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 22-05-022
And Related Matters	Application 22-05-023 Application 22-05-024

COMMENTS OF THE SOLAR ENERGY INDUSTRIES ASSOCIATION ON PROPOSED DECISION MODIFYING GREEN ACCESS PROGRAM TARIFFS AND ADOPTING A COMMUNITY RENEWABLE ENERGY PROGRAM

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Pursuant to Rule 14.3 of the Rules of Practice and Procedure of the California Public Utilities Commission ("Commission"), the Solar Energy Industries Association ("SEIA") comments on the *Proposed Decision Modifying Green Access Program Tariffs and Adopting a Community Renewable Energy Program,* issued in this proceeding on March 4, 2024 ("PD").

I. INTRODUCTION

In enacting AB 2316, the Legislature was clear in its goal -- "to create a community renewable energy program so that all Californians, especially those unable to host a rooftop solar system, realize the benefits of distributed generation through a cost-effective program that provides benefits to all ratepayers."[1] Moreover, the legislature was clear in its intent that a newly adopted community renewable energy program support robust low-income customer participation as a vehicle to achieving bill savings for such customers.[2] The PD ignores the legislature's objectives, rejecting the only proposed community solar program before it – the Net Value Biling Tariff ("NVBT") – which could realize the legislative goals. Rather the PD would adopt a community solar tariff which "uses the current [Public Utilities Regulatory Policy Act] PURPA compliant tariffs (ReMAT and the PURPA Standard Offer Contract) as a foundation."[3] This tariff will be "dead on arrival" as the revenues cannot support the financing, development, and operation of community solar projects in California. Adoption of such a tariff would provide *zero* benefits to ratepayers. Adoption of the PURPA based tariff would be the second time the Commission would advance a community solar program which has no chances of success.[4] Once again the Commission will be delivering a program that further ensures that low income customers are left behind in the green energy transition.

The PD rejects the NVBT based on determinations that (1) elements of the tariff render transactions thereunder wholesale in nature and thus non-compliant with federal law, and (2) the proposed compensation structure under the NVBT exceeds the utilities' avoided costs and thus is not beneficial to all ratepayers. As illustrated below, the PD's analysis on both counts is wrong.

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1 AB 2316, Section 1(a).

2 *Id*., Section 1 (c).

3 PD, p. 118.

4 *See* PD, p. 44 (noting that the utilities' Enhanced Community Renewables programs have had limited customer enrollment since the rollout of these programs and finding that the programs have failed to efficiently serve distinct customer groups and have failed to promote robust participation among low-income customers).

However, even if Commission remains concerned regarding elements of the tariff, the purported deficiencies in the NVBT are easily remedied. The Commission has a clear path forward toward adoption of a community solar program that fulfills the intent of AB 2316. The PD must be modified to do such.

II. THE NVBT IS A STATE-RETAIL RATE PROGRAM THAT DOES NOT IMPLICATE THE FEDERAL ENERGY REGULATORY COMMISSION'S ("FERC") JURISDICTION UNDER PURPA.

The PD concludes that "the NVBT proposals do not equate to retail rate programs but instead resemble wholesale electricity procurement"[5] which is subject to Federal jurisdiction. The PD is wrong.

First, under the NVBT proposal, there is no wholesale sale or transmission of electricity that triggers FERC jurisdiction. Under the Section 201 of the Federal Power Act, regulation by FERC extends "only to those matters which are not subject to regulation by the States."[6] Under Section 201(b), the FERC has jurisdiction over: "the transmission of electric energy in interstate commerce and to the sale of electric energy at wholesale in interstate commerce," but FERC does not have jurisdiction over "facilities used for the generation of electric energy or over facilities used in local distribution" or to "*any other sale* of electric energy."[7] FERC's jurisdiction explicitly does not apply to "the transmission of electric energy in intrastate commerce, or over facilities for the transmission of electric energy consumed wholly by the transmitter."[8] The Federal Power Act was enacted in 1935 to fill the regulatory gap found present by the U.S. Supreme Court in *Pub. Util. Comm'n of R.I. v Attleboro Steam & elec. Co.,* 273 U.S. 83 (1927). In short, the state is intended to have and retain jurisdiction over local/retail matters. The NVBT is just one of those local/retail programs.

The NVBT model supports a contractual relationship between the project and its subscribers – retail end use customers. The utility is merely the conduit to the retail transaction between the project and the subscriber for retail transactions that are undertaken on the utility distribution system. While the generator puts energy on the system, an equivalent amount of energy is used by the subscribers. The utility does not take title to the power or resell the power

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5 PD, p.87.

6 16 U.S.C. § 824(a).

7 16 U.S.C. § 824(b).

8 *Id*.

to any other entity. The utility acts as a conduit in the transaction – it handles metering, billing and applying the value of the amounts delivered to the distribution system to the subscriber's account. The subscriber/customer consumes energy and pays the utility for all charges associated with its consumption of energy under its otherwise applicable tariff. These bill credits via subscriptions are not power sales. There is simply no indicia of a wholesale sale.[9]

Second, the NVBT program is local, not federal, in nature and, like pure net metering programs, Congress intentionally left such programs to the states. It is an extraordinary move to disclaim state jurisdiction over what is clearly a state-sponsored and state jurisdictional program. In the Energy Policy Act of 2005, Congress provided direction to states to undertake a number of retail-related initiatives, including net metering,[10] smart meter deployment, and demand response implementation.[11] These provisions amended PURPA as they relate to matters within state regulatory authority. For example, Section 2621(a) requires each State regulatory authority to consider each standard established by subsection (d) and "make a determination concerning whether or not it is appropriate to implement such standard to carry out the purpose of this chapter." Subsection (d) includes not only net metering, but energy efficiency investments, conservation and demand response, integrated resource planning, and electric vehicle charging programs, among other programs. A community solar program such as NVBT is analogous to and, indeed, entirely consistent with the programs cited above that Congress encouraged the states to undertake. Moreover, had Congress intended to provide federal jurisdiction over these programs, Congress would have made that delegation. It did not.

Third, as the FERC noted in *MidAmerican Energy Company*, 94 FERC ¶ 61,340 at 62,262 (2001), it is the state that is charged with "how to measure" retail transactions. That is what SEIA supports – a state jurisdictional determination that the generation produced and delivered to the distribution system and subscribed by a retail customer is a retail transaction and does not implicate PURPA or the FPA.

Fourth, while there are differences between on-site net metering, where the generator is

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[9] To the extent there is energy delivered to the utility that is unsubscribed, those amounts may be treated as wholesale in nature. Similar to California's net metering program, that excess generation, at the end of the applicable billing period, could be cashed out at the PURPA avoided cost rate. See discussion in Section IV. A, *infra.*

[10] Energy Policy Act of 2005, section 1251, amending 16 U.S.C. § 2621(d).

[11] *Id,* at section 1252.

behind the meter, and the NVBT model, this is a distinction without a difference. In both cases, the retail end use customer is receiving energy from the utility, the costs of which is offset by the value of the exported generation produced by a renewable project. In both cases, the utility is in the middle of the transaction and ensures that the generation is safely integrated via the interconnection process.[12] Using a subscription model does not alter the energy flows on the system, but the generation is incorporated within the distribution system. The subscription model's reconciliation is handled through billing and accounting, not through energy sales.[13]

Finally, there has been no showing that, even if there is a sale, such a sale is in interstate commerce and subject to the FERC's jurisdiction. Whether a sale is intrastate or interstate is based on whether the electricity being sold is comingled upstream of the sale with electricity flowing in interstate commerce.[14] It is clear that the NVBT was structured to retain the retail nature of the program with no intent that the energy flowing onto the utility distribution system from the generator would be comingled with out of state power. And no party has presented evidence that it would.

III. THE NVBT DOES NOT RESULT IN NONPARATICIPATING CUSTOMERS PAYING IN EXCESS OF AVOIDED COSTS

The PD concludes that the NVBT will result in ratepayers paying more than "true avoided costs" thus violating PU Code 769.3(c)(3) which prohibits "the program's costs from being paid by nonparticipating customers in excess of the avoided costs."[15] The PD reaches this conclusion by determining that NVBT projects will not avoid transmission and distribution costs or the generation capacity cost components of the Avoided Cost Calculator ("ACC"). The PD is wrong on both counts.

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12 *See* SEIA Opening Comments on November 6, 2023, Ruling, pp.20-21.

13 Notably, FERC has concluded, in the context of its station power cases, that whether netted station power is sourced from an on-site or a remote generation source is irrelevant to the determination of whether a sale of power has occurred. *PJM Interconnection*, 94 FERC ¶ 61,251 at 61,890-61,891 (2001) (finding that the remote self-supply of station power through the practice of netting does not constitute a sale: "When a generator self-supplies its station power requirements [via remote or on-site sources], the traditional practice of netting appropriately reflects the fact that there is no sale, whether for end use or otherwise. When a generator's supply of station power is from a third party, then there is a sale for end use that we do not regulate"). *See also, Calpine Corporation v FERC*, 702 F.3d 41 (D.C. Cir. 2012).

14 *See FPC v. Florida Power & Light Company,* 404 U.S. 453, 463 (1972).

15 PD, p. 95.

A. Avoided Transmission and Distribution Costs

The PD tees up the question "of whether a project sited (as proposed) anywhere in a utility's territory will avoid transmission and distribution [T&D] costs"[16] and determines it does not. In doing so, the PD relies on Cal Advocates whose position it characterizes as "recogniz[ing] that the siting of generation facilities away from subscribers makes it unlikely that there are future avoided costs for transmission and distribution."[17] But the PD never explains why such is the case. It is not.

As documented on the record, exports from NVBT projects will flow onto the distribution system and will serve nearby loads including any load at the host site.[18] By serving these nearby loads on the local distribution system, the NVBT generation will reduce loads on upstream transmission and distribution systems and will avoid capacity-related T&D costs, because much of the output of these solar + storage facilities will be managed to occur in the peak hours that drive marginal T&D costs.[19] Moreover, the avoided T&D costs in the ACC are developed as "unspecified" avoided T&D costs that are not tied to the deferral of specific T&D upgrades on specific segments of the grid. Rather, unspecified avoided T&D costs reflect the fact that lower peak loads on the overall T&D system, over time, will reduce the investments that a utility must make in its grid infrastructure.[20] This is exactly what the solar + storage projects developed under the NVBT will do. It is also exactly what exports from net metering and net billing tariff projects do, and exports from these projects are assumed to avoid the capacity-related T&D costs included in the ACC. Thus, contrary to the statements of Cal Advocates, allowing customers from a wider geographic area to subscribe to a NVBT project does not make it unlikely that future T&D costs will be avoided.

B. Avoided Generation Capacity Costs

In concluding that the NVBT would not allow load serving entities ("LSE") to avoid generation capacity costs, the PD finds: "that without the ability of Utilities and CCAs to claim

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16 *Id.,* p. 100.

17 *Id*., p. 101.

18 SEIA Reply Comments on June 23, 2023, Ruling, p. 8.

19 *Id.,* pp. 8-9.

20 *See* D. 20-04-020, at pp. 49-62. As stated on page 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."

Resource Adequacy [RA] credits, proposed NVBT projects could not avoid generation capacity costs."[21] In addition, the PD asserts that the lack of a deliverability study, required in the RA process, could lead to the need for transmission upgrades that could result in higher costs for all ratepayers.[22] The former statement ignores the record evidence regarding the manner which the NVBT can be incorporated into the RA program, while the latter concern ignores fundamental elements of the NVBT which completely remove the possibility that projects operating under the tariff would lead to transmission upgrades paid by ratepayers.

The PD disregards in its entirety the record evidence regarding the feasibility of counting community renewable energy program resources as load modifiers for the purpose of RA. But SEIA clearly demonstrated on the record how this could be done:

> The most straightforward way to include NVBT projects in the RA program is to authorize LSEs who offer the NVBT tariff to modify their RA load forecast by subtracting the hourly generation available from such projects. Other types of DERs, such as distributed solar and energy efficiency (EE), also are treated as load modifiers, with the hourly CEC load forecast used to set LSEs' RA requirements adjusted for the forecasted impacts of additions of distributed solar and energy efficiency…. Each LSE can reduce their hourly load forecast in the Commission's new hourly "slice-of-day" (SOD) RA framework by the forecasted hourly output of the new NVBT facilities which serve the LSE's customers. Once experience and actual output data is obtained from the operation of these facilities, their hourly RA value in the SOD RA framework can be estimated using the SOD counting rules for hybrid solar-plus-storage projects.[23]

SEIA's showing is augmented by CCSA's discussion of the availability of the data necessary for the LSE to calculate the output of these facilities to the grid. As CCSA explained:

> Because NVBT facilities are customers of the load serving entity, with a Generator Account, the LSE will also have meter data at the same granularity, and returned to the utility at the same frequency, as other commercial customer meter data, typically a 15-minute interval. Most of these projects will have advanced telemetry including SCADA, allowing for far more granular production data if that is necessary for LSEs and the Energy Commission to utilize in their forecasting.[24]

CCSA further explained that:

> Given that project revenues are entirely dependent on the tariff design and CAISO prices, the profile of the projects will have a predictable shape. Even before projects

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21 PD, p.101.

22 *Id.,* p. 102.

23 Exhibit SEIA-04 (Beach), p. 10.

24 CCSA's Opening Comments on November 6, 2023, Ruling, p. 15.

> are operational, each LSE participating in the NVBT will have information necessary to estimate the production of a facility until actual production can inform their load forecasting. For example, LSEs could use the model CCSA provided in testimony to estimate output or they could use their own proprietary modeling. Under either approach, if participating LSEs know the location of the facility, the size of the facility, the size of the facility's battery, whether the facility utilizes trackers, and a storage dispatch algorithm, they can estimate the facility's production.[25]

Finally, while the PD acknowledges the position taken by the CAISO that "if [NVBT] resources demonstrably offset Resource Adequacy requirements by reducing the metrics that drive Resource Adequacy requirements, then the resources could reduce system capacity needs in lieu of procuring additional supply side Resource Adequacy capacity,"[26] it gives no weight to the CAISO's position. The fact is that CAISO has stated that, if the resources are consistently used and dispatched coincident with the hours and times of peak demand, then RA savings will be realized.[27] As the proposed export credit rate under the NVBT focuses compensation in the seasons and hours when the grid is most likely to have a shortage of supply, and would also allow participating LSEs to change the four hour peak to address system needs so long as notice is provided to the facility,[28] it ensures that resources are consistently dispatched to the grid during times of peak demand, and thus, as stated by the CAISO, the NVBT merits load modifying status.

Turning to the PD's "concern" that the lack of a deliverability study could result in the need for costly transmission upgrades, it lacks foundation. NVBT projects will interconnect to the distribution system pursuant to Rule 21. Interconnection studies look at whether a proposed generator exceeds the capability of the distribution system to operate within thermal, voltage, and protection limits.[29] If the distribution system is not adequate to accept an NVBT's project's output, and to deliver that power to load on the nearby distribution system, then the NVBT project must pay for the associated upgrade.[30] As a result, there is no ratepayer exposure to

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25 *Id.,* pp. 15-16.

26 PD, pp. 80-81.

27 CAISO Comments on the November 6, 2023, Ruling, p. 4.

28 See CCSA Reply Comments on November 6, 2023, Ruling, p. 12.

29 Exhibit CCSA-07 (Smithwood), p. 40.

30 *Id*., p. 42.

"transmission upgrades that could result in higher costs for all ratepayers" as the PD opines.[31] In fact, the PD ignores the basic laws of physics. A NVBT project will inject generation into the distribution system, the result of which will be to unload the distribution system upstream of the point of injection, allowing that portion of the distribution system to serve more load and to postpone the need for the utility to upgrade that portion of the distribution system at ratepayer expense.[32] Ratepayers *benefit* from this expansion, at no cost to them.

Finally, it should be noted that the NBT projects which interconnect pursuant to Rule 21 and do not provide deliverability are credited full ACC value, including generation capacity for their exports. Thus, the Commission has acknowledged such projects avoid generation capacity.

C. Evidence on Cost-effectiveness

The PD utilizes its erroneous finding that NVBT projects will not avoid transmission and distribution costs and generation capacity costs to reach the conclusion that the ACC and, therefore, the Ratepayer Impact Measure ("RIM") test (which is based on outputs of the ACC) should not be relied upon to determine the impact of the NVBT proposals on nonparticipating customers.[33] But, as shown above, NVBT projects will in fact avoid transmission and distribution and generation capacity costs. Thus, the use of the RIM test is in fact appropriate.

In this regard, the evidence showed that the NVBT was the most cost-effective proposal for non-participating ratepayers, with RIM scores in the range of 0.8 to 0.9, depending on the utility and the assumptions used.[34] These are significantly higher RIM scores than for the existing community solar programs,[35] and are exceptional RIM scores for a program whose principal purpose is to support low-income customers. The Commission has made clear in prior decisions that programs with a significant equity component do not have to achieve a RIM score

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[31] To the extent that upgrades are required, the PD fails to acknowledge the availability of federal investment tax credits under 26 USC §§ 48 and 48E that allow for interconnection upgrades to be included in the eligible basis for projects up to 5MW AC, which will be the size of a typical NVBT project, thus allowing ratepayers to benefit from an external cost subsidy that will only be available if eligible projects are built.

[32] *See* SEIA Comments on November 6, 2023, Ruling, p. 18 (if the backflows of generation up the distribution system from the NVBT project are larger than the capacity of that portion of the distribution system, the NVBT project will have to pay to expand the system.)

[33] PD, p. 108

[34] *See* SEIA's Comments on June 23, 2023, Ruling, p. 6 (Table 1).

[35] *See* CCSA's Comments on June 23, 2023, Ruling, p. 9 (Table 1).

above 1.0.[36] Indeed, AB 2316 requires that the new program "*minimize* impacts to nonparticipating customers by prohibiting the program's costs from being paid by nonparticipating customers in excess of the avoided cost."[37] The use of the word "minimize" indicates that a certain impact on non-participants is tolerable, so long as it is as small as possible. In the case of the NVBT, the additional costs that cause its RIM score to be below 1.0 are principally the equity portion of the program costs that are used to provide bill savings to low-income customers.[38]

Finally, the RIM test is a measure of equity between participating and non-participating ratepayers. In this case, as specified in Section 1 of AB 2316, the primary participants in these programs would be "those unable to host a rooftop solar system" in other words, low-income customers, especially renters who do not own their home. If the RIM score for the NVBT is somewhat less than 1.0 – who are the non-participants who are slightly harmed? The non-participants are largely the group of customers who already have the ability to realize similar benefits by installing solar and battery systems for their own homes. The purpose of proposals such as the NVBT is to take a step forward in ensuring equitable access to the environmental and economic benefits of solar adoption, for all customers.

IV. THE PD'S CONCERNS WITH THE NVBT ARE READILY CORRECTED

As highlighted above, the PD rejects the NVBT as it opines that certain elements of the tariff structure render it non-compliant with federal and state law. While SEIA disagrees with the PD's analysis, the Commission could make certain modifications to the NVBT which would fully address the PD's stated concerns.

A. Proposed Changes to Address Federal Law Concerns

The PD finds that the NVBT proposals "depict something more akin to wholesale procurement as compared to retail net energy metering"[39] and as such" likely conflict[s] with federal law and California statute."[40] In other words, the PD does not definitely determine that NVBT transactions run afoul of federal law. Indeed, it cannot as there is no definitive precedent.

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36 *See* Decision 21-05-031, p. 19.

37 Section 769.3 (c) (5) (emphasis added).

38 See SEIA's Comments on June 23, 2023, Ruling, p. 11.

39 PD, p. 88.

40 *Id.,* p. 89.

Rather the PD points to elements of the NVBT and determines that either their presence or absence renders transactions taking place under the tariff wholesale transactions rather than retail. While, as demonstrated above, the PD has misinterpreted the relevant law, the NVBT could be modified in a manner which addresses the PD's concerns.

The PD highlights three features of the NVBT which it opines render transactions thereunder wholesale in nature: (1) the lack of a true-up period for individual subscriber accounts; (2) the practice of banking credits for surplus energy in lieu of providing net surplus compensation ("NSC"); and (3) the absence of geographic proximity between generation and subscriber load. Taking each of these features in turn, the first - lack of a true up for individual subscriber accounts – can be addressed by applying the same practice for customers under the NVBT that is afforded to Net Billing Tariff customers. A subscriber's credits would be allowed to rollover monthly during the customer's 12-month Relevant Period and offset accrued charges. At the end of the Relevant Period the subscriber will be paid for 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 generator's Relevant Period. Finally, and as detailed below in Section IV. B, *infra,* the absence of geographic proximity between generation and subscriber load can be addressed by imposing a reasonable locational requirement. In doing so the Commission should bear in mind that there is no direct FERC precedent which requires that the generation offset only onsite load in order to avoid federal jurisdiction – a fact acknowledged in the PD.[41]

B. Proposed Changes to Address State Law Concerns

The PD determines that NVBT projects do not avoid T&D and generation capacity costs. While the record demonstrates that such determination is erroneous, there are readily implementable modifications to the NVBT which would remedy any perceived deficiencies.

As noted above, the PD relies on Cal Advocates' position as the basis for asserting that NVBT projects will not avoid transmission and distribution costs. But the PD fails to acknowledge Cal Advocates' solution to the problem - requiring NVBT projects to be built

[41] PD, p. 92 (The Commission recognizes that this question has never been squarely presented to FERC for a definitive determination).

within the same CAISO Local Reliability Area as the customers it serves.[42] The PD could have readily adopted this proposal, but rather chose to not even address it. Adopting Cal Advocates position addresses the PD's purported concern of the projects not being located sufficiently close to load to result in avoided transmission and distribution costs.

Moreover, with respect to the Commission's concern that NVBT projects will not provide RA value, as noted above, the record demonstrates how these resources can be treated as load modifiers. However, to ensure such treatment, and despite the fact that no such condition is applied to NBT generators, the Commission can make the receipt of generation capacity value by NVBT projects contingent on receipt of load modifier status. Thus, the order in this proceeding should direct staff to request that CEC make a determination that NVBT resources will be treated as load modifiers and file notice of such finding in the instant docket.

V. THE PROPOSED PURPA-BASED COMMUNITY SOLAR PROGRAM SHOULD NOT BE ADOPTED

The PD's proposed community solar program is not compliant with AB 2316. In contravention of AB 2316, it does not provide subscribers with bill credits based on the ACC, nor can there be a reasoned determination that the program will be beneficial to ratepayers.

A. The PD Errs in its Determination that AB 2316 Does Not Require the Use of the ACC to Determine Avoided Costs of a New Community Solar Program

The PD contorts the language of AB 2316, associated legislative history and relevant Commission decisions to reach the conclusion that it is not required to use the ACC for the purpose of determining the avoided costs of a new community renewable energy program. It is undisputed that Section 769.3(c)(5) states that the Commission is required to ensure that the community renewable energy program, if established, shall "[p]rovide 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." From this language the PD reasons that:

> [T]here is no specific requirement to use the Avoided Cost Calculator or any other specific method. The only requirement is to use a Commission method of calculating the avoided cost …. FERC has issued guidance on how to calculate avoided cost, but states implementing PURPA-compliant programs have discretion to determine how

[42] Cal Advocates Opening Brief, p. 23.

avoided cost is calculated. This would equate to the "[C]ommission's methods" for calculating avoided costs."[43]

The PD's rationale is riddled with holes. First, the "only requirement" is not merely to use "a Commission method of calculating avoided costs," but rather to use the Commission's methods for calculating the "*full set of benefits of distributed energy resources*." The Commission itself has defined the purpose of the ACC to be: "to determine the primary *benefits of distributed energy resources* across Commission proceedings."[44] The same language which the Commission has used to describe the ACC is mirrored in AB 2316.

Moreover, the legislative history indicates that that it was legislature's intent that the ACC be employed.[45] The PD dismisses the cited legislative history by pointing out that "analysis of a bill is not law."[46] While true, when there is ambiguity in statutory language, California precedent dictates that the legislative history be consulted to determine legislative intent.[47] The PD continues its erroneous analysis by stating that "a review of the referenced [legislative] analysis indicates that the language of the signed bill may be different from the language of the bill at the time of the analysis, as the analysis includes fewer than the final six requirements of the community renewable energy program"[48] But review of the bill amendments to AB 2316 shows that the last amendment was made on August 24, 2022, two days prior to preparation of the cited bill analysis. Moreover, a reference to the August 24th amendment is noted therein. In other words, there were no additional amendments subsequent to the cited bill analysis which clearly indicated the legislative intent that the ACC be employed.

The PD errs in its determination that AB 2316 does not require the use of the ACC for the purpose of determining the avoided costs of a new community renewable energy program. The PD should be modified to correct this legal error.[49]

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43 PD, p. 112-113.

44 Decision 22-05-002, p. 3.

45 Senate Floor Analysis of AB 2316, August 26, 2022. https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=202120220AB2316#

46 PD, p. 111.

47 See, e.g., *People v. Ledesma* (1997) 16 Cal.4th 90, 95. Such legislative history can include bill analyses prepared by staff for legislative committees considering passage of the legislation in question. (*Id.*)

48 PD, p. 111.

49 The PD also fails to address whether its proposed tariff complies with PU Code Section 769.3 (c) -i.e., that the tariff is complementary to, and consistent with, the requirements of Section 10-115 of the

B. The Adopted PURPA Based Community Solar Program Would Not be "Beneficial to Ratepayers" as Required by AB 2316

AB 2316 directs the Commission to determine "whether it would be beneficial to ratepayers to establish a new [community solar] tariff or program for an electrical corporation." Having determined that the NVBT should not be used for a new community solar program, the PD determines that "[t]he remaining option is to provide bill credits based on the PURPA avoided costs."[50] But the PD fails to address how a community solar program which utilizes pre-existing PURPA compliant tariffs is in any way beneficial to ratepayers - it is not. To the contrary, it is detrimental to ratepayers as it will result in the expenditure of ratepayer funds to establish a program that the record demonstrates will result in zero community solar projects being built.

As was made exceedingly clear on the record of this proceeding, the compensation structure under the ReMAT program and the PURPA Stand Offer Contract have proven to be insufficient to allow developers to recover a project's capital and operating costs projects.[51] This fact is borne out by the Commission's Renewable Portfolio Standard project data base (current as of February 2024). Since 2017, only one solar project of 2 MW has come online under the ReMAT program, while 2 projects (2 to 3 MW each) remain under development. Similarly, in the past six years only two new SOCs have been signed for a solar + storage projects; these projects also remain under development.[52] Under a community solar construct, a developer would be required to take what is already inadequate compensation to support the project and allocate a portion of that compensation to subscribing customers. Projects simply cannot be financed, developed, and operated under such an economic construct. Indeed, even Southern California Edison Company ("SCE"), who is the proponent of a PURPA based community solar program, acknowledges "that generator compensation under PURPA may not be sufficient to allocate a

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California Building Standards Code (Title 24 of the California Code of Regulations). Rather it places the obligation on the developer to demonstrate to the Energy Commission that the proposal is complementary to and consistent with the applicable Building Standards Code. *See* PD, p. 124. The statute requires that the Commission ensure that all requirements of Section 769.3 (c) are met with respect to any program adopted. The Commission cannot place that obligation on another entity.

[50] *Id.,* p. 118.

[51] Exh. SEIA-04, p. 6.

[52] See https://www.cpuc.ca.gov/industries-and-topics/electrical-energy/energy-reports-and-whitepapers/rps-reports-and-data

portion to fund a bill credit for subscribing customers."[53] It is telling that SCE, in making its last-minute proposal of a program based on ReMAT and the PURPA SOC, on which the PD relies, presented no evidence that such a program would be economically feasible.[54] The PD's response to this insurmountable hurdle is to offer up what is at best limited funding from sources other than ratepayers – funding which will not be sufficient to stand up even a modest community solar program, much less one that provides a pathway for a significant number of low-income customers to share in the benefits of distributed generation. In this regard, the PD reasons:

> [T]o address the concern that wholesale tariff compensation such as REMAT and PURPA avoided costs may be insufficient to create and grow interest in community renewable energy program projects, the Commission adopts the use of $33 million appropriated to the Commission for community solar usage and storage-backed renewable generation programs. Furthermore, the California Infrastructure and Economic Development Bank, on behalf of California, has applied for grant funding from the Environmental Protection Agency's Solar for All competition.[55]

Initially it should be pointed out that there is no guarantee that California will receive the requested funds from the Solar for All competition. However, even if it does, the receipt of such funding in conjunction with the limited state funds available does nothing to address the underlying problem – the PURPA-based compensation is insufficient to develop and operate a project, much less offer bill credits to project subscribers. Further, as the PD acknowledges,

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[53] SCE Opening Comments on November 6, 2023, Ruling, p. 4.

[54] SEIA strongly recommends that the Commission consult with Energy Division to compare the revenues available to a solar project under a PURPA SOC to the 25-year levelized costs for a new distributed solar project. Each of the IOUs file an advice letter each month with current PURPA SOC prices. The Energy Division's Integrated Resource Planning (IRP) team calculates the levelized costs of new distributed solar projects as part of the IRP's *Final 2023 Inputs & Assumptions* document – see p. 65, Table 41, available at https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/energy-division/documents/integrated-resource-plan-and-long-term-procurement-plan-irp-ltpp/2023-irp-cycle-events-and-materials/inputs-assumptions-2022-2023_final_document_10052023.pdf. It would be arbitrary and capricious decision making for the Commission to adopt a new community solar program without understanding the basic economics to be faced by new community solar projects and the amount of external support that would be needed to make such projects viable. If the Commission undertakes this basic analysis, SEIA is confident that the Commission will conclude that the PD's proposed new PURPA-based program would be a poor use of limited external funding and that the proposed $33 million in external funding would be adequate to support only a handful of new 5 MW PURPA SOC community solar projects over their expected 25-year lives.

[55] PD, pp. 120-121.

incentive funds are limited to providing benefits to low-income subscribers.[56] To make these projects viable, however, additional funds are needed to allow developers to recover their capital and operating costs, and to fund benefits for non-low-income subscribers.

Moreover, in describing the level of funds available to provide an "adder" for low-income customers, the PD states:

> A fund of monies will be kept in a balancing account and will be provided to eligible low-income subscribers. Incentive levels will be dependent upon the amount of funds in the balancing account, including new funds when they become available.[57]

The PD, of course, does not explain how to design a program to provide an incentive to low-income customers when the funds available to design that incentive are indeterminate. The PD creates a community solar program which guarantees no developer participation. No time or resources should be expended implementing this deeply flawed program – it should be rejected outright.

VI. CONCLUSION

The PD errs in its determination that the NVBT is not compliant with federal law. The NVBT is a retail rate program, clearly under the auspices of state jurisdiction. Moreover, the NVBT is compliant with the enabling legislation, AB 2316, meeting all statutory requirements, including that credits afforded participating customers do not exceed the utilities' avoided costs as correctly measured under the ACC. In contrast, the community solar tariff advanced by the PD contravenes state law in that it uses a PURPA-based compensation structure which, among other things, will provide inadequate revenues to support benefits for subscribing ratepayers. The PD must be revised to adopt the NVBT.

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[56] *Id*., p. 121 (only low-income subscribers will be eligible to receive non-ratepayer or external funds through an adder or other subsidy, as the additional funds are only available to low-income customers.).

[57] *Id.,* p. 166, Ordering Paragraph 1(c).

Respectfully submitted, this 25th day of March 2024 at San Francisco, California.

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By */s/ Jeanne B. Armstrong*
Jeanne B. Armstrong

Recommended Changes to Findings of Fact and Conclusions of Law

Findings of Fact

14. The NVBT proposals ~~do not equate to~~ are retail rate programs. ~~but instead resemble wholesale electricity procurement.~~

15. ~~Although~~ ~~p~~ 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 would have ~~no~~ a direct 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. ~~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 do not render transaction under the NVBT wholesale procurement.

20. ~~The structure of the NVBT proposals represents a departure from FERC precedent in the context of net energy metering~~.

21. ~~The NVBT proposals 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~~ can be structured to provide monthly netting of credits ~~including indefinite rollover of credits instead of the~~ with an 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 do not~~ can be structured to 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.

26. Net surplus compensation is a~~n 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 b~~ Banking of credits under the NVBT ~~precludes~~ could allow for any excess generation ~~from being~~ to be ~~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.~~, 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 which require four hour battery storage make potential projects ~~comparable to~~ different than 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 on the idea that acceptable net energy metering programs place the generator 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~~.

35. Parties to this proceeding have not identified any ~~no authority from~~ FERC or a federal court authority indicating generation ~~for~~ from facilities to which end-use customers subscribe, that are not located on-site to those customers, would not be 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 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 not result in ratepayers paying more than the avoided costs for these resources.

43. ~~Absent~~ With project citing requirements, ~~beyond being in the same service territory as the subscribers~~, the Commission is ~~un~~able 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.~~ Exports from NVBT projects will flow onto the distribution system and will serve nearby loads including any load at the host site. By serving these nearby loads on the local distribution system, the NVBT generation will reduce loads on upstream transmission and distribution systems and will avoid capacity-related T&D costs.

45. ~~Without Utilities' ability to claim Resource Adequacy credits, NVBT projects cannot avoid generation capacity costs~~. As the proposed export credit rate under the NVBT focuses compensation in the seasons and hours when the grid is most likely to have a shortage of supply it ensures that resources are consistently dispatched to the gird during times of peak demand, and thus, merits load modifying status.

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.~~ NVBT projects will interconnect to the distribution system pursuant to Rule 21. Interconnection studies will look at whether a proposed generator exceeds the capability of the distribution system to operate within thermal, voltage, and protection limits.

47. In the VNEM, NEMA, and RES-BCT tariffs, the generator is sized to fit the load; in the NVBT proposals ~~the customer subscriptions are sized to fit the production of the generator.~~ a subscriber's capacity interest in a facility is based on the subscriber's historical energy usage.

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 anywhere within a utility's service territory~~ can be structured to have a proximate connection between the location of the generating facility and the subscribers.

49. ~~The proposed NVBT does not 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.

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, energy will flow onto the distribution system and will serve nearby loads including any load at the host site. a ~~customer's load may not be offset. Instead,~~

~~the energy will be sent directly to the distribution 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 not result in ratepayers compensating customers for costs that are not avoided~~, which 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~~ Tenets of statutory constriction dictate that the term "avoided costs" in Pub. Util. Code Section 769.3 ~~could~~ refers to ~~either the PURPA avoided costs or~~ the avoided costs in the Avoided Cost Calculator.

60. Pub. Util. Code Section 769.3 ~~makes no requirement to~~ requires the 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~~ the full set of benefits of distributed energy resources.

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 from a diverse array of entities.

65. The Commission twice set aside submission of the record of this proceeding. ~~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~~ minimal opportunity to comment on SCE's PURPA compliant proposal.

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~~ The legislature directed the Commission to decide whether a 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."

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 insufficient 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~~ will not be sufficient compensation for garnering additional interest in community solar by developers.

77. The SCE PURPA compliant proposal is incomplete.

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.~~

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 MW and requiring developers 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~~ NVBT 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 to compensate generation resources ensures program costs are not paid by nonparticipating customers in excess of avoided costs.~~

89. Requiring ~~the PURPA-compliant~~ NVBT 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 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 NVBT ~~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.

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).

Conclusions of Law

5. The NVBT proposals are retail rate programs subject to state jurisdiction. ~~not exempt from the requirements of PURPA.~~

6. The Commission should ~~not~~ adopt ~~any of~~ the NVBT ~~proposals~~ 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.~~ comply with federal law

9. The NVBT proposals ~~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 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~~ NVBT 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 find 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 community renewable energy program~~.

17. ~~The Commission should adopt the proposal to provide customers a flat monetary credit on customer bills.~~

18. ~~The Commission should 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 can meet the requirements of Pub. Util. Code Section 769.3.~~

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

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