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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the Commission's own motion to consider alternative-fueled vehicle tariffs, infrastructure and policies to support California's greenhouse gas emissions reduction goals.

Rulemaking 09-08-009
(Filed August 20, 2009)

ASSIGNED COMMISSIONER'S SCOPING MEMO

In accordance with Rule 7.3 of the Commission's Rules of Practice and Procedure,¹ this ruling sets the procedural schedule and defines the scope of this proceeding following a prehearing conference held on November 18, 2009. This ruling also confirms the Commission's efforts to comply with the relevant legislative mandates set forth Senate Bill 626.²

1. Background

The Commission initiated this rulemaking proceeding on August 24, 2009 as part of its efforts to ready the electric infrastructure for light-duty passenger plug-in hybrid electric vehicles and battery electric vehicles (collectively "electric vehicles"). In its August 24, 2009 rulemaking, the Commission raised a number

¹ All subsequent references to Rules are to the Commission's Rules of Practice and Procedure, Chapter 1, Division 1 of Title 20 of the California Code of Regulations. The current version of the Rules is available on the Commission's website: www.cpuc.ca.gov.

² Senate Bill 626, an act to add section 740.2 to the Public Utilities Code, relating to electrical infrastructure, (chaptered on October 11, 2009).

of broad topics related to alternative fueled vehicles and asked parties to comment on these topics. Detailed information about the issues raised by this rulemaking and other procedural matters may be found in the document issued by the Commission on August 24, 2009, and referred to as *Rulemaking 09-08-009, Order Instituting Rulemaking on the Commission's Own Motion to Consider Alternative-Fueled Vehicle Tariffs, Infrastructure and Policies to Support California's Greenhouse Gas Emissions Reduction Goals*.³

The Commission received comments from the named respondents⁴ and over twenty other parties, including electric vehicle manufacturers, charging service providers, environmental groups, and consumer advocates.⁵

On November 18, 2009, the Commission held a prehearing conference in this proceeding. Prior to the prehearing conference, the assigned Administrative Law Judge issued a ruling proposing, among other things, a preliminary list of potential issues and a tentative schedule. Based on the information provided in the ruling, the parties worked to narrow relevant issues and prioritized issues during the November 18, 2009 prehearing conference.

As a result, I have identified the most pressing issues and put together a final schedule. In the discussion which follows on the scope of this proceeding, I identify the issues to be addressed.

³ An electronic copy of the Commission's Order Instituting Rulemaking 09-08-009 can be found at http://docs.cpuc.ca.gov/word_pdf/FINAL_DECISION/106042.doc.

⁴ The Commission named as respondents to this proceeding Pacific Gas and Electric Company, Southern California Edison Company, Southern California Gas Company and San Diego Gas and Electric Company.

⁵ These comments may be reviewed on the Commission's website.

2. Issues Included Within Scope of Rulemaking

The scope of this proceeding will include the issues noted below. Should the assigned Commissioner decide to modify the scope of this proceeding, the assigned Commissioner will issue a revised scoping memo to notify all the parties of this change. As part of this rulemaking, the Commission will adhere to the directive set forth in Senate Bill 626 to “evaluate policies to develop infrastructure sufficient to overcome any barriers to the widespread deployment and use of plug-in hybrid and electric vehicles” and to develop related rules by July 1, 2011. Furthermore, consistent with Senate Bill 626, this Commission will also act on these matters in consultation with the Energy Commission, California Air Resources Board (CARB), utilities, and the motor vehicle industry.

2.1. Phase 1

2.1.1. Public Utilities Code Sections 216 and 218

At the November 18, 2009 prehearing conference and in comments, parties requested the Commission address issues related to the provision of electric vehicle charging services by entities other than the electrical corporations currently regulated by the Commission as public utilities. Parties described the resolution of these issues as “critical” to bringing private investment to California for electric vehicle charging infrastructure and requested the Commission address these issues as soon as possible. I agree.

Questions: Accordingly, the scope of this proceeding will include the question of whether such providers of electric charging services for use as a transportation fuel are electrical corporations and public utilities under Pub. Util. Code §§ 216 and 218.

These providers could include, but not be limited to, owners of stand-alone electric vehicle charging spots that sell a single type of transportation fuel,

electric recharging; owners of shared station arrangements where several types of transportation fuels, including electric recharging, are sold; residential and commercial landlords that provide electric vehicle charging as a service on the premises to tenants, guests of the tenants, customers of the tenants, and perhaps others; condominium associations that provide electric vehicle charging on the premises as a service to the condominium owners, their guests, and others; employers that provide access to recharging facilities as a service to their employees; and potentially others.

In addition, these sales could be based on kilowatt-hour usage or another form of measurement, including, but not limited to, usage time, i.e., the amount of time spent charging; a flat rate per charge; or a utility's tariffed rate.

If the Commission concludes that such sales by providers other than electrical corporations currently regulated by the Commission as public utilities fall outside its jurisdiction, the proceeding must also determine the exact boundaries of the Commission's regulatory authority.

Proposals for Briefs: Based on my initial review of the existing materials submitted in this proceeding and the rationale the Commission applied in Decision (D.) 91-07-018⁶ concerning the operation of facilities for the sale of compressed natural gas for a transportation fuel, I put forward the following preliminary interpretation to focus parties' briefs. Facilities that are solely used

⁶ D.91-07-018, 1991 Cal. PUC LEXIS 509 (July 2, 1991). In D.91-07-018, the Commission found as follows: "Persons operating service stations for the sale of CNG, other than those who are public utilities by reason of operations other than operating a service station, are not subject to regulation by this Commission. Those persons may sell CNG at prices they deem appropriate." ... "Our jurisdiction on CNG sales is limited to PG&E's side of the meter and the connection to the service stations' side of the meter." (D.91-07-018, Conclusions of Law 18 and 19).

to provide electricity as a transportation fuel do not constitute “electric plant” pursuant to Pub. Util. Code § 218. Thus, an entity owning, controlling, operating, or managing electric vehicle charging facilities is not an “electric corporation” pursuant to Pub. Util. Code § 218 and not a “public utility” pursuant to Pub. Util. Code § 216, unless an entity falls under § 216 and § 218 for other reasons. As such, the Commission would not have regulatory authority regarding the price that an electric vehicle charging facility operator charges for charging services or other aspects of the operation of such facilities unless the charging facility operator is a public utility by reason of its operations other than providing electric charging. The price that a provider of charging services pays for electricity would vary based on the provider’s relationship with its load-serving entity. For example, the customer of an investor-owned utility would pay a rate according to a tariffed rate schedule. A customer of an energy service provider (ESP) would pay a price determined through the contract between the ESP and customer.

Briefs on Proposal: Parties are directed to provide a legal and policy analysis of the preliminary interpretation described above and other issues identified in this Section. Parties should provide their analysis in the opening and reply briefs identified in the schedule below. In analyzing these questions, parties must address the applicability of the reasoning of the Commission in prior decisions involving natural gas vehicle refueling, such as D.91-07-018. Parties should also address whether the framework described above would necessitate modifications to any Electric Tariff Rules, typically Rule 18 or Rule 19, which permit utility customers to collect payment from their tenants for electric

services.⁷ Parties are asked to address the applicability of the regulatory framework behind Rule 18 or 19 to the sale of electricity for the purpose of electric vehicle recharging.

Briefing Schedule: To summarize, parties submitting briefs should address all the matters described above from both a legal and a policy perspective. The deadlines for filing briefs are set forth in the schedule adopted herein.

2.1.2. Charging Installation Streamlining

Issues related to charging installation streamlining will be included within the scope of this proceeding. At the November 18, 2009, prehearing conference and in comments, parties identified issues related to charging installation streamlining as a priority in the markets where electric vehicles will initially be marketed. I agree. Success of electric vehicles hinges on making the customer experience when bringing a car home as convenient and as seamless as possible.

It remains unclear, however, what the Commission's role is in this area. As highlighted by Senate Bill 626, other state agencies, such as the Energy Commission and CARB, play a critical role in readying the market for the widespread use of electric vehicles. Senate Bill 626 directs the Commission, in consultation with these other key agencies, to address the role the state should take to ensure that technologies employed for electric vehicles "work in a harmonious manner and across service territories."⁸ The bill also requires the

⁷ The Commission addressed matters related to SCE's Rule 18 in D.09-08-028 and addressed similar matters related to PG&E in D.09-08-028.

⁸ Pub.Util. Code § 740.2(e).

Commission to address code and permitting requirements related to electric vehicles.⁹

For this reason, the scope of this proceeding will explore how the Commission can work with other state agencies, including the Energy Commission and CARB, and with regional and local governments, to streamline the installation of charging infrastructure.

This proceeding's examination will consider issues related to single-user infrastructure (e.g., charging infrastructure in a single-family residence), and multi-user infrastructure (e.g., public and commercial charging, as well as charging used by residents of multi-family dwellings). This proceeding will also examine different approaches to educating the public on the use of electric vehicles. All of these issues will be analyzed with the goal of creating a level playing field for all participants in this market.

The first step toward addressing these issues will be a discussion on charging installation streamlining issues to occur at a workshop in Sacramento. A general timeframe for this workshop is set forth in the schedule below and the agenda will be announced as soon as possible.

2.1.3. Monitoring of Ongoing and Near-Term Utility Activities

In conjunction with the legal briefs submitted on §§ 216 and 218, the utility respondents are directed to include a review of the utilities' activities currently ongoing related to alternative fueled vehicles. This review should include a description of expenses or capital costs associated with these activities and how these expenses or capital costs are recovered from ratepayers. If these expenses

⁹ Pub. Util. Code § 740.2(d).

or capital costs are not recovered from ratepayers, the analysis should describe how these costs or capital costs are accounted for. In addition, the utilities should describe their goal to accommodate near-term growth (2010-2015) in the electric and natural gas vehicle markets.

While the Phase 1 decision will not specifically address ongoing and near-term expenditures, I believe it will be helpful to the Commission and parties to gather information on the utilities' ongoing alternative fueled vehicle activities early in this rulemaking.

2.2. Phase 2

2.2.1. Rate Design Policy and Direct Charging Management

Rate design will be included in the scope of this proceeding. This proceeding's examination of rate design and charging management will assist the Commission in addressing the impacts of electric vehicles on electrical infrastructure as required by Pub. Util. Code §740.2(a) and the impact of vehicles on grid stability and the integration of renewable resources as required by Pub. Util. Code § 740.2(b).

It is clear that electric vehicle charging could represent a new and substantial increase in load. In addition, if electric vehicle charging occurs during peak periods, electric vehicle charging could lead to greater use of lower efficiency and higher greenhouse gas emission peaking generating units. Electricity rates can provide electric vehicle owners a financial incentive to charge at some times rather than others, e.g., charge when the economic and environmental impacts on the grid are lowest.

Rate design is a critical issue in this proceeding. The critical nature of rate design is highlighted by the legislature's directive in Senate Bill 626 to examine the possible shifting of emissions reductions responsibilities of the transportation

sector to the electrical industry as a result of electric vehicles. For these reasons, the scope of this proceeding will include generic rate design policies to electric vehicle charging. This proceeding will probably not be the forum where the Commission adopts specific electric vehicle rates but, instead, general rate design policy and guidance.

Questions to be considered will include the following: What types of time variant rates should be offered to electric vehicle owners? What characteristics should electric vehicle rate designs have? How should residential electric vehicle rates be designed given the inverted-tier rate structure? For residential customers, should the utility offer whole house time-variant rates for electric vehicle owners, rates that only apply to electric vehicles, or both? What types of rates should apply to stand-alone commercial and public electric vehicle charging? What types of rates should apply when an electric customer offers electric vehicle charging services and has other electricity uses?

In addition to rates, this proceeding will consider equipment and other technology, as opposed to rates, to encourage owners of electric vehicles to charge in a manner that avoids detrimental impacts on the distribution system, transmission system and bulk power system and assists in the integration of renewable resources. For example, a switch could be included in charging infrastructure that allows a utility to remotely stop or start the charging of an electric vehicle. Herein this term refers to this type of mechanism as “direct charging management.”

To the extent the Commission determines that direct charging management is needed to manage the impacts of electric vehicle charging the Commission will need to consider a number of policy issues. For example, how should electric vehicle owners be encouraged to adopt direct charging

management mechanisms? Also, in developing policies around direct charging management, how should a utility's obligation to provide reliable electric service be balanced with a vehicle owner's desire to control when charging occurs?

I anticipate these issues will be addressed primarily through written comments during the second phase of this proceeding.

2.2.2. Separate Metering for Electric Vehicles

The scope of this proceeding will include issues regarding meter ownership and metering arrangements for tracking usage by electric vehicles.

Regarding metering arrangements, a number of possibilities exist. Metering could occur through the main meter in the residence, an on-car arrangement, through a separate revenue-grade meter serving a dedicated electric vehicle load or through a sub-meter. Separate metering could be important if the Commission implements special electric vehicle rates programs, Smart Grid integration, and other values to be gained through time-differentiated tracking. Electric utilities will also need to consider the metering rules contained in the CARB's Low Carbon Fuel Standard, as discussed further below.

Various meter ownership arrangements are also possible. The meter could be owned by the utility, the vehicle owners, or a third party. I will focus on promoting arrangements that do not hinder competitive markets in metering equipment, installation, and electric vehicles generally and do not impose unnecessary cost burdens on electric vehicle owners.

When addressing all these matters, this proceeding will consider whether to mandate certain metering arrangements or whether to allow for a variety of arrangements.

2.2.3. Utility Cost Recovery Policy

This proceeding will not be a vehicle for considering specific utility expenditures related to electric vehicles. However, this proceeding may consider broad cost recovery policies. For example, should utilities be permitted to make expenditures in residential, commercial and public charging infrastructure? How should a utility recover expenditures on charging infrastructure? Should utility costs be recovered directly from the users of the infrastructure or from the wider body of ratepayers? How should a utility recover costs of distribution system upgrades attributable to electric vehicles? This proceeding may also adopt a policy concerning how utilities should seek Commission recovery of expenditures driven by the deployment of electric vehicles. For example, should utilities seek recovery of expenditures related to electric vehicles through general rate cases or are special applications necessary and appropriate?

2.3. Other Issues – Phase 3 or Subsequent Rulemaking

2.3.1. Natural Gas Vehicles

Natural gas vehicles are included in the scope of this proceeding in recognition of the fact that such vehicles play an important role in the Commission's overall goal of reducing greenhouse gas emissions. The Commission's regulatory framework for natural gas vehicles also serves as an important reference as this proceeding seeks to develop an appropriate framework for electric vehicles. While this proceeding does not at this time identify specific issues that need to be addressed related to natural gas vehicles, the scope leaves open the possibility that the Commission should consider natural gas vehicle-related policies while developing policies that apply to electric vehicles. The scope of this proceeding will not include revisiting the existing regulations and policies adopted in D.91-07-018 and D.93-07-054.

2.3.2. Uniform Standards – Statewide and National

Parties raised the issue of the Commission adopting national standards related to electric vehicles in comments.¹⁰ I recognize the importance of standards for electric vehicles as a means of avoiding confusion in the early market entries. As a result, the Commission has already initiated its review of standardization issues in the Smart Grid Proceeding, R.08-12-009.¹¹ The Smart Grid proceeding will continue to serve as the forum for Commission consideration of these matters and parties are directed to raise concerns in R.08-12-009 regarding statewide and national standards related to market growth of electric vehicles as well as interoperability with existing infrastructure, Smart Grid and the Advanced Metering Initiatives.

2.3.3. Low Carbon Fuel Standard – California Air Resources Board

At its April 23, 2009 public hearing, CARB approved the adoption of the California Code of Regulations, Title 17, § § 95480, 95480.1, 95481, 95482, 95483, 95484, 95485, 95486, 95487, 95488, 95489, 95490. The approved sections comprise a regulation for implementing the Low Carbon Fuel Standard (LCFS). The LCFS regulations apply to any transportation fuel, as defined in the regulation. CARB has accepted several rounds of comments on the LCFS regulations. The scope of this proceeding will not include a review of the LCFS regulations which are under consideration at CARB.

¹⁰ See SCE opening comments: NIST Draft Publication, *NIST Framework and Roadmap for Smart Grid Interoperability Standards Release 1.0* from the Office of the National Coordinator for Smart Grid Interoperability, Sept. 2009.

¹¹ Information about R.08-12-009 (Smart Grid) is available at <http://www.cpuc.ca.gov/puc/energy/smartgrid>.

However, as mentioned above, this proceeding will consider whether the LCFS creates a need for certain meter arrangements. This proceeding will also consider addressing the disposition of any revenues that utilities receive from the sale of LCFS credits; however, the scope of this proceeding does not anticipate addressing this issue in the first two phases.

2.3.4. Impact of Electric Vehicles on Greenhouse Gas and Renewable Energy Policy

Pub. Util. Code § 740.2(f) requires the Commission to consider what impact the widespread use of electric vehicles could have on the state's greenhouse gas reduction goals and renewable portfolio standard program and whether steps should be taken to address the "shifting of emissions reductions responsibilities from the transportation sector to the electrical industry." While this issue is within the scope of this proceeding, I may determine that any specific recommendations or rules are best considered and adopted in a proceeding that is specifically focused on greenhouse gas policy and/or the renewable portfolio standard.

3. Collaboration With Other Government Agencies

This proceeding will include collaboration with other governmental entities with interests in this area and encourage their input and participation. This collaboration will include state entities such as, but not limited to, the California Energy Commission and CARB. This proceeding will also include collaborative efforts with relevant regional and local governmental agencies. This proceeding will also coordinate consideration of tariffs, infrastructure, and policy with issues considered in the ongoing Commission Smart Grid proceeding (R.08-12-009).

4. Schedule

Pursuant to Pub. Util Code § 1701.5, the Commission must resolve the issues raised in the scoping memo within 18 months of the issuance of the scoping memo or issue a decision seeking an extension of time. I expect that Phase 1 and Phase 2 will be completed within this 18 month timeframe. The schedule is set forth below:

Adopted Schedule R.09-08-009

Opening Briefs	February 8, 2010
Reply Briefs	March 1, 2010
Workshop on Charging Installation Streamlining	February 2010
Estimated Date for Phase 1 Proposed Decision	April 2010
Phase 2	To be Determined – Will Follow Phase 1

5. Need for Evidentiary Hearings

Today’s scoping memo adopts a procedural schedule that does not include formal hearings. Should this determination change, the assigned Commissioner will issue a revised scoping memo and “the ruling shall be placed on the Commission’s Consent Agenda for approval of that change.”¹² It is anticipated that the record will be composed of all documents filed and served on parties.

6. Categorization of Proceeding

In the Rulemaking issued on August 24, 2009, the Commission preliminarily determined that this proceeding should be categorized as

¹² Rule 7.5.

“quasi-legislative,” as that term is defined in Pub. Util. Code § 1701.1(c)(1). No party raised objections to this preliminary categorization in comments or at the prehearing conference. Today’s ruling confirms this categorization. As set forth in Rule 7.6, the determination as to category is subject to appeal. Before this proceeding examines any ratemaking issues framed within Phase 2 or a potential Phase 3 (or a subsequent proceeding), this proceeding may be re-categorized as “ratesetting.”

7. Service List and Service Requirements

The official service list was created at the November 18, 2009, prehearing conference and is now on the Commission’s website. You may request to be added to the service list at anytime by e-mailing assigned Administrative Law Judge Regina M. DeAngelis at rmd@cpuc.ca.gov. Electronic service is addressed in Rule 1.10(b) which provides that “by providing an e-mail address for the official service list in a proceeding, a person consents to e-mail service in any proceeding in which the person is on an official service list.” All parties to this proceeding shall serve documents and pleadings using electronic mail and, whenever possible, electronic mail should be transmitted no later than 5:00 p.m. on the date scheduled for service to occur. Parties are reminded that, when serving copies of documents, the document format must be consistent with the requirements set forth in Rule 1.10(a).

Rules 1.9 and 1.10 govern service of documents only and do not change the Rules regarding the tendering of documents for filing to the Commission’s Docket Office. Parties can find information about electronic filing of documents at the Commission’s Docket Office at www.cpuc.ca.gov/PUC/efiling.

As indicated by the assigned Administrative Law Judge during the November 18, 2009 prehearing conference, the Commission will rely primarily

on e-mail service of all documents it issues during this proceeding. No party objected to the assigned Administrative Law Judge's proposal to rely on this procedure.

8. Ex Parte Communications

In a proceeding categorized as quasi-legislative, *ex parte* communications are allowed without restrictions or reporting requirements. (Pub. Util. Code § 1701.4(b); Rule 8.2.)

9. Discovery

To the extent discovery is conducted in this proceeding, this proceeding will follow the general rule of 10 working days to respond to data requests. This rule will apply to all parties. If a longer response time is required, the party preparing the response shall so notify the requesting party and indicate when the response will be sent. Such notice should be provided as soon as possible, but no later than 10 days after receipt of the request. If parties have discovery disputes they are unable to resolve by meeting and conferring, they should raise these disputes with the Commission pursuant to Rule 10.1.

10. Briefs

To the fullest extent reasonably possible, all parties shall use the same outline for opening briefs and reply briefs. Parties should agree on a common outline for briefs and bring any unresolved disputes to the attention of the assigned Administrative Law Judge.

11. Intervenor Compensation

A party who intends to seek an award of compensation pursuant to Pub. Util. Code §§ 1801-1812 should have filed and served a notice of intent to claim compensation no later than 30 days after the November 18, 2009,

prehearing conference. (Pub. Util. Code § 1804(a)(1).) Under the Commission's Rules, future opportunities may arise for such filings but such an opportunity is not guaranteed.

In this proceeding, parties intending to seek an award of intervenor compensation must maintain daily record-keeping for all hours charged and a sufficient description for each time entry. Sufficient means more detail than just "review correspondence" or "research" or "attend meeting". In addition, intervenors must classify time by issue. When submitting requests for compensation, the hourly data should be presented in an Excel spreadsheet.

As reflected in the provisions set forth in Pub. Util. Code § 1801.3(f) and § 1802.5, all parties seeking an award of intervenor compensation must coordinate their analysis and presentation with other parties to avoid duplication.

IT IS RULED that:

1. The scope of the proceeding is set forth in Section 2, above.
2. The schedule for the proceeding is set forth in Section 4, above, subject to change by subsequent ruling by the assigned Commissioner or assigned Administrative Law Judge, as appropriate.
3. The schedule does not anticipate formal hearings. Should this determination change, the assigned Commissioner will issue a revised scoping memo and the ruling shall be placed on the Consent Agenda for the full Commission's approval of this change. It is anticipated that the record will be composed of all documents filed and served on parties.
4. The Commission preliminarily determined that this proceeding should be categorized as "quasi-legislative," as that term is defined in Pub. Util. Code

§ 1701.1(c)(1). Today's ruling confirms this categorization. As set forth in Rule 7.6, the determination as to category is subject to appeal.

5. In this proceeding, parties intending to seek an award of intervenor compensation must maintain daily record-keeping for all hours charged and a sufficient description for each time entry. As reflected in the provisions set forth in Pub. Util. Code § 1801.3(f) and § 1802.5, all parties seeking an award of intervenor compensation must coordinate their analysis and presentation with other parties to avoid duplication. In addition, intervenor's must classify time by issue.

Dated January 12, 2010, at San Francisco, California.

/s/ MICHAEL R. PEEVEY

Michael R. Peevey
Assigned Commissioner

