



FILED

05/31/23

10:44 AM

R2211013

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Consider Distributed Energy Resource Program Cost-Effectiveness Issues, Data Access and Use, and Equipment Performance Standards.

Rulemaking 22-11-013

ASSIGNED COMMISSIONER’S SCOPING MEMO AND RULING

This scoping memo and ruling sets forth the issues, need for hearing, schedule, category, and other matters necessary to scope this proceeding pursuant to Public Utilities Code Section 1701.1 and Article 7 of the Commission’s Rules of Practice and Procedure (Rules).

1. Background

On November 23, 2022, the Commission issued an Order Instituting Rulemaking (OIR) to achieve consistency of cost effectiveness assessments, improve data access and use, and consider equipment performance standards for distributed energy resource (DER) customer programs.¹ As a successor

¹ DER customer programs are programs offered to ratepayers by utilities, or other load-serving entities, that enable participants to manage their energy use by purchasing energy efficient or electric generation technologies, making behavioral changes, or engaging in other activities that occur on the customer’s premises (often called “behind-the-meter”). They are sometimes referred to as “demand-side management” programs because they allow customers to manage their own demand for electricity or natural gas. They are also referred to as “distributed energy resource” programs since the technologies used may be small, modular devices that can be distributed throughout the electric grid or natural gas system, rather than centrally-stationed like most utility-scale generation (*e.g.*, power plants). This proceeding will use the terms DER or customer programs to refer only to behind-the-meter activities. The term “distributed energy resources” as used elsewhere often includes small, distributed utility-scale generation.

proceeding to Rulemaking (R.) 14-10-003, this rulemaking is the procedural framework for advancing the vision articulated in the customer programs track of the Commission's DER Action Plan 2.0, which states:

The DER Action Plan's Customer Programs Track focuses on improving coordination, planning and developing consistent metrics across DER proceedings related to customer programs to maximize their contributions to [greenhouse gas (GHG)] reductions and other state energy goals. The goal is to enable all customers to effectively manage their energy usage in a manner that ensures equitable participation and distribution of benefits, alignment with evolving rate design and load flexibility, alignment with distribution planning objectives, and alignment with integrated resource planning objectives.²

A prehearing conference (PHC) was held on March 29, 2023, to address the issues of law and fact, determine the need for hearing, set the schedule for resolving the matter, and address other matters as necessary.

1.1. Respondents

The respondents named in the OIR are the electric utilities that offer DER programs. The OIR named the following Commission-jurisdictional large electric utilities as the primary respondents: Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company. Southern California Gas Company, which implements a number of DER programs, is also named as a respondent. Interested parties were invited to file comments within 45 days of the issuance of the OIR.

1.2. Proceeding Phases

This proceeding has two phases.

² Available at: <https://www.cpuc.ca.gov/about-cpuc/divisions/energy-division/der-action-plan>. Last accessed May 12, 2023.

Phase One focuses on issues related to cost-effectiveness of customer DER programs, including updating the Avoided Cost Calculator, and policies on improving data usage and access to help customers make informed decisions about adoption, evaluation, and utilization of DERs. There are two tracks in Phase One. Track One examines how to make cost-effectiveness assessments more accurate and consistent across DER programs. Track Two examines the rules and requirements to improve data access to facilitate adoption, evaluation, and utilization of DERs by customers and other entities and to improve DER integration with the grid.

Phase Two focuses on developing equipment performance standards. After considering the comments to the OIR, reply comments to the OIR, and the discussion at the PHC, I have determined the issues and initial schedules for Track One and Track Two of Phase One of this proceeding to be as set forth in this Assigned Commissioner's Scoping Memo and Ruling (Scoping Memo). The issues and schedules for Phase Two of the proceeding will be determined after the conclusion of Phase One.

2. Phase One, Track One

2.1. Track One Issues

The issues to be determined in Phase One, Track One are:

1. What updates are appropriate for the Avoided Cost Calculator (ACC), in accordance with Decision (D.) 22-05-002? What modifications, if any, to the biennial update process are appropriate?
2. Should the Commission adopt guiding principles for the ACC, including principles that ensure alignment with R.20-05-003 (Integrated Resource Planning OIR) and other DER-related proceedings?
3. Should the Commission adopt a Societal Cost Test? If so, how should the results of the Societal Cost Test be

- considered in the DER cost-effectiveness framework? If appropriate, how should the Societal Cost Test consider equity issues, such as affordability and public health inequalities?
4. Should the Commission consider the results from the research report *Quantifying the Air Quality Impacts of Decarbonization and Distributed Energy Programs in California*³ when evaluating DER cost effectiveness? If appropriate, how should we apply and incorporate these results in the ACC?
 5. How should equity issues be considered in evaluating DER cost effectiveness?

2.2. Category of Proceeding and Ex Parte Restrictions

The Commission preliminarily categorized the OIR as a ratesetting proceeding. In comments to the OIR, parties generally agree with this categorization, particularly for issues related to the ACC. Track One of this proceeding is categorized as ratesetting. Accordingly, ex parte communications pertaining to Track One issues are restricted and must be reported pursuant to Article 8 of the Rules.

2.3. Need for Evidentiary Hearing in Track One

The issues in Phase One, Track One may potentially involve contested material issues of fact. Accordingly, we will allow parties to present evidence on these issues. Evidentiary hearings are needed.

³ Available at: <https://www.ethree.com/wp-content/uploads/2022/01/CPUC-Air-Quality-Report-FINAL.pdf>. Last accessed May 12, 2023.

2.4. Track One Proceeding Schedule

The following schedule is adopted here and may be modified by the assigned Commissioner or the Administrative Law Judge (ALJ) as required to promote the efficient and fair resolution of the rulemaking:

Event	Date
Party Comments on Societal Cost Test and Air Quality Research Results	April 28, 2023
Issuance of Staff Proposal on the 2024 ACC	July 2023
Workshops on the Staff ACC Proposal	August 2023
Proposed Decision for the Societal Cost Test, or Air Quality Research Results	TBD
Discovery completed on the ACC Proposal	8 weeks after issuance of Staff Proposal
Opening Testimony served	12 weeks after issuance of Staff Proposal
Rebuttal Testimony served	15 weeks after issuance of Staff Proposal
List of Disputed and Stipulated Issues; Report of Meet and Confer	January 9, 2024
Evidentiary hearing	January 23-25, 2024
Opening briefs	February 21, 2024
Reply briefs [<i>Track One submitted</i>]	March 13, 2024
Proposed decision	June 2024

Although not specified in the proceeding schedule, the Commission’s Energy Division, in accordance with D.22-05-002,⁴ is developing a study on

⁴ D.22-05-002, Ordering Paragraph 8.

transmission and distribution avoided costs. The procedural steps for incorporating the results of this study will be determined later, after the study is completed.

Pursuant to Rule 13.9, the parties shall meet and confer no later than 10 calendar days after the submission of rebuttal testimony. The purpose of the meet and confer is to ascertain whether, pursuant to Rule 13.8(c), the parties stipulate to the receipt of prepared testimony into evidence without direct or cross examination or whether an evidentiary hearing is still needed. After the meet and confer, one of the Respondents, on behalf of the parties, shall file and serve a Report of the Meet and Confer to indicate whether an evidentiary hearing is still needed and include with the Report a list of issues that parties stipulate to or dispute.

Track One issues will stand submitted upon the filing of reply briefs, unless the assigned Commissioner or ALJ requires further evidence or argument, and will be resolved within 18 months of the issuance of this scoping memo.

3. Phase One, Track Two

3.1. Track Two Issues

The issues to be determined in Phase One, Track Two are:

1. What rules and requirements should the Commission develop or modify to improve data access to support the following:
 - a. enable customers and other entities to make informed decisions on selecting, adopting, evaluating, and utilizing DERs,
 - b. increase accuracy of load forecasting, and
 - c. align with other DER-related Commission proceedings, particularly R.22-07-005 (Demand Flexibility OIR) and R.21-06-017 (High DER Future Grid OIR), including

enabling customer interaction with real-time pricing portals?

2. In considering the development or modification of data usage and access rules and requirements, how should the Commission consider the following issues:
 - a. customer privacy,⁵
 - b. barriers to data sharing and data access,
 - c. the standardization or centralization of databases, data models, data collection, and data reporting tools,
 - d. developing or improving data management best practices, and
 - e. identifying and removing data reporting redundancies?
3. What data-related issues are specific to environmental and social justice (ESJ) communities and how do we address these issues to facilitate DER adoption in ESJ communities?

3.1.2. Costs related to Data Access and Usage

During the PHC, parties raised issues about the costs of data access and usage, including the costs of preparing, storing, and processing data, the impacts of the recovery of those costs on rates, and the allocation of those costs.⁶ While Track Two can consider costs in the context of formulating rules and policies to improve data access and usage, the issues in this proceeding are focused on developing the appropriate rules and policies to improve data access and usage. The exact costs of implementing these data rules and policies and the allocation of these costs will not be examined in Track Two.

⁵ Customer privacy issues include issues related to confidentiality of customer data.

⁶ Pacific Gas and Electric Company and ChargePoint raised issues related to costs of data usage, storage, and access. *See* PHC Transcript at 63 and 75-76.

3.1.3. Defining the Type of Data within the Scope

The Data Working Groups will examine access to data needed to facilitate customer and other entities' adoption, evaluation, and utilization of DER programs and to improve DER integration with the grid. These data may include, but are not limited to, the following types of data:

- Customer Smart Meter data,
- DER device-level data,
- Customer information, including location, California Alternate Rates for Energy status, appliance ownership, customer relationship management/customer information system data, and other personally-identifiable information,
- Electric distribution infrastructure data, including data on circuit capacity, and
- Gas distribution system data.

3.2. Category of Proceeding and Ex Parte Restrictions

The Commission preliminary determined that the OIR is a ratesetting proceeding. However, because the issues examined in Track Two are focused on developing rules and policies on improving data access and use, the category for Track Two of this proceeding is changed to quasi-legislative. Accordingly, ex parte communications pertaining to Track Two issues are permitted without restriction or reporting requirement pursuant to Article 8 of the Rules.

3.3. Need for Evidentiary Hearing in Track Two

The issues in Track Two primarily address policy matters. However, parties may raise matters that could be contested, material issues of fact. If the need for hearings arises in Track Two, parties may make a motion to schedule an evidentiary hearing. The assigned Commissioner, in consultation with the ALJ,

will then determine the need for an evidentiary hearing and provide parties with further instructions as appropriate.

3.4. Track Two Proceeding Schedule

The following schedule is adopted here and may be modified by the assigned Commissioner or ALJ as required to promote the efficient and fair resolution of the rulemaking:

Event	Date
Ruling requesting party comments on formation, membership, and coordinator for Data Working Groups	June 2023
Party comments in response to Ruling on the Formation of Data Working Groups, filed	2-3 weeks after the issuance of the Ruling
Ruling creating Data Working Groups and establishing roles and responsibilities of a facilitator for the Data Working Groups	Q3 2023
Workshops for the Data Working Groups	TBD
Recommendations from Data Working Groups, served	Approximately 12 months after the first workshop is held
Ruling requesting Party Comments on the Recommendations from the Data Working Groups	Within two weeks after Recommendations from the Data Working Groups are served
Workshops, if necessary, to discuss Recommendations from the Data Working Groups	TBD
Party Comments on the Recommendations from the Data Working Group, filed (<i>Track Two submitted</i>)	Three weeks after the conclusion of workshops

Proposed Decision(s) addressing recommendations from the Data Working Groups	No later than 90 days after Party Comments on Data Working Group Recommendations are filed
--	--

Track Two will stand submitted upon the filing of party comments on the recommendations from the Data Working Group, unless the assigned Commissioner or ALJ requires further evidence or argument. Based on this schedule, Track Two will be resolved within 18 months from the issuance of this scoping memo consistent with Public Utilities (Pub. Util.) Code Section 1701.5.

4. Intervenor Compensation

Pursuant to Pub. Util. Code Section 1804(a)(1), a party who intends to seek an award of compensation must file and serve a notice of intent to claim compensation by April 28, 2023, 30 days after the prehearing conference.

As discussed at the PHC, parties' participation in the Track Two Data Working Groups are eligible for Intervenor Compensation, subject to the guidelines set in Pub. Util. Code Sections 1801-1812.

5. Alternative Dispute Resolution (ADR) Program and Settlements

The Commission's ADR program offers mediation, early neutral evaluation, and facilitation services, and uses ALJs who have been trained as neutrals. At the parties' request, the assigned ALJ can refer this proceeding to the Commission's ADR Coordinator. Additional ADR information is available on the Commission's website.⁷

Any settlement between parties, whether regarding all or some of the issues, shall comply with Article 12 of the Rules and shall be served in writing. Such settlements shall include a complete explanation of the settlement and a

⁷ See D.07-05-062, Appendix A, § IV.O.

complete explanation of why it is reasonable in light of the whole record, consistent with the law and in the public interest. The proposing parties bear the burden of proof as to whether the settlement should be adopted by the Commission.

6. Public Outreach

Pursuant to Pub. Util. Code Section 1711(a), I hereby report that the Commission sought the participation of those likely to be affected by this matter by noticing it in the Commission's February 2023 monthly newsletter that is served on communities and business that subscribe to it and posted on the Commission's website.

The Commission also served the OIR on the California Energy Commission and the California Air Resources Board, in addition to the official service lists of the following Commission proceedings:

- Integrated Distributed Energy Resources (R.14-10-003)
- Transportation Electrification (R.18-12-006)
- Demand Response (Application (A.) 22-05-002 et. al.)
- Net Energy Metering (R.14-07-002 and R.20-08-020)
- Green Access Programs (A.22-05-022 et. al.)
- Self-Generation Incentive Program (R.20-05-012)
- Energy Savings Assistance Program Budget Application (A.19-11-003 et. al.)
- Energy Savings Assistance Program Budget, Small and Multi-Jurisdictional Utilities' Application (A.20-03-014 et. al.)
- Affordability (R.18-07-006)
- San Joaquin Valley (R.15-03-010)
- Energy Efficiency (R.13-11-005)

- Energy Efficiency Business Plan Applications (A.22-02-005 et. al.)
- Building Decarbonization (R.19-01-011)
- Integrated Resource Planning (R.16-02-007)
- High DER Future Grid (R.21-06-17)
- Demand Flexibility (R.22-07-005)
- Microgrids (R.19-09-009)
- Clean Energy Financing (R.20-08-022)
- Renewable Natural Gas (R.13-02-008)
- Long-term Gas Infrastructure (R.20-01-007)
- Demand Response Click-Through Mechanism Application (A.18-11-015 et. al.), and
- Rulemaking to Examine Electric Utility De-Energization of Power Lines in Dangerous Conditions (R.18-12-005).

7. Response to Public Comments

Parties may, but are not required to, respond to written comments received from the public. Parties may do so by posting such a response using the “Add Public Comment” button on the “Public Comment” tab of the online docket card for the proceeding.

8. Public Advisor

Any person interested in participating in this proceeding who is unfamiliar with the Commission’s procedures or has questions about the electronic filing procedures is encouraged to obtain more information at <http://consumers.cpuc.ca.gov/pao/> or contact the Commission’s Public Advisor at 866-849-8390 or 866-836-7825 (TTY), or send an e-mail to public.advisor@cpuc.ca.gov.

9. Filing, Service, and Service List

The official service list has been created and is on the Commission's website. Parties should confirm that their information on the service list is correct and serve notice of any errors on the Commission's Process office, the service list, and the ALJ. Persons may become a party pursuant to Rule 1.4.⁸

When serving any document, each party must ensure that it is using the current official service list on the Commission's website.

This proceeding will follow the electronic service protocol set forth in Rule 1.10. All parties to this proceeding shall serve documents and pleadings using electronic mail, whenever possible, transmitted no later than 5:00 p.m., on the date scheduled for service to occur. Rule 1.10 requires service on the ALJ of both an electronic and a paper copy of filed or served documents.

When serving documents on Commissioners or their advisors, whether or not they are on the official service list, parties must only provide electronic service. Parties must not send hard copies of documents to Commissioners or their advisors unless specifically instructed to do so.

Persons who are not parties but wish to receive electronic service of documents filed in the proceeding may contact the Process Office at process_office@cpuc.ca.gov to request addition to the "Information Only" category of the official service list pursuant to Rule 1.9(f).

The Commission encourages those who seek information-only status on the service list to consider the Commission's subscription service as an alternative. The subscription service sends individual notifications to each

⁸ The form to request additions and changes to the Service list may be found at <https://www.cpsc.ca.gov/-/media/cpsc-website/divisions/administrative-law-judge-division/documents/additiontoservicelisttranscriptordercompliant.pdf>

subscriber of formal e-filings tendered and accepted by the Commission. Notices sent through subscription service are less likely to be flagged by spam or other filters. Notifications can be for a specific proceeding, a range of documents and daily or weekly digests.

10. Receiving Electronic Service from the Commission

Parties and other persons on the service list are advised that it is the responsibility of each person or entity on the service list for Commission proceedings to ensure their ability to receive emails from the Commission. Please add “@cpuc.ca.gov” to your email safe sender list and update your email screening practices, settings and filters to ensure receipt of emails from the Commission.

11. Assignment of Proceeding

Darcie L. Houck is the assigned commissioner and Elaine Lau is the assigned ALJ for this proceeding. ALJ Lau is the presiding officer for Track One of Phase One of this proceeding.

IT IS RULED that:

1. The scopes of Track One and Track Two of Phase One of this proceeding are described above and are adopted.
2. The schedules of Track One and Track Two of Phase One of this proceeding are set forth above and are adopted.
3. Evidentiary hearing is needed for Track One of Phase One of this proceeding.
4. For Track One of Phase One of this proceeding, the presiding officer is Administrative Law Judge Elaine Lau.
5. The category of Track One of Phase One of this proceeding is ratesetting.

6. The category of Track Two of Phase One of this proceeding is quasi-legislative.

Dated May 31, 2023, at Sacramento, California.

/s/ DARCIE L. HOUCK

Darcie L. Houck
Assigned Commissioner