

## CPUC Net Metering Decision Is Good News For Clean Energy

*Law360, New York (February 3, 2016, 12:13 PM ET) --*



Sheridan J. Pauker



Peter D. Mostow



Grace Hsu

On Jan. 28, 2016, the California Public Utilities Commission adopted a decision by a vote of 3-2 approving a new tariff structure for future net energy metering customers. The decision preserves the existing retail rate of compensation for exports of electricity by the customer on a monthly basis in the service territories of the state's three large investor-owned utilities (IOUs). While the NEM successor tariff will impose on net metering customers certain interconnection fees, increase monthly charges that apply to all ratepayers, and require customers to take service on any time-of-use (TOU) rates available to them, it has been strongly praised by the clean energy industry as largely preserving the economics of a customer's decision whether to install distributed energy resources.

### Background

Net metering has been a significant factor driving the growth of distributed solar photovoltaics in California and many other states across the country. California's current NEM tariffs allow customers with distributed generation systems to receive a credit on their utility bills for electricity exported to the utility grid at retail rates, allowing the customer's meter to "spin backwards" when the distributed generation device produces more electricity than the customer is using, and thereby offsetting electricity bills.[1]

In 2013, California's Legislature passed Assembly Bill 327 (Perea)[2] (AB 327) which required the CPUC to develop a successor NEM tariff to apply on the earlier date of July 1, 2017, or the date the utility reaches a NEM program capacity limit of 5 percent of aggregate customer peak demand (the transition trigger date).[3] AB 327 also required the CPUC to ensure that the total benefits of the NEM successor tariff to all customers and the electrical system are approximately equal to the total costs.[4]

In an earlier decision, D.14-03-041, the commission decided that customers who took service prior to the transition trigger date could remain on the current NEM tariff for a period of 20 years after the original year that their each existing NEM facility interconnected. The caps for "NEM 1.0" are close to being met, and are predicted to be reached in the San Diego Gas & Electric Company's (SDG&E) territory as early as April 2016, and in the Pacific Gas and Electric Company's (PG&E) territory as early as August 2016.[5]

In recent years, several states across the U.S. have made changes negatively impacting the economics of net metering, including imposing high fixed monthly charges on customers and significantly reducing the rate of compensation for exports. In October of 2015, for example, Hawaii regulators ended that state's net metering program and created new "self supply" and "grid supply" options for new solar systems seeking interconnection.[6] As recently as December 2015, Nevada regulators severely altered that state's NEM program by adding fixed charges and significantly decreasing export compensation to the avoided cost rate (in some areas, \$0.02649 by 2020).[7] This had the effect of causing prominent solar installers to immediately withdraw operations in Nevada and lay off large numbers of employees in that state.

In this context, the California decision was the subject of intense debate, regulatory advocacy and speculation. As part of the stakeholder process that resulted in the decision, the IOUs had argued for the imposition of high demand charges, standby charges, and a variety of substantial fees, as well as compensation for exports well below retail rates. The solar industry reasoned that the existing rate structure fairly took into account the value and benefits of distributed clean energy exports to the grid.

### **NEM Successor Tariff Decision**

**Retail Rates:** The decision passed last week rejected most of the calls for extremely high fees and charges on net metering customers that were broadly predicted to be detrimental to the economics of rooftop solar and, most significantly, preserved full retail compensation for exports on a 1:1 basis.[8]

**Nonbypassable Charges:** The decision changes the way certain generally applicable utility bill charges apply to net metering customers. Previously, certain "nonbypassable charges," including those funding public purposes like energy efficiency incentives and low-income programs, nuclear decommissioning, competition transition, and water resources bonds that apply to ratepayers generally only applied to the net kilowatt-hour consumed by NEM customers after taking the renewable energy exports into account. Now, these charges will apply to each kilowatt-hour a customer consumes from the grid. Industry experts expect these nonbypassable charges to add approximately 2 to 3 cents per kilowatt-hour or \$6 to \$8 per month for an average residential solar customer.[9] The decision maintains the existing minimum monthly customer bill of \$10 for non-California alternate rates for energy (CARE) customers as established in D.15-07-001.10

**Interconnection Fees:** Under the decision, NEM customers will be charged a "reasonable" interconnection fee. The amount of such fee will be proposed by California's IOUs via upcoming advice letter filings, and calculated based on previously documented interconnection costs. The interconnection fees are likely to range between \$75 to \$100 for systems under 30 kilowatts.[11]

**Time-of-Use Rates:** Another important change imposed by the decision requires net metering customers to take service under any available time of use rate.[12] Currently, residential customers are subject to tiered rates that depend on their monthly electricity usage. In D.15-07-001, the commission

determined that by 2019, customers will be moved to a default TOU rate, such that the cost of service is greater when demand for electricity is high in the late afternoon and the cost of service is lower when demand is low in the late evening. The NEM successor tariff accelerates the shift to TOU rates for net metering customers.

**Virtual Net Metering:** AB 327 required the NEM successor tariff to include "specific alternatives" to ensure growth among residential customers in disadvantaged communities.[13] Instead, the decision maintains the current virtual net metering and net metering aggregation programs, which apply in the multimeter tenant and adjacent property contexts. Under the NEM successor tariff, these programs will also be subject to the changed application of nonbypassable charges and new interconnection fees.

Virtual Net Metering will now allow multiple service delivery points at a single site. The final version of the decision approved by the CPUC removed prior language that would have expanded virtual net metering for disadvantaged communities, possibly including a community solar-like program that would have allowed customers in such communities to virtually participate in and benefit from offsite renewable projects. Citing the need to integrate legislation passed in October of 2015, the decision delays implementation of this program and instead determines to further examine how to expand renewables in disadvantaged communities in a second phase of the proceeding.

**Consumer Protection:** With respect to consumer protection, the decision requires the IOUs to require that an applicant for the NEM successor tariff provide verification that all major solar system components are on the verified equipment list maintained by the California Energy Commission and that a minimum warranty of 10 years has been provided on all equipment and the installation. The decision indicated that other consumer protection issues, including the development of a customer information packet and measurement and evaluation of the NEM successor tariff, would be undertaken in the next phase of the proceeding.

**Grandfathering:** Finally, like current NEM customers, customers interconnecting under the NEM successor tariff would be grandfathered onto such tariff for a period of 20 years.

## **Next Steps**

The decision requires Southern California Edison, PG&E and SDG&E each to submit an advice letter with its NEM successor tariff by Feb. 29, 2016. It also indicates that the battles regarding net metering in California are not over, authorizing commission staff to undertake steps (e.g., collecting data, holding workshops, and developing reports and tools) to prepare for the commission's review of the NEM successor tariff, anticipated to happen in 2019. Such ongoing discussions were foreshadowed by several of the commissioners in their statements at the CPUC meeting approving the decision, and this process should be closely followed by the industry and investors.

For the distributed energy industry, one of the most important next steps will be to evaluate proposed time of use rates and their potential impact on customer project economics. In December of 2015, the commission opened a new rulemaking docket (R. 15-12-012) to examine data on load, net load after renewable generation is taken into account, the predicted "shape" of solar and other electric generation, and other factors, in order to identify time periods that are relevant for encouraging customers to reduce demand or supply electricity under TOU rates.[14] There will be upcoming opportunities for interested stakeholders to get involved in this proceeding, including comments on California Independent System Operator data, workshops and additional public comments. The interplay between intermittent renewable generation and energy storage will be key factors in this and other

distributed generation analyses underway, with impacts on the incentive structures for such technologies.

—By Sheridan J. Pauker, Peter D. Mostow and Grace Hsu, Wilson Sonsini Goodrich & Rosati

*Sheridan Pauker is regulatory counsel in Wilson Sonsini's San Francisco office. Her practice focuses on renewable energy, energy storage and energy efficiency regulation, incentives, and financing, with particular emphasis on state energy regulatory programs.*

*Peter Mostow is a partner in Wilson Sonsini's Seattle office. His practice focuses on the representation of emerging and mature companies in the fields of energy and clean technology.*

*Grace Hsu is an associate in Wilson Sonsini's San Francisco office. She is a member of the firm's energy and clean technology practice.*

*The opinions expressed are those of the author(s) and do not necessarily reflect the views of the firm, its clients, or Portfolio Media Inc., or any of its or their respective affiliates. This article is for general information purposes and is not intended to be and should not be taken as legal advice.*

[1] The current California NEM tariffs allow for cash compensation for electricity generated in excess of onsite load beyond a 12-month period at a lower, "net surplus compensation rate" (currently approximately \$0.03 to \$0.05/ kWh), or for the customer to roll credits forward to future months at such rate. This remains unchanged under the decision. See Decision at 96; Decision 11-06-016.

[2] Stats. 2013, ch. 611; Cal. Pub. Util. Code §2827.1.

[3] Under Public Utilities Code § 2827(c)(4)(B), "aggregate customer peak demand" means "the highest sum of noncoincident peak demands of all the [IOU's] customers that occurs in any calendar year."

[4] Cal. Pub. Util. Code §2827.1(b)(4).

[5] See CalSEIA, "California regulators approve net metering 2.0" (Jan. 29, 2016), available at: <http://calseia.org/industry-news/2016/1/29/california-regulators-approve-net-metering-20>. As of Jan. 29, 2016, SDG&E customers have installed or submitted applications for 541.3 MWs out of a cap of 617 MWs. SDG&E, Net Energy Metering Dashboard, available at: <http://www.sdge.com/clean-energy/net-energy-metering/overview-nem-cap>. As of December, 2015, PG&E customers have installed or submitted applications for 1827.6 out of 2409 MW and Southern California Edison (SCE) customers have installed or submitted applications for 1387.7 MWs out of a cap of 2240 MWs. See PG&E, Net Energy Metering Program Tracking, available at: <http://www.pge.com/en/mybusiness/save/solar/nemtracking/index.page>; SCE, Get a Read On Net Energy Metering, available at: <https://www.sce.com/wps/portal/home/residential/generating-your-own-power/net-energy-metering>.

[6] Public Utilities Commission of Hawaii, Docket No: 2014-0192, Order No. 33258 (Oct.12, 2015).

[7] Public Utilities Commission of Nevada, Docket Nos: 15-07041/15-07042, Order dated (Dec. 23, 2015); see also NV Energy, Net Metering Overview, available at <https://www.nvenergy.com/renewablesenvironment/renewablegenerations/NetMetering.cfm>.

[8] As with the existing NEM tariff, exports will net against usage on a monthly basis. Any net export credits can be rolled forward on a monthly basis. At the end of a 12-month period, surplus generation credits may be payable at the net surplus compensation rate, or the dollar value of such surplus can be rolled forward and credited against future bills. See Decision at 96; Decision 11-06-016.

[9] Susannah Churchill, Vote Solar, "CPUC Net Metering Decision Keeps Leading on Rooftop Solar and Customer Choice" (Jan. 28, 2016), available at: <http://votesolar.org/2016/01/28/cpuc-net-metering-decision-keeps-leading-on-rooftop-solar-and-customer-choice/>.

[10] We note that an earlier draft of the decision also included a transmission charge. The exclusion of this charge was the stated reason CPUC Commissioners Sandoval and Florio did not vote for the decision.

[11] See CPUC Press Release, "CPUC Ensures Customers Continue To Benefit From Going Solar By Approving New Net Metering Guidelines" (Jan. 28, 2016), available at: <http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M158/K181/158181664.PDF>; see also Decision at 67, 71.

[12] SDG&E customers who complete their interconnection applications for the NEM successor tariff prior to the time the TOU rates for SDG&E residential customers are in effect will be allowed to maintain their current tiered rates for a period of up to five years.

[13] Cal. Pub. Util. Code 2827.1(b)(1).

[14] California Public Utilities Commission, Order Instituting Rulemaking to Assess Peak Electricity Usage Patterns and Consider Appropriate Time Periods for Future Time-of-Use Rates and Energy Resource Contract Payments (Dec. 17, 2015), available at: <http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M157/K412/157412121.pdf>.

All Content © 2003-2016, Portfolio Media, Inc.