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 (November 8, 2012)

REPLY COMMENTS OF THE SOLAR ENERGY INDUSTRIES ASSOCIATION AND THE CALIFORNIA SOLAR ENERGY INDUSTRIES ASSOCIATION ON PROPOSED DECISION ESTABLISHING A TRANSITION PERIOD PURSUANT TO ASSEMBLY BILL 327 FOR CUSTOMERS ENROLLED IN NET ENERGY METERING TARIFFS

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Pursuant to Rule 14 of the Rules of Practice and Procedure of the California Public Utilities Commission (Commission), the Solar Energy Industries Association (SEIA)[1] and the California Solar Energy Industries Association (CALSEIA) reply to comments on the Proposed Decision Establishing a Transition Period Pursuant to Assembly Bill 327 for Customers Enrolled in Net Energy Metering Tariffs (PD) filed on March 12, 2014.

I. INTRODUCTION

The comments of the three investor owned utilities (IOUs) are focused on an issue not in play in this phase of the proceeding -- alleged cost shifts engendered by net energy metering (NEM).[2] The IOUs utilize those alleged cost shifts to argue for shorter transition periods. SEIA / CALSEIA acknowledge that this issue will be addressed in a subsequent phase of this proceeding or a newly issued rulemaking. It should not, however, be at play here. The studies relied on by the IOUs to support the alleged levels of cost shifts are dated, based on a rate

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1 The comments contained in this filing represent the position of the Solar Energy Industries Association as an organization, but not necessarily the views of any particular member.

2 San Diego Gas & Electric Company Comments, pp. 9-11; Southern California Edison Company Comments, pp. 2-4 and 7-8; Pacific Gas and Electric Company on the Proposed Decision, pp. 6-9.

structure that will no longer be in effect in 2015. The Commission should not be making a determination of the appropriate transition period which will impact the investments of hundreds of thousands of Californians based on dated material. Moreover, AB 327 does not direct the Commission to consider any alleged cost shifts in determining the transition period and any alleged cost shifts will be mitigated by the rate design changes expected in light of 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. This determination is consistent with AB 327 and correctly protects the investments which thousands of Californians made in pursuit of California's renewable energy goals. The IOUs' comments do not illustrate error in the PD's determination. The IOUs merely continue to promote their own version of a "reasonable payback" period by reiterating the conclusions of the studies they already presented on the record - studies which the PD states were reviewed in "detail" [3] and rejected. Use of the expected life of the NEM installation is the correct proxy for the adopted transition period.

SEIA / CALSEIA will use this reply to respond to a specific proposal presented in PG&E's opening comments which is not only incomplete but if interpreted in its broadest sense could severely impact the solar market immediately. It should be soundly rejected.

II. PG&E'S PROPOSAL FOR A SHORTER TRANSITION PERIOD FOR PROJECTS COMING ON LINE AFTER MARCH 2014 MUST BE REJECTED

PG&E's argument that a shorter transition period for projects coming on line after March 31, 2014 is appropriate "since the industry knows change is coming" is unsupported and should be rejected. Such a result is contrary to AB 327, which calls for NEM to be made available "continuously and without interruption" until the earlier of when each IOU reaches its respective

[3] Proposed Decision, p. 20

NEM program limit or July 1, 2017.[4] In contrast, PG&E's proposal would create immediate havoc in the solar market by introducing rate uncertainty and severely undercutting the economics of projects which are currently in development but have not yet come on line.

As indicated by SEIA and CALSEIA in their respective opening comments, a short transition period or a transition period that is not consistently applied would unduly impede the solar market. PG&E's sole support for a shorter transition period for certain projects is that "[c]ustomers installing renewable generation between January 2016 and July 2017 should not be surprised by the NEM changes, since those rules will have been set in 2015."[5] This statement is simply not true for the many projects that will be in development when the successor tariff is defined in December 2015, but will come on line at a later date .

The decisionmaking process for solar installations and actual project development can take a significant period of time. For systems larger than 10 kW at commercial properties, the average time between the reservation date for CSI incentives and the completion date is 12.8 months for all completed projects in the CSI database. For multifamily affordable housing it is 18.5 months.[6] Therefore, a typical commercial project started after November 2014 or a low-income apartment building project started after June 2014 is unlikely to be completed by the end of December 2015 to operate under known NEM rules. This would effectively shut down these large market segments. If commercial and affordable multifamily projects are out of the market for a year or a year and a half, it would hinder the overall solar market so much that the economies of scale reached with the CSI program would be sacrificed.

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4 Public Utilities Code section 2827 (c)(4)(B).

5 PG&E Comments, p. 13.

6 CSI Working Data Set, downloaded February 26, 2014. Since a signed contract must be submitted on the reservation date, this greatly underestimates the time needed to develop a project.

Further, PG&E's requested change to the PD is not clear, *i.e.,* whether PG&E is advocating for a minimal transition period for NEM customers coming on line after March 2014 or after December 2015. PG&E provides no rationale for why projects that come on line between April 2014 and January 2016 should receive a shorter transition period. Apparently, PG&E believes that it is appropriate to have these individuals roll the dice and hope that their projects will be cost effective under the new NEM rules despite the fact that they have absolutely no idea what those rules will be.

Under either interpretation of PG&E's proposal, customers, who based the economics of their projects on a set of rules which have been in place for over a decade, will now see the economics of those projects put in peril.[7] PG&E's proposal thus would set up a construct that will (1) undercut the economics of projects which are currently in development,[8] and (2) impede the advancement of the solar market over the next two years as customers will be hesitant to sign contracts for new solar installations when they will not know the set of policy rules under which those installations will operate.

Moreover, as illustrated in SEIA comments, AB 327 dictates a singular transition period applicable to *all* customers taking service under the NEM tariff prior to the earlier of July 1, 2017, or when an IOU's NEM cap is reached [9] -- a reality that PG&E's proposal ignores. Similarly, as noted in CALSEIA's comments, the creation of two transition periods would

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7 As noted in SEIA / TASC's Opening Comments (p. 7), government entities and other non-residential customers that may have significant project lead times of as much as 24 months.

8 PG&E notes (comments at p. 12) that after AB 327 was enacted, over 3,000 new projects have applied for interconnection in every month and that these customers elected to install renewable generation systems despite facing uncertainty around the rules for the NEM transition period. SEIA/ CALSEIA have no basis to dispute PG&E's attestation regarding 3,000 new projects. However, there is no basis to think that these customers, who no doubt plan to be connected prior to June 2017, thought they would be subjected to a different transition period than those already on line.

9 SEIA / TASC Comments, pp. 6-7.

circumvent and render meaningless 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).[10] The purpose of such codification was to clearly establish the cap on the MW which would be eligible for NEM under the current construct. The Legislature decided with AB 510 in 2010 that NEM should be available to customers until "the combined total peak demand of all electricity used by eligible customer-generators served by all the electric utilities in the large electrical corporation's service area furnishing net energy metering to eligible customer-generators exceeds 5 percent of the aggregate customer peak demand.[11] This level was reaffirmed with AB 327 in 2013. All customers who fall under that cap prior to the legislatively mandated cut-off date of June 30, 2017, must be treated the same. Failure to do so would be effectively writing a provision out of the statute. A statute should not be interpreted to render a provision meaningless.[12]

III. CONCLUSION

The PD appropriately determines that the NEM transition period should be based on the expected useful life of the NEM facility. The opening comments of the IOUs do not demonstrate legal or factual error in this determination. To the contrary, the record of this proceeding fully supports the PD's conclusion. Moreover, proposals for differing transition periods based upon

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10 California Solar Energy Industries Association Comments, pp. 4-5.

11 Public Utilities Code section 2827(c)(4)(B).

12 *People v. Arias* (2008) 45 Cal.4th 169, 180("[I]n reviewing the text of a statute, we must follow the fundamental rule of statutory construction that requires every part of a statute be presumed to have some effect and not be treated as meaningless unless absolutely necessary."); *Delaney v. Superior Court* (1990) 50 Cal.3d 785, 798-799: "Significance should be given, if possible to every word of an act. [Citation.] Conversely, a construction that renders a word surplusage should be avoided. [Citations.]"

when a customer interconnects should be soundly rejected as contrary to AB 327 and disruptive to the solar market which the Commission has been fostering for over a decade.

Respectfully submitted this March 17, 2014, San Francisco, California.

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