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 DENYING REHEARING OF DECISION 22-12-056

I. INTRODUCTION

On December 19, 2022, the Commission issued Decision (D.) 22-12-056, *Decision Revi*
Code.[1] In the successor tariff, the structure of the net energy metering 2.0 (NEM 2.0) tariff was revised to align the tariff with the value that behind-the-meter renewable energy generation systems provide to the grid and to create more accurate price signals that encourage electrification and the adoption of battery storage to promote electric grid reliability. (Decision at 3.)

On January 17 and 18, 2023, applications for rehearing were filed on the Decision. The Center for Biological Diversity, the Protect Our Communities Foundation, and the Environmental Working Group (collectively Joint Parties), filed an application for rehearing on January 18, 2023 (Joint Parties Rehearing). The Joint Parties allege that the Decision adopts a successor to the current NEM tariff that fails to meet the statutory requirements for a successor tariff set forth in section 2827.1. More specifically, the Joint Parties contend that: (1) the Decision violates the statutory mandate for any successor tariff to ensure the continued growth of distributed generation in California; (2) the Decision violates the statutory mandate for any successor tariff to include specific alternatives designed for growth among residential customers in disadvantaged

[1] All statutory references are to the Public Utilities Code unless otherwise stated.

communities (or DACs); (3) the Commission commits legal error by failing to account for the benefits and costs of behind-the-meter (BTM) generation; (4) the Decision's deferral of numerous significant considerations to other proceedings makes an accurate accounting of the successor tariff impossible; and (5) the Commission commits legal error in making major changes to the tariff for commercial and industrial customers without record basis.[2]

On January 17, 2023, CAlifornians for Renewable Energy, Inc. and Michael E. Boyd (collectively CARE) filed an application for rehearing, alleging that the Decision violates the Public Utilities Regulatory Policies Act (PURPA) and is part of a conspiracy to violate antitrust laws, the Cartwright Act and the Sherman Act (CARE Rehearing).

On February 1, 2023, 350 Bay Area filed a response in support of the Joint Parties' application for rehearing of Decision 22-12-056. On February 2, 2023, Clean Coalition filed a response in support of the Joint Parties' application for rehearing of Decision 22-12-056, and Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E), and Southern California Edison Company (SCE) (the latter collectively, the Joint Utilities) filed a response in opposition to the Joint Parties' application for rehearing.

We have carefully considered the arguments raised in the applications. We deny rehearing as legal error has not been shown.

[2] On March 16, 2023, the Joint Parties filed an ex parte letter urging the Commission to delay its effective date during the pendency of the rehearing. Such communications are not part of the evidentiary record. (§ 1701.1, subd. (e)(8) ["The commission shall render its decisions based on the law and on the evidence in the record. Ex parte communications shall not be a part of the evidentiary record of the proceedings."].)

II. DISCUSSION

A. Joint Parties Rehearing Application

1. The Decision does not violate section 2827.1's mandate that "customer-sited renewable distributed generation continues to grow sustainably."

The Joint Parties allege that the Decision misinterprets and fails to satisfy the requirement set forth in section 2827.1(b)(1) that the successor NEM tariff "ensure that customer-sited renewable distributed generation continues to grow sustainably." (Joint Parties Rehearing at 5, citing Decision at 55, quoting § 2827.1, subd. (b)(1).) They contend that "continues to grow sustainably" requires the Commission "to maintain current growth rates for distributed generation," and that record evidence shows the Decision did not meet this read of the statute. (*Id.* at 5-6.) According to the Joint Parties, the tariff's increased payback periods, which could be as long as nine years, and decreased bill savings "will seriously diminish solar adoption," which they allege the Decision acknowledges in Finding of Fact 197. (*Id.* at 6 & fn. 22.) The Joint Parties also allege that the Decision's balancing of the statutory directives, including its consideration of cost-shifts to non-participants, misinterprets and violates section 2827.1(b)(3) and (b)(4), and does so without explanation. (*Id.* at 5-9.) The Joint Parties' arguments lack merit.

In relevant part, section 2827.1(b) requires the Commission to do all of the following in developing the NEM tariff:

> (1) Ensure that the standard contract or tariff made available to eligible customer-generators ensures that customer-sited renewable distributed generation continues to grow sustainably….
>
> (3) Ensure that the standard contract or tariff made available to eligible customer-generators is based on the costs and benefits of the renewable electrical generation facility
>
> (4) Ensure that the total benefits of the standard contract or tariff to all customers and the electrical system are approximately equal to the total costs.

Contrary to the Joint Parties' contention, the statute does not require the Commission to maintain the current growth rates. In the Decision, the Commission emphasizes that the growth of the market "should not come at the undue and burdensome financial expense of nonparticipant ratepayers." (Decision at 13, 58, citing D.21-02-007.) The Decision focuses on the Commission's prior interpretation of this term in D.16-09-036 and notes that "[a]llowing the net energy metering tariff to result in growing costs shifted to nonparticipant ratepayers is not sustainable to the overall health of net energy metering." (Decision at 57-58, citing D.16-09-036 at 13.) Notably, The Utility Reform Network (TURN) emphasized the Commission has long taken the position that the "sustainable growth" criterion is no more important than other provisions of the statute, and that "the Commission was not placing a greater emphasis on achieving sustainable growth" over other statutory obligations. (*Id*. at 56; *Reply Brief of The Utility Reform Network Regarding a Successor to the Current Net Energy Metering Tariff*, September 14, 2021, at 39, citing D.16-09-036.)

Among the numerous suggested interpretations of the statute, TURN commented that the requirement to grow sustainably "can be satisfied if a successor tariff is found to be cost-effective for certain participants over a reasonably defined timeframe." (Decision at 56; *Opening Brief of The Utility Reform Network Regarding a Successor to the Current Net Energy Metering Tariff*, August 31, 2021, at 47, citing Ex. TRN-01 at 31-32.) Another example is the Coalition of California Utility Employees' recommendation that the Commission adopt the United Nation's definition describing "growth that is repeatable, ethical, and responsible to, and for, current and future communities." (*Id*. at 56*; Opening Brief of the Coalition of California Utility Employees*, August 31, 2021, at 11, citing CUE-02 at 13.) The Coalition of California Utility Employees described this as meaning that growth of the net energy metering tariff "is not sustainable if it does not take into account inequities caused by the tariff, either now or in the future." (*Id*. at 56-57; *Opening Brief of the Coalition of California Utility Employees,* August 31, 2021, at 11.)

Additionally, many parties provided comments on what "grow sustainably" should look like in the context of the length of time required for participating customer bill savings to recover the participating customer's investment in the net energy metering-eligible resource. (Decision at 71, citing *Opening Brief of The Utility Reform Network Regarding a Successor to the Current Net Energy Metering Tariff*, August 31, 2021, at 36.) This period is commonly referred to as the "payback period."

The Decision discusses a number of proposals by solar parties to the proceeding. (Decision at 73.) The California Solar and Storage Association proposed a maximum payback period of seven years based on the collective experience of its members. (*Id*. at 73-74, citing *Opening Brief of the California Solar & Storage Association*, August 31, 2021, at 20, citing Ex. CSA-01 at 60:15-61:23.) The Solar Energy Industries Association/Vote Solar argued that a payback period longer than 10 years would be unlikely to attract significant customer interest and opposed a payback period more than 15 years. (*Id*. at 74.) The Small Business Utility Advocates argued that based on its analysis increasing the payback period from five to nine years would reduce solar uptake by 55 percent. (*Ibid*.)

In contrast, however, the Joint Utilities and the Public Advocates Office argued that the NEM 2.0 payback periods were too short. (Decision at 75.) The Joint Utilities argued that the payback period was three to five years for a solar energy system that one major solar manufacturer estimated to have a useful life of 35 years. (*Ibid*., citing *Joint Reply Brief of Pacific Gas and Electric Company (U 39-E), San Diego Gas & Electric Company (U 902-E), and Southern California Edison Company (U 338-E)*, September 14, 2021, at 27, citing 2013 National Renewable Energy Laboratory Study at abstract and Exh. PAO-02 at 3-16 to 3-17.) As the Public Advocates Office noted, "[i]t speaks volumes that even SEIA's [the Solar Energy Industry Association's] expert witness testified that the current payback periods in California are too short." (*Opening Brief of the Public Advocates Office*, August 31, 2021, at 27, citing Hearing Transcript, Vol. 8 at 1282-1283 [Testimony of Thomas R. Beach: "I think that all parties for this

case, as far as I know, have agreed that paybacks should be longer in California, that they're too short."].)

The Commission took these perspectives into consideration and agreed that it should consider the length of time for a customer's payback period, but it was not persuaded that payback periods are the predominant factor for customers when considering solar adoption. (Decision at 76.) The Decision cited 2013 and 2017 National Renewable Energy Laboratory studies "showing that consumers (especially in California where rates are amongst the highest in the nation) look at monthly bill savings when making an economic decision on adopting solar." (*Ibid*.) The 2013 National Renewable Energy Laboratory study states that

> previously, the consumer behavior literature has suggested that residential customers primarily use a simple payback time to evaluate a new technology. However, with the strong growth of third-party owned systems, we expected that leasing customers are frequently being pitched PV systems based on the monthly bill savings rather than a payback time. Surprisingly, customers who bought PV systems are also increasingly using monthly bill savings.

(Decision at 76-77, citing 2013 National Renewable Energy Laboratory Study at 6.)

The Decision also notes comments by TURN that a tariff expected to produce a fully discounted payback in a future year may still result in the customer realizing net savings in every year. (Decision at 77, citing *Opening Brief of The Utility Reform Network Regarding a Successor to the Current Net Energy Metering Tariff*, August 31, 2021, at 38.) In the end, the Commission determined that a successor tariff that targets a nine-year simple payback for a stand-alone solar system, which is equivalent to nearly $100 in monthly bill savings for an average residential customer, is a balanced approach that protects consumers and ensures that customer-sited renewable distributed generation continues to grow sustainably. (Decision at 78.)

Given the breadth of opinions presented to the Commission on an appropriate payback period, and support for a focus on monthly bill savings, the

Commission's decision to apply a nine-year payback period was appropriate. The Joint Parties have not shown that the Commission erred in this determination.

In addition, the Joint Parties' reliance on Finding of Fact 197 to support their analysis is misguided. Finding of Fact 197 states that "[t]he inability to achieve higher bill savings and reasonable payback periods are barriers to increased participation by low-income customers." (Decision at 226, Finding of Fact 197.) As stated above, the adoption rate is required to grow sustainably and not necessarily to grow at the same rate as before. More importantly, the Joint Parties fail to place the Finding of Fact they cite within the context of how the Decision addresses the requirement in section 2827.1(b)(1) that the tariff include specific alternatives designed for growth among residential customers in disadvantaged communities. (§ 2827.1, subd. (b)(1).) This is discussed in detail below.

The Joint Parties are also wrong that the Decision misinterprets and violates section 2827.1(b)(3) and (b)(4). Their allegation – that the Commission places such a heavy focus on impacts on nonparticipants that it violates section 2827.1 (b)(3) and (4) and without explanation – ignores concerns the Commission and other parties have expressed with the sustainability of the program given the extent of cost shifting from participants to nonparticipants.

For example, the Decision notes comments by the Independent Energy Producers Association that, without any changes to the current tariff structure, the financial burden on the shrinking pool of nonparticipants is unsustainable and would disproportionately fall on lower-income ratepayers. (Decision at 48, citing *Reply Brief of the Independent Energy Producers Association*, September 14, 2021, at 4.) However, contrary to the Joint Parties' claims, the Decision declined to adopt proposals "focused solely on meeting the cost-effectiveness thresholds and eliminating the cost shift without any true deference to attempting to ensure customer-sited renewable generation continues to grow sustainably." (Decision at 137.)

The Commission's effort in the Decision – to balance the need for continued sustainable growth with the need to ensure that the total benefits of the

standard contract or tariff to all customers and the electrical system are approximately equal to the total costs – is exemplified in how it addresses the payback period and provides a glide path with the Avoided Cost Calculator plus adder. Both topics are discussed further below.

For the reasons stated above, the Joint Parties have not shown that the Decision erred in addressing the cost shift.

2. The Decision properly accounts for the benefits and costs of BTM generation.

The Joint Parties argue that the Decision violates section 2827.1(b)(3) and (b)(4) because it "improperly discounts NEM systems' demonstrated benefits while inflating the costs of BTM generation." (Joint Parties Rehearing at 19.) The Joint Parties assert a variety of allegations to this end, which are presented and addressed below.

a) The Decision does not fail to properly account for the benefits of customer-sited renewable distributed generation.

The Joint Parties allege that the Decision's reliance on the Avoided Cost Calculator to value benefits and export compensation rate departs from Commission practice. (Joint Parties Rehearing at 19-22.) They also argue that the Decision omits several benefits of NEM systems in violation of section 2827.1 and contrary to record evidence, including consideration of out-of-state methane leakage, avoided transmission costs, resiliency benefits, avoided land use impacts, and other non-energy benefits (NEBs) and societal benefits. (*Id.* at 23-38.) As support, the Joint Parties primarily rely on *Center for Biological Diversity v. National Highway Traffic Safety Administration* (9th Cir. 2008) 538 F.3d 1172, 1198 (*NHTSA)*. The Joint Parties' arguments are unavailing.

Section 2827.1(b)(4) must be supplied in its entirety. It requires the Commission, in developing the NEM tariff, to:

> (4) Ensure that the total benefits of the standard contract or tariff to all customers and the electrical system are approximately equal to the total costs.

The Joint Parties' claim that the Decision did not take into account *all* benefits of customer-sited renewable generation fails to recognize section 2827.1(b)(4)'s additional requirements that the total benefits to *all* customers and the electrical system must be *approximately* equal to the total *costs*. Section 2827.1(b)(4) cannot be read so narrowly as the Joint Parties attempt. Moreover, the Joint Parties fail to give "approximately equal" weight to the total costs; indeed, the record demonstrates that some parties believe that the Commission actually overvalued customer-sited solar power in the Decision. The alleged shortcomings of the Avoided Cost Calculator are simply not supported by the record. The record supports the Commission's balanced consideration of all reasonable benefits captured in the Avoided Cost Calculator and complete implementation of the statute.

The Decision explains its reasons for utilizing the Avoided Cost Calculator to value NEM customers' compensation for exported energy to achieve the mandates contained in Section 2827.1. As the Verdant White Paper, "Alternative Ratemaking Mechanisms for Distributed Energy Resources in California" demonstrates, "the hours when [NEM customers] are producing maximum output do not coincide with the hours when customer demand on the electric system as a whole is peaking." (*Email Ruling Introducing White Paper, Noticing Workshop on White Paper, and Providing Instructions for Successor Proposals*, January 28, 2021, Attachment 1, CPUC, *Alternative Ratemaking Mechanisms for Distributed Energy Resources in California: Successor Tariff Options Compliant with AB 327* at 11.) By setting higher compensation rates during the evening hours, the Avoided Cost Calculator will send rational price signals to NEM customers to pair solar with storage and achieve exports of energy during those evening hours when demand far outstrips supply.

The Commission utilized the 2020 Avoided Cost Calculator for the successor NEM tariff. (Decision at 15.) The Avoided Cost Calculator calculates the costs that the interconnected utility incurs to buy clean energy elsewhere. It is based on the primary benefits of distributed energy resources: generation capacity, electrical

energy generated, transmission and distribution capacity, ancillary services, renewable portfolio standard, and greenhouse gas emissions. (D.20-04-010.) The Commission determined that the Avoided Cost Calculator would properly value exported energy according to the time of day and system needs, as well as provide a disincentive to take power from the grid when the interconnecting utility must procure the most expensive power. This was intended to "significantly reduce the cost shift [from NEM customers to non-NEM customers] and improve affordability for nonparticipating ratepayers, particularly low-income ratepayers." (Decision at 4.)

The Joint Parties also fail to show that the Decision lacked substantial evidence to support its use of the Avoided Cost Calculator and its determinations regarding avoided out-of-state methane leakage, increased resiliency, avoided land use impacts, and avoided transmission costs. And, more importantly, they have not shown that the Commission's determinations were unexplained or unsupported by the record.

The Joint Parties rely foremost on a federal case, *NHTSA*. Their reliance on *NHTSA*, however, is misplaced. Set aside the fact that this is a federal case construing a federal law not at issue here: even taken on its own terms, *NHTSA* will not carry the weight the Joint Parties put on it.

NHTSA is a challenge under the Energy Policy and Conservation Act of 1975 and the National Environmental Policy Act of 1969 (NEPA) to the National Highway Traffic Safety Administration's Final Rule for the Corporate Average Fuel Economy (CAFE) standards for light trucks. (*NHTSA, supra*, 538 F.3d at 1181.) NHTSA refused to include the benefits of reduced carbon emissions in the CAFE analysis despite evidence of quantified benefits provided from numerous, peer-reviewed sources. (*Id*. at 1199.) The Ninth Circuit was particularly struck that NHTSA "assigned no value to the most significant benefit of more stringent CAFE standards: reduction in carbon emissions." (*Ibid.*) Such an omission would be problematic where NEPA applies, which requires a "hard look" at the "significant aspects of the probable environmental consequences." (*Id.* at 1194.)

Section 2827.1, however, does not require, nor does the Decision identify, resiliency as one of the "most significant benefits" of the NEM program. (See Decision at 5-9, 13-14.) *NHTSA* is simply not applicable here.

The Ninth Circuit did distinguish circumstances when the applicable law holds agencies to a qualified standard. (*NHTSA*, 538 F.3d at 1101, citing *Citizens for Clean Air v. EPA* (9th Cir. 1992) 959 F.2d 839, 848, and the Clean Air Act's required "*best available* control technology" [emphasis in original].) In the case of *NHTSA*, the Ninth Circuit quoted the operative statutory language to inform its review of NHTSA's actions, and the language speaks to maximal standards: the Secretary of Transportation must set fuel economy standards at the "maximum feasible average fuel economy level that the Secretary decides the manufacturers can achieve in that model year" (538 F.3d at 1182, quoting the Energy Policy and Conservation Act of 1975, 49 U.S.C. § 32902(a)); and "NEPA requires a federal agency 'to the fullest extent possible,' to prepare 'a detailed statement on … the environmental impact' of 'major Federal actions significantly affecting the quality of the human environment.'" (*Id.* at 1185, quoting the National Environmental Policy Act, 42 U.S.C. § 4332(2)(C)(i).)

The operative language in section 2827.1, in contrast, enumerates seven different considerations, which would necessitate a fair balancing of them. Moreover, section 2827.1 does not contain the maximal language at issue in *NHTSA*. Quite the contrary: it speaks of ensuring that customer-sited generation "continues to grow *sustainably*," that total benefits to *all* customers and the electric system "are *approximately* equal" to the total costs, and that the Commission consider a "*reasonable*" payback period. (Emphasis added.) *NHTSA* and the instant case are therefore clearly distinguishable.

Even if the *NHTSA* case were apposite here—and, to be clear, it is not—the Joint Parties have not shown that the Commission committed legal error by not including all of the factors that the Joint Parties urged, as discussed below. Their primary argument thus fails. The benefits that the Joint Parties alleged should have been included are discussed below.

(1) Out-of-state methane leakage

The Joint Parties are wrong that the Decision improperly omitted consideration of avoided out-of-state methane leakage when determining the new successor retail export compensation rate. (Joint Parties Rehearing at 23, 36-37.) As explained above, the Avoided Cost Calculator is intended to value the power that behind-the-meter generation customers fail to generate themselves and that must be procured for their consumption. And if, in fact, such power imported by net energy metering customers is procured from in-state resources, the incorporation of a value for avoiding out-of-state leakage would be an unmerited windfall and would result in double counting of the benefit, because in-state methane leakage is already accounted for in the Avoided Cost Calculator. (Decision at 70.)

The Commission has pointedly declined to incorporate avoided methane leakage into the Avoided Cost Calculator. The Joint Parties had an opportunity to challenge this position in Rulemaking (R.) 14-10-003, prior to adoption of D.22-05-002, but did not. Following the filing of briefs in R.20-08-020, the Commission adopted D.22-05-002, which updated the Avoided Cost Calculator for 2022. (*Id*.) In that decision, the Commission declined to include out-of-state methane leakage values in the Avoided Cost Calculator. (*Id*.; D.22-05-002 at 45-47.) Moreover, as TURN comments, "there is no basis to assign this value uniquely to behind the meter generation for purposes of assessing successor tariff options," especially as this value can be secured from large-scale in-state renewable resources, energy efficiency, and conservation. (*Reply Brief of The Utility Reform Network Regarding a Successor to the Current Net Energy Metering Tariff*, September 14, 2021, at 18.)

The Joint Parties have not shown that the Commission's determination to use the Avoided Cost Calculator, without inclusion of out-of-state methane, is improper. Therefore, the Commission did not err in its decision.

(2) Resiliency benefits

The Joint Parties claim that the Decision incorrectly excluded a value for resiliency benefits. (Joint Parties Rehearing at 29-34.) They argue that despite record

evidence that these benefits accrue to society as a whole, the Decision improperly dismisses these benefits as "individual." (*Id.* at 29-34.) This argument does not sufficiently address how this issue is analyzed in the Decision and the limited nature of the evidence presented to the Commission.

The Decision notes that the Protect Our Communities Foundation supported adoption of resiliency benefits for solar systems paired with energy storage because "paired storage offers 'resiliency-related benefits that accrue to society as a whole,' such as the ability to generate onsite power during a heat wave, the ability to prevent increased emergency room visits during heat waves; the ability to prevent food spoilage and waste due to loss of refrigeration; and the ability to continue educational classes during remote learning." (Decision at 68-69, citing *Opening Brief of the Protect Our Communities Foundation*, August 31, 2021, at 22-23.) TURN argued that these benefits are either private—meaning that the benefits accrue to an individual that invests in paired storage at their home or business and not society as a whole—or highly speculative and limited to unusual circumstances. (Decision at 69, citing *Reply Brief of The Utility Reform Network Regarding a Successor to the Current Net Energy Metering Tariff*, September 14, 2021, at 18.)

In response to these arguments, the Commission declined to adopt resiliency adders. (Decision at 69.) The Decision states that "[n]either SEIA [Solar Energy Industries Association]/Vote Solar nor PCF [Protection Our Communities Foundation] have provided convincing evidence that the examples of resiliency benefits offered are more than individual benefits." (*Id*.) The Commission goes on to state that the examples provided are "either private benefits or highly speculative and limited to unique circumstances; none of which lead the Commission to ascribe to a resiliency adder for all net energy customers." (*Ibid*.) However, the Commission recognized that "evolving analysis and changing grid conditions may result in more persuasive arguments in favor of quantifying resiliency benefits in the future, especially locational ones…." (*Id*. at 69-70.) Therefore, the Commission stated that it remained open to considering this issue again in the future. (*Id*. at 70.)

For the reasons stated above, the Commission did not commit legal error by rejecting a resiliency adder.

(3) Land use benefits

The Joint Parties argue that the Decision improperly omits land use benefits because it ignores avoided land use impacts from avoided transmission infrastructure buildouts, which both the Avoided Cost Calculator and the Decision acknowledge are benefits of distributed resources. (Joint Parties Rehearing at 35-36.) Their argument for the land conservation benefits of rooftop solar versus utility-scale solar is unsupported. Contrary to the requirements for a rehearing application, which in relevant part directs that such applications include "specific references to the record," the Joint Parties fail to cite to record evidence and simply contend, without further analysis, that there is a benefit that the Commission must quantify and include in the Decision. (Rule 16.1, subd. (c), Code of Regs., tit. 20, § 16.1, subd. (c).)

Even if the Joint Parties had cited record evidence, their argument lacks merit. As the Commission stated in its decision, "[n]either CALSSA [California Solar and Storage Association] nor SEIA [Solar Energy Industries Association]/Vote Solar offer any evidence that increased net energy metering installations will directly result in decreased utility scale projects." (Decision at 71.) And the Decision notes that the California Wind Energy Association presented an analysis of SB 100 indicating that the need for utility-scale renewables would remain virtually the same if the growth rate of customer-side solar was reduced. (*Ibid.*, citing Ex. CWA-01 at 8.) The Joint Parties fail to point to contrary evidence. Therefore, the Commission was reasonably unpersuaded by the arguments for a land-use societal benefit. *(Ibid.*)

(4) Avoided transmission costs

The Joint Parties argue that the Avoided Cost Calculator and the Decision underestimate avoided transmission costs. (Joint Parties Rehearing at 25-29.) The Decision stated the following regarding contentions made by one party to the rehearing application, the Center for Biological Diversity, regarding avoided transmission costs:

> This decision takes this opportunity to refute once and for all a misconception that continues to be argued by some parties regarding transmission avoided costs in the Avoided Cost Calculator. Center for Biological Diversity contends that the Avoided Cost Calculator does not accurately account for the avoided costs of transmission and relies upon a 2017-2018 CAISO [California Independent System Operator] Transmission Plan from March 22, 2018. The Center asserts that this report confirms that increased solar (and energy efficiency) led to a $2.6 billion savings to ratepayers. This misconception has been refuted by the Commission in previous decisions. In D.20-04-010, the Commission confirmed that the statement regarding distributed energy resources saving $2 billion in avoided transmission costs had been refuted by CAISO in the record of R.14-10-003. The Commission further declared that this is a 'false statement and a factual misinterpretation.'

(Decision at 204-205, citing *Center for Biological Diversity Opening Comments to November 10, 2022 Proposed Decision*, at 9 and D.20-04-010 at 76-77.) Accordingly, the Joint Parties' allegation amounts to a collateral attack on a prior Commission decision, which is prohibited. (§ 1709.) Thus, the Joint Parties' argument fails.

(5) Other NEBs and societal costs

The Joint Parties argue that the Decision is in error because it fails to consider other NEBs and societal benefits of BTM generation raised by parties in the proceeding, including local job creation and local air quality benefits from decreased fossil fuel infrastructure in DACs. (Joint Parties Rehearing at 22, 36-38.) They claim that because the record shows that the value of these benefits is not zero, and because there are tools available to estimate the value, the Decision commits legal error. (*Id*. at 36-38.) In particular, the Joint Parties assert that because the Commission's Societal Cost Test is a tool to calculate societal benefits, failure to utilize the test in this proceeding is legal error. (*Id.* at 38.)

The Joint Parties are incorrect. Although they argue that the Decision should have adopted the Societal Cost Test in this proceeding, they fail to point to any evidence in the record supporting the assertion that adoption of this test is necessary to

support the Decision. (*Id.* at 36-38.) One party to the rehearing application, the Protect Our Communities Foundation, argued during the proceeding that the Societal Cost Test should be adopted despite it not yet being approved for use in this or other proceedings. (Decision at 66, citing *Opening Brief of Protect Our Communities Foundation*, August 31, 2021, at 26-27.) Another party to the proceeding, Coalition of California Utility Employees, on the other hand noted that the Societal Cost Test is a work in progress and should not serve as a basis for the successor tariff ultimately adopted in the proceeding. (*Reply Brief of the Coalition of California Utility Employees*, September 14, 2012, at 19.)

In a footnote, the Decision explains that in D.19-05-019 "the Commission adopted three elements of the Societal Cost Test (societal discount rate, social cost of carbon, and air quality co-benefits) for informational purposes and to test and evaluate the details of the three elements." (Decision at 66, fn. 131.) And it noted that "[t]he test is being piloted in the Integrated Resources Planning proceeding." (*Ibid*.) Within that proceeding, a "final review of the three elements will be reviewed in R. [Rulemaking] 14-10-003 or a successor proceeding." (*Ibid*.)

Here, the Commission decided that the Societal Cost Test would not be applied in this proceeding because it is not yet finalized. This determination is reasonable. For the reasons stated above, the Joint Parties have not shown legal error in the Commission's consideration of the benefits of customer-sited renewable distributed generation.

b) The Decision does not improperly account for costs.

The Joint Parties argue that the Decision errs in determining the costs of NEM systems in two regards: first, by equating NEM participant bill savings (minus avoided costs) to the costs shifted to non-participants; and second, by improperly focusing on non-participants versus the entire electrical system. (Joint Parties Rehearing at 38-39.) They allege that these determinations: (1) demonstrate disparate accounting of NEM customer bill savings, comparing NEM to energy efficiency; (2) are inconsistent with prior Commission decisions; and (3) violate section 2827.1. (*Id*. at 39-42.) They further allege that the Commission compounds these errors by deferring "the issue of

accurately calculating a customer's energy and grid usage while ensuring that the grid is prepared for the intermittent decrease and increase of usage" to R.22-07-005. (*Id*. at 41, citing Decision at 115.) Finally, the Joint Parties assert that "a cost-of-service analysis provides a transparent and more accurate assessment of any cost shift due to BTM generation." (*Id.* at 39; *see also id.* at 41-42.) The Joint Parties' arguments are rejected.

Public Utilities Code section 2827.1 requires the Commission to ensure "that the total benefits of the standard contract or tariff to all customers and the electric system are approximately equal to the total costs." (§ 2827.1, subd. (b)(4).) Regarding the Joint Parties' comparison of energy efficiency measures versus customer-sited distributed generation, the Decision did not find that analysis convincing. The Decision notes comments made by Natural Resources Defense Council that "hanging laundry (*i.e.*, conservation) and self-consumption (*i.e.*, distribution) have different grid impacts." (Decision at 113, citing Exh. NRD-02 at 27.) Natural Resources Defense Council discussed how "in conservation the customer permanently reduces their load, but net energy metering customers intermittently reduce their load depending upon the performance of the solar system." (*Ibid*.) Furthermore, the Decision notes the Joint Utilities' explanation that:

> when net energy metering customers avoid paying volumetric rates when self-generating, they avoid paying certain aspects of the bill for which all customers are responsible including grid services such as transmission, distribution, and the cost allocation mechanism, policy mandates such as CARE [California Alternate Rates for Energy], program subsidies for energy efficiency programs, public purpose programs, the Wildfire Fund, and Nuclear Decommissioning; and the costs of utility provided customer services. These costs (which are currently only assessed via the volumetric rate) are thus shifted to non-net energy metering customers in addition to their own costs for these items. Joint Utilities further explain that behind-the-meter solar without paired storage, 'does not decrease the need for the distribution or transmission system and resiliency, reliability, and safety upgrades to that infrastructure.' Joint Utilities assert utilities through ratepayers 'continue to pay generation legacy costs, as well as

> procure new generation to instantly meet net energy metering customers demand should their systems be, for whatever reason, unavailable to serve all or part of their load.'

(Decision at 112-113, citing *Joint Opening Brief of Pacific Gas and Electric Company (U 39-E), San Diego Gas & Electric Company (U 902-E), and Southern California Edison Company (U 338-E)*, August 31, 2021, at 70-71.) The Protect Our Communities Foundation did not present persuasive arguments given the concerns expressed in the Decision. Therefore, the Decision's determination is reasonable.

As well, the Decision notes that the Protect Our Communities Foundation asked the Commission to focus on a cost-of-service analysis instead of relying on the Avoided Cost Calculator. (Decision at 61.) The Decision states that the Protect Our Communities Foundation's justification for this is its claim that "the Avoided Cost Calculator underestimates transmission and distribution costs, reduced greenhouse gases, and system resiliency and reliability; all of which the Commission addressed in D.20-04-010." (Decision at 61, citing D.20-04-010 at 42-43, 50-56, 56-61, 69-70.) The Commission explained that "PCF [Protect Our Communities Foundation] is essentially asking the Commission to upend three prior decisions requiring use of the Avoided Cost Calculator as the determinant of the inputs for the standard practice manual cost-effectiveness test and instead use the Lookback Study's cost-of-service analysis." (Decision at 14, 61 [stating that "[t]he Lookback Study conducted in 2020 entails a cost-effectiveness analysis consistent with the Commission's Standard Practice Manual and D.19-05-019, *Decision Adopting Cost-Effectiveness Analysis Framework Policies for all Distributed Energy Resources*; and a cost-of-service analysis that compares the cost to serve NEM 2.0 [Net Energy Metering 2.0] customers against their total bill payments"].) Because these issues have already been decided, the Decision reasonably denied this request. (Decision at 61.)

3. The Decision did not violate the statutory mandate for any successor tariff to include specific alternatives designed for growth in DACs.

The Joint Parties advance several arguments that the Decision violates section 2827.1(b)(1)'s requirement that the successor tariff "include specific alternatives designed for growth among residential customers in disadvantaged communities." (Joint Parties Rehearing at 9.) In general, they contend that "by eliminating the proposed Equity Fund, rejecting a separate cost of solar installation analysis for low-income communities, and improperly deferring consideration of the benefits of NEM community solar systems and other benefits of BTM generation that particularly accrue to DAC and other low-income community residents, the Commission fails to fulfill this mandate." (*Ibid.*)

More specifically, the Joint Parties allege that the Decision's reliance on Assembly Bill (AB) 209 (Stats. 2022, c. 251), which added section 379.10, is misplaced, inapposite, ignores the Commission's obligations under 2827.1(b)(1), and runs contrary to the Commission's Rate Design Principles set forth in D.15-07-001. (*Id.* at 10-14.) Next, the Joint Parties claim that the Decision is not based on substantial evidence because it uses inaccurate installation costs for low-income customers, which will increase barriers to adoption among low-income customers in violation of 2827.1(b)(1) and the guiding principles adopted by the Commission in D.21-02-007 to assist in the development and evaluation of a successor tariff. (*Id*. at 14-17.) Lastly, they argue that the Decision's determination to defer community solar and community storage proposals is arbitrary and capricious. (*Id*. at 17-19, 44-45.)

The Joint Parties' arguments fail to demonstrate legal error and are rejected for several reasons. First, the Joint Parties fail to acknowledge the numerous other programs the Commission has adopted to accomplish Section 2827.1(b)(1)'s directive to develop alternatives designed for growth in disadvantaged communities and other elements in the Decision that address this requirement. For example, in D.18-06-027, the Commission adopted three new programs pursuant to the requirement that the tariff

"include specific alternatives designed for growth among residential customers in disadvantaged communities." (§ 2827.1, subd. (b)(1).) The first program, the Disadvantaged Communities-Single-family Solar Homes program, serves residential low-income customers living in single-family homes in disadvantaged communities by providing no cost solar installations. (D.18-06-027 at 3.) The second program, the Disadvantaged Communities-Green Tariff program, serves customers living in disadvantaged communities who meet the income eligibility requirements for the low-income assistance programs California Alternate Rates for Energy (CARE) or Family Electric Rate Assistance (FERA) by providing them with 100 percent clean energy from a pool of projects and a 20 percent bill discount. (D.18-06-027 at 3.) The third program, the Community Solar Green Tariff program, is designed to allow primarily low-income customers in disadvantaged communities to benefit from the development of solar generation projects located in their own or nearby communities and a 20 percent bill discount. (D.18-06-027 at 3-4.) These programs were discussed in the testimony of both TURN and the Joint Utilities. (Ex. TRN-01 at 32; Ex. IOU-01 at 168.)

Additionally, the Joint Parties fail to acknowledge how the successor tariff adopts extra bill credits for low-income customers, residential customers living in disadvantaged communities, and customers living in California Indian Country to support growth in disadvantaged communities. The Decision notes that low-income customers who participated in Net Energy Metering 2.0 received lower bill savings benefits and a longer payback period than other customers. (Decision at 175, citing Net Energy Metering 2.0 Lookback Study, January 21, 2021, at 94.) This resulted in less frequent installations of distributed generation in low-income and disadvantaged communities. (*Ibid*.) While the Decision says this was primarily due to the cost of systems, the Commission also considered "the inability to: (1) achieve a higher bill savings; and (2) receive payback in a reasonable number of years…." (*Ibid*.)

In direct response to these concerns, the Decision adopted over double the amount of extra bill credits for low-income customers, residential customers living in disadvantaged communities, and customers living in California Indian Country as part of

the glide path adder. (Decision at 175.) The bill credit amount was determined by targeting an average payback period of nine years or less to achieve equivalency with other customers. (*Ibid*.) This is yet one more way the Decision clearly addressed the requirement for growth in disadvantaged communities.

The Decision also includes a required performance evaluation of the successor tariff with an emphasis on evaluating equity, affordability, and grid benefits. (Decision at 200.) Data on the successor tariff will be collected for three years and a draft evaluation completed within five years of implementation of the successor tariff. (*Ibid*.)

Second, the Joint Parties ignore that the Decision adopted a cost of solar of $3.30 per watt after properly considering a wide range of values, and this result has ample record support. At the low end, the Joint Utilities and TURN argued for use of the National Renewable Energy Laboratory Annual Technology baseline value of $2.36 per watt. (Decision at 79.) The California Solar and Storage Association proposed $3.80 per watt from the December 2020 edition of the Lawrence Berkeley National Laboratory's *Tracking the Sun* report as a more accurate calculation. (*Id.* at 80, citing *Opening Brief of the California Solar & Storage Association*, August 31, 2021, at 32, citing CSA-01 at 63:7 to 67:10.) TURN argued that the *Tracking the Sun* value included costs for main electrical panel upgrades, and permitting and interconnection delays that should not be included in the estimate. (*Ibid*., citing *Reply Brief of The Utility Reform Network Regarding a Successor to the Current Net Energy Metering Tariff*, September 14, 2021, at 27-28.)

Also, as the Natural Resources Defense Council noted, during comments on the Lookback Study both the Solar Energy Industries Association and the California Solar and Storage Association argued that $3.80 a watt for the cost of solar was too high. (Decision at 81-82, citing *Comments of the Solar Energy Industries Association and Vote Solar on the Net Energy Metering 2.0 Lookback Study*, February 2021, at 10 and *Comments of the California Solar & Storage Association on the Net Energy Metering 2.0 Lookback Study,* February 2021, at 2.) Given the absence of costs for financing panel

upgrades or installation delays in the $2.34 watt value and the admittedly high value of $3.80, the Commission chose a value that fell between the two numbers. (Decision at 82.)

The Decision also includes a discussion of the potential for a separate cost of solar for low-income households, but declined to adopt it because the proposal was based on data from the Commission's Disadvantaged Communities-Solar on Single Family Homes program, which the Commission explained has unique requirements and is not analogous to the tariff in this proceeding "where a homeowner is making their own choices in an open, competitive market." (Decision at 84.) The Joint Parties have not shown this determination to be unreasonable.

Third, the Joint Parties do not demonstrate that the Decision errs by deferring certain matter to other proceedings. It is well-established that determinations concerning how to organize Commission proceedings are entirely within the discretion of the Commission. Pursuant to the California Constitution, "[s]ubject to statute and due process, the commission may establish its own procedures." (Cal. Const., art. XII, § 2.) The California Supreme Court has thus explained that there is:

> …a strong presumption of the correctness of the findings and conclusions of the commission which may choose its own criteria or method of arriving at its decisions, even if irregular, provided unreasonableness is not "clearly established…."

(*Pacific Telephone and Telegraph Co. v. Public Utilities Com*. (1965) 62 Cal.2d 634, 647; see also, *e.g.*, *San Pablo Bay Pipeline Co., LLC v. Public Utilities Com*. (2015) 243 Cal.App.4th 295, 313 [holding that the Commission may employ even "unwritten procedures on a case-by-case basis provided that those procedures do not contradict a statute and are consistent with the requirements of due process."].) Thus, absent some violation of law, it is for the Commission to decide how to organize its proceedings.

Additionally, section 701 empowers the Commission to do "all things . . . which are necessary and convenient" to exercise its regulatory authority over public

utilities. (§ 701.) This authority reasonably includes determining which proceeding would most efficiently and effectively address a particular issue.

Here, the Commission declined to adopt a successor tariff specifically for community distributed energy resources in the Decision because to do so was premature. (Decision at 188.) The Decision notes that the Scoping Memo includes within the scope of the proceeding coordination with other proceedings and there are aspects of community solar that are being considered in other proceedings. (*Ibid*.) The Decision goes on to note the consolidated proceeding of Application (A.) 22-05-022, A.22-05-023, and A.22-05-024, filed in May 2022, where PG&E, SDG&E, and SCE each filed applications for their Green Tariff Shared Renewables program, Disadvantaged Communities Green Tariff program, and Community Solar Green Tariff program. (Decision at 188.)

The Decision explicitly considers AB 2316 (Ward, Stats. 2022, c. 350) which requires the Commission to evaluate customer renewable energy subscription programs to determine whether they achieve specified goals, including whether the program efficiently serves distinct groups; minimizes duplicative offerings; and promotes robust participation by low-income customers. (Decision at 188.) Further, AB 2316 requires the Commission to provide a report to the Legislature by March 31, 2024, that justifies any actions taken as a result of each program and explains whether it would be beneficial to ratepayers to establish a new community renewable energy program. (*Ibid*.) The Decision goes on to explain that a recent ruling in A.22-05-022 et al. directed parties to consider matters such as AB 2316 when determining the schedule for that proceeding. (*Ibid*.)

The Commission determined that full consideration of community renewable energy program tariffs would be best examined in the narrower context of A.22-05-022, et al. which would allow a comparison of the costs and benefits of proposals for new community solar renewable energy programs directly with existing community solar programs. (*Id*. at 188-89.) And, there may be parties that participate in the Commission's more focused disadvantaged community proceedings that do not

participate in the larger, overall net energy metering proceeding. The Joint Parties' arguments do not show that this determination is unreasonable. Under the circumstances, it is entirely reasonable to defer discussion of the issues mentioned above to a more narrowly focused proceeding. Therefore, the Commission did not err in making this determination.

As explained above, none of the Joint Parties' arguments demonstrate that the Commission erred when it adopted its approach concerning disadvantaged communities.

4. The Decision's changes to the nonresidential tariff do not lack record support and are otherwise lawful.

The Joint Parties argue that the Decision's changes to the commercial and industrial tariff are unlawful because the Decision fails to prioritize the Total Resources Cost test to evaluate cost-effectiveness and, instead, over-relies on the Ratepayer Impact Measure test. (Joint Parties Rehearing at 45-46.) They assert that the Decision's basis for doing so is not supported by substantial evidence and prior Commission decisions and guidance. (*Id*. at 46.) Among other findings, the Joint Parties cite as support Finding of Fact 35, which states that "[t]he Standard Practice Manual states that the cost effectiveness tests should not be used individually, but instead consider the tradeoffs between the tests." (*Id*., at 45, fn. 175; Decision at 210, Finding of Fact 35.)

The Joint Parties are wrong: the Commission did consider the tradeoffs between the tests. The three tests considered were the Participant Cost Test (PCT), Total Resources Cost (TRC) test, and Ratepayer Impact Measure (RIM) test. When looking at the three tests, the Commission noted that the results of the Ratepayer Impact Measure test "fared poorly" and "the RIM test is useful for examining whether disproportionate impacts occur on nonparticipants, as part of complying with the statute's requirements to ensure that benefits approximately equal costs to all customers; such an examination cannot be conducted with the TRC test." (Decision at 50.) Therefore, the Commission decided to place more weight on the results of the Ratepayer Impact Measure test. (*Ibid*.)

As stated above, the Commission did consider the tradeoffs between the tests. The Joint Parties, despite alleging legal error and lack of substantial evidence, seek only to have the Commission re-weigh the evidence. Such claims do not demonstrate legal error. (*Clean Energy Fuels Corp. v. Public Utilities Com*. (2014) 227 Cal.App.4th 641, 649 (*Clean Energy*); see also *Toward Utility Rate Normalization v. Public Utilities Com.* (1978) 22 Cal.3d 529, 537-538.)

Overall, the Joint Parties' application fails to demonstrate legal error.

B. CARE Rehearing Application

1. The CARE rehearing application fails to establish that the Decision violates the Public Utility Regulatory Policies Act of 1978 (PURPA).

The CARE rehearing application alleges that the Decision violates PURPA. (CARE Rehearing at 4.) In support of this contention, a section of the Decision is quoted, which distinguishes the avoided costs determined by the Avoided Cost Calculator and "avoided cost" as used in federal law. (See 18 C.F.R. § 292.101, subd. (b)(6) [defining "avoided cost" as used in PURPA].) Pointing to ongoing litigation in federal court, the CARE rehearing application also asserts that "solar generation should be measured at the solar inverter AC output …." (CARE Rehearing at 6.) These contentions fail to establish legal error.

CARE does not establish legal error by quoting the Decision's explanation of how it uses the term "avoided cost." In the Code of Federal Regulations, "[a]voided costs means the incremental costs to an electric utility of electric energy or capacity or both which, but for the purchase from the qualifying facility or qualifying facilities, such utility would generate itself or purchase from another source." (18 C.F.R. § 292.101, subd. (b)(6).) The Decision clarifies that it is using the same term "avoided cost" in a different context to determine the retail rate for net-metered energy. And in that context "the avoided costs determined in the Avoided Cost Calculator are the utilities' marginal costs of providing electric service to customers. Those costs can be avoided when the demand for energy decreases because of distributed energy resources, and are, thus, the

benefits of using distributed energy resources." (Decision at 59.) That clarification shows that while the same language is used, it reflects a different concept. The CARE rehearing application makes no showing that this clarification is unlawful.

The CARE rehearing application also fails to establish legal error by asserting that "solar generation should be measured at the solar inverter AC output." (CARE Rehearing at 6.) CARE provides no support for its assertion, nor does it analyze its applicability in this context. Thus, legal error has not been alleged and this contention is not grounds for rehearing. (Rule 16.1, subd. (c), Code of Regs., tit. 20, § 16.1 subd. (c), see also § 1732.)

Similarly, CARE's identification of actions taken in support of litigation against the Commission does not establish legal error here. For example, on August 22, 2022, before the Decision issued, CARE states that it argued in its federal litigation "that the CPUC and California investor-owned utilities violated the avoided-cost mandate under PURPA through the CPUC's implementation of its net metering rules." (CARE Rehearing at 6.) The CARE rehearing application fails to establish that any court has found those arguments to be meritorious.

For the reasons provided, CARE fails to establish that the Decision violates PURPA.

2. CARE fails to establish that the Decision violates the Sherman Act or the Cartwright Act.

a) The Sherman Act and the Cartwright Act.

CARE cites to the federal Sherman Act and the California Cartwright Act as bases for alleged legal error. (CARE Rehearing at 4.) Section 1 of the Sherman Act (15 U.S.C. § 1) prohibits "[e]very contract, combination ..., or conspiracy, in restraint of trade or commerce." Such restraints on trade must be "unreasonable" to be actionable under Section 1. (See, e.g., *Copperweld Corp. v. Indep. Tube Corp*. (1984) 467 U.S. 752, 768.) A conspiracy in violation of Section 1 must be demonstrated by direct or circumstantial evidence that tends to exclude the possibility of independent action. (*Monsanto Co. v. Spray-Rite Service Corp.* (1984) 465 U.S. 752, 768.)

The California Cartwright Act

> is contained in Business and Professions Code section 16700 et seq. Sections 16720 and 16726 generally codify the common law prohibition against restraint of trade. Thus, an unlawful trust is defined in section 16720 as "a combination of capital, skill or acts by two or more persons" for enumerated purposes which restrain trade.

(*G.H.I.I. v. MTS, Inc.* (1983) 147 Cal.App.3d 256, 264 (internal citation omitted).) California courts have noted that federal law interpreting Section 1 of the Sherman Act is "useful when addressing issues arising under section 16720." (*SC Manufactured Homes, Inc. v. Liebert* (2008) 162 Cal.App.4th 68, 84.)

b) The antitrust allegations in the CARE rehearing application are baseless.

The CARE rehearing application makes broad allegations of a conspiracy between many parties. (CARE Rehearing at 6-12.) It provides quotes from parts of the Decision in which the investor-owned utilities (IOUs), the Commission, TURN, and Natural Resources Defense Council (NRDC) analyzed the Lookback Study (*id*. at 7-10) and contends that the cost-shift between small renewable power generators to IOU customers without residential solar systems "is pretextual and the proximate cause of the antitrust injuries." (*Id*. at 7.)

The Decision specifically found that "[t]he Lookback Study indicates NEM 2.0 negatively impacts non-participant ratepayers" (Decision at 208, FOF 15) and more specifically that "[t]he NEM 2.0 tariff negatively impacts non-participant ratepayers." (Decision at 207, FOF 4.) There is a strong presumption in favor of the validity of Commission decisions. (*Pacific Gas & Elec. Co. v. Public Utilities Com.* (2015) 237 Cal.App.4th 812, 838, quoting *Greyhound Lines, Inc. v. Public Utilities Com.* (1968) 68 Cal.2d 406, 410.) And, as explained above, the California Supreme Court has emphasized the "strong presumption of the correctness of the findings...of the commission, which may choose its own criteria or method of arriving at its decision." (*Pacific Telephone and Telegraph Co., supra,* 62 Cal.2d at 647.)

To assist in evaluating the Lookback Study, "[p]arties were asked to address what information from the Lookback Study the Commission should use to inform the selection of the successor net energy metering tariff and how that information should be applied." (Decision at 39.) Then the Commission evaluated the contentions of parties who offered differing views. (See *id*. at 43-48.) The Decision concluded that "the Commission should use this information to develop a successor tariff that corrects the cost shift, to the extent possible, while balancing all eight guiding principles." (*Id*. at 48.) Nothing in this process, or in the quotations of party positions provided by CARE, demonstrates a conspiracy.

CARE also states that a former Commissioner was working as an officer for SCE before working as an officer for PG&E, as well as working for all three IOUs as a witness in the same case. (CARE Rehearing at 11-12.) While an agreement may be inferred from circumstantial evidence (see M*onsanto*, *supra*, 465 U.S. at 764), evidence of a former Commissioner later working for IOUs as an officer or a witness does not demonstrate an agreement between the parties to restrain trade through the Decision, and thus fails to raise the appearance of anti-competitive behavior. This example provided by CARE does not reasonably show a "conscious commitment to a common scheme" and does not support the broad allegations of concerted action. (See *ibid*.)

In sum, CARE's characterizations of the Lookback Study analysis, as well as the employment testimony of a former Commissioner, fail to establish antitrust law violations.

c) CARE fails to establish any unlawful practices such as price fixing, group boycotting, price discrimination, or tying.

CARE alleges that "[t]he objective of the conspiracy and the Decision here is both whol PURPA.[3] (*Id.* at 15.) CARE further alleges price discrimination, specifically a conspiracy among the IOUs to charge small renewable power generators, including

[3] As explained above, the Decision uses the term "avoided cost" in a different context from PURPA. (Decision at 59-60.)

customers with residential solar systems, differently than customers without residential solar systems. (*Id*. at 15-16.) CARE also alleges tying, specifically a conspiracy among the IOUs to tie wholesale sales compensation for small renewable power generators, including those IOU customers residential solar systems, to their participation in the NEM program. (*Id.* at 16.)

A rehearing application "… must make specific references to the record or law. The purpose of an application for rehearing is to alert the Commission to a legal error, so that the Commission may correct it expeditiously." (Rule 16.1 subd. (c), Code of Regs., tit. 20, § 16.1, subd. (c).) The bare allegations in the CARE rehearing application are unavailing. No specific facts are provided to support any of its claims. Rather, CARE provides general statements on the definitions of the terms in its claims.[4] As CARE fails to provide any factual support for its claims, or to explain how its cited facts establish any of them, there is no basis upon which to find legal error. (See *ibid.*, see also § 1732.)

[4] Moreover, the collusive relationships alleged in the CARE application for rehearing are not substantiated. Simply implying collusive relationships does not establish legal error.

d) The CARE rehearing application fails to establish legal error in its assertions of joint and several liability, jurisdiction, damages and compliance with the California Tort Claims Act.

CARE asserts that the identified parties are jointly and severally liable under the Cartwright Act. (CARE Rehearing at 17-18.) It further asserts that the superior court has jurisdiction over the alleged antitrust violations. (*Id.* at 18-19.) CARE also calculates damages for the alleged wrongdoing. (*Id.* at 19-21.) And finally, CARE asserts that it has complied with the California Tort Claims Act. (*Id.* at 21-24.) None of these arguments establish legal error in the Decision, as they do not provide grounds upon which the Decision could be found unlawful. (See § 1732.)

For the reasons stated above, the CARE application for rehearing fails to demonstrate legal error.

III. CONCLUSION

For the reasons discussed above, the applications for rehearing are denied.

THEREFORE, IT IS ORDERED that:

1. The Joint Parties' application for rehearing is denied.
2. CARE's application for rehearing is denied.
3. This proceeding shall remain open.

This order is effective today.

Dated _____, 2023, at San Francisco, California.