

Case No. A167721

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

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

Petitioners,

v.

PUBLIC UTILITIES COMMISSION OF THE STATE OF
CALIFORNIA

Respondent,

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

Real Parties in Interest

From a Decision of the Public Utilities Commission of the State of
California, No. 22-12-056 (December 19, 2022)

**SUPPLEMENTAL BRIEF OF REAL PARTIES IN INTEREST ON
REMAND FROM THE CALIFORNIA SUPREME COURT**

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INTRODUCTION

The Supreme Court’s clarification of the level of deference that applies to California Public Utilities Commission decisions does not alter the outcome of this case. (See *Center for Biological Diversity, Inc. v. Pub. Utilities Com.* (2023) 98 Cal.App.5th 20, *remanded by* (Aug. 7, 2025) 18 Cal.5th 293 [335 Cal.Rptr.3d 264] (*CBD*.) The Commission’s net-energy-metering tariff should be upheld under *Yamaha Corp. of America v. State Board of Equalization* (1998) 19 Cal.4th 1 (*Yamaha*).

Public Utilities Code section 2827.1 requires the Commission to “target[]” the predecessor tariff’s cost shift—which had resulted in lower-income customers subsidizing higher-income customers’ rooftop solar systems—and to adopt “specific alternatives designed” to support rooftop-solar growth in disadvantaged communities. (*CBD, supra*, 98 Cal.App.5th at p. 32; Pub. Util. Code § 2827.1, subd. (b)(1).)

The Commission did what the statute required. It adopted a new tariff that compensates owners of residential solar systems for the economic “benefits they confer on ‘all customers and the electrical system,’” without “burdening ratepayers with additional costs—such as . . . purported benefits conferred on society at large[.]” (*CBD, supra*, 98 Cal.App.5th at p. 32.) The Commission also adopted alternatives to support the growth of rooftop solar in disadvantaged communities. While Petitioners argue that the statute requires the Commission to consider additional benefits of rooftop solar—such as the purported reduction in out-of-state methane leakage—the statute does not

require the Commission to consider such asserted benefits, as the Commission correctly found. Because the Commission’s decision satisfies the Legislature’s directive, it should be affirmed.

This Court should also decline to disturb its conclusions concerning the many other arguments from the original writ petition that Petitioners abandoned at the Supreme Court. To the extent these arguments are preserved, they should not be relitigated—or else should be rejected under *Yamaha*.

The Commission’s decision should be affirmed.

BACKGROUND

California has long compensated utility customers with rooftop solar (or other renewable-energy systems) for electricity that they export to the grid through the net-energy-metering (NEM) program. For decades, that program provided a generous credit to NEM customers—a credit that, as a practical matter, required mostly lower-income customers without rooftop solar to pay billions of dollars in subsidies to higher-income customers with those systems.

As the program grew, these subsidies became unsustainable. To “prevent[]” this cost shift, the Legislature passed Public Utilities Code section 2827.1. (*CBD, supra*, 98 Cal.App.5th at p. 26 [quoting Sen. Rules Com., Off. of Sen. Floor Analysis, 3d reading analysis of Assem. Bill No. 327 (2013–2014 Reg. Sess.) as amended Sept. 3, 2013, p. 4].) That statute required the Commission to adopt a new tariff that, among other things, is “based on the costs and benefits” of rooftop solar and ensures that “the total benefits” of the tariff “to all customers and

the electrical system are approximately equal to the total costs.” (§ 2827.1, subds. (b)(3), (4).)

The Commission did what the Legislature directed. Over the course of two years of administrative proceedings—encompassing multiple rounds of comments and briefing, a 12-day evidentiary hearing, and studies by outside consultants—the Commission generated a 19,000-page record. (21:App:797-APP18253–18257; see 22:App:806-APP19390.) Based on that record and its statutory mandate, the Commission adopted a successor tariff.

The successor tariff compensates solar customers for the power they export to the grid based on the Avoided Cost Calculator. The Avoided Cost Calculator measures the economic costs that a utility avoids when a customer’s solar system provides power instead of the utility. The Commission found that the “Avoided Cost Calculator values provide the true value of the electricity exported to the grid [by generating customers],” satisfying the statute’s mandate that the tariff be based on the costs and benefits of rooftop solar and that those costs and benefits be approximately equal. (21:App:797-APP18460–18461.) Even at these new rates, residential solar-system owners will receive at least \$100 per month in bill savings. (*CBD, supra*, 98 Cal.App.5th at p. 29.)

Petitioners—environmental groups that promote the use of rooftop solar—sought a writ of mandate, challenging the Commission’s new tariff. Among other things, Petitioners argued that the statute requires the Commission to account for

additional claimed benefits of rooftop solar, including economic benefits not captured by the Avoided Cost Calculator and non-economic benefits to society at large. Petitioners also raised other arguments, including that the Commission: failed to promote the growth of rooftop solar in disadvantaged communities; erred in treating reduced energy use by solar customers as a cost; improperly focused on the cost shift; failed to ensure the sustainable growth of rooftop solar; and improperly modified the tariff for nonresidential customers.

The Court rejected Petitioners' challenges in a thorough opinion. The Court acknowledged the purpose of section 2827.1: to require the Commission to address the cost shift. (*Ibid.*; *id.* at pp. 26, 35.) The Court also rejected Petitioners' arguments that the Commission had improperly interpreted the statute not to require accounting of the purported benefits Petitioners identified. The Court upheld the Commission's interpretation applying *Greyhound* deference. (*Id.* at pp. 29, 31.) The Court held that the Commission based the tariff on the "economic benefits" of rooftop solar, and the Commission's interpretation bore "a reasonable relation to statutory purposes and language." (*Id.* at p. 29.) The Court also held that substantial evidence supported the Commission's decision to disregard the specific economic benefits asserted by Petitioners. (*Id.* at pp. 33–34.) The Court rejected all of Petitioners' other arguments in many cases based on the plain text and purpose of the statute. (E.g., *id.* at p. 35.)

Petitioners sought review in the Supreme Court on three issues: (1) whether this Court applied the appropriate level of deference to the Commission’s interpretation of the statute, (2) whether the Commission failed to comply with the requirement to base the tariff on the “costs and benefits” of rooftop solar when it accounted for only economic benefits using the Avoided Cost Calculator, and (3) whether the Commission failed to “include specific alternatives designed for growth” of rooftop solar in disadvantaged communities when it adopted the successor tariff. (Petn. for Rev. at 10–11.) The petition for review did not raise any of their other challenges to the tariff.

The Supreme Court granted review and reversed, holding that this Court applied “an unduly deferential standard of review.” (*CBD, supra*, 18 Cal.5th at p. 306.) The Court held that, instead, the standard articulated in *Yamaha Corp. of America v. State Board of Equalization* (1998) 19 Cal.4th 1, should apply.

Under *Yamaha*, the Court is required to apply its “independent judgment de novo” when it interprets the statute. (*CBD, supra*, 18 Cal.5th at p. 305.) In doing so, the Court uses traditional tools of statutory construction and may consider the “agency’s interpretation” as “one among several tools available to the court,’ but the court cannot abdicate ‘a quintessential judicial duty—applying its independent judgment de novo to the merits of the legal issue before it.’” (*Ibid.* [quoting *Yamaha, supra*, 19 Cal.4th at pp. 7–8].)

The degree of deference that the court may give to an agency’s action depends on the nature of that action. A highly

deferential standard of review applies when an agency exercises “quasi-legislative” authority. (*Ibid.*) But where “the primary question is whether a state agency has acted in a manner consistent with the statute it purports to implement,” “the binding power of [the] agency’s interpretation of a statute . . . is contextual,” depending on “factors that support the merit of the interpretation.” (*Ibid.*) In some circumstances, the Court can still give an agency’s statutory interpretation “great weight.” (*Ibid.*) But the court must ultimately assess what interpretation of the statute is “correct.” (See *ibid.*)

The Supreme Court remanded for this Court to address “whether the challenged tariff should be upheld under the *Yamaha* standard.” (*Id.* at p. 309.)

ARGUMENT

Under *Yamaha*, the Commission’s decision should be upheld. The Commission properly interpreted the statute to require it to consider only the economic costs and benefits of rooftop solar to customers and the electrical system. Any deference due under *Yamaha* provides all the more reason to uphold the tariff.

Petitioners offer no other reason to overturn the tariff. Many of Petitioners’ arguments were abandoned at the Supreme Court or cannot be relitigated because they are law of the case. And many of those arguments—including those that turned on disputed factual questions—are entirely unaffected by the Supreme Court’s decision about the standard that applies to questions of law. Petitioners’ only remaining argument—that the

Commission failed to adopt alternatives designed for growth in disadvantaged communities—is meritless. The Commission had significant discretion in adopting such alternatives, and it reasonably exercised that discretion, both in the successor tariff itself and through programs adopted in connection with it.

I. The Successor Tariff Should Be Upheld

Under any standard, the Commission properly based the successor tariff on the economic costs and benefits of rooftop solar. *Yamaha* requires the Court to apply its “independent judgment” in determining whether the statute requires the Commission to account for additional costs and benefits. (*Yamaha, supra*, 19 Cal.4th at p. 8.) Applying traditional tools of statutory construction, the Commission’s decision should be upheld because it was “correct.” (See *CBD, supra*, 18 Cal.5th at p. 306.)

If there were any doubt about this conclusion, the deference due to the Commission’s interpretation under *Yamaha* would further support that same result.

A. The Tariff Adopted by the Commission Reflects the Best Reading of Section 2827.1

The Court’s exercise of its independent judgment interpreting section 2827.1 should be in accord with the Commission’s as it is the best reading of the statute. Section 2827.1 requires that the Commission consider “the costs and benefits of the renewable electrical generation facility” (§ 2827.1, subd. (b)(3)) and ensure that “the total benefits of the [tariff] to all customers and the electrical system [be] approximately equal

to the total costs” (§ 2827.1, subd. (b)(4)). The Commission’s “decision to base the price of exported energy on the marginal cost of energy to the utilities serve[d] the goal[s]” set by the Legislature and satisfied the statute as properly construed, regardless of the level of deference to the Commission’s interpretation. (See *CBD, supra*, 98 Cal.App.5th at p. 32.)

Section 2827.1 required the Commission, when setting a new tariff, to account for only economic costs and benefits to customers and the electrical grid—which the Commission did by using the Avoided Cost Calculator. The statute did not require the Commission to account for “all” benefits, whether they be the “societal costs and benefits” identified by Petitioners or other unidentified benefits for which there is no evidence in the record. (*CBD, supra*, 98 Cal.App.5th at p. 32, fn.5.) Regardless of any deference given to the Commission, that is the “correct” reading of the statute. (See *CBD, supra*, 18 Cal.5th at p. 306.) It is consistent with the statute’s text, context, and statutory purpose. (*Dyna-Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3d 1379, 1387–1388.)

First, the Commission’s focus on avoided costs is consistent with section 2827.1’s text. Although Petitioners contend that the statute requires the Commission to account for the societal benefits of renewable energy, the statute does not mention renewable energy, societal benefits, or the unique benefits of distributed generation, as this Court has already recognized. (*CBD, supra*, 98 Cal.App.5th at p. 31.) The statute simply does not say what Petitioners want it to say.

This omission is material. When the Legislature wants the Commission to consider non-economic or societal benefits—like “the environment” or other “nonenergy benefits, such as health and safety”—it says so. For example, Public Utilities Code section 701.1, subdivision (c), requires the Commission to “calculat[e] the cost-effectiveness of energy resources,” including “a value for any costs and benefits *to the environment*.” (Accord Pub. Resources Code, § 25000.1, subd. (c) [similar].) Similarly, Public Resources Code section 26227.2, subdivision (b)(3), explains that “[p]roject selection may . . . include consideration of *nonenergy benefits, such as health and safety*.” Section 2827.1 has no similar language. That omission is “notable in light of the numerous statutes that *expressly* include” such language. (*Olson v. Automobile Club of So. Cal.* (2008) 42 Cal.4th 1142, 1148; see also *Dyna-Med, supra*, 43 Cal.3d at p. 1391, fn.13.)

Petitioners argue that “the” means “all,” so the reference to “the” costs and benefits must refer to every possible cost and benefit. But there is no rule that “the” always means “all.” “[W]hen *the* is followed by a plural noun”—as it is here—“the combination can suggest either all or some, depending on the context.” (*United States v. Lopez* (10th Cir. 2025) 131 F.4th 1114, 1132; see also *Leonor v. Provident Life & Acc. Co.* (6th Cir. 2015) 790 F.3d 682, 687–91.)

Statutory context demonstrates that “the” costs and benefits refers to economic costs and benefits that accrue to customers and the grid. The statutory provision immediately adjacent to subdivision (b)(3)—subdivision (b)(4)—makes that

clear. (*People v. Partee* (2020) 8 Cal.5th 860, 868.) Subdivision (b)(4) focuses on economic “costs” and “benefits” by requiring the Commission to “[e]nsure that the total benefits” of the new tariff “to all customers and the electrical system are approximately equal to total costs.” Customers, in their capacity as customers, receive economic benefits on their bills when a utility avoids costs that would otherwise be incurred to provide power to customers with rooftop solar. The electrical system similarly benefits when it does not need to provide power to customers with rooftop solar.

Subdivision (b)(3) must be “construed in [the] context” of subdivision (b)(4) to “harmoniz[e]” the statutory scheme. (*Dyna-Med, supra*, 43 Cal.3d at p. 1387.) Subdivision (b)(3)’s reference to “costs and benefits” refers to same types of economic costs and benefits as subdivision (b)(4)—nothing broader. (*Partee, supra*, 8 Cal.5th at p. 868.)

Read together, these provisions demonstrate that the Commission was required to account for only economic costs and benefits that specifically accrue to customers and the grid, not costs and benefits to society as a whole.

Finally, this interpretation aligns with the statute’s purpose. (*Cox v. City of Oakland* (2025) 17 Cal.5th 362, 373 [explaining that the Court’s “fundamental task in interpreting” the statute is to “determine the Legislature’s intent so as to effectuate the law’s purpose”].) As this Court has already found, the Commission’s interpretation serves the statute’s purposes, including the “goal of equity between generating and nongenerating customers.” (*CBD, supra*, 98 Cal.App.5th at p. 32;

see also *id.* at p. 26.) The Utilities agree that the Commission’s interpretation of the statute aligns with the Legislature’s recognized purpose of addressing the cost shift.

Petitioners’ interpretation of section 2827.1—requiring the Commission to account for “all” purported benefits—does not effectuate that purpose. Indeed, Petitioners have acknowledged the effect of their argument: there would be *no need to change* anything, because once all Petitioners’ purported benefits are accounted for “any alleged cost shift is eliminated” entirely. (15:App:384-APP11743.) That demonstrates how irreconcilable Petitioners’ position is with the Legislature’s purpose—which *was* to address the cost shift. And although Petitioners advocate for specific benefits before this Court, their argument would go much further. If the statute were interpreted to require the Commission to account for “all” supposed benefits of rooftop solar, the Commission could be required to account for all manner of claimed benefits, such as jobs created for solar panel installers or foreign solar panel manufacturers. That would lead to the consequences the statute was enacted to avoid: a relatively small number of mostly lower-income customers bearing a disproportionate share of the costs of rooftop solar. (*CBD, supra*, 98 Cal.App.5th at p. 36.)

Subdivision (b)(1), which requires the Commission to ensure the “sustainabl[e]” growth of rooftop solar, further supports this interpretation. As the Utilities have previously explained, the legislative history demonstrates a concern with the cost shift and a desire to “see if there is a way to make sure

that NEM can be a *sustainable* program.” (Assem. Com. on Utilities and Commerce, Analysis of AB 2514 (2011-2012 Reg. Sess.) as amended Feb. 24, 2012, pp. 1–2, italics added.) The Commission similarly found that “[a]llowing the net energy metering tariff to result in growing costs shifted to non-participants is not sustainable[.]” (21:App:797-APP18454.) In other words, to promote the *sustainable* growth of rooftop solar under subdivision (b)(1), the Commission had to address the cost shift—and the Commission could best address the cost shift by considering only economic costs and benefits.

The Commission’s focus on economic costs and benefits is also consistent with the history of prior legislative enactments on this topic and the rest of AB 327, the bill that included section 2827.1. (See *Dyna-Med, supra*, 43 Cal.3d at pp. 1386–1388.) In 2012, the Legislature required the Commission to complete a study of “who bears the *economic burden*” of the net-energy-metering program. (Assem. Bill No. 2514 (2011-2012 Reg. Sess.) § 1, emphasis added.) The Legislature then followed up with AB 327. Section 2827.1 required the Commission to reform that same program and balance the costs and benefits of the program. (See Assem. Com. on Utilities and Commerce, Analysis of AB 327 (2013-2014 Reg. Sess.), as amended Sept. 6, 2013.) The only fair reading of this history is that the Legislature was focused on the “economic burden” of the net-energy-metering program. The rest of AB 327 supports that interpretation. Broadly speaking, AB 327 was a rate-reform bill, with provisions aimed at allowing the Commission to make “necessary changes for the thousands of

middle to low income families struggling to pay high energy costs.” (*Id.* at p. 4.) Section 2827.1 must be read in that context. (See *Jurcoane v. Super. Ct.* (2001) 93 Cal.App.4th 886, 893.)

For all these reasons, the Commission’s interpretation of the statute was the correct one: the statute did not require the Commission to focus on societal costs and benefits. The Commission properly considered the economic costs and benefits of renewable-energy systems to customers and the grid by using the Avoided Cost Calculator to set the compensation rate for owners of such systems—aligning that compensation rate with the value that their exported energy actually provides to the grid. (21:App:797-APP18349.) Section 2827.1 did not require more.

B. Any Deference Under *Yamaha* Supports the Same Result

The Court need not assess the precise degree of deference due to the Commission’s interpretation under *Yamaha* because the Commission’s interpretation was correct. However, the Commission’s interpretation is an additional “tool[] available to the court” when it applies its “independent judgment” to the statute. (*CBD, supra*, 18 Cal.5th at p. 305.)

Under *Yamaha*, the Court generally must consider “two broad categories of factors” that determine the weight given to the Commission’s interpretation: (1) factors “indicating that the agency has a comparative interpretive advantage,” including whether the agency “has expertise and technical knowledge” and whether the statute is “technical, obscure, complex, open-ended, or entwined with issues of fact, policy, and discretion”; and

(2) factors “indicating that the [agency’s] interpretation in question is probably correct,” including whether the interpretation was the result of procedures that “enhance . . . accuracy and reliability.” (*Yamaha, supra*, 19 Cal.4th at pp. 12–13.) The weight a court gives to the agency’s interpretation is context-specific and “fundamentally situational.” (*Id.* at p. 12.)

Both sets of factors indicate that the Commission’s interpretation should have some “persuasive” value under the circumstances presented here. (See *Alvarado v. Dart Container Corp. of Cal.* (2018) 4 Cal.5th 542, 558.)

1. The First Set of *Yamaha* Factors Supports the Commission’s Interpretation

As to the first set of *Yamaha* factors, the Commission’s interpretation can be “helpful,” especially given the Commission’s “expertise” and “special familiarity” with the statutory scheme at issue. (*Alvarado, supra*, 4 Cal.5th at pp. 557–558.) The Commission interpreted the statute to require consideration of only economic costs and benefits when it held that use of the Avoided Cost Calculator—which measures economic benefits—satisfied sections 2827.1(b)(3) and (b)(4). (21:App:797-18460.) That interpretation is certainly helpful, supporting the plain text reading of the statute.

The Commission has expertise and technical knowledge in structuring rooftop-solar rates, including quantifying costs and benefits of the NEM program; indeed, the Commission has studied the NEM program and its resulting cost shift for years, including pursuant to legislative directive. The Legislature itself

indicated that the Commission has this expertise by providing general objectives for the successor tariff, while giving the Commission the authority to “strike an appropriate balance” between them. (*CBD, supra*, 98 Cal.App.5th at p. 43.) Based on the Commission’s experience, the Commission has “an intimate knowledge of . . . the various administrative consequences arising from particular interpretations” of section 2827.1—including the consequences of an interpretation that would require it to somehow quantify “all” conceivable costs and benefits. (*Diablo Valley College Faculty Senate v. Contra Costa Community College Dist.* (2007) 148 Cal.App.4th 1023, 1035.) Moreover, the Commission “routinely” analyzes costs and benefits of different energy policies as part of its work. (*Ibid.*) The Court, by contrast, “visits [this] particular regulatory statute only infrequently [and] lacks the advantage arising out of specialization.” (*Ibid.*)

Although the phrase “costs and benefits” may have colloquial meaning and seem subject to judicial knowledge, the statute uses that phrase in a specific context in which the Commission has expertise. *Yamaha* deference can still be warranted where seemingly non-technical phrases are used in context as a term of art. For example, courts have applied deference when an air-quality agency with significant technical expertise determined whether pollution-reducing technology was “available,” (*Am. Coatings Assn. v. S. Coast Air Quality Management Dist.* (2012) 54 Cal.4th 446, 469), and where a regulation itself was not “highly technical” but was part of a

“complex regulatory system” that was “very familiar” to the agency (*Diablo Valley College Faculty Senate, supra*, 148 Cal.App.4th at p. 1035).

The Commission’s decision was also “entwined with issues of fact, policy, and discretion.” (*Yamaha, supra*, 19 Cal.4th at p. 12.) The choice as to how to quantify and measure costs and benefits inherently requires some discretion—there are myriad ways to consider and assess costs and benefits, and the breadth of potential costs and benefits must be measured against the purpose of the statute. As this Court has recognized, one key purpose of section 2827.1 was to reduce the cost shift, but the Commission was required to balance other “potentially conflicting requirements.” (*CBD, supra*, 98 Cal.App.5th at pp. 26, 38.) If the Commission had accounted for benefits the Petitioners urged them to include, it would have “effectively” required customers without rooftop solar to compensate customers with rooftop solar for these additional benefits, which “necessarily would have lessened the extent to which the successor tariff reduced the cost shift.” (*Id.* at p. 32.) The Commission is well positioned “to strike an appropriate balance among the many important—but sometimes conflicting—public policy interests” specified by the statute. (*Id.* at p. 43.)

2. The Commission’s Interpretation Was Also Correct

The Commission’s interpretation was also “likely to be correct”—indeed, it *was* correct for the reasons set forth above.

(*Yamaha, supra*, 19 Cal.4th at p. 13.) The second set of *Yamaha* factors further supports the Commission’s interpretation.

This is not a case where an agency adopted an interpretation decades after a statute was enacted: The Commission adopted the successor tariff in 2022, just a few years after section 2827.1 was passed. (*People v. Harrison* (2013) 57 Cal.4th 1211, 1225.) The agency’s interpretation also “emerged only after litigation and extensive study” and after “all competing views [had] been thoroughly aired along the way[.]” (*Spanish Speaking Citizens’ Foundation, Inc. v. Low* (2000) 85 Cal.App.4th 1179, 1236.) Such in-depth proceedings—including “notice to the public” and “opportunity for public comment”—“enhance the accuracy and reliability” of the agency’s decision. (*Yamaha, supra*, 19 Cal.4th at p. 13; see also, e.g., *Cal. Bldg. Industry Assn. v. Bay Area Air Quality Management Dist.* (2005) 62 Cal.4th 369, 390.)

Here, the Commission conducted a lengthy formal rulemaking process including a study by outside consultants and a 12-day adversarial hearing. (21:App:797-APP18254–18256.) It produced a 19,000-page record. The Commission’s process was careful, deliberate, and reasoned. These procedures “enhance[d] the accuracy and reliability” of the Commission’s decision (*Yamaha, supra*, 19 Cal.4th at p. 13).

As a result, the *Yamaha* factors support what other “tools available to the court” independently reflect: the Commission’s interpretation was correct. (*CBD, supra*, 18 Cal.5th at p. 305.)

II. Petitioners’ Other Arguments Should be Rejected

Petitioners’ remaining arguments should be rejected, some on multiple grounds. Petitioners should not have a second bite at the apple for arguments that were unaffected by the Supreme Court’s opinion. The arguments that Petitioners failed to raise in their Supreme Court petition are abandoned. Arguments not affected by the Supreme Court’s clarified standard of review—including those this Court previously rejected without any deference to the Commission—are also law of the case. Finally, to the extent Petitioners are not precluded from relitigating the arguments this Court already rejected, those arguments should be rejected under *Yamaha*.

A. Petitioners Abandoned Arguments Not Presented in their Petition for Review

As noted above, Petitioners sought review in the Supreme Court on three issues: (1) whether this Court applied the appropriate level of deference to the Commission’s interpretation of the statute, (2) whether the Commission failed to comply with the requirement to base the tariff on the “costs and benefits” of rooftop solar when it accounted for only economic benefits using the Avoided Cost Calculator, and (3) whether the Commission failed to “include specific alternatives designed for growth” of rooftop solar in disadvantaged communities when it adopted the successor tariff. (Petn. for Rev. at 10–11.) But before this Court, Petitioners raised a wider array of issues, including arguments that: (a) the Commission improperly focused on addressing the cost shift, (b) the Commission did not ensure customer-sited renewable distributed energy would continue to grow

sustainably, and (c) the tariff was based on erroneous and unsupported findings.

Petitioners abandoned these arguments at the Supreme Court, so this Court need not consider them on remand. (*Cal. Ins. Guarantee Assn. v. Workers' Comp. Appeals Bd.* (2005) 128 Cal.App.4th 569, 572, fn.3 [holding that the petitioner's failure to raise an argument in the petition to the Supreme Court was considered abandoned on remand to the Court of Appeal]; *Sargon Enterprises, Inc. v. Univ. of So. Cal.* (2013) 215 Cal.App.4th 1495, 1508 [holding that the failure to raise an issue on appeal waived the issue on remand]; see also Petn. for Rev. at 10–11.)

B. The Court Should Not Relitigate Issues Unaffected by the Supreme Court's Decision

Regardless of whether Petitioners presented any particular argument to the Supreme Court, many of their arguments are precluded under the doctrine of law of the case and stare decisis, because the Supreme Court's decision does not affect this Court's previous resolution of those arguments. Under California Rule of Court 8.1115(e), after decision on review by the Supreme Court, unless the Supreme Court orders otherwise, a published opinion is citable and has "binding" effect except to the extent it is inconsistent with the decision of the Supreme Court.¹ As a

¹ There is one case suggesting that, when the California Supreme Court grants a petition for review "without limiting the issues it would consider," the law of the case does not apply on remand. (*Crossroads Investors, L.P. v. Fed. Nat. Mortgage Assn.* (2017) 13 Cal.App.5th 757, 775.) That is not true here, where the California Supreme Court granted review on only three issues from the Court's prior opinion. Moreover, the Supreme Court had

result, any parts of the prior opinion that did not implicate the issue of deference remain binding. (Cal. Rules of Court, rule 8.1115; *Sargon Enterprises, supra*, 215 Cal.App.4th at p. 1505; cf. *People v. Garcia* (2025) 114 Cal.App.5th 139.) That includes the parts of this Court’s prior opinion that resolved purely factual questions, as well as the parts of the opinion that resolved legal questions without relying on *Greyhound* deference.

The Supreme Court’s opinion did not disturb any findings based on the evidentiary record. In particular, the Court already rejected Petitioners’ arguments as to purported resiliency benefits and an additional value for avoided transmission costs on factual grounds. (*CBD, supra*, 98 Cal.App.5th at p. 33.) With respect to resiliency benefits, the Commission found that there was no “convincing evidence” that the resiliency benefits cited by Petitioners were more than individual benefits enjoyed by customers with rooftop solar. (21:App:797-APP18313.) The Commission was not required to compensate customers with rooftop solar for the benefits they already received. (See *CBD, supra*, 98 Cal.App.5th at p. 33.) With respect to additional avoided transmission costs, the Avoided Cost Calculator includes a value for avoided transmission costs (1:App:122-APP01481), and this Court held that substantial evidence supports that value (*CBD, supra*, 98 Cal.App.5th at pp. 33–34). Similarly, the

de-published the opinion in that case—rendering it noncitable—and the case appeared to rely on precedent that was abrogated by the current version of Rule 8.1115(e). (See *id.* at p. 765; com. to rule 8.1115(e)(1).)

Supreme Court’s decision did not affect this Court’s rejection of Petitioners’ factual challenges to the NEM tariff for nonresidential customers. (*CBD, supra*, 98 Cal.App.5th at pp. 42–43.)

The Supreme Court’s decision on the deference that applies to questions of law provides no reason for the Court to revisit its decision as to these questions of fact. For the same reason, any attempt by Petitioners to revisit these factual issues would also be outside the scope of supplemental briefing, which is limited to matters “arising after” the Court’s previous decision. (Cal. Rules of Court, rule 8.200(b)(2).)

Similarly, several aspects of the prior decision did not rest on the Court’s application of the erroneous *Greyhound* standard of deference. The Court did not invoke *Greyhound*—explicitly or implicitly—in rejecting Petitioners’ arguments that (a) the Commission improperly treated reduced energy usage as a cost, (b) the Commission improperly focused on addressing the cost shift rather than considering cost-effectiveness of the system as a whole, and (c) the successor tariff did not ensure customer-sited renewable distributed generation continues to grow sustainably. (*CBD, supra*, 98 Cal.App.5th at pp. 35, 36–37, 38.)

Because no deference is necessary to affirm, and no facts have changed, there is no need for the Court to revisit these aspects of its decision on remand.

C. *Yamaha* Does Not Change the Outcome for Any Other Argument

The Court should reject Petitioners’ remaining arguments, as the Commission’s interpretation should be upheld under *Yamaha*.

1. The Court Should Reject Petitioners Arguments About the Two Specific Benefits and the Societal Cost Test

Petitioners argue that the Commission failed to account for four specific purported benefits and that it erred by declining to use the Societal Cost Test. Two of these purported benefits—resiliency benefits and reduced transmission costs—were rejected on factual grounds and should not be relitigated as discussed above. The remaining two—the purported benefit of the avoidance of methane leakage in other states and the reduced land use that purportedly accompanies distributed generation—are “manifestly social” benefits that the Commission was not required to consider for the reasons explained above. (*CBD, supra*, 98 Cal.App.5th at p. 33.) But even if the Commission were required to account for societal benefits, substantial evidence supports the Commission’s decision not to account for these specific purported benefits.

As for the purported benefits of avoided methane leakage in other states, the Avoided Cost Calculator already values in-state methane leakage. (21:App:797-APP18314.) The alternative value Petitioners proposed for out-of-state methane leakage would have resulted in double-counting, because it *also* accounted for in-state methane leakage. (10:App:351-APP08990.)

Petitioners’ proposed value also had other errors. (*Ibid.*) The Commission reasonably rejected Petitioners’ approach. (21:App:797-APP18314.)

Substantial evidence also supports the Commission’s decision not to account for avoided land-use impacts. The premise of Petitioners’ argument is that the growth of rooftop solar means that specific transmission projects can be deferred, so land that would otherwise be used for those projects is conserved. The Commission found that Petitioners did not “offer any evidence that increased net energy metering installations will directly result in decreased utility scale projects.”

(21:App:797-APP18314–18315.) In denying the petitions for rehearing, the Commission repeated that there was no record evidence supporting this argument. (D.23-06-056 at p. 14.) To the contrary, evidence established that, because the growth of rooftop solar is based on individual customer decisions to install solar systems, it is too uncertain to provide the assurance needed for utilities to forego particular transmission projects.

(9:App:321-APP07628; see also 15:App:364b-APP10989.) Instead, the decision whether to defer a project is based on “a variety of specific factors,” not just rooftop solar adoption. (8:App:297-APP06550; see also 9:App:321-APP07628–07629.) There was also evidence that rooftop solar requires “more utility-scale resources overall.” (15:App:374-APP11470–11471; CALWEA, Prepared Rebuttal Testimony of Dariush Shirmohammadi (July 16, 2021), pp. 8–9 [excerpts filed as attachment to Answer].)

Additionally, the Commission did not err in declining to use the Societal Cost Test. The Commission found that use of the test was “premature because the evaluation to determine the final details of the test has not been completed.” (21:App:797-APP18310.) The Commission could reasonably decide to not use an unfinished tool and to “revisit the issue if and when it deems the Societal Cost Test fully developed.” (*CBD, supra*, 98 Cal.App.5th at p. 34.)

In sum, the Court should not disturb its holdings on these issues. If the Court defers to the Commission’s interpretation of the statute, there was no need for the Commission to consider these benefits. And, even if the Court does not defer to the Commission’s interpretation of the statute, to the extent these are factual issues, the Commission did not err in assessing the costs and benefits of rooftop solar.

2. The Commission’s Decision Includes Alternatives Designed for Growth In Disadvantaged Communities

The Commission’s choice of “specific alternatives designed for growth among residential customers in disadvantaged communities” (§ 2827.1, subd. (b)(1)) should also be affirmed. The Court previously held that the Commission’s approach bore a “reasonable relation to statutory purposes and language”—applying *Greyhound* to uphold the Commission’s decision. (*CBD, supra*, 98 Cal.App.5th at p. 40.) Applying *Yamaha* does not alter the outcome because the Commission’s choices were reasonable and within its authority.

Under *Yamaha*, the Commission’s choice of particular “alternatives” is subject to greater deference because it involves the exercise of what *Yamaha* describes as “quasi-legislative” authority. (*Yamaha, supra*, 19 Cal.4th at pp. 10–11.) For quasi-legislative decisions, the Court must affirm if the decision “lay within the lawmaking authority delegated by the Legislature” and was “reasonably necessary to implement the purpose of the statute[.]” (*Ibid.*) Here, as this Court held previously, the statute “does not require the Commission to adopt any particular ‘specific alternatives.’” (*CBD, supra*, 98 Cal.App.5th at p. 41.) In other words, the Legislature left a “broad legislative gap,” delegating policymaking power to the Commission to adopt unspecified “alternatives” to promote growth. (*Stoetzl v. Dept. of Human Resources* (2019) 7 Cal.5th 718, 745.)

For all the reasons this Court previously recognized, the Commission’s efforts were lawful and reasonable. After a study finding that lower bill savings contributed to slower adoption in low-income communities, the Commission adopted a higher rate of compensation for those customers—ensuring they could repay installation costs in nine years. (21:App:797-APP18419; 21:App:797-APP18321.) The Commission eliminated a discount to the export compensation rate that limited those customers’ compensation under the former tariff. (21:App:797-APP18419-18420.) That satisfied the statute.

Even if the Commission were required to do more, the Commission previously established other programs to promote rooftop solar in disadvantaged communities in connection with

the tariff. When the Commission was developing NEM 2.0—the interim version of the successor NEM tariff—the Commission held extensive rulemaking proceedings regarding the “alternatives for growth” requirement, including a workshop, a staff paper, and proposals and comments from interested parties. (See D.18-06-027 at pp. 5–6.) After those proceedings, the Commission adopted three programs to satisfy the “alternatives for growth” requirement: (1) the Disadvantaged Communities-Single-family Solar Homes program, which provided no-cost solar installations to certain low-income customers, (2) the Disadvantaged Communities-Green Tariff program, which provided low-income customers with clean energy and a 20% bill discount, and (3) the Community Solar Green Tariff program, which allowed low-income customers in disadvantaged communities to benefit from community solar projects and provided a 20% bill discount. (See generally D.18-06-027.) If Petitioners took issue with these three programs, the time to raise those issues was in 2018, when they were adopted and the Commission concluded that they satisfied the statute. The Court should reject Petitioners’ late-breaking “collateral attack[]” on the Commission’s 2018 decision. (See Pub. Util. Code, § 1709 [“In all collateral actions or proceedings, the orders and decisions of the commission which have become final shall be conclusive.”]; *Anchor Lighting v. So. Cal. Edison Co.* (2006) 142 Cal.App.4th 541, 550–552.)

Even if the Court were to consider Petitioners’ newfound criticism of these programs, it should reject their arguments.

Petitioners argue that the Court cannot consider these programs because they are outside of the tariff, but that argument is unsupported. The Legislature has recognized that programs outside of the tariff can satisfy section 2827.1, subdivision (b)(1)'s requirement: It explicitly stated that the Multifamily Affordable Housing Solar Roofs Program—a program outside of the successor tariff—“may count toward the satisfaction” of section 2827.1(b)(1). (See § 2870, subd. (b)(1).)

Section 2827.1's text confirms that view. It provides that the Commission must include “specific alternatives” in the process of “developing the . . . tariff”; it does not say that those “specific alternatives” must be in the tariff itself. (§ 2827.1, subd. (b).) The Legislature has instructed the Court not to elevate form over substance. (See Civ. Code, § 3528.) Requiring the Commission to include these alternatives in the decision adopting the tariff would violate that mandate. Here, the Commission adopted the three programs as part of its development of NEM 2.0; that satisfies the statute.

“A court passing on the means employed by an agency to effectuate a statutory purpose will not substitute its judgment for that of the agency in the absence of arbitrary and capricious action.” (*Carrancho v. Cal. Air Resources Bd.* (2003) 111 Cal.App.4th 1255, 1272.) There was none here. Petitioners challenge various actions the Commission did *not* take—creating an “Equity Fund” or adopting other programs—but that is not enough to reverse. There is no statutory hook requiring the Petitioners' preferred approaches. As before, the “Commission's

compliance with section 2827.1, subdivision (b)(1) must be measured by what it did rather than by what it chose not to do”; that the Commission could have done more does not mean that it failed to satisfy the law. (*CBD, supra*, 98 Cal.App.5th at p. 40.)

CONCLUSION

For the foregoing reasons, the Utilities respectfully request that the Court affirm the Commission’s decision.

DATED: November 21, 2025 By: /s/ Henry Weissmann

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CERTIFICATE OF COMPLIANCE

In accordance with California Rules of Court, rule 8.204(c), I hereby certify that this brief contains 6,456 words as established by the word count of the computer program (Microsoft Word) used for preparation of this brief. This brief has been prepared in a proportionally spaced typeface using Microsoft Word 2016 13-point size Century Schoolbook font.

DATED: November 21, 2025 By: /s/ Henry Weissmann

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PROOF OF SERVICE

**CENTER FOR BIOLOGICAL DIVERSITY
v. PUBLIC UTILITIES COMMISSION
Case No. A167721**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of Los Angeles, State of California. My business address is 350 South Grand Avenue, 50th Floor, Los Angeles, California 90071.

On November 21, 2025, I served true copies of the following document(s) described as:

**SUPPLEMENTAL BRIEF OF REAL PARTIES IN INTEREST
ON REMAND FROM THE CALIFORNIA SUPREME COURT**

on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY ELECTRONIC SERVICE: I electronically filed the document(s) with the Clerk of the Court by using the TrueFiling system. Participants in the case are registered TrueFiling users and will be served by the TrueFiling system.

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

Executed on November 21, 2025, at Los Angeles, California.



Myrna E. Martinez

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**CENTER FOR BIOLOGICAL DIVERSITY
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