Decision 16-09-036 September 15, 2016

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)

ORDER MODIFYING DECISION (D.) 16-01-044 AND DENYING REHEARING, AS MODIFIED

I. INTRODUCTION

In this Order, we dispose of the Applications for Rehearing of Decision (D.) 16-01-044 (or "Decision") filed by Pacific Gas and Electric Company ("PG&E"), The Utility Reform Network ("TURN"), the Coalition of California Utility Employees ("CUE"), and San Diego Gas & Electric Company ("SDG&E") and Southern California Edison Company ("SCE") (together, the "Joint Utilities").[1]

Net Energy Metering ("NEM") was first established in 1995 with the enactment of Public Utilities Code Section 2827 (Senate Bill ("SB") 656, Stats. 1995, ch. 369).[2] NEM is part of California's larger policy framework to support direct customer investment in grid-tied renewable distributed generation ("DG"). Currently, the majority of NEM customers use on-site solar photovoltaic ("PV") systems.[3]

[1] Except for formally published decisions, all Commission decision citations are to the official pdf versions, which can be located on the Commission's website at: http://docs.cpuc.ca.gov/DecisionsSearchForm.aspx.

[2] All subsequent section references are to the Public Utilities Code unless otherwise stated.

[3] The NEM program has been modified several times to increase the cap on total program participation, starting at 0.1% of the utility's peak electricity demand forecast, increasing to 5% of aggregate customer peak demand. (Assembly Bill ("AB") 1755, Stats. 1998, ch. 855 (0.5%); SB 1, Stats. 2006, ch. 132 (2.5%); AB 510, Stats. 2010, ch. 6 (5%).)

Under the existing NEM tariff, customers who install eligible renewable DG facilities on the customer side of the meter ("customer-generators") receive a financial credit for power generated by their on-site systems that is fed back into the grid for use by other customers.[4] The credit is used to offset the customers-generators' own electricity bills.

Assembly Bill ("AB") 327 was enacted on October 7, 2013, adding section 2827.1.[5] Among other things, section 2827.1 directed the Commission to develop a successor NEM contract or tariff ("successor tariff") to be offered to new eligible customer-generators beginning July 1, 2017, or sooner if directed by the Commission. It also required the Commission to establish a transition period during which eligible customer-generators taking service under an existing NEM tariff before July 1, 2017 (or until the utility has reached its NEM limit, whichever is earlier) may continue service under the prior tariff.[6]

Our Decision adopted a successor tariff with a view toward aligning the economic responsibilities of NEM customers more closely with those of other customers in their class.[7] The successor tariff retains many of the basic features of the existing tariff, but requires that under the new tariff customers pay: (1) interconnection fees;

[4] Section 2827 (b)(4) defines an eligible customer generator as:

> a residential customer, small commercial customer as defined in subdivision (h) of Section 331, or commercial, industrial, or agricultural customer of an electric utility, who uses a renewable electric generation facility, or combination of those facilities, with a total capacity of not more than one megawatt, that is located on the customers' owned, leased, or rented premises, and is interconnected and operates in parallel with the electrical grid, and is intended primarily to offset part or all of the customers own electrical requirements.

[5] AB 327 (Stats. 2013, ch. 611.).

[6] Pub. Util. Code § 2827.1, subds. (a) & (b)(6).

[7] D.16-01-044, at pp. 85-86.

(2) nonbypassable charges based on each kWh of electricity consumed; and (3) residential time of use ("TOU") rates, with no opt-out, consistent with the Commission's residential rate design policies.[8]

PG&E argues that the Decision: (1) failed to adequately reduce non-NEM customer ("nonparticipant") costs; (2) failed to address the evidence regarding NEM costs and benefits; (3) unlawfully deferred implementing statutory requirements; and (4) over-prioritized sustainable growth.

TURN asserts that the Decision: (1) failed to meet the statutory objective that total costs be approximately equal to total benefits; (2) ignored the need to estimate nonparticipant costs and benefits; (3) over-prioritized sustainable growth; (4) failed to address certain arguments raised by TURN; and (5) erred in its treatment of the federal Investment Tax Credit ("ITC").

CUE contends the Decision: (1) failed to balance program costs and benefits; and (2) unlawfully delayed enacting meaningful NEM reform.

The Joint Utilities argue that the Decision: (1) wrongly excluded transmission charges from the list of nonbypassable charges; (2) unlawfully approved a transition period for successor tariff customers; and (3) over-prioritized sustainable growth.

Responses were filed by The Alliance for Solar Choice ("TASC"), 350 Bay Area, and the Inland Empire Utilities Agency, Padre Dam Municipal Water District, Rancho California Water District, San Bernardino Valley Municipal Water District, Sweetwater Authority, TerraVerde Renewable Partners and Valley Center Municipal Water District (collectively, the "Net Energy Metering Public Agency Coalition 2.0" or "NEM-PAC 2.0").

[8] D.16-01-044, at pp. 2-5, 86, 91-94, noting *Order Instituting Rulemaking on the Commission's Own Motion to Conduct a Comprehensive Examination of Investor Owned Electric Utilities' Residential Rate Structures, the Transition to Time Varying and Dynamic Rates, and Other Statutory Obligations* ("*Residential Rate Design Decision*") [D.15-07-001] (2015).

We have carefully considered the arguments raised in the Applications for Rehearing, and are of the opinion that the Decision should be modified to clarify our explanation in connection with achieving sustainable program growth. With these clarifications we find that good cause has not been established to grant rehearing. Accordingly, we deny rehearing of D.16-01-044, as modified, because no legal error has been shown.

II. DISCUSSION

In enacting section 2827, the Legislature declared:

> …net energy metering combined with net surplus compensation, co-energy metering, and wind energy co-metering for eligible customer-generators is one way to encourage substantial private investment in renewable energy resources, stimulate in-state economic growth, reduce demand for electricity during peak consumption periods, help stabilize California's energy resource mix, reduce interconnection and administrative costs for electricity suppliers, and encourage conservation and efficiency.

(Pub. Util. Code,§ 2827, subd. (a).)

Despite various NEM program benefits,[9] some parties allege the program has resulted in unlawful cost-shifting, whereby non-NEM customers subsidize certain NEM participant costs.[10] Most of the arguments raised in the rehearing applications involve allegations that the successor tariff is unlawful because it would not entirely eliminate any cost-shifting.

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[9] See, e.g., the Commission California Net Energy Metering Ratepayer Impacts Evaluation ("2013 NEM Report"), dated October 2013, at pp. 2-3 [Noting environmental, public health and other non-energy benefits also flowing from the deployment of renewable generation through programs such as NEM. The 2013 NEM Report can be located at: http://www.cpuc.ca.gov/WorkArea/DownloadAsset.aspx?id=4292. (See also The Commission's Energy Action Plan II, located at http://www.cpuc.ca.gov/eaps.)

[10] Cost-shifting in relation to NEM would occur from the netting arrangement under the NEM tariff. Because NEM customers produce their own energy, consume less energy from the grid, and are credited for energy they export to the grid, they pay less of the utilities' total costs that are recovered through volumetric charges. As a result, utilities make up any shortage in total volumetric costs from other ratepayers. (See, e.g., D.16-01-044, at pp. 56, 81-82.)

We discuss these arguments in more detail below, however, two points are relevant to note at the outset. First, cost-shifting, subsidies, and similar incentive mechanisms are not inherently unlawful. They are cost allocation tools sometimes used to encourage and support various State programs and objectives that are intended to provide desired environmental, social, and/or other economic benefits.[11]

Second, it is impossible to reach any definitive conclusion regarding the extent or amount of any cost-shifting under NEM based on the record in this proceeding. Some parties argued there is none. Others argued it is substantial. But the evidence itself was insufficient to estimate the amount of any cost-shift with any measure of certainty. As discussed below, that is largely because at present much more is known about total costs than total benefits. Therefore, the Decision approached cost-shifting concerns as an ongoing program consideration.

PG&E Application for Rehearing

PG&E alleges the Decision: (1) failed to adequately reduce costs to nonparticipants; (2) failed to address evidence regarding program costs and benefits; (3) unlawfully deferred implementing statutory requirements; and (4) over-prioritized sustainable growth. We address each argument individually below.

A. Nonparticipant Costs

1. Legislative History

Section 2827.1 set three key criteria for developing the successor tariff:

[11] See, e.g., *Application of Pacific Gas and Electric Company for Approval of Economic Development Rate for 2013-2017* [D.13-10-019] (2013), at pp. 4-9 (slip op.) [Adopting Economic Development Rate tariff options for large commercial and industrial customers.]; *Re Universal Service and Compliance with the Mandates of Assembly Bill 3643* [D.95-07-050] (1995) 60 Cal.P.U.C.2d 536, 544-546, 588, fns. 4&6 [Proposed rules for Universal Service in California's telecommunications market, including the California High Cost Fund ($48 million subsidy) and the Universal Lifeline Telephone Service ($360 million subsidy).]; and *Order Instituting Rulemaking Regarding Policies, Procedures and Rules for the California Solar Initiative, the Self-Generation Incentive Program and Other Distributed Generation Issues* [D.06-08-028] (2006) at pp. 2-8 (slip op.) [Adopting incentives for the installation of qualifying solar photo-voltaic technologies.]; and *Order Instituting Rulemaking Regarding Policies, Procedures and Rules for the California Solar Initiative, the Self-Generation Incentive Program and Other Distributed Generation Issues* [D.07-11-045] (2007) at pp. 1-11 (slip op.) [Adopting full and partial subsidies for the installation of solar systems by qualifying owner-occupied low income households.].

(1) ensuring customer-sited renewable DG will continue to grow sustainably; (2) ensuring the tariff is based on costs and benefits of the renewable electrical generation facilities; and (3) ensuring total program costs are approximately equal to total benefits for all customers and the electrical system.[12]

PG&E contends the Decision is flawed because we ignored the Legislature's intent to prevent cost-shifting to non-participants. (PG&E Rhg. App., at pp. 9-12, 22-24.)

PG&E bases this claim on a pre-September 3, 2013 draft of AB 327, which required that we ensure the tariff was based on costs and benefits of only nonparticipants.[13] It also would have required the tariff to preserve nonparticipant ratepayer indifference.[14]

On September 3, 2013, the Bill was amended to eliminate those requirements. It deleted nonparticipant language in favor of evaluating costs and benefits to all customers and the electrical system on whole. PG&E acknowledges that change, but argues even after the amendment, bill analyses reflect an intent to prevent cost-shifting.[15]

The cited bill analyses do show that even after the amendment, there were continued references to preventing cost-shifts. However, consideration of the legislative history is secondary to the plain language of the statute, and the plain language does not mandate elimination of any cost-shifting. However, we recognize that the Legislature was concerned about cost-shifting, and we will continue to strive to minimize any cost-shifting to the extent possible.

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[12] Pub. Util. Code, § 2827.1, subds. (b)(1), (b)(3) & (b)(4), respectively. Section 2827.1 also requires that customer-generators receive service at costs that are just and reasonable. (Pub. Util. Code, § 2827.1, subd. (b)(7).)

[13] AB 327, dated August 21, 2013, § 2827.1, subd. (b)(2).

[14] AB 327, dated August 21, 2013, § 2827.1, subd. (b)(3).

[15] See, e.g., Senate Rules Committee, Office of the Senate Floor Analyses, dated September 3, 2013, p. 3, ¶ 8. (See also Senate Rules Committee, Office of the Senate Floor Analyses, dated September 6, 2013, at p. 3,¶ 8.)

Further, the plain language of section 2827.1 required us to consider and balance all three key goals. No one goal is controlling. And it is difficult to achieve each one in equal measure. For example, we found that achieving sustainable growth did not easily mesh with equalizing costs and benefits. The draft legislation's original single focus on nonparticipant interests was also broadened to consideration of costs and benefits to *all customers and the electrical system.* Had the Legislature intended to mandate the Commission completely prevent the potential for all cost-shifting, or that we base our determination solely on nonparticipant interests it could have done so in the statute itself.[16] It did not.

That is not to say, as PG&E claims, we failed to address or consider impacts to nonparticipants. Our Decision merely said nonparticipants were not the sole focus in light of the statute's clear and unambiguous expansion of the criteria to be weighed.

To reach our determination we evaluated the approved analytical framework developed by Energy Division in the Public Tool, as then used to develop the parties' tariff proposals.[17] The Public Tool contains illustrative scenarios using three established Standard Practice Manual ("SPM") tests: the Participant Cost Test ("PCT"); the Program Administrator Cost Test ("PACT"); and the Ratepayer Impact Test ("RIM").[18]

[16] *Kendall-Frief Company v. Superior Court of Orange County* (1976) 60 Cal.App.3d 462, 466.

[17] The Public Tool is a spreadsheet model that provides a common framework for parties to use to test and evaluate options for the NEM successor tariff. It was developed as a neutral illustrative analytical framework that would allow comparisons on an "apples to apples" basis. It was not developed or applied to provide the answer or outcome scenario for the ultimate NEM tariff. (See D.16-01-044, at pp. 6-8, 48-50.) The Public Tool can be located at: http://www.cpuc.ca.gov/PUC/energy/DistGen/NEMWorkshop04232014.htm.

[18] The Standard Practice Manual can be located at: http://www.cpuc.ca.gov/WorkArea?DownloadAsset.aspx?id=7741.

Of the three tests, the RIM test best captures impacts to nonparticipants. Yet even using the RIM test, no party could derive a tariff to completely equalize costs and benefits in a manner to eliminate all cost-shifting.[19]

Even PG&E concedes it did not advocate or expect the successor tariff to completely eliminate the potential for cost-shifting under the successor tariff. It sought only a gradual reduction, with an option to revisit the tariff in 2019.[20] (PG&E Rhg. App., at p. 25, citing PG&E Proposal for Net Energy Metering Successor Tariff, dated August 3, 2015, at pp. 6-8.)

That is exactly what the Decision did. We considered all discernable costs and benefits, moved toward aligning NEM customer costs with those of nonparticipants, and provided for review of the successor in 2019.[21] PG&E's dispute is essentially one of degree, i.e., more of the perceived cost-shift should have been reduced.[22] But arguments over degree do not establish we ignored the statutory criterial or failed to comply with section 2827.1.

2. Evidence Regarding Costs and Benefits

PG&E contends there were vast amounts of evidence we could have used to evaluate ratepayer costs and benefits, but the Decision failed to quantify costs and

[19] D.16-01-044, at pp. 54-61.

[20] SCE also supported the RIM test, but noted its inability to prevent cost-shifting. SCE defined total benefits approximately equal to total costs to mean only that costs not *unreasonably* be shifted to nonparticipants. (SCE's Response to the Administrative Law Judge's Ruling Seeking Party Proposals for the Successor Tariff or Contract, dated August 3, 2015, at pp. 1-2, 8, 15, 22-23.)

[21] D.16-01-044, at pp. 85-94.

[22] PG&E contends in adopting section 2827.1 the Legislature intended to start afresh with an entirely new NEM program. (PG&E Rhg. App., at pp. 22-23.) This is an overstatement and nothing in the statute itself or the legislative history supports that conclusion. Section 2827.1 merely modified the existing program to revise the maximum NEM system capacity, require the successor tariff, require a transition period for existing customers, refine the evaluation criteria, and remove certain pricing restrictions (such as the prior restriction on TOU rates and fixed charges).

benefits, or calculate what level of subsidy is necessary to achieve sustainable growth.[23] (PG&E Rhg. App., at pp. 12-20, 24-28.)

Nothing in section 2827.1 explicitly requires such quantification, and there are several reasons why it was not feasible to achieve the type of quantification PG&E wanted with any certainty at this time.

PG&E goes on at length regarding the Public Tool, suggesting it provided an evidentiary basis to reach certain conclusions. But that is wrong. As stated in the Public Tool and explained in our Decision, the Public Tool was never intended to provide specific answers or outcomes for purposes of the successor tariff. It only provided an illustrative model and Excel-based tool to be used by the parties as a common, neutral framework upon which to compare various proposals on an "apples to apples" basis.[24]

The Public Tool also explained that even under its various scenarios, there were a myriad of challenges to deriving an accurate assessment of costs and benefits. Due to fluid factors such as Zero Net Energy goals, Renewable Portfolio Standard Program goals and policies, retail rate design policies and changes, locational values, the integration of energy storage, and the state of the market, results can vary significantly over time. And the Public Tool scenarios merely show a continuum depending on the assumptions used.[25]

PG&E goes on to reiterate various proposals and calculations presented by the parties to argue more could have been done. However, PG&E does not address the

[23] PG&E also argues the Decision failed to discuss certain evidence. (PG&E Rhg. App., at p. 27.) The Commission is not required to discuss all the evidence or even make findings on all the evidence or issues. (*Goldin v. Public Utilities Commission* ("*Goldin*") (1979) 23 Cal.3d 638, 670.) The Decision discussed numerous proposals and shows that we did consider all the evidence before us. (See, e.g., D.16-01-044, at pp. 23-45, 61-84.)

[24] See D.16-01-044, at pp. 6-8, 48-50; Administrative Law Judge's Ruling (1) Accepting into the Record the Energy Division Staff Papers on the AB 327 Successor Tariff or Contract; (2) Seeking Party Proposals for the Successor Tariff or Contract; (3) Setting a Partial Schedule for Further Activities in this Proceeding, dated June 4, 2015, Attachment 1: Energy Division Staff Paper on the AB 327 Successor Tariff or Contract ("Energy Division Staff Paper"), dated June 3, 2015, at pp. 1-3 to 1-4.

[25] Energy Division Staff Paper, dated June 3, 2015, at pp. 1-14, 1-27 to 1-28.

conflicting nature of the evidence as well as the flaws with various proposals.[26] The Decision clearly evaluated the parties' respective valuation proposals, and explained why it was not reasonable to rely on certain evidence.

We also explained the limitations in currently available information upon which to derive specific cost / benefit estimates at this time. Most notably, those included information, methodologies, and determinations still pending in proceedings such as the Residential Rate Design proceeding, the Distributed Resource Planning ("DRP") proceeding, and the Integration of Distributed Energy Resources ("IDER") proceeding.[27] These proceedings are expected to meaningfully inform any reliable estimate of NEM costs and benefits.

PG&E criticizes this reasoning. But it does not establish that it was wrong. PG&E appears to simply have wanted us to pick specific calculations or guess what total costs and benefits were likely to be. Nothing in the law required that. Thus, based on the record available to us at this time, it was reasonable to forego any immediate drastic departure from the existing NEM tariff, and instead adopt incremental advances toward aligning the known costs and benefits of all customers.

3. Investment Tax Credit

The federal Investment Tax Credit ("ITC") provides a tax benefit to customers that install renewable DG systems. During the pendency of this proceeding, it was anticipated that the ITC would end in 2015. But shortly after the proposed decision was issued, the ITC was extended at least through 2022.

PG&E contends it was error not to adjust the successor tariff to account for extension of the ITC. (PG&E Rhg. App., at pp. 20-22.) We disagree.

It would not have been reasonable or lawful to adjust for the ITC change in the final Decision. The change occurred after the record in this proceeding was closed,

[26] D.16-01-044, at pp. 23-45, 61-84.

[27] D.16-01-044, at pp. 12-19, 20-22, 60 [Noting Residential Rate Design Rulemaking (R.) 12-06-013, DRP (R.14-08-013, and IDER (R.14-10-003).]. The Decision also explained it is easier to identify and quantify NEM costs than it is to identify and quantify NEM benefits.

and the assumptions used for the Public Tool and parties' proposals did not contemplate or account for the ITC extension. Therefore, the extent to which this change might inform the cost / benefit analysis going forward was not clearly developed. Because the record was devoid of adequate evidence upon which to base any sound conclusion, it was reasonable to forego making an immediate change based on the extension.

B. Deferral of Statutory Requirements

PG&E contends the statute mandated adoption of a successor tariff by the end of 2015 that meets *all* of the criteria in section 2827.1(b), but that the Commission deferred any meaningful analysis of program costs and benefits. PG&E argues it was improper to reason the ongoing DRP and IDER proceedings hampered further action. In PG&E's view, the outcomes in those proceedings may not be relevant, and in any case fail to justify non-compliance with the statutory requirement to act now. (PG&E Rhg. App., at pp. 28-30.) This contention has no merit.

The only fixed requirement in section 2827.1 was to adopt a successor tariff by December 31, 2015. We complied with that requirement. The statute required we consider the three key criteria enumerated above to develop the tariff. But as previously discussed, no one statutory goal controls, and the statute proscribed no set metric by which to accomplish these goals. The task of adopting a successor tariff in consideration of these goals was left to the Commission. And achieving the goals required balancing, not absolutes.

In addition, the 2015 deadline to adopt a successor tariff placed some barriers on our ability to accomplish a completely developed cost / benefit analysis. DRP and IDER are the Commission's two major proceedings involving distributed resource planning and integration are expected to produce cost-effectiveness methodologies and address various tariff, coordination, deployment, and spending issues for DG resources that are directly relevant to developing an accurate NEM cost / benefit assessment.[28]

[28] D.16-01-044, at pp. 20-22, 50, fn. 60. More specific information about the Commission's distributed generation resource proceedings can be located at http://www.cpuc.ca.gov/demand_side/.

PG&E's argument that DRP and IDER considerations were irrelevant is just factually incorrect.

Indeed, the statute itself appears to recognize that cost / benefit analyses are dynamic and evolve over time. That is reflected in section 2827.1(b), which expressly allows the Commission to revise the tariff "as appropriate to achieve objectives of the statute." Similarly, section 2827.1(b)(7) gives the Commission discretion to determine what rates, cost-allocation, and tariffs should be applicable to NEM customers.

PG&E may not agree that the Decision moved far enough in the direction it preferred. However, the Decision adopted a successor tariff as required and made prudent cost adjustments in light of the information and record developed during this proceeding. For this reason, we find no legal error.

C. Sustainable Growth

PG&E contends the Decision misinterpreted the statutory objective to ensure NEM continues to grow sustainably because we: (1) placed that as the first priority; (2) failed to define sustainable growth; and (3) failed to determine what level of growth is necessary while still eliminating the cost-shift. (PG&E Rhg. App., at pp. 30-33.) These arguments are addressed separately below.

1. Priority of Sustainable Growth

PG&E takes issue with two sentences in the Decision:

> The primary direction to the Commission is to "ensure that the…tariff…ensure that customer-sited renewable distributed generation continues to grow sustainably and include specific alternatives designed for growth among residential customers in disadvantaged communities.

(D.16-01-044, at p. 50, citing Pub. Util. Code, §2827.1, subd. (b)(1).)

> Since the Commission's first responsibility under Section 2827.1 is to see to continued growth of customer-sited renewable DG, RIM results that suggest costs to customers not siting renewable DG on their premises also suggest that further investigation of benefits and costs is warranted.

(D.16-01-044, at p. 58.)

PG&E argues these sentences prove that we improperly prioritized sustainable growth, when in fact the statute set out multiple goals with no discernable priority. PG&E contends we were obligated to fulfill each equally, and there was no basis to find sustainable growth should take precedence. (PG&E Rhg. App., at pp. 30-31.)

It is incorrect to suggest we diminished the importance of any statutory objective just because the Decision could not eliminate all cost-shifting. All statutory objectives were thoughtfully considered. Indeed, much of our Decision grappled with issues relating to reasonable costs, benefits, rates, and charges.[29]

At the same time, encouraging growth and expansion of customer-sited renewable DG has been, and continues to be, a central theme behind NEM legislation and the Legislature's expressed intent. For example, section 2827 states:

> The Legislature finds and declares that a program to provide net energy metering…is one way to encourage substantial private investment in renewable energy resources, stimulate in-state economic growth, reduce demand for electricity during peak consumption periods, help stabilize California's energy supply infrastructure, enhance the continued diversification of California's energy resource mix, reduce interconnection and administrative costs for electricity suppliers, and encourage conservation and efficiency.

(Pub. Util. Code, §2827, subd. (a).)

In section 2827.1, the Legislature built on that objective by not only continuing the NEM program, but envisioning development of options for NEM participation to expand to disadvantaged residential communities.[30] The Legislature also

[29] D.16-01-044, at pp. 23-42, 54-81, 86-95 [Discussing section 2827.1, subds. (b)(2), (b)(3) & (b)(4).]. The Decision also provided for further action to develop alternatives for growth in disadvantaged residential communities as required by section 2827.1, subd. (b)(1). (See D.16-01-044, at pp. 37-42 & 101.)

[30] Pub. Util. Code, § 2827.1, subd. (b)(1).

eliminated the cap on eligible DG system size so the program can grow through the inclusion of projects over one megawatt.[31]

Nevertheless, it is possible to see how the two cited sentences could be misunderstood to place a greater emphasis on achieving sustainable growth. Therefore, we will modify the Decision to clarify our meaning as set forth in the ordering paragraphs below.

2. Defining Sustainable Growth

PG&E contends the Decision failed to comply with section 2827.1 by not adopting an express definition of sustainable growth. (PG&E Rhg. App., at p. 32.)

Section 2827.1 did not require that we adopt any specific definition of sustainable growth, nor did the Legislature itself define this term as it did for various other terms used in the statute.[32]

PG&E admits that the successor tariff should in fact achieve sustainable growth, but PG&E still argues we failed to conduct a meaningful analysis of the relevant evidence.

Our Decision expressly discussed this issue and the relevant testimony. However, the record shows there was no clear consensus as to how this criteria should be defined or measured. Most parties defined the term to suit their own preferred program and policy outcomes.[33] For that reason, we directed the Commission's Energy Division to work with the utilities to develop publicly available reporting and tracking tools that will allow the Commission to evaluate a metric of average growth over a 3-5 period. Such information will better allow the Commission to achieve the overall goal, while determining if a change in course is needed in the 2019 relook.[34]

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[31] Pub. Util. Code, § 2827.1, subd. (b)(5).

[32] Pub. Util. Code, §§ 2827, subd. (b) & 2827.1, subd. (a).

[33] D.16-01-044, at pp. 50-53.

[34] D.16-01-044, at p. 53.

PG&E criticizes this outcome, reiterating its desire that we adopt a definition that meets its own definition, i.e., no subsidy from other ratepayers.[35] But that was not required nor would it have been consistent with the broader statutory goals. Thus, we find no error.

3. Level of Sustainable Growth

PG&E contends we failed to determine how much program growth is necessary or reasonable in light of the countervailing need to reduce or eliminate the cost-shift to non-NEM customers. (PG&E Rhg. App., at pp. 32-33.)

As discussed above, that was not mandated by the statute. And we did not have sufficient evidentiary basis at present to definitively make such a determination. We therefore moved toward that end by recognizing currently available data suggest a metric that looks at average growth over a 3-5 year period may best allow us and the interested parties to evaluate this area further.[36]

PG&E does not acknowledge or address this course of action, nor does it assert why such an analysis will not help better assess this objective. Instead PG&E simply reiterates its reliance on early drafts of AB 327 to argue the Legislature never abandoned its goal to eliminate cost-shifting.

We addressed this argument in Part A under PG&E's Application for Rehearing (above) and do not repeat it here. On whole our Decision demonstrates our work to achieve all the statutory criteria, while providing a future course to adjust the tariff as more information and data concerning program costs and benefits, residential rate policies, and related DG policies become available. Thus, we do not find legal error.

TURN Application for Rehearing

TURN asserts the Decision: (1) failed to adequately ensure total costs are equal to total benefits; (2) failed to adequately address impacts to nonparticipants; (3) over-prioritized sustainable growth; and (4) failed to adjust for extension of the ITC.

[35] D.16-01-044, at p. 51.

[36] D.16-01-044, at p. 53.

(TURN Rhg. App., at pp. 4-9, 12-13.) These allegations are addressed elsewhere herein and are not discussed separately here. We discuss TURN's remaining two allegations below.

A. Commissioner Comments

TURN contends that comments made by certain Commissioners during the Commission's January 28, 2016, public business meeting demonstrate that the Decision was flawed. (TURN Rhg. App., at pp. 2-3, citing comments by Commissioners Picker, Peterman, and Florio.)

Comments, concerns, views and opinions of any one Commissioner do not represent the position of the full Commission, nor do they establish a decision is unreasonable or unlawful. Even if we were to consider the cited individual comments at this juncture, they did not in fact suggest the Decision was unlawful. The Commissioners merely acknowledged the difficulty in striking a proper balance between the multiple program and statutory objectives. Individual Commissioners may have preferred a slightly different balance on certain issues. That is not unusual and such comments are common before the Commission votes on the adoption of any decision. But that is not grounds for finding error or noncompliance. On whole, the Commission approved the Decision because it was reasonable and lawful.

B. Rate Arguments Raised by TURN

TURN contends the Decision is legally deficient because it made only one reference to the critiques and concerns TURN raised on the subject of retail rates. (TURN Rhg. App., at pp. 10-11.) We find no merit to this argument.

As noted above, there is no legal requirement that a Commission decision discuss or address every issue raised by every party to a proceeding.[37] To do so would impose a burdensome, if not impossible task in proceedings such as this with multiple parties, and hundreds of pages of comments, recommendations, proposals, and critiques.

[37] *Goldin, supra,* 23 Cal.3d at p. 670.

The Commission's legal obligation is to consider and weigh all the evidence before it. The Decision demonstrates that we did that here. We consistently discussed the most significant positions and recommendations made by the parties on the material issues to be decided.[38] TURN's positions and concerns in particular, were addressed no less than 11 times.[39] Therefore, TURN fails to establish we failed to consider its arguments, or that there was legal error.

CUE Application for Rehearing

CUE contends the Decision: (1) failed to address cost impacts to nonparticipants; (2) failed to adequately balance program costs and benefits; and (3) improperly delayed meaningful NEM reform. (CUE Rhg. App., at pp. 4-10.) These arguments are all addressed elsewhere in this order and are not repeated here.

SDG&E and SCE Application for Rehearing

The Joint Utilities contend the Decision: (1) erred in eliminating transmission charges from the list of nonbypassable charges; (2) erred in allowing a 20-year transition period for customers under the successor tariff; and (3) over-prioritized sustainable growth. (Joint Utilities Rhg. App., at pp. 4-19.) The Joint Utilities third argument is addressed elsewhere in this order and is not repeated here. The remaining issues are discussed below.

A. Nonbypassable Charges

Nonbypassable charges ("NBCs") are charges collected from ratepayers to support various public purpose programs to benefit all ratepayers. Historically, NBCs have also included some charges imposed in connection with California's transition to a restructured electric industry.[40] The Decision listed applicable NBCs for successor tariff customers as: Public Purpose Program Charges; Nuclear Decommissioning Charges; Competition Transition Charges; and Department of Water Resources bond charges.

[38] See, e.g., D.16-01-044, at pp. 22-45. 51-53, 61-85.

[39] See, e.g., D.16-01-044, at pp. 34-36, 41, 49 fn. 57, 53, 65, 66, 68, 71, 76 & 80.

[40] See, e.g., Energy Division Staff Paper, dated June 3, 2015, at p.1-24.

For existing NEM customers, NBCs have been paid corresponding to the customer's net energy consumption from the grid.[41] However, section 2827.1 does not require and specific method of cost recovery.[42] Therefore, we determined that to better align NEM costs to those of other customers, under the successor tariff NEM customers will pay NBCs based on each kilowatt hour ("kWh") of electricity they consume from the grid in each metered interval.[43]

The Joint Utilities support that outcome, but they argue it was error not to include transmission charges in the list of NBCs. (Joint Utilities Rhg. App., at pp. 4-14.)

No statute or decision prescribes a fixed or required list of NBCs or requires that transmission charges be included. The ultimate determination of what charges apply is left to the Commission's experience and discretion.

Even if the Joint Utilities arguments are considered, they are without merit. For example, the Joint Utilities argue the proposed decision included transmission charges as a NBC, and therefore it was error to exclude them in the final Decision.

It is not unlawful for a final Decision to change certain outcomes reflected in a proposed decision. A proposed decision is the recommendation of an assigned Administrative Law Judge at the close of a proceeding. The Commission is free to render a different ultimate conclusion, as long as it is reasonable and based on the record.

In this case, we explained that it was necessary to modify the list of NBCs to align with the NBCs used in the record, i.e., in the assumptions used by the Public Tool and in the parties' proposals.

Still, the Joint Utilities argue excluding transmission charges from the list of NBCs violates sections 2827.1 and 451, because it will force non-NEM customers to pay uncapped transmission charges of NEM customers, and perpetuate the cost-shift.

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[41] D.16-01-044, at p. 89, explaining this is the group of NBCs generally used for departing load customers.

[42] Pub. Util. Code, § 2827.1, subd. (b)(7).

[43] D.16-01-044, at pp. 88-91.

This argument suggests NEM customers will pay no transmission charges at all under the successor tariff. That is incorrect. Like existing NEM customers, successor tariff customers will pay transmission charges based on their net energy consumption.

The Joint Utilities real issue appears to be less about whether transmission charges should be a NBC, and more that the Joint Utilities want transmission charges to be based on total electric consumption (pre-netting). But they do not explain or establish why not doing so violates section 2827.1 or section 451.

Section 2827.1 eliminated the net consumption limitation on charges, but it did not preclude or prohibit using a net consumption basis to set any particular charges. Section 2827.1 gives the Commission discretion to determine the terms of service and billing rules applicable under the successor tariff. It also gives the Commission discretion to determine rates, cost allocation, and tariff requirements.[44]

Section 451 requires that customers pay just and reasonable charges for the services they receive. But the Joint Utilities fail to show how the successor tariff will violate that requirement. If anything, the Decision took steps to better level any cost imbalance between NEM and non-NEM customers.

The Joint Utilities also contend the Decision erred in relying on Direct Access ("DA") and Community Choice Aggregator ("CCA") precedent to set transmission charges based on net electricity consumption. They argue that was wrong because DA/CCA customers pay transmission on the full volume of electricity they consume. (Joint Utilities Rhg. App., at pp. 8-11.)

We did not rely on DA/CCA precedent to determine how transmission charges should be set. We merely noted that the NBCs paid by DA/CCA customers also do not include transmission charges.[45]

[44] See Pub. Util. Code, § 2827.1, subds. (b)(2) & (7), respectively.

[45] D.16-01-044, at p. 89, fn. 100.

Finally, the Joint Utilities contend that PG&E's Economic Development Rate tariff supports including transmission charges as a NBC. (Joint Utilities Rhg. App., at pp. 12-14, citing *Application of Pacific Gas and Electric Company for Approval of Economic Development Rate for 2013-2017* ("*EDR Decision*") [D.13-10-019] (2013).)

The *EDR Decision* is not analogous or precedential for purposes NEM customer charges. EDR rates do not apply to, nor are they even available to, residential customers such as NEM customer-generators. It is a unique tariff that applies to provide substantial cost discounts to qualifying large commercial and industrial customers.[46]

It is true that the EDR program is also a program with the potential for cost-shifting to nonparticipants.[47] It is also true that under the EDR tariff customers pay transmission charges as a NBC.[48] However, that is more the exception than the rule, and it is not unlawful for different customers to pay somewhat different NBCs. Therefore, the Joint Utilities do not establish it was error to exclude transmission charges from the list of applicable NBCs.

B. Transition Period

Section 2827.1 directed that any customer taking service before the successor tariff is offered must be able to continue taking service under the existing tariff for a transition period to be set by the Commission. The transition period must take into account a reasonable payback period on their investment.[49]

Pursuant to that direction, in 2014 the Commission adopted a 20-year

[46] See, e.g., *EDR Decision* [D.13-10-019], *supra,* at pp. 1-12 (slip op.).

[47] *Id.* at pp. 7-9 (slip op.).

[48] *Id.* at pp. 3-4, 11 (slip op.).

[49] Pub. Util. Code, § 2827.1, subd. (b)(6) [Requiring the transition period be established by March 31, 2014, and further requiring the Commission to do so in light of the reasonable expected payback period based on the year the customer initially took service.].

transition period, beginning with the year a system is interconnected.[50] D.14-03-041 found that a 20-year time frame was consistent with the expected useful life of a DG system, and the period of time it would generally take customers to recover the cost of their initial investment. That decision also found that a shorter transition period would be contrary to the public interest, would potentially undermine customer and regulatory certainty, and would discourage future investment in renewable distributed energy.[51]

Section 2827.1 gives the Commission authority and discretion to determine appropriate billing rules as well as the terms of service, rules, rates under the tariff.[52] Consistent with that authority it was lawful to adopt the transition period as a tariff program rule.

This was a reasonable policy choice to provide successor tariff customers with the same measure of certainty the Legislature envisioned for existing tariff customers. And the Joint Utilities offer no compelling reason to deny that certainty to successor tariff customers. It was also reasonable as a way to promote new customer sign ups (and sustainable growth) in light of potential tariff changes in the 2019 relook. Such policy choices do not provide a basis to establish legal error. Thus, we reject the Joint Utilities challenge.

III. CONCLUSION

For the reasons stated above, D.16-01-044 is modified as set forth in the below ordering paragraphs. The Applications for Rehearing of D.16-01-044, as modified are denied because no legal error has been shown.

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[50] *Order Instituting Rulemaking Regarding Policies, Procedures and Rules for the California Solar Initiative, the Self-Generation Incentive Program, and Other Distributed Generation Issues* ("*Transition Period Decision*") [D.14-03-041] (2014) at pp. 2-3 & 20-25 (slip op.).

[51] D.14-03-041], *supra,* at pp. 20-21 (slip op.).

[52] Pub. Util. Code, § 2827.1, subds. (b)(2) & (b)(7).

THEREFORE, **IT IS ORDERED** that:

1. D.16-01-044 is modified to provide clarification as follows:
   a. The first sentence of Section 2.9 on page 50 of D.16-01-044 is modified to state:

      Section 2827.1(b)(1) directs the Commission to "ensure that the…tariff…ensures that customer-sited renewable distributed generation continues to grow sustainably and include specific alternatives designed for growth among residential customers in disadvantaged communities.

   b. The first sentence of the third full paragraph on page 58 of D.16-01-044 is modified to state:

      A central theme throughout the provisions of Section 2827.1, is to foster continued growth of customer-sited renewable DG. However, because RIM results suggest continued impacts to customers not siting renewable DG on their premises, further investigation of program benefits and costs is warranted.

2. The Applications for Rehearing of D.16-01-044, as modified, are denied.
3. This proceeding, Rulemaking (R.) 14-07-002, remains open.

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This order is effective today.

Dated September 15, 2016, at San Francisco, California.

MICHAEL PICKER
President
MICHEL PETER FLORIO
LIANE M. RANDOLPH
Commissioners

Commissioner Carla J. Peterman, being necessarily absent, did not participate.

I will file a written concurrence.

/s/ MICHEL PETER FLORIO
Commissioner

I dissent.

/s/ CATHERINE J.K. SANDOVAL
Commissioner

D16-09-036/R.14-07-002

Concurring Statement of Commissioner Florio

I am voting to deny rehearing in this matter in order to avoid what would otherwise be a 2 to 2 stalemate vote. Absent this extraordinary circumstance, I would have voted to grant rehearing, for the same reasons that I cast my initial "no" vote on the Proposed Decision in this matter. I believe the original decision represented a missed opportunity to begin to rationalize NEM compensation, given the unanticipated extension of the federal investment tax credit after the close of the record. In my view, it would have made sense to re-open the record to consider the benefit of the investment tax credit to NEM customers; instead, the decision excludes net-metered customers from non-bypassable transmission charges, making an already generous compensation rate even richer, and failing to balance grid and energy costs fairly across all classes of utility customers.