

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Rulemaking on the Commission's Own Motion into Reliability Standards for Telecommunications Emergency Backup Power Systems and Emergency Notification Systems Pursuant to Assembly Bill 2393.

FILED
PUBLIC UTILITIES COMMISSION
APRIL 12, 2007
SAN FRANCISCO, CALIFORNIA
RULEMAKING 07-04-015

**ORDER INSTITUTING RULEMAKING
TO IMPLEMENT ASSEMBLY BILL 2393**

I. Summary

With this decision, the Commission initiates a rulemaking addressing standards for telecommunications backup power systems and emergency notification systems pursuant to Assembly Bill (AB) 2393 (Ch. 776, Stats 2006).

II. AB 2393

AB 2393 added §§ 776, 2872.5 and 2892.1 to the Public Utilities Code.¹
A copy is included as Attachment A.

A central battery system was deployed by telecommunications providers in the 1920s to improve network operations, performance and reliability. As a result, batteries and generators located in the provider's central office were able to power both the central office and the customer's telephone in the event of a power outage assuming the telephone system is otherwise intact. The same

¹ All section references are to the Public Utilities Code.

continues to be true today for customers receiving land line service from a facilities-based provider of telephony services (telephony provider) through copper wires. However, newer communications transmission technologies, including fiber optic and coaxial cable, may require distributed backup power systems, both in the network and at the customer's premise, in order to have this capability.

Section 776 [AB 2393(1)] requires the Commission to consider the need for performance reliability standards, and to develop and implement performance reliability standards for backup power systems installed on the property of residential and small commercial customers by a facilities-based provider of telephony services, if the benefits of the standards exceed the costs. In any event, the Commission must provide a report to the legislature on the results of this investigation by January 1, 2008. Any standards are to include: minimum operating life, minimum time period in which a telephone system with a charged backup power system will provide the customer with sufficient electricity for emergency usage, and a means to warn the customer when the backup system's charge is low or when the system can no longer hold a charge. In developing any such standards, the Commission is to consider current best practices and the technical feasibility of establishing battery backup requirements. We note that AB 2393 and § 776 do not define "small commercial customer." Thus, one of our tasks is to establish a definition.

Automatic dialing-announcing devices are used in emergency notification systems by law enforcement agencies, fire protection agencies, public health agencies, public environmental health agencies, city or county emergency services planning agencies, and private for-profit agencies operating under contract with, and at the direction of, one or more of these agencies. These are

automatic devices that store phone numbers and disseminate a prerecorded message to those phone numbers in the event of an emergency.

Section 2872.5 [AB 2393(2)] requires the Commission, in consultation with the Office of Emergency Services (OES) and the Department of General Services (DGS), to determine whether standardized notification systems and protocols should be used by entities that are authorized to use automatic dialing devices to facilitate notification of affected members of the public in the event of local emergencies.² The Commission is not to establish standards for notification systems or protocols unless the benefits of the standards or protocols exceed the costs. The Commission is also required to provide any recommendations it may have for funding notification systems and any statutory modifications needed to facilitate notification of affected members of the public during local emergencies. In any event, the Commission must provide a report to the legislature on the results of this investigation by January 1, 2008.

As noted above, providers of telecommunications service generally install backup power systems on their property so that their systems can operate when the electric utility serving the property has a power outage. The backup power systems are designed to enable the telecommunications networks to function and customers to contact a public safety answering point (PSAP) operator during an electrical outage. These backup power systems are often batteries supplemented by diesel-powered electric generators, which recharge the batteries. In addition to telephony providers' own motivation to ensure network reliability and

² Our staff has been in contact with the staff of OES and DGS regarding this rulemaking, and we look forward to their continued participation.

operational efficiencies, minimizing communications service disruptions is widely beneficial for public safety and economic sustainability.

Section 2892.1 [AB 2393(3)] requires the Commission, in consultation with OES and DGS, to determine the need for such backup power systems not located on the customer's premises and to determine performance criteria. The Commission is also to determine whether the best practices recommended by the Network Reliability and Interoperability Council in December 2005 (Best Practices) for backup power systems have been implemented by providers of telecommunications service.³

If the Commission determines it is in the public interest, it is required to develop performance reliability standards for such backup power systems and implement the standards if the benefits exceed the costs. In developing such standards, the Commission is to consider current best practices and technical feasibility for establishing battery backup requirements.

In addition to the above, the Commission is required to determine the feasibility of the use of zero greenhouse gas emission fuel cell systems to replace diesel generators for such backup power systems.⁴ In any event, the Commission

³ Network Reliability and Interoperability Council (NRIC) VII, Focus Group 1C, "Analysis of the Effectiveness of Best Practices Aimed at E9-1-1 and Public Safety, F Report," December 2005.
http://www.nric.org/meetings/docs/meeting_20051216/FG1C_Dec%2005_Final%20Report.pdf. We note that best practices no. 7-7-5204 on p.59 recommends that backup power systems should be located on site when appropriate.

⁴ Section 42801.1 of the California Health and Safety Code defines greenhouse gas as including carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

must provide a report to the legislature on the results of this investigation by January 1, 2008.

Section 2892.1(a) provides that for the purposes of § 2892.1, “telecommunications service” means voice communication provided by a telephone corporation as defined in § 234, voice communications provided by a provider of satellite telephone services, voice communications provided by a provider of mobile telephony service as defined in § 2890.2, and voice communications provided by a facilities-based provider of voice communications utilizing voice over Internet Protocol or any successor protocol.

As noted above, the Commission is required to report to the Legislature on the above results of each investigation before January 1, 2008, and complete this proceeding within 18 months of AB 2393’s effective date, i.e., June 30, 2008.

III. Backup Power Systems Installed on the Property of Residential and Small Commercial Customers--Plan of Action

Section 776 addresses backup power systems installed on the property of residential and small commercial customers by telephony providers. The first step in the investigation will be to determine the telephony providers’ current practices regarding backup power systems, including the feasibility of establishing such systems where they do not exist. The second step will be to obtain the telephony providers’ and other interested parties’ recommendations for reliability standards and the associated costs and benefits.

To this end, the Commission’s Communications Division (CD) is directed to convene a technical workshop of subject matter experts to inform the Commission on this matter. The workshop to discuss “back up power installed on the property of residential and small commercial customers” will be held

June 5, 2007. CD will provide timely notice on the Commission's Calendar and to the service list.

The outcome of the workshop will be an informational request that will seek more detailed information, concerns and issues related to backup power systems on the property of residential and small commercial customers. The request will direct respondents to provide recommendations along with associated implementation costs and benefits. While the bill concerns itself with only backup power, a cost/benefit analysis should be viewed holistically. For example, there is no customer benefit if power is maintained/restored but the lines are flooded under water.

The request will be sent to all facilities-based telephony providers and other interested parties. Upon receipt of the responses to the request, CD will compile the information into a report that:

1. Identifies the concerns and issues that the Commission must address, including current best practices and the technical feasibility of establishing battery backup requirements;
2. Identifies recommendations presented by the parties and their level of support;
3. Identifies a recommended course of action, as well as any other viable options;
4. Discusses the costs and benefits of implementing the recommended course of action;
5. Proposes a definition of small businesses for the purpose of this investigation; and
6. Identifies any concerns or issues that remain to be addressed.

The draft report will be sent to the parties for comment. Upon receipt of the comments, CD, in consultation with the assigned Commissioner, will prepare

a revised draft report, which will be provided to the parties for comment.⁵ A proposed decision, which adopts a final report, then will be prepared.

IV. Emergency Notification Systems--Plan of Action

Section 2872.5 addresses standardized notification systems and protocols for emergency notification systems. The first step in the investigation will be, in consultation with OES and DGS, to determine the standards and protocols currently in use by those entities that operate such systems. The second step will be to obtain the operating entities' and other interested parties' recommendations for standards and protocols, and the associated costs and benefits.

To this end, CD is directed to convene a technical workshop of subject matter experts to inform the Commission on this matter. The workshop to discuss "emergency notification systems" will be held June 19, 2007. CD will provide timely notice on the Commission's Calendar and to the service list.

The outcome of the workshop will be an informational request that will seek more detailed information, concerns and issues that must be addressed to establish emergency notification systems. The request will direct respondents to provide recommendations along with associated implementation costs and benefits.

The request will be sent to all facilities-based telephony providers, users of emergency notification systems (such as law enforcement agencies, fire

⁵ For any or all of these three workshop topics, CD may evaluate a gradation of possibilities with varying costs and benefits. Option A, for example, may have some benefits but relatively high costs. Option B may be the opposite with several other options falling in between. All possibilities may be feasible, and CD will specify its recommended options in accordance with the requirements of §§ 776, 2872.5 and 2892.1.

protection agencies, public health agencies, public environmental health agencies, city or county emergency services planning agencies), and other interested parties. Upon receipt of the responses to the request, CD will compile the information into a report that:

1. Identifies the concerns and issues that the Commission must address, including funding of notification systems and any necessary statutory modifications needed to facilitate such notification;
2. Identifies recommendations presented and their level of support;
3. Identifies a recommended course of action, as well as any other viable options;
4. Discusses the costs and benefits of implementing the recommended course of action; and
5. Identifies any concerns or issues that remain to be addressed.

The draft report will be sent to the parties for comment. Upon receipt of the comments, CD, in consultation with the assigned Commissioner, will prepare a revised draft report, which will be provided to the parties for comment.⁶ A proposed decision, which adopts a final report, then will be prepared.

V. Backup Power Systems Not Installed on the Customer's Premises --Plan of Action

Section 2892.1 addresses backup power systems not located on the customer's premises. The first step in the investigation will be to determine the telecommunications service providers' current standards and practices

⁶ As explained in greater detail in footnote 5, CD may evaluate a gradation of possibilities, and it will specify its recommended options in accordance with the requirements of §§ 776, 2872.5 and 2892.1.

applicable to their backup power systems. The second step will be to obtain the telecommunications service providers' and other interested parties' recommendations for reliability standards, and the associated costs and benefits.

To this end, CD is directed to convene a technical workshop of subject matter experts to inform the Commission in this matter. The workshop to discuss "backup power systems not installed on the customer's premises" will be held June 6, 2007. CD will provide timely notice on the Commission's Calendar and to the service list.

The outcome of the workshop will be an informational request that will seek more detailed information, concerns and issues related to backup power systems that are not installed on the customer's premises. The request will direct respondents to provide recommendations along with associated implementation costs and benefits.

The request will be sent to all telecommunications service providers and other interested parties. Upon receipt of the responses to the request, CD will compile the information into a report that:

1. Identifies the concerns and issues that the Commission must address, including whether the best practices have been implemented, and an assessment of the feasibility of zero greenhouse gas emission fuel cell systems to replace diesel generators for such backup power systems;
2. Identifies recommendations presented and their level of support;
3. Identifies a recommended course of action, as well as any other viable options;
4. Discusses the costs and benefits of implementing the recommended course of action; and

5. Identifies any concerns or issues that remain to be addressed.

The draft report will be sent to the parties for comment. Upon receipt of the comments, CD, in consultation with the assigned Commissioner, will prepare a revised draft report, which will be provided to the parties for comment.⁷ A proposed decision, which adopts a final report, then will be prepared.

VI. Existing Standards or Protocols

It is possible that there are existing standards or protocols addressing the matters covered by AB 2393. Therefore, we ask the respondents to provide information on any relevant existing state or federal standards or protocols, including citations, as well as any state or federal action that gives the recommendations of standard-setting agencies the force of law.

VII. Respondents

For purposes of this proceeding, all California certificated telephony providers, users of emergency notification systems, and providers of telecommunications service (as defined in § 2892.1.(a)) are respondents.

VIII. Service List

The Executive Director shall serve copies of the rulemaking on respondents to this proceeding.

While we have attempted to identify and serve this rulemaking on all respondents, we may have missed some. Therefore, we ask those receiving this rulemaking to share it with any respondents who may not have been served.

⁷ As explained in greater detail in footnote 5, CD may evaluate a gradation of possibilities, and it will specify its recommended options in accordance with the requirements of §§ 776, 2872.5 and 2892.1.

We invite broad participation in this proceeding. Those who seek party status, including respondents, or wish to monitor this proceeding may do so by informing the Commission's Administrative Law Judge (ALJ) Process Office (process_office@cpuc.ca.gov) of his or her intent to participate and providing the following information:

- a. Name and organization represented, if any
- b. Address
- c. Telephone number
- d. E-mail address
- e. Assignment to the appearance, state service, or information only category.

In order to be included on the initial service list of this proceeding, parties should so inform the ALJ Process Office no later than April 30, 2007.

While all respondents identified in the OIR will be bound by the outcome of this proceeding, only those who notify us of their wish to be on the service list will be accorded service by others until final rules are proposed and/or a final decision issued.

The initial service list will be posted on the Commission's website at www.cpuc.ca.gov and will be updated periodically. Parties should use the website service list for service of all filings.

All filings in this proceeding may be made electronically according to Rule 1.10 of the Commission's Rules of Practice and Procedure (Rules). Consistent with those rules, a hard copy of all pleadings shall be concurrently served on the assigned ALJ.

IX. Jurisdiction

AB 2393 addresses matters related to the reliability of a wide variety of telecommunications services during an emergency, and directs the Commission

to undertake the tasks specified therein. Yet the Commission's jurisdiction regarding telecommunications rates and services is subject to limitations depending on the type of telecommunications services being provided.⁸

In the course of this rulemaking, the Commission may identify the need for standards in an area that is not within the Commission's jurisdiction. In such a case, the Commission may recommend state or federal legislation or the adoption of an appropriate standard by the state or federal agency with the necessary jurisdiction. We will invite parties' comments on when jurisdictional issues dictate use of these alternate measures, if any are necessary.

The Commission requests the full cooperation of all respondents and interested parties with CD in carrying out its tasks as described herein.

The participation of a provider of a communications service will not constitute an admission of jurisdiction. Any participating party, however, shall provide information requested by the Commission.

X. Preliminary Scoping Memo

This rulemaking is instituted for the purpose of implementing AB 2393, as described herein.

This rulemaking is preliminarily determined to be a quasi-legislative proceeding, as that term is defined in Rule 1.3(d) of the Rules. It is preliminarily

⁸ See, e.g., In re Vonage Holdings Corp., 19 F.C.C.R. 22404, 22424 at ¶ 31 (preempting state regulation of VoIP service offered by Vonage); Minnesota Public Utilities Comm'n v. Federal Communications Comm'n, 2007 U.S. App. LEXIS 6448 (8th Cir. 2007) (recognizing that the FCC decision in Vonage precludes state regulation to the same extent for other "services 'having basic characteristics similar to DigitalVoice service'") (quoting id. at 22424, ¶ 32).

determined that this proceeding shall be conducted through a written record, and hearings are not necessary.

Respondents and other interested parties are invited to participate in workshops and comment opportunities, as described above.

Rule 6.2 provides that comments may be filed on an Order Instituting Rulemaking addressing the category, need for hearings, issues, or schedule. In particular, we invite comments on how information for this investigation may be best obtained and whether workshops are needed. Comments shall be filed no later than May 4, 2007.

Pursuant to Rule 17.1(a)(2), Notices of Intent to claim compensation shall be filed no later than June 4, 2007.

The schedule is as follows:

Rulemaking Issued	April 12, 2007
Request to be placed on service list	April 30, 2007
Comments on the rulemaking	May 4, 2007
Workshop scope/agendas mailed	May 25, 2007
Notices of Intent to claim compensation filed	June 4, 2007
Workshop – § 776	June 5, 2007
Workshop – § 2892.1	June 6, 2007
Workshop – § 2872.5	June 19, 2007
Informational requests mailed	July 13, 2007
Responses to informational requests filed	August 15, 2007
CD draft report mailed ⁹	October 17, 2007
Comments on draft report filed	November 6, 2007
Reply comments on draft report filed	November 21, 2007
CD revised draft report mailed	December 11, 2007

⁹ CD's draft report will be a single document addressing §§ 776, 2872.5 and 2892.1. All reports, comments and reply comments are to be filed and served on all parties.

Comments on revised draft report filed	December 21, 2007
Commission's report to the Legislature	December 31, 2007
Reply comments on revised draft report filed	January 14, 2008
Proposed decision mailed	April 11, 2008
Proposed decision on Commission's Agenda	May 2008

XI. Exempt from Public Review

Pursuant to Rule 14.7, no public review or comment is required for an Order Instituting Rulemaking.

IT IS ORDERED that:

1. A rulemaking is instituted for the purpose of addressing standards for telecommunications backup power systems and emergency notification systems pursuant to Assembly Bill 2393.

2. This rulemaking is preliminarily determined to be a quasi-legislative proceeding, as that term is defined in Rule 1.3(d) of the Commission's Rules of Practice and Procedure.

3. All California certificated telephony providers, users of emergency notification systems, and providers of telecommunications service (as defined in Public Utilities Code Section 2892.1.(a)) are respondents to this rulemaking.

4. The temporary service list for this proceeding shall include the respondents, the Office of Emergency Services, and the Department of General Services.

5. The schedule is as set forth herein.

6. Those who seek party status or wish to monitor this proceeding shall do so by informing the Commission's Administrative Law Judge (ALJ) Process Office (process_office@cpuc.ca.gov) of his or her intent to participate and providing the following information:

a. Name and organization represented, if any

- b. Address
- c. Telephone number
- d. E-mail address
- e. Assignment to the appearance, state service, or information only category.

In order to be included on the initial service list of this proceeding, parties shall so inform the ALJ Process Office no later than April 30, 2007.

7. The assigned Commissioner and/or the assigned ALJ shall have ongoing oversight of the service list and may institute changes to the list or the rules governing it, as needed.

8. The assigned Commissioner and/or the assigned ALJ may modify the process and schedule established herein as necessary.

This order is effective today.

Dated April 12, 2007, at San Francisco, California.

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