

**PUBLIC UTILITIES COMMISSION**505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298**FILED**
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Ratesetting

TO PARTIES OF RECORD IN RULEMAKING 14-10-003:

This is the proposed decision of Administrative Law Judge Hymes. Until and unless the Commission hears the item and votes to approve it, the proposed decision has no legal effect. This item may be heard, at the earliest, at the Commission's May 31, 2018 Business Meeting. To confirm when the item will be heard, please see the Business Meeting agenda, which is posted on the Commission's website 10 days before each Business Meeting.

Parties of record may file comments on the proposed decision as provided in Rule 14.3 of the Commission's Rules of Practice and Procedure.

The Commission may hold a Ratesetting Deliberative Meeting to consider this item in closed session in advance of the Business Meeting at which the item will be heard. In such event, notice of the Ratesetting Deliberative Meeting will appear in the Daily Calendar, which is posted on the Commission's website. If a Ratesetting Deliberative Meeting is scheduled, ex parte communications are prohibited pursuant to Rule 8.3(c)(4)(B).

/s/ ANNE E. SIMONAnne E. Simon
Chief Administrative Law JudgeAES:ek4
Attachment

Decision PROPOSED DECISION OF ALJ HYMES (Mailed 4/30/2018)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Create a Consistent Regulatory Framework for the Guidance, Planning, and Evaluation of Integrated Distributed Energy Resources

Rulemaking 14-10-003

DECISION MODIFYING DECISION 16-12-036**Summary**

The Office of Ratepayer Advocates' petition for modification of Decision (D.) 16-12-036 is granted, in part. A review of the petition for modification and D.16-12-036 indicates a potential for cost recovery of both a previously authorized distribution capital project and a distributed energy resources project approved through D.16-12-036 that defers or replaces the distribution capital project. As described below, D.16-12-036 is modified to prevent this by requiring that utility spending for D.16-12-036 distributed energy resources pilot projects that either avoid or defer a distribution capital project previously authorized or pending be recovered initially through previously authorized distribution capital project spending from the utility's general rate case. This modification mirrors the cost recovery method adopted in D.18-02-004.

Rulemaking 14-10-003 remains open.

1. Procedural Background

Decision (D.)16-12-036 established the Competitive Solicitation Framework (Framework) and a Utility Regulatory Incentive pilot (Pilot) for the procurement

of distributed energy resources that displace or defer the need for capital expenditures on traditional distribution infrastructure. On November 9, 2017, the Office of Ratepayer Advocates (ORA) filed a petition for modification of D.16-12-036 (Petition) requesting the Commission revise the decision to require Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E), and Southern California Edison Company (SCE) (jointly, the Utilities) to use or apply general rate case budgets to fund the Pilot. The Utilities filed a response to the Petition on December 11, 2017.

Rulemaking (R.) 14-10-003 remains open to address unresolved issues in the scope of the proceeding.

2. Overview of D.16-12-036

D.16-12-036 approved a seven-step Pilot to test both the effectiveness of the incentive mechanism and the Framework (see Table 1).¹ The purpose of the incentive mechanism is to encourage the Utilities to procure distributed energy resources in order to defer or avoid the need for capital expenditures on traditional distribution infrastructure.² The intent of the Framework is to implement a competitive solicitation process for these projects, which targets reliability needs in the areas identified by Rulemaking (R.) 14-08-013 (the Distribution Resources Plan proceeding).³

¹ D.16-12-036 at 41.

² *Id.* at 2.

³ *Id.* at 4.

Table 1 Seven Step Regulatory Incentive Mechanism Pilot Adopted in D.16-12-036
Step One: Formation of the Advisory Group – The Group will advise the Utilities on all Distribution Planning Activities.
Step Two: Identification of Projects – Utilities will work with the Advisory Group formed in Step One to identify potential projects for the Pilot.
Step Three: Advice Letter Process – Utilities will each file a Tier Three Advice Letter requesting approval to procure one or more distributed energy resources solutions and include forecasted incremental administrative costs for the solicitation process.
Step Four: Solicitation Approval Process – Workshop, Protests/Responses to Step Three Advice Letters, and Resolution Addressing Step Three Advice Letters.
Step Five: Solicitation Process – Utilities will conduct a streamlined Distribution Deferral Request for Offers process.
Step Six: Contract Approval Process – Utilities will review the Step Five contracts with Procurement Review Group and file Tier Two Advice Letters requesting approval of the contracts.
Step Seven: Pilot Evaluation Process – Both the performance of the solicitation process and the performance of the procured distributed energy resources will be evaluated.

For the Pilot, each of the Utilities was required to identify one project where the deployment of distributed energy resources on the system would displace or defer the need for capital expenditures on traditional distribution

infrastructure.⁴ To specifically test the incentive mechanism, the Utilities were encouraged to select up to three additional projects.⁵

Specific to the Petition, pre-approval of the distributed energy resource contract costs and the solicitation administrative costs would be conducted through the Tier Three and Tier Two Advice Letter Pilot processes (Steps Three and Six), but these costs would be recovered in a utility's subsequent general rate case through the use of balancing and memorandum accounts.⁶ Additionally, D.16-12-036 authorized the Utilities to record the value of the incentive in a balancing account for recovery in its next Energy Resource Recovery Account compliance application, if deferral of the traditional distribution expenditure was achieved.

3. Parties' Positions

ORA states that its Petition is based on newly presented facts that justify modifications to D.16-12-036. ORA first explains that, pursuant to D.16-12-036, PG&E, SDG&E, and SCE each pursued Step Three of the Pilot by filing Advice Letters requesting approval for distributed energy resources solutions and cost recovery for distribution system needs.⁷ ORA's concern is that PG&E and SCE have previously requested capital cost recovery within approved or pending general rate case proceedings for distribution system needs.⁸ Contending that

⁴ *Id.* at 16.

⁵ For purposes of the incentive mechanism, the Commission adopted a four percent pre-tax incentive applied to annual payment for the distributed energy resource.

⁶ D.16-12-036 at 58-62.

⁷ Petition at 1.

⁸ *Ibid.*

these funding requests are duplicative of previous requests for relieving distribution systems constraints, ORA recommends the Commission modify D.16-12-036 to require the Utilities to use or apply general rate case budgets to fund the Pilots that defer previously funded traditional capital upgrades. ORA also requests the Commission modify D.16-12-036 to clarify whether the Utilities may request general rate case capital funding authorization simultaneously with Pilot funding authorization.

In a response to the Petition, the Utilities state that D.16-12-036 made clear that the costs of the Pilot would be subject to review in a utility's subsequent general rate case "to ensure no double recovery of traditional distribution spending occurs."⁹ Additionally, the Utilities contend that a review prior to the next general rate case is premature, because SCE's current 2018 general rate case is pending and PG&E's next general rate case will not begin until the second half of 2018.¹⁰ The Utilities also assert that because this matter is a pilot no precedent is established for how the Utilities will integrate distributed energy resources distribution deferral projects into their general rate case funding requests. Furthermore, the Utilities note that R.14-08-013 is currently considering a distribution investment deferral framework that would be integrated with general rate cases going forward.¹¹

Accordingly, the two issues this Decision addresses are: 1) whether D.16-12-036 should be modified to require the Utilities to use or apply general rate case budgets to fund the D.16-12-036 Pilot projects; and 2) whether the

⁹ Utilities Protest at 2 citing D.16-12-036 at Ordering Paragraph 23.

¹⁰ *Id.* at 2.

¹¹ *Id.* at 3.

Utilities may simultaneously request general rate case capital project funding and Pilot project funding authorization.

4. Discussion and Analysis

As described below, this Decision grants, in part, the petition for modification of D.16-12-036 filed by ORA. First, we find ORA's contention of double recovery to be plausible. To ensure the Utilities do not recover costs for both a pre-authorized capital distribution project and a Pilot project that avoids or defers the capital project, we modify D.16-12-036 to reflect the cost recovery adopted in D.18-02-004 of R.14-08-013. Second, the intent of D.16-12-036 was to defer or avoid distribution projects; the Commission had anticipated that Utilities would focus on deferring or avoiding *previously* (emphasis added) approved and authorized distribution projects. Hence, the Commission did not intend for the Utilities to request simultaneous general rate case capital and Pilot funding authorization. However, D.16-12-036 was not clear in this intention. Accordingly, we authorize the Commission's Energy Division, in its review of the Pilot, to compare the outcomes of each Pilot project to analyze the impact of simultaneous requests. Energy Division shall include their analysis of this matter and any recommendation for final revisions to the Framework in their post-Pilot report.

4.1. Double Recovery Issue

ORA argues that D.16-12-036 should not establish a model where funds may be recovered twice, once from a prior general rate case and again from tracked contract costs and administrative costs for the Pilot projects. Maintaining that this conflicts with Public Utilities Code Section 451, whereby ratepayers may

not pay twice for the same project, ORA contends it is neither reasonable nor just to require ratepayers to pay for duplicative infrastructure upgrades.¹² As discussed below, D.16-12-036 explicitly prohibits funds to be recovered twice and, therefore, does not violate Public Utilities Code Section 451. However, we find that there is potential for double recovery that requires a modification of D.16-12-036. Furthermore, it is reasonable that the cost recovery mechanism for the Pilots be the same as that used in R.14-08-013. Accordingly, we adopt the same method here.

In discussing the recovery of the costs for the Pilot projects, D.16-12-036 explicitly states that the proposed distributed energy resources procurement contract costs and the associated solicitation administrative costs will be considered through the Tier Three and Tier Two Advice Letter Pilot processes (i.e., Steps Three and Six), shall follow existing Commission cost-allocation principles, *but shall be recovered in the utility's next general rate case* (emphasis added).¹³ (The costs of the distributed energy resources procurement contract shall be recovered over the lifetime of the contract through subsequent general rate cases.) As underscored by the Utilities, the Commission ordered that a review of the costs of the Pilot be conducted in subsequent General Rate Cases to ensure that no double recovery of traditional distribution spending occurs.¹⁴ In D.16-12-036, the Commission stated that “any previously-authorized distribution capital spending will not be reviewed until the next general case, when the

¹² Petition at 6.

¹³ D.16-12-036 at 59.

¹⁴ Utilities Protest at 2 citing D.16-12-036 at Ordering Paragraph 23.

recorded rate base is trued up.”¹⁵ The Commission anticipated that the Utilities would defer spending on the distribution projects in lieu of the Pilot projects. Consequently, the previously authorized expenses that would have been incurred by the traditional distribution project (which has now been deferred or avoided), would be used instead for the pre-approved costs of the distributed energy resources procurement for the Pilot. Hence in theory, ratepayers should not pay twice for the same project. We find that the Pilot as approved in D.16-12-036 explicitly prohibits double recovery and, therefore, does not conflict with Public Utilities Code Section 451.

However, in our review of the Petition and D.16-12-036, we find that double recovery of authorized funds could occur if a utility uses the funds allocated to the previously-authorized distribution capital project during the course of the general rate case years and records spending in the balancing account for the Pilot project during the same years. In D.18-02-004, which addresses the Distribution Investment and Deferral Framework and builds upon the Framework and Pilot adopted in D.16-12-036, the Commission affirmed its prohibition against double recovery and adopted a cost recovery method to prevent it.¹⁶ Specifically, the Commission directed that for distributed energy resources projects that defer a specific investment, which has been explicitly approved in a general rate case and is included in the general rate case revenue requirement, the Utilities may recover the cost of the distributed energy resources projects through the general rate case revenues, and not record payments for the corresponding Pilot projects to the balancing account. The

¹⁵ *Id.* at 61.

¹⁶ D.18-02-004 at 72.

Commission explained that this cost recovery denial only applies through the distributed energy resources contract period during which the utility collects a revenue requirement for the approved traditional investment.¹⁷ We find this recovery method is a reasonable approach to protect ratepayer funding. Furthermore, for Pilot projects providing ancillary services, we permit the Utilities to record these costs for recovery in the Energy Resource and Recovery Accounts.

4.2. Simultaneous General Rate Case Capital and Pilot Funding Authorization

ORA presents documentation that previous to requesting approval and funding for one of its Pilot projects, SCE simultaneously requested funding for capital costs for traditional upgrades in its 2018 general rate case application. The proposed SCE Pilot project would defer or avoid the traditional project requested in SCE's 2018 general rate case application.

D.16-12-036 states that the purpose of the Framework is to defer or avoid a previously planned and previously authorized distribution project through the procurement of distributed energy resources.¹⁸ Consequently, the Commission anticipated that the Pilot projects (i.e., procured distributed energy resources) would not duplicate but rather replace the previously planned and authorized distribution projects through either deferral or displacement. Hence, the Commission also anticipated that the Utilities would have previously planned and received authorization for a traditional distribution project and then would have requested approval in their Step Three Advice Letters for a distributed

¹⁷ *Ibid.*

¹⁸ D.16-12-036 at 59.

energy resources procurement project in order to defer or avoid that same project. However, the Commission did not consider a simultaneous request in a utility's general rate case and the Pilot for these projects.

The cost recovery method adopted herein will address the simultaneous request issue and provide financial protection to ratepayers. Given these ratepayer protections and given that SCE's Pilot project has already been approved by the Commission, it is reasonable to use a comparison of the outcomes of a previously approved project with one that was not previously approved, as an additional Pilot metric for the Commission's Energy Division to analyze. This Decision declines to adopt ORA's recommended language revising D.16-12-036, at this time. However, the Commission will address this issue in its consideration of whether to move the Pilot to permanent status. We authorize the Commission's Energy Division, in its analysis of the Pilot, to compare the outcomes of each project to see whether deferring or avoiding a previously approved distribution project produces any different outcomes from that of a project that was not previously approved. Energy Division shall include their analysis of this matter and any recommendation for final revisions to the Framework in the post-Pilot report.¹⁹

5. Conclusion

This Decision grants, in part, ORA's Petition for Modification of D.16-12-036 and adopts the cost recovery method approved by the Commission in D.18-02-004. Hence, we modify D.16-12-036 as indicated below.

- a.) We add additional language to D.16-12-036 to describe that double recovery of authorized funds could occur if a utility

¹⁹ D.16-12-036 at 63, Section No. 6.

uses the funds for the previously-authorized distribution capital project during the course of the general rate case years and simultaneously tracks spending in the balancing account for the Pilot project during the same years.

- b.) We add a new Finding of Fact stating that this double recovery of authorized funds could occur.
- c.) We add a new Conclusion of Law stating that it is reasonable to require the Utilities to recover the cost of the Pilot projects through the general rate case revenues.
- d.) We revise Ordering Paragraph 23 to require the Utilities to recover the cost of the Pilot projects through the general rate case revenues.

6. Comments on Proposed Decision

The proposed decision of ALJ Hymes in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on _____, and reply comments were filed on _____ by _____.

7. Assignment of Proceeding

Michael Picker is the assigned Commissioner and Kelly A. Hymes is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. D.16-12-036 explicitly prohibits double recovery of traditional distribution spending and spending for a Pilot project that defers or avoids the traditional distribution spending.
2. Double recovery of authorized funds could occur if a utility uses the funds originally allocated to a previously-authorized distribution capital project during the course of the general rate case years and records spending in the balancing account of the Pilot project during the same years.

3. The Commission affirmed its prohibition against double recovery in D.18-02-004 and specified that for distributed energy resources projects that defer a specific investment, which has been explicitly approved in a general rate case and is included in the general rate case revenue requirement, a utility may recover these costs through general rate case revenues and may not record payments for the corresponding Pilot project to the balancing account.

4. Adopting the same cost recovery method as that approved in D.18-02-004 is a reasonable approach to protect ratepayer funding.

5. The Commission expected that the Pilot projects would not duplicate but, rather, replace the previously planned and authorized distribution projects through either deferral or displacement.

6. In D.16-12-036, the Commission did not consider a simultaneous funding request in a utility's general rate case and the Pilot.

7. The cost recovery method approved in D.18-02-004 could also address the simultaneous request situation.

8. It is reasonable to compare the outcomes of each Pilot project to see whether deferring or avoiding a previously approved distribution project produces any different outcomes from that of a project that was not previously approved.

Conclusions of Law

1. The Pilot approved in D.16-12-036 does not conflict with Public Utilities Code Section 451.

2. The Commission should modify D.16-12-036 to adopt the same cost recovery method as approved in D.18-02-004.

3. The Commission should authorize the Commission Energy Division to compare the outcomes of a project that deferred or avoided a previously

authorized distribution project with the outcomes of a project that deferred or avoided a distribution project that was not previously authorized.

O R D E R

IT IS ORDERED that:

1. The Petition for Modification filed by the Office of Ratepayer Advocates is granted, in part.

2. Decision 16-12-036 is modified to add the following language to page 61 before the paragraph beginning with the words, "In comments to the ruling...":

However, we have determined that double recovery of authorized funds could occur if a utility uses the funds for the previously-authorized distribution capital project during the course of the general rate case years and simultaneously tracks spending in the balancing account for the Pilot project during the same years. Accordingly, for distributed energy resources projects that defer a specific investment, which has been explicitly approved in a general rate case and is included in the general rate case revenue requirement, we direct the Utilities to recover the cost of the Pilot projects through the general rate case revenues, and prohibit the Utilities from recording payments for the Pilot projects to the balancing account. This cost recovery denial only applies through the distributed energy resources contract period during which the utility collects a revenue requirement for the approved traditional investment. For Pilot projects providing ancillary services, the Utilities are authorized to record these costs for recovery in the Energy Resource and Recovery Accounts.

3. Decision 16-12-036 is modified to add a new Finding of Fact, Finding of Fact No. 113, as follows:

Double recovery of authorized funds could occur if a utility uses the funds allocated to the previously-authorized distribution capital project during the general rate case years and simultaneously tracks spending in the balancing account for the Pilot project during the same years.

4. Decision 16-12-036 is modified to add a new Conclusion of Law, Conclusion of Law No. 21, as follows:

It is reasonable to require the Utilities to recover the cost of the Pilot projects through the general rate case revenues in order to protect ratepayer funding.

5. Decision 16-12-036, Ordering Paragraph No. 23, is revised to add the following language:

For the distributed energy resources projects that defer a specific investment, which has been explicitly approved in a general rate case and is included in the general rate case revenue requirement, a utility shall recover these costs through the general rate case revenues, and shall not record payments for the corresponding Pilot project to the balancing account. Such cost recovery denial only applies through the distributed energy resources contract period during which the utility collects a revenue requirement for the approved traditional investment. Where a distributed energy resources provider receives payments for ancillary services as energy and resource adequacy, a utility may record these costs to be recovered through the Energy Resource Recovery Accounts

6. Rulemaking 14-10-003 remains open.

This order is effective today.

Dated _____, at San Francisco, California.