



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE  
STATE OF CALIFORNIA

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Order Instituting Rulemaking to Consider Smart  
Grid Technologies Pursuant to Federal  
Legislation and on the Commission's Own  
Motion to Actively Guide Policy in California's  
Development of a Smart Grid System

R.08-12-009  
(Filed December 18, 2008)

SOUTHERN CALIFORNIA EDISON COMPANY'S (U 338-E) REPLY COMMENTS TO  
THE ASSIGNED COMMISSIONER'S MAY 29, 2009 RULING AMENDING THE  
SCOPE AND SCHEDULE OF PROCEEDING TO ADDRESS POLICY ISSUES  
PERTAINING TO SMART GRID FUNDING APPROPRIATED IN THE AMERICAN  
RECOVERY AND REINVESTMENT ACT OF 2009

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Dated: **June 29, 2009**

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**I.**

**INTRODUCTION**

In accordance with the Assigned Commissioner's Ruling Amending the Scope and Schedule of Proceeding to Address Policy Issues Pertaining to Smart Grid Funding Appropriated in the American Recovery and Reinvestment Act of 2009 (Ruling), Southern California Edison Company (SCE) submits the following reply to various parties' comments on the Ruling. SCE's reply addresses three primary issues:

- (1) The Ruling appropriately proposes to grant a rebuttable presumption of reasonableness to Investor-Owned Utility (IOU) Smart Grid projects that receive Department of Energy (DOE) matching funds. The proposed rebuttable presumption is not unlawful (as some parties claim in their opening comments), but rather is a permissible exercise of the California Public Utilities Commission's (Commission's) discretion under California Public Utilities Code § 454(b). The rebuttable presumption is particularly appropriate because of the close alignment of state and federal policies concerning the Smart Grid, as recognized in the Ruling.
- (2) The Tier-3 advice letter process proposed by the Ruling for contingent pre-approval of co-funding offers a sufficient opportunity for public participation in the

Commission's review of IOU Smart Grid projects that seek DOE matching funds (and that do not require CEQA review or the issuance of a CPCN). To the extent an IOU seeks, prior to DOE action, Commission approval of the expenditures associated with a Smart Grid project – and such approval is contingent upon the DOE selecting the project for federal matching funds – the standard Tier-3 advice letter process will give interested parties an appropriate chance to review and comment upon the IOU's submission. Certain parties have proposed extensions to the advice letter comment period and dollar caps on the funding that IOUs may request via an advice letter, with no support for these additional requirements. These arbitrary proposed modifications to the Ruling should be rejected.

- (3) The Division of Ratepayer Advocates (DRA) inappropriately requests that the Ruling's proposed reporting requirements for projects seeking DOE matching funds be extended to require that the IOUs submit to DRA a copy of all information provided to the Commission, including confidential information. SCE does not object to providing public information to parties on the service list in this proceeding (including DRA) as required by the Ruling. However, DRA provides no justification for requiring IOUs to submit such confidential information to parties other than the Commission (assuming the IOU has not yet requested Commission approval for project co-funding). The Commission should not obligate the IOUs to release such confidential information simply because DRA has some unspecified interest in seeing the data.

For these reasons, as discussed further below, SCE requests that the Commission issue a Proposed Decision that: (a) adopts the Ruling's proposed rebuttable presumption of reasonableness for Smart Grid projects approved for DOE matching funds; (b) retains the Tier-3 advice letter process for contingent pre-approval of Smart Grid expenditures without arbitrary comment period extensions or financial limitations; and (c) does not obligate the IOUs to unnecessarily disclose confidential information to DRA.

## II.

### **A REBUTTABLE PRESUMPTION OF REASONABLENESS FOR SMART GRID PROJECTS AWARDED MATCHING FUNDS BY THE DOE IS APPROPRIATE**

The Consumer Federation of California (CFC), DRA, and The Utility Reform Network (TURN) oppose the Ruling's proposal to adopt a rebuttable presumption of reasonableness for IOU Smart Grid projects that receive DOE matching funds, on the grounds that such a

presumption violates California law.<sup>1</sup> CFC and DRA further assert that the proposed rebuttable presumption is improper by claiming that state and federal policies concerning the Smart Grid are not sufficiently aligned.<sup>2</sup> These contentions are incorrect and should be rejected by the Commission. As discussed below, the California Public Utilities Code expressly vests the Commission with the discretion to adopt reasonable and proper rules related to the showing required to support proposed rate changes. The Ruling’s proposed rebuttable presumption is an appropriate exercise of this discretion. Moreover, the Smart Grid policies that Commission and the DOE are seeking to implement are closely aligned in their support of cost-effective projects that are initiated consistent with the Energy Independence and Security Act of 2007 (EISA). Thus, the Ruling’s proposed rebuttable presumption should be adopted by the Commission.

**A. The Ruling’s Proposed Rebuttable Presumption is Consistent with California Law**

CFC, DRA, and TURN claim that the Ruling’s proposed rebuttable presumption of reasonableness for projects awarded DOE matching funds would violate California law by shifting the burden of proof regarding reasonableness from the utilities to intervenors or consumers. In support of their arguments, CFC, DRA, and TURN assert that California Public Utilities Code § 454(a) prohibits any shift in the burden of proof with respect to rates because the code states: “no utility shall change any rate . . . except upon a showing before the commission and a finding by the commission that the new rate is justified.”<sup>3</sup> This position, however, ignores the next subsection of the code, which expressly grants the Commission flexibility in determining how the showing that supports a new rate will be made.

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<sup>1</sup> Comments Addressing Policy Issues Pertaining to Smart Grid Funding Appropriated in the American Recovery and Reinvestment Act (CFC Comments), at 3-4; The Division of Ratepayer Advocates’ Amended Comments on the May 29, 2009 Assigned Commissioner’s Ruling Amending the Scope and Schedule of Proceeding to Address Policy Issues Pertaining to Smart Grid Funding Appropriated in the American Recovery and Reinvestment Act of 2009 (DRA Comments), at 4-7; Comments of The Utility Reform Network on Assigned Commissioner Ruling Amending the Scope and Schedule of Proceeding to Address Policy Issues Pertaining to Smart Grid Funding Appropriated in the American Recovery and Reinvestment Act of 2009 (TURN Comments), at 6-7.

<sup>2</sup> CFC Comments, at 4-5; DRA Comments, at 5.

<sup>3</sup> CFC Comments, at 3; DRA Comments, at 5-6; TURN Comments, at 7.

Contrary to the assertions of CFC, DRA, and TURN, Public Utilities Code § 454 did not contemplate that the burden of proof could never be adjusted, regardless of how compelling the circumstances were. Section 454(b) grants the Commission important discretion in this area:

The commission may adopt rules *it considers reasonable and proper* for each class of public utility *providing for the nature of the showing required to be made in support of proposed rate changes*, the form and manner of the presentation of the showing, with or without a hearing, and the procedure to be followed in the consideration thereof.<sup>4</sup>

Accordingly, the Ruling's proposed rebuttable presumption falls squarely within the authority granted to the Commission by Section 454(b).

CFC and DRA further claim that by implementing a rebuttable presumption of reasonableness based on DOE approval of a Smart Grid project, the Commission would abdicate its regulatory authority to determine that new rates are just and reasonable.<sup>5</sup> This contention is simply wrong. The Ruling's approach does not cause the Commission to grant total deference to the DOE's decisions, as CFC and DRA suggest. Rather, the Commission will still evaluate Smart Grid projects using its traditional criteria, but place the burden on parties challenging the costs of the projects to show them to be unreasonable. The Ruling makes clear that IOUs will be required to provide details of each project for Commission scrutiny, including costs and benefits.<sup>6</sup> Importantly, the presumption is rebuttable -- if an opposing party provides appropriate evidence to demonstrate that the costs of a project are unreasonable, the Commission can deny co-funding. The rebuttable presumption simply enables the Commission to strike an appropriate balance: maintaining its oversight role over the IOUs while also permitting the IOUs an

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<sup>4</sup> Cal. Pub. Util. Code § 454(b) (emphasis added).

<sup>5</sup> CFC Comments, at 4; DRA Comments, at 6-7. CFC and DRA not only oppose total deference to DOE decisions to award funds to Smart Grid projects, but they appear to resist the Commission granting any weight to the DOE's funding decisions. To the extent these parties are implying that the IOUs would propose wasteful Smart Grid projects simply to obtain federal funding, or that the DOE would award funds to such projects, such an implication is unwarranted and should be disregarded by the Commission

<sup>6</sup> Ruling, at 10-11.

opportunity to demonstrate a level of match funding in seeking federal stimulus dollars for California in a highly-competitive process.

CFC also incorrectly asserts that the proposed rebuttal presumption is inconsistent with “unique role” that EISA creates for the states to evaluate Smart Grid projects.<sup>7</sup> The EISA provision that CFC cites addresses *nonadvanced* grid technologies and simply asks States to *consider* whether they should implement a requirement that a utility show it considered an investment in a “qualified smart grid system” before proceeding with an investment in a nonadvanced technology.<sup>8</sup> EISA does not dictate what a state should decide and it certainly does not require a state to perform a particular evaluation of proposed Smart Grid projects.

CFC’s, DRA’s, and TURN’s arguments hinge in large part on the Commission’s procedures in a “typical” proceeding or rate case. However, we are not in a typical situation. The availability of federal matching funds in the energy sector has created a unique opportunity for California (and for the nation). The Governor, the Commission, and the California Energy Commission have pledged to take all reasonable measures to obtain stimulus funds for California and its economy. Thus, it is reasonable for the Commission to exercise its discretion and implement the appropriate rebuttable presumption of reasonableness proposed in the Ruling.

**B. The DOE Grant Program and the Commission’s Smart Grid Rulemaking in Advancing the Goals of EISA**

CFC and DRA attempt to undermine the Ruling’s proposed rebuttable presumption by isolating certain passages in the DOE’s Smart Grid Funding Opportunity Announcements (FOA) and concluding that the DOE’s policies are inconsistent with California’s interests. These claims should be rejected.

CFC claims that when the DOE evaluates Smart Grid projects, it will not be investigating factors that the Commission must consider to assess the reasonableness of expenditures,

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<sup>7</sup> CFC Comments, at 4.

<sup>8</sup> 16 U.S.C. § 2621(d)(16).

including “cost-effectiveness, societal benefits, reliability, performance, [and] security.”<sup>9</sup> CFC reaches this conclusion by quoting one section of the DOE’s Notice of Intent (NOI) to Issue a Funding Opportunity Announcement for the Smart Grid Investment Program, regarding “Program Policy Factors” that the DOE may consider in selecting projects. However, CFC fails to recognize that the immediately preceding section of the NOI (describing potential “Merit Review Criteria”) states that the DOE may also consider the following factors when evaluating “public benefits” associated with a project: reduced emissions; lower costs; enhanced cost-effectiveness; increased reliability; greater energy security; flexibility to accommodate new energy technologies, including renewable, intermittent, and distributed sources; and other public benefits derived from the project.<sup>10</sup> These criteria address the very issues that CFC contends would not be evaluated by the DOE.

Moreover, the DOE issued the final FOA for the Smart Grid Investment Grant Program on June 25, 2009.<sup>11</sup> The FOA makes clear that the DOE intends to conduct a thorough cost-benefit analysis of proposed projects. Among other things, applicants are required to describe “all of the relevant costs that should be included in the analysis of costs [of the project], including the un-depreciated costs of existing (to-be-replaced) equipment,” and include quantitative estimates of the expected benefits of the project in areas such as: lower electricity costs, lower peak demand, lower T&D losses, lower O&M costs, reduced transmission congestion costs, reduced costs of power interruptions, lower emissions of greenhouse gases, and lower consumption of oil.<sup>12</sup> The DOE will also consider the benefit of “economic opportunities for businesses and new jobs for workers” resulting from a project.<sup>13</sup> Consideration of these costs

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<sup>9</sup> CFC Comments, at 5.

<sup>10</sup> U.S. Department of Energy *Notice of Intent to Issue a Funding Opportunity Announcement for the Smart Grid Investment Grant Program* (DE-FOA-0000058), April 16, 2009, at 13.

<sup>11</sup> U.S. Department of Energy *Financial Assistance Funding Opportunity Announcement: Smart Grid Investment Grant Program* (DE-FOA-0000058), June 25, 2009.

<sup>12</sup> *Id.*, at 25.

<sup>13</sup> *Id.*, at 7.

and benefits is consistent with the Commission’s traditional reasonableness review for IOUs’ expenditures.

DRA argues (citing the DOE’s Draft FOA for Smart Grid Demonstration Grants) that the “DOE does not indicate a preference for projects that build upon an individual state’s activities, or that are cost-beneficial to ratepayers of a particular state,” and thus the DOE’s stated purposes are not consistent with the Commission’s interest in supporting efforts to obtain stimulus funding that specifically promotes the interests of Californians.<sup>14</sup> This argument is unreasonable. The DOE cannot and should not expressly grant a preference for an individual state or its ratepayers. To do so would not only be illegal, but would completely undermine the credibility of the DOE and our federal government. But the absence of such a preference does not mean that when the DOE awards funds to a California project, the awarded project will not promote California’s interest. Just the opposite is the case. Stimulus funds will be disbursed as a result of a highly-competitive process where each of the 50 states has an equal chance to apply. As a result, ratepayers of an individual state will know that not only did the DOE consider the state’s project to be a worthy one, with substantial benefits and deserving of federal funds, but that the project was *even more worthy* than many other projects from other states.

The Ruling correctly observes that state and federal policies concerning the Smart Grid are closely aligned because the Commission’s Smart Grid OIR and the DOE grant programs both “seek to provide support for projects initiated consistent with EISA.” The isolated examples of alleged policy differences identified by CFC and DRA are erroneous, and do not undermine the Ruling’s conclusion. Given this alignment of policies, and the statutory authority discussed above, SCE supports the Ruling’s proposal for a rebuttable presumption of reasonableness applicable to Smart Grid projects awarded DOE matching funds.

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<sup>14</sup> DRA Comments, at 5.

### III.

#### **THE TIER-3 ADVICE LETTER PROCESS PROPOSED IN THE RULING SHOULD NOT BE MODIFIED TO EXTEND RESPONSE PERIOD OR IMPOSE DOLLAR CAPS**

In their respective comments, DRA and TURN recommend that the Tier-3 advice letter process proposed in the Ruling for contingent pre-approval of co-funding for IOU Smart Grid projects be modified to extend the response period on the advice filing (DRA) and/or to impose financial caps on the projects that may obtain pre-approval through this process.<sup>15</sup> SCE suggests that the Commission reject these proposed modifications.

DRA states that it would support the Tier-3 advice letter process if the period to respond to the advice letter is extended from 20 days to 60 days, and: (1) the Smart Grid project costs no more than \$15 million in total, and (2) the IOU obtains DOE matching funds for at least 25% of the project's costs.<sup>16</sup> Projects that do not meet this threshold would obtain co-funding pre-approval only through an application to the Commission. TURN recommends that Smart Grid demonstration projects that are "relatively small scale" be permitted to obtain pre-approval through the Tier-3 process, but any "large scale expenditures" should undergo a formal review process (presumably via an application).<sup>17</sup>

DRA and TURN fail to offer a clear justification or explanation for these proposed modifications. The proposed modifications to the Ruling should be rejected. Not only are they unsupported, but if adopted, the modifications would effectively thwart the purpose of the Ruling's proposed Tier-3 advice letter process: to allow the IOUs to bring their projects before the Commission and obtain a decision in sufficient time for the IOU to communicate to the DOE that co-funding for the project has been confirmed, prior to the DOE's decision of whether to award matching funds. The Ruling's proposal to utilize a standard Tier-3 advice letter process would afford interested parties a sufficient opportunity to review and comment on an IOU's

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<sup>15</sup> DRA Comments, at 8-9; TURN Comments, at 11.

<sup>16</sup> DRA Comments, at 8.

<sup>17</sup> TURN Comments, at 11.

proposed project -- regardless of the cost of the project or the percentage of DOE matching funds sought -- before the Commission grants or denies approval of the project.

DRA also requests that the Ruling be modified to require an additional regulatory process to revisit approval of the funding for Smart Grid projects that were pre-approved by the Commission but ultimately do not receive DOE funding.<sup>18</sup> It appears that DRA misunderstands the Ruling's proposed Tier-3 advice letter process. The Ruling does not propose that the Commission issue blanket approval of the costs of a Smart Grid project in the Tier-3 advice letter process, irrespective of the DOE's decision. Rather, Commission approval is contingent upon the award of DOE matching funds.<sup>19</sup> If the DOE ultimately does not award matching funds, then the Tier-3 pre-approval would not bind ratepayer funds. Thus, it appears that the Ruling already accounts for DRA's concern.

#### IV.

#### **THE IOUs SHOULD NOT BE OBLIGATED TO SUBMIT CONFIDENTIAL SMART GRID APPLICATION DATA TO DRA**

Without providing any justification for its request, DRA recommends that the Ruling's proposed reporting requirements for IOU Smart Grid projects submitted to the DOE be extended to require the IOUs to submit to DRA a copy of all information provided to the Commission, *including confidential information*.<sup>20</sup> SCE does not object to providing public information related to its DOE filings to parties in this proceeding (including DRA), in accordance with the Ruling.<sup>21</sup> However, to the extent an IOU includes confidential data in its application to the DOE, the Commission should not require the IOU to automatically provide that data to DRA, simply because it will also be submitted to the Commission. SCE could understand a requirement to provide appropriate parties with confidential Smart Grid project information *at the time we file an advice letter or application seeking Commission approval for co-funding*. However, the

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<sup>18</sup> DRA Comments, at 10.

<sup>19</sup> Ruling, at 11-12.

<sup>20</sup> DRA Comments, at 2.

<sup>21</sup> Ruling, at 6-8.

Commission should not obligate the IOUs to release such confidential information to DRA prior to seeking Commission co-funding approval, based solely on DRA's unspecified interest in the data.

V.

**CONCLUSION**

For the reasons discussed above, SCE supports implementation of the processes described in the Ruling for IOUs to seek co-funding approval for Smart Grid projects that receive DOE matching funds.

Respectfully submitted,

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June 29, 2009

**CERTIFICATE OF SERVICE**

I hereby certify that, pursuant to the Commission's Rules of Practice and Procedure, I have this day served a true copy of SOUTHERN CALIFORNIA EDISON COMPANY'S (U 338-E) REPLY COMMENTS TO THE ASSIGNED COMMISSIONER'S MAY 29, 2009 RULING AMENDING THE SCOPE AND SCHEDULE OF PROCEEDING TO ADDRESS POLICY ISSUES PERTAINING TO SMART GRID FUNDING APPROPRIATED IN THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 on all parties identified on the attached service list(s). Service was effected by one or more means indicated below:

Transmitting the copies via e-mail to all parties who have provided an e-mail address. First class mail will be used if electronic service cannot be effectuated.

Executed this **29th day of June, 2009**, at Rosemead, California.

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