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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

**ASSIGNED COMMISSIONER'S AMENDED SCOPING MEMO
AND STATUTORY DEADLINE EXTENSION**

The scoping memo and ruling issued on November 19, 2022 (Initial Scoping Memo) set forth the issues, need for hearing, schedule, category, and other matters necessary to scope this proceeding pursuant to Public Utilities (Pub. Util.) Code Section 1701.1 and Article 7 of the Commission's Rules of Practice and Procedure (Rules). This Assigned Commissioner's Amended Scoping Memo (Amended Scoping Memo) supersedes it and amends the scope of issues in the Initial Scoping Memo, updates the procedural schedule, and extends the statutory deadline. As indicated in the updated procedural schedule, a future ruling in this proceeding will address the new issues in this Amended Scoping Memo. Otherwise, this Amended Scoping Memo reaffirms, *inter alia*, the Initial Scoping Memo's determinations of category, need for hearing, and designation of presiding officer.

1. Procedural Background

On August 27, 2020, the Commission initiated Rulemaking (R.) 20-08-020 to develop a successor to the existing net energy metering tariff as part of its commitment in Decision (D.) 16-01-044 to review the current net energy metering

tariff. The Order Instituting Rulemaking (Order) stated that “[p]ursuant to the requirements of Assembly Bill (AB) 327, this successor will be a mechanism for providing customer-generators with credit or compensation for electricity generated by the renewable facilities that a) balances the costs and benefits of the renewable electrical generation facility and b) allows customer-sited renewable generation to grow sustainably among different types of customers and throughout California’s diverse communities.”¹ As also noted in the Order, an examination of the current net energy metering tariff was being conducted by a consultant under contract with the Commission, and the results of the Net Energy Metering 2.0 Lookback Study would be considered in this proceeding.

A prehearing conference was held on November 2, 2020 to address the issues of law and fact, determine the need for hearing, set the schedule for resolving the matter, and address other matters as necessary. After considering the comments on the Order, replies to the comments, and discussion at the prehearing conference, the assigned Commissioner issued the Initial Scoping Memo on November 19, 2020.

The Commission adopted two decisions in this proceeding, D.21-02-007, Decision Adopting Guiding Principles for the Development of a Successor to the Current Net Energy Metering Tariff and D.22-12-056, Decision Revising Net Energy Metering Tariff and Subtariffs), which addressed Issue’s 1 through 5 from the Initial Scoping Memo. However, Issue’s 6 and 7 remain to be resolved. The Issues listed in Section 2 below are now denoted as either resolved or yet to be resolved.

¹ Order Instituting R.20-08-020, August 27, 2020 at 6-7.

Pertinent to this Amended Scoping Memo, on September 29, 2022, California Governor Gavin Newsom approved Assembly Bill (AB) 2143 (Carrillo), which beginning on January 1, 2024, requires large customer-sited renewable electrical generation facilities, and any associated battery storage, that enrolls in tariffs designed for these projects (*e.g.*, net energy metering or net billing tariffs) to provide, at a minimum, prevailing wages to all construction workers and apprentices, unless the project is “(1) a residential facility that will have a maximum generating capacity of 15 kilowatts (kW) or less of electricity that will be installed on a single-family home, (2) a project that is already a public work under existing law, or (3) a facility that serves only a modular home, a modular home community, or multiunit housing that has two or fewer stories.” The contractor is required to maintain and verify payroll records and biannually, on July 1st and December 31st of each year, submit to the Commission digital copies of the certified payroll records for projects subject to this statute. The statute states that if a willful wage violation has been enforced against a contractor of an eligible and interconnected project, then the project will lose service to its standard contract or tariff that is offered pursuant to Section 2827 or 2827.1.

AB 2143 requires the Commission to direct each large electrical corporation to include these requirements in any standard contract or tariff offered pursuant to Pub. Util. Code Section 2827 or Section 2827.1 (tariffs designed for customer-sited renewable generation facilities). The Commission shall also retain the submitted certified payroll records as public records for five years.

AB 2143 also requires the Commission to provide an annual report to the legislature and publish the report on the Commission website. The report shall

describe the “progress made to grow the use of distributed energy resources among residential customers in disadvantaged communities and in low-income households.” Along with the report, the Commission shall provide an aggregated list, by census tract and ZIP code, of all renewable electrical generation facilities, as defined in Section 2827, that began to receive service pursuant to a tariff designed for customer-sited renewable generation facilities during the preceding calendar year, including but not limited to, median household income, home ownership, and racial composition, as applicable.

2. Issues

As previously discussed, a majority of the issues from the Initial Scoping Memo have been determined; two remain unresolved. The genesis for the Amended Scoping Memo is the implementation of AB 2143, described above. Accordingly, the list of issues in this Amended Scoping Memo is as follows:

1. What guiding principles (including those related to AB 327 (2013, Perea), equity, environmental goals, and social justice) should the Commission adopt to assist in the development and evaluation of a successor to the current net energy metering tariff? (Resolved)
2. What information from the Net Energy Metering 2.0 Lookback Study should inform the successor and how should the Commission apply those findings in its consideration? (Resolved)
3. What method should the Commission use to analyze the program elements identified in Issue 4 and the resulting proposals, while ensuring the proposals comply with the guiding principles? (Resolved)
4. What program elements or specific features should the Commission include in a successor to the current net energy metering tariff? (Resolved)
5. Which of the analyzed proposals should the Commission adopt as a successor to the current net energy metering

tariff and why? What should the timeline be for implementation? (Resolved)

6. Other issues that may arise related to current net energy metering tariffs and subtariffs, which include but are not limited to the virtual net energy metering tariffs, net energy metering aggregation tariff, the Renewable Energy Self-Generation Bill Credit Transfer program, and the net energy metering fuel cell tariff. (Yet To Be Resolved)
7. What additional or enhanced consumer protections for customers taking service under net energy metering and/or the successor to the current net energy metering tariff should be adopted by the Commission? (Yet To Be Resolved)
8. What actions does the Commission need to adopt to implement AB 2143. (New Issue Yet To Be Resolved)

3. Need for Evidentiary Hearing

Resolution of Issue numbers 3, 4, and 5 required the Commission to resolve contested material issues of fact. Portions of Issue 6 also required the Commission to resolve contested material issues of fact. Accordingly, we changed the preliminary determination in the Order and found that evidentiary hearing was needed on these issues. With respect to the new issue in this Amended Scoping Memo, I find the issue can be addressed through responses to questions in a ruling. However, I will allow for a deadline by which to request evidentiary hearing for this new issue, as indicated in the schedule below.

4. Schedule

The following updated schedule for resolving the remaining issues in this proceeding is adopted here and may be modified by the Administrative Law Judge as required to promote the efficient and fair resolution of this rulemaking:

Event	Date
Ruling Directing Responses to Questions on Issue 8	TBD

Comments Filed Responding to Ruling Questions	+21 days
Reply Comments Filed along with Requests for Evidentiary Hearing	+10 days
Proposed Decision	<i>[no later than 90 days after submission]</i>
Commission Decision	<i>[no sooner than 30 days after PD]</i>

If requesting Evidentiary Hearing through the required motion, the motion shall include a list and discussion of the disputed material facts.

The proceeding will stand submitted upon the filing of reply comments, unless the Administrative Law Judge requires further evidence or argument. Pub. Util. Code Section 1701.5 requires resolution of the proceeding within 18 months. D.22-08-043 previously extended the statutory deadline of this proceeding to August 27, 2023. Given the new issue in this Amended Scoping Memo, an additional 90 days are needed. Accordingly, the statutory deadline for resolving this proceeding is extended to November 27, 2023.

5. Alternative Dispute Resolution (ADR) Program and Settlements

The Commission’s ADR program offers mediation, early neutral evaluation, and facilitation services, and uses Administrative Law Judges who have been trained as neutrals. At the parties’ request, the assigned Administrative Law Judge can refer this proceeding to the Commission’s ADR Coordinator. Additional ADR information is available on the Commission’s website.²

² See D.07-05-062, Appendix A, § IV.O.

Any settlement between parties, whether regarding all or some of the issues, shall comply with Article 12 of the Rules of Practice and Procedure and shall be served in writing. Such settlements shall include a complete explanation of the settlement and a complete explanation of why it is reasonable in light of the whole record, consistent with the law and in the public interest. The proposing parties bear the burden of proof as to whether the settlement should be adopted by the Commission.

6. Category of Proceeding and Ex-Parte Restrictions

This Amended Scoping Memo retains the previous determination that this is a ratesetting proceeding.³ Accordingly, ex-parte communications are restricted and must be reported pursuant to Article 8 of the Rules.

7. Public Outreach

Pursuant to Pub. Util. Code Section 1711(a), I hereby report that the Commission sought the participation of those likely to be affected by this matter by noticing it in the Commission's monthly newsletter that is served on communities and businesses that subscribe to it and posted on the Commission's website.

In addition, the Commission served the Order on the official service lists for R.12-11-005 and R.20-05-012 on renewable distributed generation programs, R.19-09-009 on Microgrids, R.14-08-013 on Distribution Resources Planning, R.17-07-007 on Rule 21 and the interconnection of distributed generation resources, R.14-10-003 on the integration of distributed energy resources, R.14-07-002 on the development of a successor tariff to the original net energy

³ Initial Scoping Memo at 7-8.

metering tariff, and Application 10-03-001 et al., the former net surplus compensation proceeding.

8. Intervenor Compensation

Pursuant to Pub. Util. Code Section 1804(a)(1), a customer who intends to seek an award of compensation must file and serve a notice of intent to claim compensation 30 days after the prehearing conference. However, in cases where no prehearing conference is scheduled and where new issues emerge subsequent to the original time set for filing, the Commission may determine an appropriate procedure for accepting new noting of intent. Hence, parties have until the filing date of the comments to the questions in the ruling to file and serve a notice of intent to claim compensation for participating in Issue 8.

9. Response to Public Comments

Parties may, but are not required to, respond to written comments received from the public. Parties may do so by posting such response using the “Add Public Comment” button on the “Public Comment” tab of the online docket card for the proceeding.

10. Public Advisor

Any person interested in participating in this proceeding who is unfamiliar with the Commission’s procedures or has questions about the electronic filing procedures is encouraged to obtain more information at <http://consumers.cpuc.ca.gov/pao/> or contact the Commission’s Public Advisor at 866-849-8390 or 866-836-7825 (TTY), or send an e-mail to public.advisor@cpuc.ca.gov.

11. Filing, Service, and Service List

The official service list has been created and is on the Commission’s website. Parties should confirm that their information on the service list is correct and serve notice of any errors on the Commission’s Process office, the service list,

and the Administrative Law Judge. Persons may become a party pursuant to Rule 1.4⁴.

When serving any document, each party must ensure that it is using the current official service list on the Commission's website.

This proceeding will follow the electronic service protocol set forth in Rule 1.10. All parties to this proceeding shall serve documents and pleadings using electronic mail, whenever possible, transmitted no later than 5:00 p.m., on the date scheduled for service to occur. Rule 1.10 requires service on the Administrative Law Judge of both an electronic and a paper copy of filed or served documents; this part of Rule 1.10 is not applicable in this proceeding.

When serving documents on Commissioners or their personal advisors, whether or not they are on the official service list, parties must only provide electronic service. Parties must not send hard copies of documents to Commissioners or their personal advisors unless specifically instructed to do so.

Persons who are not parties but wish to receive electronic service of documents filed in the proceeding may contact the Process Office at process_office@cpuc.ca.gov to request addition to the "Information Only" category of the official service list pursuant to Rule 1.9(f).

The Commission encourages those who seek information-only status on the service list to consider the Commission's subscription service as an alternative. The subscription service sends individual notifications to each subscriber of formal e-filings tendered and accepted by the Commission. Notices sent through subscription service are less likely to be flagged by spam or other

⁴ The form to request additions and changes to the service list may be found at <https://www.cpsc.ca.gov/-/media/cpsc-website/divisions/administrative-law-judge-division/documents/additiontoservicelisttranscriptordercompliant.pdf>

filters. Notifications can be for a specific proceeding, a range of documents and daily or weekly digests.

12. Receiving Electronic Service from the Commission

Parties and other persons on the service list are advised that it is the responsibility of each person or entity on the service list for Commission proceedings to ensure their ability to receive e-mails from the Commission. Please add “@cpuc.ca.gov” to your e-mail safe sender list and update your e-mail screening practices, settings and filters to ensure receipt of e-mails from the Commission.

13. Assignment of Proceeding

Alice Reynolds is the assigned Commissioner and Kelly A. Hymes is the assigned Administrative Law Judge and presiding officer for the proceeding.

IT IS RULED that:

1. The scope of this proceeding is amended as described above and is adopted.
2. The schedule of this proceeding is revised as set forth above and is adopted.
3. Evidentiary Hearing may be requested by motion no later than indicated on the schedule above.
4. The presiding officer is Administrative Law Judge Kelly A. Hymes.
5. The category of the proceeding is ratesetting.
6. The statutory deadline for resolving this proceeding is extended to November 27, 2023.

7. Parties shall file and serve a notice of intent to claim compensation for participating in Issue 8 no later than the filing date of the comments to the questions in the Issue 8 Ruling.

Dated March 22, 2023, at San Francisco, California.

 /s/ ALICE REYNOLDS

Alice Reynolds
Assigned Commissioner