

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

**ENERGY DIVISION**

**RESOLUTION E-4887**

**October 12, 2017**

**R E S O L U T I O N**

Resolution E-4887. Adoption of revised Self-Generation Incentive Program developer definition pursuant to Decision (D.) 16-06-055 and other revisions to the SGIP Handbook.

**PROPOSED OUTCOME:**

- The definition of developer used in the Self-Generation Incentive Program is revised, and other clarifying amendments to the SGIP Handbook are made, on Energy Division's own motion. A Tier 1 advice letter that ensures compliance with this Resolution shall be filed by the Self-Generation Incentive Program administrators within 14 days.

**SAFETY CONSIDERATIONS:**

- There are no safety implications of the revised definition of developer.

**ESTIMATED COST:**

- There is no incremental cost associated with these changes to the Self-Generation Incentive Program rules.

By Energy Division on its own motion, as authorized by  
D.16-06-055.

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**SUMMARY**

In accordance with Decision (D.) 16-06-055 (the Decision), Energy Division proposes a revised definition of "developer" for use in the Self-Generation Incentive Program (SGIP).

This resolution requires that Southern California Gas Company (SoCalGas), Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE) and the Center for Sustainable Energy (CSE) – collectively referred to as the program administrators (PAs) – make the following modifications to the SGIP Handbook:

- 1) The definition of developer is modified to allow the SGIP administrators, with oversight from Energy Division, to find that an entity is the project's developer if that entity handles a substantial amount of the project's development activities. An exclusive list of development activities is added to the definition. Disclosure of relationships, including ownership relationships, with other developers is required, and any violation of this disclosure requirement will automatically be considered to be an infraction.
- 2) An expanded Developer Eligibility Application is adopted, seeking information on all development activities handled by a developer. These must be submitted by all participants if their original Developer Eligibility Applications did not sufficiently describe their relationships with other developers.
- 3) The language in the SGIP Handbook concerning the investigation of infractions is clarified so that Energy Division's authority to independently investigate infractions and issue penalties on behalf of the CPUC is codified.

## **BACKGROUND**

SGIP was significantly modified by D.16-06-055 in response to Senate Bill (SB) 861 (Committee on Budget and Fiscal Review, 2014), Assembly Bill (AB) 1478 (Committee on Budget, 2014) and to reflect changing conditions and priorities with respect to the program.

D.16-06-055 created a 20% cap on the amount of incentives in a given step that may be awarded to a single developer. Specifically, the Decision mandated that any single developer/installer (or any combination of affiliated developers/installers under the same majority ownership) is limited to 20% of the

available funding for a given technology category's total in each incentive step.<sup>1</sup> The Decision continued its explanation of the developer cap by stating:

"The SGIP [PAs] shall not issue conditional reservations to a project installed by a developer (or combination of affiliated installers/developers under the same majority ownership) that has already received reservations for active projects in a given step such that the total exceeds the percentage allocation for that step. Each reservation application shall include the name and address of the customer; the customer's account number; the name and address of the developer/installer; the name and address of the developer/installer's parent company, defined as an entity with a majority ownership interest in the developer/installer (direct parent and ultimate parent, if applicable); the identity of the owner; and the identity of the host."<sup>2</sup>

Section 4.1.5 of the SGIP Handbook provides the following definition of a developer:

"A Developer is the corporate entity that holds the contract for purchase and installation of the system, and/or alternative System Ownership Agreement (such as a Power Purchase Agreement) with the host customer and handles the project's development activities. The Developer must fully disclose their participation in developing the project and/or ownership in the project, or that of a combination of affiliated installers/developers. The customer contract will be verified at Proof of Project Milestone to confirm the Developer's representations. When applicable, the Developer cap will apply to the aggregate of the projects for Developers under the same parent company."<sup>3</sup>

The stated purpose of the developer cap in D.16-06-055 is to "ensure diversity and prevent any gaming by program participants."<sup>4</sup> The Decision also provides

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<sup>1</sup> D.16-06-055 at 39-40. The Decision clarifies that the cap is applied separately to the residential and non-residential storage sub-buckets.

<sup>2</sup> *Id.*

<sup>3</sup> SGIP Handbook at Section 4.1.5.

<sup>4</sup> D.16-06-055 at 39.

that “the program administrators and/or Energy Division be authorized to propose modifications - via advice letter and/or resolution - to the rules associated with manufacturer and installer caps, based on their experience with the caps under the new rules.”<sup>5</sup>

This Resolution proposes modifications to the rules associated with the developer cap, based on Energy Division’s analysis of the results of Step 1 of SGIP, which opened on May 1, 2017 and saw hundreds of applications submitted by dozens of different developers.

## **NOTICE**

The Resolution was sent to the CPUC’s General Order (GO) 96-B service list and to the R.12-11-005 service list.

## **DISCUSSION**

In this Resolution, Energy Division modifies the rules surrounding SGIP’s developer cap pursuant to the authority granted to it in D.16-06-055. Energy Division’s analysis of the results of Step 1 of SGIP from May, 2017 indicate that market actors that participate in SGIP have developed innovative business models that are beyond the scope of what the original developer cap rules in the 2017 SGIP Handbook anticipated. We note that the current developer definition has two requirements for a developer – 1) to hold the contract for purchase and installation of the system, and/or alternative System Ownership Agreement (such as a Power Purchase Agreement) with the host customer and 2) to handle the project’s development activities.

The principal modifications made to the developer cap rules are intended to address the situation where multiple developers share in a project’s development, meaning that some project development activities may be handled by Developer A, while others are handled by Developer B. To address this situation, the definition of developer is changed such that holding the contract for purchase and installation of the energy storage system is no longer a

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<sup>5</sup> D.16-06-055 at 40.

necessary condition of the definition. This is required because while Developer A may hold the contract, that Developer may not contribute anything else to a project's development, while Developer B may be handling all of the project's development activities without legally holding the contract for system purchase.<sup>6</sup>

The focus of the modified definition is on the development activities that a party handles, and whether that party handles a sufficient amount of development activities to qualify as the developer of a project. In a situation where more than one party handles different development activities, the party that is found to handle a substantial amount of the project's development activities will be found to be the developer for that project. Only one party may be a developer for any given project, for the purposes of applying the SGIP's developer cap.

This resolution also clarifies which activities should qualify as project development activities, and how the SGIP administrators should apply their analysis of these activities. Further, additional reporting requirements for SGIP participants are outlined to ensure that the common majority ownership rule can be more easily enforced.

Below, we discuss various issues identified by Energy Division in its review of the outcomes of Step 1 that are reflected in the revised definition, and other additional enforcement issues that are addressed by other modifications to the SGIP Handbook.

### ***Modifying the developer cap rules to address multiple developer participation in a single project***

As noted above, a "developer"<sup>7</sup> for the purpose of the developer cap has been "the corporate entity that holds the contract for purchase and installation of the

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<sup>6</sup> This could occur where, for example, Developer B sells its ownership of a purchase contract to Developer A while continuing to conduct all project management subsequent to the contract's sale. In such situations, the existing definition is very difficult to sensibly apply.

<sup>7</sup> D.16-06-055 did not define the word "developer." Instead, the SGIP administrators proposed a definition in their draft SGIP Handbook submitted for CPUC approval in

system, and/or alternative System Ownership Agreement (such as a Power Purchase Agreement) with the host customer and handles the project's development activities.”<sup>8</sup> The stated purpose of the developer cap in D.16-06-055 is to “ensure diversity and prevent any gaming by program participants.”<sup>9</sup>

*Defining “the project’s development activities”*

Upon review of the results of Step 1, Energy Division recommends further refining the meaning of the term “project’s development activities” currently used in the SGIP Handbook. The term as currently used is ambiguous while also being critical to determining which of potentially several parties should be considered a developer. Due to the critical nature of the term, further refinement of its meaning is necessary. Energy Division recommends that the following activities should constitute an exclusive list of an SGIP energy storage project’s development activities for the purpose of applying the developer cap:

1. Approaching or communicating with the host customer about the project and learning about its needs and energy profile (i.e., customer acquisition or developing leads)
2. Developing the specifications for a system based on the customer’s needs and interests
3. Soliciting bids from multiple manufacturers for the specified system
4. Gaining the customer’s commitment to purchase or lease the specified system, usually but not necessarily by signing a purchase order with a customer or other form of agreement
5. Purchasing the specified system from the manufacturer to fulfill the obligation to provide a system to the customer
6. Securing permits for the system on behalf of the customer

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October, 2016. The definition in the SGIP Handbook was approved by CPUC Resolution E-4824.

<sup>8</sup> 2017 SGIP Handbook Section 4.1.5 at page 30.

<sup>9</sup> *Id.*

7. Securing interconnection permission for the system on behalf of the customer
8. Submitting SGIP applications
9. Liaising with the SGIP administrators on incentive reservations
10. Liaising with the SGIP administrators on data reporting requirements
11. Supplying project data to SGIP evaluators
12. Physically constructing the system at the customer's premises
13. Installing the system at the customer's premises

Energy Division learned in the course of its review of Step 1 that a single SGIP energy storage project may have different parties handling different development activities. For example, one party may acquire a customer, learn about its energy needs and suggest specifications for a system that meets those needs; while another party may solicit bids for the specified system and sign a purchase agreement with the customer for an agreed price.

While the SGIP Handbook's existing developer definition works when one party conducts all development activities for a given project, it is clear that market actors are developing business models where different parties may undertake different development activities for the same project. This is likely an efficiency that SGIP should encourage, but it does present a practical problem when applying the current developer definition and developer cap.

Energy Division believes that the existing definition of developer should be modified to account for this situation such that the entity that handles a *substantial* amount of the project's development activities should be considered to be the developer. The SGIP administrators, with oversight from Energy Division, would maintain discretion to determine whether the purchase agreement holder also handles a substantial amount of the project's development activities and is the developer for the purpose of applying the developer cap.

Energy Division's rationale for modifying the current definition in this way is that the developer cap is designed to facilitate competition in the market for energy storage system development and to prevent market actors from

exercising dominance over a nascent industry. D.16-06-055 states that the rationale for adopting the developer cap is to “ensure diversity and prevent any gaming by program participants.”<sup>10</sup> The reference to gaming is important, as it signals the CPUC’s intent to prevent participants from subverting program rules in order to disproportionately increase their share of incentives beyond the 20% threshold.

Allowing developers to subvert the intent of the developer cap by handling a substantial amount of the project’s development activities while allowing a separate party to nominally hold the purchase agreement for the system would be contrary to the policies established by D.16-06-055 to encourage competition between developers and prevent gaming.

*Other modifications to the developer definition and developer cap rules*

In light of Energy Division’s review of Step 1, we find that there are other less substantive modifications to the developer definition and developer cap rules that are required.

*Eligibility of homeowners to “self-develop” their projects*

During the lead-up to the reopening of Step 1, several homeowners contacted Energy Division to enquire if they were able to register as developers and “self-develop” their own projects. Such self-development was necessary if a homeowner wished to apply for SGIP incentives themselves rather than going through a third-party SGIP developer.

Because SGIP is designed to give rebates to utility customers for the installation and operation of self-generation and energy storage resources, it is appropriate to allow individual homeowners as host customers to apply for their own incentives. Because the new SGIP online portal requires a unique developer key for each application (to ensure the operation of the developer cap), individual homeowners must submit a Developer Eligibility Application to the SGIP administrators and receive their own unique developer key.

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<sup>10</sup> D.16-06-055 at 39.



However, the existing definition of developer refers to it only as a “corporate entity,” meaning that individual homeowners could be technically prevented from registering as their own developer. The definition shall be modified to allow individual homeowners to qualify as developers.

We note that the SGIP administrators should remain vigilant and monitor SGIP incentive requests to determine if this homeowner exception is being used to game the developer cap. In response to comments from SCE, PG&E and CSE, we clarify that homeowners that choose to submit an application as a developer will be required to submit a Developer Eligibility Application and meet the standard analysis to determine whether they handle substantial amount of the development activities listed previously.

In comments PG&E argues that a homeowner applying as a developer may not be able to show that they conduct activities #1 and #4. A homeowner may, in fact, have been approached by a retailer of energy storage systems and therefore the homeowner would need to reveal which entities conducted those activities in that Developer Eligibility Application.

*Developer registration with the California Secretary of State*

In its review of Step 1, Energy Division noticed that some developers were not registered with the California Secretary of State either as foreign or domestic corporations. This prevented Energy Division from confirming the organizational structure of some developers, which was an impediment to confirming that the common majority ownership rules were followed. It could also create the potential situation where a developer may not have an agent for service of process in California.

In order to address these issues, corporate entities that seek to be SGIP developers must be registered and in good standing with the Secretary of State of California going forward.

*Ability of SGIP administrators, with oversight from Energy Division, to retroactively adjust assignment of projects to a given developer's cap*

The determination by the SGIP administrators of which party handles a substantial amount of a project's development activities will occur after a reservation request has been received. The developer that originally filed the SGIP application may not be the entity that the SGIP administrators believe should actually be the developer for a given project. Therefore, it is necessary to modify the developer definition to note that the assignment of a given project's incentives to a given developer's cap may change during the course of reviewing a reservation request up to the point that a confirmed reservation is issued for a given project.<sup>11</sup>

For the purpose of applying the developer definition and the developer cap, the SGIP administrators, with oversight from Energy Division, have discretion to determine whether a participant handles project development activities, and whether a participant handles a substantial amount of these activities for a given project. If a reassignment of developer status for a given project occurs after an SGIP application is submitted but before a confirmed reservation is issued, and leads to a participant retroactively exceeding its developer cap for a given incentive Step, reservation requests for that participant shall be cancelled to bring the participant under its developer cap.

This clarification of SGIP administrator and Energy Division authority shall be made in the revised developer definition to ensure that all SGIP participants are fully aware of their authority in this respect.

*Ownership and other relationships between developers*

As noted above, Energy Division found that some developers were working together on Step 1 projects to jointly develop the projects. Energy Division also found in its review that some Developer Eligibility Applications did not reveal information concerning minority ownership positions held by some developers

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<sup>11</sup> Additionally, the need for ex post review of developers' claims regarding their handling of a project's development activities mean that developers cannot rely on the acceptance of a Developer Eligibility Application as an assurance that they will be considered the developer for any given SGIP project.

in others. SGIP participants must continue to disclose such relationships to the SGIP administrators as part of Developer Eligibility Application and on an ongoing basis if relationships are modified, including ownership arrangements in addition to commercial relationships.

Therefore, the developer definition shall be modified to remind participants that the developer must disclose relationships with other SGIP participants in developing and/or owning any existing projects funded in whole or in part by SGIP or reasonably foreseeable future projects that may be funded in whole or in part by SGIP to the SGIP administrators on an ongoing basis and in the Developer Eligibility Application. For example, if a developer purchases the contract for installation of a system from another developer, each developer must describe the transaction for each applicable SGIP project in their Developer Eligibility Application, or inform the SGIP administrators of the transaction if the Developer Eligibility Application has already been accepted.

Note that the relationships between developers that must be disclosed to the SGIP administrators include commercial or financial relationships between developers that do not share the same majority ownership.

Transparency regarding the relationships between developers is essential to the ability of the SGIP administrators to enforce the revised developer cap rules. It is therefore necessary to ensure that these relationship disclosure rules are strictly followed. Failure to disclose relationships with other participants in a Developer Eligibility Application shall be considered an infraction.

*Clarifying the meaning of “same majority ownership”*

The developer cap is to be applied to all affiliated developers under the same majority ownership, per D.16-06-055.<sup>12</sup> In order to clarify the meaning of “same majority ownership” for all SGIP participants, Energy Division recommends that the developer definition be revised such that majority ownership may be evidenced by the ownership interest in different developers by: a single parent corporation, the distinct subsidiaries of a single parent corporation, a private equity firm, an investment bank, a group of individual shareholders, or any

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<sup>12</sup> D.16-06-055 at 39-40.

other entity that the SGIP administrators or Energy Division in their discretion determine to constitute the same majority ownership of different developers.

This clarification is recommended as the review of Step 1 revealed many different forms of commercial relationships between developers that could be leveraged for control or influence over a developer's business. The "same majority ownership" rule is intended to prevent different entities from using different developer caps even if they are controlled by a single entity. We clarify the definition in this way in order to make clear that the traditional parent-child relationship of corporate entities is not the only way common majority ownership may be evidenced.

As above, transparency in relationships between developers is essential to the ability of the SGIP administrators to pursue their work. Therefore, the developer definition shall be clarified to state that in order to ensure that majority ownership can be accurately assessed by the SGIP administrators, all developers will be required, upon request, to disclose the identity of all of their equity holders, including the ultimate ownership interests in those equity holders.

*Clarification of infraction determination authority*

Per the above, we affirm today that Energy Division has the authority to determine if an SGIP participant is in violation of the developer cap. This requires a clarification of the existing infraction determination authority as defined in the SGIP Handbook that clarifies that Energy Division may determine if an infraction of SGIP rules or policies has occurred. We find that this authority has always been implied in SGIP, as the CPUC is ultimately responsible for SGIP administration, but requires clarification in the SGIP Handbook to remove any doubt as to this implied authority.

***Revisions to the developer definition in the SGIP Handbook to give effect to the revisions to the SGIP developer cap rules discussed above***

This resolution codifies the changes to the developer cap rules referred to above in the following amendments. Within 14 days of the effective date of this resolution, the SGIP administrators are ordered to file a Tier 1 advice letter to

make the following amendments to the SGIP Handbook. Additions are underlined, deletions are in strikethrough text.

*Section 4.1.5*

“A Developer is, if not individual homeowners applying for SGIP incentives for systems located on their own property, the corporate entity registered and in good standing with the Secretary of State of California that holds the contract for purchase and installation of the system, and/or alternative System Ownership Agreement (such as a Power Purchase Agreement) with the host customer and handles a substantial amount of the project’s development activities.

“An exclusive list of a project’s development activities to be used for the purpose of applying this definition to the Program’s developer cap is as follows:

1. Approaching or communicating with the host customer about the project and learning about its needs and energy profile
2. Developing the specifications for a system based on the customer’s needs and interests
3. Soliciting bids from multiple manufacturers for the specified system
4. Gaining the customer’s commitment to purchase or lease the specified system, usually but not necessarily by signing a purchase order with a customer or other form of agreement
5. Purchasing the specified system from the manufacturer to fulfill the obligation to provide a system to the customer
6. Securing permits for the system on behalf of the customer
7. Securing interconnection permission for the system on behalf of the customer
8. Submitting SGIP applications on behalf of the customer
9. Liaising with the SGIP administrators on incentive reservations
10. Liaising with the SGIP administrators on data reporting requirements
11. Supplying project data to SGIP evaluators
12. Physically constructing the system at the customer’s premises
13. Installing the system at the customer’s premises

“Only one participant per project can be determined by the Program Administrators or Energy Division to handle a substantial portion of the project’s development activities.

“For the purpose of this definition, the Program Administrators, with oversight from Energy Division, have discretion to determine whether a participant handles such activities, and whether a participant handles a substantial amount of these activities for a given project. If a reassignment of Developer status for a given project occurs after an SGIP application is submitted but before a confirmed reservation is issued, and leads to a participant retroactively exceeding its developer cap for a given incentive Step, a sufficient number of reservation requests for that participant shall be cancelled to bring the participant under its developer cap.

“Acceptance by the Program Administrators of a Developer Eligibility Application does not guarantee that a participant qualifies as a Developer of any given project.

“The Developer must fully disclose ~~their~~ its participation in developing the project and/or ownership in the project, or that of a combination of affiliated installers/developers. The Developer must disclose relationships with other SGIP participants in developing and/or owning any existing projects funded in whole or in part by SGIP or reasonably foreseeable future projects that may be funded in whole or in part by SGIP to the Program Administrators on an ongoing basis and in the Developer Eligibility Application. For example, if a Developer purchases the contract for purchase and installation of a system from another Developer, each Developer must describe the transaction in its Developer Eligibility Application, or inform the Program Administrators of the transaction if the Developer Eligibility Application has already been accepted. Note that the relationships between Developers to be disclosed to the Program Administrators include commercial or financial relationships between Developers that do not share the same majority ownership.

“Failure to disclose relationships with other participants in a Developer Eligibility Application shall be considered an infraction.

“The customer contract will be verified at Proof of Project Milestone to confirm the Developer’s representations. When applicable, the Developer cap will apply to any combination of affiliated developers under the same majority ownership. Majority ownership may be evidenced by the ownership interest in different Developers by: a single parent corporation, the distinct subsidiaries of a single parent corporation, a private equity firm, an investment bank, a group of individual shareholders, or any other entity that the Program Administrators or Energy Division in their discretion determine to constitute the same majority ownership of different Developers.

“In order to ensure that majority ownership can be accurately assessed by the Program Administrators, all Developers will be required, upon request, to disclose the identity of all of their equity holders, including the ultimate ownership interests in those equity holders.”

## *Section 9.2*

“Infractions are any actions that circumvent program policy or requirements, or have the intent to do so, in addition to low performance levels. Infractions can be issued to any participant, as defined in Section 4.1. The Program Administrators or Energy Division will evaluate program infractions, which may include gross negligence or intentional submission of inaccurate project information...”

### *Section 9.2.1*

“If a Program Administrator determines that an infraction may be warranted, a notice will be sent to the violating participant. Participants may be issued one or more warnings before being issued an infraction; however, serious violations may result in an immediate infraction. Participants may receive no more than three warnings before an infraction is issued. Infractions will be reviewed by all SGIP Program Administrators and will be communicated to the participant. Notwithstanding the above, Energy Division may initiate an investigation of potential infractions, which may result in a penalty for any infraction determined to have occurred.

*Need to resubmit Developer Eligibility Applications*

Given the changes to the rules governing the developer cap mandated by this Resolution, it is necessary for SGIP participants whose original Developer Eligibility Applications did not fully describe their relationships with other participants to resubmit their Developer Eligibility Applications with the following information:

- If a parent company for the participant exists, the ultimate owner of the parent company if the parent company is nested within other parent-child corporate relationships – revelation of the ultimate owner is required
- Any ownership interest – including a minority interest – in the developer held by another developer or ultimate owner of another developer
- The identity of the entity, if reasonably foreseeable,<sup>13</sup> that will execute any of the following development activities if it is not the developer named in the Developer Eligibility Application:
  - Approaching or communicating with the host customer about the project and learning about its needs and energy profile
  - Developing the specifications for a system based on the customer's needs and interests
  - Soliciting bids from multiple manufacturers for the specified system
  - Gaining the customer's commitment to purchase the specified system, usually by signing a purchase order with a customer or other form of agreement; or owning the system during its lifetime and signing a lease or other similar agreement with the customer
  - Purchasing the specified system from the manufacturer to fulfill the obligation to provide a system to the customer
  - Securing permits for the system on behalf of the customer
  - Securing interconnection permission for the system on behalf of the customer

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<sup>13</sup> If an entity is not reasonably foreseeable, the developer should note that in their application and provide all other relevant information, and relay an update to the PAs when available.



- Filing SGIP applications
- Liaising with the SGIP administrators on incentive reservations
- Liaising with the SGIP administrators on data reporting requirements
- Supplying project data to SGIP evaluators
- Physically constructing the system at the customer's premises
- Installing the system at the customer's premises
- If the developer plans to divide project development activities with another entity in different ways for different projects, the developer must note that on the application form and submit supplemental information with the Developer Eligibility Application describing those other ways for other projects
- To the extent not described in the section asking for information on execution of project development activities, a description of relationships with other SGIP participants, including commercial or financial relationships between developers that do not share the same majority ownership, in developing and/or owning any existing projects funded in whole or in part by SGIP or reasonably foreseeable future projects that may be funded in whole or in part by SGIP

Because SGIP participants will need to exercise judgment in determining whether or not to submit revised Developer Eligibility Applications in a short period of time, the SGIP administrators are ordered to widely publicize this requirement and update their Developer Eligibility Application form expediently to allow participants to comply with this requirement in a timely fashion.

### **COMMENTS**

Public Utilities Code section 311(g)(1) provides that this resolution must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the CPUC. Section 311(g)(2) provides that this 30-day period may be reduced or waived upon the stipulation of all parties in the proceeding.

The 30-day comment period for the draft of this resolution was neither waived nor reduced. Accordingly, this draft resolution was mailed to parties on August 25, 2017.

Comments were timely filed by Tesla, Inc. (Tesla), California Energy Storage Alliance (CESA), Custom Power Solar, California Solar Energy Industries Association (CalSEIA), California Building Industry Association (CBIA), Center for Sustainable Energy (CSE), Southern California Gas Company (SCG), Advanced Microgrid Solutions, Inc. (AMS), Swell Energy, Inc. (Swell), Southern California Edison (SCE), and Pacific Gas and Electric Company (PG&E).

In response to numerous party comments, we clarify that the changes this Resolution makes to the definition of developer and the application of the developer cap apply only to applications received in SGIP Step 3 or later. Parties also commented that the definition of developer as the entity responsible for a substantial amount of a project's development activities is ambiguous and leaves room for subjective interpretation and inconsistencies in implementation across the PAs' territories. As with SGIP implementation to date, the SGIP Working Group in collaboration with the Energy Division will work to ensure consistent program implementation throughout. Therefore, further clarification of the developer definition is not necessary at this time.

Where appropriate, other changes to the Resolution in response to comments appear throughout.

## **FINDINGS**

1. Energy Division's analysis of the results of Step 1 of the Self-Generation Incentive Program (SGIP) from May, 2017 indicate that market actors that participate in SGIP have developed innovative business models that are beyond the scope of what the original developer cap rules in the 2017 SGIP Handbook anticipated.
2. Energy Division learned in the course of its review of Step 1 that a single SGIP energy storage project may have different parties handling different development activities.

3. Market actors developing business models where different parties may undertake different development activities for the same project is likely an efficiency that SGIP should encourage, but it does present a practical problem when applying the current developer definition and developer cap.
4. Allowing developers to subvert the intent of the developer cap by handling a substantial amount of the project's development activities while allowing a separate party to nominally hold the purchase agreement for the system would be contrary to the policies established by D.16-06-055 to encourage competition between developers and prevent gaming.
5. Because SGIP is designed to give rebates to utility customers for the installation and operation of self-generation and energy storage resources, it is appropriate to allow individual homeowners as host customers to apply for their own incentives.
6. Because the new SGIP online portal requires a unique developer key for each application (to ensure the accurate operation of the developer cap), individual homeowners must submit a Developer Eligibility Application to the SGIP administrators and receive their own unique developer key.
7. In its review of Step 1, Energy Division noticed that some developers that were corporate entities were not registered with the California Secretary of State either as foreign or domestic corporations. This prevented Energy Division from confirming the organizational structure of some developers, which was an impediment to confirming that the common majority ownership rules were followed.
8. Energy Division found that some developers were working together to jointly develop Step 1 projects. Energy Division also found in its review that some Developer Eligibility Applications did not reveal information concerning minority ownership positions held by some developers in others.
9. Transparency regarding the relationships between developers is essential to the ability of the SGIP administrators to enforce the revised developer cap rules.
10. Energy Division's authority to determine if an infraction of SGIP rules or policies has occurred has always been implied in SGIP, as the CPUC is

ultimately responsible for SGIP administration, but requires clarification in the SGIP Handbook to remove any doubt as to this implied authority.

**THEREFORE IT IS ORDERED THAT:**

1. Within 14 days of the effective date of this resolution, Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), Southern California Gas Company (SoCalGas) and the Center for Sustainable Energy (CSE) (collectively the SGIP administrators) are ordered to file a Tier 1 advice letter to make revisions to the Self-Generation Incentive Program (SGIP) Handbook as outlined in this resolution.
2. Within 14 days of the effective date of this Resolution, the SGIP administrators shall revise, for Step 3 and onward, the Developer Eligibility Application to account for the new information sought by the revised developer cap rules, and widely publicize the requirement that SGIP participants resubmit their Developer Eligibility Applications if their original Developer Eligibility Applications did not fully describe their relationships with other participants.

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on October 12, 2017; the following Commissioners voting favorably thereon:

/s/TIMOTHY J. SULLIVAN  
TIMOTHY J. SULLIVAN  
Executive Director

MICHAEL PICKER  
President  
CARLA J. PETERMAN  
LIANE M. RANDOLPH  
MARTHA GUZMAN ACEVES  
CLIFFORD RECHTSCHAFFEN  
Commissioners