

Decision 07-06-015

June 7, 2007

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

ORDER DENYING REHEARING OF DECISION 06-12-033

This decision addresses the application for rehearing of Decision (D.) 06-12-033, filed by Consumer Federation of California (“CFC”). We have reviewed each and every allegation set forth in the application and do not find grounds for granting rehearing. We modify the Decision to clarify references to Public Resources Code section 25780(b) and to the CSI review process and to correct typographical errors. We deny the application for rehearing of D.06-12-033, as modified.

I. FACTS

On December 14, 2006, the Commission issued Decision (D.) 06-12-033 (“Decision”) in Rulemaking (R.) 06-03-004, regarding the Commission’s California Solar Initiative (“CSI”). The Decision modifies D.06-01-024 and D.06-08-028 to conform CSI to the requirements of Senate Bill 1 (“SB 1”) (Stats. 2006, ch. 132), signed into law by the Governor on August 21, 2006, and effective January 1, 2007. SB 1 directs the Commission and the California Energy Commission (CEC) to implement CSI with certain requirements and budget limits.

Specifically, the Decision modifies earlier CSI decisions to clarify the maximum project size that can receive incentives, to phase in performance-based incentives more quickly, and to establish time-of-use tariff and interim energy efficiency requirements. In addition, the Commission modified the earlier CSI decisions to clarify that it will no longer collect revenues from natural gas ratepayers to fund CSI and to modify CSI budget allocations and megawatt goals, consistent with SB 1. The Decision also specifies that solar technologies other than photovoltaic may receive incentives through CSI, but only if they displace electric usage.

Consumer Federation of California (“CFC”) timely filed an application for rehearing on several grounds. CFC claims (1) the Commission has acted contrary to law regarding financing incentives, energy efficiency improvements and eligibility criteria; (2) in setting the CSI budget, the Commission failed to take into account the budgets of other programs that share policy goals with CSI; (3) it is not the Commission’s responsibility to create a market for solar energy in California, and (4) the “launch date” for CSI is January 2008, rather than 2007. CFC also seeks to incorporate by reference its previous application for rehearing in this proceeding, noting specifically that it includes arguments that (1) the Commission does not have authority to implement CSI; (2) the CEC has this authority; (3) the Commission has not met legal requirements for CSI regarding cost-effectiveness and ratepayer benefit.

II. DISCUSSION

A. Financing Incentives

CFC argues that the Commission has “acted contrary to law” in the area of financing incentives. CFC asserts that Public Utilities Code section 2851(a)(2)(C) requires the Commission to adopt financing incentives, but that the Commission has “postponed consideration” of such incentives so that “no

financing will be available (if at all) until late this year.” (Rehearing Application, p. 3.) CFC has mischaracterized the statute.

Public Utilities Code section 2851(a)(2) directs us to adopt a performance-based incentive program with certain features to be in place by January 1, 2008 and provides that in doing so, the [C]ommission may: “Develop financing options that help offset the installation costs of the solar energy system . . .” (Pub. Util. Code § 2851, subds. (a)(2) & (a)(2)(C) (Emphasis added).) CFC’s claim that we are required to adopt financing incentives is inconsistent with the permissive “may” in the statute. Further, CFC implies that if financing were not available until “late this year,” that would be “contrary to law.” (Rehearing Application, p. 3.) However, the date provided in the statute for adopting a performance-based incentive program is January 1, 2008. (Pub. Util. Code § 2851, subd. (a)(2).) For these reasons, there is no merit in CFC’s claim that we have acted contrary to law with regard to financing options.

B. Energy Efficiency Improvements

CFC asserts that the Commission has acted contrary to law by requiring only an audit as a condition of providing incentives for eligible solar energy systems because Public Utilities Code section 2851(a)(3) requires customers to install reasonable and cost-effective energy efficiency improvements as a condition of providing incentives. (Rehearing Application, p. 3.) CFC’s claim of legal error is incorrect. Section 2851(a)(3) specifies an effective date of January 1, 2008 for the requirement. Therefore, there is no requirement for installed improvements as a condition before that date and CFC’s argument has no merit.

CFC also argues that the Commission “ignored its own staff’s advice” in this regard because, in a January 2006 decision, staff recommended making energy efficiency improvements a condition of solar incentives. (Rehearing Application, p. 4, citing D.06-01-024, Appendix A: Revised Joint Staff Proposal to

Implement a California Solar Initiative.) The argument is without merit. In D.06-12-033, we discussed interim audit requirements for the period before January 2008. In doing so, the Decision notes that an April 2006 Staff Proposal,

recommended maintaining the audit requirement for existing structures, with the clarification that an audit should both establish an efficiency baseline and educate the applicant regarding the economic benefits of efficiency improvements. . . .

(D.06-12-033, pp. 14 – 15.) CFC has not identified an error in our decision to adopt interim audit requirements. Further, CFC’s claim that we “ignored” the staff’s advice is without merit.

C. Eligibility Criteria

CFC claims the decision to apply our own eligibility criteria until the CEC’s criteria are in place is contrary to law and unsupported by a reasoned analysis or opinion. (Rehearing Application, p. 5.) The Public Utilities Code directs us in this regard. The pertinent part of the statute states as follows:

The [C]ommission shall determine the eligibility of a solar energy system, as defined in Section 25781 of the Public Resources Code, to receive monetary incentives until the time the [CEC] establishes eligibility criteria pursuant to Section 25782.

(Pub. Util. Code § 2851, subd. (a)(1).)¹

We held correctly that the above statutory language requires us to determine which solar energy systems are eligible for incentives until the CEC criteria are in place. (D.06-12-033, pp. 4 – 7.) Section 25782(a) requires the CEC

¹ CFC mistakenly cites Public Resources Code §2851(a)(1), as the applicable code on this topic. The correct citation is: Public Utilities Code § 2851(a)(1). (See Rehearing Application, p. 6; D.06-12-033, pp. 4 - 7.)

to establish eligibility criteria by January 1, 2008. Therefore, the phrase “until the time the [CEC] establishes eligibility criteria,” could only refer to the time period preceding 2008.

Further, CFC’s claim that we did not provide “a reasoned analysis or opinion” regarding our interpretation of Public Utilities Code section 2851(a)(1) is incorrect. We addressed CFC’s arguments at some length. (D.06-12-033, p. 6.) CFC’s claims that we interpreted Public Utilities Code section 2851(a)(1) in an unlawful manner and that the Decision lacks a reasoned analysis are without merit.

CFC references Public Resources Code section 25782 in support of its claim that the Commission’s eligibility criteria are contrary to express directives of the Legislature. (Rehearing Application, pp. 4 – 6.) However, Public Resources Code section 25782 directs the CEC, not the Commission, to establish these eligibility criteria by January 1, 2008. The Legislature did not direct the Commission to incorporate the listed features during the interim period before the CEC’s eligibility criteria are complete. CFC’s claim is without merit.

In another argument that appears to address eligibility criteria, CFC claims that the program authorized by D.06-12-033 “does not follow the guidelines established by the [L]egislature.” (Rehearing Application, p. 6.) It is not possible to determine what legal error CFC intends to establish with this argument. CFC has not provided sufficient information to permit a response and the argument is, therefore, without merit, and hereby rejected. (See Pub. Util. Code, §1732, requiring a rehearing application to specify “the ground or grounds on which the applicant considers the decision or order to be unlawful.”)

1. Statutory Construction

CFC states that the Commission’s decision to use its own eligibility criteria until the CEC’s criteria are in place is not supported by an analysis of statutory construction rules. (Rehearing Application, p. 5.) We have reviewed each and every argument CFC makes to support its claim that statutory

construction or legislative history reveals an error in D.06-12-033 with regard to eligibility criteria.

As discussed above, the plain meaning of Public Utilities Code section 2851(a)(1) is clear with regard to the Commission's responsibility until the time the CEC eligibility criteria are in place. When the words of a statute are not ambiguous, based on the usual and ordinary meaning of the words, the statute's plain meaning controls and that plain language conveys the legislative intent. (*Thomas M. White v. Ultramar, Inc.* (1999) 21 Cal.4th 563, 572.) Because the statute's language is not ambiguous, legislative history plays no part in its interpretation.

However, even if the language of section 2851(a)(1) were ambiguous, and required statutory construction, CFC does not offer any reference to the legislative history of SB 1 or to any legislative history that supports its claims that the Commission may only administer SGIP in 2007 or that CSI funds are to be "used only for the initiative designed by the CEC."

CFC also claims that legislative intent in "similar legislation" shows that sums for "solar subsidies" are to be used for "cost-effective investments." (Rehearing Application, p. 6.) D.07-03-018 addressed and rejected the cost-effectiveness arguments made in CFC's previous application for rehearing. (*Order Denying Rehearing of Decision 06-08-028* [D.07-03-018, at pp. 4-12 (slip op.)] (2006) ____ Cal.P.U.C.3d ____.) CFC's current claim of legislative intent regarding cost-effective investments in renewable programs is based exclusively on a vague reference to the Legislature's intent "in similar legislation." CFC does not indicate which legislation it considers to be "similar," or provide evidence of legislative intent from any legislation.

CFC's third "statutory construction" argument states that the Commission's interpretation of section 2851(a)(1) would lead to an "absurd result." (Rehearing Application, p. 6.) Merely claiming that there will be "an absurd result," does not reveal a legal error in the Commission's interpretation of

section 2851(a)(1). (See Pub. Util. Code, §1732.) Rather, this argument seems to summarize CFC's objections to the concept of eligibility determinations in 2007. CFC's "statutory construction" arguments do not identify an error with regard to the interpretation of Public Utilities Code section 2851(a)(1) and they are without merit.

2. Challenge to Handbook Process

CFC asserts that, even if our interpretation of Public Utilities Code section 2851(a)(1) were correct, through the handbook process we have unlawfully allowed participants and Commission staff to determine eligibility criteria that are contrary to express directives of the Legislature. (Rehearing Application, p. 6, citing Pub. Resources Code § 25782.) CFC has not identified a legal basis for its claim that the handbook process is unlawful. The argument is vague, offered without specific legal grounds and is, therefore, without merit. (See Pub. Util. Code, §1732.) Vague assertions in rehearing applications will be given little attention. (See *Order Instituting Rulemaking to Establish Policies and Rules to Ensure Reliable, Long-Term Supplies of Natural Gas to California* [D.06-08-032, p. 10, fn. 6 (slip op.)] (2006) ___ Cal.P.U.C.3d ____, 2006 Cal.LEXIS 351, *19.)

Further, CFC's suggestion that we have not exercised sufficient control of the process of this rulemaking proceeding is incorrect. In developing the CSI program, we have issued formal decisions and have taken comment on specific topics and on proposed decisions.

The CSI Program Handbook is being drafted by participants, to reflect the terms of the Commission-adopted CSI program, and is subject to a Commission review and approval process, which includes comments by the

parties.² (D.06-12-033, p. 41, Ordering Paragraph 5.) We have exercised control of the design of the CSI program and have required that the Handbook must reflect the provisions of the applicable decisions. CFC's challenge to the CSI handbook process is without merit.

D. Arguments Related to Public Utilities Code section 2851(e)(1)

CFC argues that section 2851(e)(1) "requires the Commission to take into account prior³ rate increases" when it sets the CSI budget and CFC specifically identifies ". . . \$6 billion imposed in 2006 to help reduce California's dependence on carbon fuels." (Rehearing Application, p. 7.) The \$6 billion in CFC's argument appears to be CFC's calculation of the combined budgets for energy efficiency and advanced metering programs. (Rehearing Application, pp. 2, 7 - 11.) Related to this argument, CFC cites the following statutory language regarding CSI:

The total cost over the duration of these programs shall not exceed two billion one hundred sixty-six million eight hundred thousand dollars (\$2,166,800,000) and includes moneys collected directly into a tracking account for support of the California Solar Initiative and moneys collected into other accounts that are used to further the goals of the California Solar Initiative.

(Pub. Utilities Code, §2851, subd. (e)(1).)

² The service list for the proceeding includes an extensive list of participants, including consumer representatives, governmental entities and Commission staff members, in addition to representatives of the solar industry.

³ CFC does not explain its use of the term "prior" to identify funds that it argues must be taken into account. CFC provides no authority for its use of the phrase, "prior rate increases." Similarly, CFC argues that the Legislature directed the Commission to take "previously authorized expenditures" into account. (Rehearing Application, p. 9.) Again, CFC provides no explanation or authority regarding this phrase.

CFC asserts that we interpreted Public Utilities Code section 2851(e)(1) erroneously because we did not “take into account” budgets for energy efficiency and advanced metering efforts in adopting the CSI budget. (Rehearing Application, pp. 7 – 11.) CFC claims these programs share certain broad policy goals with CSI.⁴ (Rehearing Application, pp. 7 – 11.) CFC has misunderstood section 2851(e)(1).

The language of the statute is much narrower than CFC’s interpretation, providing only that, in addition to a CSI tracking account, the CSI budget includes moneys “collected into other accounts that are used to further the goals of the [CSI].” The statute does not support CFC’s argument that the Commission must take other program budgets “into account.” Therefore, the argument is without merit.

CFC also disputes our holding that the goal of SB 1 is “to install solar energy systems.” (Rehearing Application, p. 7, citing D.06-12-033, p. 29.) CFC argues that “installation of solar energy systems at ratepayer expense is not a goal in and of itself,” and also, “[t]he [L]egislature did not enact SB 1 to subsidize the solar industry.” (Rehearing Application, pp. 7 - 8.) However, the Legislature specifically identified “to install solar energy systems,” and “to establish a self-sufficient solar industry,” in its statement of the state’s goal for CSI. The statute provides:

It is the goal of the state to install solar energy systems with a generation capacity equivalent of 3,000 megawatts, to establish a self-sufficient solar industry in which solar energy systems are a viable mainstream

⁴ In addition to reducing “California’s dependence on carbon fuels” (Rehearing Application, p. 7), CFC identifies such shared goals as “to lower peak loads, decrease greenhouse gases and develop supply-side resource options,” (Rehearing Application, p. 9) and also, “optimizing energy conservation and resource efficiency and reducing per capita electricity demand.” (Rehearing Application, p. 10.)

option for both homes and businesses in 10 years, and to place solar energy systems on 50 percent of new homes in 13 years.

(Pub. Resources Code, § 25780 subd. (a).) Based on this language, there is no merit in CFC's arguments that we committed error with regard to the goal of CSI.

Regarding ratepayer funding, the law provides that the financial components of the CSI shall include: (1) [p]rograms under the supervision of the [C]ommission funded by charges collected from customers" (Pub. Util. Code, §§ 2851, subd. (e) and 2851, subd. (e) (1).) If CFC intends to challenge the legality of ratepayer funding for CSI, the argument is without merit.

CFC argues that in the Decision we recognize a broader goal for CSI based on section 25780 (b). CFC cites the following passage from the Decision,

While SB 1 states that 'a solar initiative should be a cost-effective investment by ratepayers in peak electricity generation,' this statement is a program goal and is not a requirement that cost-effectiveness findings must precede incentives.

(Rehearing Application, p. 8, citing D.06-12-033, p. 7 and Pub. Resources Code, § 25780, subd. (b) .)⁵ CFC claims the above passage reveals an internal contradiction in the Decision; namely, that the Commission "recognizes" that "the goal of SB 1 is not solely 'to install solar energy systems.'" (Rehearing Application, p. 8.)

In making this argument, CFC both misunderstands the Commission holding and ignores the language of the applicable statutes, discussed above. The disputed passage from the Decision does not address the scope of the phrase "goals of the [CSI]" as it is used in Public Utilities Code section 2851(e)(1). Rather, the Decision addresses and correctly rejects CFC's claim that Public

⁵Although CFC cites to p. 6 of the Decision, the passage actually appears on p. 7.

Resources Code section 25780(b) requires the Commission to make a preliminary finding of cost-effectiveness before implementing CSI.⁶ (*Comments of Consumer Federation of California on Modifications to Decision 06-01-024 and Decision 06-08-028 in Response to Senate Bill 1* (September 25, 2006), p. 4.)

Public Resources Code section 25780(a) defines the State’s goal for CSI. The following section, 25780(b), states, as an anticipated benefit or outcome, that the CSI “should be a cost-effective investment by ratepayers in peak electricity generation . . .” This subsequent statement does not alter or expand the Legislature’s previous direct statement of the state’s goal. Public Utilities Code section 2851(e)(1) directs the Commission to include, as part of the CSI budget, moneys in other accounts that are used to further the goals of CSI. Both statutes are unambiguous, and, therefore, must be applied based on their plain meaning. (*White v. Ultramar, supra*, 21 Cal. 4th 563, 572.) CFC’s claim that Public Resources Code section 25780(b) also states “goals of the [CSI]” as the phrase is used in Public Utilities Code section 2851(e)(1) is without merit.

In order to avoid any possible confusion related to our phrase “a program goal,” in the passage quoted above, we will modify the Decision to use the phrase “an anticipated benefit.” We will also insert a clarifying footnote.

In addressing CFC’s argument about taking into account the budget for energy efficiency programs in setting the CSI budget, we explained in the Decision:

Nevertheless, the Commission’s periodic CSI review process can be used to ensure that moneys collected into other accounts that further the goals of CSI are taken into consideration as part of the CSI total budget of \$2.1 billion.

⁶ CFC does not challenge the Decision’s holding on this issue.

(Decision 06-12-033, p. 29.) Consequently, during the ten-year duration of the program, if accounts are identified that further the goals of the CSI, pursuant to section 2851(e)(1), they can be included in the budget through the periodic review process. CFC argues that, in the above passage, the Commission “impliedly recognizes the shallowness of its review when it states it may reach a different result in periodic reviews of the CSI.” (Rehearing Application, p. 7, f.note 3.) CFC misquotes the passage, which does not state that we “may reach a different result.” CFC’s argument is apparently based on the misquotation and this argument is without merit.

However, in order to tie the language of the Decision more closely to the statute, and avoid possible confusion, we will modify the language in the above quotation to replace the phrase “are taken into consideration” with the phrase “are included.” The passage quoted above will be modified to say:

Nevertheless, the Commission’s periodic CSI review process can be used to ensure that moneys collected into other accounts that further the goals of CSI are included as part of the CSI total budget of \$2.1 billion.

CFC argues further that SB 1 requires “that solar energy systems primarily offset part or all of the consumer’s own electricity demand. (Rehearing Application, p. 8, citing Pub. Resources Code § 25782(a)(2)) and that, “SB 1’s goals do not include natural gas displacement.” (Rehearing Application, p. 8, citing D.06-12-033, p. 24.) CFC does not state that there is an error in the Decision related to these assertions. It is not possible to respond substantively to these vague arguments and, as a basis for granting rehearing, they have no merit. (See Pub. Util. Code, §1732).

CFC also argues that the reporting requirement in Public Utilities Code section 2851(c)(3) provides evidence regarding legislative goals for SB 1. (Rehearing Application, p. 8, citing Pub. Util. Code § 2851(c) (3).) CFC’s suggestion that this requirement to submit an assessment of the program is actually

a requirement to take into account other program budgets in the calculation of the CSI budget is without merit.

We have considered each and every claim of error related to CFC's argument that we should have taken into account the budgets for energy efficiency and advanced metering programs when setting the CSI budget. CFC has not identified a legal error in D.06-12-033 with regard to these claims.

E. Commission Responsibility Regarding Solar Technologies

CFC challenges the Commission's statements about the development of a market for solar technologies, arguing that it is not the Commission's responsibility to create a market for solar energy in California. (Rehearing Application, p. 11.) This argument ignores the direct statement of the state's goal for CSI that includes, "to establish a self-sufficient solar industry in which solar energy systems are a viable mainstream option for both homes and businesses in 10 years" (Pub. Resources Code, § 25780. subd. (a).) The Legislature also gave the Commission responsibility for implementing CSI. (See Pub. Util. Code, § 2851.) CFC's claim that a market for solar energy is not the Commission's responsibility has no merit.

CFC also argues that there is nothing in the Commission's decisions in R.06-03-004 to show the Commission has considered "the effect that implementation will have on consumer interests." (Rehearing Application, p. 11, citing *Federal Power Com. v. Hope Natural Gas Co.* (1944) 320 U.S. 591.) However, we have been addressing cost-effectiveness and cost-benefit analyses in our distributed generation and other related proceedings, including solar. (D.07-03-018, pp. 10 - 12.) Therefore, CFC's argument that we have not considered the consumer interest is without merit.

F. Additional Arguments

1. Implementation Date

CFC argues that the “launch date” of CSI is January 2008, rather than 2007. In conjunction with this argument, CFC asserts, “the [L]egislature tried to slow the Commission’s forward momentum ordering certain conditions and features be added to the [CSI] before it is launched;” and also, “[t]he Commission overruled the [L]egislature and said it will begin implementation right away.” (Rehearing Application, p. 3.)

Statutory requirements regarding the implementation date of CSI are discussed in Section C., above. However, it should be noted here that CFC’s assertions that the Legislature tried to slow the Commission and that the Commission overruled the Legislature are made in isolation without any grounds or explanation. These statements are without merit.

2. Integration of Programs

CFC argues that the Commission has not made “any effort to integrate” CSI, smart meters and installation of energy efficiency measures to “maximize synergies among and between them.” (Rehearing Application, p. 3.) CFC does not provide specific grounds for this claim. Further, it does not cite authority regarding integration or “maximize[ing] synergies” among the three programs. CFC’s arguments about taking the budgets of energy efficiency and advanced metering programs “into account” when setting the CSI budget are addressed in Section D, above. CFC has not identified a legal error in the decision relating to its arguments about integration of programs or synergies. If it intends this statement as an additional allegation of error, the argument is without merit. (See Pub. Util. Code, § 1732.)

3. Commission's CSI "Superseded" by SB 1

CFC asserts, "[t]he [Commission's] CSI has been superseded by SB1 and is not legally authorized." (Rehearing Application, p. 5.) As discussed in the Decision, on August 21, 2006, the Governor signed SB 1, which directed the Commission and the CEC to implement the CSI given specific requirements and budget limits set forth in the legislation. (D.06-12-033, p. 2.) As the Commission explained, certain program and budgetary details set forth in earlier Commission orders required modification. (*Ibid.*) SB 1 directs the Commission and the CEC on the implementation of CSI. In D.06-12-033 we adopted modifications to CSI to conform it to the legislative requirements. We are proceeding under the terms of SB 1. CFC's claim that, because of SB 1, the Commission's CSI is not legally authorized has no merit.

4. Cost-effectiveness and Cost Benefit Analysis

Throughout the instant application for rehearing, CFC uses the terms cost-effectiveness and benefit.⁷ In its Application for Rehearing of D.06-08-028, CFC argued that before implementing CSI the Commission was required to find CSI cost-effective and that it would benefit ratepayers. (See Section G., below.) CFC proffered a number of alternate theories to support these assertions and claimed that the Commission had made insufficient efforts in these areas. (Application for Rehearing of D.06-08-028, p. 8.)

⁷ CFC also uses the phrase "lower rates" in its arguments about cost-effectiveness. (Rehearing Application, pp. 5 & 6.) It appears that CFC is using language from Public Resources Code section 25780 (b) and refers to "lower rates" as an outcome related to cost-effective investments, but not as a separate allegation. In its Application for Rehearing of D.06-08-028 CFC argued that the Commission was required to find CSI would reduce rates. (P. 3.) D.07-03-018 held, "SB 1 does not require a finding that CSI will reduce rates." (D.07-03-018, p. 12.)

D.07-03-018 addresses and rejects each of CFC's arguments and legal theories alleging required findings of cost-effectiveness and customer benefit related to the CSI program. (D.07-03-018, pp. 4 - 12.) D.06-12-033 also addresses and rejects a cost-effectiveness argument raised by CFC. (D.06-12-033, p. 7.) With one exception, the repeated references to these concepts in the instant application for rehearing do not require further legal analysis. In its discussion of eligibility criteria, CFC includes a legislative intent argument regarding "cost-effective investments in renewable programs." (Rehearing Application, p. 6.) That argument is addressed in Section C.1., above.

G. Issues Raised Previously in CFC's Application for Rehearing of D.06-08-028

CFC asserts that its current application for rehearing "incorporates by reference" its September 22, 2006 application for rehearing of D.06-08-028. (Rehearing Application, p. 4.) (Referencing, *The Consumer Federation of California's Application for Rehearing of the August 25, 2006 Opinion in R.06-03-004* ("Application for Rehearing of D.06-08-028").) The Commission addressed CFC's Application for Rehearing of D.06-08-028 in D.07-03-018. (*Order Denying Rehearing of Decision 06-08-028* [D.07-03-018], *supra*.) In effect, CFC's assertion is a request that we approve the incorporation by reference. For the reasons discussed below, we deny the request.

Incorporating by reference the issues from the earlier pleading into the instant application for rehearing and addressing CFC's arguments again here would be duplicative and, therefore, pointless. Moreover, CFC does not specify pages or identify the specific arguments it seeks to incorporate. Rather, it seeks incorporation of the previous application as a whole. CFC highlights three specific areas of argument from its earlier application. (Rehearing Application, pp. 4 – 5.) These areas are: Commission authority to implement CSI, CEC authority regarding CSI, and issues related to consumer benefit and cost-

effectiveness of CSI, including the claim that the Commission had undertaken no investigation regarding cost-effectiveness.

Neither the general reference to the earlier pleading nor the brief summary of three areas of argument is sufficient to meet the requirements of Public Utilities Code section 1732, and Rule 16.1 (c) of the Commission's Rules of Practice and Procedure, both of which require applications for rehearing to "set forth specifically" the grounds on which the applicant considers the decision to be unlawful. CFC does not allege any specific basis for applying its earlier arguments to any aspect of D.06-12-033.

In D.07-03-018 we denied CFC's Application for Rehearing of D.06-08-028 and addressed all issues CFC raised therein. CFC's request to incorporate by reference its earlier application for rehearing is denied.

THEREFORE, IT IS ORDERED that:

1. D.06-12-033 is modified for clarification as follows:

a. The second sentence in the first full paragraph on page 7 is modified to read as follows:

"While SB 1 states that "a solar initiative should be a cost-effective investment by ratepayers in peak electricity generation," this statement is an anticipated benefit and is not a requirement that cost-effectiveness findings must precede incentives."

b. A footnote is added on page. 7 immediately following the above modified sentence, to state as follows:

"We have at times used the terms "goal" and "program goal" to characterize statutory language that describes the anticipated benefits of CSI. In order to avoid confusion that might result from using the term "goal" in more than one sense, we characterize the factors

referenced in Public Resources Code section 25780 (b) as “anticipated benefits.”

c. The last sentence in the first full paragraph on page 29 is modified to read as follows:

“Nevertheless, the Commission’s periodic CSI review process can be used to ensure that moneys collected into other accounts that further the goals of CSI are included as part of the CSI budget of \$2.1 billion.”

2. D.06-12-033 is modified to correct typographical errors as follows:

a. The citation in the first sentence of the second full paragraph on page 14 is corrected as follows:

“Section 2851(a)(3)”

b. The next to the last sentence on page 27 is corrected to read as follows:

“Moreover, the ALJ ruling proposed the Commission revise its allocation of the total dollars that can be disbursed in each step of the program.”

3. Rehearing of D.06-12-033, as modified, is denied.

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 A. SIMON
Commissioners