

**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

**COMMENTS OF
THE COALITION FOR COMMUNITY SOLAR ACCESS
ON PROPOSED DECISION MODIFYING GREEN ACCESS PROGRAM TARIFFS
AND ADOPTING A COMMUNITY RENEWABLE ENERGY PROGRAM**

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Pursuant to Rule 14.3(a) of the Commission’s Rules of Practice and Procedure, the Coalition for Community Solar Access (“CCSA”) files these comments on the Decision Modifying Green Access Tariffs and Adopting a Community Renewable Energy Program (“Proposed Decision” or “PD”) filed on March 4, 2024. CCSA appreciates the opportunity to advise the Commission on the legal and factual errors in the Proposed Decision that support rejection or significant modification of the Proposed Decision.

I. Introduction and Summary

The concept of community solar was developed nearly 20 years ago by the City of Ellensburg’s electric utility¹ and the City of St. George Energy Services Department/Dixie Escalante Electric in Utah² as an innovative means to increase access to renewable energy for community members who were unable to install a rooftop solar energy system. The premise these public utilities embraced is simple but powerful: if a customer cannot install distributed energy resources (“DERs”) on their property for any number of reasons, allowing the customer to share in a common facility and providing them with a bill credit for doing so was a fair and equitable way to expand access to renewable energy resources. Since the launch of these first of their kind programs, community solar has evolved and matured with programs in over 22 states

¹ See City of Ellensburg Renewable Energy, Renewable Energy Park tab, <https://www.ci.ellensburg.wa.us/1031/Renewable-Energy>.

² SUNSMART, <https://sgsunsmart.com/index.html>.

and the District of Columbia supporting over 7 gigawatts (“GW”) of resources.³ Community solar continues to thrive with the federal government, via the Inflation Reduction Act (“IRA”), making billions of dollars available to support the development of community solar.

Since 2013, the Commission has tried to develop a community solar program to equitably expand access to renewable energy resources. The record of this proceeding and the PD make crystal clear that none of the current programs has been successful. Based on their shortcomings, the PD agreed that they violate the requirements of Public Utilities Code Sec. 769.3. Existing programs are duplicative, they do not result in robust participation among low-income Californians, and they are inefficient in serving customers.⁴

Faced with ongoing failure in current programs, the PD offers up two things: (1) continuance of failed programs (albeit after making small changes), and (2) a new community renewable energy program that would utilize tariffs that have failed to deploy resources since 2017. Both violate the intent of Assembly Bill 2316 (Ward, 2022) (AB 2316). To reach this outcome, the PD embraces a myopic view of the breadth of the Commission’s authority to regulate the retail relationship between energy consumers and their utility advanced by the investor-owned utilities (“IOUs”) that is contrary to federal law. Building off this flawed framework, the PD then argues that the NVBT will result in cost shifts to nonparticipating customers because the NVBT export credit rate includes compensation for avoided transmission and distribution capacity and avoided generation capacity. This conclusion is directly contrary to prior determinations by the Commission that the value of *exported* energy – for both behind-the-meter (“BTM”) and in-front-of-the-meter (“IFOM”) DERs – is accurately assessed by the Avoided Cost Calculator (“ACC”). The PD’s cost shift conclusion also ignores significant record evidence demonstrating billions of dollars in benefits the NVBT offers versus the status quo.

Based on the PD’s numerous flaws, CCSA urges the Commission to reject the PD in its entirety or to modify it significantly. The PD’s erroneous findings undermine efforts in California and across the country to expand access to renewable energy resources. The PD is directly contrary to the legislative intent to create a thriving community solar market to expand access to all Californians as expressed repeatedly by the Legislature in SB 43 and AB 2316.

³ See <https://www.woodmac.com/press-releases/2024-press-releases/cumulative-us-community-solar-installed-capacity-expected-to-break-14-gwdc-by-2028/>.

⁴ See CCSA Opening Brief, Section IV, at pp. 8-17.

II. The PD Erred in Concluding that a Wholesale Sale in Interstate Commerce Occurs Under the NVBT.

Unlike this Commission, the Federal Energy Regulatory Commission (“FERC”) is a “creature of statute, having no constitutional or common law existence or authority, but only those authorities conferred upon it by Congress.”⁵ FERC’s jurisdiction is limited and includes the transmission of electric energy in interstate commerce and wholesale sales of electric energy in interstate commerce.⁶ The Federal Power Act (“FPA”) preserves a “zone of exclusive state jurisdiction” over “within-state wholesale sales or . . . retail sales of electricity (*i.e.*, sales directly to end users).”⁷ States also retain jurisdiction over generation, distribution, and transmission in intrastate commerce.⁸ Here, FERC does not have jurisdiction over community solar because there is no wholesale sale in interstate commerce. In the absence of such a sale, PURPA is inapplicable. Moreover, decades of FERC precedent have upheld the use of net metering, and federal law does not preempt community solar.

A. FERC Has Never Invalidated a State Net Metering, Virtual Net Metering, or Community Solar Program

An examination of FERC precedent shows that FERC has never invalidated a state net metering, virtual net metering, or community solar program. Instead, for more than 20 years, FERC has properly and prudently recognized that such retail programs further important state policies and are inherently a matter of state retail rate design. Any alleged implication of wholesale rates is indirect and unintended. As a result, FERC has consistently refused to set aside state retail rate programs that utilize netting. In *MidAmerican*, FERC denied a petition for declaratory order that sought preemption of a state net metering program.⁹ In *SunEdison*, FERC extended the reach of *MidAmerican* to distributed solar facilities that sold electricity to end users participating in a net metering program.¹⁰ FERC has relied on the holdings of *MidAmerican* and *SunEdison* in landmark orders that address net metered resources, including Order No. 2003-A

⁵ *Atlantic City Elec. Co. v. FERC*, 295 F.3d 1, 8 (D.C. Cir. 2002).

⁶ 16 U.S.C. § 824(b)(1); *FERC v. Elec. Power Supply Ass’n*, 136 S. Ct. 760, 767 (2016) (“Under the statute, the Commission has authority to regulate ‘the transmission of electric energy in interstate commerce’ and ‘the sale of electric energy at wholesale in interstate commerce.’”) (“*EPSA*”).

⁷ *EPSA*, 136 S. Ct. at 767-68.

⁸ *New York v. FERC*, 535 U.S. 1, 22 (2002) (citing 16 U.S.C. § 824(b)).

⁹ *MidAmerican Energy Co.*, 94 FERC ¶ 61,340, at ¶ 62,263-62,264 (2001).

¹⁰ *Sun Edison LLC*, 129 FERC ¶ 61,146, at P 19 (2009).

(interconnection processes),¹¹ Order No. 841 (energy storage),¹² Order No. 841-A (energy storage),¹³ and Order No. 2222 (aggregated DERs).¹⁴ More recently, in 2020, FERC denied yet another petition for declaratory order seeking to preempt state net metering programs.¹⁵

FERC has also refrained from asserting jurisdiction over state virtual net metering programs and community solar. In *EnergyMark*, FERC declined to assert jurisdiction over community solar projects in NYISO that “receive compensation from end-users through a virtual net metering-type program and do not engage in wholesale sales of electricity.”¹⁶ Similarly, FERC denied a petition for declaratory order that asked FERC to preempt a Maryland community solar program.¹⁷ FERC explained, “Given the nature of the pilot program, and as a matter of comity, we continue to believe it is appropriate for the Cooperatives to conclude pertinent state proceedings before seeking relief from the Commission.”¹⁸ As a matter of comity and for prudential reasons, the CPUC should decline to find preemption when the federal agency charged with overseeing the FPA has steadfastly refused to do so.

¹¹ See *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003-A, 106 FERC ¶ 61,220, at P 747 (2004)(relying on *MidAmerican* in determining when a net metering customer could rely on FERC’s interconnection rules), *order on reh’g*, Order No. 2003-B, 109 FERC ¶ 61,287 (2004), *order on reh’g*, Order No. 2003-C, 111 FERC ¶ 61,401 (2005), *aff’d sub nom. Nat’l Ass’n of Regul. Util. Comm’rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007).

¹² *Electric Storage Participation in Markets Operated by Regional Transmission Organizations and Indep. Sys. Operators*, Order No. 841, 162 FERC ¶ 61,127, at P 30 (2018) (citing *SunEdison* for the proposition that “injections of electric energy back into the grid do not necessarily trigger the Commission’s jurisdiction”), *order on reh’g*, Order No. 841-A, 167 FERC ¶ 61,154 (2019), *aff’d sub nom. Nat’l Ass’n of Regulatory Util. Comm’rs v. FERC*, No. 19-1142 (D.C. Cir. July 10, 2020).

¹³ *Electric Storage Participation in Markets Operated by Regional Transmission Organizations and Indep. Sys. Operators*, Order No. 841-A, 167 FERC ¶ 61,154, at P 55 (2019) (discussing *MidAmerican* and how storage resources could participate in retail net metering programs and the RTO/ISO markets) *aff’d sub nom. Nat’l Ass’n of Regulatory Util. Comm’rs v. FERC*, No. 19-1142 (D.C. Cir. July 10, 2020).

¹⁴ *Participation of Distributed Energy Resource Aggregations in Markets Operated by Regional Transmission Organizations and Independent System Operators*, Order No. 2222, 172 FERC ¶ 61,247, at P 40 (2020) (citing *SunEdison* for the proposition that “the Commission’s jurisdiction would arise only when a facility operating under a state net metering program produces more power than it consumes over the relevant netting period”), *order on reh’g*, Order No. 2222-A, 174 FERC ¶ 61,247, *order on reh’g*, Order No. 2222-B, 175 FERC ¶ 61,227 (2021).

¹⁵ *New England Ratepayers Ass’n*, 172 FERC ¶ 61,042 (2020).

¹⁶ *EnergyMark, LLC*, 181 FERC ¶ 61,062, at P 5 (2022).

¹⁷ *S. Md. Elec. Coop., Inc.*, 162 FERC ¶ 61,048, at P 16 (2018) (“we believe it was appropriate for the Commission to exercise its discretion and decline to reach the merits of the Petition”).

¹⁸ *Id.*

B. FERC Lacks Jurisdiction Over Community Solar

The PD erred in finding that a FERC-jurisdictional wholesale sale occurs when the community solar facility flows power into the IOU's distribution system.¹⁹ For FERC to assert jurisdiction, three requirements must be met. There must be (1) a sale, (2) at wholesale, (3) in interstate commerce.²⁰ If any one of those three requirements is not met, FERC does not have jurisdiction. Here, none of those requirements is met. First, the power flow from the community solar facility to the IOU is not a sale. Second, the IOU engages in a retail sale with the subscriber. Third, the subscriber's credit is netted against the bill, so there is no sale, let alone a wholesale sale in interstate commerce.

C. There Is No Sale Between the Community Solar Facility and the IOU or From the Subscriber to the IOU

First, no sale occurs between the community solar facility and the IOU when the community solar facility sends power into the distribution system. Under the NVBT, the community solar facility is not selling power to the IOU, and the IOU does not pay the facility for the power. Here, state policy expressed in the NVBT requires the IOU to provide a tariffed service to retail customers who wish to subscribe to a facility participating in a Commission-approved community solar program. Just as state policy can require utilities to provide net metering service for rooftop solar, it can require utilities to provide virtual net metering service to accommodate community solar. The arrangement is regulatory, not commercial, in nature.

Moreover, as between the IOU and the subscriber, the IOU makes a retail sale to the subscriber for their consumption of energy based on their otherwise applicable rate, and the subscriber receives the benefit of crediting for the exports related to their capacity subscription. FERC specifically recognizes that no sale occurs when a customer's bill is net metered and the credit does not exceed the bill during the relevant netting period.²¹ Notably, given IOU advocacy in this docket, SCE, PG&E, and SDG&E have argued before FERC that under *SunEdison* "certain types of exchanges (i.e., credits) between utilities and net metering customers were not sales at all."²² Thus, the IOUs clearly recognize, when they choose to do so, that there is no sale at all in the context of netting programs. Here, under the NVBT, credits from a

¹⁹ See PD at p. 87.

²⁰ 16 U.S.C. § 824(b)(1).

²¹ *MidAmerican*, 94 FERC at 62,263-62,264.

²² *Cal. Indep. Sys. Operator Corp.*, 181 FERC ¶ 61,035, at P 7 (2022).

subscription cannot exceed the customer's bill over the relevant netting period;²³ potential credits from unsubscribed capacity are banked, and unless they are used within two years, they are lost. Thus, there is no sale.

There is no basis to distinguish between the treatment of credits earned from net metering, virtual net metering, or community solar. FERC has made no such distinction. Otherwise, FERC would have had to assert jurisdiction in *EnergyMark*, which it declined to do.²⁴ In *SunEdison*, FERC also extended *MidAmerican* to include a net metering customer who bought power from a distributed solar facility.²⁵ Although the Energy Policy Act of 2005 ("EPAct 2005") refers to on-site generation for net metering,²⁶ it does not address virtual net metering. More importantly, EPAct characterizes net metering as a "service," not as a sale.²⁷

D. There Is No Wholesale Sale

Assuming *arguendo* there is a sale from the subscriber to the IOU, it is not a wholesale sale. States retain "a zone of exclusive jurisdiction" over retail sales.²⁸ Just like net metering and virtual net metering, community solar is quintessentially an exercise in retail rate design and state energy and environmental policy. Under the NVBT, excess credits are banked for up to a two-year period and are lost if not used. Any alleged wholesale aspect of community solar is indirect and unintended in nature.

E. The Transaction Is Not in Interstate Commerce

Even if there is a sale and the sale is deemed to be wholesale in nature, states have exclusive jurisdiction over "within state wholesale sales."²⁹ For a variety of reasons, the transaction here is entirely within state, not in interstate commerce. The community solar facilities are interconnected at the distribution level. The NVBT participating facilities will not become members of CAISO or participate in the CAISO wholesale energy markets. If the Commission believes it is important to do so to ensure transactions cannot occur in interstate

²³ See, Exhibit CCSA-004 at pg. 29, ln. 14 to pg. 30, ln. 5.

²⁴ *EnergyMark*, 181 FERC ¶ 61,062 at PP 25-26.

²⁵ *Sun Edison*, 129 FERC ¶ 61,146 at PP 1-2.

²⁶ 16 U.S.C. § 2621(d)(11).

²⁷ *Id.* ("Each electric utility shall make available upon request net metering service to any electric consumer that the electric utility serves.").

²⁸ *EPSA*, 136 S. Ct. at 767.

²⁹ *Id.* at 768.

commerce, the Commission can prohibit participating facilities from engaging in sales into the CAISO market.

The plain intent of the community solar facilities is to participate in the retail market created by the NVBT, not the wholesale market. In rulemakings, FERC has explained that net metered resources are subject to FERC jurisdiction only when they intend to participate in wholesale energy markets.³⁰ Here, community solar facilities do not have such an intent.

F. Federal Law Does Not Preempt the NVBT

To determine whether state overreaching has occurred, the Supreme Court considers “the *target* at which [a] law *aims*.”³¹ Here, the undeniable purpose of the NVBT is to craft a retail rate design that furthers an important state public policy of broadening access to clean energy. This policy does not have the “target” of reducing wholesale rates in interstate commerce. Even if there were such an impact, it would be indirect, unintended, and tangential to the retail, environmental, and social equity target at which the NVBT aims.

Moreover, preemption would be inconsistent with the FPA’s purpose. “[T]he Federal Power Act indicates an overriding policy of maintaining competition to the maximum extent possible consistent with the public interests.”³² Community solar provides consumers with more choice, not less, and adds clean energy resources at the distribution level. The FPA was also intended to fix regulatory gaps when states could not reach interstate conduct.³³ Here, there is no such gap, because California has exclusive jurisdiction over retail rates.

Preemption would also defy clear congressional and federal agency support for community solar. The IRA creates the Low-Income Communities Bonus Credit Program (“LICBC”) and the Solar for All Program. The LICBC provides a 10% or 20% increase to the investment tax credit for qualified solar and wind facilities with a maximum net output of five

³⁰ See Order No. 2003-A, 106 FERC ¶ 61,220 at P 747 (for a net metered distributed energy resource to interconnect under FERC processes it must “seek interconnection to a facility subject to a Commission-approved OATT *and* intend to make net sales of energy to a utility”) (emphasis added); Order No. 841-A, 167 FERC ¶ 61,154 at P 55 (energy storage resource may participate in net metering program and RTO/ISO markets, but “Commission jurisdiction would arise *only* where the electric storage resource participates in the wholesale market by making a Commission-jurisdictional sale for resale”) (emphasis added).

³¹ *EPSA*, 136 S. Ct. at 776 (quoting *Oneok, Inc. v. Learjet*, 135 S. Ct. 1591, 1599 (2015)); see also *Hughes v. Talen Energy Mktg., L.L.C.*, 578 U.S. 150, 164 (2016) (finding FPA preemption of state law that targeted wholesale rates).

³² *Otter Tail Power Co. v. United States*, 410 U.S. 366, 374 (1973).

³³ *EPSA*, 136 S. Ct. at 767 (citing *Pub. Util. Comm’n of R.I. v. Attleboro Steam & Elec. Co.*, 273 U.S. 83 (1927)).

megawatts.³⁴ The Solar for All Program is a \$7 billion grant competition to states, tribes, municipalities, and eligible nonprofits to create new or to expand existing rooftop and community solar programs.³⁵ Similarly, the U.S. Department of Energy has created the National Community Solar Partnership to expand access to affordable community solar.³⁶ The U.S. Department of Health and Human Services has also confirmed the use of Low-Income Home Energy Assistance Program (“LIHEAP”) funds for community solar subscription fees.³⁷ For all of the above reasons, the PD erred in concluding that federal law preempts the NVBT.³⁸

III. The NVBT Can Be Further Refined to Address Concerns Expressed in the PD

From the onset of this docket, CCSA has worked with stakeholders to refine the NVBT to address their concerns while also ensuring the resulting NVBT will be a viable program. Those modifications include allowing the peak window to evolve as grid needs evolve, allowing participating load serving entities to move the peak window with notice, requiring the provision of information to CAISO to support grid operations, and supporting the Public Advocates Office’s (“PAO”) proposed program cap. CCSA continues to be open to working with all stakeholders to refine the NVBT. As discussed herein, the record contains a variety of options that can address the concerns expressed in the PD.

A. The Shared Savings Model and Simplified Billing Are Not Required Components of a Successful Community Renewable Energy Program Founded on the NVBT

The PD acknowledges that the overall NVBT contemplates different ways in which a subscriber can compensate a developer for the subscriber’s capacity interest: (1) paying for a portion of the project’s capacity; (2) paying an amount of each kWh produced; (3) paying a fixed

³⁴ 26 U.S.C. § 48(e)(2)(A); *see also* *Low-Income Communities Bonus Credit Program*, DEP’T OF ENERGY, <https://www.energy.gov/justice/low-income-communities-bonus-credit-program> (last visited Mar. 19, 2024).

³⁵ 43 U.S.C. § 7434; *see also* *Solar for All*, EPA: GREENHOUSE GAS REDUCTION FUND, <https://www.epa.gov/greenhouse-gas-reduction-fund/solar-all> (last visited Mar. 19, 2024).

³⁶ *National Community Solar Partnership*, DEP’T OF ENERGY, <https://www.energy.gov/community-solar/community-solar> (last visited Mar. 19, 2024).

³⁷ Information Memorandum on Community Solar and LIHEAP Considerations, LIHEAP-IM-2023-04 (U.S. Dep’t of Health and Human Services June 15, 2023), <https://www.acf.hhs.gov/ocs/policy-guidance/liheap-im-2023-04-community-solar-and-liheap-considerations>.

³⁸ In the absence of a FERC-jurisdictional wholesale sale, PURPA is inapplicable. Preemption is also inconsistent with PURPA because PURPA’s purpose is “to encourage the development of cogeneration and small power production facilities” that use biomass, waste, or renewable resources, *FERC v. Mississippi*, 456 U.S. 742, 750 (1982).

amount each month; or (4) sharing an agreed-upon portion of the bill credit received by the subscriber (i.e. the Shared Savings Model).³⁹ Yet, in support of the PD's view that the NVBT is more wholesale in nature than retail, the PD focuses on only the last option arguing that the Shared Savings Model and Simplified Billing as "combined elements result in something akin to wholesale procurement."⁴⁰ CCSA fundamentally disagrees because, under either the Shared Savings Model or Simplified Billing, credits for exported energy only flows to a subscriber. The subscriber's contract with the community solar facility to pay for their capacity interest is a separate agreement that is distinct from the bill credit the NVBT provides to the subscriber for their exported energy. A subscriber and developer agreeing to base developer compensation on the actual bill credit the customer receives does not negate the fact that the agreement is distinct from the NVBT. Facilitating the Shared Savings Model via Simplified Billing also does not change this essential feature of a distinct agreement between the subscriber and the developer – authorizing Simplified Billing would merely require the utility to facilitate that underlying agreement. Simplified Billing and the Shared Savings Model were offered by CCSA as options for the Commission to consider as they ease participation by low-income subscribers and promote consumer protection.⁴¹ But if the combination of these options raises concerns with the Commission, the Commission could authorize Shared Savings and forego requiring Simplified Billing or it does not have to adopt them. The PD simply fails to acknowledge this fact and instead assumes they are necessary components of the proposed NVBT.

B. The NVBT's Treatment of Subscribed and Unsubscribed Energy Can Be Modified to Address Concerns Raised by the PD

The PD takes issue with the NVBT lacking the net surplus compensation ("NSC") framework utilized in the Net Billing Tariff and Virtual Net Billing Tariff arguing the lack of these features causes the program to violate PURPA and is inconsistent with the requirements for net energy metering pursuant to AB 920.⁴² As discussed above, the Net Value Billing Tariff does not violate PURPA. AB 920 also does not apply to a community renewable energy program authorized by Sec. 769.3 – there is no reference to complying with Sec. 2827 in AB 2316. However, to the extent the Commission believes a NSC framework is a necessary

³⁹ See PD at p. 68.

⁴⁰ PD at p. 88.

⁴¹ See, e.g., Exhibit CCSA-001 at pg. 40, ln. 11 – pg. 41, ln. 19; pg. 64, ln. 14 to pg. 65, ln. 5; pg. 72, lns. 11-13; pg. 75, ln 16 to pg. 78, ln. 17.

⁴² See PD at pp. 89-91.

requirement in the NVBT, the NVBT can be modified to require the use of the same NSC framework utilized in the currently approved Virtual Net Billing Tariff approved in D.23-11-068. Under this framework, subscriber bill credits would roll over monthly during the customer's Relevant Period and offset accrued charges. At the end of the Relevant Period the subscriber will be paid the NSC rate on any net surplus electricity (defined as all electricity generated by the NVBT generator that is allocated to a subscriber measured in kilowatt-hours over a Relevant Period that exceeds the amount of electricity consumed by the subscriber). The practice of banking credits for surplus energy can also be addressed by applying the NSC rate to all surplus (i.e., unsubscribed) energy at the end of the NVBT facility's Relevant Period. This modification to the NVBT would address the PD's concerns. It would also maintain a strong incentive for developers to keep their projects subscribed.

C. Geographic Limitations on Siting Can Be Implemented to Address the Concerns Raised by the PD

The PD expresses concerns that the lack of any geographic limitations beyond being in the same utility service territory between a facility and its subscribers makes confirmation of the avoided cost benefits of NVBT resources difficult.⁴³ This finding is at odds with how the T&D benefits measured by the ACC accrue. The T&D benefits measured by the ACC are for reductions in load due to *exported* energy on the circuit the facility is interconnected with.⁴⁴ Importantly, the avoided T&D costs recognized in the ACC are “unspecified avoided T&D costs that reflect the benefit of lower peak loads on the T&D system over time.”⁴⁵ It is unreasonable and inequitable to deny NVBT facilities the same type of benefits due to demand reductions from *exported* energy that other distributed energy programs have received. The benefit of an *exported* kWh in reducing peak loads is the same regardless of whether it was excess energy from a BTM system or an IFOM system.⁴⁶ D.23-11-68 embraced this point when it provided T&D avoided costs to facilities participating in the VNEM/VNBT program (which requires

⁴³ PD at p. 101.

⁴⁴ See Decision D. 22-12-056, at p. 59 (“the avoided costs determined in the [ACC] are the utilities’ marginal costs of providing electric service to customers. Those costs can be avoided when the demand for energy decreases because of distributed energy resources, and are, thus, the benefits of using distributed energy resources.”).

⁴⁵ See D. 20-04-020, at pp. 49-62, at p. 50 (“Unspecified deferral avoided costs are avoided costs that reflect the increased need for capacity projects that would have occurred if there were less distributed energy resources growth embedded in the utility base forecasts.”).

⁴⁶ See Exhibit CCSA-007 at p. 19, lns. 13-15.

IFOM interconnections) and NEMA program (which allows for either option).⁴⁷ SEIA explained that the avoided costs of each NVBT project will be based on that particular project's location when explaining the flaws in PAO's argument concerning geographic proximity.⁴⁸ The PD simply ignores these details.

Furthermore, while the PD points to PAO's concerns regarding the avoidance of T&D benefits due to lack of any siting restrictions beyond the facility being in the same service territory as the subscriber, the PD ignores PAO's proposed solution that's discussed on the very same page – “require Community Renewable projects to be built within the same CAISO Local Reliability Area (“LRA”) as the customer it serves.”⁴⁹ While CCSA opposed this idea because of the potential impacts it could have on financing, CCSA did not state that imposing geographic siting restrictions would make NVBT project finance unworkable. A fair reading of CCSA's testimony is that geographic restrictions undermine flexibility which could negatively impact the program.⁵⁰ PAO's siting recommendation⁵¹ can be accommodated in the overall NVBT program structure and adopting the PAO's recommendation would provide the Commission with additional assurance that T&D benefits will accrue.⁵²

D. The PD's Concerns Regarding Compensation for Generation Capacity Avoided Costs are based on Factual Error

The PD finds that generation capacity value will not be realized by participating load serving entities (“LSE”) because LSEs will be unable to claim resource adequacy credits and because lack of a deliverability study could trigger costly transmission upgrades.⁵³ Neither statement is supported by the record. First, as the PD acknowledges, the CAISO weighed in on the ability of DERs to reduce resource adequacy requirements using one of two pathways – as

⁴⁷ See, e.g., PG&E's Virtual Net Energy Metering website, requiring “[t]he generating account can have no load other than that required for the renewable generating system.” available at <https://www.pge.com/en/about/doing-business-with-pge/interconnections/virtual-net-energy-metering.html>; PG&E NEM Aggregation (NEMA) Frequently Asked Questions, Section II. Definitions, “What is a Generating Account?” response in relevant part: “A Generating Account is the account that is connected to the renewable generator. It may or may not have load other than that of the generator.” available at: <https://www.pge.com/assets/pge/docs/about/doing-business-with-pge/NEM2AFAQ.pdf>.

⁴⁸ SEIA Reply Comments to June 23 Ruling at pp. 10-11.

⁴⁹ See PAO Opening Comments on June 23 Ruling at p. 19.

⁵⁰ See Exhibit CCSA-004 at pp. 24-25.

⁵¹ See PAO Opening Comments, July 31, 2023, pp. 5-6 and 19.

⁵² See *id* at p. 16 (“The Modified NVBT would realize the benefits of the avoided transmission and distribution values by requiring siting in areas of grid constraints, and thereby should receive the avoided cost compensation for these components.” (internal citations omitted)).

⁵³ CAISO Opening Comments to November 6 Ruling at p. 4.

supply side resources participating in wholesale markets or by treatment as load modifying resources.⁵⁴ The PD also acknowledges the CAISO's view that to avoid resource adequacy requirements, load modifying resources should consistently, coincidentally, and systematically contribute to meeting or reducing demand "during those hours and times that would have otherwise set the peak demand for that year or month."⁵⁵ While the PD accurately summarizes the CAISO views, it ignores record evidence that the NVBT is designed to meet that outcome using solar plus storage resources. The peak period for the export credit rate broadly covers the hours and times that have historically set peak demand and is designed to provide an overwhelming signal to project owners to export energy during those critical hours as failure to do so would mean the project is uneconomic.⁵⁶ The NVBT would also allow (1) the peak period to shift over time as the net peak on the grid evolves,⁵⁷ and (2) allow participating LSEs to change the four-hour peak to address system needs so long as notice is provided to the facility.⁵⁸ The record clearly establishes a tight linkage between hourly injections anticipated by NVBT facilities and generation, transmission and distribution capacity value captured in the ACC.⁵⁹ Finally, the CEC will have all the information it needs to incorporate these resources into its load forecasting process as it has done with the over 15 GWs of distributed generation currently deployed in California.^{60,61} All of these features taken together support the conclusion that NVBT participating resources consistently, coincidentally, and systematically contribute to reductions in peak loads.

The Commission should also recognize that no other currently authorized customer DER program has offered this level of flexibility in meeting system needs. Nor do they require four hours of battery storage to be paired with all participating resources. Yet all those other customer DER programs have an export credit rate that compensates resources for generation

⁵⁴ See PD at p. 80.

⁵⁵ CAISO Opening Comments on November 6 Ruling at p. 4.

⁵⁶ CCSA Opening Comments on November 6 Ruling at p. 3; see also California ISO Peak Load History, 1998 through 2022, CAISO, <https://www.aiso.com/documents/californiaaisopeakloadhistory.pdf>. Exhibit CCSA-001 at p. 52, ln. 20 - p. 51, ln. 4; Exhibit CCSA-007 at p. 24, ln. 13 – p. 25, ln. 8.

⁵⁷ See Exhibit CCSA-007 at p. 33, ln. 18 - p. 34, ln. 9.

⁵⁸ See CCSA Reply Comments on November 6 Ruling at p. 12.

⁵⁹ See *id.*, Table 1, p. 9 (demonstrating an hourly overlap of 85-90% for injections and ACC values).

⁶⁰ See CCSA Opening Comments on November 6 Ruling at p. 13-17.

⁶¹ To facilitate the CEC's process in incorporating NVBT resources into their forecasting, the Commission should direct staff to request that the CEC make a determination that NVBT resources can be treated as load modifiers and provide notice in the instant docket when that outcome occurs.

capacity value. The NVBT seeks nothing more regarding treatment of *exported* energy than has already been authorized for other DER programs at the Commission, and its features provide a tighter linkage between exports and avoided costs than those programs do to ensure ratepayers receive those avoided cost benefits.

The PD also ignores insurance benefits of the NVBT as there is growing evidence that wholesale resources seeking to come online using wholesale interconnection tariffs are facing severe delays. PG&E and SCE filed a Petition for Modification of D.21-06-035 requesting a delay in procuring 2,500 MW of mid-term reliability procurement arguing that a variety of factors “have made it challenging for LSEs and developers to bring sufficient resources online by the deadlines set by the Commission.”⁶² The Petition highlights that interconnecting a new utility scale project can take up to 6 years.⁶³ The NVBT is designed to specifically provide the solar plus storage resources so desperately needed and do so in a timely fashion.⁶⁴ Thus, the program has value as insurance against shortfalls in anticipated wholesale procurement.⁶⁵ Additionally, the PD’s concern that the costs of any transmission upgrades could fall on nonparticipating ratepayers is not supported by the record. CCSA has proposed that *all* interconnection upgrades must be paid by the facility participating in the NVBT.⁶⁶

Finally, the PD’s discussion of differences between the NVBT and existing IFOM distributed generation programs mischaracterized the record and is irrelevant to determining the value of *exported* energy. First, the PD mischaracterizes the relationship between a customer subscription and the overall generation capacity of a facility stating that a customer subscription is sized to fit production of the generator. A subscriber’s capacity interest in a facility is based on the subscriber’s historical energy usage, not the overall capacity of the generator.⁶⁷ The PD

⁶² See Southern California Edison Company’s (U 338-E) and Pacific Gas and Electric Company’s (U 39-E) Joint Expedited Petition for Modification of Decision 21-06-035, filed August 9, 2023, R.20-05-003, p. 2. (Petition)

⁶³ See Petition, p. 12 and Appendix G (slide titled Challenges for Generation Resources to Come Online, first bullet point).

⁶⁴ See CCSA Reply Comments on June 23 Ruling, p. 12-13.

⁶⁵ See *id.*

⁶⁶ Exhibit CCSA-007 at p. 42, lns. 13-14 (“I agree [with TURN] that interconnection costs should be solely borne by the developers of projects and that would be the case under the NVBT and Rule 21 interconnection rules.”).

⁶⁷ See, Exhibit CCSA-01 at p. 50 (“The subscription would be sized such that the capacity would produce an amount of energy equivalent to the subscriber’s anticipated usage.”), lns. 3-5; Exhibit CCSA-004 at p. 29, ln. 14-p. 30, ln. 5 (“In my opening testimony I proposed that subscriptions be sized to a maximum of the subscriber’s expected annual usage, consistent with the recent net metering successor decision, D.22-12-056.”).

then argues that because VNEM and NEMA tariffs are limited to being located on-site or on a contiguous property they are distinguishable from the NVBT. While it is true that VNEM and NEMA require participating facilities to be located on-site or on a contiguous property, that fact is simply not relevant to whether *exports* from DERs provide the benefits identified by the ACC. The Commission has consistently stated that the ACC accurately values *exports* from DERs. The Commission has used the ACC to value *exports* from DERs – that are located both BTM and IFOM – using the ACC.⁶⁸ NVBT resources are DERs, and they modify load on a circuit through injections of exported energy in the same way as exports from any other DER.⁶⁹ Treating exports from NVBT facilities any different from other exports from DERs is irrational and discriminatory.

IV. The PD Harms Affordability by Ignoring Record Evidence that the NVBT Is the Most Cost Effective Program Offered in the Docket when Compared on an Apples-to-Apples-Basis with Other Options and Will Save Ratepayers Billions Versus Maintaining the Status Quo

CCSA appreciates the PD's agreement that PG&E's cost shift analysis is fundamentally flawed.⁷⁰ However, the PD finds that the NVBT results in impermissible cost shifts based on its erroneous conclusion that transmission and distribution costs and generation capacity costs are not avoided, and therefore, declines to accept the cost effectiveness analysis offered by CCSA comparing the NVBT to currently existing programs. Once the PD's errors are corrected regarding avoided costs, the record supports the conclusion that the NVBT is the most cost-effective offered in the docket.⁷¹ It is also entirely reasonable to compare current Green Access Programs' cost-effectiveness to the cost-effectiveness of this new program as both programs are designed to serve the same pool of low-income customers and others who cannot install distributed generation.⁷²

Importantly, additional record evidence supports a conclusion that the NVBT is the best option to meet the requirements of AB 2316 and will be beneficial to nonparticipating ratepayers. For example, the record demonstrates that procurement under current DAC programs is 138% more expensive than procuring NVBT resources when the programs are compared on an

⁶⁸ See *supra* note 45.

⁶⁹ See, e.g., Exhibit CCSA-007 at p. 19; see, also, CCSA Reply Brief at p. 14.

⁷⁰ See PD at p. 110.

⁷¹ See CCSA Opening Comments on June 23 Ruling at pp. 6-11; see, also, TURN Opening Comments on June 23 Ruling at pp. 7, 11; PAO Opening Comments on June 23 Ruling at pp. 6-10.

⁷² See PAO Reply Comments on June 23 Ruling at pp. 5-6.

equal basis.⁷³ By expanding programs that are dramatically more expensive than the NVBT, the PD directly undermines affordability.⁷⁴ The record also demonstrates that facilities procured under the current ReMAT program are nearly 50% more expensive than NVBT resources when compared on an equal basis.⁷⁵ Moreover, leaving developers to use net metering as the only compliance pathway to meet Title 24 requirements will increase costs to nonparticipating ratepayers because utilizing NVBT resources will save \$1.08-4.14 billion over the life of the NVBT facilities for each 250-400 MWs tranche of NVBT resources that displace the use of net billing supported on-site DG.⁷⁶ Record evidence also supports the conclusion that the cost of deploying community solar plus storage to support reliability is much less costly than continuing to bail out aging coastal gas plants instead of deploying clean energy resources or continuing to engage in emergency procurement under the Emergency Load Response Program.⁷⁷ The PD simply ignores this cumulative record evidence which directly supports the conclusion that deploying the NVBT to support a scalable community renewable energy program will save all Californians billions of dollars compared to maintaining the status quo.

V. Conclusion

CCSA appreciates the opportunity to provide comments on the Proposed Decision. Based on the Proposed Decision's numerous flaws, CCSA urges the Commission to significantly modify the PD or reject it in its entirety.

Respectfully submitted on March 25, 2024.

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⁷³ See CCSA Opening Comments on June 23 Ruling at p. 17.

⁷⁴ See *id.* at p. 20.

⁷⁵ See *id.*

⁷⁶ See *id.* at p. 35.

⁷⁷ See *id.* at pp. 29-30.

Appendix A
Proposed Modifications to
Findings of Fact and Conclusions of Law

Modifications to Findings of Fact

1. In evaluating any existing, modified, or new Green Access Program tariff, the Commission determines if the program meets the following goals:

(1) efficiently serves distinct customer groups; (2) minimizes duplicative offerings; and (3) promotes robust participation by low-income customers.

2. When a Green Access Program tariff does not meet the goals provided in Pub. Util. Code Section 769.3(b)(1)(B), Pub. Util. Code Section 769.3 authorizes the Commission to terminate or modify the tariff.

3. Whether a program “efficiently serves” distinct customer groups is evaluated by balancing sufficient enrollment by customer groups with a program’s overall customer costs.

4. Whether a program “minimizes duplicative offerings” is defined as whether a program offering overlaps with similar offerings to the same customer groups.

5. Whether a program “promotes robust participation by low-income customers” is measured by the number of enrolled low-income customers for existing programs, and the number of prospective low-income customers for new programs.

6. Pub. Util. Code Section 769.3(c) establishes the requirements for new Green Access Program tariffs.

7. The current ECR program fails to efficiently serve distinct customer groups because, among other reasons, the investor-owned utilities’ programs have had no customer enrollment since the programs’ inception. The current ECR program fails to promote robust participation among low-income customers based on the lack of enrollment by low-income customers.

8. The current GT program fails to efficiently serve distinct customer groups because, among other reasons, the investor-owned utilities’ programs have all

been suspended in some capacity. The current GT program fails to promote robust participation among low-income customers based on the lack of enrollment by low-income customers.

9. The current DAC-GT program fails to efficiently serve distinct customer groups because, among other reasons, the program is under-subscribed and under-procured. The current DAC-GT program fails to promote robust participation among low-income customers based on the low level of enrollment among low-income customers.

10. The current CSGT program fails to efficiently serve distinct customer groups because, among other reasons, there have been no customers enrolled in the CSGT program since the program's inception. The current CSGT program fails to promote robust participation among low-income customers based on the lack of enrollment by low-income customers.

11. Under the Federal Power Act, FERC has exclusive jurisdiction over the sale of electricity at wholesale rates, and states are preempted from setting wholesale rates.

~~12. PURPA creates an exception allowing states to set wholesale rates for utilities to purchase electricity and capacity from qualifying facilities at their avoided cost.~~

~~13. FERC mandates certain minimum requirements governing how to calculate avoided cost, but states implementing PURPA-compliant programs have discretion to determine how avoided cost is calculated.~~

14. The NVBT proposals ~~do not equate to~~ is a retail rate programs subject to the Commission's exclusive jurisdiction. ~~but instead resemble wholesale electricity procurement.~~

~~15. Although proceeds of the sale of electricity purchased by the utility would be distributed to subscribers as credits in the NVBT proposals, this would not change the wholesale nature of the projects' delivery to the grid.~~

16. Electricity generated by proposed NVBT projects is exported to the grid

~~and subject to netting on a subscriber's utility bill. would have no relationship with the subscriber load but, rather, would be resold by the utility to end users alongside electricity purchased in the wholesale market.~~

17. The NVBT proposals are not measurably different from the net energy metering/net billing or VNEM/net billing frameworks adopted in D.22-12-056 or D.23-11-068.

~~18. The NVBT proposals lack a true-up period, have no provision for surplus compensation, and include generation located offsite from subscribers and not proximate to subscriber load.~~

19. Modifying the NVBT proposals as discussed in this Decision will improve its relationship to currently existing Commission-approved distributed generation programs. ~~depict wholesale procurement and not retail net energy metering in terms of: (1) the lack of a true-up period; (2) the practice of banking surplus energy in lieu of providing net surplus energy compensation; and (3) the absence of geographic proximity between generation and subscriber load.~~

20. The structure of the NVBT proposals represents a departure from is consistent with FERC precedent in the context of its decisions concerning netting. ~~net energy metering.~~

21. The NVBT proposals should be modified to include ~~a lack a true-up period to determine if there has been generation in excess of subscriber load, which is referred to as using the net surplus compensation framework established in other distributed generation programs.~~

~~22. The NVBT proposals monthly netting of credits include indefinite rollover of credits instead of the annual true-up required in net billing and virtual net billing.~~

23. The NVBT proposals prohibit the generating account from distributing subscriber credits beyond the value of the generator's production to the grid or taking any bill credit for the generator's production.

24. The NVBT proposals' bill credits for any generation produced to the grid

beyond that subscribed to customer accounts can be “banked” (for up to two years) until a new customer is enrolled to receive the bill credit; after two years, the bill credit would disappear.

25. The NVBT proposals should be modified to do not provide generators with “net surplus compensation” — at a price equal to utility’s avoided cost as required PURPA — for any net surplus generation exported to the grid in excess of subscriber load after 1 year of banking.

26. Net surplus compensation is an essential feature of the Commission’s net billing and virtual net billing tariffs that make them compliant with PURPA.

27. The Commission’s use of the net compensation framework for all net metering tariffs is guided by FERC, AB 920, and prior Commission decisions, with respect to net surplus compensation.

28. AB 920 requires the Commission to establish a net surplus compensation program to compensate net energy metering customers for electricity produced in excess of on-site load at the end of a 12-month true-up period.

~~29. The NVBT’s proposed banking of credits precludes any excess generation from being compensated at the utility’s avoided cost as required by PURPA.~~

30. The NVBT proposals allow generation to be located off-site from the subscriber’s load similar to current programs, ~~which is a departure from FERC precedent finding net metered generation subject to state and not federal jurisdiction.~~

~~31. The off-site feature of the NVBT proposals make potential projects comparable to the generation projects currently compensated under the Standard Offer Contract or participating in the ReMAT program.~~

~~32. Under 16 U.S.C. Section 2621(d)(11), net energy metering is described as service to an electric consumer, under which electric energy generated by that consumer is from an eligible on-site generation facility.~~

33. FERC has consistently premised its decisions concerning netting on a careful evaluation of its jurisdiction and found it lacks jurisdiction. ~~on the idea that~~

~~acceptable net energy metering programs place the generator on-site of the load.~~

34. FERC has consistently found that decisions finding netting metering arrangements, including net energy metering and virtual net metering, to be outside FERC's jurisdiction ~~have involved generation located on-site to the utility customer.~~

35. ~~Parties to this proceeding have identified no authority from FERC or a federal court indicating generation for facilities to which end-use customers subscribe, that are not located on-site to those customers, would be considered net metering and, therefore, exempt from FERC jurisdiction.~~

36. The "essential" features of net energy metering are a tariff, including a modified NVBT, in which a subscriber's energy generation is netted against their load within an established billing period and the subscriber's net surplus energy generation and unsubscribed generation are calculated over a true-up period, ~~recognized as a wholesale transaction,~~ and compensated at the utility's PURPA-compliant avoided cost as a means to clearly avoid implicating federal jurisdiction.

37. ~~The essential features of net energy metering are lacking from the NVBT proposals.~~

38. Proponents of the NVBT proposals have ~~not~~ demonstrated that the NVBT proposals comply with federal law.

39. ~~NVBT proposals do not propose a form of "net energy metering" and are not exempt from the requirements of PURPA on this basis.~~

40. Section 769.3(b)(2)(B) contains the following language: "If the commission establishes a community renewable energy program pursuant to subparagraph (A)."

41. The plain language of AB 2316 and Pub. Util. Code Section 769.3 allows the Commission to make its own determination on the reasonableness of adopting and implementing a community renewable energy program.

42. Because the NVBT proposals would compensate generators and customers

based on the Avoided Cost Calculator values ~~and not the required PURPA-avoided costs~~, adopting any of the NVBT proposals would result in ratepayers paying only more than the avoided costs for these resources.

43. Absent project citing requirements, beyond being in the same service territory as the subscribers, the Commission is unable to determine whether a project would avoid any transmission or distribution costs, much less what that avoided costs equals.

44. ~~Without the certainty that the~~ Modifying the NVBT to require geographic constraints on resources would be located so the facilities are closer to customers; allows the avoided costs of transmission and distribution ~~cannot be~~ to be confirmed.

45. ~~Without Utilities' ability to claim Resource Adequacy credits~~, NVBT projects ~~cannot~~ avoid generation capacity costs by modifying load on the circuit they are interconnected with in the same manner as other distributed generation programs participating facilities do with their exported energy.

46. ~~The lack of a deliverability study, required in the Resource Adequacy process, could lead to the need for transmission upgrades that could result in higher costs for all ratepayers.~~

47. In the VNEM, NEMA, and RES-BCT tariffs, the generator is sized to fit the load; similarly, in the NVBT proposals the customer subscriptions are sized to fit the subscriber's annual load ~~production of the generator.~~

48. For both the VNEM and NEMA tariffs, the generating facility is located onsite, or on a contiguous property; whereas, with the NVBT, the generating facility will be located more flexibly to address the fact that many ratepayers cannot install a distributed energy resource on their property for a variety of reasons. ~~anywhere within a utility's service territory.~~

49. With the geographic limitations contained in this decision, ~~t~~The proposed NVBT ~~does not have a~~ will have a proximate connection between the location of the generating facility and the subscribers in the proposed NVBT.

50. The NVBT proposals are ~~not~~ functionally the same as the VNEM, NEMA, and RES-BCT tariffs in that the NVBT ~~does not~~ similarly avoids transmission and distribution costs by lowering demand in the distribution grid.

51. Front-of-the-meter resources are in front of a customer's meter.

52. Behind-the-meter resources are behind a customer's meter and will address onsite load, if any, and then feed back into the grid.

53. If a resource is behind the meter then the resource will offset any load from the customer before producing energy to the distribution grid.

54. If the resource is in front of the meter, a customer's load may not be offset. Instead, the energy will be sent directly to the distribution grid reducing demand on the grid. ~~The location of the resource and its proximity to customers will determine what happens to the produced energy.~~

55. The Avoided Cost Calculator and, ~~therefore,~~ the RIM test results should ~~not~~ be relied upon to determine the impact of NVBT proposals on nonparticipating customers.

56. Comparing wholesale procured resources with the proposed NVBT resources is not how the Commission has historically evaluated distributed energy resources.

57. The NVBT proposals would result in ratepayers compensating customers for costs that are ~~not~~ avoided, which avoids ~~would result in~~ a cost shift.

~~58. Neither the plain language in AB 2316 nor in Pub. Util. Code Section 769.3 uses the term Avoided Cost Calculator.~~

59. A reasonable interpretation of the term "avoided costs" in Pub. Util. Code Section 769.3 ~~could refer to either the PURPA avoided costs or~~ is the avoided costs assessed in the Avoided Cost Calculator.

~~60. Pub. Util. Code Section 769.3 makes no requirement to use the Avoided Cost Calculator or any other specific method.~~

~~61. Pub. Util. Code Section 769.3 requires the use of a Commission method of calculating the avoided cost.~~

~~62. FERC has issued guidance on how to calculate avoided cost but allows state discretion to determine how avoided cost is calculated, which would equate to the Commission's methods for calculating avoided costs.~~

~~63. Because none of the NVBT proposals propose a form of "net energy metering," and are not exempt from the requirements of PURPA on this basis, the Commission must turn to the PURPA guidance for calculating avoided cost.~~

64. The record indicates strong support for the adoption of a new community renewable energy program founded on the NVBT from a diverse array of entities.

65. The Commission twice set aside submission of the record of this proceeding to further develop the record concerning the NVBT and other proposals in the record, because of concerns with NVBT proposals regarding cost effectiveness and reliability matters; SCE's PURPA compliant proposal is an alternative community renewable energy program to address these concerns.

~~66. All parties have been provided with an opportunity to comment on SCE's PURPA compliant proposal is flawed and not adoptable.~~

67. Pub. Util. Code Section 769.3 does not require the community renewable energy program to attain any specific procurement target.

68. Pub. Util. Code Section 769.3 requires the Commission to determine by March 31, 2024, whether it is beneficial to adopt a community renewable energy program.

~~69. SCE's PURPA compliant proposal is neither out of scope nor does it violate due process rights.~~

70. SCE provides no analysis that its PURPA compliant proposal would comply with Pub. Util. Code Section 769.3(c)(1) or Pub. Util. Code Section 769.3(c)(6).

71. The Energy Commission will decide whether a facility utilizing the NVBT to provide subscriptions associated with new construction meets the

requirements established by the CEC as an alternative compliance pathway for Title 24 requirements. ~~proposal complies with Section 769.3(c)(1).~~

72. Pub. Util. Code Section 769.3(c)(1) directs that “[f]or purposes of this paragraph, the Commission shall consult with the Energy Commission.” The Commission has consulted with the CEC and determined that NVBT is complementary to and consistent with Title 24 needs.

~~73. In SCE’s PURPA compliant proposal, the subscribing customer’s share of the generation resource’s compensation would be set aside in a balancing account and distributed through a flat \$/kWh credit that can be trued up annually based on facility performance and credits distributed; the credit is deducted from compensation to the generation, which is calculated based on PURPA avoided costs of the program’s facilities.~~

~~74. SCE has presented evidence on how its PURPA compliant proposal meets the requirements of Pub. Util. Code Section 769.3(c)(3) and Green Access Program tariff evaluation results indicate there has been limited success developing community solar.~~

75. The limited past success was one of the reasons for requiring an evaluation of the Green Access Program tariffs and the subsequent required applications for improvement filed as the basis of this proceeding.

76. PURPA prices alone ~~may not~~ are not be sufficient compensation for garnering additional interest in community solar by developers.

77. The SCE PURPA compliant proposal is incomplete and, therefore, cannot be adopted.

~~78. The incomplete SCE PURPA compliant proposal requires additional record building time that the Commission does not have.~~

79. The Commission has several existing tariffs that are PURPA compliant, but none have resulted in viable projects for many years.

~~80. It is reasonable to address the concern that PURPA avoided costs may be insufficient by using the \$33 million appropriated to the Commission for community solar usage as an adder.~~

81. In Pub. Util. Code Section 769.3, the Legislature intended low-income households and those who rent or lease their space to be the target market for the community renewable energy programs.

82. Only low-income households are eligible for the \$33 million funds appropriated to the Commission through AB 102.

83. The Commission adopted automatic enrollment in DAC-GT in D.20-07-008.

84. Automatic enrollment reduces administrative costs, minimizes marketing, education, and outreach costs, and reduces barriers to access.

85. Compensating customers in energy units is not applicable when netting is not being performed.

86. Limiting the size of ~~PURPA-compliant~~ community renewable energy program projects to ~~20~~ 5 MW and requiring developers seeking to utilize facilities participating in the NVBT for Title 24 compliance to demonstrate to the Energy Commission that a project complies with Section 10-115 of the California Building Code ensures compliance with Pub. Util. Code Section 769.3(c)(1).

87. Requiring that 51 percent of a ~~PURPA-compliant~~ community renewable energy program generation facility's capacity be subscribed to low-income households ensures compliance with Pub. Util. Code Section 769.3(c)(2).

88. Requiring the ~~PURPA-compliant~~ community renewable energy program to use ~~PURPA-avoided costs~~ identified in the Avoided Cost Calculator to compensate generation resources ensures program costs are not paid by nonparticipating customers in excess of avoided costs.

89. Requiring the ~~PURPA-compliant~~ community renewable energy program project developers to comply with the prevailing wage requirement ensures compliance with Section 1773 of the Labor Code and Pub. Util. Code Section 769.3(c)(4).

90. Requiring the ~~PURPA-compliant~~ community renewable energy program

to: (1) compensate generating resources based on the ~~PURPA~~ avoided costs of the facility as identified in the Avoided Cost Calculator and (2) provide subscribing customers with their portion of this compensation as a bill credit results in compliance with Pub. Util. Code Section 769.3.(c)(3) and (c)(5).

91. There are several state and federal funding sources available for ~~PURPA-compliant~~ community renewable energy programs including AB 102, the Environmental Protection Agency's Solar for All, the enhanced federal ITC, and the Greenhouse Gas Reduction Fund.

92. Requiring developers of community renewable energy program projects to take advantage of the available state and federal funding results in compliance with Pub. Util. Code Section 769.3(c)(6).

Modifications to Conclusions of Law

1. The current ECR tariff fails to meet the goals of Pub. Util. Code Section 769.3(b)(1)(A).

2. The current GT tariff fails to meet the goals of Pub. Util. Code Section 769.3(b)(1)(A).

3. The current DAC-GT tariff fails to meet the goals of Pub. Util. Code Section 769.3(b)(1)(A).

4. The current CSGT tariff fails to meet the goals of Pub. Util. Code Section 769.3(b)(1)(A).

5. The NVBT proposals are ~~not~~ exempt from the requirements of PURPA.

6. The Commission should ~~not~~ adopt ~~any of the NVBT proposals, as~~ modified in this Decision, as a foundation for a community renewable energy program.

7. AB 2316 and Pub. Util. Code Section 769.3 does not require the Commission to adopt a community renewable energy program.

~~8. The NVBT proposals' element to bank and roll-over credits runs afoul of PURPA and is not consistent with the requirements for net energy metering as authorized by AB 920.~~

9. The NVBT proposals, as modified in this Decision, ~~do not~~ comply with the requirements of Pub. Util. Code Section 769.3.

10. ~~Neither AB 2316 nor~~ and Pub. Util. Code Section 769.3 require the use of the Avoided Cost Calculator ~~or any other specific method~~ to determine the avoided costs of the NVBT facilities.

11. The Commission should not use the PURPA avoided costs for calculating avoided costs of the community renewable energy program facilities.

12. To 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, the Commission should require that developers of ~~PURPA-compliant~~ community renewable energy program projects should take advantage of state and federal funds including AB 102, the Environmental Protection Agency's Solar for All, the enhanced federal ITC, and the Greenhouse Gas Reduction Fund.

13. The Commission ~~should~~ finds it beneficial to adopt a community renewable energy program.

~~14. The Commission should only allow low-income households to receive the community renewable energy program adder.~~

15. The Commission should not adopt the top-off approach.

16. The Commission should adopt automatic enrollment in the currently existing community renewable energy program.

17. The Commission should adopt the proposal to provide customers participating in currently existing programs with a flat monetary credit on customer bills.

18. The Commission should adopt a community renewable energy program that uses the ~~current PURPA-compliant tariffs~~ NVBT, as modified in this decision, as a foundation.

19. A community renewable energy program ~~compliant with~~ using

PURPA avoided costs cannot meet the requirements of Pub. Util. Code Section 769.3.

20. The community renewable energy program founded on the NVBT meets the requirements of Pub. Util. Code Section 769.3.

~~21. The Commission should adopt the community renewable energy program compliant with PURPA.~~