Attachment 2

Timesheet and Categorization

The Protect Our Communities Foundation
Request for Intervenor Compensation for Contribution to Obtaining Judicial Review of D.22-12-056 in R.20-08-020:
CBD I*, *CBD II*, and *CBD III

Issue	Total Hours	%	Description
CBD I	166.60	18.14%	Court of Appeal participation leading to *Center for Biological Diversity et al. v. Pub. Util. Comm.* (2024) 98 Cal.App.5th 20 ("*CBD I*")
CBD II	611.83	66.61%	Supreme Court participation leading to *Center for Biological Diversity et al. v. Pub. Util. Comm.* (2025) 18 Cal.5th 293 ("*CBD II*")
CBD III	140.10	15.25%	Court of Appeal participation leading to *Center for Biological Diversity et al. v. Pub. Util. Comm.* (2026) 118 Cal.App.5th 1288 ("*CBD III*").
Total	918.53	100.00%	
IC	19.30	N/A	Intervenor Compensation

Person	Date	Total	Description	Issue
Aaron Stanton	03/02/2023	3.60	Draft petition (3.5); email correspondence re record preparation (0.1)	CBD I
Aaron Stanton	03/03/2023	5.80	Draft petition.	CBD I
Aaron Stanton	03/15/2023	3.60	Draft costs and benefits section of petition.	CBD I
Aaron Stanton	03/23/2023	1.50	Draft costs and benefits section of petition.	CBD I
Aaron Stanton	03/24/2023	3.60	Draft costs and benefits section of petition.	CBD I
Aaron Stanton	03/31/2023	4.30	Review and comment on statutory interpretation, equity, continued growth, and non-residential sections of petition	CBD I
Aaron Stanton	04/07/2023	3.60	Revise petition for review.	CBD I
Aaron Stanton	04/08/2023	3.80	Revise petition for writ of review.	CBD I
Aaron Stanton	06/22/2023	0.20	Email correspondence re reply.	CBD I
Aaron Stanton	06/29/2023	3.30	Review answer briefs; strategize re reply.	CBD I
Aaron Stanton	07/06/2023	2.40	Review decision denying rehearing; strategize re same; draft reply brief.	CBD I
Aaron Stanton	07/11/2023	3.90	Draft reply brief.	CBD I
Aaron Stanton	07/12/2023	2.10	Draft reply brief.	CBD I
Aaron Stanton	07/13/2023	7.20	Draft reply brief.	CBD I
Aaron Stanton	07/14/2023	3.30	Draft reply brief.	CBD I
Aaron Stanton	07/15/2023	6.40	Draft reply brief; revise same.	CBD I
Aaron Stanton	07/17/2023	5.70	Revise reply brief.	CBD I
Aaron Stanton	07/20/2023	1.80	Revise reply brief; legal research re same; email correspondence re same.	CBD I
Aaron Stanton	07/21/2023	1.20	Revise reply brief.	CBD I
Aaron Stanton	07/24/2023	4.90	Revise reply brief.	CBD I
Aaron Stanton	07/25/2023	4.80	Revise reply brief and supplemental request for judicial notice; direct cite-check of same.	CBD I
Aaron Stanton	07/26/2023	3.00	Revise reply brief; direct cite-check of reply brief.	CBD I
Aaron Stanton	07/28/2023	1.30	Revise reply brief; email correspondence re same.	CBD I
Aaron Stanton	07/30/2023	1.70	Revise reply brief.	CBD I
Aaron Stanton	07/31/2023	3.60	Revise reply brief; direct filing of same.	CBD I
	Total	86.60		

Person	Date	Total	Description	Issue
Aaron Stanton	10/04/2023	2.50	Revise opposition to request for judicial notice; email correspondence re same.	CBD I
Aaron Stanton	12/06/2023	1.30	Review letter to counsel re questions for oral argument; strategize re same; research re same.	CBD I
Aaron Stanton	12/11/2023	2.90	Prepare for oral argument; participate in moot hearing re same.	CBD I
	Total	6.70		
	Divided by Two	3.35		
	Total 2023	89.95		

Person	Date	Total	Description	Issue
Ellison Folk	04/11/2023	4.50	Review petition.	CBD I
Ellison Folk	04/12/2023	1.00	Revise petition for writ.	CBD I
Ellison Folk	04/14/2023	2.00	Review and revise petition for writ.	CBD I
Ellison Folk	04/16/2023	1.10	Review and revise petition for writ of review.	CBD I
Ellison Folk	04/18/2023	3.00	Review and revise petition for review.	CBD I
Ellison Folk	04/19/2023	1.80	Review and revise brief; confer with M. Ryan re citations.	CBD I
Ellison Folk	04/23/2023	3.20	Review and revise brief.	CBD I
Ellison Folk	04/25/2023	3.80	Finalize brief; review and respond to client email; research real party in interest.	CBD I
Ellison Folk	04/26/2023	4.20	Review client comments; revise brief; email client re same; direct research re judicial notice of Public Utilities Commission decisions.	CBD I
Ellison Folk	04/27/2023	2.50	Telephone call with counsel for Public Utilities Commission; review caption; email client re timing; confer re service issues; confer with client re filing timing.	CBD I
Ellison Folk	04/29/2023	1.30	Review cite checking changes, finalize brief, email clients.	CBD I
Ellison Folk	05/01/2023	4.50	Confer with clients re filing, prepare request for judicial notice, confer with P. Larkin, M. Ryan re appendix, filing, service.	CBD I
Ellison Folk	05/02/2023	3.20	Finalize brief, review cite checking changes, finalize request for judicial notice; email E. Moldavsky, email clients; confer with E. Moldavsky re filing petition.	CBD I

Ellison Folk	05/03/2023	0.70	Review final brief, tables, etc.	CBD I
Ellison Folk	05/04/2023	0.80	Telephone call with Moldavsky, email exchange with client/co-petitioners re same; respond to press inquiries.	CBD I
Ellison Folk	05/05/2023	1.00	Telephone call with Public Utilities Commission attorney re abeyance.	CBD I
Ellison Folk	05/16/2023	0.20	Review and respond to email re extension request.	CBD I
Ellison Folk	05/18/2023	0.30	Review and respond to email re extension; consider same.	CBD I
Ellison Folk	07/17/2023	1.10	Review and revise reply brief, confer with A. Stanton re: same	CBD I
Ellison Folk	07/18/2023	4.70	Review and revise reply brief, review Commission/RPI answering briefs.	CBD I
Ellison Folk	07/25/2023	1.40	Review and revise reply brief, RJN.	CBD I
Ellison Folk	07/26/2023	2.30	Review and revise reply brief; confer with A. Stanton re: same	CBD I
	Total	48.60		

Person	**Date**	**Total**	**Description**	**Issue**
Ellison Folk	09/14/2023	0.20	Review order from court, email A. Stanton re: same.	CBD I
Ellison Folk	10/02/2023	0.50	Confer with A. Stanton re: Public Utilities Commission request for judicial notice; review same.; review client email re: same.	CBD I
Ellison Folk	11/16/2023	1.00	Prepare for oral argument.	CBD I
Ellison Folk	11/17/2023	1.00	Prepare for oral argument.	CBD I
Ellison Folk	11/19/2023	2.00	Prepare for oral argument.	CBD I
Ellison Folk	11/20/2023	1.00	Prepare for oral argument; call with client re: same	CBD I
Ellison Folk	11/21/2023	1.20	Prepare for oral argument.	CBD I
Ellison Folk	11/27/2023	1.90	Prepare for oral argument.	CBD I
Ellison Folk	11/28/2023	4.80	Prepare for oral argument.	CBD I
Ellison Folk	11/29/2023	2.00	Prepare oral argument.	CBD I
Ellison Folk	11/30/2023	5.00	Prepare for oral argument.	CBD I
Ellison Folk	12/01/2023	1.00	Prepare oral argument.	CBD I
Ellison Folk	12/04/2023	5.00	Prepare for oral argument.	CBD I
Ellison Folk	12/05/2023	3.50	Prepare oral argument; attend moot court.	CBD I
Ellison Folk	12/07/2023	3.00	Prepare for oral argument.	CBD I
Ellison Folk	12/09/2023	4.00	Prepare for oral argument.	CBD I
Ellison Folk	12/10/2023	6.00	Prepare for oral argument.	CBD I
Ellison Folk	12/11/2023	4.00	Prepare oral argument; moot court for same.	CBD I
Ellison Folk	12/12/2023	5.00	Prepare for oral argument.	CBD I
Ellison Folk	12/13/2023	4.00	Prepare for and attend oral argument, debrief.	CBD I
Ellison Folk	12/21/2023	2.50	Review appellate decision; consider petition for rehearing/review.	CBD II
Ellison Folk	12/22/2023	1.00	Review appellate decision; call with clients re: rehearing petition.	CBD II
Ellison Folk	12/26/2023	3.50	Prepare petition for rehearing.	CBD II
Ellison Folk	12/27/2023	4.50	Prepare petition for rehearing; confer with S. Goldman re same.	CBD II
Ellison Folk	12/28/2023	0.70	Review leg history research; confer with S. Goldman re: same	CBD II
Ellison Folk	12/28/2023	3.00	Review and revise rehearing petition.	CBD II
Ellison Folk	12/29/2023	4.00	Prepare petition for rehearing; review inserts on legislative history; confer with S. Goldman re: same.	CBD II
	Total	75.30		
	Divided by Two	37.65		
	Total 2023	86.25		
	Overall Total 2023	176.20		

Person	**Date**	**Total**	**Description**	**Issue**
Malinda Dickenson	2024-05-22	8.70	Edit and provide substantive feedback on draft opening brief	CBD II
Malinda Dickenson	2024-05-22	1.50	Legal research re Eschleman and development of Section 5 of Article 12 of the California Constitution	CBD II
Malinda Dickenson	2024-05-31	4.50	Edit draft opening brief	CBD II
Malinda Dickenson	2024-06-02	4.50	Continue editing draft opening brief	CBD II
Malinda Dickenson	2024-09-19	2.00	Review answering briefs	CBD II
Malinda Dickenson	2024-09-19	1.00	Legal research re CPUC standard of review section	CBD II
Malinda Dickenson	2024-09-23	4.00	Review and revise draft outline of reply brief	CBD II
Malinda Dickenson	2024-10-14	7.00	Review and revise first draft of reply standard of review section	CBD II
Malinda Dickenson	2024-10-15	1.00	Review additional deference case law	CBD II
Malinda Dickenson	2024-10-15	2.50	Continue reviewing and revising reply brief	CBD II
Malinda Dickenson	2024-10-15	2.00	Analyze Verdant study use of ACC and underlying documents	CBD II
Malinda Dickenson	2024-10-16	4.50	Continue revising reply brief	CBD II
Malinda Dickenson	2024-10-16	5.00	Analyze decision treatement of ACC and underlying documents	CBD II
Malinda Dickenson	2024-10-17	3.40	Continue revising reply brief and send section I to team	CBD II
Malinda Dickenson	2024-10-17	7.00	Continue revising reply brief and send section II to team	CBD II
Malinda Dickenson	2024-10-18	1.50	Continue revising reply brief and send section III to team	CBD II
Malinda Dickenson	2024-10-18	2.50	Continue to develop responses to answering briefs, attention to NEM and ACC decision history	CBD II
Malinda Dickenson	2024-10-19	3.50	Assess RJN and draft objections thereto	CBD II
Malinda Dickenson	2024-10-19	1.70	Analyze legislative history submitted by Utilities and for AB 327	CBD II
Malinda Dickenson	2024-10-21	0.20	Correspondence with EF, BP re ACC arguments	CBD II

Malinda Dickenson	2024-10-21	0.40	Phone call with BP re DER differences	CBD II
Malinda Dickenson	2024-10-21	3.00	Continue to analyze 2020 ACC and Utilities' arguments	CBD II
Malinda Dickenson	2024-10-22	3.20	Continue analyzing Utilities' cost-shift arguments and citations	CBD II
Malinda Dickenson	2024-10-22	2.00	Continue analyzing avoided transmission arguments	CBD II
Malinda Dickenson	2024-10-23	1.50	Continue developing avoided transmission arguments	CBD II
Malinda Dickenson	2024-10-23	2.20	Review next draft of Section I	CBD II
Malinda Dickenson	2024-10-23	1.00	Draft RJN opposition	CBD II
Malinda Dickenson	2024-10-23	1.50	Research re past NEM cost benefit reports	CBD II
Malinda Dickenson	2024-10-24	0.10	Review request for extension	CBD II
Malinda Dickenson	2024-10-24	7.20	Continue reviewing next draft of Section I	CBD II
Malinda Dickenson	2024-10-25	3.70	Continue revising next draft of Section I, review CPUC arguments re SPM and ACC for Yamaha arguments	CBD II
Malinda Dickenson	2024-10-25	0.80	Review and revise next draft of Section III	CBD II
Malinda Dickenson	2024-10-26	1.70	Review and revise Section III	CBD II
Malinda Dickenson	2024-10-28	4.30	Continue legal research re statutory language and revisions to section I of reply	CBD II
Malinda Dickenson	2024-10-28	0.20	Continue revising Section III	CBD II
Malinda Dickenson	2024-10-29	4.30	Review and revise secton draft of Section II	CBD II
Malinda Dickenson	2024-10-29	1.80	Continue revising Section III and send to team	CBD II
Malinda Dickenson	2024-10-30	6.00	Continue revising section II	CBD II
Malinda Dickenson	2024-10-31	5.20	Continue revising section II	CBD II
Malinda Dickenson	2024-11-08	3.00	Review next version of brief	CBD II
Malinda Dickenson	2024-11-08	1.00	Research re categorization	CBD II
Malinda Dickenson	2024-11-09	4.50	Continue reviewing next version of brief, section I	CBD II
Malinda Dickenson	2024-11-09	3.30	Review next version of brief, section III	CBD II
Malinda Dickenson	2024-11-10	7.00	Review next version of brief, section II	CBD II
Malinda Dickenson	2024-11-11	0.50	Continue reviewing section II	CBD II
Malinda Dickenson	2024-11-11	8.00	Continue revising brief attention to clarifying and simplifying ACC explanation; assess past ACCs and CPUC treatment over time	CBD II
Malinda Dickenson	2024-11-20	2.50	Continue reviewing brief and send edits to team	CBD II
Malinda Dickenson	2024-11-20	4.00	Review legislative history re costs; continue analysis of lookback study	CBD II
	Total 2024	151.90		

Person	**Date**	**Total**	**Description**	**Issue**
Aaron Stanton	01/04/2024	2.50	Review court of appeal decision; revise petition for rehearing	CBD II
Aaron Stanton	01/08/2024	5.00	Review court of appeal decision; strategize re petition for review.	CBD II
Aaron Stanton	01/09/2024	3.80	Research in support of petition for review.	CBD II
Aaron Stanton	01/10/2024	3.50	Research re petition for review; draft outline of petition.	CBD II
Aaron Stanton	01/12/2024	3.50	Draft petition for review; legal research re same.	CBD II
Aaron Stanton	01/16/2024	6.30	Review order denying rehearing (.3); draft statement of facts section of petition for review (4.0); draft standard of review argument of petition for review (1.0); legal research re standard of review (1.0).	CBD II
Aaron Stanton	01/17/2024	4.90	Draft standard of review argument section of petition for review.	CBD II
Aaron Stanton	01/18/2024	8.00	Draft petition for review.	CBD II
Aaron Stanton	01/19/2024	2.70	Revise petition for review.	CBD II
Aaron Stanton	01/20/2024	3.20	Revise petition for review.	CBD II
Aaron Stanton	01/22/2024	7.10	Revise petition for review.	CBD II
Aaron Stanton	01/23/2024	4.00	Revise petition for review.	CBD II
Aaron Stanton	01/24/2024	6.40	Revise petition for review; legal research re same.	CBD II
Aaron Stanton	01/25/2024	5.50	Revise petition for review.	CBD II
Aaron Stanton	01/28/2024	4.70	Revise petition for review.	CBD II
Aaron Stanton	04/18/2024	2.60	Draft outline of opening brief.	CBD II
Aaron Stanton	05/05/2024	0.25	Draft statement of the case.	CBD II
Aaron Stanton	05/09/2024	0.65	Draft standard of review section of opening brief; legal research re same.	CBD II
Aaron Stanton	05/10/2024	3.65	Draft standard of review section of opening brief; legal research re same.	CBD II
Aaron Stanton	05/11/2024	2.20	Draft standard of review section of argument; legal research re same.	CBD II
Aaron Stanton	05/12/2024	1.65	Draft standard of review section of opening brief.	CBD II
Aaron Stanton	05/13/2024	2.15	Draft standard of review and statement of the case sections of opening brief.	CBD II
Aaron Stanton	05/15/2024	2.10	Revise costs and benefits and disadvantaged communities sections of opening brief; revise standard of review section of opening brief.	CBD II
Aaron Stanton	05/16/2024	2.20	Revise draft opening brief.	CBD II
Aaron Stanton	05/17/2024	1.40	Revise draft opening brief.	CBD II
Aaron Stanton	05/20/2024	0.35	Legal research in support of opening brief; strategize re same.	CBD II
Aaron Stanton	05/21/2024	0.60	Direct legal research in support of opening brief.	CBD II
Aaron Stanton	05/22/2024	0.20	Direct research re opening brief.	CBD II
Aaron Stanton	05/24/2024	1.45	Revise opening brief; legal research re same	CBD II
Aaron Stanton	05/25/2024	0.85	Revise opening brief.	CBD II
Aaron Stanton	05/26/2024	0.55	Revise opening brief.	CBD II
Aaron Stanton	05/27/2024	0.95	Revise opening brief.	CBD II
Aaron Stanton	05/28/2024	1.70	Revise opening brief.	CBD II
Aaron Stanton	05/29/2024	2.85	Revise opening brief; legal research re same.	CBD II
Aaron Stanton	05/30/2024	2.95	Revise opening brief; legal research re same.	CBD II
Aaron Stanton	05/31/2024	1.35	Revise opening brief; legal research re same.	CBD II
Aaron Stanton	06/03/2024	5.70	Revise opening brief; direct research in support of reply brief.	CBD II

Aaron Stanton	06/05/2024	8.60	Revise opening brief.	CBD II
Aaron Stanton	06/06/2024	4.80	Revise opening brief; legal research re same; draft request for judicial notice.	CBD II
Aaron Stanton	06/08/2024	5.20	Revise opening brief.	CBD II
Aaron Stanton	06/09/2024	0.60	Revise opening brief.	CBD II
Aaron Stanton	06/11/2024	0.30	Email correspondence re opposition brief.	CBD II
Aaron Stanton	09/24/2024	0.80	Draft standard of review section of reply brief; legal research re same.	CBD II
Aaron Stanton	09/25/2024	5.30	Draft standard of review section of reply brief.	CBD II
Aaron Stanton	09/26/2024	4.20	Draft standard of review section of reply brief.	CBD II
Aaron Stanton	09/27/2024	2.70	Revise standard of review section of reply brief.	CBD II
Aaron Stanton	10/04/2024	4.00	Draft costs and benefits section of reply brief.	CBD II
Aaron Stanton	10/05/2024	3.80	Draft costs and benefits section of reply brief.	CBD II
Aaron Stanton	10/06/2024	1.50	Draft costs and benefits section of reply brief.	CBD II
Aaron Stanton	10/07/2024	5.10	Draft costs and benefits section of reply brief (3.6); draft disadvantaged communities section of reply brief (1.5).	CBD II
Aaron Stanton	10/08/2024	4.60	Draft disadvantaged communities section of reply brief.	CBD II
Aaron Stanton	10/10/2024	1.70	Revise reply brief.	CBD II
Aaron Stanton	10/18/2024	5.50	Revise reply brief.	CBD II
Aaron Stanton	10/28/2024	2.80	Revise reply brief.	CBD II
Aaron Stanton	11/01/2024	3.20	Revise reply brief.	CBD II
Aaron Stanton	11/03/2024	2.60	Revise costs and benefits section of reply brief.	CBD II
Aaron Stanton	11/07/2024	2.30	Draft introduction for reply brief.	CBD II
Aaron Stanton	11/08/2024	0.50	Revise introduction for reply brief.	CBD II
Aaron Stanton	11/13/2024	3.40	Revise reply brief.	CBD II
Aaron Stanton	11/14/2024	5.90	Revise reply brief.	CBD II
Aaron Stanton	11/20/2024	6.30	Revise reply brief.	CBD II
	Total 2024	195.15		
	Divided by 2	97.58		

Person	**Date**	**Total**	**Description**	**Issue**
Ellison Folk	01/03/2024	4.50	Review and revise petition for rehearing.	CBD II
Ellison Folk	01/04/2024	0.30	Prepare petition for rehearing.	CBD II
Ellison Folk	01/08/2024	0.60	Confer with A. Stanton, S. Goldman re: petition for review.	CBD II
Ellison Folk	01/11/2024	1.00	Review petition for review; confer with A. Stanton re: same.	CBD II
Ellison Folk	01/12/2024	0.30	Review research on PUC provisions	CBD II
Ellison Folk	01/16/2024	0.20	Review order from court; email client re: same.	CBD II
Ellison Folk	01/19/2024	4.50	Review and revise petition for review; confer with A. Stanton re: same.	CBD II
Ellison Folk	01/20/2024	6.00	Draft petition for review.	CBD II
Ellison Folk	01/21/2024	4.50	Review and revise petition for review.	CBD II
Ellison Folk	01/22/2024	2.00	Review and revise petition for review; confer with A. Stanton re. same.	CBD II
Ellison Folk	01/23/2024	2.00	Review and revise petition for review.	CBD II
Ellison Folk	01/24/2024	4.30	Review and revise petition for review; confer with client re: same.	CBD II
Ellison Folk	01/25/2024	6.30	Review and revise petition for review.	CBD II
Ellison Folk	01/26/2024	7.00	Review and revise petition for review; confer with client re: same.	CBD II
Ellison Folk	01/27/2024	2.40	Review emails re: petition, for review; respond to same; revise petition for review.	CBD II
Ellison Folk	01/28/2024	6.00	Review and revise petition for review; respond to client comments.	CBD II
Ellison Folk	01/29/2024	1.00	Finalize petition for review.	CBD II
Ellison Folk	03/22/2024	0.10	Review email from court; email clients re: same.	CBD II
Ellison Folk	04/11/2024	1.00	Review rules of court, grant of review; prepare extension outline; email clients re: same; email opposing counsel re: extension; review and respond to request for brief.	CBD II
Ellison Folk	04/16/2024	0.90	Review issues, extension; consider time line; prepare outline of opening brief.	CBD II
Ellison Folk	04/18/2024	0.50	Consider issues for opening brief, timing for briefing/client review.	CBD II
Ellison Folk	04/19/2024	1.20	Review outline/schedule.	CBD II
Ellison Folk	04/22/2024	0.30	Review revised outline.	CBD II
Ellison Folk	04/24/2024	0.20	Review outline/email re: same.	CBD II
Ellison Folk	04/29/2024	2.00	Research re: standard of review in PUC cases.	CBD II
Ellison Folk	05/02/2024	2.25	Prepare opening brief.	CBD II
Ellison Folk	05/03/2024	1.15	Prepare opening brief; call with A. Stanton re: same.	CBD II
Ellison Folk	05/06/2024	1.75	Draft opening brief.	CBD II
Ellison Folk	05/08/2024	2.25	Prepare opening brief.	CBD II
Ellison Folk	05/09/2024	2.50	Draft opening brief.	CBD II
Ellison Folk	05/10/2024	2.25	Prepare opening brief (DAC).	CBD II
Ellison Folk	05/14/2024	1.50	Draft opening brief (standard of review).	CBD II
Ellison Folk	05/15/2024	2.25	Draft opening brief (standard of review (3) DAC (.5); costs/benefits (.8).	CBD II
Ellison Folk	05/16/2024	2.10	Prepare opening brief (1.8 all topics equally); revise DAC section (2.4).	CBD II
Ellison Folk	05/17/2024	1.75	Prepare opening brief (standard of review 1.5) (DAC .5); costs/benefits (1).	CBD II
Ellison Folk	05/20/2024	0.15	Develop research tasks for opening brief.	CBD II
Ellison Folk	05/21/2024	0.35	Prepare opening brief.	CBD II
Ellison Folk	05/26/2024	3.00	Review and revise opening brief (costs/benefits).	CBD II
Ellison Folk	05/27/2024	1.25	Review and revise opening brief (equal c/b and DAC).	CBD II
Ellison Folk	05/28/2024	0.75	Review and revise brief (SOC .5).	CBD II
Ellison Folk	05/29/2024	3.00	Review and revise brief; draft introduction.	CBD II
Ellison Folk	05/31/2024	0.25	Prepare opening brief.	CBD II

Ellison Folk	06/02/2024	1.00	Review and revise opening brief.	CBD II
Ellison Folk	06/04/2024	7.00	Review and revise brief.	CBD II
Ellison Folk	06/05/2024	2.80	Review and revise opening brief; confer with client re: same.	CBD II
Ellison Folk	06/06/2024	3.10	Review and revise opening brief.	CBD II
Ellison Folk	06/07/2024	1.50	Review and revise opening brief.	CBD II
Ellison Folk	06/09/2024	1.00	Review final brief.	CBD II
Ellison Folk	07/01/2024	1.00	Review Loper decision.	CBD II
Ellison Folk	07/24/2024	0.40	Review new appellate decision re: standard of review; email exchange re: extension request.	CBD II
Ellison Folk	09/13/2024	0.50	Review Public Utilities Commission brief.	CBD II
Ellison Folk	09/16/2024	1.70	Review PUC brief; prepare reply brief, extension for reply brief	CBD II
Ellison Folk	09/17/2024	3.00	Review answering briefs; outline response; confer with A. Stanton re: same.	CBD II
Ellison Folk	09/18/2024	0.20	Prepare extension request.	CBD II
Ellison Folk	09/20/2024	1.00	Review and revise outline of reply brief.	CBD II
Ellison Folk	09/23/2024	1.50	Call with client/A. Stanton re: reply brief.	CBD II
Ellison Folk	09/24/2024	2.80	Review issues re:ACC/transmission; email client re: same; review standard of review/Yamaha case law.	CBD II
Ellison Folk	09/30/2024	3.00	Review PUC brief; revise reply brief.	CBD II
Ellison Folk	10/01/2024	2.00	Review and revise reply brief.	CBD II
Ellison Folk	10/08/2024	1.00	Review and revise reply brief.	CBD II
Ellison Folk	10/09/2024	6.20	Review and revise reply brief.	CBD II
Ellison Folk	10/10/2024	3.50	Review and revise reply brief.	CBD II
Ellison Folk	10/18/2024	2.50	Review PCF argument on costs/benefits.	CBD II
Ellison Folk	10/19/2024	1.30	Review and revise reply brief.	CBD II
Ellison Folk	10/20/2024	3.00	Review client edits; revise brief; email clients re: same.	CBD II
Ellison Folk	10/22/2024	3.00	Review and revise reply brief (standard of review); confer with A. Stanton re: same; meeting with clients re: briefing.	CBD II
Ellison Folk	10/26/2024	0.50	Review and revise reply brief	CBD II
Ellison Folk	10/27/2024	2.30	Prepare reply brief.	CBD II
Ellison Folk	10/28/2024	5.00	Review and revise reply brief; consider client comments on reply	CBD II
Ellison Folk	10/29/2024	7.00	Review and revise reply brief.	CBD II
Ellison Folk	10/30/2024	6.00	Revise reply brief; confer with M. Zinn re: Yamaha; confer with M. Dickenson re: same.	CBD II
Ellison Folk	10/31/2024	2.00	Review and revise brief; read and summarize Eshleman	CBD II
Ellison Folk	11/01/2024	4.20	Review and revise brief.	CBD II
Ellison Folk	11/03/2024	5.00	Review and revise brief; confer with A. Stanton re: same.	CBD II
Ellison Folk	11/04/2024	3.50	Review and revise brief; confer with A. Stanton re: same.	CBD II
Ellison Folk	11/06/2024	3.00	Call with client re: Yamaha argument; confer with A. Stanton; review revised argument.	CBD II
Ellison Folk	11/08/2024	2.00	Review and revise preliminary statement.	CBD II
Ellison Folk	11/14/2024	4.00	Review and revise brief; confer with A. Stanton re: same.	CBD II
Ellison Folk	11/15/2024	4.00	Review and revise brief.	CBD II
Ellison Folk	11/19/2024	1.20	Review and revise final brief; direct cite checking.	CBD II
Ellison Folk	11/20/2024	1.00	Review edits to brief, issues re: request for judicial notice; confer with A. Stanton re: same.	CBD II
Ellison Folk	11/21/2024	1.50	Review and revise final brief; confer with A. Stanton re: same; consider appendix for 1757.	CBD II
Ellison Folk	11/22/2024	3.10	Review and revise brief; confer with A. Stanton re: same.	CBD II
Ellison Folk	12/04/2024	0.40	Consider strategy for oral argument.	CBD II
Ellison Folk	12/05/2024	0.50	Consider oral argument issues.	CBD II
Ellison Folk	12/23/2024	0.30	Call with M. Dickenson re: strategy/argument	CBD II
	Total 2024	198.10		
	Divided by 2	99.05		
	Overall Total 2024	348.53		

Person	**Date**	**Total**	**Description**	**Issue**
Malinda Dickenson	2025-02-24	1.00	Review Lookback study in preparation for oral argument	CBD II
Malinda Dickenson	2025-03-11	3.00	Review and respond to oral argument questions and proposed responses	CBD II
Malinda Dickenson	2025-03-18	2.50	Continue oral argument prep: draft outline	CBD II
Malinda Dickenson	2025-03-20	1.50	Continue analysis of standard of review questions	CBD II
Malinda Dickenson	2025-03-21	1.20	Continue outline and analysis for oral argument, attention to Article 12	CBD II
Malinda Dickenson	2025-03-24	7.00	Continue drafting proposed responses to questions; review legislative history and research re APA	CBD II
Malinda Dickenson	2025-03-28	3.00	Continue preparing for oral argument	CBD II
Malinda Dickenson	2025-03-31	3.50	Continue oral argument prep, attention to 1757.1 differences with 1094.5	CBD II
Malinda Dickenson	2025-04-01	6.00	Continue oral argument prep; review case law and draft responses to potential questions; order and review leg history of 1094.5	CBD II
Malinda Dickenson	2025-04-02	5.80	Continue preparing for oral argument	CBD II
Malinda Dickenson	2025-04-07	7.50	Continue preparing for oral argument, standard of review questions	CBD II
Malinda Dickenson	2025-04-08	2.00	Continue preparing standard of review for NEM oral argument	CBD II

Malinda Dickenson	2025-04-09	2.00	Review and revise draft oral argument standard of review opening; explain comments	CBD II
Malinda Dickenson	2025-04-09	7.50	Continue legal research re constitution	CBD II
Malinda Dickenson	2025-04-11	2.50	Continue preparing for oral argument, attention to 2827.1 arguments in amicus briefs	CBD II
Malinda Dickenson	2025-04-17	3.00	Continue preparing for oral argument, standard of review presentation	CBD II
Malinda Dickenson	2025-04-17	4.50	Continue preparing for oral argument, 2827.1 presentation	CBD II
Malinda Dickenson	2025-04-28	5.00	Continue revising oral argument 2827.1(b)(3) argument	CBD II
Malinda Dickenson	2025-05-02	0.50	Correspondence with EF and analysis re issues on review	CBD II
Malinda Dickenson	2025-05-05	2.00	Prepare for oral argument, prepare for anticipated questions	CBD II
Malinda Dickenson	2025-05-08	4.30	Continue preparing for oral argument	CBD II
Malinda Dickenson	2025-05-08	0.50	Phone call with BP re issues for moot	CBD II
Malinda Dickenson	2025-05-13	3.30	Prepare for oral argument, ACC and cost shift	CBD II
Malinda Dickenson	2025-05-14	7.00	Prepare for oral argument, chart of decisions	CBD II
Malinda Dickenson	2025-05-15	5.00	Prepare for oral argument, finish chart of decisions	CBD II
Malinda Dickenson	2025-05-18	2.50	Continue drafting DAC section, cost shift response	CBD II
Malinda Dickenson	2025-05-18	5.00	Continue analyzing focus question, prepare presentation	CBD II
Malinda Dickenson	2025-05-20	6.00	Continue preparing for oral argument	CBD II
Malinda Dickenson	2025-05-21	2.00	Prepare 2827.1(b)(3) argument	CBD II
Malinda Dickenson	2025-05-21	10.00	Prepare combined presentation	CBD II
Malinda Dickenson	2025-05-22	9.00	Continue preparing for oral argument	CBD II
Malinda Dickenson	2025-05-23	1.50	Prepare for oral argument	CBD II
Malinda Dickenson	2025-05-24	8.50	Prepare for oral argument	CBD II
Malinda Dickenson	2025-05-25	8.00	Prepare for oral argument	CBD II
Malinda Dickenson	2025-05-27	8.00	Prepare for oral argument	CBD II
Malinda Dickenson	2025-05-28	8.00	Prepare for oral argument	CBD II
Malinda Dickenson	2025-05-29	8.00	Prepare for oral argument	CBD II
Malinda Dickenson	2025-05-30	8.00	Prepare for oral argument	CBD II
Malinda Dickenson	2025-05-31	8.00	Prepare for oral argument	CBD II
Malinda Dickenson	2025-06-01	6.00	Prepare for oral argument	CBD II
Malinda Dickenson	2025-06-02	8.00	Prepare for oral argument	CBD II
Malinda Dickenson	2025-06-03	2.50	Prepare for oral argument	CBD II
Malinda Dickenson	2025-06-04	2.00	Attend oral argument	CBD II
Malinda Dickenson	2025-08-07	1.00	Outline appellate brief	CBD III
Malinda Dickenson	2025-08-15	1.00	Analyze Mosk concurrence and relationship between (a)(2) and Yamaha	CBD III
Malinda Dickenson	2025-08-19	1.50	Continue analysis of typographical error; draft, revise, and email to team draft letter seeking correction of typographical errors	CBD III
Malinda Dickenson	2025-08-24	5.50	Draft supplemental brief, attention to intro and section 1757.1	CBD III
Malinda Dickenson	2025-08-25	3.50	Continue drafting supplemental brief, attention to statement of the case	CBD III
Malinda Dickenson	2025-08-26	3.00	Categorize citations in D.22-12-056 and memo to file re same	CBD III
Malinda Dickenson	2025-08-27	1.00	Continue analysis of court of appeal opinion	CBD III
Malinda Dickenson	2025-09-06	4.50	Continue analysis and drafting standard of review section	CBD III
Malinda Dickenson	2025-09-07	7.50	Continue drafting supplemental brief, attention to Lookback Study error	CBD III
Malinda Dickenson	2025-09-08	6.80	Continue drafting supplemental brief	CBD III
Malinda Dickenson	2025-09-09	2.50	Continue drafting supplemental brief	CBD III
Malinda Dickenson	2025-09-10	5.30	Continue drafting supplemental brief, cost shift section	CBD III
Malinda Dickenson	2025-09-10	0.80	Continue drafting supplemental brief, attention to (b)(4)	CBD III
Malinda Dickenson	2025-09-13	4.50	Continue drafting supplemental brief	CBD III
Malinda Dickenson	2025-09-14	8.00	Continue drafting supplemental brief	CBD III
Malinda Dickenson	2025-09-27	4.50	Continue drafting 2827.1 argument, attention to (b)(3)	CBD III
Malinda Dickenson	2025-09-27	2.50	Continue drafting 2827.1 argument, attention to (b)(4), cost shift	CBD III
Malinda Dickenson	2025-09-28	4.70	Continue drafting 2827.1 argument	CBD III
Malinda Dickenson	2025-10-10	4.50	Continue legal research re statutory interpretation	CBD III
Malinda Dickenson	2025-10-10	1.00	Draft section on statutory interpretation	CBD III
Malinda Dickenson	2025-10-12	3.00	Continue drafting supplemental brief	CBD III
Malinda Dickenson	2025-10-13	1.50	Continue drafting supplemental brief	CBD III
Malinda Dickenson	2025-10-14	2.50	Continue drafting supplemental brief	CBD III
Malinda Dickenson	2025-10-15	2.00	Continue drafting supplemental brief	CBD III
Malinda Dickenson	2025-10-16	2.00	Continue drafting supplemental brief	CBD III
Malinda Dickenson	2025-10-17	3.50	Continue drafting supplemental brief	CBD III
Malinda Dickenson	2025-10-23	4.50	Continue drafting supplemental brief	CBD III
Malinda Dickenson	2025-10-24	4.50	Continue drafting supplemental brief	CBD III
Malinda Dickenson	2025-11-03	4.00	Continue drafting supplemental brief	CBD III
Malinda Dickenson	2025-11-06	8.00	Continue drafting supplemental brief	CBD III
Malinda Dickenson	2025-11-15	8.00	Continue third draft, attention to sections II, VI	CBD III
Malinda Dickenson	2025-11-16	8.00	Continue third draft, attention to sections III, V	CBD III
Malinda Dickenson	2025-11-17	4.00	Continue third draft, attention to section V	CBD III
Malinda Dickenson	2025-12-21	6.00	Revise supplemental responding brief, add vacillation argument	CBD III
	Total 2025	337.20		

Person	Date	Total	Description	Issue
Ellison Folk	01/13/2025	1.00	Review and revise potential questions for oral argument.	CBD II
Ellison Folk	01/15/2025	1.30	Review new PUC decision; consider implications for supreme court case.	CBD II

Ellison Folk	02/13/2025	0.50	Review summary of amicus briefs; email client re: questions for oral argument.	CBD II
Ellison Folk	03/10/2025	0.60	Review oral argument notice; review availability; draft letter to court.	CBD II
Ellison Folk	03/11/2025	0.30	Review and consider email re: oral argument issues.	CBD II
Ellison Folk	03/14/2025	0.30	Review and respond to email/voicemail from M. Dickinson; confer with A. Stanton re: same.	CBD II
Ellison Folk	03/19/2025	2.00	Draft standard of review overview, questions.	CBD II
Ellison Folk	03/20/2025	4.00	Prepare for oral argument; call with clients re: same.	CBD II
Ellison Folk	03/21/2025	4.40	Prepare for oral argument.	CBD II
Ellison Folk	03/24/2025	1.00	Prepare oral argument.	CBD II
Ellison Folk	03/25/2025	2.50	Prepare oral argument.	CBD II
Ellison Folk	03/26/2025	3.50	Prepare oral argument.	CBD II
Ellison Folk	03/27/2025	2.40	Oral argument preparation; meeting with client re: same.	CBD II
Ellison Folk	03/28/2025	0.20	Prepare oral argument.	CBD II
Ellison Folk	03/29/2025	1.80	Review findings of fact/law	CBD II
Ellison Folk	04/02/2025	1.50	Prepare oral argument.	CBD II
Ellison Folk	04/03/2025	1.00	Prepare oral argument.	CBD II
Ellison Folk	04/04/2025	4.50	Review answers to oral argument questions; prepare for oral argument; review CBE v. CEC; confer with A. Stanton re: same.	CBD II
Ellison Folk	04/07/2025	3.00	Prepare oral argument; review Yamaha, CBE v. CEC; outline argument issues on Standard of Review.	CBD II
Ellison Folk	04/08/2025	2.40	Review and consider responses to questions on Standard of Review.	CBD II
Ellison Folk	04/09/2025	1.00	Prepare oral argument.	CBD II
Ellison Folk	04/11/2025	3.00	Prepare for oral argument.	CBD II
Ellison Folk	04/15/2025	0.30	Review summary of case for oral argument.	CBD II
Ellison Folk	04/16/2025	2.40	Prepare oral argument; review BJ amicus brief.	CBD II
Ellison Folk	04/17/2025	1.00	Prepare oral argument; confer with A. Stanton re: same.	CBD II
Ellison Folk	04/18/2025	2.30	Oral argument preparation with client.	CBD II
Ellison Folk	04/21/2025	0.30	Review summary of DAC compensation issue.	CBD II
Ellison Folk	04/23/2025	0.50	Prepare for oral argument.	CBD II
Ellison Folk	04/24/2025	2.80	Prepare oral argument.	CBD II
Ellison Folk	04/28/2025	5.00	Prepare oral argument.	CBD II
Ellison Folk	04/30/2025	5.00	Prepare for oral argument; attend moot court.	CBD II
Ellison Folk	05/01/2025	1.40	Consider issues from moot; prepare oral argument.	CBD II
Ellison Folk	05/02/2025	2.50	Prepare oral argument.	CBD II
Ellison Folk	05/05/2025	4.50	Prepare oral argument.	CBD II
Ellison Folk	05/06/2025	2.50	Prepare oral argument.	CBD II
Ellison Folk	05/08/2025	2.20	Prepare oral argument.	CBD II
Ellison Folk	05/09/2025	5.50	Moot court; prepare for same; debrief after.	CBD II
Ellison Folk	05/12/2025	1.30	Prepare oral argument.	CBD II
Ellison Folk	05/15/2025	0.50	Review court order setting oral argument; email exchange with client re: meeting; review/consider court order re: issues to focus on.	CBD II
Ellison Folk	05/19/2025	3.00	Prepare oral argument; confer with A. Stanton re: court's issue; legal standard; review notice to appear.	CBD II
Ellison Folk	05/20/2025	2.50	Prepare oral argument.	CBD II
Ellison Folk	05/21/2025	0.80	Confer re: oral argument; email exchange with client re: argument.	CBD II
Ellison Folk	05/22/2025	1.50	Moot court.	CBD II
Ellison Folk	05/23/2025	0.30	Follow up on oral argument issues.	CBD II
Ellison Folk	05/28/2025	2.00	Moot court; prepare for same.	CBD II
Ellison Folk	05/30/2025	3.50	Moot court; prepare record/documents for oral argument.	CBD II
Ellison Folk	05/31/2025	2.50	Prepare questions/answers, documents for oral argument.	CBD II
Ellison Folk	06/01/2025	2.30	Prep answers for supreme court argument.	CBD II
Ellison Folk	06/02/2025	2.60	Prepare documents for oral argument; moot court; review court ruling on request for judicial notices; email client re: same.	CBD II
	Total 2025	103.20		
	Divided by 2	51.60		
	Overall Total 2025	388.80		

Person	**Date**	**Total**	**Description: Claim Preparation**	
Malinda Dickenson	2026-01-09	5.00	Revise draft supplemental responding brief	CBD III
	Total 2026	5.00		
	Total All Years	918.53		

Person	**Date**	**Total**	**Description: Claim Preparation**
Malinda Dickenson	2026-08-09	5.00	Draft IC claim
Malinda Dickenson	2026-08-10	4.00	Draft IC claim
Malinda Dickenson	2026-08-11	1.00	Review and revise IC claim
Malinda Dickenson	2026-08-11	1.50	Review timesheets and reduce time claimed
	Total 2026	**11.50**	

Person	**Date**	**Total**	**Description: Claim Preparation**

Andrea White	2026-08-06	2.50	Review SMW Invoices
Andrea White	2026-08-07	1.30	Review SMW Invoices
Andrea White	2026-08-07	1.00	Legal research re compensation for obtaining judicial review
Andrea White	2026-08-07	0.5	Draft IC claim re rates
Andrea White	2026-08-10	2.5	Compile data entries for timesheet
	Total 2026	**7.80**	
	Total IC Hours	**19.30**	

Attachment 3

Andrea White Resume

Andrea White
4452 Park Boulevard #309, San Diego, CA 92116, andrea@protectourcommunities.org, (619) 693-4788

EMPLOYMENT

The Protect Our Communities Foundation, San Diego, CA
Staff Attorney, November 2023- Present; Law Fellow, August 2023-November 2023
Represents PCF in litigation and advocacy before the California Public Utilities Commission. Conducts cross-examinations, presents oral arguments, drafts and submits opening and reply briefs and comments, and assists in the preparation of written testimony. Responds to and sends data requests, submits research memos, and attends conferences. Organizes, leads, and participates in meet and confer meetings and coordinates with other members of CPUC proceedings. Assists with litigation related to regional decarbonization, utility franchise agreements, and net energy metering by conducting legal research, reviewing the administrative record, and cite checking.

EDUCATION

University of California, Berkeley, School of Law, Berkeley, CA, May 2023
Honors: Berkeley Law Dean's Fellowship (merit-based tuition award)
Environmental Law Certificate & Energy and Clean Technology Law Certificate
Activities: Ecology Law Quarterly, Senior Articles Editor and Executive Editor
Articles: Andrea White, *Protecting Future Generations from Climate Change in the United States,* 49.2 ELQ 501 (2023).
Andrea White, *The Wild Horse Problem: An Opportunity to Amend the Wild Free-Roaming Horses and Burros Act,* 48.2 ELQ 749 (2022).

Cornell University, Ithaca, NY
B.S., s*umma cum laude*, Environment and Sustainability (Concentration: Environmental Biology and Applied Ecology), May 2020
Minors: Anthropology, Archaeology, and Climate Change
Honors: Dean's List (all semesters), College of Agriculture and Life Sciences Honor Society,
Publications: Coauthored article entitled "Experimental Cultivation of Eastern North America's Lost Crops: Insights into Agricultural Practice and Yield Potential" in *Journal of Ethnobiology* (December 2019).

EXPERIENCE

Berkeley Law Environmental Law Clinic, Berkeley, CA, Aug. 2022 -Nov. 2022 *Student Clinician* Drafted memo related to the rights of non-federally recognized tribes and met with clients.

Environmental Defense Center, Santa Barbara, CA, May 2022 -July 2022 *Legal Intern*
Assisted in litigation related to the transportation of crude oil in Santa Barbara County. This included conducting research and drafting memos, motions, and sample declarations.

Great Rivers Environmental Law Center, St. Louis, MO June 2021-July 2021 *Legal Intern*
Performed legal research and writing on anti-idling regulations in MO and pesticide use in St. Louis. Met with clients interested in these projects, performed legal research on statutes, and drafted Sunshine Requests to determine their enforcement. Additionally, drafted a comment for a water quality permit.

Clean Energy Leaders in Law, Berkeley, CA August 2021-April 2022 *Student Leader*
Acted both as an advisor and participant for pro bono projects related to updating an informational website on community solar programs and drafting model legislation and an introductory memo.

Environmental Conservation Outreach, Berkeley, CA August 2020-May 2021 *Student Researcher* Drafted a comment letter on federal oil and gas leasing, sent in records requests related to a possible oil pipeline, and drafted a legal memo on exceptions to notification requirements for pipeline construction.

Attachment 4

Malinda Dickenson Resume

Malinda R. Dickenson
4452 Park Boulevard #309 ▪ San Diego, CA 92116
malinda@protectourcommunities.org ▪ (619) 693-4788

PROFESSIONAL HISTORY

The Protect Our Communities Foundation
Legal & Executive Director 1/2023-present
General Counsel 11/2019-12/2022
Direct all legal work and strategy. Represent the interests of San Diego and Southern California residential utility ratepayers in proceedings before the Public Utilities Commission, other regulatory bodies and the courts. Successfully argued before and secured unanimous decision by the California Supreme Court enforcing the standard for judicial review of Public Utilities Commission decisions. Advocate for clean, local, affordable, and equitable energy solutions; for just and reasonable rates; and for proper implementation of legal requirements. Support and advance local power and the San Diego region's clean energy future. Additional duties include providing overall direction and guidance to organization as a whole.

Law Office of Malinda R. Dickenson
Principal 11/2010 – 11/2019
Managed all aspects of law practice focused on land use, environmental, real estate, civil rights, and consumer protection matters. Advocated before administrative, legislative, and judicial decision-makers. Secured judgments, writs of mandate. Handled successful climate change CEQA case from administrative to trial court proceedings, appeal, and answer to petition for review. Negotiated settlement agreements and resolved various lawsuits in both state and federal courts via alternative dispute resolution processes. Prepared documents for presentation to clients, mediators, experts, courts, public officials. Consulted on real estate and land use matters.

Andersen Mann Hilbert & Parker, LLP
Attorney 6/2009 – 11/2010
Primary responsibility for handling litigation matters in predominantly real estate and insurance defense practice. Analyzed, prosecuted, and defended numerous title and escrow disputes. Defended coordinated class actions. Advised affordable housing developer regarding development impact fees and special taxes. Developed legal strategies to further clients' goals. Conducted in-depth legal research and factual investigations. Propounded and responded to discovery requests, handled numerous depositions, prepared briefs based on the law and the evidence including judicially noticeable evidence. Persuaded decision-makers in oral and written arguments. Represented clients' interests in mediations and settlement conferences. Negotiated settlements and obtained court approval when necessary.

City of San Diego
Deputy City Attorney 6/2006 – 6/2009
Represented public agencies and public officials in specialized Land Use Litigation Unit of Civil Litigation Division. Defended and prosecuted real property, land use, environmental, and related civil litigation, from inception of lawsuit through trial. Secured dismissals and judgments. Negotiated, prepared, sought approval for, and enforced settlement agreements. Provided legal advice and recommendations on litigation specific issues. Prepared memoranda, reports, resolutions, and supporting materials for presentation at meetings and public hearings. Engaged various stakeholders and community groups to build consensus and facilitate dispute resolution. Gained jury trial experience in the General Trial Unit of the Criminal Division.

Malinda R. Dickenson
4452 Park Boulevard #309 ▪ San Diego, CA 92116
malinda@protectourcommunities.org ▪ (619) 693-4788

Worden Williams, APC
Attorney 6/2000 – 6/2006
Transactional and litigation practice involved public agency, land use, real estate, and environmental matters. Argued successful petition for writ of administrative mandamus upholding citizens' initiative measures. Prepared comment letters and testified at administrative hearings on issues such as conditional use permits, zoning amendments, general and specific plan amendments, development agreements and other entitlements, environmental impacts, and endangered species. Provided transactional advice on matters including commercial and residential leases, licenses, easement agreements, and purchase and sale agreements. Clerked during law school and promoted to attorney upon admission to the bar.

EDUCATION
University of San Diego School of Law, Juris Doctor, May 2002
University of California at Santa Barbara, B.A., English, June 1999
Prof. Robert-Delores Simmons Award for Excellence in Environmental Law Practice, 2002
Highest Grade, *Environmental Law Clinic*, Fall 2000, Spring 2001, Fall 2001
Honors, *Lawyering Skills Legal Research & Writing,* 1999; *Lawyering Skills Oral Advocacy,* 2000
President, *Environmental Law Society*, USD, 2000-2001
Summer Intern, Natural Resources Defense Council, 2001.

ADMISSIONS
Supreme Court of the State of California, admitted December 4, 2002
United States District Court, Southern District of California
United States District Court, Central District of California
United States District Court, Northern District of California
United States Court of Appeals for the Ninth Circuit
United States Court of Appeals for the Federal Circuit

Attachment 5

June 15, 2026 Remittitur

COURT OF APPEAL, FIRST APPELLATE DISTRICT
350 MCALLISTER STREET
SAN FRANCISCO, CA 94102
DIVISION 3

Ellison Folk
Shute, Mihaly & Weinberger LLP
396 Hayes Street
San Francisco, CA 94102-4421

CENTER FOR BIOLOGICAL DIVERSITY et al.,
Petitioners,
v.
PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA,
Respondent;
PACIFIC GAS AND ELECTRIC COMPANY et al.,
Real Parties in Interest.

A167721
[No County Applies] County Super. Ct. No. 2212056

* * REMITTITUR * *

I, Charles D. Johnson, Clerk of the Court of Appeal of the State of California for the First Appellate District, do hereby certify that the decision entered in the above-entitled cause on March 9, 2026 has now become final.

See decision for costs determination.

Witness my hand and the Seal of the Court affixed at my office this June 15, 2026

Charles D. Johnson
Clerk of the Court

{SEAL}

X. Ramos

Deputy Clerk

COURT OF APPEAL, FIRST APPELLATE DISTRICT
350 MCALLISTER STREET
SAN FRANCISCO, CA 94102
DIVISION 3

Aaron Michael Stanton
Shute, Mihaly & Weinberger LLP
396 Hayes St
San Francisco, CA 94102-4421

CENTER FOR BIOLOGICAL DIVERSITY et al.,
Petitioners,
v.
PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA,
Respondent;
PACIFIC GAS AND ELECTRIC COMPANY et al.,
Real Parties in Interest.

A167721
[No County Applies] County Super. Ct. No. 2212056

* * REMITTITUR * *

I, Charles D. Johnson, Clerk of the Court of Appeal of the State of California for the First Appellate District, do hereby certify that the decision entered in the above-entitled cause on March 9, 2026 has now become final.

See decision for costs determination.

Witness my hand and the Seal of the Court affixed at my office this June 15, 2026

Charles D. Johnson
Clerk of the Court

{SEAL}

X. Ramos

Deputy Clerk

COURT OF APPEAL, FIRST APPELLATE DISTRICT
350 MCALLISTER STREET
SAN FRANCISCO, CA 94102
DIVISION 3

Roger Lin
Center for Biological Diversity
1212 Broadway, Suite 800
Oakland, CA 94612

CENTER FOR BIOLOGICAL DIVERSITY et al.,
Petitioners,
v.
PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA,
Respondent;
PACIFIC GAS AND ELECTRIC COMPANY et al.,
Real Parties in Interest.

A167721
[No County Applies] County Super. Ct. No. 2212056

* * REMITTITUR * *

I, Charles D. Johnson, Clerk of the Court of Appeal of the State of California for the First Appellate District, do hereby certify that the decision entered in the above-entitled cause on March 9, 2026 has now become final.

See decision for costs determination.

Witness my hand and the Seal of the Court affixed at my office this June 15, 2026

Charles D. Johnson
Clerk of the Court

{SEAL}

X. Ramos

Deputy Clerk

COURT OF APPEAL, FIRST APPELLATE DISTRICT
350 MCALLISTER STREET
SAN FRANCISCO, CA 94102
DIVISION 3

Anchun Jean Su
Center for Biological Diversity
1212 Broadway, Suite 800
Oakland, CA 94612

CENTER FOR BIOLOGICAL DIVERSITY et al.,
Petitioners,
v.
PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA,
Respondent;
PACIFIC GAS AND ELECTRIC COMPANY et al.,
Real Parties in Interest.

A167721
[No County Applies] County Super. Ct. No. 2212056

* * REMITTITUR * *

I, Charles D. Johnson, Clerk of the Court of Appeal of the State of California for the First Appellate District, do hereby certify that the decision entered in the above-entitled cause on March 9, 2026 has now become final.

See decision for costs determination.

Witness my hand and the Seal of the Court affixed at my office this June 15, 2026

Charles D. Johnson
Clerk of the Court

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CENTER FOR BIOLOGICAL DIVERSITY et al.,
Petitioners,
v.
PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA,
Respondent;
PACIFIC GAS AND ELECTRIC COMPANY et al.,
Real Parties in Interest.

A167721
[No County Applies] County Super. Ct. No. 2212056

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CENTER FOR BIOLOGICAL DIVERSITY et al.,
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CENTER FOR BIOLOGICAL DIVERSITY et al.,
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CENTER FOR BIOLOGICAL DIVERSITY et al.,
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CENTER FOR BIOLOGICAL DIVERSITY et al.,
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A167721
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CENTER FOR BIOLOGICAL DIVERSITY et al.,
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CENTER FOR BIOLOGICAL DIVERSITY et al.,
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Respondent;
PACIFIC GAS AND ELECTRIC COMPANY et al.,
Real Parties in Interest.

A167721
[No County Applies] County Super. Ct. No. 2212056

* * REMITTITUR * *

I, Charles D. Johnson, Clerk of the Court of Appeal of the State of California, for the First Appellate District, do hereby certify that the attached is a true and correct copy of the original opinion or decision entered in the above-entitled cause on March 9, 2026 and that this opinion has now become final.

See decision for costs determination.

Witness my hand and the Seal of the Court affixed at my office this June 15, 2026

Very truly yours,
Charles D. Johnson
Clerk of the Court

{SEAL}

X. Ramos

Deputy Clerk

Attachment 6

CBD I Decision

98 Cal.App.5th 20
Review granted. See Cal. Rules of Court 8.1105 and 8.1115
(and corresponding Comment, par. 2, concerning rule 8.1115(e)(3))
Court of Appeal, First District, Division 3, California.

CENTER FOR BIOLOGICAL DIVERSITY, INC., et al., Petitioners,

v.

PUBLIC UTILITIES COMMISSION, Respondent;

Pacific Gas and Electric Company et al., Real Parties in Interest.

A167721
|
Filed December 20, 2023
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As Modified December 21, 2023
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As Modified on Denial of Rehearing January 16, 2024

Synopsis

Background: Environmental organization and others petitioned for writ review of Public Utilities Commission's adoption of successor to net energy metering (NEM) tariff, which significantly reduced prices utilities paid for customer-generated power, contending it failed to comply with statute setting forth objectives for successor tariff.

Holdings: The Court of Appeal, Rodriguez, J., held that:

Commission was not required to consider costs and benefits of renewable energy generally when valuing energy generated and exported by consumers;

Commission's decision to base price of customer-generated energy on utilities' marginal cost of energy was reasonably related to statutory goal of equity between customers;

petitioners failed to establish benefits of increased resiliency conferred by customer-generated energy accrued to utilities or electrical system rather than to those customers;

utilities' costs under regulatory category "transmission revenue requirements" did not undermine Commission's estimate of avoided transmission costs;

reduction in financial benefit to customers with renewable energy systems did not violate statutory directive to ensure "customer-sited renewable distributed generation continues to grow sustainably";

successor tariff satisfied statutory requirement of including "specific alternatives designed for growth" of customer-generated energy among disadvantaged residential communities; and

sufficient evidence supported finding that applying successor tariff to nonresidential customers would serve statutory requirement of balancing costs and benefits to all customers and electrical system.

Affirmed.

Tucher, P.J., filed concurring opinion.

****469** (Cal.P.U.C. Dec. No. 22-12-056)

Attorneys and Law Firms

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Christine Jun Hammond and Edward Moldavsky for Respondent.

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Pacific Gas and Electric Company Law Department and Ashley E. Merlo, Irvine, for Real Party in Interest Pacific Gas and Electric Company.

San Diego Gas & Electric Company and E. Gregory Barnes, San Diego, for Real Party in Interest San Diego Gas & Electric Company.

Southern California Edison Company and Rebecca Meiers-De Pastino, Rosemead, for Real Party in Interest Southern California Edison Company.

Opinion

Rodríguez, J.

***24** For nearly 30 years, California has used a net energy metering (NEM) tariff to encourage public utility customers to install renewable energy systems (renewable systems). In practical effect, the tariff requires utilities to purchase excess electricity exported by renewable systems to the electrical grid at the price paid by a utility's customers for electricity. Utilities have long been rankled by the tariff, contending it overcompensates owners of renewable systems for their exported energy and thereby raises the cost of electricity for customers without such systems.

In 2013, the Legislature responded to these concerns by enacting Public Utilities Code section 2827.1 (undesignated statutory references are to this code), which requires the Public Utilities Commission (Commission) to adopt a successor tariff to govern utility billing of customers with renewable systems. Among other objectives, section 2827.1 requires the successor tariff to promote the continued sustainable growth of renewable power generation while balancing costs and benefits to all customers. (*Id.*, subd. (b)(1), (3), (4).) In 2022, the Commission adopted a successor tariff, which significantly reduces the price utilities pay for customer-generated power.

Petitioners Center for Biological Diversity, Inc., Environmental Working Group, and The Protect our Communities Foundation (collectively, petitioners) filed a petition for writ review of the successor tariff, ****470** contending it fails to comply with various requirements of section 2827.1. Among other claims, petitioners argue it does not take account of the social benefits of customer-generated power, improperly favors the interests of utility customers who do not own renewable systems, fails to promote sustainable growth of renewable energy, and omits alternatives to promote the growth of renewable systems among customers in disadvantaged communities.

In this writ matter, the scope of our review is "limited" (*City and County of San Francisco v. Public Utilities Com.* (1985) 39 Cal.3d 523, 530, 217 Cal.Rptr. 43, 703 P.2d 381), and there's a "strong presumption" in favor of the Commission decision's validity. (*Toward Utility Rate Normalization v. Public Utilities Com.* (1978) 22 Cal.3d 529, 537, 149 Cal.Rptr. 692, 585 P.2d 491.) Applying the applicable deferential standard of review, we conclude the successor tariff adequately serves the various—albeit sometimes inconsistent—objectives of section 2827.1 and thus affirm.

***25 BACKGROUND**

The supply of power generated by renewable systems is neither constant nor consistent. Residential solar power systems, for example, generate electricity only when the sun shines, and the amount of power they generate depends on the intensity of the sunlight. By contrast, the use of electricity by a residence with a solar power system is independent of the supply of sunlight. Such systems often produce more electricity than needed by the residence during sunny days, and they produce no power after dark — notwithstanding the residents' continuing need for electricity. Utilities remedy this imbalance. They supply supplemental electricity to customers with renewable systems when the systems do not generate sufficient power to meet the customers' needs, and the power grid accepts and uses the excess electricity available when a renewable system produces more power than needed by the generating residence.

The NEM tariff governs the way that owners of renewable systems are billed by their utility. The state's first NEM tariff was created in response to the enactment of section 2827 in 1995. (Stats. 1995, ch. 369, § 1, p. 1917.) The purpose of the legislation was to clear regulatory hurdles to utilities' purchase of excess power generated by residential solar power systems and to create a regulatory structure for that purchase. (See Assem. Com. on Utilities and Commerce, Analysis of Sen. Bill No. 656 (1995–1996 Reg. Sess.) as amended June 7, 1995, pp. 1–2 (Assembly Analysis).) The purchase of excess energy was expected to "encourage substantial private investment in renewable energy resources" by helping to defray the then-substantial costs of solar power system installation.[1] (§ 2827, subd. (a); see Assem. Analysis, at pp. 1–2.) Under the original NEM tariff (NEM 1.0), residences with solar power systems were allowed to install an electricity meter that measured the difference between the quantity of electricity supplied to the residence by the utility and the quantity of electricity supplied to the grid by the residence —thus the name, "net energy metering." (Former § 2827, subds. (c), (d).) The residence was charged only for this difference, which represented the residence's *net* use of electricity ****471** from the power grid. (*Id.*, subd. (f)(2).) By offsetting exported power against imported power, NEM 1.0 functionally required utilities to purchase excess power generated by residential solar power systems at the price paid by their customers for electricity.

Even prior to the enactment of section 2827, the proposed NEM tariff was criticized as "provid[ing] an electric ratepayer subsidy to purchasers of ***26** expensive residential photovoltaic systems." (Assem. Analysis, p. 3.) As characterized in a contemporary bill analysis, the NEM tariff's opponents argued such an approach "assumes that [exported and imported power] have the same value, when they [do] not. A kwh [kilowatt-hour of electricity] delivered to a customer is a retail commodity while a kwh sold to the utility is a wholesale commodity and the prices for the two commodities are different. Instead of netting out kilowatt hours sold, opposition believes a more accurate system would net out the relative prices of the commodities that have been exchanged." (*Ibid*.)

The 2013 enactment of section 2827.1 required the Commission to adopt a successor tariff to replace NEM 1.0. (§ 2827.1, subd. (b); Stats. 2013, ch. 611, § 11.) The Commission characterized the general purpose of the legislation as granting it "the ability to 'address current electricity rate inequities, protect low income energy users and maintain robust incentives for renewable energy investments.' " A bill analysis prepared by the Senate Rules Committee explained a more specific purpose, observing that "[a]s transmission and distribution costs are typically one-half to two-thirds of a residential customer's billing, full retail

NEM offers a substantial subsidy to NEM customers with the costs being shifted to non-NEM customers.... The Legislature has in the past justified this subsidy as it stimulates the solar industry, helps the state reach its renewable energy goals, and provides other external benefits." (Sen. Rules Com., Off. of Sen. Floor Analysis, 3d reading analysis of Assem. Bill No. 327 (2013–2014 Reg. Sess.) as amended Sept. 3, 2013, pp. 6–7.)[2] Under section 2827.1, however, "[t]he [Commission] will be required to ensure that the [successor tariff] is based on the electrical system costs and benefits received by nonparticipating customers and prevents a cost shift to non-NEM customers." (3d reading analysis, at p. 4.)

As an interim measure, the Commission adopted a revised tariff (NEM 2.0) in 2016 that sought to address some of the concerns surrounding NEM 1.0. NEM 2.0 continued to allow customers with renewable systems to offset excess electricity generated by their systems against electricity used, but these customers were charged a onetime interconnection fee and other periodic ***27** "non-bypassable" fees. It was anticipated ****472** NEM 2.0 would be subject to Commission review in or after 2019, when a more permanent replacement for NEM 1.0 would be adopted.

In 2020, the Commission initiated a proceeding to "revisit" NEM 2.0. It ultimately adopted a successor tariff—which it calls a net billing tariff—in *Decision Revising Net Energy Metering Tariff and Subtariffs* (2022) Cal. P.U.C. Dec. No. D.22-12-056 (Decision). The "foundation" for the successor tariff was the Net-Energy Metering 2.0 Lookback Study, January 21, 2021 (Lookback Study), an evaluation of NEM 2.0 by outside consultants Verdant Associates, LLC, which concluded "NEM 2.0 participants benefit from the structure, while ratepayers see increased rates." (Lookback Study, p. 1.)

Drawing on the Lookback Study, the Commission found the NEM tariff "negatively impact[s]" utility customers who do not own renewable systems, particularly low-income customers, and is not cost effective for the utilities' customers. (Decision, pp. 39, 43, 207.) The Commission reasoned the tariff allows owners of renewable systems to avoid paying their proportionate share of the "infrastructure and other service costs" associated with electrical service because these costs are "embedded in" the rates charged for electricity.[3] When owners of renewable systems reduce their purchase of electricity from the grid, they necessarily reduce their payment of these costs. (*Id.* at p. 208.) A portion of renewable system owners' share of the utilities' fixed costs is thereby shifted to customers without renewable systems. The Commission found these shifted costs to be one of three drivers of high electricity rates, along with costs of transmission and distribution and wildfire mitigation. (*Ibid.*)

In addition, the Commission was concerned NEM takes no account of the time of day and season when the owner of a solar power system imports electricity. Yet the cost of electricity varies significantly with the time of its use—peaking in late afternoon and early evening. By overriding these cost variations, NEM fails to incentivize more efficient use of power by owners of renewable systems. (Decision, pp. 217–218.) Further, the Commission concluded, by equating the prices of imported and exported electricity, NEM overcompensates owners of renewable systems for the electricity they generate, effectively paying such owners at a rate from 3.8 to 5.4 times greater than the benefit conferred on the grid by their exported power. (*Id.* at p. 216.)

Based on these and other findings, the Commission adopted the net billing tariff. The most fundamental change from a NEM tariff is that charges for ***28** electricity under the successor tariff are no longer based on the difference between the quantity of electricity imported by a customer and the quantity exported. Instead, the meter of a residence owning a renewable system will separately measure the power imported from and exported to the grid. The value of the exported and imported energy is determined independently, and customers are billed for the difference between the *value* of the power imported and exported by the residence, rather than the difference in *quantity*. (Decision, p. 237.) Imported and exported power, in other words, are no longer treated as equivalent.

Under the successor tariff, the price paid for exported power is determined by the "Avoided Cost Calculator" (calculator), ****473** an algorithm developed earlier by the Commission that aims "to determine the primary benefits of distributed energy resources [i.e., customer-generated power]."[4] (*Decision Adopting Changes to the Avoided Cost Calculator* (2022) Cal. P.U.C. Dec. No. D.22-05-002, at p. 3; Decision, p. 237.) As explained by the Commission, the calculator " 'calculates seven types of avoided costs: generation capacity, energy, transmission and distribution capacity, ancillary services, Renewable Portfolio Standard, greenhouse gas emissions, and high global warming potential gases.' ... [¶] [These] costs ... are the utilities' marginal costs of providing electric service to customers. Those costs can be avoided when the demand for energy decreases because of distributed energy resources, and are, thus, the benefits of using distributed energy resources." (Decision, p. 59.) In other words, the calculator estimates the cost to the utilities of providing an additional increment of electrical power; this is the cost "avoided" when a customer's renewable system supplies that increment. Under the successor tariff, this avoided cost is the price paid by the utilities for exported energy.

The successor tariff determines charges for imported electricity under "[h]ighly differentiated time-of-use rates" specified in the Decision. (Decision, p. 239.) By imposing time-of-use rates, the successor tariff is intended to encourage renewable system owners to purchase batteries that permit excess energy generated during times of low power demand to be stored and subsequently used by the customer or exported to the grid during times of higher demand. The use of renewable system batteries is also incentivized by the calculator, which grants a higher price for energy exported during periods of peak demand. The successor tariff also includes a so-called "glide path," a five-year transition period during which more generous terms are granted to the owners of renewable systems. (*Id.* at p. 237.)

***29** When fully implemented, these changes will cause a noticeable increase in the energy bills of utility customers who own renewable systems. Peak period electricity rates can be more than double the price during morning and nighttime hours, and the price paid for exported power determined by the calculator is typically less than one-third of the retail price. Despite these changes, the Commission concluded the purchaser of a residential solar power system will still see energy bill savings of $100 a month, which will repay the cost of system installation within nine years.

Petitioners sought leave to challenge the Decision by filing a petition for a writ of review in this court. (§ 1756, subd. (a).) We granted the petition. Answers in support of the successor tariff were filed by the Commission and real parties in interest.

DISCUSSION

"[T]he PUC is not an ordinary administrative agency, but a constitutional body with broad legislative and judicial powers." (*Wise v. Pacific Gas & Electric Co.* (1999) 77 Cal.App.4th 287, 300, 91 Cal.Rptr.2d 479.) The scope of our review of its decision is "limited." (*City and County of San Francisco v. Public Utilities Com.*, *supra*, 39 Cal.3d at p. 530, 217 Cal.Rptr. 43, 703 P.2d 381.) "There is a strong presumption favoring the validity of a Commission decision." (*Toward Utility Rate Normalization v. Public Utilities Com.*, *supra*, 22 Cal.3d at p. 537, 149 Cal.Rptr. 692, 585 P.2d 491.) Under section 1757, judicial review of a Commission decision ****474** "shall not extend further than to determine, on the basis of the entire record ... whether" the Commission "acted without, or in excess of, its powers or jurisdiction"; failed to proceed "in the manner required by law"; rendered a decision unsupported by the findings; made findings unsupported by substantial evidence; rendered a decision that "was procured by fraud or was an abuse of discretion"; or issued an order or decision that violates the petitioner's state or federal constitutional rights. (*Id.*, subd. (a)(1)–(6).) "We do not conduct a trial de novo, nor weigh nor exercise independent judgment on the evidence. [Citations.] The Commission's findings of fact ' "are not open to attack for insufficiency if they are supported by any reasonable construction of the evidence." ' " (*Southern California Gas Co. v. Public Utilities Com.* (2023) 87 Cal.App.5th 324, 339, 303 Cal.Rptr.3d 500 (*SoCalGas*).)

When, as here, the Commission is charged with interpreting a provision of the Public Utilities Code, "[w]e give great weight to the Commission's interpretation." (*SoCalGas*, *supra*, 87 Cal.App.5th at p. 339, 303 Cal.Rptr.3d 500.) We will disturb the Commission's interpretation only if " 'it fails to bear a reasonable relation to statutory purposes and language.' " (*Southern California Edison Co. v. Peevey* (2003) 31 Cal.4th 781, 796, 3 Cal.Rptr.3d 703, 74 P.3d 795.) ***30** "This judicial deference acknowledges a role for the Commission's administrative expertise: '[W]e give presumptive value to a public agency's interpretation of a statute within its administrative jurisdiction because the agency may have "special familiarity with satellite legal and regulatory issues," leading to expertise expressed in its interpretation of the statute.' " (*Pacific Gas & Electric Co. v. Public Utilities Com.* (2015) 237 Cal.App.4th 812, 839, 188 Cal.Rptr.3d 374.)

Section 2827.1, the statute at issue here, requires the Commission to "develop a standard contract or tariff, which may include net energy metering," for utility customers owning noncommercial renewable systems. (§ 2827.1, subds. (a), (b); see § 2827, subd. (b)(4)(A).) The statute sets out seven requirements for the tariff. (§ 2827.1, subd. (b)(1)–(7).) As relevant here, the successor tariff "shall do all of the following" (*id.*, subd. (b)): (1) ensure renewable system installation "continues to grow sustainably" (*id.*, subd. (b)(1)); (2) include "specific alternatives designed for growth among residential customers in disadvantaged communities" (*ibid*); (3) be based on "the costs and benefits of the renewable electrical generation facility" (*id.*, subd. (b)(3)); and (4) equalize the "total benefits" and "total costs" of the tariff "to all customers and the electrical system" (*id.*, subd. (b)(4)).

I.

Petitioners first contend the successor tariff fails to satisfy the requirement of section 2827.1 that it balance various costs and benefits because the calculator fails to take account of all the benefits of renewable energy, particularly those conferred on society generally. In particular, petitioners contend the calculator fails to take account of (1) the value of resiliency, (2) avoided out-of-state methane leakage, (3) avoided land use impacts, and (4) certain avoided transmission costs. In addition, petitioners contend the Commission "improperly dismisse[d]" an alternative test for determining the benefits of distributed power, the "Societal Cost Test."

Section 2827.1, subdivision (b), contains several requirements. One subdivisions, (b)(3) and (4), requires the Commission to consider "the costs and benefits of the renewable electrical generation facility" and to ensure "the total ****475** benefits of the [successor tariff] to all customers and the electrical system are approximately equal to the total costs." (*Ibid.*) Petitioners argue the use of the definite article "the" in the phrase "*the* costs and benefits" in subdivision (b)(3) "means that the clause refers to *all* costs and benefits.... [¶] The failure to properly account for the costs and benefits of distributed generation ... constitutes legal error requiring that the Decision be set aside."

Although petitioners characterize their argument as challenging the omission of various purported benefits of renewable energy, it is more generally ***31** an attack on the Commission's approach to valuing exported energy from renewable systems by means of the calculator. As previously explained, the Commission chose—through the calculator—to value exported energy by the marginal cost to utilities of providing power. This marginal cost, in turn, is measured by the various costs the utilities need not incur because of their use of exported energy. (Decision, p. 59.) Petitioners effectively argue section 2827.1 requires the Commission to take all of the benefits of renewable energy generation into account when valuing exported energy, rather than merely the economic costs avoided by the use of customer-generated power.

We must give "great weight" to the Commission's interpretation of provisions of the Public Utilities Code. (*SoCalGas*, *supra*, 87 Cal.App.5th at p. 339, 303 Cal.Rptr.3d 500.) In light of the Commission's expertise in energy regulation, we are permitted to overturn its interpretation of a statutory mandate only if the interpretation " 'fails to bear a reasonable relation to statutory purposes and language.' " (*Southern California Edison Co. v. Peevey*, *supra*, 31 Cal.4th at p. 796, 3 Cal.Rptr.3d 703, 74 P.3d 795.) Further, "[t]here is a strong presumption favoring the validity of a Commission decision." (*Toward Utility Rate Normalization v. Public Utilities Com.*, *supra*, 22 Cal.3d at p. 537, 149 Cal.Rptr. 692, 585 P.2d 491.) This uniquely deferential standard of review is accorded the Commission because of its status as " 'a constitutional body with broad legislative and judicial powers.' " (*Kerman Telephone Co. v. Public Utilities Com.* (2023) 94 Cal.App.5th 920, 931, 312 Cal.Rptr.3d 559.)

We conclude the successor tariff adopted by the Commission bears a reasonable relation to the statutory purposes and language. Petitioners argue the statute requires the Commission to "properly account for the costs and benefits of distributed generation" in formulating the successor tariff. Notably, neither section 2827.1, subdivision (b)(3) nor subdivision (b)(4) refers to the costs and benefits of "distributed generation." Subdivision (b)(3) requires the Commission to base the successor tariff on "the costs and benefits of the renewable electrical generation facility." The meaning of this subdivision is not wholly clear; its reference to the costs and benefits of "the ... facility" appears to require the tariff to be based on the costs and benefits of renewable systems. In any event, the language certainly does not compel the Commission to consider the costs and benefits of renewable energy generally.

Similarly, section 2827.1, subdivision (b)(4) requires the Commission to ensure "the total benefits of the standard contract or tariff to all customers and the electrical system are approximately equal to the total costs." Again, there is no reference to the costs and benefits of distributed generation. Instead, the statute speaks of the costs and benefits of the "standard contract or tariff"—that is, the successor tariff—to "all customers." In accord, the ****476** Commission strove to ensure the successor tariff is fair to both owners and nonowners of renewable systems. Although some of the benefits of renewable energy ***32** presumably factor into that calculus—and certainly did factor into the Commission's formulation of the calculator—we find nothing in the statutory text that indisputably requires the Commission to take account of "*all* costs and benefits" of "distributed renewable generation."

The Commission's decision to base the price of exported energy on the marginal cost of energy to the utilities serves this goal of equity between generating and nongenerating customers. Generating customers are compensated for the economic benefit they confer on the grid—and thereby on their fellow utility customers—by supplying excess energy. On the other side of the ledger, nongenerating utility customers are no longer required to subsidize generating customers by purchasing excess energy at a premium above its economic value. As directed by the Legislature, the calculator compensates generators for the benefits they confer on "all customers and the electrical system" (§ 2827.1, subd. (b) (4)) by supplying excess energy without burdening ratepayers with additional costs—such as compensating system owners for the purported benefits conferred on society at large, as advocated by petitioners.[5]

The Commission presumably could have elected to adopt some version of petitioners' approach by compensating customers who export energy to the grid for the social, as well as economic, benefits conferred by the distributed generation of power. Indeed, the Commission's counsel conceded as much at oral argument. But of course, it's a zero-sum game; such an approach necessarily would have lessened the extent to which the successor tariff reduced the cost shift targeted by section 2827.1. By requiring utilities to factor social benefits into the price paid for exported power, petitioners' approach would effectively require customers who do not own renewable systems to compensate owners of the systems for the value of these social benefits, as well as for the economic benefits conferred on the grid. It can be debated whether this approach would better satisfy the Legislature's command to balance the equities among all customers, but we needn't choose a side. Plainly, the successor tariff adopted by the Commission bears a reasonable relation to statutory purposes and language.

Accordingly, we find no error in the Commission's decision to restrict the calculator to economic benefits conferred on the grid by exported power. ***33** Because two of the specific benefits cited by petitioners are manifestly social—the avoidance of methane leakage in other states that occurs when the utilities' need for out-of-state natural gas is reduced by the export of excess power and the reduced use of land for utility infrastructure made possible by distributed generation—they need not be discussed further. Nor did the Commission err by selecting an approach that excluded the two other benefits cited by petitioners, nor by deciding not to use the Societal Cost Test.

****477** Petitioners first contend the Commission erred in failing to give renewable system owners credit for the "benefits of increased resiliency—that is, the ability to maintain power during a blackout or other grid disruption—and reliability conferred by distributed renewable generation." The Commission considered and rejected the suggestion that the calculator, in valuing excess power, should take account of the purported increased resilience of the energy grid afforded by renewable energy. The Commission explained proponents had not provided "convincing evidence" the benefits of resiliency accrued to the grid, rather than to the owners of renewable systems. This is a finding of fact we must accept if supported " ' "by any reasonable construction of the evidence." ' " (*SoCalGas*, *supra*, 87 Cal.App.5th at p. 339, 303 Cal.Rptr.3d 500.) We find no reason to question the Commission's conclusion. Although petitioners claim the benefits of resiliency accrue "not just to individual participants," the only examples they cite are the type of owner benefits to which the Commission referred: the ability of a renewable system owner to generate power during a heat wave, system owners' avoidance of food spoilage due to loss of refrigeration, and the ability of households with a renewable system to participate in educational activities during a power outage. Because these benefits are not conferred on utilities or the electrical system from the export of excess energy, but instead are benefits realized by generating customers from their installation of a renewable system, there was no statutory basis compelling their incorporation into the calculator.

Petitioners also contend the calculator fails to take full account of the transmission costs avoided because of exported energy. For the three major public utilities, the calculator projects a total expenditure of over $481 million for transmission costs during the period 2021–2025. A Commission report in the record, however, states that a regulatory category called "transmission revenue requirements" for the three utilities exceeded $4 billion in 2021. Characterizing the latter figure as "actual transmission spending," petitioners argue the real avoided transmission costs must be much greater than accounted for in the calculator. The calculator does not, however, include all "actual transmission spending." Rather, it includes only transmission spending that is avoided—that is, rendered unnecessary—by the export of electricity by owners of renewable systems. Petitioners make no attempt to demonstrate that the transmission revenue requirements listed in the report represent avoided costs. Moreover, an examination of the Commission report ***34** makes clear that the category sweeps much broader than avoided transmission costs, including, for example, "wildfire mitigation work, including enhanced inspections and vegetation management efforts." These are the type of ordinary overhead costs that are unaffected by the export of energy from renewable systems. Given the uncertain relationship between transmission revenue requirements and avoided transmission costs, petitioners' argument fails to convince that the calculator's estimate of avoided transmission costs is not supported by substantial evidence.

Petitioners also quibble with the Commission's accounting for avoided transmission costs in the calculator, citing various items of evidence in the record to argue transmission costs avoided by use of exported energy are greater than the value assigned in the calculator. Having reviewed the arguments, we are not persuaded the Commission's chosen value is not supported by substantial evidence.

Finally, petitioners contend the Commission erred in failing to adopt the ****478** Societal Cost Test—an evaluative tool under development by Commission—as a measure of the benefits of renewable energy use. The Commission rejected a request to use the test in connection with the successor tariff as "premature because the evaluation to determine the final details of the test has not been completed." (Decision, p. 66.) Contrary to petitioners' claim, there was nothing "improper[ ]" in the Commission's refusal to use a test that was not fully developed. (Of course, the Commission might revisit the issue if and when it deems the Societal Cost Test fully developed.) To the extent petitioners are arguing more generally that the Commission erred in basing the successor tariff on the costs and benefits of renewable power to generators and ratepayers, rather than the costs and benefits to society at large, we find the Commission's approach to bear a reasonable relation to its statutory mandate. Our standard of review allows for no further inquiry.[6]

II.

Petitioners next contend the Decision fails to properly account for the costs of renewable energy because it treats reduced energy usage by owners of renewable systems as a cost rather than a benefit. The argument arises in the context of the successor tariff's attempt to address the long-standing criticism that the NEM tariff permits owners of renewable systems to shift a disproportionate share of the fixed costs of energy supply to customers who lack such ***35** systems. The shift occurs because the utilities' fixed costs are recovered through the rates charged for energy use. Every utility customer pays a portion of the fixed costs through their monthly bill, with the amount of the payment proportional to the amount of energy the customer uses. To the extent self-generated power reduces owners' use of energy from the grid, these customers necessarily reduce their payment of the utilities' fixed costs; the utilities' remaining customers must collectively pay the portion avoided by renewable system owners. The NEM tariff magnifies this effect by permitting renewable system owners to offset their exported energy against imported energy, thereby *further* reducing their purchase of energy. As noted, the Legislature anticipated in enacting section 2827.1 that the successor tariff would mitigate this shift, and the statute's instruction in subdivision (b)(4) to equalize costs and benefits of the *successor tariff* to all customers effectuates that intent.

Petitioners take issue with the Decision's discussion of the extent to which the adoption of distributed energy shifts utility costs to nonowners. Petitioners contend the Commission should have treated the reduction in energy purchases as a benefit of renewable energy—rather than a cost—because reduced demand for utility-generated energy represents a social good. They point out that customers' efforts to reduce energy consumption through conservation are not treated as a cost, even though these reductions similarly result in reduced purchases of energy from the grid, thereby shifting costs to those who do not conserve.

Petitioners' arguments about the proper treatment of reduced energy use ****479** are legally immaterial because they are not pertinent to the successor tariff. Contrary to petitioners' claim, the successor tariff does not charge, or otherwise penalize, renewable system owners when they reduce their use of imported electricity by substituting self-generated power. Owners are billed only for the energy they actually import, regardless of the degree to which they reduce their use of imported energy by generating power. In this way, the successor tariff makes no attempt to address any shift of costs that results solely from the reduction in renewable system owners' use of imported energy. Rather, it remedies only the cost shift that occurs when the NEM tariff permits renewable system owners to avoid paying for imported energy by offsetting exported energy against it. Because this approach is consistent with the statutory language and clearly serves the statutory purpose of equalizing the successor tariff's costs and benefits to all customers, it provides no basis for challenging the Decision.

With this understanding of the role of cost shift in the successor tariff, it is clear petitioners' argument regarding energy conservation misses the point. It ***36** is true, as petitioners contend, that customers who do not own renewable systems are not penalized when they reduce their purchases of energy through conservation. But owners of renewable systems are not penalized when they reduce their purchases of energy either—whether those reductions result from conservation or energy generation. There is no inconsistency in the tariff's treatment of reduced energy consumption by owners and nonowners.

Petitioners also argue the utilities' charges for electricity imported by owners of renewable systems should be based on the actual cost of serving such customers, rather than on ordinary service rates. Although this was presumably a viable option for the Commission to consider, it was by no means required by the statutory language. The Commission rejected the suggestion as inconsistent with prior precedent. Because the Commission's chosen approach represents a proper application of the statutory language, our standard of review does not permit the type of regulatory second-guessing petitioners' advocate.

III.

Petitioners contend the Decision's "focus on addressing the purported cost shift" improperly placed the interests of customers who do not own renewable systems over "cost-effectiveness to the electrical system as a whole." According to petitioners, section 2827.1, subdivision (b)(4), which requires the Commission to "[e]nsure that the total benefits of the [successor tariff] to all customers and the electrical system are approximately equal to the total costs," requires the successor tariff to be premised on "cost-effectiveness for the system as a whole, not effects on one ratepayer group."

We find no error in the Commission's interpretation of its statutory mandate. Contrary to petitioners' characterization, the Commission's decision to reduce the subsidy provided to renewable system owners did not constitute an improper focus on one ratepayer group. The statute directs the Commission to ensure the costs and benefits of the successor tariff to all customers and the electrical system are approximately equal. The implication of that language, honored by the Commission in formulating the successor tariff, is to ensure the successor tariff does not grant unwarranted benefits or impose unwarranted costs on any particular group of ratepayers.

In evaluating the successor tariff's satisfaction of that requirement, it is important to remember the successor tariff was formulated ****480** in the shadow of the NEM tariff, which is generally recognized as granting an economically unwarranted subsidy to owners of renewable systems by shifting a disproportionate share of the utilities' fixed costs to nonowners. The successor tariff's reduction of the benefits to system owners—decried by petitioners as a focus ***37** on the interests of nonowners—was inevitable because the statutory command to equalize the costs and benefits of the successor tariff required reducing the subsidy granted to renewable system owners by NEM 1.0 and NEM 2.0. Even if this is characterized as a "focus" on the interests of nonowners, it was not improper. It occurred only because the NEM tariffs favored renewable system owners.

In short, although one of the primary differences between NEM 2.0 and the successor tariff was a mitigation of the cost shift imposed by a NEM tariff, that does not mean the Commission placed the interests of nonowners over those of system owners or the entire electrical system. On the contrary, the "primary test" (Decision, p. 65) used by the Commission to evaluate the cost-effectiveness of existing and proposed tariffs, the "Total Resource Cost" (TRC) test, considered the costs to the system as a whole. (Decision, pp. 14, 62–63 ["the TRC test has the ability to indicate whether a demand side program is cost-effective to the grid relative to other resource options"].) The Commission simply concluded accomplishing the directive of section 2827.1, subdivision (b)(4) to equalize costs and benefits both to all customers and to the electrical system required reducing the costs disproportionately shifted to nonowners by the NEM tariff. This was a reasonable and proper interpretation of the statute.

IV.

Petitioners argue the Decision fails to satisfy the directive of section 2827.1, subdivision (b)(1), that the successor tariff "ensure[ ] that customer-sited renewable distributed generation continues to grow sustainably." Petitioners point out the successor tariff "is specifically designed to decrease bill savings and increase payback periods" for renewable systems, thereby making the systems less financially attractive. Petitioners also note similar efforts to reduce the financial advantages of renewable systems in other states have led to a substantial decline in the rate of installation of renewable systems.

There are two answers to petitioners' contention. First, the directive of subdivision (b)(1) is one of several requirements imposed on the successor tariff by section 2827.1. The Commission is directed by the statute to "do all of the following" (§ 2827.1, subd. (b)), leaving the Commission to decide how best to accomplish the seven aims articulated by the Legislature. To the extent those objectives are in tension, it was left to the Commission to decide how to satisfy the conflicting demands. As the Commission observed, "[i]t is the Commission's responsibility to balance the multiple and, sometimes, conflicting requirements of the statute." (Decision, p. 108.) In adopting the successor tariff, the Commission affirmed it intended to "balance the multiple ***38** requirements of the Public Utilities Code and the needs of the electric grid, the environment, participating ratepayers, as well as all other ratepayers." (*Id.* at p. 2.)

At the time section 2827.1 was enacted, the NEM tariff had long been recognized to confer a financial benefit on owners of renewable systems and impose a disproportionate burden on nonowners. Remedying this inequity necessarily required the Commission to adopt a successor tariff making the installation of renewable systems less financially attractive to ****481** utility customers.[7] Subdivision (b)(1) cannot be interpreted, as petitioners insist, to require the successor tariff to preserve the financial benefit conferred on system owners by a NEM tariff. When it directed the Commission to devise a successor tariff equalizing the treatment of owners and nonowners, the Legislature was aware the successor tariff would make renewable systems less remunerative. Necessarily, the Commission's task was not to preserve existing advantages for owners of the NEM tariff, but to reduce those advantages without halting the adoption of renewable systems. The mere fact that the successor tariff reduces the financial advantages of renewable system installation does not alone place it in violation of section 2827.1.

Petitioners argue the Commission was not empowered to balance the demands of the statute's potentially conflicting requirements because the Legislature directed the Commission to "do all of the following." (§ 2827.1, subd. (b).) The Legislature, of course, could direct the Commission to have its cake and eat it too; regrettably, the Commission has no such power. The statute's instruction to do all of the following must be understood as requiring the Commission to take into consideration all of the listed objectives in formulating the successor tariff. To the extent those objectives are in tension, it was for the Commission to decide how best to balance the demands. We are not persuaded the Commission's decision in this respect constituted an abuse of its discretion.

Second, petitioners' argument is based on a misreading of the language of section 2827.1, subdivision (b)(1). Petitioners assert "continue" means " 'to maintain without interruption a condition, course, or action' " and argue, based on this definition, "the Legislature directed that any successor tariff may not materially reduce the continued uptake of" renewable systems. Subdivision (b)(1), however, requires continued "growth" of renewable energy—that is, continued installation of new renewable systems. It does not require continued growth *at the same pace*. That the rate of adoption of ***39** renewable systems will slow under the successor tariff does not mean adoption will cease. Rather, it will simply grow more slowly than it would have under a NEM tariff.

As noted, we assume the Legislature understood its instruction to reduce the inequity of the NEM tariff would result in a successor tariff less advantageous to renewable system owners. Thus, section 2827.1, subdivision (b)(1) was presumably intended to ensure the successor tariff is not so financially disadvantageous as to make installation of such systems uneconomic. The successor tariff satisfies that requirement. After its implementation, customers who install a renewable system will recover their investment within nine years; after that time, owners will see an energy cost savings for the remaining life of the system. That financial incentive, combined with the environmental benefits of renewable energy, presumably will ensure the continued growth of renewable energy, as required by subdivision (b)(1).

V.

Petitioners next contend the successor tariff fails to "include specific alternatives designed for growth among residential customers in disadvantaged ****482** communities," as required by section 2827.1, subdivision (b)(1). Not so.

The Commission designed the successor tariff to satisfy this requirement in two ways. First, the Lookback Study concluded low-income customers were less likely to install renewable systems not only because of the upfront cost of such systems, but also because such customers also received lower bill savings, contributing to a longer payback period. To mitigate this disincentive, low-income and other disadvantaged customers are eligible under the successor tariff to receive a higher rate of compensation for energy exported to the grid, a benefit designed to ensure they can pay back the upfront costs of a system within nine years. (Decision, pp. 175–176, 238.) Second, the successor tariff eliminates a discount applied by NEM 2.0 to the compensation paid for exported energy to customers participating in two programs—California Alternate Rates for Energy and Family Electric Rate Assistance—providing discounted energy rates to low-income customers. (*Id.* at p. 176.)

In addition to these provisions of the successor tariff, the Commission had earlier adopted a series of three programs to make renewable systems more accessible to low-income customers. (See *Alternate Decision Adopting Alternatives to Promote Solar Distributed Generation in Disadvantaged Communities* (2018) Cal. P.U.C. Dec. No. D.18-06-027, pp. 2–4.) The disadvantaged communities—single-family solar homes program, for example, subsidizes the purchase of renewable systems by low-income homeowners. (***40** *Id.* at pp. 2–3, 27–30.) The other two programs provide low-income customers with access to renewable energy and bill discounts. (*Id*. at pp. 3–4.) The Commission expressly adopted these programs, which will be funded through utility revenues, to satisfy the statutory requirement. (*Id*. at pp. 6, 30–31, A-1.)

Petitioners fault the Commission's efforts to stimulate adoption of renewable systems in disadvantaged communities because (1) the Commission failed to adopt a proposed "Equity Fund," (2) the Commission's calculation of the higher rate for exported energy was based on an underestimate of the cost of solar installation for low-income households, and (3) the Commission improperly deferred consideration of the benefits of renewable systems that particularly accrue to low-income customers. Before addressing these arguments, we note the Commission's compliance with section 2827.1, subdivision (b)(1) must be measured by what it did rather than by what it chose not to do. The fact that, as petitioners argue, these efforts might be imperfect does not demonstrate the Commission failed to comply with the Legislature's direction. As noted, the Commission modified the tariff applicable to low-income customers to increase the compensation for exported energy, thereby making renewable systems more financially attractive. Further, it adopted three programs that directly subsidize the cost of solar installation or provide access to renewable energy for such customers. All of these constitute "specific alternatives designed for growth among residential customers in disadvantaged communities." Petitioners fail to demonstrate (or even try to demonstrate) the benefits provided by these efforts are illusory or so inadequate as to disqualify their consideration. On the contrary, we conclude these efforts bear a reasonable relation to statutory purposes and language and satisfy the requirements of section 2827.1, subdivision (b)(1).

Petitioners contend these earlier-adopted programs cannot be considered because the requirements of section 2827.1 apply only to the successor tariff. Necessarily, ****483** however, the successor tariff itself can be of limited use in meeting the goal of subdivision (b)(1) to stimulate "growth [of renewable energy adoption] among residential customers in disadvantaged communities." Any benefits of the successor tariff accrue only after a system is installed; the tariff cannot directly overcome the primary barrier to the growth sought by the statute—the initial cost of solar system installation. Given this limitation, we find the Commission's conclusion that subdivision (b)(1) can be satisfied in part by programs subsidizing system installation and promoting renewable energy use among low-income customers to bear a reasonable relation to the statutory purposes and language because these programs provide access to the successor tariff for low-income customers.

Again, we find petitioners' arguments about the inadequacy of the Commission's efforts to make renewable system adoption more affordable to be ***41** largely beside the point. Petitioners first argue the Commission should have created an "Equity Fund," which would use a billing surcharge imposed through the successor tariff to assist low-income customers in acquiring renewable systems. The Commission decided against such a fund because the Legislature enacted, shortly before issuance of the Decision, Assembly Bill No. 209 (2021–2022 Reg. Sess.), which created a state program to provide incentives for the installation of solar generation and storage systems. (§ 379.10, subds. (a), (b); Decision, pp. 178–179.) At the time, 70 percent of the funds appropriated for this program were earmarked for low-income residents; an amendment of section 379.10 enacted after issuance of the Decision now appears to require all of the funds in the new program to be so allocated. (Former § 379.10, subd. (a); Stats. 2023, ch. 52, § 6.) Although petitioners fault the Commission's rationale in deciding against the equity fund, they cite no statutory authority requiring its adoption. Further, of course, the programs adopted separately by the Commission serve the same purpose as the suggested equity fund. Because, as noted, the Commission's efforts to satisfy section 2827.1, subdivision (b)(1) are sufficient, it did not err in electing not to implement an equity fund.

Second, petitioners contend the augmented rate for exported energy applicable to disadvantaged customers will not promote their adoption of renewable systems because the Commission did not accurately estimate the cost of solar installation. As a result, they argue, the additional payments will not pay back the cost of installation within the intended nine years. Even if this criticism was well founded, the augmented rate was only one of the methods by which the Commission sought to satisfy section 2827.1, subdivision (b)(1). Its incentives for solar growth must be considered together with those other methods. Further, the augmented rate, even if insufficient to recoup installation costs within nine years, will still provide an incentive for system installation. Finally, the Commission expressly considered petitioners' argument and rejected it, concluding the higher cost figure was derived from a materially different program. (Decision, pp. 83–84.) This factual finding is supported by substantial evidence.

Third, petitioners contend the Commission improperly deferred consideration of promoting the installation of solar systems serving entire communities. Assuming, as petitioners argue, that "[w]ell-designed community solar and storage programs could realize considerable grid and ratepayer benefits," that alone did not mandate their adoption. Section 2827.1, subdivision (b)(1) does not require the Commission to adopt any particular ****484** "specific alternatives" to ensure growth of renewable energy in disadvantaged communities, and the steps it has taken are adequate to meet its statutory obligation. The Commission's explanation that consideration of community solar is "premature" because such programs are the subject of other ongoing Commission proceedings fully justifies their omission. (Decision, p. 188.)

***42 VI.**

Petitioners finally argue the modifications of the NEM tariff for nonresidential customers effected in the successor tariff are "based on erroneous and unsupported findings." We disagree.

The Lookback Study found, based on the TRC test, that the NEM 2.0 tariff was cost effective for nonresidential customers.[8] The tariff's average TRC score was 1.25, where a score of 1.00 represents no net cost or benefit. Yet the Commission declined to adopt this conclusion because the NEM tariff for nonresidential customers performed poorly on the “Ratepayer Impact Measure” (RIM) test, earning an average score of .57, suggesting costs predominated over benefits. That test “is useful for examining whether disproportionate impacts occur on non-participants” (Decision, p. 50), a measure of cost-effectiveness particularly pertinent to the requirement of section 2827.1, subdivision (b)(4) that the successor tariff should balance costs and benefits for all customers. Citing its conclusion that “the use of retail rates as a foundation for compensating customers for exporting electricity to the grid [has] no connection to the actual costs of the exports or the benefits the exported electricity provide to customers and the grid,” the Commission elected to use the calculator to determine the price paid to nonresidential customers for exported energy, just as it did for residential customers. (Decision, pp. 107–108.) In effect, the Commission applied the successor tariff to both residential and nonresidential customers, although nonresidential customers were not afforded the benefit of the phase-in granted to residential customers. (*Id*. at p. 238.)

Petitioners fault the Commission's conclusion that NEM 2.0 is not cost effective for nonresidential customers. Petitioners note the Commission designated the TRC test as the primary test to determine the cost effectiveness of the successor tariff for the electrical system. Accordingly, they argue, the Commission committed “legal error” when it “determined the NEM tariff for [nonresidential] sectors is not cost-effective based on its RIM test scores *alone*.”

By treating cost effectiveness as a single concept, petitioners distort the nature of the Decision. As petitioners argue, the TRC test is a measure of the cost-effectiveness of the tariff *for the electrical system*. Section 2827.1, subdivision (b)(4), however, does not require the successor tariff to be cost effective only for the electrical system. Instead, it requires the Commission to ensure the costs and benefits of the successor tariff “to all customers and the ***43** electrical system” are approximately equal. As the Commission found, the RIM test is a better measure of cost effectiveness for all customers because it measures the impact of a policy on nonparticipants. The Commission was therefore faced with test results suggesting that, while the nonresidential NEM 2.0 tariff conferred a fairly small net benefit on the ****485** electrical system, it failed, to a substantial degree, to equalize the costs and benefits among customers. As discussed above, it was for the Commission to balance the various legislative objectives expressed in section 2827.1. We find no abuse of discretion, and certainly no legal error, in the Commission's decision to strike a balance in favor of rectifying a substantial inequity among its customers.[9]

VII.

In section 2827.1, the Legislature specified several general objectives for a successor to the NEM tariff, leaving the Commission —in the exercise of its institutional expertise—to strike an appropriate balance among the many important—but sometimes conflicting—public policy interests. In reviewing the Decision, we may neither second-guess the Commission's balancing of those interests nor substitute our own view of the optimal policy outcome. To the contrary, in recognition of the Commission's unusual standing as a constitutional body, our review is limited to ensuring that the successor tariff bears a reasonable relation to the statute's purpose and language and that the Commission did not otherwise err under section 1757. For the reasons discussed above, this deferential standard of review leaves no basis for faulting the Commission's work. In reaching this conclusion, we mean to express no views about the Commission's resolution of the policy issues implicated, except that the Decision is properly sensitive to—and consistent with—the objectives established by the Legislature.

DISPOSITION

The decision of the Commission is affirmed. The Commission and real parties in interest shall recover their costs in this proceeding.

Tucher, P. J., and Petrou, J., concurred

Concur by: Tucher, P.J.Concur TUCHER, P. J., Concurring.
With the following additional observations, I concur in the court's opinion.

***44** The Legislature established, as the first requirement for the successor tariff, that it "*ensure[ ]* that customer-sited renewable distributed generation *continues to grow* sustainably." (Pub. Util. Code, § 2827.1, subd. (b)(1), italics added.) If petitioners' worst fears are realized, and the successor tariff devastates solar adoption rates instead of fostering sustainable growth, the Public Utilities Commission (Commission) will have to course correct when it revisits its work. The Legislature intended for the Commission to "revise the ... tariff as appropriate to achieve [statutory] objectives" (§ 2827.1, subd. (b)), and the Commission has already committed to studying the performance of the successor tariff after its first three years.

When the Commission undertakes this study, it may choose to look closely at its societal cost test (Societal Cost Test) or at some other measure that fully accounts for the environmental detriments of conventional electricity generation. In adopting the successor tariff, the Commission determined it was "premature" to apply the Societal Cost Test, as the test was still under development. ****486** But when complete, that test may turn out to be a more refined and appropriate measure of the total benefits of customer-sited generation than the avoided cost calculator that the successor tariff currently incorporates. Section 2827.1 allows for a tariff that captures the noneconomic benefits of renewable electricity. The Commission understands this, as evidenced by its actions in adopting and defending NEM 2.0 and its counsel's response to questions at oral argument. And once a tariff is able to capture the full spectrum of costs avoided with renewable energy, it would seem optimal that it do so.

But the issue before the court today is, as the majority notes, not whether the Commission has chosen the best possible tariff. Rather, we are asked simply to decide whether the Commission has chosen a course that complies with the law and is reasonably supported by the evidence. (See maj. opn. *ante*, at pp. 29–30..).) Given the limited scope of our review, I agree that the decision of the Commission must be affirmed.

On December 21, 2023, the opinion was modified.

A petition for a rehearing was denied January 16, 2024, and the opinion was modified to read as printed above. Petitioners' petition for review by the Supreme Court was granted April 10, 2024, S283614.

All Citations

98 Cal.App.5th 20, 316 Cal.Rptr.3d 464, 23 Cal. Daily Op. Serv. 11,470, 2023 Daily Journal D.A.R. 11,904

Footnotes

1 Originally, the NEM tariff required by section 2827 applied only to solar power systems operated by a utility's residential customers. (Former § 2827, subd. (b).) The tariff now applies to any "renewable electrical generation facility" with a total capacity of less than one megawatt operated by a utility customer, regardless of the way the power is generated or the nature of the customer. (§§ 2827, subd. (b)(4)(A); 2827.1, subd. (a).)

2 Petitioners and real parties in interest Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company have collectively filed three requests for judicial notice of various Commission decisions, legislative history materials, and other state agency documents. Finding such materials to be appropriate objects of judicial notice (Evid. Code, § 452, subd. (c)), we grant the requests. We grant judicial notice of exhibit 2 to the Commission's request for judicial notice for the same reason.

Given the extensive record of exhibits lodged by petitioners, we declined to require the Commission to file an administrative record but permitted the parties to request supplementation. We grant the Commission's request to supplement the administrative record with exhibit 1 to its request for judicial notice. Although petitioners contend this document is not relevant, it appears to be appropriate for inclusion in the record. In granting these various requests, we do not mean to suggest a view on the relevance for our decision of any of the documents.

3 In addition to the costs of servicing customers and maintaining the power grid, these costs include funding for various public policy programs, such as those subsidizing utility service to low-income customers.

4 Customer-generated renewable energy is sometimes referred to as "distributed energy resources," presumably because the generating systems are decentralized.

5 Petitioners rely primarily on *Center for Biological Diversity v. National Highway Traffic Safety Administration* (9th Cir. 2008) 538 F.3d 1172, which holds that, when an administrative agency is directed to evaluate the costs and benefits of a regulatory action, "it cannot put a thumb on the scale by undervaluing the benefits and overvaluing the costs" of the action. (*Id*. at p. 1198.) In that case, the administrative agency was found to have "assigned no value to the most significant benefit" of the regulatory action when making its cost-benefit analysis. (*Id*. at p. 1199.) As the statute did not compel the Commission to consider societal costs and benefits, we find this case inapposite.

6 This argument is followed in petitioners' brief by an extended criticism of the Commission's use of the calculator in this context. The discussion, which mentions neither our standard of review nor the statutory language, appears to be premised on the assumption that we can reverse or modify the Decision merely because we find another approach to be preferable. We cannot.

7 Petitioners argue it was not necessary for the Commission to remedy the inequities inherent in a NEM tariff to equalize the costs and benefits because the Commission could have considered the "full"—i.e., social—benefits of renewable systems. Whatever the merits of this argument, the Commission was not obligated to adopt this approach.

8 The TRC test measures cost-effectiveness of a program for the entire electrical grid. (Decision, p. 62.)

9 Petitioners also argue nonresidential customers were required under the NEM 2.0 tariff to pay higher utility bills than the cost for the utilities to provide them service. The intended legal significance of this argument is unclear. Section 2827.1 directed the Commission to devise a successor tariff balancing costs and benefits among all customers, but it did not require the Commission to ensure no customers were charged more by the utilities than the cost to serve them.

End of Document

Attachment 7

CBD II Decision

18 Cal.5th 293
Supreme Court of California.

CENTER FOR BIOLOGICAL DIVERSITY, INC., et al., Petitioners,

v.

PUBLIC UTILITIES COMMISSION, Respondent;

Pacific Gas and Electric Company et al., Real Parties in Interest.

S283614
|
August 7, 2025
|
As Modified September 3, 2025

Synopsis

Background: Environmental and utility ratepayer advocacy groups petitioned for writ of review challenging the Public Utilities Commission's decision adopting a tariff that reduced the price utilities pay for customer-generated power, arguing the tariff was inconsistent with the Public Utilities Code. The First District Court of Appeal, Rodríguez, J., 98 Cal.App.5th 20, 316 Cal.Rptr.3d 464, granted the petition and affirmed the Commission's decision. The Supreme Court granted review.

The Supreme Court, Kruger, J., held that Court of Appeal erred by upholding Commission's decision under unduly deferential standard of review instead of applying its independent judgment; disapproving *Southern Cal. Edison Co. v. Public Utilities Com.*, 117 Cal.App.4th 1039, 12 Cal.Rptr.3d 441, *The Utility Reform Network v. Public Utilities Com.*, 166 Cal.App.4th 522, 82 Cal.Rptr.3d 791, and *Ames v. Public Utilities Com.*, 197 Cal.App.4th 1411, 128 Cal.Rptr.3d 702.

Reversed and remanded.

First Appellate District, Division Three A167721, Cal.P.U.C. Decision No. 22-12-056

Attorneys and Law Firms

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Opinion

Opinion of the Court by Kruger, J.

***298** ****30** *****266** This case concerns the degree of deference that courts should afford to the Public Utilities Commission's interpretation of the Public Utilities Code.

***299** For nearly a century, statutory law directed courts to uphold the Commission's decisions so long as the Commission had "regularly pursued its authority." (Stats. 1911, 1st Ex. Sess. 1911, ch. 14, § 67, pp. 55, 56; Stats. 1951, ch. 764, p. 2090.) During this era, we instructed that "the [C]ommission's interpretation of the Public Utilities Code should not be disturbed unless it fails to bear a reasonable relation to statutory purposes and language." (****31** *Greyhound Lines, Inc. v. Public Utilities Com.* (1968) 68 Cal.2d 406, 410–411, 67 Cal.Rptr. 97, 438 P.2d 801 (*Greyhound*).) But as the century drew to a close, the Legislature revised the law to expand judicial review of most Commission decisions. (See Stats. 1996, ch. 855, § 7, p. 4554; see *id.*, § 8, pp. 4554–4555; Stats. 1998, ch. 886, §§ 11–14.5, pp. 5808–5811; Stats. 2000, ch. 953, §§ 3–6, pp. 7021–7023.)

The question before us is whether the highly deferential approach of *Greyhound* continues to apply in cases affected by this significant legislative change. We conclude it does not. We reverse the judgment of the Court of Appeal in this matter, which relied on *Greyhound*, and remand for the court to conduct the appropriate inquiry under current law.

I.

Broadly speaking, the underlying dispute in this case concerns rooftop solar panels and other means by which utility customers can generate their own power. (See Pub. Util. Code, § 2802.) Solar panels may generate less — or more — electricity than their owners need at a particular time. At night or on a cloudy day, for example, a utility customer with solar panels may need to draw additional electricity from the power grid. On a sunny morning, by contrast, the panels may generate more electricity than the customer needs, allowing *****267** the customer to export excess energy to the grid.

Since 1995, the Legislature has required utilities to compensate “customer-generators” for the energy those customers export. (Stats. 1995, ch. 369, § 1, pp. 1917–1919.) Initially, customers could use the electricity they supplied *to* a utility to offset the amount of electricity they received *from* that utility. (*Id.*, § 1, pp. 1918–1919.) “By offsetting exported power against imported power,” this approach “functionally required utilities to purchase excess power generated by residential solar power systems at the price paid by their customers for electricity.” (*Center for Biological Diversity, Inc. v. Public Utilities Com.* (2023) 98 Cal.App.5th 20, 25, 316 Cal.Rptr.3d 464 (*Center for Biological Diversity*).) Critics argued that the approach overcompensated customer-generators, because it treated energy exported by customers as equivalent in value to energy generated and delivered on demand by utility companies — effectively shifting more of the burden of paying for utility services onto customers who lacked expensive solar power systems. (*Id.* at pp. 25–26, 316 Cal.Rptr.3d 464.)

***300** In 2013, the Legislature instructed the Commission to revisit the appropriate amount of compensation for customer-generators. (See Stats. 2013, ch. 611, § 11, pp. 5030–5031.) The resulting measure, Public Utilities Code section 2827.1 (section 2827.1), directs the Commission to set an applicable “standard contract or tariff ... for eligible customer-generators” and specifies several factors that the Commission is required to consider, including “[e]nsur[ing] that the standard contract or tariff made available to eligible customer-generators is based on the costs and benefits of the renewable electrical generation facility” and “[e]nsur[ing] that the total benefits of the standard contract or tariff to all customers and the electrical system are approximately equal to the total costs.” (*Id.*, subd. (b)(3), (4).) In response, following an interim measure, the Commission in 2022 adopted a tariff that “significantly reduces the price utilities pay for customer-generated power.” (*Center for Biological Diversity*, *supra*, 98 Cal.App.5th at p. 24, 316 Cal.Rptr.3d 464.)

Petitioners Center for Biological Diversity, Inc., Environmental Working Group, and the Protect Our Communities Foundation maintain that the Commission's tariff is inconsistent with section 2827.1. They petitioned for a writ of review in the Court of Appeal. (See Pub. Util. Code, § 1756, subd. (a); *Center for Biological Diversity*, *supra*, 98 Cal.App.5th at p. 24, 316 Cal.Rptr.3d 464.) Among other things, they argued that the Commission did not “[e]nsure that the standard contract or tariff ... is based on the costs and benefits of the renewable electrical generation facility,” as section 2827.1, subdivision (b)(3) requires, because the Commission “fail[ed] to take account of all the benefits of renewable energy, particularly those conferred on society generally” (*Center for Biological Diversity*, at p. 30, 316 Cal.Rptr.3d 464). They also argued that the Commission failed to “[e]nsure that the standard contract or tariff ... ****32** ensures that customer-sited renewable distributed generation continues to grow sustainably” and to “include specific alternatives designed for growth among residential customers in disadvantaged communities,” as section 2827.1, subdivision (b)(1) instructs. (*Center for Biological Diversity*, at pp. 37–41, 316 Cal.Rptr.3d 464.)

The Court of Appeal granted the petition for a writ of review and affirmed the decision of the Commission. (*Center for Biological Diversity*, *supra*, 98 Cal.App.5th at pp. 29, 43, 316 Cal.Rptr.3d 464.) In reviewing that decision, the court asked the question set forth in *Greyhound*: *****268** namely, whether “the Commission's interpretation” of section 2827.1 “ ‘ “fails to bear a reasonable relation to statutory purposes and language.” ’ ” (*Center for Biological Diversity*, at p. 29, 316 Cal.Rptr.3d 464.) The court upheld the Commission's decision under this “uniquely deferential standard of review.” (*Id.* at p. 31, 316 Cal.Rptr.3d 464.) The court focused its inquiry on whether statutory language “compel[led]” (*ibid.*) or “indisputably require[d]” (*id.* at p. 32, 316 Cal.Rptr.3d 464) adoption of petitioners’ position. The court stated: “To the extent petitioners are arguing ... that the Commission erred in basing the successor tariff on the costs and benefits of renewable power to generators and ***301** ratepayers, rather than the costs and benefits to society at large, we find the Commission's approach to bear a reasonable relation to its statutory mandate. Our standard of review allows for no further inquiry.” (*Id.* at p. 34, 316 Cal.Rptr.3d 464.) Similarly, in addressing petitioners’ contention that the Commission could not rely on pretariff initiatives to satisfy its obligation to “include specific alternatives designed for growth among residential customers in disadvantaged communities” (§ 2827.1, subd. (b)(1)), the court upheld the Commission's approach on the ground that it “bear[s] a reasonable relation to the statutory purposes and language” (*Center for Biological Diversity*, at p. 40, 316 Cal.Rptr.3d 464).

Petitioners sought our review. At the outset, they asked us to address the continuing vitality of the *Greyhound* framework on which the Court of Appeal's decision rested. Although they had not raised the *Greyhound* issue in their merits briefing in the

Court of Appeal, neither the Commission nor the real parties in interest have objected to our consideration of that issue. For that reason, and because the issue presents a question of law of considerable statewide importance, we granted review and will address it.

II.

A.

" ' "The [Public Utilities] [C]ommission is a state agency of constitutional origin with far-reaching duties, functions and powers. (Cal. Const., art. XII, §§ 1–6.) The Constitution confers broad authority on the commission to regulate utilities, including the power to fix rates, establish rules, hold various types of hearings, award reparation, and establish its own procedures. (*Id*., §§ 2, 4, 6.)" ' [Citation.] 'The Constitution also confers plenary power on the Legislature to "establish the manner and scope of review of commission action in a court of record" (Cal. Const., art. XII, § 5).' " (*Gantner v. PG&E Corp.* (2023) 15 Cal.5th 396, 401–402, 315 Cal.Rptr.3d 281, 538 P.3d 676.)

The relevant constitutional provisions date to October 1911, when voters passed a package of Progressive Era constitutional amendments. One of these amendments expanded the powers of the Railroad Commission (later renamed the Public Utilities Commission) to regulate public utilities. (*City of Santa Cruz v. Pacific Gas & Electric Co.* (2000) 82 Cal.App.4th 1167, 1181, 99 Cal.Rptr.2d 198; see *Independent Energy Producers Assn. v. McPherson* (2006) 38 Cal.4th 1020, 1038, 44 Cal.Rptr.3d 644, 136 P.3d 178 (*McPherson*).) After decades of agency capture had rendered the Railroad Commission ineffectual, the voters aimed to ensure the Commission had all the power necessary to perform its regulatory functions. (*McPherson,* at p. 1040, 44 Cal.Rptr.3d 644, 136 P.3d 178; see generally *id.* at pp. 1037–1042, 44 Cal.Rptr.3d 644, 136 P.3d 178.)

***302** The same year, the Legislature enacted the Public Utilities Act of 1911. The Act *****269** set out the then-Railroad Commission's authority to regulate various utilities, including water, ****33** energy, transportation, and telecommunications companies. (See Stats. 1911, 1st Ex. Sess. 1911, ch. 14, §§ 2, 31, pp. 18–22, 35.) The Act also set forth a narrow provision for judicial review of Commission decisions. Such review could be had only in the Supreme Court. Further, the Act instructed, "[t]he review shall not be extended further than to determine whether the commission has regularly pursued its authority, including a determination of whether the order or decision under review violates any right of the petitioner under the constitution of the United States or of the State of California." (Stats. 1911, 1st Ex. Sess. 1911, ch. 14, § 67, pp. 55, 56.) By prescribing only a narrow scope of judicial review, the Legislature restricted the extent to which the Commission could be "hampered in the performance of any official act by any court." (*Sexton v. Atchison etc. Ry. Co.* (1916) 173 Cal. 760, 764, 161 P. 748.)

The Legislature retained this "regularly pursued" standard through multiple iterations of the Public Utilities Act, and, later, the enactment of the Public Utilities Code in 1951. (Stats. 1951, ch. 764, p. 2090; see *id.*, §§ 1, 2, p. 2025; see *Southern Pac. Co. v. Public Utilities Com.* (1953) 41 Cal.2d 354, 357–362, 260 P.2d 70 [tracing the history of the provision]; see also Stats. 1915, ch. 91, § 67, p. 161 ["regularly pursued its authority"]; Stats. 1933, ch. 442, § 1, p. 1157 [same].) The Code provided that a challenge to an order or decision of the Commission could be brought in this court "for the purpose of having the lawfulness of the ... order or decision ... inquired into and determined." (Stats. 1951, ch. 764, p. 2090.) As relevant, the Code further specified the scope of this court's review in terms that closely track its 1911 predecessor: "No new or additional evidence may be introduced in the Supreme Court, but the cause shall be heard on the record of the commission as certified to by it. *The review shall not be extended further than to determine whether the commission has regularly pursued its authority*, including a determination of whether the order or decision under review violates any right of the petitioner under the Constitution of the United States or of this State. The findings and conclusions of the commission on questions of fact shall be final and shall not be subject to review except as provided in this article. Such questions of fact shall include ultimate facts and the findings and conclusions of the commission on reasonableness and discrimination." (Stats. 1951, ch. 764, p. 2090, italics added; see also *id.*, p. 2091.)

We considered the meaning of this review provision in *Greyhound*, *supra*, 68 Cal.2d at pages 409–411, 67 Cal.Rptr. 97, 438 P.2d 801, which concerned the validity of a Commission decision requiring a commuter bus operator to extend service over certain routes in the San Francisco Bay Area. The challenger argued that the Commission had "not regularly pursued its authority" because the statute on which the Commission relied for its authority did not, in fact, authorize ***303** the order. (*Id.* at p. 410, 67 Cal.Rptr. 97, 438 P.2d 801.) In rejecting this argument, we wrote: "There is a strong presumption of validity of the commission's decisions [citations], and the commission's interpretation of the Public Utilities Code should not be disturbed unless it fails to bear a reasonable relation to statutory purposes and language." (*Id.* at pp. 410–411, 67 Cal.Rptr. 97, 438 P.2d 801.)

This formulation, which the Court of Appeal in this case correctly described as "uniquely deferential" (*Center for Biological Diversity*, *supra*, 98 Cal.App.5th at p. 31, 316 Cal.Rptr.3d 464), differs from the standard generally applicable to agencies' statutory interpretations. As explained further *****270** below, while the level of deference owed to such interpretations may vary depending on the circumstances, courts remain the final arbiters of statutory meaning. (See *Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 78 Cal.Rptr.2d 1, 960 P.2d 1031 (*Yamaha*); pt. II.B, *post*.)

B.

The statutory provision governing judicial review of Commission decisions remained largely unchanged for nearly a century. Beginning in the mid-1990s, however, in response to deregulation in the energy and other utility markets, the Legislature passed a series of amendments that expanded the scope of review. (Stats. 1998, ch. 886, § 1.5, subd. (a), p. 5796; see ****34** *McPherson*, *supra*, 38 Cal.4th at p. 1025, 44 Cal.Rptr.3d 644, 136 P.3d 178 [describing changes to the energy industry].) These changes eliminated the "regularly pursued its authority" standard for review of most Commission decisions. (See Stats. 1996, ch. 855, § 7, p. 4554; see *id.*, § 8, pp. 4554–4555; Stats. 1998, ch. 886, §§ 11–14.5, pp. 5808–5811; Stats. 2000, ch. 953, §§ 3–6, pp. 7021–7023.) Even after these modifications, however, courts have continued to cite *Greyhound* when applying the modified statutory standard of review, albeit without much explanation or discussion. (See, e.g., *Ames v. Public Utilities Com.* (2011) 197 Cal.App.4th 1411, 1418, 128 Cal.Rptr.3d 702.) After careful examination of the effect of the legislative changes, we now conclude that, for the category of cases in which the "regularly pursued its authority" standard is no longer in effect, the degree of deference prescribed in *Greyhound* no longer governs review under Public Utilities Code sections 1757 (section 1757) and 1757.1 (section 1757.1).

As currently written, sections 1757 and 1757.1 specify several bases on which a reviewing court may set aside a decision of the Commission. Section 1757 applies to complaint and enforcement proceedings and ratemaking and licensing decisions that are "addressed to specific parties," while section 1757.1 applies in any proceedings not covered by section 1757. (See §§ 1757, subd. (a), 1757.1, subd. (a).) Section 1757.1, subdivision (a), extends review to whether "(1) The order or decision of the commission was ***304** an abuse of discretion. [¶] (2) The commission has not proceeded in the manner required by law. [¶] (3) The commission acted without, or in excess of, its powers or jurisdiction. [¶] (4) The decision of the commission is not supported by the findings. [¶] (5) The order or decision was procured by fraud. [or] [¶] (6) The order or decision of the commission violates any right of the petitioner under the Constitution of the United States or the California Constitution." When applicable, section 1757 extends review to those same considerations, as well as whether "[t]he findings in the decision of the commission are not supported by substantial evidence in light of the whole record." (§ 1757, subd. (a)(4); see *id.*, subd. (a).)

Both sections retain the "regularly pursued its authority" standard, but only for decisions pertaining "solely to water corporations." (§ 1757, subd. (c); § 1757.1, subd. (b); see, e.g., *Golden State Water Co. v. Public Utilities Com.* (2024) 16 Cal.5th 380, 322 Cal.Rptr.3d 531, 550 P.3d 1059.) For all other relevant Commission decisions — whether they concern telecommunications, transportation, or, as here, energy — the statutes prescribe an inquiry that parallels the inquiry prescribed under the general administrative mandamus statute, Code of Civil Procedure section 1094.5. (See Code Civ. Proc., § 1094.5, subd. (b) ["The inquiry ... shall extend to ... whether there was any prejudicial abuse of discretion. Abuse of discretion is *****271** established if the respondent has not proceeded in the manner required by law."]; see, e.g., *Christensen v. Lightbourne* (2019) 7 Cal.5th 761, 770–771, 249 Cal.Rptr.3d 281, 444 P.3d 85.)

We presume that when the Legislature adopted a review provision that borrowed heavily from Code of Civil Procedure section 1094.5, the choice was intentional. (Cf. *Greener v. Workers' Comp. Appeals Bd.* (1993) 6 Cal.4th 1028, 1043, 25 Cal.Rptr.2d 539, 863 P.2d 784 ["When the Legislature uses language identical to that of an existing statute in newly enacted legislation, it is presumed that the same construction is intended"].) It follows that review under these provisions should parallel the review that applies to other administrative decisions, rather than the uniquely deferential form of review described in *Greyhound*.

To the extent there can be any doubt on this point, the Legislature put it plainly in the uncodified preamble to the 1998 legislation. (See *Carter v. California Dept. of Veterans Affairs* (2006) 38 Cal.4th 914, 925, 44 Cal.Rptr.3d 223, 135 P.3d 637 [relying on uncodified preamble].) With the 1998 enactment, the Legislature found and declared "that the conversion of the energy, transportation, and telecommunications industries from traditional regulated markets to competitive markets necessitates a change in the judicial review of Public Utilities Commission decisions that pertain to those industries. The Legislature finds that the activities of ****35** the energy, telecommunications, and transportation industries will require expanded access to the court ***305** system at all levels." (Stats. 1998, ch. 886, § 1.5, subd. (a), p. 5796.) "It is the intent of the Legislature in enacting the judicial review provisions of this act to, in part, establish the manner and scope of review taken from decisions of the Public Utilities Commission. *It is further the intent of the Legislature to conform judicial review of the Public Utilities Commission decisions* that pertain to utility service providers with competitive markets *to be consistent with judicial review of the other state agencies*." (*Id.*, § 1.5, subd. (b), p. 5796, italics added; see also *id.*, subd. (a), p. 5796 [explaining that the statute retained the "regularly pursued its authority" standard for water corporations because "the water supply industry continues to operate in a traditional, noncompetitive utility market"].)

Where, as here, the primary question is whether a state agency has acted in a manner consistent with the statute it purports to implement, judicial review typically differs meaningfully from the approach we described in *Greyhound*. Our leading case concerning review of an agency's statutory interpretation is *Yamaha*, *supra*, 19 Cal.4th 1, 78 Cal.Rptr.2d 1, 960 P.2d 1031. In *Yamaha*, we distinguished between "opposite ends of an administrative continuum" (*id.* at p. 6, fn. 3, 78 Cal.Rptr.2d 1, 960 P.2d 1031): (i) "quasi-legislative regulations adopted by an agency to which the Legislature has confided the power to 'make law' " and (ii) "[a]n agency interpretation of the meaning and legal effect of a statute" (*id.* at p. 7, 78 Cal.Rptr.2d 1, 960 P.2d 1031). "An agency interpretation of the meaning and legal effect of a statute is entitled to consideration and respect by the courts; however, unlike quasi-legislative regulations adopted by an agency to which the Legislature has confided the power to 'make law,' and which, if authorized by the enabling legislation, bind this and other courts as firmly as statutes themselves, the binding power of an agency's *interpretation* of a statute or regulation is contextual: Its power to persuade is both circumstantial and dependent on the presence or absence of factors that support the merit of the interpretation." *****272** (*Ibid.*; see *id.* at pp. 12–15, 78 Cal.Rptr.2d 1, 960 P.2d 1031 [describing relevant factors].) Although courts should "respect[ ] [an] agency's interpretation" of a statute that the agency administers (*id.* at p. 7, 78 Cal.Rptr.2d 1, 960 P.2d 1031) — and may, in appropriate circumstances, afford that interpretation " 'great weight' " (*id.* at p. 12, 78 Cal.Rptr.2d 1, 960 P.2d 1031) — "[c]ourts must ... independently judge the text of the statute" (*id.* at p. 7, 78 Cal.Rptr.2d 1, 960 P.2d 1031). "[A]n agency's interpretation is one among several tools available to the court" (*ibid.*), but the court cannot abdicate "a quintessential judicial duty — applying its independent judgment de novo to the merits of the legal issue before it" (*id.* at p. 8, 78 Cal.Rptr.2d 1, 960 P.2d 1031, italics omitted).

Quasi-legislative regulations, we have explained, are subject to a substantially narrower scope of review: "If satisfied that the rule in question lay within the lawmaking authority delegated by the Legislature, and that it is reasonably necessary to implement the purpose of the statute, judicial review is at an end." (*Yamaha*, *supra*, 19 Cal.4th at pp. 10–11, 78 Cal.Rptr.2d 1, 960 P.2d 1031.) But, as we explained in *Yamaha*, "even quasi-legislative rules are reviewed independently for consistency with controlling law," in that a court does not defer to the ***306** agency's view of whether the regulation lies within the scope of the lawmaking authority delegated by the Legislature. (*Id.* at p. 11, fn. 4, 78 Cal.Rptr.2d 1, 960 P.2d 1031.) In other words, we review independently whether an agency has lawmaking authority, even if it may be appropriate to defer to an agency's reasonable exercise of any such authority.

The Court of Appeal in this case did not cite *Yamaha*, nor did its analysis resemble the *Yamaha* inquiry. The court instead relied on the "uniquely deferential" approach it understood to be required under *Greyhound*. (*Center for Biological Diversity*, *supra*, 98 Cal.App.5th at p. 31, 316 Cal.Rptr.3d 464.) It explained, for example: "[W]e find the Commission's approach to bear a reasonable relation to its statutory mandate. Our standard of review allows for no further inquiry." (*Id.* at p. 34, 316 Cal.Rptr.3d 464; see ****36** *id.* at pp. 31, 32, 40, 43, 316 Cal.Rptr.3d 464.) Its discussion addressed whether statutory language "compel[led]" (*id.* at p. 31, 316 Cal.Rptr.3d 464) or "indisputably require[d]" (*id.* at p. 32, 316 Cal.Rptr.3d 464) adoption of petitioners' position, rather than whether, in the Court of Appeal's independent judgment, petitioners' position was correct.

We do not decide whether the court's ultimate conclusion that the tariff is consistent with section 2827.1 is correct or incorrect — only that the Court of Appeal erred by applying an unduly deferential standard of review to reach that conclusion.

III.

The parties make little effort to defend the Court of Appeal's reliance on the approach described in *Greyhound*. In their briefing, the utility companies that are real parties in interest took "no position on petitioners' argument about the level of deference applicable to the Commission's interpretation of Section 2827.1." At oral argument, they argued that *Greyhound* can be understood as essentially an alternative formulation of the *Yamaha* inquiry, applicable at a certain point on the continuum that *Yamaha* described. If *Greyhound* were best understood to mirror our later decision in *Yamaha* as applied to a particular set of circumstances, however, there would be little reason to retain *Greyhound* in place of or in addition to the more well-developed body of precedent applying the *Yamaha* inquiry. More fundamentally, *****273** regardless of whether *Greyhound* might be read in the manner the utilities suggest, it is apparent that the Court of Appeal in this case did not adopt that reading. The court understood itself to be conducting a "uniquely deferential" analysis (*Center for Biological Diversity*, *supra*, 98 Cal.App.5th at p. 31, 316 Cal.Rptr.3d 464) — not applying *Yamaha*, which the Court of Appeal did not cite.

The Attorney General advances a few arguments in support of the Court of Appeal's approach, but none is persuasive. First, the Attorney General argues ***307** that some of the rationale underlying *Yamaha* has less force in the context of action by the Commission. *Yamaha* identified constitutional separation-of-powers concerns that arise when an agency, rather than a court, is effectively given final responsibility for interpreting a statute. (See *Yamaha*, *supra*, 19 Cal.4th at pp. 7, 10–11, 78 Cal.Rptr.2d 1, 960 P.2d 1031.) The Attorney General contends those concerns are not significant here, because our state's Constitution both establishes the Commission and empowers it to exercise certain "judicial functions," such as administering subpoenas, taking testimony, and punishing contempt. (Cal. Const., art. XII, § 6.)

But the very same constitutional provisions also make clear that "[t]he Legislature has plenary power ... to establish the manner and scope of review of commission action in a court of record ...." (Cal. Const., art. XII, § 5; see *County of Sonoma v. State Energy Resources Conservation etc. Com.* (1985) 40 Cal.3d 361, 365–371, 220 Cal.Rptr. 114, 708 P.2d 693.) Whether or not *Yamaha* should apply of its own force, our Legislature has adopted a statutory standard of review for most Commission decisions that borrows from the standard applicable to the decisions of other agencies. (§§ 1757.1, subd. (a), 1757, subd. (a); see Code Civ. Proc., § 1094.5.) For the reasons discussed, that statutory standard of review is not the same as the highly deferential approach described in *Greyhound*.

Second, the Attorney General contends that the text and the legislative history of the 1998 enactment "say[ ] nothing about *Greyhound* or the level of deference courts should give to the Commission's interpretations of statutes." The Attorney General finds this omission noteworthy because the text of the 1998 enactment does mention an intent to expressly overrule a different decision of this court. Specifically, a portion of the 1998 enactment conveys the Legislature's intention "to, among other things, overrule" *Camp Meeker Water System, Inc. v. Public Utilities Com.* (1990) 51 Cal.3d 845, 864, 274 Cal.Rptr. 678, 799 P.2d 758, which limited review of the Commission's factual findings to whether those findings have *any* evidentiary support. (Stats. 1998, ch. 886, § 1.5, subd. (b), p. 5796.)

We are unpersuaded. Although the Legislature's statement of intent could have been ****37** more explicit about the effect of its changes on the *Greyhound* decision, the statute itself could scarcely have been clearer that the "regularly pursued its authority" standard interpreted in *Greyhound* is now applicable only to decisions pertaining "solely to water corporations" (§ 1757, subd. (c); § 1757.1, subd. (b)), and not to decisions pertaining to other industries. It is hard to see how the Legislature could have intended *Greyhound*'s interpretation to outlive the language *Greyhound* was interpreting. And although the Legislature's uncodified finding does not cite *Greyhound*, the Legislature's stated intention to make judicial review of the Commission's decisions ***308** "consistent with judicial review of the other state agencies" is best understood to include judicial review of the statutory interpretations underlying those *****274** decisions. (Stats. 1998, ch. 886, § 1.5, subd. (b), p. 5796.)[1]

Third, and finally, the Attorney General observes that this court has cited *Greyhound* even after the 1998 amendment just discussed. (See *Southern California Edison Co. v. Peevey* (2003) 31 Cal.4th 781, 796, 3 Cal.Rptr.3d 703, 74 P.3d 795; *T-Mobile West LLC v. City and County of San Francisco* (2019) 6 Cal.5th 1107, 1123, 245 Cal.Rptr.3d 412, 438 P.3d 239.) Because neither of these cases arose under either the past or the current versions of sections 1757 and 1757.1, the Attorney General reads these citations as evidence that *Greyhound* does not depend on "the particular language or features of sections 1757 and 1757.1," and changes to those sections should not affect *Greyhound*'s ongoing vitality. The cases the Attorney General identifies, however, did not consider whether Senate Bill No. 779 (1997–1998 Reg. Sess.)'s changes to sections 1757 and 1757.1 bear on *Greyhound*'s continuing vitality, and thus do not shed much light on the question before us. (*People v. Brooks* (2017) 3 Cal.5th 1, 110, 219 Cal.Rptr.3d 331, 396 P.3d 480 ["a case is not authority for an issue that was not considered"].) Indeed, in one of the cases, we simply relied on the Commission's position as further support for our independent interpretation of the statute at issue; we were not asked to, and did not, directly review the validity of any Commission action. (See *T-Mobile*, at pp. 1124–1125, 245 Cal.Rptr.3d 412, 438 P.3d 239.) Ultimately, because neither decision considered the question before us, neither constrains us here.[2]

* * *

At bottom, we see no reason to conclude that a court performing the inquiry required by the amended version of section 1757, subdivision (a) or section 1757.1, subdivision (a) should employ the same inquiry prescribed under preamendment law, under which "the [C]ommission's interpretation of the Public Utilities Code" must be upheld "unless [that interpretation] fails to bear a reasonable relation to statutory purposes and language." (*Greyhound*, *supra*, 68 Cal.2d at pp. 410–411, 67 Cal.Rptr. 97, 438 P.2d 801.) Accordingly, we conclude that the Court of Appeal erred by relying on that highly deferential approach. To the extent the ***309** following decisions also did so, we disapprove *Southern Cal. Edison Co. v. Public Utilities Com.* (2004) 117 Cal.App.4th 1039, 12 Cal.Rptr.3d 441; *The Utility Reform Network v. Public Utilities Com.* (2008) 166 Cal.App.4th 522, 82 Cal.Rptr.3d 791; and *Ames v. Public Utilities Com.*, *supra*, 197 Cal.App.4th 1411, 128 Cal.Rptr.3d 702.

IV.

The parties vigorously dispute whether the challenged tariff should be upheld under the *Yamaha* standard. As in *Yamaha* itself, however, we leave this question for the Court of Appeal to address in the first instance, consistent with our usual practice and with appropriate "regard for the structure of appellate ****38** decisionmaking." *****275** (*Yamaha*, *supra*, 19 Cal.4th at p. 15, 78 Cal.Rptr.2d 1, 960 P.2d 1031; see, e.g., *In re Cabrera* (2012) 55 Cal.4th 683, 692, 148 Cal.Rptr.3d 500, 287 P.3d 72.)

We reverse the judgment of the Court of Appeal and remand the matter for further proceedings consistent with this opinion.

We Concur:

GUERRERO, C. J.

CORRIGAN, J.

LIU, J.

GROBAN, J.

JENKINS, J.

EVANS, J.

All Citations

18 Cal.5th 293, 573 P.3d 28, 335 Cal.Rptr.3d 264, 2025 Daily Journal D.A.R. 7467

Footnotes

1 The legislative history similarly suggests that one of the “key problems involving the [Commission]” that the Legislature considered in enacting the 1998 enactment was the “widespread consensus that judicial review of [Commission] decisions is virtually nonexistent.” (Assem. Com. on Judiciary, Analysis of Sen. Bill No. 779 (1997–1998 Reg. Sess.) as amended Aug. 17, 1998, p. 3.) Applying the same standard of review to Commission decisions as applies to the review of other state agency decisions is consistent with the Legislature's goal of addressing this problem.

2 It is also not necessary to determine here whether *Peevey* and *T-Mobile* erred in relying on *Greyhound* in addressing matters that did not arise under the amended provisions of sections 1757 or 1757.1.

End of Document

Attachment 8

CBD III Decision

118 Cal.App.5th 1288
Court of Appeal, First District, California.
DIVISION THREE.

CENTER FOR BIOLOGICAL DIVERSITY, INC. et al., Petitioners,
v.
PUBLIC UTILITIES COMMISSION, Respondent;
Pacific Gas and Electric Company et al., Real Parties in Interest.

A167721
|
Filed 3/9/2026

Synopsis
Background: Environmental and utility ratepayer advocacy groups petitioned for writ of review challenging Public Utilities Commission's decision adopting tariff that reduced price utilities pay for customer-generated power, arguing tariff was inconsistent with Public Utilities Code. The First District Court of Appeal, Rodríguez, J., 98 Cal.App.5th 20, 316 Cal.Rptr.3d 464, granted the petition and affirmed PUC's decision. The Supreme Court granted review, and reversed and remanded, 18 Cal.5th 293, 573 P.3d 28, 335 Cal.Rptr.3d 264.

Holdings: The Court of Appeal, Rodríguez, J., held that:

Court of Appeal would exercise its independent judgment in interpreting provisions of statute requiring PUC to design successor program for rooftop solar and other customer-sited renewable generation;

PUC acted within its delegated authority in adopting successor tariff that replaced netting by quantity with net billing approach, separately valued imported and exported electricity, based export compensation largely on avoided cost values, reduced extent of cost-shifting to nonparticipating customers, and included temporary “glide path” adder to soften transition;

PUC acted within its delegated authority under statutory provision requiring PUC to base new net-metering tariff on real upsides and downsides of rooftop or customer-side renewable generation in adopting successor tariff that accounted for benefits of customer generation through concept of utilities' avoided costs; and

PUC acted within its delegated authority under statutory provision implementing flexible, aggregate cost-equals-benefit requirement designed to ensure successor tariff was roughly cost-justified for system as whole in adopting successor tariff that based its export compensation rates on value of power exported — rather than providing offset based on quantity alone.

Affirmed.

(Cal.P.U.C. Dec. No. 22-12-056)

Attorneys and Law Firms

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Opinion

RODRÍGUEZ, J.

***1293** ****381** For over 30 years, California has used a net energy metering (NEM) tariff that allows public utility customers with renewable electrical generating facilities to receive credit on their electric bills for excess energy exported to the power grid. (Pub. Util. Code, § 2827, added by Stats. 1995, ch. 369, § 1; undesignated statutory references are to this code.) In 2013, the ****382** Legislature enacted section 2827.1, directing the Public Utilities Commission (Commission) to develop a successor tariff. (Stats. 2013, ch. 611, § 11.) Under then-existing law, NEM customers received credit at the full retail rate — including certain fixed costs of the exported energy — resulting in a “substantial subsidy” to those customers and a shifting of costs to non-NEM customers. (Sen. Rules Com., Off. of Sen. Floor Analyses, 3d reading analysis of Assem. Bill No. 327 (2013–2014 Reg. Sess.) as amended Sept. 6, 2013, p. 7 (Sen. Analysis).) By enacting section 2827.1, the Legislature directed the Commission to ensure the successor tariff “is based on the electrical system ***1294** costs and benefits received by nonparticipating customers” and “prevents a cost shift to non-NEM customers.” (Sen. Analysis, at p. 4.)

In 2022, the Commission adopted a successor tariff in its *Decision Revising Net Energy Metering Tariff and Subtariffs* (2022) Cal. P.U.C. Dec. No. 22-12-056 (Decision). Petitioners Center for Biological Diversity, Inc., Environmental Working Group, and The Protect our Communities Foundation (collectively, petitioners) filed a petition for writ review in this court, contending the successor tariff was inconsistent with section 2827.1. We granted the petition and affirmed the Decision. (*Center for Biological Diversity, Inc. v. Public Utilities Com.* (2023) 98 Cal.App.5th 20, 316 Cal.Rptr.3d 464, review granted Apr. 10, 2024, S283614 (*CBD I*).)

The California Supreme Court granted review and addressed an issue it acknowledged petitioners had failed to raise in our court: whether the “highly deferential” approach of *Greyhound Lines, Inc. v. Public Utilities Com.* (1968) 68 Cal.2d 406, 67 Cal.Rptr. 97, 438 P.2d 801 (*Greyhound*) applies to the Commission's interpretation of the Public Utilities Code. (*Center for Biological Diversity, Inc. v. Public Utilities Com.* (2025) 18 Cal.5th 293, 301, 335 Cal.Rptr.3d 264, 573 P.3d 28 (*CBD II*).) The court concluded it does not, and it reversed and remanded the matter to this court to address in the first instance whether the successor tariff should be upheld under the standard set forth in *Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 78 Cal.Rptr.2d 1, 960 P.2d 1031 (*Yamaha*). (*CBD II*, at p. 309, 335 Cal.Rptr.3d 264, 573 P.3d 28.) After applying that standard here, we again affirm the Decision.

BACKGROUND

The supply of power generated by renewable systems is neither constant nor consistent. Solar panels, for example, may generate electricity only when the sun shines, and the amount of power they generate depends on the intensity of the sunlight. They “may generate less—or more—electricity than their owners need at a particular time. At night or on a cloudy day, for example, a utility customer with solar panels may need to draw additional electricity from the power grid. On a sunny morning, by contrast, the panels may generate more electricity than the customer needs, allowing the customer to export excess energy to the grid." (*CBD II*, *supra*, 18 Cal.5th at p. 299, 335 Cal.Rptr.3d 264, 573 P.3d 28.)

The Legislature has required utilities to compensate eligible "customer-generators" for energy those customers export since the enactment of section 2827 in 1995. (§ 2827, subd. (b)(4)(A); *CBD II*, *supra*, 18 Cal.5th at p. 299, 335 Cal.Rptr.3d 264, 573 P.3d 28; ***1295** Legis. Counsel's Dig., Sen. Bill No. 656, Stats. 1995 (1995–1996 Reg. Sess.) Summary Dig.) The program was expected to "encourage substantial private investment in renewable energy resources, stimulate in-state economic growth, reduce demand for electricity during ****383** peak consumption periods, help stabilize California's energy supply infrastructure, enhance the continued diversification of California's energy resource mix, reduce interconnection and administrative costs for electricity suppliers, and encourage conservation and efficiency." (§ 2827, subd. (a).)

The Commission created the first NEM tariff (NEM 1.0) pursuant to section 2827. Under NEM 1.0, residences with solar power systems[1] were allowed to install an electricity meter that measured the difference between the quantity of electricity supplied to the residence by the utility and the quantity of electricity supplied to the grid by the residence — hence the name, "net energy metering." (Former § 2827, subds. (c), (d).) The residence was charged only for this difference — i.e., the *net* use of electricity from the grid. (*Id.*, subd. (f)(2).) By offsetting exported power with imported power, NEM 1.0 functionally required utilities to purchase excess power at the price paid by the customers for electricity. (*CBD II*, *supra*, 18 Cal.5th at p. 299, 335 Cal.Rptr.3d 264, 573 P.3d 28.)

Almost two decades later, the Legislature instructed the Commission to revisit the compensation for consumer-generators by enacting section 2827.1. (*CBD II*, *supra*, 18 Cal.5th at p. 300, 335 Cal.Rptr.3d 264, 573 P.3d 28, citing Stats. 2013, ch. 611, § 11, pp. 5030–5031.) A bill analysis identified a more specific purpose: "to ensure that the [successor tariff] is based on the electrical system costs and benefits received by nonparticipating customers and prevents a cost shift to non-NEM customers." (Sen. Analysis, *supra*, at p. 4.)

Under NEM 1.0, consumer-generators had received bill credit at the full retail rate. (Sen. Analysis, *supra*, at p. 7.) Because this rate included certain fixed costs, like transmission and distribution costs, NEM customers were receiving a "substantial subsidy," thereby shifting costs to non-NEM customers. (*Ibid.*) A bill analysis observed that "transmission and distribution costs are typically one-half to two-thirds of a residential customer's billing." (*Ibid.*) It thus estimated that full retail NEM "comes at a cost of approximately $60 million to non-NEM customers across the state." (*Ibid.*) While the Legislature had "in the past justified this subsidy as it stimulates the solar industry, helps the state reach its renewable energy goals, and provides other external benefits," the Legislature now directed the Commission to develop a successor tariff that "prevents a cost shift to non-NEM customers." (*Id.* at pp. 7, 4.)

***1296** As relevant here, section 2827.1, subdivision (b) (section 2827.1(b)) identifies three objectives the Commission must ensure in developing the successor tariff. The Commission must (1) ensure that the successor tariff "ensures that customer-sited renewable distributed generation continues to grow sustainably," and include "specific alternatives designed for growth among residential customers in disadvantaged communities" (*id.*, subd. (b)(1)); (2) ensure that the successor tariff be "based on the costs and benefits of the renewable electrical generation facility" (*id.*, subd. (b)(3)); and (3) ensure that the "total benefits" of the successor tariff "to all customers and the electrical system" are "approximately equal to the total costs" (*id.*, subd. (b)(4)). Section 2827.1(b) also allows the Commission ****384** to revise the successor tariff "as appropriate to achieve the objectives of this section."

The Commission adopted a revised tariff (NEM 2.0) in 2016 as an interim measure to address some of the concerns about cost-shifting under NEM 1.0. NEM customers continued to receive full retail rate credit but were charged a onetime interconnection fee and other periodic "non-bypassable" fees. It was thought that NEM 2.0 would be subject to review in or after 2019, when a more permanent replacement for NEM 1.0 would be adopted.

The Commission initiated a proceeding in 2020 to "revisit" NEM 2.0 and issued its Decision adopting the successor tariff — which it calls a net billing tariff — in 2022. (Decision, *supra*, at p. 137.) The "foundation" for the successor tariff was the Net-Energy Metering 2.0 Lookback Study, January 21, 2021 (Lookback Study), an evaluation of NEM 2.0 by outside consultants Verdant Associates, LLC that concluded "NEM 2.0 participants benefit from the structure, while ratepayers see increased rates." (Decision, at p. 207; Lookback Study, at p. 1.)

Drawing on the Lookback Study, the Commission found the NEM 2.0 tariff "negatively impacts non-participating ratepayers, disproportionately harms low-income ratepayers, and is not cost-effective." (Decision, *supra*, at pp. 2–3, 207.) The Commission explained this negative impact was caused by the "20-year legacy" of full retail rate compensation, which allowed NEM customers to avoid paying their proportionate share of the "infrastructure and other service costs"[2] associated with electrical service — because those costs are "embedded in" the rates charged for electricity — and shifted those costs to non-NEM customers. (*Id.* at pp. 47, 208.) The Commission found these shifted costs to be one of three drivers of high electricity rates (along with costs of transmission and distribution and wildfire mitigation). (*Id.* at p. 208.) ***1297** And by equating the prices of imported and exported electricity, the Commission further found the NEM tariff had overcompensated customers for the electricity they supplied back to the grid, effectively paying such customers at a rate from "3.8 to 5.4 times" greater than the benefit conferred. (*Id*. at p. 216.)

Based on these and other findings, the Commission adopted the successor tariff. (Decision, *supra*, at pp. 137, 207–237.) The most fundamental change from the prior NEM tariff was that imported and exported power under the successor tariff are calculated separately (i.e., "no netting of consumption and production"), and customers are then billed for the difference between the *value* of the power imported and exported, rather than the difference in *quantity*. (*Id.* at p. 237.) In other words, imported and exported power are no longer treated as equivalent. (*Ibid.*)

Under the successor tariff, export compensation rates are based on values derived from the "Avoided Cost Calculator" (calculator), a tool developed earlier by the Commission " 'to determine the primary benefits of distributed energy resources.' " (Decision, *supra*, at pp. 59, 233, 237.) As set forth by the Commission, the calculator " 'calculates seven types of avoided costs: generation capacity, energy, transmission and distribution capacity, ancillary services, Renewables Portfolio Standard, greenhouse gas emissions, and high global warming potential gases.' " (*Id.* at p. 59.) The avoided costs determined in the calculator ****385** "are the utilities' marginal costs of providing electric service to customers" that "can be avoided when the demand for energy decreases because of distributed energy resources, and are, thus, the benefits of using distributed energy resources." (*Ibid*.)

The Commission stated the successor tariff "makes great strides in tackling the cost shift" to nonparticipating customers. (Decision, *supra*, at p. 170.) For participating customers, the Commission acknowledged the changes would likely reduce bill credits (as the price paid for exported power determined by the calculator is typically less than the full retail price), but they would still provide credits targeting a nine-year payback period on the upfront cost of a stand-alone solar system (or the equivalent of nearly $100 in monthly bill savings). (*Id.* at p. 77, Appendix at p. 2.)

To ease the transition and "ensure the sustainable growth of customer-sited renewable distributed generation," the Commission adopted a five-year "glide path" in the successor tariff. (Decision, *supra*, at pp. 4, 170.) The glide path consists of an "adder" to increase compensation rates for new residential customers above the value determined by the calculator, with a stepdown over time so the path ultimately ends at the calculator-based values. (*Id*. at p. 148.) The glide path includes a higher adder for residential customers ***1298** enrolled in the California Alternate Rates for Energy (CARE) program, resident owners of single-family homes living in disadvantaged communities, and residential customers who live in California Indian country. (*Id*. at pp. 158, 176.)

Finally, the Commission stated it would evaluate the successor tariff by collecting data for three years after its implementation and follow "a similar process as conducted in the Lookback Study, reviewing the entire successor tariff but with a focus on affordability, equity, and grid benefits." (Decision, *supra*, at p. 200.) According to the Commission, it is currently in the process of collecting such data.

Petitioners submitted an application for rehearing to the Commission, which was denied. (*Order Denying Rehearing of Decision 22-12-056* (2023) Cal. P.U.C. Dec. No. 23-06-056.) They filed a petition for a writ of review in this court. (§ 1756, subd. (a) [within 30 days after denial of application for rehearing, "any aggrieved party may petition for a writ of review in the court of appeal or the Supreme Court for the purpose of having the lawfulness of the original order or decision or of the order or decision on rehearing inquired into and determined"].) Petitioners argued the Decision was inconsistent with the objectives in section 2827.1(b)(1), (b)(3), and (b)(4). We granted the petition, and answers were filed by the Commission and real parties in interest.[3]

We affirmed the Decision. (*CBD I*, *supra*, 98 Cal.App.5th at p. 43, 316 Cal.Rptr.3d 464, review granted.) In so doing, we used the standard set forth in *Greyhound*, concluded the successor tariff bore a reasonable relation to the purpose and language of section 2827.1, and concluded the Commission did not otherwise err. (*CBD I*, at p. 43, 316 Cal.Rptr.3d 464; see ****386** *Greyhound*, *supra*, 68 Cal.2d at pp. 410–411, 67 Cal.Rptr. 97, 438 P.2d 801 ["[C]ommission's interpretation of the Public Utilities Code should not be disturbed unless it fails to bear a reasonable relation to statutory purposes and language"].)

Petitioners subsequently presented the following issues in their petition for review to the California Supreme Court: whether the deferential standard of review in our opinion conflicted with law and identified a conflict in case law for resolution, and whether the Commission failed to proceed in a manner required by section 2827.1(b)(1) (that the Commission must "include specific alternatives designed for growth among residential customers in disadvantaged communities" in developing the successor tariff) and (b)(3) (that the ***1299** Commission must ensure that the successor tariff is "based on the costs and benefits of the renewable electrical generation facility").

The Supreme Court noted petitioners had not raised the first issue in this court but addressed it given the absence of any objection and because the issue "presents a question of law of considerable statewide importance." (*CBD II*, *supra*, 18 Cal.5th at p. 301, 335 Cal.Rptr.3d 264, 573 P.3d 28.) The court concluded the "highly deferential" approach of *Greyhound* no longer applies to the Commission's interpretation of the Public Utilities Code. (*CBD II*, at p. 299, 335 Cal.Rptr.3d 264, 573 P.3d 28.) It explained that "[w]here, as here, the primary question is whether a state agency has acted in a manner consistent with the statute it purports to implement, judicial review typically differs meaningfully from the approach we described in *Greyhound*," and the "leading case concerning review of an agency's statutory interpretation" is *Yamaha*. (*CBD II*, at p. 305, 335 Cal.Rptr.3d 264, 573 P.3d 28.)

The court declined to resolve whether our ultimate conclusion in *CBD I* — that the successor tariff is consistent with section 2827.1 — was correct or incorrect, leaving for us the question of whether the tariff should be upheld under the *Yamaha* standard. (*CBD II*, *supra*, 18 Cal.5th at pp. 299, 309, 335 Cal.Rptr.3d 264, 573 P.3d 28.) The court reversed the judgment and remanded for further proceedings consistent with its opinion. (*Id.* at p. 309, 335 Cal.Rptr.3d 264, 573 P.3d 28.) Supplemental opening and responding briefs have since been filed by petitioners, the Commission, and real parties in interest. (Cal. Rules of Court, rule 8.200(b).)

DISCUSSION

The parties agree section 1757.1 governs the scope of our review because the successor tariff was adopted by the Commission through a rulemaking proceeding. (Compare § 1757 [scope of review "[i]n a complaint or enforcement proceeding, or in a ratemaking or licensing decision of specific application that is addressed to particular parties"] with § 1757.1 [scope of review "[i]n any proceeding other than a proceeding subject to the standard of review under Section 1757"].) Section 1757.1, subdivision (a) provides, in relevant part, that judicial review "shall not extend further than to determine," based on the entire record, whether the Decision "was an abuse of discretion," the Commission "has not proceeded in the manner required by law," or the Decision "is not supported by the findings." (*Id.* subd. (a)(1)–(2), (4).)

Most of petitioners' arguments, including those presented in their original petition and in their supplemental briefing after remand, seek review pursuant to section 1757.1(a)(2). That is, they contend the Commission failed to proceed in the manner required by section 2827.1(b)(1), (b)(3), and (b)(4) in developing and adopting the successor tariff.

***1300** ****387** As the Supreme Court explained in *CBD II*, the *Yamaha* standard governs our inquiry of whether the Commission has acted in a manner consistent with section 2827.1, the statute it purported to implement in developing and adopting the successor tariff. (*CBD II*, *supra*, 18 Cal.5th at p. 305, 335 Cal.Rptr.3d 264, 573 P.3d 28.) *Yamaha* differentiated the scope of that inquiry on the "opposite ends of an administrative continuum," from "quasi-legislative regulations adopted by an agency to which the Legislature has confided the power to 'make law' " to "[a]n agency interpretation of the meaning and legal effect of a statute." (*Yamaha*, *supra*, 19 Cal.4th at pp. 6, fn. 3, 7, 78 Cal.Rptr.2d 1, 960 P.2d 1031.) On one end of the continuum, quasi-legislative regulations are "subject to a substantially narrower scope of review: 'If satisfied that the rule in question lay within the lawmaking authority delegated by the Legislature, and that it is reasonably necessary to implement the purpose of the statute, judicial review is at an end.' " (*CBD II*, at p. 305, 335 Cal.Rptr.3d 264, 573 P.3d 28, quoting *Yamaha*, at pp. 10–11, 78 Cal.Rptr.2d 1, 960 P.2d 1031.) On the other end of the continuum, "the binding power of an agency's *interpretation* of a statute or regulation is contextual: Its power to persuade is both circumstantial and dependent on the presence or absence of factors that support the merit of the interpretation." (*Yamaha*, at p. 7, 78 Cal.Rptr.2d 1, 960 P.2d 1031.)

We agree with the Commission that its Decision is a quasi-legislative administrative decision properly reviewed at that end of the *Yamaha* continuum. "[Q]uasi-legislative rules are the substantive product of a delegated legislative power conferred on the agency." (*Yamaha*, *supra*, 19 Cal.4th at p. 8, 78 Cal.Rptr.2d 1, 960 P.2d 1031, italics omitted.) Through its enactment of section 2827.1(b), the Legislature explicitly directed the Commission to develop a tariff for eligible customer-generators with a renewable electrical generation facility and afforded the Commission with discretion to revise that tariff as appropriate to achieve statutory objectives. Pursuant to this directive, the Commission engaged in an extensive, yearslong rulemaking proceeding, instituting the proceeding in 2020 and issuing its Decision in 2022. During this proceeding, the Commission presented the Lookback Study, adopted guiding principles for the development of the successor tariff to reflect the objectives of section 2827.1, reviewed 19 proposals from parties, held 12 days of evidentiary hearings, and considered briefing and comments presented by a broad range of stakeholders. (Decision, *supra*, at pp. 10–11.)

Petitioners' contentions that the Commission failed to proceed in the manner required by section 2827.1(b)(1), (b)(3), and (b)(4) are thus subject to the "narrow" scope of review under *Yamaha*: specifically, whether the Commission's Decision developing and adopting the successor tariff "lay within the lawmaking authority delegated by the Legislature." (*Yamaha*, *supra*, 19 Cal.4th at p. 10, 78 Cal.Rptr.2d 1, 960 P.2d 1031.) But *Yamaha* instructs that "even quasi-legislative rules are reviewed independently for consistency with controlling law. A court does not, in other words, defer to an agency's view when deciding whether a regulation lies within the scope of the authority delegated by the Legislature. ***1301** The court, not the agency, has 'final responsibility for the interpretation of the law' under which the regulation was issued." (*Yamaha*, at p. 11, fn. 4, 78 Cal.Rptr.2d 1, 960 P.2d 1031.)

Accordingly, we exercise our independent judgment in interpreting the provisions of section 2827.1. Our fundamental task is to give effect to the intended ****388** purpose of the statute, and we apply well-settled principles of construction. (*California Cannabis Coalition v. City of Upland* (2017) 3 Cal.5th 924, 933–934, 222 Cal.Rptr.3d 210, 401 P.3d 49 (*Cannabis Coalition*).) We begin with the words of the statute themselves because " ' " 'they generally provide the most reliable indicator of legislative intent.' " ' " (*Lopez v. Sony Electronics, Inc.* (2018) 5 Cal.5th 627, 634, 234 Cal.Rptr.3d 856, 420 P.3d 767.) We ascribe to words "their ordinary meaning, while taking account of related provisions and the structure of the relevant statutory ... scheme." (*Cannabis Coalition*, at p. 933, 222 Cal.Rptr.3d 210, 401 P.3d 49.) " ' "If the statutory language is clear and unambiguous our inquiry ends." ' " (*Lopez*, at p. 634, 234 Cal.Rptr.3d 856, 420 P.3d 767.) But if any ambiguity remains, we may then consider extrinsic aids such as legislative history materials. (*Cannabis Coalition*, at p. 934, 222 Cal.Rptr.3d 210, 401 P.3d 49.)

With this framework in mind, we address petitioners' arguments regarding section 2827.1(b)(1), (b)(3), and (b)(4) in turn.

I.

The objective set forth in section 2827.1(b)(1) contains two components for development of the successor tariff: that the Commission ensure that the successor tariff ensures customer-sited renewable distributed generation "continues to grow sustainably," and that the Commission include "specific alternatives designed for growth among residential customers in disadvantaged communities." Petitioners argue the Commission failed to proceed in the manner required by each of these components. They fail to persuade.

As a preliminary matter, the Commission contends petitioners' arguments regarding this first component of section 2827.1(b)(1) (as well as their arguments regarding § 2827.1(b)(4)) cannot be revisited on remand because petitioners did not seek Supreme Court review of those issues, and our prior opinion thus remains "law of the case" on those issues. (*Santa Barbara County Water Agency v. All Persons & Parties* (1960) 53 Cal.2d 743, 745, 3 Cal.Rptr. 348, 350 P.2d 100.) But the Commission's cited authority suggests any such rule is not applicable given the procedural posture here. (*Romo v. Ford Motor Co*. (2003) 113 Cal.App.4th 738, 744, fn. 1, 6 Cal.Rptr.3d 793 [concluding certain points in original opinion were not affected by United States Supreme Court action and thus remained "law of the case"].) We originally concluded the successor tariff bears a reasonable relation to the purpose and language of the provisions in section 2827.1, but the Supreme Court reversed our ***1302** judgment — concluding this "highly deferential" approach was no longer applicable — and remanded to us to address in the first instance whether the successor tariff should be upheld under the *Yamaha* standard. (*CBD I*, *supra*, 98 Cal.App.5th at p. 43, 316 Cal.Rptr.3d 464, rev.gr.; *CBD II*, *supra*, 18 Cal.5th at pp. 301, 309, 335 Cal.Rptr.3d 264, 573 P.3d 28.) Because application of that standard affects how we analyze the challenges raised here, we consider them anew.

Turning to the first component of section 2827.1(b)(1), petitioners do not suggest the successor tariff has halted all growth of customer-sited renewable distributed generation. Rather, they contend the term "continues" in section 2827.1(b)(1) should be interpreted in accordance with a dictionary definition " 'to maintain without interruption a condition, course, or action,' " and because the successor tariff created a significantly longer payback period for renewable systems by reducing bill savings ****389** — slowing the rate of growth — the tariff is inconsistent with the statute.

We are unpersuaded that using this dictionary definition gives proper effect to the purpose of section 2827.1(b)(1). The statutory phrase, in its entirety, requires the Commission to ensure the successor tariff ensures customer-sited renewable distributed generation "continues to grow *sustainably*." (Italics added.) The legislative history of section 2827.1[4] indicates what the Legislature meant when it added the term "sustainably." A bill analysis explained that, over the prior two decades, the NEM tariff had resulted in a "substantial subsidy" to participating customers and a shifting of costs to non-NEM customers. (Sen. Analysis, *supra*, at p. 7.) The Legislature estimated this cost shift to be "approximately $60 million." (*Ibid.*) Given the increasing number of participating customers over time — and the decreasing number of non-NEM customers bearing the resulting cost shift — it is clear the Legislature understood the NEM 1.0 tariff was not sustainable. We decline to interpret section 2827.1(b)(1), as petitioners urge, to require the Commission to ensure that the successor tariff preserves a subsidy (and resulting cost shift) the Legislature expressly sought to address. (Sen. Analysis, at p. 4.)

Section 2827.1(b)(1) must also be read alongside the surrounding subsections. (*Cannabis Coalition*, *supra*, 3 Cal.5th at p. 933, 222 Cal.Rptr.3d 210, 401 P.3d 49.) Section 2827.1(b)(4) requires the Commission to ensure the total benefits and costs of ***1303** the successor tariff to "all customers and the electrical system" are approximately equal. Legislative history shows the sustainability objective in section 2827.1(b)(1) was linked to the equity objective in section 2827.1(b)(4). The author of the bill enacting section 2827.1 described the successor tariff as "allowing [a] sustainable program, which ensures that the total benefits of the program to all customers and the electric system are equal to the total costs." (Assem. Henry T. Perea, Fact Sheet on Assem. Bill No. 327, dated Aug. 28, 2013 (Fact Sheet) p. 2.)

Moreover, section 2827.1(b)(6) required the Commission to establish a transition period for customer-generators taking service under a NEM tariff prior to July 1, 2017, and to consider "a reasonable expected payback period based on the year the customer initially took service" in doing so. This is further confirmation that the Legislature did not intend to require the Commission to maintain the NEM tariff (and its resulting payback period) without interruption. In short, nothing in section 2827.1(b)(1) requires the Commission ensure the successor tariff would result in continued growth of customer-sited renewable distributed generation *at the same pace as before its adoption*.

As to the second component of section 2827.1(b)(1), petitioners contend the Commission failed to "include specific alternatives designed for growth among residential customers in disadvantaged ****390** communities." In its supplemental briefing after remand, the Commission maintains it addressed this requirement in two ways. First, the glide path in the successor tariff includes a higher adder for residential customers enrolled in the CARE program, resident owners of single-family homes living in disadvantaged communities, and residential customers who live in California Indian country. (Decision, *supra*, at pp. 158, 176.) Second, the Commission adopted a series of programs through rulemaking proceedings in 2017 and 2018 to promote the growth of renewable energy in disadvantaged communities. The Solar on Multifamily Affordable Housing Program (SOMAH), for example, provides financial incentives for the installation of solar systems on multifamily affordable housing properties. (See *Decision Adopting Implementation Framework for Assembly Bill 693 and Creating the Solar on Multifamily Affordable Housing Program* (2017) Cal. P.U.C. Dec. No. 17-12-022, at pp. 9–10.)

Petitioners argue these earlier adopted programs are insufficient to satisfy section 2827.1(b)(1) because the Commission was required to adopt specific alternatives *in the successor tariff*. In other words, they contend the statute should be interpreted to require the Commission to have developed new alternatives at the same time it created the successor tariff. This interpretation is inconsistent with the plain language of the statute. ***1304** Section 2827.1(b)(1) requires the *Commission* (not the successor tariff itself) to include specific alternatives designed for growth among residential customers in disadvantaged communities. We are not persuaded that the inclusion of specific alternatives adopted by the Commission through earlier rulemaking proceedings falls outside the lawmaking authority delegated by the Legislature.[5] (*Yamaha*, *supra*, 19 Cal.4th at p. 10, 78 Cal.Rptr.2d 1, 960 P.2d 1031.)

For the first time in their supplemental briefing after remand, petitioners alternatively argue the higher adder and earlier adopted programs are insufficient to satisfy section 2827.1(b)(1) because they focus on low-income households and not communities "defined by *geographic, public-health*, and *environmental-hazard* criteria." Specifically, they argue the term "disadvantaged communities" in section 2827.1(b)(1) should be interpreted to include those falling within the top 25 percent scoring areas of "CalEnviroScreen," a screening methodology developed by an office of the California Environmental Protection Agency to identify communities disproportionately burdened by pollution. (Cal. Office of Environmental Health Hazard Assessment, CalEnviroScreen 4.0 (Oct. 2021) p. 8.)

As a preliminary matter, petitioners have not explained why this argument is not forfeited. (Cf. *Unzueta v. Akopyan* (2022) 85 Cal.App.5th 67, 78, fn. 8, 301 Cal.Rptr.3d 93 [declining to find forfeiture where new argument was made in response to issue raised on remand].) Even if not forfeited, there is nothing in section 2827.1(b)(1) that suggests the term "disadvantaged communities" *must* be defined to include the communities specified by petitioners. And in any event, the Commission ****391** explains that the higher adder *does* apply to those communities: resident owners of single-family homes living in "disadvantaged communities" include those "among the top 25 percent of communities statewide" identified by CalEnviroScreen (with the exception of the Community Solar program). (Decision, *supra*, at p. 176; *Alternate Decision Adopting Alternatives to Promote Solar Distributed Generation in Disadvantaged Communities* (2018) Cal. P.U.C. Dec. No. 18-06-027, at p. 96.)

Petitioners also raised several arguments regarding section 2827.1(b)(1) in their original petition that they do not appear to maintain in their supplemental briefing on remand. But given the nature of such briefing — and petitioners' raising of an issue in the Supreme Court that they failed to raise when previously before us — we address them in an abundance of caution. (***1305** Cal. Rules of Court, rule 8.200(b) ["Supplemental briefs must be limited to matters arising after the previous Court of Appeal decision in the cause, unless the presiding justice permits briefing on other matters"].)

Petitioners contend the higher adder fails to provide a sufficient alternative for growth because it underestimated the cost of installing solar in disadvantaged communities. To the extent this raises a challenge under section 1757.1(a)(2) (that the Commission failed to proceed under manner required by law), we see nothing in section 2827.1(b)(1) that mandates any specific *amount* of growth among residential customers in disadvantaged communities, or that such growth must be equivalent to growth for other customers. To the extent this raises a challenge under section 1757.1(a)(4) (that the Decision is not supported by the findings), the Commission found a value of $3.30 per watt for the cost of solar used in calculating the higher adder to be reasonable as the adopted 2023 cost of solar, and expressly rejected petitioners' proposed $4.28 value because it was derived from a materially different solar incentive program. (Decision, *supra*, at pp. 82–84.) Petitioners offer no basis to review the sufficiency of evidence supporting this finding. (See § 1757.1(c) [factual findings are "final and shall not be subject to review" except as otherwise provided in statute]; *California Community Choice Assn. v. Public Utilities Com*. (2024) 103 Cal.App.5th 845, 854, 323 Cal.Rptr.3d 322 [explaining § 1757.1 includes grounds for judicial review in § 1757 "except for the fourth ground authorizing a substantial evidence review of the Commission's findings"].)

Finally, petitioners contend the Commission otherwise failed to proceed in the manner required by section 2827.1(b)(1) because it did not create an equity fund, which would use a billing surcharge imposed through the successor tariff to assist low-income customers in acquiring renewable systems, and it deferred consideration of community solar systems upon finding such consideration "premature." (Decision, *supra*, at p. 188.) But nothing in section 2827.1(b)(1) suggests the Commission was required to include any *particular* "alternatives" to ensure growth of renewable energy in disadvantaged communities. Importantly, our interpretation does not suggest the Commission was barred from considering such alternatives (or would be precluded from revisiting them in the future after, for example, reviewing data from the initial implementation of the successor tariff). But the statutory language here dictates that the Commission's development of the successor tariff be measured by what it did include, rather than by what it did not. Petitioners have not shown that such development lay outside the lawmaking authority delegated by the Legislature. (*Yamaha*, *supra*, 19 Cal.4th at p. 10, 78 Cal.Rptr.2d 1, 960 P.2d 1031.)

****392** In sum, we conclude the Commission did not fail to proceed in the manner required by section 2827.1(b)(1) or otherwise err when it adopted the successor tariff.

***1306 II.**

Section 2827.1(b)(3) requires the Commission to ensure the successor tariff "is based on the costs and benefits of the renewable electrical generation facility." The original petition argued the Commission failed to proceed in the manner required by section 2827.1(b)(3) because the calculator focuses on economic benefits conferred on the grid by exported power and fails to account for "several acknowledged benefits" of distributed renewable generation.[6] Specifically, petitioners cited four purported "societal" benefits: resiliency, avoided out-of-state methane leakage, avoided land use impacts, and avoided transmission costs.

As a preliminary matter, we clarify that section 2827.1(b)(3) refers to the costs and benefits of "the renewable electrical generation facility," not distributed renewable generation more generally. But even applying petitioners' argument to the correct statutory category of costs and benefits, we are not persuaded that petitioners have shown the Commission's Decision fell outside its lawmaking authority delegated by the Legislature. (*Yamaha*, *supra*, 19 Cal.4th at p. 10, 78 Cal.Rptr.2d 1, 960 P.2d 1031.)

First, the original petition described increased resiliency as "the ability to maintain power during a blackout or other grid disruption," including to cool one's home during a heat wave and prevent food spoilage due to loss of refrigeration. The Commission declined to adopt the suggestion that this purported increased resiliency be included in the calculator for valuing excess power. (Decision, *supra*, at p. 69.) It explained that proponents had only provided examples of such benefits that were private, highly speculative, and/or limited to unique circumstances. (*Ibid.*)

Second, the original petition identified the avoidance of methane leakage in other states that occurs when the utilities' need for production and transmission of out-of-state natural gas is reduced by the export of excess power. The Commission explained that in-state methane leakage was already accounted for in the calculator but declined to include out-of-state methane leakage because it did not decrease regulatory compliance costs for utilities and ratepayers. (See Decision, *supra*, at p. 70; *Decision Adopting Changes to the Avoided Cost Calculator* (2022) Cal. P.U.C. Dec. No. 22-05-002, at pp. 46–47 (ACC Decision).) Recognizing "greenhouse gas emissions know no state ***1307** boundary," however, the Commission had authorized continued monitoring and update of the issue during the next update of the calculator. (ACC Decision, at p. 47.)

Third, the original petition described avoided land use impacts from "reduced transmission projects" (i.e., rooftop solar versus utility-scale solar) due to distributed generation. The Commission again declined to include this suggestion in the calculator because its proponents had failed to "offer any evidence that increased net energy metering installations will directly result in decreased utility scale projects," ****393** especially given analysis presented to the Commission that a reduction in the rate of growth of customer-side solar (contemplated with adoption of the successor tariff) would mean the need for utility-scale solar " 'remains virtually the same.' " (Decision, *supra*, at pp. 70–71.)

In each of these instances, the Commission considered but ultimately declined to include the purported benefit in the calculator because there was insufficient evidence at the time of its Decision that there was an actual benefit to customers and/or the electrical system. Nothing in the language of section 2827.1(b)(3) suggests the Commission was required to do otherwise. Indeed, the legislative history of section 2827.1 makes clear that the Legislature intended to provide the Commission with "flexibility to implement fair and reasonable reforms, in line with the state's energy policy goals and objectives." (Assem. Henry T. Perea, Assem. Bill No. 327 Press Release Aug. 30, 2013.) Effectuating that intent, section 2827.1(b) explicitly provides a mechanism for the Commission to revise the tariff "as appropriate to achieve the objectives of this section." We see no reason why this provision would not include future revisions to the tariff based on new or additional evidence regarding the costs and benefits of renewable electrical generation facilities.

Fourth, the original petition argued that the calculator fails to fully account for transmission costs avoided because of exported energy. The Commission reviewed competing proposals for a methodology to estimate avoided transmission costs, adopting the one it deemed most reasonable and authorizing further review and analysis of avoided transmission costs to aid in the development of improved methods to estimate such costs. (ACC Decision, *supra*, at pp. 73–75.) Petitioners have not shown that the Commission's methodology falls outside its lawmaking authority delegated by the Legislature. (*Yamaha*, *supra*, 19 Cal.4th at p. 10, 78 Cal.Rptr.2d 1, 960 P.2d 1031.) The original petition did not propose any alternative estimation methodology. Instead, it presumed that the calculator undervalued avoided transmission costs by comparing its $481 million projection of such costs for the three major public utilities during the period 2021–2025 with a Commission report in the record identifying a ***1308** regulatory category called "transmission revenue requirements" that exceeded $4 billion for the three utilities in 2021. But an examination of that report makes clear that the regulatory category sweeps much broader than costs avoided by the export of energy from renewable systems, including, for example, "wildfire mitigation work, including enhanced inspections and vegetation management efforts."

The original petition also argued that the Commission failed to proceed in the manner required by section 2827.1(b)(3) because the successor tariff treats reduced use of grid-supplied energy by NEM customers as a cost rather than a benefit and penalizes them when they reduce their electric bill. We disagree. Consumer-generators are billed for the energy they import, regardless of the degree to which they reduce their use of imported energy. In this way, the successor tariff makes no attempt to address any cost shift that results solely from the reduction in those customers' use of imported energy. Instead, it remedies only the cost shift that occurred when the NEM tariff permitted consumer-generators to avoid paying for imported energy by offsetting exported energy against it. The Legislature clearly contemplated and wanted a successor tariff that would prevent this shift. (Sen. Analysis, *supra*, at p. 4.)

****394** The original petition lastly argued that the Commission improperly dismissed an alternative test for evaluating distributed energy resources, known as the "Societal Cost Test." The Commission found it "premature" to apply the Societal Cost Test because it was still under development by the Commission at that time. (Decision, *supra*, at p. 211.) Petitioners have not shown that the Commission's methodology fell outside its lawmaking authority delegated by the Legislature. (*Yamaha*, *supra*, 19 Cal.4th at p. 10, 78 Cal.Rptr.2d 1, 960 P.2d 1031.) Section 2827.1(b)(3) does not specify *how* the Commission should determine the costs and benefits of renewable electrical generation facilities, let alone require the Commission adopt a particular methodology not fully developed at the time of its Decision. As detailed above, the Legislature intended to provide the Commission with flexibility and we see no reason why its discretion under section 2827.1(b) would not include future revisions to the tariff based on new or additional methodology regarding the costs and benefits of renewable electrical generation facilities.[7]

For the first time in their supplemental briefing after remand, petitioners argue that the successor tariff is based on the utilities' avoided costs, and it ***1309** fails to account for the benefits "that accrue when customer-generators invest in private facilities to generate and use renewable energy on-site." Petitioners have not explained why this argument is not forfeited. (*Unzueta v. Akopyan*, *supra*, 85 Cal.App.5th at p. 78, fn. 8, 301 Cal.Rptr.3d 93.) Even if not forfeited, we are not persuaded that petitioners have shown the Commission's Decision fell outside its lawmaking authority delegated by the Legislature. (*Yamaha*, *supra*, 19 Cal.4th at p. 10, 78 Cal.Rptr.2d 1, 960 P.2d 1031.)

As to the argument that the successor tariff is improperly based on the utilities' avoided costs, the Commission adopted a methodology that considered the benefit of the renewable electrical generation facility in reducing utilities' costs for providing electricity that would *otherwise be recouped* from customers through electricity rates. (Decision, *supra*, at p. 59.) As petitioners acknowledge, "Ratepayers are on the hook for all of the utilities' spending." The Legislature understood the connection between the utilities' avoided costs and the costs and benefits of renewable electrical generation facilities when it enacted section 2827.1 and directed the Commission to develop a successor tariff that prevented the shifting of utility costs to certain customers. (Sen. Analysis, *supra*, at p. 4.)

Moreover, petitioners do not sufficiently describe the purported benefits of "customer-generators invest[ing] in private facilities to generate and use renewable energy on-site" or how they differ from the "societal benefits" raised in their original petition. For example, petitioners contend that generation and use of on-site power reduces the demand for electricity during hot days and stabilizes California's energy supply infrastructure. These purported benefits resemble the resiliency benefit presented in the original petition, which the Commission declined to include in the calculator because proponents had only ****395** provided examples of such benefits that were private, highly speculative, and/or limited to unique circumstances. (Decision, *supra*, at p. 69.) Petitioners' supplemental briefing cites no evidence regarding *any* of these benefits. Under these circumstances, we cannot conclude that the Commission's Decision fell outside its lawmaking authority delegated by the Legislature. (*Yamaha*, *supra*, 19 Cal.4th at p. 10, 78 Cal.Rptr.2d 1, 960 P.2d 1031.)

Petitioners also argue that on-site generation of renewable energy provides a benefit by generating "electricity that ratepayers are not on the hook for." The Decision explains that the calculator *does* consider this benefit in terms of costs utilities may avoid when customers use their renewable electrical generation facility to meet their consumption needs. (Decision, *supra*, at p. 59 [noting "avoided costs determined in the Avoided Cost Calculator are the utilities' marginal costs of providing electric service to customers" and "can be avoided when the demand for energy decreases because of distributed energy resources"].) But as directed by the Legislature, the successor tariff ***1310** does not *overvalue* that benefit at the expense of nongenerating customers. (Sen. Analysis, *supra*, at p. 4.) Inflating the benefits of customer-generators to the detriment of nongenerating customers would be contrary to the purpose of section 2827.1.

Petitioners appear to suggest otherwise by pointing to "the history of the Legislature's efforts to promote customer-generated renewable electricity." Specifically, petitioners rely on the express findings and declarations made by the Legislature in 1995 when it enacted former section 2827, subdivision (a), including that net energy metering "is one way to encourage private investment in renewable energy resources." But the legislative history of section 2827.1 shows why such reliance is misplaced. The author of the bill explained the Commission would be required "to develop a new structure for Net Energy Metering (NEM) *unconstrained* by existing law (PUC code, Section 2827) governing the existing NEM program." (Fact Sheet, *supra*, at p. 2, italics added.) Accordingly, we decline petitioners' invitation to import legislative findings and declarations from section 2827 to section 2827.1, especially when it would alter the statutory objectives set forth in section 2827.1(b).

In sum, we conclude the Commission did not fail to proceed in the manner required by section 2827.1(b)(3) or otherwise err when it adopted the successor tariff.

III.

Section 2827.1(b)(4) requires the Commission to ensure the "total benefits" of the successor tariff "to all customers and the electrical system are approximately equal to the total costs." The original petition argued the Commission failed to proceed in the manner required by section 2827.1(b)(4) because its cost-effectiveness analysis improperly placed the interests of nonparticipating customers over "cost-effectiveness to the electrical system as a whole." We disagree.

The Lookback Study used certain cost-effectiveness tests from the Commission's Standard Practice Manual. (Decision, *supra*, at p. 14.) This included the Total Resources Cost (TRC) test, which "measures the net costs of a demand-side management program as a resource option based on the total costs of the program, including both the participants' and the utility's costs." (Decision, at p. 15, fn. 17.) It also included the Ratepayer Impact Measure (RIM) test, which "measures what happens to customer bills or rates due to changes in utility revenues and operating costs caused by a program." (Decision, *id.* at fn. 18.)

***1311** ****396** Contrary to petitioners' characterization, the adoption of a successor tariff that bases its export compensation rates on the value of the power exported — rather than providing an offset based on quantity alone — did not constitute an improper focus on nonparticipating customers. (Decision, *supra*, at p. 237.) The Legislature recognized the offset used in NEM 1.0 was inequitable because it shifted costs to non-NEM customers. (Sen. Analysis, *supra*, at p. 4.) In response, section 2827.1(b)(4) directs the Commission to ensure the total costs and benefits to *all customers* (and the electrical system) are approximately equal. The clear implication of that language is to ensure the successor tariff does not grant unwarranted benefits to, or impose unwarranted costs on, *any* particular group of ratepayers. Moreover, the TRC test *did* consider the costs to the electrical system as a whole. (Decision, at pp. 62–63 ["the TRC test has the ability to indicate whether a demand side program is cost-effective to the grid relative to other resource options"].) Petitioners have not shown that the Commission's cost-effective analysis fell outside its lawmaking authority delegated by the Legislature. (*Yamaha*, *supra*, 19 Cal.4th at p. 10, 78 Cal.Rptr.2d 1, 960 P.2d 1031.)

The original petition also argued that the Commission did not proceed in the manner required by section 2827.1(b)(4) and erred or abused its discretion because the successor tariff "dramatically reduce[d]" compensation for nonresidential customers without support from findings. (§ 1757.1, subds. (a)(1)–(2), (4).) Again, we disagree.

The Lookback Study explained that the NEM 2.0 tariff had TRC test results for nonresidential customers averaging 1.25, where a score of 1.00 represents no net cost or benefit. (Decision, *supra*, at pp. 48–49.) Accordingly, under the TRC test, the nonresidential NEM 2.0 tariff conferred a fairly small net benefit on the electrical system and was thus cost-effective for these market segments. (*Id.* at p. 49.) But the Commission declined to adopt this conclusion because it found the nonresidential NEM 2.0 tariff performed poorly on the RIM test: it earned an average score of .57, indicating an increase in rates for all customers and an increase in bills for nonparticipating customers. (*Id.* at pp. 48–50.) Given the equity objective in section 2827.1(b)(4), and the RIM test's usefulness in "examining whether disproportionate impacts occur on non-participants," the Commission placed "more weight" on the RIM test results and found the nonresidential NEM 2.0 tariff was not cost-effective. (Decision, at p. 50.)

Petitioners appear to contend the Commission should have accepted the cost-effectiveness conclusion from the TRC test because it is designated as the " 'primary test' " in the Standard Practice Manual. But the TRC test measures cost-effectiveness *for the electrical system*. Section 2827.1(b)(4), however, does not require the successor tariff to be cost-effective only for the ***1312** electrical system. Instead, it requires the Commission ensure the total costs and benefits of the successor tariff "to *all customers* and the electrical system" are approximately equal. (*Ibid.*, italics added.) Consistent with this directive, the Commission considered test results showing the nonresidential NEM 2.0 tariff failed to equalize costs and benefits among customers.

Petitioners also appear to contend that nonresidential customers "pay far more in utility bills than the actual cost to provide them energy from the grid." The intended significance of this contention is unclear. Section 2827.1(b)(4) directs the Commission to devise a successor tariff that balances the total costs and benefits across all ****397** customers and the electrical system. It does not require the Commission to ensure no customers were charged more by the utilities than the cost to serve them.

Finally, in their supplemental briefing after remand, petitioners argue for the first time that the Commission failed to proceed in the manner required by section 2827.1(b)(4) because the successor tariff is based on the utilities' avoided costs and fails to quantify benefits of the tariff to all customers and the electrical system. Petitioners have not explained why this argument is not forfeited. (*Unzueta v. Akopyan*, *supra*, 85 Cal.App.5th at p. 78, fn. 8, 301 Cal.Rptr.3d 93.) Even if not forfeited, we remain unpersuaded that petitioners have shown the Commission's Decision fell outside its lawmaking authority delegated by the Legislature. (*Yamaha*, *supra*, 19 Cal.4th at p. 10, 78 Cal.Rptr.2d 1, 960 P.2d 1031.)

The Legislature made clear that the equity objective of section 2827.1(b)(4) was to "ensure[ ] that the total benefits of the program to all customers and the electric system are equal to the total costs." (Fact Sheet, *supra*, at p. 2.) As explained above, the successor tariff based export compensation rates on values derived from the calculator, which determined utilities' avoided costs for providing electricity that would *otherwise be recouped* from customers through electricity rates. (Decision, *supra*, at pp. 59, 233, 237.) The Legislature understood the role of utilities' avoided costs in ensuring the costs and benefits of the successor tariff were equitable across all customers and the electrical system. (Sen. Analysis, *supra*, at p. 4.) It enacted section 2827.1 to prevent the continuation of a decades-long shift of utilities' costs from NEM to non-NEM customers. (Sen. Analysis, at p. 4.)

And petitioners do not sufficiently describe the benefits of the tariff that the Commission purportedly failed to quantify. Instead, they make vague reference to benefits of the renewable electrical generation facility cited in their section 2827.1(b)(3) argument, including benefits of consumers generating renewable energy on-site and other "societal" benefits. We do not see how recharacterizing these as benefits of the tariff shows the Commission's Decision fell outside its lawmaking authority delegated by the Legislature. ***1313** (*Yamaha*, *supra*, 19 Cal.4th at p. 10, 78 Cal.Rptr.2d 1, 960 P.2d 1031.) As explained above, the tariff *did* account for the benefits of consumers' renewable electrical generation facility to meet their consumption needs but balanced it in consideration of the total benefits and costs to *all* consumers and the electrical system. (Decision, *supra*, at p. 59.) And like section 2827.1(b)(3), nothing in section 2827.1(b)(4) requires the Commission to have balanced the four "societal" benefits identified in the original petition when there was insufficient evidence at the time of its Decision of an actual benefit to customers and/or the electrical system. Nor does it preclude the Commission from revising the tariff in the future upon new or additional evidence regarding the total benefits and costs of the tariff to all customers and the electrical system.

In sum, we conclude the Commission did not fail to proceed in the manner required by section 2827.1(b)(4) and did not otherwise err or abuse its discretion when it adopted the successor tariff.

DISPOSITION

The Decision is affirmed. The Commission and real parties in interest shall recover their costs in this proceeding. (Cal. Rules of Court, rule 8.278(a)(1)–(2).)

WE CONCUR:

TUCHER, P. J.

PETROU, J.

All Citations

118 Cal.App.5th 1288, 342 Cal.Rptr.3d 379

Footnotes

1 Originally, the NEM tariff required by section 2827 applied only to solar power systems operated by an electric utility's residential customers. (Former § 2827, subd. (b).) The tariff now applies to any "renewable electrical generation facility" with a total capacity of one megawatt or less operated by a utility customer, regardless of the way the power is generated or the nature of the customer. (§§ 2827, subd. (b)(4)(A), 2827.1, subd. (a).)

2 In addition to the costs of servicing customers and maintaining the power grid, these costs include funding for various public policy programs, such as those subsidizing utility service to low-income customers.

3 Given the extensive record of exhibits lodged by petitioners, we declined to require the Commission to file an administrative record but permitted the parties to request supplementation. We grant the Commission's request to add the Assigned Commissioner's Scoping Memo and Ruling, Rulemaking 22-11-013 (May 31, 2023) as it appears appropriate for inclusion in the administrative record. We otherwise deny the request, as it seeks inclusion of other material that postdates both the Decision and the order denying petitioners' application for rehearing.

4 We deny as unnecessary the requests for judicial notice filed by petitioners on May 3 and July 31, 2023, the Commission on September 29, 2023, and real parties in interest on June 21, 2023 and January 12, 2026. These requests seek judicial notice of legislative history materials, Commission decisions, and other agency documents, all of which are published. Such requests are unnecessary. " 'Citation to the material is sufficient.' " (*Wittenburg v. Beachwalk Homeowners Assn*. (2013) 217 Cal.App.4th 654, 665, fn. 4, 158 Cal.Rptr.3d 508 [considering request for judicial notice of published Senate bill analysis as citation to material]; *Thornton v. California Unemployment Ins. Appeals Bd.* (2012) 204 Cal.App.4th 1403, 1410, fn. 3, 139 Cal.Rptr.3d 737 [denying request for judicial notice of published agency recommendation].)

5 Given this conclusion, we reject any argument by petitioners that the Commission did not proceed in a manner consistent with section 2827.1(b)(1) because the "specific alternatives" requirement is plural. We similarly reject any argument that the earlier adopted programs cannot satisfy the requirement because they were not relied upon or mentioned in the Decision. The Decision makes multiple references to SOMAH, including a finding that evaluation of the program "could be useful in determining future changes to the tariff." (Decision, *supra*, at pp. 227, 174, 182, 236.)

6 In analyzing this argument, we need not address petitioners' citation to generalized principles regarding cost-benefit analysis by an administrative agency. (*Ctr. for Biological Diversity v. Nat'l Highway Traffic Safety Admin.* (9th Cir. 2008) 538 F.3d 1172; *Golden Hill Neighborhood Assn., Inc. v. City of San Diego* (2011) 199 Cal.App.4th 416, 130 Cal.Rptr.3d 865.) We find these cases inapposite, as section 2827.1 provides the framework governing the Commission's Decision here.

7 In its briefing before the Supreme Court, the Commission stated it has "long acknowledged the possibility of including certain societal effects in its cost-benefit analyses" and that the Societal Cost Test (finalized in 2024) will be an "informative tool going forward." The Decision also indicated the Commission "may consider" resiliency benefits at a future time, given "evolving analysis and changing grid conditions." (Decision, *supra*, at pp. 69–70.) Nothing about our interpretation of section 2827.1(b)(3) forecloses such consideration.

End of Document

Attachment 9

Petitioners' Supplemental Opening Brief, filed November 21, 2025

A167721

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT, DIVISION THREE

CENTER FOR BIOLOGICAL DIVERSITY, INC.,
ENVIRONMENTAL WORKING GROUP, AND
THE PROTECT OUR COMMUNITIES FOUNDATION,
Petitioners,

v.

PUBLIC UTILITIES COMMISSION,
Respondent;

PACIFIC GAS AND ELECTRIC COMPANY,
SAN DIEGO GAS & ELECTRIC COMPANY, AND
SOUTHERN CALIFORNIA EDISON COMPANY,
Real Parties in Interest.

CAL. P.U.C. DECISION NO. 22-12-056;
ON REMAND FROM CALIFORNIA SUPREME COURT CASE NO. S283614

PETITIONERS' SUPPLEMENTAL OPENING BRIEF

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Constitutions

Statutes

Legislative Materials

Other Authorities

Links to Exhibits to Requests for Judicial Notice

May 3, 2023 RJN, Exh. A [D.16-01-044]:
https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M158/K285/158285436.PDF

May 3, 2023 RJN, Exh. B [D.22-05-002]:
https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M474/K624/474624547.PDF

May 3, 2023 RJN, Exh. C [D.19-05-019]:
https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M293/K833/293833387.PDF

May 3, 2023 RJN, Exh. E [D.20-04-010]: https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M334/K734/334734544.PDF

July 31, 2023 RJN, Exh. D [D.18-06-027]: https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M216/K789/216789285.PDF

Sept. 13, 2024 RJN, Exh. 8 [D.16-09-036]: https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M162/K043/162043082.PDF

INTRODUCTION

In 2013, the Legislature enacted Assembly Bill No. 327 (2013-2014 Reg. Sess.) (AB 327). In the part of that bill codified as Public Utilities Code section 2827.1, the Legislature required the Public Utilities Commission to devise a new, uncapped tariff for customer-generators that, among other things, must:

- be "based on the costs and benefits of the renewable electrical generation facility"—that is, the costs and benefits of the generation facility installed and used by the customer-generator on the customer's own property (§ 2827.1, subd. (b)(3));[1]
- "ensure[ ] that customer-sited renewable distributed generation continues to grow sustainably" (§ 2827.1, subd. (b)(1));
- "include specific alternatives designed for growth among residential customers in disadvantaged communities" (§ 2827.1, subd. (b)(1)); and
- ensure that *the tariff's* "total benefits ... to all customers and the electrical system are approximately equal to [its] total costs" (§ 2827.1, subd. (b)(4)).

But in 2022, the Commission brought forth a tariff that flouted every one of these statutory requirements. The question presented here is: Must that tariff be set aside because the Commission failed to "proceed[ ] in the manner required by law"? (§ 1757.1, subd. (a)(2).)

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[1] Statutory citations are to the Public Utilities Code unless otherwise indicated.

Much has changed since this case was last before the Court. The California Supreme Court has now confirmed that the Legislature changed the standard for judicial review of Commission decisions in 1998, requiring courts to independently interpret statutes that direct Commission actions. The Supreme Court thus settled how judicial review must be conducted and overruled prior decisions, some of which had accorded Commission decisions a "strong presumption" of validity. (*Center for Biological Diversity, Inc. v. Pub. Util. Com.* (2023) 98 Cal.App.5th 20, 29 (*CBD I*).)[2] Some courts believed that this presumption entailed an extraordinarily lenient judicial-review standard that stripped courts of their power to interpret statutes de novo. This Court, for example, felt that it could disturb the Commission's statutory interpretation only if it "fail[ed] to bear a reasonable relation to statutory purposes and language." (*Ibid.*)

Prior to the Supreme Court's ruling in this case, the Commission, working in close collaboration with the large utility companies it regulates, felt free to take the detailed and highly specific instructions contained in section 2827.1 as a series of suggestions that it could follow, augment, modify, or ignore. Nor was consistency required. In 2016, the Commission mostly interpreted the statute as written. But by 2022, when the Commission issued the tariff challenged here, it had largely repudiated its own interpretation in favor of one that subverted

[2] In quotations throughout this brief, unless otherwise indicated, emphases were added while internal quotation marks, ellipses, brackets, citations, footnotes, and the like were omitted.

(or in some cases *in*verted) the statute's stated requirements and purpose, based on theories, tests, and considerations extraneous to the statute.

Those freewheeling days are over. As the Supreme Court observed, this case involves "'a quintessential judicial duty—applying its independent judgment de novo to the merits of the legal issue before it.'" (*Center for Biological Diversity, Inc. v. Pub. Util. Com.* (2025) 18 Cal.5th 293, 305 (*CBD II*), quoting *Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 8.)

Applying its independent judgment to the meaning of the statutes at issue here, and using the rigorous judicial scrutiny required by *CBD II*, the Court will see that the Commission's 2022 Decision Revising Net Energy Metering Tariff and Subtariffs (2022 Tariff) (21 App 18242) failed to proceed in the manner required by section 2827.1 in each of the following ways.

- **The 2022 Tariff is *not* based on "the costs and benefits" of the generation facility installed and used by the customer-generator.** As expressed in the statute itself, the primary benefit that the Legislature sought to advance in enacting section 2827.1 was to induce more generation of renewable electricity by customers on their own property for use on-site, or to be shared with neighbors, thus increasing clean generation resources without increasing use of the electric grid—an especially important benefit at times of peak electricity consumption. The Commission, however, excluded from its consideration not just *some* of the benefits of on-site generation facilities, but the *primary benefits* that the Legislature sought to advance. The 2022 Tariff therefore is not "based on" the facility's costs and benefits. (See Part II, *post*.)

- **The 2022 Tariff does *not* "ensure[ ] that customer-sited renewable distributed generation continues to grow sustainably."** Quite the opposite, in fact. The Commission relied on a private consultant's report (the so-called "Lookback Study") that, in conflict with the statute, treated *customer generation as a cost* instead of as *the very purpose* that the Legislature intended to promote. In so doing, the Commission deliberately and severely constrained the growth of customer-sited generation while ensuring the continued growth of monopoly utility profits. (See Part III, *post*.)
- **The 2022 Tariff does *not* include "specific alternatives designed for growth among residential customers in disadvantaged communities."** It just doesn't. The Commission attempted to excuse this fatal omission by pointing to limited programs outside the 2022 Tariff, none of which meets all of the statutory requirements. (See Part IV, *post*.)

- **The 2022 Tariff does *not* ensure that its own "total benefits ... to all customers and to the electrical system are approximately equal to [its] total costs."** This violation flowed naturally from the others: Having systematically excluded the statutory subjects (customer-sited generation, the generation facility, alternatives in disadvantaged communities) and each of their key benefits from its analysis, the Commission rendered itself incapable of determining whether the 2022 Tariff's total benefits and costs were approximately equal. (See Part V, *post*.)

These were not mere technical deficiencies. Collectively, they thoroughly undermined the legislative purposes—set forth expressly in section 2827, subdivision (a)—of "encourag[ing] substantial private investment in renewable energy resources, stimulat[ing] in-state economic growth, reduc[ing] demand for electricity during peak consumption periods, help[ing to] stabilize California's energy supply infrastructure, enhanc[ing] the continued diversification of California's energy resource mix, [and] reduc[ing] interconnection and administrative costs for electricity suppliers." (§ 2827, subd. (a).)

For all these reasons and others set forth below, the Court should set aside the 2022 Tariff.

ARGUMENT

I. *Yamaha*'s independent judgment de novo standard applies to statutory-interpretation questions and requires courts to start by examining the statutory language.

To determine whether the Commission failed to proceed as section 2827.1 requires, the Court applies its independent judgment de novo to determine the meaning of the Legislature's express statutory directives to the Commission.

When independently interpreting a statute, a court's "fundamental task is to ascertain the Legislature's intent and effectuate the law's purpose, giving the statutory language its plain and commonsense meaning." (*Kaanaana v. Barrett Business Services, Inc.* (2021) 11 Cal.5th 158, 168.) The analysis starts with the words of the statute, which are the most reliable indicator of the Legislature's intent. (*People v. The North River Ins. Co.* (2025) 18 Cal.5th 1, 13.) Courts give the words of a statute their plain, usual, ordinary, and commonsense meaning. (*Ibid.*; *Brown v. City of Inglewood* (2025) 18 Cal.5th 33, 40.) Courts examine the words of a statute "in context, keeping in mind [its] nature and obvious purpose," and "must harmonize 'the various parts of a statutory enactment … by considering the particular clause or section in the context of the statutory framework as a whole.'" (*People v. Murphy* (2001) 25 Cal.4th 136, 142.) In doing so, courts attribute significance to every word and phrase in a statute and avoid treating some words as surplusage. (*People v. Woodhead* (1987) 43 Cal.3d 1002, 1010.) Courts should not insert limitations that the Legislature excluded from the statutory language. (*Kaanaana*, at pp. 171, 173.)

Only when the words of the statute are susceptible to more than one interpretation may courts consult extrinsic sources, such as the statute's purpose, legislative history, public policy, and administrative interpretations. (*Brown*, *supra*, 18 Cal.5th at p. 40; *Microsoft Corp. v. Franchise Tax Bd.* (2006) 39 Cal.4th 750, 759-760.) Extrinsic materials "have a role in statutory interpretation only to the extent they shed a reliable light on the enacting Legislature's understanding of otherwise ambiguous terms." (*Martinez v. Regents of University of California* (2010) 50 Cal.4th 1277, 1293.)

The difference between the independent de novo review mandated by the California Supreme Court's *CBD II* decision and the standard of review that this Court previously applied could not be more stark. Courts must start by examining the language used by the Legislature, not the interpretations adopted by the Commission. It "makes no sense to speak of a 'permissible' [agency] interpretation that is not the one the court, after applying all relevant interpretive tools, concludes is *best*. In the business of statutory interpretation, if it is not *the best*, it is *not permissible*." (*Loper Bright Enterprises v. Raimondo* (2024) 603 U.S. 369, 400.)[3] In determining the weight to give to

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[3] *Loper Bright* involved the federal Administrative Procedure Act, and neither the federal nor the California Administrative Procedure Act apply in this case. (§ 1701, subd. (b); Gov. Code, § 11351, subd. (a).) Nonetheless, *Loper Bright*'s articulation of how courts use basic statutory

administrative interpretations of statutory language, agencies have no “comparative interpretative advantage over the courts.” (*Kaanaana*, *supra*, 11 Cal.5th at pp. 178-179.)

II. The Commission failed to proceed in the manner required by Public Utilities Code section 2827.1, subdivision (b)(3), which requires that the tariff be based on the costs and benefits of the customer-generator’s renewable electrical generation facility.

The Legislature required the Commission to “ensure” that the “tariff made available to eligible customer-generators is based on the costs and benefits of the renewable electrical generation facility.” (§ 2827.1, subd. (b)(3).) As discussed below, the statutory definition of the term “eligible customer-generator” in section 2827 establishes that the “renewable electrical generation facility” identified in section 2827.1, subdivision (b)(3) refers to a customer asset used to generate renewable electricity for use on-site and locally, and which is distinct from, though connected to, the utilities’ grid. The Merriam-Webster.com dictionary definition of “based” establishes that the costs and benefits of the identified customer facilities must constitute the foundation for the tariff.[4] Despite the unambiguous statutory text, however, the Commission did not evaluate *any* benefits of on-site generation and use by customers (§ 2827, subd. (b)(4)(A)), much less ensure

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interpretation tools is instructive here for the fundamental principle that courts decide the *best* interpretation of a statute.

[4] Merriam-Webster.com Dict. <https://www.merriam-webster.com/dictionary/base> [as of Nov. 21, 2025].

that the benefits of the facility described in the statute formed the basis for the tariff.

Instead, the Commission decided to base the 2022 Tariff on a so-called "Lookback Study," which was divorced from, and indeed contrary to, the directives in section 2827.1.[5] The result was a 2022 Tariff based on, and protective of, *the utilities'* costs and revenues[6] instead of a tariff based on the costs and benefits to all customers and the electrical system of the facilities identified in the statute—facilities that physically generate electricity to help power California's growing economy while preventing the need to expand the utilities' grid as electricity consumption in the electrical system increases.

A. Subdivision (b)(3) requires that the tariff be founded upon the costs and benefits of privately funded customer assets that generate renewable electrical power for use on-site and locally, preventing increased use of the utilities' grid.

To interpret subdivision (b)(3) of section 2827.1, the Court should consider—in context and in relation to each other—the meaning of the following terms: (1) "eligible customer-generator";

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[5] 21 App 18476 (Conclusion of Law No. 1); accord, *CBD I*, *supra*, 98 Cal.App.5th at p. 27 ("The 'foundation' for the successor tariff was the Net-Energy Metering 2.0 Lookback Study ....").

[6] 21 App 18477 (Conclusion of Law No. 18: "The Commission should base retail export compensation rates on values derived from the Avoided Cost Calculator."); accord, *CBD I*, *supra*, 98 Cal.App.5th at p. 31 ("Commission chose—through the [Avoided Cost] calculator—to value exported energy by the marginal *cost to utilities* of providing power").

(2) "renewable electrical generation facility"; and (3) "based on." The key statutory terms and their interrelation are addressed below.

1. "Eligible customer-generator"

Section 2827.1, subdivision (a) incorporates section 2827's definitions of "eligible customer-generator" and "renewable electrical generation facility." These key statutory terms are inextricably intertwined and must be read together.

The Legislature defined the term "eligible customer-generator" to mean a customer "who uses a renewable electrical generation facility … that is located on the customer's owned, leased, or rented premises, and is interconnected and operates in parallel with the electrical grid, and is intended *primarily* to offset part or all of *the customer's own electrical requirements*." (§ 2827, subd. (b)(4)(A).)

2. "Renewable electrical generation facility"

The Legislature defined the term "renewable electrical generation facility" to mean "a facility that generates electricity from a renewable source" identified in the Public Resources Code, like solar photovoltaic facilities, wind-driven generators, or geothermal installations, and "any additions or enhancements to the facility using that technology." (§ 2827, subd. (b)(11); Pub. Resources Code, § 24741, subd. (a)(1).)

Reading the statutorily defined terms "eligible customer-generator" and "renewable electrical generation facility" together yields this conclusion: A customer-generator's renewable electrical generation facility is a private customer asset on a customer's property that generates renewable energy *primarily to meet or offset the customer's on-site electricity use* and that operates alongside the utilities' grid. (§ 2827, subd. (b)(4)(A), (11).) Facilities used by customer-generators, on the one hand, and facilities constituting the utilities' grid, on the other, constitute distinct parts of "the electrical system"—a point that will become especially important later when discussing the Commission's violation of subdivision (b)(4). (See Part V, *ante*.)

In addition to "offset[ting] part or all of the customer's own electrical requirements" (§ 2827, subd. (b)(4)(A)), the customer-generators' facilities—which by definition are connected to the utilities' grid (§ 2827.1, subd. (b)(4))—also supply neighboring homes and buildings with locally generated electricity.[7] This local supply—both the generation of the electricity and its delivery along the small existing wires between homes and buildings within a neighborhood—happens at no significant added cost to the utility because the customer's extra electricity flows efficiently to neighboring loads according to the laws of physics. (10 App 8537.)

Thus, the facility identified in subdivision (b)(3) is a customer asset that generates renewable electrical power

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[7] See, e.g., § 2827, subd. (b)(6) (defining "net energy metering" as "measuring the difference between the electricity supplied through the electrical grid and the electricity generated by an eligible customer-generator and fed back to the electrical grid over a 12-month period as described in subdivisions (c) and (h)").

primarily for the customer's use on-site and for local use, allowing more electricity to be consumed in the electrical system without increasing demand on the grid, an especially important benefit on hot summer days.

3. The term "based on" means that the costs and benefits of the facility must constitute the foundation for the tariff.

The dictionary definition of the transitive verb "based" used in section 2827.1 is "to find a foundation or basis for: to find a base … for—usually used with *on* or *upon*," with the noun "base" defined as "the fundamental part of something."[8] The ordinary usage of the term "based on" establishes that the Legislature required that the costs and benefits of the customer-sited generation facility must constitute the tariff's foundation.

Read together with the statutory definitions of "eligible customer-generator" and "renewable electrical generation facility," the language of section 2827.1, subdivision (b)(3) thus requires that the tariff be founded upon the costs and benefits of privately funded customer assets that generate renewable electrical power for use on-site and locally, preventing increased use of the utilities' grid.

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[8] Merriam-Webster.com Dict. <https://www.merriam-webster.com/dictionary/base> [as of Nov. 21, 2025].

4. The Legislature has long recognized and encouraged the benefits of customer-sited generation facilities.

The textual interpretation presented above is more than enough to determine the meaning of subdivision (b)(3). But if any doubts remain, they are resolved by the history of the Legislature's efforts to promote customer-generated renewable electricity.

When it enacted section 2827.1 in 2013, the Legislature already had repeatedly recognized and encouraged the myriad state-wide benefits that result when customer-generators invest in facilities to generate electricity for the customer's on-site use or to be shared locally. (See, e.g., §§ 2827, subd. (a), 2827.1, subd. (b)(1).) Yet the 2022 Tariff failed to include those benefits as its basis and instead treated them as costs. Any benefits that the Commission did ascribe to those assets were completely unrelated to their function of generating electricity.

The Legislature first established net energy metering for eligible customer-generators in 1995 "to encourage private investment [by residential customers] in renewable energy resources, stimulate in-state economic growth, enhance the continued diversification of California's energy resource mix, and reduce utility interconnection and administrative costs." (Former § 2827, subd. (a), added by Stats. 1995, ch. 369, § 1 [Sen. Bill No. 656 (1995-1996 Reg. Sess.)].)

In 1998, 2001, 2002, 2006 and 2009, the Legislature repeatedly expanded net energy metering to more and more customers.[9] In 2013, instead of sunsetting the program or maintaining the cap on the number and amount of additional customer-generators, the Legislature completely eliminated the cap on total participation and eliminated the cap on system sizes for each eligible facility. And the Legislature expressly required the Commission to *ensure* the continued sustainable growth of customer-sited generation. (Stats. 2013, ch. 611, §§ 9, 11 [AB 327 amending § 2827 and enacting § 2827.1]; § 2827.1, subds. (b)(1) & (5), (c).)

Enacting section 2827.1 was a clear directive to the Commission to consider customer generation no longer an

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[9] Former § 2827, subd. (a), as amended by Stats. 1998, ch. 855, § 1 (Assem. Bill No. 1755 (1997-1998 Reg. Sess.)); see Stats. 2001, Ex. Sess., ch. 8, § 11 (Assem. Bill No. 29X (2001-2002 1st Ex. Sess.) adding small commercial, commercial, industrial, and agricultural customers and increasing the individual system size from 10 kilowatts to one megawatt); Stats. 2002, ch. 836, § 2 (Assem. Bill No. 58 (2002-2003 Reg. Sess.) raising program cap from 0.1 percent to 0.5 percent); Stats. 2006, ch. 132, § 6 (Sen. Bill No. 1 (2006-2007 Reg. Sess.) raising program cap from 0.5 percent to 2.5 percent); Stats. 2010, ch. 6, § 1 (Assem. Bill No. 510 (2010-2011 Reg. Sess.) raising program cap from 2.5 percent to 5 percent); Stats. 2012, ch. 610, § 1 (Sen. Bill. No. 594 (2012-2013 Reg. Sess.) adding properties with multiple meters, such as apartment buildings and farmland). See also former § 2827, subd. (a), as amended by Stats. 2001, Ex. Sess., ch. 8, § 11 (Assem. Bill No. 29X (2001-2002 1st Ex. Sess.) declaring that net energy metering can "encourage *substantial* private investment in renewable energy resources," adding that net energy metering also "reduce[s] demand for electricity during peak consumption periods" and "help[s] stabilize California's energy supply infrastructure."); § 2827, subds. (b)(7)-(9), (h)(5); former § 2827, as amended by Stats. 2009, ch. 376, § 1 (Assem. Bill No. 920 (2009-2010 Reg. Sess.)).

experimental pilot program, but rather a permanent fixture of California's energy economy. As the Commission itself explained in 2016, "encouraging growth and expansion of customer-sited renewable [distributed generation] has been, and continues to be, a central theme behind NEM [net energy metering] legislation and the Legislature's expressed intent," and in "section 2827.1, the Legislature built on that objective by not only continuing the NEM program, but envisioning development of options for NEM participation to expand to disadvantaged residential communities." (Sept. 13, 2024 RJN, Exh. 8 [D.16-09-036], p. 13.)[10]

As discussed below at Part II.C, however, instead of basing the tariff on an accurate analysis of *the costs and benefits of customer facilities* that, by design, generate electricity and thereby prevent increased demand on the grid, the Commission instead based its 2022 Tariff on the *utility's* lost revenues and the *utility's* short-term avoided costs—a truncated and improper analysis that ignored the value of an electron generated by a customer and directly contravened the longstanding legislative objectives codified in sections 2827 and 2827.1.

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[10] Hyperlinks to all exhibits cited in the Requests for Judicial Notice are included at the end of the Table of Authorities for the Court's convenience.

B. The 2022 Tariff ignores a primary purpose of customer-sited generation facilities: on-site generation for on-site use by customer-generators.

As this Court's previous decision explained, the 2022 Tariff claims to compensate customer-generators "for the economic benefit they confer on the grid … by supplying excess energy." (*CBD I*, *supra*, 98 Cal.App.5th at p. 32.) But the Legislature did not say that the tariff should be based on the benefits of "supplying excess energy." Instead, the Legislature required that the tariff be "based on the costs and benefits of the renewable electrical generation facility." (§ 2827.1, subd. (b)(3).)

While supplying excess energy to the utilities' grid is one function of "the renewable electrical generation facility," a customer is not even eligible for the tariff unless that customer uses their renewable electrical generation facility for the customer's own use on-site. (§ 2827.1, subd (a); § 2827, subd. (b)(4)(A).) By basing the 2022 Tariff solely on the act of "supplying excess energy," the Commission excluded all the benefits that accrue when customer-generators invest in private facilities to generate and use renewable energy on-site—benefits that the Legislature expressly commanded the Commission to make the basis of its new tariff.

The benefits of customer-generators with renewable electrical generation facilities generating and using power on-site are not theoretical or abstract. They include all the benefits that the Legislature expressly identified in section 2827, subdivision (a), such as:

- benefits of private investment in customer-generation facilities (use of funds to generate electricity that ratepayers are not on the hook for);
- economic growth resulting from wide-ranging economic activities (purchases of rooftop solar panels, electric vehicles, heat pumps, electrical equipment, etc.);
- reducing demand for electricity during peak consumption periods (hot summer days);
- stabilizing California's energy supply infrastructure by generating electricity for use on-site and locally (in contrast to purchasing and delivering electricity from far-away fossil plants or wind or solar farms);
- resource diversification; and
- reducing interconnection and administrative costs.

But the Commission did not evaluate any of these benefits of on-site generation and use. Instead, it looked only at the benefits *to the utilities' grid* when customer-generators' facilities export electricity that the customer-generator does *not* consume on-site.[11]

For example, the Commission failed to evaluate the benefits of customer self-supply to meet increased electricity usage. Indeed, the Commission admitted that the foundation for

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[11] 21 App 18477 (Conclusion of Law No. 18: "The Commission should base retail export compensation rates on values derived from the Avoided Cost Calculator."); *CBD I*, *supra*, 98 Cal.App.5th at p. 31 ("the Commission chose—through the calculator—to value exported energy by the marginal cost to utilities of providing power").

the 2022 Tariff[12] failed to adequately address electricity consumption patterns or to quantify the well-known electrification benefits that accrue when customer-generators use on-site renewable electrical generation facilities.[13]

This failure to base the 2022 Tariff on the facility's primary benefits—on-site generation and use by the customer-generator—is more than enough, in and of itself, to require that the 2022 Tariff be set aside.

C. The Commission violated subdivision (b)(3) by basing the tariff on the "Lookback Study" instead of on "the costs and benefits of the renewable electrical generation facility."

The Lookback Study that formed the basis for the 2022 Tariff[14] was wholly untethered to the language in section 2827.1

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[12] 21 App 18476 (Conclusion of Law No. 1).

[13] 21 App 18458 (2022 Tariff, acknowledging benefits of electrification but admitting that "[e]lectricity consumption patterns are not discussed in the key takeaways of the Lookback Study," and that the Lookback Study cannot be relied upon to assess electrification benefits).

[14] 21 App 18476 (Conclusion of Law No. 1: "The Commission should use the Lookback Study as a foundation to create a successor tariff …."), 18283 ("[T]his decision finds that the following Lookback Study conclusions should be considered findings of fact in this proceeding and used in the analysis of proposals and adoption of a successor to the existing net energy metering tariff: [¶] (a) NEM 2.0 has negatively impacted non-participant ratepayers. [¶] (b) NEM 2.0 is not cost-effective. [¶] (c) NEM 2.0 disproportionately harms low-income customers not participating in the net energy metering tariff."), 18295 ("The cost-effectiveness analysis results of the Lookback Study for the

and did not purport to estimate the costs and benefits of "the renewable electrical generation facility," as subdivision (b)(3) required. Rather, the Lookback Study was written by consultants, who are frequently also hired by the utilities themselves, to evaluate the Commission's 2016 tariff (2016 Tariff). (May 3, 2023 RJN, Exh. A [D.16-01-044].)[15]

The Commission's reliance on the Lookback Study violated the statute in three ways.

First, as discussed in Part II.C.1, *post*, the Commission directed the Lookback Study authors to ignore all the benefits of customer-generated renewable energy *except for* the utility's short-term avoided costs from reduced usage of grid-supplied electricity. Specifically, the Commission required the authors to use the "2020 Avoided Cost Calculator," a model that does not estimate the value of any "facility" that generates electrons.

Second, as explained in Part II.C.2, *post*, the Commission directed the Lookback Study authors to use certain "cost-effectiveness" tests described in Commission decision D.19-05-019. (May 3, 2023 RJN, Exh. C.) That decision applies to Commission activities "requiring cost-effectiveness analysis of distributed energy resources"[16]—which is not the analysis that section 2827.1 requires.

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residential segment are incorporated into this decision as findings of fact.").

[15] The Commission refers to its 2016 Tariff as "NEM 2.0."

[16] D.19-05-019 at pp. 65-66; 1 App 828 & fn. 53; 21 App 18453 (Finding of Fact No. 22: admitting the Lookback Study

Third, as shown in Part II.C.3, *post*, one of the inapposite tests, the so-called Ratepayer Impact Measure (RIM) test, views matters *exclusively* from the utilities' perspective and, as a result, went so far as to treat statutorily defined *benefits* as *costs*. As explained below, the RIM test led to the Commission's erroneous conclusions about impacts to nonparticipants and a fictional "cost shift."

1. The 2022 Tariff was tainted by the Lookback Study's use of the Avoided Cost Calculator, a model that does not evaluate the costs and benefits of the customer-sited generation facility to which the statute refers.

The Commission instructed its consultants to limit the Lookback Study's analysis to the 2020 Avoided Cost Calculator,[17] a model so named because its outputs purport to "represent marginal costs a utility would avoid in any given hour if a distributed energy resource avoided the provision of energy during that hour." (May 3, 2023 RJN, Exh. E [D.20-04-010], p. 5.)[18] The Avoided Cost Calculator did not attempt to estimate

"followed the directives of prior Commission decisions regarding the methods for cost-effectiveness analysis").

[17] 1 App 909 ("We have been directed not to deviate from the 2020 ACC in developing benefit/cost estimates for this analysis."), 911 ("[W]e will only be using the 2020 ACC in this study."), 841 ("The avoided costs used in this analysis are based on the CPUC 2020 Avoided Cost Calculator (ACC) v1c approved on June 25, 2020.").

[18] The Lookback Study then input the 2020 Avoided Cost Calculator outputs into the inapposite "cost-effectiveness" tests described in the next section, as well as into a so-called "cost of service analysis." (21 App 18259 ["Avoided costs used in the four

the benefits of the various kinds of renewable electrical *generation* facilities identified in section 2827.1, subdivision (b)(3). Indeed, it does not evaluate generation facilities at all. Rather, the Commission admits that the Avoided Cost Calculator estimates only *the utilities'* avoided costs related to *the utilities'* "provision of electric and natural gas service" (May 3, 2023 RJN, Exh. B [D.22-05-002], pp. 3-4), and that it does so by estimating "the costs of the traditional resource, normally a new combustion turbine, that will be avoided when a distributed energy resource[19] is instead procured." (May 3, 2023 RJN, Exh. C [D.19-05-019], p. 50, fn. 99; May 3, 2023 RJN, Exh. E [D.20-04-010], pp. 4-5.)

In other words, rather than model electricity *generated by customers*, the Avoided Cost Calculator models the *utilities' costs* for providing electricity exclusively on the *utilities'* electrical *grid*. As previously demonstrated,[20] a customer-generator's renewable electrical generation facility—by definition—is *not* a utility asset. (§ 2827, subd. (b)(4)(A).) Rather, the customer facility operates "in

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tests are based on the 2020 Avoided Cost Calculator approved by the Commission on June 25, 2020."]; 1 App 826, 829, 830.)

[19] As explained in the next section, the term "distributed energy resource" and "renewable electrical generation facility" are not synonymous. (Part II.C.2, *post*.)

[20] As explained in Part II.A.2, *ante*, the words that the Legislature used in the statute reveal that the utilities' electrical grid and the customer-generator facility constitute distinct segments of the electrical system that provide power differently. (See § 2827.1, subd. (b)(3) [using the term "renewable electrical generation facility"], (b)(4) [using the term "electrical system"]; § 2827, subd. (b)(4)(A) [using the term "electrical grid"].)

parallel with," and is not the same as, the utilities' electrical grid. (*Ibid.*) The customer-sited generation facility remains a private asset on private property that generates renewable electricity for on-site and local use, using only the small wires between homes. (§ 2827, subd. (b)(4)(A), (11); see 10 App 8537; 5 App 4528.) The utilities, in contrast, purchase power from fossil plants and remote solar and wind farms and deliver power via the utilities' electrical grid using hundreds of miles of expensive power lines. (See 22 App 19326-19331; 9 App 7673-7674.)

But the Commission, in creating the 2022 Tariff, substituted an evaluation of the electricity generated by the utilities for the statutorily required evaluation of the electricity generated by customer-sited facilities.

Although peak electricity *usage* by California consumers has increased over the past 20 years, peak demand on the utilities' electrical *grid* has remained relatively flat thanks to electricity from customer-sited generation facilities.[21] Yet the Avoided Cost Calculator fails to account for the total benefits of avoiding the expansion of grid-supplied generation and infrastructure costs over the past 20 years. In defiance of section

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[21] 10 App 8477-8478, 8528, 8530; 5 App 4522-4523; see also 7 App 5185 (The California Independent System Operator (CAISO), the entity that manages the utilities' electrical grid, explaining that "[t]he downward pressure on peak demand load growth and energy consumption was compounded by higher than anticipated development of behind-the-meter solar photovoltaic generation. Behind-the-meter solar has reduced the summer peak loads traditionally occurring in mid-day …."), 5232 (CAISO: "Statewide, self-generation was projected to reduce peak load by more than 8,078 MW in the mid case by 2027.").

2827.1, the Calculator simply does not measure the benefits that result when customer-generation facilities enable increased consumption of electricity without a correspondingly increased demand on the utilities' grid.

Significantly, while the Legislature has used the words "avoided costs" in other statutes,[22] it did not include that term in section 2827.1. When the Legislature uses a term in one place and omits it from another, the term should not be inferred where it was excluded. (*Woodhead*, *supra*, 43 Cal.3d at p. 1010.) The omission of a provision used in a related statute "is significant to show that a different intention existed." (*People v. Valentine* (1946) 28 Cal.2d 121, 142.)

The Commission's decision to confine the Lookback Study's authors to benefits in the utility-centric Avoided Cost Calculator rendered the Lookback Study unusable for purposes of complying with the statutory requirement in section 2827.1, subdivision (b)(3), which required the Commission to base the tariff on "the

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[22] For example, the Legislature required the Commission to evaluate the success and impact of the Self-Generation Incentive Program on performance measures that, among many others, include "[t]he value to the electrical transmission and distribution system *measured in avoided costs* of transmission and distribution upgrades and replacement." (§ 379.6, subd. (*l*)(6); see also § 399.32, subd. (d) [requiring publicly owned utilities adopting certain tariffs to "consider avoided costs for distribution and transmission system upgrades"]; § 328.2 ["credit shall be equal to the billing and collection services costs *actually avoided* by the gas corporation"]; § 963, subd. (c)(3) [same]; § 769.3, subd. (c)(3) [requiring the Commission to "prohibit[ ] the program's costs from being paid by nonparticipating customers in excess of the *avoided* costs"].)

costs and benefits of the renewable electrical generation facility," i.e., a customer asset that generates clean power for on-site and local use, allowing for increased electricity consumption without correspondingly increased use of the grid.

2. The 2022 Tariff was further compromised by the Lookback Study's use of "cost-effectiveness" tests for "distributed energy resources"—analyses untethered to section 2827.1.

The Lookback Study's adherence to D.19-05-019, an earlier Commission decision applicable to Commission activities "requiring cost-effectiveness analysis of distributed energy resources,"[23] provides yet another reason why the Lookback Study was unusable for purposes of complying with section 2827.1, subdivision (b)(3). Adhering to D.19-05-019 sent the Lookback Study authors down a rabbit hole of various "cost-effectiveness" tests designed "to determine the cost-effectiveness of utility-sponsored programs." (1 App 863.) In contrast, section 2827.1, subdivision (b)(3) refers to *privately funded customer assets*, not utility-sponsored programs.[24]

[23] May 3, 2023 RJN, Exh. C (D.19-05-019), pp. 65-66; 1 App 828 & fn. 53; 21 App 18453 (Finding of Fact No. 22: admitting the Lookback Study "followed the directives of prior Commission decisions regarding the methods for cost-effectiveness analysis").

[24] § 2827.1, subd. (b)(3) ("the renewable electrical generation facility"); § 2827, subd. (b)(4)(A) (eligibility conditioned on generation and on-site use of the facility on the customer's own premises); see also § 2827, subd. (a) (expressly "encourag[ing] substantial private investment").

The Commission requires *utility-sponsored* programs to be "cost-effective" because of the inherent conflict between the utilities' interests and ratepayers' interests.[25] While ratepayers are inherently interested in seeing that the utilities spend as efficiently as possible, the utilities "are inherently incentivized to make investments to drive an increase in their rate base and therefore, their profitability." (22 App 19315.)

In other statutes, the Legislature uses the term "cost-effective" in reference to utility-sponsored programs. For example, the Legislature used the term "cost-effective" in section 8 of AB 327 to require the utilities to propose "cost-effective" *utility spending* to maximize the locational benefits of distributed resources. (Compare Stats. 2013, ch. 611, § 8 [adding § 769] with *id.* at § 11 [renumbering and enacting § 2827.1].) The Legislature's use of the term "cost-effective" elsewhere in AB 327 and its exclusion from section 2827.1 means that the Court should avoid reading that term into section 2827.1. (See *Woodhead*, *supra*, 43 Cal.3d at p. 1010; *Valentine*, *supra*, 28 Cal.2d at p. 142.)

The Legislature in section 2827.1 likewise avoided using the term "distributed energy resources." Instead, the Legislature used the term "renewable electrical generation facility" and

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[25] Ratepayers are on the hook for all of the utilities' spending; and ratepayers also pay for the utilities to profit from spending money on ratepayer-funded capital expenditures. (See 22 App 19315 [Commission explaining that the utilities' "rate base has a direct relationship with the return on rate base revenue requirement that is recovered from ratepayers"], 19310 [explaining rate base].)

incorporated the definition of that term found in section 2827, which expressly refers to a *generation* asset. (§ 2827.1, subd. (a); § 2827, subd. (b)(11) [defining "renewable electrical generation facility" as "a facility that *generates* electricity from a renewable source"].) Programs traditionally referred to as "distributed energy resource programs," like energy-efficiency and demand-response programs (May 3, 2023 RJN, Exh. C [D.19-05-019], p. 8), do not *generate* energy.

While the customer-sited renewable generation facilities referred to in section 2827.1, subdivision (b)(3) are, in fact, distributed, the parsing of words here is important because an analysis that treats generation facilities as no different from energy-efficiency programs inherently fails to assess the benefits of generating electrons. Turning off the light switch, while helping to limit grid use by using *less* electricity, is categorically different from installing a facility that generates electrons and allows for *more* electricity. The statute's words "renewable electrical generation facility" cannot be distorted by conflating them with the very different words "distributed energy resources." To do so, as the Commission did in the 2022 Tariff, subverts the Legislature's intention to promote customer generation, with all of its identified beneficial attributes.

In section 2827.1, the Legislature defined "renewable electrical generation facility" and omitted any reference to "cost-effectiveness" or to "distributed energy resources." The use of different terms with different definitions in different sections of

AB 327 should be given effect by the Court. (*Woodhead*, *supra*, 43 Cal.3d at p. 1010; *Valentine*, *supra*, 28 Cal.2d at p. 142.)[26]

The Lookback Study should not have used *any* of the D.19-05-019 tests in its analysis; but one of those tests, discussed next, holds the distinction of being the exact *opposite* of what section 2827.1 called for.

3. The Lookback Study's RIM test was antithetical to the Legislature's express statutory intent.

Using the RIM test was flagrantly improper because it counted *only* the *utilities'* avoided costs as benefits and *only* the *utilities'* reduced revenues and operational costs as costs.[27] That test thus was not merely untethered to section 2827.1, it flipped the statute's entire purpose on its head.

Treating customer-sited electricity generation as a "cost" directly undermined the Legislature's fundamental intent to *requir*e the continued proliferation of customer-sited generation for on-site and local use and to base the tariff on customer assets that generate electricity on the customer's own property for the customer's on-site use. (§§ 2827.1, subd. (b)(1), (3), 2827, subd.

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[26] May 3, 2023 RJN, Exh. C (D.19-05-019), pp. 65-66; 1 App 828 & fn. 53; 21 App 18453 (Finding of Fact No. 22: admitting the Lookback Study "followed the directives of prior Commission decisions regarding the methods for cost-effectiveness analysis").

[27] 1 App 829 (showing the RIM test looks exclusively at "Electricity Avoided Costs" as benefits and "Electric Bill Savings" as costs), 828 (Lookback Study admitting RIM "costs are the utility's costs to operate the NEM 2.0 program and the reduction in revenue received by the utility when participating customer bills decline due to the operation of the NEM 2.0 system.").

(b)(4)(A), (11).) Such facilities reduce demand during peak consumption periods, help to stabilize California's overall energy system, and *prevent* costs that all ratepayers otherwise would bear. All consumers and the whole electrical system benefit. (§ 2827, subd. (a).) Yet this subversive test formed the genesis of the fictional "cost shift"[28] that the Commission presented as an excuse for its failure to adhere to the requirements of section 2827.1.

In sum: The Commission failed to proceed as required by section 2827.1, subdivision (b)(3) when it based the 2022 Tariff on the Lookback Study instead of basing it on "the costs and benefits of the renewable electrical generation facility," as the statute required. Reliance on the Lookback Study requires that the Commission's 2022 Tariff be set aside.

[28] See 21 App 18473 (Finding of Fact No. 232: identifying an estimated cost shift ranging "between $1 billion and $3.4 billion annually"), 18288 & fn. 54 (referring to Lookback Study $1 billion estimate of the cost shift and the utilities' extrapolation from that estimate); 1 App 864 (Lookback Study explaining that "[t]he NPV of RIM costs exceed the RIM benefits by approximately $13,000 m," arrived at by using the numbers in Table 5-1 in the RIM column: 20,583-7,576=13,007); 16 App 13164, fn. 13 (utilities translating the Lookback Study's $13,000M RIM results to "over $1 Billion in cost shifting per year").

III. The Commission failed to proceed in the manner required by section 2827.1, subdivision (b)(1)'s mandate to ensure that customer-sited renewable distributed generation continues to grow sustainably.

Instead of ensuring "that customer-sited renewable distributed generation continues to grow sustainably" (§ 2827.1, subd. (b)(1)), the Commission concluded, based on the Lookback Study's specious RIM results, that it should instead contravene the statute in order to "minimize the cost shift" and "ensure [that] the growth of the net energy metering market does not come at the undue and burdensome financial expense of nonparticipant ratepayers." (21 App 18476, 18477 [Conclusions of Law Nos. 1, 2, 12].)

Distilled to its essence, the Commission in the 2022 Tariff did the precise opposite of what the statute required: It ensured the growth of monopoly utility profits instead of ensuring the growth of customer-sited generation. Or to put it even more bluntly: Through the instructions it gave its consultants, the Commission rigged the Lookback Study to systematically exclude the benefits flowing from customer-sited generation—the very benefits that the Legislature sought to advance when it enacted section 2827.1. The Commission then relied on the Study's preordained results as the pretext for not merely ignoring but actually contravening its statutory obligations under subdivision (b)(1).

A. Subdivision (b)(1) requires that the Commission maintain at length, without interruption or weakening, the expansion of customer-sited renewable distributed generation.

The first clause of subdivision (b)(1) of section 2827.1 requires the Commission to ensure that the "tariff made available to eligible customer-generators ensures that customer-sited renewable distributed generation continues to grow sustainably." (§ 2827.1, subd. (b)(1).) As explained below, construing all of these terms and then reading them together yields this conclusion: The first clause of section 2827.1, subdivision (b)(1) requires the Commission to ensure that the tariff maintains at length, without interruption or weakening, the already expanding consumption of electricity generated by customer-sited generation facilities located on private property or used by neighbors.

To understand the meaning of the statutory mandate, the terms "customer-sited renewable distributed generation," "continues," "grow," and "sustainable," must be read in the context of subdivision (b)(1)'s subject—a "tariff made available to eligible customer-generators."[29]

As explained in Part II.A, *ante*, the term "customer-sited renewable distributed generation" incorporates definitions set forth in section 2827 and, properly construed in light of those definitions, refers to utility customers that generate and use

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[29] See Part II.A, *ante* (discussing statutory definition of "eligible customer-generator").

renewable electricity on their own property to offset part or all of their own on-site electrical needs. By using private assets to generate electricity for on-site use, and by sharing excess electricity with neighbors using only the small wires between homes or buildings, customer-sited generation benefits all ratepayers and the electrical system by preventing increased use of an already strained electric grid. (See Part II.B, *ante*.)

The dictionary definitions of the words “continues,” “grow,” and “sustainable” can be used to understand the phrase “continues to grow sustainably.” (§ 2827.1, subd. (b)(1).) The verb “continue” means “to maintain without interruption a condition, course, or action.”[30] The verb “grow” means, among other things, to increase or expand.[31] The adjective “sustainable” means capable of being “maintained at length without interruption or weakening.”[32] Thus, the phrase “continues to grow sustainably” means to maintain at length, without interruption or weakening, the already occurring expansion of customer-sited renewable distributed generation.

Put simply, the Legislature envisioned an electrical system that would continue to increase the number of consumers self-supplying their own electricity and sharing surplus with

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[30] Merriam-Webster.com Dict. <https://www.merriam-webster.com/dictionary/continue> [as of Nov. 21, 2025].

[31] *Id.* at <https://www.merriam-webster.com/dictionary/grow> [as of Nov. 21, 2025].

[32] *Id.* at <https://www.merriam-webster.com/dictionary/sustainable>, <https://www.merriam-webster.com/dictionary/sustained> [as of Nov. 21, 2025].

neighbors as a way to prevent load growth on a stressed and costly grid while also "stimulat[ing] in-state economic growth." (§ 2827, subd. (a).)

B. The Commission subverted the statute's purpose, giving itself an excuse not to proceed in the manner required by section 2827.1, subdivision (b)(1).

The 2022 Tariff failed to ensure that customer-sited distributed generation continues to grow sustainably as required by the first clause of section 2827.1, subdivision (b)(1).[33] Instead, citing an "undue and burdensome financial expense of nonparticipant ratepayers,"[34] the Tariff used the Lookback Study's RIM results as an excuse for *not* ensuring the continued sustainable growth of customer-sited generation.

Rather than implementing the statute's requirements, the Commission adopted a so-called "five-year glide path," purportedly in order to "minimize the cost shift, to ensure equity among all customers, and also to encourage the sustainable growth of the market, but not at the undue and burdensome

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[33] In contrast, the Commission's 2016 Tariff decision acknowledged that any implementation of subdivision (b)(1) must contain modifications to the net energy metering scheme that "ensure that customer-sited renewable DG continues to grow sustainably." (May 3, 2023 RJN, Exh. A [D.16-1-044 Conclusion of Law No. 1], p. 113.)

[34] 21 App 18476 (Conclusion of Law No. 2 in 2022 Tariff: "The Commission should ensure the growth of the net energy metering market does not come at the undue and burdensome financial expense of nonparticipant ratepayers.").

financial expense of nonparticipant ratepayers."[35] This glide path provides an "ACC Plus adder" for the first five years of the 2022 Tariff, whereby certain PG&E and SCE customers who enroll in the 2022 Tariff receive slightly more than Avoided Cost Calculator values[36] for exporting excess electricity to the grid. (21 App 18481-18482.)[37]

The Commission admitted that it *intended* the so-called glide path to result in a nine-year "payback period" for customer-generators with stand-alone solar systems. This meant that the Commission deliberately *doubled or tripled* the time in which prospective customer-generators could expect to recoup their investment.[38] On its face, this move could only discourage customer investments—the very opposite of ensuring continued, sustainable growth.

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[35] 21 App 18477 (Conclusion of Law No. 12).

[36] The Commission explained that the ACC adder is a credit to the customer's utility bill to reflect the customer's electricity exports. "The adder will be a discrete line on the customer's utility bill, will apply to all charges, and will apply to future bills until the credit is used." (21 App 18482.)

[37] The ACC Plus adder amounts decrease by 20 percent each year for a nine-year period. (21 App 18482.)

[38] 21 App 18467 (Finding of Fact No. 164: "The glide path is meant to ensure successor tariff customers, including CARE- and FERA-enrolled customers, have a nine-year simple payback period for stand-alone solar systems."), 18319 ("Joint Utilities assert the residential NEM 2.0 customer payback period is three to five years."), 18468 (Finding of Fact No. 177: "The transition to the successor tariff will require customers to make substantial investments … with longer payback periods in comparison with the NEM 2.0 tariff.").

The Commission's justification for throttling self-generation in this manner was to "alleviate cost shift." (21 App 18456 [Finding of Fact No. 57].) But, as discussed in Part II.C, *ante*, the Lookback Study's erroneous conclusions about impacts to nonparticipants, as well as its fabricated cost-shift, were based on an analysis (the RIM test) that treated nonuse of the utilities' grid as a *cost*. This was flatly inconsistent with one of the chief intended *benefits* of § 2827.1—namely, *increasing* nonuse of the grid by encouraging self-generation. (See Part II.B, *ante*.)

In short, the Commission failed to proceed in the manner required by subdivision (b)(1) when it refused to create a tariff that ensured that customer-sited renewable distributed generation would continue to grow sustainably. In direct violation of that statutory directive, the Commission instead eliminated most of the financial incentive for eligible customers to invest in on-site facilities to produce electricity for use themselves and by their neighbors.

IV. The Commission failed to proceed in the manner required by subdivision (b)(1) when it misinterpreted and ignored the statute's requirement that the *tariff* include "specific alternatives" for growth of customer-sited generation among residential customers in "disadvantaged communities."

The second clause of section 2827.1, subdivision (b)(1) requires the Commission to include in the tariff what we will refer to as "DAC Customer Alternatives"—i.e., "specific alternative<u>s</u> **[note: plural]** designed for growth of [customer-sited renewable distributed generation] among residential customers in disadvantaged communities."[39]

Despite that clear mandate, the 2022 Tariff does not include *any* alternative—let alone multiple "specific" ones—that is designed to achieve customer-sited generation growth among residential customers in disadvantaged communities. The Commission's negation of (b)(1)'s DAC Customer Alternatives requirement is enough, without more, to require that the 2022 Tariff be set aside.

The Commission has offered no persuasive defense of this failure to proceed in the manner required by law. Throughout this litigation, the Commission has tried to excuse its illegal omission of DAC Customer Alternatives by pointing to limited programs established *outside* of the 2022 Tariff.[40] Indeed, those programs were *excluded* from the tariff.[41] As explained below,

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[39] § 2827.1, subd. (b)(1), bolding and bracketed term added.

[40] Those non-tariff programs included: (1) the Disadvantaged Communities-Single-family Solar Homes program (DAC-SASH), (2) the Disadvantaged Communities-Green Tariff program (DAC-Green Tariff), and (3) the Community Solar Green Tariff Program (CS-GT). (D.23-06-056, p. 20.) Two of the three programs do not even involve *customer-sited* generation—in other words, the Commission also ignored the statutory requirement that the technology be "located on the customer's owned, leased, or rented premises." (§ 2827, subd. (b)(4)(A).)

[41] The Commission's own 2022 Decision acknowledged that "DAC-SASH ... is not analogous to the net billing tariff." (21 App 18328, 18471 [Finding of Fact No. 213: "The SOMAH evaluation is not in the record of this proceeding."], 18457 [Finding of Fact No. 63]; see also 21 App 18473 [Findings of Fact Nos. 226-228: finding community solar programs like DAC-Green Tariff and CS-GT were being considered in other proceedings and that it

however, the Commission's diversionary tactic of pointing to non-tariff programs ignores two critical points.

First, the Legislature had compelling reasons for demanding that DAC Customer Alternatives be included *within the tariff*. Programs mandated by a tariff constitute standing offers to eligible customers—offers on which those customers may confidently rely and which create binding obligations when a customer accepts them. By contrast, public programs may depend on taxpayer funding that is subject to the appropriations process and is therefore outside the Commission's control; or they may be Commission-created pilot programs that rely on a utility's commitment to adequately staff and appropriately implement a legislative directive. A tariff thus offers the customer a degree of certainty and reliability that non-tariff programs cannot approach.

Second, the Commission relied on a material misreading of the statute. To the extent that the 2022 Tariff addresses underserved populations, it focuses on "*low-income households*," not on the statutorily specified residential customers in "*disadvantaged communities*"—a term encompassing many types of community stressors, including but not limited to low income.

"Low-income households" and "low-income customers" are exactly what those words connote. The Public Utilities Code defines low-income electricity and gas customers as those with "annual household incomes that are no greater than 200 percent

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would be "premature to adopt a Community Solar tariff or subtariff in this decision"].)

of the federal poverty guideline levels." (§ 739.1, subd. (a).) Similarly, the Health and Safety Code defines "low-income communities" as those with "median household incomes at or below 80 percent of the statewide median income or with median household incomes at or below the threshold designated as low income by" a state agency. (Health & Saf. Code, § 39713, subd. (d)(2).)

By contrast, the statutory term "disadvantaged communities" encompasses far more than its words facially connote. It embraces not only low-income communities but also ones defined by *geographic*, *public-health*, and *environmental-hazard* criteria. By mistakenly equating the broader statutory term "disadvantaged communities" with the narrower term "low-income households"—which appears nowhere in section 2827.1—the Commission artificially constricted the scope of the statute's DAC Customer Alternatives requirement, inevitably excluding customers that the Legislature intended to benefit.

Although the Public Utilities Code does not define "disadvantaged communities," it is a term that was well-known to the Legislature when it enacted section 2827.1 in 2013. The term was first used by the Legislature in 2012 as part of the State's climate policy of directing investments to communities disproportionately impacted by pollution and other problems. The Legislature therefore tasked the California Environmental Protection Agency (CalEPA) with identifying such communities "based on *geographic, socioeconomic, public health,* and *environmental hazard* criteria." (Health & Saf. Code, § 39711, subd. (a).)[42]

The same statute specifies that "disadvantaged communities" "may include, but are not limited to, … [a]reas disproportionately affected by environmental pollution and other hazards that can lead to negative public health effects, exposure, or environmental degradation," as well as "[a]reas with concentrations of people that are of low income, high unemployment, low levels of homeownership, high rent burden, sensitive populations, or low levels of educational attainment." (Health & Saf. Code, § 39711, subd. (a)(1) & (2).) And in the same statutory scheme, the Legislature acknowledged that "disadvantaged communities" and "low-income communities" are not the same thing. (Compare Health & Saf. Code, § 39713, subd. (b) [directing 5 percent of climate-change investment-plan funds to benefit "low-income" households and communities] with Health & Saf. Code, § 39713, subd. (a) [directing 25 percent of such funds to benefit disadvantaged communities].)

As instructed, CalEPA identified disadvantaged communities as ones falling within "the top 25 percent overall

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[42] To understand the intended meaning of a statutory phrase, courts may consider use of the same or similar language in other statutes, because similar words or phrases in statutes that are in pari materia ordinarily will be given the same interpretation. Two statutes are considered to be in pari materia when they, inter alia, "relate to … the same class of persons"—in this case, the class of persons residing in "disadvantaged communities." (*Wendz v. State Dept. of Education* (2023) 93 Cal.App.5th 607, 633.)

scoring areas from CalEnviroScreen,"[43] a screening methodology that "may be used to help identify California communities that are disproportionately burdened by multiple sources of pollution."[44]

The term "disadvantaged communities" thus focuses on the pollution burden of a designated geographical area and on many other criteria—*not* just income levels.[45] Indeed, the Commission itself agrees that "proposals that seek to refocus on low-income individuals, or [that] add criteria in order to allow low-income individuals not living in [disadvantaged communities] to participate, *miss the mark*.... [T]his legislation [AB 327, which included section 2827.1] is about 'residential customers in *disadvantaged communities*.'"[46]

In sum: The Commission erroneously conflated low-income communities with disadvantaged ones and failed to include any DAC Customer Alternatives in the 2022 Tariff. Accordingly, the Court should find that the Commission failed to proceed in the manner required by the second clause of section 2827.1, subdivision (b)(1) and should set aside the 2022 Tariff.

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[43] 1 App 809.

[44] Cal. OEHHA, CalEnviroScreen 4.0 (May 1, 2023) <https://oehha.ca.gov/calenviroscreen/report/calenviroscreen-40>. CalEPA's designation of "disadvantaged communities" likewise included communities that lacked an overall CalEnviroScreen score but ranked in "the top five percent *pollution burdened* census tracts from CalEnviroScreen." (1 App 809.)

[45] See, e.g., July 31, 2023 RJN, Exh. D (D.18-06-027), p. 19.

[46] July 31, 2023 RJN, Exh. D (D.18-06-027), p. 19.

As explained in the next section, the Commission's failure to include DAC Customer Alternatives in the tariff also prevented it from considering the benefits of those programs and thus from performing the analysis required by subdivision (b)(4).

V. The Commission failed to proceed in the manner required by subsection (b)(4), which requires it to ensure that the tariff's total benefits and total costs to all customers and to the electrical system are approximately equal.

Section 2827.1, subdivision (b)(4) requires the Commission to "[e]nsure that the total benefits of the ... tariff to all customers and the electrical system are approximately equal to the total costs." (§2827.1, subd. (b)(4).) Having failed to create a tariff that met the requirements of section 2827.1, subdivision (b)(1) and (3), the Commission rendered itself incapable of assessing the total benefits or the total costs of the 2022 Tariff to all customers and the electrical system, as section 2827.1, subdivision (b)(4) requires.

The Commission did not even attempt to balance the tariff's total benefits and total costs because, as discussed below, the Commission replaced the term used in subdivision (b)(4), "tariff," with the term "exported power," a term not found anywhere in section 2827.1. And rather than total up the benefits to all customers and the electrical system, the Commission limited its analysis to the *utilities'* revenues and costs attributable to providing electricity via the *utilities'* part of the electrical system.

The Commission tried to justify its refusal to adhere to each of section 2827.1's mandates by referring to unspecified "conflicts" in those mandates. The Court should reject that argument. Read in light of the Legislature's expressed intent, the statutory requirements for the tariff for "eligible customer-generators" make perfect sense.

A. Subdivision (b)(4)'s inclusive language requires the Commission to analyze all of the tariff's benefits to all customers and to the electrical system as a whole.

To ascertain the correct meaning of subdivision (b)(4), the Court decides what the Legislature meant when it used the following terms: "tariff," "all customers and the electrical system," "total benefits," "total costs," and "approximately equal." Reading those terms together yields this conclusion: The Legislature required the Commission to total up the tariff's benefits to all customers and to the electrical system, to total up the costs, and to ensure that those totals were approximately equal. Those costs and benefits of the tariff must be all-inclusive.

Read in context, the term "tariff" must be interpreted as being the same tariff to which the Legislature refers throughout section 2827.1. (§ 2827.1, subd. (b); *Kaanaana*, *supra*, 11 Cal.5th at p. 175.) Thus, the "tariff" of subsection (b)(4) is the same one that "ensure[s] that customer-sited renewable distributed generation continues to grow sustainably"; that "include[s] specific alternatives designed for growth among residential customers in disadvantaged communities"; and that is "based on the costs and benefits of the renewable electrical generation facility." (§ 2827.1, subd. (b)(1), (3).)

The broad and inclusive language "all customers and the electrical system" includes every kind of customer and the whole electrical system. The dictionary meaning of the adjective "all" includes "the whole amount, quantity, or extent of," "every member or individual component of," and "the whole number or sum of."[47] The term "all customers" thus necessarily includes the customer groups expressly referenced in section 2827.1: namely, "eligible customer-generators" and "residential customers in disadvantaged communities." (§2827.1, subd. (b)(1), (3).) And "all customers" also naturally includes customers *not* specifically referenced in section 2827.1—i.e., electric-utility customers that do *not* generate renewable power for use on-site.

The word "system" is defined as "a regularly interacting or interdependent group of items forming a unified whole."[48] The term "electrical system" necessarily includes at least the two components of the electrical system expressly referred to elsewhere in the statute: (1) eligible customer-generators' renewable electrical generation facilities; and (2) the electrical grid. (§ 2827.1, subd. (a) [incorporating section 2827 definitions];

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[47] Merriam-Webster.com Dict. <https://www.merriam-webster.com/dictionary/all> [as of Nov. 21, 2025].

[48] Merriam-Webster.com Dict. <https://www.merriam-webster.com/dictionary/system> [as of Nov. 21, 2025].

§ 2827, subd. (b)(4)(A) ["electrical grid" distinct from "renewable electrical generation facility" used by customer-generators].)[49]

The dictionary defines the word "total" as "comprising or constituting a whole: entire," and as "involving a complete and unified effort especially to achieve a desired effect."[50] The language "total benefits" and "total costs" thus must be interpreted as inclusive and cannot be interpreted as excluding certain kinds of benefits or certain kinds of costs.

Thus, when the Legislature directed the Commission to ensure that the tariff's total costs and total benefits to all customers and the electrical system are approximately equal, it meant that the Commission must evaluate the entirety of the tariff's benefits and the entirety of the tariff's costs without excluding any customer groups or components of the electrical system.

[49] As explained in Part II.A, *ante*, the statutory definition of "eligible customer-generator" establishes that customer-generators' facilities and the electrical grid are interconnected but distinct segments of the electrical system: "eligible customer customer-generator" means one who uses a renewable electrical generation facility on the customer's own premises which is "interconnected and operates in parallel with the electrical grid." (§ 2827, subd. (b)(4)(A).)

[50] Merriam-Webster.com Dict. <https://www.merriam-webster.com/dictionary/total> [as of Nov. 21, 2025].

B. The Commission failed to proceed in the manner required by subdivision (b)(4) when it confined its analysis to the benefits and costs of *exported energy*, as measured by the *utilities'* costs and the *utilities'* part of the electrical system, instead of analyzing *the tariff's* total benefits and total costs.

The Commission did not even claim to have ensured that the tariff's total benefits and total costs to all customers and the electrical system are approximately equal, as subdivision (b)(4) requires.

Instead, the Commission erroneously substituted the word *exports* (i.e., excess electricity generated by a customer-generator's facility and supplied to the grid) for the word *tariff*.[51] But as previously discussed, limiting the analysis to exports considers only one of functions of the facility identified in subdivision (b)(3) while ignoring its primary function: on-site generation and on-site use by the customer to meet or offset the customer's own electrical requirements. (See Part II.B, *ante*.)

The Commission then compounded its error by assuming that the Avoided Cost Calculator somehow would ensure that the

[51] 21 App 18460 (Finding of Fact 93: "The Commission needs to know *export actual costs and benefits* in order to ensure they are approximately equal pursuant to Section 2827.1").

costs and benefits of exports "to the electric grid"[52] were approximately equal.[53]

We previously discussed the Commission's insupportable use of the Avoided Cost Calculator in the context of subdivision (b)(3). (See Part II.C.1, *ante*.) But another legal error resulted from the Commission's erroneous attempt to invoke the Avoided Cost Calculator in the context of subdivision (b)(4): The Commission failed to evaluate the benefits of the 2022 Tariff to *all ratepayers and the electrical system*.

As discussed in Part II.C.1, *ante*, the utilities' interests in providing electricity via the grid are *contrary to* the interests of all customers and the electrical system. While the regulatory profit structure gives utilities an incentive to expand the electrical grid, all customers and the electrical system benefit from *avoiding* grid expansions. Avoiding those expansions benefits all ratepayers and the electrical *system* but is not accounted for in the 2022 Tariff, which focuses myopically on the utilities' lost sales and the utility's grossly underestimated

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[52] 21 App 18460 (Finding of Fact No. 101), 18246 ("The current net energy metering tariff and its subtariffs are revised to balance the multiple requirements of the Public Utilities Code and the needs of the electric *grid*, the environment, participating ratepayers, as well as all other ratepayers."), 18247 (2022 Tariff has "a retail export compensation rate aligned with the value that behind-the-meter energy generation systems provide *to the grid*.").

[53] 21 App 18460 (Finding of Fact No. 98: "Using the Avoided Cost Calculator approach will ensure the costs and benefits [of exports] are approximately equal, as instructed by the Legislature.").

marginal costs of providing electricity via the grid. The 2022 Tariff therefore fails to quantify:

- "resource-specific" benefits (i.e. benefits of customer-sited generation facilities like rooftop solar facilities);
- benefits that were *not* resource-specific (i.e., benefits "not solely applicable" to customer-sited generation facilities like rooftop solar facilities);
- benefits conferred on customer-generators (so-called "private" benefits);
- benefits conferred on everyone, whether or not they are regulated-utility customers (so-called "societal" benefits);
- benefits conferred on residential customers in disadvantaged communities;
- benefits conferred on all the utilities' customers; and
- benefits to the electrical system.[54]

[54] See, e.g., Part II.C.2, *ante* (Avoided Cost Calculator does not assess customer-sited generation or benefits to all ratepayers and electrical system of generating electrons that enable more consumption of electricity without grid expansions); 21 App 18454 (Finding of Fact 34: relying on Avoided Cost Calculator estimates for transmission and distribution, greenhouse gas emission reductions, and grid reliability and resiliency), 18455 (Finding of Fact No. 41: rejecting reliability and resiliency because "*only* ... attributable to stand-alone solar and solar paired with storage"; Finding of Fact No. 45: rejecting cost of carbon, methane leakage, and future transmission because "not solely applicable to net energy metering" and erroneously deemed "societal"; Finding of Fact No. 44: rejecting resiliency benefits erroneously deemed "*private*"); see also 1 App 824 (recognizing "equity-focused programs may further accelerate system installations in less affluent and more diverse areas going

In sum: The Commission utterly failed to conduct the comprehensive and inclusive analysis required by subdivision (b)(4).

C. The Court should harmonize the statute and reject the Commission's erroneous assertion that the statutory requirements "conflict."

In an attempt to justify its refusal to comply with the Legislature's mandates, the Commission asserted that those mandates "sometimes[ ] conflict[ed]" with each other in some unspecified way. (21 App 18461 [Finding of Fact 107: "It [is] the Commission's responsibility to balance the multiple and, sometimes, conflicting requirements of the statute."].) Tellingly, while the 2022 Tariff alludes to purported conflicts, it fails to specifically identify any of them.[55] That failure left this Court in

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forward"); Part V.A., *ante* (discussing differences between "electrical system" and "electrical grid"); 22 App 19315 (utilities are inherently incentivized to increase their profits by capital expenditures like expanding the grid, which all ratepayers pay for).

[55] 21 App 18320 ("This decision reiterates the previous statement that analysis of the successor tariff requires balancing multiple—and sometimes conflicting—legislative requirements and guiding principles, as well as balancing the needs of participants and nonparticipants. Hence, no single method of analysis will be the overriding determinant of a final successor tariff, including the length of time for the payback period."), 18348 ("Continuing to base retail export compensation rates on retail import rates does not comply with Public Utilities Code Section 2827.1, thereby conflicting with one of the guiding principles."), 18352 (declining to consider resource-specific benefits of wind power because "[i]t is the Commission's

the position of having to *infer* that the Commission had concluded that "the directive of section 2827.1, subdivision (b)(4) to equalize costs and benefits both to all customers and to the electrical system required reducing the costs disproportionally shifted to nonowners by the NEM tariff." (*CBD I*, *supra*, 98 Cal.App.5th at p. 37.) Deferring to the Commission's unsubstantiated claim of "conflicting demands," the Court declined to enforce the statutory mandate that the Commission "do *all* of the following." (*Ibid.*; § 2827.1, subd. (b).)[56]

That ruling occurred within the context of an ultra-lenient judicial review. But the independent judgment de novo *Yamaha* standard recognized by the Supreme Court requires a different approach—and a different result: The Court now should independently consider the language that the Legislature used (and did not use) in section 2827.1 and attempt to harmonize the statute's various provisions to the extent they conflict. (*Woodhead*, *supra*, 43 Cal.3d at pp. 1009, 1010.)

When engaged in that task, the Court should bear the following in mind: When it wants to, the Legislature knows how to require the Commission to address cost shifting; yet the

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responsibility to balance the multiple and, sometimes, conflicting requirements of the statute").

[56] *CBD I*, *supra*, 98 Cal.App.5th at pp. 37, 38 ("Petitioners argue the Commission was not empowered to balance the demands of the statute's potentially conflicting requirements because the Legislature directed the Commission to 'do all of the following.' (§ 2827.1, subd. (b).) The Legislature, of course, could direct the Commission to have its cake and eat it too; regrettably, the Commission has no such power.").

Legislature omitted any mention of cost shifting in section 2827.1. For example, in section 2827, the section immediately preceding section 2827.1, the Legislature prohibited "a shifting of costs" for net surplus compensation.[57] (§ 2827, subd. (h)(5)(B).) But the Legislature did not include anything about cost shifting in section 2827.1. The Court therefore should refrain from reading any implied cost-shifting requirement into that section. (See *Woodhead*, *supra*, 43 Cal.3d at p. 1010; *Valentine*, *supra*, 28 Cal.2d at p. 142.)

In fact, the Legislature deliberately *deleted* cost-shift language from earlier versions of the bill. Those versions would have required that the tariff "be based on the electrical system costs and benefits received by nonparticipating customers" and that the tariff "[p]reserve nonparticipant ratepayer indifference" (meaning that the tariff should not affect ratepayers that do not participate in it).[58] (AB 327 (2013-2014 Reg. Sess.) as amended

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[57] "Net surplus customer-generator," "[n]et surplus electricity," and "[n]et surplus energy compensation" are statutorily defined terms that apply to net energy metering tariffs developed pursuant to section 2827. (§ 2827, subd. (b)(7)-(9).) Under section 2827, net surplus energy compensation must be provided to eligible customer-generators who "generate[ ] more electricity during a 12-month period than is supplied by the electric utility to the eligible customer-generator during the same 12-month period." (§ 2827, subds. (b)(7), (h)(5).) Only net surplus energy compensation includes language about cost shifting; bill credits provided for net energy metering customers have no such limitation. (Compare § 2827, subd. (c) with § 2827, subd. (h).)

[58] The Legislature sometimes requires the Commission to ensure that a tariff does not affect ratepayers that do not participate in the tariff. (See, e.g., § 2841, subd. (b)(4) ["The commission shall ensure that ratepayers not utilizing combined

Sept. 3, 2013, pp. 53-55 [showing strikethrough and new language].) The Legislature's rejection of those provisions in earlier versions of AB 327 "is most persuasive to the conclusion that the act should not be construed to include the omitted provision." (*People v. Soto* (2011) 51 Cal.4th 229, 245.)

The Court likewise should reject any suggestion that the hypothesized "cost shift" actually exists. The Legislature made no reference to any "cost shift" in 2013 when directing the Commission to include customer-generation as a permanent fixture in the electrical system (see Part II.A.3, *ante*); nor did the Commission assert the existence of any "cost shift" in 2016.[59] Even the flawed 2022 Tariff is devoid of any actual finding that a "cost shift" results from the renewable electrical generation facility that is the subject of section 2827.1, subdivision (b)(3), or from the customer-sited renewable distributed generation that is the subject of section 2827.1, subdivision (b)(1). Instead, the cost shift arose from the Commission's choice to require that the Lookback Study employ the erroneous and misleading RIM test, which treats non-use of the utilities' grid as a cost instead of as a core statutory benefit.

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heat and power systems are held indifferent to the existence of this tariff."]; see also §§ 2831, subds. (g), (h), 2833.)

[59] The Commission in 2016 acknowledged that the utilities lose revenue when customer-generators generate their own electricity, but rejected the utilities' and other parties' requests to assume any resulting "cost shift." (May 3, 2023 RJN, Exh. A [D.16-01-044], p. 81.)

If the Commission had evaluated the benefits of customer facilities that generate renewable power for use on-site and locally; *if* the Commission had acknowledged the benefits to all customers and the electrical system of increasing customer-sited generation instead of treating those benefits as a cost; and *if* the Commission had included in the Tariff beneficial alternatives for residential customers in disadvantaged communities—then and only then could it have accurately evaluated the total benefits and the total costs of the tariff to all customers and the electrical system. (§ 2827.1, subd. (b).) The problem lies not with any perceived "conflicts" in the Legislature's directives to the Commission, but in the Commission's refusal to comply with those directives. The Court should reject the Commission's refusal to adhere, as instructed, to *all* of the Legislature's requirements in section 2827.1.

VI. Section 1757.1, subdivision (a)(2) governs the scope of this Court's review.

When it remanded this case, the Supreme Court recognized that the Legislature changed the scope and manner of judicial review of Commission decisions in 1998 when it exercised its power under article XII of the state Constitution to rewrite sections 1757 and 1757.1. (*CBD II*, *supra*, 18 Cal.5th at pp. 303-304, 307, citing Cal. Const., art. XII, § 5.) Under article XII, the Legislature has the plenary power to grant the Commission authority over public utilities and to establish the scope and manner of judicial review of Commission actions. (Cal. Const., art. XII, §§ 3, 5.)[60]

Under the 1998 amendments, *Yamaha*'s independent judgment de novo standard governs when courts review Commission energy decisions under sections 1757 and 1757.1, just as it does when courts review other agencies' decisions and decide issues of statutory interpretation. (*CBD II*, *supra*, 18 Cal.5th at pp. 303-308, citing *Yamaha*, *supra*, 19 Cal.4th 1.) And courts apply the normal rules of statutory interpretation, described in Part I, *ante*, to understand the meaning and requirements of those statutes.

The Legislature used identical language—"has not proceeded in the manner required by law"—for all Commission decisions, however categorized. (*CBD II*, *supra*, 18 Cal.5th at pp. 303-304, quoting § 1757.1, subd. (a)(2).) The *Yamaha* distinction between a quasi-legislative and an interpretive role for agency action thus has no application in the Commission context under article XII of the state Constitution.

Section 1757.1 applies to Commission rulemaking proceedings like this one.[61] When reviewing Commission decisions applying a statute, the task before the Court in every

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[60] When article XII as it exists today was adopted in 1974, it made "no substantive change" to the pre-1974 Constitution. (Cal. Const., art. XII, § 9; *Independent Energy Producers Assn. v. McPherson* (2006) 38 Cal.4th 1020, 1040, fn. 6.)

[61] "The commission shall determine which rates and tariffs are applicable to customer generators only during a rulemaking proceeding." (§ 2827.1, subd. (b)(7).)

case is to give the statute its best reading—derived independently and de novo—using the established tools that courts regularly employ to determine the Legislature's intent and starting with the language the Legislature used. (See Part I, *ante*.) The Legislature has provided no thumb on the scale for the Commission's reading of the law.

Article XII is the constitutional source of the judicial review statutes applicable to review of Commission decisions, and courts are required to adhere to the Legislature's language. (Cal. Const., art. XII, § 5; *Pac. Tel. & Tel. Co. v. Eshleman* (1913) 166 Cal. 640, 653-654; see also Brief of Amici Curiae Martha Escutia et al. (Dec. 30, 2024, No. S283614).)

The plain language of 1757.1, subdivision (a)(2) that the Commission "has not proceeded in the manner required by law,"[62] as well as courts' treatment of such language in other cases involving other statutes with similar language,[63] requires this

[62] This language is derived from the administrative-mandamus statute Code of Civil Procedure section 1094.5. (See *CBD II*, *supra*, 18 Cal.5th at pp. 303-304.) The statutes governing judicial review of Commission decisions differ in important ways from the language of Code of Civil Procedure section 1094.5. These differences emphasize the rigor of the independent de novo statutory interpretation of legislative intent by the reviewing court in the article XII utility regulation context. Of particular consequence are the specification of "has not proceeded in the manner required by law" as a separate ground for reversal from "abuse of discretion," and the elimination of a showing of prejudicial effect. (§ 1757.1, subds. (a)(1), (2); compare Code Civ. Proc., § 1094.5, subd. (b).)

[63] Cf. *City of San Diego v. Bd. of Trustees of Cal. State Univ.* (2015) 61 Cal.4th 945, 956 ("use of an erroneous legal standard constitutes a failure to proceed in a manner required by law");

Court to determine what the governing statute requires and then to decide whether the Commission has not proceeded as required.

In short, the task before this Court under section 1757.1, subdivision (a)(2) is to determine the meaning of section 2827.1 by applying *Yamaha*'s independent judgment de novo standard as the Legislature and the Supreme Court have directed. (*CBD II*, *supra*, 18 Cal.5th at pp. 303-304.)

VII. The Commission's failure to proceed in the manner required by section 2827.1 requires that the 2022 Tariff be set aside, thus reinstating the Commission's 2016 Tariff.

Section 1758 requires that "[u]pon the hearing the Supreme Court or court of appeal shall enter judgment either affirming or setting aside the order or decision of the commission." (§ 1758, subd. (a).) For the reasons discussed above, the Court should set aside the 2022 Tariff.

As a practical matter, setting aside the 2022 Tariff will reinstate the 2016 Tariff. In the 2016 Tariff, the Commission committed to fully quantifying the benefits of the tariff as required by section 2827.1, which the Commission utterly failed to do in the 2022 Tariff. (Compare May 3, 2023 RJN, Exh. A at pp. 55, 117 [D.16-01-044 Conclusion of Law No. 25] with 21 App 18242.) Vacating the 2022 Tariff will clear the way for the Commission to keep its own promise to identify and fully

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Family Health Centers of San Diego v. State Dept. of Health Care Services (2023) 15 Cal.5th 1, 10 (agency decision based on erroneous conclusions of law "must be reversed").

quantify the range of benefits that the Legislature has long recognized and has required the Commission to assess.

CONCLUSION

For all the reasons set forth herein, Petitioners respectfully request that the 2022 Tariff be set aside.

DATED: November 21, 2025

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CERTIFICATE OF WORD COUNT

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Dated: November 21, 2025

/s/ Steven A. Hirsch
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Attachment 10

Petitioners' Supplemental Responding Brief, filed January 12, 2026

A167721

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT, DIVISION THREE

CENTER FOR BIOLOGICAL DIVERSITY, INC., ENVIRONMENTAL WORKING GROUP, AND THE PROTECT OUR COMMUNITIES FOUNDATION,
Petitioners,

v.

PUBLIC UTILITIES COMMISSION,
Respondent;

PACIFIC GAS AND ELECTRIC COMPANY, SAN DIEGO GAS & ELECTRIC COMPANY, AND SOUTHERN CALIFORNIA EDISON COMPANY,
Real Parties in Interest.

CAL. P.U.C. DECISION NO. 22-12-056;
ON REMAND FROM CALIFORNIA SUPREME COURT CASE NO. S283614

PETITIONERS' SUPPLEMENTAL RESPONDING BRIEF

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Constitutional Provisions

Statutes

Rules

Other Authorities

Links to Exhibits to Requests for Judicial Notice

May 3, 2023 RJN, Exh. A [D.16-01-044]:
https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M158/K285/158285436.PDF

May 3, 2023 RJN, Exh. C [D.19-05-019]:
https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M293/K833/293833387.PDF

June 21, 2023 RJN, Exh. 10 [D.09-08-026]:
https://docs.cpuc.ca.gov/PublishedDocs/WORD_PDF/FINAL_DECISION/105926.PDF

July 31, 2023 RJN, Exh. D [D.18-06-027]:
https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M216/K789/216789285.PDF

Sept. 13, 2024 RJN, Exh. 8 [D.16-09-036]:
https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M162/K043/162043082.PDF

INTRODUCTION

The Supreme Court held in this case that "the Legislature's stated intention to make judicial review of the Commission's decisions 'consistent with judicial review of the other state agencies' is best understood to include judicial review of the statutory interpretations underlying those decisions." (*Center for Biological Diversity, Inc. v. Pub. Util. Com*. (2025) 18 Cal.5th 293, 307-308 (*CBD II*).) Accordingly, the Supreme Court instructed this Court to "address [on remand] in the first instance" the question "whether the challenged tariff should be upheld under the *Yamaha* standard" for reviewing agency interpretations of statutory language. (*Id.* at p. 309.) Answering that question requires the Court to carry out its "quintessential judicial duty—applying its independent judgment de novo to the merits of the legal issue before it," beginning with the text of the statute. (*Id.* at p. 305.)

Petitioners have assisted the Court in performing that task. Based on a close parsing of the words of section 2827.1,[1]

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[1] Throughout this brief, unless otherwise indicated, (1) statutory citations are to the Public Utilities Code; (2) emphases were added to quotations while internal quotation marks, citations, brackets, ellipses, footnote references, and the like were omitted from them; (3) "Respondents" refers collectively to respondent California Public Utilities Commission (the Commission) and to the three utilities that are the real parties in interest (the Utilities); (4) "2022 Tariff" or "the Tariff" refers to the Commission's December 15, 2022 decision identified as D.22-12-056, *Decision Revising Net Energy Metering Tariff and Subtariffs* (21 App 18242); (5) "2016 Tariff" or "NEM 2.0" refers to the Commission's January 28, 2016 decision identified as D.16-01-044, *Decision Adopting Successor to Net Energy Metering*

Petitioners' supplemental opening brief presented detailed statutory interpretations—summarized below in Part I—establishing that the Commission failed to proceed in the manner required by law (§ 1757.1, subd. (a)(2)) when it promulgated a successor tariff that violated the statute's letter and overall purpose. That purpose was to make customer-sited generation a permanent fixture in California and to ensure its growth so that customer-sited generation that is primarily for local use by customer-generators and their neighbors would enable the state to meet increased electrical demand without forcing ratepayers to fund costly expansions of the utilities' electrical grid.[2] This, Petitioners have shown, is the single, *best* judicial interpretation of the statutory language.

Respondents, by contrast, have *not* assisted the Court in performing the task that the Supreme Court assigned. Their supplemental opening briefs—like the 2022 Tariff itself—largely fail to present any competing statutory interpretation, much less commit to any single and purportedly *best* statutory interpretation. Instead, Respondents assert that the statute's language is indeterminate[3] and that it therefore granted the

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Tariff (May 3, 2023 RJN, Exh. A); and (6) "PB," "CB," and "UB" refer respectively to Petitioners', the Commission's, and the Utilities' supplemental opening briefs on remand.

[2] See PB 25-27 (explaining that customer-sited renewable generation facilities allow for increased consumption of clean electricity outside of the utilities' grid).

[3] See CB 32-39 (Commission posits two "reasonable" interpretations of section 2827.1 without committing to either).

Commission carte blanche to draw upon its "expertise" by basing the Tariff on inapposite "cost-effectiveness" tests[4] that concededly were *not* developed with the purposes or requirements of section 2827.1 in mind and that actually violate the law and undermine the statute's objectives.

Respondents thus have it all backwards: An agency must first interpret the statute and then develop and apply the analytical methods necessary and appropriate to carry out the statute as so interpreted. Instead, Respondents ask this Court to *infer* from the Commission's (inapposite) methodological choices the existence of a statutory "interpretation" that the Commission never undertook. That approach cannot be accepted by a court exercising independent, de novo review of the Commission's orders and decisions under article XII, section 5 of the California Constitution,[5] the judicial-review statute adopted in 1998 (§ 1757.1), and the Supreme Court's remand order in this case.

To distract the Court from the statute's actual words, Respondents offer three major arguments (and a welter of minor ones).

First, Respondents offer up a variety of "been there, done that" arguments to persuade the Court that it has already decided the (purportedly) few issues that remain in the case. But Respondents' arguments for avoiding the merits are precluded by

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[4] See PB 33-36 (discussing fundamental difference between cost-benefit and cost-effectiveness tests).

[5] That provision grants the Legislature "plenary power" to "establish the manner and scope of review of commission action in a court of record."

the Supreme Court's sweeping remand instruction, which requires this Court to decide whether the 2022 Tariff should be upheld under a different and far more stringent standard of judicial review. That ruling set all of this Court's previous statutory interpretations at large for plenary redetermination. (See Part II, *post*.)

Second, Respondents assert that the Commission's statutory "interpretation"—whatever it might be—is entitled to "great weight" in the Court's analysis. (CB 26.) Their deference arguments are nothing more than an attempt to resurrect the now-disapproved *Greyhound*[6] approach under another name in hopes of insulating the 2022 Tariff from meaningful judicial review.[7] Those arguments fail on multiple grounds (see Part III, *post*), including the following:

(1) The Commission's development of the 2022 Tariff was not guided by any "interpretation" to which deference could attach. (See Part III.A, *post*.) The 2022 Tariff is largely devoid of any such interpretation (as are the Respondents' supplemental opening briefs). The reason isn't hard to guess: When its decisions were insulated from effective judicial review by the now-disapproved *Greyhound* approach, the Commission likely felt that there was little point in analyzing the statutory language, as any Commission "interpretation" was almost certain to be upheld.

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[6] *Greyhound Lines, Inc. v. Public Utilities Commission* (1968) 68 Cal.2d 406.

[7] See, e.g., UB 30 (asserting that the 2022 Tariff should be upheld because Commission's choices were "*reasonable* and within its authority").

But the era of virtually nonexistent judicial review is over, and the absence of any serious attempt to interpret the statutory language can no longer be excused.

(2) Under *Yamaha Corp. of America v. State Board of Equalization* (1998) 19 Cal.4th 1 and its progeny, the Commission's vacillating position as to what section 2827.1 requires is entitled to no deference whatsoever. Petitioners demonstrate below that the Commission's current position departs radically from the one it adopted in the 2016 Tariff under the same statutory language. (See Part III.B, *post*.)

(3) The Commission's claim that the California Constitution entitles its "interpretations" to "great weight" (CB 26) ignores article XII, section 5 of that document, which granted the Legislature plenary authority not only to determine the Commission's jurisdiction and powers, but also to formulate the standard for judicial review of Commission actions. The Legislature did just that in sections 1757 and 1757.1, using phrasing that deprives the Commission of any discretion when interpreting the statutes that govern its actions. The Commission's repeated invocations of its own "expertise" therefore fall flat. A purported "expertise" in cost-benefit analysis does not equate to an expertise in statutory interpretation. On that subject, the Court, not the Commission, is the unquestioned expert, which is why the Court has been tasked with exercising independent, de novo review of the Commission's statutory interpretations. (See Part III.C, *post*.)

Third, in lieu of textual interpretation, Respondents offer up a phony story that the Legislature's purpose in enacting AB 327 (which included section 2827.1) was to "address the cost shift." (UB 10, 17-18; see Part IV.A, *post*.)

That assertion is wrong, and transparently so. In fact, the Legislature *deleted* proposed "cost shift" language from section 2827.1, including language apparently referring to the RIM test on which the entire cost-shift theory rests. (See PB 29, 36-37, 43, 59; Parts III.B, IV.A, *post*.) Given Respondents' heavy reliance on the fictional "cost shift," that deletion is nearly as important to the proper resolution of this case as the words that the Legislature chose to include.

Tellingly, neither Respondent cites even once to the list of statutory purposes expressly codified into law by section 2827, subdivision (a)—which makes no mention of any "cost shift." (See PB 25-27 [discussing those purposes].) Instead, Respondents point to legislative committee reports describing the cost-shift language that the Legislature *deleted* from section 2827.1. Respondents also point to an early report about a draft of a 2012 bill[8] that added former section 2827.3, a provision repealed in 2017 by operation of a sunset provision, which required the Commission to *study* whether the *original* net energy metering program (NEM 1.0) produced any disparate burdens. But calling for a study to determine whether any burdens existed was a legislative expression of *uncertainty* about the subject to be studied. In no way did it convey acceptance of any views on that

[8] Assem. Bill No. 2514 (2011-2012 Reg. Sess.) (AB 2514).

subject, much less establish the legislative purpose of section 2827.1.

The idea that the Legislature enacted AB 327 to "address the cost shift" has never been subjected to any probing test of reality. The truth is that the "cost shift" manufactured by the 2022 Tariff was based on the Lookback Study's use of inapposite RIM-test results instead of the analysis required by section 2827.1. And the theory makes no sense on its face. Customer-sited renewable-generation facilities not only reduce demand on the utilities' existing electrical grid, reducing maintenance costs; they also generate clean electricity and allow California to consume more electricity without forcing ratepayers to fund costly grid expansions. (See PB 25-27.) Those savings give the lie to the Commission's expressions of concern that customer-sited generation somehow victimizes the less affluent. Those emotional appeals are as phony as the so-called "cost shift" on which they are founded, and they represent yet another attempt to distract the Court's attention from the statute's words and stated intent. (See Part V, *post*.)

Finally, this is not a case in which exercising independent, de novo review will plunge the Court into a morass of scientific and economic policymaking decisions—a groundless fear that both Respondents adroitly attempt to exploit. The question posed here is not "*what are the best technical means for addressing the (fictional) cost shift?*" or "*what is the best test for measuring costs and benefits to the utilities' grid?*" but rather, "*under the best judicial interpretation of section 2827.1, did the Commission* *proceed in the manner required by law?*" The Commission possesses no comparative advantage in answering the latter question, and whatever answer it offers is owed no deference by this Court. In this case, determining what the statute requires involves no technical or economic expertise beyond the ordinary tools of statutory interpretation.

For all the reasons set forth below and in Petitioners' supplemental opening brief, the 2022 Tariff should be set aside.

ARGUMENT

I. Petitioners' supplemental opening brief offered a comprehensive interpretation of the words of the governing statute.

When determining whether the Commission proceeded in the manner required by section 2827.1, the Court's principal task is to identify the interpretation that "the court, after applying all relevant interpretive tools, concludes is *best*," because "[i]n the business of statutory interpretation, if it is not *the best*, it is *not permissible*." (*Loper Bright Enterprises v. Raimondo* (2024) 603 U.S. 369, 400.)[9] Petitioners' supplemental opening brief provides that interpretation. For the Court's convenience, Petitioners

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[9] *Loper Bright* involved the federal Administrative Procedure Act. Neither the federal nor the California Administrative Procedure Act apply in this case. (See § 1701, subd. (b); Gov. Code, § 11351, subd. (a).) But *Loper Bright*'s articulation of how courts use basic statutory-interpretation tools is instructive for the fundamental principle that courts exercising independent review must determine the statute's *best* interpretation.

briefly summarize the key statutory interpretations (**bolded**) and supporting arguments set forth in that brief.

1. <u>Subdivision (b)(3)</u> of section 2827.1 requires the Commission to base the tariff upon the costs and benefits of privately funded customer facilities that generate renewable electrical power for use on-site and locally, allowing more electricity to be consumed in the electrical system while preventing increased use and costly expansion of the utility's grid. (PB 10, 21.) Instead, however, the Commission required the consultant-authors of the "Lookback Study" to employ an Avoided Cost Calculator (ACC) that looked only at the benefits of reducing demand on *the utilities' existing grid* (in terms of avoided costs). (PB 26-38.)[10] As a result, the 2022 Tariff is *not* "based on" *the customer-sited facility's* costs and benefits.

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[10] Respondents' briefs admit as much, stating that "[t]he Avoided Cost Calculator is a tool that calculates *the costs avoided by utilities* when customers use their rooftop solar panels to meet their consumption needs." (CB 16-17; see also UB 9 [Avoided Cost Calculator "measures the economic *costs that a utility avoids* when a customer's solar system provides power instead of the utility."], 14 [claiming that section 2827.1 only requires the Commission to account for costs and benefits to customers and "*the [utilities'] electrical grid*"]; accord, UB 15 [claiming that "[s]tatutory context" demonstrates that "costs and benefits" in subdivision (b)(3) refers to "economic costs and benefits that accrue to customers and *the [utilities'] grid*"]; cf. PB 51 [explaining that customer-sited facilities and the utilities' electrical grid are distinct components of the "electrical system"].)

2. **<u>The first clause of subdivision (b)(1)</u> of section 2827.1 requires the Commission to ensure that the tariff maintains at length, without interruption or weakening, the already expanding consumption of electricity generated by customer-sited generation facilities located on private property or used by neighbors.** (PB 39.) Instead, however, the Commission—citing the "undue and burdensome financial expense of nonparticipant ratepayers"—used the Lookback Study's RIM-test results as a justification for *not* ensuring the continued sustainable growth of customer-sited generation. (PB 41.) As a result, the payback time for rooftop-solar systems doubled or tripled, *discouraging* investment in rooftop solar generation instead of ensuring its sustainable growth. (PB 42.)[11]

3. **<u>The second clause of subdivision (b)(1)</u> of section 2827.1 requires the Commission to include in the tariff—not elsewhere—specific alternatives (DAC Customer Alternatives) designed for growth of customer-sited renewable distributed generation among residential customers in "disadvantaged communities."**

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[11] An industry amicus brief of which the Supreme Court took judicial notice demonstrated a 63 percent overall decline in solar installations under the 2022 Tariff, with at least nine distributed-generation-industry companies operating in California having filed for bankruptcy and many more being forced to either substantially cut back on their labor force or permanently close. (Brief of Amicus Curiae California Solar Energy Industries Association, Inc. (Dec. 30, 2024, No. S283614) at pp. 38-39 (hereafter CALSEIA Amicus).)

"Disadvantaged communities" means areas disproportionately affected by environmental pollution and other hazards that can lead to negative public-health effects, exposure, or environmental degradation, as well as areas with concentrations of people that are of low income, high unemployment, low levels of home ownership, high rent burden, sensitive populations, or low levels of educational attainment. (See PB 46-48.) Instead, however, the Commission substituted *low-income households* for *disadvantaged communities* and failed to include any DAC Customer Alternatives in the 2022 Tariff itself. (See PB 45-46.) The result was a reliance on programs, not included in the Tariff, that lack the certainty and reliability of in-tariff alternatives and that artificially constrict the scope of the statute's DAC Customer Alternatives, inevitably excluding customers that the Legislature intended to benefit. (PB 45-46.)

Moreover, the so-called "adder" that Respondents cite as an in-tariff DAC Customer Alternative (CB 18-19) did not grant DAC Customers any "*alternative*" designed to encourage customer-sited generation growth in disadvantaged communities—instead, it imposed by fiat the same detrimental payback period on those customers that it imposed on everyone else. That's not an "alternative." (See PB 42; Part IV.E, *post*.)

4. Subdivision (b)(4) of section 2827.1 requires the Commission to approximately equalize the *tariff's* benefits and costs to "all customers" *and* to the entire "electrical system" (comprising both the customer-generators'

facilities *and* the utilities' electrical grid). (See PB 50.) Instead, however, the Commission's erroneous implementation of subdivisions (b)(3) and (b)(1) rendered it unable to accurately perform the (b)(4) analysis, and the Commission compounded that error by substituting the word "exports" for the word "tariff" and by excluding benefits to residential customers in disadvantaged communities. (See PB 43-49.) As a result, the Commission failed to perform the required (b)(4) analysis of the 2022 Tariff and limited its analysis of total benefits to those flowing from *exports* of excess energy to the *grid*, while ignoring the *primary* benefit of customer-sited generation: producing electricity for use on-site and locally, allowing for increased consumption of clean electricity in the electrical system without expanding the grid.[12]

Nearly as important as the language included in section 2827.1 is the language that the Legislature *deleted* from that section. As explained below, those deletions doom the Respondents' core theory that section 2827.1's purpose and effect is to "address the cost shift." (See PB 58-59; Parts III.B, IV.A, *post*.)

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[12] The Utilities' supplemental opening brief craftily acknowledges this benefit, leaving the impression that the 2022 Tariff does, too—but it doesn't. (See UB 16 ["Customers, in their capacity as customers, receive economic benefits on their bills when a utility avoids costs that would otherwise be incurred to provide power to customers with rooftop solar. The electrical system similarly benefits when it does not need to provide power to customers with rooftop solar."].)

Respondents' supplemental opening briefs—like the 2022 Tariff itself—offer no correspondingly detailed and thorough parsing of the words of section 2827.1. Instead, as discussed below, Respondents offer only a series of distractions from those words.

II. The Court should reject all of Respondents' "been there, done that" arguments for avoiding the merits, because accepting them would violate the Supreme Court's remand instruction.

The Supreme Court's remand instructs this Court to "address in the first instance" the question "whether the challenged tariff should be upheld under the *Yamaha* standard." (*CBD II*, *supra*, 18 Cal.5th at p. 309.) The Supreme Court understood, and clearly expressed its understanding, that applying this far more rigorous standard of review would have a pervasive effect on all prior rulings in the case, throwing them open for plenary redetermination on remand.[13]

Respondents nevertheless offer two "been there, done that" arguments that mistakenly urge this Court to ignore the Supreme Court's instruction on the theory that the change in the review standard makes no difference. Specifically, they contend that (1) the Court already decided most of Petitioners' issues in

[13] The breadth of the Supreme Court's ruling is undeniable: The court disapproved of three longstanding appellate decisions that applied the same "highly deferential approach" adopted in *CBD I*. (*CBD II*, *supra*, 18 Cal.5th at pp. 308-309.)

CBD I[14] on grounds unaffected by the change in the review standard and those rulings constitute "law of the case," and (2) Petitioners forfeited the right to reargue two issues on remand because they failed to raise those issues in the Supreme Court.[15]

Petitioners anticipate that the Respondents also may proffer an equally erroneous argument that the Petitioners' opening brief fails to comply with California Rules of Court, rule 8.200(b)(2) because it raises issues that did not "aris[e] after" this Court's *CBD I* decision. That is false.

As discussed below, it would violate the Supreme Court's instruction to accept any of Respondents' misguided arguments for avoiding the merits.

A. The "law of the case" doctrine does not apply here because the Court's remand left no prior interpretive rulings standing and because this proceeding is neither a retrial nor a second appeal.

Respondents assert that this Court decided issues in *CBD I* that were not dependent on the judicial-review standard and that those rulings therefore remain unaffected by the Supreme Court's

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[14] *Center for Biological Diversity, Inc. v. Pub. Util. Com.* (2023) 98 Cal.App.5th 20 (*CBD I*).

[15] "[T]he correct term is 'forfeiture' rather than 'waiver,' because the former term refers to a failure to object or to invoke a right, whereas the latter term conveys an express relinquishment of a right or privilege. As a practical matter, the two terms on occasion have been used interchangeably." (*PGA W. Residential Assn., Inc. v. Hulven International, Inc.* (2017) 14 Cal.App.5th 156, 175, fn. 13.)

ruling and constitute "law of the case." That argument fails on two grounds.

First, the Supreme Court's *CBD II* ruling left in its wake no previously established "law" on which the "law of the case" doctrine could operate.

Respondents ignore the scope of the Supreme Court's holding and remand instruction, which set all prior statutory interpretations at large for plenary redetermination. The *Greyhound* approach to judicial review that the Supreme Court disapproved was radically different from the *Yamaha* independent judgment, de novo review standard that this Court was ordered to apply when interpreting section 2827.1 on remand. And the Supreme Court's remand instruction singled out no specific issue for review on remand. Accordingly, the Supreme Court's ruling necessarily affects *all* statutory interpretations that the Court made in *CBD I*, without exception.[16]

The Supreme Court's opinion itself refutes Respondents' assertions that some of *CBD I*'s statutory interpretations remain

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[16] As the leading California appellate treatise observes, "[t]he Supreme Court can decide fewer than all issues encompassed in the grant of review and then remand the case to the court of appeal for a decision on the issues left undecided. . . . Such a disposition is likely to occur, e.g., if the appellate court did not reach certain issues *because it decided the appeal on an overriding ground that the supreme court determines to have been erroneous*." (Eisenberg et al., Cal. Practice Guide: Civil Appeals & Writs (The Rutter Group 2025) ch. 13-E, ¶ 13:188.) Here, the Supreme Court decided "fewer than all issues encompassed in the grant of review" because it decided the appeal on the "overriding ground" that this Court had applied the wrong standard of judicial review.

untouched by the change in review standards. The Supreme Court specifically held that this Court's judgment in *CBD I* was erroneous *because* it "*relied on Greyhound*," and the court "remand[ed] for [this Court] to conduct the appropriate inquiry under current law." (*CBD II*, *supra*, 18 Cal.5th at p. 299; see also *id*. at p. 308 ["[W]e conclude that the Court of Appeal erred *by relying on* [*Greyhound*'s] highly deferential approach."].)

And the Supreme Court didn't stop there: In a lengthy passage, it discussed this Court's pervasive reliance on the *Greyhound* approach: "In reviewing [the Commission's] decision, the court [of appeal in *CBD I*] asked the question set forth in *Greyhound*: namely, whether the Commission's interpretation of section 2827.1 'fails to bear a reasonable relation to statutory purposes and language.' The [*CBD I*] court upheld the Commission's decision under this 'uniquely deferential standard of review'" and concluded that the standard "'allow[ed] for no further inquiry.'" (*CBD II*, *supra*, 18 Cal.5th at pp. 300-301.)[17]

In short: The Supreme Court clearly expressed its intention that on remand, this Court should revisit *all* of the statutory-interpretation issues in the case. Thus, there simply is no "law of the case" to apply here.

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[17] The Supreme Court likewise observed, with respect to this Court's ruling regarding the DAC Customer Alternatives requirement of section 2827.1, subdivision (b)(1), that this Court "upheld the Commission's approach on the ground that it 'bears a reasonable relation to the statutory purposes and language.'" (*CBD II*, *supra*, 18 Cal.5th at p. 301.)

Second, Respondents' "law of the case" argument also fails because this is neither a retrial nor a second appeal in the case.

"The doctrine of 'law of the case' deals with the effect of the *first appellate* decision on the subsequent *retrial or appeal*: The decision of an appellate court, stating a rule of law necessary to the decision of the case, conclusively establishes that rule and makes it determinative of the rights of the same parties in *any subsequent retrial or appeal in the same case*." (*Leider v. Lewis* (2017) 2 Cal.5th 1121, 1127, original italics.)

But this is not a "subsequent retrial," as it is not occurring in a trial court and appellate courts do not conduct "trials." Rather, this is a remand to an *appellate* court after an initial proceeding on *writ of review* under section 1756—effectively a do-over of that proceeding. Nor is it a second "appeal," as evidenced by the fact that the parties are engaged in "supplemental" briefing under California Rules of Court, rule 8.200(b), as opposed to following the normal briefing schedule and rules that would apply in a true second appeal. This failure to satisfy the retrial/second-appeal prerequisite for applying the "law of the case" doctrine provides a second ground for rejecting the Respondents' "law of the case" argument.

But even if the present proceeding could be considered a retrial or second appeal, the fact remains that, with respect to the statutory-interpretation issues in this proceeding, the only "law of the case" is that laid down by the Supreme Court in *CBD II*—namely, that the *Greyhound* approach to judicial review of the Commission's statutory interpretations has been supplanted by independent, de novo judicial review. Viewed in that light, Respondents' arguments for avoiding the merits amount to an invitation to *violate* the "law of the case" doctrine.

B. The Supreme Court's sweeping remand instruction negates any claim that the Petitioners forfeited two arguments presented here.

The Utilities further argue that Petitioners' omission of two issues from their Supreme Court review petition constitutes some sort of forfeiture of Petitioners' right to reargue those issues here, on remand, under the proper review standard. (UB 24-25.) This bid to avoid the merits fails at the threshold because, as previously discussed, the Supreme Court's ruling set *all* statutory-interpretation issues at large for plenary redetermination under the proper review standard—whether or not all of those issues were expressly presented to the court. The court's sweeping remand instruction thus negates any claim of forfeiture.

If accepted, the Utilities' meritless forfeiture argument would prevent the Court from considering Petitioners' arguments that the Commission violated (1) the requirement in section 2827.1, subdivision (b)(1) that the Tariff ensure that customer-sited renewable distributed generation "continues to grow sustainably," and (2) the requirement in section 2827.1, subdivision (b)(4) that the Commission approximately equalize "the total benefits of the standard contract or tariff to all customers and the electrical system."

But even if Petitioners' review petition *had* separately identified those two issues, the Supreme Court would have reached the exact same result: It still would have decided only the standard-of-review issue and then remanded for a thoroughgoing reevaluation of all other issues, "consistent with [its] usual practice and with appropriate regard for the structure of appellate decisionmaking." (*CBD II*, *supra*, 18 Cal.5th at p. 309.)

Moreover, the Supreme Court may decide "any issues that are *raised or fairly included in* the petition [for review] or answer." (Cal. Rules of Court, rule 8.516(b)(1).) Equally important and relevant here, it is black-letter law that statutory provisions cannot be read in isolation. (See *People v. Murphy* (2001) 25 Cal.4th 136, 142.) The two issues in question were "raised" by and "fairly included" within the issues raised in Petitioners' review petition and are intertwined with and derivative of those issues. (See, e.g., Petn. for Review (Jan. 29, 2024, No. S283614) at p. 23.)

The first derivative issue—the Commission's violation of subdivision (b)(1)'s continued-sustainable-*growth* requirement—must be considered as part of analyzing the Commission's violation of subdivision (b)(1)'s requirement that the successor tariff include specific alternatives *designed for growth* among residential customers in disadvantaged communities and the overall purpose of section 2827.1.

And the second derivative issue—the Commission's violation of subdivision (b)(4)'s requirement that it equalize the tariff's total costs and benefits to customers and the electrical system—is a natural consequence of the Commission's violations of subdivisions (b)(1) and (b)(3), which rendered it incapable of undertaking the analysis that subdivision (b)(4) requires.

Additionally, it would be inappropriate to avoid the merits of the issues allegedly forfeited in the Supreme Court, as they are ones of pure law based on a fixed administrative record (cf. *In re Marriage of Priem* (2013) 214 Cal.App.4th 505, 510-511; Eisenberg et al., Cal. Practice Guide: Civil Appeals & Writs (The Rutter Group 2025) ch. 8-D, ¶ 8.237) and involve "important questions of public policy or public concern" (*id*. at ¶ 8.239, italics omitted [collecting cases]).

In short, the derivative issues are ones of law necessary to determine the meaning of section 2827.1 under the review standard required by the Supreme Court. The Court should decide them on the merits.

C. Petitioners' supplemental opening brief complies with California Rules of Court, rule 8.200(b)(2).

Petitioners anticipate, based on Respondents' heavy reliance on "been there, done that" arguments, that Respondents' supplemental responding briefs may argue that Petitioner's opening brief should be stricken or ignored for purportedly violating California Rules of Court, rule 8.200(b)(2). That rule limits supplemental briefs to "matters arising after the previous Court of Appeal decision in the cause."

Any such argument must fail. As previously explained, the Supreme Court viewed the *CBD I* decision as having relied pervasively on the now-disapproved *Greyhound* approach to judicial review of Commission decisions. Accordingly, *all* of the statutory-interpretation issues raised in Petitioners' supplemental opening brief effectively "ar[o]se after the previous Court of Appeal decision in the cause," and *all* are fair game for supplemental briefing on remand.[18]

Respondents have presented no legitimate rationale for ignoring the Supreme Court's sweeping remand instruction. All of their arguments for avoiding the merits should be rejected.

III. The Commission's statutory "interpretation" is not entitled to any weight, let alone "great" weight.

Like the 2022 Tariff itself, Respondents' supplemental opening briefs are strikingly devoid of statutory interpretation—the actual parsing of the words in the statute. Instead, Respondents try to distract attention away from those words with arguments about the Commission's expertise and a spurious claim that the Legislature enacted the statute with the purpose of "address[ing] the cost shift." (UB 10, 17; see also CB 14.)[19]

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[18] Petitioners do not seek to expand the scope of the remand beyond the issues previously litigated; they seek only to have those issues evaluated under the legally correct standard mandated by the Supreme Court.

[19] Petitioners discuss the latter argument at Part IV.A, *post*.

At the same time, though, Respondents assert that the Commission's unstated "interpretation," whatever it may be, is entitled to judicial deference and should even be granted "great weight" by this Court. (CB 26.) Their deference arguments are nothing more than an attempt to resurrect the now-disapproved *Greyhound* approach under another name in hopes of insulating the 2022 Tariff from meaningful judicial review. Indeed, the Commission proclaims this, writing: "[E]ven setting deference under *Yamaha* aside, the Commission's *reasonable, expertise-driven decision* would satisfy the statute under any standard of review." (CB 10.)

Below, Petitioners demonstrate that no such deference is owed and that no "weight" attaches to the Commission's "interpretation" because (1) there simply is no agency "interpretation" that guided the Commission's formulation of the 2022 Tariff and thus no interpretation to which any "weight" could attach; (2) an agency's vacillating position—like the one challenged here, which diverges materially from the Commission's 2016 statutory interpretation—is entitled to "no deference" under *Yamaha*; and (3) contrary to the Commission's assertions, the California Constitution does *not* require the Court to grant Commission interpretation "great weight"—in fact, as implemented by the Legislature in section 1757.1, it requires the Court to grant that interpretation *no* weight.

A. There is no agency "interpretation" to which any "weight" could attach.

Respondents' supplemental opening briefs are largely devoid of any textual interpretation of section 2827.1, and they don't even mention section 2827, subdivision (a), the Legislature's codified statement of its purposes for encouraging the growth of customer-sited generation. There's a reason for that: *The 2022 Tariff was not guided by or based upon any Commission interpretation of the statutory language*. The Commission never parsed the words of either statute, let alone attempted to ground the provisions of the 2022 Tariff in such a parsing.

The reason for that omission is easy to guess: There is a "widespread consensus" that, under the now-disapproved *Greyhound* approach, "judicial review of Commission decisions [was] virtually nonexistent." (*CBD II*, *supra*, 18 Cal.5th at p. 308, fn. 1.) The Commission likely concluded that there was little point in conducting a diligent analysis of statutory language when any position it adopted was almost certain to be upheld.

Instead of interpreting the statute's words, the Commission chose to use methods untethered to any statutory interpretation—and it now offers those methods in lieu of the interpretation it never performed.[20]

To put it another way—because the point is so crucial—Respondents are asking this Court to *infer* from the

[20] See, e.g., UB 20 (claiming that the Commission "interpreted" the statute when it held that the statute would be "satisfied" by using the Avoided Cost Calculator).

Commission's inapposite methodological choices about which tests or tools it would use to develop the 2022 Tariff that the Commission actually undertook some sort of statutory interpretation—when it manifestly did not, as evidenced by the near-absence of any such interpretation in the 2022 Tariff or in the Respondents' supplemental opening briefs. Instead, the Commission's supplemental opening brief prates on endlessly about the Commission's "expertise" in developing cost-benefit tests,[21] when the only expertise relevant here is the ability to parse statutory language—an expertise in which the courts have no equal.

To justify these moves, Respondents baselessly assert that the statutory language is so indeterminate that it gave the Commission carte blanche to apply inapposite cost-effectiveness tests that concededly were *not* developed with the statute's express purposes and requirements in mind and that were actually antithetical to those purposes and requirements. (CB 29-39 [positing two "reasonable" statutory interpretations but committing to neither of them]; UB 30; see PB 27-37, 41-43.)

As our opening brief demonstrates, however, the words of the statute actually *do* matter; they *can* be parsed; and once parsed, they yield up a single, *best* judicial interpretation. (See Part I, *ante* [summarizing that interpretation].)

A yawning interpretive chasm thus separates the language of section 2827.1 from the methodological choices that determined the features of the 2022 Tariff. The Commission

[21] See, e.g., CB 9-10, 21, 25-31.

made no attempt to bridge that chasm by anchoring the Tariff' in a close reading of the statutory language. Accordingly, there is no agency "interpretation" to place on the interpretive scales. Even if the Court were so inclined, it could not grant the Commission's (non)interpretation any weight, let alone "great weight."

Of course, Petitioners cannot know what Respondents will argue in their supplemental responding briefs. Perhaps their lawyers will try to prop up the 2022 Tariff by committing, for the first time, to some textual analysis of section 2827.1. But any such post hoc rationalization, cooked up by litigation counsel in response to Petitioners' textual analysis, should not be granted any weight, let alone "great weight," under *Yamaha*.

For *Yamaha*'s "situational" factors[22] (such as the agency's claimed expertise) to shed any light on the value of an agency's interpretation, those factors must have contemporaneously guided the making of that interpretation, *before* it was officially promulgated. Before the agency commits itself to an interpretation through official action, it remains at least theoretically capable of bringing its expertise to bear on the task of undertaking a neutral and unbiased analysis of the statutory text. After the agency has committed itself—and especially after its interpretation has been challenged in court—its interpretation inevitably will be skewed by its reflexive instinct to defend its

[22] See *Yamaha*, *supra*, 19 Cal.4th at p. 12 (describing "situational" factors for assessing the value of an agency interpretation); Part III.B, *post*.

own actions and prevail in the case. *Yamaha*'s situational factors lend no support to such an interpretation.

Accordingly, the Court should not mistake Respondents' belatedly developed statutory interpretations (if they offer any) for genuine interpretations entitled to any form of deference under *Yamaha*.

B. The Commission's "expertise" arguments fall flat because *Yamaha* and its progeny establish that a vacillating position like the one at issue here warrants "no deference."

The 2022 Tariff warrants no deference under *Yamaha* because it represents a near-total departure from the interpretation that the Commission articulated in its 2016 Tariff. The Commission does not and cannot offer any persuasive justification for its inconsistent positions. The words of section 2827.1 were the same in 2022 as they were in 2016. The Legislature's statement of its own purposes, codified in section 2827, subdivision (a), was the same. The legislative history was the same.

Yet Respondents argue that the Court should afford "great weight" to the Commission's ever-shifting, implicit interpretation. (CB 26; cf. UB 20 ["the Commission's interpretation should have some 'persuasive' value"].) Their legal hook for that assertion is *Yamaha*'s description of various "situational" factors that determine "[w]hether judicial deference to an agency's interpretation is appropriate and, if so, its extent—the 'weight' it should be given." (*Yamaha*, *supra*, 19 Cal.4th at p. 12.) Those factors tend to show either that an agency has "a comparative interpretive advantage over the courts" when interpreting the statute in question or that the agency's interpretation is "probably correct." (*Ibid.*)

Respondents rely heavily on *Yamaha*'s "situational" factors as a basis for granting the Commission's statutory (non)interpretation "great weight." In so doing, they appear to forget the California Supreme Court's admonition in this case that a court "cannot abdicate [its] quintessential judicial duty—applying its independent judgment de novo to the merits of the legal issue before it." (*CBD II*, *supra*, 18 Cal.5th at p. 305.)

More to the point, Respondents fail to take note of a "situational" factor identified in *Yamaha* that overrides all the other factors where it is shown to exist—namely, "a vacillating [agency] position is entitled to *no* deference." (*Yamaha*, *supra*, 19 Cal.4th at p. 13). The phrase "no deference" used in *Yamaha* and in later cases[23] signifies that *vacillation is invariably fatal to deference even if other situational factors favor deference*. Petitioners know of no case in which significant vacillation was found to have occurred and yet the agency interpretation was afforded substantial weight or deference.

The "vacillation/no deference" rule disposes of any claim to deference here because the Commission's "position" on the meaning of section 2827.1—to the extent that one can be inferred

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[23] See, e.g., *California Fair Plan Assn. v. Lara* (2025) 116 Cal.App.5th 869 [2025 WL 3496664, at *10]; *State Bldg. & Constr. Trades Council of California v. Duncan* (2008) 162 Cal.App.4th 289, 303; *Van Wagner Communications, Inc. v. City of Los Angeles* (2000) 84 Cal.App.4th 499, 510.

from the Commission's methods—has vacillated wildly over the years. A comparison of the Commission's first effort to implement section 2827.1 in D.16-01-044 and D.16-09-036 with the challenged 2022 Tariff reveals a sharp swerve by the Commission—precisely the sort of inconstancy that results in "no deference" under *Yamaha* and its progeny.

When interpreting section 2827.1 in 2016, the Commission *rejected* the notion of a cost shift for three separate reasons.

First, the 2016 Commission recognized that the Legislature had *deleted* from the statute any reference to the cost-shift theory, including language that appeared to refer to the RIM test.

Specifically, the Legislature had eliminated language proposed in earlier versions of the bill that would have required that the tariff be "based on the electrical system costs and benefits received by *nonparticipating customers*" and *"[p]reserve nonparticipant ratepayer indifference*," and had replaced those deleted provisions with the requirements of section 2827.1, subdivisions (b)(1), (b)(3), and (b)(4).[24] The Commission has

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[24] May 3, 2023 RJN, Exh. A [D.16-01-044], pp. 54-55; see also Sen. Amend. to AB 327 (2013-2014 Reg. Sess.) Sept. 3, 2013, pp. 53-55 [showing strikethrough and new language]. The Legislature sometimes requires the Commission to ensure that a tariff does not affect ratepayers that do not participate in the tariff. (See, e.g., § 2841, subd. (b)(4) ["The commission shall ensure that ratepayers not utilizing combined heat and power systems are held indifferent to the existence of this tariff."]; see also §§ 2831, subds. (g), (h), 2833.)

acknowledged that "[t]he Rim test [*sic*] has been described as the *Non-Participant* Test."[25]

The 2016 Commission explained that, in deleting this cost-shift language, "[t]he Legislature deliberately expanded the scope of statutory concern from 'nonparticipating customers' to 'all customers and the electrical system.'"[26] And the Commission explicitly rejected proposals to evaluate the tariff "in terms of their impact on nonparticipants (i.e., utility customers who are not using the NEM successor tariff)," because doing so would erroneously promote "a standard that does not fully reflect the actual legislative requirement."[27]

The Commission also rejected the Utilities' arguments attributing significance to bill analyses that had erroneously continued to reference cost-shift language *after* the Legislature had deleted that language. The Commission correctly concluded that "consideration of the legislative history is secondary to the plain language of the statute."[28] Thus, the Commission understood that extrinsic materials could not be used to contradict the statutory language. (See *In re Abbigail A.* (2016) 1 Cal.5th 83, 94.) An end-of-session committee report by a single, unknown author, referencing the pre-deletion version of section 2827.1, cannot be read to resurrect language that the Legislature

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[25] 21 App 18259.

[26] May 3, 2023 RJN, Exh. A [D.16-01-044], p. 55.

[27] *Ibid.*

[28] Sept. 13, 2024 RJN, Exh. 8 [D.16-09-036], p. 6.

eliminated. (See *Martinez v. Regents of University of California* (2010) 50 Cal.4th 1277, 1293.)

Second, the 2016 Commission also understood that the Legislature viewed net energy metering as a *good thing* that was to be encouraged and expanded on, not something terrible to be constrained, as Respondents would now have this Court believe.

The Commission's 2016 Tariff concluded that "encouraging growth and expansion of customer-sited renewable [distributed generation] has been, and continues to be, a central theme behind NEM legislation and the Legislature's expressed intent," including in section 2827, subdivision (a).[29] The Commission interpreted section 2827.1 as building on the Legislature's objective of encouraging growth and expansion of customer-sited renewable distributed generation "by not only continuing the NEM program, but envisioning development of options for NEM participation to expand to disadvantaged residential communities" and "eliminat[ing] the cap on eligible [distributed-generation] system size so the program can grow through the inclusion of projects over one megawatt."[30] And the Commission's 2016 Tariff likewise *rejected* the Utilities' argument that the Commission should limit growth because of a "countervailing need to reduce or eliminate the [Utility-alleged] cost-shift to non-NEM customers."[31] An advantage of maintaining net energy metering, the Commission explained, was its "demonstrated

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[29] Sept. 13, 2024 RJN, Exh. 8 [D.16-09-036], p. 13.

[30] *Id.* at pp. 13-14.

[31] *Id.* at p. 15.

success in supporting the growth of customer-sited renewable [distributed generation].”[32]

Third, the 2016 Commission believed that the RIM test could not satisfy the analytical requirements of subdivision (b)(4) and that the Commission had yet to quantify the benefits of customer-sited generation in serving growing on-site load.[33] The Commission committed to including information about those benefits in proceedings then underway and in future studies.[34] And it *rejected* the idea that RIM-test results yield reliable conclusions about impacts to nonparticipants, explaining that “the conventional way of looking at costs to nonparticipants is not fully functional for the NEM successor tariff.”[35]

The Commission’s skepticism about the RIM test dated back at least to 2009, when the Commission decided on a cost-benefit methodology for state-funded distributed-generation programs.[36] At that time, the Commission required use of the *non*-RIM tests, including the societal test, to capture the benefits

[32] May 3, 2023 RJN, Exh. A [D.16-01-044], p. 80.

[33] May 3, 2023 RJN, Exh. A [D.16-01-044], pp. 55, 58.

[34] *Id.* at pp. 107 (Finding of Fact No. 12), 177 (Conclusion of Law No. 22).

[35] *Id.* at p. 58. In determining that it could not yet perform the subdivision (b)(4) analysis with respect to the 2016 Tariff [NEM 2.0], the Commission concluded that “the large majority of costs of [that] tariff are currently known and relatively easy to quantify, while the benefits to the electrical system and all customers are not fully known, and thus not able to be put in equivalent form on the other side of the equation with costs.” (*Ibid.*)

[36] See June 21, 2023 RJN, Exh. 10 [D.09-08-026].

of distributed generation.[37] And even as recently as 2019, the Commission subordinated the RIM test to the Total Resource Cost test.[38]

But the Commission's 2022 Tariff swerved in a completely different direction that elevated the RIM test to primacy, furnishing yet another example of the Commission's vacillation.[39] The 2022 Tariff was based on the revealingly titled Lookback Study instead of the forward-looking initiatives to which the Commission had committed itself in 2016.[40] When it began this proceeding (R.20-08-020) in 2020, the Commission had recited a head-spinning number of other forward-looking proceedings that it intended to coordinate.[41] But the 2022 Tariff failed to resolve *any* of the issues examined in those proceedings. Instead, the Commission admitted that the Lookback Study on which it had relied did *not* address consumption patterns or the supply used to meet that consumption—the raison d'être for the on-site

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[37] *Id.* at pp. 3, 30 (acknowledging that benefits should not be limited to avoided costs), 35 (acknowledging location-specific transmission and distribution benefits), 64, 66.

[38] May 3, 2023 RJN, Exh. C [D.19-05-019], pp. 65-66.

[39] 21 App 18294 (2022 Tariff: "[T]he Commission should place more weight on the results of the RIM test.").

[40] May 3, 2023 RJN, Exh. A [D.16-01-044], p. 58.

[41] 1 App 65 (citing R.12-11-005 and R.20-05-012 on renewable distributed generation programs, R.19-09-009 on Microgrids, R.14-08-013 on Distribution Resources Planning, R.17-07-007 on Rule 21 and the interconnection of distributed generation resources, R.14-10-003 on IDER, R.19-11-009 on Resource Adequacy, and R.14-07-002 on development of a successor to the original NEM tariff).

generation that the Legislature sought to promote in section 2827.1.[42]

Thus, even if one accepts Respondents' notion that the Commission's various "cost-effectiveness" tests qualify as an implicit statutory "interpretation," the Commission's vacillating approaches, methods, and positions as to the use and prioritization of those tests ensure that its implicit interpretation warrants "no deference." (*Yamaha*, *supra*, 19 Cal.4th at p. 13.) There is accordingly no merit to any claim that the Commission's technical expertise, formal manner of proceeding, top-level approval of the 2022 Tariff, or any other "situational" factor mentioned in *Yamaha* entitles the Commission's "interpretation" to "great weight" in the Court's analysis.

In sum: There is no Commission "interpretation" to speak of; but even if one could be inferred from the Lookback Study and the inapposite methodological choices on which the Tariff is based, it would be so different from the Commission's 2016 "interpretation" as to warrant "no deference."

C. The California Constitution does not require the Court to grant the Commission's statutory interpretations "great weight"—in fact, as implemented by the Legislature in section 1757.1, it requires the Court to grant that interpretation *no* weight.

Respondents assert that a provision of the California Constitution that has nothing to do with the standard of judicial

[42] See, e.g., 21 App 18458 (Findings of Fact Nos. 77-80).

review dictates that the Court accord "great weight" to the Commission's interpretation of section 2827.1. As discussed below, however, the reality is that a different section of the California Constitution specifically governs the standard of review in Commission cases and requires the Court to give the Commission's interpretation no deference at all.

The Commission claims a *constitutional* prerogative to have its interpretations afforded "great weight" in the courts. (See CB 26-27.) The Commission locates this prerogative in article XII, *section 6* of the California Constitution, which says nothing about judicial-review standards and merely provides that the Commission "may fix rates, establish rules, examine records, issue subpenas, administer oaths, take testimony, punish for contempt, and prescribe a uniform system of accounts for all public utilities subject to its jurisdiction."

By contrast, article XII, *section 5* of the California Constitution establishes the Legislature's "plenary" authority to define the Commission's powers and to "establish the *manner and scope of review* of commission action in a court of record." As explained below, the standard that the Legislature promulgated thereunder in section 1757.1 effectively eliminates any judicial deference to the Commission's interpretations of the statutes that govern its actions.

In claiming a constitutional right to have its interpretations accorded "great weight," the Commission misstates the source of its powers and, as a result, gets the judicial-review standard and *its* source wrong as well. The

Commission omits any mention of article XII, section 3 of the California Constitution, which provides that stationary utilities like the electricity providers in this case are "subject to control by the *Legislature*," not the Commission. The Commission likewise ignores article XII, sections 5 and 9, which establish that the Legislature's authority to (1) confer "powers respecting public utilities" upon the Commission and (2) "establish the manner and scope of [judicial] review" of Commission actions is "'plenary' and 'unlimited by any provision of this Constitution.'" (*County of Sonoma v. State Energy Resources Conservation and Development Com.* (1985) 40 Cal.3d 361, 367-368; accord, *CBD II*, *supra*, 18 Cal.5th at p. 307 [citing *County of Sonoma*]; see also Brief of Amicus Curiae Martha Escutia et al. (Dec. 30, 2024, No. S283614) at pp. 13, 16-41 [setting forth history of California Constitution's provisions regarding judicial review of Commission actions].)

In 1998, the Legislature exercised its article XII, section 5 power when it enacted Senate Bill No. 779 (1997-1998 Reg. Sess.). That bill repealed and reenacted section 1757 and added a new section 1757.1, which applies here. Subdivision (a)(2) of both statutes now requires courts to determine whether "[t]he commission has not proceeded in the manner required by law."

Although the same phrase appears in the general administrative mandamus statute (Code Civ. Proc., § 1094.5, subd. (b)),[43] it appears there as one of three grounds for finding a

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[43] See *CBD II*, *supra*, 18 Cal.5th at pp. 304, 307 (recognizing that in both 1757 and 1757.1, the Legislature

"prejudicial abuse of discretion." By contrast, in sections 1757 and 1757.1, the Legislature *separated* the phrase "abuse of discretion" from the phrase "has not proceeded in the manner required by law" by placing them in two distinct subdivisions—subdivisions (a)(1) and (a)(2), respectively, in section 1757.1, and subdivisions (a)(5) and (a)(2), respectively, in section 1757. And in both sections, the Legislature declined to require the showing of prejudice that Code of Civil Procedure section 1094.5 requires.

These differences from Code of Civil Procedure section 1094.5 underscore the fact that the Commission has no discretion, much less any special constitutional or statutory dispensation, to violate the law. And the similar wording of sections 1757 and 1757.1 ensure that *a single, unified, non-deferential review standard* applies to nearly all Commission actions and proceedings.[44]

By contrast, the variable-deference approach elucidated in *Yamaha* posits a "continuum" running from quasi-legislative regulations (which attract the most judicial deference) to interpretive regulations (which garner less deference). (*Yamaha*, *supra*, 19 Cal.4th at pp. 6-7 & fn. 3.) At the same time, though, *Yamaha* teaches that a court assessing the value of an agency interpretation must consider, inter alia, "*the particular agency offering the interpretation*." (*Id*. at p. 12.)

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adopted a statutory standard of review that borrowed from Code of Civil Procedure section 1094.5).

[44] The sole exception is judicial review of water-utility regulations. (See §§ 1757, subd. (c), 1757.1, subd. (b).)

That admonition is crucial here, because any consideration of "the particular agency" in a Commission case leads right back to the Legislature's plenary article XII, section 5 authority over the Commission and to the unique judicial-review standard that the Legislature, exercising that authority, codified in section 1757.1. Thus, to the extent that the legislatively created, unified, non-deferential judicial-review standard of section 1757.1 differs from the judicially created variable-deference approach outlined in *Yamaha*, *Yamaha itself* suggests that the Legislature's unified standard must prevail—and under that standard, no deference is owed.[45]

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[45] Vacillation aside, another *Yamaha* "situational" factor cuts strongly against treating the Commission's 2022 interpretation as "probably correct"—namely, "indications of careful consideration by senior agency officials." (*Yamaha*, *supra*, 19 Cal.4th at p. 13.) Respondents invoke this factor based on the fact that the Commission directed its consultants to perform the Lookback Study and held evidentiary hearings. (UB 23; CB 30-31.)

But Respondents fail to disclose that (1) no evidentiary hearings were held with respect to the Lookback Study and (2) the Commission's analysis of the 2022 Tariff was not the subject of any testimony or any hearing. The evidentiary hearings were limited to issues related to parties' proposals and certain "other issues." (1 App 451-452 [Issues 3-6]; 21 App 453 [evidentiary hearings not held on Issue 2], 451 [Issue 2: "What information from the Net Energy Metering 2.0 Lookback Study should inform the successor and how should the Commission apply those findings in its consideration?"].) The Commission's 2022 analysis of the 2022 Tariff (21 App 18411-18415, 18495-18497) was not the subject of testimony or hearings, which had concluded by mid-2021 (21 App 18255).

In sum: For all the reasons stated above—absence of any guiding Commission interpretation; the Commission's vacillating positions; and the unique statutory review standard applicable to Commission decisions under the California Constitution, *Yamaha*, and *CBD II*—the Commission's (non)interpretation of section 2827.1 warrants no deference whatsoever from this Court.

IV. Respondents' "substantive-correctness" arguments fail because the Commission's statutory interpretation, if one ever existed, was wrong.

Respondents assert that, even if the Commission's statutory interpretation is owed no deference, it should be upheld because it is correct.

Not so. Petitioners' supplemental opening brief demonstrated that the Commission failed to proceed in the manner required by section 2827.1. Our analysis was based on a detailed parsing of the language of section 2827.1 and of the statutory definitions of the terms used therein, viewed in light of the statutory purposes codified in section 2827, subdivision (a). (See Part I, *ante* [summarizing Petitioners' interpretations].)

Petitioners will not repeat those arguments here but will respond briefly to Respondents' "correctness" arguments, beginning with their warped account of the statute's legislative purpose.

A. Respondents substitute a made-up legislative purpose ("addressing the cost shift") for the legislative purposes codified in section 2827, subdivision (a).

Instead of being grounded in a careful parsing of the statute, Respondents' claim to interpretive correctness leans heavily on the provably false assertion that the Legislature's "purpose" in enacting section 2827.1 was *not* any of the ones expressly set forth in subdivision (a) of section 2827, but rather, a desire to "address the cost shift." (UB 10, 16-17; see also CB 12-14.) That argument represents yet another attempt by the Respondents to distract from the actual words of the statute.

It strains credulity to suppose that a Legislature that took unusual care to spell out its purposes in a provision that it *codified into law* would somehow fail to mention that its sole, overriding purpose in enacting the statute was to "address the cost shift." Moreover, as previously discussed, the Legislature in AB 327 *deleted* cost-shift language from an earlier version of section 2827.1. These deliberate drafting choices preclude courts from reading any "cost shift" language into section 2827.1. (See PB 57-59; Part III.B, *ante*.)

The Utilities' sole textual hook for the "cost shift purpose" argument is the word "sustainably" in the clause of section 2827.1, subdivision (b)(1) requiring that the successor tariff ensure that customer-sited renewable distributed generation "continues to grow *sustainably*." The Utilities assert that this one word imported their entire cost-shift theory into the statute. (UB 17-18.)

But "sustainably" cannot bear that weight. If the Legislature had intended subdivision (b)(1) to import a complex "cost shift" economic theory into the statute and to anoint that theory as the statute's overriding purpose, "we doubt they would have been so opaque in their draftsmanship. The Legislature does not, one might say, hide elephants in mouse-holes." (*Starbucks Corp. v. Superior Court* (2008) 168 Cal.App.4th 1436, 1451.) Nor did it do so here.

The ordinary meaning of the adjective "sustainable" is "capable of being maintained at length without interruption or weakening." (PB 40, citing Merriam-Webster.com Dict. <https://www.merriamwebster.com/dictionary/continue> [as of Nov. 21, 2025].) The statutory text furnishes no indication that the Legislature intended to assign that word a non-standard, technical definition that implied a "cost shift" theory. The Court therefore should apply the interpretive canon that courts give the words of a statute "their ordinary, everyday meaning unless, of course, the statute itself specifically defines those words to give them a special meaning." (*U.D. Registry, Inc. v. Municipal Court* (1996) 50 Cal.App.4th 671, 674.) In short, there is no textual hook for asserting that the statute's legislative purpose was to "address the cost shift."[46]

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[46] The Utilities urge that courts should ignore the ordinary "colloquial" meaning of a statutory term, even if it "seem[s] subject to judicial knowledge," if the agency proffers a more arcane definition drawn from its area of expertise. (UB 21 [discussing meaning of "costs and benefits"].) But the Utilities' cases do not support this implausible interpretive canon. The statutory term at issue in *American Coatings Assn. v. South*

Resorting improperly to extrinsic evidence, the Utilities locate the purported "cost shift purpose" in legislative committee reports describing cost-shift language that the Legislature *eliminated* from section 2827.1. (UB 8, 18.) As previously mentioned, the Legislature *deleted* language requiring that the tariff "be based on the electrical system costs and benefits received by nonparticipating customers" and that the tariff "[p]reserve nonparticipant ratepayer indifference." (May 3, 2023 RJN, Exh. A [D.16-01-044], pp. 54-5; see Part III.B, *ante*.) The Legislature's rejection of a specific provision in an act as originally introduced "is most persuasive to the conclusion that the act should not be construed to include the omitted provision." (*People v. Soto* (2011) 51 Cal.4th 229, 245.)

As evidence of the purported "cost shift purpose," Respondents also point to a legislative committee report of a different bill—AB 2514—that enacted former section 2827.3. But

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Coast Air Quality Management Dist. (2012) 54 Cal.4th 446, was not the "colloquial" word "*available*," as the Utilities assert, but rather, the obviously technical phrase "*best available retrofit control technology*," which has no ordinary or "colloquial" meaning. (*Id*. at p. 469.) And the Utilities' other case concerned an agency's interpretation of non-technical language *in its own regulation*, where "[a] court is more likely to defer" because "the agency is likely to be intimately familiar with regulations it authored and sensitive to the practical implications of one interpretation over another." (*Diablo Valley College Faculty Senate v. Contra Costa Community College Dist.* (2007) 148 Cal.App.4th 1023, 1035, quoting *Yamaha*, *supra*, 19 Cal.4th at p. 12.) By contrast, "sustainably" is just an ordinary word in a statute.

that argument fares no better. Former section 2827.3[47] required the Commission to complete a study by October 1, 2013 "to determine who benefits from, and who bears the economic burden, *if any*, of, the net energy metering program." Section 2827.3 was repealed as of July 1, 2017 by operation of a sunsetting provision.[48]

Former section 2827.3 lends zero support to Respondents' theory that the Legislature enacted section 2827.1 to "address the cost shift." It proves only one thing: In 2013, when the Legislature enacted section 2827.1, it had drawn no conclusions as to whether the original net energy-metering program (NEM 1.0) had burdened anyone.

In short, the Court should reject Respondents' attempt to substitute a cost-shift motivation for the legislative purposes expressly set forth in subdivision (a) of section 2827.

B. Respondents misread subdivision (b)(1)'s continued sustainable-growth requirement.

The Legislature directed the Commission to craft a tariff that would "ensure that [rooftop solar] continues to grow sustainably." (§ 2827.1, subd. (b)(1).) Instead, the Commission came up with a tariff that strangled that growth, causing new rooftop solar-generation installations in California to fall off a cliff and decimating the solar-power industry in California.[49]

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[47] AB 327 renumbered what was then referred to as section 2827.1 to section 2827.3. (Stats. 2013, ch. 611, § 10.)

[48] Stats. 2012, ch. 609, § 1 (AB 2514).

[49] See CALSEIA Amicus 38-39.

Apart from their mistaken argument that "sustainably" imports the cost-shift theory,[50] Respondents' briefs barely mention the sustainable-growth requirement. Perhaps they mistakenly assume that Petitioners forfeited their argument that the Commission violated that requirement.[51] To that extent, Respondents arguably have forfeited *their* arguments regarding the sustainable-growth requirement (as well as any arguments regarding the (b)(4) requirement). Any such arguments belatedly presented in their supplemental responding briefs should therefore be ignored.

The Commission does claim that it is "not at all clear" that it could have adopted Petitioners' "preferred methodology" without violating (b)(1)'s continued-sustainable-growth requirement. (CB 38.) Apparently, this is just another way of asserting that the way the Petitioners read the statute would render solar growth unsustainable by exacerbating the (fictional) cost shift. Petitioners have already addressed that mistaken contention. (See also Part V, *post*.)

C. Respondents' failure to even begin to interpret the statute shows up starkly in their conflation of "costs and benefits" in subdivisions (b)(3) and (b)(4) of section 2827.1.

Respondents persistently conflate subdivision (b)(3) with subdivision (b)(4), ignoring the stark differences they specify in

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[50] See UB 17-18; Part IV.A, *ante* (refuting that assertion).

[51] See Part II.B, *ante* (refuting that assertion).

the costs and benefits "of what."[52] Subdivision (b)(3) requires the tariff to be based on the costs and benefits *of the renewable electrical generation facility* (the "of what"). Subdivision (b)(4) requires the Commission to equalize the total costs and total benefits *of the tariff* (the "of what") to all customers and the electrical system. Respondents' confusion over the most basic statutory terms bespeaks a fundamental failure to parse the words of, and thus *interpret*, the statute. It provides powerful confirmation that the Commission never "interpreted" the statute at all but is instead attempting to pass off its bad methodological choices as a form of implicit "interpretation." (See Part III.A, *ante*.)

Subdivision (b)(3) requires the tariff to be based on the costs and benefits *of the generation facility itself* (the "of what"), thus focusing on the costs and benefits of privately funded facilities that generate clean electricity for on-site and local use. While the costs of the generation facility remain the responsibility of the customer-generator, the facility provides tremendous benefits to all customers and the electrical system. (See PB 25-27; Part V, *post*.)

By contrast, subdivision (b)(4) requires the Commission to approximately equalize the total costs and total benefits *of the tariff as a whole* (the "of what"). Conflating these distinct

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[52] See, e.g., UB 16 ("Subdivision (b)(3)'s reference to costs and benefits refers to [the] *same types* of economic costs and benefits as subdivision (b)(4)—nothing broader."); CB 29-30 (referring to (b)(3)'s "direct[ion] to base the successor tariff on the costs and benefits *of solar*").

inquiries collapses two separate statutory requirements into one and defeats the Legislature's carefully differentiated scheme. It thus violates the statutory-interpretation canon requiring courts to attribute significance to every word and to avoid treating any words as surplusage. (See *People v. Woodhead* (1987) 43 Cal.3d 1002, 1010.)

Besides mistakenly conflating the two provisions, the Commission's 2022 Tariff violates them individually. Subdivision (b)(3) requires evaluating *the privately funded facility that generates clean electricity for use on-site and locally* (whether that be solar panels, solar panels paired with storage, or facilities using any of the other resources identified in Public Resources Code section 25741). Instead of basing the tariff on those locational generation costs and benefits of the subject facility, the Commission valued only exports—estimating only the costs that the utilities avoid when customer-generators' excess supply reduces demand on the utilities' existing grid. (See PB 53-54.)

And the Commission did not even pretend to comply with subdivision (b)(4)'s requirement that it total, much less balance, the tariff's costs and benefits to all customers and the electrical system. Respondents concede that instead of considering benefits to the *electrical system*, the Commission looked exclusively at benefits *to the electrical grid*.[53] Additionally, although subdivision

[53] See UB 5, 14, 16, 19 (repeatedly misinterpreting section 2827.1 as requiring an analysis of costs and benefits that accrue to customers *and the grid*), 9 (admitting export compensation is based solely on Avoided Cost Calculator); CB 34 (Commission admitting it used "demand-side" tests); see also 11 App 9272 (Utilities' witness testifying the Avoided Cost Calculator

(b)(4) uses inclusive language and refers "to all customers and the electrical system," the Commission excluded from its (b)(4) analysis any benefits to the two customer groups expressly mentioned in section 2827.1—(1) eligible customer-generators and (2) residential customers in disadvantaged communities. (See PB 51-52.)

In short, Respondents' claim that the Commission adopted the "correct" interpretation of subdivisions (b)(3) and (b)(4) cannot survive even the most casual inspection of the statutory text.

D. Contrary to Respondents' assertions, Petitioners' interpretation of the costs and benefits referenced in section 2827.1, subdivision (b)(3) *does* have "a logical stopping point."

As we have shown, Respondents are extraordinarily sloppy when identifying the "of what" in section 2827.1, subdivision (b)(3). That same sloppiness leads them to assert that, under Petitioners' interpretation, subdivision (b)(3) would require the Commission to count "all" costs and benefits of "*renewable energy*" or "*rooftop solar*"—a requirement with "virtually no logical stopping point," as it could extend to such diverse considerations as "economic development, national security, and job creation." (CB 36; see also CB 7, 34; UB 16-17, 21.)

But subdivision (b)(3) doesn't require the Commission to base the successor tariff on the costs and benefits of "renewable

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"assumes all the values it's calculating are for load reduction behind a retail meter, essentially a reduction in load.").

energy" or of "rooftop solar." It specifically requires the Commission to base that tariff on the costs and benefits of "*the renewable electrical generation facility*." (§ 2827.1, subd. (b)(3); PB 18-21.) This means, at a minimum, that the Commission must count all the quantifiable benefits that accrue when customer-generators invest in private facilities to generate and use renewable energy on-site and locally. The Legislature listed some of those benefits in section 2827, subdivision (a). (See PB 25-26.) But the Commission largely ignored them.

Might the Commission identify other costs and benefits to count? Certainly—but that's beside the point. Lots of ingredients could go into chicken soup—salt, basil, and oregano, perhaps. Or not. But one thing that *must* go in is chicken. The Commission's "interpretation" leaves out the chicken and therefore cannot be "correct."

E. Respondents fail to establish that the 2022 Tariff includes the DAC Customer Alternatives required by section 2827.1, subdivision (b)(1).

The second clause of section 2827.1, subdivision (b)(1) requires that the Tariff "include specific alternatives designed for growth among residential customers in disadvantaged communities." Petitioners' supplemental opening brief demonstrated that the Commission violated this DAC Customer Alternatives requirement by failing to include any such alternatives in the 2022 Tariff. (PB 43-49.)

Respondents offer four meritless counterarguments.

First, the Utilities erroneously characterize Petitioners' DAC-related statutory-interpretation arguments as a collateral attack on a prior Commission decision. (UB 32.) Wrong. Petitioners are attacking only the 2022 Tariff, not any prior tariff or decision or any program incorporated into any prior tariff or decision. The 2022 Tariff did *not* include or incorporate in any way any of the programs that Respondents now claim are being "collaterally attacked."

Second, Respondents claim that four programs *not* included in the 2022 Tariff nevertheless satisfy the DAC Customer Alternatives requirement. (See CB 41-43; UB 32-33.) But not being included in the Tariff is an immediate disqualification,[54] as a DAC program incorporated in a tariff offers customers a degree of certainty and reliability that a non-tariff program cannot approach. (See PB 45.) Moreover, the non-tariff programs that Respondents cite were expressly *excluded* from the 2022 Tariff. (See PB 44-45, fn. 41.) Any benefits that those programs offer residential customers in disadvantaged communities were thus also excluded from the analysis of the 2022 Tariff required by section 2827.1, subdivision (b)(4).

The Utilities attempt to address this lack-of-inclusion problem with a threshold argument that subdivision (b)(1) of

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[54] While the Legislature provided that the Multifamily Affordable Housing Solar Roofs Program codified in section 2870 may "*count toward* the satisfaction of the commission's obligation" to include DAC alternatives (§ 2870, subd. (b)(1)), the program's reach is far too narrow to *satisfy* that obligation by itself. (See § 2870, subds. (c) [funds expired in 2020, conditional until mid-2026], (f)(1) [program megawatt cap].)

section 2827.1 merely requires the Commission to include DAC Customer Alternatives *somewhere*, but not necessarily *in* the successor tariff. (UB 33.) But the Utilities fail to specify where that "somewhere" might be.

Crucially, none of Respondents' non-tariff programs is supported by a *factual finding* that the program satisfies the DAC Customer Alternatives requirement. The only relevant finding of fact in the 2022 Tariff states that "[t]he combination of *the ACC Plus [i.e., the "adder"]* and *an equity fund* could assist the Commission in meeting" the DAC Customer Alternatives requirement. (21 App 18471 [Finding of Fact No. 205].) But the Commission made no factual finding that any other program (including the adder standing alone) or combination of programs could help to satisfy that requirement. Indeed, the Commission expressly *declined* to incorporate an analysis of the nontariff programs or their benefits in the 2022 Tariff.

The Court therefore should grant no weight to the assertions made in Respondents' briefs that various non-tariff programs satisfy the DAC Customer Alternatives requirement. The findings of fact in the 2022 Tariff reveal the contrary.

Third, Respondents mistakenly assert that the DAC Customer Alternatives requirement is satisfied by the 2022 Tariff's inclusion of the so-called "adder," which the Commission admits subjects DAC Customers to the same doubled or tripled payback period that now afflicts every other tariff-eligible customer.[55]

But Respondents' reliance on the adder fails because the adder was based on the Lookback Study's analysis of *low-income households*, not the "*disadvantaged communities*" referenced in subdivision (b)(1). (See PB 45-48; 21 App 18419.) The Utilities admit that the eliminated discount to which they refer applied only to low-income communities (UB 31) and thus fails for the same reason.

The adder therefore was not designed to assist many of the customers whom the Legislature expressly intended to benefit, including ones who—even if they do not meet the "low income" definition—reside in areas disproportionately affected by environmental pollution and other hazards that can lead to negative public health effects, exposure, or environmental degradation.[56] (See PB 46-48.) An "alternative" that, on its face,

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[55] Petitioners have explained that doubling or tripling the payback period violates subdivision (b)(1)'s textually adjacent requirement of ensuring that customer-sited renewable distributed generation "continues to grow sustainably." (See PB 41-43; Part IV.B, *ante*.)

[56] See, e.g., July 31, 2023 RJN, Exh. D [D.18-06-027], p. 19 ("Those proposals that seek to refocus on low-income individuals, or add criteria in order to allow low-income individuals not living in [disadvantaged communities] to participate, *miss the mark*. . . . [Section 2827.1] is about 'residential customers in *disadvantaged communities*.'"); see also *id.* at pp. 19-20 ("[E]conomic barriers such as insufficient access to capital and credit as well as marketing, outreach and linguistic barriers," are "some of the barriers specific to low-income communities," whereas "property

purportedly is designed for growth among low-income households cannot be equated with an alternative designed for growth "among residential customers in disadvantaged communities." (§ 2827.1, subd. (b)(1).) In short, such an "alternative" cannot satisfy the DAC Customer Alternatives requirement.

And there is yet another reason why the adder can't qualify as a "specific alternative" designed for customer-sited generation growth among DAC Customers: It's not an "alternative" of any kind.

Merriam-Webster.com defines "alternative" as "offering or expressing a choice" (as in "several *alternative* plans") or as "different from the usual or conventional" (as in "*alternative* newspaper" or "*alternative* lifestyle").[57] But the "adder" offers low-income households no "choices." It's take-it-or-leave-it. The Commission admits—indeed, asserts—that the "adder" subjects low-income households (by fiat) to the same elongated payback period that now confronts every other eligible customer under the 2022 Tariff. (CB 40.) If that's true, the "adder" is, by the Commission's own logic, no "different" from the "usual or conventional" deal that the 2022 Tariff offers to every other tariff-eligible customer. Even if the adder-augmented deal offered in the 2022 Tariff were better for DAC Customers than the deal they were offered under NEM 2.0, it is not an "alternative" deal.

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structure and property ownership barriers" are more specific to disadvantaged communities.).

[57] Merriam-Webster.com Dict. <https://www.merriam-webster.com/dictionary/alternative> [as of Jan. 7, 2026].

It just means that they and other non-DAC customers will have an equally difficult time making their rooftop-solar investments pay off.

Fourth, in defiance of the Supreme Court's *CBD II* ruling, the Utilities try to resurrect "reasonableness" as the pertinent judicial inquiry here. Specifically, they assert that the issues raised by Petitioners' DAC arguments are not ones of statutory *interpretation* reviewed de novo, but rather, ones of statutory *implementation* subject to the *Yamaha* test for reviewing quasi-legislative regulations. (UB 31-33.)

But it misses the mark to characterize the Commission's DAC choices in this article XII case as "quasi-legislative." As previously explained,[58] when the Legislature exercised its article XII authority by enacting section 1757.1, it chose a unified "not proceeded in the manner required by law" standard for reviewing Commission decisions as opposed to a *Yamaha*-like "continuum" approach that entails varying levels of deference. (*Yamaha*, *supra*, 19 Cal.4th at pp. 6-7.) Thus, the quasi-legislative/ interpretive continuum has no bearing here. Indeed, the questions that *Yamaha* instructs courts to consider in a quasi-legislative case are simply not part of the court's inquiry under section 1757.1, subdivision (a)(2).[59]

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[58] See Part III.C, *ante*.

[59] In quasi-legislative cases, the Court considers whether (1) "the rule in question lay within the lawmaking authority delegated by the Legislature," and (2) was "reasonably necessary to implement the purpose of the statute." (*CBD II*, *supra*, 18 Cal.5th at p. 305.) In contrast, this case requires the Court to determine whether the Commission "has not proceeded in the

Moreover, the Utilities' argument mischaracterizes the nature of Petitioners' DAC arguments, which are ones of statutory interpretation, not statutory implementation. Contrary to the Utilities' assertions, Petitioners do not advocate for any specific "means" or "preferred approaches" for satisfying the DAC Customer Alternatives requirement. (UB 33-34.) There may be many different ways to satisfy that requirement. But that's beside the point. As a matter of statutory interpretation, the requirement *cannot* be satisfied by means that (1) are not included in the 2022 Tariff, or (2) target low-income households instead of "residential customers in disadvantaged communities." (§ 2827.1, subd. (b)(1).)

Thus, the Commission failed to proceed in the manner required by the disadvantaged-communities clause of section 2827.1, subdivision (b)(1).

V. The "cost shift" theory is a spurious distraction from the need to interpret the statute.

At the previous oral argument and in its *CBD I* opinion, the Court treated the "cost shift" as the overriding concern in evaluating the 2022 Tariff. Respondents predictably reprise that theme in their supplemental opening briefs.

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manner required by law." (§ 1757.1, subd. (a)(2); see *CBD II*, at pp. 303-304 [detailing the statutory standards in sections 1757 and 1757.1 and recognizing that the Legislature borrowed from Code of Civil Procedure section 1094.5].) Code of Civil Procedure section 1094.5 does not apply to quasi-legislative cases. (See, e.g., *Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 566-567.)

Petitioners have already pointed out that (1) the Legislature *deleted* cost-shift language from the part of AB 327 that became section 2827.1, and (2) the cost shift is an artifact of the inapposite RIM test.[60] That ought to be the end of the matter. But Respondents have jammed so much anxiety-tweaking cost-shift propaganda into their supplemental opening briefs that Petitioners have no choice but to attempt to clear away some of the smoke, even though doing so is extraneous to the task of statutory interpretation.

The Commission's cost-shift theory posits that utilities incur large "fixed costs"—such as building power lines—to ensure that all customers enjoy on-demand access to power from the grid. Historically (the story goes), utilities have recovered these "fixed costs" from all customers through retail electricity rates. But because customers with rooftop solar self-generate much of their own power, they take less service from electric utilities and contribute less toward utilities' "fixed costs." As a result, customers without rooftop solar must pay higher rates to make up the difference. (CB 17-18.)

For at least four reasons, the cost-shift theory lacks any basis in reality and is argued improperly here. Much more could be said, but we lack the space.

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[60] It is beyond dispute that the cost-shift theory results from and depends upon the legally irrelevant RIM-test results (also known as the "nonparticipant test"). The Commission's 2022 Tariff cited cost-shift estimates on page 23 of the Joint Utilities Opening Brief (21 App 18288 & fn. 54), which, in turn, were derived from RIM-test figures listed in Table 5-1 of the Lookback Study (15 App 11821).

First, the Commission improperly supports its arguments about a growing cost shift by citing to materials outside the record, created years after the proceedings closed. (See CB 10, 15, 27, 28.) That's obviously improper. By statute, judicial review of Commission decisions is conducted solely on the basis of the Commission-certified record. (See § 1757.1, subd. (a).) And that record is long closed.

Second, the cost-shift theory rests on a misunderstanding of "fixed costs" that exaggerates their size and ignores the savings from customer-sited renewable generation facilities.

"Fixed costs," being *fixed*, don't grow with increased electricity consumption. In contrast, the costs of *grid-expansion projects* are *not* fixed but rather, *do* grow with increased consumption. So when on-site generation enables customers to increase their own electricity consumption and that of their neighbors without triggering the need to expand the grid, it does *not* affect "fixed" costs but *does* reduce variable costs—a lot.[61] The Commission's "cost shift" story gets this totally wrong and caused it to ignore real cost drivers[62] while minimizing real savings

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[61] See, e.g., 9 App 7656-7681.

[62] 21 App 18291. The Commission's Affordability Report explained that utilities are inherently incentivized to increase their profits by investing in capital projects; and the report identified capital expenditures, like utility self-approved transmission projects, as a primary driver of rate increases. (22 App 19298, 19315, 19329-19330 [Cal. P.U.C., Utility Costs and Affordability of the Grid of the Future (Feb. 2021)].)

resulting from customer-sited generation.[63]

Third, and relatedly, customer-sited renewable generation facilities have avoided growth in the peak electricity demand that drives grid expansion. Peak and overall electricity consumption served by the utilities has remained more-or-less flat over the past 20 years despite increased economic activity, temperatures, and use of electronics.[64] Avoiding costly grid expansions lowers costs for *all* ratepayers.

Fourth, under net metering, the Utilities get something from their customers while doing virtually nothing. Every electron that a customer-generator exports flows immediately to a neighbor who, in turn, pays the utility a full retail rate for it—even though the utility did nothing to produce the electron and

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[63] The record contains unrefuted evidence establishing the value of customer-sited generation to offset grid expansions. (See, e.g., 9 App 7675-7681.) The Commission did not reject this evidence but simply deemed it legally immaterial. It therefore remains undisputed on the record in this case that the Commission attributed no value to avoiding the costs of cancelled transmission projects. (15 App 11736-11737 [Protect Our Communities Foundation (POCF) opening brief describing evidence quantifying value of specific avoided transmission projects identified by the California Independent System Operator]; 9 App 7656-7658 [POCF expert explaining no specified transmission value was included in the ACC]; 11 App 9379-9380 [Commission witness conceding that the ACC does not calculate when specific transmission projects are avoided].)

[64] 10 App 8477; PB 31 & fn. 21. California's electricity usage peaks around 2 p.m. on hot summer days. That's also when solar facilities work best. And when those facilities don't work as well, such as at night or on winter days, California's utilities are flush with power and incur no additional costs to serve that off-peak load. (10 App 8477.)

almost nothing to transmit it to the neighboring house.[65] The Commission's "cost shift" story falsely asserts that, even though the Utilities are made whole (under NEM 2.0) or realize a windfall (under the 2022 Tariff), customer-generators are somehow shirking their duty to help support the electrical grid. In fact, however, they are exceptional grid-citizens helping lower costs for everyone and bringing more clean energy into the system.

The Court should not allow a spurious economic theory with no basis in reality to distract it from the task of statutory interpretation.

[65] The electron travels on the existing small wires between homes, and the utility incurs no or extremely minimal additional costs because the customer-generator is sharing electricity with their neighbor. (10 App 8537.)

CONCLUSION

For all the reasons stated above and in Petitioners' Supplemental Opening Brief, and in accordance with section 1758, the Court should set aside the 2022 Tariff and order the Commission to reinstate the 2016 Tariff (NEM 2.0).

DATED: January 12, 2026

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DATED: January 12, 2026

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CERTIFICATE OF WORD COUNT

(California Rules of Court, rule 8.204(c)(1))

The text of this brief consists of 13,438 words as counted by the Microsoft Word program used to generate this brief.

Dated: January 12, 2026

/s/ Steven A. Hirsch
Steven A. Hirsch

Attachment 11

Petition for Review in Supreme Court, filed January 29, 2024

S__________

IN THE SUPREME COURT OF CALIFORNIA

CENTER FOR BIOLOGICAL DIVERSITY, ENVIRONMENTAL WORKING GROUP, and THE PROTECT OUR COMMUNITIES FOUNDATION

Petitioners,

vs.

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Respondent,

PACIFIC GAS AND ELECTRIC COMPANY, SAN DIEGO GAS & ELECTRIC COMPANY, and SOUTHERN CALIFORNIA EDISON COMPANY

Real Parties in Interest.

After a Decision by the Court of Appeal
First Appellate District, Case No. A167721
From a Decision of the Public Utilities Commission of the State of California, No. 22-12-056 (December 19, 2022)

PETITION FOR REVIEW

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

California Cases

Federal Cases

Constitutional Provisions

Rules of Court

Other Authorities

TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE CALIFORNIA SUPREME COURT:

Petitioners Center for Biological Diversity, Environmental Working Group, and The Protect Our Communities Foundation ("Petitioners") respectfully petition for review of the published opinion of the Court of Appeal, First District, in *Center for Biological Diversity, et al. v. Public Utilities Commission, et al.* (December 20, 2023, A167721; Tucher, P.J., Rodríguez, J., and Petrou, J.) ("Opinion"). A copy of the Opinion is attached as Exhibit A. The Orders modifying the Opinion are attached as Exhibit B.

ISSUES PRESENTED FOR REVIEW

1. Pursuant to the plenary authority granted to the Legislature by Article XII, Section 5 of the California Constitution, in 1998, the California Legislature amended Public Utilities Code sections 1757 and 1757.1 to significantly expand the scope of judicial review of Commission decisions. Did the Opinion's "uniquely deferential" standard of review conflict with the 1998 amendments and highlight a conflict in the caselaw resulting from the failure by some appellate courts to follow the

Legislature's direction that judicial review of Commission decisions conform to review of other agencies' decisions?

2. By ignoring the acknowledged societal and other benefits of customer-sited renewable generation and assigning value solely to limited economic benefits, did the Commission fail to proceed in the manner required by section 2827.1(b)(3), which mandates that a net energy metering tariff must be "based on the costs and benefits of the renewable electrical generation facility?"

3. Section 2827.1(b)(1) requires that the net energy metering tariff "include specific alternatives designed for growth" of customer-sited renewable generation among customers in disadvantaged communities. Did the Commission fail to proceed in the manner required by law when it ignored the specific barriers to growth facing these customers?

GROUNDS FOR REVIEW

This Court should grant review of the Opinion for three reasons.

First, review is warranted to ensure uniformity of decision and to settle an important question regarding the standard of review applicable to Commission decisions. (Cal. Rules of Court, rule 8.500(b)(1).) Pursuant to its constitutional authority, in

1998, the Legislature amended sections 1757 and 1757.1,[1] directing courts to conform their review of Commission decisions to the standards applicable to other state agencies. Notwithstanding this direction, Courts of Appeal have applied an inconsistent mix of standards that continues to treat review of Commission decisions differently from review of other state agency decisions. The Opinion's "uniquely deferential" review highlights this failure of appellate courts to comply with the Legislature's direction. This Court should grant review to ensure that Commission decisions do not receive special deference. Rather, when reviewing whether the Commission has acted within the scope of its statutory authority, courts should employ the same independent judgment standard applied to other state agencies.

The Opinion relies on the Commission's status as a constitutional agency to justify its unique standard of review. However, under Article XII, section 5 of the California Constitution, "the Legislature has plenary power, unlimited by

[1] All undesignated statutory references are to the Public Utilities Code.

the other provisions of this constitution … to establish the manner and scope of review of commission action in a court of record." Before 1998, the Legislature exercised this power by limiting judicial review of Commission decisions to whether the Commission "regularly pursued its authority" and whether any evidence supported its factual findings. (*Toward Utility Rate Normalization v. Public Utilities Com.* (1978) 22 Cal.3d 529, 537 [quoting then-existing § 1757]; see also *Greyhound Lines, Inc. v. Public Utilities Com.* (1968) 68 Cal.2d 406, 410-11, 414 ["*Greyhound*"] [applying then-existing § 1757 and requiring deference to the Commission's statutory interpretation "unless it fails to bear a reasonable relation to statutory purposes and language."].)

In 1998, however, the Legislature extensively expanded the scope of judicial review of Commission decisions to "conform" to that applied to decisions of other agencies. (Sen. Bill No. 779 (1997-1998 Reg. Sess.) ["SB 779"] §§ 1.5, 12.) Among other changes, the Legislature replaced the provision requiring only that the Commission "regularly pursued its authority" with the requirement that courts ensure that the Commission "proceeded in the manner required by law." (§§ 1757(a)(2); 1757.1(a)(2).)

Also in 1998, this Court decided *Yamaha Corp. v. State Board of Equalization* (1998) 19 Cal. 4th 1 [“*Yamaha*”], which explained that a “statute’s legal meaning and effect” are “questions lying within the constitutional domain of the courts.” (*Id.* at 11.) Courts apply their independent judgment to legal issues when determining whether an agency has proceeded in the manner required by law. (*Pedro v. City of Los Angeles* (2014) 229 Cal.App.4th 87, 99; *McAllister v. California Coastal Com.* (2009) 169 Cal.App.4th 912, 921-22 [while courts defer to agencies’ factual findings, courts exercise their “independent judgment on pure questions of law, including the interpretation of statutes and judicial precedent.”].)

Despite the Legislature’s clear direction in the 1998 amendments to sections 1757 and 1757.1, courts have not applied a consistent standard of review to Commission decisions. Some courts have reached back to pre-1998 decisions to find the Commission is entitled to special deference. (See, e.g., *Pacific Gas & Electric Co. v. Public Utilities Com.* (2015) 237 Cal.App.4th 812, 839 [“*PG&E*”] [discussing the “special respect” afforded the Commission]; *Southern California Edison Co. v. Public Utilities Com.* (2004) 117 Cal.App.4th 1039, 1050 [“*SCE*”] [applying

Greyhound deference to question of Commission's power to award intervenor compensation].) Some courts have applied their independent judgment under *Yamaha*. (*New Cingular Wireless PCS, LLC v. Public Utilities Com.* (2016) 246 Cal.App.4th 784, 807-08 ["*New Cingular*"] [applying *Yamaha*, and rejecting *Greyhound*, to question of Commission's power to award intervenor compensation].) Other courts have applied a mix of *Greyhound* deference and *Yamaha*. (*PG&E*, 237 Cal.App.4th at 852-53.)

The courts' inconsistent adherence to the Legislature's direction has created confusion concerning the correct standard of review. Moreover, the continued reliance on pre-1998 caselaw highlights a conflict in the law between the treatment of Commission decisions and that of other agencies that defies the Legislature's direction, adopted pursuant to its constitutional authority "to establish the manner and scope of review of commission action in a court of record." (Cal. Const., art. XII, § 5.)

Although this Court cited *Greyhound* after 1998 in dicta, it did not decide that the uniquely deferential standard of review previously applied to Commission decisions survived the 1998 amendments. (*Southern California Edison Co. v. Peevey* (2003) 31 Cal.4th 781 ["*Peevey*"].)

The Court's review is necessary to ensure that Commission decisions are reviewed under the standards applicable to other public agencies, as intended by the Legislature in amending sections 1757 and 1757.1. Absent such direction, some courts will continue to apply undue deference to Commission decisions, as the Opinion did here. Such deferential review undermines the role of the Legislature, as set forth in the Constitution, and the role of the courts as the final arbiter of legislative intent.

Second, review is necessary to settle an important question of law related to whether section 2827.1 allows the Commission to ignore undisputed societal and other benefits when establishing the system of compensation (i.e., "tariff") for customer-sited generation in any successor to the net energy metering ("NEM") tariff.[2] (Cal. Rules of Court, rule 8.500(b)(1).)

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[2] Net energy metering refers to a means of compensating customers for power they import from the electrical grid, power they generate and consume themselves, and excess power they generate and supply to the grid.

Section 2827.1 requires the Commission to ensure that the successor to the NEM tariff is "based on the costs and benefits" of customer-sited generation. Customer-sited generation—predominantly rooftop solar—has played a critical role in meeting California's greenhouse gas reduction mandates, increasing the resiliency of the electrical system, and reducing the costs of utility infrastructure. The Commission, however, declined to value these societal and other benefits. Instead, the Commission adopted a decision that dramatically alters the system of compensation for customer-sited renewable generation and is deliberately designed to slow its growth. (See Decision 22-12-056, Decision Revising Net Energy Metering Tariff and Subtariffs (Dec. 15, 2022) ["Decision"], 21:App:797-APP18242.[3]) The Decision conflicts with the Legislature's express direction to value all of rooftop solar's benefits and represents a sharp break with the Commission's own prior decision finding that these societal benefits should be valued. (D.16-01-044, Decision Adopting Successor to Net Energy Metering Tariff (Feb. 5, 2016)

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[3] Citations to documents in the appellate record, including the Decision, are in the format [Volume]:App:[Tab]-[Page].

at 58-61.[4]) Nonetheless, the Opinion applied a "uniquely deferential" standard of review to uphold the Commission's action.

Relying on this uniquely deferential standard of review, the Opinion determined that declining to compensate customers for all of their generation's benefits bore a reasonable relation to the statutory text and purposes. (Opinion at 13-14.) In reaching this conclusion, the Opinion deferred to the Commission's interpretation that section 2827.1 required reducing an alleged "cost shift" from participants to non-participants. (Opinion at 13-15.) Valuing additional benefits, the Opinion reasoned, would increase participants' compensation and shift additional costs. (*Id.*)

The Opinion, however, ignores the plain meaning of the statutory text and other evidence of legislative intent. By directing the Commission to account for "*the* costs and benefits" of customer-sited generation, section 2827.1 requires quantification of *all* such benefits. (See *In re Davis' Estate* (1908)

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[4] For the Court's convenience, hyperlinks to other cited Commission decisions are included in the Table of Authorities.

8 Cal.App. 355, 358 ["the" means "all"]; *Frazier v. Pioneer Americas LLC* (5th Cir. 2006) 455 F.3d 542, 546 [same].) Further, by requiring the Commission to balance the tariff's costs and benefits "to all customers and the electrical system," the Legislature did not require reducing costs shifted to a particular customer class. The Legislature knows how to require the Commission to address cost shifts. (See, e.g., § 2827(h)(5)(B) [expressly prohibiting cost shifts].) It did not do so here.

In undervaluing benefits and prioritizing a perceived cost shift, the Decision dramatically reduces NEM customers' compensation, resulting in severe consequences. Rooftop solar sales have dropped approximately 80% since the Decision took effect.[5] As a result, roughly 17,000 solar industry jobs have been

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[5] Michelle Ma & Tope Alake, *California's Push for Rooftop Solar Panels Isn't Going So Well Right Now*, Bloomberg (Dec. 21, 2023), https://www.bloomberg.com/news/articles/2023-12-21/california-s-push-for-rooftop-solar-power-goes-dark; *Editorial: Solar installations are plummeting and California regulators are to blame*, Los Angeles Times (Dec. 28, 2023), https://www.latimes.com/opinion/story/2023-12-28/editorial-solar-installations-are-plummeting-and-california-regulators-are-to-blame.

lost, and some solar companies are facing closure.[6] These precipitous declines come at a time when California needs *more* rooftop solar, not less, to meet its legislative goal to achieve 100% clean retail sales of electricity by 2045. (See Sen. Bill No. 100 (2017-2018 Reg. Sess.) § 1(b); § 454.53(a).) This Court's review of the Opinion is warranted to determine whether section 2827.1 allows the Commission to chart this dangerous course for California's energy policy.

Finally, this Court should grant review to settle an important question of law related to the Commission's obligation under section 2827.1(b)(1) to adopt alternatives designed to foster growth of rooftop solar in disadvantaged communities. (Cal. Rules of Court, rule 8.500(b)(1).) The Decision relies on two elements to satisfy its obligation: a small increase in compensation paid to customers in disadvantaged communities and a rebate program established by the legislature. But these elements fail to address an important aspect of the problem

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[6] Julie Cart, *What's happened since California cut home solar payments? Demand has plunged 80%*, Cal Matters (Jan. 26, 2024), https://calmatters.org/environment/climate-change/2024/01/california-solar-demand-plummets/.

identified by section 2827.1(b)(1)—the specific barriers to adopting customer-sited generation that customers in disadvantaged communities face. These barriers include challenges in obtaining upfront financing, and marketing, outreach, and linguistic barriers. (See D.18-06-027, Alternate Decision Adopting Alternatives to Promote Solar Distributed Generation in Disadvantaged Communities (June 22, 2018) at 19, 27.) Neither additional bill credits nor rebates addresses financing challenges; instead, they provide assistance after a system has been purchased, requiring customers to obtain their own financing first.

Only after Petitioners sought review of the Decision did the Commission claim that three *preexisting* programs satisfied its statutory mandate. (D.23-06-056, Order Denying Rehearing of Decision 22-12-056 (June 30, 2023).) This assertion, however, conflicts with the Decision's finding that the status quo, including the preexisting programs, was leaving disadvantaged community residents behind. (21:App:797-APP18458.) Moreover, the Opinion's deference to the Commission's reliance on the pre-existing programs violates the principle that "[a]n agency's order must be upheld, if at all, 'on the same basis articulated in the order by the agency itself.'" (*Pacific Gas & Electric Co. v. Public Utilities Com.* (2000) 85 Cal.App.4th 86, 96.)

The Court's review is thus necessary to establish that the Commission may not satisfy its statutory obligation under section 2827.1(b)(1) to encourage growth among customers in disadvantaged communities while ignoring a critical aspect of the problem facing those customers—i.e., the significant and specific barriers those customers face. Indeed, by decreasing the economic benefits of rooftop solar, the Decision has exacerbated obstacles to its growth among customers in disadvantaged communities, making the development of effective alternatives to serve those customers even more critical.

STATEMENT OF THE CASE

I. Following the Legislature's direction, the Commission promoted the deployment of customer-sited renewable generation under the original NEM and NEM 2.0 tariffs.

In 1995, the Legislature established California's first NEM program to encourage private investment in renewable energy. (Sen. Bill No. 656 (1995-1996 Reg. Sess.) §1.) The NEM tariff charged customer-generators for only the *net* electricity they consumed each month, taking into account the power they took from the grid, the power they generated and consumed on-site, and the power they sent back to the grid (or "exported") when their facilities generated excess electricity. (D.16-01-044 at 12-13.)

In 2013, the Legislature directed the Commission to establish a successor to the original NEM tariff. (§2827.1). As relevant here, section 2827.1 provides that, in developing a new tariff, the Commission *shall*:

> (1) Ensure that … customer-sited renewable distributed generation continues to grow sustainably and include specific alternatives designed for growth among residential customers in disadvantaged communities…
>
> (3) Ensure that the standard contract or tariff ... is based on the costs and benefits of the renewable electrical generation facility.
>
> (4) Ensure that the total benefits of the standard contract or tariff to all customers and the electrical system are approximately equal to the total costs. (§2827.1(b).)

An earlier draft of section 2827.1 called for the Commission to consider the costs and benefits of the tariff to non-participating customers and to prevent cost shifts to non-participants. (D.16-01-044 at 54.) The Legislature eliminated both references to nonparticipants, establishing section 2827.1's broader focus on costs and benefits *to all customers and the electrical system*. (*Id.* at 55.)

Pursuant to section 2827.1, the Commission adopted the first successor to the original NEM tariff, the "NEM 2.0" tariff, in 2016. (21:App:797-APP18252.) NEM 2.0 achieved the statutory directive to ensure rooftop solar's continued growth, in part by compensating customers for energy they exported to the grid at the retail rate—the rate customers themselves pay for energy from the grid. (D.16-01-044 at 110.) The decision establishing the NEM 2.0 tariff also rejected arguments that section 2827.1 required the elimination of the alleged cost shift between nonparticipants and participants in the NEM program. (D.16-01-044 at 55.) Addressing the exact issues raised here, the Commission found that the Legislature had removed all references to eliminating a cost shift and instead directed the Commission to ensure that all costs and benefits to customers as a whole were approximately equal. (*Id.*)

II. In 2022, the Commission adopted a successor tariff specifically designed to decrease the growth of customer-sited renewable generation.

The Commission initiated a proceeding to review the NEM 2.0 tariff and develop a new successor tariff in August 2020.

(1:App:1-APP00058.) The Commission adopted the new successor tariff in December 2022. (21:App:797-APP18242.)

Despite the statute's directive to ensure the continued growth of rooftop solar, the successor tariff dramatically decreased the compensation paid to NEM customers, approximately doubling the time it takes to pay back the initial investment in a rooftop solar system. (21:App:797-APP18323.) The Commission decreased the attractiveness of customer-sited generation primarily to address a perceived "cost shift" from participants to non-participating customers. (21:App:797-APP18292, 18321.) The Commission claimed that section 2827.1(b)(4)'s requirement to balance the costs and benefits of the tariff "to *all customers* and the electrical system" required avoiding "disproportionate impacts" to *some* customers—i.e., nonparticipants. (21:App:797-APP18294 [emphasis added].)

The Decision decreases compensation for NEM customers primarily by reducing the value of their exported energy. Rather than compensate customers for exported energy at the retail rate, the Decision compensates customers based on Avoided Cost Calculator values. (21:App:797-APP18348.) The Avoided Cost Calculator is a tool that models the generic benefits of distributed resources based on some costs that they obviate, or "avoid." The Decision concludes that the Avoided Cost Calculator accurately values the benefits NEM resources provide to the grid. (21:App:797-APP18348-49.)

The Decision, however, acknowledges that the Avoided Cost Calculator does not include values for *all* benefits of customer-sited generation. Rather, the Decision discusses various benefits excluded from the Avoided Cost Calculator, including several societal and other benefits that parties argued should be quantified and reflected in the successor tariff. (21:App:797-APP18311-12.) The Commission rejected each one. (21:App:797-APP18313-15.)

Finally, the Decision discussed programs intended to serve customers in disadvantaged communities. The Decision found that these customers faced significant barriers to adopting rooftop solar, including financial challenges, lower bill savings, and longer payback periods. (21:App:797-APP18469-70.) Because of these unaddressed barriers, the Commission concluded that customers in disadvantaged communities were being left behind. (21:App:797-APP18458.) While the Decision adopted a modestly higher rate of compensation for customers in disadvantaged communities “to ensure simple payback periods of [ ] nine years or less on average” (21:App:797-APP18419), the Decision declined to adopt a specific cost of solar energy for customers in disadvantaged communities to inform its analysis. The Commission also noted that new legislation, separate from the tariff, would subsidize customer-sited generation in disadvantaged communities. (21:App:797-APP18425.)

III. The Opinion deferred to the Commission’s statutory interpretation of section 2827.1 and upheld the Commission’s decision.

The Court of Appeal issued its Opinion on December 20, 2023. The Opinion applied a “uniquely deferential standard of review.” (Opinion at 12.) It stated that the court would “disturb the Commission’s interpretation [of the Public Utilities Code] only if ‘it fails to bear a reasonable relation to the statutory purposes and language.’” (Opinion at 10 [quoting *Southern California Edison Co. v. Peevey* (2003) 31 Cal.4th 781, 796].)

The Opinion first deferred to the Commission’s determination that the Avoided Cost Calculator adequately measures the benefits of customer-sited generation. (Opinion at 9-15.) The court acknowledged the Commission’s concession at oral argument that the Commission could have quantified societal and other benefits that were not captured by the Avoided Cost Calculator. (Opinion at 14.) However, the court deferred to the Commission's position that section 2827.1(b)(3) did not require the quantification of those benefits. (Opinion at 12-13.)

The Opinion also deferred to the Commission's claim that section 2827.1 prioritized reducing a perceived cost shift. (Opinion at 13-14.) The court concluded that section 2827.1(b)(4)'s requirement that the Commission ensure the costs and benefits of the tariff "*to* all customers and the electrical system" were approximately equal constituted a command "to balance the equities *among* all customers." (Opinion at 14-15 [emphasis added]; see also Opinion at 20-21 ["The implication of [subdivision (b)(4)] ... is to ensure the successor tariff does not grant unwarranted benefits or impose unwarranted costs on any particular group of ratepayers."].)

Finally, the Opinion accepted the Commission's reliance on a mix of existing programs and other elements to satisfy section 2827.1(b)(1)'s requirement that the tariff "include specific alternatives designed for growth among residential customers in disadvantaged communities." (Opinion at 25-27.) The Opinion concluded that an additional bill credit and a legislatively-established rebate program for customers in disadvantaged communities satisfied the statutory mandate because they would help customers in disadvantaged communities pay back the upfront costs of system installation. (*Id.* at 25, 27.)

Petitioners filed a petition for rehearing on January 4, 2024. The court denied rehearing and modified the Opinion on January 16, 2024, without changing the judgment. The Opinion became final on January 19, 2024. (Cal. Rules of Court, rule 8.490(b)(2).) This petition is timely. (Cal. Rules of Court, rule 8.500(e)(1).)

ARGUMENT

I. Review is necessary to bring uniformity to the appellate case law and ensure that courts do not apply a standard of review that the Legislature has abrogated.

In 1998, the Legislature exercised its constitutional authority to expand the scope of judicial review of Commission decisions, amending sections 1757 and 1757.1[7] to eliminate the

[7] The Commission asserted that section 1757.1 applies here. (Court of Appeal Case No. A167721, Commission's Answering Brief at 15, fn. 3.) The Opinion, however, cites section 1757. (Opinion at 31.) Because the relevant statutory provisions are identical (§ 1757(a)(2), § 1757.1(a)(2)), the same analysis applies under either statute.

unique limits on review that had previously applied. In applying a "uniquely deferential" standard of review to the Commission's interpretations of its obligations under the Public Utilities Code, the Opinion and the recent decisions it cites follow a line of cases decided before 1998. This Court should grant review to establish that the Commission is no longer entitled to special deference; instead, its decisions are reviewed consistent with the standards that apply to every agency, as delineated in amended sections 1757 and 1757.1.

A. The Legislature amended sections 1757 and 1757.1 to expand judicial review of Commission decisions, aligning it with standards of review applied to other state agencies.

The Legislature has plenary power "to establish the manner and scope of review of commission action in a court of record." (Cal. Const., art. XII, § 5.) Prior to 1998, the Legislature exercised this authority through the then-existing section 1757. That section limited judicial review to a determination of whether the Commission "regularly pursued its authority." (*Toward Utility Rate Normalization*, 22 Cal.3d at 537.) Applying this limited standard of review, in *Greyhound,* this Court found: "[T]he commission's interpretation of the Public Utilities Code should not be disturbed unless it fails to bear a reasonable relation to statutory purposes and language." (68 Cal.2d at 410-11.) Further, the Commission's factual findings were final and unreviewable if supported by any evidence. (*Southern Pacific Co. v. Public Utilities Com.* (1953) 41 Cal.2d 354, 362, 367.)

In 1998, however, the Legislature amended sections 1757 and 1757.1 to significantly expand the scope of judicial review of Commission decisions and eliminate the special restrictions previously imposed on courts' review. (SB 779, §§ 1.5, 12.) The Legislature expressed its unambiguous intent that "decisions by the commission ... be subject to review on grounds similar to those of other state agencies." (*Id.* at §1.5.) To achieve this aim, sections 1757 and 1757.1 set out new grounds for review of Commission decisions, including whether the Commission abused its discretion, whether the decision is supported by the findings, and whether the Commission proceeded in the manner required by law. (§ 1757(a); 1757.1(a).) These new grounds significantly expanded the scope of judicial review of the Commission's legal conclusions, including its statutory interpretations.

This Court, however, has never addressed how the new sections 1757 and 1757.1 reshaped judicial review of Commission decisions or how judicial review of Commission decisions should conform to that applied to other state agencies. Five years after the amendments, in *Peevey*, the Court cited *Greyhound's* "reasonable relation" language, but did not discuss or analyze the 1998 amendments to sections 1757 and 1757.1 or their effects on the standard of review. (31 Cal.4th at 796.) Moreover, *Peevey* involved a specific Public Utilities Code provision reminiscent of the *former* section 1757, providing that the specific Commission determinations at issue there "shall be final, and ... may not be rescinded, altered or amended." (§ 367). *Peevey* thus involved limited circumstances in which special deference to the Commission's determinations retained a role. It does not, however, hold that absent such circumstances, courts should continue to treat the Commission's decisions with the hands-off approach required before the Legislature's amendments.

The Opinion's deferential review is based on outdated law regarding judicial review of Commission decisions. (See Opinion at 9 [citing *City and County of San Francisco v. Public Utilities Com.* (1985) 39 Cal.3d 523, 530].) That outdated deference to the Commission's legal interpretations is responsible for the Opinion's affirmance of the Commission's decision. (Opinion at 2

[“Applying the applicable deferential standard of review, we conclude that the successor tariff adequately serves the … objectives of section 2827.1 and thus affirm.”].) The Opinion, however, never addresses the amendments to sections 1757 or 1757.1 that significantly expanded the scope of review of Commission decisions.

Under the California Constitution, judicial review is governed by statutes enacted by the Legislature. (Cal. Const., art. XII, § 5 [“The Legislature has plenary power…to establish the manner and scope of review of commission action in a court of record.”].)[8] When it amended sections 1757 and 1757.1, the Legislature specifically directed courts to ensure that the Commission “proceeded in the manner required by law.” (§§ 1757(a)(2), 1757.1(a)(2).) This change, which mirrors the requirements of Code of Civil Procedure section 1094.5, requires the court to exercise its independent judgment. (*McAllister,* 169 Cal.App.4th at 922 [independent judgment applies to questions of

[8] Cf., *Pacific Telephone & Telegraph Co. v. Eshleman* (1913) 166 Cal. 640, 659 (“…the same power vested in the legislature which admittedly authorizes it to limit or destroy the jurisdiction of the courts of this state, must necessarily authorize it to confer upon such courts such jurisdiction as it sees fit.”).

law, including statutory interpretation].) This statutory amendment renders obsolete cases that applied section 1757 as it existed before 1998.

This Court's review is necessary to ensure that courts comply with the Legislature's direction in sections 1757 and 1757.1 that review of Commission decisions be consistent with the standards that apply to other agencies. The courts' continued reliance on *Greyhound* and other pre-1998 cases in the absence of such clarification (see Opinion at 8, 12; see also, e.g., *The Utility Reform Network v. Public Utilities Com.* (2008) 166 Cal.App.4th 522, 533) has not only resulted in a split of authority as to the standard of review of Commission decisions (see § I.B, *infra*), it has also ignored the Legislature's direction in amending sections 1757 and 1757.1.

B. Notwithstanding the Legislature's direction, courts have failed to apply a consistent standard of review and continue to rely on a long-abrogated standard of review to treat review of Commission decisions differently from that of other agencies' decisions.

In *Yamaha* this Court emphasized that "[t]he standard for judicial review of agency interpretation of law is the *independent judgment* of the court, giving *deference* to the determination of the agency *appropriate* to the circumstances of the agency action." (19 Cal.4th at 8.) Courts do *not* defer when assessing whether an agency decision "lies within the scope of the authority delegated by the Legislature." (*Id.* at 11, fn. 4.)

Instead, courts must use their independent judgment to determine whether the agency regulation or decision is consistent with—and thus authorized by—the statute. (*Yamaha*, 19 Cal.4th at 11, fn. 4.; *Western States Petroleum Assn. v. Bd. Of Equalization* (2013) 57 Cal.4th 401, 415; see also *Carmona v. Division of Industrial Safety* (1975) 13 Cal.3d 303, 310 [statutory interpretation is "a question of law" for the court to resolve]; *City of San Diego v. Bd. of Trustees of California State Univ.* (2015) 61 Cal. 4th 945, 956 [questions of law are reviewed de novo].) The standard of review of challenges in such circumstances is one of "respectful nondeference." (*Yamaha,* 19 Cal. 4th at 11, fn. 4 [quoting *Environmental Protection Information Center v. Department of Forestry & Fire Protection* (1996) 43 Cal.App.4th 1011, 1022].)

Courts have not consistently applied the independent judgment standard to determine whether the Commission has acted within the scope of its authority. Indeed, courts have even applied different standards of review to Commission interpretations of the same statutory text, resulting in different analyses and outcomes. For example, in *Southern California Edison Co. v. Public Utilities Commission* ["*SCE*"], the court deferred to the Commission's position that sections 1802 and 1803 allowed it to award attorneys' fees to a party that intervened to defend the Commission's decisions in court. (117 Cal.App.4th at 1050 ["[w]e cannot say that this construction bears no 'reasonable relation to statutory purposes and language.'"].) *SCE* did not cite or discuss section 1757 or *Yamaha*, nor did it analyze whether, based on the circumstances, the Commission's interpretation was deserving of the considerable deference the court afforded it.

In contrast, *New Cingular Wireless PCS, LLC v. Public Utilities Commission*, which concerned the exact same statutory scheme, cited section 1757 and applied *Yamaha* in its review of whether a party's contribution had to be on the merits to justify attorneys' fees. ((2016) 246 Cal.App.4th 784, 809.) *New Cingular* concluded that the intervenor compensation statutes defined the scope of the Commission's authority to award attorneys' fees and thus rejected *Greyhound* deference. (*Id.* at 808 ["[A]pplying the

Greyhound test here would effectively swallow the statutory scheme in whole, rendering its limitations subordinate to the [Commission's] interpretation of the statute."].) Instead, the court applied *Yamaha*, walking through the factors described in that decision, and ultimately directed the Commission to reconsider its reasoning. (*Id.* at 812-19.)

SCE and *New Cingular Wireless* are not isolated examples of the confusion about the applicable standard. In *Pacific Gas & Electric Co. v. Public Utilities Commission,* the court ricocheted between "considerable" *Greyhound* deference to the Commission's reasonable statutory interpretations (237 Cal.App.4th at 852, 853), and *Yamaha*'s requirement that it apply its independent judgment. (*Id.* at 839-40, 852 ["the ultimate decision [on statutory interpretation] is with the courts."]; *id.* at 852 [concluding "minimal" deference was owed to the Commission's inconsistent interpretations].) Ultimately, the court all but threw up its hands at the standard of review, stating that "[i]n any event," its "purely independent review" of the statute supported the Commission's decision. (*Id.* at 854.) Other courts have also used this same approach to avoid resolving whether to apply *Greyhound* or their independent judgment under *Yamaha*.

(*BullsEye Telecom, Inc. v. California Public Utilities Com.* (2021) 66 Cal.App.5th 301, 334 fn. 34 ["Because we reach our conclusion without extending any special deference to the Commission's interpretation of the statutes, we need not decide what level of deference would be appropriate."].)

This Court's review is necessary to bring uniformity to this inconsistent mix of deferential review standards and to ensure conformity between judicial review of Commission decisions and review of other agency decisions.

C. The Opinion exacerbates the rift between judicial review of Commission decisions and the review of other agency decisions by failing to independently review the statutory requirements of the Public Utilities Code.

The Opinion's invocation of a uniquely deferential standard of review for Commission actions conflicts with *Yamaha* and the standard applied to other agencies.[9] The Opinion does not apply

[9] One sentence in *Utility Consumers' Action Network v. Public Utilities Commission* encapsulates the conflict between the standard applied to all agencies and that often applied to the Commission: "Although an agency is accorded less deference in its interpretation of statutes [citing *Yamaha*], the ['Commission's] interpretation of the Public Utility Code 'should not be disturbed unless it fails to bear a reasonable relation to statutory purposes and language [quoting language originating in *Greyhound*].'" ((2010) 187 Cal.App.4th 688, 698.)

the independent judgment standard to determine whether the decision resulting from the Commission's interpretation of section 2827.1 is authorized by the statute.

Here, the Legislature did not "employ[] open-ended statutory language" that left gaps for the Commission to fill. (*See New Cingular*, 246 Cal.App.4th at 810 [quoting *Yamaha*, 19 Cal.4th at 17].) Rather, as discussed in section II.A below, the Legislature directed the Commission to develop a successor tariff that captured all costs and benefits of customer-sited generation. (§ 2827.1 (b)(3).) Notably, the Legislature did not direct the Commission to eliminate an alleged "cost shift" between customers with rooftop solar and those without it. (§ II.B, *infra*.) Whether the Decision exceeded the scope of this legislative authorization is a question of law for the courts. (*Yamaha*, 19 Cal.4th at 18 [Mosk, J., concurring].) Had the Opinion applied standard rules of statutory interpretation, it could not have upheld the Decision. (See § II, *infra*.)

Even where agency action is within the scope of its statutory authority and some deference is appropriate, *Yamaha* characterizes that deference as "fundamentally situational." (*Id.* at 12.) For example, courts extend greater deference when the statutory interpretation involves expertise, technical knowledge, complex or obscure text, or policy or factual determinations, as well as when there are indications that senior officials carefully considered the interpretation, or when the interpretation is long-standing. (*Id.*) Absent these factors, an agency interpretation "may ... be of little worth." (*Id.* at 7-8.)

However, the Opinion also fails to address these *Yamaha* factors demonstrating that it should not have deferred to the Commission's decision. For example, the Decision conflicts with the Commission's only prior interpretation of the statute. (See §§ II.B & II.C, *infra.*) Further, the key statutory language at issue—whether "*the* costs and benefits" means *all* costs and benefits, and whether balancing costs and benefits "*to* all customers and the electric system" means balancing costs *among* customer classes (§ 2827.1(b)(3) & (4) [emphasis added])—does not involve technical language or expertise. The Opinion did not address, much less grapple with, the Commission's prior inconsistent interpretation of section 2827.1 or the plain meaning of the statutory text.

The Opinion's failure to apply their independent judgment to legal questions continues the troubling trend of courts applying a standard of review to the Commission's statutory interpretations that is *different from* the standard applicable to other agencies. Divergent standards of review applied to Commission and other agency decisions runs directly counter to the Legislature's intent in amending sections 1757 and 1757.1. Review is necessary to ensure that courts honor the Legislature's intent to bring review of Commission decisions in line with that of other agency decisions, so that the courts may provide a meaningful check on the Commission's exercise of its authority.

II. The Opinion raises an important question as to whether section 2827.1 requires valuing all benefits of customer-sited generation, or whether its express directives must yield to a goal of reducing cost shifts that is absent from the statutory text.

Review is also necessary to resolve an important question concerning State energy policy: that is, whether section 2827.1 allows the Commission to sacrifice the growth of rooftop solar and undercount its benefits in favor of addressing a perceived cost shift to non-participating customers. Under any standard of review, the Opinion answered this question incorrectly. As explained below, statutory text, case law, legislative history, and other evidence of legislative intent establish that the Commission's interpretation of section 2827.1 failed to bear a reasonable relation to explicit statutory language and the statute's purposes.

A. The statutory reference to "the costs and benefits" of customer-sited generation requires the Commission to account for *all* quantifiable costs and benefits.

In accepting the Commission's decision to value exported energy using a tool that omits societal and other benefits, the Opinion stated that "nothing in the statutory text [ ] indisputably requires the Commission to take account of '*all* costs and benefits' of 'distributed renewable generation.'" (Opinion at 13.) The Opinion, however, ignored the Legislature's use of the definite article—directing the Commission to ensure that the tariff is "based on *the* costs and benefits of the renewable electrical generating facility" (§ 2827.1(b)(3) [emphasis added])—which constitutes exactly such a requirement.

The Legislature directed the Commission to enact a tariff accounting for "the costs and benefits"—not *some*, *certain*, *avoided*, or *economic* costs and benefits.[10] The use of the term

[10] Compare section 769.3(c)(3), which requires the Commission to "prohibit[ ] the program's costs from being paid by nonparticipating customers in excess of the *avoided* costs." (Emphasis added.)

"the" is legally significant. It means "all." (See *Frazier v. Pioneer Americas LLC* (5th Cir. 2006) 455 F.3d 542, 546). For example, in *In re Davis' Estate*, the court held that a judge's reference to "the papers and orders" necessarily meant "all the papers and orders" in the case. ((1908) 8 Cal.App. 355, 358 ["[B]y the employment of the definite article 'the' as descriptive of the papers and orders ... the judge intended to, and does, certify that said papers and orders were in fact *all* the papers and orders."]; see also *Kaufman v. Allstate New Jersey Ins. Co*. (3d Cir. 2009) 561 F.3d 144, 155 ["the definite article preceding the term 'claims' indicates that 'the claims asserted' means *all* the claims asserted."]; *Macrovision Corp. v. Dwight Cavendish Developments Ltd.* (N.D. Cal. 2000) 105 F.Supp.2d 1070, 1073 [the term "the effects" was "plural and all inclusive" and meant "all the effects" described in a patent claim].)

Even under the Opinion's erroneously deferential standard of review, a tariff that is explicitly based on only some of the benefits of customer-sited renewable generation is not reasonably related to a statutory requirement to value all of its benefits.

Finally, the Opinion's interpretation of section 2827.1(b)(3) was informed by its determination that the related subdivision (b)(4) required the reduction of a perceived cost shift. The Opinion suggested that valuing societal benefits as part of the benefits of customer-sited generation would increase the compensation paid to participating customers, and, under the Opinion's "zero-sum" view (Opinion at 14), would increase costs shifted to non-participants. (*Id.*) Thus, the Opinion concluded that the Commission's *omission* of societal benefits furthered statutory purposes and language by reducing the perceived cost shift. (*Id.* at 14-15.) As explained below, however, the Opinion erred in concluding that the statute requires addressing a cost shift.

B. Section 2827.1 does not require addressing a cost shift.

The Opinion erroneously equates section 2827.1(b)(4)'s direction to equalize the costs and benefits of the tariff "to all customers and the electrical system" with a command to "balance the equities *among* all customers"—i.e., to reduce costs shifted from participants to non-participants. (Opinion at 14-15 [emphasis added]; see also Opinion at 20-21, 22.)

The text of section 2827.1(b)(4) does not support the Opinion's reading. The Legislature directed the Commission to balance the costs and benefits of the tariff to "all customers and the electrical system"—i.e., to ensure that the tariff is cost-effective from the perspective of the utilities and their customers as a whole. There is no reference to ensuring equity *among* specific customer classes.

When the Legislature wants to prohibit cost shifts or ensure equity among customer classes, it does so expressly and unambiguously. Indeed, the statute creating the *first* NEM tariff expressly required the Commission to ensure that the compensation for surplus generation under that tariff "does not result in a shifting of costs between eligible customer-generators and other ... customers." (§ 2827(h)(5)(B).) The Public Utilities Code is replete with other examples of express language addressing cost shifts:

- § 366.2(a)(4): a program "shall not result in a shifting of costs between the customers of the community choice aggregator" and other customers.
- § 367.7(d): "The methodology ... shall not result in any shifts in costs between customer classes."
- § 380(b)(3): requiring action "in a manner that prevents the shifting of costs between customer classes."

- § 384.5(b): a tariff shall accomplish its objectives "without shifting costs to nonparticipating ratepayers."

See also §§ 399.20(d)(4), 454.51(d)(3), 454.52(c), 740.11, 769.3(c)(3), 2828(h)(7), 2831(h), 2832(d), 2833(q), 2795, 8371(b), 9607(a) [all unambiguously prohibiting cost shifting in other aspects of Commission ratemaking].)

The Legislature's omission of any language prohibiting a cost shift in section 2827.1(b)(4) is strong evidence that the Legislature did not intend to include that objective. (*PG&E*, 237 Cal.App.4th at 842-44 [Legislature's use of "unmistakable language" in Public Utilities Code provisions means that its "decision not to include" such language in a statute is significant].)

In fact, the legislative history of section 2827.1 shows that the Legislature deliberately removed language that would have required a focus on nonparticipants or cost shifts. Earlier versions of the statute required that the tariff be based on the "costs and benefits *received by nonparticipating customers*" and required the Commission to "[p]reserve nonparticipant ratepayer indifference." (D.16-01-044 at 54 [quoting August 21, 2013 draft of Assem. Bill No. 327 (1993-1994 Reg. Sess.) ["AB 327"]].) The

Legislature removed these references from the final bill. (*Id.* at 55; *see also* § 2827.1(b).) As the Commission itself previously concluded, this shows that section 2827.1 does not require nonparticipant indifference. (D.16-01-044 at 54-55.) Rather, the Legislature "deliberately expanded the scope of statutory concern from 'nonparticipating customers' to 'all customers and the electrical system.'" (*Id.*)

In the same version of the bill that contained the amendments eliminating references to nonparticipant indifference, the Legislature added the requirement that the successor tariff "ensure[ ] that customer-sited renewable distributed generation continues to grow sustainably." (§ 2827.1(b)(1); AB 327, Sept. 3, 2013 version, §§ 10, 11 (at 53-54).) The Legislature also directed the Commission to include a specific alternative designed to ensure the growth of customer-sited generation in disadvantaged communities. (*Id.*)

These changes prioritized the growth of customer-sited generation, particularly in disadvantaged communities; they *eliminated* requirements to reduce a cost shift.[11] Indeed, the Commission's 2016 interpretation of the statute stated that the agency's "first responsibility" was to "see to the continued growth of customer-sited renewable [generation]." (D.16-01-044, at 58.)

The evidence of legislative intent shows that the statutory purposes and text did not include addressing a cost shift; rather, they required a full accounting of all costs and benefits. Thus, under any standard of review, the Opinion erred by interpreting section 2827.1 in a manner divorced from the statutory text and legislative intent.

C. The Commission's new interpretation of section 2827.1 represents a radical shift that threatens the growth of customer-sited renewable generation and the state's ability to meet its clean energy goals.

In 2016, when the Commission adopted the NEM 2.0 tariff, the Commission interpreted section 2827.1 differently from its

[11] Notwithstanding the statutory text, some legislative analyses of AB 327 referenced reducing cost shifts even after the amendments removing the nonparticipant language. (See D.16-09-036, Order Modifying Decision (D.) 16-01-044 and Denying Rehearing, As Modified (Sept. 22, 2016) at 6). While those subsequent analyses include "cost shift" language, they are near exact copies of earlier analyses that were prepared before the amendments deleting cost shift language from the bill text.

interpretation in the Decision. Not only did the Commission in 2016 state that section 2728.1 required it to ensure the continued growth of rooftop solar as its "first responsibility," the Commission also suggested that, pursuant to the statute's requirements, societal benefits should be quantified and accounted for once that quantification became possible. (D.16-01-044 at 58-61.)

The challenged Decision abandons the Commission's previous interpretation prioritizing growth in favor of a new interpretation that prioritizes reducing a perceived cost shift. In changing its interpretation, the Commission turned away from rooftop solar and dealt the solar industry a devastating blow, flouting the statute's command to ensure that rooftop solar continues to grow sustainably. The Decision more than doubles the time it takes rooftop solar customers to pay back their initial investments. (21:App:797-APP18323.) As a result, customer interest in rooftop solar has declined precipitously since the Decision took effect, with catastrophic impacts to the solar industry. Sales data reviewed by the California Solar + Storage Association ("CALSSA") shows that rooftop solar sales decreased between 77% and 85% in the year after the Decision.[12] CALSSA estimated that this decline would result in the elimination of 17,000 solar industry jobs in California, or 22% of all solar jobs in the state, by the end of 2023.[13]

This decline in rooftop solar comes at a time that the State can ill afford it. California needs almost double the current amount of rooftop solar installed on homes by 2045 to meet the State's climate targets.[14]

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[12] CALSSA, *Impact of NEM-3 on California's Renewable Energy Progress and Solar Jobs* (Nov. 2023) at 7, https://static1.squarespace.com/static/54c1a3f9e4b04884b35cfef6/t/6568c37150268f14081b4895/1701364595998/State+of+the+Industry+CALSSA+11.30.23.pdf.

[13] *Id.* at 9.

[14] SB 100 sets a goal of achieving 100% renewable electricity by 2045. (Cal. Energy Com., 2021 SB 100 Joint Agency Report, Achieving 100 Percent Clean Electricity in California: An Initial Assessment (Mar. 15, 2021) p. 1, https://www.energy.ca.gov/publications/2021/2021-sb-100-joint-agency-report-achieving-100-percent-clean-electricity.) The California Air Resources Board ("CARB") has modeled how the State may achieve this goal; its model assumes 29,208 MW of "additional customer solar" would be needed by 2045. (CARB, 2022 Scoping Plan for Achieving Carbon Neutrality (Nov. 16, 2022) at 202, fn. 369, https://ww2.arb.ca.gov/sites/default/files/2022-12/2022-sp.pdf.) As of January 2024, California has roughly 16,000 MW of installed rooftop solar. (https://www.californiadgstats.ca.gov/.)

Review of the Opinion is necessary to settle this important question of state law and determine whether the Court of Appeal erred in concluding that section 2827.1 allowed the Commission to jeopardize the solar industry and the State's climate goals, thereby subverting the statute's requirement to ensure that customer-sited generation continues to grow sustainably.

III. The Opinion raises an important issue of law as to whether the Commission may ignore a critical aspect of the problem in designing specific alternatives for growth among customers in disadvantaged communities.

Section 2827.1(b)(1) requires the Commission to include "specific alternatives designed for growth [of rooftop solar] among residential customers in disadvantaged communities." The Commission previously determined that achieving this mandate required alternatives that address the specific financial, structural, and outreach barriers that disadvantaged community residents face in accessing rooftop solar. (D.18-06-027 at 10.) The Opinion, however, defers to the Commission's assertions that two elements discussed in the Decision and three pre-existing programs raised *post hoc* satisfied its statutory obligation (Opinion at 26-27), despite (1) the failure to address the specific barriers facing disadvantaged community residents, and (2) the

Commission's determination that the existing programs were inadequate. In dismissing these arguments as mere complaints that the Commission's efforts were "imperfect" (Opinion at 26), the Opinion ignores that the Commission "entirely fail[ed] to consider an important aspect of the problem," rendering its decision arbitrary and capricious. (*Center for Biological Diversity v. United States Fish & Wildlife Service* (9th Cir. 2023) 67 F.4th 1027, 1035 (quoting *Motor Vehicle Mfrs. Ass'n . v. State Farm Mut. Auto. Ins. Co*. (1983) 463 U.S. 29, 43).)

In 2018, the Commission identified specific barriers to adopting rooftop solar facing customers in disadvantaged communities. Those barriers include challenges obtaining upfront financing (D.18-06-027 at 27 [identifying "additional costs that cannot be financed," including "required roof repair or replacement or an electrical service upgrade,"]), and "marketing, outreach and linguistic barriers." (*Id.* at 19.) The Commission concluded that section 2827.1(b)(1) required programs that addressed these specific barriers. (*Id.* at 10.)

The Decision described two elements intended to serve disadvantaged communities. First, the Decision extended additional bill credits to disadvantaged community residents, intended to ensure a nine-year payback period. (21:App:797-APP18419.) Second, it referenced AB 209, a separate bill intended to incentivize rooftop solar in disadvantaged communities. (21:App:797-APP18471.) Only after Petitioners sought writ review to challenge the adequacy of these elements did the Commission *also* claim reliance on three existing programs to satisfy section 2827.1(b)(1)'s requirements. (D.23-06-056 at 19-20.)

The Opinion accepts the Commission's reliance on all of these programs—the bill credits, AB 209, and the three existing programs. (Opinion at 26-27.) In doing so, the Opinion errs for a number of reasons.

The Opinion first errs in deferring to the Commission's reliance on additional bill credits and AB 209 because these elements ignore the specific barriers facing disadvantaged community residents—i.e., lack of upfront capital and other barriers to financing, and the need for marketing, education, and outreach. Neither additional bill credits nor funding for solar and storage systems addresses challenges posed by the prevalence of outdated housing stock in disadvantaged communities. Those challenges include costs for roof repair or replacement or electrical panel upgrades for which financing is unavailable. Further, neither bill credits nor AB 209 funding, which is delivered through a rebate program (see 20:App:649-APP16445, 21:App:753-APP17981), addresses high upfront installation costs. Both elements require disadvantaged community residents to first overcome upfront financing barriers themselves, and only then provide funding. By relying on elements that fail to address these specific barriers, the Commission failed to consider a critical aspect of the problem the statute required it to solve.

Second, the Opinion erred in accepting the Commission's reliance on three existing programs. "An agency's order must be upheld, if at all, 'on the same basis articulated in the order by the agency itself.'" (*Pacific Gas & Electric Co.,* 85 Cal.App.4th at 96.) The Decision does not rely on or even mention the existing programs. Rather, the Commission only raised their existence after Petitioners challenged the Decision.

Moreover, the Decision itself determined that the status quo—which included the three programs—was failing to adequately serve customers in disadvantaged communities. Despite the existing programs' adoption in 2018, the Decision determined that customers in disadvantaged communities "continue[d] to be left behind." (21:App:797-APP18458.) The Commission's finding recognizes that the three programs were insufficient to achieve section 2827.1's mandate—and indeed, the programs have performed poorly.[15] "[I]f a public entity changes its view, it must explain its rationale." (*Boatworks, LLC v. City of Alameda* (2019) 35 Cal.App.5th 290, 303.) When the Commission contradicted its finding that the three programs were inadequate by relying on them to defend its Decision, it did not explain its rationale. The Commission discussed neither its 2022 finding about the inadequate status quo nor the existing programs' performance in seeking to rely on them. (See D.23-06-056 at 20.)

The Court should grant review of the Opinion to establish that the Commission cannot satisfy its statutory obligations while ignoring critical aspects of the problems the statutes are intended to solve. Moreover, review is necessary to ensure that customers in disadvantaged communities gain access to rooftop

[15] As Petitioners argued below, two of the three programs are cumulatively capped at less than 2% of current installed rooftop solar capacity; of those, one had enrolled no customers as of August 2021; the third program had installed less than 0.1% of current rooftop solar capacity as of early 2023. (Court of Appeal Case No. A167721, Petitioners' reply at 51-52.)

solar. If the other elements of the Decision stand, the Commission's deep cuts to the economics of rooftop solar will make specific alternatives for customers in disadvantaged communities even more important. The specific alternatives do not need to be perfect programs (Opinion at 26); but they do need to be real solutions, designed to address the specific problems the statute identifies.

CONCLUSION

For the reasons described above, Petitioners respectfully request that this Court grant review and reverse the Court of Appeal's judgment.

DATED: January 29, 2024

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DATED: January 29, 2024

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CERTIFICATE OF WORD COUNT

In accordance with California Rules of Court Rule 8.504(d)(1), I certify that, exclusive of this certification and the other exclusions referenced in Rule of Court 8.204(c)(3), this PETITION FOR REVIEW contains 8,381 words, including footnotes, as determined by the word count of the computer used to prepare this brief.

DATED: January 29, 2024

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EXHIBIT A

Filed 12/20/23

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

CENTER FOR BIOLOGICAL DIVERSITY, INC. et al., Petitioners, v. PUBLIC UTILITIES COMMISSION, Respondent; PACIFIC GAS AND ELECTRIC COMPANY et al., Real Parties in Interest.	A167721 (Cal.P.U.C. Dec. No. 22-12-056)

For nearly 30 years, California has used a net energy metering (NEM) tariff to encourage public utility customers to install renewable energy systems (renewable systems). In practical effect, the tariff requires utilities to purchase excess electricity exported by renewable systems to the electrical grid at the price paid by a utility's customers for electricity. Utilities have long been rankled by the tariff, contending it overcompensates owners of renewable systems for their exported energy and thereby raises the cost of electricity for customers without such systems.

In 2013, the Legislature responded to these concerns by enacting Public Utilities Code section 2827.1 (undesignated statutory references are to this code), which requires the Public Utilities Commission (Commission) to adopt a successor tariff to govern utility billing of customers with renewable systems. Among other objectives, section 2827.1 requires the successor tariff to promote the continued sustainable growth of renewable power generation while balancing costs and benefits to all customers. (*Id.*, subds. (b)(1), (3), (4).) In 2022, the Commission adopted a successor tariff, which significantly reduces the price utilities pay for customer-generated power.

Petitioners Center for Biological Diversity, Inc., Environmental Working Group, and The Protect our Communities Foundation (collectively, petitioners) filed a petition for writ review of the successor tariff, contending it fails to comply with various requirements of section 2827.1. Among other claims, petitioners argue it does not take account of the social benefits of customer-generated power, improperly favors the interests of utility customers who do not own renewable systems, fails to promote sustainable growth of renewable energy, and omits alternatives to promote the growth of renewable systems among customers in disadvantaged communities.

In this writ matter, the scope of our review is "limited" (*City and County of San Francisco v. Public Utilities Com.* (1985) 39 Cal.3d 523, 530), and there's a "strong presumption" in favor of the Commission decision's validity. (*Toward Utility Rate Normalization v. Public Utilities Com.* (1978) 22 Cal.3d 529, 537.) Applying the applicable deferential standard of review, we conclude the successor tariff adequately serves the various — albeit sometimes inconsistent — objectives of section 2827.1 and thus affirm.

BACKGROUND

The supply of power generated by renewable systems is neither constant nor consistent. Residential solar power systems, for example, generate electricity only when the sun shines, and the amount of power they generate depends on the intensity of the sunlight. By contrast, the use of electricity by a residence with a solar power system is independent of the supply of sunlight. Such systems often produce more electricity than needed by the residence during sunny days, and they produce no power after dark — notwithstanding the residents' continuing need for electricity. Utilities remedy this imbalance. They supply supplemental electricity to customers with renewable systems when the systems do not generate sufficient power to meet the customers' needs, and the power grid accepts and uses the excess electricity available when a renewable system produces more power than needed by the generating residence.

The NEM tariff governs the way that owners of renewable systems are billed by their utility. The state's first NEM tariff was created in response to the enactment of section 2827 in 1995. (Stats. 1995, ch. 369, § 1.) The purpose of the legislation was to clear regulatory hurdles to utilities' purchase of excess power generated by residential solar power systems and to create a regulatory structure for that purchase. (See Assem. Com. on Utilities and Commerce, Analysis of Sen. Bill No. 656 (1995–1996 Reg. Sess.) as amended June 7, 1995, at pp. 1–2 (Assem. Analysis).) The purchase of excess energy was expected to "encourage private investment in renewable energy resources" by helping to defray the then-substantial costs of solar power system installation.[1] (§ 2827, subd. (a); Assem. Analysis, at pp. 1–2.) Under the original NEM tariff (NEM 1.0), residences with solar power systems were allowed to install an electricity meter that measured the

[1] Originally, the NEM tariff required by section 2827 applied only to solar power systems operated by a utility's residential customers. (Former § 2827, subd. (b).) The tariff now applies to any "renewable electrical generation facility" with a total capacity of less than one megawatt operated by a utility customer, regardless of the way the power is generated or the nature of the customer. (§§ 2827, subd. (b)(4)(A); 2827.1, subd. (a).)

difference between the quantity of electricity supplied to the residence by the utility and the quantity of electricity supplied to the grid by the residence — thus the name, "net energy metering." (Former § 2827, subds. (c), (d).) The residence was charged only for this difference, which represented the residence's *net* use of electricity from the power grid. (*Id.*, subd. (f)(2).) By offsetting exported power against imported power, NEM 1.0 functionally required utilities to purchase excess power generated by residential solar power systems at the price paid by their customers for electricity.

Even prior to the enactment of section 2827, the proposed NEM tariff was criticized as "provid[ing] an electric ratepayer subsidy to purchasers of expensive residential photovoltaic systems." (Assem. Analysis, at p. 3.) As characterized in a contemporary bill analysis, the NEM tariff's opponents argued such an approach "assumes that [exported and imported power] have the same value, when they [do] not. A kwh [kilowatt-hour of electricity] delivered to a customer is a retail commodity while a kwh sold to the utility is a wholesale commodity and the prices for the two commodities are different. Instead of netting out kilowatt hours sold, opposition believes a more accurate system would net out the relative prices of the commodities that have been exchanged." (*Ibid.*)

The 2013 enactment of section 2827.1 required the Commission to adopt a successor tariff to replace NEM 1.0. (§ 2827.1, subd. (b); Stats. 2013, ch. 611, § 11.) The Commission characterized the general purpose of the legislation as granting it "the ability to 'address current electricity rate inequities, protect low income energy users and maintain robust incentives for renewable energy investments.' " A bill analysis prepared by the Senate Rules Committee explained a more specific purpose, observing that "[a]s transmission and distribution costs are typically one-half to two-thirds of a residential customer's billing, full retail NEM offers a substantial subsidy to NEM customers with the costs being shifted to non-NEM customers. . . . The Legislature has in the past justified this subsidy as it stimulates the solar industry, helps the state reach its renewable energy goals, and provides other external benefits." (Sen. Rules Com., Off. of Sen. Floor Analysis, 3d reading analysis of Assem. Bill No. 327 (2013–2014 Reg. Sess.) as amended Sept. 3, 2013, pp. 6–7.)[2] Under section 2827.1, however, "[t]he [Commission] would be required to ensure that the [successor tariff] is based on the electrical system costs and benefits received by nonparticipating customers and prevents a cost shift to non-NEM customers." (3d reading analysis, at p. 4.)

As an interim measure, the Commission adopted a revised tariff (NEM 2.0) in 2016 that sought to address some of the concerns surrounding NEM 1.0. NEM 2.0 continued to allow customers with renewable systems to offset excess electricity generated by their systems against electricity used, but these customers were charged a onetime interconnection fee and other periodic "non-bypassable" fees. It was anticipated NEM 2.0 would be subject

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[2] Petitioners and real parties in interest Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company have collectively filed three requests for judicial notice of various Commission decisions, legislative history materials, and other state agency documents. Finding such materials to be appropriate objects of judicial notice (Evid. Code, § 452, subd. (c)), we grant the requests. We grant judicial notice of exhibit 2 to the Commission's request for judicial notice for the same reason.

Given the extensive record of exhibits lodged by petitioners, we declined to require the Commission to file an administrative record but permitted the parties to request supplementation. We grant the Commission's request to supplement the administrative record with exhibit 1 to its request for judicial notice. Although petitioners contend this document is not relevant, it appears to be appropriate for inclusion in the record. In granting these various requests, we do not mean to suggest a view on the relevance for our decision of any of the documents.

to Commission review in or after 2019, when a more permanent replacement for NEM 1.0 would be adopted.

In 2020, the Commission initiated a proceeding to "revisit" NEM 2.0. It ultimately adopted a successor tariff — which it calls a net billing tariff — in *Decision Revising Net Energy Metering Tariff and Subtariffs* (2022) Cal. P.U.C. Dec. No. D.22-12-056 (Decision). The "foundation" for the successor tariff was the Net-Energy Metering 2.0 Lookback Study, January 21, 2021 (Lookback Study), an evaluation of NEM 2.0 by outside consultants Verdant Associates, LLC, which concluded "NEM 2.0 participants benefit from the structure, while ratepayers see increased rates." (Lookback Study, at p. 1.)

Drawing on the Lookback Study, the Commission found the NEM tariff "negatively impact[s]" utility customers who do not own renewable systems, particularly low-income customers, and is not cost-effective for the utilities' customers. (Decision at pp. 10, 39, 43, 207.) The Commission reasoned the tariff allows owners of renewable systems to avoid paying their proportionate share of the "infrastructure and other service costs" associated with electrical service because these costs are "embedded in" the rates charged for electricity.[3] When owners of renewable systems reduce their purchase of electricity from the grid, they necessarily reduce their payment of these costs. (*Id.* at p. 208.) A portion of renewable system owners' share of the utilities' fixed costs is thereby shifted to customers without renewable systems. The Commission found these shifted costs to be one of three drivers of high electricity rates, along with costs of transmission and distribution and wildfire mitigation. (*Ibid.*)

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[3] In addition to the costs of servicing customers and maintaining the power grid, these costs include funding for various public policy programs, such as those subsidizing utility service to low-income customers.

In addition, the Commission was concerned NEM takes no account of the time of day and season when the owner of a solar power system imports electricity. Yet the cost of electricity varies significantly with the time of its use — peaking in late afternoon and early evening. By overriding these cost variations, NEM fails to incentivize more efficient use of power by owners of renewable systems. (Decision at pp. 217–218.) Further, the Commission concluded, by equating the prices of imported and exported electricity, NEM overcompensates owners of renewable systems for the electricity they generate, effectively paying such owners at a rate from 3.8 to 5.4 times greater than the benefit conferred on the grid by their exported power. (*Id.* at p. 216.)

Based on these and other findings, the Commission adopted the net billing tariff. The most fundamental change from a NEM tariff is that charges for electricity under the successor tariff are no longer based on the difference between the quantity of electricity imported by a customer and the quantity exported. Instead, the meter of a residence owning a renewable system will separately measure the power imported from and exported to the grid. The value of the exported and imported energy is determined independently, and customers are billed for the difference between the *value* of the power imported and exported by the residence, rather than the difference in *quantity*. (Decision at p. 237.) Imported and exported power, in other words, are no longer treated as equivalent.

Under the successor tariff, the price paid for exported power is determined by the "Avoided Cost Calculator" (calculator), an algorithm developed earlier by the Commission that aims "to determine the primary benefits of distributed energy resources [i.e., customer-generated power]."[4] (*Decision Adopting Changes to the Avoided Cost Calculator* (2022) Cal. P.U.C. Dec. No. D.22-05-002, at p. 3; Decision at p. 237.) As explained by the Commission, the calculator " 'calculates seven types of avoided costs: generation capacity, energy, transmission and distribution capacity, ancillary services, Renewable Portfolio Standard, greenhouse gas emissions, and high global warming potential gases.' . . . [¶] [These] costs . . . are the utilities' marginal costs of providing electric service to customers. Those costs can be avoided when the demand for energy decreases because of distributed energy resources, and are, thus, the benefits of using distributed energy resources." (Decision at p. 59.) In other words, the calculator estimates the cost to the utilities of providing an additional increment of electrical power; this is the cost "avoided" when a customer's renewable system supplies that increment. Under the successor tariff, this avoided cost is the price paid by the utilities for exported energy.

The successor tariff determines charges for imported electricity under "[h]ighly differentiated time-of-use rates" specified in the Decision. (Decision at p. 239.) By imposing time-of-use rates, the successor tariff is intended to encourage renewable system owners to purchase batteries that permit excess energy generated during times of low power demand to be stored and subsequently used by the customer or exported to the grid during times of higher demand. The use of renewable system batteries is also incentivized by the calculator, which grants a higher price for energy exported during periods of peak demand. The successor tariff also includes a so-called "glide path," a

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[4] Customer-generated renewable energy is sometimes referred to as "distributed energy resources," presumably because the generating systems are decentralized.

five-year transition period during which more generous terms are granted to the owners of renewable systems. (*Id.* at p. 237.)

When fully implemented, these changes will cause a noticeable increase in the energy bills of utility customers who own renewable systems. Peak period electricity rates can be more than double the price during morning and nighttime hours, and the price paid for exported power determined by the calculator is typically less than one-third of the retail price. Despite these changes, the Commission concluded the purchaser of a residential solar power system will still see energy bill savings of $100 a month, which will repay the cost of system installation within nine years.

Petitioners sought leave to challenge the Decision by filing a petition for a writ of review in this court. (§ 1756, subd. (a).) We granted the petition. Answers in support of the successor tariff were filed by the Commission and real parties in interest.

DISCUSSION

"[T]he PUC is not an ordinary administrative agency, but a constitutional body with broad legislative and judicial powers." (*Wise v. Pacific Gas & Electric Co.* (1999) 77 Cal.App.4th 287, 300.) The scope of our review of its decision is "limited." (*City and County of San Francisco v. Public Utilities Com.*, *supra*, 39 Cal.3d at p. 530.) "There is a strong presumption favoring the validity of a Commission decision." (*Toward Utility Rate Normalization v. Public Utilities Com.*, *supra*, 22 Cal.3d at p. 537.) Under section 1757, judicial review of a Commission decision "shall not extend further than to determine, on the basis of the entire record . . . whether" the Commission "acted without, or in excess of, its powers or jurisdiction"; failed to proceed "in the manner required by law"; rendered a decision unsupported by the findings; made findings unsupported by substantial evidence; rendered a decision that "was procured by fraud or was an abuse of discretion"; or issued an order or decision that violates the petitioner's state or federal constitutional rights. (*Id.*, subds. (a)(1)–(6).) "We do not conduct a trial de novo, nor weigh nor exercise independent judgment on the evidence. [Citations.] The Commission's findings of fact ' "are not open to attack for insufficiency if they are supported by any reasonable construction of the evidence." ' " (*Southern California Gas Co. v. Public Utilities Com.* (2023) 87 Cal.App.5th 324, 339 (*SoCalGas*).)

When, as here, the Commission is charged with interpreting a provision of the Public Utilities Code, "[w]e give great weight to the Commission's interpretation." (*SoCalGas*, *supra*, 87 Cal.App.5th at p. 339.) We will disturb the Commission's interpretation only if " 'it fails to bear a reasonable relation to statutory purposes and language.' " (*Southern California Edison Co. v. Peevey* (2003) 31 Cal.4th 781, 796.) "This judicial deference acknowledges a role for the Commission's administrative expertise: '[W]e give presumptive value to a public agency's interpretation of a statute within its administrative jurisdiction because the agency may have "special familiarity with satellite legal and regulatory issues," leading to expertise expressed in its interpretation of the statute.' " (*Pacific Gas & Electric Co. v. Public Utilities Com.* (2015) 237 Cal.App.4th 812, 839.)

Section 2827.1, the statute at issue here, requires the Commission to "develop a standard contract or tariff, which may include net energy metering," for utility customers owning noncommercial renewable systems. (§§ 2827.1, subds. (a), (b); 2827, subd. (b)(4)(A).) The statute sets out seven requirements for the tariff. (§ 2827.1, subds. (b)(1)–(7).) As relevant here, the successor tariff "shall do all of the following" (*id.*, subd. (b)): (1) ensure renewable system installation "continues to grow sustainably" (*id.*, subd. (b)(1)); (2) include "specific alternatives designed for growth among residential customers in disadvantaged communities" (*ibid*); (3) be based on "the costs and benefits of the renewable electrical generation facility" (*id.*, subd. (b)(3)); and (4) equalize the "total benefits" and "total costs" of the tariff "to all customers and the electrical system" (*id.*, subd. (b)(4)).

I.

Petitioners first contend the successor tariff fails to satisfy the requirement of section 2827.1 that it balance various costs and benefits because the calculator fails to take account of all the benefits of renewable energy, particularly those conferred on society generally. In particular, petitioners contend the calculator fails to take account of (1) the value of resiliency, (2) avoided out-of-state methane leakage, (3) avoided land use impacts, and (4) certain avoided transmission costs. In addition, petitioners contend the Commission "improperly dismisse[d]" an alternative test for determining the benefits of distributed power, the "Societal Cost Test."

Section 2827.1, subdivision (b), contains several requirements. Two subdivisions, (b)(3) and (4), respectively require the Commission to consider "the costs and benefits of the renewable electrical generation facility" and to ensure "the total benefits of the [successor tariff] to all customers and the electrical system are approximately equal to the total costs." (*Ibid.*) Petitioners argue the use of the definite article "the" in the phrase "*the* costs and benefits" in subdivision (b)(3) "means that the clause refers to *all* costs and benefits. . . . [¶] The failure to properly account for the costs and benefits of distributed generation . . . constitutes legal error requiring that the Decision be set aside."

Although petitioners characterize their argument as challenging the omission of various purported benefits of renewable energy, it is more generally an attack on the Commission's approach to valuing exported energy from renewable systems by means of the calculator. As previously explained, the Commission chose — through the calculator — to value exported energy by the marginal cost to utilities of providing power. This marginal cost, in turn, is measured by the various costs the utilities need not incur because of their use of exported energy. (Decision at p. 59.) Petitioners effectively argue section 2827.1 requires the Commission to take all of the benefits of renewable energy generation into account when valuing exported energy, rather than merely the economic costs avoided by the use of customer-generated power.

We must give "great weight" to the Commission's interpretation of provisions of the Public Utilities Code. (*SoCalGas*, *supra*, 87 Cal.App.5th at p. 339.) In light of the Commission's expertise in energy regulation, we are permitted to overturn its interpretation of a statutory mandate only if the interpretation " 'fails to bear a reasonable relation to statutory purposes and language.' " (*Southern California Edison Co. v. Peevey*, *supra*, 31 Cal.4th at p. 796.) Further, "[t]here is a strong presumption favoring the validity of a Commission decision." (*Toward Utility Rate Normalization v. Public Utilities Com.*, *supra*, 22 Cal.3d at p. 537.) This uniquely deferential standard of review is accorded the Commission because of its status as "a constitutional body with broad legislative and judicial powers." (*Kerman Telephone Co. v. Public Utilities Com.* (2023) 94 Cal.App.5th 920, 931.)

We conclude the successor tariff adopted by the Commission bears a reasonable relation to the statutory purposes and language. Petitioners argue the statute requires the Commission to "properly account for the costs and benefits of distributed generation" in formulating the successor tariff. Notably, neither section 2827.1, subdivision (b)(3) nor subdivision (b)(4) refers to the costs and benefits of "distributed generation." Subdivision (b)(3) requires the Commission to base the successor tariff on "the costs and benefits of the renewable electrical generation facility." The meaning of this subdivision is not wholly clear; its reference to the costs and benefits of "the . . . facility" appears to require the tariff to be based on the costs and benefits of renewable systems. In any event, the language certainly does not compel the Commission to consider the costs and benefits of renewable energy generally.

Similarly, section 2827.1, subdivision (b)(4) requires the Commission to ensure "the total benefits of the standard contract or tariff to all customers and the electrical system are approximately equal to the total costs." Again, there is no reference to the costs and benefits of distributed generation. Instead, the statute speaks of the costs and benefits of the "standard contract or tariff" — that is, the successor tariff — to "all customers." In accord, the Commission strove to ensure the successor tariff is fair to both owners and nonowners of renewable systems. Although some of the benefits of renewable energy presumably factor into that calculus — and certainly did factor into the Commission's formulation of the calculator — we find nothing in the statutory text that indisputably requires the Commission to take account of "*all* costs and benefits" of "distributed renewable generation."

The Commission's decision to base the price of exported energy on the marginal cost of energy to the utilities serves this goal of equity between generating and nongenerating customers. Generating customers are compensated for the economic benefit they confer on the grid — and thereby on their fellow utility customers — by supplying excess energy. On the other side of the ledger, nongenerating utility customers are no longer required to subsidize generating customers by purchasing excess energy at a premium above its economic value. As directed by the Legislature, the calculator compensates generators for the benefits they confer on "all customers and the electrical system" (§ 2827.1, subd. (b)) by supplying excess energy without burdening ratepayers with additional costs — such as compensating system owners for the purported benefits conferred on society at large, as advocated by petitioners.[5]

The Commission presumably could have elected to adopt some version of petitioners' approach by compensating customers who export energy to the grid for the social, as well as economic, benefits conferred by the distributed generation of power. Indeed, the Commission's counsel conceded as much at oral argument. But of course, it's a zero-sum game; such an approach necessarily would have lessened the extent to which the successor tariff reduced the cost shift targeted by section 2827.1. By requiring utilities to factor social benefits into the price paid for exported power, petitioners' approach would effectively require customers who do not own renewable systems to compensate owners of the systems for the value of these social benefits, as well as for the economic benefits conferred on the grid. It can be debated whether this approach would better satisfy the Legislature's command to balance the equities among all customers, but we needn't choose

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[5] Petitioners rely primarily on *Ctr. for Biological Diversity v. Nat'l Highway Traffic Safety Admin.* (9th Cir. 2008) 538 F.3d 1172, which holds that, when an administrative agency is directed to evaluate the costs and benefits of a regulatory action, "it cannot put a thumb on the scale by undervaluing the benefits and overvaluing the costs" of the action. (*Id.* at p. 1198.) In that case, the administrative agency was found to have "assigned no value to the most significant benefit" of the regulatory action when making its cost-benefit analysis. (*Id.* at p. 1199.) As the statute did not compel the Commission to consider societal costs and benefits, we find this case inapposite.

a side. Plainly, the successor tariff adopted by the Commission bears a reasonable relation to statutory purposes and language.

Accordingly, we find no error in the Commission's decision to restrict the calculator to economic benefits conferred on the grid by exported power. Because two of the specific benefits cited by petitioners are manifestly social — the avoidance of methane leakage in other states that occurs when the utilities' need for out-of-state natural gas is reduced by the export of excess power and the reduced use of land for utility infrastructure made possible by distributed generation — they need not be discussed further. Nor did the Commission err by selecting an approach that excluded the two other benefits cited by petitioners, nor by deciding not to use the Societal Cost Test.

Petitioners first contend the Commission erred in failing to give renewable system owners credit for the "benefits of increased resiliency—that is, the ability to maintain power during a blackout or other grid disruption—and reliability conferred by distributed renewable generation." The Commission considered and rejected the suggestion that the calculator, in valuing excess power, should take account of the purported increased resilience of the energy grid afforded by renewable energy. The Commission explained proponents had not provided "convincing evidence" the benefits of resiliency accrued to the grid, rather than to the owners of renewable systems. This is a finding of fact we must accept if supported " ' "by any reasonable construction of the evidence." ' " (*SoCalGas*, *supra*, 87 Cal.App.5th at p. 339.) We find no reason to question the Commission's conclusion. Although petitioners claim the benefits of resiliency accrue "not just to individual participants," the only examples they cite are the type of owner benefits to which the Commission referred: the ability of a renewable system owner to generate power during a heat wave, system owners' avoidance of food spoilage due to loss of refrigeration, and the ability of households with a renewable system to participate in educational activities during a power outage. Because these benefits are not conferred on utilities or the electrical system from the export of excess energy, but instead are benefits realized by generating customers from their installation of a renewable system, there was no statutory basis compelling their incorporation into the calculator.

Petitioners also contend the calculator fails to take full account of the transmission costs avoided because of exported energy. For the three major public utilities, the calculator projects a total expenditure of over $481 million for transmission costs during the period 2021–2025. A Commission report in the record, however, states that a regulatory category called "transmission revenue requirements" for the three utilities exceeded $4 billion in 2021. Characterizing the latter figure as "actual transmission spending," petitioners argue the real avoided transmission costs must be much greater than accounted for in the calculator. The calculator does not, however, include all "actual transmission spending." Rather, it includes only transmission spending that is avoided — that is, rendered unnecessary — by the export of electricity by owners of renewable systems. Petitioners make no attempt to demonstrate that the transmission revenue requirements listed in the report represent avoided costs. Moreover, an examination of the Commission report makes clear that the category sweeps much broader than avoided transmission costs, including, for example, "wildfire mitigation work, including enhanced inspections and vegetation management efforts." These are the type of ordinary overhead costs that are unaffected by the export of energy from renewable systems. Given the uncertain relationship between transmission revenue requirements and avoided transmission costs, petitioners' argument fails to convince that the calculator's estimate of avoided transmission costs is not supported by substantial evidence.

Petitioners also quibble with the Commission's accounting for avoided transmission costs in the calculator, citing various items of evidence in the record to argue transmission costs avoided by use of exported energy are greater than the value assigned in the calculator. Having reviewed the arguments, we are not persuaded the Commission's chosen value is not supported by substantial evidence.

Finally, petitioners contend the Commission erred in failing to adopt the Societal Cost Test — an evaluative tool under development by Commission — as a measure of the benefits of renewable energy use. The Commission rejected a request to use the test in connection with the successor tariff as "premature because the evaluation to determine the final details of the test has not been completed." (Decision at p. 66.) Contrary to petitioners' claim, there was nothing "improper[]" in the Commission's refusal to use a test that was not fully developed. (Of course, the Commission might revisit the issue if and when it deems the Societal Cost Test fully developed.) To the extent petitioners are arguing more generally that the Commission erred in basing the successor tariff on the costs and benefits of renewable power to generators and ratepayers, rather than the costs and benefits to society at large, we find the Commission's approach to bear a reasonable relation to its statutory mandate. Our standard of review allows for no further inquiry.[6]

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[6] This argument is followed in petitioners' brief by an extended criticism of the Commission's use of the calculator in this context. The discussion, which mentions neither our standard of review nor the statutory language, appears to be premised on the assumption that we can reverse or

II.

Petitioners next contend the Decision fails to properly account for the costs of renewable energy because it treats reduced energy usage by owners of renewable systems as a cost rather than a benefit. The argument arises in the context of the successor tariff's attempt to address the long-standing criticism that the NEM tariff permits owners of renewable systems to shift a disproportionate share of the fixed costs of energy supply to customers who lack such systems. The shift occurs because the utilities' fixed costs are recovered through the rates charged for energy use. Every utility customer pays a portion of the fixed costs through their monthly bill, with the amount of the payment proportional to the amount of energy the customer uses. To the extent self-generated power reduces owners' use of energy from the grid, these customers necessarily reduce their payment of the utilities' fixed costs; the utilities' remaining customers must collectively pay the portion avoided by renewable system owners. The NEM tariff magnifies this effect by permitting renewable system owners to offset their exported energy against imported energy, thereby *further* reducing their purchase of energy. As noted, the Legislature anticipated in enacting section 2827.1 that the successor tariff would mitigate this shift, and the statute's instruction in subdivision (b)(4) to equalize costs and benefits of the *successor tariff* to all customers effectuates that intent.

Petitioners do not dispute this cost-shifting effect of a NEM tariff. Rather, they take issue with a more general discussion in the Decision of the extent to which the adoption of distributed energy shifts utility costs to nonowners. Petitioners contend the Commission should have treated the

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modify the Decision merely because we find another approach to be preferable. We cannot.

reduction in energy purchases as a benefit of renewable energy — rather than a cost — because reduced demand for utility-generated energy represents a social good. They point out that customers' efforts to reduce energy consumption through conservation are not treated as a cost, even though these reductions similarly result in reduced purchases of energy from the grid, thereby shifting costs to those who do not conserve.

Petitioners' arguments about the proper treatment of reduced energy use are legally immaterial because they are not pertinent to the successor tariff. Contrary to petitioners' claim, the successor tariff does not charge, or otherwise penalize, renewable system owners when they reduce their use of imported electricity by substituting self-generated power. Owners are billed only for the energy they actually import, regardless of the degree to which they reduce their use of imported energy by generating power. In this way, the successor tariff makes no attempt to address any shift of costs that results solely from the reduction in renewable system owners' use of imported energy. Rather, it remedies only the cost shift that occurs when the NEM tariff permits renewable system owners to avoid paying for imported energy by offsetting exported energy against it. Because this approach is consistent with the statutory language and clearly serves the statutory purpose of equalizing the successor tariff's costs and benefits to all customers, it provides no basis for challenging the Decision.

With this understanding of the role of cost shift in the successor tariff, it is clear petitioners' argument regarding energy conservation misses the point. It is true, as petitioners contend, that customers who do not own renewable systems are not penalized when they reduce their purchases of energy through conservation. But owners of renewable systems are not penalized when they reduce their purchases of energy either — whether those reductions result from conservation or energy generation. There is no inconsistency in the tariff's treatment of reduced energy consumption by owners and nonowners.

Petitioners also argue the utilities' charges for electricity imported by owners of renewable systems should be based on the actual cost of serving such customers, rather than on ordinary service rates. Although this was presumably a viable option for the Commission to consider, it was by no means required by the statutory language. The Commission rejected the suggestion as inconsistent with prior precedent. Because the Commission's chosen approach represents a proper application of the statutory language, our standard of review does not permit the type of regulatory second-guessing petitioners advocate.

III.

Petitioners contend the Decision's "focus on addressing the purported cost shift" improperly placed the interests of customers who do not own renewable systems over "cost-effectiveness to the electrical system as a whole." According to petitioners, section 2827.1, subdivision (b)(4), which requires the Commission to "[e]nsure that the total benefits of the [successor tariff] to all customers and the electrical system are approximately equal to the total costs," requires the successor tariff to be premised on "cost-effectiveness for the system as a whole, not effects on one ratepayer group."

We find no error in the Commission's interpretation of its statutory mandate. Contrary to petitioners' characterization, the Commission's decision to reduce the subsidy provided to renewable system owners did not constitute an improper focus on one ratepayer group. The statute directs the Commission to ensure the costs and benefits of the successor tariff to all customers and the electrical system are approximately equal. The implication of that language, honored by the Commission in formulating the successor tariff, is to ensure the successor tariff does not grant unwarranted benefits or impose unwarranted costs on any particular group of ratepayers.

In evaluating the successor tariff's satisfaction of that requirement, it is important to remember the successor tariff was formulated in the shadow of the NEM tariff, which is generally recognized as granting an economically unwarranted subsidy to owners of renewable systems by shifting a disproportionate share of the utilities' fixed costs to nonowners. The successor tariff's reduction of the benefits to system owners — decried by petitioners as a focus on the interests of nonowners — was inevitable because the statutory command to equalize the costs and benefits of the successor tariff required reducing the subsidy granted to renewable system owners by NEM 1.0 and NEM 2.0. Even if this is characterized as a "focus" on the interests of nonowners, it was not improper. It occurred only because the NEM tariffs favored renewable system owners.

In short, although one of the primary differences between NEM 2.0 and the successor tariff was a mitigation of the cost shift imposed by a NEM tariff, that does not mean the Commission placed the interests of nonowners over those of system owners or the entire electrical system. On the contrary, the "primary test" (Decision at p. 65) used by the Commission to evaluate the cost-effectiveness of existing and proposed tariffs, the "Total Resource Cost" (TRC) test, considered the costs to the system as a whole. (Decision at pp. 62–63 ["the TRC test has the ability to indicate whether a demand side program is cost-effective to the grid relative to other resource options"].) The Commission simply concluded accomplishing the directive of section 2827.1, subdivision (b)(4) to equalize costs and benefits both to all customers and to the electrical system required reducing the costs disproportionately shifted to nonowners by the NEM tariff. This was a reasonable and proper interpretation of the statute.

IV.

Petitioners argue the Decision fails to satisfy the directive of section 2827.1, subdivision (b)(1), that the successor tariff "ensure[] that customer-sited renewable distributed generation continues to grow sustainably." Petitioners point out the successor tariff "is specifically designed to decrease bill savings and increase payback periods" for renewable systems, thereby making the systems less financially attractive. Petitioners also note similar efforts to reduce the financial advantages of renewable systems in other states have led to a substantial decline in the rate of installation of renewable systems.

There are two answers to petitioners' contention. First, the directive of subdivision (b)(1) is one of several requirements imposed on the successor tariff by section 2827.1. The Commission is directed by the statute to "do all of the following" (§ 2827.1, subd. (b)), leaving the Commission to decide how best to accomplish the seven aims articulated by the Legislature. To the extent those objectives are in tension, it was left to the Commission to decide how to satisfy the conflicting demands. As the Commission observed, "[i]t is the Commission's responsibility to balance the multiple and, sometimes, conflicting requirements of the statute." (Decision at p. 108.) In adopting the successor tariff, the Commission affirmed it intended to "balance the multiple requirements of the Public Utilities Code and the needs of the electric grid, the environment, participating ratepayers, as well as all other ratepayers." (*Id.* at p. 2.)

At the time section 2827.1 was enacted, the NEM tariff had long been recognized to confer a financial benefit on owners of renewable systems and impose a disproportionate burden on nonowners. Remedying this inequity necessarily required the Commission to adopt a successor tariff making the installation of renewable systems less financially attractive to utility customers.[7] Subdivision (b)(1) cannot be interpreted, as petitioners insist, to require the successor tariff to preserve the financial benefit conferred on system owners by a NEM tariff. When it directed the Commission to devise a successor tariff equalizing the treatment of owners and nonowners, the Legislature was aware the successor tariff would make renewable systems less remunerative. Necessarily, the Commission's task was not to preserve existing advantages for owners of the NEM tariff, but to reduce those advantages without halting the adoption of renewable systems. The mere fact that the successor tariff reduces the financial advantages of renewable system installation does not alone place it in violation of section 2827.1.

Petitioners argue the Commission was not empowered to balance the demands of the statute's potentially conflicting requirements because the Legislature directed the Commission to "do all of the following." (§ 2827.1, subd. (b).) The Legislature, of course, could direct the Commission to have its cake and eat it too; regrettably, the Commission has no such power. The statute's instruction to do all of the following must be understood as requiring the Commission to take into consideration all of the listed objectives in formulating the successor tariff. To the extent those objectives are in tension, it was for the Commission to decide how best to balance the

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[7] Petitioners argue it was not necessary for the Commission to remedy the inequities inherent in a NEM tariff to equalize the costs and benefits because the Commission could have considered the "full" — i.e., social — benefits of renewable systems. Whatever the merits of this argument, the Commission was not obligated to adopt this approach.

demands. We are not persuaded the Commission's decision in this respect constituted an abuse of its discretion.

Second, petitioners' argument is based on a misreading of the language of section 2827.1, subdivision (b)(1). Petitioners assert "continue" means " 'to maintain without interruption a condition, course, or action' " and argue, based on this definition, "the Legislature directed that any successor tariff may not materially reduce the continued uptake of" renewable systems. Subdivision (b)(1), however, requires continued "growth" of renewable energy — that is, continued installation of new renewable systems. It does not require continued growth *at the same pace*. That the rate of adoption of renewable systems will slow under the successor tariff does not mean adoption will cease. Rather, it will simply grow more slowly than it would have under a NEM tariff.

As noted, we assume the Legislature understood its instruction to reduce the inequity of the NEM tariff would result in a successor tariff less advantageous to renewable system owners. Thus, section 2827.1, subdivision (b)(1) was presumably intended to ensure the successor tariff is not so financially disadvantageous as to make installation of such systems uneconomic. The successor tariff satisfies that requirement. After its implementation, customers who install a renewable system will recover their investment within nine years; after that time, owners will see an energy cost savings for the remaining life of the system. That financial incentive, combined with the environmental benefits of renewable energy, presumably will ensure the continued growth of renewable energy, as required by subdivision (b)(1).

V.

Petitioners next contend the successor tariff fails to "include specific alternatives designed for growth among residential customers in disadvantaged communities," as required by section 2827.1, subdivision (b)(1). Not so.

The Commission designed the successor tariff to satisfy this requirement in two ways. First, the Lookback Study concluded low-income customers were less likely to install renewable systems not only because of the upfront cost of such systems, but also because such customers also received lower bill savings, contributing to a longer payback period. To mitigate this disincentive, low-income and other disadvantaged customers are eligible under the successor tariff to receive a higher rate of compensation for energy exported to the grid, a benefit designed to ensure they can pay back the upfront costs of a system within nine years. (Decision at pp. 175–176, 238.) Second, the successor tariff eliminates a discount applied by NEM 2.0 to the compensation paid for exported energy to customers participating in two programs — California Alternate Rates for Energy and Family Electric Rate Assistance — providing discounted energy rates to low-income customers. (*Id.* at p. 176.)

In addition to these provisions of the successor tariff, the Commission had earlier adopted a series of three programs to make renewable systems more accessible to low-income customers. (See *Alternate Decision Adopting Alternatives to Promote Solar Distributed Generation in Disadvantaged Communities* (2018) Cal. P.U.C. Dec. No. D.18-06-027, at pp. 2–4.) The Disadvantaged Communities–Single-family Solar Homes program, for example, subsidizes the purchase of renewable systems by low-income homeowners. (*Id.* at pp. 2–3, 27–30.) The other two programs provide low-income customers with access to renewable energy and bill discounts. (*Id.* at pp. 3–4.) The Commission expressly adopted these programs, which will be funded through utility revenues, to satisfy the statutory requirement. (*Id.* at pp. 6, 30–31, A-1.)

Petitioners fault the Commission's efforts to stimulate adoption of renewable systems in disadvantaged communities because (1) the Commission failed to adopt a proposed "Equity Fund," (2) the Commission's calculation of the higher rate for exported energy was based on an underestimate of the cost of solar installation for low-income households, and (3) the Commission improperly deferred consideration of the benefits of renewable systems that particularly accrue to low-income customers. Before addressing these arguments, we note the Commission's compliance with section 2827.1, subdivision (b)(1) must be measured by what it did rather than by what it chose not to do. The fact that, as petitioners argue, these efforts might be imperfect does not demonstrate the Commission failed to comply with the Legislature's direction. As noted, the Commission modified the tariff applicable to low-income customers to increase the compensation for exported energy, thereby making renewable systems more financially attractive. Further, it adopted three programs that directly subsidize the cost of solar installation or provide access to renewable energy for such customers. All of these constitute "specific alternatives designed for growth among residential customers in disadvantaged communities." Petitioners fail to demonstrate (or even try to demonstrate) the benefits provided by these efforts are illusory or so inadequate as to disqualify their consideration. On the contrary, we conclude these efforts bear a reasonable relation to statutory purposes and language and satisfy the requirements of section 2827.1, subdivision (b)(1).

Petitioners contend these earlier-adopted programs cannot be considered because the requirements of section 2827.1 apply only to the successor tariff. Necessarily, however, the successor tariff itself can be of limited use in meeting the goal of subdivision (b)(1) to stimulate "growth [of renewable energy adoption] among residential customers in disadvantaged communities." Any benefits of the successor tariff accrue only after a system is installed; the tariff cannot directly overcome the primary barrier to the growth sought by the statute — the initial cost of solar system installation. Given this limitation, we find the Commission's conclusion that subdivision (b)(1) can be satisfied in part by programs subsidizing system installation and promoting renewable energy use among low-income customers to bear a reasonable relation to the statutory purposes and language because these programs provide access to the successor tariff for low-income customers.

Again, we find petitioners' arguments about the inadequacy of the Commission's efforts to make renewable system adoption more affordable to be largely beside the point. Petitioners first argue the Commission should have created an "Equity Fund," which would use a billing surcharge imposed through the successor tariff to assist low-income customers in acquiring renewable systems. The Commission decided against such a fund because the Legislature enacted, shortly before issuance of the Decision, Assembly Bill No. 209, which created a state program to provide incentives for the installation of solar generation and storage systems. (§ 379.10, subds. (a), (b); Decision at pp. 178–179.) At the time, 70 percent of the funds appropriated for this program were earmarked for low-income residents; an amendment of section 379.10 enacted after issuance of the Decision now appears to require all of the funds in the new program to be so allocated. (Former § 379.10, subd. (a); Stats. 2023, ch. 52, § 6.) Although petitioners fault the

Commission's rationale in deciding against the equity fund, they cite no statutory authority requiring its adoption. Further, of course, the programs adopted separately by the Commission serve the same purpose as the suggested equity fund. Because, as noted, the Commission's efforts to satisfy section 2827.1, subdivision (b)(1) are sufficient, it did not err in electing not to implement an equity fund.

Second, petitioners contend the augmented rate for exported energy applicable to disadvantaged customers will not promote their adoption of renewable systems because the Commission did not accurately estimate the cost of solar installation. As a result, they argue, the additional payments will not pay back the cost of installation within the intended nine years. Even if this criticism was well founded, the augmented rate was only one of the methods by which the Commission sought to satisfy section 2827.1, subdivision (b)(1). Its incentives for solar growth must be considered together with those other methods. Further, the augmented rate, even if insufficient to recoup installation costs within nine years, will still provide an incentive for system installation. Finally, the Commission expressly considered petitioners' argument and rejected it, concluding the higher cost figure was derived from a materially different program. (Decision at pp. 83–84.) This factual finding is supported by substantial evidence.

Third, petitioners contend the Commission improperly deferred consideration of promoting the installation of solar systems serving entire communities. Assuming, as petitioners argue, that "[w]ell-designed community solar and storage programs could realize considerable grid and ratepayer benefits," that alone did not mandate their adoption. Section 2827.1, subdivision (b)(1) does not require the Commission to adopt any particular "specific alternatives" to ensure growth of renewable energy in disadvantaged communities, and the steps it has taken are adequate to meet its statutory obligation. The Commission's explanation that consideration of community solar is "premature" because such programs are the subject of other ongoing Commission proceedings fully justifies their omission. (Decision at p. 188.)

VI.

Petitioners finally argue the modifications of the NEM tariff for nonresidential customers effected in the successor tariff are "based on erroneous and unsupported findings." We disagree.

The Lookback Study found, based on the TRC test, that the NEM 2.0 tariff was cost-effective for nonresidential customers.[8] The tariff's average TRC score was 1.25, where a score of 1.00 represents no net cost or benefit. Yet the Commission declined to adopt this conclusion because the NEM tariff for nonresidential customers performed poorly on the "Ratepayer Impact Measure" (RIM) test, earning an average score of .57, suggesting costs predominated over benefits. That test "is useful for examining whether disproportionate impacts occur on non-participants" (Decision at p. 50), a measure of cost-effectiveness particularly pertinent to the requirement of section 2827.1, subdivision (b)(4) that the successor tariff should balance costs and benefits for all customers. Citing its conclusion that "the use of retail rates as a foundation for compensating customers for exporting electricity to the grid [has] no connection to the actual costs of the exports or the benefits the exported electricity provide to customers and the grid," the Commission elected to use the calculator to determine the price paid to nonresidential customers for exported energy, just as it did for residential

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[8] The TRC test measures cost-effectiveness of a program for the entire electrical grid. (Decision at p. 62.)

customers. (Decision at pp. 107–108.) In effect, the Commission applied the successor tariff to both residential and nonresidential customers, although nonresidential customers were not afforded the benefit of the phase-in granted to residential customers. (*Id.* at p. 238.)

Petitioners fault the Commission's conclusion that NEM 2.0 is not cost-effective for nonresidential customers. Petitioners note the Commission designated the TRC test as the primary test to determine the cost-effectiveness of the successor tariff for the electrical system. Accordingly, they argue, the Commission committed "legal error" when it "determined the NEM tariff for [nonresidential] sectors is not cost-effective based on its RIM test scores *alone*."

By treating cost-effectiveness as a single concept, petitioners distort the nature of the Decision. As petitioners argue, the TRC test is a measure of the cost-effectiveness of the tariff *for the electrical system*. Section 2827.1, subdivision (b)(4), however, does not require the successor tariff to be cost-effective only for the electrical system. Instead, it requires the Commission to ensure the costs and benefits of the successor tariff "to all customers and the electrical system" are approximately equal. As the Commission found, the RIM test is a better measure of cost-effectiveness for all customers because it measures the impact of a policy on nonparticipants. The Commission was therefore faced with test results suggesting that, while the nonresidential NEM 2.0 tariff conferred a fairly small net benefit on the electrical system, it failed, to a substantial degree, to equalize the costs and benefits among customers. As discussed above, it was for the Commission to balance the various legislative objectives expressed in section 2827.1. We find no abuse of discretion, and certainly no legal error, in the Commission's decision to strike a balance in favor of rectifying a substantial inequity among its customers.[9]

VII.

In section 2827.1, the Legislature specified several general objectives for a successor to the NEM tariff, leaving the Commission — in the exercise of its institutional expertise — to strike an appropriate balance among the many important — but sometimes conflicting — public policy interests. In reviewing the Decision, we may neither second-guess the Commission's balancing of those interests nor substitute our own view of the optimal policy outcome. To the contrary, in recognition of the Commission's unusual standing as a constitutional body, our review is limited to ensuring that the successor tariff bears a reasonable relation to the statute's purpose and language and that the Commission did not otherwise err under section 1757. For the reasons discussed above, this deferential standard of review leaves no basis for faulting the Commission's work. In reaching this conclusion, we mean to express no views about the Commission's resolution of the policy issues implicated, except that the Decision is properly sensitive to — and consistent with — the objectives established by the Legislature.

DISPOSITION

The decision of the Commission is affirmed. The Commission and real parties in interest shall recover their costs in this proceeding.

[9] Petitioners also argue nonresidential customers were required under the NEM 2.0 tariff to pay higher utility bills than the cost for the utilities to provide them service. The intended legal significance of this argument is unclear. Section 2827.1 directed the Commission to devise a successor tariff balancing costs and benefits among all customers, but it did not require the Commission to ensure no customers were charged more by the utilities than the cost to serve them.

Rodríguez, J.

I CONCUR:

Petrou, J.

A167721

TUCHER, P. J., Concurring.

With the following additional observations, I concur in the court's opinion.

The Legislature established, as the first requirement for the successor tariff, that it "*ensure[]* that customer-sited renewable distributed generation *continues to grow* sustainably." (Pub. Util. Code, § 2827.1, subd. (b)(1), italics added.) If petitioners' worst fears are realized, and the successor tariff devastates solar adoption rates instead of fostering sustainable growth, the Commission will have to course correct when it revisits its work. The Legislature intended for the Commission to "revise the . . . tariff as appropriate to achieve [statutory] objectives" (§ 2827.1, subd. (b)), and the Commission has already committed to studying the performance of the successor tariff after its first three years.

When the Commission undertakes this study, it may choose to look closely at its Societal Cost Test or at some other measure that fully accounts for the environmental detriments of conventional electricity generation. In adopting the successor tariff, the Commission determined it was "premature" to apply the Societal Cost Test, as the test was still under development. But when complete, that test may turn out to be a more refined and appropriate measure of the total benefits of customer-sited generation than the avoided cost calculator that the successor tariff currently incorporates. Section 2827.1 allows for a tariff that captures the noneconomic benefits of renewable electricity. The Commission understands this, as evidenced by its actions in adopting and defending NEM 2.0 and its counsel's response to questions at oral argument. And once a tariff is able to capture the full spectrum of costs avoided with renewable energy, it would seem optimal that it do so.

But the issue before the court today is, as the majority notes, not whether the Commission has chosen the best possible tariff. Rather, we are asked simply to decide whether the Commission has chosen a course that complies with the law and is reasonably supported by the evidence. (See maj. opn. *ante*, at pp. 9–10.) Given the limited scope of our review, I agree that the decision of the Commission must be affirmed.

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Tucher, P. J.

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Law Offices of Richard K. Bauman and Richard K. Bauman for Albion Power Company, as Amicus Curiae on behalf of Petitioner Protect our Communities Foundation.

Christine Jun Hammond and Edward Moldavsky for Respondent.

Munger, Tolles & Olson, Henry Weissmann and Andra Lim for Real Parties in Interest Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company.
Pacific Gas and Electric Company Law Department and Ashley E. Merlo for Real Party in Interest Pacific Gas and Electric Company.
San Diego Gas & Electric Company and E. Gregory Barnes for Real Party in Interest San Diego Gas & Electric Company.
Southern California Edison Company and Rebecca Meiers-De Pastino for Real Party in Interest Southern California Edison Company.

EXHIBIT B

Filed 12/21/23 after filing published opinion 12/20/23

CERTIFIED FOR PUBLICATION

THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

CENTER FOR BIOLOGICAL DIVERSITY, INC. et al., Petitioners, v. PUBLIC UTILITIES COMMISSION, Respondent; PACIFIC GAS AND ELECTRIC COMPANY et al., Real Parties in Interest.	A167721 (Cal.P.U.C. Dec. No. 22-12-056)

ORDER MODIFYING OPINION
[NO CHANGE IN JUDGMENT]

THE COURT:

The published opinion, filed on December 20, 2023, is ordered modified as follows:

The signature page on page 32 is modified to add Presiding Justice Tucher's signature under the words, "I CONCUR:".

This modification effects no change in the judgment.

Dated: December 21, 2023 Tucher, P.J., P. J.

Shute, Mihaly & Weinberger, Ellison Folk and Aaron M. Stanton for Petitioners Protect our Communities Foundation and Environmental Working Group.
Roger Lin, Anchun Jean Su and Howard Crystal for Petitioner Center for Biological Diversity, Inc.

Law Offices of Richard K. Bauman and Richard K. Bauman for Albion Power Company, as Amicus Curiae on behalf of Petitioner Protect our Communities Foundation.

Christine Jun Hammond and Edward Moldavsky for Respondent.

Munger, Tolles & Olson, Henry Weissmann and Andra Lim for Real Parties in Interest Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company.
Pacific Gas and Electric Company Law Department and Ashley E. Merlo for Real Party in Interest Pacific Gas and Electric Company.
San Diego Gas & Electric Company and E. Gregory Barnes for Real Party in Interest San Diego Gas & Electric Company.
Southern California Edison Company and Rebecca Meiers-De Pastino for Real Party in Interest Southern California Edison Company.

Court of Appeal, First Appellate District
Charles D. Johnson, Clerk/Executive Officer
Electronically FILED on 1/16/2024 by X. Ramos, Deputy Clerk

Filed 1/16/24 after filing published opinion 12/20/23 and mod. 12/21/23.

CERTIFIED FOR PUBLICATION

THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

CENTER FOR BIOLOGICAL DIVERSITY, INC. et al., Petitioners, v. PUBLIC UTILITIES COMMISSION, Respondent; PACIFIC GAS AND ELECTRIC COMPANY et al., Real Parties in Interest.	A167721 (Cal.P.U.C. Dec. No. 22-12-056) **ORDER MODIFYING OPINION AND DENYING REHEARING [NO CHANGE IN JUDGMENT]**

THE COURT:

The published opinion, filed on December 20, 2023, and modified December 21, 2023, is ordered further modified as follows:

The first two sentences of the second paragraph on page 18 are deleted and replaced with the following sentence:

Petitioners take issue with the Decision's discussion of the extent to which the adoption of distributed energy shifts utility costs to nonowners.

This modification effects no change in the judgment.

The petition for rehearing and request for judicial notice are denied.

Dated: 01/16/2024 Tucher, P.J., P. J.

Shute, Mihaly & Weinberger, Ellison Folk and Aaron M. Stanton for Petitioners Protect our Communities Foundation and Environmental Working Group.
Roger Lin, Anchun Jean Su and Howard Crystal for Petitioner Center for Biological Diversity, Inc.

Law Offices of Richard K. Bauman and Richard K. Bauman for Albion Power Company, as Amicus Curiae on behalf of Petitioner Protect our Communities Foundation.

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Pacific Gas and Electric Company Law Department and Ashley E. Merlo for Real Party in Interest Pacific Gas and Electric Company.
San Diego Gas & Electric Company and E. Gregory Barnes for Real Party in Interest San Diego Gas & Electric Company.
Southern California Edison Company and Rebecca Meiers-De Pastino for Real Party in Interest Southern California Edison Company.

Attachment 12

Petitioners' Reply Brief in Supreme Court, filed November 22, 2024

S283614

IN THE SUPREME COURT OF CALIFORNIA

CENTER FOR BIOLOGICAL DIVERSITY, INC. et al.,

Petitioners,

vs.

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Respondent,

PACIFIC GAS AND ELECTRIC COMPANY et al.,

Real Parties in Interest.

After a Decision by the Court of Appeal
First Appellate District, Case No. A167721
From a Decision of the Public Utilities Commission of the State of California, No. 22-12-056 (December 19, 2022)

PETITIONERS' REPLY BRIEF

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

California Cases

Constitutional Provisions

Other Authorities

INTRODUCTION

In adopting Public Utilities Code section 2827.1, the Legislature commanded the Public Utilities Commission ("Commission") to ensure that the tariff for renewable, customer-sited generation compensates customers for the full value of their systems.[1] Contrary to this mandate, at the outset, the Commission accounted for only a small set of benefits and did not quantify benefits specific to customer-sited generation. As a result, the 2022 Tariff severely under-compensates customers who install renewable generation—primarily rooftop solar—on their homes and businesses.

The Commission and Real Parties in Interest (the "Utilities;" collectively, "Respondents") argue that the Commission could prioritize its concerns about a purported cost shift to non-participating customers instead of fully compensating customers that generate renewable power as required by section 2827.1. Respondents' cost shift narrative contradicts the statutory language and rests on a fundamental

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[1] All subsequent undesignated statutory references are to the Public Utilities Code.

flaw: the Commission failed to value the full range of benefits that customer-sited generation systems provide to all customers and the electrical system. The benefits ignored by the Commission are not inchoate "societal" benefits without economic value, as Respondents characterize them. Customer-sited generation provides quantifiable economic benefits that the Commission failed to value but which fall within section 2827.1's mandate that the tariff be based on *the* costs and benefits of *customer-sited generation*.

Despite Respondents' professed concern for equity, the Commission also violated the Legislature's mandate that the tariff include "specific alternatives designed for growth" of customer-sited generation in disadvantaged communities. But despite the Commission's previous findings that high upfront costs and challenges to obtaining financing prevent rooftop solar adoption in disadvantaged communities, the tariff itself provides only a small increase in compensation *after* customers install their systems. That additional compensation does nothing to address the barriers to adoption and is thus not designed for growth. Programs external to the tariff cannot save a tariff that fails to comply with the statute's mandate.

In light of the demonstrated shortcomings of the 2022 Tariff, the Commission asks this Court to apply a standard of review under a statute repealed decades ago and defer to the Commission's erroneous interpretation of section 2827.1. The Commission's claim that the Legislature's repeal and addition of new sections 1757 and 1757.1—the statutes governing judicial review of Commission decisions—did nothing to change how courts must review Commission actions disregards the language of the new statutes.

Acting pursuant to its authority under Article XII of the California Constitution, the Legislature made clear that judicial review of Commission decisions must determine whether the Commission "has not proceeded in the manner required by law." (§ 1757.1(a)(2).) When applying this standard, courts review agency decisions de novo and apply their independent judgment.

Section 2827.1 does not authorize the Commission to refuse to account for all benefits of customer-sited generation, and it does not authorize the Commission to exclude from the tariff alternatives designed for growth in disadvantaged communities. Nor does the statute allow the Commission to disregard statutory mandates under the guise of an incremental approach. Section

2827.1 contains specific directives the Commission must follow. The courts must independently determine the meaning of section 2827.1 and hold the Commission to the text of the statute. The 2022 Tariff fails to comply with section 2827.1.

ARGUMENT

I. In 1998, the Legislature required that courts use independent judgment to review whether the Commission proceeded in the manner required by law.

Article XII requires courts to adhere to the Legislature's explicit direction about "the manner and scope of [judicial] review of commission action." (Cal. Const. art. XII, § 5.) Here, section 1757.1(a)(2) requires review of whether the Commission did not proceed in the manner required by law. Courts applying this standard—as they do under Code of Civil Procedure section 1094.5 and Public Resources Code section 21168.5—must review agency decisions on questions of law de novo and apply their independent judgment.

The Commission's claimed entitlement to deference under *Greyhound Lines, Inc. v. PUC* (1968) 68 Cal.2d 406 ("*Greyhound*") conflicts with the plain meaning of section 1757.1. In 1998, Senate Bill 779 repealed the version of section 1757 that existed when this Court decided *Greyhound* and added new sections 1757 and 1757.1, which expanded and expressly delineated the grounds for judicial review of Commission actions. Further, the Commission's fallback request for "arbitrary and capricious" review under *Yamaha v. State Board of Equalization* (1998) 19 Cal.4th 1 ("*Yamaha*") fails to recognize this Court's holdings that evaluating whether an agency proceeded in the manner required by law requires the courts' independent judgment and no deference to the agency's erroneous statutory interpretations. (See Petitioners' Opening Brief ("Opening Br.") at pp. 43-44.) The Commission's claim that courts should presume the validity of and defer to the Commission's conclusions of law ignores the text of sections 1757 and 1757.1 and flouts the Legislature's constitutional authority to establish the scope of judicial review of Commission actions.

A. The Legislature's amendments to sections 1757 and 1757.1 changed the standard of review for Commission decisions.

The Commission claims that, in 1998, the Legislature "clarified" the grounds for review of Commission decisions. (Commission's Answer Brief on the Merits ("Resp. Br.") at p. 48.) According to the Commission, repealing former section 1757, which limited judicial review to "whether the commission has regularly pursued its authority" (Stats. 1951, Ch. 764, p. 2090, repealed by Stats. 1998, ch. 886, § 11),[2] and adding new sections 1757 and 1757.1, which include judicial review of "whether … [t]he commission has not proceeded in the manner required by law," did nothing to change the standard of review. (Resp. Br. at p. 49.) Instead, the Commission argues, courts applying the new sections should use the same standard previously applied under the repealed statute when evaluating whether the Commission regularly pursued its authority. (*Id.*, citing *Greyhound*.) The Commission's argument based on the repealed statute contradicts the text of sections 1757 and 1757.1 and the Legislature's express intent in adopting SB 779. (Stats. 1998, Ch. 886.)

1. Sections 1757 and 1757.1 differentiate between the Commission's failure to proceed in the manner required by law and its failure to regularly pursue its authority.

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[2] For the Court's convenience, former section 1757 is attached as Exhibit A.

In interpreting statutes, courts "first examine the statutory language, giving it a plain and commonsense meaning." (*Brennon B. v. Superior Court* (2022) 13 Cal.5th 662, 673, citation omitted.) When the language is clear, courts "follow the [statute's] plain meaning unless a literal interpretation would result in absurd consequences the Legislature did not intend." (*Id.*, citation omitted.) Sections 1757 and 1757.1 explicitly require review for whether the Commission "has not proceeded in the manner required by law."

In including review for whether the Commission "proceeded in the manner required by law" in sections 1757 and 1757.1, the Legislature necessarily invoked courts' application of that standard in other contexts. When the Legislature copies language from another statute on a similar subject, and courts have construed the earlier statute, courts presume the Legislature intended to adopt the courts' construction. (*People v. Harrison* (1989) 48 Cal.3d 321, 329.) By importing into the Public Utilities Code language it knew courts were well-versed in applying (see Code Civ. Proc., § 1094.5; Pub. Resources Code, § 21168.5), the Legislature intended the courts to import their application of that language.

Applying this familiar standard, courts review agency decisions on questions of law de novo and apply their independent judgment. (*Family Health Centers of San Diego v. State Dept. of Health Care Services* (2023) 15 Cal.5th 1, 10 ("*Family Health*"); *City of San Diego v. Bd. of Trustees of Cal. State Univ.* (2015) 61 Cal.4th 945, 956 ("*City of San Diego*"); *City of Marina v. Bd. of Trustees of Cal. State Univ.* (2006) 39 Cal.4th 341, 355, 365-66 ("*City of Marina*").) In *Family Health*, this Court reversed an agency decision that depended on an erroneous analysis of Medicaid law, explaining that "[o]n purely legal questions, we exercise independent judgment and a decision must be reversed if based on erroneous conclusions of law." (*Family Services,* 15 Cal.5th at p. 10, internal quotations and citations omitted.) In *City of San Diego* and *City of Marina,* this Court reversed agency decisions for failure to comply with the California Environmental Quality Act (CEQA), holding that the agencies' "use of an erroneous legal standard constitutes a failure to proceed in [the] manner required by law." (*City of San Diego,* 61 Cal.4th at 956; *City of Marina,* 39 Cal.4th at 365-366, both cases quoting *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 88.) When it adopted SB 779 and added sections 1757(a)(2) and 1757.1(a)(2), the Legislature adopted this same standard of review for Commission decisions.

Sections 1757's and 1757.1's application of different standards of review for Commission decisions regarding different industries further demonstrates that the Legislature intended to differentiate between review addressing the failure to proceed in the manner required by law and review addressing whether the Commission regularly pursued its authority. While the Legislature changed the standard of review in sections 1757 and 1757.1 for Commission action related to the energy, telecommunications, and transportation industries, it did not change the standard for decisions affecting water corporations. For decisions pertaining solely to water corporations, the Legislature continued to limit review to only "whether the commission has regularly pursued its authority." (§ 1757.1(b); see also § 1757(c).) The Legislature's use of different language in two provisions in the same statute shows that it intended the two provisions to have different meanings. (*Kleffman v. Vonage Holdings Corp.* (2010) 49 Cal.4th 334, 343; *People v. Jones* (1988) 46 Cal.3d 585, 596 ["[W]hen *different* words are used in contemporaneously enacted, adjoining subdivisions of a statute, the inference is compelling that a difference in meaning was intended."].)

The Commission's argument that replacing the language "regularly pursued its authority" with grounds for review including "proceeded in the manner required by law" did not change how courts review Commission decisions on questions of law would make the Legislature's use of different language a nullity. (*Jones*, 46 Cal.3d at 596; see Resp. Br. at pp. 48-49.)

2. The Commission's arguments conflict with the Legislature's express intent to expand judicial review of Commission decisions.

SB 779 on its face states the Legislature's intent to establish the manner and scope of judicial review and conform judicial review of Commission decisions to judicial review of decisions of other agencies:

> It is the intent of the Legislature in enacting the judicial review provisions of this act to, in part, establish the manner and scope of review taken from decisions of the Public Utilities Commission. It is further the intent of the Legislature to conform judicial review of the Public Utilities Commission decisions that pertain to utility service providers with competitive markets to be consistent with judicial review of the other state agencies.... Further, it is the intent of the Legislature that decisions by the

> commission pertaining to the energy, transportation, and communications industries… be subject to review on grounds similar to those of other state agencies.

(SB 779, § 1.5.) This language contradicts the Commission's claim (at p. 49) that the Legislature intended courts to continue to apply the former, repealed section 1757 at issue in *Greyhound* after it added new sections 1757 and 1757.1.

The absence in the legislative history of references to *Greyhound* does not mean the Legislature intended to retain the repealed standard of review as to decisions affecting the electricity sector. (See Resp. Br. at p. 48 & fn. 26.) *Greyhound* evaluated whether the Commission regularly pursued its authority, the sole ground for review available under section 1757 at the time. (68 Cal.2d at p. 410.) That ground for review remains applicable to "decisions pertaining solely to water corporations." (See § 1757.1(b), as amended by Stats. 2000, Ch. 953 (AB 1398); *Golden State Water Co. v. PUC* (2024) 16 Cal.5th 380, 394-95.) For the energy, transportation, and communications industries, however, SB 779 eliminated the ground for review at issue in *Greyhound*. Thus, SB 779 had no need to overrule *Greyhound.* The repealed statute at issue there no longer exists.

B. The Commission's arguments for deference conflict with the Legislature's constitutional authority to dictate the scope of judicial review of Commission decisions.

Notwithstanding the above, the Commission argues that all its decisions interpreting the Public Utilities Code receive review under "the deferential standard articulated in *Greyhound.*" (Resp. Br. at p. 46.) The Commission makes this claim based on its status as a constitutional agency and this Court's references to *Greyhound* after 1998. (Resp. Br. at pp. 46-47.) The Commission misconstrues this Court's references to *Greyhound* after 1998, and its judicial powers argument flouts the Legislature's constitutional authority to set the standard of judicial review of Commission action.

The California Constitution assigns to the Legislature the "plenary power ... to establish the manner and scope of review of commission action" by the courts. (Cal. Const., art. XII, § 5.) By repealing and adding new sections 1757 and 1757.1, the Legislature exercised this constitutional power. (See § I.A, *supra*.) The Commission's arguments that "strong deference" should nevertheless apply (Resp. Br. at p. 47) violates Article XII's express grant of authority to the Legislature to establish the standard of review of Commission decisions and the Legislature's mandates set forth in SB 779.

In any event, the Commission's judicial powers do not justify deference (see Resp. Br. at p. 47) because the Commission did not exercise judicial powers here (see § 2827.1(b)(7)). Further, neither case to which the Commission cites suggests that the Commission's judicial powers limit the Legislature's plenary power to establish the manner and scope of judicial review of Commission actions. (See Resp. Br. at p. 47, citing *McHugh v. Santa Monica Rent Control Bd.* (1989) 49 Cal.3d 348, 355 and *People v. Western Air Lines* (1954) 42 Cal.2d 621, 631-32.)

Contrary to the Commission's arguments (Resp. Br. at pp. 47-48), this Court's two references to *Greyhound* after 1998 do not mean that *Greyhound* sets the standard of review.[3] Neither case presented the question at issue here: whether the 1998

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[3] The Utilities take no position on the standard of review but imply that Petitioners previously endorsed *Greyhound*'s application. (Answering Brief on the Merits of Real Parties in Interest ("Utilities Br.") at pp. 13, 31.) While Petitioners mistakenly cited *Greyhound* in their appellate opening brief, Petitioners corrected this error in their reply brief and petition for rehearing. (See Court of Appeal Case No. A167721, Petitioners' Reply Brief (filed July 31, 2023) at pp. 14-15; Petition for Rehearing (filed Jan. 4, 2024) at pp. 9-10.)

repeal and addition of new sections 1757 and 1757.1 changed the standard of review. *Southern California Edison Co. v. Peevey* (2003) 31 Cal.4th 781, 796 did not apply sections 1757 or 1757.1, but instead concerned a question certified by the Ninth Circuit. (*Id.* at p. 787.) Similarly, *T-Mobile West LLC v. City and County of San Francisco* (2016) 6 Cal.5th 1107, 1123 considered preemption of a local ordinance; it did not involve review of Commission decisions. Moreover, in both cases, the Court independently construed the statutes at issue. (*Peevey*, 31 Cal.4th at pp. 792-96; *T-Mobile West LLC*, 6 Cal.5th at pp. 1117-21.) The passing references to *Greyhound* in these cases are not holdings of this Court. (*People v. Brooks* (2017) 3 Cal.5th 1, 110 ["[A] case is not authority for an issue that was not considered."].)

C. Whether the Commission proceeded in the manner required by law here presents a purely legal question on which the Commission receives no deference.

The Commission argues that, if *Greyhound* does not apply, its interpretation of section 2827.1 should nevertheless receive "heightened" deference under the arbitrary and capricious standard of review. (Resp. Br. at pp. 51-52, citing Justice Mosk's concurrence in *Yamaha*.) The Commission's argument ignores the

Legislature's clear direction when it repealed and added new sections 1757 and 1757.1. Rather than limit courts to arbitrary and capricious review, the Legislature directed courts to determine whether the Commission proceeded in the manner required by law. (§§ 1757(a)(2), 1757.1(a)(2).) In conducting that review, courts do not ask whether the agency acted arbitrarily or capriciously; rather, they apply independent judgment to determine whether the agency followed the governing statute. (See *20th Century Ins. Co. v. Garamendi* (1994) 8 Cal.4th 216, 271-72 [distinguishing between independent review of whether the agency followed the law and arbitrary and capricious review].) Notably, this Court has not applied *Yamaha* to sections 1757 or 1757.1, nor has it applied *Yamaha* when evaluating whether an agency proceeded in the manner required by law under Code of Civil Procedure section 1094.5 or Public Resources Code section 21168.5. (See § I.A.1, *supra* [citing cases].)

The Commission's argument for deference under *Yamaha* also fails on *Yamaha*'s own terms. *Yamaha* rejected an appellate court's "unquestioning acceptance" of an agency's statutory interpretation; it is consistent with Petitioners' arguments that the Court must apply its independent judgment to interpret section 2827.1 and reject the Commission's erroneous decision. (*Yamaha*, 19 Cal. 4th at p. 8 [a court has "a quintessential judicial duty" to "apply[ ] its independent judgment de novo to the merits of the *legal* issue before it" (emphasis in original)].)

The Commission's argument for deference under *Yamaha* also relies on incorrect assertions. First, the Commission's evidentiary hearings (Resp. Br. at pp. 54-55) cannot excuse its legal violation of section 2827.1. (See *Assembly of State of Cal. v. PUC* (1995) 12 Cal.4th 87, 101-04 [the Commission may not disregard or contradict legislative directives].) Second, the Commission has no consistent or "longstanding approach" to construing section 2827.1. (See Resp. Br. at p. 53; see also § II.A.1 *infra*; Opening Brief at pp. 77-78.) Third, as described below, and contrary to the Commission's claims (Resp. Br. at p. 53), section 2827.1 does not delegate broad authority to the Commission to make policy choices; rather, it contains narrow and specific directives. Fourth, also described below, the questions of statutory interpretation at issue here do not require technical expertise. (See Resp. Br. at p. 54-55 [arguing the contrary].) The Court lacks any basis to defer to the Commission's erroneous interpretation of section 2827.1.

II. The Commission did not proceed in the manner required by section 2827.1(b)(3) when it failed to value the full benefits of customer-sited generation.

In adopting section 2827.1, the Legislature directed the Commission to adopt a tariff "based on the costs and benefits" of customer-sited generation. (§ 2827.1(b)(3).) The Commission, however, failed to proceed as required by section 2827.1 when it relied exclusively on the undisputedly limited Avoided Cost Calculator which no party claims measures the resource-specific benefits of customer-sited generation. Contrary to Respondents' suggestions, benefits including increased resiliency, avoided transmission costs, reduction in out-of-state methane emissions, and reduced land use costs are not inchoate "societal" benefits; they have quantifiable economic value.

Respondents defend the Commission's failure to value all of the benefits of customer-sited generation by arguing that the Commission was addressing a "cost-shift" from customers with renewable generation to those without. Respondents' cost-shift argument conflicts with the Legislature's directive that the tariff for customer-sited generation must take into account the *total* costs and benefits of customer-sited generation "*to all customers and the electrical system*." (§ 2827.1(b)(4).) Moreover, Respondents' cost shift analysis did not even purport to account for all the benefits of customer-sited generation as required by section 2827.1(b)(3), but limited the benefits it considered to only those in the Avoided Cost Calculator. The Legislature's mandates in section 2827.1 are not optional. The 2022 Tariff does not comply with the requirements of section 2827.1.

A. Section 2827.1 requires the Commission to value the quantifiable benefits of customer-sited generation.

1. The Avoided Cost Calculator does not even purport to capture all the benefits of customer-sited generation.

Although customer-sited generation facilities like rooftop solar generate energy for the benefit of all customers and the electrical system, the Commission failed to value all of their benefits as required by section 2827.1(b)(3). Instead, in developing the 2022 Tariff, the Commission accounted for only those limited benefits reflected in the Commission's Avoided Cost Calculator model—a tool the Commission itself concedes "does *not* determine if a particular distributed energy resource[ ] avoids a particular cost." (D.20-04-010, 2020 Policy Updates to the Avoided Cost Calculator (Apr. 24, 2020) at p. 5 (emphasis added);

see also 21:App:797-APP18455[4] [referring to D.20-04-010].) Because the Avoided Cost Calculator does not differentiate between different types of distributed resources, the Commission cautioned that "the benefits of … specific distributed energy resources should be addressed in resource-specific proceedings." (D.20-04-010 at pp. 86, 88 [conclusions 1, 19]; 21:App:797-APP18455 [finding 40].) The Commission never intended for the Avoided Cost Calculator to measure the benefits for any one resource, but rather that the avoided costs in the model should be compared with "energy savings *and other program characteristics to estimate program benefits."* (D.20-04-010 at p. 5, emphasis added; see also *id.* at p. 78 [finding 5].)

The Commission's past findings and conclusions about the Avoided Cost Calculator's limitations demonstrate that, contrary to the Commission's suggestion (Resp. Br. at p. 53), the 2022 Tariff is *not* consistent with the Commission's "longstanding approach" to interpreting "the costs and benefits" of customer-sited generation. Prior to the 2022 Tariff, the Calculator had

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[4] Citations to documents in the Appendix of Exhibits from the administrative proceeding are in the format [Volume]:App:[Tab]-[Page].

never been used to establish rates or determine compensation to customers in the context of section 2827.1 or otherwise. (3:App:212-APP03326; 6:App:264-APP04616 - APP04617.)

In adopting the 2022 Tariff, the Commission did not heed its own warnings about the Avoided Cost Calculator's limitations. The Commission acknowledges that the Avoided Cost Calculator treats customer-sited generation only as a "demand-side program[]" that reduces energy use. (See Resp. Br. at p. 59, & fn. 36.) But customer-sited generation not only reduces energy use, it generates power that can be used by other customers and the electrical system and that can be combined with storage to discharge energy to the electrical grid even when the facility itself is not generating energy. This ability to generate power confers specific benefits, particularly in the area of resiliency and transmission savings, that the Avoided Cost Calculator was never designed to value. (See, e.g., D.20-04-010 at pp. 5, 9-10, 27, 56, 59-60, 78, 83, 84, 86, 87, 88 [Calculator does not determine value of specific resources, like the ability of rooftop solar to avoid specific transmission costs and the resiliency benefits of rooftop solar paired with storage]; § II.A.4, *infra*.)

Thus, the Commission's insistence that section 2827.1 does not require "a particular methodology" misses the point. (See Resp. Br. at pp. 14, 32, 42.) *Any* methodology that fails to account for all the non-zero benefits of customer-sited generation necessarily fails to comply with section 2827.1's mandate that the tariff must be "based on the costs and benefits" of renewable customer-sited generation facilities. In failing to capture benefits specific to customer-sited *generation*, the Commission failed to adhere to this mandate. By refusing to engage in the statutorily-required, broad inquiry to ascertain the benefits of customer-sited generation, and instead limiting the analysis to only those benefits accounted for in the Avoided Cost Calculator tool, the Commission failed to proceed in the manner required by section 2827.1.

2. The express language of section 2827.1(b)(3) does not authorize the Commission to ignore identified benefits with a non-zero value.

Respondents dispute that "the costs and benefits" of rooftop solar means "all costs and benefits" of rooftop solar. Claiming "the" does not mean "all," the Utilities cite a single case, *Staniforth v. Judges Retirement System* (2016) 245 Cal.App.4th

1442. (Utilities Br. at p. 38.) If anything, *Staniforth* supports Petitioners' grammatical reading of the Legislature's use of "the" in section 2827.1(b)(3). *Staniforth* discussed a statute's use of the phrase "the period of limitations" as referring to the specific statute of limitations set forth in the prior subdivision. (*Staniforth*, 245 Cal.App.4th at p. 1454, fn. 6.) Section 2827.1 includes no prior references to "costs and benefits" that would cabin the meaning of that phrase in section 2827.1(b)(3) to only certain benefits. With no limitations in the statutory context, "the" must be interpreted broadly.

The Commission erroneously argues that interpreting section 2827.1 requires deference to the Commission's expertise in energy regulation. (Resp. Br. at pp. 54-55.) To the contrary, whether section 2827.1's reference to "the costs and benefits" refers to "all" or only "some" benefits does not involve obscure or complex text implicating technical expertise. (See *Styrene Information & Research Center v. Office of Environmental Health Hazard Assessment* (2012) 210 Cal.App.4th 1082, 1100 [agency with expertise in determining which chemicals caused cancer had no "interpretive advantage over the courts ... in determining whether the appropriate standard under the statute was one of known cause or possible cause"].) The Commission has no interpretive advantage in determining the meaning of section 2827.1.

The Commission also argues that the Legislature's use of "the costs and benefits," without additional limitations, delegated discretion to the Commission "to structure cost-benefit analysis and compensate energy exports to the grid." (Resp. Br. at pp. 52-53.) To the contrary, section 2827.1(b)(3) does not contain a broad delegation of authority for the Commission to fill in gaps in the statutory scheme, nor does it invite the Commission to define open-ended terms or exercise broad discretion to set policy. (Compare *PacifiCare Life & Health Ins. Co. v. Jones* (2018) 27 Cal.App.5th 391, 416 [statute included "broad delegation of discretion" to agency to define statutory terms; citing Ins. Code § 790.035: "The [agency] shall have the discretion to establish what constitutes an act."]; *Association of California Ins. Companies v. Jones* (2017) 2 Cal.5th 376, 393 [statute delegated authority to "promulgate reasonable rules and regulations as reasonably necessary to administer" an article]; § 7939 [authorizing the Commission to define a statutory term].) Rather, section 2827.1 contains a specific directive: the Commission must create a tariff that compensates customers for "the costs and benefits" of their rooftop solar systems.

3. Section 2827.1 does not limit the economic benefits of rooftop solar to those experienced exclusively by customers.

Citing section 2827.1(b)(4)'s references to "all customers," the Utilities argue that section 2827.1(b)(3) is limited to benefits enjoyed exclusively by utility customers and therefore precludes consideration of societal benefits. (Utilities Br. at pp. 33-34.) Neither subsection (b)(3) nor (b)(4) limits benefits to only benefits enjoyed exclusively by utility customers. Subsection (b)(3) requires a tariff based on the costs and benefits "of the renewable electrical generation facility," without limitation. Subsection (b)(4) requires a focus on "total" costs and benefits "to all customers and the electrical system," demonstrating that the Legislature intended that the Commission incorporate the broadest range of costs and benefits that customers experience. (Black's Law Dictionary 765 (4th Pocket Ed. 2011) ["total" means "[w]hole; not divided; full; complete"].) The Legislature thus did not limit the cognizable benefits of customer-sited generation facilities to only those benefits experienced exclusively by utility customers. Indeed, before the Court of Appeal, the Commission agreed that it could have compensated customers for societal benefits. (Court of Appeal Case No. A167721, Opinion at p. 14 [acknowledging the Commission's concession].)

The Utilities also argue that the Legislature's express references to certain benefits in other statutes suggest that "the costs and benefits" referenced in section 2827.1 exclude societal benefits as opposed to "economic ones." (Utilities Br. at p. 36.) But even the Utilities' first example, section 701.1(c), undermines their argument that societal costs are not economic costs. Far from suggesting that the Commission should exclude environmental values, section 701.1(c) directs the Commission to "include … a value for *any* costs and benefits to the environment, including air quality" (emphasis added), whenever the Commission "calculate[s] the cost-effectiveness of energy resources."[5] Environmental and other societal benefits constitute economic benefits, and section 2827.1 does not exclude them.

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[5] The Utilities' other examples fare no better. Public Resources Code section 25000.1(c) includes the same requirements as 701.1(c) as applied to the California Energy Commission. Section 701.3 shows that the Legislature has been concerned about the need to "value[ ] the environmental and diversity costs and benefits associated with various generation technologies" for over
(footnote continued on next page)

4. The benefits erroneously excluded by the Commission have economic value.

The benefits advanced by Petitioners here all have economic value. Contrary to the Utilities' argument (Utilities Br. at p. 50), the Commission did not make any finding that these benefits of customer-sited generation do not exist. Rather, the Commission erroneously concluded it should use only the inputs from the Avoided Cost Calculator (21:App:797-APP18454 [finding 34 incorporating only D.20-04-010]); 21:App:797-APP18477 [conclusion 18]), despite the Commission's own findings that the Calculator does not consider resource-specific benefits, such as those provided by customer-sited generation (21:App:797-APP18455 [finding 40]; D.20-04-010 at pp. 78, 86, 88 [finding 5, conclusions 1 and 19]). To ascertain "the costs and benefits" of customer-sited generation, the Commission must do more than find fault with numbers presented by Petitioners and others and resort to a tool that undisputedly does not consider the resource-specific benefits of customer-sited generation. (See *Northern*

30 years. Public Resources Code section 26227.2(b)(3) concerns a job creation program that allows consideration of health and safety benefits in cost-effectiveness determinations. Section 1617 bypasses cost-effectiveness requirements only for "indirect and non-monetary public benefits."

California Power Agency v. PUC (1971) 5 Cal.3d 370, 380 ["The Commission may and should consider sua sponte every element of public interest affected by facilities which it is called upon to approve. [ ]It should not be necessary for any private party to rouse the Commission to perform its duty…."].) In using the Avoided Cost Calculator exclusively, the Commission necessarily failed to value resiliency benefits, avoided transmission benefits, reduced land use benefits, and out of state methane reduction benefits of customer-sited generation in violation of section 2827.1(b)(3).

1. Resilience. The Commission defends excluding resiliency benefits by describing resiliency as a private benefit already enjoyed by rooftop solar customers. (Resp. Br. at p. 58.) But resiliency—the ability to produce power when the utility system goes down—also confers manifestly *public* benefits, including avoided adverse health impacts, continuity of education, and reduced subsidies for emergency room care. (Opening Br. at pp. 63-64.) Although the Utilities claim that these benefits are difficult to quantify (Utilities Br. at pp. 51-52), no dispute exists that these benefits are quantifiable (see

9:App:304-APP06848, APP06988 - APP06991). The Commission erred by assigning no value to resilience in violation of section 2827.1(b)(3).

2. Avoided Transmission. In its decision adopting the 2016 Tariff, the Commission recognized that it had not yet calculated the full value of customer-sited generation to avoid transmission costs, but indicated it would be able to value these benefits in this proceeding. (D.16-01-044, Decision Adopting Successor To Net Energy Metering Tariff (Feb. 5, 2016) at pp. 60-61 [recognizing need to develop "a valuation of exports from customer sited renewable DG that reflects the full locational and temporal value of the services provided to the grid by those exports"].) The Commission, however, did not develop any method for valuing the specific benefits of customer-sited generation in this proceeding. (See Utilities Br. at p. 53 [the Commission relied entirely on the Avoided Cost Calculator to estimate costs].) As the Commission itself admitted, the Avoided Cost Calculator does not fully account for avoided transmission costs. (D.20-04-010 at p. 83 [findings 63-64, noting that specific avoided transmission costs are not captured by Calculator]; *id.* at

p. 88 [conclusion 19, "[B]enefits of grid services provided by specific distributed energy resources should be addressed in resource-specific proceedings."]; *see also id.* at pp. 5, 9-10, 27, 56, 59-60, 78, 84, 86, 87, 88; D.20-03-005, Decision Adopting Staff Proposal on Avoided Cost and Locational Granularity of Transmission and Distribution Deferral Values (March 18, 2020) at p. 2 ["The Avoided Cost Calculator has a single avoided transmission value in the PG&E territory and a zero value in SCE and SDG&E territory."]; *id.* at p. 20-21 [concluding transmission values should be determined outside of the Avoided Cost Calculator].)

Respondents criticize Petitioners' record evidence showing that specific avoided transmission costs yield benefits orders of magnitude greater than the negligible value produced by the Avoided Cost Calculator. (Resp. Br. at pp. 60-61; Opening Br. at pp. 68-69.) But Petitioners do not ask this Court to direct the Commission to adopt Petitioners' illustrative value for specific avoided transmission costs. Rather, Petitioners ask the Court to conclude that section 2827.1 requires *the Commission* to quantify the avoided transmission costs of customer-sited generation.

The Utilities also complain that rooftop solar is not the sole factor determining whether a particular transmission line is necessary. (Utilities Br. at p. 54.) This argument implicitly acknowledges that rooftop solar does play a role in avoiding specific transmission projects, as the Commission has acknowledged. (D.20-04-010 at pp. 60, 83.)

The Commission's argument that factual findings are conclusive does not cite to any finding. (Resp. Br. at pp. 58-59.) Far from making any findings about the benefits of customer-sited generation in avoiding specific transmission costs, the Commission used solely the Avoided Cost Calculator.

3. Avoided Land-Use Impacts. Respondents do not deny that avoiding transmission avoids adverse land-use impacts. Rather, they argue that Petitioners did not quantify avoided transmission benefits (Utilities Br. at p. 55) or that avoided land-use impacts constitute a societal benefit (Resp. Br. at p. 57). The latter argument is not a legally sound rationale for declining to value a benefit under section 2827.1. (See § II.A.2-.3, *supra*.) As for the former argument, no dispute exists that even non-generating distributed resources, like energy efficiency and demand response, avoid at least *some* transmission spending. (See Utilities Br. at p. 53.) Thus, it is undisputed that distributed energy resources avoid some transmission, and avoided transmission avoids some land-use impacts. But the Commission failed to include any value for land use impacts avoided by avoided transmission.

4. Avoided Out-of-State Methane Leakage. The Utilities do not deny that customer-sited generation avoids out-of-state methane leakage. Rather, they dispute the magnitude of the benefit and argue that valuing avoided out-of-state leakage would result in double-counting. (Utilities Br. at p. 52 [citing 10:App:351-APP08990, which criticizes the scale of the benefit, not its existence].) Although the Commission recognizes that avoided out-of-state methane leakage exists and has a quantifiable value (4:App:231-APP03606), out-of-state methane is not one of the benefits measured by the Avoided Cost Calculator (21:App:797-APP18455 [finding 48]). Given that the Commission has not yet quantified the benefits of avoided out-of-state methane leakage once, recognizing its value would not result in counting it twice.

The Utilities' remaining argument is that the Commission should ignore out-of-state methane emissions because they are not included in the California Air Resources Board's ("CARB") inventory of state greenhouse gas emissions. (Utilities Br. at pp. 52-53; see Health & Saf. Code § 39607.4.) But section 2827.1 does not limit the benefits of customer-sited generation to those considered by CARB.

B. Section 2827.1 does not address cost shifts.

1. Subdivision 2827.1(b)(4) does not concern cost shifts.

Section 2827.1(b)(4) states that the Commission shall "[e]nsure that the total benefits of the standard contract or tariff to all customers and the electrical system are approximately equal to the total costs." The Commission concedes that section 2827.1(b)(4) does not require the Commission to eliminate any cost shift, but argues that (b)(4) authorizes it to reduce cost shifts between customer-generators and customers without rooftop solar systems. (Resp. Br. at p. 43.) The Utilities argue that section 2827.1(b)(4) requires addressing a cost shift, claiming the statute requires that customer-generators and customers without rooftop solar systems "must experience benefits and costs that are approximately equal." (Utilities Br. at pp. 39-40.) However, rather than breaking customers into distinct sub-groups and requiring comparisons of costs and benefits between those sub-groups, 2827.1(b)(4) refers to "all customers" in a single group. It requires that the total costs to "all customers" approximately equal the total benefits to "all customers."

Reaching beyond section 2827.1, the Utilities argue that a different, repealed statute required the Commission to address cost shifts. (Utilities Br. at p. 40.) The Utilities argue that repealed section 2827.3 shows that section 2827.1(b)(4) concerns balancing costs and benefits between customer classes. The Utilities have it backwards. Repealed section 2827.3 called for a study of the NEM program, including, specifically, "who benefits from, and who bears the economic burden, if any," of the program. It also required the study to "quantify the costs and benefits of [NEM] to participants and nonparticipants and … disaggregate the results by … customer class, and household income groups." (Stats. 2013, ch. 611 (AB 327) § 10 [§ 2827.3].) But in section 2827.1, the Legislature did not use the same language. (Stats. 2013, ch. 611 (AB 327) § 11.) Instead, section 2827.1 calls for an analysis of the total costs and benefits of customer-sited generation to "all customers," and eschews distinctions between participants and non-participants. (Compare § 2827.1(b)(4) with § 2827.3.) "When the Legislature uses materially different language in statutory provisions addressing the same subject or related subjects, the normal inference is that the Legislature intended a difference in meaning." (*Kleffman*, 49 Cal.4th at p. 342, quoting *People v. Trevino* (2001) 26 Cal.4th 237, 242.)

The Utilities also argue that the legislative history of different bills, SB 656 and AB 2514—neither of which are relevant to the enactment of section 2827.1—suggest a concern about cost-shifting. (Utilities Br. at pp. 40-43.) But the legislative history of *AB 327* shows that the Legislature specifically *removed* concerns about cost-shifting from section 2827.1's text. (Sen. Amend. to AB 327 (2013-2014 Reg. Sess.) Sept. 3, 2013 §§ 10-11 [showing strikethrough of deleted text].) Earlier drafts of section 2827.1 expressly referenced non-participants. (*Id.*; Opening Br. at pp. 75-77.) The deletion of that language shows the Legislature did not intend a focus on cost shifts.

The Legislature knows how to require a focus on cost distribution and costs shifted to non-participants, and it has repeatedly adopted statutes requiring the elimination of such effects. (Opening Br. at p. 74 [citing examples of statutes].) Respondents do not refute that section 2827.1 does not use language that the Legislature uses when it directs the Commission to eliminate cost shifts. (Resp. Br. at pp. 43-44; Utilities Br. at pp. 39-41.) Rather, Respondents argue that, even so, the Commission was still allowed to consider cost shifts. Not so. Section 2827.1 does not direct the Commission to consider costs to non-participants or cost distribution. (Compare, e.g., §§ 900, 977, 1701.6(d) [directing consideration of various factors].) It says the Commission must base the tariff on "the cost and benefits" of customer-sited generation and must assess the total costs and benefits to *all* customers and the electrical system. The Commission lacked authority to consider "cost shifts" in a manner that contradicts the statutory directives in section 2827.1.

2. Subsection (b)(1) does not require the Commission to address cost shifts.

Respondents also argue that section 2827.1(b)(1) requires the Commission to address purported cost shifting. (Resp. Br. at p. 43; Utilities Br. at pp. 40-41.) Section 2827.1(b)(1) directs the

Commission to adopt a tariff that ensures rooftop solar "continues to grow sustainably" and that includes "specific alternatives designed for growth among residential customers in disadvantaged communities." Respondents assert that the word "sustainably" allows the Commission to prioritize cost shifting (Resp. Br. at p. 43; Utilities Br. at pp. 40-41), before effectively conceding that the Commission failed to make any finding that it could not both ensure the sustainable growth of rooftop solar and base the tariff on its costs and benefits (Resp. Br. at p. 43).

Section 2827.1(b)(1) concerns the growth of rooftop solar, including in disadvantaged communities, not cost shifts. It makes no sense that the Legislature would, through the inclusion of a single word in a section about ensuring the *growth* of rooftop solar, introduce a concern that—at least as Respondents would have it—pushes in the opposite direction. The word "sustainably" cannot work such a tectonic shift in direction when no other part of the text includes a concern about cost shifts. (See *Mendoza v. Fonseca McElroy Grinding Co., Inc.* (2021) 11 Cal.5th 1118, 1135 ["The Legislature does not … hide elephants in mouseholes." (internal quotation marks omitted; quoting *Jones v. Lodge at Torrey Pines Partnership* (2008) 42 Cal.4th 1158, 1171)].)

The Commission's finding about an unsustainable impact on customers without rooftop solar, far from supporting Respondents' position (see Resp. Br. at p. 43), instead establishes the Commission's failure to proceed in the manner required by section 2827.1. At the outset of this proceeding, the Commission preemptively determined that the cost shift study upon which the 2022 Tariff was based (21:App:797-APP18451 – APP18452) should be limited to *only* those inputs included in the Avoided Cost Calculator (1:App:64-APP00909 [cost shift study "directed not to deviate from the 2020 [Avoided Cost Calculator] in developing benefit/cost estimates for [its] analysis"]). In relying on a flawed cost-shift study, the Commission necessarily failed to account for all the benefits of customer-sited generation as required by section 2827.1.

C. The Commission may not avoid its statutory obligation to ensure that the tariff is based on the costs and benefits of customer-sited generation by arguing it might value those costs and benefits later.

Respondents argue the Commission may solve problems, including how to value benefits, incrementally. (Utilities Br. at pp. 48-49.) The Commission, however, has a present obligation to comply with the governing statute. (§ 2827.1(b) ["In developing the standard contract or tariff, the commission shall do all of the following....”]; *Assembly v. PUC* (1995) 12 Cal.4th 87, 103 [Commission may not disregard express legislative directives].)

The Utilities’ cases (pp. 48-49) cannot excuse the Commission’s present failure to satisfy section 2827.1. In *Mobil Oil Exploration & Producing Southeast Inc. v. United Distribution Companies* (1991) 498 U.S. 211, the Court held that FERC did not need to address certain problematic contract provisions in a particular proceeding. (*Id.* at p. 231.) But that case gave no indication that the governing statute, which conferred broad discretion on the agency to regulate natural gas prices, specifically required the agency to address the problematic provisions. (*Id.* at pp. 221-31.) Likewise, *National Assn. of Broadcasters v. FCC* (D.C. Cir. 1984) 740 F.2d 1190 concerned a “broadly drafted” statute, and the court reviewed whether the agency decision advanced the public interest. (*Id*. at pp. 1211, 1222).

In contrast to the statutes in these cases, section 2827.1 is not broadly drafted, nor does it rely on a vague “public interest” standard. Rather, section 2827.1(b)(3) specifically directs the

Commission to ensure that the tariff is "based on the costs and benefits" of customer-sited generation.

Finally, *Pacific Telephone & Telegraph Co. v. PUC* (1965) 62 Cal.2d 634 applied a standard of review that has been repealed. (*Id.* at p. 646 [citing version of § 1757 since repealed].) Sections 1757 and 1757.1 now require that courts independently determine whether the Commission has failed to proceed in the manner required by law. (See § I, *supra*.)

III. The Commission failed to comply with section 2827.1(b)(1).

While section 2827.1(b)(1) directs the Commission to "include specific alternatives" designed for growth of customer-sited generation in disadvantaged communities in the tariff itself, Respondents largely refer to programs outside of the tariff (the "external programs"). The single feature of the 2022 Tariff intended to assist customers in disadvantaged communities—a small increase ("adder") in compensation customers receive *after* installing generation systems—is not "designed for growth" of customer-sited generation because it does not address the *barriers to installation* that are undisputedly inhibiting growth.

A. Section 2827.1 requires alternatives within the tariff itself.

The plain text of section 2827.1 shows that the Legislature required the Commission to develop alternatives as part of the tariff itself. Section 2827.1 states that, "[i]n developing the standard contract or tariff, the commission shall … [e]nsure that the … tariff … include specific alternatives designed for growth among residential customers in disadvantaged communities." The word "include" means "to take in or comprise as part of a whole or group." (Merriam-Webster, "include," https://www.merriam-webster.com/dictionary/include, accessed Oct. 31, 2024.) This language thus directs the Commission to "include" alternatives as part of the tariff.

The Utilities argue that section 2827.1 requires only that the Commission "include 'specific alternatives' *in the process of* 'developing the … tariff,'" and that the alternatives do not need to be part of the tariff. (Utilities Br. at p. 60, emphasis added.) The Utilities' argument cannot be squared with the mandatory nature of the Commission's obligation to "[e]nsure" that the tariff "include specific alternatives" whenever the Commission revises the tariff. (§ 2827.1(b)(1).) Section 2827.1(b) includes numerous requirements that refer to features or objectives that "shall" be included in the tariff itself (§ 2827.1(b)), and the direction to "include specific alternatives" is no different than these other mandatory features of the tariff. (*Kaatz v. City of Seaside* (2006) 143 Cal.App.4th 13, 37 [when a statute contains a list of items, courts determine "the meaning of each by reference to the others, giving preference to an interpretation that makes the items similar in nature and scope" (citation omitted)].)

The Commission argues that Petitioners "elevate form over substance," suggesting that there is no reason for the Legislature to have required the programs to be part of the tariff itself. (Resp. Br. at p. 64 & fn. 39.) But including specific alternatives in the tariff ensures that their funding and survival is linked to the tariff, and requires the Commission to make findings that those programs in fact constitute specific alternatives designed for growth in disadvantaged communities. (§ 1705.) Here, the Commission did not make any findings in either its 2022 Tariff or in D.23-06-056, the decision denying Petitioners' application for rehearing of the 2022 Tariff, that any of the external programs the Commission cites constitute alternatives designed for growth in disadvantaged communities. The Commission expressly declined to include the Disadvantaged Communities-Single Family Solar Homes (DAC-SASH) program, the Solar on Multifamily Affordable Housing Program (SOMAH), the Disadvantaged Communities-Green Tariff (DAC-GT), and the Community Solar Green Tariff (CS-GT) in the 2022 Tariff. (See, e.g., 21:App:797-APP18457, APP18471, APP18472, APP18473). Nor did the Commission incorporate in the 2022 Tariff potential rebate funding to which the Utilities obliquely refer. (See Utilities Br. at p. 58; 21:App:797-APP18471, APP18423-25.) Thus, the 2022 Tariff cannot be upheld based on these external programs. (*Pacific Gas & Electric Co. v. PUC* (2000) 85 Cal.App.4th 86, 96 ["[A]n agency's order must be upheld, if at all, 'on the same basis articulated in the order by the agency itself.'" (quoting *FPC v. Texaco Inc.* (1974) 417 U.S. 380, 397)].)

The Commission's suggestion that "the Legislature could terminate" programs in the tariff just as it could terminate external programs (Resp. Br. at p. 64, fn. 39) misses the point. The Legislature is free to change the terms of its statutes; the Commission may not do so.

B. The 2022 Tariff does not address the significant barriers to increased installation of rooftop solar in disadvantaged communities.

The single program included in the tariff that that Commission found to be "promoting" growth in underrepresented communities (21:App:797-APP18470 [finding 201])—an "adder" that applies *after* installation—cannot, as the Commission's own past findings establish, be characterized as "specific alternatives designed for growth" within the meaning of section 2827.1(b)(1).

In a 2018 decision, the Commission admitted that section 2827.1 required it to "develop specific alternatives designed to increase [ ] adoption of renewable generation in [disadvantaged communities]" but that it had yet to "address the specific barriers to adoption of renewable distributed generation." (D.18-06-027, Alternate Decision Adopting Alternatives to Promote Solar Distributed Generation in Disadvantaged Communities (June 22, 2018) at p. 91 [findings 2 and 3].) The Commission's 2018 decision identified "[f]inancial barriers, including the lack of capital for an initial down-payment or lack of access to credit" that prevent customers in disadvantaged communities from adopting rooftop solar as the significant barriers to overcome. (*Id.* at p. 92 [finding 7].) The Commission also found that providing residential customers in disadvantaged communities additional compensation had been insufficient to ensure adoption of rooftop solar in disadvantaged communities. (*Id.* at pp. 91-92 [findings 3-4].) Thus, according to the Commission's own past findings, the additional compensation "adder" in the 2022 Tariff that applies only after installation cannot constitute a specific alternative designed for growth within the meaning of section 2827.1(b)(1).

Despite reaching the opposite conclusion in 2018, the Commission now claims that section 2827.1 "does not direct the Commission to address any particular barriers to growth." (Resp. Br. at p. 62; see also Utilities Br. at p. 58.) Respondents do not, however, go so far as to challenge the Commission's own past findings about the significant, upfront barriers to installation of rooftop solar in disadvantaged communities.

Moreover, contrary to Respondents' litigation position, the phrase "designed for growth" itself shows that the Legislature intended that the Commission attempt to address the factors inhibiting growth: i.e., the barriers inhibiting solar adoption in disadvantaged communities. (D.18-06-027 at p. 92; see also Opening Br. at pp. 82-83; *Com. on Peace Officer Standards & Training v. Superior Court* (2007) 42 Cal.4th 278, 290 ["[T]he

Legislature intends reasonable results consistent with its apparent purpose."].) The only element in the 2022 Tariff that purports to promote growth in disadvantaged communities involves compensation after installation, and thus does not address the upfront barriers that the Commission itself found prevent rooftop solar adoption in disadvantaged communities.

CONCLUSION

For the reasons set forth above, Petitioners request that the Court clarify that courts must independently review de novo whether the Commission has not proceeded in the manner required by law; reverse the decision of the Court of Appeal; and issue a writ of mandate directing the Commission to set aside its decision and to comply with section 2827.1 by (1) valuing all the costs and benefits of customer-sited generation—including but not limited to resiliency benefits, avoided transmission costs, avoided land use costs, and avoided out-of-state greenhouse gas emissions—instead of using only the outputs of the Avoided Cost Calculator model; and (2) adopting within the tariff specific alternatives designed for growth among residential customers in disadvantaged communities–i.e., alternatives that address the significant barriers to installation facing those customers.

DATED: November 22, 2024 SHUTE, MIHALY & WEINBERGER LLP

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CERTIFICATE OF WORD COUNT

In accordance with Rule 8.520 of the California Rules of Court, I certify that, exclusive of this certification and the other exclusions referenced in Rule 8.520(c)(3), this **PETITIONERS' REPLY BRIEF** contains 8,317 words, including footnotes, as determined by the word count of the computer used to prepare this brief.

DATED: November 22, 2024

SHUTE, MIHALY &
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EXHIBIT A

1507. Within four years after a judgment had under Section 1505, any person who did not appear as a party in the action may file a verified petition in the Superior Court in and for the County of Sacramento to show his claim to any of the money. A copy of the petition shall be served on the Attorney General at least 20 days before the hearing of the petition. The Attorney General shall answer the petition. Action against State Procedure, limitations

The court shall try the issues as issues are tried in civil actions. If it is determined that the person is entitled to any of the excess money paid into the excess rate fund under the judgment, the court shall order the Controller to draw his warrant on the Treasurer for the payment of the amount from the excess rate fund, but without interest or cost to the State. A copy of the order, under the seal of the court, shall be a sufficient voucher for drawing the warrant.

All persons who fail to appear and file their petitions within the time limited in this section, are forever barred.

1508. When a period of four years has elapsed after a judgment is secured under Section 1505, the State Treasurer shall place the excess money paid into the excess rate fund under the judgment in the State Highway Fund in the State Treasury. Disposition of money

Chapter 9. Hearings and Judicial Review

Article 1. Hearings

1701. All hearings, investigations, and proceedings shall be governed by this part and by rules of practice and procedure adopted by the commission, and in the conduct thereof the technical rules of evidence need not be applied. No informality in any hearing, investigation, or proceeding or in the manner of taking testimony shall invalidate any order, decision or rule made, approved, or confirmed by the commission. Rules of procedure

1702. Complaint may be made by the commission of its own motion or by any corporation or person, chamber of commerce, board of trade, labor organization, or any civic, commercial, mercantile, traffic, agricultural, or manufacturing association or organization, or any body politic or municipal corporation, by written petition or complaint, setting forth any act or thing done or omitted to be done by any public utility, including any rule or charge heretofore established or fixed by or for any public utility, in violation or claimed to be in violation, of any provision of law or of any order or rule of the commission. No complaint shall be entertained by the commission, except upon its own motion, as to the reasonableness of any rates or charges of any gas, electrical, water, or telephone corporation, unless it is signed by the mayor or the president or chairman of the board of trustees or a majority of the council, commission, or other legislative body of the city or city and county within which the alleged violation occurred, or by not less than 25 actual or prospective consumers or purchasers of such gas, electricity, water, or telephone service. Proper complainants, issues

Joinder of causes

1703. All matters upon which complaint may be founded may be joined in one hearing, and no motion shall be entertained against a complaint for misjoinder of causes of action or grievances or misjoinder or nonjoinder of parties. In any review by the courts of orders or decisions of the commission the same rule shall apply with regard to the joinder of causes and parties as herein provided. The commission shall not be required to dismiss any complaint because of the absence of direct damage to the complainant.

Service of process

1704. Upon the filing of a complaint, the commission shall cause a copy thereof to be served upon the corporation or person complained of. Service in all hearings, investigations, and proceedings pending before the commission may be made upon any person upon whom a summons may be served in accordance with the provisions of the Code of Civil Procedure, and may be made personally or by mailing in a sealed envelope, registered, with postage prepaid. The commission shall fix the time when and place where a hearing will be had upon the complaint and shall serve notice thereof, not less than 10 days before the time set for such hearing, unless the commission finds that public necessity requires that such hearing be held at an earlier date.

Hearing, order, etc

1705. At the time fixed for any hearing before the commission or a commissioner, or the time to which the hearing has been continued, the complainant and the corporation or person complained of, and such corporations or persons as the commission allows to intervene, shall be entitled to be heard and to introduce evidence. The commission shall issue process to enforce the attendance of all necessary witnesses. After the conclusion of the hearing, the commission shall make and file its order, containing its decision. A copy of such order, certified under the seal of the commission, shall be served upon the corporation or person complained of, or his or its attorney. The order shall, of its own force, take effect and become operative 20 days after the service thereof, except as otherwise provided, and shall continue in force either for a period designated in it or until changed or abrogated by the commission. If the commission believes that an order can not be complied with within 20 days, it may prescribe such additional time as in its judgment is reasonably necessary to comply with the order, and may on application and for good cause shown, extend the time for compliance fixed in its order.

Record of proceedings

1706. A complete record of all proceedings and testimony before the commission or any commissioner on any formal hearing shall be taken down by a reporter appointed by the commission, and the parties shall be entitled to be heard in person or by attorney. In case of an action to review any order or decision of the commission, a transcript of such testimony, together with all exhibits or copies thereof introduced, and of the pleadings, record, and proceedings in the cause, shall constitute the record of the commission, but if the petitioner and the commission stipulate that certain questions alone and a specified portion only of the evidence shall be certified to the Supreme Court for its judgment, such stipulation and the questions and the evidence therein specified shall constitute the record on review.

1707. Any public utility may complain on any of the grounds upon which complaints are allowed to be filed by other parties, and the same procedure shall be adopted and followed as in other cases, except that the complaint may be heard ex parte by the commission or may be served upon any parties designated by the commission. Utility as complainant

1708. The commission may at any time, upon notice to the public utility affected, and after opportunity to be heard as provided in the case of complaints, rescind, alter, or amend any order or decision made by it. Any order rescinding, altering, or amending a prior order or decision shall, when served upon the public utility affected, have the same effect as an original order or decision. Modification, rescission of order

1709. In all collateral actions or proceedings, the orders and decisions of the commission which have become final shall be conclusive. Orders conclusive

Article 2. Rehearings

1731. After any order or decision has been made by the commission, any party to the action or proceeding, or any stockholder or bondholder or other party pecuniarily interested in the public utility affected, may apply for a rehearing in respect to any matters determined in the action or proceeding and specified in the application for rehearing. The commission may grant and hold a rehearing on those matters, if in its judgment sufficient reason is made to appear. No cause of action arising out of any order or decision of the commission shall accrue in any court to any corporation or person unless the corporation or person has made, before the effective date of the order or decision, application to the commission for a rehearing. Application for rehearing

1732. The application for a rehearing shall set forth specifically the ground or grounds on which the applicant considers the decision or order to be unlawful. No corporation or person shall in any court urge or rely on any ground not so set forth in the application. Same Content

1733. Any application for a rehearing made 10 days or more before the effective date of the order as to which a rehearing is sought, shall be either granted or denied before the effective date, or the order shall stand suspended until the application is granted or denied. Any application for a rehearing made within less than 10 days before the effective date of the order as to which a rehearing is sought, and not granted within 20 days, may be taken by the party making the application to be denied, unless the effective date of the order is extended for the period of the pendency of the application. Same Time

1734. If any application for a rehearing is granted without a suspension of the order involved, the commission shall forthwith proceed to hear the matter with all dispatch and shall determine the matter within 20 days after final submis- Hearing sion. If no determination is made within that time, it may be taken by any party to the rehearing that the order involved is affirmed.

Effect of application

1735. An application for rehearing shall not excuse any corporation or person from complying with and obeying any order or decision, or any requirement of any order or decision of the commission theretofore made, or operate in any manner to stay or postpone the enforcement thereof, except in such cases and upon such terms as the commission by order directs.

Order of abrogation, Change Effect

1736. If, after such rehearing and a consideration of all the facts, including those arising since the making of the order or decision, the commission is of the opinion that the original order or decision or any part thereof is in any respect unjust or unwarranted, or should be changed, the commission may abrogate, change, or modify it. The order or decision abrogating, changing, or modifying the original order or decision shall have the same force and effect as an original order or decision, but shall not affect any right or the enforcement of any right arising from or by virtue of the original order or decision unless so ordered by the commission.

Article 3. Judicial Review

Writ of certiorari or review

1756. Within 30 days after the application for a rehearing is denied, or, if the application is granted, then within 30 days after the decision on rehearing, the applicant may apply to the Supreme Court of this State for a writ of certiorari or review for the purpose of having the lawfulness of the original order or decision or of the order or decision on rehearing inquired into and determined. The writ shall be made returnable not later than 30 days after the date of issuance, and shall direct the commission to certify its record in the case to the court. On the return day, the cause shall be heard by the Supreme Court, unless for a good reason shown it is continued.

Scope of review

1757. No new or additional evidence may be introduced in the Supreme Court, but the cause shall be heard on the record of the commission as certified to by it. The review shall not be extended further than to determine whether the commission has regularly pursued its authority, including a determination of whether the order or decision under review violates any right of the petitioner under the Constitution of the United States or of this State. The findings and conclusions of the commission on questions of fact shall be final and shall not be subject to review except as provided in this article. Such questions of fact shall include ultimate facts and the findings and conclusions of the commission on reasonableness and discrimination.

Appearance, judgment

1758. The commission and each party to the action or proceeding before the commission may appear in the review proceeding. Upon the hearing the Supreme Court shall enter judgment either affirming or setting aside the order or decision of the commission. The provisions of the Code of Civil Procedure relating to writs of review shall, so far as applicable and not in conflict with the provisions of this part, apply to proceedings instituted in the Supreme Court under the provisions of this article.

1759. No court of this State, except the Supreme Court to the extent specified in this article, shall have jurisdiction to review, reverse, correct, or annul any order or decision of the commission or to suspend or delay the execution or operation thereof, or to enjoin, restrain, or interfere with the commission in the performance of its official duties, except that the writ of mandamus shall lie from the Supreme Court to the commission in all proper cases. Jurisdiction in Supreme Court

1760. In any proceeding wherein the validity of any order or decision is challenged on the ground that it violates any right of petitioner under the Constitution of the United States, the Supreme Court shall exercise an independent judgment on the law and the facts, and the findings or conclusions of the commission material to the determination of the constitutional question shall not be final. Constitutional questions

1761. The pendency of a writ of review shall not of itself stay or suspend the operation of the order or decision of the commission, but during the pendency of the writ the Supreme Court in the manner provided in this article in its discretion may stay or suspend in whole or in part the operation of the commission's order or decision. Staying of commission's orders

1762. Except as provided in this section, no order staying or suspending an order or decision of the commission shall be made by the Supreme Court except upon five days' notice and after hearing. If the order or decision of the commission is stayed or suspended the order suspending it shall contain a specific finding based upon evidence submitted to the court and identified by reference thereto, that great or irreparable damage would otherwise result to the petitioner and specifying the nature of the damage, but the Supreme Court may grant a temporary stay restraining the operation of the commission order or decision at any time before such hearing and determination of the application for a stay when, in its opinion irreparable loss or damage would result to petitioner unless such temporary stay is granted. Such temporary stay shall remain in force only until the hearing and determination of the application for a stay upon notice. The hearing of such application for a stay shall be given precedence and assigned for hearing at the earliest practicable day after the expiration of the notice Same

1763. No temporary stay shall be granted by the Supreme Court unless it clearly appears from specific facts shown by the verified petition that immediate and irreparable injury, loss, or damage will result to the applicant before notice can be served and hearing had on a motion for a stay as provided in this article. Every such temporary stay shall be endorsed with the date and hour of issuance, shall be forthwith filed in the clerk's office and entered of record, shall define the injury and state why it appears to be irreparable and why the order was granted without notice, and shall by its terms expire within Temporary stay such time after entry not to exceed 10 days as the court may fix unless within the time so fixed the order is extended for a like period for good cause shown, and the reasons for such extension shall be entered of record. In case a temporary stay is granted without notice the matter of the issuance of a stay shall be set down for hearing at the earliest possible time, and when it comes up for hearing the party obtaining the temporary stay shall proceed with the application for a stay and if he does not do so the court shall dissolve the temporary stay.

Suspending bond, special deposit of collections

1764. In case the order or decision of the commission is stayed or a temporary stay granted, the order of the court shall not become effective until a suspending bond is executed and filed with and approved by the court, payable to the people of the State of California and sufficient in amount and security to insure the prompt payment by the party petitioning for the review, of all damages caused by the delay in the enforcement of the order or decision of the commission and of all money which any person or corporation may be compelled to pay pending the review of the proceedings, for transportation, transmission, product, commodity, or service in excess of the charges fixed by the order or decision of the commission, in case such order or decision is sustained. The court, in case it stays or suspends the order or decision of the commission in any matter affecting rates or classifications, may also in its discretion direct the public utility affected to pay into court from time to time, there to be impounded until the final decision of the case, or into some bank or trust company paying interest on deposits, under such conditions as the court prescribes, all sums of money which it collects from any corporation or person in excess of the sum such corporation or person would have been compelled to pay if the order or decision of the commission had not been stayed or suspended.

Conditional stay

1765. In case the Supreme Court stays any order or decision denying to the utility an increase in any rate or classification, the court may condition such stay or temporary stay so as to permit petitioner to charge a higher rate pending the determination of the review and may attach other reasonable conditions to such stay or temporary stay.

Stay of order lowering rates, etc

1766. In case the Supreme Court stays or suspends any order or decision lowering any rate or classification or stays any order or decision denying petitioner the right to charge an increased rate or classification and as a condition thereof permits the charging of higher rates, the court shall require the public utility affected to keep such accounts, verified by oath as may, in the judgment of the court, suffice to show the amounts being charged or received by such public utility, pending the review, in excess of the charges allowed by the order or decision of the commission, together with the names and addresses of the corporations or persons to whom overcharges will be refundable in case the order or decision of the commission is upheld. The court may from time to time require the petitioner to give additional security, or to increase the suspending bond, whenever in its opinion such action is necessary to insure the prompt payment of the damages and overcharges. If the final decision by the Supreme Court upholds the commission's order or decision, all money which the public utility has collected pending the appeal in excess of that authorized by the order or decision of the commission, together with such interest as may be reasonable, shall be promptly paid to the corporations or persons entitled thereto in the manner prescribed by the court.

1767. All actions and proceedings under this part and all actions or proceedings to which the commission or the people of the State of California are parties in which any question arises under this part, or under or concerning any order or decision of the commission, shall be preferred over, and shall be heard and determined in preference to, all other civil business except election causes, irrespective of position on the calendar. The same preference shall be granted upon application of the attorney of the commission in any action or proceeding in which he is allowed to intervene. **Priority of actions and proceedings**

Article 4. Witnesses

1791. Each witness who appears by order of the commission or a commissioner shall receive for his attendance the same fees and mileage allowed by law to a witness in civil cases, which shall be paid by the party at whose request the witness is subpenaed. When any witness who has not been required to attend at the request of any party is subpenaed by the commission, his fees and mileage shall be paid from the funds appropriated for the use of the commission in the same manner as other expenses of the commission are paid. Any witness subpenaed except one whose fees and mileage may be paid from the funds of the commission, may, at the time of service, demand the fee to which he is entitled for travel to and from the place at which he is required to appear, and one day's attendance. If such witness demands such fees at the time of service, and they are not at that time paid or tendered, he shall not be required to appear. All fees or mileage to which any witness is entitled under the provisions of this section may be collected by action therefor instituted by the person to whom such fees are payable. No witness furnished with free transportation shall receive mileage for the distance he may have traveled on such free transportation. **Fees. mileage**

1792. In case of the refusal of any witness to attend or testify or produce any papers required by a subpena issued by the commission or any commissioner, the commission or the commissioner may file, in the superior court in and for the county, or city and county, in which the proceeding is pending, a petition, setting forth that due notice has been given of the time and place of attendance of the witness, or the production of the papers, and that the witness has been summoned in the manner prescribed in this part and has failed and refused to **Compelling attendance Petition** attend or produce the papers required by the subpena, or has refused to answer questions propounded to him in the course of the proceeding. The petition shall include a request for an order of the court, compelling the witness to attend and testify or produce the papers before the commission.

Same: Hearing, court order

1793. Upon the filing of the petition the court shall enter an order directing the witness to appear before the court at a time and place fixed in the order and show cause why he has not attended and testified or produced said papers before the commission. The time fixed shall not be more than 10 days from the date of the order. A copy of the order shall be served upon the witness. If it appears to the court that the subpena was regularly issued by the commission or a commissioner, the court shall thereupon enter an order that the witness appear before the commission or commissioner at the time and place fixed in the order, and testify or produce the required papers, and upon failure to obey the order, the witness shall be dealt with as for contempt of court. The remedy provided in this section is cumulative, and shall not be construed to impair or interfere with the power of the commission or a commissioner to enforce the attendance of witnesses and the production of papers, and to punish for contempt in the same manner and to the same extent as courts of record.

Depositions

1794. The commission or any commissioner or any party may, in any investigation or hearing before the commission, cause the deposition of witnesses residing within or without the State to be taken in the manner prescribed by law for like depositions in civil actions in the superior courts of this State and to that end may compel the attendance of witnesses and the production of books, waybills, documents, papers, and accounts.

Immunity

1795. No person shall be excused from testifying or from producing any book, waybill, document, paper, or account in any investigation or inquiry by or hearing before the commission or any commissioner, when ordered to do so, upon the ground that the testimony or evidence, book, waybill, document, paper, or account required of him may tend to incriminate him or subject him to penalty or forfeiture, but no person shall be prosecuted, punished, or subjected to any penalty or forfeiture for or on account of any act, transaction, matter or thing concerning which, under oath, he has testified or produced documentary evidence, but no person so testifying shall be exempt from prosecution or punishment for any perjury committed by him in his testimony. Nothing herein contained shall be construed as in any manner giving to any public utility immunity of any kind.

Chapter 10. Official Documents and Fees

Certified copies as evidence

1901. Copies of all official documents and orders filed or deposited according to law in the office of the commission, certified by a commissioner or by the secretary or the assistant secretary under the official seal of the commission to be true

PROOF OF SERVICE

Case No. S283614
Center for Biological Diversity et al. v. Public Utilities Commission of the State of California
In The Supreme Court Of California

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of San Francisco, State of California. My business address is 396 Hayes Street, San Francisco, California 94102.

On November 22, 2024, I served true copies of the following document(s) described as:

PETITIONERS' REPLY BRIEF

on the parties in this action as follows:

BY ELECTRONIC SERVICE: I served the document(s) on the person listed in the Service List by submitting an electronic version of the document(s) to TrueFiling, through the user interface at www.truefiling.com.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on November 22, 2024, at San Francisco, California.

/s/ Patricia Larkin
Patricia Larkin

<u>SERVICE LIST</u>

Case No. S283614
Center for Biological Diversity et al. v. Public Utilities Commission of the State of California
In The Supreme Court Of California

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Rachel Peterson Executive Director California Public Utilities Commission of the State of California 505 Van Ness Avenue San Francisco, CA 94102-3214 rachel.peterson@cpuc.ca.gov	
Mica L. Moore Samuel T. Harbourt State of California Department of Justice 300 South Spring Street, Suite 1702 Los Angeles, CA 90013-1230 Phone (213) 269-6138 Mica.Moore@doj.ca.gov Samuel.Harbourt@doj.ca.gov	
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Attorneys for Real Parties in Interest, Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company

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Phone (858) 654-1583
Fax (619) 699-5027
GBarnes@sdge.com

Attorney for San Diego Gas & Electric Company

1852862.1

Attachment 13

Malinda Dickenson Declaration

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Revisit Net Energy Metering Tariffs Pursuant to Decision 16-01-044, and to Address Other Issues Related to Net Energy Metering.	Rulemaking 20-08-020 (Filed August 27, 2020)

DECLARATION OF MALINDA DICKENSON IN SUPPORT OF THE INTERVENOR COMPENSATION CLAIM OF THE PROTECT OUR COMMUNITIES FOUNDATION

I, Malinda Dickenson, declare as follows:

1. I am the Legal & Executive Director of The Protect Our Communities Foundation ("PCF"). I make this declaration in support of PCF's Intervenor Compensation Claim filed herewith. I have personal knowledge of the facts set forth herein, except as to those stated on information and belief, and as to those, I am informed and believe them to be true. If called as a witness, I could and would competently testify to the matters stated herein.

2. PCF is a nonprofit public benefit corporation formed and existing under California law with headquarters in San Diego. It is organized exclusively for charitable and public purposes. PCF represents the interests of San Diego and Southern California residential ratepayers in proceedings before the California Public Utilities Commission, other California agencies and in the courts.

3. PCF has a small staff and sometimes relies on outside counsel to help represent PCF in proceedings before the Commission and in the courts. PCF retained Shute Mihaly & Weinberger ("SMW") to represent PCF in this proceeding, including judicial review, because of SMW's skill and reputation, including its experience before the Commission and the courts.

4. PCF also retained SMW because SMW was willing to represent PCF without requiring that PCF pay SMW's market rates upfront. The retainer agreement between PCF and SMW related to this claim stated PCF would pay SMW its market rates only after PCF receives an award of intervenor compensation. Specifically, the retainer agreement states in relevant part:

> This Firm is providing the legal services described at significantly less than commercial rates in view of the public interest nature of the case…Any amounts for attorneys' fees or costs incurred by the Firm actually received by us or by Client, as a result of agreement or court order in this matter, will be distributed as follows: (a) payment to the Firm for any unpaid work on this matter, whether billed or unbilled, at the rates established with Client for this representation, (b) reimbursement to Client of any attorneys' fees and costs incurred by the Firm paid by Client to the Firm and (c) payment to the Firm of the difference between the reduced rates and the commercial rates established for this case, (d) retention by the Firm of any funds in excess of the foregoing.

If PCF were required to pay market rates for attorney and expert services at the time those services were rendered, PCF would not be able to afford to retain outside counsel and thus would not be able to participate and advocate on behalf of its constituents in as many matters.

5. Starting on August 21, 2023, through the conclusion of the proceedings before the California Supreme Court, PCF and its co-petitioner Environmental Working Group (EWG) agreed to be jointly represented by SMW and to split the upfront fees and costs 50/50. After the joint representation ended, I represented PCF without utilizing outside counsel. As shown in PCF's timesheet, PCF does not claim any amounts billed to EWG.

6. A copy of SMW's invoices are attached to PCF's intervenor compensation claim as Attachment 14. Entries that are not included in this claim have been redacted accordingly.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed August 12, 2026, at San Diego, California.

/s/ Malinda Dickenson
Malinda Dickenson

Attachment 14

Shute, Mihaly & Weinberger Invoices

SHUTE, MIHALY & WEINBERGER LLP

396 Hayes Street, San Francisco, CA 94102
T:(415) 552-7272 F:(415) 552-5816
www.smwlaw.com

Tax ID:94-2647744

ATTORNEY-CLIENT COMMUNICATION | PRIVILEGED & CONFIDENTIAL

Protect Our Communities Foundation
4452 Park Blvd. #309
San Diego, CA 92116

INVOICE DATE	04/17/2023
SMW FILE	POC.NEM3
SMW INVOICE	280961
	Page 1

RE: NEM 3.0 Proceeding

PDF invoice to: malinda@protectourcommunities.org

(no hard copy needed)

Previous Balance $21,470.70

SERVICES RENDERED

			Hours	
[redacted]		[redacted]	[redacted]	
03/02/2023	AMS	Draft petition (3.5); email correspondence re record preparation (.1).	3.60	$792.00
[redacted]		[redacted]	[redacted]	
03/03/2023	AMS	Draft petition.	5.80	$1,276.00
[redacted]		[redacted]	[redacted]	

			Hours	
[redacted]				
03/15/2023	AMS	Draft costs and benefits section of petition.	3.60	$792.00
[redacted]				
03/23/2023	AMS	Draft costs and benefits section of petition.	1.50	$330.00
[redacted]				
03/24/2023	AMS	Draft costs and benefits section of petition.	3.60	$792.00
[redacted]				

			Hours	
03/31/2023	AMS	Review and comment on statutory interpretation, equity, continued growth, and non-residential sections of petition.	4.30	$946.00
		Total for Services thru 03/31/2023	55.90	$8,987.50

Summary

Timekeeper	Title	Hours	Rate	Amount
Ellison Folk	Partner	0.70	$250	$175.00
Aaron M. Stanton	Associate III	29.70	$220	$6,534.00
Maurene E. Ryan	Paralegal	20.70	$95	$1,966.50
Isabella Coye	Law Clerk	4.80	$65	$312.00

COSTS ADVANCED

03/31/2023	WestLaw - Invoice# 848090049	$79.94
	Total Costs Advanced thru 03/31/2023	$79.94

AMOUNT OF CURRENT BILLING $9,067.44

CREDITS TO ACCOUNT

03/28/2023	Payment - Thank you, Check # 5219 by Protect Our Communities Foundation	-$11,470.60
03/28/2023	Payment - Thank you, Check # 5222 by Protect Our Communities Foundation	-$10,000.10

TOTAL DUE $9,067.44

AGED AMOUNTS DUE

Stmt Date	Stmt #	Billed	Due
			$0.00

SHUTE, MIHALY & WEINBERGER LLP

396 Hayes Street, San Francisco, CA 94102
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www.smwlaw.com

Tax ID:94-2647744

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4452 Park Blvd. #309
San Diego, CA 92116

INVOICE DATE	05/11/2023
SMW FILE	POC.NEM3
SMW INVOICE	281397
	Page 1

RE: NEM 3.0 Proceeding

PDF invoice to: malinda@protectourcommunities.org

(no hard copy needed)

Previous Balance $9,067.44

SERVICES RENDERED

Hours

[redacted]

			Hours	
[redacted]				
04/07/2023	AMS	Revise petition for review.	3.60	$792.00
[redacted]				
04/08/2023	AMS	Revise petition for writ of review.	3.80	$836.00
[redacted]				
04/11/2023	EF	Review petition.	4.50	$1,125.00
[redacted]				
04/12/2023	EF	Revise petition for writ.	1.00	$250.00
[redacted]				
04/14/2023	EF	Review and revise petition for writ.	2.00	$500.00
[redacted]				
04/16/2023	EF	Review and revise petition for writ of review.	1.10	$275.00
[redacted]				
04/18/2023	EF	Review and revise petition for review.	3.00	$750.00
04/19/2023	EF	Review and revise brief; confer with M. Ryan re citations.	1.80	$450.00
[redacted]				

			Hours	
[redacted]				
04/23/2023	EF	Review and revise brief.	3.20	$800.00
[redacted]				
04/25/2023	EF	Finalize brief; review and respond to client email; research real party in interest.	3.80	$950.00
[redacted]				
04/26/2023	EF	Review client comments; revise brief; email client re same; direct research re judicial notice of Public Utilities Commission decisions.	4.20	$1,050.00
[redacted]				
04/27/2023	EF	Telephone call with counsel for Public Utilities Commission; review caption; email client re timing; confer re service issues; confer with client re filing timing.	2.50	$625.00
[redacted]				
04/29/2023	EF	Review cite checking changes, finalize brief, email clients.	1.30	$325.00
		Total for Services thru 04/30/2023	128.40	$21,360.00

Summary

Timekeeper	Title	Hours	Rate	Amount
Ellison Folk	Partner	41.10	$250	$10,275.00
Aaron M. Stanton	Associate III	19.10	$220	$4,202.00
Nardos Girma	Associate I	5.60	$180	$1,008.00
Julie R. Dolinsek	Paralegal	20.60	$95	$1,957.00

Maurene E. Ryan	Paralegal	39.60	$95	$3,762.00
Isabella Coye	Law Clerk	2.40	$65	$156.00

COSTS ADVANCED

04/30/2023	WestLaw -Invoice# 848248188	$214.83
	Total Costs Advanced thru 04/30/2023	$214.83

	AMOUNT OF CURRENT BILLING	$21,574.83

CREDITS TO ACCOUNT

05/10/2023	Payment - Thank you, Check # 68204000 by Protect Our Communities Foundation	-$9,067.44
	TOTAL DUE	$21,574.83

AGED AMOUNTS DUE

Stmt Date	Stmt #	Billed	Due
			$0.00

SHUTE, MIHALY
& WEINBERGER LLP EF

396 Hayes Street, San Francisco, CA 94102
T:(415) 552-7272 F:(415) 552-5816
www.smwlaw.com

Tax ID:94-2647744

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4452 Park Blvd. #309
San Diego, CA 92116

INVOICE DATE	06/22/2023
SMW FILE	POC.NEM3
SMW INVOICE	281741
	Page 1

RE: NEM 3.0 Proceeding

PDF invoice to: malinda@protectourcommunities.org

(no hard copy needed)

Previous Balance $21,574.83

SERVICES RENDERED

			Hours	
05/01/2023	EF	Confer with clients re filing, prepare request for judicial notice, confer with P. Larkin, M. Ryan re appendix, filing, service.	4.50	$1,125.00
[redacted]				
05/02/2023	EF	Finalize brief, review cite checking changes, finalize request for judicial notice; email E. Moldavsky, email clients; confer with E. Moldavsky re filing petition.	3.20	$800.00
[redacted]				
05/03/2023	EF	Review final brief, tables, etc.	0.70	$175.00
05/04/2023	EF	Telephone call with Moldavsky, email exchange with client/co-petitioners re same; respond to press inquiries.	0.80	$200.00
05/05/2023	EF	Telephone call with Public Utilities Commission attorney re abeyance.	1.00	$250.00
[redacted]				

			Hours	
[redacted]				
05/16/2023	EF	Review and respond to email re extension request.	0.20	$50.00
[redacted]				
05/18/2023	EF	Review and respond to email re extension; consider same.	0.30	$75.00
[redacted]				
		Total for Services thru 05/31/2023	18.50	$3,710.50

Summary

Timekeeper	Title	Hours	Rate	Amount
Ellison Folk	Partner	12.60	$250	$3,150.00
Maurene E. Ryan	Paralegal	5.90	$95	$560.50

COSTS ADVANCED

05/03/2023	FedEx - Invoice# 8-128-71541	$71.62
05/03/2023	TureFiling	$819.25
05/03/2023	Photocopy	$46.20
05/30/2023	United Litigation Discovery - Invoice# 37312	$150.00
05/31/2023	WestLaw- Invoice# 848440604	$24.58
	Total Costs Advanced thru 05/31/2023	$1,111.65

AMOUNT OF CURRENT BILLING	$4,822.15
TOTAL DUE	$26,396.98

AGED AMOUNTS DUE

Stmt Date	Stmt #	Billed	Due
05/11/2023	281397	$21,574.83	$21,574.83
			$21,574.83

***The Associate I category may include law school graduates who have not yet been admitted to a State Bar.**
Some Firm attorneys are only licensed to practice in states other than California.
Bar information for each attorney is available on the Firm's website www.smwlaw.com

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Tax ID:94-2647744

ATTORNEY-CLIENT COMMUNICATION | PRIVILEGED & CONFIDENTIAL

Protect Our Communities Foundation
4452 Park Blvd. #309
San Diego, CA 92116

INVOICE DATE	07/13/2023
SMW FILE	POC.NEM3
SMW INVOICE	282141
	Page 1

RE: NEM 3.0 Proceeding

PDF invoice to: malinda@protectourcommunities.org

(no hard copy needed)

Previous Balance $26,396.98

SERVICES RENDERED

			Hours	
[redacted]				
06/22/2023	AMS	Email correspondence re reply.	0.20	$44.00
06/29/2023	AMS	Review answer briefs; strategize re reply.	3.30	$726.00
[redacted]				
Total for Services thru 06/30/2023			9.60	$2,121.00

Summary

Timekeeper	Title	Hours	Rate	Amount
Ellison Folk	Partner	0.30	$250	$75.00
Aaron M. Stanton	Associate III	9.30	$220	$2,046.00

AMOUNT OF CURRENT BILLING $2,121.00

TOTAL DUE $28,517.98

AGED AMOUNTS DUE

Stmt Date	Stmt #	Billed	Due
05/11/2023	281397	$21,574.83	$21,574.83
06/22/2023	281741	$4,822.15	$4,822.15
			$26,396.98

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INVOICE DATE	08/14/2023
SMW FILE	POC.NEM3
SMW INVOICE	282511
	Page 1

RE: NEM 3.0 Proceeding

PDF invoice to: malinda@protectourcommunities.org

(no hard copy needed)

Previous Balance $28,517.98

SERVICES RENDERED

			Hours	
07/06/2023	AMS	Review decision denying rehearing; strategize re same; draft reply brief.	2.40	$528.00
[redacted]				
07/11/2023	AMS	Draft reply brief.	3.90	$858.00
07/12/2023	AMS	Draft reply brief.	2.10	$462.00
07/13/2023	AMS	Draft reply brief.	7.20	$1,584.00
07/14/2023	AMS	Draft reply brief.	3.30	$726.00
07/15/2023	AMS	Draft reply brief; revise same.	6.40	$1,408.00
07/17/2023	AMS	Revise reply brief.	5.70	$1,254.00
07/17/2023	EF	Review and revise reply brief, confer with A. Stanton re: same.	1.10	$275.00
07/18/2023	EF	Review and revise reply brief, review Commission/RPI answering briefs.	4.70	$1,175.00
[redacted]				

			Hours	
[redacted]				
07/20/2023	AMS	Revise reply brief; legal research re same; email correspondence re same.	1.80	$396.00
[redacted]				
07/21/2023	AMS	Revise reply brief.	1.20	$264.00
07/24/2023	AMS	Revise reply brief.	4.90	$1,078.00
07/25/2023	AMS	Revise reply brief and supplemental request for judicial notice; direct cite-check of same.	4.80	$1,056.00
07/25/2023	EF	Review and revise reply brief, RJN.	1.40	$350.00
07/26/2023	AMS	Revise reply brief; direct cite-check of reply brief.	3.00	$660.00
[redacted]				
07/26/2023	EF	Review and revise reply brief; confer with A. Stanton re: same.	2.30	$575.00
[redacted]				
07/28/2023	AMS	Revise reply brief; email correspondence re same.	1.30	$286.00
07/30/2023	AMS	Revise reply brief.	1.70	$374.00
07/31/2023	AMS	Revise reply brief; direct filing of same.	3.60	$792.00
[redacted]				
		Total for Services thru 07/31/2023	77.20	$16,271.50

Summary

Timekeeper	Title	Hours	Rate	Amount
Ellison Folk	Partner	14.90	$250	$3,725.00
Aaron M. Stanton	Associate III	54.20	$220	$11,924.00
Julie R. Dolinsek	Paralegal	3.20	$95	$304.00
Brianna So	Law Clerk	4.90	$65	$318.50

COSTS ADVANCED

07/31/2023	TrueFiling x2	$21.00
07/31/2023	Westlaw - Invoice# 848783754	$50.57
	Total Costs Advanced thru 07/31/2023	$71.57

	AMOUNT OF CURRENT BILLING	$16,343.07
	CREDITS TO ACCOUNT	
07/18/2023	Payment - Thank you, Check # 0079488409 by Protect Our Communities Foundation	-$4,822.15
07/18/2023	Payment - Thank you, Check # 05247 by Protect Our Communities Foundation	-$21,574.83
	TOTAL DUE	$18,464.07

AGED AMOUNTS DUE

Stmt Date	Stmt #	Billed	Due
07/13/2023	282141	$2,121.00	$2,121.00
			$2,121.00

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INVOICE DATE	10/16/2023
SMW FILE	POC.NEM3
SMW INVOICE	283287
	Page 1

RE: NEM 3.0 Proceeding

PDF invoice to: malinda@protectourcommunities.org

(no hard copy needed)

Previous Balance $16,908.57

SERVICES RENDERED

			Hours	
[redacted]				
09/14/2023	EF	Review order from court, email A. Stanton re: same.	0.20	$50.00
[redacted]				
		Total for Services thru 09/30/2023	3.40	$754.00

Summary

Timekeeper	Title	Hours	Rate	Amount
Aaron M. Stanton	Associate III	3.20	$220	$704.00
Ellison Folk	Partner	0.20	$250	$50.00

	TOTAL OF CURRENT BILLING	$754.00
	Your portion is 50.00% of the current charges	
	YOUR TOTAL OF CURRENT BILL	$377.00

CREDITS TO ACCOUNT

10/03/2023	Payment - Thank you, Check # 5272 by Protect Our Communities Foundation	-$16,343.07
10/06/2023	ACH Payment - Thank you by Environmental W	-$565.50
	10/16/2023 Payment - Advance Account	$377.00
	YOUR TOTAL DUE	$0.00

PREPAID FUNDS REMAINING $6,502.50

AGED AMOUNTS DUE

Stmt Date	Stmt #	Billed	Due
			$0.00

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INVOICE DATE 11/09/2023
SMW FILE POC.NEM3
SMW INVOICE 284017
Page 1

RE: NEM 3.0 Proceeding

PDF invoice to: malinda@protectourcommunities.org

(no hard copy needed)

Previous Balance $0.00

SERVICES RENDERED

[redacted]

10/02/2023	EF	Confer with A. Stanton re: Public Utilities Commission request for judicial notice; review same.; review client email re: same.	0.50	$125.00

[redacted]

10/04/2023	AMS	Revise opposition to request for judicial notice; email correspondence re same.	2.50	$550.00

[redacted]

Total for Services thru 10/31/2023 9.80 $2,210.00

Summary

Timekeeper	Title	Hours	Rate	Amount
Aaron M. Stanton	Associate III	8.00	$220	$1,760.00
Ellison Folk	Partner	1.80	$250	$450.00

COSTS ADVANCED

10/31/2023	WestLaw - Invoice# 849211104	$8.99
	Total Costs Advanced thru 10/31/2023	$8.99

TOTAL OF CURRENT BILLING $2,218.99

Your portion is 50.00% of the current charges

YOUR TOTAL OF CURRENT BILL $1,109.50

YOUR TOTAL DUE $1,109.50

PREPAID FUNDS REMAINING $6,502.50

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INVOICE DATE	12/21/2023
SMW FILE	POC.NEM3
SMW INVOICE	284056
	Page 1

RE: NEM 3.0 Proceeding

PDF invoice to: malinda@protectourcommunities.org

(no hard copy needed)

Previous Balance $1,109.50

SERVICES RENDERED

			Hours	
[redacted]				
11/16/2023	EF	Prepare for oral argument.	1.00	$250.00
[redacted]				
11/17/2023	EF	Prepare for oral argument.	1.00	$250.00

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INVOICE DATE	12/21/2023
SMW FILE	POC.NEM3
SMW INVOICE	284056
	Page 2

Protect Our Communities Foundation
RE: NEM 3.0 Proceeding

			Hours	
11/19/2023	EF	Prepare for oral argument.	2.00	$500.00
[redacted]				
11/20/2023	EF	Prepare for oral argument; call with client re: same	1.00	$250.00
11/21/2023	EF	Prepare for oral argument.	1.20	$300.00
[redacted]				
11/27/2023	EF	Prepare for oral argument.	1.90	$475.00
[redacted]				
11/28/2023	EF	Prepare for oral argument.	4.80	$1,200.00
[redacted]				
11/29/2023	EF	Prepare oral argument.	2.00	$500.00
[redacted]				
11/30/2023	EF	Prepare for oral argument.	5.00	$1,250.00
		Total for Services thru 11/30/2023	40.60	$9,452.00

Summary

Timekeeper	Title	Hours	Rate	Amount
Aaron M. Stanton	Associate III	16.60	$220	$3,652.00
Ellison Folk	Partner	0.80	$250	$0.00
Ellison Folk	Partner	23.20	$250	$5,800.00

COSTS ADVANCED

10/05/2023	TrueFiling	$10.50
11/08/2023	TrueFiling	$21.00
11/20/2023	TrueFiling	$21.00
11/30/2023	WestLaw -Invoice# 849357958	$8.80
	Total Costs Advanced thru 11/30/2023	$61.30

Protect Our Communities Foundation
RE: NEM 3.0 Proceeding

TOTAL OF CURRENT BILLING		$9,513.30
Your portion is 50.00% of the current charges		
YOUR TOTAL OF CURRENT BILL		$5,371.65
12/21/2023 Payment - Advance Account		$5,371.65
YOUR TOTAL DUE		$1,109.50
PREPAID FUNDS REMAINING	$1,130.85	

AGED AMOUNTS DUE

Stmt Date	Stmt #	Billed	Due
11/09/2023	284017	$1,109.50	$1,109.50
			$1,109.50

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INVOICE DATE	01/31/2024
SMW FILE	POC.NEM3
SMW INVOICE	284792
	Page 1

RE: NEM 3.0 Proceeding

PDF invoice to: malinda@protectourcommunities.org

(no hard copy needed)

Previous Balance $2,212.16

SERVICES RENDERED

			Hours	
[redacted]				
12/01/2023	EF	Prepare oral argument.	1.00	$250.00
[redacted]				
12/04/2023	EF	Prepare for oral argument.	5.00	$1,250.00
[redacted]				
12/05/2023	EF	Prepare oral argument; attend moot court.	3.50	$875.00
12/06/2023	AMS	Review letter to counsel re questions for oral argument; strategize re same; research re same.	1.30	$286.00
[redacted]				

Protect Our Communities Foundation
RE: NEM 3.0 Proceeding

			Hours	
[redacted]				
12/07/2023	EF	Prepare for oral argument.	3.00	$750.00
[redacted]				
12/09/2023	EF	Prepare for oral argument.	4.00	$1,000.00
12/10/2023	EF	Prepare for oral argument.	6.00	$1,500.00
12/11/2023	AMS	Prepare for oral argument; participate in moot hearing re same.	2.90	$638.00
12/11/2023	EF	Prepare oral argument; moot court for same.	4.00	$1,000.00
[redacted]				
12/12/2023	EF	Prepare for oral argument.	5.00	$1,250.00
[redacted]				
12/13/2023	EF	Prepare for and attend oral argument, debrief.	4.00	$1,000.00
[redacted]				
12/21/2023	EF	Review appellate decision; consider petition for rehearing/review.	2.50	$625.00
12/22/2023	EF	Review appellate decision; call with clients re: rehearing petition.	1.00	$250.00
12/26/2023	EF	Prepare petition for rehearing.	3.50	$875.00
12/27/2023	EF	Prepare petition for rehearing; confer with S. Goldman re: same.	4.50	$1,125.00
[redacted]				
12/28/2023	EF	Review leg history research; confer with S. Goldman re: same.	0.70	$175.00
12/28/2023	EF	Review and revise rehearing petition.	3.00	$750.00
[redacted]				
12/29/2023	EF	Prepare petition for rehearing; review inserts on legislative history; confer with S. Goldman re: same.	4.00	$1,000.00
[redacted]				
		Total for Services thru 12/31/2023	87.80	$20,577.00

Summary

Timekeeper	Title	Hours	Rate	Amount
Aaron M. Stanton	Associate III	13.10	$220	$2,882.00
Andrew P. Miller	Associate III	3.50	$220	$770.00
Ellison Folk	Partner	58.70	$250	$14,675.00
Seth Goldman	Associate I	12.50	$180	$2,250.00

COSTS ADVANCED

12/28/2023	Legislative History (2 bills)	$600.00
12/29/2023	WestLaw - Invoice# 849512996	$88.67
	Total Costs Advanced thru 12/31/2023	$688.67

TOTAL OF CURRENT BILLING		$21,265.67
Your portion is 50.00% of the current charges		
YOUR TOTAL OF CURRENT BILL		$10,632.84
01/31/2024 Payment - Advance Account		$21.35
YOUR TOTAL DUE		$12,823.65
PREPAID FUNDS REMAINING	$0.00	

AGED AMOUNTS DUE

Stmt Date	Stmt #	Billed	Due
01/31/2024	284442	$2,212.16	$2,212.16
			$2,212.16

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INVOICE DATE	02/22/2024
SMW FILE	POC.NEM3
SMW INVOICE	285186
	Page 1

RE: NEM 3.0 Proceeding

PDF invoice to: malinda@protectourcommunities.org

(no hard copy needed)

Previous Balance $316.40

SERVICES RENDERED

			Hours	
[redacted]				
01/03/2024	EF	Review and revise petition for rehearing.	4.50	$1,125.00
[redacted]				
01/04/2024	AMS	Review court of appeal decision; revise petition for rehearing.	2.50	$550.00
01/04/2024	EF	Prepare petition for rehearing.	0.30	$75.00
[redacted]				
01/05/2024	AMS	Research re procedure for petition for review in Supreme Court; review court of appeal decision; research in support of petition for review.	1.30	$286.00
[redacted]				

			Hours	
01/08/2024	AMS	Review court of appeal decision; strategize re petition for review.	5.00	$1,100.00
01/08/2024	EF	Confer with A. Stanton, S. Goldman re: petition for review.	0.60	$150.00
01/09/2024	AMS	Research in support of petition for review.	3.80	$836.00
01/10/2024	AMS	Research re petition for review; draft outline of petition.	3.50	$770.00
[redacted]				
01/11/2024	EF	Review petition for review; confer with A. Stanton re: same.	1.00	$250.00
[redacted]				
01/12/2024	AMS	Draft petition for review; legal research re same.	3.50	$770.00
01/12/2024	EF	Review research on PUC provisions	0.30	$75.00
01/16/2024	AMS	Review order denying rehearing (.3); draft statement of facts section of petition for review (4.0); draft standard of review argument of petition for review (1.0); legal research re standard of review (1.0).	6.30	$1,386.00
01/16/2024	EF	Review order from court; email client re: same.	0.20	$50.00
01/17/2024	AMS	Draft standard of review argument section of petition for review.	4.90	$1,078.00
01/18/2024	AMS	Draft petition for review.	8.00	$1,760.00
[redacted]				
01/19/2024	AMS	Revise petition for review.	2.70	$594.00
01/19/2024	EF	Review and revise petition for review; confer with A. Stanton re: same.	4.50	$1,125.00
[redacted]				
01/20/2024	AMS	Revise petition for review.	3.20	$704.00
01/20/2024	EF	Draft petition for review.	6.00	$1,500.00
01/21/2024	EF	Review and revise petition for review.	4.50	$1,125.00
[redacted]				
01/22/2024	AMS	Revise petition for review.	7.10	$1,562.00

			Hours	
01/22/2024	EF	Review and revise petition for review; confer with A. Stanton re: same.	2.00	$500.00
[redacted]				
01/23/2024	AMS	Revise petition for review.	4.00	$880.00
01/23/2024	EF	Review and revise petition for review.	2.00	$500.00
01/24/2024	AMS	Revise petition for review; legal research re same.	6.40	$1,408.00
01/24/2024	EF	Review and revise petition for review; confer with client re: same.	4.30	$1,075.00
01/25/2024	AMS	Revise petition for review.	5.50	$1,210.00
01/25/2024	EF	Review and revise petition for review.	6.30	$1,575.00
[redacted]				
01/26/2024	EF	Review and revise petition for review; confer with client re: same.	7.00	$1,750.00
[redacted]				
01/27/2024	EF	Review emails re: petition, for review; respond to same; revise petition for review.	2.40	$600.00
01/28/2024	AMS	Revise petition for review.	4.70	$1,034.00
01/28/2024	EF	Review and revise petition for review; respond to client comments.	6.00	$1,500.00
[redacted]				
01/29/2024	EF	Finalize petition for review.	1.00	$250.00
[redacted]				
		Total for Services thru 01/31/2024	194.20	$41,347.50

Summary

Timekeeper	Title	Hours	Rate	Amount

Aaron M. Stanton	Associate III	89.80	$220	$19,756.00
Ellison Folk	Partner	59.30	$250	$14,825.00
Julie R. Dolinsek	Paralegal	15.90	$95	$1,510.50
Seth Goldman	Associate I	29.20	$180	$5,256.00

COSTS ADVANCED

01/04/2024	TrueFiling	$21.00
01/23/2024	Legislative Intent Service, Inc.- Invoice# 39568	$445.00
01/29/2024	TrueFiling	$752.30
01/31/2024	WestLaw - Invoice# 849667481	$234.01
01/31/2024	WestLaw - Invoice# 849667481	$113.93
01/31/2024	Photocopy charges @ $.10 per page	$21.00
	Total Costs Advanced thru 01/31/2024	$1,587.24

TOTAL OF CURRENT BILLING $42,934.74

Your portion is 50.00% of the current charges

YOUR TOTAL OF CURRENT BILL $21,467.36

YOUR TOTAL DUE $21,783.76

PREPAID FUNDS REMAINING $2,212.16

AGED AMOUNTS DUE

Stmt Date	Stmt #	Billed	Due
02/22/2024	284815	$316.40	$316.40
			$316.40

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INVOICE DATE	04/23/2024
SMW FILE	POC.NEM3
SMW INVOICE	285619
	Page 1

RE: NEM 3.0 Proceeding

PDF invoice to: malinda@protectourcommunities.org

(no hard copy needed)

Previous Balance $24,505.54

SERVICES RENDERED

			Hours	
[redacted]				
03/22/2024	EF	Review email from court; email clients re: same.	0.10	$25.00
[redacted]				
		Total for Services thru 03/31/2024	0.40	$91.00

Summary

Timekeeper	Title	Hours	Rate	Amount
Aaron M. Stanton	Associate III	0.30	$220	$66.00
Ellison Folk	Partner	0.10	$250	$25.00

INVOICE DATE	04/23/2024
SMW FILE	POC.NEM3
SMW INVOICE	285619

Protect Our Communities Foundation
RE: NEM 3.0 Proceeding

	TOTAL OF CURRENT BILLING	$91.00
	Your portion is 50.00% of the current charges	
	YOUR TOTAL OF CURRENT BILL	$45.50

CREDITS TO ACCOUNT

04/10/2024	Payment - Thank you, Check # 37650472 by Protect Our Communities Foundation	-$5,250.34
04/10/2024	Payment - Thank you, Check # 5315 by Protect Our Communities Foundation	-$18,938.80
	YOUR TOTAL DUE	$361.90

AGED AMOUNTS DUE

Stmt Date	Stmt #	Billed	Due
02/22/2024	284815	$316.40	$316.40
			$316.40

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INVOICE DATE	05/21/2024
SMW FILE	POC.NEM3
SMW INVOICE	286031
	Page 1

RE: NEM 3.0 Proceeding

PDF invoice to: malinda@protectourcommunities.org

(no hard copy needed)

Previous Balance $361.90

SERVICES RENDERED

			Hours	
[redacted]				
04/11/2024	EF	Review rules of court, grant of review; prepare extension outline; email clients re: same; email opposing counsel re: extension; review and respond to request for brief.	1.00	$250.00
[redacted]				
04/16/2024	EF	Review issues, extension; consider time line; prepare outline of opening brief.	0.90	$225.00
[redacted]				
04/18/2024	AMS	Draft outline of opening brief.	2.60	$572.00

			Hours	
04/18/2024	EF	Consider issues for opening brief, timing for briefing/client review.	0.50	$125.00
[redacted]				
04/19/2024	EF	Review outline/schedule.	1.20	$300.00
[redacted]				
04/22/2024	EF	Review revised outline.	0.30	$75.00
[redacted]				
04/24/2024	EF	Review outline/email re: same.	0.20	$50.00
[redacted]				
04/29/2024	EF	Research re: standard of review in PUC cases.	2.00	$500.00
[redacted]				
		Total for Services thru 04/30/2024	20.50	$4,816.00

Summary

Timekeeper	Title	Hours	Rate	Amount
Ellison Folk	Partner	10.20	$250	$2,550.00
Aaron M. Stanton	Associate III	10.30	$220	$2,266.00

COSTS ADVANCED

04/12/2024	TrueFiling	$10.50
04/22/2024	TrueFiling	$10.50
	Total Costs Advanced thru 04/30/2024	$21.00

	TOTAL OF CURRENT BILLING	$4,837.00
	Your portion is 50.00% of the current charges	
	YOUR TOTAL OF CURRENT BILL	$2,418.50

CREDITS TO ACCOUNT

05/10/2024	Payment - Thank you, Check # 43028966 by Protect Our Communities Foundation	-$45.50
05/20/2024	Payment - Thank you, Check # 44366857 by Protect Our Communities Foundation	-$316.40
	YOUR TOTAL DUE	$2,418.50

AGED AMOUNTS DUE

Stmt Date	Stmt #	Billed	Due
			$0.00

SHUTE, MIHALY & WEINBERGER LLP

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San Diego, CA 92116

INVOICE DATE	06/20/2024
SMW FILE	POC.NEM3
SMW INVOICE	286471
	Page 1

RE: NEM 3.0 Proceeding

PDF invoice to: malinda@protectourcommunities.org

(no hard copy needed)

Previous Balance $2,418.50

SERVICES RENDERED

			Hours	
[redacted]				
05/02/2024	EF	Prepare opening brief.	2.25	$562.50
[redacted]				
05/03/2024	EF	Prepare opening brief; call with A. Stanton re: same.	1.15	$287.50
05/05/2024	AMS	Draft statement of the case.	0.25	$55.00
05/06/2024	EF	Draft opening brief.	1.75	$437.50
[redacted]				
05/08/2024	EF	Prepare opening brief.	2.25	$562.50
05/09/2024	AMS	Draft standard of review section of opening brief; legal research re same.	0.65	$143.00
05/09/2024	EF	Draft opening brief.	2.50	$625.00
05/10/2024	AMS	Draft standard of review section of opening brief; legal research re same.	3.65	$803.00

			Hours	
05/10/2024	EF	Prepare opening brief (DAC).	2.25	$562.50
05/11/2024	AMS	Draft standard of review section of argument; legal research re same.	2.20	$484.00
05/12/2024	AMS	Draft standard of review section of opening brief.	1.65	$363.00
05/13/2024	AMS	Draft standard of review and statement of the case sections of opening brief.	2.15	$473.00
05/14/2024	EF	Draft opening brief (standard of review).	1.50	$375.00
05/15/2024	AMS	Revise costs and benefits and disadvantaged communities sections of opening brief; revise standard of review section of opening brief.	2.10	$462.00
05/15/2024	EF	Draft opening brief (standard of review (3) DAC (.5); costs/benefits (.8).	2.25	$562.50
05/16/2024	AMS	Revise draft opening brief.	2.20	$484.00
05/16/2024	EF	Prepare opening brief (1.8 all topics equally); revise DAC section (2.4).	2.10	$525.00
05/17/2024	AMS	Revise draft opening brief.	1.40	$308.00
05/17/2024	EF	Prepare opening brief (standard of review 1.5) (DAC .5); costs/benefits (1).	1.75	$437.50
05/20/2024	AMS	Legal research in support of opening brief; strategize re same.	0.35	$77.00
05/20/2024	EF	Develop research tasks for opening brief.	0.15	$37.50
[redacted]				
05/21/2024	AMS	Direct legal research in support of opening brief.	0.60	$132.00
05/21/2024	EF	Prepare opening brief.	0.35	$87.50
[redacted]				
05/22/2024	AMS	Direct research re opening brief.	0.20	$44.00
[redacted]				

			Hours	
05/24/2024	AMS	Revise opening brief; legal research re same.	1.45	$319.00
[redacted]				
05/25/2024	AMS	Revise opening brief.	0.85	$187.00
05/26/2024	AMS	Revise opening brief.	0.55	$121.00
05/26/2024	EF	Review and revise opening brief (costs/benefits).	3.00	$750.00
05/27/2024	AMS	Revise opening brief.	0.95	$209.00
05/27/2024	EF	Review and revise opening brief (equal c/b and DAC).	1.25	$312.50
05/28/2024	AMS	Revise opening brief.	1.70	$374.00
05/28/2024	EF	Review and revise brief (SOC .5).	0.75	$187.50
[redacted]				
05/29/2024	AMS	Revise opening brief; legal research re same.	2.85	$627.00
05/29/2024	EF	Review and revise brief; draft introduction.	3.00	$750.00
05/30/2024	AMS	Revise opening brief; legal research re same.	2.95	$649.00
[redacted]				
05/31/2024	AMS	Revise opening brief; legal research re same.	1.35	$297.00
05/31/2024	EF	Prepare opening brief.	0.25	$62.50
[redacted]				
		Total for Services thru 05/31/2024	79.00	$16,328.00

Summary

Timekeeper	Title	Hours	Rate	Amount
Ellison Folk	Partner	33.65	$250	$8,412.50
Aaron M. Stanton	Associate III	32.05	$220	$7,051.00
Julia Larkin	Law Clerk	13.25	$65	$861.25
Lauren Lewis	Law Clerk	0.05	$65	$3.25

COSTS ADVANCED

05/31/2024	WestLaw - Invoice# 850276978	$163.07

COSTS ADVANCED

05/31/2024	WestLaw - Invoice# 850276978	$80.81
	Total Costs Advanced thru 05/31/2024	$243.88

TOTAL OF CURRENT BILLING	$16,571.88
Your portion is 50.00% of the current charges	
YOUR TOTAL OF CURRENT BILL	$16,571.88
YOUR TOTAL DUE	$18,990.38

AGED AMOUNTS DUE

Stmt Date	Stmt #	Billed	Due
05/21/2024	286031	$2,418.50	$2,418.50
			$2,418.50

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INVOICE DATE	07/18/2024
SMW FILE	POC.NEM3
SMW INVOICE	286904
	Page 1

RE: NEM 3.0 Proceeding

PDF invoice to: malinda@protectourcommunities.org

(no hard copy needed)

Previous Balance $18,990.38

SERVICES RENDERED

			Hours	
06/02/2024	EF	Review and revise opening brief.	1.00	$250.00
06/03/2024	AMS	Revise opening brief; direct research in support of reply brief.	5.70	$1,254.00
[redacted]				
06/04/2024	EF	Review and revise brief.	7.00	$1,750.00
[redacted]				
06/05/2024	AMS	Revise opening brief.	8.60	$1,892.00
06/05/2024	EF	Review and revise opening brief; confer with client re: same.	2.80	$700.00
[redacted]				

			Hours	
06/06/2024	AMS	Revise opening brief; legal research re same; draft request for judicial notice.	4.80	$1,056.00
06/06/2024	EF	Review and revise opening brief.	3.10	$775.00
[redacted]				
06/07/2024	EF	Review and revise opening brief.	1.50	$375.00
[redacted]				
06/08/2024	AMS	Revise opening brief.	5.20	$1,144.00
[redacted]				
06/09/2024	AMS	Revise opening brief.	0.60	$132.00
06/09/2024	EF	Review final brief.	1.00	$250.00
[redacted]				
06/11/2024	AMS	Email correspondence re opposition brief.	0.30	$66.00
[redacted]				

Hours

[redacted]

	Hours	Amount
Total for Services thru 06/30/2024	92.50	$16,431.50

Summary

Timekeeper	Title	Hours	Rate	Amount
Ellison Folk	Partner	19.50	$250	$4,875.00
Aaron M. Stanton	Associate III	41.70	$220	$9,174.00
Maurene E. Ryan	Paralegal	11.60	$95	$1,102.00
Lauren Lewis	Law Clerk	19.70	$65	$1,280.50

COSTS ADVANCED

06/10/2024	TrueFiling	$21.00
06/30/2024	WestLaw - Invoice# 850413851	$1.25
06/30/2024	WestLaw - Invoice# 850413851	$272.20
	Total Costs Advanced thru 06/30/2024	$294.45

TOTAL OF CURRENT BILLING $16,724.70

Your portion is 50.00% of the current charges

YOUR TOTAL OF CURRENT BILL $8,363.60

CREDITS TO ACCOUNT

06/30/2024	Payment - Thank you, Check # 48764195 by Protect Our Communities Foundation	-$2,418.50

YOUR TOTAL DUE $24,935.48

AGED AMOUNTS DUE

Stmt Date	Stmt #	Billed	Due
06/20/2024	286471	$16,571.88	$16,571.88
			$16,571.88

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INVOICE DATE	08/15/2024
SMW FILE	POC.NEM3
SMW INVOICE	287323
	Page 1

RE: NEM 3.0 Proceeding

PDF invoice to: malinda@protectourcommunities.org

(no hard copy needed)

Previous Balance $24,935.48

SERVICES RENDERED

			Hours	
[redacted]				
07/01/2024	EF	Review Loper decision.	1.00	$257.00
[redacted]				

			Hours	
[redacted]				
07/24/2024	EF	Review new appellate decision re: standard of review; email exchange re: extension request.	0.40	$102.80
[redacted]				
		Total for Services thru 07/31/2024	40.00	$3,915.90

Summary

Timekeeper	Title	Hours	Rate	Amount
Ellison Folk	Partner	1.40	$257	$359.80
Aaron M. Stanton	Associate III	6.10	$226	$1,378.60
Lauren Lewis	Law Clerk	32.50	$67	$2,177.50

COSTS ADVANCED

07/26/2024	Barkley Court Reporters - Invoice# 1352552	$1,202.50
07/31/2024	WestLaw - Invoice# 850575898	$40.10
	Total Costs Advanced thru 07/31/2024	$1,242.60

TOTAL OF CURRENT BILLING	$5,158.50
Your portion is 50.00% of the current charges	
YOUR TOTAL OF CURRENT BILL	$2,579.25

CREDITS TO ACCOUNT

07/24/2024	Payment - Thank you, Check # 5341 by Protect Our Communities Foundation	-$16,571.88
07/24/2024	Payment - Thank you, Check # 5341 by Protect Our Communities Foundation	-$2,418.50
	YOUR TOTAL DUE	$8,524.35

AGED AMOUNTS DUE

Stmt Date	Stmt #	Billed	Due
07/18/2024	286904	$8,363.60	$5,945.10
			$5,945.10

***The Associate I category may include law school graduates who have not yet been admitted to a State Bar.**
Some Firm attorneys are only licensed to practice in states other than California.
Bar information for each attorney is available on the Firm's website www.smwlaw.com

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INVOICE DATE	08/15/2024
SMW FILE	POC.SUP
SMW INVOICE	287324
	Page 1

RE: Oppose SDG&E's Cert Petition to US Supreme Court

PDF invoice to: malinda@protectourcommunities.org

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	Previous Balance	$5,071.99
	AMOUNT OF CURRENT BILLING	$0.00
	CREDITS TO ACCOUNT	
07/24/2024	Payment - Thank you, Check # 55117450 by Protect Our Communities Foudation	-$1,259.80
	TOTAL DUE	$3,812.19

AGED AMOUNTS DUE

Stmt Date	Stmt #	Billed	Due
07/18/2024	286905	$3,812.19	$3,812.19
			$3,812.19

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INVOICE DATE	10/10/2024
SMW FILE	POC.NEM3
SMW INVOICE	288158
	Page 1

RE: NEM 3.0 Proceeding

PDF invoice to: malinda@protectourcommunities.org

(no hard copy needed)

Previous Balance $8,908.55

SERVICES RENDERED

			Hours	
[redacted]				
09/13/2024	EF	Review Public Utilities Commission brief.	0.50	$128.50
[redacted]				
09/16/2024	EF	Review PUC brief; prepare reply brief, extension for reply brief.	1.70	$436.90
[redacted]				
09/17/2024	EF	Review answering briefs; outline response; confer with A. Stanton re: same.	3.00	$771.00

			Hours	
[redacted]				
09/18/2024	EF	Prepare extension request.	0.20	$51.40
[redacted]				
09/20/2024	EF	Review and revise outline of reply brief.	1.00	$257.00
[redacted]				
09/23/2024	EF	Call with client/A. Stanton re: reply brief.	1.50	$385.50
09/24/2024	AMS	Draft standard of review section of reply brief; legal research re same.	0.80	$180.80
09/24/2024	EF	Review issues re: ACC/transmission; email client re: same; review standard of review/Yamaha case law.	2.80	$719.60
09/25/2024	AMS	Draft standard of review section of reply brief.	5.30	$1,197.80
09/26/2024	AMS	Draft standard of review section of reply brief.	4.20	$949.20
09/27/2024	AMS	Revise standard of review section of reply brief.	2.70	$610.20
[redacted]				
09/30/2024	EF	Review PUC brief; revise reply brief.	3.00	$771.00
[redacted]				
		Total for Services thru 09/30/2024	50.30	$11,763.80

Summary

Timekeeper	Title	Hours	Rate	Amount
Ellison Folk	Partner	13.70	$257	$3,520.90
Aaron M. Stanton	Associate III	35.90	$226	$8,113.40
Josh Kirmsse	Associate I	0.70	$185	$129.50

COSTS ADVANCED

09/18/2024	TrueFiling	$10.50

COSTS ADVANCED

09/30/2024	WestLaw - Invoice# 850846621	$104.53
	Total Costs Advanced thru 09/30/2024	$115.03

TOTAL OF CURRENT BILLING	$11,878.83
Your portion is 50.00% of the current charges	
YOUR TOTAL OF CURRENT BILL	$5,939.41

CREDITS TO ACCOUNT

09/30/2024	Payment - Thank you, Check # 65407918 by Protect Our Communities Foundation	-$5,945.10
09/30/2024	Payment - Thank you, Check # 65407918 by Protect Our Communities Foundation	-$2,418.50
	YOUR TOTAL DUE	$6,484.36

AGED AMOUNTS DUE

Stmt Date	Stmt #	Billed	Due
08/15/2024	287323	$2,579.25	$160.75
09/10/2024	287740	$384.20	$384.20
			$544.95

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INVOICE DATE	11/18/2024
SMW FILE	POC.NEM3
SMW INVOICE	288558
	Page 1

RE: NEM 3.0 Proceeding

PDF invoice to: malinda@protectourcommunities.org

(no hard copy needed)

Previous Balance $6,484.36

SERVICES RENDERED

			Hours	
[redacted]				
10/01/2024	EF	Review and revise reply brief.	2.00	$514.00
[redacted]				
10/04/2024	AMS	Draft costs and benefits section of reply brief.	4.00	$904.00
[redacted]				
10/05/2024	AMS	Draft costs and benefits section of reply brief.	3.80	$858.80

			Hours	
10/06/2024	AMS	Draft costs and benefits section of reply brief.	1.50	$339.00
10/07/2024	AMS	Draft costs and benefits section of reply brief (3.6); draft disadvantaged communities section of reply brief (1.5).	5.10	$1,152.60
[redacted]				
10/08/2024	AMS	Draft disadvantaged communities section of reply brief.	4.60	$1,039.60
10/08/2024	EF	Review and revise reply brief.	1.00	$257.00
[redacted]				
10/09/2024	EF	Review and revise reply brief.	6.20	$1,593.40
10/10/2024	AMS	Revise reply brief.	1.70	$384.20
10/10/2024	EF	Review and revise reply brief.	3.50	$899.50
[redacted]				
10/18/2024	AMS	Revise reply brief.	5.50	$1,243.00
10/18/2024	EF	Review PCF argument on cost/benefits.	2.50	$642.50
10/19/2024	EF	Review and revise reply brief.	1.30	$334.10
10/20/2024	EF	Review client edits; revise brief; email clients re: same.	3.00	$771.00
[redacted]				
10/22/2024	EF	Review and revise reply brief (standard of review); confer with A. Stanton re: same; meeting with clients re: briefing.	3.00	$771.00

			Hours	
[redacted]				
10/26/2024	EF	Review and revise reply brief.	0.50	$128.50
10/27/2024	EF	Prepare reply brief.	2.30	$591.10
10/28/2024	AMS	Revise reply brief.	2.80	$632.80
10/28/2024	EF	Review and revise reply brief; consider client comments on reply	5.00	$1,285.00
[redacted]				
10/29/2024	EF	Review and revise reply brief.	7.00	$1,799.00
[redacted]				
10/30/2024	EF	Revise reply brief; confer with M. Zinn re: Yamaha; confer with M. Dickenson re: same.	6.00	$1,542.00
[redacted]				
10/31/2024	EF	Review and revise brief; read and summarize Eshleman.	2.00	$514.00
		Total for Services thru 10/31/2024	130.70	$30,244.40

Summary

Timekeeper	Title	Hours	Rate	Amount
Ellison Folk	Partner	49.10	$257	$12,618.70
Aaron M. Stanton	Associate III	61.70	$226	$13,944.20
Josh Kirmsse	Associate I	15.60	$185	$2,886.00
Seth Goldman	Associate I	4.30	$185	$795.50

COSTS ADVANCED

10/24/2024	TrueFiling	$10.50
10/31/2024	WestLaw - Invoice#850974621	$410.56
	Total Costs Advanced thru 10/31/2024	$421.06

Protect Our Communities Foundation
RE: NEM 3.0 Proceeding

	TOTAL OF CURRENT BILLING	$30,665.46
	Your portion is 50.00% of the current charges	
	YOUR TOTAL OF CURRENT BILL	$15,332.73

CREDITS TO ACCOUNT

10/15/2024	Payment - Thank you, Check # 67771789 by Protect Our Communities Foundation	-$160.75
10/15/2024	Payment - Thank you, Check # 67771790 by Protect Our Communities Foundation	-$384.20
	YOUR TOTAL DUE	$21,272.14

AGED AMOUNTS DUE

Stmt Date	Stmt #	Billed	Due
10/10/2024	288158	$5,939.41	$5,939.41
			$5,939.41

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San Diego, CA 92116

INVOICE DATE	12/10/2024
SMW FILE	POC.NEM3
SMW INVOICE	288964
	Page 1

RE: NEM 3.0 Proceeding

PDF invoice to: malinda@protectourcommunities.org
cctaxadvisor@icloud.com

(no hard copy needed)

Previous Balance $21,272.14

SERVICES RENDERED

			Hours	
11/01/2024	AMS	Revise reply brief.	3.20	$723.20
11/01/2024	EF	Review and revise brief.	4.20	$1,079.40
11/03/2024	AMS	Revise costs and benefits section of reply brief.	2.60	$587.60
11/03/2024	EF	Review and revise brief; confer with A. Stanton re: same.	5.00	$1,285.00
[redacted]				
11/04/2024	EF	Review and revise brief; confer with A. Stanton re: same.	3.50	$899.50
[redacted]				
11/06/2024	EF	Call with client re: Yamaha argument; confer with A. Stanton; review revised argument.	3.00	$771.00
11/07/2024	AMS	Draft introduction for reply brief.	2.30	$519.80

Protect Our Communities Foundation
RE: NEM 3.0 Proceeding

			Hours	
[redacted]				
11/08/2024	AMS	Revise introduction for reply brief.	0.50	$113.00
11/08/2024	EF	Review and revise preliminary statement.	2.00	$514.00
11/13/2024	AMS	Revise reply brief.	3.40	$768.40
11/14/2024	AMS	Revise reply brief.	5.90	$1,333.40
11/14/2024	EF	Review and revise brief; confer with A. Stanton re: same.	4.00	$1,028.00
[redacted]				
11/15/2024	EF	Review and revise brief.	4.00	$1,028.00
[redacted]				
11/19/2024	EF	Review and revise final brief; direct cite checking.	1.20	$308.40
[redacted]				
11/20/2024	AMS	Revise reply brief.	6.30	$1,423.80
11/20/2024	EF	Review edits to brief, issues re: request for judicial notice; confer with A. Stanton re: same.	1.00	$257.00
[redacted]				
11/21/2024	EF	Review and revise final brief; confer with A. Stanton re: same; consider appendix for 1757.	1.50	$385.50
[redacted]				
11/22/2024	EF	Review and revise brief; confer with A. Stanton re: same.	3.10	$796.70
[redacted]				
		Total for Services thru 11/30/2024	95.00	$21,556.50

Summary

Timekeeper	Title	Hours	Rate	Amount

Protect Our Communities Foundation
RE: NEM 3.0 Proceeding

Ellison Folk	Partner	38.30	$257	$9,843.10
Aaron M. Stanton	Associate III	48.10	$226	$10,870.60
Maurene E. Ryan	Paralegal	8.60	$98	$842.80

COSTS ADVANCED

11/30/2024	WestLaw - Invoice# 851140574	$163.46
	Total Costs Advanced thru 11/30/2024	$163.46

TOTAL OF CURRENT BILLING	$21,719.96
Your portion is 50.00% of the current charges	
YOUR TOTAL OF CURRENT BILL	$10,859.98
YOUR TOTAL DUE	$32,132.12

AGED AMOUNTS DUE

Stmt Date	Stmt #	Billed	Due
10/10/2024	288158	$5,939.41	$5,939.41
11/18/2024	288558	$15,332.73	$15,332.73
			$21,272.14

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INVOICE DATE	01/30/2025
SMW FILE	POC.NEM3
SMW INVOICE	289397
	Page 1

RE: NEM 3.0 Proceeding

PDF invoice to: malinda@protectourcommunities.org
cctaxadvisor@icloud.com

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Previous Balance $32,132.12

SERVICES RENDERED

[redacted]

			Hours	
12/04/2024	EF	Consider strategy for oral argument.	0.40	$102.80
12/05/2024	EF	Consider oral argument issues.	0.50	$128.50

[redacted]

			Hours	
12/23/2024	EF	Call with M. Dickenson re: strategy/argument.	0.30	$77.10
[redacted]				
		Total for Services thru 12/31/2024	4.40	$1,031.60

Summary

Timekeeper	Title	Hours	Rate	Amount
Ellison Folk	Partner	1.20	$257	$308.40
Aaron M. Stanton	Associate III	3.20	$226	$723.20

TOTAL OF CURRENT BILLING $1,031.60

Your portion is 50.00% of the current charges

YOUR TOTAL OF CURRENT BILL $515.80

CREDITS TO ACCOUNT

12/16/2024	Payment - Thank you, Check # 5367 by Protect Our Communities Foundation	-$15,332.73
12/16/2024	Payment - Thank you, Check # 77154490 by Protect Our Communities Foundation	-$5,939.41
01/10/2025	Payment - Thank you, Check # 5380 by Protect Our Communities Foundation	-$10,859.98

YOUR TOTAL DUE $515.80

AGED AMOUNTS DUE

Stmt Date	Stmt #	Billed	Due
			$0.00

SHUTE, MIHALY & WEINBERGER LLP

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www.smwlaw.com

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INVOICE DATE	02/21/2025
SMW FILE	POC.NEM3
SMW INVOICE	289835
	Page 1

RE: NEM 3.0 Proceeding

PDF invoice to: malinda@protectourcommunities.org
cctaxadvisor@icloud.com

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Previous Balance $515.80

SERVICES RENDERED

[redacted]

			Hours	
[redacted]				
01/13/2025	EF	Review and revise potential questions for oral argument.	1.00	$263.00
[redacted]				
01/15/2025	EF	Review new PUC decision; consider implications for supreme court case.	1.30	$341.90
[redacted]				
		Total for Services thru 01/31/2025	14.30	$3,581.70

Summary

Timekeeper	Title	Hours	Rate	Amount
Ellison Folk	Partner	8.70	$263	$2,288.10
Aaron M. Stanton	Associate III	5.60	$231	$1,293.60

	TOTAL OF CURRENT BILLING	$3,581.70
	Your portion is 50.00% of the current charges	
	YOUR TOTAL OF CURRENT BILL	$1,790.85
	CREDITS TO ACCOUNT	
02/12/2025	Payment - Thank you, Check # 86937845 by Protect Our Communities Foundation	-$515.00
	YOUR TOTAL DUE	$1,791.65

AGED AMOUNTS DUE

Stmt Date	Stmt #	Billed	Due
01/30/2025	289397	$515.80	$0.80
			$0.80

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INVOICE DATE	03/17/2025
SMW FILE	POC.NEM3
SMW INVOICE	290304
	Page 1

RE: NEM 3.0 Proceeding

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Previous Balance $1,791.65

SERVICES RENDERED

Hours

[redacted]

			Hours	
02/13/2025	EF	Review summary of amicus briefs; email client re: questions for oral argument.	0.50	$131.50
		Total for Services thru 02/28/2025	3.00	$709.00

Summary

Timekeeper	Title	Hours	Rate	Amount
Ellison Folk	Partner	0.50	$263	$131.50
Aaron M. Stanton	Associate III	2.50	$231	$577.50

TOTAL OF CURRENT BILLING	$709.00
Your portion is 50.00% of the current charges	
YOUR TOTAL OF CURRENT BILL	$354.50
YOUR TOTAL DUE	$2,146.15

AGED AMOUNTS DUE

Stmt Date	Stmt #	Billed	Due
01/30/2025	289397	$515.80	$0.80
02/21/2025	289835	$1,790.85	$1,790.85
			$1,791.65

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INVOICE DATE	04/23/2025
SMW FILE	POC.NEM3
SMW INVOICE	290768
	Page 1

RE: NEM 3.0 Proceeding

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Previous Balance $2,146.15

SERVICES RENDERED

			Hours	
[redacted]				
03/10/2025	EF	Review oral argument notice; review availability; draft letter to court.	0.60	$157.80
[redacted]				
03/11/2025	EF	Review and consider email re: oral argument issues.	0.30	$78.90
[redacted]				
03/14/2025	EF	Review and respond to email/voicemail from M. Dickinson; confer with A. Stanton re: same.	0.30	$78.90
[redacted]				

			Hours	
[redacted]				
03/19/2025	EF	Draft standard of review overview, questions.	2.00	$526.00
[redacted]				
03/20/2025	EF	Prepare for oral argument; call with clients re: same.	4.00	$1,052.00
[redacted]				
03/21/2025	EF	Prepare for oral argument.	4.40	$1,157.20
03/24/2025	EF	Prepare oral argument.	1.00	$263.00
03/25/2025	EF	Prepare oral argument.	2.50	$657.50
03/26/2025	EF	Prepare oral argument.	3.50	$920.50
[redacted]				
03/27/2025	EF	Oral argument preparation; meeting with client re: same.	2.40	$631.20
[redacted]				
03/28/2025	EF	Prepare oral argument.	0.20	$52.60
03/29/2025	EF	Review findings of fact/law	1.80	$473.40
		Total for Services thru 03/31/2025	38.60	$9,863.80

Summary

Timekeeper	Title	Hours	Rate	Amount
Ellison Folk	Partner	29.00	$263	$7,627.00
Robert S. Perlmutter	Partner	0.60	$263	$157.80
Aaron M. Stanton	Associate III	9.00	$231	$2,079.00

COSTS ADVANCED

03/17/2025	TrueFiling	$10.50
03/31/2025	Online Legal Research.	$9.23
	Total Costs Advanced thru 03/31/2025	$19.73

	TOTAL OF CURRENT BILLING	$9,883.53
	Your portion is 50.00% of the current charges	
	YOUR TOTAL OF CURRENT BILL	$4,941.77

CREDITS TO ACCOUNT

04/04/2025	Payment - Thank you, Check # 95155837 by Protect Our Communities Foundation	-$0.80
04/04/2025	Payment - Thank you, Check # 95155837 by Protect Our Communities Foundation	-$1,790.85
04/04/2025	Payment - Thank you, Check # 95155838 by Protect Our Communities Foundation	-$354.50
	YOUR TOTAL DUE	$4,941.77

AGED AMOUNTS DUE

Stmt Date	Stmt #	Billed	Due
			$0.00

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INVOICE DATE	05/12/2025
SMW FILE	POC.NEM3
SMW INVOICE	291208

RE: NEM 3.0 Proceeding

PDF invoice to: malinda@protectourcommunities.org
cctaxadvisor@icloud.com

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Previous Balance $4,941.77

SERVICES RENDERED

			Hours	
[redacted]				
04/02/2025	EF	Prepare oral argument.	1.50	$394.50
[redacted]				
04/03/2025	EF	Prepare oral argument.	1.00	$263.00
[redacted]				
04/04/2025	EF	Review answers to oral argument questions; prepare for oral argument; review CBE v. CEC; confer with A. Stanton re: same.	4.50	$1,183.50
[redacted]				

			Hours	
04/07/2025	EF	Prepare oral argument; review Yamaha, CBE v. CEC; outline argument issues on Standard of Review.	3.00	$789.00
04/08/2025	EF	Review and consider responses to questions on Standard of Review.	2.40	$631.20
04/09/2025	EF	Prepare oral argument.	1.00	$263.00
[redacted]				
04/11/2025	EF	Prepare for oral argument.	3.00	$789.00
[redacted]				
04/15/2025	EF	Review summary of case for oral argument.	0.30	$78.90
04/16/2025	EF	Prepare oral argument; review BJ amicus brief.	2.40	$631.20
[redacted]				
04/17/2025	EF	Prepare oral argument; confer with A. Stanton re: same.	1.00	$263.00
[redacted]				
04/18/2025	EF	Oral argument preparation with client.	2.30	$604.90
[redacted]				
04/21/2025	EF	Review summary of DAC compensation issue.	0.30	$78.90
04/23/2025	EF	Prepare for oral argument.	0.50	$131.50
04/24/2025	EF	Prepare oral argument.	2.80	$736.40
[redacted]				
04/28/2025	EF	Prepare oral argument.	5.00	$1,315.00
[redacted]				

			Hours	
[redacted]				
04/30/2025	EF	Prepare for oral argument; attend moot court.	5.00	$1,315.00
[redacted]				
		Total for Services thru 04/30/2025	73.00	$18,183.00

Summary

Timekeeper	Title	Hours	Rate	Amount
Ellison Folk	Partner	41.20	$263	$10,835.60
Robert S. Perlmutter	Partner	7.40	$263	$1,946.20
Aaron M. Stanton	Associate III	18.80	$231	$4,342.80
Seth Goldman	Associate I	5.60	$189	$1,058.40

COSTS ADVANCED

04/30/2025	Online Legal Research.	$54.93
	Total Costs Advanced thru 04/30/2025	$54.93

TOTAL OF CURRENT BILLING	$18,237.93
Your portion is 50.00% of the current charges	
YOUR TOTAL OF CURRENT BILL	$9,118.96
YOUR TOTAL DUE	$14,060.73

AGED AMOUNTS DUE

Stmt Date	Stmt #	Billed	Due
04/23/2025	290768	$4,941.77	$4,941.77
			$4,941.77

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INVOICE DATE	06/20/2025
SMW FILE	POC.NEM3
SMW INVOICE	291653
	Page 1

RE: NEM 3.0 Proceeding

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cctaxadvisor@icloud.com

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Previous Balance $14,060.73

SERVICES RENDERED

			Hours	
[redacted]				
05/01/2025	EF	Consider issues from moot; prepare oral argument.	1.40	$368.20
[redacted]				
05/02/2025	EF	Prepare oral argument.	2.50	$657.50
05/05/2025	EF	Prepare oral argument.	4.50	$1,183.50
[redacted]				
05/06/2025	EF	Prepare oral argument.	2.50	$657.50
[redacted]				
05/08/2025	EF	Prepare oral argument.	2.20	$578.60
[redacted]				
05/09/2025	EF	Moot court; prepare for same; debrief after.	5.50	$1,446.50
[redacted]				

			Hours	
05/12/2025	EF	Prepare oral argument.	1.30	$341.90
[redacted]				
05/15/2025	EF	Review court order setting oral argument; email exchange with client re: meeting; review/consider court order re: issues to focus on.	0.50	$131.50
[redacted]				
05/19/2025	EF	Prepare oral argument; confer with A. Stanton re: court's issue; legal standard; review notice to appear.	3.00	$789.00
[redacted]				
05/20/2025	EF	Prepare oral argument.	2.50	$657.50
[redacted]				
05/21/2025	EF	Confer re: oral argument; email exchange with client re: argument.	0.80	$210.40
[redacted]				
05/22/2025	EF	Moot court.	1.50	$394.50
[redacted]				
05/23/2025	EF	Follow up on oral argument issues.	0.30	$78.90
[redacted]				
05/28/2025	EF	Moot court; prepare for same.	2.00	$526.00
[redacted]				

			Hours	
[redacted]				
05/30/2025	EF	Moot court; prepare record/documents for oral argument.	3.50	$920.50
[redacted]				
05/31/2025	EF	Prepare questions/answers, documents for oral argument.	2.50	$657.50
		Total for Services thru 05/31/2025	67.90	$17,041.70

Summary

Timekeeper	Title	Hours	Rate	Amount
Ellison Folk	Partner	36.90	$263	$9,704.70
Robert S. Perlmutter	Partner	5.50	$263	$1,446.50
Aaron M. Stanton	Associate III	25.50	$231	$5,890.50

COSTS ADVANCED

05/05/2025	Meals	$0.00
05/30/2025	Online Legal Research.	$49.50
05/30/2025	Photocopy charges @ $.10 per page	$117.30
	Total Costs Advanced thru 05/31/2025	$166.80

	TOTAL OF CURRENT BILLING	$17,208.50
	Your portion is 50.00% of the current charges	
	YOUR TOTAL OF CURRENT BILL	$8,604.25
	CREDITS TO ACCOUNT	
05/14/2025	Payment - Thank you, Check # 2238574 by Protect Our Communities Foundation	-$4,941.77
	YOUR TOTAL DUE	$17,723.21

AGED AMOUNTS DUE

Stmt Date	Stmt #	Billed	Due
05/12/2025	291208	$9,118.96	$9,118.96
			$9,118.96

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INVOICE DATE	07/14/2025
SMW FILE	POC.NEM3
SMW INVOICE	292065
	Page 1

RE: NEM 3.0 Proceeding

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Previous Balance $17,683.76

SERVICES RENDERED

			Hours	
[redacted]				
06/01/2025	EF	Prep answers for supreme court argument.	2.30	$604.90
[redacted]				
06/02/2025	EF	Prepare documents for oral argument; moot court; review court ruling on request for judicial notices; email client re: same.	2.60	$683.80
[redacted]				
		Total for Services thru 06/30/2025	22.40	$5,763.20

Summary

Timekeeper	Title	Hours	Rate	Amount
Ellison Folk	Partner	18.40	$263	$4,839.20
Aaron M. Stanton	Associate III	4.00	$231	$924.00

COSTS ADVANCED

06/04/2025	Lodging	$158.95
06/04/2025	EF - Air Fare	$546.97
06/04/2025	MetroLink	$2.25
06/04/2025	Meals	$34.56
06/04/2025	Taxi	$80.00
	Total Costs Advanced thru 06/30/2025	$822.73

TOTAL OF CURRENT BILLING	$6,585.93
Your portion is 50.00% of the current charges	
YOUR TOTAL OF CURRENT BILL	$3,292.95

CREDITS TO ACCOUNT

06/26/2025	Payment - Thank you, Check # 9519112 by Protect Our Communities Foundation	-$9,118.96
	YOUR TOTAL DUE	$11,857.75

AGED AMOUNTS DUE

Stmt Date	Stmt #	Billed	Due
06/25/2025	291653	$8,564.80	$8,564.80
			$8,564.80