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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)

RESPONSE OF SOLARCITY CORPORATION TO MAAS ENERGY WORKS' PETITION FOR MODIFICATION OF DECISION 15-12-027 TO ADDRESS IRREGULARITIES IN 2016 APPLICATIONS RECEIVED FOR THE SELF-GENERATION INCENTIVE PROGRAM

Jason B. Keyes
Keyes, Fox & Wiedman LLP
436 14th Street, Suite 1305
Oakland, CA 94612
Telephone: (510) 314-8203
Email: jkeyes@kfwlaw.com

Counsel for SolarCity Corporation

April 7, 2016

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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Pursuant to Rule 16.4 of the California Public Utilities Commission's (Commission) Rules of Practice and Procedure, SolarCity Corporation (SolarCity) respectfully submits the following response to the *Petition for Modification of Decision 15-12-027 to Address Irregularities in 2016 Applications Received for the Self-Generation Incentive Program* (Petition) submitted by Maas Energy Works, Inc. (Maas) on March 8, 2016.

I. DESCRIPTION OF SOLARCITY

SolarCity is California's leading full service solar power provider for homeowners and businesses – a single source for engineering, design, installation, monitoring, and support. As of December 31, 2015, the company had more than 6,000 California employees based at more than 35 facilities around the state and had installed solar energy systems for over 230,000 customers nationwide.

II. INTRODUCTION

As Maas notes in its Petition, during the February 23, 2016 Self-Generation Incentive Program (SGIP) solicitation, many users faced a number of challenges, which clearly indicated malfunctions with the online portal opening.[1] SolarCity has filed jointly with Avalon Battery, Johnson Controls, Sharp Electronics, sonnen-Batterie, and Swell Energy (hereinafter Joint Parties) to recommend that the funds that would have been allocated in the February 23, 2016 solicitation ("2.23.16") should not be awarded, and instead the results should be voided and these funds should be rolled into future SGIP solicitations. While the response of the Joint Parties focuses on remedying the problematic program opening, SolarCity wishes to use these comments to focus on how, based on its experience on February 23, 2016 (in addition to the results of the $10M funding released by Pacific Gas & Electric Company (PG&E) on December 1, 2015), SGIP should be structured going forward in order to avoid the numerous issues identified by Maas and other parties,[2] as well as to ensure the achievement of the Commission's goals for SGIP. In the context of a petition to modify D.15-12-027, SolarCity respectfully requests that the Commission consider the SGIP modifications suggested here to address the concerns of numerous stakeholders.

Specifically, SolarCity believes the current SGIP structure of 60% cost coverage has resulted in reported project costs that are inflated to maximize incentive levels. Furthermore, because Commission staff does not have visibility into the costs facing private companies, administratively-set incentive levels will almost certainly either be too low to finance projects or higher than necessary, resulting in wasteful spending. What is needed is a pricing discovery mechanism that will force SGIP participants to reveal the lowest incentive level necessary to

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[1] *See* Maas Petition at p. 3.
[2] Letters submitted to Energy Division Director regarding the February 23, 2016 opening are included herein as Attachment A.

develop projects such that the maximum number of projects can be funded with the limited SGIP budget. Once initial pricing discovery is achieved, the incentive levels should decline over time in a predictable manner to drive cost reductions.

Thus, rather than attempting to set SGIP incentive levels administratively through speculation in the program re-design, the Commission should conduct a "pricing discovery round" so that the Commission can see what SGIP incentive levels the industry as a whole would require for advanced energy storage (AES) projects, and how different projects, developers, and technologies may vary in the incentive levels they require to move projects forward. The fundamental goal of this pricing discovery would be to set an incentive level whereby the highest possible capacity of projects could receive funding, thus bringing demand for limited SGIP funds more in line with supply.

In order to achieve this pricing discovery, SolarCity recommends that the Commission conduct a single reverse auction whereby developers would submit requested incentive values for each of their AES projects that would then be ranked on a $/kWh basis. The Commission could consider this reverse auction as "Step 0," with the results being utilized to then determine the appropriate SGIP incentive level for "Step 1" of a California Solar Initiative (CSI) style program. Thereafter, incentive levels would decrease in a step-down structure as proposed by the Commission Energy Division staff in November.

To ensure this competitive framework in the AES category does not otherwise negatively impact the ability for new technologies, smaller companies, and smaller projects to participate in SGIP, SolarCity would recommend the following measures be taken to ensure adequate funding remains available for all parties:

- Instituting a 5% residential carve-out within the AES category for systems <10 kW. This carve-out would utilize a similar incentive step-down structure with Step 1 being determined by the Commission as necessary to spur demand.
- Institute a 1 MW incentive cap for AES projects, to ensure no one project receives an inordinate amount of funds. This cap would not prevent >1 MW projects from participating in SGIP, but those projects would only be eligible for SGIP incentive for the first 1 MW of capacity.
- Instituting a higher reservation fee of 5% of requested incentive, requiring that checks be submitted at the time of application submittal, diligent enforcement of proof of project milestone (PPM) dates, and strict penalties for recurring project cancellations.
- A 20% developer cap should be instituted within the AES category to ensure no one developer can consume an inordinate portion of funding within any given step.[3]

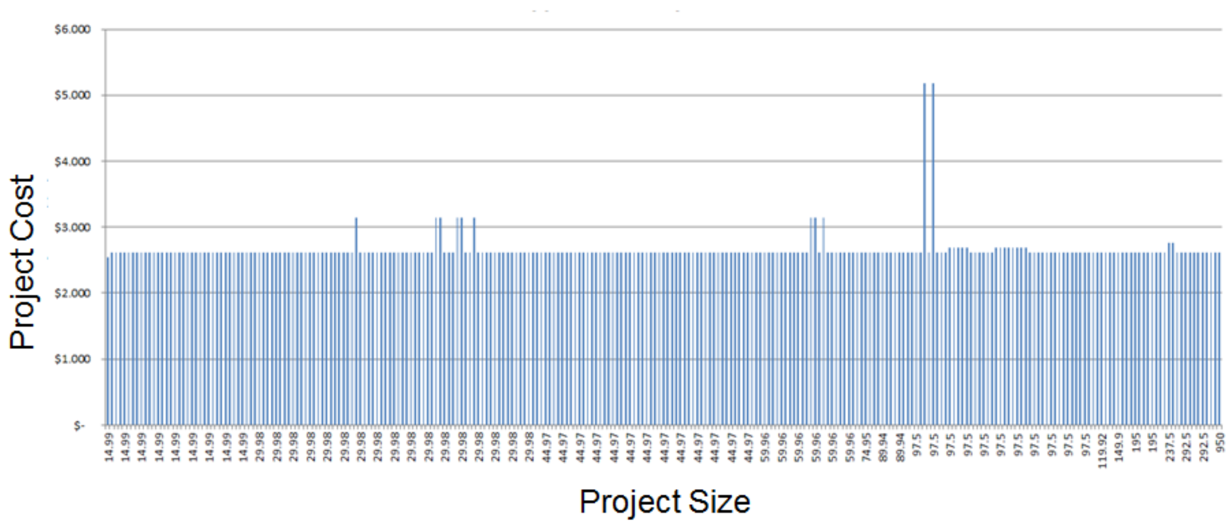
III. DISCUSSION

a. Price Discovery Necessary for Setting Rebate Level for SGIP

The results of the 2.23.16 solicitation indicate that the current SGIP structure encourages developers to potentially inflate costs in order to maximize incentives, and as a result, there is less funding available for other projects and technologies to participate in SGIP. In some cases, it appears that projects of significantly different sizes from the same developer have been submitted as having the same exact cost per kilowatt structure (kW), as demonstrated in the graph below utilizing data available from the 2.23.16 results. This is an extremely troubling

[3] SolarCity is proposing a CSI-style capacity-based step-down structure.

irregularity since cost per kW would be expected to decrease as projects increase in size due to economies of scale.



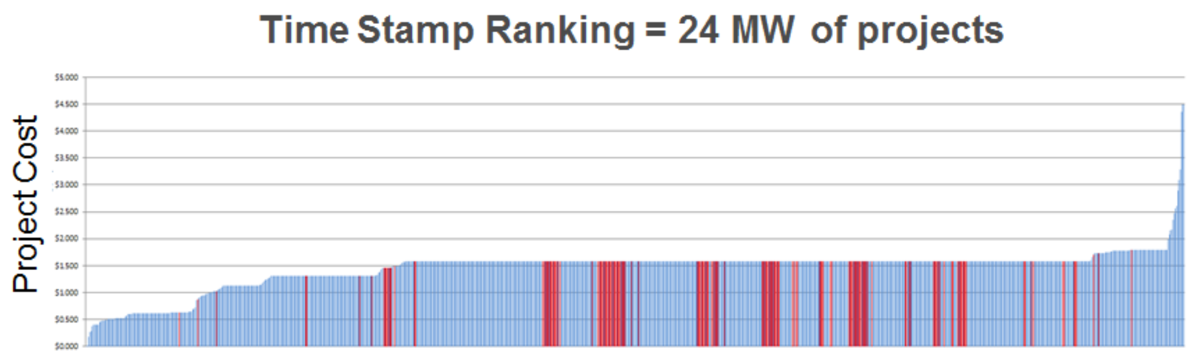
In addition, the high demand for SGIP incentives would indicate that the current incentive level for AES may be too high based on market trends, and given the 60% cost coverage structure, there is no mechanism whereby developers are encouraged to request the minimum funding necessary in order to move their best projects forward. Additionally, given the historically fixed nature of SGIP rebate levels and the difficulty of obtaining confidential cost data, there is very limited data visibility for the Commission and PAs to utilize when determining an appropriate incentive level going forward as part of program re-design. Therefore the Commission, the PAs, and the SGIP program itself would dramatically benefit from a pricing discovery process whereby the industry participates in a competitive solicitation for SGIP funding in which project ranking is based on the amount of requested incentive itself, as opposed to millisecond time stamp differences. The results of this pricing discovery process would provide valuable insight for the Commission into the industry as a whole, and the incentives required across various AES technologies and business models.

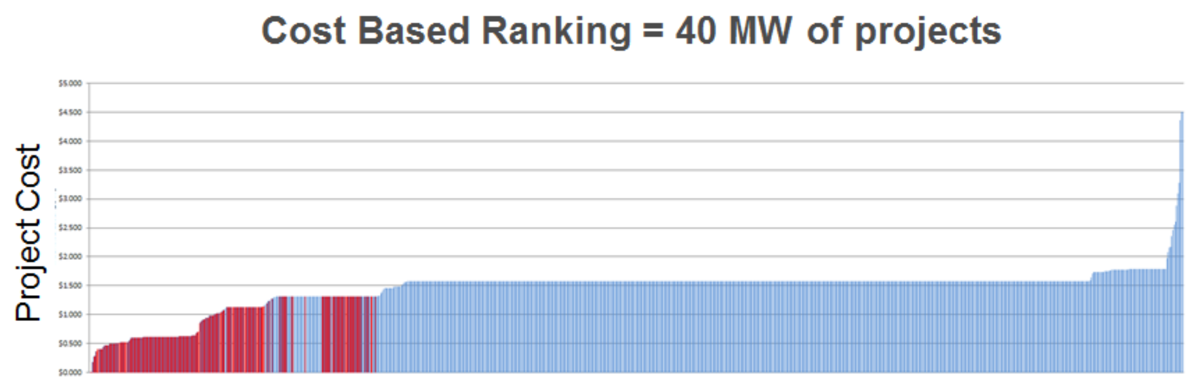
b. Price Discovery Will Improve Economic Efficiency of SGIP

Conducting a pricing discovery funding round based on requested incentive level will not only inform future incentive levels going forward -- it would also result in significantly more projects being deployed. For example, based on SolarCity's analysis of the February 23, 2016 opening, using a time stamp methodology, approximately 24 MW of projects will be deployed.[4] Of this, the vast majority of projects will receive \$1.57/W, the maximum SGIP incentive allowable. However, if projects were ranked based on incentive level requested, this would result in nearly double the capacity, or about 40 MW of projects being deployed. In addition, under the requested incentive based ranking structure, the total average incentive level of projects awarded funding would be \$0.686/W, or a 44% reduction from the \$1.57/W maximum incentive level.[5]

These ranking methodologies are shown in the graphs below, with red bars demonstrating projects that would receive funding under the different ranking methodologies.

[4] SGIP Weekly Data Report.
[5] *Id.*





Clearly, there is significant room for improving the economic efficiency of SGIP, and SolarCity would recommend utilizing a portion of the 2016 SGIP program year funds to conduct a pricing discovery round that could be considered a "Step 0" of a CSI-like program as proposed by Commission Energy Division (ED) staff. The results of Step 0 could then be used to set the most economically efficient starting incentive level for Step 1, as further outlined below.

c. Reverse Auction as Step 0 Pricing Discovery Tool

SolarCity believes a reverse auction mechanism is the most effective way to conduct this Step 0 pricing discovery round, and that this could be implemented relatively easily while also addressing technological issues identified on February 23, 2016. Under a reverse auction, participants could fill out nearly identical forms as those already utilized under SGIP (with a new box for "requested incentive amount"), and submittals could be done utilizing a similar platform as that developed by Energy Solutions for February 23, 2016.

While many parties, including Energy Solutions, experienced challenges in a "first come, first serve" methodology where the number of applications submitted exceeded processing capacity at the millisecond level,[6] a reverse auction mechanism would obviate the need for such a chaotic submittal process. Under a reverse auction, parties would be allowed to submit applications within a specified window of time (e.g., one business day) during which all applications would be treated equally regardless of time stamps. Projects would then be ranked based on their requested incentive levels, and awards would be allocated until funding is fully subscribed within each PA territory.

In order to avoid any potential gaming in the Step 0 funding round, applications would be "paid as bid," so that each project would receive the specific level of funding requested (assuming their ranking deems them eligible for funding). This would prevent the submissions of lower bids in the hopes that these would eventually be paid a higher value "clearing price." As we have seen, SGIP is plagued with aggressive submission strategies and therefore a "paid as bid" approach with strict penalties for project failure will prevent any potential gaming and ensure that Step 0 results in honest bids, which will ultimately set future rebate levels to accurately reflect industry need. With this approach, and because this Step 0 would become the basis for Step 1 and all future incentive levels, the Commission is sure to see a fair, honest, and thoughtful set of incentive requests.

Lastly, to ensure that no one party can reserve a disproportionate amount of funds based on this ranking methodology, or otherwise skew the results, SolarCity would recommend instituting a 20% developer cap for this Step 0 pricing discovery process, as well as all future Steps.

[6] Based on party statements at March 21, 2016 SGIP All-Party Meeting.

d. Step 0 as Basis for Determining Step 1 Incentive Level

There are a variety of ways in which the Commission could determine the Step 1 funding level based on Step 0 results, and SolarCity again utilized the February 23, 2016 results to analyze various potential methodologies here. Using the "requested incentive level" ranking from February 23, 2016, the average incentive awarded across the 40 MW that would clear would have been $0.686/W.[7] The highest incentive request that would have cleared would have been $1.310/W. Clearly, there is a need to strike a balance between these two values in order to be equitable to all technologies and business models.

To achieve equitability and to account for the fact that incentives will decline as the steps progress, SolarCity would recommend setting the Step 1 incentive level as the midpoint between the highest incentive request that cleared within Step 0 (not the highest price submitted, but cleared), and the average of all incentive requests that cleared Step 0. Using this methodology based on February 23, 2016 results, the Step 1 incentive level would be set at $0.998/W (the average of $0.686 and $1.310). However, we would expect that once the industry is forced to compete in this Step 0 reverse auction, the requested incentive amounts would be reduced, thus resulting in a lower Step 1 incentive level.

The end result of this proposed approach would be an economically optimized SGIP incentive level that is developed based on a fair and transparent process, taking into account all technologies and business models, without any one company able to game the system.

e. Merit of a CSI-like Step Down Program with Pricing Discovery

As SolarCity has noted in earlier comments, lessons learned from successful programs like CSI should be incorporated into SGIP where appropriate, and a step-down structure is ideal because it responds to economies of scale and naturally promotes competition, leading us toward

[7] SGIP Weekly Statewide Report.

an industry less reliant on subsidies.[8] Moreover, as Energy Division (ED) Staff noted in its SGIP Proposal, a capacity-based decline structure allows incentives to be continuously available to program participants, without program interruptions.[9] Also, using a step-down structure as suggested would avoid the need for the complexity of recurring reverse auction mechanisms.

However, it is critical that the initial incentive level for this new CSI-like step down is structured in an economically efficient manner that balances supply vs. demand, while also taking into account the various parties seeking to participate in SGIP. SolarCity believes that the proposed reverse auction for a Step 0 pricing discovery provides an ideal basis from which to set a new incentive level for Step 1, while also addressing a number of other program issues, and ensuring the limited program funds are leveraged in an optimal manner going forward.

f. Addition Learning from Recent Solicitations to Inform Future Program Design

SolarCity also recommends a 1 MW cap for AES projects, a 5% residential carve out, strict enforcement for project cancellation, and a 20% developer cap to allow more diverse project deployment within a limited funding environment.

SolarCity proposes that a 5% carve-out be established for projects that are less than or equal to 10 kW within the AES category. These systems would not participate in the reverse auction mechanism. Instead, a starting price would be determined by the Commission, which would then decline over time via a step-down structure. Although the initial incentive might be set at a higher level than necessary in the absence of price discovery, the step-down structure will ensure that incentives quickly adjust to the right level, and the small percentage of overall funding dedicated to this category reduces the importance of precision when setting initial incentive levels.

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[8] *See* SolarCity Comments on Senate Bill 861, R.12-11-005 (May 22, 2015), at pp. 12-13.
[9] Staff SGIP Proposal at p. 21.

While a 5% residential carve out might seem small, this portion of SGIP funding is double the historic demand, and should sufficiently allow the market to flourish while also providing appropriate incentives for the bulk of projects that have historically sought SGIP funding, those in the 11 kW to 1 MW range. Based on SolarCity calculations, projects 10 kW and below have received 2.5% of historical funds available and, according to the 2.23.16 solicitation, applied for approximately $1.5 million (or less than 1% of total incentives applied for).[10] While it is important to have a carve-out, it is equally important to ensure any such carve out reflects market demand.

In stark contrast, the demand for AES projects 11 kW to 1 MW is overwhelming and SolarCity believes that, for AES projects, the Commission should limit the amount of capacity that any individual project can receive incentives to 1 MW.[11] Nearly $130 million dollars in applications were submitted on 2.23.16 for this market segment within the AES category. That represents nearly 60% of all applications received across all technology categories.[12] It is important that a handful of large projects do not completely consume large amounts of funding and also not hold funds for extended periods of time. For example, based on historical data, of the only ten storage projects 2 MW or greater that have applied for SGIP funding (out of over 2,000 storage project applications since becoming eligible), half of those are still active waiting to be completed. To mitigate this, an incentive cap of 1 MW should be instituted, similar to CSI. This would not restrict projects >1 MW from participating in SGIP, but they would be eligible for funding beyond the first MW, and they would need to rely on economies of scale in order to deploy a larger project.

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[10] Weekly Statewide Report.
[11] *Id.*
[12] *Id.*

Finally, but equally important, strict rules must be put in place to prevent project attrition. High attrition rates for speculative projects that have previously received funding result in more viable projects going without funding and either being canceled or stalled. For example, PG&E opened $10 million on 12.1.15, receiving hundreds of duplicate applications that shut down the servers. Of the $10 million opening, 98% of funding was allocated to two developers. While that clearly represents inequitable dispersion of funds, over $2 million worth of projects by one of these developers was canceled within a month of the opening. There was no mechanism in place for this developer to be penalized for submitting millions of dollars of speculative projects that did not have a path forward at the expense of shovel-ready projects. SolarCity therefore believes there should be a higher application fee of 5%, with checks due upon application submittal, coupled with diligent tracking of PPM milestones and strict penalties if a developer shows a tendency toward regularly cancelling or delaying their reserved projects.

Lastly, a low developer cap, such as 20%, will also be instrumental in reducing project attrition and ensuring equitable program participation. This will force developers to apply for their highest quality projects, while also ensuring no one party is able to reserve an outsized portion of the program funds, as has been the unfortunate circumstance in the recent 12.1.16 and 2.23.16 openings.

IV. CONCLUSION

SolarCity appreciates the opportunity to offer this response and looks forward to continued participation in this proceeding.

Respectfully submitted at Oakland, California on April 7, 2016

BY: /s/ *Jason B. Keyes*_______

Jason B. Keyes
Keyes, Fox & Wiedman LLP
436 14th Street, Suite 1305
Oakland, CA 94612
Telephone: (510) 314-8203
Email: jkeyes@kfwlaw.com
Counsel to SolarCity Corporation

ATTACHMENT A

March 9, 2016

Mr. Edward Randolph
Energy Division Director
California Public Utility Commission
505 Van Ness Avenue
San Francisco, California 94102

Re: February 23, 2016 Self-Generation Incentive Program Opening Failures

Mr. Randolph,

We, the undersigned twelve companies, write today to express our deep concern with regard to the failures we experienced and observed during the February 23, 2016 Self Generation Incentive Program (SGIP) Opening. For the reasons that we will describe below, and based on the results of the February 23, 2016 SGIP Opening, stakeholders respectfully request the following actions by the Commission:

- Leverage the learnings of the February 23, 2016 SGIP Opening (as well as the December 1, 2015 opening) to design a high-functioning program that is no longer dependent on a "first come, first served" time-stamped ranking methodology;
- Institute measures to ensure funding is more equitably dispersed utilizing an appropriately set developer cap or similar means that ensures diverse participation;
- Adopt the proposed Energy Division staff budget allocation with a minimum of 75% of the future program funding be allocated to energy storage based on the clear, robust market demand; and
- Issue a formal investigation into the February 23, 2016 SGIP Opening to ensure the portal did not malfunction and no program rules were violated, whether inadvertently or otherwise, with an official report submitted to the Program Administrators (PAs) and made publically available.

Taking these actions will ensure that the Commission meets the legislative intent of SB 861 to the benefit of the broader storage market and the public interest.

<u>Background</u>

On December 23, 2015, the Commission issued Decision (D.) 15-12-027 directing SGIP PAs to accept new applications for SGIP incentives until 50% of their 2016 program funds are reserved.[1] The Commission determined that partial disbursement of 2016 funds was necessary in

[1] D.15-12-027, Ordering Paragraph 1, at p. 12

order to avoid the market disruption that may have resulted from waiting to disburse 2016 funds until SGIP program modifications are completed, expected in mid-2016. [2]

As noted in that Decision, eleven parties, including but not limited to, ratepayer advocates, trade associations, environmental advocates, and the Center for Sustainable Energy, recommended <u>not</u> holding a solicitation until the SGIP program modifications were complete.[3] These parties cited the high risk of inequitable awards in a solicitation likely to entail a crush of applications resulting in all funding being allocated in minutes.[4] Parties also raised additional issues with the decision including a lack of clarity on program rules and questioned how the decision to release 50% of 2016 funds was consistent with the legislative intent of SB 861.[5]

On February 11, 2016, Commercial Energy submitted a letter to Mr. Randolph raising a number of concerns regarding the processes for the 2016 program opening, and in particular that the new application portal might not allow all applicants to log in and participate at the crucial moment of the 8:00 a.m. opening on February 23, 2016 and called for a stay on the new portal.[6] On February 17, 2016, SolarCity, Advanced Microgrid Solutions, and Stem, Inc. submitted a joint letter to Mr. Randolph in response to Commercial Energy's letter. [7] This letter supported both the planned solicitation and the use of new technology to address the issues associated with application submission issues that plagued the December 1, 2015 PG&E SGIP funding opening. However, the letter specifically cautioned that if Commercial Energy's concerns regarding the 2016 program opening were realized, "in such an event, the program should be closed and re-opened at a later date with no funding for any applicants awarded." [8]

<u>The Failures of the February 23, 2016 SGIP Program Opening</u>

On February 23, 2016, the new portal designed and administered by Energy Solutions was used to accept SGIP applications. Below are examples of the many failures and challenges users documented that clearly indicate a malfunction with the portal opening when they attempted to access the portal at 8:00 a.m. on February 23, 2016:

1. Parties experienced delays when logging into the portal, facing a 3 – 5 minute loading delay after submitting their login credentials;
2. Some parties received an "error" message when going to the selfgenca.com website, thus never even seeing the portal login landing page;

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[2] *Id.* at p. 6
[3] Id at page 3 (California Energy Storage Alliance (CESA), California Solar Energy Industry Association, the Office of Ratepayer Advocates (ORA), Foundation Windpower, Commercial Energy, Stem and SolarCity (filing jointly), Sierra Club, Robert Bosch LLC, Tesla Motors, and The Utility Ratepayer Network, and Center for Sustainable Energy (CSE).
[4] Id.
[5] Id. at pp. 4-5
[6] Commercial Energy letter, Feb. 11, 2016 (served on parties to R.12-11-005 on Feb. 12, 2016).
[7] Stakeholder letter, Feb. 17, 2016 (served on parties to R.12-11-005 on Feb. 18, 2016).
[8] Stakeholder letter, Feb. 17, 2016 (served on parties to R.12-11-005 on Feb. 18, 2016).

3. Some users were unable to log-on after multiple attempts for roughly 10 minutes; and
4. Perhaps most importantly – some parties are reporting that the order in which they submitted their applications does not match the time stamp order on the released SGIP data. This mismatch is significant in that it indicates that the data published on March 1, 2016 is either factually incorrect or, equally problematic, the portal was so over-loaded with the number of applications at 8:00 a.m. that the time stamps were potentially allocated incorrectly to individual applications.

On February 23rd at 8:57 a.m., an email was sent by Energy Solutions that stated:

> Due to the high volume and concentration of submissions, some applications received the same 4-digit app number at the end of their application ID. These are not duplicates but rather applications that were received within milliseconds of each other.

This email clearly demonstrates that the portal did not operate as intended, and that even the party responsible for managing the portal experienced malfunctions.

The Concerning Results of the February 23, 2016 SGIP Program Opening

When considering the various issues users experienced with the portal, the results of the February 23 funding opening are both suspicious and concerning: [9]

1. Despite the login delays experienced by others, one party was able to submit 56 applications before any other parties were able to submit even a single application (or in many cases, long before other users were even able to log-on);
2. ~41% of the funding was allocated to a single party (i.e., the same party outlined above, which submitted 109 of the total 150 applications received);
3. ~70% of the funding will be allocated across only three parties; and
4. Only 10 of the total 49 parties will receive any funding.

The results of the February 23 opening clearly show that a dramatically disproportionate amount of the available funds will be allocated to only a few parties. As such, the February 23 partial program opening has not served its purpose of avoiding market disruption, but rather has ensured it. The end result is that many would-be program participants will have to either cancel or delay projects that did not receive funding, while successful applicants will inappropriately benefit from the unexpected windfall of funding. Clearly, this goes completely counter to the Legislature's and Commission's goals for the SGIP and is harmful to the broader storage market.

Adding insult to injury, PG&E's December 1, 2015 $10 MM funding opening resulted in a similar situation, with one party sweeping ~59% of the funds and two parties accounting for

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[9] Based on Self-Generation Incentive Program Statewide Report from 3/1/2016. Available funding calculations are using data from 2/8/2016 data prior to the opening. Results are based on initial analysis and estimates. Analysis is subject to change pending final determination by the PAs.

~98% of all funding allocations.[10] The two parties that swept the December 1, 2015 opening are also two of the largest beneficiaries of the February 23, 2016 funding release.

Based on some parties' understanding, the combination of the December 1, 2015 and February 23 results have caused considerable concern amongst the PAs, and as a result, some PAs have chosen not to release funds secured in the February 23 opening while concerns are addressed.

The Commission Must Reform the Flawed SGIP Design to Ensure the Success of the Storage Market

Currently, the success or failure of SGIP applications appears to be based on the difference in nanosecond application submission time stamps, which raises the specter of potential system gaming. Instead of funding the best and lowest cost technologies across a diverse range of participants to the benefit of the broader storage market and in the public interest, SGIP is inexplicably rewarding creative and aggressive application submittal strategies and ultimately concentrating funding among a very small pool of applicants. In addition, on the Energy Solutions portal webpage, under the restrictions of use, it is clearly stated that, " [an applicant] may not use any robot, spider or other automatic device, process or means to access, retrieve, scrape, reverse engineer, compile, create derivative works, publically display or otherwise distribute any portion of the Site or the Platform."[11]

Major reforms are necessary to address these issues and ensure the future success of SGIP. For example, the current manufacturing cap did nothing to prevent a couple of developers from sweeping the majority of the funds. In addition, because applicant names were not released, some manufacturers are still left wondering who even applied using their technologies with little to no visibility into the reality of these applications. And lastly, it has been clearly demonstrated that allocating funding based on a first-come first served time stamp methodology is rife for gaming and no longer viable, requiring a new methodology for ranking SGIP application submittals.

The SGIP is clearly not achieving the legislative intent of SB 861 and is not functioning in the public interest. Immediate reforms are needed to fix this flawed program design.

[10] Based on the Self-Generation Incentive Program Statewide Report
[11] https://www.selfgenca.com/terms_of_use/

Regards,

/s/ Genevieve Dufau

Genevieve Dufau
SolarCity Corporation
444 Deharo Street
San Francisco, CA 94131
(415) 799-6790
gdufau@solarcity.com
Deputy Director

SolarCity Corporation

/s/ Manal Yamout

Manal Yamout
Advanced Microgrid Solutions
25 Stillman Street, Suite 200
San Francisco, CA 94107
(415) 638-6146
manaly@advmicrogrid.com
Vice President of Policy and Markets

Advanced Microgrid Solutions

/s/ Johnson Chiang

Johnson Chiang
Avalon Battery Corporation
426 17th St. #700
Oakland, CA 94612
+1.510.338.8078
jchiang@avalonbattery.com
Chief Executive Office

Avalon Battery Corporation

/s/ Ted Thomas

Ted Thomas
Clean Energy Storage Inc.
42128 Remington Ave
Temecula, CA 92590
800-889-07998
www.cleanenergystorage.net
Chief Executive Officer

Clean Energy Storage Inc.

/s/ Jason Simon

Jason Simon
Enphase Energy
1420 N. McDowell Blvd
Petaluma, CA 94954
(707) 763-4784, x7531
jsimon@enphaseenergy.com
Director of Policy Strategy

Enphase Energy

/s/ Ryan Wartena

Ryan Wartena
Geli
657 Mission St, Suite 600
San Francisco, CA 94105
6506449177
ryan@geli.net
Chief Executive Officer

Geli

/s/ Mike Seavey

Mike Seavey
Gexpro
9500 N Royal Lane, Suite 130 |
Irving, TX 75063
P: (972) 915-1857
National Solar and Energy Storage Sales Manager

Gexpro

/s/ Jennifer Chamberlin

Jennifer Chamberlin
Johnson Controls, Inc
901 Campisi Way, Suite 260
Campbell, CA 95008
(925) 890-9174
jennifer.anne.chamberlin@jci.com
Director Regulatory Affairs-Integrated Demand Resources

Johnson Controls, Inc

/s/ Neil Maguire

Neil Maguire
JuiceBox Energy, Inc.
1650 Centre Pointe Drive
Milpitas, CA 95035
408-391-9360
nmaguire@juiceboxsolar.com
Chief Executive Officer

JuiceBox Energy, Inc.

/s/ Carl Mansfield

Carl Mansfield
Sharp Electronics Corporation
5750 MW Pacific Rim Blvd
Camas, WA 98607
(360) 834-8764
cmansfield@sharpsec.com
General Manager, Energy Systems and Services Group

Sharp Electronics Corporation

/s/ Milissa Marona

Milissa Marona
Sonnen, Inc.
10800 Burbank Blvd. Suite C
North Hollywood, CA 91601
(626)463-8190
milissa.m@sonnen-batterie.com
Director, Utility and Government Relations

Sonnen, Inc.

/s/ Polly Shaw

Polly Shaw
SunEdison
44 Montgomery Street, Ste 2200
San Francisco, CA 94104
(415) 577-5763
pshaw@sunedison.com
Vice President

SunEdison

FOUNDATION
WINDPOWER

March 16, 2016

VIA FIRST CLASS MAIL

Mr. Edward Randolph
Energy Division Director
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

Re: February 23, 2016 Self-Generation Incentive Program (SGIP) Opening

Dear Mr. Randolph:

Foundation Windpower, LLC (FWP) joins with several other parties in encouraging a careful review of the February 23, 2016 SGIP opening and the manner in which applications were processed and selected.

Like other parties, FWP attempted to log into the portal at precisely 8:00 a.m. on February 23 and encountered many of the same difficulties identified in other parties' correspondence. As it stands, despite the fact that FWP was ready, willing and able to submit applications, including an application for a project at a California State correctional facility, at the moment the SGIP re-opened, due to technical issues beyond its control – or technical advantages seized by others having nothing at all to do with the merits of their projects – there will be **no wind projects** funded by the first 50% of the 2016 SGIP funds. This categorical exclusion of wind from SGIP is compounded by the fact that FWP applications were rejected in similar fashion -- including an application that was submitted to PG&E via email at precisely at 8:00 a.m. -- when the program briefly re-opened in December 2015.

The exclusion of wind from SGIP at this time is particularly unfortunate because federal tax incentives for wind energy are scheduled to begin declining on December 31, 2016. Thereafter, these incentives will decline by 20% per year until the end of 2019 when they will be completely eliminated. As a result, while the SGIP is mired in its current administrative difficulties, Californians are losing the opportunity to leverage those federal incentives to deploy wind energy on-site. Indeed, due to a flawed implementation and a rush to overbuild storage at the expense of technologies like wind that actually generate 100% GHG-emission-free electricity -- including substantial production during late afternoon/early evening periods when solar generation is waning --

FOUNDATION WINDPOWER

the SGIP is at serious risk of losing its ability to meet many of the policy goals it was designed to achieve.

As one of the chief advocates for adoption of AB 1150, which extended (and mended) the SGIP at a time when the program was at risk of extinction after an over-reaching effort by one company (and one technology) undermined public and legislative confidence in the efficacy and integrity of the program, FWP is particularly disheartened by these recent events. We fear that the combined effects of the disastrous results of the electronic application processes in both December 2015 and February 2016, the severe over-concentration of SGIP investment in a few storage technology companies, and the complete exclusion of wind energy from the program, will again undermine confidence in the SGIP -- and justifiably so.

We sincerely hope that the Commission will use the current crisis of confidence to act promptly and decisively to remedy the severe errors that have led to the current state of affairs and ensure that the SGIP, once again, is administered in an even-handed manner that is consistent with its entire statutory mandate and appropriately reflective of the diverse range of SGIP-eligible technologies.

We appreciate your attention to this matter.

Sincerely,

Steve Sherr
steve.sherr@foundationwindpower.com
415-519-4435
Foundation Windpower, LLC

cc: Service List

FuelCell Energy
Ultra-Clean, Efficient, Reliable Power

March 9, 2016

Mr. Edward Randolph
Energy Division Director
California Public Utility Commission
505 Van Ness Avenue
San Francisco, California 94102

Re: February 23, 2016 Self-Generation Incentive Program Opening

Dear Mr. Randolph,

FuelCell Energy (FCE) writes to join numerous other parties in encouraging the Commission to take immediate steps to address and correct the failure of the February 23, 2016 Self Generation Incentive Program (SGIP) Opening.

The March 8, 2016 Petition for Modification filed by Maas Energy Works, Inc. and the letter submitted to your office today by twelve other parties describe a fundamentally flawed and dysfunctional process. Participants were unable to connect with the Commission's Portal, and were prevented from timely submitting their applications in what was designed to be a fair and even handed "first come first served" process. Delays of several minutes effectively forced some participants out altogether, while others received receipts with faulty time stamps and encountered other unexplainable irregularities. FCE experienced similar problems. Having faithfully complied with all of the Commission's requirements, FCE was prevented from submitting its project applications for the first several minutes following the 8 a.m. opening of the SGIP Portal. While we recognize that this new and untested system may have been challenged by a large number of participants, there is no reasonable explanation or justification for a process that randomly (or not) refused some applicants while allowing others in at exactly the same time.

The announced results of the February 23, 2016 opening have confirmed that this flawed process resulted in a flawed outcome. Apparently a single participant was able to submit 56 applications before any other party was allowed into the Portal process, and even at that point, irregularities appear to have affected parties arbitrarily. Looking at the problems experienced on February 23, and the resulting windfall to a single participant, it is impossible to avoid the conclusion that the February 23 opening was a failure. It would be completely unfair and inappropriate to treat the results of the February 23 opening as legitimate. Instead, the Commission needs to acknowledge the problem and take steps to address it as soon as possible.

Parties have made some good initial recommendations. FCE supports the suggestion to initiate an investigation and address the clear deficiencies in the Portal process. However, in order to avoid compounding the problem, FCE further urges the Commission to maintain the status quo by suspending the process pending completion of the investigation. This is crucial, in order to ensure that the Commission preserves all options for addressing and mitigating the failures of the February 23 opening, and in order to protect the reputation of the SGIP program and avoid legal challenges.

FCE specifically requests that the Commission take the following actions:

1. Formally suspend the February 23, 2016 application process, and send every participant a letter clarifying that the Commission will not issue conditional reservation letters or take any other action pending completion of investigation. Parties should be cautioned that they should not act in reliance on the outcome of the February 23 opening.
2. Immediately initiate a formal investigation of the February 23 opening. The investigation should be thorough and transparent. If necessary, the Commission should retain forensic experts to determine why the Portal process failed, how it failed, and the ultimate causes leading to the inexplicable results described above.
3. After the investigation is complete, determine an alternative process for taking applications for disbursement of 50% of 2016 SGIP funds and restart the process over again as soon as reasonably possible, giving all parties a fair and equal opportunity to resubmit applications. FCE strongly supports the storage parties' recommendation that the Commission institute a program that is not dependent on "first come, first served." However, this should be considered as an option for re-running the February 23 opening as well as for future application procedures.
4. If the investigation reveals that any applicant violated SGIP program rules or otherwise acted in a manner not consistent with the regulations and requirements of SGIP and the Commission’s Rules of Practice and Procedure, including Rule 1, that participant should be barred from future participation in SGIP and subjected to other appropriate penalties.

To remedy the situation created on February 23, regardless of the detailed outcome of investigation, the Commission has no choice but to completely re-run the application process. It would be utterly improper and unfair to treat the outcome of the flawed February 23 opening process as legitimate, and a partial solution (such as excluding some applications if there is evidence of bad acts) will not work. The situation on 8:01 am on February 23 was chaotic, possibly due to one or more parties’ “gaming” the technology. Some parties continued trying to submit applications. Some parties probably tried to address the problem with their IT staff. Others may have simply given up and stopped trying to submit applications for a period of time. There is no way to restore the rights of each party except by re-running the application process. Since blocking the Portal clearly affected different parties in different ways that cannot possibly be ascertained, the Commission has no way of correcting the process other than starting over. We understand that much work went into the Portal and planning for the February 23, 2016 opening. But the fact remains that process clearly did not work as planned, and that many parties were materially affected as a result. We hope that the Commission's investigation yields a sound analysis of what went wrong and why, and that the Commission is able to recommence the process as soon as possible following the completion of its investigation.

Thank you for your timely consideration of this matter.

Sincerely,

Mike Levin
Director, Government Affairs
(949) 231-0111

cc: R.12-11-005 service list