



**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

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Order Instituting Rulemaking to Modernize
the Electric Grid for a High Distributed
Energy Resources Future.

Rulemaking 21-06-017
(Filed June 24, 2021)

**THE PROTECT OUR COMMUNITIES FOUNDATION COMMENTS ON THE ORDER
INSTITUTING RULEMAKING TO MODERNIZE THE ELECTRIC GRID FOR A
HIGH DISTRIBUTED ENERGY RESOURCES FUTURE**

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Dated: August 16, 2021

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The Protect Our Communities Foundation (“PCF”) provides these opening comments on *The Order Instituting Rulemaking To Modernize The Electric Grid For A High Distributed Energy Resources Future* (“OIR”). These comments are timely filed pursuant to Ordering Paragraph 7 of the OIR.

I. INTRODUCTION

The “High DER” proceeding can transform distributed energy resources (DER) into a valuable tool for ratepayers to access a wider range of clean energy resources. Alternatively, the proceeding could result in an infrastructure-building and wealth-creating bonanza for utility shareholders.

PCF recommends that the Commission structure the proceeding so that ratepayers benefit from distributed energy resources and are shielded from unneeded infrastructure building by the utilities. The following sections recommend schedule, organizational, and structural changes to help to protect ratepayers by (1) revising the preliminary categorization determination for the proceeding from quasi-legislative to ratesetting, (2) determining the probable need of evidentiary hearings, (3) scheduling consecutively the proceeding’s tracks to allow for more active participation from all parties, (4) re-configuring the tracks such that the first track would be a cost containment and ratepayer protection track, and (5) establishing cost containment and cost effectiveness as a primary issue within each of the additional tracks of the proceeding to allow the Commission to only select cost-effective DER options.

In addition to the issues listed above, PCF also responds to the four questions posed in the OIR in section VI below.

II. The preliminary issues listed in the OIR best align with a proceeding categorization of ratesetting.

The Commission’s Rules of Practice and Procedure,¹ Rule 1.3(g) defines ratesetting proceedings as “proceedings in which the Commission sets or investigates rates for a specifically named utility (or utilities), or establishes a mechanism that in turn sets the rates for a specifically named utility (or utilities).”² This OIR details that a major component of the proceeding will entail determining the optimal distribution system operator (DSO) model.³ The OIR then states that “[a] high-penetration DER structure could reduce overall IOU rates of return. For an IOU-administered DSO to be successful, performance incentives not tied to capital investments may be needed, or there may be a need for a third-party DSO administrator.”⁴ Thus, the OIR proposes reviewing the way that the IOUs earn profits. Redefining the way utilities earn money in a way that could even go as far as to restructure the rate of return clearly aligns with Rule 1.3(g)’s definition of a ratesetting proceeding that references “establish[ing] a mechanism that in turn sets the rates.”

Additionally, the OIR references costs, cost-effectiveness, or cost reviews approximately 30 times. Rule 1.3(f), which defines quasi-legislative proceedings, notes that quasi-legislative proceedings may have an “incidental effect on ratepayer costs.”⁵ However, the OIR makes clear that costs and rates will be central to the decision making in the High DER proceeding. Thus, a categorization of quasi-legislative is not appropriate.

Finally, quasi-legislative proceedings do not require ex-parte reporting.⁶ The OIR states that the topics and issues addressed in the proceeding will be wide-ranging⁷ and anticipates

¹ All additional reference to “Rules” in the comments are in reference to the Commission’s Rules of Practice and Procedure unless otherwise noted.

² CPUC Rules of Practice and Procedure, (May 2, 2021), Rule 1.3(g), p. 2.

³ OIR, p. 11-12.

⁴ OIR, p. 11-12.

⁵ CPUC Rules of Practice and Procedure, (May 2, 2021), Rule 1.3(f), p. 2.

⁶ CPUC Rules of Practice and Procedure, (May 2, 2021), Rule 8.2(a), p. 52.

⁷ OIR, p 13, (“In addition to considering wide-ranging issues related to distribution planning, this proceeding will support DRP and IDER proceeding work streams to continue to implement the requirements of Section 769 with the anticipated closure of these two proceedings.”).

coordinating with 23 other proceedings.⁸ Many of those 23 proceedings are ratesetting. Categorizing the High DER proceeding as quasi-legislative would significantly limit transparency by eliminating ex parte communication reporting requirements. The High DER proceeding will likely become a landmark proceeding because of its important, complex, and wide-ranging nature and the major impacts it will have on ratepayer costs. Transparent communications by parties with decision makers should be a minimum requirement for such an important proceeding.

Thus, for the reasons stated above, PCF recommends the final categorization of the proceeding be changed from quasi-legislative to ratesetting.

III. The preliminary scoping memo should assume the need for evidentiary hearings because the proceeding’s scope spans numerous issues and thus will likely encounter several instances of disputed material facts.

The OIR states that “[i]t appears that the issues may be resolved through comments and workshops without the need for evidentiary hearings.”⁹ As noted in the previous section, the High DER proceeding anticipates addressing wide-ranging topics and plans to coordinate with at least 23 other proceedings. Such a complex and multifaceted proceeding will undoubtedly encounter disputes of material facts. As such, PCF recommends that the OIR be revised to anticipate the need for evidentiary hearings because not only will the proceeding be complex, it also addresses DERs, a subject with many highly controversial elements as demonstrated in the current net energy metering proceeding.¹⁰

IV. The proceeding’s schedule should be revised to order the tracks consecutively rather than in parallel because a sequential arrangement of tracks will allow for more fulsome participation by all parties.

The OIR states that “Rate impacts and alignment with the Commission’s ESJ Action Plan are expected to be considerations in this OIR for some of the scope areas, and we are seeking party feedback on these topics.”¹¹ Even though multiple parties to Commission proceedings regularly advocate on behalf of disadvantaged communities, those parties often times must make

⁸ OIR, p. 31-32.

⁹ OIR, p. 26.

¹⁰ At the least, the OIR should be revised to allow an opportunity for parties to move for evidentiary hearings once the OIR proceeds, when issues of material dispute become more apparent.

¹¹ OIR, p. 11.

choices as to which proceedings they have the capacity to devote resources. The limited resources available to these parties, parties like PCF, will be less pressured by a schedule that organizes the tracks consecutively rather than in parallel. Addressing the voluminous number of issues one by one rather than in batches will allow a more equitable representation of all ratepayers. If the goal is to incorporate environmental and social justice priorities, then the schedule should reflect that goal. A key and critical way to accomplish that would be to avoid parallel scheduling of the proceeding's tracks.

V. The primary concern in the High DER proceeding should be ratepayer costs.

As noted in Section II above, the OIR makes clear that the issue of costs will be a key aspect of the proceeding. PCF appreciates the stated emphasis but would prefer that costs be integrated in a more concrete way. The current rate of return methodology used to provide a cost-plus payment structure incentivizes the utilities to spend as much as possible on infrastructure, thereby increasing shareholder returns. The utilities have learned to leverage the rules to maximize profits.

For instance, SDG&E has demonstrated its proficiency at increasing spending and shareholder returns. As of 2019 SDG&E charged its residential customers more than any other investor owned utility in the country with at least 300,000 customers.¹² Then, in September 2019, the Commission approved an additional 18% increase to the SDG&E revenue requirement through 2021.¹³ Currently, SDG&E charges its customers more than twice as much for electricity as Sacramento Municipal Utility District (“SMUD”) customers pay.¹⁴ That means the average SMUD customer pays substantially less than SDG&E CARE customers who receive the 35% CARE discount.

To make sure that the High DER proceeding avoids adding to rapidly expanding prices borne by the IOUs' ratepayers, PCF recommends that the final scoping memo insert an additional track to be completed before any other tracks of the high DER proceeding. The new

¹² U.S. Energy Information Administration, 2019, table 6, available at https://www.eia.gov/electricity/sales_revenue_price/.

¹³ D.19-09-051, pp. 2-3 (2019 = 5.7% increase, 2020 = 6.74% increase, 2021 = 4.83% increase. After compounding, the rate increase exceeds 18% - more than three times the rate of inflation), <http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M316/K704/316704666.PDF>.

¹⁴ SMUD rate comparison [last accessed August 16, 2021], available at <https://www.smud.org/en/Rate-Information/Compare-rates>.

track would be tasked with addressing question #4 from the OIR Track 1 questions, which states “Should the IOUs be incentivized to cost-effectively prepare for widespread DER deployments? If so, how?”¹⁵ That question embodies the threshold issue of the proceeding. The proceeding should be structured to address this threshold issue at the outset. Unless the Commission determines how to lower ratepayer costs by integrating DERs, then the High DER proceeding will serve as yet another way that utilities raise rates.

One key example of how IOUs have recently used DERs to increase rates can be found within transportation electrification. Again, looking at SDG&E specifically, SDG&E paid \$21,815/port for its charging infrastructure in its Power Your Drive (“PYD”) program.¹⁶ The other utilities paid similarly high prices.¹⁷ Comparatively, CCAs have paid market rates for electric vehicle charging infrastructure. MCE averages \$4,708/port for its electric vehicle (EV) infrastructure.¹⁸ Thus, SDG&E pays 4.6 times the amount for electric vehicle infrastructure that CCAs pay.¹⁹

The OIR preliminary scope includes “[e]nabl[ing] swift evolution of grid capabilities and operations to integrate... EVs/EVSE [electric vehicle supply equipment]...”²⁰ The exceptionally high spending by the utilities on electric vehicle infrastructure noted above, should be directly addressed at the outset of the High DER proceeding along with cost containment mechanisms for DERs as a whole. It is imperative that the scoping memo schedules a cost containment track as the first and most important track of the High DER proceeding.

VI. Questions posed in the OIR

- 1. How should the proceeding schedule and tracks be managed? Should the tracks be reorganized, and if so, how? Comments may include whether to amend the issues presented in the OIR and how to prioritize the issues to be resolved; how to procedurally address these issues; and a proposed schedule for resolving the issues that may extend beyond 36 months. Please also address to what extent the tracks should be run in parallel or sequentially, taking into consideration stakeholder capacity to participate in multiple tracks at once.*

¹⁵ OIR, p. 15.

¹⁶ D.21-04-014, Table 3, p. 39.

¹⁷ *Id.*, footnote 148, p. 40, (“SCE’s Charge Ready Pilot achieved a total per port average costs of \$13,754, while PG&E’s EV Charge Network’s actual per port cost averaged \$17,956.”).

¹⁸ R.18-12-006, Comments Of The Joint CCAs On Sections 6, 11.1, And 11.2 Of The Draft Transportation Electrification Framework, (August 21, 2020), p. 10.

¹⁹ \$21,815/port /\$4,708/port = 4.633

²⁰ OIR, p. 13-14.

See Section V above for data supporting the need for a separate cost containment track to be completed before any other scoped issue within the proceeding. The cost containment track should review (1) current rules for IOU distribution infrastructure cost recovery (2) whether IOUs should be granted any rate of return on new distribution infrastructure (3) whether an IOU rate of return on existing infrastructure should be granted or suspended unless an IOU achieves overall rate reductions over a rolling multi-year period (4) other incentive structures for IOUs to install infrastructure that lowers rates (5) the ways that cost containment shall be incorporated into each of the other tracks of the proceeding.

2. *Should the Commission address Track 1 (DSO) issues with a consultant-led process that includes a white paper followed by workshops and culminates in a third-party consultant report of recommendations? If not, how should Track 1 issues be addressed?*

In addition to the proposed consultant-led process, the Commission should provide the opportunity for party proposals regarding DSO issues and structures. Each proposal should be required to be filed on a similar schedule as the consultant's white paper. Opportunities to respond to party proposals should be added to the schedule as well.

3. *Should the Commission address Track 2 (DPP) issues through a series of consultant technical reports supplemented by workshops and followed by staff proposals? If not, how should Track 2 issues be addressed?*

The DPP track should be dependent on the outcome of PCF's proposed cost containment track. The key issue that the proceeding should address focuses on aligning IOU shareholder benefits with actions that result in ratepayer benefits. Such a realignment of shareholder benefits would require significant revisions to the IOU incentive structure – a structure that currently rewards shareholders for increasing ratepayer costs.

4. *Should the Commission address Track 3 (smart inverter operationalization, grid modernization, and GRC alignment) issues in two separate work streams: 1) a smart inverter working group and working group report followed by a staff proposal and workshop, and 2) a staff-led proposal and workshop on grid modernization and GRC alignment? If not, how should Track 3 issues be addressed?*

Track 3 as proposed contains major cost implications for ratepayers as well as implications for IOU revenue requirements. The overarching cost elements should be separated

and addresses on a wholistic level in a cost containment track before the OIR-proposed tracks address issue specific costs.

VII. CONCLUSION

For the reasons stated above, the scoping memo should determine that (1) the proceeding categorization be ratemaking, (2) evidentiary hearings may be needed, (3) cost containment represents a threshold issue and should be addressed in the first track of the proceeding, and (4) the schedule should order the tracks one by one instead of in parallel.

Respectfully submitted,

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Dated: August 16, 2021

VERIFICATION

I am authorized by The Protect Our Communities Foundation to make this verification on its behalf. The facts stated in the foregoing document are true of my own knowledge, except as to matters which are therein stated on information or belief, and as to those matters I believe them to be true. I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 16, 2021 in Santa Fe, New Mexico.

/s/ Bill Powers

Bill Powers, Board Secretary

The Protect Our Communities Foundation