

# WHY IS IID SUING TO REPEAL RIVERSIDE COUNTY ORDINANCE NO. 943?



## SOLAR BACKGROUND

Under Public Utilities Code Section 2827, California utilities were mandated to implement a net energy metering program by January 1, 2010, that subsidizes rooftop solar customers. The mandate specifically called for utilities to provide NEM pricing for 5 percent of the utility's peak megawatt demand. Based on this, IID reached its NEM obligation of 50.2 MW in early 2016.

In July of that year, the IID Board of Directors made a policy decision to create a NEM successor that ensures all customers pay their fair share for the use of the energy grid, including customers who choose to install rooftop solar systems. The NEM successor program, dubbed net billing, was adopted by IID's Board of Directors after multiple public workshops and public meetings. IID's net billing program aligns prices with the actual cost of providing power for all customers.

To date, IID customers have installed approximately 5,000 solar systems totaling more than 68 megawatts.

Unhappy with IID's NEM successor program, Renova Solar, an independent for-profit business, has since indemnified and lobbied the Riverside County Board of Supervisors to adopt an ordinance that seeks to reinstate the solar subsidy.

## UNPRECEDENTED AND UNLAWFUL

Riverside County ordinance No. 943 is nothing more than an unprecedented attempt by the county to unlawfully usurp the Imperial Irrigation District's authority to set rates for its customers. Public Utility Code clearly states that the authority to set rates rests solely on the utility and its publicly elected board of directors.

Understanding the difference between an investor-owned utility and a publicly owned utility is vital to understanding the programs the utilities offer. IID has a fiduciary responsibility to all of its customers to provide the best service at the lowest cost. Since IID is a not-for-profit utility, it does not have shareholders. Any subsidy IID would provide to one class of customers would result in higher costs for its other customers.

IID's business model allows the district to offer its customers some of the lowest residential electric rates in California – rates that are as much as 50 percent lower than that of neighboring investor-owned utilities. The ordinance, should it be implemented, jeopardizes these rates and sets a bad public policy that has the potential to impact other public power providers across the state.

## IID'S ASK OF THE COURT

In July 2018, IID filed a lawsuit in Riverside County Superior Court seeking three actions:

- A repeal of Riverside County Ordinance No. 943 that dictates to IID that it discard its publicly vetted and board-approved net billing solar program and replace it with a new solar tariff that closely resembles a program offered by investor-owned Southern California Edison.
- Direction from the court to end what IID believes is the unlawful indemnification of Riverside County by Vincent Battaglia and Renova Solar, a business that stands to make hundreds of thousands of dollars in profits, should the ordinance move forward.
- A temporary stay of enforcement while the courts weigh the merits of the suit.



# LEGAL ERRORS AND OMISSIONS IN THE RIVERSIDE COUNTY SOLAR ORDINANCE

## JURISDICTIONAL CONFLICT

The California Legislature, under Public Utilities Code Section 2827(c)(1), has already established state mandates for utilities and their participation in net metering. The Riverside County ordinance is in direct conflict with this.

Under the state code, a non-investor owned utility that has exceeded the 5 percent peak demand cap “... is not obligated to provide net energy metering to additional eligible customer-generators in its service area...”

Having met its state-mandated obligation, IID has voluntarily adopted its successor net billing program that is devoid of caps and program limits.

## RATEMAKING AUTHORITY

The notion that a county and/or other localities could impose their authority on electrical rates is completely unauthorized by the state Water Code. Section 22123 is meant to deal with undergrounding electric utilities. Such a patch quilt approach to ratemaking by a public utility is inherently unreasonable and unauthorized. Riverside County’s approach is an example of bad public policy that creates an unlawful division of ratepayers in Riverside and Imperial counties.

## INDEMNIFICATION CONFLICT

The question of whether the indemnity agreement is illegal and void under California Civil Code section 2773 is one of public right because the county has a public duty to comply with state law and to refrain from forming illegal contracts. The county “... cannot be indemnified for expenses incurred in defending an ordinance they knew violated the California Constitution and the Public Utilities Code at the time the ordinance was adopted.”

On June 26, 2018, when the Riverside County Board of Supervisors approved the ordinance, the county board was informed that the ordinance was illegal. When pressed on the legality issue, county legal counsel deferred to Mr. Battaglia and his personal attorney, who drafted the ordinance.

## POSSIBLE BROWN ACT VIOLATIONS?

Based on comments made by Mr. Battaglia, it appears that the Riverside County Board of Supervisors may have began development of the ordinance long before the board gave its approval in public session on June 26, 2018. During that meeting, the board went as far as to motion, second and approve the ordinance before giving the public, or the IID and its legal counsel, a chance to provide comments.

In comparison, IID undertook hours of public discourse in which it solicited input from customers and solar industry experts prior to adopting the NEM successor program. Riverside County has relied on a, for-profit solar developer, and his personal attorney to draft the ordinance and provide testimony in which its decision was based.

For more information or for a copy of IID’s brief, visit [www.iid.com/solarsuit](http://www.iid.com/solarsuit).

