

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE
STATE OF CALIFORNIA**



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

Rulemaking No. 20-08-020
(Filed August 27, 2020)

**COMMENTS OF EAST BAY COMMUNITY ENERGY
AND SAN DIEGO COMMUNITY POWER
ON THE PROPOSED DECISION REVISING
NET ENERGY METERING TARIFF AND SUBTARIFFS**

Laura Fernandez
Director of Regulatory and Legislative
Affairs
San Diego Community Power
815 E Street, Suite 12716
San Diego, CA 92112
lfernandez@sdcommunitypower.org
Telephone: 619-657-0406

Melissa Brandt
Vice President of Public Policy and
Deputy General Counsel
East Bay Community Energy
1999 Harrison Street, Suite 800
Oakland, CA 94612
mbrandt@ebce.org
Telephone: 510-570-5110

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Pursuant to Rule 14.3(a) of the California Public Utilities Commission (“Commission”) Rules of Practice and Procedure, East Bay Community Energy and San Diego Community Power (together, “Joint CCAs”) respectfully submit these comments on the December 13, 2021 *Decision Revising Net Energy Metering Tariff and Subtariffs* (“Proposed Decision” or “PD”). The Joint CCAs appreciate the opportunity to file these comments addressing factual, technical, and legal errors with the PD.

I. Introduction

The Joint CCAs recognize the difficult task before the Commission balancing competing statutory objectives. The challenge before the Commission is to simultaneously:

- allow customer-sited renewable distributed generation to grow sustainably,
- ensure equity, and
- ensure that grid costs and benefits from a new net energy metering (“NEM”) tariff balance out.

The sharp disagreement among parties about how to balance these three objectives

highlights the difficulty of this task.

The PD would apply a fixed charge only to customers investing in renewable distributed generation. It would also move NEM customers to a compensation mechanism based upon avoided cost and instantaneous netting.

Unfortunately, the record in this docket demonstrates that the PD's cumulative changes to the standard tariff from currently approved tariffs goes too far, too quickly. The record demonstrates that the glidepath advanced by the Sierra Club which starts at the generally applicable electrification tariff rates and advances towards a credit for exported energy based upon the Commission's Avoided Cost Calculator is the best approach for complying with the competing statutory mandates that solar distributed generation continue to grow sustainably while balancing other statutory requirements.

Further, the PD's justification for declining to assess the full range of nonbypassable charges identified by The Utility Reform Network on energy consumed from the grid is not supported by the record developed in the docket and should be reversed so that all customers consuming energy from the grid pay the same nonbypassable charges.

Finally, the Joint CCAs urge the Commission to use hourly netting instead of instantaneous netting, as data access issues present a barrier to effective implementation.

Taken together, this is the best approach for complying with the competing statutory mandates that solar distributed generation continue to grow sustainably while balancing other statutory requirements.

II. The Proposed Grid Participation Charge is Illegal Under Federal Law

The Proposed Decision seeks to impose a "fixed monthly charge based on the number of kilowatts installed in a residential customer's system" under several rationales including (1)

to ensure “equity among customers”; (2) to ensure the new tariff is “accurately based on the costs and benefits of the generator”; and (3) “to balance the multiple requirements of the tariff to develop a reasonable outcome for all ratepayers, participants, and nonparticipants alike.”¹

While the Joint CCAs understand and appreciate the difficult task in front of the Commission in balancing competing statutory commands regarding sustainable growth in customer-sited distributed energy resources, equity and balancing costs and benefits, these requirements are not the only legal requirements attendant in designing rates for customers installing customer-sited distributed generation.

Under the Public Utilities Regulatory Policy Act of 1978 (“PURPA”), rates to qualifying facilities must be nondiscriminatory.² Under federal law, the touchstone of nondiscriminatory rates is cost causation based on consistent system wide cost causation principles.³ Moreover, any differential rate that is cost justified must also “apply to the utility’s other customers with similar load or other cost-related characteristics.”⁴ Recently, the Arizona Corporation Commission stated federal nondiscrimination requirements succinctly in rejecting a “grid access charge” (“GAC”) for customers installing customer-sited generation explaining:

“Under . . . federal law, a utility may not discriminate against DG solar customers, and it must justify any difference in treatment based on accurate data and consistently applied cost-allocation principles, including that charges applied to DG customers also apply to non-DG customers with similar load characteristics. Because the record contains no such evidence that might justify treating DG solar customers differently, we reject APS’s proposal to charge solar

¹ See *Proposed Decision at pgs. 100-101.*

² 18 C.F.R. § 292.305(a)(1). See also 16 U.S.C. § 824a-3(c).

³ See *Alabama Elec. Co-op., Inc. v. F.E.R.C.*, 684 F.2d 20, 27 (D.C. Cir. 1982) (“[I]t has come to be well established that electrical rates should be based on the costs of providing service to the utility’s customers, plus a just and fair return on equity.”).

⁴ 18 C.F.R. §292.305(a)(2)).

customers on TOU-E a GAC.”⁵

None of the aforementioned rationales offered by the Proposed Decision as justifications for a grid participation charge meet the federal standards identified above.

The Proposed Decision dismisses arguments based on federal law by citing to GAC proponents’ arguments. For example, the Proposed Decision cites the argument advanced by Pacific Gas and Electric Company, San Diego Gas and Electric Company, and Southern California Edison Company (collectively, “Joint Utilities”), that customers with distributed generation avoid paying volumetric rates when self-generating that contain a variety of costs imbedded in retail rates which are then shifted to non-participating customers.⁶ Similarly, the Proposed Decision points to arguments by the Public Advocates Office and the Joint Utilities that “design flaws” in residential volumetric rates as currently established result in costs shifts and are “no longer practical”.⁷

Those arguments do not justify imposing a fixed charge solely on customers installing distributed generation. They are predicated on general observations about how California’s current rate design impacts residential rates, not on any unique characteristics of distributed generation. These two justifications merely highlight ongoing flaws in current retail rate design in that *any* customer whose usage is lower than the average usage used to set the rates for the customer class will shift costs to other customers. Thus, the problem they seek to solve is not one caused by customers with distributed generation alone, nor is the problem unique to these customers. Federal requirements speak directly to these concerns requiring that

⁵ ACC Docket No. E-01345A-19-0236, Commissioner Kennedy Proposed Amendment No. 11 (September 30, 2021) (“Amendment No. 11”); ACC Docket No. E-01345A-19-0236, Memo (October 29, 2021).

⁶ See Proposed Decision at pg. 98.

⁷ See Proposed Decision at 100.

qualifying facilities “not be singled out to lose any interclass or intraclass subsidies to which it might have been entitled had it not generated part of its electric energy needs itself.”⁸

Consequently, cost shifts generically attributable to reduced electricity usage cannot justify assessing differential charges on customers installing distributed generation.

Similarly, the Natural Resources Defense Council (“NRDC”)’s high-level observation that usage from customers with self-generation from intermittent resources results in varying increases or decreases in grid usage is insufficient.⁹ NRDC has not demonstrated that such varied usage from customers with distributed generation imposes unique costs from these customers alone versus other customers with similarly highly varied usage. Nor has NDRC proposed to impose fixed charges on non-DG customers with similar load characteristics.

The Commission has also observed that cost causation is the foundation of just and reasonable rates during the recent redesign of residential rates in R.12-06-013.¹⁰ The concerns raised by proponents of fixed charges strongly illuminate the need to revisit residential rate design to address cost shifting by the general body of low usage residential customers no matter their reason for being low usage or the general body of residential customers which exhibit highly varied usage.

⁸ See *FERC Order 69*, 45 *Fed. Reg.* 12,214 at 12,228 (Feb. 25, 1980).

⁹ See *Id.*

¹⁰ See *D.15-07-001*, issued July 3, 2015, at pg. 2 (citing *K N Energy, Inc. v. F.E.R.C.*, 968 F.2d 1295, 1300 (D.C. Cir. 1992) (“[I]t has been traditionally required that all approved rates reflect to some degree the costs actually caused by the customer who must pay them.”); *Alabama Elec. Co-op., Inc. v. F.E.R.C.*, 684 F.2d 20, 27 (D.C. Cir. 1982) (“[I]t has come to be well established that electrical rates should be based on the costs of providing service to the utility’s customers, plus a just and fair return on equity.”); *So. Cal. Edison Authorized to Increase Rates for California Intrastate Electric Services*, 75 CPUC 641 (1973) (recognizing the desirability of each group’s bearing its fair share of the cost of service, as such share is measured by the cost of service study); *In the Matter of the Application of PacifiCorp*, D.10-09-010 (2010), and observing that for this reason a cost of service study is part of each general rate case for establishing electricity rates in Footnote 3.)

There is a remedy at hand for the legal infirmity of the PD. As discussed in Section V below, Sierra Club’s proposal for requiring customers installing customer-sited distributed generation to enroll in cost-based electrification rates with modest fixed charges successfully navigates federal law requirements; the PD’s imposition of a discriminatory fixed charge on utility customers investing in customer-sited generation via a grid participation charge does not.

III. It is Reasonable to Assess Nonbypassable Charges Faced by the General Body of Ratepayers on Energy Consumed from the Grid by Customers Installing Distributed Energy Resources

The Joint CCAs believe the Commission should revisit the Proposed Decision’s determination that expanding the list of nonbypassable charges assessed on energy consumed from the grid is unsupported. At present, nonbypassable charges assessed on net energy consumption are the public purpose program charge, the nuclear decommissioning charge, the competition transition charge, and the Department of Water Resources bond charge.¹¹ Accordingly, the current net metering tariff exempts customers with customer-sited distributed generation from the following charges: the Wildfire Fund Charge, Reliability Services, New System Generation Costs, Investor-owned Utility securitization costs relating to wildfires and other undercollections, Energy Cost Recovery Account (for Pacific Gas & Electric Company) and the PUC Reimbursement Surcharge. The PD asserts that proponents of expansion “provided no evidence as to why the list of nonbypassable charges should be expanded to include these [latter] charges.”¹²

Further evidence is not necessary for the Commission to assess these charges on net

¹¹ See *Proposed Decision* at pg. 101.

¹² *Proposed Decision* at pg. 102.

consumption. Whether to assess such charges is a policy decision. It rests on the same arguments that support application of federal law to *reduce* the GAC – as a matter of fairness and equity among all customers who consume energy from the grid, customers with customer-sited distributed generation should pay the same set of nonbypassable charges as any other customer for their net consumption.

Each of these charges recovers costs the Commission has already determined are just and reasonable. There is no principled reason to exempt one group of customers who consume energy from the grid from these charges. Assessing these charges on net consumption would also be consistent with the Proposed Decision’s general effort to reduce cost shifting by placing all customers utilizing the grid on the same footing regarding the nonbypassable charges they pay.

IV. The Commission Should Adopt Hourly Netting Practices

The Proposed Decision’s determination that the new net billing tariff should require netting on an instantaneous basis is ill-advised based on the record in this proceeding. While instantaneous netting could better align import and export value with system costs,¹³ such a significant change would need to ensure sustainable growth of distributed generation and protect consumers from inaccurate estimates of savings from going solar. However, past history demonstrates delayed and inaccurate investor-owned utility implementation of new complex billing systems; it does not provide confidence that the utilities will even be able to implement instantaneous netting. Furthermore, unless and until instantaneous data is made available to other key stakeholders including solar installers and community choice

¹³ See *Proposed Decision* at pg. 107.

aggregators, implementing instantaneous netting raises consumer protection concerns and is likely to dampen the growth of solar.

While the Proposed Decision recognizes that the investor-owned utilities may not have the capability currently to share the necessary information with solar installers so they may accurately advise customers on their likely savings, it nonetheless orders instantaneous netting on the same timeframe as the implementation of other details of the new net billing tariff.¹⁴ The investor-owned utilities' statement that they either "already or will soon" have the capability to provide the necessary information should not be taken at face value.¹⁵ The essential element in moving to instantaneous netting is whether the necessary information is available within the timeframe the Proposed Decision contemplates moving to the net billing tariff. There is no record evidence that this timing challenge can be met. "Soon" may not be "soon enough" and promises are not facts on the ground. Moreover, the lead time for sales of solar equipment mean that any disconnect could seriously disrupt sales flow – an outcome which would directly harm California's vibrant installer community. Supporting this view, the California Solar and Storage Association ("CalSSA") raises practical concerns with a quick move to instantaneous netting noting the disconnect between requiring instantaneous netting and the tools solar installers are currently required to use to support consumer protection (which do not utilize instantaneous netting).¹⁶ CalSSA also notes complexities associated with PG&E's current "Share My Data Portal" that should be further assessed prior to any move to instantaneous netting.

Based on the lack of evidence in the record that necessary data is available in the

¹⁴ See *Proposed Decision* at pg. 106.

¹⁵ See *Proposed Decision* at pg. 107.

¹⁶ See *CalSSA Opening Brief* at pg. 173-174

timeframe contemplated for implementation of the new tariff and the need to reform tools the Commission requires installers to utilize to enhance consumer protection, maintaining current netting periods is appropriate. At a minimum, prior to implementing instantaneous netting two things should occur: (1) the utilities must have clearly demonstrated the ability of customers and installers to reasonably access necessary data and (2) the Commission must have reformed and tested tools it requires installers to use as part of the Commission's consumer protection rules.

V. The Record Demonstrates that Sierra Club's Glidepath Towards an Export Credit Rate Based upon Electrification Rates is a More Reasonable Approach to Adjusting Compensation for Exported Energy than the Proposed Decision's Approach

Compounding the concerns expressed above, the Proposed Decision moves to a net billing framework which bases the credit for exported energy on avoided costs as identified in the Commission's Avoided Cost Calculator, rejecting recommendations to continuing basing the export credit on retail rates.¹⁷ The Proposed Decision finds that doing so "brings the cost of the successor tariff for utilities closer to its value" which advances guiding principles related to equity and maximizing the value of customer-sited distributed generation to all customers and the electrical system.¹⁸ In an effort to balance "all requirements and principles", the Proposed Decision then sets "the export compensation rate at averaged monthly values for each hour, differentiated between weekday and weekend"¹⁹ with differentiation by climate zone.²⁰ Finally, the Proposed Decision fixes the export credit value

¹⁷ See *Proposed Decision* at pgs. 86-89.

¹⁸ See *Proposed Decision* at pg. 89.

¹⁹ See *Proposed Decision* at pg. 113.

²⁰ See *Proposed Decision* at pg. 115.

for “the first five years following a customer’s interconnection date” with future years’ value based on the Avoided Cost Calculator adopted each January 1st.²¹ In sum, the Proposed Decision moves to an avoided cost rate that is fixed in the short term differentiated by climate zone that will vary yearly after the first five years. The instability in the export compensation rate is hard to square with the Commission’s prior pronouncements that rates should be stable²² and that transparency is a guiding principle for the successor tariff.²³ A short term value proposition for exported energy that will adjust yearly in an opaque fashion based on a future ACC does not appear transparent. The instability in compensation for exported energy is also hard to square with the Joint CCAs’ experience procuring large-scale resources which require contracts that contain a long-term pricing mechanism as a necessary component of making a project financeable. In this regard, the use of a short-term structure of distributed generation is arguably discriminatory.

In contrast to the instability and opacity of the Proposed Decision’s export credit rate, the proposal by Sierra Club bases the export credit rate on electrification rates with modest fixed charges and a glidepath to avoided cost based on clearly defined tranches of capacity.²⁴ This appears to better meet the various requirements the Commission must balance in designing a successor tariff. As Sierra Club points out, the fixed charges contained in current and proposed electrification rates will align cost recovery with the marginal customer costs

²¹ See *Proposed Decision* at pg. 114-115.

²² See *D.15-07-001*, at pg. 28 (*Identifying Rate Design Principle No. 6 as “Rates should be stable and understandable and provide customer choice.”*)

²³ See *D.21-02-007* at pg. 20-23 (*discussing Guiding Principle no. 7 which initially identified regulatory certainty but after party comment clarified that concept to transparent, understandable and uniform, to the extent possible, across all utilities.*)

²⁴ See *Sierra Club Opening Brief* at pg. 2, 8, 22-24, 28-29 (*proposing and explaining the reasonableness of a 10 GW glidepath with a 10% reduction in export credit rate for each 1 GW of installed capacity*).

identified in the Lookback Study.²⁵ Electrification rates also are cost-based which the Joint Utilities recognize “inherently reduces cost shifting”²⁶, the high differentials in peak and off-peak rates align customer consumption and exports with GHG and system benefits²⁷, and electrification rates support adoption of other electrification technologies.²⁸ The Joint CCAs also support the Sierra Club’s observation that a glidepath to an export credit rate based on avoided costs is necessary to meet statutory requirements for sustainable growth and avoiding the sharp falloff in installations which occurred in Hawaii and Nevada when they moved too aggressively.²⁹ The Sierra Club proposal also balances the need for certainty in export compensation with a fix to the rate of export compensation for 20 years that does not escalate over time unlike net metering to provide meaningful reductions in cost shifts immediately and into the future.³⁰ A 10 gigawatt glidepath also recognizes the SB 100 Joint Agency Report’s finding that over 28 GW of additional customer-sited solar by 2045 will be needed to meet SB 100 goals, limit land use impacts from utility-scale solar deployment, and decrease reliance on natural gas fired generation in local capacity areas.³¹ In sum, Sierra Club presents a reasonable and nuanced approach to establishing an export credit rate glidepath to avoided cost that addresses many of the shortcomings of the rate established in the Proposed Decision.

To support low-income customers in their adoption of customer-sited distributed generation, the Commission should exempt low-income customers from any fixed charge associated with the electrification rate as part of adopting the Sierra Club’s export compensation

²⁵ See *Sierra Club Opening Brief* at pg. 5.

²⁶ See *Sierra Club Opening Brief* at pg. 8.

²⁷ See *Sierra Club Opening Brief* at pg. 10-11

²⁸ See *Sierra Club Opening Brief* at pg. 11-12.

²⁹ See *Sierra Club Opening Brief* at pg. 15-16.

³⁰ See *Sierra Club Opening Brief* at pg. 21-22.

³¹ See *Sierra Club Opening Brief* at pg. 23-28.

rate proposal. Funding for the credit should be provided by all ratepayers through the Public Purpose Program charge. This change is consistent with the PD's other actions designed to promote greater adoption of customer-sited distributed generation by low-income customers.

VI. Conclusion

The Joint CCAs appreciate the opportunity to submit these comments on the Proposed Decision. As discussed herein, we request that the Commission reject the grid participation charge, modify the export credit rate to provide long-term stability consistent with Sierra Club's proposal, and make other modest changes to the PD prior to its approval.

Respectfully submitted,

/s/ Melissa Brandt

Melissa Brandt
Vice President of Public Policy and
Deputy General Counsel
East Bay Community Energy
1999 Harrison Street, Suite 800
Oakland, CA 94612
E-mail: mbrandt@ebce.org
Telephone: 510-570-5110

/s/ Laura Fernandez

Laura Fernandez
Director of Regulatory and Legislative Affairs
San Diego Community Power
815 E Street, Suite 12716
San Diego, CA 92112
E-mail: lfernandez@sdcommunitypower.org
Telephone: 619-657-0406

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Appendix A

Proposed Edits to Findings of Fact and Conclusions of Law

Proposed Edits to Findings of Fact

~~80. Basing export rates on retail rates has resulted in compensation levels 3.8 to 5.4 times higher than the benefits they provide to the electrical systems in the form of avoided costs.~~

~~81. Using avoided cost values instead of the retail rate bring the cost of the successor tariff closer to its value, which will ensure equity among customers and maximize the value of the resource to all customers and to the grid.~~

~~82. Export compensation based on Avoided Cost Calculator values sends more accurate price signals and promotes paired storage.~~

80. Basing export credit rates on retail rates contained in electrification rates best align costs with benefits while continuing to promote electrification and energy conservation.

81. Sierra Club's proposed glidepath utilizing current electrification rates that step down over time to avoided costs for exported energy represents the best approach in balancing sustainable growth with ensuring benefits and costs to all ratepayers are approximately equal.

82. Fixing a customer's export compensation rate so that the compensation rate does not increase with retail rates will ensure stability in the value to a customer investing in distributed energy resources while also minimizing increasing costs.

~~84. Using the Avoided Cost Calculator approach to assess costs and benefits will ensure a reasonable accounting of the costs and benefits of customer investment in distributed energy resources. the costs and benefits are approximately equal, as instructed by the Legislature.~~

~~87. Using Avoided Cost Calculator values to ultimately set export rates on a glidepath will ensure export compensation is based on the benefits they provide to the system and will reduce the cost shift.~~

~~104. The current design of retail rates no longer provides the ability to accurately calculate a customer's energy and grid usage, with respect to net energy metering customers.~~

~~106. The grid must always be prepared for the intermittent decrease and increase of any customer's usage.~~

~~107. Net energy metering All customers cause costs even when not directly importing consuming energy from the grid.~~

~~108. Retail rates were created before the emergence of the two-way street of imports and exports.~~

~~109. A grid participation charge has not been justified at this time. in combination with the retail rate will provide improved accuracy for considering the grid usage of net energy metering customers.~~

~~110. The addition of a grid participation charge will decrease the cost shift created by the inaccuracies related to having both imports and exports.~~

~~111. The addition of a grid participation charge will lead to just and reasonable rates for all customers.~~

~~112. The addition of a grid participation charge will ensure the successor tariff is accurately based on the generator's costs and benefits to the system as a whole and will ensure equity among customers.~~

~~114. Parties provided no evidence regarding why the list of nonbypassable charges adopted in D.16-01-044 should be expanded. Expanding the nonbypassable charges that customers with distributed generation pay for energy consumed from the grid will place these customers in the same footing as all other customers promoting equity and reducing cost shifts.~~

~~122. It is not necessary to adopt a minimum bill because we are adopting a grid benefits charge.~~

~~123. Reducing the netting interval exposes more of the customers' imports and exports to net billing.~~

~~124. Instantaneous netting is more consistent with cost-based compensation and will maximize the value of customer-sited renewable generation to all customers and to the grid. Netting periods should be hourly to align with available data.~~

~~129. A glidepath from retail rates to avoided cost based upon a ten percent reduction in retail rates contained in current electrification tariffs will provide the certainty necessary to support continued growth in customer-sited distributed generation while also addressing cost shifts. Averaging the Avoided Cost Calculator values across days in a month acknowledges the general trends in differences between hours and months and results in accurate values.~~

~~130. Averaging the Avoided Cost Calculator values Utilizing a glidepath from retail rates to avoided costs yields more accurate signals for customer generators to reduce imports from the grid and for battery storage to dispatch during hours most valuable to the grid.~~

~~131. Averaging the Avoided Cost Calculator values across days in a month does not add the false precision of potentially inaccurate forecasts of a specific hour's weather and other conditions.~~

~~132. Using cost-based electrification rates averaged monthly Avoided Cost Calculator values for export compensation ensures the tariff is based on the generator's true costs and benefits to the grid and leads to equity among all ratepayers while maximizing the value of the generation to all ratepayers and to the grid.~~

~~134. Basing the Avoided Cost Calculator values on a five-year schedule of values will enable solar providers to predict customer savings. Fixing the export compensation rate at the time of a customer's investment will minimize confusion and enable solar providers to predict customer savings while addressing cost shift concerns.~~

~~135. The certainty of a five-year lock-in rate helps to ensure that customer-sited renewable distributed generation continues to grow sustainably, enhances customer protection measures, and provides transparency to customers.~~

~~136. Using single year avoided cost values, instead of averaged costs, brings the cost of the tariff closer to its value.~~

~~137. Using single year avoided cost values aligns with requirements to ensure the tariff is based on the costs and benefits of the customer generator and ensures the benefits are approximately equal to the total costs.~~

~~153. A grid participation charge enables the Commission to create a successor tariff that ensures equity among customers and is accurately based on the costs and benefits of the generation.~~

~~154. The name "grid participation charge" sends a clear message to the customers they are paying to use the grid.~~

~~179. Basing export compensation on retail rates does not meet the objective of aligning costs and benefits of customer generation.~~

Proposed Edits to Conclusions of Law

~~22. Continuing to base e~~Export compensation on retail rates does not will comply with Public Utilities Code Section 2827.1 if Sierra Club's glidepath is utilized.

23. The Commission should base ultimate export compensation on values derived from the Avoided Cost Calculator.

26. The Commission should adopt a successor tariff that requires customers to take service on ~~an~~ existing electrification rates with highly differentiated time-of-use rate available to all customers.

27. The Commission should not adopt a successor tariff that includes a grid participation charge.

29. The Commission should adopt ~~instantaneous~~ hourly netting in the successor tariff.

31. The Commission should set export compensation rates at a discount off of current electrification rates with a stepdown of ten percent for each gigawatt of customer sited distributed generation until compensation rates equal avoided costs. monthly values for each hour, differentiated between weekday and weekend.

~~32. The Commission should adopt Avoided Cost Calculator values based on a five-year schedule of values for each hour from the most recent Avoided Cost Calculator, adopted as of January 1 of the calendar year of the new successor tariff customer's interconnection date. The Commission should develop export compensation rates based upon further process consistent with Sierra Club's proposal.~~

35. The Commission should not adopt a grid participation charge for residential net energy metering customers as part of the successor tariff.

~~41. The Commission should not apply the grid participation charge and should allow any time-of-use rate for low-income households enrolled in the successor tariff.~~