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MEMORANDUM

TO: Local Government Sustainable Energy Coalition
FROM: Jody London
DATE: December 24, 2009
SUBJECT: Update on Energy Efficiency, Renewable Energy Policy Activities

This memo provides an update on regulatory activity related to energy efficiency and renewable energy at the California Public Utilities Commission (“CPUC”) and California Energy Commission (“CEC”). This memo is provided in addition to the quarterly newsletter of the Local Government Sustainable Energy Coalition (“LGSEC”), which is next scheduled for February. At the back I have provided a quick review of State legislation passed in 2009.

The short message on energy efficiency is the CPUC is processing draft evaluation reports for the 2006-2008 program cycle, the utilities are trying to sign contracts and get the 2010-2012 program up and rolling as close to January 1 as possible, the compliance filings from the utilities for the 2010-2012 cycle have been put in abeyance while the CPUC figures out possible fixes to complaints, and work continues on the shareholder incentive piece. The short message on renewables is the CPUC, CEC, Air Resources Board, and Independent System Operator are scrambling to figure out how to achieve a 33% Renewable Portfolio Standard target by 2020, per the Governor’s Executive Order S-21-09. The CPUC is poised to issue a Proposed Decision on a feed-in tariff that I do not believe reflects the best interests of customers who install generation capacity – see below for details. Just yesterday, the CPUC issued a Proposed Decision that authorizes the use of tradable Renewable Energy Credits (“TREC’s”) to meet Renewable Portfolio Standard obligations. The Proposed Decision will be considered by the CPUC in early February. The CPUC also is looking at expanding the technologies eligible for the Self Generation Incentive Program.

Finally, both the CPUC and CEC are losing Commissioners at the end of this month. CPUC Commissioner Rachelle Chong is being forced to leave because the Senate would not grant her a hearing for her re-confirmation. CEC Commissioner Art Rosenfeld is retiring after two 5-year terms. Rosenfeld assured me when I saw him recently, as he assures everybody, that he will have an office at Lawrence Berkeley National Laboratory and intends to stay involved. Governor Schwarzenegger will nominate new individuals to those spots. Under State law, Rosenfeld’s spot must be filled by a scientist or engineer. Chong was generally considered the telecommunications expert at the CPUC, but there are no specified requirements to be a Public Utilities Commissioner.

ENERGY EFFICIENCY

Compliance Advice Letters

In late September, the CPUC (finally) approved the investor-owned utilities' applications for energy efficiency programs for 2010-2012 (D.09-09-047).¹ The total amount approved statewide is about \$3 billion, \$1 billion less than the utilities had requested. Part of the approval process is a requirement for the utilities to file, over several months, a series of "advice letters" (compliance filings) that detail how the utilities will adapt programs to the changes made by the CPUC, and also provide information requested by the CPUC.

The first compliance advice letters, which showed how the utilities modified budgets and program offerings to meet the lower budget and other changes approved by the CPUC, were filed in November. Several parties, including the LGSEC, protested the November advice letters. Our protest was limited to issues that impact local governments and focused primarily on whether the programs provided sufficient opportunity to meet goals set by the CPUC and CEC in the *Energy Efficiency Strategic Plan*. The City and County of San Francisco filed similar comments. The Utility Reform Network ("TURN") and the Division of Ratepayer Advocates ("DRA") submitted protests that focused on cost-effectiveness and utility accuracy. DRA complains that the portfolios still are not sufficiently cost-effective, continue to have excessive administrative costs, spend too much on direct implementation costs (non-incentives and rebates), do not do enough toward the *Strategic Plan*, and need to do more to motivate customers to install compact fluorescent light bulbs they have in their closets. TURN has similar concerns, and also questions whether the utilities' savings forecasts are accurate. The utilities of course dispute all these concerns.

On December 18, the CPUC Energy Division suspended the advice letters for 120 days while it investigates the issues raised in the protests. This basically means the Energy Division staff bought themselves extra time; otherwise the advice letters would have been effective in the near future. At the same time, the Energy Division tells the utilities that "there shall be no delay in the utility commencement of 2010-2012 energy efficiency programs, including for local government partnership and third party programs, during the time that Energy Division is considering these protest letters." PG&E indicated in an e-mail message to its local government partners that it intends to continue with negotiations with the goal of launching the programs "as soon as negotiations are completed."

Other Compliance Issues for the 2010-2012 Program Cycle

The utilities have numerous other compliance filings and reports required in the next several months. They have asked to delay some of those until the CPUC completes the evaluation, measurement, and verification ("EM&V") reports for the 2006-2008 program cycle (see below). This includes the statewide Whole House Retrofit program (extended to late January) and the local government marketing activities (extended to Feb. 22). Additionally, in its reply to the advice letters discussed above, SCE indicated that it is going to ask for an

¹ The Proposed Decision and the final Decision were summarized in memos when they were issued. This was also covered in the November LGSEC Newsletter.



extension on the “innovative local government” proposals the CPUC ordered in the September decision.

Evaluation, Measurement, and Verification for 2006-2008 Programs

The CPUC throughout December issued draft EM&V reports for components of the 2006-2008 portfolio. It has subsequently held webinars to discuss each draft report. Parties can comment on each report in January – the due dates for comments vary. The CPUC will issue final reports in January and a master report in late March or April. The CPUC is spending \$97 million on this EM&V effort, for evaluation a program that cost \$2 billion.²

There are two local government program EM&V reports. One looks at the “resource” elements of local government partnerships (i.e., programs that were required to produce savings) and focuses primarily on the statewide partnerships with the University of California/California State University and California Community College Foundation. I participated in the review webinar for this report on December 18. The discussion was very technical, questioning why and how the consultants made certain calculations, etc. One finding of note is that the Community College partnership became much more effective when the management responsibility shifted mid-course to an office where there were two “champions” for the program. We have been raising the importance of ensuring there are local champions for several years, so it is good to see this coming out in a “non-biased” report. Comments on this report are due January 7.

The EM&V report for the “non-resource” programs was issued December 18. This is where most of the program LGSEC members operated in 2006-2008 would fall. A webinar to discuss the report will be held on January 6, and comments are due January 12. If there is sufficient interest, the LGSEC will submit comments (I imagine there will be). The report appears to focus mainly on the need for standardized metrics to evaluate non-resource programs. Many of the reforms called for in the draft report are, I believe, things that most of you would support. For example, a standard tool and protocol for tracking customer contacts. We probably even could work collaboratively to determine which of us has processes in place that could easily be adapted to other programs. The draft report also states several times that the local government partnership programs are new and continuing to evolve. It also calls for developing a better metric for evaluating the impact of behavioral programs.

New Qualifying Energy Efficiency Technologies

Last week, the CPUC approved a request from PG&E to allow solar-powered crop drying and solar assisted heat pumps to qualify as energy efficiency measures. Decision 09-12-022 finds these technologies are “...similar to solar water heating and solar water circulators approved as energy efficiency measures in D.05-04-051 and D.07-11-004, respectively. These technologies both permanently reduce natural gas load, and also generate electricity outside of the grid for their own usage. While typical energy efficiency measures do not generate power

² At a joint CPUC/CEC *Energy Action Plan* hearing last month, I observed that \$97 million is about the amount the Oakland Unified School District will need to cut from its budget over the next three years due to anticipated shortfalls in the State budget, just a way of illustrating the severe budget crisis for local government.



for their own power generation, such is not in and of itself a barrier to being considered as an energy efficiency measure. We also note that it is possible that one or both of the technologies PG&E puts forward may increase electrical use while decreasing natural gas use. As long as the net impact is reduced usage, there is a positive energy efficiency impact.” (p. 5) The utilities must file an advice letter showing the technologies are cost-effective before they can be added to the 2010-2012 portfolio.

Shareholder Incentives

The utilities received a nice holiday gift from the CPUC last week: \$61 million in shareholder incentives for the 2006-2008 program. In addition to an aggregate award when the program is complete, under the current rules the utilities can earn incentives each year. Commissioner Bohn sponsored an alternate that gave the utilities more than had been recommended by the Administrative Law Judge (he would have given them \$26 million). Bohn adjusted upward one of the factors in the equation. He also is the Assigned Commissioner on the ongoing proceeding on how to revamp the shareholder incentive mechanism (R.09-01-019).

RENEWABLES

In September, the Governor issued Executive Order S-21-09, which calls for California to reach a 33% Renewable Portfolio Standard (“RPS”) target by 2020. The Air Resources Board must develop a regulation for doing so by July 31, 2010. The CPUC and CEC are directed to work with the Air Resources Board. Needless to say, they all are hustling. The three agencies, along with the Independent System Operator, held a joint meeting on December 16 to discuss the *Energy Action Plan* and related topics. In addition to the topics described below, the joint meeting included briefings from the CEC staff on the agency’s progress in distributing funds from the American Recovery and Reinvestment Act and setting up green jobs programs.

Renewable Distributed Energy Collaborative

The CPUC’s Energy Division staff last month launched the Renewable Distributed Energy Collaborative (“ReDEC”). This ad hoc group is focused on identifying how more distribution scale renewable energy can be connected to the grid. A primary motivation is the 33% RPS requirement, and the realization that there may be a role for smaller scale renewables in meeting it. Studies performed for the Renewable Energy Transmission Initiative are showing a large need for transmission, coming at a high cost. This appears to be a contributing factor to renewable generation coming on line (or not).

An initial meeting occurred on December 9, which I attended on behalf of Sustainable Conservation. The ReDEC group is very focused on solar technology. Participants at the initial meeting were mainly solar developers and utility staff, with several consultants from Black & Veatch and E3, who made the presentations. There were very few participants speaking on behalf of either customers or other generation technologies. A primary area of discussion is interconnection: how the process can be streamlined, how (solar) developers can learn more easily where they can interconnect, concerns about utilities being overwhelmed with interconnection requests, timeliness with which customers proceed once a request has been



granted, and so on. The CPUC staff and consultants are considering anything under 20 MW as part of the ReDEC process. Should the LGSEC weigh in on this, we might want to suggest that they may consider differently much smaller systems, i.e., under 5 MW, and challenges for customers who wish to install generation. Alternatively, it may be that the feed-in tariff for small projects could meet local government needs (see below).

Tradable Renewable Energy Credits

On December 23, the CPUC issued a Proposed Decision on authorizing the use of tradable renewable energy credits (“RECs”). This issue has been under consideration for years, so the Proposed Decision truly is a milestone. To qualify, the first point of interconnection for the RECs must be in California. The CPUC expects demand to exceed supply in early years. It therefore is imposing on the investor-owned utilities a temporary limit of 40% of their annual procurement targets from RECs. The CPUC also is instituting a temporary price cap for the utilities of \$50/REC, as a way to limit costs. It will review both these temporary policies in two years. Load serving entities can unbundle RECs from associated energy; this should promote liquidity in the market. Any load serving entity using RECs must commit to their use within three years of when electricity is generated – they cannot be carried indefinitely. However, RECs cannot be unbundled and traded in the first three years of a contract. Proceeds from TREC sales should go to the ratepayers. Everyone trading RECs must use the Western Renewable Energy Generation Information System for tracking. Utilities can start submitting contracts for approval March 1, 2010.

Because this is a Proposed Decision, anyone interested can submit comments. Opening comments are due January 19, reply comments are due January 25, and the first date on which the CPUC will consider this is February 4.

Feed-in Tariff Status

AB 1969 (2006) required the CPUC to establish a feed-in tariff for projects under 1.5 MW from water and wastewater treatment facilities. During implementation proceedings in 2007, the eligible capacity was expanded to 500 MW statewide and any renewable technology under 1.5 MW was allowed to participate. SB 32 (2009) expands the eligibility to projects under 3 MW; I anticipate the CPUC will initiate implementation proceedings in the next few months.

The CPUC has been under pressure for years to further expand its feed-in tariff. In August 2009, the CPUC Energy Division issued a proposal that would use an auction to establish prices for small-to-medium scale projects that interconnect at the distribution level. At the CPUC/CEC joint meeting last week, the Energy Division Director announced they expect a Proposed Decision that recommends the staff proposal in the first quarter of 2010.

Under the staff proposal, the tariff would be a standard contract for projects between 1 and 10 MW. Under this proposal, the CPUC would use a reverse auction mechanism. Customers would submit a price bid. The utility conducting the auction would take all bidders at the price they bid, starting with the lowest bidder, until an auction cap is reached. The cap will be based on a revenue requirement cap pre-determined by the CPUC. There will be a specific



revenue requirement for each technology type. Each utility would conduct a minimum of two auctions per year, and a bidder who was not successful in one auction could re-submit in a future auction.

This model for a feed-in tariff does not follow the model used in other countries. I am concerned that it will be confusing to bidders, particularly those at the lower end of the eligibility scale, many of whom may be customers whose primary business is not energy generation. My concern stems from my experiences over many years with other complicated auction processes approved by the CPUC, notably the Final Standard Offer 4/Biennial Resource Plan Update (circa 2003-2004), and the Power Exchange that was a key part of electricity industry restructuring in the late 1990s. Other parties have shared these concerns in comments on the staff proposal, but apparently they have not to date been persuasive if the CPUC staff expects this to be included in a Proposed Decision in the next month or two.

Utility Long-Term Procurement Plans

Earlier this week, the utilities submitted to the CPUC their long-term procurement plans, which are submitted every other year. As part of RPS implementation, the utilities conduct annual auctions for larger scale projects. The utilities also submit long-term procurement plans that indicate how the utilities will meet their needs for baseload, load-following, and peaking resources. This review occurs in a complex proceeding, and the plans are quite long. The CPUC has been pushing the utilities to also include in the plans energy efficiency, demand response, and the 33% RPS target.

In early December, Commissioner Peevey issued a ruling that splits the long-term procurement planning into two tracks, one that looks at system planning and the resources needed to ensure resource adequacy, and another that looks at procurement policy and utility procurement plans that the CPUC would approve. Two weeks ago, the CPUC hosted a two-day workshop on reaching the 33% target in the context of resource planning.

Greater Eligibility for Self-Generation Incentive Program

SB 412 (Kehoe, 2009), extended the sunset date for the Self Generation Incentive Program (“SGIP”) to January 1, 2016 from January 1, 2012. SB 412 also calls for the CPUC to expand the definition of technologies eligible for the SGIP. When the program started several years, it included most distributed generation technologies. Since 2008, it has been limited to wind and fuel cells, with solar being addressed through the California Solar Initiative.

The CPUC received comments in the last week on how the definition of eligible technologies should be expanded (these comments are filed in the Distributed Generation Rulemaking, R.08-03-008). The comments also look at whether there should be different prices for different technologies, other program design changes, and how to wind the program down for the 2016 sunset. The CPUC will host a workshop on this issue on January 7. Parties will have the opportunity to submit reply comments on January 18. The CPUC Energy Division then will submit a workshop report to the Administrative Law Judge, who will determine next steps.



SELECT 2009 ENERGY-RELATED LEGISLATION³

AB 45 (Blakeslee) – re-establishes a lapsed authorization for local governments to establish ordinances for the installation of small wind energy systems. Requires local governments that have not provided such authorization by a specified date to approve applications for small wind energy systems.

AB 474 (Blumenfeld) – allows water efficiency improvements to be included in AB 811 programs.

AB 758 (Skinner) – Requires CPUC to look at how to achieve more energy efficiency in existing residential and commercial buildings. By March 1, 2010, CPUC must open a proceeding to investigate the ability of utilities to provide energy efficiency financing options to their customers.

AB 920 (Huffman) – Expands net metering programs for wind and solar so that customers can sell excess electricity generated over the course of a year. Caps the amount of net surplus electricity a utility must purchase at 2.5% of each electric utility's aggregate peak demand. Says the utility owns all of the renewable attributes or RECs associated with any net surplus electricity it must purchase. The customer retains RECs for any renewable energy credit associated with any electricity generated by the customer that is utilized by the customer.

AB 1031 (Blumenfeld) – Allows University of California and California State University to install renewable generation at one location and net it against other accounts, similar to AB 2466.

SB 32 (Negrete-McLeod) -- expands the current feed-in-tariff program to allow renewable resources up to 3 MW to qualify. Requires the CPUC to include the value of environmental compliance costs in the rate paid to generators under the feed-in tariff.

SB 412 (Kehoe) – Extends the sunset date of the Self-Generation Incentive Program through January 1, 2016, restricts the amount the CPUC can direct the utilities to collect, and expands the eligible resources to include all self-generation technologies the CPUC determines will support the state's goals for the reduction of emissions of greenhouse gases.

SB 695 (Kehoe) – Lifts the rate freeze put in place during the energy crisis. Limits baseline rate increases to no more than the Consumer Price Index plus 1%. An additional cap ties baseline rates to the system average rate. Institutes a ban on mandatory time of use pricing for residential customers until 2013, 2014, or 2020;⁴ no residential customer should be required to move to TOU. Changes CARE eligibility guidelines. Initiates reopening of direct access: CPUC must adopt and implement a reopening schedule by April 11, 2010, to phase in allowable direct access transactions over a period of not less than three years, and not more than five years.

³ Note there is a very useful legislative summary on the web site of the California Center for Sustainable Energy.

⁴ This point continues to confuse me and I am seeking clarification from TURN, one of the bill's chief sponsors.

