



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 PROPOSED DECISION OF COMMISSIONER CHONG ESTABLISHING
COMMISSION PROCESSES FOR REVIEW OF PROJECTS AND INVESTMENTS BY
INVESTOR-OWNED UTILITIES SEEKING RECOVERY ACT FUNDING**

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Dated: **August 17, 2009**

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Pursuant to Rule 14.3 of the California Public Utilities Commission Rules of Practice and Procedure, **Southern California Edison Company (SCE)** respectfully submits the following Reply comments concerning the Proposed Decision of Commissioner Chong Establishing Commission Processes For Review of Projects and Investments By Investor-Owned Utilities Seeking Recovery Act Funding (PD).

I. DRA, TURN, and CFC Fail to Identify Errors in the PD

Rule 14.3(c) of the CPUC Rules of Practice and Procedure is quite clear: comments on a proposed or alternate decision must “focus on factual, legal or technical errors in the proposed or alternate decision and in citing such errors shall make specific references to the record. Comments which merely reargue positions taken in briefs will be accorded no weight.” Ignoring this rule, parties such as DRA, TURN, and CFC instead make policy-type arguments because they *disagree* with the PD, not because they find *error* within it. For example, DRA arbitrarily

wishes to extend the protest period for advice letters to 60 days and to limit the co-funding approval processes authorized in the PD to only those IOU projects that receive 25% or greater co-funding from the DOE.¹

On May 29, 2009, Commissioner Chong issued her Assigned Commissioner's Ruling² (ACR). Under the applicable rules, respondents and intervenors were given a free hand in commenting on all aspects of her ruling, and indeed the various parties submitted detailed comments, as reflected in the PD. Commissioner Chong took those comments into account, and scaled back a number of the provisions in the ACR that parties such as DRA and TURN strenuously objected to. For example, in the PD Commissioner Chong now limits the use of the rebuttable presumption to apply solely to the accuracy of cost-benefit information for a project which succeeds in attracting ARRA stimulus funding, whereas in the ACR a rebuttable presumption of reasonableness applied to the entire project.³ Despite Commissioner Chong addressing their concerns in the ACR phase, certain parties now seek a "second bite at the apple" by continuing to press for changes to the PD, rather than corrections of any purported errors that might be found within it.

II. The PD's Rebuttable Presumption and Expedited Review Processes Are Consistent with the Commission's Statutory Authority

With respect to the PD's rebuttable presumption of accuracy, DRA, TURN, and CFC oppose the presumption (as they did the broader presumption of reasonableness proposed in the ACR) on the ground that the presumption is an unlawful and/or unreasonable exercise of the Commission's authority.⁴ CFC similarly argues that the overall expedited application procedures and advice letter process described in the PD for approval of Smart Grid project co-funding are

¹ DRA Comments on PD, pp. 11-12.

² *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.*

³ Compare PD at p. 27 with ACR at p. 10.

⁴ DRA Comments on PD, pp. 4-8; TURN Comments on PD, pp. 2-7; CFC Comments on PD, pp. 6-7.

not valid exercises of the Commission’s statutory obligations.⁵ These arguments, however, fail in the face of the clear authority provided to the Commission by Section 454(b) of the California Public Utilities Code:

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.⁶

Only DRA even attempts to directly address Section 454(b) in its comments on the PD, arguing that the statute applies only to the “management” of a proceeding and does not extend to the implementation of rebuttable presumptions.⁷ DRA cites no authority for this strained interpretation of Section 454(b), which should be rejected by the Commission. The plain language of Section 454(b) vests broad authority in the Commission to adopt procedures regarding the nature of the showing to be made in support of a proposed rate change and the procedure to be followed for consideration of the change. Expedited review processes and a rebuttable presumption of the accuracy of cost-benefit information for Smart Grid co-funding requests, as described in the PD, fall well within this discretion.⁸

DRA, TURN, and CFC also incorrectly argue that the PD’s rebuttable presumption results in the Commission abdicating its responsibility to assess the reasonableness of Smart Grid projects, by essentially deferring to the DOE’s review of project costs and benefits.⁹ The PD

⁵ CFC Comments on PD, pp. 7, 10-11.

⁶ Cal. Pub. Util. Code § 454(b) (emphasis added).

⁷ DRA Comments on PD, p. 4.

⁸ TURN also appears to misunderstand the extent of the rebuttable presumption in the PD. TURN asserts that: “[w]hat is perhaps especially troubling in the PD is the rebuttable presumption of data accuracy, which applies even if the project fails to get DOE funding and submits an application to the CPUC. (PD at 31-32).” TURN Comments on PD, p. 10. To the contrary, the PD specifically states, at the very pages cited by TURN, that the rebuttable presumption applies continues to apply where the DOE has granted funds but the costs of the project exceed its quantified benefits: “[i]f a project has obtained DOE funds but fails to demonstrate that the benefits to the utility’s ratepayers exceed the costs to ratepayers and an IOU wants ratepayer funding, then the IOU can apply via an application to the Commission . . . the costs and benefits contained in the DOE application will carry a rebuttable presumption of accuracy.” PD at pp. 31-32 (emphasis added).

⁹ DRA Comments on PD, pp. 8-10; TURN Comments on PD, pp. 7-11; CFC Comments on PD, pp. 9-10.

makes clear that the cost-benefit analysis is only one element of the Commission's reasonableness review and leaves no doubt that the Commission will evaluate the reasonableness of all IOU requests for Smart Grid project co-funding:

The IOU seeking Commission approval for a project, however, retains the responsibility of providing the Commission information adequate to demonstrate the proposed rate increases are reasonable and consistent with California policy.

The Commission will then review this information to determine the reasonableness of Smart Grid projects

* * *

We note that a favorable cost benefit ratio is only one element in the determination of the reasonableness of a project In this process the determination of reasonableness of allocating ratepayer funding in support of a Smart Grid project remains with this Commission – it is not delegated in any way.¹⁰

III. The Availability of Smart Grid Federal Matching Funds Creates a Unique Opportunity for California

Ultimately, DRA's, TURN's, and CFC's arguments hinge in large part on Commission procedures applicable to a typical or everyday proceeding. However, we are simply 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 country as a whole). *See, e.g.*, ACR at p. 2 ("The Smart Grid funding provided by the Recovery Act creates a unique opportunity for California to expand and accelerate its activities to modernize the state's electric infrastructure, using some federal dollars.").

The Governor, the Commission, and the California Energy Commission have pledged to take all reasonable measures to obtain stimulus funds for California, its economy, and its workforce. It is certainly reasonable for the Commission to exercise its discretion and implement procedures to streamline the assessment of projects, in order to maximize the chances

¹⁰ PD, pp. 23-24, 28.

of reaching decisions in a timely fashion. Parties objecting to the PD, however, not only wish to eviscerate the streamlined procedures found in the PD, but attempt to enact additional barriers to approval of Smart Grid projects.¹¹ Left unaddressed by these parties is the question of how California utilities are to succeed in a highly competitive nationwide process and attract stimulus dollars for California's economy and workforce if the procedures are so onerous that a decision from the State regulators cannot even be obtained until long after it has effectively become moot.

IV. Conclusion

SCE respectfully requests that the Commission reject the positions taken by DRA, TURN, and CFC, and asks that the Commission adopt the PD.

Respectfully submitted,

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August 17, 2009

¹¹ See, e.g., DRA Comments on PD, pp. 4-10 (arguing for complete elimination of a rebuttable presumption); p. 12 (advocating lengthy extension of protest period and advice letter processes).

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) COMMENTS TO THE PROPOSED DECISION OF COMMISSIONER CHONG ESTABLISHING COMMISSION PROCESSES FOR REVIEW OF PROJECTS AND INVESTMENTS BY INVESTOR-OWNED UTILITIES SEEKING RECOVERY ACT FUNDING 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 **17th day of August, 2009**, at Rosemead, California.

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