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SEIA_CALSSA Comments re TPUD Application for Determination

Additional submitted attachment is included below.



August 5, 2019

Commissioner Andrew McAllister
Energy Commission Staff
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814

Re: Application for Photovoltaic System Requirement Determination by Trinity Public Utility District in Accordance with Section 10-109(k) of the California Code of Regulations, Title 24, Part 1 (Docket No. 19-BSTD-05)

Dear Commissioner McAllister and Staff,

I. INTRODUCTION

The California Solar & Storage Association (CALSSA) and the Solar Energy Industries Association (SEIA) (collectively the “Solar Parties”)¹ respectfully submit these comments in response to the application of Trinity Public Utility District (TPUD) for a Residential Photovoltaic Determination (Request or Application).

TPUD’s Application provide neither sufficient information and nor adequate evidence for the California Energy Commission (“Commission”) to effectively evaluate its request and grant an exemption to the Photovoltaic System Requirement (PV Requirement) as set forth in Title 24, Part 1, Chapter 10, Section 10-109(k) of the California Code of Regulations.

¹ SEIA is the national trade association for solar companies, representing 1,000+ companies across all market segments. As the national trade association of the U.S. solar energy industry, which now employs more than 260,000 Americans, we represent all organizations that promote, manufacture, install and support the development of solar energy. SEIA works with its member companies to build jobs and diversity, champion the use of cost-competitive solar in America, remove market barriers and educate the public on the benefits of solar.

Since 1977, the California Solar and Storage Association has advanced the common interests of the solar industry, helping make California’s solar market the most robust in the United States. Comprised of over 500 contractors, manufacturers, distributors, developers, engineers, consultants and educational organizations, CALSSA represents a diverse membership committed to growing the California solar industry, including storage and solar thermal technologies. CALSSA engages with local and state decision makers to ensure California remains a solar energy leader through good public policy and regulations that provide clarity, transparency, and certainty.

The comments herein represent the views of SEIA and CALSSA, and do not necessarily represent the views of their individual member companies.

Specifically, TPUD's application fails to include full information regarding the differences between its rules and the Commission's cost effectiveness determinations, fails to provide specific recommended limitations to the scope of the determination requested, and fails to provide specific eligibility criteria to determine what buildings would qualify for an exemption. The Solar Parties therefore ask that the Commission require TPUD to supplement its Application with this information before making its determination as to whether TPUD should be exempted from the PV Requirement.

The ultimate determination made by the Commission on TPUD's Request, and the process employed by the Commission in making its determination, will have significant ramifications for California and its ability to meet the environmental and other policy objectives that the PV Requirement is intended to advance. Namely, it is imperative that the Commission set a clear precedent that an application for determination will be subjected to a rigorous and transparent process that requires a strong factual showing along with a thorough analysis that an exemption is warranted consistent with the standard set forth in the code.

II. DISCUSSION

A. Background

The 2019 Building Energy Efficiency Standards require solar photovoltaic systems for new low-rise residential buildings. In establishing this requirement, the Commission undertook a rigorous stakeholder process and found single-family homes built with the 2019 standards will use about 7 percent less energy due to energy efficiency measures versus those built under the 2016 standards. Further, the Commission found that when rooftop solar electricity generation is factored in, homes built under the 2019 standards will reduce more carbon, more energy than homes without solar. Specifically, these new solar homes will pull approximately 53 percent less energy from the electrical grid than those built under the 2016 standards. The homes will also reduce greenhouse gas emissions by 700,000 metric tons over three years, equivalent to taking 115,000 fossil fuel cars off the road.²

The Commission also determined that the standards must be cost effective and bring value to the grid and environment.³ Therefore, in certain instances the Commission may provide an exemption to the PV requirement. To that end, Section 10-109(k) creates a process for requesting an exemption from the requirement, and a standard for considering such requests:

The Commission may, upon written application or its own motion, determine that the photovoltaic requirements in Section 150.1(c)14 shall not apply, if the Commission finds that the implementation of public agency rules regarding utility system costs and

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[https://ww2.energy.ca.gov/title24/2019standards/documents/2018 Title 24 2019 Building Standards FAQ.pdf](https://ww2.energy.ca.gov/title24/2019standards/documents/2018_Title_24_2019_Building_Standards_FAQ.pdf) at 1-2 (Mar. 2018) (accessed Jul. 21, 2019).

³ *Id.* at 2.

revenue requirements, compensation for customer-owned generation, or interconnection fees, causes the Commission's cost effectiveness conclusions, made pursuant to Public Resources Code 25402(b)(3), to not hold for particular buildings.

The Commission's Rule also prescribes the requirements for a request for exemption. Applications must "include full information regarding the differences between public agency rules and Commission cost effectiveness determinations. In addition, Applications must also include specific recommended limitations to the scope of the determination that is requested, and specific eligibility criteria to determine which "particular buildings" would qualify for the determination." Compliance with these requirements would allow the Commission to analyze the cost effectiveness of solar for a specific applicant and its residents or customers and the corresponding buildings in question; not necessarily a full waiver for a region or area.

Finally, and as a matter of law, the Commission must ensure that its decision to grant an exemption is supported by competent, substantial evidence so that the decision is not arbitrary and capricious. Under CCP § 1094.5, courts are generally deferential to agencies' decisions under the substantial evidence test, "however, courts will invalidate an agency's decision if the agency fails to make required findings or fails to demonstrate the analytical route between the evidence and the action."⁴

B. TPUD's Application Is Insufficient and Must Be Supplemented with the Required Information Set Forth in Section 10-109(k)

First, Section 10-109(k) requires that Applications "include full information regarding the differences between public agency rules and Energy Commission cost effectiveness determinations." TPUD's Application fails to provide full information to this effect, and is devoid of an economic analysis for the CEC to review.

In establishing the PV requirement, the Commission's analysis considered, among other things, the impact on builders, building designers and energy consultants, occupational safety and health, building owners and occupants, the creation of businesses and jobs, investment, innovation, state and local funds, energy savings and energy costs, and life-cycle cost and cost effectiveness.⁵

⁴ *West Chandler Blvd. Neighborhood Ass'n v. City of Los Angeles*, 198 Cal.App.4th 1506 (2011); The landmark California Supreme Court case *Topanga Association for a Scenic Community v. County of Los Angeles* articulated the purpose of findings in adjudicatory hearings as follows: Bridge the analytical gap between raw evidence" and an agency's ultimate decision (11 Cal.3d at 515); Enhance the efficiency and effectiveness of judicial review by explaining to the court what a decision means and how it was reached (11 Cal.3d at 516); Diminish the importance of judicial review by enhancing the integrity and rigor of administrative decision making by cities (11 Cal.3d at 516); Serve "a public relations function" by showing the parties and the interested public that the city made its decision in a careful, reasoned, and equitable manner (11 Cal.3d at 517).

⁵ Rooftop Solar PV System Report, Docket No. 17-BSTD-01 (filed Oct. 2, 2017).

By comparison, TPUD submitted a short letter that makes a passing reference to the Commission's analysis and provides TPUD's residential rates schedule as an attachment.⁶ TPUD simply states:

TPUD's low rates simply make rooftop solar uneconomic in TPUD's service area. The CEC, in adopting the rooftop solar mandate appears to have relied, in part, on cost effectiveness conclusions developed by its consultant, E3. Upon review of the E3 report, TPUD believes that some of the assumptions within this report are not correct as applied to TPUD. Trinity PUD's residential rate schedule is attached showing our residential energy charge, which ranges from \$.05545 per kWh to \$.07822 per kWh depending on the geographic area of our system.

TPUD makes an unsupported claim that rooftop solar is uneconomic in its service area. TPUD only provides its rate schedule, but no accompanying analysis connecting this evidence to the conclusion that solar is not cost effective. Otherwise stated, TPUD merely makes reference to its retail rates and asks for an exemption without any analysis. Further, TPUD fails to address or rebut any of the impacts analyzed by the Commission, most notably the life cycle cost and cost effectiveness relied upon by the Commission in reaching its conclusions. While it may be the case that PV is not cost effective in TPUD's service territory, the Commission should require TPUD to make an analytical showing to this effect that considers the analysis undertaken by the Commission. At a minimum, TPUD should be required to provide a comparison of their specific customer economics to those as previously calculated by the Commission for TPUD's specific climate zone and the utility-specific situation utilizing the same 30-year payback methodology, identifying all assumptions that differ from those used in the Commission's calculations and the overall result which may or may not support TPUD's conclusion.

Moreover, TPUD neither included specific recommended limitations to the scope of the determination requested, nor specific eligibility criteria to determine "which particular" buildings would qualify for the determination, as required by the code. Thus, it appears that TPUD's Application is a request to exempt all buildings, for all time, regardless of circumstances, because its Application lacks eligibility criteria. Considering these requirements are for low-rise residential buildings, additional detail showing the cost effectiveness comparison for these building types should be included in TPUD's comparison of their specific customer economics as previously mentioned.

TPUD should be required to provide specific recommended limitations to the scope of the determination requested, and specific eligibility criteria to determine what buildings would qualify for the determination.

⁶ Trinity Public Utility District's Request for a Residential Photovoltaic Determination at 1.

Finally, in order to grant flexibility where appropriate and ensure cost effective compliance options for regulated entities, the code allows for compliance with the PV requirement through an offsite solar project.⁷ A regulated entity may apply for approval to administer a community shared solar system to provide partial or total compliance with the PV requirement. Clearly, if after the requisite analysis, onsite solar were found not to be cost effective in TPUD service territory, compliance through offsite solar would be more consistent with the PV requirement than a blanket exemption from the code. Thus, the Solar Parties recommend that in addition to the showing discussed above regarding the cost effectiveness of onsite PV in TPUD service territory, the Commission require TPUD to analyze and make a showing in the record as to whether offsite solar would provide a cost effective compliance alternative to the onsite PV requirement.

III. REQUESTED RELIEF

The Solar Parties ask the Commission to require TPUD to file an amended Application that complies with Section 10-109(k). Based on the information TPUD submitted, it is impossible for the Solar Parties or the Commission to determine whether TPUD is entitled to an exemption, to which buildings the exemption would apply, and how long the exemption would be in effect.

Further, the Solar Parties ask that the Commission subject TPUD's amended application to scrutiny that is sufficiently rigorous to ensure that an exemption, if it is granted, is based on a factual and analytical showing that is consistent with the standard set forth in the code. At a minimum, TPUD should be required to provide a comparison of the customer economics as previously calculated by the Commission for TPUD's specific climate zone and the utility-specific situation utilizing the same 30-year payback methodology, identifying all assumptions that differ from those used in the Commission's calculations. And, TPUD should be required to provide specific recommended limitations to the scope of the determination requested, and specific eligibility criteria to determine what buildings would qualify for the determination.

As the Commission has noted, "the California Public Utilities Commission (CPUC), the California Energy Commission (CEC), and the major California utilities have collaboratively endorsed the goal that all new residential construction will be zero net energy (ZNE) by 2020 (CPUC 2008, 2011). For individual homes to achieve ZNE, they must include a source of renewable power generation. Solar PV is currently the only broadly economical renewable generation option for individual homes and is therefore proposed here as a prescriptive compliance approach."⁸

Finally, the Solar Parties recommend that before granting a waiver, the Commission require the TPUD to consider whether an offsite solar compliance option is a cost effective alternative to the onsite PV requirement.

⁷ Title 24, Part 1, Chapter 10, Section 10-115(a)

⁸ Rooftop Solar PV System Report, Docket No. 17-BSTD-01 at 12 (filed Oct. 2, 2017).

IV. CONCLUSION

The Solar Parties appreciate the opportunity to comment on the TPUD's Application and look forward to engaging further in this process to help ensure the success of the PV requirement and state policy objectives this requirement is intended to further.

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