

**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

A.22-05-022

And Related Matters

A.22-05-023

A.22-05-024

**REPLY COMMENTS OF ARCADIA POWER, INC ON THE PROPOSED DECISION
MODIFYING GREEN ACCESS PROGRAM TARIFFS AND ADOPTING A
COMMUNITY RENEWABLE ENERGY PROGRAM**

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RENEWABLE ENERGY PROGRAM**

Pursuant to Rule 14.3(d) of the Commission’s Rules of Practice and Procedure, Arcadia Power, Inc. (“Arcadia”) respectfully submits these reply comments in response to the opening comments on the Proposed Decision Modifying Green Access Tariffs and Adopting a Community Renewable Energy Program (“PD”). Arcadia appreciates the opportunity to provide this response in support of the Commission either rejecting or significantly modifying the PD.

I. INTRODUCTION

The PD focuses on two areas of analysis as required under AB 2316: (1) evaluating existing Green Access Programs, and (2) establishing new community renewable energy programs.¹ Arcadia’s comments focus on the PD’s findings on the establishment of a new community renewable energy program. These reply comments conclude that the PD erred in (1) determining that the Net Value Billing Tariff (“NVBT”) proposal from the Coalition for Community Solar Access (“CCSA”) is not compliant with federal law² and (2) determining that a new community renewable energy program,

¹ California Assembly Bill No. 2316 (AB 2316). An act to add Sections 769.3 and 913.15 to the Public Utilities Code, relating to electricity, §1, Approved by Governor September 16, 2022, Ward 2022 emphasis added.

² Proposed Decision (“PD”) A.22-05-022, issued March 4, 2024, at p. 82-94.

which includes a feed-in tariff with a customer subscription framework (“SCE Proposal”), meets the requirements of AB 2316.³ These errors require either rejection or significant modification of the PD.

II. THE NVBT PROPOSAL COMPLIES WITH FEDERAL LAW.

The PD finds that the NVBT proposal violates federal law, because it “do[es] not equate to retail rate programs but instead resemble[s] wholesale electricity procurement.”⁴ As set forth in Arcadia’s opening comments on the PD, the PD’s finding is fatally flawed because it is based on an inaccurate understanding of the NVBT proposal, and it applies this inaccurate understanding to an unreasonable interpretation of the boundaries of federal jurisdiction.⁵ This determination is supported in opening comments filed by many other parties.⁶

A. The PD Misunderstands the NVBT Proposal in Finding That it Does Not Constitute a Retail Rate Program.

Many parties filed opening comments demonstrating how the PD misconstrues foundational elements of the NVBT proposal in concluding that the NVBT is designed in a way to implicate FERC jurisdiction.⁷ First, the PD concludes that “[e]lectricity generated by a proposed NVBT project would have no relationship with the subscriber load.”⁸ As demonstrated in the opening comments of CEJA, CCSA, and SEIA, there is a direct relationship between the subscribers’ load and the NVBT project.⁹ Neither PG&E nor SCE provided comments contradicting this direct relationship. The PD’s conclusion otherwise must be rescinded as it is legally and factually incorrect.

³ PD at p. 123.

⁴ PD at p. 150.

⁵ See Arcadia Opening Comments on the PD (“Opening Comments”) at p. 3-9.

⁶ See CCSA Opening Comments at p. 3-8, TURN Opening Comments at p. 6-8, SEIA Opening Comments at p. 2-4, CEJA Opening Comments at p. 10-11, CBD Opening Comments at p. 3-4, CUE Opening Comments at p. 2; Cypress Creek Opening Comments at p. 2-9.

⁷ See *id.*

⁸ PD at p. 150.

⁹ CEJA Opening Comments at p. 11 (“under CCSA’s proposal NVBT projects would be sized according to historical subscriber load”); CCSA Opening Comments at p. 13-14 (“[a] subscriber’s capacity interest in a facility is based on the subscriber’s historical energy usage”); SEIA Opening Comments at p. 2 (“The NVBT model supports a contractual relationship between the project and its subscribers – retail end use customers.”).

Additionally, multiple parties refute the PD's conclusion that the NVBT proposals (1) "lack a true-up period for each subscriber to determine if there has been generation in excess of subscriber load" and (2) "the banking of credits would preclude this generation from being compensated at the utility's avoided cost as required by PURPA."¹⁰ Arcadia and CCSA's opening comments prove that the NVBT *does contain a true-up period* and that the banking of credits has no bearing on compensation for net surplus generation.¹¹ If the Commission finds that the true-up period should be shorter than the 2 year period proposed by CCSA or that net surplus generation must be compensated at a rate above zero, it may do so.¹² Regardless, nothing in the opening comments of SCE, PG&E, or any other party, refutes the clear evidence in the record that there is a true up period and that banking bill credits does not implicate PURPA.

Third, the PD erroneously concludes that the Simplified Billing model further "portray[s] this wholesale nature."¹³ Arcadia's opening comments speak to this flawed characterization, analogizing Simplified Billing to an on-bill financing arrangement.¹⁴ Cypress Creek argues that "[t]he Simplified Billing proposal contemplates a retail sale of electric energy, which does not conflict with the FPA."¹⁵ Simplified Billing clearly does not implicate FERC jurisdiction. The PD's finding that the NVBT proposal constitutes a wholesale sale subject to FERC jurisdiction is wrong and must be reversed.

¹⁰ PD at p. 89 - 91.

¹¹ Arcadia Opening Comments at p. 5-7; CCSA Opening Comments at p. 6 ("[C]redits from the subscription cannot exceed the customer's bill over the relevant netting period; potential credits from unsubscribed capacity are banked, and unless they are used within two years, they are lost. Thus, there is no sale.").

¹² See CCSA Opening Comments at p. 6; see also TURN Opening Comments at p. 6-7.

¹³ PD at p. 87.

¹⁴ Opening Comments at p. 8-9.

¹⁵ Cypress Creek Opening Comments at p. 6.

B. The PD’s Analysis Regarding the Boundaries of Federal Versus State Jurisdiction is Unreasonable and Must Be Set Aside.

The opening comments overwhelmingly refute the PD’s finding that “[t]he NVBT proposals do not equate to retail rate programs but instead resemble wholesale electricity procurement.”¹⁶ CCSA’s opening comments, co-authored by former FERC Chairman Norman Bay, address the ways in which there is no wholesale sale in interstate commerce.¹⁷ The evidence in the record, as well as FERC’s own history of declining to exercise jurisdiction over net metering, virtual net metering, and community solar programs,¹⁸ support the Commission’s reversal of the PD’s incorrect conclusion.

III. THE SCE PROPOSAL, AS ADOPTED BY THE PD, DOES NOT COMPLY WITH AB 2316.

AB 2316 requires that any new community renewable energy program, if established, shall meet six foundational criteria.¹⁹ The opening comments on the PD overwhelmingly support the conclusion that the SCE Proposal, as adopted by the PD, violates at least three of the criteria: (1) the SCE Proposal is not complementary to or consistent with the requirements of Title 24, (2) the SCE Proposal does not provide bill credits equivalent to the “full set of benefits” of DER programs, and (3) the SCE Proposal does not “prioritize the maximum use of state and federal incentives.”²⁰ Neither PG&E nor SCE provide any detail as to how the SCE Proposal achieves these requirements.

First, the scant record on the SCE Proposal makes clear that the adoption of the proposal would not be compliant with the Title 24 “new solar homes” mandate. The PD itself confirms this fact, stating “SCE provides no analysis that its PURPA compliant proposal would comply with Pub. Util.

¹⁶ PD at p. 150.

¹⁷ CCSA Opening Comments at p. 3-8.

¹⁸ See *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).

¹⁹ Pub. Utils. Code § 769.3(c).

²⁰ See Opening Comments of TURN at p. 3-6, SEIA at p. 11-15, CCSA at p. 14-15, CBD at p. 7-8, 11-15.

Code Section 769.3(c)(1).”²¹ In contrast, the NVBT is explicitly designed to meet Title 24’s alternative compliance pathway, with an estimated “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.”²²

The record also demonstrates that the SCE Proposal fails to provide bill credits equivalent to “the full set of benefits” of distributed energy resources.²³ PG&E and SCE understand this basic point, stating explicitly that the program will establish a compensation mechanism that, without external sources of funding, cannot support the application of bill credits, let alone bill credits that represent “the full set of benefits” of DERs.²⁴ External state funding sources are insufficient.²⁵ Federal sources of funding are unlikely to be available to these projects in violation of AB 2316.²⁶ Thus, the PD’s determination that the SCE Proposal would satisfy the criteria of AB 2316 is a reversible error.

IV. CONCLUSION

For all the reasons laid out in these reply comments, the PD’s conclusions of law and findings of fact contain substantive and impactful errors. The Commission must either reject the PD and issue a new one or significantly modify the PD to correct the factual and legal errors set forth therein.

Respectfully submitted,

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²¹ PD at p. 156.

²² TURN Opening Comments at p. 12.

²³ See Cypress Creek Opening Comments at p. 10-12.

²⁴ See SCE Opening Comments at p. 4 and PG&E Opening Comments at p. 6-7.

²⁵ See Dimension Opening Comments at p. 4.

²⁶ See Arcadia Opening Comments at p. 11-13; see also Renewable Properties Opening Comments at p. 4-5.