

Decision 09-09-029 September 10, 2009

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)

**DECISION ESTABLISHING COMMISSION PROCESSES FOR REVIEW OF
PROJECTS AND INVESTMENTS BY INVESTOR-OWNED UTILITIES
SEEKING RECOVERY ACT FUNDING**

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1. Summary

The American Recovery and Reinvestment Act of 2009 (Recovery Act) appropriated \$4.5 billion “to modernize the electric grid.”¹ The United States Department of Energy issued Funding Opportunity Announcements (FOAs) establishing a Smart Grid Investment Grant Program² and a Smart Grid Demonstrations³ program to provide funds in support of proposed projects.

As reflected in the Order Instituting Rulemaking that commenced this proceeding, this Commission supports national policies that seek to ensure that the evolution of our electric system will enable the key functional aspects of the Smart Grid.⁴ Specifically, the Commission embraced the language of the Energy Independence and Security Act of 2007, which states that “[i]t is the policy of the United States to support the modernization of the Nation’s electricity transmission and distribution system to maintain a reliable and secure electricity infrastructure that can meet future demand growth.”⁵

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

² United States Department of Energy, *Financial Assistance Funding Opportunity Announcement: Smart Grid Investment Grant Program (SGIG)* (DE-FOA-0000058), June 25, 2009.

³ U.S. Department of Energy, *Financial Assistance Funding Opportunity Announcement: Smart Grid Demonstration Program (SGDP)* (DE-FOA-0000036), June 25, 2009.

⁴ See Order Instituting Rulemaking 08-12-009 at 2.

⁵ Energy Information and Security Act Section (§) 1301.

In this rulemaking the Commission intends to develop policies related to Smart Grid that further our state's energy policy goals as enunciated in the Energy Action Plan and state law, including Assembly Bill 32.

Modernizing the electric grid with additional two-way communications, sensors and control technologies, key components of a Smart Grid, can lead to substantial benefits for consumers. A Smart Grid can enable the integration of higher levels of renewable energy, energy storage, and, eventually, electric vehicles, at a lower cost to consumers. A Smart Grid can also facilitate consumer participation in demand response programs and help consumers to use energy more efficiently. Greater monitoring and automated controls can also reduce the frequency and duration of outages. Many of the advantages of a Smart Grid will contribute to reducing greenhouse gas emissions.

The Smart Grid funding provided by the Recovery Act creates an opportunity for California to expand and accelerate its activities to modernize the state's electric infrastructure at a significantly lower cost to ratepayers.

Governor Schwarzenegger has organized statewide efforts to pursue the maximum amount of Recovery Act funding in order to reduce the state's 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." The Commission, working collaboratively with the California Energy Commission (CEC) and the California Independent System Operator (CAISO), also wants to ensure that federal money comes to the state to further our state energy policies, create jobs, and stimulate the economy.

The processes and policies established by this decision are intended to align the timeline of the Commission's review of investor-owned utility Smart

Grid projects with the Department of Energy's rapid timeline for reviewing and granting awards for projects. Thus, the processes we adopt are in some respects faster than typical Commission review processes. However, we have included a significant opportunity for review by the Commission and intervenors so that we can be confident that additional utility investments in Smart Grid projects are consistent with state policy and in the interest of ratepayers.

This decision finds that the benefits that The United States Department of Energy seeks to achieve through its Smart Grid grants would also be beneficial to investor-owned utility ratepayers. These benefits include improving reliability, increasing energy efficiency and demand response, and reducing greenhouse gas emissions. Furthermore, projects that receive The United States Department of Energy awards will be attractive from a cost perspective since utilities will have the opportunity to make investments and have only 50% of the cost (or less) fall to ratepayers.

The decision further determines that the unique circumstances associated with the Recovery Act, including the United States Department of Energy's rapid timeline for reviewing projects, granting awards, and starting construction, warrant rapid action on projects by this Commission. These are unique circumstances and the procedures we adopt in this decision do not set a precedent for future decisions. In this decision we adopt a Tier-3 advice letter process for the review of those projects that have received a United States Department of Energy Smart Grid Recovery Act award. The Commission will review the reasonableness of projects and expenditure of ratepayers funds by applying specific criteria enumerated in the decision. An investor-owned utility may seek approval through a Tier-3 Advice Letter filing, if, and only if, the project has been selected to receive an award by the United States Department of Energy, does not

require a California Environmental Quality Act (CEQA) review, a Certificate of Public Convenience and Necessity (CPCN), or a permit to construct (PTC), does not require incremental ratepayer funding in excess of 50% of project costs, and does not require incremental ratepayer funding greater than \$30 million. A party protesting the Advice Letter should demonstrate that the Advice Letter does not meet the conditions set forth herein.

An investor-owned utility also has the option to seek contingent approval for a project from the Commission in advance of the project being selected by the United States Department of Energy as described in this decision.

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.”⁶

The OIR further noted that as a consequence of amendments to the Public Utilities Regulatory Policies Act (PURPA) contained in the Energy Independence and Security Act of 2007 (EISA), PURPA § 111(d)(16) now requires states “to consider imposing certain requirements and authorizing certain expenditures”⁷ pertaining to the Smart Grid.⁸

EISA defines “smart grid functions” as follows:

The term “smart grid functions” means any of the following:

⁶ OIR at 2.

⁷ OIR at 8.

⁸ The Recovery Act at Division A, Title IV, Sec. 408 redesignated PURPA § 111(d)(16) as § 111(d)(18).

- (1) The ability to develop, store, send and receive digital information concerning electricity use, costs, prices, time of use, nature of use, storage, or other information relevant to device, grid, or utility operations, to or from or by means of the electric utility system, through one or a combination of devices and technologies.
- (2) The ability to develop, store, send and receive digital information concerning electricity use, costs, prices, time of use, nature of use, storage, or other information relevant to device, grid, or utility operations to or from a computer or other control device.
- (3) The ability to measure or monitor electricity use as a function of time of day, power quality characteristics such as voltage level, current, cycles per second, or source or type of generation and to store, synthesize or report that information by digital means.
- (4) The ability to sense and localize disruptions or changes in power flows on the grid and communicate such information instantaneously and automatically for purposes of enabling automatic protective responses to sustain reliability and security of grid operations.
- (5) The ability to detect, prevent, communicate with regard to, respond to, or recover from system security threats, including cybersecurity threats and terrorism, using digital information, media, and devices.
- (6) The ability of any appliance or machine to respond to such signals, measurements, or communications automatically or in a manner programmed by its owner or operator without independent human intervention.
- (7) The ability to use digital information to operate functionalities on the electric utility grid that were previously electro-mechanical or manual.
- (8) The ability to use digital controls to manage and modify electricity demand, enable congestion management, assist in voltage control, provide operating reserves, and provide frequency regulation.

(9) Such other functions as the Secretary [of Energy] may identify as being necessary or useful to the operation of a Smart Grid.⁹

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.¹⁰ The Recovery Act also amended several EISA provisions pertaining to the Smart Grid.¹¹ 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 standards (including Internet-based protocols and standards) if available and appropriate.”¹²

⁹ EISA § 1306(d). We note that in workshops associated with this proceeding, we have learned that the integration of distributed renewable energy such as solar roofs and wind turbines will be greatly enhanced by Smart Grid upgrades that allow two-way flows of information. Two-way information flows can also help to integrate electric vehicles. In addition, the Smart Grid can include the widespread use of synchrophasers and the introduction of micro-grid projects that will increase the reliability of the electricity delivery system.

¹⁰ 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.) ... ”

¹¹ Recovery Act at Division A, Title IV.

¹² The Recovery Act § 405.

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*.¹³ 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.¹⁴

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.

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

¹³ Federal Energy Regulatory Commission, *Smart Grid Policy, Proposed Policy Statement and Action Plan* (March 19, 1009), PL09-4-000.

¹⁴ *Id.* at ¶ 3.

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 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 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.¹⁵

On May 29, 2009, the assigned Commissioner issued an Assigned Commissioner's Ruling (ACR) amending the scope of the proceeding.¹⁶ The 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

¹⁵ Scoping Memo at 7-8.

¹⁶ *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.

modernize the state's electric infrastructure, using some federal dollars."¹⁷ To take advantage of this opportunity, the ACR amended the scope of the rulemaking and solicited comments on a proposal that would:

- Require a reporting process by those 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.¹⁸

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 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.

Comments on the proposals contained in the ACR were filed by PG&E, CFC, San Diego Gas & Electric Company (SDG&E), the California Large Energy Consumers Association (CLECA), SCE, The Utility Reform Network (TURN), and DRA, by the June 15, 2009 deadline.

¹⁷ *Id.* at 2.

¹⁸ *Id.*

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.¹⁹

PG&E, SCE, TURN, SDG&E, DRA, and CFC filed reply comments, which were due on June 29, 2009.

On July 8, 2009, an ALJ Ruling took official notice of the DOE documents and attached them as reference for the parties in this proceeding.²⁰ These included the final FOA for Smart Grid Demonstrations and the final FOA for the Smart Grid Investment Grant Program.

On July 16, 2009 FERC adopted a Smart Grid Policy Statement.²¹

3. Reporting Requirements

As noted above, on May 29, 2009, the ACR proposed reporting requirements concerning applications to the DOE for Smart Grid funding. Specifically, the ACR stated:

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

¹⁹ 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.

²⁰ *Administrative Law Judge’s Ruling Taking Official Notice of Certain Department of Energy Publications Associated with the Recovery Act*, July 8, 2009.

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

- 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;
- 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; and
- 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 California Energy Commission (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.²²

²² ACR at 7-8.

In addition, the ACR invited comment on whether the Commission should “post the notices and reports provided by parties on a publicly accessible website” in order to promote disclosure and transparency.²³ The ACR also invited parties to propose “alternative reporting requirements.”²⁴

3.1. Positions of Parties

In general, parties did not discuss the proposed reporting requirements at great length, but instead either voiced no objection or support for the proposed reporting requirements.

PG&E states that it believes “the ACR’s reporting proposals for DOE-funded Smart Grid projects are reasonable.”²⁵ PG&E asks, however, that “the Commission clarify that it is willing to accept already-existing reports on DOE-funded projects that provide the same or similar information to that requested by the Commission.”²⁶

SDG&E provides comments concerning the proposed requirement of quarterly notices to the Commission’s Energy Division. SDG&E argues that:

... this reporting requirement would be duplicative of current DOE reporting requirements in this area. Specifically, SDG&E notes that the DOE regulation already impose stringent reporting requirements on project status – which are by default public reports.²⁷

²³ *Id.* at 8.

²⁴ *Id.*

²⁵ PG&E Comments at 6.

²⁶ *Id.*

²⁷ SDG&E Comments at 4-5.

SDG&E concludes that “it is likely that copies of the DOE reports will adequately provide Commission staff the information needed for keeping the Governor apprised of information on any federally funded project.”²⁸

CLECA supports the proposed reporting comments, stating:

... such reporting is a minimum necessary requirement for utilities seeking federal funding, but [CLECA] questions whether this will prove sufficient to enable Commission oversight. CLECA also heartily concurs that this information should be made public.²⁹

TURN reports that it “agrees with the proposal to require IOUs and other utilities to submit regular reports to the Commission and the public concerning its proposals under the Smart Grid funding opportunities contained in the A.R.R.A. [Recovery Act].”³⁰

DRA’s comments do not state a position supporting or opposing reporting requirements, but DRA does ask that a copy of any information submitted to the Commission be provided to DRA. Specifically, DRA states:

DRA requests that the scoping ruling require the IOUs to provide DRA a copy of all such information at the time of submission, including confidential information. DRA further requests that to the extent the utility’s application to DOE contains confidential information, such as vendor pricing information in response to an IOU Request for Offer (RFO), the public version of the application be available on the IOUs’ websites.³¹

In reply, SCE states that although it has no objection to providing public information to DRA, “to the extent an IOU includes confidential data in its

²⁸ *Id.* at 5.

²⁹ CLECA Comments at 3.

³⁰ TURN Comments at 6.

³¹ DRA Comments at 4.

application to DOE, the Commission should not require the IOU to automatically provide the data to DRA, simply because it will also be submitted to the Commission.”³² Similarly, citing safety and security provisions, SDG&E argues that “there is little benefit and significant potential detriment to forcing the utilities to provide DRA with sensitive application information and that the request is incompatible with the other Smart Grid cybersecurity functions each utility must perform.”³³

3.2. Discussion

The proposed reporting requirements are reasonable. The first two reporting requirements only serve to provide notice to the Commission and to the service list of an IOU’s action to seek DOE funding for Smart Grid projects and the results of those efforts. These requirements are clearly necessary and helpful to the Commission in its planning and exercise of regulatory oversight of utility operation.

The third reporting requirement – requiring quarterly updates concerning funded projects – is also reasonable. SDG&E points out that this requirement duplicates Federal oversight reporting requirements, which it describes as “stringent.”³⁴ Similarly, PG&E also asks that the Commission clarify its willingness to accept “already existing reports on DOE funded projects...”³⁵ There is no reason for the Commission either to duplicate or to require the

³² SCE Reply at 9.

³³ SDG&E Reply Comments at 8.

³⁴ SDG&E Comments at 5.

³⁵ PG&E Comments at 6.

submission of identical information in a slightly different format. Instead, the Commission will simply require the submission to the Commission of copies of the quarterly status reports submitted to DOE.

The last proposed reporting requirement – the submission of copies of “studies, evaluation, or other reports on Recovery Act-funded activities” required by the DOE to this Commission – is reasonable.

Concerning the Commission’s inquiry about the advisability of posting information on the public Internet, SDG&E points out that the reports submitted to the DOE are “by default public.”³⁶ CLECA, as noted above, “concur[s] that this information should be made public.”³⁷ Similarly, DRA also supports that the “public version of the application be available on the IOUs’ websites.”³⁸

Based on this information, we will require that IOUs file and serve in this proceeding copies of all publicly available information provided by an applicant to DOE for Smart Grid funding in this proceeding. This action will ensure the availability of this information on the Commission’s website.

Finally, DRA’s request that the IOUs provide a copy of materials directly to DRA at the same time they provide the materials to Energy Division is reasonable. DRA’s access to information is consistent with the public interest, and DRA is covered by statutes that require DRA to protect confidential information.

³⁶ SDG&E Comments at 5.

³⁷ CLECA Comments at 3.

³⁸ DRA Comments at 4.

In light of security concerns, the appropriate policy is for IOUs to serve any non-confidential information associated with a Smart Grid project on DRA and other parties. The IOUs shall also furnish confidential and security-related information to Energy Division and DRA at the same time the information is provided to DOE.

Based on the discussion above, the Commission will impose reporting requirements on IOU applicants for DOE Smart Grid funding as follows:

- An IOU should file electronically and serve a notice in this proceeding when an application for funding of a Smart Grid-related action has been submitted to the DOE. The notice should include: the application submitted to the DOE; 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. Confidential and security-related information in the application shall be supplied to Energy Division and DRA when an application is submitted to DOE. Such information should be provided to other interested parties only under appropriate non-disclosure agreements;
- An IOU should file electronically and serve a further notice in this proceeding when DOE awards funding for a Smart Grid activity or informs the IOU that the activity will not receive a DOE award. The notice should contain all publicly available information contained in the DOE award;
- For Smart Grid projects or activities receiving a DOE award, an IOU should file electronically and serve quarterly notices in this proceeding describing in detail the status of all federally funded projects or activities until such time as the project or activity is complete; and
- To the extent DOE requires an IOU to prepare and submit studies, evaluation, or other reports on Smart Grid Activities fund by the Recovery Act, the IOU should file electronically

and serve copies of the same reports in this proceeding. All confidential and non-confidential portions of reports should be provided to DRA automatically. Confidential and security-related information in reports should be supplied to other interested parties under appropriate non-disclosure agreements and subject to any other measures deemed appropriate by this Commission.

Because all non-confidential information pertaining to Smart Grid projects developed pursuant to the Recovery Act will be filed electronically and served in this proceeding, the information will be available on the Commission's website.

4. No Review Required if No Ratepayer Funds Sought

The ACR sought to make clear that when an IOU could 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),"³⁹ then no further Commission review of the project is required. The IOU, however, does need to comply with the reporting requirements listed above.

4.1 Positions of Parties

The situation in which no ratepayer funds are needed generated little comment, and no party opposed the proposal that such an application to DOE would not require additional Commission review of the reasonableness of the costs associated with the project.

On this matter, "CLECA thinks it would be wonderful if no additional ratepayer funds were needed, but considers this an unlikely outcome."⁴⁰

³⁹ ACR at 9.

⁴⁰ CLECA Comments at 4.

DRA stated that it:

... does not oppose this process, but the Commission should clarify that Proposed Process 1 does not allow the IOU to shift ratepayer funding from existing programs into a Smart Grid project.⁴¹

PG&E observes that “[t]he first process (co-funding that requires no new ratepayer funding or other Commission approvals) is not at issue in this proceeding, so PG&E will not discuss [it] further in its comments.”⁴²

4.2 Discussion

Abstaining from Commission review of the costs associated with proposed Smart Grid projects that do not require further action by the Commission is reasonable and in the interest of the utility’s ratepayers. In these situations, an IOU applicant for DOE funding need fulfill only the reporting requirements outlined above, which are required for our general oversight of regulated utilities.

5. A Process for Review of Project Co-Funding When an IOU Does Not Seek Commission Approval until after Securing DOE Grant

The ACR proposed to establish a memorandum account so that IOUs can book and track the costs and expenses associated with Smart Grid projects.

In addition, the ACR proposed that any project that has received DOE funding:

... would carry with it a rebuttable presumption that the project is reasonable. The state filing, however, should nevertheless itemize, to the extent possible, the costs and benefits accruing to California for the ratepayer share of the funding Absent a clear and

⁴¹ DRA Comments at 5.

⁴² PG&E Comments at 2.

convincing showing of unreasonableness, the Commission would find the federally funded project to be “reasonable.”⁴³

The ACR proposed applying a rebuttable presumption because both the DOE and this rulemaking seek to provide support for projects initiated consistent with EISA. Furthermore, the ACR noted that 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

The proposed Commission review of the IOU’s project and associated costs would take place in the next General Rate Case (GRC), which would evaluate the IOU’s showing. Those opposing recovery of project costs related to Smart Grid activities would have the legal burden to overcome the rebuttable presumption of reasonableness by demonstrating with evidence that the project is not a reasonable use of ratepayer funds. For projects approved in the GRC, the Commission would authorize the recovery of all costs in rates as the Commission deemed appropriate.

5.1 Positions of Parties

DRA, TURN and the CFC strongly oppose the use of the rebuttable presumption that relies on the DOE assessment to determine the reasonableness of a project.

DRA asserts that the use of a rebuttable presumption “is not lawful.”⁴⁴ DRA’s argument centers in large part on the Commission’s responsibility, under § 454(a) of the Pub. Util. Code, to issue findings that a utility’s request for a rate increase is just and reasonable. Specifically, DRA argues that “[b]y allowing

⁴³ ACR at 10.

⁴⁴ DRA Comments at 6.

IOUs to recover project costs from ratepayers before the Commission makes a finding that the expenditure is just and reasonable, the ... proposal would violate Public Utilities Code § 454.”⁴⁵ DRA contends that the Commission’s reliance on the DOE’s authorization of funding for Smart Grid activities to authorize rate increases is unlawful because “[i]t is beyond the Commission’s jurisdiction and authority to allow IOUs to spend California ratepayer dollars based on a finding by the DOE that federal stimulus dollars should be devoted to a Smart Grid demonstration project.”⁴⁶ More specifically, DRA states that adopting a new rate requires a showing that the Commission’s “decision is supported by substantial evidence.”⁴⁷

TURN opposes the rebuttable presumption on the basis that “[i]t would be improper to alter the burden of proof with regard to the showing or reasonableness with respect to any costs associated with Smart Grid projects that are partially funded under ARRA.”⁴⁸ TURN concludes that “the fact that the AC proposal does not even contain a ceiling on the potential costs that might be imposed on ratepayers as a result of this policy exposes ratepayers to significant risks that should not be imposed at this time.”⁴⁹

CFC similarly opposes shifting the burden of proof away from the utility as “inconsistent with California law.”⁵⁰ According to CFC, the Commission is

⁴⁵ *Id.* at 7.

⁴⁶ *Id.*

⁴⁷ *Id.* at 8.

⁴⁸ TURN Comments at 7.

⁴⁹ *Id.*

⁵⁰ CFC Comments at 3.

“required to consider whether the utility’s investment would ‘minimize the cost to society’ of the reliable energy services that are provided by natural gas and electricity.”⁵¹ CFC also states a more general concern that a “utility cannot possibly know, ahead of time, the total amount of investment that will actually be required to perform a project for which DOE funding is required.”⁵²

CLECA states that it “is concerned about the proposed rebuttable presumption of reasonableness in this case because it implicitly assumes that DOE’s vision of Smart Grid is the same as California’s.”⁵³ It argues further that “[r]ates should not be increased without an opportunity for parties to evaluate utility proposals or actions.”⁵⁴

SCE and PG&E both support the ACR’s proposed rebuttable presumption of reasonableness. In response, SCE argues that the “ruling’s proposed rebuttable presumption is consistent with California law.”⁵⁵ SCE supports its argument by citing to the Public Utilities Code, stating that:

Section 454(b) grants the Commission important discretion in this area:

The commission may adopt rules it considers reasonable and proper for each class of public utility providing for the nature of the showing required to be made in support of proposed rate changes, the form and manner of the presentation of the

⁵¹ *Id.*, emphasis in original, which cites Pub. Util. Code § 701.1(a).

⁵² *Id.* at 6.

⁵³ CLECA Comments at 5.

⁵⁴ *Id.* at 6.

⁵⁵ SCE Reply at 3.

showing, with or without a hearing, and the procedure to be followed in the consideration thereof.

Accordingly, the Ruling's proposed rebuttable presumption falls squarely within the authority granted to the Commission by Section 454(b).⁵⁶

SCE does not view the proposed process as an abdication of the Commission's regulatory authority to DOE. SCE instead argues that "the Commission will still evaluate Smart Grid projects using its traditional criteria, but place the burden on parties challenging the costs of the projects to show them to be unreasonable."⁵⁷

PG&E meanwhile supports the rebuttable presumption "because of the numerous findings, criteria and policies in support of Smart Grid projects in the Commission's adopted OIR in this proceeding, in the federal Recovery Act itself, and in DOE Smart Grid implementation documents ..."⁵⁸

PG&E further argues that "the rebuttable presumption should not be limited to GRC, but should be extended to the Commission's review of advice filings requesting approval of Smart Grid projects."⁵⁹ In advocating this position, PG&E identifies drawbacks that arise from limiting the use of rebuttable presumptions to GRCs. PG&E points out that the proposal to defer consideration of the recovery of Smart Grid funds to the next GRC is flawed because of their infrequency. To illustrate this point, PG&E states that its last GRC did not include funding for Smart Grid projects and that its next scheduled

⁵⁶ *Id.* at 4.

⁵⁷ *Id.*

⁵⁸ PG&E Comments at 5.

⁵⁹ *Id.*

GRC “will not be decided until the end of 2010 or early 2011, after the likely deadline for PG&E to demonstrate that it has the matching funds required to receive DOE Smart Grid grants.⁶⁰ As a result, PG&E does not view this particular rate recovery process as one that is “reasonably available for PG&E’s Recovery Act-funded projects ...”⁶¹

5.2 Discussion

Our review of the record in this proceeding, including the DOE FOA’s, shows that DOE has adopted extensive requirements and a thorough review process. Moreover, the DOE is a federal agency with expertise in the energy area, including expertise specifically related to Smart Grid investments.

The Commission has learned about many of the benefits to ratepayers that will be derived from modernizing the electric grid through our Smart Grid rulemaking. The DOE identifies similar benefits in its FOA’s.

Specifically, DOE’s FOA for the SGIG program describes that the program is intended to enable measurable improvements in areas including:

- Reliability of the electric power system;
- Electric power system costs and peak demand;
- Consumer electricity costs, bills, and environmental impacts;
- Clean energy development and greenhouse gas emissions; and
- Economic opportunities for businesses and new jobs for workers.⁶²

⁶⁰ *Id.* at 2.

⁶¹ *Id.*

⁶² United States Department of Energy, *Financial Assistance Funding Opportunity Announcement: Smart Grid Investment Grant Program (SGIG)* (DE-FOA-0000058), June 25, 2009, p. 7.

Similarly, the DOE's FOA for the SGDP program states that the goal of the program is to collect and provide information to:

- Reduce system demands and costs;
- Increase energy efficiency;
- Optimally allocate and match demand and resources to meet that demand; and
- Increase the reliability of the grid. ⁶³

The DOE's objectives are consistent with our policies, including the Energy Action Plan and state law, including Assembly Bill 32. Thus, it is reasonable to conclude that IOU projects that receive DOE grants will be beneficial to the IOU's ratepayers and further California's clean energy policies.

Projects that received DOE awards will also be attractive from a cost perspective since utilities will have the opportunity to make investments that are beneficial to ratepayers and have only 50% of the cost (or less) fall to ratepayers.

The unique circumstances associated with the Recovery Act, including the DOE's rapid timeline for reviewing projects, granting awards, and starting construction, warrant rapid action on projects by this Commission. We therefore adopt a Tier-3 advice letter process for the review of those projects that have received a DOE Smart Grid Recovery Act award. Staff shall issue a draft resolution for Commission approval recommending that the incremental costs for a specific project are justified if the following conditions have been met:

1. The DOE has selected the project to receive an award;

⁶³ U.S. Department of Energy, *Financial Assistance Funding Opportunity Announcement: Smart Grid Demonstration Program (SGDP)* (DE-FOA-0000036), June 25, 2009, p. 6.

2. The project furthers one or more of the benefits to IOU ratepayers identified in this section (i.e. the five listed benefits for SGIG grants and the four listed benefits for SGDP grants);
3. The requested incremental ratepayer funding for the project does not exceed \$30 million;
4. The utility attests that ratepayer funding does not exceed 50 percent of the total project costs;
5. The utility attests or otherwise demonstrates that it has sought third-party funding, in addition to DOE funding, and indicates what third-party co-funding it has received;
6. The utility has provided a detailed itemized budget for the project and included a reasonable explanation of how the budget was developed; and
7. The utility attests or otherwise demonstrates that the costs are necessary for the project.

If the conditions above are met, the Energy Division shall prepare a resolution approving the project for consideration by the Commission. A party protesting the Advice Letter should demonstrate that the Advice Letter does not meet the conditions set forth.

Pursuant to General Order (GO) 96-B , a matter that requires an evidentiary hearing may only be considered in a formal proceeding such as application.⁶⁴ We do not anticipate any material contested issues of fact in the case of Advice Letters reviewed under the adopted process, thus an Advice Letter process is appropriate in this case. However, if the Energy Division

⁶⁴ See Rule 5.1 and Rule 5.2 of GO 96-B (provisions adopted by D.01-07-026 (July 12, 2001), D.02-01-038 (January 9, 2002), D.05-01-032 (January 13, 2005), D.07-01-024 (January 25, 2007), D.07-09-019 (September 6, 2007), D.08-05-019 (May 15, 2008), Resolution ALJ-221 (August 21, 2008), Resolution W-4749 (March 26, 2009), and D.09-04-005 (April 16, 2009)).

determines that a protest raises a material contested issue of fact then Energy Division should reject the Advice Letter without prejudice as required by GO 96-B, Rule 5.3. The utility can then refile its project as a formal application.

Standard Commission processes will apply for reviewing final projects costs and for including project costs in rates.

Projects for which incremental IOU ratepayer costs exceed 50% of the total project costs or for which incremental IOU ratepayer costs exceed \$30 million do not qualify for a Tier-3 review process. They must proceed via application.

We adopt these procedures because of the unique circumstances of the Recovery Act and the Smart Grid grants. This decision and the procedures we adopt in it set no precedent for future Commission decisions.

6. A Process for Review of Project Co-Funding When an IOU Seeks Contingent Approval by the Commission in Advance of Securing DOE Approval

The ACR proposed that in instances where an IOU desires the Commission's contingent approval of expenditures before federal action, the utility would be authorized to book its share of costs into a memorandum account and apply to the Commission for approval of the project. For those projects that would not require a CEQA review, a CPCN, or a permit to construct, the utility would be allowed to apply for Commission approval via an advice letter. For all other projects, the utility would be required to file an application seeking Commission approval.

6.1 Positions of Parties

Concerning the proposed review process, SDG&E states that the ACR "appropriately establishes a workable process to evaluate the issues and

questions that should be addressed in the Commission's efforts to further facilitate Smart Grid access to Recovery Act federal resources."⁶⁵

PG&E similarly supports this proposed process and states that it "is a workable and fair process that balances the need for expedited Commission approval with the need for an opportunity for the Commission and interested parties to review and comment in advance on the reasonableness of the rates required to support the non-federal share of project costs."⁶⁶

TURN opposes this proposed review process, arguing that it:

... is not appropriate or reasonable, particularly for large scale projects or costs that could have a significant impact on rates. The proposal is not appropriate as well because of the lack of prior Commission evidentiary proceedings in which the type of projects, their costs and benefits, or the Smart Grid functionalities have been explored or evaluated by the public. The Public Utilities Code requires the Commission to determine the reasonableness of costs before such costs are included in rates or authorized to be included in rates.⁶⁷

TURN argues further that:

It would not be appropriate or fair for this Commission to evade its statutory responsibility to consider proposals for recovery of costs incurred by utilities with a full evaluation and consideration of the evidence associated with the costs and benefits of these projects. The burden should not be on ratepayers to demonstrate imprudence or produce "clear and convincing" evidence of unreasonableness ...⁶⁸

⁶⁵ SDG&E Comments at 3.

⁶⁶ PG&E Comments at 3.

⁶⁷ TURN Comments at 8.

⁶⁸ TURN Comments at 9.

TURN does not see the need for an expedited process that approves ratepayer funds contingent upon a projects' receipt of DOE funds. Instead, TURN proposes an expedited process that would lead to an "endorsement of the IOU's proposal to DOE ..." ⁶⁹ If as a result of such a policy, "... an IOU would not otherwise submit the federal grant proposal without ... an order that would allow the IOU to include expenses or investments in rates," then TURN states that "proposals for Demonstration Grants that are relatively small scale *might* justify an expedited Commission review." ⁷⁰

For larger projects, TURN sees no need for departing from business as usual, stating:

With regard to any large scale expenditures, particularly those associated with Implementation Grants under Section 1306, these proposals should undergo a formal review process that requires the IOU to document the benefits and costs associated with its proposal, the potential impact on ratepayers if the costs were included in rates, and demonstrate why any expedited rate recovery would be necessary. ⁷¹

Similarly, DRA opposes the major features of the proposed review process conducted in advance of DOE action. Instead, DRA proposes to:

- Limit the use of a Tier 3 Advice Letter process in Proposed Process 3 to situations where the IOU seeks no more than \$15 million in California ratepayer funding and DOE provides at least 25% of a Smart Grid project's funding;

⁶⁹ *Id.* at 11.

⁷⁰ *Id.*, emphasis added.

⁷¹ *Id.*

- Require an application if an IOU seeks more than \$15 million in California ratepayer funding, or DOE provides less than 25% of project funding; and
- Require that the IOUs provide the Commission clear and itemized data in support of any Smart Grid project.⁷²

DRA further recommends “an extended review period of 60 days” for the Tier 3 Advice Letter process.⁷³

CLECA, similarly, notes that:

... no comment period *is required* under the Commission’s rules of practice and procedure for an advice letter or resolution in a rulemaking. CLECA believes that it would be inappropriate for parties to be denied the opportunity to “protest” utility advice letters regarding Smart Grid projects ...⁷⁴

In addition, CLECA complains regarding the DOE Smart Grid funding proposals that:

It is already June 2009. ... there will be very limited time for a full review of the utility proposals.⁷⁵

Still, CLECA recommends that where utilities seek pre-approval of matching funds:

... the Commission should hold a series of workshops on the proposals and solicit input from parties during the workshops and

⁷² DRA Comments at 12-13.

⁷³ *Id.* at 10.

⁷⁴ CLECA Comments at 7. CLECA fails to note that independent of a comment period on a resolution resolving the issues in an advice letter, parties have full opportunities to protest the advice letter itself. CLECA’s comments appear to conflate commenting on a resolution with protesting and/or commenting on an advice letter. The ACR made no proposal that would change any party’s opportunity to protest an advice letter filing.

⁷⁵ *Id.* at 8.

in post-workshop comments. This input should be explicitly sought from interested parties, even within what may be difficult time constraints.⁷⁶

The CFC's comments advise against the pursuit of Recovery Act funds for the Smart Grid. CFC argues that "Smart grid upgrades are not 'shovel ready.'"⁷⁷ CFC does not support any review of utility projects in advance of DOE funding, arguing that:

Utilities which are not promised recovery of costs of a smart grid investment will be more selective about the project proposed to DOE, so that they will be able to subsequently make a showing to the Commission that the investment will be cost-effective, will improve system reliability and performance, and will provide real benefits to California.⁷⁸

6.2 Discussion

As noted above, it is reasonable for the Commission to authorize each utility applying for DOE Smart Grid funding to establish a memorandum account to track the costs associated with projects for which Smart Grid funding by DOE is sought. For this reason, as discussed above, each IOU is authorized to track these costs from the effective date of this decision. Each IOU seeking a memorandum account to track these costs shall file an advice letter with the Commission within 30 days of the effective date of this decision.

Upon our review of the comments and our review of the final FOA for the Smart Grid Demonstrations and the final FOA for the Smart Grid Investment Grant Program, we believe that it is likely that the material submitted to the DOE

⁷⁶ *Id.* at 9.

⁷⁷ CFC Comments at 7.

⁷⁸ *Id.*

will prove adequate to permit a determination by this Commission of the reasonableness of the rates required to support the non-federal share of project cost. Specifically, for both the Smart Grid Demonstrations and the Smart Grid Investment Grant Program, the DOE requires the submission of information on the costs and benefits associated with either the demonstration project or the investment. A comparison of the project benefits with the incremental utility share of project costs will permit the Commission to make a determination of the reasonableness of the commitment of ratepayer funds to these projects. If the information provided to DOE is adequately supported, it is likely that it will prove sufficient for reviews by this Commission.

Our review of the DOE application materials, however, indicates that when there is no DOE determination yet that a project merits funding to guide and focus this Commission's review, then the complex information contained in the DOE application is best reviewed by this Commission through an application process – not through an advice letter. As a result, we do not adopt the advice letter review process proposed in the ACR for projects seeking Commission approval in advance of DOE funding.

Finally, since the Commission's evaluation of the reasonableness of a project will assume that DOE is paying a certain portion of the project costs, a Commission decision approving a project may take a conditional form. In particular, the Commission may determine that it is reasonable for ratepayers to pay up to a certain percentage or amount of a project's costs. As a result, the Commission's approval of a project may be contingent on a commitment of DOE funds at a specific level. Subsequently, if the DOE funding meets the anticipated levels, then, unless otherwise stated in the Commission decision reviewing the project, further action reviewing the project may not be needed. The final project

costs will, however, upon completion of the project be subject to a standard review in a general rate case or separate application that will incorporate the costs into rates.

If, however, the DOE fails to fund a project at the level upon which Commission approval is contingent and the utility wants to increase its contribution to the project and recover the additional contribution through rates, then it will be necessary for the project's proponent to provide new facts to the Commission and seek to demonstrate that a larger commitment of ratepayer funds is reasonable.

As noted above, in order to produce a timely review consistent with the goals of the Recovery Act, we adopt rules in advance of an application to facilitate the processing of such applications when they are made. In particular, it is reasonable to limit the protest period on the application to 15 days, rather than the 30 days otherwise provided in the Commission's rules. In addition, we decide now that applicants may reply to protests, with the reply due 7 days following the protest.

In summary, we find it reasonable to authorize each IOU to track costs related to Smart Grid projects for which it seeks DOE funding from the date of the effective date of this decision. Each IOU seeking a memorandum account to track these costs shall file an advice letter with the Commission within 30 days of the effective date of this decision. If an IOU desires Commission approval in advance of a DOE decision on project funding, it may file an application requesting Commission approval and demonstrating that it is reasonable for the Commission to approve ratepayer funds for these projects.

7. Comments on Proposed Decision

The proposed decision of the Commissioner in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on August 10, 2009 by PG&E, SCE, SDG&E, TURN, DRA, and CFC. Reply comments were filed on August 17, 2009 by SCE, DRA, PG&E, and SDG&E. In this section, we consider the major arguments made by parties.

TURN objected to our proposal to provide deference to DOE for several reasons. First, TURN argues that "[w]hile there may be circumstances that warrant some deference to other agencies, the question should be answered by considering at a minimum the expertise of the other agency and the purpose of the cost-effectiveness analysis in the other forum."⁷⁹ TURN further states that "there is no indication that DOE will conduct a substantive review of the cost-effectiveness analysis."⁸⁰

In response to TURN's first charge, we note that the United States Department of Energy, which oversees the national laboratories, does have expertise on energy matters. It is reasonable for this Commission to give significant weight to DOE's expertise in energy matters.

In addition, the DOE, as indicated above, is conducting a thorough review of these projects including the costs and benefits. Furthermore, we note that fraudulent presentations in the application are subject to fines and imprisonment under 18 U.S.C § 1001. Furthermore, the costs and benefits are central to the

⁷⁹ TURN Comments on PD at 4.

⁸⁰ Id. at 7.

work of DOE, which includes the award of \$4.5 billion in support of Smart Grid activities throughout the nation.

For the Smart Grid Demonstrations, Appendix A provides detailed notes on how to provide cost benefit data to DOE.⁸¹ Similarly, for the Smart Grid Investment Grants, DOE states that:

To ensure consistency in the estimation of overall and net benefits derived from all project awarded grants, DOE will apply a cost-benefit analysis (CBA) methodology. ... While the details of benefits estimation for each project might vary, the CBA methodology will be applied uniformly, and to the extent possible, DOE will use the same method, from project to project, to estimate each given type of benefit.⁸²

Thus, it is clear that a standard and accurate cost-benefit analysis is of critical concern to DOE as it compares grants and makes awards.

It is also clear that DOE plans an active review. Furthermore, we note that this Commission will conduct its own analysis of a project's costs and benefits consistent with our statutory obligations. We do not need, nor do we rely upon, a cost benefit analysis of DOE, but will perform our own review of the costs and benefits as described in this decision.

In summary, there is no merit to TURN's arguments that we should not rely on information provided to DOE or to DOE's process for eliciting and analyzing project costs and benefits.

⁸¹ See ALJ Ruling, July 8, 2009, Attachment B at 51ff.

⁸² See ALJ Ruling, July 8, 2009, Attachment A.

Second, TURN objects to the use of a rebuttable presumption in the review of IOU projects that have obtained a DOE award. We note that the approach we adopt today does not include a rebuttable presumption.

Third, TURN objects to the statement in this decision that “we believe that it is likely that the material submitted to the DOE will prove adequate to permit a determination by this Commission of the reasonableness of the rates required to support the non-federal share of project cost.”⁸³ TURN argues that it “is quite puzzled by this apparent promise from the Commission that the information submitted to another agency will be found reasonable for CPUC review.”⁸⁴ As a result, TURN argues that such a promise “is in conflict with ... statutory obligations.”⁸⁵

TURN’s concern is misplaced. Even a cursory review of the DOE applications shows that DOE requires the submission of very extensive information. Moreover, giving guidance to IOUs concerning what information it should submit to the Commission is consistent with the guidance that the Commission routinely gives to IOUs in situations involving new programs subject to Commission review.⁸⁶ Furthermore, our review of the sentence cited by TURN does not reveal any promise that the mere submission of data will lead to a finding that costs are reasonable.

⁸³ TURN Comments on PD at 11.

⁸⁴ Id. at 11.

⁸⁵ Id. at 11.

⁸⁶ See for example the June 6, 2002 Joint ACR and ALJ Ruling in R.02-06-001 at 5, which provides guidance to utilities on the costs that IOUs should submit for the “Base Case AMI Scenario.”

Finally, TURN argues that the PD makes policy conclusions without record evidence. In particular, TURN states that it “is astonished” that the Commission could state that “many of the advantages of a Smart Grid will contribute to reducing greenhouse gas emissions.”⁸⁷ TURN further states that “helping to integrate renewable resources or electric vehicles ... will contribute to GHG reduction” is “a tenuous claim” that “should be substantiated by evidence, and more importantly, by an alternative analysis.”

Once again, we disagree with TURN’s assertion. Comments and workshops in this proceeding have focused extensively on ways in which a Smart Grid can help to reduce greenhouse gas emissions. For example, a smarter grid can support the use of wind and solar generation technologies that operate with an abrupt intermittency.

Parties have also provided comments in this regard:

Deployment of a smart grid will facilitate the following four mechanisms that contribute to reduced greenhouse gas (GHG) emissions.

- Increased use of renewable energy;
- Energy conservation;
- Load shifting; and
- Enabling electric transportation.⁸⁸

And:

Based on conservative estimates, SCE expects Edison SmartConnect™ to create an annual reduction of 365,000 metric tons

⁸⁷ Id. at 12.

⁸⁸ SCE Comments, February 9, 2009 at 70.

of carbon dioxide or about 1,000 metric tons per day within our service territory. ⁸⁹

And:

The increased use of Plug-in Electric Vehicles (PEVs) supports greenhouse gas reduction goals by displacing fossil fuel emissions with electricity from an increasingly renewable utility generation portfolio. ⁹⁰

TURN does not address this information, nor does TURN provide any data that rebuts this information. PG&E and SDG&E have also provided information indicating that Smart Grid technologies can reduce green house gas emissions.⁹¹

DRA raises several issues in its comments. First, DRA states that it is “interested in reviewing and commenting upon IOU proposals.” We therefore require IOUs to provide all data to DRA that it provides to the Energy Division and have amended our decision accordingly.

Second, DRA also objects to the use of the rebuttable presumption. As we have noted, the approach adopted herein does not use a rebuttable presumption.

Third, DRA asks that the Commission clarify that “memorandum accounts may or may not be recoverable through rates and are subject to further scrutiny by the Commission.”⁹² DRA asks that we clarify that “if the DOE does not reward Recovery Act funding for an IOU project, the IOU cannot recover costs

⁸⁹ Id.

⁹⁰ Id. at 71.

⁹¹ See also PG&E Comments, February 9, 2009 at 33 and SDG&E Comments, February 9, 2009, at 27, which also provide information on this issue, albeit with less detail.

⁹² DRA Comments on PD at 11.

tracked in a memorandum account without presenting a formal application.”⁹³ This is exactly what we had in mind, and we agree with this clarification.

DRA also asks that the Commission “direct the IOUs to track costs separately for each individual project.”⁹⁴ This is a reasonable request, and we so direct.

Fourth, DRA proposes that the protest period be amended and asks for an extension of the protest period to 60 days.⁹⁵ Regarding the proposed shortening of the protest period for applications, DRA states “[p]rovided that DRA and other parties still maintain the right to conduct evidentiary discovery and prepare testimony, it may not be as necessary to extend the protest period as for the advice letter.”⁹⁶

We note that since the initial application deadlines to DOE are in the month of August, discovery by DRA and other parties on these matters can start well in advance of any filing made before this Commission. We also note that pursuant to this decision, DRA will receive all the information provided to DOE immediately, and can begin its analysis far in advance of the filing of an advice letter or application. Thus, we see little reason for extending the protest period.

On the other hand, given the short time frame to lodge a protest, we require the IOUs to make available in a timely manner all studies, evaluations and other reports on Smart Grid activities funded by the Recovery Act that are

⁹³ Id. at 12.

⁹⁴ Id. at 11.

⁹⁵ Id. at 12.

⁹⁶ Id.

submitted to DOE, consistent with confidentiality protections. In addition, IOUs should provide all documentation that is necessary for an ALJ or the Energy Division to evaluate the Application or Advice Letter at the time of filing, and respond expeditiously to any data requests from Energy Division or parties, serving that information on all parties to the Application or Advice Letter.

CFC objects to the provision of matching funds “from ratepayers during a severe recession.”⁹⁷ Instead, CFC argues that “matching funds used to stimulate economic recovery should be provided by government, not ratepayers.”⁹⁸

In response, we note that the Commission will only approve ratepayer funding for projects that offer benefits to ratepayers.

CFC also objects to the use of an expedited review process and the use of an advice letter review process.⁹⁹ CFC argues that the Tier 3 advice letter review “does not satisfy the requirements of General Order 96B ...”¹⁰⁰

In response, we note that General Order 96B Energy Industry Rule 5.3 states that matters appropriate for a Tier-3 Advice Letter review include:

(2) A tariff change in compliance with a statute or Commission order where the wording of the change does not follow directly from the statute or Commission order. ...

(9) A change to a rate or charge pursuant to a methodology approved by the Commission for use in an advice letter, such as an annual performance review for performance-based ratemaking as

⁹⁷ CFC Comments on Proposed Decision at 3.

⁹⁸ Id. at 4.

⁹⁹ Id. at 6.

¹⁰⁰ Id.

approved by the Commission for the Utility submitting the advice letter.¹⁰¹

Thus, the proposed use of Advice Letter is perfectly consistent with General Order 96B.

CFC also argues the proposed decision “unlawfully shifts the burden of proof to anyone opposing the utility’s project”¹⁰² and that under the proposed decision, “the Commission will delegate its authority to DOE.”¹⁰³

We have discussed this matter above. The Commission does not delegate its review to DOE. The Commission assesses the information that utilities provide to it and makes a determination on the reasonableness of committing ratepayer funds to Smart Grid projects.

SDG&E, and SCE provided short comments supporting the proposed decision.

PG&E provided supportive comments, but also argues that:

... the Commission must be willing to employ extraordinary and expedited decision-making procedures in order to meet the DOE’s deadlines for approval of ARRA projects, because DOE is likely to significantly discount the merits of proposed projects for which required regulatory approvals and non-federal matching funding have not been timely secured.¹⁰⁴

PG&E further argues that:

¹⁰¹ General Order 99B, Energy Industry Rule 5, Section 5.3.

¹⁰² CFC Comments on Proposed Decision at 7.

¹⁰³ Id. at 9.

¹⁰⁴ PG&E Comments of Proposed Decision at 1.

... the Commission should make clear that the requirement that utilities file a formal application for their projects under this process does not mean that the application should require evidentiary hearings, prepared testimony, or should require extensive discovery or even any discovery, if the application contains extensive information and factual support on its face. In addition, although limiting the protest period for such applications is helpful, it is equally important that the Commission direct the Assigned Commissioner and Administrative Law Judge presiding over the application to hold a prehearing conference and issue a scoping memo on an expedited basis, i.e. within a few days of the deadline for protests.¹⁰⁵

And again, PG&E argues:

... it is essential that the Commission acknowledge DOE's 90 day deadline for deciding Smart Grid applications, and direct the Assigned Commissioner and ALJ to issue a proposed decision on a "fast track" schedule, e.g. no later than 60 days following the Prehearing Conference. In addition to the comments and revisions that we have discussed herein, we have made other changes and revisions as we deemed appropriate.¹⁰⁶

In response, we note that although we see the need for timely processing of any application in this situation, we decline from adopting further case management requirements beyond the shortening of the protest period. Our experience with case management is that within a week or two of the assignment of a case, the assigned Commissioner and ALJ adopt a case management plan that serves the public interest. We see no reason to determine their case management plan in this proceeding.

¹⁰⁵ Id. at 2-3.

¹⁰⁶ Id. at 3.

8. Assignment of Proceeding

Rachelle B. Chong is the assigned Commissioner, and Timothy J. Sullivan is the assigned ALJ.

Findings of Fact

1. The Recovery Act appropriated \$4.5 billion to modernize the electric grid.
2. DOE issued FOAs offering up to 50 percent funding for proposed projects in a Smart Grid Investment Grant Program and a Smart Grid Demonstrations program. The final FOAs were adopted by DOE on June 25, 2009.
3. The FOAs attest that DOE will conduct a thorough review of projects before granting Recovery Act funding.
4. Each of the DOE-approved Smart Grid programs will require a commitment of funds in addition to the funds approved by the DOE.
5. It is reasonable to require IOUs subject to Commission regulation to file electronically and serve in this proceeding a notice when an application for funding has been submitted to DOE. It is reasonable for the notice to include: the application submitted to the DOE; 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.
6. It is reasonable to limit access to confidential and security-related information concerning the Smart Grid. Confidential and security-related information should be supplied only to the Commission including DRA. It may also be reasonable to supply such information to other interested parties upon the completion of appropriate non-disclosure agreements or after other measures that the Commission deems appropriate.

7. It is reasonable to require an IOU to file electronically and serve in this proceeding a further notice when DOE awards funding for an activity or informs the IOU that the activity will not receive a DOE award.

8. For projects or activities receiving a DOE award, it is reasonable to require an IOU to file electronically and serve in this proceeding quarterly notices describing in detail the status of all federally funded projects or activities until such time as the project or activity is complete.

9. Copies of quarterly status reports submitted to DOE are adequate for the purposes of this Commission as currently envisioned.

10. To the extent DOE requires an IOU to prepare and submit studies, evaluation, or other reports on Recovery Act-funded activities, it is reasonable to require an IOU to file electronically and serve in this proceeding copies of the same reports.

11. It is reasonable to abstain from the review of proposed Smart Grid projects that do not require additional ratepayer funds.

12. It is reasonable to require the IOUs to make available in a timely manner all studies, evaluations and other reports on Smart Grid activities funded by the Recovery Act that are submitted to DOE, consistent with confidentiality protections.

13. It is reasonable to require IOUs to provide all documentation that is necessary for an ALJ or the Energy Division to evaluate the Application or Advice Letter at the time of filing, and respond expeditiously to any data requests from Energy Division or parties, serving that information on all parties to the Application or Advice Letter.

14. It is reasonable to authorize each IOU subject to the Commission's jurisdiction to track the costs associated with Smart Grid projects for which

funding by DOE is sought, from the effective date of this decision and to establish a memorandum account via an advice letter filing, made within 30 days, for booking these costs.

15. It is reasonable to review by a Tier-3 Advice Letter any IOU project that has obtained DOE Recovery Act Smart Grid funding in light of DOE's review of the project if the project does not require a CEQA review, a CPCN, or a permit to construct.

16. It is reasonable for the Commission to review through an application process those Smart Grid proposals that either lack DOE approval, or, even with DOE approval, require a CEQA review, a CPCN, or a permit to construct.

17. An advice letter or expedited application is a more reasonable process for reviewing a Smart Grid proposal than waiting for an IOU's next GRC.

18. It is reasonable to limit the protest period for applications filed pursuant to this decision to 15 days and to permit replies 7 days later.

19. The public interest is served by timely Commission action on Smart Grid projects that have applied for Recovery Act funding.

20. The DOE requires applicants for Smart Grid funds to submit information concerning the costs and benefits of the proposed projects.

21. The circumstances of the Recovery Act Smart Grid funding are unique.

Conclusions of Law

1. The Assigned Commissioner's Ruling of May 29, 2009 amended the scope of this proceeding to cover the funding opportunities created by the Recovery Act.

2. The Commission should require the reporting by IOUs of the information identified herein pertaining to the DOE Smart Grid programs in order for the Commission to supervise and regulate these public utilities.

3. The reporting requirements contained herein are consistent with the authority granted the Commission under § 701 of the Pub. Util. Code.

4. A Smart Grid project funded by the DOE that needs no additional ratepayer funding does not require further Commission review of the reasonableness of its costs.

5. It is reasonable and in the public interest for the Commission to authorize IOUs to track costs incurred for Smart Grid projects for which DOE funding is sought from the effective date of this decision and to establish memorandum accounts via an advice letter filing made within 30 days of the effective date of this decision.

6. Due to the unique circumstances associated with the Recovery Act's support for Smart Grid investments and projects, including DOE's thorough review of all applications for funding, this use of a Tier-3 advice letter to review a project is reasonable, and the procedures we adopt in this decision provide no precedent for future Commission decisions.

7. The advice letter process proposed herein for the review of Smart Grid projects that have obtained DOE funding and do not require a CEQA review, a CPCN, or a permit to construct is consistent with Commission precedent and the authority granted in § 454(b) of the Pub. Util. Code.

8. Reducing the time for protesting applications filed pursuant to IOU efforts to obtain Commission approvals of Smart Grid projects seeking DOE funding is in the public interest and consistent with § 1701 of the Pub. Util. Code and the provisions of Rule 2.6 of the Commission's Rules of Practice and Procedure.

9. The information on costs and benefits submitted to the DOE can provide a basis for initiating this Commission's review of a proposed Smart Grid project.

O R D E R

IT IS ORDERED that:

1. Investor-owned utilities subject to Commission regulation that apply for Smart Grid funding from the United States Department of Energy shall provide reports to the Commission's Energy Division and DRA as set forth in Section 3.2 of this decision.

2. Investor-owned utilities subject to Commission regulation that apply for Smart Grid funding from the United States Department of Energy shall be authorized to establish memorandum accounts to track the costs associated with these projects. Each investor-owned utility is authorized to track these costs from the effective date of this decision. Costs must be separately tracked for each individual project. Each investor-owned utility seeking a memorandum account to track these costs shall file an advice letter with the Commission within 30 days of the effective date of this decision.

3. A Smart Grid project that has been reviewed and approved for funding by the United States Department of Energy and does not require a California Environmental Quality Act review, a Certificate of Public Convenience and Necessity, or a permit to construct and does not require ratepayer funding that exceeds 50t of costs, may file a Tier-3 Advice Letter seeking Commission approval. The Commission's Energy Division shall review the advice letter consistent with Tier-3 advice letter procedures to determine whether:

1. The DOE has selected the project to receive an award;
2. The project furthers one or more of the benefits to IOU ratepayers identified in Section 5.2;
3. The requested incremental ratepayer funding for the project does not exceed \$30 million;

4. The utility attests that ratepayer funding does not exceed 50 percent of the total project costs;
5. The utility attests or otherwise demonstrates that it has sought third-party funding, in addition to DOE funding, and indicates what third-party co-funding it has received;
6. The utility has provided a detailed itemized budget for the project and included a reasonable explanation of how the budget was developed; and
7. The utility attests or otherwise demonstrates that the costs are necessary for the project.

If the conditions above are met, the Energy Division shall prepare a resolution approving the project for consideration by the Commission. A party protesting the Advice Letter should demonstrate that the Advice Letter does not meet the conditions set forth above.

4. Investor-owned utilities that receive an award of funding from the United States Department of Energy for Smart-grid related projects that require a California Environmental Quality Act review, a Certificate of Public Convenience and Necessity, a permit to construct shall file an application to obtain Commission review and determination of the reasonableness of the project and whether to authorize the recovery of costs through rates.

5. Except as indicated in Ordering Paragraphs 3, Smart Grid projects proposed by investor-owned utilities for funding by the United States Department of Energy shall seek Commission review of the reasonableness of recovering from ratepayers any costs associated with the project via an application process.

6. For applications filed pursuant to Ordering Paragraphs 4 and 5, the protest period is reduced to 15 days. The replies to protest are due with seven days thereafter.

7. Investor owned utilities shall make available in a timely manner all studies, evaluations and other reports on Smart Grid activities funded by the Recovery Act that are submitted to DOE, consistent with confidentiality protections.

8. Investor-owned utilities shall provide all documentation that is necessary for an Administrative Law Judge or the Energy Division to approve an Application or Advice Letter at the time of filing, and respond expeditiously to any data requests from Energy Division or parties, serving that information on all parties to the Application or Advice Letter.

This order is effective today.

Dated September 10, 2009, at San Francisco, California.

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
TIMOTHY ALAN SIMON
Commissioners