

# KEYES & FOX, LLP

Distributed Generation Law

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**January 16, 2009**

## VIA EMAIL

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### **Re: Post-Workshop Comments on AB 2466 – Local Government Renewable Energy Self Generation Program**

The Interstate Renewable Energy Council<sup>1</sup> (“IREC”) would like to thank Curtis Seymour and the California Public Utilities Commission (“Commission”) for hosting the January 8, 2009 workshop on the implementation of AB 2466 – Renewable Energy Credits for Local Governments. IREC would like to address two issues in connection with AB 2466 implementation.

#### **1. Net Metering the Generation Account**

In reference to the slides used during the workshop, slide 6, item 2 states: “Customer usage and excess generation at the Generating Account are metered separately.” It is not clear what this bullet is trying to communicate. The annotations provided state that this bullet is based on PU Code 2830(a)(4) and (b)(4). However, neither of these sections requires or even suggests that usage and excess generation must be metered separately. It is key that the statute not be interpreted so as to require generation and on-site load to be metered separately such that on-site generation is not able to offset any on-site demand charges.

The most administratively efficient means of implementing AB 2466 would be to allow the generating account to be net metered, if desired, with any monthly kWh excess translated into a bill credit that would flow to any benefiting account(s). Although the definition of “bill credit” suggests calculations based on instantaneous output, a liberal reading of the statute would interpret output as net output and allow the generation account to be net metered. Therefore, IREC disagrees with slide 9, item 9, which states that “a Generating Account under AB 2466 would not be eligible to participate in Net Energy Metering (NEM).” IREC notes that the annotations contain no citation for this claim.

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<sup>1</sup> For over two decades, IREC has worked as a non-profit organization to accelerate the sustainable utilization of renewable energy resources. With funding from the United States Department of Energy, IREC’s mission includes assisting policymakers in identifying “best practices”<sup>1</sup> in the areas of interconnecting and net metering distributed renewable energy technologies. To that end, IREC has participated in workshops, proceedings and rulemakings before over eighteen state public utility commissions during the past two years. IREC was active in the development of interconnection rules in Florida, Illinois, New Mexico, North Carolina, Utah, Virginia and to a lesser extent, California, Colorado, Maryland, South Dakota and the District of Columbia. For net metering, IREC was active in rulemakings in Alaska, Arizona, Colorado, Florida, Kentucky, Massachusetts, New Jersey, Nevada, New York, North Carolina, Ohio, Oregon, Utah, Texas and Virginia. IREC has also developed model interconnection procedures and model net metering rules that reflect “best practices” in these areas.

Although last week's workshop highlighted the need for changes to the California Energy Commission's handbook to allow net metered customers to participate in the state's RPS, the handbook provides no justification for removing California Solar Initiative eligibility or the ability to net meter. IREC agrees with the interpretation of § 2830(a)(3) offered by Tam Hunt that the reference to "eligible renewable energy resource" in § 2830(a)(3) is a reference to § 399.12 not the California Energy Commission's handbook.

## **2. Rule 21 Applies to AB 2466 Interconnections**

IREC is confident that California Rule 21 is the interconnection standard that should be applied when interconnecting systems under AB 2466. IREC notes that slide 22, bullet 2, expresses a preference for this outcome, so IREC expects these will not be controversial comments.

Simply put, states have jurisdiction over interconnections to the distribution system unless preempted by the Federal Energy Regulatory Commission ("FERC"). FERC addressed this issue in paragraphs 803 to 809 of Order 2003 (<http://www.ferc.gov/whats-new/comm-meet/072303/E-1.pdf>). In that Order, FERC acknowledged that it lacked jurisdiction over interconnections to local distribution facilities unless the distribution facilities are covered by a public utility's OATT and an interconnection is for the purpose of facilitating a wholesale sale of electric energy. *See* Order 2003, paragraph 804. The U.S. Court of Appeals upheld Order 2003 and FERC's delineation of its jurisdiction in *NARUC v. FERC*, 475 F.3d 1277 (2007). In Order 2003, FERC also clarified that it would not assert jurisdiction over an interconnection to a distribution line when a retail customer installs a generator that will produce energy to be consumed on site. *See* Order 2003, paragraph 805. According to FERC, such arrangements are not wholesale sales over which it would have jurisdiction because there is no net sale to the utility. *See MidAmerican Energy Company*, 94 FERC ¶ 61,340 at 62,263 (2001).

As with net metering, AB 2466 does not involve a wholesale sale of electricity to a utility. Therefore, interconnections under AB 2466 are not subject to FERC's jurisdiction.

IREC would like to thank Commission Staff for the opportunity to submit these post-workshop comments.

Dated this 16th day of January 2009.

Respectfully submitted,

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