

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



FILED

07/01/22

12:02 PM

R2008020

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 COMMENTS OF ENVIRONMENTAL WORKING GROUP ON
ADMINISTRATIVE LAW JUDGE'S RULING SETTING ASIDE SUBMISSION OF THE
RECORD TO TAKE COMMENT ON A LIMITED BASIS**

Ken Cook
Co-Founder and President
Environmental Working Group
500 Washington Street, Suite 400
San Francisco, CA 94111
Telephone: (202) 674-8400
Email: ken@ewg.org

July 1, 2022

Pursuant to Rule 14.3 of the Commission’s Rules of Practice and Procedure, the Environmental Working Group (“EWG”) submits these Reply Comments on Administrative Law Judge Hymes’ Ruling to *Set Aside Record to Take Comment on a Limited Basis* in rulemaking (R.) 20-08-020 that was issued May 9, 2022. In our opening comments, we addressed the issue of fixed non-bypassable charges assessed behind the meter. EWG reserved the right to address other issues posed by the Commission. In addition to that issue in these Reply Comments, we address the questions with respect to glide path and the community solar, referring to various parties’ comments.

I. The Commission must reground its decision in the urgency of state climate objectives

The tone of the Commission throughout this proceeding comes across as decidedly one-sided and narrow in its conception of equity in energy policy. Up to this point in the proceeding, there does not seem to be any recognition of the state’s climate and renewables goals and how critically important distributed solar plus storage is to achieving those goals. Nor has the Commission appeared interested in recognizing the salient sources of high utility bills in California – namely, the emphasis on utility-scale investment, particularly power lines, fire damage costs shifted to the public, and an overly inflated return on investment awarded to utility companies.¹ These issues have been raised by EWG and other parties throughout this proceeding.

However, like other parties to this proceeding, EWG remains convinced that the state cannot hope to meet its climate and renewable energy goals without a robust distributed solar market.

We remain unconvinced that state law suggests otherwise or that customer-owned solar, as purported by the investor-owned utilities (IOUs) and Proposed Decision (PD), represents some enormous financial burden to the power system or non-solar customers.

¹ In fact, the IOUs’ joint opening comments claim in footnote 3, p. 2, that they are “purchasing” energy from NEM customers, leading one to believe that NEM is the reason for the recent enormous bill increases. However, NEM customers are self-consumers to avoid giving the IOUs a reason to build even more overpriced infrastructure. The IOUs simply forego revenue from NEM customers. Moreover, IOUs charge the retail rate for exported energy to the grid that is consumed by NEM customers’ non-solar neighbors.

Indeed, the fixed-charge remedies proposed to correct the so-called imbalance between solar and non-solar customers but that ultimately discriminate against solar customers are clear violations of state and federal law. We are even more convinced of this given the opening comments of several parties in response to the Commission's reaction to comments on various issues here.

The opening comments also clearly show that the community solar program is deficient in design and, in the hands of the IOUs, will never reach its potential.

The glide path suggested in the PD must be substantially lengthened. However, the true value of solar has yet to be properly assessed, as various comments in this proceeding show. The Commission has excluded critical elements from the ACC that must be corrected in this or another proceeding to rationally frame a discussion of the future of California's distributed solar market.

EWG supports the following portions of submitted comments with respect to:

- 1) Fixed non-bypassable charges;
- 2) The community solar program; and,
- 3) The glide path.

II. Fixed non-bypassable charges on behind-the-meter use of a customer's own power generation would be violations of state and federal law.

EWG adheres to its position that, outside of fixed charges as traditionally defined using the basic customer method for assigning costs, a discriminatory fixed charge is a discriminatory fixed charge by any other name. And that the proposed charges, as presented in various forms, and without necessary documentation, in testimony during the proceeding, violate state and federal statute. Comments responding to the Commission's latest request for input reinforce this position.

EWG supports comments by the Solar Energy Industries Association (SEIA) and Vote Solar,² the California Solar and Storage Association,³ (CALSSA), Protect Our Communities Foundation,⁴ (PCOF), Ivy Energy,⁵ the County of Los Angeles,⁶ Small Business Utility Advocates⁷ (SBUA), and Center for Sustainable Energy⁸ (CSE) on their opposition to imposing fixed non-bypassable charges on solar customers' behind-the-meter energy use.

These comments show that:

- The Commission has no jurisdiction to impose these non-bypassable charges;
- The proposed non-bypassable charges – as well as the PD proposed grid participation charges – are discriminatory under state and federal law; and,
- Such charges violate rate-making principles.

A. The Commission has no jurisdiction to impose non-bypassable charges on behind-the-meter energy use from the customer's own power generation.

² Comments of the Solar Energy Industries Association and Vote Solar on Administrative Law Judge's Ruling Setting Aside Submission of the Record to Take Comment on a Limited Basis (June 10, 2022); Docket No. 20-08-020 available at <https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M484/K091/484091096.PDF>.

³ Opening Comments of the California Solar & Storage Association on Administrative Law Judge's Ruling Setting Aside Submission of the Record to Take Comment on a Limited Basis (June 10, 2022); Docket No. 20-08-020 available at <https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M483/K885/483885773.PDF>.

⁴ Opening Comments of Protect Our Communities Foundation on Administrative Law Judge's Ruling Setting Aside Submission of the Record to Take Comment on a Limited Basis (June 10, 2022); Docket No. 20-08-020 available at <https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M483/K887/483887997.PDF>.

⁵ Opening Comments of Ivy Energy on Administrative Law Judge's Ruling Setting Aside Submission of the Record to Take Comment on a Limited Basis (June 10, 2022); Docket No. 20-08-020 available at <https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M483/K864/483864803.PDF>.

⁶ Opening Comments of the County of Los Angeles on Administrative Law Judge's Ruling Setting Aside Submission of the Record to Take Comment on a Limited Basis (June 10, 2022); Docket No. 20-08-020 available at <https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M484/K403/484403541.PDF>.

⁷ Small Business Utility Advocates' Opening Comments on Administrative Law Judge's Ruling Setting Aside Submission of the Record to Take Comment on a Limited Basis (June 10, 2022); Docket No. 20-08-020 available at <https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M483/K864/483864934.PDF>.

⁸ Opening Comments of Center for Sustainable Energy regarding Administrative Law Judge's Ruling Setting Aside Submission of the Record to Take Comment on a Limited Basis (June 10, 2022); Docket No. 20-08-020 available at <https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M483/K864/483864931.PDF>.

EWG agrees with the analyses that NBCs must be assessed based on a customers' imported energy use only from the utility system over which the Commission has jurisdiction. The jurisdiction turns on whether said charges are "associated with jurisdictional retail electric service." (SEIA/Vote Solar, June 2022, p. 15) But these comments, and those by the California Solar and Storage Association clearly show the Commission has no jurisdiction over "electricity that is self-produced and self-consumed by NEM generators." (SEIA/Vote Solar, June 2022, p. 15)

These sentiments are also expressed by Ivy Energy – that these behind-the-meter charges were akin to "a tax or fee for choosing another provider of electricity" (Ivy Energy, June 2022, p. 6), and POCF, because NEM customers would be charged "for services not received from the utility" (POCF, June 2022, p. 12). SBUA also refer to "NBCs on gross consumption" as a tax on renewable power generation "unrelated to the costs sought to be recovered..." (SBUA, June 2022, p. 5).

SEIA/Vote Solar, CALSSA and POCF assert in lengthy explanations that none of the NBCs listed by the Commission are subject to Commission jurisdiction.

B. The proposed non-bypassable charges – as well as the PD proposed grid participation charges – are discriminatory and violate state and federal law

EWG supports the SEIA/Vote Solar and CALSSA analysis claiming that the proposed NBCs would violate state law by instituting discriminatory rates. Essentially, such charges for solar customers would be assessed a fixed charge for behind-the-meter energy use while non-solar customers would be charged based on imports, with a variable charge. In addition, according to the Center for Sustainable Energy:

It is unclear how a customer who reduces their electricity imports through installation of behind-the-meter solar is any different from a customer who reduces their load through energy efficiency (EE) measures or through participation in a Demand Response (DR) program; nevertheless, the customer adopting EE measures or participating in a DR program is not charged NBCs on their avoided consumption. (CSE, June 2022, p. 4)

The County of Los Angeles also points to likely violation of the state's anti-discriminatory statutory provisions in ratemaking.

EWG supports CALSSA's assertion that the proposed NBCs violate PURPA, as no cost-of-service study has been conducted between solar and non-solar customers to determine whether solar customers add incremental costs to the grid. Importantly, CALSSA points out that "the NBC proposal violates PURPA because it is designed to solve a problem conceptualized based on a lost revenue analysis, rather than on consistent system-wide costing principles." (CALSSA, June 2022, p. 14) It is difficult to understand how customers can be viewed as increasing overall grid costs when the Commission recognizes they reduce their cost of service by installing solar and avoiding incremental costs to the electric system.

Commenters also bring up violations of other state laws.

POCF notes violations of state statute regarding the PD hampering, not ensuring growth of distributed solar, doing the same to working class communities, "disincentivizes energy efficiency and peak load reductions." (POCF, June 2022, p. 2) Center for Biological Diversity, or CBD, also flags the NBCs as a potential violation of the state statute's mandate for "sustainable growth" in the net metering program for "low- and moderate-income" customers.⁹

Others express concern for the negative impact NBCs can have on distributed solar programs and markets.

The County of Los Angeles fears that the grid participation charge and expanded NBCs will hamper California in reaching its "clean energy goals" and disrupt progress in disadvantaged communities.¹⁰ Similarly, Ivy Energy condemns the proposed BTM, fixed NBCs in that they "reduce the value of energy conservation, demand response, optimized energy storage and self-generation for customers." (Ivy Energy, June 2022, p.5) From the Center of Biological Diversity's standpoint, the proposed NBCs could slow the transition, undermining the state's ability to reach "climate and equity" goals. (CBD, June 2022, p.3)

⁹ *Center for Biological Diversity Opening Comments on Administrative Law Judge's Ruling Setting Aside Submission of the Record to Take Comment on a Limited Basis* (June 10, 2022); Docket No. 20-08-020, p. 3 available at <https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M483/K885/483885756.PDF>.

¹⁰ *Opening Comments of the County of Los Angeles on Administrative Law Judge's Ruling Setting Aside Submission of the Record to Take Comment on a Limited Basis* (June 10, 2022); Docket No. 20-08-020, p.1 <https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M484/K403/484403541.PDF>.

C. The proposed NBCs violate ratemaking principles.

SEIA/Vote Solar, CALSSA and POCF all emphasize that behind-the-meter self-generation impose no costs on the system. Therefore, there is no sound rationale or legal basis that NBCs can or should be applied to gross consumption.

III. As designed, the community solar program is ineffective and must be reformed

In reviewing comments by CALSSA, the SEIA and Vote Solar, CBD and POCF, it is clear that the state's community solar program has failed. EWG agrees with these findings. Indeed, the Community Solar Green Tariff program has no subscribers in the IOU territories, according to SEIA/Vote Solar.

In addition, CALSSA and the commenters we have mentioned assert that the program is too small, has limited eligibility, does not support storage with solar, and cannot meet "California's building code requirements."¹¹ But the primary problem they see is the utility management of the program.

All find that utility management, instead of third-party management, fails to keep the program enrolled. POCF correctly states, "The IOUs have an inherent incentive to discourage community solar because community solar has the potential to reduce their future growth and profits." (POCF, June 2022, p.16)

EWG also agrees that the community solar program should be expanded to all customers, including renters, and supports the proposed POCF framework for the program. Virtual net metering should remain in place.

IV. Any glide path must sustain the solar market

EWG fully agrees with the CBD that:

¹¹ *Comments of the Coalition for Community Solar Access on Administrative Law Judge's Ruling Setting Aside Submission of the Record to Take Comment on a Limited Basis* (June 10, 2022); Docket No. 20-08-020, p. 9 <https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M483/K864/483864799.PDF>.

The record is clear that the Avoided Cost Calculator (“ACC”) omits significant social costs and non-energy benefits (“NEBs”) associated with NEM, for instance, the local public health benefits of the displacement of fossil fuel-based generation from peaker plants, the local economic benefits of the NEM program, or the increased affordability benefits to low-income ratepayers from avoided and associated transmission costs. (CBD, June 2022, p.4)

And EWG agrees that “methodology of the ACC Plus” would likely not provide sufficient support for the solar market. (CBD, June 2022, p.4)

In support of POCF’s perspective, EWG would prefer that the NEM 2.0 structure be maintained until the state properly values solar in the ACC that would create a much more accurate framework for reevaluating the cost-shift controversy. In addition, EWG also prefers that, instead of penalizing rooftop solar ratepayers, the CPUC urgently investigate and propose policies to aggressively induce investment in rooftop solar and storage in working class and disadvantaged communities and prioritize policies to dramatically reverse the embarrassing failure of California’s current community solar program. In other words, the Commission should focus policy directly on the problem the state’s major utilities disingenuously claim is being caused by “cost shifts” arising from current NEM policies. Failing that, CALSSA’s glide path would provide a reasonable transition from NEM 2.0. However, as the Center suggests, the Commission should try to compensate in this proceeding for deficiencies in the ACC.

V. Conclusions

The criticisms leveled at the PD and in this round of comments are not isolated incidents. Outside the proceeding, hundreds of organizations, including those focused on environmental justice, and major newspapers have rejected the narrative that customer-owned solar somehow has a crushing influence on household finances. A large body of evidence filed in the NEM proceeding strongly indicates otherwise. Many parties have urged the Commission to look more closely at the actual sources of high utility bills in the state and the obvious broad and pervasive savings benefits inherent in the distributed power system

paradigm (also recognized by the state). This includes the enhanced potential benefits of solar plus storage, coordinated to support grid reliability. Yet, so far, the Commission seems determined to look the other way, to assume the distributed solar market, rather than extravagant utility spending on infrastructure, must be curtailed, reined in, undermined on behalf of a false narrative.

The legal traps woven through the PD and the newly proposed behind-the-meter charges are apparent. They have not gone unnoticed by multiple parties. The Commission must now weigh the prospects of legal challenges on a variety of fronts or reassess the situation and engage in productive discussions that will result in just and fair resolution for ratepayers. Urging, prodding and presenting sound alternatives seems to have failed. And the largest distributed solar market in the country cannot fail if affordability, serious attention to climate change, and power system resiliency are to be the order of day on a national level. That responsibility now rests fully with the state of California.

Respectfully submitted on this 1st of July 2022,

/s/ Ken Cook

Ken Cook
Cofounder and President
Environmental Working Group
500 Washington Street, Suite 400
San Francisco, CA 94111
Email: ken@ewg.org
Phone: (202) 674-8400