

**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)

**MOTION FOR CLARIFICATION OF THE
INTERSTATE RENEWABLE ENERGY COUNCIL**

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July 25, 2011

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

**MOTION FOR CLARIFICATION OF THE
INTERSTATE RENEWABLE ENERGY COUNCIL**

Pursuant to Rule 11.1 of the Commission’s Rules of Practice and Procedure, the Interstate Renewable Energy Council (IREC) submits this motion for clarification regarding the scope of Rulemaking (R.) 10-05-004. In particular, IREC requests that the Commission clarify that the determination of the appropriate method for calculating the net metering program cap established in Public Utilities Code § 2827(c)(1) is within the scope of the proceeding.¹ Because this issue is both time-sensitive and ripe for action by the Commission, IREC also requests that the Commission set the issue for comment during the upcoming Phase 2 of the docket.

The lack of clarity regarding the calculation of the net metering program cap has been an issue for some time now. In November 2009, prior to the opening of the current docket, IREC protested Pacific Gas & Electric’s (PG&E’s) proposal in Advice Letter (AL) 3555-E to voluntarily increase its total rated generating capacity used by eligible customer generators under its net metering tariffs from 2.5 percent to 3.5 percent of PG&E’s aggregate customer peak

¹ Cal. Pub. Util. Code § 2827(c)(1) states: “Every electric utility shall develop a standard contract or tariff providing for net energy metering, and shall make this standard contract or tariff available to eligible customer-generators, upon request, on a first-come-first-served basis until the time that the total rated generating capacity used by eligible customer-generators exceeds 5 percent of the electric utility's aggregate customer peak demand.”

demand.² While IREC fully supported PG&E’s proposal to voluntarily increase its cap, IREC protested PG&E’s use of its highest system peak demand, as shown in its Federal Energy Regulatory Commission Form 1, Page 401b, to measure aggregate customer peak demand under § 2827(c)(1).³ In its protest letter, IREC noted that the term “aggregate customer peak demand” is not defined within the statute and that the Commission has not defined the phrase either, although it has the discretion to interpret it.⁴ In its letter declaring AL 3555-E effective, the Commission acknowledged IREC’s protest and stated that it “may, at a later date, consider an appropriate definition of ‘aggregate customer peak demand’ for the purposes of calculating the net energy metering (NEM) cap.”⁵ The Commission indicated that “[s]uch consideration would likely occur” in R.08-03-008,⁶ the predecessor docket to R.10-05-004.

When R.10-05-004 was initiated just over a year ago, the Order Instituting Rulemaking made it clear that one of the issues to be addressed in the proceeding was “[o]ngoing review, evaluation and consideration of DG policy issues generally, with a particular emphasis on DG on the customer-side of the meter, including not but limited to net energy metering policies, DG interconnection issues, and Rule 21 utility interconnection tariffs.”⁷ The Commission went on to state that it would “carry on its work begun in prior DG rulemakings to implement net energy metering issues as they arise and DG interconnection for customer-side of the meter projects,

² Letter from IREC to Cal. Pub. Util. Comm’n re Support and Protest of Interstate Renewable Energy Council to Advice Letter 3555-E (Nov. 25, 2009).

³ *See id.*

⁴ *See id.*

⁵ *See* Letter from Cal. Pub. Util. Comm’n to PG&E re Revisions to Electric Schedule NEM—Net Energy Metering to Voluntarily Increase Pacific Gas and Electric Company’s Cap to 3.5 Percent, and Related NEM Administrative Matters (Dec. 7, 2009).

⁶ *Id.*

⁷ Cal. Pub. Util. Comm’n, *Order Instituting Rulemaking Regarding Policies, Procedures and Rules For the California Solar Initiative, the Self-Generation Incentive Program and Other Distributed Generation Issues*, Docket R.10-05-004, at 4 (May 12, 2010).

including ongoing implementation and refinement of the utilities' Rule 21 tariffs.”⁸ IREC believes that consideration of the appropriate method of calculating the net metering cap falls squarely within the category of “DG policy issues generally” and “net energy metering policies” in particular. For this reason, the Commission should clarify that it intends to address the very important, but as yet unresolved, issue of what constitutes “aggregate customer peak demand” for the purposes of calculating the net energy metering cap in Phase 2 of this current proceeding.

In our initial Prehearing Conference Statement, IREC raised the appropriate method for calculating the net metering program cap established in Public Utilities Code 2827(c)(1) as an issue to be addressed in R.10-05-004.⁹ We noted that utilities have used different means of calculating this cap in response to prior Energy Division data requests issued to utilities subject to the cap, which demonstrates that there is ambiguity in the terminology used in the net metering statute that needs to be resolved.¹⁰ The Scoping Ruling issued on November 9, 2010, did not explicitly set the topic for discussion in Phase 1 of the docket. However that Ruling did re-state the Commission’s intention to address “DG policy issues generally, with a particular emphasis on DG on the customer-side of the meter, including not but limited to net energy metering policies, DG interconnection issues, and Rule 21 utility interconnection tariffs” during the course of Phase 2 of the proceeding, following the resolution of Phase I.¹¹ Because the November 9th Scoping Memo did not explicitly include the appropriate calculation of the net metering cap as an issue, and it did not provide any specific guidance regarding when and how

⁸ *Id.* at 9.

⁹ IREC, *Prehearing Conference Statement of the Interstate Renewable Energy Council*, Docket R.10-05-004, at 2-3 (Aug. 6, 2010).

¹⁰ *See id.* at 3.

¹¹ Cal. Pub. Utils. Comm’n, *Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judges, and Request for Comment on Phase I Issues*, Docket R.10-05-004, at 3 (Nov. 9, 2010).

this issue and other non-listed issues would be addressed, it is unclear whether the Commission intends to address the topic in the foreseeable future.

IREC raises the issue via this Motion for Clarification because the issue of the calculation of the net metering cap remains important, particularly since the utilities appear to be approaching their net metering program caps. As this occurs, the appropriate method for calculating the cap has become increasingly of concern to solar stakeholders in the state. Resolution of this issue will greatly aid all stakeholders in assessing progress towards meeting each of the investor-owned utilities' individual net metering program caps. Consequently, IREC urges the Commission to clarify the scope of the proceeding to include resolution of the appropriate method for calculating the net metering program cap established in Public Utilities Code § 2827(c)(1) by setting this issue for comment and decision in the upcoming Phase 2 of R.10-05-004.

Respectfully submitted this July 25, 2011 at Oakland, California.

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VERIFICATION

I am an attorney representing the Interstate Renewable Energy Council and am authorized to make this verification on its behalf. I have read the foregoing “Motion For Clarification of the Interstate Renewable Energy Council” and am informed and believe that the matters stated therein are true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 25th day of July, at Oakland, California.

/s/ Erica M. Schroeder
By: Erica M. Schroeder