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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 AND ADMINISTRATIVE LAW JUDGE'S JOINT RULING INVITING COMMENTS ON PROPOSED POLICIES AND FINDINGS PERTAINING TO THE SMART GRID POLICIES ESTABLISHED BY THE ENERGY INFORMATION AND SECURITY ACT OF 2007

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ASSIGNED COMMISSIONER AND ADMINISTRATIVE LAW JUDGE'S JOINT RULING INVITING COMMENTS ON PROPOSED POLICIES AND FINDINGS PERTAINING TO THE SMART GRID POLICIES ESTABLISHED BY THE ENERGY INFORMATION AND SECURITY ACT OF 2007

1. Summary

Today's ruling requests that parties submit comments pertaining to proposed policies and findings concerning the Smart Grid.

This is the first of two rulings. This ruling proposes policies and findings to fulfill the regulatory obligations imposed on states by the Energy Information and Security Act of 2007's (EISA)¹ amendments to the Public Utilities Regulatory Policies Act. Since the EISA addresses customer access to energy information, this ruling will address both the specific requirements of the EISA and customer access to energy information more broadly.

This ruling proposes tentative findings based on the record in this proceeding and asks a series of questions (and establishes a cycle of comments and replies) to further develop a record that will permit the Commission to address the issues identified for resolution by the Public Utility Regulatory Policies Act (PURPA) as amended by the EISA and to adopt the requisite findings by December 19, 2009.

A second ruling will follow shortly. This second ruling will solicit additional comments that pertain to this Commission's proposals to adopt policies to advance California's Smart Grid infrastructure² and will address the issues raised for this proceeding by Senate Bill (SB) 17 (Padilla), if enacted. The

¹ 16 U.S.C. 2621(d).

² Order Instituting Rulemaking (OIR) 08-12-009 at 3.

Commission continues to seek to adopt policies that prepare California's electric infrastructure for the communications and coordination challenges that a greater reliance on demand reduction, load management, renewable resources and electric vehicles pose. With the possible enactment of SB 17 and the tight deadlines that it adopts, this proceeding will become the most efficient vehicle for meeting its deadlines.

To assist the parties in addressing the proposed questions relating to the EISA's amendments to the PURPA, this ruling summarizes the record developed to date and identifies tentative conclusions that the record suggests to us. We stress that these conclusions are tentative, and we seek comments and replies that provide arguments and facts that either support or oppose the proposed policy direction. More specifically, comments that say "We support the proposed policies," or "We oppose the proposed policies," should be accompanied by the facts or reasoning that demonstrate why such a position is, or is not, consistent with law and the public interest.

Comments are due on October 19, 2009 and replies are due on October 26, 2009.

2. Procedural History

The Commission initiated this 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

³ OIR at 2.

The OIR further noted that as a consequence of amendments to the PURPA contained in the EISA, 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 Act⁶ appropriated \$4.5 billion “to modernize the electric grid” through activities including the Smart Grid programs authorized by EISA.⁷ The Recovery Act also amended several EISA provisions pertaining to the Smart Grid.⁸ 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 must use “open protocols and

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

⁷ 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.) ...”

⁸ The Recovery Act at Division A, Title IV.

standards (including Internet-based protocols and standards) if available and appropriate.”⁹

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 a ruling 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*.¹⁰ 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 [FERC] rulemaking.¹¹

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.

⁹ The Recovery Act § 405.

¹⁰ Federal Energy Regulatory Commission, *Smart Grid Policy, Proposed Policy Statement and Action Plan* (March 19, 1009), PL09-4-000.

¹¹ *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 the Smart Grid, review utilities' and other parties' plans to seek federal funding, and consider what the Commission should do to support the efforts of Investor-Owned Utilities (IOUs) and other parties to seek Recovery Act funding related to the Smart Grid in ways that promote the interests of the state.

On April 16, 2009, the 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 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.¹²

On May 29, 2009, the assigned Commissioner issued an Assigned Commissioner's Ruling (ACR) amending the scope of the proceeding.¹³ The

¹² Scoping Memo at 7-8.

¹³ *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 (ACR)*, May 29, 2009.

ACR notes that “[t]he Smart Grid funding provided by the Recovery Act creates a unique opportunity for California to expand and accelerate its activities to modernize the state’s electric infrastructure, using some federal dollars.”¹⁴ To take advantage of this opportunity, the ACR amended the scope of the rulemaking and solicited comments pertaining to Recovery Act issues.

On June 8, 2009, the Division of Ratepayer Advocates (DRA) filed an Appeal of Categorization, arguing that because of the amended scope, the proceeding should be recategorized as “ratemaking.” Responses to DRA’s appeal were submitted by the Consumer Federation of California (CFC), Pacific Gas and Electric Company (PG&E), the California Independent System Operator (CAISO) and Southern California Edison Company (SCE) by June 12, 2009. On June 18, 2009, the Commission adopted Decision (D.) 09-06-043, which denied the appeal of categorization.

On June 25, 2009, DOE issued a final FOA pertaining to the Smart Grid Investment Grant Program and a final FOA pertaining to the Smart Grid Demonstrations Program. On June 26, 2009, DOE issued “Frequently Asked Questions” documents pertaining to the two programs.¹⁵ On July 8, 2009, an ALJ Ruling took official notice of the DOE documents and attached them as reference

¹⁴ *Id.* at 2.

¹⁵ U.S. Department of Energy, *Financial Assistance Funding Opportunity Announcement: Smart Grid Investment Grant Program* (DE-FOA-0000058) *Frequently Asked Questions*, June 26, 2009; and U.S. Department of Energy, *Financial Assistance Funding Opportunity Announcement: Smart Grid Demonstration Program* (DE-FOA-0000036), *Frequently Asked Questions*, June 26, 2009.

for the parties in this proceeding.¹⁶ On July 16, 2009 FERC adopted a Smart Grid Policy Statement.¹⁷

On July 21, 2009, a proposed decision to create a review process for projects submitted to DOE for funding was mailed. On September 10, 2009, the Commission adopted D.09-09-029, which created a process for reviewing the projects developed by IOUs to seek Recovery Act funds.

Concerning the Smart Grid issues identified in EISA and in the OIR in this proceeding, the Commission held a Symposium with invited experts on April 21, 2009.

Subsequently, the Commission held a series of workshops addressing topics by issue area. On May 27, 2009, a workshop addressed consumer issues, including privacy, that are raised by the deployment of a Smart Grid. On June 5, 2009, a workshop addressed technical and policy issues concerning the Smart Grid and its affects on the distribution networks of electric utilities. On June 28, a workshop addressed the technical and policy issues concerning the Smart Grid and its affects on the transmission network for electric power and energy storage within California. On July 15, 2009, a Smart Grid workshop addressed technical and policy issues that the deployment of plug-in electric vehicles will pose for California electric networks. On July 31, 2009, a workshop addressed the best regulatory approach for conducting regulatory reviews of Smart Grid infrastructure investments that will permit a thorough yet timely review.

¹⁶ *Administrative Law Judge's Ruling Taking Official Notice of Certain Department of Energy Publications Associated with the Recovery Act*, July 8, 2009.

¹⁷ 128 FERC ¶ 61, 060, US Federal Energy Regulatory Commission, 18 CFR Chapter 1, Smart Grid Policy, July 16, 2009.

During the period of this proceeding, Smart Grid policies have also been the subject of California legislation. SB 17 (Padilla), after being passed in both the California Assembly and Senate, was enrolled on September 11, 2009 for consideration for enactment by Governor Schwarzenegger.

3. Federal Law and Proceeding Scope

This proceeding was initiated in part to fulfill the statutory requirements that EISA added to PURPA and in part to develop state policies that develop a Smart Grid in ways beneficial to California and consistent with state policies towards renewable energy, distributed energy, demand response, and other programs already in place.

This section of this ruling provides a legal analysis of what the federal statutes require the Commission to consider.

3.1. The EISA Amendments to PURPA Create Five Tasks for This Proceeding

Section 1307 of EISA amended § 111(d)¹⁸ of PURPA by adding two paragraphs regarding the Smart Grid. After corrections of initial clerical errors, these became paragraphs 18 and 19 in 16 U.S.C. § 2621(d). For clarity, we include them here:

16 U.S.C. § 2621(d)(18) Consideration of Smart Grid investments.

(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 that the electric utility considered an investment in a qualified smart grid system based on appropriate factors, including --

- (i) total costs;

¹⁸ 16 U.S.C. 2621(d).

- (ii) cost-effectiveness;
- (iii) improved reliability;
- (iv) security;
- (v) system performance; and
- (vi) societal benefit.

(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.

(C) Obsolete equipment. Each State shall consider authorizing any electric utility or other party of the State to deploy a qualified smart grid system to recover in a timely manner the remaining book-value costs of any equipment rendered obsolete by the deployment of the qualified smart grid system, based on the remaining depreciable life of the obsolete equipment.

and

16 U.S.C. § 2621(d)(19) Smart Grid information.

(A) Standard. All electricity purchasers shall be provided direct access, in written or electronic machine-readable form as appropriate, to information from their electricity provider as provided in subparagraph (B).

(B) Information. Information provided under this section, to the extent practicable, shall include:

- (i) Prices. Purchasers and other interested persons shall be provided with information on -- (I) time-based electricity prices in the wholesale electricity market; and (II) time-based electricity retail prices or rates that are available to the purchasers
- (ii) Usage. Purchasers shall be provided with the number of electricity units, expressed in kwh, purchased by them.
- (iii) Intervals and projections. Updates of information on prices and usage shall be offered on not less than a daily basis, shall include hourly price and use information, where available, and

shall include a day-ahead projection of such price information to the extent available.

(iv) Sources. Purchasers and other interested persons shall be provided annually with written information on the sources of the power provided by the utility, to the extent it can be determined, by type of generation, including greenhouse gas emissions associated with each type of generation, for intervals during which such information is available on a cost-effective basis.

(C) Access. Purchasers shall be able to access their own information at any time through the Internet and on other means of communication elected by that utility for Smart Grid applications. Other interested persons shall be able to access information not specific to any purchaser through the Internet. Information specific to any purchaser shall be provided solely to that purchaser.

Because of the structure of PURPA, the obligations imposed upon states by regulatory standards adopted in paragraphs 18 and 19 become clear only through a reading of the introductory section of 16 U.S.C. § 2621 and 16 U.S.C. § 2611:

16 U.S.C. § 2621

(a) Consideration and determination. Each State regulatory authority (with respect to each electric utility for which it has ratemaking authority) and each nonregulated electric utility shall consider each standard established by subsection (d) and make a determination concerning whether or not it is appropriate to implement such standard to carry out the purposes of this chapter. For purposes of such consideration and determination in accordance with subsections (b) and (c), and for purposes of any review of such consideration and determination in any court in accordance with section 123 [16 USCS § 2633], the purposes of this title supplement otherwise applicable State law. Nothing in this subsection prohibits any State regulatory authority or nonregulated electric utility from making any determination that it is not appropriate to implement any such standard, pursuant to its authority under otherwise applicable State law.

(b) Procedural requirements for consideration and determination.

(1) The consideration referred to in subsection (a) shall be made after public notice and hearing. The determination referred to in subsection (a) shall be --

(A) in writing,

(B) based upon findings included in such determination and upon the evidence presented at the hearing, and

(C) available to the public.

(2) Except as otherwise provided in paragraph (1), in the second sentence of section 112(a) [16 USCS § 2622(a)], and in sections 121 and 122 [16 USCS §§ 2631, 2632], the procedures for the consideration and determination referred to in subsection (a) shall be those established by the State regulatory authority or the nonregulated electric utility.

(c) Implementation.

(1) The State regulatory authority (with respect to each electric utility for which it has ratemaking authority) or nonregulated electric utility may, to the extent consistent with otherwise applicable State law --

(A) implement any such standard determined under subsection (a) to be appropriate to carry out the purposes of this chapter, or

(B) decline to implement any such standard.

(2) If a State regulatory authority (with respect to each electric utility for which it has ratemaking authority) or nonregulated electric utility declines to implement any standard established by subsection (d) which is determined under subsection (a) to be appropriate to carry out the purposes of this title, such authority or nonregulated electric utility shall state in writing the reasons therefor. Such statement of reasons shall be available to the public.

(3) If a State regulatory authority implements a standard established by subsection (d)(7) or (8), such authority shall --

(A) consider the impact that implementation of such standard would have on small businesses engaged in the design, sale, supply, installation or servicing of energy

conservation, energy efficiency or other demand side management measures, and

(B) implement such standard so as to assure that utility actions would not provide such utilities with unfair competitive advantages over such small businesses.

Thus, this section of PURPA sets rules on how the Commission, acting for the state of California, is to “determine” whether to adopt a particular requirement. The Commission is to “make a determination concerning whether or not it is appropriate to implement such standard to carry out the purposes of this chapter.” In making this determination, PURPA requires the Commission to provide public notice, make the determination in writing, make findings that support the determination based on evidence presented, and make the determination available to the public.

Furthermore, the “purposes of this chapter” are defined not in EISA, but in § 2611 of PURPA. It reads as follows:

16 U.S.C. § 2611

The purposes of this chapter are to encourage - (1) conservation of energy supplied by electric utilities; (2) the optimization of the efficiency of use of facilities and resources by electric utilities; and (3) equitable rates to electric consumers.

Finally, if the Commission determines that a requirement would advance the purposes of the act, the Commission has authority under PURPA to either implement or decline to implement the standard. If the Commission declines to implement a standard deemed appropriate, however, the Commission must explain its reasons for so doing.

To summarize, the EISA amendments, in the context of PURPA, impose on states an obligation to determine whether to adopt a specific statutory standard as consistent with the purposes of the act and then to determine whether to

impose the standard on each utility subject to state ratemaking jurisdiction. The law delegates to the state broad power, to the extent consistent with state law, to determine the specific requirements of the standards as long as they are “consistent with the purposes of this chapter.”

Finally, 16 U.S.C. § 2622 requests the states to make the determinations required by 16 U.S.C. § 2621. EISA amended 16 U.S.C. § 2622(b), which generally contains time limitations, to add a timetable for a state’s determinations of whether to adopt the standards proposed in 16 U.S.C. § 2621(d)(18) and(19). Specifically, 16 U.S.C. § 2622(b)(6) now reads:

(6) (A) Not later than 1 year after December 19, 2007, each State regulatory authority (with respect to each electric utility for which it has ratemaking authority) and each nonregulated utility shall commence the consideration referred to in section 2621 of this title, or set a hearing date for consideration, with respect to the standards established by paragraphs (17) through (18) of section 2621(d) of this title.

(B) Not later than 2 years after December 19, 2007, each State regulatory authority (with respect to each electric utility for which it has ratemaking authority), and each nonregulated electric utility, shall complete the consideration, and shall make the determination, referred to in section 2621 of this title with respect to each standard established by paragraphs (17) through (18) of section 2621(d) of this title.

In addition, we note that 16 U.S.C. § 2622(d) states:

(d) Prior State actions. Subsections (b) and (c) of this section shall not apply to the standards established by paragraphs (11) through (13) and paragraphs (16) through (19) of section 111(d) [16 USCS § 2621(d)] in the case of any electric utility in a State if, before the enactment of this subsection -- (1) the State has implemented for such utility the standard concerned (or a comparable standard); (2) the State regulatory authority for such State or relevant nonregulated electric utility has conducted a proceeding to consider implementation of the standard

concerned (or a comparable standard) for such utility; or (3) the State legislature has voted on the implementation of such standard (or a comparable standard) for such utility.

16 U.S.C. § 2622 also states:

In the case of the standards established by paragraphs (16) through (19) of section 111(d) [16 USCS § 2621(d)], the reference contained in this subsection to the date of enactment of this Act shall be deemed to be a reference to the date of enactment of such paragraphs [enacted Dec. 19, 2007].

As a result, this proceeding will determine for each electric utility under the Commission's ratemaking authority the following questions pertaining to ratemaking:

1. Whether to require a consideration of Smart Grid investments before making any new investment in the grid;
2. Whether to adopt a special ratemaking treatment for Smart Grid investments; and
3. Whether the Commission should adopt a policy authorizing a utility to recover the remaining book value of equipment made obsolete by Smart Grid investments.

In addition, the proceeding must also determine whether to impose requirements for information disclosure to customers by electric utilities.

Specifically,

4. Whether to require utilities to provide customers with access in written and/or electronic form to information concerning
 - (i) Prices.
 - (ii) Usage.
 - (iii) Daily updates of prices with details on hourly basis and day ahead projections to the extent available.
 - (iv) Sources - annually with written information on the sources of the power provided by the utility, to the extent it can be determined, by type of generation, including greenhouse gas emissions associated with each type of

generation, for intervals during which such information is available on a cost-effective basis.

5. Whether to impose a requirement on utilities to provide purchasers of electric power with access to their own information at any time through the Internet and on other means of communication elected by that utility for Smart Grid applications and whether to provide to other interested persons access to information on electricity use and prices not specific to any purchaser through the Internet. Whether Information specific to any purchaser should be provided solely to that purchaser.

This ruling assesses the information provided in the record of comments and in the workshops pertaining to these matters and, where possible, sets forth tentative conclusions as to what policies serve the public interest. In addition, this ruling invites parties to provide more information relevant for the Commission's analysis.

3.2. Questions for Parties to the Rulemaking

Parties are invited to comment on the above legal analysis concerning what obligations PURPA, as amended by EISA, places on this Commission and this proceeding.

4. Considerations Triggered by EISA's Amendments to PURPA

As described in Section 3.1, our review of PURPA as amended by EISA identified five areas where the Commission must make a determination concerning whether or not it is appropriate to implement such standard to carry out the purposes of PURPA. In particular, PURPA requires that the Commission make a determination for each of the utilities subject to its regulatory authority and make that determination consistent with the requirements contained in 16 U.S.C. § 2621(a) - 16 U.S.C. § 2621(c), as discussed above.

Concerning the federal requirements to provide public notice, to make determinations in writing, and to make findings that support determinations based on evidence presented, we note that the Commission's standard procedures comport with state statutory requirements that impose these requirements on the Commission. We also note that the tentative conclusions reached in this ruling are the result of a publicly noticed process that has developed a record through filed comments.

In addition, this ruling invites parties to provide additional comments and information that can be used by the Commission in its deliberations and can permit the Commission to make the required findings. Moreover, the record on several of the EISA topics is already quite extensive.

Finally, we note that Commission procedures guarantee that the conclusions the Commission reaches will be publicly available in the form of a written decision, which will be subject to public notice and comment. For these reasons, Commission deliberation creates a process that conforms to the procedural requirements of PURPA as amended by EISA.

5. EISA Obligations Related to Ratemaking

5.1. Should the Commission Require Each Utility to Demonstrate that it has Considered a Smart Grid Investment Before Making any Grid Investment?

As the legal analysis in section 3 makes clear, PURPA, as amended by EISA, requires that for each electric utility subject to the Commission's ratemaking authority, the Commission must make findings as to whether to require that the utility, before investing in any nonadvanced grid technologies, demonstrate that it has considered a Smart Grid investment based on factors that

include: (i) total costs; (ii) cost-effectiveness; (iii) improved reliability; (iv) security; (v) system performance; and (vi) societal benefit.

This section considers whether this Commission should adopt this requirement as consistent with the purposes of EISA in the California context.

5.1.1. Positions of Parties

In comments filed in this proceeding, the California IOUs were uniform in their opposition to the imposition of a requirement that a utility demonstrate that it has considered a Smart Grid investment before investing in any nonadvanced grid technologies.

San Diego Gas & Electric Company (SDG&E) argues against requiring a utility to demonstrate that it has considered an investment in a Smart Grid system before undertaking investments in nonadvanced grid technologies. SDG&E argues that “[s]mart grid investment decisions should be made a part of every utility’s normal investment planning process.”¹⁹ SDG&E therefore argues that such a requirement is not necessary. Moreover, SDG&E argues that such a requirement would be counterproductive and lead to inefficiencies in infrastructure development. SDG&E argues that “if a utility is required to demonstrate to the Commission that it considered an investment in a qualified smart grid system as an alternative, it would lengthen the investment planning process and make it less efficient.”²⁰

PG&E similarly argues that the Commission should not impose such a requirement on any utility. PG&E points out that “the EISA ‘smart grid’

¹⁹ SDG&E Comments at 6.

²⁰ *Id.*

definition is broad and somewhat imprecise, so that determining the technical difference between smart grid and non-smart grid investments cannot be made without further evaluation and review by individual state utility commissions and policymakers.”²¹ Thus, PG&E’s view is that it would prove difficult to determine to which activities the requirement applies.

SCE also opposes the adoption of this requirement. SCE argues that “[w]hile SCE strongly supports the intent of EISA Section 1307(a), which seeks to promote the deployment of a smart grid electric system, we are concerned that the language of this section, if taken to an extreme, might inadvertently delay ongoing and necessary electric utility capital deployment and infrastructure replacement programs.”²² In addition, SCE argues that “even with emerging advancements in energy technologies, telecommunications, and computing technology capabilities, the electric power deliver system over the next ten years will largely continue to consist of longstanding and proven technologies, such as conductors, poles, towers, and transformers.”²³

PacifiCorp argues that “[s]mall utilities and multi-jurisdictional utilities with small California customer bases should be excluded from this requirement.”²⁴

California Association of Small and Multi-Jurisdictional Utilities (CASMU) more broadly states that:

²¹ PG&E Comments at 7.

²² SCE Comments at 14.

²³ *Id.*

²⁴ PacifiCorp Comments at 3.

Mountain Utilities is not connected to any transmission system. Bear Valley Electric Service is physically connected to the distribution system of Southern California Edison Company. PacificCorp owns a transmission grid spanning several states, and operates its own control area, which is not connected to the CAISO grid operationally. Sierra Pacific Power Company operates its own control area as well, and like PacificCorp, Sierra Pacific's grid is not connected operationally with the CAISO grid.²⁵

Because of these facts, CASMU argues that these utilities should not be held to any of EISA's proposed requirements for the Smart Grid at this time.

Sierra Pacific argues that "the programs proposed for smart grid implementation may achieve certain goals in the three large IOUs' service territories, while being impracticable in Sierra's much smaller California territory."²⁶ On the other hand, Sierra Pacific notes that it "is in the process of investigating a smart grid program for its Nevada territory."²⁷

The opposition to this requirement was not limited to IOUs. Enspira, similarly argues that "[i]mposing a strict interpretation of this section will be overly burdensome."²⁸

The Utility Reform Network (TURN), like PG&E, also notes the lack of clarity as to what constitutes either a Smart Grid investment or a "non-advanced grid technology."²⁹ As a result, "TURN recommends that the Commission defer any decision on this proposed standard until there is a more definitive definition

²⁵ CASMU Comments at 3.

²⁶ Sierra Pacific Comments at 3.

²⁷ *Id.*

²⁸ Enspira at 5.

²⁹ TURN Comments at 6.

of what constitutes a ‘smart grid’ investment and a better understanding of the current status of a utility’s conformance to a ‘smart grid’ system.”³⁰

DRA argues that “[w]ithout specifics on what technologies the Commission requires makes it inherently difficult to make this consideration a requirement.”³¹

Some parties, however, did support the imposition of this requirement. CFC argues that the Commission should impose this requirement, but CFC does not provide any analysis to support its recommendation.³² However, CFC does quote a California Energy Commission’s (CEC’s) 2007 Integrated Energy Policy Report, that it contends endorses this position.³³

CPower also supports the imposition of such a requirement without a supporting argument³⁴ as does TechNet:³⁵

California Large Energy Consumers Association (CLECA) Argues that “[p]rior to undertaking investments in either non-advanced or advanced grid-technologies, the Commission should require that any investment meet the criteria listed above in a cost-effective manner that minimized the obsolescence of existing equipment and thus the need for customers to pay for stranded costs.”³⁶

³⁰ *Id.* at 7.

³¹ DRA Comments at 4.

³² CFC Comments at 21.

³³ *Id.* at 21.

³⁴ CPower Comments at 3.

³⁵ TechNet Comments at 6.

³⁶ CLECA Comments at 6.

5.1.2. Discussion

We propose to decline to adopt the proposed EISA requirement that a utility demonstrate that it considered Smart Grid investments before making any new investments in the grid. Specifically, we believe that the Commission should decline to do so because imposing such a requirement on California utilities is inconsistent with the purposes of the act, which seek to optimize the efficient use of facilities and resources by electric utilities and lead to equitable rates to electric consumers.³⁷

For Sierra Pacific, Mountain Utilities, PacifiCorp and Bear Valley Electric, we plan to find that the small size of these utilities and the nature of their operations makes it inappropriate to impose such a requirement. Specifically, Sierra Pacific, Mountain Utilities, and PacifiCorp do not operate within the CAISO's control area. Bear Valley, which does, is only a distribution customer of another larger utility. Thus, a requirement to consider Smart Grid investments before making any grid investment would only impose costs and inefficiencies on IOUs while producing no benefits.

In addition to this finding for small IOUs, we plan to find that adopting such a blanket requirement for any IOU would not serve the public interest. First, many grid replacements, such as a pole replacement or grid extension, are routine matters and tasks that utilities must perform. A requirement to make a consideration of a "Smart Grid" technology a prerequisite to such action would almost surely increase costs and eventually consumer rates while decreasing response times for services. Thus, a requirement that a utility consider a "Smart

³⁷ 16 U.S.C. § 2611.

Grid” investment in such a circumstance is inconsistent with the purposes of the act, which seek to produce equitable rates to consumers. Moreover, for the foreseeable future, much of the technology used in the distribution network, such as poles, wires, and trenching, will remain decidedly “non-smart.”

Second, for all utilities, the imposition of a requirement to demonstrate that the utility has considered a Smart Grid investment imposes a regulatory hurdle that can slow infrastructure investment and modernization, thereby undercutting the EISA purpose of producing an the efficient use of facilities and resources by electric utilities.

Third, the utilities’ routine regulatory proceedings offer an opportunity for the consideration of Smart Grid investments as part of the Commission’s review of any grid or transmission project. Although we believe that the public interest is served by a consideration of Smart Grid investments in most instances, we conclude that the Commission should decline to make such a consideration a requirement. The participation of consumer advocates and careful review by the Commission will ensure consideration of Smart Grid projects by utilities when doing so advances the efficient use of the network and leads to equitable consumer rates. Once again, the imposition of a requirement to consider Smart Grid investments even in situations for which there is no rational basis would produce costs without benefits and is therefore inconsistent with the purposes of EISA.

5.1.3. Questions for Parties

For the reasons cited above, we propose that the Commission decline to impose on any California utility subject to its ratemaking authority an obligation to demonstrate that it has considered making a Smart Grid investment before making a new investment in the grid. We therefore seek comments regarding

the advisability of this proposed course of action and on the merits of our reasoning.

In addition, we seek comments and submissions that will further develop the record and enable the Commission to support the requisite findings needed to demonstrate that it has met the requirements for consideration and determination, the procedural requirements, and the implementation requirements set forth in 16 U.S.C. § 2621(a), 16 U.S.C. § 2621(b), and 16 U.S.C. § 2621(c).

5.2. 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?

EISA requires that each state 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.”³⁸ This section develops our initial assessment as to whether such a requirement would be necessary and consistent with the purposes of the act.

5.2.1. Positions of Parties

Each of the responding California IOUs support adopting this requirement of authorizing recovery of capital, operating expenditures and other costs associated with a qualified Smart Grid system from ratepayers.

³⁸ 16 U.S.C. § 2621(d)(18)(B)

SCE argues that “[s]mart grid development and deployment expenses should be recoverable from ratepayers.”³⁹ SCE cites Commission decisions, potential benefits and state law. SCE asserts that “[e]xisting precedent, potential benefits, and existing state law support utility recovery of its costs and investments.”⁴⁰

Similarly, PG&E argues that “the Commission should authorize an electric utility to recover any reasonable costs associated with the deployment of qualified smart grid projects, investments and programs, including an incentive rate of return on such investments if they meet or support major energy policy goals of the state ...”⁴¹

SDG&E argues that “smart grid assets should be included in the utility asset base similar to any asset that is deemed ‘used and useful’ for the ratepayer.”⁴² SDG&E further argues that these assets “warrant the design of an incentive-based rate of return (ROR) for smart grid assets.”⁴³

Sierra Pacific argues that “[t]o the extent that the Commission imposes goals, measures, or other criteria upon Sierra’s California service territory, then such costs should be recovered from Sierra’s California customers.”⁴⁴

PacifiCorp similarly argues that “[y]es, utilities should be able to recover the costs of implementing and operating smart grid systems within their

³⁹ SCE Comments at 15.

⁴⁰ *Id.*

⁴¹ PG&E Comments at 8.

⁴² SDG&E Comments at 6.

⁴³ *Id.* at 7.

⁴⁴ Sierra Pacific at 7.

California service territories from their customers within those service territories.”⁴⁵

DRA also supports rate recovery for Smart Grid assets noting that:

... the Commission considered and authorized the rate recovery of AMI deployment in Applications (A.) 05-03-015, A.05-06-028 and A.07-07-026 based on the following criteria: total costs; cost effectiveness; improved reliability; security; system performance; and societal benefit. ... This rulemaking should adopt these standards to remain consistent with existing Commission policy, and for the purpose of federal statutory compliance with PURPA
...⁴⁶

TURN “recommends that the Commission NOT adopt this federal standard.”⁴⁷ TURN views this federal standard as imposing special ratemaking standards for Smart Grid investments, and argues:

The Commission should not grant electric utilities with any “special” or unique ratemaking treatment for smart grid investments, however defined. Rate recovery for smart grid investments should be governed by traditional ratemaking policies, all of which are designed to ensure that utilities do recover reasonable and cost effective expenditures through rates and allowed [sic] an opportunity to earn a reasonable rate of return on capital investments.⁴⁸

Thus, TURN makes an argument with premises similar to that of DRA, but comes to the opposite conclusion. TURN sees following traditional ratemaking

⁴⁵ PacifiCorp Comments at 3.

⁴⁶ DRA Comments at 5.

⁴⁷ TURN Comments at 7, emphasis in original.

⁴⁸ TURN Comments at 7-8.

practices as a rejection of the federal standard, while DRA sees the adoption of traditional ratemaking as compliance with the standard.

CFC also supports traditional ratemaking, stating that:

... [o]nce smart grid investments are isolated, then the traditional rules of ratemaking should apply to those investments. If an investment is prudent and the capital addition is used and useful to utility service, and if costs classified as expenses are reasonable, they are recoverable.⁴⁹

TechNet “agrees that the Commission should authorize recovery for qualified Smart Grid systems.”⁵⁰ TechNet, furthermore, argues that “[w]here necessary, a slightly higher rate of return authorization might incentivize utilities to accelerate Smart Grid investment projects.”⁵¹

CPower takes a more cautious approach, arguing that “[t]he utility should be required to demonstrate that that any investments it makes are based on a comprehensive review of all resources, including non-traditional resources such as demand response, that can best meet the needs of its customers at the lowest possible cost.”⁵²

Enspira argues that:

If investments in smart grid related solutions are going to become the mainstay of electric utilities instead of a temporary program, then utilities need to have confidence that their investments in these technologies and solutions will not face higher hurdles than current utility investments. This would indicate that utilities should be able

⁴⁹ CFC Comments at 25.

⁵⁰ TechNet Comments at 7.

⁵¹ *Id.*

⁵² CPower Comments at 2.

to enjoy the same rates of return and cost recovery as other expenditures.⁵³

5.2.2. Discussion

We see no significant difference between the Commission traditional ratemaking procedures, which offer IOUs a reasonable return on investments made to provide service to ratepayers, and the proposed requirement that would adopt as a regulatory standard “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 ...”⁵⁴ We therefore see no need for the Commission to adopt this provision for Smart Grid investments because this reasonable ratemaking treatment already applies to all utility investments, including those related to the Smart Grid.

Additionally, we see no reason for the Commission to adopt this federal standard for all IOUs in California. Since this standard is already the current practice, adoption of a new federal standard may create confusion. In particular, creating a special rate treatment for Smart Grid investments would likely prove counterproductive and lead to regulatory delays in determining whether a particular investment qualified for special treatment.

In addition, providing special treatment does not appear to comport with the stated purposes of PURPA, which include ensuring the efficient use of resources and equitable rates for consumers. Special rate treatment for Smart Grid investments is likely to distort the use of resources and lead to higher rates

⁵³ Enspira Comments at 5.

⁵⁴ 16 U.S.C. § 2621(d)(18)(B). We note that our discussion assumes that only a “reasonable” Smart Grid system would be “qualified.”

for electric customers than needed to finance network upgrades. Thus, adopting this standard in the California setting would be inconsistent with the purposes of PURPA.

Similarly, we see no reason for granting the developers of the Smart Grid an increase in return beyond that offered for other investments. Current California law and practice requires that utilities have an opportunity to earn a fair return on the funds that they invest. Granting premiums above market may, absent a compelling reason, distort investment choices and lead to inefficient results. Thus, providing an earnings premium for Smart Grid investments is inconsistent with the statutory purposes of using resources efficiently. For the reasons contained in the discussion above, we propose that the Commission reject a federal standard that would authorize 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. We note that the standard proposed in EISA is essentially the one currently in place for all utility investments in California. We propose that the Commission reject special treatment for Smart Grid infrastructure projects as both unnecessary, and ultimately inconsistent with the purposes of PURPA.

5.2.3. Questions for Parties

We seek comments regarding the advisability of this proposed rejection of an additional ratemaking standard that would offer special treatment to infrastructure investments deemed to be a “qualified Smart Grid.” In addition, we seek comments that will help develop the record and enable the Commission to make the requisite findings needed to demonstrate that the Commission has

meet the requirements for consideration and determination, the procedural requirements, and the implementation requirements set for in 16 U.S.C. § 2621(a), 16 U.S.C. § 2621(b), and 16 U.S.C. § 2621(c).

5.3. Should the Commission Authorize any electric utility that Deploys a Smart Grid to Recover in a Timely Manner the Remaining Book-Value Costs of Any Equipment Rendered Obsolete by the Deployment of the Qualified Smart Grid System, Based on the Remaining Depreciable Life of the Obsolete Equipment?

As the legal analysis above demonstrates, PURPA, as amended by EISA, requires that for each electric utility subject to the Commission's ratemaking authority, the Commission must make findings as to whether to permit timely recovery of the remaining book-value costs of any equipment rendered obsolete by the deployment of the qualified Smart Grid system, based on the remaining depreciable life of the obsolete equipment. In this section, we begin a consideration of whether to adopt this requirement as a new state regulatory standard.

5.3.1. Positions of Parties

Although this issue was posed in the OIR, only two parties filed comments in response.

In its Comments, SDG&E argues that the Commission should let obsolete equipment remain on utility books because "these assets were placed in service under a specific recovery time as deemed appropriate by the Commission at the time."⁵⁵

⁵⁵ *Id.*

SCE believes that further analysis is required to better understand the potential impacts of replacing an increasing amount of grid assets (which may have asset lives of several decades) with technologies that have asset lives of perhaps a single decade.⁵⁶

5.3.2. Discussion

We note that there is little record in this proceeding that would support detailed policies pertaining to the regulatory treatment of infrastructure rendered obsolete by Smart Grid investments. We invite comments on this issue so that we will have a full record on which to decide this matter consistent with EISA.

Based on the record developed so far, we would tentatively conclude that it is more consistent with the purposes of PURPA to defer consideration of specific rate treatment for obsolete equipment to general rate cases or applications that address Smart Grid investments. At that time, the Commission can develop a record that enables the Commission to address the ratemaking treatment of any equipment that is made obsolete.

5.3.3. Questions for Parties

For the reasons contained in the discussion above, we invite further comments regarding the advisability of adopting a regulatory treatment for equipment rendered obsolete by Smart Grid investments. In particular, we seek comments on whether to defer the adoption of rules for the rate treatment of obsolete equipment to general rate cases or applications that address Smart Grid investments. Specifically, we seek comments that will help develop the record

⁵⁶ SCE Comments at 16 dated February 9, 2009.

and enable the Commission to make the requisite findings needed to demonstrate that it has meet the requirements for consideration and determination, the procedural requirements and the implementation requirements set for in 16 U.S.C. § 2621(a), 16 U.S.C. § 2621(b), and 16 U.S.C. § 2621(c).

6. Customer Access to Energy Information

6.1. Should the Commission Require Utilities to Provide Customers with Access to the Information Referenced in 16 U.S.C. § 1621(d)(19)(B) of PURPA in Written and Electronic Form?

As the legal analysis above makes clear, PURPA, as amended by EISA, requires that, for each electric utility subject to the Commission's ratemaking authority, the Commission make findings as to whether to require the utility to provide access to information pertaining to a customer's electricity usage. The statute proposes that the information to be provided by the utility must include prices, both wholesale time-based electricity prices and time-based retail electricity prices, and usage. Furthermore, PURPA proposes that such information must be updated "on not less than a daily basis,"⁵⁷ including hourly prices and use information and include a day-ahead projection of prices.

Additionally, PURPA proposes that the utility would provide information concerning the sources of power by generation type, "including greenhouse gas emissions associated with each type of generation, for intervals during which such information is available."⁵⁸

⁵⁷ 16 U.S.C. § 1621(d)(19)(B)(iii).

⁵⁸ 16 U.S.C. § 1621(d)(19)(B)(iv).

Finally, we note that PURPA, as amended by EISA, makes unnecessary further consideration of information disclosure where there has been “prior state action.”

6.1.1. Positions of Parties

SCE supports providing electricity information to customers, but believes that the information should not be limited to the information that is listed in the statute. SCE notes that it is working to provide additional information to customers beyond what is listed in EISA § 1307(a), such as peak versus off-peak usage summaries, and information showing a customer’s electricity usage in relation to a tiered rate structure. SCE also specifies how it is or is not meeting the standards of EISA § 1307(a). Notably, SCE believes that it is already compliant with or will be compliant with most of the standards in the near future, excluding providing time-based wholesale market prices, regarding which SCE replies that it “currently does not provide time-based wholesale prices to its customers.”⁵⁹

SDG&E states that it is already in compliance with the standards outlined in EISA § 1307(a).⁶⁰

PG&E submits that any proposed information standards should be “evaluated as part of the Commission’s broader initiatives” regarding demand response and dynamic pricing and not implemented in this rulemaking.⁶¹ PG&E

⁵⁹ SCE Comments at 23.

⁶⁰ SDG&E Comments at 7. In a response to Question 7, SDG&E inadvertently refers to the wrong PURPA standard in their response. As such, they do not answer the question regarding whether or not the Commission should implement this particular Smart Grid standard.

⁶¹ PG&E Comments at 11.

also notes that it believes that it is already in compliance with this standard as part of prior Commission action.⁶²

DRA suggests that previous Commission actions⁶³ have already satisfied the requirements of this standard. Nevertheless, DRA argues that the Commission should affirm and adopt the standards as consistent with existing Commission policy to show compliance with the statute.⁶⁴

TURN states that the Commission should not adopt the standard as it relates to providing hourly wholesale spot market prices, but does not oppose adopting the standard regarding the sources of generation supplied to the customer. TURN argues that California's IOUs are already required to submit similar information to their customers via a bill insert, and, as such, requiring the IOUs to include data regarding greenhouse gas (GHG) emissions associated with each type of generation in a bill insert "would not be overly burdensome."⁶⁵

CFC supports adopting the standard, but cautions "only if access to the information is secure."⁶⁶ CFC states that additional work is needed before implementing this standard in order to create a verification system to ensure security. CFC also supports providing prices and GHG emission information as it is useful to customers to make more efficient use of their consumption and to

⁶² *Id.* at 12.

⁶³ Advanced Metering Infrastructure (AMI) Minimum Functionality Criteria, ACR, R.02-06-001 (February 19, 2004).

⁶⁴ DRA Comments at 6.

⁶⁵ TURN Comments at 10.

⁶⁶ CFC Comments at 26.

reduce GHG, but is unsure if the IOUs have the needed technology to provide customers with this information.

PacifiCorp supports adoption of the standard, with one change (see next section). PacifiCorp notes that it has not installed advanced meters, so it is currently not in compliance with this standard.⁶⁷

CLECA notes that the type of information listed in this standard is not readily available to California consumers and “should be the goal of AMI and other system improvements.”⁶⁸ CPower echoes CLECA’s position.⁶⁹ Enspira notes that information “contributes to ... the energy value chain.”⁷⁰

Center for Energy Efficiency and Renewable Technologies (CEERT) notes that a “not less than daily basis” may not be granular enough to allow for a real-time integration of customer resources into the market, and suggests that the Commission modify the EISA language to allow for more frequent and more timely updates on pricing and usage.⁷¹

6.1.2. Discussion

We recommend that the Commission decline to adopt the proposed requirement that a utility provide certain information to customers regarding prices, usage, intervals and projections and sources.

For Sierra Pacific, Mountain Utilities, PacifiCorp and Bear Valley Electric, we find that the small size of these utilities and the nature of their operations

⁶⁷ PacifiCorp Comments at 4.

⁶⁸ CLECA Comments at 9.

⁶⁹ CPower Comments at 4.

⁷⁰ Enspira Comments at 9.

⁷¹ CEERT Reply Comments at 12.

makes it inappropriate to impose such a requirement. Specifically, Sierra Pacific, Mountain Utilities, and PacifiCorp do not operate within the CAISO's control area. Bear Valley, which does, is only a distribution customer of another larger utility. Additionally, none of the companies have installed advanced meters, and the additional cost of installing new advanced meters to meet this standard could be overly burdensome on their small ratepayer base. Thus, imposing this requirement on these companies is inconsistent with the purposes of the act, which seek to promote an efficient electric distribution system and equitable pricing of power. It is clear that for these companies, the requirements would produce costly and burdensome requirements.

For SCE, PG&E and SDG&E, we propose that the Commission find that prior Commission actions on implementing information disclosure policies in the context of the utilities' advanced metering initiatives constitute a "prior state action" pursuant to 16 U.S.C. § 1621(d), and make further action unnecessary to fulfill EISA requirements.

In reviewing and approving SCE's, PG&E's, and SDG&E's advanced metering projects, the Commission required that the utilities' advanced metering projects satisfy certain minimum functionality requirements. The six functionality requirements, which were first issued in a February 19, 2004 ACR in R.02-06-001 and subsequently adopted in decisions pertaining to each company's AMI plans, include two requirements that pertain to customer access to information:

- b. Collection of usage data at a level of detail (interval data) that supports customer understanding of hourly usage patterns and how those usage patterns relate to energy costs.

- c. Customer access to personal energy usage data with sufficient flexibility to ensure that changes in customer preference of access frequency do not result in additional AMI system hardware costs.⁷²

Specifically, the Commission found in D.07-07-043 that SCE's AMI application satisfactorily met the six functions.⁷³ In D.06-07-027, the Commission found that PG&E's AMI application satisfactorily met the six functions. In D.07-04-043, the Commission found that SDG&E's AMI application satisfactorily met the six functions.⁷⁴

Our understanding is that once a customer of PG&E, SDG&E or SCE has received an advanced meter, the customer will have access to his or her energy usage information via the internet with a one day lag. The energy usage information will be broken down into one hour intervals for residential customers and into fifteen minute intervals for commercial and industrial

⁷² Joint Assigned Commissioner and Administrative Law Judge's Ruling Providing Guidance for the Advanced Metering Infrastructure Business Case Analysis, R.02-06-001, February 19, 2004 at 4. The other required functions were:

- a. Implementation of specified price responsive tariffs.
- d. Compatible with applications that utilize collected data to provide customer education and energy management information, customized billing, and support improved complaint resolution.
- e. Compatible with utility system applications that promote and enhance system operating efficiency and improve service reliability, such as remote meter reading, outage management, reduction of theft and diversion, improved forecasting, workforce management, etc.
- f. Capable of interfacing with load control communication technology.

⁷³ See also, D.08-09-039, FOF 20 (September 18, 2008).

⁷⁴ The Commission conditioned approval of SDG&E's AMI pursuant to SDG&E signing contracts with certain vendors to implement SDG&E's AMI application. We subsequently approved these contracts and confirmed that these contracts met the functionality standards outlined in R.02-06-001. (Resolution E-4201, November 6, 2008).

customers. The utilities also generally provide retail price information via their websites.

The advanced metering projects approved by the Commission also include Home Area Network (HAN) devices that link to the new meters. A HAN device can enable price signals, load control and near real time data for electric customers.⁷⁵

We believe that the policies pertaining to customer access to information adopted in the AMI decisions are comparable to the EISA standard and, therefore, generally satisfy the requirements of EISA.

Additionally, the Demand Response Vision Statement, attached to D.03-06-032, noted that “[a]ll customers who choose to should be able to conveniently access their usage information using communications media (e.g., over the internet, via on-site devices, or other means chosen by the customer and respectful of potential privacy concerns).”⁷⁶ As these prior Commission actions suggest, the Commission has already adopted policies that meet, or, in some cases, exceed the requirements of the standard proposed by EISA.

Furthermore, DRA and TURN both note that the IOUs are already required to provide information on their generation sources pursuant to Public Utilities Code Sec. 398.1 and D.98-07-056.⁷⁷

For these reasons, we tentatively conclude that imposition of new requirements is not required by EISA.

⁷⁵ D.09-03-026, FOF 6 (March 13, 2009).

⁷⁶ OIR policies and practices for advanced metering, demand response, and dynamic pricing, D.03-06-032, Attachment A at 3, June 5, 2003.

⁷⁷ D.98-07-056 at 92.

However, we believe it is appropriate to reaffirm our expectations that PG&E, SDG&E and SCE provide their customers and other interested persons with retail prices and provide their customers with usage information. Providing prices to customers, to the extent customers decide to make use of them, will provide customers with necessary information to make more efficient use of their electricity consumption, and, potentially, result in lower electricity costs. Also, ensuring that retail prices are easily accessible to customers will be important to support the Commission's dynamic pricing policies. Customers will need to understand what price they are paying for electricity so that they can choose how much energy to consume. Customers may also have opportunities to invest in enabling devices that "listen" to prices and automatically increase or decrease their consumption of energy based on instructions that have been pre-programmed by the customer.

Retail prices are available to customers in the form of the utilities' published tariffs and are typically printed on customers' monthly bills. However, it is unclear at this time when or how PG&E, SCE and SDG&E anticipate providing retail price information to customers on a real-time basis and in a machine-readable form, e.g., sending a signal or internet message that communicates what the time-of-use price is at the time the price is in effect. We propose to require that the three large IOUs provide retail prices on a real-time basis in a machine-readable form. We propose further that this requirement go into effect at the completion of each utility's respective AMI deployment or the implementation of real-time pricing rates, whichever comes first. A utility would need to seek recovery of the costs to meet this requirement, if any, in a general rate case or relevant application.

Furthermore, we propose requiring the three large IOUs to provide price, usage and generation source information in a uniform manner consistent with widely accepted national standards or formats where available. Consistency in the way this data is provided should provide customers with the needed information to make more informed decisions over their electricity usage.

We recommend that the Commission adopt these requirements and require a new electric tariff that would be consistent for PG&E, SCE, and SDG&E.

We also agree with DRA⁷⁸ in that we expect that new technologies, products and third party entrants may provide additional information beyond the information contemplated in the EISA standard or our proposed requirements. Our intention is not to limit the type of information that may be provided to customers in the future, nor are we limiting who may be providing this data to customers.

6.1.3. Questions for Parties

For the reasons contained in the discussion above, we propose that the Commission decline to adopt this federal standard on information disclosure at this time. At this point, we tentatively conclude that the adoption of such a federal standard at this time is not required by PURPA for SDG&E, SCE and PG&E.

However, we propose adopting alternative standards. We therefore seek comments regarding the advisability of this proposed action. Specifically, we seek comments that will help develop the record and enable the Commission to

⁷⁸ DRA Reply Comments at 11.

make the requisite findings needed to demonstrate that it has meet the requirements of PURPA as amended by EISA.

6.2. Should the Commission Require Utilities to Provide Purchasers of Electricity with Access to their Own Information at Any Time Through the Internet and on Other Means of Communications Elected by the Utility? Should the Commission Require Utilities to Provide Other Interested Persons Access to Information not Specific to Any Purchaser Through the Internet?

As detailed in the legal discussion above, EISA requires that the Commission must make findings for each utility that it regulates as to whether or not to require the utility to facilitate the ability of its customers to have access to their usage information at any time through the Internet, or through any other means selected by the utility for Smart Grid applications. Additionally, PURPA, as amended by EISA, asks the Commission to determine whether to require rules that would allow “other interested persons” to access information “not specific to any” customer through the Internet, provided that any information specific to any customer only be provided to that customer.

This section considers the comments of parties and proposes tentative conclusions as to the appropriate course of action for the Commission.

6.2.1. Positions of Parties

SCE notes that it already provides customers an opportunity to access their own information at any time via the internet, via Internet Voice Response or via their smart meter-enabled home area network interface. Additionally, SCE states that it also provides non-customer specific data to other entities and would like to work on developing an industry standard for exchanging data with “interested persons” other than the customer. It pledges to not provide

customer-specific data to any third party without the permission of the customer.⁷⁹

PG&E and SDG&E both state that they are already in compliance with this standard. On the other hand, CLECA⁸⁰ and CPower⁸¹ both state that information and access to this information is not available today.

PacifiCorp supports adoption of this standard with one revision. PacifiCorp requests that if the Commission adopts this standard then the Commission should change the “and” in the first sentence to an “or.”⁸² Thus, under its proposal, an IOU would need to provide access to information *either* through the internet *or* via some other means.

TURN cautions that this standard warrants further consideration due to the privacy implications of sharing customer data with a third party.⁸³

6.2.2. Discussion

We propose that the Commission decline to adopt the EISA standard that requires an IOU to provide customers of an IOU with access to usage information and to provide other interested persons with access to certain information, but restrict the provision of customer-specific information to that customer.

For PacifiCorp, Sierra Pacific, Mountain Utilities, and Bear Valley, we would find that their operations and customer base are too small to support the

⁷⁹ SCE Comments at 25-26.

⁸⁰ CLECA Comments at 9.

⁸¹ CPower Comments at 4.

⁸² PacifiCorp Comments at 4.

⁸³ TURN Comments at 11.

significant infrastructure investments that would be needed to support the implementation of this standard, and these utilities have not installed advanced meters for their customers. Thus, we would conclude that adopting such a standard would be inconsistent with the purposes of PURPA, which seeks to promote efficiency while assuring the equitability of rates to consumers.

For SCE, SDG&E and PG&E, as discussed above, we propose that the Commission find that prior Commission actions implementing information disclosure policies in AMI, pursuant to 16 U.S.C. § 1621(d), constitute a “prior state action” and therefore make further action unnecessary to fulfill PURPA requirements.

Nevertheless, we believe that the AMI disclosure requirements are generally consistent with the information disclosure requirements proposed in 16 U.S.C. § 2621(d)(19) and are interested in determining whether further disclosure requirements will further California’s policy objectives. Even though we recommend that the Commission decline to adopt this standard, we share the opinion of CLECA that customer access to their usage information is a goal of this Commission, and should be a goal of IOUs in implementing a Smart Grid. Indeed, SDG&E and Google have already entered into a partnership to provide customers with just this type of access to their consumption data.

It is important that we recognize that customers own their data and should be able to allow third parties to access that data upon a customers’ choosing, provided certain privacy and security protections are in place to prevent fraudulent access to the information. As noted below, we seek comment on any potential rules regarding this relationship between the IOU, customer and third-party provider.

As AMI roll-out comes to a close by 2012, we expect the IOUs to have put into place operations that allow customers to access their information easily, either directly through the IOU or through an agreement with a third party, provided certain privacy and security measures are in place to mitigate the potential for fraud and hacking. However, there are significant concerns that the Commission must address as it relates to access, such as confidentiality, the security of the customer's information, and processes to allow for third parties to obtain access to the data with a customer's permission.

6.2.3. Questions for Parties

For the reasons contained in the discussion above, we propose that the Commission decline to adopt this federal standard at this time. At this point, we would conclude that the adoption of such a federal standard at this time is not required by PURPA for SDG&E, SCE and PG&E because of prior Commission action.

In addition, for the smaller IOUs, the adoption of this requirement would be inconsistent with the purposes of PURPA for it would not be efficient nor would it be equitable to impose the costs of the proposed requirements on customers at this time.

We therefore seek comments regarding the advisability of this proposed action. Specifically, we seek comments concerning the legal argument outlined herein, or, alternatively, comments that will help develop the record and enable the Commission to make the requisite findings concerning either the adoption or rejection of the requirements of PURPA as amended by EISA.

Furthermore, we seek comments on what, if any, additional steps the Commission should take towards providing customers with access to their usage information, both from their utility or from a third party, and what actions

should we take to address customer confidentiality and security concerns. For example, are the utilities' electric tariff rules that address customer and third party access to information in the context of Direct Access a potential model for any potential rules regarding third party access to customer data?⁸⁴ Are there any other Commission rules regarding privacy and third party access to customer that could pose a barrier?

We would also like specific recommendations on how to facilitate customers having near real-time access to their energy usage information. For example, should the Commission direct the utilities to provide customers near real-time access to usage information via the advance meters' Home Area Network by a date certain?

Therefore, **IT IS RULED** that Parties may file comments and replies to the issues and questions identified in sections 4 and 5 above. Opening comments are due October 19, 2009. Reply comments are due October 26, 2009.

Dated September 28, 2009, at San Francisco, California.

/s/ RACHELLE B. CHONG

Rachelle B. Chong
Commissioner

/s/ TIMOTHY J. SULLIVAN

Timothy J. Sullivan
Administrative Law Judge

⁸⁴ See PG&E Electric Rule 22, SCE Rule 22, and SDG&E Electric Rule 25.

