

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



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Order Instituting Rulemaking to Revisit Net  
Energy Metering Tariffs Pursuant to Decision  
16-01-044, and to Address Other Issues Related  
to Net Metering

Rulemaking 20-08-020  
(Filed August 27, 2020)

**COMMENTS OF THE SOLAR ENERGY INDUSTRIES ASSOCIATION AND  
VOTE SOLAR ON PROPOSED DECISION ADOPTING GUIDING PRINCIPLES  
FOR THE DEVELOPMENT OF THE SUCCESSOR TO THE CURRENT  
NET ENERGY METERING TARIFF**

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Dated: January 25, 2021

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Pursuant to Rule 14.3 of the Rules of Practice and Procedure of the California Public Utilities Commission ("Commission"), the Solar Energy Industries Association (SEIA") and Vote Solar comment on the Proposed Decision Adopting Guiding Principles for the Development of the Successor to the Current Net Energy Metering Tariff ("Proposed Decision") which was issued in the above captioned proceeding on January 12, 2021.

**I. INTRODUCTION**

SEIA and Vote Solar are aligned with the Proposed Decision's determination that guiding principles should provide a framework to assist in the development and evaluation of a successor tariff, but that they should not adopt tariff elements or predetermine the resolution of contested issues. In this regard, SEIA and Vote Solar are fully supportive of the Proposed Decision's rejection of principles advanced by certain parties that rely on facts that are not currently in the record or on certain cost-effectiveness approaches with required outcomes. With respect to the latter point, SEIA and Vote Solar appreciate the Proposed Decision's reminder to parties that the Commission has already determined that the Total Resource Cost Test will be the primary test

for all Commission activities requiring cost-effectiveness analysis of distributed energy resources and that attempts to change that determination through guiding principles are not appropriate.

Although SEIA and Vote Solar believe that the Proposed Decision generally effects a reasoned parsing of parties' position, resulting in a list of generally acceptable principles, there are a few instances in which the Proposed Decision has reformulated a guiding principle in a manner which fails to reflect its original intent or which unnecessarily places limitations on the Commission's consideration of various tariff structures. As discussed below, SEIA and Vote Solar recommend changes to the Proposed Decision to correct these errors.

In addition, the Commission offers a definition of "grow sustainably" as that term is used in Public Utilities Code Section 2827.1. The proffered definition is not necessary and, more importantly, is not consistent with either legislative history or the Commission's prior deliberations on this matter. The Proposed Decision should be revised to remove this definition, or, at minimum, revise the definition in the manner set forth herein.

Finally, while SEIA and Vote Solar will not contest the Proposed Decision's rejection of their proposed additional principles - (1) a successor shall protect the customer's right to self-consume and store clean energy generated onsite, and (2) a successor shall include rates, charges, and fees for participating customers that are consistent with the Commission's rate design principles – they note that the former is grounded in state and federal law and policy, and the latter has, in fact, been previously acknowledged by the Commission in Decision 16-01-044 adopting the NEM 2.0 tariff.

## **II. NECESSARY MODIFICATIONS TO THE PROPOSED DECISION**

### **A. The Proposed Decision Errs in its Recommended Definition of Sustainable Growth**

The Public Utilities Code requires that the successor 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."<sup>1</sup> The Proposed Decision asserts that the parties should understand how the Commission interprets “to grow sustainably” so that they can submit proposals that follow the same interpretation.<sup>2</sup> The PD interprets sustainable growth to mean growth "whereby all customers can sustain the cost of that growth."<sup>3</sup> SEIA and Vote Solar submit that this proposed definition is too narrowly focused on cost and, not reflective of legislative intent, and entirely overlooks the Commission's previous deliberations on defining the term. As such, the Proposed Decision should be revised to remove the definition. If the Commission retains a definition of "grow sustainably," then it must be modified, as discussed below.

While the Proposed Decision sets forth the Commission's interpretation of "grow sustainably" it is not the Commission's interpretation which should rule, but that of the legislature. As highlighted by CALSSA, the discussion of “sustainable growth” in the legislative analysis refers to “whether the changes to NEM will impact the sustained growth of the industry.”<sup>4</sup> In this regard, CALSSA pointed out that the bill analysis notes several matters that impact “sustainable growth” in addition to NEM, such as federal tax credits, treatment of depreciation, and customer credits for greenhouse gas reduction.<sup>5</sup> All of these items impact the customer economics of investing in DERs, and therefore the growth of the market.

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<sup>1</sup> P.U. Code Section 2827.1(b)(1).

<sup>2</sup> Proposed Decision , p. 8.

<sup>3</sup> *Id.*, p. 37, Conclusion of Law 7.

<sup>4</sup> See *Reply Comments of the California Solar & Storage Industry on Guiding Principles*, R. 20-08-020 (December 11, 2020), p. 7 citing Assembly Committee on Utilities and Commerce, Bill Analysis of AB 327 (Perea) – As Amended: September 6, 2013, available at [http://www.leginfo.ca.gov/pub/13-14/bill\\_asm/ab\\_0301-0350/ab\\_327\\_cfa\\_20130911\\_131650\\_asm\\_comm.html](http://www.leginfo.ca.gov/pub/13-14/bill_asm/ab_0301-0350/ab_327_cfa_20130911_131650_asm_comm.html)

<sup>5</sup> *Id.*

The Commission previously acknowledged and accepted the legislative intent behind the requirement of sustainable growth when it addressed the need to define "grow sustainably" as part of the NEM 2.0 proceeding. In responding to an allegation of error in Decision 16-01-044 for its "failure" to comply with section 2827.1 by not adopting an express definition of sustainable growth, the Commission noted that it had addressed this issue in its determination that "[o]n balance, a metric that looks at average growth over a 3-5 year period should be sufficient to function as a way for Energy Division staff, IOUs, and market participants to evaluate whether a major change in course should be considered."<sup>6</sup> These prior deliberations clearly indicate that cost should not be the metric used in defining sustainability, but development of the distributed generation market must be considered. Indeed, the Commission previously denounced the definition of sustainability advanced by PG&E in the NEM 2.0 proceeding – i.e., "without subsidy from other ratepayers"- stating that it was not consistent with broader statutory goals.<sup>7</sup>

Moreover, from a pure statutory construction perspective, equating the term "grow sustainably" as used in Section 2827.1(b) (1) to the sustainability of the costs overlooks the fact that the statute already contains a provision that addresses sustainability from the cost perspective – i.e., the successor NEM tariff must "[e]nsure that the total benefits of the standard contract or tariff to all customers and the electrical system are approximately equal to the total costs."

Accordingly, the Proposed Decision should be revised to remove the definition of "grow sustainably." If, however, the Commission determines that its decision on Guiding Principles

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<sup>6</sup> Decision 16-01-044, p. 53; Decision 16-09-036 , p. 14.

<sup>7</sup> Decision 16-09-036 , p. 15.

for the successor NEM tariff must contain a definition of "grow sustainably" as that term is used in the statute, then the definition offered in the Proposed Decision should be revised as follow:

Grow sustainably means that behind the meter clean distributed generation deployment will continue to increase year-over-year at a pace at least in line with historical average.

## **B. The Proposed Decision Errs in its Reformulation of the Equity Principle**

The Scoping Ruling advanced the principle that "a successor shall ensure equity among customers and enhance consumer protection measures." The Proposed Decision recommends separating the concepts of equity and consumer protection into two distinct principles and modifying the equity aspect to provide that the successor tariff shall "ensure equal compensation for the same generation, equal collection of unavoidable and non-bypassable charges from participants and non-participants, and requiring participants to pay a fair share for the grid services they use" – a definition advanced by TURN.<sup>8</sup> The Proposed Decision provides no explanation for its adoption of TURN's proposal beyond the fact that it finds it "reasonable."<sup>9</sup> The Proposed Decision errs in its adoption of this overly prescriptive definition of equity.

Fundamentally the term equity means "the quality of being fair and impartial."<sup>10</sup> While fairness in cost burden is clearly an aspect of an equitable successor tariff, there are other aspects as well, such as equity of access – a point raised by several parties to the proceeding.<sup>11</sup>

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<sup>8</sup> Proposed Decision, p. 13.

<sup>9</sup> *Id.*

<sup>10</sup> <https://www.dictionary.com/browse/equity>

<sup>11</sup> See, e.g., *Comment of the Natural Resources Defense Council on Joint Assigned Commissioner's Scoping Memo and Administrative Law Judge Ruling Directing Comments on Proposed Guiding Principles*, R. 20-08-020 (December 4, 2020), p. 4 (customer-sited renewable generation should be accessible to all customers, including CARE and FERA customers); *Comments of the Center for Sustainable Energy Regarding Joint Assigned Commissioner's Scoping Memo and Administrative Law Judge Ruling Directing Comments on Proposed Guiding Principles*, R. 20-08-020 (December 4, 2020), p. 3 (in addressing equity principle, CSE states that it agrees with the Commission's proposal of this Guiding Principle and believes it is one of the most critical to the expansion of clean energy to all income

The Proposed Decision recognizes the need for a successor tariff to ensure equitable access to customers in disadvantaged and low-income communities by stating that it will require parties' proposals to include a metric by which they can be measured to meet the requirements for growth in such communities.<sup>12</sup> The Proposed Decision, however, chose not to establish a separate principle encapsulating the concept of fair and impartial access to all customers, implying that such is already captured in the statute.<sup>13</sup> Similarly, if the concept of equity is going to be narrowed to the fairness of the cost burden, it too should not be established as a separate principle because such is already captured in the statute – i.e., the successor tariff shall "[e]nsure that the total benefits of the standard contract or tariff to all customers and the electrical system are approximately equal to the costs."<sup>14</sup>

In addition, beyond the fact that the recommended principle overlooks the element of equity in access, it contains elements that place arbitrary limitations on the Commission, effect a predetermination of issues, could result in inequitable outcomes, and/or contain ambiguous terms. For example, the first clause provides that the successor tariff "ensures equal compensation for the same generation." As explained by TURN (the promoter of the principle) ensuring equal compensation would require all NEM customers to be on the same otherwise applicable rate schedule or require a "buy all/ sell all" construct<sup>15</sup> - issues which clearly are in

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levels in California, including low income and ESJ customers who previously had not had the opportunity to purchase or lease renewable generating systems).

<sup>12</sup> Proposed Decision, p. 10. SEIA and Vote Solar note that in making this directive the Proposed Decision references that the parties' proposals are due on March 1, 2021. The date provided is incorrect. The date should be changes to March 15, 2021, consistent with the November 19, 2020 Scoping Memo.

<sup>13</sup> See PU Code Section 2827.1 (b)(1) ( the successor tariff shall ".....include specific alternatives designed for growth among residential customers in disadvantaged communities. ").

<sup>14</sup> See PU Code Section 2827.1 (b)(4).

<sup>15</sup> *Comments of The Utility Reform Network on the Proposed Guiding Principle for a Successor to the Net energy Metering Tariff*, R. 20-08-020 (December 4, 2020), pp. 4-5.

play in this proceeding. Moreover, a requirement of equal compensation could limit the Commission's consideration of different tariff designs to incentivize solar adoption in lower income communities.

Moreover, the second clause -- ensure equal collection of unavoidable and non-bypassable charges from participants and non-participants -- would foster an inequitable outcome. Different types of customers have different costs of service and different load profiles. Thus all customers should not pay equal unavoidable and non-bypassable charges, given the common understanding of "equal" as "exactly the same." Again, using such prescriptive language could reduce the Commission's ability to craft a fair result in this proceeding that considers all of the many factors that impact how costs are assigned to various groups of customers.

Finally, the last clause - requiring participants to pay a fair share for the grid services they use -- raises the question of what is meant by "grid services". While TURN implies that the term grid services is limited to transmission and distribution services,<sup>16</sup> that is not stated in the principle.

In sum, the principle set forth in the proposed decision should not be adopted. If the Commission proceeds to do such, the principle must be revised in order to address the broader concept of equity and ensure that an adopted principle does not inhibit the Commission's deliberations in this proceeding and is unambiguous in its meaning:

The successor tariff ~~shall ensure~~ should encourage: (a) equitable access, ~~equal~~ (b) equitable compensation for the same generation, ~~equal~~ (c) equitable collection of unavoidable and non-bypassable charges from participants and non-participants, and ~~requiring~~ (d) participants to pay a fair share for the grid services they their use of the transmission and distribution grid.

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<sup>16</sup> *Id.*, p. 4.



### C. The Proposed Decision Errs in its Reformulation of the Regulatory Certainty Principle

The proposed principle embodied in the Scoping Ruling provided that "the successor should provide regulatory certainty." The Proposed Decision, purportedly based on portions of the clarifying changes to this principle offered by both SEIA/Vote Solar and the Joint Utilities, alters this principle to provide "A successor shall be transparent and understandable to all customers and be uniform, to the extent possible, across all utilities."<sup>17</sup> SEIA and Vote Solar support the altered principle, but transparency and understandability are *not* precepts of regulatory certainty – predictability is.

In commenting on the proposed principle that the successor should provide regulatory certainty, SEIA and Vote Solar emphasized, consistent with past Commission decisions,<sup>18</sup> that customers need a uniform and reliable expectation of stability of the NEM structure under which they decided to invest in their customer-sited renewable DG systems, and requested a modification to the principle to reflect such. The PD appears to acknowledge the validity of SEIA's and Vote Solar's requested modification to the principle to recognize the concept of a "reliable expectation of stability," noting TURN's agreement with this concept and stating its intent to adopt portions of SEIA and Vote Solar's proposed clarifications to the principle. The PD, however, then fails to incorporate this concept. Accordingly, SEIA and Vote Solar request that the principle recommended by the Proposed Decision be modified to provide:

A successor shall be transparent and understandable to all customers, provide a reasonable expectation of stability over the life of the PV system, and be uniform, to the extent possible, across all utilities.

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<sup>17</sup> Proposed Decision, p. 18.

<sup>18</sup> See Decision 16-01-044, p. 100 (the Commission adopted a 20 year period over which a customer taking service under the NEM 2.0 tariff should be eligible to continue taking service under that tariff to "allow customers to have a uniform and reliable expectation of stability of the NEM structure under which they decided to invest in their customer-sited renewable DG systems.").

### III. SEIA AND VOTE SOLAR RECOMMENDED PRINCIPLES

#### A. The Right to Self-Generate is Grounded in State and Federal law and Policy

In comments on the proposed principles, SEIA and Vote Solar offered the following additional principle: A successor shall protect the customer's right to self-consume and store clean energy generated onsite.<sup>19</sup> The Proposed Decision rejects this proposed principle stating:

No other party supports this proposed principle. Moreover, this proposed principle conflicts with our previous finding that guiding principles should provide a framework to assist in the development and evaluation of a successor but not predetermine the resolution of contested issues of fact and law.<sup>20</sup>

The fact that the right to self-generate is grounded in law is not contested by any party. As the Joint IOUs acknowledge, "California's Net Energy Metering (NEM) statute, and the laws or regulations of most states and most state commissions, permit QFs to serve their own on-site load."<sup>21</sup> This "permission" is grounded in both state law, which recognizes the right to generate for self-use,<sup>22</sup> and the Public Utilities Policy Act which *requires* an electric utility to purchase any energy and capacity which is made available from a qualifying facility.<sup>23</sup> The energy which a NEM customer makes available to the utility is the excess energy from its solar installation subsequent to on-site use.

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<sup>19</sup> *Comments of the Solar Energy Industries Association and Vote Solar on Proposed Guiding Principles for a Successor to the Current Net Energy Metering Tariff*, R. 20-08-020 (December 4, 2020) ("SEIA/VS Comments"), p. 8.

<sup>20</sup> Proposed Decision, p. 26.

<sup>21</sup> *Joint Reply Comments of Southern California Edison, Pacific Gas and Electric company and San Diego Gas & Electric Company on Guiding Principles*, R. 20-08-020 (December 11, 2020) p. 7.

<sup>22</sup> See PU Code Section 2868 which defines independent solar energy producer" as a "corporation or person employing one or more solar energy systems for the generation of electricity for any one or more of the following purposes: (1) Its own use or the use of its tenants.(2) The use of, or sale to, not more than two other entities or persons per generation system solely for use on the real property on which the electricity is generated, or on real property immediately adjacent thereto."

<sup>23</sup> 18 CFR § 292.303 (a).

Indeed, right to self-generate was once again recognized in AB 1516 (2018), which provides that it is the policy of the state to:

"encourage the continued development, installation, and interconnection of clean and efficient self-generation and cogeneration resources, to improve system reliability for consumers by retaining existing generation and encouraging new generation to connect to the electric grid, and to increase self-sufficiency of consumers of electricity through the deployment of self-generation and cogeneration."<sup>24</sup>

The right to self-generate grounded in both federal and state law must be recognized in any successor tariff adopted by this Commission.

**B. The Commission has Recognized that Rate Design Principles are Applicable to NEM Customers**

SEIA and Vote Solar, noting that “the existing NEM program is based on participating customers taking service under Commission-approved rates that also apply to non-participating customers,”<sup>25</sup> had offered the following as an additional principle to guide this proceeding: “a successor shall include rates, charges, and fees for participating customers that are consistent with the Commission’s rate design principles.”<sup>26</sup> The Proposed Decision, based on arguments advanced by TURN, rejected this principle. But TURN's argument is incorrect.

Specifically, TURN argues that “Public Utilities Code Section 2827.1 requires NEM 2.0 customers to take service under the successor tariff and disallows these customers to switch to any other rate option provided to non-participating customers.”<sup>27</sup> But TURN appears to be forgetting two points (1) NEM 2.0 customers, in addition to taking service under the NEM tariff,

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<sup>24</sup> PU code Section 372 (f).

<sup>25</sup> SEIA/ VS Comments, p. 9.

<sup>26</sup> *Id.*

<sup>27</sup> *Reply Comments of The Utility Reform Network on the Proposed Guiding Principle for a Successor to the Net energy Metering Tariff*, R. 20-08-020 (December 11, 2020), p. 4.

must also take service under an otherwise applicable TOU rate – a rate that does apply to non-participating customers and that presumably has been developed in reliance on the Commission’s rate design principles; and (2) the Commission has already determined the relevance of the rate design principles to the creation a successor tariff. Specifically, the Commission, in its deliberations regarding the NEM 2.0 tariff, stated:

Section 2827.1 is one part of a larger initiative on residential rate reform mandated by AB 327. In its recent decision on residential rate redesign, D. 15-07-001, the Commission instituted a number of changes that are important both to residential rate design itself and to the process of developing the NEM successor tariff. Since the determinations made in D. 15-07-001 are critical to development of the successor tariff it is useful to review the most relevant.<sup>28</sup>

More specifically, in addressing a specific rate design proposal in that proceeding, the Commission recognized that NEM customers should not be singled out and subject to discriminatory treatment vis-a-vis rate designs previously dismissed for residential customers as a whole:

Since PG&E’s proposal is expressed as the creation of a demand charge on a subset of residential customers--NEM residential customers--it is, in effect, an effort to revisit the Commission’s determination in D. 15-07-001 that fixed charges, including demand charges, should not be imposed on residential customers before default TOU rates have been established in 2019.<sup>29</sup>

Through its recommended principle, SEIA and Vote Solar were not attempting to introduce a new concept – just emphasize one that the Commission has already recognized. If the Commission determines not to adopt this recommended principle as part of this proceeding, then it should, at minimum, state its intent to follow its previously approved, and repeatedly used, residential rate design principles when designing the NEM successor tariff.

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<sup>28</sup> Decision. 16-01-044, p. 17.

<sup>29</sup> *Id.*, p. 66.

#### IV. CONCLUSION

The Proposed Decision correctly determines that guiding principles should provide a framework to assist in the development and evaluation of a successor tariff, but that they should not adopt tariff elements or predetermine the resolution of contested issues. In order to maintain consistency with this overarching tenet, the Proposed Decision's reformulation of the equity principle must be removed or substantially modified. Moreover, the Proposed Decisions modification to the regulatory certainty principle fail to include the concept of predictability which the Commission has previously recognized in the context of the NEM tariff. Finally, the Proposed Decision's offered definition of "sustainable growth" is not necessary. However, if the Commission determines that the term must be defined prior to the continuation of this proceeding, the definition must be modified consistent with the legislative history and the Commission's prior deliberations on the term.

Respectfully submitted January 25, 2021, at San Francisco, California.

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<sup>30</sup> In accord with Rule 1.8 SEIA's representative is authorized to sign these comments on behalf of Vote Solar.

## RECOMMENDED CHANGES TO FINDINGS OF FACT AND CONCLUSIONS OF LAW

### Findings of Fact

8. ~~Parties should understand how the Commission interprets “to grow sustainably” so they submit proposals that follow the same interpretation.~~
10. Sustainable growth should ~~not be solely~~ based on the historical average growth of distributed energy resources ~~or even distributed energy resources for low-income households.~~
16. ~~TURN’s definition of equity does not prescribe outcomes related to the rates and charges future customers of the successor will pay.~~
17. ~~It is reasonable to adopt TURN’s definition of equity~~
44. SEIA/Vote Solar’s proposed principle to protect the customer’s right to self-consume and store clean energy generated onsite is grounded in state and federal law. ~~conflicts with our previous finding that guiding principles should not predetermine the resolution of contested issues of fact and law.~~

### Conclusions of Law

7. ~~The Commission should not focus~~ The definition of sustainable growth ~~in a narrow manner but, rather, interpret sustainable growth to mean growth whereby all customers can sustain the cost of that growth~~ must be consistent with legislative intent.
8. ~~The Commission should adopt TURN’s definition of equity: “ensuring equal compensation for the same generation, equal collection of unavoidable and non-bypassable charges from participants and non-participants and requiring participants to pay a fair share for the grid services they use.”~~
16. The Commission should adopt the following language as a revision to proposed principle: “A successor shall be transparent and understandable to all customers, provide a reasonable expectation of stability over the life of the PV system, and be uniform, to the extent possible, across all utilities.
26. The Commission should recognize that ~~not adopt SEIA/Vote Solar’s proposed principle: a successor tariff shall include rates, charges, and fees for participating customers that are~~ should be consistent with the Commission’s rate design principles.