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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking Regarding Policies, Procedures and Rules for Development of Distribution Resources Plans Pursuant to Public Utilities Code Section 769.	Rulemaking 14-08-013
And Related Matters.	Application 15-07-002 Application 15-07-003 Application 15-07-006
(NOT CONSOLIDATED)	
In the Matter of the Application of PacifiCorp (U901E) Setting Forth its Distribution Resource Plan Pursuant to Public Utilities Code Section 769.	Application 15-07-005
And Related Matters.	Application 15-07-007 Application 15-07-008

**ADMINISTRATIVE LAW JUDGE'S RULING RESOLVING
CONFIDENTIALITY CLAIMS RAISED BY PACIFIC GAS AND ELECTRIC
COMPANY, SOUTHERN CALIFORNIA EDISON COMPANY, AND
SAN DIEGO GAS & ELECTRIC COMPANY AS TO DISTRIBUTION
SYSTEM PLANNING DATA ORDERED BY DECISION (D.) 17-09-026 AND
D.18-12-004**

Summary

This *Ruling* resolves the confidentiality claims raised by Pacific Gas and

Electric Company, Southern California Edison Company, and San Diego Gas and Electric Company as to distribution system planning data ordered to be made publicly available via online maps by Decision (D.) 17-09-026 and D.18-12-004.

This *Ruling* finds that Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SEC), and San Diego Gas and Electric Company (SDG&E) have failed to carry their burden of proving, that the information that they wish to redact from their soon to be made public online maps and/or make subject to a non-disclosure agreement, meets the definition of Critical Electrical Infrastructure Information that should be protected from public disclosure on confidentiality (*i.e.* physical or cybersecurity) grounds.

This *Ruling* finds that stakeholders and interested parties may have access to the online maps without having to execute a non-disclosure agreement. Instead, stakeholders and interested parties may have access to the online maps by complying with the registration process described, *infra*, in this *Ruling*.

This *Ruling* further orders that by December 28, 2018, PG&E, SCE, and SDG&E shall make available online, through their respective Distribution Resources Plan (DRP) portals, the Integration Capacity Analysis and Locational Net Benefits Analysis maps and underlying data, as well as the Grid Needs Assessment and Distribution deferral Opportunities Report data required by D. 17-09-026, Ordering Paragraphs 5 and 6, and D.18-12-004, Ordering Paragraph 2.e.

1. Background

The Commission opened this rulemaking to establish policies, procedures, and rules for the development of Distribution Resources Plan (DRP) proposals in accordance with Assembly Bill 327.

On September 28, 2017, the Commission issued Decision (D.) 17-09-026 on *Track 1 Demonstration Projects A (Integration Capacity Analysis [ICA]) and B (Locational Net Benefits Analysis [LNBA])*. D.17-09-026 adopted, as part of Demonstration Project A, the iterative methodology for calculating values for the online maps and interconnection streamlining, and Ordering Paragraph (OP) 5 directed Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), and San Diego Gas & Electric Company (SDG&E) (collectively referred to as the investor-owned utilities (IOUs or Joint IOUs)) to include identified system attributes on the online ICA maps. OP 6 directed the IOUs to implement the ICA to achieve the online map plus interconnection use case.

On February 15, 2018, the Commission issued D.18-02-004 on *Track 3 Policy Issues, Sub-Track 1 (Growth Scenarios), and Sub-Track 3 (Distribution Investment and Deferral Framework [DIDF])*. D.18-02-004 established a distribution resources planning process that requires the IOUs to expand their annual distribution resource planning process to include the DIDF. As part of the DIDF, the Commission ordered the IOUs to file two new reports – a Grid Needs Assessment (GNA), which documents the forecasting assumptions; and a Distribution Deferral Opportunities Report (DDOR), which must document the planned investments and candidate deferral opportunities. D.18-02-004, OP 2.e., also required the GNA and DDOR to provide a characterization of circuits according to data types and attributes described in Section 3.4.1 of D.18-02-004, and that such data be made publicly available in an online map form, as a pop-up layer atop the circuit models being developed for the ICA, and in downloadable, machine-readable datasets. Through a series of extension requests, the IOUs have been given until December 28, 2018 to comply with

D.17 -09-026, OPs 5 and 6, and D.18-02-004, OP 2.e.¹ The extension requests were reasonable and necessary due the ongoing debate over the IOUs' confidentiality claims (e.g. the need to protect customer privacy, Facility Identification, Critical Electrical Infrastructure Information (CEII), and market sensitivity from physical and/or cybersecurity intrusion).

1.1. June 8, 2018 Ruling

But the IOUs previously raised concerns, via their Tier 2 Advice Letter, about the confidentiality and physical and cybersecurity attendant to the information that D.17-09-006 and D.18-02-004 require to be made publicly available. As a result, I issued a ruling on June 8, 2018 entitled *Administrative Law Judge's Ruling Ordering Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas and Electric Company to File Separate Motions for Confidential Treatment and Redaction of Distribution System Planning Data Ordered by Decisions 17-09-026 and 18-02-004 (June 8, 2018 Ruling)*. As part of their filings, each IOU was ordered to submit a matrix that identified (1) the data category; (2) any data subcategory; (3) the factual basis for redacting this data category or data subcategory; (4) the legal basis for the redaction; and (5) an explanation of how the data redaction criteria applies to this data category or data subcategory. On June 22, 2018, CESA, Clean Coalition, IREC, ORA, and SEIA filed their responses.

On June 15, 2018, the IOUs served and filed their separate *Motions for Confidential Treatment and Redaction of Distribution System Planning Data* in response to my *June 8, 2018 Ruling*. Interested parties served and filed their

¹ The Commission's Executive Director, Alice Stebbins, granted the extension requests on June 29, 2018, July 30, 2018, and August 31, 2018.

responses/protests to the IOUs' *Motions*. While the protests did not dispute the need to protect individual customer data usage information, interested parties questioned the factual and legal showings that the IOUs made regarding the desire to redact Facilities ID, CEII, and market-sensitive information. With respect to CEII, the interested parties argued that the IOUs' reliance on Government Code § 6255(a) is an insufficient grounds for redacting CEII as they fail to set forth, as required by General Order (GO) 66-D, the "granular specificity on the facts of the particular information why the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record." The interested parties also acknowledged that some information might need to be redacted for physical and/or cybersecurity protection, so they asked that the Commission articulate consistent criteria to assist them, and the Commission, in determining if an identified CEII category would be properly subject to redaction.² Interested parties also asked that the Commission establish a process whereby they could execute a non-disclosure agreement (NDA) in order to gain access to redacted CEII data.

1.2. July 24, 2018 Ruling

On July 24, 2018, I issued my Ruling *Addressing [The IOUs] Claims for Confidential Treatment and Redaction of Distribution System Planning Data Ordered by Decisions 17-09-026 and 18-02-004*. The *July 24, 2018 Ruling* found that, with respect to redacting CEII, the IOUs failed to provide the necessary granularity and consistency that would permit me or the Commission to rule that any of the

² See CESA's Response at 3; Clean Coalition's Response at 3-4; and IREC's Response at 5-6.

Footnote continued on next page

identified data categories and subcategories should be redacted.³ Given that shortcoming, my July 24, Ruling did the following:

- Granted the request to treat individual customer energy usages as private in accordance with Pub. Util. Code § 8380(b) (1) and (d) and with the definitions of “covered information” and “personal information” set forth in D. 14 -05-016;
- Clarified that Facility Identification information should not be redacted;
- Adopted uniform criteria for identifying data that should be classified as critical electrical infrastructure information for redaction purposes, and required each IOU to demonstrate that every data set it wished to redact fits within the criteria;⁴
- Adopted a protocol for permitting interested stakeholders to seek leave for permission to be given access to Facility Identification information, and/or critical electrical infrastructure information, that has been redacted in accordance with the protocols established herein; and
- Rejected the Joint IOUs’ attempts to redact information that the Investor-owned Utilities deemed market sensitive since

³ July 24, 2018 Ruling at 18.

⁴ The criteria I adopted had been agreed to by the *Joint Parties’ Filing of Updated Draft Straw Proposal for Physical Security Regulations*, that was filed on August 31, 2017 in Rulemaking (R.) 15 -06 -009. The seven categories were (1) Distribution Facility necessary for crank path, black start or capability essential to the restoration of regional electricity service that are not subject to the California Independent System Operator’s (CAISO) operational control; (2) Distribution Facility that is the primary source of electrical service to a military installation essential to national security and/or emergency response services; (3) Distribution Facility that serves installations necessary for the provision of regional drinking water supplies and wastewater services; (4) Distribution Facility that serves a regional public safety establishment; (5) Distribution Facility that serves a major transportation facility; (6) Distribution Facility that serves as a Level 1 Trauma Center; and (7) Distribution Facility that serves over 60,000 meters. CEII that fit within one or more of these seven examples would be eligible for redaction in the public version of the DRP maps.

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D.18-02-004, OP 2.q., ordered that the actual cost of distribution system upgrades be considered public information as part of the ongoing DIDF, and in associated DRP tools such as the LNBA.

But after issuing my *July 24, 2018 Ruling*, the IOUs filed and served their *Joint Motion for Public Workshop and Opportunity for Stakeholder Comments Prior to Implementation of Administrative Law Judge's July 24, 2018 Ruling Adopting Data Redaction Criteria (Joint Motion)*. IOUs argue that the CEII redaction criteria I adopted was specific to physical security concerns and that cybersecurity needed separate redaction criteria.⁵ Rather than permit the parties to go directly into a workshop, I scheduled a hearing on September 26, 2018 to address the issues raised in the *Joint Motion*. During the hearing, the IOUs and other parties pointed out that even if the articulated criteria were utilized, the absence of the information from the online map would serve as a roadmap to what CEII had been removed and to its location.⁶ Some stakeholders argued that the criteria that I adopted was so broad that it potentially encompassed classes of data that were already publicly available on the Photovoltaic Renewable Auction Mechanism Maps (PV RAM Maps) that the IOUs had placed online and were available to stakeholders who complied with the registration process for access, and that the PV Maps had been taken down as a result of my *July 24, 2018 Ruling*.⁷ The hearing concluded with the parties indicating that they would meet

⁵ *Joint Motion* at 4-7.

⁶ Reporter's Transcript [RT] at 280:16-28.

⁷ RT at 263-265. Following the hearing, I issued my *Ruling Regarding Photo Voltaic Renewable Auction Mechanism Maps*, wherein I ordered the IOUs to make the PV RAM Maps publicly available, as they did before, in conformity with D.10-12-048 and Resolution E-4414.

and confer in an effort to resolve the CEII redaction criteria and the terms of an NDA.

1.3. November 9, 2018 Ruling

On November 9, 2018, I issued my *Ruling Ordering Parties to File and Serve Status Reports Regarding their Effort to Resolve Confidentiality Claims Raised by Pacific Gas and Electric Company, Southern California Edison Company and San Diego Gas and Electric Company*. On November 16, 2018, November 30, 2018, and December 14, 2018, the IOUs and the Joint Parties⁸ filed their first status reports. As I will discuss in greater detail, even with the parties' participation in the meet and confer process, they are no closer to resolving their dispute as to what should constitute CEII that should be redacted on physical and/or cybersecurity grounds, and what should be the suitable terms of an NDA that would allow stakeholders access to the redacted CEII. As such, it is incumbent on me to resolve the dispute so that the purposes behind D.17-09-026 and D.18-02-004 can proceed and be realized.

2. Discussion

2.1. General Policy Considerations and the Burden of Proof

In making my *Ruling*, I remain cognizant of two potentially conflicting policy objectives that must be harmonized. On the one hand, it is clear that the need to protect CEII from physical and/or cybersecurity attack or infiltration is a high priority for the Commission. On June 11, 2015, the Commission approved R. 15-06-009 to establish policies, procedures, and rules for the regulation of physical security risks to the electric distribution facilities of electrical

⁸ Joint Parties are Interstate Renewable Energy Council, Inc., Solar Energy Industries Association, California Energy Storage Alliance, Clean Coalition, Vote Solar, California Solar & Storage Association, STEM, and The Public Advocates Office.

corporations. The Commission opened R.15-06-009 in compliance with Pub. Util. Code § 364(a) which states:

The commission shall adopt inspection, maintenance, repair, and replacement standards, and shall, in a new proceeding, or new phase of an existing proceeding, to commence on or before July 1, 2015, consider adopting rules to address the physical security risks to the distribution systems of electrical corporations. The standards or rules, which shall be prescriptive or performance based, or both, and may be based on risk management, as appropriate, for each substantial type of distribution equipment or facility, shall provide for high-quality, safe ,and reliable service.

The *Assigned Commissioner's Phase I Scoping Memo and Ruling* dated March 10, 2017, identified a number of issues for resolution, one of which I consider most relevant to this *Ruling*:

What new rules or standards or modifications to existing policies should the Commission consider to allow for adequate disclosure of information to the public without disclosing sensitive information that could pose a physical security risk or threat if disclosed?

To date, the Commission has not adopted a decision from R.15-06-009 that addresses the above issue. Thus far, the proposed *Phase I Decision on Order Instituting Rulemaking Regarding the Physical Security of Electrical Corporations* instructed electric utilities to identify electric distribution assets that *may* merit special protection and measures to lessen identified physical risks and threats.⁹ Yet the proposed *Phase I Decision* does not take a position as to whether the

⁹ The proposed decision was scheduled for a Commission vote on December 13, 2018, but was held until January 10, 2019.

locations of distribution substations, circuits and feeders, as identified on the PV -RAM maps, constitute Security Sensitive Information as defined in the Joint Parties' Straw Proposal.¹⁰

Moreover, the fact that California is concerned about protecting CEII from physical and/or cybersecurity attack is not a substitute for a party's duty to satisfy its burden of establishing that the information it wishes to redact fits within the scope of CEII. Simply invoking the confidentiality claim, or any privilege claim that is designed to restrict public access to information, is not sufficient. In D.06-06-066,¹¹ the Commission explained that when a party seeks confidentiality for data listed, for example, in a matrix, its burden should be to prove (1) that the data match the matrix category; (2) that the information is not already public; and (3) that the data cannot be produced in a masked or aggregated form. Once it does so, it is entitled to the protection the Matrix provides for that category.¹² The burden of proof that must be established in order to restrict access to information is a rigorous one since the strong public interest in an open Commission process will outweigh the unsubstantiated claim of confidentiality.¹³

Because of the need to encourage public access to Commission proceedings and the related documents developed therein, on

¹⁰ See *Joint Parties' Filing of Updated Draft Straw Proposal for Physical Security Regulations*, filed August 31, 2017, in R.15-06-009.

¹¹ *Interim Opinion Implementing Senate Bill No. 1488, Relating to Confidentiality of Electric Procurement Data Submitted to the Commission*.

¹² D.06-06-066 at 22, and Conclusion of Law 6. This standard is consistent with the general burden of proof standard found in Evidence Code § 500: "Except as otherwise provided by law, a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that he is asserting."

¹³ See *Re Sierra Pacific Power Company* (1988) 28 CPUC2d 3 at 11.

November 14, 2014, the Commission opened R.14-11-001 in order to improve public access to public records pursuant to the California Public Records Act. The Commission adopted (D.)17-09-023 which created GO 66-D, superseding GO 66-C, and established procedures for (1) the submission of information to the Commission with claims of confidentiality; (2) the submission of request per the California Public Records Act; and (3) the release of any Information by the Commission. With respect to formal proceedings, Section 3.3 of GO 66-D requires the information submitter file a motion for treatment of confidentiality pursuant to Rule 11.4, or comply with a process established by the Administrative Law Judge for that specific proceeding. But allowing for the redaction of information that might be subject to physical and/or cybersecurity attack has not yet been resolved, so R. 14-11-001 does not prevent me from resolving the CEII dispute based on the record that has been developed in this proceeding.

2.2. The IOUs Have Failed to Meet Their Burden of Proof

Ever since the CEII issue was raised in this proceeding, the IOUs have failed to prove, with the necessary granularity required by GO 66-D, what categories of documents should be grouped for protection under the CEII umbrella. That failure has continued with the IOUs' November 16, 2018 *Joint Periodic Status Report* wherein in response to my question "What specific information (e.g. circuit locations, other infrastructure locations, ICA data, LNBA data, GNA data, DDOR data, other) would be subject to the NDA," IOUs said that "the physical location of all IOU electric distribution facilities, including substations, feeders and circuits, would be subject to the NDA, as well as all

related safety-and-security-sensitive data.”¹⁴ IOUs’ response fails to explain why any of the information identified would need to be protected from public disclosure by way of either redacted maps or made available to stakeholders only after they executed an NDA. This is especially true with respect to the IOUs’ catch-all phrase “all related safety-and-security-sensitive data.” Such generalized language fails to satisfy the burden of proof standard that this Commission established in D.06-06-066 and GO 66-D.¹⁵

This same generalized definition of CEII can be seen in the IOUs’ December 14, 2018 *Joint Periodic Status Report*. First, they cite to my *July 24, 2018 Ruling* but neglect to acknowledge that they did not think that redaction criteria for physical security would be applicable to cybersecurity concerns. Second, IOUs point to a recent Petition for Modification filed regarding the CEII contained in the PV RAM maps as “clearly defining CEII as the detailed configuration of the Joint IOUs’ electric distribution and transmissions systems contained in the ICA, LNBA, and PV RAM maps.”¹⁶ But as I will demonstrate, distribution and transmission systems are publicly available via the internet. As such, no pleading to date as identified the specific classes of information that should be redacted as CEII.

The IOUs’ claim for CEII redaction is also not supported by their draft NDAs. As Joint Parties point out, the draft NDA stated that the agreement is

¹⁴ *Joint Periodic Status Report* at 5.

¹⁵ The IOUs’ November 30, 2018 *Joint Periodic Status Report* stated that that there had been no further developments on discussions due to the intervening holidays and priority compliance filings and comments in this and other proceedings.

¹⁶ *Joint Periodic Status Report* at 2.

limited to the information and data as identified in Attachment A to the NDA, but Attachment A was not provided to the Joint Parties.¹⁷ More troublesome is the fact that on November 8, 2018 the IOUs asked the Joint Parties to provide a markup of the NDA and to fill in attachment A.¹⁸ The IOUs sent a revised NDA to the Joint Parties on November 13, 2018 but did not identify the scope of the information that would be covered.¹⁹ As of the filing of their respective November 30, 2018 and December 14, 2018 status reports, that impasse remains.²⁰

In light of the impasse and after reviewing the parties' respective positions and the developed record, I am in agreement with Joint Parties' position that the information contained in the maps ordered by D.17-09-026 and D.18-02-004 has not been proven to be confidential, should be made public, and should not be subject to an NDA.²¹ My conclusion is supported by the fact that the information the IOUs claim as CEII is publicly available. For example,

The "physical location of all IOU electric distribution facilities, including substations, feeders and circuits" is currently publicly available via the PV-RAM maps that the IOUs have, once again, made publicly available.

Electrical transmission lines/substations: the California Energy Commission posts it all on their site <https://www.energy.ca.gov/maps/>, including the Keyhole Markup Language (KML) notations that Google earth

¹⁷ *Joint Parties Status Report* at 5.

¹⁸ *Id.*

¹⁹ *Id.*, at 6.

²⁰ See *Joint Parties' Second Status Report* at 3-4; *Joint Parties' Third Status Report* at 5; *IOUs' Joint Periodic Status Report* at 2.

²¹ *Joint Parties' Status Report* at 10; *Joint Parties' Second Status Report* at 3.

uses. One can download the KMLs and open them in Google earth and then turn on “street view.”

Distribution architecture can be identified through the use of online search tools.

For instance, here is a link to the SF substation in San Francisco:

<https://www.google.com/maps/@37.7878335,-122.3937764,3a,75y,140.67h,95.84t/data=!3m6!1e1!3m4!1sQR-IRoiXk5gADlycDLWt4A!2e0!7i16384!8i8192>

Here is a link to an overhead of the Vaca-Dixon Substation:

<https://www.google.com/maps/@38.4004201,-121.9209799,770m/data=!3m1!1e3>

Finally, a Google Maps search of “Substation” leads to the following:

<https://www.google.com/maps/search/substation/@38.4416857,-121.8191809,408684m/data=!3m1!1e3>

Given the relative ease by which this information can be found in the public domain, IOUs have not provided any proof to substantiate their position that information on the soon-to-be-posted online maps must be redacted on CEII grounds. By extension, stakeholders and interested parties should not be required to execute an NDA in order to have access to information that is already publicly available.

2.3. The Registration Process

Resolution E-4414 developed a process wherein the IOUs may require developers to register in order to access to interconnection maps as an alternative to signing an NDA.²² I see no reason why a similar registration process should

²² Resolution E-4414 at 4, Ordering Paragraph 26.

not be followed here in order for stakeholders and interested parties to access the maps that the IOUs must place online by December 28, 2018.

IT IS RULED THAT:

1. Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas and Electric Company have failed to carry their burden of proving, that the information that they wish to redact from their soon -to -be -made public online maps and/or make subject to a non-disclosure agreement, meets the definition of Critical Electrical Infrastructure Information that should be protected from public disclosure on confidentiality (*i.e.* physical or cybersecurity) grounds.

2. Stakeholders and interested parties may have access to the online maps without having to execute a non-disclosure agreement. Instead, stakeholders and interested parties may have access to the online maps by complying with the registration process adopted by Resolution E-4414.

3. By December 28, 2018, Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas and Electric Company shall make available online, through the DRP portal, the Integration Capacity Analysis and Locational Net Benefits Analysis maps and underlying data, as well as the Grid Needs Assessment and Distribution deferral Opportunities Report data required by Decision (D.) 17-09-026, Ordering Paragraphs 5 and 6, and D -18 -12 -004, Ordering Paragraph 2.e.

Dated December 17, 2018, at San Francisco, California.

/S/ ROBERT M. MASON III
ROBERT M. MASON III
Administrative Law Judge