

Decision 07-06-014 June 7, 2007

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

Order Instituting Rulemaking Regarding Policies, Procedures and Rules for California Solar Initiative, the Self-Generation Incentive Program and Other Distributed Generation Issues.

Rulemaking 06-03-004  
(Filed March 2, 2006)

**OPINION MODIFYING DECISION 06-12-033  
REGARDING TIME VARIANT PRICING REQUIREMENTS**

**1. Summary**

This decision grants a petition for modification filed by PV Now, the California Solar Energy Industries Association, and the Vote Solar Initiative (collectively, the "Petitioners") and stays implementation of the California Solar Initiative (CSI) time variant pricing requirement in Pub. Util. Code § 2851 (a)(4)<sup>1</sup> until such time as the Commission develops time-of-use tariffs that meet all of the criteria in that section.

**2. Background**

In Decision (D.) 06-01-024, the Commission and the California Energy Commission (CEC) collaborated to establish the California Solar Initiative to fund rebates for installation of qualifying solar energy systems for customers of Pacific Gas and Electric Company (PG&E), Southern California Edison Company

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<sup>1</sup> All references are to the Public Utilities Code unless otherwise noted.

(SCE), and San Diego Gas and Electric Company (SDG&E).<sup>2</sup> In subsequent orders, the Commission adopted detailed program requirements. (See, e.g., D.06-07-028, D.06-08-028, D.06-12-033, D.07-01-018, and D.07-05-007.) The CSI program was codified when the Governor signed Senate Bill (SB) 1 in August 2006.<sup>3</sup> SB 1 set forth additional CSI program requirements, including Pub. Util. Code § 2851(a)(4) which states:

Notwithstanding subdivision (g) of Section 2827,<sup>4</sup> the commission shall require time-variant pricing for all ratepayers with a solar energy system. The commission shall develop a time-variant tariff that creates the maximum incentive for ratepayers to install solar energy systems so that the system's peak electricity production coincides with California's peak electricity demands and that assures that ratepayers receive due value for their contribution to the purchase of solar energy systems and customers with solar energy systems continue to have an incentive to use electricity efficiently. In developing the time-variant tariff, the commission may exclude customers participating in the tariff from the rate cap for residential customers for existing baseline quantities or usage by those customers of up to 130 percent of existing baseline quantities, as required by Section 80110 of the Water Code. Nothing in this paragraph authorizes the commission to require time-variant pricing for ratepayers without a solar energy system.

In D.06-12-033, the Commission concluded that, based on the language of SB 1, customers who applied for solar incentives beginning January 1, 2007

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<sup>2</sup> The Commission portion of CSI targets solar facilities on existing homes and new and existing businesses. The CEC portion of CSI targets solar installations in the new home construction market.

<sup>3</sup> Chapter 132, Statutes of 2006.

<sup>4</sup> Section 2827(g) contains specifications for net energy metering contracts or tariffs, with an exception for time-variant pricing tariffs adopted pursuant to § 2851(a)(4).

would be required to be served under existing time variant, or “time-of-use” (TOU) tariffs in order to receive their solar incentive. In reaching this conclusion, the Commission considered requests to delay implementation of SB 1’s time variant pricing requirement until a review of TOU tariffs to ensure they met all the criteria described in § 2851(a)(4). The Commission concluded that customers who received CSI incentives were required to take service on TOU tariffs effective January 1, 2007, and that future review and modification of TOU tariffs would occur in each utility’s next general rate case or other appropriate proceeding.

### **3. Petition for Modification**

On March 5, 2007, Petitioners jointly submitted a petition requesting the Commission modify D.06-12-033 and temporarily stay the time variant pricing requirement of § 2851(a)(4) until the Commission developed a time-variant tariff that met the full requirements of that section.

As Petitioners point out, TOU rates had been optional for CSI customers prior to January 1, 2007. Petitioners contend that the Commission’s decision to use existing TOU tariffs to implement the time variant pricing requirement of SB 1 has had negative and unanticipated impacts on many purchasers of solar energy systems, particularly in the SCE territory, because existing TOU tariffs are inconsistent with SB 1’s mandate for the Commission to develop a TOU tariff that creates the maximum incentive for ratepayers to install solar energy systems. They allege the existing TOU tariffs discourage significant numbers of potential customers from participating in CSI.

Specifically, they claim that SCE’s Schedule TOU D-2 is detrimental to SCE customers residing in low desert areas such as Palm Springs and the Coachella Valley, particularly for residential customers with relatively high electric usage

during peak periods. Petitioners submit a declaration from Gordon Bloom, an executive with a solar installer in Southern California, containing an analysis that approximately half of that installer's customers in 2006 would have been negatively impacted by the TOU rate requirement if it had been in effect last year. (See Petition for Modification of D.06-12-033, Declaration of Gordon Bloom, 3/5/07.) Further, Petitioners allege a lack of sufficient unshaded roof space and funding limitations make many customers unable to fully offset their entire peak electrical usage, particularly those in low desert climates. Even with substantial solar production in the summer peak period, a lack of rate tiers or baseline allocations in some TOU tariffs means that all usage during the summer peak period is at the highest rate. (Petition, 3/5/07, p. 6.) Petitioners provide a second declaration from a solar installer who claims that placing a typical Southern California coastal customer on a TOU tariff increases the payback period for a solar investment by 50%, thereby significantly reducing the number of people interested in purchasing solar in the Long Beach area. (Petition for Modification, Declaration of Patrick Redgate, 3/5/07.)

According to Petitioners, customers are forgoing the purchase of a solar energy system due to negative financial impacts from TOU rate structures. They claim this is directly at odds with the goal of SB 1 to create the maximum incentive for customers to install solar. Petitioners contend SB 1 requires the Commission to develop a TOU rate that considers impacts on solar customers, not to place customers on the existing TOU rate. Further, they maintain the Commission does not need to fulfill SB 1's time variant pricing requirement until a TOU tariff meeting the criteria of § 2851(a)(4) is developed. Petitioners request the Commission modify its prior order to make service under existing TOU tariffs optional until TOU rates can be developed that comport with the

requirements of § 2851(a)(4). Petitioners suggest that review and development of appropriate TOU tariffs should occur within the existing general rate case process because the topic is complex, will involve many parties, and it would be a burden on parties to engage in rate design in another proceeding.

Petitioners ask the Commission to act quickly to provide relief to the solar installers and customers subjected to TOU rates, because they claim the rates are a disincentive for customers to install solar energy systems, particularly in the hot climates of the state where solar is most needed.

Responses to the petition for modification were filed by Americans for Solar Power (ASPV), SCE, and SDG&E.<sup>5</sup> ASPV supports the request that the Commission make TOU rates optional rather than mandatory. ASPV cites analysis supporting Petitioners' claims that existing TOU rates discourage participation in CSI not only in SCE's territory, but also for customers of PG&E and SDG&E. (See Response of ASPV, Affidavit of Angiolo Laviziano, 4/18/07.) ASPV's affiant Laviziano states his analysis indicates customers who consume more than 35% to 50% of their total usage during peak periods will have a higher utility bill with solar under the existing TOU tariff than with solar under the flat-rated tariff. (*Id.*, pp. 3-4.) ASPV contends it is reasonable to interpret § 2851(a)(4) to not require time variant pricing until the Commission has developed TOU tariffs that meet the criteria of that section. ASPV suggests a single proceeding for TOU tariff development, rather than piecemeal development for each utility in the GRC context.

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<sup>5</sup> Petitioners and SCE requested, and were granted, a two-week extension to file responses to the petition in order to discuss alternative solutions.

SDG&E supports the petition and proposes that customers receiving CSI incentives should have the option of taking service on SDG&E's residential TOU tariff until rates are approved in SDG&E's GRC 2 rate design filing and Advanced Metering Infrastructure meters are available, both of which are expected in 2008.

SCE responds that the petition's analysis is flawed. SCE maintains the Petitioner's claims are based on two errors, namely a calculation error in SCE's TOU rate that has been subsequently corrected and a faulty assumption that residential customers must use Schedule TOU-D-2. SCE states residential CSI customers have the option of Schedule TOU D-1 or TOU-D-2. SCE provides its own analysis claiming to show that by using corrected TOU rates and choosing from these two TOU Schedules, the majority of its customers will see bill savings from installed solar energy systems, even on a TOU rate. SCE admits that some customers, depending on usage and installation characteristics, may see less bill savings on a TOU rate than on a flat-rated tariff. According to SCE's analysis, rate impacts appear to vary the most based on usage and installation for the 3% of SCE's residential customers in desert regions. (See Declaration of Robert Thomas, 4/18/07, p. 5.) SCE contends that no single rate exists that will provide the maximum benefit or the lowest possible bill to all customers because of myriad installation characteristics and customer usage patterns.

#### **4. Discussion**

We find that Petitioners provide new information the Commission was not aware of last December when it implemented the TOU requirement effective January 1, 2007. Petitioners have demonstrated the potential for adverse rate impacts for some portion of customers who install solar energy systems. The extent of the adverse impact depends on specific customer circumstances,

including the customer's load profile and whether the customer can size and install a solar energy system to meet or exceed his/her own peak usage.

Although the exact severity of the problem is unclear and depends on customer usage patterns, system sizing, and geographic location, we find the information in the petition and responses provides sufficient reason for the Commission to stay implementation of the time-variant pricing requirement of § 2851 until it has reviewed the existing time of use tariffs to ensure they meet the criteria set forth in the second part of § 2851(a)(4).

At the time the Commission established the TOU tariff requirement last December, it was not aware that existing TOU tariffs, particularly in the SCE territory, could result in significantly increased electricity bills for some customers installing solar. From the information in the petition, some customers could face electricity bill increases when moving to a TOU tariff if they cannot size their systems large enough to eliminate their total peak usage. Some customers, particularly those with high peak usage in inland geographic locations, may face financial constraints or facility limitations, such as shading or other roof constraints, which limit the size of the system they can install. Other features of SCE's existing TOU tariff might exacerbate this problem.

Therefore, this decision modifies D.06-12-033 to stay implementation of SB 1's time variant pricing requirement and allow customers who apply for rebates under CSI, and who are not otherwise required to take TOU service, the option of taking electricity service on a TOU tariff until such time as the Commission develops time of use tariffs that meet the criteria in § 2851(a)(4). The option of choosing TOU service only applies to those CSI applicants not otherwise required to take service on TOU tariffs.

In either this rulemaking, each utility's next general rate case, or other appropriate proceeding, the Commission will develop TOU tariffs for PG&E, SCE and SDG&E that consider all the criteria in § 2851(a)(4). Specifically, the criteria require the Commission to develop a TOU tariff that a) provides the maximum incentive for ratepayers to install solar energy systems with production that coincides with California's peak electricity demands, b) assures ratepayers receive due value for their contribution to the purchase of solar energy systems and c) provides solar customers an incentive to use electricity efficiently. In granting the requested relief, the Commission does not agree with Petitioners' narrow interpretation of SB 1 that a TOU tariff should merely provide the maximum incentive to install solar energy systems.

Customers who have already applied for CSI rebates beginning January 1, 2007, but before the effective date of this order, shall be given the option of remaining on TOU tariffs or returning to their prior electricity tariff or an otherwise applicable flat rate tariff for which they qualify. If any such customers have already switched to service on a TOU tariff as a requirement of receiving their CSI rebate, they may be eligible to receive a credit for any difference between their bill under the TOU tariff and their bill under their prior tariff schedule or other qualifying flat rate tariff. Within 10 days of this order, the CSI program administrators<sup>6</sup> and SDG&E should identify any customers who applied for solar incentives after January 1, 2007, and were forced to take service on a TOU tariff. Within 20 days of this order, PG&E, SCE, and SDG&E should notify these customers they have the option of returning to their former

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<sup>6</sup> The CSI program administrators are PG&E, SCE and the California Center for Sustainable Energy (formerly the San Diego Regional Energy Office).

electricity tariff or a flat rate tariff for which they qualify. Customers will have 60 days from the date of notification to inform the utility whether they choose to return to their former tariff or otherwise applicable flat rate tariff. The utility should credit any such customers within 60 days of receipt of notice from the customer for the difference between their bills on TOU rates and their bills on their former rate schedules or otherwise applicable flat rate.<sup>7</sup> Within 150 days of this order, PG&E, SCE and SDG&E shall each send a letter to the Commission's Executive Director demonstrating that all affected customers have been notified and credited, as applicable.

After the Commission develops TOU tariffs that meet the requirements of § 2851(a)(4), we anticipate requiring them for all customers who receive solar incentives after the effective date of the new TOU tariffs. Requiring that customers who receive CSI incentives prior to the tariffs' effective date must be placed on the newly developed TOU tariff could create customer uncertainty about future tariff requirements and inhibit solar installations between the effective date of this order and the development of TOU tariffs that meet the requirements of § 2851(a)(4). However, customers who receive CSI incentives prior to the new TOU tariffs' effective date will have the option to sign up for the new TOU tariffs.

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<sup>7</sup> Many customers on net metering and TOU tariffs typically only pay the non-energy charges (e.g., customer charges, meter charges, demand charges, minimum monthly charges, etc.) until their annual true-up for net metering. Therefore, any credits for these customers provided through this decision should be based on differences between what a customer has actually paid on the mandated TOU rate and the customer's otherwise applicable flat rate tariff. At the time of the later annual true-up for net metering, energy charges would simply reflect the customer's selected flat rate schedule and no further credits are required.

The Commission notes that pending legislation, namely Assembly Bill (AB) 1714 in the current legislative session, would amend § 2851 to expressly 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. This decision is consistent with that pending legislation.

## **5. Comments on Proposed Decision**

The proposed decision of assigned Commissioner Peevey was mailed out for comments in accordance with Rule 14.6(c)(9) of the Commission's Rules of Practice and Procedure. The standard 30-day public review and comment period was shortened to allow the Commission to act expeditiously on the petition, avoid disruption of the solar market, and remedy or prevent any adverse customer or installer impacts from the existing TOU requirement. We note that parties had an extended period to respond to the petition. Accordingly, the public interest in shortening the public review and comment period outweighs the public interest in a full 30-day comment period.

Comments were filed by California Center for Sustainable Energy (formerly San Diego Regional Energy Office), Californians for Renewable Energy, Inc. (CARE), Consumer Federation of California (CFC), PG&E, and the Petitioners. Reply comments were filed by CARE, the Petitioners, SCE and SDG&E. Most parties' comments support the order and ask for minor clarifications to it. Minor changes in response to comments are incorporated into the order.

CFC comments that the Commission should stay implementation of all parts of D.06-12-033 and D.06-08-028, not just the TOU rate requirements, because CFC claims the entire CSI program implemented by the Commission in

those two orders is inconsistent with SB 1. CFC's arguments repeat claims it has made in applications for rehearing of D.06-12-033 and D.06-08-028 and we will not address them in this order. PG&E comments that customers on TOU rates who are also on net metering tariffs typically only pay the non-energy charges (e.g., customer charges, meter charges, demand charges, minimum monthly charges, etc.) until the annual net metering true-up. Therefore, PG&E asks for clarification that credits provided through this decision should be based on what a customer has actually paid, i.e. differences between non-energy charges on the mandated TOU rate and the customer's otherwise applicable flat rate tariff. At the time of the later annual true-up, energy charges would simply reflect the customer's selected rate schedule and no further credits would be required. PG&E's explanation is reasonable and we have noted it in the order.

## **6. Assignment of Proceeding**

Commissioner Michael R. Peevey is the assigned Commissioner and Dorothy J. Duda is the assigned Administrative Law Judge in this portion of the proceeding.

## **Findings of Fact**

1. Section 2851(a)(4) requires time variant pricing as part of the CSI program.
2. D.06-12-033 required all customers who apply for and receive CSI incentives after January 1, 2007 to take service on TOU tariffs.
3. Section 2851(a)(4) requires the Commission to develop TOU tariffs that
  - a) provide the maximum incentive for ratepayers to install solar energy systems with production that coincides with California's peak electricity demands,
  - b) assure ratepayers receive due value for their contribution to the purchase of solar energy systems and
  - c) provide solar customers an incentive to use electricity efficiently.

**Conclusions of Law**

1. Existing TOU tariffs may not meet the criteria in § 2851(a)(4).
2. Under existing TOU tariffs, some customers required to take service on a TOU rate schedule could see significant bill increases with a solar installation.
3. D.06-12-033 should be modified to clarify that TOU tariffs are optional for CSI applicants not otherwise required to take service on TOU rates until the Commission develops and makes effective TOU tariffs that meet the requirements of § 2851(a)(4), either in this proceeding, each utility's next general rate case, or other appropriate proceeding.
4. The Commission should not require that customers who receive solar incentives before the effective date of the new TOU tariffs be placed on the new TOU rates.
5. The CSI program administrators and SDG&E should identify any customers who may have been required to take service on a TOU tariff as a condition of receiving a CSI incentive, and give those customers the option of returning to their former tariff or an otherwise applicable flat rate tariff for which they qualify.
6. PG&E, SCE and SDG&E should credit any customer who chooses to return to their former tariff or an applicable flat rate tariff with the difference, if any, between their bill on a TOU rate and their bill on their former rate schedule or other qualifying flat rate tariff.
7. Within 150 days of this order, SCE, PG&E and SDG&E should each send a letter to the Commission's Executive Director demonstrating that all affected customers have been notified and credited.

**O R D E R**

**IT IS ORDERED** that:

1. The petition for modification filed by PV Now, the California Solar Energy Industries Association, and the Vote Solar Initiative on March 5, 2007 is granted as set forth below.

2. Decision 06-12-033 is modified as set forth in Appendix A of this order.

3. Within 10 days of this order, the California Center for Sustainable Energy, Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), and San Diego Gas & Electric Company (SDG&E) shall identify any customers who applied for solar incentives after January 1, 2007 and were forced to take service on a time-of-use (TOU) tariff and give them the option to return to their former rate schedule or an otherwise applicable flat rate tariff for which they qualify.

4. Within 20 days of this order, PG&E, SCE, and SDG&E should notify these customers they have the option of returning to their former electricity tariff or a flat rate tariff for which they qualify. Customers shall be given 60 days from the date of notice to inform their utility they wish to return to their former rate schedule or move to another qualifying flat rate tariff. If customers choose to change tariffs as described herein, PG&E, SCE, and SDG&E shall credit any such customers within 60 days of receipt of notice from the customer for the difference, if any, between their bills on TOU rates and their bills on their former rate schedules or otherwise applicable flat rate tariff.

5. Within 150 days of this order, PG&E, SCE, and SDG&E shall each send a letter to the Commission's Executive Director demonstrating that all affected customers have been notified and credited, as applicable.

This order is effective today.

Dated June 7, 2007, at San Francisco, California.

MICHAEL R. PEEVEY  
President  
DIAN M. GRUENEICH  
JOHN A. BOHN  
RACHELLE B. CHONG  
TIMOTHY ALAN SIMON  
Commissioners

**APPENDIX A**  
**Modifications to D.06-12-033**

Decision 06-12-033 should be modified as follows:

The first sentence of the first paragraph on p. 19 should read:

We find the approach in the ALJ ruling, which requires new CSI applicants as of January 1, 2007 to take service on applicable existing TOU tariffs, is reasonable and comports with the legislation, except that we modify the approach to allow customers the option of taking service on existing TOU tariffs or an otherwise applicable flat rate tariff for which they qualify until the Commission can develop a time variant tariff that meets all of the requirements of SB 1.

Replace Finding of Fact 9 with the following:

SB 1 mandates time variant pricing for all ratepayers with a solar energy system and mandates the Commission develop a time variant tariff with specific requirements.

Replace Conclusion of Law 12 with the following:

Applicants for solar incentives as of January 1, 2007 shall be given the option to take service under TOU tariffs or an otherwise applicable flat rate tariff for which they qualify until such time as the Commission creates a time variant tariff that meets the requirements of Pub. Util. Code § 2851(a)(4).

**(END OF APPENDIX A)**