

Decision 19-08-039

August 15, 2019

## BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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| Order Instituting Rulemaking to Develop a Successor to Existing Net Energy Metering Tariffs Pursuant to Public Utilities Code Section 2827.1, and to Address Other Issues Related to Net Energy Metering. | Rulemaking 14-07-002  |
| And Related Matter.   | Application 16-07-015 |

**ORDER DENYING REHEARING OF DECISION (D.) 18-09-044**

In this Order, we dispose of the application for rehearing of Decision (D.) 18-09-044<sup>1</sup> (or “Decision”), filed by the Solar Energy Industries Association (“SEIA”).

**I. BACKGROUND**

In D.18-09-044, we adopted net energy metering (“NEM”) consumer protection measures, including a consumer information packet explaining issues associated with installing and connecting a private solar system to a utility power grid. The information packet consists of a “Solar Energy Disclosures Document,” drafted by the Contractors State License Board with input from the Commission, and a document created by the Commission’s Energy Division, addressing issues commonly associated with going solar. (D.18-09-044, at pp. 11, 36 & Appendix A [“solar information packet” or “solar packet”].) Pursuant to D.18-09-044, solar providers must furnish the solar

<sup>1</sup> All citations to Commission decisions after July 2000 are to the official pdf versions which are available on the Commission’s website at: <http://docs.cpuc.ca.gov/DecisionsSearchForm.aspx>.

packet to consumers and upload signed,<sup>2</sup> in handwriting, signature pages confirming that the consumer received and read the packet prior to entering a solar contract or sale. (D.18-09-044, at pp. 32 & 53-56.)

SEIA timely filed an application for rehearing of D.18-09-044, alleging that, by requiring handwritten, i.e., “wet” signatures on the solar information packet, the Commission: (1) violated a section of the Uniform Electronic Transactions Act governing electronic signatures, and (2) exceeded its regulatory authority established under Public Utilities Code section 701.<sup>3</sup> The California Low-Income Consumer Coalition and the California Solar and Storage Association filed responses to SEIA’s application for rehearing.

We have carefully considered all the arguments presented by the rehearing application, and are of the opinion that good cause for rehearing has not been shown. Accordingly, rehearing of D.18-09-044 is denied.

## II. DISCUSSION

### A. **The Decision did not violate the Uniform Electronic Transactions Act by requiring wet signatures on the solar information packet signature pages.**

In its rehearing application, SEIA argues that, by requiring the provision of wet, rather than electronic, signatures on the solar information packet, the Commission violated the Uniform Electronic Transactions Act (“UETA”). This argument lacks merit.

In 1999, the California Legislature enacted the UETA, Civ. Code, § 1633.1 et seq., which applies to “any electronic record or electronic signature created, generated, sent, communicated, received, or stored on or after January 1, 2000.” (Civ. Code, § 1633.4; see also Civ. Code, § 1633.3.) The UETA provides that when a law requires a record to be in writing or requires a signature, an electronic record or signature

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<sup>2</sup> The “upload” process requires solar providers to import digital copies of the handwritten signature pages into an “interconnection portal” configured by Pacific Gas and Electric, Southern California Edison Company, and San Diego Gas & Electric Company (together, the utilities). (D.18-09-044, at p. 55.)

<sup>3</sup> All section references are to the Public Utilities Code, unless otherwise specified.

satisfies the law. (Civ. Code, §§ 1633.7, subds. (c), (d).) The UETA also states that a contract may not be denied legal effect or enforceability solely because an electronic signature or record is used in its formation (Civ. Code, § 1633.7, subd. (b)), and that, for the UETA to apply to a transaction, each party must agree to conduct the transaction by electronic means. (Civ. Code, § 1633.5, subd. (b).)

Here, SEIA argues that the wet signature requirement is in “direct violation” of UETA section 1633.7 (d), which provides: “If a law requires a signature, an electronic signature satisfies the law.” (Civ. Code, § 1633.7, subd. (d).) Relying on this language, SEIA summarily states, “[t]hus the Commission errs in requiring a customer’s wet signature on the information packet[.]” (Rhrng. App., at p. 3.) This argument lacks merit.

The UETA “applies only to a transaction between parties each of which has agreed to conduct the transaction by electronic means. Whether the parties agree to conduct a transaction by electronic means is determined from the context and surrounding circumstances, including the parties’ conduct.” (Civ. Code, § 1633.5, subd. (b).) Here, to the extent that the solar information packet may be considered part of a “transaction”<sup>4</sup> under the UETA, the Decision expressly stated that a potential consumer may not conduct, i.e., convey, his or her signature by electronic means. It follows that, absent an agreed-upon electronic transaction, the UETA does not apply to this portion of the solar contracting process. The fact that we ordered potential consumers to conduct this portion of the transaction by non-electronic means is wholly consistent with the UETA’s statutory scheme, which “*does not require* a record or signature to be created, generated, sent, communicated, received, stored, or otherwise processed or used by electronic means or in electronic form.” (Civ. Code, § 1633.5, subd. (a) [emphasis added]; see also Civ. Code, § 1633.5, subd. (c) [“A party that agrees to conduct a transaction by electronic means may refuse to conduct other transactions by electronic means.”].)

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<sup>4</sup> Civ. Code, § 1633.2 (“ ‘Transaction’ means an action or set of actions occurring between two or more persons relating to the conduct of business, commercial, or governmental affairs.”)

In so holding, we did not state that parties may not conduct later portions of a solar transaction by electronic means should they so choose. (See Civ. Code, § 1633.5, subd. (b).) There is therefore no conflict between the wet signature requirement and the portion of the UETA that permits electronic signatures when the “context and surrounding circumstances” convey that the parties have agreed to conduct a transaction in such a manner. Here, we have simply determined that confirming that a potential consumer has received and read the solar information packet is not one of those “circumstances.” (Civ. Code, § 1633.5, subd. (b).)

Based on the foregoing, the Decision did not violate the UETA by requiring wet signatures as confirmation that a potential solar consumer has received and read the solar information packet prior to entering a solar contract or sale. Rehearing on this issue is denied.

**B. The wet signature requirement is a proper exercise of Commission authority under section 701.**

SEIA also argues that the wet signature requirement exceeds the boundaries of our authority set forth in section 701.

Section 701 provides: “The Commission may supervise and regulate every public utility in the State and may do all things, whether specifically designated in this part or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction.” “Section 701 vests the [Commission] with ‘expansive’ authority (citation) to ‘supervise,’ to ‘regulate every public utility,’ and ‘*do all things ... which are necessary and convenient* in the exercise of such power and jurisdiction,’ regardless of whether it is specifically designated in the Public Utilities Code ‘or *in addition thereto.*’ ” (*Southern Cal. Edison Co. v. Public Utilities Com.* (2014) 227 Cal.App.4th 172, 186, quoting § 701 [emphasis in original].) This broad power permits the Commission to adopt rules so long as there is not a “specific statutory directive that *prohibits* the [Commission’s] action.” (*Id.* at p. 187 [emphasis in original].)

Pertinent here, we have the inherent power to protect California consumers from fraud.<sup>5</sup> As explained in the Decision, the wet signature requirement “is a critical element of [the Commission’s] consumer protection measures,” including protection from “aggressive and misleading sales tactics...persistent robocalls; pressure to sign a contract or agreement on the same day by solar salespersons; misrepresentation about the costs and benefits of rooftop solar,” and other abusive practices. (D.18-09-044, at pp. 8, 9-11 & 32-33.) Based upon these concerns, there is no question that we have the authority to place conditions upon a solar provider’s ability to conduct business with consumers who lack critical knowledge regarding solar programs and the risks and benefits thereof.

Additionally, the portion of the UETA relied upon by SEIA that states “[i]f a law requires a signature, an electronic signature satisfies the law” clearly contains no language that would prohibit the use of a wet signature under these circumstances.

As a result, we properly exercised our section 701 authority and acted lawfully in adopting a wet signature requirement. Rehearing on this issue is denied.

### III. CONCLUSION

For the reasons stated above, we have determined that good cause has not been demonstrated to grant rehearing of D.18-09-044.

**THEREFORE, IT IS ORDERED** that:

1. Rehearing of D.18-09-044 is hereby denied.
2. The proceeding, Rulemaking 14-07-002, remains open.

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<sup>5</sup> *Order Instituting Rulemaking on the Commission’s Own Motion to Establish Consumer Rights and Protection Rules Applicable to All Telecommunications Utilities – Decision Issuing Revised General Order 168, Market Rules to Empower Telecommunications Consumers and Prevent Fraud* (2006) [D.06-06-013], at p. 149, slip op. [“A primary role of the Commission is to protect consumers against fraud.”]

This order is effective today.

Dated August 15, 2019, at San Francisco, California.

MICHAEL PICKER

President

LIANE M. RANDOLPH

MARTHA GUZMAN ACEVES

CLIFFORD RECHTSCHAFFEN

GENEVIEVE SHIROMA

Commissioners