Decision **PROPOSED DECISION OF COMMISSIONER PICKER (Mailed 4/6/2015)**

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.	Rulemaking 12-11-005 (Filed November 8, 2012)

DECISION GRANTING THE PETITION FOR MODIFICATION OF THE SELF-GENERATION INCENTIVE PROGRAM ADMINISTRATORS OF DECISION 11-09-015 TO PROVIDE A MAXIMUM OF THREE EXTENSIONS OF THE RESERVATION EXPIRATION DATE

Summary

This decision grants the petition of the Self-Generation Incentive Program (SGIP) program administrators to increase the number of six-month extensions from two to three for SGIP projects at commercial or government host customer sites to submit complete incentive claim forms after receipt of a conditional reservation letter. This decision also allow projects located at all host customer sites, including residential, to seek a third six-month extension. This proceeding remains open.

1. Background

Senate Bill (SB) 412 (Stats. 2009, ch. 182) extended the end of the Self-Generation Incentive Program (SGIP) from January 1, 2012 to January 1, 2016 and required the Commission to adopt several changes to SGIP. The Commission adopted these changes in Decision (D.) 11-09-015,[1] which required, among other things, that all SGIP projects be provided, at the discretion of the SGIP program administrators, a maximum of two six-month extensions beyond the 18-month deadline for projects to submit complete incentive claim forms following receipt of a conditional reservation letter.

On November 13, 2014 the four SGIP program administrators, Center for Sustainable Energy (CSE),[2] Pacific Gas and Electric Company, Southern California Edison Company, and Southern California Gas Company, jointly filed a petition for modification of D.11-09-015. The petition requests that the Commission permit the program administrators, at their discretion, to offer a third extension of six-months to the deadline for projects to submit complete incentive claim forms following receipt of a conditional reservation letter to projects at government or commercial host sites if the following factors weigh in favor an additional extension:[3]

[1] *Decision Modifying the Self-Generation Incentive Program and Implementing Senate Bill 412*, September 8, 2011.

[2] CSE is a non-profit corporation that administers SGIP in the territory of San Diego Gas & Electric Company.

[3] The subject of extensions of the Reservation Expiration Date is found at Section 2.6.3 of the 2014 SGIP Handbook.

1. The project's delay is outside the control of the host customer.
2. The project has made significant progress toward completion, and a timeline is provided showing the expected date of commissioning of the project and that interconnection of the project will fall within the third six-month extension of the project's Reservation Expiration Date.
3. The extension of the project's Reservation Expiration Date will not affect the [program administrator's] ability to incentivize other projects.
4. The program administrators also recommend that the granting of a third extension should require written confirmation of unanimous SGIP Working Group approval. [4]

On December 2, 2014, the California Energy Storage Alliance (CESA) filed a motion for expedited consideration of the November 13, 2014 petition for modification. CESA's motion supports the program administrators' request for the Commission to allow a third extension. CESA additionally requests that projects that have already been granted a second extension have at least 20 days following the Commission's approval of the November 13, 2014 petition for modification to prepare and submit a request for a third extension.

On December 15, 2014 responses in support of the petition for modification were filed by CESA and Doosan Fuel Cell America (Doosan). CESA again offers support for the petition to modify with the caveat that all customers, including residential customers, should have access to third extensions.

On December 19, 2014, the assigned Commissioner issued a ruling staying the termination of any SGIP projects when delay is caused by circumstances outside the program participant's control until the Commission acts in response to the November 13, 2014 petition for modification.

On February 12, 2015 Commercial Energy filed a motion for party status, a motion to late file a response to the program administrators' petition for

[4] November 13, 2014 Petition for Modification at 7–8.

modification and a response to the petition opposing the program administrators' request. By ruling dated February 18, 2015, the Administrative Law Judge (ALJ) granted Commercial Energy's motions. CSE, on behalf of all the program administrators, filed a reply to Commercial Energy's response on March 2, 2015.

2. Request for Leave to Late File the Petition

Rule 16.4(d) of the Commission's Rules of Practice and Procedure[5] states, in part, that petitions for modification should be filed within one year of the effective date of the decision proposed to be modified. Petitions filed more than one year after the effective date must explain why the petition could not have been filed by the one-year deadline. If the Commission finds the delay in submission is not justified, it may summarily dismiss the petition. Commercial Energy sought dismissal of the petition for modification.

[5] The Rules are available on the Commission's website at http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M089/K380/89380172.PDF .

This petition for modification was filed more than three years after the effective date of D.11-09-015. In response to Rule 16.4(d), the program administrators provide two reasons for the delay in submission. First, final program rules and implementation of the SGIP, as modified, was not effective until March 22, 2012,[6] six months after the effective date of the decision. Second, given the long lead times for some projects to reach completion, many projects are only now running the risk of exceeding the two six-month extensions available under the current program rules. As a result, the complications that have affected some SGIP projects could not have been foreseen within one year of the effective date of D.11-09-015.[7]

Related to the issue of the timeliness of this petition for modification, two parties filed responses in support of the petition and describe specific projects that will likely be terminated if the requested relief is not granted: CESA's December 2, 2014 motion for expedited consideration[8] and Doosan's December 15, 2014 response to CESA's motion for expedited consideration.[9] The specific projects described are a battery storage project located at the University of California at San Diego and a fuel cell project located at the California State

[6] Implementation of D.11-09-015 required two advice letter filings, the second of which was approved by the Commission on March 22, 2012. On October 10, 2011, the SGIP program administrators jointly filed CSE Advice Letter 22 / PG&E Advice Letter 3245-G/3923-E / SCE Advice Letter 2637-E / SoCalGas Advice Letter 4286 to propose revisions to the SGIP Handbook in compliance with D.11-09-015.

[7] November 13, 2014 Petition for Modification at 4–5.

[8] December 2, 2014 Motion of the California Energy Storage Alliance for Expedited Consideration of Petition for Modification of D.11-09-015.

[9] December 15, 2014 Response of Doosan Fuel Cell America to the Motion of the California Energy Storage Alliance for Expedited Consideration of Petition for Modification of D.11-09-015.

University at San Marcos. The project at the University of California at San Diego was delayed due to issues related to University of California contracting requirements and the fact that the electric power conditioning system as designed by the project developer did not meet California Building Codes. The project at the California State University at San Marcos was delayed due to the bankruptcy of the fuel cell vendor, ClearEdge Power. Doosan's response explains that Doosan acquired ClearEdge Power in July 2014 after ClearEdge Power filed for bankruptcy. ClearEdge Power was supposed to provide fuel cells for the project at the California State University at San Marcos but ceased manufacturing before delivering the fuel cells to the campus.

Commercial Energy argues that the program administrators fail to justify why the petition could not have been filed by the one-year deadline under Rule ~~6.4~~16.4(d) because, under the circumstance, the program administrators should have known within a year that additional extension would likely be needed.

We find the program administrators' explanation for why their petition for modification was not filed within a year of the effective date of the decision reasonable. While it is possible that the program administrators could have filed sooner, filing at the present time is reasonable. We are further convinced by the two specific projects located at universities operated by the state of California that finding the petition timely under Rule 16.4(d) is reasonable. The February 12, 2015 request by Commercial Energy to dismiss the petition for modification as untimely is denied.

3. Petition for Modification

In support of their petition for modification, the program administrators make several arguments. The ~~project~~program administrators point out that schools, community colleges, and public universities are already eligible to

receive a third extension under the California Solar Initiative (CSI) program.[10] The program administrators also state that many program participants in need of a third extension have made financial commitments based on their confirmed SGIP reservations. Lastly, the program administrators note that because SGIP incentives decline each year, if the projects are terminated and required to reapply for incentives the lower incentive may be inadequate based on the original project economics. The financial disadvantages might prevent many projects from reaching completion.[11]

Doosan supports the program administrators' request to allow a third six-month extension. Doosan states that it has renegotiated the contract with the project developer, BioFuels Energy LLC, and the project is slated for completion in the fall of 2015. However, the project would require a third six-month extension to avoid termination.[12]

CESA also supports the program administrators' petition and suggests that the availability of a third extension be offered to all types of host customers, not just government and commercial customers.[13] CESA suggests that SGIP administration should be evenhanded for all types of technologies and host customers and that no rational basis exists to treat residential customers differently. CESA observes that the petition for modification does not explain why the additional extension should only be provided to commercial and

[10] *See* Section 4.6.2.1 of the CSI Handbook. http://www.cpuc.ca.gov/NR/rdonlyres/89E2B291-2DB9-423B-9321-CE330E9EB2A0/0/201410CSI_Handbook.pdf.

[11] November 13, 2014 Petition for Modification at 6–7.

[12] December 15, 2014 Response of Doosan Fuel Cell America to the Motion of the California Energy Storage Alliance for Expedited Consideration of Petition for Modification of D.11-09-015 at 3–4.

[13] December 15, 2014 Response of the California Energy Storage Alliance to Petition at 2.

government host customers.[14] CESA additionally requests that the Commission direct Energy Division staff to provide written guidance to the program administrators and that a rebuttable presumption of eligibility be granted for projects that have been affected by interconnection delays.[15]

Commercial Energy opposes the petition for modification. Commercial ~~energy~~Energy points out that it submitted a reservation request on January 29, 2015 and received notice that it was placed on the waitlist for program year 2015 funds on February 2, 2015, indicating that funds for program year 2015 were already reserved by January 29, 2015. Commercial Energy's concern is that granting additional extensions will enable projects that are already in the queue to crowd out more viable projects, possibly to the detriment of newer, more innovative technologies.[16] Commercial Energy also points out that if the rules are changed now, parties on the waitlist will be potentially placed at a financial disadvantage because those waitlisted will have to wait longer, and incentives drop annually.[17]

In their reply to Commercial Energy's response, the program administrators address two of Commercial Energy's substantive arguments against granting the petition for modification. First, the program administrators address Commercial Energy's claim that allowing for an additional extension would "unfairly displace other SGIP applicants who are in a less favorable place…"[18] The program administrators indicate that projects currently in need of

[14] *Id.* at 4.
[15] *Id.* at 5–6.
[16] February 12, 2015 Commercial Energy's Response to the Center for Sustainable Energy's Petition for Modification of D.11-09-015 at 1–2.
[17] February 12, 2015 Commercial Energy's Response to the Center for Sustainable Energy's Petition for Modification of Decision 11-09-015 at 7–8.
[18] February 12, 2015 Commercial Energy's Response to the Center for Sustainable Energy's Petition for Modification of Decision 11-09-015 at 1.

a third extension "have already signed contracts, secured financing… and have begun or, in some cases, completed construction of their projects."[19] In contrast to Commercial Energy's assertion that granting a third extension would be contrary to the program's goals, the program administrators argue that terminating projects that have begun or completed construction and that have met program requirements within their power would harm the credibility of the program. Second, in response to the claim that displacing waitlisted projects would stifle competition from new technologies entering the market, the program administrators argue that the flexibility to offer an additional extension creates market stability because investors will have more confidence that they can rely on SGIP.

4. Discussion

We must first decide whether it is reasonable to grant the petition for modification to allow the program administrators to give projects related to government and commercial customers a third six-month extension. If we grant the petition for modification, we must decide whether it is reasonable to provide access to a third extension to residential customers as well.

In evaluating the reasonableness of the petition for modification, we weigh the potential benefit of allowing project developers that have faced unexpected delays an additional opportunity to complete their projects against the potential harm of crowding out waitlisted projects. The testimony filed by CESA and Doosan provides two concrete examples of customers who would be harmed if we do not allow the program administrators to grant a third extension. Both customers are public universities whose projects were delayed due to circumstances beyond their control. As the program administrators note in their

[19] March 2, 2015 Reply of the Center for Sustainable Energy et al. to Commercial Energy's Response at 3.

petition, these entities would be eligible for a third extension for solar PV projects funded by the California Solar Initiative.[20]

We agree with Commercial Energy's concerns to the extent that projects with a low likelihood of success should not be allowed to tie up funds that could be more productively used by other projects. Commercial Energy's project and other waitlisted projects would benefit from the termination of projects that are unable to achieve project completion by the end of their second extensions. ~~We agree with Commercial Energy's concerns to the extent that projects with a low likelihood of success should not be allowed to tie up funds that could be more productively used by other projects.~~ However, the criteria proposed by the program administrators should ensure that such projects do not receive third extensions. In light of the examples that have been submitted by CESA and Doosan, we will grant the program administrators' petition for modification~~.~~ but ~~However,~~ only projects that have made significant progress toward completion should receive a third extension of the project deadline.

In response to comments filed on the April 6, 2015 proposed decision of Commissioner Picker, we clarify that the time period between the filing date of this petition for modification, November 13, 2014, and the effective date of today's decision, does not count toward the Reservation Expiration Date for projects currently obtaining a third extension.[21] This clarification is reasonable because the advancement of projects were put on hold pending resolution of this petition for modification.

We will next consider whether third extensions should be limited to commercial and government customers or should be available to all customers, including residential. We agree with CESA that no basis exists for excluding

[20] November 13, 2014 Petition for Modification at 6–7.
[21] April 23, 2015 Program Administrators' reply comments at 3.

residential customers. We therefore direct that the revisions to D.11-09-015 requested by the program administrators include making third extensions available to all customers. We will also grant CESA's request to give projects that are currently in their second extension period a minimum of 20 days to file a request for a third extension with the program administrators.

In comments on the April 6, 2015 proposed decision of Commissioner Picker, the program administrators asked whether extensions granted to residential storage SGIP projects pursuant to D.14-05-033 applied in addition to the third six-month extension granted in today's decision.[22] We clarify that residential storage SGIP projects may rely on the longer of either (1) the 120 days from the date that the Commission adopts the revised NEM-tariff (per D.14-05-033) or (2) the three 6-month extensions granted by today's decision.

6. Comments on Proposed Decision

The proposed decision of Commissioner Picker in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure.

Comments were filed on _____ or before April 27, 2015 by the SGIP program administrators, CESA, and Doosan, and reply comments were filed on _____ by _____. or before May 4, 2015 by PG&E.

The April 6, 2015 proposed decision of Commissioner Picker has been revised in response to comments to clarify that NEM-paired SGIP storage projects may benefit from either the third extensions, granted in today's decision, or the extensions set forth in D.14-05-033, whichever provides more time to complete the project and file the Incentive Claim Form. The proposed decision is further modified to clarify that the time period between November 13, 2014, the

[22] April 23, 2015 Program Administrators' reply comments at 2.

date the petition for modification was filed, and the date of this decision does not count toward the Reservation Expiration Date for projects requiring a third extension.

7. Assignment of Proceeding

Michael Picker is the assigned Commissioner and Regina DeAngelis and Karin Hieta are the assigned ALJs in this proceeding.

Findings of Fact

1. The SGIP program administrators filed their joint petition for modification more than three years after the effective date of D.11-09-015.

2. The California Solar Initiative program grants up to three 180 -day extensions to schools, community colleges and public universities.

3. The SGIP project at California State University at San Marcos has been significantly delayed by the bankruptcy of the manufacturer that was supposed to provide the fuel cell for the project.

4. The ~~UC~~University of California (UC) San Diego battery storage SGIP project has been delayed by UC contracting requirements and the discovery, once detailed review of the project schematics began, of the incompatibility of the system design with California Building Codes.

5. The types of delays experienced by CSU San Marcos and UC San Diego were not foreseen by the program administrators at the time D.11-09-015 was under consideration.

6. Projects have only recently been at risk of exhausting second extensions of the Reservation Expiration Date due to delays in approving the implementing advice ~~letter~~letters of D.11-09-015.

7. Projects with a low likelihood of success could tie up SGIP funds that would be otherwise be used by more viable projects.

8. The program administrators' petition for modification includes the following proposed criteria the program administrators would evaluate before granting a third extension: 1) the project's delay is outside the control of the host customer; 2) the project has made significant progress toward completion, and a timeline is provided showing the expected date of commissioning of the Project and that interconnection of the ~~Project~~project will fall within the third six-month extension of the project's Reservation Expiration Date; and 3) the extension of the project's Reservation Expiration Date will not affect the [program administrator's] ability to incentivize other ~~Projects~~projects. Furthermore, the program administrators recommend that the granting of a third six-month extension should require written confirmation of unanimous SGIP Working Group approval.

9. The advancement of some projects was put on hold during the pendency of this petition for modification.

10. ~~9.~~ The program administrators did not provide any rationale for not allowing residential customers to request a third extension of the Reservation Expiration Date.

11. D.14-05-033 granted SGIP-funded storage projects paired with NEM-eligible generating facilities an extension to file Incentive Claim Forms of 120 days after the Commission's approval of revised NEM tariffs incorporating the NEM metering requirements and estimation methodology for NEM-paired storage. .

Conclusions of Law

1. The request for leave to late file the petition for modification should be granted.

2. The petition for modification should be granted with the modification that a third extension of the Reservation Expiration Date should be available to all customers.

3. SGIP participants who are currently on their second extensions, including projects whose terminations were stayed by the December 19, 2014 ruling of the assigned Commissioner, should have the later of 20 days after the Energy Division's approval of the advice letter implementing this decision or the final date of the current extension to file a third extension request with the program administrators in order to have adequate time to prepare and file such a request.

4. The time period between the date this petition for modification was filed, November 13, 2014, and the date of this decision should not count toward the Reservation Expiration Date because the advancement of some projects was put on hold during the pendency of this petition for modification.

5. The extension granted to SGIP storage projects paired with NEM generating facilities in D.14-05-033 should not be added to the extension granted in today's decisions. Eligible projects should benefit from whichever extension provides more time to file the Incentive Claim Form if a third six-month extension is granted by the program administrators.

O R D E R

IT IS ORDERED that:

1. The request for leave to late file the petition for modification of Decision 11-09-015 is granted.

2. Decision 11-09-015 is modified so that all customer classes may request a third extension of the Reservation Expiration Date.

3. Attachment A, page 5 of Decision 11-09-015 is modified to read: "All projects shall be limited to a maximum of three six-month extensions. Any requests for second and third extensions shall require unanimous SGIP Working Group approval."

4. The Center for Sustainable Energy, Pacific Gas and Electric Company, Southern California Edison Company, and Southern California Gas Company shall jointly file a Tier 1 Advice Letter ~~with revisions~~ to conform the Self-Generation Incentive Program (SGIP) Handbook ~~conforming~~ to ~~the modification ordered in~~ Ordering Paragraph 3 and ~~incorporating~~to incorporate the following criteria for consideration by the SGIP Working Group when considering a request for a third six-month extension: 1) whether the project's delay is outside the control of the host customer; 2) whether the project has made significant progress toward completion, and a timeline is provided showing the expected date of commissioning of the ~~Project~~project and that interconnection of the ~~Project~~project will fall within the third six-month extension of the project's Reservation Expiration Date; and 3) whether the extension of the project's Reservation Expiration Date will affect the program administrator's ability to incentivize other Projects. The granting of a third six-month extension shall require unanimous SGIP Working Group approval, and the SGIP Working Group shall notify applicants of the SGIP Working Group's decision ~~within 30 days.~~ in writing within 30 days. The Advice Letter shall further clarify that eligible storage SGIP projects may rely on the longer of the extension granted under Decision 14-05-033 or the extension granted in today's decision. The Advice Letter shall indicate that the time period between the date this petition for

modification was filed, November 13, 2014, and the date of today's decision does not count toward the Reservation Expiration Date for projects currently seeking a third six-month extension. The Tier 1 Advice Letter shall be filed within 20 days of the effective date of this decision.

5. Self-Generation Incentive Program (SGIP) participants who are currently on their second extensions of the Reservation Expiration Date, including projects whose terminations were stayed by the December 19, 2014 ruling of the assigned Commissioner, shall have the later of 20 days after the Energy Division's approval of the advice letter implementing this decision or the final date of the second extension to file a third extension request with the SGIP program administrators.

6. Rulemaking 12-11-005 remains open.

This order is effective today.

Dated _____, at San Francisco, California.

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