Decision 21-09-024 September 23, 2021

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Develop a Successor to Existing Net Energy Metering Tariffs Pursuant to Public Utilities Code Section 2827.1, and to Address Other Issues Related to Net Energy Metering.	Rulemaking 14-07-002
And Related Matters.	Application 16-07-015

REVIEW OF SOLAR CONSUMER ASSISTANCE FUND FOR NET ENERGY METERING CUSTOMERS

TABLE OF CONTENTS

Title **Page**

Summary 2
1. Background 2
2. Proposed NEM Assistance Fund 6
3. Party Comment on the Proposed Fund 11
3.1. Overall Need for the Recovery Fund 12
3.2. Commission Jurisdiction to Establish the Assistance Fund 13
3.3. Proposed Funding Source 15
3.4. Fee Level and Relevance to Cost of Service 16
3.5. Exempting Low-income Customers 17
3.6. Other Funding and Budget Considerations 18
3.6.1. Fund Size 18
3.6.2. Fund Solvency 19
3.6.3. Distribution of Fund Revenue by Utility 20
3.6.4. Administrative Costs 21
3.6.5. Role of the Fund Administrator 22
3.7. Claim Eligibility 22
3.8. Costs Eligible for Assistance 23
3.9. Alternative and Additional Approaches 24
3.9.1. Leverage Existing Solar Installation Educational Materials 25
3.9.2. Independent Consumer Advocate 25
3.9.3. Contractor-funded Recovery Fund 26
3.9.4. Legislative Mandate 27
3.9.5. Further Workshops 28
4. Original Proposed Decision and Comments 29
4.1. New Appropriation for Consumer Assistance 30
5. Process to Assess the Need for a Solar Consumer Assistance Fund 31
6. Comments on Proposed Decision 34
7. Assignment of Proceeding 34
Findings of Fact 34
Conclusions of Law 35
ORDER 36

REVIEW OF SOLAR CONSUMER ASSISTANCE FUND FOR NET ENERGY METERING CUSTOMERS

Summary

This decision establishes a process to assess the continued need for an assistance fund for residential customers of the investor-owned electric utilities who have not received the expected benefits of their net energy metering solar installations either due to fraud, poor workmanship, or other violations of Contractors License Law, and where no other administrative remedy for consumer financial assistance is available. A working group will review the status of currently-appropriated funds to assist consumers and provide future data and recommendations to the Commission on the potential need for a new funding source. This consolidated proceeding is closed.

1. Background

The consumer protections phase of this proceeding has extensively considered various approaches to address fraud and other harmful and illegal practices impacting solar consumers. The Commission has already adopted measures to deter future violations by improving information collection and strengthening interagency coordination in support of oversight in Decision (D.) 20-02-011, and implemented measures to ensure solar consumers are better informed about the considerations of going solar in D.18-09-044.

As a complement to these adopted measures, which seek to prevent future harms, this proceeding has also been considering solutions that ameliorate existing consumer harms. The concept of a fund that provides financial assistance to victimized solar consumers has been repeatedly raised. The March 8, 2019 *Assigned Commissioner's Ruling Regarding Enhanced Consumer Protections for Net Energy Metering Customers* (first enhanced consumer protections Assigned Commissioner's Ruling (ACR)) invited comments on

enhanced consumer protection measures including the creation of a fund. The October 18, 2019 *Assigned Commissioner's Ruling regarding enhanced consumer protections via potential modifications to customer information packet signature requirement, and solar provider registration process for interconnecting under net energy metering* (second enhanced consumer protections ACR) also raised the potential for a fund funded by citation program penalties.

Parties provided comments on these ideas, including:

- A neutral party such as Commission staff should coordinate on issues, interact with consumers with complaints, help direct cases to other agencies as needed, and help consumers determine whether solar providers or their agents have a valid license or complaints against them;
- Any Commission system for imposing penalties could focus on misrepresentations, violation of interconnection requirements, and blatant deception; existing civil and criminal penalties do not adequately address the problem.

Building on this record, the assigned commissioner issued a proposal to create a fund to assist customers (ACR) on September 3, 2020. The fund would provide assistance for residential customers of electric investor-owned utilities who are affected by inadequate solar installations. The ACR stated that D.20-02-011 noted the intent of the Commission to consider a fund for solar consumers affected by inadequate solar installations. D.20-02-011 stated that: "[Investor-owned utility (IOU)] ratepayers being defrauded or misled, and being saddled with solar systems that do not provide benefits, runs counter to our energy goals and our overall responsibility to ensure a reliable electric grid… Some stakeholders assert that industry's existing voluntary practices of complaint resolution are enough. We are not persuaded by this last point, particularly in the absence of any substantive, collective industry commitment to

ensuring that some of the most egregious cases can be resolved. More must be done."[1]

The ACR described the solar fraud problems that have been repeatedly raised in this proceeding, stating "concern over solar fraud, particularly from unscrupulous lead generators and sales agents misleading consumers into entering harmful transactions, has grown." Parties have previously described the problems on the record; California Low-Income Consumer Coalition (CLICC), which consists of thirteen member organizations that provide free legal services, stated in 2019 that "over the past several years, CLICC's members have seen an influx of vulnerable homeowners trapped in clean energy financing and/or solar lease agreements that they do not understand and cannot afford. These homeowners were often tricked into signing these agreements based on gross misrepresentations. CLICC member organizations have witnessed identical abuses in the solar industry in locations as far-flung as Alameda, Los Angeles, Monterey, Orange, and San Diego counties."[2]

The ACR also noted that the Contractors State License Board (CSLB) and the Commission participate in the Interagency Solar Consumer Protection Taskforce (Taskforce), which considers potential solutions to the issue of inadequate solar installations and consumer protections. The ACR asserted that the CSLB reported at the August 2020 Taskforce meeting the following facts based on CSLB's review of the practices of solar contractors:

- CSLB received an average of 90 new solar-related complaints per month in Fiscal Year (FY) 2019-20. This

[1] D.20-02-011 at 21-22.

[2] CLICC Opening comments responding to first consumer protections ACR, at 2.

monthly average complaint count is the highest CSLB has experienced since 2015.

- In FY 2019-20, 122 complaints were referred by the CSLB to legal action. In terms of CSLB's process, "referring a complaint to legal action" means that the CSLB registrar has asserted through an investigation that there is a preponderance of the evidence, or clear and convincing evidence, that the violation has occurred. Legal actions include, for example, a citation or license revocation or suspension. A much higher number of complaints are closed due to insufficient evidence, are settled or referred to arbitration than are referred to legal action.
- Between January 2018 and July 2020, CSLB referred 251 solar-related complaints to legal action. Of these, 141 complaints were closed by the CSLB because the contractor's license had already been revoked. In these cases, the CSLB adds the consumer's complaints to the series of complaints already reflected in the accusation against the license and records any additional financial injury owed to the consumer against the license. That amount will need to be paid by the contractor if the contractor is ever going to be licensed again.
- 17 of the 251 complaints involved unlicensed contractors.
- In 110 of the 251 solar-related complaints referred to above, the CSLB alleged either misrepresentation in violation of Business and Professions Code (BPC) § 7161 or a willful and fraudulent act in violation of BPC § 7116.
- In 124 of the 251 solar-related complaints referred to above, the CSLB alleged poor workmanship in violation of BPC § 7109.
- In 72 of the 251 solar-related complaints referred to above the CSLB alleged abandonment of the project by the contractor without legal excuse, in violation of BPC § 7107.[3]

[3] ACR at 4-5.

The ACR further asserted that inadequate solar installations particularly harmed low-income, elderly, and non-English speaking consumers and communities. The ACR reasoned that adoption of its proposed recovery fund in tandem with continued coordination between the partner agencies of the Interagency Solar Consumer Protection Taskforce would provide customers affected by inadequate solar installations with assistance that also advances California's mandate in sustaining the growth of distributed renewable generation.[4]

2. Proposed NEM Assistance Fund

The ACR proposed the adoption of a fund that would protect the integrity of the NEM program by ensuring consumers receive the expected benefits of solar projects and do not suffer economic harm from fraud as determined in the CSLB's formal adjudication process. The ACR intended for the fund to be retroactive, reimbursing customers for economic harm incurred in the past, noting that the Commission's previously-adopted measures focused on prevention and that solutions for violations that have already occurred were needed.[5] The ACR also intended the recovery fund to provide a streamlined administrative process for customers affected by inadequate solar installations, recognizing that the ability for many of these customers to pursue a full remedy in civil court is limited.[6]

In general, the ACR proposed the following elements for the fund:

- A fund account would be created by the IOUs and overseen by the Commission.

[4] ACR at 6.

[5] ACR at 6.

[6] ACR at 6-7.

- A residential NEM consumer protection interconnection surcharge would be established, and the IOUs would collect the surcharge and place the revenue into the fund.
- The fund would be administered by a third-party recovery fund administrator (RFA) under contract with the Commission or via a contract with one of the IOUs under Commission oversight.
- Under the memoranda of understanding (MOU) established under the Interagency Solar Consumer Protection Taskforce, the RFA would receive eligible claims from the CSLB (*i.e.,* a "referred complaint" from the CSLB), verify recipient eligibility, and disburse funds to claimants.
- In all cases in which consumers recover from the fund, the RFA will forward a certified attestation of that fact to the CSLB for inclusion in the contractor's license record.[7]

The ACR proposed the following types of inadequate solar installations, if verified by the CSLB through their adjudicatory process, would make an affected customer eligible for compensation from the recovery fund:

1) Referred complaints in which the CSLB alleges misrepresentation and/or fraud in violation of BPC §§ 7161 and 7116. Generally, affected customers in this category would have been misled about the real cost of investing in distributed solar as well as the cost of energy for solar consumers. This category could also include situations where a customer suffers harms resulting from more general lies or other misrepresentations; for example, if the customers did not even know they were agreeing to install solar.
2) Referred complaints in which the solar system at issue was partially installed and not connected to the grid, incomplete in another way, or was otherwise stranded. Examples of these types of complaints include those related to non-interconnected systems, systems with

[7] ACR at 7-8.

noncompliant inverters, and systems that require panel installation.

3) Referred complaints regarding inadequate solar installations that are not covered by any of the aforementioned categories.

In addition to specifying the categories of claims, the ACR proposed the following eligibility criteria in order for a customer to receive a payment from the recovery fund:

1) The customer must be an active residential customer of the electric IOUs, taking service under the NEM tariff or eligible to do so, and whose claims are referred to the RFA by the CSLB. The ACR stated that claims related to installations using Property Assessment Clean Energy (PACE) financing would be ineligible.

2) The customer must have exhausted administrative remedies for compensation such that the only cases referred to the RFA would be solar complaint cases in which the CSLB determined that fraud, misrepresentation, poor workmanship and/or abandonment occurred; the consumer was financially harmed; payment of a specified sum to an injured party was established or an amount of restitution was ordered; and the consumer did not recover funds. The ACR proposed that the claim would meet these criteria if CSLB affirmed that the claim:

   - Arose out of a contract for a solar energy system as defined in subdivision (g) of BPC § 7169, installed at a residence and not as a standard feature on new construction; and the complaint investigation has resulted in a "legal action," either a citation under authority of BPC § 7099 or administrative action to suspend or revoke a contractor's license pursuant to BPC § 7090; and

   - The legal action contained either 1) an order of payment of a specified sum to an injured party in lieu of correction pursuant to BPC § 7099, or 2) an order of

restitution, as a condition of probation or of a new or reinstated license pursuant to BPC § 7095, 7102, and/or Government Code § 11519; and

- The order of payment of a specified sum to an injured party, or the order of restitution, has become the final decision of the registrar in a proceeding conducted in accordance with the provisions of Chapter 5 (commencing with § 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the consumer has not received the funds; and
- The legal action contains any one or more of the following causes of discipline: violation of BPC §§ 7107 (Abandonment), 7109 (Departure from Accepted Trade Standards or Plans or Specifications), 7110 (Violation of Building or Safety Laws), 7113 (Failure to Complete for Contract Price), 7115 (False Completion Certificate Filed to Obtain Financing), 7116 (Willful or Fraudulent Act Causing Harm), 7119 (Failure to Prosecute Work Diligently), 7120 (Failure to Pay for Materials or Services), 7159 et seq (Contract Form Requirements) or 7161 (Misrepresentation); and/or
- The legal action is against an unlicensed or a licensed contractor that the CSLB has referred to a local agency for prosecution, and that referral has resulted in a judgment following a plea or verdict of guilty or a plea of nolo contendere or finding of guilt and contains a court ordered restitution or that has resulted in a judgment.

The ACR specified that the fund administrator would not adjudicate or determine fund amounts to be disbursed. Recovery amounts for each claim would be pre-determined by CSLB through its adjudicatory process. This recovery amount would be referred to by CSLB as a "financial injury." Every complaint that would be referred by the CSLB to the RFA for recovery would have an estimate of financial injury to the customer.

The ACR proposed that in cases involving fraud/misrepresentation in which the CSLB's financial injury determination may not sufficiently restitute the injured party, the consumer would receive a categorical amount predetermined by the Commission. The ACR further proposed that for claims involving misrepresentations where a customer has a functioning solar system but cannot afford it or does not want it, the customer would recover funds in the amount of the contract price. Finally, the ACR also proposed that the recovery amount could be capped at one-third of the contract price, or $10,000, whichever is greater, to provide a standard amount intended to only cover the funds needed to remove the solar panels and repair the roof if it is damaged.

With respect to claims administration, the ACR proposed that the RFA execute the following steps to pay out a claim:

- Verify that the claimant is an active IOU customer by contacting the relevant IOU and confirming the active account number and customer information.[8]
- Contact the claimant and verify that the claimant is the individual identified in the referred claim and that their personal and contact information is accurate.
- Collect an attestation from the claimant that they have not received other restitution for the reimbursed damages, and that if they receive in the future any other restitution through civil or criminal court proceedings, they will reimburse the fund for funds received.
- Disburse funds to the claimant in the amount identified in the referred claim as the financial injury.
- For claims demonstrating fraud and/or misrepresentation (violations of BPC §§ 7116 or 7161) in which the contract price is reflected in the financial injury estimate and the

[8] If the customer cannot be verified as an active IOU customer, the RFA will notify the CSLB and the consumer that the referred claim is rejected.

customer had a negative true-up bill at the end of their first year on the NEM tariff, the RFA will add that true-up amount to the total amount paid.

- Provide a certified attestation to the CSLB of funds paid for inclusion in its records.

The ACR proposed that if claimants wished to dispute the outcome of their claim, they could use the existing process for registering a complaint against the CSLB with its Executive Office.

The ACR proposed that the source of the fund would be a new interconnection surcharge on residential IOU customers taking service under the NEM tariff. The ACR reasoned that such a surcharge would be consistent with the Commission's goal of ensuring grid reliability, expanding renewable deployment, protecting the public, and ensuring the provision of, and access to, safe and reliable utility infrastructure and services.

Based on an analysis of past claims and estimates of future interconnection applications, the ACR estimated that the fund would pay out $1,631,763 worth of claims each year, and that $100,000 would be required for annual administration costs. Based on these estimates, the ACR proposed a NEM interconnection surcharge of $12.

3. Party Comment on the Proposed Fund

On October 1, 2020, Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E), GRID Alternatives (GRID), the Public Advocates Office at the California Public Utilities Commission (Cal Advocates), Southern California Edison Company (SCE), the Solar Energy Industries Association (SEIA), and the California Solar & Storage Association (CALSSA) filed opening comments on the ACR. On October 15, 2020, reply comments were filed by GRID, The Utility Reform Network (TURN), Central California Legal

Services (CCLS), SEIA, and CALSSA. The comments of the parties are organized by topic below.

3.1. Overall Need for the Recovery Fund

Most parties supported the objective of the fund, agreeing that the issue it is intended to solve is worth addressing. SDG&E stated the "issue of remedies for consumers defrauded by solar providers to be important and worthy of careful consideration."[9] GRID asserted the fund is necessary, stating that "there have been vulnerable homeowners in California, seeking to save money and/or reduce their environmental footprint with on-site solar, that have been seriously harmed. For past and future victims of fraud, a restitution fund is necessary to provide financial recourse."[10] GRID stated further that "maintaining a healthy, transparent, and reputable solar industry is paramount to GRID and the solar industry at large."[11]

Cal Advocates agreed the proposal would protect consumers from fraud, although it did not support the proposed funding source.

SEIA and CALSSA stated that a fund can be "a useful tool for individuals who have a final judgment but cannot collect through no fault of their own," and that the fund as proposed is "workable with some adjustments."[12]

While SCE opposed the proposal and recommended the Commission "adopt a more limited and narrowly tailored restitution program," it admitted

[9] SDG&E Opening Comments at 1.

[10] GRID reply comments at 1.

[11] GRID Reply comments at 4.

[12] CALSSA opening comments at 2.

that the NEM program "has created perverse incentives and opened the door to opportunities for unethical contractors to prey on vulnerable customers."[13]

3.2. Commission Jurisdiction to Establish the Assistance Fund

Several parties were broadly critical of the ACR's proposal on jurisdictional and due process grounds. While agreeing that customers should be protected from the harm of inadequately installed solar systems, PG&E claimed that the proposed funding source raised jurisdictional concerns that were unaddressed in the ACR. Specifically, PG&E argued that "requiring customers to pay the charge… may exceed [the Commission's] constitutional authority by enforcing non-utility laws that are within the proper province of the legislature and judiciary."[14] SDG&E shared similar concerns and stated that the Commission should consider whether the proposed surcharge "constitutes an improper 'tax' outside the Commission's authority."[15]

SCE raised multiple legal and jurisdictional challenges to the proposal. It opined that "the true goal of the compensation program appears to be fairness to defrauded consumers," and that "[w]hile promoting such fairness is a worthy goal, it is not cognate and germane to the Commission's regulation of utilities."[16] SCE also asserted that the California Supreme Court has held that the Commission does not have the authority under Public Utilities Code §§ 701 and 728 to create ratepayer-funded compensation schemes for third parties absent direction from the Legislature. SCE argued that Public Utilities Code § 734 only

[13] SCE opening comments at 1.

[14] PG&E opening comments at 4.

[15] SDG&E opening comments at 2.

[16] SCE opening comments at 8.

allows the Commission to order reparations concerning a "rate… for a product or commodity furnished or service performed by a public utility" and not for compensation for inadequate solar installations performed by solar contractors.[17]

SCE argued that a customer should not be eligible to receive compensation from the recovery fund unless they had previously exhausted their judicial remedies (*i.e.*, sought judgment in a civil court for their losses), or else the process risked infringing upon the jurisdiction of the civil court system.

CCLS contradicted SCE's assertions, claiming that there are significant barriers to access of the judicial system by customers affected by inadequate solar installations. They argued that the current length of time to litigate a claim at civil court, combined with the expense of retaining counsel, make it more likely that an affected customer would accept a settlement contrary to their interest. CCLS also asserted that small claims court was not an effective option, given the lack of English-language proficiency and internet connectivity required to substantially participate in hearings before such a court. However, CCLS noted that some customers may need to pursue civil action in spite of these barriers for other reasons, and therefore customers should be eligible to apply to the RFA if they have a court's judgment (or arbitration award) in hand.

In contrast, other parties stated that the Commission has sufficient authority to implement the proposal. TURN broadly affirmed the Commission's authority by noting that "the Commission has exclusive jurisdiction over the requirements governing eligibility for NEM."[18] Cal Advocates agreed that the fund would address solar fraud, and stated that doing so is directly within the

[17] SCE opening comments at 12.

[18] TURN reply comments at 5.

Commission's mandate of implementing the NEM program and ensuring that renewable generation continues to grow.[19]

3.3. Proposed Funding Source

Several parties raised concerns regarding the proposed $12 interconnection surcharge that would be used to capitalize the fund. In general, parties opposed collecting the funds from participating NEM customers for two reasons: they asserted the funding should come from solar developers, and they expressed concern that those who pay the fee may not benefit from the fund.

PG&E, SCE, and SDG&E opposed the surcharge and argued that any such fees should be collected from contractors directly by the CSLB pursuant to legislation. They also claimed that customers paying the fee are unlikely to directly benefit from the recovery fund.[20]

PG&E noted that the Commission's efforts to prospectively reduce misleading solar marketing would likely lead to fewer complaints about inadequate solar installations in the future, which in turn would make it even more likely that customers paying the recovery fund fee would not benefit from the fund.[21]

Cal Advocates opposed the proposed interconnection surcharge on the grounds that NEM customers as a group should not pay for the harms caused by solar contractors, even if some NEM customers benefit from the proposed recovery fund.[22] TURN stated that if the fund is "created in response to unscrupulous or improper business practices by some solar providers, it is

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[19] Cal Advocates opening comments at 1-2.

[20] *See* PG&E opening comments at 2.

[21] PG&E opening comments at 3.

[22] Cal Advocates opening comments at 2.

appropriate for participants in the solar industry to contribute to any recovery fund that is created."[23]

CALSSA and SEIA lodged an objection to the ACR's proposal on these grounds as well, specifically arguing that NEM customers that receive solar as part of new home construction should not pay the proposed interconnection surcharge.[24]

3.4. Fee Level and Relevance to Cost of Service

PG&E, SCE and SDG&E each argued that the proposed $12 interconnection fee was not related to any cost of service imposed by NEM customers. According to PG&E, "[w]hile the one-time surcharge to residential NEM customers would be paid as part of the interconnection fee, it is not a cost of service, rate, tariff or customer service charge applicable to utility service. The customers who would pay the surcharge have not violated [Commission] rules or orders, so [Public Utilities] Code [§§] 2100, et seq. similarly do not provide a basis for the charge."[25]

SCE also argued that the proposed interconnection surcharge was contrary to D.16-01-044, which determined the NEM interconnection fee to be paid by SCE's NEM customers based on an analysis of the costs to serve SCE's NEM customers.[26] SCE also pointed to a recent Commission decision that found it is inconsistent with cost causation principles to allocate costs to customers based solely on indirect societal benefits – which SCE argued the ACR proposes to do

[23] TURN reply comments at 2.

[24] CALSSA/SEIA opening comments at 5-6.

[25] PG&E opening comments at 3-4.

[26] SCE opening comments at 18.

by levying a $12 surcharge to deter malfeasance by third parties.[27] With respect to the ACR's rationale that future NEM customers would potentially benefit from recovery fund payouts, SCE attempted to refute the reasoning by citing a Commission decision holding that "costs should be borne by those customers who cause the utility to incur the expense, not necessarily by those who benefit from the expense."[28] SCE pointed out that many customers that would be eligible for compensation from the recovery fund will never pay the surcharge (*i.e.*, customers already interconnected or those that failed to interconnect in the first place).[29]

Additionally, SCE argued that the setting of the $12 surcharge in the quasi-legislative phase of this proceeding would be unlawful as it is arbitrary and not related to any cost to serve NEM customers.[30]

3.5. Exempting Low-income Customers

Cal Advocates argued that if the proposed recovery fund is established, low-income NEM customers should not pay the proposed surcharge. Cal Advocates reasoned that this exemption would avoid creating an additional barrier to solar adoption by low-income households.[31] GRID Alternatives also recommended exempting all low-income customers from the interconnection surcharge, and suggested that an exemption be granted to customers that

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[27] SCE opening comments at 18, citing D.19-09-004 at 9.

[28] SCE opening comments at 19, citing D.14-12-024 at 48.

[29] SCE opening comments at 19.

[30] SCE opening comments at 17, citing *Ponderosa Tel. Co. v. Cal. P.U.C.* (2019) 36 Cal.App.5th 999, 1019 ("arbitrary decisionmaking is precluded"; "if an agency decision is shown to be 'arbitrary' . . . or to 'exceed the bounds of reason,' an abuse of discretion will be found") (citations and internal markings omitted).

[31] Cal Advocates opening comments at 3-4.

participate in a low-income solar program.[32] TURN agreed with the positions of both Cal Advocates and GRID.[33] CCLS also supported an exemption from the surcharge for low-income customers.[34]

3.6. Other Funding and Budget Considerations

Parties raised several concerns related to the recovery fund's proposed budget, solvency, and future financial needs. These concerns are summarized below.

3.6.1. Fund Size

CALSSA and SEIA argued that the Commission should revise the ACR's estimate for the recovery fund's size, with an estimate based "on the actual orders of payment or restitution issued by the CSLB over the determined relevant period" rather than those simply referred to legal action.[35] They also recommended capping the amount of the interconnection surcharge and revisiting the amount every three years, in order to provide certainty to market actors, with an initial cap of $20.[36] SCE asserted that the proposed $1.6 million initial recovery fund budget and the proposed $12 surcharge appear to be arbitrary numbers "calculated with a very limited amount of data."[37]

SCE also argued that it will take years for the recovery fund to be adequately capitalized and that as a consequence "claims must be submitted and

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[32] GRID opening comments at 2, reply comments at 3-4.

[33] TURN reply comments at 3.

[34] CCLS reply comments at 5.

[35] CALSSA/SEIA opening comments at 4-5.

[36] CALSSA/SEIA opening comments at 5.

[37] SCE opening comments at 7.

paid out on a rolling basis as the fund becomes solvent" rather than immediately as implied by the ACR's proposal.[38]

3.6.2. Fund Solvency

CALSSA and SEIA also recommended that the Commission should institute a requirement that, should the fund operate at a loss in any one year, it would "revisit various criteria of the fund's administration to rectify the deficit." They asserted that recovery funds in other states addressed potential insolvency by placing caps on the claims paid per complainant and caps on the claims paid per contractor,[39] although they did not suggest applying such caps at the beginning of the recovery fund's administration.[40]

SCE was concerned about the solvency of the recovery fund and argued that to protect the fund's solvency the Commission should: 1) limit the retroactivity of the fund or make it only available on a going forward basis, 2) limit the time for a claimant to file a claim going forward (*i.e.*, a statute of limitations), 3) cap the amount a claimant can recover from the fund, 4) cap the number of claims a customer can make on the fund, 5) set a maximum budget for the operation of the fund that must be paid for out of the charge collected to capitalize the fund, and 6) establish procedures for winding up the fund or suspending its operation in periods of insolvency.[41] SDG&E also supported a cap on recovery fund payments per claimant.[42]

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[38] SCE opening comments at 29.

[39] CALSSA/SEIA opening comments at 7.

[40] CALSSA/SEIA opening comments at 8.

[41] SCE opening comments at 25.

[42] SDG&E opening comments at 3.

TURN recommended that, if a recovery fund is capitalized by ratepayers, then the Commission should institute a cap on the total amount per claim and limit the amount of times a specific customer can recover from the fund to one.[43]

Cal Advocates recommended continual monitoring of fund disbursements, and a reduction in the interconnection surcharge if in the future the need for fund disbursements is reduced. They specifically cited the need to avoid an "overcollection of funds" through the use of a tracking mechanism that includes regular reports by the RFA to the Commission and the NEM proceeding's service list. If a pre-determined percentage of the recovery fund remained unspent for a specified period of time, Cal Advocates recommended that "it should trigger an automatic reduction in the amount of recovery fund money collected and reimbursement to the ratepayers from whom the unspent funds were collected."

CALSSA and SEIA theorized that the customer protection measures currently in place for new NEM customers will lead to a reduction in inadequate solar installations in the future, and therefore suggested a reduced budget for the recovery fund based on annual reviews of funding needs. SDG&E similarly argued for annual reviews of the recovery fund budget that is necessary to pay out estimated claims to avoid overcollections. TURN supported SDG&E's proposal, sought a bi-annual review of the recovery fund's financial position and forecasted financial needs, and supported the idea that excess funds held by the RFA should be automatically returned to ratepayers if unneeded by the RFA.

3.6.3. Distribution of Fund Revenue by Utility

CALSSA and SEIA argued that the interconnection surcharges collected by the large electrical corporations should be pooled into a single fund managed by

[43] TURN reply comments at 2.

the RFA, reasoning that this would ensure eligible customers could receive payments even if their electrical corporation's contributions had been exhausted.[44] SDG&E similarly supported an approach where the contributions of the large electrical corporations would be pooled in a single recovery fund for the sake of administrative efficiency.[45]

SCE recommended that funds collected from a utility's customers should fund payments made to that utility's customers, "provided that such a system does not present problems for the solvency of the fund."[46] TURN agreed that each utility's collections should only be used to fund claims by that utility's customers to avoid cross-subsidization.[47]

3.6.4. Administrative Costs

PG&E argued that the administrative costs for the RFA were underestimated by the ACR; but did not provide an estimate of those costs.[48] CALSSA and SEIA believed that the administrative budget of $100,000 per year was reasonable, and the RFA should request from the Commission more funding in the future if necessary, with Commission approval only after a public process to consider the revised administrative budget.[49] SCE claimed that there was insufficient record regarding the role of the RFA to determine if the ACR's proposed budget was reasonable.[50] TURN expressed concern that administrative

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[44] CALSSA/SEIA opening comments at 8.

[45] SDG&E opening comments at 3-4.

[46] SCE opening comments at 31.

[47] TURN reply comments at 4.

[48] PG&E opening comments at 7-8.

[49] CALSSA/SEIA opening comments at 8.

[50] SCE opening comments at 31-32.

costs were uncertain, and sought a guarantee that ratepayers would not be required to backstop administrative costs or ensure initial fund solvency given these uncertainties.[51]

3.6.5. Role of the Fund Administrator

PG&E was broadly critical of the jurisdictional basis for defining the role of the RFA and asserted that the proposed role of the RFA in preventing double recovery and determining how to refund annual true-ups implies that the RFA will fulfill a fact-finding and adjudicatory role rather than being exclusively ministerial. SCE made similar arguments.

SCE theorized that if the RFA is viewed as the agent of the Commission, then it may be bound by the restrictions of Public Utilities Code § 409 and would not be able to pay out claims without legislative appropriation. With respect to the process of selecting an RFA, SCE reasoned that there must be more detail provided on how the RFA will be selected in compliance with state contracting rules, "which must be adhered to even if the Commission directs the [large electrical corporations] to enter into the contract with the RFA on the Commission's behalf." SCE argued that "[i]f the Commission chooses to proceed with the NEM recovery fund, the proper course is for the Commission to direct the [large electrical corporations] to both select and administer the contract with the RFA."

3.7. Claim Eligibility

As proposed, the fund is limited to active residential customers of the electric IOUs whose CSLB claim exhausts the CSLB's administrative process without receiving financial payment. SCE, CALSSA and SEIA proposed that the

[51] TURN reply comments at 4-5.

RFA should be allowed to receive applications directly from claimants that won a final judgment in court, in addition to accepting claims from the CSLB. They claimed this would allow customers to pursue claims in court rather than relying on CSLB processes. CALSSA and SEIA also reasoned that customers that finance their solar systems through PACE financing should be eligible as those customers would end up paying the interconnection surcharge. They asserted that the CSLB can investigate complaints about PACE-funded workmanship, home improvement contract terms, and contract misrepresentations; and that it would also be inequitable to require customers to pay into the recovery fund but be unable to access it.

As noted previously, SCE argued that customers should not be eligible for recovery fund compensation unless they had previously exhausted their judicial remedies.

TURN argued against eligibility based on income in general but conceded that if the recovery fund allows for claims regarding misrepresentations of costs and savings, "then an income cap may be necessary to ensure fund solvency."

3.8. Costs Eligible for Assistance

Most parties did not object to the main proposed scope of eligible costs, which again include those resulting from violation of the following laws: BPC §§ 7107 (Abandonment), 7109 (Departure from Accepted Trade Standards or Plans or Specifications), 7110 (Violation of Building or Safety Laws), 7113 (Failure to Complete for Contract Price), 7115 (False Completion Certificate Filed to Obtain Financing), 7116 (Willful or Fraudulent Act Causing Harm), 7119 (Failure to Prosecute Work Diligently), 7120 (Failure to Pay for Materials or Services), 7159 *et seq* (Contract Form Requirements) or 7161 (Misrepresentation).

SDG&E opposed the inclusion of any "punitive" costs in the calculation of recovery fund payments, arguing that such penalties should remain the realm of the civil courts.[52]

SCE recommended that the Commission should "limit any fund recovery to a narrow set of claims involving stranded systems or especially egregious cases of fraud in which customers were not aware they were signing a solar contract, and, even then, only after those customers have exhausted their judicial remedies and enforcement of judgment options."[53]

TURN did not support recovery fund reimbursements for losses associated with misrepresented costs or savings. TURN argued that these types of claims "would be difficult to verify and calculating 'missed savings' would be challenging and cumbersome. Utility rates are constantly changing and it is not appropriate for the fund to act as a backstop for customer savings." TURN further asserted that the proposals for reimbursing the customer for these misrepresentations did not align with the Commission's policy goals or fairly compensate the customer for the harms incurred.[54]

3.9. Alternative and Additional Approaches

Several parties supported the policy goal of ensuring that customers experiencing inadequate solar installations receive assistance, but disagreed with the approach proposed by the ACR or suggested additional approaches. Party proposals for additional approaches and alternatively constructed regimes are summarized below.

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[52] SDG&E opening comments at 3.

[53] SCE opening comments at 5.

[54] TURN reply comments at 6.

3.9.1. Leverage Existing Solar Installation Educational Materials

Cal Advocates recommended changing the way the existing solar information packet is distributed in order to deter inadequate solar installations. Cal Advocates argued that the solar information packet's "availability should be more widespread and it should be made available earlier in the process of considering solar in order to more effectively prevent solar fraud, thus obviating the need for a costly recovery fund."[55] GRID also supported improvements to the solar information packet process.[56]

SCE also supported leveraging existing solar information resources, and potentially creating new resources, to help customers avoid inadequate solar installations in the first place.[57]

3.9.2. Independent Consumer Advocate

Earlier rulings in this proceeding sought party comment on the establishment of an independent solar consumer advocate. In a December 2016 assigned commissioner's ruling, parties were asked to comment on the concept of an independent consumer advocate, based on an idea first proposed in 2015 by Cal Advocates (then the Office of Ratepayer Advocates).[58] The majority of parties were in favor of the general concept, with questions around scope and implementation. GRID specifically stated that it would be critical for a trusted independent consumer advocate to be dedicated to low-income and underserved communities. In the first enhanced consumer protections ACR, the Commission

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[55] Cal Advocates opening comments at 3.

[56] GRID Alternatives reply comments at 2-3.

[57] SCE opening comments at 34-36.

[58] Administrative Law Judge's Ruling Seeking Comment on Consumer Protection and Related Issues, December 8, 2016.

asked for further party comment on the concept of an independent consumer advocate or consumer clearinghouse. Parties including CALSSA, SEIA, CLICC, SCE, TURN, and GRID stated support for establishing an independent consumer advocate that would act as a clearinghouse for information, assist with complaints and refer consumers to the appropriate agency with the jurisdiction to assist in their situation. GRID reiterated its prior support for an independent consumer advocate that would work "on behalf of the Commission to bolster consumer protection education and outreach efforts to protect vulnerable customers from unethical business practices."[59]

3.9.3. Contractor-funded Recovery Fund

Several parties suggested that the fund be capitalized with contributions from solar contractors rather than ratepayers. SCE recommended that the Commission "capitalize a Commission created fund with registration fees charged to contractors, not residential NEM customers, non-participating customers, or the utilities" and asserted that such an approach was raised in a 2019 Assigned Commissioner's Ruling issued in this proceeding, which was never formally rejected.[60] Cal Advocates suggested that a non-ratepayer funded mechanism should be established to compensate customers for inadequate solar installations.[61] SDG&E largely concurred, stating that a recovery fund approach "should start with [CSLB] and be funded by solar providers." CALSSA and SEIA asked the Commission to reject contractor-funded schemes at this time, and argued that legislative action would be required to create any such funding

[59] GRID reply comments at 3.

[60] SCE opening comments at 4.

[61] Cal Advocates opening comments at 3.

scheme.[62] TURN agreed that it would be more appropriate to capitalize the recovery fund using fees paid by solar contractors rather than utility customers.[63]

CALSSA and SEIA posited that if CSLB increased the bonding requirements for licensed home improvement contractors (which would increase the likelihood of financial recovery at the CSLB itself), then the policy problem the ACR seeks to address may be ameliorated.[64] CALSSA and SEIA further recommended that if the CSLB ever instituted its own recovery fund that may be accessed by customers eligible for the ACR's proposed recovery fund, then the Commission should dissolve its recovery fund.[65]

3.9.4. Legislative Mandate

PG&E recommended that the Commission explore a legislatively-mandated fund that solar installers would pay into and that would be administered by the CSLB.[66] SCE argued that "the solution to the problem of a recovery fund for customers defrauded by solar contractors properly lies with the California Legislature" and that the Commission should focus on engaging the Legislature to develop a solution in that forum.[67] SDG&E noted that they would support legislative action necessary to allow the CSLB to collect funds for a recovery fund.[68]

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[62] CALSSA/SEIA reply comments at 2.

[63] TURN reply comments at 1.

[64] CALSSA/SEIA opening comments at 11.

[65] CALSSA/SEIA opening comments at 6.

[66] PG&E opening comments at 5-6.

[67] SCE opening comments at 2.

[68] SDG&E opening comments at 2.

CALSSA and SEIA observed that many states have laws establishing funds similar to the one proposed in the ACR (including but not limited to solar installers). They pointed out that, unlike the ACR's proposed fund, monies for the funds typically come from surcharges imposed on the license and registration fees paid by contractors (rather than customers). They stated that California does not have a similar fund for its contractors, although it does have legislatively mandated recovery funds for lawyers, real estate agents, car dealers, and mobile home dealers.[69]

Based on this analysis, CALSSA and SEIA stated that a legislatively mandated creation of a home improvement contractor recovery fund "would have an advantage over the recovery fund proposal in the [ACR] in that the recovery fund would be available to all residential customers in the state, rather than just those of the three large [electrical corporations]."[70]

3.9.5. Further Workshops

PG&E proposed further discussion among stakeholders at a workshop on several issues such as an income limitation on fee payments and whether or not to cap the recovery fund's payments.[71] CALSSA and SEIA strongly recommended further party comment before proceeding with the creation of a fund.[72]

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[69] CALSSA/SEIA opening comments at 2-3.

[70] CALSSA/SEIA opening comments at 11.

[71] PG&E opening comments at 7.

[72] CALSSA/SEIA opening comments at 2, reply comments at 5.

SDG&E recommended additional workshops to refine program details, including addressing metrics, thresholds, a statute of limitations, and limits on fund disbursements.[73] TURN also supported an additional workshop.[74]

4. Original Proposed Decision and Comments

On May 19, 2021, the assigned commissioner issued a proposed decision that would have established a solar consumer assistance fund for NEM customers. The original proposed decision established a NEM interconnection surcharge to serve as the funding mechanism for the assistance fund; specified capitalization and ongoing funding levels, including an annual review process to ensure fund solvency; and designated an assistance fund administrator to make payments to claimants referred by the CSLB according to specified eligibility criteria, identified costs eligible for recovery from the assistance fund, and detailed a process for making payments.

On June 8, 2021, opening comments were filed by SEIA and CALSSA, and jointly by the large electrical corporations (Joint IOUs). Reply comments were filed on June 11 and 14, 2021 by CLICC, jointly by CALSSA and SEIA, and TURN. In opening comments, the Joint IOUs reiterate their support for efforts to address consumer harms, and acknowledge that "existing customers who have been wronged, and customers who may still be misled, would benefit from a mechanism for financial recompense where other avenues for that recovery, such as civil litigation or small claims court, are not successful."[75] The Joint IOUs also

[73] SDG&E opening comments at 5.

[74] TURN reply comments at 7.

[75] Joint IOU opening comments at 1

raise a number of implementation questions and recommendations and request an increase in the administrative budget.

CALSSA and SEIA's opening comments similarly agree with the overall goal, and go further, stating "this assistance fund can fill that important role and so our associations are largely supportive of this proposal."[76] CALSSA/SEIA also raise implementation considerations related to the timelines for review of the fund amounts, procedures for paying out claims, and other clarifications, which they suggest be addressed in the implementation workshop.

4.1. New Appropriation for Consumer Assistance

In comments, the Joint IOUs and CALSSA/SEIA also raise an issue previously unanticipated in this proceeding: the 2021-2022 State Senate Budget included $5 million for the CSLB to establish a recovery fund, of which $4 million would be dedicated for solar consumer payouts. The Joint IOUs and CALSSA/SEIA argue that if the budget appropriation is approved, the proposed assistance fund is moot and thus should not be adopted.

In reply comments, TURN and CLICC have a different view than the Joint IOUs and industry parties on how the appropriation should affect our considerations here. CLICC sees the appropriation, if adopted, as a positive step but states that the "proposed one-time allocation does not establish the continuity of funding required to address the problem, and therefore does not obviate the need for the Commission to consider requiring a fee from NEM customers at interconnection."[77] TURN agrees that "the one-year appropriation does not provide a long-term funding source" and that a "a stable long-term

[76] CALSSA and SEIA opening comments at 1

[77] CLICC reply comments at 2

funding source should be authorized."[78] TURN recommends that if the appropriation is adopted, the Commission should reconsider the proposed fund in 2022 "based on the status of the CSLB-administered restitution fund and its funding level at the need of the 2022 fiscal cycle," and argues that if a subsequent appropriation is not approved in the State budget the Commission should adopt the proposed assistance fund.[79]

After comments and reply comments were received, the State Legislature approved, and the Governor signed, the California State Budget Act of 2021. Within that budget, $5 million was appropriated to the CSLB for the purpose of providing restitution to consumers who have suffered financial loss or injury due to the unlawful acts of a residential solar energy system contractor that has not been and will not be fully reimbursed from any other source. The Budget Trailer Assembly Bill 137, provided detailed statutory guidance for the administration of these funds in the article titled "Solar Energy System Restitution Program."[80] The eligibility criteria and administration laid out in statute for this fund appear substantially similar to those in the ACR.

5. Process to Assess the Need for a Solar Consumer Assistance Fund

As the Joint IOUs and CALSSA/SEIA point out, the Solar Energy System Restitution Program appears to address the same problem addressed by the original proposed decision's assistance fund, and is funded via the General Fund. We are unable to estimate how long the appropriated funds will last nor

[78] TURN reply comments, at 2.

[79] Ibid.

[80] Article 6.5 (commencing with § 7086) of Chapter 9, Division 3 of the Business and Professions Code

whether claims that would also be eligible under our program may remain once it is exhausted; we note that the Solar Energy System Restitution Program is available to all residential solar consumers in the state, whereas our proposal would be available only to electric IOU customers. TURN and CLICC may be correct that a stable, ongoing funding source is still needed, but we would need information on the progress of the one-time appropriation, the remaining need, and a new recommended funding level in the future in order to verify that contention. We agree with TURN that a review of the CSLB's progress with the appropriated funds should be conducted before we consider the need for a future interconnection surcharge.

Therefore, as parties recommended, we are revising the original proposed decision to require a review of the CSLB's new Solar Energy System Restitution Program by a working group led by PG&E. TURN suggested a review occur after one year. We prefer to require a review timeline that is tied to the CSLB's progress in administering the funds, rather than a calendar timeline. Through the Interagency Solar Consumer Protection Taskforce, the CSLB will provide updates on its progress, notifying the Taskforce and the public when it has paid out 25 percent, 50 percent, 75 percent, and 100 percent of the available Solar Energy System Restitution Program funds. Energy Division's representative on the Taskforce will notify PG&E when the 50 percent point has been reached. Upon being notified that the 50 percent point has been reached, PG&E shall coordinate with Energy Division, CALSSA/SEIA and the Taskforce to host a workshop (and subsequent workshops, if deemed necessary). The service list of this proceeding shall be notified of the workshop(s), and all parties and stakeholders shall be invited to participate. The workshop(s) shall discuss the following issues:

- How many claims have been addressed, and how many remain? Can the CSLB as well as other working group members provide an assessment or recommendation regarding the need for a future funding source should the existing appropriation be exhausted? How many claims have been paid to IOU customers, and what data on the amount of payment and type of violation is available? Based on experience with the Solar Energy Restitution Program, how many claims might be expected, what might average claim amounts be, and what ongoing funding levels might be needed?
- If a new funding source is approved in the future by the Commission for electric IOU customers, are any program administration rules different from those applying to the Solar Energy Restitution Program needed? Should such a future program be administered by the CSLB directly or by a third party administrator?
- How can the fund solvency and fund administration questions raised in this proceeding be addressed?
- Should the Commission engage with an independent third-party evaluator to: 1) establish the goals of the Solar Energy System Restitution Program, 2) identify the key performance indicators and metrics needed to determine the program's impact, and 3) identify the long-term effects, outcomes, or impacts stakeholders hope to see as a result of the program?
    - Would an evaluator be helpful in determining if the Solar Energy System Restitution Program is collecting the appropriate data in the appropriate formats to support the measurement of performance during the program's implementation?
- If a new funding source is approved in the future by the Commission for electric IOU customers, would it be appropriate to use that source to fund the work of an independent third-party evaluator?

PG&E shall prepare a workshop report summarizing the working group's input on these issues, and file a compliance filing containing that report.

6. Comments on Proposed Decision

The proposed decision of Commissioner Martha Guzman Aceves in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. The Commission did not receive any comments on the proposed decision. Non-substantive revisions have been made for the purpose of clarity.

7. Assignment of Proceeding

Martha Guzman Aceves is the assigned Commissioner and Patrick Doherty and Valerie U. Kao are the assigned Administrative Law Judges in this proceeding.

Findings of Fact

1. D.20-02-011 noted the intent of the Commission to consider a recovery fund for solar consumers affected by inadequate solar installations.
2. CSLB received an average of 90 new solar-related complaints per month in FY 2019-20. This monthly average complaint count is the highest CSLB has experienced since 2015.
3. In FY 2019-20, 122 complaints were referred by the CSLB to legal action.
4. Between January 2018 and July 2020, CSLB referred 251 solar-related complaints to legal action. Of these, 141 complaints were closed by the CSLB because the contractor's license had already been revoked. 17 complaints involved unlicensed contractors. In 110 of the 251 solar-related complaints, the CSLB alleged either misrepresentation in violation of BPC § 7161 or a willful and fraudulent act in violation of BPC § 7116. In 124 of the 251 solar-related

complaints, the CSLB alleged poor workmanship in violation of BPC § 7109. In 72 of the 251 solar-related complaints, the CSLB alleged abandonment of the project by the contractor without legal excuse, in violation of BPC § 7107.

5. The Legislature approved, and the Governor signed, the California State Budget Act of 2021, which included a $5 million appropriation from the State General Fund to the CSLB to establish and administer a Solar Energy System Restitution Program. This program addresses the problems outlined in the September 3, 2020 ACR, which proposed a NEM Assistance Fund.

6. Other than a legislatively mandated fund such as the Solar Energy System Restitution Program, none of the alternatives to the ACR's proposal offered by the parties will achieve the public policy goal defined by this decision as comprehensively and immediately as the ACR's proposed recovery fund.

7. A stable, ongoing funding source for a NEM consumer recovery fund may still be needed to ensure the continued sustainability of the NEM program by increasing customer trust in the program, providing an incentive for NEM customers to identify and pursue actions against bad actors and ensuring that there are not regulatory gaps that prevent the delivery of benefits of the NEM program to customers.

8. Determination of whether a stable, ongoing funding source for a NEM consumer recovery fund will be needed is contingent on information regarding the Solar Energy System Restitution Program.

Conclusions of Law

1. Provision of financial assistance to customers who expended funds on inadequate solar energy systems directly supports the NEM program and the Commission's statutory duty to support a sustainable distributed renewable generation market in the State.

2. It is reasonable to establish a process to assess the need for a solar consumer assistance fund, based on the CSLB's distribution of funds under the Solar Energy System Restitution Program.

O R D E R

IT IS ORDERED that:

1. Within 30 days after the Contractors State License Board publishes a notice that it has paid out fifty percent of the available Solar Energy System Restitution Program funds, Pacific Gas and Electric Company must host a workshop as specified in Section 5 of this decision. Commission staff is authorized to determine whether subsequent workshops are needed to adequately address the issues raised in Section 5 of this decision, via an email from the Energy Division director or his/her/their delegate to the service list of this proceeding. Pacific Gas and Electric Company must provide notice of each workshop via an email to the service list of this proceeding, no later than 20 days before the date of each workshop.

2. Within 30 days after the final workshop, Pacific Gas and Electric Company must file a compliance filing that contains a workshop report summarizing the working group's input on the issues identified in Section 5 of this decision.

3. This consolidated proceeding is closed.

This order is effective today.

Dated September 23, 2021, at San Francisco, California

MARTHA GUZMAN ACEVES
CLIFFORD RECHTSCHAFFEN
GENEVIEVE SHIROMA
Commissioners

I dissent.

/s/ MARYBEL BATJER
Commissioner

I dissent.

/s/ DARCIE L. HOUCK
Commissioner