



**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)

**CENTER FOR BIOLOGICAL DIVERSITY
OPENING COMMENTS ON
PROPOSED DECISION ADOPTING AN APPLICATION PROCESS FOR UTILITY
DISTRIBUTED ENERGY RESOURCES ORCHESTRATION**

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October 19, 2026

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE
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Electric Grid for a High Distributed Energy
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Pursuant to Rule 14.3 of the Commission’s Rules of Practice and Procedure, the Center for Biological Diversity (“Center”) respectfully submits the following comments on the Commission’s Proposed Decision Adopting an Application Process for Utility Distributed Energy Resources Orchestration and Ordering Utilities to Incorporate Load Flexibility Scenarios into their Distribution Planning and Execution Processes (“PD”).

Pursuant to Rule 13.15(b), and concurrent with these opening comments, the Center further respectfully moves the Commission to set aside submission for the taking of additional evidence or argument to address the relief requested in this comment and the September 10, 2026 Center and Utility Consumer Action Network (“UCAN”) Motion to Address Unaddressed Issues.

In short, the Commission cannot proceed until it addresses how it could be consistent with sound regulatory principles to allow the utilities *themselves* to serve as the Distributed System Operator—thereby empowering them to play a role in effectively regulating their own competitors. As Alfred Kahn explained in his seminal work on the economics of regulation:

The essence of regulation is the explicit replacement of competition with governmental orders as the principal institutional device for assuring good performance. The regulatory agency determines specifically who shall be permitted to serve, [as well as the] price, quality and conditions of service, and imposes an obligation to serve.¹

I. By Failing to Address an Issue Scoped for Consideration in Track 2, the Commission Commits Legal Error.

A. Conflict of Interest is a Scoped Issue in Track 2.

A “scoping memo” is “an order or ruling describing the issues to be considered in a proceeding and the timetable for resolving the proceeding.”² Following issuance of a scoping memo, “[t]he assigned PUC commissioner then must make a ruling on the scoping memo that “*finally* determine[s] the . . . issues *to be addressed*” in the proceeding.³

As detailed in the September 10, 2026 Motion to Address Unaddressed Issues, the current (August 2023/Amended) Scoping Memo and Ruling (“Amended Scoping Memo”) still requires the Commission to determine appropriate guardrails to address the inherent conflict of interest — which the Commission itself had previously identified at the outset of this proceeding—between maximizing utility company profits and deploying distributed energy resources (“DERs”) to achieve a “high DER future.”⁴ Yet the Commission proposes to resolve the following two Track 2 questions without doing so:

1. What are the operational needs necessary to *efficiently operate* a high DER grid and *unlock economic opportunities* for DERs to provide grid services, *limit*

¹ Alfred Kahn, *The Economics of Regulation: Principles and Institutions* (1970) at 20.

² *Southern California Edison Co. v. Public Util. Com.*, 140 Cal. App. 4th 1085, 1104 (Cal. Ct. App. 2006) (citing Cal. Code Regs., tit. 20, § 5).

³ *Id.* (emphasis added).

⁴ See e.g. R.21-06-017 Order Instituting Rulemaking at 11-12 (“The current cost recovery and investment structures for electric distribution systems focuses on large capital investments. 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.”)

market power, reduce ratepayer costs, increase equity, support grid resiliency, and meet State policy objectives? and

2. What are the existing gaps and *barriers* in achieving the needs identified above within our current IOU-operated DSO? What are the potential *solutions in overcoming these barriers*?⁵

Importantly, as recognized by the PD, in amending the prior November 15, 2021 Assigned Commissioner’s Scoping Memo and Ruling, the Amended Scoping Memo did not remove any issues from consideration, but instead “streamlined the *process* for resolving scoped issues.”⁶ Comparing the November 2021 and August 2023 Scoping Memos, the Commission imbedded the earlier inquiry into different Distribution System Operator (“DSO”) models (from the prior November 15, 2021 Scoping Memo) into question 1’s inquiry about “operational needs,” and similarly, the inquiry of whether “Utilities should be incentivized to cost-effectively prepare for widespread DER deployment” into question 2’s “barriers” and potential “solutions.”⁷ In other words, the Amended Scoping Memo preserved the issue of conflict of interest to be addressed by the Commission’s deliberation of these two substantive issues *in Track 2*.

Certainly, as a “high-penetration DER structure could reduce overall IOU rates of return,” the “efficient operation of a high DER grid” raises the critical question: is efficient operation even possible if the DSOs—here as proposed, the IOUs—also have fiduciary duties to shareholders to maximize rates of return?

⁵ PD at 8, citing Amended Scoping Memo at 6 and 7.

⁶ PD at 8 (emphasis added).

⁷ See Assigned Commissioner’s Scoping Memo and Ruling (November 15, 2021) at 6 (“1. How do alternative DSO models compare in their ability to plan and operate a high DER grid, unlock economic opportunities for DERs to provide grid services, limit market power, reduce ratepayer costs, increase equity, support grid resiliency, and meet State policy objectives? [and] 2. Should the Utilities be incentivized to cost-effectively prepare for widespread DER deployments? If so, how?”)

There certainly can be no dispute that the IOUs consider DERs to be competition that threatens their fiduciary obligations to their shareholders.⁸ Indeed, as SDG&E (Sempra Utilities) candidly explained in a filing with the U.S. Securities Exchange Commission, “the expanded cost-effective utilization of distributed generation (e.g., rooftop solar and community solar projects)” is an “example[] of technological changes *that could negatively impact our businesses*”⁹ In particular, the company explained, “technological advances in distributed and local power generation and energy storage could reduce the demand for large-scale renewable electricity generation.”¹⁰

Similarly, Southern California Edison has identified “customers and third parties . . . increasingly deploying DERs, such as solar generation, energy storage, energy efficiency and demand response technologies” as “*Competitive and Market Risks*.”¹¹ As SCE has frankly explained, the very DERs that this proceeding is intended to support threaten to “materially impact[]” “its business model, its ability to execute on its strategy, and ultimately its financial condition and results of operations.”¹²

⁸ Thus, PG&E has declared that “[a]ll members of the Board [of Directors of PG&E] have a fiduciary responsibility to represent the best interests of the Corporation and all of its shareholders.” *See e.g.* PG&E Company 2027 General Rate Case, A.25-05-009, TURN Hearing Exhibit 313, PG&E Corporation Board of Directors Corporate Governance Guidelines (Dec. 12, 2024) *available at* <https://docs.cpuc.ca.gov/PublishedDocs/SupDoc/A2505009/9371/608229899.pdf>.

⁹ *See e.g.* Sempra Energy, San Diego Gas & Electric Company, Southern California Gas Company Form 10-K (December 31, 2016) (emphasis added) *available at* <https://www.sec.gov/Archives/edgar/data/86521/000008652117000017/sre20161231form10k.htm#s7A72897029937A005EEB6817D3B1B5FD>.

¹⁰ *Id.*

¹¹ Edison International, Southern California Edison Company, Form 10-K (December 31, 2023) at 47 (emphasis added) *available at* <https://www.sec.gov/Archives/edgar/data/92103/000082705224000013/eix-20231231x10k.htm>.

¹² *Id.* at 48.

Furthermore, as third party, or non-IOU owned, DERs present such competitive and market risks to SCE, and likely the other IOUs, the Amended Scoping Memo's inquiry into "limit[ing] market power" clearly contemplates what safeguards are needed to avoid market abuse. It is vital that the Commission address what safeguards are needed to avoid market abuse when a market and system operator is also a market participant.

Indeed, utility company interference with DER competition is well-established.¹³ Utilities play a similarly anti-competitive role in transmission, where they "have gamed governance processes at Regional Transmission Operators and Independent System Operators, stunting those organizations' abilities to encourage competitive markets and allowing utilities to favor generation facilities owned by their parent holding companies."¹⁴ The potential for these kinds of market abuses are even greater here, as the PD would authorize the IOUs, as market participants, to also operate the market.

B. The PD Fails to Include a Viable Procedural Avenue to Develop Necessary Guardrails Against the Commission-Identified Conflict of Interest.

The PD improperly proposes to close Track 2 without addressing and resolving the scoped conflict of interest issue. Instead of determining whether the conflict of interest issue has been resolved (by granting or denying the Center and UCAN's Motion to Address Unaddressed

¹³ See, e.g., Air Peskoe, *Unjust, Unreasonable, and Unduly Discriminatory: Electric Utility Rates and the Campaign Against Rooftop Solar*, Texas Jrl. Of Oil, Gas and Energy Law (2016) available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2735789; see also Rooftop Solar Justice (2023), available at https://www.biologicialdiversity.org/programs/energy-justice/pdfs/Rooftop-Solar-Justice-Report-March-2023.pdf?_gl=1.

¹⁴ See Petition from 239 consumer, anti-monopoly advocates, public interest and environmental organizations for FTC Investigation into the Electric Utility Industry's Abusive Practices that Stifle Renewable Energy Competition and Harm Consumer Protection (June 14, 2022) at 4 (*citing* Ari Peskoe, *Is the Utility Transmission Syndicate Forever?*, Energy Bar Association (2021), https://www.eba-net.org/assets/1/6/5_-_5BPeskoe%5D%5B1-66%5D.pdf) available at https://www.biologicialdiversity.org/programs/energy-justice/pdfs/FTC-Petition-Re-Utilities-2022-05-16.pdf?_gl=1*sw640c*_gcl_au*MTY2NzQ3MzA5Ni4xNzg5NTc5NzY2

Issues), the Commission simply states that the conflict of interest issue “*may be* considered during the Joint IOU Application proceeding.”¹⁵ This is insufficient and fails to comply with the legal requirements for consideration of issues included in a Commission scoping memo.

Procedurally, an Application is a different proceeding than a Rulemaking.¹⁶ An Application proceeding is not the continuation of a Rulemaking where issues can or should be deferred to. On the other hand, R.21-06-017 is a Rulemaking “to prepare the electric grid for a high number of distributed energy resources.”¹⁷ Specific to Track 2 of this Rulemaking, the Commission must—in *this* proceeding—prepare for a high DER future by first fully resolving these two Scoping Memo questions *prior to* submission of the resulting Joint IOU Application—which would be a *subsequent* proceeding—to determine IOU roles and responsibilities as a DSO.

While the PD authorizes “an additional working group meeting series” prior to the filing of the Joint IOU Application, that series cannot substitute for an adequate Commission determination on these two Track 2 scoped questions for two reasons. First, the Commission does not require consideration of the conflict of interest issue, and second, even if that consideration occurs, the PD positions it within the Joint IOU Application Proceeding, which would occur *after* the working group meeting series is completed.¹⁸ This sequencing, combined with the absence of any requirement for the IOUs to accord working group findings adequate weight, renders discussion of several working group meeting series issues meaningless. To illustrate the ineffectiveness of the PD’s approach, while the Commission seeks to solicit

¹⁵ PD at 73 (emphasis added).

¹⁶ See e.g. CPUC Rules of Practice and Procedure Rule 2.1 and Rule 7.1.

¹⁷ See e.g. Amended Scoping Memo and Ruling at 2.

¹⁸ See PD at 73 (“Issues raised by the Motion to Address Unaddressed Issues filed by CBD and UCAN on September 10, 2026 may be considered during the Joint IOU Application Proceeding.”) Notably, this vague suggestion to address the Center and UCAN’s Motion to Address Unaddressed Issues is further included in neither Findings of Fact, Conclusions of Law nor any Commission Order in the PD.

stakeholder discussion on topics including valuation frameworks, cost-effectiveness, DSO visibility, and DER orchestration, each of these and other topics is wholly dependent on resolution of this conflict of interest issue.¹⁹

As currently proposed in the PD, there is ultimately no required procedural avenue for the Commission to deliberate necessary guardrails for the Commission-identified conflict of interest and scoped issue in Track 2.

C. The Commission Must Correct the Legal Error in the PD.

Once an issue is included in a scoping memo, the Commission is required to follow through on that scope, and may not disregard it.²⁰ A scoping memo constrains the Commission to the defined issues and does not permit silent constriction to reach other policy determinations.²¹ “If the Commission cannot fairly be said to have complied with the statutory scoping memo requirement, it has failed to regularly pursue its authority.”²²

Here, the PD lacks any finding of fact or conclusion of law resolving the Commission-identified conflict of interest issue which is included in the Amended Scoping Memo. Consequently, the Commission fails to proceed in the manner required by law in departing from

¹⁹ See e.g. California Community Choice Association’s Response to Motion to Address Unaddressed Issues (September 25, 2026) at 5 (“The existing IOU business model not only creates an inherent bias for the IOUs to prioritize grid investments over demand flexibility but also gives them a significant market advantage over third-party-owned demand flexibility providers, which lack visibility into grid needs, capabilities, and costs.”); Response of Joint Parties in Support of Motion to Address Unaddressed Issues (September 25, 2026) at 3 ([addressing conflict of interest] will determine whether DER orchestration produces meaningful ratepayer savings or merely adds another layer of utility-administered programs without ensuring that cost-effective DER alternatives are identified, valued, enabled, procured, dispatched, compensated, and verified before traditional infrastructure investments move forward.”); *id.* at 5 (“Without timely access to grid data, non-discriminatory participation rules, clear valuation methods, performance verification, and independent accountability, stakeholders and regulators cannot determine whether the IOUs are maximizing cost-effective DER alternatives or whether traditional capital investment remains the default path.”).

²⁰ See *Golden State Water Co. v. Public Util. Com.*, 16 Cal. 5th 380, 395-96 (Cal. 2024).

²¹ See *Id.* at 394-96.

²² *Id.* at 394-95.

the expectations it established in its Scoping Memo, frustrating stakeholder expectations and undermining the transparency and integrity of this proceeding.²³

Moreover, as noted in the Motion to Address Unaddressed Issues, closing consideration of Track 2 issues prior to addressing the conflict of interest issue risks violating mandates to ensure just and reasonable rates,²⁴ which are the lowest amount possible,²⁵ the Loading Order, and state climate policy.²⁶ Failing to comply with the legal requirements of a scoping memo that results in such prejudicial action constitutes reversible error.²⁷

II. Motion to Set Aside Submission of Track 2 Issues.

Pursuant to Rule 13.15(b), the Center further requests that if necessary to address the relief requested in the Motion to Address Unaddressed Issues, and reiterated in this comment, the Commission set aside submission of Track 2 for the reasons detailed herein.²⁸

²³ See *id.* at 394; see also *Greyhound Lines, Inc. v. Public Utilities Com.*, 68 Cal.2d 406, 410-11, 414 (1968) (applying then-existing § 1757). Before 1998, judicial review of Commission decisions was limited to assessing whether the Commission “regularly pursued its authority” and whether any evidence supported its factual findings. With the 1998 revisions to the Public Utilities Code, the Legislature replaced that standard of review with a more stringent one; courts now must determine whether the Commission “proceeded in the manner required by law.” Pub. Util. Code, § 1757.1(a)(2). The updated language requires a more stringent obligation to comply with specific statutory procedures and legal mandates. On August 7, 2025, in *Center for Biological Diversity v. Public Utils. Comm’n*, No. S283614 (Cal. Aug. 7, 2025) the Supreme Court clarified that the applicable standard of review must conform to §§ 1757 and 1757.1. Accordingly, the Commission is obligated to proceed in the manner required by law.

²⁴ Cal. Pub. Util. Code § 451 (“All charges demanded or received by any public utility, or by any two or more public utilities, for any product or commodity furnished or to be furnished or any service rendered or to be rendered shall be just and reasonable.”)

²⁵ Cal. Pub. Util. Code § 747 (“It is the intent of the Legislature that the commission reduce rates for electricity . . . to the lowest amount possible.”)

²⁶ Cal. Pub. Util. Code § 400(a) (The Commission shall “take into account the use of distributed generation to the extent that it provides economic and environmental benefits in disadvantaged communities” to meet California’s climate targets.)

²⁷ *Southern California Edison Co. v. Public Util. Com.*, 140 Cal.App. 4th at 1106-7.

²⁸ PD at 11 (“the matter on Track 1 and 2 issues was submitted on July 31, 2026 upon receipt of reply comments in response to the July 9 Ruling”).

III. Failing to Address the Commission-Identified IOU Conflict of Interest in a Formal Proceeding Will Have Deleterious Impacts on Affordability, Energy Justice and California’s Climate and Clean Energy Goals.

The trajectory of rapidly improving cost-effectiveness, performance, scalability and local benefits of DERs has triggered rapid growth in their quantity and diversity on the electricity system. The crucial matter for the Commission, then, is how to unlock the greatest value from the proliferation of DERs, which includes value to ratepayers, electric system performance and cost-effectiveness, climate resilience, and meeting state climate and clean energy goals such as SB 100, let alone the value to individuals and communities investing in and deploying DERs.

The key to unlocking these values is a well-designed and governed DSO which operates an open-access distribution network and transaction platform for DERs to transact energy and distribution grid services. The qualities, “well designed and governed” go to the heart of Track 2 of this proceeding and the present PD.

Unlocking the greatest value from DERs offers the following ratepayer, community, societal and climate benefits:

- Reducing the need for bulk-system generation and transmission. A 2016 study by NLR (formerly NREL) of US solar technical potential showed that California could meet 74 percent of annual electricity demand from rooftop solar.²⁹ That number may or may not overstate today’s practical potential, but it certainly warrants a fresh assessment. If only one third of that potential is achievable, it would substantially reduce California’s need for costly bulk system investment. Ignoring it means over-building bulk system supply and transmission, to the detriment of affordability.
- Avoiding land-use conflicts. Distributed generation and storage can be deployed on built structures, such as roofs of warehouses, schools, shopping malls, parking lots, etc. There are no land-use issues that tend to delay and add costs to bulk system resources and transmission lines.
- Increasing climate resilience. DERs can be planned and deployed to maintain electric service to communities and critical local functions during utility system outages. No

²⁹ NREL, *Rooftop Solar Photovoltaic Technical Potential in the United States* (2016) at Slide 21 available at <https://docs.nlr.gov/docs/fy16osti/65586.pdf>.

matter how much is invested to strengthen the utility grid against outages, the rapid decline of climate stability will bring extreme events that cause grid outages, which will be matters of life or death for vulnerable people and communities.

- Reducing incentives for grid defection. The growth of cost-effective DERs means that the utility grid is contestable; it is no longer the “natural monopoly” of the 20th century. As noted above, energy customers want DERs, and they will want more DERs as DERs improve in cost-effectiveness and performance while utility costs continue to escalate without improved performance, such as reliability and connection times. These trends will increase customer incentives to defect from the grid. But growing grid defection would be a bad outcome for system performance and for most ratepayers. Grid defection will deny the system of the grid services those DERs could otherwise provide, and it will be an option only for customers who have financial resources, mainly affluent homeowners and energy-intensive businesses, with severe adverse impacts on energy and economic justice. On the other hand, an open access transaction platform will offer opportunities for DER owners to recoup some of their investment costs and will incentivize them to remain connected and offer their full value to the system.
- Community economic development. A benefit usually overlooked in discussions of DERs is the fact that local renewable generation and storage owned by and reducing energy costs for local governments, school districts and campuses, municipal services, community organizations like churches and resilience hubs strengthen the economic health and resilience of communities.
- Affordability. All of the above improve affordability of energy. The more energy resources are deployed locally to serve local demand, and are owned by non-utility local entities and other third parties, the more effectively costly infrastructure investment can be constrained while improving other values like reliability, resilience and achievement of state policy goals.

Unlocking all these benefits requires a well-designed and governed DSO whose functional responsibilities and governance framework provide an open-access platform and commercial environment that elicits customer and third-party DER investment (which does not show up in utility rates) and unlocks all the services and benefits those DERs can provide.

The glaring challenge, however, is that the IOUs’ highest priority objective is to maximize profits, which they do by building as much rate-based infrastructure as possible, whereas the goal of realizing the greatest benefits from DER proliferation will involve reducing

IOU infrastructure investment. The urgent goal to address the affordability and climate crisis hangs in the balance.

This is the core conflict of interest raised by the Center and UCAN's Motion to Address Unaddressed Issues. The electric distribution system is where the most momentous and far-reaching evolution of a 21st century electricity system is occurring today. The DSO design and governance framework will determine whether this evolution leads to a broadly beneficial clean energy future or, by trying to maintain IOU dominance of electric service, just stifles the energy transition, raises costs, worsens inequities and drives grid defection by those who can afford it. The PD's proposal to assume away the conflict of interest inherent in IOU profit maximization via grid investment, and put the IOUs in charge of the High-DER Future goes in the wrong direction.

IV. Conclusion.

For the foregoing reasons, the Center respectfully requests that the Commission grant the Center and UCAN's September 10, 2026 Motion to Address Unaddressed Issues, if necessary, grant the Motion to Set Aside Submission, and modify or hold the PD accordingly.

Dated: October 19, 2026

Respectfully submitted,

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