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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

**COMMENTS OF THE CALIFORNIA SOLAR & STORAGE ASSOCIATION ON THE  
PROPOSED DECISION ADDRESSING PETITION FOR MODIFICATION OF  
DECISION (D.) 19-09-027 AND D.20-01-021**

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Pursuant to Rule 14.3 of the Rules of Practice and Procedure of the California Public Utilities Commission (Commission), the California Solar & Storage Association (CALSSA) submits the following comments on the proposed decision (PD) *Decision Addressing Petition for Modification of Decision (D.) 19-09-027 and D.20-01-021*, issued on June 15, 2020. The PD addresses several issues that CALSSA raised in a petition for modification (Petition) filed April 1, 2020. One of the issues we raised was an obvious error in a table, which the PD would correct. The PD would also adopt CALSSA's recommendation to facilitate the participation of homeless shelters, food banks, and independent living centers in the Equity Resiliency budget of the Self-Generation Incentive Program (SGIP). These two issues need no further discussion, but we address the other issues raised in the Petition in our comments below.

**1 Clarification of Residential Equity Budget Eligibility for Customers in California Indian Country**

On this matter, and on income verification requirements for SGIP generally, CALSSA has coordinated with GRID Alternatives and supports their comments filed separately today. CALSSA also supports the position of the Rincon Band of Luiseño Indians, Pala Band of Mission Indians, and San Pasqual Band of Mission Indians as described in their letter to

Commissioner Rechtschaffen dated July 6, 2020 and attached to these comments in Attachment B.

## **2 Back-Up Requirements for Equity Budget and General Market Storage Systems**

In the Petition, CALSSA requested modifications to the resiliency requirements adopted in D.19-09-027 and D.20-01-021 for Equity and general market projects respectively. In D.19-09-027 the Commission modified the storage incentive step-down structure to allow Equity projects to receive 100% of the incentive for the third and fourth hours of discharge duration. In exchange, Equity projects with greater than 2 hours of duration would have to meet the resiliency requirements the Commission adopted for Equity Resiliency for projects.<sup>1</sup> D.20-01-021 adopted the same modified step-down structure and resiliency requirements for general market (Large Scale and Small Residential) projects.<sup>2</sup>

CALSSA requested that the Commission maintain the modified step-down structure without imposing the resiliency requirements, noting other benefits of longer-duration storage in addition to providing resiliency for customers.<sup>3</sup> We also provided information regarding the substantial costs that may be incurred to conduct additional engineering analysis, install additional systems components, and re-wire circuits through critical load panels in order to enable storage systems to provide back-up power. As we noted, many applicants would be forced to spend thousands of dollars on back-up capability they neither need nor want in order to get a storage system that otherwise meets their needs.

Instead of eliminating the resiliency requirements altogether, the PD would adopt a compromise solution that CALSSA suggested to allow Equity and general market projects to choose between the legacy step-down structure with no resiliency requirements and the modified step-down structure with the resiliency requirements. While CALSSA continues to support our preferred recommendation for the reasons cited in the Petition, we appreciate the Commission's recognition of the need to grant project developers more flexibility to design storage systems without having to incur the sizeable expenses back-up capability often entails.

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<sup>1</sup> D.19-09-027 at 43 and Attachment A, A3-A4.

<sup>2</sup> D.20-01-021 at Ordering Paragraph 28.

<sup>3</sup> Petition at 6-7.

### 3 System Sizing Limits for Equity and General Market Projects

In D.20-01-021, the Commission adopted a CALSSA recommendation to allow Equity Resiliency and Large Scale projects using the resiliency adder to size their energy storage systems larger than the host customer's peak load if the modularity of the system components requires the system to exceed the peak load in order to be able to meet the peak load.<sup>4</sup> The Petition requested similar exceptions for other general market and Equity projects that provide back-up power, which the PD would deny.<sup>5</sup>

Although not discussed in the body of the PD, Finding of Fact 16 states that "SGIP incentive sizing limits do not prohibit customers from installing larger energy storage systems..."<sup>6</sup> The Commission may be conflating the energy capacity rating of storage systems (kWh) with the discharge rating (kW), or what is referred to in the SGIP Handbook as an energy storage system's "rated capacity."<sup>7</sup> While it is true that a project can install an unlimited amount of energy storage capacity and only receive incentives for the portion covered by the step-down incentive structure, the rated capacity sizing limit is strictly enforced.<sup>8</sup>

CALSSA would like to propose an alternative that would allay concerns the Commission may have that relaxing the sizing limit would allow projects to receive excessive levels of rebates from the program. Under our proposal, SGIP would allow projects with back-up capability to install inverters large enough to safely meet the anticipated inrush currents that

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<sup>4</sup> D.20-01-021 at 34, 72-73, Finding of Fact 57, Finding of Fact 58, Conclusion of Law 26, Conclusion of Law 27, and Ordering Paragraph 30.

<sup>5</sup> In the Petition, CALSSA requested that the storage system sizing limits also be relaxed for all projects not applying for either the Equity Resiliency incentive or the resiliency adder. While the heading for Section 7 in the PD refers to the issue as concerning sizing limits for "General Market Energy Storage Systems," the text on page 40 refers to "general market or equity budget incentives. CALSSA's intent was to include both Equity and general market Large Scale projects.

<sup>6</sup> PD at 48.

<sup>7</sup> See SGIP Handbook, Section 5.1.1.

<sup>8</sup> System sizing limits would not be problematic for energy storage systems designed to provide back-up if customers' peak loads were measured instantaneously. In practice, peak loads are measured as averages across the billing interval, so short-duration peak loads may be much higher than the peak load measured by the meter. The discrepancy between true peak load and measured peak load may be larger for residential customers who have longer, hourly meter reads.

electric motors and other sources of load create during start up while continuing to base the incentive limits on customers' measured peak loads.<sup>9</sup>

Below, we provide an example to illustrate how the maximum incentives available to a customer would not depend on the rated capacity of the storage. If a residential customer has a measured peak of 13 kW, but has a pump or other inductive load that, combined with other sources of load at the residence, could impose a total short duration load of 17 kW, the customer would be allowed to install a system with a rated capacity large enough to handle 17 kW but only receive incentives based on 13 kW. As a back-up enabled system, the project would be eligible to receive 100% of the incentive for up to 52 kWh of capacity (4 hours x 13 kW) rather than 68 kWh (4 hours x 17 kW). Applicants would have the latitude to size the inverter above their measured peak loads to safely to meet short duration loads, but there would be no financial benefit to doing so. See Attachment A for suggested revisions to the PD.

#### **4 Conclusion**

CALSSA appreciates the Commission's expeditious response to the Petition. With the revisions to the system sizing limits section we have suggested and the eligibility requirements for residential customers in California Indian Country proposed by GRID Alternatives, we encourage the Commission to adopt the PD.

Respectfully submitted,

/s/ Scott Murtishaw

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July 6, 2020

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<sup>9</sup> For an explanation of inrush current, see [https://en.wikipedia.org/wiki/Inrush\\_current](https://en.wikipedia.org/wiki/Inrush_current).

## **Appendix A. Recommended Changes to the Body, Findings of Fact, Conclusions of Law, and Ordering Paragraphs**

### Body of the Decision

#### Heading 7: System Sizing Limits that Establish Incentive Levels for General Market *and Equity* Energy Storage Systems Designed to Provide Backup Capability

Text on p. 40: ~~It is important to clarify that SGIP incentive sizing limits do not prohibit customers from installing larger energy storage systems but rather ensure that incentive payments are based on appropriate sizing requirements.~~

We ~~deny~~ *grant in part* this portion of CALSSA's PFM. We agree with Cal Advocates and the IOUs that using general market or equity budget incentives to support the oversizing of systems for customers that do not have critical resiliency needs is unnecessary, misaligned with the intent of D.20-01-021 and would lead to fewer SGIP-funded projects that can provide backup capabilities to customers. *However, it is important for energy storage systems designed to provide back-up capability to have the rated capacity to safely handle inrush currents during the start-up of certain types of equipment. Accordingly, we will allow energy storage projects designed to provide back-up capability but that do not receive the Equity Resiliency incentive or the resiliency adder to have rated capacities (in kW) that exceed the host customers' measured peak loads from the previous 12 months. To ensure that SGIP systems are not oversized with respect to their energy capacities (in kWh) and that incentives are available to more customers, the incentives available to any particular project should continue to be based on the host customer's measured peak load.*

*We modify D.20-01-021 as follows:*

- *Text at page 72: The final decision removes SGIP sizing limitations based on ~~inverter size rated capacity~~ for ~~equity resiliency projects and projects using the resiliency incentive adder~~ projects designed to provide back-up capability. In addition, equity resiliency projects and projects using the resiliency incentive adder ~~specific resiliency projects~~ may receive full incentives for a system that is sized above peak load if this is necessary due to modular component sizes to*

- accommodate the customer's peak load, but the project applicant must demonstrate proof of this need before the incentive can be paid. ~~Apart from these two component-specific changes, incentive~~ *Incentive* awards for resiliency projects *that do not qualify for equity resiliency or resiliency adder incentives* shall continue to be based on existing SGIP sizing rules.
- Finding of Fact 57: Modifying the SGIP handbook to remove sizing limitations based on ~~inverter size rated capacity~~ for ~~equity resiliency projects and projects using the resiliency incentive adder~~ *projects designed to provide back-up capability* will help ensure that these types of projects can size systems more appropriately to on-site needs.
  - Finding of Fact 58: To address modular component sizing restrictions, allowing ~~resiliency~~ *projects designed to provide back-up capability* to be sized larger than peak load in certain circumstances will help ensure adequate power for critical services during a PSPS event.
  - New Finding of Fact: *In order to ensure that projects receiving an equity resiliency or resiliency adder incentive have sufficient energy storage capacity to meet on-site loads during an outage, these projects may receive the full incentives based on the rated capacity above host customers' peak loads as needed depending on the modularity of the system components.*
  - New Finding of Fact: *Allowing energy storage projects that do not receive the equity resiliency incentive or the resiliency adder but that provide back-up capability to receive incentives based on an uncapped rated capacity could encourage developers to oversize the energy capacity of systems, reducing the number of customers who can benefit from SGIP.*
  - Conclusion of Law 26: The Commission should direct the SGIP PAs to update the SGIP handbook to remove sizing limitations based on ~~inverter size rated capacity~~ for ~~equity resiliency projects and projects using the resiliency incentive adder~~ *projects designed to provide back-up capability.*
  - Conclusion of Law 27: The Commission should address modular component sizing restrictions by allowing ~~resiliency~~ *projects designed to provide back-up capability* to be sized larger than peak load in certain circumstances.



- New Conclusion of Law: *In order to ensure that equity resiliency and resiliency adder projects receive enough funding cover their on-site energy needs during an outage, they should have access to the full incentives based on the discharge capacity above host customers' peak loads as needed depending on the modularity of the system components.*
- New Conclusion of Law: *To prevent the incentive to oversize the energy capacity of energy storage systems designed to provide back-up capability, the incentives available to projects that do not receive an equity resiliency or resiliency adder incentive should continue to be based on the host customer's peak load.*
- Ordering Paragraph 30: Pacific Gas and Electric Company, Southern California Edison Company, Southern California Gas Company and the Center for Sustainable Energy shall revise the Self-Generation Incentive Program handbook to remove sizing limitations based on ~~inverter-size rated capacity~~ for ~~equity resiliency~~ projects *designed to provide back-up capability and projects using the resiliency incentive* and shall allow ~~specific~~ *equity resiliency and resiliency adder* projects to receive incentives for a system that is sized above peak load if this is necessary due to modular component sizes to accommodate the customer's peak load, if the project applicant demonstrates proof of this need before the incentive is paid. *Projects designed to provide back-up capability that do not receive an equity resiliency or resiliency adder incentive shall continue to receive incentives based on host customers' peak loads.*

### Findings of Fact

Finding of Fact 16: *In some cases, SGIP incentive sizing limits do not prohibit customers from installing larger energy storage systems designed to provide back-up capability but rather ensure that incentive payments are based on appropriate sizing requirements with rated capacities that are sufficient to safely handle the inrush currents of certain types of equipment.*

New Finding of Fact: *Allowing energy storage projects designed to provide back-up capability that do not receive the equity resiliency incentive or the resiliency adder to receive incentives based on an uncapped rated capacity could encourage developers to*

*oversize the energy capacity of systems, reducing the number of customers who can benefit from SGIP.*

#### Conclusions of Law

*New CoL: The Commission should allow energy storage projects designed to provide back-up capability that do not receive the equity resiliency incentive or the resiliency adder to have rated capacities that exceed host customers' peak loads while continuing to base the incentives on customers' peak loads.*

Conclusion of Law 8: The Commission should modify D.19-09-027 and D.20-01-021 as indicated in sections 4.2, 7.2, 6.2 and 8.2.

#### Ordering Paragraphs

Ordering Paragraph 2, new subparagraphs:

- *Text at page 72: The final decision removes SGIP sizing limitations based on ~~inverter size rated capacity~~ for ~~equity resiliency projects and projects using the resiliency incentive adder~~ projects designed to provide back-up capability. In addition, equity resiliency projects and projects using the resiliency incentive adder ~~specific resiliency projects~~ may receive full incentives for a system that is sized above peak load if this is necessary due to modular component sizes to accommodate the customer's peak load, but the project applicant must demonstrate proof of this need before the incentive can be paid. ~~Apart from these two component specific changes, incentive~~ Incentive awards for resiliency projects that do not qualify for equity resiliency or resiliency adder incentives shall continue to be based on existing SGIP sizing rules.*
- Finding of Fact 57: Modifying the SGIP handbook to remove sizing limitations based on ~~inverter size rated capacity~~ for ~~equity resiliency projects and projects using the resiliency incentive adder~~ projects designed to provide back-up capability will help ensure that these types of projects can size systems more appropriately to on-site needs.
- Finding of Fact 58: To address modular component sizing restrictions, allowing ~~resiliency~~ projects designed to provide back-up capability to be sized larger than peak load in certain circumstances will help ensure adequate power for critical services during a PSPS event.

- New Finding of Fact: *In order to ensure that projects receiving an equity resiliency or resiliency adder incentive have sufficient energy storage capacity to meet on-site loads during an outage, these projects may receive the full incentives based on the rated capacity above host customers' peak loads as needed depending on the modularity of the system components.*
- New Finding of Fact: *Allowing energy storage projects that do not receive the equity resiliency incentive or the resiliency adder but that provide back-up capability to receive incentives based on an uncapped rated capacity could encourage developers to oversize the energy capacity of systems, reducing the number of customers who can benefit from SGIP.*
- Conclusion of Law 26: The Commission should direct the SGIP PAs to update the SGIP handbook to remove sizing limitations based on ~~inverter size~~ *rated capacity* for ~~equity resiliency projects and projects using the resiliency incentive adder~~ *projects designed to provide back-up capability.*
- Conclusion of Law 27: The Commission should address modular component sizing restrictions by allowing ~~resiliency~~ *projects designed to provide back-up capability* to be sized larger than peak load in certain circumstances.
- New Conclusion of Law: *In order to ensure that equity resiliency and resiliency adder projects receive enough funding cover their on-site energy needs during an outage, they should have access to the full incentives based on the discharge capacity above host customers' peak loads as needed depending on the modularity of the system components.*
- New Conclusion of Law: *To prevent the incentive to oversize the energy capacity of energy storage systems designed to provide back-up capability, the incentives available to projects that do not receive an equity resiliency or resiliency adder incentive should continue to be based on the host customer's peak load.*
- Ordering Paragraph 30: Pacific Gas and Electric Company, Southern California Edison Company, Southern California Gas Company and the Center for Sustainable Energy shall revise the Self-Generation Incentive Program handbook to remove sizing limitations based on ~~inverter size~~ *rated capacity* for ~~equity resiliency~~ *projects designed to provide back-up capability and projects using the*

~~resiliency incentive~~ and shall allow ~~specific~~ *equity resiliency and resiliency adder* projects to receive incentives for a system that is sized above peak load if this is necessary due to modular component sizes to accommodate the customer's peak load, if the project applicant demonstrates proof of this need before the incentive is paid. *Projects designed to provide back-up capability that do not receive an equity resiliency or resiliency adder incentive shall continue to receive incentives based on host customers' peak loads.*

**Attachment B: Letter of the Rincon Band of Luiseño Indians, Pala Band of Mission Indians, and San Pasqual Band of Mission Indians to Commissioner Rechtschaffen**

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July 6, 2020

Commissioner Rechtschaffen  
California Public Utilities Commission  
505 Van Ness Avenue  
San Francisco, CA 94102

Commissioner Rechtschaffen,

Our governments reviewed the Proposed Decision submitted by your office on June 15, 2020 regarding the eligibility of residences on our lands for the Self Generation Incentive Program (SGIP) equity budget rebate as described in CPUC Decision 19-09-027. We appreciate the proposed clarifications of the Commission's intent regarding income requirements and the inapplicability of deed- and resale-restrictions in determining the SGIP equity budget eligibility of projects in California Indian Country. For reasons explained in the attached letter, we do not support the proposal to apply CARE and ESA income limits, which differ from the "lower income households" limits that are the basis of SGIP equity budget eligibility for projects outside of California Indian Country. Lastly, as requested in a letter sent to your office on February 25, 2020, we request advance notice and early consultation opportunities on CPUC proceedings that impact California tribal communities such as this Proposed Decision, in accordance with the CPUC's Tribal Consultation Policy.

Respectfully,



Robert Smith  
Chairman, Pala Band of Mission Indians



Tishmall Turner  
Vice Chair, Rincon Band of Luiseño Indians



Stephen W. Cope  
Chairman, San Pasqual Band of Mission Indians

**DATE:** July 6, 2020

**TO:** Commissioner Rechtschaffen, California Public Utilities Commission

**FROM:** Rincon Band of Luiseño Indians, San Pasqual Band of Mission Indians, and Pala Band of Mission Indians

**SUBJECT: June 15, 2020 Proposed Decision to Modify D.19-09-027 Residential SGIP Equity Budget Eligibility for California Indian Country**

The Rincon Band of Luiseño Indians, San Pasqual Band of Mission Indians, and Pala Band of Mission Indians (“Tribes”) submitted a letter to your office on February 25, 2020 thanking the Commission for its attempts to address resilience needs in California Indian Country and requesting clarification on residential equity budget eligibility within California Indian Country as described in D.19-09-027. As explained in that letter, language in D.19-09-027 led our communities to believe that the Commission intended to make all homes within California Indian Country eligible for the SGIP equity budget despite a different interpretation that was being adopted by CPUC staff. The February 25, 2020 letter was then attached to a Petition for Modification on D.19-09-027 submitted by CalSSA on April 1, 2020 in support of this interpretation with a request for the Commission to clearly confirm this intent. Cal Advocates, CSE, and the IOUs submitted responses that supported modifying D.19-09-027 to clarify that all residential customers in California Indian Country are eligible for the equity budget, with CSE agreeing that this appeared to reflect the Commission’s original intent. No parties opposed the requested modification.

Our communities appreciate the Commission’s attempts to provide clarity on SGIP equity budget eligibility requirements for residential customers in California Indian Country in the June 15, 2020 Proposed Decision submitted by your office. While we believe our interpretation of the Commission’s intent to make all residences in California Indian Country eligible for the equity budget through D.19-09-027 was reasonable and consistent with the Commission’s desire to address the problems of “poor electric service reliability” on our lands and the “historic neglect” faced by Native Americans in California,<sup>1</sup> refers the Proposed Decision states that this is not the Commission’s intent. Relying upon equity budget eligibility requirements established in D.17-10-004, the Proposed Decision makes it clear that the Commission intends to limit SGIP equity budget eligibility to low-income Californians, including those located within California Indian Country.

However, in response to the PFM, the Commission is now proposing new income limits for residential customers in California Indian Country that are inconsistent with the income limits for residential customers outside of California Indian Country. The proposed income limits are,

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<sup>1</sup> “However, because of their remoteness, these lands frequently experience poor electric service reliability. They have also suffered from historic neglect. To address these problems, the SGIP ACR asked if the Commission should expand eligibility for the storage equity budget to include all projects located in California Indian Country.” D.19-09-027 at 11.

except in limit instances, lower than the basis of the current non-Indian Country limits. As a result, the proposed income limits are adversely inequitable to residences within California Indian Country. We do not support the proposed CARE and ESA based income limits and urge the Commission to adopt consistent equity budget income limits for all Californians, including those residing within California Indian Country.

Conversely, we do support the Commission's proposal to remove deed and resale restrictions as an equity budget eligibility requirement for residential California Indian Country customers. As pointed out in the Petition for Modification and in our February 25, 2020 letter, deed and resale restrictions are not applicable in California Indian Country.

## Discussion

D.17-10-004 clearly describes the Commission's intent to target low-income residential customers, to utilize income criteria for this purpose, and to limit eligibility to "lower income households."<sup>2</sup> In D.17-10-004, the Commission concludes that "low-income residential housing

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<sup>2</sup> "The Commission makes this programmatic change on our own motion with the objective that these investments will...**ensure that low-income customers**, and non-profit or public sector organizations in disadvantaged or low-income communities have access to energy storage resources incentivized through SGIP." (pg. 6, emphasis added) "GRID Alternatives and CalSEIA recommend that the SGIP Equity Budget use the eligibility criteria established for other energy equity programs under the Commission's jurisdiction, most notably the AB 693 program (Eggman, Stats. 2015, ch. 582), the Multifamily Affordable Solar Housing program, and the Single-Family Affordable Solar Housing program...Consistent eligibility criteria where practicable are reasonable and can simplify program participation. **We adopt an eligibility framework for the SGIP Equity Budget based on existing policies that utilize geographic, housing type, and income criteria.**

In order to ensure that the distribution of the SGIP Equity Budget funds is more geographically even, and to include low-income customers not currently captured by the CalEnviroScreen, it is reasonable to expand geographic eligibility for the Equity Budget beyond the statewide top 25% most affected census tracts as defined by CalEnviroScreen. We do so in two ways...and **by allowing "low-income residential customers" to access the SGIP Equity Budget regardless of where they happen to reside.**" D.17-10-004 at 12-13, emphasis added.

"For the purpose of the SGIP Equity Budget, **a low-income community is defined in the same way as § 39713(d)(2) of the Health and Safety Code.** That subsection defines low-income communities as census tracts with median household incomes at or below 80% of the statewide median income or with median household incomes at or below the threshold designated as low-income by the Department of Housing and Community Development's list of state income limits adopted pursuant to Section 50093." D.17-10-004 at 13-14, emphasis added.

"**We similarly rely on existing programs and statutory definitions to define low-income residential customers that are eligible for the SGIP Equity Budget regardless of where they live.** Specifically, we rely on the definition of low-income residential housing as used in AB 69330 where it is defined as a multifamily residential building of at least five rental housing units that is operated to provide deed-restricted low-income residential housing, as described in clause (i) of subparagraph (A) of paragraph (3) of subdivision (a) of § 2852 of the Public Utilities Code, and is either: 1) in a disadvantaged community; or 2) a building where at least 80% of the households have incomes at or below 60% of the area median income, as defined in subdivision (f) of § 50052.5 of the Health and Safety Code. Any customer account in such buildings will be eligible for the SGIP Equity Budget." D.17-10-004 at 14-15, emphasis added.

"In comments, CalSEIA argues that the Commission should ensure that customers living in low-income single-family homes, regardless of location, have access to the Equity Budget. This is a reasonable addition to the definition of low-income residential housing as codified by AB 693 that we adopt above, as it would ensure that low-income residential customers that happen to live in single-family homes rather than multi-family dwellings



should be defined in the same way as section 2852 of the Public Utilities Code, as refined by this decision.”<sup>3</sup> Public Utilities Code Section 2852 uses “lower income household(s)” in defining both multi- and single-family “low-income residential housing,” which “have the same meanings as in those set forth in Chapter 2 (commencing with Section 50050) of Part 1 of Division 31 of the Health and Safety Code.”<sup>4</sup> Paragraph (a) of Section 50079.5 of the Health and Safety Code states that “Lower income households’ means persons and families whose income does not exceed the qualifying limits for lower income families as established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937. The limits

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also have access to SGIP Equity Budget funds. *Therefore, an individual customer living in a low-income residence, as described in subparagraph (C) of paragraph (3) of subdivision (a) of § 2852 of the Public Utilities Code, also meets the definition of low-income residential customer for the purpose of the SGIP Equity Budget.*” D.17-10-004 at 14, emphasis added.

<sup>3</sup> D.17-10-004 at 30, emphasis added.

“IT IS ORDERED that: 1. The Self-Generation Incentive Program (SGIP) Equity Budget will be administered...in the following manner: **Eligibility: Low-income residences, as defined in Conclusion of Law 4**, throughout each utility’s service territory.” D.17-10-004 at 32, emphasis added.

<sup>4</sup> (a) As used in this section, the following terms have the following meanings:

(1) “Affordable housing cost,” “affordable rent,” and “**lower income households**” *have the same meanings as in those set forth in Chapter 2 (commencing with Section 50050) of Part 1 of Division 31 of the Health and Safety Code.*

(2) “California Solar Initiative” means the program providing ratepayer-funded incentives for eligible solar energy systems adopted by the Public Utilities Commission in Decision 05-12-044 and Decision 06-01-024.

(3) “Low-income residential housing” means any of the following:

(A) A multifamily residential complex financed with low-income housing tax credits, tax-exempt mortgage revenue bonds, general obligation bonds, or local, state, or federal loans or grants, and for which either of the following applies:

(i) The rents of the occupants who are **lower income households** do not exceed those prescribed by deed restrictions or regulatory agreements pursuant to the terms of the financing or financial assistance.

(ii) The affordable units have been or will be initially sold at an affordable housing cost to a **lower income household** and those units are subject to a resale restriction or equity sharing agreement pursuant to the terms of the financing or financial assistance.

(B) A multifamily residential complex in which at least 20 percent of the total housing units are sold or rented to lower income households and either of the following applies:

(i) The rental housing units targeted for **lower income households** are subject to a deed restriction or affordability covenant with a public entity or nonprofit housing provider organized under Section 501(c)(3) of the Internal Revenue Code that has as its stated purpose in its articles of incorporation on file with the office of the Secretary of State to provide affordable housing to lower income households that ensures that the units will be available at an affordable rent for a period of at least 30 years.

(ii) The housing units have been or will be initially sold at an affordable cost to a **lower income household** and those units are subject to a resale restriction or equity sharing agreement, for which the homeowner does not receive a greater share of equity than described in paragraph (2) of subdivision (c) of Section 65915 of the Government Code, with a public entity or nonprofit housing provider organized under Section 501(c)(3) of the Internal Revenue Code that has as its stated purpose in its articles of incorporation on file with the office of the Secretary of State to provide affordable housing to lower income households.

(C) An individual residence sold at an affordable housing cost to a **lower income household** that is subject to a resale restriction or equity sharing agreement, for which the homeowner does not receive a greater share of equity than described in paragraph (2) of subdivision (c) of Section 65915 of the Government Code, with a public entity or nonprofit housing provider organized under Section 501(c)(3) of the Internal Revenue Code that has as its stated purpose in its articles of incorporation on file with the office of the Secretary of State to provide affordable housing to lower income households.” Public Utilities Code § 2852(a), emphasis added.

shall be published by the department in the California Code of Regulations as soon as possible after adoption by the Secretary of Housing and Urban Development. In the event the federal standards are discontinued, the department shall, by regulation, establish income limits for lower income households for all geographic areas of the state at 80 percent of area median income, adjusted for family size and revised annually.”<sup>5</sup> 42 U.S. Code § 1437a(b)(2)(A) of the United State Housing Act it is established that “the term ‘low-income families’ means those families whose incomes do not exceed 80 per centum of the median income for the area, as determined by the Secretary with adjustments for smaller and larger families.”<sup>6</sup>

The Commission’s stated intent in D.17-10-004 was to align household eligibility thresholds used in the SGIP Equity Budget with the Single-Family Affordable Solar Homes (SASH) program, a low-income solar program that has been in effect in California for more than a decade.<sup>7</sup> Since 2015, the SASH program requires an individual household income requirement of 80% of AMI based upon Public Utilities Code 2852 definition of “lower income households” and requires actual or presumed household deed or resale restrictions.<sup>8</sup>

The Program Administrators adopted both the individual household income requirement and the presumed or actual deed or resale requirement from D.17-10-004 in the 2017 Self-Generation Incentive Program Handbook, which were previously approved by the Commission and have been carried over, unchanged, into the initial 2020 Handbook.<sup>9</sup> The 2017 Handbook

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<sup>5</sup> (a) **“Lower income households” means persons and families whose income does not exceed the qualifying limits for lower income families as established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937.** The limits shall be published by the department in the California Code of Regulations as soon as possible after adoption by the Secretary of Housing and Urban Development. In the event the federal standards are discontinued, the department shall, by regulation, establish **income limits for lower income households for all geographic areas of the state at 80 percent of area median income, adjusted for family size and revised annually.**

(b) “Lower income households” includes very low income households, as defined in Section 50105, and extremely low income households, as defined in Section 50106. The addition of this subdivision does not constitute a change in, but is declaratory of, existing law.

(c) As used in this section, **“area median income” means the median family income of a geographic area of the state.** Health and Safety Code § 50079.5, emphasis added.

<sup>6</sup> “The term **“low-income families” means those families whose incomes do not exceed 80 per centum of the median income for the area, as determined by the Secretary with adjustments for smaller and larger families,** except that the Secretary may establish income ceilings higher or lower than 80 per centum of the median for the area on the basis of the Secretary’s findings that such variations are necessary because of prevailing levels of construction costs or unusually high or low family incomes.” 42 U.S. Code § 1437a(b)(2)(A), emphasis added.

<sup>7</sup> See footnote 2, D.17-10-004, p.9-10

<sup>8</sup> SASH Program Handbook, p.7, See “Applicant Eligibility Section 4.2.1:

[https://gridalternatives.org/sites/default/files/SASH%202.0\\_Handbook%20Update\\_FINAL.pdf](https://gridalternatives.org/sites/default/files/SASH%202.0_Handbook%20Update_FINAL.pdf); See also D15-01-027, p.53, January 30, 2015. “Section 2852 provides guidelines on low-income property eligibility standards for participation in SASH and MASH.”

<sup>9</sup> “Eligible multi-family housing is defined as a multi-family residential building of at least five rental housing units that is operated to provide deed-restricted low-income residential housing Eligible multi-family housing is defined as a multi-family residential building of at least five rental housing units that is operated to provide deed-restricted **low-income residential housing**<sup>32</sup>, and is either located in a disadvantaged community, or is a building where at

through the initial 2020 required that applicants demonstrate that they do not exceed 80% area median income by providing household income documentation in the form of federal income tax returns for single family projects.<sup>10</sup> This is not included as a requirement for multi-family projects, presumably because household income is already incorporated in the required low-income housing documentation that must be provided by the applicant.

In the April 15, 2020 Joint Advice Letter (No. 110-E) submitted by CSE and the IOUs that was approved by the Commission on June 29, 2020, the requirement that applicants demonstrate that they do not exceed 80% area median income (AMI) by providing household income documentation in the form of federal income tax returns for single family projects is to be removed from the next version of the 2020 Handbook. While the exact reasons for removing this requirement after requiring it for the previous 3 years are not fully known, it appears to be based on the belief that D.17-10-004 doesn't explicitly required income verification through federal tax returns, the 80% AMI and comparable income limits are already incorporated into the required deed- and resale-restrictions, and removing the need to provide federal tax returns will make it easier for low-income households to apply for the equity budget rebate. This is consistent with the multi-family project application requirements, which solely rely upon deed- and resale-restriction documentation for low income verification purposes. Ultimately, the 80% AMI limit is still the basis of low-income eligibility for the equity budget for all projects outside of California Indian Country, even without requiring tax returns.

The June 15, 2020 Proposed Decision recommends new and different household income requirements for residential projects within California Indian Country. Instead of adopting the "lower income household" limits established in D.17-10-004, the Proposed Decision requires that "single family residences in California Indian Country must demonstrate eligibility for California Alternate Rates for Energy (CARE) to be eligible for the equity budget and multi-family buildings in California Indian Country must use an owner affidavit process based on the Energy Savings Assistance (ESA) program to demonstrate equity budget eligibility." CARE and ESA income limits for eligibility are 200% of the federal poverty level, with no adjustments for cost-of-living based on the location of the household. The Proposed Decision further explains that, "in lieu of requiring residential customers in California Indian Country to reside in deed- or resale-restricted housing, requiring CARE eligibility for single family residences and the ESA program owner affidavit process for multi-family buildings is a comparable and reasonable proxy." The Proposed Decision then goes on to state:

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least 80% of the households have incomes at or below 60% of the area median income. Any customer account in such buildings will be eligible for the Equity Budget.

Additionally, the Equity Budget is available to customers living in **single-family low-income residences** sold at an affordable housing cost to a **lower income household** that is subject to...

[FOOTNOTE 32: As described in clause (i) of subparagraph (A) of paragraph (3) of subdivision (a) of § 2852 of the Public Utilities Code.]” 2020 SGIP Handbook at 33, emphasis added.

<sup>10</sup> Proof of Income Qualification (Single-family Projects Only)

Documentation showing the **host customer's household income is 80% of the area median income or less based upon a copy of the most recently available federal income tax return**. Area Median Income is subject to annual changes based upon Housing and Urban Development's income guidelines. 2020 SGIP Handbook at 58, emphasis added.

“Our intent with the equity budget is to support low-income Californians’ participation in SGIP. Restricting equity budget eligibility to single family residences in California Indian Country that are CARE-eligible or multi-family buildings for which a building owner or authorized representative has certified that 80 percent of residents meet ESA income guidelines supports directing limited incentives to those most in need. This is an equitable approach that supports broad participation in SGIP by low-income residents of California Indian Country, while allowing higher-income residents to participate via general market incentives.”

The proposed CARE and ESA requirements are not equitable for all Californians inside and outside of California Indian Country, with respect to income limits. The CARE and ESA income eligibility upper limits for the equity budget are, with limited exceptions, lower and more restrictive, for single and multi-family residential projects in California Indian Country than for residential projects outside of California Indian Country.<sup>11</sup> The inequity is proportionately greater in areas where the cost of living is higher. Table 1 shows the difference between proposed income eligibility limits for California Indian Country versus those that have already been established in D.17-10-004 for three different California counties: Lake, San Diego, and Sonoma.<sup>12</sup> Lake is among the lowest income areas in California and home six tribes. The other two counties are San Diego, which is home to the seventeen tribes or the most of any county in the United States, and Sonoma, which is home to six federally recognized tribes.

**Table 1. A comparison of proposed 2020 CARE/ESA income limits with the 2020 80% Area Median Income Limits for Lake, San Diego, and Sonoma counties currently applicable under D.17-10-004**

Persons in Family	Proposed CARE/ESA Income Limits	Lake County 80% Area Median Income Limits	San Diego County 80% Area Median Income Limits	Sonoma County 80% Area Median Income Limits
1	\$34,480	\$39,150	\$64,700	\$63,650
2	\$34,480	\$44,750	\$73,950	\$72,750
3	\$43,440	\$50,350	\$83,200	\$81,850
4	\$52,400	\$55,900	\$92,400	\$90,900
5	\$61,360	\$60,400	\$99,800	\$98,200
6	\$70,320	\$64,850	\$107,200	\$105,450
7	\$79,280	\$69,350	\$114,600	\$112,750
8	\$88,240	\$73,800	\$122,000	\$120,000
+1 person	\$8,960			

The upcoming revisions to the 2020 Handbook, as adopted by the Commission in approving the April 15, 2020 Advice Letter and which no longer require federal tax returns to demonstrate 80% or lower household AMI, allow for even greater inequities between the income limits

<sup>11</sup> Both CARE and ESA use 200% of federal poverty guidelines as an income qualification threshold.

<sup>12</sup> As currently shown in HUD’s FY2020 Income Limits Documentation System at:

[https://www.huduser.gov/portal/datasets/il/il2020/select\\_Geography.odn](https://www.huduser.gov/portal/datasets/il/il2020/select_Geography.odn)

applicable to single family residential projects in California Indian Country versus outside of California Indian Country. While the 80% AMI limit is necessary to establish an equity budget eligible deed- or resale-restriction, a residence outside of California Indian Country is now eligible for the equity budget even if the household's annual income has increased beyond the intended income limit. Furthermore, a residence outside of California Indian Country may rely upon a "presumed resale restriction" which doesn't require any verification that a residence is actually a low-income household.<sup>13</sup>

Removing the requirement to submit federal tax returns, as authorized in the Commission's approval of the April 15, 2020 Advice Letter, undermines the Commission's intent to limit SGIP equity budget eligibility to low income residences.

On the other hand, CARE eligibility is based on a household's current income. If a household no longer qualifies for CARE, they must immediately notify the applicable IOU and will be removed from the program. Therefore, the Proposed Decision will not only subject residences in California Indian Country to different, and likely lower, income limits for SGIP equity budget eligibility it will also require a current income verification while almost simultaneously removing a comparable income requirement for single family residences outside of California Indian Country. In our opinion, this is not "an equitable approach that supports broad participation in SGIP by low-income residents of California Indian Country."

## **Recommendations**

The Commission has inadvertently proposed inequitable equity budget eligibility for residences in California Indian Country. Based on language throughout D.17-10-004 and the Proposed Decision, we do not believe that this was the Commission's intent. Rather, this appears to have resulted from unavoidable challenges in interpreting various past decisions and their cross-references to external state and federal laws that further cross-reference other state and federal laws.

Instead of adopting the inequitable income limits proposed, we request the adoption of the same equity budget eligibility income limits for all residential projects outside of California Indian Country for projects within California Indian Country. This can be accomplished by establishing that residential projects in California Indian Country qualify if the "host customer's household income is 80% of the area median income or less based upon a copy of the most

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<sup>13</sup> "Additionally, a presumed resale restriction may also be demonstrated to meet the resale restriction eligibility requirement, such as single-family homes located in IRS-defined Qualified Census Tracts<sup>68</sup> and other designated areas eligible for the Single-Family Affordable Solar Homes (SASH) program.<sup>69</sup>"

FOOTNOTE 68: "Qualified Census tracts are defined by Internal Revenue Code Section 143(j)(2) as "a tract in which 70 percent or more of the families have income which is 80 percent or less of the statewide median family income" [https://www.huduser.gov/portal/sadda/sadda\\_qct.html](https://www.huduser.gov/portal/sadda/sadda_qct.html)"

FOOTNOTE 69: "Decision 15-01-027 allows presumed resale restrictions within the SASH program, such as those found in federally-designated Empowerment Zones, Enterprise Communities, certain Neighborhood Revitalization Areas, Targeted Employment Areas, and Qualified Census Tracts." 2020 SGIP Handbook at 58.

recently available federal income tax return,” borrowing previously approved language regarding equity budget eligibility of single-family residences from the SGIP Handbook dating back to 2017. To simplify eligibility requirements, this should apply to both single- and multi-family projects. In addition, residences in California Indian Country should be permitted to demonstrate eligibility using the “presumed resale restriction” qualifications that are available to non-California Indian Country residences.<sup>14</sup> We support the use of the proposed CARE and ESA eligibility requirements as another way to qualify for the SGIP equity budget, but only in addition to the 80% AMI and “presumed resale restriction” eligibility pathways.

## **Conclusion**

In order to establish “an equitable approach that supports broad participation in SGIP by low-income residents of California Indian Country,” the Commission must adopt income limits for residential projects in California Indian Country that are consistent with the income limits for SGIP equity budget projects outside of California Indian Country. In addition, the Commission should consider re-establishing the household income requirement of 80% of AMI (or 200% of federal poverty level, for the rare circumstances in which this income limit is higher) for all single-family households statewide participating in the SGIP Equity programs, to carry out the Commission’s stated intentions in D.17-10-004 and remove the “loophole” that will allow wealthy households outside of California Indian Country to reserve equity budget funds set aside for low-income households. Our governments urge the Commission to do so by adopting the recommendations provided herein.

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<sup>14</sup> 2020 SGIP Handbook at 58.