including the state's Zero Net Energy goals. This evaluation will include, but is not limited to, an examination of the estimated costs and benefits of various tariff elements for both those who take service under NEM tariffs and those who do not. As a part of our evaluation, we will also consider the safety implications of any changes to the NEM tariffs.

¹⁴ Pub. Util. Code § 2827.1(b) as amended in AB 327.

3.2. Other NEM Tariff Issues

In addition to the major focus of this proceeding on the development of a successor to existing NEM tariffs, we expect to address issues that arise related to existing NEM tariffs in this proceeding. For example, we intend that clarifications of or potential modifications to existing NEM tariffs and their application by utilities should be raised in this proceeding, not in R.12-11-005. The review and (if needed) potential modification of all NEM tariff schedules should be considered to be within the scope of this proceeding, including but not limited to Virtual Net Metering (VNEM), VNEM for multifamily affordable housing, NEM aggregation, and other NEM tariffs applicable to different generation sources such as biogas and fuel cell customer generators.

A replacement for the NEM fuel cell tariff authorized in Section 2827.10, which according to current statute will no longer be open to new enrollment after January 1, 2017, is also within the scope of this proceeding, and may be addressed along with or separately from other NEM tariffs.

3.3. Coordination Between This Rulemaking and Other Related Proceedings

Because NEM applies as an overlay to a customer's other applicable rates schedule, the costs and benefits of different NEM options or possible successors tariffs or contracts is largely dependent on the underlying rates on which NEM customers are served. For example, changes to the existing tiered residential rate design structure will affect the bill credits that customer-generators currently receive under NEM. A comprehensive review of residential rate design is currently ongoing in R.12-06-013, and the outcome of that proceeding is likely to affect the analysis of the costs and benefits of possible NEM successor tariff options. Because of this, the scope and schedule of this proceeding account for the need to coordinate closely with the residential rate redesign proceeding and

ensure that the record contains as much information as possible on the structure of residential rates likely to be in place when the NEM successor tariff or contract is implemented.

In addition, we will coordinate with the ongoing CSI/Distributed Generation (DG) proceeding, R.12-11-005, and any successors to that proceeding, as well as the Rule 21 Interconnection proceeding, R.11-09-011. Through these proceedings we will continue our efforts to support renewable customer generation and allow it to grow sustainably in the future, consistent with the provisions of AB 327. While this proceeding will focus specifically on NEM tariff issues, R.12-11-005 will continue to focus on the ongoing implementation and administration of CSI and SGIP, and is the more appropriate venue for discussion of activities and funding specific to those programs.

4. Anticipated Activities Within This Proceeding

In order to ensure a robust record for the development of a successor tariff, we anticipate that activities in this proceeding will include, but may not be limited to:

1. Identification of guiding principles, or goals, to assist in the development and evaluation of different tariff or contract options for the NEM successor tariff.
2. Identification of “program elements,” or specific features that may be included in a NEM successor tariff or contract, such as pricing mechanisms, fees or fee waivers, timing for meter reads and billing, or other items.
3. Development of a tool for estimating the costs and benefits of various NEM successor tariff options or rate scenarios (known as the “Public Tool”).
4. Development of a variety of possible options for a NEM successor tariff or contract.
5. Analysis of the various elements of a potential NEM successor tariff or contract, using the public tool and other

information, to identify one or more tariff or contract options that will meet the goals of AB 327 and other guiding principles.

Staff held an informal workshop in April 2014, to begin the process of identifying guiding principles and program elements, and have received informal written comments on the issues raised in that workshop. While these informal efforts are not a part of the record of this proceeding, we intend that these informal comments will be considered in the development of future proposals and activities within this rulemaking, including development of the Public Tool. The assigned Commissioner and assigned Administrative Law Judge (ALJ) may add to or modify these activities to ensure that there is a robust formal record on all issues relevant to the development of a successor to the NEM tariffs. If issues arise related to the review and possible modification of existing NEM tariffs, the assigned Commissioner and assigned ALJ will determine the activities and schedule for addressing those issues.

5. Category and Need for Hearing

Rule 7.1(d) provides that the Order Instituting Rulemaking (OIR) “shall preliminarily determine the category and need for hearing...”¹⁵ This rulemaking is preliminarily determined to be ratesetting, as that term is defined in Rule 1.3(e). This preliminary determination is not appealable, but shall be confirmed or changed by assigned Commissioner’s ruling. The assigned Commissioner’s determination as to category is subject to appeal pursuant to Rules 7.3 and 7.6.

¹⁵ All rules cited are contained in the Commission’s Rules of Practice and Procedure.

We anticipate that the issues in this proceeding may be resolved through a combination of filed comments, workshops and testimony, and that evidentiary hearings will not be necessary. Any person who objects to the preliminary hearing determination shall state the objections in their comments on this OIR, described in Section 6, below. The assigned Commissioner will determine the need for hearing in the Scoping Ruling issued following a Prehearing Conference (PHC).

6. Preliminary Schedule

The preliminary schedule for this proceeding is set forth below and includes the provisions for the filing of comments on the OIR. The assigned Commissioner or ALJ may change the schedule and scope as necessary to provide full and fair development of the record.

Item	Date
Comments on the OIR filed and served	30 days from issuance of the OIR
Reply comments on the OIR filed and served	40 days from issuance of the OIR
Staff workshop on the Public Tool	August 2014
PHC	August 2014
Scoping memo	September 2014
Development of the Public Tool	Fall/Winter 2014
Development of guiding principles and program elements	Fall/Winter 2014
Development and analysis of successor tariff or contract options, additional activities to be determined	Spring/Summer 2015
Proposed decision on successor tariffs or contracts	Fall 2015

Consistent with AB 327, we expect to adopt a successor to existing NEM tariffs not later than December 31, 2015, and consistent with Pub. Util. Code

§ 1701.5, we expect this proceeding to be concluded within 18 months of the date of the scoping memo.

7. Invitation to Comment on Preliminary Scoping Memo and Schedule

Parties are invited to comment on the Preliminary Scoping Memo and schedule established in this OIR. Comments are due 30 days after the issuance of this OIR.

We direct parties to limit their comments to the schedule, the issues set forth in the preliminary scoping memo, the anticipated activities in this proceeding, and to objections to the preliminary determinations below. Comments directed to the issues identified within the scope of this proceeding may include whether to amend the issues and how to prioritize the issues to be resolved; how to procedurally address these issues; and the proposed timeline for resolving the issues identified, within the general schedule set forth in Section 6. Comments are limited to 15 pages per party, and will help to inform the PHC to be held in this proceeding later this summer.

8. Respondents

Pacific Gas and Electric Company, San Diego Gas and Electric Company, and Southern California Edison Company, as large electrical corporations defined in Code Section 2827(b)(5), are required to make NEM tariffs available to their customers, and will be required to implement the tariffs developed in this proceeding. For this reason, these three companies are hereby made respondents to this proceeding.

9. Service of Order Instituting Rulemaking (OIR)

This OIR shall be served on all respondents and on the electric corporations named in Attachment A. In addition, in the interest of broad notice,

this rulemaking will be served on the official service lists for current CSI/DG R.12-11-005), the residential rate redesign R.12-06-013, the rulemaking on Rule 21; the interconnection of distributed generation resources R.11-09-011, and the former net surplus compensation proceeding Application10-03-001 et al. *Service of the OIR does not confer party status or place a person who has received such service on the Official Service List for this proceeding.*

10. Filing and Service of Comments and Other Documents

Filing and service of comments and other documents in the proceeding are governed by the rules contained in Article 1 of the Commission's Rules of Practice and Procedure. (See particularly Rules 1.5 through 1.10 and 1.13.)

The Commission encourages electronic filing and e-mail service in this Rulemaking. You may find information about electronic filing at <http://www.cpuc.ca.gov/PUC/efiling>. E-mail service is governed by Rule 1.10. If you use e-mail service, you must also provide a paper copy to the assigned Commissioner and Administrative Law Judge. The electronic copy should be in Microsoft Word or Excel formats to the extent possible. The paper copy should be double-sided. E-mail service of documents must occur no later than 5:00 p.m. on the date that service is scheduled to occur.

All paper copies of filings that are served should be printed double-sided. Paper copies of the service list need not be provided to the ALJs but a paper copy of the certificate of service, together with the filing, is required. The assigned Commissioner will rely on electronic copies of the documents filed, so paper copies of filings should not be provided to that office.

If you have questions about the Commission's filing and service procedures, contact the Docket Office at (415) 703-2472.

11. Addition to Official Service List

Addition to the official service list is governed by Rule 1.9(f) of the Commission's Rules of Practice and Procedure.

Respondents are parties to the proceeding (see Rule 1.4(d)) and will be immediately placed on the official service list. Respondents must confirm their primary representative with the Commission's docket office within seven days of the date of issuance of this rulemaking to be listed on the service list.

Any person will be added to the "Information Only" category of the official service list upon request, for electronic service of all documents in the proceeding, and should do so within 20 days of the issuance (mailing) of this rulemaking in order to ensure timely service of comments and other documents and correspondence in the proceeding (*see* Rule 1.9(f)). The request must be sent to the Process Office by e-mail (process_office@cpuc.ca.gov) or letter (Process Office, California Public Utilities Commission, 505 Van Ness Avenue, San Francisco, California 94102). Please include the Docket Number of this rulemaking in the request.

Persons who file responsive comments to this OIR thereby become parties to the proceeding (*see* Rule 1.4(a)(2)) and will be added to the "Parties" category of the official service list upon such filing. In order to assure service of comments and other documents and correspondence in advance of obtaining party status, persons should promptly request addition to the "Information Only" category as described above; they will be removed from that category upon obtaining party status. Persons wishing to obtain party status after the due date for the reply comments on this rulemaking must either appear at the PHC for this proceeding and make an oral motion to become a party as provided in Rule 1.4(a)(3), or must file a written motion for party status as provided in Rule 1.4(a)(4).

12. Subscription Service

Persons may monitor the proceeding by subscribing 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 official 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/>.

13. Public Advisor

Any person or entity interested in participating in this Rulemaking who is unfamiliar with the Commission's procedures should contact the Commission's Public Advisor in San Francisco at (415) 703-2074 or (866) 849-8390 or e-mail public.advisor@cpuc.ca.gov; or in Los Angeles at (213) 576-7055 or (866) 849-8391, or e-mail public.advisor.la@cpuc.ca.gov. The TYY number is (866) 836-7825.

14. Intervenor Compensation

In accordance with Rule 17.1, notices of intent to claim intervenor compensation in this rulemaking proceeding shall be filed and served no later than 30 days after the date of the PHC or as otherwise directed by the assigned Commissioner or the assigned ALJ.

O R D E R

IT IS ORDERED that:

1. Pacific Gas and Electric Company, San Diego Gas and Electric Company, and Southern California Edison Company are named as respondents and are parties to this proceeding pursuant to Rule 1.4(d) of the Commission's Rules of Practice and Procedure.

2. The Executive Director will cause this Order Instituting Rulemaking to be served on all respondents and on the service lists for the following Commission

proceedings: Rulemaking (R.) 12-11-005, R.12-06-013, R.11-09-011, and Application 10-03-001 et al., as well as the electric corporations identified in Attachment A.

3. Interested persons must follow the directions in Section 11 of this Order Instituting Rulemaking to become a party or to be placed on the official service list as a non-party.

4. The Commission's Process Office will publish the official service list on the Commission's website (www.cpuc.ca.gov) as soon as practicable.

5. The assigned Commissioner or the assigned Administrative Law Judge will have on-going oversight of the service list and may institute changes to the list or the rules governing it, as needed.

6. Parties may file comments on this Order Instituting Rulemaking (OIR) as provided in Section 7 of this OIR.

7. The assigned Commissioner or the assigned Administrative Law Judge may modify the activities and schedule established in this Order Instituting Rulemaking as necessary for the efficient conduct of this proceeding.

8. Parties serving documents in this proceeding must comply with Rule 1.10 of the Commission's Rules of Practice and Procedure regarding electronic mail (e-mail) service. Parties providing e-mail service must also provide a paper copy to the assigned Commissioner and Administrative Law Judge.

This order is effective today.

Dated July 10, 2014, at San Francisco, California.

MICHAEL R. PEEVEY
President
CATHERINE J.K. SANDOVAL
CARLA J. PETERMAN
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Commissioner Michel Peter Florio, being necessarily absent, did not participate.

ATTACHMENT A
(Small Electric Utilities' Contact Information)

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