

Date of Hearing: April 30, 2025

ASSEMBLY COMMITTEE ON UTILITIES AND ENERGY

Cottie Petrie-Norris, Chair

AB 1104 (Pellerin) – As Amended April 21, 2025

SUBJECT: Small Business Renewable Energy Access and Protection Act

SUMMARY: Exempts solar energy producers with an unspecified number of solar facilities selling power to an unspecified number of customers from state law applicable to “electrical corporations.” Additionally, provides that if a renewable energy facility (like a solar or wind project) is built and receives electric service under a standard contract or tariff, the entity that hires a contractor to build the facility is not considered an “awarding body” under California public works law. Specifically, **this bill:**

- 1) States that, for the construction of a nonresidential renewable electrical generation facility, the facility shall be eligible to receive service pursuant to a standard contract or tariff, regardless of an enforced willful violation of prevailing wage requirements by the contractor, provided that restitution to the affected workers has been made and any and all associated penalties and fines have been paid.
- 2) Provides that the entity that engaged the contractor in the construction of the facility is not an awarding body, as defined. Public works project requirements not found in this section do not apply to the entity. This does not affect the entity’s liability for nonpayment of wages or materials under Article XIV, Section 3 of the California Constitution.

EXISTING LAW:

- 1) Authorizes the California Public Utilities Commission (CPUC) to regulate public utilities, including electric and natural gas corporations and establish rates for these utilities. (Public Utilities Code § 201 et. seq.)
- 2) Defines an “electrical corporation” as every corporation or person owning, controlling, operating, or managing any electric plant for compensation in the state, except where electricity is generated on or distributed by the producer through private property solely for its own use or the use of its tenants and not for sale or transmission to others; establishes limited exemptions to the definition of an electrical corporation; and generally designates any entity that sells electricity to more than two contiguous parcels or across the street as an “electrical corporation.” (Public Utilities Code § 218)
- 3) Defines “awarding body” to mean a department, board, authority, officer or agent awarding a contract for public work. (Labor Code § 1722)
- 4) Defines “public works” to mean construction, alteration, demolition, installation, or repair work done under contract and paid for in whole or in part out of public funds, except work done directly by a public utility company pursuant to order of the PUC or other public authority. Public works also includes, among other things, irrigation work, street improvements, and tree trimming. (Labor Code § 1720(a))

- 5) Requires each contractor and subcontractor on a public work to keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by the contractor or subcontractor in connection with the public work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, with specified information. (Labor Code § 1776(a))
- 6) Provides that the construction of any renewable electrical generation facility, and any associated battery storage, after December 31, 2023, that receives service pursuant to the standard contract or tariff, as specified, shall constitute a public works project. (Public Utilities Code § 769.2(a))
- 7) Requires a contractor who enters into a contract to perform work on a renewable electrical generation facility or associated battery storage described above to do all of the following:
 - a) The contractor shall pay each construction worker employed in the execution of the work, at minimum, the general prevailing rate of per diem wages, except that an apprentice registered in a program approved by the Chief of the Division of Apprenticeship Standards shall be paid, at minimum, the applicable apprentice prevailing rate.
 - b) The contractor shall maintain and verify payroll records pursuant to recordkeeping provisions of the Labor Code and make those records available for inspection and copying as required by those provisions. The contractor shall not be required to provide copies of certified payroll records to any entity other than the Department of Industrial Relations and the CPUC.
 - c) The contractor shall biannually, on July 1 and December 31 of each year, submit to the commission digital copies of its certified payroll records for projects covered by this bill. The PUC shall retain these records as public records for five years. (Public Utilities Code § 769.2(b))
- 8) States that if a willful violation of the prevailing wage requirement has been enforced against a contractor for the construction of a renewable electrical generation facility, that facility shall not be eligible to receive service pursuant to a standard contract or tariff developed, as specified. (Public Utilities Code §769.2(d))
- 9) Provides that mechanics, persons furnishing materials, artisans, and laborers of every class, shall have a lien upon the property upon which they have bestowed labor or furnished material for the value of such labor done and material furnished; and the Legislature shall provide, by law, for the speedy and efficient enforcement of such liens. (Article XIV, Section 3 of the California Constitution)

FISCAL EFFECT: Unknown. This bill is keyed fiscal, and will be referred to the Assembly Committee on Appropriations for its review.

CONSUMER COST IMPACTS: Unknown, likely negligible. This bill may lower costs to some solar consumers, who would benefit from the waiving of various requirements and costs provided by this measure.

BACKGROUND:

Net Energy Metering (NEM) – Electric ratepayers have long subsidized the cost of customer-sited electricity generation from renewable resources, which has overwhelmingly meant electricity generated by rooftop solar. One of the primary forms of subsidy has been the availability of NEM tariffs, which state law requires each electrical investor-owned utility to offer to any customer with rooftop solar (or other on-site renewable generating facility). Under the tariff, such a customer is compensated by the utility for the electricity the customer exports to the electric grid in excess of the electricity the customer draws from the grid.

California’s NEM program started in 1997, prompted by SB 656 (Alquist, Chapter 369, Statutes of 1995). It allows customers who install eligible renewable electrical generation facilities to serve onsite energy needs and receive credits on their electric bills for surplus energy sent to the electric grid. Most customer-sited, grid-connected solar in California is interconnected through NEM tariffs. Enrollment in the first NEM program, now colloquially known as “NEM 1.0,” continued and was phased out between 2016 and 2017. NEM 1.0 was not meant to be cost-effective. Rather, the NEM tariff, and the larger state program, was meant to encourage adoption of rooftop solar so that manufacturing and installation costs could come down. This effort was successful: rooftop solar installation grew considerably from 2006 through 2012.

The Legislature called for the revision of NEM 1.0 per AB 327 (Perea, Chapter 611, Statutes of 2013) primarily to address the cost associated with the full retail credits available under the tariff. The CPUC responded with what is commonly referred to as NEM 2.0 in 2016. Customers taking service under that tariff – 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. On August 27, 2020, the CPUC initiated Rulemaking 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 2021.¹ However, the final decision was delayed while the CPUC considered party comments and evaluated alternatives. On December 15, 2022 the CPUC adopted a new decision establishing the Net Billing Tariff (NBT), or colloquially NEM 3.0.²

The NBT applied to customers who submit an interconnection application on or after April 15, 2023. The NBT made a number of changes from NEM 2.0, replacing export compensation tied to the retail rate with the avoided cost calculator (ACC) rate. The retail rate is typically a fixed amount, around 30-40¢/kWh, depending on service territory.³ The ACC-calculated rate is variable, changing for each hour per month, with different values on weekends versus weekdays. These values are meant to track grid conditions, and can range from 0.03-0.05¢/kWh on the low

¹ See *Decision Revising Net Energy Metering and Subtariffs*, CPUC, December 13, 2021, at: <https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M430/K903/430903088.PDF>

² D. 22-12-056

³ See PG&E’s 2024 residential TOU at ~45¢ here:

https://view.officeapps.live.com/op/view.aspx?src=https://www.pge.com/assets/rates/tariffs/Res_Inclu_TOU_Current.xlsx

end for most months of the year to over \$1-\$4/kWh on the high end for select evenings (5-7pm) in August-October.⁴

The NBT eliminated the netting interval, meaning customers' imports on the first meter channel are charged the import retail rate (fixed, usually higher prices), and all recorded exports on the second meter channel are credited the retail export compensation rate (variable, only high during certain evenings).⁵ The consequence of eliminating the netting interval is that behind-the-meter consumption is incentivized (it effectively earns the retail rate), encouraging customers to install both electric vehicle charging equipment and battery storage paired with their solar. The NBT decision also did not affect existing rooftop solar customers; those legacy NEM 1.0 and NEM 2.0 customers remain on their tariff. The NBT decision also did not include any charges unique to solar customers (despite early draft decisions doing that). The result of these changes led to a drop in the compensation rooftop solar customers will receive, increasing the payback period to 9 years.⁶

According to the Distributed Generation Statistics database, as of 2024, the NEM program had enabled 1.8 million project installations, equating to roughly 16 gigawatts (GWs) of customer-sited renewable generation, almost all of which is rooftop solar.⁷ Now, NEM systems reduce the demand on the electric grid by as much as 25% during midday when the sun is shining.⁸

Over-the-Fence – The definition of “electrical corporations” provided in Public Utilities Code § 218 is the subject of a long-standing point of division colloquially known as the “over-the-fence” rule. Current statute limits the ability of an entity to serve multiple customers (greater than two on adjacent properties) if that entity is not an electric utility. Statute ensures regulatory oversight of a private entity providing electric service for compensation, that is not otherwise a corporation or person employing cogeneration, landfill gas technology, or digester gas technology. The implications for defining an electrical corporation are to ensure adequate regulatory oversight, including the bedrock principles of safe, reliable, and affordable service. The CPUC has regulatory oversight of all electrical corporations, maintaining broad authority, including the ability to review books, set rates, fine and penalize, and revoke licenses to operate. However, many private entities seeking unique electrical generation arrangements – such as microgrid developers – see these legal limitations as a hurdle to deploying greater use of emergent technologies.

COMMENTS:

- 1) *Author's Statement.* According to the author, “Although California has committed to achieving 100% clean energy by 2045, the state’s commercial solar market is facing serious setbacks that threaten this goal. AB 1104, the Small Business Renewable Energy Access and Protection Act, will expand opportunities for small businesses to access

⁴ Values relative to SDG&E’s Energy Export Credits under the NBT; <https://www.sdge.com/solar/solar-billing-plan/export-pricing>

⁵ Pg. 129, D. 22-12-056

⁶ CPUC, “Fact Sheet: Modernizing NEM to Meet California’s Reliability and Climate Goals,” November 10, 2022. <https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/energy-division/documents/net-energy-metering-nem/nemrevisit/final-fact-sheet-nem.pdf>

⁷ <https://www.californiadgstats.ca.gov/charts/nem/>

⁸ CPUC Fact Sheet; “Modernizing California’s Net Energy Metering Program to Meet our Clean Energy Goals.” December 13, 2021.

renewable energy by reducing administrative burdens. Specifically, it will exempt the owners of commercial solar projects under 1 MW from registering as an awarding body with the Department of Industrial Relations, while maintaining all current prevailing wage and apprenticeship requirements. Additionally, AB 1104 will enact a limited expansion to the definition of “independent solar energy producer,” allowing more business-to-business solar transactions to occur without being regulated as a public utility.”

- 2) *Purpose of Bill.* In 2022, California enacted AB 2143 (Carrillo, Chapter 774, Statutes of 2022) to require that prevailing wage be paid for certain solar projects over 15 kW constructed after December 31, 2023, that are interconnected under the NEM tariff. AB 2143 sought to ensure workers on larger solar projects are paid fairly and with family-sustaining wages. The policy behind paying a prevailing wage is to ensure that contractors are not awarded these solar projects by virtue of paying low wages and undercutting competitors who provide higher compensation. Typically requirements for prevailing wage fall on both the contractor undertaking the work, as well as the public agency – or in the case of rooftop solar, the customer-generator of a 15kW (or greater) system taking service under a NEM or NBT – hiring the contractor to perform the work. This bill removes the requirements on the customer-generator.

The author motivates this change by noting compliance with labor law for large, public agencies can be onerous to the small businesses seeking to install rooftop solar. Principally, the author notes under AB 2143 businesses have to 1) register as an “awarding body” at the Department of Industrial Relations (DIR); 2) register their solar project as a public works project with DIR; 3) obtain prevailing wage rates from DIR; 4) specify these rates in making bid calls; 5) prepare bid specifications, including prevailing wage notices in contracts; and 6) post wage rate info at the job site. This bill removes some of the administrative responsibilities of these solar system owners by no longer defining them as “awarding bodies,” thus not having to do any of the aforementioned steps. However, this bill, importantly, does not remove the prevailing wage requirements as laid out in AB 2143 for the contractor, and upholds that the rooftop solar owner’s liability for nonpayment of wages or materials is not affected.

- 3) *Tearing Down the Fence.* This bill additionally exempts solar energy producers with an unspecified number of solar facilities selling power to an unspecified number of customers from state law applicable to “electrical corporations.” Existing law generally classifies any entity selling electricity to more than two adjacent parcels as an electrical corporation, subject to full regulation by the CPUC. While existing law establishes very limited exemptions to this definition, those exemptions generally only apply to electricity generated for on-site energy consumption or electricity provided to no more than two parcels that are contiguous to the property on which the electricity is generated. These restrictions are generally known as the “over-the-fence” rules due to the requirement that parcels be adjacent to each other. Many private entities seeking unique electrical generation arrangements – such as microgrid developers – see these legal limitations as a hurdle to deploying greater use of emergent technologies.

Customers of the state’s electric utilities have financial incentives to shed the many charges that are bundled into the rates for each kilowatt of electricity, approved by the CPUC and charged by the utilities. Yet, one customer successfully avoiding these charges

oftentimes creates problems for the customers who are left to pay the costs that are recovered through those charges, which remain unchanged. This phenomenon is commonly known as a “cost shift” and has been the subject of intense debate for well over a decade. Oftentimes, efforts to expand “over-the-fence” rules are really efforts to avoid certain charges and avoid the burden of supporting the greater electrical system. Recent legislative attempts to expand the “over-the-fence” rule have tried to address this, by targeting the expansion only on new load; thus no load is departing and no facilities nor charges would be shifted to remaining ratepayers to cover.⁹

This bill, however, offers no such constraints. Instead it broadly allows a solar energy producer – which could employ an infinite number of solar energy systems – to sell electricity to an unspecified number of customers. This provision, if adopted, would be limitless: no locational, customer size, facility size, nor customer class constraints. This would be a monumental shift in energy policy, without a regulator to ensure consumers were not overcharged, assure the facilities are operated in a safe and reliable manner, and avoid the duplication of utility infrastructure.¹⁰

The author contends this broad sweep is not the intent, noting the changes to the over-the-fence statute were intended to begin a conversation about potential solutions to aid the commercial solar industry. While this bill’s provisions would likely financially benefit those eligible customer-generators, it has the potential to harm both participating customers (who are no longer benefitting from regulatory oversight) and nonparticipating ratepayers (who would be left bearing more of the fixed cost of the system). *As such, the committee recommends striking Sections 1, 2, and 4 of the bill, retaining the provisions related to public works law.*

4) *Related Legislation.*

AB 388 (Rogers, 2025) provides two exemptions – one from state and one from federal law regulating utilities – for entities that sell electricity from solar and wind generation if those entities provide electric generation exclusively for electrolytic hydrogen production and electrifying industrial heat processes. The state exemption is from the over-the-fence rule. Status: *Set for hearing* in this committee on April 30, 2025.

5) *Prior Legislation.*

SB 1018 (Becker, 2024), largely similar to AB 388 (Rogers, 2025), provides two exemptions from existing law for an entity that sells electricity generated from solar or wind energy if the entity supplies the electricity exclusively for electrolytic hydrogen production and electrifying industrial heat processes. Status: *Held* in the Assembly Committee on Appropriations.

AB 2143 (Carrillo) declares construction, after December 31, 2023, of any renewable electrical generation facility and any associated battery storage with a maximum

⁹ Such is the arrangement for hydrogen and industrial heat in AB 388 (Rogers, 2025) and SB 1018 (Becker, 2024)

¹⁰ CPUC Decision 24-11-004; *Decision Adopting Implementation Rules for Multi-Property Microgrid Tariffs and Other Matters*; R. 19-09-009; November 7, 2024;

<https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M546/K650/546650794.PDF>

generating capacity of more than 15 kilowatts (kW) and installed on a non-single family home that receives service pursuant to an electric utility's net energy metering (NEM) offering to be a public works project for which prevailing wage must be paid. Status: Chapter 774, Statutes of 2022.

- 6) *Double Referral*. This bill is double referred. Prior to being heard in this committee, it was heard in the Assembly Committee on Labor and Employment, where it passed out on April 23, 2025, on a 6-0-1 vote.

REGISTERED SUPPORT / OPPOSITION:

Support

180 Solar Power
Aeterna Energy
All Seasons Roofing & Waterproofing, INC.
Allterra Solar
Associated Builders and Contractors Northern California Chapter
Aws Solar
Baker Home Energy
Brighten Solar
California Solar & Storage Association
Capital City Solar
Chico Electric
Cinnamon Energy Systems
Citadel Roofing and Solar
Cleanfi
Collective Sun
Corda Solar
Core Energy
Enphase Energy
Estriatus Law Pc
Excite Energy
Grid Alternatives
Harmony Air
Individual
Kodiak Roofing & Waterproofing Co.
Mr. Roofing
Mw Energy
Mynt Systems
Nova West Energy
Pearlx Infrastructure, LLC
Pickett Solar
Sandbar Solar & Electric
Santa Cruz County Chamber of Commerce
Santa Cruz Westside Electric, DbA Sandbar
Schneider Electric
Simply Solar
Six Rivers Solar

Solar Energy Builders, INC
Solar Renewable Energy
Solar Rights Alliance
Solar Symphony Construction
Solar Technologies
Solex Applied Solar Energy
Source Solar
Spca Monterey County
Sun Light & Power
Sungreen Systems
Tenco Solar
Your Solarmate

Oppose

California State Association of Electrical Workers
Coalition of California Utility Employees

Analysis Prepared by: Laura Shybut / U. & E. / (916) 319-2083