

STATE OF CALIFORNIA

Public Utilities Commission
San Francisco

M e m o r a n d u m

Date: March 15, 2016

To: The Commission
(Meeting of March 17, 2016)

From: Hazel Miranda, Director
Office of Governmental Affairs (OGA) – Sacramento

Subject: **AB 2861 (Ting) – Electricity: distribution grid interconnection dispute resolution process.**
As introduced: February 19, 2016

RECOMMENDED POSITION: SUPPORT AS SPONSOR

SUMMARY OF BILL

- Adds Section 769.5 to the Public Utilities (PU) Code requiring the Commission to establish an expedited interconnection dispute resolution panel by April 1, 2017.
- Directs the Commission to retain an eight-member technical advisory panel, consisting of four members from electrical corporations and four members not from electrical corporations who are paid to serve on the panel.
- Of the eight-member panel, four panel members will be assigned to review each dispute brought before the Commission and make a recommendation within 30 days to the Executive Director, who then has 30 days to review the recommendation and prepare an Order resolving the dispute.
- Any interested party can request a review of the Order within 10 days, which would require a Resolution on the matter for a vote of the Commission.

CURRENT LAW

- Places various duties upon the Commission with respect to distributed generation and interconnection.
- Requires each electrical corporation to submit to the Commission for its approval a distribution resources plan proposal to identify optimal locations for the deployment of distributed resources, as defined in P.U. Code Section 769.
- Establishes operational and metering requirements for a generation facility to be interconnected to an electrical corporation's distribution grid. Requires the utility to maintain grid reliability and safety.
- Requires the Commission to have interconnection procedures. As implemented through the Commission's existing Rule 21, current policy provides a process for interconnection dispute resolution in Rule 21 Section K. Under this Rule,

disputes that arise during the interconnection process are first focused on bilateral negotiations between the utility and the project developer, followed by the option to utilize the Commission's Alternative Dispute Resolution (ADR) process if parties fail to come to consensus.

- In addition, the Commission's existing Complaint procedures, established under the Rules of Practice and Procedure, offer any customer an avenue to seek remedy in the application of a utility's tariff.

AUTHOR'S PURPOSE

The problem the bill addresses is that the interconnection disputes can frequently arise between a project developer and a monopoly utility. These disputes often focus on complex technical interpretations of the interconnection rules, the applicability of existing precedent to emerging technologies, and the inconsistent application of utility engineering judgement that errs on the side of safety and reliability.

The existing dispute resolution process laid out in Rule 21 Section K first provides a structure for bilateral negotiations between a developer and the utility, and then directs unresolved interconnection disputes into the Commission's ADR process (see discussion of the current process below under PROGRAM BACKGROUND). ADR is relatively time consuming compared to Rule 21 application and study timelines, requires additional monetary outlays, does not benefit from readily-leveraged technical expertise to review and make recommendations on the engineering determinations and subsequent upgrade costs that generally lead to disputes, and centers around a protracted mediation process after failing to reach consensus bilaterally. As such, developers rarely, if ever, escalate interconnection disputes into ADR, and instead typically raise interconnection complaints to Energy Division staff, who lack the engineering expertise and decision-making authority to effectively intervene in disputes beyond informally mediating between developers and utilities.

Project developers have expressed concern that their need to receive a definitive, binding ruling on disputes in a timely manner often makes them abandon the available dispute resolution remedies in the interest of time, and more importantly, the business relationship with the monopoly utility that they need to work with on all ongoing other projects.

A number of developers have advocated for a streamlined dispute resolution process that would:

- Be easily integrated into the existing Rule 21 process;
- Operate within timelines that are more closely aligned with existing Rule 21 timelines for interconnection applications, studies, and contract negotiations;
- Grant the Commission considerably more technical expertise and leverage in reviewing and resolving interconnection disputes; and
- Issue binding resolutions on a dispute after bilateral negotiations between developers and utilities have resulted in an impasse.

This bill would create a more expedited dispute resolution process to address the problem, and it is appropriately addressed within CPUC-jurisdictional Tariff Rule 21.

The goal is to efficiently resolve interconnection disputes at the CPUC.

DIVISION ANALYSIS (Energy Division)

This bill aims to enhance the Commission's ability to resolve interconnection disputes. Currently, the interconnection process is almost exclusively under the purview of the investor-owned utilities. The technical advisory panel and 60-day dispute resolution process proposed in the bill would effectively replace the current dispute resolution process laid out in Rule 21 Section K, which, after providing a structure for bilateral negotiations, directs unresolved disputes to the Commission's ADR process. The bill would leverage independent distribution engineering experts to review and seek consensus resolution with their IOU counterparts for interconnection disputes within the scope of Rule 21 application processing workflows and timelines.

The bill could have a preventative effect, inducing bilateral resolution of disputes before they are referred to the technical advisory panel. For example, the utilities are currently the arbiters of Rule 21 applications. It may motivate the utilities to find earlier resolution to complex disputes as the utilities would be required to act knowing that unresolved disputes could be referred to the Commission's streamlined process to intervene in disputes.

The bill would create significant additional functions for Energy Division staff and the Commission's Executive Director, as well as ongoing tasks for Legal Division and rulemaking start-up tasks for Administrative Law Judge (ALJ) Division staff, including:

- The Executive Director would review both unanimous and split recommendations of the technical advisory panel and issue orders with binding force;
- The Executive Director or the Energy Division Director would be required to issue a proposed resolution when a request for review of an order is received;
- Energy Division staff would likely play a significant role supporting the technical advisory panel, Executive Director, and Energy Division Director;
- Energy Division staff would have ongoing administration and contract management tasks related to the utility and non-utility members of the technical advisory panel; and
- Legal Division would likely be asked to review and advise the technical advisory panel, Executive Director, and Energy Division Director.
- Commission staff would be required to make sure the panel meets all applicable laws, including the Bagley-Keene Open Meeting Act and conflict of interest laws.

The bill will require significant start-up activities prior to the launch of the technical advisory panel on April 1, 2017, including:

- Rulemaking to establish the charter and operational procedures;

- Establishment of CPUC administrative and contracting procedures, including vetting members for conflicts of interest;
- Contracting and selection of technical advisory panel members; and
- Legal analysis of establishing an entirely new administrative/adjudicatory process.

Staff has identified a number of technical issues with the proposal in AB 2861. The legislation may be considered duplicative of the Commission's existing formal complaint and ADR processes, in that the bill creates a confusing and legally-challenging parallel decision-making process for the Commission. Although the Commission has only recently received its first interconnection-related complaint, no developer has entered the ADR process to staff's knowledge.

The proposed makeup of the panel in the AB 2861 might be difficult to manage and could be unnecessarily complex. The goal of the panel is to provide CPUC staff and the Executive Director an independent analysis of engineering or contractual factual disputes between the utility and developers. These disputes can involve technical details that are beyond the training of CPUC staff. A multiple member panel is not the only way to provide this independent analysis and the same goal could be met by contracting with a single independent expert (IE) to review the dispute along with CPUC staff. IEs are already used successfully to advise the Commission on power purchase agreements.

SAFETY AND RELIABILITY IMPACT

The overarching purpose of Rule 21 is to interconnect distributed generation in a manner that maintains the safety, including worker safety, and reliability of the distribution system. The utilities oversee the interconnection application and study process because they are solely responsible for the safe and reliable operation of their systems.

Interconnection disputes often revolve around additional costs to developers stemming from engineering determinations that call for system upgrades needed to maintain safety and reliability. Such engineering determinations are made by best practice and informed by various standards and grid codes such as IEEE 1547, but in some cases are reflective of internal company policies that go beyond the provisions of relevant codes and standards. Some of these internal policies have been considered overly conservative and/or obstructionist by developers, and, in the absence of an expedited dispute resolution process, have been a source of informal complaints frequently raised with Energy Division staff. Staff has limited expertise in the application of and adherence to the minutiae of IEEE 1547 and other applicable standards.

A technical advisory panel, or independent expert (IE), to review and rule on interconnection disputes would spread the onus for the safe and reliable operation of the grid beyond the utilities. Specifically, the panel, or IE, could advise on whether

flexibility could be applied to the utilities' engineering determinations while still guaranteeing the safety and reliability of the grid. Given that ensuring the safe and reliable provision of utility service is part of the Commission's mission statement, this could be scoped into the technical advisory panel's charter. Furthermore, the technical advisory panel would consist of members that have a working knowledge of distribution and protection engineering, as well as the applicable codes and standards that govern distributed generation interconnection. The technical advisory panel would thus provide a non-biased, outside interpretation of the same codes, standards, and best practices in assessing the reasonableness of the utilities' engineering determinations.

In sum, the expedited interconnection dispute resolution process should be designed to have no net impact on safety and reliability.

RATEPAYER IMPACT

The Commission would provide the four non-electrical corporation members of the technical advisory panel with a per diem compensation consistent with Section 19822.5 of the Government Code. To the extent that the CPUC's budget is funded by ratepayers, this compensation (quantified in the following section) would thus be funded by ratepayers.

On the other hand, the technical advisory panel would have the potential to reduce the ratepayer impact of distributed generation. This is because the total costs of certain distributed generation projects, such as ReMAT projects, get passed onto ratepayers in the form of PPA prices. Because the process established in this bill could result in a challenge against the utilities' engineering determinations and associated upgrade costs, it could potentially limit the extent of upgrade costs that are reflected in PPA energy prices, which are passed onto ratepayers. Such reductions in interconnection project costs, however, would be difficult to quantify.

FISCAL IMPACT

Potentially significant and currently indeterminate costs.

ECONOMIC IMPACT

For developers: the creation of a technical advisory panel would either maintain the status quo, or would have a positive economic impact, depending on whether the panel generally rules against the utilities' engineering determinations that lead to system upgrades and subsequent costs. For utilities: no impact, as utilities are not allowed to ratebase the capital system upgrades that are funded by developers, so there would be no net economic impact if the technical advisory panel consistently ruled against utilities' engineering determinations that call for system upgrades. However, shortening the timelines for interconnection applications offers cost savings to both developers and to utilities.

LEGAL IMPACT

Potentially significant legal impact addressed with an independent expert to assist the Energy Division and Executive Director.

LEGISLATIVE HISTORY

The expedited interconnection dispute resolution panel was proposed in a CPUC Reform Trailer Bill, SB 106 (2015). SB 106 contained ten unique directives relating to various aspects of CPUC governance and program administration. As such, the order to make SB 106 inactive should not pre-judge the reasonableness of this specific proposal.

PROGRAM BACKGROUND

Rule 21 Section K, as updated in a 2012 settlement agreement adopted in D.12-09-018, lays out a dispute resolution process that first provides a structure for bilateral negotiations, and then directs unresolved disputes to the Commission's ADR process. The technical advisory panel and 60-day dispute resolution process proposed in the bill would largely, if not entirely, supplant the existing process. For instance, if the bill becomes law, Rule 21 Section K will likely continue to provide a structure for bilateral negotiations before directing applicants to file disputes with the technical advisory panel, instead of directing disputes into ADR.

ADR is administered by the Commission's ALJ Division, and provides a dispute resolution forum for all utility service provision under the Commission's jurisdiction. Data has not been collected on the number of disputes related to Rule 21 interconnection that have gone through the ADR process. Anecdotally, as described above, the process has rarely, if ever, been used by interconnection applicants due to the time and cost to do so. Instead, developers often raise complaints with Energy Division staff, who lack the engineering expertise and decision-making authority to effectively intervene in interconnection disputes beyond informally mediating between developers and utilities. If the bill becomes law, the expedited interconnection dispute resolution process would likely increase the number of formal disputes that are raised by interconnection applicants. Statistics on disputes brought before the panel and resolved would be easily tracked upon creation of the expedited dispute resolution process.

With regards to changes in administrative action and work products, first and foremost, ALJ Division would no longer oversee the dispute resolution process for interconnection-related disputes. The bill would also reduce Energy Division staff's workload related to informal mediation between developers and utilities when interconnection disputes arise. The technical advisory panel would likely be administered by Energy Division, which would entail the following administrative work:

- Determining panel selection criteria, term length, panel charter, guidelines for reviews and recommendations, and other programmatic elements;
- Facilitating a stakeholder process to determine necessary revisions to Rule 21 in order to integrate the expedited dispute resolution process into the Rule 21 process workflow;
- Launching a competitive solicitation process to solicit and contract with panel members;

- Administration of panel members' contracts and compensation;
- Creating standardized process workflows for:
 - Receiving applicant disputes;
 - Assigning panel members to each dispute;
 - Managing the panel's review and recommendation process;
 - Tracking panel members' time;
 - Submitting panel recommendations to the Executive Director;
 - Establishing a public process for parties to file written comments on the panel's recommendations; and
 - Establishing a public process for parties to request Commission review, via Commission resolution, of the Executive Director's final order on dispute resolution.
- Working in conjunction with Legal Division on potentially substantial legal analysis due to the conflicted positions of at least half of the technical advisory panel.

The Commission's Executive Director would be charged with making a final ruling on the dispute within 30 days of receiving the panel's recommendations. This would at minimum entail an Order from the Executive Director to the utility reviewing the dispute and the panel's recommendation, and providing a final resolution on the dispute.

OTHER STATES' / JURISDICTIONS' INFORMATION

Other State and Federal jurisdictions provide for dispute resolution processes that are substantively similar to that of the current Rule 21 Section K. For instance, the Massachusetts Department of Public Utilities (Mass DPU) directs interconnection disputes into an ADR process. It is unknown how Mass DPU's ADR process compares to that of the CPUC. Similarly, FERC's Large Generator Interconnection Procedures (Order 2003-c) provides a structure for bilateral negotiations, followed by an off-ramp into external arbitration. The arbitrator, or panel of arbitrators, then has 90 days to render a decision in the dispute. PG&E's Wholesale Distribution Tariff, which oversees distribution-level interconnections under FERC's jurisdiction, provides a 30-day bilateral negotiation period, followed by an external arbitration process overseen by a neutral arbitrator who must render a decision with 90 days. Last, the CAISO tariff, Section 13, lays out the dispute resolution process applicable to all facets of the CAISO's operations. If parties are not able to resolve a dispute bilaterally, parties can escalate the issue to the CAISO's ADR coordinator, who then arranges for the dispute to be taken up by a neutral mediator.

SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION

This bill should be supported by the CPUC for the following reason(s):

The CPUC supports this work-in-progress and will continue to work to resolving outstanding concerns of other parties.

SUMMARY OF SUGGESTED AMENDMENTS

The Commission recommends that the proposal in AB 2861 be amended in the following way(s):

- (1) To emphasize efficiency in the interconnection process under this bill.
- (2) The bill should provide the Commission the discretion to implement an Expedited Interconnection Dispute Resolution Process consistent with the goals of a streamlined, low-cost interconnection dispute resolution process that issues binding decisions in 60 days or less, in a manner that most efficiently fits within existing Commission processes.
- (3) The bill should delay the program implementation deadline from April 1, 2017 to December 1, 2017 to give the Commission adequate time to implement and staff the expedited interconnection dispute resolution process, assuming it would be effective on January 1, 2017.
- (4) The bill should be amended to replace the technical advisory panel with an independent expert/special master (in the vein of the Independent Evaluator monitoring of Power Purchase Agreements).

STATUS

Pending referral.

STAFF CONTACTS:

Hazel Miranda, Director

Nick Zanjani, Senior Legislative Liaison

Michael Minkus, Senior Legislative Liaison

Lori Misicka, Legislative Liaison

Ivy Walker, Legislative Liaison

Hazel.Miranda@cpuc.ca.gov

Nick.Zanjani@cpuc.ca.gov

Michael.Minkus@cpuc.ca.gov

Lori.Misicka@cpuc.ca.gov

Ivy.Walker@cpuc.ca.gov

BILL LANGUAGE:

AB 2861 (Ting), as introduced February, 19, 2016, Electricity: distribution grid interconnection dispute resolution process.

http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB2861