



**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

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And Related Matters

Application 22-05-023

Application 22-05-024

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

SOLAR ENERGY INDUSTRIES  
ASSOCIATION

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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”) replies to comments on the *Proposed Decision Modifying Green Access Program Tariffs and Adopting a Community Renewable Energy Program* (“PD”), which were filed on March 25, 2024.

## **I. INTRODUCTION**

With limited exception, the parties’ comments highlighted the glaring legal and factual deficiencies in the PD. The comments clearly illustrated that the basis upon which PD rejects the Net Value Billing Tariff (“NVBT”) – *i.e.*, (1) non-compliance with federal law, and (2) the proposed compensation structure exceeds the utilities’ avoided costs– are not legally or factually supportable. Moreover, parties demonstrated that the community solar program advanced by the PD - the “SCE Alternative Proposal” – does not meet the requirements of AB 2316 and is poorly conceived. If the Commission adopts the PD, then it will not have proceeded in a manner required by law,<sup>1</sup> rendering determinations which simply are not supported by substantial evidence.<sup>2</sup> The Commission must decline to adopt the PD as drafted. Instead, the Commission should rely on the record and adopt the NVBT – the only proposal before it which meets both the letter and intent of AB 2316.

## **II. THE NVBT IS A COMMISSION JURISDICTIONAL RETAIL PROGRAM**

Opening comments illustrate that the NVBT is compliant with federal law.<sup>3</sup> As highlighted therein, PD is premised on flawed logic – *i.e.*, if the NVBT is not net metering, then it must be subject to federal jurisdiction. But federal jurisdiction is narrowly tailored to “the transmission of electric energy in interstate commerce and to the sale of electric energy at wholesale in interstate commerce,” while the states have jurisdiction over facilities used for the generation or local distribution or to “*any other sale* of electric energy.”<sup>4</sup> In other words, the state retains jurisdiction over all local/retail matters. The NVBT is a local retail program.<sup>5</sup> The fact

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<sup>1</sup> See PU Code Section 1757 (a) (2).

<sup>2</sup> See PU Code Section 1757 (a) (4).

<sup>3</sup> CCSA Comments, pp. 3-8; Cypress Creek Comments, pp. 2-9; TURN Comments, pp. 6-8; Arcadia Comments, pp. 3-7 ; Valta Comments, pp. 2-4; Center for Biological Diversity Comments, pp. 3-4; Dimension Renewable Energy Comments, Appendix A; SEIA Comments, pp. 2-4.

<sup>4</sup> 16 U.S.C. § 824(b).

<sup>5</sup> CCSA Comments, pp. 5-6; Dimension Renewable Energy Comments, Appendix A, pp. 3-5; Cypress Creek Comments, pp. 3-5; SEIA Comments, pp. 2-3.

that it does not fit the mold of a traditional net metering transaction is irrelevant.

### **III. THE PD ADOPTED COMMUNITY SOLAR PROGRAM VIOLATES AB 2316**

AB 2316 is clear that any new community solar program adopted by the Commission must comply with six statutory requirements set forth in PU Code Section 769.3 (c). The PD acknowledges this fact and asserts that the “SCE Alternative Proposal,” meets these requirements.<sup>6</sup> But such determination is not supported by the record.

Specifically, of the six statutory requirements, the SCE Alternative fails to meet three. Thus, Section 769.3 (c) (1) requires a new program “be complementary to, and consistent with, the requirements of Section 10-115 of the California Building Standards Code (Title 24 of the California Code of Regulations).” In examining this prerequisite, the PD acknowledges that “SCE provides no analysis that the SCE alternative proposal would comply with the Title 24 requirement.”<sup>7</sup> The PD, however, attempts to get around this record deficiency by abrogating the responsibility to determine whether the adopted program is complementary and consistent with Title 24 to the CEC. But as pointed out by several parties, AB 2316 squarely places this responsibility on the Commission.<sup>8</sup> As, the PD admits there is nothing on the record to allow the Commission to make the necessary determination, the SCE Alternative must fail.

AB 2316 also requires that “a new community solar program “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.” The PD determines that this statutory requirement does not dictate the use of the Avoided Cost Calculator (“ACC”) but rather the use of any Commission method for determining avoided costs, thereby rendering the SCE Alternative (which relies on PURPA based avoided costs) compliant with the statute. But as comments show, this determination is legal error.<sup>9</sup> The language of AB 2316, the legislative history, and Commission decisions describing the ACC all dictate that a new community solar program use the ACC to determine bill credits for subscribing customers.

Finally, AB 2316 requires that a new community solar program “prioritize the maximum use of state and federal incentives.” This statutory section specifically calls out ensuring that “a

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<sup>6</sup> PD p. 123.

<sup>7</sup> *Id.*, p. 115.

<sup>8</sup> Arcadia Comments, p. 10; Center for Biological Diversity Comments, p.13.

<sup>9</sup> TURN Comments, p.10-11; Arcadia Comments, pp. 10-11. *See also*, SEIA Comments, pp.11-12.

community renewable energy facility participating in the community renewable energy program is eligible for an enhanced federal investment tax credit.” Without any analysis at all, and acknowledging that SCE provided no analysis on the matter,<sup>10</sup> the PD finds that “[t]he adopted community renewable energy program takes advantage of several state and federal funds and incentives including AB 102, the Environmental Protection Agency’s Solar for All, and the enhanced federal ITC.”<sup>11</sup> But as highlighted by Arcadia and TURN, the SCE Alternative is in fact is inconsistent with the requirements of the Inflation Reduction Act’s Low-Income Communities Bonus Credit (“LICBC”) as well as the Environment Protection Agency’s Solar for All program.<sup>12</sup> Indeed, the PD illustrates a lack of understanding of the requirements for the LICBC by allowing projects under the SCE Alternative to be sized up to 20 MW<sup>13</sup> when the receipt of the LICBC is limited to projects that have a maximum net output of less than 5 MW.<sup>14</sup>

Even with respect to state funding the PD comes up short. While the PD purportedly “adopts the use of \$33 million appropriated to the Commission for community solar usage and storage-backed renewable generation programs” as a means to support bill credits to low income customers,<sup>15</sup> as TURN highlights, the authorizing legislation clarifies that these funds are available for “storage-backed renewable generation programs.”<sup>16</sup> The program adopted by the PD does not mandate a storage component.

#### **IV. THE RECORD ON THE SCE ALTERNATIVE IS DEFICIENT**

Opening comments clearly demonstrated that the PD advanced the SCE Alternative Proposal with little to no analysis as to whether it would be commercially viable or even how it would be implemented. Thus, the PD only gives only passing thought to the commercial viability of the program, basically asserting that the availability of federal and state incentives will serve as a panacea for inadequate compensation from the PURPA construct. But as highlighted by several parties, the compensation structures under the ReMAT program and the PURPA Stand Offer Contract have proven to be insufficient to allow developers to recover a

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<sup>10</sup> PD, p. 115.

<sup>11</sup> *Id.*, p. 127.

<sup>12</sup> Arcadia Comments, pp. 12-13; TURN Comments, pp. 4-5.

<sup>13</sup> PD, p. 124.

<sup>14</sup> Solar Landscape Comments, p.2, *citing* <https://www.govinfo.gov/content/pkg/FR-2023-08-15/pdf/2023-17078.pdf>

<sup>15</sup> PD, pp, 120-121.

<sup>16</sup> TURN Comments, p. 5 *citing* AB 102, Budget Act of 2023, Section 244.

project's capital and operating costs<sup>17</sup> and that “[u]ncertain and short-term revenue streams, such as the one the Proposed Decision proposes, do not support project financing.”<sup>18</sup> As clarified by Cypress Creek, “unable to *predict long-term and stable revenues*, many financing parties will place no value on the short-term revenue streams the Proposed Decision would seek to use.”<sup>19</sup>

Moreover, as illustrated by Clean Coalition, the PD contains no analysis as to how the SCE Alternative will work within the parameters of the existing ReMAT and Stand Offer Contracts programs, and even a cursory exploration of the matter illustrates they will not.<sup>20</sup> For example, Clean Coalition points to the significant record evidence that securing financing for a project requires a clear demonstration of financial viability, including a long-term value stream from a contract of 20-25 years, but the SOC offers a contract term of only 12 years. Similarly, with respect to ReMAT, Clean Coalition illustrates how certain factors of that program, in addition to insufficient compensation, such as the interconnection and application process make it incompatible with community solar- factors which the PD does not explore. Indeed, it is not even clear whether the Commission intends that the amount of new projects under the SCE Alternative will be limited by the remaining capacity available under ReMAT.

Even proponents of the SCE Alternative demonstrate confusion as to fundamental aspects of the alternative. Thus, for example, SCE interprets the PD as ruling that “the source of funding for any subscriber bill credit (or adder or subsidy) is not a “share” of the developers’ compensation, but rather non-customer funded sources like state and federal incentives.”<sup>21</sup> But the only funding identified by the PD for bill credits is limited to low income customers.<sup>22</sup> So, unless SCE interprets the PD as limiting subscriptions solely to low-income subscribers, its interpretation is incorrect. Similarly, PG&E expresses confusion as to exactly what it has been asked to implement. Thus, PG&E seeks a future Commission ruling on several key components of the program, concluding that “[a] future ruling will enable IOUs and other stakeholders to develop a more detailed proposal in their subsequent Advice Letters on the three issues above”

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<sup>17</sup> TURN Comments, pp. 3-4; Cypress Creek Comments, p.11; SEIA Comments, pp.12-14; Clean Coalition Comments p.7.

<sup>18</sup> Cypress Creek Comments, p.12.

<sup>19</sup> *Id.* (emphasis added).

<sup>20</sup> Clean Coalition Comments, pp. 4-9.

<sup>21</sup> SCE Comments, p. 4.

<sup>22</sup> PD, p. 124.

and that “[t]he additional time and clarity on bill credits, external funds and implementation cost would also give PG&E and other program administrators the opportunity to consult with CEC staff on a more detailed PURPA-based Community Renewable Energy Program proposal before seeking approval of a fully detailed program and tariff via Advice Letter.”<sup>23</sup> PG&E should not be submitting “*a more detailed*” program in an Advice Letter but rather implementing clear directives from a Commission decision, based on a comprehensive record. But even PG&E recognizes that there are many holes left to be filled.<sup>24</sup>

The PD advances a program which is completely unworkable. No time or resources should be expended implementing this deeply flawed program – it should be rejected outright.

#### **V. THE NVBT IS SUPPORTED BY A ROBUST RECORD**

In contrast to the SCE Alternative adopted by the PD which is based on a scant record and lacks even the most fundamental of details, the NVBT is supported by a robust record. The record demonstrates that the NVBT is the most cost-effective proposal offered in the docket that is also scalable,<sup>25</sup> addresses inequities in access to distributed energy resources,<sup>26</sup> is responsive to grid needs,<sup>27</sup> meets the needs of California’s home builders for Title 24 compliance pathway in a way that lowers overall costs of compliance,<sup>28</sup> and is designed to “prioritize the maximum use of state and federal incentives.”<sup>29</sup> The record on the NVBT also addresses implementation issues such as billing and consumer protection.<sup>30</sup> The PD should be revised to adopt the NVBT.

#### **VI. THE GREEN TARIFF HAS FAILED AND MUST BE CLOSED**

The SoCal CCAs correctly state that the Green Tariff program “enjoys a robust and largely uncontested record” demonstrating its manifold flaws.<sup>31</sup> Yet, inexplicably, the PD retains the program, making small modifications that fail to address the root causes of the program’s deficiencies. No further resources should be wasted on the Green Tariff. It should be closed.

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<sup>23</sup> PG&E Comments, p. 7.

<sup>24</sup> *See also*, Cal Advocates Comments, p. 2 (setting forth a list of issues to be addressed in a future phase of the proceeding).

<sup>25</sup> CCSA Comments on June 23 Ruling, pp 6-10; SEIA Comments on June 23 Ruling, pp.5-9.

<sup>26</sup> *See, e.g.*, Exh. CCSA-01, pp.7-8 (discussing inadequacy of current programs to address barriers to distributed resources)

<sup>27</sup> CCSA Comments on November 6 Ruling, pp.4-5; SEIA Comments on November 6 Ruling, p. 3.

<sup>28</sup> CUE Comments, pp. 3-5.

<sup>29</sup> Exh. CCSA-01, pp. 93-100.

<sup>30</sup> *Id.*, pp. pp. 53-78.

<sup>31</sup> SoCal CCAs’ Comments, pp. 1-2.

Respectfully submitted, this 2nd day of April 2024 at San Francisco, California.

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By           /s/ Jeanne B. Armstrong            
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