

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 _____

**ORDER INSTITUTING RULEMAKING
REGARDING POLICIES, PROCEDURES AND RULES FOR THE
CALIFORNIA SOLAR INITIATIVE, THE SELF-GENERATION INCENTIVE
PROGRAM AND OTHER DISTRIBUTED GENERATION ISSUES**

1. Summary

This rulemaking is initiated to continue the work from Rulemaking (R.) 06-03-004 for the purpose of development and refinement of policies, rules and programs for the California Solar Initiative (CSI) and the Self-Generation Incentive Program (SGIP) and to continue our consideration more generally of policies for the development of cost-effective, clean and reliable distributed generation (DG). As in our previous rulemakings, we intend to continue to collaborate with the California Energy Commission (CEC) on these matters to ensure our programs and policies are coordinated to the maximum extent practicable. The Commission will hold a Prehearing Conference in this matter on April 22, 2008. R.06-03-004 is closed.

2. Background

Over the past several years, this Commission has made a substantial effort to stimulate development of DG projects and technologies by providing financial

incentives to project developers and exemptions from standby rates and the California Department of Water Resources cost responsibility surcharges. This rulemaking evolves from and builds on the work we began in four previous proceedings, R.98-12-015, R.99-10-025, R.04-03-017, and R.06-03-004. These previous rulemaking orders describe our fundamental view of DG and its role in providing the state with clean, reliable energy resources and remain useful as background documents guiding our work here. The joint agency Energy Action Plan II, the Integrated Energy Policy Report issued by the CEC, and our own orders emphasize the state's commitment to DG development. Although, we have performed an enormous amount of work in our four prior rulemakings to develop policies and implement the SGIP and CSI incentive programs, we must continue our work to resolve certain issues as set forth in this new rulemaking.

In an earlier DG rulemaking (R.03-04-017), the Commission refined SGIP rules and incentive levels, adopted new interconnection rules, conducted an inquiry into cost-benefit methodologies and stated our intent to fund a new DG program specific to solar, namely the CSI. In D.06-01-024, we committed \$2.5 billion to CSI over 10 years, established broad program principles, and set forth a number of program issues that require our additional attention.

The Commission continued these efforts in our most recent DG and CSI rulemaking, R.06-03-004. Significant decisions in the rulemaking included D.06-08-028, in which the Commission's adopted performance-based solar incentives, an incentive reduction mechanism, metering requirements, and an administrative structure for the CSI program. Following passage of Senate Bill (SB) 1 by the Legislature in August 2006, the Commission issued D.06-12-033 to conform the CSI program to the new legislation. Most notably, the decision adjusted the CSI budget to \$2.16 billion through 2016, in accordance with SB 1.

Within this rulemaking the Commission also addressed treatment of renewable energy credits (RECs) (D.07-01-018), time of use requirements for solar incentive recipients (D.07-06-014), a \$50 million CSI research, development and demonstration (RD&D) program (D.07-09-042), and solar incentives for low-income homeowners (D.07-11-045).

This proceeding will continue the Commission's policymaking and implementation surrounding DG and solar incentives by addressing the following broad categories of issues:

- Further development of policies and program rules in support of the CSI;
- Consideration of DG policy issues generally and ongoing management of the SGIP; and
- Resolution of the cost-benefit methodologies initially explored in R.03-04-017.

We describe each of these in more detail below. We hope to resolve these issues expeditiously in order to assure the continued operation of comprehensive, efficient, and effective CSI and SGIP programs.

3. Preliminary Scoping Memo: Scope of the Proceeding

This new Rulemaking divides the present task into three issue areas:

3.1. CSI Policies, Rules, and Program Development

As noted above, D.06-01-024 adopted a number of policies for the implementation of the CSI, and in D.06-08-028, the Commission began program implementation by adopting performance-based incentives, an incentive structure, an administrative structure, and other program requirements.

Following passage of SB 1, the Commission adjusted the CSI program in line with the new legislation by decreasing the program's total budget to \$2.16 billion through 2016 and adopting other program changes (see D.06-12-033). Several issues that were included in the scope of R.06-03-004 still require review and development. In addition, this proceeding will be the vehicle for the Commission to carry on its work implementing all prior CSI orders, including but not limited to RD&D funding and solar low-income program implementation. We list below the major issues contained in the scoping memo for R.06-03-004 that remain to be addressed in this proceeding:

3.1.1. Solar Incentives for Multi-Family Low-Income Housing

Assembly Bill (AB) 2723 requires the Commission to spend not less than 10% of overall CSI funds, or \$216 million, for installation of solar energy systems on low-income residential housing. In D.07-11-045, the Commission adopted a \$108 million incentive program for solar incentives to qualifying single-family low-income homeowners. The Commission is required to spend an additional \$108 million on low-income solar incentives, so it will now explore methods for promoting installation of solar energy systems on multi-family low-income housing.

3.1.2. Energy Efficiency Requirements

In D.06-01-024, we established the requirement that CSI applicants obtain an energy efficiency audit for existing buildings as a condition of receiving CSI incentives. SB 1 added Section 25782(b)(3) to the Public Resources Code, directing the CEC to require "appropriate energy efficiency improvements in the

new or existing home or commercial structure where the solar energy is installed.” SB 1 also added Section 2851(a)(3) to the Public Utilities Code,¹ directing the CPUC to require “reasonable and cost-effective energy efficiency improvements in existing buildings as a condition of providing incentives....” In D.06-12-033, we clarified that the audit requirement will remain in place until the energy efficiency requirements of SB 1 are addressed.

On December 19, 2007, the CEC published its “Guidelines for California’ Solar Electric Incentive Programs Pursuant to SB 1” (CEC Guidelines), establishing, among other things, minimum energy efficiency requirements for 2008 and additional energy efficiency requirements to take effect January 1, 2009. By an Administrative Law Judge’s (ALJ) ruling in January 2008,² we established a process for implementing the requirements of the CEC Guidelines into our program. We will continue that work in this rulemaking. We also will consider whether to require additional energy efficiency improvements, as described in Section 2851(a)(3).

3.1.3. Marketing, Outreach and Consumer Education

In R.06-03-004, the Commission stated its intent to develop protocols for the use of CSI funds to inform potential solar customers and developers of program opportunities. In D.06-12-033, the Commission directed that no more than 10% of the budget for mainstream CSI incentives could be used for administration, which includes program evaluation, marketing, and outreach. In

¹ All statutory references are to the Public Utilities Code unless otherwise noted.

² See “ALJ’s Ruling Noticing Issuance of CEC Solar Incentive Guidelines and Directing Program Administrators to Implement Program Changes,” January 15, 2008.

D.07-05-047, interim marketing plans were adopted for CSI. In this proceeding, the Commission will consider policy guidance to the CSI program administrators³ regarding permanent marketing budgets and programs. We expect our efforts in this area to include consideration of consumer education and protection measures.

3.1.4. Program Evaluation

In establishing the CSI program in D.06-01-024, the Commission determined that Commission staff would oversee program evaluation and that evaluation and monitoring protocols should be the same as those specified in R.01-08-028, to the extent possible, for energy efficiency programs. (D.06-01-024, p. 32.) In R.06-03-004 and its scoping memo, the Commission stated its intent to evaluate program effectiveness in Phase II of the proceeding. Moreover, SB 1 added Section 2851(c)(3) to the Public Utilities Code which requires the Commission to submit to the Legislature by June 30, 2009 and every year thereafter, an assessment of CSI program's success, including numbers of installations, incentives awarded, capacity of installed systems, program costs, total electrical system benefits, environmental and reliability benefits, and effects on peak demand.

In D.06-08-028, the Commission indicated it would review major aspects of the CSI program every two years based on new information on solar costs, federal tax credits and other solar market conditions and factors. The review's purpose would be to identify potential improvements in CSI program design and to determine if revisions to CSI incentive mechanisms are warranted. We

³ The CSI program administrators are the California Center for Sustainable Energy,

Footnote continued on next page

anticipated that the first evaluation would take place in a new rulemaking in 2009, after two years of experience with the program, and we stated the new rulemaking would determine the elements of the program that should be included in the review.

In that same order, we established mechanisms to provide data for program review. First, we directed the program administrators to create a program database that we could use as a tool for program assessment. (D.06-08-028, p. 63.) Second, we required all CSI incentive recipients to have performance monitoring and reporting services (PMRS), provided by an independent entity not affiliated with solar manufactures or installers, attached to their meters. (*Id.*, p. 79.) In D.08-01-030, we dropped the requirement that PMRS be provided by independent entities, and we established protocols for “performance data providers” (PDPs) to report solar system output information from the customer’s meter to the program administrator for PBI payment purposes.

Consistent with the requirements of D.06-08-028 and SB 1, we intend to develop a Program Evaluation Plan in this rulemaking to gather the data we need for our report to the Legislature in June 2009 and for the program review that we intend to conduct later in this rulemaking. Therefore, our first step will be to address the elements of a Program Evaluation Plan, namely who will conduct the evaluation, by what deadline, and what program data and reports are essential for our program review and legislative reporting obligations. Potential data sources could include but are not limited to the program

Pacific Gas and Electric Company, and Southern California Edison Company.

administrators, the CSI database, and the PDP/PMRS vendors. We intend to draw from our program evaluation experience in both SGIP and energy efficiency as guidance for our CSI Program Evaluation Plan.

After we establish the Program Evaluation Plan, we will implement the plan and use the results for our first review of the CSI program in a later portion of this rulemaking. As indicated in D.06-08-028 and subsequent orders, our CSI review may include, but is not limited to, the following:

- Consider adjustments to CSI incentive rates based on solar costs, market conditions, the status of federal tax credits,⁴ the value of RECs, or other factors
- Assess the need for program modifications or enhancements, and alternative mechanisms to achieve CSI goals
- Review the capacity factor used in the PBI payment calculation
- Review allocation of CSI funds between residential and non-residential customers
- Evaluate the allocations of total budget funds for administration, marketing, evaluation, RD&D and low income programs, and the use of any unspent funds
- Evaluate the participation of non-PV technologies in the CSI program
- Assess the accuracy of data reporting provided by PDP and PMRS vendors

⁴ Current federal tax credits are due to expire on December 31, 2008, unless extended by federal legislation. If the tax credit expires, the Commission may consider incentive changes before other elements of CSI program evaluation are completed.

- Compare and evaluate the effectiveness of the three program administrators for the mainstream CSI program

3.1.5. Solar Water Heating

In D.06-01-024, the Commission allowed a pilot program to test incentives to solar water heating. The Commission directed evaluation of that pilot before allowing incentives to solar water heating on a statewide basis. The pilot was approved by an assigned Commissioner's ruling in February 2007⁵ and is currently underway in the SDG&E service territory, administered by CCSE (formerly the San Diego Regional Energy Office).

In 2007, the Legislature passed AB 1470, also known as the Solar Water Heating and Efficiency Act, to promote the installation of solar water heating systems and other technologies that reduce natural gas demand in California. AB 1470 adds Section 2860 *et seq.* to the Pub. Util. Code, which requires the commission to evaluate the data available from the solar water heating pilot program in San Diego, and, if it determines that a solar water heating program is cost-effective for ratepayers and in the public interest, to design and implement a program of incentives for the installation of 200,000 solar water heating systems in homes and businesses throughout the state by 2017. In this proceeding, the Commission intends to evaluate the results of CCSE's solar water heating pilot and consider further action as appropriate.

3.1.6. Time-Of-Use (TOU) Requirements

SB 1 added Section 2851(a)(4) that required the Commission to require time-variant, or TOU, pricing for all ratepayers with a solar energy system and to

develop a time-variant tariff that met certain conditions. In AB 1714, the Legislature amended that statute to authorize the Commission to delay implementation of time-variant pricing for ratepayers with a solar energy system until the effective date of new rates established in the utilities' next general rate cases, scheduled to be completed after January 1, 2009.

In this proceeding, we intend to address any issues surrounding implementation of time-variant tariffs for CSI incentive recipients, if they arise and are not otherwise addressed in the context of each utility's general rate case.

3.2. DG Policy Issues and SGIP Rules and Management

The SGIP was adopted by the Commission in D.01-03-073 and provides incentives to business and individuals who invest in distributed generation. The Commission's SGIP program has so far encumbered more than \$507 million in incentives and motivated more than 278 MW of DG capacity through 1,138 projects since 2001. In R.04-03-017, we refined our interconnection rules, revised incentive payments, and addressed budgetary and policy issues surrounding the program. In R.06-03-004, we addressed treatment of RECs for DG facilities, SGIP measurement and evaluation, and budgetary issues.

AB 2778⁶ amended Section 379.6 relating to SGIP and extended the program until January 1, 2012. The bill also limited technologies eligible for SGIP to qualifying wind and fuel cell distributed generation projects. All other technologies were deemed ineligible for SGIP incentives as of January 1, 2008.

⁵ See "Assigned Commissioner's and Administrative Law Judge's Ruling Approving Solar Water Heating Pilot Program," February 15, 2007.

⁶ Chapter 617, Statutes of 2006.

In this proceeding, we will address, as needed, any policy, legal, or administrative issues that arise in the broad context of DG or within the ongoing SGIP. These may include, but are not limited to funding levels, incentive amounts, and program modification requests. We will also consider changes to incentive levels and technologies as market conditions change, as long as the changes are in compliance with Section 379.6. We intend to handle any pending Program Modification Requests (PMRs) that were submitted to Energy Division in accordance with the multi-step process established in D.03-08-013. These submissions request program changes or inclusion of additional technologies in the program. Our ongoing collaboration with the CEC will help us to understand and incorporate new DG technologies when and if they become viable, and if they comply with the program guidelines in Section 379.6.

We also intend to consider the ongoing work of the “Rule 21 Working Group.” As part of R.04-03-017, the CEC took the initiative to work with the utilities and DG community to update the utilities’ Rule 21 interconnection tariffs which govern interconnections between distribution systems of electric utilities and DG facilities. The Rule 21 Working Group spearheaded those efforts and is comprised of utility personnel, manufacturers of DG facilities, DG developers, DG customers, and regulators. The staff of the CEC has chaired the Rule 21 Working Group meetings and funded the group’s research efforts for several years, and the group’s work has resulted in dramatic reductions in the time and costs for most DG interconnections. In this proceeding, we will direct the Energy Division to convene a workshop to discuss the future role of the Rule 21 Working Group, and submit a report following the workshop with recommendations for our consideration.

3.3. Distributed Generation Cost-Benefit Methodology

As we discussed in R.04-03-017, the Commission needs to establish a way of measuring costs and benefits of DG projects to meet our legislative obligations and to measure the success of various program elements and tailor incentives accordingly.⁷

In R.04-03-017, we began the process of investigating a cost-benefit methodology for DG projects. The Commission solicited testimony and held hearings on this matter in May 2005 following the issuance of a report sponsored by the Self-Generation Working Group and drafted by Itron, Inc. in March 2005.⁸ The proceeding was also guided by the “Standard Practice Manual” (SPM),⁹ which the Commission has used to evaluate utility energy efficiency programs for several years.

⁷ Public Utilities Code Section 353.9, enacted in SB 28x of 2001, states in pertinent part:

“The commission shall create a firewall that segregates distribution cost recovery so that any net costs, taking into account the actual costs and benefits of distributed energy resources, proportional to each customer class, as determined by the commission, resulting from the tariff modifications granted to members of each customer class may be recovered only from that class.”

Similarly, Section 2827(n) directs the Commission to:

“assess the environmental costs and benefits of net metering to customer-generators, ratepayers, and utilities, including any beneficial and adverse effects on public benefit programs and special purpose surcharges.”

⁸ The March 2005 report is titled “Framework for Assessing the Cost-Effectiveness of the Self-Generation Incentive Program.”

⁹ SPM is an abbreviation for “California Standard Practice Manual: Economic Analysis of Demand-Side Programs and Projects.”

In September 2005, the assigned ALJ issued a proposed decision on this topic. The proposed decision was later withdrawn in order to coordinate its findings with the Commission's work in other related proceedings, including our rulemaking developing consistent avoided costs (R.04-04-025), and the work undertaken in energy efficiency proceedings (R.01-08-028 and related). At the same time, competing priorities surrounding the implementation of CSI in 2006 and 2007 prevented the Commission from completing its work on development of a cost-benefit methodology.

We expect to renew our efforts to finalize a cost-benefit methodology in this rulemaking, and the assigned ALJ will notify parties regarding how the Commission will proceed on this topic during the pendency of this proceeding. We incorporate the records of R.06-03-004 and R.04-03-017 into this docket to facilitate these efforts.

4. Proceeding Schedule

The assigned ALJ will hold a prehearing conference (PHC) in this matter at 10:00 a.m., on April 22, 2008, at the Commission's Hearing Room, State Office Building, 505 Van Ness Avenue, San Francisco, California 94102. No later than April 11, 2008, parties should file PHC statements, and serve them on the service list for R.06-03-004, unless a new service list for this proceeding is already established. In these statements, parties should comment on the preliminary scoping memo contained in this rulemaking, and whether they agree with the preliminary determination that hearings are not necessary.

Following the PHC, the assigned Commissioner and ALJ in this proceeding will issue a scoping memo, including a schedule for the proceeding. The Commission will schedule workshops, hearings and testimony, and/or comment filing dates, as appropriate.

This proceeding will conform to the statutory case management deadline for quasi-legislative matters set forth in Section 1701.5. In particular, it is our intention to resolve all relevant issues within 24 months of the date of the assigned Commissioner's Scoping Memo. In using the authority granted in Section 1701.5(b) to set a time longer than 18 months, we consider the number and complexity of the tasks and the need to coordinate certain aspects of this proceeding with the CEC.

5. Parties and Service List

This OIR is served on the parties to R.06-03-004, which we close today. Within 20 days from the mailing date of this order, any person or representative of an entity interested in monitoring or participating in this proceeding should send a letter to the Commission's Process Office (process_office@cpuc.ca.gov), with a copy to ALJ Dorothy Duda (dot@cpuc.ca.gov) and ALJ Maryam Ebke (meb@cpuc.ca.gov), all of whom are located at 505 Van Ness Avenue, San Francisco, California 94102. The letter should specify the docket number of this rulemaking in the subject line, and must include the name, address, phone number, organization and e-mail address of those who wish to be added to the service list.

When individuals write to the Process Office, their letter should specify whether they wish to be a "Party" (i.e., actively participate in the proceeding by filing comments or appearing at workshops or hearings) or "Information Only" (i.e., not participate, but simply receive electronic service of all documents in this rulemaking). Those who seek to be a "party" should indicate how they intend to participate in the proceeding. Individuals who intend to maintain party status must appear at the prehearing conference to confirm this. Letters may be sent

either by electronic mail or regular mail, but must be received by the Commission within 20 days of the mailing of this order.

The Process Office will thereafter create a new service list and the new service list will be posted on the Commission's web site, www.cpuc.ca.gov soon thereafter. Parties who do not contact the Commission for inclusion on the service list will not receive future documents in this proceeding. **Parties currently on the service list for R.06-03-004 will NOT automatically be placed on the new service list and must follow the procedure described above to be added to the new service list.**

In accordance with Commission practice, by entering an appearance at a hearing or by other appropriate means, an interested party or protestant gains "party" status, as set forth in Commission Rule 1.4. A party to a Commission proceeding has certain rights that non-parties (those in "state service" and "information only" service categories) do not have. For example, a party has the right to participate in evidentiary hearings, file comments on a proposed decision, and appeal a final decision. A party also has the ability to consent to waive or reduce a comment period. Non-parties do not have these rights, even though they are included on the service list for the proceeding and receive copies of some or all documents.

Any party interested in participating in this rulemaking who is unfamiliar with the Commission's procedures should contact the Public Advisor's Office in Los Angeles at (866) 849-8391, or in San Francisco at (415) 703-2074, or toll free at (866) 849-8390.

Parties are encouraged to serve documents electronically, in accordance with Rule 1.10 of the Commissions' Rules of Practice and Procedure.

6. Preliminary Categorization of the Proceeding

Rule 7.1(d) requires that an order instituting rulemaking preliminarily determine the category of the proceeding and the need for hearing. As a preliminary matter, we determine that this proceeding is “quasi-legislative,” as defined in Rule 1.3(d). We anticipate that the issues in this proceeding may be resolved through a combination of workshops and formal comments, and that evidentiary hearings will not be necessary. Any person who objects to the preliminary categorization of this rulemaking as “quasi-legislative” or to the preliminary hearing determination, shall state the objections in their prehearing conference statements, no later than April 11, 2008, as discussed above. After considering the comments on the preliminary scoping memo, the assigned Commissioner will issue a scoping ruling making a final category determination; this final determination is subject to appeal as specified in Rule 7.6(a).

7. *Ex Parte* Communications

In accordance with Rule 8.2, *ex parte* communications¹⁰ in this proceeding are allowed without restricting or reporting requirement.

¹⁰ An *ex parte* communication is defined in Rule 8.1(c) as:

...a written communication (including a communication by letter or electronic medium) or oral communication (including a communication by telephone or in person) that:

- (1) concerns any substantive issue in a formal proceeding, including categorization of a proceeding, or assignment or reassignment of a proceeding to an Administrative Law Judge.
- (2) takes place between an interested person and a decisionmaker, and
- (3) does not occur in a public hearing, workshop, or other public setting, or on the record of the proceeding.

Findings of Fact

1. The Commission has expressed its support for the development of distributed generation by utilities and customers.
2. State policy and utility rules will affect the development of distributed generation.

Conclusions of Law

1. The Commission should initiate a new rulemaking to continue to consider policies, rules and practices that would promote the development of cost-effective distributed generation in California.
2. Because the issues remaining in R.06-03-004 will be addressed in this rulemaking, the record in R.06-03-004 should be incorporated into this docket and R.06-03-004 should be closed.

Therefore, **IT IS ORDERED** that:

1. A rulemaking is instituted on the Commission’s own motion to establish policies and rules regarding distributed generation and distributed energy resources, to implement the provisions of the California Solar Initiative (CSI) as set forth in Senate Bill 1 and Commission orders, and to address ongoing issues associated with the Self-Generation Incentive Program.
2. Pacific Gas and Electric Company, Southern California Edison Company, Southern California Gas Company, and San Diego Gas & Electric Company are made respondents to this proceeding.
3. The records in Rulemaking (R.) 06-03-004 and R.04-03-017 are incorporated in this proceeding by reference, and any pending matters in these former rulemakings will be addressed in this new proceeding.
4. The Executive Director shall cause this Order Instituting Rulemaking to be served on the respondents, the Executive Director of the California Energy

Commission, the California Independent System Operator, the California Air Resources Board, the California Environmental Protection Agency, and on the parties to R.06-03-004.

5. Within 20 days from the date of mailing of this order, any person or representative of an entity interested in monitoring or participating in this rulemaking should send a letter to the Commission's Process Office, 505 Van Ness Avenue, San Francisco, California 94102, or electronically to process_office@cpuc.ca.gov, asking that his or her name be placed on the service list for this rulemaking.

6. The category of this rulemaking is preliminarily determined to be "quasi-legislative." Any persons objecting to the preliminary categorization of this rulemaking as "quasi-legislative" or to the preliminary determination that limited evidentiary hearings are not necessary shall state their objections in comments on the preliminary scoping memo, to be filed and served no later than April 11, 2008.

7. The assigned Administrative Law Judge (ALJ) shall conduct proceedings in this rulemaking to effect the Commission's policy and direction as set forth herein; in that capacity the ALJ, in consultation with the assigned Commissioner, may make any adjustments to the schedule and service list for this proceeding.

8. The Commission hereby schedules a prehearing conference (PHC) in this proceeding for the purpose of discussing the management of this docket. The prehearing conference will take place at 10:00 a.m., on April 22, 2008, in the Commission's San Francisco Hearing Room, State Office Building, San Francisco, California 94102

9. Parties may file PHC statements in advance of the prehearing no later than April 11, 2008, as further directed in Section 4 above, and serve them on the service list for R.06-03-004, unless a new service list is established by that date.

10. Any party that expects to request intervenor compensation for its participation in this rulemaking shall file its notice of intent to claim intervenor compensation in accordance with Rule 17.1 of the Commission's Rules of Practice and Procedure.

11. R.06-03-004 is closed.

This order is effective today.

Dated _____, at San Francisco, California.