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**IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA**

FIRST APPELLATE DISTRICT, DIVISION THREE

**CENTER FOR BIOLOGICAL DIVERSITY, INC.,
ENVIRONMENTAL WORKING GROUP, AND
THE PROTECT OUR COMMUNITIES FOUNDATION,**

Petitioners,

v.

PUBLIC UTILITIES COMMISSION,

Respondent;

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

Real Parties in Interest.

CAL. P.U.C. DECISION NO. 22-12-056;
ON REMAND FROM CALIFORNIA SUPREME COURT CASE NO. S283614

PETITIONERS' SUPPLEMENTAL OPENING BRIEF

**COMPLEX APPELLATE
LITIGATION GROUP LLP**

Steven A. Hirsch (No. 171825)

steve.hirsch@calg.com

96 Jessie Street

San Francisco, CA 94105

(415) 649-6700

Counsel for Petitioner

Environmental Working Group

**THE PROTECT OUR
COMMUNITIES FOUNDATION**

Malinda R. Dickenson (No. 222564)

malinda@protectourcommunities.org

4452 Park Blvd, Suite 309

San Diego, CA 92116

(619) 693-4788

Counsel for Petitioner

The Protect Our Communities Foundation

CENTER FOR BIOLOGICAL DIVERSITY

***Roger Lin** (No. 248144)

rlin@biologicaldiversity.org

Anchun Jean Su (No. 285167)

jsu@biologicaldiversity.org

2100 Franklin Street, Suite 375

Oakland, CA 94612

(510) 844-7100

Counsel for Petitioner

Center for Biological Diversity

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INTRODUCTION

In 2013, the Legislature enacted Assembly Bill No. 327 (2013-2014 Reg. Sess.) (AB 327). In the part of that bill codified as Public Utilities Code section 2827.1, the Legislature required the Public Utilities Commission to devise a new, uncapped tariff for customer-generators that, among other things, must:

- be “based on the costs and benefits of the renewable electrical generation facility”—that is, the costs and benefits of the generation facility installed and used by the customer-generator on the customer’s own property (§ 2827.1, subd. (b)(3));¹
- “ensure[] that customer-sited renewable distributed generation continues to grow sustainably” (§ 2827.1, subd. (b)(1));
- “include specific alternatives designed for growth among residential customers in disadvantaged communities” (§ 2827.1, subd. (b)(1)); and
- ensure that *the tariff’s* “total benefits ... to all customers and the electrical system are approximately equal to [its] total costs” (§ 2827.1, subd. (b)(4)).

But in 2022, the Commission brought forth a tariff that flouted every one of these statutory requirements. The question presented here is: Must that tariff be set aside because the Commission failed to “proceed[] in the manner required by law”? (§ 1757.1, subd. (a)(2).)

¹ Statutory citations are to the Public Utilities Code unless otherwise indicated.

Much has changed since this case was last before the Court. The California Supreme Court has now confirmed that the Legislature changed the standard for judicial review of Commission decisions in 1998, requiring courts to independently interpret statutes that direct Commission actions. The Supreme Court thus settled how judicial review must be conducted and overruled prior decisions, some of which had accorded Commission decisions a “strong presumption” of validity. (*Center for Biological Diversity, Inc. v. Pub. Util. Com.* (2023) 98 Cal.App.5th 20, 29 (*CBD I*).)² Some courts believed that this presumption entailed an extraordinarily lenient judicial-review standard that stripped courts of their power to interpret statutes de novo. This Court, for example, felt that it could disturb the Commission’s statutory interpretation only if it “fail[ed] to bear a reasonable relation to statutory purposes and language.” (*Ibid.*)

Prior to the Supreme Court’s ruling in this case, the Commission, working in close collaboration with the large utility companies it regulates, felt free to take the detailed and highly specific instructions contained in section 2827.1 as a series of suggestions that it could follow, augment, modify, or ignore. Nor was consistency required. In 2016, the Commission mostly interpreted the statute as written. But by 2022, when the Commission issued the tariff challenged here, it had largely repudiated its own interpretation in favor of one that subverted

² In quotations throughout this brief, unless otherwise indicated, emphases were added while internal quotation marks, ellipses, brackets, citations, footnotes, and the like were omitted.

(or in some cases *inverted*) the statute’s stated requirements and purpose, based on theories, tests, and considerations extraneous to the statute.

Those freewheeling days are over. As the Supreme Court observed, this case involves “a quintessential judicial duty—applying its independent judgment *de novo* to the merits of the legal issue before it.” (*Center for Biological Diversity, Inc. v. Pub. Util. Com.* (2025) 18 Cal.5th 293, 305 (*CBD II*), quoting *Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 8.)

Applying its independent judgment to the meaning of the statutes at issue here, and using the rigorous judicial scrutiny required by *CBD II*, the Court will see that the Commission’s 2022 Decision Revising Net Energy Metering Tariff and Subtariffs (2022 Tariff) (21 App 18242) failed to proceed in the manner required by section 2827.1 in each of the following ways.

- **The 2022 Tariff is *not* based on “the costs and benefits” of the generation facility installed and used by the customer-generator.** As expressed in the statute itself, the primary benefit that the Legislature sought to advance in enacting section 2827.1 was to induce more generation of renewable electricity by customers on their own property for use on-site, or to be shared with neighbors, thus increasing clean generation resources without increasing use of the electric grid—an especially important benefit at times of peak electricity consumption. The Commission, however, excluded from

its consideration not just *some* of the benefits of on-site generation facilities, but the *primary benefits* that the Legislature sought to advance. The 2022 Tariff therefore is not “based on” the facility’s costs and benefits. (See Part II, *post.*)

- **The 2022 Tariff does *not* “ensure[] that customer-sited renewable distributed generation continues to grow sustainably.”** Quite the opposite, in fact. The Commission relied on a private consultant’s report (the so-called “Lookback Study”) that, in conflict with the statute, treated *customer generation as a cost* instead of as *the very purpose* that the Legislature intended to promote. In so doing, the Commission deliberately and severely constrained the growth of customer-sited generation while ensuring the continued growth of monopoly utility profits. (See Part III, *post.*)
- **The 2022 Tariff does *not* include “specific alternatives designed for growth among residential customers in disadvantaged communities.”** It just doesn’t. The Commission attempted to excuse this fatal omission by pointing to limited programs outside the 2022 Tariff, none of which meets all of the statutory requirements. (See Part IV, *post.*)

- **The 2022 Tariff does *not* ensure that its own “total benefits ... to all customers and to the electrical system are approximately equal to [its] total costs.”** This violation flowed naturally from the others: Having systematically excluded the statutory subjects (customer-sited generation, the generation facility, alternatives in disadvantaged communities) and each of their key benefits from its analysis, the Commission rendered itself incapable of determining whether the 2022 Tariff’s total benefits and costs were approximately equal. (See Part V, *post*.)

These were not mere technical deficiencies. Collectively, they thoroughly undermined the legislative purposes—set forth expressly in section 2827, subdivision (a)—of “encourag[ing] substantial private investment in renewable energy resources, stimulat[ing] in-state economic growth, reduc[ing] demand for electricity during peak consumption periods, help[ing to] stabilize California’s energy supply infrastructure, enhanc[ing] the continued diversification of California’s energy resource mix, [and] reduc[ing] interconnection and administrative costs for electricity suppliers.” (§ 2827, subd. (a).)

For all these reasons and others set forth below, the Court should set aside the 2022 Tariff.

ARGUMENT

I. *Yamaha's independent judgment de novo standard applies to statutory-interpretation questions and requires courts to start by examining the statutory language.*

To determine whether the Commission failed to proceed as section 2827.1 requires, the Court applies its independent judgment de novo to determine the meaning of the Legislature's express statutory directives to the Commission.

When independently interpreting a statute, a court's "fundamental task is to ascertain the Legislature's intent and effectuate the law's purpose, giving the statutory language its plain and commonsense meaning." (*Kaanaana v. Barrett Business Services, Inc.* (2021) 11 Cal.5th 158, 168.) The analysis starts with the words of the statute, which are the most reliable indicator of the Legislature's intent. (*People v. The North River Ins. Co.* (2025) 18 Cal.5th 1, 13.) Courts give the words of a statute their plain, usual, ordinary, and commonsense meaning. (*Ibid.*; *Brown v. City of Inglewood* (2025) 18 Cal.5th 33, 40.) Courts examine the words of a statute "in context, keeping in mind [its] nature and obvious purpose," and "must harmonize 'the various parts of a statutory enactment ... by considering the particular clause or section in the context of the statutory framework as a whole.'" (*People v. Murphy* (2001) 25 Cal.4th 136, 142.) In doing so, courts attribute significance to every word and phrase in a statute and avoid treating some words as surplusage. (*People v. Woodhead* (1987) 43 Cal.3d 1002, 1010.) Courts should

not insert limitations that the Legislature excluded from the statutory language. (*Kaanaana*, at pp. 171, 173.)

Only when the words of the statute are susceptible to more than one interpretation may courts consult extrinsic sources, such as the statute’s purpose, legislative history, public policy, and administrative interpretations. (*Brown, supra*, 18 Cal.5th at p. 40; *Microsoft Corp. v. Franchise Tax Bd.* (2006) 39 Cal.4th 750, 759-760.) Extrinsic materials “have a role in statutory interpretation only to the extent they shed a reliable light on the enacting Legislature’s understanding of otherwise ambiguous terms.” (*Martinez v. Regents of University of California* (2010) 50 Cal.4th 1277, 1293.)

The difference between the independent de novo review mandated by the California Supreme Court’s *CBD II* decision and the standard of review that this Court previously applied could not be more stark. Courts must start by examining the language used by the Legislature, not the interpretations adopted by the Commission. It “makes no sense to speak of a ‘permissible’ [agency] interpretation that is not the one the court, after applying all relevant interpretive tools, concludes is *best*. In the business of statutory interpretation, if it is not *the best*, it is *not permissible*.” (*Loper Bright Enterprises v. Raimondo* (2024) 603 U.S. 369, 400.)³ In determining the weight to give to

³ *Loper Bright* involved the federal Administrative Procedure Act, and neither the federal nor the California Administrative Procedure Act apply in this case. (§ 1701, subd. (b); Gov. Code, § 11351, subd. (a).) Nonetheless, *Loper Bright*’s articulation of how courts use basic statutory

administrative interpretations of statutory language, agencies have no “comparative interpretative advantage over the courts.” (*Kaanaana, supra*, 11 Cal.5th at pp. 178-179.)

II. The Commission failed to proceed in the manner required by Public Utilities Code section 2827.1, subdivision (b)(3), which requires that the tariff be based on the costs and benefits of the customer-generator’s renewable electrical generation facility.

The Legislature required the Commission to “ensure” that the “tariff made available to eligible customer-generators is based on the costs and benefits of the renewable electrical generation facility.” (§ 2827.1, subd. (b)(3).) As discussed below, the statutory definition of the term “eligible customer-generator” in section 2827 establishes that the “renewable electrical generation facility” identified in section 2827.1, subdivision (b)(3) refers to a customer asset used to generate renewable electricity for use on-site and locally, and which is distinct from, though connected to, the utilities’ grid. The Merriam-Webster.com dictionary definition of “based” establishes that the costs and benefits of the identified customer facilities must constitute the foundation for the tariff.⁴ Despite the unambiguous statutory text, however, the Commission did not evaluate *any* benefits of on-site generation and use by customers (§ 2827, subd. (b)(4)(A)), much less ensure

interpretation tools is instructive here for the fundamental principle that courts decide the *best* interpretation of a statute.

⁴ Merriam-Webster.com Dict. <<https://www.merriam-webster.com/dictionary/base>> [as of Nov. 21, 2025].

that the benefits of the facility described in the statute formed the basis for the tariff.

Instead, the Commission decided to base the 2022 Tariff on a so-called “Lookback Study,” which was divorced from, and indeed contrary to, the directives in section 2827.1.⁵ The result was a 2022 Tariff based on, and protective of, *the utilities’* costs and revenues⁶ instead of a tariff based on the costs and benefits to all customers and the electrical system of the facilities identified in the statute—facilities that physically generate electricity to help power California’s growing economy while preventing the need to expand the utilities’ grid as electricity consumption in the electrical system increases.

A. Subdivision (b)(3) requires that the tariff be founded upon the costs and benefits of privately funded customer assets that generate renewable electrical power for use on-site and locally, preventing increased use of the utilities’ grid.

To interpret subdivision (b)(3) of section 2827.1, the Court should consider—in context and in relation to each other—the meaning of the following terms: (1) “eligible customer-generator”;

⁵ 21 App 18476 (Conclusion of Law No. 1); accord, *CBD I, supra*, 98 Cal.App.5th at p. 27 (“The ‘foundation’ for the successor tariff was the Net-Energy Metering 2.0 Lookback Study”).

⁶ 21 App 18477 (Conclusion of Law No. 18: “The Commission should base retail export compensation rates on values derived from the Avoided Cost Calculator.”); accord, *CBD I, supra*, 98 Cal.App.5th at p. 31 (“Commission chose—through the [Avoided Cost] calculator—to value exported energy by the marginal *cost to utilities* of providing power”).

(2) “renewable electrical generation facility”; and (3) “based on.” The key statutory terms and their interrelation are addressed below.

1. “*Eligible customer-generator*”

Section 2827.1, subdivision (a) incorporates section 2827’s definitions of “eligible customer-generator” and “renewable electrical generation facility.” These key statutory terms are inextricably intertwined and must be read together.

The Legislature defined the term “eligible customer-generator” to mean a customer “who uses a renewable electrical generation facility ... that is located on the customer’s owned, leased, or rented premises, and is interconnected and operates in parallel with the electrical grid, and is intended *primarily* to offset part or all of *the customer’s own electrical requirements.*” (§ 2827, subd. (b)(4)(A).)

2. “*Renewable electrical generation facility*”

The Legislature defined the term “renewable electrical generation facility” to mean “a facility that generates electricity from a renewable source” identified in the Public Resources Code, like solar photovoltaic facilities, wind-driven generators, or geothermal installations, and “any additions or enhancements to the facility using that technology.” (§ 2827, subd. (b)(11); Pub. Resources Code, § 24741, subd. (a)(1).)

Reading the statutorily defined terms “eligible customer-generator” and “renewable electrical generation facility” together yields this conclusion: A customer-generator’s renewable

electrical generation facility is a private customer asset on a customer's property that generates renewable energy *primarily to meet or offset the customer's on-site electricity use* and that operates alongside the utilities' grid. (§ 2827, subd. (b)(4)(A), (11).) Facilities used by customer-generators, on the one hand, and facilities constituting the utilities' grid, on the other, constitute distinct parts of "the electrical system"—a point that will become especially important later when discussing the Commission's violation of subdivision (b)(4). (See Part V, *ante*.)

In addition to "offset[ing] part or all of the customer's own electrical requirements" (§ 2827, subd. (b)(4)(A)), the customer-generators' facilities—which by definition are connected to the utilities' grid (§ 2827.1, subd. (b)(4))—also supply neighboring homes and buildings with locally generated electricity.⁷ This local supply—both the generation of the electricity and its delivery along the small existing wires between homes and buildings within a neighborhood—happens at no significant added cost to the utility because the customer's extra electricity flows efficiently to neighboring loads according to the laws of physics. (10 App 8537.)

Thus, the facility identified in subdivision (b)(3) is a customer asset that generates renewable electrical power

⁷ See, e.g., § 2827, subd. (b)(6) (defining "net energy metering" as "measuring the difference between the electricity supplied through the electrical grid and the electricity generated by an eligible customer-generator and fed back to the electrical grid over a 12-month period as described in subdivisions (c) and (h)").

primarily for the customer’s use on-site and for local use, allowing more electricity to be consumed in the electrical system without increasing demand on the grid, an especially important benefit on hot summer days.

3. *The term “based on” means that the costs and benefits of the facility must constitute the foundation for the tariff.*

The dictionary definition of the transitive verb “based” used in section 2827.1 is “to find a foundation or basis for: to find a base ... for—usually used with *on* or *upon*,” with the noun “base” defined as “the fundamental part of something.”⁸ The ordinary usage of the term “based on” establishes that the Legislature required that the costs and benefits of the customer-sited generation facility must constitute the tariff’s foundation.

Read together with the statutory definitions of “eligible customer-generator” and “renewable electrical generation facility,” the language of section 2827.1, subdivision (b)(3) thus requires that the tariff be founded upon the costs and benefits of privately funded customer assets that generate renewable electrical power for use on-site and locally, preventing increased use of the utilities’ grid.

⁸ Merriam-Webster.com Dict. <<https://www.merriam-webster.com/dictionary/base>> [as of Nov. 21, 2025].

4. *The Legislature has long recognized and encouraged the benefits of customer-sited generation facilities.*

The textual interpretation presented above is more than enough to determine the meaning of subdivision (b)(3). But if any doubts remain, they are resolved by the history of the Legislature's efforts to promote customer-generated renewable electricity.

When it enacted section 2827.1 in 2013, the Legislature already had repeatedly recognized and encouraged the myriad state-wide benefits that result when customer-generators invest in facilities to generate electricity for the customer's on-site use or to be shared locally. (See, e.g., §§ 2827, subd. (a), 2827.1, subd. (b)(1).) Yet the 2022 Tariff failed to include those benefits as its basis and instead treated them as costs. Any benefits that the Commission did ascribe to those assets were completely unrelated to their function of generating electricity.

The Legislature first established net energy metering for eligible customer-generators in 1995 "to encourage private investment [by residential customers] in renewable energy resources, stimulate in-state economic growth, enhance the continued diversification of California's energy resource mix, and reduce utility interconnection and administrative costs." (Former § 2827, subd. (a), added by Stats. 1995, ch. 369, § 1 [Sen. Bill No. 656 (1995-1996 Reg. Sess.)].)

In 1998, 2001, 2002, 2006 and 2009, the Legislature repeatedly expanded net energy metering to more and more

customers.⁹ In 2013, instead of sunseting the program or maintaining the cap on the number and amount of additional customer-generators, the Legislature completely eliminated the cap on total participation and eliminated the cap on system sizes for each eligible facility. And the Legislature expressly required the Commission to *ensure* the continued sustainable growth of customer-sited generation. (Stats. 2013, ch. 611, §§ 9, 11 [AB 327 amending § 2827 and enacting § 2827.1]; § 2827.1, subds. (b)(1) & (5), (c).)

Enacting section 2827.1 was a clear directive to the Commission to consider customer generation no longer an

⁹ Former § 2827, subd. (a), as amended by Stats. 1998, ch. 855, § 1 (Assem. Bill No. 1755 (1997-1998 Reg. Sess.)); see Stats. 2001, Ex. Sess., ch. 8, § 11 (Assem. Bill No. 29X (2001-2002 1st Ex. Sess.) adding small commercial, commercial, industrial, and agricultural customers and increasing the individual system size from 10 kilowatts to one megawatt); Stats. 2002, ch. 836, § 2 (Assem. Bill No. 58 (2002-2003 Reg. Sess.) raising program cap from 0.1 percent to 0.5 percent); Stats. 2006, ch. 132, § 6 (Sen. Bill No. 1 (2006-2007 Reg. Sess.) raising program cap from 0.5 percent to 2.5 percent); Stats. 2010, ch. 6, § 1 (Assem. Bill No. 510 (2010-2011 Reg. Sess.) raising program cap from 2.5 percent to 5 percent); Stats. 2012, ch. 610, § 1 (Sen. Bill. No. 594 (2012-2013 Reg. Sess.) adding properties with multiple meters, such as apartment buildings and farmland). See also former § 2827, subd. (a), as amended by Stats. 2001, Ex. Sess., ch. 8, § 11 (Assem. Bill No. 29X (2001-2002 1st Ex. Sess.) declaring that net energy metering can “encourage *substantial* private investment in renewable energy resources,” adding that net energy metering also “reduce[s] demand for electricity during peak consumption periods” and “help[s] stabilize California’s energy supply infrastructure.”); § 2827, subds. (b)(7)-(9), (h)(5); former § 2827, as amended by Stats. 2009, ch. 376, § 1 (Assem. Bill No. 920 (2009-2010 Reg. Sess.)).

experimental pilot program, but rather a permanent fixture of California’s energy economy. As the Commission itself explained in 2016, “encouraging growth and expansion of customer-sited renewable [distributed generation] has been, and continues to be, a central theme behind NEM [net energy metering] legislation and the Legislature’s expressed intent,” and in “section 2827.1, the Legislature built on that objective by not only continuing the NEM program, but envisioning development of options for NEM participation to expand to disadvantaged residential communities.” (Sept. 13, 2024 RJN, Exh. 8 [D.16-09-036], p. 13.)¹⁰

As discussed below at Part II.C, however, instead of basing the tariff on an accurate analysis of *the costs and benefits of customer facilities* that, by design, generate electricity and thereby prevent increased demand on the grid, the Commission instead based its 2022 Tariff on the *utility’s* lost revenues and the *utility’s* short-term avoided costs—a truncated and improper analysis that ignored the value of an electron generated by a customer and directly contravened the longstanding legislative objectives codified in sections 2827 and 2827.1.

¹⁰ Hyperlinks to all exhibits cited in the Requests for Judicial Notice are included at the end of the Table of Authorities for the Court’s convenience.

B. The 2022 Tariff ignores a primary purpose of customer-sited generation facilities: on-site generation for on-site use by customer-generators.

As this Court’s previous decision explained, the 2022 Tariff claims to compensate customer-generators “for the economic benefit they confer on the grid ... by supplying excess energy.” (*CBD I, supra*, 98 Cal.App.5th at p. 32.) But the Legislature did not say that the tariff should be based on the benefits of “supplying excess energy.” Instead, the Legislature required that the tariff be “based on the costs and benefits of the renewable electrical generation facility.” (§ 2827.1, subd. (b)(3).)

While supplying excess energy to the utilities’ grid is one function of “the renewable electrical generation facility,” a customer is not even eligible for the tariff unless that customer uses their renewable electrical generation facility for the customer’s own use on-site. (§ 2827.1, subd (a); § 2827, subd. (b)(4)(A).) By basing the 2022 Tariff solely on the act of “supplying excess energy,” the Commission excluded all the benefits that accrue when customer-generators invest in private facilities to generate and use renewable energy on-site—benefits that the Legislature expressly commanded the Commission to make the basis of its new tariff.

The benefits of customer-generators with renewable electrical generation facilities generating and using power on-site are not theoretical or abstract. They include all the benefits that the Legislature expressly identified in section 2827, subdivision (a), such as:

- benefits of private investment in customer-generation facilities (use of funds to generate electricity that ratepayers are not on the hook for);
- economic growth resulting from wide-ranging economic activities (purchases of rooftop solar panels, electric vehicles, heat pumps, electrical equipment, etc.);
- reducing demand for electricity during peak consumption periods (hot summer days);
- stabilizing California’s energy supply infrastructure by generating electricity for use on-site and locally (in contrast to purchasing and delivering electricity from far-away fossil plants or wind or solar farms);
- resource diversification; and
- reducing interconnection and administrative costs.

But the Commission did not evaluate any of these benefits of on-site generation and use. Instead, it looked only at the benefits *to the utilities’ grid* when customer-generators’ facilities export electricity that the customer-generator does *not* consume on-site.¹¹

For example, the Commission failed to evaluate the benefits of customer self-supply to meet increased electricity usage. Indeed, the Commission admitted that the foundation for

¹¹ 21 App 18477 (Conclusion of Law No. 18: “The Commission should base retail export compensation rates on values derived from the Avoided Cost Calculator.”); *CBD I, supra*, 98 Cal.App.5th at p. 31 (“the Commission chose—through the calculator—to value exported energy by the marginal cost to utilities of providing power”).

the 2022 Tariff¹² failed to adequately address electricity consumption patterns or to quantify the well-known electrification benefits that accrue when customer-generators use on-site renewable electrical generation facilities.¹³

This failure to base the 2022 Tariff on the facility’s primary benefits—on-site generation and use by the customer-generator—is more than enough, in and of itself, to require that the 2022 Tariff be set aside.

C. The Commission violated subdivision (b)(3) by basing the tariff on the “Lookback Study” instead of on “the costs and benefits of the renewable electrical generation facility.”

The Lookback Study that formed the basis for the 2022 Tariff¹⁴ was wholly untethered to the language in section 2827.1

¹² 21 App 18476 (Conclusion of Law No. 1).

¹³ 21 App 18458 (2022 Tariff, acknowledging benefits of electrification but admitting that “[e]lectricity consumption patterns are not discussed in the key takeaways of the Lookback Study,” and that the Lookback Study cannot be relied upon to assess electrification benefits).

¹⁴ 21 App 18476 (Conclusion of Law No. 1: “The Commission should use the Lookback Study as a foundation to create a successor tariff”), 18283 (“[T]his decision finds that the following Lookback Study conclusions should be considered findings of fact in this proceeding and used in the analysis of proposals and adoption of a successor to the existing net energy metering tariff: [¶] (a) NEM 2.0 has negatively impacted non-participant ratepayers. [¶] (b) NEM 2.0 is not cost-effective. [¶] (c) NEM 2.0 disproportionately harms low-income customers not participating in the net energy metering tariff.”), 18295 (“The cost-effectiveness analysis results of the Lookback Study for the

and did not purport to estimate the costs and benefits of “the renewable electrical generation facility,” as subdivision (b)(3) required. Rather, the Lookback Study was written by consultants, who are frequently also hired by the utilities themselves, to evaluate the Commission’s 2016 tariff (2016 Tariff). (May 3, 2023 RJN, Exh. A [D.16-01-044].)¹⁵

The Commission’s reliance on the Lookback Study violated the statute in three ways.

First, as discussed in Part II.C.1, *post*, the Commission directed the Lookback Study authors to ignore all the benefits of customer-generated renewable energy *except for* the utility’s short-term avoided costs from reduced usage of grid-supplied electricity. Specifically, the Commission required the authors to use the “2020 Avoided Cost Calculator,” a model that does not estimate the value of any “facility” that generates electrons.

Second, as explained in Part II.C.2, *post*, the Commission directed the Lookback Study authors to use certain “cost-effectiveness” tests described in Commission decision D.19-05-019. (May 3, 2023 RJN, Exh. C.) That decision applies to Commission activities “requiring cost-effectiveness analysis of distributed energy resources”¹⁶—which is not the analysis that section 2827.1 requires.

residential segment are incorporated into this decision as findings of fact.”).

¹⁵ The Commission refers to its 2016 Tariff as “NEM 2.0.”

¹⁶ D.19-05-019 at pp. 65-66; 1 App 828 & fn. 53; 21 App 18453 (Finding of Fact No. 22: admitting the Lookback Study

Third, as shown in Part II.C.3, *post*, one of the inapposite tests, the so-called Ratepayer Impact Measure (RIM) test, views matters *exclusively* from the utilities’ perspective and, as a result, went so far as to treat statutorily defined *benefits* as *costs*. As explained below, the RIM test led to the Commission’s erroneous conclusions about impacts to nonparticipants and a fictional “cost shift.”

1. *The 2022 Tariff was tainted by the Lookback Study’s use of the Avoided Cost Calculator, a model that does not evaluate the costs and benefits of the customer-sited generation facility to which the statute refers.*

The Commission instructed its consultants to limit the Lookback Study’s analysis to the 2020 Avoided Cost Calculator,¹⁷ a model so named because its outputs purport to “represent marginal costs a utility would avoid in any given hour if a distributed energy resource avoided the provision of energy during that hour.” (May 3, 2023 RJN, Exh. E [D.20-04-010], p. 5.)¹⁸ The Avoided Cost Calculator did not attempt to estimate

“followed the directives of prior Commission decisions regarding the methods for cost-effectiveness analysis”).

¹⁷ 1 App 909 (“We have been directed not to deviate from the 2020 ACC in developing benefit/cost estimates for this analysis.”), 911 (“[W]e will only be using the 2020 ACC in this study.”), 841 (“The avoided costs used in this analysis are based on the CPUC 2020 Avoided Cost Calculator (ACC) v1c approved on June 25, 2020.”).

¹⁸ The Lookback Study then input the 2020 Avoided Cost Calculator outputs into the inapposite “cost-effectiveness” tests described in the next section, as well as into a so-called “cost of service analysis.” (21 App 18259 [“Avoided costs used in the four

the benefits of the various kinds of renewable electrical *generation* facilities identified in section 2827.1, subdivision (b)(3). Indeed, it does not evaluate generation facilities at all. Rather, the Commission admits that the Avoided Cost Calculator estimates only *the utilities'* avoided costs related to *the utilities'* “provision of electric and natural gas service” (May 3, 2023 RJN, Exh. B [D.22-05-002], pp. 3-4), and that it does so by estimating “the costs of the traditional resource, normally a new combustion turbine, that will be avoided when a distributed energy resource^[19] is instead procured.” (May 3, 2023 RJN, Exh. C [D.19-05-019], p. 50, fn. 99; May 3, 2023 RJN, Exh. E [D.20-04-010], pp. 4-5.)

In other words, rather than model electricity *generated by customers*, the Avoided Cost Calculator models the *utilities' costs* for providing electricity exclusively on the *utilities' electrical grid*. As previously demonstrated,²⁰ a customer-generator's renewable electrical generation facility—by definition—is *not* a utility asset. (§ 2827, subd. (b)(4)(A).) Rather, the customer facility operates “in

tests are based on the 2020 Avoided Cost Calculator approved by the Commission on June 25, 2020.”]; 1 App 826, 829, 830.)

¹⁹ As explained in the next section, the term “distributed energy resource” and “renewable electrical generation facility” are not synonymous. (Part II.C.2, *post*.)

²⁰ As explained in Part II.A.2, *ante*, the words that the Legislature used in the statute reveal that the utilities' electrical grid and the customer-generator facility constitute distinct segments of the electrical system that provide power differently. (See § 2827.1, subd. (b)(3) [using the term “renewable electrical generation facility”], (b)(4) [using the term “electrical system”]; § 2827, subd. (b)(4)(A) [using the term “electrical grid”].)

parallel with,” and is not the same as, the utilities’ electrical grid. (*Ibid.*) The customer-sited generation facility remains a private asset on private property that generates renewable electricity for on-site and local use, using only the small wires between homes. (§ 2827, subd. (b)(4)(A), (11); see 10 App 8537; 5 App 4528.) The utilities, in contrast, purchase power from fossil plants and remote solar and wind farms and deliver power via the utilities’ electrical grid using hundreds of miles of expensive power lines. (See 22 App 19326-19331; 9 App 7673-7674.)

But the Commission, in creating the 2022 Tariff, substituted an evaluation of the electricity generated by the utilities for the statutorily required evaluation of the electricity generated by customer-sited facilities.

Although peak electricity *usage* by California consumers has increased over the past 20 years, peak demand on the utilities’ electrical *grid* has remained relatively flat thanks to electricity from customer-sited generation facilities.²¹ Yet the Avoided Cost Calculator fails to account for the total benefits of avoiding the expansion of grid-supplied generation and infrastructure costs over the past 20 years. In defiance of section

²¹ 10 App 8477-8478, 8528, 8530; 5 App 4522-4523; see also 7 App 5185 (The California Independent System Operator (CAISO), the entity that manages the utilities’ electrical grid, explaining that “[t]he downward pressure on peak demand load growth and energy consumption was compounded by higher than anticipated development of behind-the-meter solar photovoltaic generation. Behind-the-meter solar has reduced the summer peak loads traditionally occurring in mid-day ...”), 5232 (CAISO: “Statewide, self-generation was projected to reduce peak load by more than 8,078 MW in the mid case by 2027.”).

2827.1, the Calculator simply does not measure the benefits that result when customer-generation facilities enable increased consumption of electricity without a correspondingly increased demand on the utilities' grid.

Significantly, while the Legislature has used the words "avoided costs" in other statutes,²² it did not include that term in section 2827.1. When the Legislature uses a term in one place and omits it from another, the term should not be inferred where it was excluded. (*Woodhead, supra*, 43 Cal.3d at p. 1010.) The omission of a provision used in a related statute "is significant to show that a different intention existed." (*People v. Valentine* (1946) 28 Cal.2d 121, 142.)

The Commission's decision to confine the Lookback Study's authors to benefits in the utility-centric Avoided Cost Calculator rendered the Lookback Study unusable for purposes of complying with the statutory requirement in section 2827.1, subdivision (b)(3), which required the Commission to base the tariff on "the

²² For example, the Legislature required the Commission to evaluate the success and impact of the Self-Generation Incentive Program on performance measures that, among many others, include "[t]he value to the electrical transmission and distribution system *measured in avoided costs* of transmission and distribution upgrades and replacement." (§ 379.6, subd. (l)(6); see also § 399.32, subd. (d) [requiring publicly owned utilities adopting certain tariffs to "consider avoided costs for distribution and transmission system upgrades"]; § 328.2 ["credit shall be equal to the billing and collection services costs *actually avoided* by the gas corporation"]; § 963, subd. (c)(3) [same]; § 769.3, subd. (c)(3) [requiring the Commission to "prohibit[] the program's costs from being paid by nonparticipating customers in excess of the *avoided costs*"].)

costs and benefits of the renewable electrical generation facility,” i.e., a customer asset that generates clean power for on-site and local use, allowing for increased electricity consumption without correspondingly increased use of the grid.

2. *The 2022 Tariff was further compromised by the Lookback Study’s use of “cost-effectiveness” tests for “distributed energy resources”—analyses untethered to section 2827.1.*

The Lookback Study’s adherence to D.19-05-019, an earlier Commission decision applicable to Commission activities “requiring cost-effectiveness analysis of distributed energy resources,”²³ provides yet another reason why the Lookback Study was unusable for purposes of complying with section 2827.1, subdivision (b)(3). Adhering to D.19-05-019 sent the Lookback Study authors down a rabbit hole of various “cost-effectiveness” tests designed “to determine the cost-effectiveness of utility-sponsored programs.” (1 App 863.) In contrast, section 2827.1, subdivision (b)(3) refers to *privately funded customer assets*, not utility-sponsored programs.²⁴

²³ May 3, 2023 RJN, Exh. C (D.19-05-019), pp. 65-66; 1 App 828 & fn. 53; 21 App 18453 (Finding of Fact No. 22: admitting the Lookback Study “followed the directives of prior Commission decisions regarding the methods for cost-effectiveness analysis”).

²⁴ § 2827.1, subd. (b)(3) (“the renewable electrical generation facility”); § 2827, subd. (b)(4)(A) (eligibility conditioned on generation and on-site use of the facility on the customer’s own premises); see also § 2827, subd. (a) (expressly “encourag[ing] substantial private investment”).

The Commission requires *utility-sponsored* programs to be “cost-effective” because of the inherent conflict between the utilities’ interests and ratepayers’ interests.²⁵ While ratepayers are inherently interested in seeing that the utilities spend as efficiently as possible, the utilities “are inherently incentivized to make investments to drive an increase in their rate base and therefore, their profitability.” (22 App 19315.)

In other statutes, the Legislature uses the term “cost-effective” in reference to utility-sponsored programs. For example, the Legislature used the term “cost-effective” in section 8 of AB 327 to require the utilities to propose “cost-effective” *utility spending* to maximize the locational benefits of distributed resources. (Compare Stats. 2013, ch. 611, § 8 [adding § 769] with *id.* at § 11 [renumbering and enacting § 2827.1].) The Legislature’s use of the term “cost-effective” elsewhere in AB 327 and its exclusion from section 2827.1 means that the Court should avoid reading that term into section 2827.1. (See *Woodhead, supra*, 43 Cal.3d at p. 1010; *Valentine, supra*, 28 Cal.2d at p. 142.)

The Legislature in section 2827.1 likewise avoided using the term “distributed energy resources.” Instead, the Legislature used the term “renewable electrical generation facility” and

²⁵ Ratepayers are on the hook for all of the utilities’ spending; and ratepayers also pay for the utilities to profit from spending money on ratepayer-funded capital expenditures. (See 22 App 19315 [Commission explaining that the utilities’ “rate base has a direct relationship with the return on rate base revenue requirement that is recovered from ratepayers”], 19310 [explaining rate base].)

incorporated the definition of that term found in section 2827, which expressly refers to a *generation* asset. (§ 2827.1, subd. (a); § 2827, subd. (b)(11) [defining “renewable electrical generation facility” as “a facility that *generates* electricity from a renewable source”].) Programs traditionally referred to as “distributed energy resource programs,” like energy-efficiency and demand-response programs (May 3, 2023 RJN, Exh. C [D.19-05-019], p. 8), do not *generate* energy.

While the customer-sited renewable generation facilities referred to in section 2827.1, subdivision (b)(3) are, in fact, distributed, the parsing of words here is important because an analysis that treats generation facilities as no different from energy-efficiency programs inherently fails to assess the benefits of generating electrons. Turning off the light switch, while helping to limit grid use by using *less* electricity, is categorically different from installing a facility that generates electrons and allows for *more* electricity. The statute’s words “renewable electrical generation facility” cannot be distorted by conflating them with the very different words “distributed energy resources.” To do so, as the Commission did in the 2022 Tariff, subverts the Legislature’s intention to promote customer generation, with all of its identified beneficial attributes.

In section 2827.1, the Legislature defined “renewable electrical generation facility” and omitted any reference to “cost-effectiveness” or to “distributed energy resources.” The use of different terms with different definitions in different sections of

AB 327 should be given effect by the Court. (*Woodhead, supra*, 43 Cal.3d at p. 1010; *Valentine, supra*, 28 Cal.2d at p. 142.)²⁶

The Lookback Study should not have used *any* of the D.19-05-019 tests in its analysis; but one of those tests, discussed next, holds the distinction of being the exact *opposite* of what section 2827.1 called for.

3. *The Lookback Study’s RIM test was antithetical to the Legislature’s express statutory intent.*

Using the RIM test was flagrantly improper because it counted *only* the *utilities’* avoided costs as benefits and *only* the *utilities’* reduced revenues and operational costs as costs.²⁷ That test thus was not merely untethered to section 2827.1, it flipped the statute’s entire purpose on its head.

Treating customer-sited electricity generation as a “cost” directly undermined the Legislature’s fundamental intent to *require* the continued proliferation of customer-sited generation for on-site and local use and to base the tariff on customer assets that generate electricity on the customer’s own property for the customer’s on-site use. (§§ 2827.1, subd. (b)(1), (3), 2827, subd.

²⁶ May 3, 2023 RJN, Exh. C (D.19-05-019), pp. 65-66; 1 App 828 & fn. 53; 21 App 18453 (Finding of Fact No. 22: admitting the Lookback Study “followed the directives of prior Commission decisions regarding the methods for cost-effectiveness analysis”).

²⁷ 1 App 829 (showing the RIM test looks exclusively at “Electricity Avoided Costs” as benefits and “Electric Bill Savings” as costs), 828 (Lookback Study admitting RIM “costs are the utility’s costs to operate the NEM 2.0 program and the reduction in revenue received by the utility when participating customer bills decline due to the operation of the NEM 2.0 system.”).

(b)(4)(A), (11).) Such facilities reduce demand during peak consumption periods, help to stabilize California’s overall energy system, and *prevent* costs that all ratepayers otherwise would bear. All consumers and the whole electrical system benefit. (§ 2827, subd. (a).) Yet this subversive test formed the genesis of the fictional “cost shift”²⁸ that the Commission presented as an excuse for its failure to adhere to the requirements of section 2827.1.

In sum: The Commission failed to proceed as required by section 2827.1, subdivision (b)(3) when it based the 2022 Tariff on the Lookback Study instead of basing it on “the costs and benefits of the renewable electrical generation facility,” as the statute required. Reliance on the Lookback Study requires that the Commission’s 2022 Tariff be set aside.

²⁸ See 21 App 18473 (Finding of Fact No. 232: identifying an estimated cost shift ranging “between \$1 billion and \$3.4 billion annually”), 18288 & fn. 54 (referring to Lookback Study \$1 billion estimate of the cost shift and the utilities’ extrapolation from that estimate); 1 App 864 (Lookback Study explaining that “[t]he NPV of RIM costs exceed the RIM benefits by approximately \$13,000 m,” arrived at by using the numbers in Table 5-1 in the RIM column: $20,583-7,576=13,007$); 16 App 13164, fn. 13 (utilities translating the Lookback Study’s \$13,000M RIM results to “over \$1 Billion in cost shifting per year”).

III. The Commission failed to proceed in the manner required by section 2827.1, subdivision (b)(1)'s mandate to ensure that customer-sited renewable distributed generation continues to grow sustainably.

Instead of ensuring “that customer-sited renewable distributed generation continues to grow sustainably” (§ 2827.1, subd. (b)(1)), the Commission concluded, based on the Lookback Study’s specious RIM results, that it should instead contravene the statute in order to “minimize the cost shift” and “ensure [that] the growth of the net energy metering market does not come at the undue and burdensome financial expense of nonparticipant ratepayers.” (21 App 18476, 18477 [Conclusions of Law Nos. 1, 2, 12].)

Distilled to its essence, the Commission in the 2022 Tariff did the precise opposite of what the statute required: It ensured the growth of monopoly utility profits instead of ensuring the growth of customer-sited generation. Or to put it even more bluntly: Through the instructions it gave its consultants, the Commission rigged the Lookback Study to systematically exclude the benefits flowing from customer-sited generation—the very benefits that the Legislature sought to advance when it enacted section 2827.1. The Commission then relied on the Study’s preordained results as the pretext for not merely ignoring but actually contravening its statutory obligations under subdivision (b)(1).

A. Subdivision (b)(1) requires that the Commission maintain at length, without interruption or weakening, the expansion of customer-sited renewable distributed generation.

The first clause of subdivision (b)(1) of section 2827.1 requires the Commission to ensure that the “tariff made available to eligible customer-generators ensures that customer-sited renewable distributed generation continues to grow sustainably.” (§ 2827.1, subd. (b)(1).) As explained below, construing all of these terms and then reading them together yields this conclusion: The first clause of section 2827.1, subdivision (b)(1) requires the Commission to ensure that the tariff maintains at length, without interruption or weakening, the already expanding consumption of electricity generated by customer-sited generation facilities located on private property or used by neighbors.

To understand the meaning of the statutory mandate, the terms “customer-sited renewable distributed generation,” “continues,” “grow,” and “sustainable,” must be read in the context of subdivision (b)(1)’s subject—a “tariff made available to eligible customer-generators.”²⁹

As explained in Part II.A, *ante*, the term “customer-sited renewable distributed generation” incorporates definitions set forth in section 2827 and, properly construed in light of those definitions, refers to utility customers that generate and use

²⁹ See Part II.A, *ante* (discussing statutory definition of “eligible customer-generator”).

renewable electricity on their own property to offset part or all of their own on-site electrical needs. By using private assets to generate electricity for on-site use, and by sharing excess electricity with neighbors using only the small wires between homes or buildings, customer-sited generation benefits all ratepayers and the electrical system by preventing increased use of an already strained electric grid. (See Part II.B, *ante*.)

The dictionary definitions of the words “continues,” “grow,” and “sustainable” can be used to understand the phrase “continues to grow sustainably.” (§ 2827.1, subd. (b)(1).) The verb “continue” means “to maintain without interruption a condition, course, or action.”³⁰ The verb “grow” means, among other things, to increase or expand.³¹ The adjective “sustainable” means capable of being “maintained at length without interruption or weakening.”³² Thus, the phrase “continues to grow sustainably” means to maintain at length, without interruption or weakening, the already occurring expansion of customer-sited renewable distributed generation.

Put simply, the Legislature envisioned an electrical system that would continue to increase the number of consumers self-supplying their own electricity and sharing surplus with

³⁰ Merriam-Webster.com Dict. <<https://www.merriam-webster.com/dictionary/continue>> [as of Nov. 21, 2025].

³¹ *Id.* at <<https://www.merriam-webster.com/dictionary/grow>> [as of Nov. 21, 2025].

³² *Id.* at <<https://www.merriam-webster.com/dictionary/sustainable>>, <<https://www.merriam-webster.com/dictionary/sustained>> [as of Nov. 21, 2025].

neighbors as a way to prevent load growth on a stressed and costly grid while also “stimulat[ing] in-state economic growth.” (§ 2827, subd. (a).)

B. The Commission subverted the statute’s purpose, giving itself an excuse not to proceed in the manner required by section 2827.1, subdivision (b)(1).

The 2022 Tariff failed to ensure that customer-sited distributed generation continues to grow sustainably as required by the first clause of section 2827.1, subdivision (b)(1).³³ Instead, citing an “undue and burdensome financial expense of nonparticipant ratepayers,”³⁴ the Tariff used the Lookback Study’s RIM results as an excuse for *not* ensuring the continued sustainable growth of customer-sited generation.

Rather than implementing the statute’s requirements, the Commission adopted a so-called “five-year glide path,” purportedly in order to “minimize the cost shift, to ensure equity among all customers, and also to encourage the sustainable growth of the market, but not at the undue and burdensome

³³ In contrast, the Commission’s 2016 Tariff decision acknowledged that any implementation of subdivision (b)(1) must contain modifications to the net energy metering scheme that “ensure that customer-sited renewable DG continues to grow sustainably.” (May 3, 2023 RJN, Exh. A [D.16-1-044 Conclusion of Law No. 1], p. 113.)

³⁴ 21 App 18476 (Conclusion of Law No. 2 in 2022 Tariff: “The Commission should ensure the growth of the net energy metering market does not come at the undue and burdensome financial expense of nonparticipant ratepayers.”).

financial expense of nonparticipant ratepayers.”³⁵ This glide path provides an “ACC Plus adder” for the first five years of the 2022 Tariff, whereby certain PG&E and SCE customers who enroll in the 2022 Tariff receive slightly more than Avoided Cost Calculator values³⁶ for exporting excess electricity to the grid. (21 App 18481-18482.)³⁷

The Commission admitted that it *intended* the so-called glide path to result in a nine-year “payback period” for customer-generators with stand-alone solar systems. This meant that the Commission deliberately *doubled or tripled* the time in which prospective customer-generators could expect to recoup their investment.³⁸ On its face, this move could only discourage customer investments—the very opposite of ensuring continued, sustainable growth.

³⁵ 21 App 18477 (Conclusion of Law No. 12).

³⁶ The Commission explained that the ACC adder is a credit to the customer’s utility bill to reflect the customer’s electricity exports. “The adder will be a discrete line on the customer’s utility bill, will apply to all charges, and will apply to future bills until the credit is used.” (21 App 18482.)

³⁷ The ACC Plus adder amounts decrease by 20 percent each year for a nine-year period. (21 App 18482.)

³⁸ 21 App 18467 (Finding of Fact No. 164: “The glide path is meant to ensure successor tariff customers, including CARE- and FERA-enrolled customers, have a nine-year simple payback period for stand-alone solar systems.”), 18319 (“Joint Utilities assert the residential NEM 2.0 customer payback period is three to five years.”), 18468 (Finding of Fact No. 177: “The transition to the successor tariff will require customers to make substantial investments ... with longer payback periods in comparison with the NEM 2.0 tariff.”).

The Commission’s justification for throttling self-generation in this manner was to “alleviate cost shift.” (21 App 18456 [Finding of Fact No. 57].) But, as discussed in Part II.C, *ante*, the Lookback Study’s erroneous conclusions about impacts to nonparticipants, as well as its fabricated cost-shift, were based on an analysis (the RIM test) that treated nonuse of the utilities’ grid as a *cost*. This was flatly inconsistent with one of the chief intended *benefits* of § 2827.1—namely, *increasing* nonuse of the grid by encouraging self-generation. (See Part II.B, *ante*.)

In short, the Commission failed to proceed in the manner required by subdivision (b)(1) when it refused to create a tariff that ensured that customer-sited renewable distributed generation would continue to grow sustainably. In direct violation of that statutory directive, the Commission instead eliminated most of the financial incentive for eligible customers to invest in on-site facilities to produce electricity for use themselves and by their neighbors.

IV. The Commission failed to proceed in the manner required by subdivision (b)(1) when it misinterpreted and ignored the statute’s requirement that the *tariff* include “specific alternatives” for growth of customer-sited generation among residential customers in “disadvantaged communities.”

The second clause of section 2827.1, subdivision (b)(1) requires the Commission to include in the tariff what we will refer to as “DAC Customer Alternatives”—i.e., “specific alternatives [note: plural] designed for growth of [customer-

sited renewable distributed generation] among residential customers in disadvantaged communities.”³⁹

Despite that clear mandate, the 2022 Tariff does not include *any* alternative—let alone multiple “specific” ones—that is designed to achieve customer-sited generation growth among residential customers in disadvantaged communities. The Commission’s negation of (b)(1)’s DAC Customer Alternatives requirement is enough, without more, to require that the 2022 Tariff be set aside.

The Commission has offered no persuasive defense of this failure to proceed in the manner required by law. Throughout this litigation, the Commission has tried to excuse its illegal omission of DAC Customer Alternatives by pointing to limited programs established *outside* of the 2022 Tariff.⁴⁰ Indeed, those programs were *excluded* from the tariff.⁴¹ As explained below,

³⁹ § 2827.1, subd. (b)(1), **bolding and bracketed term added.**

⁴⁰ Those non-tariff programs included: (1) the Disadvantaged Communities-Single-family Solar Homes program (DAC-SASH), (2) the Disadvantaged Communities-Green Tariff program (DAC-Green Tariff), and (3) the Community Solar Green Tariff Program (CS-GT). (D.23-06-056, p. 20.) Two of the three programs do not even involve *customer-sited* generation—in other words, the Commission also ignored the statutory requirement that the technology be “located on the customer’s owned, leased, or rented premises.” (§ 2827, subd. (b)(4)(A).)

⁴¹ The Commission’s own 2022 Decision acknowledged that “DAC-SASH ... is not analogous to the net billing tariff.” (21 App 18328, 18471 [Finding of Fact No. 213: “The SOMAH evaluation is not in the record of this proceeding.”], 18457 [Finding of Fact No. 63]; see also 21 App 18473 [Findings of Fact Nos. 226-228: finding community solar programs like DAC-Green Tariff and CS-GT were being considered in other proceedings and that it

however, the Commission’s diversionary tactic of pointing to non-tariff programs ignores two critical points.

First, the Legislature had compelling reasons for demanding that DAC Customer Alternatives be included *within the tariff*. Programs mandated by a tariff constitute standing offers to eligible customers—offers on which those customers may confidently rely and which create binding obligations when a customer accepts them. By contrast, public programs may depend on taxpayer funding that is subject to the appropriations process and is therefore outside the Commission’s control; or they may be Commission-created pilot programs that rely on a utility’s commitment to adequately staff and appropriately implement a legislative directive. A tariff thus offers the customer a degree of certainty and reliability that non-tariff programs cannot approach.

Second, the Commission relied on a material misreading of the statute. To the extent that the 2022 Tariff addresses underserved populations, it focuses on “*low-income households*,” not on the statutorily specified residential customers in “*disadvantaged communities*”—a term encompassing many types of community stressors, including but not limited to low income.

“Low-income households” and “low-income customers” are exactly what those words connote. The Public Utilities Code defines low-income electricity and gas customers as those with “annual household incomes that are no greater than 200 percent

would be “premature to adopt a Community Solar tariff or subtariff in this decision”].)

of the federal poverty guideline levels.” (§ 739.1, subd. (a).) Similarly, the Health and Safety Code defines “low-income communities” as those with “median household incomes at or below 80 percent of the statewide median income or with median household incomes at or below the threshold designated as low income by” a state agency. (Health & Saf. Code, § 39713, subd. (d)(2).)

By contrast, the statutory term “disadvantaged communities” encompasses far more than its words facially connote. It embraces not only low-income communities but also ones defined by *geographic, public-health, and environmental-hazard* criteria. By mistakenly equating the broader statutory term “disadvantaged communities” with the narrower term “low-income households”—which appears nowhere in section 2827.1—the Commission artificially constricted the scope of the statute’s DAC Customer Alternatives requirement, inevitably excluding customers that the Legislature intended to benefit.

Although the Public Utilities Code does not define “disadvantaged communities,” it is a term that was well-known to the Legislature when it enacted section 2827.1 in 2013. The term was first used by the Legislature in 2012 as part of the State’s climate policy of directing investments to communities disproportionately impacted by pollution and other problems. The Legislature therefore tasked the California Environmental Protection Agency (CalEPA) with identifying such communities “based on *geographic, socioeconomic, public health, and*

environmental hazard criteria.” (Health & Saf. Code, § 39711, subd. (a).)⁴²

The same statute specifies that “disadvantaged communities” “may include, but are not limited to, ... [a]reas disproportionately affected by environmental pollution and other hazards that can lead to negative public health effects, exposure, or environmental degradation,” as well as “[a]reas with concentrations of people that are of low income, high unemployment, low levels of homeownership, high rent burden, sensitive populations, or low levels of educational attainment.” (Health & Saf. Code, § 39711, subd. (a)(1) & (2).) And in the same statutory scheme, the Legislature acknowledged that “disadvantaged communities” and “low-income communities” are not the same thing. (Compare Health & Saf. Code, § 39713, subd. (b) [directing 5 percent of climate-change investment-plan funds to benefit “low-income” households and communities] with Health & Saf. Code, § 39713, subd. (a) [directing 25 percent of such funds to benefit disadvantaged communities].)

As instructed, CalEPA identified disadvantaged communities as ones falling within “the top 25 percent overall

⁴² To understand the intended meaning of a statutory phrase, courts may consider use of the same or similar language in other statutes, because similar words or phrases in statutes that are in *pari materia* ordinarily will be given the same interpretation. Two statutes are considered to be in *pari materia* when they, *inter alia*, “relate to ... the same class of persons”—in this case, the class of persons residing in “disadvantaged communities.” (*Wendz v. State Dept. of Education* (2023) 93 Cal.App.5th 607, 633.)

scoring areas from CalEnviroScreen,”⁴³ a screening methodology that “may be used to help identify California communities that are disproportionately burdened by multiple sources of pollution.”⁴⁴

The term “disadvantaged communities” thus focuses on the pollution burden of a designated geographical area and on many other criteria—not just income levels.⁴⁵ Indeed, the Commission itself agrees that “proposals that seek to refocus on low-income individuals, or [that] add criteria in order to allow low-income individuals not living in [disadvantaged communities] to participate, *miss the mark*.... [T]his legislation [AB 327, which included section 2827.1] is about ‘residential customers in *disadvantaged communities*.’”⁴⁶

In sum: The Commission erroneously conflated low-income communities with disadvantaged ones and failed to include any DAC Customer Alternatives in the 2022 Tariff. Accordingly, the Court should find that the Commission failed to proceed in the manner required by the second clause of section 2827.1, subdivision (b)(1) and should set aside the 2022 Tariff.

⁴³ 1 App 809.

⁴⁴ Cal. OEHHA, CalEnviroScreen 4.0 (May 1, 2023) <<https://oehha.ca.gov/calenviroscreen/report/calenviroscreen-40>>. CalEPA’s designation of “disadvantaged communities” likewise included communities that lacked an overall CalEnviroScreen score but ranked in “the top five percent *pollution burdened* census tracts from CalEnviroScreen.” (1 App 809.)

⁴⁵ See, e.g., July 31, 2023 RJN, Exh. D (D.18-06-027), p. 19.

⁴⁶ July 31, 2023 RJN, Exh. D (D.18-06-027), p. 19.

As explained in the next section, the Commission's failure to include DAC Customer Alternatives in the tariff also prevented it from considering the benefits of those programs and thus from performing the analysis required by subdivision (b)(4).

V. The Commission failed to proceed in the manner required by subsection (b)(4), which requires it to ensure that the tariff's total benefits and total costs to all customers and to the electrical system are approximately equal.

Section 2827.1, subdivision (b)(4) requires the Commission to “[e]nsure that the total benefits of the ... tariff to all customers and the electrical system are approximately equal to the total costs.” (§2827.1, subd. (b)(4).) Having failed to create a tariff that met the requirements of section 2827.1, subdivision (b)(1) and (3), the Commission rendered itself incapable of assessing the total benefits or the total costs of the 2022 Tariff to all customers and the electrical system, as section 2827.1, subdivision (b)(4) requires.

The Commission did not even attempt to balance the tariff's total benefits and total costs because, as discussed below, the Commission replaced the term used in subdivision (b)(4), “tariff,” with the term “exported power,” a term not found anywhere in section 2827.1. And rather than total up the benefits to all customers and the electrical system, the Commission limited its analysis to the *utilities*' revenues and costs attributable to providing electricity via the *utilities*' part of the electrical system.

The Commission tried to justify its refusal to adhere to each of section 2827.1's mandates by referring to unspecified "conflicts" in those mandates. The Court should reject that argument. Read in light of the Legislature's expressed intent, the statutory requirements for the tariff for "eligible customer-generators" make perfect sense.

A. Subdivision (b)(4)'s inclusive language requires the Commission to analyze all of the tariff's benefits to all customers and to the electrical system as a whole.

To ascertain the correct meaning of subdivision (b)(4), the Court decides what the Legislature meant when it used the following terms: "tariff," "all customers and the electrical system," "total benefits," "total costs," and "approximately equal." Reading those terms together yields this conclusion: The Legislature required the Commission to total up the tariff's benefits to all customers and to the electrical system, to total up the costs, and to ensure that those totals were approximately equal. Those costs and benefits of the tariff must be all-inclusive.

Read in context, the term "tariff" must be interpreted as being the same tariff to which the Legislature refers throughout section 2827.1. (§ 2827.1, subd. (b); *Kaanaana, supra*, 11 Cal.5th at p. 175.) Thus, the "tariff" of subsection (b)(4) is the same one that "ensure[s] that customer-sited renewable distributed generation continues to grow sustainably"; that "include[s] specific alternatives designed for growth among residential customers in disadvantaged communities"; and that is "based on

the costs and benefits of the renewable electrical generation facility.” (§ 2827.1, subd. (b)(1), (3).)

The broad and inclusive language “all customers and the electrical system” includes every kind of customer and the whole electrical system. The dictionary meaning of the adjective “all” includes “the whole amount, quantity, or extent of,” “every member or individual component of,” and “the whole number or sum of.”⁴⁷ The term “all customers” thus necessarily includes the customer groups expressly referenced in section 2827.1: namely, “eligible customer-generators” and “residential customers in disadvantaged communities.” (§2827.1, subd. (b)(1), (3).) And “all customers” also naturally includes customers *not* specifically referenced in section 2827.1—i.e., electric-utility customers that do *not* generate renewable power for use on-site.

The word “system” is defined as “a regularly interacting or interdependent group of items forming a unified whole.”⁴⁸ The term “electrical system” necessarily includes at least the two components of the electrical system expressly referred to elsewhere in the statute: (1) eligible customer-generators’ renewable electrical generation facilities; and (2) the electrical grid. (§ 2827.1, subd. (a) [incorporating section 2827 definitions];

⁴⁷ Merriam-Webster.com Dict. <<https://www.merriam-webster.com/dictionary/all>> [as of Nov. 21, 2025].

⁴⁸ Merriam-Webster.com Dict. <<https://www.merriam-webster.com/dictionary/system>> [as of Nov. 21, 2025].

§ 2827, subd. (b)(4)(A) [“electrical grid” distinct from “renewable electrical generation facility” used by customer-generators].⁴⁹

The dictionary defines the word “total” as “comprising or constituting a whole: entire,” and as “involving a complete and unified effort especially to achieve a desired effect.”⁵⁰ The language “total benefits” and “total costs” thus must be interpreted as inclusive and cannot be interpreted as excluding certain kinds of benefits or certain kinds of costs.

Thus, when the Legislature directed the Commission to ensure that the tariff’s total costs and total benefits to all customers and the electrical system are approximately equal, it meant that the Commission must evaluate the entirety of the tariff’s benefits and the entirety of the tariff’s costs without excluding any customer groups or components of the electrical system.

⁴⁹ As explained in Part II.A, *ante*, the statutory definition of “eligible customer-generator” establishes that customer-generators’ facilities and the electrical grid are interconnected but distinct segments of the electrical system: “eligible customer generator” means one who uses a renewable electrical generation facility on the customer’s own premises which is “interconnected and operates in parallel with the electrical grid.” (§ 2827, subd. (b)(4)(A).)

⁵⁰ Merriam-Webster.com Dict. <<https://www.merriam-webster.com/dictionary/total>> [as of Nov. 21, 2025].

B. The Commission failed to proceed in the manner required by subdivision (b)(4) when it confined its analysis to the benefits and costs of *exported energy*, as measured by the *utilities’ costs* and the *utilities’ part* of the electrical system, instead of analyzing *the tariff’s total benefits and total costs*.

The Commission did not even claim to have ensured that the tariff’s total benefits and total costs to all customers and the electrical system are approximately equal, as subdivision (b)(4) requires.

Instead, the Commission erroneously substituted the word *exports* (i.e., excess electricity generated by a customer-generator’s facility and supplied to the grid) for the word *tariff*.⁵¹ But as previously discussed, limiting the analysis to exports considers only one of functions of the facility identified in subdivision (b)(3) while ignoring its primary function: on-site generation and on-site use by the customer to meet or offset the customer’s own electrical requirements. (See Part II.B, *ante*.)

The Commission then compounded its error by assuming that the Avoided Cost Calculator somehow would ensure that the

⁵¹ 21 App 18460 (Finding of Fact 93: “The Commission needs to know *export actual costs and benefits* in order to ensure they are approximately equal pursuant to Section 2827.1”).

costs and benefits of exports “to the electric grid”⁵² were approximately equal.⁵³

We previously discussed the Commission’s insupportable use of the Avoided Cost Calculator in the context of subdivision (b)(3). (See Part II.C.1, *ante*.) But another legal error resulted from the Commission’s erroneous attempt to invoke the Avoided Cost Calculator in the context of subdivision (b)(4): The Commission failed to evaluate the benefits of the 2022 Tariff to *all ratepayers and the electrical system*.

As discussed in Part II.C.1, *ante*, the utilities’ interests in providing electricity via the grid are *contrary to* the interests of all customers and the electrical system. While the regulatory profit structure gives utilities an incentive to expand the electrical grid, all customers and the electrical system benefit from *avoiding* grid expansions. Avoiding those expansions benefits all ratepayers and the electrical *system* but is not accounted for in the 2022 Tariff, which focuses myopically on the utilities’ lost sales and the utility’s grossly underestimated

⁵² 21 App 18460 (Finding of Fact No. 101), 18246 (“The current net energy metering tariff and its subtariffs are revised to balance the multiple requirements of the Public Utilities Code and the needs of the electric *grid*, the environment, participating ratepayers, as well as all other ratepayers.”), 18247 (2022 Tariff has “a retail export compensation rate aligned with the value that behind-the-meter energy generation systems provide *to the grid*.”).

⁵³ 21 App 18460 (Finding of Fact No. 98: “Using the Avoided Cost Calculator approach will ensure the costs and benefits [of exports] are approximately equal, as instructed by the Legislature.”).

marginal costs of providing electricity via the grid. The 2022 Tariff therefore fails to quantify:

- “resource-specific” benefits (i.e. benefits of customer-sited generation facilities like rooftop solar facilities);
- benefits that were *not* resource-specific (i.e., benefits “not solely applicable” to customer-sited generation facilities like rooftop solar facilities);
- benefits conferred on customer-generators (so-called “private” benefits);
- benefits conferred on everyone, whether or not they are regulated-utility customers (so-called “societal” benefits);
- benefits conferred on residential customers in disadvantaged communities;
- benefits conferred on all the utilities’ customers; and
- benefits to the electrical system.⁵⁴

⁵⁴ See, e.g., Part II.C.2, *ante* (Avoided Cost Calculator does not assess customer-sited generation or benefits to all ratepayers and electrical system of generating electrons that enable more consumption of electricity without grid expansions); 21 App 18454 (Finding of Fact 34: relying on Avoided Cost Calculator estimates for transmission and distribution, greenhouse gas emission reductions, and grid reliability and resiliency), 18455 (Finding of Fact No. 41: rejecting reliability and resiliency because “*only* ... attributable to stand-alone solar and solar paired with storage”; Finding of Fact No. 45: rejecting cost of carbon, methane leakage, and future transmission because “not solely applicable to net energy metering” and erroneously deemed “societal”; Finding of Fact No. 44: rejecting resiliency benefits erroneously deemed “*private*”); see also 1 App 824 (recognizing “equity-focused programs may further accelerate system installations in less affluent and more diverse areas going

In sum: The Commission utterly failed to conduct the comprehensive and inclusive analysis required by subdivision (b)(4).

C. The Court should harmonize the statute and reject the Commission’s erroneous assertion that the statutory requirements “conflict.”

In an attempt to justify its refusal to comply with the Legislature’s mandates, the Commission asserted that those mandates “sometimes[] conflict[ed]” with each other in some unspecified way. (21 App 18461 [Finding of Fact 107: “It [is] the Commission’s responsibility to balance the multiple and, sometimes, conflicting requirements of the statute.”].) Tellingly, while the 2022 Tariff alludes to purported conflicts, it fails to specifically identify any of them.⁵⁵ That failure left this Court in

forward”); Part V.A., *ante* (discussing differences between “electrical system” and “electrical grid”); 22 App 19315 (utilities are inherently incentivized to increase their profits by capital expenditures like expanding the grid, which all ratepayers pay for).

⁵⁵ 21 App 18320 (“This decision reiterates the previous statement that analysis of the successor tariff requires balancing multiple—and sometimes conflicting—legislative requirements and guiding principles, as well as balancing the needs of participants and nonparticipants. Hence, no single method of analysis will be the overriding determinant of a final successor tariff, including the length of time for the payback period.”), 18348 (“Continuing to base retail export compensation rates on retail import rates does not comply with Public Utilities Code Section 2827.1, thereby conflicting with one of the guiding principles.”), 18352 (declining to consider resource-specific benefits of wind power because “[i]t is the Commission’s

the position of having to *infer* that the Commission had concluded that “the directive of section 2827.1, subdivision (b)(4) to equalize costs and benefits both to all customers and to the electrical system required reducing the costs disproportionately shifted to nonowners by the NEM tariff.” (*CBD I, supra*, 98 Cal.App.5th at p. 37.) Deferring to the Commission’s unsubstantiated claim of “conflicting demands,” the Court declined to enforce the statutory mandate that the Commission “do *all* of the following.” (*Ibid.*; § 2827.1, subd. (b).)⁵⁶

That ruling occurred within the context of an ultra-lenient judicial review. But the independent judgment *de novo* *Yamaha* standard recognized by the Supreme Court requires a different approach—and a different result: The Court now should independently consider the language that the Legislature used (and did not use) in section 2827.1 and attempt to harmonize the statute’s various provisions to the extent they conflict. (*Woodhead, supra*, 43 Cal.3d at pp. 1009, 1010.)

When engaged in that task, the Court should bear the following in mind: When it wants to, the Legislature knows how to require the Commission to address cost shifting; yet the

responsibility to balance the multiple and, sometimes, conflicting requirements of the statute”).

⁵⁶ *CBD I, supra*, 98 Cal.App.5th at pp. 37, 38 (“Petitioners argue the Commission was not empowered to balance the demands of the statute’s potentially conflicting requirements because the Legislature directed the Commission to ‘do all of the following.’ (§ 2827.1, subd. (b).) The Legislature, of course, could direct the Commission to have its cake and eat it too; regrettably, the Commission has no such power.”).

Legislature omitted any mention of cost shifting in section 2827.1. For example, in section 2827, the section immediately preceding section 2827.1, the Legislature prohibited “a shifting of costs” for net surplus compensation.⁵⁷ (§ 2827, subd. (h)(5)(B).) But the Legislature did not include anything about cost shifting in section 2827.1. The Court therefore should refrain from reading any implied cost-shifting requirement into that section. (See *Woodhead, supra*, 43 Cal.3d at p. 1010; *Valentine, supra*, 28 Cal.2d at p. 142.)

In fact, the Legislature deliberately *deleted* cost-shift language from earlier versions of the bill. Those versions would have required that the tariff “be based on the electrical system costs and benefits received by nonparticipating customers” and that the tariff “[p]reserve nonparticipant ratepayer indifference” (meaning that the tariff should not affect ratepayers that do not participate in it).⁵⁸ (AB 327 (2013-2014 Reg. Sess.) as amended

⁵⁷ “Net surplus customer-generator,” “[n]et surplus electricity,” and “[n]et surplus energy compensation” are statutorily defined terms that apply to net energy metering tariffs developed pursuant to section 2827. (§ 2827, subd. (b)(7)-(9).) Under section 2827, net surplus energy compensation must be provided to eligible customer-generators who “generate[] more electricity during a 12-month period than is supplied by the electric utility to the eligible customer-generator during the same 12-month period.” (§ 2827, subs. (b)(7), (h)(5).) Only net surplus energy compensation includes language about cost shifting; bill credits provided for net energy metering customers have no such limitation. (Compare § 2827, subd. (c) with § 2827, subd. (h).)

⁵⁸ The Legislature sometimes requires the Commission to ensure that a tariff does not affect ratepayers that do not participate in the tariff. (See, e.g., § 2841, subd. (b)(4) [“The commission shall ensure that ratepayers not utilizing combined

Sept. 3, 2013, pp. 53-55 [showing strikethrough and new language].) The Legislature’s rejection of those provisions in earlier versions of AB 327 “is most persuasive to the conclusion that the act should not be construed to include the omitted provision.” (*People v. Soto* (2011) 51 Cal.4th 229, 245.)

The Court likewise should reject any suggestion that the hypothesized “cost shift” actually exists. The Legislature made no reference to any “cost shift” in 2013 when directing the Commission to include customer-generation as a permanent fixture in the electrical system (see Part II.A.3, *ante*); nor did the Commission assert the existence of any “cost shift” in 2016.⁵⁹ Even the flawed 2022 Tariff is devoid of any actual finding that a “cost shift” results from the renewable electrical generation facility that is the subject of section 2827.1, subdivision (b)(3), or from the customer-sited renewable distributed generation that is the subject of section 2827.1, subdivision (b)(1). Instead, the cost shift arose from the Commission’s choice to require that the Lookback Study employ the erroneous and misleading RIM test, which treats non-use of the utilities’ grid as a cost instead of as a core statutory benefit.

heat and power systems are held indifferent to the existence of this tariff.”]; see also §§ 2831, subs. (g), (h), 2833.)

⁵⁹ The Commission in 2016 acknowledged that the utilities lose revenue when customer-generators generate their own electricity, but rejected the utilities’ and other parties’ requests to assume any resulting “cost shift.” (May 3, 2023 RJN, Exh. A [D.16-01-044], p. 81.)

If the Commission had evaluated the benefits of customer facilities that generate renewable power for use on-site and locally; *if* the Commission had acknowledged the benefits to all customers and the electrical system of increasing customer-sited generation instead of treating those benefits as a cost; and *if* the Commission had included in the Tariff beneficial alternatives for residential customers in disadvantaged communities—then and only then could it have accurately evaluated the total benefits and the total costs of the tariff to all customers and the electrical system. (§ 2827.1, subd. (b).) The problem lies not with any perceived “conflicts” in the Legislature’s directives to the Commission, but in the Commission’s refusal to comply with those directives. The Court should reject the Commission’s refusal to adhere, as instructed, to *all* of the Legislature’s requirements in section 2827.1.

VI. Section 1757.1, subdivision (a)(2) governs the scope of this Court’s review.

When it remanded this case, the Supreme Court recognized that the Legislature changed the scope and manner of judicial review of Commission decisions in 1998 when it exercised its power under article XII of the state Constitution to rewrite sections 1757 and 1757.1. (*CBD II, supra*, 18 Cal.5th at pp. 303-304, 307, citing Cal. Const., art. XII, § 5.) Under article XII, the Legislature has the plenary power to grant the Commission authority over public utilities and to establish the scope and

manner of judicial review of Commission actions. (Cal. Const., art. XII, §§ 3, 5.)⁶⁰

Under the 1998 amendments, *Yamaha's* independent judgment de novo standard governs when courts review Commission energy decisions under sections 1757 and 1757.1, just as it does when courts review other agencies' decisions and decide issues of statutory interpretation. (*CBD II, supra*, 18 Cal.5th at pp. 303-308, citing *Yamaha, supra*, 19 Cal.4th 1.) And courts apply the normal rules of statutory interpretation, described in Part I, *ante*, to understand the meaning and requirements of those statutes.

The Legislature used identical language—"has not proceeded in the manner required by law"—for all Commission decisions, however categorized. (*CBD II, supra*, 18 Cal.5th at pp. 303-304, quoting § 1757.1, subd. (a)(2).) The *Yamaha* distinction between a quasi-legislative and an interpretive role for agency action thus has no application in the Commission context under article XII of the state Constitution.

Section 1757.1 applies to Commission rulemaking proceedings like this one.⁶¹ When reviewing Commission decisions applying a statute, the task before the Court in every

⁶⁰ When article XII as it exists today was adopted in 1974, it made "no substantive change" to the pre-1974 Constitution. (Cal. Const., art. XII, § 9; *Independent Energy Producers Assn. v. McPherson* (2006) 38 Cal.4th 1020, 1040, fn. 6.)

⁶¹ "The commission shall determine which rates and tariffs are applicable to customer generators only during a rulemaking proceeding." (§ 2827.1, subd. (b)(7).)

case is to give the statute its best reading—derived independently and de novo—using the established tools that courts regularly employ to determine the Legislature’s intent and starting with the language the Legislature used. (See Part I, *ante*.) The Legislature has provided no thumb on the scale for the Commission’s reading of the law.

Article XII is the constitutional source of the judicial review statutes applicable to review of Commission decisions, and courts are required to adhere to the Legislature’s language. (Cal. Const., art. XII, § 5; *Pac. Tel. & Tel. Co. v. Eshleman* (1913) 166 Cal. 640, 653-654; see also Brief of Amici Curiae Martha Escutia et al. (Dec. 30, 2024, No. S283614).)

The plain language of 1757.1, subdivision (a)(2) that the Commission “has not proceeded in the manner required by law,”⁶² as well as courts’ treatment of such language in other cases involving other statutes with similar language,⁶³ requires this

⁶² This language is derived from the administrative-mandamus statute Code of Civil Procedure section 1094.5. (See *CBD II, supra*, 18 Cal.5th at pp. 303-304.) The statutes governing judicial review of Commission decisions differ in important ways from the language of Code of Civil Procedure section 1094.5. These differences emphasize the rigor of the independent de novo statutory interpretation of legislative intent by the reviewing court in the article XII utility regulation context. Of particular consequence are the specification of “has not proceeded in the manner required by law” as a separate ground for reversal from “abuse of discretion,” and the elimination of a showing of prejudicial effect. (§ 1757.1, subs. (a)(1), (2); compare Code Civ. Proc., § 1094.5, subd. (b).)

⁶³ Cf. *City of San Diego v. Bd. of Trustees of Cal. State Univ.* (2015) 61 Cal.4th 945, 956 (“use of an erroneous legal standard constitutes a failure to proceed in a manner required by law”);

Court to determine what the governing statute requires and then to decide whether the Commission has not proceeded as required.

In short, the task before this Court under section 1757.1, subdivision (a)(2) is to determine the meaning of section 2827.1 by applying *Yamaha's* independent judgment de novo standard as the Legislature and the Supreme Court have directed. (*CBD II, supra*, 18 Cal.5th at pp. 303-304.)

VII. The Commission's failure to proceed in the manner required by section 2827.1 requires that the 2022 Tariff be set aside, thus reinstating the Commission's 2016 Tariff.

Section 1758 requires that “[u]pon the hearing the Supreme Court or court of appeal shall enter judgment either affirming or setting aside the order or decision of the commission.” (§ 1758, subd. (a).) For the reasons discussed above, the Court should set aside the 2022 Tariff.

As a practical matter, setting aside the 2022 Tariff will reinstate the 2016 Tariff. In the 2016 Tariff, the Commission committed to fully quantifying the benefits of the tariff as required by section 2827.1, which the Commission utterly failed to do in the 2022 Tariff. (Compare May 3, 2023 RJN, Exh. A at pp. 55, 117 [D.16-01-044 Conclusion of Law No. 25] with 21 App 18242.) Vacating the 2022 Tariff will clear the way for the Commission to keep its own promise to identify and fully

Family Health Centers of San Diego v. State Dept. of Health Care Services (2023) 15 Cal.5th 1, 10 (agency decision based on erroneous conclusions of law “must be reversed”).

quantify the range of benefits that the Legislature has long recognized and has required the Commission to assess.

CONCLUSION

For all the reasons set forth herein, Petitioners respectfully request that the 2022 Tariff be set aside.

DATED: November 21, 2025 **The Protect Our Communities Foundation**

By /s/ Malinda Dickenson
MALINDA DICKENSON

*Counsel for Petitioner
The Protect Our Communities
Foundation*

DATED: November 21, 2025 **Complex Appellate Litigation Group LLP for Environmental Working Group**

By /s/ Steven A. Hirsch
STEVEN A. HIRSCH

*Counsel for Petitioner
Environmental Working Group*

DATED: November 21, 2025 **Center for Biological Diversity**

By /s/ Roger Lin
ROGER LIN

*Counsel for Petitioner
Center for Biological Diversity*

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/s/ Steven A. Hirsch
Steven A. Hirsch

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