FILED
03/15/21
04:59 PM

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Revisit Net Energy Metering Tariffs Pursuant to Decision 16-01-044, and to Address Other Issues Related to Net Energy Metering.	Rulemaking 20-08-020 (Filed August 27, 2020)

CAlifornians for Renewable Energy Proposed Qualifying Facility Net Energy Metering Successor to the Current Net Energy Metering Tariff

Michael E. Boyd President (CARE)
CAlifornians for Renewable Energy, Inc.
5439 Soquel Drive,
Soquel, CA 95073
Phone: (408) 891-9677
E-mail: boyd.michaele@gmail.com

March 14, 2021

Table of Contents

Abbreviations and acronyms

Administrative Law Judge	ALJ
behind the meter	BTM
California Independent System Operator Corporation	CAISO
California Public Utilities Commission	CPUC
CAlifornians for Renewable Energy	CARE
Code of Federal Regulations	C.F.R.
community choice aggregators	CCAs
energy service providers	ESPs
Federal Energy Regulatory Commission	FERC
Federal Power Act	FPA
Integrated Resource Plan and Long Term Procurement	IRP-LTPP
investor-owned utilities	IOUs
Load Serving Entities	LSEs
long-run avoided cost	LRAC
megawatts	MW
net energy metering	NEM
net surplus compensation	NSC
North American Electric Reliability Corporation	NERC
Pacific Gas and Electric Company	PG&E
Public Utility Regulatory Policies Act	PURPA
qualifying facility	QF
renewable energy credits	RECs
renewable portfolio standard	RPS
Resource Adequacy	RA
San Diego Gas and Electric Company	SDG&E
short-run avoided cost	SRAC
Southern California Edison Company	SCE

to be determined	TBD
United States Code	U.S.C.
utility owned generation	UOG

Table of Authorities

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Revisit Net Energy Metering Tariffs Pursuant to Decision 16-01-044, and to Address Other Issues Related to Net Energy Metering.	Rulemaking 20-08-020 (Filed August 27, 2020)

CAlifornians for Renewable Energy Proposed Qualifying Facility Net Energy Metering Successor to the Current Net Energy Metering Tariff

1. Pursuant to the Assigned Commissioner's December 21, 2020 Scoping Memo and Ruling and the subsequent Administrative Law Judge's January 28, 2021 Email Ruling Introducing White Paper and Providing Instructions for Successor Proposals (ALJ Email Ruling), CAlifornians for Renewable Energy (CARE) respectfully provides its proposal.

I. Summary

2. Overview of the proposal: CARE's proposal is for a small renewable qualifying facility ("QF") net energy metering ("NEM") customer-generator tariff or power purchase agreement[1] for facilities up to 3 megawatts. [QF NEM proposal]

3. How the QF NEM Proposal addresses each of the following elements:

a. Export compensation structure(s) (e.g., net metering, net billing, feed-in tariff). Utilities must compensate QF NEMs at a rate equal to the utility's "avoided cost." 18 CFR § 292.304(d).

b. Description of methodology and inputs for calculating export compensation price(s) (e.g., avoided greenhouse gas emissions, transmission capacity, distribution capacity, generation energy, system generation capacity, local

[1] CARE feels ambivalent to a standard contract versus a Commission determined tariff.

generation capacity). QF NEMs compensated at Public Utility Regulatory Policies Act ("PURPA") "avoided cost" e.g., "the incremental cost[] to an electric utility of electric energy or capacity or both which, but for the purchase from the qualifying facility or qualifying facilities, such utility would generate itself or purchase from another source." 18 C.F.R. § 292.101(6).

c. Rate structure(s) (e.g., time-of-use rate requirement, fixed or demand charges, minimum bill, market transition credit, nonbypassable charges). This depends on factors that would need to be determined ("TBD") as part of evidentiary hearings on this proposal for a small renewable qualifying facility ("QF") net energy metering ("NEM") customer-generator tariff or power purchase agreement for facilities up to 3 megawatts.

d. Continued application of secondary customer benefits (e.g., exemptions from interconnection upgrade costs, standby charges, and departing load charges). TBD as part of evidentiary hearings following approval of this proposal.

e. Terms of service and billing rules (e.g., duration of service, true-up period, netting interval). TBD as part of evidentiary hearings on this proposal.

f. Treatment for systems 1 megawatt and larger. The proposal includes systems up to 3MW.

g. How to address variations on the current net energy metering tariff (e.g., net energy metering aggregation and virtual net energy metering). TBD as part of evidentiary hearings on this proposal.

h. Any modifications to existing smart inverter requirements for systems taking service on the successor tariff. None anticipated but depends on factors not analyzed.

i. Whether and how energy storage and other distributed energy resources are integrated into the tariff. This proposal is for adopting avoided cost pricing tiered by energy generator type, and size, for Pacific Gas and Electric Company ("PG&E); Southern California Edison Company ("SCE"), San Diego Gas

and Electric Company ("SDG&E") and other Load Serving Entities ("LSEs") within the Commission's jurisdictional authorities.

j. Any safety issues related to the successor tariff. This QF NEM proposal would provide a successor to the net energy metering tariff to enhance consumer protection measures for customer-generators by allowing access to safety measures related to net energy metering services under PURPA regulations [18 C.F.R. §292.101(b)] defining what constitutes a system emergency, supplemental power, back-up power, interruptible power, and maintenance power for all QFs.

k. Any legal issues associated with your proposal (e.g., consistency with other Commission decisions or statutory requirements, tax implications for customers). TBD as part of evidentiary hearings on this proposal.

II. Addressing how the proposal meets each of the relevant statutory criteria and the Guiding Principles[2] via PURPA.

4. In 1978, Congress enacted the Public Utility Regulatory Policies Act ("PURPA") to reduce American dependence on fossil fuels, encourage renewable

[2] "Proposals should justify how they address each of the "guiding principles" articulated in the Decision Adopting Guiding Principles for the Development of the Successor to the Current Net Energy Metering Tariff in R.20-08-020, as adopted by the Commission. Compliance with all statutory and cost-effectiveness mandates, as indicated in the adopted guiding principles, should be highlighted in the proposal. Parties are encouraged to justify the cost-effectiveness of proposals within their proposals.
The following guiding principles are adopted to assist in the development and evaluation of a successor to the current net energy metering tariff:
(a) A successor to the net energy metering tariff should comply with the statutory requirements of Public Utilities Code Section 2827.1;
(b) A successor to the net energy metering tariff should ensure equity among customers;
(c) A successor to the net energy metering tariff should enhance consumer protection measures for customer-generators providing net energy metering services;
(d) A successor to the net energy metering tariff should fairly consider all technologies that meet the definition of renewable electrical generation facility in Public Utilities Code Section 2827.1;
(e) A successor to the net energy metering tariff should be coordinated with the Commission and California's energy policies, including but not limited to, Senate Bill 100 (2018, DeLeon), the Integrated Resource Planning process, Title 24 Building Energy Efficiency Standards, and California Executive Order B-55-18;
(f) A successor to the net energy metering tariff should be transparent and understandable to all customers and should be uniform, to the extent possible, across all utilities;
(g) A successor to the net energy metering tariff should maximize the value of customer-sited renewable generation to all customers and to the electrical system;
and

energy development, and promote increased energy efficiency. 16 U.S.C. § 824a-3; *FERC v. Mississippi,* 456 U.S. 742, 745-46, 102 S. Ct. 2126, 2130, 72 L.Ed.2d 532 (1982); *Small Power Prod. and Congregation Facilities; Regulations Implementing Sec. 210 of the Pub. Util. Reg. Pol. Act of 1978,* Order No. 69, 45 Fed. Reg. 12,214, 12,215 (Feb. 25, 1980).

5. PURPA aims to eliminate significant barriers to the development of alternative energy sources, including the reluctance of traditional electric utilities to purchase power from and sell power to non-traditional facilities and the financial burdens imposed upon alternative energy sources by state and federal utilities. *CARE v. CPUC,* 922 F.3d 929, 932 (9th Cir. 2019) (citing *Independent Energy Producers Ass'n, Inc. v. Cal. Pub. Utils. Comm'n,* 36 F.3d 848, 850 (9th Cir. 1994)). PURPA charges the Federal Energy Regulatory Commission ("FERC") with enacting PURPA's implementing regulations. *CARE v. CPUC,* 922 F.3d at 931.

6. Section 210 of PURPA requires large electric utilities to purchase energy from small power production QFs at standard-offer rates. 18 C.F.R. §§ 292.201, 292.203, 292.204. Small power QFs have a nameplate capacity of 80 megawatts ("MW") or less and produce electric power from biomass, waste, or renewable resources such as wind, water, or solar energy. 18 C.F.R. § 292.204(a), (b); 16 U.S.C. § 796(17)(A). Rates must be "just and reasonable" to consumers, "in the public interest," and nondiscriminatory to the QF to "encourage" renewable energy development and allow small QFs to "become and remain viable suppliers of electricity." 18 C.F.R. § 292.304(a); 16 U.S.C. § 824a-3(a), (b); *Whitehall Wind, LLC v. Mont. Pub. Serv. Comm'n,* 2010 MT 2, ¶ 7, 355 Mont. 15, 223 P.3d 907 (*Whitehall Wind I*).

7. When setting the purchase price, QFs must be compensated at a rate equal to the utility's full avoided cost. 18 C.F.R. § 292.304(b)(2); *Am. Paper Inst. v.*

(h) A successor to the net energy metering tariff should consider competitive neutrality amongst Load Serving Entities."
[Decision 21-02-007 pages 45-46]

Am. Elec. Power Serv. Corp., 461 U.S. 402, 406, 103 S. Ct. 1921, 1924, 76 L.Ed.2d 22 (1983). Avoided costs are "the incremental costs to an electric utility of electric energy or capacity *or both* which, but for the purchase from the qualifying facility or qualifying facilities, such utility would generate itself or purchase from another source." 18 C.F.R. § 292.101(b)(6) (emphasis added).

8. Capacity costs are those costs incurred from providing the capability to deliver energy, consisting primarily of the capital costs of energy storing facilities. FERC Order No. 69 at 12,216.

9. Energy costs are costs associated with energy production, including operating and maintenance expenses. FERC Order No. 69 at 12,216. By limiting the purchase price to a utility's avoided cost, Congress sought to achieve a balance between the interests of ratepayers and generators. Energy purchased at the utility's avoided cost is cost effective and reasonable for consumers because it is equivalent in price as if the utility generated the power itself or purchased it from another source. *S. Cal. Edison Co., San Diego Gas & Elec. Co.,* 71 FERC ¶ 61,269, 62,280 (June 2, 1995).

10. In *CARE v CPUC*, 922 F. 3d 929 (2019) the Court panel states the responsibilities of State regulators under the Public Utility Regulatory Policies Act ("PURPA"), at 933.

> State regulatory agencies have the responsibility of calculating avoided cost, but FERC has set forth factors that states should consider. 18 C.F.R. § 292.304(e). Those factors are:
>
> (1) the utility's system cost data;
>
> (2) the terms of any contract including the duration of the obligation;
>
> (3) the availability of capacity or energy from a QF during the system daily and seasonal peak periods;
>
> (4) the relationship of the availability of energy or capacity from the QF to the ability of the electric utility to avoid costs; and
>
> (5) the costs or savings resulting from variations in line losses from those that would have existed in the absence of purchases from the QF.

11. To providing a successor to the net energy metering tariff that consider all technologies that meet the definition of renewable electrical generation facility in Public Utilities Code Section 2827.1, we request the Commission hold evidentiary hearings for the purposes of adopting avoided cost pricing tiered by energy generator type, and size, for Pacific Gas and Electric Company ("PG&E); Southern California Edison Company ("SCE"), San Diego Gas and Electric Company ("SDG&E") and other Load Serving Entities ("LSEs") within the Commission's jurisdictional authorities, after these entities have publicly released those factors identified in 18 C.F.R. § 292.304(e) for each type and size of energy resource so designated by the Commission.

12. The proposed successor to the net energy metering tariff [the "QF NEM proposal"] complies with the statutory requirements of Public Utilities Code Section 2827.1[3] for "a standard contract or tariff, which may include net energy

[3] Public Utilities Code Section 2827.1.

(a) For purposes of this section, "eligible customer-generator," "large electrical corporation," and "renewable electrical generation facility" have the same meanings as defined in Section 2827.

(b) Notwithstanding any other law, the commission shall develop a standard contract or tariff, which may include net energy metering, for eligible customer-generators with a renewable electrical generation facility that is a customer of a large electrical corporation no later than December 31, 2015. The commission may develop the standard contract or tariff prior to December 31, 2015, and may require a large electrical corporation that has reached the net energy metering program limit of subparagraph (B) of paragraph (4) of subdivision (c) of Section 2827 to offer the standard contract or tariff to eligible customer-generators. A large electrical corporation shall offer the standard contract or tariff to an eligible customer-generator beginning July 1, 2017, or prior to that date if ordered to do so by the commission because it has reached the net energy metering program limit of subparagraph (B) of paragraph (4) of subdivision (c) of Section 2827. The commission may revise the standard contract or tariff as appropriate to achieve the objectives of this section. In developing the standard contract or tariff, the commission shall do all of the following:

(1) Ensure that the standard contract or tariff made available to eligible customer-generators ensures that customer-sited renewable distributed generation continues to grow sustainably and include specific alternatives designed for growth among residential customers in disadvantaged communities.

(2) Establish terms of service and billing rules for eligible customer-generators.

(3) Ensure that the standard contract or tariff made available to eligible customer-generators is based on the costs and benefits of the renewable electrical generation facility.

(4) 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.

metering, for eligible customer-generators with a renewable electrical generation facility that is a customer of a large electrical corporation". "A large electrical corporation shall offer the standard contract or tariff to an eligible customer-generator beginning July 1, 2017".

13. In *CARE v CPUC*, 922 F. 3d 929 (2019) the Court panel found that State regulators hold discretionary authority under the Public Utility Regulatory Policies Act ("PURPA") over "using various technologies", at 933. "*Cal. Pub. Util. Comm'n ("CPUC"),* 133 FERC ¶ 61,059, 61,265, 2010 WL 4144227 (2010). "Avoided cost rates may also `differentiate among qualifying facilities using various technologies on the basis of the supply characteristics of the different technologies.'" Id. at ¶ 61,265-66 (quoting 18 C.F.R. § 292.304(c)(3)(ii)). Avoided cost can also include the capacity costs that the 933*933 utility avoids by purchasing electricity from QFs. CPUC, at ¶ 26."

14. A QF NEM successor to the net energy metering tariff would ensure equity among customers, pursuant to the Federal Power Act ("FPA") section 206, which ensures equity among customers through the exclusive jurisdictional authority of the Federal Energy Regulatory Commission ("FERC") over wholesale rates for electricity throughout the nation. "Whenever the Commission [FERC], after a hearing had upon its own motion or upon complaint, shall find that any rate, charge, or classification, demanded, observed, charged, or collected by any public

(5) Allow projects greater than one megawatt that do not have significant impact on the distribution grid to be built to the size of the onsite load if the projects with a capacity of more than one megawatt are subject to reasonable interconnection charges established pursuant to the commission's Electric Rule 21 and applicable state and federal requirements.

(6) Establish a transition period during which eligible customer-generators taking service under a net energy metering tariff or contract prior to July 1, 2017, or until the electrical corporation reaches its net energy metering program limit pursuant to subparagraph (B) of paragraph (4) of subdivision (c) of Section 2827, whichever is earlier, shall be eligible to continue service under the previously applicable net energy metering tariff for a length of time to be determined by the commission by March 31, 2014. Any rules adopted by the commission shall consider a reasonable expected payback period based on the year the customer initially took service under the tariff or contract authorized by Section 2827.

(7) The commission shall determine which rates and tariffs are applicable to customer generators only during a rulemaking proceeding.

utility for any transmission or sale subject to the jurisdiction of the Commission [FERC], or that any rule, regulation, practice, or contract affecting such rate, charge, or classification is unjust, unreasonable, unduly discriminatory or preferential, the Commission [FERC] shall determine the just and reasonable rate, charge, classification, rule, regulation, practice, or contract to be thereafter observed and in force, and shall fix the same by order." 16 U.S.C. § 824e(a).

15. Under the current regulatory paradigm most people with rooftop solar cannot access their solar power during a system emergency, without the Commission requiring LSEs to provide for the provision for supplemental power, back-up power, interruptible power, and maintenance power for all NEM QFs affected as allowed for under PURPA. The QF NEM proposal would provide a successor to the net energy metering tariff to enhance consumer protection measures for customer-generators by allowing access to net energy metering services under PURPA regulations [18 C.F.R. §292.101(b)] defining what constitutes a system emergency, supplemental power, back-up power, interruptible power, and maintenance power for all QFs [upon request]. We request that Pacific Gas and Electric Company ("PG&E); Southern California Edison Company ("SCE"), San Diego Gas and Electric Company ("SDG&E") and other Load Serving Entities ("LSEs") within the Commission's jurisdictional authorities provide these services.

> 4) System emergency means a condition on a utility's system which is likely to result in imminent significant disruption of service to customers or is imminently likely to endanger life or property.
> (8) Supplementary power means electric energy or capacity supplied by an electric utility, regularly used by a qualifying facility in addition to that which the facility generates itself.
> (9) Back-up power means electric energy or capacity supplied by an electric utility to replace energy ordinarily generated by a facility's own generation equipment during an unscheduled outage of the facility.
> (10) Interruptible power means electric energy or capacity supplied by an electric utility subject to interruption by the electric utility under specified conditions.

(11) Maintenance power means electric energy or capacity supplied by an electric utility during scheduled outages of the qualifying facility.

16. To provide a successor to the net energy metering tariff that would be coordinated with the Commission and California's energy policies, including but not limited to, Senate Bill 100 (2018, DeLeon)[4], the Integrated Resource Planning process[5], Title 24 Building Energy Efficiency Standards[6], and California Executive Order B-55-18[7] suggests a proposal that harmonizes federal and state Climate goals

[4] Senate Bill 100 (2018, DeLeon)
SECTION 1. (a) This act shall be known as The 100 Percent Clean Energy Act of 2018.
(b) The Legislature finds and declares that the Public Utilities Commission, State Energy Resources Conservation and Development Commission, and State Air Resources Board should plan for 100 percent of total retail sales of electricity in California to come from eligible renewable energy resources and zero-carbon resources by December 31, 2045.
(c) It is the intent of the Legislature in enacting this act to extend and expand policies established pursuant to the California Renewables Portfolio Standard Program (Article 16 (commencing with Section 399.11) of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code), and to codify the policies established pursuant to Section 454.53 of the Public Utilities Code, and that both be incorporated in long-term planning.

[5]Integrated Resource Plan and Long Term Procurement Plan (IRP-LTPP)
Background
This is an "umbrella" planning proceeding to consider all of the Commission's electric procurement policies and programs and ensure California has a safe, reliable, and cost-effective electricity supply. The proceeding is also the Commission's primary venue for implementation of the Senate Bill (SB) 350 requirements related to integrated resource planning (IRP) (Public Utilities Code Sections 454.51 and 454.52). It will implement a process for integrated resource planning that will ensure that load serving entities (LSEs) meet targets that allow the electricity sector to contribute to California's economy-wide greenhouse gas emissions reductions goals.
Evaluating Need
To evaluate need, the Proceeding takes a 10-year-ahead look at
1. System needs (reliability needs of the overall electric system)
2. Local needs (reliability needs specific to areas with transmission limitations)
3. Flexibility needs (such as the resources needed to integrate renewables)
See: https://www.cpuc.ca.gov/irp/

[6] https://www.energy.ca.gov/programs-and-topics/programs/building-energy-efficiency-standards
Building Energy Efficiency Standards - Title 24 California's energy code is designed to reduce wasteful and unnecessary energy consumption in newly constructed and existing buildings.

[7] California Governor Jerry Brown (D) on September 10th, 2018, issued Executive Order B-55-18 establishing a statewide goal to "achieve carbon neutrality as soon as possible, and no later than 2045, and maintain and achieve negative emissions thereafter." The order directs the California Air Resources Board to work with other state agencies to identify and recommend measures to achieve those goals.
See: https://www.ca.gov/archive/gov39/wp-content/uploads/2018/09/9.10.18-Executive-Order.pdf

and energy regulations. In *CARE v CPUC*, 922 F. 3d 929 (2019) the Court panel observes at 937, how PURPA could help. “Although FERC initially stated in CPUC that a "state may take into account obligations imposed by the state that, for example, utilities purchase energy from particular sources of energy," CPUC, 133 FERC at ¶ 61266 (emphasis added), later in CPUC, FERC reiterated that when a state has a requirement that utilities source energy from a particular type of generator, "generators with those characteristics constitute the sources that are relevant to the determination of the utility's avoided cost for that procurement requirement." *Id*. at ¶ 61267. Thus, where a state has an RPS and the utility is using a QF's energy to meet the RPS, the utility cannot calculate avoided costs based on energy sources that would not also meet the RPS.”

17. To provide a successor to the net energy metering tariff that would be transparent and understandable to all customers and should be uniform, to the extent possible, across all utilities suggests the unmet need for standard rates.

a. Under PURPA for all QF’s with a design capacity of 100 kilowatts or less, there “shall” be put into effect (with respect to each electric utility) standard rates for purchases from qualifying facilities.”18 C.F.R.§292.304 (c)(1). Only with larger facilities are standard rates optional [“may”] and, hence, competitive markets an option. See 18 C.F.R.§292.304 (c)(2).

b. For generating facilities with net power production capacities of 1 MW or less, Order No. 732 created an exemption, such that those facilities are not required to file either a notice of self-certification or an application for Commission certification to qualify as a QF. [FERC] Order No. 732, 130 FERC ¶ 61,214 at P 3.

c. Public Utilities Code Section 2827.1(b)(5) allows projects greater than 1 MW that “do not have a significant impact on the distribution grid to be built to the size of the onsite load if the projects with a capacity of more than one megawatt are subject to reasonable interconnection charges established pursuant to the commission’s Electric Rule 21 and applicable state and federal requirements.” CARE’s QF NEM proposal requires renewable qualifying facility generators with

an aggregate system size of 1 MW design capacity or greater up to 20 MW design capacity to self-certify their facility with the FERC pursuant to PURPA requirements. This proposal makes QF NEMs greater than 1 MW nameplate and up to and including 3 MW nameplate eligible for a standard tariff or power purchase agreement upon a showing of filing either a notice of self-certification or an application for FERC certification to qualify as a QF NEM.

III. Addressing compensation for QF NEM capacity.

18. Under the current regulatory paradigm people with rooftop solar would not be eligible for capacity payments as allowed for under PURPA. To provide a successor to the net energy metering tariff that maximizes the value of customer-sited renewable generation to all customers and to the electrical system QF NEM customer generators would be compensated for their customer side of the utility's meter solar capacity [and storage capacity too].

19. According to CPUC NEM website "[c]ustomers who install small solar, wind, biogas, and fuel cell generation facilities to serve all or a portion of onsite electricity needs are eligible for the state's net metering program. NEM allows customers who generate their own energy ("customer-generators") to serve their energy needs directly onsite and to receive a financial credit on their electric bills for any surplus energy fed back to their utility. Participation in the NEM does not limit a customer-generator's eligibility for any other rebate, incentive, or credit provided by an electric utility. More than 90% of all megawatts (MW) of customer-sited solar capacity interconnected to the grid in the three large investor-owned utilities ("IOUs") territories (PG&E, SCE, and SDG&E) in California are on NEM tariffs." The Commission website describes the existing compensation rate as follows "[a]t the end of a customer's 12-month billing period, any balance of surplus electricity is trued-up at a separate fair market value, known as net surplus compensation (NSC). The NSC rate is based on a 12-month rolling average of the market rate for energy. That rate is currently approximately $0.02 to $0.03 per kWh (for up-to-date NSC data, follow these links: PG&E, SCE, SDG&E)." *Id.*

20. Each May 1, the CPUC is required to report to the Legislature the aggregated costs and cost savings of renewable energy expenditures and contracts for the previous year. The three utilities system cost data [18 C.F.R. § 292.304(e)(1)] for PV solar [without storage] paid by their customers for 2018 can be found in the CPUC 2019 Padilla Report at page 26.[8] The three IOU's utility owned generation (UOG) Solar Photovoltaic system costs in (¢/kWh) for 0-3 MW systems was 33.71¢ for PG&E, 69.75¢ for SCE, and 57.66¢ for SDG&E respectively in 2018. Installed PV solar "capacity" on the customer side of the utility meter once installed becomes 100% delivered because it avoids the utility's UOG system costs and transmission costs.

21. In *CARE v CPUC*, 922 F. 3d 929 (2019) at 938, the Court panel addressed capacity costs stating,

> CARE next contends that several CPUC programs violate PURPA because they do not include capacity costs as part of the full avoided cost. In granting summary judgment for CPUC, the district court reasoned that PURPA did not require state regulatory agencies to take into account capacity costs. Rather, the regulations required state utility regulators to consider capacity costs only "to the extent practicable." C.F.R. § 292.304(e). The district court found no genuine dispute of material fact that NEM participants were not being paid avoided cost, nor were utilities required to include capacity costs because NEM customers did not provide capacity to the utility. Finally, the district court found that avoided cost did not require the use of long-run avoided cost ("LRAC") as opposed to SRAC.
>
> It would go too far to say that state regulatory agencies are never required to include capacity costs in an avoided cost calculation. The FERC regulations set forth factors for states to consider in setting avoided cost but states that those factors, including capacity, "shall, to the extent practicable, be taken into account." C.F.R. § 292.304(e). FERC has "made clear that an avoided cost rate need not include capacity costs (as distinct from energy costs) where a QF does not `permit the purchasing utility to avoid the need to construct a generating unit, to build a smaller, less expensive plant, or to reduce

[8]https://www.cpuc.ca.gov/uploadedFiles/CPUCWebsite/Content/About_Us/Organization/Divisions/Office_of_Governmental_Affairs/Legislation/2019/Padilla%20Report%202019%20-%20Final(1).pdf

> firm power purchases from another utility.'" *City of Ketchikan, Alaska,* 94 FERC ¶ 61293, 2001 WL 275023, at *6 (2001) (quoting Order No. 69, FERC Stats. & Regs., Regs. Preambles 1977-1981 ¶ 30,128 at 30,865. FERC Order 69, however, clarifies that capacity costs are required in some circumstances. Specifically, FERC stated:
>
> > [i]f a qualifying facility offers energy of sufficient reliability and with sufficient legally enforceable guarantees of deliverability to permit the purchasing electric utility to avoid the need to construct a generating unit, to build a smaller, less expensive plant, or to reduce firm power purchases from another utility, then the rates for such a purchase will be based on the avoided capacity and energy costs.
>
> *Order 69*, 45 FERC at 12216.
>
> Thus, a QF would not be entitled to capacity costs unless it actually displaced the utility's need for additional capacity. If a QF displaces the utility's need for additional capacity, however, the utility is required to include capacity costs as part of avoided costs.

22. To provide a successor to the net energy metering tariff that would consider competitive neutrality amongst Load Serving Entities we request the Commission hold evidentiary hearings for the purposes of adopting avoided cost pricing tiered by energy generator type, and size, including all Commission jurisdictional Load Serving Entities.

23. A load-serving entity ("LSE") is an entity that "[s]ecures energy and Transmission Service (and related Interconnected Operations Services) to serve the electrical demand and energy requirements of its end-use customers." Load-serving entities, among other things, submit load profiles and characteristics, plans, and forecasts as needed to the balancing authorities, purchasing selling entities, planning coordinator, resource planners, and transmission planners and provide generation commitments and dispatch schedules to the balancing authority.[9]

[9] North American Electric Reliability Corporation ("NERC") Functional Model (Version 5) at 55. See also Reliability Standards MOD-016-1.1, MOD-017-0.1, MOD-018-0, MOD-021-1, and MOD-031-1 (Demand and Energy Data) which will replace MOD-16 through 19 and 21 in 2016.

24. The CPUC established Resource Adequacy ("RA") obligations applicable to all Load Serving Entities ("LSEs") within the CPUC's jurisdiction, including investor-owned utilities ("IOUs"), energy service providers ("ESPs"), and community choice aggregators ("CCAs"). The Commission's RA policy framework – implemented as the RA program - guides resource procurement and promotes infrastructure investment by requiring that LSEs procure capacity so that capacity is available to the California Independent System Operator Corporation ("CAISO") when and where needed. [10]

IV. Important statutory, policy, or practical issues that remain open in the proposal.

25. The issue of compensation for QF NEM renewable attributes remains unresolved. Renewable Energy Credits ("RECs") are strictly a state program independent from PURPA pricing for QFs. In 105 FERC ¶61,005 at page 1, Background, Section B, the FERC found regarding the valuation of renewable energy credits "RECs are 'tradeable certificates' that correspond to a certain amount of renewable energy generated by a third party." *American Ref-Fuel*, 105 FERC at 61,005. Generally speaking, RECs are inventions of state property law whereby the renewable energy attributes are "unbundled" from the energy itself and the credits can be purchased by companies and sold separately individuals to offset use of energy generated from traditional fossil fuel resources or by government agencies to satisfy certain requirements that these agencies purchase a certain percentage of their energy from renewable sources."

26. In 2003 regarding RECs the FERC found ""States, in creating RECs, have the power to determine who owns the REC in the initial instance, and how they may be sold or traded; it is not an issue controlled by PURPA" [*American Ref-Fuel*

See Demand and Energy Data Reliability Standard, Order No. 804, 80 Fed. Reg. 9596 (Feb. 24, 2015), 150 FERC ¶ 61,109 (2015).

[10] See https://www.cpuc.ca.gov/ra/

Company "Order Granting Petition for Declaratory Order", 105 FERC ¶ 61,004 (2003), Docket No. EL03-133-000, P.23.]

27. In Decision 11-12-052 issued December 21, 2011 the Commission found [at page 56] regarding the price paid for RECs "In making an upfront showing in an advice letter seeking approval of a contract for unbundled RECs, an IOU must show, for contracts signed prior to December 31, 2013, that the levelized price does not exceed $50/REC.[11]"

28. In fact the Commission [and California for that matter] has no way to determine the value of RECs because there is no RECs trading market in the state to base its findings on; and by finding regarding the renewable attributes value the "IOU must show, for contracts signed prior to December 31, 2013, that the levelized price does not exceed $50/REC" the decision is legally vulnerable to Constitutional challenge because it discriminates against in-state generation by imposing different requirements on in-state versus out-of-state generators in violation of the Commerce Clause.[12]

V. Addressing implementation plans and timelines.

29. Assuming the QF NEM proposal is approved, with regard to implementation plans, there is a need for a further formal implementation phase within this proceeding after the adoption of the proposed successor to the current tariff, to conduct the requested evidentiary hearings for the purposes of adopting avoided cost pricing tiered by energy generator type, and size, for Pacific Gas and Electric Company ("PG&E); Southern California Edison Company ("SCE"), San Diego Gas and Electric Company ("SDG&E") and other Load Serving Entities ("LSEs") within the Commission's jurisdictional authorities, after these entities have publicly released those factors identified in 18 C.F.R. § 292.304(e) for each type and size of energy resource.

---

[11] Once the Commission implements the cost containment mechanism called for in new § 399.15(c), the upfront showing that must be made by IOUs on the cost of REC-only contracts may change.

[12] *See*, United States Constitution, Article I, Section 8, Clause 3.

30. Regarding the timeline we provide a breakdown of the total anticipated time it will take to fully implement the tariff after Commission adoption.

Decision on QF NEM successor tariff issued	January 17, 2022
LSEs release factors identified in 18 C.F.R. § 292.304(e)	March 18, 2022
Evidentiary Hearings	April 4 - 8, 2022
Opening Briefs	April 25, 2022
Reply Briefs	May 23, 2022
Proposed Decision	Within 90 days
Decision Issued	At least 30 days after PD.

VI. Similarities and differences with elements discussed in the White Paper.

> "E3 believes that a central element of the proposed framework is the design of a mandatory new successor rate for customers with onsite renewable generation, which will increase efficiency in adoption of BTM generation while also producing more equitable outcomes than the current NEM program. This rate would not be required for nonparticipating customers, although enrollment would be open to all. At this initial stage in the successor tariff development, the white paper does not advocate for a specific rate structure, but we identify a number of potential successor rate options that represent an improvement over current residential and small commercial rates. All such candidate successor rate options would enhance equity by more rigorously incorporating cost causation and other ratemaking principles in setting the various rate components. Together with a newly adopted multi-part rate for customers with onsite renewable generation, we believe that a departure from the traditional NEM compensation structure is necessary, replacing retail rate-based credits for energy injections into the grid with export rates that reflect avoided costs and are time-of-day and seasonally differentiated."
> [E3 White Paper page 3]

31. We feel uncomfortable discussing the similarities and differences with elements discussed in the E3 White Paper.[13] We observe the White Paper uses the term [and element] "avoided costs" thirty nine times. We feel confused by this use of this term because 18 C.F.R. § 292.101(6) defines "avoided costs" as "[a]voided costs means the incremental costs to an electric utility of electric energy or capacity or both which, but for the purchase from the qualifying facility or qualifying facilities, such utility would generate itself or purchase from another source." Our QF NEM proposal uses the same term "avoided costs" but unlike the E3 White Paper this term has meaning under the federal law, PURPA.

VII. Conclusions

32. We respectfully request that the proposal for a QF NEM successor tariff be granted.

Respectfully submitted,

Michael E. Boyd President (CARE)
CAlifornians for Renewable Energy, Inc.
5439 Soquel Drive,
Soquel, CA 95073
Phone: (408) 891-9677
E-mail: boyd.michaele@gmail.com

March 14, 2021

[13] A quote by Marshall B. Rosenberg "Every criticism, judgment, diagnosis, and expression of anger is the tragic expression of an unmet need."