

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



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Order Instituting Rulemaking on Customer-
Generated Renewables for Priority
Communities

Rulemaking 25-01-005

**COMMENTS OF
THE SOLAR ENERGY INDUSTRIES ASSOCIATION
ON UPDATED ADMINISTRATIVE LAW JUDGE'S RULING SEEKING COMMENTS
ON ENERGY DIVISION SMALL AND MULTI-JURISDICTIONAL UTILITY
CUSTOMER GENERATION STAFF PROPOSAL**

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Pursuant to the *Administrative Law Judge’s Ruling Seeking Comments on Updated Energy Division Small and Multi-Jurisdictional Utility Customer Generation Staff Proposal* issued in the above captioned proceeding on September 28, 2026, the Solar Energy Industries Association (“SEIA”) provides these comments.

I. INTRODUCTION

The Staff Proposal on Small Multi-Jurisdictional Utility (“SMJU”) Customer Generation Tariff Reform (“Staff Proposal”) advances a new Net Billing Tariff (“NBT”) for Liberty Utilities (“Liberty”) and revisions to the current NBTs of PacifiCorp and Bear Valley Electric Service (“BVES”). In doing so, the Staff Proposal offers recommendations for the legacy periods for the customers on Liberty’s Schedule NEM-NEMA, BVES Schedules NEM-S, NEM-L (traditional NEM tariffs) and Schedule DGS (net billing tariff), and PacifiCorp’s Schedule NEM-35 (traditional NEM tariff) and Schedule NB-136 (net billing tariff). Currently, with the exception of Liberty’s Schedule NEM-NEMA which has no legacy period, the NEM and NBT tariffs at issue provide for a legacy period of either twenty years from the date of interconnection (BVES Schedule NEM-S, NEM-L and DGS; PacifiCorp Schedule NB-136) or until March 1, 2040

(PacifiCorp Schedule NEM-35). The legacy periods for BVES and PacifiCorp NEM/NBT schedules were established by the Commission in decisions issued six years ago.¹ In these decisions, the Commission determined that these legacy periods were “reasonable”²

The Staff Proposal would nullify those elements of the earlier Commission decisions and completely eradicate the legacy periods for PacifiCorp and BVES NEM and NBT customers, requiring all such customers, starting on their first true-up date after January 1, 2027, to take service under a revised NBT adopted in this proceeding. Similarly, with respect to Liberty’s Scheule NEM-NEMA, for which the Commission has never established a legacy period, the Staff Proposal would force all customers off that tariff and on to a new NBT adopted in this proceeding on the date of their first true-up after January 1, 2027.

The proposed abrupt eradication of legacy periods for NEM and NBT customers advanced by the Staff Proposal runs counter to over twelve years of Commission policy. The arguments used in the Staff Proposal as purported basis for ignoring this precedent are unsubstantiated, in certain instances lacking any factual basis, and legally tenuous. The Commission must reject these elements of the Staff Proposal, retain the current legacy periods for PacifiCorp and BVES NEM/NBT customers and establish a reasonable legacy period for Liberty NEM customers.

II. THE COMMISSION MUST REJECT STAFF’S UNFOUNDED PROPOSALS TO ERADICATE LEGACY PERIODS FOR THE SMJUS NEM/NBT CUSTOMERS

As referenced above, PacifiCorp and BVES have NBTs and legacy NEM schedules with 20 year legacy periods while Liberty does not currently have a NBT, with its NEM tariff still open to new customers for which no legacy period has been determined. Given this distinction

¹ See Decision 20-01-007 and Decision 20-01-008

² Decision 20-01-008, Finding of Fact 21; *see also* Decision 20-01-007, Finding of Fact 11.

between the three SMJUs, the Staff Proposal bifurcates its discussion of this issue, applying slightly different rationales for its recommended abrupt termination of service under these utilities' current NBT and NEM schedules and the concurrent transfer of customers to new or revised NBTs. As demonstrated below, in all circumstances, Staff's arguments are not well supported, lacking factual and evidentiary and in certain instances legal support, and demonstrate complete disregard for established Commission policy.

A. Liberty Schedule NEM

The Staff Proposal advocates for Liberty's Schedule NEM tariff to close to new interconnections on the Commission decision issuance date and all existing Liberty Schedule NEM customers to migrate to the new Liberty NBT at the customer's first true-up occurring after January 1, 2027.³ Staff bases its recommendation in "four independent grounds"⁴

Thus, the Staff Proposal attests that:

PU Code Section 2827(c)(1) governs the NEM obligation of every electric utility, including SMJUs. It requires each utility to offer NEM on a first-come-first-served basis until the program capacity limit is reached, at which point existing customers retain the right to continue service *"for a length of time to be determined by the commission"*⁵

Staff continues by asserting that because the statute "imposes no specific legacy period and requires no payback-period analysis for small utilities"⁶ the Commission can abruptly end Liberty's NEM tariff. Staff's argument is problematic.

As even Staff recognizes requires each utility, including the SMJUs, to "offer NEM on a first-come-first-served basis until the program capacity limit is reached." The reason Liberty's

³ Staff Proposal, pp.12- 13.

⁴ *Id.*, p. 13.

⁵ *Id.* (quotation marks in the original; emphasis added).

⁶ *Id.*

NEM tariff remains open to new customers is that Liberty has not yet met the statutory cap of customers required to be served under this tariff. The statute specifically states that the traditional NEM tariff “*shall*” be made available “until the time that the total rated generating capacity used by eligible customer-generators exceeds 5 percent of the electric utility’s aggregate customer peak demand.” Liberty is statutorily required to continue offering the tariff until the cap is met, and the Commission is precluded from eliminating the tariff. Staff’s proposal that Liberty’s NEM tariff be closed on the date of a Commission decision in this proceeding is contrary to law and cannot be adopted.

While the Commission cannot eradicate the tariff, it is not precluded from establishing a reasonable legacy period for which customers are guaranteed service under the tariff. However, Staff’s arguments for minimizing that period for Liberty customers do not withstand even cursory review.

First, Staff argues that there are no restrictions on the legacy period which the Commission may establish as PU Code Section 2827(c)(1) merely provides that it shall be “for a length of time to be determined by the Commission.” But that phrase is not contained within the code section.

Second, the Staff notes that the Commission has never established a legacy period for Liberty NEM customers and that the provisions of PU Code Section 2827.1(b)(6) which directed the Commission, when determining a transition period for customers taking service under a NEM tariff, to consider “a reasonable expected payback period” only applied to the large investor owned utilities and not the SMJUs.⁷ The implication is that because the legislature did not impose the same requirement on the Commission’s determination of transition periods for the

⁷ *Id.*

NEM customers of the SMJUs, the Commission should ignore that metric in doing so. The Staff's argument is faulty.

As an initial matter, it should be noted that, unlike PU Code 2827 (establishing NEM tariffs) which applies to all IOUs, including the SMJUs, Section 2827.1 (establishing successor NEM tariffs) applies solely to the large IOUs. Thus, the SMJUs were not required to offer a successor tariff rendering it unnecessary for the legislature to address a transition period from NEM to a successor tariff for SMJU customers. In other words, the fact that the legislature did not apply the same "payback periods standard" to transition periods for NEM customers of the SMJUs was a product of the fact that it did not order these utilities to offer successor tariffs to which these customers could be transitioned, not that these customers did not deserve similar treatment. More importantly, however, the Staff skips over the fact that the legislative policy behind the use of the payback period as a metric upon which to base equitable transition periods was independently adopted by the Commission as a guiding policy:

We are cognizant of the legislature's direction that we consider the reasonable payback period in setting the transition timeframe and ***are persuaded that customers who invest in renewable distributed generation systems and participate in existing NEM tariffs should at least have an opportunity to recoup their initial investment in distributed renewable generation.*** In addition, we find that adopting a transition period that denies customer-generators the opportunity to realize their expected benefits would not be in the public interest, to the extent that it could undermine regulatory certainty and discourage future investment in renewable distributed generation⁸

In other words, when determining a legacy period for NEM customers of the large IOUs, the Commission recognized the need to maintain regulatory certainty so as not to disrupt future distributed generation investments in California. Liberty's NEM customers are no different than the NEM customers of the large IOUs – they should at least have an opportunity to recoup their

⁸ Decision 14 -03-041, p. 20 (emphasis added).

initial investment in distributed renewable generation. The Staff Proposal does not include a payback period analysis for NEM customers in Liberty’s service territory which demonstrates that these customers have recouped their investments.

Third, the Staff Proposal asserts that “the Commission's finding in D.22-12-056 that NEM customers have no vested right to specific compensation rates” applies “with equal or greater force at Liberty, where no legacy commitment was ever established”.⁹ Again, it is unclear what the Staff Proposal is referencing as it does not provide a page citation to the decision and there is no reference in the decision to “vested rights to specific compensation rates.” What the decision does state is that NEM customers are not entitled to the continuation of any particular *underlying rate design, or particular rates*.¹⁰ However, NEM customers who are afforded legacy status have right to continue service under the adopted NEM program on which they were afforded such status (e.g., same compensation structure, same netting interval, etc.)

Fourth, the Staff asserts that “the magnitude of the cost shift counsels against any legacy period” for Liberty’s NEM customers.¹¹ SEIA will not comment on the “cost shift” analysis described in the Staff Proposal as it has not been afforded the opportunity to review Staff’s workpapers or cross examine staff on its analysis but would point out that the analysis is limited, not taking into account all the values afforded by distributed energy generation. Moreover, and most importantly, any potential cost shift is only one part of the analysis. As stated by the Commission when addressing the legacy period for NEM 1 and NEM 2 customers of the large investor owned utilities:

While this decision concludes the Commission has the authority to revise the

⁹ Staff Proposal, p. 13.

¹⁰ Decision 16-01-044, p. 100.

¹¹ Staff Proposal, p. 13.

legacy NEM 1.0 and NEM 2.0 tariffs, the outcome could result in an inequity to one of two groups: nonparticipant ratepayers or NEM 1.0 and NEM 2.0 participant ratepayers. Public Utilities Code Section 2827.1 and the guiding principles do not rank the requirements, defining whose needs should come first: the needs of a particular group of people, the environment, or the grid. Hence, the Commission is left with a policy decision of what requirements and needs should be prioritized. This decision has noted that the adopted successor tariff is a balance of various and competing requirements, impacting participants and nonparticipants, the grid, and the environment. This is equally true of the determination for the NEM 1.0 and NEM 2.0 customers and customers who take service under NEM 2.0 after the adoption of this decision.... The Commission finds that the NEM 1.0 and NEM 2.0 tariff should remain intact¹²

Ultimately the determination of the appropriate legacy period for Liberty's NEM customers is a policy decision based on the Commission's balancing of various interests. The Commission should, as it has consistently in the past, balance those interests (e.g., regulatory certainty, environmental benefits, grid support, potential cost shift) in establishing a reasoned legacy period for the customers on Liberty's Schedule NEM.

B. PacifiCorp and BVES NEM and NBT Schedules

As referenced above, both PacifiCorp and BVES have NBTs and legacy NEM schedules with a twenty year term from interconnection. The Staff Proposal offers varying justifications for the eradication of those legacy terms. All of these arguments fall short.

1. BVES Schedules NEM-S and NEM-L and PacifiCorp Schedule NEM-35

The Staff Proposal recommends that "any remaining BVES Scheule NEM-S and NEM-L customers and PacifiCorp Schedule NEM-35 legacy customers [] migrate to the applicable current net billing tariff (DGS or NB-136) at the customer's first true-up occurring after January 1, 2027"¹³ The Staff asserts that "[t]he case for prompt migration is the cost shift"¹⁴ To this end

¹² Decision 22-12-056, p.193.

¹³ Staff Proposal, p. 17

¹⁴ *Id.*

the Staff Proposal states that the “[r]etail-rate export crediting pays legacy customers roughly ten times avoided cost, shifting approximately \$2,400 per participating customer per year onto non-participants”¹⁵ Section II of the Staff Proposal is cited as support for this statement¹⁶ Once again, it is unclear to what the Staff Proposal is referring. Section II makes reference to a cost shift analysis pertaining to NEM customers in PacifiCorp’s or BVES’s service territory having been performed by Staff, but the analysis is not presented. Thus, while the Staff Proposal attests that “Quantitative modeling conducted by Energy Division confirms significant cost-shift concerns at all three utilities”¹⁷ only the quantitative modeling for Liberty is shared.¹⁸ This leaves open the question of where Staff got the \$2400 figure. Moreover, is the purported \$2400 cost shift per NEM customer applicable to NEM customers in PacifiCorp’s service territory? BVES’s service territory? both? Staff’s argument that immediate elimination of legacy rights is justified by a demonstrated cost shift is not supported on the record.

Similarly, Staff’s assertion that because these legacy schedules closed to new enrollment under D.20-01-008 and D.20-01-007, “these systems are all more than five years old and have substantially recovered their capital costs”¹⁹ is simply unsubstantiated. First, Staff is incorrect that all systems on PacifiCorp schedule NEM-35 are more than five years old. Pursuant to the terms of Decision 20-01-007, customers in PacifiCorp’s service territory had until March 1, 2023 to interconnect and receive between 17- 20 years legacy treatment under the NEM tariff. Systems interconnecting in 2022 and 2023 would not be more than five years old. More importantly, Staff

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*, p. 5.

¹⁸ *See Id.*, p. 6 and Appendix B.

¹⁹ *Id.*, p. 18

has produced no payback analysis demonstrating that customers under these PacificCorp and BVES NEM schedules have “substantially recovered their capital costs.” Finally, the Staff Proposal glosses over the fact that the Commission approved these legacy periods for BVES and PacificCorp NEM customers a scant six years ago noting the importance of the consistent application of Commission policy:

[H]aving established a 20-year duration of service period from the date of interconnection for large IOU NEM programs, *it would be consistent and reasonable for the Commission to adopt a 20-year duration of service period, beginning on the date of interconnection*, for BVES’s customers participating in its existing NEM program.²⁰

2. BVES Schedule DGS and PacificCorp Schedule NB-36

When the Commission approved BVES’ and PacificCorp’s NBTs in Decisions 20-01-008 and 20-01-007, respectively, that approval included a twenty year duration of service. Indeed, with respect to PacificCorp, it was the Commission who argued for the twenty year duration. As stated in D. 20-01-008:

PacificCorp rejected the idea that the net billing tariff should have a set duration of service given the lack of a statutory requirement to offer net billing in the first instance. Instead, PacificCorp argued that the appropriate time to consider a duration of service for net billing customers would be when a replacement for the net billing program is proposed by PacificCorp.

It is true that PacificCorp is voluntarily offering the net billing program to its customers with distributed renewable energy systems. ***However, the Commission has held in a previous decision that a duration of service requirement is generally necessary “to allow customers to have a uniform and reliable expectation of stability of the NEM structure under which they decided to invest in their customer-sited renewable [distributed generation] systems.” The duration of service requirement of D.16-01-044 was applied to both NEM customers and NEM successor tariff customers, despite the fact that the law required no such duration of service requirement for NEM successor tariff customers.*** This indicates that the Commission views the duration of service requirement as an important policy that should be applied to all customers using

²⁰ Decision 20-01-008, p. 18 (emphasis added); *see also* Decision 20-01-007, Conclusion of Law 12.

distributed renewable energy systems and taking advantage of utility tariffs to receive some compensation for the electricity they may export to the utility.

Therefore, in order to align existing policy regarding duration of service with PacifiCorp's new net billing program, this decision finds that PacifiCorp must offer the net billing tariff to customers that enroll in the program for period of at least 20 years from the date of their interconnection²¹

The Staff is now proposing to upend this Commission determination, taking away the legacy rights afforded these customers, by requiring all BVES and PacifiCorp customers on these utilities' current NBTs be transitioned to the revised NBT produced from this proceeding at the time of their next true-up date after January 1, 2027.²² The Staff is proposing such despite the Commission's clear statement that it views "the duration of service requirement as an important policy that should be applied to all customers using distributed renewable energy systems and taking advantage of utility tariffs to receive some compensation for the electricity they may export to the utility."

Staff asserts that "[t]hree grounds support the Commission's authority"²³ to take away these customers' legacy rights, but in reality Staff's arguments are all different versions of the same thing – that the Commission is not legally restricted from modifying the terms and conditions of a Commission approved utility tariff. But the fact that the Commission can do it is not a justification for why they should do it. The Staff has provided *no rationale* for upending determinations made by the Commission six years ago that these NBT schedules should contain a 20 year duration of service – determinations which were relied upon by customers in PacifiCorp's and BVES' service territories in their assessments of whether the installation of solar or solar + storage systems was an economically viable proposition. In this regard, SEIA

²¹ D. 20-01-008, pp. 22-23 (emphasis added)

²² Staff Proposal, p. 17.

²³ *Id.*

would note that Staff has misconstrued the meaning of legacy rights under a tariff, and the importance of such rights in determining the economics of a project. Specifically, Staff submits that as long as a customer is allowed to remain enrolled in the same tariff, despite changing the terms of that tariff, then its legacy rights are maintained.²⁴ This is simply not the case. Legacy rights, while not protecting the specific level of the rate, protect the underlying terms and conditions of service, such as how import and export rates are determined. Thus, when adopting a twenty year term of service for customers receiving service under the large IOUs NEM 2 tariffs the Commission clarified:

This duration of service applies only to service under the NEM successor tariff, not to any other aspect of the customer's bill, for example, a minimum bill. To avoid any misunderstanding, we reiterate our observation in D.15-07-001 that customers do not have any entitlement to the continuation of any particular underlying rate design, or particular rates. The 20-year period we designate applies only to a customer-generator's ability to continue service under the NEM successor tariff established by this decision.²⁵

III. CONCLUSION

In numerous decisions over the past twelve years, the Commission has upheld the use of a 20 year legacy term for customers receiving service on the NEM schedules of both the large IOUs and the SMJUs. Moreover, having granted these 20 year legacy rights, the Commission has determined that, in balancing all competing factors, it was in the public interest not to renege on that regulatory contract by altering those rights. In this instance the Staff Proposal runs directly counter to Commission policy, advocating for the immediate eradication of the legacy rights of PacifiCorp and BVES NEM customers – rights which were granted a scant 6 years ago by

²⁴ See Staff Proposal, p. 18 (noting that with respect to BVES' and PacifiCorp's NBT Staff proposing "a change to schedule terms, not a termination of the customer's right to remain enrolled.").

²⁵ D.16-01-044, pp. 100-101.

Commission decision. Staff has not presented sufficient basis for the Commission to make a sea change in its policy and the Commission should reject Staff's proposal. With respect to Liberty's NEM customers, SEIA notes that the Commission cannot close that tariff as Liberty is statutorily required to keep it open until it reaches the targeted cap but agrees that it would be reasonable for the Commission to establish a duration of service as one currently does not exist. But again, Staff's rationale for abbreviated (or no) legacy period is based on an incorrect interpretation of applicable law and disregard of applicable Commission decisions.

With respect to Staff's proposed elimination of BVES' and PacifiCorp's current NBTs with their associated 20 year legacy rights and the required immediate migration to the new NBTs, Staff relies solely on the fact that the Commission has the authority to make such a change. It does not however provide any valid basis for why the Commission should make such change. Again, the Commission should reject Staff's proposal, retaining the legacy rights it established for these tariffs only six years ago.

Respectfully submitted the 9th day of October 2026 at San Francisco, California.

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