

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Develop
a Successor to Existing Net Energy
Metering Tariffs Pursuant to Public
Utilities Code Section 2827.1, and to
Address Other Issues Related to Net
Energy Metering.

Rulemaking 14-07-002
(Filed July 10, 2014)

**THE OFFICE OF RATEPAYER ADVOCATES'
REPLY COMMENTS ON ADMINISTRATIVE LAW JUDGE'S
RULING SEEKING PROPOSALS AND COMMENTS
ON IMPLEMENTATION OF ASSEMBLY BILL 693**

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I. INTRODUCTION

The July 8, 2016 *Administrative Law Judge's Ruling Seeking Proposals and Comments on Implementation of Assembly Bill 693 [AB 693]* (Ruling) seeks responses to a set of questions on the implementation of AB 693's Multifamily Affordable Housing Solar Roofs (MAHSR) Program. The Office of Ratepayer Advocates (ORA) submits the following reply comments in response to some of the Opening Comments of other parties.

II. DISCUSSION

A. **The Commission should conduct a market research study to refine the various incentive structure proposals under consideration.**

In their opening comments, most parties generally agreed on the fundamentals of the incentive structure design.¹ In particular, these parties recommended the program provide up-front capacity-based incentives² coupled with a net energy metering tariff that provides electricity bill credits to eligible tenants. ORA agrees that up-front incentives with a NEM tariff for eligible tenants would be the best method for achieving the goals of AB 693.

Parties provided diverse proposals on how to structure the incentives. Specifically, parties diverge with regard to the dollars-per-watt (\$/W) incentive amount, how the incentive amount should be adjusted based on other incentives and tax credits leveraged by the participating property owner, how the incentive amount should be adjusted based on how the solar system is apportioned to tenant and property owner load, and how the incentives should be decreased over time. Furthermore, parties diverge with respect to how to allocate bill credits to eligible tenants and how to resolve the interaction

¹ CSE Opening Comments, p. 9, CALSEIA opening Comments, p. 3, PG&E Opening Comments, P. 6, CPS Opening Comments, p.10, Energy Freedom Coalition, p. 9, Nonprofit Coalition Joint Proposal, p. 47, CSE Opening Comments, p. 8, TURN Opening Comments, p. 8.

² An advance, lump sum payment in which, the payment amount is based on the solar energy system's expected performance or capacity. The California Solar Initiative (CSI) general market program had offered cash back for solar installations using this methodology for installations smaller than 30 kW beginning in 2010. <http://www.gosolarcalifornia.ca.gov/csi/rebates.php>.

between bill credits and eligible tenants' utility bill allowances. While several parties have endeavored to provide thoughtful and thorough analytical bases for their incentive structure recommendations, which represent a good first step, the Commission's comment process alone does not provide sufficient opportunity for parties and the Energy Division to discuss ideas, data, and analysis and agree on the key assumptions and the methodology for developing the incentive structure.

In its opening comments ORA recommended that the incentive structure be based on the findings of a market research study. ORA recommends that the market research study build upon the ideas presented in parties' proposed incentive structure ideas. Below ORA identifies strengths and weaknesses in select parties' incentive structure proposals:

In its opening comments, the California Solar Energy Industries Association (CALSEIA) recommends an incentive structure that: provides higher incentives to property owners that do not have the ability to access the investment tax credit (ITC),³ does not allow participating property owners to cover solar system costs through increases to eligible tenants' utility allowances,⁴ and reduces incentives for solar capacity that offsets common area load.⁵ CALSEIA's proposals align with the objectives of increasing the deployment of solar for the benefit of low-income customers in multifamily dwellings. CALSEIA recommends adjustments to the Multifamily Affordable Solar Housing (MASH) Program incentives that include assumptions for the usable energy output,⁶ the average tenant electricity consumption, the tenant load offset by the average MASH system, and solar system cost reductions since the MASH rebate levels were put in place. Increasing the revised MASH incentives, as CALSEIA proposes, may not be necessary given the recently observed reductions in solar system

³ CALSEIA Opening Comments, p. 14.

⁴ CALSEIA Opening Comments, p. 14.

⁵ CALSEIA Opening Comments, p. 6.

⁶ Using the AC to DC derate factor, see CALSEIA Opening Comments, p. 4-5.

costs and rapid reservation of all available MASH incentives. The Commission should conduct a rigorous evaluation of the MASH incentive design adopted by Decision (D.) 15-01-027 prior to adopting CALSEIA's proposed method that develops an incentive structure based on the MASH incentives. An evaluation of the MAHSR incentive design options should be part of the ORA-recommended study.

Pacific Gas and Electric Company (PG&E) highlights problems with basing the incentive structure on the MASH incentive amounts, including the rapid reservation of incentive funds and an incentive design that doesn't account for the economies of scale for larger projects.⁷ ORA agrees with PG&E's conclusion that the rapid reservation of MASH incentive funds could indicate that incentive amount may be reduced, which would make more incentive funds available to benefit more low-income tenants.⁸ PG&E uses National Renewable Energy Laboratory (NREL) reports on U.S. photovoltaic prices and costs to approximate incentives for solar systems and makes several assumptions about the impact of tax credits and the amount and value of PV generation participating property owners will use to offset common area load. Basing incentives on solar system costs and prices is likely to result in appropriate incentive amounts; however, PG&E's methodology and assumptions could use further refinement through ORA's recommended study.

GRID Alternatives (GRID) holds up the Low Income Weatherization Program (LIWP) as an example of a program that has incentives based on other funding sources that the project could leverage.⁹ GRID highlights the importance of having tight cost controls so that the incentive dollars can benefit more eligible tenants.¹⁰ GRID also states that "[a]n ideal outcome for AB 693 is to develop an incentive structure that does not over-subsidize projects; but rather, drives additional public-private-nonprofit investment

⁷ PG&E Opening Comments, p. 7.

⁸ PG&E Opening Comments, p. 8.

⁹ GRID Opening Comments, p. 8.

¹⁰ GRID Opening Comments, p. 9.

dollars to projects and considers the multitude of funding sources a project could leverage.”¹¹ ORA agrees with GRID that the incentive structure should be designed to leverage and account for additional funding sources, and should put cost controls in place to ensure that the ratepayers’ contribution to the program is maximized.

The Nonprofit Solar Stakeholders Coalition (Nonprofit Coalition) provides a detailed proposal which recommends that program incentives be aligned with a “Solar PV Cost Index,” to be developed by the Commission or the Program Administrator.¹² The Solar PV Cost Index will presumably be used to model incentive amounts in order to align incentives with solar costs and to encourage cost-based pricing from solar vendors.¹³ ORA agrees that a solar cost index as proposed by the Nonprofit Coalition is an important input for determining incentives. The solar cost index is an element of ORA’s proposed study, except that ORA recommends that the study be managed so that it can begin without delay.¹⁴ The incentive amounts proposed by the Nonprofit Coalition on Table 7 of their proposal¹⁵ appear to cover the full cost of the systems. ORA cautions against having incentives cover the full cost of the systems. Fully subsidized solar systems leave little incentive for property owners to seek a more favorable purchase price or power purchase agreement (PPA). This could inadvertently result in a very costly and inefficient incentive structure.

¹¹ GRID Opening Comments, p. 9.

¹² Nonprofit Coalition Joint Proposal, p. 50.

¹³ Nonprofit Coalition Joint Proposal, p. 49, footnote 69.

¹⁴ The Commission’s Energy Division may not have the staffing to complete the study at the moment, and would have to go through a long contracting process. Waiting for the Commission to select an administrator before completing the study would also amount to a significant delay.

¹⁵ Nonprofit Coalition Joint Proposal, p. 53.

B. A third-party, statewide program administrator is better suited to serve the MAHSR Program’s target market.

Many parties¹⁶ agree with ORA that the MAHSR program should have a third-party, statewide administrator. This preference mainly centers on the benefits of having: 1) a “one-stop-shop” advisor to achieve economies of scale and 2) an advisor that has closer ties with the low-income housing community. ORA agrees with many of these positions that the Commission should approach the implementation of this new program as an opportunity to improve upon the MASH program administration.

In Opening Comments, PG&E wrote that ORA had supported the investor owned utilities’ (IOUs’) administration of the MASH program when the program was extended in 2015.¹⁷ ORA had supported the *continuation* of the IOUs’ administration of the MASH program in 2015 because switching administrators for a program with an already expansive waitlist would have unnecessarily diverted administrative dollars away from incentives.¹⁸ ORA maintains that the new MAHSR program should have the administrative efficiencies of a single third-party, statewide administrator.

ORA agrees with CSE that having a single program administrator would reduce the administrative hurdles property owners and managers may encounter if they have assets in multiple utility territories.¹⁹ In Opening Comments, ORA identified various administrative tasks that do not need to be replicated across utility service areas. These include verifying eligibility, reserving incentive funding, verifying project completion, coordinating interconnection and tariff issues with the local utility, and making incentive payments.²⁰

¹⁶ CALSEIA Opening Comments, p. 24-25; Greenlining Opening Comments, p. 10-11; TURN Opening Comments, p. 19-21; CSE Opening Comments, p. 18-20; CPS Opening Comments, p. 19-20; Nonprofit Coalition Joint Proposal, p. 89-93, GRID Alternatives Opening Comments, p. 20-22.

¹⁷ PG&E Opening Comments, p. 27.

¹⁸ ORA Reply Comments to the July 2, 2014 Staff Proposal for Implementing Assembly Bill 217, p. 6-7.

¹⁹ CSE Opening Comments, p. 19.

²⁰ ORA Opening Comments, p. 15.

Greenlining added that in its experience, the utilities have not been well-versed in non-utility programs, such as the Department of Community Services and Development's (CSD) Low Income Weatherization Program (LIWP). ORA agrees with Greenlining that an independent, statewide administrator with experience in solar and affordable housing would be better able to provide guidance to program participants in navigating all the relevant programs that would help them maximize funding and benefits.²¹

The Utility Reform Network (TURN) points to GRID Alternative's administration of the SASH program as a successful model²² and the Nonprofit Joint Proposal highlights the LIWP Large Multifamily Program as another.²³

C. The Commission should give low-income MAHSR program residents flexibility regarding their rate schedule.

Several parties²⁴ raised concerns that the low-income tenant beneficiaries of the MAHSR program would be required to be on a TOU rate when subject to the NEM successor tariff. The Decision Adopting Successor to Net Energy Metering Tariff, D.16-01-044, does order PG&E, SCE and SDG&E to "ensure that every residential customer interconnecting pursuant to the net energy metering successor tariff is placed on an appropriate and available time of use rate...." (Ordering Paragraph 5.)

ORA recommends the Commission provide California Alternate Rates for Energy (CARE) customers and building tenants participating in MAHSR the option to choose a non-TOU rate schedule given the fact that tenants do not have a role in deciding whether or not their building gets the solar panels. Without granting the tenant the option to choose a non-TOU rate, this program would effectively be giving the building owner the power to determine the rate schedule for the tenant. Upon enrollment in the program, the

²¹ Greenlining Opening Comments, p. 10.

²² TURN Opening Comments, p. 19.

²³ Nonprofit Coalition Joint Proposal, p. 92-93.

²⁴ GRID Alternatives Opening Comments, p. 18; Greenlining Opening Comments, p. 8; IREC Opening Comments, p. 7-8; Nonprofit Coalition Joint Proposal, p. 36; Vote Solar Opening Comments, p. 8-9; MASH Coalition Opening Comments, p. 24.

utility should be required to provide meaningful education to the participating CARE customer to provide the basis for an informed choice.

D. A prequalified list of applicants could create unnecessary hurdles to participation.

ORA disagrees with Greenlining and the Nonprofit Coalition Joint Proposal that there should be a general prequalified list of applicants. According to the Joint Proposal, the PAs should maintain a list of “prequalified applicants” based on an inventory of properties supplied by public agencies and nonprofit organizations.²⁵ Other applicants would have to apply to be on the prequalified list before they can apply to participate in the program.

The suggested approach could make the program overly burdensome for otherwise qualified applicants who are not on the prequalified list and inadvertently favor some applicants over others. Some properties may not initially be on the prequalified list for reasons beyond their control, such as administrative error, new constructions, remote location, fewer resources, and limited technical acumen.

E. The Commission should hold a workshop to refine the energy efficiency proposals under consideration.

Solar projects with well incorporated energy efficiency (EE) requirements should support program effectiveness by helping to size PV units properly to demand, increase tenant comfort and increase bill savings.²⁶ AB 693 calls for the Commission to establish energy efficiency requirements for the MAHSR Program equal to those “established for the program described in Section 2852.” Proponents of a MASH-type approach to the MAHSR program have interpreted Section 2852 of the Public Utilities (PU) Code to describe the MASH program, and to mean EE requirements for MASHSR must be the

²⁵ Joint Proposal filed by the Nonprofit Solar Stakeholders Coalition (CHPC, CEJA, Brightline Defense Project, NRDC and NHLP) on August 3, 2016; page 21.

²⁶ See *Multiple Benefits of Multifamily Energy Efficiency Cost Effectiveness Screening* by Rachel Cluett and Jennifer Amann, June 2015, ACEEE Report A1502 p. 10.

same as those in MASH.²⁷ However, PU Code Section 2852 does not enumerate EE requirements for MASH;²⁸ and arguably the Commission is at liberty to design EE requirements that are broader than the requirements for the MASH program and that would be suitable for the goals of the MAHSR program.

Any EE requirements for the MASHR program would need to be structured so that they do not unreasonably inhibit program adoption. Parties have proposed innovative improvements to EE requirements for the current program including: 1) adopting a 15 percent EE requirement, 2) setting participant energy improvement goals,²⁹ 3) setting aside 10 percent funding for EE retrofits,³⁰ 4) coordinating the MAHSR with various existing Commission EE programs,³¹ and 6) requiring the PAs and IOUs to coordinate EE enrollment for low-income tenants.³² These innovative approaches to EE for the MAHSR program are worth careful consideration. Therefore, ORA recommends the Commission hold a workshop to review EE recommendations and develop reasonable EE goals and requirements for this program, including metrics for how success will be measured.

F. The Commission should apply the CalEnviroScreen tool either within the IOU territories or statewide, whichever yields broader results for that region.

ORA agrees with multiple parties³³ who recommend that the Commission should consider applying the CalEnviroScreen to each IOU territory independently. Applying

²⁷ SDG&E Opening Comments, p. 35; SCE Opening Comments, p. 24; Everyday Energy Opening Comments, p. 32; TURN Opening Comments, p. 22.

²⁸ Section 2852 requires funds “shall be utilized to augment existing cost-effective energy efficiency measures in low-income residential housing that benefit ratepayers.” Section 2852(c)(3).

²⁹ Nonprofit Coalition Joint Proposal, p. 69-70.

³⁰ Greenlining Opening Comments, p. 12.

³¹ CSE Opening Comments, p. 24.

³² PG&E Opening Comments, p. 13.

³³ Nonprofit Coalition Joint Proposal, p. 18; GRID Alternatives Opening Comments, p. 6-7; Vote Solar Opening Comments, p. 4-5; CSE Opening Comments, p. 3-5; Nonprofit Coalition Joint Proposal, p. 18; Greenlining Opening Comments, p. 2; TURN Opening Comments, p. 5-6.

the CalEnviroScreen for each IOU will ensure that no territory is inappropriately over-or under-represented in the statewide MAHSR program. According to GRID Alternatives, the majority of the residents in the top 25% of disadvantaged communities in the state as defined by the CalEnviroScreen tool³⁴ do not reside within the San Diego Gas & Electric (SDG&E) (2.54%)³⁵ and PG&E (14.09%)³⁶ service areas while 60.03% are located in the Southern California Edison (SCE) service territory. In Opening Comments to the Ruling, SDG&E urged the Commission to apply the CalEnviroScreen tool within its service area as well, “because SDG&E has very few census tracts in the top percentages identified by the tool, if the parameters are statewide.”³⁷ ORA supports the recommendations to apply the CalEnviroScreen tool within individual IOU territories if applying the statewide parameters yields a lower percentage of qualifying properties. This will help ensure the program has the broadest possible reach.

G. The Commission should ensure operations and maintenance (O&M) costs are not passed on to low-income tenants.

The Commission should ensure that costs associated with the program are not passed on to low-income tenants inappropriately. The Commission should investigate appropriate methods to ensure operations and maintenance is performed for systems building owners purchase directly (without third-party contracts) without creating a burden on the tenants and violating the Legislature’s intent of AB 693.

The Nonprofit Coalition Joint Proposal recommends that in cases where a property owner directly purchases a solar system through the MAHSR program, the property owner should be allowed to collect no more than two cents per kWh or no more than 20%

³⁴ Pursuant to Senate Bill 535 and for purposes of the Cap-and-Trade funding program, census tracts that score at or above the 75th percentile using the CalEnviroScreen are designated as disadvantaged communities: <http://www.calepa.ca.gov/EnvJustice/GHGInvest/Documents/SB535DesCom.pdf>.

³⁵ GRID Opening Comments, Appendix A.

³⁶ GRID Alternatives Opening Comments, Appendix A.

³⁷ SDG&E Opening Comments, p. 8.

of the offsets to help pay for operations and maintenance costs.³⁸ This proposal is intended to provide a revenue stream to the property owner to support maintaining the system, however there is no basis for what the costs for maintenance might be, or how that would relate to the proportion of the residents' energy cost offsets. To the extent the Commission finds it appropriate to offset operations and maintenance costs to building owners that directly purchase solar systems, ORA recommends evaluating mechanisms for designing an upfront incentive to provide a reasonable portion of those costs. Operations and maintenance costs should be evaluated as part of ORA's proposed market research study to provide a basis for setting an appropriate incentive amount.

H. Deed-restriction and regulatory agreements should be valid for a reasonable time frame and/or have an intent to renew.

Public Utilities Code Section 2852(a)(3)(A)(i) requires that rents charged to low-income tenants living at the subject property may not exceed those set by deed restrictions. The statute does not specify the length of time that the property should offer restricted rents. ORA supports adopting the same temporal requirements required for MASH programs, as specified in Public Utilities Code 2852.³⁹ New properties should be required to demonstrate that the building's rental units will be available at deed-restricted rents for a period of at least 30 years.

Properties that have less than 30 years remaining on their deed restrictions should be allowed to participate in the program, as long as appropriate guidelines are put in place. GRID Alternatives recommends that affordability agreements with more than 10 years of affordability remaining should qualify for the program, while those with more than five years but less than 10 years remaining, should require an affidavit from the

³⁸ Nonprofit Coalition Joint Proposal, p. 37.

³⁹ CPUC Code Section 2852(a)(3)(B)(i) states that "The rental housing units targeted for lower income households are subject to a deed restriction or affordability covenant with a public entity or nonprofit housing provider organized under Section 501(c)(3) of the Internal Revenue Code that has as its stated purpose in its articles of incorporation on file with the office of the Secretary of State to provide affordable housing to lower income households that ensures that the units will be available at an affordable rent for a period of at least 30 years."

property owner demonstrating their intent to keep the property affordable; and those with less than 5 years remaining should not qualify until the deed-restriction is reauthorized.⁴⁰ ORA supports GRID Alternatives' recommended guidelines as a mechanism that will expand the reach of the MAHSR program appropriately.

III. CONCLUSION

ORA appreciates the opportunity to submit reply comments for the ruling on implementation of AB 693.

Respectfully submitted,

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⁴⁰ GRID Opening Comments, p. 5.