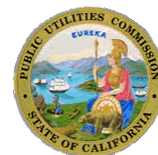


**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



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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 Energy Metering.

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

**REPLY BRIEF OF THE
CALIFORNIA LOW-INCOME CONSUMER COALITION**

September 14, 2021

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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 Energy Metering.

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**REPLY BRIEF OF THE
CALIFORNIA LOW-INCOME CONSUMER COALITION**

Pursuant to Rule 13.12 of the California Public Utility Commission’s (“Commission”) Rules of Practice and Procedure, and the direction of Administrative Law Judge Kelly A. Hymes at the conclusion of the evidentiary hearing in this proceeding on August 10, 2021,¹ the California Low-Income Consumer Coalition (CLICC) respectfully submits this reply brief.

CLICC is a coalition of legal aid organizations that advocates for the interests of low-income California consumers in administrative proceedings and in the legislature. CLICC’s member organizations are Bet Tzedek Legal Services, Centro Legal de la Raza, Community Legal Services in East Palo Alto, East Bay Community Law Center, Elder Law & Advocacy, the Justice & Diversity Center of the Bar Association of San Francisco, the Katherine & George Alexander Community Law Center at Santa Clara School of Law, Marin Legal Aid, Public Counsel, Public Law Center, Riverside Legal Aid, the UC Irvine School of Law Consumer Law Clinic, and the Watsonville Law Center. CLICC’s member organizations provide free legal services to thousands of low-income Californians across the state every year. CLICC member clients are generally people of color, people with limited English proficiency, senior citizens, people with disabilities, and other low-income people who may be renters or fixed- or low-income homeowners.

On behalf of its members’ low-income clients, CLICC welcomes the Commission’s decision to

¹ Reporter’s Transcript, P. 2200, line 25.

“include . . . consumer protection considerations as part of our overall consideration of the successor tariff.² CLICC has joined this proceeding in order to address three of the eight principles addressed in this proceeding: the propositions (1) that “[a] successor to the net energy metering tariff should enhance consumer protection measures for customer-generators providing net energy metering services”; (2) that “[a] successor to the net energy metering tariff should be transparent and understandable to all customers”; and (3) that “[a] successor to the net energy metering tariff should ensure equity among customers.”³

CLICC members’ clients are bounded rational actors: to the extent information is accurate, clear, salient, and accessible, they respond to price signals and other communications that make adopting solar a sensible financial decision. The principal reason CLICC members’ clients seek solar is to respond to high utility costs, which are a significant burden to low-income people.⁴ Therefore, the cost-shift problem that is at the heart of this proceeding is inequitable, since it provides disproportionately wealthy homeowners with a subsidy paid by other, disproportionately low-income ratepayers. However, low-income consumers also benefit from NEM when they decide to adopt solar themselves.

Solar customer-generators should pay something for the fixed costs of the electrical grid they rely on. CLICC also recognizes that the current NEM structure has disproportionately benefited wealthy Californians. However, CLICC urges the Commission, as it considers ways in which NEM might be structured to minimize the cost-shift, also to keep in mind those low-income consumers who have already adopted solar. CLICC further urges the Commission to consider how 25 years of incentives that have enabled the development of robust solar capability in wealthy communities can be restructured in a way that includes mechanisms to enable lower-income communities to develop and benefit from similar locally controlled behind-the-meter distributed generation capabilities.

CLICC’s perspective on this proceeding is informed by its members’ experience working with

² Decision 21-02-007, February 11, 2021, at p. 16.

³ *Id.* at p.45, 46.

⁴ Roughly 11 percent of lower income households in the state spend more than a third of their income on utilities, after housing costs are accounted for. California Public Utilities Commission, 2019 Annual Affordability Report, April 29, 2021, at p.36.

individual low-income homeowners and other low-income people who have been harmed by debt. Usually, this debt was assumed for entirely reasonable or unavoidable expenses, but the consequences of having to borrow to cover such expenses often cause long-lasting harm to low-income people.

Unfortunately, CLICC has extensive experience with homeowners who have been or are being harmed in some way by the installation of solar on their homes. Frequently, it is the financing of their solar project that has caused the harm.⁵ Whether through Property Assessed Clean Energy (PACE) financing or some other loan, many low-income people remain indebted far longer than their wealthier counterparts because of how they have financed their solar systems.

Other clients have come to us, and to our colleagues in the housing units of our member organizations, with confusion and consternation about their utilities bills after a solar installation because of the true-up process. The current Solar Consumer Protection Guide illustrates what such a true-up might look like: monthly bills for \$10 for eleven months, followed by a true-up bill of \$560.⁶ While theoretically a NEM customer should set aside money saved in high-producing months in order to be able to pay for any NEM deficit at the end of the year, the fact is that most low-income people live from paycheck to paycheck, and cannot set aside money to pay for unexpectedly large obligations.

The frame of reference that CLICC brings to this proceeding is that of its members' low-income consumer clients. That perspective leads CLICC to offer the following overarching comments and observations on reform of the NEM tariff proposals:

1. CLICC is wary of proposals that unilaterally modify the bargain made by low-income homeowners who financed solar systems under NEM 1.0 or 2.0, particularly if there is no mechanism enabling low-income customer-generators to maintain the benefits of the original bargain at least while they are still paying off their systems.
2. CLICC supports proposals that make it both possible and likely for low-income consumers to make an informed choice about whether installing solar or solar + storage

⁵ Decision 18-09-044, September 27, 2018, at pp.11-14; Decision 20-02-011, February 6, 2020, at p.10.

⁶ Ex. IOU-08 (Cross Exhibit: Heavner, Plaisted, Beach), Commission, Solar Consumer Protection Guide, January 2021, at p.17.

makes financial sense.

3. CLICC supports effective disclosures that all customers can understand and a robust role for the Commission in assuring solar customers are protected.
4. CLICC supports proposals that make it possible for low-income consumers to avoid unpleasant billing surprises and to understand their utility bills.
5. CLICC opposes successor tariff models that impose fixed fees, which are regressive and tend harm smaller solar customers, as well as proposals that penalize consumers who are unable upgrade their infrastructure.
6. CLICC believes that the definition of “low-income” for the new NEM tariff should include CARE and FERA enrollees, but also those communities and individuals described in the Commission’s Environmental and Social Justice Action Plan.
7. CLICC supports mechanisms that promote the development of community, rather than individual, power generation resources in low-income communities, providing lower-cost power, greater community resiliency, and other benefits, as well as reducing pressure for low-income people to borrow money.

Each of these topics is discussed in more detail below.

I. CLICC is wary of proposals that unilaterally modify the bargain made by low-income homeowners who financed solar systems under NEM 1.0 or 2.0, particularly if there is no mechanism enabling low-income customer-generators to maintain the benefits of the original bargain at least while they are still paying off their systems.

Low-income consumers invest in solar projects because their utility bills are high and also because they believe in reducing fossil fuel consumption. Most solar consumers finance their projects rather than paying the full amount up front: the Joint Utilities’ data show that “70% of the customer cost of solar is shouldered through financing.”⁷ Thus, low-income customers pay more for their solar generation systems than do their higher-income counterparts who can pay cash or get a better loan. Many current low-income NEM consumers are still paying on their systems, and will be for many years.

Existing low-income solar customer-generators entered into their solar agreements knowing that

⁷ Joint Opening Brief of Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company (Joint Utilities Opening Brief), August 31, 2021, at p.26.

it would take a long time to pay off the system, particularly since they may have signed on to loan terms of more than 20 years, but with an understanding that NEM export compensation rates would continue to help them do that until the system was paid off. Their understanding comes from the estimates given to them by their installer. It also comes from assurances made to them in the Commission’s Solar Consumer Protection Guide, which explains how NEM works:

- “NEM allows you to get a financial credit on your electricity bill when your solar system sends electricity back to the grid...Usually this credit is approximately equal to the retail rate of the energy...This means that you are credited on your bill about the same amount that your electricity provider would have charged you for electricity during that time.”
- “If you took in more than you sent out to the grid in any given month, you will see an overall charge on your bill If you sent out more than you took in, you will see an overall credit.”
- “Typically, you will be able to carry forward credits to the next month’s bill, and electricity usage charges will not be due until the end of a 12-month period.”

Critically, the Guide leaves no doubt about how long NEM will last:

- “Currently, PG&E, SCE, and SDG&E customers are guaranteed NEM for 20 years from the time their solar system starts operating.”⁸

CLICC believes that it is not fair to low-income consumers to renege on that guarantee, particularly for installations made after the Commission began requiring that solar installer provide consumers with the Solar Consumer Protection Guide in 2019.⁹ An average consumer would reasonably conclude from the Guide that what was guaranteed for at least 20 years was that the utility would compensate them for their exported electricity at “about the same amount” as what the consumer would have paid for that amount of electricity.

For this reason, CLICC supports maintaining higher export compensation rates for low-income legacy NEM customers for an extended, defined period of years. For instance, GRID Alternatives, Vote Solar and the Sierra Club propose freezing the export compensation rates of

⁸ Ex. IOU-08 at p.17.

⁹ Decision 18-09-044, September 27, 2018.

low-income legacy NEM customers at 2021 time-of-use retail rates for 20 years.¹⁰ Their proposal honors the Commission’s assurance of a 20-year period during which the utilities will credit exports at “about the same amount that [the utility] would have charged you for electricity during that time.”

CLICC does not object to imposing some form of grid use charge on legacy NEM customers, or to levying some form of equity charge, but CLICC supports exempting or discounting the charges for low-income legacy NEM 1.0 and 2.0 customer-generators. The imposition of a distinct charge is not addressed in the Guide, which does point out that electricity rates will likely go up (though it does not say that the export compensation rate will become uncoupled from that rate) and that utilities may change the rate plan that a NEM customer is required to adopt.¹¹ CLICC supports an exemption or a discount on charges like these for low-income customers at least for some period of years, out of fairness given their ability to pay these fees and in recognition of the many years of subsidy that low-income NEM customers provided to wealthy customers who adopted solar before they did.

II. CLICC supports proposals that make it both possible and likely for low-income consumers to make an informed choice about whether installing solar or solar + storage makes financial sense.

CLICC supports proposals that honor the “transparent and understandable” guiding principle by enabling consumers to make an informed choice before investing in a solar generation or solar storage system. Absent an easy way to predict utility costs based on proposed formulas, and to couple those predictions with a customer’s actual expectations about their own use, customers will not be able to evaluate the appropriateness of adopting solar or solar + storage.

Complex utility charge formulas, coupled with complicated expectations about how customers will modify their behavior to respond to the formulas, will make it difficult for customers to understand how solar could or might not benefit them, and do not sufficiently address the “transparent and understandable” principle. For instance, under the Joint Utilities’ proposal a consumer would have to understand three different time of use rates, each adjusted seasonally

¹⁰ Opening Brief of GRID Alternatives, Vote Solar, and Sierra Club (“GRID/VS/Sierra Club Opening Brief”), August 31, 2021, at p.22.

¹¹ *Id.*

based on seasonal demand, and annually or more often based on updated calculations of avoided costs; understand forecasted rates for each hour of the year; and figure out how and how effectively they would be able to respond to these price cues if they were to adopt solar.¹² To realistically evaluate the financial logic of installing a solar project before undertaking it, a customer would have to map out all of these things, in spite of having limited current information, and then compare that cost estimate to the cost of the system and the price of financing. The Joint Utilities claim that their proposal “would make the value of solar exports more transparent and improve customer understanding of potential and realized bill savings,”¹³ but it seems unlikely that the average customer will agree. Similarly, The Utility Reform Network (TURN) claims that “customers will be able to clearly understand the economic value proposition of TURN’s proposed successor tariff” because “[c]ompensation would be the product of three elements – an up-front MTC [market transition credit] incentive payment, a generation-based rate credit for production used for self-consumption, and Avoided Cost values for exports that can be locked in for a period of 10 years.”¹⁴ However, TURN’s proposal is actually more complex than the Joint Utilities’ proposal.¹⁵

¹² Joint Proposal of Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company (Joint Utilities’ Proposal), March 15, 2021, at pp.14-16.

¹³ Joint Utilities Opening Brief at p.110.

¹⁴ Opening Brief of The Utility Reform Network Regarding a Successor to the Current Net Energy Metering Tariff (“TURN Opening Brief”), August 31, 2021, at p.63.

¹⁵ TURN Opening Brief at pp.72-73. TURN claims that “customers will be able to clearly understand the economic value proposition of TURN’s proposed successor tariff” because “[c]ompensation would be the product of three elements – an up-front MTC [market transition credit] incentive payment, a generation-based rate credit for production used for self-consumption, and Avoided Cost values for exports that can be locked in for a period of 10 years.” (TURN Opening Brief at p.63.) While CLICC agrees that the MTC would be clear, and does not oppose a market transition credit, the rest of TURN’s proposal would not enable the average (or even perhaps a sophisticated) customer “to clearly understand the economic value proposition” of a behind-the-meter generation project under TURN’s proposed tariff. TURN’s plan would require that solar consumers: learn what, if any, market transition credit they are entitled to; learn what the Avoided Costs Calculator is and what it calculates for compensation rates at each hour of the year for that customer’s location; decide at interconnection whether they wanted to either lock in to a fixed hourly ACC rate (which they could lock in for either 5 years or 10, as they choose); either immediately or at the expiration of their locked-in rate, learn how to modify their usage in response to hourly, daily, seasonal, locational, and annual rate changes; install and program technology that helps them do this even when they are not at home; and eventually learn daily market rates and every day adjust their power consumption based on this day-ahead signal. (TURN Opening Brief at pp. 55, 64, 75.) It seems improbable that customers would be able to map these factors in a way that they could understand the financial impact of installing solar.

TURN’s complex formula for export compensation rates “is designed to perfectly align this element of the successor tariff with the benefits provided by the customer generation,” but perfect alignment is neither required by law nor desirable when it is so difficult for customers to understand. (TURN Opening Brief at p.72.)

III. CLICC supports effective disclosures that all customers can understand and a robust role for the Commission in assuring solar customers are protected.

The Commission's decision to include consumer protection considerations as part of the design phase of a NEM successor tariff shows that the Commission is taking seriously the need for full disclosure of risks and benefits to potential solar or solar + storage consumers. In order to be effective, these disclosures written in a way that allows consumers who don't speak English, who are not sophisticated, and who are disabled to understand them.¹⁶ Fine print may disclose, but it often does not inform, as the Commission has recognized.¹⁷ Therefore, CLICC encourages careful vetting of disclosures, such as the standardized disclosures proposed by the Coalition for Community Solar Access.¹⁸ In addition, the Commission should take an active role in assuring that contracts for solar services that are part of grid-tied distribution systems meet consumer protection guidelines that the Commission sets, including by establishing enforcement mechanisms.¹⁹

IV. CLICC supports proposals that make it possible for low-income consumers to avoid unpleasant billing surprises and to understand their utility bills.

a. Solar customer-generator bills should be leveled for roughly equivalent monthly payments, with an annual true-up.

CLICC has seen frequent customer confusion and unwelcome surprise at annual true-ups. To address this problem, the Commission should adopt default monthly billing for solar customers, like what is currently offered as an option by community solar providers, with an annual true-up that runs from April-March to account for the cycle of the solar generation year and seasonal fluctuations in energy use, as proposed by The Solar Energy Industries Association and Vote Solar.²⁰ This billing plan would give consumers the maximum credit for their

¹⁶ Decision 18-09-044, September 27, 2018, at pp.25, 50, 52-53. CLICC does not believe it is realistic to expect that the Solar Consumer Guide be revised by November 1, 2021, as the Joint Utilities propose. (Joint Utilities Opening Brief, at p.108).

¹⁷ Decision 18-09-044.

¹⁸ Opening Brief of the Coalition for Community Solar Access Supporting the Establishment of a Net Value Billing Tariff ("Community Solar Opening Brief"), August 31, 2021, at p.24.

¹⁹ For instance, CLICC agrees with TURN that it may be appropriate for the Commission to take steps to assure that community solar consumers are adequately and meaningfully informed and protected, and that community solar developers are not improperly enriched at consumer expense. (TURN Opening Brief at p.124)

²⁰ Opening Brief of the Solar Energy Industry Association and Vote Solar, August 31, 2021, at p.70-71. The April true-up would be instead of an annual true-up at the interconnection anniversary.

generation in a given year, with monthly billing minimizing harsh year-end true-ups. Customers who prefer an annual true-up could opt in to annual billing.

CLICC does not believe that the monthly true-up that the Joint IOUs propose is an appropriate solution. Rather, the Joint Utilities' proposal would penalize solar consumers for unavoidable annual fluctuations in solar production. The monthly true-up proposed by the Joint Utilities essentially guarantees that solar customers will face high bills in the winter months, when their production is low, and be under-compensated for their production in the summer months, when their production is high. The Joint Utilities propose that while the dollar value of excess export credits would be credited each month, these excess exports would only be credited at the net surplus compensation (NSC) rate, which is much lower than the Joint IOUs' proposed export compensation rate.²¹ The Joint Utilities' monthly true-up proposal seems unfair based on existing consumer expectations and also unfair to new solar adopters. Existing solar customers—and those selling them their systems—estimated their bill savings on annual usage and annual projected generation. Moreover, annual usage would continue to be the best way for a consumer to estimate bill savings before installing solar. And finally, solar consumer generators' summer production is of greater value to the grid than it would be in the winter, meaning that limiting excess export compensation during summer months is inconsistent with grid needs.

b. Electric bills should be easy to understand.

It is vital that customers be able to understand their bills, consistent with the guiding principle that a reformed NEM tariff should be “transparent and understandable to all customers.” CLICC agrees with the California Solar and Storage Association that many of the “proposed solar fees are incredibly complex, difficult to understand, and likely to be volatile.”²² Moreover, it appears to CLICC that some proposals which rely on complex time-of-use rate calculations are expecting the monthly bill to not only notify the customer of what they owe, but to perform a new function: to inform the customer of upcoming rates so that the customer will change their behavior.

It is not clear how the average consumer could decipher the breakdown of charges that many of

²¹ Joint Utilities' Opening Brief at pp.67, 109; Joint Utilities' Proposal at pp.17-18)

²² Opening Brief of the California Solar & Storage Association, August 31, 2021, at p.195.

the proposals would include in a bill. For example, under the Joint Utilities' proposal, customers would see on their bills a retail rate charge for their use, an export compensation rate for their generation that month up to the kWh of their production, and, at least in summer months, a credit for excess generation valued at a net surplus compensation rate. All three rates would fluctuate hourly (time of use, time of production), seasonally (three seasonal periods), and at least annually.²³ In short, the bill will reflect information that falls in a number of categories, and each of them may vary from one bill to the next, perhaps a great deal. This promises very confusing electrical bills. TURN's export compensation proposal, which "TURN submits . . . is straightforward,"²⁴ would also present consumers with very confusing bills.

These proposals also introduce a problematic new role for a bill. Under such proposals no longer would a hard-to-understand bill only be needed to see what one owes, but also conform one's behavior to adapt to future prices. This is an entirely new function for a bill. For instance, the Joint Utilities argue that "[c]ustomers can see the ECR [export compensation rate] far in advance and use it to plan an initial purchase or develop new behavioral patterns that provide consistent load reductions or shifts."²⁵ The Joint Utilities claim that their "proposal will provide greater transparency to customers and vendors, and will be easier to understand. These elements will reduce confusion about successor tariff billing and facilitate consumer protection."²⁶ Low-income consumers are unlikely to find this to be true. The logistics of both tracking prices and pairing that information with an appropriate response, which would require adopting programmable interconnected smart technology and paired electrical systems and storage capability, and then actually programming the smart technology, will be beyond the reach of most consumers.

²³ Joint Utilities' Proposal at pp.8-11.

²⁴ TURN Opening Brief at p.76.

²⁵ Joint Utilities' Opening Brief at p.93.

²⁶ *Id.* at p.109.

V. CLICC opposes successor tariff models that impose fixed fees, which are regressive and tend harm smaller solar customers, as well as proposals that penalize consumers who are unable upgrade their infrastructure.

a. Charges not connected to energy production should not be flat fees, but should instead be tightly linked to system size.

Grid benefits and equity charges, if they are adopted, should be tightly connected to solar system size. CLICC does not oppose some form of grid benefits charge for NEM customers, and some form of equity charge, but these should not be flat fees. Flat fees tend to be regressive, penalizing small users disproportionately and giving a break to those with excessive electric consumption or oversized systems.²⁷

b. Electrification rates should not be mandatory for low-income customers.

Mandating that solar customers switch to an electrification rate will disproportionately burden low-income people. An electrification rate is built on the assumption that consumers will adjust their energy use to take advantage of the nuanced time-of-use rates designed with electrification in mind. The push toward electrification for purposes of meeting climate goals makes sense, but mandating that people who cannot afford to electrify begin paying for electricity on electrification rates unduly burdens them. Low-income people are not in a position to retrofit their homes and transportation systems to take advantage of the incentives of an electrification rate.

Tiered rates, which provide different incentives than electrification rates, may be more affordable for most low-income customers. Unlike an electrification rate, a tiered rate incentivizes overall conservation: your rate increases with increased overall consumption, and if you use little enough, you are rewarded with fairly low rates, particularly since a low “baseline rate” often applies to the first portion of the energy you use. So if your house is small—or if the apartment you rent is small—as is true for many low-income people—you are likely to be able to stay

²⁷ The Public Advocates Office makes this point: “A minimum bill would not fairly or accurately address the shortfall in cost of service on an individual customer basis, because it would apply a flat charge for all customers despite the fact that customers with larger PV systems are likely to exhibit larger shortfalls in their fixed costs responsibility – and should contribute more to ensure they pay their fair share of system costs.” (Opening Brief of the Public Advocates Office (“PAO Opening Brief”), August 31, 2021, at p.22.)

within baseline rates. And if you have a big house and use a lot of energy, you pay more.²⁸

Time-of-use rate structures, on the other hand, do not encourage electricity conservation overall, but instead promote time-managed use of electricity. Low-income and high-income consumers are not equally able to control the time when they use electricity.

A lower-income person is unlikely to be able to adapt their residential and transportation infrastructure to time-of-use deployment. Lower -income consumers will use power when they have to use power. They will probably use power when they get home from work, which is likely to be at peak times, and they will have no battery that will enable them to avoid paying the retail rate for this on-peak power. They are unlikely to have an electric car, so they will have nothing to charge during the cheapest time—and in any case they may have to leave the house well before the off-peak period is over because they cannot afford to live near their jobs. They probably will not have a programmable home energy management system, and may not have the reliable Internet (and perhaps unlimited data) that such a management system relies upon. For this person, the only way they can take advantage of time-of-use rates will be to change their habits, if that is even feasible.

In contrast, wealthy over-consumers are able to adjust their electricity use to a time-of-use price signals without needing to change to their daily habits. They can buy residential storage that lets them use stored power when they come home from work instead of paying peak prices, electric cars that can be charged in the middle of the night, other electric devices like heat pumps, and programmable smart controls that deploy their infrastructure for maximum advantage given price signals. Their electrical bills may be lower even though their daily patterns of actual power use may be identical, and the volume of their overall use much higher.

Thus, electrification rates will result in higher bills for lower-income people, and may give the

²⁸ In March 2021 the Commission removed a high usage charge (HUC) for customers on tiered rates. Before its elimination, the HUC penalized excessive use: customers who used more than 400% of the “baseline” use of an average residence faced a penalty in the form of far higher electrical rates for the excessive use. When the Commission considered removing it, the Center for Accessible Technology questioned removing the charge given that “the financial benefits of HUC elimination will accrue to a small number of very high electricity users, while rates and bills for the majority of tiered rate customers (i.e., non-HUC customers) will rise as a result.” (D.21-03-003, March 4, 2021, at p.24.) However, the Commission decided to eliminate the charge in March 2021 anyway, arguing that changes in billing structures means that removing the HUC now is “not an imposition on the majority of residential electricity customers as it would have been in 2015 or 2019.” (*Id.*)

impression of personal responsibility, but in fact reward wealthy over-consumers who are able to adjust their electricity use with no change to their habits. Like TURN, CLICC has concerns that a required switch to electrification rates has “disproportionately adverse impacts on smaller customers that are currently served on rates that include baseline quantities.”²⁹

Moreover, electrification rates will push low-income people to borrow, because taking advantage of an “electrification rate” requires “electrification,” which is to say, buying new equipment. And buying things takes money. Homeowners who do not have money for electrification will have to borrow it. (It is unclear how low-income renters would be able to take advantage of an electrification rate at all.) If existing low-income solar consumers are moved to a new tariff that incentivizes electrification, they will be pushed to borrow to ensure that their initial investment continues to make sense.³⁰ And having to borrow money often harms low-income people. While CLICC has come thus far come before the PUC to talk about a narrow kind of consumer harm, namely, unfair financing of residential solar systems, most CLICC member organizations’ consumer practices spend far more time defending their clients against debt lawsuits and damaged credit due to unpaid bills—this is a far more widespread consumer harm. CLICC recognizes that investment in electrification technology, including by low-income people, is necessary for a switch to an all-electric future, but urges the Commission to be wary of mandatory rate structures that make electrification urgent and therefore pressure low-income people to borrow more than they can afford.

VI. CLICC believes that the definition of “low-income” for the new NEM tariff should include CARE and FERA enrollees, but also those communities and individuals described in the Commission’s Environmental and Social Justice Action Plan.

CLICC believes that the definition of “low-income” for the new NEM tariff should include CARE and FERA enrollees, but also those communities and individuals identified in the Commission’s Environmental and Social Justice Action Plan as deserving special

²⁹ TURN Opening Brief at p.77.

³⁰ The Sierra Club recommends that “as part of customer notification, the utilities provide information on technologies and available incentives that can improve system value such as programmable thermostats, heat pump water and space heaters, electric vehicles and batteries.” (Sierra Club Successor Tariff Proposal, March 15, 2021, at p.22).

consideration.³¹ Incorporating the Commission’s definition of disadvantaged communities into the definition of “low-income” in this proceeding would more fairly include low-income people in the benefits various proposals currently limit to medical baseline, CARE, and possibly FERA enrollees.

Adopting this broader definition of “low-income” would be consistent with this proceeding’s guiding principle that a new tariff should be equitable, and the Commission’s decision that “the statutory criteria for the successor tariff, such as the requirement to ensure that the total costs are approximately equivalent to total benefits, should not be applied in the development of alternatives for DACs [disadvantaged communities].”³²

The definition of disadvantaged communities in the Environmental and Social Justice Action Plan is the result of the Commission’s formal effort to address historic inequities affecting some populations.³³ GRID Alternatives/VS/Sierra Club point out, “these same communities tend to be more vulnerable to air pollution, outages, and climate change.”³⁴

NEM 1.0 and NEM 2.0 were not designed to break this pattern, as this proceeding recognizes. And although this proceeding has been framed as primarily concerned with remedying inequity, it is important that the Commission link addressing one inequity (retail rate hikes that higher-income customers avoid through NEM compensation for their solar production) with remedies for other, broader inequities, including the inequity of providing higher-income communities with 25 years of ratepayer-subsidized solar development and then removing this subsidy before low-income communities can develop a comparable infrastructure.

The Commission’s Environmental and Social Justice Action Plan lays out specific criteria for identifying who should be selected for preferential implementation of efforts to remediate the harms flowing from historic injustice: households with incomes below 80% of local AMI; census tracts where aggregated household incomes are less than 80% of AMI; communities in the most environmentally burdened census tracts, as identified through a Cal EPA screening tool; and all

³¹ GRID/VS/Sierra Club Opening Brief, at pp.9-10; Proposal of GRID Alternatives, Vote Solar, and Sierra Club for a Net Energy Metering Successor Tariff (“GRID/VS/Sierra Club Proposal”), March 15, 2021, at pp.1-2.

³² D.18-06-027 at p.10, cited in Opening Brief of GRID/VS/Sierra Club, at p.2, fn.2.

³³ GRID/VS/Sierra Club Opening Brief at p.5.

³⁴ *Id.*, at p.1.

tribal lands.³⁵ Moreover, the Commission routinely examines the impact of utility rates on “households that may be lower-income but still not qualify for low-income assistance programs,” because it recognizes that relying only on income, which is the sole eligibility criterion for programs like CARE, does not create a complete picture of affordability.³⁶ The Commission’s Affordability Study, therefore, evaluates the burden of utility costs on “households that are low-income, but do not necessarily qualify for an assistance program such as California Alternate Rates for Energy (CARE).”³⁷

Parties generally recognize the need to protect low-income people from harm stemming from NEM change, or NEM change that is too abrupt,³⁸ and CLICC urges extension of such protections to more low-income people. These protections and incentives should not be limited to medical baseline, CARE, or CARE/FERA customers, but should instead be extended to disadvantaged communities as defined above.

VII. CLICC supports mechanisms that promote the development of community, rather than individual, power generation resources in low-income communities, providing lower-cost power, greater community resiliency, and other benefits, as well as reducing pressure for low-income people to borrow money.

Community-based distributed energy projects can take pressure off individuals to borrow to make improvements, and increase local communities’ energy independence and resiliency. Several of the parties’ proposals in this proceeding would enhance the ability of groups, rather than individuals, to establish solar projects, benefiting a whole community.³⁹ CLICC supports such mechanisms.

Locally owned distributed energy generation can and should be a public good. It is one that disadvantaged customers and communities should be able to develop and benefit from. The

³⁵ GRID/VS/Sierra Club Opening Brief at p.10

³⁶ Decision 20-07-032, July 17, 2020, at pp.17, 90.

³⁷ California Public Utilities Commission, 2019 Annual Affordability Report, April 29, 2021, at p.36.

³⁸ For instance, the Joint Utilities propose transitional discounts to CARE, FERA, and medical baseline enrolled customers, offering them a 3-year grid benefits discount, and a battery program for about 25,000 of the same customers. (Joint Utilities’ Opening Brief at p.75ff.) Cal Advocates’ proposal exempts CARE and FERA customers from the grid benefits charge for five years, and subsequently provided they have installed storage capability. (PAO Opening Brief at pp.25, 28-29.) Proposals that include an equity charge, or something like it, generally exclude CARE customers from having to pay it, at least for a while.

³⁹ E.g., GRID/VS/Sierra Club Proposal at p.4.

Commission’s Environmental and Social Justice Action Plan sets goals to increase clean energy investment in ESJ communities, increase climate resiliency, and provide jobs.⁴⁰ Behind-the-meter solar can contribute to these goals, as many parties point out.⁴¹ Community projects, rather than individual ones, will likely better serve low-income communities and these specific goals. The promise of the Joint Utilities to be the stewards of clean energy generation, and to therefore relieve disadvantaged communities in particular of the burden of creating such resources, sits uneasily with the Joint Utilities’ past practice and their express interest in maintaining control of power distribution as well as power generation. The Joint Utilities’ development of large-scale solar may offer benefits to the public, but it is an investment by and for the benefit of a for-profit corporation which continues to control that resource. CLICC urges the Commission to consider ways that NEM reform can be accomplished in a way that removes barriers to the development of locally controlled, locally constructed energy generation capabilities that permit the development of a more equitable and distributed power generation system in California, or at least that does not foreclose that possible future.

a. CLICC supports higher export compensation rates for solar projects that serve ESJ communities.

CLICC supports higher export compensation rates for residents of ESJ communities, for non-profits serving ESJ communities, for cooperatives serving ESJ communities, and for government and other public entities, as discussed in the GRID Alternatives/VS/Sierra Club Opening Brief.⁴²

b. CLICC supports higher export compensation rates for multi-family projects served through VNEM.

CLICC supports continuing to compensate the energy exports of VNEM projects located on

⁴⁰ GRID/VS/Sierra Club Opening Brief at p.9.

⁴¹ E.g., GRID/VS/Sierra Club Opening Brief at pp.8-10; CALSSA Opening Brief at p.84; Opening Brief of Albion Power Company, Inc., August 31, 2021, at pp.4-5, 10, 15-16. Several parties object to treating resiliency as a benefit of residential solar because, they argue, the benefit accrues only to an individual. (e.g., TURN Opening Brief at pp.6, 28.) However, this is an oversimplification. First, even an individual’s storage capability may benefit nearby people, just as a neighbor with a generator often provides a way to charge a phone or take a hot shower or get hot food. For instance, during sustained Public Safety Power Shutoffs, local organizations like town halls, police stations, and senior centers often run generators and provided local people with WiFi and cell phone charging, if not more. Were these organizations able to afford storage and solar, they would be able to provide these services without the pollution of running generators. And, as microgrids become possible, the residential solar and storage in one person’s house may become a contributor to a community-controlled microgrid that provides the community with low-emissions resilience.

⁴² GRID/VS/Sierra Club Opening Brief at pp.28-29.

multi-family buildings at higher rates than residential projects installed by higher-income homeowners, as Ivy Energy suggests. Ivy Energy emphasizes the importance of virtual net metering (VNEM) for encouraging and enabling solar projects on multi-family buildings, whose tenants then get the benefits of reduced utility bills.⁴³ This is particularly important as it is one of few ways that low-income renters can gain access to the benefits of NEM.⁴⁴

c. CLICC supports the expansion of community solar and higher export compensation rates for those projects.

CLICC supports the expansion of community solar and higher export compensation rates for those projects, consistent with suggestions from the Coalition for Community Solar Access, particularly if such projects include robust consumer protections.⁴⁵ Many parties agree that community solar has promise and should be supported.⁴⁶ CLICC joins them.

d. CLICC supports the development of a robust behind-the-meter generation capacity in ESJ communities so that microgrids can be viable.

CLICC supports the development of a robust behind-the-meter generation capacity in ESJ communities so that microgrids can be viable. The Commission's microgrid proceeding responds to legislative and executive recognition of the value of distributed generation capabilities.⁴⁷ The development of microgrids depends on a local infrastructure of behind-the-meter generation capabilities, ideally coupled with robust storage capabilities. Unless local communities have or are able to develop local behind-the-meter generation capabilities, which will require ongoing higher export compensation rates in those communities, they will be unable to develop the local microgrids that would rely on them. As every party in this proceeding has acknowledged, this infrastructure has been developed in wealthier communities far more than it has been in disadvantaged communities.

Conclusion

The structure of a successor NEM tariff is complex, as the voluminous record in this proceeding

⁴³ Opening Brief of Ivy Energy, August 31, 2021, at pp.3-4.

⁴⁴ *Id.* at p.8.

⁴⁵ Community Solar Opening Brief at p.19.

⁴⁶ E.g. TURN Opening Brief at pp.61-62.

⁴⁷ Decision 21-01-018, January 14, 2021, at pp.3-4.

demonstrates. Some stakeholders have characterized the proceeding as being about “fixing the cost shift” and therefore emphasize making electrical costs more fair for ratepayers who do not have solar, many of whom are low income. CLICC does not deny that there is truth to this characterization. Other parties emphasize the value of continuing to develop rooftop solar generation capabilities. CLICC believes that these parties, too, have valuable points to make. CLICC offers these comments in an effort to provide the Commission with an additional perspective that focuses on low-income consumer protection, on transparency, and on equity.

We commend the Commission for paying attention to the particular needs of low-income consumers – both those who have already adopted solar and those who may adopt it. In support of this effort, we have sought to underscore the ways that its decision to reform NEM will affect the low-income, less-sophisticated homeowners and community members who are CLICC members’ clientele.

Respectfully submitted,

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