

Decision 10-06-019

June 3, 2010

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 08-03-008
(Filed March 13, 2008)

**ORDER DENYING REHEARING
OF DECISION (D.) 09-12-047**

I. INTRODUCTION

The Utility Reform Network (“TURN”) filed an application for rehearing of Decision (D.) 09-12-047 (“Decision”) on January 25, 2010. In D.09-12-047, the Commission adopted a Self Generation Incentive Program (“SGIP”) budget of \$83 million for 2010 and 2011. In addition, the Decision allows the continued practice of tracking carryover amounts, amounts previously authorized but unspent, from earlier SGIP budgets and allowing those amounts to augment the 2010 and 2011 authorized SGIP budgets. The California Energy Storage Alliance (“CESA”), the California Center for Sustainable Energy (“CCSE”), the California Clean DG Coalition (“Clean DG”), and FuelCell Energy Inc. (“FSE”) all filed responses to TURN’s application.

We have carefully considered the arguments presented by TURN and are of the opinion that no grounds for rehearing have been demonstrated. Therefore, we are denying TURN’s application for rehearing.

II. DISCUSSION

The sole issue TURN raises in its application for rehearing is whether we violated the provisions of Public Utilities Code section 379.6 (a)(1)¹ in allowing the carryover of SGIP funds authorized in previous years but not spent. TURN contends that allowing collection of previously authorized SGIP funds in addition to the annual \$83 million amount “appears to violate the plain language of SB 412.” (TURN App. Rehg, at p 3.) TURN asserts that the statute limits collections to “not more than the amount authorized for the self-generation incentive program” in 2008. In addition, TURN alleges that the Decision violates the legislative intent to limit new SGIP rate collections to \$83 million per year.

The responses to TURN’s application for rehearing point out that that TURN does not accurately describe the statutory language. Responding parties assert that both the plain language of the statute and the legislative history support the Commission’s interpretation. They also note that it had been our long-standing policy to allow carry-overs of authorized but unspent SGIP funds, and that policy considerations support the carry-over of those funds.

A. Plain Language

In analyzing a statute one must an agency must first look to the language of the statute:

Our first task is to examine the language of the statute ... giving the words their usual, ordinary meaning. [Citations] If the language is clear and unambiguous, we follow the plain meaning of the measure. [] “[T]he ‘plain meaning’ rule does not prohibit a court from determining whether the literal meaning of a measure comports with its purpose or whether such a construction of one provision is consistent with other provisions of the statute.”

¹ All subsequent section references are to the Public Utilities Code.

(*People v. Canty* (2004) 32 Cal.4th 1266, 1276 (citations omitted).) Thus the initial task in interpreting a statute is to “examine the words at issue to determine whether their meaning is ambiguous.” (*Sand v. Superior Court* (1983) 34 Cal.3d 567, 570 (citations omitted).) If the meaning is clear and unambiguous there is no need to review the intent of the Legislature. (*Lundgren v. Deukmejian* (1988) 45 Cal.3d 727, 735.)

In its entirety section 379.6 (a)(1) reads:

The commission, in consultation with the Energy Commission, may authorize the annual collection of not more than the amount authorized for the self-generation incentive program in the 2008 calendar year, through December 31, 2011. The commission shall require the administration of its program for distributed energy resources originally established pursuant to Chapter 329 of the Statutes of 2000, until January 1, 2016. On January 1, 2016, the commission shall provide repayment of all unallocated funds collected pursuant to this section to reduce ratepayer costs.

TURN maintains the limitation on the new amounts that can be authorized for collection means that the Commission was prohibited from allowing carryovers of SGIP amounts previously authorized to 2010 and 2011. When TURN describes this provision in its argument, it maintains that the statute “limits ‘the annual collection’” of the ratepayer funds for the SGIP. (TURN App. Rehg., at p. 4.) Actually, the statute does not state that future annual *collections* are limited to \$83 million, but rather that new *authorizations* are limited. This distinction is important because the plain language of statute does not limit the collection of amounts that were previously authorized.

Pursuant to the plain language of the statute, the amount the Commission can authorize for collection for 2010 and 2011 is limited to the amount authorized in 2008, which was \$83 million. As the Commission and responding parties note, there is no limitation on the amount of previously authorized amounts that can be carried over.

As the Commission explained in the Decision:

The statute speaks to how much the Commission can authorize for collection in 2010 and 2011, but it does not speak to previously authorized amounts. Uncollected carryover funding was previously authorized by the

Commission and the utilities do not need authorization to collect these funds...

(D.09-12-047, at p. 17.)

For these reasons, TURN's argument that the plain language of SB 412 prohibits carryovers of SGIP funds lacks merit.

B. Legislative Intent

TURN next argues that "even if one believes there is an ambiguity in the statute" the legislative history shows that Legislature intended to prohibit carryover funding. (App. Rhg., at p. 5.) First, as discussed, because the plain language simply does not contain any restriction on carryover funding, pursuant to established law on statutory interpretation there is no need to review the legislative history. In any event, review of the legislative history, and other evidence of legislative intent, does not support TURN's view that the Legislature intended to prohibit carryover funding of the SGIP.

In support of its legislative intent argument, TURN cites a number of passages from Senate and Assembly Committee analyses. None of the documents TURN cites demonstrate a legislative intent to restrict carryover funding, however. One Senate Committee analysis states that SB 412 "does not increase funding" from \$83 million annually. (April 21, 2009, SB 412 Senate Committee Analysis.) This is entirely consistent with our interpretation of the statute. We have only allowed \$83 million annually for SGIP in 2010 and 2011 with the unspent portion from earlier years' budgets carried over. Similarly, other reports TURN cites referring to the \$83 million annual budget for SGIP do not indicate that carryover funding is prohibited. Although TURN argues that there was a legislative intent to limit SGIP funding, the Commission does not dispute that intent. Under the Commission's interpretation new authorization for SGIP funding is limited. However, TURN does not show any specific intent to restrict previously authorized funding.

In interpreting section 379.6(a)(1), it is particularly significant that we had a preexisting practice of allowing such carryovers. (See D.08-01-029, D.08-04-049, and D.09-03-013.) As we explained in the Decision, before D.09-12-047 the utilities were

already fully authorized to collect the previously authorized amounts without any additional action from the Commission. (D.09-12-047, at pp. 6-7.) These factors also militate against TURN's interpretation of the statute. TURN is suggesting that a previously authorized action and practice was overturned by the Legislature, which would give the statute retroactive effect. Generally, it is disfavored to interpret a statute or regulation as having retroactive impact, unless the meaning is clear. "The rule to be applied is the same with respect to all statutes, and none of them is retroactive unless the Legislature has expressly so declared." (*Di Genova v. State Board of Education* (1962) 57 Cal.2d 167, 173.) Here, there is no indication in the statute, much less any express language, that shows a legislative intent to undo any previous Commission authorization.

III. CONCLUSION

TURN has failed to demonstrate that our interpretation of section 379.6(a)(1) conflicts with either the statute's plain language or the statutory intent. Therefore, the application for rehearing should be denied.

THEREFORE, IT IS ORDERED that:

1. Rehearing of D.09-12-047 is hereby denied.
2. Rulemaking 08-03-008 remains open.

This order is effective today.

Dated June 3, 2010, at San Francisco, California.

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
TIMOTHY ALAN SIMON
NANCY E. RYAN
Commissioners