

ASSEMBLY THIRD READING
AB 1139 (Lorena Gonzalez and Carrillo)
As Amended May 11, 2021
Majority vote

SUMMARY

This bill directs the California Public Utilities Commission (CPUC) to adopt a new net-energy metering (NEM) standard contract or tariff, which the bill defines as the "replacement tariff," by February 1, 2022, and requires an electrical investor-owned utility (IOU) to offer the replacement tariff to an eligible customer-generator by December 31, 2023. If the CPUC fails to act, the CPUC is required to adopt a new tariff under terms prescribed by this bill.

Major Provisions

- 1) Requires the CPUC to adopt a new NEM tariff by February 1, 2022, and, if it fails to act, prescribes the terms of a new tariff that shall be instituted by the IOUs by December 31, 2023, based on the costs and benefits of the renewable electrical generation facility for nonparticipating ratepayers, that cost-effectively achieves the policy goals and objectives of the state, and that specific alternatives designed for growth among residential customers in disadvantaged communities are available.
- 2) Requires any customer-generator with a NEM tariff under existing law to be transferred to the replacement tariff no later than ten years from the date that customer first received service pursuant to the prior tariff.
- 3) Asserts construction of any renewable electrical generation facility after December 31, 2023, that is to receive service pursuant to the NEM replacement tariff is a public works project.
- 4) Requires the CPUC to include in its annual report to the Legislature a report on progress made to grow use of distributed energy resources among residential customers in disadvantaged communities.

COMMENTS

The controversy associated with NEM is that the customers with NEM (most of which have roof-top solar) are subsidized by customers without NEM. Extensive study has occurred for several years without any refutation of the cost shift. All residential non-NEM or non-participating customers, including CARE customers, shoulder an additional rate burden as a result of the cost shift from NEM customers. According to Next10 and the Energy Institute at Haas:

...residential customers with [rooftop solar] are credited at the retail electricity rate for every kWh of solar electricity they generate. This effectively shifts the burden of fixed cost recovery onto customers that have not adopted [rooftop solar]...this confers a generous subsidy because residential rates significantly exceed social marginal cost (which includes, among other components, the estimated social cost of greenhouse gas emissions). Importantly, the growing gap between the retail rate and marginal cost reflects costs that are not avoided—only shifted—when a household adopts [rooftop solar].

The Legislature attempted to address the cost-shift issue with the passage of AB 327 (Perea), Chapter 611, Statutes of 2013. The CPUC was directed to make a number of reforms to the NEM tariff and in January 2016, issued a decision to require a customer on the NEM tariff to: (a) pay one-time interconnection fee to cover the costs of interconnection to the electric grid; (b) pay monthly nonbypassable charges that support "public-purpose programs," such as low-income rate subsidies; and (c) be on a time-of-use (TOU) rate schedule, so that the customer is compensated for the electricity the customer exports to the grid in an amount equal to the retail price of electricity when the electricity is generated. The NEM tariff, following the CPUC's changes, became known as NEM 2.0 and decreased the value of the NEM tariff to rooftop solar customers but also reduced the cost shift of NEM for non-participating ratepayers.

However, critics assert the cost of the NEM 2.0 subsidy to ratepayers who do not have rooftop solar continues and exceeds the benefits those ratepayers receive from the existence of NEM-subsidized rooftop solar. In addition, many note that ratepayers who install rooftop solar and enjoy the NEM-subsidized rates tend to be more affluent than ratepayers in general.

The CPUC has an open proceeding with the intention of adopting a replacement tariff for NEM 2.0 and indicates it should reach a decision later this year. Should that occur, the replacement tariff terms in this bill would not be operative but all existing NEM customers would be shifted to the replacement tariff ten years from the date that they took service under former NEM tariffs. Additionally, all systems installed and interconnected under the replacement tariff would be considered a public works project.

According to the Author

It's entirely unfair that under net energy metering working class families and families of color who have not had the same access to rooftop solar have actually had to foot the bill for this industry and pay higher energy bills. This inequitable cost shift on to non-solar customers is only expected to continue and increase if we do not make changes to the system. The Solar Equity and Ratepayer Relief Act will gradually reform the energy rate structures to ensure rooftop solar customers pay their fair share.

Arguments in Support

The California State Association of Electrical Workers and the Coalition of California Utility Employee are the sponsors of this bill with the intent of ending the "NEM unjust cost shift" and begin to reform the "Reverse Robin Hood nature of our solar programs that take from the poor and gives to the wealthy...giving all ratepayers a rate cut on their electric rates." They report that "NEM Customers are not paying their share of system costs, so the 91% of non-NEM customers are paying all the costs for the 9% who are in NEM...This wind fall profit [the difference between the wholesale and retail rate] amounts to \$3 Billion in 2021 and will grow to \$4.5 Billion in 4 short years. Again, the 91% paying this windfall to the 9%."

Arguments in Opposition

Several opponents recognize the need for a replacement NEM tariff but object to the terms of the "backstop" or replacement tariff that would be triggered by this bill if the CPUC fails to act to February 1, 2022. Environmental groups opine that the terms "undervalue established benefits of distributed generation, removing a consideration in developing a future NEM structure intended to ensure deployment continues at levels necessary to California's climate goals." The bill was substantially amended in policy committee so there is little correspondence on the current version. However, the general sentiment has been that the Legislature should not act and allow

the CPUC to continue its work on a replacement tariff. "Depending on the outcome of those proceedings, there may be a need for the state legislature to weigh in on the future of net energy metering policy but undertaking such an effort while a proceeding is open and active would be inappropriate."

FISCAL COMMENTS

According to the Assembly Appropriations Committee, the CPUC has an open proceeding to adopt a revised NEM tariff. According to the CPUC's "Net Energy Metering Successor Proceeding Scoping Memo," the CPUC expects to release a proposed decision on the proceeding by the third or fourth quarter of this calendar year. However, this bill would entail costs for the CPUC, should it fail to propose a replacement NEM tariff as part of that decision or fail to adopt a replacement tariff by February 1, 2022, in which case the bill would result in the CPUC redirecting existing staff and resources toward adopting the replacement tariff, as required by the bill.

VOTES

ASM UTILITIES AND ENERGY: 12-0-3

YES: Cristina Garcia, Patterson, Burke, Carrillo, Chen, Eduardo Garcia, Chau, Mayes, Quirk, Reyes, Santiago, Ting

ABS, ABST OR NV: Bauer-Kahan, Cunningham, Muratsuchi

ASM APPROPRIATIONS: 10-4-2

YES: Lorena Gonzalez, Calderon, Carrillo, Chau, Eduardo Garcia, Quirk, Robert Rivas, Akilah Weber, Holden, Luz Rivas

NO: Bigelow, Megan Dahle, Davies, Levine

ABS, ABST OR NV: Fong, Gabriel

UPDATED

VERSION: May 11, 2021

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FN: 0000681