STATE OF CALIFORNIA — Public Utilities Commission
San Francisco

**M e m o r a n d u m**

**Date:** May 23, 2011

**To:** The Commission
(Meeting of May 26, 2011)

**From:** Edward Randolph, Director
Office of Governmental Affairs (OGA) — Sacramento

**Subject:** **AB 864 (Huffman) – Self Generation Incentive Program**
**As amended: April 28, 2011**

**LEGISLATIVE SUBCOMMITTEE RECOMMENDATION**: **OPPOSE**

**SUMMARY OF BILL:**

AB 864 expands the eligibility rules for the Self Generation Incentive Program (SGIP) distributed energy resources by allowing units sized up to 10 MW to qualify for the program but limits the payment of incentives to no more than 5 MW. The bill requires the California Public Utilities Commission (CPUC) to establish a declining incentive schedule for projects greater than 3 MW and only pay incentives to projects that meet "cost-effectiveness rules established by the [CPUC]."

**SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION:**

On its merits, the CPUC may be able to support the overall intent of this bill. However, the bill's requirements are currently the subject of a SGIP rulemaking the CPUC has opened pursuant to SB 412 (Kehoe, 2009). Specifically, the CPUC staff has released two staff proposals in R.10-05-004,[1] which would significantly modify the program's eligibility, incentive levels, incentive structure, and other elements. The CPUC will likely adopt a decision in R.10-05-004 this summer and changes proposed by this bill could require the CPUC to immediately reopen a SGIP proceeding to implement the provisions of this bill. The new proceeding would create more uncertainty for potential customer generators wishing to participate in the program and would created added administrative costs for the CPUC. .

[1] See R. 10-05-004, Rulings on September 30, 2010 and April 21, 2011.
http://docs.cpuc.ca.gov/published/proceedings/R1005004.htm

## SUMMARY OF SUGGESTED AMENDMENTS:

None.

## DIVISION ANALYSIS (Energy Division):

1. This bill expands the SGIP to include larger projects. The current cap on SGIP generator size would be doubled from the CPUC-mandated 5 MW cap to a statutory 10 MW, with a corresponding raise of incentive cap from the first 3 MW to the first 5 MW – so long as the projects are deemed cost-effective. This could favor larger projects, which could take advantage of economies of scale as well as increased incentive support up to 5 MW. Though the incentives would decline at a schedule to be determined by the CPUC, the total amount of incentive support for a given project would increase under this bill. The bill could also result in fewer, but larger, SGIP projects. To date, the CPUC has not provided incentives to SGIP projects above 3 MW since those projects are usually more economical from the customer perspective and are in less in need of incentives.

2. The bill's restriction that incentives above 3 MW only be paid for projects the CPUC finds are cost-effectiveness would eliminate from SGIP any distributed energy resources *not* deemed to be cost-effective. According to a February 2011 SGIP cost-effectiveness evaluation, a gas turbine sized 2.5 MW and above is the only technology deemed to be cost-effective.[2]

3. Given the CPUC's current SGIP rulemaking, this bill is premature. In a September 2010 proposal that is part of the rulemaking to implement changes to the SGIP mandated under SB 412 (Kehoe, 2009), CPUC staff recommends that the CPUC eliminate the current 5 MW cap on generator size for all eligible technologies (but retain the current 3 MW cap on incentives). The rulemaking is also considering technology eligibility for the SGIP program that may be informed, in part, by the SGIP cost-effectiveness evaluation. Other program changes being considered include incentive structure, incentive levels, incentive allocations per technology supplier and/or installation contractor, as well as a declining incentive level schedule. This bill will complicate the implementation of SB 412 and may even require the CPUC to open yet another proceeding on the heels of the one currently in process.

## PROGRAM BACKGROUND:

Per SB 412, CPUC's Energy Division has spent the past year developing proposals and taking public comment on many proposed changes to the role, function, and administration of the SGIP. After an initial set of SGIP changes in a Staff Proposal on September 30, 2010, the SGIP Staff Proposal, Part II, was released April 21, 2011 to

[2] Based on cost-effectiveness evaluation performed for CPUC staff by Itron. This evaluation is part of the record for R 10-05-004. The February 2011 SGIP Cost-Effectiveness Report, prepared by Itron, Inc., is available here: http://www.cpuc.ca.gov/PUC/energy/DistGen/sgip/proposal_workshops.htm

address the majority of technology eligibility and incentive amount changes. The CPUC will likely consider a Proposed Decision on the SGIP in the early summer 2011.

**LEGISLATIVE HISTORY:**

1. The SGIP program has been modified on numerous occasions by the legislature. AB 970 (Ducheny, 2000) required the CPUC to initiate load control and distributed generation activities. Many subsequent bills have made modifications to program requirements, eligible technologies and fuel sources, as well as funding levels.

2. AB 2778 (Lieber, 2006) restricted the SGIP program to only wind and fuel cell technologies. This statutory change eliminated CHP projects from eligibility.

3. Decision 08-04-049 (April, 2008) removed the 1MW cap on incentives for 2008 and 2009, allowing projects to receive lower incentives on a tiered structure for the portion of a system over 1MW.

4. SB 412 (Kehoe, 2009) charges the CPUC in conjunction with CARB to determine GHG reducing DG and set appropriate incentive levels for those technologies. This statutory change provided for the program to fund CHP and storage technologies, as well as others, if the Commission and CARB found the technologies to be GHG reducing.

**FISCAL IMPACT:**

We anticipate that the bill's costs would be absorbable.

**STATUS:**

AB 864 passed the Assembly 74-0 and is awaiting committee assignment in the Senate.

**SUPPORT/OPPOSITION:**

Support: California Business Properties Association, California Large Energy Consumers Association
California Manufacturers & Technology Association
Sonoma County Water Agency

Opposition: None on file

**STAFF CONTACTS:**

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## BILL LANGUAGE

BILL NUMBER: AB 864 AMENDED
BILL TEXT

AMENDED IN ASSEMBLY APRIL 28, 2011
AMENDED IN ASSEMBLY APRIL 13, 2011

INTRODUCED BY Assembly Member Huffman

FEBRUARY 17, 2011

An act to amend Section 379.6 of the Public Utilities Code, relating to electricity.

LEGISLATIVE COUNSEL'S DIGEST

AB 864, as amended, Huffman. Electricity: self-generation incentive program.

Under existing law, the Public Utilities Commission (PUC) has regulatory authority over public utilities, including electrical corporations, as defined. Existing law requires the PUC, in consultation with the State Energy Resources Conservation and Development Commission (Energy Commission), to administer, until January 1, 2016, a self-generation incentive program (SGIP) for distributed generation resources and to separately administer solar technologies pursuant to the California Solar Initiative. Existing law limits eligibility for SGIP incentives to distributed energy resources that the PUC, in consultation with the State Air Resources Board (state board), determines will achieve reductions in emissions of greenhouse gases pursuant to the California Global Warming Solutions Act of 2006.

This bill would require that distributed energy resources with a nameplate generating capacity of up to 10 megawatts are eligible for incentives, but would limit the award of incentives to not more than 5 megawatts of that capacity. *The bill would limit incentives being made available for distributed energy resources with a nameplate generating capacity above 3 megawatts to those technologies that meet cost-effectiveness rules established by the commission. The bill would require that incentives made available for distributed energy resources with a nameplate generating capacity greater than 3 megawatts be based on a declining schedule determined by the commission.*

Under existing law, a violation of the Public Utilities Act or any order, decision, rule, direction, demand, or requirement of the commission is a crime.

Because the program that is extended under the provisions of this bill are within the act and a decision or order of the commission would be required to implement the program requirements, a violation of these provisions would impose a state-mandated local program by expanding the definition of a crime.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that

reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 379.6 of the Public Utilities Code is amended to read:

379.6. (a) (1) The commission, in consultation with the Energy Commission, may authorize the annual collection of not more than the amount authorized for the self-generation incentive program in the 2008 calendar year, through December 31, 2011. The commission shall require the administration of the program for distributed energy resources originally established pursuant to Chapter 329 of the Statutes of 2000 until January 1, 2016. On January 1, 2016, the commission shall provide repayment of all unallocated funds collected pursuant to this section to reduce ratepayer costs.

(2) The commission shall administer solar technologies separately, pursuant to the California Solar Initiative adopted by the commission in Decision 06-01-024.

(b) (1) Eligibility for incentives under the program shall be limited to distributed energy resources that the commission, in consultation with the State Air Resources Board, determines will achieve reductions of greenhouse gas emissions pursuant to the California Global Warming Solutions Act of 2006 (Division 25.5 (commencing with Section 38500) of the Health and Safety Code).

(2) *(A)* Distributed energy resources with a nameplate generating capacity of up to 10 megawatts shall be eligible for incentives, but incentives shall not be available for more than five megawatts of that capacity.

*(B) Incentives shall not be made available for distributed energy resources with a nameplate generating capacity greater than 3 megawatts unless the technology utilized for the distributed energy resource meets cost-effectiveness rules established by the commission. This subparagraph does not require the commission to open a new proceeding and it is the intent of the Legislature that the commission apply the cost-effectiveness rules developed in Rulemaking 10-05-004.*

*(C) Incentives made available for distributed energy resources with a nameplate generating capacity greater than 3 megawatts, up to 5 megawatts of capacity, shall be based on a declining schedule determined by the commission.*

(c) Eligibility for the funding of any combustion-operated distributed generation projects using fossil fuel is subject to all of the following conditions:

(1) An oxides of nitrogen (NOx) emissions rate standard of 0.07 pounds per megawatthour and a minimum efficiency of 60 percent, or any other NOx emissions rate and minimum efficiency standard adopted by the State Air Resources Board. A minimum efficiency of 60 percent shall be measured as useful energy output divided by fuel input. The efficiency determination shall be based on 100-percent load.

(2) Combined heat and power units that meet the 60-percent efficiency standard may take a credit to meet the applicable NOx emissions standard of 0.07 pounds per megawatthour. Credit shall be

at the rate of one megawatthour for each 3.4 million British thermal units (Btus) of heat recovered.

(3) The customer receiving incentives shall adequately maintain and service the combined heat and power units so that during operation, the system continues to meet or exceed the efficiency and emissions standards established pursuant to paragraphs (1) and (2).

(4) Notwithstanding paragraph (1), a project that does not meet the applicable NOx emissions standard is eligible if it meets both of the following requirements:

(A) The project operates solely on waste gas. The commission shall require a customer that applies for an incentive pursuant to this paragraph to provide an affidavit or other form of proof, that specifies that the project shall be operated solely on waste gas. Incentives awarded pursuant to this paragraph shall be subject to refund and shall be refunded by the recipient to the extent the project does not operate on waste gas. As used in this paragraph, "waste gas" means natural gas that is generated as a byproduct of petroleum production operations and is not eligible for delivery to the utility pipeline system.

(B) The air quality management district or air pollution control district, in issuing a permit to operate the project, determines that operation of the project will produce an onsite net air emissions benefit, compared to permitted onsite emissions if the project does not operate. The commission shall require the customer to secure the permit prior to receiving incentives.

(d) In determining the eligibility for the self-generation incentive program, minimum system efficiency shall be determined either by calculating electrical and process heat efficiency as set forth in Section 216.6, or by calculating overall electrical efficiency.

(e) In administering the self-generation incentive program, the commission may adjust the amount of rebates and evaluate other public policy interests, including, but not limited to, ratepayers, and energy efficiency, peak load reduction, load management, and environmental interests.

(f) The commission shall ensure that distributed generation resources are made available in the program for all ratepayers.

(g) (1) In administering the self-generation incentive program, the commission shall provide an additional incentive of 20 percent from existing program funds for the installation of eligible distributed generation resources from a California supplier.

(2) "California supplier" as used in this subdivision means any sole proprietorship, partnership, joint venture, corporation, or other business entity that manufactures eligible distributed generation resources in California and that meets either of the following criteria:

(A) The owners or policymaking officers are domiciled in California and the permanent principal office, or place of business from which the supplier's trade is directed or managed, is located in California.

(B) A business or corporation, including those owned by, or under common control of, a corporation, that meets all of the following criteria continuously during the five years prior to providing eligible distributed generation resources to a self-generation incentive program recipient:

(i) Owns and operates a manufacturing facility located in California that builds or manufactures eligible distributed

generation resources.

(ii) Is licensed by the state to conduct business within the state.

(iii) Employs California residents for work within the state.

(3) For purposes of qualifying as a California supplier, a distribution or sales management office or facility does not qualify as a manufacturing facility.

(h) The costs of the program adopted and implemented pursuant to this section shall not be recovered from customers participating in the California Alternate Rates for Energy (CARE) program.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.