

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA



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Order Instituting Rulemaking on the Commission's Own Motion to improve distribution level interconnection rules and regulations for certain classes of electric generators and electric storage resources.

Rulemaking 11-09-011
(Filed September 22, 2011)

**THE OFFICE OF RATEPAYER ADVOCATES' REPLY COMMENTS
ON PROPOSED DECISION GRANTING THE JOINT MOTIONS OF
SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E),
SAN DIEGO GAS & ELECTRIC COMPANY (U 902-E), AND
PACIFIC GAS AND ELECTRIC COMPANY (U 39-E) TO
APPROVE PROPOSED REVISIONS TO ELECTRIC TARIFF RULE 21**

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I. INTRODUCTION

The Office of Ratepayer Advocates (ORA) submits its reply comments on the Proposed Decision (PD) of Administrative Law Judge Maribeth Bushey, dated February 16, 2016. ORA's reply comments address parties' comments regarding: (1) interconnection cost overruns, and (2) the investor-owned utilities' (IOUs) new proposals for recovery of cost overruns that are not part of the record. ORA recommends that the Commission adopt the PD with ORA's recommended modifications included in Attachment 1 of ORA's Comments on the Proposed Decision.

II. DISCUSSION

A. The PD Correctly Notes Interconnection Cost Overruns Should Not Be Allocated to Ratepayers

ORA opposed the IOUs proposed ratemaking for cost overruns on projects subject to the Fixed Cost Option on the basis that cost recovery should follow cost causation and that allocating cost overruns to ratepayers is at odds with the Commission's ratemaking principles. The ALJ agreed with ORA and denied the IOUs' ratemaking proposal for cost overruns of projects under the Fixed Price Option because it is inconsistent with Commission's ratemaking principles and unreasonable.¹ Several parties commented on the Fixed Price Option proposal, especially in regards to the rate treatment of the interconnection cost overruns. Many of the parties' opinions are consistent with ORA's initial comments, including the Interstate Renewable Energy Council, Inc. (IREC), which stated:

IREC continues to believe that an approach modeled off of the Massachusetts cost envelope offers the most reasonable and prudent method for addressing cost certainty. In addition to arguing that they lack sufficient control over the factors that determine what the actual interconnection costs are, the utilities have argued that the cost envelope undermines the basic "cost causer" principle of interconnection. As IREC explained in our September 26, 2014 comments, the utility argument that shareholder liability for interconnection costs that grossly exceed the original cost estimate violate PURPA and the cost-causer principle are red herrings that wrongly characterize the cost envelope as an attempt to avoid having interconnection customers pay for the costs they trigger. This is misleading and disingenuous when the utilities' own proposal would have the same effect of shifting costs, only with ratepayers bearing the costs instead of the shareholders.²

¹ PD, Conclusions of Law #3.

² *Comments of the Interstate Renewable Energy Council, Inc. on the Proposed Decision Granting Joint Motions to Approve Proposed Revisions To Electric Tariff Rule 21*; March 7, 2016, p. 7 (Citations Omitted).

ORA concurs with the PD, but recommends the PD be modified to clarify that the interconnection applicant shall pay 10% and the IOU shareholders shall pay 90% of any cost overruns incurred under the Fixed Price Option. Contrary to the IOUs new proposal, which is not part of the record (discussed below), this proposal is part of the evidentiary record. ORA proposed³ the 10/90 percent split of cost overruns between interconnection applicant/IOU shareholders, respectively, which is akin to the Massachusetts Model that was vetted at workshops in this proceeding and which many parties in this proceeding found to be reasonable. Of all the proposals in this proceeding the Massachusetts Model best protects ratepayers by allocating any interconnection cost overruns between the applicant (the entity creating the cost) and the IOUs (the entities responsible for the cost estimate). Furthermore, the fundamental point remains that the development of an accurate cost estimate solely lies with the IOUs, so it follows that the cost estimate is more likely to be accurate if the party responsible for developing the estimate bears some responsibility.

B. The Joint IOUs’ New Proposals for Cost Recovery Is Not Part of the Record, Has Not Been Vetted, and Impermissibly Allocates Costs to Ratepayers

As a preliminary measure, the Joint IOUs’ Comments on the PD, includes proposals⁴ that are not part of the record and may not be considered by the Commission.⁵ These proposals were not appropriately vetted, and parties have not had the opportunity to review these new proposals. ORA respectfully requests the Commission to reject these proposals.

The Joint IOUs state that “the PD eliminates any opportunity for the IOUs to recover reasonably, prudently incurred interconnection costs that may exceed the Fixed Price Option’s estimate.” This argument is meritless. The PD allows for the IOUs to recover interconnection costs from the applicant after the IOU provides a reasonable cost estimate.”⁶ The Joint Utilities’ Proposals,⁷ either an advance engineering study design option or a

³ *The [ORA] Reply to Comments on the Motion and Supplement to the Motion of Southern California Edison Company (U-399 E), Dan Diego Gas & Electric Company (U 902-E), and Pacific Gas and Electric Company (U 39-E) Proposing Rule 21 Tariff Language Implementing Joint Cost Certainty Proposal*, filed June 8, 2015, pp. 4-7.

⁴ *Joint Comments of Southern California Edison Company, San Diego Gas & Electric Company, and Pacific Gas and Electric Company on Proposed Decision Granting Joint Motions to Approve Proposed Revisions to Electric Tariff Rule 21 (Joint IOU Comments)*; March 7, 2016, p. 3-7.

⁵ Commission Rules of Practice and Procedure, Rule 8.3(k) (The Commission shall render its decision based on the evidence of record.)

⁶ Joint IOU Comments, p. 4.

⁷ Joint IOU Comments, p. 5-7.

memorandum account – will shift the IOUs’ revenue shortfall resulting from their inaccurate cost estimates to ratepayers, which, under the current ratemaking principles, is the responsibility of the applicants.⁸

A memorandum account⁹ will not necessarily incent the IOUs’ to provide accurate project cost estimates or be accountable for inaccurate estimates. Memorandum accounts are typically used by a utility to track costs in order to ultimately request recovery of those costs from ratepayers. A memorandum account does not typically provide for allocation of costs to the applicant generator. Not does it appear to be the intent of the Joint Utilities’ Proposal which does not consider the allocation of costs to the applicant generator. The Joint Utilities’ Proposal provides no rationale to explain why this cost shift is reasonable. Without a benefit to ratepayers, it is unreasonable to allow such a shift of costs to ratepayers. These proposals are not consistent with fundamental ratemaking principles that avoid cross-subsidies between customer classes.¹⁰ The Commission has consistently ensured that the entity that creates cost – in this case the generator – pays those costs. The Commission has said that to protect utility ratepayers from unreasonable rates it will allocate costs to the customer causing them.¹¹ The Commission should not deviate from this fundamental principle now and should reject the Joint Utilities’ proposals to shift costs to ratepayers.

The Joint IOUs’ Comment also infers that the Massachusetts Model may violate PURPA by not allowing the “IOUs to recover their prudently incurred cost.”¹² This argument is without legal merit. PURPA requires IOUs to interconnect qualifying facilities, but the Joint IOUs’ do not cite a legal authority for the proposition that the cost of interconnection must be passed on to ratepayers. Indeed, ratemaking principles, discussed above, dictate that the applicant pay the costs. Under the Massachusetts Model, the IOUs can avoid costs by providing accurate cost estimates, which result in the applicant paying for the interconnection costs.

⁸ Rule 21, §§ F. 2, F. 3.

⁹ Joint IOU Comments, p. 6.

¹⁰ Cal. Pub. Util. Code §§ 453, 454.8. See also, D.12-12-033, Decision Adopting Cap-and-Trade Greenhouse Gas Allowance Revenue Allocation Methodology for the Investor-Owned Electric Utilities in Rulemaking 11-03-012, *Order Instituting Rulemaking to Address Utility Cost and Revenue Issues Associated with Greenhouse Gas Emissions*, December 20, 2012.

¹¹ See, e.g., D.05-08-013, Interim Opinion Adopting Changes in Interconnection Rules for Distributed Generation *Order Instituting Rulemaking Regarding Policies, Procedures and Incentives for Distributed Generation and Distributed Energy Resources in Rulemaking* 04-03-017, August 25, 2005.

¹² Joint IOU Comments, p. 4.

III. CONCLUSION

For the foregoing reasons, ORA recommends that the Commission adopt the PD with ORA's recommended modifications included in Attachment 1 of ORA's Comments on the Proposed Decision.

Respectfully submitted,

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