

**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 INTERSTATE RENEWABLE
ENERGY COUNCIL, INC. ON THE PROPOSED DECISION
ESTABLISHING A NET ENERGY METERING TRANSITION PERIOD**

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Pursuant Rule 14.3 of the California Public Utilities Commission’s Rules of Practice and Procedure, the Interstate Renewable Energy Council, Inc. (“IREC”) respectfully submits these reply comments on the Proposed Decision of Commissioner Peevey Establishing a Transition Period Pursuant to Assembly Bill 327 for Customers Enrolled in Net Energy Metering Tariffs (“PD”). IREC replies here generally to the arguments raised in comments by Pacific Gas & Electric Company (“PG&E”), Southern California Edison Company (“SCE”), San Diego Gas & Electric (“SDG&E”), and the Utility Reform Network (“TURN”). The utilities’ comments, in particular, largely reiterate their earlier positions—positions that the PD chose not to adopt—and fail to demonstrate legal or factual errors that require or warrant modification of the PD.

IREC encourages the Commission to approve the PD and to stand by its legally defensible choice to base the transition period on a conservative¹ measure of expected system life. This approach should continue to be favored over the more nebulous prospect of identifying a single “payback period” that is fair to NEM customers, each of whom have unique circumstances that inform what length of payback period would be reasonable to respect their initial investment. As well, payback periods will necessarily depend on rate structures, and residential rates are currently being changed to something that will undoubtedly lengthen payback periods.

¹ As noted in IREC’s opening comments, IREC suggests that 25 years is an appropriate conservative estimate of expected system life, based on standard industry warranties.

I. The 20 Year Transition Period in the PD Is a Valid Exercise of Commission Discretion Under AB 327 and Does Not Constitute Legal Error.

The Commission has broad authority to interpret and implement the Public Utilities Code and to do all things necessary and convenient to regulate matters germane to public utility business.² The Commission does not commit legal error by exercising the broad authority given to it through the plain language of AB 327.

Through AB 327, the Legislature gave the Commission broad discretion to determine the appropriate length of the NEM transition period. AB 327 directs the Commission to establish a transition period under which eligible customer-generators would be able to continue service under the existing NEM tariff “for a length of time to be determined by the commission by March 31, 2014” and provides that “[a]ny rules adopted by the commission shall consider a reasonable expected payback period based on the year the customer initially took service under the tariff or contract authorized by Section 2827.”³ The language of AB 327 is clear on its face that the Commission must consider one factor (system payback), but it does not otherwise confine the Commission to base its decision on specific parameters or number of years set by the Legislature.

The language of AB 327 unambiguously grants the Commission this authority and does not put any restriction beyond the requirement that the Commission “shall consider” reasonable system payback in developing its rules. Under principles of statutory interpretation, where a statute is clear on its face, there is no need to resort to legislative history or other extrinsic sources to determine its meaning.⁴ Accordingly, the Commission does not need to resort to the legislative history cited by PG&E, SDG&E, and SCE to determine that the implementation proposed by the PD is consistent with the language of the statute. The Commission does not commit legal error by giving little or no weight to those sources. By not binding the Commission to a specific transition period length or method of determination, the Legislature explicitly deferred a politically hot issue to the discretion of the Commission and handed the Commission, as Commissioner Ferron opined, a “poisoned chalice”. The Commission does not commit legal error by exercising its discretion and making the difficult choice deferred to it by the Legislature.

² *Huntington Beach v. Cal. Pub. Util. Comm'n* (2013) 214 Cal. App. 4th 566, 584.

³ Section 2827.1(b)(6).

⁴ *See Herman v. Los Angeles County Metropolitan Transp. Auth.* (1999) 71 Cal. App. 4th 819, 825.

The Commission’s decision to refer to the Governor’s signing statement to implement the NEM transition period is also not a legal error. As proposed by the PD, the statute and the Governor’s proposed implementation strategy are not mutually exclusive. In other words, the Commission can take the approach suggested by the Governor without offending the plain letter of the law. The Commission clearly must consider, as it has, the concept of a reasonable payback period. It is equally clear, however, that the Legislature gave the Commission the ultimate discretion to determine the length of the transition period. The Commission is not bound by the Governor’s statement, but is free to consider it as guidance to determine the proper basis for establishing a transition period. Given the Commission’s discretion to act, the governor’s signing statement does not, as SCE and SDG&E suggests, have the effect of an unconstitutional line item veto or challenge the role of the Legislature.⁵

II. Basing the Transition Period on Expected System Life Is Preferable to the Factual Morass of Determining a Reasonable Expected Payback Period.

In addition to being a legally sound choice, IREC suggests that a conservative estimate of expected system life is a far more practical and manageable determination than a “reasonable payback period.” As evidenced in the lively disagreements at the all-party meeting to discuss the PD, there are a multitude of factors that inform the system payback calculation (e.g., rate design, installed system costs, availability of tax credits or other incentives, individual customer load profiles). This calculation is too idiosyncratic to provide a suitable uniform policy solution to the range of NEM customers. There is no simple, one-size-fits-all solution for determining a reasonable payback period.

In contrast, the PD’s choice to use a conservative measure of expected system life provides a definite and stable ground for developing a uniform policy across customer types and classes. Expected system life can be approximated by looking at historical data on the degradation rate of solar panels or by looking to the current standard length of manufacturer’s warranties. Because customers typically invest in a product with the expectation that it will use it for its entire life, there is an additional fairness element in giving customers the benefit of the bargain they entered. With net metering as the policy driving these customers’ investments, it would be fair to allow customers to continue to

⁵ SCE Comments at 6-7; SDG&E Comments at 6.

use that mechanism to offset their utility purchases, even as the absolute value they receive from those systems fluctuates with rate design changes.

Taken as a whole, the PD's current approach of basing the transition period on expected life of a NEM system is far more definite than the tangle of assumptions and extrapolations required to determine what a reasonable payback period should be for all customers (or even a segment of NEM customers). While the record shows that customers face a range of payback periods, IREC disagrees with TURN that residential customers should be given a shorter transition period.⁶ Even if taken as true that system payback is shorter for residential customers than non-residential customers, choosing to provide a uniform transition period based on expected system life does not constitute a factual error. Rather, it is a policy choice within the discretion of the Commission to respect the investment and expectations of all customers.

In spite of the appeal of a uniform transition period for all customers, IREC suggests that exceptions could be justified for well-defined groups, such as school districts and local government entities that self-finance projects. The Commission may take into consideration that these groups, under these circumstances, do not benefit from tax credits and may require an even longer time to realize the benefits of their NEM systems. In such cases the Commission may consider payback period as an exception to the general rule and extend the period further for those customers. Otherwise, expected system life should remain consistent across all customer types.

Moreover, IREC suggests that the record is not adequately developed to rely on parties' models of system payback estimates as the basis for determining NEM customers' rights. The models/studies developed by parties to show estimated payback periods for NEM customers—submitted into the docket prior to issuance of the PD—did not show the impact of likely residential rate design reforms on NEM payback periods. PG&E, in its opening comments on the PD, however, claims that rate reforms would only cut the purported NEM cost shift in half, and would still amount to \$10 billion statewide cost shift over the course of the PD's transition period.⁷ The sheer size of PG&E's estimated cost shift suggests that PG&E's methodology for determining a future cost shift

⁶ TURN Comments at 3 -4.

⁷ PG&E Comments at 8.

might depend on questionable assumptions, such as counting behind-the-meter consumption in addition to electricity exports from customer-generators as the costs of net metering. Such an approach would grossly distort the size of any cost-shift. The Commission should not base the rights of NEM customers on self-serving calculations shrouded by uncertain assumptions.

Similarly, PG&E's statement that rate design alone cannot address the purported NEM cost-shift should be disregarded. The PD's statement that the costs of NEM are "entirely" a function of rate design, echoes the E3 study, which concluded that the bulk of what it observed as a cost-shift was rooted in rate design and would likely be significantly reduced with AB 327 rate design changes.⁸ Regardless, the Commission is not required to use a rigid cost-benefit approach to determine the length of the transition period and is not required to achieve mathematical precision. The Commission is able to balance competing objectives, including the public's interest in seeing the distributed generation market continue to grow, and use its judgment as to what transition length is just and reasonable to customers that have invested in NEM systems.

III. CONCLUSION

IREC respectfully requests that the Commission retain "expected system life" as the basis for the NEM transition period.

Respectfully submitted at San Francisco, California on March 17, 2014,

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⁸ Introduction to the California Net Energy Metering Ratepayer Impacts Evaluation at p. 5, available at www.cpuc.ca.gov/NR/ronlyres/75573B69-D5C8-45D3-BE22-3074EAB16D87/0/NEMReport.pdf.