



**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

FILED

07-02-12

04:59 PM

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)

**PETITION OF THE SOLAR ENERGY INDUSTRIES ASSOCIATION
FOR MODIFICATION OF DECISION 12-05-036**

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July 2, 2012

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Pursuant to Rule 16.4 of the Rules of Practice and Procedure of the Public Utilities Commission of the State of California (Commission), the Solar Energy Industry Association (SEIA)¹ submits this Petition for Modification of Decision 12-05-036 regarding the calculation of the Net Energy Metering (NEM) cap. The purpose of SEIA's petition is to clarify and modify the element of the Decision that would suspend the NEM program in each Investor Owned Utility's (IOU) service territory on the later of January 1, 2015 or such time as the IOU has reached its solar PV target under the California Solar Initiative (CSI), if the Commission has not issued new policy rules for the NEM program by January 1, 2015. As explained below, the requested changes to the Decision are necessary to ensure that the NEM program is not prematurely suspended in contravention of the Commission's intent, as expressed in the Decision, and to provide clear guidance to market participants with respect to implementation of this element of the Decision. In the absence of this clarification, the Decision inadvertently will cause significant market disruption within as little as 12 months, impacting thousands of jobs in the solar industry and discouraging continued private investment in solar.

¹ The comments contained in this filing represent the position of SEIA as an organization, but not necessarily the views of any particular member with respect to any issue.

I. INTRODUCTION

Section 2827 (c) (1) of the Public Utilities Code provides in applicable part that:

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*.²

Through Decision 12-05-036, the Commission clarified that the term “aggregate peak customer demand” as used in Section 2827 of the Public Utilities Code means the aggregation, or sum, of individual customers’ peak demands, i.e., their non-coincident peak demands.

The Decision also orders an updated, comprehensive study of the costs and benefits of the NEM program. As stated in the Decision, the goal of the study will be to provide the Commission and all interested parties “with a better understanding of who benefits, and who bears the economic burden, if any, of the NEM program.”³ The Commission stated its intent that the results of such a study can be used to set future policy for the NEM program and that it intends to “ensure that our policy appropriately reflects what we learn from this study.”⁴

The Decision effectively establishes a timeline for the Commission’s consideration and adoption of such future policy by requiring the state’s three major IOUs-- Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas and Electric Company -- to suspend the NEM program for new customer-generators effective January 1, 2015, unless new policy rules for the state’s NEM Program are issued by that date.⁵ While SEIA

² Pub. Util. Code § 2827(c)(1) (emphasis added).

³ Decision 12-05-036 at p. 14.

⁴ *Id.*

⁵ The Decision provides that a suspension of the NEM program will remain in effect until the new policy rules are issued, and that if new rules are issued by December 31, 2014, then no suspension of the program will occur. Decision 12-05-036 at p. 15.

is committed to work in good faith with other stakeholders to assist the Commission in issuing new policy rules by the end of 2014, market participants know this outcome is not certain.

The Decision includes an alternative provision that would delay the potential suspension of the NEM program, holding that “no utility should be relieved of its obligation to offer full-retail NEM to renewable customer-sited generation until it has reached its *CSI program target for solar PV capacity*.”⁶ For the reasons set forth below, SEIA interprets the language of the alternative suspension provision to mean that an IOU’s obligation to offer NEM will not be suspended until installation of all three IOUs’ currently existing allocated MW targets for solar PV capacity with respect to *each* component of the CSI program has been reached. SEIA seeks confirmation as to that interpretation.

In addition, as illustrated below, the criteria for suspension of the NEM program have the effect of directly undermining the Commission’s correct interpretation of the statutory language setting the NEM program cap, which allows for continued growth of the NEM program. Accordingly, SEIA requests that the Commission modify the alternative suspension criteria to avoid such a result. Finally, SEIA requests clarification of the treatment of NEM applications submitted prior to any suspension of the NEM program.

II. THE DECISION SHOULD BE CLARIFIED SO THAT THE NEM PROGRAM IS NOT SUSPENDED PRIOR TO ACHIEVEMENT OF THE MW TARGETS FOR EACH COMPONENT OF THE CSI ON A STATEWIDE BASIS

Senate Bill 1, funding the California Solar Initiative, contains a total solar *installation* goal of 3,000 MW.⁷ The percentage of megawatts allocated to three Commission jurisdictional IOUs is 2,300 MW, with the remaining MW allocated to publicly owned utilities. This 2,300

⁶ *Id.* Conclusion of Law No. 10 and Ordering Paragraph 7.

⁷ *See* Decision 06-12-033, Finding of Fact No. 13 (“SB 1 contains a total solar *installation* goal of 3,000 MW, based on the solar programs of the Commission, CEC, and municipal utilities.)

MW goal is comprised of four components -- a 1,750 MW general market program, a combined 190 MW for the Multi-family Affordable Solar Housing (MASH) and Single-family Affordable Solar Homes (SASH) programs, and a 360 MW New Solar Homes Partnership program. Each IOU in turn has been allocated a percentage of the general market program and the combined MASH/ SASH programs based upon their percentage of total electric retail sales.⁸ The MW in the NSHP have not been allocated amongst the IOUs, thus requiring each IOU to continue to offer the NSHP program in its service territory until the statewide goal of 360 MW has been reached.

In light of this overall CSI program structure, and in order to ensure the goals of SB 1 are fully met, the language in the Commission decision which provides that “no utility should be relieved of its obligation to offer full-retail NEM to renewable customer-sited generation until it has reached its CSI program target for solar PV capacity” must be interpreted such that none of the three IOUs - Pacific Gas and Electric Company, Southern California Edison Company and San Diego Gas and Electric Company -- may stop offering full retail NEM in its respective service territory until all three IOUs have reached their individually allocated MW for each CSI program component: the general market CSI program, the SASH program, and the MASH program,⁹ as well as the statewide goal of 360 MW for the NSHP. This statewide element of the CSI program would preclude an IOU from suspending its offering of NEM in its service territory even if it had reached its individually allocated targets for the remainder of the program components if the NSHP goal had not been met statewide. Moreover, the determination of when

⁸ Decision 06-12-033.

⁹ PG&E’s current MW allocation for the general market component of the CSI is 764 MW and its combined MW allocation for the SASH and MASH components is 83 MW; SCE’s current allocations are 805 MW and 87 MW, respectively; SDG&E’s current allocations are 264 MW and 20 MW respectively.

the targets have been reached must be based on installations (not applications), as the goal of the CSI program is premised on installed capacity. Merely because an application has been submitted does not mean that the facility will actually be installed and come on line. In order to ensure compliance with the Commission's intent that all CSI targets are met prior to the suspension of the NEM Program, this determination must be made based on the capacity of installed solar systems.

Finally, SEIA observes that the data on installations under the elements of the CSI is publicly available and regularly updated, as follows:

- CSI General Market: http://www.californiasolarstatistics.ca.gov/reports/agency_stats/
- SASH/MASH: Quarterly or semi-annual reports are available at <http://www.cpuc.ca.gov/NR/rdonlyres/FC00235C-64EF-4C58-AA3B-4404C3DEBB58/0/2011Q4SASHREPORT.pdf> and http://www.cpuc.ca.gov/NR/rdonlyres/B5FA5376-F593-4D3E-8432-E53043A8CAF9/0/MASHSemiAnnualProgressReport_Feb2012.pdf

III. THE DECISION SHOULD BE MODIFIED TO CLARIFY THAT THE NEM PROGRAM WILL NOT BE SUSPENDED UNTIL 150% OF THE STATEWIDE CSI TARGETS ARE ACHIEVED

The Decision provides that the NEM program would be suspended on the later of January 1, 2015 or such time as the IOUs have reached their CSI program targets for solar PV, if the Commission has not issued new policy rules for the NEM program. This provision implicitly acknowledges that the January 1, 2015 suspension date is an arbitrary point in time, and may be overly restrictive in effect. At the same time, by tying the suspension of the program to the obtainment of the target MW for the CSI program, the Decision has inadvertently adopted a formula that will do little more than maintain the status quo, including the IOUs unduly

restrictive interpretation of the cap calculation. SEIA believes this result is contrary to the Commission's overall intent as reflected in its clarification of the cap methodology.

Accordingly, the Decision should be modified such that the number of MW under the NEM program will be allowed to increase a reasonable amount before any suspension takes place. For this purpose SEIA recommends that the Decision be modified to specify that suspension of the NEM program shall not occur until the later of January 1, 2015 or such time as the number of MW installed under the NEM program has reached 3,450 MW (i.e., 150 percent of CSI statewide goals).

As noted above, the statutory cap for the number of MW that the IOUs are required to offer under the NEM program is "5 percent of the electric utility's aggregate customer peak demand." The IOUs argued that "aggregate customer peak demand" was a coincident measure of system peak, while other stakeholders (the Joint NEM Parties) took the position that "aggregate customer peak demand" meant the non-coincident sum of individual customers' peak demand. The IOUs' interpretation of "aggregate customer peak demand" would allow for significantly *less* capacity in the NEM program as compared with the interpretation of the Joint NEM Parties which would result in *more* capacity allowed in the program. The Commission adopted the Joint NEM Parties' interpretation. In so doing the Commission relied on not only the specific statutory language but also the stated goals of the NEM program, including encouraging substantial private investment in renewable energy resources and stimulating in-state economic growth.¹⁰

In contrast, the Decision's criteria for suspension of the NEM program when the IOUs reach the CSI program targets could result in a severe limitation of NEM capacity, and would

¹⁰ Decision 12-05-036 at p. 12 (citing program goals set for the in PU Code section 2827(a))

conflict with the reasoning and the policy goals relied upon by the Commission in adopting the Joint NEM Parities’ interpretation of the NEM program cap. If the various elements of the CSI reach their program goals at roughly the same time, the Decision’s suspension criteria would maintain the status quo for NEM program capacity (as had been advanced the by the IOUs). SEIA believes that this was not the Commission’s intent in clarifying the cap calculation, and that the Decision should be modified so as to permit reasonable additional NEM program growth while the new rate design and renewable policies were developed.

This contradiction is best illustrated by the chart below:

IOU	Pre-CSI MW in NEM Program ¹¹	CSI MWs (General Market Program) ¹²	SASH/MASH Program MW ¹³	NSHP Program MW ¹⁴	Total MW in NEM Program at CSI Completion	NEM Program Cap Calculated Using Methodology Advanced by IOUs ¹⁵	NEM Program Cap Using Commission adopted Methodology ¹⁶
PG&E	119	764.7	83	157	1124	1044	2414
SCE	46	805.1	87	166	1104	1154	2239
SDG&E	27	180.3	20	20	264	234	612
Total Statewide					2492 MW	2432 MW	5265 MW

¹¹ See <http://www.cpuc.ca.gov/PUC/energy/Solar/aboutsolar.htm>

¹² See Decision 06-12-033, Table 2

¹³ See Decision 07-11-045, Table 2 and Decision 08-10-036, Table 2.

¹⁴ As noted above, the MW in the NSHP Program is not allocated by IOU service territory. These numbers are illustrative of how many MW each IOU might achieve under the program using the same allocation percentages used in the CSI General Market Program .

¹⁵ See <http://www.pge.com/myhome/saveenergymoney/solarenergy/nemtracking/>
<http://sdge.com/clean-energy/overview/overview>
<http://www.sce.com/customergeneration/net-energy-metering-cap-data.htm>

¹⁶ Based on IOU data for non-coincident peak demand presented at the June 25, 2012 workshop ordered in D. 12-05-036.

As demonstrated above, by tying the suspension of the NEM program to achievement of CSI program targets, the Decision has the potential to almost completely negate the impact of its determination to clarify the statutorily imposed NEM program cap calculation using the non-coincident sum of individual customers' peak demand -- an interpretation which is consistent with program goals of renewable investment and economic growth. In contrast, if the suspension were implemented upon reaching the CSI program targets, as the Decision presently provides, only an additional 60 MW could be added to the NEM program statewide prior to its suspension. This would eviscerate the effect of the Commission's decision on the methodology of the NEM program cap, and for all practical purposes allow the IOUs' methodology to remain in place -- a flawed methodology that the Decision determined did not comport with the statutory language or California's goals for the NEM program. Accordingly, the criteria for suspension of the NEM program must be modified.

SEIA's proposal to refine the criteria for the suspension would allow the NEM program to reach installation of 3,450 MW statewide prior to suspension. While this amount is still significantly below the statutorily mandated program cap of approximately 5,265 MW, as such cap has been correctly interpreted by the Commission, SEIA contends that it more closely comports with the overall intent of the Decision to allow a reasonable amount of additional NEM capacity to be installed to meet the intent of the CSI legislation and the Commission to spur renewable investment and economic growth. SEIA submits that the use of the 150% of CSI statewide capacity targets as the criteria for suspension is reasonable and provides all parties an incentive to pro-actively address the challenging rate design and renewable policy decisions, while enabling the NEM program to continue to grow at a rate anticipated by the Decision's interpretation of the statutory program cap.

IV. CLARIFICATION IS NEEDED REGARDING STATUS OF APPLICATIONS SUBMITTED PRIOR TO SUSPENSION

In suspending the NEM program the later of January 1, 2015 or the date which the IOUs' CSI targets are met, the Decision provides that as of such time "the utilities will not accept any new NEM applications."¹⁷ The implication of this language is that up until the date of the suspension the IOU must continue to accept NEM applications and that any such application will continued to be processed after the date of suspension. Whether or not the renewable generator has been installed on the suspension date should not be determinative, in part because it is not completely within the control of the applicant. The Decision should be clarified in this respect to specify that all projects for which NEM applications are submitted before the effective date of the suspension (if such a suspension occurs) will be permitted to proceed to completion and interconnection and will be entitled to NEM service, the same as any other project installed prior to the suspension's effective date.

Without the requested clarification, the Decision will inadvertently cause significant market disruption as early as mid-2013, as impacts of the potential suspension would begin as much as 18 months earlier given current non-residential project timelines. This disruption would negatively impact thousands of jobs in the solar industry and discourage continued private investment in solar, undermining the significant efforts to date of the Legislature and the Commission to enable a self-sustaining solar market.

¹⁷ Decision12-05-036 at p. 15

**PROPOSED MODIFICATIONS TO TEXT, CONCLUSIONS OF LAW AND
ORDERING PARAGRAPHS OF DECISION 12-05-036**

Decision Text (. 15)

But if the post-study rulemaking remains open and incomplete on January 1, 2015, then under the terms of today's decision the program will be suspended thereafter, and the utilities will not accept any new NEM applications, until the new rules are issued and take effect. Any generator, whose application for the NEM program is received by a utility prior to the effective date upon which the NEM program is suspended, shall be eligible for the NEM program provided the generator meets program criteria.

Decision Text (pp. 15-16)

In order to ensure that ~~each utility~~ the utilities achieves ~~its~~ their respective CSI solar PV targets for each program component of the CSI, including the General Market Program, the SASH Program, the MASH Program and the New Solar Homes Partnership, and in order to ensure that any suspension of the NEM Program more fully comports with the statutory goals to spur renewable investment and economic growth, the suspension of the NEM obligation should not apply to any utility if the CSI targets, based upon MW installed, ~~has~~ have not been met in each utility's service territory and the utilities' NEM Programs have not reached a combined total of 3450 MW. Until both of these milestones occur, ~~Any utility that has not yet reached its CSI target~~ the utilities should continue to offer full-retail NEM to renewable customer-sited generation. ~~until its CSI solar PV target has been reached.~~

Conclusion of Law

10. Notwithstanding the preceding conclusion of law, no utility should be relieved of its obligation to offer full-retail NEM to renewable customer-sited generation ~~until it has reached its~~ the CSI program targets for each program component of the CSI have been reached, based on

number of MW installed, in each utility's service territory and the utilities' NEM programs have reached a combined total of 3450MW. solar PV capacity.

Ordering Paragraph

6. Unless the Commission issues new policy rules for the Net Energy Metering (NEM) Program by January 1, 2015, Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas and Electric Company shall suspend the NEM program for new customer-generators effective January 1, 2015. During the period of suspension, the utilities shall not offer net energy metering service to new customer-generators except that the utilities shall continue to process applications for NEM service received prior to January 1, 2015. The suspension will remain in effect until such rules are adopted.

7. Notwithstanding the preceding Ordering Paragraph, no utility shall be relieved of its obligation to offer net energy metering to renewable customer-sited generation until the CSI program targets for each program component of the CSI, based on number of MW installed, have been reached in each utility's service territory and the utilities' NEM programs have reached a combined total of 3450 MW. ~~it has reached its target for solar photovoltaic capacity under the California Solar Initiative.~~