Decision 15-12-027 December 17, 2015

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 (November 8, 2012)

DECISION PARTIALLY SUSPENDING DISBURSEMENT OF 2016 PROGRAM YEAR FUNDS AND ACCEPTANCE OF NEW APPLICATIONS FOR THE SELF-GENERATION INCENTIVE PROGRAM

Summary

This decision orders the program administrators of the Self-Generation Incentive Program (SGIP), including Pacific Gas and Electric Company, Southern California Edison Company, Southern California Gas Company, and the Center for Sustainable Energy (CSE),[1] to partially fund the acceptance of new applications and disbursement of the SGIP program year 2016 funds until the Commission revises the SGIP pursuant to Senate Bill 861. This partial suspension would consist of a release of 50% of the 2016 SGIP program funds at the start of 2016 with the balance of the funds subject to the revised program rules.

This proceeding remains open.

[1] CSE administers the program on behalf of San Diego Gas & Electric Company.

1. Background

Senate Bill (SB) 861 (Budget Act of 2014, Stats. 2014, ch. 35) extended the Self-Generation Incentive Program (SGIP) from January 1, 2016 to January 1, 2021. Historically, funds for the SGIP are released at the start of each program year. Incentive funds are currently low or close to exhausted. However, approximately $77 million of additional funding will be available at the start of 2016.[2]

SB 861 also included several additional program directives related to eligibility, allocation of funding among technologies, and criteria for program evaluation, codified in Pub. Util. Code § 379.6 in subsections (e), (h) and (l).[3] An April 29, 2015 assigned Commissioner's ruling asked parties to respond to questions pertaining to compliance with these directives, as well as other potential revisions to SGIP. Based on comments to the April 29, 2015 ruling, a proposed decision recommending various revisions to the SGIP rules and incentive levels is anticipated for the first quarter of 2016.

The available SGIP funding for 2015, particularly for the renewable energy and emerging technologies category, was quickly subscribed and a lengthy waitlist has formed. Because a Commission decision revising the SGIP rules may not be finalized until sometime after the start of 2016, it is likely that most, if not all, of the SGIP incentive budget for 2016 will be reserved under the current SGIP rules and incentive levels if the Commission does not act now to order the SGIP program administrators to reserve some or all of the additional funding that will become available.

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[2] Decision 14-12-033 adopted $83 million annual SGIP collections through 2019.

[3] All section references are to the Public Utilities Code unless otherwise indicated.

On November 3, 2015, the assigned Commissioner issued a ruling asking parties to comment on whether the Commission should allow the program administrators to make all SGIP 2016 funds available under the current SGIP rules and incentive levels, order the program administrators to fully suspend the SGIP until the new rules are implemented, or order the program administrators to partially suspend the program by making only a portion of 2016 SGIP funds available.

2. Positions of the Parties

Twenty parties filed comments on November 6, 2015, in response to the assigned Commissioner's ruling, with SolarCity and Stem filing jointly. Ten parties support full suspension of the SGIP until new rules are implemented, pursuant to a forthcoming Commission decision.[4] However, CESA suggests making some funds available if the re-opening of the program is delayed beyond April 1, 2016. Seven parties support making all program year 2016 funds available under the current rules. Only Pacific Gas and Electric Company (PG&E) and Custom Power Solar recommend partially suspending the program by allowing a portion of the 2016 funding to be available under the current rules. In PG&E's comments, PG&E recommends allowing 50% of the 2016 funds to be made available at the start of 2016 with the remaining funds subject to the partial suspension and reserved for use under the revised program rules.

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[4] California Energy Storage Alliance (CESA), California Solar Energy Industry Association, the Office of Ratepayer Advocates (ORA), Foundation Windpower, Commercial Energy, Stem and SolarCity (filing jointly), Sierra Club, Robert Bosch LLC, Tesla Motors, and Center for Sustainable Energy (CSE).

The parties supporting full suspension generally argue that the program improvements likely to be made in the forthcoming decision justify a delay in releasing 2016 program year funds.[5] According to these parties, the benefits of better allocating ratepayer dollars under a revised SGIP structure outweigh any disruption in the market for the technologies funded by SGIP dollars. As examples of the program improvements that could be implemented, these parties cite reduced incentive levels (and consequently an increase in the capacity of self-generation and storage projects incentivized); market-responsive incentive levels that step down according to installed capacity, similar to the California Solar Initiative; the addition of new technology categories; reallocation of incentive budget among technology categories; and changes to the Performance-Based Incentive structure for storage systems to encourage better use of those resources.[6]

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[5] Bloom Energy, California Clean Distributed Generation Coalition (CCDC), National Fuel Cell Research Center, Fuel Cell Energy (FCE), Doosan Fuel Cell America, Southern California Gas Company, and Southern California Edison.

[6] *See e.g.*, ORA November 6, 2015 comments at 3–4, CSE November 6, 2015 comments at 4–5, and Commercial Energy November 6, 2015 comments at 4.

Sierra Club and CSE argue that the Commission must suspend the SGIP in order to comply with the additional program directives that were included in SB 861.[7] However, none of the subsections of § 379.6 cited above include a deadline for incorporating the directives included therein.

Several parties support the immediate availability of the SGIP funds in 2016. These parties emphasize that a suspension of the program will induce uncertainty in the markets for SGIP-funded technologies.[8] Furthermore, these parties reason that, as a consequence, the greenhouse gas (GHG) emissions, NOx, and peak demand reduction benefits provided by SGIP projects will be deferred.[9]

Several parties comment on administrative changes to the SGIP that would need to be made in the case where a partial suspension is granted. PG&E recommends limiting the waitlist to 50% or less of its normal capacity, while adhering to current waitlist protocol, where only the confirmed waitlisted projects should retain a placeholder for the second phase of the 2016 program and budget. SoCalGas and CCDC recommend that that the 2015 program year wait listed applications be cancelled and required to reapply for the 2016 program year under 2016 rules and incentive rates. SoCal Gas also seeks direction on the three following questions:

1. Is the partial funding in addition to any potential carry-over funding?
2. Should the PAs continue to have the flexibility to reallocate funds?
3. Should the wait list continue to be used as a mechanism to pre-reserve funds?

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[7] Sierra Club November 6, 2015 comments at 1-2; CSE November 6, 2015 comments at 2.

[8] CCDC November 6, 2015 comments at 2; Bloom Energy November 6, 2015 comments at 2.

[9] FCE November 6, 2015 comments at 2.

3. Discussion

The issue to be decided is fundamentally a trade-off between disrupting the market for customer-sited generation and storage technologies by delaying incentive availability, potentially for several months, and the opportunity to spend ratepayer-funded incentives more effectively by reallocating funding among technology classes and/or lowering incentive levels for some or all technologies, and/or making other program revisions. FCE cites statistics from the 2013 SGIP Impact Evaluation Report regarding the benefits provided by the current program that may be deferred by suspending the program.10 However, the program revisions contemplated by the April 29, 2015 assigned Commissioner's ruling could lead to a program structure that induces more customer-sited generation and storage capacity, supports projects that provide greater value per dollar spent, reduces more GHG emissions, and provides various other benefits compared to the current program.

In consideration of the substantial improvements that could be made in the SGIP, while considering the market disruption that a full suspension could create, we conclude that the program should be partially suspended at 50% of the 2016 funding level until further order of the Commission. In an effort to minimize market and administrative confusion, the waitlist should be continued to cover the partial suspension, but limited to no more than the 50% funding level. All other aspects of the waitlist protocol should be adhered too. The SGIP program administrators should continue to accept new applications up to the point that 50% of their 2016 funds are reserved. The balance of the 2016 SGIP

[10] FCE November 6, 2015 comments at 1–2.

funds should be withheld until revisions to the SGIP pursuant to a forthcoming decision have been implemented.

In comments to the Proposed Decision, parties raised a number of outstanding administrative issues that require additional consideration and clarification. Among them are the treatment of the 2015 waitlist in 2016, whether a waitlist should be established for the partially funded 2016 program year, and whether a waitlist should be initiated for the partially funded 2016 program. With regards to the treatment of the 2015 waitlist in the partially funded 2016 program, the current program rules would give priority access to the partially funded 2016 program to applicants on the current 2015 program waitlist. While both SoCal Gas and Southern California Edison stated that maintaining this rule would effectively mean few or no new applicants could participate in the partially funded 2016 program, the overarching goal of maintaining program continuity from 2015 into 2016 suggests leaving the existing rule as is. As a result, no change should be made to the current rules governing treatment of waitlisted applicants during the partially funded 2016 program year. We must now deal with whether or not a waitlist should be established for the partially funded 2016 program year. On balance, we find that establishing a waitlist for the partially funded 2016 program year does not make administrative sense due to the pending changes that are coming to the SGIP program later in 2016. In its place, any incentives that become unallocated due to program attrition during the partially funded 2016 program year should be rolled over into the successor program.

Next, we turn to the question of whether rebate levels should be adjusted for the partially funded 2016 program year. Current program rules require that rebate levels be reduced by 10% for emerging technologies (which include advanced energy storage, electric-only fuel cells, CHP fuel cells, and the biogas adder) and 5% for renewable, waste energy recovery, and conventional CHP. In comments to the Assigned Commissioner Ruling, PG&E advocated for even greater reductions in the rebate levels, while in comments to this Proposed Decision, Center for Sustainable Energy noted that when PG&E opened up rebates to their waitlist this past month, all rebates were depleted in a matter of minutes. Both of these points suggest that rebate reductions greater than 10% and 5% may be merited. Unfortunately, the record supporting any reductions greater than those currently envisioned under the current program rules is seriously lacking. Taking this factor into account, as well as the justification that underlies this Proposed Decision, which is to balance maintaining market certainty for participants with the potential benefits of significantly changing the program, we find that maintaining the current rebate reduction program rules represents the most balanced approach. Program Administrators shall therefore reduce rebates in accordance with the existing rules (i.e., emerging technology incentives by 10% and other technology incentives by 5% for the partially funded 2016 program year. Parties also requested clarification regarding the basis of the 40% manufacturer cap during the partially funded 2016 program. Keeping the methodology of the current rules, we clarify that the basis for the manufacturer cap will be the total amount allocated to the partially funded 2016 program, plus any amounts carried over from the 2015 program year.

In D.11-09-015 we allowed continued funding for fuel cells.11 We also established that CHP projects be evaluated on a project-specific basis12, a requirement which this decision does not alter. For electric-only fossil fuel-consuming technologies (of which fuel cells are the only type in SGIP) we required that the PAs develop, in consultation with CARB, criteria and procedures for showing compliance with the GHG emission rate (which then was 379 kgCO2/MWh)13. In compliance with that directive, the Program Administrators developed a procedure which is described in the SGIP Handbook.14 In this Decision, we direct the Program Administrators to update these procedures to reflect the new emissions rate approved by this Commission in D.15-11-027 for the purposes of the partially funded 2016 program. Additionally, we reserve the right to revisit the appropriateness of this procedure for determining SGIP eligibility of pure electric fuel cells following the completion of the partially funded 2016 program.

Finally, the SGIP Program Administrators are directed to address any outstanding administrative issues pertinent to the partially funded 2016 program in due course of their program administration.

4. Safety Considerations

We find that partially suspending the SGIP raises no safety considerations.

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[11] D.11-09-015 at 20.

[12] D.11-09-015 at 16.

[13] D.11-09-015 at 17.

[14] SGIP Handbook Section 4.2.9, at 51.

5. Comments on Proposed Decision

The proposed decision of Commissioner Picker in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on December 7, 2015, and reply comments were filed on December 14, 2015. Issues raised by comments have been addressed, as needed.

6. Assignment of Proceeding

Michael Picker is the assigned Commissioner and Regina M. DeAngelis is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. SGIP funds authorized in 2015, particularly for the renewable energy and emerging technologies category, were quickly reserved.

2. Subsections (e), (h), and (l) of § 379.6 have no deadline for implementing the directives set forth therein.

3. Suspending the SGIP until program revisions are fully implemented sometime in 2016 may disrupt market demand for SGIP-eligible technologies.

4. Revisions to the SGIP could result in a more effective program that delivers more value to ratepayers from the $77 million incentive budget that will become available at the start of 2016.

5. Partially funding the SGIP program to allow 50% of 2016 funds to be disbursed at the start of 2016 while reserving the balance of 2016 funds, as well as all future SGIP funds, strikes a balance between the negative effects of a market disruption and the benefits of re-designing the SGIP program.

6. Maintaining the current treatment of waitlisted applicants to have preferential access to incentives in the partially funded 2016 program year supports the goal of market certainty.

7. Reducing the rebate levels in the partially funded 2016 program year in-line with current program rules supports the goal of market certainty.

8. Eliminating the use of a waitlist for the partially funded 2016 program year, and allocating funds that become available as a result of attrition to the successor SGIP program balances administrative ease and prudent incentive funds management.

Conclusions of Law

1. The benefits of partially funding the SGIP, in an effort to allocate the 2016 program year funds more effectively, are likely equal to the costs of market uncertainty and deferred benefits of projects that would otherwise be subject to incentives under the current program rules.

2. The SGIP should be partially suspended, such that 50% of 2016 funds are made available at the start of 2016 until the Commission has the opportunity to consider program revisions in a forthcoming decision.

3. Treatment of waitlisted applicants from the 2015 funding year shall remain unchanged in the partially funded 2016 program year.

4. Rebate levels for the partially funded 2016 program year shall be reduced by 10% for emerging technologies (which include advanced energy storage, electric-only fuel cells, CHP fuel cells, and the biogas adder) and 5% for renewable, waste energy recovery, and conventional CHP.

5. The partially funded 2016 program year shall have no waitlist and any funds that become available as a result of attrition shall be allocated to the successor SGIP program.

O R D E R

IT IS ORDERED that:

1. The program administrators of the Self-Generation Incentive Program (SGIP), namely the Center for Sustainable Energy, Pacific Gas and Electric Company, Southern California Gas Company, and Southern California Edison Company, shall continue accepting new applications for incentives until 50% of their 2016 SGIP program funds are reserved and shall not disburse any additional funds authorized for program year 2016 until further ordered by the Commission.
2. Rulemaking 12-11-005 remains open.

This order is effective today.

Dated December 17, 2015, at San Francisco, California.

MICHAEL PICKER
President
MICHEL PETER FLORIO
CATHERINE J.K. SANDOVAL
CARLA J. PETERMAN
LIANE M. RANDOLPH
Commissioners