

Decision 20-08-007 August 6, 2020

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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

**DECISION MODIFYING DECISION 16-01-044 REGARDING VIRTUAL
NET ENERGY METERING ELIGIBILITY REQUIREMENTS**

Summary

This decision modifies Decision 16-01-044 to reduce and minimize ambiguity regarding eligibility to take service on a virtual net energy metering tariff. The modifications to Decision 16-01-044 confirm Commission policy to permit netting of energy from a single eligible renewable generating facility among customers or accounts behind multiple service delivery points and on multiple contiguous parcels, provided that those customers or accounts are part of the same multitenant or multi-meter facility (as specified).

This proceeding remains open.

1. Background

In Decision (D.) 16-01-044, the Commission adopted a net energy metering successor tariff pursuant to Assembly Bill 327 (Stats. 2013, Chap. 611). With respect to virtual net energy metering (VNEM),¹ D.16-01-044 adopted a proposal by the California Solar & Storage Association (CALSSA)² to “allow participation by multiple [service delivery points] on a single property, mirroring the same rule for low-income customers in the VNEM tariffs.”³

On November 20, 2019, CALSSA filed a petition to modify D.16-01-044 (petition), requesting the Commission to “resolve ambiguity in the way that eligible properties are defined for purposes of participation in...VNEM.”⁴ The petition describes how the Commission’s VNEM policy changed over time, as follows:

- D.08-10-036 establishes VNEM for Multifamily Affordable Solar Homes (MASH) projects to offset tenant loads. Only “multifamily affordable housing properties” with customers or accounts behind a single service delivery point are eligible to take service on a VNEM tariff.

¹ Virtual net energy metering provides for netting of energy from a single eligible renewable generation facility among multiple customers / accounts that belong to the same multifamily or multitenant property.

² On February 8, 2018, the California Solar Energy Industries Association filed a notice of name change to California Solar & Storage Association.

³ *Proposal of the California Solar Energy Industries Association for the Net Energy Metering Successor Tariff*, filed August 3, 2015, at 25.

⁴ *Petition for Modification of the California Solar & Storage Association Regarding Clarification of Virtual Net Energy Metering Eligibility Requirements*, filed November 20, 2019 (Petition), at 1.

- August 2010: Pacific Gas and Electric Company (PG&E) proposes to temporarily allow MASH projects to serve customers behind multiple service delivery points but within a single low-income development, defining “eligible low income development” as “all of the real property and apparatus employed in a single low income housing enterprise on contiguous parcels of land.”⁵
- D.11-07-031:
 - 1) Directs PG&E to continue allowing MASH projects to serve customers behind multiple service delivery points but within a single low-income development
 - 2) Directs San Diego Gas & Electric Company (SDG&E) and Southern California Edison Company (SCE) to revise their VNEM tariffs to match PG&E’s tariff, defining “Eligible Low Income Development” as:

All of the real property and apparatus employed in a single low income housing enterprise on contiguous parcels of land. These parcels may be divided by a dedicated street, highway or public thoroughfare or railway, so long as they are otherwise contiguous and part of the same single low income housing enterprise, and all under the same ownership.
 - 3) Makes all multifamily and multitenant properties eligible for VNEM, but limits eligibility of non-MASH participating properties (also referred

⁵ PG&E Advice Letter 3718-E and 3718-E-A, effective September 15, 2010 (https://www.pge.com/nots/rates/tariffs/tm2/pdf/ELEC_3718-E-A.pdf, accessed May 6, 2020).

to as “market rate” or “general market” multifamily and multitenant properties) to customers or accounts behind a single service delivery point.

- August 2015: The California Solar Energy Industries Association (CALSEIA) proposes to make VNEM available to non-MASH program participants served by multiple service delivery points on a single property, “mirroring the same rule for low-income customers in the VNEM tariffs.”⁶
- D.16-01-044 adopts CALSEIA’s proposal and directs the large electric investor owned utilities (IOUs)⁷ to submit VNEM successor tariffs implementing the adopted proposal.
- August 2016: The Commission’s Energy Division director approved PG&E’s advice letter implementing D.16-01-044, after first requesting PG&E to modify its NEM2V tariff to refer to and define “property” rather than “premises”.
 - PG&E’s advice letter originally proposed to refer to “premises,” defined in its Electric Rule 1 as:

All of the real property and apparatus employed in a single enterprise on an integral parcel of land undivided, excepting in the case of industrial, agricultural, oil field, resort enterprises, and public or quasi-public institutions, by a dedicated street, highway or public thoroughfare or railway. Automobile parking lots constituting a part of and adjacent to a single enterprise may be

⁶ Petition, at 3.

⁷ Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company.

separated by an alley from the remainder of the Premises served.

- The version of PG&E's NEM2V tariff that Energy Division approved referred to and defined "Property" in the same manner as SCE:

A cluster of multi-tenant and multi-meter buildings, facilities or structures that are under the control of a single Owner or Operator built to serve a common function, such as a housing complex or a multi-tenant complex, on an integral parcel of land undivided, unless the division is a street, highway, or similar public thoroughfare, which is permissible provided no other unrelated Single Enterprises (defined as a separate business or other individual activity carried on by a customer but does not apply to associations or combinations of customers) break up the otherwise integral parcel and cluster of multi-tenant and multi-meter buildings, facilities or structures.⁸

The petition alleges that, until 2018, the large electric IOUs had implemented their general market VNEM tariffs consistently, specifically by permitting projects to span more than one tax parcel (also referred to as assessor parcel). The petition explains that CALSSA only became aware that PG&E defined "integral parcel" as a single tax parcel in August 2018, which CALSSA

⁸ PG&E Advice 4802-E, submitted February 29, 2016, at 8 and Schedule NEM2V, Sheet 1 (file:///C:/Users/pucstaff/Documents/R1407002/CALSSA%20PFM%20of%20D.16-01-044/advice%20letters%20implementing%20D.16-01-044/PG&E/ELEC_4802-E.pdf, accessed June 12, 2020).

cites as the reason that it did not file the petition within one year after the effective date of D.16-01-044.⁹

On December 20, 2019, PG&E filed a response to the petition (response). PG&E's response describes the petition as a request to remove ambiguity from PG&E's VNEM tariff, and based on that characterization urges the Commission to reject the petition because CALSSA had due notice and opportunity to raise objections to the tariff at the time that PG&E submitted its advice letter to implement the new tariff. The response further notes CALSSA still did not file the petition until over a year after it first learned of PG&E's deficiency notice to Blue Sky Utility. The response argues CALSSA fails to demonstrate how PG&E's NEM2V tariff is ambiguous or why its scope should be expanded, but clarifies that PG&E evaluates the description of lands in each interconnection application to confirm the project qualifies as "an integral parcel of land undivided," based on California's Subdivision Map Act (hereafter referred to as a legal parcel), as opposed to relying on designations of tax or assessor parcels.

The response further asserts that PG&E did not revise its interpretation of "parcel"; rather, PG&E claims it did not perform land reviews on interconnection applications until after it became aware that Blue Sky Utility's applications involved multiple (legal) parcels.

The response raises several policy and implementation arguments against permitting multiple (legal) parcels under a single general market VNEM arrangement, including that doing so would enable customer generators to serve

⁹ California Public Utilities Commission Rules of Practice and Procedure, Rule 16.4(d).

as a load serving entity (LSE) without having to fulfill scheduling, reliability or other LSE responsibilities. The response suggests that permitting multiple (legal) parcels for MASH and SOMAH program participants is justified only because these programs are for low-income housing, and that projects served by these programs are required to provide equivalent benefits for each tenant. The response also notes potential billing complexities associated with permitting multiple (legal) parcels under a single non-MASH VNEM arrangement.

On December 30, 2019, CALSSA filed a reply to PG&E's response (reply). The reply argues that PG&E's reference to legal parcels (as opposed to tax or assessor parcels) demonstrates there is in fact ambiguity in the meaning of "parcel," which CALSSA asserts the Commission must clarify if the large electric IOUs are to implement their VNEM successor tariffs consistently and in accordance with D.16-01-044. The reply counters PG&E's argument that the petition is not timely by emphasizing that PG&E's determination to begin enforcing its own interpretation of "integral parcel," beginning in 2018, does constitute a change in circumstances as required by Rule 16.4. The reply also disputes PG&E's substantive arguments against permitting multiple parcels under a single general market VNEM arrangement, noting that the definition of eligible properties in the general market VNEM tariff prevents customer generators from serving as LSEs without any LSE responsibilities, and that PG&E's other arguments are flawed.

On May 13, 2020, Administrative Law Judge Kao issued a ruling seeking supplemental information from each of the large electric IOUs regarding their

implementation of VNEM pursuant to D.16-01-044. The large electric IOUs filed their responses on May 29, 2020.

2. The Petition Fails to Justify its Late Submission, Pursuant to Rule 16.4(d)

In addressing why CALSSA did not file a petition for modification within one year after the effective date of D.16-01-044, pursuant to Rule 16.4(d), CALSSA states that PG&E and SCE's different implementation of VNEM pursuant to D.16-01-044, despite having the same tariff language regarding integral parcels, did not come to CALSSA's attention until it learned of Blue Sky's experience in August 2018. CALSSA does not, however, address why it did not file a petition for modification, or otherwise bring the issue of inconsistent implementation of D.16-01-044 among the three large electric IOUs to the Commission's attention, more immediately after it learned of Blue Sky's experience in 2018. Therefore, the petition should be denied for failure to justify its late submission.

3. Non-MASH Virtual Net Energy Metering Eligibility is the Same as for MASH Virtual Net Energy Metering

Notwithstanding the fact that CALSSA's petition fails to justify its late submission, the Commission is intent on having the large electric IOUs implement their VNEM tariffs, pursuant to D.16-01-044, consistently. Given that SDG&E's tariff, and both SDG&E and SCE's implementation of D.16-01-044, reflect an interpretation of D.16-01-044 that does not align with PG&E's, one or all of the large electric IOUs should have sought Commission clarification of D.16-01-044. This decision now modifies D.16-01-044 to provide such clarification.

The Commission's intent is apparent from D.16-01-044, which adopted the CALSEIA (now CALSSA) proposal without modification: to make VNEM eligibility requirements for non-MASH multifamily and multitenant customers the same as for affordable housing tenants. Specifically, customers or accounts behind multiple service delivery points and on multiple contiguous parcels (whether tax /assessor or legal) may take service on a VNEM tariff, and thereby receive credits from the same eligible renewable generating facility, provided those customers or accounts are part of the same multitenant or multi-meter facility (as specified in each electric IOU's VNEM tariff).

PG&E implemented its general market VNEM tariff in a manner that contravened the clear intent of D.16-01-044; this decision addresses that erroneous implementation. Similarly, this decision provides uniformity in terminology across the electric IOUs by requiring specific modifications to PG&E and SCE's general market VNEM tariffs regarding the definition of "Property."

In their responses to the May 13, 2020 ruling, each of the large electric IOUs addresses whether and how to modify their respective VNEM successor tariffs in the event that the Commission modifies D.16-01-044 as proposed in CALSSA's petition. PG&E proposes replacing "integral parcel" in its definition of "Property" with "contiguous parcels".¹⁰ SCE states it does not believe any changes are necessary, but "it is acceptable for SCE to clarify within the

¹⁰ *Pacific Gas and Electric Company's (U 39E) Response to the Administrative Law Judge's Ruling Seeking Supplemental Information Related to the Petition for Modification of the California Solar & Storage Association Regarding Clarification of Virtual Net Energy Metering Eligibility Requirements*, filed May 29, 2020, at 2-3.

definition of ‘Property’ that an ‘integral parcel’ can be a ‘cluster of one or more contiguous tax parcels.’”¹¹ SDG&E does not offer specific modifications to its tariff but responds that “[c]onsistency would be achieved if the definition of ‘Property’ under the three IOU tariffs is identical.”¹² In this instance we agree with SDG&E that including the same definition of “property” in each of the electric IOUs’ general market VNEM tariffs would best achieve consistency. Because no parties have raised issues or concerns with the definition employed in SDG&E’s NEM-V-ST tariff, and because SDG&E has implemented D.16-01-044 according to Commission intent, this decision directs PG&E and SCE to modify their general market VNEM tariffs to include the same definition of “property” as SDG&E’s Schedule NEM-V-ST.

The May 13, 2020 ruling also asked SCE and SDG&E whether their current non-MASH VNEM tariffs prevent customer generators from serving as an LSE without scheduling or other LSE responsibilities. SCE’s response states it has not identified any entity engaged in such a practice, and if SCE did notice such a practice, it would notify the Commission and seek tariff changes to prevent it. SDG&E states nothing in its tariff prevents such a practice, and suggests adding a provision to the tariff to specify the requirements for an LSE. The large electric

¹¹ *Responses of Southern California Edison Company (U 338-E) on Administrative Law Judge’s E-mail Ruling Requiring Supplemental Information Regarding Petition to Modify D.16-01-044*, filed May 29, 2020, at 4.

¹² *Comments of San Diego Gas & Electric Company (U 902-E) in Response to May 13, 2020 Ruling Regarding CALSSA Petition for Modification of VNM Eligibility Requirements*, filed May 29, 2020, at 4.

IOUs may each propose a modification to their respective general market VNEM tariffs to specify the requirements for an LSE.

In comments jointly filed to the proposed decision, the large electric IOUs emphasize the importance of retaining the requirement, contained in PG&E's and SCE's current tariffs but not in SDG&E's, that an eligible property serve a common function. The electric IOUs assert that retaining this requirement helps prevent a customer from taking on LSE responsibilities. In reply comments to the proposed decision, CALSSA questions the necessity of including the "common function" requirement and further raises concern that the electric IOUs may interpret "common function" inconsistently, given there is no explicit definition of the term in either PG&E's or SCE's tariffs. Given the concerns raised by CALSSA, we will not require the electric IOUs to include the "common function" requirement in their respective general market VNEM tariffs, but they may propose to do so as part of proposing modifications to their respective general market VNEM tariffs. If the electric IOUs propose including the "common function" requirement in the definition of an eligible property, as part of proposing modifications to their respective general market VNEM tariffs, they must each include a proposed definition of "common function" that is the same across all three IOUs. We urge the IOUs to engage with stakeholders on these proposed modifications prior to submitting them for approval.

4. Modifications to D.16-01-044

Although it is reasonable to conclude the Commission, in adopting D.16-01-044, intended for general market VNEM eligibility to be the same as for

MASH VNEM eligibility, this decision modifies D.16-01-044 to reduce and minimize any ambiguity on this question.

D.16-01-044 is modified as follows (additions in underlined text):

At page 99:

The Commission also adopts the CALSEIA proposal that the VNM tariff should be expanded to allow multiple service delivery points at a single site under the tariff, including the provision of the MASH VNM tariff for an eligible property to consist of “contiguous parcels”.

Finding of Fact 46:

It is reasonable to allow the use of multiple service delivery points and contiguous parcels for all premises under the updated VNM tariff.

5. Comments on Proposed Decision

The proposed decision of the ALJ’s 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. On July 27, 2020, PG&E, SDG&E and SCE (jointly) and CALSSA filed comments; on August 3, 2020, CALSSA filed reply comments. Changes have been made throughout the proposed decision in response to party comments. We address parties’ further comments here.

CALSSA asserts the Commission should not deny the petition, even though the proposed decision grants CALSSA’s substantive request by modifying D.16-01-044, because the petition explains why it could not have been filed within one year of the effective date of D.16-01-044. CALSSA asserts, thus,

the petition complies with Rule 16.4(d). However, as the proposed decision explains, the petition does not sufficiently justify why it could not have been filed more immediately after CALSSA learned of Blue Sky's experience. Even with the further detail provided in CALSSA's comments to the proposed decision, it is unclear why CALSSA could not have filed a petition for modification concurrently with their efforts to resolve the matter informally with PG&E. Therefore, we maintain that the petition's late submission was not justified.

6. Assignment of Proceeding

Martha Guzman Aceves is the assigned Commissioner and Patrick Doherty and Valerie U. Kao are the assigned Administrative Law Judges in this proceeding.

Findings of Fact

1. CALSSA's petition for modification of D.16-01-044 does not justify its late filing in accordance with Rule 16.4(d) of the Commission's Rules of Practice and Procedure.
2. D.16-01-044 adopted CALSSA's proposal regarding eligibility for general market VNEM without modification.
3. PG&E's NEM2V tariff contains the same definition of "property" as SCE's Schedule NEM-V-ST tariff.
4. PG&E's implementation of its general market VNEM tariff, pursuant to D.16-01-044, has not been consistent with SDG&E or SCE's implementation of their respective general market VNEM tariffs, pursuant to D.16-01-044.

5. No parties have raised issues or concerns with the definition of “property” included in SDG&E’s Schedule NEM-V-ST tariff.

Conclusions of Law

1. CALSSA’s petition for modification of D.16-01-044 should be denied for failure to justify its late filing.

2. D.16-01-044 should be modified to minimize ambiguity regarding the Commission’s intent to permit multiple parcels under a single non-MASH VNEM arrangement.

3. PG&E and SCE should be directed to modify their general market VNEM tariffs to include the same definition of “property” as SDG&E’s Schedule NEM-V-ST tariff.

O R D E R

IT IS ORDERED that:

1. The November 20, 2019 *Petition for Modification of the California Solar & Storage Association Regarding Clarification of Virtual Net Energy Metering Eligibility Requirements* is denied for failure to justify its late filing.

2. Decision 16-01-044 is modified as follows (additions in underlined text):

At page 99:

The Commission also adopts the CALSEIA proposal that the VNM tariff should be expanded to allow multiple service delivery points at a single site under the tariff, including the provision of the MASH VNM tariff for an eligible property to consist of “contiguous parcels”.

Finding of Fact 46:

It is reasonable to allow the use of multiple service delivery points and contiguous parcels for all premises under the updated VNM tariff.

3. Within 30 days after the issue date of this decision, Pacific Gas and Electric Company shall submit a Tier 2 advice letter proposing revisions to its NEM2V tariff to make effective the following definition of “Property”:

Property: All of the real property and apparatus employed in a single multi-tenant or multi-meter facility on contiguous parcels of land. These parcels may be divided by a dedicated street, highway or public thoroughfare or railway, so long as they are otherwise contiguous, part of the same single multi-tenant or multi-meter facility, and all under the same ownership.

4. Within 30 days after the issue date of this decision, Southern California Edison Company shall submit a Tier 2 advice letter proposing revisions to its NEM-V-ST Schedule to make effective the following definition of “Property”:

Property: All of the real property and apparatus employed in a single multi-tenant or multi-meter facility on contiguous parcels of land. These parcels may be divided by a dedicated street, highway or public thoroughfare or railway, so long as they are otherwise contiguous, part of the same single multi-tenant or multi-meter facility, and all under the same ownership.

5. Within 30 days after the issue date of this decision, Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company (together, the electric utilities) may each submit a Tier 2 advice letter to propose modifications to their respective virtual net energy metering successor

tariffs to specify the requirements for a load serving entity. This advice letter must be a separate advice letter from the advice letters required by Ordering Paragraphs 3 and 4. If Pacific Gas and Electric Company, San Diego Gas & Electric Company, or Southern California Edison Company propose to include a “common function” requirement in their respective virtual net energy metering tariffs, then the electric utilities must each propose a definition of “common function” that is the same across all three electric utilities.

6. This consolidated proceeding remains open.

This order is effective today.

Dated August 6, 2020, at San Francisco, California.

MARYBEL BATJER

President

LIANE M. RANDOLPH

MARTHA GUZMAN ACEVES

CLIFFORD RECHTSCHAFFEN

GENEVIEVE SHIROMA

Commissioners