

**PUBLIC UTILITIES COMMISSION**505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298**FILED**

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April 2, 2025

Agenda ID # 23398
Ratesetting

TO PARTIES OF RECORD IN RULEMAKING 20-08-020:

This is the proposed decision of Administrative Law Judge Jack Chang. Until and unless the Commission hears the item and votes to approve it, the proposed decision has no legal effect. This item may be heard, at the earliest, at the Commission's May 15, 2025, Business Meeting. To confirm when the item will be heard, please see the Business Meeting agenda, which is posted on the Commission's website 10 days before each Business Meeting.

Parties of record may file comments on the proposed decision as provided in Rule 14.3 of the Commission's Rules of Practice and Procedure.

The Commission may hold a Ratesetting Deliberative Meeting to consider this item in closed session in advance of the Business Meeting at which the item will be heard. In such an event, notice of the Ratesetting Deliberative Meeting will appear in the Daily Calendar, which is posted on the Commission's website. If a Ratesetting Deliberative Meeting is scheduled, *ex parte* communications are prohibited pursuant to Rule 8.2(c)(4).

/s/ MICHELLE COOKE

Michelle Cooke

Chief Administrative Law Judge

MLC:abb

Attachment

Decision PROPOSED DECISION OF ALJ CHANG (Mailed 4/2/25)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Revisit Net Energy Metering Tariffs Pursuant to Decision D.16-01-044, and to Address Other Issues Related to Net Energy Metering.

Rulemaking 20-08-020

DECISION GRANTING PACIFIC GAS AND ELECTRIC COMPANY, SOUTHERN CALIFORNIA EDISON COMPANY, AND SAN DIEGO GAS & ELECTRIC COMPANY'S PETITION FOR MODIFICATION OF DECISION 23-11-068 AND DENYING BLOOM ENERGY CORPORATION'S PETITION FOR MODIFICATION OF DECISION 23-11-068

Summary

We grant Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company's Petition for Modification of Decision (D.)23-11-068 addressing remaining proceeding issues in Rulemaking (R.)20-08-020. We remove requirements in D.23-11-068 that the investor-owned utilities enter into a non-disclosure agreement with the California Department of Industrial Relations to protect confidential information that the department may receive from accessing the utilities' net energy metering/net billing tariff (NEM/NBT) interconnection portals.

We also authorize the utilities to record the costs of implementing the Public Utility Regulatory Policies Act (PURPA) Compliant Tariff in a separate memorandum account. We require utilities to file a Tier-2 Advice Letter establishing the memorandum account. In addition, we allow the utilities to

recover those PURPA Compliant Tariff implementation costs in their respective General Rate Cases.

Finally, we deny without prejudice Bloom Energy Corporation's Petition for Modification requesting that D.23-11-068 be modified to rescind or postpone implementation of the NEM fuel cell tariff greenhouse gas standards until they have been reviewed and updated by the California Air Resources Board following a public process. We also deny Bloom Energy's Motion for Stay regarding the implementation of CARB's NEM fuel cell greenhouse gas emissions standards as ordered in D.23-11-068.

1. Background

The California Public Utilities Commission (Commission) approved D.23-11-068 on November 16, 2023, addressing remaining proceeding issues in R.20-08-020.

Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), and San Diego Gas & Electric Company (SDG&E), collectively referred to as the Utilities, timely filed a Petition for Modification (Utilities' Petition for Modification) on November 15, 2024, requesting that Ordering Paragraph-36 of D.23-11-068 requiring utilities enter into non-disclosure agreements (NDAs) with the California Department of Industrial Relations (Department) to implement Public Utilities Code Section 769.2 regarding labor and pay standards be removed because the Department by law cannot keep confidential information related to prevailing wage violations for public works projects.¹

¹ Pacific Gas and Electric Co., Southern California Edison Co. & San Diego Gas & Electric Co. Petition for Modification of D.23-11-068, at Page 3 (November 15, 2024)

The Utilities' Petition for Modification also requests that the Commission authorize the Utilities to record in an existing Net Billing Tariff (NBT) memorandum account established in D.22-12-056 any costs that they may incur implementing and maintaining a Public Utility Regulatory Policies Act (PURPA) Compliant Tariff required by D.23-11-068 for customer generators who have lost access to their Net Energy Metering (NEM)/NBT tariff due to contractor prevailing wage violations.²

No protests were filed for the Utilities' Petition for Modification.

On January 24, 2025, Bloom Energy Corporation (Bloom) filed a Petition for Modification (Bloom's Petition for Modification) requesting the Commission modify D.23-11-068 to revise or postpone implementation of the Net Energy Metering Fuel Cell (NEMFC) Greenhouse Gas (GHG) Emissions Standards until the California Air Resources Board (CARB) has reviewed and updated the standards.

On January 24, 2025, Bloom also filed a Motion for Stay regarding the implementation of CARB's NEMFC GHG Emissions Standards as ordered in D.23-11-068, which were scheduled to go into effect for NEMFC customers on February 1, 2025³.

On January 31, 2025, Commission Executive Director Rachel Peterson granted the Utilities an eight-month extension to comply with NEMFC customer generation certification and payment requirements in Ordering Paragraph-25 of D.23-11-068, with the extension starting from the date CARB issues a final

² Id. at Page 2

³ On May 20, 2024, California Public Utilities Commission Executive Director Rachel Peterson granted an extension until February 1, 2025, for customer-generators participating in the Net Energy Metering Fuel Cell tariff to provide certification and payment of certification fees.

decision in the upcoming public process reviewing possible updates to the NEMFC GHG Emissions Standards.

No protests were filed for either Bloom's Petition for Modification or Motion for Stay.

2. Submission Date

These matters were submitted on November 15, 2024, upon the Utilities' filing of their Petition for Modification and on January 24, 2025, upon Bloom's filing of its Petition for Modification.

3. Issues Before the Commission

The issues before the Commission are as follows:

1. Whether to grant the Utilities' Petition for Modification to change the requirement that the Utilities enter into NDAs with the Department regarding NEM customer-generators.⁴
2. Whether to grant the Utilities' Petition for Modification to record calculation and implementation costs for the PURPA Compliant Tariff in the NBT balancing account established in D.22-12-056.⁵
3. Whether to grant Bloom's Petition for Modification to postpone or rescind the requirement that the Utilities comply with CARB NEMFC GHG Emissions Standards.⁶

4. Decision 23-11-068 Requirements

In D.23-11-068, the Commission ordered in Ordering Paragraph-36 the Utilities to enter into NDAs with the Department to protect confidential customer information that the department may receive by accessing the utilities' NEM/NBT interconnection portals.

⁴ Id.

⁵ Id.

⁶ Bloom Energy Petition for Modification at Page 2 (January 24, 2025)

The decision also required in Ordering Paragraph-39 that the IOUs develop a PURPA Compliant Tariff for customer-generators who have lost access to their net metering or billing tariff due to their contractor's willful violation of the prevailing wage statute. The decision did not specify a cost recovery mechanism for the Utilities in developing and implementing that new PURPA Compliant Tariff.

Finally, Ordering Paragraphs-25 through 30 of D.23-11-068 implemented NEMFC GHG Emissions Standards as developed by CARB and required the Utilities to file a Tier-2 advice letter updating the NEMFC tariff as directed in the decision.

5. Utilities Petition for Modification

Rule 16.4 of the Commission's Rules of Practice and Procedure provides that a petitioner may request modifications to an issued Commission decision. Generally, a petition for modification must be filed and served within one-year of the effective date of the decision proposed to be modified. Rule 16.4 (b) also allows petitions for modification to introduce allegations of new or changed facts if "supported by an appropriate declaration or affidavit."

The Utilities timely filed a Petition for Modification on November 15, 2024, requesting that Ordering Paragraph-36 of D.23-11-068 be removed because the Department had informed the Utilities that it by law could not keep confidential information related to prevailing wage violations for public works projects.⁷ As a result, the Utilities wrote that the Department could not execute the NDAs with the IOUs as ordered by D.23-11-068.

⁷ Pacific Gas and Electric Co., Southern California Edison Co. & San Diego Gas & Electric Co. Petition for Modification of D.23-11-068, at Page 3 (November 15, 2024)

The Utilities' petition introduces a new fact into the record with the Department's communication to the Commission that it "cannot keep information relating to prevailing wage violations for such projects confidential" and that "that information is, by law, public, unless it is required to be kept confidential or is exempt from disclosure by law."⁸ The petition also states that "[t]he Department's procedures for public works projects include a *public* hearing process for prevailing wage violations during which evidence, which will necessarily include customer information, is made public."⁹ To implement provisions of AB 2143 (Carrillo) and Pub. Util. Code §769.2, Commission staff in the Energy Division have been routinely working with counterparts in the Department. As part of this ongoing work, staff learned in April 2024 of the Department's concerns regarding the feasibility of the NDAs and their enforcement given the Department's public hearing processes. It is reasonable to conclude that by law, the Department cannot comply with Ordering Paragraph-36 of D.23-11-068 requiring the IOUs enact an NDA with the Department keeping personally identifiable customer information confidential.

The Utilities' Petition for Modification also requests that the Commission authorize the Utilities to record any costs that they may incur implementing and maintaining a PURPA Compliant Tariff required by D.23-11-068 in an existing NBT memorandum account established in D.22-12-056 so that those costs can be reviewed in the Utilities' next General Rate Cases (GRC).¹⁰ The Utilities' petition makes a convincing argument that D.23-11-068 overlooked "how the IOUs should record and recover any potential costs associated with implementing the

⁸ Id. at Page 3

⁹ Id.

¹⁰ Id. At Page 2

PURPA Compliant Tariff, including calculating and delivering the compensation to the customers.”¹¹ As currently ordered in D.23-11-068, the Utilities would need to attempt to recover its PURPA Compliant Tariff implementation costs in their next GRCs without having first recorded the costs in a balancing or memorandum account beforehand. In that light, it is reasonable to conclude that implementing the new tariff may require Utility staff time and resources and that the Utilities should be able to record those costs in a memorandum account for consideration in its next GRC. As stated by the Utilities, however, the NBT memorandum account established in D.22-12-056 that the Utilities propose as an appropriate vehicle to record PURPA Compliant Tariff implementation costs was created “to record costs for implementation of marketing, education, and outreach for the successor tariff ... and for the data collection, administrative support, and execution of the third party evaluation.”¹² These are distinct expenses from costs incurred with the implementation of the PURPA Compliant Tariff. Such disparate costs should not be recorded in the same memorandum account as the NBT ordered by D.22-12-056.

The Utilities’ Petition for Modification is granted with modification. Should the Utilities identify costs to implement the PURPA compliant tariff, it is reasonable for the Utilities to first propose the establishment of a separate memorandum account through the submission of a Tier-2 Advice Letter. In that advice letter filing, the Utilities must explain the need and provide estimated annual costs. Should the advice letter filing be approved, the Utilities may record the PURPA Compliant Tariff implementation costs in that separate,

¹¹ Id. at Page 5

¹² Id.

unique memorandum account. Further, should the PURPA Compliant Tariff memorandum account be approved, the Utilities must track separately for:

1. Export value compensation costs provided to customer-generators;
2. Utility administration or billing system costs; and
3. Other costs.

The filing should also document the PURPA Compliant Tariff's billing system implementation plans as they occur within the Utilities larger billing modernization efforts. This is especially important in light of the findings of the Commission-commissioned Net Energy Metering 2.0 Lookback Study that found that "[n]ot all components of the cost to serve a customer are presented within the Phase-2 GRC. The regulatory and transmission costs and the costs specific to NEM 2.0 customers' interconnection, billing, and incremental grid costs were not presented in the GRC Phase-2 filings."¹³ A separate memorandum account established to record PURPA Compliant Tariff implementation costs would enable a reasonableness review in each Utility's GRC application.

6. Bloom's Petition for Modification

On January 24, 2025, Bloom filed a Petition for Modification requesting the Commission modify D.23-11-068 to revise or postpone implementation of the NEMFC GHG Emissions standards until CARB has reviewed and possibly updated them. The petition referenced and included a letter written by CARB to Bloom on January 23, 2025, stating that CARB would review "new data available since the original (Fuel Cell Net Energy Metering) Regulation was adopted and

¹³ Net Energy Metering 2.0 Lookback Study at Page 46 (January 21, 2021)

update the schedule of standards, as necessary.”¹⁴ In the letter, CARB also wrote it “can commit to opening a public process over the next few months to evaluate the new data.”¹⁵ Bloom stated in its petition that in light of the CARB letter, the Commission should modify D.23-11-068 to revise or postpone implementation of the NEMFC GHG Emissions standards until CARB has reviewed and possibly updated those standards.¹⁶

Bloom filed the Petition for Modification more than one year after the effective date of D.23-11-068 but explained in its petition that that timing was in response to CARB’s January 23, 2025, letter. Considering that CARB sent its letter after the one-year filing deadline established by Rule 16.4, Bloom reasonably filed its Petition for Modification later than the deadline.

Bloom’s Petition for Modification is denied. CARB’s letter to Bloom does not constitute a new fact in this proceeding that requires modifying D.23-11-068. However, Bloom can submit a new Petition for Modification in the event that CARB changes the NEMFC GHG Emissions Standards after its public process, which would be a new fact in this proceeding.

7. Bloom Motion for Stay

On January 24, 2025, Bloom filed a Motion for Stay of Ordering Paragraph-25 of D.23-11-068 related to the implementation of CARB’s NEMFC GHG Emissions Standards, which were scheduled to go into effect for NEMFC customers on February 1, 2025. On January 31, 2025, Commission Executive Director Rachel Peterson granted the Utilities an eight-month extension to

¹⁴ Bloom Energy Petition for Modification of D.23-11-068, Attached CARB Letter to Bloom Energy (January 24, 2025)

¹⁵ Id.

¹⁶ Bloom Energy Petition for Modification of D.23-11-068 at Page 2 (January 24, 2025)

comply with customer generation certification and payment requirements in Ordering Paragraph-25 of D.23-11-068, starting from the date CARB issues a final decision in the upcoming public process reviewing possible updates to the NEMFC GHG emissions regulations. In light of the extension issued by Executive Director Peterson, Bloom's Motion for Stay is not necessary and is denied.

8. Summary of Public Comment

Rule 1.18 allows any member of the public to submit written comment in any Commission proceeding using the "Public Comment" tab of the online Docket Card for that proceeding on the Commission's website. Rule 1.18(b) requires that relevant written comment submitted in a proceeding be summarized in the final decision issued in that proceeding.

No comments relevant to the issues in this decision were received.

9. Comments on Proposed Decision

The proposed decision of ALJ Jack Chang in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on _____, and reply comments were filed on _____ by _____.

10. Assignment of Proceeding

Alice Reynolds is the assigned Commissioner, and Jack Chang is the assigned ALJ in this proceeding.

FINDINGS OF FACT

1. D.23-11-068 was effective on November 16, 2023.
2. The Petition for Modification was filed by the Utilities within one-year of the effective date of D.23-11-068.

3. The Petition for Modification was filed by Bloom more than one-year after the effective date of D.23-11-068.

4. The California Department of Industrial Relations informed the Utilities that by state law, it could not keep confidential all information for customer-generators participating in the Net Energy Metering or Net Billing Tariff.

5. D.23-11-068 did not establish a cost recovery mechanism for utilities to calculate and implement the Public Utility Regulatory Policies Act Compliant Tariff ordered by the decision.

6. On January 23, 2025, the California Air Resources Board informed Bloom in a letter that it was committing to a public process to review its Net Energy Metering Fuel Cell Greenhouse Gas Emissions Standards.

7. On January 31, 2025, California Public Utilities Commission Executive Director Rachel Peterson extended the period for Utilities to comply with customer-generator certification and fee payment requirements related to implementing the California Air Resource Board's Net Energy Metering Fuel Cell Greenhouse Gas Emissions Standards, with the compliance period postponed to eight-months after the resource board issues a final decision in its public process reviewing the standards.

CONCLUSIONS OF LAW

1. The Commission should grant the Utilities' Petition for Modification with modifications.

2. Bloom reasonably filed its Petition for Modification more than one year after the effective date of D.23-11-068.

3. The Commission should deny, without prejudice, Bloom's Petition for Modification.

4. The Commission should deny Bloom's Motion for Stay.

O R D E R

IT IS ORDERED that:

1. The request to modify Decision 23-11-068 by Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company is granted.
2. Ordering Paragraph-36 in Decision 23-11-068 shall be deleted.
3. The paragraph on Page-188 of Decision 23-11-068, stating that "Given there is no known rule in the Labor Code requiring the Department to share a finding of a prevailing wage violation with the Commission or Utilities, the Commission requires Utilities to enter into or amend existing confidentiality agreements with the Department and CSLB to receive notice of willful wage violations," shall be deleted.
4. Subsection-D on Page-194 of Decision 23-11-068 with the heading Confidential Disclosure Agreements shall be deleted.
5. Ordering Paragraph-39 of Decision 23-11-068 shall be modified to read "No later than February 15, 2024, Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company (Utilities) shall submit a Tier-2 Advice Letter proposing the specifics of a customer generation export tariff using the pricing established in Decision 20-05-006. Utilities shall consider the different impacts to customers on the virtual net energy metering and virtual net billing tariffs, and alternatives to address this new tariff. The Utilities may submit a Tier-2 Advice Letter requesting to establish a Public Utility Regulatory Policies Act (PURPA) Compliant Tariff memorandum account to record the costs for implementation of this tariff. This advice letter filing must justify the request and provide an estimate of annual

implementation costs. The PURPA Memorandum Account, if approved, must track expenses to show:

1. Export compensation values for customer-generators,
2. Administration and billing costs, and
3. Other costs.

The Utilities shall be allowed to propose recovery of those costs in their respective General Rate Cases subject to a reasonableness review. ”

6. The request to modify Decision 23-11-068 by Bloom Energy is denied without prejudice.

7. Bloom Energy’s Motion for Stay is denied.

8. Rulemaking 20-08-020 is closed.

This order is effective today.

Dated _____, at _____, California