

Decision 14-12-079 December 18, 2014

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of SAN DIEGO GAS &
ELECTRIC COMPANY (U902E) for
Approval of its Electric Vehicle-Grid
Integration Pilot Program.

Application 14-04-014
(Filed April 11, 2014)

And Related Matter.

Rulemaking 13-11-007

**PHASE 1 DECISION ESTABLISHING POLICY TO EXPAND THE UTILITIES'
ROLE IN DEVELOPMENT OF ELECTRIC VEHICLE INFRASTRUCTURE**

Summary

This decision in Phase 1 of Rulemaking 13-11-007 is a first step in this proceeding's efforts to adopt rules that will encourage the expansion of electric vehicle infrastructure and the widespread deployment and use of plug-in electric vehicles (PEV). As Californians increasingly adopt PEVs, the electric utilities that the Commission regulates, including Pacific Gas and Electric Company (PG&E), Southern California Edison Company (Edison) and San Diego Gas & Electric Company (SDG&E),¹ will take on a critical role in the transportation sector as procurers, deliverers and suppliers of transportation fuel – in this case electricity. (See, Decision 11-07-029.) In this decision, we expand the electric utilities' potential role in ownership of electric vehicle charging infrastructure.

¹ The respondents to this rulemaking are PG&E, Edison, and SDG&E.

Today's decision sets aside the requirement that the utilities demonstrate a "market failure" or "underserved market" as part of any request for authority to own PEV charging infrastructure. This change is designed to allow for consideration of utility requests on a case-specific basis. In doing so, we clarify the elements we will examine, at a minimum, in determining whether utility entrance into a competitive market with non-utility participants should be allowed. We do not otherwise limit the analysis the Commission may apply in future cases.

1. Procedural History - Phase 1

The July 16, 2014 Assigned Commissioner's Scoping Memo and Ruling in Rulemaking (R.) 13-11-007 included the following inquiry as Question 2:

"Should the Commission consider an increased role for the utilities in PEV infrastructure deployment and, if so, what should that role be? If the Commission should consider utility ownership of PEV charging infrastructure, how should the Commission evaluate 'underserved markets' or a 'market failure' pursuant to D.11-07-029? What else should the commission consider when evaluating an increased role for utilities in PEV infrastructure deployment?"²

Parties were invited to file opening and reply comments. The following parties filed comments on August 29, 2014 during Phase 1 of this proceeding: Green Power Institute/Community Environmental Council (GPI/CEC), National Asian American Coalition/Los Angeles Chamber of Commerce/Jesse Miranda Center for Hispanic Leadership/Ecumenical Center for Black Church Studies (Joint Minority Parties), Proterra, Inc., Consumer Federation of California, ChargePoint, Inc., The Utility Reform Network (TURN), Office of Ratepayer

² Assigned Commissioner's Scoping Memo and Ruling, July 16, 2014 at 13.

Advocates (ORA), California Independent System Operator Corporation (CAISO), Sacramento Municipal Utility District (SMUD), Environmental Defense Fund (EDF), Alliance of Automobile Manufacturers/General Motors/Association of Global Automakers (Automobile Alliance), Pacific Gas and Electric Company (PG&E), Southern California Edison Company (Edison), NRG Energy, Inc.(NRG), Natural Resources Defense Council (NRDC), San Diego Gas & Electric Company (SDG&E), Marin Clean Energy, California Energy Storage Alliance (CESA), CALSTART, South Coast Air Quality Management District, Plug In America, Valent Power Inc., KnGrid, National Electrical Manufacturers Association, California Electric Vehicle Alliance (CEVA), Center for Sustainable Energy (CSE), and Recargo.

The following parties filed Reply Comments on September 12, 2014: Joint Minority Parties, NRG, NRDC, EDF, Edison, Automobile Alliance, CESA, CFC, SDG&E, PG&E, ORA, TURN, GPI/CEC, ChargePoint, CSE, CALSTART and CEVA.

The September 29, 2014 Joint Assigned Commissioner and Administrative Law Judge's Scoping Memo and Consolidation Ruling consolidated SDG&E's Application for authority to establish and implement a pilot program for electric vehicle-grid integration, Application 14-04-014 (SDG&E Application) with R.13-11-007. Question 2 was cited specifically as a common issue for both proceedings.

2. Discussion - Phase 1, Question 2 Issues

We initiated this Rulemaking to ensure that California's investor-owned electric utilities are prepared for and support the projected statewide market growth of plug-in hybrid and electric vehicles (PEVs) and to continue the work from the previous Rulemaking, R.09-08-009. R.09-08-009 resulted in Decision (D.) 11-07-029 that adopted a prohibition on utility ownership of electric

vehicle service equipment (EVSE), with the exception of charging infrastructure for the utilities' own fleets or workplaces.

Specifically, the Commission found that "certain benefits of IOU ownership of EVSE may exist, but these benefits are speculative and do not outweigh the competitive limitation that may result from utility EVSE ownership."³ Further, the Commission adopted Conclusion of Law 20: "The benefits of utility ownership of EVSE do not outweigh the competitive limitation that may result from utility ownership, with the exception of EVSE used to charge their own electric vehicle fleets or provide workplace charging for utility employees."⁴ In adopting the prohibition on utility ownership of EVSE, the Commission stated that: "should utilities present evidence in an appropriate proceeding of underserved markets or market failure in areas where utility involvement is prohibited, we will revisit this prohibition. Should the Commission revisit this issue, we will revisit the concerns outlined above, among others, including the potential cost-subsidization implications of any utility proposal to own public EVSE."⁵

Furthermore, the Commission required SDG&E to provide convincing evidence that our prohibiting SDG&E ownership of EVSE at this early stage of PEV market development would result in underserved markets or market failures in areas where non-utility entities fail to properly serve all markets.⁶

The Scoping Ruling in this proceeding asked parties to consider whether there should be an increased role for the utilities in development of EV

³ D.11-07-029 at 79.

⁴ D.11-07-029 at 82.

⁵ D.11-07-029 at 50.

⁶ D.11-07-029 at 50.

infrastructure. The parties' comments represent near unanimity that the utilities should have an expanded role in EV infrastructure support and development in order to realize the potential benefits of widespread EV adoption. There was disagreement in the appropriate degree of increased utility participation, with some parties advocating for limited utility activity, with stringent criteria applied to approval of utility program proposals,⁷ while others strongly promoted a swift and aggressive turn to utility participation and funding.⁸

We agree with the majority of comments received, and endorse an expanded role for utility activity in developing and supporting PEV charging infrastructure. However, in doing so, we decline to prescriptively determine the appropriate level of utility activity at this time. Instead, we will evaluate utility proposals on a case-specific basis. The consolidated SDG&E Application will provide the first opportunity to do so.

This decision reaffirms the balancing test applied in D.11-07-029, that the benefits of utility ownership of PEV charging infrastructure must be balanced against the competitive limitation that may result from that ownership. However, we eliminate the necessity of a showing that, but for the utility program, a market failure or underserved market would result, or if already in existence, would continue. In D.11-07-029, the Commission found that the benefits of utility ownership of EVSE did not outweigh the competitive limitation that may result from utility ownership. While this was a reasonable approach at the time, based on our subsequent experience, we find that a blanket prohibition on utility ownership of EVSE is unnecessary, and as a matter of policy we

⁷ e.g., TURN, ORA.

⁸ e.g., Edison, NRDC, SDG&E.

overturn Conclusion of Law 20 in favor of applying the balancing test on a case-specific basis.

The Comments in this case struggled with application of the requirement that the utility's role in ownership of EVSE be reexamined only in situations where a market failure or underserved market could be shown. Some parties, such as ORA, suggested meaningful use of these criteria would require data-intense analytical study, beginning with the gathering of broad based survey information.⁹ The Automobile Alliance advised that an increased role for the utilities is a "matter beyond 'underserved markets' or 'market failures' and should be reevaluated through the lens of benefitting both the PEV market and all utility customers."¹⁰ At the other end of the spectrum, while offering assistance should we uphold these criteria, SDG&E bluntly counseled that "defining these terms with precision at this stage of PEV customer adoption has no useful purpose."¹¹

Given the early stage of current PEV market development, it may well be premature to reasonably assess "market failures" or whether "underserved markets" exist when the electric vehicle market as a whole is relatively new. We conclude that these criteria are overly restrictive in evaluating the reasonableness of any particular utility proposal. We arrive at this conclusion after review of the comments received, relevant statutes including Pub. Util. Code §§ 740.3 and

⁹ ORA Opening Comments at 5-6.

¹⁰ Automobile Alliance at 7.

¹¹ SDG&E Response at 7.

740.8, and the recent Fourth Appellate District decision in *Clean Energy Fuels Corporation v. CPUC*¹² which affirmed our decisions D.12-12-037 and D.13-10-042.

As CAISO and SMUD remind us, the utilities have a crucial role in the electrification of transportation as the infrastructure support and fuel supplier in their service territories.¹³ CESA pointed out that certain market segments are harder for third parties to penetrate and the utilities may be better positioned to develop those market segments or support third party providers to do so.¹⁴ As Edison noted, even limited utility involvement to accelerate the PEV infrastructure market can improve the business case for third parties.¹⁵ These comments provided additional reasons for overturning the broad prohibition on utility ownership of EVSE.

Our decision to overturn the broad prohibition against utility PEV infrastructure ownership is consistent with the result in *Clean Energy Fuels Corp. v. CPUC*. In that case, the court upheld our decision approving Southern California Gas Company's (SoCalGas) Compression Services Tariff over challenges that SoCalGas' status as a monopoly provided it an unfair competitive advantage over non-utility market participants in provision of the same services. While that case did not involve a proposal to use ratepayer funds, it was nonetheless instructive in determining that it is not necessary to impose a blanket prohibition against utility participation in a market with non-utility competitors. As acknowledged in *Clean Energy*, while Pub.Util. Code § 740.3 requires that the

¹² *Clean Energy Fuels Corp. v. California Public Utilities Commission* (2014) 2014 Cal.App.LEXIS 578.

¹³ CAISO at 3, SMUD at 2.

¹⁴ CESA at 3.

¹⁵ Edison at 15.

Commission “ensure that the utilities do not unfairly compete with nonutility enterprises,” it does not prevent the utilities from competing at all. The case allowed SoCalGas to compete, albeit with the proper conditions and restrictions to address the potential anticompetitive impacts.¹⁶

Again, the requirement to protect against unfair competition must be considered, along with the demonstrated costs and benefits of any utility PEV proposal. This analysis must occur in the context of providing electric service to customers, including PEV drivers, at just and reasonable rates as required by Pub. Util. Code § 451.

The concerns over utility entrance into competitive market sectors are well taken, and lifting the broad prohibition on utility ownership of charging infrastructure in particular is not without limitation. It may be that certain programs are not appropriate for either ratepayer funding or ratepayer funding without shareholder contribution. Further, the Commission has a number of rules and regulatory protocols designed to address (and potentially restrict or prohibit) utility activity in competitive markets.

We intend to take a more detailed, tailored approach to assessing any proposed utility program based upon the facts of specific requests, the likely competitive impact on the market segment targeted, and whether any anticompetitive impacts can be prevented or adequately mitigated through the exercise of existing rules or conditions.¹⁷ As was done by the Commission in D.12-12-037, review of each utility application will necessarily entail a factual inquiry, including at a minimum, examination of the following:

¹⁶ *Clean Energy Fuels Corp. v. California Public Utilities Commission* (2014) 2014 Cal.App.LEXIS 578.

¹⁷ See, e.g., CESA Reply Comments, at 4, footnote 4.

- 1) The nature of the proposed utility program and its elements; for example, whether the utility proposes to own or provide charging infrastructure, billing services, metering, or customer information and education.
- 2) Examination of the degree to which the market into which the utility program would enter is competitive, and in what level of concentration.
- 3) Identification of potential unfair utility advantages, if any.
- 4) If the potential for the utility to unfairly compete is identified, the commission will determine if rules, conditions or regulatory protections are needed to effectively mitigate the anticompetitive impacts or unfair advantages held by the utility.

In summary, these elements will be examined in the balancing test we affirm today. The balancing test, adopted in D.11-07-029, weighs benefits of utility ownership of charging infrastructure against potential competitive limitation. While not discussed in detail in this order, we clarify that the benefits analysis applied in the balancing test will rely heavily on the guidance from Pub. Util. Code § 740.8. Commission's ability to take a broader approach or set forth more specific criteria in the future.

3. Comments on Proposed Decision

The proposed decision of assigned Commissioner Peterman 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 December 4, 2014 by SDG&E, PG&E, SCE, CFC, VSI, Chargepoint, ORA, Shell Energy North America (US), L.P., NRG, CESA, TURN, MCE, GPI/CEC, NRDC, EDF, Automobile Alliance, Joint Minority Parties, PGI and Recargo, and reply comments were filed on December 9, 2014 by SCE, SDG&E, EDF, NEMA, PIA, TURN, and MCE. No

errors of fact or law were identified in the comments or replies. (One typographical error was identified and has been corrected.)

Some commenters, such as Chargepoint, NRG, ORA and others raised concerns about the pending, consolidated SDG&E Application. We will address these concerns as the record develops in that case. In addition, a number of parties, such as TURN, MCE and CESA among others, provided comments advocating for adoption of greater prescriptive detail for the analysis contemplated under both prongs of the balancing test adopted today. We agree that both the ratepayer benefit analysis (which necessarily includes a quantification of costs) and the impact on competition will require compliance with Sections 740.3, 740.8 and 451. However, we conclude that further prescriptive detail is neither required nor constructive at this juncture. In adopting a case-specific approach, we will not adopt a definitive inventory of elements that could become relevant to the application of the balancing test to current and future proposals for IOU EVSE ownership. We affirm the balancing test today anticipating that further refinement may emerge as the Commission considers the consolidated applications, coordinated with the activities already outlined and scheduled in the broader policy OIR.

4. Assignment of Proceeding

Carla J. Peterman is the assigned Commissioner and Irene K. Moosen is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. R.09-08-009 resulted in a Phase 2 decision (D. 11-07-029) that adopted a prohibition on utility ownership of EVSE, with the exception of charging infrastructure for the utilities' own fleets or workplaces.
2. In adopting the prohibition on utility ownership of EVSE, the Commission stated that "should utilities present evidence in an appropriate proceeding of

underserved markets or market failure in areas where utility involvement is prohibited, we will revisit this prohibition.

3. As argued by the Automobile Alliance, an increased role for the utilities is a “matter beyond ‘underserved markets’ or ‘market failures.’ and should be reevaluated through the lens of benefitting both the PEV market and all utility customers.”

4. The parties’ comments represent near unanimity that the utilities should have an expanded role in PEV infrastructure support and development in order to realize the potential benefits of widespread PEV adoption.

Conclusions of Law

1. The previous blanket prohibition against electric utility ownership of plug-in electric vehicle charging infrastructure was overly broad, and should be replaced by a case-specific approach.

2. It is reasonable to continue to apply the balancing test adopted in D. 11-07-029, that is, the benefits of electric utility ownership of charging infrastructure should be balanced against the potential competitive limitation.

3. We should take a more detailed, tailored approach to assessing the “impacts on competition” side of the balancing test. In doing so we will examine each proposed utility program based upon its specific requests.

O R D E R

IT IS ORDERED that:

1. The blanket prohibition against electric utility ownership of plug-in electric vehicle charging infrastructure adopted in Decision 11-07-029, Conclusion of Law 20 shall no longer be in effect, and shall be replaced by a case-specific approach.

2. The balancing test that weighs the benefits of electric utility ownership of charging infrastructure against the potential competitive limitation articulated in Decision 11-07-029 shall remain in effect and shall be applied on a case-specific basis.

3. This decision shall be adopted on an interim basis. The case-specific approach and criteria set forth in this decision do not limit the Commission's ability to take a broader approach or set forth more specific criteria in the future.

This order is effective today.

Dated December 18, 2014, at San Francisco, California.

MICHAEL R. PEEVEY
President
MICHEL PETER FLORIO
CATHERINE J.K. SANDOVAL
CARLA J. PETERMAN
MICHAEL PICKER
Commissioners