

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA



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Order Instituting Investigation on the Commission's
Own Motion to actively promote the development
of transmission infrastructure to provide access to
renewable energy resources for California

Investigation 08-03-010
(Filed March 13, 2008)

And Related Matters.

Rulemaking 08-03-009
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REPLY BRIEF OF THE DIVISION OF RATEPAYER ADVOCATES

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I. INTRODUCTION

Pursuant to the Scoping Memo and Ruling of Assigned Commissioner (“Scoping Memo”) issued on January 12, 2010, the Division of Ratepayer Advocates (“DRA”) respectfully submits this reply brief in the above-captioned proceeding. The January 12, 2010 Scoping Memo ordered that respondents must and other parties may file briefs on several issues identified by the Scoping Memo related to the Commission’s efforts to actively promote the development of transmission infrastructure to provide access to renewable energy resources for California.¹ Multiple parties filed opening briefs on February 17, 2010.² DRA’s reply brief is directed to arguments in these opening briefs, focusing on arguments not previously addressed, or that require further discussion. Silence on any subject should not be interpreted as agreement or disagreement.

¹ Scoping Memo, pp. 6-7.

² Parties filing Opening Briefs on February 17, 2010 include Independent Energy Producers Association (“IEP”), Large-scale Solar Association (“LSA”), Pacific Gas and Electric (“PG&E”), PacifiCorp, Southern California Edison (“SCE”), San Diego Gas and Electric (“SDG&E”) and Vote Solar Initiative (“Vote Solar”).

II. DISCUSSION

The Scoping Memo indicated that parties should address five issues under two scenarios: (1) the present Renewables Portfolio Standard (“RPS”) framework and (2) a renewable energy program with a goal of 33% renewable energy by 2020 under the Air Resources Board (“ARB”) aegis, as directed in Executive Order (“EO”) S-21-09. As with its opening brief, the positions in DRA’s reply brief are the same under either the current RPS framework, or the 33% renewable energy by 2020 framework.

A. **The Commission should not Grant a Rebuttable Presumption with Regard to Transmission Project Need and Cost Recovery Based on the Renewable Energy Transmission Initiative (“RETI”) findings.**

Several parties³ have recommended that the Commission grant the findings of RETI a rebuttable presumption with regard to need and cost recovery under California Public Utilities Code Section 399.2.5 (“Section 399.2.5”).⁴ DRA disagrees with this position and does not believe the Commission should grant a rebuttable presumption with regard to transmission project need and cost recovery based on RETI findings.

DRA supports and actively participates in the RETI process. Moreover, RETI findings provide valuable information regarding proposed transmission project applications. However, it is inappropriate and unnecessary for the Commission to shift the burden of proof based on the findings of RETI or other organizations.

RETI is a stakeholder initiative that operates without the due process protections of the Commission’s (or another California regulatory agency’s)

³ LSA Opening Brief, p. 8; SCE Opening Brief, p. 6; SDG&E Opening Brief, pp. 4-

⁴ Several parties have also recommended that the findings of the California Transmission Planning Group (“CTPG”) should also be used as a rebuttable presumption of cost recovery eligibility under Section 399.2.5. DRA also opposes granting CTPG’s findings a rebuttable presumption.

decision-making process. RETI deliberations cannot substitute for the due process safeguards provided by a formal Commission proceeding. The RETI Mission Statement is in clear support of this position, specifically stating that "... RETI will not pre-judge the CPUC's review of any transmission project submitted for its review."⁵

RETI's findings merit significant weight, but the Commission should not shift the burden of proof in a proceeding evaluating new transmission projects, particularly with respect to need or cost recovery under Section 399.2.5. The Commission should evaluate each proposed transmission project based on the specific characteristics and merit of that transmission project. Although proposed transmission projects in RETI's higher ranked Competitive Renewable Energy Zones ("CREZs") may provide greater justification for project approval, that finding **alone** should not translate into justification for need or cost recovery under Section 399.2.5.

B. The Commission does not have the Authority to Issue Blanket Authorization for Automatic Recovery of Certain Types of Costs Pursuant to Section 399.2.5.

As discussed extensively in DRA's opening brief,⁶ the plain language of the Section 399.2.5 **does not** provide the Commission with the authority to make blanket authorizations of "automatic" recovery of costs.⁷ As accurately stated by IEP, the Commission's ratesetting authority is bound by sections 451 and 454, which impose reasonableness requirements on utility expenditures.⁸

⁵ "RETI was initiated as a joint effort among the CPUC, the Energy Commission, the California ISO, IOUs, and POUs. It operates as a stakeholder collaborative process (p. 2)." "Output from RETI will inform renewable generation procurement and transmission permitting processes at the CPUC... (p. 1)"; Addendum B, p. 14. RETI Mission Statement, available at: http://www.energy.ca.gov/reti/Mission_Statement.pdf;

⁶ DRA Opening Brief, pp. 3-6.

⁷ Cal. Pub. Util. Code § 399.2.5 (2008).

⁸ IEP Opening Brief, p. 5; Cal. Pub. Util. Code § 399.2.5 (2008).

The very definition of the word “automatic” contradicts the clear requirements of sections 451 and 454, in that an “automatic” act is defined as one that is “largely or wholly involuntary.”⁹ Based on this definition, “automatic” cost recovery would essentially eliminate the reasonableness requirements mandated by sections 451 and 454, exposing ratepayers to the risk of unreasonable rates or charges.

The Commission’s authority with regards to Section 399.2.5 “backstop” recovery is limited to an assurance that a utility is **eligible** for such recovery based on a reasonableness review subsequent to FERC denying recovery. Any additional assurance is contrary to the plain language of the statute and would be inconsistent with the Commission’s responsibility to ensure that rates are just and reasonable.¹⁰

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⁹ Merriam-Webster’s Collegiate Dictionary, tenth edition (2001).

¹⁰ Cal. Pub. Util. Code §§ 451 & 454 (2009).

III. CONCLUSION

DRA respectfully requests that the Commission adopts its recommendations with regard to the issues identified by the Scoping Memo related to the Commission's efforts to actively promote the development of transmission infrastructure to provide access to renewable energy resources for California.

Respectfully submitted,

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March 4, 2010

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of **REPLY BRIEF OF THE DIVISION OF RATEPAYER ADVOCATES** to the official service list in

I. 08-03-010 **et al.** by using the following service:

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Executed on March 5, 2010 at San Francisco, California.

/s/ NANCY SALYER

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