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**IN THE
SUPREME COURT OF CALIFORNIA**

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

v.

PUBLIC UTILITIES COMMISSION,
Respondent;

PACIFIC GAS AND ELECTRIC COMPANY
ET AL.,
Real Parties in Interest.

AFTER A DECISION BY THE COURT OF APPEAL
FIRST APPELLATE DISTRICT, DIVISION THREE CASE NO. A167721
AFTER REMAND FROM CALIFORNIA SUPREME COURT CASE NO. S283614
CAL. P.U.C. DECISION NO. 22-12-056

PETITION FOR REVIEW

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I. ISSUES PRESENTED

1. How are courts to apply the *Yamaha* standard for reviewing agency statutory interpretations to decisions of the California Public Utilities Commission, as the Court’s prior decision in this case requires, in a manner consistent with the judicial-review standard in Public Utilities Code section 1757.1, subdivision (a)(2),¹ which asks whether “[t]he commission has not proceeded in the manner required by law”?²

2. Did the Commission proceed in the manner required by the detailed requirements of Public Utilities Code section 2827.1 when it revised its net-energy-metering tariff in 2022?

II. WHY REVIEW SHOULD BE GRANTED

In *Center for Biological Diversity, Inc. v. Public Utilities Com.* (2025) 18 Cal.5th 293 (*CBD II*), this Court held that the *Yamaha*³ standard for reviewing an agency’s statutory interpretations also applies to statutory interpretations by the

¹ Section 1757, subdivision (a)(2) features the same “required by law” language and poses the same issues. For simplicity and concision, we refer henceforth only to section 1757.1, subdivision (a)(2).

² Hereafter, statutory references are to the Public Utilities Code unless otherwise indicated.

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

³ See *Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 10-13.

Public Utilities Commission. But the Court of Appeal’s published decision on remand reveals that lower courts remain confused about how to comply with that holding. The Court therefore should grant review to show how *Yamaha* interacts with section 1757.1, which represents the Legislature’s exercise of its exclusive constitutional power to determine the review standard for Commission decisions (the first Issue Presented) and, in the process, settle once and for all the legality of the critically important 2022 Tariff,⁴ which throttled the growth of renewable energy in California (the second Issue Presented).

In *CBD II*, this Court reversed the Court of Appeal’s decision upholding the Commission’s 2022 Tariff; disapproved the “uniquely deferential” *Greyhound* approach⁵ to judicial review of Commission decisions, which the Court of Appeal had applied; and remanded with instructions that the Court of Appeal “apply[] its independent judgment de novo” to interpret the governing statute, section 2827.1, and determine “whether the challenged tariff should be upheld under the *Yamaha* standard.” (*CBD II, supra*, 18 Cal.5th at pp. 304, 305, 309.)

But the Court did not specify how courts are to reconcile *Yamaha*’s complex “continuum”-based approach with the seemingly straightforward “not proceeded in the manner required by law” standard enshrined in section 1757.1, subdivision (a)(2).

⁴ Decision Revising Net Energy Metering Tariff and Subtariffs (2022) Cal. P.U.C. Dec. No. D.22-12-056 (2022 Tariff) (21 App 18242).

⁵ See *Greyhound Lines, Inc. v. Public Utilities Com.* (1968) 68 Cal.2d 406, 410-411.

Nor did the Court specify how—or even whether—*Yamaha*'s continuum applies in the Commission context, or where decisions like the 2022 Tariff would fall on that continuum if it were applicable.

On remand, the Court of Appeal again upheld the tariff. Instead of applying the *Yamaha* standard for reviewing statutory interpretations, the Court of Appeal effectively resurrected *Greyhound*'s ultra-deferential approach. It accomplished this in two steps. *First*, the Court of Appeal categorized the 2022 Tariff as “quasi-legislative” under *Yamaha*, without stopping to consider whether, under section 1757.1, that concept even applies to Commission decisions. *Second*, based on that categorization, the court carved out and applied the first prong of *Yamaha*'s deferential two-part standard for reviewing “quasi-legislative” agency regulations.

Under this new review standard, the Court of Appeal subjected every question about the meaning of section 2827.1 and the legality of the 2022 Tariff to the same inquiry: Did the tariff “f[a]ll outside [the Commission's] lawmaking authority delegated by the Legislature”?

But that was the wrong question—and it not only led to the wrong answer, it also seriously encroached upon the Legislature's exclusive constitutional power to determine the judicial-review standard applicable to Commission decisions. Under article XII of the California Constitution, section 5, the Legislature—not the judiciary—possesses “plenary power” to “‘establish the manner

and scope of review of commission action in a court of record.’ ”
(*CBD II, supra*, 18 Cal.5th at p. 301, 307.)

The Legislature exercised that power in 1998 when it revised the judicial-review standard to expand review of Commission decisions. But the standard that it codified in section 1757.1, subdivision (a)(2), was *not* whether the Commission’s action “fell outside its lawmaking authority delegated by the Legislature” (Opn. 21). Instead, that provision poses a very different question: Did the Commission “not proceed in the manner required by law”? In other words: Did the Commission do what the governing statute, interpreted properly and independently by the courts, required it to do?

Under the “required by law” standard that the Legislature specifically enacted for judicial review of all Commission decisions that are not water-related, the detailed requirements of section 2827.1 have real bite, because the question is whether the Commission’s 2022 Tariff satisfied each of those requirements—and the clear answer is “no.” (See Part IV.D., *post.*)

By contrast, under the far-less-rigorous standard that the Court of Appeal purported to derive from *Yamaha*, section 2827.1’s detailed requirements are effectively nullified, because the question becomes simply whether the Commission’s 2022 Tariff fell outside of the Commission’s general authority to develop and modify tariffs. Under that standard—which resembles the *Greyhound* approach of asking whether the Commission’s action “bears a reasonable relation to the statutory purposes and language”—it’s much easier to conclude that the

2022 Tariff passes legal muster. (See *Center for Biological Diversity, Inc. v. Public Utilities Com.* (2023) 98 Cal.App.5th 20, 31 (*CBD I.*)) But the proper question is not whether the Commission has the general authority to create or modify tariffs—it’s whether the Commission has the authority *not* to do what the governing statute specifically *requires* it to do.

By adopting a *Greyhound*-like, ultra-deferential review standard, the Court of Appeal granted itself permission to jump past the normal requirements of statutory construction, which take the statute’s actual words as their starting point (and, absent ambiguity, their ending point as well). Instead, the court resolved every interpretive issue according to whether or not the Commission’s interpretation was consistent with a purported legislative purpose of avoiding the so-called “cost-shift.” The “cost shift” theory posits that customer-generators, regardless of whether they ever export a single electron, unfairly shift the costs of operating and maintaining the electrical grid onto other “non-participating” customers because they buy less electricity from the utility company.

But this “cost shift” purpose appears nowhere in the statute and in fact was *rejected* by the Legislature when finalizing the language of 2827.1. The Court of Appeal instead derived the “cost shift” purpose principally from a superseded Senate Rules Committee analysis describing a pre-enactment version of section 2827.1 whose cost-shift language the Legislature later deleted.

The Court of Appeal ignored that deletion, the specific requirements of the enacted text, and the legislative purposes

expressly codified in an adjacent provision (section 2827, subdivision (a)). That provision describes numerous benefits provided by customer-generators, makes no mention of the “cost shift,” and supports Petitioners’ textually based statutory interpretation. An imaginary “cost shift” gestalt, founded on language that failed to make it into the statute, thus triumphed over the statute’s literal requirements and express statement of purposes.

The Court of Appeal’s published decision on remand thus violates the California Constitution and will spawn confusion about how this Court’s command to apply *Yamaha* in Commission cases interacts with the judicial-review standard of section 1757.1. The decision reveals the need for this Court to build upon its *CBD II* opinion by providing additional guidance to the lower courts. And since applying *Yamaha* to the specifics of the 2022 Tariff is the best way for the Court to demonstrate how it should be done in general, Petitioners ask that the Court also settle the substantive question of the tariff’s legality.

Petitioners therefore respectfully request that the Court grant review in order to settle both Issues Presented.

III. BACKGROUND

A. The Legislature’s enactment of section 2827.1 and rejection of the “cost shift” purpose urged by the utilities.

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 Commission to continue making an uncapped “standard contract or tariff” available to encourage “eligible customer-generators”—customers who generate electricity for use on-site and locally using privately funded renewable electrical generation facilities—which includes but is not limited to rooftop solar.⁶

Customer-sited and -funded generation does not burden the utility-owned electrical grid. Just the opposite, in fact. When a customer generates electricity, the electrons are either used on-site by the customer themselves or are transmitted over small, pre-existing wires to the customer-generator’s neighbors. For that reason, distributed renewable electrical generation has enabled California’s overall electricity usage to grow over the last two decades without costly expansions of the grid.⁷

But the utilities “have long been rankled by”⁸ the very existence of customer-generators, whose private investments threaten the additional returns that the utilities seek whenever

⁶ The phrase “rooftop solar” is not used here because the “renewable electrical generation facility” defined by section 2827.1, subdivision (a) includes generation from a broader array of renewable sources listed in section 25741 of the Public Resources Code.

⁷ The record contains unrefuted evidence establishing the value of customer-sited generation to offset grid expansions. (See, e.g., 9 App 7675-7681.) The Commission did not reject this evidence but deemed it not “relevant.” (See 21 App 18452.)

⁸ *CBD I, supra*, 98 Cal.App.5th at p. 24.

they expand the grid.⁹ The utilities would prefer to purchase energy from massive, centralized solar farms that will funnel their electricity through that same, expanded grid.

As AB 327 made its way through the Legislature, the utilities pushed a narrative that customer-generators, whether or not they export electricity and regardless of the size of the bill credit granted through the tariff, unfairly shift the costs of operating and maintaining the grid onto other “non-participating” customers—even though, as mentioned, electricity exported by customer-generators never touches the high voltage bulk-power grid and in fact generates clean electricity locally, relieving pressure to construct costly grid expansions.

On August 21, 2013, the Senate briefly incorporated this “cost-shift” theory into the bill by including language that the revised tariff should be “based on the electrical system costs and benefits received by *nonparticipating customers*” and “[p]reserve *nonparticipant ratepayer indifference*.” But the cost-shift theory was eliminated as quickly as it arrived: In the very next version of the bill, the Senate deleted that language and replaced it with the detailed requirements of section 2827.1, subdivision (b)(1), (b)(3), and (b)(4).¹⁰ As discussed below, however, a

⁹ See 22 App 19298, 19315, 19329-19330 (Cal. P.U.C., Utility Costs and Affordability of the Grid of the Future (Feb. 2021)).

¹⁰ May 3, 2023 RJN, Exh. A [D.16-01-044], pp. 54-55; see also Sen. Amend. to AB 327 (2013-2014 Reg. Sess.) Sept. 3, 2013, pp. 53-55 (showing strikethrough and new language). Decisions of the Public Utilities Commission appear in the appellate record as exhibits to several Requests for Judicial Notice. Hyperlinks to

contemporaneously published Senate Committee analysis— heavily relied upon by the Court of Appeal on remand—failed to take note of this critical amendment.

B. Section 2827.1’s requirements and codified purposes.

As enacted, section 2827.1 sought to ensure the continued growth of customer-sited renewable generation by placing specific requirements on the Commission. Addressing a fictional cost shift was not among them. Instead, section 2827.1 requires that the new tariff must, among other things:

- be “based on the costs and benefits of the renewable electrical generation facility”—that is, the costs and benefits of the privately funded, customer-sited generation facility installed and used on site and locally by the customer-generator’s nearest neighbors (§ 2827.1, subds. (a), (b)(3), § 2827, subds. (b)(4), (11));
- “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)).

decisions cited in this petition are included at the end of the Table of Authorities for the Court’s convenience.

The true (non-cost-shift) purposes behind section 2827.1 were unusually easy to discern, not only due to the statute’s own detailed requirements but also because the Legislature simultaneously reenacted a list of statutory purposes codified in section 2827, subdivision (a). There the Legislature stated that providing programs for eligible customer-generators can:

- “encourage substantial private investment in renewable energy resources,”
- “stimulate in-state economic growth,”
- “reduce demand for electricity during peak consumption periods,”
- “help stabilize California’s energy supply infrastructure,” and
- “enhance the continued diversification of California’s energy resource mix.”

Although the Legislature could have modified this list of purposes upon reenactment to include references to avoiding the “cost shift,” ensuring fairness to “non-participants,” or maintaining “ratepayer indifference,” it did not do so. This was consistent with the Legislature’s deletion of cost-shift-related language from section 2827.1 itself.¹¹

¹¹ The Legislature expressly incorporated section 2827’s definitions of “eligible customer-generator” and “renewable electrical generation facility” into section 2827.1. (See §§ 2827.1, subd. (a), 2827, subds. (b)(4)(A), (b)(11).) By cementing the bond between the two adjacent statutory sections, the Legislature left no doubt that it was referring to the same, helpful eligible customer-generators in section 2827.1 that it referred to in section 2827 when it acknowledged the benefits of renewable customer generation.

C. The Commission’s vacillating interpretation of section 2827.1.

Back in 2016, the Commission had no trouble understanding what section 2827.1 meant and required it to do. The 2016 Commission correctly understood that the Legislature viewed net energy metering (NEM¹²) as a good thing that was to be encouraged and expanded upon, not something to be constrained. The tariff that the Commission approved that year concluded that “encouraging growth and expansion of customer-sited renewable [distributed generation] has been, and continues to be, a central theme behind NEM legislation and the Legislature’s expressed intent,” including in section 2827, subdivision (a).¹³ The Commission correctly interpreted section 2827.1 as building on the Legislature’s objective of encouraging growth and expansion of customer-sited renewable distributed generation “by not only continuing the NEM program, but envisioning development of options for NEM participation to expand to disadvantaged residential communities” and “eliminat[ing] the cap on eligible [distributed-generation] system size so the program can grow through the inclusion of projects over one megawatt.”¹⁴ And the Commission’s 2016 tariff likewise *rejected* the utilities’ argument that the Commission should limit growth because of a “countervailing need to reduce or eliminate

¹² See § 2827, subd. (b)(6) (defining net energy metering).

¹³ Sept. 13, 2024 RJN, Exh. 8 [D.16-09-036], p. 13.

¹⁴ Sept. 13, 2024 RJN, Exh. 8 [D.16-09-036], pp. 13-14.

the [alleged] cost-shift to non-NEM customers.”¹⁵ One advantage of maintaining net energy metering, the Commission explained, was its “demonstrated success in supporting the growth of customer-sited renewable [distributed generation].”¹⁶

Over the last decade, the statute has not changed; but the Commission has changed its mind about the statute. In 2022, after years of intense industry lobbying, the Commission dramatically revised its view of what section 2827.1 required. Now the Commission resurrected the utility-sponsored “cost-shift” argument that the Legislature struck from the bill in 2013. The Commission also changed its mind about how to measure the costs and benefits of net energy metering, treating the very thing that the Legislature had tried to encourage—customer generation of renewable electricity—as a “cost” (that is, as an activity that reduces utility revenues) while ignoring its many benefits. The output of an inapposite formula that mischaracterized “costs” and limited “benefits” became the Commission’s rationale for refusing to comply with the law. As a result, the 2022 Tariff failed to comply with the law, including any of the four specific section 2827.1 requirements quoted above. (See Part IV.D., *post.*)

D. History of this litigation.

Petitioners participated in the Commission proceeding that led to the 2022 Tariff. When the Commission issued its decision approving the tariff, they petitioned for a writ of review in the

¹⁵ Sept. 13, 2024 RJN, Exh. 8 [D.16-09-036], p. 15.

¹⁶ May 3, 2023 RJN, Exh. A [D.16-01-044], p. 80.

Court of Appeal under section 1757.1, subdivision (a). Petitioners argued, among other things, that the 2022 Tariff violated section 2827.1.

1. The Court of Appeal’s initial *CBD I* decision.

The Court of Appeal upheld the tariff under the “uniquely deferential” *Greyhound* approach for reviewing Commission decisions, which mandated “a strong presumption favoring the validity of a Commission decision.” (*CBD I, supra*, 98 Cal.App.5th at p. 31.) Its opinion largely avoided interpreting the text of section 2827.1, instead relying on superseded legislative history that took no account of the Legislature’s deletion of cost-shift-related language, and concluding under *Greyhound* that the tariff “bears a reasonable relation to the statutory purposes and language”—both of which, the court concluded, had to do with avoiding the “cost shift.” (*Id.* at pp. 26, 31.)

2. This Court’s *CBD II* decision.

This Court reversed in a decision that eliminated the *Greyhound* approach, confirmed the application of the *Yamaha* standard instead, and emphasized that courts reviewing Commission decisions “cannot abdicate” their “quintessential” duty to independently interpret the words of the statute that governs the challenged Commission action. (*CBD II, supra*, 18 Cal.5th at p. 305.)

The Court commenced its analysis by explaining that article XII, section 5 of the California Constitution “confers plenary power on the Legislature” to “establish the manner and

scope of review of commission action in a court of record.” (*CBD II, supra*, 18 Cal.5th at p. 301.)

The Court further explained that the Legislature exercised that unique constitutional power in 1911, enacting a statute that narrowly limited judicial review to a determination of “whether the commission has regularly pursued its authority.” (*CBD II, supra*, 18 Cal.5th at p. 302.) This in turn became the basis for the ultra-lenient *Greyhound* approach that the Court of Appeal had applied in upholding the 2022 Tariff.

But the statutory foundation in place when *Greyhound* was decided vanished in 1998 when the Legislature rewrote sections 1757 and 1757.1, setting new standards for judicial review of most Commission decisions. The new standards “expanded the scope of review,” largely to address a “widespread consensus” that judicial review of Commission decisions under *Greyhound* was “virtually nonexistent.” (*CBD II, supra*, 18 Cal.5th at pp. 303-304, 308, fn. 1.)

This Court did not decide whether section 1757 or 1757.1 applied here; nor did it decide how to interpret the “required by law” standard in subdivision (a)(2) of either statute. But this Court did observe that sections 1757 and 1757.1 “borrowed heavily” from the general administrative-mandamus statute, Code of Civil Procedure section 1094.5, and that “[i]t follows that review under [sections 1757 and 1757.1] should parallel the review that applies to other administrative decisions.” (*CBD II, supra*, 18 Cal.5th at p. 304.) Second, the Court quoted the statutes’ uncodified preamble, which explained that the

Legislature’s intent in altering the review standard was “to conform judicial review of the Public Utilities Commission decisions . . . to be consistent with judicial review of the other state agencies.” (*Id.* at pp. 304-305, italics omitted.) The Court decided that “the Legislature’s stated intention to make judicial review of the Commission’s decisions ‘consistent with judicial review of the other state agencies’ is best understood to include judicial review of the statutory interpretations underlying those decisions.” (*CBD II, supra*, 18 Cal.5th at pp. 307-308.) The Court therefore offered a variety of observations regarding the courts’ ultimately nondelegable duty to interpret statutes independently. (See *id.* at pp. 303-304, 305-306.)

The Court observed that, “[w]here, as here, the primary question is whether a state agency has acted in a manner consistent with the statute it purports to implement . . . [o]ur leading case concerning review of an agency’s statutory interpretation is *Yamaha*.” (*CBD II, supra*, 18 Cal.5th at p. 305.) The Court went on to describe *Yamaha*’s framework, which “distinguished between opposite ends of an administrative continuum”: “(i) quasi-legislative regulations adopted by an agency to which the Legislature has confided the power to make law and (ii) an agency interpretation of the meaning and legal effect of a statute.” (*Id.* at p. 305.)

Quasi-legislative regulations are reviewed under a two-pronged test: “If satisfied [1] that the rule in question lay within the lawmaking authority delegated by the Legislature, and [2] that it is reasonably necessary to implement the purpose of the

statute, judicial review is at an end.” (*CBD II, supra*, 18 Cal.5th at p. 305, quoting *Yamaha, supra*, 19 Cal.4th at pp. 10-11, bracketed numbers added.) But the Court did not hold that the *Yamaha* quasi-legislative approach applies in the Commission context.

At the other end of the *Yamaha* continuum, “the binding power of an agency’s interpretation of a statute or regulation is contextual: Its power to persuade is both circumstantial and dependent on the presence or absence of factors that support the merit of the interpretation.” (*CBD II, supra*, 18 Cal.5th at p. 305, quoting *Yamaha, supra*, 19 Cal.4th at p. 7, italics omitted.) One of those factors—identified in *Yamaha* and critical to the proper resolution of this case—requires courts to consider “the particular agency offering the interpretation.” (*Yamaha*, at p. 12; see Part IV.A.2., *post*.)

In conclusion, the Court instructed the Court of Appeal to address on remand “in the first instance” the question “whether the challenged tariff should be upheld under the *Yamaha* standard” for reviewing agency interpretations of statutory language. (*CBD II, supra*, 18 Cal.5th at p. 309.) Answering that question would require the Court of Appeal to carry out its “quintessential judicial duty” of “applying its independent judgment de novo to the merits of the legal issue before it,” beginning with the text of the statute. (*Id.* at p. 305.)

Consistent with its usual practice and “the structure of appellate decisionmaking” (*CBD II, supra*, 18 Cal.5th at p. 309), this Court also left it to the Court of Appeal to resolve important

subsidiary questions surrounding *Yamaha's* application to Commission decisions. Chief among these were:

1. How are courts to reconcile *Yamaha's* “continuum”-based approach to judicial deference with the seemingly straightforward “not proceeded in the manner required by law” standard enshrined in sections 1757, subdivision (a)(2) and 1757.1, subdivision (a)(2)?

2. Is *Yamaha's* quasi-legislative/interpretive continuum relevant to judicial review of Commission decisions, and if so, how is it to be applied to challenges to Commission decisions brought under section 1757.1, subdivision (a)(2)?¹⁷

3. The Court of Appeal's *CBD III* decision on remand.

On remand, in a published opinion, the Court of Appeal again upheld the 2022 Tariff (*CBD III*). The court agreed in principle that it must “exercise [its] independent judgment in interpreting the provisions of section 2827.1” by applying “well-settled principles of construction” (Opn. 12) and that its review was governed by section 1757.1, subdivision (a)(2) (Opn. 10-11).

But that is not how it proceeded. Instead of interpreting and applying the section 1757.1 subdivision (a)(2) review standard, it subjected every interpretive issue to a *Greyhound*-like standard that it created by (1) concluding that the 2022 Tariff decision was a “quasi-legislative administrative decision properly reviewed at that end of the *Yamaha* continuum” and

¹⁷ Both subsidiary questions are subsumed within Issue 1 of this Petition.

then (2) asking a single question: whether the Commission’s decision “fell outside [the Commission’s] lawmaking authority delegated by the Legislature,” a formula repeated over and over throughout the opinion. (See Opn. 12, 17, 20, 23, 25, 26, 28, 30.)¹⁸

Having settled upon a supremely deferential review standard of its own making, the Court of Appeal spent almost no time interpreting the words of section 2827.1 or explaining how the Commission had proceeded in the manner that section 2827.1 requires. Instead—without first identifying textual ambiguities that could justify resorting to extrinsic evidence of legislative intent—the court relied on snippets of superseded legislative history to once again support the conclusion that section 2827.1’s overriding purpose was to address the “cost shift.”¹⁹ The court

¹⁸ At the same time, the Court of Appeal eliminated the second prong of *Yamaha*’s “quasi-legislative” standard, which asks whether the agency action was “reasonably necessary to implement the purpose of the statute.” (*CBD II, supra*, 18 Cal.5th at p. 305, quoting *Yamaha, supra*, 19 Cal.4th at pp. 10-11.) That second prong functions—if only weakly—as an additional limitation or check on the highly deferential first prong. Because the Court of Appeal’s review standard excises even that modest limitation, it is *more* deferential than *Yamaha*’s quasi-legislative standard.

¹⁹ As authority for the “cost shift,” *CBD III* repeatedly cites to language in a Senate Rules Committee Analysis prepared on September 9, 2013. (Opn. 1-2, 4, 15, 24, 25, 26, 28, 30 [citing to Sen. Rules Com., Off. of Sen. Floor Analyses, 3d reading analysis of Assem. Bill No. 327 (2013-2014 Reg. Sess.) as amended Sept. 6, 2013 (Sept. 9th Senate Analysis)].)

But the Sept. 9th Senate Analysis cannot constitute reliable evidence of the Legislative intent behind section 2827.1, as it describes the version of section 2827.1 that existed on August 21, 2013—a version gutted on September 3, 2013 when

never mentioned, let alone considered the implications of, the fact that the Legislature had *deleted* all cost-shift-oriented language from section 2827.1 in the bill that was eventually enacted. The court likewise declined to “import” the detailed list of legislative purposes codified in section 2827, subdivision (a), which expressed the Legislature’s intent to encourage, not throttle, customer-sited renewable generation. (Opn. 26-27.)

Employing these methods, the Court of Appeal concluded, among other things, that:

- Subdivision (b)(1)’s requirement that the Commission devise a tariff “ensur[ing] that customer-sited renewable distributed generation continues to grow sustainably” was driven by the Legislature’s concern that continuing growth “at the same pace as before” would be *unsustainable*—due to the cost shift. (Opn. 14-16.)
- Subdivision (b)(1)’s requirement that the tariff “*include* specific alternatives designed for growth among residential customers in disadvantaged communities” did not literally require that the tariff “include” such alternatives. (Opn. 16-19.)

the Legislature deleted the bill’s cost-shift language, replacing it with the directives in subdivision (b)(1), (b)(3), and (b)(4) that are at issue in this case.

The other two documents that the Opinion relies upon are an August 28, 2013 “Fact Sheet” and an August 30, 2013 “Press Release.” (See Opn. 16, 22, 27.) These documents were dated before the September 3, 2013 amendments to section 2827.1 and thus were irrelevant to the questions before the Court.

- Subdivision (b)(3)'s requirement that the tariff be "based on the costs and benefits of the renewable electrical generation facility" did not actually require any analysis of the costs and benefits of the renewable electrical generation facility and instead allowed the Commission to base the tariff on an inapposite Lookback Study and an equally inapposite Avoided Cost Calculator. (Opn. 5-7, 20-27.)
- Subdivision (b)(4)'s requirement that the Commission "[e]nsure that the total benefits of the standard contract or tariff to all customers and the electrical system are approximately equal to the total costs" was not violated by the Commission's substituting the word "export" for "tariff," basing the tariff on something other than the renewable electrical generation facility, and failure to quantify benefits to all customers and the electrical system—because those choices all served the overarching purpose of remedying the "cost shift." (Opn. 27-31.)

The Court of Appeal summarily denied Petitioners' Petition for Rehearing on April 1, 2026.

IV. DISCUSSION

- A. The Court should clarify how courts are to apply the *Yamaha* standard for reviewing agency statutory interpretations, in a manner consistent with article XII, to Commission decisions challenged under section 1757.1, subdivision (a)(2).**

An appellate court looking to the Court of Appeal's *CBD III* remand opinion for guidance on how to apply *Yamaha* to a

Commission decision challenged under section 1757.1, subdivision (a)(2) is bound to come away with some highly misleading impressions.

For example, that court is likely to disregard as mere surplusage the section 1757.1, subdivision (a)(2) review standard, which asks whether the Commission “has not proceeded in the manner required by law.” It is likely instead to pose the very different, *Greyhound*-like question whether the Commission’s decision “fell outside its lawmaking authority delegated by the Legislature.” And in answering that question, the court might similarly privilege extrinsic evidence of legislative intent over the actual statutory text and enactment history—just as the Court of Appeal did on remand.

As discussed below, each of these methodological choices would be wrong, and in many cases they would lead to an incorrect result—one that encroaches upon the Legislature’s exclusive article XII powers and conflicts with this Court’s decisions applying the “in the manner required by law” language in other statutory contexts.

- 1. The Court of Appeal’s decision exhibits confusion over the proper standard of review when *Yamaha* is applied to Commission decisions.**

As mentioned, this Court’s *CBD II* decision left it for the Court of Appeal to determine (among other things) some important subsidiary questions about how to apply *Yamaha* to Commission decisions in a manner consistent with the review standard of section 1757.1, subdivision (a)(2).

Left to its own devices, the Court of Appeal invented a new review standard adapted from the first prong of *Yamaha*'s two-part test for determining the legality of "quasi-legislative" administrative regulations. The new standard asks whether the Commission's decision "fell outside its lawmaking authority delegated by the Legislature."

But that is a very different question than the one posed by section 1757.1, subdivision (a)(2)—whether the Commission "has not proceeded in the manner required by law." That standard requires courts to determine whether the Commission actually complied with each of the statute's specific requirements.

Asking whether the Commission "has not proceeded in the manner required by law" gives section 2827.1's detailed requirements real teeth by asking whether the 2022 Tariff satisfies each of those requirements. As discussed below, the resulting answer is "no." (See Part IV.D., *post.*)

By contrast, asking whether the Commission's tariff decision "fell outside its lawmaking authority delegated by the Legislature," as the Court of Appeal did here, potentially nullifies section 2827.1's requirements by asking only whether the Commission's tariff decision fell within its general authority to develop and modify tariffs. (See § 2827.1, subd. (b) [requiring Commission to "develop a standard contract or tariff" that is "appropriate to achieve the objectives of" section 2827.1].) Under the Court of Appeal's new standard—which effectively resurrects the discredited *Greyhound* approach of asking whether the Commission's action bears "a reasonable relation to statutory

purposes and language”—it’s much easier to conclude that the 2022 Tariff passes legal muster.

And there is yet another objection to equating the words “not proceeded in the manner required by law” with “fell outside its lawmaking authority delegated by the Legislature”: Doing so clashes with the way this Court has interpreted “in the manner required by law” in other statutory contexts. When considering whether an agency failed to proceed in the manner required by law, courts do not ask themselves whether an administrative decision “fell outside [the agency’s] lawmaking authority delegated by the Legislature.” Instead, they independently interpret and decide what the law requires and then determine whether the agency violated those requirements.²⁰

Accordingly, this Court should grant review to clarify the review standard that emerges when applying *Yamaha* in the Commission context.

²⁰ See, e.g., *City of San Diego v. Bd. of Trustees of Cal. State Univ.* (2015) 61 Cal.4th 945, 956 (“[U]se of an erroneous legal standard constitutes a failure to proceed in a manner required by law”); *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”); *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 512 (explaining that an agency has no discretion as to legal requirements in a California Environmental Quality Act case involving allegations that an agency failed to act in a manner required by law).

2. The Court of Appeal’s decision exhibits confusion over whether a Commission decision is a “quasi-legislative” administrative regulation under *Yamaha*.

The first step in the Court of Appeal’s replacement of section 1757.1’s “required by law” standard required it to conclude that the 2022 Tariff is “quasi-legislative” within the meaning of *Yamaha*. That conclusion formed the predicate for adapting the first prong of *Yamaha*’s two-part “quasi-legislative” test as the new standard for reviewing Commission decisions.

This move raises an important question that the Court’s *CBD II* decision left for the Court of Appeal to decide in the first instance: Is the *Yamaha* “continuum” even relevant here; and if so, how does it interact with the “required by law” standard of section 1757.1, subdivision (a)(2)? Although the Court’s *CBD II* decision described the *Yamaha* continuum, it stopped short of holding that the continuum applies to Commission decisions or that the 2022 Tariff occupies any particular spot on the continuum.

The question is consequential. Unlike *Yamaha*’s continuum approach, which articulates the varying standards of review applicable to varying types of agency action under varying circumstances, section 1757.1 applies a single, unified “required by law” standard to *every* procedural context facing the Commission (except those involving water corporations). (See § 1757.1, subds. (a)(2), (b); see also § 1757, subds. (a)(2), (c).) As this Court explained, section 1757 applies “in complaint and enforcement proceedings and ratemaking and licensing decisions

that are addressed to specific parties,” while section 1757.1 applies in proceedings not governed by section 1757. (*CBD II, supra*, 18 Cal.5th at p. 303.)

None of the words used in sections 1757 or 1757.1 resemble the *Yamaha* test for reviewing quasi-legislative administrative regulations, a test that “derives directly from statute,” and specifically from the Administrative Procedure Act (APA).²¹ To the contrary, the Commission is expressly excluded from the APA.²²

To the extent that the “quasi-legislative” label authorizes a form of extreme deference to Commission interpretations of statute or otherwise treats Commission decisions as binding authority in the courts, or does not require statutory compliance, it should be rejected in Commission cases.

On remand, Petitioners suggested to the Court of Appeal that there is at least one way to read *Yamaha* so as to avoid any potential clash between the *Yamaha* “continuum” approach and section 1757.1, subdivision (a)(2)’s “required by law” standard. *Yamaha* teaches that a court assessing the value of an agency interpretation must consider, inter alia, “the particular agency offering the interpretation.” (*Yamaha, supra*, 19 Cal.4th at p. 12.) That admonition carries special weight here, because any

²¹ *Yamaha, supra*, 19 Cal.5th at p. 16 (conc. opn. of Mosk, J.), citing Gov. Code, §§ 11342.1 & 11342.2; *accord id.* at p. 11, citing *Wallace Berrie & Co. v. State Bd. of Equalization* (1985) 40 Cal.3d 60, 65, citing in turn former Gov. Code, §§ 11373 & 11374.

²² Gov. Code, § 11351, subd. (a) (the exclusion excepts Commission rules of procedure, which are filed and noticed).

consideration of “the particular agency” in a Commission case leads right back to the Legislature’s plenary article XII, section 5 authority over the Commission and to the unique judicial-review standard that the Legislature, exercising that authority, codified in section 1757.1.

Thus, to the extent that the legislatively created judicial-review standard of section 1757.1 differs from the judicially created variable-deference approach outlined in *Yamaha*, *Yamaha itself* suggests that the Legislature’s standard must prevail. It is therefore unnecessary to assume that section 1757.1 incorporates the *Yamaha* continuum.

But even if *Yamaha*’s continuum concept applies here in some fashion, there are grounds for concluding that the 2022 Tariff is *not* “quasi-legislative.” As this Court explained in *CBD II*, the Legislature borrowed language from Code of Civil Procedure section 1094.5 when crafting the “required by law” language of section 1757.1, subdivision (a)(2). (See *CBD II, supra*, 18 Cal.5th at pp. 304, 307.) But section 1094.5 applies only to adjudicatory or quasi-judicial administrative decisions. (See, e.g., *Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 566-567.) Thus, the “required by law” standard borrowed language that *does not apply* in the quasi-legislative context. (*CBD II*, at pp. 303-304.) For the Court of Appeal to characterize the 2022 Tariff as quasi-legislative is a further encroachment upon the Legislature’s article XII powers.

This, too, is a question that can be resolved only if this Court grants review to clarify how the *Yamaha* standard works in the Commission context.

B. This case is of statewide legal importance, both for its potential to clarify how *Yamaha* applies to Commission decisions and for its impact on renewable-energy growth in California.

As the Court recognized by its grant of review in *CBD II*, the unsettled questions posed by this case satisfy the “important question of law” standard of California Rules of Court, rule 8.500(b)(1). And for two reasons, in the wake of the Court of Appeal’s remand decision, that is truer than ever.

First, the Court of Appeal’s published opinion is the first to implement this Court’s *CBD II* ruling. As such, it furnishes the template that other courts will follow when applying *Yamaha* to section 1757.1, subdivision (a)(2) challenges to Commission decisions. Yet the Court of Appeal’s confused and improper approach effectively undoes the work that this Court did in *CBD II* when it ended the Commission’s era of virtual unreviewability and recognized the Legislature’s intention to subject the Commission’s statutory interpretations to the courts’ ordinary statutory-interpretation principles.

Second, the legality of the 2022 Tariff—in and of itself, and without regard to any broader jurisprudential issue—is a question of paramount importance to this State. The 2022 Tariff throttled the growth of customer-sited renewable energy generation in California. New installations of eligible technologies dropped by 63 percent, while nine companies

operating in California have filed for bankruptcy and many more have been forced to either substantially cut back on their labor force or permanently close.²³

The 2022 Tariff put the torch to decades of efforts by the Legislature to promote the continued growth of customer-generated renewable electricity. When the Legislature enacted section 2827.1 in 2013, it already had repeatedly recognized and encouraged the myriad state-wide benefits that result when customer-generators invest in facilities to generate renewable 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.

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

²³ See Brief of Amicus Curiae California Solar Energy Industries Association, Inc. (Dec. 30, 2024, No. S283614) at pp. 38-39.

and more customers.²⁴ In 2013, instead of sunseting the program or maintaining the cap on the number and amount of additional customer-generators, the Legislature eliminated the cap on total participation and the cap on system sizes for each eligible facility. And the Legislature 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, subs. (b)(1) & (5), (c).)

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

²⁴ See, e.g., 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).

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.)

But instead of basing the tariff on an accurate analysis of the costs and benefits of customer facilities that generate electricity and thus prevent increased demand on the grid, the Commission based its 2022 Tariff on 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 2827.1 and 2827, subdivision (a).

The Issues Presented here are, accordingly, indisputably ones of statewide importance.

C. This case is an excellent vehicle for deciding the issues presented.

Petitioners’ first Issue Presented asks how courts are to apply the *Yamaha* standard for interpreting statutes to Commission decisions in a manner consistent with article XII and the legislatively created judicial-review standard set forth in section 1757.1, subdivision (a)(2). Unfortunately, the Court of Appeal’s published remand decision—the first to attempt that task—will only confuse courts in all future cases that review Commission decisions. Now is the time to nip that confusion in the bud by showing the lower courts exactly how it’s done. For that reason alone, this case is the best possible vehicle for addressing Issue One.

Petitioners’ second Issue Presented asks whether the Commission proceeded in the manner required by section 2827.1

in promulgating the challenged 2022 Tariff. This case isn't just a *good* vehicle for resolving that question—it's the *only* vehicle. Unless this Court grants review, the tariff will stand and will continue to undermine the sustainable growth of renewable energy in California—even though the tariff manifestly fails to conform to the governing law.²⁵

²⁵ For three reasons, the “vehicle” inquiry is not affected by the Court of Appeal’s repeated suggestions that Petitioners “have not explained why [an] argument [was] not forfeited.” (Opn. 18, 25, 30.) **First**, Petitioners had no ability to object to the court’s application of its novel review standard until the opinion issued—so no forfeiture could have occurred on that point. **Second**, the Court of Appeal never actually held that the Petitioners had forfeited any argument. **Third**, Petitioners *did* “explain” on pages 25-27 of their Supplemental Responding Brief why no issues were forfeited; and those arguments apparently were enough to prevent the court from finding forfeiture.

Equally inaccurate was the court’s statement that Petitioners’ supplemental briefing cited “no evidence regarding *any* of” the benefits of customer-sited generation. (Opn. pp. 25-26, original italics.) In fact, Petitioners’ supplemental briefing established that the 2022 Tariff did not consider the subject matter of section 2827.1 subdivision (b)(3) *at all*. (Petitioners’ Supplemental Opening Brief 17-37; Petitioners’ Supplemental Responding Brief 16, 52-53.) And Petitioners’ briefing cited extensive record evidence of the benefits of customer-sited distributed electrical generation facilities. (See, e.g., Petitioners’ Supplemental Opening Brief 20 [citing 10 App 8537], 26-27 [citing Commission’s own findings failing to consider electrification benefits], 31 [citing 5 App 4522-4523, 4528; 7 App 5185, 5232; 9 App 7673-7674; 10 App 8477-8478, 8528, 8530, 8537; 22 App 19326-19331], 34 [citing 22 App 19315, 19310]; Petitioners’ Supplemental Responding Brief 9, 14, 19, 37-38, 52-53 [citing 11 App 9272], 62-64 [citing 9 App 7656-7681; 11 App 9379-9380; 10 App 8477, 8537]; see also 5 App 4530; 1 App 789.)

D. The Commission failed to proceed in the manner required by law when it developed and issued the 2022 Tariff.

The Court of Appeal’s confusion over how to apply *Yamaha* in the Commission context prevented it from adequately performing its interpretive task and resulted in a misguided judgment that upheld an illegal tariff. If this Court grants review on Petitioners’ second Issue Presented, Petitioners will present a textual statutory interpretation and explain how the Commission failed to proceed in the manner required by section 2827.1 as so interpreted.

As a threshold matter, Petitioners note that the Court of Appeal’s ultra-deferential standard for reviewing Commission decisions was erroneous because it clashed with section 1757.1, subdivision (a)(2)’s “required by law” standard and because it effectively resurrected the disapproved *Greyhound* approach. Under article XII, section 5 of the California Constitution, the Legislature possesses sole and plenary power to determine the judicial-review standard for Commission decisions. The Court of Appeal effectively usurped that power.

The Court of Appeal’s application of its *Greyhound*-like standard resulted in an erroneous interpretation of—or, more accurately, a failure to interpret—the text of section 2827.1. When determining whether the Commission proceeded in the manner required by section 2827.1, the Court of Appeal’s principal task was to identify the interpretation that “the court, after applying all relevant interpretive tools, concludes is *best*,” because “[i]n 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.)²⁶

Instead, led astray by its *Greyhound*-like standard, the court engaged in almost no independent interpretation of the text of section 2827.1. It decided every question according to whether it bore some reasonable relation to an overriding “cost-shift” purpose that the court located primarily in superseded snippets of legislative history that failed to take note of the fact that the Legislature had *deleted* cost-shift language from the statute. The court thus privileged superseded legislative history over statutory language—a fundamental error.

What follows is a necessarily brief preview of Petitioners’ interpretive arguments, each of which was elaborately explained and supported in the briefing submitted below.

1. Subdivision (b)(3) of section 2827.1 requires the Commission to base the tariff upon the costs and benefits of privately funded customer facilities that generate renewable electrical power for use on-site and locally, allowing more electricity to be consumed in the electrical system while preventing increased use and costly expansion of the utility’s grid. These inherent characteristics of the facility are found in the definitions of “eligible customer-generator” and “renewable electrical generation facility” that the

²⁶ *Loper Bright* involved the federal Administrative Procedure Act. Neither the federal nor the California Administrative Procedure Act apply in this case. (See § 1701, subd. (b); Gov. Code, § 11351, subd. (a).) But *Loper Bright* is useful here for the principle quoted above.

Legislature expressly incorporated into section 2827.1. (§2827.1, subd. (a).) Instead, however, the Commission based the 2022 Tariff on the Lookback Study and on an Avoided Cost Calculator that looked only at the benefits of reducing demand on the utilities' existing grid. As a result, the 2022 Tariff is *not* “based on” the customer-sited generation facility’s costs and benefits.

2. The first clause of subdivision (b)(1) of section 2827.1 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. Instead, however, the Commission—citing the “undue and burdensome financial expense of nonparticipant ratepayers”—used the Lookback Study’s RIM-test results as a justification for *not* ensuring the continued sustainable growth of customer-sited generation. As a result, the payback time for eligible technologies doubled or tripled, discouraging investment in renewable generation instead of ensuring its sustainable growth.

3. The second clause of subdivision (b)(1) of section 2827.1 requires the Commission to include in the tariff—not elsewhere—specific alternatives (DAC Customer Alternatives) designed for growth of customer-sited renewable distributed generation among residential customers in “disadvantaged communities.” Instead, however, the Commission substituted *low-income households* for *disadvantaged communities* and failed to include any

disadvantaged-customer alternatives in the 2022 Tariff itself. The result was a reliance on programs, not included in the tariff, that lack the certainty and reliability of in-tariff alternatives and that artificially constrict the scope of the statute’s disadvantaged-customer alternatives requirement, inevitably excluding customers that the Legislature intended to benefit.

4. Subdivision (b)(4) of section 2827.1 requires the Commission to approximately equalize the tariff’s benefits and costs to “all customers” and to the entire “electrical system” (comprising both the customer-generators’ facilities *and* the utilities’ electrical grid). As a result, the Commission failed to perform the required (b)(4) analysis of the 2022 Tariff and limited its analysis of benefits to those flowing from *exports* of excess energy to the *grid*, while ignoring the *primary* benefit of customer-sited generation facilities: producing electricity for use on-site and locally, allowing for increased consumption of clean electricity in the electrical system without expanding the grid at all customers’ expense.

Nearly as important as the language included in section 2827.1 is the language that the Legislature *deleted* from that section. Those deletions doom the Court of Appeal’s and the utilities’ core theory—rejected by the Commission itself in 2016—that section 2827.1’s purpose is to “address the cost shift.”

CONCLUSION

For all the reasons set forth above, the Court should grant the Petition for Review.

DATED: April 17, 2026

**Complex Appellate Litigation
Group LLP for Environmental
Working Group**

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DATED: April 17, 2026

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CERTIFICATE OF WORD COUNT

(California Rules of Court, rule 8.504(d)(1))

The text of this petition consists of 8,256 words as counted by the Microsoft Word program used to generate this petition.

Dated: April 17, 2026

/s/ Steven A. Hirsch
Steven A. Hirsch

Document received by the CA Supreme Court.

Filed 3/9/26

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

CENTER FOR BIOLOGICAL
DIVERSITY, INC. et al.,

Petitioners,

v.

A167721

PUBLIC UTILITIES COMMISSION,

(Cal.P.U.C. Dec. No. 22-12-056)

Respondent;

PACIFIC GAS AND ELECTRIC
COMPANY et al.,

Real Parties in Interest.

For over 30 years, California has used a net energy metering (NEM) tariff that allows public utility customers with renewable electrical generating facilities to receive credit on their electric bills for excess energy exported to the power grid. (Pub. Util. Code, § 2827, added by Stats. 1995, ch. 369, § 1; undesignated statutory references are to this code.) In 2013, the Legislature enacted section 2827.1, directing the Public Utilities Commission (Commission) to develop a successor tariff. (Stats. 2013, ch. 611, § 11.) Under then-existing law, NEM customers received credit at the full retail rate — including certain fixed costs of the exported energy — resulting in a “substantial subsidy” to those customers and a shifting of costs to non-NEM customers. (Sen. Rules Com., Off. of Sen. Floor Analyses, 3d reading analysis

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of Assem. Bill No. 327 (2013–2014 Reg. Sess.) as amended Sept. 6, 2013, p. 7 (Sen. Analysis).) By enacting section 2827.1, the Legislature directed the Commission to ensure the successor tariff “is based on the electrical system costs and benefits received by nonparticipating customers” and “prevents a cost shift to non-NEM customers.” (Sen. Analysis, at p. 4.)

In 2022, the Commission adopted a successor tariff in its *Decision Revising Net Energy Metering Tariff and Subtariffs* (2022) Cal. P.U.C. Dec. No. 22-12-056 (Decision). Petitioners Center for Biological Diversity, Inc., Environmental Working Group, and The Protect our Communities Foundation (collectively, petitioners) filed a petition for writ review in this court, contending the successor tariff was inconsistent with section 2827.1. We granted the petition and affirmed the Decision. (*Center for Biological Diversity, Inc. v. Public Utilities Com.* (2023) 98 Cal.App.5th 20, review granted Apr. 10, 2024, S283614 (*CBD I*).

The California Supreme Court granted review and addressed an issue it acknowledged petitioners had failed to raise in our court: whether the “highly deferential” approach of *Greyhound Lines, Inc. v. Public Utilities Com.* (1968) 68 Cal.2d 406 (*Greyhound*) applies to the Commission’s interpretation of the Public Utilities Code. (*Center for Biological Diversity, Inc. v. Public Utilities Com.* (2025) 18 Cal.5th 293, 301 (*CBD II*)). The court concluded it does not, and it reversed and remanded the matter to this court to address in the first instance whether the successor tariff should be upheld under the standard set forth in *Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th at page 1 (*Yamaha*). (*CBD II*, at p. 309.) After applying that standard here, we again affirm the Decision.

BACKGROUND

The supply of power generated by renewable systems is neither constant nor consistent. Solar panels, for example, may generate electricity only when the sun shines, and the amount of power they generate depends on the intensity of the sunlight. They “may generate less—or more—electricity than their owners need at a particular time. At night or on a cloudy day, for example, a utility customer with solar panels may need to draw additional electricity from the power grid. On a sunny morning, by contrast, the panels may generate more electricity than the customer needs, allowing the customer to export excess energy to the grid.” (*CBD II, supra*, 18 Cal.5th at p. 299.)

The Legislature has required utilities to compensate eligible “customer-generators” for energy those customers export since the enactment of section 2827 in 1995. (§ 2827, subd. (b)(4)(A); *CBD II, supra*, 18 Cal.5th at p. 299; Legis. Counsel’s Dig., Sen. Bill No. 656, Stats. 1995 (1995–1996 Reg. Sess.) Summary Dig.) The program was expected to “encourage substantial private investment in renewable energy resources, stimulate in-state economic growth, reduce demand for electricity during peak consumption periods, help stabilize California’s energy supply infrastructure, enhance the continued diversification of California’s energy resource mix, reduce interconnection and administrative costs for electricity suppliers, and encourage conservation and efficiency.” (§ 2827, subd. (a).)

The Commission created the first NEM tariff (NEM 1.0) pursuant to section 2827. Under NEM 1.0, residences with solar power systems¹ were

¹ Originally, the NEM tariff required by section 2827 applied only to solar power systems operated by an electric utility’s residential customers. (Former § 2827, subd. (b).) The tariff now applies to any “renewable electrical generation facility” with a total capacity of one megawatt or less

allowed to install an electricity meter that measured the difference between the quantity of electricity supplied to the residence by the utility and the quantity of electricity supplied to the grid by the residence — hence the name, “net energy metering.” (Former § 2827, subs. (c), (d).) The residence was charged only for this difference — i.e., the *net* use of electricity from the grid. (*Id.*, subd. (f)(2).) By offsetting exported power with imported power, NEM 1.0 functionally required utilities to purchase excess power at the price paid by the customers for electricity. (*CBD II, supra*, 18 Cal.5th at p. 299.)

Almost two decades later, the Legislature instructed the Commission to revisit the compensation for consumer-generators by enacting section 2827.1. (*CBD II, supra*, 18 Cal.5th at p. 300, citing Stats. 2013, ch. 611, § 11, pp. 5030–5031.) A bill analysis identified a more specific purpose: “to ensure that the [successor tariff] is based on the electrical system costs and benefits received by nonparticipating customers and prevents a cost shift to non-NEM customers.” (Sen. Analysis, *supra*, at p. 4.)

Under NEM 1.0, consumer-generators had received bill credit at the full retail rate. (Sen. Analysis, *supra*, at p. 7.) Because this rate included certain fixed costs, like transmission and distribution costs, NEM customers were receiving a “substantial subsidy,” thereby shifting costs to non-NEM customers. (*Ibid.*) A bill analysis observed that “transmission and distribution costs are typically one-half to two-thirds of a residential customer’s billing.” (*Ibid.*) It thus estimated that full retail NEM “comes at a cost of approximately \$60 million to non-NEM customers across the state.” (*Ibid.*) While the Legislature had “in the past justified this subsidy as it stimulates the solar industry, helps the state reach its renewable energy

operated by a utility customer, regardless of the way the power is generated or the nature of the customer. (§§ 2827, subd. (b)(4)(A), 2827.1, subd. (a).)

goals, and provides other external benefits,” the Legislature now directed the Commission to develop a successor tariff that “prevents a cost shift to non-NEM customers.” (*Id.* at pp. 7, 4.)

As relevant here, section 2827.1, subdivision (b) (section 2827.1(b)) identifies three objectives the Commission must ensure in developing the successor tariff. The Commission must (1) ensure that the successor tariff “ensures that customer-sited renewable distributed generation continues to grow sustainably,” and include “specific alternatives designed for growth among residential customers in disadvantaged communities” (*id.*, subd. (b)(1)); (2) ensure that the successor tariff be “based on the costs and benefits of the renewable electrical generation facility” (*id.*, subd. (b)(3)); and (3) ensure that the “total benefits” of the successor tariff “to all customers and the electrical system” are “approximately equal to the total costs” (*id.*, subd. (b)(4)). Section 2827.1(b) also allows the Commission to revise the successor tariff “as appropriate to achieve the objectives of this section.”

The Commission adopted a revised tariff (NEM 2.0) in 2016 as an interim measure to address some of the concerns about cost-shifting under NEM 1.0. NEM customers continued to receive full retail rate credit but were charged a onetime interconnection fee and other periodic “non-bypassable” fees. It was thought that NEM 2.0 would be subject to review in or after 2019, when a more permanent replacement for NEM 1.0 would be adopted.

The Commission initiated a proceeding in 2020 to “revisit” NEM 2.0 and issued its Decision adopting the successor tariff — which it calls a net billing tariff — in 2022. (Decision, *supra*, at p. 137.) The “foundation” for the successor tariff was the Net-Energy Metering 2.0 Lookback Study, January 21, 2021 (Lookback Study), an evaluation of NEM 2.0 by outside consultants

Verdant Associates, LLC that concluded “NEM 2.0 participants benefit from the structure, while ratepayers see increased rates.” (Decision, at p. 207; Lookback Study, at p. 1.)

Drawing on the Lookback Study, the Commission found the NEM 2.0 tariff “negatively impacts non-participating ratepayers, disproportionately harms low-income ratepayers, and is not cost-effective.” (Decision, *supra*, at pp. 2–3, 207.) The Commission explained this negative impact was caused by the “20-year legacy” of full retail rate compensation, which allowed NEM customers to avoid paying their proportionate share of the “infrastructure and other service costs”² associated with electrical service — because those costs are “embedded in” the rates charged for electricity — and shifted those costs to non-NEM customers. (*Id.* at pp. 47, 208.) The Commission found these shifted costs to be one of three drivers of high electricity rates (along with costs of transmission and distribution and wildfire mitigation). (*Id.* at p. 208.) And by equating the prices of imported and exported electricity, the Commission further found the NEM tariff had overcompensated customers for the electricity they supplied back to the grid, effectively paying such customers at a rate from “3.8 to 5.4 times” greater than the benefit conferred. (*Id.* at p. 216.)

Based on these and other findings, the Commission adopted the successor tariff. (Decision, *supra*, at pp. 137, 207–237.) The most fundamental change from the prior NEM tariff was that imported and exported power under the successor tariff are calculated separately (i.e., “no netting of consumption and production”), and customers are then billed for

² In addition to the costs of servicing customers and maintaining the power grid, these costs include funding for various public policy programs, such as those subsidizing utility service to low-income customers.

the difference between the *value* of the power imported and exported, rather than the difference in *quantity*. (*Id.* at p. 237.) In other words, imported and exported power are no longer treated as equivalent. (*Ibid.*)

Under the successor tariff, export compensation rates are based on values derived from the “Avoided Cost Calculator” (calculator), a tool developed earlier by the Commission “ ‘to determine the primary benefits of distributed energy resources.’ ” (Decision, *supra*, at pp. 59, 233, 237.) As set forth by the Commission, the calculator “ ‘calculates seven types of avoided costs: generation capacity, energy, transmission and distribution capacity, ancillary services, Renewables Portfolio Standard, greenhouse gas emissions, and high global warming potential gases.’ ” (*Id.* at p. 59.) The avoided costs determined in the calculator “are the utilities’ marginal costs of providing electric service to customers” that “can be avoided when the demand for energy decreases because of distributed energy resources, and are, thus, the benefits of using distributed energy resources.” (*Ibid.*)

The Commission stated the successor tariff “makes great strides in tackling the cost shift” to nonparticipating customers. (Decision, *supra*, at p. 170.) For participating customers, the Commission acknowledged the changes would likely reduce bill credits (as the price paid for exported power determined by the calculator is typically less than the full retail price), but they would still provide credits targeting a nine-year payback period on the upfront cost of a stand-alone solar system (or the equivalent of nearly \$100 in monthly bill savings). (*Id.* at p. 77, Appendix at p. 2.)

To ease the transition and “ensure the sustainable growth of customer-sited renewable distributed generation,” the Commission adopted a five-year “glide path” in the successor tariff. (Decision, *supra*, at pp. 4, 170.) The glide path consists of an “adder” to increase compensation rates for new residential

customers above the value determined by the calculator, with a stepdown over time so the path ultimately ends at the calculator-based values. (*Id.* at p. 148.) The glide path includes a higher adder for residential customers enrolled in the California Alternate Rates for Energy (CARE) program, resident owners of single-family homes living in disadvantaged communities, and residential customers who live in California Indian country. (*Id.* at pp. 158, 176.)

Finally, the Commission stated it would evaluate the successor tariff by collecting data for three years after its implementation and follow “a similar process as conducted in the Lookback Study, reviewing the entire successor tariff but with a focus on affordability, equity, and grid benefits.” (Decision, *supra*, at p. 200.) According to the Commission, it is currently in the process of collecting such data.

Petitioners submitted an application for rehearing to the Commission, which was denied. (*Order Denying Rehearing of Decision 22-12-056* (2023) Cal. P.U.C. Dec. No. 23-06-056.) They filed a petition for a writ of review in this court. (§ 1756, subd. (a) [within 30 days after denial of application for rehearing, “any aggrieved party may petition for a writ of review in the court of appeal or the Supreme Court for the purpose of having the lawfulness of the original order or decision or of the order or decision on rehearing inquired into and determined”].) Petitioners argued the Decision was inconsistent with the objectives in section 2827.1(b)(1), (b)(3), and (b)(4). We granted the petition, and answers were filed by the Commission and real parties in interest.³

³ Given the extensive record of exhibits lodged by petitioners, we declined to require the Commission to file an administrative record but permitted the parties to request supplementation. We grant the Commission’s request to add the Assigned Commissioner’s Scoping Memo

We affirmed the Decision. (*CBD I, supra*, 98 Cal.App.5th at p. 43, review granted.) In so doing, we used the standard set forth in *Greyhound*, concluded the successor tariff bore a reasonable relation to the purpose and language of section 2827.1, and concluded the Commission did not otherwise err. (*CBD I*, at p. 43; see *Greyhound, supra*, 68 Cal.2d at pp. 410–411 [“[C]ommission’s interpretation of the Public Utilities Code should not be disturbed unless it fails to bear a reasonable relation to statutory purposes and language”].)

Petitioners subsequently presented the following issues in their petition for review to the California Supreme Court: whether the deferential standard of review in our opinion conflicted with law and identified a conflict in case law for resolution, and whether the Commission failed to proceed in a manner required by section 2827.1(b)(1) (that the Commission must “include specific alternatives designed for growth among residential customers in disadvantaged communities” in developing the successor tariff) and (b)(3) (that the Commission must ensure that the successor tariff is “based on the costs and benefits of the renewable electrical generation facility”).

The Supreme Court noted petitioners had not raised the first issue in this court but addressed it given the absence of any objection and because the issue “presents a question of law of considerable statewide importance.” (*CBD II, supra*, 18 Cal.5th at p. 301.) The court concluded the “highly deferential” approach of *Greyhound* no longer applies to the Commission’s interpretation of the Public Utilities Code. (*CBD II*, at p. 299.) It explained that “[w]here, as here, the primary question is whether a state agency has

and Ruling, Rulemaking 22-11-013 (May 31, 2023) as it appears appropriate for inclusion in the administrative record. We otherwise deny the request, as it seeks inclusion of other material that postdates both the Decision and the order denying petitioners’ application for rehearing.

acted in a manner consistent with the statute it purports to implement, judicial review typically differs meaningfully from the approach we described in *Greyhound*,” and the “leading case concerning review of an agency’s statutory interpretation” is *Yamaha*. (*CBD II*, at p. 305.)

The court declined to resolve whether our ultimate conclusion in *CBD I*— that the successor tariff is consistent with section 2827.1 — was correct or incorrect, leaving for us the question of whether the tariff should be upheld under the *Yamaha* standard. (*CBD II, supra*, 18 Cal.5th at pp. 299, 309.) The court reversed the judgment and remanded for further proceedings consistent with its opinion. (*Id.* at p. 309.) Supplemental opening and responding briefs have since been filed by petitioners, the Commission, and real parties in interest. (Cal. Rules of Court, rule 8.200(b).)

DISCUSSION

The parties agree section 1757.1 governs the scope of our review because the successor tariff was adopted by the Commission through a rulemaking proceeding. (Compare § 1757 [scope of review “[i]n a complaint or enforcement proceeding, or in a ratemaking or licensing decision of specific application that is addressed to particular parties”] with § 1757.1 [scope of review “[i]n any proceeding other than a proceeding subject to the standard of review under Section 1757”].) Section 1757.1, subdivision (a) provides, in relevant part, that judicial review “shall not extend further than to determine,” based on the entire record, whether the Decision “was an abuse of discretion,” the Commission “has not proceeded in the manner required by law,” or the Decision “is not supported by the findings.” (*Id.* subd. (a)(1)–(2), (4).)

Most of petitioners’ arguments, including those presented in their original petition and in their supplemental briefing after remand, seek

review pursuant to section 1757.1(a)(2). That is, they contend the Commission failed to proceed in the manner required by section 2827.1(b)(1), (b)(3), and (b)(4) in developing and adopting the successor tariff.

As the Supreme Court explained in *CBD II*, the *Yamaha* standard governs our inquiry of whether the Commission has acted in a manner consistent with section 2827.1, the statute it purported to implement in developing and adopting the successor tariff. (*CBD II, supra*, 18 Cal.5th at p. 305.) *Yamaha* differentiated the scope of that inquiry on the “opposite ends of an administrative continuum,” from “quasi-legislative regulations adopted by an agency to which the Legislature has confided the power to ‘make law’ ” to “[a]n agency interpretation of the meaning and legal effect of a statute.” (*Yamaha, supra*, 19 Cal.4th at pp. 6, fn. 3, 7.) On one end of the continuum, quasi-legislative regulations are “subject to a substantially narrower scope of review: ‘If satisfied that the rule in question lay within the lawmaking authority delegated by the Legislature, and that it is reasonably necessary to implement the purpose of the statute, judicial review is at an end.’ ” (*CBD II*, at p. 305, quoting *Yamaha*, at pp. 10–11.) On the other end of the continuum, “the binding power of an agency’s *interpretation* of a statute or regulation is contextual: Its power to persuade is both circumstantial and dependent on the presence or absence of factors that support the merit of the interpretation.” (*Yamaha*, at p. 7.)

We agree with the Commission that its Decision is a quasi-legislative administrative decision properly reviewed at that end of the *Yamaha* continuum. “[Q]uasi-legislative rules are the substantive product of a delegated legislative power conferred on the agency.” (*Yamaha, supra*, 19 Cal.4th at p. 8, italics omitted.) Through its enactment of section 2827.1(b), the Legislature explicitly directed the Commission to develop a

tariff for eligible customer-generators with a renewable electrical generation facility and afforded the Commission with discretion to revise that tariff as appropriate to achieve statutory objectives. Pursuant to this directive, the Commission engaged in an extensive, yearslong rulemaking proceeding, instituting the proceeding in 2020 and issuing its Decision in 2022. During this proceeding, the Commission presented the Lookback Study, adopted guiding principles for the development of the successor tariff to reflect the objectives of section 2827.1, reviewed 19 proposals from parties, held 12 days of evidentiary hearings, and considered briefing and comments presented by a broad range of stakeholders. (Decision, *supra*, at pp. 10–11.)

Petitioners’ contentions that the Commission failed to proceed in the manner required by section 2827.1(b)(1), (b)(3), and (b)(4) are thus subject to the “narrow” scope of review under *Yamaha*: specifically, whether the Commission’s Decision developing and adopting the successor tariff “lay within the lawmaking authority delegated by the Legislature.” (*Yamaha, supra*, 19 Cal.4th at p. 10.) But *Yamaha* instructs that “even quasi-legislative rules are reviewed independently for consistency with controlling law. A court does not, in other words, defer to an agency’s view when deciding whether a regulation lies within the scope of the authority delegated by the Legislature. The court, not the agency, has ‘final responsibility for the interpretation of the law’ under which the regulation was issued.” (*Yamaha, supra*, at p. 11, fn. 4.)

Accordingly, we exercise our independent judgment in interpreting the provisions of section 2827.1. Our fundamental task is to give effect to the intended purpose of the statute, and we apply well-settled principles of construction. (*California Cannabis Coalition v. City of Upland* (2017) 3 Cal.5th 924, 933–934 (*Cannabis Coalition*)). We begin with the words of

the statute themselves because “ “ “they generally provide the most reliable indicator of legislative intent.’ ” ’ ” (*Lopez v. Sony Electronics, Inc.* (2018) 5 Cal.5th 627, 634.) We ascribe to words “their ordinary meaning, while taking account of related provisions and the structure of the relevant statutory . . . scheme.” (*Cannabis Coalition*, at p. 933.) “ “ “If the statutory language is clear and unambiguous our inquiry ends.” ’ ” (*Lopez*, at p. 634.) But if any ambiguity remains, we may then consider extrinsic aids such as legislative history materials. (*Cannabis Coalition*, at p. 934.)

With this framework in mind, we address petitioners’ arguments regarding section 2827.1(b)(1), (b)(3), and (b)(4) in turn.

I.

The objective set forth in section 2827.1(b)(1) contains two components for development of the successor tariff: that the Commission ensure that the successor tariff ensures customer-sited renewable distributed generation “continues to grow sustainably,” and that the Commission include “specific alternatives designed for growth among residential customers in disadvantaged communities.” Petitioners argue the Commission failed to proceed in the manner required by each of these components. They fail to persuade.

As a preliminary matter, the Commission contends petitioners’ arguments regarding this first component of section 2827.1(b)(1) (as well as their arguments regarding § 2827.1(b)(4)) cannot be revisited on remand because petitioners did not seek Supreme Court review of those issues, and our prior opinion thus remains “law of the case” on those issues. (*Santa Barbara County Water Agency v. All Persons & Parties* (1960) 53 Cal.2d 743, 745.) But the Commission’s cited authority suggests any such rule is not applicable given the procedural posture here. (*Romo v. Ford Motor Co.* (2003)

113 Cal.App.4th 738, 744, fn. 1 [concluding certain points in original opinion were not affected by United States Supreme Court action and thus remained “law of the case”].) We originally concluded the successor tariff bears a reasonable relation to the purpose and language of the provisions in section 2827.1, but the Supreme Court reversed our judgment — concluding this “highly deferential” approach was no longer applicable — and remanded to us to address in the first instance whether the successor tariff should be upheld under the *Yamaha* standard. (*CBD I, supra*, 98 Cal.App.5th at p. 43, rev.gr.; *CBD II, supra*, 18 Cal.5th at pp. 301, 309.) Because application of that standard affects how we analyze the challenges raised here, we consider them anew.

Turning to the first component of section 2827.1(b)(1), petitioners do not suggest the successor tariff has halted all growth of customer-sited renewable distributed generation. Rather, they contend the term “continues” in section 2827.1(b)(1) should be interpreted in accordance with a dictionary definition “ ‘to maintain without interruption a condition, course, or action,’ ” and because the successor tariff created a significantly longer payback period for renewable systems by reducing bill savings — slowing the rate of growth — the tariff is inconsistent with the statute.

We are unpersuaded that using this dictionary definition gives proper effect to the purpose of section 2827.1(b)(1). The statutory phrase, in its entirety, requires the Commission to ensure the successor tariff ensures customer-sited renewable distributed generation “continues to grow *sustainably*.” (Italics added.) The legislative history of section 2827.1⁴

⁴ We deny as unnecessary the requests for judicial notice filed by petitioners on May 3 and July 31, 2023, the Commission on September 29, 2023, and real parties in interest on June 21, 2023 and January 12, 2026. These requests seek judicial notice of legislative history materials,

indicates what the Legislature meant when it added the term “sustainably.” A bill analysis explained that, over the prior two decades, the NEM tariff had resulted in a “substantial subsidy” to participating customers and a shifting of costs to non-NEM customers. (Sen. Analysis, *supra*, at p. 7.) The Legislature estimated this cost shift to be “approximately \$60 million.” (*Ibid.*) Given the increasing number of participating customers over time — and the decreasing number of non-NEM customers bearing the resulting cost shift — it is clear the Legislature understood the NEM 1.0 tariff was not sustainable. We decline to interpret section 2827.1(b)(1), as petitioners urge, to require the Commission to ensure that the successor tariff preserves a subsidy (and resulting cost shift) the Legislature expressly sought to address. (Sen. Analysis, at p. 4.)

Section 2827.1(b)(1) must also be read alongside the surrounding subsections. (*Cannabis Coalition, supra*, 3 Cal.5th at p. 933.) Section 2827.1(b)(4) requires the Commission to ensure the total benefits and costs of the successor tariff to “all customers and the electrical system” are approximately equal. Legislative history shows the sustainability objective in section 2827.1(b)(1) was linked to the equity objective in section 2827.1(b)(4). The author of the bill enacting section 2827.1 described the successor tariff as “allowing [a] sustainable program, which ensures that the total benefits of the program to all customers and the electric system are

Commission decisions, and other agency documents, all of which are published. Such requests are unnecessary. “‘Citation to the material is sufficient.’” (*Wittenburg v. Beachwalk Homeowners Assn.* (2013) 217 Cal.App.4th 654, 665, fn. 4 [considering request for judicial notice of published Senate bill analysis as citation to material]; *Thornton v. California Unemployment Ins. Appeals Bd.* (2012) 204 Cal.App.4th 1403, 1410, fn. 3 [denying request for judicial notice of published agency recommendation].)

equal to the total costs.” (Assem. Henry T. Perea, Fact Sheet on Assem. Bill No. 327, dated Aug. 28, 2013 (Fact Sheet) p. 2.)

Moreover, section 2827.1(b)(6) required the Commission to establish a transition period for customer-generators taking service under a NEM tariff prior to July 1, 2017, and to consider “a reasonable expected payback period based on the year the customer initially took service” in doing so. This is further confirmation that the Legislature did not intend to require the Commission to maintain the NEM tariff (and its resulting payback period) without interruption. In short, nothing in section 2827.1(b)(1) requires the Commission ensure the successor tariff would result in continued growth of customer-sited renewable distributed generation *at the same pace as before its adoption*.

As to the second component of section 2827.1(b)(1), petitioners contend the Commission failed to “include specific alternatives designed for growth among residential customers in disadvantaged communities.” In its supplemental briefing after remand, the Commission maintains it addressed this requirement in two ways. First, the glide path in the successor tariff includes a higher adder for residential customers enrolled in the CARE program, resident owners of single-family homes living in disadvantaged communities, and residential customers who live in California Indian country. (Decision, *supra*, at pp. 158, 176.) Second, the Commission adopted a series of programs through rulemaking proceedings in 2017 and 2018 to promote the growth of renewable energy in disadvantaged communities. The Solar on Multifamily Affordable Housing Program (SOMAH), for example, provides financial incentives for the installation of solar systems on multifamily affordable housing properties. (See *Decision Adopting Implementation Framework for Assembly Bill 693 and Creating the Solar on*

Multifamily Affordable Housing Program (2017) Cal. P.U.C. Dec. No. 17-12-022, at pp. 9–10.)

Petitioners argue these earlier adopted programs are insufficient to satisfy section 2827.1(b)(1) because the Commission was required to adopt specific alternatives *in the successor tariff*. In other words, they contend the statute should be interpreted to require the Commission to have developed new alternatives at the same time it created the successor tariff. This interpretation is inconsistent with the plain language of the statute. Section 2827.1(b)(1) requires the *Commission* (not the successor tariff itself) to include specific alternatives designed for growth among residential customers in disadvantaged communities. We are not persuaded that the inclusion of specific alternatives adopted by the Commission through earlier rulemaking proceedings falls outside the lawmaking authority delegated by the Legislature.⁵ (*Yamaha, supra*, 19 Cal.4th at p. 10.)

For the first time in their supplemental briefing after remand, petitioners alternatively argue the higher adder and earlier adopted programs are insufficient to satisfy section 2827.1(b)(1) because they focus on low-income households and not communities “defined by *geographic, public-health, and environmental-hazard* criteria.” Specifically, they argue the term “disadvantaged communities” in section 2827.1(b)(1) should be interpreted to include those falling within the top 25 percent scoring areas of

⁵ Given this conclusion, we reject any argument by petitioners that the Commission did not proceed in a manner consistent with section 2827.1(b)(1) because the “specific alternatives” requirement is plural. We similarly reject any argument that the earlier adopted programs cannot satisfy the requirement because they were not relied upon or mentioned in the Decision. The Decision makes multiple references to SOMAH, including a finding that evaluation of the program “could be useful in determining future changes to the tariff.” (Decision, *supra*, at pp. 227, 174, 182, 236.)

“CalEnviroScreen,” a screening methodology developed by an office of the California Environmental Protection Agency to identify communities disproportionately burdened by pollution. (Cal. Office of Environmental Health Hazard Assessment, CalEnviroScreen 4.0 (Oct. 2021) p. 8.)

As a preliminary matter, petitioners have not explained why this argument is not forfeited. (Cf. *Unzueta v. Akopyan* (2022) 85 Cal.App.5th 67, 78, fn. 8 [declining to find forfeiture where new argument was made in response to issue raised on remand].) Even if not forfeited, there is nothing in section 2827.1(b)(1) that suggests the term “disadvantaged communities” *must* be defined to include the communities specified by petitioners. And in any event, the Commission explains that the higher adder *does* apply to those communities: resident owners of single-family homes living in “disadvantaged communities” include those “among the top 25 percent of communities statewide” identified by CalEnviroScreen (with the exception of the Community Solar program). (Decision, *supra*, at p. 176; *Alternate Decision Adopting Alternatives to Promote Solar Distributed Generation in Disadvantaged Communities* (2018) Cal. P.U.C. Dec. No. 18-06-027, at p. 96.)

Petitioners also raised several arguments regarding section 2827.1(b)(1) in their original petition that they do not appear to maintain in their supplemental briefing on remand. But given the nature of such briefing — and petitioners’ raising of an issue in the Supreme Court that they failed to raise when previously before us — we address them in an abundance of caution. (Cal. Rules of Court, rule 8.200(b) [“Supplemental briefs must be limited to matters arising after the previous Court of Appeal decision in the cause, unless the presiding justice permits briefing on other matters”].)

Petitioners contend the higher adder fails to provide a sufficient alternative for growth because it underestimated the cost of installing solar

in disadvantaged communities. To the extent this raises a challenge under section 1757.1(a)(2) (that the Commission failed to proceed under manner required by law), we see nothing in section 2827.1(b)(1) that mandates any specific *amount* of growth among residential customers in disadvantaged communities, or that such growth must be equivalent to growth for other customers. To the extent this raises a challenge under section 1757.1(a)(4) (that the Decision is not supported by the findings), the Commission found a value of \$3.30 per watt for the cost of solar used in calculating the higher adder to be reasonable as the adopted 2023 cost of solar, and expressly rejected petitioners’ proposed \$4.28 value because it was derived from a materially different solar incentive program. (Decision, *supra*, at pp. 82–84.) Petitioners offer no basis to review the sufficiency of evidence supporting this finding. (See § 1757.1(c) [factual findings are “final and shall not be subject to review” except as otherwise provided in statute]; *California Community Choice Assn. v. Public Utilities Com.* (2024) 103 Cal.App.5th 845, 854 [explaining § 1757.1 includes grounds for judicial review in § 1757 “except for the fourth ground authorizing a substantial evidence review of the Commission’s findings”].)

Finally, petitioners contend the Commission otherwise failed to proceed in the manner required by section 2827.1(b)(1) because it did not create an equity fund, which would use a billing surcharge imposed through the successor tariff to assist low-income customers in acquiring renewable systems, and it deferred consideration of community solar systems upon finding such consideration “premature.” (Decision, *supra*, at p. 188.) But nothing in section 2827.1(b)(1) suggests the Commission was required to include any *particular* “alternatives” to ensure growth of renewable energy in disadvantaged communities. Importantly, our interpretation does not

suggest the Commission was barred from considering such alternatives (or would be precluded from revisiting them in the future after, for example, reviewing data from the initial implementation of the successor tariff). But the statutory language here dictates that the Commission’s development of the successor tariff be measured by what it did include, rather than by what it did not. Petitioners have not shown that such development lay outside the lawmaking authority delegated by the Legislature. (*Yamaha, supra*, 19 Cal.4th at p. 10.)

In sum, we conclude the Commission did not fail to proceed in the manner required by section 2827.1(b)(1) or otherwise err when it adopted the successor tariff.

II.

Section 2827.1(b)(3) requires the Commission to ensure the successor tariff “is based on the costs and benefits of the renewable electrical generation facility.” The original petition argued the Commission failed to proceed in the manner required by section 2827.1(b)(3) because the calculator focuses on economic benefits conferred on the grid by exported power and fails to account for “several acknowledged benefits” of distributed renewable generation.⁶ Specifically, petitioners cited four purported “societal” benefits: resiliency, avoided out-of-state methane leakage, avoided land use impacts, and avoided transmission costs.

⁶ In analyzing this argument, we need not address petitioners’ citation to generalized principles regarding cost-benefit analysis by an administrative agency. (*Ctr. for Biological Diversity v. Nat’l Highway Traffic Safety Admin.* (9th Cir. 2008) 538 F.3d 1172; *Golden Hill Neighborhood Assn., Inc. v. City of San Diego* (2011) 199 Cal.App.4th 416.) We find these cases inapposite, as section 2827.1 provides the framework governing the Commission’s Decision here.

As a preliminary matter, we clarify that section 2827.1(b)(3) refers to the costs and benefits of “the renewable electrical generation facility,” not distributed renewable generation more generally. But even applying petitioners’ argument to the correct statutory category of costs and benefits, we are not persuaded that petitioners have shown the Commission’s Decision fell outside its lawmaking authority delegated by the Legislature. (*Yamaha, supra*, 19 Cal.4th at p. 10.)

First, the original petition described increased resiliency as “the ability to maintain power during a blackout or other grid disruption,” including to cool one’s home during a heat wave and prevent food spoilage due to loss of refrigeration. The Commission declined to adopt the suggestion that this purported increased resiliency be included in the calculator for valuing excess power. (Decision, *supra*, at p. 69.) It explained that proponents had only provided examples of such benefits that were private, highly speculative, and/or limited to unique circumstances. (*Ibid.*)

Second, the original petition identified the avoidance of methane leakage in other states that occurs when the utilities’ need for production and transmission of out-of-state natural gas is reduced by the export of excess power. The Commission explained that in-state methane leakage was already accounted for in the calculator but declined to include out-of-state methane leakage because it did not decrease regulatory compliance costs for utilities and ratepayers. (See Decision, *supra*, at p. 70; *Decision Adopting Changes to the Avoided Cost Calculator* (2022) Cal. P.U.C. Dec. No. 22-05-002, at pp. 46–47 (ACC Decision).) Recognizing “greenhouse gas emissions know no state boundary,” however, the Commission had authorized continued monitoring and update of the issue during the next update of the calculator. (ACC Decision, at p. 47.)

Third, the original petition described avoided land use impacts from “reduced transmission projects” (i.e., rooftop solar versus utility-scale solar) due to distributed generation. The Commission again declined to include this suggestion in the calculator because its proponents had failed to “offer any evidence that increased net energy metering installations will directly result in decreased utility scale projects,” especially given analysis presented to the Commission that a reduction in the rate of growth of customer-side solar (contemplated with adoption of the successor tariff) would mean the need for utility-scale solar “‘remains virtually the same.’” (Decision, *supra*, at pp. 70–71.)

In each of these instances, the Commission considered but ultimately declined to include the purported benefit in the calculator because there was insufficient evidence at the time of its Decision that there was an actual benefit to customers and/or the electrical system. Nothing in the language of section 2827.1(b)(3) suggests the Commission was required to do otherwise. Indeed, the legislative history of section 2827.1 makes clear that the Legislature intended to provide the Commission with “flexibility to implement fair and reasonable reforms, in line with the state’s energy policy goals and objectives.” (Assem. Henry T. Perea, Assem. Bill No. 327 Press Release Aug. 30, 2013.) Effectuating that intent, section 2827.1(b) explicitly provides a mechanism for the Commission to revise the tariff “as appropriate to achieve the objectives of this section.” We see no reason why this provision would not include future revisions to the tariff based on new or additional evidence regarding the costs and benefits of renewable electrical generation facilities.

Fourth, the original petition argued that the calculator fails to fully account for transmission costs avoided because of exported energy. The

Commission reviewed competing proposals for a methodology to estimate avoided transmission costs, adopting the one it deemed most reasonable and authorizing further review and analysis of avoided transmission costs to aid in the development of improved methods to estimate such costs. (ACC Decision, *supra*, at pp. 73–75.) Petitioners have not shown that the Commission’s methodology falls outside its lawmaking authority delegated by the Legislature. (*Yamaha, supra*, 19 Cal.4th at p. 10.) The original petition did not propose any alternative estimation methodology. Instead, it presumed that the calculator undervalued avoided transmission costs by comparing its \$481 million projection of such costs for the three major public utilities during the period 2021–2025 with a Commission report in the record identifying a regulatory category called “transmission revenue requirements” that exceeded \$4 billion for the three utilities in 2021. But an examination of that report makes clear that the regulatory category sweeps much broader than costs avoided by the export of energy from renewable systems, including, for example, “wildfire mitigation work, including enhanced inspections and vegetation management efforts.”

The original petition also argued that the Commission failed to proceed in the manner required by section 2827.1(b)(3) because the successor tariff treats reduced use of grid-supplied energy by NEM customers as a cost rather than a benefit and penalizes them when they reduce their electric bill. We disagree. Consumer-generators are billed for the energy they import, regardless of the degree to which they reduce their use of imported energy. In this way, the successor tariff makes no attempt to address any cost shift that results solely from the reduction in those customers’ use of imported energy. Instead, it remedies only the cost shift that occurred when the NEM tariff permitted consumer-generators to avoid paying for imported energy by

offsetting exported energy against it. The Legislature clearly contemplated and wanted a successor tariff that would prevent this shift. (Sen. Analysis, *supra*, at p. 4.)

The original petition lastly argued that the Commission improperly dismissed an alternative test for evaluating distributed energy resources, known as the “Societal Cost Test.” The Commission found it “premature” to apply the Societal Cost Test because it was still under development by the Commission at that time. (Decision, *supra*, at p. 211.) Petitioners have not shown that the Commission’s methodology fell outside its lawmaking authority delegated by the Legislature. (*Yamaha, supra*, 19 Cal.4th at p. 10.) Section 2827.1(b)(3) does not specify *how* the Commission should determine the costs and benefits of renewable electrical generation facilities, let alone require the Commission adopt a particular methodology not fully developed at the time of its Decision. As detailed above, the Legislature intended to provide the Commission with flexibility and we see no reason why its discretion under section 2827.1(b) would not include future revisions to the tariff based on new or additional methodology regarding the costs and benefits of renewable electrical generation facilities.⁷

For the first time in their supplemental briefing after remand, petitioners argue that the successor tariff is based on the utilities’ avoided costs, and it fails to account for the benefits “that accrue when customer-

⁷ In its briefing before the Supreme Court, the Commission stated it has “long acknowledged the possibility of including certain societal effects in its cost-benefit analyses” and that the Societal Cost Test (finalized in 2024) will be an “informative tool going forward.” The Decision also indicated the Commission “may consider” resiliency benefits at a future time, given “evolving analysis and changing grid conditions.” (Decision, *supra*, at pp. 69–70.) Nothing about our interpretation of section 2827.1(b)(3) forecloses such consideration.

generators invest in private facilities to generate and use renewable energy on-site.” Petitioners have not explained why this argument is not forfeited. (*Unzueta v. Akopyan, supra*, 85 Cal.App.5th at p. 78, fn. 8.) Even if not forfeited, we are not persuaded that petitioners have shown the Commission’s Decision fell outside its lawmaking authority delegated by the Legislature. (*Yamaha, supra*, 19 Cal.4th at p. 10.)

As to the argument that the successor tariff is improperly based on the utilities’ avoided costs, the Commission adopted a methodology that considered the benefit of the renewable electrical generation facility in reducing utilities’ costs for providing electricity that would *otherwise be recouped* from customers through electricity rates. (Decision, *supra*, at p. 59.) As petitioners acknowledge, “Ratepayers are on the hook for all of the utilities’ spending.” The Legislature understood the connection between the utilities’ avoided costs and the costs and benefits of renewable electrical generation facilities when it enacted section 2827.1 and directed the Commission to develop a successor tariff that prevented the shifting of utility costs to certain customers. (Sen. Analysis, *supra*, at p. 4.)

Moreover, petitioners do not sufficiently describe the purported benefits of “customer-generators invest[ing] in private facilities to generate and use renewable energy on-site” or how they differ from the “societal benefits” raised in their original petition. For example, petitioners contend that generation and use of on-site power reduces the demand for electricity during hot days and stabilizes California’s energy supply infrastructure. These purported benefits resemble the resiliency benefit presented in the original petition, which the Commission declined to include in the calculator because proponents had only provided examples of such benefits that were private, highly speculative, and/or limited to unique circumstances. (Decision, *supra*,

at p. 69.) Petitioners’ supplemental briefing cites no evidence regarding *any* of these benefits. Under these circumstances, we cannot conclude that the Commission’s Decision fell outside its lawmaking authority delegated by the Legislature. (*Yamaha, supra*, 19 Cal.4th at p. 10.)

Petitioners also argue that on-site generation of renewable energy provides a benefit by generating “electricity that ratepayers are not on the hook for.” The Decision explains that the calculator *does* consider this benefit in terms of costs utilities may avoid when customers use their renewable electrical generation facility to meet their consumption needs. (Decision, *supra*, at p. 59 [noting “avoided costs determined in the Avoided Cost Calculator are the utilities’ marginal costs of providing electric service to customers” and “can be avoided when the demand for energy decreases because of distributed energy resources”].) But as directed by the Legislature, the successor tariff does not *overvalue* that benefit at the expense of nongenerating customers. (Sen. Analysis, *supra*, at p. 4.) Inflating the benefits of customer-generators to the detriment of nongenerating customers would be contrary to the purpose of section 2827.1.

Petitioners appear to suggest otherwise by pointing to “the history of the Legislature’s efforts to promote customer-generated renewable electricity.” Specifically, petitioners rely on the express findings and declarations made by the Legislature in 1995 when it enacted former section 2827, subdivision (a), including that net energy metering “is one way to encourage private investment in renewable energy resources.” But the legislative history of section 2827.1 shows why such reliance is misplaced. The author of the bill explained the Commission would be required “to develop a new structure for Net Energy Metering (NEM) *unconstrained* by existing law (PUC code, Section 2827) governing the existing NEM program.”

(Fact Sheet, *supra*, at p. 2, italics added.) Accordingly, we decline petitioners’ invitation to import legislative findings and declarations from section 2827 to section 2827.1, especially when it would alter the statutory objectives set forth in section 2827.1(b).

In sum, we conclude the Commission did not fail to proceed in the manner required by section 2827.1(b)(3) or otherwise err when it adopted the successor tariff.

III.

Section 2827.1(b)(4) requires the Commission to ensure the “total benefits” of the successor tariff “to all customers and the electrical system are approximately equal to the total costs.” The original petition argued the Commission failed to proceed in the manner required by section 2827.1(b)(4) because its cost-effectiveness analysis improperly placed the interests of nonparticipating customers over “cost-effectiveness to the electrical system as a whole.” We disagree.

The Lookback Study used certain cost-effectiveness tests from the Commission’s Standard Practice Manual. (Decision, *supra*, at p. 14.) This included the Total Resources Cost (TRC) test, which “measures the net costs of a demand-side management program as a resource option based on the total costs of the program, including both the participants’ and the utility’s costs.” (Decision, at p. 15, fn. 17.) It also included the Ratepayer Impact Measure (RIM) test, which “measures what happens to customer bills or rates due to changes in utility revenues and operating costs caused by a program.” (Decision, *id.* at fn. 18.)

Contrary to petitioners’ characterization, the adoption of a successor tariff that bases its export compensation rates on the value of the power exported — rather than providing an offset based on quantity alone — did

not constitute an improper focus on nonparticipating customers. (Decision, *supra*, at p. 237.) The Legislature recognized the offset used in NEM 1.0 was inequitable because it shifted costs to non-NEM customers. (Sen. Analysis, *supra*, at p. 4.) In response, section 2827.1(b)(4) directs the Commission to ensure the total costs and benefits to *all customers* (and the electrical system) are approximately equal. The clear implication of that language is to ensure the successor tariff does not grant unwarranted benefits to, or impose unwarranted costs on, *any* particular group of ratepayers. Moreover, the TRC test *did* consider the costs to the electrical system as a whole. (Decision, at pp. 62–63 [“the TRC test has the ability to indicate whether a demand side program is cost-effective to the grid relative to other resource options”].) Petitioners have not shown that the Commission’s cost-effective analysis fell outside its lawmaking authority delegated by the Legislature. (*Yamaha*, *supra*, 19 Cal.4th at p. 10.)

The original petition also argued that the Commission did not proceed in the manner required by section 2827.1(b)(4) and erred or abused its discretion because the successor tariff “dramatically reduce[d]” compensation for nonresidential customers without support from findings. (§ 1757.1, subds. (a)(1)–(2), (4).) Again, we disagree.

The Lookback Study explained that the NEM 2.0 tariff had TRC test results for nonresidential customers averaging 1.25, where a score of 1.00 represents no net cost or benefit. (Decision, *supra*, at pp. 48–49.) Accordingly, under the TRC test, the nonresidential NEM 2.0 tariff conferred a fairly small net benefit on the electrical system and was thus cost-effective for these market segments. (*Id.* at p. 49.) But the Commission declined to adopt this conclusion because it found the nonresidential NEM 2.0 tariff performed poorly on the RIM test: it earned an average score of .57,

indicating an increase in rates for all customers and an increase in bills for nonparticipating customers. (*Id.* at pp. 48–50.) Given the equity objective in section 2827.1(b)(4), and the RIM test’s usefulness in “examining whether disproportionate impacts occur on non-participants,” the Commission placed “more weight” on the RIM test results and found the nonresidential NEM 2.0 tariff was not cost-effective. (Decision, at p. 50.)

Petitioners appear to contend the Commission should have accepted the cost-effectiveness conclusion from the TRC test because it is designated as the “‘primary test’” in the Standard Practice Manual. But the TRC test measures cost-effectiveness *for the electrical system*. Section 2827.1(b)(4), however, does not require the successor tariff to be cost-effective only for the electrical system. Instead, it requires the Commission ensure the total costs and benefits of the successor tariff “to *all customers* and the electrical system” are approximately equal. (*Ibid.*, italics added.) Consistent with this directive, the Commission considered test results showing the nonresidential NEM 2.0 tariff failed to equalize costs and benefits among customers.

Petitioners also appear to contend that nonresidential customers “pay far more in utility bills than the actual cost to provide them energy from the grid.” The intended significance of this contention is unclear. Section 2827.1(b)(4) directs the Commission to devise a successor tariff that balances the total costs and benefits across all customers and the electrical system. It does not require the Commission to ensure no customers were charged more by the utilities than the cost to serve them.

Finally, in their supplemental briefing after remand, petitioners argue for the first time that the Commission failed to proceed in the manner required by section 2827.1(b)(4) because the successor tariff is based on the utilities’ avoided costs and fails to quantify benefits of the tariff to all

customers and the electrical system. Petitioners have not explained why this argument is not forfeited. (*Unzueta v. Akopyan, supra*, 85 Cal.App.5th at p. 78, fn. 8.) Even if not forfeited, we remain unpersuaded that petitioners have shown the Commission’s Decision fell outside its lawmaking authority delegated by the Legislature. (*Yamaha, supra*, 19 Cal.4th at p. 10.)

The Legislature made clear that the equity objective of section 2827.1(b)(4) was to “ensure[] that the total benefits of the program to all customers and the electric system are equal to the total costs.” (Fact Sheet, *supra*, at p. 2.) As explained above, the successor tariff based export compensation rates on values derived from the calculator, which determined utilities’ avoided costs for providing electricity that would *otherwise be recouped* from customers through electricity rates. (Decision, *supra*, at pp. 59, 233, 237.) The Legislature understood the role of utilities’ avoided costs in ensuring the costs and benefits of the successor tariff were equitable across all customers and the electrical system. (Sen. Analysis, *supra*, at p. 4.) It enacted section 2827.1 to prevent the continuation of a decades-long shift of utilities’ costs from NEM to non-NEM customers. (Sen. Analysis, at p. 4.)

And petitioners do not sufficiently describe the benefits of the tariff that the Commission purportedly failed to quantify. Instead, they make vague reference to benefits of the renewable electrical generation facility cited in their section 2827.1(b)(3) argument, including benefits of consumers generating renewable energy on-site and other “societal” benefits. We do not see how recharacterizing these as benefits of the tariff shows the Commission’s Decision fell outside its lawmaking authority delegated by the Legislature. (*Yamaha, supra*, 19 Cal.4th at p. 10.) As explained above, the tariff *did* account for the benefits of consumers’ renewable electrical generation facility to meet their consumption needs but balanced it in

consideration of the total benefits and costs to *all* consumers and the electrical system. (Decision, *supra*, at p. 59.) And like section 2827.1(b)(3), nothing in section 2827.1(b)(4) requires the Commission to have balanced the four “societal” benefits identified in the original petition when there was insufficient evidence at the time of its Decision of an actual benefit to customers and/or the electrical system. Nor does it preclude the Commission from revising the tariff in the future upon new or additional evidence regarding the total benefits and costs of the tariff to all customers and the electrical system.

In sum, we conclude the Commission did not fail to proceed in the manner required by section 2827.1(b)(4) and did not otherwise err or abuse its discretion when it adopted the successor tariff.

DISPOSITION

The Decision is affirmed. The Commission and real parties in interest shall recover their costs in this proceeding. (Cal. Rules of Court, rule 8.278(a)(1)–(2).)

RODRÍGUEZ, J.

WE CONCUR:

TUCHER, P. J.

PETROU, J.

A167721; *Center for Biological Diversity, Inc. v. P.U.C.*

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