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Decision 24-09-022 September 12, 2024

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of PACIFIC GAS AND ELECTRIC COMPANY (U39E) for Review of the Disadvantaged Communities – Green Tariff, Community Solar Green Tariff and Green Tariff Shared Renewables Programs.	Application 22-05-022
And Related Matters.	Application 22-05-023 Application 22-05-024

ORDER DENYING REHEARING OF DECISION 24-05-065

I. INTRODUCTION

On June 7, 2024, the Commission issued Decision (D.) 24-05-065 (D.24-05-065 or the Decision).[1] D.24-05-065 adopts a new community renewable energy program (community renewable energy program or the program), in which subscribers to the program will receive a bill credit associated with off-site renewable energy projects. (D.24-05-065 at 168 (Ordering Paragraph (OP) 1(b)).) The tariff for the program will use a Public Utility Regulatory Policies Act (PURPA)-compliant tariff, such as the Renewable Market Adjusting Tariff (ReMAT) or the Standard-Offer Contract. (*Id*. at 168 (OP 1(a)).) As explained in D.24-05-065, use of PURPA avoided costs is appropriate in this instance to calculate the avoided costs of the program. (*See id*. at 164 (Conclusion of Law (COL) 9).)

[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.

The Center for Biological Diversity (CBD), a party to the above captioned proceeding, timely filed its application for rehearing of D.24-05-065 on July 8, 2024. (Application of the Center for Biological Diversity for Rehearing of Decision 24-05-065 [hereinafter Rehg. App.].) CBD's arguments relate to the Commission's election to use PURPA-based methodologies rather than the Avoided Cost Calculator (ACC) to calculate avoided costs of the community renewable energy program. CBD asserts that the Commission's choice to base community renewable energy program compensation on established tariffs rather than the ACC constitutes legal error. CBD also alleges that the Commission errs when it finds that the alternatively proposed Net Value Billing Tariff (NVBT) program would create a cost-shift and errs in what CBD misconstrues as the Commission's determination to adopt a PURPA-compliant community renewable energy program. CBD also asserts that the community renewable energy program fails to comply with its originating statute, Public Utilities Code section 769.3.[2] CBD asserts that the program fails to meet the requirements set forth in section 769.3 because the program fails to ensure robust participation of low-income customers, fails to complement the California Building Code, and fails to ensure the maximum use of state and federal incentives. Finally, CBD argues that the adopted program violates California's civil rights statute. For these reasons, CBD argues that the Commission should grant its application for rehearing in order to revise the Decision.

We have carefully considered all the arguments presented in the rehearing application and deny rehearing.

II. DISCUSSION

A. The Commission's election to use PURPA avoided costs is supported by the statutory language, legislative history, and past Commission practice.

CBD argues that the Commission errs in its determination to use PURPA avoided costs rather than the Commission's ACC to determine the avoided costs of the program. (Rehg. App. at 6-10.) CBD argues that this determination: 1) is contrary to the

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

plain language of section 769.3; 2) is contrary to the legislative intent behind section 769.3; and 3) is inconsistent with the Commission's own precedent using the ACC. (*Ibid*.) Each argument is addressed below.

1. The Commission's use of PURPA tariffs as a basis to calculate avoided costs is consistent with the plain language of the statute.

CBD argues that section 769.3 requires the Commission to use the ACC. (Rehg. App. at 8.) In support, CBD relies on section 769.3(c)(5), which requires the program "[p]rovide bill credits to subscribers based on the avoided costs of the programs facilities, as determined by the commission's methods for calculating the full set of benefits of distributed energy resources." CBD asserts that because "the Commission has never identified any method other than the ACC for calculating the benefits of distributed energy resources," the statutory reference to avoided costs must mean the Avoided Cost Calculator. (*Ibid*.)

The Commission has already addressed the meaning of section 769.3(c)(5) in D.24-05-065. The Decision notes that the legislature could have used the term "Avoided Cost Calculator" had it intended to bind the Commission to the ACC. (D.24-05-065 at 103-106.) Further, CBD's argument that the statute's use of "avoided costs" must mean the Avoided Cost Calculator ignores section 769.3(c)(3), which prohibits the program's costs from being paid by nonparticipating customers in excess of the avoided costs. (section 769.3(c)(3) [the Commission must "prohibit … the program's costs from being paid by nonparticipating customers in excess of the avoided costs"].) As discussed in Section II.B, *infra*, the Commission finds in D.24-05-065 that using the ACC for the community renewable energy program would result in a cost-shift to nonparticipating customers.

As CBD points out, the Commission has used the ACC in other instances, such as the recent revision to the net-billing tariff. (Rehg. App. at 7 citing to D.22-12-056.) Projects implemented under the net-billing tariff however, are sited directly on the customer's property, whereas there is no such locational requirement for

projects under the community renewable energy program other than that the project be within the same service territory as the customer subscriber. (D.24-05-065 at 145.) The different benefits presented by behind-the-meter (BTM) projects such as customer sited rooftop solar, in contrast to in front of the meter projects (IFoM) projects allowed under the program is critical. As explained in D.24-05-065, because the ACC accounts for benefits such as avoided transmission and distribution costs, which projects under the community renewable energy program may not have, calculating avoided costs under the ACC would attribute avoided costs to the program that may not actually occur. (D.24-05-065 at 86-87, 92-95, 98-99.) Further, the net-billing tariff based on the ACC does not fully offset the cost shift to nonparticipating customers, but rather mitigates the cost shift compared to the net energy metering (NEM) 2.0 tariff. (D.22-12-056, Appendix B at B5-B6.) Thus, calculating avoided costs under the ACC would overcompensate program subscribers and cause a cost-shift to non-participants in violation of section 769.3(c)(3). (D.24-05-065 at 99-103.)

In sum, the plain language of section 769.3(c)(5) does not require the Commission use the ACC for the community renewable energy program, and interpretating the statute to require use of the ACC would conflict with the mandate prohibiting program costs from being paid by nonparticipants. (*See Dyna-Med, Inc. v. Fair Employment Housing Com.* (1987) 43 Cal.3d. 1379, 1387 [rules of statutory construction dictate that statutory language should be harmonized]; *Howard Jarvis Taxpayers Assn. v. Bay Area Toll Authority* (2020) 51 Cal.App.5th 435, 449 [“statutes or statutory sections relating to the same subject must be harmonized, both internally and with each other, to the extent possible”].)

2. The legislature history does not demonstrate intent to require the Commission to use the ACC specifically for the program.

CBD asserts that the legislative history behind section 769.3 demonstrates that the legislature intended the Commission to use the ACC. (Rehg. App. at 8). In support, CBD cites to a legislative analysis that describes the ACC. (Rehg. App. at 8,

citing to Analysis of Assembly Bill (AB) 2316 (Ward), Senate Committee on Energy, Utilities and Communications, June 24, 2022, at 7; *see also* The Utility Reform Network Opening Comments on Proposed Decision at 11 [citing same].) CBD points to this description of the ACC to argue that by "avoided costs," the legislature intended to refer to the ACC.

Neither the statute nor the various legislative analyses of the bill specifically state that the Commission must use the ACC, and as noted in the Decision, the description of the ACC in the legislative analysis is provided as background (D.24-05-065 at 105.) In addition, the legislature made a deliberate change to the draft legislation to delete a specific reference to the ACC. When the bill was first introduced on February 16, 2022, the initial version of the bill included a provision that required the Commission to:

> Create[] a bill credit rate that is differentiated based on the time of generation. This time-differentiated bill credit rate shall be based on the avoided costs of the facility, including, but not limited to, wholesale energy values plus all expected benefits to a facility over the 25-year term of the tariff, including, but not limited to, avoided generation capacity costs, avoided transmission and distribution costs, and avoided greenhouse gas costs. **Avoided costs associated with nonwholesale energy values shall be based on the Commission's avoided cost calculator, or its successor**, and held fixed for not less than 25 years avoided cost upon a facility's execution of an interconnection agreement. (emphasis added.)[3]

In the next iteration of the bill available on the California legislature's website, dated March 28, 2022, the language regarding avoided costs had been changed to remove the phrase "avoided cost calculator." Instead, the March 28, 2022 version of

[3] Compare the February 16, 2022 version of the draft legislation with later versions, available at: https://leginfo.legislature.ca.gov/faces/billVersionsCompareClient.xhtml?bill_id=202120220AB2316&cversion=20210AB231699INT.

the legislation required that a bill credit be based on "the avoided costs of the facility and be consistent with the commission's methods for calculating the full set of benefits of distributed energy resources."[4] This language would undergo further changes prior to the passage of the bill. In sum, section 769.3(c)(5) lends the Commission discretion in establishing the avoided costs of the program, and does not bind the Commission to one specific method to calculate avoided costs. Had the legislature intended to bind the Commission to use of the ACC, it could have specifically stated as such in the passed legislation.

3. The Commission has previously used PURPA avoided costs methodologies.

CBD argues that the Commission's election to use PURPA to calculate avoided costs conflicts with past Commission precedent. (Rehg. App. at 4, 7.) According to CBD, the Commission has previously held that the ACC "is the tool that must be used when assessing the cost-effectiveness of distributed energy resources like community solar." (Rehg. App. at 7 citing D.22-12-056, D.16-06-007, D.21-02-007, and D.22-05-002.)

CBD fails to cite any authority for the notion that the ACC is the tool the Commission "must" use when assessing the cost-effectiveness of renewable resources. The cases cited by CBD are not on-point and unpersuasive. In D.22-12-056, the Commission used the ACC to revise its net billing tariff for customer-sited BTM renewable generation. (D.22-12-056 at 237 (OP 1(a)).) In D.16-06-007, the Commission updated portions of the Commission's cost-effectiveness framework, and in doing so, made various updates to the ACC. (D.16-06-007 at 6-9.) D.21-02-007 adopted guiding principles for the development of a successor to the 2016 net energy metering tariff adopted in D.16-01-044. D.22-05-002 adopted changes to the avoided cost calculator. None of these decisions require use of the ACC for all future renewable programs.

[4] The March 28, 2022 version of the draft legislation, compared with the final version of the bill, is available at: https://leginfo.legislature.ca.gov/faces/billVersionsCompareClient.xhtml?bill_id=202120220AB2316&cversion=20210AB231698AMD.

The Commission has used the ACC in the past. However, prior applications of the ACC to BTM programs such as net energy metering, where the renewable resources are sited directly on customer-property and self-supply electricity to serve customer load behind the utility meter, are unpersuasive here. (*See e.g.,* D.22-12-056 at 237 (OP 1(a)); *see also* D.23-12-005 at 8 [finding that the ACC was "developed by the Commission to calculate the avoided costs of behind-the-meter (BTM) distributed energy resources"].) In contrast, the community renewable energy program allows IFoM projects. There is no locational requirement for where projects can be sited to participate in the program, other than that projects be within the same service territory as the customer subscribers. (D.24-05-065 at 145.) As discussed further in Section II.B, *infra*, this distinction significantly impacts the Commission's ability to use the ACC in order to avoid causing a cost-shift to nonparticipants in compliance with section 769.3(c)(3).

In contrast to CBD's arguments that the use of PURPA is contrary to Commission precedent, the use of PURPA avoided costs has proven to be a durable baseline for calculating a compensation rate that does not shift cost burdens unfairly onto utility customers. (*See e.g.,* D.20-05-006 [establishing a new PURPA standard offer contract that will be available to Qualifying Facilities of 20 MW or less seeking to sell electricity and/or capacity to utilities]; D.12-05-035 [implementing the Re-MAT tariff pursuant to PURPA for the renewable feed-in tariff]; D.86-97-004, 1986 Cal. PUC Lexis 458, *1, 5 [developing standard offers to govern sales of electricity by the operators of Qualifying Facilities to the utilities under PURPA and the California Private Energy Producers Act].) The Commission has used methods other than the ACC to calculate the benefit of renewable resources for years, and it is not inconsistent to continue to do so here. CBD's comparison to the use of the ACC for net-energy metering is unpersuasive given the distinction between BTM resources, which customers use to self-supply, and IFoM resources in the community renewable energy program, which are directly forced on to the distribution system and may be credited to customers anywhere in a utility service territory. (*See* D.24-05-065 at 93-99; *see also* Section II.B, *infra.*)

B. The Commission's finding that the Net Value Billing Tariff would create a cost-shift does not constitute legal error.

In D.24-05-065, the Commission explains that the Coalition for Community Solar Access (CCSA) set forth a proposal for a Net Value Billing Tariff (NVBT), as the new community renewable energy program, which would use the ACC to calculate avoided costs. (D.24-05-065 at 70.) The Commission did not approve the NVBT proposal as proposed by CCSA, finding that it would result in a cost-shift. (D.24-05-065 at 99-103.)

CBD argues that the Decision errs where it finds that the NVBT would result in a cost-shift. (Rehg. App. at 10.) CBD argues that in making this finding, the Commission ignored "substantial evidence" presented by CBD and other parties explaining why concerns about a cost-shift are "likely overblown," and must be set aside when considering distributed renewable energy programs in disadvantaged communities. (Rehg. App. at 11.) As part of this "substantial evidence," CBD asserts that the Commission fails to consider evidence that resources installed as part of a community renewable energy program would act as load modifiers. (Rehg. App. at 9.)

In fact, the Commission considered evidence and arguments regarding the NVBT program's potential to modify load and found them unpersuasive. D.24-05-065 discusses this assertion, finding that because these resources would typically be IFoM, they may not offset load. (D.24-05-065 at 88-99.) Granting compensation based on the ACC, which recognizes load modification as a benefit of BTM distributed generation, would thus overcompensate program subscribers and shift costs to nonparticipants. (D.24-05-065 at 86-87, 95-99, 156 (Finding of Fact (FOF) 25)) ["[i]f the resource is in front of the meter, a customer's load may not be offset. Instead, the energy will be sent directly to the distribution grid. The location of the resource and its proximity to customers will determine what happens to the produced energy."].) In addition, D.24-05-065 directly analyzes the argument that community renewable resources would avoid transmission and distribution costs. (D.24-05-065 at 95-99.) D.24-05-065 finds that avoiding transmission and distribution costs is not a proved benefit of a program that

does not intend to self-supply onsite customer load and instead simply adds solar generation projects anywhere on the distribution system. (D.24-05-065 at 92, 95.) Thus, CBD's argument that the Commission ignored evidence lacks merit.

Further, CBD asserts that it raised "substantial evidence" regarding avoided load modification and transmission and distribution costs associated with the NVBT. However, it is not entirely clear what evidence CBD refers to. In its application for rehearing, CBD cites to prior comments it submitted in this proceeding, in which it makes statements that community solar has load modification and similar benefits. CBD also cites to a Court of Appeals pleading where it criticizes the ACC. (Rehg. App. at 9-10.) The Decision plainly showed that the Commission weighed parties' assertions regarding load modification and transmission and distribution costs and found them insufficient.

CBD also argues that the Commission ignores "substantial evidence" on the "[n]on-energy benefits" of community solar programs. (Rehg. App. at 11.) It is unclear why these claimed non-energy benefits would overcome evidence of a cost shift. Further, merely because CBD made various assertions in its comments does not necessitate an obligation on the Commission's part to discuss those assertions. There is no legal requirement that every piece of evidence or party assertion in the record be mentioned in the decision. (D.09-07-024 at 29 citing *Toward Utility Rate Normalization v. Public Utilities Com.* (1978) 22 Cal.3d 529, 540 ["[w]e have never held that an administrative decision must contain a complete summary of all proceedings and evidence leading to a decision."].) Likewise, the Commission does not have to make findings as to why it rejected alternatives offered by the parties. (*Clean Energy Fuels Corp. v. Public Utilities Com.* (2014) 227 Cal.App.4th 641, 659.) Merely because the Commission disagreed with a party's argument or offered alternative does not constitute legal error. (D.21-09-045 at 6-7.)

D.24-05-065 demonstrates that the Commission weighed the various arguments and evidence brought by the parties, and ultimately found a lack of reliable evidence that the community renewable energy program can be attributed the various benefits granted to BTM resources after applying the ACC. (D.24-05-065 at 86-106; *see*

also D.21-09-045 at 6-7 [that the Commission did not reach Applicant's preferred finding is not legal error].) D.24-05-065 extensively discusses the cost-shift issue, with cites to the evidence raised by the parties. (*See* D.24-05-065 at 86-106.) The Commission weighs the arguments and evidence presented by the parties and finds ample evidence for a cost-shift under the NVBT proposal. (*Ibid*.; *Clean Energy Fuels, supra,* 227 Cal.App.4th at 649 [it is for the Commission to weigh the preponderance of conflicting evidence].)

In short, the Commission's findings are based on substantial evidence in the record and CBD has failed to present information showing how or why the Commission's findings here are unreasonable or constitute legal error. (*See Pacific Gas and Electric Co. v. Public Utilities Com.* (2015) 237 Cal.App.4th 812, 839) ["the Commission's factual findings are almost always treated as conclusive, final and not subject to review"] (internal citations and quotations omitted); *The Utility Reform Network v. Public Utilities Com.* (2014) 223 Cal.App.4th 945, 959 [the Commission's factual findings will be upheld provided they are based on substantial evidence.]; *S. Cal. Edison Co. v. Public Utilities. Com.* (2002) 101 Cal.App.4th 384, 396 [a Commission finding will be upheld where it is backed by substantial evidence in the record].)

Simply put, CBD's arguments are premised on the fact that IFoM resources with subscribers located anywhere in a utility service territory can be attributed with the same benefits as BTM resources with onsite load. The Decision examined this issue and found ample record evidence showing otherwise. These factual findings are reasonable and supported by the record. The Commission's decision meets the substantial evidence test and CBD fails to meet its burden to show that a reasonable person could not have reached the same conclusion, or otherwise shown legal error. (*See Securus Technologies, LLC v. Public Utilities Com.* (2023) 88 Cal.App.5th 787, 802 ["any" substantial evidence will suffice to support a finding, so long as a reasonable person could reach the same conclusion]; *Clean Energy Fuels*, *supra*, 227 Cal.App.4th at 658 [holding same]; *The Utility Reform Network, supra*, 223 Cal. App.4th at 959 [holding same].)

C. The Commission did not make a finding that it must adopt a PURPA-compliant program.

CBD alleges that the Commission commits legal error because it "de facto maintained its conclusion [set forth in the Proposed Decision] that it should not adopt the NVBT because of concerns about conflict with PURPA . . ." (Rehg. App. at 14-15.) CBD maintains that although the Commission "changed its approach" regarding PURPA from the proposed decision to the final Decision, it still implicitly finds that the program must be PURPA-compliant when it uses PURPA to calculate avoided costs. (*Ibid*.)

D.24-05-065 does not find make a finding as to whether or not the program must comply with PURPA. Instead, the Decision explains at length why the ACC would not be appropriate for use given that the proposed renewable program allows IFoM resources with subscribers located anywhere in a utility service territory. (*See* D.24-05-065 at 88-115.) The Commission's finding with regard to use of a compensation rate based on a PURPA tariff rather than the ACC is supported through the Commission's various factual findings regarding the benefits of BTM versus IFoM resources serving load offsite. There is no need to reach a conclusion on whether the program must comply with PURPA, and the Commission did not do so. In essence, CBD is challenging a determination that does not actually exist in the Decision. Along these same lines, CBD argues in its rehearing decision that PURPA is not applicable. (Rehg. App. at 15.) This is irrelevant as D.24-05-065 does not make such a determination either way. CBD's argument fails to address the actual basis for the Decision, which is based on evidence of a cost-shift. As such, CBD fails to show legal error.

D. The Commission's adopted community renewable energy program complies with the requirements set forth in section 769.3.

CBD argues that the adopted community renewable energy program does not meet the requirements in section 769.3(c). CBD argues that the adopted program: 1) does not ensure the robust participation of low-income customers, in violation of section 769.3(c)(2); 2) does not complement California's Building Code, in violation of

section 769.3(c)(1); and 3) does not ensure maximum use of state and federal incentives, in violation of section 769.3(c)(6). Each of these arguments is addressed below.

1. The adopted program meets the statutory requirement that at least 51 percent of the program's capacity serves low-income customers.

Pursuant to section 769.3(c), at least 51% of program subscribers must be low-income. (D.24-05-065 at 159 (FOF 57), 169 (OP 1(g)).) CBD argues that the requirement set forth in section 769.3(c) has not been met because the decision to use a rate based on PURPA tariffs rather than the ACC to calculate avoided costs will result in lower bill credits to subscribers. (Rehg. App. at 16.) CBD argues that due to this lower compensation, the program will not be successful and will thus not meet the legislature's objective to encourage renewable adoption in low-income communities. (*Ibid*.).

This argument is unproven speculation on CBD's part, and CBD fails to show legal error in the Decision's implementation of the program. Further, the Commission is currently in the implementation phase of the program and working through additional details to ensure the program's success. The Commission has adopted a requirement that 51% of program subscribers must be low-income. (D.24-05-065 at 159 (FOF 57), 169 (OP 1(g)).) This is sufficient to comply with the statutory requirement. Further, as explained above, there is a statutory requirement to avoid shifting costs to nonparticipants. (*See* Section II.B, *supra*.) The Decision includes a lengthy analysis on this point, and the Commission's finding that use of the ACC would result in such a cost-shift is supported by substantial evidence in the record. (*See* Section II.B, *supra*.) Thus, authorizing higher bill credits, i.e., credits above the avoided costs of the program, would violate the mandate set forth in section 769.3(c)(3) to avoid shifting costs to nonparticipants.

2. The adopted program complements California's Building Code.

Section 769.3(c)(1) requires that the program be complementary to, and consistent with, Section 10-115 of the California Building Code Standards. Section 10-115 of the Building Code states that:

> If approved by the [California Energy Commission], a community shared solar system, other community shared renewable system, community shared battery storage system, or combination of the aforementioned systems (hereinafter referred to as a community shared solar or battery storage system) may be used as a compliance option to partially or totally meet the on-site solar electric generation system and/or battery storage system that is otherwise required by Section 140.0(c), 150.1(a)3, or 170.0(a)3 of Title 24, California Code of Regulations, Part 6.

This section of the Building Code allows different types of solar projects to meet building code requirements if approved by the California Energy Commission. It does not require the Commission to approve any particular tariff, compensation structure, or use of ratepayer funding for any program or technology. Section 769.3(c)(1) does not require the Commission to adopt a community renewable energy program (*see* section 769.3(b)(2)(A)), and also requires that if the Commission does adopt such a program, it must be complementary to Section 10-115 of the Building Code. Pursuant to this requirement, D.24-05-065 requires that the tariff for the program obliges developers to demonstrate compliance with this Building Code provision to the Energy Commission. (D.24-05-065 at 122, 159 (FOF 56).)

CBD argues that the adopted program is inconsistent with California's Building Code. (Rehg. App. at 18.) In support, CBD cites to a brief from the California Building Association which states that "about 250 to 400 MW of community renewable will be necessary each year for builders to effectively meet existing Building Code requirements." (Rehg. App. at 18 citing to California Building Industry Association Opening Brief at 7 (May 17, 2023) (citing Exh. CBIA-01 at 8).) Thus, CBD argues that in order to be "complementary to" the Building Code requirement, the community

renewable energy program must achieve at least 250 to 400 MW of new community solar per year. (Rehg. App. at 18.)

This argument is unpersuasive. The Commission is not required to implement a community solar program. (*See* section 769.3(b)(2)(A).) Moreover, the Building Code recognizes that a community solar program is only one option that "may be used as a compliance option to partially or totally meet the on-site solar electric generation system," required under California law. The Building Code does not require the Commission to approve any particular tariff, compensation structure, or use of ratepayer funding for any program or technology. CBD seems to read the Building Code as requiring all renewable resources needed to meet on-site solar electric generation system and/or battery storage system goals come directly from the Commission's community renewable energy program. This interpretation is contrary to the plain language of Section 10-115 of the California Building Code Standards. Instead, this Building Code provision provides that, if the Commission creates a community renewable solar program, projects under this program can be used to meet the energy budget standard set by the Building Code. CBD fails to show how the community renewable energy program is not complementary to, or consistent with, Section 10-115 of the California Building Standards Code, and as such, fails to show any legal error.

3. The adopted program prioritizes the maximum use of state and federal incentives.

Section 769.3(c)(6) requires that the community renewable energy program prioritize the maximum use of state and federal incentives. Per this requirement, D.24-05-065 explains that the program takes advantage of several state and federal funds and incentives including AB 102, the Environmental Protection Agency's Solar for All grant competition, and the enhanced federal Investment Tax Credit. (D.24-05-065 at126, 165 (COL 10).) The program also remains open to Utility Greenhouse Gas Allowance Proceeds or California's Greenhouse Gas Reduction Fund. (*Id*. at 165 (COL 10).) The Commission thus concludes that the community renewable energy program complies with section 769.3(c)(6). (*Id.* at 160 (FOF 62).)

CBD argues that the adopted program does not ensure maximum use of state and federal incentives in compliance with section 769.3(c)(6). CBD's argument again relates back to the Commission's determination not to use the ACC. CBD argues that because the program is not offering higher compensation to subscribers, it is unlikely to be successful, and therefore is unlikely to prioritize the maximum use of state and federal incentives. (Rehg. App. at 20.)

Similar to its other arguments regarding an alleged failure to meet the requirements in section 769.3(c), CBD ignores the statutory requirement that expressly prohibits a cost-shift. (§ 769.3(c)(3).) As explained, the Commission has a reasonable basis to conclude that the use of the ACC, in this instance, would cause such a cost-shift. (*See* Section II.B, *supra*.) CBD's arguments regarding the lack of success of this program are speculative and CBD does not point to any state or federal incentive that the Commission has prohibited developers from using, or otherwise pointed to any legal error.

Finally, SCE raises a ripeness issue in its response to CBD's rehearing application. (*See* Response of Southern California Edison Company (U 338-E) to the Application of the Center for Biological Diversity for Rehearing of Decision 24-05-065 at 24 [hereinafter SCE Response].) SCE points out that the proceeding is being left open for the parties to continue to work out implementation details of the program and further notes that program tariffs have not yet been adopted. (SCE Response at 25.) Further, CBD's claim that the program is unlikely to be successful is inherently speculative. As such, SCE raises a reasonable argument that CBD's argument may not be ripe for review. (*See* SCE Response at 24-25; *see also Pacific Legal Foundation v. California Coastal Community* (1982) 33 Cal.3d 158, 172 [finding that "[p]laintiffs are in essence inviting us to speculate" as to what may occur following the adoption of California Coastal Commission regulations, "and then to express an opinion on the validity and proper scope of such hypothetical exactions. We decline to enter into such a contrived inquiry."]; *PG&E Corp. v. Public Utilities Com.* (2004) 118 Cal.App.4th 1174, 1216 ["[a] basic

prerequisite to judicial review of administrative acts is the existence of a ripe controversy"].)

For all of these reasons, CBD fails to show legal error.

E. The Decision does not violate California's civil rights statute.

CBD argues that the Decision violates Government Code section 11135 by adopting a program that will have a disparate impact on renters, who disproportionately come from communities of color. (Rehg. App. at 20.) CBD argues that the program will have a disparate impact on Black, Latino, and tribal communities because the adopted program compensates participants at a lower rate than Net Billing Tariff customers, who tend to be higher income. (*Id*. at 21.) As with the other arguments presented by CBD, this relates back to the use of PURPA rather than the ACC to determine avoided costs. CBD asserts that because the Commission did not use the ACC, the Commission is undervaluing the benefits of the program, and thus planning to compensate participants at a lower rate. (*Ibid*.)

CBD relies on Government Code section 11135(a), which provides 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.

CBD's argument is unpersuasive for multiple reasons. First, the program is facially neutral and does not prohibit participation by any protected class identified in Government Code section 11135(a). Further, both the community renewable energy program and the net-billing tariff program are open to all customers, with the caveat that 51% of community renewable energy program enrollees must be low-income. Similarly,

CBD ignores that the community renewable energy program is but one of suite of programs aimed at advancing renewable energy for low-income customers.

California applies a burden-shifting framework to disparate impact claims. (*See Villafana v. County of San Diego* (2020) 57 Cal.App.5th 1012, 1017.) It is CBD's burden to establish a prima-facie case that the Commission's facially neutral program causes a disproportionate impact on a protected class. (*Ibid.*) To meet this burden, CBD must plead facts that show a facially neutral program causes a disproportionate harm to a protected class. (*Ibid*.) This includes "an appropriate statistical measure," that "take[s] into account the correct population base and its racial makeup." (*Ibid. citing Darensburg v. Metro Transp. Comm'n* (2011) 636 F.3d 511, 520.) CBD fails to include information showing a disparate impact. Further, even if CBD had established a prima facie case of disparate impact discrimination, which it failed to do, the Commission need only present a substantial legitimate justification for the challenged program to shift the burden back to CBD to articulate an equally effective, less discriminator alternative. (*Ibid*.) As explained throughout, the Commission has thoroughly explained in D.24-05-065 why authorizing a higher bill credit is not permissible pursuant to section 769.3(c)(3). (*See* Section II.B, *supra*.)

CBD also asserts that the Commission commits legal error by failing to address its concerns about civil rights that it raised in comments on the Proposed Decision. (Rehg. App. at 21.) There is no legal requirement to present a complete summary of the proceeding and every argument presented therein in a decision. (*See Toward Utility Rate Normalization*, *supra*, 11 Cal.3d at 540.) Not including a parties' concerns in the final decision is not legal error and CBD does not cite to any legal authority to support this contention.

CBD fails to meet its burden to show that the program violates California's civil rights statutes. The Commission's program is entirely consistent with the requirements set forth in section 769.3 and CBD fails to show legal error.

III. CONCLUSION

For the reasons stated above, good cause has not been demonstrated to grant rehearing of the Decision.

THEREFORE, IT IS ORDERED that:

1. Rehearing of Decision 24-05-065 is denied.
2. These proceedings, Application 22-05-022 et al., remain open to address implementation issues as ordered in Decision 24-05-065.

This order is effective today.

Dated September 12, 2024, at Sacramento, California.

ALICE REYNOLDS
President
JOHN REYNOLDS
KAREN DOUGLAS
Commissioners

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

I abstain.

/s/ DARCIE L. HOUCK
Commissioner