

**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  
(Filed August 27, 2020)

**JOINT REPLY BRIEF OF SAN JOSÉ CLEAN ENERGY  
AND SAN DIEGO COMMUNITY POWER**

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**I. INTRODUCTION**

Pursuant to Rule 13.12 of the Rules of Practice and Procedure of the California Public Utilities Commission (“Commission” or “CPUC”), Commissioner Guzman Aceves’s November 19, 2020 Scoping Ruling (“Scoping Ruling”),<sup>1</sup> Administrative Law Judge (“ALJ”) Hymes’s April 8, 2021 ruling revising the schedule of this proceeding,<sup>2</sup> and the oral ruling of ALJ Hymes at the conclusion of evidentiary hearings on August 10, 2021, San José Clean Energy (“SJCE”) and San Diego Community Power (“SDCP”) hereby jointly submit this Reply Brief.

SJCE and SDCP recommend that the Commission: (i) reject the Joint Investor-Owned Utility (“Joint IOU”) proposal to use the Avoided Cost Calculator (“ACC”) for determining Net Energy Metering (“NEM”) customer compensation, (ii) reject high fixed charges for NEM customers, (iii) adopt a reasonable glidepath to ensure that the rooftop solar industry can continue to grow sustainably, (iv) reject proposals to move NEM 1.0 and 2.0 customers to the

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<sup>1</sup> R.20-08-020, Joint Assigned Commissioner’s Scoping Memo and ALJ Ruling Directing Comments on Proposed Guiding Principles, pp. 2-4 (Nov. 19, 2020) (“Scoping Ruling”).

<sup>2</sup> R.20-08-020, Email Ruling Noticing April 22, 2021, Workshop and Revising Procedural Schedule (Apr. 22, 2021).

successor tariff, (v) ensure growth of rooftop solar in equity communities, and (vi) explore electrification friendly rates for NEM customers.

## **II. BACKGROUND**

Operated by the City of San José's ("San José") Community Energy Department, SJCE is the Community Choice Aggregator ("CCA") serving nearly 350,000 homes and businesses in the City of San José with clean, reliable electric generation service. SJCE developed its own NEM program in 2019 to help advance San José's one gigawatt solar goal, as stated in San José's Climate Smart Plan.<sup>3</sup> SJCE currently serves about 28,300<sup>4</sup> solar NEM customers in the City of San José, of which 3,402<sup>5</sup> are California Alternate Rates for Energy ("CARE") and Family Electric Rate Assistance ("FERA") NEM customers. San José's Climate Action Plan supports all forms of renewable power, including utility-scale and customer-sited, to meet California's clean air and climate mitigation goals. San José further supports accelerated adoption of electric vehicle ("EV") charging stations, including EV charging stations powered by on-site solar and storage generation. Through a partnership with the California Energy Commission, San José will double its current EV charging infrastructure over the next few years with over forty percent (40%) of new charging stations being installed in low-income and Disadvantaged Communities ("DACs").<sup>6</sup> In addition, forty-six percent (46%) of available funds for the City of San José from the California Electric Vehicle Infrastructure Project have been reserved for chargers in low-

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<sup>3</sup> City of San José, *Climate Smart San José, A People-Centered Plan For A Low-Carbon City* (Feb. 2018), available at: <https://www.sanjoseca.gov/home/showdocument?id=1364>.

<sup>4</sup> San José City Council Memo, 2020 Power Mix, Opt-Out Fee Waiver, and Net Energy Metering Enrollment (Dec. 4, 2019) available at: <https://sanjose.legistar.com/LegislationDetail.aspx?ID=4263953&GUID=DFF5D1F6-10B1-412E-B1B1-AC901A3CC22C&Options=&Search=>.

<sup>5</sup> PG&E 4013 CRCR report to SJCE dated September 4, 2021.

<sup>6</sup> California Energy Commission, *California Electric Vehicle Infrastructure Project (CALeVIP) - Peninsula-Silicon Valley Incentive Project*, available at: <https://calevip.org/incentive-project/peninsula-silicon-valley> (last visited Sept. 14, 2021).

income communities and DACs.<sup>7</sup> Additional charges or reduced compensation amounts for NEM customers, such as those being proposed by the Joint IOUs in this proceeding, would limit the options available to DAC EV charging stations to benefit from zero emission, on-site electric power generation.

SDCP is a CCA currently serving the cities of Chula Vista, Encinitas, La Mesa, Imperial Beach, and San Diego. Once full enrollment of the five cities is completed in 2022, SDCP will be the second largest CCA in the state with approximately 770,000 accounts. SDCP is the first CCA in the state to embed within its Joint Powers Authority Agreement the objective of reaching 100% renewable energy by no later than 2035. Meeting this target ten years in advance of the state's Senate Bill ("SB") 100 goal will require a vast increase in renewable energy, including local rooftop solar. Moreover, SDCP will have approximately 90,000 NEM accounts by the time full enrollment is completed in 2022. Ensuring that existing, as well as future, NEM customers are appropriately incentivized to self-generate will support our collective renewable energy goals and is key for sustainable growth of the industry.

### **III. DISCUSSION**

#### **A. THE COMMISSION SHOULD REJECT THE JOINT IOU PROPOSAL TO COMPENSATE NEM CUSTOMERS USING THE ANNUALLY UPDATED AVOIDED COST CALCULATOR.**

Currently, California's NEM tariffs enable the end-use utility customer to receive a retail credit on their utility bill for the surplus net generation accounting for consumption, as an incentive for adopting on-site renewable generation and exporting renewable energy to the grid. If NEM customers generate more than they consume, this surplus is compensated at their retail rate. If the customer consumed more than they generated, they are charged at the end of their

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<sup>7</sup> *Id.*

relevant billing period.<sup>8</sup> NEM customers pay both usage-based generation and transmission and distribution (“T&D”) rates; CCAs true-up the generation portion of the bill and IOUs true-up the T&D side of the bill.<sup>9</sup>

The Commission should reject the Joint IOUs proposal to compensate NEM customers for exports at avoided cost using the value established by the most current version of the ACC, with time-of-export periods that match the time-of-use periods of the underlying tariff.<sup>10</sup> The ACC is updated annually through an obscure process, which earlier this year resulted in controversial and major updates. SJCE and SDCP agree with the positions articulated by Solar Energy Industry Association (“SEIA”) and Vote Solar that “the ACC was not intended to be a rate design tool and has never been used to design rates.”<sup>11</sup> As these parties also indicate, relying on the ACC model for determining compensation for NEM customers will undoubtedly result in customer uncertainty and market volatility due to the annual update process.<sup>12</sup> Customer uncertainty and market volatility should be avoided so that customer-sited renewable distributed generation continues to grow sustainably, as required by Public Utilities Code Section 2827.1.

## **B. THE COMMISSION SHOULD REJECT HIGH FIXED CHARGES FOR NEM CUSTOMERS.**

In addition to proposing to compensate NEM customers using the value established by the ACC, the Joint IOUs also propose a Grid Benefits Charge (“GBC”) that would be based on solar system size and also updated annually.<sup>13</sup> The GBC would recover T&D and non-bypassable

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<sup>8</sup> See Cal. Pub. Util. Comm’n, *Net Energy Metering*, available at: <https://www.cpuc.ca.gov/industries-and-topics/electrical-energy/demand-side-management/net-energy-metering> (last visited Sept. 14, 2021).

<sup>9</sup> See *id.*

<sup>10</sup> R.20-08-020, Joint Opening Brief of Pacific Gas and Electric Company, San Diego Gas and Electric Company and Southern California Edison Company, p. 63 (Aug. 31, 2021) (“Joint IOUs Opening Brief”).

<sup>11</sup> R.20-08-020, Opening Brief of the Solar Energy Industries Association and Vote Solar, p. 7 (Aug. 31, 2021) (“SEIA/Vote Solar Opening Brief”).

<sup>12</sup> *Id.*

<sup>13</sup> See Joint IOUs Opening Brief, xii (Summary of Recommendations).

charges (“NBCs”) from solar customers, and therefore would impact bundled as well as unbundled (i.e., CCA) customers alike.<sup>14</sup> Similar to the challenges posed by the annual updates to the ACC, updating the GBC on an annual basis would lead to further customer uncertainty as well as market volatility, which as noted above should be avoided.

Moreover, these changes would almost certainly result in reduced incentives to install rooftop solar generation for future customers who did not take service under the NEM 1.0 and 2.0 tariffs. At a time of increasing demand on the California grid it is imperative to deeply reduce greenhouse gas emissions from all sources, including buildings. Any approach that incorporates a high fixed charge is not only counter intuitive to decarbonizing the state’s power supply, but also directly contradicts California state law. For example, Public Utilities Code Section 2801 provides:

[I]t is desirable and necessary to *encourage* private energy producers to competitively develop independent sources of natural gas and electric energy not otherwise available to California consumers served by public utilities, to require the transmission by public utilities of such energy for private energy producers under certain conditions, and remove unnecessary barriers to energy transactions involving private energy producers.<sup>15</sup>

Additionally, Public Utilities Code Section 2827.1 requires that, in developing the successor NEM tariff, the Commission is required to ensure “that customer-sited renewable distributed generation continues to grow sustainably.”<sup>16</sup> SJCE and SDCP agree with the California Solar and Storage Association (“CALSSA”) who note that “[s]ingling out NEM customers for high fees would *specifically disincentivize* self-generation as a method of achieving demand reductions by directly reducing the savings that these customers are able to obtain from their investments in

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<sup>14</sup> *Id.*

<sup>15</sup> Cal. Pub. Util. Code § 2801 (emphasis added).

<sup>16</sup> Cal. Pub. Util. Code § 2827.1(b)(1).

NEM systems.”<sup>17</sup> Therefore, the Joint IOUs’ GBC proposal, as well as other similar proposals, would not only reduce the existing cost savings and value proposition for NEM customers, but it would also contradict the California Legislature’s clear direction to encourage customer-sited generation. The GBC and other similar proposals for high fixed charges for current and future NEM customers should be summarily rejected by the Commission.

### **C. SJCE AND SDCP SUPPORT A REASONABLE GLIDEPATH.**

SJCE and SDCP join with CALSSA,<sup>18</sup> SEIA/Vote Solar,<sup>19</sup> and Sierra Club<sup>20</sup> in support of a glidepath approach. CALSSA<sup>21</sup> and SEIA/Vote Solar<sup>22</sup> accurately predict that a glidepath will help ensure that the industry continues to grow sustainably, as is required under Public Utilities Code Section 2827.1(b)(1). A successor tariff “that focuses on reducing the export compensation rate, with a reasonable glidepath to step the rates down based on the achievement of adoption targets,” as proposed by CALSSA is a reasonable way for the Commission to ensure that customer-sited renewable distributed generation continues to grow sustainably, as required by law.<sup>23</sup> In contrast, instituting a rapid and sudden change towards the ACC could hamper growth of the rooftop solar industry, which the state should be supporting in order to meet its SB 100 goals. For these reasons, SJCE and SDCP reiterate that the ACC approach proposed by the Joint IOUs should be rejected.

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<sup>17</sup> R.20-08-020, Opening Brief of the California Solar & Storage Association, p. 136 (Aug. 31, 2021). (“CALSSA Opening Brief”).

<sup>18</sup> CALSSA Opening Brief, pp. 106-107.

<sup>19</sup> SEIA/Vote Solar Opening Brief, pp. 38-39.

<sup>20</sup> R.20-08-020, Sierra Club Opening Brief, p. 6 (Aug. 31, 2021) (“Sierra Club Opening Brief”).

<sup>21</sup> CALSSA Opening Brief, p. 106.

<sup>22</sup> SEIA/Vote Solar Opening Brief, p. 76.

<sup>23</sup> CALSSA Opening Brief, p. vii (Summary of Recommendations).



**D. SJCE AND SDCP OPPOSE RETROACTIVE CHANGES FOR NEM 1.0 AND NEM 2.0 CUSTOMERS.**

SJCE and SDCP agree with parties in the proceeding such as CALSSA who oppose transferring NEM 1.0 and NEM 2.0 customers to the successor tariff. As noted by CALSSA, “[m]odifying eligibility terms retroactively would not only harm existing NEM customers—including lower income customers—and undermine the terms of their investments that the Commission had previously determined were set, but it would also cast doubt on the stability of the NEM program going forward.”<sup>24</sup> By the time a successor tariff is approved, SJCE<sup>25</sup> and SDCP collectively will serve over 100,000 NEM 1.0 and 2.0 customers in California.<sup>26</sup> SJCE and SDCP seek to protect the investments of these early adopters and agree with parties in the proceeding such as CALSSA who argue that changes to NEM 1.0 and 2.0 are beyond the scope of the instant proceeding.<sup>27</sup> The Commission should solely focus its attention on a successor tariff for *new* NEM customers.

**E. THE COMMISSION SHOULD EXPAND ACCESS TO ROOFTOP SOLAR FOR EQUITY COMMUNITIES.**

As the Commission considers a successor tariff, it must ensure that low-income customers, CARE/FERA Program customers and customers in DACs are not only protected, but are prioritized in a way that ensures that solar adoption for these customers and communities continues to grow and expand. SJCE and SDCP support CALSSA’s proposal that would allow these customers to be eligible for a tariff that is equivalent to NEM 2.0 – NEM credits at full

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<sup>24</sup> *Id.*, p. 194.

<sup>25</sup> San José City Council Memo (December 2019), p. 2, *available at*: <http://sanjose.legistar.com/gateway.aspx?M=F&ID=b4a04928-5a29-4036-9105-450da67bca4d.pdf>

<sup>26</sup> SDCP Board of Directors May 27, 2021 Meeting, Agenda Packet, p. 93, *available at*: <https://sdcommunitypower.org/wp-content/uploads/2020/12/00.-Revised-Agenda-Packet-v4-1.pdf>

<sup>27</sup> See CALSSA Opening Brief, pp. 220-221.

retail rate minus NBCs.<sup>28</sup> Moreover, NEM 2.0 should be maintained for both current as well as future low-income and CARE/FERA customers. Specifically, SJCE and SDCP agree with CALSSA that low-income should be defined as 80% of area median income.<sup>29</sup> This is to account for regional income differences, which are not considered in the CARE and FERA federal income thresholds of 200% and 250%.

Additionally, SJCE and SDCP share concerns with several of the parties that the solar incentive programs like Disadvantaged Communities–Single-Family Affordable Solar Homes and the Solar on Multifamily Affordable Housing would be adversely affected if the Commission adopts the Joint IOUs’ proposal to estimate NEM charges through an ACC rather than a glidepath approach because, as noted by CALSSA, the “programs rely on cost savings created” through the existing structure to encourage adoption by customers.<sup>30</sup>

#### **F. SJCE AND SDCP SUPPORT ELECTRIFICATION RATES.**

Lastly, both SJCE and SDCP would be in support of exploring electrification friendly rates available for successor NEM tariff customers. As mentioned in the Sierra Club and SEIA/Vote Solar opening briefs<sup>31</sup>, requiring non-low income residential NEM 3.0 customers to take service on an electrification rate could encourage a more efficient use of the renewables on the grid, thereby leading to further electrification and decarbonization of our grid.

#### **IV. CONCLUSION**

For all the above reasons, SJCE and SDCP recommend that the Commission: (i) reject the Joint IOU proposal to use the ACC for determining NEM customer compensation, (ii) reject high fixed charges for NEM customers, (iii) adopt a reasonable glidepath to ensure that the

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<sup>28</sup> *Id.*, p. 58.

<sup>29</sup> *Id.*, p. 73.

<sup>30</sup> *Id.*, p. 189.

<sup>31</sup> SEIA/Vote Solar Opening Brief, p. 9; and Sierra Club Opening Brief, pp. 1-2.

rooftop solar industry can continue to grow sustainably, (iv) reject proposals to move NEM 1.0 and 2.0 customers to the successor tariff, (v) ensure growth of rooftop solar in equity communities and (vi) explore electrification friendly rates NEM customers.

Pursuant to Rule 1.8(d) of the Commission's Rules of Practice and Procedure, City of San José, administrator of San José Clean Energy has been authorized by representatives of SDCP to submit this filing on their behalf.

Respectfully submitted,

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