BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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Application of PACIFIC GAS AND ELECTRIC COMPANY (U 39 E) for Review of the Disadvantaged Communities – Green Tariff, Community Solar Green Tariff and Green Tariff Shared Renewables Programs	Application No. 22-05-022 (Filed May 31, 2022)
And Related Matters	Application 22-05-023 Application 22-05-024

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

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Pursuant to Rule 14.3 of the Commission's Rules of Practice and Procedure, the Coalition for Community Solar Access ("CCSA") files these reply comments responding to opening comments on the Decision Modifying Green Access Tariffs and Adopting a Community Renewable Energy Program ("Proposed Decision" or "PD") filed by parties on March 25, 2024. CCSA greatly appreciates the continued support of numerous parties for adoption of the Net Value Billing Tariff ("NVBT") as the foundation of a viable community renewable energy program ("CREP") that can expand access to the benefits of distributed energy resources ("DERs") to all Californians unable to install onsite DERs.

I. Introduction and Summary

Based on the PD's numerous flaws, the Commission should either (1) reject the PD in its entirety and issue an alternate PD or (2) significantly modify the PD to embrace the NVBT as the foundation of a viable CREP. The CREP proposed by Southern California Edison ("SCE") that the PD supports ("PURPA-minus CREP") will not result in a viable program that meets the intent of AB 2316. The record concerning the PURPA-minus CREP also lacks the evidentiary record necessary for the Commission to make required findings that the proposal complies with Section 769.3(c).[1] Adopting the PURPA-minus CREP at such a late stage in the docket not only violates due process rights of parties in the docket who adhered to the procedural schedule, but also has resulted in a proposal that lacks critical details that even the proponent is now asking the Commission to dial back. The Commission can do better to effectuate the intent of AB 2316 – by adopting the NVBT as the foundation of a viable, scalable, and equitable CREP that benefits all Californians.

II. The PURPA-Minus CREP Adopted by the PD Lacks the Evidentiary Record Necessary for the Commission to Reach Conclusions on Its Compliance with AB 2316

SCE's argument that its proposed PURPA-minus CREP complies with the law has no basis in the record.[2] Section 769.3(c), based on its plain terms, requires any CREP to meet the six requirements expressed in (c)(1)-(6). Despite this statutory mandate, the PD embraces SCE's defective proposal even though the PD finds that "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)."[3] The proponent bears the burden of establishing that its proposal complies

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1 All references are to the California Public Utilities Code unless otherwise stated.

2 See SCE Opening Comments on PD at pg. 2.

3 Finding of Fact 70, PD at pg. 156.

with state law, and the Commission's approval of a program with such obvious and acknowledged flaws would be reversible error.[4]

In response to these obvious deficiencies, the PD opines that "ultimately the Energy Commission will decide whether a proposal would comply with Title 24."[5] This point is irrelevant to the duties the Commission must undertake pursuant to statute. While the Energy Commission will ultimately determine whether any particular proposal utilizing a CREP put before it by a builder (to show compliance with Title 24) meets the requirements of its regulations, that fact does not absolve the Commission from determining whether the CREP it adopts meets the requirements of Section 769.3(c)(1). The statutory language requires that the adopted program be complementary to and consistent with Title 24. Consultation with the Energy Commission does not absolve the Commission of its statutory obligations. Instead, the requirement recognizes that both Commissions will need to work together to ensure that a compliant program is developed within their respective spheres of authority – the Commission's being implementation of AB 2316 and the Energy Commission's being implementation of Title 24. The PD points to nothing in the record that supports the necessary finding that the PURPA-minus CREP will be complementary to and consistent with Title 24. It cannot do so.[6]

Despite acknowledging that there is no evidence the PURPA-minus CREP will meet the requirements of Section 769.3(c)(6), the PD nonetheless concludes that the program meets the statutory requirement. The PD points to nothing in the record to support this view. Opening comments make clear that the PURPA-minus CREP cannot meet this statutory requirement.[7] In contrast, record evidence demonstrates how the NVBT will be complementary to and consistent with Title 24 and how the NVBT will support maximization of state and federal incentives.[8] Finally, the PD's conclusion that the PURPA-minus CREP complies with Section 769.3(c)(5) is "riddled with holes."[9] CCSA agrees with SEIA and TURN that the PD commits reversible error in declining to use the Avoided Cost Calculator to value the "full set of benefits of distributed energy resources."[10] The PD's conclusions on these topics are reversible error.

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4 *See* Public Utilities Code Section 1757(a)(2) and Section 1757.1(a)(2).
5 PD at pg. 115.
6 *See* Arcadia Opening Comments on PD at pgs. 9-10.
7 *See* Arcadia Opening Comments on PD at pgs. 11-13.
8 *See* CCSA Opening Brief at pgs. 27-30.
9 *See* SEIA Opening Comments on PD at pg. 12.
10 *See* SEIA Opening Comments on PD at pgs. 12-13; See TURN Opening Comments at pgs. 10-11.

These three defects are not the only ways in which the PURPA-minus CREP proposal violates AB 2316. AB 2316 allows community choice aggregators ("CCAs") and energy service providers ("ESPs") to voluntarily participate in any CREP adopted by the Commission.[11] The PD and SCE have offered nothing on how the PURPA-minus CREP would allow for voluntary participation by CCAs and ESPs so "it is unclear how interested CCAs should participate in the new programs as proposed in the PD."[12] Nor does the PD address whether the "CCAs may create and/or use already existing tariffs for the new program."[13] In stark contrast to the lack of detail on program participation by LSEs authorized by Section 769.3(b)(2)(B), the record concerning the NVBT demonstrates how CCAs and ESPs can participate in a CREP founded on the NVBT.[14] The PD's lack of detail on LSE program participation is reversible error.

III. Adoption of SCE's Proposal Violates Parties' Due Process Rights to the Detriment of Reasoned Decision-Making

TURN argues that "parties were denied a meaningful opportunity to review and comment on the PURPA-minus CREP" and that the proposal is out of scope.[15] The PD dismisses both concerns arguing that SCE "simply offered an alternative to the NVBT" and that parties were offered an opportunity to argue against the proposal.[16] Both arguments miss the point: (1) SCE's proposal was not responsive to the Ruling; and (2) it came so late as to deprive other parties of their right to a *meaningful* opportunity to respond. First, the PD does not address the fact that the November 6 Ruling cannot fairly be read as offering parties an opportunity to present a new proposal. The Ruling itself states no such thing. All the questions in the ruling focus on further record building concerning various aspects of the NVBT, and the title of the ruling and its contents reference only the NVBT.[17] At the same time, the Scoping Memo and subsequent rulings were clear that parties were to have offered initial proposals on January 20,

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[11] *See* Section 769.3(b)(2)(B).

[12] Joint CCA Opening Comments on PD at pg. 3.

[13] See *id*.

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

[15] TURN Opening Comments on PD at pg. 2.

[16] *See* PD at pgs. 114-115.

[17] See Attachment 2, Administrative Law Judge's Ruling Setting Aside Submission of the Record to Seek Comments on Aspects of the Net Value Billing Tariff Proposal, filed November 6, 2023.

2023 and revised proposals on March 15, 2023.[18] Taken together, SCE's PURPA-minus CREP should be viewed as out of scope. Any other finding is prejudicial to parties who followed the Commission's established schedule.

Moreover, any argument that parties have a *meaningful* opportunity to discuss a new proposal on such a complex topic in one round of reply comments undermines the entire process parties have engaged in to develop a record that can support reasoned decision-making. Initial proposals were due nearly 11 months prior to SCE offering its proposal. Timely proposals were then discussed by parties in an all-party workshop and refined based on feedback in amended opening testimony due March 15, 2023. Rebuttal testimony and surrebuttal testimony followed. Those efforts built a detailed record on a complex topic that is simply absent in the record established in a single round of reply comments.

In addition, meaningful review is not merely about due process. It is necessary for reasoned decision-making by the Commission.[19] Opening comments on the PD amply demonstrate how departure from the process established in the Scoping Memo and subsequent rulings undermined reasoned decision-making within the PD. Opening comments point out serious factual errors with any conclusion that founding the PURPA-minus CREP on existing PUPRA tariffs will result in a viable program that can meet the requirements of AB 2316.[20] They also highlight just how utterly deficient the record is concerning essential details of the PURPA-minus CREP. For example, PAO argues that "the PD should be revised to include a preliminary scope of implementation issues" that include critical program features such as the minimum share of project revenue for low-income and non-low-income participating customers, the method for disbursing the low-income participant adder, necessary consumer protections, reporting requirements, and use of auto-enrollment.[21] The CCAs have also raised concerns about how they would participate in the PURPA-minus CREP. PG&E suggests consulting with the CEC so a "more detailed" PURPA-minus CREP can be developed.[22] These topics are not implementation issues; they are core features of any CREP that should have been presented on the record in a timely fashion for vetting by parties. In contrast to the utter lack of record

[18] *See* Assigned Commissioner's Scoping Memo and Ruling, filed December 2, 2022, at pg. 5; Administrative Law Judges' Ruling Revising Procedural Schedule, filed February 23, 2023, at pg. 3.
[19] See *Southern California Edison*, 140 Cal. App. 4th 1085, 1105-1107 (2006).
[20] See, e.g., SEIA Opening Comments on PD at pg. 13; TURN Opening Comments on PD at pgs. 3-6.
[21] See PAO Opening Comments on PD at pgs. 2-3.
[22] See PG&E Opening Comments on PD at pg. 7.

evidence concerning these essential program details for the PURPA-minus CREP, all these details have been discussed on the record in testimony for the NVBT.[23]

Even SCE, the proponent of the PURPA-minus CREP, appears concerned by what the PD has embraced, arguing that "the PD needs clarification that the PD is not proposing to deprive generating facilities of the full compensation to which PURPA entitles them."[24] Yet this deprivation is precisely what SCE proposed.[25] The context in which this statement is offered makes clear that SCE meant "a PURPA contract" struck between an LSE and wholesale generator.[26] Perhaps sensing that this economic deprivation fundamentally undermines the ability of the proposed CREP to support resource deployment, SCE now seeks a "clarification." It is not a clarification and presents another reason to reject SCE's untimely proposal. What is left unsaid is that if parties had had a *meaningful* opportunity to vet SCE's proposal, this foundational defect would have come to light prior to opening comments on a PD. The PD simply glosses over these infirmities and thereby commits reversible error.

IV. Conclusion

Based on the Proposed Decision's numerous flaws, CCSA urges the Commission to significantly modify the PD or to reject it in its entirety and to issue an alternate PD that adopts the NVBT. The record demonstrates that the NVBT is the most cost-effective proposal offered in the docket that is also scalable,[27] addresses inequities in access to DERs,[28] is responsive to grid needs though deployment of solar plus storage resources,[29] and meets the needs of California's home builders for Title 24 compliance pathway that lowers the overall cost of compliance.[30] It is also designed to "prioritize the maximum use of state and federal incentives" to the benefit of all ratepayers.[31]

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[23] *See* CCSA Opening Brief at pgs. 18-19.
[24] *See* SCE Opening Comments on PD at pg. 4.
[25] *See* SCE Opening Comments on November 6 Ruling at pgs. 16-17 ("LSE will pay the resource owner directly for their share of the contract price and…distribute the remaining share of the contract price to subscribers…".)
[26] *See id* at pg. 16 (proposing CREP resources participate in LSE solicitations or sign a PURPA contract directly with the LSE).
[27] CCSA Comments on June 23 Ruling, pgs. 6-10; SEIA Comments on June 23 Ruling, pgs. 5-9.
[28] *See, e.g.,* Exh. CCSA-01, pgs. 7-8 (discussing inadequacy of current programs to address barriers to distributed resources)
[29] CCSA Comments on November 6 Ruling, pgs. 4-5; SEIA Comments on November 6 Ruling, pg. 3.
[30] CUE Comments on PD, pgs. 3-5.
[31] Exh. CCSA-01, pgs. 93-100.

Respectfully submitted on April 2, 2024.

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