

**BEFORE THE PUBLIC UTILITIES COMMISSION OF
THE STATE OF CALIFORNIA**



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Application of PACIFIC GAS AND ELECTRIC
COMPANY (U39E) for Review of the
Disadvantaged Communities – Green Tariff,
Community Solar Green Tariff and Green Tariff
Shared Renewables Programs.

Application 22-05-022
(Filed May 31, 2022)

And Related Matters

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

**OPENING COMMENTS OF THE UTILITY REFORM NETWORK ON THE
PROPOSED DECISION OF ADMINISTRATIVE LAW JUDGE HYMES**



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SUMMARY OF RECOMMENDED CHANGES TO THE PROPOSED DECISION

TURN recommends that the Commission reject the Proposed Decision or adopt the following modifications:

- Find that the new community renewable energy program proposed by Southern California Edison (SCE) in its November 23, 2023 comments is not viable, will not induce developers to participate, is not sustainable or scalable, and will squander the opportunity to use available federal funding.
- Adopt the Net Value Billing Tariff (NVBT) program proposed by the Coalition for Community Solar Access (CCSA) subject to the modifications proposed in TURN's testimony, comments and briefs.
- Eliminate the conclusion that the NVBT is equivalent to wholesale procurement and is therefore federally preempted under the Public Utility Regulatory Policies Act (PURPA).
- Decline to compare the NVBT costs to those that would be incurred if projects sold their output under the Renewable Energy Market Adjusting Tariff (ReMAT) or under a PURPA Standard Offer contract.
- Delete language that limits the applicability of the Avoided Cost Calculator (ACC) to exported electricity under the Net Billing Tariff (NBT), Virtual Net Energy Metering (VNEM) and Net Energy Metering Aggregation (NEMA).
- Conclude that AB 2316 requires the Commission to use the ACC for purposes of valuing subscriber bill credits under the NVBT.
- Recognize that the NVBT would serve as alternative compliance under the Title 24 new residential building standards, displace between 250-400 MW/year of rooftop solar on new buildings, and result in significant savings for all customers relative to the cost shift under NBT/VNEM. The PD should also acknowledge that its alternative program is unlikely to satisfy the Title 24 requirements, would result in virtually no participation, and cause substantial new cost shifting under NBT/VNEM.

- Clarify that the Commission is not eliminating the requirement to retire Renewable Energy Credits (RECs) for procurement to serve subscribers of existing Green Access Programs.
- Reject proposals by all IOUs to serve Green Tariff customers through renewable energy procured to meet the requirements of the Renewable Portfolio Standard (RPS) program or Integrated Resource Planning (IRP). The Commission should require all procurement to serve Green Tariff programs be incremental but may allow that procurement to be coordinated with other RPS or IRP activities.

**OPENING COMMENTS OF THE PROPOSED DECISION OF
ADMINISTRATIVE LAW JUDGE HYMES**

Pursuant to Rule 14.3 of the Commission rules of Practice and Procedure, The Utility Reform Network (TURN) submits these opening comments on the March 4, 2024 Proposed Decision (PD) of ALJ Hymes. TURN opposes the PD because it relies on legal and factual errors, does not reasonably implement the requirements of AB 2316 (Ward), and would not result in the establishment of a viable community renewable energy program. The Commission should modify the PD to adopt the proposed Net Value Billing Tariff (NVBT) proposed by the Coalition for Community Solar Access (CCSA) subject to the modifications contained in TURN's testimony, briefs and comments.

I. THE ALTERNATIVE PROGRAM ADOPTED BY THE PD IS NOT VIABLE AND WOULD BE A WASTE OF EFFORT AND RESOURCES TO IMPLEMENT

The new community renewable energy program envisioned by the PD would allow any eligible renewable energy project to execute a contract with an IOU priced at PURPA avoided costs, either under a standard offer contract or the Renewable Energy Market Adjusting Tariff (ReMAT), and share a portion (10-20%) of the revenue received under that agreement with subscribers.¹ Subscribers would receive both their portion of the avoided cost revenue and any additional bill credits from externally sources such as the state general fund, the USEPA Solar for All program, or through the sale of Greenhouse Gas allowances by the IOUs that would otherwise be used for the Climate Dividend.²

As a matter of due process, the Commission should reject the PD's reliance on a proposal submitted at the end of an extensive proceeding with a nearly-complete evidentiary record and limited opportunities for scrutiny by other parties. On a substantive level, the proposed program is fatally flawed, cannot be scaled to meet customer demand, is not sustainable over any multi-year duration, and will not induce

¹ SCE comments, November 23, 2023, page 3.

² The PD does not address the fact that the diversion of GHG allowances for this purpose would represent a cost shift from the general body of ratepayers who would otherwise benefit from these revenues through the Climate Divided.

participation by renewable energy project developers. SCE's proposal is unlikely to provide any value to consumers. These are issues that would have been more thoroughly explored had the proposal been vetted throughout the course of this proceeding. Investing time and energy into this approach would be a waste of resources for the Commission, the IOUs, and other parties.

A. Parties were denied a meaningful opportunity to review and comment on the proposal during the proceeding

The PD embraces a new community renewable energy program first proposed in SCE comments responding to the November 6, 2023 ALJ ruling.³ The November 6th ALJ Ruling did not invite parties to submit alternative community renewable energy program concepts but instead requested responses to a list of questions regarding specific aspects of the NVBT.⁴ SCE included its alternative program in an introductory section and not in response to the questions posed by the Ruling.⁵ SCE added substantial additional details in its December 7, 2023 reply comments, thereby denying parties any opportunity to respond prior to the issuance of the PD.⁶

Prior to these comments, parties had submitted three rounds of testimony, opening and reply briefs, and a set of post-briefing comments on cost-effectiveness considerations. The SCE alternative was not proposed in any of these previous submissions. As a result, parties were left with a single set of reply comments to respond to a brief description of SCE's concept and no opportunity to respond to the extensive description and material provided in SCE's reply comments. The inability of parties to adequately review and comment on this proposal constitutes a failure of due process in this proceeding. Given the extensive process that all other parties were required to follow to submit and vet their tariff proposals, the Commission should decline to adopt a program design that was submitted *sua sponte* at such a late stage of the proceeding.

³ PD, page 78, footnote 212.

⁴ ALJ Ruling Setting Aside Submission of the Record to Seek comments on aspects of Net Value Billing Tariff Proposal, November 6, 2023.

⁵ SCE comments, November 23, 2023, pages 2-4.

⁶ SCE reply comments, December 7, 2023, pages 2-5, 10-15, 17-21,

B. The proposed Community Renewable Energy Program has fatal flaws that will result in little-to-no enrolled capacity or subscribers and squander opportunities for federal funding

The program envisioned by SCE and the PD suffers from six fatal flaws that will prevent it from succeeding. The first flaw is the misguided assumption that developers would be eager to split PURPA avoided cost revenues with subscribers. The PD requires 20% of the PURPA avoided cost revenues to be shared with low-income subscribers and a non-zero (but yet to be defined) percentage to be shared with non-low-income subscribers.⁷ Developers could be required to find and enroll subscribers and absorb other costs that are incremental to those facing a standard merchant generation project.⁸ The PD notes SCE's acknowledgement that "compensation under PURPA may not be sufficient to allocate a portion to fund a bill credit for subscribing customers" but takes no particular action to address this failing.⁹

The PD fails to grapple with the fundamental question of why a project developer would agree to share these revenues with subscribers, and potentially absorb additional enrollment and subscription costs, when the project could alternatively execute a wholesale Power Purchase contract with an IOU under PURPA or ReMAT and keep 100% of avoided cost revenues without any need to enroll subscribers. There is no clear motivation for a developer to take less revenue in exchange for higher burdens.

The second flaw is the assumption that PURPA avoided cost pricing, even in the absence of sharing any value with subscribers, is sufficient to induce participation by project developers. The ReMAT program has only resulted in contracts with eight projects (totaling 12.4 MW) since 2017 (and none since the program reopened in 2020) and the PURPA Standard Offer Contract program has only yielded a single new project

⁷ PD, pages 122-123.

⁸ It is not clear from the PD whether developers would be obligated to perform this function or whether all enrollment would be categorical and administered by the IOUs.

⁹ PD, page 117.

(20 MW solar) in the last five years.¹⁰ These results call into question whether PURPA pricing reflects the market value of new projects. Given this anemic track record, there is no legitimate reason to believe that developers would flock to take advantage of a new program that offers even lower levels of compensation.

The third flaw is the failure to prioritize paired energy storage. In D.22-12-056, the Commission noted the far greater value of solar with paired energy storage to the grid, stating that “it is and will continue to be Commission policy to encourage solar systems paired with storage, while considering the costs and benefits.”¹¹ While the NVBT would require all participating projects to include an equivalent amount of generation and storage capacity with 4 hours of energy storage, the PD’s alternate approach does little to promote projects that contain paired storage. Given the low pricing available under PURPA/ReMAT, and the requirement to share these revenues with subscribers, there is no reason to believe that new community renewable energy projects with paired storage will be developed. The Commission should insist that any new eligible projects include adequate energy storage to better serve grid needs.

The fourth flaw is the concern that participating generation projects may not be eligible for the enhanced 50% Investment Tax Credit (ITC) available to qualifying low-income economic benefit projects. The PD agrees that AB 2316 establishes such eligibility as a requirement for any new program pursuant and concedes that SCE has not provided any analysis to show that its proposal would comply with the requirements governing the enhanced ITC.¹² Despite the absence of any analysis, the PD summarily concludes that the adopted program would satisfy the enhanced ITC requirements.¹³ This conclusion may not be warranted for two reasons. First, the PURPA program allows projects up to 20 MW in size to participate but eligibility for the enhanced ITC is limited

¹⁰ Ex. SEIA-4, page 6, footnotes 11, 12; TURN reply comments, August 10, 2023, page 8 (*citing* CPUC 2023 Padilla Report).

¹¹ D.22-12-056, page 99.

¹² PD, page 115; Cal. Pub. Util. Code §769.3(c)(6)

¹³ PD, page 127.

to projects no larger than 5 MW in size.¹⁴ Second, the IRS regulations require that project owners provide documentation identifying each qualifying low-income household subscribing to the project, the output allocated to each low-income customer and the method of income verification utilized.¹⁵ In light of the PD's proposal to have the utility automatically enroll at least a portion of project subscribers,¹⁶ the project developer may not have adequate information to be able to make this showing and claim the enhanced ITC.

The fifth flaw is the absence of adequate external funding to provide meaningful bill credits to subscribers. The PD adopts the use of \$33 million appropriated by the Legislature to support subscriber bill credits.¹⁷ A review of the authorizing legislation clarifies that these funds were made available for "storage-backed renewable generation programs".¹⁸ In the event that no projects including storage participate, the Commission may be unable to access and spend this money under the envisioned program. Even if the funds are available to support stand-alone solar projects, the application of \$33 million would not be adequate to support sustained bill credits for any meaningful amount of generation. Assuming that these funds are used to provide a 3 cents/kWh bill credit, the \$33 million would only be able to support 10 years of bill credits for approximately 50 MW of new generation which could serve approximately 18,000 low-income customers across the three IOUs.¹⁹ This limited scale would render this program of marginal importance and fail to justify the effort invested in the overall program.

The sixth flaw is the failure of the PD to construct a program that would be able to efficiently utilize any Solar for All funding from US EPA.²⁰ If few (or no) projects are

¹⁴ PD, page 120; 26 CFR § 1.48(e)-1(b)(ii).

¹⁵ 26 CFR § 1.48(e)-1(f)(3).

¹⁶ PD, page 122.

¹⁷ PD, page 121.

¹⁸ AB 102, Budget Act of 2023, Section 244.

¹⁹ This example assumes that 50 MW of solar generation would operate at a 25% capacity factor and produce 1,095,000,000 kWh over the course of 10 years. An average household is assumed to use 500 kWh/month.

²⁰ PD, page 121.

developed to serve customers under the PD's program (due to the absence of adequate revenues for developers), there will be no use for any funds awarded by US EPA. This outcome represent a huge missed opportunity for California and fails to honor the statutory directive that the Commission "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."²¹

Taken together, these six flaws demonstrate the foolhardiness of moving forward with the PD's alternative to the NVBT. The Commission should avoid the adoption of a doomed program and decline to adopt the PD as drafted. Instead, the Commission should adopt the NVBT program and incorporate the modifications proposed by TURN in testimony, comments and briefs.²²

II. THE NET VALUE BILLING TARIFF DOES NOT VIOLATE PURPA

The PD concludes that the NVBT resembles wholesale electricity procurement and is therefore federally preempted under PURPA. The key features of the NVBT that lead the PD to reach this conclusion are the fact that the generator is not located behind the meter of the benefiting customer and the assumed absence of a true-up period to ensure that excess generation is treated as net surplus compensation. These concerns result from a misunderstanding of the NVBT proposal and an unwarranted assumption regarding locational requirements for a tariff to be exempt from PURPA.

The PD's first mistake is insisting that the NVBT's rollover and banking provisions violate PURPA because they do not compensation excess generation using the Commission's "net surplus compensation" methodology required under AB 920 for net energy metering.²³ TURN proposed allowing NVBT export credits to be banked for up to one year with any unused credits receiving no compensation.²⁴ Under this approach,

²¹ Cal. Pub. Util. Code 769.3(c)(6).

²² TURN opening brief, pages 21-27.

²³ PD, page 91.

²⁴ TURN opening brief, page 24; Ex. TURN-2, page 18.

NVBT generators would receive zero compensation for any generation not assigned to a subscriber account within one year.²⁵ TURN's proposal would result in no "net sale of energy to a utility" and no FERC claim of federal jurisdiction.²⁶ The Commission should adopt TURN's one-year banking limit to resolve the PD's concern. If the Commission believes it must pay more than zero for excess generation not subscribed within a year (a dubious proposition), it could adopt the NVBT subject to the requirement that excess (unsubscribed) generation be paid out at the net surplus compensation rate. This modest and easy to implement modification could be included in any final order.

The PD's second mistake is presuming that FERC would only disclaim jurisdiction over retail billing arrangements when the generation is located "on-site to the utility customer."²⁷ The PD suggests that, by allowing offsite facilities to be eligible for a retail bill crediting arrangement, the NVBT "presents an additional departure from FERC precedent".²⁸ There is no such departure since FERC has never adopted any precedent that prohibits the locational outcomes under the NVBT. As noted in the PD, over 22 states currently operate community solar programs that, by definition, allow customers to subscribe to the output of renewable generation not located onsite.²⁹ Since 2016, FERC has declined to grant several petitions seeking a finding that community solar programs violate PURPA.³⁰ The PD's conclusion is not based on any FERC action and is undermined by the existence of community solar programs around the country. Rather than rushing to declare federal preemption where none has previously been found, the Commission should make earnest efforts to implement enacted state law.

²⁵ The provisions of AB 920 (Cal. Pub. Util. Code §2827) apply to net energy metering and not the NVBT (which is authorized under a different code section). The Commission is not obligated to provide net surplus compensation under the NVBT and can instead decide to provide zero compensation for excess generation not allocated to a subscriber within one year.

²⁶ PD, page 90, *citing Sun Edison* 129 FERC ¶61,146 at 61,620.

²⁷ PD, page 92.

²⁸ PD, page 91.

²⁹ PD, page 86. The Commission need not know the details of community solar programs in other states to understand that these facilities are not located at the same site as the subscribers.

³⁰ Southern Maryland Elec. Coop. and Choptank Elec. Coop., 157 FERC ¶ 61,118 (2016); Southern Maryland Elec. Coop. and Choptank Elec. Coop., 162 FERC ¶ 61,048 (2018); New England Ratepayers Association, 172 FERC ¶61,042 (2020).

In declining to move forward with the community renewable energy program envisioned by AB 2316 on the basis of federal preemption that has not been established by either FERC or the federal courts, the Commission treads dangerously close to violating Article III, Section 3.5 of the California Constitution. This section of the Constitution prohibits any state administrative agency from refusing to enforce or implement state law on the basis that it violates federal law unless an appellate court has made such a finding.³¹ Since no appellate court has found any community solar program to violate PURPA, the PD may not refuse to adopt the NVBT on that basis.

III. THE COST SHIFT ANALYSIS FOR THE NVBT IS FLAWED

The PD's rejection of the NVBT relies, in part, on the finding that using the Avoided Cost Calculator (ACC) to value exported power from an eligible distribution-connected generation project would represent a subsidy in comparison to the use of PURPA avoided costs.³² This analysis is fundamentally flawed, does not recognize that virtually no projects are being contracted at PURPA avoided costs, and does not accurately recognize the value of the NVBT projects.

TURN addressed the use of PURPA avoided costs in its August 10, 2023 reply comments.³³ Those comments noted the lack of meaningful participation in ReMAT (no contracts executed since 2020) and observed that "reliance on ReMAT as a substitute for the ACC in a Green Access Program would likely yield zero new MWs of renewable capacity and energy storage."³⁴ The lack of uptake under both ReMAT and PURPA demonstrates that available pricing is not sufficient to motivate developers to build new stand-alone solar projects and will not reflect the market price for distributed solar plus storage projects. The use of PURPA pricing as a benchmark is flawed because it reflects a price which virtually no projects are willing to accept and therefore does not represent the cost of developing similar resources under an alternative tariff. At a minimum, any

³¹ CA Constitution, Article III, Section 3.5(c).

³² PD, pages 108-110, Appendix A.

³³ TURN August 10, 2023 reply comments, pages 8-9.

³⁴ TURN reply comments, August 10, 2023, pages 8-9.

comparison of the NVBT with wholesale procurement should consider the costs incurred by IOUs or CCAs in competitive solicitations for new transmission-connected solar projects with a 1:1 ratio of solar to storage capacity and 4 hours of energy storage.

As a general matter, the PD envisions restricting the ACC to the sole purpose other than calculating export compensation under the NBT / VNEM / NEMA tariffs while valuing exports from all other projects using PURPA. This approach would unconscionably place a higher value on exports from stand-alone behind the meter solar projects than exports from NVBT projects that include energy storage. This outcome defies logic.

The PD suggests that the ACC massively overstates the value of Transmission and Distribution (T&D) deferral and Generation Capacity associated with exports to the distribution system.³⁵ The PD specifically criticizes the provision of ACC T&D deferral values for an NVBT project not located “close” to its benefiting subscribers.³⁶ This critique is not consistent with the ACC’s reliance on generic values for T&D deferrals that are neither tied to specific projects nor linked to exports on any particular distribution circuit.³⁷ There is no rational basis to find that exports from an NBT/VNEM project produce T&D deferral benefits but an NVBT project exporting the electricity to the distribution system during the same hours does not.

To the extent that the Commission believes that the ACC is not a fair metric for the value of exports, the ACC should be reformed to better reflect the true value provided by distribution-connected resources. Instead of offering reforms, the PD merely calls out perceived ACC flaws for the sole purpose of rejecting the NVBT but does so in a manner that lacks consistency across programs.

In its discussion of Generation Capacity value, the PD expresses concern about providing ACC values to an NVBT. The PD offers an incomplete summary of TURN’s position on this topic which is to provide ACC values to NVBT projects only if the

³⁵ PD, pages 100-102.

³⁶ PD, pages 100-101.

³⁷ D.20-04-020, page 50.

California Energy Commission (CEC) agrees to treat the output as a load modifier.³⁸

This decision by the CEC would reduce the Resource Adequacy obligations for the IOU or CCA and provide the value embedded in the ACC.³⁹ If the CEC does not agree to this treatment, TURN recommends that NVBT projects be permitted to sell any Resource Adequacy under long-term contracts to a Load Serving Entity with the proceeds being applied to offset any subscriber cost obligations.⁴⁰ The PD should be modified to reflect the fact that a CEC determination would allow NVBT output would serve as a load modifier and justify the provision of generation capacity values under the ACC.

IV. THE PD COMMITS LEGAL ERROR BY DECLINING TO IMPLEMENT THE STATUTORY REQUIREMENT TO USE THE AVOIDED COST CALCULATOR

The PD concludes that AB 2316 does not require the use of the ACC for purposes of determining bill credits for subscribers to a community renewable energy program.⁴¹ The PD reaches this conclusion despite clear statutory language and legislative analysis demonstrating the opposite. The PD's conclusion represents reversible legal error.

AB 2316 requires any "community renewable energy program" to "provide bill credits to subscribers based on the avoided costs of the program's facilities, as determined by the commission's methods for calculating the full set of benefits of distributed energy resources."⁴² This language can only be understood to describe the ACC since the Commission has never previously identified any other method of performing a calculation specific to distributed energy resources. This understanding was held by all stakeholders and legislators working on AB 2316. TURN's opening brief noted that the analysis performed by the Senate Committee on Energy, Utilities and Communications

³⁸ PD, pages 101-102.

³⁹ TURN opening comments, November 27, 2023, pages 2, 5-6; TURN reply comments, December 7, 2023, pages 1-3.

⁴⁰ TURN reply comments, December 7, 2023, page 3.

⁴¹ PD, pages 110-113.

⁴² Cal. Pub. Util. Code §769.3(c)(5).

devotes an entire section to describing the Avoided Cost Calculator and explaining that this approach would be required under AB 2316.⁴³

The PD declines to give any weight to the committee analysis because “the language of the signed bill may be different from the language of the bill at the time of the analysis”.⁴⁴ There is no need to speculate on this point. A review of the legislative history shows that the relevant language requiring the use of the ACC analyzed by the Senate Committee on June 24, 2022 is identical to the language that was enacted into law.⁴⁵ Furthermore, the PD incorrectly asserts that the analysis “never states that the Commission is required to use the Avoided Cost Calculator” for purposes of subscriber bill credits.⁴⁶ In fact, the committee analysis compares the ACC (described as avoided costs) to retail rates and notes that “this bill’s program compensates based on the far-less generous avoided cost.”⁴⁷ The entire section of the analysis referenced in the PD does not identify any other method of determining avoided costs apart from the ACC.

The PD’s refusal to acknowledge that the statutory language clearly refers to the avoided cost calculator relies on tortured logic and is patently unreasonable. It is not plausible to imagine that the Legislature intended to allow PURPA avoided costs to satisfy this requirement. Failure to remedy this portion of the PD would render it susceptible to reversal upon judicial review.

⁴³ TURN opening brief, page 36. The PD (footnote 312) incorrectly cites TURN’s August 26, 2022 reply comments (which do not contain this argument) and incorrectly states that TURN referenced a Senate Floor Analysis.

⁴⁴ PD, page 111.

⁴⁵ The version of AB 2316 considered by the Senate Energy, Utilities and Communications committee included the following language (2827.2(c) The community renewable energy program shall do all of the following....(5) Provide bill credits to subscribers based on the avoided costs of the community renewable energy facility, as determined by the commission’s methods for calculating the full set of benefits of distributed energy resources.)(https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB2316)

⁴⁶ PD, page 112.

⁴⁷ Analysis of AB 2316 (Ward), Senate Committee on Energy, Utilities and Communications, June 24, 2022, page 7 (https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=202120220AB2316#). This analysis was cited in TURN’s opening brief, page 36.

V. THE PD ERRS BY FAILING TO EVALUATE THE REDUCTION IN COSTS THAT WOULD RESULT FROM A SUCCESSFUL COMMUNITY RENEWABLE ENERGY PROGRAM THAT SERVES AS ALTERNATIVE COMPLIANCE UNDER TITLE 24

TURN's support for the NVBT is based, in part, on its ability to serve as an alternative compliance option under the Title 24 new residential building standards.⁴⁸ The alternative compliance option to use community solar programs is contingent upon satisfying various criteria including 20 years of bill savings.⁴⁹ The PD's proposal to rely on short-term infusions of limited external funds to provide subscriber bill savings would not meet this criteria since future savings would depend upon funds that have not yet been promised or committed by the state or federal government. Although the PD waves off this infirmity by suggesting that the CEC will make the ultimate determination, it does not appear likely that the alternative program will qualify.⁵⁰

Even if the alternative program qualifies under Title 24, the structural infirmities of the proposal mean that there is virtually no chance that material amounts of new generating capacity will enroll to serve that compliance need. CBIA estimates that 250-400 MW of community solar facilities are needed annually to serve as compliance option for Title 24 requirements.⁵¹ Absent a viable community solar program, Title 24 compliance will be met entirely with rooftop projects under the Net Billing Tariff (NBT) and Virtual Net Energy Metering (VNEM) tariffs. Under NBT and VNEM, a large share of generation output would be treated as residential self-consumption and compensated at retail rates. Exports would be compensated at the ACC values plus the 9-year adders adopted in D.22-12-056 (for NBT) and D.23-11-068 (for VNEM and NEMA). As shown in TURN's August 10 reply comments, the NVBT would result in 20-year levelized compensation for exports that is 27-35% lower than exports under the

⁴⁸ TURN opening brief, pages 32-33.

⁴⁹ TURN opening brief, pages 32-33, footnote 85 (2019 Building Energy Efficiency Standards, Title 24, Part 6, Section 10-115(a)(2), (3), (4), (5)).

⁵⁰ PD, pages 114-115.

⁵¹ CBIA opening brief, page 7.

VNEM tariff.⁵² This gap significantly understates the savings from the NVBT because a high proportion of generation under NBT/VNEM would be self-consumed and credited at the full retail rate.⁵³

CCSA estimated a net present value savings of up to \$4.47 billion over 25 years from using NVBT over NBT for 400 MW of Title 24 compliance.⁵⁴ These values would increase with greater utilization of the NVBT for new home construction over time. The PD's failure to evaluate these savings represents another fatal flaw. Compared to the NVBT, the PD's alternative program would create a massive cost shift due to thousands of MWs of new rooftop solar being installed under Title 24 and locking in decades of compensation at rates that dwarf both PURPA avoided costs and ACC values.

VI. SEVERAL PROPOSED MODIFICATIONS TO EXISTING GREEN ACCESS PROGRAMS ARE ILLEGAL OR UNREASONABLE

The PD adopts several modifications to existing Green Access Programs with the goal of addressing identified challenges of low participation. TURN has concerns with respect to two changes that may, or may not, be adopted by the PD.

First, the PD "eliminates the requirement to retire Renewable Energy Credits" for renewable energy procured to serve customers under the DAC-GT and Green Tariff programs.⁵⁵ It is not clear whether the PD references Renewable Energy Credits (RECs) as a stand-alone issue or only in connection with the California Air Resources Board Voluntary Renewable Electricity (VRE) Reserve Account. If the PD merely intends to eliminate the use of the VRE, TURN does not object to this change. If the PD intends to eliminate the requirement to retire RECs for resources credited to subscribers (which would allow RECs to be effectively counted twice), such an outcome would violate

⁵² TURN reply comments, August 10, 2023, page 3.

⁵³ The calculation in TURN's August 10th reply comments only compare the NVBT bill credit with the VNEM export rate and do not consider the value of self-consumption credits under the adopted 15-minute netting proposal.

⁵⁴ CCSA opening comments, January 31, 2023, pages 34-35.

⁵⁵ PD, page 130.

decades of Commission practice and the prohibitions on double counting pursuant to Public Utilities Code §399.21.⁵⁶

Second, the PD is ambiguous as to whether it adopts PG&E's proposal to abandon its practice of procuring incremental renewable energy projects to serve customers enrolled in its Green Tariff program. The PD appears to deny a similar request made by SCE as part of its Green Share program.⁵⁷ In the section assessing PG&E's modifications, the PD suggests that PG&E's overall proposals are "reasonable" but elaborates on this finding by referencing the elimination of the ECR tariff.⁵⁸ In other sections, the PD rejects the "top off" proposals of SCE and PG&E and directs each IOU and CCA administrator to submit Tier 2 Advice Letters that include "details on how their programs will result in incremental new renewable energy being purchased."⁵⁹

PG&E's actual proposal in this proceeding would eliminate any incremental procurement to serve program subscribers and instead allow mandated IRP procurement that results in excess RPS compliance to provide the required RECs to "top-off" Green Tariff customer accounts.⁶⁰ PG&E argued against any new long-term contracting for Green Tariff subscribers and proposed that any RPS-eligible transaction could be used including short-term (or one-time) contracts and unbundled RECs from existing resources anywhere in the West.⁶¹ PG&E's testimony and brief also suggest (but do not explicitly state) that surplus banked RPS compliance (which reflects historic overcompliance) could be used to meet subscriber demand.⁶² TURN's reply brief noted that this approach would result in no incremental renewable energy procurement to serve subscribers, an outcome directly at odds with the Commission's prior findings

⁵⁶ Cal. Pub. Util. Code §399.21(a)(2)(Each renewable energy credit shall be counted only once for compliance with the renewables portfolio standard of this state or any other state, or for verifying retail product claims in this state or any other state.)

⁵⁷ PD, Conclusion of Law 40.

⁵⁸ PD, page 143.

⁵⁹ PD, page 145.

⁶⁰ TURN reply brief, page 5; PG&E opening brief, page 15; Ex. PG&E-2, page 19.

⁶¹ TURN reply brief, page 5; Ex. PG&E-2, pages 18-20.

⁶² TURN reply brief, page 5.

and direction with respect to voluntary green energy tariffs. In D.15-01-051, the Commission affirmed the importance of additionality, which it found meant that “GTSR subscriber demand should result in commensurate incremental renewable energy facilities being developed beyond what would have been built in the absence of the GTSR Program.”⁶³ The Commission should affirmatively reject any modification that would allow PG&E (or SCE) to reallocate procurement undertaken to comply with RPS or IRP requirements to serve Green Tariff subscribers.

While TURN does not object to PG&E and SCE conducting solicitations for incremental renewable energy resources to serve Green Tariff customers as part of procurement conducted under the Integrated Resource Plan, each IOU should be required to demonstrate additional procurement specifically to serve Green Tariff subscribers. The allocation of IRP-mandated procurement, or procurement occurring to meet GHG targets, to Green Tariff subscribers would violate the principle of additionality and should be forcefully rejected. The PD should clarify its resolution of this issue to avoid future disputes over the meaning of any adopted decision in this proceeding.

VII. CONCLUSION

TURN appreciates the opportunity to submit comments on the Proposed Decision.

Respectfully submitted,
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⁶³ D.15-01-051, page 20

APPENDIX A
PROPOSED REVISIONS TO FINDINGS OF FACT
AND CONCLUSIONS OF LAW

Revisions to Findings of Fact

14. The NVBT proposals ~~do not~~ equate to retail rate programs and do not but instead resemble wholesale electricity procurement.
15. Because exports would be valued using the avoided cost calculator and credited to Although proceeds of the sale of electricity purchased by the utility would be distributed to subscribers as credits in the NVBT proposals, this would result in the program operating in a similar fashion to net energy metering. not change the wholesale nature of the projects' delivery to the grid.
16. ~~Electricity generated by proposed NVBT projects 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 materially 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 should include TURN's proposal a one-year timeline for allocating ACC credits to subscribers, after which any excess generation would not be eligible for any compensation or bill credits. 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. ~~The NVBT proposals 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 has not been shown to constitute represents a departure from FERC precedent in the context of net energy metering and there are no instances of FERC or a federal court invalidating any similar state program on this basis.
21. The NVBT proposals include lack a true-up period to determine if there has been generation in excess of subscriber load, which is referred to as net surplus generation.

22. The NVBT proposals monthly netting of credits include a one year period to indefinite rollover of credits which is comparable to instead of the annual true-up required in net billing and virtual net billing.
24. The NVBT proposals' bill credits for any generation produced to the grid beyond that subscribed to customer accounts should can be "banked" (for no longer than up to two one years) until a new customer is enrolled to receive the bill credit; after two years, the bill credit would disappear.
25. The NVBT proposals may provide zero credit for excess annual generation and do not need to provide generators with "net surplus compensation" – at a price equal to utility's avoided cost as required PURPA – because they are not subject to the requirements of §2827(h). for any net surplus generation exported to the grid in excess of subscriber load.
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. The NVBT provides more favorable treatment for non-participating ratepayers by providing no value for excess generation not assigned to a subscriber.
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. The NVBT is not subject to this requirement.
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. This requirement does not apply to the NVBT.
29. The NVBT's proposed limit on the banking of credits would ensure that precludes any excess generation is not eligible for compensation. from being compensated at the utility's avoided cost as required by PURPA.
30. Although the NVBT proposals allow generation to be located off-site from the subscriber's load, which this feature has not been found by is a departure from FERC to implicate precedent finding net metered generation subject to state and not federal jurisdiction.
31. The ~~off-site feature of the~~ NVBT proposals are not 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 never held that a state bill crediting program exempt from federal jurisdiction must require consistently premised its decisions on the idea that acceptable net energy metering programs place the generator to be located on-site of the load.
34. FERC decisions finding net metering arrangements to be outside FERC's jurisdiction have involved generation located on-site to the utility customer. FERC has declined to find that community solar programs violate PURPA.
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 subject to considered net metering and, therefore, exempt from FERC jurisdiction.
36. ~~The "essential" features of net energy metering are a tariff 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.~~
37. The essential features of net energy metering are consistent with lacking from the NVBT proposals.
38. Opponents Proponents of the NVBT proposals have not demonstrated that the NVBT proposals do not 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.~~
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 not result in ratepayers paying 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 NVBT resources would be located close to~~

~~customers, the avoided costs of transmission and distribution cannot be confirmed.~~

45. Without Utilities' ability to claim Resource Adequacy credits, NVBT projects cannot avoid generation capacity costs unless they are found to be load-modifying resources by the California Energy Commission.
46. In the event that the California Energy Commission does not find NVBT resources to be load modifiers, the projects should be directed to sell any Resource Adequacy credit to Load Serving Entities under long-term contracts and apply the value of these sales to subscriber bills.
~~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, and NVBT tariffs, ~~the generator is sized to fit the load; in the NVBT proposals the customer load and subscriptions are sized to fit the production of the generator.~~
49. The proposed NVBT does not need to demonstrate ~~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 avoid transmission and distribution costs.~~
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.
57. The NVBT proposals would result in ratepayers compensating customers for costs that are ~~not~~ assumed to be avoided for any export to the distribution system, which would not result in a cost shift.
58. ~~Neither~~ The plain language in AB 2316 ~~nor~~ and in Pub. Util. Code Section 769.3 references ~~uses the term~~ Avoided Cost Calculator.
59. The only A-reasonable interpretation of the term phrase "avoided costs of the program's facilities, as determined by the commission's methods for calculating the full set of benefits of distributed energy resources" in Pub. Util. Code Section 769.3 could refer to either the PURPA avoided costs or is the avoided costs in the Avoided Cost Calculator.

60. Pub. Util. Code Section 769.3 ~~makes no~~ requires ~~ment~~ the Commission to use the Avoided Cost Calculator ~~or any other specific method.~~
- ~~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.~~
66. ~~All~~ Parties have not been provided with an adequate opportunity to comment on SCE’s PURPA compliant proposal
- ~~69. SCE’s PURPA compliant proposal is neither out of scope nor does it violate due process rights.~~
74. SCE has not presented adequate 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.
- ~~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.~~
90. SCE’s Requiring the PURPA-compliant community renewable energy program suffers from a variety of fatal flaws that would prevent the program from succeeding and providing any meaningful development of new renewable energy generation and storage projects.
~~to: (1) compensate generating resources based on the PURPA avoided costs of the facility 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 the NVBT including PURPA-compliant community renewable energy programs AB 102, the Environmental Protection Agency’s Solar for All, the enhanced federal ITC, and the Greenhouse Gas Reduction Fund.
121. Integrating Green Tariff resource availability with other Integrated Resource plans could be more efficient lead to less rate volatility so long as the procurement is incremental to the amounts required for compliance with the Renewables Portfolio Standard and Integrated Resource Planning.

Revisions to Conclusions of Law

5. The NVBT proposals have never been found by FERC or a reviewing court to be subject ~~are not exempt from~~ subject to the requirements of PURPA.
6. The Commission should ~~not adopt any of the~~ NVBT proposals subject to the modifications proposed by TURN as a foundation for a community renewable energy program.
8. The NVBT proposals' element to bank and roll-over credits does not runs afoul of PURPA and does not need to be ~~is not~~ consistent with the requirements for net energy metering as authorized by AB 920
9. The NVBT proposals ~~do not~~ comply with the requirements of Pub. Util. Code Section 769.3.
10. ~~Neither Both~~ 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 NVBT 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.
18. The Commission should not adopt a community renewable energy program that uses the current PURPA compliant tariffs as a foundation.
19. A community renewable energy program compliant with PURPA would not ~~can~~ meet the requirements of Pub. Util. Code Section 769.3.
20. The ~~community renewable energy~~ NVBT program meets the requirements of Pub. Util. Code Section 769.3.
21. The Commission should adopt the NVBT and reject SCE's proposed PURPA-compliant community renewable energy program ~~compliant with PURPA~~.