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

Order Instituting Rulemaking to Develop a
Successor to Existing Net Energy Metering Tariffs
Pursuant to Public Utilities Code Section 2827.1,
and to Address Other Issues Related to Net
Energy Metering.

Rulemaking 14-07-002
(Filed July 10, 2014)

**SAN DIEGO GAS & ELECTRIC COMPANY
(U 902 E) COMMENTS ON PROPOSED DECISION**

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I.

INTRODUCTION AND SUMMARY

Pursuant to Rule 14.3 of the Rules of Practice and Procedure of the California Public Utilities Commission (the “Commission”), San Diego Gas and Electric Company (“SDG&E”) provides these comments regarding the proposed *Decision Adopting Successor to Net Energy Metering Tariff* (the “PD”) issued in the above-captioned proceeding.

The PD implements certain provisions related to net energy metering (“NEM”) contained in Assembly Bill (“AB”) 327, codified at Public Utilities Code § 2827.1.^{1/} NEM is a tariff billing mechanism originally established pursuant to § 2827 that allows eligible customer-generators to rely on an on-site distributed generation (“DG”) system to serve a portion of their energy needs, and to receive compensation for generation exported to the utility grid. AB 327 directs the Commission to develop a replacement NEM contract or tariff that meets specified requirements no later than December 31, 2015.^{2/} The PD seeks to implement this directive.

As discussed in more detail below, the PD contains significant legal and factual errors. Specifically, the PD improperly defers mandatory statutory action and offers conclusions regarding the legislative intent of AB 327 that are legally and factually flawed. The PD’s continuation of the current NEM tariff with minor modifications violates the public interest; the approach taken in the PD is at odds with both the intent and the express requirements of AB 327.

^{1/} Assembly Bill (“AB”) 327 (Stats. 2013, Ch. 611). All statutory references herein are to the Public Utilities Code, unless otherwise noted.

^{2/} The provision notes that the successor to the current NEM tariff may be a tariff or a standard contract. For ease of reference, SDG&E will refer to both options herein as the “successor tariff”.

To address the infirmities in the PD, SDG&E, along with Pacific Gas & Electric Company (“PG&E”) and Southern California Edison Company (“SCE”) (together, the “Investor-Owned Utilities” or “IOUs”), jointly recommend a compromise proposal intended to provide meaningful progress toward satisfaction of the requirements of AB 327, while largely maintaining the benefits for the solar industry conferred under the PD. The joint IOU proposal offers a transition to a more sustainable future for all customers and shares with non-NEM customers the benefits of the recently-extended federal Investment Tax Credit (“ITC”).^{3/} As discussed below, the IOUs jointly recommend that the PD be revised to:

- Ensure that residential and small commercial^{4/} NEM customers are charged the full retail rate for each kWh of electricity they consume from the grid on their otherwise applicable rate (“OAT”), rather than only on the netted-out volume of electricity consumed from the grid; and
- Provide a fixed export compensation rate for energy exported for a 10-year period. This export compensation rate would be 15 cents/kWh for all installations prior to reaching 7% of the IOU’s aggregate customer peak demand, and 13 cents/kWh after reaching 7% of the IOU’s aggregate customer peak demand.

The IOUs propose that this structure be available to new NEM customers until 2019, when NEM is set to be reevaluated. In addition, SDG&E discusses below certain other proposed revisions to the PD.

II.

FAILURE TO COMPLY WITH STATUTORY REQUIREMENTS

A. The PD Improperly Defers Mandatory Statutory Action

AB 327 requires the Commission to adopt by no later than December 31, 2015 a successor NEM tariff that (i) is based on the costs and benefits of the renewable electrical generation facility; (ii) ensures that the total benefits of the standard contract or tariff to all customers and the electrical system are approximately equal to total costs; and (iii) ensures “sustainable growth” of customer-sited renewable DG.^{5/} As context for the proposal, the AB 327 bill analysis discussed the “substantial subsidy” provided to NEM customers, pointing out that the Legislature had in the past justified the subsidy provided under NEM as necessary to, among

^{3/} In December, 2015, subsequent to the issuance of the PD, Congress approved an extension of the federal ITC for solar energy projects and the Production Tax Credit (“PTC”) for wind projects. This tax credit extension is a material benefit to the economics of solar PV systems that was not originally accounted for in the PD.

^{4/} Small commercial customers that are not on demand charge rates.

^{5/} §§ 2827.1(b)(1), (3), (4).

other things, stimulate growth in the solar industry, but noting that § 2827.1 is intended to “require the CPUC to develop a new standard contract or tariff for NEM *that prevents a cost shift to non-NEM customers.*”^{6/}

The statute provides that the Commission “shall” adopt a tariff that meets the § 2827.1(b) criteria by the December 31, 2015 deadline, and further that once the NEM program limits established for each IOU under the current § 2827 NEM program^{7/} have been met, all new eligible customer-generators “shall” take service under a successor tariff that meets all of the § 2827.1(b) requirements. The Legislature’s use of the word “shall” in each instance signifies imposition of a mandatory obligation.^{8/} Thus, AB 327 does not grant the Commission discretion to determine which of the criteria enumerated in § 2827.1(b) it will comply with or the timing of such compliance; rather, it makes clear that *all* of the successor tariff requirements set forth in § 2827.1(b) must be met by the end of 2015.

Despite this clear legislative direction, the PD declines to adopt a successor tariff that ensures that NEM program costs approximately equal benefits in compliance with § 2827.1(b)(4). The PD notes the existence of certain Commission proceedings that could impact the determination of the benefits conferred under the NEM program.^{9/} It determines that the analysis to be developed in those proceedings is “critical” to the Commission’s approach to the NEM successor tariff and therefore that a delay of four years, until 2019, in adoption of a tariff that equalizes costs and benefits in order to allow time for results in these other proceedings is “reasonable and realistic.”^{10/} Based upon this rationale, the PD largely preserves the existing NEM program, modifying a few elements but leaving the current program (with its attendant cost-shift) mostly intact.

The PD’s failure to implement the requirements of AB 327 constitutes legal error. Adoption of the PD in its current form would amount to a failure on the part of the Commission to “regularly . . . pursue its authority” granted under AB 327.^{11/} The statute is clear that a successor tariff that satisfies all of the requirements of § 2827.1(b) must be in place by December

^{6/} AB 327 Bill Analysis, Senate Appropriations Committee, pp. 2, 5 (emphasis added). Available at: http://www.leginfo.ca.gov/pub/13-14/bill/asm/ab_0301-0350/ab_327_cfa_20130830_113209_sen_comm.html.

^{7/} See § 2827(c).

^{8/} See *People v. McGee*, 19 Cal.3d 948, 959-960 (1977).

^{9/} PD, pp. 17-21, 45-47, 58-59.

^{10/} PD, p. 59.

^{11/} See *Los Angeles v. Public Utilities Com.*, 15 Cal. 3d 680 (1975).

31, 2015. Simply extending the existing NEM tariff with a few minor revisions cannot under any analysis be deemed to satisfy the requirement that a successor tariff be adopted that equalizes NEM program costs and benefits or succeeds in preventing the cost-shift that occurs under the current NEM program. The Commission’s inaction regarding implementation of AB 327 is legal error, as is its failure to act in the public interest to ensure just and reasonable rates for all customers, including non-NEM customers.^{12/}

Moreover, the notion that the Commission may defer statutorily mandated action simply because later regulatory developments may affect the action taken is without merit. The regulatory environment is constantly evolving. While it is important to strive for consistency and alignment between the Commission’s myriad proceedings, the Commission cannot allow itself to be paralyzed in its decision-making simply because future decisions in related proceedings may impact the analysis of particular issues. Rather, the Commission must render its decision on the basis of the best information available to it at the time. In other words, where the Commission is directed to take specific action, as is the case here, it must comply with its obligation and then make future adjustments as necessary in response to subsequent regulatory developments. Indeed, § 2827.1 contemplates that exact dynamic, expressly permitting the Commission to revise the successor tariff in the future “as appropriate to achieve the objectives of this section.”^{13/} Thus, the PD errs in deferring compliance with § 2827.1(b)(4) on the grounds that the future outcome of separate Commission proceedings could be relevant to the successor tariff implemented under the provision.

B. The PD Misinterprets Legislative Intent

Section 2827.1(b) establishes several requirements related to implementation of the successor tariff, including (i) adoption of a successor tariff that ensures “sustainable growth” of customer-sited renewable DG; (ii) establishing terms of service and billing rules; (iii) ensuring that the successor tariff is based on the costs and benefits of the renewable electrical generation facility; (iv) ensuring that the total benefits of the successor tariff to all customers and the electrical system are approximately equal to total costs; (v) establishing rules to allow projects greater than one megawatt that do not have significant impacts on the distribution grid to be built

^{12/} See § 451.

^{13/} § 2827.1(b).

to the size of on-site load if such projects are subject to Rule 21 interconnection charges; and (vi) defining a transition period for customers taking service under the current NEM tariff.

The statute lists these requirements seriatim without assigning greater priority to any one in particular. The PD erroneously concludes, however, that AB 327's "primary" direction to the Commission is to ensure the sustainable growth of customer-sited renewable DG, and that ensuring sustainable growth is the Commission's "first responsibility."¹⁴ The PD offers no support for the conclusion that the "sustainable growth" requirement takes precedence over the other requirements set forth in § 2827.1(b). It appears to reach this conclusion simply because the sustainable growth requirement falls first in the enumerated list of requirements. This assumption in the PD is flawed and violates the Commission's obligation to carry out its statutory responsibilities. It is clear that the Commission's obligation is to fulfill *all* of the requirements set forth in § 2827.1(b). It must strike a reasonable balance between competing objectives – *i.e.*, ensuring sustainable growth on the one hand, and preventing a cost-shift on the other – and may not rely on one requirement to justify its failure to comply with the other. The PD should be revised to make clear that the "sustainable growth" requirement included in § 2827.1(b)(1) is on par with the other requirements included in the provision, and that the requirement in § 2827.1(b)(4) to adopt a successor tariff that aligns the costs and benefits of the NEM program is of equal priority.

In addition, the PD errs to the extent it fails to reach a determination regarding "sustainable growth" that complies with § 2827.1(b)(1). The PD declines to adopt an express definition for "sustainable growth," noting that the term "can be understood in several ways."¹⁵ It omits meaningful analysis of the evidence in the record regarding "sustainable growth" and instead defaults to the conclusion that the current explosive growth rate for solar adoption should be maintained. It finds that the current NEM tariff with the limited modifications made in the PD "is likely to allow customer-sited renewable DG to continue to grow sustainably."¹⁶ While it is beyond debate that the current extremely favorable rate treatment for NEM results in robust growth of the solar market, this was not the question placed before the Commission by AB 327. Rather, the legislation obligates the Commission to determine the level of growth that is reasonable given the counterbalanced objective of eliminating the cost-shift to non-NEM

^{14/} PD, pp. 49-50, 57.

^{15/} PD, p. 50.

^{16/} PD, Finding of Fact ("FOF") 27.

customers. The PD completely ignores this task and, in so doing, violates AB 327 and the Commission's ratepayer protection obligation.

The PD disregards analysis using the Public Tool establishing that positive growth in the solar market would occur under *all* parties' successor NEM proposals.^{17/} Indeed, in most cases distributed energy resource ("DER") average adoption outputs more than doubled from 2016 to 2025 after the implementation of the parties' NEM Successor Tariff proposals. In terms of the average year-over-year increase in DER adoption, the various proposals offered in the proceeding result in an average of 9% to 18% year-over-year increase over the years 2017 to 2025.^{18/} Thus, the record does not support the PD's determination that retention of most of the elements of the current NEM tariff is necessary to ensure sustainable growth. The conclusion that the PD erred in making this finding is strengthened when customer payback is taken into account. Even *without* an NEM program, a customer installing solar is able to recover the cost of the system through the standalone generation benefits of the system over the 20-year life of the system.^{19/} Under the PD, NEM customers would receive an *additional* subsidy through netting of more than double the cost of the system, at the expense of non-participating customers. In other words, since investment costs are fully repaid (without considering NEM) over the 20-year life of the system *and* NEM customer receive an additional benefit of double the cost of their system, the resulting total benefit for NEM customers under the PD is over 3 times the cost of their initial investment over the 20-year life of the system.^{20/} This total benefit is excessive

^{17/} See, e.g., *San Diego Gas & Electric Company Comments on Proposals for Successor Net Energy Metering Tariff and Disadvantaged Communities Program*, filed September 1, 2015 in R.14-07-002 ("September 1 Comments"), pp. 13-15; *Opening Brief of San Diego Gas & Electric Company*, filed October 19, 2015 in R. 14-07-002 ("SDG&E Opening Brief"), p. 6.

^{18/} September 1 Comments, p. 14.

^{19/} Annual Generation Benefit = Annual kWh Generated x market price benchmark (8.4 cents/kWh) = \$584. Annual kWh Generated = Installed Capacity of 4 kW x 8,760 hours/year x 19.9% Capacity Factor = 6,973 kWh.

^{20/} The lifetime benefit is calculated assuming a 4kW system with a 20 year life. Lifetime benefit = (Annual Benefit x 20 year)/Net System Cost. Net system costs assumes system cost of \$16,000 with a 30% ITC.= \$11,200. Annual Benefit = Annual Cost Shift + Annual Generation Benefit. Annual Generation Benefit = Annual kWh Generated x market price benchmark (8.4 cents/kWh) = \$584. Annual kWh Generated = Installed Capacity of 4 kW x 8,760 hours/year x 19.9% Capacity Factor = 6,973 kWh. Annual Cost Shift = total NEM generation in kWh x applicable retail rate in that period less avoided cost. Avoided cost value is based on the market price benchmark. NEM generation is calculated assuming capacity factors from E3 from the California Net Energy Metering Ratepayer Impacts Evaluation, October 2013. For TOU rates, the calculation has an assumption about TOU buckets for the generation – based on solar profile for PV production. For residential,

and unreasonable – particularly given the implications to non-participating customers – and contrary to legislative intent.

Finally, the PD incorrectly characterizes the Commission’s obligation under § 2827.1, finding that the observation offered by SDG&E and other parties that § 2827.1(b) is intended to eliminate the current cost-shift to non-NEM customers “promot[es] a standard that is not consistent with the actual legislative requirement.”^{21/} The PD’s erroneous conclusion that § 2827.1(b) is *not* intended to eliminate the current cost-shift to non-NEM customers is based upon changes to the draft legislation made shortly before the statute was adopted. As originally drafted, AB 327 specified that the successor tariff should be based on the electrical system costs and benefits received by nonparticipating customers. It also imposed a ratepayer indifference standard. The original bill text was modified to provide that costs of the program should be equal to the benefits received for *all* customers and the electrical system.

The most straightforward interpretation of this change in the text of the bill is that it is meant to ensure that *all* customers pay costs that are equal to the benefits they receive under the successor tariff. This is plainly not occurring under the current NEM tariff – every new residential NEM customer causes a cost-shift of over \$1,600 per year to those customers who have not elected to or do not have the resources and/or necessary access to install solar on their rooftop.^{22/} This results in an aggregate annual cost-shift in SDG&E’s service territory of \$131 million as of the time SDG&E filed its proposal – this number has grown to \$173 million as of today.^{23/} The suggestion in the PD that the objective of preventing the current cost-shift is “not consistent” with the adopted legislation is entirely without merit and should be stricken from the PD. It is plain that the goal of protecting non-NEM customers from being unfairly burdened by costs properly attributed to NEM customers lies at the heart of AB 327. Even assuming, *arguendo*, that the PD is correct that the Legislature expanded the scope of statutory concern

there is an assumption on tier usage offset of 63/37 upper/lower tiers. No demand reduction is assumed. Residential customers are assumed to export 60% of generation.

^{21/} PD, p. 54.

^{22/} Assumes median residential NEM customer of 4kW. September 1 Comments, p. 7.

^{23/} SDG&E calculates the current cost-shift associated with NEM customers as total NEM generation in kWh x applicable retail rate in that period less avoided cost. Avoided cost value is based on the market price benchmark. NEM generation is calculated assuming capacity factors from E3 from the California Net Energy Metering Ratepayer Impacts Evaluation, October 2013. For TOU rates, the calculation has an assumption about TOU buckets for the generation – based on solar profile for PV production. For residential, there is an assumption on tier usage offset of 63/37 upper/lower tiers. No demand reduction is assumed. This is based on installations and rates effective December 2015.

beyond ensuring ratepayer indifference, it does not follow that in doing so the Legislature completely abandoned its ratepayer protection goal in favor of preservation of the current, massive cost-shift to non-NEM customers. The Commission is clearly obligated by AB 327 to take meaningful action to ensure that NEM customers are paying costs that are approximately equal to the benefits they receive under the NEM program, and to prevent costs rightfully borne by NEM customers from being shifted to non-NEM customers.

The strongest evidence of the Legislature’s intent to strike a more reasonable balance between promoting growth of the customer-sited renewable DG market, on the one hand, and protecting non-NEM customers, on the other, comes from the fact that § 2827.1 was adopted in the first place. AB 327 both modifies the existing NEM program (§ 2827) and directs the Commission to establish a new NEM program (§ 2827.1). If the Legislature sought merely to preserve the existing NEM program with minimal modifications, there would have been no need to adopt the successor program provision. Adoption of § 2827.1 signals the Legislature’s intent to turn the page on the existing NEM program and start fresh with an entirely new program that reflects and supports legislative intent to eliminate the current “substantial subsidy” provided to NEM customers in favor of a more balanced rate structure that ties rates to the cost of providing service.^{24/} Adoption of a NEM program that is essentially identical to that in place today, with its significant cost-shift and negative impact on non-NEM customers, is clearly not what the Legislature had in mind in adopting § 2827.1.

III. JOINT IOU RECOMMENDATION

As discussed above, the PD fails to satisfy the requirements of § 2827.1 or to meaningfully address the cost-shift that § 2827.1 is intended to ameliorate. It essentially defers compliance with § 2827.1, finding that the benefit/cost issue should be reevaluated in 2019,^{25/} and adopts a successor NEM rate structure that is nearly identical to the existing NEM rate structure. While the PD makes certain adjustments to the existing approach intended to “better align” the obligations of NEM customers with those of non-NEM customers, it ignores the clear intent of § 2827.1 to prevent the unfair and unsustainable cost-shift that occurs under the current NEM program.^{26/} In its current form, the PD violates both the letter and the spirit of AB 327. In

^{24/} See AB 327 Bill Analysis, *supra*, note 6, pp. 2, 5.

^{25/} PD, Conclusion of Law (“COL”) 16.

^{26/} See PD, COL 2, 3, 10.

order to avoid running afoul of its statutory responsibility, the Commission must adopt as a transition to an AB 327-compliant tariff in 2019 a transition tariff that ensures reasonable progress toward AB 327's objective to "prevent a cost shift to non-NEM customers."^{27/}

The joint IOU recommendation is a compromise approach that will advance the ratepayer protection goals of AB 327 and share with non-NEM customers the recently-extended benefits of the ITC. At the same time, it maintains most of the benefits for the solar industry contemplated by the PD and ensures sustainable growth.

The IOUs propose that the PD be revised to (i) ensure that residential and small commercial^{28/} NEM customers are charged the full retail rate for each kWh of electricity they consume from the grid, rather than only on the netted-out volume of electricity consumed from the grid; and (ii) provide a fixed export compensation rate for energy exported for a 10-year period. Under the joint IOU proposal, NEM customers will continue to see the benefit of netting on their bill. Under the current NEM structure, customers are billed on their netted consumption. Under the IOUs' proposal, customers would pay for the energy consumed based on their otherwise applicable rate and receive compensation for their energy exported at a fixed compensation rate for a 10 year period, and thereby continuing to benefit from netting on their bill.

As SDG&E has explained, the cost shift to non-NEM customers results from the ability of NEM customers to bypass costs embedded in their volumetric rates (\$/kWh) since NEM customers are assessed such charges only on the netted-out volume of electricity consumed from the grid.^{29/} The cost-shift that results is most significant from residential NEM due to the current fully-bundled residential rate structure, which charges all costs of service (including costs of mandated public policy programs) on a volumetric basis. Indeed, the cost that a residential NEM customer shifts today is 3.5 times greater than that of a business NEM customer due to the distorted rates that are currently in place.^{30/} The PD's modification of the current NEM tariff to require NEM customers to pay nonbypassable charges ("NBCs")^{31/} for energy consumed from

^{27/} AB 327 Bill Analysis, *supra*, note 6, p. 5.

^{28/} Small commercial customers that are not on demand charge rates.

^{29/} See, e.g., *San Diego Gas & Electric Company Proposal for Successor Net Energy Metering Tariff*, filed August 3, 2015 in R.14-07-002 ("SDG&E Proposal"), Attachment A, pp. A-8 – A-11.

^{30/} SDG&E Proposal, p. 2.

^{31/} The PD recognizes that since NBCs support important programs that are used by and benefit all ratepayers, including NEM customers, NEM customers should pay nonbypassable charges on each

the grid, while a step in the right direction, results in a minimal reduction in overall cost-shift – *i.e.*, approximately 10%. Under the PD, residential NEM will continue to result in significantly larger cost shifts due to the combination of netting and a fully-bundled volumetric rate structure.

The direction in § 2827.1(b)(4) to ensure that NEM program costs are approximately equal to benefits is clearly intended to ensure that subsidies built into the current rate structure are eliminated. The PD elects to leave the current inherent subsidies in place in order to avoid negative economic impact on the renewable DG market. A better approach – one that would be more consistent with § 2827.1 – would be to provide an explicit and transparent subsidy in the form of a favorable fixed export compensation rate for a 10-year period, while ensuring that residential and small commercial NEM customers pay for the energy consumed from the grid on their otherwise applicable rate. Specifically, the Commission should modify the PD to provide that (i) residential and small commercial NEM customers pay for the energy consumed from the grid in accordance with the rates, terms and conditions contained in their otherwise applicable tariff (“OAT”); and (ii) receive a fixed export compensation rate for a 10-year period. The IOUs propose a program structure that sets NEM customers’ export compensation rate for residential and small commercial customers of 15 cents/kWh for all installations prior to reaching 7% of the IOUs aggregate customer peak demand and 13 cents/kWh after reaching 7% of the IOUs aggregate customer peak demand.

The transition NEM tariff would be open to new customers until January 1, 2019. Customers taking service under the transition tariff would receive the relevant export compensation rate for a 10-year period and would then move to the then-effective NEM tariff (developed in 2019). Because the transition approach calls for residential and small commercial NEM customers to pay for the energy consumed from the grid based on otherwise applicable rate

kWh of electricity they consume from the grid in each metered interval rather than only on the netted-out quantity of energy consumed from the grid. PD, pp 88-89. The PD defines NBCs as the transmission charge, Public Purpose Program Charge, Nuclear Decommissioning Charge, Competition Transition Charge, New System Generation Charge, and Department of Water Resources bond charge with the Power Charge Indifference Adjustment applicable to Community Choice Aggregation (“CCA”) and Direct Access (“DA”) customers. PD, p. 88, footnote 99. As a threshold matter, SDG&E notes that it agrees that these rate components are properly collected on the basis of delivered generation. The PD fails to include distribution costs in the definition of NBC as one of the “important programs that are used by and benefit all ratepayers, including NEM customers.” The Commission should determine that costs of the utility grid warrant the same treatment as other NBCs and that, going forward, NEM customers should pay distribution charges based on each kWh of electricity they consume from the grid rather than the netted out amount.

– *i.e.*, the rates applicable to customers of same customer class – these customers’ rates would continue to change as they would for all other customers of the same class. Consistent with the PD, beginning in 2018, residential NEM 2.0 customers would be required to take service on a time of use (“TOU”) rate.^{32/} This requirement would be in effect until 2019 when NEM is reevaluated.

The goal of this approach is to provide a transition path to equalization of benefits and costs. Adoption of this proposal would establish the framework upon which the Commission’s efforts in 2019 will build. The modification proposed would represent meaningful progress toward compliance with AB 327 and would not result in harmful economic impact on the renewable DG industry. In December, 2015, the federal government approved an extension of the ITC for solar energy projects. The Public Tool, however, was developed assuming an ITC step-down from 30% to 10% in 2017. Under this assumption, the levelized cost of solar energy was 21 cents/kWh^{33/} in 2017 under the base case solar costs for systems under 10kW. Given that the ITC was extended and will *not* be stepping down in 2017, the levelized cost of solar with a 30% ITC is 17 cents/kWh^{34/} in 2017 under the base case solar costs for systems under 10kW, resulting in a difference of 4 cents/kWh. This un-accounted for benefit from the cost reduction for solar due to the ITC extension is equivalent to reducing export compensation by roughly 8 cents per kWh, assuming 50% of generation is exported.^{35/} Thus, extension of the ITC operates to offset reduction in export compensation rate below full retail. Indeed, extension of the ITC would otherwise be a windfall to NEM customers.

When considering SDG&E’s residential and small commercial average rates after adjustment for NBCs (as defined in the PD) and further adjustment for the ITC, the resulting export compensation would be well below 15 cents. SDG&E’s current residential and small commercial class average retail rates are over 22 cents/kWh, 22.4 cents/kWh and 22.3 cents/kWh, respectively. Adjusted for NBCs, as defined in the PD, this results in a rate of 17.6

^{32/} For SDG&E, small commercial customers are currently on mandatory TOU rates. (D.12-12-004).

^{33/} PG&E/James, Exh. 20, p. 3-5, Table 3-1.

^{34/} *Pacific Gas & Electric Company’s Proposal for Net Energy Metering Successor Tariff*, filed August 3, 2015 in R.14-07-002 (“PG&E Proposal”), p. 80, Chart “Residential Solar Fixed-Rate PPA Prices (<10kW)”.

^{35/} 4 cents per kWh/ 50% exports = 8 cents/kWh reduction in export compensation is equivalent to the solar customer benefit compared to a 10% ITC.

cents/kWh residential and 16.8 cents/kWh for small commercial. **As such, an export compensation rate of 15 cents/kWh results in an export compensation that continues to benefit NEM customers while allowing both NEM and non-NEM customers to benefit from the ITC renewal.**

As further proof of the preservation of benefits for NEM customers under the joint IOU proposal, adoption of the proposal would result in minimal impacts to adoption rates estimated under the PD. Under the current NEM program, the Public Tool projected average year-over-year adoption rate of approximately 16%. Because the changes from the current NEM program proposed in the PD are relatively limited, the PD maintains an approximately 16% average year-over-year adoption rate based on Public Tool results. **Under the joint IOU proposal, an average year-over-year adoption rate based on runs from the Public Tool would be an extremely robust 13-14%, while providing meaningful reductions to the cost-shift to non-participating customers.** It should be noted that these adoption rates do not reflect the recent decision to extend the ITC. In addition, with the IOUs' proposed modifications, **NEM customers would continue receive a subsidy benefit under the IOUs' transition tariff equal to the cost of their system, resulting in a total benefit – generation benefit and subsidy benefits - that is more than double the cost of their system.**

The PD correctly finds that “the NEM successor tariff program ... should move the economic contribution of NEM customers toward being more consistent with the contribution of other customers.”^{36/} While the PD concludes that the record developed in the proceeding does not allow it to fully quantify the costs and benefits of the NEM program; the record does support a transition toward this ultimate objective through ensuring that residential and small commercial NEM customers pay for the full volume of energy delivered from the grid. Accordingly, SDG&E urges the Commission to modify the PD to adopt the joint IOU proposal to (i) ensure that residential and small commercial NEM customers pay for energy consumed from the grid in accordance with their OAT; (ii) provide a 10-year fixed export compensation rate under a program structure that sets NEM customers' export compensation at a rate of 15 cents/kWh prior to reaching 7% of the IOUs aggregate customer peak demand and 13 cents/kWh for a 10 year period for all installations after reaching 7% of the IOUs aggregate customer peak demand; and (iii) specify that the successor NEM tariff will be closed to new customers in 2019. It is

^{36/} PD, p. 86.

important to note that even with this modification to the PD, the Commission must take up consideration of the benefit/cost issue in 2019 (or before) to ensure compliance with § 2827.1(b)(4). Commission adoption of the joint IOU proposal would, however, serve in the meantime to further the goal of protecting non-NEM customers from the unfair cost burden that exists under the current NEM program (and remains under the framework proposed in the PD).

IV.

ADDITIONAL ERRORS CONTAINED IN PD

A. The PD Should be Revised to Clarify the Action to be Taken in 2019

The PD declines to make findings on the benefits and costs of the NEM program, or to propose a successor tariff that meets the requirement in §2827.1(b)(4) related to equalization of benefits and costs. It finds that the NEM successor tariff adopted in the decision should be reviewed in 2019 in order to ensure that the successor tariff (i) is consistent with Commission policy on distributed energy resources; (ii) makes use of relevant information about locational benefits and optimal distribution generation resources; and (iii) is appropriately aligned with changes to retail rates for residential and small customers.^{37/}

The PD mischaracterizes the action required to be taken in 2016. The “re-look” envisioned to occur in 2019 must be squarely focused on the question of the benefits and costs of NEM program and compliance with the statutory requirements set forth in § 2827.1(b). It is this question that the PD is deferring to 2019. While Commission policy and analysis developed in related proceedings will be relevant to the examination to be undertaken in 2019, the stated purpose of the 2019 evaluation must be compliance with § 2827.1 – compliance that is deferred under the PD. The PD should be revised to expressly state that the process undertaken in 2019 is intended, first and foremost, as a thorough examination of the benefit/cost issue and other issues necessary to ensure compliance with § 2827.1(b)(4). The PD should also acknowledge that the successor tariff adopted in the instant proceeding is intended as an interim solution and will likely be replaced as the result of the NEM benefit/cost inquiry undertaken in 2019.

B. The PD Should be Revised to Eliminate the Grandfather Provision if the Joint IOU Proposal is not Adopted

Section 2827.1(b)(6) directs the Commission to adopt a transition period for customer generator taking service under the § 2827 NEM tariff (the “NEM 1.0 tariff”). The Commission adopted a 20-year transition period for such customers in D.14-03-041. The PD concludes that a

^{37/} PD, COL 16.

similar 20-year grandfather period should be adopted for customers that take service under the NEM successor tariff (the “NEM 2.0 tariff”) “in order to promote consistency in the treatment of customers under the existing NEM tariff and customers under the NEM successor tariff.”^{38/}

The PD’s grant of a transition period to NEM 2.0 customers constitutes legal error inasmuch as §2827.1 does not provide for a transition period for such customers. Under the rules of statutory construction, “the expression of one thing in a statute ordinarily implies the exclusion of other things.”^{39/} Thus, the statute’s express inclusion of a transition period solely for NEM 1.0 customers signifies legislative intent to *exclude* NEM 2.0 customers from the right to take service under particular tariff terms for a set period of time. Adoption of the joint IOU proposal would render this aspect of the PD moot since the proposed tariff structure would not include the grandfather provision. If the Commission declines to adopt the joint IOU proposal, however, the PD must be revised to eliminate the 20-year grandfather provision for customers taking service under the successor tariff.

C. The PD Should be Revised to Eliminate the Virtual Net Energy Metering Proposal

The PD concludes that “it is reasonable to continue the [virtual net metering (“VNM”)] tariff, updated to include the requirements of the NEM successor tariff.”^{40/} The PD provides no analysis, however, of the cost implications of doing so. Logic dictates that retention of VNM under the successor tariff proposed in the PD would significantly expand the cost-shift and the resulting burden on non-NEM customers, in direct violation of the intent of AB 327 to prevent the current cost-shift. These cost impacts have not been fully evaluated, however. Accordingly, the PD should be revised to eliminate the VNM proposal and provide that VNM will be considered in the next phase of the proceeding.

D. The PD Should be Revised to Address Certain Interconnection Issues

The PD would require the IOUs to verify as part of every interconnection request that all major solar system components proposed for use by the customer-generator are on the verified equipment list maintained by the California Energy Commission (“CEC”). It would also require that certain other equipment be verified as having safety certification from a nationally recognized testing laboratory (“NRTL”) and that the interconnection request verify that a

^{38/} PD, COL 11.

^{39/} *In re J.W.*, 29 Cal. 4th 200, 209 (2002).

^{40/} PD, FOF 32.

warranty of at least 10 years has been provided on all equipment and its installation.^{41/} The PD should be revised to eliminate these requirements. Requiring the IOUs to police and monitor the ever increasing number of solar installers and their equipment is unduly burdensome, would be costly and is an inappropriate role for the utility. The requirement would likely be equally unwelcome to potential NEM customers, and the perception that the utility is imposing requirements that appear to create obstacles to installation could invite customer dissatisfaction and backlash.

If the Commission, nevertheless, elects to impose this requirement on the IOUs, it should authorize creation of a balancing account to track and recover the costs incurred to verify the equipment and warranties of numerous solar installers who use different equipment and differing warranty language. In addition, SDG&E request that it be authorized to open a memorandum account to track costs associate with upgrades to automated systems such as SDG&E's Distribution Interconnection Information System ("DIIS"). Upgrades to DIIS that will be necessary if the PD is adopted include, for example, functionality to allow for systems greater than 1 MW, tracking and processing interconnection fee payments and other necessary system upgrades.

V. CONCLUSION

For the reasons set forth above, the Commission should adopt the PD with the modifications described herein.

Respectfully submitted this 7th day of January, 2016.

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^{41/} PD, pp. 97-98.