



BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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Order Instituting Rulemaking on the Commission's own motion to determine the impact on public benefits associated with the expiration of ratepayer charges pursuant to Public Utilities Code Section 399.8.

Rulemaking 11-10-003
(Filed October 6, 2011)

**JOINT REPLY COMMENTS OF
THE NATURAL RESOURCES DEFENSE COUNCIL,
THE UNION OF CONCERNED SCIENTISTS,
THE VOTE SOLAR INITIATIVE, SIERRA CLUB CALIFORNIA,
CALIFORNIANS FOR CLEAN ENERGY AND JOBS AND
THE NATURE CONSERVANCY ON THE PROPOSED DECISION**

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December 12, 2011

**BEFORE THE PUBLIC UTILITIES COMMISSION
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Pursuant to Rule 14.3 of the Commission's Rules of Practice and Procedure, and the *Order Instituting Rulemaking* issued October 6, 2011 (OIR) in this proceeding, the Natural Resources Defense Council (NRDC), the Union of Concerned Scientists (UCS), The Vote Solar Initiative (Vote Solar), Sierra Club California (SCC), Californians for Clean Energy and Jobs (CCEJ), and The Nature Conservancy (TNC) submit the following joint reply comments. Collectively, NRDC, UCS, Vote Solar, SCC, CCEJ and TNC shall be referred to as the "Joint Environmental Parties."

I. INTRODUCTION AND SUMMARY

This proceeding commenced with the Commission's Order Instituting Rulemaking (OIR) on October 6, 2011. In the OIR, the Commission established two phases for the proceeding and requested party comments on a number of factual, legal and policy issues regarding research, development and demonstration and emerging renewable programs. Parties filed opening comments on October 20th and reply comments on October 25th. On October 27, 2011, Administrative Law Judge (ALJ) Gamson held a pre-hearing conference to further discuss party comments and legal

issues. On November 15, 2011, ALJ Gamson issued a proposed decision, “Phase 1 Decision Establishing Interim Research, Development and Demonstration, And Renewables Programs Funding Levels” (PD). The PD incorporated comments from parties, made some legal and policy conclusions, and left open many programmatic and governance details to be determined in second phase of the proceeding. Parties filed opening comments on the PD on December 5, 2011.

In these reply comments, we note that most parties support the adoption of the PD and respond to the opposition from Southern California Edison (SCE).

II. DISCUSSION

1. Most Parties Support Adoption of the PD

The Joint Environmental Parties continue to support the PD and urge the Commission to adopt it without change. As we stated in our opening comments, while the PD does not adopt all of the elements advocated for by the Joint Environmental Parties, it balances the policy interests of all of the parties in a fair manner and leaves key programmatic, policy, and governance questions open for Phase 2 of this proceeding. Most parties support adoption of the PD. Indeed, in addition to the signatories of these comments, the list of supporters includes: The Solar Alliance, The Consumer Federation of California, TURN, The Energy Efficiency Industry Council, Waste Management, Silicon Valley Leadership Group, CleanTECH San Diego, CALSTART, TechNet, The Green Power Institute, California Biomass Energy Alliance, California Forestry Association, Wheelabrator Technologies, SDG&E, PG&E, and Marin Energy Authority.¹ While some of these parties have differences over the final policy goals, programs, and governance structure of Electric Program Investment Charge (EPIC) funds, there is broad agreement that the Commission can and should move forward with adoption and can make additional decisions regarding these issues in Phase 2 of this proceeding.

2. Remaining opposition merely restates positions in previous comments

While some parties continue to oppose adoption of the PD, they do so on grounds considered and rejected in the Proposed Decision. In particular, SCE redrafts its opposition to Commission authority and responsibility for customer funded Research,

¹ Some of these parties request changes or clarifications to the PD, but all generally support its adoption.

Development and Demonstration and renewable programs. SCE's comments contain forceful protests, but do not cover new significant ground.

A. The Commission Has Legal Authority to Adjust Rates to Include RD&D and Renewable Investments

SCE continues to argue that that the Commission lacks authority to include RD&D and renewable energy investments in rates.² However, the PD adequately addresses these same arguments. The PD rightly finds that the expiration of the specific rate requirements in PU Code § 399.8 does not unwind the significant constitutional and legal authority of the Commission to incorporate RD&D investments in rates. Indeed, while SCE emphasizes the expiration of Public Goods Charge requirements in § 399.8 and claims that § 701 alone does not provide authority, nowhere does it confront the holistic conclusion of the PD:

The California Constitution and the §§ 701, 701.1, 701.3, 740, 740.3 provide authority for the Commission to require a charge by electrical corporations to ensure continuation of the ratepayer and public benefits associated with the expiring system benefits charge in Public Utilities Code Section 399.8 for renewables and RD&D programs.³

The Commission's responsibility and authority to incorporate investment in public interest energy research and development in rates did not end with the expiration of the particular Public Goods Charge requirements of § 399.8.

B. RD&D Investments Included in Rates are not Taxes or Fees

SCE's opposition comments also continue to use the argument that the Commission's incorporation of RD&D and renewable programs in rates constitutes a new tax, subject to Propositions 13 and 26.⁴ This argument does not address the wide range of statutory authority granted to the Commission to incorporate these investments. Moreover, RD&D is fundamental to the completion of the Commission's legal mandates to achieve all cost effective energy efficiency, meet the state's 33% renewable energy mandate, and reduce

² SCE, pp. 1-9.

³ PD, Conclusion of Law #3, p. 38.

⁴ SCE, pp. 9-11.

greenhouse gas emissions to meet the requirements of AB 32. The claim that inclusion of RD&D in rates would constitute a new tax would undermine the fundamental authority of the Commission to adjust rates to ensure completion of its statutory mandates: would inclusion of costs to build a new transmission line or power plant in order to ensure electricity is provided reliably to all customers be taxes? Surely not, yet SCE claims that RD&D, for which the Commission is given clear authority and responsibility in statute- and is necessary for the achievement of a number of Commission mandates, including reliable electric service, is outside of the ratemaking authority of the Commission.

C. The Commission Has Legal Authority to Transfer Administration to the Energy Commission

SCE would prefer to control its own RD&D program. SCE objects to the PD's finding that the Commission can and should transfer day-to-day administration of RD&D programs to the Energy Commission. The PD confronts this very issue head on, considering and rejecting SCE's objection.⁵ While SCE attempts to characterize the distinction between administration and governance as unworkable,⁶ the clear Commission precedent for doing just that, as cited in the PD,⁷ undermines SCE's argument. Furthermore, the specific nature of the governance structure will be determined in Phase 2, rendering any of SCE's complaints that the Commission has over delegated its oversight responsibility premature.

D. Procedural Objections to the EPIC be Resolved in Phase 2

SCE also raises some procedural objections to the PD, claiming additional process is necessary before the EPIC can be approved.⁸ While the Joint Environmental Parties do not support these arguments, the PD resolves this concern by requiring the IOUs to incorporate the EPIC and maintain the funds in balancing accounts subject to refund depending on a Phase 2 decision. Prior to the Phase 2 decision, and prior to the

⁵ PD, pp. 21-24.

⁶ SCE, pp. 11-13.

⁷ PD, pp. 22-23.

⁸ SCE, pp. 6-9.

Commission directing investment of EPIC funds, any procedural requirements can be addressed.

V. CONCLUSION

The Joint Environmental Parties are appreciative of this opportunity to reply to comments on the PD. As we stated before, based on the Commission's broad ratemaking authority, the PD strikes a reasonable balance between maintaining crucial public interest research, development, demonstration and renewables programs, and considering and implementing potential programmatic changes to these programs. Indeed, the PD leaves ample room for additional process and final decisions on EPIC programs, policy, investment levels, and governance structure to Phase 2 of the decision. In the interests of continuing the state's progress in renewable energy and renewable energy-related research and development, the Joint Environmental Parties strongly recommend that the Commission rightfully dismiss SCE's arguments, approve the PD and move expeditiously forward with Phase 2 of the proceeding.

WHEREFORE, the Joint Environmental Parties respectfully request the Commission consider the above stated comments.

Respectfully Submitted,

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