

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.

FILED
PUBLIC UTILITIES COMMISSION
MAY 6, 2010
SAN FRANCISCO, CALIFORNIA
RULEMAKING 10-05-004

**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.) 08-03-008 for the purpose of development and refinement of policies, rules and programs for the California Solar Initiative and the Self-Generation Incentive Program and to continue our consideration more generally of policies for the development of cost-effective, clean and reliable distributed generation. As in our previous rulemakings, we intend to continue to collaborate with the California Energy Commission on these matters to ensure our programs and policies are coordinated to the maximum extent practicable. R.08-03-008 is closed.

2. Background

Over the past several years, this Commission has made a substantial effort to stimulate development of distributed generation (DG) projects and technologies by providing financial incentives to project developers. When our

efforts to promote DG began in 2001, the term DG generally referred to customer-owned electric generating facilities, sized up to 5 megawatts (MW), such as solar photovoltaics, wind turbines, biogas, fuel cells, microturbines, small gas turbines, internal combustion engines, and combined heat and power cogeneration plants. Over the last decade, as technologies, legislation, and public policy have evolved, our incentive programs have evolved as well to focus on promoting these various technologies in different ways. This rulemaking evolves from and builds on the work we began in five previous proceedings, Rulemaking (R.) 98-12-015, R.99-10-025, R.04-03-017, R.06-03-004, and R.08-03-008. 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 California Energy Commission (CEC), and our own orders emphasize the state's commitment to DG development.

Notable achievements in these prior rulemakings include our California Solar Initiative (CSI), created in 2006 with a total budget of \$2.16 billion, which provides a long-term commitment to a solar incentive program for solar photovoltaic (PV) and non-PV solar projects, and our Self-Generation Incentive Program (SGIP), which began in 2001 and has provided a sustained endeavor to promote DG technologies other than solar, with a current annual budget of \$125 million. Legislation effective in 2008 limited eligibility for SGIP incentives to wind and fuel cell technologies. However, Senate Bill (SB) 412 (Stats. 2009, Ch. 182), which became effective in 2010, authorizes the Commission, in consultation with the California Air Resources Board (CARB), to determine

SGIP-eligible technologies based on the requirement that they achieve reductions of greenhouse gas emissions.

In our previous DG rulemakings, the Commission established and refined SGIP and CSI.¹ In our most recent CSI/DG rulemaking, R.08-03-008, we issued key decisions involving establishment of the Multifamily Affordable Solar Housing Program (MASH) (Decision (D.) 08-10-036), adoption of a DG cost-benefit methodology for use in assessing DG programs (D.09-08-026), and creation of the CSI Thermal Program to provide incentives to solar water heating systems (D.10-01-022). With regard to SGIP, the Commission allowed SGIP incentives for advanced energy storage technologies if the storage system was coupled with an eligible SGIP technology (D.08-11-044 and D.10-02-017).

Although we have performed a vast quantity of work in our five prior rulemakings to develop policies and implement the SGIP and CSI incentive programs, we must continue to monitor and modify the programs as new issues arise and as the technologies and legislation continually evolve. This proceeding will continue the Commission's policymaking and implementation surrounding DG and solar incentives by addressing the following broad categories of issues:

- Ongoing review, evaluation, and consideration of modification to policies and program rules for CSI and its many sub-programs including, but not limited to, the general market CSI program, the Single Family Affordable Solar Housing (SASH), the MASH, the CSI Research, Development, and Demonstration (RD&D) Program, and the CSI Thermal Program that provides solar water heating incentives. As part of the CSI Thermal Program, the Commission will work towards development of a low-income solar water heating incentive program.

¹ See R.08-03-008 for background on the key decisions in the prior DG rulemakings.

- Ongoing review, evaluation, and consideration of modification to the SGIP with emphasis on consideration of potential modification to SGIP to comply with SB Bill 412.
- Ongoing 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.

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

3. Preliminary Scoping Memo: Scope of the Proceeding

This new Rulemaking divides the critical tasks into three issue areas:

3.1. CSI Review, Evaluation, and Program Oversight

This proceeding will be the vehicle for the Commission to carry on its work implementing all prior CSI orders from R.08-03-008 and earlier rulemakings. This work will include the general market CSI incentive program as well as the MASH, SASH, RD&D, and CSI Thermal Programs. The Commission has largely accomplished the tasks it outlined for itself in R.06-03-004 and R.08-03-008 relating to CSI. The Commission's CSI general market program has, since 2007, allocated slightly more than \$700 million in incentives to over 29,000 installed solar projects representing 320 MW of new solar capacity.²

² See California Solar Statistics at: <http://www.californiasolarstatistics.ca.gov>.

Critical policy areas that the Commission plans to examine in this rulemaking with regard to the various CSI sub-programs include:

- **Low-Income CSI Thermal Program**

In D.10-01-022, the Commission established the CSI Thermal Program to provide incentives to solar water heating (SWH) systems pursuant to Assembly Bill (AB) 1470. AB 1470 requires the Commission to provide not less than 10% of the overall program funds for installation of SWH systems on low-income residential housing, as defined in the statute. (Pub. Util. Code § 2866.)³ In adopting D.10-01-022, the Commission set aside \$25 million for this low-income CSI Thermal Program, but details of implementation remain to be addressed. We intend to finalize the details of a low-income CSI Thermal Program in this rulemaking.

- **Virtual Net Metering**

In D.08-10-036, the Commission established the MASH program of solar incentives for multifamily affordable solar housing. As part of the MASH program, the Commission directed Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), and San Diego Gas & Electric Company to file tariffs for a “virtual net metering” (VNM) program that allows the electricity produced by a single solar installation to be credited to the benefit of multiple tenants in the building. Ordering Paragraph 6 of the decision directed the Administrative Law Judge (ALJ) to issue a ruling to explore expansion of the VNM tariff to all multitenant properties that install solar energy systems. We intend to explore this issue in this rulemaking.

³ All statutory references are to the Public Utilities Code unless otherwise noted.

- **Marketing, Outreach and Consumer Education**

In D.07-05-047, interim marketing plans were adopted for the general market CSI program. In R.08-03-008, we stated that the Commission would consider policy guidance to the CSI program administrators⁴ regarding permanent marketing budgets and programs and consumer education and protection measures. While the Commission was unable to address this issue in R.08-03-008, we anticipate addressing this issue in this new rulemaking.

- **Energy Efficiency Requirements**

In R.08-03-008, the Commission described the energy efficiency audit requirements established in D.06-01-024 for CSI applicants as well as statutory modifications enacted by SB 1 that direct the CEC to require “appropriate energy efficiency improvements in the new or existing home or commercial structure where the solar energy is installed” (Public Resources Code Section 25782(b)(3)), and direct this Commission to require “reasonable and cost-effective energy efficiency improvements in existing buildings as a condition of providing incentives....” (Public Utilities Code Section 2851(a)(3)). Although the scoping memo for R.08-03-008 stated the Commission’s intent to address energy efficiency requirement issues, time and resource limitations prevented the Commission from addressing the issue. In this rulemaking, we may consider whether to require additional energy efficiency improvements, as described in Section 2851(a)(3).

⁴ The CSI program administrators are the California Center for Sustainable Energy, PG&E, and SCE.

- **Other CSI Enhancements**

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. In R.08-03-008, we anticipated that the first evaluation would take place in 2009, after two years of experience with the program and we described development of a Program Evaluation Plan to gather needed data. An Assigned Commissioner's Ruling in July 2008 established the CSI Program Evaluation Plan and described a comprehensive set of data and reports for program evaluation purposes.⁵ Subsequently, in D.09-08-026, we adopted a cost-benefit methodology to be used in evaluating our various DG incentive programs.

Now that many of the reports outlined in the assigned Commissioner's July 2008 Program Evaluation Plan ruling have been completed, the Commission can use these reports, coupled with workshops and/or opportunities for comments by interested parties, to consider CSI program modifications. Examples of program areas where the Commission may consider revisions to current program requirements include, but are not limited to:

- CSI budget and incentive rate adjustments based on solar costs, market conditions, the status of federal and state tax credits, the value of renewable energy credits (RECs), or other factors;

⁵ See "Assigned Commissioner's Ruling Establishing Program Evaluation Plan for the California Solar Initiative," July 29, 2008, R.08-03-008.

- Assessment of the need for program modifications or enhancements to achieve CSI goals, including market transformation and transparency;
- Metering, monitoring, and program reporting requirements;
- The definition of “eligible site” for the purpose of receiving incentives; and
- Program evaluation plans and budgets.

3.2. SGIP Review, Evaluation, and Program Oversight

This rulemaking will be the vehicle for the Commission to carry on its work implementing all prior SGIP orders from R.08-03-008 and earlier rulemakings. 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 has so far encumbered more than \$747 million in incentives and motivated more than 430 MW of DG capacity through 1,447 projects since 2001. These projects represent approximately \$2.1 billion in private investment in DG technologies. In our previous DG rulemakings, we refined our interconnection rules, revised incentive payments, and addressed budgetary and policy issues surrounding SGIP. Most recently, in R.08-03-008, we allowed incentives for advanced energy storage technologies coupled with wind and fuel cell projects (D.08-11-044) and allowed directed biogas to qualify as a renewable fuel for SGIP eligible facilities (D.09-09-048).

In 2009, the legislature enacted SB 412, which authorizes the Commission, in consultation with the CARB, to determine eligible technologies for the SGIP based on the requirement that they “achieve reductions of greenhouse gas emissions pursuant to the California Global Warming Solutions Act of 2006.” In a ruling of November 11, 2009, the ALJ solicited comments from parties

regarding implementation of SB 412 through SGIP. A workshop was held on this topic on January 7, 2010.

In this proceeding, we will address whether changes are needed to SGIP to comply with SB 412, and, 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. 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.

3.3. Ongoing DG Policy Development and Review

In this proceeding, the Commission will 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, including ongoing implementation and refinement of the utilities' Rule 21 tariffs.

4. Proceeding Schedule

The assigned ALJ will schedule a prehearing conference (PHC) in this matter as soon as practicable. 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, Service List, and Subscription Service

This Order Instituting Rulemaking (OIR) is served on the parties to R.08-03-008, which we close today. The service list for today's OIR shall be the list for R.08-03-008 and all entities on that list will automatically be transferred to the service list for this new OIR. 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 who is not already on the list for R.08-03-008 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. 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 then combine the existing service list for R.08-03-008 plus any correspondence it receives to create a new service list for this OIR and the new service list will be posted on the Commission's web site, www.cpuc.ca.gov soon thereafter.

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 Commission's Rules of Practice and Procedure.

This proceeding can also be monitored by subscribing in order to receive electronic copies of documents in this proceeding that are published on the Commission's website. There is no need to be on the service list in order to use the subscription service. Instructions for enrolling in the subscription service are available on the Commission's website at <http://subscribecpuc.cpuc.ca.gov/>.

6. Preliminary Categorization of the Proceeding

Rule 7.1(d) requires that an OIR 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 at the PHC, which the ALJ will schedule in this proceeding as soon as practicable. After considering any 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. Intervenor Compensation

Parties that were previously granted eligibility to request compensation in R.08-03-008 and have no material changes to their by-laws or financial status shall remain eligible for compensation in this proceeding and do not need to file a new notice of intent to claim compensation for this rulemaking. Otherwise, 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.

8. *Ex Parte* Communications

In accordance with Rule 8.2, *ex parte* communications⁶ in this proceeding are allowed without restriction or reporting requirement.

Findings of Fact

1. The Commission has expressed its support for the development and adoption of distributed generation technologies, including solar, wind and fuel cells, 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.08-03-008 will be addressed in this rulemaking, the record in R.08-03-008 should be incorporated into this docket and R.08-03-008 should be closed.

⁶ 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.

O R D E R

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 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 record in Rulemaking 08-03-008 is incorporated in this proceeding by reference, and any pending matters in that former rulemaking will be addressed in this new proceeding under the new caption. Any future petitions to modify decisions in prior distributed generation rulemakings should be filed in this new proceeding and served on the service list of both this docket and the docket of the original order.

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 Rulemaking 08-03-008.

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 that is not already on the service list for Rulemaking 08-03-008 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. A copy of the letter should be sent to Administrative Law Judge Dorothy Duda (dot@cpuc.ca.gov) and Administrative Law Judge Maryam Ebke (meh@cpuc.ca.gov) at the Commission.

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 at the prehearing conference to be scheduled by the assigned Administrative Law Judge.

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

8. 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, unless they were previously granted eligibility to request compensation in Rulemaking 08-03-008 and there are no material changes to their by-laws or financial status.

9. Rulemaking 08-03-008 is closed.

This order is effective today.

Dated May 6, 2010, at San Francisco, California.

MICHAEL R. PEEVEY

President

DIAN M. GRUENEICH

JOHN A. BOHN

TIMOTHY ALAN SIMON

NANCY E. RYAN

Commissioners