



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

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Application of Sunrun, Inc. for Rehearing of Resolution
E-5054.

Application _____

**APPLICATION BY SUNRUN, INC. FOR REHEARING
OF RESOLUTION E-5054**

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Pursuant to Rule 16.1 of the Commission’s Rules of Practice and Procedure and Rule 8.1 of General Order 96-B, Sunrun, Inc. (“Sunrun”) applies for rehearing of Resolution E-5054, which approved revisions to the Solar On Multifamily Affordable Housing (“SOMAH”) Program Handbook to prevent photovoltaic (“PV”) projects from participating in both the SOMAH Program and the Multifamily Affordable Solar Homes (“MASH”) program.¹ The approved revisions were proposed by the Center for Sustainable Energy (“CSE”) in its Advice Letter 105-E, which was submitted at the direction of the Commission's Energy Division. Sunrun served written comments on Draft Resolution E-5054 and, therefore, pursuant to Rule 16.2 is deemed a “party” eligible to seek rehearing of the final resolution.

INTRODUCTION

The SOMAH and MASH programs both support the installation of solar PV facilities and equipment for the benefit of low-income residents of multifamily affordable housing.

¹ Resolution E-5054 was adopted on May 28, 2020, but was not mailed until June 5, 2020. Therefore, this Application for Rehearing is timely.

Under the MASH program, which was first adopted in 2008 by Decision (D.) 08-10-036 and subsequently renewed by D.15-01-027, owners of qualified low-income multifamily housing receive incentive payments in varying specified amounts for installations of solar PV capacity.² These payments, along with other costs of the MASH program, are included as part of the participating electric utilities' approved revenue requirements³ and, therefore, are funded directly by ratepayers.

The SOMAH program expands on the MASH program, focusing on the installation of solar PV systems at multifamily affordable housing in identified economically disadvantaged communities or which have tenants with incomes at or below 60% of the area median income.⁴ The Commission's expectation in adopting the SOMAH program was that it would "significantly reduce the costs of solar PV systems serving multifamily affordable housing, and as a result encourage more widespread development of these systems for the benefit of multifamily affordable housing tenants."⁵

While the SOMAH program is "similar in structure and goals" to the MASH program, it is "a new program with different rules and eligibility requirements, and a new funding source."⁶ Specifically, rather than being funded with revenues received from utility ratepayers, the SOMAH program is funded, pursuant to Public Utilities Code § 2870(c), from an allocation of the proceeds from the sale of greenhouse gas ("GHG") allowances under California's Cap and Trade program. As the Commission has explained to ratepayers in the context of Climate Credits, which are funded from the very same source, "The credits come from

² See, D.15-01-027, at pp. 30-44.

³ *Id.*, at p. 3.

⁴ D.17-12-022, at p. 9.

⁵ *Id.*

⁶ *Id.*, at pp. 2-3 (emphasis added).

a State program that requires power plants, natural gas distributors, and other large industries that emit greenhouse gases to buy carbon pollution permits. . . . The money is from the State, not from the utility, even though the utilities deliver the credit on the State's behalf.”⁷

The existence of overlaps between the SOMAH program and other similar funding sources, specifically including the MASH program, were understood by the Legislature during its consideration of the underlying bill (AB 693).⁸ Yet, there is nothing in Public Utilities Code § 2870 that suggests that incentives from the SOMAH program or other sources cannot be combined with funding from the MASH program or that SOMAH incentives should be confined to projects for which other funding sources are not available. Instead, rather than barring the payment of SOMAH incentives for projects eligible for other funding sources, the Legislature addressed the overlaps simply by requiring the Commission to take them into account when setting SOMAH incentive levels so that the combination of such funding does not exceed the total cost of the project.⁹ Thus, as the Commission held in D.17-12-022, where federal investment tax credits, for example, are available, the SOMAH incentive is reduced accordingly.¹⁰ But, importantly, other incentives as well as SOMAH incentives remain available to meet any shortfall in overall project cost.

Consistent with this legislative scheme and the understanding exhibited in D.17-17-022, the SOMAH Program Handbook, as approved by Resolution E-4987, allows incentives to be combined, providing only that the total incentives received for a project not exceed the total project cost.¹¹ In furtherance of this policy, the SOMAH application process, which was

⁷ See, <https://www.cpuc.ca.gov/climatecredit/> (“Frequently Asked Questions”).

⁸ See, e.g., AB-693 Assembly Floor Analysis (September 10, 2015).

⁹ Public Utilities Code § 2870(f)(4) and (5).

¹⁰ D.17-12-022, at p. 41.

¹¹ See, SOMAH Handbook, Section 3 (as approved by Resolution E-4987).

developed contemporaneously with the approval of the SOMAH Handbook, provides for identification of the additional funding sources for each project, specifically including MASH incentives, to enable the SOMAH Program Administrator (the “PA”) to assure that the level of combined incentives will not exceed the cost of the solar PV installation and to enable accurate program tracking and reporting.¹²

Based on the language and intent of the statute, the implementing documentation, and other assurances, Sunrun, other developers, and tax investors went forward to complete a number of projects that would not have been deemed feasible (without the imposition of substantial rent increases on tenants) absent the justifiable expectation that SOMAH funds would be made available to them to combine with previously-committed MASH funds.¹³ These efforts resulted in the completion of at least 25 new solar PV projects for low-income residents of multifamily affordable housing who might otherwise never have been able to enjoy the benefits of solar energy power.¹⁴

Any lingering doubt as to correctness of the assumption that SOMAH and MASH proceeds could be combined for this purpose was subsequently eliminated during the public question and answer session of the SOMAH Contractor Training Workshop, which was jointly presented by the SOMAH PA and the Commission's Energy Division on April 10, 2019. The official notes taken by the SOMAH PA reflect the following question and answer:

¹² See, Protest of Sunrun Inc. to Center for Sustainable Energy Advice 105-E, dated January 3, 2020, (“Sunrun Protest”) at Appendix 1, pp. 2-3 (screenshot of SOMAH PowerClerk online application form).

¹³ Sunrun, Inc.’s Comments on Draft Resolution E-5054, dated April 23, 2020, (“Sunrun Comments,” at p. 5 and Appendix A.

¹⁴ *Id.*

Question: “If you received a MASH rebate on a project that we recently completed in the last 12-months, can you also receive a SOMAH rebate?”

Response: “The response was a verbal ‘Yes.’”¹⁵

Thus, development efforts thereafter continued under the assumption that both SOMAH and MASH programs funds would be available to enable the projects to be completed on a basis that would be economically feasible for owners and low-income tenants of affected multifamily housing.

However, long after the SOMAH Handbook was approved and over seven months after the assurances made from the April 2019 Contractor Training Workshop, the Energy Division, without notice or discussion, directed the SOMAH PA to submit an advice letter modifying the SOMAH Handbook to eliminate the previously-confirmed ability to combine SOMAH and MASH incentives, thereby denying completed projects and pending projects of vital, promised funding. Following protests, the Energy Division circulated its Draft Resolution E-5054 for public comment, and after doing so, the final Resolution was approved by the Commission at its May 28, 2020 meeting and then issued on June 5, 2020.

One reason given by the Resolution for mandating the SOMAH Handbook change is an assertion that combining MASH incentives with SOMAH incentives is effectively prohibited by Section 3.3 of the MASH Handbook, which provides, “For projects that receive ‘other incentives’ for the same generating equipment that are funded by California investor-owned utility ratepayers (e.g., utility or California Energy Commission public goods charge programs), the MASH incentive is discounted by the amount of the ‘other incentive.’”

¹⁵ *Id.*, at Appendix C.

According to the analysis set forth in the Resolution, revenues from the sale of GHG allowances are tantamount to ratepayer funds and, therefore, incentives funded from such sales, such as the SOMAH incentives, must be offset against MASH incentives in accordance with Section 3.3 of the MASH Handbook, thereby effectively precluding the use of combined incentives.¹⁶

A further reason given for prohibiting the use of combined incentives is that it would supposedly complicate and interfere with the Commission's ability to accurately report the impacts of the two programs to the Legislature.¹⁷

Aside from being exceedingly unfair to low-income tenants of qualified multifamily affordable housing, housing owners, and the solar contractors who relied on the previously-confirmed ability to combine SOMAH and MASH incentives,¹⁸ the program changes now mandated by Resolution E-5054 disserve the Legislature's, and the Commission's, goals of bringing savings and other benefits of solar PV energy to Californians who have been left behind as the rest of the State continues to transition to a sustainable, green energy future.¹⁹ While such a shift in direction is, perhaps, within the Commission's discretion to make, it is not one that can or should be made without first affording full notice and a reasonable opportunity to be heard to all parties. The limited notice and contracted opportunity to comment on the Draft Resolution fell short of the minimum requirements of the Public Utilities Code and far short of what

¹⁶ Resolution E-5054, at p. 11.

¹⁷ *Id.*, at pp. 12-13.

¹⁸ The change adopted by Resolution E-5054 immediately affects approximately 6,000 low-income residents and places \$13.5 million of sunk private investment at risk. (Sunrun Comments, at p. 6.)

¹⁹ AB 693 provides, for example, at Section 1(e): "It is the goal of the state to make qualifying solar energy systems more accessible to low-income and disadvantaged communities and, as in the case of the Multifamily Affordable Housing Solar Roofs Program, to install those systems in a manner that represents the geographic diversity of the state."

reasonably can be deemed an appropriate process for considering a program change that undercuts the primary intent and purpose of the SOMAH program.

The fall-out from the failure to follow appropriate procedure is that a vital aspect of the Commission's renewable energy policy has been eliminated largely on the basis of a contrived interpretation of one sentence in the MASH Handbook, without due consideration of the resulting impacts or, indeed, without any truly rational basis. Nowhere in Resolution E-5054 is there any discussion of any real purpose that would be served by the SOMAH Handbook change, other than the unexplained and demonstrably false notion that the change would somehow make it easier to track and report the impacts of the SOMAH and MASH programs, much less any attempt whatsoever to weigh the pros and cons of the change, in terms of State energy policy or any other policy, for that matter. Without providing a reasoned and factually supported basis for the determination that SOMAH and MASH incentives cannot be combined when necessary to fulfill the very purposes of those programs, Resolution E-5054 can only be deemed arbitrary and capricious.

For these reasons, which are explained further, below, Resolution E-5054 is unlawful and must be vacated.

SPECIFICATION OF ERRORS

1. RESOLUTION E-5054 UNLAWFULLY EFFECTS A MODIFICATION OF DECISION 17-12-022 WITHOUT FOLLOWING THE PROCEDURE MANDATED BY PUBLIC UTILITIES CODE § 1708

Public Utilities Code § 1708 provides that, before the Commission rescinds, alters, or amends an order or decision, it must provide notice to the parties, and with opportunity to be heard as provided in the case of complaints. That is not what occurred in this case. Instead, the explicit prohibition against combining SOMAH and MASH incentives was adopted with only a short opportunity to submit written comments, not the process called for in the case

of complaints as established by Public Utilities Code § 1705, contrary to the mandate of Public Utilities Code § 1708.

Resolution E-5054 justifies its reliance on the advice letter process based on the assertion that prohibiting solar PV projects from being funded through a combination of SOMAH and MASH incentives is not of the nature of a “weighty” decision worthy of consideration in a formal proceeding.²⁰ Asserting that the potential use of combined incentives is “misaligned with Commission policy,” the Resolution argues that the SOMAH Handbook change is merely a “minor program modification” in the nature of a “limited and targeted” clarification.²¹

However, the underlying assumption that existing Commission policy militates against the combining of incentives is unsupported. The Resolution claims that this policy is exhibited by the fact that D.17-12-022 requires the SOMAH incentive to be reduced by 30% if the project receives either the federal Investment Tax Credit (“ITC”) or the Low Income Housing Tax Credit (“LIHTC”), and by 50% if the project receives both.²² This, the Resolution implies, shows that the intent of D.17-12-022 is to reduce the SOMAH incentive, dollar for dollar, by the amounts received from any other incentives.²³

But this is not what the Decision says, and is not the goal of the ITC and LIHTC offsets. The purpose of identifying specific reductions reflecting the ITC and LIHTC is to assure that solar PV installations do not receive funding that exceeds the actual costs of the projects. The tax credits effectively reduce the costs of projects; therefore, they must be taken into consideration when determining SOMAH incentive levels to prevent project overfunding.

²⁰ Resolution E-5054, at p. 10.

²¹ *Id.*

²² *Id.*, at p. 12.

²³ *Id.*

Decision 17-12-022 accomplishes this by assigning specific percentage values to effect the necessary offsets for the tax credits associated with projects. But, the Decision does not treat other available incentives in the same fashion as tax credits. Instead, rather than requiring that the SOMAH credits be reduced by an amount equal to the value of other incentives, the Decision only provides for such reductions to be made if the SOMAH incentives would exceed the cost of the project when other incentives the project receives are considered, as provided in Public Utilities Code § 2870(f)(5).²⁴

Thus, the Commission's policy is not as reported in the Resolution. Rather, the policy expressed in D.17-12-022 is to allow a project to receive and benefit from other available incentives, “such as a rebate from a city program, or an incentive from another state incentive program,” so long as the total amount of incentives, including the SOMAH incentive, does not exceed the total cost of the installation (as reduced by any tax credits).²⁵ Accordingly, the characterization of the SOMAH Handbook change as constituting something other than a modification of, or an amendment to, the SOMAH program policy adopted by D.17-12-022 is incorrect.

Further, the Resolution’s assertion that eliminating the ability to combine SOMAH and MASH incentives is not a “weighty” decision is unfounded. To the contrary, as noted above, the inability to combine these incentives undercuts the overarching goals of both programs by placing solar PV outside the reach of low-income residents of multifamily affordable housing properties where the costs of conversion are too high to be completed using funding available under only one program. As Sunrun and other commenters explained, “More than half of all MASH projects have been canceled, primarily because they could not be made

²⁴ D.17-12-022, at p. 41.

²⁵ *Id.*

economically feasible, and MASH is no longer accepting applications. [T]he 25 projects where Sunrun installed solar, based on its reliance that it could combine SOMAH and MASH, would not have otherwise moved forward. These projects did not financially work, but for the ability to combine SOMAH and MASH.”²⁶ “Allowing SOMAH and MASH incentives to be combined, up to the limits of the cost controls already established by law, expands the program and the number of properties, disadvantaged communities and low-income renters that can be served. It makes possible solar projects that otherwise would be impossible, allows systems to be installed with greater direct resident benefits, and incentivizes host customers to move toward doing as much to benefit their tenants as they can, rather than doing the absolute minimum.”²⁷

Under these circumstances, reliance on the G.O. 96-B advice letter process to make the change called for by Resolution E-5054, was improper. While parties were afforded a short opportunity to submit comments on the Draft Resolution, this fell well short of the “opportunity to be heard as provided in the case of complaints” mandated by Public Utilities Code § 1708 before an alteration or amendment is made to a Commission order or decision.

The inadequacy of the process followed in this instance is made obvious in the Resolution’s discussion of Sunrun’s and other parties’ comments that combining SOMAH and MASH incentives is required to enable some projects to go forward. The Resolution rejects those comments because detailed evidence in the form of “project-level finance data or other detailed specifics of the projects in question” was not furnished, stating: “Without that information, we cannot substantiate the validity or accuracy of the claims. Since we cannot independently confirm why the 25 projects require the use of both program incentives because the comments failed to provide supportive evidence, we reject these comments as

²⁶ Sunrun Comments, at pp. 2-3.

²⁷ *Id.*, at p. 7. *Also, see, id.*, at Appendix A.

unsubstantiated.”²⁸ This discussion both reveals and ignores the fact that there was never any forum or process established for the presentation of this type of evidence.

By contrast, following the process that applies when, as here, Public Utilities Code § 1708 is implicated would have allowed parties to submit the type of evidence the Resolution complains was not made available during the advice letter review process and, importantly, more reasoned consideration of which potential outcomes or solutions would best serve the goals of the SOMAH program and other important public interests. Nowhere in Resolution E-5054 is there any such discussion. Instead, the question of whether combining the MASH and SOMAH incentives should be allowed is resolved in a policy vacuum based solely on unclear language contained in one sentence of the MASH Handbook and an untested, undiscussed assertion that it would be too hard to effectively measure results if incentives are combined.

If, as Resolution E-5054 contends, incentives paid from the proceeds of GHG allowance auctions can be deemed “funded by California investor-owned utility ratepayers (e.g., utility or California Energy Commission public goods charge programs)” within the meaning of the MASH Handbook,²⁹ the question still remains whether this is how the MASH Handbook provision should be interpreted or whether it should be interpreted more narrowly to better enable fulfillment of identified program goals and policies. This question is not addressed by the Resolution; in fact, there is no discussion at all as to what purpose the MASH Handbook provision actually serves.

Further, even if it were clear that SOMAH incentives are covered by that provision, which is hardly the case, it would have been reasonable at least to consider whether

²⁸ Resolution E-5054, at p. 15.

²⁹ *Id.*, at p. 14.

the provision makes any sense in the case of the SOMAH program -- perhaps, the Commission would conclude, if it had done so, that it would better serve the public interest to modify the MASH Handbook rather than preclude the use of combined SOMAH and MASH incentives.

But, the Resolution does not get to that question, or any other question regarding impacts on the public interest or Commission or Legislative goals, because the exceedingly narrow process employed did not allow for the robust discussion and examination of all material issues that would have occurred if the procedure called for by Public Utilities Code § 1708 had been followed.

Under that procedure, which is described in Public Utilities Code § 1705, the Commission is required to consider and make findings on all issues material to its decision. These include issues specifically raised by parties and “every element of public interest affected by . . . [utility proposals] which it is called upon to approve.”³⁰ The Resolution provides no explanation or other basis justifying its failure to address and deliberate these issues. Consequently, its adoption of changes to the SOMAH Rulebook without doing so constitutes error.³¹

For these reasons, Resolution E-5054 is unlawful and must be set aside.

2. RESOLUTION E-5054’S ADOPTION OF THE PROHIBITION AGAINST COMBINING SOMAH AND MASH FUNDS IS ARBITRARY AND CAPRICIOUS

As discussed, because Resolution E-5054 does not address and make findings on all factual and policy issues material to its determination, it is invalid and cannot stand. But, even as to certain key issues it does purport to resolve, the Resolution’s conclusions must be set aside because they were reached in an arbitrary manner. A “rational connection [is] needed

³⁰ *Los Angeles v. Public Utilities Com.* (1975) 15 Cal.3d 680, 694-695, citing *Northern California Power Agency v. Public Util. Com.* (1971) 5 Cal.3d 370, 380.

³¹ *Id.*

between the agency's consideration of relevant factors, the choice made, and the purposes of the enabling statute."³² The issuance of a decision that is irrational because it is arbitrary or exceeds the bounds of reason constitutes an abuse of discretion.³³

A. The Determination that SOMAH Incentives Are Funded by California Investor-Owned Utility Ratepayers within the Meaning of Section 3 of the MASH Handbook Is Arbitrary and Capricious

Resolution E-5054's conclusion that SOMAH incentives derived from GHG allowance auction proceeds are "funded by California investor-owned utility ratepayers" is inaccurate on its face. Those proceeds are paid by third parties in exchange for GHG allowances that have been allocated for free to utilities before being consigned by those utilities for auction.³⁴ As noted above, in explaining whether Climate Credits received by ratepayers from those same proceeds are paid by utilities, the Commission's answer is no, "[t]he money is from the State."³⁵

While it is true that proceeds from the sale of utilities' GHG allowances must be used primarily for the benefit of retail ratepayers, this is not the same as saying that incentives derived from such proceeds are "funded by ratepayers" within the meaning of Section 3 of the MASH Handbook. Just as equally, if not more so, it could be said that such incentives are funded by third parties or, as the Commission has said, by the State, and stop there. Either

³² *The Ponderosa Telephone Co. v. Public Utilities Com.* (2019) 36 Cal. App. 5th 999, 1019, citing to and summarizing the Supreme Court's holding in *California Hotel and Motel Assn. v. Industrial Welfare Com.* (1979) 25 Cal.3d 200, 212.

³³ *Id.*

³⁴ D.12-12-033, at p. 15. As explained by the California Solar and Storage Association ("CALSSA") in its Comments on Draft Resolution E-5054, dated April 23, 2020 ("CALSSA Comments"), such third parties include, "refineries, finished fuel importers, and large point sources that must purchase allowances to comply with the cap and trade program." (CALSSA Comments, at p. 2.)

³⁵ <https://www.cpuc.ca.gov/climatecredit/> ("Frequently Asked Questions").

answer is perfectly plausible and, in a given situation, either one could be the appropriate answer.³⁶

Resolution E-5054 provides no explanation, however, why it chose the first answer. There is no consideration of policy impacts, no consideration of the history or purpose of the MASH Handbook limitation, no discussion of the inconsistency of that determination with prior statements and actions, such as the public representation to contractors that combining SOMAH and MASH incentives is permitted,³⁷ the inclusion of MASH incentives in the list of potentially offsetting incentives in the SOMAH application,³⁸ and the Commission's statement that amounts credited to ratepayers from GHG auctions come from the State. Further, there is no true consideration of impacts on low-income ratepayers, affordable housing owners, or contractors who relied on those representations.³⁹

Without discussions and findings on these and other concerns, there is no way to determine whether or not there is a rational basis for the outcome adopted by Resolution E-5054. “Findings are essential to ‘afford a rational basis for judicial review and assist the reviewing court to ascertain the principles relied upon by the commission and to determine whether it acted

³⁶ Sunrun notes that D.18-06-027, which was not mentioned by Resolution E-5054, contains a finding stating “Public purpose program funds and GHG allowances proceeds are funded both by bundled and unbundled customers.” (D.18-06-027, Finding of Fact 37.) However, Sunrun found no discussion or explanation of the basis for that particular finding anywhere in the Decision or the record. Instead, it seems merely to be a reflection of a one-line statement made by Pacific Gas and Electric Company in comments submitted in the underlying proceeding and does not appear to have been critical or even material to the issues in that proceeding. Therefore, its inclusion in D.18-06-027 is without foundation; it is merely unsupported *dicta* and cannot be relied upon for any purpose in this proceeding.

³⁷ See, Sunrun Comments, Appendix C.

³⁸ See, Sunrun Protest at Appendix 1, pp. 2-3 (screenshot of SOMAH PowerClerk online application form).

³⁹ Again, as noted above, the change adopted by Resolution E-5054 immediately affects approximately 6,000 low-income residents and places \$13.5 million of sunk private investment at risk. (Sunrun Comments, at p. 6.)

arbitrarily, as well as assist parties to know why the case was lost and to prepare for rehearing or review, assist others planning activities involving similar questions, and serve to help the commission avoid careless or arbitrary action.”⁴⁰

It may well be that if all material issues had been considered, the Resolution may have come up with the same result; but, the opposite may be just as true. However, unless and until appropriate attention is given all issues and concerns, the conclusion that combining SOMAH and MASH incentives is impermissible can only be deemed arbitrary and capricious, and therefore, an abuse of discretion.

B. The Conclusion that Combining SOMAH and MASH Incentives Should Not Be Permitted Because Doing So Would Prevent the Commission from Properly Carrying Out Reporting Obligations Is Arbitrary and Capricious

The Resolution’s conclusion that combining incentives should not be permitted because doing so would prevent the Commission from properly carrying out its reporting obligations is not supported by evidence or sound reasoning, but, instead is arbitrary and capricious.

First, there is no explanation at all in the Resolution as to why the Commission would be unable to determine “whether we are achieving the cumulative, new installation goal of at least 335 MW for MASH (35 MW) and SOMAH (300+ MW)” if the incentives from both programs are combined in certain cases.⁴¹ MASH incentives have been combined with other incentives, such as substantial tax credits and GHG allowance-funded Low Income Weatherization Program incentives, for years. Yet, this has not stopped the Commission from preparing and submitting reports to the Legislature tracking the efficacy of the MASH program. It would certainly seem that the very same process that is used to differentiate MASH-derived

⁴⁰ *Cal. Mfrs. Ass’n. v. Public Utilities Com.* (1979) 2 Cal.3d 251, 258-259, quoting *Greyhound Lines, Inc. v. Public Utilities Com.* (1967) 65 Cal.2d 811, 813.

⁴¹ *See*, Resolution E-5054, at p. 3.

achievements from tax-derived achievements could be used to differentiate MASH-derived achievements from those derived from GHG allowance auction proceeds. Similarly, the process used to differentiate between SOMAH-derived achievements and those derived from “a rebate from a city program, or an incentive from another state incentive program,” or from ITC or LIHTC, could serve equally well to enable SOMAH-derived achievements to be differentiated from MASH-derived achievements. Indeed, methods to appropriately measure and allocate achievements between the two programs were proposed by Sunrun and other parties in their comments. Yet, the Resolution provides no explanation why applying such methods, or other potential procedures, would be impractical or provide materially less accurate information to the Legislature than the Commission is now providing.

Second, the Resolution inexplicably fails to address and explain why it chose, in the first place, to elevate the importance of elusively-defined reporting accuracy over that of fulfilling the fundamental purposes and goals of the programs. While the Legislature has required the Commission to submit periodic reports on the progress and effects of the SOMAH and MASH incentives, it did not give such reporting anywhere the same degree of primacy as does the Resolution. While tracking and reporting on the programs is important, nowhere in the SOMAH or MASH legislation is there a suggestion that imperfect program analysis should lead the Commission to program paralysis.

The Resolution’s utter and unexplained failure to take the fundamental goals of the SOMAH and MASH programs into consideration in making a decision that would disserve those goals is clearly arbitrary and capricious and an abuse of discretion.

C. There Is No Basis for Resolution E-5054,s Suggestion that Alternatives Exist to Enable Solar PV Installations To Go Forward Without Combining SOMAH and MASH Incentives at Properties Where SOMAH or MASH Incentives Alone Are Shown to Be Inadequate

There is no basis for the notion proffered by Resolution E-5054 that any untoward impacts on renters stemming from the inability to combine SOMAH and MASH incentives can be avoided through “no cost” technical and financial assistance from the SOMAH PA.⁴² The assertion that the SOMAH PA has the ability to “ensure a viable pathway towards financing the PV systems” under such circumstances is not substantiated by any fact or reason. Indeed, it is a pipe dream -- a completely unsupported, illusory, arbitrary, and capricious rationalization for going forward with the SOMAH Handbook change, and cannot be accepted as a basis for permitting the SOMAH Handbook change to be made.

CONCLUSION

As shown above, Resolution E-5054 is not at all well thought out. It was adopted pursuant to inadequate, unlawful procedure, and is based on improper, arbitrary and capricious decisionmaking. Therefore, Resolution E-5054 must be set aside on the grounds that the Commission did not proceed in the manner required by law and its adoption was an abuse of discretion.

Respectfully submitted July 2, 2020 at San Francisco, California.

⁴² See, Resolution E-5054, at p. 17.

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