



FILED

05-29-09

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
(Filed December 18, 2008)

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

1. Summary

The American Recovery and Reinvestment Act of 2009 (Recovery Act) appropriated \$4.5 billion "to modernize the electric grid."¹ This ruling will generally refer to this as development of a "Smart Grid."

The California Public Utilities Commission (Commission or CPUC) has already recognized that incorporating new communications and information technologies into the electric grid can reduce greenhouse gas emissions, increase energy efficiency and demand response, expand the use of renewable energy, and improve reliability, all important state energy goals pursuant to the "Loading Order."² The Smart Grid funding provided by the Recovery Act

¹ American Recovery and Reinvestment Act of 2009 (Recovery Act), Pub. L. 111-5 (H.R. 1), 123 Stat. 115.

² The "Loading Order" is a concept developed in the 2003 Energy Action Plan adopted by the Commission and the California Energy Commission (CEC) and sets an order for the use of energy resources that consists of (1) energy efficiency, (2) demand response, (3) renewable energy, and, if necessary, (4) clean traditional power generation.

creates a unique opportunity for California to expand and accelerate its activities to modernize the state's electric infrastructure, using some federal dollars.

This ruling amends the scope of this rulemaking and solicits comments on a proposal that would:

- Require a reporting process by those investor-owned utilities (IOUs) participating in Recovery Act funded activities;
- 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;

This ruling also solicits comments, sets forth the procedural schedule, and addresses other procedural issues related to the Commission's role in supporting efforts by California utilities to secure Recovery Act funds for Smart Grid investments and other funded activities relating to the Smart Grid. The CPUC, working collaboratively with the CEC and the California Independent System Operator (CAISO), wants to encourage and prepare for Recovery Act federal money coming to the state in order to further our state energy policies, create jobs, and stimulate the economy.

2. Background

The Commission initiated this Order Instituting Rulemaking (OIR) 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.”³ The OIR further noted that as a consequence of the Energy Independence and Security Act of 2007 (EISA) amendments, the Public Utilities Regulatory Policy Act (PURPA) § 111(d)(16) now requires states “to consider imposing certain requirements and authorizing certain expenditures”⁴ pertaining to the Smart Grid.⁵

After the issuance of the OIR, the Recovery Act appropriated \$4.5 billion “to modernize the electric grid” through activities including the Smart Grid programs authorized by EISA.⁶ The Recovery Act also amended several EISA provisions pertaining to the Smart Grid.⁷ For example, the Recovery Act increased the percentage of federal support for the EISA § 1306 program from 20% to up to 50%. The amendments broadened the potential recipients of EISA § 1304 funding to include electric utilities *and* “other parties.” The Recovery Act also added a requirement that funded projects use “open protocols and

³ OIR at 2.

⁴ OIR at 8.

⁵ The Recovery Act at Division A, Title IV, Sec. 408 redesignated PURPA § 111(d)(16) as § 111(d)(18).

⁶ The Recovery Act, Section 2, Division A, Title IV, Energy and Water Development states: “For an additional amount for ‘Electricity Delivery and Energy Reliability,’ \$4,500,000,000: Provided, That funds shall be available for expenses necessary for electricity delivery and energy reliability activities to modernize the electric grid, to include demand responsive equipment, enhance security and reliability of the energy infrastructure, energy storage research, development, demonstration and deployment, and facilitate recovery from disruptions to the energy supply, and for implementation of programs authorized under title XIII of the Energy Independence and Security Act of 2007 (EISA) (42 U.S.C. 17381 et seq.) ... ”

⁷ Recovery Act at Division A, Title IV.

standards (including Internet-based protocols and standards) if available and appropriate.”⁸

Pursuant to the OIR, parties filed opening comments on February 9, 2009, with reply comments filed on March 9, 2009.

On March 3, 2009, the Administrative Law Judge (ALJ) issued an order scheduling a prehearing conference (PHC) and a workshop to address the Smart Grid funding available through the Recovery Act.

On March 19, 2009, the Federal Energy Regulatory Commission (FERC) issued a *Proposed Policy Statement and Action Plan*.⁹ FERC stated that:

The purpose of the policy statement [that FERC] ultimately adopts will be to prioritize the development of key interoperability standards, provide guidance to the electric industry regarding the need for full cybersecurity for Smart Grid projects, and provide an interim rate policy under which jurisdictional public utilities may seek to recover the costs of Smart Grid deployments before relevant standards are adopted through a Commission rulemaking.¹⁰

On March 27, 2009, a PHC took place at the Commission offices in San Francisco to take appearances in the proceeding, to refine the scope of the proceeding, and to develop a procedural timetable for the management of this proceeding. At the PHC, the assigned Commissioner indicated her preferences for the management of the proceeding via two decisions, one addressing the issues raised by the Recovery Act, and one addressing the many other issues set forth in the OIR.

⁸ The Recovery Act § 405.

⁹ Federal Energy Regulatory Commission, Smart Grid Policy, *Proposed Policy Statement and Action Plan* (March 19, 2009), PL09-4-000.

¹⁰ *Id.* at ¶ 3.

On the afternoon of March 27, 2009, a workshop took place to discuss opportunities created by the Recovery Act for California utilities and other companies to seek federal money for Smart Grid, review utilities' and other parties' plans to seek federal funding, and consider what the Commission should do to support the efforts of IOUs and other parties to seek Recovery Act funding related to Smart Grid in ways that promote the interests of all Californians.

On April 16, 2009, the United States Department of Energy (DOE), pursuant to the Recovery Act, issued a Draft Funding Opportunity Announcement (FOA) for the Smart Grid Demonstrations (#DE-FOA-0000036) and a Draft Notice of Intent (NOI) for the Smart Grid Investment Grant Program (#DE-FOA-0000058A), two major programs to fund demonstration and investments in the Smart Grid.

On April 21, 2009, the Commission held a "Smart Grid Symposium" to hear technical presentations on topics related to the Smart Grid. Also in attendance were three CPUC Commissioners, a CEC commissioner, and two representatives of the CAISO. Among other things, the symposium addressed how a Smart Grid may enhance generation, transmission and distribution systems, and enhance consumer demand response; cybersecurity issues; the difficulties of planning for and implementing a Smart Grid; and the potential for "clean green energy" that arises from the deployment of the Smart Grid. Approximately 140 persons attended the Symposium, with 184 more listening in via the live webcast.

On May 1, 2009, a *Scoping Memo and Ruling of Assigned Commissioner* (Scoping Memo) set the scope and procedural schedule for resolving the issues set out in the OIR. In addition, the Scoping Memo stated:

The scope of this proceeding shall also include those issues pertaining to Smart Grid affected by the Recovery Act legislation. A separate ruling will propose a reporting process and will address how this Commission will fulfill its responsibilities concerning an investor-owned utility's contributions of ratepayer-backed funds to Recovery Act activities.¹¹

3. Amendments to the Scope and Timetable of Proceeding

The OIR set the preliminary scope and timetable for this proceeding, but permitted the assigned Commissioner or ALJ to refine the scope of the proceeding and to adjust its schedule.¹² As noted above, on May 1, 2009, the Scoping Memo established the scope and schedule of the proceeding.

This ruling amends the scope and schedule of the proceeding to address the issues pertaining to Smart Grid that arise from the passage of the Recovery Act. More specifically, this ruling includes within the scope and seeks comments on possible reporting and review requirements pertaining to utility projects developed pursuant to DOE's FOA and NOI. In addition, this ruling sets 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.

3.1. Reporting Requirements for IOUs Seeking Recovery Act Funding

Governor Schwarzenegger has organized statewide efforts to pursue the maximum amount of Recovery Act funding in order to reduce the state's

¹¹ Scoping Memo at 7-8.

¹² OIR, Ordering Paragraph 4 at 28.

unemployment rate and stimulate the economy. He has also established a task force to “keep track of all of the dollars coming into the state and ensure that Californians see how effectively those dollars are being spent.”¹³

The CPUC, working collaboratively with the CEC and the CAISO, also wants to ensure that federal money comes to the state to further our state energy policies, create jobs, and stimulate the economy. In the area of Smart Grid funding, utilities and other parties will be the primary applicants and recipients of federal funding.

The state will generally not be a direct recipient of this funding. Accordingly, a reporting process so that the CPUC can track the efforts of California IOUs to secure federal Smart Grid funding and provide information to the Governor as requested, appears to be a reasonable approach to ensure the availability of this information.

For the IOUs, this proceeding will consider a reporting requirement consisting of the following:

- An IOU should submit a notice to the Commission’s Energy Division and the service list in this proceeding when an application for funding has been submitted to the DOE. The notice should include: the application submitted to the DOE or a link to the application on a publicly accessible utility or government website; a brief, one-page summary of the project or activity; the amount of federal funding being sought; estimated jobs created; amount and source of matching funding; partners involved in the project; and identification of any other type of federal or other funding being sought for the same activity;

¹³ Press Release, “Governor Schwarzenegger Creates Federal Economic Stimulus Task Force”, March 26, 2009, <http://www.gov.ca.gov/press-release/11814/>.

- An IOU should submit a further notice to the Commission's Energy Division and the service list in this proceeding when DOE awards funding for an activity or informs the IOU that the activity will not receive a DOE award;
- For projects or activities receiving a DOE award, an IOU should submit quarterly notices to the Commission's Energy Division describing in detail the status of all federally funded projects or activities until such time as the project or activity is complete;
- To the extent DOE requires an IOU to prepare and submit studies, evaluation, or other reports on Recovery Act-funded activities, the IOU should provide copies of the same reports to the Commission's Energy Division.

For entities other than the IOUs that apply for Recovery Act Smart Grid funding, voluntary reporting to the Commission's Energy Division, and in the case of the publicly-owned utilities, voluntary reporting to the CEC appears as a reasonable approach to acquiring the information needed. Voluntary reports could provide the same type of information that is required of the IOUs.

In addition, the proceeding will determine whether having the Commission post the notices and reports provided by parties on a publicly accessible website offers the best approach to disclosure and transparency.

This ruling requests comments on these proposed reporting requirements consistent with the timeline described below. Parties may also propose alternative reporting requirements. Parties should address the costs that may be incurred due to the reporting requirements under consideration.

3.2. Regulatory Process for Addressing IOU Contributions to Recovery Act-Funded Activities

DOE's funding of projects and investments through its FOA and NOI programs will be limited to 50% of total project costs. As such, applicants will also need to provide substantial matching funding toward projects.

This ruling amends the scope of this proceeding to include the consideration of the regulatory and financial issues that arise from IOU participation in programs that seek DOE funding. In particular, this proceeding will address issues that arise from Smart Grid investments and projects for which an IOU will eventually seek ratepayer funding. This Smart Grid regulatory process does not intend to provide any duplicative state funding for activities that have already been approved in a prior rate case or other CPUC proceeding.

Below, this ruling proposes three processes through which IOUs can move forward expeditiously with their applications and the Commission can exercise its duty to assess the reasonableness of any utility expenditures that require an increase in rates:

(1) Co-Funding that Requires No Additional Commission Action. To the extent an IOU can provide any needed co-funding without seeking any additional approval from the Commission, *i.e.*, without raising rates or receiving a certificate of public convenience and necessity (CPCN) or permit to construct (PTC), then no Commission review of the project is required beyond the reporting requirement described above. Based on discussions at the March 27 workshop, some IOU activities will likely fall in this category.

(2) Co-Funding for Which an IOU Does Not Seek Pre-approval. For activities that require investments that are incremental to those previously authorized by the Commission or new investments, an IOU may opt to make co-funding investments prior to receiving Commission approval and seek a traditional after-the-fact reasonableness finding in the IOU's next general rate case. This may be a preferred approach since it enables an IOU to move quickly without any extra Commission review outside of the standard general rate case process.

In the subsequent Commission review, any project that has received DOE funding, whether new or incremental, would carry with it a rebuttable presumption that the project is reasonable. The state filing, however, should nevertheless itemize, to the extent possible, the cost and benefits accruing to California for the ratepayer share of the funding. Deference is due to the DOE's judgment in making Recovery Act Smart Grid awards because both the DOE and this regulatory proceeding seek to provide support for projects initiated consistent with EISA. Furthermore, the public benefits that can derive from Smart Grid investments identified in the DOE FOA and NOI mirror those identified by the Commission in the OIR for this proceeding. Under this proposal, the burden of proof would shift to those opposing the project -- that is, those opposing the project would have to show that it is an "unreasonable" use of ratepayer funds. Absent a clear and convincing showing of unreasonableness, the Commission would find the federally funded project to be "reasonable."

Comments should discuss whether the close alignment of state and federal policies concerning the Smart Grid, which arises because both this rulemaking and the DOE grant programs seek to advance the goals set forth in EISA, makes it reasonable for this Commission to grant a rebuttable presumption of reasonableness to investments and projects that obtain matching funds.

In such a situation, however, the Commission would review requested co-funding carefully to ensure that there is no "double funding" of a Smart Grid investment or project, *i.e.*, that the IOU has not previously been authorized by the Commission to make expenditures for the same investment or project in a general rate case or other proceeding.

In addition, to facilitate this approach, the decision issued in this phase of this proceeding would authorize any electric utility that received an award of

DOE funds to book its share of the costs of projects or investments into a memorandum account, which could be recovered at the time of the subsequent Commission review.

(3) Co-Funding for Which an IOU Seeks Commission Contingent Approval in Advance of DOE Action. In instances where an IOU desires the Commission's contingent approval of expenditures before federal action, the following process would apply:

1. An electric utility would be authorized to book its share of costs of either projects or investment for which it is applying for DOE Smart Grid matching funds into a memorandum account. The memorandum account would be authorized in the Commission decision establishing this process. The funds in the account could be recovered as described below.
2. A utility would be authorized to file an advice letter seeking approval of a project in advance of Federal action when a project or group of projects does not require a California Environmental Quality Act (CEQA) review or the issuance of a CPCN. A timely Tier-3 review process would apply to the advice letter submitted by the utility. The filing should itemize, to the extent possible, the cost and benefits accruing to California for the ratepayer share of the funding. Each utility would be authorized to submit a single advice letter containing all the proposals that it will submit to the DOE and for which the utility seeks additional approval from the Commission for some or all of its share of the costs not covered by federal funding.

The advice letter review process would result in a resolution either granting contingent approval or rejecting the proposals for either a subset or all of a utility's proposals so that in the event of DOE funding, the IOU could proceed with its approved proposals with the assurance that it can recover the remaining costs through rate changes. Recovery would follow standard ratemaking practices.

To gain this approval, the advice letter must show that the IOU's proposal:

- a. Produces benefits, including the benefits of information and experience concerning the best way of implementing a Smart Grid, and exceeds the state portion of the proposal's costs;¹⁴
 - b. Does not require CEQA reviews. CEQA reviews are not required for many transmission and distribution related projects because of the categorical exemptions granted in CEQA (such as 14 CCR 15301) and incorporated into General Order 131d; and
 - c. Does not require the issuance of a CPCN or a permit to construct by the Commission.
3. If an IOU is seeking Commission approval in advance of federal action for projects that require the issuance of a CPCN, a PTC, or a CEQA determination, the IOU must submit the information and its request for contingent approval in the form of an application, which will receive expedited treatment.¹⁵ The filing should itemize, to the extent possible, the cost and benefits accruing to California for the ratepayer share of the funding.

Through this ruling parties' comments are sought on the processes described above, as well as alternative approaches that they may propose. Parties should address the cost and ratepayer impacts of potential IOU contributions to Recovery Act-funded activities.

¹⁴ Presumably DOE will reach its own determination as to whether the project benefits, including both the benefits of an economic stimulus and the information benefits obtained from the project, warrant funding.

¹⁵ Note: Because CEQA provides a categorical exemption to the upgrade and minor modification of existing facilities, such as transmission and distribution facilities, it is likely that only a few Smart Grid projects (such as a new transmission facility) would require a CEQA review.

In order to have in place procedures that will permit the CPUC to review and approve projects seeking DOE matching funds in a timely fashion, the following schedule is appropriate:

Event	Date
Comments on proposed process and DOE regulations, if available	June 15, 2009
Reply comments and further comments on DOE regulations, if available	June 29, 2009
Proposed Decision	July 20, 2009
Commission consideration	August 20, 2009

The decision will also address the schedule for the subsequent advice letter process.

Consistent with Pub. Util. Code § 1701.5, I anticipate that this portion of the proceeding will be completed within 18 months of the date of this amendment to the scoping memo.

IT IS RULED that:

1. The scope of the proceeding is amended in light of the passage of the American Recovery and Reinvestment Act of 2009 (Recovery Act) as set forth above.

2. The schedule for issues related to the Recovery Act is as set forth above unless further amended by the assigned Commissioner or ALJ.

Dated May 29, 2009 at San Francisco, California.

/s/ RACHELLE B. CHONG

Rachelle B. Chong
Assigned Commissioner

INFORMATION REGARDING SERVICE

I have provided notification of filing to the electronic mail addresses on the attached service list.

Upon confirmation of this document's acceptance for filing, I will cause a Notice of Availability of the filed document to be served upon the service list to this proceeding by U.S. mail. The service list I will use to serve the Notice of Availability of the filed document is current as of today's date.

Dated May 29, 2009, at San Francisco, California.

/s/ JOYCE TOM

Joyce Tom