



BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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Order Instituting Rulemaking Regarding
Policies, Procedures and Rules for the
California Solar Initiative, the Self-Generation
Incentive Program and Other Distributed
Generation Issues.

Rulemaking 10-05-004
(Filed May 6, 2010)

**COMMENTS OF THE UTILITY REFORM NETWORK ON THE
PROPOSED DECISION OF PRESIDENT PEEVEY
REVISING THE NET ENERGY METERING CAP CALCULATION**



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Pursuant to Rule 14.3 of the Commission’s Rules of Practice and Procedure, the Utility Reform Network (“TURN”) submits these comments on the Proposed Decision of President Peevey (PD), mailed on April 11, 2012.¹

The Proposed Decision fundamentally changes the method for calculating the cap on total customer generation capacity that is eligible for the net energy metering (“NEM”) tariff pursuant to Public Utilities Code § 2827(c)(1). The Proposed Decision adopts a new method that is contrary to calculations performed over the past fifteen years. The Proposed Decision inappropriately interprets ambiguous statutory language and completely ignores relevant legislative history. The result is a conclusion that conflicts with the clear legislative intent to use coincident system peak load – including all bundled and direct access customers – to calculate the NEM cap. The Commission should reject the Proposed Decision as contrary to law and instead modify the cap methodology to provide for a consistent method among for all utilities.

The proposed decision justifies its analysis by claiming that the legislature made a substantive change in 1998 when it modified the term “peak electricity demand” to the term “aggregate customer peak demand.” The previous term “peak electricity demand” referred to the each utility’s coincident peak demand. The PD approvingly cites the argument of the Joint NEM Parties that, if the new term were likewise interpreted to

¹ The PD is entitled “Decision Regarding Calculation of the Net Energy Metering Cap.”
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mean coincident peak demand, the words “aggregate customer” would constitute mere “surplusage,” contrary to standard rules of statutory interpretation.² The PD concludes that the phrase “aggregate customer peak demand” is most plainly interpreted as the aggregation of each customer’s non-coincident peak load.

The PD’s conclusion is legally deficient because the PD simply ignores persuasive evidence showing that the Legislature had a completely different reason for inserting the words “aggregate customer” into § 2827(c)(1) in 1998.

The original NEM implementation statute, passed in 1995 prior to electric deregulation, used the term “utility’s peak electricity demand forecast for 1996,” and specifically used data forecasting the coincident peak load for each utility’s service territory. AB 1755, passed in 1998 after electric deregulation came into effect, was a bill primarily intended to reinstate certain property tax benefits (exemption from new construction reassessments) for solar installations. However, it secondarily made changes to § 2827(c)(1) in order to “accommodate electricity deregulation.”³ These changes involved imposing the mandate on all “electric service providers” until “the total rated generating capacity used by eligible customer-generators equals one-tenth of 1 percent of the *electric service provider’s aggregate customer peak demand*.”⁴

² PD, at 10 and 11.

³ See, for example, AB 1755, Senate Floor analysis, 8/17/98, available at http://www.leginfo.ca.gov/pub/97-98/bill/asm/ab_1751-1800/ab_1755_cfa_19980817_175310_sen_floor.html The same language is used in other legislative bill analyses.

⁴ § 2727(c)(1) as amended by AB 1755 (emphasis added). See, http://www.leginfo.ca.gov/pub/97-98/bill/asm/ab_1751-1800/ab_1755_bill_19980925_chaptered.html

The words “aggregate customer” were added in 1998 not to institute a dramatic change from using the “utility’s peak demand” in the cap method. The language was instead intended to ensure a NEM cap calculation for every ESP. AB 1755 amended the original language to account for the fact that the distribution system now served the load of both bundled IOU customers as well as electric service provider customers.⁵ Each ESP served individual customers within the service territory of a distribution utility. Each ESP had their own separate coincident peak load, which was the accumulation of their own customers’ coincident peaks.

SDG&E provided a comprehensive review of the legislative history and explained that “an ESP’s peak demand was not the same as the utility service area peak demand, so the new term ‘aggregate customer peak demand’ was introduced to refer to the peak demands of both ESPs and the incumbent utilities.”⁶ SDG&E explained that various bill analyses equated this term with “utility peak demand” for the specific case of an electric corporation.⁷ This interpretation is particularly important due to the overall cap set in § 2827(c)(3), which limited the availability of NEM when the “combined total peak demand of all customer-generators served by all the electric service providers in that service area” exceeded the cap, based on the “aggregate customer peak demand of those electric service providers.”

The same language was repeated in various bills until AB 3048 (Stats.208, c. 558) replaced the term “electric service provider’s” with the term “utility’s” to modify “aggregate customer peak demand.”

⁵ PD, at 6-7.

⁶ PD, at 7.

⁷ SDG&E Reply Comments, January 27, 2012, p. 3-4.

The various committee and floor analyses of bills that have modified § 2827(c) use various terms to refer to peak demand.⁸ It is not surprising that the legislature did not settle on one term. The concept of peak load for individual ESPs, rather than a distribution system, was a new concept in 1998. The only unambiguous result would have been if the legislature had used the term “coincident” or “non-coincident” to modify “customer.” These words have specific operational meaning. Any other term referring to peak demand, including the word “aggregate,” is inherently ambiguous. Both the coincident and non-coincident peak of any EPS or distribution system *aggregate* the loads of individual customers. One aggregates individual peak loads at different hours, while the other aggregates the individual loads during the hour of the peak load (for the ESP or the system).

If there is any ambiguity, it must be resolved by looking to legislative intent. In this case, the proposed decision itself recounts the analysis of legislative intent on pages 7-8. The utilities provide a coherent and un rebutted explanation of why the addition of the words “aggregate customer” was meant to clarify that the same *system* coincident peak load – including loads of all electric service providers – was to be used to set the cap. Moreover, the utilities note that using “non-coincident peak load” in 1998 would lead to absurdity which defies common sense. The NEM statute applied to residential and small commercial customers. But in 1998, as well as through various revisions until 2008, residential customers only had analog meters which could not even measure peak demand. Calculating “non-coincident” peak load was physically impossible, and would

⁸ PD, at 7.

have rendered the entire NEM cap section irrelevant, a point the PD never even addresses.

The PD simply ignores all this evidence of legislative intent specifically connected to AB 1755. Instead, the PD interprets Legislative intent by relying on the goals of the NEM program as articulated in § 2728(a), introduced in the original implementing legislation (SB 656) in 1995. These goals are to encourage “substantial private investment in renewable energy resources and stimulating in-state economic growth.”⁹ The PD then concludes that “in light of these goals,” it is reasonable to adopt the sum of all non-coincident peak demands as the measure of the NEM cap, presumably because this interpretation will substantially increase the cap.

The PD’s interpretation of legislative intent is legally deficient. While it is permissible to look to the goals of a statute, one cannot simply ignore evidence of legislative intent that is more directly relevant to the ambiguous language. The PD ignores evidence from numerous bills and legislative staff analyses that are more specific indications of Legislative intent with respect to the meaning of the words “aggregate customer.” The relevant legislative history indicates that the legislature never intended to change the use of coincident system peak demand as the proper measure to use in setting the NEM cap.

The Commission should either modify this PD, or issue an alternate, that corrects the legal error and appropriately selects one consistent method to calculate the coincident peak load served by a utility’s distribution system for purposes of calculating the NEM cap.

⁹ PD, at 11.

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Respectfully submitted,

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