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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE

STATE OF CALIFORNIA

Order Instituting Rulemaking to Revisit Net Energy Metering Tariffs Pursuant to Decision D.16-01-044, and to Address Other Issues Related to Net Energy Metering.	R.20-08-020

JOINT REPLY COMMENTS OF SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E), PACIFIC GAS AND ELECTRIC COMPANY (U 39-E), AND SAN DIEGO GAS & ELECTRIC COMPANY (U 902-E) ON ORDER INSTITUTING RULEMAKING TO REVISIT NET ENERGY METERING TARIFFS PURSUANT TO D.16-01-044, AND TO ADDRESS OTHER ISSUES RELATED TO NET ENERGY METERING

STEVEN W. FRANK PETER VAN MIEGHEM Pacific Gas and Electric Company 77 Beale Street, Mail Code B30A San Francisco, CA 94015 Telephone: (415) 973-2902 Facsimile: (415) 973 5520 Email: Peter.VanMieghem@pge.com Attorneys for Pacific Gas and Electric Company	E. GREGORY BARNES San Diego Gas & Electric Company 8330 Century Park Court, CP32D San Diego, CA 92123 Telephone: (858) 654-1583 Facsimile: (619) 699-5027 Email: gbarnes@semprautilities.com Attorney for San Diego Gas & Electric Company
	JANET S. COMBS REBECCA MEIERS-DEPASTINO Southern California Edison Company 2244 Walnut Grove Avenue Rosemead, CA 91770 Telephone: (626) 302-6016 Email: Rebecca Meiers-Depastino@sce.com Attorneys for Southern California Edison Company

Dated: **October 13, 2020**

Pursuant to Rule 14.3 of the California Public Utilities Commission's (CPUC's or Commission's) Rules of Practice and Procedure, Southern California Edison Company (SCE), Pacific Gas and Electric Company (PG&E), and San Diego Gas & Electric Company (SDG&E) (collectively, the Joint IOUs)[1] respectfully file these Reply Comments on the Proposed Order Instituting Rulemaking to Revisit Net Energy Metering Tariffs Pursuant to D.16-01-044, and to Address Other Issues Related to Net Energy Metering (NEM).

I.
INTRODUCTION

The Joint IOUs reply focuses on objecting to the following issues raised by other parties in opening comments: (1) delay of this proceeding, (2) unlawful proposals by parties, (3) inclusion of issues beyond the scope of what is appropriate under Assembly Bill (AB) 327, (4) inclusion of additional factors into the Avoided Cost Calculator (5), alteration of the categorization of the proceeding, and (6) other matters.

II.
THE CPUC SHOULD REJECT SUGGESTIONS TO DELAY THIS PROCEEDING

The Joint IOUs' opening comments proposed to accelerate the OIR's already ambitious schedule so that Phase 1 will be completed by August 2021. Despite the enormous and growing inequitable cost shift, some parties seek to delay revisiting the NEM tariff. Protect Our Communities (POC) urges the Commission to delay the OIR's proposed schedule for 12 months so parties can address the effect of end of the Federal Investment Tax Credit (FITC), delaying the effective date of replacement for the current tariff until January 2023.[2] The Commission should reject this thin rationale for postponing resolution of this important customer equity issue. As The Utility Reform Network (TURN) correctly notes, it is important that the Commission not further delay its AB 327 analysis.[3]

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[1] Pursuant to Rule 1.8(d) of the Commission's Rules of Practice and Procedure, PG&E and SDG&E have authorized SCE to file and sign these comments on their behalf.

[2] POC Opening Comments, pp. 3-4.

[3] TURN Opening Comments, p. 1.

III.

THE CPUC SHOULD REJECT AND STRIKE UNLAWFUL PROPOSALS

A. The Commission Should Reject SEIA/VS's Incorrect Characterization of the Relative Importance of AB 327 Factors

Solar Energy Industries Association and Vote Solar (SEIA/VS) misrepresent AB 327 and CPUC Decision (D.) 16-01-044 to support the incorrect proposition that sustainable growth of customer-sited Distributed Generation (DG) is AB 327's most important priority. D.16-01-044 unequivocally and explicitly contradicts SEIA/VS's position.[4] SEIA/VS quote a superseded and inapplicable version of D.16-01-044 as support for the contention that "the Commission has recognized that its 'first responsibility under PU Code Section 2827.1 is to see the continued growth of customer-sited renewable [distributed generation] DG'" and that this is the Commission's "first priority under P.U. Code Section 2827.1."[5] SEIA/VS do not disclose that D.16-09-036 the CPUC specifically corrected in D.16-01-044 to say that sustainable growth is **not** the most important priority just because it is listed first: "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…".[6]

Miss-citation aside, SEIA/VS suggest that the CPUC and Legislature have made Section 2827.1(b)(1) more of a priority than Section 2827.1(b)(2)-(5). While it is true that the sustainable growth requirement is the first listed, this does not suggest it is of greater importance than the other requirements; the statute states that "the commission shall do *all* the following" and in no way states that because it is listed first the sustainable growth requirement is more important than the other requirements in Section 2827.1(b), which include "Ensure that the standard contract or tariff made available to eligible customer-generators is based on the costs

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[4] Rule 1 of the Commission's Rules of Practice and Procedure establishes a duty of candor to the Commission that prohibits parties from misrepresenting the law or facts to the Commission.

[5] SEIA/VS, p. 2.

[6] D.16-09-036, p. 14 (emphasis added). The language cited by SEIA actually says: "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."

and benefits of the renewable electrical generation facility"[7] and "Ensure that the total benefits of the standard contract or tariff to all customers and the electrical system are approximately equal to the total costs,"[8] among other requirements. In the same decision, the CPUC held that "the plain language of section 2827.1 required us to consider and balance all three key goals [set forth in Section 2827.1(b)(1), (3) and (4)]. No one goal is controlling."[9] Thus, while sustainable growth is a key consideration, it must be balanced with the others in the CPUC's evaluation, contrary to what SEIA/VS appear to suggest.

In addition to misstating Commission precedent, SEIA/VS also advance an interpretation of the statutory language that violates the rules of statutory construction and therefore mischaracterizes the intent of the statutory language. Section 2827.1(b)(1) requires that the standard contract or tariff "ensures that customer-sited renewable distributed generation continues to grow sustainably. . .." Sustainably is an adverb, meaning that it uses the suffix "ly" as shorthand for the phrase "in a sustainable manner." Merriam-Webster's Online Dictionary defines "Sustainable" as: "(1) capable of being sustained, (2) (a) of, relating to, or being a method of . . . using a resource so that the resource is not depleted or permanently damaged, (b) of or relating to a lifestyle involving the use of sustainable methods."[10]

The NEM subsidy is furnished by non-participating customers. For customer-sited renewable distributed generation to "continue to grow sustainably", *i.e.*, in a sustainable manner, the NEM program cannot deplete or permanently damage the resources that funds it, namely non-participating customers. This interpretation of the statute is the only interpretation that is consistent with AB 327's overall objective because, as the legislative history shows, AB 327 is, first and foremost, a rate reform statute. It violates the rules of statutory interpretation to read statutory provisions in conflict with one another, as SEIA/VS do by suggesting that Section 2827.1(b)(1) and (b)(2)-(5) are somehow at war with one another or with the statute's overall

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[7] PUC § 2827.1(b)(3).
[8] PUC § 2827.1(b)(4).
[9] D.16-09-036, p. 7.
[10] "Sustainable" Definition, available at: https://www.merriam-webster.com/dictionary/sustainable

rate reform objective.[11] All factors must be harmoniously realized. The Commission should therefore reject this attempt to mischaracterize Commission precedent and the statute.

B. The Commission Should Reject Clean Coalition's Unlawful Proposal to Allow the Oversizing of NEM Eligible Renewable Generating Facility[12]

Clean Coalition requests that the CPUC include in scope eliminating restrictions on oversizing systems beyond historical onsite load and allowing NEM customers to use a wholesale distribution access (WDAT) tariff for surplus energy credits. Given the facial unlawfulness of the request, it is not appropriate for the Commission or parties to expend time and resources throughout the proceeding responding to such arguments.[13] The Commission should therefore reject those proposals now and remove them from the scope of this proceeding.

Since at least 2006, the Commission has consistently and repeatedly interpreted federal law and California Public Utilities Code Section 2827's requirement that NEM-eligible systems are "intended primarily to offset part or all of the customer's own electrical requirements" as requiring NEM systems, as a matter of law, to be "sized to meet but not exceed the customer's annual onsite load."[14] When the Commission first adopted the California Solar Initiative (CSI) in 2006, it construed the net metering statutes as "not require[ing] the utilities to purchase solar production that exceeds the customer's annual electric consumption."[15] It also acknowledged the existence of federal jurisdictional issues with utility purchases of excess generation from oversized systems.[16] The decision that most thoroughly and directly addressed the question

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[11] *People v. Black*, 32 Cal. 3d 1, 5 & *Wells v. Marina City Properties, Inc.*, 29 Cal. 3d 781, 788 (The interpretation should harmonize one part of the statute with the other part, and with the purpose of the statute as a whole.); *People v. Comingore*, 20 Cal. 3d 142, 147 (A statute should be interpreted in harmony with the statutory scheme.); *Isobe v. Unemployment Ins. Appeals Bd.*, 12 Cal. 3d 584, 590 – 591 (statute should be interpreted to harmonize, with other laws relating to the same subject.); *Dyna-Med, Inc. v. Fair Employment and Housing Com.*, 43 Cal. 3d 1379, 1387 & *Fay v. District Court of Appeal*, 200 Cal. 522, 537. (The legislative history of a statute and the wider historical circumstances of its enactment may be considered when interpreting a statute.)

[12] This section does not address California Energy Storage Association's (CESA's) comments about sizing limits for paired energy storage systems, which the Joint Utilities contend is an issue within the scope of this proceeding that should also be coordinated with the Microgrid OIR proceeding.

[13] Clean Coalition at pp. 3-4 (also requesting that the Commission allow NEM customers to interconnect under the WDAT and sell power at wholesale).

[14] D.14-03-041.

[15] D.06-01-024 at p. 15.

[16] *Id*.

solely with respect to NEM – D.11-06-016, in which the Commission held that "NEM customers are required to size their systems to be no larger than onsite load."[17] Later, in two 2014 decisions, D.14-03-041 and D.14-11-001, the Commission reiterated its long standing interpretation that "[b]y statute, the NEM tariff is awarded only for those systems **sized to the customer's historical or expected load**."[18]

The Commission's interpretation was based upon clear state and federal statutory language and intent. First, with respect to state law, PUC Section 2827 was added to the Public Utilities Code in 1995 through the enactment of Senate Bill (SB) 656. Ever since, the definition of an eligible customer-generator has required that the NEM system be "intended primarily to offset part of all of the customer's own electrical requirements."[19] The Legislative analysis of SB 656 demonstrates that this language was intended to allow utility customers to receive NEM benefits for renewable generating systems that are installed "to offset the customer's own electricity use, rather than to produce excess power for sale to the utility."[20] For this reason, in D.02-03-057, the Commission noted that SB 656's purpose was to provide an incentive to customers installing systems to "supply their own load."[21] While NEM's scope has expanded over the years to include larger and different types of generators, its fundamental structure has remained the same: to incentivize customers to offset their onsite electricity use from the grid with onsite renewable generation at a retail rate.[22]

For the first 14 years of the NEM program – until 2009 – Section 2827 limited the economic impact of the NEM systems to offsetting a customer's load by providing that at the annual true up, the customer was not eligible to receive compensation for any surplus kilowatt hours (kWh) that exceeded the customer's load over that prior 12-month period. In 2009, the Legislature enacted AB 920, which allowed eligible customers to be compensated for net surplus

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[17] D.11-06-016 at p. 34, p. 53, *see also* CL 25.

[18] D.14-11-001 at p. 17 (emphasis added.)

[19] Section 2827(b) in Ch. 369, Statutes of 1995.

[20] Analysis by Assembly Member Diane Martinez ("According to the author, this bill provides equitable rate treatment for small, residential solar systems that are designed primarily to offset the customer's own electricity use, rather than to produce power for sale to the utility."); SB 656 Bill Analyses, dated June 12, 1995 at p.2 ("The systems are primarily designed to offset the customer's own electricity use.") available at http://www.leginfo.ca.gov/pub/95-96/bill/sen/sb_0651-0700/sb_656_cfa_950609_122709_asm_comm.html

[21] D.02-03-057 at p. 2.

[22] *Id*.

energy produced over the 12-month period. Nothing in the statutory changes indicated any intent by the Legislature to deviate from the system sizing limitation.[23] To the contrary, AB 920's statutory change reflected an intent to encourage customers to continue energy efficiency efforts, even though generation is sized to load, by allowing customers installing up to the maximum size limits already in the statute to receive compensation for excess kilowatt hours. In fact, excerpts from an AB 920 bill analysis explain precisely how the provisions of AB 920 would be implemented[24] and expressly reject the notion that AB 920 altered the sizing restriction for the CSI program, which is governed by the same sizing restriction.[25]

Bill analysis for a later revision of the NEM statute, SB 489, confirms size limits on NEM projects remained in place after the passage of AB 920, stating: "This bill: . . . 2. Retains current requirements that . . . limit[] the generation from the project to primarily offset on-site electricity demand. . . ."[26] Similarly, AB 920 explicitly altered the 1 MW cap requirement, but retained the "customer's electrical requirements" limitation on generation. The Legislature chose to eliminate one size restriction while maintaining the ratio of system size to annual electricity use. Had the Legislature ever altered the sizing requirement, it would have implicated federal jurisdiction over the NEM program that would have prevented customers from being able to receive compensation for exports at a retail rate.

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[23] *See, e.g.* Section 2827(b)(6) ("'Net energy metering' means measuring the difference between the electricity supplied through the electric grid and the electricity generated by an eligible customer-generator and fed back to the electric grid over a 12-month period . . .."); Section 2827(b) (7) ("'Net surplus customer-generator"' means an eligible customer-generator that generates more electricity during a 12-month period than is supplied by the electric utility to the eligible customer- generator during the same 12-month period); Section 2827(b)(8) ("'Net surplus electricity' means all electricity generated by an eligible customer-generator measured in kilowatt hours over a 12-month period that exceeds the amount of electricity consumed by that eligible customer-generator"); Section 2827(b)(9) ("'Net surplus electricity compensation' means a per kilowatt hour rate offered by the electric utility to the net surplus customer-generator for net surplus electricity that is set by the ratemaking authority pursuant to subdivision (h)."); Section 2827(h) ("For eligible customer-generators, the net energy metering calculation shall be made by measuring the difference between the electricity supplied to the eligible customer-generator and the electricity generated by the eligible customer generator and fed back to the electric grid over a 12-month period.").

[24] AB 920 Assembly Floor Analysis dated Sept. 21, 2009, pp. 3-4, ("Because net-metering is based on sizing the generation to meet a customer-generator's own load . . .")

[25] *Id*. at p. 34 ("To be eligible for CSI rebates the system must still be sized to actual or projected load of the customer-generator at the time the solar energy system is installed. **This means that customers cannot intentionally oversize a solar energy system** and receive a CSI rebate." (emphasis added.)

[26] SB 489 Bill Analysis dated August 30, 2011, p.4 available at http://www.leginfo.ca.gov/pub/11-12/bill/sen/sb_0451-0500/sb_489_cfa_20110830_101610_sen_floor.html.

In 2001, the Federal Energy Regulatory Commission (FERC) disclaimed jurisdiction over net billing arrangements because it opined that there is no wholesale transaction under the Federal Power Act (FPA) or the Public Utility Regulatory Policies Act (PURPA) for the ***monthly*** net billing arrangement that occurs when a customer generator receives a retail rate bill credit for excess energy the customer exports to the utility that is not consumed on-site. This is because, at least in theory, over the course of the billing period, the customer generally uses more energy from the utility than it exports.[27] But when a customer-generator generates more electricity (measured in kWh) during *a 12-month period* than that which is supplied by the utility, and the customer-generator receives direct compensation for the excess energy, FERC found that a FERC-jurisdictional net sale of energy has occurred.[28] Under PURPA, to lawfully maintain a net billing arrangement that pays customer generators for exports at a retail rate, the customers' systems must be sized to annual load so that virtually all generation is consumed on site. Consistent with FERC's decision disclaiming jurisdiction over NEM monthly billing arrangements for monthly exports, the Commission, in D.11-06-016, when adopting a net surplus compensation (NSC) rate under AB 920, expressly addressed the sizing limits and affirmed that "NEM customers are required to size their systems to be no larger than onsite load and for most NEM customers, there is little or no net surplus generation over a 12-month period."[29]

Accordingly, if parties want a program that allows oversizing of customer-sited renewable generating systems, those customers must enter into a power purchase agreement with the utility as a QF for compensation at a PURPA avoided costs rate and comply with Rule 21's interconnection requirements, including the costs associated with such interconnection. To be clear: NEM customers are not eligible to oversize their systems to exceed onsite load without running afoul of state and federal law. If customers want systems sized to exceed onsite load, they are wholesale generators compensated at an avoided cost rate. They cannot have it both

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[27] FERC Order 2003-A, 106 FERC ¶ 61,220 at 747 (2004) (citing *MidAmerican Energy Co.*, 94 FERC ¶ 61,340 at 62,263 (2001).)

[28] *Id*. ("Only if the Generating Facility produces more energy than it needs and makes a net sale of energy to the utility over the applicable billing period would [FERC] assert jurisdiction.") (citing *MidAmerican, supra*, at 62,263).

[29] D.11-06-016 at pp. 34, 53, CL 25 ("Systems sized larger than the NEM customer's electrical requirements would not be eligible for NEM and, therefore, are not eligible for NSC.")

ways. The Commission has never deviated from the foregoing correct application of state and federal law and should not agree to do so in this proceeding.

C. The Commission Should Reject Unlawful Attempts to Expand VNEM

The Joint Utilities agree that virtual NEM (VNEM) is an important program that is properly within the scope of the proceeding, but submit that the Commission should address changes to the VNEM program to a later phase of this proceeding and that all enlargements or modifications should be made within the legal parameters established by state and federal law.

Dimension, however, advocates for expanding virtual NEM (VNEM), by among other things, treating bill credits as a transferrable commodity because it would allow customers to assign the benefits of their VNEM facilities to those with offsite load. VNEM systems cannot serve offsite load without running afoul of state and federal law. Under the legal framework discussed above, virtual NEM, if expanded beyond its current scope, would be unable to satisfy the legal requirements for NEM under federal law. The only reason California's NEM statute and the Commission's NEM and VNEM tariffs are not preempted by federal law is because they are predicated upon the requirement that participating customers have installed onsite eligible renewable generating facilities that are designed to primarily serve onsite load and are thus sized to their annual historical onsite load.

FERC's decision disclaiming jurisdiction applies ***exclusively*** to onsite generation sized to serve the onsite or adjacent parcel load. If the energy exported is serving load that is not onsite or at least on adjacent parcels, FERC controls compensation to the generator under the FPA and requires the energy to be sold through the California Independent System Operator (CAISO) at wholesale. Likewise, the CAISO does not permit netting to eliminate the wholesale sale. For instance, the CAISO requires renewable generators over 1 MW to participate in the CAISO market if they use the transmission system. The CAISO has informally interpreted this requirement as not applying to NEM 2.0 customers over 1 MW, ***so long as the generating facility is onsite and sized to onsite load***. FERC and federal courts would thus likely deem any extension of VNEM beyond the onsite load to be unlawful as preempted under federal law, including the FPA and PURPA. Transferring credits to anyone other than the customer whose load is being offset is an expansion that runs afoul of this legal limit and transforms the VNEM customer into a wholesaler.

IV.
THE CPUC SHOULD REJECT CERTAIN REQUESTS TO EXPAND THE SCOPE OF THE PROCEEDING BEYOND THE MANDATED AB 327 ANALYSIS

A. The Commission Should Coordinate with Other Proceedings, but Not Duplicate the Scope of those Proceedings Here

1. The Commission Should Not Duplicate the Scope of Proceedings Devoted to Grid Resiliency

The California Solar and Storage Association (CALSSA) suggests that the Commission should include the issue of the role of NEM in system resiliency in this proceeding, arguing that customers need solutions to the challenges of wildfire seasons, blackouts, and Public Safety Power Shutoffs (PSPS).[30] As a general matter, the Joint IOUs support the notion that Distributed Energy Resources (DERs) may have the potential to play a role in electric system resiliency but submit that this is a matter of coordination with other proceedings, as the OIR already contemplates, as opposed to adopting that issue as one that requires resolution here. The OIR properly focuses this proceeding on revisiting the current NEM tariff, which is a pricing structure and customer equity issue. The Commission should thus resist importing programmatic issues squarely under consideration in other proceedings and focus on meeting the charge of AB 327 and the mission set forth in the OIR. Such duplication is not only a distraction from the mandated AB 327 analysis, but also an inefficient drain on the Commission's resources.

2. The Commission Should Not Duplicate the Scope of Proceedings Devoted to General Rate Design Matters

POC and Small Business Utility Advocates (SBUA) ask the Commission to import issues of general rate design that are addressed in other proceedings into the scope of this proceeding. POC asks the Commission to include in scope the adjustment of Time-of-Use (TOU) periods[31] and SBUA asks the Commission to take up demand charges and general rate design principles

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30 CALSSA Opening Comments, p. 1.
31 POC Opening Comments, pp. 2-3.

here. [32] Both issues are squarely within other Commission proceedings. SBUA concedes as much, stating, "The Commission will need to decide how to translate decision about rate design in this proceeding back to the retail rates, including for utilities that are currently in [general rate case (GRC)] Phase 2 proceedings."[33]

More specifically, the Commission should see through POC's attempt to make TOU rate design matters, which are the subject of Phase 2 of each IOUs' GRC, relevant to this proceeding. POC does so by turning the cost shift concept on its head, contending that "there is a substantial and unjustifiable cost shift from NEM 2.0 customers to utility solar PPA projects under the Commission's current TOU on-peak window."[34] POC's concern lacks merit because paying for utility procurement is not a cost shift, it is an obligation of every benefiting customer and all NEM customers need and use the grid every single hour of every single day.

Regardless, this is an issue that should be resolved, if at all, in the IOUs' respective Phase 2 GRCs in which the Commission can adjust TOU periods, if appropriate. It is not an issue that is properly resolved in this proceeding, which should be devoted to completing the hard work required by AB 327 – a rate reform bill designed to correct the inequities of the cost shift to non-participating customers. The same is true of the SBUA's rate design arguments.

B. The CPUC Should Address DAC Program Matters After Correcting the Cost Shift

CALSSA contends that the Commission should "prioritize the development of a separate low-income tariff, as well as the consideration of other proposals designed to encourage increased NEM adoption in low-income and disadvantaged communities [DACs]."[35] The Commission recently fulfilled AB 327's mandate to create alternative programs for DACs. Given that these programs are currently at the implementation and procurement stage, Joint IOUs submit that this issue is not one the Commission should address in the first phase of this proceeding. Rather, the best use of the Commission's time and efforts to address inequities is to prioritize correcting the unsustainable and unreasonable cost shift to non-participating customers. The Commission should therefore address such matters in later phases of this proceeding.

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[32] SBUA Opening Comments, p. 3.
[33] *Id*.
[34] POC Opening Comments, pp. 2-3.
[35] CALSSA Opening Comments, p. 4.

V.

THE COMMISSION SHOULD NOT ADOPT VALUATION FACTORS BEYOND THE AVOID COST CALCULATOR

The Commission should continue to reject, as they have in the past, SEIA/VS's attempt to include the Societal Cost Test (SCT) and other factors into the Avoided Cost Calculator (ACC) for the purpose of evaluating NEM. As SEIA/VS acknowledge, they persist with this request even though the Commission already rejected SEIA/VS's prior attempts to add additional factors to the ACC. GRID Alternatives (GRID) similarly advocates that the Commission adopt the SCT.[36] In addition to the Commission's decisions on this issue, GRID and SEIA/VS also fail to recognize that no such test exists.

SEIA/VS admit they "recognize that, in D.19-05-019, the Commission directed Staff to test the details of the [SCT] elements for information purposes as part of the Integrated Resources Planning [IRP] proceeding, and, by mid-2021, make a recommendation as to the best approach for future use of the SCT, including how the SCT should be used in decision-making; with such recommendation to be considered in a subsequent decision."[37] GRID also implies such a test is ready, stating that "in D.19-05-019, [] the Commission anticipates that the SCT will be available for decision making in 2021."[38] GRID, however, does not correctly characterize the content of D.19-05-019, in which the CPUC anticipates further study of the SCT, directing Energy Division staff "During 2021, Staff is instructed to evaluate the elements of the SCT and recommend to the Commission whether the details of the SCT elements should be continued as implemented in this decision or revised pursuant to evaluation results. Furthermore, Staff shall

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[36] GRID misconstrues language on page 60 of D.16-01-044 to make a similar unfounded proposal to include SCT in this proceeding. The statement cited by GRID in their comments follows a discussion of how to meet the requirements of AB 327 that total benefits approximately equal total costs. The CPUC identifies the Ratepayer Impact Test (RIM) as the test that best captures that balance. After finding that no set of assumptions could achieve a successful outcome using the RIM test, the CPUC goes on to identify ongoing analysis that could better identify the benefits of NEM. Although the SCT is referred to in passing, the specific additional analysis that is relied on by the CPUC includes 1) efforts to better align residential rates with utility costs and grid needs -- i.e. analysis of the impact on the cost shift of TOU rates; 2) better identification of costs on which residential fixed rates could be based; and 3) efforts to better identify the benefits of NEM in IDER and DRP -- locational net benefits. The discussion leading to the statement cited by GRID Alternatives simply does not support an assumption of support for the use of the STC.

[37] SEIA/VS, p. 5.

[38] GRID Alternatives, p. 5 (citing D.19-05-019, p. 37).

make a recommendation as to the best approach for future use of the SCT, including how the SCT should be used in decision-making." The CPUC concludes in that decision that "[b]ased upon the evaluation, recommendations, and associated comments, the Commission will provide guidance on the SCT, the final details of the three elements and how the SCT should be used in decision-making. That guidance will be provided in a future decision in this proceeding or its successor proceeding."[39] This cannot support an assumption that the SCT can appropriately be used in this proceeding.

That is the case because the Joint IOUs are not aware of any testing being done by CPUC staff as part of the current cycle of the IRP, a necessary part of the process to implement an SCT. Regardless, it appears highly unlikely, if not impossible, that a fully vetted SCT will be available for use in this proceeding. For that reason alone, the Commission should reject GRID's and SEIA/VS's proposal to add "Analysis of the value of resource-specific benefits and services that can be provided by distributed generation, including societal benefits"[40] because this proceeding should not be delayed pending development of a SCT.

SEIA/VS claim that "this is the appropriate proceeding to conduct this examination" of their proposed inclusion of grid services—which SEIA/VS admit the CPUC previously rejected in the last iteration of the ACC, D.20-04-010.[41] On the contrary, the CPUC in D.20-04-010 noted that "no party presented support" for this avoided cost and the CPUC noted it was "cognizant of the potential for double-compensation."[42] While the CPUC noted that grid services avoided costs is a "future research need",[43] the appropriate proceeding to evaluate such research on this potential avoided cost is the Integrated Distributed Energy Resources (IDER) rulemaking, not this proceeding.

While SEIA/VS are correct that the Commission held in D.20-04-010 that it should "consider resource-specific benefits in resource-specific proceedings"[44], the CPUC should not relitigate issues that were already litigated in the latest iteration of the ACC. For example, SEIA/VS highlighted reliability and resiliency values already in the ACC and the CPUC

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[39] D.19-05-019, p. 37.
[40] SEIA/VS, p. 5.
[41] SEIA/VS, p. 4.
[42] D.20-04-010, p. 73.
[43] D.20-04-010, p. 73.
[44] SEIA/VS, p. 4; D.20-04-010, p. 67.

determined the proposals put forth by SEIA/VS to be participant benefits limited to storage and storage plus solar.[45]

In sum, the Commission should reject SEIA/VS's and GRID's SCT proposals because neither advance any reasonable arguments for adopting a not yet developed SCT in this proceeding or delaying this proceeding pending its development.

VI.
THE COMMISSION SHOULD REJECT FCE AND DIMENSION'S COMMENTS ON CATEGORIZATION AND SCHEDULE

A. An Accelerated Schedule Should Focus on Developing a Main Successor Tariff

Fuel Cell Energy, like the Joint Utilities, asks the CPUC to accelerate the schedule, but specifically asks the Commission to prioritize NEMFC, which the Joint IOUs explained in their opening comments is not in scope because it is not a NEM tariff subject to AB 327.[46] For the reasons already discussed in opening comments, the Commission should prioritize developing the main successor tariff to NEM 2.0 and remove NEMFC from scope.

B. The Proceeding is Correctly Categorized as Ratesetting

Dimension asks the Commission to recategorize this proceeding as quasi-legislative so that parties can have more *ex parte* contacts with the Commission.[47] The Commission should reject that request because circumventing the *ex parte* rules is not an acceptable justification for recategorizing a proceeding as quasi-legislative that, regardless of its outcome, will have billions of dollars of rate impact.

VII.
CONCLUSION

For the foregoing reasons, the Commission should adopt the Joint IOUs' recommendations provided above and in opening comments.

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45 D.20-04-010, FoF 89 and 91.
46 FCE, pp. 2-3.
47 Dimension, p. 7.

Respectfully submitted on behalf of the Joint Utilities,

JANET S. COMBS
REBECCA MEIERS-DE PASTINO

/s/ Rebecca Meiers-De Pastino
By: Rebecca Meiers-De Pastino

Attorneys for
SOUTHERN CALIFORNIA EDISON COMPANY

2244 Walnut Grove Avenue
Post Office Box 800
Rosemead, California 91770
Telephone: (626) 302-6016
E-mail: Rebecca.Meiers.Depastino@sce.com

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