



BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA

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Order Instituting Rulemaking Regarding  
Microgrids Pursuant to Senate Bill 1339 and  
Resiliency Strategies.

Rulemaking 19-09-009  
(Filed September 12, 2019)

**BLOOM ENERGY CORPORATION'S  
PETITION FOR MODIFICATION OF COMMISSION'S DECISION ADOPTING  
MICROGRID RESILIENCY SOLUTIONS TO ENHANCE SUMMER 2022 AND  
SUMMER 2023 RELIABILITY, D. 21-12-004**

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Pursuant to Rule 16.4 of the Rules of Practice and Procedure of the California Public Utilities Commission ("Commission"), Bloom Energy Corporation ("Bloom Energy") respectfully submits this Petition for Modification of D. 21-12-004, the Commission's decision issued in the emergency reliability phase, Track 4, Expedited Phase 1, of the Microgrid Proceeding (referred to herein as the "Resiliency Solutions Decision"). Bloom Energy petitions the Commission to modify the Resiliency Solutions Decision to eliminate two sentences which unnecessarily suggest that several proposals before it, including Bloom Energy's proposed Microgrid Capacity Services tariff, would constitute impermissible cost-shifting, and do so without the requisite record or foundation. The Commission's decision did not and could not make such a finding given the limited scope of that phase of the proceeding.

A modification is needed because these two sentences, unless treated purely as dicta, could have significant and inadvertent ramifications. If viewed as precedential, they could preclude cost-effective proposals that would return a net benefit to all customers as well as advance the Commission's core mission. These proposals include future filings that Bloom Energy intends to make, and anticipates others might otherwise make, before the Commission. If given weight, these two sentences could also have an adverse impact on the Commission's authority to conduct ratemaking under its constitutional authorities, particularly with respect to microgrids, and its ability to use the tools otherwise at its disposal to combat increasingly urgent reliability and climate change challenges.

Granting this motion will clarify that (i) the Commission did not and, indeed, on the limited record before it, could not find that customer-based proposals such as Bloom Energy’s proposed Microgrid Capacity Services tariff would necessarily comprise a prohibited cost shift; and, (ii) making such an important and precedential finding can come only following Commission scrutiny of the net benefits to all ratepayers and application of the Commission’s cost-causation principles.

## I. BACKGROUND

SB 1339, Ch. 566 (2018) requires the Commission to take actions needed to facilitate the commercialization of microgrids and to do so without “shifting costs between ratepayers.” Specifically, the statute provides:

The commission . . . shall take all of the following actions by December 1, 2020, to facilitate the commercialization of microgrids for distribution customers of large electrical corporations:

\* \* \*

(b) **Without shifting costs between ratepayers**, develop methods to reduce barriers for microgrid deployment.

\* \* \*

(d) **Without shifting costs between ratepayers**, develop separate large electrical corporation rates and tariffs, as necessary, to support microgrids, while ensuring that system, public, and worker safety are given the highest priority.

Cal. Pub. Util. Code § 8371(emphasis added).

The interpretation of this cost-shift language and the scope of its limitation of the Commission’s authority is currently pending before the Commission. In response to the Commission’s decision on standby charges (D. 21-07-011), which preceded the Resilience Solutions Decision, San Diego Gas & Electric (“SDG&E”) filed an Application for Rehearing arguing that the Commission’s suspension of the capacity reservation component of the standby charge for eligible microgrids constitutes a prohibited cost-shift.<sup>1</sup> Bloom Energy responded to that application in support of the Commission’s decision, detailing the reasons why suspension of the

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<sup>1</sup> Application of San Diego Gas & Electric Company for Rehearing of D.21-07-011, Docket R.19-09-009 (filed August 16, 2021), *available at* <https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M400/K593/400593884.PDF>.

standby charges was well within the Commission’s authority and consistent with the Commission’s long-held principles on cost-causation and an equitable reallocation of costs, rather than the type of simple “cost shift” that would serve solely to benefit microgrids, and that the statutory language and its legislative history intended to avoid.<sup>2</sup>

In Phase 1 of Track 4 of this proceeding, which was aimed at finding resiliency solutions in light of critical shortfalls in capacity projected for this summer and next, the issue of what constitutes a cost-shift was raised again, this time in connection with proposals offered in response to Governor Newsom’s Proclamation of a State of Emergency last July. Several proposals, including Bloom Energy’s proposed Microgrid Capacity Services tariff, proposed augmenting the potential of customer-owned distributed energy resources (“DERs”) to provide needed capacity, reduce grid stress, particularly during capacity shortage periods, and allow for additional grid support by DERs that can export power to the grid when needed.<sup>3</sup>

In its Resiliency Solutions Decision, the Commission left the cost shift issue unresolved. The decision concluded that it could not appropriately consider these and other non-Investor Owned Utility-based proposals “given the expedited track of this proceeding.”<sup>4</sup> As the Commission expressly stated with respect to the Bloom Energy proposal, the Commission declined “to adopt this recommendation because *it is out of scope for the purposes of the Expedited Phase 1 of Track 4.*”<sup>5</sup>

Despite making clear that the Commission found Bloom Energy’s proposal to be out of scope and therefore deciding it could not address the cost shift issue, there are two places in the Resiliency Solutions Decision that inadvertently imply just the opposite. These sentences seem to suggest that, however unlikely it would be for the Commission to evaluate out-of-scope

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<sup>2</sup> Response of Bloom Energy Corporation to San Diego Gas & Electric Company’s Application for Rehearing of Decision 21-07-011, Docket R. 19-09-009, filed August 31, 2021, *available at* <https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M404/K291/404291739.PDF>; *see also* Joint Parties’ Response to San Diego Gas and Electric Application for Rehearing of Decision 21-07-011 and Opposition to Attempt to Supplement the Record, Docket R. 19-09-009, filed August 31, 2021, *available at* <https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M404/K292/404292619.PDF>.

<sup>3</sup> *See* Bloom Energy Corporation Proposals in Response to Administrative Law Judge’s Ruling on Potential Microgrid and Resiliency Solutions for Commission Reliability Action to Address Governor Newsom’s July 30, 2021 Proclamation of a State of Emergency, at 3-5, Docket R. 19-09-008, *available at* <https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M406/K286/406286696.PDF>.

<sup>4</sup> D.21-12-004 at 45.

<sup>5</sup> *Id.* at 36 (emphasis added).

proposals on the complex question of cost shifting and the scope of a statutory limitation on the Commission's constitutional authority, some conclusion had been made:

Referring to Bloom Energy's proposal, the decision states, "Additionally, we are not adopting new subsidies that would result in a cost-shift prohibited by Section 8371." D.21-12-004 at 36.

Referring to Bloom Energy's proposal and other proposals Bloom Energy mentioned in its Reply Comments on the Proposed Decision, the decision states: "This decision protects ratepayers from proposals that could create more cost-shifting subsidies that are statutorily prohibited by Senate Bill 1339." D.21-12-004 at 45.

These two sentences are inconsistent with the finding that the proposals were out of scope and unnecessary to the Commission's decision to decline to consider the proposals. While clearly unintended to have such a result, they could be cast as precedential in future attempts to restrict the Commission's authority.

## **II. THE COMMISSION SHOULD REMOVE TWO SENTENCES FROM D.21-12-004 THAT IMPLIEDLY PREJUDGE THE COST-SHIFTING ISSUE**

Bloom Energy petitions the Commission to modify the Resiliency Solutions Decision by simply deleting the two unnecessary sentences noted above. The Commission should grant this motion for three reasons.

First, granting this motion would clarify the scope and extent of the Commission's decision. The two problematic sentences inadvertently and incorrectly suggest the Commission decided whether Bloom Energy's proposal would constitute a prohibited cost-shift. As detailed above, the Commission made plain that it did not because Bloom Energy's proposal was "out of scope for purposes of the Expedited Phase 1 of Track 4." The expedited nature of this phase of the proceeding did not afford a sufficient opportunity to undertake adequate scrutiny of proposals like the tariff proposed by Bloom Energy, and the administrative record is insufficient for the Commission to have made such a determination, particularly with regard to the complex issues of determining whether a cost shift would occur. As a result, the Commission could not and did not decide whether Bloom Energy's proposal was a prohibited cost shift.

Second, if these two sentences represent more than dicta, then they mean the Commission accepts the proposition that SB 1339 dramatically curbed its traditional ratemaking authority, at least with respect to microgrids. These sentences suggest the Commission cannot provide any compensation to a microgrid ratepayer for services it renders under a proposed tariff, even if that tariff would yield positive net benefits to all ratepayers. Such a finding would be a drastic break with Commission precedent and settled law.

It is long settled that the Commission’s authority is extremely broad.<sup>6</sup> That authority can be traced to the State’s constitution, which provides that the Commission has plenary jurisdiction to fix rates, establish rules, examine records, and prescribe a uniform system of accounts for all public utilities.<sup>7</sup> The Public Utilities Code goes further, declaring that the Commission “may supervise and regulate every public utility in the State and may do all things, whether specifically designated in this part or in addition thereto, *which are necessary and convenient in the exercise of such power and jurisdiction.*”<sup>8</sup> As the California Supreme Court once noted, the Commission is “‘a state agency of constitutional origin with far-reaching duties, functions and powers’ whose ‘power to fix rates [and] establish rules’ has been ‘liberally construed.’”<sup>9</sup> Thus, while the Legislature has “plenary power” to confer *additional authority* on the Commission,<sup>10</sup> it cannot take those constitutionally-prescribed authorities away. Ratemaking is plainly central to the Commission’s constitutional authority, and the legislature’s ability to limit that ratemaking authority should be subject to strict scrutiny and the narrowest necessary application.

Against that backdrop, when the legislature enacted SB 1339, it is not reasonable to interpret the statutory authority as cutting off the Commission’s ratemaking authority to develop a microgrid tariff that is consistent with cost-causation principles and that yields broad benefits to all ratepayers. The Commission’s broad powers to fix rates clearly enables it to consider the net benefits of a tariff and cannot be limited to conditions in which no reallocation of rates takes place, or to prevent compensation of one set of ratepayers for services rendered even if the value

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<sup>6</sup> See, e.g., *Consumers Lobby Against Monopolies v. Public Utilities Com.*, 25 Cal. 3d 891, 905 (1979).

<sup>7</sup> See Cal. Constitution, Article XII, Section 6.

<sup>8</sup> Cal. Pub. Util. Code § 701 (emphasis added).

<sup>9</sup> *Southern California Edison Co. v. Peevey*, 31 Cal. 4th 781, 792 (2003), quoting *San Diego Gas & Electric Co. v. Superior Court*, 13 Cal. 4th 893, 914–915 (1996).

<sup>10</sup> *Southern California Edison Co. v. Public Utilities Comm.*, 227 Cal. App. 4th 172, 186-87 (2014) (internal citations omitted).



of those services exceed that compensation. The legislature could not circumscribe that authority even if it wanted to, and there is ample reason to believe that it had no such intention.<sup>11</sup>

More to the point, the legislative history of SB 1339 could not be more clear that the cost shift language in the statute specifically incorporated the principle of cost causation:

*Per the principle of cost-causation, these costs should not be shouldered by ratepayers who do not benefit from the microgrid project. This bill requires the CPUC and POU's to establish tariffs for microgrids, but appropriately prohibits costs [sic.] shifts to non-microgrid customers.*<sup>12</sup>

Where a proposed tariff results in cost savings to all ratepayers, including non-microgrid customers, there is no cost-shift, but rather a net benefit. Under the Commission's interpretation and application of cost-causation principles, providing an incentive to the microgrid customer to bring about that net benefit simply does not comprise a cost-shift. In commenting on the Proposed Decision that was ultimately adopted as the Resiliency Solutions Decision, the Sierra Club stated it well:

To the extent that the Commission is seeking to comply with Section 8371(d)'s prohibition against cost shifting, the operative determination should be based on a comparison of the lifetime ratepayer costs of each proposal relative to the value of services it provides to the grid.<sup>13</sup>

In sum, SB 1339's prohibition on cost-shifts does not require the Commission to close its eyes to the overall net benefits that might be realized by adoption of a particular microgrid tariff. If the cost-shift language literally prohibited altering rates as between ratepayer groups without consideration of overall net benefits, the Commission's ability to conduct meaningful ratemaking would be fundamentally *narrowed*. That cannot be right.

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<sup>11</sup> Such an interpretation would not only impede the Commission's ratemaking authority, but it would also result in precisely the opposite goal of SB 1339, which was *to facilitate* the development of microgrids. If this interpretation were correct, the Commission's authority not only to conduct ratemaking but also to facilitate the development of microgrids would be impeded. It is a cardinal rule of statutory construction that statutory language "must be given such interpretation as will promote rather than defeat the general purpose and policy of the law." In re Pacific Bell, D.05-05-017, at 7, *available at*, 2005 WL 1240096 (CPUC 2005), quoting *Sales v. Agricultural Labor Relations Board*, 39 Cal. 3d 209, 223 (1985).

<sup>12</sup> SB 1339 Senate Floor Analysis at 5 (8/31/18) (emphasis added), *available at* [https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill\\_id=201720180SB1339](https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201720180SB1339).

<sup>13</sup> Sierra Club Opening Comments on Proposed Decision Adopting Microgrid and Resiliency Solutions to Enhance Summer 2022 and Summer 2023 Reliability at 7-8, *available at* <https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M422/K318/422318387.PDF>.

Third, and finally, had Phase 1 of Track 4 afforded the opportunity to analyze Bloom Energy’s proposed Capacity Services tariff, the Commission would have had to conclude that the proposal would not cause a prohibited cost shift. Over the past several years, the Commission has recognized the serious potential capacity shortfalls facing the State and the associated threats to grid reliability and to meeting the State’s decarbonization goals.<sup>14</sup> That recognition is reflected in a series of Commission decisions specifically ordering the expedited procurement of substantial additional capacity to come online as soon as this summer and the years that immediately follow.<sup>15</sup> These decisions underscore that the State is at a critical tipping point, where the success or failure of its ambitious goals are being put to the test against the increasingly severe impacts of climate change.<sup>16</sup>

In the Commission’s Extreme Weather Event Proceeding (R.20-11-03), Bloom Energy presented evidence demonstrating that fuel cells are one of several DERs that could provide significant benefits to the grid. Because stationary fuel cells generally run constantly and are extremely resilient, their deployment results in a quantifiable and exceedingly reliable reduction in load. Fuel cells thereby lessen the need for supply-side generation as well as infrastructure to support it in a fashion that can be fully incorporated into energy supply, transmission and distribution planning, as well as in operations. This results in the reduction in costs for energy generation, generation capacity, ancillary services, losses, and transmission and distribution infrastructure as

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<sup>14</sup> As the Commission recently recognized in adopting its Preferred System Plan in the Integrated Resource Planning Proceeding, “[w]hile the CEC’s analysis helps show that zero-emitting resources are capable of maintaining reliability at levels equivalent to thermal resources under modeled conditions and that individual battery and other risks occurring can be overcome, outstanding concerns remain about the possibility of various risks occurring simultaneously rather than in isolation.” D.22-02-004 at 133, available at <https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M451/K412/451412947.PDF>.

<sup>15</sup> See D.21-06-035 at 2, 21 (Ordering LSE’s to accelerate procurement of 11,500 MW over next four years to achieve our ambitious greenhouse gas (GHG) emissions reduction targets for 2030” while meeting tight “reliability electricity situation”), available at <https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M389/K603/389603637.PDF>; see also D.19-11-019 at 3-4, 13-16 (extending once through cooling plants and ordering procurement of 3,300 MW of RA capacity by 2023 given projected shortfall in capacity), available at <https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M319/K825/319825388.PDF>.

<sup>16</sup> Extreme weather events and the increasing deployment of diesel generation is one such worrisome development. See M3 Policy Analysis, “*Diesel Back-up Generator Population Grows Rapidly in the Bay Area and Southern California*,” available at <https://www.bloomenergy.com/wp-content/uploads/diesel-back-up-generator-population-grows-rapidly.pdf>.

well as the reduction in stress on existing energy system elements, particularly when the system is in duress.<sup>17</sup>

Because fuel cells operate without combustion, their environmental benefits include reduced impacts on CO<sub>2</sub> emissions, SO<sub>2</sub> emissions, NO<sub>x</sub> emissions, and PM emissions. These are quantifiable benefits to all ratepayers which, had such an analysis been conducted by the Commission, would have resulted in the opposite conclusion than the one suggested in the two problematic sentences.<sup>18</sup> In short, were the Commission to have adopted Bloom Energy's proposed Capacity Services Tariff, the net benefits that it would have yielded to all ratepayers would have offset the costs imposed on non-microgrid ratepayers, an outcome that is well within the Commission's broad authority and not a prohibited cost shift.

For purposes of deciding this petition, however, the Commission *does not* need to decide whether Bloom Energy's proposed tariff would have resulted in net benefits to ratepayers or the scope of its ratemaking authority. As noted at the outset, the Commission made clear in the Resilience Solutions Decision that the limited scope of Phase 1 of Track 4 of the Microgrid proceeding rendered these issues out of scope and therefore undecided. By making the two deletions Bloom Energy requests in this petition, the Commission removes any suggestion to the contrary.

Granting this petition is particularly important given the likelihood the Commission will need to act with dispatch to address the many challenges the Commission may face in the near- and mid-term. The capacity issues facing the State are likely not fully resolved in light of events beyond the Commission's control. There are reports daily about supply chain disruptions triggered by the pandemic that are far from over.<sup>19</sup> Many of the projects that the State is counting on to fill

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<sup>17</sup> See Opening Brief of Bloom Energy Corp. at 12-14, *available at* <https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M407/K765/407765482.PDF>. In support of its brief, Bloom also presented the testimony of Dr. Ahmad Faruqi from the Brattle Group which documented the net benefit of Bloom's fuel cells.

<sup>18</sup> *Id.*

<sup>19</sup> See SEIA Report, Solar Growth Trajectory Remains Uncertain as Federal Legislation Stalls (March 10, 2022) ("In 2021, U.S. solar prices increased as much as 18% due to unprecedented supply chain challenges, trade actions, and legislative uncertainty," causing "a third of all utility-scale solar capacity scheduled for completion in Q4 2021 was delayed by at least a quarter and 13% of capacity slated for completion in 2022 has either been delayed by a year or more or canceled outright"), *available at*, <https://www.seia.org/news/solar-growth-trajectory-remains-uncertain-federal-legislation-stalls>; "World Economic Forum, *Here's how supply chain issues are affecting renewable energy projects*" ("56% of

the gap in capacity are likely to be delayed, undoing the extraordinary efforts the Commission has undertaken over the past several years to head off a reliability crisis. Events in Europe seem certain to extend, if not worsen, those supply chain dislocations, only increasing the risk of a capacity shortfall that will jeopardize reliability. Meanwhile, the cost of the raw materials needed for batteries is dramatically rising,<sup>20</sup> and California is facing another rough summer, with drought conditions reducing hydroelectric output and additional service interruptions from threatened wildfires likely.

Against this backdrop, Bloom Energy believes these factors may trigger the need for swift action by the Commission to adopt policies to speed the deployment of fuel cells and other DERs if the State is to remain on track to meet its carbon and environmental objectives without sacrificing reliability. Having clarity in the record of what was decided, *and what was not*, will be essential to ensuring efficient and effective Commission proceedings.

### III. CONCLUSION

Bloom Energy requests that this petition be granted and the modifications discussed above and included in the Attachment attached hereto be made.

Date: April 18, 2022

Respectfully submitted,

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worldwide utility-scale solar projects planned for 2022 could be postponed or cancelled”), available at <https://www.weforum.org/agenda/2021/11/supply-chain-problems-solar-power-renewable-energy/>; Power Grid International, “Global supply chain disruptions could slow grid modernization and decarbonization” (published October 27, 2021) available at <https://www.power-grid.com/energy-storage/global-supply-chain-disruptions-could-slow-grid-modernization/#gref>.

<sup>20</sup> Reuters, “Lithium carbonate prices jump to record high in China” (January 5, 2022) (noting increase in essential raw material used in battery manufacture increasing in cost by 485% of past year), available at <https://www.reuters.com/business/energy/lithium-carbonate-prices-jump-record-high-china-bmi-2022-01-05/>; see also Forbes, “The Challenges Posed by Rising Lithium Prices” (December 31, 2021), available at <https://www.forbes.com/sites/rpapier/2021/12/31/the-challenges-posed-by-rising-lithium-prices/?sh=648618713af9>.

## ATTACHMENT

### Proposed Modifications to D. 21-12-004

**Page 36, Second Paragraph:** Delete “Additionally, we are not adopting new subsidies that would result in a cost-shift prohibited by Section 8371.”

**Page 45, Carryover Paragraph:** Delete “This decision protects ratepayers from proposals that could create more cost-shifting subsidies that are statutorily prohibited by Senate Bill 1339.”