



**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE
STATE OF CALIFORNIA**

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Order Instituting Rulemaking to Continue)
Implementation and Administration of the)
California Renewables Portfolio Standard)
Program.)
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Rulemaking 11-05-005
(Filed May 5, 2011)

PETITION OF SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E)
FOR MODIFICATION OF DECISION 10-12-048

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Dated: December 16, 2011

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Pursuant to Rule 16.4 of the Rules of Practice and Procedure of the California Public Utilities Commission (“CPUC” or “Commission”), Southern California Edison Company (“SCE”) respectfully submits this Petition for Modification (“Petition”) of Decision (“D.”) 10-12-048, entitled Decision Adopting the Renewable Auction Mechanism (the “Decision”).

I.

INTRODUCTION

For the reasons discussed in greater detail below, the Decision should be modified to prevent unrestricted public access to confidential transmission and distribution system information, the dissemination of which presents a serious risk to public safety and security. This is especially the case when the information SCE already provided is sufficient to satisfy the Commission’s stated goal of supporting small generation. SCE’s proposed modifications to D.10-12-048 are set forth in Attachment A.

II.

RELEVANT BACKGROUND

On December 16, 2010, the Commission issued D.10-12-048, which required SCE “to provide the “available capacity” at the substation and circuit level, which [it] define[d] as the

total capacity minus the allocated and queued capacity.”¹ The Decision elaborated that “[a]llocated capacity refers to generators already connected to that substation or circuit. Queued capacity refers to generators in the interconnection queue at that substation or circuit.”² The Decision required SCE to provide this information in map format and “at the most detailed level feasible, and work to increase the precision of the information over time.”³

The Decision also “anticipate[d] that each IOU will, over time, provide system-wide information,” and instructed that “IOUs should eventually provide reasonable data on all areas, and let developers, along with IOUs and other stakeholders, decide if it makes sense to interconnect at various locations.”⁴ In explaining this requirement, the Decision analogized the similar requirements adopted for SCE’s solar PV programs (“SPVP”).⁵

Interpreting the Decision as only requiring the disclosure of certain distribution system information,⁶ SCE posted two maps on its website, the first of which was for SPVP and showed areas with available capacity on the 12 kilovolt (kV) distribution circuits in urban areas,⁷ and the second of which was for the Renewable Auction Mechanism (“RAM”) and showed the Non-ISO-controlled sub-transmission that served large load centers at the 66 kV and 115 kV levels.⁸

On August 18, 2011, the Commission implemented the Decision through Resolution E-4414 (“the Resolution”). The Resolution broadly construed the language of the Decision as directing “the IOUs to provide system wide information over time for both the distribution and

¹ D.10-12-048 at p. 71.

² *Id.* at p. 71, fn. 128.

³ *Id.* at p. 71.

⁴ *Id.* at pp. 71-72 (emphasis added.)

⁵ *Id.* at p. 72 (citing D.09-06-049 at 40, Resolution E-4299 at 5-7, D.10-04-052 at Ordering Paragraphs 9 and 10, D. 10-09-016 Ordering Paragraph 4.)

⁶ If the Commission agrees with SCE’s initial interpretation of the Decision, it should construe this Petition as one for Modification of the Resolution consistent with the proper interpretation of the Decision.

⁷ SCE’s SPVP Interconnection Map of the locations of SCE’s distribution circuits, substations, and sub-transmission systems with associated circuit/substation/system voltage, available capacity and current and queued DG interconnection amounts available, after downloading Google Earth, at <http://www.sce.com/EnergyProcurement/renewables/spvp-ipp/spvp-ipp.htm#area>.

⁸ SCE’s RAM Interconnection Map of the locations of SCE’s distribution circuits, substations, and sub-transmission systems with associated circuit/substation/system voltage, available capacity and current and queued DG interconnection amounts available, after downloading Google Earth, <http://www.sce.com/EnergyProcurement/renewables/renewable-auction-mechanism.htm>

transmission systems” in “maps that cover the whole service territory.”⁹ Finding the maps SCE posted on its website insufficient to discharge its obligations under the Decision, the Resolution ordered SCE to “provide maps that cover both the distribution and transmission systems by March 31, 2012.”¹⁰

The Commission rejected SCE’s comments on both the proposed Decision and the proposed Resolution in which SCE raised serious security concerns regarding the dissemination of sensitive and confidential system information that the Homeland Security Act of 2002¹¹ defines as Critical Infrastructure Information (“CII”) and shields from federal, state and local government disclosure under the Critical Infrastructure Information Act of 2002.¹² The Resolution also rejected SCE’s proposal that developers execute non-disclosure agreements before being permitted to access such information as purportedly unduly burdensome.¹³ The Resolution did not address SCE’s explanation that the maps already provided on SCE’s website were reasonable and sufficient to support small generation.

III.

THE DECISION SHOULD BE MODIFIED TO PROTECT SENSITIVE AND CONFIDENTIAL DISTRIBUTION AND TRANSMISSION SYSTEM INFORMATION

A. There is No Reasonable Basis for Requiring SCE to Disclose Maps of its Transmission and Distribution System that Reveal Detailed Capacity Information

Because projects using the RAM program are 20 MW or under, RAM generators do not need access to maps of SCE’s entire distribution and transmission system that disclose detailed capacity information, especially with respect to substations serving large loads, to determine where interconnection is most feasible. As stated in the Decision, “[o]ne of the primary goals of

⁹ Resolution at pp. 18, 21.

¹⁰ *Id.* at p. 21.

¹¹ 6 U.S.C. 101 *et seq.*

¹² 6 U.S.C. §§ 131-134; 6 C.F.R. §§ 29.1-29.9.

¹³ Resolution at p. 21.

RAM is to support the development of small generation that can interconnect quickly to the distribution system, thereby avoiding the significant time and economic investment required for larger projects requiring transmission upgrades before they can be operational.¹⁴ The information provided should be sufficient to support the development of small generation. Moreover, supporting small generation should not take precedence over protecting public safety and the electrical grid. Thus, the Decision should be appropriately tailored to support generation while providing sufficient protection for sensitive and confidential system information.

B. Release of Confidential, Non-Public Transmission System Information Presents an Unjustifiable and Serious Risk to Public Safety and Security

The Commission should not require the disclosure of sensitive and confidential transmission system information, the dissemination of which may present an unjustifiable risk to public safety and national and state security. The unrestricted dissemination of information regarding the location of a utility's major loads and substations serving those loads renders the entire grid unnecessarily vulnerable. If one or more substations serving major loads were attacked, it could result in a wide scale outage for a prolonged period. Massive power outages caused by an attack on significant substations could disrupt the economy and countless industries, halt transportation, impede emergency services and responders, cause a shortage of food, water and other necessary supplies, and distract from a simultaneous attack elsewhere.

These precise public safety concerns provide the basis for the Department of Homeland Security and Critical Infrastructure Acts of 2002 ("the Acts"). Indeed, the expressly stated statutory mission of the Acts is to prevent terrorist attacks with the United States by, in part, safeguarding and protecting CII, which is statutorily defined as "information not customarily in the public domain and related to the security of critical infrastructure or protected systems"¹⁵ That same principle should guide the Commission's judgment here.

¹⁴ D.10-12-048 at p. 65.

¹⁵ 6 U.S.C. §§ 131(3), 133(a)(1)(A), (E)(i); *see also* 6 C.F.R. §§ 29.1, 29.8(g).

C. SCE Would Appreciate the Opportunity to Work Closely with the Commission to Create an Appropriate Balance Between Furnishing Information to Support Small Generation and Protecting the Public Safety

The broad mandate of the Decision and Resolution compromises public safety by unnecessarily creating the risk that critical and confidential infrastructure information will fall into the hands of those who would use it for a nefarious purpose. SCE would therefore greatly appreciate the opportunity to work with the Commission and its staff to: (1) explain in greater detail why transmission and distribution system information is critical information that should not be made readily available, and (2) collaborate with the Commission to create a policy and procedure for releasing information that will strike the appropriate balance between supporting small generation and achieving critical public safety objectives.

It should also be noted that SCE has likely already voluntarily provided the Commission with at least some information about, including maps of, its distribution and transmission systems¹⁶ under California Public Utilities Code Section 583.¹⁷ Any such voluntarily supplied information would fall squarely within the scope of the Critical Infrastructure Act (“the Act”), which prevents CII that is voluntarily shared with federal, state or local government agencies from public disclosure by the government.¹⁸ Before ordering SCE to reveal its transmission and distribution system maps, the Commission should, in an abundance of caution, perform a thoughtful and thorough review of any information already in its possession to assess whether the information is CII, *i.e.*, whether it “relates to the security of critical infrastructure or protected systems.”

If after meeting with SCE and performing such a review, the Commission agrees that transmission and distribution system information is CII and that its unrestricted access may

¹⁶ SCE requires to time to provide the Commission with detailed list of precisely what has already been disclosed.

¹⁷ California Public Utilities Code Section 583 provides that “[n]o information furnished to the commission by a public utility . . . shall be open to public inspection or made public except on order of the commission, or by the commission or commissioner in the course of a hearing or proceeding. Any present or former officer or employee of the commission who divulges any such information is guilty of a misdemeanor.”

¹⁸ 6 U.S.C. §§ 131(3), 133(a)(1)(A), (E)(i).

present a significant risk to public safety, under any reasonable interpretation of the Act, SCE is confident that the Commission would agree that it should neither disseminate nor compel its disclosure. Indeed, a Commission order that requires SCE to do what the Commission could not otherwise lawfully accomplish itself under the Act, namely revealing critical infrastructure information, is the practical equivalent of a government disclosure.¹⁹ The Act's penalty provision provides, in pertinent part, that any government entity that "knowingly . . . *makes known in any manner* or to any extent not authorized by law [] any critical infrastructure information protected from disclosure . . . shall be" subject to criminal and administrative penalties.²⁰ Thus, ordering SCE to disclose information that SCE may have voluntarily supplied to the Commission may unnecessarily expose the Commission to the penalty provisions of the Act.

In addition, the CAISO correctly treats distribution and transmission system information as CII, places it behind a secured web portal, and requires parties who have a business reason to access such information to execute a non-disclosure agreement.²¹ Thus, if the Commission insists on the dissemination of such information, it should, at a minimum, require developers to execute non-disclosure agreements that create legal obligations and financial incentives for maintaining the confidentiality of the information. PG&E's registration process is wholly inadequate because it does neither.²² Moreover, there is nothing in the record demonstrating that

¹⁹ "Taking into consideration the policies and purposes of [an] act, the applicable rule of statutory construction is that the purpose sought to be achieved and evils to be eliminated have an important place in ascertaining the legislative intent. Statutes should be interpreted to promote rather than defeat the legislative purpose and policy. '[In] the interpretation of statutes, when two constructions appear possible, this court follows the rule of favoring that which leads to the more reasonable result.' And, '[t]hat construction of a statute should be avoided which affords an opportunity to evade the act, and that construction is favored which would defeat subterfuges, expediences, or evasions employed to continue the mischief sought to be remedied by the statute, or to defeat compliance with its terms, or any attempt to accomplish by indirection what the statute forbids.'" *Freedland v. Greco* (1955) 45 Cal. 2d 462, 467-68 (citations and quotations omitted).

²⁰ 6 U.S.C. § 133 (f) (emphasis added), 6 C.F.R. § 29.9.

²¹ *See, e.g.*, CAISO Non-Disclosure and Use of Information Agreement for Transmission Constraints Enforcement Limits, available at <http://www.caiso.com/Documents/RegionalTransmissionNDA.pdf>.

²² Resolution at p. 21 (explaining PG&E's lax registration procedure.)

such a requirement is so onerous as to outweigh the security concerns presented by disclosing such information.

IV.

CONCLUSION

For the reasons discussed above, SCE respectfully requests that the Commission modify D.10-12-048, as set forth above and in Attachment A.

Respectfully submitted,

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/s/ Rebecca Meiers-De Pastino

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Dated: December 16, 2011

VERIFICATION

I am a manager in the Transmission and Distribution Department of Southern California Edison Company and am authorized to make this verification on its behalf. I am informed and believe that the matters stated in the foregoing pleading are true.

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

Executed this **16th** day of **December 2011**, at Rosemead, California.

/s/ Dana Cabbell

By: Dana Cabbell
Transmission and Distribution
SOUTHERN CALIFORNIA EDISON COMPANY

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Attachment A

Proposed Modifications to D.10-12-048

SCE respectfully proposes the following modifications to D.10-12-048:¹

Proposed Modifications to the Text:

11.1.2. Discussion

Page 70: We recognize that it may be infeasible-~~unnecessary and imprudent~~ for an IOU to provide information on all substations during the initial rollout of this program given the large service areas of each IOU.

The data must be sufficiently detailed to be useful **but should refrain from revealing details that could jeopardize the public safety.**

Pages 70-71: For the initial rollout, we adopt the FIT Coalition’s recommendation to require the IOUs to provide the “available capacity” at the substation and circuit level, which we define as the total capacity minus the allocated and queued capacity **but only to the extent that such detail does not compromise safety and security. Specifically, to the extent the IOUs can safely do so, the IOUs shall make interconnection maps of the approximate locations of their distribution circuits, substations, and sub-transmission systems with associated circuit/substation/system voltage, available capacity and current and queued DG interconnection amounts available. With specific respect to SCE, the maps will show available capacity on the 12 kilovolt (kV) distribution circuits in urban areas, and the non-ISO-controlled sub-transmission system that serve load centers at the 66 kV and 115 kV levels. After one year, the Commission will review whether these maps are sufficient to support small generation or if more information is needed. If more information is needed, the Commission will attempt to create policies and procedures for the release of additional information in a manner that does not compromise public safety and security.**

Page 71: We also expect each IOU to pursue all cost effective improvements to **timely** provide this data at a more detailed level with more timely updates.

Page 72-73: We anticipate that each IOU will, over time, provide system-wide information. To not do so requires IOUs to continuously determine what are and are not “preferred” areas. That involves judgment better left to stakeholders. IOUs should eventually provide reasonable data on all areas, and let developers, along with IOUs and other stakeholders, decide if it makes sense to interconnect at various locations.

11.1.3. Response to Critical Infrastructure Argument

Page 74: ~~The Critical Infrastructure Information Act of 2002 (CII Act) has no bearing on the Commission’s decision about whether this information should be provided to potential distributed generation developers. The CII Act distinguishes between submitters and recipients of critical infrastructure information, with the result that the federal~~

¹ SCE’s deletions are indicated with a strike out. SCE’s additions appear in red and are bolded, underlined, and italicized.

statute's prohibition on disclosure of protected confidential infrastructure information applies only when it has been "provided to a State or local government or government agency ..." (6 U.S.C. § 133(a)(1)(E)). See *County of Santa Clara v. Superior Court*, 170 Cal. App. 4th 1301, 1319 (Cal. App. 6th Dist. 2009). In this instance, the information in question was generated solely by SCE. Because SCE is neither a state or local government agency, nor a recipient of critical infrastructure information from the federal government, the CII Act and accompanying regulations do not apply.

12. Regulation and Commission Oversight

12.1. RAM Program Modifications and Reports

Page 74: ED may act on its own motion to revise any aspect of the RAM program, *in a manner consistent with public safety and security considerations*, through resolutions proposed for Commission approval.

Proposed Modifications to the Findings of Fact

Page 86, Finding of Fact 46. ~~The Critical Infrastructure Information Act of 2002 has no bearing on the Commission's decision about whether interconnection information should be provided to potential distributed generation developers.~~

Page 86, Finding of Fact 47. It is reasonable to allow ED to revise any aspect of the RAM program, *consistent with public safety and security considerations*, through resolutions proposed for Commission approval.

Proposed Modifications to the Conclusions of Law

Page 92, Conclusion of Law 44: IOUs should provide the "available capacity" at the substation and circuit level, updated on a monthly basis, which is defined as the total capacity minus the allocated and queued capacity, *provided that such detail does not compromise safety and security*. The IOUs should provide this information in map format. *Specifically, to the extent the IOUs can safely do so, the IOUs shall make interconnection maps of the approximate locations of their distribution circuits, substations, and sub-transmission systems with associated circuit/substation/system voltage, available capacity and current and queued DG interconnection amounts available. With specific respect to SCE, the maps will show available capacity on the 12 kilovolt (kV) distribution circuits in urban areas, and the non-ISO-controlled sub-transmission system that serve load centers at the 66 kV and 115 kV levels. After one year, the Commission will review whether these maps are sufficient to support small generation or if more information is needed. If more information is needed, the Commission will attempt to create policies and procedures for the release of additional information in a manner that does not compromise public safety and security.*

Proposed Modifications to the Ordering Paragraph

Ordering Paragraph 5: Similarly, Energy Division may issue a resolution on its own motion to propose program modifications, *consistent with public safety and security considerations*, based on information from these program forums or the annual reports developed pursuant to Ordering Paragraph 3 above.

Proposed Modifications to Appendix A

6. Market Elements at Pages 5:

Preferred Locations: The IOUs must provide the “available capacity” at the substation and circuit level, defined as the total capacity minus the allocated and queued capacity, provided that such detail does not compromise safety and security. The IOUs should provide this information in map format. The IOUs should provide this information in map format. Specifically, to the extent the IOUs can safely do so, the IOUs shall make interconnection maps of the approximate locations of their distribution circuits, substations, and sub-transmission systems with associated circuit/substation/system voltage, available capacity and current and queued DG interconnection amounts available. With specific respect to SCE, the maps will show available capacity on the 12 kilovolt (kV) distribution circuits in urban areas, and the non-ISO-controlled sub-transmission system that serve load centers at the 66 kV and 115 kV levels. After one year, the Commission will review whether these maps are sufficient to support small generation or if more information is needed. If more information is needed, the Commission will attempt to create policies and procedures for the release of additional information in a manner that does not compromise public safety and security. If unable to initially provide the desired level of detail, each IOU must provide the data at the most detailed level feasible, and work to increase the precision of the information over time. This information is to be available in the advice letter implementing RAM and updated on a monthly basis.

7. Regulation and Commission Oversight at Page 6:

a. **Program modifications:** The Commission can modify any element of the program, consistent with public safety and security considerations, at any time through a Commission resolution.