



**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 12-11-005  
(Filed November 8, 2012)

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**RESPONSE OF FUELCELL ENERGY, INC. ON MAAS ENERGY WORKS, INC.'S PETITION FOR  
MODIFICATION OF DECISION 15-12-027 TO ADDRESS IRREGULARITIES IN 2016 APPLICATIONS  
RECEIVED FOR THE SELF-GENERATION INCENTIVE PROGRAM**

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In accordance with Rule 16.4 of the California Public Utilities Commission (Commission) Rules of Practice and Procedure, FuelCell Energy, Inc. (FCE) submits the following response to Maas Energy Works, Inc.'s (Maas) Petition for Modification (PFM) of Decision 15-12-027 to Address Irregularities in the 2016 Applications Received for the Self-Generation Incentive Program (SGIP). FCE thanks the Energy Division and the Commission for considering this response.

**I. Introduction**

FCE is a leading manufacturer of Combined Heat and Power (CHP) fuel cells with over 300 megawatts of systems installed or in backlog, including about 20 projects that have received SGIP funding.

We appreciate the opportunity to share our own recent experience with the SGIP application process. On the morning of February 23, 2016, FCE was prepared to submit applications for four projects totaling 9.3 megawatts. This included highly desirable systems using renewable biogas and one designed to co-produce renewable hydrogen. We had multiple employees dedicated to following the letter and spirit of the rules.

Starting at precisely 8:00 a.m., we began the submission process via the application portal. The system froze at 8:00 a.m., 8:01 a.m., 8:02 a.m. and 8:03 a.m., when other parties were allowed to submit their applications. As confirmed by the portal administrator, Energy

Solutions, during a March 21, 2016 Commission meeting, no time stamps exist for FCE's failed submissions, or for any others who were not able to submit their applications.

The lack of available time stamps is a critical fact in considering the options for correcting the irregularities that occurred on February 23, 2016. Without time stamps from all who attempted to submit applications, whether successfully or not, there is no reasonable and transparent way to assure the results of the application process were "first come, first served." **Accordingly, the existing February 23, 2016 application results cannot be used in whole or part to equitably distribute funds as required by statute.**

Eventually, after multiple submission attempts, the portal finally accepted FCE's applications, starting at 8:04 a.m. By then, we were far behind other applicants in the queue, giving our applications a low probability of receiving any SGIP funds. We understand that our experience may have been shared by as many as 20 or 30 damaged participants. This was not a fair and even-handed process.

To its credit, the Commission has acted quickly to investigate the irregularities that have tainted the February 23, 2016 application process, and provided an opportunity for affected participants to publicly discuss the issue. On March 11, 2016 the Energy Division sent out a notice acknowledging that parties had reported significant delays, errors, and inconsistencies in the February 23, 2016 application process. On March 21, 2016, Energy Division staff held a meeting that allowed parties to describe what happened on February 23 and discuss how best to address the failed application process. The meeting provided ample substantiation that many companies shared the frustrating experience of being refused timely access to the Commission's portal, apparently because of inappropriate actions taken by one or more participants. At the close of the March 21 meeting, Energy Division staff encouraged all parties to formally submit their comments and recommendations by filing responses to the Maas PFM.

## **II. The Petition for Modification**

The PFM documents Maas' experience on February 23, 2016, which seems consistent with the experience of numerous other applicants, including FCE. Maas apparently was locked

out of the portal for several minutes, and then still unable to timely submit applications.<sup>1</sup> Maas offers further analysis pointing to the likelihood that one or more participants may have undermined the entire February 23, 2016 application process by actions that to date have not been subjected to a full forensic investigation.<sup>2</sup> The PFM requests that the Commission “modify their Decision 15-12-027 authorizing the disbursement of 50% of 2016 SGIP funds to include the following:

- 1) Require the Program Administrators and/or their subcontractor, Energy Solutions, to release certain information (See Section VI) relating to the February 23, 2016 SGIP submissions process and applications received using a new application Portal managed by Energy Solution
- 2) Require the Program Administrators and/or their subcontractor, Energy Solutions, to determine the cause of irregularities in the 2016 applications received
- 3) Clarify that any SGIP Conditional Reservation Letters from the February 23, 2016 application round may be revoked if warranted by irregularities in projects’ applications, with funds awarded to the next eligible applications.<sup>3</sup>

### **III. Short and Long-Term Solutions**

As discussed below, FCE supports the Maas PFM in part, but does not support the petition’s ultimate recommendation for addressing the unfair outcome of the February 23, 2016 application process.

It appears that the February 23, 2016 situation was likely caused due to one or more parties’ “gaming” the Portal. FCE fully supports the initiation of an independent investigation to address what happened and the suspension of SGIP pending completion of the investigation. This is crucial, in order to ensure that the Commission preserves all options.

We understand and appreciate that much work went into the portal and planning for the February 23, 2016 SGIP opening. We recognize that certain features of the new online application system provide an efficient and transparent organization of data. However, looking at the problems experienced on February 23, 2016, and the resulting windfall to a single participant, it is clear that the application process refused some applicants while allowing

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<sup>1</sup> PFM p. 5.

<sup>2</sup> PFM pp. 5-8.

<sup>3</sup> PFM p. 2.

others in at exactly the same time. Moreover, the portal was not able to date stamp or otherwise accurately memorialize failed attempts to log in or submit applications, which means there is no way “after the fact” to re-order and grant applications on a “first-come, first-served” basis, as originally intended. Accordingly, it would be completely inappropriate to treat any of the results as legitimate.

**In order to avoid potential legal challenges from damaged participants, and to preserve the reputation of SGIP, the Commission has no choice but to completely re-run the application process.** Some have suggested a partial solution, such as excluding some applications if there is evidence of bad acts while allowing others in the queue to stand. The PFM requests that the Commission take the even more limited step of “clarifying” that SGIP reservation letters may be revoked “if warranted by irregularities in projects’ applications, with funds awarded to the next eligible applicants.”

These recommendations do not begin to address the unfairness and potential economic damage done to the majority of the applicants in this process. Given the lack of time stamp information for all attempted applications, there is no way to ensure that the application queue order actually reflects a “first come, first served” result. There is no way the Commission could implement Maas’ recommendation to simply weed out applications submitted by wrongdoers and then award funds to the “next eligible applicants” because the Commission has no idea who the “next eligible applicants” were. All the Commission has is the evidence of the order that applications were accepted through the completely flawed and dysfunctional process described in the petition and at the March 21 workshop. The Commission should grant the PFM, but address the February 23, 2016 irregularities by establishing a new date to re-run the application process using a system that is secure from gaming and that does not award SGIP reservations on the basis of applicants’ IT skills and resources.

In the long term, we strongly support the recommendation that the Commission institute an application process that is not dependent on a “first come, first served” model. We support the idea of a semi-annual lottery as suggested by Pacific Gas & Electric Company, and we advocate that such a system be as “low-tech” as possible as to avoid potential technical impropriety.

We hope that the Commission's investigation yields a sound analysis of what went wrong and why, including whether one or more parties did act unethically or potentially illegally. If the investigation reveals that any applicant violated SGIP rules or otherwise acted in a manner not consistent with the regulations of the Commission, that participant should be banned from the Program and subjected to other appropriate penalties.

#### **IV. Conclusion**

We look forward to working with the Program Administrators and the Commission in coming months and years to improve the application process and restore the integrity of SGIP.

Dated: April 7, 2016

Respectfully submitted,

By: \_\_\_\_\_ /s/

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