

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

In the Matter of the 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 11/27/2013)

**INFORMAL COMMENTS OF THE NEM-PAC 2.0  
REGARDING THE NEM SUCCESSOR TARIFF FOR  
CONTRACT OPTIONS**

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Dated: May 30, 2014

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**I. INTRODUCTION**

Best Best & Krieger LLP represented a coalition of affected cities, water districts, schools, and interested stakeholders, the Net Energy Metering - Public Agency Coalition (NEM-PAC), during the recently completed proceeding establishing the grandfathering or transition period for existing net energy metering (NEM) customers. Best Best & Krieger LLP will represent a coalition of similar agencies and stakeholders in this proceeding, the Net Energy Metering - Public Agency Coalition 2.0 (NEM-PAC 2.0). We submit these comments on behalf of these agencies.

**II. THE SUCCESSOR TARIFF SHOULD ENSURE NEM IS AVAILABLE TO PUBLIC AGENCIES**

It is imperative that the successor tariff ensures that all customer classes, including public agencies, are able to continue to invest in renewable energy and that public NEM projects remain economically viable. As explained in the NEM-PAC's comments during the grandfathering proceeding, public projects are simply subject to different rules that result in dramatically different costs for these projects.<sup>1</sup> These differences include the unavailability of tax depreciation benefits<sup>2</sup> and the legal requirements to pay prevailing wages on projects and to obtain payment bonds.<sup>3</sup> The successor tariff should ensure that NEM projects are available to public agencies in light of these increased costs and reduced benefits.

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<sup>1</sup> See Opening Comments of NEM-PAC on PD, p. 2-3.

<sup>2</sup> Importantly, even with the expected phase-out of the federal tax credit, public agencies are not able to take advantage of federal tax depreciation and other benefits.

<sup>3</sup> Civil Code § 9550 (payment bonds are required for any public project in excess of \$25,000); Labor Code §§ 1720 and 1720.6 (requires prevailing wages be paid for public works; Section 1720.6 of the Labor Code was enacted in 2011 to require prevailing wages be paid under public agency PPAs and leases).

**III. THE GUIDING PRINCIPLES SHOULD PERMIT THE COMMISSION TO ACKNOWLEDGE DIFFERENCES BETWEEN CUSTOMER CLASSES**

In many respects, the Guiding Principles currently embody this goal. For example, Guiding Principle 3 ensures that the successor tariff “encourage[s] simple, transparent, and equitable policies for all customers.” (Emphasis added.) An equitable successor tariff would account for the differences between public and private projects.

While this Guiding Principle currently recognizes the importance of establishing an equitable successor tariff, NEM-PAC 2.0 agrees with the Informal Comments submitted by TerraVerde Renewable Partners that this principle should be revised to clarify the need for flexibility within the tariff to ensure equity among customer classes. NEM-PAC 2.0 recommends revising Guiding Principle 3 as proposed by TerraVerde:

“3. The successor tariff or contract should encourage simple, transparent, and equitable policies for all customers that are flexible enough to fairly account for inherent and meaningful differences across customer classes.”

It is important to note that these amendments would not mandate that the ultimate successor tariff necessarily treat customer classes differently. Rather, it would provide the Commission with the flexibility to determine whether the differences between customer classes justify disparate treatment without introducing unnecessary complexity into the successor tariff.

**IV. THE PUBLIC TOOL SHOULD PROVIDE INFORMATION ON CUSTOMER CLASSES**

To ensure the Commission and stakeholders can accurately account for the differences between public and private projects, the NEM Alternatives Public Tool should provide project cost and benefit information on all types of projects. In the past, analyses regarding NEM costs and benefits have excluded public projects. For example, during the grandfathering proceeding, the investor-owned utilities’ payback analyses expressly excluded all public projects and included cost and benefit assumptions that were inapplicable to public projects.<sup>4</sup> This resulted in a lack of information and/or an attempt to apply inapplicable assumptions to public projects.

Given the importance of establishing an equitable successor tariff, the Commission should ensure that the NEM Alternatives Public Tool provides accurate cost and benefit information for all types of projects for all customer classes. At a minimum, this should include having different cost and benefit assumptions for public and private projects. This information will permit the Commission to determine if NEM proposals are actually equitable.

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<sup>4</sup> See Opening Comments of NEM-PAC on PD, p. 2-3.

V. **CONCLUSION**

The NEM-PAC 2.0 appreciates the opportunity to provide these informal comments. Please let us know if we can provide additional information.

Respectfully submitted,

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