



**PUBLIC UTILITIES COMMISSION**

505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3298

**FILED**

03/24/23

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March 24, 2023

**Agenda ID #21486**  
**Quasi-legislative**

TO PARTIES OF RECORD IN RULEMAKING (R.) 10-05-004 AND R.12-11-005:

This is the proposed decision of Commissioner Karen Douglas. Until and unless the Commission hears the item and votes to approve it, the proposed decision has no legal effect. This item may be heard, at the earliest, at the Commission's April 27, 2023 Business Meeting. To confirm when the item will be heard, please see the Business Meeting agenda, which is posted on the Commission's website 10 days before each Business Meeting.

Parties to the proceeding may file comments on the proposed decision as provided in Rule 14.3 of the Commission's Rules of Practice and Procedure.

/s/ MICHELLE COOKE  
Michelle Cooke  
Acting Chief Administrative Law Judge

MLC:nd3  
Attachment

Decision **PROPOSED DECISION OF COMMISSIONER DOUGLAS**  
(Mailed 3/24/2023)**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 10-05-004
NOT CONSOLIDATED	
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

**DECISION GRANTING PETITION TO MODIFY  
DECISION (D.) 11-09-015, D.15-06-002,  
AND D.19-08-001 WITH MODIFICATIONS****Summary**

This decision grants, with modifications, the May 20, 2022 petition to modify Decision (D.) 11-09-015, D.15-06-002, and D.19-08-001 filed by Pacific Gas and Electric Company, Southern California Gas Company, Southern California Edison Company, and Center for Sustainable Energy seeking relief to customers who unexpectedly and permanently lose contact with their developer due to the

developer declaring bankruptcy or otherwise going out of business. The Petition was filed due to the bankruptcy filing of a Self-Generation Incentive Program developer, Petersen Dean, Inc. (Petersen Dean). This decision:

- (1) Grants the requested relief for additional time to submit documentation, release from service warranty requirements, and developer non-compliance program administrator (PA) enforcement obligations, to Petersen Dean's customers so that they can receive their incentive payments for already installed projects;
- (2) Provides additional time to submit program documentation for any customers who unexpectedly and permanently lose contact with their developer due to the developer declaring bankruptcy or otherwise going out of business to submit program documentation; and
- (3) Directs the PAs to file Tier 2 Advice Letters to submit exceptions to the rules for service warranty requirements and developer non-compliance PA enforcement obligations.

Rulemaking (R.) 10-05-004 and R.12-11-005 are closed.

## **1. Procedural History**

On May 20, 2022, Pacific Gas and Electric Company (PG&E), on behalf of Southern California Gas Company (SoCalGas), Southern California Edison Company (SCE), and Center for Sustainable Energy (CSE) (collectively, the Self-Generation Incentive Program (SGIP) Administrators or PAs) filed a Joint Petition for Modification (Petition) of Decision (D.) 11-09-015, D.15-06-002, and D.19-08-001 (the Decisions).

No response to the Petition was filed.

## **2. Relief Requested**

In the Petition, the PAs request that they be authorized, under specific and rare circumstances, to grant exceptions to the extensions, service warranty requirement, and other ongoing developer fleet compliance obligations

established by the Decisions in order to disburse SGIP incentives to certain customers for their installations of eligible SGIP projects. These exceptions would be granted only under circumstances where a customer, who qualified for an SGIP incentive and has installed a project that has otherwise met all program requirements, subsequently loses the ability to satisfy these requirements due to unexpectedly and permanently losing contact with their developer due to developer declaring bankruptcy or otherwise going out of business.

To support their petition, the PAs provide facts regarding the bankruptcy of the SGIP developer Petersen Dean, Inc. (Petersen Dean) and how the customers of Petersen Dean were affected by its bankruptcy.<sup>1</sup> The PAs state that Petersen Dean filed for Chapter 11 Bankruptcy on June 11, 2020 and the bankruptcy has prevented Petersen Dean's customers who have installed and are operating their projects from receiving their SGIP incentives since Petersen Dean is unable to honor their 10-year service warranty obligations.

To prevent similar situations, the PAs identify three changes that are needed to provide relief to customers who unexpectedly and permanently lose contact with their developer due to the developer declaring bankruptcy or otherwise going out of business:

- (1) Additional time to submit program documentation;
- (2) Release from program service warranty requirements; and
- (3) Release of PAs from specific developer non-compliance enforcement obligations.

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<sup>1</sup> Petition at 2-3.

### **3. Discussion**

#### **3.1. Timeliness of the Petition**

Rule 16.4(d) of the California Public Utility Commission's (Commission) Rules of Practice and Procedure (Rules) requires petitions for modification to be filed and served within one year of the effective date of the decision proposed to be modified. If more than one year has elapsed, the petition must explain why the petition could not have been presented within one year of the date of the decision. Since the Petition was filed more than a year after the effective date of the Decisions, it must explain why it could not have been presented within the one-year timeframe.

The PAs explain that they were not able to file this Petition within one year of the effective date of the Decisions because the recent circumstances necessitating an exception to the extensions, service warranty requirement, and ongoing developer fleet compliance obligations were not anticipated and did not occur until last year, following the bankruptcy filing by Petersen Dean.

The Commission finds that the PAs provide a sufficient justification for filing the joint petition more than one year after the issuance of the Decisions.

#### **3.2. Request for Official Notice**

Pursuant to Rule 13.10, the PAs request that the Commission take official notice of the Petersen Dean bankruptcy, filed in United States Bankruptcy Court, District of Nevada (Case No. 2:20-BK-12821), jointly administered with In Re: Beachhead Roofing and Supply Inc. (Bankr. D. Nev. 2:20-BK-12814).

Rule 13.10 states that "[o]fficial notice may be taken of such matters as may be judicially noticed by the courts of the State of California pursuant to Evidence Code section 450 et seq."

There was no party comment on this request. We find that the request is appropriate and take official notice of the Petersen Dean bankruptcy filed in United States Bankruptcy Court, District of Nevada (Case No. 2:20-BK-12821), jointly administered with In Re: Beachhead Roofing and Supply Inc. (Bankr. D. Nev. 2:20-BK-12814).

### **3.3. Restrictions on the Number of Extensions to Submit Program Documentation**

SGIP sets milestones that customers must meet to remain eligible for the program. SGIP also allows customers to request up to three six-month extensions if customers experience delays that are out of their control.<sup>2</sup>

The Commission originally addressed SGIP extensions in D.11-09-015. That decision provides that all projects be limited to one, six-month extension and requires SGIP Working Group approval for second extension.<sup>3</sup> Subsequently, D.15-06-002 granted a petition to modify D.11-09-015 to increase the number of six-month extensions from two to three for SGIP projects with any requests for second and third extensions requiring unanimous SGIP Working Group approval.<sup>4</sup>

In the Petition, the PAs seek discretion to provide an additional 90-day extension to the current three six-month extensions for customers who have been impacted by a developer filing for bankruptcy or otherwise going out of business to submit program documentation. This additional extension would apply when a customer loses contact with their developer due to their developer declaring

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<sup>2</sup> See SGIP Handbook at 22.

<sup>3</sup> D.11-09-015 at 66.

<sup>4</sup> D.15-06-002 at Ordering Paragraph (OP) 3.

bankruptcy after submitting the Reservation Request Form but before submission of the Incentive Claim Form.

The PAs opine that this additional time is justified because D.11-09-015 and D.15-06-002 do not contemplate the situation in which a developer unexpectedly and permanently becomes non-responsive to the customer due to the developer declaring bankruptcy or otherwise going out of business. The PAs also add that the additional time will allow a customer to work with the PA to complete the Incentive Claim Form and submit all necessary documents.

The Commission finds this request reasonable and grants the requested relief. We recognize that, in absence of additional time, it will be challenging for a customer to complete the requisite paperwork for receiving incentive payments in circumstances involving bankruptcy of a developer, especially when the requisite paperwork involves collecting technical documents.

Accordingly, D.11-09-015, Attachment A at 5 modified by D.15-06-002, OP 3, is modified to read:

Extensions: All projects shall be limited to a maximum of three six-month extensions, plus a 90-day extension in the event a developer becomes unexpectedly and permanently non-responsive due to bankruptcy or otherwise going out of business before completing the required documentation. Any requests for a second, or third six-month extension, or a 90-day ~~and third~~ extension shall require unanimous SGIP Working Group approval.

### **3.4. Warranty Requirements**

The Commission adopted warranty requirements for SGIP in 2001 in order to "...ensure continued operation and reliability of the system, and... encourage manufacturers and vendors to offer high quality products."<sup>5</sup> D.11-09-015

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<sup>5</sup> D.01-03-073 at 34.

extended the warranty requirement to a 10-year parts and service warranty.<sup>6</sup> SGIP program participants must comply with the policies and procedures laid out in the SGIP Handbook, a document approved by this Commission which incorporates the rules of the program adopted in SGIP decisions.<sup>7</sup>Currently, the SGIP Handbook states the following:

As part of the Executed Contract, all storage systems are required to include a minimum 10-year service warranty. A service warranty ensures proper maintenance and continued project performance. The service warranty must cover the system maintenance to include (but not limited to) system support, problem diagnosis, on-site repair and preventative maintenance. The warranty should also include language to guarantee the continued performance of the system over the warranty period. The System Owner must provide proof of warranty and maintenance contract, and specify the warranty and maintenance contract start and end dates.<sup>8</sup>

The PAs request that they be authorized to waive the service warranty requirement on a case-by-case basis, in the event a customer's service warranty is rendered unenforceable in narrow circumstances where the developer, who was responsible for the service portion of the warranty, will no longer honor the service warranty due to bankruptcy or otherwise going out of business. This waiver would be granted at the discretion of the SGIP Working Group and only apply to the service warranty; the manufacturer's warranty would continue to be required by the program for the 10-year warranty period. Under these

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<sup>6</sup> D.11-09-015 Appendix A specifies a 10-year warranty without referencing either parts or service. PG&E Advice Letter 3245-G/3923-E, submitted in compliance with D.11-09-015, OP 2, clarifies the warranty requirement would be implemented as applying to both parts and service.

<sup>7</sup> See 2022 SGIP Handbook at:

<https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/energy-division/documents/self-generation-incentive-program/2022-sgip-handbook-v5.pdf>.

<sup>8</sup> 2022 SGIP Handbook v1, Section 5.4.2.(3).



circumstances, the PAs would also require the customer to acknowledge that they: (a) are choosing to move forward with only a manufacturer's warranty that may lack certain service warranty activities; and (b) remain obligated to keep their system operational for the program's 10-year requirement.

The PAs justify the request by stating that: (1) waiver of the service warranty under the circumstances described above would only apply to a small percentage of projects where the developer will no longer honor a service warranty due to bankruptcy or otherwise going out of business, and where customers have installed projects but have yet to receive their SGIP incentive due to no fault of their own; (2) the service warranty waiver poses little risk to ongoing operation or basic consumer protections as it would be granted only for customers whose systems have already been installed and who have the motivation to ensure their system functions optimally, and the requirement for a 10-year manufacturer's warranty would remain in place.

The PAs add that if a service warranty waiver was not allowed, the current SGIP rules would require the PAs to reject these customers' applications. This would leave customers who had spent significant sums of money on a project and expected an SGIP incentive to be denied their incentive because their now defunct developer can no longer honor the service warranty.

The Commission recognizes the hardship faced by Petersen Dean customers due to not being able to receive their incentive payments on a timely basis and the need for the requested modification to prevent similar situations. However, in D.11-09-015, the Commission stated that requiring only a parts warranty is insufficient to protect ratepayers' investment and that "[a] service warranty for a reasonable expected useful life of a project ensures proper

maintenance and continued project performance.”<sup>9</sup> Given the importance of a service warranty, a customer’s acknowledgement to remain obligated to keep their system operational for the program’s 10-year requirement may not be sufficient to have the system operate efficiently. We find that this topic requires further consideration by the PAs and the SGIP Working Group and close monitoring by the Commission.

For that reason, we grant the relief requested for the customers affected by Petersen Dean’s bankruptcy, effective immediately. However, going forward, the PAs must submit similar requests via Tier 2 Advice Letters, which would allow the Commission to monitor financial health of SGIP developers, identify trends, and consider placing additional requirements for SGIP such as prescreening of developers, if need be.

D.11-09-015, Attachment A at 5 is modified to read:

Warranty: ten-year equipment and service warranty required. Requests for exceptions to the service warranty portion of the requirement may be made with a Tier 2 Advice Letter, only in cases where the provider of the service warranty can no longer honor it due to bankruptcy or otherwise going out of business.

### **3.5. Developer Fleet Compliance Requirements**

D.19-08-001 adopted operational requirements for installed SGIP energy storage systems to help ensure that they reduce GHG emissions. Specifically, it required developers’ ongoing project fleet to maintain operational requirements during projects’ 10-year lifespan to ensure an annual reduction in GHG emissions and minimum cycling requirements. D.19-08-001 also adopted

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<sup>9</sup> D.11-09-015 at 66.

enforcement oversight by the PAs, obligating the PAs to issue infractions for a developer's failure to meet these program requirements.<sup>10</sup>

The PAs seek to be relieved of the obligation to enforce penalties against developers who have declared bankruptcy or otherwise gone out of business because infractions in these circumstances are meaningless. Although they have authority to penalize developers for failure to comply with operational requirements, the PAs seek to be relieved of the obligation to enforce penalties against developers who have declared bankruptcy or otherwise gone out of business when the developer's projects are out of compliance with program GHG rules. The PAs justify their request by stating that other program mechanisms will continue to support GHG reduction by SGIP participants, including requiring participants to enroll on a time-varying rate plan and solar pairing alternatives.<sup>11</sup>

For the purposes of program impact evaluation, the PAs believe that it is important to continue reporting. Therefore, the PAs request approval to include these projects that were yet-to-be paid at the time a developer declared bankruptcy or otherwise went out of business with the fleet of projects that already exist for that developer. This comes with the understanding that the defunct developer is no longer actively monitoring the performance of its fleet. This approach, for the purposes of program impact evaluation reporting, will combine installed projects that are pending payment with the fleet of projects that already exist for that same developer. This evaluation report will clearly

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<sup>10</sup> D.19-08-001, Attachment A at 8-9.

<sup>11</sup> D.19-08-001, Attachment A at 6-7.

delineate projects where the developer is no longer able to monitor the fleet performance.

Similar to the issue of warranty requirements, we find that this topic beyond the narrow case of Petersen Dean requires further consideration by the PAs and the SGIP Working Group and close monitoring by the Commission. We recognize that the penalties currently in place may render unenforceable in cases of developer bankruptcy, but that does not mean that the developers should be relieved of their responsibilities at no cost. For that reason, we grant the relief requested for the customers affected by Petersen Dean's bankruptcy, effective immediately. However, going forward, the PAs must submit similar requests via Tier 2 Advice Letters, which would allow the Commission to monitor closely and consider this issue.

D.19-08-001, Attachment A at 8 is modified to read:

#### Enforcement Mechanism

The PAs shall clearly state in the SGIP handbook that new residential SGIP systems are required to reduce GHG emissions and that developers that do not provide requested documentation to evaluators or PAs regarding new residential customer's storage systems or rates within the requested time frame shall be subject to infractions and possible suspension. Exceptions to PA infraction obligations may be made in cases where penalties are rendered unenforceable due to a developer bankruptcy or otherwise going out of business. Any exceptions to this requirement shall require filing a Tier 2 Advice Letter for Commission's consideration.

#### **4. Next Steps**

The SGIP PA are directed to file Tier 1 Advice Letter to implement the changes to the SGIP Handbook within 60 days after the issuance of this decision.

## **5. Comments on Proposed Decision**

The proposed decision of Commissioner Karen Douglas in this matter was mailed to the parties in accordance with Public Utilities Code Section 311 and comments were allowed under Rule 14.3. Comments were filed on \_\_\_\_\_, and reply comments were filed on \_\_\_\_\_ by \_\_\_\_\_.

## **6. Assignment of Proceeding**

Commissioner Karen Douglas is the assigned Commissioner and Nilgun Atamturk is the assigned Administrative Law Judge in this proceeding.

### **Findings of Fact**

1. D.11-09-015 and D.15-06-002 do not contemplate the situation in which a developer unexpectedly and permanently becomes non-responsive to the customer due to the developer declaring bankruptcy or otherwise going out of business.
2. The additional 90-day extension to the current three six-month extensions to submit program documentation for customers who have been impacted by a developer filing for bankruptcy or otherwise going out of business will allow a customer to work with the PA to complete the Incentive Claim Form and submit all necessary documents.
3. In absence of additional time, it may be challenging for a customer to complete the requisite paperwork for receiving incentive payments in circumstances involving bankruptcy of a developer, especially when the requisite paperwork involves collecting technical documents.
4. If a service warranty waiver were not allowed, the current SGIP rules would require the PAs to reject these customers' applications, which would leave

customers who had spent significant sums of money on a project and expected an SGIP incentive to be denied their incentive payments.

5. Peterson Dean's customers may face hardship due to the developer declaring bankruptcy.

6. The topic of exceptions to service warranty and exceptions to enforcement obligations by PAs require further consideration by the SGIP Working Group and the Commission.

### **Conclusions of Law**

1. The PAs provide a sufficient justification for filing the joint petition more than one year after the issuance of the Decisions.

2. The PAs' request for discretion to provide an additional 90-day extension to the current three six-month extensions for customers who have been impacted by a developer filing for bankruptcy or otherwise going out of business to submit program documentation is reasonable.

3. The May 20, 2022 petition to modify D.11-09-015, D.15-06-002, and D.19-08-001 filed by the SGIP Program Administrators should be granted with modifications.

4. Relief from service warranty requirements should be granted for the customers affected by Petersen Dean's bankruptcy, effective immediately.

5. PAs should submit exceptions to service warranty requirements via Tier 2 Advice Letters.

6. PAs should submit requests for exceptions to enforcement oversight by the PAs via Tier 2 Advice Letters.

7. The Commission should take official notice of the Petersen Dean bankruptcy filed in United States Bankruptcy Court, District of Nevada (Case

No. 2:20-BK-12821), jointly administered with In Re: Beachhead Roofing and Supply Inc. (Bankr. D. Nev. 2:20-BK-12814).

## **O R D E R**

**IT IS ORDERED** that:

1. The May 20, 2022 petition to modify Decision (D.) 11-09-015, D.15-06-002, and D.19-08-001 filed by Pacific Gas and Electric Company, Southern California Gas Company, Southern California Edison Company, and Center for Sustainable Energy is granted with modifications.

2. The Program Administrators have the discretion to grant requests to provide an additional 90-day extension to the current three six-month extensions for customers who have been impacted by a developer filing for bankruptcy or otherwise going out of business to submit program documentation.

3. The relief from service warranty requirements is granted for the customers affected by Petersen Dean Inc.'s bankruptcy, effective immediately.

4. Program Administrators must submit exceptions to service warranty requirements to customers affected by a developer's bankruptcy via Tier 2 Advice Letters.

5. Program Administrators must submit requests for exceptions to enforcement oversight for developers experiencing bankruptcy via Tier 2 Advice Letters.

6. D.11-09-015, Attachment A at 5 is modified as follows:

Warranty: ten-year equipment and service warranty required. Requests for exceptions to the service warranty portion of the requirement may be made with a Tier 2 Advice Letter, only in cases where the provider of the service warranty can no longer honor it due to bankruptcy or otherwise going out of business.

7. D.11-09-015, Attachment A at 5 modified by D.15-06-002, is modified as follows:

Extensions: All projects shall be limited to a maximum of three six-month extensions, plus a 90-day extension in the event a developer becomes unexpectedly and permanently non-responsive due to bankruptcy or otherwise going out of business before completing the required documentation. Any requests for a second or third six-month extension, or a 90-day extension shall require unanimous SGIP Working Group approval.

8. D.19-08-001, Attachment A at 8 is modified as follows:

#### Enforcement Mechanism

The PAs shall clearly state in the SGIP handbook that new residential SGIP systems are required to reduce GHG emissions and that developers that do not provide requested documentation to evaluators or PAs regarding new residential customer's storage systems or rates within the requested time frame shall be subject to infractions and possible suspension. Exceptions to PA infraction obligations may be made in cases where penalties are rendered unenforceable due to a developer bankruptcy or otherwise going out of business. Any exceptions to this requirement shall require filing a Tier 2 Advice Letter for Commission's consideration.

9. The Self-Generation Incentive Program (SGIP) Administrators are directed to file Tier 1 Advice Letter to implement the changes to the SGIP Handbook within 60 days of the issuance of this decision.

10. Rulemaking (R.) 10-05-004 and R.12-11-005 are closed.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.