

Decision 21-08-021

August 5, 2021

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Sunrun, Inc. for Rehearing
of Resolution E-5054

Application 20-07-001
(Filed July 2, 2020)

ORDER DENYING REHEARING OF RESOLUTION E-5054

I. INTRODUCTION

This Order disposes of the application for rehearing of Resolution E-5054 (Resolution)¹ filed by Sunrun, Inc. (Sunrun). We deny rehearing of the Resolution because no legal error has been demonstrated.

II. BACKGROUND AND FACTS

The Commission has a long history of supporting the adoption of solar generation in low-income and disadvantaged communities. For instance, under the direction of Assembly Bill (AB) 2723 (Pavley), Stats. 2006, ch. 864, we adopted the Multifamily Affordable Solar Housing (MASH) Program to provide incentives for solar installations on multifamily affordable housing. This program is administered by the California investor-owned utilities (IOUs) San Diego Gas & Electric Company, Pacific Gas & Electric Company, and Southern California Edison Company, and are funded by ratepayers.

In AB 693 (Eggman), Stats. 2015, ch. 582,² the Legislature created the Multifamily Affordable Housing Solar Roofs Program to provide financial incentives for the installation of solar photovoltaic (PV) energy systems on multifamily affordable

¹ Citations to Commission resolutions are to the official pdf version on the Commission’s website at: <https://docs.cpuc.ca.gov/ResolutionSearchForm.aspx>.

² AB 693 was codified as Public Utilities Code section 2870.

housing properties throughout California. Under AB 693, the installation of these systems is funded using a percentage of the proceeds from the auction of greenhouse gas (GHG) allowances allocated to California's IOUs for the benefit of ratepayers.

In December 2017, we issued D.17-12-022,³ establishing the Solar on Multifamily Affordable Housing (SOMAH) Program as a vehicle for the implementation of AB 693. Pursuant to D.17-12-022 (or SOMAH Decision), a statewide program administrator (PA) selected by the Commission was required to submit a Tier 3 Advice Letter (AL) with a proposed SOMAH Program Handbook that would act as the "comprehensive" rulebook containing the standards for the program and outlining its policies and procedures. (D.17-12-022, pp. 28-30.) Pursuant to this direction, the SOMAH PA submitted a Tier 3 AL in October 2018, which was approved in April 2019 in Resolution E-4987.

On July 1, 2019, the SOMAH Program officially launched and began accepting incentive applications. At that time, several applications were received by the SOMAH PA for solar PV projects also leveraging incentives through the MASH Program. Due to differences in the programs' requirements, the SOMAH PA notified the Commission's Energy Division (ED), and asked ED to determine how best to address the issue. In November 2019, ED issued a letter to the SOMAH PA, explaining that a solar PV project may only participate in one, but not both, of the MASH and SOMAH programs, and thus could not receive incentives from both. ED explained that this result was dictated by the relevant incentive rules set forth in the MASH Program Handbook, which state that, for "projects that receive 'other incentives' for the same generating equipment that are funded by California investor-owned utility ratepayers...the MASH incentive is discounted by the amount of the 'other incentive.'" ED thus ordered the SOMAH PA to file a Tier 2 AL with modifications to the SOMAH Program Handbook to reflect this prohibition on incentive stacking.

³ Unless otherwise noted, citations to Commission decisions issued since July 1, 2000 are to the official pdf versions, which are available on the Commission's website at: <http://docs.cpuc.ca.gov/DecisionsSearchForm.aspx>.

In accordance with ED's directive, the SOMAH PA filed a Tier 2 AL (AL 105-E) in December 2019 containing two proposed modifications to the SOMAH Program Handbook. Specifically, the AL proposed to add one sentence to Section 2.3.1 of the Handbook, titled "New Equipment, Not Pilot or Demonstration Systems," stating that "Equipment that has received incentives from the [MASH] program are not eligible to receive SOMAH incentives." The AL also proposed to add express language to Section 3 of the Handbook, titled "SOMAH Incentive Structure," specifically prohibiting the combination of the SOMAH and MASH incentives for the same solar PV project. (Resolution, p. 5.)

In January 2020, Sunrun, Inc. (Sunrun) filed a protest to AL 105-E, challenging ED's decision not to permit the combination of the SOMAH and MASH incentives for the same solar PV project. Upon review, we issued Resolution E-5054 (Resolution), approving the AL's proposed changes to the SOMAH Program Handbook and rejecting Sunrun's protest.

Sunrun subsequently filed a timely application for rehearing of the Resolution. In its rehearing application, Sunrun argues that: (1) the modifications to the SOMAH Program Handbook were inappropriate for AL treatment, and should have been considered through the more formal process established in Public Utilities Code section 1708;⁴ (2) certain conclusions in the Resolution are not supported by the evidence; (3) the Resolution fails to address all material issues; (4) the Resolution is arbitrary and capricious; and (5) the Resolution is contrary to the Commission's and the Legislature's policies favoring the free installation of the maximum number of solar PV projects in low-income communities. No responses to Sunrun's rehearing application were filed.

We have reviewed each and every argument raised in the application for rehearing and are of the opinion that good cause has not been established to grant rehearing. Accordingly, we deny the application for rehearing of Resolution E-5054 because no legal error was shown.

⁴ Unless otherwise noted, all subsequent section references are to the Public Utilities Code.

III. DISCUSSION

A. **The Advice Letter process was the appropriate means by which to modify the SOMAH Program Handbook.**

Sunrun argues that the Advice Letter (AL) process set forth in General Order (GO) 96-B⁵ was not the appropriate venue to address the SOMAH PA's proposed modifications to the SOMAH Program Handbook. Sunrun claims that, instead, the modification issue should have been addressed via the process set forth in section 1708, which states:

The commission may at any time, upon notice to the parties, and with opportunity to be heard as provided in the case of complaints, rescind, alter, or amend any order or decision made by it. Any order rescinding, altering, or amending a prior order or decision shall, when served upon the parties, have the same effect as an original order or decision.

Sunrun claims that the AL's proposed revisions to the SOMAH Program Handbook "unlawfully effect[ed]" a modification to the policy adopted in D.17-12-022, which, according to Sunrun, allows a single solar PV project to combine all available incentives, including SOMAH incentives, so long as the total amount does not exceed the project's total cost. (Rhr. App., pp. 3, 7 & 9.) Sunrun claims that the AL process did not provide us with the ability to adequately consider this issue, and that, absent the procedure set forth in section 1708, the parties could not engage in the "robust discussion" processes necessary to resolve the matter. (Rhr. App., p. 12.) We reject this argument for several reasons.

1. Section 1708 does not apply.

Contrary to Sunrun's claim, the SOMAH Program Handbook modifications set forth in AL 105-E did not rescind, alter, or amend any policies or rules established in D.17-12-022. A review of D.17-12-022 shows that the decision did not address the commingling of the SOMAH and MASH incentives, and therefore made no determination for us to change in the Resolution approving the AL. Because the

⁵ Pursuant to GO 96-B, Section 5.1, the AL process may be used where it "been authorized or required, by...Commission order...."

approved AL did not modify, rescind, or alter any issues decided in D.17-12-022, the requirements set forth in section 1708 were not triggered.

2. The Advice Letter process provided the parties with adequate notice and opportunity to be heard.

The AL process also provided the parties with adequate notice and opportunity to address the proposed modifications to the SOMAH Program Handbook. In support of its argument to the contrary, Sunrun claims that, without the procedures set forth in section 1708, it was unable to present evidence of 25 solar PV projects that it would not have completed but for the “expectation that SOMAH funds [would] be made available to them to combine with previously-committed MASH funds.” (Rhrq. App., pp. 4 & 11.)

Upon review, we find that the AL procedure provided the parties with sufficient process. First, as explained in the Resolution, the SOMAH Decision expressly permitted this modification procedure, stating: “Once the SOMAH Program Handbook is adopted, the PA may propose program adjustments to the Program Handbook via a Tier 2 Advice Letter.” (D.17-12-022, p. 56.) Pursuant to GO 96-B, Section 5.1, the AL process may be used where it “has been authorized or required, by...Commission order...” Because D.17-12-022 authorized the SOMAH PA to propose revisions to the SOMAH Program Handbook via Advice Letter, the use of the AL process in this instance was permitted under GO 96-B.

Additionally, AL 105-E was noticed on our daily calendar and mailed to the interested parties, including Sunrun. (Resolution, p. 5.) In its protest to the AL, Sunrun stated that the record was replete with evidence showing that the SOMAH and MASH incentives could be combined, stating: “[T]he issue of combining rebates was *thoroughly vetted in the record* and authorized as part of the Commission’s implementation of the program.” (Sunrun Protest, 1/3/20, p. 1, italics added.)

Subsequently, six parties, including Sunrun, filed comments to the draft resolution approving the AL. In its comments, Sunrun again argued that the record fully justified its position that the SOMAH and MASH incentives should be combined, stating:

The record clearly indicates that combining MASH and SOMAH rebates was contemplated, provided for, and subsequently relied upon. By ignoring the factual record, the Draft Resolution downplays the fact that significant economic activity moved forward because it relied, to its detriment, on Commission rules and Program Administrator representations...that SOMAH and MASH may be combined....

(Sunrun Comments, 4/23/20, p. 10.)

Sunrun cannot be permitted to argue that the record contains sufficient evidence to support its position unless and until that position is rejected. The presentation of such inconsistent positions does not support a claim of legal error.

Sunrun also argues that we violated section 1708 by failing to allow the parties to discuss whether the public interest would be better served by modifying the sections of the MASH Program Handbook addressing incentive stacking, rather than specifically prohibiting the combination of the SOMAH and MASH incentives. (Rhrgr. App., p. 12.) However, prior to its rehearing application, Sunrun never presented this question to the Commission. We do not commit legal error by failing to consider an issue that was not previously brought to our attention by a party. Moreover, whether the MASH Program Handbook should have been modified has no relevance to this case and is wholly outside of the proceeding's scope. Sunrun does not explain how or why the SOMAH PA was responsible for proposing modifications to an entirely different program's handbook, and it was clearly not ordered to do so.

B. The decision to prohibit the combination of the SOMAH and MASH incentives is not arbitrary and capricious.

Sunrun next argues that our decision to prohibit the combination of SOMAH and MASH is based upon an arbitrary and capricious determination that the former must be treated similarly to MASH and other ratepayer-funded incentives, and that, as a result, this combination was subject to the prohibition on incentive stacking set forth in the MASH Program Handbook, which, again, states that for "projects that receive 'other incentives' for the same generating equipment that are funded by California investor-owned utility ratepayers...the MASH incentive is discounted by the amount of

the ‘other incentive.’” Sunrun claims that, contrary to our conclusion, SOMAH incentives are not “ratepayer-funded,” where the program is funded by GHG allowance auction proceeds, rather than rates. Sunrun concludes that, as a result, the MASH Program Handbook’s prohibition on ratepayer-funded incentive stacking does not apply to the combination of the SOMAH and MASH incentives. (Rhr. App., p. 13.) This claim lacks merit.

Upon review, our determination that GHG auction proceeds used to fund the SOMAH Program must be treated similarly to ratepayer funding for the purpose of incentive stacking is consistent with our statutory authority to distribute these proceeds to ratepayers, rather than to solar PV projects. This authority is established through various statutes, including Cal. Code Regs., tit. 17, § 95892, which states, in pertinent part, that “[a]llocated allowance [GHG] auction proceeds must be used to reduce greenhouse gas emissions *or returned to ratepayers....*” (Cal. Code Regs., tit. 17, § 95892, subd. (d)(3), italics added.) Our authority over the use of such funds is further demonstrated by section (d)(2) of that statute, titled “Limitations on the Use of Auction Proceeds and Allowance Value,” which states:

Proceeds obtained from the monetization of [GHG] allowances directly allocated to investor owned utilities *shall be subject to any limitations imposed by the California Public Utilities Commission* and to the additional requirements set forth in sections 95892(d)(3)-(8) and 95892(e).

(Cal. Code Regs., tit. 17, § 95892, subd. (d)(2), italics added.)

Moreover, under section 2870, which established the SOMAH Program, we “may credit uncommitted funds back to ratepayers pursuant to Section 748.5,” which, in turn, sets forth the various ratepayer groups that may receive said credits. (Pub. Util. Code, § 2870, subd. (j)(1).) These statutes establish a clear policy that the Commission, if it deems it the best outcome, may forego allocating SOMAH incentives towards solar PV projects, and instead return these funds to, or reserve them for, ratepayers.

Additionally, there is nothing in these statutes, or elsewhere, that prohibits us from barring the combination of the SOMAH and MASH incentives for the same solar

PV project. The California Supreme Court has held that when the Commission has inherent authority to act, such authority is only limited when barred by some specific statutory limit on its power. (*Southern California Edison Co. v. Peevey* (2003) 31 Cal.4th 781, 792; see also Cal. Const., art. XII; Pub. Util. Code, § 701.) Here, Sunrun cites to no statute or other rule that specifically prohibits us from adopting this rule. The most Sunrun alleges is that D.17-12-022, the MASH and SOMAH Program Handbooks, and various statutes “allowed” this combination. (Rhr. App., pp. 3, 9 & 11.) Such a claim does not demonstrate that our power to limit the use of the SOMAH and MASH incentives in this manner is specifically prohibited by law. Absent such a limitation, Sunrun fails to show that our decision to bar the combined use of the SOMAH and MASH incentives was an arbitrary or capricious exercise of our authority.

1. The Resolution made all essential findings justifying the decision to treat SOMAH incentives similarly to ratepayer-funded incentives, in accordance with section 1705.

Sunrun also argues that the Resolution failed to include sufficient findings to support our decision to treat SOMAH incentives similarly to ratepayer-funded incentives. Sunrun claims that, because SOMAH incentives are derived from GHG auction proceeds, rather than rates, the incentives could just as easily be characterized as “non-ratepayer” funded. Sunrun states that, in adopting the first interpretation, we failed to consider the history or purpose of the limitation on incentive stacking in the MASH Program Handbook, as well as various pieces of evidence that it believes were material to our decision on this issue. (Rhr. App., pp. 13-15.) Sunrun also claims that we failed to consider whether this decision violated the policy that Sunrun believes was adopted in D.17-12-022, namely, that all available incentives, including SOMAH incentives, should be combined for any given solar PV project, up to its total cost. (Rhr. App., pp. 3, 9-10 & 14-15.) This, it asserts, violates section 1705, which provides, in pertinent part, that “the decision shall contain, separately stated findings of fact and conclusions of law by the commission on all issues material to the order or decision.” We reject these arguments.

First, to the extent that Sunrun challenges the Resolution on policy grounds, it is unsuccessful. Section 1732 requires that a rehearing applicant demonstrate legal error, which does not include the assertion of differing policy claims. Additionally, Sunrun raised this policy view before, which we considered and rejected. (Sunrun Protest, 1/3/10, p. 2 [the SOMAH-MASH prohibition is “inconsistent with an established component of adopted Commission policy. In [D.17-12-022], the Commission explicitly contemplated actions to promote the combination of SOMAH incentives with other incentives....”]; Resolution, p. 15.) Sunrun’s contrary policy position continues to provide no basis for rehearing.

Sunrun’s claim that we failed to consider its evidence is also meritless. The evidence that Sunrun cites includes an email stating that the SOMAH PA answered “yes” to the following question during a 2019 SOMAH workshop: “If you received a MASH rebate on a project that we recently completed in the last 12-months, can you also receive a SOMAH rebate?” (Rhr. App., p. 14.) Sunrun also cites to a form on the online SOMAH applications portal, titled “System Information & Incentive Calculation,” that includes a checkbox allowing applicants to indicate whether the project will use incentives from other programs, including MASH. (Rhr. App., p. 14.) Sunrun also argues that we failed to consider its statements that the stacking limitation would place various solar PV projects at risk due to underfunding, to the detriment of low-income communities, affordable housing owners, and contractors expecting to receive SOMAH funding to complete these projects. Sunrun claims that without “appropriate attention” to these issues, our decision to prohibit the combination of the SOMAH and MASH incentives is not supported by findings and conclusions sufficient to meet the requirements of section 1705.

Upon review, it is clear that we did consider and weigh Sunrun’s evidence, including its claims regarding the SOMAH online form, as well as its claims regarding the “adverse impacts the Handbook changes would have on affected affordable housing sponsors and tenants.” (Resolution, pp. 6 & 15-16.) Section 1705 does not require us to address each and every argument or piece of evidence advanced by a party in

our findings and conclusions, or even in our discussion.⁶ Thus, the fact that the Resolution did not list every claim or piece of evidence submitted by Sunrun does not show that we failed to consider it.

Additionally, contrary to Sunrun's claim, the Resolution contains adequate findings to support our decision to treat the SOMAH incentives similarly to MASH and other ratepayer-funded incentives. For example, the body of the Resolution contains a detailed explanation of our decision not to "differentiate these funding sources," due to their shared focus on ratepayer benefit. (Resolution, pp. 10-12 & 14.) This discussion is also reflected in the Resolution's formal findings. (Resolution, p. 20, Finding Nos. 20-23.) Based on the foregoing, there is no error under section 1705.⁷

C. The Commission did not err in determining that combining the SOMAH and MASH incentives would impede its ability to report each program's performance to the Legislature.

Sunrun also challenges our additional basis for barring the SOMAH-MASH combination, namely, that commingling the two would prevent us from accurately reporting each program's performance to the Legislature, as required by statute.⁸ Sunrun claims that this conclusion is arbitrary, capricious, and unsupported by the evidence. (Rhr. App., pp. 15-16.) We reject these claims.

During the AL process, several parties presented evidence supporting our conclusion. For instance, the Commission's Energy Division's letter ordering the SOMAH Program Handbook modification, states that:

⁶ D.21-04-021, p. 12; *Toward Utility Rate Normalization v. Public Utilities Com.* (1978) 22 Cal.3d 529, 540.

⁷ Sunrun also claims that we failed to address whether the MASH Program Handbook's prohibition on incentive stacking should include SOMAH incentives. (Rhr. App., p. 11.) Sunrun is incorrect. Multiple pages of the Resolution, as well as several findings of fact, address this very issue. (Resolution, pp. 11-12.) In fact, the Resolution specifically found: "MASH program stipulations on the use of other ratepayer program incentives extend to SOMAH incentives." (Resolution, p. 20, Finding No. 22.) Thus, this claim lacks merit.

⁸ Pursuant to sections 913.7, 913.8, 2851 and 2870, the Commission is required to send the Legislature annual assessments of the SOMAH and MASH programs' performance. Pursuant to these statutory mandates, the Commission is required to report on total electrical system benefits, generating capacity, costs, and other program details.

Allowing a PV project to receive incentives from both the CSI MASH Program and the SOMAH Program would inhibit the precise fiscal accounting and accurate attribution of solar generation capacity resulting from participation in either program. The CPUC would be unable to conclude whether we are achieving the cumulative, new installation goal of at least 335 MW for MASH (35 MW) and SOMAH (300+ MW).

(SOMAH PA Letter, 1/13/20, Attachment A, p. 1.)

This determination is within ED's expertise as the Commission Division responsible for overseeing the SOMAH Program and its results. (Resolution E-4987, p. 26.) Moreover, ED's findings were supported by the Commission's Public Advocates Office (Cal Advocates) in a letter submitted in January 2020, which explained that it was necessary "to bar applicants from applying for both SOMAH and MASH incentives on the same PV projects" to prevent, among other things, "disjointed program tracking and reporting." (Cal Advocates Letter, 1/6/20, pp. 1 & 5.) As a result, the record contains sufficient evidence to support our decision on this matter.

Moreover, as discussed in section B, *supra*, we were never required by rule or statute to combine the SOMAH and MASH incentives. Our concern for satisfying an actual statutory requirement to provide accurate data to the Legislature is reasonable, and it was not an abuse of discretion to include the need to avoid potential causes of noncompliance with this requirement as an additional basis for our decision to prohibit the SOMAH-MASH combination.

1. The Commission's determination that the SOMAH-MASH combination would cause reporting inaccuracies did not overlook the programs' "fundamental" goals.

Sunrun also argues that our decision to bar the SOMAH-MASH combination erroneously elevated our statutory reporting duty over the programs' "fundamental" goals, including, in Sunrun's view, fully funding as many solar PV projects as possible. (Rhr. App., p. 16.) Sunrun claims that "nowhere in the SOMAH or MASH legislation is there a suggestion that imperfect program analysis should lead the Commission to program paralysis." We reject this claim for several reasons.

First, Sunrun does not explain why the provision of one, rather than both, of these incentives would “paralyze” the implementation of solar PV projects. In fact, the record shows otherwise. For example, in its comments to the draft resolution, Cal Advocates explained that, of the roughly 20 projects that applied for SOMAH and MASH incentives prior to the explicit prohibition of that combination, at least 16 of those had applied for MASH before the SOMAH Program had even begun, thus having no original expectation of receiving additional funding from SOMAH to complete the project. (Cal Advocates Comments, 4/23/20, pp. 3-4.) The fact that the majority of these projects were initiated without the expectation of full funding shows that the prohibition of the SOMAH-MASH combination will not lead to the paralysis alleged by Sunrun.

Secondly, again, nowhere in the relevant legislation is there a requirement that we combine these two programs, and we never guaranteed that the SOMAH incentives would be available to meet any shortfalls in MASH funding. This was clearly explained in the Resolution, which stated: “That tenants in MASH projects would share some of the costs of the project – but still be better off than they would have been without it – was anticipated and accepted by the Commission when the MASH program was created or reauthorized.” (Resolution, p. 17.) This determination is also consistent with our conclusion in D.17-12-022 that the SOMAH Program was expected to “significantly reduce the costs of solar PV systems,” which is neither a guarantee nor a requirement that solar PV projects be implemented for free using the SOMAH-MASH incentive combination, or any others. (D.17-12-022, p. 9.) Thus, the fact that we gave more weight to the potential impact of the SOMAH-MASH combination on our statutorily mandated reporting duties than to the potential consequences of a permissible, and expected, funding gap does not indicate that we ignored any of the programs’ goals and does not establish legal error.

D. The Commission did not err in determining that alternatives exist to enable solar PV projects to proceed without combining the SOMAH and MASH incentives.

Sunrun also argues that there is no factual basis for our determination that alternatives exist to allow solar PV projects to proceed without combining the SOMAH and MASH incentives. (Rhr. App., p. 17.) Specifically, Sunrun challenges our determination that, while some projects funded solely by MASH may not receive full funding, other options exist to protect low-income communities from any issues resulting from the funding gap, including an increase in tenants' rent to subsidize the projects' remaining costs. In so finding, we determined that the SOMAH PA could provide these projects with technical and financial assistance at no cost in order to ensure a viable pathway towards financing these systems. (Resolution, p. 17.)

Sunrun presents its challenge to this finding broadly, failing to provide any specificity or analysis to support its claim. Instead, Sunrun simply states that our determination is a "pipe dream," and a "completely unsupported, illusory, arbitrary, and capricious rationalization" for the prohibition of the SOMAH-MASH combination. (Rhr. App., p. 17.) Sunrun offers no citation to relevant legal authority or analysis, and, as a result, the claim does not meet the requirements of section 1732, which requires a rehearing applicant to set forth specifically the grounds for legal error and to make specific references to the record or law to support its arguments. Thus, rehearing is denied on this issue.

IV. CONCLUSION

For the reasons stated above, we have determined that good cause has not been demonstrated to grant rehearing of Resolution E-5054.

THEREFORE, IT IS ORDERED that:

1. Rehearing of Resolution E-5054 is hereby denied.
2. The proceeding, Application 20-07-001, is now closed.

This order is effective today.

Dated August 5, 2021, at San Francisco, California.

MARYBEL BATJER
President
MARTHA GUZMAN ACEVES
CLIFFORD RECHTSCHAFFEN
GENEVIEVE SHIROMA
DARCIE L. HOUCK
Commissioners