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 (Filed May 31, 2022)
And Related Matters.	A.22-05-023 A.22-05-024

REPLY COMMENTS OF SAN DIEGO GAS & ELECTRIC COMPANY (U 902 E) ON PROPOSED DECISION

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REPLY COMMENTS OF SAN DIEGO GAS & ELECTRIC COMPANY (U 902 E) ON PROPOSED DECISION

Pursuant to Rule 14.3(d),[1] San Diego Gas & Electric Company ("SDG&E") hereby replies to certain opening comments[2] on the *Proposed Decision Modifying Green Access Program Tariffs and Adopting a Community Renewable Energy Program* issued March 4, 2024 ("PD").

I. TURN GETS IT WRONG; THE PD IS WELL-GROUNDED IN STATE LAW

We focus here on TURN because the other supporters of the Net Value Billing Tariff ("NVBT") as a community solar program, *i.e.,* those who oppose the PD, have a clear profit motive. They argue based on their own economic interests, not what is best for California ratepayers faced with significant affordability challenges.[3] TURN alleges several legal errors in

[1] References herein to "Rules" are to the Commission's Rules of Practice and Procedure.

[2] Twenty-two parties beside SDG&E filed opening comments: Arcadia Power, Inc. ("Arcadia"); Coalition of California Utility Employee; Coalition for Community Solar Access ("CCSA"); Valta Energy, LLC ("Valta"); Clean Coalition; Commission's Public Advocates Office; Renewable Properties, LLC; Cypress Creek Renewables, LLC ("Cypress Creek"); Solar Origination Landscape, LLC ("Solar Landscape"); California Environmental Justice Alliance and Vote Solar, and Natural Resources Defense Council; PearlX Infrastructure LLC ("PearlX"); Center for Biological Diversity ("CBD"); The Utility Reform Network ("TURN"); Dimension Energy LLC; PowerFlex Inc.; Solar Energy Industries Association; San Diego Community Power and Clean Energy Alliance; Clean Power Alliance of Southern California and California Choice Energy Authority; Southern California Edison Company ("SCE"); Pacific Gas and Electric Company ("PG&E"); Joint Community Choice Aggregators and City and County of San Francisco and Small Business Utility Advocates. Comments are cited as: [party nickname] at [page number(s)].

[3] Although the investor-owned utilities ("IOUs") also have keen interests in affordability, their motives are often questioned. The Community Choice Aggregators' ("CCAs") complete lack of support for NVBT should pique the interest of the Commission and provide ample assurance that the PD's economic findings are sound. If any community solar program based on an NVBT structure would help reduce their costs of serving retail load, CCAs would have adopted such programs by now. But

the PD. The bottom line is that TURN is wrong – the PD got it right. This reply will address two fundamental errors in TURN's arguments to uphold the proposed NVBT.

A. The ACC is Not Required By Statute Here

First, TURN argues that the legislative history of Assembly Bill ("AB") 2316 demonstrates that the statutory reference to the Commission's methods for determining "avoided costs" was intended to require the use of the ACC for pricing generator exports.[4] TURN cites a California Senate Committee report on AB 2316.[5] But the cited bill analysis provides no such demonstration; reading the cited passage in context shows that the description of the ACC was part of an extended "Background" exposition on all existing solar programs available to customers, including net energy metering. There was nothing in the "Discussion" portion of the Committee analysis that supports an intent to require the use of the ACC for community solar programs under AB 2316. And, as shown below, use of the ACC would cause a cost shift to nonparticipating customers, which is expressly barred by AB 2316.

B. The NVBT Would Cause an Impermissible Cost Shift

TURN, CCSA, and others[6] attack the PD's finding that the NVBT would create a cost shift.[7] Again, the PD gets it right. This reply will not re-hash parties' arguments over the PD's analysis of ACC components that cause excessive export pricing. In a larger context, the NVBT is bound to cause a cost shift. Recall that CCSA introduced its community solar proposal in

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if Avoided Cost Calculator ("ACC")-based compensation under long-term PPAs was a reasonable price to pay for the benefits of distributed solar, CCAs could simply issue RFPs for long-term PPAs offering an ACC-based price for distributed renewable resources in the communities they serve, without any of the complications of subscribers and bill credits, and seek RA credit for such capacity. The fact that they are not doing this is the best evidence that the costs of NVBT Resources do *not* outweigh the benefits.

4 TURN at 11. But TURN's quote omits the next sentence which gives the Commission an alternative for pricing: "The commission may use actual wholesale market prices for the energy supply portion of an avoided cost calculation or credit value," which permits community solar pricing based on PURPA, as with the RAM mechanism adopted for CREP. *See also* Valta at 6, Cypress Creek at 10-11, PearlX at 7.

5 Analysis of AB 2316, Senate Committee on Energy, Utilities and Communications (June 24, 2022), p. 7, *cited* at TURN at 11, n.47.

6 TURN at 8-10; CCSA at 2, 14; Arcadia at 14-15, Valta at 6-7, Solar Landscape at 1, Dimension at 1.

7 AB 2316 specifically bars shifting costs to nonparticipating customers; any community solar program must "… [m]inimize impacts to nonparticipating customers by prohibiting the program's costs from being paid by nonparticipating customers in excess of the avoided costs." Public Utilities ("P.U.") Code § 769.3(c)(3).

R.20-08-020, the net energy metering ("NEM") revisit proceeding. Unlike NEM, where applicable law required the Commission to reconcile conflicting considerations of sustaining the advance of and customer expectations around a long-standing rooftop solar tariff with mitigating the cost shift inherent in the old tariff,[8] there is no such reconciliation or compromise permitted under the statutes governing this proceeding. The law does not permit new Green Access Programs, or the continuation of existing programs, if they harm nonparticipating ratepayers. In contrast, the NEM revisit decision, D.22-12-056, balanced the conflicting requirements of P.U. Code § 2827.1, and conceded "that a significant and growing cost shift exists in the previous tariff *and, to a lesser extent, remains in the adopted successor tariff*."[9] It is noteworthy that, after D.22-12-056 established the Net Billing Tariff ("NBT"), and moved CCSA's proposal to this proceeding, CCSA "rebranded" its proposal as NVBT, presumably to capture the momentum and halo effect of the NBT.[10] In so doing, CCSA also captured the cost shift found by the Commission to remain in the ACC-based NBT.

Moreover, a siloed, in-front-of-the-meter small generation program - a set-aside for non-competitive generation[11] - will inevitably inflate the cost of generation to nonparticipants, especially if the aim is to assist subscribing participants with cheaper electricity. Such a result is not allowed under the applicable statutes, and it has no place in an era with daunting affordability challenges. The Commission recently explained that "it is indisputable that when there is any decrease in the number of customers who pay retail rates for energy, the costs supported by such rates are spread over a smaller customer base, leading to some increases in retail rates."[12] A 10% or 20% bill credit is basically a 10-20% reduction in the kWh of a customer's retail purchases,

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[8] The NEM revisit decision, D.22-12-056 at 4, balanced the conflicting requirements of P.U. Code § 2827.1, and conceded "that a significant and growing cost shift exists in the previous tariff *and, to a lesser extent, remains in the adopted successor tariff*" (emphasis added).

[9] D.22-12-056 at 4, emphasis added.

[10] CCSA concedes in this proceeding that its NVBT proposal is the same as that offered in the NEM revisit docket, R.20-08-020. *See*, Ex. CCSA-002 (Fulmer) at 2 (lines 17-18) - 3 (lines 1-2).

[11] If the generation were competitive, it could obtain financing by being paid a rate similar to the rates paid by the IOUs in their general procurement efforts for long-term PPAs. The PURPA Standard Offer Contract rate reflects recent procurements. *See* D.20-05-006 at 2-3. The ReMAT rate reflects procurements from 20 MW and smaller renewable resources. *See* D.20-10-005 at 2. If these rates are insufficient, as alleged by some commenters, then such resources are not competitive and require an above-market price for development.

[12] *See* D.24-02-050 at 10.

which must be paid for by nonparticipating customers. A resultant cost shift is indisputable. These fundamental problems with NVBT cannot be obscured by quibbles over whether elements of an administratively-determined export pricing formula must be maintained to attract developers and give discounts to customers. Such a program will add costs to nonparticipants and offend affordability, thereby failing the applicable statutory tests.

II. AMPLE DUE PROCESS SUPPORTS THE PD

TURN, CCSA and others claim that the PD violates due process by entertaining and accepting, in part, SCE's PURPA-based community renewables proposal in place of NVBT.[13] But the record shows otherwise. SCE first raised the PURPA issue and what would constitute a lawful PURPA program for Title 24 purposes in its rebuttal testimony.[14] Thereafter, SCE and others emphasized that a lawful community renewables program must comply with PURPA in nearly every round of subsequent submittals in the proceeding.[15] The PD did not adopt SCE's PURPA proposal in whole. Instead, it took the record and crafted something of its own, rejecting some aspects of the SCE proposal. The Commission may properly exercise sound discretion to use the legal and evidentiary record before it to both (1) reject the NVBT as unlawful under both state and federal law; and (2) create a tariff that conforms to the law and policy supported by the evidentiary record that the IOUs can offer to their customers.

NVBT proponents do not object to the PURPA community renewables proposal as such; they are mad about rejection of the NVBT and that was done on legal grounds that SCE raised at the outset of the proceeding and was also raised in the NEM revisit proceeding.[16]

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[13] TURN at 2; CCSA at 2-3, CBD at 2-3.

[14] Ex SCE-03 at 11-15 and 28-30 (April 7, 2023).

[15] SCE raised the PURPA issue in response to the ruling reopening the record issued precisely to allow parties to be heard on this issue. *See, Opening Comments of …[SCE] on Administrative Law Judge's Ruling Setting Aside Submission of the Record to Seek Comments on Aspects of … [NVBT] Proposal* (November 28, 2023) *passim*. NBVT proponents were heard repeatedly on this SCE proposal in their comments in response to the rulings, briefs, and the PD comments. Plus, they have engaged in a large volume of advocacy directly to Commission offices on the purported lawfulness of the NVBT and SCE's PURPA proposal.

[16] R.22-08-020, *Joint Opening Brief of … [PG&E, SCE and SDG&E]* (August 31, 2021) at 6-17, 100-101; *Joint Reply Brief of … [PG&E, SCE and SDG&E]* (September 14, 2021) at 22-24.

III. CBD WOULD BOOTSTRAP LEGAL ARGUMENT INTO TESTIMONY

To support the proposition that the NVBT "would not trigger FERC jurisdiction or the application of PURPA," CBD's reply[17] cites "comments" by former FERC Chair Norman Bay found at a link to a press release on CCSA's website.[18] Putting aside the question whether citation to a press release carries any weight, the Commission should disregard CBD's citation and argument on the point. Mr. Bay appears as counsel for CCSA in this matter.[19] As CCSA's lawyer, he is ethically bound to argue his client's perspective zealously. No doubt he has done so. CBD improperly cites a CCSA press release by Mr. Bay as evidence. It is not evidence, but lawyer's argument, and should be disregarded, not the least because CCSA has presented ample legal argument on the point, presumably guided by Mr. Bay acting as its lawyer.

IV. CONCLUSION

SDG&E asks the Commission to adopt the PD with the changes suggested in the Appendix to SDG&E's opening comments and attached herein.

Respectfully submitted,
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[17] CBD filed and served its reply on April 1 when the Commission was closed for a state holiday, giving SDG&E the opportunity to respond to its tactic.

[18] CBD Reply at 4. Confusingly, CCSA heads the press release with the great seal of the Commission, creating an impression that the release is that of the Commission.

[19] Most recently, Mr. Bay appears on the cover of CCSA's PD comments as one of its legal counsel.