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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Consider Smart Grid Technologies Pursuant to Federal Legislation and on the Commission's own Motion to Actively Guide Policy in California's Development of a Smart Grid System.

Rulemaking 08-12-009
(Filed December 18, 2008)

ASSIGNED COMMISSIONER SCOPING MEMO AND RULING AMENDING SCOPE OF PROCEEDING, INITIATING PHASE 2 AND SETTING A SCHEDULE FOR RESOLUTION OF OUTSTANDING ISSUES

Summary

This ruling amends the scope of this rulemaking proceeding to determine how the Rules Regarding Privacy and Security Protections for Energy Usage Data that were adopted in Decision (D.) 11-07-056 should be extended to gas corporations, community choice aggregators and electric service providers.

This ruling adopts a procedural timetable for addressing these issues. Consistent with Pub. Util. Code § 1701.5, the deadline for the conclusion of this proceeding is 18 months from the date of this ruling.

Background

D.11-07-056 initiated Phase 2 of this proceeding and established its scope. Ordering Paragraph 12 states:

12. The scope of this rulemaking is amended to consider in Phase 2 how the Rules Regarding Privacy and Security Protections for Energy Usage Data in Attachment D of this

decision and other requirements of this decision should apply to gas corporations, community choice aggregators, and electric service providers. We will issue an amended scoping memo, which will set a new deadline for the resolution of this proceeding consistent with § 1701.5.¹

On September 1, 2011, an Administrative Law Judge's (ALJ) Ruling set a Prehearing Conference (PHC) for September 16, 2011. The Ruling invited parties to serve PHC statements by September 12, 2011.

On September 12, 2011, the Division of Ratepayer Advocates (DRA), the Alliance for Retail Energy Markets (AREM), Southern California Edison Company (SCE), and Southern California Gas Company (SoCalGas) filed PHC statements.

On September 16, 2011, a PHC took place at the Commission offices in San Francisco to take appearances in the proceeding, to refine the scope of the proceeding, and to develop a procedural timetable for the management of the proceeding.

Scope of Proceeding

As noted above, the scope of this proceeding is amended to consider how the Rules Regarding Privacy and Security Protections for Energy Usage Data in Attachment D of D.11-07-056 and other requirements of D.11-07-056 should apply to gas corporations, community choice aggregators (CCAs), and electric service providers (ESPs).

¹ D.11-07-056 at 167.

Positions of Parties

In its PHC Statement, DRA argued that the proceeding should take the following actions (quoting directly):

- Adopt Fair Information Practice Principles as a framework for privacy rules applicable to gas corporations, community choice aggregators, and electric service providers;
- Determine whether the privacy rules adopted in Decision (D.) 11-07-056 need to be altered in their application to gas corporations, community choice aggregators, and electric service providers;
- Apply the same enforceable privacy rules adopted in D.11-07-056 to gas corporations, community choice aggregators, and electric service providers, to the extent possible; and
- Require parties to brief the Commission on jurisdictional issues related to third party access to customer information.²

SoCalGas, in its PHC Statement, argued that “gas service is materially different from electric service, and therefore should not be bound by electric service focused smart grid policy decisions....”³ SoCalGas argued further that the Commission should “address the unique gas Advanced Metering Infrastructure issues in a separate, gas only, phase of the proceeding....”⁴

AReM, in its PHC Statement, argued that there are “significant legal and regulatory issues that the Commission must address with respect to ESPs

² DRA PHC Statement at 1-2.

³ SoCalGas PHC Statement at 2.

⁴ *Id.* at 3.

[electric service providers].”⁵ Among other things, AReM argued that Senate Bill (SB) 1476 “does not apply to ESPs.”⁶ AReM therefore requested that in this proceeding that the Commission clarify “the basis for the Commission’s jurisdiction to impose these rules and requirements on ESPs.”⁷ In its PHC Statement, AReM also raised issues concerning the need for specificity in any rules adopted, comparability of privacy rules with those of other states, and the cost-effectiveness of any rules that apply to ESPs.

SCE, in a short PHC Statement, argued that the Commission should clarify that the rules apply not only to CCAs, but to “community aggregators,” such as the City of Cerritos, as well. At the PHC, SCE argued further that “[i]ts [City of Cerritos’s] service is really no different than an ESP service in the sense that it provides a competitive generation resource for customers within SCE’s service area that are living within the jurisdiction of Cerritos.”⁸ PG&E supported SCE’s analysis.⁹

At the PHC, PG&E argued that “the rules for privacy [should] be consistent and adopted at the same time in this proceeding for both gas and electric corporations mainly because we treat our gas and electric customers the same in that respect.”¹⁰

⁵ AReM PHC Statement at 2.

⁶ *Id.*

⁷ *Id.*

⁸ PHC-3 transcript at 139.

⁹ *Id.* at 141-142.

¹⁰ *Id.* at 127.

At the PHC, SDG&E echoed PG&E's position and argued that "it would be beneficial to treat them the same under the same rules and guidelines."¹¹

At the PHC, the Direct Access Customer Coalition, who expressed concern over the rules applied to ESPs, argued for the bifurcation of the proceeding, asking for "a phase applicable to the gas utilities or the combined gas and electric utilities followed by a phase applicable to ESPs and CCAs."¹² AReM also expressed support for this approach.

In contrast, DRA argued for "separate phases ... run in parallel" and leading to a single decision.¹³ On the other hand, DRA recommended separate workshops for gas and electric issues.

Discussion

Concerning the scope of the issues in this proceeding, there are essentially two sets of issues: 1) should the Commission extend privacy rules and requirements adopted in D.11-07-056 as written (or modify them) to gas companies, CCAs and ESPs, and 2) which entities (gas, CCA's, and/or ESPs) should be subject to privacy rules adopted by the Commission?

There is broad consensus among the parties that the question of whether the Commission should extend the privacy rules as written (or modify them) to gas companies, CCAs or ESPs is the central issue in this phase of the proceeding. Concerning the question of which entities should be subject to privacy rules adopted by the Commission, there was no consensus among the parties as to

¹¹ *Id.* at 129.

¹² *Id.* at 130.

¹³ *Id.* at 134.

whom the rules should apply. As noted above, AReM argued that SB 1476, which explicitly addresses gas and electric utilities, does not apply to ESPs. Pub. Util. Code § 394.4, however, gives the Commission broad authority to protect confidential customer data provided to ESPs. Similarly, Pub. Util. Code § 366.2(c)(4)(D) gives the Commission broad authority to establish rules pertaining to CCAs. Although a more detailed analysis of this authority can await parties' comments, there is no basis at this time to doubt that the Commission has authority to adopt privacy rules for either ESPs or CCAs.

Concerning community aggregators, such as the City of Cerritos, Ordering Paragraph 12 of D.11-07-056, which set the scope of this proceeding, did not set the scope to include community aggregators. Moreover, the statutory status of the City of Cerritos differs from that of CCAs and ESPs. There is no compelling reason to include community aggregators, such as the City of Cerritos, within the scope of this proceeding at this time.

Proceeding Category, Ex Parte Rules, and Need for Hearing

This proceeding has been characterized as quasi-legislative and it has been anticipated that this proceeding would not require evidentiary hearings.

No party disputed either of these determinations. This proceeding will not affect rates and there are no disputes of facts that would require evidentiary hearings.

Pursuant to Rule 8.2(a), a quasi-legislative proceeding does not have any *ex parte* restrictions or reporting requirements.

Workshop Topics and Tentative Schedule

At the PHC, the parties worked to develop a consensus on how to proceed as follows:

Event	Date
Workshop on issues related to Gas Corporations	November 16, 2011 at 9:00 a.m. Commission Auditorium State Office Building 505 Van Ness Avenue San Francisco, CA 94102
Workshop on issues related to ESPs and CCAs	November 16, 2011 at 1:00 p.m. Commission Auditorium State Office Building 505 Van Ness Avenue San Francisco, CA 94102
Concurrent Opening Comments	January 20, 2012
Concurrent Reply Comments	February 3, 2012
Projected Proposed Decision	April 2012
Projected Commission Decision	June 2012

In addition, the parties agreed that it would be beneficial for the Commission to facilitate conference calls among interested parties to scope the issues in advance of the workshop for both the gas corporations and for the CCAs and ESPs.¹⁴

SoCalGas requested that the comments be divided into two discrete sections, one dealing with privacy issues pertaining to the gas industry, and one

¹⁴ *Id.* at 137.

dealing with privacy issues pertaining to CCAs and ESPs. No party objected to this request.

Finally, we note that although the schedule above indicates a rapid resolution of the issues before this Commission, this proceeding, in any event, is expected to conclude no later than 18 months after the date of this amended scoping memo and ruling as envisioned in Pub. Util. Code § 1701.

Notice of Intent to Claim Compensation

Because of the amended scope set for this proceeding, it is reasonable to construe the Commission's Rules as permitting the establishment of a new date for the timely receipt of a notice of intent to claim compensation by those who have not previously been found eligible for an award of compensation in this proceeding.

Consistent with Rule 17.1 of the Commission's Rules of Practice and Procedure, a notice of intent to claim compensation may be filed until 30 days after the PHC. Since the PHC in this proceeding took place on September 16, 2011, the deadline for filing a notice is October 16, 2011.

Consistent with Rule 17.2, parties that were found eligible for an award of compensation previously in this proceeding remain eligible for an award in this new phase of the proceeding without a new demonstration of eligibility.

Final Oral Argument

Since no evidentiary hearings are scheduled, no final oral argument is anticipated.

Presiding Officer

Since no evidentiary hearings are scheduled, no designation of presiding officer is necessary. Pursuant to Rule 13.2 (c), if evidentiary hearings are held, the presiding officer shall be the assigned Commissioner.

Deadline Extended

Pursuant to § 1701.5, this ruling amending the scope of the proceeding extends the deadline to permit the resolution of all issues set for this proceeding by D.11-07-056. The new deadline for resolution of all issues in this proceeding is March 31, 2013, which is within 18 months of the mailing of this ruling.

Service List/Filing and Service of Documents

The official service list for this proceeding is attached to this ruling. The parties shall notify the Commission's Process Office of any address, telephone, or electronic mail (email) change to the service list.

Parties shall file and serve all pleadings as set forth in Article 1 of the Rules. All documents shall be served electronically, as set forth in Rule 1.10. Testimony, if later determined to be necessary, shall be served but not filed.

IT IS RULED that:

1. The scope of the proceeding is as set forth above.
2. The final categorization of this proceeding is quasi-legislative. Hearings are not required.
3. The initial schedule for issues related to the review of privacy issues pertaining to gas corporations, electric service providers, and community choice aggregators is as set forth above unless further amended by the assigned Commissioner or Administrative Law Judge.
4. The deadline for filing a Notice of Intent to Claim Compensation in this proceeding is October 16, 2011 for those parties who have not done so in an earlier phase of this proceeding.
5. Since there are no planned evidentiary hearings at this time, there will be no oral argument.

6. Since there are no planned evidentiary hearings at this time, there will be no presiding officer designated in this proceeding.

7. The service list for filing and service of documents and service of testimony in this proceeding is as set forth above.

Dated October 7, 2011, at San Francisco, California.

/s/ MICHAEL R. PEEVEY

Michael R. Peevey
Assigned Commissioner