



**FILED**

08/04/22

04:59 PM

P2206012

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA

Petition to Adopt, Amend, or Repeal a  
Regulation Pursuant to Pub. Util Code §  
1708.5.

Petition 22-06-012  
(Filed June 23, 2022)

**REPLY OF BLOOM ENERGY CORPORATION TO RESPONSES TO PETITION FOR  
RULEMAKING TO ADOPT A DISTRIBUTED ENERGY RESOURCE RELIABILITY  
& RESILIENCE TARIFF TO ADDRESS URGENT AND NEAR-TERM GRID  
RELIABILITY NEEDS**

Arthur Haubenstein, Esq.  
Vice President, Regulatory Law  
Bloom Energy Corporation  
4353 North 1st Street  
San Jose, CA 95134  
Tel.: (415) 518-3814  
Email: [arthur.haubenstein@bloomenergy.com](mailto:arthur.haubenstein@bloomenergy.com)

William D. Kissinger, Esq.  
Morgan, Lewis & Bockius LLP  
One Market, Spear Street Tower  
San Francisco, CA 94105  
Tel.: (415) 442-1480  
Fax: (415) 442-1001  
Email: [william.kissinger@morganlewis.com](mailto:william.kissinger@morganlewis.com)

Attorneys for Bloom Energy Corporation

August 4, 2022

## TABLE OF CONTENTS

	<b>Page</b>
A. There is a Problem Requiring Commission Action .....	3
B. A New Tariff that Leverages Customer Investments in DERs Is Necessary to Mitigate the Grid Reliability Risk and Redirect Customer Investments Away from Environmentally Harmful DERs .....	4
C. The Proposed Tariff Is Neither Piecemeal Ratemaking Nor Excessively Narrow .....	6
D. Sierra Club’s Complaints Are, At Best, Poorly Founded. ....	8
E. Arguments About Cost and Other Aspects of the Proposed Tariff are Premature. ....	9
F. The Assertion that the Commission is Precluded from Considering the Petition Because of Rule 6.3(f) of the Commission’s Rules of Practice and Procedure is Wrong. ....	10
G. Conclusion. ....	12

**TABLE OF AUTHORITIES**

**Page(s)**

**CALIFORNIA CASES**

Consumers Lobby Against Monopolies v. Public Utilities Com., 25 Cal. 3d 891, 905 (1979) ....11

**CONSTITUTION AND STATUTES**

California Constitution, Article XII, Section 6.....11

Cal. Pub. Util. Code § 701 .....11

**COMMISSION DECISIONS**

D.21-03-056 .....5

D.21-12-015 .....5

**OTHER AUTHORITIES**

California Public Commission Rules of Practice and Procedure Rule 6.3 .....10, 11

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA

Petition to Adopt, Amend, or Repeal a  
Regulation Pursuant to Pub. Util Code §  
1708.5.

Petition 22-06-012  
(Filed June 23, 2022)

**REPLY OF BLOOM ENERGY CORPORATION TO RESPONSES TO PETITION FOR  
RULEMAKING TO ADOPT A DISTRIBUTED ENERGY RESOURCE RELIABILITY  
& RESILIENCE TARIFF TO ADDRESS URGENT AND NEAR-TERM GRID  
RELIABILITY NEEDS**

Pursuant to Rule 6.3 of the Rules of Practice and Procedure of the California Public Utilities Commission (“Commission”), Bloom Energy Corporation (“Petitioner” or “Bloom Energy”) respectfully submits this reply to the responses filed in response to its Petition for Rulemaking to Adopt a Distributed Energy Resource Reliability & Resilience Tariff to Address Urgent and Near Term Grid Reliability Needs (“Petition”).

The key question before the Commission is whether it will commence a proceeding that will unlock the potential to leverage investments in hundreds, if not thousands, of additional megawatts of new distributed energy resources (“DERs”) as a means to meet the urgent reliability needs facing the State. Central to that effort is whether that discussion happens in a timeframe and in a manner that incentivizes customers to make investment decisions that help support energy system reliability, resilience, equity and air quality rather than the most common and highly detrimental current choice, diesel generation.

The Petition lays out a path for doing so. As detailed below, of the sixteen parties that filed responses to the Petition, only five opposed it. More than twice that number (11) supported it and urged the Commission to open a new proceeding to develop a DER reliability and resilience tariff that incentivizes the deployment of DERs to address the near and mid-term challenges facing the State.<sup>1</sup> They all agreed there is an immediate need for the Commission to

---

<sup>1</sup> The parties that filed responses in support of Bloom Energy’s Petition include: California Clean DG Coalition, Coalition for Renewable Natural Gas, National Fuel Cell Research Center, Clean Coalition, FuelCell Energy, Inc., Mainspring Energy, Inc., Southern California Gas Co. (“SoCalGas”), California Efficiency + Demand Management Council, Microgrid Resources Coalition, Center for Energy Efficiency and Renewable Technologies (“CEERT”) and Enchanted Rock, LLC. In addition to these eleven parties,

commence a proceeding to channel the investments of DER customers to mitigate the reliability issues currently confronting the State and reduce the dramatic increase in the deployment of diesel backup generation.

The five parties opposing the Petition are the State’s three Investor Owned Electric Utilities (IOUs) – Southern California Edison (“SCE”), Pacific Gas & Electric (“PG&E”), and San Diego Gas and Electric Co. (“SDG&E”) – as well as the Public Advocates Office (“PAO”) and the Sierra Club. Each raises arguments one would expect, *e.g.*, that the issues have previously been or are currently before the Commission, that the tariff will be too expensive or go on for too long, or is too narrow in scope or not broad enough, but none of them can seriously dispute there is a need for Commission action on DERs, as evidenced most recently by the Commission’s Order Instituting Rulemaking to Advance Demand Flexibility through Electric Rates (“Demand Flexibility OIR”), R.22-07-005, and their argument that the issues raised in the Petition should be folded into that proceeding.<sup>2</sup>

Opponents of the Petition want to stop any discussion before it even begins by lodging a range of arguments that ultimately suffer from losing sight of the forest from the trees. If the Commission grants the Petition and commences a proceeding, undoubtedly the Commission will shape the tariff in a manner that best achieves its objectives. While Bloom Energy believes the tariff it has advanced is a solid means to advance the goals expressed in the Petition and one that provides far more value than cost to ratepayers, it recognizes that where the Commission ultimately lands, should it grant the Petition, will almost certainly not be precisely what Bloom Energy proposed.

One thing is clear: if the Commission does *not* grant the Petition and instead decides against commencing a new proceeding (or initiating a new phase in an existing one), the opportunity to leverage investments in DERs to provide significant additional resources to mitigate the risks facing the State will likely be lost, and customers will instead continue to invest in regrettable options that will remain part of California’s DER infrastructure for decades to come.

---

Environmental Defense Fund (“EDF”) filed a public comment noting its support of a market signal to reward customers for their investments in clean distributed energy resources.” EDF Public Comment (filed July 25, 2022), available at <https://apps.cpuc.ca.gov/apex/f?p=401:65:0::NO>. A copy of the EDF comment is attached as Attachment A to this brief.

<sup>2</sup> See SCE Response to Petition of Bloom Energy for Rulemaking (“Resp.”) at 7; SDG&E Resp. at 4-5.

**A. There is a Problem Requiring Commission Action**

Most of the Petition’s opponents ignore the serious threat facing the State with respect to both grid reliability and the State’s efforts to decarbonize the grid. Rather than candidly acknowledge the seriousness of that risk, they largely focus on procedural matters as to whether the Commission has the authority to grapple with the issue. Indeed, SCE downplays how serious the risk is, suggesting the Petition should be denied because “Bloom has failed to demonstrate that the Commission’s efforts [that resulted in the procurement of 11,500 MW] are insufficient.”<sup>3</sup> SCE concludes by arguing that the Petition is little more than a “worst-case scenario risk [that] does not justify opening a new narrow proceeding as Bloom proposes, particularly in light of the newly initiated demand flexibility OIR.”<sup>4</sup>

But this is not simply “a worst-case scenario risk.” Far from it. As discussed at length in the Petition, it is not for lack of effort by the Commission that the State now faces a capacity shortfall that is the result of a “perfect storm” triggered by climate change, supply chain disruptions, price run-ups and project delays.<sup>5</sup> These phenomena have now put the State behind the eight ball as it relates to grid reliability, a point made glaringly clear a little more than a week ago in a presentation by California Energy Commission (“CEC”) Vice Chair Gunda on the agency’s Demand Side Grid Support Program.

In his presentation, Vice Chair Gunda noted the CEC’s conclusion that, *even after accounting for the massive authorized procurement to date*, there is a risk of the grid still being 7,000 MW short in 2022 and 10,000 MW short in 2025.<sup>6</sup> As reflected in the charts on the following page, updated demand forecasts, extreme weather and fire risks and project development delays have all come together to undercut the Commission’s vigorous procurement efforts over the past few years. Those efforts will come up short, despite the fact, as SCE notes, the 11,500 MW of new resources ordered was “the largest capacity procurement ordered at a single time by the Commission.”<sup>7</sup>

---

<sup>3</sup> SCE Resp. at 8.

<sup>4</sup> *Id.* at 9.

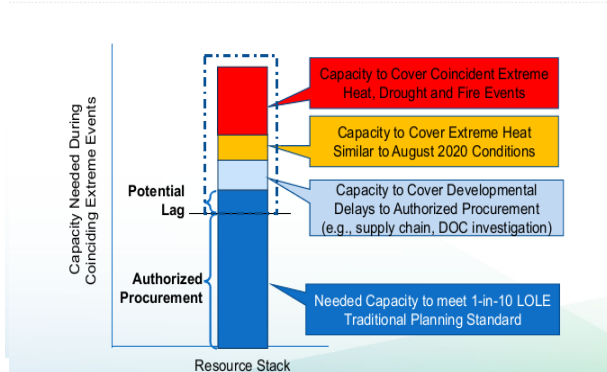
<sup>5</sup> Petition at 5-9.

<sup>6</sup> See Staff Workshop Presentation Slides for the Demand Side Grid Support Program at 4 & 5 (presented July 25, 2022), available at <https://www.energy.ca.gov/event/workshop/2022-07/staff-workshop-demand-side-grid-support-program-draft-guidelines> (link to: Presentations DSGS Program Staff Workshop).

<sup>7</sup> SCE Resp. at 8.



## Reliability Impacts



Issue	2022	2025
Lag in incorporation of updated demand forecasts and policy goals in procurement targeting 1-in-10 traditional planning metric	1,700 MWs	1,800 MWs
Extreme weather and fire risks to energy assets not completely captured in a 1-in-10 traditional planning efforts	4,000 - 5,000 MWs	
Project Development Delay Scenarios (estimated)	600 MWs	1,600 - 3800 MWs

*In total the risk in a coincidental situation could be 7,000MW in 2022 & 10,000MW in 2025*

*Source: CEC Presentation July 25, 2022*

This should come as no surprise to the IOUs who oppose the Petition. They are confronting significant delays in the projects they have under contract. Some of these delays were detailed in the Petition.<sup>8</sup> Those examples as well as more recent ones<sup>9</sup> make clear that the concerns expressed in the Petition are not merely “worst case scenarios,” as SCE suggests. They are real, and they are ongoing.

**B. A New Tariff that Leverages Customer Investments in DERs Is Necessary to Mitigate the Grid Reliability Risk and Redirect Customer Investments Away from Environmentally Harmful DERs**

In the Petition, Bloom Energy details how a new tariff that leverages customer investments in DERs is necessary not only to mitigate the current grid reliability risk but also to redirect investments away from back up generation that undermines California’s energy and environmental objectives, as evidenced by the exponential growth of the backup diesel fleet.<sup>10</sup> PG&E and SDG&E both argue that a specific tariff is unnecessary and duplicative of other programs. For example, PG&E argues that the Commission’s Emergency Load Reduction Program (“ELRP”) in D.21-12-015 and D.21-03-056, already does, at least in part, what the

<sup>8</sup> See Petition at 8 n. 22 (\$1.2b SCE Storage Project may not meet August 1 online date for 37.5 MW of storage for SCE), n. 26 (CPUC Energy Division presentation noting delays in some if not many projects to close the capacity shortfall).

<sup>9</sup> By way of example, only last week PG&E wrote to the Commission’s Executive Director and noted that some (undisclosed) portion of the 194 MW required to be online by August 1, 2022 under D.19-11-016 would not meet this commercial operation date. PG&E noted in its letter, “[a]s PG&E has previously communicated to Commission Staff, there have been project development delays related to, among other issues, the impacts of the COVID-19 pandemic and global supply chain disruptions.” Letter from Mr. Bob Dietz II to Rachel Peterson, at 2 (dated July 25, 2022) (served on service list in Integrated Resource Planning proceeding, R.20-05-003 on July 25 2022).

<sup>10</sup> Petition at 2, 15-16.

proposed tariff would do.<sup>11</sup> SDG&E notes the potential eligibility of fuel cells under the ELRP as well as their eligibility under NEM also make the proposed tariff unnecessary.<sup>12</sup> In this same vein, PAO argues that the Commission has “already established processes to address reliability, so any relief should be sought in ongoing proceedings.”<sup>13</sup>

To be sure, the Commission has many ongoing proceedings that advance reliability, including, among others, the ELRP. As SoCalGas notes in its paper supporting the Petition, the proposed tariff rightly incorporates the apparently successful approach of the ELRP into the proposed tariff,<sup>14</sup> but the demand response payment it offers during grid emergencies is unlikely to incentivize a customer to make the necessary investment that will result in the deployment of the DER. PG&E at least acknowledges the difference with ELRP, recognizing that it offers no capacity payment,<sup>15</sup> but it inexplicably fails to address the fundamental reason capacity payments are made in energy markets, whether through bilateral or central capacity markets: to ensure resources are deployed and available.

As a result, there is no evidence that this program will result in closing the capacity shortfall facing the State or drive investment away from the growing diesel fleet. This is a point ignored by all three IOUs and PAO – none of which apparently deem the proliferation of diesel generators as a problem that needs fixing.<sup>16</sup>

The same is true of the many other ongoing proceedings that seek to enhance grid reliability in one way or another. As noted by many of the Petition’s supporters, none of those programs establish a price signal that will incent the installation of DERs that can help close the capacity shortfall.<sup>17</sup> As many of the parties that filed in support of the Petition noted, the Commission should “provide credit to customers who invest in clean DERs as opposed to

---

<sup>11</sup> PG&E Resp. at 6.

<sup>12</sup> SDG&E Resp. at 5-6, 8.

<sup>13</sup> Resp. of PAO at 1; *see also id.* at 2-3.

<sup>14</sup> SoCalGas Resp. at 5-6 (commending the proposed tariff for utilizing existing mechanisms from other programs streamlines mechanics and wraps these offerings into a one stop shop for DER operators)

<sup>15</sup> PG&E Resp. at 6-7.

<sup>16</sup> Not surprisingly, the word “diesel” does not even appear in any of the responses filed by PG&E, SCE and SDG&E.

<sup>17</sup> Petition at 10-11; FuelCell Energy, Inc. Resp. at 2 (“to date none of these initiatives have provided an effective mechanism for tapping the considerable potential of clean baseload DER resources to meet near-term capacity needs and reduce the state’s increasing dependence on dirty diesel backup generation”).



investing in lower cost diesel.”<sup>18</sup> As Enchanted Rock notes, “incentivizing the switch from diesel back-up generation to RNG DERs is a no-regrets proposition that will significantly reduce the greenhouse gas and criteria pollutant emissions during routine power outages and widespread grid emergency events.”<sup>19</sup>

There is every reason to believe a tariff that provides the proper incentive structure coupled with swift action by the Commission will result in substantial amounts of new capacity being brought online over the next several years, including substantial DERs being deployed by next summer. Just how much will depend on the terms of the tariff. If those terms make it economic, the additional capacity would almost certainly be in the hundreds or even thousands of additional MWs.<sup>20</sup> As noted in the Petition, some DERs can be deployed in as little as a long weekend and, when installed behind the meter, do not face the lengthy delays otherwise associated with the interconnection process.<sup>21</sup> In short, implementation of the proposed tariff or something like it could readily result in the installation of new capacity that will for the reasons noted in the Petition bring a wide array of benefits to ratepayers, including improved reliability.<sup>22</sup>

**C. The Proposed Tariff Is Neither Piecemeal Ratemaking Nor Excessively Narrow**

PAO objects to the proposed tariff, arguing it “would just continue [a] ‘piecemeal approach to load management.’”<sup>23</sup> SDG&E and SCE advance a similar argument, arguing that the proposed tariff is too narrow and should instead be rolled into the proceedings that will flow from the Demand Flexibility OIR.<sup>24</sup> We certainly support the Demand Flexibility OIR and its

---

<sup>18</sup> Resp. of Center for Energy Efficiency and Renewable Technologies (“CEERT”) at 3; *see, e.g.*, Petition at 16; Resp. of Microgrid Resources Coalition at 3 (“with input from stakeholders through an expedited rulemaking process, the Commission can adopt a tariff and rate schedule for customers to provide clean firm capacity to the grid in a timely fashion to alleviate the impacts of grid instability and deliver significant ratepayer and system benefits”).

<sup>19</sup> Resp. of Enchanted Rock at 4.

<sup>20</sup> By way of example, Bloom Energy is scaling up its fuel cell production, having just opened a mega fuel cell factory in Fremont that is expected to produce 1 GW by the end of next year. *See* “Bloom Energy Expands its Fuel Cell Factory to Enable 1GW+ of Production, *California Current* at 12-13 (July 29, 2022); Business Wire “Bloom Energy Celebrates Grand Opening of Fremont Multi-Gigawatt Factory” (July 20, 2022), available at <https://www.businesswire.com/news/home/20220720006042/en/Bloom-Energy-Celebrates-Grand-Opening-of-Fremont-Multi-Gigawatt-Factory-Adding-Hundreds-of-New-Clean-Energy-Jobs>.

<sup>21</sup> Petition at 5 & n.31.

<sup>22</sup> *Id.* at 14-16.

<sup>23</sup> PAO Resp. at 2.

<sup>24</sup> Resp. of SDG&E at 2, 4; Resp. of SCE at 7-8.

promise of a comprehensive, long-term vision for optimizing DER deployment and use. At the same time, as CEERT observes, the Demand Flexibility OIR “is likely not to lead to any immediate tariff changes that would accomplish the goals of Bloom’s proposal in the near term,” and “quick action is needed to mitigate continuing grid reliability risk.”<sup>25</sup>

We agree. The Petition should therefore be seen as a complementary separate adjunct to the longer-term Demand Flexibility OIR, a “baby step” towards the future it promises. Therefore, as a good and immediate solution, the Petition’s proposed tariff should not be postponed for the more perfect, comprehensive solutions that we all hope the Demand Flexibility OIR will ultimately offer.

To the issue of it advancing a piecemeal approach, this argument fails to give credit for the problems it will help to solve. The Petition aims to address the very real challenges regarding grid reliability and growing deployment of polluting backup diesel generation. If it is effective, it is hard to quarrel with an approach that fills an otherwise unfilled gap in the Commission’s current programs. As for rolling the Petition into the Demand Flexibility OIR, as noted in the Petition, that is certainly a possibility open to the Commission.<sup>26</sup> That said, it is not clear that such an approach will result in the swift formulation of a tariff. The way in which the OIR has been framed, however, suggests it is not readily aligned with the proposed tariff.

A number of the Petition opponents also assert that the proposed tariff is too narrowly focused on fuel cells and fails to regulate an entire class of entities or activities over which the Commission has jurisdiction and must apply to future conduct.<sup>27</sup> Two responses are warranted. First, the Commission surely has authority to take the steps necessary to develop a tariff that corrects serious problems, whether it is narrow in scope or applicable to only a limited class of entities.

Second, and equally important, all that is currently before the Commission is whether to commence a formal proceeding. It is clear from the multiple responses filed in support of the Petition that there are a variety of views about what the criteria and eligibility requirements should be under the new tariff. Thus, it seems all but certain that, if the Commission decides to grant the Petition, that will be the start of a proceeding that will result in a tariff that will be

---

<sup>25</sup> CEERT Resp. at 2.

<sup>26</sup> Petition at 3.

<sup>27</sup> Resp. of SDG&E at 1-2 (quoting Commission Rules of Practice Rule 6.3(a)).

different in multiple respects from what Bloom Energy has proposed. Thus, to complain that the tariff is (currently) too narrow is to ignore that the Commission has the authority that it will surely use to modify the tariff in ways that will invariably make it less narrow and about which the IOUs complain.

**D. Sierra Club's Complaints Are, At Best, Poorly Founded.**

Sierra Club argues the Petition should be denied because fuel cells are powered by natural gas “with greenhouse gas emissions well above the grid average.”<sup>28</sup> It also disputes that the deployment of fuel cells provides a means to transition to the use of renewable natural gas or hydrogen.<sup>29</sup> Neither argument is a sound basis for denying the Petition.

As to the first argument, Sierra Club argues that fuel cells are not benign when they consume natural gas, but as detailed in the Petition, fuel cells provide significant environmental benefits even when using natural gas as a fuel because they do not combust the fuel, employing instead an electrochemical reaction that results in near-zero harmful emissions associated with the combustion, such as PM10, NOx and Sox, and thus much less harmful than diesel generation.<sup>30</sup>

When Sierra Club compares the carbon intensity of fuel cells to the system average, it is making the wrong comparison. Comparisons to grid averages are misleading because of the high renewable energy content on the grid. Thus, such a comparison results in the conclusion Sierra Club advances. However, what Sierra Club should compare is the carbon intensity of fuel cells to other generation being added to the system to address urgent reliability needs, especially diesel generation, and should also consider criteria emissions and other environmental impacts. This comparison would result in a very different outcome, especially for the disadvantaged and other communities in which diesel generation are most often deployed.

Sierra Club's position has a more fundamental flaw: it ignores the problems facing the grid. If, in Sierra Club's view, fuel cells or any other resource that uses natural gas are off-limits, how exactly does Sierra Club expect to solve the current problem? Sierra Club, unfortunately, offers no answer to this question. To borrow from Sierra Club's own filing, this is a true

---

<sup>28</sup> Sierra Club Resp. at 3-5.

<sup>29</sup> *Id* at 4-6.

<sup>30</sup> See Testimony of Professor Jacob (Jack) Brouwer at 12-16. In its response, Sierra Club assumes that the installed diesel generators are used only occasionally. Whether that is actually true is not something the State can confirm. What is clear is they are proliferating wildly throughout the State.

example of “magical thinking.”<sup>31</sup> As noted, California is currently facing a perfect storm of different phenomena and events that have put California’s policy objectives in jeopardy. The use of DERs that consume natural gas provide a stable bridge until the State is able to build sufficient new storage and other technologies that will allow the integration of renewable generation and provide protection against the challenges posed by climate change.

Sierra Club’s skepticism about the ability of fuel cells to switch from natural gas to renewable fuel sources is also off-base. Much work is on-going, by the State and others, studying the integration of hydrogen into the gas system or alternative distribution systems.<sup>32</sup> The State long ago adopted an “all of the above” approach to decarbonizing the grid. It is curious that Sierra Club has ruled hydrogen out of our energy future. That is simply inconsistent with where the State is headed. Deploying DERs that operate on natural gas can fill a critical current need while having the ability to transition to renewable fuel sources.<sup>33</sup> Given the exigent need for reducing load, development of a tariff that encourages the deployment of fuel cells among other DERs is a net positive that can mitigate the reliability risks we face over the next few years.

**E. Arguments About Cost and Other Aspects of the Proposed Tariff are Premature.**

Opponents of the Petition focus on the cost and duration of the proposed tariff, arguing that it is too costly for ratepayers.<sup>34</sup> They also argue that it is not technology neutral and too focused on fuel cells to the exclusion of other technologies. Like the arguments about whether the tariff is too narrowly drawn, arguments about its cost, duration and scope are actually premature at this point. As noted previously, while Bloom Energy believes its proposed tariff presents an appropriate policy choice at a reasonable cost, the Commission need not make a judgment now about the specific terms of the tariff. The central issue for decision is whether the

---

<sup>31</sup> Sierra Club Resp. at 6.

<sup>32</sup> For an overview of the work being done on hydrogen, see the information the CEC has posted on its website for the recent Integrated Energy Policy Report Commissioner Workshop on Role of Hydrogen in California’s Clean Energy Future, held June 21, 2022, which is available at <https://www.energy.ca.gov/event/workshop/2022-06/iepr-commissioner-workshop-role-hydrogen-californias-clean-energy-future>.

<sup>33</sup> It is also worth noting that Sierra Club also incorrectly assumes that hydrogen-powered DERs *necessarily* would require broad hydrogen distribution systems. Electrolyzers can be deployed where needed, including on a distributed basis, and would not necessarily be limited to producing hydrogen for long-distance pipelines.

<sup>34</sup> PAO Resp. at 4-6; Resp. of SCE at 9-10.

Commission will order the commencement of a formal proceeding. In the course of that proceeding, the scope of the tariff, the qualifying criteria, the compensation for the capacity will be addressed. To deny the Petition based on the price or duration of the proposed tariff assumes that Bloom Energy presented the proposed tariff on a “take it or leave it” basis. Bloom Energy would certainly welcome the Commission adopting its proposed tariff as presented, but recognizes that is not likely to be the outcome. With the input from interested parties, what the Commission ultimately orders will almost invariably differ from what was originally proposed. Thus, given the broader policy issues at stake, the argument PAO makes about how the proposed tariff is not just and reasonable is an issue that can be taken up if and when the Commission formally commences the proceeding.<sup>35</sup>

**F. The Assertion that the Commission is Precluded from Considering the Petition Because of Rule 6.3(f) of the Commission’s Rules of Practice and Procedure is Wrong.**

Both PG&E and SDG&E argue that the Commission **must** deny the Petition under Rule 6.3(f) of the Commission’s Rules of Practice and Procedure and that the Commission is “**prohibited**” from acting because of prior proceedings in the past 12 months that touched on common elements of the proposed tariff.<sup>36</sup> That is wrong for the reasons set forth in the Petition. While there are some elements of the tariff that were raised in the prior proceeding, there were significant differences between the two.<sup>37</sup>

Moreover, the argument PG&E and SDG&E make that the Commission decided not to take up the issue effects a bar on it doing so now is inconsistent with the Rule itself. As they both concede, the Commission ruled in the Microgrid Proceeding that the tariff Bloom Energy previously proposed was “out of scope” and, therefore, could not be decided in that proceeding.<sup>38</sup> As for the Microgrid Resources Coalition proposal, the Commission concluded the issue ought to

---

<sup>35</sup> When the time for that discussion comes, Bloom Energy intends to present evidence in addition to the evidence already submitted that the costs presented in its proposed tariff are just and reasonable.

<sup>36</sup> Resp. of PG&E at 3 (Rule 6.3(b) “**prohibits** a petition for a rulemaking on any issue “that the Commission has . . . decided not to act on within the preceding 12 months . . . Bloom’s petition is barred.”); Resp. of SDG&E at 3 (prior proceedings “requires denial of the Petition.”)

<sup>37</sup> See Petition at 18-20. For example, the tariffs that were presented in the prior proceedings focused energy payments during emergency stage alerts, rather than a capacity payment coupled with an energy payment.

<sup>38</sup> Petition at 19.

be raised in other proceedings because of its potential impact on them.<sup>39</sup> It is one thing for the Commission to decide it does not want to substantively decide something. It is another thing entirely if the Commission concludes an issue cannot be decided in a particular proceeding, as occurred here. A rule that then prevented the Commission from taking up that issue over the next 12 months by way of a Rule 6(a) Petition would effectively require it to address all issues substantively when they first arise to avoid enabling the argument PG&E and SDG&E make here.

Their argument fails for this reason. Rule 6.3(f) is intended to prevent petitioners from raising issues that were raised in the prior year so the Commission need not repetitively take up issues it has recently addressed. Where, as here, the Commission simply said an issue was not right for the particular proceeding in which it was raised, that it was out of scope for that proceeding, it can certainly be raised within 12 months by way of Rule 6.3(a) petition.

Equally importantly, while Rule 6.3(f) *enables* the Commission to dismiss petitions that raise issues that were raised within the prior 12 months, that rule in no way “**precludes**” or “**bars**” the Commission from deciding to take up the issue, as PG&E and SDG&E contend. That would simply not make any sense because such a rule would be completely inconsistent with the Commission’s broad authority to act.<sup>40</sup> That authority can be traced to the California State Constitution, which, among other things, provides that the Commission fix rates, establish rules, examine records, and prescribe a uniform system of accounts for all public utilities. *See* Cal Constitution, Article XII, Section 6. 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.” Pub. Util. Code § 701 (emphasis added).

Nothing in Rule 6.3(f) prevents the Commission from taking up a sensible reform of its tariff to address an issue that goes to key objectives of grid reliability and meeting the States immediate and mid-term energy challenges. The Commission is not hobbled by its own rules “to do all things necessary and convenient” in the exercise of its authority. It cannot be that having

---

<sup>39</sup> *Id.* at 19-20.

<sup>40</sup> *See, e.g.,* Consumers Lobby Against Monopolies v. Public Utilities Com., 25 Cal. 3d 891, 905 (1979).

decided an issue was not within the scope of a prior proceeding effectively bars it from deciding to take up that issue for the ensuing 12 months.

**G. Conclusion.**

For the reasons stated, Petitioner requests that the Commission grant this petition and commence an expedited rulemaking proceeding. If it takes this action, the Commission will make a significant contribution towards filling the reliability gap next summer and for the next few years while limiting the rate impact on customer investments. It will also enable the Commission to provide economic and regulatory guidance that will divert customer investments from resources that are less compatible with its equity, environmental and climate goals and, given diesel generation's poor track record, the State's reliability and resilience goals.

Date: August 4, 2022

Respectfully submitted,

By: /s/ William D. Kissinger  
William D. Kissinger, Esq.  
Morgan, Lewis & Bockius LLP  
One Market, Spear Street Tower  
San Francisco, CA 94105  
Tel.: (415) 442-1480  
Fax: (415) 442-1001  
Email: [william.kissinger@morganlewis.com](mailto:william.kissinger@morganlewis.com)  
Attorneys for Bloom Energy Corp.

Arthur Haubenstock, Esq.  
Vice President, Regulatory Law  
Bloom Energy Corporation  
4353 North 1st Street  
San Jose, CA 95134  
Tel.: (415) 518-3814  
Email:  
[Arthur.Haubenstock@bloomenergy.com](mailto:Arthur.Haubenstock@bloomenergy.com)