

BEFORE THE PUBLIC UTILITIES COMMISSION OF
THE STATE OF CALIFORNIA



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Application of PACIFIC GAS AND
ELECTRIC COMPANY (U 39 E) for Review
of the Disadvantaged Communities – Green
Tariff, Community Solar Green Tariff and
Green Tariff Shared Renewables Programs

Application No. 22-05-022
(Filed May 31, 2022)

And Related Matters

Application 22-05-023
Application 22-05-024

**OPENING BRIEF OF THE COALITION FOR COMMUNITY SOLAR ACCESS
REGARDING GREEN ACCESS PROGRAMS**

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Summary of Recommendations:

- Adopt the Net Value Billing Tariff as proposed by CCSA in testimony and as described in this brief.
- End solicitations for the GTSR program but maintain the Enhanced Community Renewables portion of the program such that it is available to interested subscribers to honor existing contracts.¹
- Continue the DAC-GT and CSGT programs including solicitation of projects until contracted projects expire and program caps in the enabling decision are reached.²

¹ See Exhibit CCSA-001 (Smithwood) at p. 36, lns. 6-14.

² See Id. at p. 36, ln. 20 - p. 38, ln. 2.

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Pursuant to the schedule in the Administrative Law Judges’ Ruling Updating the Procedural Schedule and Requiring Use of Briefing Outline, filed April 21, 2023 (“ALJ Ruling”), and Rule 13.12 of the California Public Utilities Commission’s Rules of Practice and Procedure, the Coalition for Community Solar Access (“CCSA”) respectfully submits this Opening Brief supporting the establishment of a Net Value Billing Tariff (“NVBT”) as a cost effective means of expanding access to the benefits of distributed energy resources to all Californians including those who cannot install rooftop solar for a variety of reasons, provide an opportunity for robust participation by low-income customers, and meet the needs of California’s building industry for a Title 24 compliance pathway.

I. INTRODUCTION

The record established in this docket clearly demonstrates that CCSA’s NVBT is the only proposal that will support the development of a cost-effective, grid-responsive, and comprehensive community renewable energy program based on demonstrated best practices that can serve all Californians. The NVBT can achieve these ends while ensuring particular focus on robust participation

by low-income households and do so at the scale necessary to meet the breadth of needs identified in AB 2316 and by parties in the docket using storage-paired resources that can meet California’s urgent need for clean energy capacity. This opening brief will illuminate the record evidence that supports this statement, but the single most powerful fact supporting this view is that a broad coalition of parties in the docket agree that adoption of the NVBT is in the best interest of ratepayers based on their own expert analysis. Support on the record for the NVBT comes from stakeholders representing broad diverse interests including consumer advocates such as the Public Advocates Office (“CalAdvocates”) and The Utility Reform Network (“TURN”), environmental justice advocates such as the California Environmental Justice Alliance (“CEJA”), environmental organizations such as the National Resources Defense Council (“NRDC”), industry stakeholders and solar advocates such as the Vote Solar Initiative (“VS”), the Solar Energy Industries Association (“SEIA”), Cypress Creek, and the Clean Coalition, and California’s building industry through the participation of the California Building Industries Association (“CBIA”). While supporters of the NVBT agree that it is the best proposal offered in the docket, many offer modifications that they believe will improve the NVBT proposed by CCSA along several lines. In response to these recommendations, CCSA has proposed numerous modifications from its original proposal submitted in Amended Opening Testimony to meet the concerns animating other parties’ proposed modifications to the NVBT while also ensuring the NVBT will result in viable projects that can actually serve program participants. The weight of evidence established in testimony clearly demonstrates that the NVBT is beneficial to ratepayers and meets the goals and spirit of AB 2316. We encourage the Commission to adopt the NVBT as proposed in CCSA’s testimony and discussed herein.

II. THE OBJECTIVE OF ANY GREEN ACCESS PROGRAM SHOULD BE TO EFFECTUATE THE INTENT OF AB 2316.

The overarching objective of any decision made by the Commission in this docket should be to

effectuate the purpose of AB 2316.¹ In Section 1 of AB 2316, the Legislature laid out three broad intentions: (1) “create a community renewable energy program so that all Californians, especially those unable to host a rooftop system, realize the benefits of distributed generation through a cost-effective program that provides benefits to all ratepayers;” (2) “facilitate community renewable energy options that can help the state cost effectively meet the energy efficiency mandates in the California Building Standards Code;” and (3) “support robust low-income customer participation in the community renewable energy program.”

The basic structure of Public Utilities Code Sec. 769.3² directly supports an outcome from this docket that will be aligned with this expressed legislative intent by requiring the Commission to review existing programs to determine if the program meets all of the three goals expressed in Sec. 769.3(b)(1)(A)(i)-(iii) while also considering load migration trends among bundled and unbundled customers including any associated risks pursuant to Sec. 769.3(b)(1)(B). If a program does not meet these three goals, Sec. 769.3(b)(1)(C) requires the Commission to terminate or modify the program. Concurrently with the evaluation of existing programs, the Commission is required to determine whether it is beneficial to ratepayers to establish a new program or modify an existing program to establish a program that is consistent with the six criteria spelled out in Sec. 769.3(c)(1)-(6). AB 2316 is silent on what the goals of any such modification of a deficient program should be, but a holistic reading of AB 2316 would suggest it should be modified to meet not only the three goals identified as part of the review process for existing programs, but also the six criteria any new or modified program should meet.³ This view is reasonable given the fact that the three goals expressed in Sec. 769.3(b)(1)(A)(i)-

¹ See *People v. Murphy* (2001) 25 Cal.4th 136, 142 (fundamental task is to determine the Legislature’s intent so as to effectuate the law’s purpose).

² All references are to the California Public Utilities Code unless otherwise noted.

³ See *West Pico Furniture Co. v. Pacific Finance Loans* (1970) 2 Cal. 3d 594, 608 (look to the entire substance of

(iii) and the six criteria in Sec. 769.3(c)(1)-(6) are directly aligned with and support the intent of the Legislature expressed in Section 1 for a cost-effective program that can serve all Californians. For example, Sec. 769.3(b)(1)(A)(iii) directs the Commission to assess the ability of existing programs to robustly serve low-income customers which directly supports the intent expressed in Section 1(c). Similarly, Section 769.3(c)(2) requires any new or modified program to ensure at least 51% of program capacity serves low-income customers. Accordingly, under any outcome of the AB 2316 process, the Legislature was careful to focus any outcome on robustly serving low-income customers. The legislative goal of efficiently serving distinct customer groups expressed in Sec. 769.3(b)(1)(A) is also reflected in requirements in Sec. 769.3(c)(1) that a new or modified program be complementary to and consistent with Section 10-115 of California Building Standards Code (“Title 24”) and Sec. 769.3(c)(2)’s focus on low-income customers as both are distinct customer groups which have not benefited from distributed energy resources at the same scale as other ratepayers able to host a rooftop system. The legislative intent that the program be cost-effective expressed in Section 1(a) is directly supported in the requirement that existing programs “efficiently serve” customers and “minimize duplicative offerings” as expressed in Sec. 769.3(b)(1)(A) and by the requirements that impacts to nonparticipating ratepayers be minimized by prohibiting program costs from being in excess of avoided costs,⁴ that bill credits be based on avoided costs,⁵ and by requiring that the maximum use of state and federal incentives be obtained for the benefit of program participants.⁶

CCSA proposes that the method to determine whether a particular existing program or new

the statute to determine scope and purpose); *Moyer v. Workmen’s Comp. Appeals Bd.* (1973) 10 Cal. 3d 222, 230 (harmonize various parts of a statutory enactment...by considering the particular clause or section in the context of the statutory framework as a whole).

⁴ See Sec. 769.3(c)(3).

⁵ See Sec. 769.3(c)(5).

⁶ See Sec. 769.3(c)(6).

program meets these goals is for the Commission to see if it affirmatively answers each of these questions based upon evidence in the record:

(1) Does the program allow for broad participation by all Californians (especially those unable to host a rooftop solar system)?

(2) Does the program specifically support robust participation by low-income customers as that group is defined in Sec. 769.3(a)(3)?

(3) Is the program cost effective?

(4) Does the program provide benefits to all ratepayers?

(5) Does the program help facilitate compliance with Title 24 mandates?

(6) Can the program take maximum advantage of state and federal incentives including the Inflation Reduction Act?

III. CCSA'S PROPOSED METHODS TO EVALUATE CURRENT GREEN ACCESS PROGRAMS ("GAPs") MEET THE REQUIREMENTS OF AB 2316.

a. CCSA's Proposed Method for Assessing Whether Current GAPs Efficiently Serve Distinct Customer Groups.

Witness Smithwood testified that the most reasonable way to view whether a program efficiently serves distinct customer groups is to determine what an efficient program looks like and then to understand what are reasonably considered distinct customer groups. Addressing what is intended by the word efficient service in this context, Witness Smithwood testified that a threshold concept of efficiency is achieving a desired result with little to no wasted effort, but that the concept has an economic and non-economic component.⁷ The economic view suggests a program that avoids significant subsidies by linking bill credits a facility receives for energy exports to the value of these

⁷ See Exhibit CCSA-001 (Smithwood) at p. 9, ln. 21 - p. 10, ln. 4.

exports to the grid.⁸ Such an outcome supports economic efficiency as resources are responsive to evolving grid needs while also ensuring developers and program participants are only compensated for the value the facility provides.⁹ This value-based approach to efficiency results in a program that is scalable to the addressable market without negative impacts on ratepayers.¹⁰ Looking at how a program can efficiently serve from a non-economic perspective, Witness Smithwood observed that broad eligibility is a touchstone of efficiency so that marketing and outreach efforts are not wasted and having a program that avoids booms and busts in program enrollment based on changing benefits.¹¹

Turning to how to understand distinct customer groups, Witness Smithwood testified that residential, commercial, agricultural, and industrial customers form one basis under traditional utility ratemaking to define “distinct customer groups”, but that the phrase customer group also needed to be considered more broadly based on who faces barriers to accessing rooftop solar such as renters and residents of disadvantaged or underserved communities.¹² Witness Smithwood also argued that distinct customer groups properly include new residential homebuyers and other nonresidential building owners covered by Title 24 mandates as a distinct customer group in order to assess whether current programs can provide a pathway to meet Title 24 requirements efficiently.¹³ Finally, Witness Smithwood argued that customers of community choice aggregators and energy service providers are properly considered distinct customer groups because these customers present unique issues in designing programs that can successfully serve unbundled customers.¹⁴

⁸ See Id at p. 10 lns. 4-8.

⁹ See Id at lns. 8-11.

¹⁰ See Id at lns. 11-13.

¹¹ See Id at p. 10, ln. 14 - p. 11, ln. 3.

¹² See Exhibit CCSA-001 (Smithwood) at p. 11, ln. 6 - p. 12, ln. 6.

¹³ See Id at p. 12, ln 8 - p. 13, ln. 5.

¹⁴ See Id at p. 13, lns. 6-10.

Combining these points into a workable definition resulted in the following: a program that efficiently serves distinct customer groups is one that results in residential, commercial, agricultural, and industrial customers (including renters, new home buyers, and residents of disadvantaged communities) being able to access the program's benefits through a single tariff that is open to bundled and unbundled customers that links bill credit compensation to the value a facility provides to the grid.¹⁵

b. CCSA's Proposed Method for Assessing Whether Current GAPs Minimize Duplicative Offerings.

To assess whether a program minimizes duplicative offerings requires looking at whether one program is exactly like another program by comparing the first program to one or more other programs.¹⁶ Accordingly, Witness Smithwood testified that a duplicative offering would be one that serves the same customer class or group of customers with an offering that is indistinguishable from another program offering.¹⁷

c. CCSA's Proposed Method for Assessing Whether Current GAPs Promote Robust Participation by Low-Income Customers.

To assess the requirement that existing programs promote robust participation by low-income customers, Witness Smithwood noted that robust is understood to mean healthy or strong and looked at the 13% participation rate in the net energy metering program as a floor on what should reasonably be considered a metric to assess robust participation in GAPs.¹⁸ Thus, Witness Smithwood observed that a GAP compliant with this understanding is one that is scalable to the overall pool of low-income customers identified within AB 2316.¹⁹ Pursuant to Sec. 769.3(a)(3), low-income customer is much

¹⁵ See Id at p. 13, ln. 13 - p. 14, ln. 4.

¹⁶ See Id at p. 14, lns. 7-9.

¹⁷ See Id at lns. 10-12.

¹⁸ See Id. at lns. 18-21.

¹⁹ See Id at p. 15, lns. 1-17.

more broadly defined that what is usually considered a low-income customer in Commission proceedings to include participants not only the typical customers considered to be low-income in Commission discourse, namely participants in the California Alternative Rates for Energy (“CARE”) program and the Family Electric Rate Assistance (“FERA”) program, but also customers that are enrolled in the CalFresh program, the federal Supplemental Nutrition Assistance Program (“SNAP”), the Low-income Heating Energy Assistance program (“LIHEAP”), or an individual or household that resides in an underserved community, which is defined as a “low-income community” under Health and Safety Code Sec. 39713, a community within a top-25% most disadvantaged communities within the CalEnviroScreen, or a community belonging to a California Native American tribe as defined in Public Resources Code Sec. 21073. Witness Smithwood’s testimony discusses the fact that this body of low-income customers represents multiple millions of California’s energy consumers.²⁰ Accordingly, he advised the Commission that a GAP program that promotes robust participation by this diverse group of energy consumers is one that promotes strong and healthy participation levels within the total pool of low-income customers.²¹

IV. CURRENTLY APPROVED GAP PROGRAMS FAIL TO MEET THE GOALS OF SEC. 769.3(b)(1)(A).

a. The Green Tariff Shared Renewables Program (“GTSR”) is Incapable of Meeting the Goals Articulated in Sec. 769.3(b)(1)(A) and Runs a High Risk of Failure Due to Departing Load.

i. The GTSR Program Does Not Efficiently Serve Distinct Customer Groups.

The record demonstrates that the GTSR²² program has several flaws which prevent it from

²⁰ See Id at p. 20, ln. 12 - p. 21, ln 7.

²¹ See Id at p. 15, lns. 15-17.

²² The GTSR program has two components – the GTSR-Green Tariff and the GTSR-Enhanced Community Renewables tariff. This discussion refers to both of these programs within the overall GTSR program unless

efficiently serving distinct customer groups. First, the program is limited to bundled customers so the program cannot serve unbundled customers. Thus, this distinct customer group is locked out of the program.²³ CCA customers now comprise 58% of Pacific Gas and Electric Company's ("PG&E") customers, 34% of Southern California Edison's ("SCE") customers, and 54% of San Diego Gas & Electric Company's ("SDG&E") customers²⁴ which means substantial portions of energy consumers are locked out. Similarly, customers taking service from an energy service provider are unable to access the program as they are not bundled customers.²⁵ The growth of these two forms of unbundled customers not only undermines the ability of the program to efficiently serve distinct customer groups, but also has significant program impacts which will be discussed later in this section.

The GTSR program is inefficient on both economic and non-economic grounds. The program's retail rate-based credit structure undermines the economic efficiency of the program by not linking GTSR facility compensation to their value to the grid.²⁶ The current GTSR compensation structure also results in an inefficient means of serving customers from a more practical (non-economic) standpoint: the crediting structure has resulted in severe rate volatility which has led to radical changes in customer participation rates as the program moves from a premium product to a cost saving product and back.²⁷

The deleterious impacts of this volatility were front and center in PG&E's emergency request to use resources procured to meet Renewable Portfolio Standard ("RPS") to serve the surge in customer seeking to enroll in PG&E's GTSR program "as a result of the Solar Choice rate changing from a net

specifically noted.

²³ See Exhibit CCSA-001 (Smithwood) at p. 21, ln. 20 - p. 22, ln. 3.

²⁴ See Id. at p. 22, lns. 3-6.

²⁵ See Id. at lns. 7-10.

²⁶ See Id. at lns. 12-13.

²⁷ See Id at lns. 16-18.

premium to a net discount, especially for large non-residential customers.”²⁸ In PG&E’s Petition, PG&E noted that demand surged from 35 MW in December 2020 to approximately 235 MW in April 2021 – a figure far above the 52.75 MW of dedicated resource supply available in the program at that time.²⁹ It now appears that demand has eroded as PG&E’s December 27, 2022 monthly progress report estimates that participation has declined to 199.6 MW.³⁰ Thus, the basic compensation structure of the GTSR program results in inefficiency by clinging to a volatile rate structure, which causes booms and busts in program participation that must be managed, rather than compensating resources based on their value.

Finally, the IOUs’ GTSR programs are essentially fully subscribed with only PG&E’s program having any remaining capacity.³¹ This means that the program simply cannot serve other distinct customer groups such as renters or residents of disadvantaged communities at any reasonable scale. Witness Smithwood noted that even if the entire 600 MW of GTSR program capacity was still available, that capacity would at best serve 7.18% of residents of disadvantaged communities if the eligibility was limited to these customers and only 3.98% of renters if eligibility was limited to rental households.³² Even if one viewed these percentages of participation as laudatory, it would come at the exclusion of unbundled customers of any sort and small and large commercial and industrial customers. Under PG&E’s current program, excluding this latter group would result in customers with a total capacity of 184.8 MW being excluded from the program.³³ Excluding distinct customer groups is directly contrary to the Legislature’s clearly stated intent that the program serve *all* Californians. Based on this analysis it

²⁸ See Id at p. 22, ln. 18 – p. 23, ln. 4.

²⁹ See Id at lns. 4-7.

³⁰ See Id at lns. 7-11.

³¹ See Id at p. 24, ln 3-7.

³² See Id at lns. 7-15.

³³ See Id at p. 23, ln. 10.

is reasonable to conclude that the GTSR program is incapable of efficiently serving distinct customer groups.

ii. The GTSR Program Fails to Promote Robust Participation by Low-Income Customers.

As previously discussed, AB 2316 has defined low-income customer in a manner that is much broader than what is traditionally considered a low-income customer in discussions before the Commission. It includes not only individual energy consumers enrolled in various programs that support Californians facing energy/food burdens, but also entire communities located in top-25% most disadvantaged communities, defined as a low-income community under Health and Safety Code Sec. 39713, or belonging to a Native American tribe as defined in Public Resources Code Sec. 21073.³⁴ The breadth of the definition of low-income customer makes it hard to determine the number of energy customers who would meet the definition, but it is reasonable to conclude that this body of energy consumers represents multiple millions of Californians as there are over 3 million customers eligible for CARE and over 3 million households residing in top 25% disadvantaged communities alone.³⁵ Witness Smithwood testified that just serving these two customer groups defined as low-income customers by AB 2316 would require 1.2 GW for each group - which is collectively over four times the statutory cap for the GTSR program of 600 MW (virtually none of which is still available).

Most importantly, because the GTSR program is a premium rate program, it is irrational to think low-income customers will participate in the program at any significant level – much less robustly.³⁶ Data bears this out as PG&E has a mere 1,082 CARE customers enrolled in their Green Tariff program, SCE had a paltry 269 CARE customers enrolled in their Green Tariff program, and SDG&E had 684

³⁴ See Id. at p. 25, lns. 11-17.

³⁵ See Id at p. 25, ln. 17 - p. 26, ln. 10.

³⁶ See Id at p. 26, lns. 14-20.

CARE customers enrolled in their Green Tariff program prior to its suspension.³⁷ When compared to the millions of CARE customers, these numbers demonstrate conclusively that the GTSR program is incapable of robustly promoting participation by low-income customers.

iii. The Limitation on GTSR Program Participation to Bundled Customers has Resulted in Fatal Program Instability Already.

The program instability caused by departed load is in sharp focus in this docket as evidenced by the cumulative testimony of SDG&E wherein SDG&E described how their GTSR program eroded over time with SDG&E concluding that programs for bundled customers “are, by and large, no longer viable in its territory because so few bundled customers remain after choosing customer choice aggregation (“CCAs”).”³⁸ As SDG&E explained, the shrinking pool of eligible customers due to the departure of customers to CCAs has resulted in fixed program costs being spread among an ever smaller pool of customers which has resulted in eye-popping GTSR rate increases from \$0.001 per kWh to over \$0.24 per kWh.³⁹ The Commission authorized suspension of SDG&E’s GTSR program on August 22, 2022,⁴⁰ and SDG&E has argued in testimony that it is simply not feasible for SDG&E to continue to offer the GTSR due to mass customer attrition.⁴¹ The death spiral experienced in SDG&E’s GTSR program provides additional evidence to support the conclusion that the GTSR program does not represent a viable pathway to meeting the goals of AB 2316.⁴²

³⁷ See Id at p. 27, lns. 4-7.

³⁸ See Exhibit SDGE-01 (Various) at p. 3, lns. 2-6.

³⁹ See SDG&E GAP Application, A.22-05-023, filed May 31, 2022, at pg. 11.

⁴⁰ See Administrative Law Judge Ruling Granting Request for Green Tariff Suspension, A.22-05-022, filed August 22, 2022.

⁴¹ See Exhibit SDGE-02 (Bierman) at p. 12, ln. 10 – p. 14, ln. 12.

⁴² See Exhibit SEIA-01 (McLaughlin) at p. 20, ln. 8-9; See Exhibit SDGE-04 (Bierman) at p. 9, lns. 1-5 (acknowledging that SEIA’s characterization comports with SDG&E’s experience).

b. The Disadvantaged Communities – Green Tariff (“DAC-GT”) is Incapable of Meeting the Goals Articulated in Sec. 769.3(b)(1)(A).

i. The DAC-GT Program Fails to Efficiently Serve Distinct Customer Groups.

The DAC-GT program does not efficiently serve distinct customer groups because the program fundamentally relies on direct subsidies to operate which results in an economically inefficient program.⁴³ Moreover, as currently structured, the power purchase agreements used to obtain program resources do not incentivize program resources to export power to the grid when that energy is needed most.⁴⁴ This feature of the program also results in economic inefficiency.⁴⁵

ii. The DAC-GT Program does not Promote Robust Participation by Low-Income Customers.

The DAC-GT program cannot promote robust participation by low-income customers because the program is limited to serving only a subset of low-income customers and the scale of the program is too small. As currently structured, the DAC-GT program only allows participation by CARE/FERA enrolled customers residing in top 25% disadvantaged communities.⁴⁶ However, as discussed previously in this brief, CARE/FERA customers are only one subset of the definition for low-income customer as defined in Sec. 769.3(a)(3) which means the program as currently structured cannot serve the range of low-income customers identified in statute. No party has recommended that the program expand eligibility beyond CARE/FERA customers. Moreover, the pool of low-income customers as defined in Sec. 769.3(a)(3) is multiple millions of Californians and the DAC-GT program could at best serve approximately 39,500 customers.⁴⁷ Thus, the program even when fully subscribed would have a

⁴³ See Exhibit CCSA-001 (Smithwood) at p. 30, lns. 20-23.

⁴⁴ See Id at p. 30, ln. 23 - p. 31, ln. 2.

⁴⁵ See Id at p. 31, ln. 2.

⁴⁶ See Id at p. 30, lns. 8-10.

⁴⁷ See Id at p. 31, lns. 6-8.

level of participation that is far short of what one could reasonably consider as “robust” participation.⁴⁸ These features of the program clearly demonstrate that the program cannot promote robust participation by low-income customers.

c. The Community Solar Green Tariff (“CSGT”) Program is Incapable of Meeting the Goals Articulated in Sec. 769.3(b)(1)(A).

i. The CSGT Program Does Not Efficiently Serve Distinct Customer Groups.

Like the DAC-GT program, the CSGT program relies on subsidies to support the program.⁴⁹ Reliance on subsidies means the program has limited ability to scale beyond its current program cap of 40 MW.⁵⁰ The program also contains geographic eligibility requirements which will result in many energy consumers – both low-income and non-low-income – being denied the opportunity to benefit from the program.⁵¹ Both of these features of the CSGT program result in an inefficient program based on Witness Smithwood’s methods of analyzing GAP programs discussed previously.

ii. The CSGT Program Does Not Promote Robust Participation by Low-Income Customers.

As noted previously, the definition of low-income customer in AB 2316 encompasses multiple millions of energy consumers in California including entire communities in certain geographic regions or with a particular socioeconomic status. At best, the CSGT program can serve approximately 10,000 customers.⁵² This number of participants is vanishingly small compared to the millions of low-income customers AB 2316 envisions a compliant program serving. The small scale of the CSGT program

⁴⁸ See Id at lns. 8-9.

⁴⁹ See Id at p. 32, lns. 17-18.

⁵⁰ See Id.

⁵¹ See Id at p. 31, ln. 22 – p. 32, ln. 1.

⁵² See Id at p. 32, lns. 14-15.

simply does not meet the goals of AB 2316.⁵³

d. Collectively, Existing GAPs Cannot Meet the Goals of AB 2316 Based on the Record Established in this Docket.

The record established in this docket clearly demonstrates that existing GAP programs cannot efficiently serve distinct customer groups and cannot promote robust participation by low-income customers on their own or as a portfolio. The GTSR program is statutorily capped at a size that inherently cannot allow it to robustly serve low-income customers even if all its program capacity was still available. It cannot efficiently serve distinct customer groups because only bundled customers are eligible. Its volatile compensation structure results in significant swings in program participation as the program moves from a premium to a cost saving program and back. The GTSR program is also economically inefficient because it is not founded on the avoided costs GTSR facilities provide to the grid. Similarly, while the DAC-GT and CSGT programs have laudable features, neither is of a scale sufficient to meet the needs of the body of low-income customers as defined in AB 2316 and their reliance on direct subsidies to support the program means they are not scalable to a size needed to robustly serve low-income customers.

Notably, no party in the docket has requested any of the existing programs be modified in a manner that would allow robust participation by the breadth of low-income customers identified in statute. The only proposal to expand the size of existing GAP programs is the Joint CCAs request that their DAC-GT program capacity be expanded to serve 50% of currently eligible customers.⁵⁴ While this expansion might benefit currently eligible customers, the body of low-income customers AB 2316 seeks to have programs serve spans far beyond CARE/FERA customers who reside in top 25% disadvantaged

⁵³ See Id at Ins. 15-17.

⁵⁴ See Exhibit JCCA-01 (Various) at p. 34, Ins. 7-8.

communities, and this broader body of low-income customers would continue to be shut out of the benefits of distributed generation which is directly contrary to the statutory goals and spirit of AB 2316. The program is also not economically efficient and therefore would not be more broadly in the interest of ratepayers.

e. The Commission Should Close Out Existing Programs in a Manner That Leaves Developers and Participating Customers Whole.

The Scoping Memo, issued December 2, 2022, provided guidance to parties on factors to address in making proposals for the modification or closure of existing programs and for proposals for new programs. This guidance included a principle that such proposals “ensur[e] developers and participating customers are made whole.”⁵⁵ CCSA appreciates this guidance and believes that for California to remain the focus of substantial clean energy investment, honoring existing commitments while transitioning to new programs is needed to affirm that the state is a place to invest in clean energy programs. The thoughtful dissolution of programs is therefore critical.

CCSA Witness Smithwood testified that while the existing DAC and GTSR programs were not able to meet the requirements of AB 2316, there are awarded projects in both programs and planned DAC solicitations by numerous LSEs and those commercial commitments should be honored.⁵⁶ Specifically, it is important that outstanding DAC solicitations be allowed to utilize the modest amount of available capacity in the program⁵⁷ and that the GTSR-ECR program continue for the small number of awarded projects in SCE service territory to allow them to serve new subscribers as those projects will be financially inviable if they are unable to do so.⁵⁸

⁵⁵ Assigned Commissioner’s Scoping Memo and Ruling, filed December 2, 2022, A.22-05-022 et al, Appendix A, pg. 2

⁵⁶ See Exhibit CCSA-001 at p. 36, ln. 20 to p. 38, ln. 2.

⁵⁷ See Id.

⁵⁸ See Exhibit CCSA-004, p. 6, ln. 5 to p. 7, ln. 14.

V. TO MEET THE REQUIREMENTS AND SPIRIT OF AB 2316 A NEW GAP IS NECESSARY

The cumulative record of this docket clearly establishes the fact that a fresh start is needed⁵⁹ to meet the letter and spirit of AB 2316 and serve customers fully and efficiently, unlike the portfolio of existing programs. The vast majority of parties in the docket agree on this point. For example, CEJA-VS-NRDC observed that “the NVBT is likely the best opportunity California has to meet the requirements of AB 2316 and create a foundation for a viable and equitable community solar-and-storage program,” will support financeable community solar projects, while “enabling meaningful benefits for low-income subscribers.”⁶⁰ CBIA testified to the desperate need by California’s building industry for a robust community solar compliance pathway and how the NVBT “represents a forward-thinking, durable, and viable foundation for community solar...”⁶¹ CalAdvocates concluded that the “Commission should use CCSA’s NVBT proposal as the basis for the successor GAP to satisfy the requirements of AB 2316.”⁶² TURN supported the core elements of the NVBT while offering a number of proposed modifications and additional program elements over the course of its testimony.⁶³ SEIA generally supported the “comprehensive proposal for a new community solar program presented in the testimony of [CCSA’s witnesses].”⁶⁴ Cypress Creek testified that the “Commission should adopt the Net Value Billing Tariff proposal and program design put forth by CCSA” arguing that the proposal would meet the three goals identified in Sec. 79.69.3(b)(1)(A) by balancing the values and benefits of solar plus storage assets...with the administrative and commercial realities of effective program and

⁵⁹ Consistent with CCSA’s recommendation that the Green Tariff Shared Renewables – Enhanced Community Renewables program, CSGT, and DAC-GT programs be allowed to run their course.

⁶⁰ See Exhibit CEJA-02 (Various) at p. 1, lns. 24-26 and p. 2, lns. 5-6.

⁶¹ See Exhibit CBIA-01 (Raymer) at p. 5, lns. 20-21.

⁶² See Exhibit CA-03 (Ahlstedt) at p. 1-33, ln 19-20.

⁶³ See Exhibit TURN-1 (Dowdell/Anning) at p. 17, lns. 13-14.

⁶⁴ See Exhibit SEIA-02 (Beach) at p. 3, ln. 25 - p. 4, ln. 1.

tariff design, all while minimizing costs to non-participating ratepayers.”⁶⁵ Solar Landscape⁶⁶ and Clean Coalition also support the NVBT with Clean Coalition going as far as to abandon its proposal in favor of the NVBT.⁶⁷

a. Description of the Net Value Billing Tariff

CCSA has worked diligently with a coalition of stakeholders to present a well-designed proposal based on demonstrated best practices and with sufficient detail to be implemented quickly so that California can benefit from state and federal incentives made available to community solar resources. CCSA’s testimony addresses all salient features necessary for the creation of a NVBT tariff for each of the investor-owned utilities and any CCA or Energy Service Provider (“ESP”) who decides to participate in the program. CCSA’s testimony addresses the specific aspects and reasonableness of (1) the bill credit compensation structure – i.e. the Export Credit Rate;⁶⁸ (2) the basic terms and conditions of eligibility, duration of service, true-up period for crediting, the netting interval, and form of subscriptions;⁶⁹ (3) technologies that qualify for the tariff including the requirement for a minimum of four hours of energy storage and additionality;⁷⁰ (4) treatment of renewable energy credits generated by eligible facilities;⁷¹ (5) consumer protection measures including registration of facility owners and subscription coordinators with the Commission, consumer disclosure forms, prohibition on the use of credit scores and termination fees for low-income enrollees, annual reporting requirements, potential

⁶⁵ See Exhibit Cypress Creek 01 (Kozey) at p. 44, ln. 6-18.

⁶⁶ See Exhibit SL-01 (Churchill) at p. 2, ln 17-19.

⁶⁷ See Exhibit CLC (Schwartz) at p. 2, lns. 3-13.

⁶⁸ See Exhibit CCSA-001 (Smithwood) at p. 45, ln. 18 – p. 46, ln. 11 (providing a general description of the Export Credit Rate); Exhibit CCSA-002 (Fulmer) at p 1 – p. 24, ln. 2 (presenting original structure of ECR); Exhibit CCSA-008 (Fulmer) at p. 2, ln. 1 – p. 6, ln. 2 (presenting updated ECR that allows peak period to shift within certain parameters as discussed).

⁶⁹ See Exhibit CCSA-001 (Smithwood) at p. 46, ln. 12 – p. 50, ln. 5.

⁷⁰ See Id at p. 50, ln. 6 – p. 52, ln. 20.

⁷¹ See Id at p. 53, lns. 1-10.

additional consumer education, qualification methods for low-income subscribers;⁷² (6) enrollment of a facility in the NVBT program and use of Rule 21 for interconnection;⁷³ (7) billing and crediting including allocation of credits to program participants and developers including “Simplified Billing”.⁷⁴ CCSA’s testimony also addresses other foundational aspects of the NVBT including (1) the need for a 25-year lock on ACC values in order to support financing of solar-plus-storage projects;⁷⁵ (2) participation of CCAs/ESPs in the program and what would happen if these LSE’s decide to not participate in the program;⁷⁶ (3) the ability of the NVBT to support near-term reliability needs and ability of the grid to support deployment;⁷⁷ (4) how the benefits of solar-plus-storage resources can be captured by participating load serving entities to ensure they receive the benefits they are paying for via the Export Credit Rate.⁷⁸

CCSA’s testimony has also proposed specific modifications to the NVBT as it was originally

⁷² See Id at p. 53, lns. 11 – p. 69, lns. 9.

⁷³ See Id at p. 72, ln. 14 – p. 73, ln. 9; see, also, Exhibit CCSA-004 at p. 59, lns. 2-10.

⁷⁴ See Id at p. 73, ln. 10 – p. 78, ln. 17.

⁷⁵ See, generally, Exhibit CCSA-003 (Kennerly) (discussing how financiers assess risk when funding a project or portfolio of projects and how this relates to the need for a 20 to 25 year lock on specific aspects of the ACC rate due to lack of a means to forecast ACC rates past any lock period); see, also, Exhibit CCSA-007 (Smithwood) at p. 35, lns. 1- 23.

⁷⁶ See Exhibit CCSA-001 (Smithwood) at p. 105, ln. 21 – p. 109, ln. 17; Exhibit CCSA-007 (Smithwood) at p. 38, ln. 5 – p. 39, ln. 7 (amending understanding of CCA participation in the NVBT based upon rebuttal testimony submitted by TURN regarding Generator Accounts and Benefiting Accounts).

⁷⁷ See Exhibit CCSA-007 (Smithwood) at p. 71, ln. 5 - p. 73, ln. 9.

⁷⁸ See Exhibit CCSA-001 (Smithwood) at p. 104, ln. 18 – p. 105, ln. 17 (discussing how NVBT resources fit within ongoing Integrated Resource Planning processes and unlocking resource adequacy value); Exhibit CCSA-007 (Smithwood) at p. 17, ln. 8 – p. 20, ln. 17 (discussing how NVBT resources can have the same relationship to the CAISO tariff as other distributed energy resources, discussing how existing CAISO mechanisms for assessing demand reductions from load modifying resources can be utilized for NVBT resources, and discussing how this process relates to transmission benefits); Exhibit CCSA-007 (Smithwood) at p. 23, ln. 14 – p. 27, ln. 6 (discussing how resource adequacy value can be unlocked, discussing why inclusion of avoided transmission and distribution is reasonable, and correcting misunderstanding of how environmental value is credited in the NVBT); see, also, Exhibit SEIA-04 (Beach) at p. 9, ln. 11 – p. 10, ln. 22 (discussing how resource adequacy value can be unlocked in the near term by authorizing load serving entities to reflect NVBT resources in their resource adequacy load forecasts and once data and experience is gathered, the resources can be integrated into the new resource adequacy process authorized in D.23-04-010).

proposed to address concerns and good ideas raised by stakeholders. In response to concerns raised by TURN that the Commission set aside additional capacity for non-low-income residential customers, Witness Smithwood noted a per project capacity reservation of 51% was sufficient to ensure that over half of every system's capacity would serve residential customers, but did not object to TURN's proposal that the Commission track what classes of customers are participating in the program and at what level as part of annual reporting.⁷⁹ In response to TURN's view that it would be preferable to require all Facility Owners utilize the shared savings model, Witness Smithwood noted that CCSA would not oppose this requirement if the Commission chose to embrace it.⁸⁰ Witness Smithwood also testified that it is reasonable to have a standard consumer guide and a "marketplace", where subscribers can see what projects are available and compare subscriptions, and offered examples of other states guides and marketplaces to facilitate that conversation during ongoing implementation.⁸¹ Witness Smithwood also supported the idea of requiring Facility Owners and Subscription Coordinators to demonstrate they have relationships with community-based organizations as a condition of registration with the Commission and explained how that could be done via a Marketing Implementation Plan.⁸² In response to TURN's concern that the value of NVBT facilities would erode over time as grid needs change, CCSA explained how existing features of the NVBT can address that concern while also agreeing that the peak period within the ECR compensation structure could shift based on future needs if certain other aspects of the ECR are held the same.⁸³ CCSA also responded to criticism that the NVBT does not offer a minimum level of bill savings by modifying the proposal - conditional on accepting

⁷⁹ See Exhibit CCSA-004 (Smithwood) at p. 22, lns. 1 – 22.

⁸⁰ See Id at p. 28, ln. 13 – p. 29, ln. 9.

⁸¹ See Id at p. 39, ln. 1 - p. 40, ln. 10.

⁸² See Id at p. 48, ln. 1 – p. 51, ln. 20.

⁸³ See Exhibit CCSA-007 (Smithwood) at p. 33, ln. 3 to p. 34, ln. 9; Exhibit CCSA-008 (Fulmer) at p. 2, ln. 1 – p. 6, ln. 2 (presenting updated ECR that allows peak period to shift within certain parameters as discussed).

CCSA's proposed 25-year term lock - to include a minimum 20% bill savings for low income subscribers and a minimum 25% bill savings for low income subscribers of community solar plus storage facilities that receive a federal Investment Tax Credit Low-Income Economic Benefit Adder and how this change is supported by recent guidance released in April concerning the U.S. Environmental Protection Agency's \$7 billion funding opportunity.⁸⁴ When referring to bill savings, CCSA means guaranteed savings as a function of a subscriber's bill credit.⁸⁵ CCSA also clarified that residential and small commercial customers (with less than 25kW demand) cannot be directly or indirectly charged any fee beyond a percentage of the bill credit that subscriber receives.⁸⁶ Other proposals to modify the NVBT offered by various parties are not supported by CCSA for the reasons extensively discussed in CCSA's testimony and will not be repeated in this brief.

b. The NVBT Meets the Objectives Identified in Section 1 of this Brief and Directly Addresses Shortcomings in Current GAPS.

In Section 1 of this Brief, CCSA discussed its reasoning for why the overarching objective of any decision made by the Commission in this docket should be to effectuate the intent of the Legislature as expressed in AB 2316 as the foundational exercise before stakeholders. In Section 1 of AB 2316, the Legislature laid out three broad intentions: (1) "create a community renewable energy program so that all Californians, especially those unable to host a rooftop system, realize the benefits of distributed generation through a cost-effective program that provides benefits to all ratepayers;" (2) "facilitate community renewable energy options that can help the state cost effectively meet the energy efficiency mandates in the California Building Standards Code;" and (3) "support robust low-income customer

⁸⁴ See Exhibit CCSA-007 (Smithwood) at p. 52, ln. 9 – p. 55, ln. 14.

⁸⁵ For example, if a customer has a \$100 credit from their subscription in a NVBT facility, 20% savings = \$20 (\$20 of the \$100 bill credit).

⁸⁶ See Id at p. 47, ln. 19 - p. 48, ln. 2.

participation in the community renewable energy program.” Previously in this brief, CCSA proposed six questions for the Commission to weigh any Commission-adopted GAP outcome against to see if the program proposal answers those six questions affirmatively. Accordingly, CCSA will weight its proposal against those six questions:⁸⁷

(1) The NVBT allows for broad participation by all Californians (especially those unable to host a rooftop solar system).

The NVBT will allow California’s diverse body of energy consumers to participate in the benefits of distributed energy resources through a program structure that shares compensation for exported energy via bill credits between developers of facilities and subscribers. Under the NVBT, subscribers can be from any customer class and can be bundled or unbundled customers.⁸⁸ The only restriction on a subscriber participation is that subscribers must be in the same IOU service territory as the Generator Account where the Facility is located.⁸⁹ This flexible framework is in contrast to currently approved programs which are (1) limited to certain customers, such as CARE/FERA customers within the DAC-GT, (2) contain geographic limitations such as the CSGT’s requirement that a customer reside in top 25% disadvantaged communities or eligible San Joaquin Valley communities, or (3) restrict program entry to bundled customers such as the GTSR program. Notably, the record demonstrates that geographic restrictions in current programs have harmed program success and

⁸⁷ Those six questions are: (1) Does the program allow for broad participation by all Californians (especially those unable to host a rooftop solar system)?; (2) Does the program specifically support robust participation by low-income customers as that group is defined in Sec. 769.3(a)(3)?; (3) Is the program cost effective?; (4) Does the program provide benefits to all ratepayers?; (5) Does the program help facilitate compliance with Title 24 mandates?; (6) Can the program effectively take advantage of state and federal incentives including the Inflation Reduction Act?

⁸⁸ See Exhibit CCSA-001 (Smithwood) at p. 46, Ins. 16-20.

⁸⁹ See Id.

stakeholders are now advocating that those geographic limitations be relaxed.⁹⁰ Restrictions on program eligibility to CARE/FERA program enrollees or residents of top 25% disadvantaged communities, while laudable as a means to focus these programs' bill discounts on the most vulnerable, have resulted in millions of other energy consumers who do not meet current eligibility requirements including non-CARE/FERA enrolled low-income households, renters, business, churches, schools, and government agencies unable to access the benefits of distributed energy resources. This inequity is precisely the situation AB 2136 seeks to fix. As discussed previously, currently approved programs are unable to serve this broader body of ratepayers due to statutory and other caps on program size, limitations on which customers can participate, and reliance on direct subsidies to fund the program.

(2) The NVBT specifically supports robust participation by low-income customers as that group is defined in Sec. 769.3(a)(3).

The NVBT supports robust participation by low-income customers by reserving 51% of each facility's capacity for customers defined as low-income within AB 2316. The NVBT is the only proposal offered in the docket that can serve this broader body of low-income customers as no party has recommended relaxing eligibility requirements for existing programs to cover the breadth of energy consumers identified as low-income in AB 2316. Moreover, both of the new program proposals offered in the docket by PG&E and SCE would specifically exclude low-income customers in the case of SCE's program proposal⁹¹ and both programs would be unattractive to low-income customers because they are

⁹⁰ See, e.g., Exhibit SCE-01 (Molnar) at p. 4, Ins. 17-22 (proposing relaxation of location requirements) and p. 9, Ins. 12-13 (noting the biggest challenge to reaching program capacity is "the lack of viable projects that qualify based on their location"); Exhibit JCCA-01 (Various) at p. 36, ln. 14 - p. 36, ln. 6 (supporting SCE's recommendation and discussing Independent Evaluator Report concerning challenges with project siting).

⁹¹ See Exhibit SCE (Various) at p. 9, ln. 11 - p. 10, ln. 17 and p. 11, Table III-1 (discussing how the DAC-GT and CSGT programs would remain open for low-income customers, how the GTSR program would residential/small commercial customers to the Green Share program and proposing the Green Share program for large commercial customers initially).

premium rate programs.⁹² Adoption of either of these programs would violate both the spirit of AB 2316 to robustly include low-income customers within any community renewable energy program and would also violate Sec. 769.3(c)(5)'s requirement that bill *credits* (not a premium) be based on avoided costs.

(3) The NVBT is cost effective.

The record clearly demonstrates that the NVBT is cost effective. Witness Fulmer provided cost effectiveness analysis that uses Commission-approved methodologies to demonstrate the NVBT garners Total Resource Cost ("TRC") Test scores ranging from 1.05 to 1.29 depending on ACC lock term and facility eligibility for standard or enhanced Investment Tax Credit support.⁹³ The NVBT also garnered very high scores on the Ratepayer Impact Measure ("RIM") test with scores between 0.81 and 0.92 depending on ACC lock term. CalAdvocates agreed that the program was cost effective, though the costs of billing should be included in a final determination of the program's cost effectiveness.⁹⁴ In surrebuttal testimony, CCSA demonstrated that even with the inclusion of IOUs' highest cost preliminary estimates for billing upgrades and program administration the program was still cost-effective. However, to be clear, Witness Smithwood has proposed that developers pay registration and billing costs similar to the process utilized in Virtual Net Metering.⁹⁵

These cost effectiveness scores provide direct record evidence that the NVBT proposal is cost-effective.⁹⁶ In contrast to this record evidence on the cost-effectiveness of the NVBT proposal, no party presented testimony concerning the cost effectiveness results for their program proposals. Furthermore,

⁹² See, e.g. Exhibit SEIA-03 (McLaughlin) at p. 24, lns. 10-14; Exhibit CCSA-004 (Smithwood) at p. 12, lns. 4-10.

⁹³ See Exhibit CCSA-002 (Fulmer) at p. 26 (Table 5 providing TRC results).

⁹⁴ See Exhibit CA-03 (Ahlstedt) at p. 1-27, ln. 15 - 1-28, ln. 2.

⁹⁵ See Exhibit CCSA-001 (Smithwood) at p. 122, lns. 1-9.

⁹⁶ See Exhibit CCSA-008 (Fulmer) at p. 7, Table 3.

utility critiques of the cost effectiveness and potential cost shifts that could occur under the NVBT rely on fundamental misunderstandings of the nature of NVBT resources⁹⁷ while also failing to use any Commission approved cost effectiveness methodologies to support their argument.⁹⁸ Thus, it is reasonable for the Commission to reject this jaundiced analysis out of hand.

(4) The NVBT provides benefits to all ratepayers.⁹⁹

The NVBT would provide benefits to participating and non-participating ratepayers for a variety of reasons. The NVBT is first and foremost beneficial to ratepayers because it compensates resources for what the generation is worth to the grid with projects required to evolve with the grid as the grid's needs change.¹⁰⁰ The program goes beyond that core value to all ratepayers by requiring that the value created be shared among customers, with a particular focus on low-income customers. The NVBT is the only program proposal that aligns resources with grid needs and, therefore, provides reliability benefits to all ratepayers.¹⁰¹ With billions of dollars in federal and state funding currently available, the Net Value Billing Tariff also presents the opportunity to enhance benefits to participants and non-participants.

By being a program open to all customers, the NVBT efficiently and cost effectively allows every customer an opportunity to participate without restricting eligibility to particular classes of customers or geographic locations. This program efficiency is a benefit to all ratepayers as it gives all of

⁹⁷ See Exhibit CCSA-007 (Smithwood) at p. 10, ln. 7 – p. 12, ln. 7 (discussing why utilities' arguments that NVBT resources are not distributed energy resources and are not behind-the-meter resources are flawed).

⁹⁸ SCE and PG&E's cost shift analysis relies on comparisons of distributed energy resources to the cost of wholesale resources which is not relevant to the discussion at hand in this docket as this docket is not focused on procuring wholesale resources but, instead, the development of a retail customer community solar program.

⁹⁹ This discussion is also offered to comply with Sec. D.e.ii of the required briefing outline.

¹⁰⁰ See Exhibit CCSA-001 (Smithwood) at p. 80, lns. 14-17; Exhibit CCSA-007 (Smithwood) at p. 33, ln. 3 - p. 34, ln. 9; Exhibit CCSA-008 (Fulmer) at p. 2, ln. 1 – p. 6, ln. 2 (presenting updated ECR that allows peak period to shift within certain parameters as discussed).

¹⁰¹ See Exhibit CCSA-001 (Smithwood) at p. 34, Table 2 (assessing the NVBT and existing programs' alignment with grid needs); see, also, Exhibit CCSA-001 (Smithwood) at p. 79, lns. 7-8 and lns. 15-16.

them an opportunity to participate in a program they are supporting via rates. As a matter of equity, all Californian's deserve this opportunity to participate.¹⁰² The NVBT will also facilitate compliance with Title 24 mandates which will support state goals to reduce greenhouse gas emissions while facilitating the construction of affordable housing.¹⁰³

The NVBT also benefits all ratepayers by operationalizing the CEC's Title 24 requirements which the CEC has found would support numerous state policy directives. In adopting the 2019 Title 24 Building Energy Efficiency Standards, which authorized the use of community solar as a compliance pathway for new low-rise residential construction, the CEC found that the Standards would "increase the efficiency of and conserve the use of energy and water" and were cost-effective.¹⁰⁴ The CEC also found that the standards were *required* to meet the public interest because they directly address numerous state policy directives including the 2003 Energy Action Plan, the Climate Action Initiative (Executive Order S-3-05)¹⁰⁵, the Global Warming Solutions Act of 2006 (AB 32), key recommendations of the Climate Change Proposed Scoping Plan¹⁰⁶, the Integrated Energy Policy Report, the California Long Term Energy Efficiency Strategic Plan¹⁰⁷, the Clean Energy Jobs Plan, Executive Order B-18-12¹⁰⁸ and its associated Green Building Action Plan¹⁰⁹, and the Clean Energy and Pollution Reduction Act of 2016

¹⁰² See CBIA-01 (Raymer) at p. 8, ln 3-4.

¹⁰³ See Exhibit CBIA-01 (Raymer) at p. 3, lns. 1-12 (discussing the impact not having a community solar compliance pathway) p. 5, lns. 5-16 (discussing the benefits the NVBT can bring to the building industry).

¹⁰⁴ See Resolution Adopting Negative Declaration and Proposed Regulations, California Energy Commission Docket 17-BSTD-02, filed May 18, 2018, at pg. 5.

¹⁰⁵ Available at: <https://www.californiaenvironmentallawblog.com/wp-content/uploads/sites/449/2013/01/Exec.-Order-S-3-05-Jun.-2005.pdf>.

¹⁰⁶ Available at: <https://ww2.arb.ca.gov/sites/default/files/classic/cc/scopingplan/document/psp.pdf>.

¹⁰⁷ The California Long Term Energy Efficiency Strategic Plan was adopted by the Commission in D.08-09-040. The 2008 Plan is available at <https://www.cpuc.ca.gov/-/media/cpuc-website/files/legacyfiles/e/5305-eestrategicplan.pdf>.

¹⁰⁸ Available at: <https://www.green.ca.gov/Buildings/resources/executiveOrder/>.

¹⁰⁹ Available at: https://www.ca.gov/archive/gov39/wp-content/uploads/2017/09/Green_Building_Action_Plan_B.18.12.pdf.

(SB 350).¹¹⁰ It is notable that many of the highlighted policies were joint actions between this Commission, the Air Resources Board and the Energy Commission as part of their coordinated efforts to address climate change. Such coordination is required by various statutes and executive orders noted above. In adopting the 2022 Energy Efficiency Standards, which would expand the solar mandate to include not only new low-rise residential construction (as required under the 2019 Building Code), but also new high-rise multifamily buildings, nonresidential (grocery, retail, office, etc.) buildings and hotels and motels, the CEC found that the proposed regulations would “reduce wasteful, uneconomic, inefficient, and unnecessary consumption of energy” which serves the public interest and will make a major contribution in meeting the state’s goals for reductions in greenhouse gas emissions from buildings.¹¹¹ The Energy Commission’s findings regarding how Title 24 standards combat climate change provides additional foundation supporting a finding that the NVBT benefits all ratepayers by supporting numerous state policy directives related to renewable energy and decarbonization.

(5) The NVBT will help facilitate compliance with Title 24 mandates.¹¹²

Witness Smithwood presented extensive testimony on how the NVBT can serve as a foundation for entities to build upon in developing offerings that comply with Title 24 mandates.¹¹³ Witness Smithwood’s testimony walks through the process the California Energy Commission (“CEC”) uses to evaluate community solar offerings put forward to meet the Section 10-115 of the 2022 Building Energy Efficiency Standards and discusses how the NVBT supports each of the fourteen criteria contained in the section. As Witness Smithwood explained, an applicant will bring a proposal to the CEC and that

¹¹⁰ See *Id.* at pgs. 10-13.

¹¹¹ See Resolution Adopting Negative Declaration and Proposed Regulations, California Energy Commission Docket 21-BSTD-01, filed August 18, 2021, at pgs. 4, 6-7.

¹¹² This discussion is also offered to comply with Sec. D.e.ii of the required briefing outline.

¹¹³ See Exhibit CCSA-001 (Smithwood) at p. 81, ln. 11 – p. 89, ln. 14.

applicant can be a homebuilder, Facility Owner, Subscription Coordinator, or another entity.¹¹⁴ It is this entity that will have the obligation to demonstrate to the CEC that their proposal to comply with Section 10-115 using the NVBT as a foundation will meet each of the fourteen criteria.¹¹⁵ Utility arguments that the NVBT cannot meet the needs of Title 24 are simply misplaced as they fundamentally misunderstand the basic fact that the NVBT is a *foundation* upon which entities can build an offering for builders - an offering that the CEC will assess for Title 24 compliance.¹¹⁶ Succinctly put, homebuilders ultimately have the obligation of ensuring the buildings they build are compliant with the building code whether through traditional compliance options or via acting as, or relying on, Community Solar Administrators operating projects and managing compliance on their behalf.¹¹⁷ Notably, CBIA - which represents over 3100 companies involved in residential and light commercial construction - has embraced the NVBT as a pathway to Title 24 compliance.¹¹⁸ Contrary to the utilities' claims, the record more than adequately demonstrates that the NVBT can support a community solar compliance pathway for Title 24.

(6) The NVBT can take maximum advantage of state and federal incentives including the Inflation Reduction Act.¹¹⁹

Section 769(c)(6) states that the “program established must “prioritize the maximum use of state and federal incentives and accelerate implementation of the program to ensure that time or quantity-limited federal incentives can be obtained for the benefit of subscribers. As part of this prioritization, the commission shall ensure that the community renewable energy program is eligible for an enhanced federal investment tax credit available as a qualified Low Income Economic Benefit project pursuant to

¹¹⁴ See Exhibit CCSA-001 (Smitwood) at p. 82, lns. 11-18.

¹¹⁵ See Id.

¹¹⁶ See Exhibit CCSA-007 (Smithwood) at p. 12, ln. 8 – p. 13, ln. 11.

¹¹⁷ See Id at p. 13, lns. 7-10.

¹¹⁸ See Id. at p. 5, lns. 17-25.

¹¹⁹ This discussion is also offered to comply with Sec. D.e.vi of the required briefing outline.

subsection (e) of Section 48 of Title 26 of the United States Code.” Based upon this language, there are three requirements flowing from Section 769.3(c)(6). The first is for the Commission to move quickly to capture incentives; the commission has already begun to act on this directive by establishing a timeline and process to meet this goal in the ALJ’s December 2nd Scoping Ruling. The second requirement is to capture federal incentives *for the benefit of subscribers*. CCSA interprets the concept of “for the benefit of subscribers” as clearly intending that the incremental funds stemming from enhanced tax credits should have the effect of improving the value proposition for subscribers above and beyond what they would otherwise realize. Finally, the third requirement is that the program needs to make sure that all facilities in the program would be able to comply with federal requirements for qualifying as a low-income benefit project.

CCSA’s testimony provides extensive discussion of the status of federal efforts to develop guidance to expend funds made available by the Inflation Reduction Act and potential state funding under the CEC’s Clean Energy Reliability Investment Plan and Distributed Electricity Backup Assets (“DEBA”) program.¹²⁰ The record supports the conclusion that NVBT resources are well positioned to access funds by requiring 51% low income participation¹²¹ and providing minimum savings levels to low-income customers for facilities accessing the 30% ITC with additional minimum savings for projects that are Low Income Economic Benefit projects (accessing the 50% ITC).¹²² However, having an opportunity to garner any of this external support requires stakeholders remain on track to have a

¹²⁰ See Exhibit CCSA-001 (Smithwood) at pg. 95, ln. 1 – p. 102, ln. 21 (discussing the various types of federal support available via the Inflation Reduction Act, guidance from relevant federal agencies on securing funds, developments concerning possible state funding support for NVBT resources and CCSA’s activities to garner such funds); Exhibit CCSA-007 (Smithwood) at p. 5, ln. 7- p. 6, ln. 2 (discussing the most recent guidance from the EPA and how it relates to the need for a new program in California and advice regarding timelines in the docket to secure funds).

¹²¹ See Exhibit CCSA-001 (Smithwood) at p. 70, lns. 10-14.

¹²² See Exhibit CCSA-007 (Smithwood) at p. 54, lns. 4-15 and p. 55, lns.1-14.

decision authorizing and implementing a program in time to access funds.¹²³ Indeed, this timing was reinforced by recent guidance from the US EPA which stated that programs would need to begin expending funds within 18 months of award.¹²⁴

c. The NVBT Ensures Low-Income Customers are Served by at least 51% of Program Capacity.

Sec. 769.3(c)(2) requires any new or modified program to ensure that at least 51% of program capacity is serving low-income customers. The NVBT meets this requirement by requiring each facility to reserve 51% of its capacity for low-income customers.¹²⁵ This method is preferable to looking at the requirement from a program capacity view as it avoids burdensome administration and expensive accounting of an overall program capacity requirement by making each facility compliant.¹²⁶ Annual reporting by each facility and the Participant Allocation List each Facility Owner submits to the utility to facilitate crediting can be utilized to ensure compliance.¹²⁷

d. The NVBT Minimizes Impacts to Nonparticipating Ratepayers by Grounding Bill Credits in Avoided Costs as Required by AB 2316.

Sec. 769.3(c)(3) requires new or modified programs to minimize costs to nonparticipating customers by crediting facilities for exports based only on the avoided costs of those exports. Sec. 769.3(c)(5) requires new or modified programs to provide bill credits based on the avoided costs of the facility based on the full set of benefits of distributed energy resources. The NVBT meets both requirements by utilizing the Commission's Avoided Cost Calculator to assess the avoided costs of

¹²³ See Exhibit CCSA-007 (Smithwood) at p. 5, ln. 19 – p. 6, ln. 2 (observing that it is possible to meet the aggressive timelines identified in recent federal guidance if the docket stays on current timelines).

¹²⁴ See Id.

¹²⁵ See Exhibit CCSA-001 (Smithwood) at p. 90, lns. 1-2.

¹²⁶ See Id at lns. 3 - 12.

¹²⁷ See Id at p. 90, ln. 13 – p. 91, ln. 13.

NVBT facilities and develop an Export Credit Rate solely based upon those avoided costs.¹²⁸

As explained in CCSA’s testimony, IOU arguments that the use of the ACC to calculate avoided costs for NVBT resources is improper are based on profoundly flawed arguments. First, SCE and PG&E’s argument that NVBT resources are not distributed energy resources is meritless.¹²⁹ NVBT-eligible resources would be required to interconnect on the distribution system via Rule 21 and are, therefore, properly considered distributed energy resources.¹³⁰ The facilities will also be located close to the load they serve as they will be offsetting the load on the circuit they are interconnected with and will be behind-the-meter resources.¹³¹ The utilities’ witnesses’ reliance on irrelevant comparisons to wholesale procurement programs that cannot comply with AB 2316 is also fundamentally misplaced. As explained by Witness Smithwood, the program envisioned by AB 2316 is simply not a wholesale procurement program, but instead is a retail customer-oriented, Commission-jurisdictional program that is required to use the full avoided cost value of distributed energy resources to provide bill credits to subscribers, thus comparisons to the ReMAT program are simply not relevant.¹³² Finally, the utilities’

¹²⁸ See, generally, Exhibit CCSA-002 (Fulmer) (describing the development of the Export Credit Rate and its relationship to the ACC).

¹²⁹ See Exhibit CCSA-007 (Smithwood) at p. 10, lns. 7 – 17.

¹³⁰ See, e.g., CPUC Distributed Energy Resources Action Plan, issued April 21, 2022 at pp. 23-24 (defining Distributed Energy Resources to “include distributed renewable generation resources, energy efficiency, energy storage, electric vehicles, time variant and dynamic rates, flexible load management, and demand response technologies. Most DERs are connected to the distribution grid behind the customer’s meter (BTM), and some are connected in front of the customer’s meter.” Available at:

<https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M467/K470/467470758.PDF>; and see, also, 18 CFR Sec. 35.28(b)(10)(defining a distributed energy resource as “any resource located on the distribution system, any subsystem thereof or behind a customer meter.”); see, also, Electric Power Research Institute, The Integrated Grid: A Benefit-Cost Framework, issued February 12, 2015 at pg. xvii, (defining Distributed Energy Resources as electricity supply resources that...are “Interconnected to the electric grid, in an approved manner, at or below IEEE medium voltage (69kV) and one of three other criteria such as “generate electricity using any primary fuel source and store energy and can supply electricity to the grid from that reservoir.”), available at: <https://www.epri.com/research/products/000000003002004878>.

¹³¹ See CCSA-007 (Smithwood) at p. 10, lns. 8-17.

¹³² See Id at p. 15, ln. 4 – p. 19, ln. 3.

arguments that the only avoid cost methodology that the Commission can use to value AB 2316-compliant resources is short run federal avoided cost frameworks is similarly misplaced. As explained by Witness Smithwood, 22 states and the District of Columbia have community solar programs that in all essential respects are the same as the NVBT and have never faced a jurisdictional challenge at the Federal Energy Regulatory Commission despite some of these programs being in operation for over a decade and supporting gigawatts of deployed resources.¹³³ Their arguments also ignore the clear embrace of community solar within the Inflation Reduction Act, through such actions as providing additional incentives to Low-Income Economic Benefit Projects within 26 U.S.C. Sec. 48(e)(1)(A)(ii), and by the U.S. Department of Energy through its National Community Solar Partnership.¹³⁴ Notably, the IOUs have also already conceded that the Commission has inherent authority to adopt the NVBT in comments filed last year in R.20-08-020, the net energy metering revisit docket. In comments in that docket, the IOUs stated, “[t]he Commission certainly has the authority to consider community solar proposals under its Section 701 authority, but the Joint Utilities contend that the Commission should exercise its authority in another proceeding.”¹³⁵ They also argued that this docket is “the perfect venue” in which the Commission should exercise its authority.¹³⁶ Based on this analysis, it is reasonable for the Commission to reject arguments that the NVBT would be illegal under federal law. The Commission’s authority to authorize a community solar program is further bolstered by AB 2316’s clear embrace of the basic framework of community solar programs which provide bill credits based on avoided costs.

¹³³ See *Id.* at p. 9, lns. 9-13.

¹³⁴ See National Community Solar Partnership, U.S. Department of Energy, available at: <https://www.energy.gov/communitysolar/community-solar>.

¹³⁵ See Joint Comments of Southern California Edison Company, Pacific Gas and Electric Company and San Diego Gas & Electric Company on the Administrative Law Judge’s Ruling Setting Aside Submission of the Record to Take Comment on a Limited Basis, filed June 10, 2022, R. 20-08-020, at pg. 20.

¹³⁶ See *Id.* at pg. 22.

AB 2316-compliant program would be Commission jurisdictional and, therefore, use of the Commission’s Avoided Cost Calculator to establish the ECR is reasonable and has already been done under D.22-12-056 which adopted the net billing tariff.¹³⁷ The use of the Avoided Cost Calculator to establish avoided costs was discussed by the Legislature in analysis of AB 2316¹³⁸ so it is reasonable to conclude that the Avoided Cost Calculator is what the Legislature anticipated the Commission would utilize in “calculating the full set of benefits of distributed energy resources.”¹³⁹

e. The Projects Seeking to Participate in the NVBT will Need to Comply with Prevailing Wage Requirements.

Sec. 769.3(c)(4) extends prevailing wage requirements to the construction of facilities participating in community renewables programs – as a new tariff, facilities seeking to enroll in the NVBT will need to comply with the section. Notably, the provisions of Sec. 769.3(c)(4) rely on existing enforcement mechanisms, so the section does not create any new regulatory requirements for the Commission or stakeholders. If any party, including the Commission, is concerned that a facility is not complying with the section’s requirements, that party can file a complaint with the Division of Labor Standards Enforcement or the applicable project labor agreement, as applicable.

f. The NVBT Meets Unmet Needs and Gaps in Existing Programs that Will Benefit All Ratepayers.

Record evidence clearly demonstrates that currently approved GAPS are insufficient in scale to serve the millions of Californians who for a variety of reasons cannot install on-site distributed energy resources and who, therefore, currently lack access to the benefits of distributed energy resources.¹⁴⁰ No

¹³⁷ See Id at p. 15, ln. 15 – 23.

¹³⁸ See, e.g. Senate Floor Analysis, August 26, 2022 at pgs. 5-6. Available at: https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=202120220AB2316.

¹³⁹ See Sec. 769.3(c)(6).

¹⁴⁰ See, e.g. Exhibit CCSA-001 (Smithwood) at p. 7, ln. 5 - p.8, ln. 9 (discussing past efforts at the Commission to design programs to address barriers to solar adoption and how current programs are insufficient), p. 15, ln 18 - p.

proponent of continuing these GAP programs has sought modifications to existing programs that can fundamentally address this yawning gap in access and the two new programs offered by the IOUs are targeted at very narrow customer segments which is at odds with the goals of AB 2316 to serve “all Californians”. PG&E and SCE’s proposals are also simply not compliant with statutory requirements as discussed by numerous parties in testimony.¹⁴¹ The only proposal that addresses the fundamental gap in accessing distributed energy resources in a manner that is fully compliant with AB 2316 is the NVBT. At its core, the NVBT fills this unmet need through a cost effective, flexible program that benefits all ratepayers by supporting the deployment of solar resources with a minimum of four hours of energy storage which will directly contribute to meeting California’s reliability needs by strongly incenting resources to export energy during the evening ramp.

VI. THE RECORD PROVIDES AMPLE EVIDENCE TO SUPPORT IMPLEMENTATION OF THE NVBT.

To maximize the opportunity for NVBT eligible facilities to garner state and federal funds, CCSA has worked cooperatively with parties to develop a timeline for the docket that allows the Commission to meet the requirement in Sec. 769.3(c)(6) that implementation of programs be accelerated to ensure time- or quantity-limited federal incentives can be obtained for the benefit of subscribers. To

21, ln. 7 (discussing current program offerings, the addressable market for low-income customers as defined in AB 2316, and the gaps in current program offerings); see, also, Exhibit CEJA-01 (Various) at p. 5, ln. 22 - p. 11, ln. 14 (discussing history of California’s program offerings, how those offerings fall short of the need, and takeaways from design of prior programs); Exhibit SEIA-01 (McLaughlin) at p. 4, ln.3 - p. 12, ln. 2 (discussing history of current programs, SEIA’s efforts to advise the Commission on program designs to avoid, and discussion of program failings).

¹⁴¹ See Exhibit CA 03 (Ahlstedt) at p. 1-30, ln. 13 - p. 1-32, ln. 13; Exhibit TURN-2 (Dowdell/Anning) at p. 4, ln. 1 - p. 10, ln. 9; Exhibit CEJA-2 (Various) at p. 21, lns. 6-23; Exhibit SEIA-03 (McLaughlin) at p. 16, ln. 13 - p. 20, ln. 9 (discussing deficiencies in PG&E’s program proposal and successor program proposal) and p. 23, ln. 11 - p. 27, ln. 3 (discussing the deficiencies in SCE’s program proposals including its successor program proposal); Exhibit CCSA-004 (Smithwood) at p. 10, ln. 7 - p. 15, ln. 16 (discussing the numerous ways that PG&E and SCE’s proposals are deeply flawed in meeting the requirements of AB 2316); and Cypress Creek 02 (Kozey) at p. 26, lns. 4-17.

that end, CCSA worked with parties to develop a schedule that was mutually agreeable to all stakeholders but recognized the need to move more quickly than is typical for dockets at the Commission and also providing testimony that is a comprehensive foundation for the Commission to act upon by including model forms and other materials that are relevant to the proposals CCSA put forward so parties and Commission staff can move quickly to particularize program specifics should the NVBT be adopted by the Commission. CCSA also provided a specific timeline for implementation in Table 5 of Witness Smithwood's amended opening testimony that identifies all relevant milestones necessary to launch a program in time to receive federal funds.¹⁴² These milestones include development and release of consumer disclosure forms and registration forms, approval of utility tariffs, timing of customer recruitment, deadlines for CCA and ESP notification of participation, release of utility participant allocation lists, submission of initial subscriber allocation lists, and other milestones. Additionally, CCSA provided Table 6 in Witness Smithwood's amended opening testimony which identifies the steps of commercial development and the typical timelines those steps take while also reflecting commercial timelines for project development.¹⁴³ The basic takeaway from these tables is that tariffs will need to be released this fall to allow for projects to enroll in the tariff and then advance to construction in time to garner federal funds and meet near term reliability needs. This includes bringing projects online beginning in Summer 2024 to address reliability challenges. To meet that need, CCSA's implementation timeline contains an additional workshop to kick off stakeholder discussion of necessary program forms and documents.¹⁴⁴

¹⁴² See Exhibit CCSA-001 (Smithwood) at pp. 124-126.

¹⁴³ See Exhibit CCSA-001 (Smithwood) at p. 126, ln. 1 – p. 129, ln. 6.

¹⁴⁴ See Id at p. 129, ln. 13-20.

VII. CONCLUSION

CCSA respectfully requests that the Commission adopt the Net Value Billing Tariff as described in CCSA's testimony and this brief. The NVBT has the support of a broad group of stakeholders including consumer advocates, environmental advocates, environmental and social justice advocates, the California building industry, and clean energy advocates. The record demonstrates that embracing the NVBT will result in a scalable, cost-effective program that can close existing gaps in current Commission program offerings so that all Californians realize the benefits of distributed energy resources as intended by the Legislature.

Respectfully submitted on May 17, 2023.

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