

DOCKETED

Docket Number:	19-BSTD-08
Project Title:	Community Shared System Applications
TN #:	231981
Document Title:	SEIA Comments re Revised SMUD Community Solar Application
Description:	N/A
Filer:	System
Organization:	Solar Energy Industry Association (SEIA)/Rick Umoff
Submitter Role:	Public
Submission Date:	2/7/2020 11:26:11 AM
Docketed Date:	2/7/2020

Comment Received From: Rick Umoff
Submitted On: 2/7/2020
Docket Number: 19-BSTD-08

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Additional submitted attachment is included below.



February 7, 2020

California Energy Commission
1516 - 9th Street
Sacramento, CA 95814

Docket number: 19-BSTD-08

Subject SMUD's Revised Application (December 2019) to Administer a Community Shared Solar System as an Alternative to the Onsite Photovoltaic Requirements for Newly Constructed Low-Rise Residential Buildings in the 2019 Building Energy Efficiency Standards (BEES)

Dear Commissioners:

The Solar Energy Industry Association (SEIA®) submits these comments in response to the Sacramento Municipal Utility District's (SMUD's) recent revised application posted to the docket January 17, 2020.¹

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.

SMUD has submitted a revised application to address specific areas for which the California Energy Commission (CEC) received numerous comments including those from SEIA and as summarized in the CEC Staff's Review of SMUD's Revised Application.² SEIA met with SMUD several times over the course of the CEC's deferral and appreciates the company's revised

¹ The comments herein represent the view of SEIA and not any individual member company. [SMUD's Revised Application for SolarShare Program](#) This document is SMUD's revised application to be a Section 10-115 administrator for the "Neighborhood SolarShares® program", hereinafter referred to also as the SolarShares program.

² [Notice of Availability and Summary of Staff's Review of SMUD's Revised Application To Administer a Community Shared Solar System as an Alternative to the Onsite Photovoltaic Requirements for Newly Constructed Low-Rise Residential Buildings in the 2019 Building Energy Efficiency Standards](#)

application. However, SEIA remains concerned with certain aspects of SMUD’s revised proposal.

POLICY SUMMARY

In short, SEIA fully supports community solar and believes putting sensible limits on the size, location and market share of community solar projects avoids the unintended consequence of undercutting the significant progress the homebuilding industry has made in establishing on-site residential solar as a standard feature of new California homes. The CEC can continue to build upon the success of the New Solar Homes Partnership, which facilitated billions of dollars of clean-energy investment over the past decade, and ensure onsite solar that makes California homeowners an integral part of the state’s energy solution.

ANALYSIS

To provide flexibility to builders under the Title 24 solar requirement, the Commission approved an alternative compliance pathway which would allow community-scale solar systems (hereinafter referred to as “community solar” or “community shared solar electric generation systems”) to be paired with new construction if certain criteria are met.³ The clear intent was to enable an **alternative** that would capture similar and equivalent benefits as onsite solar while continuing to enable compliance through rooftop PV.⁴ SEIA supported this option recognizing that locally sited and appropriately sized shared solar systems can provide similar benefits to rooftop PV. In considering SMUD’s proposal and other proposals for offsite compliance options, the Commission should carefully consider whether the proposed offsite option offers equivalent or similar benefits to participating residents and fully satisfies the goals of the original requirement for PV on all new low-rise residential buildings.

SMUD’s revised proposal also fails to meet practical concerns regarding customer choice. For example, SMUD’s proposal appears to contemplate a home-by-home approach for determining which homes would be part of SMUD’s program. While this approach, if properly implemented to ensure informed and meaningful customer choice, might work with custom new residential construction, production home builders and solar providers may wish to develop solar standard new home communities, as is the practice today. It is not clear whether or how SMUD’s proposal would accommodate existing practices. Regardless of the Commission’s ultimate

³ Section 10-115 – Community Shared Solar Electric Generation System or Community Shared Battery Storage System Compliance Option for Onsite Electric Generation or Battery Storage Requirements, referred to in these comments as “community solar”

⁴ Frequently Asked Questions, 2019 Building Energy Efficiency Standards at 4 (Importantly, the 2019 Standards allow community-scale PV as an **alternative renewable resource to onsite PV systems**); In the CEC staff presentation on May 9, 2018, Zero Net Energy lead, Maziar Shirakh presented that the standards’ 2019 Benefits - Path to the Future highlighted the CEC’s intention to “promote demand flexibility and self-utilization of PV generation” among other benefits; Section 7.4.1 of the *2019 Residential Compliance Manual* states, “entities who wish to serve as administrators of a proposed Community Shared Solar Electric Generation System must...ensure that the Community Shared Solar Generation System provides equivalent benefits to the residential building expected to occur if photovoltaics or batteries had been installed on the building site.”

decision, it is important that all market participants have a clear path forward and SMUD's proposal address practical issues that can already be identified.

Therefore, in consideration of SMUD's application, the Commission should provide further guidance on Section 10-115 to ensure that the unique benefits of distributed solar accrue to customers through implementation of the PV mandate as intended. Specifically, SEIA recommends that the Commission direct SMUD to address the following issues.

A. The Commission should ensure that SMUD Customers retain the optionality to add rooftop solar even if they originally subscribe to the SolarShares program by the homebuilder

In its revised application, SMUD states on page 6 that:

SMUD's program will offer homebuilders and developers choice. While SMUD's original Neighborhood SolarShares program design did not constrain builders or developers to enroll all homes in a development (that is a choice of the developer), SMUD commits to assisting participating developers/builders to facilitate offering a point of purchase choice option for prospective homebuyers between compliant rooftop solar and Neighborhood SolarShares participation.

Further, on page 18 of the revised application, SMUD states:

***Participating customer** means a SMUD customer for energy service that occupies, either as an owner or tenant, a participating home during the 20-year period starting with the first day of occupancy by the first customer that takes service in the participating home. Each participating customer is obligated to take service from SMUD under the Commission-approved SolarShares program for the SolarShares that were allocated to the participating home to comply with the 2019 Building Standards.*

Page 14 of the revised application addresses comments that stakeholders provided regarding the 20-year requirement for durability in Section 10-115 (a) 5 of the 2019 BEES standard.

***20-year participation requirement:** Some stakeholders raised the issue that SMUD's Neighborhood SolarShares program constrains consumer choice by "locking up" participants for 20 years. The 2019 Building Standards require the community-shared solar system provide energy savings benefits dedicated to the building for a period no less than twenty (20) years. Accordingly, SMUD cannot address this issue in a revised application, absent modification to the Building Code through a formal rulemaking process. To the extent that changes are made to the Building Standards that modifies the durability requirement, SMUD will revisit its program.*

While the 2019 Building Energy Efficiency Standards (BEES) include a durability clause to ensure the community solar system will provide the energy savings benefits required for the

compliance period, the requirements do not preclude a customer from switching to rooftop at a later date to comply with the PV requirement.

The Commission can utilize its broad authority as the implementing agency of Title 24 to implement the code in a manner that is reasonable and consistent with the spirit and intent of the code.⁵ Although SMUD attempts to portray the code as clearly defined in all areas, the reality is that there are portions of the code, including Section 10-115, that are intentionally broad or overly-vague so not to foreclose clever solutions. This intentional, and overly broad language, was designed to give the flexibility to the Commission when acting on petitions. Thus, the Commission is fully empowered to further refine its approach and define “community solar.”⁶

Should the homeowner decide that rooftop solar is more advantageous and provides greater benefits than the SolarShares program, that homeowner should retain the right to choose rooftop solar – just as a homeowner may choose to replace an energy-efficient water heater or furnace with a different model. In fact, the choice to install rooftop solar at a later date would enable the homeowner, and the building, to enjoy the benefits of solar energy for even longer than required by the 20-year durability clause for community solar, since it is generally common in the solar industry for PV systems to have a 25-year performance warranty and it is likely that these systems will have an even longer operational life.

Further, providing customers the option to switch after they have been enrolled in the SolarShares program is consistent with the Commission’s goal of empowering customers to take advantage of the benefits of onsite solar and storage. Failure to clarify that customers may opt out of SMUD’s program at any time would undermine this central objective of the solar mandate.

Thus, SEIA recommends that the Commission require SMUD’s application to include an the optionality provision for homeowners and building owners to opt-out of the SolarShares program should they choose to install onsite solar and storage at any time during the compliance period.

⁵ Section 25402 of the California Public Resources Code authorizes the Energy Commission to develop and maintain Energy Standards for new buildings. This section of the code, commonly referred to as the Warren-Alquist Act (the act), is direction from the Legislature on the development of Energy Standards in California; 2002 Cal. PUC LEXIS 117 (Cal. P.U.C. February 7, 2002) (Pursuant to the Chevron Doctrine an agency’s interpretation of the statutes it is empowered to enforce, and of its own regulations, should be given deference by a reviewing court, unless the interpretation is arbitrary, capricious, or manifestly contrary to the statute or regulation. (*Chevron U.S.A. v. Natural Resources Defense Council* (1984) 467 U.S. 837, 844, 864-866;)

⁶ See Commissioner McAllister’s statement regarding community solar on the CEC’s day of adoption of Title 24, Part 6, Section 10-115, ““To come up with other ways of compliance, compliance pathways that get us new green energy, **either on the property or out somewhere nearby in the community** or via **some other options that they’ll come up with**. So there’s a lot of creativity, actually out there. And the future bodes, I think it bodes very well for the future to **continue to reduce costs and continue to figure out how to get additive green energy in our communities, which is what it’s all about.**” page 75 of the California Energy Commission’s hearing transcript from May 9, 2018; emphasis added.

B. The Commission should ensure that SMUD includes specific provisions and actions to serve disadvantaged and low-middle income communities

In its comments, SMUD states that *“as the Neighborhood SolarShares program proceeds, SMUD will consider what aspects of the program can be developed in the context of our broader programs to support disadvantaged communities. For example, SMUD may include consideration of disadvantaged communities when siting and developing new resources for the program.”*

Solar can provide long-term financial relief to families struggling with high and unpredictable energy costs, living-wage jobs, and a source of clean, local energy sited in communities that have been disproportionately impacted by traditional power generation.

Therefore, rather than waiting, SMUD should be encouraged to begin this process now. The Commission should direct SMUD to work with key stakeholders, such as local community leaders and subject matter experts including Grid Alternatives, Vote Solar, and the Center for Social Inclusion to begin developing options to serve low-income customers with a community solar solution.⁷

C. The Commission should conduct annual market monitoring to prevent unintended consequences from SMUD’s SolarShares program

One of the primary concerns that many stakeholders, including SEIA, have expressed regarding SMUD’s application is that the size and structure of the program may make it more difficult for home occupants to install solar onsite. As SEIA noted in its comments on SMUD’s original application, the Commission envisioned community solar to be “a few kW to a few MWs,” as stated in its FAQs.⁸ SMUD and the Commission should not ignore this guidance. This is especially true against the backdrop of the approximately 2,300 residences built every year in SMUD territory (1,600 residential homes and 700 multifamily homes).⁹ At this rate of construction, the 20 MW projects SMUD has proposed could provide compliance for the next several years in place of rooftop solar.

SMUD’s SolarShares program may be attractive to builders seeking to minimize upfront cost even as it provides much less benefit to the ultimate residents of the buildings. However, SEIA does not believe it was the Commission’s intent to provide a community solar compliance pathway that results in less benefits accruing to new homeowners than originally envisioned by the solar mandate.

Therefore, SEIA recommends that the Commission review SMUD’s program on a regular basis to ensure that it does not stifle the ability of customers to install onsite solar and storage

⁷ SEIA recommends that SMUD consider policy options discussed in the [Low-Income Solar Policy Guide](#)

⁸ Frequently Asked Questions, 2019 Building Energy Efficiency Standards at 4

⁹ <https://www.sacbee.com/news/business/real-estate-news/article230210744.html>

resources in its territory. If the Commission finds the adoption rate of onsite resources to be much lower than participation in SolarShares, the Commission should work with SMUD to revise its program to ensure the objectives of the solar mandate are met.

D. The Commission should encourage SMUD to prioritize local resilience when selecting projects for SolarShares

SEIA is encouraged by the Commission's recognition that community solar projects should be locally sited, and urges the Commission to emphasize that projects should be sited to provide community resilience benefits, as this one of the unique benefits that distributed solar can provide.¹⁰

CONCLUSION

In consideration of SMUD's application, SEIA urges the Commission to require SMUD to address the remaining concerns raised herein. We appreciate the opportunity to continue to collaborate and comment on these important community solar provisions to ensure that the goals of the 2019 BEES standards are met.

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¹⁰ Notice of Availability and Summary of Staff's Review of SMUD's Revised Application at 5