

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA



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In the Matter of the Application of San Diego Gas & Electric Company (U902E) for Adoption of its Smart Grid Deployment Plan.

Application 11-06-006
(Filed June 6, 2011)

And Related Matters.

Application 11-06-029
Application 11-07-001

**OPENING COMMENTS
OF THE DIVISION OF RATEPAYER ADVOCATES ON THE
WORKSHOP REPORT OF THE COMMISSION STAFF**

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I. INTRODUCTION

Pursuant to the *Administrative Law Judge Ruling Setting Schedule and Topics* for Workshop filed November 22, 2011 and the *Administrative Law Judge's Ruling Revising Schedule for Workshops* ("Rulings") filed on January 5, 2012, the Division of Ratepayer Advocates ("DRA") hereby submits these comments on the Workshop Report of Commission Staff ("Workshop Report") submitted March 1, 2012. The Rulings and Workshop Report invite parties to comment on the Commission Staff's ("Staff") recommendations specifically and the Workshop Report generally. In particular, the Workshop Report urges the utilities and stakeholders to provide additional information and proposals in order to create an efficient Smart Grid Annual Report ("Annual Report"). DRA's assessment of the Workshop Report and recommendations for the Annual Report follows. Silence on any particular issue should not be construed as assent.

The following is a summation of DRA's recommendations:

- DRA maintains its recommendations presented at the workshop, and attaches its presentation to these comments to ensure its incorporation into the record of this proceeding;
- The Commission should adopt an update process for Deployment Plans whereby the utilities update their Deployment Plans on a three-year cycle coinciding with their respective general rate cases (GRCs);
- The Commission should establish a process to update the Smart Grid metrics that will be adopted in a future decision;
- The Commission should require the utilities to detail their project selection processes along with the prioritized list of standards described in the Workshop Report;
- While DRA understands the Commission will develop its cyber-security policy in a subsequent decision, DRA supports a limited role for the Commission in cyber-security that: 1) requires the utilities to include cyber-security plans for any Smart Grid project for which they seek or receive Commission approval or ratepayer funding; 2) directs the utilities to follow federal and other applicable standards in devising their cyber-security plans; 3) requires utility reporting of security breaches; and 4) requires that the utilities each maintain a chief security officer. However, the Commission lacks expertise to monitor such planning – absent hiring of new staff or consultants – and if it is to have a direct role in cyber-security, DRA would recommend that the Commission seek authorization to hire experts in this area;
- DRA generally continues to support a demarcation point at the meter; however, DRA agrees that the Commission should extend this proceeding to specifically examine the demarcation point issue. Until the conclusion of that examination, all utility requests for projects beyond the meter should be made through applications to allow greater scrutiny.
- Stakeholders should be allowed to provide input on the template for the Annual Report to the Commission.

II. BACKGROUND

On June 24, 2010, the Commission issued Decision (“D.”) 10-06-047 adopting requirements for Smart Grid Deployment Plans (“Deployment Plans”) pursuant to Senate Bill (“SB”) 17. In accordance with D.10-06-047, each utility filed an application submitting its Deployment Plan to the Commission by July 1, 2011. On July 25, 2011,

an Administrative Law Judge (“ALJ”) ruling memorialized the consolidation of the three utilities’ applications into one proceeding.¹ On October 3, 2011, a Scoping Memo was issued allowing parties to assess the Deployment Plans and provide recommendations on the number and structure of workshops. Following comments on the Scoping Memo, the Commission issued its Rulings establishing four days of workshops to discuss the Deployment Plans, which commenced on January 30 and concluded on February 2, 2011. The workshops were structured on the conceptual framework of Smart Customer, Smart Market, and Smart Utility.

After the workshops, Staff released its Workshop Report. The purpose of the Workshop Report was to explain “the key areas that were discussed during the workshops and provide direction on how to improve/enhance the [Deployment] Plans.”² Staff provides an initial framework for the Annual Report, which requires additional information not previously included in the Deployment Plans.³ The Workshop Report also recommends that parties comment, in part, on the following:

- The utilities should submit a joint template for the Annual Report (including any revisions to the customer roadmap in Appendix 1);
- The utilities should submit a prioritized list of standards to indicate the current priorities (the list may be limited to the top ten standards);
- The parties should submit their comments pertaining to whether the Commission should set a demarcation point and if so, whether this should be done now or at another time. Also, parties should comment on whether a more detailed record should be established for this issue; and
- The parties should submit suggestions for how the CPUC should address cyber-security concerns, either as part of the Smart Grid Deployment Plan effort or through other methods.⁴

¹ San Diego Gas and Electric Company (A.11-06-006); Pacific Gas and Electric Company (A.11-06-029); and Southern California Electric Company (A.11-07-001).

² Workshop Report, at 1.

³ Id., at 13-14.

⁴ Id., at 13.

III. DISCUSSION

1. DRA Continues To Support Its Recommendations Presented At The Workshop

In the February 3, 2012 workshop, DRA presented a series of cogent, specific recommendations for how best to move forward with the Deployment Plans. Following the presentation, parties actively engaged in a productive exchange in which the utilities and ALJ seemed amenable to most of DRA's proposals. DRA is very disappointed that its presentation and the ensuing discussions were not mentioned in the Workshop Report. In this regard, the Workshop Report is incomplete, and DRA sees these omissions as considerable flaws in the procedural process in that workshops were held in lieu of evidentiary hearings. DRA maintains its recommendations, and attaches its workshop presentation (Attachment A) to these comments to guarantee its incorporation into the record of this proceeding. In summary, DRA's recommendations include:

- Use this proceeding to create a framework for tracking Smart Grid progress;
- The Deployment Plans should be forward-looking and transparent;
- The Deployment Plans should coordinate with other proceedings;
- The Commission should determine how best to update Deployment Plans;
- Utility project selection should be based on an analytical construct;
- Routine requests should be made through a GRC, whereas untested or barely tested technology requests should be made through Applications;
- Funding requests must contain certain key elements;
- The Commission should establish a process for tracking Smart Grid achievements; and
- The Commission should create a Smart Grid Matrix for the Annual Report;

Further, DRA reminds the Commission that, in its October 3, 2011 Scoping Memo⁵ and in D.10-06-047, it concluded that it “is not reasonable to use a Smart Grid Deployment Plan to confer a presumption of reasonableness on a specific investment project.”⁶ DRA respectfully requests that the Commission reaffirm its opinion in this proceeding’s decision, thereby irrefutably concluding and disposing of this issue.

2. The Workshop Report Fails To Provide A Process And Schedule To Update The Deployment Plans

The Commission initiated this proceeding, in part, to determine the function of the Deployment Plans, and when and how they should be updated. However, the Workshop Report fails to provide a proposed process and schedule by which the utilities will comply with these required updates.

In D.10-06-047, the Commission concluded:

At this time, we conclude that the best way for the Commission to proceed is to review the first Smart Grid Deployment Plan for each utility, as discussed above, and as part of that proceeding, we will address when and how an update should be filed.⁷

Further, in the October 3, 2011 Scoping Memo, the Commission stated:

Concerning the issue pertaining to Smart Grid Deployment Plan updates raised in D.10-06-047, the Commission will make a determination how updates to Smart Grid Deployment Plans should be filed in this proceeding.⁸

To date, an update process has not been crafted nor has a tentative schedule been recommended; the Workshop Report seemingly sets aside the issue and identifies the

⁵ Scoping Memo, at 11.

⁶ D.10-06-047, Conclusion of Law 9, at 133.

⁷ D.10-006-047, at 93-94.

⁸ Scoping Memo, at 9.

Annual Report as the sole vehicle to record goal, project, and vision adjustments. The record is clear that the Commission’s objective is to develop a mechanism to ensure the Deployment Plans retain their usefulness by periodic updates. However, the Workshop Report specifies:

The CPUC Staff therefore encourages the utilities to keep the Plans current and have the latest version of the documents available through their respective websites. The Commission may request the utilities to provide an updated version of the Plans at some point in the future, and therefore, the utilities will benefit from making sure that their Plans are generally up to date.²

DRA disagrees with this approach because it is too vague and risks Deployment Plan updates falling by the wayside by only contending that the Commission “may” request an update “at some point in the future.” Instead, DRA recommends that the Commission require the utilities to update their Deployment Plans on a three year cycle to coincide with the utilities’ respective General Rate Cases (“GRC”). Aligning the Deployment Plan updates with the utilities’ GRC cycles will conserve Commission resources and alleviate the burden of abbreviated update filing intervals.

The Workshop Report’s proposal encourages the utilities to constantly revise the Deployment Plans in anticipation of a Commission request to provide an update. Such a process would be burdensome and unproductive. Instead, requiring the utilities to update their plans to coincide with the three year GRC filing cycle grants the utilities time and resources to update their Deployment Plans as a function of the overall GRC process. Adopting DRA’s recommendation will allow the utilities to take advantage of their GRC information to provide more accurate retrospections and forecasts of Smart Grid projects and associated costs in their update filings. It also will allow intervening parties participating in GRCs to utilize the information in Deployment Plans while reviewing

² Workshop Report, at 13.

GRC requests. DRA submits that this approach offers an efficient means to track Deployment Plan changes. DRA's approach also is consistent with the requirements set forth in D.10-06-047.

In addition, DRA agrees that the Annual Report serves the functional purpose of apprising the Commission of the utilities' most current Smart Grid ventures. Thus, DRA further recommends the Commission employ the Annual Report, as a complement to the Deployment Plan updates coincident with the GRC cycles, to engage the utilities in an annual informal meeting. DRA proposes that the Commission also order the utilities to meet with stakeholders for an informal discussion and review of the Commission's Annual Reports, which are required by statute. An informal meeting to confer on the Annual Reports will allow parties and the Commission staff to provide constructive feedback on planned Smart Grid projects. This may negate the need to file formal pleadings in some circumstances, so it will be time well-spent.

3 The Commission Should Establish a Process to Update the Forthcoming Smart Grid Metrics

In Rulemaking ("R.") 08-12-009, the Commission identified the need to adopt metrics to measure the progress of the utilities in implementing the Smart Grid and in achieving the benefits described in SB 17. Currently, the Commission indicates that a decision establishing those Smart Grid metrics is forthcoming and, hence, the Workshop Report indicates that a section in the Annual Report will specifically focus on metrics and performance. DRA supports using metrics to measure progress and performance in the Annual Report, and further recommends that the Commission begin to contemplate a process to update those metrics. The workshops underscored the rapidity in which innovation and technology are progressing – a point emphasized by the utilities in the *Report on Consensus and Non-Consensus Smart Grid Metrics* ("Metrics Report") filed on December 29, 2010. In the Metrics Report, the utilities stated:

[T]he consensus metrics recommended here will need to be reviewed and updated as the quantitative and qualitative

criteria and standards for the smart grid evolves over the next months and years.¹⁰

As further recognized in the Metric(s) Report, some metrics may eventually become irrelevant as Smart milestones are achieved.¹¹ DRA agrees that metrics will need to be reviewed and updated as the Smart Grid continues to evolve. DRA pointed out, in its comments on the Metrics Report, that allowing for re-evaluation of metrics is consistent with the principle that Smart Grid metrics should be a living document. That is, it should be flexible, provide meaningful information for regulators, and not be costly or burdensome to the reporting utilities.¹² Because the metrics decision has been delayed, and a decision on the Deployment Plan is statutorily required by July 1, 2012, the impetus to establish a metrics update process has heightened.

Thus, DRA urges the Commission to preemptively create a vehicle to promptly establish a metrics update process – perhaps prior to the issuance of the metrics decision. DRA recommends that the Commission order a technical working group(s) to examine the utilities' Annual Report submission(s). During the course of its examination, the technical working group(s) would be tasked with developing metrics in the non-consensus areas, and establish a process for adopting metrics revisions that dovetails with the Deployment Plan updates.¹³ Afterwards, DRA recommends the technical working group(s) issue a report on how the metrics should be updated going forward.

¹⁰ Metrics Report, at 4.

¹¹ Metrics Report, at 5.

¹² DRA Comments on Smart Grid Ruling (01/24/2011), at 2-3.

¹³ Id., at 2.

4. The Utilities Should Submit Their Project Selection Process

In the Workshop Report, Staff recommends the utilities submit an itemized list of standards to indicate the current priorities.¹⁴ In general, DRA supports Staff's recommendations in this area. The success of Smart Grid may be enhanced by the utilities proffering the Commission and parties information detailing their deployment priorities and technical standards.¹⁵ DRA proposes the Commission also require the utilities to identify their respective processes for project selection. As highlighted in the workshops and memorialized in the Workshop Report, the Deployment Plans "are uneven in terms of how clearly they explain why certain technologies are needed and how they will ultimately help achieve larger goals."¹⁶ DRA agrees with Staff's assessment of the Deployment Plans and their shortcomings in this area. To effectively produce a Smart Grid, project selection should be based on a strategy that addresses resolution of problems or needs of the electric grid, rather than first selecting Smart Grid technologies and finding a use for them.

In addition to a prioritized list of standards, DRA recommends the Commission require the utilities to clearly detail the rationale and strategy for selecting individual projects, assessing problems in need of solutions, and identifying how the project relates to the utilities' Smart Grid strategy. As noted in the Workshop Report, "[s]ignificant investments in Smart Grid foundational infrastructure will be required in order to achieve the Smart Grid vision and the State's goals."¹⁷ DRA recognizes the State's goal to modernize the grid requires considerable investments; however, compelling the utilities to detail their selection processes will help guarantee that those investments are focused

¹⁴ Workshop Report, at 13.

¹⁵ Id., at 12.

¹⁶ Id., at 7.

¹⁷ Id., at 7.

and directed towards achieving significant benefits. Further, the utilities' selection processes will allow the Commission to examine, to what extent, the utilities' upcoming projects are leveraging existing investments.

5. Cyber-Security

The Workshop Report lists cyber-security as an issue that was discussed at length in the workshops but that requires further development at a later time. Staff proposes an "in-depth discussion and analysis is needed in order to determine how to approach cyber-security."¹⁸ Staff further proposes the Commission establish an additional procedural vehicle to examine the issue in more detail.¹⁹

The Commission lacks the proper expertise to involve itself in cyber-security matters beyond its statutory obligations to enforce privacy laws, and ensure safe and reliable services. The task of drafting cyber security standards by which the utilities must abide should be entrusted to federal agencies that possess far more experience in these matters, such as the Department of Homeland Security and the Department of Energy. The utilities also should be encouraged to use the best practice recommendations developed by respected trade organizations such as the Institute of Electrical and Electronics Engineers ("IEEE") and report those practices to the Commission.

Though cyber-security remains an important component of the Smart Grid's future, the Commission has not adopted a comprehensive policy position. Once the Commission addresses the issue, DRA believes that it should only have a limited role in cyber-security that requires:

- 1) The utilities to retain a chief cyber-security officer;
- 2) Utility reporting of security breaches; and
- 3) The utilities include cyber-security for any Smart Grid project for which they seek or receive Commission

¹⁸ Id., at 12.

¹⁹ Id., at 12.

approval or ratepayer funding, and that such plans follow federal and other applicable standards.

The Commission's role should cover the three key areas, but probably not more, unless it hires new staff or retains expert consultants with a high level of expertise in the complex cyber-security area. First, the Commission should require the utilities to retain a chief cyber-security officer tasked with coordinating the utility's overall Smart Grid cyber-security effort. That officer should not only be knowledgeable about all aspects of the utilities' cyber-security efforts, but available to address Commission concerns if there are security breaches or gaps in utility cyber-security plans.

Second, the Commission should require the utilities to report system breaches, and detail the steps the utility has taken to alert the relevant authorities and notify affected customers. If the breaches threaten the reliability or security of the electric grid, the utilities should work closely with the Commission on its efforts to safeguard the grid and the public, and protect secure data. The Commission should have the ability to penalize the utility if the utilities own lax policies cause the breach.

Lastly, DRA urges the Commission to mandate that the utilities include a detailed cyber-security plan along with any future Smart Grid application for specific projects, when necessary. The plan(s) shall follow applicable federal and standards-setting policies. When the utilities roll out technologies that necessitate cyber-security, it is important there are safeguards in place before those technologies go online. Numerous parties at the workshops stressed that implementing cyber-security protocols at the beginning of a project is far more effective and less costly than trying to remedy them at a later date. Protections should not be delayed or implemented to a time which may compromise the integrity of the system and/or customer information.

6. Demarcation Point

In the Workshop Report, Staff requests parties to submit comments detailing whether the Commission should affix a demarcation point, "and if so, whether this should be done now or at another time. Also, the parties should comment on whether a more

detailed record should be established for this issue.”²⁰ DRA continues to support a demarcation point at the meter, with exceptions to the rule determined on a case-by-case basis. Nevertheless, a separate phase of this proceeding for consideration of this issue would be appropriate. The Commission should use that additional phase to elicit information and lessons learned from other relevant technologies such as, but not limited to, Plug-in Electric Vehicles (“PEVs”) and the Home Area Network (“HAN”) devices. Further, the workshops demonstrated the value of examining other industry experiences with setting demarcation points. In particular, DRA found the experiences and recommendations of the telecommunication industry representatives to be useful and perhaps a workable platform to explore possible effects on the market.

Generally, customers should own their devices and the market for consumer-owned devices and energy management tools should be allowed to fully develop.²¹ In the workshop, parties expressed concern that extending the utilities’ monopoly role beyond the meter may inhibit innovation and obstruct competition leading to higher prices. DRA agrees and sees no reason for ratepayer funds to be used in instances where market innovation and funding is prepared to offer the same or similar technologies.

However, DRA also agrees that the Commission’s review of the Deployment Plans may not offer an appropriate vehicle to effectively litigate this issue. Therefore, until the Commission adopts such a vehicle and disposes of this issue, it should carefully scrutinize any request for ratepayer money for customer-side equipment. Further, because the demarcation issues clearly will have longstanding effects on funding, third-parties, and market formations, DRA recommends the Commission require all utility requests for ratepayer money related to customer-side equipment to go through

²⁰ Id., at 13.

²¹ DRA Reply Comments (04/07/2010), at 16-17.

applications rather than GRCs. The application process allows for a more thorough examination of these kinds of specific issues than do GRCs.

7. The Commission Should Provide An Opportunity For Stakeholders To Offer Recommendations And Comments On The Annual Report Template

The Workshop Report seeks to produce a template for the utilities' Annual Report to the Commission, as required by D.10-06-047. Specifically, Staff recommends the "utilities should submit a joint template for the Annual Report (including any revisions to the customer roadmap in Appendix 1)."²² DRA agrees, but adds that stakeholders should be allowed an opportunity to comment on the joint utilities' proposed template. Excluding stakeholder input from the process disproportionately relies on the utilities to guide their own reporting requirements, and may potentially leave out information important to the stakeholders who will be ultimately reviewing these documents. In other words, by having the utilities propose the contents of the Annual Report without any input from stakeholders, the Commission proposes that the regulated entity regulate itself.

DRA recommends the Commission establish a procedural vehicle to allow equitable opportunities for all parties involved in this proceeding to participate in the creation of the Annual Report template. The record of this proceeding and R.08-12-009 demonstrates the value of cooperation amongst the stakeholders and the utilities; indeed, it is unreasonable to foreclose consumer advocates, third parties, and other entities from contributing in the last hour of this decision-making process.

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²² Id., at 13.

IV. CONCLUSION

DRA respectfully requests that the Commission adopt the recommendations made herein and in the following attachments.

Respectfully submitted,

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Attachment A