

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



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Procedures and Rules for the California Solar
Initiative, the Self-Generation Incentive Program
and Other Distributed Generation Issues.

Rulemaking 08-03-008
(Filed March 13, 2008)

**RESPONSE OF THE CALIFORNIA ENERGY STORAGE ALLIANCE
TO APPLICATION FOR REHEARING OF DECISION 09-12-047**

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February 9, 2010

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**RESPONSE OF THE CALIFORNIA ENERGY STORAGE ALLIANCE
TO APPLICATION FOR REHEARING OF D.09-12-047**

In accordance with Rule 16.1(d) of the California Public Utilities Commission’s Rules of Practice and Procedure, the California Energy Storage Alliance (“CESA”)¹ respectfully submits this Response to the Application for Rehearing of D.09-12-047 filed by the Utility Reform Network (“TURN”) on January 25, 2010 (“Application”).

I. INTRODUCTION.

In D.09-12-047, issued on December 17, 2009, the Commission adopted an annual budget of \$83 million annually for the Self Generation Incentive Program (“SGIP”) in 2010 and 2011. The Commission also ordered the SGIP Program Administrators to reserve and spend total authorized carryover fund in the amount of \$310.2 million from prior years’ authorized SGIP budget by filing annual advice letter requests until January 1, 2016.²

In its Application, TURN seeks a rehearing based on its assertion that the Commission’s authorization of the SGIP Program Administrators to collect previously authorized carryover funds “*appears to conflict*” with the recent enactment of SB 412 (Kehoe), which amended Public

¹ The California Energy Alliance is an advocacy group made up of renewable energy developers and system integrators and energy storage system manufacturers presently comprised, of A123 Systems, Altair Nanotechnologies, Beacon Power Corporation, Chevron Energy Solutions, Debenham Energy LLC, Deeya Energy, Energy Alchemy LLC, Enersys, Fluidic Energy Inc., Ice Energy Inc., Powergetics, Prudent Energy, PVT Solar, Suntech America, Inc., SustainX, Xtreme Power Solutions, and ZBB Energy Corporation. The views attributed to CESA in these Comments are those of CESA, and they do not necessarily represent the views of each CESA member company on every specific point.

² See, Ordering Paragraphs Numbers One and Two and Three, pp. 17-20.

Utilities Code 379.6(a)(1).³ TURN asserts in the Application that the Commission must rehear D.09-12-047 based on an incorrect reading of the plain language of Public Utilities (P.U.) Code §379.6(a)(1) and citation to legislative history relevant to the wording of the amended statute that supports the Commission’s correct interpretation. For the reasons set forth in this Response, the Commission should reject the Application in its entirety.

II. TURN’S CLAIM OF LEGAL ERROR IS WITHOUT MERIT.

A. The Plain Language of P.U. Code §379.6(a)(1) Is Clear And Unambiguous.

The single legal issue raised by TURN is whether D.09-12-057 violates P.U. Code because the statute. P.U. Code Section 379.6(a)(1) provides:

“The commission, in consultation with the Energy Commission, may authorize the annual collection of no more than the amount authorized for the self-generation incentive program in the 2008 calendar year for the self-generation incentive program in the 2008 calendar year, through December 31, 2011. The commission shall require the administration of the program for distributed energy resources originally established pursuant to Chapter 329 of the Statutes of 2000 until January 1, 2016. On January 1, 2016, the commission shall provide repayment of all unallocated funds collected pursuant to this section to reduce ratepayer costs. [emphasis added]”

The amended language plainly imposes a limitation on *new* collections that can be authorized by the Commission from 2010 through the end of 2011. Equally plainly, it does not address whether or not the Commission’s authority to order the collection of *previously authorized* amounts to fund the SGIP program during those years should be limited in any way. Since § 379.6(a)(1) is completely silent on the subject of collection of carryover funding, it would violate long established and well-understood canons of statutory construction to try to read language into the statute that is simply not there.

In D.09-08-047 the Commission followed the stated direction of the legislature by approving the entire amount of funding that it “may authorize.” Language further directing the Commission to nullify previously authorized funding could readily have been included if that was what was what the legislature intended. The Commission explains in D.09-08-047 that: “[p]revious Commission decisions have directed that SGIP authorized budgets that remain

³ Stats. of 2009, (Chap. 182) was signed into law on October 11, 2009, and became effective on January 1, 2010.

unspent or uncommitted in any given year should be “carried over” for use in future budget years. (See D.08-01-029, D.08-04-049, and D.09-01-013.) [footnote omitted]. On June 1, 2009, the four IOUs supplied the SGIP budget information requested by D.09-01-013 regarding carryover funds and program participation. The data supplied is current through May 1, 2009, and indicates different accounting methods for each utility regarding SGIP funds, and significant carryover funds, i.e., authorized budgets, that are unspent.” (p. 6).

Remarkably, the Application states: “TURN noted in our previous comments on the ALJ Ruling⁴ that *arguably* the utilities cannot “collect” any more than the \$83 million for 2010 and 2011 based on the plain language of SB 412. *The legislative reports which TURN has reviewed make no mention of “carryover” funding but explicitly discuss the \$83 million annual budget and its rate impacts.* [emphasis added]” (p. 2). It is therefore hardly surprising that TURN goes on to concede in the Application that: “*If there is any ambiguity in the legislative intent in SB 412, TURN hopes the legislature will act to remedy the problem.* [emphasis added]” (p. 3).

B. The Legislative History Supports the Commission’s Interpretation of P.U. Code §379.6(a)(1)

As noted above, it is an established principle of statutory construction that legislative history (such as legislative analyst reports cited by TURN) may only be considered if the statute in question is susceptible of more than one meaning.⁵ In this case neither the statute nor the legislative history makes any statement at all regarding SGIP carry over funding that can be construed one way or another. Since the legislature’s intent in enacting SB 412 is plainly stated in the statute, there should be no recourse to legislative history to help discern what was

⁴ See, Administrative Law Judge’s Ruling Requesting Comments on the Self Generation Incentive Program Budget for 2010 and 2011, issued September 17, 2009 (“ALJ’s Ruling”).

⁵ The primary rule was articulated in *Caminetti v. United States*, 242 U.S. 470, 485, 37 S.Ct. 192, 194, 61 L.Ed. 442 (1916) “It is elementary that the meaning of a statute must, in the first instance, be sought in the language in which ... [it] is framed, and if that is plain, ... the sole function of the courts is to enforce it according to its terms.” California courts have concurred. For example: “*If there is doubt as to the intent of the legislature*, the court may resort to extrinsic aid to interpret a statute, such as its contemporary history, circumstances under which it was passed and mischief at which it was aimed.” [Emphasis added]. *Koenig v. Johnson* (1945) 163 P. 2d 746, 71 C.A.2d 739.

intended.⁶ That said, as noted above, TURN states in the Application that the analysts reports that it cites entirely support the Commission's interpretation of P.U. Code §379.6(a)(1).

III. CONCLUSION.

For all of the foregoing reasons, CESA urges the Commission to reject TURN's Application.

Respectfully submitted,



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Date: February 9, 2010

⁶ Apart from TURN, no party that submitted comments on either the ALJ's Ruling (issued prior to enactment of SB 412) or the Commission's Proposed Decision issued on November 17, 2009 (issued subsequent to enactment of SB 412) that preceded D.09-08-047 questioned the Commission's interpretation of P.U. Code §379.6(a)(1).

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of *Response of the California Energy Storage Alliance To Application for Rehearing of D.09-12-047* on all parties of record in proceeding *R.08-03-008* by serving an electronic copy on their email addresses of record and by mailing a properly addressed copy by first-class mail with postage prepaid to each party for whom an email address is not available.

Executed on February 9, 2010, at Woodland Hills, California.



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