



**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

FILED

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<p>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.</p>	<p>Rulemaking 08-12-009 (Filed December 18, 2008)</p>
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**APPLICATION FOR REHEARING OF DECISION 09-09-029
(COMMISSION PROCESSES FOR REVIEW OF PROJECTS AND INVESTMENTS BY
INVESTOR-OWNED UTILITIES SEEKING RECOVERY ACT FUNDING)**

The Consumer Federation of California (CFC) applies for rehearing of the decision (D.09-09-029) of the Public Utilities Commission (Commission) which established a process to expedite approval of a utility’s request to make customers invest in smart grid projects.¹ Applications for rehearing are authorized by Public Utilities Code (PU Code) section 1731(b)(1) and Article 16 of the Commission’s Rules of Practice and Procedure. The Application is timely because it was filed “within 30 days after the date of issuance,”² September 15, 2009.

Decision 09-09-029 establishes a process for utilities to follow when they seek or obtain a DOE grant, and want matching funds from ratepayers. The process established includes no notice to the public; a shrunken protest period; no proof³ that the confiscated capital will be used prudently in a project benefiting Californians; no opportunity for customers present and cross-examine evidence in an evidentiary

¹ In a section entitled “A Process for Review of Project Co-Funding,” the Commission states, “Projects that received DOE awards will also be attractive from a cost perspective since utilities will have the opportunity to make investments that are beneficial to ratepayers and have only 50% of the cost (or less) fall to ratepayers. D.09-09-029 at 19, 25

² PU Code § 1731(b)(1).

³ The Commission will accept a DOE national cost-effectiveness finding as sufficient proof to order action. D.09-09-029 at 32. (“A comparison of the project benefits with the incremental utility share of project costs will permit the Commission to make a determination of the reasonableness of the commitment of ratepayer funds to these projects. If the information provided to DOE is adequately supported, it is likely that it will prove sufficient for reviews by this Commission”).

hearing and only a restricted opportunity to be heard at all; and no Commission determination, made after an evidentiary hearing and on a record of substantial evidence, that the proposed use of customer funds is prudent and not duplicative of completed projects, or that the rates are reasonable and consistent with the California Constitution and statutes.

The Commission has acted without, or in excess of, its powers or jurisdiction; has not proceeded in the manner required by law; and violates the consumers right under the Constitution of the United States and the California Constitution, to notice and an opportunity to be heard in an evidentiary hearing. The findings in D.09-09-029 are not supported by substantial evidence in light of the whole record. The Commission should abrogate D.09-09-029 and any right arising from or by virtue of that decision, and proceed in an orderly manner with the rulemaking it initiated in December, 2008. The utilities can make any investment required by a DOE grant.

I. PROCEDURAL HISTORY

In 2007, Congress enacted the Energy Independence and Security Act of 2007 (“EISA”), which added a new section to the Public Utilities Regulatory Policy Act (“PURPA”), entitled “Smart Grid.”⁴ As a result, the Commission said, “PURPA § 111(d)(16) now requires states to consider imposing certain requirements and authorizing certain expenditures. Each of these requirements assumes, in accordance with longstanding regulatory policy, that capital will be invested by the utility, not customers.

- (A) In general.—Each State shall consider requiring that, prior to undertaking investments in nonadvanced grid technologies, an electric utility of the State demonstrate to the State the electric utility considered an investment in a qualified smart grid system based on appropriate factors, including—
- (i) total costs;
 - (ii) cost-effectiveness;
 - (iii) improved reliability;
 - (iv) security;
 - (v) system performance; and
 - (vi) societal benefit.

⁴ Oll at 4.

(B) Rate recovery. — Each State shall consider authorizing each electric utility of the State to recover from ratepayers any capital, operating expenditure, or other costs of the electric utility relating to the deployment of a qualified smart grid system, including a reasonable rate of return on the capital expenditures of the electric utility for the deployment of the qualified smart grid system.

The Commission said it was initiating Rulemaking A.08-12-009 to “consider setting policies, standards and protocols to guide the development of a smart grid system and facilitate integration of new technologies such as distributed generation, storage, demand-side technologies, and electric vehicles.”⁵ The Commission explained the scope of the rulemaking proceeding would be “to consider further actions, if needed, to comply with the requirements of EISA and also to consider policy and performance guidelines to enable the electric utilities to develop and implement a smart grid system in California.”⁶ The Commission said that it intended to achieve the following in this rulemaking:

- Consider the principles and criteria that should guide the Commission’s smart grid policies;
- Determine the characteristics and requirements of a smart grid in California that would support existing policies;
- Identify the IOUs’ existing activities and investments related to a smart grid;
- Determine how the Commission should assess the costs and benefits of smart grid-related expenditures that may be necessary to meet the state’s future needs;
- Develop an appropriate regulatory approach to support the development of a cost-effective smart grid in California;⁷

None of these objectives have been achieved. The Commission has not yet decided the best regulatory policy and practices, including rate recovery, for California’s smart grid.

⁵ Order Initiating Rulemaking in A.08-12-009 issued December 22, 2008 (*hereafter*, “OII”) at 2.
⁶ OII at 13.
⁷ OII at 16.

Persons submitting comments in the ruling were asked to address a series of questions which included questions about rate recovery of smart grid investments, *e.g.*,

- Should the Commission authorize each electric utility to recover from ratepayers any capital, operating expenditure, or other costs of the electric utility relating to the deployment of a qualified smart grid system, including a reasonable rate of return on the capital expenditures of the electric utility for the deployment of a qualified smart grid system, pursuant to PURPA § 111(d)(16)(B) added by EISA § 1307(a)?⁸
- How should investments and other costs of a qualified smart grid system be determined for purposes of considering recovery from ratepayers?⁹
- “Should smart grid-related costs be borne by ratepayers, shareholders, or third parties?”¹⁰
- How should the Commission assess the cost-effectiveness and reasonableness of smart grid-related expenditures?
- What types of costs would be associated with deploying a smart grid?
- How should any smart grid upgrades that are approved by the Commission be staged over a reasonable time horizon that mitigates rate impacts?
- What types of benefits would result from a smart grid?
- What type of regulatory approach should the Commission take to support the development of a cost-effective smart grid?

Parties have commented on these and other questions, and the Assigned Commissioner has said she will issue a ruling which “will solicit additional comments ... and will address the issues raised for this proceeding by Senate Bill (SB) 17 (Padilla), if enacted.”¹¹

⁸ OII at 17.

⁹ OII at 18.

¹⁰ OII at 21.

¹¹ Sept. 28 Ruling at 2

The rulemaking is still in progress and no decisions have been made on issues identified by the Commissioner. Nevertheless, in its Decision 09-09-029, the Commission has established policy for the state of California. No utility will have to spend any money on smart grid projects which DOE deems worthy of its grant money. Any money DOE doesn't pay, customers will. All of the utilities investment and expenditures may be charged to customers.

II. THE ASSIGNED COMMISSIONER ERRED IN DENYING THE ARRA PROCEEDING WAS A RATEMAKING PROCEEDING.

The American Recovery and Reinvestment Act of 2009 ("ARRA" or "Recovery Act"), aka the 'Stimulus Bill,' appropriated \$4.5 billion "to modernize the electric grid."¹² On or about May 29, 2009, the Assigned Commissioner amended the initial Scoping Memo in this proceeding to invite Comments on a proposal to

- Grant all projects that receive Recovery Act funds a rebuttable presumption of reasonableness in any subsequent review by this Commission; and
- Establish an advice letter or expedited application process for authorizing the utility to recover the non-federal portion of the costs through traditional ratemaking avenues, such as the recovery of expenditures and the ratebasing of investments.¹³

In the amended scoping memo, the Assigned Commissioner also "set a timetable for adopting a decision pertaining to Recovery Act matters that will enable IOUs to pursue DOE funds with confidence that the Commission will permit the rate recovery of IOU investments and expenses needed to match DOE-funded projects."¹⁴

A. The Commission Erred In Finding This Proceeding Will Not Be Setting Rates.

DRA "appeal[ed] the categorization of the proceeding after enactment of ARRA, and request[ed] recategorization from "quasi-legislative" to "ratesetting" because "the

¹² ACR Amending Scope at 1.

¹³ ACR Amending Scope at 2. Since the capital is contributed by the DOE and customers, per D.09-09-029, there is no reason to include the investment in rate base.

¹⁴ ACR Amending Scope at 6

proceedings could ultimately set rates,” quoting from Decision (D.) 03-05-066.¹⁵ CFC supported the appeal arguing, “The Assigned Commissioner is proposing to create a ratesetting mechanism which will establish rates for qualified electric utilities, and thus, the proceeding falls within the definition of a ratesetting case.”¹⁶

The Assigned Commissioner denied the request for recategorization, in part, because “this proceeding will not be setting rates. The review of rates will be done in separate proceedings.”¹⁷ In the final decision, however, the Commission waives the reasonableness review of a utility rate application, usually undertaken in a GRC.¹⁸ The Commission directs the utilities to file a Tier 3 Advice Letter, to be reviewed by its Staff for compliance with specified criteria, none of which relate to the necessity for the rates, the reasonableness of the rates, the policy of least cost planning, or other statutory criteria including prudence and usefulness. One must therefore conclude the setting of rates was determined in D.09-09-029 and the Commission erred in failing to consider the DOE grant applications in a ratesetting proceeding.

B. The Commission Erred In Its Interpretation and Application of PU Code Section 1701.1(c)(3).

The Commission also denied DRA’s request because “the standard that the Commission traditionally has applied in determining whether a proceeding is ratesetting is to consider whether a proceeding will set rates for a *specific named utility or utilities* in the proceeding. The Commission did not examine the entirety of PU Code section 1701.1(b)(3), which states: Ratesetting cases, for purposes of this article, are cases in which rates are established for a specific company, including, but not limited to, general rate cases, performance-based ratemaking, and *other ratesetting mechanisms*. PG&E, Edison, and SDG&E are each now entitled to use the ratesetting mechanism adopted in D.09-09-029, and there will be no further ‘setting’ of rates for these companies because the Commission delegated that task to its Staff.

¹⁵ Division Of Ratepayer Advocates' Appeal Of The Categorization Of Rulemaking 08-12-009 (June 8, 2009).

¹⁶ CFC Response to Appeal of Categorization at 2.

¹⁷ D.09-06-043 at 7.

¹⁸ D.09-09-029, Finding of Fact 17, p. 45.

C. The Commission Confiscated Customers' Money without Affording them Notice, Holding a Hearing, or Making the Findings Required by the Constitution and Statutes.

The Commission denied ratepayers notice and the opportunity to be heard before their money is taken. The Commission exercised the State's police power to confiscate hundreds of millions of dollars¹⁹ from Californians to pay for Smart Grid projects, without hearing evidence or entering findings required by statute.²⁰ Before 'taking' customers' money and transferring it to a private utility,²¹ the Commission is required by Constitution and statute to hold a hearing to determine the funds will be reasonably and prudently spent on projects which benefit ratepayers.²² Prior notice must be given to ratepayers of the nature of the public use for which the property is to be taken.²³ No notice was given to customers that they would be co-funding smart grid projects.

Further, in order to take funds from customers for development of the smart grid, the Commission, not the DOT, must determine that all of these criteria have been established:

- a) The public interest and necessity require the project.
- b) The project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury.
- c) The property sought to be acquired is necessary for the project.²⁴

These findings are to be made after the Commission gives" notice to the affected parties and holds hearings at which evidence must be considered to support the requisite findings. (§ 1245.235; 11 Miller & Starr, Cal. Real Estate (3d ed. 2002) Eminent Domain, § 30A:14, pp. 18-20 (Miller & Starr).)" *City of Stockton v. Marina Towers LLC* (2009)171 Cal. App. 4th 93, 104.

¹⁹ Customers may be asked to contribute as much as \$200 million per project.

²⁰ *City of Stockton v. Marina Towers LLC* (2009) 171 Cal.App.4th 93, 104. There is no question that a taking will occur. The Commission's Decision describes procedures by which "[a]n investor-owned utility can seek Commission approval of *ratepayer funding* for a Smart Grid project or investment."

²¹ *20th Century Ins. Co. v. Garamendi* (1994) 8 Cal.4th 216, 251.

²² U.S. Const.Amend. 5; Cal. Const. Art. 1, § 19.

²³ PU Code § 454; *City of Stockton v. Marina Towers LLC* (2009) 171 Cal.App.4th 93.

²⁴ Code of Civ. Procedure (CCP) § 1240.030

The Commission has no statutory authority to require ratepayers to fund smart grid projects. A return may be paid to the utility after its investment becomes “used in the utility’s service.” *20th Century Ins. Co. v. Garamendi* (1994) 8 Cal. 4th 216, 251 n. 4. (The “used and useful” principle is “designed to assure that the ratepayers, whose property might otherwise of course be ‘taken’ by regulatory authorities, will not ... as a matter of simple justice, be required to pay for that which provides the ratepayers with no discernible benefit.” The Commission should require utilities to supply the capital needed to build the smart grid, and include that cost in pro forma revenue requirements in the next General Rate Case (GRC).

The DOE Secretary is required to “establish procedures to ensure that ... the grant goes to the party making the actual expenditures for the qualifying Smart Grid investments,”²⁵ As it now stands, grant money should go to customers.

III. UNRELIABLE WORKSHOP EVIDENCE.

The Commission relied to some extent, in D.09-09-029, on matter presented at workshops during the summer (2009). The Commission heard presentations of invited guests about the benefits of the smart grid, mostly from the viewpoint of utilities and vendors. In only one of the workshops was more than one consumer group asked to speak, whereas speakers for utility companies and vendors were well represented throughout the workshop process. A list of those making presentations is included in this Application as Attachment A. Any information from the workshop which was considered by the Commission in reaching its decision in D.09-09-029²⁶ must be deemed unreliable since it is heavily weighted in favor of those who want customers to provide funds for the development of the smart grid. The evidence was not tested in an adversary proceeding.

²⁵ 42 U.S.C. 17386(e)(1)(C)

²⁶ See e.g., D.09-09-029 at 24, 37. To the extent the Commission relied on evidence offered at these workshops in reaching its decision in D.09-09-029, it did so in violation of the due process clause. Consumers should have been allowed an opportunity to confront witnesses and adverse testimony with cross-examination and testimony of their own..

IV. UNLAWFUL PROCEDURES IN ARRA COLLECTION PROCESS.

The Commission's final decision in this case (D.09-09-029) did not correct errors made in the Proposed Decision. The procedure created by the Commission for a utility seeking matching funds for a DOE grant is contrary to law and will not result in reasonable rates."²⁷ The procedure is as follows:

- A. [I]t is reasonable to conclude that IOU projects that receive DOE grants will be beneficial to the IOU's ratepayers and further California's clean energy policies.²⁸
- B. [W]e adopt a Tier-3 advice letter process for the review of those projects that have received a United States Department of Energy Smart Grid Recovery Act award."²⁹
- C. [I]t is reasonable to limit the protest period on the application to 15 days, rather than the 30 days otherwise provided in the Commission's rules.³⁰
- D. [W]e decide now that applicants may reply to protests, with the reply due 7 days following the protest.
- E. A party protesting the Advice Letter should demonstrate that the Advice Letter does not meet the conditions set forth herein.³¹
- F. Staff shall issue a draft resolution for Commission approval recommending that the incremental costs for a specific project are justified if the following conditions have been met:
 1. The DOE has selected the project to receive an award;
 2. The project furthers one or more of the benefits to IOU ratepayers identified in this section (i.e. the five listed benefits for SGIG grants³² and the four listed benefits for SGDP grants³³);

²⁷ D.09-09-029 at 4.

²⁸ D.09-09-029 at 25

²⁹ D.09-09-029 at 4

³⁰ D.09-09-029 at 33.

³¹ D.09-09-029 at 5. This requirement, when read together with ¶ A and other parts of the decision, tends to refute the Commission's statement that "the approach we adopt today does not include a rebuttable presumption." (D.09-09-029 at 36, 38). The words may no longer be there, but the concept remains.

³² SGIG is the acronym of the DOE for its *Smart Grid Investment Grant Program (SGIG)*. Its "five listed benefits" are, in the Commission's words:

"[T]he program is intended to enable measurable improvements in areas including:

- Reliability of the electric power system;
- Electric power system costs and peak demand;
- Consumer electricity costs, bills, and environmental impacts;
- Clean energy development and greenhouse gas emissions; and
- Economic opportunities for businesses and new jobs for workers.

3. The requested incremental ratepayer funding for the project does not exceed \$30 million;
 4. The utility attests that ratepayer funding does not exceed 50 percent of the total project costs;
 5. The utility attests or otherwise demonstrates that it has sought third party funding, in addition to DOE funding, and indicates what third-party co-funding it has received;
 6. The utility has provided a detailed itemized budget for the project and included a reasonable explanation of how the budget was developed; and
 7. The utility attests or otherwise demonstrates that the costs are necessary for the project.³⁴
- G. If the conditions above are met, the Energy Division shall prepare a resolution approving the project for consideration by the Commission.³⁵

The Commission determined that a review of documents submitted to DOE to meet these standards would suffice for a determination that rates collecting matching funds were reasonable. “[T]he material submitted to the DOE will prove adequate to permit a determination by this Commission of the reasonableness of the rates required to support the non-federal share of project cost. DOE requires the submission of information on the costs and benefits A comparison of the project benefits with the incremental utility share of project costs will permit the Commission to make a determination of the reasonableness of the commitment of ratepayer funds to these projects.”³⁶

(United States Department of Energy, Financial Assistance Funding Opportunity Announcement: Smart Grid Investment Grant Program (SGIG) (DE-FOA-0000058), June 25, 2009, p. 7.)

³³ SGDP is the acronym for the *Smart Grid Demonstration Program*. Its four listed benefits, in the Commission’s words, are:

the goal of the program is to collect and provide information to:

- Reduce system demands and costs;
- Increase energy efficiency;
- Optimally allocate and match demand and resources to meet that demand; and
- Increase the reliability of the grid.

³⁴ D.09-09-029 at 26.

³⁵ D.09-09-029 at 26.

³⁶ D.09-09-029 at 31-32

The Commission found, “An advice letter or expedited application is a more reasonable process for reviewing a Smart Grid proposal than waiting for an IOU’s next GRC,”³⁷ apparently affirming the Proposed Decision’s holding that ““The project will ... be reviewed in a ministerial advice letter that will incorporate costs into rates as directed in the reviewing decision.”³⁸ On the other hand, the Commission indicated that the final costs of projects funded by DOE and customers would be “subject to a standard review in a general rate case or separate application that will incorporate the costs into rates.”³⁹ One interpretation of these statements is that the Commission will promise a utility at the time an advice letter is filed, that it will be allowed to collect matching funds from customers, but will wait until the project is complete to determine how much more of the total project costs may be included in rates. The Proposed Decision offers an alternative interpretation, *i.e.*, that costs will be incorporated in rates as part of the advice letter filing. The Commission should clarify the ratemaking aspect of its order, if it becomes effective.

A. The Commission Misinterpreted PU Code § 454 and Misapplied the Burden of Proof In Contravention of the Filed Rate Doctrine.

The Commission’s decision unlawfully shifts the burden of proving rates meet California statutory standards from the utility to customers. In D.09-09-029, the Commission states, “A party protesting the Advice Letter should demonstrate that the Advice Letter does not meet the conditions set forth.”⁴⁰ Further, the party is given only 15 days, not the usual 30, in which to prove the advice letter doesn’t meet the specified requirements. The Commission’s decision is contrary to law because PU Code section 454(a) places the burden on utilities to prove that a rate is reasonable before it is placed in effect: “No public utility shall change any rate ... except upon a showing before the commission and a finding by the commission that the new rate is justified.”

³⁷ D.09-09-029 at Finding of Fact No. 17

³⁸ PD at 38.

³⁹ D.09-09-029 at 32-33

⁴⁰ Those conditions are that the project furthers a benefit, rate recovery does not exceed \$300 million, utility attests that ratepayer funding does not exceed 50 percent of the total project costs and that the costs are necessary for the project, and there is a budget for the program.

PU Code section 454(a) is consistent with the filed rate doctrine, which has been a guiding rule of ratemaking for many years. Under the filed rate doctrine, “there is a presumption that rates fixed by a lawful ratefixing body are reasonable, fair and lawful and that the burden is upon the person contending otherwise to overcome this presumption. *Elliott v. City of Pacific Grove* (1975) 54 Cal. App. 3d 53, 59, *citing Durant v. Beverly Hills* (1940) 39 Cal. App. 2d 133, 139. (“The rates here complained of, having been fixed by the lawful rate-fixing body, must be presumed to be reasonable, fair and lawful.”) Since approved rates are presumed to be reasonable, the utilities must show that changed rates, designed to provide Smart Grid funding, are reasonable.

The Commission did not address the filed rate doctrine in its decision. It relied, instead, on Southern California Edison’s statement that the “ruling’s proposed rebuttable presumption is consistent with California law.”⁴¹ Edison’s argument was based on a faulty interpretation of PU code section 454(b), which states: “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,” Because the language in PU code section 454(a) is more specific than the language in section 454(b), section 454(a) prevails: “If inconsistent statutes cannot otherwise be reconciled, “a particular or specific provision will take precedence over a conflicting general provision.” *Stone Street Capital, LLC v. California State Lottery Com.* (2008) 165 Cal. App. 4th 109, 119. It may not be necessary to employ this rule of construction since the statutes may be reconciled by interpreting 454(a) as establishing the basic rule, and section 454(b) as allowing the Commission to determine the level of proof required.

B. The Commission Erroneously Equated the Cost/Benefit Test With the Requirements of the Public Utilities Code.

The Commission concluded “it is reasonable to conclude that IOU projects that receive DOE grants will be beneficial to the IOU’s ratepayers,” and said “[a] comparison of the project benefits with the incremental utility share of project costs will permit the

⁴¹ D.09-09-029 at 22.

Commission to make a determination of the reasonableness of the commitment of ratepayer funds to these projects.”⁴² Such a conclusion is not reasonable.

The record does not show that benefits the DOE identified are benefits which California ratepayers will receive, nor does it show that benefits will be quantified at the DOE so that they can be compared to project costs. The underlying assumptions in utility calculations of benefits and costs may not be revealed or tested. We do not yet know what smart grid functions have already been enabled in the utilities’ territories. There may be some redundancy between utilities’ projects. Smart Grid projects may provide benefits to federal policy but might not produce benefits for California consumers.

Furthermore, cost-effectiveness is only one of the findings that must be made before imposing the cost of these projects on customers. The Commission must also find the capital (which is supposed to come from the utility, not ratepayers) has been prudently invested,⁴³ that operation of the grid will be safe, reliable, and efficient,⁴⁴ affordable, and environmentally sustainable⁴⁵ once the project is installed, that the project would minimize the cost to society of electric service,⁴⁶ that the project will be in compliance with Commission inspection, maintenance, repair, and replacement standards,⁴⁷ that customers’ right to privacy is protected,⁴⁸ and that rates will be reasonable⁴⁹. A prudency determination would involve an examination of existing smart grid projects with those proposed to avoid duplication, and also a finding that the funds have been properly managed.

The Commission cannot delegate these fact findings to the DOE. The DOE will not be considering questions which the Commission must address in a rate order. The DOE is interested in “gather[ing] data and perform[ing] analysis to estimate the project-based and societal benefits of smart grid technology and associated implementation

⁴² D.09-09-029 at 31-32
⁴³ See *E.g.*, PU Code §§ 399, 463.
⁴⁴ PU Code § 399.2.
⁴⁵ PU Code § 399.8
⁴⁶ PU Code § 701.1(a).
⁴⁷ PU Code § 364.
⁴⁸ Cal. Const.
⁴⁹ PU Code § 451.

policies.”⁵⁰ It will determine grant eligibility based on “diversity of technical approaches and methods,” “different kinds and sizes of organizations,” “geographic distribution,” “active participation by consumers,” interoperability, “[i]ntegrat[ion] of renewable and distributed energy resources,” cyber-security, and use of dynamic pricing.⁵¹ Utility customers should pay only for plant which is used and useful to them. New technologies and programs funded by the DOE are still being investigated and may not be shown to be commercially viable. The risk that some of the new technologies will not become commercial, belongs on the utility’s shoulders not on the backs of ratepayers.

The PD acknowledged the different roles of the two agencies: “TURN, DRA and CFC rightly note that it is not certain that the DOE awards will reach determinations needed to ensure that the funded projects are in the interest of California ratepayers.”⁵²

C. The Commission Unlawfully Deferred to the DOE and Lacks Substantial Evidence Upon which to Find the Nature of Any Benefits Arising from Customers’ Investment.

The Commission found “it is reasonable to conclude that IOU projects that receive DOE grants will be beneficial to the IOU’s ratepayers and further California’s clean energy policies.”⁵³

The Commission has learned about many of the benefits to ratepayers that will be derived from modernizing the electric grid through our Smart Grid rulemaking.⁵⁴ The DOE identifies similar benefits in its FOA’s, DOE’s FOA for the SGIG program describes that the program is intended to enable measurable improvements in areas including: ...the DOE’s FOA for the SGDP program states that the goal of the program is to collect and provide information⁵⁵

Further, based on the apparent assumption that ratepayers pay the entire cost of anything the utility builds, the Commission states, “Projects that received DOE awards will also be attractive from a cost perspective since utilities will have the opportunity to

⁵⁰ DOE Grant Notice, No. DE-FOA-0000058 (April 16, 2009) at 8. [https://ecenter.doe.gov/iips/faopor.nsf/UNID/39C0D96768F2083F8525759A0068F216/\\$file/OE_SGIG_NOI_Final.pdf](https://ecenter.doe.gov/iips/faopor.nsf/UNID/39C0D96768F2083F8525759A0068F216/$file/OE_SGIG_NOI_Final.pdf)

⁵¹ DOE Grant Notice, No. DE-FOA-0000058 (April 16, 2009) at 13-14.

⁵² PD at 37.

⁵³ D.09-09-029 at 25

⁵⁴ As argued earlier, presentations made at the workshop were not subjected to cross-examination, nor was the presentation of any evidence contrary to those presentations encouraged.

⁵⁵ D.09-09-029 at 24.

make investments that are beneficial to ratepayers and have only 50% of the cost (or less) fall to ratepayers.”⁵⁶ The Commission cannot determine whether smart grid projects undertaken by the utilities are cost-effective, as required by SB 17 (Padilla).

IV. CONCLUSION

The Commission has not yet resolved some key questions related to cost recovery which are posed by the OII in this rulemaking, *e.g.*

Question No. 3: Should the Commission authorize each electric utility to recover from ratepayers any capital, operating expenditure, or other costs of the electric utility relating to the deployment of a qualified smart grid system, including a reasonable rate of return on the capital expenditures of the electric utility for the deployment of a qualified smart grid system.

Question No. 18. How should the Commission assess the cost-effectiveness and reasonableness of smart grid-related expenditures?

Question No. 21. Should smart grid-related costs be borne by ratepayers, shareholders, or third parties?

The Commission has not yet had an opportunity to consider and resolve these questions. The Commission should wait to develop procedures for collecting from customers the costs related to smart grid projects until it has had an opportunity to thoughtfully consider the consequences of that decision. If the Commission fails to see merit in this Application, it should nonetheless make D.09-09-029 contingent upon findings in the rulemaking that grid-related costs should be borne by ratepayers, rather than shareholders.

DATE: October 14, 2009

CONSUMER FEDERATION OF CALIFORNIA

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⁵⁶ D.09-09-029 at 25.

ATTACHMENT A
PRESENTERS AT SMART GRID WORKSHOPS

Workshop No. 1 (Consumer Issues):

Utilities: SDG&E, CAISO
Vendors: Google, Tendril, Itron
Researchers: U.C. Berkeley, EPRI, Lawrence Berkeley National Lab
Consumers: DRA

Workshop No. 2 (Distribution):

Utilities: PG&E, SDG&E, SCE, CAISO, Navigant Consulting, CAISO
Vendors: S&C Electric, Cisco Systems, Google, Tendril, Itron
Researchers: U.C. San Diego, U.C. Berkeley, EPRI,
Lawrence Berkeley National Lab
Consumers: DRA

Workshop No. 3 (Transmission):

Utilities: SCE, SDG&E, CAISO, PG&E, SMUD, AES Corp.
Vendors: Science Applications Intern't'l Corp.(SAIC), AREVA, IBM
GE, Beacon Power, California Energy Storage Alliance
(Chevron, Fluidic Energy, Xtreme Power, ICE Energy,
A123 Systems, Strategen, ZBB Energy Corp.)
Researchers: Lawrence Berkeley National Lab
Consumers: None

Workshop No. 4: Plug-In Hybrid Electric Vehicles

Utilities: PG&E, Sempra, SCE, SDG&E
Vendors: Lightning Rod Foundation and Plug-in America,
Better Place, Coulomb Technologies, Tesla Motors,
Clipper Creek, Ford Motors, Efficient Drivetrains
Researchers:EPRI
Environmentalist: NRDC
Consumers: None

Workshop No. 5: Regulatory Approach

Utilities: PG&E, SCE, SDG&E
Vendors: IBM, Honeywell, Association of Home Appliance Mfrs.
Consumers: DRA, TURN, CLECA

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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.

Rulemaking 08-12-009

CERTIFICATE OF SERVICE

I hereby certify that on October 14, 2009, I served by e-mail all parties on the service lists for R.08-12-009 for which an email address was known, true copies of the original of the following document which is attached hereto:

**APPLICATION FOR REHEARING OF DECISION 09-09-029
(COMMISSION PROCESSES FOR REVIEW OF PROJECTS AND INVESTMENTS BY
INVESTOR-OWNED UTILITIES SEEKING RECOVERY ACT FUNDING)**

The names and e-mail addresses of parties served by e-mail are shown on an attachment. In addition, I served the following persons by enclosing said document in an envelope addressed to them and depositing the envelope in the U.S. Mail, with postage prepaid.

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Dated: October 14, 2009

Respectfully submitted,

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