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 ALLIANCE FOR SOLAR CHOICE ON PROPOSED DECISION ESTABLISHING A TRANSITION PERIOD PURSUANT TO ASSEMBLY BILL 327 FOR CUSTOMERS ENROLLED IN NET ENERGY METERING TARIFFS

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March 17, 2014

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TASC's opening comments, submitted jointly with SEIA, encouraged the Commission to modify President Peevey's Proposed Decision ("PD") to adopt a 25-year transition period, which represents a conservative estimate of a solar net energy metering ("NEM") system's expected life.[1] These reply comments support that position while addressing misstatements of law and fact in the IOUs' comments to show that: (1) the Commission has met its statutory obligation in determining that the transition period should be based on the reasonable expected life of a NEM system; (2) the IOUs' arguments regarding cost shifts are highly misleading and misplaced; (3) the PD's treatment of transferability is consistent with the IOUs' NEM tariffs; and (4) the PD does not prejudge the results of an ACR on energy storage in this proceeding.

I. The PD Is Consistent With the Language of AB 327.

The PD is entirely consistent with the Legislature's mandate that the Commission "consider" a reasonable expected payback period in determining an appropriate transition period for customer-generators that invest in NEM systems on reliance on current NEM tariffs. The language of the statute is clear on its face,[2] and, as acknowledged in The Utility Reform Network's comments, "AB 327 provides the Commission with discretion in developing the transition period, as long as the Commission considers the 'reasonable expected payback period' in crafting the grandfathering rules." [3] In contrast, the IOUs appear to wish away the plain meaning of the word "consider" and have the Commission base the transition period only on a definition of payback period unilaterally defined by the IOUs themselves. The IOUs' comments

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[1] TASC/SEIA Comments on PD at 3-5.

[2] *See, e.g.,* Decision 01-11-031 at p. 6 (listing the Commission 's well recognized principles of statutory interpretation).

[3] TURN Opening Comments at 4 (December 13, 2013).

commit legal error by ignoring principles of statutory interpretation and, at the same time, fail to identify any legal error in the PD.

Reasonable expected payback period is one of several factors that the PD appropriately considers, including the Governor's directive to the Commission in his signing message to consider the reasonable expected life of a system in determining what is fair for customer-generators. More than 54,000 individuals and groups have implored this Commission not to prematurely pull the financial foundation out from under their investments and have requested a transition period of 30 years or more, based on the expected life of a system. A number of these organizations participated in the Commission's March 12 all-party meeting, where the discussion demonstrated that the Commission has fulfilled its statutory mandate by giving due consideration to the factors identified in AB 327.

Based on the record evidence the PD reasonably concludes to base the transition period on the expected useful life of the NEM installation. The IOUs' comments do not illustrate error in the PD, which is consistent with AB 327 and correctly protects the investments that thousands of Californians made in pursuit of California's renewable goals. While the IOUs assert this is somehow inconsistent with legislative intent, legislative history is clear that a short transition period was considered and rejected by the Legislature, as explained in correspondence from several members of the Legislature. Moreover, the creation of a shorter transition period for customers interconnecting after a certain date would be inconsistent with a critical provision in AB 327, which effectively codifies the Commission's determination of how "aggregate customer peak demand" is to be calculated through the MW limits set forth in Public Utilities Code section 2827(c)(4)(B). Finally, as the PD notes, two transition periods will cause significant market disruption from uncertainty related to "significant delay between the time that a customer

decides to install such a system and the date the system actually becomes operational."[4]

II. The IOUs Misrepresent the Nature and Extent of Alleged Cost Shifts.

The PD correctly notes E3's conclusion that rate design is *the* "central driver" of cost shifts between and within customer classes.[5] Nonetheless, in an attempt to impose the shortest possible transition period on NEM customer-generators, the IOUs engage in what can be most charitably described as mathematical sleight of hand to exaggerate the potential cost shift associated with NEM. For example, both SCE and SDG&E discuss the cost shift using 2017 dollars, which has the effect of nominally increasing the magnitude of the numbers.[6] PG&E goes even further, alleging that the PD's approach will result in a cost shift of $20 billion, an eyebrow-raising number that PG&E derives by multiplying the ~$1 billion cost shift E3 estimated occurring in 2020 under the all-generation scenario, by the 20 years of grandfathering proposed in the PD.[7] This number is deeply flawed and grossly overstates the cost shift well beyond what even E3's study suggests. Energy Division staff have noted that the all-generation scenario likely overstates any cost shift associated with NEM because it includes generation that is not exported.[8] Additionally, by multiplying this number by 20 years, PG&E ignores the fact that many systems will have been interconnected well before the issuance of a final decision, meaning tens of thousands of systems will have less than 20 years of grandfathering remaining once the PD is issued. PG&E's cost-shift math is deceptive and should be disregarded in the context of crafting a transition period. The Commission is addressing any cost-shift through changes to residential rates made pursuant to AB 327, which the IOUs are aggressively pursuing.

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[4] PD at 29, Finding of Fact 14 at p. 33.

[5] *Id.* at 7; *California Net Energy Metering Ratepayer Impacts*, at 3 (October 2013).

[6] SCE Comments on PD at 7; SDG&E Comments on PD at 10.

[7] PG&E Comments on PD at 6-7.

[8] *California Net Energy Metering Ratepayer Impacts*, at 4 (October 2013).

III. The PD Correctly Addresses the Transferability of Systems in a Manner Consistent with Utility Tariffs and the Preservation of the Value of a Solar Home.

The PD correctly concludes based on record evidence that transferability preserves the value of onsite solar systems and ensures that the cost of system installation may be recovered on the terms expected when the system was purchased.[9] This issue has serious implications for third-party owned systems, where eliminating grandfathering rights would significantly undermine the viability of lease transfers.[10] PG&E states that this approach is not consistent with utility tariff practice.[11] However, PG&E's own NEM tariff states that a new customer will take service under PG&E's current tariff so long as the facility complies with Rule 21, the owner does not object to PG&E sharing certain information about the facility, and the system has not been modified.[12] It does not list any other limits on transferability. The other IOUs' tariffs include similar rules, indicating the PD's treatment of transferability would be consistent with existing practice.[13]

SDG&E also argues that transferability for the grandfathering right to subsequent property owners/customers is unnecessary because the amount they pay for a property will reflect the anticipated benefits they expect from a solar system.[14] TASC does not disagree that the value of solar may be capitalized into property values. However, the amount by which property values increase is inextricably tied to the value customers can reasonably anticipate the system providing. If that anticipated value is significantly reduced, as would be the case if the grandfathering right is not transferable to subsequent owners, the ability of a given customer to

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9 PD at 28.
10 TASC Opening Comments at 16-17 (December 13, 2013).
11 PG&E Comments on PD at 13-14.
12 PG&E NEM Tariff at Sheet 3.
13 *See, e.g.,* SCE NEM Tariff at Sheet 2.
14 SDG&E Comments on PD at 12

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recover their investment in a solar system upon sale of their property, or of a leasing customer to be able to transfer the lease agreement, will be placed in substantial jeopardy.

IV. The PD's Treatment of Energy Storage Systems is Appropriate.

AB 327 requires the Commission to make a broad policy decision for all "eligible customer-generators taking service under a net metering tariff" prior to the NEM cap being reached.[15] The PD appropriately addresses the applicability of the transition period to storage, explicitly conditioning this on the extent to which "eligible energy storage systems are granted interconnection exemptions under NEM."[16] SCE and SDG&E appear to ignore this quoted language to argue that the Commission's conditional statement prejudges the ACR.[17] However, the PD only applies to storage systems *if* such storage systems are granted exemptions; it does not address the question of whether or not storage is eligible for service under the NEM tariff. Moreover, eliminating storage from the PD, and potentially requiring time for more administrative process to revisit the issue once the ACR is resolved, could unjustifiably deny NEM eligible storage technologies the same access to NEM that other technologies currently enjoy.

V. Conclusion

Based on the foregoing, the Commission should reject the IOUs' proposed changes and adopt the PD with the changes suggested in TASC's opening comments.

Respectfully submitted this 17th day of March, 2014,

/s/ Tim Lindl
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15 Cal PU Code §2827.1(b)(6) (Deering's 2013).

16 PD at 29.

17 SCE Comments on PD at 12; SDG&E Comments on PD at 12-13.

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