BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking Regarding Policies, Procedures and Rules for the California Solar Initiative, the Self-Generation Incentive Program and Other Distributed Generation Issues.	Rulemaking 12-11-005 (Filed November 8, 2012)

REPLY COMMENTS OF THE CALIFORNIA FARM BUREAU FEDERATION TO THE ASSIGNED COMMISSIONER'S RULING REGARDING ESTABLISHMENT OF A NET ENERGY METERING TRANSITION PERIOD PURSUANT TO ASSEMBLY BILL 327

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Dated: December 23, 2013

I. INTRODUCTION

Pursuant to the schedule established by the Administrative Law Judge, the California Farm Bureau Federation ("Farm Bureau")[1] replies to comments that were filed by parties on December 13, 2013 regarding the establishment of an appropriate transition period for customer-generators taking service under a net energy metering ("NEM") tariff. The topic of net metering, its terms and future, is of great interest to a wide variety of stakeholders as evidenced by the extensive opening comments which were submitted. Despite purportedly similar goals in some cases for the transition period, parties come to significantly divergent conclusions. Farm Bureau reaffirms its position set forth in its Opening Comments that the appropriate consideration for the transition should be grounded on the expected life of the system. In reaffirming that position, the following topics are addressed which were raised, many as a basis for the erosion of a fair transition period to customer generators: the relationship of NEM 2.0 to the appropriate transition period, the characterization of fulfilling the program limits of NEM 1.0 as a gold rush, the assumptions about how customers should have anticipated regulatory changes, and conclusions to be drawn about the various proposals for the transition periods.

II. PREDICTIONS ABOUT WHAT CREDITS NEM 2.0 WILL PROVIDE TO CURRENT NEM CUSTOMERS IS PREMATURE AND OVERSTATED

A number of parties raise the structure of NEM 2.0, required to be implemented in accordance with Public Utilities Code section 2827.1, as justification for a truncated

[1] The California Farm Bureau Federation is California's largest farm organization with approximately 78,000 agricultural and associate members in 53 county Farm Bureaus. California farmers and ranchers sell $44.7 billion in agricultural products annually. Farm Bureau's members expect to pay in excess of $850 million for their electric service.

transition period. PG&E and others[2] argue in the context of the payback period discussion that the unknown parameters of NEM 2.0 will provide sufficient value to existing NEM customers such that any transition to a new credit methodology will adequately address a customer-generator's expectations for sustaining the investment. As evidenced by the current debate over interpretation of AB 327's directive to "consider a reasonable payback period", there will be exhaustive debate about the meaning of the components that will comprise NEM 2.0. No one, based on the information at this time, can commit to existing NEM customers that NEM 2.0 will justify a specific transition period. It is precisely because it is anticipated that NEM 2.0 will be significantly different than the existing structure, that grandfathering is being discussed. It is irrelevant to rationalize a transition period for customers who relied in good faith on an existing NEM framework by basing it on something that is vague at best.

III. REFERENCES TO A GOLD RUSH OF PROJECTS IS MISPLACED

Various comments were raised about the need to truncate the transition period for NEM customers because it will create a "gold rush" of those who take service under the NEM 1.0 framework. The NEM 1.0 can never go above the 5% cap – it has always been constrained by the cap, and AB 327 did not purport to change the number of customers taking service on NEM 1.0 under the cap.[3] The various reviews, analyses, and discussions about the costs associated with NEM have been tailored toward the effects of the program and the cap. An important aspect of AB 327 was to specify once and for all that NEM 1.0 would not be continued after reaching the cap or a date certain. Arguments that the transition should be based on assumptions about customers

[2] TURN Comments, page 7; PG&E Comments, page 7; SCE Comments, page 13.
[3] SCE Comments, page 6, noting that prior to July 2017 or the program limit being reached, there is no change to NEM 1.0.

subscribing under the existing program is merely an effort to change the parameters of the current NEM program and the directives of AB 327. NEM 1.0 is to continue until July 1, 2017 or until the 5% cap has been reached, and those existing opportunities should not be precluded. Focus should remain on the customers who have heeded the opportunities available under the existing framework and ensuring fairness.

The focus on recent adapters to the program would also undermine those who were poised to pursue, or were in the midst of pursuing, projects prior to AB 327 becoming law. Such efforts had to be placed on hold once it became clear there was uncertainty about the current structure. Thus PG&E's recommendation that installations after April 2014 should receive a truncated transition period is particularly unfounded[4] since many customers may have invested extensively in projects before the program was clouded with uncertainty. It should also be noted that up until August 2013 the extensive debate about the NEM program revolved around whether the current 5% cap would be retained, not over the existence of the program. For example, in the Commission's Legislative Subcommittee Recommendation to support SB 594 (Wolk), it was noted that "This bill's expansion of larger non-residential NEM systems is likely to accelerate the advance toward the cap. However, this also means that California is moving faster toward its DG policy goals and the reconsideration of the NEM cap will be an inevitable part of the conversation."[5]

[4] PG&E Comments, page 9. SDG&E has a similar proposal to PG&E, SDG&E Comments, page 6.
[5] May 8, 2012 Legislative Memorandum on SB 594, page 4.

IV. PAYBACK AND INVESTMENT ANALYSIS VARY WIDELY DEPENDING ON THE OTHERWISE APPLICABLE TARIFF

It is understood that any analysis undertaken by a customer to assess whether to invest in a generation project includes the effects the otherwise applicable tariff will have on the crediting process. Many of the comments addressing payback scenarios focus on residential rates. Farm Bureau is not familiar with the residential rate structure, as it is significantly distinct from the agricultural, and sometimes commercial, tariffs on which our members take service. And within the group of commercial and agricultural tariffs, there is wide variance within each utility and between the utilities. This variance is one of many factors which argue against the Commission's use of a payback period on which to base a transition for NEM 1.0 and in favor of using the expected life analysis.

Although parties purport to recognize the variability within rate schedules, they seem to be confident they can overcome it by making broad assumptions about what customers can or should sustain in recouping their investments.[6] The assumption that the commercial utility schedules, as well as agricultural schedules, resulted in limited but beneficial returns from NEM, in part seemed to factor in the Commission's support of SB 594.[7] For example, agricultural customers' monthly usage charges are by far not eliminated by NEM. They pay varying levels of contributions to T&D costs, depending on the rate schedule. Furthermore, agricultural customers are predominately on TOU rates and will all be required to be on TOU rates over the next few years based on Commission direction. Such recognition of the variances in the OATs demonstrates how difficult it is to provide a one-size-fits-all payback period and how inequitable it would be to do so. No party has suggested that a customer has or should expect the

[6] SDG&E, page 11; SCE, page 11.
[7] May 8, 2012 Legislative Memorandum on SB 594, page 3.

OAT to remain constant throughout the life of the system. However, the variances anticipated from demand charges, customer costs, and generation rates are dramatically distinct from a complete revisiting of the basic construct of net metering.

Notions of equity and fairness should appropriately be focused on the impacts to customer-generators who have relied on the framework of the net metering statute as it currently exists. A payback period is one approach, which clearly has been shown as an unwieldy mechanism to fairly capture the broad range of customers and circumstances under which investments were undertaken. It is entirely appropriate and consistent with Commission practice to consider the input from the Governor.[8] The Governor's signing language for AB 327, regarding reliance on a system's expected life, is indicative of the importance of regulatory commitments to customers, who embraced a program so strongly supported by the State's energy agencies. Curiously, commenters, such as SCE, find it unnecessary to consider the Governor's signing language because such direction was not contained in the Statute,[9] but view it appropriate to look beyond the payback period mentioned by the Statute for criteria in defining the transition period.[10]

To suggest that at the outset it was reasonable to assume the NEM framework could have been changed at any time[11] or that it was not reasonable for customers to expect they could recoup their investment at all, would send a very clear message that there should be no expectation of any consistency from the Commission. Such a message would greatly undermine the Commission's goals toward encouraging

[8] R.11-10-003, Order Instituting Rulemaking, Issued October 13, 2011, page 4.
[9] SCE Opening Comments, page 13.
[10] SCE Comments, page 9.
[11] SCE Comments, page 9.

customers to embrace energy efficiency, demand response, and investments in operations to respond to rate schedule structures. Such a message would also result in customers only incurring costs which ensure they will come out even immediately. Those types of investments would comprise a short list. It is not logical to assume a program like NEM, which was so broadly publicized and endorsed by this Commission and held up as an effective tool for energy management, would be subject to an abrupt change. Programs, schedules and the like are frequently grandfathered for extended periods, although closed to new customers.

V. ANY TRANSITION DATE SHOULD ASSURE FAIRNESS, SIMPLICITY AND PRACTICALITY

Farm Bureau concurs with myriad parties who recommend a common number of years or specific date for establishment of grandfathering NEM 1.0 customers. Where we depart, of course, is the number of years to be used. The wide range of assumptions about payback periods only reinforces the impossibility of such a measure for establishment of a common date for the transition period. As a result the Commission is really left with the other measures it has raised for customer generation facilities, which include system warranties and system life. Substantial references have been provided that use of warranties and system life argue for a range of a minimum 25 to 30 year transition period.

The proposals of SCE and SDG&E, as depicted by their charts,[12] highlight the inequities of a presumption about payback periods. The argument seems to be that a longer period is warranted for early interconnections based on cost. But it is just as likely that the margins of cost-effectiveness changed and what might have not made

[12] SDG&E Comments, page 6; SCE Comments, page 12.

sense eight years ago made sense five years ago based on assumptions that the program would be continued under a consistent construct. Although it is fair to find a consistent standard for the transition, fairness demands it be based on the system life of the facility as Governor Brown has indicated is an appropriate measure of fairness.

VI. CONCLUSION

Farm Bureau members face uncertainty every day, as is to be expected in a business impacted so predominately by Mother Nature. Net metering and other methods used to manage their operations provide the opportunity to assert greater control over everyday uncertainties. AB 327 should not be implemented in a way to undermine what has to date been a positive program for many customers. The Commission should act to fulfill the commitments and representations made about the NEM program and determine an expected life of 30 years from the interconnection date be established.

Dated: December 23, 2013

Respectfully submitted,

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