

STATE OF CALIFORNIA

Public Utilities CPUC
San Francisco

M e m o r a n d u m

Date: May 24, 2011

To: The CPUC
(Meeting of May 26, 2011)

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

Subject: **AB 1150 (V. Manuel Perez): Self-Generation Incentive Program**
As amended: May 11, 2011

LEGISLATIVE SUBCOMMITTEE RECOMMENDATION: OPPOSE UNLESS AMENDED

SUMMARY OF BILL:

This bill extends life of the Self Generation Incentive Program (SGIP) for two additional years through 2018 (from 2016) and extends its funding authority for three years through December 2014 (from December 2011). The bill also requires eligible distributed energy projects to comply with California Air Resources Board (CARB) certification standards and applicable district permitting standards, introduces new restrictions on projects using renewable fuels, and requires the program transition from up-front incentives to performance-based incentives.

SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION:

AB 1150 introduces significant changes to the SGIP. While the California Public Utilities Commission (CPUC) supports the extension of program funding and administration, we oppose the other provisions in the bill because they 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 the bill's proposed changes to SGIP will likely require the CPUC to immediately reopen a proceeding to implement its provisions. The new proceeding would create more uncertainty for potential customer generators wishing to participate in the program and would create 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:

The CPUC can only support the extension of ratepayer support and program administration of SGIP. We request that all other provisions be deleted.

ANALYSIS (Energy Division):

1. Since 2001, SGIP has provided ratepayer incentives for distributed generation (DG) technologies which have demonstrated financial need to encourage customer adoption. SGIP has funded approximately 1,300 projects generating 355 MW of electricity. SB 412 (Kehoe, 2009) requires the CPUC to only fund greenhouse gas (GHG) reducing DG and set appropriate incentive levels for these technologies. Accordingly, CPUC staff has spent the past year developing proposals and taking public comment on many proposed changes to the role, function, and administration of the SGIP program. Among other things, two staff proposals, released September 30, 2010 and April 21, 2011, address cost-effective technology eligibility, GHG reductions, and incentive levels, including performance-based incentives.
2. The CPUC can generally support the intent of this bill - to "mend and extend" the SGIP. However, the CPUC is already more than a year into detailed record development among a large set of parties and stakeholders to implement the wide-ranging changes required by SB 412. 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. Enactment of yet another legislative directive could hamper the SGIP reform process currently underway and would be both counter-productive and wasteful of the considerable resources expended by many stakeholders and staff over the past year and a half.

LEGISLATIVE HISTORY:

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.

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

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 CPUC and CARB found the technologies to be GHG reducing.

FISCAL IMPACT:

We estimate a cost of \$259,992 for a full-time Administrative Law Judge II, and one full-time analyst at the Public Utilities Regulatory Analyst V level would be required to implement the program modifications and oversee the administration of the SGIP (note: this is based on a previous version of the bill but we don't expect costs to change substantially).

STATUS:

AB 1150 was referred to the suspense file of the Assembly Appropriations Committee.

SUPPORT:

A123 Systems, Inc.
Associated General Contractors of America
Bloom Energy (if amended)
California Business Properties Association
California Energy Storage Alliance (CESA)
California Institute of Technology (Caltech)
California Large Energy Consumers Association (CLECA)
California Manufacturers & Technology Association (CMTA)
CALMAC Manufacturing Corporation
CalWEA
Capstone Turbine Corporation
Cemex
Clean Power Campaign (if amended)
Debenham Energy LLC
Deeya Energy, Inc.
EnerVault Corporation
Fluidic Energy
Foundation Windpower (Sponsor)
Fuel Cell and Hydrogen Energy Association (FCHEA)
Greensmith Energy Management Systems, LLC
Ice Energy, Inc.
LightSail Energy, Inc.
Mitsubishi Cement Corporation
Pacific Environment
Powergetics, Inc.
Prudent Energy Corporation
RES Americas, Inc.
Saft America
Samsung SDI America, Inc.
Seo, Inc.
Silent Power, Inc.
Solar Turbines Incorporated (if amended)

Sonoma County Water Agency (if amended)
Sumitomo Electric
SunEdison
Sunverge Energy, LLC
SustainX, Inc.
UTC Power Corporation (if amended)
Xtreme Power, Inc.
Yunicos, Inc.

OPPOSITION:

The Utility Reform Network

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BILL LANGUAGE

BILL NUMBER: AB 1150 AMENDED
BILL TEXT

AMENDED IN ASSEMBLY MAY 11, 2011
AMENDED IN ASSEMBLY APRIL 28, 2011
AMENDED IN ASSEMBLY APRIL 25, 2011
AMENDED IN ASSEMBLY MARCH 29, 2011

INTRODUCED BY Assembly Member V. Manuel Pérez

FEBRUARY 18, 2011

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

LEGISLATIVE COUNSEL'S DIGEST

AB 1150, as amended, V. Manuel Pérez. 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 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. The PUC, in consultation with the State Energy Resources Conservation and Development Commission (Energy Commission), may authorize electrical corporations to annually collect not more than the amount authorized for the SGIP in the 2008 calendar year through December 31, 2011.

This bill would expand the authority of the PUC to authorize electrical corporations to continue making the annual collections through December 31, ~~2016~~ 2014, as provided, and would require the PUC to continue to administer the program until January 1, 2018. *The bill would require the PUC to transition the program to performance-based incentives, so that incentive payments are earned based on the actual electrical output of the distributed energy resource. The bill would require the PUC to require, for an incentive payment received on the basis that the distributed energy project uses a renewable fuel, confirmation of the physical delivery of the renewable fuel to the project or to the California pipeline system, in an amount equivalent to the fuel requirements of the project for the life of the project. The bill would delete provisions requiring combustion-operated distributed generation projects using fossil fuel to meet specified emission requirements, and instead require eligible distributed energy projects to meet applicable State Air Resources Board certification standards and applicable air pollution control district or air quality management district permitting standards.* The bill would require the PUC to periodically evaluate the program to adjust the amount of rebates and other program design elements to achieve specified program goals and

objectives.

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 implements 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) It is the intent of the Legislature that the self-generation incentive program should increase deployment of distributed generation and distributed storage systems to facilitate integration of those resources into the electrical grid and reduce ratepayer costs.

(2) The commission, in consultation with the Energy Commission, may authorize the annual collection of not more than eighty-three million dollars (\$83,000,000) in each calendar year through December 31, ~~2016~~ 2014 , which the commission may increase on an annual basis in an appropriate amount consistent with, but not limited to, the annual rate of inflation. The commission shall administer the self-generation incentive program until January 1, 2018. On January 1, 2018, the commission shall provide repayment of all unallocated funds collected pursuant to this section to reduce ratepayer costs.

(3) The commission shall administer solar technologies separately, pursuant to the California Solar Initiative adopted by the commission in Decisions 05-12-044 and 06-01-024, as modified by Article 1 (commencing with Section 2851) of Chapter 9 of Part 2 of this code, and Chapter 8.8 (commencing with Section 25780) of Division 15 of the Public Resources Code.

(b) 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 in emissions of greenhouse gases pursuant to the California Global Warming Solutions Act of 2006 (Division 25.5 (commencing with Section 38500) of the Health and Safety Code).

~~— (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 NO_x 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).~~

(c) (1) An eligible distributed energy project shall meet applicable State Air Resources Board certification standards and applicable air pollution control district or air quality management district permitting standards.

(2) An eligible distributed energy project subject to State Air Resources Board certification or district permitting shall be adequately maintained and serviced to ensure that during operation the resource continues to meet or exceed the certification or permitting requirement.

~~—(4)~~

(3) Notwithstanding paragraph (1), a project that does not meet the applicable NO_x 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 shall periodically evaluate the program to adjust the amount of rebates and other program design elements to achieve the following program goals and objectives:

(1) Cost-effective use of ratepayer funds to stimulate deployment of eligible technologies.

(2) Meeting environmental objectives, including reduction of emissions of greenhouse gases , with confirmation of emission reductions, in consultation with the State Air Resources Board

(3) In-state job growth.

(4) Development of market signals to provide incentives for private investment in California.

(5) Market transformation of most, if not all, eligible technologies by driving down prices and increasing performance of these technologies.

(6) Energy efficiency, peakload reduction, and load management.

(7) Equitable distribution of rebates to all eligible technologies and program participants , *including promoting geographic distribution of rebates throughout the state* .

(8) Assessment of technology penetration into underserved areas of the state that are environmentally blighted and economically stressed.

(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.

(i) *For an incentive payment received on the basis that the distributed energy project uses a renewable fuel, the commission shall require confirmation of the physical delivery of the renewable fuel to the project or to the California pipeline system, in an amount equivalent to the fuel requirements of the project for the life of the project.*

(j) *On a schedule to be determined by the commission, the commission shall transition the program to performance-based incentives, so that incentive payments are earned based on the actual electrical output of the distributed energy resource, consistent with the requirements imposed on the California Solar Initiative as*

described in Section 2851.

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.