

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric
Company for 2013 Rate Design Window
Proceeding (U39E).

Application 12-12-002
(Filed December 3, 2012)

**ORDER MODIFYING DECISION (D.) 14-12-080 AND
DENYING REHEARING OF DECISION, AS MODIFIED**

I. INTRODUCTION

In Decision (D.) 14-12-080 (or “Decision”),¹ we approved, in part, a rate design proposal to adopt an “Option R” rate for customers on Pacific Gas and Electric (“PG&E”)’s rate schedules E-19 and E-20, which apply to medium and large commercial and industrial customers. As adopted, the Option R rates shift all revenues collected for generation capacity costs and 75% of revenues collected for distribution capacity costs from peak and part-peak demand charges to peak and part-peak energy charges. Option R is available to qualifying customers with solar photovoltaic (“PV”) systems that provide 15% or more of their annual electricity usage.

In its rehearing application, PG&E alleges the following: (1) the Decision lacks adequate findings and is not supported by record evidence;² (2) the Decision illegally relied on settlement agreements in other rate cases; (3) the Commission

¹ Except as otherwise noted, all citations to Commission decisions are to the official pdf versions which are available on the Commission’s website at: <http://docs.cpuc.ca.gov/DecisionsSearchForm.aspx>.

² In support of these allegations, PG&E cites to Public Utilities Code section 1757(a)(3) and (a)(4), which sets forth the standard of review for judicial review of the Commission’s orders or decisions in a complaint or enforcement proceeding, or in a ratemaking or licensing decision of specific application that is addressed to particular parties. (Rehrg. App., p. 12.)

All subsequent section references are to the Public Utilities Code, unless otherwise specified.

improperly refused to consider the Commission's own conclusion on the issue in dispute; and (4) giving the rate to only solar customers constitutes unlawful discrimination and violates sections 453 and 2827. PG&E also requests oral argument.

The Solar Energy Industries Association ("SEIA") filed a response to the rehearing application.

We have reviewed each and every argument raised in the rehearing application and are of the opinion that modifications to the Decision, as described herein, are warranted to: (1) clarify why we denied PG&E's motion for official notice; and (2) correct a typographical error. Rehearing of D.14-12-080, as modified, is denied. PG&E's request for oral argument is also denied.

II. DISCUSSION

A. Allegations That the Decision Is Not Supported by Record Evidence or Findings

PG&E alleges that the Decision is not supported by record evidence and necessary findings because: (1) the cost study relied on by the Commission did not include any cost data; (2) there is no evidence that looking at load in a single hour of the year provides accurate evidence of the value of capacity; (3) there is no evidence that data for only five customers is a statistically meaningful sample to accomplish a major change in rate design, or that 2011 was a representative year; and (4) the Decision concluded that solar customers are overcharged but did not consider half the costs and benefits of these customers' bills.

In several instances, PG&E's rehearing application seeks to have the Commission reweigh the evidence in the record, which does not constitute a basis for granting rehearing. The purpose of a rehearing application is to specify legal error, not to relitigate issues already determined by the Commission. (Pub. Util. Code, § 1732; Cal. Code Regs., tit. 20, § 16.1, subd. (c).) It is within our discretion to weigh the preponderance of conflicting evidence in the record. (*The Utility Reform Network v. Public Utilities Com.* (2014) 223 Cal.App.4th 945, 959; Pub. Util. Code, § 1757, subd. (b).) If the challenged findings are supported by a reasonable construction of the

evidence in the record, there is no demonstration of legal error, and thus, no basis for granting rehearing. (See *The Utility Reform Network v. Public Utilities Com.*, *supra*, 223 Cal.App.4th at p. 959; *SFPP, L.P. v. Public Utilities Com.* (2013) 217 Cal.App.4th 784, 794.)

Furthermore, in several instances, PG&E's rehearing application improperly relies on materials outside of the record. (See e.g., Rehr. App., pp. 3 (Commission report on net energy metering ("NEM")); 17, fn. 27 (slides presented at workshop in another docket); 20, fn. 33 (Energy Efficiency Evaluation Protocols); 24 (Comments of Commissioner Peevey at a Commission meeting); 24, fn. 45 (Commission press release) & 26-28 (Commission report on NEM).) A rehearing application cannot rely on materials outside of the record. (See Cal. Code Regs., tit. 20, § 16.1, subd. (c) [rehearing application must make specific references to the record or law].) Thus, we do not consider these extra-record materials in considering PG&E's rehearing application.

For the reasons detailed below, we find that PG&E's allegations that the Decision's findings are not supported by record evidence lack merit. PG&E claims that expert testimony does not constitute competent evidence where this testimony is not based on facts.³ (Rehr. App., pp. 13-14.) Contrary to PG&E's claims, the evidence we relied on was based on facts. The fact that PG&E may disagree with how those facts should be weighed and interpreted does not demonstrate legal error.

³ PG&E's rehearing application cites to several cases involving Evidence Code section 801, which sets the standard for admissibility of expert witness testimony. (See Rehr. App., p. 13 citing *Sargon Enterprises, Inc. v. Univ. of Southern Cal.* (2012) 55 Cal.4th 747, 770; *Hyatt v. Sierra Boat Co.* (1978) 79 Cal.App.3d 325, 338-339; *PG&E v. Zuckerman* (1987) 189 Cal.App.3d 1113, 1136.) But Evidence Code section 801 does not apply to the Commission's proceedings. (See Cal. Const., Art. XII, § 2 ("Subject to statute and due process, the commission may establish its own procedures."); Pub. Util. Code, § 1701, subd. (a) (The technical rules of evidence need not be applied to the Commission's hearings, investigations, and proceedings.)) PG&E also cites to *Harris Transportation Co. v. Air Resources Bd.* (1995) 32 Cal.App.4th 1472, 1478. (Rehr. App., pp. 13-14.) This case involved application of the rule set forth in *People v. Kelly* (1976) 17 Cal.3d 24, which established a legal standard for the admission of scientific evidence based on its level of acceptance in the relevant scientific community. PG&E does not explain why the rule in *People v. Kelly* would be controlling in this case or in any Commission case. Moreover, the instant case does not involve scientific evidence.

1. Allegation That There Was No Evidence of Costs

According to PG&E, the Decision concluded that solar customers on the E-19 and E-20 tariffs were charged substantially more for capacity than the cost of service. (Rehrg. App., p. 14.) PG&E alleges that in reaching this conclusion we relied on a study that was not based on PG&E's actual, avoided, or marginal costs, and thus, that the conclusion is not supported by any credible evidence. (Rehrg. App., p. 14.)

PG&E's costs for additional generation, transmission, and primary distribution capacity are driven by the need to meet coincident peak demands. (D.14-12-080, pp. 14 & 22 [Finding of Fact ("FOF") 8]; Exh. PG&E-1, p. 3; Exh. SEIA-1, at 7:18-19.) The Decision determined that the current demand charge structure, which is based on a customer's single highest 15-minute peak and part-peak demand that occurred during the billing cycle, unfairly charges solar customers more for coincident demand-related capacity costs than they actually cause PG&E to incur. (D.14-12-080, pp.17-18 & 20.) The Decision made the finding that:

PG&E's use of peak and part-peak demand charges on the E-19 and E-20 tariffs unfairly overcharges solar customers with relatively erratic loads because an individual customer's highest recorded usage during a single 15-minute interval each billing period may not coincide with system-level peak demands.

(D.14-12-080, p. 23 [FOF 11]; see also D.14-12-080, pp. 15-17 & 20.) PG&E fails to demonstrate that this finding is unsupported by record evidence.

D.11-12-053⁴ required PG&E to complete a study examining the demand charges in the E-19 and E-20 tariffs, and the extent to which those demand charges may penalize customers with erratic loads by overcharging them for their contributions to system peaks. (D.11-12-053, *supra*, at pp. 28 & 89-90 [Ordering Paragraph ("OP") 9] (slip op.)) Pursuant to this directive, PG&E submitted in this proceeding a study based

⁴ *Decision Adopting Electric Marginal Costs, Revenue Allocation and Non-Residential Rate Design for Pacific Gas and Electric Company* [D.11-12-053] (2011).

on five E-19 and E-20 customers with installed solar systems. SEIA requested additional data from PG&E and performed additional analysis on these customers.

In finding that the current demand charge structure unfairly overcharges solar customers for coincident demand-related capacity costs, we relied on SEIA's analysis of the five customers chosen by PG&E for its analysis.⁵ SEIA's study demonstrated that these individual customers' maximum peak period demands did not coincide with the monthly summer peak demands on PG&E's system. (D.14-12-080, pp. 17 & 20; Exh. SEIA-1, p. 15, Table 5-5.) The study also showed that for these five customers the average coincident peak period loads were significantly lower than the highest loads for which these customers were billed. (D.14-12-080, pp. 17 & 20; Exh. SEIA-1, p. 23, Table 6-1.)

With regard to the demand charges for generation capacity, SEIA's study found that in 2011, the customers' average load during the top 40 15-minute intervals of system peak demand was 203 kilowatt ("kW") but that the average maximum peak period load billed for these five customers across the six summer months was 744 kW.⁶ (D.14-12-080, p. 17; Exh. SEIA-1, pp. 10-11, Tables 5-2 and 5-3.) SEIA estimated that PG&E billed these customers for 3.9 times more peak and part-peak period capacity than was required to serve them. (D.14-12-080, p. 17 citing Exh. SEIA-1, pp. 10-11, Tables 5-2 and 5-3.) SEIA used PG&E's retail rates as a proxy for PG&E's marginal generation capacity costs. (Exh. SEIA-1, at 10:14-16; Reporter's Transcript ("RT"), Vol. 1, at 29:3-5.)

A review of the record in this case demonstrates that it was reasonable for the retail rates to be used as a proxy for marginal costs. The E-19 and E-20 rates are the

⁵ SEIA also performed a study analyzing usage and demand data for 71 of PG&E's E-19 customers with installed solar. We did not give this study much weight in reaching the conclusions in the Decision. (D.14-12-080, p. 13.)

⁶ PG&E alleges that using a retail rate and multiplying it by a customer's kW demand at a single hour is not a relevant measure of cost of service. (Rehrg. App., p. 14.) PG&E mischaracterizes the SEIA study relied on in the Decision, which examined the customers' average load during the 40 intervals of highest system peak demand, as well as the customers' data for the six peak summer months of 2011.

result of a Commission-approved settlement. SEIA's witness R. Thomas Beach testified that PG&E's retail rates are based PG&E's marginal costs. (RT, Vol. 1, at 29:17-21.) He also testified that \$12 per kW month was within the ballpark of the range of estimates for PG&E's marginal generation capacity costs that were offered by parties in PG&E's 2011 rate case. (RT, Vol. 1, at 30:10-14.) The record reflects that PG&E's own witness testified that the generation on-peak and partial-peak demand charges in PG&E's rates are designed to reflect the marginal cost of generation capacity. (Exh. PG&E-2, at 5:4-6.)

With regard to demand charges for primary distribution capacity, SEIA compared each of the five customers' loads during the 40 highest intervals of demand at the substation and distribution planning area level to the loads that were the basis of the time of use ("TOU") demand charges billed to these customers. Based on a comparison of these loads, SEIA's study showed that across all five customers, the average factor of overbilling was 2.1. (D.14-12-080, p. 18 citing Exh. SEIA-1, p. 22, Table 5-10.)⁷

Based on the foregoing, the Decision's finding that TOU demand charges unfairly overcharge E-19 and E-20 solar customers for coincident demand-related capacity costs is based on a reasonable construction of the evidence in this proceeding. SEIA's study showed that the customers' maximum peak period demands did not coincide with the monthly summer peak demands on PG&E's system, and that the average peak period loads and coincident peak loads were lower than the highest loads for which these customers were billed. Furthermore, the record of this proceeding supports the reasonableness of using the retail rates as a proxy for the marginal generation capacity costs. Therefore, PG&E fails to demonstrate that rehearing is warranted on this issue.

⁷ SEIA also conducted a similar analysis for demand charges for transmission capacity costs. (Exh. SEIA-1, pp. 16-18.) The Decision did not make any changes affecting the transmission demand charge, which is under the jurisdiction of the Federal Energy Regulatory Commission ("FERC"). (D.14-12-080, pp. 20-21.)

2. Allegation That the Value of Capacity Does Not Lie in a Single Hour of the Year

As explained above, based on SEIA's study, we made the finding that the current demand structure unfairly overcharges solar customers for coincident demand-related capacity costs. (D.14-12-080, p. 23 [FOF 11].) According to PG&E, the SEIA calculation relied on customer loads in either a single hour of the year when the PG&E system peaked in 2011, or the top ten highest system peak hours. PG&E alleges that, therefore, the Decision made a factual finding that the value of capacity lies entirely in a single hour of the year. PG&E alleges that there is no evidence that the value of capacity lies in a single hour. (Rehrg. App., p. 15.)

PG&E misreads the Decision. The Decision did not make the factual finding that the value of capacity lies in a single hour of the year. FOF 11, which PG&E cites in its rehearing application, did not make this finding. (Rehrg. App., p. 15.) Rather, FOF 11 found that PG&E's use of peak and part-peak demand charges based on a customer's highest single interval of demand unfairly overcharges solar customers with relatively erratic loads.⁸ We determined that it was more appropriate to recover coincident peak and part-peak capacity costs from these customers via volumetric peak and part-peak energy rates. (D.14-12-080, p. 24 [FOF 19].)

PG&E also mischaracterizes the SEIA study that we relied on in the Decision. This study did not merely look at customer loads in a single hour of the year. SEIA's analysis, which was based on PG&E's data, examined the customers' load profiles during the top 40 15-minute intervals of demand in 2011 and compared these to the maximum peak period loads for which the customers were billed. (Exh. SEIA-1, pp. 11-14 & Attachment RTB-4; see also D.14-12-080, p. 13.) SEIA also examined data for the six peak summer months of 2011 and compared the customers' peak period net loads

⁸ PG&E also alleges that footnote 7 of the Decision illustrates the problem of putting the entire value of capacity in a single hour. (Rehrg. App., pp. 18-19.) This footnote did not make the finding that the entire value of capacity lies in a single hour. Footnote 7 was merely a hypothetical example intended to illustrate the smoothing effect of load diversity on system demand. (D.14-12-080, p. 15, fn. 7.)

on the peak day of each month to the customers' individual maximum peak period net loads during those months. (Exh. SEIA-1, pp. 14-15; see also D.14-12-080, pp. 23 [FOF 13] & 24 [FOF 17].)

PG&E does not demonstrate that, as a matter of law, it was erroneous for us to rely on this evidence in the record. To the extent that PG&E's rehearing application seeks to have us reweigh the evidence in the record, this does not constitute a basis for granting rehearing. (Pub. Util. Code, § 1732; Cal. Code Regs., tit. 20, § 16.1, subd. (c).) PG&E does not identify any legal requirement that we use a specific methodology to evaluate generation capacity costs. PG&E's own study, which it submitted pursuant D.11-12-053's directive to provide a cost study evaluating an Option R rate for E-19 and E-20 customers, examined customers' data during the top 40 15-minute intervals of demand.

PG&E suggests that section 399.26(d) requires use of the Effective Load Carrying Capability ("ELCC") method, which according to PG&E is based on 250 hours. (Rehrg. App., p. 17.) Section 399.26(d) requires the Commission to determine the effective load carrying capacity of wind and solar energy resources for purposes of establishing resource adequacy requirements pursuant to section 380. There is nothing in that statute that requires us to use a specific methodology in this case. Moreover, we have not yet implemented the requirements of section 399.26(d). In discussing section 399.26(d), PG&E references slides presented by Energy Division at a Commission workshop that are not a part of the record of this proceeding, and thus, cannot be considered in disposing of the rehearing application. (Cal. Code Regs., tit. 20, § 16.1, subd. (c) [rehearing application must make specific references to the record or law].)

PG&E misreads the findings in the Decision, as well as the evidence in the record. Therefore, PG&E fails to demonstrate that rehearing is warranted on this issue.

3. Allegation That the Decision Improperly Relied on a Study of Only Five Customers

PG&E alleges that the Decision relied on a study of five customers, and that it is unreasonable to conclude that a five-customer sample can statistically represent

a population of thousands of diverse E-19 and E-20 customers. (Rehrg. App., p. 20.) PG&E alleges that the Decision failed to make a factual finding that this data was sufficient to adopt a new rate design. (Rehrg. App., pp. 20-21.) PG&E also alleges that 2011 was not a representative year as PG&E's 2011 system peak occurred in June but in every other year between 2005 and 2012, the peak occurred in July or August. (Rehrg. App., p. 20.)

PG&E fails to demonstrate any legal error. PG&E does not dispute that our determinations are supported by evidence in the record. Rather, PG&E challenges the credibility of that evidence. PG&E's rehearing application is essentially asking us to reweigh the evidence in this proceeding. As noted above, the purpose of a rehearing application is to specify legal error, not to be a vehicle for relitigation. (Pub. Util. Code, § 1732; Cal. Code Regs., tit. 20, § 16.1, subd. (c).) PG&E previously made the same arguments that we should not rely on SEIA's study. (See e.g., PG&E's Opening Comments on the Proposed and Alternate Proposed Decisions, dated December 8, 2014, pp. 5-6.) We previously considered and rejected these arguments.

PG&E does not demonstrate that, as a matter of law, it was erroneous for us to rely on SEIA's study. It is within our discretion to weigh the preponderance of conflicting evidence in the record. (*The Utility Reform Network v. Public Utilities Com.*, *supra*, 223 Cal.App.4th at p. 959; see also Pub. Util. Code, § 1757, subd. (b).) PG&E does not cite to any legal authority that we may only rely on studies with a certain level of statistical significance.² In this case, we lawfully exercised our discretion to weigh the

² In support of its allegation that our reliance on a five-customer sample was unreasonable from a statistical standpoint, PG&E cites to *Application of Pacific Gas and Electric Company for Authority, Among Other Things, to Increase Rates and Charges for Electric and Gas Service Effective on January 1, 1999* [D.00-02-046] (2000) 2000 Cal. PUC LEXIS 239 and the Commission's Energy Efficiency Evaluation Protocols. In D.00-02-046, we found that certain temperature adjustments that PG&E had made to its load forecasting methodology relied on a statistical forecasting method but failed to test the statistical significance of temperature parameters. (D.00-02-046, *supra*, 2000 Cal. PUC LEXIS 239 at * 277.) In this case, SEIA's study did not use a statistical forecasting method that would require statistical significance. With regard to the Commission's Energy Efficiency Protocols, these protocols are not part of the record of this proceeding. (See Cal. Code Regs., tit. 20, § 16.1, subd. (c).) In any event, neither D.00-02-046 nor the Energy Efficiency Protocols dictate that we may only rely on a study with a certain

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evidence that was part of the record of this proceeding and found persuasive SEIA's analysis regarding the inaccuracy of maximum TOU demand charges for solar customers with erratic load. (See D.14-12-080, p. 18.)

In its rehearing application, PG&E alleges that any inferences drawn from the five customer study are essentially meaningless.¹⁰ (Rehrg. App., p. 20, fn. 30.) But it was PG&E that prepared a study using data from these five customers in response to our directives in D.11-12-053 to prepare a demand charge cost study evaluating an Option R rate. (See D.11-12-053, *supra*, at pp. 28 & 89-90 [OP 9] (slip op.)) PG&E's witness testified that PG&E's five customer study was responsive to D.11-12-053's directives and that the data provided useful information for the Commission about the degree to which solar customers are producing during the hours when either the system, distribution planning area, substation, or circuit peaks. (RT, Vol. 1, at 101:20-102:5.) SEIA's study merely conducted further analysis on these five customers based on additional data provided by PG&E.

Pursuant to D.11-12-053, PG&E was required to provide a study that would enable us to evaluate an Option R rate. It is not credible for PG&E to argue that its five customer study fulfilled the directives of D.11-12-053, and thus, was sufficient for our evaluation of an Option R rate, but that we should not rely on SEIA's analysis of data on these same five customers.

PG&E also argues that large quantities of additional interval data was available had SEIA simply requested it from PG&E. (Rehrg. App., p. 21.) If PG&E

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level of statistical significance in this case.

¹⁰ PG&E alleges that the five-customer sample cannot represent a population of thousands of diverse E-19 and E-20 customers. (Rehrg. App., p. 20.) However, SEIA's study was not intended to represent the total population of E-19 and E-20 customers. Rather, the study sought to analyze E-19 and E-20 customers with solar installations. (SEIA Resp. to Rehrg. App., pp. 8-9.) The record reflects that there are 306 E-19 solar customers. (Exh. SEIA-1, at 8:1-4.) The record does not reflect precisely how many E-20 customers have solar installations. PG&E's witness indicated that there are hundreds of E-19 and E-20 customers who have installed solar. (Exh. PG&E-2, at: 28:22-24.)

wanted us to consider this additional data, PG&E itself could have provided this data for us to consider. Pursuant to D.11-12-053, it was PG&E's responsibility to produce a study that would enable us to evaluate an Option R rate. PG&E asserted that it fulfilled this obligation when it submitted its study based on the five solar customers.

The Commission's determinations must be based on evidence that is part of the record. (See Pub. Util. Code, § 1757, subd. (a)(4).) Accordingly, we weighed the evidence that was part of the record in this proceeding to reach our determinations. There is no dispute as to the accuracy of the data for the five customers.¹¹ (See RT, Vol. 1, at 111:12-19.) We found persuasive SEIA's analysis based on this data regarding the inaccuracy of maximum TOU demand charges for solar customers with erratic load. (D.14-12-080, pp. 15-18.) PG&E fails to demonstrate that this constitutes legal error. A request that we reweigh the record evidence does not constitute grounds for granting rehearing.

PG&E also alleges that the Decision failed to make a factual finding but implicitly concluded that a study of five customers is enough to completely change rate design. (Rehrg. App., p. 21.) PG&E does not identify any legal authority that requires us to make a finding of fact on every piece of evidence in the record. Rather, the law requires us to make findings of fact on material issues. (Pub. Util. Code, § 1705.) As the California Supreme Court has explained:

We have never held that an administrative decision must contain a complete summary of all proceedings and evidence leading to the decision. Rather we have repeatedly [Citation] set as our standard a statement which will allow us a meaningful opportunity to ascertain in the principles and facts relied upon by the Commission in reaching its decision.

(Toward Utility Rate Normalization v. Public Utilities Com. (1978) 22 Cal.3d 529, 540.)

¹¹ Since PG&E claims that it had large quantities of additional interval data available, if there was additional data that could show that the load profiles of the five customers were atypical and not representative of other E-19 and E-20 solar customers, PG&E presumably could have produced that data. But PG&E did not produce any such data.

PG&E does not demonstrate that the Decision's findings were inadequate to reasonably apprise the reader of the reasoning behind and the basis for our determinations. We adequately explained our reasons for adopting an Option R rate and detailed the record evidence that we relied on in reaching this determination. (See D.14-12-080, pp. 16-18, 20 & 22-25 [FOFs 8-20].)

4. Allegation That the Decision Ignored Half the Costs and Credits That Apply to Solar Customers

PG&E alleges that the Decision concluded that E-19 and E-20 solar customers were overcharged. (Rehrg. App., p. 22.) PG&E alleges that this conclusion is in error because the Decision did not adequately address the energy benefits that solar customers on NEM would receive under the Option R rate. (Rehrg. App., pp. 22-23.)

Contrary to PG&E's allegation, the Decision did not generally conclude that E-19 and E-20 solar customers were overcharged. PG&E alleges that the Decision made such a finding but does not provide any citation to the Decision itself. PG&E's E-19 and E-20 tariffs consist of four different types of charges: (1) a fixed monthly customer charge; (2) time-varying peak and part-peak maximum demand charges; (3) non-coincident demand charges; and (4) peak, part-peak and off peak energy charges. (D.14-12-080, pp. 4-5.) The Decision only examined the issue of time-varying peak and part-peak maximum demand charges and its determinations were limited to that issue. We made the finding that the current demand charge structure overcharges solar customers more for coincident demand-related capacity costs than they actually cause PG&E to incur. (D.14-12-080, pp. 20 & 23 [FOF 11].) We determined that the Option R rate would more equitably allocate costs related to coincident demand to solar customers. (D.14-12-080, p. 25 [Conclusion of Law ("COL") 1].) The Decision did not make any findings that solar customers were overcharged for other charges in the E-19 and E-20 tariffs.

PG&E alleges that SEIA's study ignored the benefits associated with more than doubling the energy rate for exports by NEM customers. (Rehrg. App., pp. 22-23.) As explained in sections II.A.1. and II.A.2., above, SEIA's study supports our finding

that E-19 and E-20 solar customers were overcharged for coincident demand-related capacity costs. (See also D.14-12-080, pp. 15-18.) Moreover, SEIA's analysis of capacity-related costs for E-19 and E-20 solar customers did take into account the impact of net metering credits at the higher TOU energy rates under Option R. (Exh. SEIA-1, at 26:1-27:4; RT, Vol. 1, at 12:2-16.) To the extent that PG&E attempts to relitigate the evidence, PG&E does not demonstrate a basis for granting rehearing.¹²

PG&E misreads the Decision. PG&E fails to demonstrate that the finding we actually made in the Decision (that E-19 and E-20 solar customers were overcharged for coincident demand-related capacity costs) was in error. Accordingly, PG&E fails to demonstrate that rehearing is warranted on this issue.

B. Allegation That the Decision Illegally Relied on Settlement Agreements in Other Cases

PG&E alleges that the Decision relied on the fact that Southern California Edison Company ("SCE") and San Diego Gas & Electric Company ("SDG&E") have agreed to an Option R rate via settlement agreements. (Rehrg. App., p. 24.) PG&E states that in discussing the proposed decision at the Commission meeting, Commissioner Peevey discussed the fact that SCE had agreed to an Option R settlement. (Rehrg. App., p. 24.) PG&E alleges that by relying on these settlement agreements, the Decision violated Rule 12.5 of the Commission's Rules of Practice and Procedure. (Rehrg. App., pp. 24-25.)

Rule 12.5 states: "Unless the Commission expressly provides otherwise, [the Commission's adoption of a settlement] does not constitute approval of, or precedent regarding, any principle or issue in the proceeding or in any future proceeding." (Cal. Code Regs., tit. 20, § 12.5.)

¹² PG&E also alleges that the Decision "cited with approval" PG&E's testimony regarding the consequences of a higher rate for exports for NEM customers. (Rehrg. App., p. 23.) PG&E is mistaken that the Decision cited this testimony "with approval." Rather, the Decision stated: "We do not necessarily concur with PG&E's characterization that the NEM credits that solar customers would receive under Option R rates are excessive." (D.14-12-080, p. 19.)

According to PG&E, there are no less than seven instances where the Decision noted that SCE and SDG&E have agreed to an Option R rate. (Rehrg. App., p. 24 citing D.14-12-080, pp. 5, 10, 14, 21, 22, 24 & 25.) PG&E cites to the following:

- On page 5, the Decision stated that SEIA's proposed Option R rate was modeled on comparable rates adopted in settlements by SCE and SDG&E.
- On page 10, the Decision recounted statements made by SEIA in its opening brief regarding SCE's and SDG&E's Option R tariffs.
- On page 14, the Decision noted that unlike SCE and SDG&E, PG&E's medium and large commercial and industrial tariffs include peak and part-peak demand charges.
- On page 21, the Commission encouraged PG&E or another party to file a request with FERC regarding the recovery of transmission costs similar to the one that SDG&E had committed to do in its settlement.
- FOF 4 on page 22 stated that the Option R rate designs in effect for SCE and SDG&E customers were adopted as part of comprehensive rate design settlements.
- FOF 20 on pages 24 and 25 set forth conclusions that SCE had made in a cost study that it had submitted in Phase 2 of its 2012 General Rate Case regarding its Option R rate.

PG&E fails to explain how any of these statements demonstrate that the Decision relied on previous settlements.¹³ The mere fact that the Decision referenced the settlements or noted that SCE and SDG&E have agreed to an Option R rate does not mean that we relied on these agreements to reach any of the findings in the Decision.

¹³ FOF 20 concerns a cost study studying the effects of SCE's Option R, which is a part of the record of this proceeding. (Exh. SEIA-1, Attachment RTB-2.) PG&E fails to explain how Rule 12.5, which applies to settlement agreements, would prohibit us from considering this cost study.

Moreover, statements made by Commissioner Peevey during a Commission meeting are not part of the Decision and are not part of the evidentiary record that forms the basis for the Decision. The fact that Commissioner Peevey stated that SCE had agreed to an Option R rate does not demonstrate that the Decision relied on this settlement. Furthermore, PG&E omits the fact that Commissioner Peevey also stated that he was “cognizant that settlements are not precedential.”¹⁴

Our determination to adopt an Option R tariff for PG&E was not based on the fact that SCE and SDG&E have Option R rates. Rather, as explained above in section II.A., the Decision’s findings were based on the record of this proceeding. PG&E fails to demonstrate that we based our decision on anything other than the record evidence. In fact, the removal of the seven statements cited by PG&E would not have an effect on any of the ultimate determinations reached in the Decision. Thus, PG&E fails to demonstrate that the Decision relied on previous settlements in violation of Rule 12.5.

C. Allegation That the Decision Improperly Refused to Consider a Commission Study on the Issue in Dispute

Assembly Bill 2514 (Stats. 2012, ch. 609) required the Commission to complete a study evaluating the NEM Program’s costs and benefits by October 1, 2013 (“NEM Study”) and to report the results of the study to the Legislature. (Pub. Util. Code, § 2827.3, subds. (a) & (b).) PG&E filed a motion requesting that we take official notice of the NEM Study in this proceeding. The Decision did not specifically address this motion but ordered that “All rulings not previously granted are denied.” (D.14-12-080, p. 26 [OP 2].)¹⁵

PG&E claims that the issue in the NEM Study and the issue in this case were identical. (Rehrg. App., p. 29.) PG&E alleges that we erred by refusing to consider

¹⁴ A video stream of Commissioner Peevey’s comments are available at: http://www.californiaadmin.com/cgi-bin/cali/cpuc_view.cgi?name=CPUC_OM121814&part=2. The quoted portion of his comments takes place at approximately 30:32-30:35.

¹⁵ OP 2 of the Decision contains a typographical order as it should have denied all motions, not all rulings. We modify the Decision, as set forth in the ordering paragraph below, to correct this typographical error.

the study and did not provide any explanation as to why we would not consider the study. (Rehrg. App., p. 30.) PG&E alleges that the Decision is not supported by necessary findings or record evidence because it disregarded this study. (Rehrg. App., p. 30.)

As noted above, the law requires the Commission to make findings of fact on material issues but does not require the Commission to provide a complete summary of all proceedings and evidence leading to its decision. (Pub. Util. Code, § 1705; *Toward Utility Rate Normalization v. Public Utilities Com.*, *supra*, 22 Cal.3d at p. 540.) PG&E does not necessarily demonstrate that we violated this requirement with regard to its motion for official notice. Nevertheless, we modify the Decision to clarify why we denied the motion for official notice.

The proceeding was submitted as of August 23, 2013 when parties completed briefing. (Cal. Code Regs., tit. 20, § 13.14, subd. (a).) PG&E filed its motion for official notice on November 8, 2013. In order for the Commission to consider the NEM Study, submission had to be set aside and the record of the proceeding had to be reopened. (See Cal. Code Regs., tit. 20, § 13.14, subd. (b); see also *Order Modifying D.12-11-002 and Denying Rehearing of the Decision as Modified* [D.14-04-024] (2014), at p. 11 (slip op.).) But PG&E did not file a motion to set aside submission and reopen the record.¹⁶ Thus, PG&E's motion for official notice was not procedurally proper, and was appropriately denied. We modify the Decision, as set forth in the ordering paragraphs below, to clarify this point.

We note that even if PG&E's motion was procedurally proper, which it was not, PG&E still does not demonstrate that the exclusion of the NEM Study from the record was unlawful. The California Supreme Court has held that errors in the admission or exclusion of evidence do not constitute a failure of the Commission to regularly pursue its authority unless they result in an unfair hearing. (*Ventura County Waterworks Dist.*

¹⁶ PG&E alleges that it tried repeatedly to have the NEM Study included in the record in this case. (Rehrg. App., p. 29.) The NEM Study was issued in October 2013. The NEM Study could not have been entered into the record of this proceeding prior to that date, which occurred after the submission of this proceeding.

No. 5 v. Public Utilities Com. (1964) 61 Cal. 2d 462, 464; *Brewer v. Railroad Com.* (1928) 190 Cal. 60, 77-78.) It would be unlawful for the Commission to entirely exclude evidence on one side touching on an essential matter at issue, as this would amount to a denial of due process of law. (*Brewer v. Railroad Com.*, *supra*, 190 Cal. at pp. 77-78.)

PG&E does not claim that it was denied a fair hearing and there is no indication that PG&E was denied a fair hearing. PG&E claims that the NEM Study concluded that, overall, solar customer including E-19 and E-20 customers receive bill savings from their solar installations that exceed utility costs. (Rehrg. App., p. 27.) PG&E made similar arguments during the proceeding that E-19 and E-20 solar customers are already subsidized by and shift costs to non-solar customers and presented evidence in support of its position, which we considered. (See e.g., PG&E Opening Brief, pp. 10-12 & 24-25.) Thus, there is no demonstration that the exclusion of the NEM Study from the record denied PG&E a fair hearing.¹⁷

PG&E also alleges that because we did not consider the NEM Study, the Decision is not supported by record evidence. (Rehrg. App., p. 30.) PG&E's allegation fails to specify which finding in the Decision is unsupported. Thus, this allegation fails to meet the requirements of section 1732 and Rule 16.1(c) of the Commission's Rules of Practice and Procedure, which require a rehearing application to set forth specifically the grounds on which the applicant considers the order or decision of the Commission to be unlawful or erroneous. We have ruled that merely identifying a legal principle or argument, without providing any explanation of how it applies to the instant case, is

¹⁷ Furthermore, even if we had taken official notice of the NEM Study, this would not necessarily mean that the statements in the study would have been dispositive of the issues in this proceeding. The fact that the Commission may take official notice of a document does not establish the truth of the matters stated in that document. (*Order Modifying Interim Opinion Decision 02-01-039 and Denying Rehearing, as Modified* [D.02-07-043] (2002), p. 40 (slip op.); *Order Modifying Decision (D.) 10-12-052, and Denying Rehearing of the Decision as Modified* [D.11-14-034] (2011), pp. 18-19 (slip op.); see also 1 Witkin, California Evidence (5th Ed. 2012) Judicial Notice, § 21, p. 128.) Moreover, SEIA had disputed the relevance of the NEM Study arguing that the overall costs and benefits of solar installations were not at issue in this proceeding. (SEIA Resp. to PG&E's Motion for Official Notice, dated Nov. 20, 2013, p. 3.) SEIA had also disputed how the results of the study should be interpreted as applied to this proceeding, as well as the validity of the findings of the study. (SEIA Resp. to PG&E's Motion for Official Notice, dated Nov. 20, 2013, pp. 4-8.)

insufficient to meet the requirements of section 1732. (*Order Modifying Decision (D.) 07-10-013 and Denying Rehearing of the Decision as Modified* [D.10-07-050] (2010), p. 19 (slip op.))

Moreover, PG&E fails to explain how the exclusion of the NEM Study from the record would demonstrate that any of the Decision's findings are unsupported by evidence in the record. On the contrary and as discussed above, the record evidence supports our determinations.

D. Allegations That the Option R Rate is Unlawfully Discriminatory

In addition to the data on the five solar E-19 and E-20 customers, PG&E's study included data on four erratic load E-19 and E-20 customers without solar. According to PG&E, this data demonstrated that these customers had a much lower kW demand on the single peak day of 2011 than the solar customers. (Rehrg. App., pp. 30-31.) PG&E alleges that extending the Option R rate to solar customers but not to other erratic load customers, therefore, violates section 453 because there is no factual basis for treating these other erratic load customers differently. (Rehrg. App., p. 30.) PG&E also alleges that extending the Option R rate only to solar customers violates section 2827, which requires an identical rate structure for all customers participating in NEM. (Rehrg. App., p. 32.)

Section 453(a) states, "No public utility shall, as to rates, charges, service, facilities, or in any other respect, make or grant any preference or advantage to any corporation or person or subject any corporation or person to any prejudice or disadvantage." The California Supreme Court has held that: "Although couched in general terms of 'any' prejudice or disadvantage, the section, from the outset, has been interpreted, consistent with traditional common law principles, to prohibit only unjust or unreasonable differential treatment." (*Gay Law Students Assn. v. Pacific Telephone & Telegraph Co.* (1979) 24 Cal.3d 458, 477.) Under section 453, the Commission may reasonably allow differential treatment when there is a rational basis for doing so.

(*Toward Utility Rate Normalization v. Public Utilities Com.*, *supra*, 22 Cal.3d at pp. 543-544.)

We have similarly held that in determining whether the action of a utility violates section 453, it is not sufficient to merely show that rates, charges, services, etc. differ. To constitute unlawful discrimination, the treatment must “draw an unfair line or strike an unfair balance between those in like circumstances having equal rights and privileges.” (*Order Denying Rehearing of Decision (D.) 05-12-045* [D.06-04-041] (2006), at pp. 6-7 (slip op.) citing *Hansen v. City of San Buenaventura* (1986) 42 Cal.3d 1172, 1180 and *International Cable T.V. Corp. v. All Metal Fabricators, Inc.* [D.71559] (1966) 66 Cal.P.U.C. 366, 382.)

Here, PG&E fails to demonstrate that solar customers and non-solar customers with erratic load are similarly situated. Our decision to adopt an Option R rate for solar customers was based on findings that solar customers have particular characteristics and load profiles. (D.14-12-080, pp. 16-17 & 23-24 [FOFs 12-17].) The evidence in the record indicates that solar customers are likely to experience their peak loads on overcast days when the output of the solar systems is diminished, which typically do not coincide with system-level peak demands. (Exh. SEIA-1, at 11:20-15:11 & Attachment RTB-4.) Conversely, on the hot, sunny days that typically drive system peaks, solar output will tend to be high, keeping solar customers’ net loads low. (Exh. SEIA-1, at 9:16-10:10, 11:20-15:11 & Attachment RTB-4.) There is no such comparable information in the record for the non-solar customers, and thus, there is insufficient information to determine whether an Option R rate would be warranted for these customers. For example, there is no information in the record regarding why these customers’ loads are erratic so it is unknown if their peak loads consistently would not coincide with system-level peak demands.

Based on the foregoing, the record of this proceeding demonstrates that there was a rational basis for distinguishing between solar and non-solar erratic load customers. Therefore, PG&E fails to demonstrate that extending the Option R rate only

to E-19 and E-20 solar customers constitutes unlawful discrimination in violation of section 453.

PG&E also alleges that an Option R rate that applies only to solar customers conflicts with section 2827, which requires an identical rate structure for all customers participating in NEM. (Rehrg. App., p. 32.) This allegation lacks merit. PG&E selectively quotes from section 2827(g) and omits the portion of the statute that provides an exception for time-variant tariffs that the Commission develops for solar customers pursuant to section 2851(a)(4).

Section 2827(g) provides:

Except for the time-variant kilowatt pricing portion of any tariff adopted by the commission pursuant to paragraph (4) of subdivision (a) of Section 2851, each net energy metering contract or tariff shall be identical, with respect to rate structure, all retail rate components, and any monthly charges, to the contract or tariff to which the same customer would be assigned if the customer did not use a renewable electrical generation facility....

Section 2851(a)(4), in turn, states:

Notwithstanding subdivision (g) of Section 2827, the commission may develop a time-variant tariff that creates the maximum incentive for ratepayers to install solar energy systems so that the system's peak electricity production coincides with California's peak electricity demands and that ensures that ratepayers receive due value for their contribution to the purchase of solar energy systems and customers with solar energy systems continue to have an incentive to use electricity efficiently.

The Option R rate is a time-variant tariff, which we adopted in order to more equitably allocate costs to solar customers. As detailed above, we found that the current demand charge structure overcharges solar customers on the E-19 and E-20 tariffs for coincident peak and part-peak capacity costs and that it was more equitable to recover these costs via volumetric peak and part-peak energy rates. (D.14-12-080, pp. 23 [FOF 11], 24 [FOF 19] & 25 [COL 1].) Pursuant to section 2851(a)(4), we are authorized to

develop such a time-variant tariff for solar customers. Moreover, sections 2827(g) and 2851(a)(4) provide that the requirements of section 2827(g) do not apply to such tariffs. Therefore, PG&E fails to demonstrate that Option R violates section 2827(g).

E. Request for Oral Argument

PG&E request oral argument pursuant to Rule 16.3 of the Commission's Rules of Practice and Procedure. Rule 16.3(a) states that a request for oral argument "should explain how oral argument will materially assist the Commission in resolving the application, and demonstrate that the application raises issues of major significance for the Commission" (Cal. Code Regs., tit. 20, § 16.3, subd. (a).) The Commission has complete discretion to determine the appropriateness of oral argument in any particular matter. (*Ibid.*)

PG&E generally alleges that the issues in its rehearing application are ones of controversy and public importance. But PG&E does not explain how oral argument will materially assist the Commission in resolving the issues raised in its rehearing application. PG&E suggests that the Commission should have examined the marginal cost, revenue allocation, and rate design methods of all three major investor owned utilities and that the proceeding should have involved a broader level of participation by a full range of stakeholder intervenors from all customer classes. (Rehrg. App., p. 33.) But these issues are beyond the scope of what may be addressed during oral argument. Oral argument must be based only on the evidence in the record and only parties that were parties to the proceeding may participate. (Cal. Code Regs., tit. 20, § 16.3, subds. (a) & (e).) Therefore, PG&E does not demonstrate that oral argument is warranted and the request for oral argument is denied.

III. CONCLUSION

For the reasons stated above, we modify D.14-12-080 to: (1) clarify why we denied PG&E's motion for official notice; and (2) correct a typographical error. As modified, rehearing of D.14-12-080 is denied. The request for oral argument is also denied.

THEREFORE, IT IS ORDERED that:

1. D.14-12-080 shall be modified as follows:
 - a. Finding of Fact 23 is added to read:

“PG&E’s motion for official notice, dated November 8, 2013, was filed after the proceeding had already been submitted.”
 - b. Conclusion of Law 7 is added to read:

“PG&E’s motion for official notice, dated November 8, 2013, should be denied as it was filed after the record in this proceeding was closed.”
 - c. Ordering Paragraph 2 on page 26 is modified to read:

“All motions not previously granted are denied.”
2. Rehearing of D.14-12-080, as modified, is denied.
3. PG&E’s request for oral argument is denied.
4. Application 12-12-002 is closed.

This order is effective today.

Dated June 11, 2015, at San Francisco, California.

MICHAEL PICKER
President
MICHEL PETER FLORIO
CATHERINE J.K. SANDOVAL
CARLA J. PETERMAN
Commissioners

Commissioner LIANE M. RANDOLPH,
being necessarily absent, did not
participate.