

Decision 19-05-031 May 30, 2019

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Southern California Edison Company (U338E) for Approval of Green Energy Programs.

Application 18-09-015

DECISION DISMISSING THE APPLICATION FOR APPROVAL OF GREEN ENERGY PROGRAMS

Summary

This decision dismisses Southern California Edison Company's (SCE) ¹ Application 18-09-015 for approval to replace its existing Green Tariff Shared Renewables Program with five new green energy programs starting in 2021. This decision does not prejudge the merits of SCE's proposed Green Energy Programs, nor does it preclude SCE or parties from seeking Commission approval for refinement or modification of the existing Green Tariff Shared Renewables Program. However, any program changes must be consistent with Public Utilities Code Sections 2831 through 2833.²

This proceeding is closed.

1. Background

On September 26, 2018, SCE filed Application (A.) 18-09-015 (Application) requesting Commission approval to recover up to \$5.87 million in implementation, administration, and marketing costs associated with five new

¹ Attachment 1 lists all acronyms for this decision.

² All further references to section are to the Public Utilities Code, unless otherwise specified.

green energy programs (collectively, the Green Energy Programs, or GEPs). The GEPs would allow customers the opportunity to use renewable energy resources to meet their electricity needs.

SCE proposes to replace its existing Green Tariff Shared Renewables (GTSR) Program with the GEPs starting in 2021. GTSR is a statewide program enacted by Senate Bill (SB) 43 and codified in Sections 2831 through 2834. SB 43 sets a formal requirement for the three large electrical utilities to implement the GTSR Program. The current GTSR Program has a Green Tariff Option component and an Enhanced Community Renewables component. Section 2834 originally set a sunset date of January 1, 2019 for the GTSR Program. The Commission implemented and refined the GTSR Program in 2015 and 2016 in Decision (D.) 15-01-051 and D.16-05-006, respectively. D.15-01-051 directed the utilities to file Tier 3 Advice Letters (ALs) no later than December 31, 2017 to either extend their GTSR programs beyond the statutory sunset date or terminate GTSR as of that date. In September 2016, after the issuance of D.15-01-051 and D.16-05-006, SB 840 repealed Section 2834, removing the GTSR's sunset date. However, neither D.15-01-051 nor D.16-05-006 was modified to reflect the change in law that removed the sunset date from the GTSR Program.

Pursuant to D.15-01-051, on December 22, 2017, SCE filed AL 3722-E requesting authority to sunset its GTSR Program as of December 31, 2018 due to low participation. Energy Division suspended the AL on January 8, 2018, and on June 8, 2018, Energy Division extended the suspension of the AL pending the Commission's disposition.³ On January 7, 2019, Energy Division issued a

³ Available at: www1.sce.com/NR/sc3/tm2/pdf/3722-E.pdf.

Disposition Letter approving SCE's GTSR Rate Component Updates for 2019 in its AL 3905-E and Supplemental AL 3905-E-A.⁴ In addition, Energy Division approved SCE's AL 3898-E removing the sunset date from its GTSR Program tariffs.⁵ As a result, SCE's GTSR Program is still in effect.

On October 29, 2018, protests were filed by the Public Advocate's Office (Cal Advocates), California Choice Energy Authority (CCEA), Clean Power Alliance of Southern California (CPA), Coalition for Community Solar Access (CCSA), Shell Energy North America (Shell) and Direct Access Customer Coalition (DACC), and jointly by The Utility Reform Network and Coalition for California Utility Employees (TURN/CUE). Solar Energy Industries Association (SEIA) and Vote Solar filed a joint response.

A prehearing conference (PHC) was held on December 3, 2018 to discuss the issues of law and fact, determine the need for hearing, and establish a schedule for resolving the matter.

A motion to dismiss was filed by Shell on December 5, 2018. On January 18, 2019, Administrative Law Judge (ALJ) Liang-Uejio issued a Ruling denying Shell's motion to dismiss and directing SCE and the parties to file opening and reply briefs on the threshold legal issues related to the compliance of SCE's proposal with Sections 2831-2833. Opening briefs were filed by SCE, Cal Advocates, CCEA, Clean Coalition, Small Business Utility Advocates (SBUA), and TURN/CUE on February 8, 2019. Reply briefs were filed by SBUA on February 13, 2019 and by SCE, Cal Advocates, and CCEA, on February 15, 2019.

⁴ Available at: www1.sce.com/NR/sc3/tm2/pdf/3905-E-A.pdf.

⁵ Available at: www1.sce.com/NR/sc3/tm2/pdf/3898-E.pdf.

On April 19, 2019, the assigned Commissioner issued a Scoping Memo and Ruling setting forth the category, issues to be addressed, and schedule for the proceeding pursuant to Section 1701.1 and Article 7 of the Commission's Rules of Practice and Procedure.

1.1. Factual Background

In this Application, SCE requests approval to "discontinue its existing GTSR program once SCE implements the new Green Rate Programs in 2021."⁶ SCE asserts that "[n]umerous barriers for customers and developers, including program caps and sizing restrictions, make it difficult for SCE to subscribe customers to either GTSR program."⁷ SCE states that its proposal would reduce or eliminate these barriers.

SCE states that for example, the primary barrier for the GTSR Green Tariff Option is that "SCE must recover the program costs in rates only from participating customers instead of across all customers." This results in higher electricity rates for participating customers.⁸ The GEPs would eliminate this disparity by recovering the non-procurement related costs⁹ from all bundled customers (both participants and non-participants).¹⁰ In addition, SCE proposes to reduce program rates by offering a ten percent (10%) discount for qualifying

⁶ Application at 10.

⁷ *Id.* at 2.

⁸ *Id.* at 2.

⁹ The administrative costs; marketing, education, and outreach costs; and transition credit for low-income customers.

¹⁰ *Id.* at 7 and SCE's response to Shell's Motion to Dismiss at 2-3.

low-income customers who are not eligible for the Disadvantaged Communities program adopted in D.18-06-027.¹¹

In addition, SCE states that “the Green Energy Programs increase cap levels that hindered certain customer segments’ ability to participate in programs and satisfy their renewable energy goals and requirements.”¹² Unfortunately, SCE’s application does not provide any details as to which of the many GTSR program caps it is referring to. However, because this decision does not consider the GEPs on their merits, it is not necessary to determine what barriers, if any, exist or how the GEPs would reduce those barriers.

SCE also asserts that the proposed GEPs will reduce greenhouse gas (GHG) emissions and advance renewable energy options for low-income customers and Disadvantaged Communities.¹³

In their protests or response and at the PHC, parties raised concerns with SCE’s proposal to replace the GTSR Program with the GEPs. Parties’ issues fall into two general areas: (1) whether the GEPs could replace the GTSR Program if the new GEPs do not comply with SB 43 and (2) whether the GEPs are just and reasonable.

Parties are concerned that the Commission is constrained by the current GTSR Program mandated by statute. CCEA alleges that SCE’s proposal lacks legal basis and is unsupported by SB 43.¹⁴ TURN/CUE identify whether SCE’s proposed rate design changes comply with the requirements under SB 43 as a

¹¹ Application at 5.

¹² *Id.* at 3.

¹³ *Id.* at 3.

¹⁴ CCEA’s Protest at 6-7.

potential issue.¹⁵ DACC/Shell asserts that SCE's cost recovery proposal would result in a cost shift between bundled and departing customers.¹⁶ Cal Advocates is also concerned about SCE's proposal to spread costs to non-participating customers in this Application. This would directly conflict with the GTSR statutory requirement that the GTSR Program cannot result in a cost shift between participating and non-participating customers.¹⁷

Parties raise other issues regarding the reasonableness of the proposed GEPs. TURN/CUE strongly oppose the use of unbundled Renewable Energy Credits and existing renewable energy resources because it would not create additional renewable energy projects.¹⁸

CCSA argues that the GTSR Program has failed, and that the reason for that failure is the poor economic value proposition. CCSA asserts that the current GTSR Program does not credit customers for the full value of distributed energy resources. CCSA also does not agree with the departing load charge calculation for participating customers. As a result of these factors, CCSA alleges that the proposed GEPs fail to overcome the key failing of the GTSR Program and SCE's proposal therefore should be modified.¹⁹

In its reply to parties' protests and response to the January 18, 2019 ALJ Ruling, SCE argues that the GEPs' policy objectives are consistent with

¹⁵ TURN/CUE's Protest at 4.

¹⁶ DACC/Shell's Protest at 2 and 6.

¹⁷ Cal Advocates' Protest at 4; *See* Section 2833(p) requiring that "charges and credits associated with [GTSR] are set in a manner that ensures nonparticipant ratepayer indifference for the remaining bundled service, direct access, and community choice aggregation customers and ensures that no costs are shifted from participating customers to nonparticipating ratepayers."

¹⁸ TURN/CUE's Protest at 2-4.

¹⁹ CCSA's Protest at 2-4.

SB 43's policy goals and that the GEPs are not constrained by SB 43. SCE asserts that the Commission has the authority to approve the Application. SCE believes that the Commission is not legally required to subject the GEPs to the SB 43 requirements for GTSR, as doing so would frustrate the Legislature's articulated policy objectives for SB 43 and defeat the purpose of SCE's proposal to replace GTSR.²⁰

After considering the parties' protests and response as well as comments at the PHC, and reviewing Sections 2831-2833, the assigned ALJs determined that it is necessary to develop a record to resolve the threshold legal issues related to statutory compliance before considering the reasonableness of SCE's proposal. In the January 18, 2019 ALJ Ruling, parties were directed to brief the following legal issues: (1) whether SCE can terminate the GTSR Program without violating Sections 2831-2833 and (2) whether SCE can replace the GTSR Program with new programs that do not meet the GTSR statutory requirement.

The Scoping Memo also finds that if it is determined that SCE cannot terminate the GTSR Program without violating Sections 2831-2833, then there is no need to devote Commission and party resources and time to evaluating the replacement of the GTSR Program on their merits.

2. Issues Before the Commission

The main issue in this proceeding is whether the Commission should approve SCE's proposal to replace the existing GTSR Program with GEPs. As discussed in the Scoping Memo, SCE's proposal raises a threshold legal issue of whether SCE can terminate the existing GTSR Program without violating current law.

²⁰ SCE's Reply to Protests at 2-4.

This decision finds that SCE does not have authority to terminate its existing GTSR Program. Because termination is a foundational element of SCE's proposal, we dismiss the application. All issues as to the merits of the proposals, including whether the proposals must or do comply with SB 43 are therefore moot and not addressed in this decision.

3. Sections 2831-2833 Compliance

3.1. GTSR Early Termination

This decision concludes that SCE cannot terminate its existing GTSR Program before it reaches the allocated 269 MW program cap without violating Sections 2831-2833.

SCE asserts that the Commission can lawfully authorize SCE to terminate its existing GTSR Program. SCE further asserts that under the California Constitution and Section 701, the Commission has the jurisdiction to implement voluntary utility programs without specific statutory authorization.²¹

Clean Coalition and SBUA in the opening briefs have similar arguments as SCE's. Clean Coalition believes that the Commission should approve or modify SCE's Application regardless of whether it grants SCE's request to sunset the GTSR Program.²² SBUA argues that the statutory goal under Sections 2831-2833 "has been frustrated, cannot reasonably be achieved, conflicts with the Commission's other statutory mandates, and should no longer be pursued by SCE or enforced by the Commission."²³

However, other parties disagree, arguing that the statute forbids early termination of the GTSR Program. Cal Advocates, CCEA, and TURN/CUE cite

²¹ SCE's Opening Brief at 2 and 5.

²² Clean Coalition's Opening Brief at 1.

²³ SBUA's Opening Brief at 3.

Section 2833(d) and argue that the existing law establishes an unambiguous GTSR obligation for SCE until it reaches its allocated 269 MW program cap.²⁴

We conclude that while the Commission has authority to approve voluntary utility programs, the Commission is constrained by Sections 2831-2833 when considering the termination of the GTSR Program. Section 2833(a) states:

The commission shall require a green tariff shared renewables program to be administered by a participating utility in accordance with this section.

Section 2833(d) states:

A participating utility shall permit customers within the service territory of the utility to purchase electricity pursuant to the tariff approved by the commission to implement the utility's green tariff shared renewables program, until the utility meets its proportionate share of a statewide limitation of 600 megawatts (MW) of customer participation, measured by nameplate rated generating capacity. [Emphasis added]

We agree with Cal Advocates, CCEA, and TURN/CUE that existing law forbids early termination of SCE's GTSR Program before it reaches the 269 MW program cap. SCE's January 2019 Monthly GTSR Progress Report shows that its GTSR enrollment is well below the 269 MW cap (16.16 MW for the Green Tariff Option and zero for the Enhanced Community Renewables).²⁵

²⁴ Cal Advocates' Opening Brief at 2. CCEA's Opening Brief at 1-3. TURN's Opening Brief at 2.

²⁵ See, "Southern California Edison Company's (U 338-E) Monthly Green Tariff Shared Renewables Program Progress Report," at 4, available at: [www3.sce.com/sscc/law/dis/dbattach5e.nsf/0/B2139138078A565C882583AD0081B353/\\$FILE/A1201008%20et%20al-SCE%20Monthly%20GTSR%20Program%20Progress%20Report%20201901.pdf](http://www3.sce.com/sscc/law/dis/dbattach5e.nsf/0/B2139138078A565C882583AD0081B353/$FILE/A1201008%20et%20al-SCE%20Monthly%20GTSR%20Program%20Progress%20Report%20201901.pdf).

We also agree with Cal Advocates that SCE's claim that D.15-01-051 allows SCE to file an advice letter to sunset the GTSR Program is based on an ordering paragraph of the decision that does not reflect the change in law.²⁶ As discussed in Section 1 above, D.15-01-051 was adopted prior to SB 840 repealing the sunset date for the GTSR Program. SCE also argues that D.15-01-051 allows early termination of the GTSR Program under certain unique circumstances related to market failure.²⁷ CCEA and TURN/CUE disagree, citing D.15-01-051, Ordering Paragraph 14, which states:

If any of Pacific Gas and Electric Company, San Diego Gas & Electric Company, or Southern California Edison Company wish to suspend the program, it shall file a Tier 2 Advice Letter setting forth why such suspension is necessary to protect ratepayers and the utility's proposal for resolving the issue. [Emphasis added]

TURN/CUE argue that SCE did not identify any unique circumstances that warrant permitting an early termination of the GTSR Program.²⁸ CCEA asserts that the Legislature removed the sunset date with a clear intent that GTSR Program continues to operate beyond the program cap and that SCE must obtain authority to end its GTSR Program from the Legislature, not the Commission.²⁹ CCEA further points out that that D.15-01-051 allows suspension, not early termination. By definition, a program "suspension" is temporary, unlike a permanent program termination.³⁰ We agree with CCEA that there is a

²⁶ D.15-01-051, Ordering Paragraph 13.

²⁷ SCE's Reply to Protests at 4. SCE's Opening Brief at 4-6.

²⁸ *Id.* at 3.

²⁹ CCEA's Opening Brief at 3-4.

³⁰ CCEA's Reply Brief at 3-4.

distinction between “suspension” and “termination.” D.15-01-051 has already determined that “[i]t is not consistent with SB 43 to allow early termination.”³¹ The intent of the suspension provision in D.15-01-051 is to protect ratepayers against cost exposure from a market malfunction, but it requires utilities to set forth proposals to resolve the issue before granting a suspension. We also note that SCE’s AL 3722-E requesting early termination was not based on the D.15-01-051 GTSR suspension provision.³²

3.1.1. Voluntary Green Energy Programs

SCE argues that the GEPs proposal as voluntary utility programs is separate from the GTSR Program and therefore does not require compliance with SB 43.³³ SCE notes that its advice letter requesting GTSR termination is currently pending and argues that we need only address the merits of the new programs SCE has voluntarily proposed.³⁴ SCE further states that if the Commission believes SCE cannot terminate the existing GTSR Program, SCE would abide by an order instructing SCE to delete references to a “replacement.”³⁵ We find that because discontinuing its GTSR Program is the foundation of SCE’s request to replace the GTSR Program, we cannot simply evaluate the remainder of the application by deleting references to a “replacement.” SCE can, however, elect to submit a new application for its voluntary GEPs that is not premised on terminating and replacing the GTSR Program. If SCE believes that its existing GTSR Program is not working, SCE can take steps to modify the program.

³¹ D.15-01-051 at 83.

³² *Id.*, Ordering Paragraph 14 at 183.

³³ SCE’s Opening Brief at 6.

³⁴ *Id.* at 7.

³⁵ *Id.* at 7.

In their protests or response and briefs, parties raise other issues related to the reasonableness of the GEPs, e.g., justification for ratepayer funding for both the existing and new programs, renewable additionality, and cost recovery. These are valid issues that would be a part of the reasonableness evaluation of the GEPs. Therefore, if SCE does file a new application proposing the GEPs, SCE should address how the GEPs would coexist with the GTSR Program. SCE's proposal should also address the reasonableness issues raised by parties in this proceeding.³⁶

4. Categorization and Need for Hearing

The Scoping Memo and Ruling confirms the Commission's preliminary determination in Resolution ALJ 176-3425 that this is a ratesetting proceeding and evidentiary hearings are required. Accordingly, *ex parte* communications are restricted and must be reported pursuant to Article 8 of the Commission's Rules of Practice and Procedure. This decision resolves the threshold legal issues; therefore, no evidentiary hearings are needed.

5. Comments on Proposed Decision

The proposed decision of ALJ Liang-Uejio in this matter was mailed to the parties in accordance with Section 311 and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on May 20, 2019 by SCE, SBUA, and TURN. Reply comments were filed on May 28, 2019 by SCE and CCEA.

³⁶ See, e.g., the list provided in ALJ Liang-Uejio's November 28, 2018 Ruling.

6. Assignment of Proceeding

Michael Picker is the assigned Commissioner. Scarlett Liang-Uejio and Regina DeAngelis are the assigned ALJs and the presiding officers for the proceeding.

Findings of Fact

1. SCE requests Commission approval to implement the GEPs as a replacement for its existing GTSR program starting in 2021.
2. SCE requests to recover up to \$5.87 million in implementation, administration, and marketing costs associated with the proposed GEPs.
3. SCE proposes to recover the non-procurement related costs of the proposed GEPs from all bundled customers, both participants and non-participants.
4. The GTSR Program is a statewide program enacted by SB 43 and codified in Sections 2831 through 2834. SB 43 set a formal requirement for the three large electrical utilities to implement the GTSR Program with a Green Tariff Option component and an Enhanced Community Renewables component.
5. Section 2834 originally set a sunset date for the GTSR Program of January 1, 2019.
6. The Commission implemented and refined the GTSR Program in 2015 and 2016 in D.15-01-051 and D.16-05-006, respectively. D.15-01-051 directed the utilities to file Tier 3 ALs no later than December 31, 2017 to either extend their GTSR Programs beyond the statutory sunset date or terminate the GTSR Program as of that date.
7. Subsequent to the issuance of D.15-01-051 and D.16-05-006, the sunset date for the GTSR Program was removed from statute by SB 840 in September 2016.

8. Neither D.15-01-051 nor D.16 05 006 was modified to reflect the change in law that removed the sunset date from the GTSR Program.

9. SCE's GTSR Program is currently in effect.

10. SCE's allocated 269 MW program cap has not been reached.

11. SCE filed AL 3722-E on December 22, 2017 seeking to terminate its existing GTSR Program pursuant to D.15-01-051, Ordering Paragraph 13. SCE's AL 3722-E is suspended pending the Commission disposition.

12. SCE's AL 3722-E does not reference the GTSR suspension provision in Ordering Paragraph 14 of D.15-01-051.

13. D.15-01-051 determined that early termination of the GTSR Program is not consistent with SB 43.

Conclusions of Law

1. Parties' issues raised in this proceeding fall into two areas: (1) whether the GEPs could replace the GTSR Program if the new GEPs do not comply with SB 43 and (2) whether the GEPs are just and reasonable.

2. The current law requires the utilities to administer the GTSR program in accordance with Sections 2831-2833.

3. While the Commission has authority to approve voluntary utility programs, the Commission is constrained by Sections 2831-2833 when considering termination of the current GTSR Program.

4. It is necessary to resolve the threshold legal issues related to the GTSR Program termination before considering the reasonableness of the proposed replacement programs.

5. Terminating SCE's existing GTSR Program before it reaches the allocated 269 MW program cap would violate Section 2833(d).

6. D.15-01-051 does not authorize early termination of the GTSR Program. There is a distinction between “suspension” and “termination.”

7. Sections 2831-2833 require non-procurement costs to be recovered only from GTSR program participants.

8. SCE is not prohibited from modifying the GTSR Program through, depending on the nature of the proposed modifications, an advice letter, petition for modification, or a new application.

9. Replacing its GTSR Program with the GEPs is the foundation of SCE’s request in this Application, so deleting the references to a “replacement” is not sufficient for the Commission to continue to consider this Application.

10. SCE’s Application should be dismissed.

O R D E R

IT IS ORDERED that:

1. Southern California Edison Company’s Application 18-09-015 requesting Commission approval to implement five new green energy programs as a replacement for its existing Green Tariff Shared Renewables Program is dismissed.

2. Application 18-09-015 is closed.

This order is effective today.

Dated May 30, 2019, at San Francisco, California.

MICHAEL PICKER

President

LIANE M. RANDOLPH

MARTHA GUZMAN ACEVES

CLIFFORD RECHTSCHAFFEN

GENEVIEVE SHIROMA
Commissioners

Attachment 1

ACRONYMS

AL	Advice Letter
ALJ	Administrative Law Judge
Cal Advocates	California Public Advocate's Office
CCA	Community Choice Aggregator
CCEA	California Choice Energy Authority
CCSA	Coalition for Community Solar Access
CPA	Clean Power Alliance of Southern California
CUE	The Coalition of California Utility Employees
DACC	The Direct Access Customer Coalition
ESP	Energy Service Provider
GEPs	Green Energy Programs
GHG	Greenhouse Gas
GTSR	Green Tariff Shared Renewables
MW	Megawatts
PHC	Prehearing Conference
RPS	Renewables Portfolio Standard
SB	Senate Bill
SBUA	Small Business Utility Advocates
SCE	Southern California Edison Company
SEIA	The Solar Energy Industries Association
TURN	The Utility Reform Network

(END OF ATTACHMENT 1)