

**PUBLIC UTILITIES COMMISSION**505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298**FILED**

10/28/22

09:20 AM

P2206012

October 28, 2022

Agenda ID #21080**TO PARTIES OF RECORD IN PETITION 22-06-012:**

This is the proposed decision of Administrative Law Judge Colin Rizzo. Until and unless the Commission hears the item and votes to approve it, the proposed decision has no legal effect. This item may be heard, at the earliest, at the Commission's December 1, 2022 Business Meeting. To confirm when the item will be heard, please see the Business Meeting agenda, which is posted on the Commission's website 10 days before each Business Meeting.

Parties to the proceeding may file comments on the proposed decision as provided in Rule 14.3 of the Commission's Rules of Practice and Procedure.

The Commission may hold a Ratesetting Deliberative Meeting to consider this item in closed session in advance of the Business Meeting at which the item will be heard. In such event, notice of the Ratesetting Deliberative Meeting will appear in the Daily Calendar, which is posted on the Commission's website. If a Ratesetting Deliberative Meeting is scheduled, *ex parte* communications are prohibited pursuant to Rule 8.2(c)(4).

/s/ MICHELLE COOKEMichelle Cooke
Acting Chief Administrative Law JudgeMLC:nd3
Attachment

Decision PROPOSED DECISION OF ALJ RIZZO (Mailed 10/28/2022)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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

Petition 22-06-012

**DECISION DENYING PETITION OF BLOOM ENERGY CORPORATION
TO ADOPT, AMEND, OR REPEAL A REGULATION
PURSUANT TO PUBLIC UTILITIES CODE SECTION 1708.5**

Summary

This decision denies the petition for rulemaking by Bloom Energy Corporation to consider adopting a distributed energy resource reliability and resilience tariff, pursuant to Public Utilities Code Section 1708.5 and Rule 6.3 of the Commission's Rules of Practice and Procedure. The issues presented in this petition were considered in Commission proceedings within the previous 12 months. Furthermore, the proposal, as narrowly presented by the petition, is not appropriate for a rulemaking, and is more appropriately considered in other proceedings.

Petition 22-06-012 is closed.

1. Background

On June 23, 2022, Bloom Energy Corporation (Bloom or petitioner) filed a petition to adopt, amend, or repeal a regulation pursuant to Public Utilities (Pub. Util.) Code Section 1708.5.

On July 25, 2022, responses to the petition were received by parties of record. The following parties submitted responses: (1) California Clean DG Coalition (CCDGC); (2) California Efficiency + Demand Management Council (CEDMC); (3) Center for Energy Efficiency and Renewable Technologies (CEERT); (4) Clean Coalition; (5) Coalition for Renewable Natural Gas (CRNG); (6) Enchanted Rock, LLC (Enchanted Rock); (7) FuelCell Energy, Inc. (FuelCell); (8) Mainspring Energy, Inc. (Mainspring); (9) Microgrids Resources Coalition (MRC); (10) National Fuel Cell Research Center (NFCRC); (11) Pacific Gas and Electric Company (PG&E); (12) San Diego Gas & Electric Company (SDG&E); (13) Sierra Club; (14) Southern California Edison Company (SCE); (15) Southern California Gas Company (SoCalGas); and (16) the Public Advocates Office at the California Public Utilities Commission (Cal Advocates).

On August 4, 2022, replies to the responses to the petition were received. The following parties submitted replies to the responses: (1) Bioenergy Association of California (BAC); (2) Bloom; and (3) SoCalGas.

2. Summary of Petition

The petition requests that the Commission open a rulemaking to consider a distributed energy resource (DER) reliability and resiliency tariff to address electric grid reliability needs in the near and long-term.¹ The petitioner requests that the Commission initiate a new rulemaking to implement a tariff that compensates fuel cells, as well as other DERs that can meet specific performance standards. The petitioner proposes that the participating fuel cell would need to meet the following technical requirements: (1) a capacity factor greater than 80 percent with continuous operation for greater than 120 hours; and (2) must

¹ Petition at 3.

have renewable fuels and commit to switching to renewable fuels in accordance with Senate Bill 100's timeline.²

The petition proposes that California ratepayers should pay monthly capacity payments to fuel cells or other "long duration" or "highly reliable" DERs that meet specific eligibility requirements to meet grid reliability needs.³ In its petition, Bloom proposes that ratepayers would pay a fuel cell a rate of up to \$40 per kilowatt (kW)-month for resources located in capacity constrained areas⁴ and a rate of up to \$30 per kW-month for resources outside these areas.⁵ Under the petition, ratepayers would make these ongoing payment obligations for up to 10 years.⁶

3. Positions of Parties

The parties' positions varied in response to Bloom's petition with regards to whether the petition meets the requirements of Pub. Util. Code Section 1708.5 and Rule 6.3, as well as the merits of the proposal. BAC supports the petition, arguing that DERs provide grid benefits such as reliability and resiliency.⁷ Cal Advocates opposes the petition, arguing that: (1) the Commission has already established a process to address reliability, so any relief should be sought in other ongoing proceedings; (2) the petition would not provide meaningful incremental value where locational constraints exist; (3) the petition would overcompensate participants; (4) the petition's capacity incentive and penalty

² *Id.* at 17.

³ *Id.* at 13.

⁴ *Id.* at 14.

⁵ *Id.*

⁶ *Id.*

⁷ BAC Reply at 6.

structure is not just or reasonable; and (5) the petition would harm vulnerable customers by increasing rates without creating new value.⁸

CCDGC supports, with modification, arguing that an “all of the above” resource approach is required to meet the State’s clean energy goals while simultaneously ensuring grid reliability.⁹ CEDMC opposes with modification, asserting that the petition is narrowly focused on long-duration DERs, and unnecessarily excludes many other types of behind-the-meter DERs.¹⁰ CEERT supports with modification, stating that the proposal may only be beneficial to fuel cells, as opposed to all DERs.¹¹

Clean Coalition supports with modification, arguing that the proposal should promote renewable resources, including fuel cells run with green hydrogen.¹² CRNG: supports the petition to help address energy system needs.¹³ Enchanted Rock supports the petition asserting that promoting clean and dependable DERs on the demand side will boost grid performance.¹⁴ FuelCell supports the petition asserting that fuel cells can help address the state’s reliability needs.¹⁵ Mainspring supports the petition with modification, arguing that dispatchable resources should be compensated as well.¹⁶ MRC supports the

⁸ Cal Advocates Response at 2-6.

⁹ CCDGC Response at 2-3.

¹⁰ CEDMC Response at 2-4.

¹¹ CEERT Response at 2-3.

¹² Clean Coalition Response at 2.

¹³ CRNG Response at 2.

¹⁴ Enchanted Rock Response at 3.

¹⁵ FuelCell Response at 2-3.

¹⁶ Mainspring Response at 3.

petition.¹⁷ NFCRC supports the petition with modification, offering an array of modifications to the petition's proposal.¹⁸

PG&E opposes the petition. PG&E argues that: (1) the petition's proposed tariff is similar to previously submitted proposals in Rulemaking (R.) 19-09-009, triggering the Rule 6.3 prohibition of the Commission's Rules of Practice and Procedure (Rules); (2) the petition's proposed tariff is also similar to MRC's proposal in R.20-11-003, which is an additional reason Rule 6.3 requires the petition to be dismissed; (3) the voluntary option under the proposed tariff is already available under the Emergency Load Reduction Program; and (4) the petition ignores other considerations affecting installation of fuel cells.¹⁹

SDG&E also opposes the petition. SDG&E argues that: (1) the petition fails to meet the requirements of Rule 6.3(a) and Rule 6.3(f); (2) the petition should be denied as it is redundant and seeks to address issues that are already being considered in other active proceedings; (3) the proposed tariff would aggravate massive over-compensation that customers with DERs already receive; and (4) Bloom's proposal is not technology neutral.²⁰

Sierra Club opposes the petition. Sierra Club argues that: (1) the petition should be denied because the Commission rejected similar requests to expand eligible DER Programs to include fuel cells in the past years; and (2) the petition should be denied because it undermines achievement of California's climate objectives.²¹

¹⁷ MRC Response at 2-3.

¹⁸ NFCRC Response at 2-3.

¹⁹ PG&E Response at 2-9.

²⁰ SDG&E Response at 1-8.

²¹ Sierra Club Response at 2-6.

SCE opposes the petition. SCE argues that: (1) the petition does not comply with Rule 6.3(a); (2) the petition does not comply with Rule 6.3(f); (3) the petition makes proposals that are more appropriately addressed in the context of a broader proceeding; (4) the petition fails to establish a need for additional fuel cell resources; and (5) the proposed tariff would result in inappropriate and unreasonable compensation for fuel cells.²²

Finally, SoCalGas supports the petition. SoCalGas argues that: (1) the petition helps mitigate grid reliability risk; (2) the petition leverages customer investments in fuel cells and other highly reliable DERs; and (3) the deployment of fuel cells and other DERs would address near and long-term goals.²³

4. The Petition Fails to Meet the Requirements of Rule 6.3 and Is Denied

The petitioner requests that the Commission adopt a rulemaking pursuant to Pub. Util. Code Section 1708.5.²⁴ The Commission implements Section 1708.5 in Rule 6.3.

We evaluate the petitioner's request according to Rule 6.3 and explain the most pertinent sections for the purposes of this decision. Rule 6.3(a) requires that the proposed regulation must apply to an *entire class* (emphasis added) of entities or activities over which the Commission has jurisdiction and must apply to future conduct. Rule 6.3(b) requires the petition to state the justification for the requested relief, include proposed wording for its proposed regulation, and state whether the petitioner believes that the issues raised in the petition have ever been litigated before the Commission.

²² SCE Response at 2-10.

²³ SoCalGas Response at 2-6.

²⁴ All subsequent references are to the Public Utilities Code unless otherwise specified.

Rule 6.3(c) requires that, if the petition would result in modification of a prior Commission order or decision, then the petition must be served on all parties to the proceeding or proceedings in which the decision that would be modified was issued. Finally, Rule 6.3(f) states that the Commission will not entertain a petition for rulemaking on an issue that the Commission *has acted on or decided not to act on within the preceding 12 months* (emphasis added).

Application of Rule 6.3(a): First, petitioner has not met its burden to show that the proposed regulation applies to an entire class of entities or activities over which the Commission has jurisdiction. The petition focuses on a single class of activities or resources — high-capacity factor DERs such as fuel cells.²⁵ The petitioner would have tariff eligibility limited to DERs with a capacity factor of at least 80 percent and capable of continuous operation for a minimum of 120 hours and operate during any stage alert, among other criteria.²⁶ This criterion applies to a very limited subset of DERs.

High-capacity factor DERs reflect only one segment of DERs technologies available. We agree with CEDMC that Bloom’s proposal is narrowly focused and excludes many other types of behind-the-meter DERs.²⁷ A single tariff, as contemplated by petitioner, would cause California ratepayers to subsidize a single technology class at a special, higher cost rate. This is incongruent with Rule 6.3(a). Fuel cells, the most prominent high-capacity factor DER and the petitioner’s product, reflect only one of an array of resources, under a range of

²⁵ Petition at 3, stating: petitioner proposes the Commission adopt a tariff that establishes a credit for ratepayers that install fuel cells and other qualifying DERs to compensate them for the value their resources bring to the grid by enhancing reliability, providing capacity as well as other benefits.

²⁶ Petition at 17.

²⁷ CEDMC Response at 2.

policies and programs, that may be responsive to the State's reliability and resiliency needs.

We agree with SCE²⁸ and SDG&E²⁹ that it would be inappropriate for the Commission, or for interested stakeholders, to carve out a single resource or even a very limited group of resources for a separate rulemaking as the Petition requests.³⁰

Rule 6.3(a) requires the Commission to consider the broader array of activities and diversity of resources in meeting these challenges. Petitioner does not satisfy the requirements of Rule 6.3(a).

Application of Rule 6.3(b): Generally, petitioner satisfies the initial elements of Rule 6.3(b) because petitioner stated its request for relief and proposed wording for its proposed regulation and tariff. However, we discuss whether the issues raised in the petition have ever been litigated before the Commission below, under our analysis of Rule 6.3(f).

Application of Rule 6.3(c): Petitioner states that the petition was served on the following service lists of these Commission proceedings: (a) R.20-08-020 (*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, which considered changes to the avoided cost calculator*); (b) R.14-07-002 (*Order Instituting Rulemaking to Develop a Successor to Existing Net Energy Metering Tariffs Pursuant to Section 2827.1, and to Address Other Issues Related to Net Energy Metering*); and (c) Application 22-05-002 (*Application of PG&E for Approval of its Demand Response Programs, Pilots, and Budgets for Program Years 2023-2027*), R.20-11-003 (*Order*

²⁸ SCE Response at 3.

²⁹ SDG&E Response at 2.

³⁰ *Id.*

Instituting Rulemaking to Establish Policies, Processes, and Rules to Ensure Reliable Electric Service in the Event of an Extreme Weather Event in 2021), and R.19-09-009 (*Order Instituting Rulemaking Regarding Microgrids Pursuant to Senate Bill 1339 and Resiliency Strategies*).³¹

Application of Rule 6.3(f): Finally, petitioner has not met its burden under Rule 6.3(f). Rule 6.3(f) requires that the Commission will not entertain a petition for rulemaking on an issue that the Commission *has acted on or decided not to act on within the preceding 12 months* (emphasis added).

Petitioner acknowledges that the Commission has considered similar proposals in at least two other Commission proceedings within the last 12 months. Petitioner refers³² to the following proceedings: (1) R.19-09-009, *Order Instituting Rulemaking Regarding Microgrids Pursuant to Senate Bill 1339 and Resiliency Strategies* (Microgrids & Resiliency Strategies); and (2) R.20-11-003, *Order Instituting Rulemaking to Establish Policies, Processes, and Rules to Ensure Reliable Electric Service in the Event of an Extreme Weather Event in 2021* (Extreme Weather). Petitioner participated in both proceedings and submitted proposals as well as testimony advocating for customer incentives, and ratepayer subsidies, to encourage the adoption of fuel cell technology within the context of resiliency and reliability.

In *Microgrids and Resiliency Strategies*, on September 10, 2021, Bloom submitted a proposal in Track 1 of Phase 4 of R.19-09-009 for a new “Microgrid

³¹ For purposes of Rule 6.3(c), we note that the petition also should have been served on R.21-06-017 (*Order Instituting Rulemaking to Modernize the Electric Grid for High Distributed Energy Resources*) and R.21-10-002 (*Order Instituting Rulemaking to Oversee the Resource Adequacy Program, Consider Program Reforms and Refinements, and Establish Forward Resource Adequacy Procurement Obligations*).

³² Petition at 19.

Capacity Services Tariff” to address near-term “reliability and capacity shortfall concerns” and a modification to the existing Fuel Cell Net Energy Metering (NEMFC) tariff.³³ These proposals would allow customers to pair batteries and other storage devices with fuel cells to reduce strain on the grid.³⁴ The details of Bloom’s proposal in Track 1 of Phase 4 of R.19-09-009 track closely with the tariff it presents through its petition because: (1) both proposals would apply to customer-sited, behind-the-meter microgrids; (2) both proposals would require that eligible facilities meet the performance, environmental and climate requirements delineated in Decision (D.) 21-07-011; (3) both proposals would require similar long-duration performance capabilities; (4) both proposals would involve energy export compensation during emergencies of \$2 per kilowatt-hour (kWh); (5) both proposals would allow customer-generators to commit capacity available to the respective load-serving entity during emergency events; and (6) both proposals would waive standby charges for customers that meet the requirements of the Microgrid Track 3 decision, D.21-07-011. In D.21-12-004, we declined to act on Petitioner’s proposal.

Turning to the docket of Extreme Weather, R.20-11-003, Bloom also acknowledges that the proposal it presents in its petition is similar to MRC’s proposal in that proceeding.³⁵ MRC’s proposal, called the Emergency Capacity Services Tariff, aimed to assist customers who are seeking to install new DERs to

³³ R.19-09-009, 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 (September 10, 2021) at 6 and 15.

³⁴ *Id.*

³⁵ While Rule 6.3(f) does not require that the issue be raised by the petitioner, only that the Commission has acted or decided not to act on the issue, we nevertheless note that Bloom is a member of MRC.

provide support to the grid, whether as exported energy or as a demand response resource, particularly during capacity shortfalls.³⁶ Bloom's petition mirrors MRC's proposal in R.20-11-003 in several substantive ways, because: (1) both proposals would apply to customer-sited, behind the meter DERs; (2) both proposals refer to performance requirements delineated in D.21-07-011, although the specific elements may not be exactly the same; (3) both proposals would lock in the tariff (modifications to Rule 21 for the MRC proposal and a new retail tariff for the petitioner's proposal) for long time periods, to enable customers to remain on the tariffs 10 years for the petitioner's proposal and 25 years for the MRC proposal; (4) both proposals involve energy export compensation of \$2 per kWh during a stage alert; (5) both proposals would allow export to the grid and load reductions on the customer premises to be compensated; and (6) both proposals would waive standby charges for customers that meet the requirements of the Microgrid Track 3 decision, D.21-07-011. In D.21-12-015, we declined to act on MRC's proposal.

Bloom does not dispute that the issues presented in its petition were presented in the Commission in the last twelve months in at least two proceedings (see above). However, Bloom asserts that its petition is not barred under Rule 6.3(f) because: (1) it was found to be out of scope in R.19-09-009 and was thus, not actually litigated; and (2) the Commission never acted on MRC's proposal in R.20-11-003 stating that MRC's "proposal was "addressed in the Microgrid proceeding[,] . . . it got no more attention there than in the Extreme Weather proceeding."³⁷

³⁶ R.20-11-003, MRC Testimony at 5 and 10.

³⁷ Petition at 18-20.

We disagree. Petitioner misconstrues Rule 6.3(b) and Rule 6.3(f), by stating whether the question has been “actually litigated” within the past 12 months.³⁸ Rule 6.3(f) does not turn on whether the issue was “actually litigated,” but rather on whether we acted on or decided not to act on the issue presented in the petition within the preceding 12 months. As stated earlier, in D.21-12-004 and D.21-12-015, we considered and decided not to act on the issues contemplated in the petition.

In conclusion, based on a failure to meet requirements of Rule 6.3, we deny petitioner’s request on procedural grounds.³⁹

5. Conclusion

The petition is denied on procedural grounds. Petitioner may seek to include their issues of concern in the scope of other, ongoing or future Commission proceedings.⁴⁰

6. Categorization and Need for Hearing

This proceeding is categorized as a petition for rulemaking. There is no hearing taken for such proceedings.

³⁸ Petition at 19, stating “As a result that issue was not actually litigated before the Commission in the past 12 months.”

³⁹ As a matter of general policy, we note that the Commission has not viewed favorably similar capacity-based proposals in the past in several different contexts. For example, in the Extreme Weather proceeding we approved the ELRP offering a payment of \$2 per kWh for demand side reductions during highly stressed grid events. ELRP considered, but did not include a capacity payment as part of its design, finding that energy payments, solely, were the appropriate compensation mechanism for the reliability benefits delivered under that program.

⁴⁰ This includes R.22-07-005, Order Instituting Rulemaking to Advance Demand Flexibility Through Electric Rates, in which Bloom is currently participating. In its recent post prehearing conference statement filed there, Bloom acknowledged that the Commission could achieve the same results sought by the petition by adopting the tariff proposed here in that proceeding. (See Post Prehearing Conference Statement of Bloom Energy Corporation, R.22-07-005 (September 27, 2022) at 6.)

7. Comments on Proposed Decision

The proposed decision of Administrative Law Judge (ALJ) Colin Rizzo in this matter was mailed to the parties in accordance with Pub. Util. Section 311 and comments were allowed under Rule 14.3. Comments were filed on _____, and reply comments were filed on _____ by _____.

8. Assignment of Proceeding

Clifford Rechtschaffen is the assigned Commissioner and Colin Rizzo is the assigned ALJ in this proceeding.

Findings of Fact

1. The instant petition proposes a regulation that focuses narrowly on one segment of distributed energy resources, fuel cells or other high capacity factor resources, rather than an entire class of entities or activities.
2. The Commission has acted on or decided not to act on substantively similar issues as proposed in the petition within the last 12 months, as demonstrated recently in Rulemaking 19-09-009 and Rulemaking 20-11-003.
3. Petitioner participated in both R.19-09-009 and R.20-11-003 by submitting, and supporting, similar tariff proposals that the Commission in those proceedings decided not to act upon.
4. In R.19-09-009, Petitioner submitted a proposal in Track 1 of Phase 4 for a new "Microgrid Capacity Services Tariff" to address near-term "reliability and capacity shortfall concerns" and a modification to the existing NEMFC tariff.
5. The details of the proposal Petitioner submitted in Track 1 of Phase 4 of R.19-09-009 closely tracks with the tariff Petitioner presents through the instant matter because: (1) both proposals would apply to customer-sited, behind-the-meter microgrids; (2) both proposals would require that eligible

facilities meet the performance, environmental and climate requirements delineated in D.21-07-011; (3) both proposals would require similar long-duration performance capabilities; (4) both proposals would involve energy export compensation during emergencies of \$2 per kWh; (5) both proposals would allow customer-generators to commit capacity available to the respective load-serving entity during emergency events; and (6) both proposals would waive standby charges for customers that meet the requirements of the Microgrid Track 3 decision, D.21-07-011.

6. In D.21-12-004, the Commission declined to act on Petitioner's proposal.

7. In R.20-11-003, Petitioner also acknowledges that the proposal it presents in its petition is similar to MRC's proposal.

8. MRC's proposal, called the Emergency Capacity Services Tariff, aimed to assist customers who are seeking to install new DERs to provide support to the grid, whether as exported energy or as a demand response resource, particularly during capacity shortfalls.

9. Petitioner's proposal mirrors MRC's proposal in R.20-11-003 because: (1) both proposals would apply to customer-sited, behind the meter DERs; (2) both proposals refer to performance requirements delineated in D.21-07-011, although the specific elements may not be exactly the same; (3) both proposals would lock in the tariff (modifications to Rule 21 for MRC's proposal and a new retail tariff for the Petitioner's proposal) for long time periods, to enable customers to remain on the tariffs 10 years for the Petitioner's proposal and 25 years for the MRC Proposal; (4) both proposals involve energy export compensation of \$2 per kWh during a stage alert; (5) both proposals would allow export to the grid and load reductions on the customer premises to be compensated; and (6) both proposals would waive standby charges for

customers that meet the requirements of the Microgrid Track 3 decision, D.21-07-011.

10. In D.21-12-015, the Commission declined to act on MRC's proposal.

Conclusions of Law

1. Pub. Util. Code Section 1708.5 requires that the Commission implement its terms under the Commission's Rules.

2. Rule 6.3 governs petitions made pursuant to Pub. Util. Code Section 1708.5.

3. Rule 6.3(a) requires that the proposed regulation must apply to an entire class of entities or activities over which the Commission has jurisdiction and must apply to future conduct.

4. Rule 6.3(f) states that the Commission will not entertain a petition for rulemaking on an issue that the Commission has acted on or decided not to act on within the preceding 12 months.

5. It is inconsistent with Rule 6.3(a) and unreasonable to open a rulemaking to undertake consideration of the proposed distributed energy-resources reliability and resiliency tariff because it only applies to a single class of entities and activities over which the Commission has jurisdiction.

6. It is inconsistent with Pub. Util. Code Section 1708.5 and Rule 6.3(f), and unreasonable to open a rulemaking to undertake consideration of the proposed distributed energy-resources reliability and resiliency tariff because the Commission decided to not act on this issue within the preceding 12 months through at least two proceedings, Rulemaking 19-09-009, and Rulemaking 20-11-003.

O R D E R

IT IS ORDERED that:

1. The petition of Bloom Energy Corporation to adopt, amend, or repeal a Regulation Pursuant to Public Utilities Code Section 1708.5 is denied.
2. Petition 22-06-012 is closed.

This order is effective today.

Dated _____, at San Francisco, California.