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**FILED**

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R2008020

**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 Metering.

Rulemaking 20-08-020

**ADMINISTRATIVE LAW JUDGE'S RULING  
SEEKING COMMENTS ON ASSEMBLY BILL 2143**

The March 22, 2023 *Assigned Commissioner's Amended Scoping Memo And Statutory Deadline Extension* (Amended Scoping Memo) amended the scope of issues in this proceeding and included the new issue of actions the Commission needs to adopt to implement Assembly Bill (AB) 2143 (Carrillo). The Amended Scoping Memo provides a broad description of the bill but, generally, AB 2143 creates two new sections (Section 769.2 and Section 913.13) to the Public Utilities Code. Together, these two new sections require: 1) customer-sited renewable electrical generation facilities, and any associated battery storage, that enroll in tariffs designed for these projects (e.g., net energy metering or net billing tariffs) provide, at a minimum, prevailing wages to all construction workers and apprentices with certain exemptions; 2) the Commission 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; and 3) the Commission submit an annual report to the legislature and publish the report on the Commission website.

As was anticipated in the Amended Scoping Memo, this ruling invites parties to file comments responding to questions regarding the implementation of AB 2143. The filed comments and reply comments will form the record so the Commission may consider options for implementation.

The Amended Scoping Memo also directed that motions for evidentiary hearing on this matter shall be filed at the time reply comments are filed. The motion shall include a list and discussion of disputed material facts.

**IT IS RULED** that:

1. Comments responding to the questions in Attachment 1 shall be filed no later than April 24, 2023.
2. Reply comments shall be filed no later than May 4, 2023.
3. Motions for evidentiary hearing on the matter of the implementation of Assembly Bill 2143 shall be filed no later than May 4, 2023 and shall include a list and discussion of disputed material facts.

Dated April 3, 2023, at San Francisco, California.

/s/ KELLY A. HYMES  
Kelly A. Hymes  
Administrative Law Judge

**Attachment 1**

### **Questions Regarding the Implementation of Assembly Bill (AB) 2143**

Contractors of renewable generation projects eligible for Public Utilities Code Section 769.2<sup>1</sup> must treat their projects as a public work and are required to pay their construction workers and apprentices the general prevailing rate of per diem wages, at a minimum. Section 769.2(a) applies to eligible projects under construction, and must follow Labor Code 1720(a)(1) which defines “construction” as “construction, alteration, demolition, installation, or repair work... [and] includes work performed during the design, site assessment, feasibility study, and other preconstruction phases of construction, including, but not limited to, inspection and land surveying work, regardless of whether any further construction work is conducted, and work performed during the postconstruction phases of construction, including, but not limited to, all cleanup work at the jobsite” and related tree removal work. Section 769.2 is effective on January 1, 2024, and, pursuant to Section 769.2(b), is triggered when “[a] contractor...enters into a contract to perform work on a renewable electrical generation facility or associated battery storage described in [Section 769.2](a).”

Section 769.2(b)(2-3) requires contractors to maintain and verify payroll records per Labor Code 1776 and biannually, on July 1<sup>st</sup> and December 31<sup>st</sup> of each year, submit digital copies of certified payroll records to the Commission. The Commission will hold these records for at least five years.

1. What is a reasonable process and timeline for the Commission, its consultants, and/or the three investor-owned utilities (Pacific Gas and Electric Company, San Diego Gas & Electric Company and Southern California Edison Company, hereafter referred to as Utilities) to request and receive notice

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<sup>1</sup> Unless otherwise noted, all Public Utilities Code Sections are hereafter referred to by Section number.

of contract start dates to ensure contractors are complying with AB 2143?

2. When Section 769.2 goes into effect on January 1, 2024, some qualified projects will have prior contract start dates, but be engaged in phases of construction work covered under Labor Code 1720(a)(1) on Section 769.2 qualified projects. What is a reasonable transition policy for contractors with qualified facilities, under contract, and currently in-progress to comply with Section 769.2 starting on January 1, 2024? How can qualified projects, in this situation only, document their contract start-date and how would such a transition comply with statute?
3. What role, if any, should Utilities and community choice aggregators have in educating and informing contractors and/or impacted customers about Section 769.2 eligibility, wage requirements, and/or penalties? Some examples of outreach are account-representative outreach, bill inserts, etc. How might the costs associated with these activities be attributed and accounted for?

As a result of AB 2143, tariffs developed pursuant to Section 2827.1 and 2827 will need new language describing the wage requirements and penalties in Section 769.2.

4. Propose new language for relevant tariffs, including all subtariffs, to align the tariffs with all new requirements of Section 769.2.
  - a. Should compliance with Section 769.2(b)(3) biannual payroll record submission dates be a condition for tariff access? Are there other effective means for ensuring compliance with the payroll record submittal requirement?
5. What, if any, confidentiality agreements or communication protocols are necessary to allow for the coordination between the Commission, Department of Industrial Relations, contractors, and Utilities to implement and enforce the provisions of Section 769.2? Are rules from any previous

Commission decisions on the sharing of customer information implicated?

The penalties for noncompliance with the wage rule introduces a new split incentive issue. Section 769.2(d) states that the penalty will be “that [the] facility shall not be eligible to receive service pursuant to a standard contract or tariff developed pursuant to Section 2827 or 2827.1” In some instances, the facility owner/operator would not oversee the payment of individual construction workers during the construction phase but would lose access to net energy metering and net billing tariffs if wages are not lawfully paid.

6. What actions, if any, should the Commission take to address split incentives between utility customers, generation operators, and/or contractors after Section 769.2 is implemented?
7. [Utilities only.] What entity should be responsible for notifying Utilities of qualifying violations under Section 769.2(c); how should this notification be executed; and what is a reasonable process for removing customers when violations occur? How will the process allow customers to contest or restore their access in the case of an error?

**(END OF ATTACHMENT 1)**