Decision 24-07-036 July 11, 2024

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Revisit Net Energy Metering Tariffs Pursuant to Decision 16-01-044, and to Address Other Issues Related to Net Energy Metering.	Rulemaking 20-08-020

ORDER MODIFYING DECISION 23-11-068 AND DENYING REHEARING OF THE DECISION, AS MODIFIED

I. INTRODUCTION

On November 11, 2023, we issued Decision (D.) 23-11-068 (D.23-11-068 or the Decision).[1] The Decision modifies the existing net energy metering fuel cell (NEMFC) tariff to impose the California Air Resources Board's (CARB's) greenhouse gas emissions reductions standards for net energy metering (NEM) fuel cell resources (CARB Standards) and declines to adopt a new NEMFC tariff. (Decision at 133-134, 166-170.) The Decision adopts a successor virtual net energy metering (VNEM) tariff that aligns with the net billing tariff (NBT) adopted in D.22-12-056 (NBT Decision) but has different netting requirements for residential and nonresidential customers. (*Id.* at 8.) In addition, the Decision adopts a successor net energy metering aggregation (NEMA) subtariff that generally aligns with the NBT. (*Id.* at 2.) Lastly, the Decision adopts a consumer protection related to implementing Assembly Bill (AB) 2143 (Carillo),

[1] Unless otherwise noted, citations to Commission decisions and resolutions are to the official pdf versions, which are available on the Commission's website at: http://docs.cpuc.ca.gov/DecisionsSearchForm.aspx and https://docs.cpuc.ca.gov/ResolutionSearchForm.aspx.

codified at Public Utilities Code § 769.2.[2] (*Id.* at 188-189, 228 (Finding of Fact (FOF) 281).)

Six applications for rehearing have been timely filed challenging various aspects of the Decision. Bloom Energy Corporation (Bloom), the California Solar and Storage Association (CALSSA) jointly with Solar Energy Industries Association (SEIA) (collectively CALSSA/SEIA), the Agriculture Energy Consumers Association (AECA) jointly with the California Farm Bureau Federation (CFBF) (collectively Agricultural Parties), Ivy Energy (Ivy), the Small Business Utility Advocates (SBUA), and SEIA individually, all filed applications for rehearing on December 22, 2023. In addition, Bloom filed a motion to stay the implementation of the Decision's determinations on NEMFC-related issues on December 22, 2023.[3] (*Bloom Motion for Stay of Specific Provision of Decision 23-11-068* (Dec. 22, 2023).) CAlifornians for Renewable Energy, Inc. (CARE) filed a motion requesting official notice of a brief and exhibits it filed in the Ninth Circuit Court of Appeal on December 22, 2023. (*CARE Request for Official Notice* (Dec. 22, 2023).)

On January 8, 2024, Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E), and Southern California Edison Company (SCE) (collectively Joint Utilities) jointly filed a response, arguing that all six applications should be denied. The Coalition of California Utility Employees (CUE) filed a response to SEIA's rehearing application, asserting that the application should be denied because the Commission's implementation of AB 2143 was lawful.

We have carefully considered all the arguments presented by the rehearing applicants and are of the opinion that certain modifications of the Decision are appropriate. After making these modifications of the Decision, rehearing is denied.

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[2] Unless otherwise indicated, all subsequent section references are to the California Public Utilities Code.

[3] Bloom's motion to stay the Decision is addressed in a separate order.

Each application for rehearing and CARE's outstanding motion are discussed in more detail and addressed below.

II. DISCUSSION

A. Bloom's application for rehearing is denied.

Bloom alleges that the Decision errs because it: (1) misinterprets section 2827.10; (2) violates the Commission's Rules of Practice and Procedure[4] regarding scoping requirements; (3) misapplies D.21-02-007 (Guiding Principles Decision); (4) lacks evidentiary support for findings related to NEMFC tariff alternatives; and (5) misreads the federal Public Utility Regulatory Policies Act (PURPA). Bloom's allegations are discussed in more detail and disposed of below.

1. The Decision correctly interprets section 2827.10 to require the implementation of the CARB Standards.

The Decision interprets section 2827.10 to require the Commission to implement and enforce the CARB Standards. (Decision at 134, 167-168.) Bloom alleges that the Decision's conclusions are contrary to the statutory language and amount to an abdication of the Commission's independent ratemaking authority and obligations. (Bloom App. Rehg. at 7, 19-22.)

Pursuant to section 2827.10(a)(3)(A)(iii), eligibility for the NEMFC tariff requires a fuel cell customer-generator to "[u]se technology the [C]ommission has determined will achieve reductions in emissions of greenhouse gases pursuant to subdivision (b)." (§ 2827.10, subd. (a)(3)(A)(iii).) Subdivision (b), in relevant part, mandates CARB to "establish a schedule of annual greenhouse gas emissions reduction standards for a fuel cell electrical generation resource." (§ 2827.10, subd. (b).)

The statute is clear that tariff eligibility includes our determination that customer-generators achieve the greenhouse gas standards established by CARB. Bloom's arguments to the contrary are without textual basis and run afoul of fundamental

[4] Unless otherwise indicated, all subsequent Rule(s) references are to the Commission's Rules of Practice and Procedure.

principles of statutory construction. (See, e.g., *McAllister v. California Coastal Com.* (2008) 169 Cal.App.4th 912, 928, *Woosley v. State of California* (1992) 3 Cal.4th 758, 775-776.) In addition, we do not violate the law or abdicate our authority by following the clear commands set forth in the Public Utilities Code. (See, e.g., *Pacific Gas and Electric Corp. v. Public Utilities Com.* (2004) 118 Cal.App.4th 1174, 1199.) Thus, we reject Bloom's arguments.

2. The Decision lawfully declined to adopt a new NEMFC tariff and to extend the section 2827.10 NEMFC tariff.

In comments, Bloom advocated for the consideration of a new NEMFC tariff in light of section 2827.10's sunset. (See, e.g., *Bloom Reply Comments Responding to the ALJ's Ruling Soliciting Responses to Ruling Questions* (April 4, 2023) at 2, 3-4, 6.) The Decision declines to extend the statutory tariff or to adopt a new NEMFC tariff on several grounds. (See Decision at 168-170, 223 (FOFs 238 & 239).) Bloom argues that each justification constitutes legal error requiring the Commission to open a new phase of the rulemaking to consider a new NEMFC tariff. (Bloom App. Rehg. at 10-19.) Bloom also alleges that the Decision violates section 454 by failing to develop an adequate record prior to rejecting its request to consider a new NEMFC tariff. (*Id.* at 25.) The Decision's grounds and Bloom's arguments are discussed and addressed below.

a) The Decision is consistent with the Commission's scoping authority.

The Decision concludes that consideration of a new NEMFC tariff goes beyond the scope of the proceeding. (Decision at 134, 223 (FOFs 238 & 239).) Bloom argues that this determination is inconsistent with the language in the *Joint Assigned Commissioner's Scoping Memo and Administrative Law Judge Ruling Directing Comments on Proposed Guiding Principles* (Scoping Memo), including scoping Issue 6, and the Decision's adoption of successor VNEM and NEMA tariffs. (Bloom App. Rehg. at 15-17.) In turn, Bloom alleges that the Decision violates section 1701.1(b)(1) and Rule

7.3,[5] and prejudices fuel cell technology advocates by depriving them of the opportunity to develop an adequate record on a new NEMFC tariff. (*Id.* at 14-17.)

Initially, Bloom misunderstands the Decision, which merely identifies that we narrowed the issues we could have potentially addressed under scoping Issue 6. However, to avoid any confusion, we modify the Decision as stated in the below Ordering Paragraphs to clarify this point. Additionally, this refinement of the potential NEMFC issues was a lawful exercise of our authority. (See, e.g., *BullsEye Telecom, Inc. v. Public Utilities Com.* (2021) 66 Cal.App.5th 301, 308, 324-326.) Finally, Bloom was not prejudiced. Even if we provided parties further opportunity to develop the record on a new NEMFC tariff, this would not have disturbed our ultimate conclusion to decline to adopt a new tariff. (See Section II.A.2.b, c, d & e, *infra*.) Accordingly, Bloom fails to demonstrate legal error.

b) The Decision's reliance on the policies set forth in the Guiding Principles Decision is not legal error.

Bloom argues that the Decision's reliance on the Guiding Principles Decision is flawed because that decision neither addresses successor subtariffs nor places restrictions upon them. (Bloom App. Rehg. at 16.) Bloom does not identify legal error.

Bloom's discontent with our policy choice to be consistent with the Guiding Principles Decision fails to raise any cognizable legal error. (§ 1732; Rule 16.1, subd. (c); see, e.g., D.22-02-008 at 3-5, 11.) In addition, the Guiding Principles Decision is cited in the Decision on page 168 quoting the principle that "a successor to the net energy metering tariff should fairly consider all technologies that meet the definition of renewable electrical generation facility in Pub. Util. Code § 2827.1." This Guiding Principle reflects the statutory definition of "renewable electrical generation facility," an eligible resource for net energy metering. (§ 2827.1, referencing § 2827 & Pub.

[5] Section 1701.1(b) and Rule 7.3, in relevant part, require the Commission to issue a scoping memo, and provide the Commission discretion to describe the issues to be considered. (§ 1701.1, subd. (b); Rule 7.3.)

Resources Code § 25741(a)(1).) The Legislature defines "renewable electrical generation facility" to include "fuel cells using renewable fuels," which are eligible for the NBT. (*Ibid*.) To the extent Bloom insists that the Commission must adopt a tariff for fuel cells that do *not* use renewable fuels and argues that the Commission improperly followed a Guiding Principle that reflects statutory direction, Bloom's arguments lack merit.

c) The Decision correctly finds that fuel cell generators have alternative pathways.

The Decision also rejects Bloom's request to consider a new NEMFC tariff in light of other pathways for fuel cells, including the NBT, the Commission's PURPA standard offer contract, and an applicable Rule 21 tariff. (Decision at 168-170.) Bloom frames the Decision's assertions as factual findings that a new NEMFC tariff is not needed because there are other viable and practical alternatives available to fuel cell generators. (Bloom App. Rehg. at 17-19.) Bloom further claims that the Decision is not based on substantial evidence because the parties did not submit testimony or briefs on those matters. (*Id.* at 17-18.) Lastly, Bloom argues the Decision lacks support because the PURPA standard offer contract is not available due to a conflict between state and federal law. (*Id.* at 18.)

Contrary to Bloom's characterization of the Decision, our assertions regarding the alternative pathways for fuel cell generators are limited to the fact of their *availability* to fuel cells. (Decision at 168-170.) Our reference to their availability has record and legal support. (See, e.g., *Joint Utilities Reply Comments on the ALJ's Ruling Soliciting Responses to Ruling Questions* (April 4, 2023) at 27), Evid. Code § 451, subd. (a).) In addition, Bloom's argument regarding the PURPA standard contract is unavailing for at least two reasons. First, Bloom's argument is a challenge to our decision authorizing the contract, D.22-05-006, which is final and conclusive and therefore not subject to collateral attack. (§ 1709.) Second, and as the Decision states, this rulemaking proceeding is not the appropriate venue to address Bloom's allegation. (Decision at 170, 223 (FOFs 237-239); see generally Scoping Memo.) For the reasons discussed, Bloom fails to identify any error in the Decision's reliance on the availability

of alternative pathways for fuel cell generators as one reason to reject Bloom's request for a new NEMFC tariff.

d) The Decision correctly interprets section 2827.10's sunset provision.

The Decision rejects Bloom's proposal to extend the NEMFC tariff due to the sunset language in section 2827.10. (Decision at 168; *id.* at 233 (FOF 236).) Bloom argues that the Decision is flawed because the sunset date does not foreclose us from exercising our inherent ratemaking powers. (Bloom App. Rehg. at 10-14.)

Bloom ignores the express sunset provision in section 2827.10, which the Decision correctly determines does not allow us to extend the same terms of this statutory tariff. (Decision at 223 (FOF 235 & 236).) Thus, the Decision does not err.

e) The Decision's rejection of Bloom's proposal to develop a new NEMFC tariff does not violate section 454.

Bloom alleges that the Decision violates section 454, claiming that "[i]t is axiomatic that the Commission, and any administrative agency, must develop new regulations, or affirmatively choose *not* to develop new regulations as it has done here, based on substantial evidence established in a rulemaking process with an adequate record." (Bloom App. Rehg. at 25, original emphasis.) Bloom's reliance on section 454 is inapposite.

Section 454 "contemplates an 'application' for a rate change by the utility and requires a 'showing' in support of the application and a 'finding' by the PUC that the change is justified." (*Southern California Edison Co. v. Peevey* (2003) 31 Cal.4th 781, 804.) This statute is inapplicable considering that the proceeding is a rulemaking proceeding opened on our own motion and does not address a utility application for a new fuel cell tariff. (*Id.* at 804-805; *Order Instituting Rulemaking to Revisit Net Energy Metering Tariffs Pursuant to Decision D.16-01-044, and to Address Other Issues Related to Net Energy Metering* (OIR) at 1-6.) Thus, Bloom's argument lacks merit.

3. The Decision is neither discriminatory nor violates Bloom's due process rights.

Bloom generally alleges that the Commission has "consistently and arbitrarily discriminated against fuel cell participation in California's energy markets by refusing to provide a proper forum and due process for consideration of a viable fuel cell tariff." (Bloom App. Rehg. at 24-25.) As support, it asserts that we have refused to consider a new NEMFC tariff in this proceeding and rejected Bloom's previous proposals to develop a new fuel cell tariff in other proceedings. (*Id.* at 25-26.) For the NEMFC issues that were addressed in this proceeding, Bloom argues that it was denied due process for lack of workshops, testimony, or evidentiary hearings. (*Id.* at 25.)

Contrary to the requirements for a rehearing application, Bloom fails to cite any legal authority to support its claims of error. (See, e.g., § 1732; D.12-10-046 at 10-11, D.17-08-015 at 4.) In any event, as discussed above, we lawfully exercised our scoping powers, provided reasonable and rational bases for declining to consider a new NEMFC tariff in this proceeding, and afforded Bloom all the process that it was due. (Section II.A.2, *supra*; Decision at 134-136, 165-166, 168-170.) Thus, we deny Bloom's rehearing application.

B. CALSSA/SEIA's application for rehearing is denied.

CALSSA/SEIA challenge the Decision's netting rules for the successor VNEM tariff and successor NEMA subtariff, as discussed below.

1. The successor VNEM tariff is lawful.

The Decision's successor VNEM tariff balances the requirements of section 2827.1 and aligns with the Guiding Principles Decision. (Decision at 8, 32.) In developing the restructured tariff, the Commission considered party proposals, as well as threshold issues such as self-consumption. (*Id.* at 14-17, 29-32.) Relevant here, the Decision orders that consumption and generation will be calculated on 15-minute unit-level netting for residential, but not nonresidential benefitting account holders, which will have no netting. (*Id.* at 241 (Ordering Paragraph (OP) 1).)

CALSSA/SEIA argue that VNEM customers self-consume electricity and, thus, "property-wide netting most accurately reflects the reality of the electrical performance of these systems." (CALSSA/SEIA App. Rehg. at 2.) Asserting that there is no record basis to not recognize the behind-the-meter consumption for nonresidential VNEM, CALSSA/SEIA argue that the Decision's determinations on self-consumption and netting are arbitrary and an abuse of discretion. (*Id.* at 9-13.) These arguments lack merit.

a) The Decision correctly declines to presume onsite consumption.

As support for their challenges to the Decision's netting determinations, CALSSA/SEIA argue that the Decision ignores record evidence regarding onsite consumption, is internally inconsistent, and contradicts the laws of physics. (CALSSA/SEIA App. Rehg. at 5-11.) They therefore argue that the Decision's conclusion to not base the successor VNEM tariff on a presumption of onsite self-consumption is unsupported. (*Id.* at 10.) CALSSA/SEIA also contest the accuracy of a statement in the Decision regarding the percent of VNEM generation and load that share a transformer. (*Id.* at 8; Decision at 31.)

The Decision recognizes that "when generation and customer meters share a physical connection to the grid, either at the meter bank through a shared bus bar or at the transformer, self-consumption can occur." (Decision at 31; see also *id.* at 10-11, 201 (FOF 24).) However, the Decision's reference on page 31 to the percent of VNEM generation is unclear. (See CALSSA/SEIA App. Rehg. at 8 & fn. 30.) Thus, we modify this portion of the Decision to avoid any confusion, as stated in the Ordering Paragraphs below. Nevertheless, CALSSA/SEIA's claims fail for several reasons.

First, CALSSA/SEIA ignore that none of the VNEM tariffs require a shared delivery service point between the generator(s) and the customer meters. Rather, the VNEM tariffs and successor tariff are neutral as to the property's physical design and site layout. (See D.11-07-031 at 13; D.16-01-044 at 15, 99, 112 (FOF 46).) In addition, the Decision finds that "the Commission [in the NBT Decision] made it easier for

multitenant properties to install renewable generation anywhere on a property, which decreases the likelihood of incidental self-consumption." (Decision at 31-32.)

Second, the successor VNEM tariff is designed to generally align with the NBT structure, which was established to comply with section 2827.1 and its requirements. Property-wide netting—which has not existed in prior iterations of the tariff—is inconsistent with this objective. (*Id.* at 42.) The record shows that customers with property-wide netting are much more likely to earn full retail price for more kWh generated (up to every kWh generated) than are customers with unit-level netting. (*Ivy Energy Opening Comments on the ALJ's Ruling Soliciting Responses to Ruling Questions* (Mar. 21, 2023) at 34; *Ivy Energy Reply Comments on the ALJ's Ruling Soliciting Responses to Ruling Questions* (April 4, 2023), Appendix B.) Based on the record, the Decision correctly concludes that "property netting and accounting of onsite consumption and generation could result in virtually all generation produced on a property earning credits equal in value to the retail import rate." (Decision at 39.) The Decision also correctly concludes that this outcome is inconsistent with section 2827.1 and the Guiding Principles Decision. (NBT Decision at 104; Decision at 39.) Relatedly, the Decision correctly concludes that a "no netting" scheme is "an accurate distribution of export compensation value" and ensures "equitable treatment between tariff participants and nonparticipants[.]" (Decision at 42.)

Third, citing price signals, the Decision determines that property-wide netting potentially conflicts with section 780.5. (Decision at 39.) Since this statute forbids new master metered arrangements for residential multiunit properties after July 1, 1982, allowing a tariff structure that made de-facto master-metered arrangements is inconsistent with the statute. (*Ibid.*)

Given the above, we had adequate grounds not to presume onsite consumption for VNEM customers and reasonably declined to apply property-wide netting.

b) The Decision is based on sound rationales and bases.

CALSSA/SEIA allege that "[t]he Decision fails to identify any record evidence supporting a no netting policy for this customer set [nonresidential VNEM] or any basis for treating functionally identical residential and nonresidential systems differently with respect to netting." (CALSSA/SEIA App. Rehg. at 12.) They therefore claim that the Decision is arbitrary and capricious. (*Id.* at 13.) CALSSA/SEIA are wrong.

We declined to adopt the novel approach advocated by parties as to property-wide netting, providing several reasons for this determination. (See Decision at 36-40.) Instead, we aligned the successor VNEM tariff with the NBT established in the NBT Decision. We also took into account equity and cost-shift concerns and carved out an exception for residential VNEM. (Decision at 2, 26-27.) The 15-minute unit-level netting adopted for residential VNEM customers strikes a balance, considering the benefits provided by the program for participants and the costs of the program borne by all other customers in the utility's service territory, which makes the "value of virtual energy self-consumption higher than the value of Avoided Cost Calculator-based retail export compensation rates." (*Id.* at 43.) In contrast, there was no showing on the record that nonresidential VNEM customers were also lower-income, or otherwise similarly situated to residential VNEM customers. (See *id.* at 42-43.) Thus, CALSSA/SEIA have failed to establish that the distinction between residential and nonresidential VNEM netting is arbitrary and capricious.

2. The successor NEMA subtariff is lawful.

In conformance with section 2827.1, the Decision adopts "an aggregation net billing subtariff that mirrors the net billing tariff but maintains the credit and debit approach used in the existing net energy metering aggregation subtariff." (Decision at 2.) The Decision determines that "[c]onsumption and generation will be calculated based on no netting of consumption." (*Id.* at 248 (OP 11).) The Decision also provides that: "the

absence of netting will not prevent self-consumption at the generating account, *i.e.*, the meter located on the same property as the customer-generator." (*Id.* at 85.)

CALSSA/SEIA contend that the Decision's determinations on self-consumption and netting for NEMA are unsupported and arbitrary. (CALSSA/SEIA App. Rehg. at 13.) As will be discussed, CALSSA/SEIA fail to establish legal error.

a) The provisions of the successor NEMA subtariff are within our discretion and based on the record.

CALSSA/SEIA analogize NEMA to the VNEM on the matter of self-consumption and argue that the Decision lacks bases for its NEMA netting rules. (CALSSA/SEIA App. Rehg. at 14.) There are several flaws with their arguments.

First, as with VNEM, the fact that self-consumption may occur does not obligate us to establish a value for that consumption in the manner urged by CALSSA/SEIA. (See Section II.B.1, II.B.1.a and b, *supra*.) Second, the NEMA subtariff is no longer mandated by law and, for example, causes higher interconnection costs than net energy metering systems. (Decision at 77, 80; see Section II.C.1 & 2, *infra*.) Thus, our decision to align the successor NEMA subtariff with the NBT was reasonable and within our discretion. (*Ibid.*; *Pacific Telephone and Telegraph Co. v. Public Utilities Com*. (1965) 62 Cal.2d 634, 647 (*Pacific Telephone*).) Thus, CALSSA/SEIA do not demonstrate legal error.

b) The successor NEMA subtariff is aligned with the NBT.

CALSSA/SEIA contend that the no netting policy adopted for the successor NEMA subtariff is not aligned with the NBT, contrary to the Decision's assertions of alignment. (See CALSSA/SEIA App. Rehg. at 14-15.) As support for this argument, CALSSA/SEIA assert that "the NBT includes a distinction between self-consumption and exports, and the aggregation subtariff adopted in the Decision recognizes no such distinction." (*Id.* at 15.) As further support for their argument, they make comparisons to the successor VNEM tariff. For example, they claim that the 15-minute unit level netting

provided to residential VNEM customers shows an inconsistency between NEMA and the NBT because the Decision concludes that the former "is meant to approximate the availability of self-consumption provided to net billing customers." (*Ibid.*, citing Decision at 43.) CALSSA/SEIA are incorrect and otherwise fail to demonstrate legal error.

The successor NEMA subtariff is consistent with the NBT. First, the "no netting" policy is directly from the NBT Decision, which determines that: "Imports and exports will be calculated based on no netting of consumption and production[.]" (NBT Decision at 237 (OP 1).) In support of this result, we found that: "[h]ourly netting in the successor tariff could lead to additional strain on the grid[,] [e]liminating the netting interval exposes more of the customers' imports and exports to net billing[, and] [n]o netting is more consistent with cost-based compensation and will maximize the value of customer-sited renewable generation to all customers and to the electrical system." (*Id.* at 220 (FOF 138, 139 & 140).) The successor NEMA subtariff provides for "high differential time-of-use import rates for residential customers and any available time-of-use rate for nonresidential customers and cost-based retail export compensation." (Decision at 84.) This is consistent with the NBT Decision's determination that: "[r]etail rates do not reflect the actual costs of the exports or the benefits the exports provide to all customers and the electrical system." (NBT Decision at 215 (FOF 92).)

Second, the adopted successor NEMA subtariff provides "[r]etail [e]xport [c]ompensation [r]ates [that are] based on hourly Avoided Cost Calculator values averaged across days in a month, differentiated by weekdays and weekends/holidays, as adopted for the net billing tariff in D.22-12-056." (Decision at 249 (OP 11(a)).) In addition, "[t]he price signals of the new Aggregation subtariff encourage adoption of storage[.]" (*Id.* at 84.) These aspects of the successor NEMA subtariff align with the NBT Decision, which finds that "[b]asing retail export compensation rates on Avoided Cost Calculator values sends more accurate price signals and promotes paired storage." (NBT Decision at 216 (FOF 96).)

Additionally, as acknowledged by the Decision, the successor NEMA subtariff does not have to be identical to the NBT to be aligned. As to the credit and debit provisions, crediting methodology, and annual true-up (which were retained from NEM 2.0), we stated:

> [T]he Commission has the discretion to maintain these provisions if they align with the requirements of Section 2827.1. The Commission should maintain the provisions of Section 2827(h) in the new Aggregation subtariff, as these provisions help ensure that the benefits of the subtariff to all customers are approximately equal to its costs.

(Decision at 85.) Thus, general alignment of the tariffs does not deprive us of the ability to ensure that the costs are approximately equal to the benefits, as was done in the NBT Decision, and as mandated by section 2827.1.

Lastly, there is no merit to CALSSA/SEIA's critique that the 15-minute unit level netting provided to residential VNEM customers shows an inconsistency between NEMA and the NBT Decision. (CALSSA/SEIA App. Rehg. at 14-15.) A carve out in the *VNEM* tariff, discussed above, does not demonstrate that the successor *NEMA* subtariff is somehow inconsistent with the NBT. Even if some "approximation" of self-consumption were assumed, it does not follow that the bases for applying the netting policy as to residential VNEM customers would be applicable to NEMA customers. Thus, we deny CALSSA/SEIA's rehearing application.

C. The Agricultural Parties' application for rehearing is denied.

As discussed, the successor NEMA subtariff aligns with the NBT adopted in the NBT Decision and has no netting. (Decision at 67-68.) In addition, while current NEMA subtariff customers may remain under that subtariff until the end of their legacy period, the Decision determines that there is no requirement to provide the NEMA subtariff to new customers or apply the netting rules set forth in section 2827. (Decision at 68, 73, 85.) The Decision's no netting determination is based on a detailed analysis regarding cost-effectiveness. (*Id.* at 78-86.)

The Agricultural Parties assert several allegations challenging the Decision's elimination of netting for the NEMA subtariff and statutory interpretation of section 2827. The allegations are discussed and addressed below.

1. The Decision correctly interprets the relevant provisions of the Public Utilities Code.

The Agricultural Parties allege that the Decision's interpretation of section 2827 is incorrect. They argue that the statute treats NEMA as separate from NEM for the purposes of section 2827(c)(4)(D), which states:

> Beginning July 1, 2017, or upon reaching the net metering program limit of subparagraph (B), whichever is earlier, the obligation of a large electrical corporation to provide service pursuant to a standard contract or tariff shall be pursuant to Section 2827.1 and applicable state and federal requirements.

(Agricultural Parties App. Rehg. at 13-14.) The Agricultural Parties also allege that the Decision's interpretation is inconsistent with the decision implementing NEM 2.0 (D.16-01-044). (*Id.* at 14.) Their arguments lack merit.

The Agricultural Parties' statutory interpretation arguments are refuted by the plain language of section 2827. As the Decision explains:

> [I]t is clear that the directive in Pub. Util. Code § 2827(c)(1), creating an end date for the applicability of the section, does apply to the NEMA subtariff. Pub. Util. Code § 2827(c)(1) talks about the first-come first-served availability implying that there is not an expectation that availability of the tariff will continue indefinitely. Furthermore, Pub. Util. Code § 2827(c)(1) discusses the allowance for an additional meter or meters to monitor the flow of electricity for the purpose of providing "the information necessary to accurately bill or credit the eligible customer-generator pursuant to subdivision (h)," which describes the NEMA subtariff requirements. The Commission concludes that Pub. Util. Code § 2827(c)(1) refers to all parts of the net energy metering tariff, including the NEMA subtariff.

(Decision at 75.) The Agricultural Parties' opposition to this interpretation of section 2827(c)(1) erroneously focuses on selective statutory language. (See Agricultural Parties App. Rehg. at 15.) Moreover, we previously made a similar determination as to the small

utilities in Resolution E-4854, finding that "[a]s NEMA is authorized as part of Public Utilities Code Section 2827, the small IOUs are not obligated to continue offering NEMA once they reach their NEM caps." (Res. E-4854 at 20 (Finding 22).)

In addition, the Agricultural Parties' reliance on D.16-01-044 is unavailing. This decision's reference to NEMA as a "sub-schedule" or "supplement under" the NEM successor tariff does not separate NEMA from its purview. (See D.16-01-044 at 4, 99.) Indeed, D.16-01-044 states: "NEMA customers, like customers using the VNM tariff, are compensated the same way as all NEM customers; only the aggregation feature is different." (*Id.* at 99-100.) Also, as explained in the Decision: "it was the Commission's *choice* in adopting D.16-01-044 to maintain the NEMA subtariff, not a requirement." (Decision at 76, original emphasis.)

Based on the above, the Agricultural Parties have failed to establish that the Decision misinterprets section 2827 or is inconsistent with our prior decisions.

2. The Decision's cost shift analysis is supported by the record and policy determinations within the Commission's discretion.

The Agricultural Parties argue that the Decision fails to apply the definition of cost shift from the NBT Decision. (Agricultural Parties App. Rehg. at 5.) Relatedly, they continue to assert that "cost-effective" nonresidential NEMA customers should be accorded onsite netting. (*Id.* at 5-12.) They contend that "[p]ursuant to the agricultural rate schedules, agricultural customers on the NEMA subtariff pay nearly all of the costs of distribution and transmission as well as nonbypassable charges assigned to them in the applicable rate proceedings and, therefore, there is no material cost shift from agricultural NEMA customers to other customers." (*Id.* at 7.) They further argue that NEMA customers are prohibited from receiving net surplus compensation by law and disagree with a Decision finding that concludes such compensation is insignificant. (*Id.* at 12.) These arguments fail to identify legal error and are rejected.

Initially, the Agricultural Parties' argument is premised on the false assumption that we were required to provide different subtariffs for residential and

nonresidential NEMA customers. Yet they fail to identify any legal requirement mandating such different treatment, and their policy arguments to this end do not establish legal error. (See, e.g., D.22-02-008 at 3-5, 11.)

In addition, the record supports the Decision's conclusions regarding cost-effectiveness. (See, e.g., Decision at 78-81, *Joint Utilities Opening Comments to the ALJ's Ruling Soliciting Responses to Ruling Questions* (Mar. 21, 2023) at 13-14; *Joint Utilities Reply Comments to the ALJ's Ruling Soliciting Responses to Ruling Questions* (April 4, 2023) at 18.) Moreover, the Agricultural Parties ignore the results of the Ratepayer Impact Measure test. (See NBT Decision at 50.) We are not required to reweigh the evidence at the rehearing stage and reject the Agricultural Parties' challenges to these ends. (See, e.g., *Pacific Telephone*, *supra*, 62 Cal.2d at 647.)

3. The Decision's approach on residential VNEM customers does not necessitate changes to NEMA.

The Agricultural Parties argue that the Decision commits error because allowing netting for VNEM residential customers while authorizing no netting for nonresidential VNEM customers and NEMA customers is arbitrary. (Agricultural Parties App. Rehg. at 3-4.) We have already addressed and rejected this argument. (Section II.B.1.b and II.B.2.b, *supra*.)

The Agricultural Parties also question why "*multi-meter* nonresidential customers … should be disallowed from this benefit, while nonresidential customers who can aggregate behind a *single meter* are afforded this ability." (Agricultural Parties App. Rehg. at 4, original emphasis.) This comparison to NBT customers is misguided since both residential and nonresidential NBT and successor NEMA subtariff customers are treated the same as they receive no netting on all accounts. Thus, we see no merit in the Agricultural Parties' contention.

D. Ivy's Application for Rehearing is denied.

Ivy alleges that the Decision commits legal error by: (1) discriminating against multifamily renters and condominium owners; (2) violating the recommendations set forth in Senate Bill (SB) 350's (Ch. 547, Stats. 2015) Low Income Barrier Study; (3)

contravening the California Energy Commission's (CEC) recommendations in the Clean Energy in Low-Income Multifamily Buildings Action Plan; (4) threatening the viability of the multi-family solar mandate in CEC Title 24;
(5) imposing an overly short sunset period for the existing VNEM tariff; (6) hurting the adoption of resiliency hubs; (7) violating equal protection rights guaranteed under Government Code section 11135; and (8) violating Fifth Amendment property rights under the takings clause. Ivy has failed to establish legal error.

1. The Decision does not unlawfully discriminate against multi-family renters and condominium owners.

Ivy argues that the Decision discriminates against multi-meter properties because the adopted tariffs do not acknowledge on-site consumption, effectively turning self-generators into wholesale generators, in contrast to single family residential units. (Ivy App. Rehg. at 4-8.) Yet, the Decision provides for 15-minute unit level netting for residential VNEM customers, a lawful approach that was based on the record. (See Section II.B.1, *supra*.)

Nevertheless, Ivy asserts that the Decision should have gone further, alleging that renters would receive worse treatment than single-family property owners because common areas are not allowed to count toward on-site generation. (Ivy App. Rehg. at 5.) Ivy also contends that by "cutting common areas – including those areas which supply load to EV charging infrastructure – the Decision disproportionately disadvantages renters and condominium owners from being able to charge EVs and other e-mobility tools[.]" (*Id.* at 10.) Ivy's allegations of discrimination lack basis, as we have already addressed above (see, e.g., Section II.B.1), and its preference for consideration of electric vehicle charging has already been rejected. (Decision at 21-22.) Ivy therefore does not provide grounds to support its allegations.

2. Ivy's allegations that the Decision goes against the SB 350 Low Income Barriers Study do not establish legal error.

Ivy alleges that the Decision "violates state law" because it contravenes the recommendation in the SB 350 Low Income Barriers Study to "[Instruct] the [investor-owned utilities] to implement programs ... to achieve an equitable penetration rate [of solar energy and renewable energy generation] among low-income customers." (Ivy App. Rehg. at 8.) Ivy's generic claim of an alleged inconsistency with the CEC's recommendation fails to demonstrate any error. Nor does Ivy show how such alleged inconsistency amounts to a cognizable "violation" of the law. Accordingly, we reject Ivy's claim as it has not satisfied the requirements for a rehearing application. (See, e.g., § 1732; D.12-10-046 at 10-11, D.17-08-015 at 4.)

3. Ivy's allegations that the Decision contravenes the CEC's recommendations in the Clean Energy in Low-Income Multifamily Buildings Action Plan do not establish legal error.

Ivy identifies certain CEC recommendations in the Clean Energy in Low-Income Multifamily Buildings Action Plan, which are allegedly "contravene[d]" by the Decision.[6] (Ivy App. Rehg. at 10.) We reject this claim for the same reasons stated above in Section II.D.2.

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[6] The recommendations identified by Ivy are:

> Action 5.1.2: Develop a strategic education and outreach program that leverages the success of current rooftop solar markets to expand into both unserved building types and communities and integrate next-step technologies, including electric vehicles and energy storage.
>
> Action 5.2.3: Leverage established relationships with affordable housing developers and solar installers to expand installation of solar energy systems to all multifamily property types and communities and advance implementation of energy storage and smart demand management systems for multifamily properties that will result in economic and grid benefits.

4. Ivy's allegations that the Decision threatens the viability of the multifamily solar mandate in CEC Title 24 do not establish legal error.

Ivy alleges that "CEC Title 24 adds complexity and tight margins to an already challenging development environment" and the Decision's alleged removal of "the economic incentive for solar installations, which are mandated in multifamily buildings, will further discourage new housing developments in California[.]" (Ivy App. Rehg. at 11.)

CEC Title 24 refers to certain building regulations issued by the CEC. Generally, California building standards are contained in Title 24 of the California Code of Regulations. Included in those standards are the California Building Energy Efficiency Standards. (Cal. Code Regs., tit. 24, pt. 6.)

Ivy does not identify which regulations establish the alleged legal error, and does not explain how "removing an economic incentive" could support a violation nor cites record evidence to this end. In fact, Ivy's factual support for this argument inappropriately relies on extra-record evidence. (Ivy App. Rehg. at 11-12, fn. 30-33; § 1757, subd. (a); Rule 16.1, subd. (c); see, e.g., D.19-04-048 at 13.) For these reasons, legal error has not been shown.

5. Ivy's allegations that the Decision imposes an overly short sunset period does not establish legal error.

The Decision imposes a 90-day sunset date for the current VNEM tariff, stating that this period is reasonable since the current tariff has a smaller footprint than the NEM 2.0 tariff. (Decision at 40.) Without legal support or citation to the record, Ivy argues that while the footprint may be smaller, the Decision's sunset date is overly short, unsupported, and arbitrary because getting VNEM "projects into the queue within 90 days is simply not possible." (Ivy App. Rehg. at 12.)

Ivy's conclusory arguments do not meet the requirements for rehearing applications. (See Rule 16.1, subd. (c).) Further, based on the sunset date for the NEM 2.0 tariff and the proceeding record, we reasonably determined that a shorter period for

the current VNEN tariff was adequate to protect customers in the process of contracting for these tariff services considering this tariff's smaller footprint. (Decision at 40, 198-199; see *Joint Utilities Response to the ALJ's Ruling Soliciting Responses to Ruling Questions* (Mar. 21, 2023) at 4-5.) Accordingly, we reject Ivy's argument.

6. Ivy's allegation that the Decision hurts the establishment of resiliency hubs does not establish legal error.

Ivy alleges that the Decision hurts the adoption of resiliency hubs. (Ivy App. Rehg. at 12-13.) This is a policy argument improper for rehearing applications. (Rule 16.1, subd. (c).) Thus, Ivy's policy argument as to resiliency hubs lacks merit.

7. Ivy's allegation that the Decision violates equal protection rights guaranteed under Government Code section 11135 does not establish legal error.

Ivy generically alleges that the Decision "*appear[s]* to violate section 11135." (Ivy App. Rehg. at 14, emphasis added.) Ivy further argues without citation to the record that the Decision creates "a disparate impact on renters, who are disproportionately less affluent and white than single-family homeowners." (*Id.* at 14 & fn. 39.) In its argument, Ivy does not address the Decision's adoption of netting for residential VNEM.

Government Code section 11135(a) states in pertinent part:

> No person in the State of California shall, on the basis of sex, race, color, religion, ancestry, national origin, ethnic group identification, age, mental disability, physical disability, medical condition, genetic information, marital status, or sexual orientation, be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency, is funded directly by the state, or receives any financial assistance from the state.

Ivy does not provide any citation to precedent or to the record to support any discriminatory impact. Accordingly, we reject Ivy's allegations because its conclusory legal claim and unsupported factual allegations do not establish legal error.

8. Ivy's allegation that the Decision violates Fifth Amendment property rights under the takings clause does not establish legal error.

Ivy alleges that the Decision violates the takings clause. (Ivy App. Rehg. at 14-15.) Specifically, Ivy alleges that the compensation rates afforded under the Decision for those "multi-tenant property owners … who have invested or are considering investing in onsite DERs-as well as the renters" are inadequate and, thus, amount to a taking. (*Id.* at 15.) Ivy elaborates that the Decision fails to recognize onsite consumption and thus enables the utilities to "buy low and sell high" at the expense of owners and renters. (*Id.* at 14-15.) Ivy fails to establish a violation of the takings clause.

The Fifth Amendment guarantees property owners just compensation when their private property is taken for public use. (U.S. Const., 5th Amend.) The process for evaluating the constitutionality of a governmental action involves an examination of its "justice and fairness," for which there is no set formula, and the inquiry is "essentially ad hoc and fact intensive." (*Eastern Enterprises v. Apfel* (1998) 524 U.S. 498, 523; *Penn Central Transportation Co v. New York City* (1978) 438 U.S. 104, 124 (*Penn Central*).) Nevertheless, the United States Supreme Court has set forth several factors which have been held to be particularly significant: (1) the economic impact of the regulation on the claimant; (2) the extent to which the regulation has interfered with reasonable investment backed expectations; and (3) the character of the governmental action. (*Penn Central*, *supra*, 438 U.S. at 124.) The U.S. Supreme Court has held that a reasonable investment-backed expectation must be more than a "unilateral expectation or an abstract need." (*Webb's Fabulous Pharmacies v. Beckwith* (1980) 449 U.S. 155, 161.)

Importantly, property interests are not created by the Constitution. (*Board of Regents of State Colleges v. Roth* (1972) 408 U.S. 564, 577 (*Board of Regents*).) "Rather, they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law—rules or understanding that secure certain benefits and that support claims of entitlement of those benefits." (*Ibid.*) While property interests may include a legally enforceable right to

receive a government benefit, those interests are defined according to the terms and conditions set forth in statute or rule. (*Id.* at 576-577.) Indeed, to have a property interest in a benefit, there must be more than an abstract need, desire, or unilateral expectation of the benefit. (*Id.* at 577.)

Ivy's allegations fail at the threshold and under the *Penn Central* factors. Ivy fails to identify any property right to a particular compensation rate for either multi-tenant property owners or their tenants who rent. As such, Ivy's contention is nothing more than an abstract need, desire, or unilateral expectation of a particular compensation rate. (See *Board of Regents*, *supra*, 408 U.S. at 577.) Ivy also fails to explain why a property right would exist considering that participation in VNEM is completely voluntary. (See, e.g., *Bowles v. Willingham* (1944) 321 U.S. 503, 517-518, *Connolly v. Pension Benefit Guaranty Corp.* (1986) 475 U.S. 211, 226-228.)

Even assuming some kind of property right exists, which it does not, Ivy's rehearing application lacks the necessary legal and factual analysis to assess its takings claim. (See Ivy App. Rehg. at 15; see also *Penn Central*, *supra*, 438 U.S. at 124.).

E. SBUA's application for rehearing is denied.

SBUA contests the Decision's rejection of its proposal that the successor VNEM tariff permit routine grid-charging of battery storage that is paired with a system covered by the NEM tariff (Grid-Charging Proposal), a proposal SBUA recommended in comments. (*SBUA Opening Comments on VNEM and NEMA Questions* (Mar. 21, 2023) at 2-3.) Even though SBUA acknowledged that routine grid charging is prohibited under the current VNEM tariff, SBUA proposed that we lift this ban for the successor VNEM tariff. (*Id.* at 2.)

The Decision rejects SBUA's Grid-Charging Proposal on two grounds:

> First, Pub. Util. Code §2827.1(a) states that Generation Facilities shall have the same meanings as defined in Pub. Util. Code §2827, which defines the term as a facility that generates electricity from a renewable source listed in paragraph (1) of subdivision (a) of Section 25741 of the Public Resources Code, which does not include stand-alone batteries. Second, beyond the legal conflict, this would be

> challenging to accurately measure and provide generation credits since the net generation output meter is not permitted to be bidirectional.

(Decision at 58.)

SBUA's comments also recommended that systems on the virtual tariff be permitted to function as microgrids by grid charging storage prior to planned outages, such as Public Safety Power Shutoffs (PSPS). (*SBUA Opening Comments on VNEM and NEMA Questions* (Mar. 21, 2023) at 4.) The Decision notes that parties agree that a solution could exist to the technical barrier identified above. (Decision at 59.) The Decision orders the utilities to lead a workshop and submit a Tier 2 advice letter proposing language to update both the VNEM tariff and the virtual NBT to permit grid charging prior to Public Safety Power Shutoffs or other planned outages. (*Id.* at 59, 245 (OP 4).)

SBUA asserts several allegations of legal error related to the Decision's legal and factual findings. Each of SBUA's allegations is discussed in more detail and addressed below.

1. The Decision does not mischaracterize SBUA's Grid-Charging Proposal.

SBUA alleges that there is no substantial evidence to support the Decision's conclusion that its Grid-Charging Proposal was for stand-alone batteries. (SBUA App. Rehg. at 4-5.) SBUA asserts that the record is clear that it proposed a virtual tariff with grid-charging storage associated with a system covered by the NEM tariff. (*Id.* at 4.)

SBUA misunderstands the Decision, which recognizes that SBUA proposed battery storage paired with a renewable generation facility. (See Decision at 57-58, 231 Conclusion of Law (COL) 23, 24 & 26).) The Decision's use of the term "stand-alone batteries" merely refers to the fact that SBUA's Grid-Charging Proposal would allow these paired batteries to charge directly from the grid, not solely from the renewable generation facility. (See *ibid.*) Thus, SBUA is wrong that the Decision mischaracterizes its proposal.

2. The Decision is modified to more narrowly address SBUA's Grid-Charging Proposal.

SBUA argues that the Decision misinterprets Public Resources Code section 25741(a)(1). (SBUA App. Rehg. at 5-8.) Relatedly, SBUA alleges that the Decision's legal ground for rejecting its Grid-Charging Proposal lacks basis. (*Id.* at 4-5.)

SBUA's allegations miss the point. Our policy has been to prohibit VNEM systems paired with storage from routine grid charging. (See, e.g., D.17-12-005 at 22 (COL 2); Decision at 58-59.) Further, SBUA's Grid-Charging Proposal makes only general assertions as to why it should be adopted. (*SBUA Opening Comments on VNEM and NEMA Questions* (Mar. 21, 2023) at 2-3.) Considering the above, SBUA failed to persuade us to change our policy determinations. (See Decision at 58, 231 (COL 26).) We modify the Decision to more clearly and narrowly reflect this point, as stated in the Ordering Paragraphs below, and deny SBUA's rehearing application.

F. SEIA's application for rehearing is denied.

SEIA challenges the Decision's order prohibiting contractors found in violation of section 769.2's prevailing wage requirement from future construction of facilities seeking to take service under section 2827 and section 2827.1 tariffs. (SEIA App. Rehg. at 3-6.) SEIA argues that this order violates the plain language and jurisdictional limits set forth in section 769.2. (*Id.* at 3-4.) SEIA further argues that the statutory scheme precludes the Commission from exercising its authority under section 701. (*Id.* at 5-6.)

Section 769.2 requires a contractor to pay, at minimum, prevailing wages for construction of certain renewable electrical generation facilities that receive service under section 2827 and section 2827.1 tariffs. (§ 769.2, subds. (a), (b), (f).) The statute also includes reporting requirements, mandating that contractors maintain, verify, and provide certified copies of their payroll records to the Department of Industrial Relations and the Commission. (*Id.* at subds. (b)(2) & (3).)

In terms of noncompliance with the prevailing wage requirement, section 769.2 penalizes both contractors and customers. For contractor violations, section 769.2 provides:

> (1) Within 18 months after completing the renewable electrical generation facility, by the Labor Commissioner through the issuance of a civil wage and penalty assessment pursuant to Section 1741 of the Labor Code, which may be reviewed pursuant to Section 1742 of the Labor Code.
>
> (2) By an underpaid construction worker or apprentice through an administrative complaint or civil action.
>
> (3) By a joint labor-management committee through a civil action pursuant to Section 1771.2 of the Labor Code.

(§ 769.2, subd. (c).) On the customer side, "[i]f a willful violation … has been enforced against a contractor for the construction of a renewable electrical generation facility" pursuant the above, "that facility shall not be eligible to receive service pursuant to a standard contract or tariff developed pursuant to Section 2827 or 2827.1." (*Id.* at subd. (d).)

We requested party comments on AB 2143, asking among other things, what actions we should take to address imbalances for compliance with the statute. (See *ALJ Ruling Seeking Comments on Assembly Bill 2143* (April 3, 2023), Attachment 1 at A-3.) In response to party comments, we adopted consumer protections for ratepayers. (Decision at 185-190.) Relevant here, we protect ratepayers by prohibiting contractors found in violation of the prevailing wage requirement from building facilities seeking to utilize tariffs pursuant to sections 2827 and 2827.1 and direct the utilities to track and enforce this prohibition. (*Id.* at 188-189, 264 (OP 40).)

As discussed below, SEIA's challenges to our directive lack merit for two reasons. First, SEIA incorrectly views section 769.2 in a vacuum, ignoring our broader authority to impose consumer protections. Second, SEIA misconstrues section 701.

1. The Commission has broad authority to impose consumer protections for ratepayers.

It is well-established that we have inherent authority to impose consumer protections for ratepayers, and that such protections are a legitimate regulatory function. (See, e.g., D.10-12-060 at 4-6, D.01-12-018 at 95-96, D.19-08-039 at 5, §§ 364.2, 451, 701, 702, 761, 770; see also *Hartwell Corporation v. The Superior Court of Ventura County* (2002) 27 Cal.4th 256, 265, 270-272.) In addition, the Public Utilities Code provides us with specific authority to establish a net energy metering program, a successor to that program, and the terms and conditions for the programs' tariffs. (§§ 2827, subd. (a), 2827.1, subds. (b)(1) & (c).)

Pursuant to the above authority, we have developed a number of consumer protections associated with the net energy metering tariffs. (D.16-01-044 at 101; see generally D.18-09-044, D.20-02-011, D.21-06-026.) We have simply done the same here by protecting ratepayers from contractors found in violation of the prevailing wage requirement—violations which bar the customer's facility from taking service under the net energy metering tariffs.

2. The Decision's consumer protection for ratepayers regarding prevailing wage violations is lawful and consistent with section 769.2.

We derive our powers from the California Constitution and the Legislature. Pursuant to the Constitution, we may, among other things, fix rates and establish rules for all public utilities subject to our jurisdiction. (Cal. Const. art. XII, § 6.) In addition, the "Legislature has plenary power … to confer additional authority and jurisdiction upon the commission ...." (Cal. Const., art. XII, § 5.) Exercising this plenary power, the Legislature enacted the Public Utilities Act (§ 201 et seq.). Yet, our "powers are not limited to those expressly conferred." (*San Diego Gas & Electric Co. v. Superior Court* (1996) 13 Cal.4th 893, 915, citing § 701.) Pursuant to section 701, the Legislature "vest[ed] the [Commission] with 'expansive' authority [citation] to 'supervise,' to 'regulate every public utility,' and '*do all things* ... which are *necessary and convenient* in the exercise of such power and jurisdiction,' regardless of whether it is specifically

designated in the Public Utilities Code '*or in addition thereto*.'" (*Southern Cal. Edison Co. v. Public Utilities Com.* (2014) 227 Cal.App.4th 172, 186 (*Edison*), quoting § 701, original emphasis.) This broad power permits us to adopt rules so long as they are cognate and germane to utility regulation and there is not a "specific statutory directive that *prohibits* the [Commission's] action." (*Id*. at 187, original emphasis.)

SEIA misunderstands and overstates the nature of section 701's limitation, which requires an *express* prohibition on our authority. (See SEIA App. Rehg. at 5-6; *Edison*, *supra*, 227 Cal.App.4th at 187.) While section 769.2 assigns certain responsibilities to the Commission and other agencies, nowhere in the statute's plain language does the Legislature expressly prohibit us from taking measures to protect ratepayers. SEIA concedes as much, ignoring the statute's plain language and instead reading into the statute a prohibition on our consumer protection authority. (SEIA App. Rehg. at 4.) Accordingly, section 769.2 does not limit our authority to impose the Decision's consumer protection measure.

G. CARE's pending motion is denied.

We deny CARE's motion for official notice. CARE's motion is inappropriate because the record was submitted on May 4, 2023, and the Decision issued on November 22, 2023, well before CARE's request was made. (Decision at 7; see Rule 13.15.) Thus, CARE's outstanding motion is denied.

III. CONCLUSION

For the reasons discussed above, the Decision is modified as specified below, and rehearing of the Decision, as modified, is denied.

THEREFORE, IT IS ORDERED that:

1. Revise the third sentence in the first full paragraph on page 31 to read:

In fact, based on PG&E data provided by CALSSA, the Commission finds that some VNEM tariff generation and load share a transformer, which indicates that onsite consumption can occur.

2. Revise the first paragraph on page 58 to read:

The Commission finds fault with the recommendations regarding grid charging. Pub. Util. Code §2827.1(a) states that Generation Facilities shall have the same meanings as defined in Pub. Util. Code §2827, which defines the term as a facility that generates electricity from a renewable source listed in paragraph (1) of subdivision (a) of Section 25741 of the Public Resources Code. The Commission's policy for the current VNEM tariff limits the routine charging of storage devices to come solely from the Generation Facility. We have not been persuaded to deviate from this approach.

3. Revise Findings of Fact 24 to read:

In PG&E's territory, seventy-seven percent of VNEM tariff generation and load share a transformer and forty-one percent of VNEM MASH and SOMAH generation and load share a transformer.

4. Revise Findings of Fact 238 to read:

The requests for a new tariff for fuel cells or a distributed energy resources tariff go beyond the scope of this proceeding or for this issue.

5. Revise Conclusion of Law 25 to read:

Pub. Util. Code §2827.1(a) states that Generation Facilities shall have the same meanings as defined in Pub. Util. Code §2827, which defines the term as a facility that generates electricity from a renewable source listed in paragraph (1) of subdivision (a) of Section 25741 of the Public Resources Code.

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6. CAlifornians for Renewable Energy, Inc.'s outstanding motion is denied.

7. Rehearing of D.23-11-068 is denied

8. This proceeding, Rulemaking 20-08-020, is closed.

This order is effective today.

Dated July 11, 2024, at San Francisco, California.

ALICE REYNOLDS
President
DARCIE L. HOUCK
JOHN REYNOLDS
KAREN DOUGLAS
Commissioners

Commissioner Matthew Baker recused himself from this agenda item and was not part of the quorum in its consideration.