BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF CALIFORNIA

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APPLICATION OF THE SOLAR ENERGY INDUSTRIES ASSOCIATION FOR REHEARING OF RESOLUTION E-5301

SOLAR ENERGY INDUSTRIES ASSOCIATION
Jeanne B. Armstrong
Senior Regulatory Attorney
Sacramento, California
Telephone: (916) 276-5706
Email: jarmstrong@seia.org

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Pursuant to Sections 1731(b) and 1732 of the Public Utilities Code, Rule 16.1 of the Rules of Practice and Procedure of the California Public Utilities Commission ("Commission") and General Order 96-B Section 8.1, the Solar Energy Industries Association submits this Application for Rehearing ("Application") of Resolution E-5301 (the "Resolution") Adopting Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company Net Billing Tariffs as directed by Decision 22-12-056. This Application timely complies with Section 1731 and Rule 16.1(a) of the Commission's Rules of Practice and Procedure. In compliance with Section 1732, the grounds for rehearing are set forth below in Section II of this Application.

I. INTRODUCTION AND BACKGROUND

In December of 2022 the Commission revised the Net Energy Metering ("NEM") tariff for the stated purpose of "balance[ing] the multiple requirements of the Public Utilities Code and the needs of the electric grid, the environment, participating ratepayers, as well as all other ratepayers."[1] In this regard, the Commission announced that the updated net billing structure of

[1] Decision 22-12-056, p. 2.

the newly adopted tariff is "designed to optimize grid use by the tariff's customers and incentivize adoption of combined solar and storage systems."[2] The Commission went on to state that "these changes will help meet California's climate goals and increase reliability, while promoting affordability across all income levels."[3]

The Decision contains certain critical determinations that the Commission fashioned to balance Public Utilities ("P.U.") Code Section 2827.1's statutory requirements for a successor tariff, while also ensuring that the new net billing tariff ("NBT") served to optimize the use of the grid. The first of these determinations was the replacement of retail rates with values from the Avoided Cost Calculator ("ACC") as the basis for export compensation rates. The stated objective for using the ACC values to compensate customers for exporting electricity to the grid was "to send correct price signals and *ensure the appropriate relationship between price signal and time for battery dispatch.*"[4] The Commission determined that sending these more accurate price signals would "promote solar paired with storage, another objective of the successor tariff."[5] Because the NBT was to be available to both unbundled as well as bundled customers, the Commission determined that the export compensation rate (credit) received by the unbundled customer would be divided between its load serving entity[6] ("LSE") and its distribution utility. The former would be responsible for the generation portion of the rate, while the latter would be

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2 *Id.*

3 *Id.*

4 *Id.,* p. 143*; see also* p.141 (approach also yields more accurate signals for customer generators to reduce imports from the grid and for battery storage to dispatch during the hours that are most valuable to the grid.)

5 *Id.,* p. 104.

6 The LSE could be either the investor-owned utility that is also the distribution utility (in the case of bundled customers) or a community choice aggregator or other energy service provider (in the case of unbundled customers).

responsible for the delivery portion. Bundled customers of course would receive both the generation and delivery components from their distribution utility.[7] The Decision did not address the issue of how to apply bundled customers' excess generation credits against their delivery charges at their annual true-up.

A second critical determination made by the Commission in its effort to balance P.U. Code Section 2827.1's statutory requirements for a successor tariff, while also ensuring that the NBT served to optimize the use of the grid, was the adoption of a nine-year payback period for solar-only customers taking service under the NBT. In this regard, the Commission determined that a nine-year simple payback "presents a balanced approach to ensuring customer-sited renewable distributed generation continues to grow sustainably."[8] However, in order to achieve this nine-year payback, and "attain sustainable growth"[9] the Commission determined that a "glide path" in the form of an adder to the ACC export compensation rate was necessary.[10] As stated by the Commission, "the glide path is meant to *ensure* successor tariff customers, including CARE- and FERA-enrolled customers, have a nine-year simple payback period for stand-alone solar systems."[11] Concomitantly the Commission stated that the NBT using ACC compensation and the adopted adder would provide a shorter payback period for solar + storage customers, and that such results "comport with the prior determination that the tariff should encourage paired storage."[12] The Commission's determination that the NBT would produce such

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7 *See Id*., pp. 143-144.

8 Decision 22-12-056, p. 77.

9 *Id*., p. 147.

10 *Id.*

11 *Id.,* p. 223, Finding of Fact No. 164 (emphasis added).

12 *Id.,* p. 168.

payback periods of no more than 9 years for solar-only customers and less for solar + storage customers was pivotal to the Commission's determination that the NBT would allow customer-sited renewable distributed generation to continue to grow sustainably, as statutorily required. The Commission's determination that the successor tariff would produce these results was grounded in the analysis performed using a model created by the Commission's consultant Energy & Environmental Economics ("E3") and made available to the parties. In determining the payback period for bundled customers the E3 model assumed that, if a customer had excess generation credits at the end of the 12-month true-up period, it could apply those credits to offset any delivery charges.[13]

On October 30, 2023, the Commission's Energy Division issued Draft Resolution E-5301 which proposed to adopt an interpretation of Decision 22-12-056 advanced by the Investor-Owned Utilities ("IOUs") which would not allow a bundled customer's generation-related export credits to offset delivery-related charges at the customer's annual true-up. Thus, for example, the Draft Resolution approved the following tariff language in PG&E's NBT:

> Export credits will be accrued separately for avoided costs attributable to generation and delivery. Export credits for generation avoided costs will only offset volumetric (kwh) generation charges accrued per the customers' OAS, and export credits for delivery avoided costs will only offset volumetric (kwh) delivery charges associated with the customer's OAS.[14]

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[13] If the model had been consistent with the separate treatment of generation and delivery credits at the annual true-up, it would have calculated and shown those generation and delivery credits separately. The "NBT Model 12142022.xlsb" supporting D. 22-12-056 does not even include separate generation and delivery components for either the retail rates it uses or for the ACC-based export rates. See the "Customer Bill Components" tab at row 57 (export credits) and row 59 (minimum bill). Thus, the NBT customer total bill (at row 61) combines generation and delivery credits/costs. Similarly, the counterfactual customer bill (at row 89) makes use of a minimum bill (at row 88) that is based on combined generation and delivery costs.

[14] PG&E Electric Schedule NBT, Special Condition 2d (Sheet 16). "OAS" is the customer's Otherwise Applicable [Rate] Schedule.

SEIA filed comments on the Draft Resolution opposing that interpretation as being directly contrary to determinations made by the Commission in its adoption of the NBT as well as ignoring the proceeding's underlying record.[15] The Commission adopted the Resolution on November 27, 2023, retaining the restriction that generation credits cannot offset delivery costs at the annual true-up.[16] In rendering this determination, the Commission stated that "[t]his resolution's clarification on the treatment of generation- and delivery-related bill credits correctly balances the Commission's stated intents to ensure consistency with NEM, competitive neutrality, ACC-based retail export compensation, and accurate price signals."[17]

SEIA applies for rehearing of the Resolution because it commits legal error in that its treatment of generation and delivery credits (1) is not consistent with NEM; (2) misapplies the doctrine of competitive neutrality; (3) undermines the principles upon which the NBT was structured; and (4) upsets the statutorily required balance between the requirements of P.U. Code Section 2827.1.

II. GROUNDS FOR REHEARING

The Resolution commits legal error because certain findings in the Resolution are not supported by substantial evidence in light of the whole record[18] and the Commission has not

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15 *Solar Energy Industries Association Comments on Draft Resolution E-5301: Establishment of Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company Net Billing Tariffs as Directed by Decision 22-12-056* (November 20, 2023) ("SEIA Comments on Draft Resolution").

16 The Resolution (p. 18) does provide that if a customer has excess credits at the time of its annual true up, it can roll them forward to the next annual period. However, this relief is meaningless as for an average customer it would take 25 years to recoup all unpaid credits. *See* SEIA Comments on the Draft Resolution, pp. 2-3.

17 Resolution, p. 31, Finding No. 8.

18 *See* PU Code Section 1757(a)(4) (Commission commits legal error when the findings in the decision of the commission are not supported by substantial evidence in light of the whole record).

proceeded in a manner required by law.[19] Specifically, the Resolution's finding that "[t]he treatment of generation- and delivery-related bill credits in this resolution correctly balances the Commission's stated intents to ensure consistency with net energy metering requirements, competitive neutrality, ACC-based retail export compensation, and accurate price signals"[20] is not factually accurate nor does the Resolution contain the requisite findings to support its determinative conclusion. Moreover, the Resolution's treatment of generation credits and delivery charges at the annual true-up changes and upsets the requisite balance of the statutory criteria for the development of a successor net energy metering tariff. Thus, the Commission has not proceeded in a manner required by law.

III. ARGUMENT

A. Findings in the Resolution are Not Supported by Substantial Evidence in Light of the Whole Record

The Resolution relies on representations of the IOUs in finding that limiting the applicability of credits only to their respective bill components is (1) a carryover from NEM 2, and (2) it is necessary to maintain competitive neutrality among LSEs.[21] Neither of these findings are correct, nor are they supported by substantial evidence in light of the whole record.

1. Limiting the Applicability of Credits to their Respective Bill Components Is Not a Carryover from NEM 2.0

Decision 22-12-056 clarified that "all references to *net energy metering requirements established in other decisions* will continue to apply to the net billing tariff unless explicitly

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[19] *See* PU Code Section 1757(a)(2) (Commission commits legal error when it has not proceeded in a manner required by law).

[20] Resolution, p. 31, Finding of Fact 8.

[21] Resolution, p. 18.

altered by this decision."[22] It is this language on which the Resolution relies in determining that, because the limitation on the applicability of credits to their respective bill components was previously established under NEM 2, it must be carried over to the NBT.[23] The Resolution, however, does not cite any Commission decision, resolution, or even advice letter disposition in which the Commission limited the applicability of credits to their respective bill components for bundled NEM customers. The fact is that this issue has ***not*** been previously addressed.

The discussion regarding the applicability of generation credits in Decision 16-01-044 adopting the NEM 2 tariff is limited to the following:

> All the elements of the current treatment of [direct access] DA and [community choice aggregator] CCA customers should be maintained under the NEM successor tariff. These customers will be able to use the NEM successor tariff on the same terms as IOU customers. As is currently the case, the relevant IOU will credit the customer for the non-generation portion of the bill; the customer's electric service provider or CCA will credit the customer for the generation portion of the bill. [24]

This language is comparable to the language in Decision 22-12-056 adopting the NBT:

> As the successor tariff is available to both bundled and unbundled customers, Joint Utilities recommend that for unbundled customers where the export credit is divided between the customer's load serving entity [LSE] and distribution utility, the load serving entity should be responsible for energy, cap and trade, and generation capacity while the distribution utility should be responsible for transmission, distribution, greenhouse gas adder, and methane leakage. This approach is consistent with current tariff approaches and considers competitive neutrality amongst load serving entities.[25]

In both instances the Commission clarified which LSE was responsible for paying which credit, but it did not address whether bundled customers' excess generation credits could offset

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22 Decision 22-12-056, pp. 137-38 (emphasis added).

23 Resolution. p. 26 *citing* Decision 22-12-056, p.138.

24 Decision 16-01-044, p. 10.

25 Decision 22-12-056. pp. 143-144.

their delivery charges at the annual true-up. Neither did the Resolution adopting the IOUs' NEM 2 tariffs.[26]

Moreover, review of the NEM 2 tariff of each of the IOUs does not reveal *any* language restricting the application of energy credits to the delivery charges for bundled service customers at the time of the annual true up. For example, the closest that PG&E's NEM 2 tariff comes to addressing the issue of zeroing out a bundled customer's generation credits is contained in Special Condition 2.h. (Tariff Sheet 15):

> Where the residential delivery minimum bill amount applies at the true up for a Bundled or Transitional Bundled Service customer, and the accumulated net generation charges over the relevant period are greater than zero, the customer-generator will also owe an amount equal to the accumulated net generation charges. *Where the residential delivery minimum bill amount applies at true up for a Bundled or Transitional Bundled Service customer, and the accumulated net generation charges over the relevant period are less than or equal to zero, no credit for accumulated net generation charges will be applied to the amount owed by the customer-generator.* (emphasis added)

PG&E's NEM 2 Tariff does not address a situation in which the residential delivery minimum bill amount does <u>not</u> apply, and the bundled customer owes additional delivery charges to PG&E at the time of the annual true up. The tariff does not specify that in such a situation, the excess generation credits would not be applied to the delivery charges. It is silent on the issue.

Comparably SCE's and SDG&E's NEM 2 tariff language addressing the annual true-up is devoid of any language indicating that a bundled customer would be unable to apply excess generation credits against delivery charges. Thus SDG&E's tariff states:

> In the event the monthly valued energy exported by the eligible customer-generator exceeds the monthly valued energy consumed by eligible customer-generator during the Relevant Period, based on the *eligible customer-generator's OAS* as set forth below, the customer-generator shall still be responsible for

[26] *See* Resolution E-4792.

> payment of the nonbypassable charges, as defined by this schedule, and no payment shall be made for the excess energy delivered to the grid.[27]

The "eligible customer-generator's OAS" referenced in SDG&E's tariff language combines both generation and delivery charges. If SDG&E was planning to treat each rate component separately, then it would have needed to be explicit. It was not.

SCE's NEM 2 tariff is comparable to SDG&E's, stating that when a customer is a net producer of energy, the amount of net produced energy…

> …. will be used in the calculation of energy credits, calculated by … Customer's net produced kWh by the applicable energy rate components of the Customer's OAT, in each TOU period, for Bundled Service Customers (though in no case can the calculation and application of these energy credits result in the reduction of the NBCs owed by the Customer) …[28]

A bundled customer's OAT includes both generation and delivery components. Again, if SCE was planning to treat each component separately at the true-up, then it would have needed to be explicit. It was not.

The IOUs have represented that under NEM 2 the practice has been to limit the applicability of bundled customers' credits only to their respective bill components,[29] but the fact is that their tariffs do not support this result. Certainly, a consumer attempting to research the terms and conditions of service under NEM 2 would not be clued into this restriction. And there is no Commission decision which authorized such treatment for bundled NEM 2 customers.

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[27] SDG&E Schedule NEM-ST, Special Conditions, Section 3 (Sheet 7).

[28] SCE Schedule NEM-ST Rates, Section 3 (Sheet 4).

[29] *See. e.g., Pacific Gas and Electric Company's Reply to the Protest from CALSSA and SEIA to Advice 6848-E – Creating Pacific Gas and Electric Company's New Net Billing Tariff (NBT) Rate Schedule Per Decision* (D.) 22-12-056, Ordering Paragraphs 12b (February 28, 2028), p. 5; *Reply of San Diego Gas & Electric to Protest of Advice Letter 4155-E: Establishment of San Diego Gas & Electric's Net Billing Tariff (Schedule NBT) Pursuant to Decision 22-12-056* (February 28, 2028), p.3.

Moreover, under NEM 2 approximately the same generation and delivery rates apply to both import and exports (with only certain small nonbypassable charges removed from the export rates). As a result, a NEM 2 customer will have either (1) both generation and delivery charges at the end of the year (if it has had more imports than exports) or (2) both generation and delivery credits at the end of the year (if it has had more exports than imports). Under NEM 2, it is highly unlikely, and perhaps impossible, for a customer to have generation credits but delivery charges at the annual true-up, because under NEM 2 export rates are very similar to the retail rates used for imports. This issue arises now because of three facts under the NBT which were not present under NEM 2: first, the NBT uses ACC-based export rates that fluctuate over a wide range during the year and over the hours of the day; second, NBT export rates have a completely different allocation between generation and delivery components than found in the retail rates used with NBT; and, third, the widespread use of storage will enable NBT customers to export significant volumes in the summer evening hours when ACC-based export rates are very high. It is these new circumstances applicable to NBT solar + storage customers that gives rise to the significant potential for an NBT customer to have generation credits but delivery charges at the annual true-up.

The Resolution's determination to limit applicability of bundled customers' NBT credits only to their respective bill components is not a carryover from NEM 2. The practice is neither reflected in the IOUs' tariff nor is the situation in which it would have applied even possible under NEM 2. This issue simply has not been addressed previously, and thus the Commission erred in relying on purportedly prior practice when it determined that generation credits could not be used to offset delivery charges at the annual true-up.

2. Limiting the Applicability of Credits to their Respective Bill Components Is Not Necessary to Maintain Competitive Neutrality

Disallowing the application of a bundled customer's excess generation credits against their delivery charges is not necessary to maintain competitive neutrality among load serving entities. In asserting that it does, the Resolution grossly misapplies the Commission's competitive neutrality policy.

The Commission's competitive neutrality policy among LSEs is embedded in law. Specifically, with respect to community choice aggregators ("CCA"), the legislature directed the Commission to develop rules and procedures that "facilitate the development of community choice aggregation programs, … foster fair competition, and … protect against cross-subsidization paid by ratepayers."[30] In developing such a Code of Conduct, the Commission's goal was to provide CCAs with the opportunity to compete on a fair and equal basis with other LSEs and to prevent utilities from using their position or market power to gain unfair advantages.[31] The competitive neutrality rules adopted by the Commission, however, do not require equal treatment of bundled and unbundled customers. Where such equality is required, it has been mandated by law or regulation.[32]

Requiring the IOUs to offset a bundled customer's excess generation credits against its delivery charges at the time of the annual true-up does not result in unfair competition nor does it prevent CCAs from competing on a fair and equal basis. CCAs have the ability to compensate their own customers for excess generation credits if they choose to do so.[33] Moreover, the IOUs

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30 *See* SB 790 (Stats 2011, Ch. 500 (Leno) § 2(h); P.U. Code § 707(a)(4)(A).

31 Decision 12-12-036, p .6.

32 See 17 CCR § 95892 (d)(6), which provides that in the allocation of greenhouse gas allowance revenues "[i]nvestor owned utilities shall ensure equal treatment of their customers and customers of electric service providers [ESPs] and community choice aggregators [CCAs]."

33 For example, Ava Community Energy (formerly East Bay Community Energy) provides a "cash-out" period every April such that NEM customers who produced more electricity during the year than they used will receive a cash-out payment for each kWh. See https://avaenergy.org/nem/

are not using ratepayer funds or contributing to any cost shift when they offset the bundled customer's excess generation credits against delivery charges, but merely paying the customer the avoided cost value of the generation provided to the system as determined by the ACC, which, in the words of the order adopting the NBT, "consistently reflect[s] the value of exported energy, year after year."[34]

Finally, Decision 22-12-056 did not state that disallowing the application of a bundled customer's excess generation credits against their delivery charges is necessary to maintain competitive neutrality among load service entities. Rather the Decision determined that (1) following the current practice of making the IOU responsible solely for the delivery portion of the credit for unbundled customers, while the CCA maintained responsibility for the generation component, and (2) correctly dividing the various elements of the ACC value stack between those two components was sufficient to maintain competitive neutrality.[35] Such determinations are consistent with the principles of competitive neutrality as it ensures that the IOUs do not pay generation-related credits to CCA customers resulting in ratepayer cross subsidization. The decision simply did not address, much less determine, whether a violation of competitive neutrality principles occurs if a bundled customer's excess generation credits are applied to its delivery charges at the annual true-up.

B. The Commission Failed to Act in a Manner Required by Law

In addition to erroneously relying on the justifications produced by the IOUs to support the limitation of the applicability of bundled customers' bill credits only to their respective bill components, the Resolution ignores the impact of that determination on the primary objective of

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34 Decision 22-12-056, p. 105.

35 *Id*., pp. 143-144.

the NBT – which is also the Commission's statutory obligation – to balance all of the requirements of P.U. Code Section 2827.1 in creating the NEM successor tariff. One of the statutory requirements that must be balanced is that the customer-sited distributed generation industry continues to grow sustainably. By doing so, the Commission failed to proceed in a manner required by law.

1. The Resolution Undermines the Primary Objective of the NBT

The NBT was structured to be the next evolution of California's solar policy – one that emphasized the use of storage to meet the needs of the grid. In this regard, the Commission stated:

> Since implementing net energy metering over 20 years ago, California has witnessed the evolution of the customer-sited rooftop solar industry, resulting in the installation of over 12 gigawatts of clean distributed energy resources. However, the needs of the electric grid in California require additional evolution of the industry. Today, California's electric grid is significantly powered by clean energy during daytime hours, but peak electricity demands in the late afternoon and continuing into the night lead to a greater reliance on greenhouse gas emitting resources. This decision revises the net energy metering tariff to improve price signals by better aligning them with the electric grid's conditions, both day and night. *The updated billing structure of the tariff is designed to optimize grid use by the tariff's customers and incentivize adoption of combined solar and storage systems. These changes will help meet California's climate goals and increase reliability, while promoting affordability across all income levels.*[36]

Thus, the Commission clearly intended the "updated billing structure" of the new tariff to both motivate customers to install storage and to incentivize those same customers to dispatch that storage at the times of day most beneficial to the grid. These two objectives were to be met through the use of price signals derived from the ACC that favor customers who have the capability (through storage) to shift their usage to midday and then export energy during the peak evening hours. This foundational premise is repeatedly emphasized throughout the Decision.

[36] D. 22-12-056, p. 2, (emphasis added).

Thus, the Commission stressed that "[b]asing retail export compensation rates on Avoided Cost Calculator values sends more accurate price signals and promotes paired storage,"[37] and that "[i]n using Avoided Cost Calculator values to compensate customers for exporting electricity to the grid, the objective is to send correct price signals and ensure the appropriate relationship between price signal and time for battery dispatch."[38]

The objective of the NBT's updated billing structure – i.e., to send appropriate price signals, and by doing so, promote solar paired with storage – is an objective which the Commission reasoned would help California meet its climate goals while also increasing grid reliability. This premise is upended with the determination not to allow bundled customers' generation credits to offset delivery charges at the annual true-up.

The bulk of export credits are on the generation side – and more specifically, generation credits are particularly high during the peak demand hours in the critical peak summer months of August and September. Accordingly, the ACC should work during those periods of time to send price signals to customers to export to the grid, thereby providing value to both the customer and the grid. The Resolution would establish a scenario in which NBT customers are sent a very granular hourly export price signal which should dictate the hours when the customer dispatches their system to export power in the highest demand hours of the year, but then at the annual true-

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37 *Id*., p. 212, Finding of Fact No. 96.

38 *Id,* p. 143 ; *see also*, p. 2 ("This decision revises the net energy metering tariff to improve price signals by better aligning them with the electric grid's conditions, both day and night"); p.3 ("The high differential electrification retail import rates in combination with the variable retail export compensation rates provided by the Avoided Cost Calculator send strong price signals to customers to shift their use of energy from the grid to mid-day and export electricity during the evening hours, which promotes the installation of storage with the solar systems."); p. 104 ("Retail export compensation rates based on the Avoided Cost Calculator sends more accurate price signals and promotes solar paired with storage, another objective of the successor tariff."); p. 221, Finding of Fact 150 ("Averaging the Avoided Cost Calculator values yields more accurate signals for customer generators to reduce imports from the grid and for battery storage to dispatch during hours most valuable to the grid.").

up takes back a large share of the export revenues if the customer does indeed respond to that signal. The customer will quickly learn that the price signal is not accurate, and if they try to respond to the ACC-based prices, they will not receive the stated value for their exports. The result is that the customer will not respond to export rates but will use the stored energy to serve their own load in other, less critical hours. Capacity will not be provided to the grid when it is most needed.

Not only will this deprive the grid of resources necessary to ensure reliability during peak periods, but it will detract from California meeting its climate goals. California still burns significant amounts of natural gas for electric generation, particularly during summer peak demand periods. When electric demand is high, the least-efficient gas plants are on the margin, producing higher amounts of greenhouse gases and criteria air pollution. Without the clean energy being dispatched from solar + storage systems during peak periods in response to accurate price signals, California could be left relying more heavily on gas plants during these critical peak hours.

The Resolution acknowledges that by not allowing bundled customers to offset generation credits against delivery charges, it could result in the "unintended consequence of slightly dampening the retail export compensation price signal during key hours when the grid is most strained and is emitting the most greenhouse gases,"[39] but deems that of lesser import than the Commission directive that NEM 2 requirements continue to apply to the NBT unless explicitly altered by D.22-12-056, and that the NBT maintain competitive neutrality among load

[39] Resolution. 18.

serving entities.[40] But as illustrated above there simply was no Commission-approved NEM requirement stating that a bundled customer's excess generation credits could not be used to offset delivery charges. In addition, as also discussed above, implementing such a restriction at this time is not necessary to maintain competitive neutrality. Moreover, reducing export compensation clearly harms the NBT customer, while the allegedly "offsetting" considerations do nothing to benefit the NBT customer. As discussed in the next section, in this way the Resolution upsets the legally required balance of interests that the Commission established in D. 22-12-056.

2. The Resolution Upends the Statutorily Required Balance of the Requirements of PU Code Section 2827.1

The Commission had a statutory obligation to "balance the multiple and, sometimes, conflicting requirements of [P.U. Code Section 2827.1]" in creating the NEM successor tariff.[41] In Decision 22-12-056, the Commission determined that the adopted NBT does just that - "balances the requirements of the statute and the guiding principles previously adopted in this proceeding."[42] Included among the statutory requirements is "[e]nsur[ing] that the standard contract or tariff made available to eligible customer-generators ensures that customer-sited renewable distributed generation continues to grow sustainably."[43] To this end, the Commission determined that certain elements of the NBT would serve to ensure that this requirement was met. Namely the Commission concluded that "a target of a nine-year simple payback for a stand-

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[40] Resolution, p. 18; *see also*, p. 26 ("The Commission's intent for NBT customers' beneficial use of storage does not supersede its findings regarding the structure of the NBT nor its directive that NEM requirements continue to apply to the NBT unless explicitly altered by D.22-12-056).

[41] Decision 22-12-056, p. 108.

[42] *Id*., p. Finding of Fact No. 191.

[43] P. U. Code Section 2827.1 (b)(1).

alone solar system — equivalent to nearly $100 in monthly bill savings — presents a balanced approach to ensuring customer-sited renewable distributed generation continues to grow sustainably."[44] While the Decision focused on achieving a nine-year payback for solar-only customers, the Commission also emphasized that the tariff was structured to achieve a shorter payback for solar + storage customers.[45] The Commission reasoned that such results "comport with the prior determination that the tariff should encourage paired storage."[46]

The conclusions that the tariff would produce a 9 year payback for solar only customers and an even shorter payback for solar + storage customers were premised on the Commission's internal analysis performed using a model created by E3. This model assumed that a bundled customer could offset its excess generation charges against their delivery credits at the annual true-up. In other words, the Commission's conclusions were premised on the customer receiving full value for the energy which they exported to the grid. If that does not occur, then customers' payback periods *will* be increased[47] and the Commission's use of the payback period as a means of ensuring customer-sited renewable distributed generation continues to grow sustainably will be undone.

The Resolution glosses over this critical point by stating that "D. 22-12-056 did not guarantee customers an exact simple payback period given the natural variation in customer usage and system generation."[48] But the issue is not whether each customer will achieve a simple payback of a designated number of years. Rather the issue is that the Commission used a set of

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44 Decision 22-12-056, p. 100.

45 *Id.*, p. 7.

46 *Id*., p. 166.

47 SEIA's Comments on Draft Resolution, p. 4 (PG&E and SCE, paybacks for solar + storage systems will increase by 10% to 12%, and first-year bill savings will fall by -9% to -11%.)

48 Resolution, p. 25.

assumptions to design a tariff with a certain payback period for the average customer in order to meet the statutory requirement of ensuring the customer-sited distributed generation continues to grow sustainably. One of those assumptions was that a bundled customer's excess generation credits could offset delivery charges at the annual true-up. The Resolution is now invalidating that assumption.

Finally, the Resolution attempts to argue that an NBT customer can avoid having excess generation credits at the annual true-up by under-sizing its system, either in comparison to the customer's present or future loads. [49] This is technically correct – the problem will not exist if future solar + storage systems are downsized by 20% or more compared to those modeled in D. 22-12-056. But this essentially concedes the point that the Resolution's determination on this issue will reduce the industry's growth below the statutory balance that was intended in D. 22-12-056 and its supporting modeling, by forcing customers to install smaller systems than those that appeared to be economic under D. 22-12-056.

IV. CONCLUSION

The Resolution's determination that a bundled customers' excess generation credits cannot be applied against its delivery charges at the annual true up (1) is not consistent with NEM 2; (2) misapplies the doctrine of competitive neutrality; (3) undermines the principles upon which the NBT was structured; and (4) upsets the statutorily required balance between the requirements of PU Code Section 2827.1. By making this determination the Commission has not acted consistent with the record evidence and has not proceeded in a manner required by law. The Commission must grant rehearing and modify the Resolution to direct the IOUs to offset a

[49] *Id*.

bundled customers' excess generation credits against its delivery charges at the customer's annual true-up.

Respectfully submitted this 3rd day of January 2024 at San Francisco, California.

By: /s/
Jeanne B. Armstrong

Senior Regulatory Attorney
Solar Energy Industries Association
Sacramento, California
Telephone: (916)-276-5706
Email: jarmstrong@seia.org