

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Revisit Net Energy Metering Tariffs Pursuant to Decision D.16-01-044, and to Address Other Issues Related to Net Energy Metering.

R. _____

ORDER INSTITUTING RULEMAKING TO REVISIT NET ENERGY METERING TARIFFS PURSUANT TO DECISION 16-01-044, AND TO ADDRESS OTHER ISSUES RELATED TO NET ENERGY METERING

Summary

This rulemaking is initiated for two main purposes: 1) to revisit the existing net energy metering (NEM) tariffs as identified in Decision (D.)16-01-044 and 2) to retain issues related to NEM into a separate stand-alone rulemaking.

We intend to coordinate this rulemaking closely with other related proceedings including, but not limited to, Rulemaking (R.)12-11-005 and R.20-05-012 on renewable distributed generation programs, R.19-09-009 on Microgrids and Resiliency, R.14-08-013 on Distribution Resources Planning, R.17-07-007 on Rule 21 and the interconnection of distributed generation resources, R.14-10-003 on Integrated Distributed Energy Resources (IDER), R.19-11-009 on Resource Adequacy and R.14-07-002 on the development of a successor tariff to the original NEM tariff. Parties may file comments on the

preliminary scope and schedule established in this rulemaking according to the schedule set forth below.

1. Background

The NEM program is an electricity tariff-based billing mechanism designed to support the installation of customer-sited renewable generation. It was originally established in California with the adoption of Senate Bill (SB) 656 (Alquist, Stats. 1995, ch. 369), codified in Section 2827 of the Public Utilities Code. Under the original NEM tariff, customers who install and operate small (1 megawatt (MW) or less) renewable generation facilities (referred to as “customer-generators”) that meet certain technical requirements may choose to participate in a NEM tariff. Previously, under the original NEM tariff, customer-generators received a full retail rate bill credit for power generated by their onsite systems that was fed back into the power grid during times when generation exceeds onsite energy demand. These credits were used to offset customers’ electricity bills, and could be rolled over to subsequent bills for up to a year.

Currently, under the successor tariff (colloquially known as “NEM 2.0,”) to the original NEM tariff, customers continue to receive full retail rate credit for energy exported to the grid up till the point when they start receiving Net Surplus Compensation. However, NEM 2.0 customers are required to pay charges that align NEM customer costs more closely with non-NEM customer costs than under the original structure. Specifically, customer-generators applying for and participating in NEM 2.0 pay a one-time interconnection fee

and non-bypassable charges,¹ and must take service under a time-of-use (TOU) rate.

NEM continues to be an important element of the policy framework supporting customer and third-party investment in grid-tied customer-sited renewable energy generation, including solar photovoltaic (PV) and energy storage systems. The majority of NEM customers use onsite photovoltaic solar generators to provide some or all their electricity, and feed power back to the power grid when they generate more than they need at a given time.

1.1. Legislative Background

Since its creation, the NEM program has been modified numerous times by legislation. Modifications have generally focused on the number of MW of customer-sited renewable generation that may participate in the program, as well as changes to the terms and eligibility requirements for participation.

Assembly Bill (AB) 327 (Perea, Stats. 2013, ch. 611), which was signed into law by Governor Brown on October 7, 2013, sought to give the Commission the ability to “address current electricity rate inequities, protect low income energy users and maintain robust incentives for renewable energy investments.”²

Among the provisions of the bill was a mandate that the Commission adopt a successor to the existing NEM tariffs, to be implemented on July 1, 2017, or when a utility reaches the NEM enrollment limit for its territory (referred to here as the

¹ Non-bypassable charges include the Department of Water Resources' bond charges, the public purpose program charge, nuclear decommissioning charge, and competition transition charge.

² Letter to State Assembly Members regarding AB 327, from Governor Edmund G. Brown Jr., October 7, 2013 (Governor's Signing Statement).

“transition trigger level”), whichever comes first.³ With reference to developing a successor to the NEM tariff, AB 327 provides that the Commission should meet several objectives. Three of the main objectives are to ensure that customer-sited renewable generation “continues to grow sustainably and include specific alternatives designed for growth among residential customers in disadvantaged communities,”⁴ to ensure that the new tariff “is based on the costs and benefits of the renewable electrical generation facility,”⁵ and to “[e]nsure that the total benefits of the standard contract or tariff to all customers and the electrical system are approximately equal to the total costs.”⁶

In addition, AB 327 provided that customers who took service under NEM before July 1, 2017, or prior to reaching the statutory net metering transition trigger level, whichever is earlier, may continue to take service on existing NEM tariffs for a transition period determined by the Commission. In D.14-03-041, the Commission adopted a transition period of 20 years following interconnection of their system.

³ Many parties to this proceeding refer to existing NEM tariff structures as NEM 1.0, to the successor tariffs required in AB 327 as NEM 2.0, and to a future successor tariff as NEM 3.0. We decline to refer to the future NEM tariff as “NEM 3.0” at this time because the details of that tariff have not yet been established. Instead, this decision refers to existing NEM tariff structures as NEM 1.0, NEM 2.0, and to the yet-to-be-developed replacement tariff as “the NEM 2.0 successor tariff.”

⁴ Pub. Util. Code § 2827.1(b)(1).

⁵ Pub. Util. Code § 2827.1(b)(3).

⁶ Pub. Util. Code § 2827.1(b)(4).

1.2. Procedural Background

On February 5, 2016, the Commission adopted D.16-01-044 that implements some of the provisions of AB 327. AB 327, among other things, added Section 2827.1 to the Public Utilities Code, requiring the Commission to develop “a standard contract or tariff, which may include NEM, for eligible customer-generators with a renewable electrical generation facility that is a customer of a large electrical corporation.” D.16-01-044 implemented AB 327 by:

- Ensuring that customer-sited renewable distributed generation continues to grow sustainably through the creation of a successor to the existing NEM 1.0 tariff;
- Addressing the applicability of nonbypassable charges, minimum bills, demand charges, grid access charges, installed capacity fees, standby fees, or similar fixed charges on NEM 2.0 residential and non-residential customers;
- Continuing to require customers installing customer-sited renewable generation systems to pay a reasonable interconnection fee to the interconnecting investor-owned utility (IOU), with some exceptions; and
- Addressing alignment between NEM 2.0 customer eligibility and enrollment in default TOU rates.

Notably, D.16-01-044 established the Commission’s commitment to review the NEM 2.0 tariff in 2019 (or later) citing interactive, yet unresolved, policy movements within the Commission, but outside the scope of the NEM proceeding. Specific proceedings cited included the Distribution Resources Planning proceeding, the IDER proceeding, and the residential rates proceedings. Similarly, the Decision pointed to actions occurring outside of the Commission’s purview such as the work of the California Energy Commission

on Zero Net Energy building goals and tax policies of the federal government that have significant impacts on the value, practicality, or effectiveness of the NEM tariffs.

2. Preliminary Scoping Memo

The Commission will conduct this rulemaking in accordance with Article 6 of the Commission's Rules of Practice and Procedure (Rules). As required by Rule 7.1(d), this Order Instituting Rulemaking (OIR) includes a preliminary scoping memo as set forth below, and preliminarily determines the category of this proceeding and the need for hearing.

2.1. Issues Generally

The scope of this proceeding encompasses any and all information necessary for: 1) development of a successor to the existing NEM 2.0 tariffs pursuant to the requirements of AB 327, and 2) issues related to existing NEM tariffs, including but not limited to questions about or modifications to specific provisions of the NEM tariffs. Section 2.2 discusses the issues and questions that we anticipate addressing related to the development of a successor to the existing NEM 2.0 tariff, and Section 2.3 outlines other NEM-related issues that may be addressed in this proceeding.

2.2. Development of a Successor to Existing NEM 2.0 Tariffs

The major focus of this proceeding will be on the development of a successor to existing NEM 2.0 tariffs. Pursuant to the requirements of AB 327, this successor will be a mechanism for providing customer-generators with credit or compensation for electricity generated by their renewable facilities that a) balances the costs and benefits of the renewable electrical generation facility

and b) allows customer-sited renewable generation to grow sustainably among different types of customers and throughout California's diverse communities.

As part of the development of a successor tariff or contract, this proceeding will include an examination of the impacts of NEM 2.0,⁷ the issues the Commission left until a future tariff review in D.16-01-044, possible tariff or contract provisions, and an evaluation of how those provisions meet the goals of AB 327 and other guiding principles consistent with California's energy policy and safety goals.

2.3. Other NEM Tariff Issues

We expect to address issues that arise related to existing NEM tariffs in this proceeding. The review and (if needed) potential modification of all NEM tariff schedules should be considered to be within the scope of this proceeding, including but not limited to Virtual Net Metering (VNEM), NEM aggregation (NEMA), and other NEM tariffs applicable to fuel cell customer-generators who use non-renewable fuel. We also expect to address issues related to consumer protection for customer-generators on NEM tariffs in this proceeding.

2.4. Coordination Between This Rulemaking and Other Related Proceedings

Because NEM functions as an overlay to a customer's otherwise applicable rate schedule, the costs and benefits of different NEM options or possible successors tariffs or contracts is largely dependent on the underlying rates on which NEM customers are served and their corresponding proceedings, as well

⁷ The venue for the examination of the impacts of NEM 2.0 will be the "NEM 2.0 Lookback Study" scheduled to be posted on the CPUC website in 2020.

as other programs that incentivize and compensate renewable customer-sited generation. Because of this, the scope of this proceeding includes coordinating with other related proceedings including, but not limited to, R.12-11-005 and R.20-05-012 on renewable distributed generation programs, R.19-09-009 on Microgrids, R.14-08-013 on Distribution Resources Planning, R.17-07-007 on Rule 21 and the interconnection of distributed generation resources, R.14-10-003 on IDER, R.19-11-009 on Resource Adequacy, and R.14-07-002 on the development of a successor tariff to the original NEM tariff.

2.5. Preliminary Scope

In order to ensure a robust record for the development of a successor tariff, we anticipate that activities in this proceeding will include, but may not be limited to:

1. Identification of guiding principles, or goals, to assist in the development and evaluation of different tariff or contract options for the NEM 2.0 successor tariff.
2. Identification of “program elements,” or specific features that may be included in a NEM 2.0 successor tariff or contract, such as pricing mechanisms, fees or fee waivers, timing for meter reads and billing, or other items.
3. Development of a variety of possible options for a NEM successor tariff or contract.
4. Analysis of the various elements of a potential NEM 2.0 successor tariff or contract to identify one or more tariff or contract options that will meet the goals of AB 327 and other guiding principles.
5. Modification of NEM tariff schedules, including but not limited to VNEM, VNEM for multifamily affordable housing, NEM aggregation, the Renewable Energy Self-

Generation Bill Credit Transfer (RES-BCT) program, and other NEM tariffs applicable to different generation sources such as fuel cell customer-generators.

D.18-09-044 authorized ratepayer funding for a consultant to conduct a formal and independent analysis of NEM 2.0. The study will analyze the costs and benefits of the tariff and assist the Commission in its development of a NEM 2.0 successor tariff.

The assigned Commissioner and assigned Administrative Law Judge (ALJ) may add to or modify these activities to ensure that there is a robust formal record on all issues relevant to the development of a successor to the NEM tariffs. If issues arise related to the review and possible modification of existing NEM tariffs, the assigned Commissioner and assigned ALJ(s) will determine the activities and schedule for addressing those issues.

3. Categorization; *Ex Parte* Communications; Need for Hearing

Rule 7.1(d) provides that an OIR shall preliminarily determine the category and need for hearing. This rulemaking is preliminarily determined to be ratesetting, as that term is defined in Rule 1.3(e). This preliminary determination is not appealable but shall be confirmed or changed by the assigned Commissioner's Scoping Memo and Ruling. The assigned Commissioner's determination as to category is subject to appeal pursuant to Rules 7.3 and 7.6.

We anticipate that the issues in this proceeding may be resolved through a combination of filed comments, workshops, and testimony, and that evidentiary hearings will not be necessary. Any person who objects to the preliminary

hearing determination shall state the objections in their comments on this OIR. The assigned Commissioner will make a final determination on the need for hearing in the Scoping Memo and Ruling issued following a Prehearing Conference (PHC).

4. Preliminary Schedule

The preliminary schedule for this proceeding is set forth below and includes the provisions for the filing of comments on the OIR. The assigned Commissioner or ALJ may change the schedule and scope as necessary to provide full and fair development of the record.

Item	Date
Comments on the OIR filed and served	30 days from issuance of the OIR
Reply comments on the OIR filed and served	40 days from issuance of the OIR
PHC	November 2020
Scoping Memo and Ruling	December 2020
Development of guiding principles and program elements	Fall/Winter 2020
Development and analysis of successor tariff or contract options, additional activities to be determined	Spring/Summer 2021
Proposed decision on successor tariffs or contracts	November 2021

We expect to adopt a successor to existing NEM tariffs no later than December 31, 2021, and consistent with Public Utilities Code Section 1701.5, we expect this proceeding to be concluded within 18 months of the date of the scoping memo.

This schedule may be revised in the Scoping Memo and Ruling, and the assigned Commissioner or the assigned ALJs may modify this schedule to promote efficient and fair administration of this proceeding.

5. Invitation to Comment on Preliminary Scoping Memo and Schedule

Parties are invited to comment on the Preliminary Scoping Memo and schedule established in this OIR. Comments are due 30 days after the issuance of this OIR.

We direct parties to limit their comments to the schedule, the issues set forth in the preliminary scoping memo, the anticipated activities in this proceeding, and to objections to the preliminary determinations below. Comments directed to the issues identified within the scope of this proceeding may include whether to amend the issues and how to prioritize the issues to be resolved; how to procedurally address these issues; and the proposed timeline for resolving the issues identified, within the general schedule set forth in this OIR. Comments are limited to 15 pages per party, and will help to inform the PHC to be held in this proceeding.

6. Respondents

Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company, as large electrical corporations defined in Public Utilities Code Section 2827(b)(5), were required to make NEM tariffs available to their customers, and were required to implement the tariffs developed in R.14-07-002. For this reason, these three companies are hereby made respondents to this proceeding.

7. Service of OIR

This OIR shall be served on all respondents and on the electric corporations named in Attachment A. In addition, in the interest of broad notice, this rulemaking will be served on the official service lists of R.12-11-005 and R.20-05-012 on renewable distributed generation programs, R.19-09-009 on Microgrids, R.14-08-013 on Distribution Resources Planning, R.17-07-007 on Rule 21 and the interconnection of distributed generation resources, R.14-10-003 on IDER, R.14-07-002 on the development of a successor tariff to the original NEM tariff, and the former net surplus compensation proceeding Application (A.) 10-03-001 et al.

Service of the OIR does not confer party status or place a person who has received such service on the Official Service List for this proceeding.

8. Filing and Service of Comments and Other Documents

Filing and service of comments and other documents in the proceeding are governed by the Commission's Rules of Practice and Procedure. This proceeding will follow the electronic service protocol set forth in Rule 1.10. All parties to this proceeding shall serve documents and pleadings using electronic mail, whenever possible, transmitted no later than 5:00 p.m., on the date scheduled for service to occur. Rule 1.10. requires service on the ALJ of both an electronic and a paper copy of filed or served documents. When serving documents on Commissioners or their personal advisors, whether or not they are on the official service list, parties must only provide electronic service. Parties must not send hard copies of documents to Commissioners or their personal advisors unless specifically instructed to do so. In addition, pursuant to the COVID-19 Temporary Filing

and Service Protocol for Formal Proceedings, the Rule 1.10(e) requirement to serve paper copies of all e-filed documents to the ALJ is suspended until further notice.

9. Addition to Official Service List

Addition to the official service list is governed by Rule 1.9(f) of the Commission's Rules of Practice and Procedure.

Respondents are parties to the proceeding (see Rule 1.4(d)) and will be immediately placed on the official service list.

Any person will be added to the "Information Only" category of the official service list upon request, for electronic service of all documents in the proceeding, and should do so promptly in order to ensure timely service of comments and other documents and correspondence in the proceeding. (See Rule 1.9(f).) The request must be sent to the Process Office by e-mail (process_office@cpuc.ca.gov) or letter (Process Office, California Public Utilities Commission, 505 Van Ness Avenue, San Francisco, California 94102). Please include the Docket Number of this rulemaking in the request.

Persons who appear at the PHC and request party status will become parties to the proceeding and will be added to the "Parties" category of the official service list. *In order to assure service of comments and other documents and correspondence in advance of obtaining party status, persons should promptly request addition to the "Information Only" category as described above; they will be removed from that category upon obtaining party status.*

10. Subscription Service

Persons may monitor the proceeding by subscribing to receive electronic copies of documents in this proceeding that are published on the Commission's website. There is no need to be on the official service list in order to use the subscription service. Instructions for enrolling in the subscription service are available on the Commission's website at <http://subscribecpuc.cpuc.ca.gov/>.

11. Intervenor Compensation

Intervenor Compensation is permitted in this proceeding. Any party that expects to claim intervenor compensation for its participation in this Rulemaking must file a timely notice of intent to claim intervenor compensation.

(See Rule 17.1(a)(2).) Intervenor compensation rules are governed by Section 1801 *et seq.* of the Public Utilities Code. Parties new to participating in Commission proceedings may contact the Commission's Public Advisor.

12. Public Advisor

Any person interested in participating in this proceeding who is unfamiliar with the Commission's procedures or has questions about the electronic filing procedures is encouraged to obtain more information at consumers.cpuc.ca.gov/pao or contact the Commission's Public Advisor at 1-866-849-8390 or 866-836-7825 (TYT), or send an e-mail to public.advisor@cpuc.ca.gov.

Therefore, **IT IS ORDERED** that:

1. Pacific Gas and Electric Company, San Diego Gas and Electric Company, and Southern California Edison Company are named as respondents and are parties to this proceeding pursuant to Rule 1.4(d) of the Commission's Rules of Practice and Procedure.

2. The Executive Director will cause this Order Instituting Rulemaking to be served on all respondents and on the service lists for the following Commission proceedings: Rulemaking (R.) 12-11-005, R.20-05-012, R.19-09-009, R.14-08-013, R.17-07-007, R.14-10-003, R.14-07-002, and Application (A.) 10-03-001 et al., as well as the electric corporations identified in Attachment A.

3. Interested persons must follow the directions of this Order Instituting Rulemaking to become a party or to be placed on the official service list as information-only.

4. The assigned Commissioner or the assigned Administrative Law Judge(s) will have on-going oversight of the service list and may institute changes to the list or the rules governing it, as needed.

5. Parties may file comments on this Order Instituting Rulemaking (OIR) as provided in this OIR.

6. The assigned Commissioner or the assigned Administrative Law Judge may modify the activities and schedule established in this Order Instituting Rulemaking as necessary for the efficient conduct of this proceeding.

7. Parties serving documents in this proceeding must comply with Rule 1.10 of the Commission's Rules of Practice and Procedure regarding electronic mail (e-mail) service.

8. This Order Instituting Rulemaking is adopted pursuant to Rule 6.1 of the Commission's Rules of Practice and Procedure.

9. The preliminary categorization is ratesetting.

10. The preliminary determination is that a hearing is not needed.

11. The preliminary scope of issues is as stated above.

12. Prehearing conference statements are due 30 days after the issuance of this Order Instituting Rulemaking.

13. The preliminary schedule for the proceeding is as set forth above.

14. Any party that expects to claim intervenor compensation for its participation in this Rulemaking must timely file its notice of intent to claim intervenor compensation. (*See* Rule 17.1(a)(2).)

This order is effective today.

Dated _____, at San Francisco, California.

ATTACHMENT A

ATTACHMENT A

(Small Electric Utilities' Contact Information)

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(END OF ATTACHMENT A)