

S283614

IN THE SUPREME COURT OF CALIFORNIA

CENTER FOR BIOLOGICAL DIVERSITY,  
ENVIRONMENTAL WORKING GROUP, and THE  
PROTECT OUR COMMUNITIES FOUNDATION

*Petitioners,*

vs.

PUBLIC UTILITIES COMMISSION OF THE STATE OF  
CALIFORNIA

*Respondent,*

PACIFIC GAS and ELECTRIC COMPANY, SAN DIEGO  
GAS & ELECTRIC COMPANY, and SOUTHERN  
CALIFORNIA EDISON COMPANY

*Real Parties in Interest.*

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After a Decision by the Court of Appeal First District Court  
of Appeal, First Appellate District Case No. A167721 From a  
Decision of the Public Utilities Commission of the State of  
California, No. 22-12-056 (December 19, 2022)

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**APPLICATION FOR LEAVE TO FILE AMICUS  
CURIAE BRIEF IN SUPPORT OF PETITIONERS;  
PROPOSED BRIEF OF AMICUS CURIAE LOCAL  
CLEAN ENERGY ALLIANCE OF THE BAY AREA**

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*Green Home, Third Act, Sustainable Rossmoor and the  
Electric Vehicle Association: Central Coast Chapter*

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## **APPLICATION TO FILE BRIEF OF AMICI CURIAE**

Proposed Amici Curiae Local Clean Energy Alliance (LCEA), California Alliance for Community Energy (CACE), 350 Bay Area, SLO Climate Coalition, Climate Reality Project (Los Angeles Chapter), Climate Reality (SF Chapter), Climate Reality (San Diego Chapter), and Reclaim Our Power: Utility Justice Campaign, Project Green Home, Third Act, Sustainable Rossmoor, and the Electric Vehicle Association: Central Coast Chapter (collectively referred to as “LCEA et al.”) make this application to file the accompanying brief in this case pursuant to California Rules of Court, rule 8.520(f).

LCEA is an energy justice organization based in Oakland, CA, working for equitable access to locally sited clean, renewable energy resources for low-income Black, Indigenous, and People of Color (BIPOC) communities in Alameda and San Joaquin Counties. LCEA advocates with, Ava Community Energy, a local Community Choice Energy Agency, to provide local clean energy resources, especially for disadvantaged communities in Alameda and San Joaquin Counties. LCEA frequently advocates with state agencies such as the California Public Utilities Commission.

CACE is statewide energy justice organization that utilizes the knowledge, expertise, and commitment of its over 260 members to promote a more equitable, affordable, reliable, and resilient clean energy future.

CACE collaborates with other organizations to inform Californians regarding the environmental, economic, and

social justice benefits from clean, locally-generated, locally-controlled, and community-determined energy solutions, especially for communities whose needs have been historically disregarded and/or undermined.

350 Bay Area is a non-profit organization with locally focused groups in seven Bay Area counties. 350 Bay Area's mission is to eliminate carbon dioxide and other global warming emissions pollution and to achieve a clean energy future with racial, economic, and environmental justice. The vast majority of 350 Bay Area's members obtain residential electrical service from Pacific Gas & Electric or from Community Choice Energy organizations. So, 350 Bay Area advocates from both an environmental and ratepayer perspective.

SLO Climate Coalition's (SLOCC) vision is for a vibrant, just and climate-resilient Central Coast. Our mission is championing high-impact regional solutions by bringing together community expertise, creativity and resources. Consumer sited solar installations are an important component of achieving our mission. After the Net Billing Tariff was approved, SLOCC suspended our efforts to bring Solar to lower income residents. The financial viability of customer based solar dramatically declined. SLOCC continues to promote electrification, however, efforts are hindered by not being able to employ solar in concert with other measures.

Los Angeles Climate Reality Project, established in 2017, with over 1,600 members is among the largest of the more than 100 chapters of the international Climate Reality

Project. We are everyday citizens, teachers, scientists, activists, artists, and storytellers who work to educate on the truth of climate change and activate everyone to prioritize addressing it.

Climate Reality Project, San Diego Chapter are leaders who educate about and advocate for efforts to mitigate climate change. We are interested in the issues in this case because we know that roof top solar is necessary tool for us to move forward in electrification. Efforts made by investor-owned utilities and the government bodies that support them to slow or stop roof top solar are not good for anyone.

Climate Reality Project, Bay Area Chapter with over 1800 members across eight Bay Area counties, is the largest Climate Reality Project chapter in the world. We are committed to mobilizing a grassroots network of advocates to take urgent action for climate mitigation, restoration and adaptation. The climate crisis requires our urgent attention. Disadvantaged communities have and will continue to suffer disproportionately from its impacts.

The Reclaim Our Power Utility Justice Campaign is a coalition of nearly 90 organizations, building a just transition toward a safe, reliable, regenerative, renewable, affordable, worker- and community-controlled not-for-profit energy utility. We believe investing in local rooftop solar generation will build a healthier future for our people and our environment and will also reduce energy costs and prevent catastrophic utility-caused wildfires by reducing the need for expensive transmission line buildouts.

Project Green Home (“PGH”) was one of California’s first Beyond LEED Platinum, Zero Net-Energy, Passive Homes when it was completed in 2011. Since then, it has been toured by over 4,000 people including school groups, politicians, church groups, girl and boy scouts, engineers, architects, and the general public. We regularly get the question: “What are the economics of PV in PG&E-land?” and we have to respond with “...not good due to NEM3.0 unless you can likewise afford a battery system.” We then explain NEM3.0; people just shake their heads in disbelief and the discussion of (and potential for) residential PV ends.

Third Act is a three-year-old national non-profit organization co-founded by the renowned climate activist Bill McKibben. Its purpose is to build a new political movement of elders over 60 dedicated to safeguarding our climate and democracy. Over 90,000 older adults have joined the group since its founding.

Sustainable Rossmoor is the environmental organization in Rossmoor, a community of nearly 10,000 residents in Walnut Creek, California. Sustainable Rossmoor’s mission is to advocate for sustainable practices and counter climate change in Rossmoor and beyond. Residents in the community, like elsewhere in California, who were poised to install rooftop solar as eco-conscious citizens and to potentially to reduce their energy bills over time, are frustrated that the CPUC took such a crippling environmental action using flawed, unscientific calculations as justification.

On the larger scale, the faulty NEM 3.0 decision delays the State's ability to meet its greenhouse gas emissions goals.

The Electric Vehicle Association: California Central Coast Chapter (EVACCC) is an all-volunteer non-profit electric vehicle (EV) education and advocacy group that formed in 2005 to introduce EVs to the five-county Central Coast, part of the 100-chapter organization across the United States. EVs eliminate tailpipe greenhouse gas and other pollutants, protecting human and ecosystem health and do not contribute to the effects of global climate change. EVs are essential for California to reach its emissions reductions goals. A direct relationship exists between rooftop solar and EV ownership such that when one owns solar, the obvious benefit of owning an EV is inspired and vice versa. EVs charged with clean, renewable electricity from rooftop solar eliminates emissions and driving costs can be reduced to \$0. The NEM3.0 decision has significantly reduced a formerly robust adoption of new rooftop solar in California which impacts the adoption of EVs.

LCEA et al. have been actively engaged in numerous regulatory proceedings before the CPUC. They repeatedly advocate against CPUC's failure to fully account for recognized benefits of programs including rooftop solar in its decisions. They participated in the proceeding at issue in this case.

LCEA et al.'s years of experience working on solar rooftop energy, energy equity, net metering, and climate policies position them to offer valuable insights to the Court's review of the Public Utilities Commission's decision on the

Net Billing Tariff, Decision 22-12-056, also known as Net Metering 3.0 (“NEM 3.0.”)

The decision to reduced rooftop solar installations by 75% will benefit Investor-Owned Utilities (“IOUs”) at the expense of Californians. The CPUC reached this decision by undertaking an unlawful cost-benefit analysis. It omitted several known benefits of customer-sited distributed energy resources, like rooftop solar, contrary to Public Utilities Code section 2827.1. Because of LCEA et al.’s deep understanding of these issues, coupled with their commitment to a just and equitable clean energy future, they understand the real-world impacts of this decision on individuals, communities which will undercut meeting the state’s ambitious clean energy goals.

LCEA et al. prioritize local renewable energy like local solar installations for frontline communities because of the many benefits those resources bring to communities long discriminated against. These benefits include improved air quality from reduced dependence on fossil fuels; new and existing local job opportunities, improved energy resilience, less reliance on long-distance transmission lines, reduced energy affordability burdens, and ability to meet state climate goals.

As the proposed amici may assist the Court through their extensive experience, proposed amici respectfully requests that this Court grant this application for leave to file an amicus curiae brief.

There are no interested entities or persons that must be listed in this certificate under rule 8.520 (f) (4) of the

California Rules of Court. No party or any counsel for a party in the pending appeal authored the proposed amicus brief in whole or in part; or made a monetary contribution intended to fund the preparation or submission of the brief.

Dated: December 19, 2024

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## [PROPOSED] AMICUS CURIAE BRIEF

### I. INTRODUCTION

For decades, California has encouraged the development of customer-sited distributed energy resources, such as rooftop solar (“rooftop solar”). In fact, the State is relying on the growth of rooftop solar to achieve its climate goal of becoming carbon neutral by 2045. However, at the same time the California Public Utilities Commission (CPUC) has issued decisions that reduce the availability of rooftop in homes and communities to the benefit of large-scale Investor-Owned Utilities (IOUs). CPUC’s decision on the Net Billing Tariff, Decision 22-12-056, also known as Net Metering 3.0.) is part of that trend.

In reaching this decision, the CPUC ignored its legal obligation (as well as over 200,000 public comments) to ensure the growth of rooftop solar in the state and analyze the benefits and costs of its proposed rulemaking. The CPUC analysis supporting its rule does not consider the broad environmental, climate, and health benefits of rooftop solar. These include meeting the state’s climate goals, reducing local pollution, and creating local microgrids that reduce dependence on long-distance transmission lines and improving grid resiliency.

In upholding the CPUC’s decision, the Court of Appeals improperly gave the CPUC “unique deference.” However, the California Legislature determined in 1998 that the CPUC is subject to the same deference as any other agency. This Court should find that the CPUC is not entitled to “unique

deference” and that the CPUC did not follow the requirements of Public Utilities Code section 2827.1 and as such adopted a Net Metering 3.0 Decision that violates the law.

## **II. DISCUSSION**

The CPUC did not comply with Public Utilities Code section 2827.1 when adopting Net Metering 3.0. Under Public Utilities Code section 2827.1., the Legislature authorized the CPUC to adopt a standard tariff for eligible “customer generators.” In establishing those tariffs, Legislature required the CPUC to ensure “customer-sited renewable distributed generation continues to grow sustainably and include specific alternatives designed for growth among residential customers in disadvantaged communities.” (Pub. Util. Code, §2827.1 subd. (b)(1)). The tariff must also account for the cost and benefits of the renewable energy facility. (Pub. Util. Code, § 2827.1 subd. (b)(3)).

The CPUC failed to meet these statutory obligations by adopting a Net Metering 3.0 policy that inhibits the growth of distributed generation, ignores the challenges to disadvantaged communities, and that overinflates the costs and undervalues the benefits of rooftop solar. The CPUC’s improper interpretation of its regulatory responsibilities is not entitled to unique deference. Rather it is subject to the same level of judicial review as other agencies pursuant to Public Utilities Code sections 1757 and 1757.1. Therefore, the CPUC failed to comply with the law in adopting Net Metering 3.0.

**A. The CPUC Is Not Entitled To Unique Deference.**

The CPUC is not entitled to unique deference because the Legislature amended Public Utilities Code sections 1757 and 1757.1 to align judicial review of CPUC decisions with that of other state agencies and because the cozy relationship between CPUC Commissioners and staff and the IOUs executive leadership and staff undermines the independence of the agency’s decision requiring judicial review.

**1. The CPUC is Subject to the Same Judicial Review as Other State Agencies.**

Since 1998, the California Legislature has required that Courts review the CPUC’s decisions consistent with the standards that apply to every agency. (Pub. Util. Code, §1757), (Sen. Bill No. 779, Ch. 886). (“SB 779”). The Legislature was concerned that “judicial review of CPUC decisions is virtually nonexistent.” (*Id.* at Bill Analysis at p. 3, [http://leginfo.ca.gov/pub/97-98/bill/sen/sb\\_0751-0800/sb\\_779\\_cfa\\_19980830\\_204540\\_asm\\_floor.html](http://leginfo.ca.gov/pub/97-98/bill/sen/sb_0751-0800/sb_779_cfa_19980830_204540_asm_floor.html) (as of Dec. 9, 2024). (Exhibit A, Amici Request for Judicial Notice “RNJ”).)

Therefore, the Legislature intended to expand the scope of judicial review and made it clear that courts should not treat the Commission as a unique agency. (“Decisions of the CPUC will be subject to judicial review on grounds similar to the grounds for review of other state agency decisions.”). (*Id.* at p. 1.)

The Legislature required that Courts determine whether “[t]he commission has not proceeded in the manner required by law.” (Pub. Util. Code, § 1757 subd. (a)(2).) This is also

the standard for Writs of Mandate under Code of Civil Procedure section 1094.5 and the California Environmental Quality Act under Public Resources Code section 21168.5. Courts assume the Legislature is aware of statutes and judicial decisions already in existence, and that “the legislature intended to maintain a consistent body of rules and to adopt the meaning of statutory terms already construed.” (*People v. Scott* (2014) 58 Cal.4<sup>th</sup> 1415, 1424.) The legislature expressed an intent to increase judicial review for CPUC decisions, understood that it was changing the standard for judicial review to mirror that for other state agencies, and included similar language to effectuate that purpose. Therefore, under amended Public Utilities Code sections 1757 and 1757.1, judicial review of CPUC’s decisions must align with that of other agencies.

**2. Courts Need to Provide Judicial Oversight Given the Close Relationship between the CPUC and IOUs.**

The Court should not give undue deference to the CPUC to ensure that it does not become an untouchable agency in contradiction to legislative authority in Public Utilities Code sections 1757 and 1757.1. This is particularly concerning given the close relationship between the CPUC Commissioners and staff and that of the IOUs. For example, the City of San Bruno alleged collusion between the CPUC and PG&E after a 2010 pipeline explosion. (Lee, *San Bruno alleges misconduct in 2010 deadly pipeline explosion case, seeks removal of CPUC President*, ABC7 News, (July 28, 2014) <http://abc7news.com/e-mail-illicit-cozy->

[relationship/225127/](#) as of Dec. 9, 2024.) San Bruno officials questioned the independence of the CPUC’s investigation after reviewing thousands of emails between the utility and the regulator. The emails showed CPUC staff and IOUs sharing confidential information and advising each other about responses to official investigation communications. (*Id.*)

In addition to causing doubt about the independence of investigations, this cozy relationship between regulators and the regulated has raised questions about the impartiality of decisions related to Community Choice and other forms of distributed energy that the IOUs do not control.<sup>1</sup>

In 2018, the CPUC adopted its Decision on Power Charge Indifference Adjustment (PCIA) which shifted the costs of utility owned and stranded assets onto non-profit Community Choice Energy programs. (D.18-10-019, Decision Modifying the Power Charge Indifference Adjustment Methodology (Oct. 19, 2018) (Exhibit B, Amici RJN). The Decision was based on an Alternative Proposed Decision of Commissioner Peterman. This decision benefited the utilities at the expense of Community Choice providers. *Id* at p. 130-152.

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<sup>1</sup> CACE has documented the numerous ways the CPUC has demonstrated a bias against Community Choice that the monopoly utilities do not control. These include explicit statements of bias, approving cost shifting and rate setting that undermine Community Choice, attempting to freeze Community Choice programs, and hamstringing Community Choice resource procurement, among others. (CACE, Updated: CPUC Bias Against Community Choice (January 2019), <https://cacomunityenergy.org/updated-cpuc-bias-against-community-choice-january-2019/> as of Dec. 9, 2024.)

Within a few weeks of the decision, Commissioner Peterman resigned and less than a year later took a position at the IOU, Southern California Edison. Business Wire, *Peterman to Join Southern California Edison, Powell and Anderson Named to Newly Created Senior Executive Posts* (April 23, 2023),

<https://www.businesswire.com/news/home/20190823005342/en/Peterman-to-Join-Southern-California-Edison-Powell-and-Anderson-Named-to-Newly-Created-Senior-Executive-Posts>

as of Dec. 9, 2024.) This is contrary to the state’s “revolving-door restrictions.” (Gov. Code, § 87406 subd. (d)(1).)

Currently Ms. Peterman is Executive Vice President of Corporate Affairs and Chief Sustainability Officer for another IOU, PG&E.<sup>2</sup> Ensuring courts review CPUC decisions de novo<sup>3</sup> and independently is imperative to restore checks and balances on this agency as the legislature intended.

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<sup>2</sup> PG&E Corporation, *Carla J. Peterman, Executive Vice President and Chief Sustainability Officer for PG&E Corporation, the parent company of Pacific Gas and Electric Company*,

<https://www.pgecorp.com/about/officers/corporation-officers/carla-peterman.html> (as of Dec. 9, 2024).

<sup>3</sup> In 2018, this Court clarified that de novo review is appropriate for questions of whether statutory criteria are met. *Sierra Club v. County of Fresno* (2018) 6 Cal.5<sup>th</sup> 502, 516.

**B. The CPUC’s Net Metering 3.0 Decision has Slowed Rooftop Installation, Omitted Specific Alternatives for Disadvantaged Communities, and Disregarded Environmental, Economic, Societal, and Climate Benefits in its Cost-Benefit Analysis Contrary to Public Utilities Code Section 2827.1.**

When the Legislature authorized the CPUC to establish a net metering tariff, it also outlined specific requirements for the CPUC to meet in setting that tariff. These included, that the rate ensures the continued growth of customer-sited rooftop solar and include specific alternatives designed to overcome the challenges for disadvantaged communities; and that the CPUC’s tariff shall be based on the cost and benefits of rooftop solar. (Pub. Util. Code, §§ 2827.1 subds. (b)(1), (3)). Here, the CPUC has not met these requirements because the decision has led to a slow down in rooftop solar installation, relied on existing limited and underfunded programs to address barriers in disadvantaged communities, and omitted several known and quantifiable benefits of rooftop solar from its cost-benefits analysis.

**1. Net Metering 3.0 has led to a contraction in the rooftop solar industry.**

Due to the Net Metering 3.0 decision, the forecast for the rooftop solar market was expected to decline 40% in 2024 and an additional 25% decline in 2025. (SEIA Comms Team, *A New Reality: The Path Forward for California’s Solar and Storage Industry* Solar Energy Industries Association (January 29, 2024) <https://seia.org/blog/new-reality-path-forward-californias-solar-and-storage-industry/#:~:text=Rooftop%20solar%20installation%20foreca>

[sts%20in,25%25%20from%202024%20to%202025](#) as of Dec. 9, 2024.)) In fact, California was expected to drive a 19% reduction in rooftop solar installations nationwide in 2024. (Solar Energy Industries Association, Q3 2024 Solar Market Insight Report, (September 9, 2024), <https://seia.org/research-resources/solar-market-insight-report-q3-2024/> (as of Dec. 10, 2024.)) California saw a 36% reduction in rooftop solar installation in the first quarter of 2024. (*Id.*)

The California Energy Commission's (CEC) forecast for rooftop solar installation also shows a considerable decline after 2023 when NEM 3.0 went into effect. (Palmer, CEC, Behind-the-Meter Distributed Generation Forecast Results, (Nov. 7, 2024) at p. 18, <https://www.energy.ca.gov/event/workshop/2024-11/iepr-commissioner-workshop-draft-load-modifier-electricity-demand-forecast> (as of Dec. 17, 2024) (Exhibit C, Amici RJN). This contraction in the rooftop solar market has also led to 17,000 lost jobs in the solar sector as well as bankruptcies for solar companies as discussed in the Amicus Brief for Albion Power Company, Inc. (Application to File Amicus Brief and Brief of Amicus Curiae Albion Power Company, Inc. in Support of Petitioner, p. 6.)

This is in direct contraction to the CPUC's mandate to ensure the growth of rooftop solar. The CPUC was aware of that a significant reduction in the rate would negatively impact the homeowner's choice to install solar and thereby slow the growth the rooftop solar. Several parties to the proceeding- the Solar Energy Industries Association

(“SEIA”,) The Environmental Working Group and Protect Our Communities Future- raised this issue in the proceeding. The CPUC discussed these points in the NEM 3.0 and did not dispute the likely slowdown in the growth of rooftop solar. (NEM Decision at p. 72.). But ultimately the CPUC decided to balance multiple principles in setting rate. (NEM3.0 at p. 76). The CPUC issued its decision even understanding that it would not satisfy its statutory mandate. Therefore, the CPUC failed to proceed in a manner required by law.

**2. The CPUC failed to include specific program alternatives for disadvantaged communities in its Net Metering 3.0 Decision.**

The Legislature recognized that disadvantaged communities face unique challenges in accessing rooftop solar. As such, it required the CPUC to adopt alternatives to help disadvantaged communities access the benefits of renewable distributed energy. (Public Utilities Code § 2827.1 subd. (b)(1).) Rather than create specific alternatives as part of Net Metering 3.0, the CPUC points to an “adder policy” that provides for a higher rate to payback financing in 9 years for qualified disadvantaged communities. However, this addresses disparities after installation, but does not address barriers that exist before installation-such as access to credit.<sup>4</sup>

As a post hoc rationalization, the CPUC points to three existing programs that are underfunded and undersubscribed

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<sup>4</sup> The CPUC recognized this is a as barrier to disadvantaged communities in a prior proceeding. D.18-06-027, Alternate Decision Adopting Alternatives to Promote Solar Distributed Generation in Disadvantaged Communities (June 22, 2018) at p. 91. (Exhibit D, Amici RJN.)

to address the directive to create specific alternatives to ensure growth of rooftop solar in disadvantaged communities. (Petitioners’ Opening Brief at pp. 85-91.)<sup>5</sup> These programs are the Solar on Multifamily Affordable Housing, Disadvantaged Communities- Single Family Solar Homes (DAC-SASH), and Disadvantaged Community-Green Tariff (DAC-GT). However, these programs are designed to be limited with prescribed budgets and capacity limits. DAC-GT has a capacity limit of 158 megawatts- further divided among service areas (70 megawatts each in Pacific Gas & Electric (“PG&E”) territory and Southern California Edison (“SCE”) territory and 18 megawatts in San Diego Gas & Electric (San Diego G&D)” territory. (D.18-06-27, *supra*, at p. 53, Exhibit D, Amici RJN.)

Similarly, with DAC-SASH, there are capacity limits. It is a statewide program that provides \$8.5 million annually in incentives for homeowners in disadvantaged communities to install solar. (Grid Alternatives, <https://gridalternatives.org/what-we-do/program-administration/dac-sash> (as of Dec. 10, 2024)). Applicants must live in the top 25% most disadvantaged communities in the state as identified by CalEnviroScreen and be a billing

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<sup>5</sup> According to the CPUC’s official public reporting site for all distributed generation projects- California Distributed Generation Statistics (DGStats), the programs specifically designed for disadvantaged communities had a capacity of around 20 megawatts and projections for declining capacity. California Distributed Generation Statistics, Statistics and Charts Low-Income PV Solar, (<https://www.californiadgstats.ca.gov/charts/li/> as of Dec. 12, 2024). (Exhibit E, Amici RJN.)

customer of PG&E, SCE, and SDG&E. There are also income restrictions. (Grid Alternative, <https://gridalternatives.org/dac-sash-eligibility-requirements>, as of Dec. 10, 2024). Even with these programs, disparities remain in disadvantaged communities and NEM 3.0 does not address those disparities contrary to Public Utilities Code section 2827.1 subdivision (b)(1).

These restricted programs do not provide the same level of opportunity for growth that a generally applied tariff program does. All eligible customers can benefit from the tariff. There are no capacity restrictions for each IOU territory. These types of generally applied tariff programs allowed for more widespread adoption- regardless of where you live within the IOU territories. According to Berkeley Lab's Solar Demographics Tool adoption of roof top solar was steadily increasing among lower-income and people of color households between 2019 and 2023. (Berkeley Lab Energy Markets and Policy, Solar Demographics Tool, <https://emp.lbl.gov/solar-demographics-tool> as of Dec. 19, 2024.)

Further, IOUs argue that the CPUC can take an incremental approach to addressing barriers in disadvantaged communities. (Answering Brief of Real Parties in Interest p. 48-49). However, the CPUC has not identified how its incremental approach has or will reduce the barriers disadvantaged communities face in adopting solar.

Moreover, rather than incrementally reduce disparities, the CPUC has incrementally rolled back access to rooftop solar

over separate proceedings- in ways that benefit the utilities and disadvantage the public.<sup>6</sup>

In 2023, the CPUC undertook a proceeding to address outstanding issues from the NEM3.0. (D. 23-11-068, Decision Addressing Remaining Proceeding Issues (November 16, 2023) at p. 4). The CPUC considered issues related how to apply the rate established through NEM 3.0 for homeowners to other customers with multiple meters-such as apartment tenants, schools, and farms. (D. 23-11-068, Decision Addressing Remaining Proceeding Issues (November 22, 2023) at p. 3) (Exhibit F, Amici RJN).

Previously, the CPUC adopted NEM rates which allowed farmers, apartment tenants, schools, and other customer groups with multiple on-site meters to invest in solar projects and use the energy produced on-site to offset energy costs on meters not directly connected to the solar installation. This would allow lower energy bills for everyone on site when there are multiple meters.

For example, apartments that installed solar on common areas like a carport would generate energy for on-site use and sell excess energy back to the grid at retail rates. The utility would then provide credits on tenant bills based on retail rates even if their unit was not directly connected to the meter. (*Id.* at 10-11.)

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<sup>6</sup> See Part II.A.2. For example, in 2018 the CPUC's PCIA decision levied a fee on Community Choice systems to cover utility costs for stranded assets to Community Choice to account for a reduction in demand for IOUs.

However, after NEM 3.0, the CPUC decided to revise the rate for virtual net metering and apply the wholesale rate established through NEM 3.0 to apartments, farms, schools, and other facilities with multiple meters. (*Id.* at 2.) Now apartments sell surplus energy to the utility at the reduced wholesale and tenants purchase energy from the utilities at the higher retail rates. The CPUC recognizes that this impacts low-income customers- acknowledging in the decision that tenants are predominately low-income. (*Id.*) Thereby, forcing higher costs on members of disadvantaged communities and ensures continued reliance on the IOUs. Recent decisions by the CPUC have reduced access to affordable rooftop solar and increase revenue and profits for the IOUs.

The NEM 3.0 Decision is part of this larger trend which illustrates how the CPUC interprets its legal mandates to protect the interests of the IOUs rather than promote the growth of rooftop solar and address barriers to disadvantaged communities. Therefore, the CPUC has not proceeded in a manner required by law.

**3. The CPUC does not account for the benefits of rooftop solar from reduced transmission costs, improved air quality, and achieved climate goals.**

The Legislature recognized multiple benefits of rooftop solar when it authorized the CPUC to establish NEM. (Pub. Utilities Code, § 2827). The Legislative findings note that NEM encourages substantial private investment in renewable energy; reduces demand for electricity during peak hours, stimulates economic growth, and helps stabilize energy infrastructure, among others. (Pub. Utilities Code, § 2827 subd. (a)). The

Legislature has also recognized that there are environmental cost and benefits, such as air quality, which should be included in cost-effectiveness of analysis. (Pub. Util. Code, § 701.1 subd. (c)).

In light of these multiple benefits, the Legislature instructed the CPUC to set the net metering rate based on “the costs and benefits of the renewable energy facility.” (Pub. Util. Code, § 2827.1 subd. (b)(3)). The Petitioners correctly argue that the use of the declarative article means “all” costs and benefits. (Petition pp 42-44). The CPUC does not include societal benefits in its cost-benefit analysis. Instead, the CPUC only utilizes the Avoided Cost Calculator to set the rate. (D.22-12-056, Net Billing Tariff (Dec. 19, 2022) at p.3.)

The Avoided Cost Calculator is a utility-centric modeling formula that focuses on the reduced cost to the utility of producing and distributing energy. In 2020, the CPUC described the use of the Avoided Cost Calculator to determine “avoided costs related to the provision of electric and natural gas service.... The outputs of the Avoided Cost Calculator feed into the cost-benefit analysis for distributed energy resources.”<sup>7</sup> (D.20-04-010, 2020 Updates to the Avoided Cost Calculator (April 24, 2020) at 4.) (Exhibit G, Amici RJN).

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<sup>7</sup> “The Avoided Cost Calculator calculates six types of avoided costs: generation capacity, energy, transmission and distribution capacity, ancillary services, renewable portfolio standard, and greenhouse gas emissions.” CPUC Decision 20-04-010, 2020 Updates to the Avoided Cost Calculator, at p 4. (April 24, 2020). (Exhibit G, Amici RJN).

In 2021<sup>8</sup>, the CPUC revised the Avoided Cost Calculator to reduce the value of rooftop solar by 50% by partially assuming an unprecedented increase in utility scale solar. (PUC Resolution E-5150, Adopts Updates to the Avoided Cost Calculator for use in demand-side distributed energy resource cost-effectiveness analyses (June 28, 2021) (Exhibit H, Amici RJN). Thereby reducing the need for and value of rooftop solar. These assumptions further reinforced the need for consideration of avoided future utility scale transmission costs, among the largest drivers of the retail cost of energy.<sup>9</sup> One of the benefits to all ratepayers from rooftop solar is the avoided costs of transmission incurred from the additional infrastructure capacity and congestion that would occur if rooftop solar had not reduced the demand at the transmission level.

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<sup>8</sup> Typically, updates to the Avoided Cost Calculator occur biannually with major updates occurring in even years and minor updates in odd years. PUC Resolution E-5150, Adopts Updates to the Avoided Cost Calculator for use in demand-side distributed energy resource cost-effectiveness analyses (June 28, 2021) at p. 3.) (Exhibit H, Amici RJN.)

<sup>9</sup> In Northern California, transmission costs increased 300% from an average of \$11.70 megawatt hour in 2011 to \$34.10 megawatt hour with an additional 100% increase by 2045. Other regions of the state, like the Central Valley can expect a to pay twice the current rate for transmission by 2040. California Municipal Utilities Association, Transmission Costs in the California System Operator Grid, Balancing the Need for Investments with Customer Affordability, (August 2022) [https://www.cmua.org/Files/Issue%20Briefs/CMUA\\_Transmission\\_Costs\\_IB\\_August2022.pdf](https://www.cmua.org/Files/Issue%20Briefs/CMUA_Transmission_Costs_IB_August2022.pdf).

Because rooftop solar is used locally first, it can reduce the need for new large-scale transmission infrastructure. In 2018, the Board of Governors for the California Independent System Operator approved a Transmission Plan that recommended canceling 18 planned projects and revising an additional 21 transmission projects which would avoid \$ 26.8 billion in future transmission costs. The Board identified greater than forecast residential rooftop solar as one of the primary reasons for this significant cost savings. (California ISO, 2017-2018 Transmission Plan, at pp. 2-3 (March 22, 2018) (as of Dec. 10, 2024).)<sup>10</sup> (Exhibit I, Amici RJN).

Further, reduced reliance on transmission also improves efficiency of the energy system. Transmission lines generally lose 5% of the high voltage electricity they carry, with higher losses occurring during high load periods. Local solar produces electricity during peak demand that is used on-site and then locally, which both avoids these losses and reduces

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<sup>10</sup> Every megawatt hour of electricity produced by rooftop solar is one fewer megawatt hours of electricity needed from utility scale solar, directly reducing the need for transmission lines and capacity required by utility scale resources. The Avoided Cost Calculator does not consider the value of reducing the level of need forecasted in long-term transmission planning and the resulting number and scale of projects, which is based on the anticipated contribution of rooftop solar. These savings are considered part of the baseline and given no value; however, the forecast transmission demand and subsequent projects would have been higher were it not for the contribution of rooftop solar in the baseline load values. The Avoided Cost Calculator ignores this value and only considers savings from projects that were planned after the baseline load value was established but subsequently cancelled.

loading and associated line loss incurred in delivering energy from remote resources.<sup>11</sup>

In addition to improved efficiency, rooftop solar and battery storage improve energy system resiliency particularly in when there are blackouts and brownouts in CA during heatwaves. On August 14 in 2020, the California Independent System Operator ordered rolling blackouts during a heatwave. The output of local solar plus the use of significant recently deployed with storage capacity helped reduce demand and mitigate blackouts. Similarly in September 2022, rooftop solar customers with batteries to store their power contributed to preventing electrical blackouts.<sup>12</sup> Sophisticated modeling of outages commissioned by the California Energy Commission demonstrates that over 90% of outages occur on the distribution grid, where rooftop solar together with storage can keep community resilience centers as well as residences online.

Local, customer-sited solar also has several environmental benefits which should be accounted for in cost-benefit analyses. Among these are reduced land use impacts and emissions. Land use is preserved by siting solar within built environments or degraded lands, avoiding degrading other

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<sup>11</sup> U.S. Energy Information Administration, Frequently Asked Questions (FAQs) <https://www.eia.gov/tools/faqs/faq.php?id=105&t=3> as of Dec. 19, 2024).

<sup>12</sup> California ISO, Special Report on Batter Storage (July 7, 2024) at p. 28, available at <https://www.caiso.com/documents/2022-special-report-on-battery-storage-jul-7-2023.pdf> (as of Dec. 19, 2024.)

lands and ecosystems for both arrays and transmission pathways. Emissions are reduced by displacing combustion-based generation, especially in populated areas where local generating capacity is required.

This is particularly beneficial to low income and disadvantaged communities. Black, Indigenous, and People of Color communities are disproportionately impacted by PM2.5 from industrial sources, such as fossil fueled power plants. (California Air Resources Board (CARB), 2022 Scoping Plan for Achieving Carbon Neutrality (Nov. 16, 2022) at p. 168.) (Exhibit J, Amici RJN). High levels of PM2.5 particles have been associated with increased incidence and severity of asthma.<sup>13</sup> (*Id.*) Because electricity from rooftop solar flows first to the nearest user, rooftop solar and other locally-sited solar not only offsets the need for local dirty power plants, but can address the unhealthy air impacts of gas-fired power plants.<sup>14</sup>

The CPUC itself has recognized that there are multiple unaccounted for benefits of distributed energy generation. In 2017, CPUC staff introduced the need for a social cost test to capture the total societal impacts of rooftop solar. (Energy Division Proposal, Distributed Energy Resources Social Cost Effectiveness Evaluation, Social Cost Test, Greenhouse Gas

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<sup>13</sup> *Id.*

<sup>14</sup> Mapping based on the state's cumulative impact screening tool, CalEnviroScreen 3.0, shows that communities with the most 10 megawatt or larger gas power plants are sited in the most overburdened in the state. Regenerate California, Gas Plants in California, <https://regeneratecalifornia.org/gas-plants/> (as of Dec. 12, 2024).

Adder and Greenhouse Gas Co-Benefits, (Jan 12, 2017) at p. 2.) (Exhibit K, Amici RJN). This was in part due to the Legislature adopting AB 197 (Garcia) in 2016 which required the California Air Resources Boards to consider social costs in the Scoping Plan, the state's roadmap for achieving the state's greenhouse gas reduction targets and climate goals. (Assembly Bill 197, Stats. 2016, Ch. 250, [https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201520160AB197](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB197) as of Dec. 9, 2024) (Exhibit L, Amici RJN). The CPUC issued a decision creating a framework for including several societal costs and benefits in cost-effectiveness proceedings for rooftop solar which identified values for air quality benefits, climate benefits, and appropriate discount rates to be used. (D.19-05-019, Decision Adopting Cost Effectiveness for All Distributed Energy Generating Sources (May 21, 2019) pp. at 10-12.) (Exhibit M, Amici RJN).

However, the CPUC failed to use the 2019 framework in the Net Metering 3.0 Proceeding. Instead, it relied solely on the Avoided Cost Calculator to determine cost effectiveness. A societal cost test which had been subject to workshops and public comments was available for use and would have provided a fuller picture of the benefits costs and benefits of rooftop solar as required by law.

By relying solely on the Avoided Cost Calculator to determine the cost-effectiveness of NEM, the Public Utilities Commission did not proceed in a manner required by law because it omitted consideration of multiple benefits and cost savings, such as avoided land use, reduced transmission,

health benefits, increased resilience, GHG reduction schedules, and other societal benefits from the transition to local distributed renewable energy production.

#### **4. The CPUC's Purported Concern About Inequitable Cost-Shift is Spurious.**

The CPUC's main cost shift argument assumes that there are fixed costs associated with the electric grid and these costs are recovered through rates. If fewer people are buying electricity because they own rooftop solar then the fixed costs are divided among fewer customers, so each one must pay a slightly larger portion of the total bill. The CPUC's argument is that this will fall most heavily on disadvantaged customers who are not able to purchase rooftop solar.

However, there are several flaws with this argument. Many of the CPUC's "fixed costs" are not actually fixed but are proportionate to use. This is especially true with regards to avoiding new infrastructure costs required to meet increasing peak loads. As discussed above, installing rooftop solar reduces demand (or sales) from the utility grid. This in turn leads to a reduced need for new or upgraded infrastructure which eliminate those costs.<sup>15</sup>

Rather than identifying this as a benefit, the PUC's formula counts any reduced energy use as a loss of revenue and then recalculate rates as if future costs did not change but as if rates had to recoup these "fixed" costs through a lower volume of sales. It is treated as cost to the utility rather than a benefit to the public.

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<sup>15</sup> See *supra*, Part II.B.3.

The CPUC does not actually have a forecast for the volume of sales to fall; on the contrary, the forecast is for massive growth in both load and sales -- growth that is driving significant costs in new infrastructure. (California Energy Commission, 2023 IEPR Demand Forecast, Electricity Rate Forecast (October 26, 2023) at pp. 7-9.) (Exhibit N, Amici RJN). The benefits of rooftop solar in reducing transmission and distribution costs for all ratepayers (as described above) represent a substantial benefit to ratepayers without solar that is not accounted for in the discussion of costs and benefits.

In reality, the greatest cost shifts are from ratepayers to the IOUs. Increasingly, ratepayers are forced to pay for the reduced sales for the utility. Nothing in Public Utilities Code section 2827.1 requires the CPUC to consider sales loss to the utility in setting the NEM. Rather, the Legislature's purpose in authorizing the CPUC to create a NEM tariff was to encourage private development of renewable energy. The CPUC did not proceed in a manner required by law when it disincentivized rooftop solar.

#### **5. The CPUC devalues rooftop solar's contribution to achieving the State's Climate Change Goals.**

The CPUC's approach, which focuses on the costs and benefits to the IOUs, runs afoul of California's approach to climate policy. Pursuant to AB 32, the California Air Resources Board ("CARB") is responsible for outlining the State's blueprint for achieving its climate targets. (Health & Saf. Code section 38951,) CARB adopted the latest iteration of the Scoping Plan in 2022. CARB described the State's

approach as an “all of government” necessitating “whole of society” changes to achieve our climate goals. (CARB, *supra*, at 25.) (Exhibit J, Amici RJN). CARB also emphasized prioritizing equity which involves reducing pollution disparities experienced by historically marginalized and underserved groups as well as eliminating barriers that “prevent frontline communities from accessing benefits” of climate policy. (*Id.* at 27.)

CARB has identified decarbonizing the energy sector as a key part of achieving the state’s climate goals. (*Id.* at 199.) SB 100 increased the Renewable Portfolio Standard to require 60% renewable energy by 2030 and for California to provide 100% of its retail sales of electricity from 100% renewable and zero-carbon sources by 2045. (*Id.*) CARB also cites the CPUC’s High-DER Proceeding which is looking at how to integrate millions of DERs (like rooftop solar) into the grid to “maximize societal and ratepayer benefits.” (*Id.* at 200-201.) Specifically, CARB estimates that the state needs to add 29,208 MW of rooftop solar by 2045 to meet its climate goals. (*Id.* at 202 fn. 369.) Currently rooftop solar or “customer solar” has added 8GW. (*Id.* at 195.) The CPUC’s net-metering 3.0 policy reduces the credits for installing solar power by 75%. This has led to a slowdown in growth at a time when state policy is geared to increasing deployment of renewable energy and distributed solar installations had been adding total capacity over the past half decade at a rate equal to that of all utility scale projects combined.

This is particularly inequitable when the CPUC slashes incentives at a time when renewable energy, rooftop solar and

building decarbonization programs are targeting low-income communities and communities of color. The CPUC's Net Metering 3.0 reduces credits for homeowners who install rooftop solar after April 15, 2023. The state is relying on a significant increase in the future rooftop solar installations to meet its climate goals. Yet, the CPUC fails to effectuate that goal in setting NEM 3.0 and fails to value rooftop solar's contribution to meet the state's climate goals in its cost-benefit analysis. As such, the CPUC does not proceed in a manner required by law.

### **III. CONCLUSION**

For the reasons stated above, the CPUC should not be granted "unique deference." The Court should review the CPUC's Decision on NEM 3.0 de novo and find that the CPUC did not proceed in a manner required by law. The CPUC's narrow focus on the costs to IOUs has eliminated a true accounting of the benefits and costs of rooftop solar. The CPUC failed to consider the benefits of rooftop solar to improved air quality, decreased transmission costs, local resilience, and achievement of the State's climate goals. The CPUC's decision also slowed growth of rooftop solar installation and did not provide specific alternatives for disadvantaged communities. In doing so, it has erased the benefits of rooftop solar to the public and failed to proceed in manner required by Public Utilities Code sections 2827 and 2827.1.

Dated: December 19, 2024

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## **CERTIFICATION OF COMPLIANCE**

(California Rules of Court, rule 8.204(c)(1))

I hereby certify, pursuant to rule 8.204(c)(1) of California Rules of Court, the enclosed brief of amicus curiae Local Clean Energy Alliance contains 6,749 words, not including cover sheet, table of contents and table of authorities, signature block, and this certificate as counted by Microsoft Word, the computer program used to prepare this brief.

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Campaign, Project Green  
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**PROOF OF SERVICE**

**Case No. S283614**

***Center for Biological Diversity et al. v. Public Utilities  
Commission of the State of California et al.  
In the Supreme Court of California***

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of San Francisco, State of California. My business address is 536 Mission Street, San Francisco, California 94105.

On December 19, 2024, I served true copies of the following document(s):

- 1. APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF PETITIONERS; PROPOSED BRIEF OF AMICUS CURIAE LOCAL CLEAN ENERGY ALLIANCE OF THE BAY AREA**
  
- 2. REQUEST FOR JUDICIAL NOTICE; DECLARATION OF CAROLINE FARRELL**

on the parties in this action as follows:

**BY ELECTRONIC SERVICE:** I served the document(s) on the person listed in the Service List by submitting an electronic version of the document(s) to TrueFiling, through the user interface at [www.truefiling.com](http://www.truefiling.com).

**BY MAIL:** I placed the documents in a sealed envelope for US mail delivery. I am readily familiar with this business practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on December 19, 2024 at San Francisco, California 94105.

/s/ Fe Gonzalez

\_\_\_\_\_  
Fe Gonzalez

**SERVICE LIST**

**Case No. S283614**

***Center for Biological Diversity et al. v. Public Utilities  
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