



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

Order Instituting Rulemaking to Revisit
Net Energy Metering Tariffs Pursuant
to Decision 16-01-044, and to Address
Other Issues Related to Net Energy
Metering.

Rulemaking 20-08-020
(Filed August 27, 2020)

FILED
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**CALifornians for Renewable Energy (CARE)
Request for Stay**

Pursuant to Rule 11.1 of the Commission’s Rules of Practice and Procedure CALifornians for Renewable Energy (CARE) and Michael E. Boyd (“we” herein) respectively request a brief stay in the above captioned proceedings while Defendants California Public Utilities Commission and Commissioners’ Motion to Dismiss Sixth Amended Complaint and Motion to Strike References to Second Supplement from Sixth Amended Complaint [ECF No. 271] is under submission to the United States District Court Central District of California in Case No. 2:11-CV-04975-JWH-JCG before the Honorable John W. Holcomb.

Statement of Facts

On December 31, 2021, we filed a request for official notice¹ of (1) the September 17, 2021, CPUC reply to our opposition to their Motion to Dismiss the Sixth Amended Complaint and Motion to Strike References to Second Supplement from Sixth Amended Complaint [Attach. 1], (2) the September 17, 2021, Objections to [our] Request for Judicial Notice filed with the District Court [Attach. 2], and (3) an October 4, 2021, Minute Order [Attach. 3] stating that the District Court “takes Defendants’ motion under submission”.

We request the December 31, 2021, request for official notice please be incorporated by this reference herein.

The ALJ in the rulemaking has set a due date for comments on her proposed decision (PD) for January 7, 2021. Attachments 1 and 2 to the December 31, 2021,

¹ See <https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M436/K700/436700098.PDF>

CARE request for official notice refers to the same subject matter in the PD which is currently under submission to the federal District Court.

We provide some examples of relevant CPUC pleadings submitted to the District Court for its review.

Defendants observe that Plaintiffs raise the CPUC’s pending rulemaking (R.20-08-020) considering revisions to the Net Energy Metering (“NEM”) Program.^{6[2]}

[Request for Official Notice page 15 lines 11 to 12]

The Decision comes from a California Public Utilities Commission (CPUC) rulemaking (R. 20-08-020) considering revisions to the Net Energy Metering (NEM) Program. □ A challenge to the ongoing NEM rulemaking in this Court regarding the CPUC’s PURPA implementation is not ripe because the CPUC is the appropriate venue at this time to deliberate on questions relating to any potential future changes to the NEM Program.

[Request for Official Notice page 22 lines 10 to 15]

“To explain, the CPUC’s Resolution E-5150 cited by the Plaintiffs and the Avoided Cost Calculator (ACC) it updated have no relevance to a federal claim. Neither even contain a reference to PURPA. The CPUC created the ACC in 2005 and it currently considers items such as efficiency and environmental costs, like carbon emissions levels, in a model that is “adopted for use in demand-side distributed energy resource cost-effectiveness analyses.”^{4[3]} A 2016 CPUC decision^{5[4]} requires an annual data correction and update to the ACC, effectuated in 2021 by Resolution E-5150. The ACC does not calculate “the cost to the electric utility of the electric energy which, but for the purchase... such utility would generate or purchase from another source”. 16 USC §824a-3(d). Nor does the ACC

² Order Instituting Rulemaking to Revisit Net Energy Metering Tariffs Pursuant to D.16-01-044, and to Address Other Issues Related to Net Energy Metering, 2020WL 5407880 (Cal. Pub. Utils. Comm’n Aug. 27, 2020).

³ Page 39, Ordering Paragraph 1, Resolution E-5150 (June 24, 2021).

⁴ Ordering Paragraph 2, D. 16-06-007 (June 15, 2016).

even set a price for the purchase of any energy by any entity. Therefore, despite the circumstance of sharing the same economic term - ‘avoided cost,’ the ACC is not calculating the avoided cost within the meaning of PURPA. The CPUC does not mention this litigation in the ACC Resolution merely as a result of the topics being unrelated to one another.”

[Request for Official Notice page 23 lines 7 to 21]

Conclusions

We feel uncomfortable submitting comments on the proposed decision in this case while the District Court renders a decision on the CPUC’s Motion to Dismiss our Complaint. We please request a short stay in the NEM rulemaking (R. 20-08-020), therefore. Thank you.

Respectfully submitted,

/s/ Michael E. Boyd
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