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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Joint Application of Pacific Gas and Electric Company (U 39-E), San Diego Gas & Electric Company (U 902-E), and Southern California Edison Company (U 338-E) for Rehearing of Resolution E-5374.	Application No. 25-07-____

JOINT APPLICATION OF PACIFIC GAS AND ELECTRIC COMPANY (U 39-E), SAN DIEGO GAS & ELECTRIC COMPANY (U 902-E), AND SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E) FOR REHEARING OF RESOLUTION E-5374

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Dated: July 17, 2025

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Pursuant to Section 1731(b) and 1732 of the Public Utilities Code, Rule 16.1 of the Commission's Rules of Practice and Procedure, and General Order 96-B General Rule 8.1, Pacific Gas and Electric Company ("PG&E"), San Diego Gas & Electric Company ("SDG&E") and Southern California Edison Company ("SCE") (collectively, the "Joint Utilities")[1] submit this Application ("Application") for Rehearing of Resolution E-5374 (the "Resolution"). The Joint Utilities alert the Commission of the Resolution's legal errors and request that the Commission correct these errors through rehearing. This Application is timely because it is filed and served within 30 days after the Commission issued the Resolution on June 17, 2025.[2]

I. INTRODUCTION

Commission Decision (D.) 23-11-068 directed the Joint Utilities to engage with stakeholders to develop a technical solution to enable storage on the virtual net energy metering ("VNEM") or virtual net billing tariff ("VNBT") (collectively, the "Virtual Tariffs") to charge from the grid prior to a Public Safety Power Shutoff ("PSPS") or other planned outage.[3] After that engagement, the Joint Utilities were then to submit an advice letter proposing such a technical solution. The Joint Utilities worked with stakeholders as directed and submitted the

[1] Pursuant to Rule 1.8(d)

[2] Pub. Util. C. § 1731(b); Rule 16.1. The Resolution was issued on June 17, 2025.

[3] D.23-11-068, Ordering Paragraph (OP) 4.

required advice letter, which they also supplemented in response to further stakeholder feedback. The Resolution is, in part, an outgrowth of that advice letter. The Resolution rejected the Joint Utilities' proposed technical solution to enable grid charging and instead, purported to clarify "existing policy" that a "multi-tariff" rule established in a 2005 Commission decision (D.05-08-013) applies to the Virtual Tariffs.

The Resolution commits legal error in purportedly clarifying that the multi-tariff rule established in the 2005 decision applies to the Virtual Tariffs. That clarification is arbitrary and capricious because it is implausible and inconsistent with prior Commission decisions. The Resolution does not merely clarify existing policy; it creates a different and new rule, and one that is inconsistent with longstanding provisions of the Virtual Tariffs. In addition, the 2005 decision pre-dates the development of the Virtual Tariffs, and no Commission decision developing or revising the Virtual Tariffs has considered application of the "multi-tariff" rule as described in the Resolution.

The Resolution further errs in incorporating this new "multi-tariff" rule in the Virtual Tariffs as there is neither any record basis for it, nor any consideration of the cost shifting impact it may have. Contrary to the Commission's careful analysis pursuant to Public Utilities Code Section 2827.1 in the underlying Rulemaking revising the net energy metering (NEM) tariffs (R.20-08-020), the Resolution fails to undertake any such analysis in further revising VNEM. For these reasons, as detailed further below, the Commission should grant rehearing.

II. BACKGROUND

In Rulemaking (R.) 20-08-020, the Commission revisited the NEM tariffs to develop a successor to the NEM 2.0 tariff, including the review and potential modification of VNEM. During the proceeding, the Commission received stakeholder feedback through workshops, written testimony, hearings, and written comments. The Rulemaking resulted in two important decisions: first, D.22-12-056 which modernized net metering to adopt the Net Billing Tariff (NBT), followed by D.23-11-068 updating VNEM to adopt the VNBT for multitenant properties.

Both the NBT and VNBT were designed to "balance[] the requirements of Public Utilities Code Section 2827.1."[4]

In connection with adoption of VNBT, the Commission also "reviewed additional recommendations for the VNEM successor tariff," including the recommendation made by the California Solar and Storage Association (CALSSA) and Small Business Utility Advocates to allow paired storage under the Virtual Tariffs to charge from the grid prior to a planned outage.[5] As CALSSA explained, "installing energy storage to provide resiliency benefits to VNEM customers has been a major challenge."[6] In response to that recommendation, the Commission directed the Joint Utilities to "lead a process to find a consensus approach to allow a virtual net billing tariff customer to charge their storage device from the grid prior to a planned Public Safety Power Shutoff for the purpose of resiliency."[7]

To implement that directive, the Joint Utilities conducted the workshop on March 25, 2024, where they discussed technical solutions to enable grid charging prior to an outage. The outgrowth of that discussion was the joint advice letter (SCE AL 5342-E/E-A, PG&E AL 7333-E/E-A, and SDG&E AL 4476-E/E-A), which was subsequently supplemented to address protests (the "Emergency Grid Charging AL"). That advice letter, as supplemented, reflected a consensus among participating stakeholders to enable grid charging prior to planned outages in compliance with D.23-11-068.[8] In summary, the Emergency Grid Charging AL, as supplemented, proposed a configuration where each generating facility paired with storage in a virtual arrangement provides resiliency to a service account, referred to as the "Resiliency Account" and which is considered a "Generating Account" in the virtual arrangement. During an outage, each

[4] D.23-11-068, p. 2.

[5] *Id.*, p. 58.

[6] Comments of the California Solar & Storage Association on the VNEM Tariff and the NEMA Subtariff, filed March 21, 2023, p. 15 (R. 20-08-020).

[7] D.23-11-068, p. 59; *see also id*., p. 245 OP 4 (requiring the Joint Utilities to host a workshop to discuss technical solutions to allow storage in a NVEM/VNBT arrangement to charge from the grid prior to a PSPS event or other planned outage).

[8] Resolution, p. 24.

Resiliency Account would be able to disconnect from the grid and operate in isolated mode to provide resiliency to that account. Under this configuration, the Joint Utilities proposed to remove permanently the controls that prevent the storage from charging from the grid due to the impracticality of having the customer or the utility modify or monitor the control settings. However, the Joint Utilities proposed to maintain "NEM integrity"—i.e., that NEM credits only be generated by eligible renewable generation—by having each renewable system separately metered by a net generation output meter (NGOM) and capping exports from the corresponding Generating Account to the production of the renewable during each billing period.[9]

Resolution E-5374 rejected the consensus proposal. The Resolution explained, among other things, that the proposed approach to allow charging at any time instead of in response to Public Safety Power Shutoff (PSPS) events or other planned outages did not satisfy the order in D.23-11-068 to "facilitate temporary, emergency charging and undermines key tenets underlying VNEM and VNBT policy."[10] The Resolution instead *sua sponte* directed the Joint Utilities to establish a "special condition" in their Virtual Tariffs to allow benefitting account customers to interconnect a BTM generating facility under the NBT or a non-export generating facility and/or storage through "multi-tariff" rules. The Resolution explains: "This will enable a benefitting account customer to have behind the meter net billing tariff or non-export/non-net energy metering (non-NEM) renewable energy and/or storage in addition to their VNBT or VNEM credit allocation. This option satisfies D.23-11-068's intent to allow emergency grid-charging of storage that can serve loads during an outage, effective upon the resolution's effective date."[11]

The Resolution asserts that incorporation of the multi-tariff rule merely "clarifies existing policy" that the multi-tariff rules established in D.05-08-013 (the "2005 Decision") apply to the virtual tariffs.[12] The 2005 Decision, as described in the Resolution, "directed how tariff and

[9] Emergency Grid Charging AL (Supplemental), pp. 6, 8-12.

[10] Resolution, pp. 25-26.

[11] *Id.*, p. 2.

[12] *Id.*, p. 3.

interconnection agreements can address sites where multiple technologies are employed" and purportedly "permits simultaneous participation in VNBT/VNEM, NBT, and/or non-export, behind-the-meter storage."[13] While the Resolution does not require such behind-the-meter installations to include paired storage, or only temporarily enable grid charging in advance of a planned outage event as the Resolution describes was intended by D.23-11-068, the Resolution reasons that the solution "satisfies the D.23-11-068 policy intent to support additional resiliency as the NEM/NBT systems and non-export, behind-the-meter storage will have the ability to charge storage from the grid in advance of an outage."[14]

III. STANDARD OF REVIEW

An application for rehearing of a Commission order or decision "shall set forth specifically the grounds on which the applicant considers the order or decision of the Commission to be unlawful or erroneous, and must make specific references to the record or law."[15] "The purpose of an application for rehearing is to alert the Commission to a legal error, so that the Commission may correct it expeditiously."[16]

The Commission commits legal error when it acts without, or in excess of, its powers or jurisdiction, does not proceed in the manner required by law, fails to support its findings with substantial evidence in light of the whole record, violates any right of the petitioner under the Constitution of the United States or the California Constitution, or when the decision was an abuse of discretion.[17] "An administrative agency may abuse its discretion if it acts arbitrarily or capriciously."[18] Under the arbitrary and capricious standard, an agency must "examine the

[13] Resolution, pp. 27-28. Note, however, that the first VNEM tariff was not developed until 2008 in D.08-10-036.

[14] *Id.*, p. 28.

[15] Rule 16.1(c).

[16] *Id.*

[17] Pub. Util. C. § 1757(a)(1)-(5).

[18] *Woodbury v. Brown-Dempsey* (2003) 108 Cal.App.4th 421, 438; *see also City of Stockton v. Marina Towers LLC* (2009) 171 Cal.App.4th 93, 114.

relevant data and articulate a satisfactory explanation for its action including a 'rational connection between the facts found and the choice made.'"[19] A reviewing court may deem an agency decision to be arbitrary or capricious if the agency entirely failed to consider a material and important issue, offered an explanation that unreasonably runs counter to the evidence, or is implausible.[20] Courts will also consider whether the Commission's findings are inconsistent when deciding whether to set aside a Commission decision or order.[21] Violation of any of these requirements constitutes grounds for rehearing.

In addition, a decision shall contain, separately stated, findings of fact and conclusions of law on all issues material to the order or decision.[22] Under Sections 1705 and 1757 of the Public Utilities Code, a Commission decision is unlawful if it is not supported by factual findings and conclusions. The "substantial evidence" standard prohibits a decision if a reasonable person could not reach the conclusion reached by the Commission based on the evidence before the Commission.[23] Ultimately, if the Commission "fail[s] to comply with required procedures, appl[ies] an incorrect legal standard, or commit[s] some other error of law," its decision will be reversed on appeal.[24]

IV. THE COMMISSION SHOULD GRANT REHEARING OF RESOLUTION E-5374

The Commission's assertion that the Resolution merely clarifies existing policy—i.e., that the multi-tariff rule established in the 2005 Decision applies to the Virtual Tariffs—is arbitrary and capricious because it is implausible and inconsistent with prior Commission decisions. The "multi-tariff" rule adopted in the Resolution is not merely an extension of the rule

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[19] *Motor Vehicle Manufacturers Association v. State Farm Mutual Ins. Co.* ("Motor Veh. Mfrs. Assoc.") (1983) 463 U.S. 29, 43 (*quoting Burlington Truck Lines, Inc. v. U.S.* (1962) 371 U.S. 156, 168).

[20] *Id.*

[21] *California Portland Cement Co. v. Pub. Util. Com.* (1957) 49 Cal. 2d 171, 176.

[22] Pub. Util. Code, § 1705. *See also Greyhound Lines, Inc. v. Public Utilities Com.* (1967) 65 Cal.2d 811, 812-13; *Cal. Motor Transport Co. v. Public Utilities Comm.* (1963) 59 Cal.2d 270, 275.

[23] *See Cal. Motor Transport, supra,* p. 274*; Greyhound, supra,* 65 Cal.2d at 811-12*; Clean Energy Fuels Corp. v. Public Utilities Com.* (4th Dist. 2014) 227 Cal.App.4th 641, 649.

[24] *Pedro v. City of Los Angeles* (2014) 229 Cal.App.4th 87, 99.

established in the 2005 Decision; rather, the Resolution creates a new rule and one that no Commission decision has ever suggested applies to the Virtual Tariffs. The Resolution further erred in adopting this new rule, as there is no basis in the record for it, and the Resolution failed to undertake the cost-benefit analysis required by Public Utilities Code Section 2827.1 in further revising VNEM. As such, rehearing is warranted.

A. The Resolution's Purported Clarification that a 2005 Decision Applies to the Virtual Tariffs Is Implausible As the Resolution Creates a New Rule

The Resolution does not merely clarify application of the rules described in the 2005 Decision to the Virtual Tariffs; it creates a new rule that has not previously been considered for application to the Virtual Tariffs.

The 2005 Decision upon which the Resolution relies, adopted before the Virtual Tariffs were first created in 2008,[25] addressed the tariff rules applicable to a customer account with "combined technology," i.e., a site with NEM and non-NEM generation—on "the same meter/account" supplying the customer's load using more than one tariff.[26] The decision resulted in three directives for such combined technology accounts: (1) "any energy generated by the renewable [distributed generation (DG)] that exceeds the customer's annual energy usage will not be compensated as renewable DG; (2) in no event will non-net metering generators receive credits designed for NEM projects; and (3) any DG owner operating under two tariffs must install at its cost individual meters for the separate generators or breakers that prevent export from the non-net metering generator."[27] The 2005 Decision determined that the record in that proceeding "does not permit an allocation of costs or payments for [distributed generation] facilities that include two or more NEM generators operating under different tariffs," and directed the Rule 21 Working Group to propose how to allocate costs and payments for DG

[25] D.08-10-036, pp. 3, 31.

[26] D.05-08-013, pp. 4, 13.

[27] *Id.*, p. 22.

facilities that include two NEM generators operating under different tariffs.[28] While the NEM tariff was subsequently revised in 2007 (again, before development of VNEM) to enable multiple NEM-eligible generators operating under different tariffs, those provisions pertain to more than one generating facility operating on one account.[29] Even today, for example, PG&E's NBT describes "Multiple Tariff Facilities" as follows: "specified NBT-eligible generators in an [renewable eligible generating facility] comprised of multiple NBT- and non-NBT eligible generators, served through the *same utility revenue meter*."[30]

The Resolution's purported clarification that benefitting accounts in a Virtual Tariff arrangement can install BTM generation under the 2005 "multi tariff" rule creates a different rule and one that is new. The Virtual Tariffs are distinct from the standard NEM/NBT tariffs in that multiple accounts and customers are involved. There is a generating account consisting of the renewable generating facility and which has no load (other than that required by the generating facility), and individually metered "benefitting account" customers that are allocated VNEM/VNBT credits for the energy exported from the renewable generating facility. Unlike in the 2005 Decision, the Resolution's use of the term "multi-tariff" does not pertain to multiple generators served under different tariffs on the same customer account. Rather, the Resolution uses the term "multi tariff" to refer to a different situation where a benefitting account customer would participate in more than one NEM tariff—e.g., NEM2V and NBT—not because they have more than one generating facility on the same account, but because they are receiving the benefits of solar under two different tariffs. That was not the design of the multi-tariff rule.

B. The Commission's Prior Decisions Do Not Consider Interconnection of BTM Generation at Benefitting Accounts in a Virtual Tariff Arrangement

None of the Commission's decisions adopting and implementing the Virtual Tariffs have considered applying the multi-tariff rule described in the Resolution to enable benefitting

[28] *Id.* pp. 19, 23, Finding of Fact 11, OP 4.

[29] Resolution E-3992, pp. 8-9, 20.

[30] PG&E Electric Schedule NBT, Sheet 8 ("Multiple Tariff Facilities") (emphasis added). *See also id.* at Sheet 25 (Special Condition 4, Multiple Tariff Facilities).

accounts in a virtual arrangement to interconnect BTM generation. Rather, they suggest that benefitting account customers would not have their own BTM generation.

The first virtual NEM tariff was developed in 2008 as part of Multifamily Affordable Solar Housing (MASH) Program.[31] As described in D.08-10-036, "virtual net metering will allow the electricity produced by a *single* solar installation to be credited to the benefit of multiple tenants in the building without requiring the system to be physically connected to each tenant's meter."[32] Thus, as described by the Commission, VNEM initially involved only one generating facility at the multi-tenant premises, rendering any consideration of benefitting accounts taking service on multiple NEM tariffs irrelevant.

The Commission subsequently expanded VNEM to all multi-tenant and multi-meter properties in D.11-07-031 and required that it "mirror" the MASH VNEM tariff.[33] The rationale for the expansion was to "allow residential, commercial, and industrial customers who now fund [the California Solar Initiative] through their rates to receive the benefits of the installation of a solar energy system and net energy metering."[34] Implicit in the rationale for expanding VNEM to all multi-tenant/multi-meter properties is that without such expansion, these customers would not be able to receive the benefits of solar through their own BTM generation. In other words, the virtual tariffs were adopted to enable renters, who generally are *unable* to install their own generating facility (due to cost and/or space constraints), to receive the benefits of NEM. Consequently, for over a decade PG&E's Commission-approved tariffs have limited a benefitting account participating in a virtual arrangement to be "load only."[35]

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[31] *See* D.08-10-036, Establishing Multifamily Affordable Solar Housing Program within the California Solar Initiative.

[32] D.08-10-036, p. 3. *See also id.* at 31 (VNEM was developed in recognition of the "economic and technical challenges to installing *one* solar energy systems in a multifamily housing complex where each tenant's unit has a separate meter" and "designed to overcome the challenge of allocating benefits from a single solar energy system to tenants in multifamily housing whose units are individually metered.")

[33] D.23-11-068, p. 10 (describing the history of the VNEM tariff).

[34] D.11-07-031, p. 16.

[35] *See* PG&E AL 3901-E-C, with the accompanying tariff at Sheet 1 (defining a benefitting account, in

Nowhere in D.22-12-056 or D.23-11-068 does the Commission reference whether benefitting account customers in a Virtual Tariff arrangement should be able to install their own BTM generating facility under the VNBT or as a non-export generating facility under Rule 21 (with or without storage), or standalone storage. The Commission's description of a VNEM system in D.23-11-068 underscores, contrary to the assertion in the Resolution, that there is not an "existing policy" that a "multi-tariff" rule applies to enable a benefitting account to interconnect its own BTM generating facility. D.23-11-068 explains: "the Generation Facility generates energy and sends it to the grid, while tenant and common area units *consume energy from the grid*…Note that in some buildings, shared equipment to access the grid causes some solar generated on site to be consumed onsite."[36] Absent from this description is any mention of the possibility of a NEM/NBT generating facility interconnected BTM of one of the benefitting accounts serving the customer's load or exporting to the grid. Indeed, in D.23-11-068 the Commission determined it "would not make sense" to require benefitting accounts in the virtual arrangement to take service on electrification rates, "as customers occupying multitenant properties *do not have the opportunity to install storage in their individual units*."[37] This finding cannot be squared with the Resolution's claim that "existing policy" allows a benefitting account

relevant part, as "an individually metered, electric account serving a tenant or common area with no other generating facility interconnected with PG&E on the account") (https://www.pge.com/tariffs/assets/pdf/adviceletter/ELEC_3902-E-C.pdf); PG&E AL 3422-E-A establishing the MASH virtual tariff at Sheet 2 (defining Common Area and Residential Unit accounts as "load only" accounts) (https://www.pge.com/tariffs/assets/pdf/adviceletter/ELEC_3422-E-A.pdf); PG&E Electric Schedule NEMV, Sheet 1 (defining benefitting account as an individually metered electric account with no other generating facility interconnected on the account) (https://www.pge.com/tariffs/assets/pdf/tariffbook/ELEC_SCHEDS_NEMV.pdf); PG&E Electric Schedule NEM2V, Sheet 1 (same) (https://www.pge.com/tariffs/assets/pdf/tariffbook/ELEC_SCHEDS_NEM2V.pdf; and PG&E Electric Schedule NBTV, Sheet 1 (same) (https://www.pge.com/tariffs/assets/pdf/tariffbook/ELEC_SCHEDS_NBTV.pdf. *See also* SCE NEM-V-ST, Applicability (Sheet 1) (requiring "all energy produced by the Eligible Generators" on the Property exporting to the grid to be "for the sole purpose of providing Allocated Credits to designated Benefitting Accounts" and thereby precluding an exporting generator on the Property to serve behind the meter load of a benefitting account) (SCE's NEM-V-ST tariff is accessible at the "Other Rates" link here: https://www.sce.com/regulatory/regulatory-information/tariff-books/rates-pricing-choices).

[36] D.23-11-068, pp. 10-11.

[37] D.23-11-068, pp. 47, 205, Finding of Fact 64 (emphasis added).

customer to install their own BTM generating facility under the Virtual Tariffs.

The Resolution cites a reference in the Emergency Grid Charging AL to a benefitting account having "non-exporting *back-up power*" as support for application of the multi-tariff rule to the Virtual Tariffs,[38] but that reference is inapposite. The "non-exporting back-up power" does not refer to a Rule 21 non-exporting facility; it pertains to a back-up generator that any customer could install with notice to their utility.[39] Such non-exporting back-up power does not implicate the multi-tariff rule.

Based on the above, the Resolution's assertion that it merely clarifies existing policy that the multi-tariff rule applies to the Virtual Tariffs, where there would be two generators behind two separate utility accounts, is in error; it is implausible and inconsistent with the Commission's prior descriptions of the Virtual Tariffs.

C. There Is No Record Supporting the Resolution's Adoption of the New "Multi-Tariff" Rule for Benefitting Accounts in a Virtual Arrangement

The Resolution also errs in adopting the new "multi-tariff" rule to enable benefitting accounts in a virtual arrangement to interconnect a BTM generating facility under a NEM/NBT tariff because nothing in the record supports such a result. The Resolution's statement that its application of the multi-tariff rule "aligns with the Utilities' proposal to combine behind-the-meter generation and virtual billing"[40] is erroneous and goes far afield of the Commission's directive in D.23-11-068 to enable grid charging of VNEM paired storage prior to planned outages.

First, as described in Section II above, revisions to the VNEM tariff were the subject of stakeholder testimony and comments in Rulemaking 20-08-020. In response, the Commission made initial revisions to the virtual tariffs in D.22-12-056 and made further revisions after further stakeholder feedback through D.23-11-068. Neither decision references any stakeholder

[38] Resolution, pp. 7, 31; see Emergency Grid Charging AL (Supplemental), p. 10.

[39] *See* https://www.pge.com/en/outages-and-safety/safety/electric-safety/backup-power-safety.html.

[40] Resolution, p. 27.

comments regarding the interconnection of a NEM/NBT generating facility BTM of a benefitting account in a virtual arrangement.

Second, the consensus proposal presented in the Joint Utilities' Emergency Grid Charging AL, as supplemented, also did not propose to enable benefitting account customers to interconnect their own BTM generating facility under NEM/NBT, as the Resolution seems to suggest.[41] Rather, it proposed to allow storage paired with the generator account for the virtual system to charge from the grid in anticipation of a grid outage and operate in isolation from the grid during an outage to provide resiliency to one of the accounts in the virtual arrangement—i.e., the "Resiliency Account." As stated in the AL, the Resiliency Account is *not* a benefitting account.[42]

Third, the Resolution is at odds with the directive in D.23-11-068 to allow VNEM/VNBT paired storage to charge from the grid in advance of a planned outage event. The Resolution's explanation for rejecting the consensus proposal demonstrates the error in the new rule. The Resolution rejected the Emergency Grid Charging AL because, among other things, the proposed approach allowed charging at any time instead of only prior to planned outages.[43] Enabling a benefitting account to interconnect a BTM generating facility has no relationship to enabling the virtual paired storage system to charge in advance of a PSPS event or other planned outage. As CALSSA explained: "storage installed under a separate tariff from VNEM/VNBT (i.e., as non-export) is not VNEM/VNBT paired storage since it does not charge from the VNEM/VNBT generator" and "the Commission should not additionally portray this as a way to resolve OP 4, since OP 4 is explicitly about VNEM/VNBT paired storage."[44]

[41] Resolution, pp. 27, 31.

[42] Emergency Grid Charging AL (Supplemental), p. 6.

[43] Resolution, pp. 25-26.

[44] CALSSA Comments on Draft Resolution E-5374, May 5, 2025, pp. 1-2.

D. The Resolution Errs in Revising the Virtual Tariffs Without Conducting the Cost-Benefit Analysis Required by Public Utilities Code Section 2827.1

Pursuant to Public Utilities Code Section 2827.1, the Commission, in revising the standard net energy metering tariff "shall ensure" that the tariff "is based on the costs and benefits of the renewable electrical generation facility," and that "the total benefits" of the tariff "to all customers and the electrical system are approximately equal to the total costs."[45] Because no record was ever developed regarding revising the Virtual Tariffs to incorporate this new "multi-tariff" rule, the Resolution erroneously asserts that there are no associated costs.[46] The Resolution therefore failed to undertake any cost/benefit analysis in revising the Virtual Tariffs to incorporate a "multi-tariff" rule, and therefore failed to proceed in the manner required by law.

Incorporation of a "multi-tariff" rule that enables benefitting accounts to interconnect NBT generating facilities is relevant to the Commission's earlier cost shift analysis, to which the Resolution gives no consideration. In D.23-11-068, the Commission sought to balance the requirements in Public Utilities Code 2827.1 in revising VNEM, reflecting its recognition that those requirements applied.[47] The Commission understood this to include a cost-effectiveness analysis, which included an analysis of the cost shift per VNEM customer.[48] That analysis, which divides the NEM 2.0 tariff cost shift across the total number of VNEM benefitting accounts, necessarily assumed that the benefitting accounts were load only, resulting in a lower cost shift per customer as compared to a customer with their own BTM generating facility interconnected under NEM 2.0.[49] Neither D.22-12-056 nor D.23-11-068 make any reference to a benefitting account customer having their own BTM NEM/NBT generation, nor is there any mention of the multi-tariff rule applying to the Virtual Tariffs. If this expansion of the Virtual Tariffs is popular such that many benefitting account customers install their own BTM NBT

[45] Pub. Util. C. § 2827.1(b)(3) and (4).

[46] Resolution, p. 1.

[47] D.23-11-068, p. 32 ("the adopted successor VNEM tariff should result in a balanced approach to meeting the requirements of Pub. Util. Code § 2827.1").

[48] *Id.*, pp. 25-27, 31-32.

[49] D.23-11-068, p. 26.

generation, it will exacerbate the cost shift that the Commission has been trying to mitigate, and contravenes the Governor's Executive Order N-5-24 directing the Commission to examine programs it oversees that may be unduly adding to electric rates.[50] The Resolution violates the law in failing to even consider these potential cost shifting impacts, which the Commission did not previously consider.

The Resolution's failure to analyze the costs and benefits of the new "multi-tariff" rule is underscored by the Resolution's dismissal of the Joint Utilities' respective implementation cost estimates. The Joint Utilities' comments on the draft of the Resolution explained that this "new multi-tariff requirement is not a simple modification of existing tariffs," "that it would change the billing for all the virtual tariffs," and that early estimates of the implementation costs ranged from $4 million to as high as $18 million (depending on the utility).[51] Although nothing in the Joint Utilities comments on the draft Resolution mentions any technology issues with their billing systems, the Resolution rejects these estimates explaining that it is unclear whether they "reflect actual policy changes identified in the draft resolution or are connected to larger technology issues with IOU billing systems."[52] But this ambiguity exists because, as discussed above, there was never any record developed with evidence relating to incorporation of the new "multi-tariff" rule in the Virtual Tariffs.

E. Appendix A to the Resolution Further Demonstrates the Arbitrary and Capricious Nature of the Adoption of a "Multi-Tariff" Rule for Benefitting Accounts under the Virtual Tariffs

The directions in Appendix A of the Resolution for implementing the new "multi-tariff" rule for benefitting accounts on a Virtual Tariff underscore the erroneous nature of this new rule and lack of stakeholder feedback. The directions create conflict with existing tariff rules and fail to consider the full scope of the new rule. Consider:

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[50] Executive Order N-5-24, p. 2 (https://www.gov.ca.gov/wp-content/uploads/2024/10/energy-EO-10-30-24.pdf).

[51] Joint Utilities Comments on Draft Resolution E-5374 (May 5, 2025), p. 5.

[52] Resolution, p. 37.

- For a benefitting account customer with a NBT generating facility in a VNEM arrangement, it states, incorrectly, that if "*the customer has a positive net export (kWh)* prior to their allocation of VNEM energy credits, those VNEM credits will only receive export compensation in accordance with the rules of its VNEM tariff."[53] This statement is irreconcilable with the NBT because NBT generating facility exports (kWh) are not netted against consumption to assess whether there is a "positive net export." The Appendix makes the same error with respect to residential VNBT benefitting accounts that also participate in the NBT.[54]
- The sizing to load requirement fails to consider how to prioritize competing sizing in the circumstance of simultaneous applications for a generating facility on a Virtual Tariff and a BTM system at a benefitting account that together result in oversizing; i.e., which generating facility must be reduced in size—the one participating in the Virtual Tariff or the BTM system on NBT?
- The sizing to load requirement also fails to consider that a benefitting account in a virtual aggregation may choose to opt out of the arrangement to maximize installation of their own BTM generation on NBT, and the impact this could have in rendering the virtual generating facility oversized.
- It assumes, incorrectly, that "there is no future scenario where an NBT or non-export facility could have been installed prior to the VNEM tariff generator."[55] This could occur in the scenario where a simple BTM generating facility is interconnected under NBT later in 2025, which could be incorporated in a pending NEM 2.0 Virtual project submitted before the sunset and that has not yet completed all steps necessary for interconnection.

Had application of a new "multi-tariff" rule for benefitting accounts ever been considered as part

[53] Resolution, p. A-4 (emphasis added).

[54] *Id.,* at A-2.

[55] Resolution, Appendix A, p. A-4.

of the Rulemaking revisiting the NEM tariffs, or discussed in workshops, these issues and the complexity that this new rule creates, could have been considered and addressed. Appendix A, therefore, further demonstrates that the Resolution's adoption of a "multi-tariff" rule for benefitting account customers is arbitrary and capricious and not supported by any findings or facts in the record.

V. CONCLUSION

For all the above reasons, the Resolution's "clarification" that the "multi-tariff" rule established in the 2005 Decision applies to the Virtual Tariffs to enable benefitting account customers to interconnect their own BTM generating facility is an abuse of discretion. In addition, the Commission failed to proceed in the manner required by law in adopting this new "multi-tariff" rule without any record basis and without conducting the analysis required by Public Utilities Code Section 2827.1. The Joint Utilities respectfully request that the Commission grant rehearing to eliminate incorporation of the new "multi-tariff" rule in the Virtual Tariffs.

Respectfully submitted on behalf of the Joint Utilities,

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Dated: July 17, 2025