

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)

COMMENTS OF THE UTILITY REFORM NETWORK ON THE
PROPOSED DECISION REGARDING NEM ELIGIBILITY FOR PAIRED
STORAGE DEVICES



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Resources Code. Rather, the Public Utilities Code refers to the “renewable **sources** listed” in the Public Resources Code.²

In other words, the NEM statute identifies the renewable fuel sources listed in the RPS statute as the basis for NEM eligibility, but the Public Utilities Code does not adopt the entire definition of a generation facility from the Public Resources Code, including the phrase “and any additions or enhancements.” It is this phrase that was defined by the CEC in its RPS Guidebook, and it is the CEC Guidebook finding that storage is an enhancement or addition that appears to be the rationale for the conclusion in the PD.³

The Legislature could have simply referred to the actual definition in the Public Resources Code if it intended to use the identical definition of a renewable electrical generation facility for purposes of the NEM statute. But it did not do so, and instead specifically referred to the “renewable sources” listed in the Public Resources code definition. Under standard canons of statutory construction, the exclusion of language in the Public Utilities Code is presumed to be intentional.⁴ Indeed, the PU Code definition specifically excludes certain small hydroelectric generation from NEM eligibility, even though this limitation is not present in the Public Resources Code.

The Commission should not delegate its jurisdiction or limit its authority unnecessarily. The Legislature specifically authorized the Energy Commission to have a role in defining elements of the RPS program, which guides the

² See, TURN Opening Comments on ACR, November 1, 2013, p. 3-4. See, also, SCE Reply Comments, November 8, 2013, p. 2-4.

³ PD, Sec. 4.2, p. 10-11

⁴ When specific language is included in one section of statute but excluded in another, the presumption is that this exclusion is intentional. See, for example, *Keene Corp. v. United States*, 508 U.S. 200, 208 (1993).

renewables procurement program to meet the state's 33% renewable target. However, the NEM program is a retail billing mechanism for behind-the-meter installations which do not necessarily count towards RPS obligations. The Commission should not delegate responsibility for determining NEM eligibility where the Legislature has not specifically required such delegation.

TURN recommends that the language in Conclusion of Law 2 and in the text on page 11 be revised as shown in Attachment A to prevent the legal error of making the word "sources" in the Public Utilities Code dependent on the definition of a renewable generation facility in the CEC Guidebook. Rather, the language should make clear that the Commission is taking a discretionary action in using the CEC Guidebook definition as a policy basis for reaching its own discretionary conclusion.

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TURN strongly supports the reporting requirements adopted in the PD, which include utility reporting of direct fee waivers, as well as reporting of distribution cost upgrade waivers and estimated avoided costs. Any data on the potential positive or negative impacts of storage paired with behind-the-meter generation could be very useful.

TURN does suggest, however, that the Commission provide additional direction concerning utility calculation of "avoided costs." TURN assumes that this phrase refers to a deferral of planned distribution capital investments due to reduced circuit peak load. Such data would be very useful. However, there is a long-running controversy concerning the degree of "reliability" of any distributed resource necessary for the utility to defer system upgrades. TURN

suggests that the “reliability” of storage may depend on system configuration, and more specifically on the ability of the IOU, a demand response provider or the CAISO to actually dispatch the storage device in response to a communicated signal. Such dispatch may require certain system configuration of metering and communications to allow for remote control of the battery. TURN recommends that the Commission order the utilities to identify system configuration in their estimation of avoided costs and provide any explanation of differences in potential system reliability caused by different configurations.

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Respectfully submitted,

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APPENDIX A

Revisions to Conclusions of Law and Ordering Paragraphs

Citation	Change or Add:
Text on p. 11	Cal. Pub. Resources Code § 25741 allows storage devices paired with NEM-eligible generation facilities and meeting the Guidebook requirements to be considered an “addition or enhancement” to NEM-eligible systems under Section III.G of the Guidebook. While this definition is not controlling since due to the reference to a “renewable source” in Public Utilities Code §2827(b)(11), we hold that as a matter of policy paired storage should be exempt from standby charges, interconnection application and review fees and costs for distribution system upgrades when interconnecting under the current NEM tariffs.
Text on p. 10	Pub. Util. Code § 2827(b)(11) provides that a “Renewable Electrical Generating Facility” is NEM eligible for interconnection, and defines such a facility as one that “generates electricity from a renewable source listed” in the Cal. Pub. Resources Code § 25741(a)(1).
Conclusion of Law 2	Pub. Util. Code § 2827(b)(11) provides that a renewable electrical generating facility is NEM eligible and defines such a facility as one that “generates electricity from a renewable source listed” in the Cal. Pub. Resources Code.
Ordering Paragraph 9	The investor owned utilities shall, beginning with currently pending storage interconnection requests, record data on the application fee waivers, supplemental

	<p>review fee waivers, distribution cost upgrade waivers, and standby charges waivers resulting from the Net Energy Metering-eligible interconnection of renewable-paired storage consistent with reporting requirements directed by Resolution E-4610. The report shall also include the investor owned utilities estimated avoided costs, together with any data on system configuration relevant to the calculation of such avoided costs.</p>
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