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Is SolarShares precedent-setting

Additional submitted attachment is included below.

The Potential for SMUD's SolarShares Program to Serve as a Model for Investor-Owned Utilities and Community Choice Aggregators

February 18, 2020

On February 20, 2020 the California Energy Commission (CEC) is scheduled to vote on whether to approve the Sacramento Municipal Utility District's (SMUD) proposal for a community solar program, referred to as "SolarShares," as a compliance option for Title 24. Authorization of the program in its current form may result in many home builders in SMUD's territory foregoing rooftop solar installations in favor of SolarShares. If approved, other publicly-owned utilities (POUs) could quickly submit similar proposals for the CEC's consideration.[1] CALSSA is concerned that in addition to the POUs, the investor-owned utilities (IOUs) and Community Choice Aggregators (CCAs) could submit similar proposals. The adoption of the SolarShares model by other electricity providers across the state threatens to drastically reduce the amount of rooftop solar anticipated at the time the CEC adopted the 2019 Title 24 code.

Many of SolarShares' design features are very similar to the Enhanced Community Renewables (ECR) programs managed by the IOUs and overseen by the California Public Utilities Commission (CPUC). However, there are key differences that prevent the ECR programs, in their current form, from complying with two Title 24 requirements: guaranteed bill savings and the 20-year participation obligation. Below, we address four key questions regarding the potential for SolarShares to serve as a template for the IOUs and CCAs:

- Could the IOUs modify their ECR programs to guarantee bill savings for properties subject to Title 24?
- Could ECR be modified to require that properties participate for a minimum of 20 years?
- How quickly could an IOU launch a new community solar option after submittal of an application to the CPUC?
- Since the CCAs are subject to less regulatory oversight by the CPUC than the IOUs, what, if any, restrictions may prevent the CCAs from establishing a program similar to SolarShares?

Our analysis that there are no impediments that necessarily prevent IOUs and CCAs from adopting programs similar to SolarShares. The IOUs could realistically have similar programs in place by late 2021, which the CCAs, which are less-regulated, could implement similar programs more quickly.

[1] Los Angeles Department of Water and Power submitted a letter of support of SolarShares on January 31, 2020.

Guaranteed Bill Savings Requirement

SMUD states in its proposal that homes participating in SolarShares will receive minimum yearly bill savings of $10 per kW of solar capacity allocated. SMUD included this element to meet the Title 24 requirement that a community solar option produce virtual energy reduction credits or payments to the building and that the credits or payments be cost-effective (i.e., yield financial benefits greater than the additional participation cost) for the building occupant.[2]

In implementing ECR, the CPUC approved a structure that allows third-party community solar developers to contract directly with participants. Since the IOUs do not have access to those contracts, they cannot ensure that participants necessarily save money on their bills. Moreover, the authorizing statute also stipulated that the CPUC ensure "nonparticipant ratepayer indifference." The CPUC's implementation of this requirement has made it nearly impossible for interested community solar developers to offer non-premium pricing due to the relatively low bill credits that participants receive from the utilities.

While it is challenging for an IOU-administered program to ensure bill savings under the existing ECR rules, the IOUs could propose alternatives to ECR that would allow them to do so. There is some precedent for such a program. In May 2019, the CPUC approved final program details for an alternative community solar option, referred to as the Community Solar Green Tariff (CSGT), that provides guaranteed bill savings of 20%. The CPUC reasoned that higher bill credits could be offered because the program is only available to residents of disadvantaged communities and was developed in response to statutory direction in the NEM successor bill.

The IOUs could raise two arguments in support of their ability to offer higher bill credits for new homes subject to the 2019 code than are allowed under ECR. First, they could argue that, as a discretionary program distinct from the programs adopted pursuant to Pub. Util Code Sec. 2833, a community solar program designed for Title 24 purposes would not be subject to the Sec. 2833 requirements. Second, they could argue that even if the ratepayer indifference criterion does apply, non-participating ratepayers would benefit from a program that bestows lower benefits to participants than the NEM tariff that the buildings would otherwise be enrolled in. In other words, because the program would be limited to new homes subject to Title 24, the baseline for ratepayer indifference is not expected utility revenues from customers who would otherwise be enrolled in a standard tariff but only from customers who would otherwise benefit from NEM.

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[2] As a threshold matter, SMUD appears to interpret Sec. 10-115(a)(3) of Title 24 as merely requiring compliant community solar options to ensure that occupants of properties subject to the 2019 code receive some net benefit from participation, even a relatively immaterial benefit. As CALSSA and our counsel have explained in comments, we believe Sec. 10-115(a)(3) requires bill savings equivalent to those provided by customer-sited solar systems. The analysis herein is based on the assumption that the CEC accepts SMUD's interpretation. If the CEC were to reject SMUD's interpretation, neither SMUD nor the IOUs would likely have much interest in supporting a community solar option since the purpose of SMUD's proposed community solar structure is to reduce the benefits that accrue to the buildings constructed under the Title 24 requirements.

20-Year Participation Obligation

SMUD explains that in order to meet Title 24's "durability" criterion, new homes enrolled in SolarShares will be required to participate for at least 20 years. The CPUC's NEM 2 decision offers an example of an analogous restriction that could apply to a Title 24 community solar option. Under the NEM 2 structure that the CPUC adopted in 2016, residential customers who install solar and who enroll in the NEM successor are prohibited from taking service on a non-TOU rate. This prohibition continues to apply regardless of whether a new occupant moves into the home. An IOU option similar to SolarShares could conceivably impose a similar restriction.

Apart from CPUC-approved rules that directly regulate IOU programs, other contractual terms could achieve the same effect. Because the ECR rules stipulate that third-party developers can enter into service contracts directly with participants, contractual terms in the customer service agreements may require the initial homeowner to pass on the participation agreement as a condition of the sale of the home. Third-party owned solar systems installed under lease or power purchase agreements typically contain such conditions.

Implementation Timeline

Because many of the program features would presumably be based on ECR, the CPUC could approve an application for Title 24 compliant version on a more expedited timeframe than it does for many applications. By drawing on previously-approved program elements, the CPUC could plausibly issue a final decision within a year of application submission. Including time for approval of implementation advice letters and issuance of solicitation materials, a Title 24 community solar program could be operational by late 2021.

CCA Considerations

It is important to note that none of the restrictions that apply to an IOU-administered program would apply to CCAs, which are subject to far less regulatory oversight by the CPUC. CCAs do not need CPUC approval for a discretionary community solar program nor are CCAs bound by ratepayer indifference principles. Additionally, CCAs could adopt community solar programs more quickly than the IOUs because they do not need CPUC authorization. CCA service is growing rapidly, with most of the coastal and Bay Area counties either currently served by CCAs or with implementation plans underway. With the prospect of rapid replication by CCAs, a decision to approve SolarShares could produce far-ranging impacts for rooftop solar across the state.