LOCAL GOVERNMENT

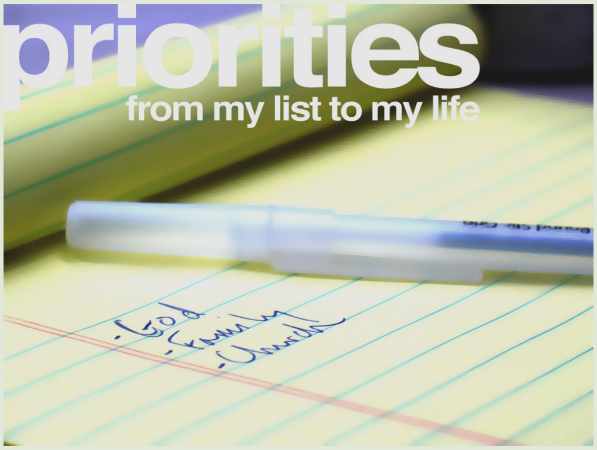
Local Government Sustainable Energy Coalition Newsletter

JUNE 2010

Completed by the LA COUNTY OFFICE of SUSTAINABILITY

This newsletter provides an update on issues before State energy and environmental regulators – the California Public Utilities Commission (CPUC), the California Energy Commission (CEC), and the California Air Resources Board – that the Board of the Local Government Sustainable Energy Coalition (LGSEC) has determined are of key interest to the group.

Local Government Top Priorities



Earlier this year the Local Government Sustainable Energy Coalition surveyed current and prospective members about their priorities and interests, and why they belong to the LGSEC. The issues of top interest among respondents, in order of preference, are:

- Energy Efficiency
- Climate change issues including greenhouse gas emission reduction policies and climate action planning;
- Property assessed clean energy (PACE) programs;
- Energy codes and standards;
- Issues related to renewable energy technology, including distributed, on-site generation and AB 2466 programs that allow a municipal customer to install renewable generation at one location and credit that against energy use at other locations.

Community choice aggregation and utility general rate cases, while still of interest to some respondents, did not rank as high.

Of the activities currently provided by the LGSEC, the most valuable is the regulatory filings, followed closely by e-mail updates from regulatory consultants on specific issues, this newsletter, the quarterly meetings, and periodic conference calls on specific issues.

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Inside this issue:

PACE Programs are Key Focus

At the LGSEC May quarterly meeting, hosted by the City of San Jose, a key topic was how local governments are rolling out PACE programs. **Lauren Rank** from the County of Los Angeles gave a detailed presentation on L.A. County's program, which is scheduled to launch this summer. The L.A. County PACE program will be the largest program in the State, including the one million residents in the unincorporated areas of L.A. County, as well as being open to all 88 cities, including the City of Los Angeles. Rank described the planning and coordination that is occurring among the participating local governments. She also described how L.A. County is working with Southern California Edison to ensure that the energy efficiency audit and rebate process is seamless to the customer, with tightly coordinated marketing and implementation between the County and the utility.

L.A. County wants to ensure that its program participants receive any rebates before their loan is financed.

CPUC: Energy Efficiency

Still Refining EM&V

Late last year, the CPUC opened a new docket, R.09-11-014 to examine how evaluation, measurement, and verification (EM&V) occurs, and how to integrate the *Energy Efficiency Strategic Plan* into ongoing energy efficiency programs. A Scoping Memo released in May emphasizes that the CPUC recognizes the contribution of behavior-based programs and programs that transform markets toward energy savings goals. Historically the only programs that have "counted" in terms of energy savings are those that install widgets and produce immediate energy savings.

The Scoping Memo also ponders how to account for energy savings from programs the investor-owned utilities do not administer, for example, programs funded through the American Reinvestment and Recovery Act, PACE programs, and building and appliance codes and standards. The utilities want to ensure they will be able to earn shareholder incentives for energy savings. The CPUC acknowledges that "disputes over who gets to claim energy efficiency savings ("attribution") will inhibit success." The first phase of the proceeding will focus on how to restructure EM&V. Opening and reply comments will be filed in early June. Later, the proceeding will anticipate the next cycle of energy efficiency programs, which likely will run 2013-2014.

Local Government "Innovator" Projects Slowly Moving Forward

Both PG&E and Southern California Edison have completed their solicitations from local governments for "innovative" programs that support the State's *Energy Efficiency Strategic Plan* goals. PG&E's program was submitted in February, and approved in late May (Letter 3081-G-B/3597-E-B). In its approval of the program, the CPUC directed PG&E to add an additional $4 million, for a total program budget of about $8 million. PG&E will put this amount out to bid in coming months. (PG&E had originally scoped its Innovator Pilot at $17 million, then trimmed it back to just over

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"THE ISSUES OF TOP INTEREST ARE ENERGY EFFICIENCY, CLIMATE CHANGE, & PACE PROGRAMS."

Local Government Top Priorities (continued from page 1)

Prospective members indicated that a revised dues structure might induce them to join the LGSEC.

The LGSEC Board is reviewing the survey results and making changes as it can. Look in the near future for a web site and members' forum, as well new membership materials and a new membership category for cities under 35,000.

CPUC Brings in New Local Government Coordinator

We were joined at our May quarterly meeting by **Simon Baker**, the newly appointed Supervisor of the CPUC's Energy Efficiency section. Baker told us that he was in the process of hiring an analyst to take over the local government partnership coordinator role (the previous person, Jean Lamming, was promoted out of that position). On June 4, Baker announced that **Lisa Paulo** will be working on the local government partnerships moving forward. Paulo has been at the CPUC for several years, working on climate change and other energy issues, but not energy efficiency. Part of her job will be coordinating inquiries to CPUC subject matter experts, and serving as primary point of contact on local government issues except climate change. We will be inviting Paulo to join us at her earliest convenience, and in the meantime our regulatory consultant will introduce the LGSEC.

CPUC: Energy Efficiency (continued from page 2)

$4 million.)

Southern California Edison only submitted its request for approval of *Strategic Plan* innovative programs in mid-May. The LGSEC is protesting Edison's request that anyone wishing to review specific bid information from the local governments that participated in the solicitation must sign a non-disclosure agreement. Given that all the bids in the solicitation were from local governments, which are subject to public disclosure laws, it makes no sense to require someone sign a non-disclosure agreement. Several local government entities, including some LGSEC members, also are protesting Edison's denial of a request from the local entities to pool resources and develop a regional energy management network, which builds on the existing energy enterprise management system operated by the County of Los Angeles.

Palm Desert Pilot Is Still Just a Pilot

Another lingering concern with the 2010-2012 portfolio is Edison's and Southern California Gas Company's request to continue the Palm Desert pilot energy efficiency partnership. The CPUC directed Edison to file a separate application for this partnership, rather than approve it with the other programs that were adopted last September. Edison and SoCalGas have not yet filed the new Palm Desert application, claiming that they need the final EM&V results for the 2006-2008 pilot first. Ratepayer groups have protested the Palm Desert program on the grounds that it is too costly for the savings realized, and too focused on short-term measures. The CPUC

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Commissioners Meet in SoCal

On April 22, the CPUC held its bi-weekly business in Los Angeles. Historically, it is rare for the Commissioners to meet outside their San Francisco offices. Working with the CPUC's Southern California Director Denise Tyrrel, many LGSEC members were able to meet individually with most of the five Commissioners the day before the business meeting. Several elected officials from LGSEC members also addressed the CPUC during public comment at the April 22 meeting. Those who took advantage of the opportunity report that the Commissioners were genuinely impressed with the level of interest and activity in Southern California. Commissioner Simon has already scheduled another day of office hours in early June.

CPUC: Renewable Energy

Renewable Energy Credits: Now You Trade Them, Now You Can't

In March, after several years of deliberation, the CPUC approved the use of tradable renewable energy credits (TRECs) to meet a 20% renewable portfolio standard obligation (Decision 10-03-021). The March decision limited the use of TRECs to 25% of the energy required for utilities to meet their renewable portfolio standard obligations. The 25% TREC cap was supposed to ensure that renewable energy projects are actually built in California, rather than allowing utilities to purchase from projects in other states. This, in turn, would reduce greenhouse gas emissions in California.

The March decision was controversial even before it was adopted, and was almost im-

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"THE MARCH DECISION WAS CONTROVERSIAL EVEN BEFORE IT WAS ADOPTED..."

CPUC: Energy Efficiency (continued from page 3)

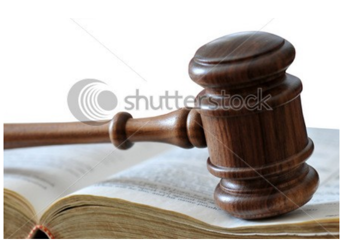
in late May issued a Proposed Decision that would continue the Palm Desert pilot on a month-to-month basis through December 2010 at latest, at 50% of the amount the utilities had requested. If Edison and SoCalGas do not file an application for the program within 45 days of the final EM&V report (expected soon), the program will end at that time.

Utilities Waiting on Final Incentives for 2006-2008 Portfolio

Regarding utility shareholder incentives for the 2006-2008 program cycle, there is one last "bucket" of funds for which the utilities are eligible. To date the utilities have received over $140 million in shareholder incentives for energy savings in the 2006-2008 program cycle; under the current methodology, incentives are awarded in increments based on progress reports, with a final payment after final EM&V results are published. Commissioner Bohn in early May issued a ruling that calls for comments from parties on different scenarios for calculating the final payment amount. Parties held a settlement conference at the end of May to discuss how to true up the incentive mechanism and determine awards to each utility.

PG&E Chastised on Community Aggregation

"...THE FULL COMMISSION ISSUED A STRONGLY WORDED DECISION THAT MAKES CLEAR THE CPUC CAN FINE UTILITIES..."



Local governments pursuing community choice aggregation (CCA) in Northern California have for several years complained that PG&E is unfairly marketing against the CCA programs. The situation reached a crisis this winter in Marin County, where PG&E actively offered customers the chance to opt out of the Marin CCA before the new program had even begun, a violation of CPUC rules. The City and County of San Francisco, which is planning to launch its CCA this summer, filed a petition to modify the 2005 decision that has governed CCA marketing.

In April, the CPUC issued Resolution E-4250, which specifies when utilities can solicit customers to opt out of a CCA, and that utilities are not allowed to offer goods or services in exchange for opting out. PG&E has filed for rehearing of the resolution, claiming the resolution violates PG&E's free speech rights.

In May, the CPUC's Executive Director sent PG&E two letters informing the utility that it appeared to be violating its own tariff with these marketing practices, and that the CPUC can take action if a utility misbehaves. This is an unusual step for the CPUC. Also in May, the full Commission issued a strongly worded decision that makes clear the CPUC can fine utilities and be subject to a temporary restraining order or preliminary injunction if they engage in anti-competitive behavior (Decision 10-05-050). The Decision also prohibits the utilities from offering any opt-out mechanisms but those approved by the CPUC. While the Decision was unanimous, Commissioner Simon and Bohn in their comments expressed some sympathy for PG&E.

These problems with PG&E and community choice aggregation are related to PG&E's sponsorship on the June 8 ballot of Proposition 16, which would require a local government to obtain approval from 2/3 of voters before adding any new customers for a municipal energy offering or expanding the offering to new territory. While the CPUC has not taken an official position against Proposition 16, CPUC President Peevey recently published an opinion piece in the *San Jose Mercury News* decrying Proposition 16 and PG&E's expenditure of $35 million (now up to $46 million) to finance the campaign.

CPUC: Renewable Energy (continued from page 3)

mediately protested by both the utilities and the Independent Energy Producers Association. The Governor's office also weighed in opposing the CPUC's decision. Ratepayer and environmental groups generally supported it. In early May, the CPUC stayed the March decision (Decision 10-05-018). In addition to halting any use of TRECs, the May decision institutes a temporary moratorium on any deals that the March decision would have defined as "REC-only." The stay was approved on a 4-1 vote, with Commissioner Diane Grueneich strongly dissenting. Among her concerns, Grueneich notes that the CPUC is engaging in inconsistent policy that is disruptive to renewable energy markets. The stay and moratorium will remain in effect until the CPUC resolves the concerns brought forward by the utilities and Independent Energy Producers.

Interestingly, the California Air Resources Board announced in late May, as part of its planning for a 33% Renewable Portfolio Standard, that it supports the unlimited use of RECs to meet obligations. CARB's rules would also apply to municipal utilities.

New Docket for Long Term Utility Procurement

In May, the CPUC opened a new rulemaking for issues related to utility long-term resource procurement practices (Rulemaking 10-05-006). (Under State law, the CPUC is supposed to close out all dockets within 18 months, although many frequently go longer.) In addition to the long-term plans that examine how the utilities will procure enough energy to meet their bundled customers' needs, the new proceeding will look in a second track at what utilities are doing within their service territories to guarantee system reliability. In a third track, the new docket will examine policy issues related to utility procurement plans.

In its ongoing docket for implementing the Renewable Portfolio Standard, the CPUC is examining how it will apply its rules for ensuring adequate resources and meeting RPS obligation to energy service providers. Under Senate Bill 695 (2009), customers have limited ability every year to purchase electricity directly from an energy service provider instead of the utilities. SB 695 dictates that the rules apply to all entities that serve electric load.

Pricing Excess Renewable Energy

Assembly Bill 920 (2009) ordered utilities to compensate customers that generate renewable electricity to sell excess electricity back to the utility. Previously, these "net metering" customers received credit only against the amount of electricity they used. The CPUC in April took proposals from the utilities on how to determine the amount of compensation for customers. (Application 10-03-001, et al.)

Feed-in Tariff, Self-Generation Incentive Programs Still on Hold

Senate Bill 412 (2009) expands the types of resources eligible for participation in the

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CEC: Federal Stimulus Implementation & Standards

Federal Stimulus Implementation

The CEC continued awarding funds from the American Recovery and Reinvestment Act (ARRA) this quarter. The CEC was questioned heavily by the Legislature for some of the awards, notably the fact that a good percentage of the $110 million in competitive State Energy Program funds were awarded to entities in Northern California. The CEC was further chastised for awarding $18 million to an entity based in Portland, Oregon. That company has subsequently clarified that it will be hiring staff in California and that the audits performed under the program will be done by Californians.

$30 million in awards for municipal financing programs is currently suspended due to a court order. The Western Riverside Council of Governments has sued the CEC because it believes its proposal was inappropriately disquali-

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CEC: Federal Stimulus Implementation & Standards

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fied. The delay in fund disbursement is expected to last at least 11 weeks.

The CEC is now turning its attention to making sure local governments understand the requirements of the ARRA funds, including EM&V and reporting.

Standards

The CEC in May held a workshop to review proposals for implementing Assembly Bill 1103, which requires utilities to benchmark energy usage in all commercial buildings and make that information available to potential tenants or purchasers. In response to questions about whether this presents an opportunity for local governments to obtain data we can use in developing energy efficiency and sustainability programs, the CEC staff responded that we need to look at Assembly Bill 758, which the CEC is in the process of implementing.

AB 758 (2009) calls on the CEC to develop a "comprehensive program to achieve greater energy savings in California's existing residential and non-residential building stock" with an emphasis on buildings that are fall below Title 24 building efficiency standards. Tools that are listed in the legislation include energy assessments, building benchmarking, energy rating, energy efficiency improvements, public and private sector financing options, education and outreach, and green workforce training. The CEC is directed to consult with a range of stakeholders, including local governments. The LGSEC has initiated dialogue with key CEC staff on this.

AB 758 also directs the CPUC to make sure the investor-owned utilities to provide energy efficiency financing options to customers can participate in the program the CEC develops.

"...Governor Schwarzenegger sent a letter to CARB Chairman Mary Nichols requesting that CARB allocate allowances to capped entities for free..."

CARB Update

LGSEC has actively participated in the California Air Resources Board's (CARB) process to develop a greenhouse gas cap and trade program for California. Cap and trade is a feature of the State's overall AB 32 climate change initiative. In January, CARB received recommendations from an expert committee appointed by the Governor, the Economic and Allocation Advisory Committee (EAAC), on allocating greenhouse gas permits for capped entities in the program, such as power generators and utilities, refineries, and cement plants. The EAAC recommended auctioning most of the allowances and returning the value to customers. Under this proposal, 25% of the auction revenue could be used to finance public purposes investments, including local government energy efficiency, renewable energy, and public transportation projects and programs.

In March, Governor Schwarzenegger sent a letter to CARB Chairman Mary Nichols requesting that CARB allocate allowances to capped entities for free. CARB has followed the recommendation of the Governor and issued revised draft rules in May that would give allowances to industries for free, to "assist" them (at least in the early years of the program) with the transition into an operating environment with carbon constraints. Electric utilities also would receive free allowances, justified because of the presumed additional cost to purchase renewable resources to hit a 33% target.

LGSEC will continue to participate in the CARB cap and trade program development process and recommend that the California program, at least, provide similar funding support for local governments as in the House version of a climate bill.

CPUC: Renewable Energy (continued from page 5)

Self Generation Incentive Program. And Senate Bill 32 (2009) increases the number of projects that can participate in the small renewable generation feed-in tariff, as well increases the cap on project size from 1 MW to 3 MW. The CPUC held a workshop in January on SB 412, but has issued nothing more public since then. And the CPUC has taken no action to date on SB 32.

All policy matters relating to distributed renewable generation, including the California Solar Initiative, were transferred to a new docket in early May (Rulemaking 10-05-004).

AB 2466 Summary

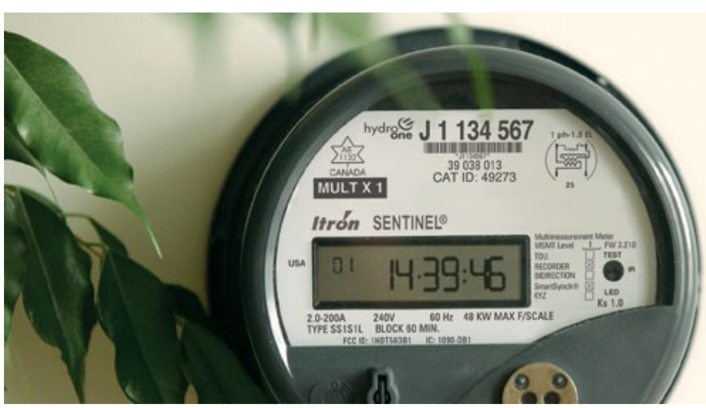
Last year, the CPUC facilitated discussion on how to implement Assembly Bill 2466 (2008), which allows local governments to install on-site renewable generation projects up to 1 MW and use the power from those projects to offset energy usage at other accounts of the government entity. CPUC Resolution E-4283, adopted in April 2010, directed the utilities to submit tariffs to implement the program. The City of San Jose has been a leader on this issue and has been working with the CPUC to refine the program. Under the final program, a government entity can install multiple on-site projects, but each project against which usage will be offset can be no more than 1 MW. You can offset multiple accounts against each project. However, determining which accounts to designate will require a significant amount of modeling and analysis to determine the best rates and combinations of accounts. Additionally, accounts participating in this program cannot also participate in net energy metering. If you want more information on the Tariffs, entitled the RES-BCT—Renewable Energy Self-Generation- Bill Credit Transfer, please contact Jody London, LGSEC Regulatory Consultant, at the phone or e-mail provided at the back of this newsletter.

Smart Meters Problematic

The CPUC has brought in an outside firm to examine PG&E's Smart Meter program. PG&E has been called in to the Legislature repeatedly this year because customers in the Central Valley found their energy bills skyrocketed after the time-of-use meters were installed. PG&E initially said the malfunctions were to be expected and were a small percentage of the overall smart meters deployed.

More recent news reports detail that a small percentage of the 5.7 million smart meters have been improperly installed, are not properly storing data, are not able to transmit data properly, or are just not measuring data accurately. The total number of meters with these problems, according to the *San Francisco Chronicle*, is about 45,000. Even though this is a small percentage, it is enough to generate customer complaints and bad press.

The PR problems are exacerbated because some ratepayer groups have been opposed to smart meter deployment from the get-go. In May, the Utility Reform Network and Worker Union of America Local 132 asked the CPUC to reconsider the SoCalGas Smart Meter program, which the CPUC approved in April.



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http://www.lgc.org/lgsec/index.html

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House, Senate Bills Have Different Outcomes

In May, Senators Kerry and Lieberman announced the most recent Senate version of a national cap and trade program, called the American Power Act (APA). Other Senators have also introduced separate energy and climate-related legislation, but the Kerry-Lieberman bill has become the most prominent. The House passed the American Clean Energy and Security Action in 2009 (ACES), which also includes cap and trade.

Two key differences between the Senate-APA and House-ACES:

1) APA prohibits states and regional groups from developing cap and trade programs, thus the California and Western Climate Initiative program would discontinue; ACES, on the other hand, does not explicitly eliminate State-created programs.
2) APA does not include provisions to allocate cap and trade allowances to local governments or direct allowance auction revenue to support local government initiatives, while ACES does include explicit support for local governments by allocating allowances to the Energy Efficiency and Conservation Block Grant (EECBG) program.

LGSEC will continue to work with partner organizations in Washington, D.C. to press for revisions to APA to support local governments, as provided in ACES.

The Local Government Sustainable Energy Coalition (LGSEC) is an association of California public entities formed to share information and resources to strengthen and leverage their communities' commitment to a sustainable energy future. That commitment is to manage today's energy uses and resources in ways that do not compromise the environment's capacity, or the community's ability to meet the needs of future generations.

Core strategies are to moderate energy demand through energy efficiency, increase renewable energy production, and improve energy security and reliability, while instilling environmental values that lead to community well-being.

LGSEC's Mission

- *To provide a central resource to help California local governments stay informed of energy policy, regulatory and market developments affecting their interests.*
- *To expand local government competence to shape those developments.*
- *To share energy experience and expertise that can benefit other communities.*
- *To leverage resources to advocate in public forums for policies and programs that support local sustainability initiatives.*
- *To empower local public entities to speak with a credible and cohesive voice on energy matters affecting their communities and constituencies.*