
THIRD READING

Bill No: AB 2143
Author: Carrillo (D), et al.
Amended: 8/25/22 in Senate
Vote: 21

SENATE ENERGY, U. & C. COMMITTEE: 11-3, 6/15/22
AYES: Hueso, Becker, Bradford, Dodd, Eggman, Gonzalez, Hertzberg, McGuire,
Min, Portantino, Stern
NOES: Dahle, Borgeas, Grove

SENATE LABOR, PUB. EMP. & RET. COMMITTEE: 3-2, 6/29/22
AYES: Cortese, Durazo, Newman
NOES: Ochoa Bogh, Wiener

SENATE APPROPRIATIONS COMMITTEE: 5-2, 8/11/22
AYES: Portantino, Bradford, Laird, McGuire, Wieckowski
NOES: Bates, Jones

ASSEMBLY FLOOR: 55-18, 5/25/22 - See last page for vote

SUBJECT: Net energy metering: construction of renewable electrical generation
facilities: prevailing wage

SOURCE: California State Association of Electrical Workers
Coalition of California Utility Employees

DIGEST: This bill applies, after December 31, 2023, public works project requirements, specifically prevailing wages, for renewable energy installations that receive service through an electric utility's net energy metering (NEM) tariff, except as specified.

Senate Floor Amendments of 8/25/22 exempt existing public works project from the provisions of this bill, further exempt modular homes and multi-unit housing, and specify that a violation of the provisions of this bill must be "willful" in order to disqualify an eligible customer-generator from receiving service under the NEM tariff.

ANALYSIS:

Existing law:

- 1) Establishes and vests the California Public Utilities Commission (CPUC) with regulatory authority over public utilities, including electrical corporations. (Article XII of the California Constitution)
- 2) Requires every electric utility, defined to include; electrical corporations, local publicly owned electric utilities, and electrical cooperatives, to develop a standard contract or tariff for NEM, for generation by a renewable electrical generation facility, and to make this contract or tariff available to eligible customer-generators, until the total rated generating capacity used by eligible customer generators exceeds five percent of the electric utility's aggregate customer peak demand. (Public Utilities Code §2827)
- 3) Requires the CPUC, for a large electrical corporation, as defined, to have developed a second standard contract or tariff to provide NEM to additional eligible customer-generators in the electrical corporation's service territory and imposes no limitation on the number of new eligible customer-generators. (Public Utilities Code §2827.1)
- 4) Imposes various requirements on public works projects, including a requirement that, at minimum, all workers employed on a public works project be paid the general prevailing rate of per diem wages for work of a similar character in the locality in which a public work is performed. Defines "public work" to include, among other things, construction, alteration, demolition, or installation or repair work done under contract and paid for, in whole or in part, out of public funds. (Labor Code §1720)
- 5) Requires that not less than the general prevailing rate of per diem wages be paid to all workers employed on a "public works" project costing over \$1,000 dollars and imposes misdemeanor penalties for violation of this requirement. (Labor Code §1771)
- 6) Requires that the applicable general prevailing rate of per diem wages be determined by the Director of the Department of Industrial Relations (DIR) for each locality in which the public work is to be performed and for each type of worker needed to execute the public works project. (Labor Code §1773)
- 7) Defines "Skilled and trained workforce" to mean a workforce where all the workers performing work in an apprenticeable occupation, as defined, in the

building and construction trades are either skilled journeypersons or apprentices registered in an apprenticeship program approved by the chief of the Division of Apprenticeship Standards. (Public Contract Code §2601)

- 8) Requires the CPUC to submit various reports to the Legislature. (Public Utilities Code §910, *et seq.*)

This bill:

- 1) Applies public works project requirements to the construction of any renewable electrical generation facility, and any associated battery storage, after December 31, 2023, that receives service pursuant to the 2nd standard contract or tariff for NEM, except a residential facility that will have a maximum generating capacity of 15 kilowatts (kW) or less of electricity or that will be installed on a single family home (2) a project that is already a public work under existing law, or (3) a facility that serves only a modular home, a modular home community, or multiunit housing that has 2 or fewer stories.
- 2) Requires a contractor who enters into a contract to perform work on the renewable electrical generation facility or associated battery storage to pay each construction worker employed in the execution of the work, at minimum, the general prevailing rate of per diem wages and each apprentice, at minimum, the applicable apprentice prevailing rate.
- 3) Authorizes enforcement mechanisms of the wage requirements.
- 4) Provides that, if a willful violation of this bill's requirements has been enforced against a contractor for the construction of a renewable electrical generation facility that was constructed in violation of the bill's requirements using those mechanisms, the facility is not eligible for to receive service pursuant to those standard contracts and tariffs.
- 5) Requires the CPUC to annually publish on its internet website and submit to the Legislature a report on the progress made to grow the use of distributed energy resources among residential customers in disadvantaged communities and in low-income households, and an aggregated list of all renewable electrical generation facilities that began to receive service pursuant to a NEM contract or tariff during the preceding calendar year.

Background

Net Energy Metering. Electric utility customers have long helped fund the cost of customer-sited electricity generation from renewable resources, which is largely

electricity generated by rooftop solar. The vast majority of rooftop solar customers are enrolled in NEM (NEM 1.0) or NEM Successor (NEM 2.0) tariffs, established under Public Utilities Code §§2827 and 2827.1, respectively. The NEM program supports onsite renewable energy (largely rooftop solar) installations designed to offset a portion, or all, of the customer's electrical energy usage. Under NEM, customers receive a bill credit (in dollars) based on the retail rate of electricity (including generation, transmission, and distribution rate components) for any excess generation (in kWh) that is exported back to the electric grid. In time periods when a customer's bill is negative (because the amount of energy the solar system exported to the electric grid exceeded the amount of energy consumed by the customer), the utility bill credits are carried forward up to one year, at which point customers may elect to receive net surplus compensation for any electricity produced in excess of on-site energy usage. Customers taking service under NEM 2.0 pay the cost to connect to the grid, take service on a "time-of-use" rate plan, and pay "non-bypassable" charges that are not offset with surplus energy credits.

New NEM tariff CPUC decision still pending. On August 2020, the CPUC initiated Rulemaking (R. 20-08-020) to develop a successor to the NEM 2.0 tariff, as part of the requirement in statute and a commitment in a previous decision to review the current tariff to address the shift in costs to nonparticipating customers. The CPUC released a proposed decision in December 2021. However, a revised proposed decision is pending as the CPUC is currently soliciting additional stakeholder comments.

Public works projects. Public works projects are, generally, those funded in part by public funds. All workers employed on public works projects must be paid the prevailing wage determined by the Director of the DIR, according to the type of work and location of the project. In California, the prevailing wage rate is an hourly rate paid on public works projects that is often set in the terms of a collective bargaining agreement. Prevailing wage creates a level playing field by requiring an across-the-board rate for all bidders on publically subsidized projects.

Rooftop solar wages. Residential rooftop solar installation does not currently require payment of the prevailing wage, as such, rooftop solar installers are generally making below the wage rate paid to other building and construction trade workers. According to the Bureau of Labor Statistics, Occupational Employment Statistics, the median hourly wage in 2015 for a solar installer was a little under \$21 an hour. According to a UC Berkeley Labor Center report on solar jobs: "residential rooftop solar companies, whether they directly employ workers or subcontract out the work to other installation crews, essentially compete in the residential construction market where barriers to entry are low, unionized

contractors are absent, and contractors who comply with employment laws and building codes must compete with many who skirt these regulations. All of this puts downward pressure on wages.”

Comments

AB 2143. This bill expands the application of “public works” definition to include NEM solar and associated battery storage installations greater than 15 kW that are not located on a single family home, modular home, two-story multi-unit housing, or is an existing public work project. This bill requires specified reporting by contractors to the CPUC and specified payroll reporting by the CPUC and enforcement mechanisms by the Labor Commissioner, workers, and others. This bill also requires the CPUC to report on the progress made to grow the use of distributed energy resources among residential customers in disadvantaged communities and low-income households.

Defining public works projects. As noted above, the mostly solar rooftop renewable energy projects subject to this bill compensate customers through a utility NEM tariff paid for by other electric utility customers. Although these projects are not necessarily funded by public dollars, the proponents of this bill argue that applying public works project definition and prevailing wage requirements is warranted as NEM projects over 15 kW tend to be the larger, commercial projects and rooftop solar installers should be compensated prevailing wages. Those in opposition to this bill argue that such an expansion of the application of public works definition will have a myriad of consequences, including misapplying public works to non-public funded projects, and slowing down California’s clean energy goals by increasing costs of NEM projects. In data provided by a solar installation company for projects located in inland southern California, they allege that the potential costs increases of applying public works prevailing wages could result in quadrupling the contractors’ costs associated with some of these projects. As currently drafted, this bill would expand the application of public works prevailing wage requirements mostly to commercial projects not currently subject to prevailing wage requirements, given that projects that receive public funding (such as schools, government buildings, etc.) would likely already be defined as public works projects which require prevailing wages. In the case of non-public buildings, such as commercial buildings or multi-family residential buildings (greater than two-stories) it is not clear whether application of public works is warranted for projects that receive no explicit public funding, though they do receive a utility tariff compensation that is collected from other customers in the corresponding utility service territory.

NEM renewable energy systems over 15 kW. Based on data collected as part of the California Solar Initiative, the interconnection of all customer-sited renewable generating facilities has been tracked and updated on a regular basis. Based on this data, about three percent of the NEM systems interconnected to the three large electric investor-owned utilities are greater than 15 kW in size, with 3.6 percent in Pacific Gas & Electric (PG&E) service territory, and 2.5 percent in each of the territories of Southern California Edison (SCE), and San Diego Gas & Electric (SDG&E). In aggregate, across all three of these utilities, there are nearly 40,000 NEM connected systems greater than 15 kW of the nearly 1.3 million NEM connected systems.

Inland areas may require larger energy systems. California Solar and Storage Association notes that inland areas in California experience hotter temperatures and, therefore, average larger solar energy systems. They cite a statewide average of 7 kW for solar rooftop energy systems, but 8 kW for areas such as Fresno. They express concerns that the increased costs for prevailing wages will make solar rooftop energy less accessible to inland communities.

Buyer beware. Among its enforcement provisions, this bill prohibits a customer with a renewable electrical generation facility for which a willful violation of this bill has been enforced from receiving service as part of the NEM tariff. While customers select what contractors they use for solar installations, they may not have full knowledge regarding any subcontract work or other aspects of a contractor's installation that could violate the requirements of this bill. However, these customers could be left in a position to pay for the installation of a renewable energy system that will not deliver as intended. Recent amendments attempt to mitigate these incidents by narrowing the application of this enforcement to only willful violations.

Related/Prior Legislation

AB 2316 (Ward, 2022) requires the CPUC to establish a new community renewable energy program that meets specified criteria, including prevailing wage requirements. The bill is pending on the Senate Floor.

AB 2667 (Friedman, 2022) establishes the Integrated Distributed Energy Resources Fund as a special fund in the State Treasury to fund, upon appropriation, incentives to support statewide customer adoption of clean distributed energy resources, with specified requirements including prevailing wage requirements. The bill is pending on the Senate Floor.

AB 1385 (Cortese, 2022) would have required the CPUC to establish a new multifamily housing local solar program, with specified requirements, including applying public works project requirements. The bill was held in the Assembly Committee on Appropriations.

AB 841 (Ting, Chapter 372, Statutes of 2020) required that all electric vehicle charging infrastructure and equipment located on the customer side of the electrical meter that is funded or authorized, in whole or in part, by state entities shall be installed by a contractor with the appropriate license and at least one electrician on each crew.

SB 350 (De León, Chapter 547, Statutes of 2015) specified that construction, alteration, demolition, installation, or repair work on the electric transmission system located in California constitutes a public works project, subjecting these projects to prevailing wage.

AB 327 (Perea, Chapter 611, Statutes of 2013) instituted several rate reforms and required the CPUC to adopt a successor NEM tariff no later than December 31, 2015.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

According to the Senate Appropriations Committee, CPUC estimates one-time costs of about \$1 million (ratepayer funds) for workshop planning and facilitation, contract solicitation and management, and construction of an online intake portal and database, among other things. In addition, CPUC estimates ongoing costs of about \$1 million annually (ratepayer funds) to perform research for the Disadvantaged Communities/Low-Income DER report, depose of implementation advice letters, establish data intake processes for contractor payroll data, and provide quality control and compliance tracking, and perform other activities. Of that amount, \$750,000 for management and maintenance of the payroll database would no longer be needed after five years.

SUPPORT: (Verified 8/25/22)

California State Association of Electrical Workers (co-source)
Coalition of California Utility Employees (co-source)
BlueGreen Alliance
California Labor Federation

OPPOSITION: (Verified 8/25/22)

California Solar + Storage Association

Desert Valleys Builders Association
Silicon Valley Leadership Group

ARGUMENTS IN SUPPORT: The California State Association of Electrical Workers and the Coalition of California Utility Employees argue that the requirements for prevailing wages for NEM connected renewable energy systems will “stop large corporations and wealthy homeowners from taking advantage of rooftop solar installers, while ensuring the highest level of competence and safety over the lifetime of the project.” They also argue that the reporting requirements of this bill will help address “the exclusion of lower income communities from participating in rooftop solar.”

ARGUMENTS IN OPPOSITION: In opposition to this bill, the California Solar + Storage Association argues that this bill will: (1) slow down California’s clean energy goals by increasing costs; (2) increase the use of fossil fuels (especially fossil fueled generators); (3) establishes a bad precedent by defining independent, behind-the-meter solar projects contracted by and for individual consumers “public works projects;” (4) kill small businesses which represent over 80 percent of California’s solar contractors; (5) hurt the state’s affordable housing and commercial solar market; (6) create unnecessary red tape as “most solar installers do not have teams of lawyers to sort through California’s prevailing wage rules.”

ASSEMBLY FLOOR: 55-18, 5/25/22

AYES: Aguiar-Curry, Arambula, Bauer-Kahan, Bennett, Bloom, Boerner Horvath, Mia Bonta, Bryan, Calderon, Carrillo, Cervantes, Chen, Cooley, Cooper, Daly, Mike Fong, Friedman, Gabriel, Cristina Garcia, Eduardo Garcia, Gipson, Gray, Grayson, Haney, Holden, Jones-Sawyer, Kalra, Lee, Low, Maienschein, McCarty, Medina, Mullin, Muratsuchi, Nazarian, Petrie-Norris, Quirk, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Stone, Ting, Villapudua, Ward, Akilah Weber, Wicks, Wilson, Wood, Rendon

NOES: Bigelow, Choi, Cunningham, Megan Dahle, Davies, Fong, Gallagher, Kiley, Lackey, Levine, Mathis, Mayes, Nguyen, Seyarto, Smith, Valladares, Voepel, Waldron

NO VOTE RECORDED: Berman, Flora, Irwin, O'Donnell, Patterson

Prepared by: Nidia Bautista / E., U. & C. / (916) 651-4107
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