

No. A167721

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT, DIVISION THREE

CENTER FOR BIOLOGICAL DIVERSITY, INC., ET AL.,

Petitioners,

v.

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Respondent,

PACIFIC GAS AND ELECTRIC COMPANY, ET AL.,

Real Parties in Interest.

SUPPLEMENTAL OPENING BRIEF

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November 21, 2025

Document received by the CA 1st District Court of Appeal.

TABLE OF CONTENTS

	Page
Introduction.....	7
Statement of the case	10
A. Legal and factual background.....	10
1. The Commission’s approach to cost-benefit analysis.....	10
2. The net energy metering system and Section 2827.1	12
3. The successor tariff.....	14
B. Procedural history	20
Argument.....	24
I. The Court should defer under <i>Yamaha</i> to the Commission’s reasonable construction of Section 2827.1...	25
II. The successor tariff is consistent with Section 2827.1	31
A. The successor tariff is based on the “costs and benefits” of rooftop solar.....	32
B. The Commission adopted measures designed for growth of rooftop solar in disadvantaged communities	40
Conclusion	43

TABLE OF AUTHORITIES

	Page
CASES	
<i>350 Montana v. Haaland</i> (9th Cir. 2022) 50 F.4th 1254	35
<i>American Coatings Assn. v. South Coast Air Quality Management Dist.</i> (2012) 54 Cal.4th 446.....	34
<i>Center for Biological Diversity, Inc. v. Public Utilities Com.</i> (2023) 98 Cal.App.5th 20.....	<i>passim</i>
<i>Center for Biological Diversity, Inc. v. Public Utilities Com.</i> (2025) 18 Cal.5th 293.....	9, 23
<i>Center for Sustainable Economy v. Jewell</i> (D.C. Cir. 2015) 779 F.3d 588.....	35
<i>Consumer Lobby Against Monopolies v. Public Utilities Com.</i> (1979) 25 Cal.3d 891	31
<i>El Dorado Oil Works v. McColgan</i> (1950) 34 Cal.2d 731	36
<i>Greyhound Lines, Inc. v. Public Utilities Com.</i> (1968) 68 Cal.2d 406	8, 20
<i>Husquarna AB v. EPA</i> (D.C. Cir. 2001) 254 F.3d 195.....	35
<i>Nat’l Assn. for Surface Finishing v. EPA</i> (D.C. Cir. 2015) 795 F.3d 1.....	35
<i>People v. Prudholme</i> (2023) 14 Cal.5th 961.....	36

TABLE OF AUTHORITIES
(continued)

	Page
<i>People v. Sanchez</i> (2003) 105 Cal.App.4th 1240	25
<i>Presbyterian Camp & Conference Centers, Inc. v. Superior Court</i> (2021) 12 Cal.5th 493.....	36
<i>Ramirez v. Yosemite Water Co.</i> (1999) 20 Cal.4th 785.....	26
<i>Romo v. Ford Motor Co.</i> (2003) 113 Cal.App.4th 738.....	25
<i>Santa Barbara Cty. Water Agency v. All Persons & Parties</i> (1960) 53 Cal.2d 743	25
<i>Seattle Master Builders Assn v. Pacific N.w. Elec. Power</i> (9th Cir. 1986) 786 F.2d 1359.....	35
<i>Southeast Queens Concerned Neighbors, Inc. v. FAA</i> (2d Cir. 2000) 229 F.3d 387	35
<i>Yamaha Corp. of America v. State Bd. of Equalization</i> (1998) 19 Cal.4th 1.....	<i>passim</i>
<i>Zero Zone, Inc. v. U.S. Dept. of Energy</i> (7th Cir. 2016) 832 F.3d 654.....	35
 STATUTES	
California Session Laws	
Stats. 1995, ch. 369, § 1	12
Stats. 2012, ch. 609.....	27
Pub. Util. Code	
§ 454.51.....	28
§ 454.52.....	28
§ 2827.1, subd. (b)(1).....	<i>passim</i>
§ 2827.1, subd. (b)(3).....	<i>passim</i>

TABLE OF AUTHORITIES
(continued)

	Page
 REGULATIONS	
Cal. Code Regs., Title 17	
§ 95811.....	17
§ 95910-95915	17
 CONSTITUTIONAL PROVISIONS	
Cal. Const., art. XII	
§ 6.....	26
 COMMISSION DECISIONS	
D.16-01-044, Decision Adopting Successor to Net Energy Metering Tariff (Feb. 5, 2016)	14, 28
D.16-09-036, Order Instituting Rulemaking to Develop a Successor to Existing Net Energy Metering Tariffs (Sept. 22, 2016)	31
D.17-12-022, Decision Creating the Solar on Multifamily Affordable Housing Program (Dec. 18, 2017)	41
D.18-06-027, Alternate Decision Adopting Alternatives to Promote Solar Distributed Generation in Disadvantaged Communities (June 22, 2018)	<i>passim</i>
D.20-04-010, 2020 Policy Updates to the Avoided Cost Calculator (Apr. 24, 2020)	33
D.21-02-007, Decision Adopting Guiding Principles for the Development of a Successor to the Current Net Energy Metering Tariff (Feb. 11, 2021).....	31, 33
D.22-05-002, Decision Adopting Changes to the Avoided Costs Calculator (May 6, 2022).....	33, 34

Document received by the CA 1st District Court of Appeal.

TABLE OF AUTHORITIES
(continued)

	Page
D.24-07-015, Decision Adopting the Societal Cost Test (July 15, 2024)	11, 12
 COURT RULES	
Cal. Rules of Court, rule 8.516.....	23
 OTHER AUTHORITIES	
2025 Sen. Bill 695 Report: Report to the Governor and Legislature on Actions to Limit Utility Cost and Rate Increases < https://tinyurl.com/3r8m7dkh >	15, 27, 28
Cal. Pub. Util. Com., 2013 California Net Energy Metering Ratepayer Impacts Evaluation < https://tinyurl.com/u82ebrwe >	27
Cal. Pub. Util. Com., 2022 Avoided Cost Calculator Documentation < https://tinyurl.com/p6ns9kec >	17
Cal. Pub. Util. Com., 2023 California Electric and Gas Utility Costs Report < https://tinyurl.com/2u9nedh5 >.....	10
Cal. Pub. Util. Com., <i>Integrated Resource Plan and Long-Term Procurement Plan</i> < https://www.cpuc.ca.gov/irp/ >	28
Cal. Pub. Util. Com., <i>Renewables Portfolio Standard</i> < https://www.cpuc.ca.gov/rps/ >	28, 37
Cal. Pub. Util. Com., Standard Practice Manual (2001) < https://tinyurl.com/2s3h7dmd >	10, 11
Sen. Rules Comm., 3d reading analysis of AB 327 (2013-2014 Reg. Sess.) as amended Sept. 3, 2013.....	13

INTRODUCTION

In its prior opinion in this case, this Court considered petitioners’ challenge to the Commission’s adoption of a successor tariff to govern pricing for utility customers that install renewable electrical generation systems, including rooftop solar. (*Center for Biological Diversity, Inc. v. Public Utilities Com.* (2023) 98 Cal.App.5th 20 (*CBD I*)).¹ Petitioners’ principal claim was that the Commission failed to comply with the Legislature’s instruction to “base[]” the tariff “on the costs and benefits” of rooftop solar systems. (Pub. Util. Code, § 2827.1, subd. (b)(3)).² In petitioners’ view, that language required the Commission to account for “all the benefits of renewable energy” in structuring the tariff, including benefits “conferred on society generally.” (*CBD I, supra*, 98 Cal.App.5th at p. 30.)

After considering statutory text, structure, and purpose, the Court rejected petitioners’ claims. (*CBD I, supra*, 98 Cal.App.5th at pp. 30-34.) It concluded that subdivision (b)(3)’s general reference to costs and benefits “certainly does not compel the Commission to consider the costs and benefits of renewable

¹ While many of the legal authorities discussed in this brief apply to renewable energy systems generally, this brief refers primarily to rooftop solar because that is by far the most common form of renewable energy system installed by electric customers.

² Unless otherwise noted, all statutory citations are to the Public Utilities Code. Citations to “S. Ct. OBM” and “S. Ct. ABM” are to the opening brief on the merits and answer brief on the merits in the California Supreme Court, respectively. Those briefs are available online at <<https://supreme.courts.ca.gov/case-information/briefs-argued-cases/june-4-and-5-2025-oral-argument-cases>> (as of Nov. 21, 2025).

energy generally” in designing the successor tariff. (*Id.* at p. 31.) The Commission’s methodology advanced the legitimate and important “goal of equity between generating and nongenerating customers.” (*Id.* at p. 32.) As the Court recognized, the existing system for subsidizing rooftop solar resulted in a massive, growing cost shift from those without rooftop solar to those with it. (*Id.* at p. 36.) To fund the subsidy, electricity rates have grown significantly, with a disproportionate burden falling on low-income ratepayers. (*Ibid.*) Separately, this Court upheld the Commission’s application of section 2827.1, subdivision (b)(1), which required it to “include specific alternatives designed for growth among residential customers in disadvantaged communities.” (*Id.* at p. 39.)

In the course of its analysis, the Court referenced the deferential standard set forth in *Greyhound Lines, Inc. v. Public Utilities Com.* (1968) 68 Cal.2d 406, 410-411, requiring courts to defer to the Commission’s interpretation of the Public Utilities Code, so long as it bears “a reasonable relation to statutory purposes and language.” (See, e.g., *CBD I, supra*, 98 Cal.App.5th at pp. 31, 40.) It is not at all clear, however, that the particular standard enunciated in *Greyhound* had any material impact on the outcome. The Court carefully considered the statutory text and upheld the Commission’s decision as consistent with the statute. (See, e.g., *id.* at pp. 31-34.)

The California Supreme Court granted review and then reversed and remanded in a narrow decision focused exclusively on the deference standard. (*Center for Biological Diversity, Inc. v.*

Public Utilities Com. (2025) 18 Cal.5th 293 (*CBD II*.) The Court held that “the degree of deference prescribed in *Greyhound* no longer governs review” in cases like this one. (*Id.* at p. 303.) Instead, *Yamaha Corporation of America v. State Board of Equalization* (1998) 19 Cal.4th 1—which supplies the general framework courts must use when determining whether to defer to agency interpretations—governs deference in the public utilities context. (*Id.* at p. 306.) The Court did not consider the merits of petitioners’ claims, and directed this Court to apply *Yamaha* in the first instance. (*Id.* at p. 309.)

The Court should now uphold the Commission’s decision once again. The only issues that remain open for consideration by this Court on remand are those that petitioners challenged before the California Supreme Court: whether the Commission is entitled to deference and whether its adoption of the successor tariff comports with the portions of subdivisions (b)(1) and (b)(3) that petitioners raised in their arguments before the Supreme Court. All other issues previously addressed by the Court are now law of the case and not subject to revisitation.

As to deference, the Commission brought its considerable “expertise and technical knowledge” to bear in construing the Legislature’s “open-ended” objectives for the successor tariff. (*Yamaha, supra*, 19 Cal.4th at p. 12.) *Yamaha* favors deference in precisely those circumstances. (See *ibid.*) And because the Commission’s application of subdivisions (b)(1) and (b)(3) was “sensitive to—and consistent with—the objectives established by the Legislature,” there is no basis to set aside the successor tariff.

(*CBD I, supra*, 98 Cal.App.5th at p. 43.) Indeed, even setting deference under *Yamaha* aside, the Commission’s reasonable, expertise-driven decision would satisfy the statute under any standard of review.

STATEMENT OF THE CASE

Although the Court is familiar with many aspects of this case, the Commission provides the following background to inform the Court’s consideration of the limited issues that remain for decision following the Supreme Court’s remand.

A. Legal and factual background

1. The Commission’s approach to cost-benefit analysis

One of the Commission’s core responsibilities is demand-side management, meaning design and oversight of programs that allow customers to manage their energy use in response to grid conditions. (Cal. Pub. Util. Com., Standard Practice Manual (2001) pp. 2-3 <<https://tinyurl.com/2s3h7dmd>> [as of Nov. 21, 2025].) As part of those efforts, the Commission oversees the tariffs that govern the installation of customer-generated renewable energy systems, including rooftop solar. (See Cal. Pub. Util. Com., 2023 California Electric and Gas Utility Costs Report p. 41 <<https://tinyurl.com/2u9nedh5>> [as of Nov. 21, 2025].)

For decades, the Commission has evaluated the costs and benefits of its demand-side programs to ensure that they provide reasonable value in relation to their costs. The Standard Practice Manual—first issued in 1983—sets forth the Commission’s general cost-benefit methodology. (Standard Practice Manual, *supra*, at p. 1.) The manual describes four tests that vary based

on which costs and benefits are considered. For example, the “Total Resource Cost Test,” the principal test used by the Commission (APP18259), examines costs and benefits to utility customers, including those that participate in a relevant program (e.g., the costs of purchasing solar panels and related bill savings).³ (Standard Practice Manual, *supra*, at p. 18.) The “Ratepayer Impact Measure Test” determines “what happens to customer bills or rates due to changes in utility revenues and operating costs.” (*Id.* at p. 13.)

The unifying thread among those tests is that under each, the Commission considers costs and benefits to participants in the electrical system, not to society at large. For example, the Commission does not generally evaluate effects on job creation or national security. (See Standard Practice Manual, *supra*, at pp. 8, 13, 18, 23.) Consideration of such benefits can be in tension with the Commission’s core mission to secure reliable, affordable access to power. By inflating a proposed policy’s benefits, societal benefits can make a policy seem more cost-effective, thereby downplaying the significance of rate increases or other costs. (See, e.g., D.24-07-015, Decision Adopting the Societal Cost Test (July 15, 2024) pp. 4-5.)⁴ The mere fact that certain proposed policies will have broad societal benefits does not mean that a

³ All citations throughout this brief to “APP___” refer to the Appendix of Exhibits previously filed in this Court.

⁴ All Commission decisions cited in this brief are available at <<https://docs.cpuc.ca.gov/DecisionsSearchForm.aspx>>.

particular program “should be paid for by California ratepayers” through increased utility rates. (*Id.* at p. 4.)⁵

2. The net energy metering system and Section 2827.1

In 1995, the Legislature established a net energy metering (NEM) billing mechanism to encourage the growth of renewable energy. (Stats. 1995, ch. 369, § 1, pp. 1917-1919.) NEM allows customers with renewable systems—typically, rooftop solar panels—to generate electricity for their own use, and to send any excess electricity to the grid, in exchange for a credit on their electricity bill. (APP18249.) For example, on sunny days, a customer with rooftop solar can export excess electricity to the grid in exchange for credits. (See APP786.) Those credits may then be used to reduce the customer’s monthly bills for electric service from the utility, including on cloudy days and at nighttime, when panels produce little or no electricity, or at anytime the customer requires full service at a moment’s notice. (APP18250.) Over time, customers’ savings from using both their self-generated electricity and bill credits when they take service from utilities can fully offset the upfront costs of installing solar panels. (APP18252.)

Under the first NEM tariff (NEM 1.0), a customer’s bill credit for electrical energy exported to the grid was equal to the

⁵ In June 2024, the Commission finalized a new societal-effects inquiry called the “Societal Cost Test.” (D.24-07-015, *supra*, at p. 2.) That test was adopted as an “information-only” test, not the “main cost-effectiveness test.” (*Id.* at pp. 40-41.) It has limited (if any) relevance in this case because it was finalized long after the decision under review.

full retail rate that customers would otherwise pay for electric service from utilities. (APP18249-18250.) The retail rate, however, includes much more than just the value of the electric energy; it also reflects certain “fixed costs” incurred by utilities when they distribute electricity among customers and maintain and expand grid infrastructure. (APP18248.) Such “transmission and distribution costs” typically represent “one-half to two-thirds” of the retail rate. (Sen. Rules Comm., 3d reading analysis of AB 327 (2013-2014 Reg. Sess.) as amended Sept. 3, 2013, p. 6.) Because the credit provided to NEM customers vastly exceeded the value of their exported electricity, NEM’s effect was to provide a “substantial subsidy” to owners of rooftop solar systems. (*Ibid.*; see *CBD I, supra*, 98 Cal.App.5th at p. 26.) Indeed, NEM “resulted in compensation levels 3.8 to 5.4 times higher than the benefits . . . provide[d]” by those systems to the electrical system. (APP18348.)

The results of NEM were mixed. The substantial subsidy led to remarkable growth in the installation of solar panels across the State. (See APP788.) But it also produced a “significant cost shift from solar customers to customers without solar.” (APP18291; see APP18287-18292.) Because the cost of subsidizing rooftop solar reduced utilities’ available revenues to fund infrastructure maintenance and other transmission and distribution costs, utilities had to increase electricity rates to make up the difference. (APP18337.) The burden of those increased rates fell mostly on non-NEM customers— “disproportionately . . . lower-income ratepayers.” (APP18292.)

In response to concerns about this cost shift to low-income customers (see, e.g., Sen. Rules. Comm., Sept. 3, 2013, *supra*, at pp. 6-7), the Legislature enacted section 2827.1, which directs the Commission to adopt a successor to NEM. In devising the successor, the Commission must ensure that it is “based on the costs and benefits of the renewable electrical generation facility” (§ 2827.1, subd. (b)(3)), and that “customer-sited renewable [energy] continues to grow sustainably” (*id.*, subd. (b)(1)). The Commission must also enact measures “designed for [renewable energy] growth among residential customers in disadvantaged communities.” (*Ibid.*)

3. The successor tariff

Before the successor tariff was finalized, the Commission adopted an interim tariff (NEM 2.0). NEM 2.0 partially addressed concerns about NEM 1.0, by requiring rooftop-solar customers to pay certain non-bypassable charges for all electricity consumed from the grid, and a one-time fee to interconnect their generator to the utility system. (See D.16-01-044, Decision Adopting Successor to Net Energy Metering Tariff (Feb. 5, 2016) p. 113, 114; see *id.* at pp. 56-58, 60-61, 89-91 119.) But it did not alter the fundamental approach to compensating NEM customers for the energy they export to the grid.

The Commission then undertook a comprehensive review of the interim tariff structure to inform the design of the successor tariff. (APP775-925.) As part of those efforts, the Commission conducted a “Lookback Study” to examine the impacts of NEM

2.0, which included “a cost-effectiveness analysis consistent with the Commission’s Standard Practice Manual.” (APP18258.)

The Commission concluded that NEM 2.0 was neither cost-effective nor sustainable. (APP18258, 18292-18295.) The Standard Practice Manual tests (see *ante*, pp. 10-11) suggested that for residential customers, NEM 2.0 was cost-effective only for its participants, but not for ratepayers generally, and not when both the utilities’ and participants’ costs and benefits were considered together. (See APP789, 792, 18292-18293.)

Calculations at the time estimated that the cost shift would grow to \$3.4 billion per year by 2021 (see APP18288), and would more than double to \$6.9 billion per year by 2030 (see APP6512.)⁶ As one stakeholder explained, “the pool of nonparticipants will shrink” as “the number of [NEM 2.0] customers continues to grow”; “thus, without any changes to the current tariff structure, the financial burden on the shrinking pool of nonparticipants will become unsustainable.” (APP18289.) The Commission agreed with that assessment. (APP18453.)

⁶ The NEM cost shift has grown at an even faster rate than was estimated at the time of the successor tariff proceedings. In a recent report to the Legislature, the Commission estimated that the cost shift totaled \$7 billion in 2024—six years earlier than predicted. (2025 Sen. Bill 695 Report: Report to the Governor and Legislature on Actions to Limit Utility Cost and Rate Increases p. 43 <<https://tinyurl.com/3r8m7dkh>> [as of Nov. 21, 2025].) This difference is due in part to “higher wildfire-related costs” that increased retail rates for electricity and correspondingly, the compensation NEM customers receive for their power. (*Ibid.*)

The Commission also concluded that the growing cost shift was both inequitable and counterproductive for the purposes of “meet[ing] [California’s] climate and clean energy objectives.” (APP18337.) In the Commission’s view, it was fundamentally unfair to force customers without rooftop solar—customers who are disproportionately low-income individuals—to bear such a significant share of the costs of subsidizing rooftop solar panels installed by comparatively wealthy individuals. (See, e.g., APP18453, 18302.) And by contributing to “higher electricity rates,” the cost shift “discourage[d] electrification” (APP18337)—for instance, purchasing electric vehicles and appliances, which in turn help to reduce greenhouse gas (GHG) emissions.

In 2022, the Commission finalized the successor tariff, which adopts an approach to rooftop solar reimbursement called “net billing.” (APP18247.) Under the net billing system, customers with solar may still use electricity generated by their panels to meet their consumption needs and may send excess electricity to the grid to offset their bills. (See APP18321.) As a result, those customers can expect to see enough in the way of electric bill savings to allow them to pay back the upfront cost of installing the panels over the course of about nine years. (*Ibid.*) But the credits customers receive for the excess electricity they send to the grid are based on its underlying *value*, not the retail electricity rate. (See, e.g., APP18247, APP18459-18450.)

To determine the value of rooftop solar-produced electricity, the Commission turned to the Avoided Cost Calculator. (APP18348.) The Avoided Cost Calculator is a tool that

calculates the costs avoided by utilities when customers use their rooftop solar panels to meet their consumption needs. Avoided costs include, among other things, the costs of producing electricity, as well as the costs of compliance with state environmental regulations. (*Ibid.*) For instance, under the State’s cap-and-trade program, utilities must purchase allowances to emit GHGs. (See Cal. Code Regs., tit. 17, §§ 95811, 95910-95915.) Solar-produced electricity exported to the grid may reduce the need for utilities to generate GHG-producing energy and, in turn, the need to purchase allowances. (Cal. Pub. Util. Com., 2022 Avoided Cost Calculator Documentation <<https://tinyurl.com/p6ns9kec>> [as of Nov. 21, 2025].)⁷

By tying compensation for solar exports to the energy’s actual value, the successor tariff substantially *reduced*—but did not eliminate—the cost shift to customers without rooftop solar. (APP18413.) Utilities incur large fixed costs to ensure that all customers enjoy on-demand access to power from the grid at any time that they wish. (See, e.g., APP18291, 18356-18359.) For example, utilities must build and maintain power lines, invest in wildfire prevention, and provide customer service. (APP18356.) Historically, utilities have recovered these fixed costs from all customers through retail electricity rates. (See, e.g., APP18356,

⁷ The Commission initially devised the Avoided Cost Calculator as a tool for conducting cost-benefit analysis of a range of demand-side management programs. (See APP18303.) Under the successor tariff, the Calculator plays a dual role. It both assists the Commission in conducting cost-benefit analysis *and* determines the amount of the credit provided to solar customers for exported energy. (See APP18303, APP18348-18349.)

18358-18359.) But because customers with rooftop solar may continue to self-generate much of their own power under the successor tariff, they take less service from electric utilities and contribute less toward utilities' fixed costs. (APP18358-18359.) As a result, customers without rooftop solar must pay higher rates to make up the difference. (See, e.g., APP6511, 8727-8728.) This cost shift constitutes another form of subsidy to rooftop solar customers: Because solar panels only supply energy when the sun is shining, utilities must maintain infrastructure to ensure that those customers have on-demand access to power. (APP18356-18359.) But those customers' utility bill payments do not offset utilities' full costs in providing on-demand access. (See *ibid.*)

To ease the transition from NEM, the Commission adopted a "glide path" in the successor tariff. (APP18332-18333.) The glide path consists of an "adder" that will increase compensation rates for new rooftop solar customers above the value determined by the Avoided Cost Calculator. (APP18392; see APP18391-18392.) Over the course of five years—a period deemed excessive by several stakeholders, including the Natural Resources Defense Council, the Public Advocates Office, and the State's major utilities—the adder will gradually fall to zero, thereby ensuring that compensation rates ultimately reflect the value of the exported energy. (APP18332, 18392.)

To promote "growth [of renewable energy generation] among residential customers in disadvantaged communities" (§ 2827.1, subd. (b)(1)), the Commission approved a higher adder for

customers in those communities. (APP18402, 18420.) In separate proceedings, the Commission adopted several other programs designed to address that statutory objective—for example, a program that offers “up-front financial incentives towards the installation of solar generating systems on the homes of low-income homeowners.” (E.g., D.18-06-027, Alternate Decision Adopting Alternatives to Promote Solar Distributed Generation in Disadvantaged Communities (June 22, 2018) pp. 2-3.)

The Commission also conducted a cost-benefit analysis. (APP18413-18415; 18495-18501.) Applying the Total Resource Cost Test (*ante*, p. 11), the Commission concluded that the successor tariff’s ratio of benefits to costs would be approximately 0.8 to 1.0 to the extent that customers pair their solar systems with batteries. (APP18413-18414.) Batteries allow customers to store energy and use it in the late afternoon and evening, when demand for electricity is at its peak and GHG emissions from power plants are at their highest. (APP18341-18343.) By reducing stress on the grid, solar systems paired with batteries provide benefits to the electric system. (APP18342, 18491.)⁸

Finally, the Commission announced plans to reevaluate the successor tariff following a three-year implementation phase.

⁸ The cost-benefit results for the successor tariff are not directly comparable to the results for NEM 2.0 reported in the Commission’s decision. (See APP18259, 18292-18293.) The latter were calculated in 2020, when electricity prices were lower and the Commission used a different version of the Avoided Cost Calculator. (See APP18258-18259.)

(APP18444.) The evaluation is anticipated to “follow a similar process as conducted in the Lookback Study . . . with a focus on affordability, equity, and grid benefits.” (*Id.*) The Commission is currently in the process of collecting data for the evaluation.

B. Procedural history

1. Petitioners are the Center for Biological Diversity, Environmental Working Group, and The Protect Our Communities Foundation. (*Center for Biological Diversity, Inc. v. Public Utilities Com.* (2023) 98 Cal.App.5th 20, 24 (*CBD I*.) Following the Commission’s adoption of the successor tariff, petitioners sought writ review in this Court, raising a series of claims. (*Ibid.*) As relevant to these remand proceedings (see *post*, pp. 24-25), petitioners contended that the Commission violated section 2827.1, subdivision (b)(3), requiring the Commission to “base[]” the successor tariff “on the costs and benefits” of rooftop solar, by excluding certain benefits, including benefits realized by society generally, in its assessment. (*CBD I, supra*, 98 Cal.App.5th at pp. 30-31.) Petitioners also argued that the Commission failed to satisfy subdivision (b)(1)’s requirement to expand access to rooftop solar for customers in disadvantaged communities. (See *id.* at pp. 39-41.)

This Court rejected both challenges and affirmed the Commission’s decision. (*CBD I, supra*, 98 Cal.App.5th at p. 43.) The Court began by stating that it would “disturb the Commission’s interpretation only “if ‘it fails to bear a reasonable relation to statutory purpose and language.’” (*Id.* at p. 29; see *Greyhound Lines, Inc. v. Public Utilities Com.* (1968) 68 Cal.2d

406, 410.) That deference, the Court explained, respects the Commission’s “administrative expertise” and “special familiarity with satellite and regulatory issues.” (*CBD I, supra*, 98 Cal.App.5th at p. 30.) Turning to the merits, the Court rejected petitioner’s challenge under subdivision (b)(3). It reasoned that the provision merely “requires the Commission to base the successor tariff on ‘the costs and benefits of the renewable electrical generation facility.’” (*Id.* at p. 31.) But it does not require the Commission to quantify all “purported benefits conferred on society at large.” (*Id.* at p. 32; see *id.* at p. 34, fn. 6 [“[Petitioners] appear[] to . . . assum[e] that we can reverse or modify [the successor tariff] merely because we find another approach to be preferable. We cannot”].)

The Court also rejected various arguments “quibbl[ing] with” the Commission’s approach to certain specific categories of alleged benefits. (*CBD I*, 98 Cal.App.5th at p. 34.) For example, petitioners had argued that the Commission “fail[ed] to take full account of the transmission costs avoided because of exported energy.” (*Id.* at p. 33.) As the Court recognized, however, the valuation favored by petitioners “sweeps much broader than avoided transmission costs” and includes, “for example, ‘wildfire mitigation work, including enhanced inspections and vegetation management efforts.’” (*Id.* at p. 34.) The court explained that “[t]hese are the type of ordinary overhead costs that are unaffected by the export of energy from renewable systems.” (*Ibid.*) And because those costs are not “avoided because of

exported energy,” they were properly excluded from the Avoided Cost Calculator’s estimation of transmission costs. (*Id.* at p. 33.)

The Court further held that the Commission satisfied subdivision (b)(1)’s requirement to enact “specific alternatives” that are “designed for growth” of rooftop solar in disadvantaged communities. (See *CBD I, supra*, 98 Cal.App.5th at pp. 39-41.) It reasoned that customers in disadvantaged communities “are eligible under the successor tariff to receive a higher rate of compensation for energy exported to the grid.” (*Id.* at p. 39.) And it noted that the Commission had adopted several programs prior to the completion of the successor tariff to address barriers to the adoption of solar. (See *id.* at pp. 39-40; see *id.* at p. 40 [“we conclude these efforts . . . satisfy the requirements of section 2827.1, subdivision (b)(1)”].)

Petitioners also raised several other challenges to the successor tariff. For instance, petitioners contended the tariff failed to satisfy section 2827.1, subdivision (b)(4)’s requirement to “[e]nsure that the total benefits of the [successor tariff] . . . are approximately equal to the total costs,” by considering the effects of the tariff on nonparticipating ratepayers. (*CBD I*, 98 Cal.App.5th at p. 36; see *id.* at pp. 36-37.) And petitioners argued that the tariff failed to satisfy subdivision (b)(1)’s requirement to “ensure[]” that rooftop solar “continues to grow sustainably,” by making rooftop solar installations “less financially attractive.” (*Id.* at p. 37.) The Court considered and rejected all of petitioners’ remaining claims, and upheld the Commission’s decision. (*Id.* at p. 43.)

2. Petitioners then filed a petition for review in the California Supreme Court, requesting the Court’s review of three issues. (See Pet. 10-11.) They first contended that this Court erred by applying a “uniquely deferential” form of review to the Commission’s decision. (*Id.* at p. 10.) Petitioners also sought review of their claims that the successor tariff failed to satisfy section 2827.1, subdivision (b)(3), requiring the tariff to be “based on the costs and benefits” of rooftop solar, as well as subdivision (b)(1)’s requirement to “include specific alternatives designed for growth” of rooftop solar in disadvantaged communities. (*Id.* at p. 11.) Petitioners did *not* seek further review of the Court’s rejection of their claim under subdivision (b)(4) or their argument that the Commission failed to satisfy subdivision (b)(1)’s requirement that rooftop solar “continue[] to grow sustainably.”

The California Supreme Court granted review of all three issues, and then reversed and remanded in a decision that addressed only the first issue. (*Center for Biological Diversity, Inc. v. Public Utilities Com.* (2025) 18 Cal.5th 293 (*CBD II*).)⁹ The Court held that “the degree of deference prescribed in *Greyhound* no longer governs review” under cases that arise under sections 1757 or 1757.1 of the Public Utilities Code. (*Id.* at p. 303.) In the Court’s view, the Legislature abrogated *Greyhound* when it amended those provisions and made review of the Commission’s decisions “consistent with [the standard of

⁹ The Supreme Court has discretion to address only a narrow subset of the issues on which it grants review. (See Cal. Rules of Court, rule 8.516(b)(3).)

review that governs] other state agencies.” (*Id.* at p. 305.) As a result, *Yamaha Corporation of America v. State Board of Equalization* (1998) 19 Cal.4th 1, which establishes the general framework for agency deference, also applies in the public utilities context. (*Ibid.*; see *id.* at pp. 305-306.) Without discussing the merits of petitioners’ claims, the California Supreme Court remanded and directed this Court to consider in the first instance whether the tariff “should be upheld under the *Yamaha* standard.” (*Id.* at p. 309.)

ARGUMENT

The Court previously rendered judgment on at least six separate claims. While petitioners could have sought further review for each and every ruling, they instead asked the California Supreme Court to review only three issues: (1) whether the Commission’s decision is entitled to deference; (2) whether the Commission satisfied section 2827.1, subdivision (b)(3)’s requirement to “base[]” the tariff on “the costs and benefits” of rooftop solar, and (3) whether the Commission satisfied subdivision (b)(1)’s requirement to enact “specific alternatives designed for growth” of solar in disadvantaged communities. (See Pet. 10-11.) Those three questions are now the only issues properly before this Court on remand. The Court’s prior opinion is law of the case as to all remaining issues.

(See, e.g., *Santa Barbara Cty. Water Agency v. All Persons & Parties* (1960) 53 Cal.2d 743, 745.)¹⁰

As to the limited issues remaining, the Court should once again uphold the Commission’s successor tariff. While *Greyhound* is no longer governing law, the Commission is entitled to significant deference under *Yamaha*. And the difference between *Greyhound* and *Yamaha* does nothing to change the Court’s prior conclusion that the successor tariff comports with subdivisions (b)(1) and (b)(3).

I. THE COURT SHOULD DEFER UNDER YAMAHA TO THE COMMISSION’S REASONABLE CONSTRUCTION OF SECTION 2827.1

When an agency interprets a law that it administers, the resulting interpretation is entitled to “consideration and respect by the courts.” (*Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 7.) In *Yamaha*, the California Supreme Court explained that the agency’s views may often reflect “a body of experience and informed judgment to which courts . . . may properly resort for guidance.” (*Id.* at p. 14, quoting *Skidmore v. Swift & Co.* (1944) 323 U.S. 134, 140.) That expertise gives the agency an “interpretive advantage” over

¹⁰ See also *People v. Sanchez* (2003) 105 Cal.App.4th 1240, 1242-1243 & fn. 3 (after Supreme Court granted review as to one discrete issue, prior decision was law of the case as to all other issues); *Romo v. Ford Motor Co.* (2003) 113 Cal.App.4th 738, 744, fn. 1 (prior decision remained the law of the case on “all points” other than those that led the high Court to vacate and remand the prior decision).

courts in construing a statute. (*Id.* at p. 12; *see id.* at pp. 11-12.) For that reason, agency actions often warrant “considerable judicial deference.” (*Ramirez v. Yosemite Water Co.* (1999) 20 Cal.4th 785, 801.)

Yamaha established a “situational” approach for determining the weight to accord to an agency’s views, in which deference depends on several factors. (*Yamaha, supra*, 19 Cal.4th at p. 12.) Consistent with *Yamaha*’s expertise-driven focus, the most important consideration is whether the agency has “expertise and technical knowledge” relevant to the statute at issue, including “special familiarity with satellite legal and regulatory issues.” (*Id.* at p. 11.) Such expertise especially favors deference where the “legal text to be interpreted is technical, obscure, [or] open-ended,” suggesting that the Legislature may have intended for the agency to exercise its judgment in applying the law. (*Id.* at p. 12.) Courts may also consider the processes used by the agency to arrive at its interpretation. Evidence that the agency used relatively formal procedures, involving “careful consideration by senior agency officials” may further suggest that the agency’s views “are likely to be correct.” (*Id.* at pp. 12-13.)

Each of those factors suggests that the Commission’s decision is entitled to great weight. First, the Commission has undeniable “expertise and technical knowledge” relevant to section 2827.1. Our State’s Constitution even recognizes this fact, conferring on the Commission broad authority to regulate utilities, including by fixing rates and promulgating rules to govern utility service. (Cal. Const., art. XII, § 6.) The

Legislature has tasked it with administering the State’s rooftop solar program since the program was first established in 1995. (See APP18249.) The Legislature has also directed the Commission to study the economic impacts of net energy metering, and to submit periodic reports to the Governor and Legislature about the state of the program. (See, e.g., Stats. 2012, ch. 609 [directing the Commission to “determine who benefits from, and who bears the economic burden, if any, of the net energy metering program”]; Cal. Pub. Util. Com., 2013 California Net Energy Metering Ratepayer Impacts Evaluation <<https://tinyurl.com/u82ebrwe>> [as of Nov. 21, 2025]; 2025 Sen. Bill 695 Report, *supra*, pp. 40-47.) Those studies, alongside the Commission’s practical experience administering NEM, have given it tremendous insight into the technical and policy tradeoffs relevant to effective design of the successor tariff.

In addition to its particular experience administering NEM, the Commission has evaluated the costs and benefits of its demand-side energy management programs generally for decades. (*Ante*, p. 10.) It has developed and refined particular methodologies over the years to ensure that it receives accurate information for evaluating the strengths and weaknesses of competing policy proposals. (*Ante*, pp. 10-11.) And it also has special familiarity with “satellite legal and regulatory issues” that bear on the design of the tariff. (*Yamaha, supra*, 19 Cal.4th at p. 11; see *CBD I*, 98 Cal.App.5th at p. 30.) For example, the Commission engages in a comprehensive planning process to develop electricity procurement policies, which require utilities

and other retail electricity providers to secure cost-effective electricity for their customers that satisfies short- and long- term reliability and clean energy standards. (Cal. Pub. Util. Com., *Integrated Resource Plan and Long-Term Procurement Plan* <<https://www.cpuc.ca.gov/irp/>> [as of Nov. 21, 2025]; see §§ 454.51, 454.52.) The Commission also administers the State’s renewables portfolio standard, which requires retail electricity providers to procure increasing proportions of their energy from renewable sources. (See generally Cal. Pub. Util. Com., *Renewables Portfolio Standard* <<https://www.cpuc.ca.gov/rps/>> [as of Nov. 21, 2025].) Those experiences give the Commission unique perspective into the role of rooftop solar in satisfying the State’s climate and energy objectives.¹¹

After the Legislature enacted section 2827.1 in 2013, the Commission gained additional expertise by undertaking extensive study to assist with the development of the successor tariff. It recognized that the Legislature’s instructions for the successor tariff did not “exist in a policy vacuum” but implicated “settled policies and emerging energy questions,” including issues then under consideration in other administrative proceedings. (D.16-01-044, *supra*, at p. 46; see *id.* at pp. 17-18 [discussing

¹¹ The Commission also administers policies to ensure affordable access to electricity, while advancing the State’s climate and other policy objectives. In that role, the Commission submits regular reports to the Governor and Legislature with recommendations to improve rate affordability, which include updates addressing the effect of rooftop solar subsidies on electricity prices. (See, e.g., 2025 Sen. Bill 695 Report, *supra*, pp. 40-47.)

Commission’s then-pending reforms of residential electrical rates].) To allow for full consideration of all relevant policy issues, the Commission adopted an interim tariff following consultation with stakeholders, and ordered staff to analyze potential options for a successor, to be considered in further proceedings. (See *id.* at pp. 2-5, 8-10, 103-104; *ante*, p. 14.) Among those efforts, the Commission conducted a retrospective study of NEM to evaluate its cost-effectiveness. (See *ante*, pp. 14-15.) The Commission concluded from the Lookback Study that NEM was neither cost-effective nor sustainable, and that it was negatively affecting customers without solar—disproportionately low-income customers. (See, e.g., APP18292-18298.) Those evidence-based conclusions also informed the Commission’s design of the successor tariff. (See, e.g., *ante*, pp. 15-19.)

The Commission’s expertise weighs heavily in favor of deference here, because section 2827.1 is written in expansive terms. When a Legislature instructs an agency to enforce a “detailed” scheme, “discretion is as a rule correspondingly narrow[.]” (*Yamaha, supra*, 19 Cal.4th at p. 18 (Mosk, J., concurring).) But when the Legislature instead uses “open-ended” terms, that language often reflects its view that application of the statute is “entwined with issues of fact, policy, and discretion,” and that the agency should apply its institutional expertise to fill in the details. (*Id.* at p. 12 (majority).)

The provisions at issue in this case involve markedly broad language. Subdivision (b)(3) directs the Commission to “base[]” the successor tariff on the “costs and benefits” of solar. (See *CBD*

I, supra, 98 Cal.App.5th at p. 31 [observing that (b)(3)’s meaning “is not wholly clear”].) To apply that language, the Commission needed to select an appropriate cost-benefit methodology, define the relevant universe of costs and benefits to include, and decide how that inquiry should inform the structure of the successor tariff. Similarly, subdivision (b)(1), as relevant here, directs the Commission to enact “specific alternatives” that are “designed for growth” of solar “among customers in disadvantaged communities.” The Commission could not have applied that provision without exercising considerable judgment as to which measures would best promote equity in access to renewable energy.¹² Nothing in section 2827.1, moreover, provides any precise direction for how the Commission should reconcile the statute’s “multiple—and sometimes conflicting—legislative requirements and guidance.” (APP18320.) That strongly suggests the Legislature intended to allow “the Commission to decide how best to accomplish” section 2827.1’s competing objectives. (*CBD I, supra*, 98 Cal.App.5th at p. 37.)

Finally, the Commission arrived at its decision using the types of procedures that “enhance the accuracy and reliability” of administrative decisionmaking. (*Yamaha, supra*, 19 Cal.4th at p. 13.) It designed the successor tariff through extensive,

¹² Indeed, Section 2827.1 does not even define “disadvantaged communities.” The Commission thus exercised the discretion provided by the Legislature to define the term to include census tracts in California with populations experiencing the most severe environmental, health, and socioeconomic burdens. See D.18-06-027, *supra*, at pp. 12-17; see also APP18420.

yearslong quasi-legislative rulemaking proceedings. (See D.16-09-036, Order Instituting Rulemaking to Develop a Successor to Existing Net Energy Metering Tariffs (Sept. 22, 2016); *Consumer Lobby Against Monopolies v. Public Utilities Com.* (1979) 25 Cal.3d 891, 909 [recognizing that ratesetting by the Commission is a quasi-legislative function].) In those proceedings, the Commission considered and responded to briefing from a broad range of stakeholders, including environmental and consumer protection organizations, solar companies and trade organizations; and the State’s major utilities. (See APP18254-18256.) That briefing addressed a range of issues, including the implementation of the specific requirements at issue here.¹³ The Commission further considered the parties’ proposals for the successor tariff during a 12-day evidentiary hearing. (APP18255.) The Commission then approved the final decision adopting the successor tariff, ratifying it at the highest level of the agency. (See APP18489.) The result of those proceedings is a thoroughly reasoned decision that is entitled to significant deference.

II. THE SUCCESSOR TARIFF IS CONSISTENT WITH SECTION 2827.1

In light of the deference due to the Commission under *Yamaha*, petitioners cannot show that the successor tariff

¹³ See, e.g., D.21-02-007, Decision Adopting Guiding Principles for the Development of a Successor to the Current Net Energy Metering Tariff (Feb. 11, 2021) pp. 11-13 (considering comment from the parties regarding the cost-benefit analysis for the successor tariff); APP18333-18336, 18415-18425 (considering proposals to promote equitable access to rooftop solar).

violates section 2827.1. But even if the Court were to set aside deference under *Yamaha*, petitioners' challenges under subdivisions (b)(1) and (b)(3) would still fail. The Court previously concluded that subdivision (b)(3)'s language "certainly does not compel the Commission to consider the costs and benefits of renewable energy generally" in designing the successor tariff (*CBD I, supra*, 98 Cal.App.5th at p. 31), and that the Commission therefore committed "no error" when it "restrict[ed] the calculator to economic benefits conferred on the grid by exported power." (*Id.* at p. 32.) The Court also held that the Commission satisfied subdivision (b)(1) by adopting "provisions [in] the successor tariff" and "a series of three programs" that were designed to make solar "more accessible to low-income customers." (*Id.* at p. 39.) That reasoning continues to support the successor tariff's validity today.

A. The successor tariff is based on the "costs and benefits" of rooftop solar

Subdivision (b)(3) of section 2827.1 requires the successor tariff to be based on the "costs and benefits of the renewable electrical generation facility." There are two reasonable ways of construing subdivision (b)(3), and the successor tariff comports with either. First, the Court could construe subdivision (b)(3) to require that the Commission base its design of the tariff on a cost-benefit analysis. The Commission did exactly that: in devising the tariff, the Commission employed the same cost-benefit methodology that it has relied on for decades. Second, the Court could construe subdivision (b)(3) to require that the Commission base the compensation rate for rooftop solar-

produced electricity on the costs and benefits of supplying that energy to the grid. The Commission did that as well: by basing compensation levels on the Avoided Cost Calculator, the Commission ensured that compensation would reflect the value of electricity transferred to the grid.

1. One reasonable reading of subdivision (b)(3) is that it requires the Commission to perform “an analysis of costs and benefits” for the successor tariff. (D.21-02-007, *supra*, at p. 12.)¹⁴ Under that interpretation, the Commission satisfied subdivision (b)(3) when it applied the “standard practice manual tests to determine cost-effectiveness.” (APP18303; see *ante*, p. 19.) As discussed above, those tests examine costs and benefits to different participants in the electrical system. While the Calculator takes into account many benefits that might be considered “societal” in some sense, such as “reduced air pollution and greenhouse gas emissions” from solar installations (S. Ct. OBM 60), it does so *only* insofar as those reductions lead to decreased costs for ratepayers and utilities, such as the costs of compliance with the State’s cap-and-trade program. (See, e.g., D.22-05-002, Decision Adopting Changes to the Avoided Costs Calculator (May 6, 2022) pp. 45-46; D.20-04-010, 2020 Policy Updates to the Avoided Cost Calculator (Apr. 24, 2020) p. 64.) For good reason, the Avoided Cost Calculator excludes societal

¹⁴ See, e.g., D.21-02-007, *supra*, at pp. 11-13 (responding to stakeholders’ “request [for] clarification of costs and benefits” in the successor tariff proceedings and explaining the Commission’s intent to adhere to its established cost-benefit methodologies).

benefits that do not result in those types of avoided costs. (See D.22-05-002, *supra*, at pp. 46-47; see also *ante*, p. 11.)

Petitioners have previously argued that the Commission violated subdivision (b)(3) because it did not sufficiently account for “all the acknowledged benefits” of rooftop solar, including certain benefits that are realized by society at large. (S. Ct. OBM 51, see S. Ct. OBM 51-81.) According to petitioners, “the use of the definite article in ‘the costs and benefits’ means that the clause refers to *all* costs and benefits,” including societal benefits that do not allow utilities to avoid any costs. (S. Ct. OBM 54-55, original italics.) But as this Court explained, “nothing” in subdivision (b)(3) “indisputably requires” the Commission to account for every quantifiable benefit of renewable energy in the successor tariff. (*CBD I, supra*, 98 Cal.App.5th at p. 32.) The Legislature did not mandate the use of any particular cost-benefit methodology, but instead delegated responsibility to the Commission to conduct an appropriate analysis. (See generally *American Coatings Assn. v. South Coast Air Quality Management Dist.* (2012) 54 Cal.4th 446, 461 [“a court may find that ‘the Legislature has delegated the task of interpreting or elaborating on a statute to an administrative agency,’ for example, when the Legislature ‘employs open-ended statutory language that an agency is authorized to apply . . .’”].) And the Commission reasonably decided to apply the tests it has developed and refined over the years for the purpose of evaluating the costs and benefits of its demand-side programs.

Numerous courts have refused to construe comparable statutory terms to require any “particular . . . methodology” for conducting a cost-benefit analysis. (E.g., *Seattle Master Builders Assn v. Pacific N.w. Elec. Power* (9th Cir. 1986) 786 F.2d 1359, 1370.) In *Seattle Master*, for example, the Ninth Circuit addressed a statute requiring an agency to “give priority . . . to resources which [it] determines to be cost-effective.” (*Id.* at p. 1367, quoting 16 U.S.C. § 839b, subd. (e)(1).) In response to arguments challenging the agency’s “particular method” of evaluating costs and benefits (*id.* at p. 1368), the court emphasized that the “choice of methodology is a highly technical question which falls within the [agency’s] unique expertise” (*id.* at p. 1370). The court thus held that the agency was “given the discretion under the statute to develop” an appropriate cost-benefit methodology. (*Ibid.*) There are many similar cases. (See, e.g., *Nat’l Assn. for Surface Finishing v. EPA* (D.C. Cir. 2015) 795 F.3d 1, 10 [concluding that, because “[t]he statute does not mandate a particular method of cost-benefit analysis,” “we defer to EPA’s methodology”].)¹⁵

Petitioners’ preferred approach would represent a substantial departure from the Commission’s existing practices.

¹⁵ See also, e.g., *Zero Zone, Inc. v. U.S. Dept. of Energy* (7th Cir. 2016) 832 F.3d 654, 680 fn. 28 (similar); *Center for Sustainable Economy v. Jewell* (D.C. Cir. 2015) 779 F.3d 588, 605 (similar); *Husqvarna AB v. EPA* (D.C. Cir. 2001) 254 F.3d 195, 200 (similar); *Southeast Queens Concerned Neighbors, Inc. v. FAA* (2d Cir. 2000) 229 F.3d 387, 394 (similar); cf. *350 Montana v. Haaland* (9th Cir. 2022) 50 F.4th 1254, 1271 (“prescribing a specific metric for the agency to use . . . is not our role”).

For years, the Commission has generally excluded societal benefits from its cost-benefit analyses, including because such benefits can distort the analysis by obscuring the effect of a given policy on electricity prices. (See *ante*, p. 11.) Had the Legislature wished to require the Commission to quantify “*all non-zero*” benefits (S. Ct. OBM 57, italics added), including societal benefits, it would have said so more clearly. The Legislature is presumed aware of longstanding agency practices. (See, e.g., *El Dorado Oil Works v. McColgan* (1950) 34 Cal.2d 731, 739; *Yamaha, supra*, 19 Cal.4th at pp. 21-22 (conc. opn. of Mosk, J.)) A generic reference to “costs” and “benefits” would have been “an astonishingly opaque and subtle way” to mandate a substantial departure from the Commission’s traditional approach to cost-benefit analysis. (*Presbyterian Camp & Conference Centers, Inc. v. Superior Court* (2021) 12 Cal.5th 493, 502.)

Petitioners’ interpretation of subdivision (b)(3) also has virtually no logical stopping point. If the Commission were truly required to quantify “*all costs and benefits*” (S. Ct. OBM 55, original italics), it would not be enough to merely evaluate *some* subset of societal benefits. The Commission would also need to consider benefits arising from economic development, national security, and job creation, as long as those benefits could be reliably attributed to the installation of rooftop solar panels. Petitioners provide no sensible basis to think the Legislature intended for the Commission to stray so far beyond its core role of regulating rates and overseeing the State’s electrical system. (See generally *People v. Prudholme* (2023) 14 Cal.5th 961, 976

[courts should avoid “literal interpretation[s]” with “absurd consequences the Legislature did not intend”].) Nor do petitioners provide any sensible basis to assume that the substantial subsidies for rooftop solar are critical to achieving societal benefits, when there are many other sources of clean energy currently being procured by retail electricity providers, such as wind, geothermal energy, and hydroelectricity. (See generally Cal. Pub. Util. Com., *Renewables Portfolio Standard* <<https://www.cpuc.ca.gov/rps/>> [as of Nov. 21, 2025].)

2. A second reasonable way to construe subdivision (b)(3) is that it requires the Commission to base the compensation rate for rooftop solar-produced electricity on the costs and benefits of supplying that energy to the grid. The Commission did so. Under the successor tariff, the compensation rate for rooftop solar customers’ energy exports now “reflect[s] the actual costs of the exports or the benefits [of] the exports . . . to all customers and the grid.” (APP18348.) That was not the case under the NEM tariff, which based the compensation rate for solar exports on the retail rate for electricity. (*Ibid.*; see *ante*, pp. 12-13.) The Commission concluded that using the Avoided Cost Calculator to determine the export rate would “bring[] the cost of the tariff closer to its value, which aligns with the requirements of Public Utilities Code Section 2827.1(b)(3), ensuring the tariff is based on the costs and benefits of the generator.” (APP18390.)

To the extent petitioners challenge the Commission’s revised approach to setting compensation rates, their arguments fail for much the same reasons discussed above. (*Ante*, pp. 33-37.)

Subdivision (b)(3) does not require the Commission to adopt any particular methodology for determining export compensation rates. And petitioners' suggested approach of considering "all" benefits, including societal benefits, would represent a substantial departure from any approach the Commission has taken to date. Under the NEM 1.0 and 2.0 tariffs, compensation rates were based on retail electricity prices, (see *ante*, pp. 12-13.) and not on any of the societal benefits that petitioners fault the Commission for declining to quantify. Petitioners fail to identify anything in section 2827.1's text or history to suggest the Legislature intended to mandate use of such a novel approach.

To the contrary, it is petitioners' suggested approach that cannot be reconciled with the Legislature's desire for greater equity among utility customers. As discussed above (*ante*, p. 13), NEM resulted in a substantial and growing cost shift from solar customers to "nonparticipants" (customers without solar). (*Ante*, p. 13.) As of 2023, the costs of subsidizing rooftop solar pursuant to NEM represented approximately 14-25% of nonparticipants' monthly electricity bills. (S. Ct. ABM 43.) And because of the growth of solar over the years, those costs were falling on a "shrinking pool of nonparticipants," rendering NEM "unsustainable." (APP18453.) The Commission made a finding of fact to that effect—a finding unchallenged by petitioners in this proceeding. (See *ibid.*; see also APP18292; APP18302, 18453-18454.) In light of that finding, it is not at all clear that the Commission could have adopted petitioners' preferred methodology without violating subdivision (b)(1)'s separate

statutory directive to ensure that rooftop solar “continues to grow *sustainably*.” (Italics added.)

This Court’s prior opinion recognized the ways in which the Commission’s methodology for assessing costs and benefits helped to address the Legislature’s “goal of equity between generating and nongenerating customers.” (*CBD I, supra*, 98 Cal.App.5th at p. 32.) The successor tariff ensures that customers with rooftop solar are “compensated for the economic benefit they confer on the grid—and thereby on their fellow utility customers—by supplying excess energy.” (*Ibid.*) But it reduces the substantial premium that those customers previously enjoyed under NEM, when compensation was instead based on the retail rate. (APP18348.) The successor tariff thus makes “great strides in tackling the cost shift,” (APP18469) while including sufficient incentives to encourage the adoption of solar. (See, e.g., *CBD I, supra*, 98 Cal.App.5th at p. 39.) Even if the Legislature did not mandate the precise approach that the Commission adopted, it at least gave the Commission discretion to “strike an appropriate balance.” (*Id.* at p. 43.)¹⁶

¹⁶ The California Supreme Court also granted review of petitioners’ claim that the Commission violated section 2827.1 by failing to quantify four specific categories of alleged benefits. (See S. Ct. OBM 63-68; *ante*, p. 22.) Two of those categories are “manifestly social” in nature, (*CBD I, supra*, 98 Cal.App.5th at p. 33), and as discussed above, the Commission relied on lawful reasons to exclude them. Petitioners’ remaining arguments are meritless for the reasons addressed in the Commission’s prior briefing. (See S. Ct. ABM 56-61.)

B. The Commission adopted measures designed for growth of rooftop solar in disadvantaged communities

The California Supreme Court also granted review of petitioners' claim that the Commission violated subdivision (b)(1) by failing to enact "specific alternatives designed for growth [of renewable energy systems] among residential customers in disadvantaged communities." (See S. Ct. OBM 13-14.) The Court's rejection of that claim does not appear to be affected in any way by the *Greyhound* standard, and should be reaffirmed. (See *CBD I, supra*, 98 Cal.App.5th at pp. 39-41.)

The Commission addressed subdivision (b)(1)'s requirement in several ways. The Lookback Study found that under NEM, low-income customers experienced longer payback periods than other customers. (APP18419.) In recognition of its view that "[d]isadvantaged communities should not continue to be left behind with respect to clean energy options" (APP18336), the Commission adopted an "adder" that increases export compensation for qualifying disadvantaged and low-income customers. (APP18470; see *ante*, p. 18.) As a result, those customers will be able to recover the upfront costs of installing solar panels in approximately the same amount of time as other customers. (See APP18419.)¹⁷

¹⁷ The successor tariff also had the effect of achieving greater parity in monthly bill savings among customers from different income groups. Many low-income customers in California pay discounted electricity rates. (APP879.) Under NEM, those customers see lower monthly bill savings than customers who pay non-discounted rates, because the
(continued...)

In 2017 and 2018, the Commission also adopted several programs to promote access to renewable energy, while proceedings to finalize the successor tariff remained pending. For instance, the Solar on Multifamily Affordable Housing Program provides financial incentives for the installation of solar systems on multifamily affordable housing. (see D.17-12-022, Decision Creating the Solar on Multifamily Affordable Housing Program (Dec. 18, 2017) pp. 9-10.) The program requires participants to ensure that over half of the generating capacity of the panels is dedicated to offsetting energy consumption and reducing electric bills for residents. (*Id.* at pp. 15, 17.) The Commission also established the Disadvantaged Communities – Single-family Solar Homes program, which provides “assistance in the form of up-front financial incentives towards the installation of solar generating systems on the homes of low-income homeowners” (D.18-06-027, *supra*, at pp. 2-3; see also S. Ct. ABM 63-64 [describing two additional programs].)

In the prior appeal, petitioners “fail[ed] to demonstrate (or even try to demonstrate)” that these measures are inadequate to satisfy subdivision (b)(1). (*CBD I, supra*, 98 Cal.App.5th at p. 40.) Nor can they do so now. At most, petitioners contended that the Court could not consider the 2017- and 2018- enacted measures because, in their view, section 2827.1 required the

compensation rate is based on the retail price of electricity. (APP879, 18420.) The Commission’s decision to base compensation rates on the value of exported power, rather than its retail rate, eliminated that disparity. (*CBD I, supra*, 98 Cal.App.5th at p. 39.)

relevant programs to be adopted as “part of the 2022 tariff itself.” (S. Ct. OBM 82.) But as this Court explained, the successor tariff has a “limited” ability to address certain barriers to the adoption of rooftop solar panels, because “the benefits of the successor tariff accrue only after the system is installed.” (*CBD I, supra*, 98 Cal.App.5th at p. 40; see D.18-06-027, *supra*, at p. 11 [identifying “insufficient access to capital” as one barrier restricting access to solar].) Petitioners’ argument would also have the practical effect of penalizing the Commission for addressing subdivision (b)(1)’s requirement more quickly, instead of waiting for the completion of proceedings to finalize the successor tariff. (See *ante*, p. 19.) And in any event, the successor tariff would be consistent with subdivision (b)(1) even under petitioners’ construction, because the Commission included an adder in the tariff’s structure to ensure that customers in disadvantaged communities experience reasonable payback periods. (*Ante*, p. 18.)

Petitioners’ remaining arguments only reiterate their preference for different types of programs, or invite the Court to flyspeck the performance of the Commission’s chosen measures. (See, e.g., S. Ct. OBM 83 [arguing that the Commission should have done more to address the “lack of upfront capital and financing” experienced by disadvantaged customers].) As the Commission explained in its answer brief before the Supreme Court, those arguments are incorrect. (See S. Ct. ABM 64-65.) As this Court recognized, “the Commission’s compliance . . . must be measured by what it did rather than what it chose not to do.” (*CBD I, supra*, 98 Cal.App.5th at p. 40.) Instead of mandating

particular policies, the Legislature granted the Commission flexibility to study the relevant issues and devise programs that it considered most suitable. The Commission settled on a suite of policies designed to promote access to renewable energy in disadvantaged communities. Those policies satisfy subdivision (b)(1).

CONCLUSION

The Court should uphold the Commission's decision.

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November 21, 2025

Document received by the CA 1st District Court of Appeal.

CERTIFICATE OF COMPLIANCE

I certify that the attached Supplemental Opening Brief uses a 13-point Century Schoolbook font and contains 8,909 words.

Dated: November 21, 2025

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