



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

FILED
8-03-16
04:59 PM

Order Instituting Rulemaking to Develop a Successor
to Existing Net Energy Metering Tariffs Pursuant to
Public Utilities Code Section 2827.1, and to Address
Other Issues Related to Net Energy Metering.

Rulemaking 14-07-002
(Filed July 10, 2014)

**COMMENTS OF PACIFICORP (U 901-E) ON THE ADMINISTRATIVE LAW
JUDGE'S RULING SEEKING PROPOSALS AND COMMENTS ON
IMPLEMENTATION OF ASSEMBLY BILL 693**

Jedediah J. Gibson
Ellison, Schneider & Harris L.L.P.
2600 Capitol Avenue, Suite 400
Sacramento, CA 95816
Telephone: (916) 447-2166
Facsimile: (916) 447-3512
Email: jjg@eslawfirm.com

August 3, 2016

Attorney for PacifiCorp

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

Order Instituting Rulemaking to Develop a Successor to Existing Net Energy Metering Tariffs Pursuant to Public Utilities Code Section 2827.1, and to Address Other Issues Related to Net Energy Metering.

Rulemaking 14-07-002
(Filed July 10, 2014)

**COMMENTS OF PACIFICORP (U 901-E) ON THE ADMINISTRATIVE LAW
JUDGE’S RULING SEEKING PROPOSALS AND COMMENTS ON
IMPLEMENTATION OF ASSEMBLY BILL 693**

In accordance with the July 8, 2016 Administrative Law Judge’s Ruling Seeking Proposals and Comments on Implementation of Assembly Bill 693 (ALJ Ruling), PacifiCorp (U 901-E), d/b/a Pacific Power (PacifiCorp) hereby provides comments on certain issues associated with implementation of Assembly Bill (AB) 693. Given the California Public Utilities Commission’s (Commission) implementation of various programs related to the Multifamily Affordable Solar Housing Roofs Program (Program), PacifiCorp’s unique characteristics, and the distinctive statutory and regulatory requirements applicable to PacifiCorp, PacifiCorp does not address all questions in the ALJ Ruling, but instead focuses on issues that could impact PacifiCorp and its customers. For the reasons described more fully below, the Commission should exempt PacifiCorp from any requirement to implement or contribute to the Program at this time.

I. Introduction and Background

PacifiCorp serves more than 1.7 million customers in six western states (California, Idaho, Oregon, Utah, Washington, and Wyoming) and operates its two balancing authority areas that encompass its six-state service territory. However, PacifiCorp has only approximately 45,000 retail customers in northern California, approximately 36,000 of which are residential.

These customers currently comprise approximately 1.5 percent of PacifiCorp’s total retail sales. PacifiCorp is uniquely situated in comparison to the other investor-owned utilities (IOUs) in California because not only does it have load-service obligations in six states, but PacifiCorp’s California customers are geographically-dispersed. PacifiCorp only has approximately four customers per square mile. Furthermore, there is limited demand for distributed resources in PacifiCorp’s service territory. Additionally, although nearly half of PacifiCorp’s California customers qualify for low-income bill assistance, it is unlikely that those customers would otherwise qualify for Program participation.

PacifiCorp’s unique characteristics have been recognized by the Legislature and the Commission, to ensure that PacifiCorp’s customers are not unduly burdened through the imposition of inefficient and uneconomical programs and requirements.¹ Indeed, when designing and implementing the California Solar Initiative (CSI) and the Multifamily Affordable Solar Housing (MASH) programs, the Commission only required California’s three largest IOUs, Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company (collectively, the Large IOUs) to participate in the CSI and MASH programs.² PacifiCorp was never required to implement either the CSI or MASH programs.³

¹ The Commission has routinely found that “the small size of [PacifiCorp] and the nature of [its] operations” make it inappropriate and burdensome for the Commission to impose certain requirements on PacifiCorp or instead require that the Commission allow PacifiCorp to take a more limited approach than that required for California’s largest IOUs. (D.09-12-046, p. 2, exempting PacifiCorp from certain smart grid-related requirements.) The Commission has noted that imposing certain planning requirements on PacifiCorp “would only impose costs and inefficiencies ... while producing no benefits.” (D.09-12-046, p. 27; *see also* D.08-05-028 (allowing PacifiCorp to use its integrated resource plan filed in other states in lieu of submitting an RPS procurement plan).

² *See, e.g.*, D.06-01-024, D.06-08-028, D.06-12-033, D.08-10-036, and D.15-01-027.

³ Although PacifiCorp did implement a solar incentive program, that program was different from the CSI and MASH programs and was designed to meet the needs of PacifiCorp’s unique service territory. (*See* A.10-03-002 and D.11-03-007.)

In the instant proceeding, the Commission must similarly avoid requiring PacifiCorp to implement or contribute to the Program, as PacifiCorp's unique characteristics make the Program's costs outweigh the benefits for PacifiCorp and its customers.

II. Program Costs Will Exceed Program Benefits

A. Question 1⁴ – Program Thresholds were not Designed for PacifiCorp's Service Territory and are Overly Burdensome to Implement

As noted in the ALJ Ruling, in order to qualify under the Program, a property must meet the statutory definition of "qualified multifamily affordable housing property." Public Utilities Code Section 2870(a)(3)⁵ provides:

"Qualified multifamily affordable housing property" means a multifamily residential building of at least five rental housing units that is operated to provide *deed-restricted* low-income residential housing, as defined in clause (i) of subparagraph (A) of paragraph (3) of subdivision (a) of Section 2852, and that meets one or more of the following requirements:

- A. The property is located in a disadvantaged community, as defined by the California Environmental Protection Agency pursuant to Section 39711 of the Health and Safety Code.
- B. At least 80 percent of the households have incomes at or below 60 percent of the area median income, as defined in subdivision (f) of Section 50052.5 of the Health and Safety Code.⁶

Similarly, Section 2852(a)(3) provides:

"Low-income residential housing" means any of the following:

- A. A multifamily residential complex financed with low-income housing tax credits, tax-exempt mortgage revenue bonds, general obligation bonds, or local, state, or federal loans or grants, and for which either of the following applies:

⁴ In conformance with the ALJ Ruling, these comments do not "reproduce the question, but responses should be numbered to match the questions addressed, or otherwise clearly identify the issue being discussed." (ALJ Ruling, p. 3.)

⁵ Unless otherwise noted, all other section references refer to the Public Utilities Code.

⁶ Emphasis added.

- i. The rents of the occupants who are lower income households do not exceed those prescribed by *deed restrictions* or regulatory agreements pursuant to the terms of the financing or financial assistance.⁷

The clear statutory eligibility requirement under the Program for a “qualified multifamily affordable housing property” requires that such a property include deed restrictions. This presents multiple problems if the Program were implemented in PacifiCorp’s service territory.

First, even if PacifiCorp could ascertain whether a property was subject to Section 2870 and 2852 deed restrictions, it is unlikely that such properties exist in PacifiCorp’s California service territory. Such income-related deed restricted properties are more frequently found in larger cities and are designed to combat gentrification, to name one intention. However, as described above, PacifiCorp’s California customers are geographically-dispersed (approximately four customers per square mile) and gentrification is less of an issue compared to what occurs in large urban parts of the service territories of the Large IOUs. Accordingly, few, if any, eligible Program customers are likely to exist in PacifiCorp’s service territory. Because few, if any, eligible Program customers are likely to exist in PacifiCorp’s California service territory, and because PacifiCorp only has approximately 45,000 customers (36,000 of which are residential), the administrative costs of implementing and managing the Program far outweigh any Program benefits.

Second, PacifiCorp does not currently have access to information that would allow it to determine whether or not a property is subject to deed restrictions satisfying the statutory criteria of Sections 2870 and 2852. This makes implementation of the Program difficult, particularly so given PacifiCorp’s small California customer-base and the disproportionate rate impacts that

⁷ Emphasis added.

administration of the Program would have on PacifiCorp's customers. These problems necessitate that the Commission exempt PacifiCorp from Program participation.

B. Question 10 – Program Features Are Likely to Derive from the CSI and MASH Programs which are Inapplicable to PacifiCorp

Though Program features have not yet been finalized, the Program is likely to borrow from successful features of the CSI and MASH programs. This is problematic for PacifiCorp, as PacifiCorp is not subject to the CSI or MASH programs. Those programs were only required for the Large IOUs, and were accordingly designed and tailored with the Large IOUs in mind. As described above, PacifiCorp is very different from the Large IOUs, so CSI and MASH features could prove problematic or impossible to implement for PacifiCorp. This would further increase administrative costs for the Program and increase burdens on PacifiCorp and its customers, further justifying exempting PacifiCorp from any requirement to implement the Program.

C. Question 18 – PacifiCorp Should Be Exempt from Contributing to and Participating in the Program

The Program relies on greenhouse gas (GHG) auction proceeds allocated pursuant to Section 748.5(c). Importantly, Section 748.5(c) does not mandate that GHG auction revenues must be allocated towards the Program, but provides discretion to the Commission to choose whether or not to allocate such revenues. Historically, the Commission has determined that it is more beneficial for PacifiCorp and its customers to return all revenues, rather than allocate revenues towards specific programs. Specifically, the Commission has allowed PacifiCorp to return to its residential and small business customers the entirety of the GHG allowance proceeds through the Climate Credit (Credit) and until this year has not required PacifiCorp to allocate any of the GHG allowance proceeds to other purposes.

In PacifiCorp's 2017 Energy Cost Adjustment Clause and GHG-related forecast application filed on August 1, 2016 (2017 ECAC), PacifiCorp has set aside funds for this program in accordance with the Commission directive.⁸ As expected, setting funds aside for this Program has reduced the proposed semi-annual Credit in 2017 for its California customers. The Credit is paid twice during the year in April and October. For 2016 the semi-annual Credit for PacifiCorp's residential customers is \$143.47. In the 2017 ECAC, taking into account the funds set aside for the Program, the proposed semi-annual Credit for 2017 is only \$106.94. The semi-annual Credit would be approximately \$127 if funds had not been set aside for this Program. With a larger Credit, customers have more funds to invest in energy efficiency measures for their homes and it helps reduce the burden of energy costs on our low income customers. Consistent with prior determinations by the Commission, PacifiCorp's California customers are best served by receiving all of the GHG auction revenues through the Credit. Therefore, the Credit should not be reduced for PacifiCorp customers for the purpose of funding the Program.

Exempting PacifiCorp from the Program is not only justified for the reasons described above, but is consistent with the Commission's historical treatment and recognition of PacifiCorp and its unique characteristics. The Commission has routinely determined that given PacifiCorp's size, certain requirements imposed upon the Large IOUs are too burdensome and result in too few benefits to warrant similarly imposing those requirements on PacifiCorp.⁹ The same rationale applies in the instant proceeding.

⁸ See A.16-08-001 Application of PacifiCorp (U 901E) for approval of its 2017 Energy Cost Adjustment Clause and Greenhouse Gas-related forecast and reconciliation of costs and revenues. Also see Administrative Law Judge ruling issued March 18, 2016 in R.14-07-002 naming PacifiCorp a respondent to the net metering proceeding and directing utilities to set aside five percent of the recorded 2016 GHG allowance proceeds and 10% of the 2017 GHG allowance proceeds.

⁹ See D.09-12-046, pp. 2, 27; see also D.08-05-028. Similarly, the Commission has recognized that PacifiCorp may be at different stages than larger utilities with regard to infrastructure deployment or other initiatives and so meeting certain standards "could be overly burdensome on [PacifiCorp's] small

Implementing the Program will be particularly burdensome for PacifiCorp because:

- PacifiCorp has been exempted from CSI and MASH program requirements that are likely to be utilized for the Program.
- The Program is likely to be tailored to the Large IOUs that are significantly different from PacifiCorp, resulting in Program inefficiencies that will make Program administration even more burdensome.
- Program eligibility will be difficult to ascertain, particularly given PacifiCorp's limited customer-base and the corresponding disproportionate administrative burdens.
- PacifiCorp's geographically-dispersed service territory makes it unlikely that any customers are eligible for the Program.

These factors all demonstrate that the costs of administering the Program for PacifiCorp vastly outweigh Program benefits, if any.

For these reasons, the Commission should not only exempt PacifiCorp from offering the Program to its customers at this time, but it should exempt PacifiCorp from diverting any GHG allowance proceeds to the Program, as any contributions would not accrue to PacifiCorp's customers. If exempted, PacifiCorp should also be removed as a respondent in the instant proceeding. In the alternate, if the Commission requires PacifiCorp to participate in this Program, the Program should be designed to ensure that all GHG allowance proceeds set aside by PacifiCorp for this Program should be used only for the benefit of PacifiCorp's customers.

ratepayer base.” (Decision 09-12-046, at 50; *see also* D.03-07-011 (decision granting PacifiCorp an exemption from filing long-term procurement plans).) The Commission has similarly concluded that distribution resource planning requirements should be simpler for utilities like PacifiCorp. (*See* January 27, 2016 Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judge, Including Deconsolidation of Certain Proceedings and a Different Consolidation of Other Proceedings, p. 4 (“We have considered these issues and conclude that the applications of the SMJUs [including PacifiCorp] are sufficiently different and generally less complex than the applications of the larger IOUs, such that the DRPs of the SMJUs should be spun off into a separate set of consolidated applications.”), available at <http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M157/K902/157902794.PDF>.)

III. Conclusion

PacifiCorp appreciates this opportunity to submit comments on the ALJ Ruling and respectfully requests, for the reasons described above, that the Commission exempt PacifiCorp from participating in, and contributing to, the Program at this time. PacifiCorp should also be removed as a respondent from the instant proceeding.

Dated: August 3, 2016

Respectfully submitted,

/s/

Jedediah J. Gibson
Ellison, Schneider & Harris L.L.P.
2600 Capitol Avenue, Suite 400
Sacramento, CA 95816
Telephone: (916) 447-2166
Facsimile: (916) 447-3512
Email: jjg@eslawfirm.com

Attorney for PacifiCorp