PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Agenda ID # 21421
ENERGY DIVISION **RESOLUTION E-5254**
April 6, 2023

RESOLUTION

Resolution E-5254: Adopts Procedural Mechanisms for Review and Approval of Electric and Gas Investor-Owned Utility Cost Recovery Requests for Infrastructure Investment and Jobs Act[1] and Other Federal Grant Programs.

PROPOSED OUTCOME:

- Describes process by which the investor-owned utilities (IOUs) should seek to recover costs associated with matching funds and other costs associated with participation in the Infrastructure Investment and Jobs Act (IIJA), the Inflation Reduction Act (IRA)[2], and the Creating Helpful Incentives to Produce Semiconductors and Science Act (CHIPS)[3].
- Provides direction on how IOUs should track project costs and taxes associated with grants awarded under the IIJA, IRA, and CHIPS.
- Establishes a tracking mechanism for IOUs to regularly report to Energy Division on planning, seeking, and implementation of IIJA, IRA, and CHIPS awards.

SAFETY CONSIDERATIONS:

- The Commission has broad authority to protect public health and safety and to ensure affordable and reliable electric service. There are no safety considerations with the implementation of this resolution. The dispersion of federal funding described herein should support enhanced resiliency for utility power systems in a time of extreme weather and worsening climate impacts.

ESTIMATED COST:

- Costs are unknown at this time as the IIJA grant programs are accepting applications through 2026. It is expected that federal funding will partially

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[1] Infrastructure Investment and Jobs Act (IIJA), Pub. L. No. 117-58, November 15, 2021 (Bipartisan Infrastructure Law).

[2] Inflation Reduction Act (IRA), Pub. L. No. 117-169, August 16, 2022.

[3] Creating Helpful Incentives to Produce Semiconductors and Science Act (CHIPS), Pub. L. No. 117-167, August 9, 2022.

displace the need for future ratepayer funding, which could lead to long-term ratepayer costs savings on projects that otherwise would be fully ratepayer funded. IRA and CHIPS funding levels also remain unknown.

SUMMARY

Pursuant to Article XII Section 6 of the California Constitution and the Public Utilities Code, the California Public Utilities Commission (Commission) may adopt reasonable regulations for the oversight of costs passed on to the ratepayers of California. This resolution adopts a procedural venue for the electric and gas investor-owned utilities (IOU) to request cost recovery for match funding and tax liabilities pursuant to any funds received from the federal Infrastructure Investment and Jobs Act (IIJA) Clean Energy Infrastructure Grant Programs administered by the United States Department of Energy (DOE), the federal Inflation Reduction Act (IRA), and the federal Creating Helpful Incentives to Produce Semiconductors and Science Act (CHIPS). This resolution also adopts an advice letter process for IOUs to track and report costs and grant project progress.

BACKGROUND

Overview of the Infrastructure Investment and Jobs Act (IIJA) Clean Energy Grant Programs

The 2021 IIJA appropriated more than $62 billion to the U.S. DOE to create and fund 60 new programs, including 16 demonstration and 32 deployment programs. The federal legislation also expands funding for 12 existing Research, Development, Demonstration, and Deployment (RDD&D) programs.[4] For most programs, funding will be available annually through FY 2026.

This newly available federal funding aligns with the Commission's goals of improving energy infrastructure to support zero carbon emissions, grid reliability, safety, and bill affordability for electric and gas customers by potentially displacing the need for future ratepayer dollars for electric infrastructure, grid hardening, and resiliency projects.

California's electric and gas IOUs can directly apply to the U.S. DOE for funding through various competitive grant solicitations. The California Energy Commission

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[4] See U.S. Department of Energy IIJA Overview website here: https://www.energy.gov/clean-energy-infrastructure/bipartisan-infrastructure-law-programs

(CEC) will also be the State coordinating entity applying to relevant formulaic and competitive funding solicitations open to state entities with much of this funding eventually flowing to the electric and gas IOUs, as well as other project developers and eligible entities. Table 1 below provides details on some of the federal grant programs for which the IOUs are eligible to apply under the IIJA. The IOUs may potentially apply to other programs as needs evolve or as DOE modifies criteria in future years.

Table 1: Summary of Selected DOE Programs & Application Timelines

Grant Program	*Funding Amount*	*Cost Share (per application amount)*	*Milestones*
Grid Resilience Industry Grants Preventing Outages and Enhancing the Resilience of the Electric Grid / Hazard Hardening (Sec. 40101(c))	\$2.5 billion (\$500 million/year FY 2022-2026)	100%	Funding solicitation released December 2022 for FY2022 and FY2023 funding (~\$4.2 billion) First round applications due in Spring 2023 (April/May 2023)
Smart Grid Grants Deployment of Technologies to Enhance Grid Flexibility (Sec. 40107)	\$3 billion (\$600 million/year FY2022-FY2026)	50% minimum	
Grid Innovation Program Upgrading Our Electric Grid and Ensuring Reliability and Resiliency (Sec. 40103(b))	\$5 billion	50% minimum	
Non-Lithium Based Energy Storage Systems (Sec. 41001)	\$505 million FY2022-FY2025	50% minimum	

Regional Clean Hydrogen Hubs (Sec. 40314)	$7 billion		First round applications due April 2023
Carbon Capture Technology Program, Front-End Engineering Design for CO2 Transport (Sec. 40303)	$92 million		First round applications due December 2022
Regional Direct Air Capture (DAC) Hubs (Sec. 40308)	$3.5 billion FY2022-FY2026		First round applications due March 2023
Clean Hydrogen Electrolysis Program (Sec. 40314)	$1 billion		TBD

Through its various Funding Opportunity Announcements,[5] the U.S. DOE has clarified the application requirements and procedures the electric and gas IOUs will need to include in their applications. As a result, the electric and gas IOUs and Commission staff have identified numerous questions that need to be resolved consistently across the utilities on a short timeline to meet DOE deadlines. Resolving these questions and related issues will better position the electric and gas IOUs to submit successful applications to receive available federal funding through the IIJA.

To gather additional information on how California's IOUs plan to seek and utilize matching funds of non-ratepayer funding, the Commission's President Reynolds sent two letters to the IOUs on January 24, 2022 and November 28, 2022.[6] In response, the IOUs provided information on potential hurdles to accessing federal IIJA grants, offered suggestions on how to best position California IOUs for maximum grant capture, and identified specific grant programs, projects, and strategies each IOU was considering for potential advancement.

[5] See Funding Opportunity Announcements here - https://www.fedconnect.net/FedConnect/PublicPages/PublicSearch/Public_OpportunitySummary.aspx?ReturnUrl=%2ffedconnect%2f%3fdoc%3dDE-FOA-0002740%26agency%3dDOE&doc=DE-FOA-0002740&agency=DOE

[6] Letters and responses available at: https://www.cpuc.ca.gov/about-cpuc/divisions/office-of-governmental-affairs/federal-funding.

Overview of the Inflation Reduction Act (IRA) and Creating Helpful Incentives to Produce Semiconductors and Science Act (CHIPS)

Congress passed two other major pieces of energy-related federal legislation in 2022 after the passage of the IIJA in 2021 – the Inflation Reduction Act (IRA) and the Creating Helpful Incentives to Produce Semiconductors and Science Act (CHIPS). Unlike the IIJA, the IRA and CHIPS rely less heavily on grants to utility providers. The IRA's principal climate and energy-related tools are tax rebates and consumer credits or incentives, while CHIPS invests in research and development to catalyze commercialization of new clean energy technologies faster and at cheaper price points. However, like the IIJA, specific programs and details of the IRA and CHIPS require matching funds (although not necessarily from IOU ratepayers) while others are still under development, allowing for grant or other utility-focused opportunities to be announced at a future time.

DISCUSSION

This resolution provides a guiding framework and set of rules for how the IOUs should seek cost recovery, track costs, and report to the Commission on IIJA, IRA, and CHIPS grant activities. The Cost Recovery section below describes a process by which the IOUs may establish memorandum accounts for these federal opportunities. This includes instructions on how electric and gas IOUs shall track match funding and other costs associated with tax liability and revenue requirement offsets. The Grant Reporting section will discuss how the electric and gas IOUs are to submit regular informational advice letters detailing the information on grant planning and progress (e.g., taxes, matching funding requirements, etc.) before and after the initial award.

Cost Recovery

Infrastructure Investment and Jobs Act (IIJA) Memorandum Account

The electric and gas IOUs, which include PG&E, SCE, SDG&E, SoCalGas, Southwest Gas, Bear Valley Electric Service, Liberty Utilities, and PacifiCorp are each directed to file a Tier 2 advice letter to establish an IIJA Memorandum Account within 60 days of the issuance of this Resolution. The IIJA Memorandum Account will track the costs for projects that are awarded federal funding to inform oversight and evaluation of future match funding cost recovery requests. While the IIJA Memorandum Account will track any costs associated with match funding, the actual spending requests for projects will be addressed in the IOUs' General Rate Cases or separate project applications.

In addition, the IOUs should establish a sub-account within the IIJA Memorandum Account to track the tax impacts of the federal grant awards. The sub-account should include not only tracking of tax liabilities related to IIJA federal grant awards, but also any related tax benefits such as the impact on depreciation. Similar to cost recovery treatment for match funding amounts, requests for cost recovery of tax impacts from the IIJA federal grant awards will be considered by the Commission during IOU GRCs or other cost recovery applications.

If, at a future time, IOUs are eligible to apply for federal funding through the IRA or CHIPS, IOUs may also use this account to track costs and taxes for those awards.[7]

Tax Treatment

In the December 2022 letters to the Commission, the IOUs' recommendations varied regarding the treatment of tax liability stemming from federal grant funding related to the IIJA.[8]

- PG&E stated that it believes the grants will be considered taxable income for federal purposes but may not be taxable for California state tax purposes.[9]
- In contrast, SCE stated that the grants would be taxable income for both federal and state purposes and proposed a ratemaking treatment for grants that is similar to Contributions-In-Aid of Construction (CIAC).[10] SDG&E agreed that the grants would be taxable for both federal and state income tax purposes and proposed a memorandum account process that would be used to track and recover or refund any taxes.[11]
- SoCalGas requested Commission guidance on whether it could recover taxes incurred through a regulatory mechanism such as a memorandum account.[12]
- Southwest Gas proposed regulatory accounting treatment for tax recovery[13] and Bear Valley Electric Service proposed allowing the IOUs to establish memorandum accounts to track federal grant-related tax liabilities with recovery via Tier 2 advice letter filing.[14] PacifiCorp and Liberty Utilities did not submit

[7] The benefits of IRA provisions related to investment tax credits, production tax credits, and new tax credits to promote climate goals should be included in utility GRC applications.

[8] Commission President Reynolds Letter and IOU responses will be available at: https://www.cpuc.ca.gov/about-cpuc/divisions/office-of-governmental-affairs/federal-funding.

[9] PG&E letter to Alice Reynolds dated December 23, 2022, p. 2.

[10] SCE letter to Alice Reynolds dated December 22,2022, p. 3.

[11] SDG&E letter to Alice Reynolds dated December 20, p.2.

[12] SoCalGas letter to Alice Reynolds dated December 23, 2022, p. 2.

[13] Southwest Gas letter to the Commission dated December 23, 2022, p. 2.

[14] Bear Valley Electric Service letter to Alice Reynolds dated December 20, 2022, p.1.

any proposal for treatment of potential tax liabilities stemming from IIJA federal grants.

Barring specific guidance from the Internal Revenue Service (IRS) indicating otherwise, we find it likely that federal IIJA grants received by an IOU will be considered taxable income at the federal level. Internal Revenue Code (IRC) Sec. 118[15] governs federal income tax treatment for contributions to the capital of a corporation. IRC Sec. 118(a) states that "In the case of a corporation, gross income does not include any contribution to the capital of the taxpayer." (*Emphasis added*) However, the Tax Cuts and Jobs Act of 2017[16] added to IRC Sec. 118(b)(2) made an exception to include in gross income "any contribution by any governmental entity or civic group." Thus, it appears at this time, any federal grants stemming from the IIJA will be taxable income at the federal level.

Regarding potential California state income tax liability, as mentioned above, PG&E's December 2022 letter to the Commission stated that the grants may not be considered taxable income for state tax purposes since California has not conformed to the Tax Cuts and Jobs Act of 2017. The California Franchise Tax Board (FTB) Summary of Federal Income Tax Changes 2017 report discusses how California tax law only conforms to federal rules related to contributions as of January 1, 2015, specifically stating that:

> "*California does not conform to the federal modifications related to certain contributions in aid of construction by customers or potential customers or contributions by governmental entities that are not treated as contributions to capital*."[17,18]

As a result, barring specific guidance from the FTB stating otherwise, we agree with PG&E that federal grants related to the 2021 IIJA are not likely to be considered taxable income for State of California tax purposes.

It should be noted that future guidance or action by taxation authorities could alter these findings regarding federal or state tax treatment of IIJA grants. It is the Commission's expectation that the IOUs will comply with applicable tax laws while the tax impacts reflected in ratemaking from the IIJA should also follow applicable tax laws.

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[15] 26 U.S. Code §118.

[16] Tax Cuts and Jobs Act, Pub. L. No. 115-97 (2017).

[17] https://www.ftb.ca.gov/about-ftb/data-reports-plans/Summary-of-Federal-Income-Tax-Changes/2017.pdf. See pages 201-202 for discussion of California non-conformity with federal changes to IRC Sec. 118.

[18] See also: California Revenue and Taxation Code RTC Sec. 23051.5 and Sec. 17024.5(a)(1)(P).

Several of the IOUs' December 2022 letters suggested memorandum account treatment to track the potential tax liabilities associated with IIJA grants.[19] Because we find there will likely be income tax liabilities at the federal level associated with IIJA grants, and because we intend the 2021 IIJA grant funding to be used to fund utility infrastructure that provides customer benefits, we agree that there is a need for a mechanism, such as a memorandum account, to capture the impacts of tax liabilities associated with the federal grants. In addition, memorandum account treatment provides the ability to make adjustments to reflect compliance with any future tax law changes or guidance from taxing authorities related to the IIJA grants, if necessary.

As described above, we, therefore direct the IOUs to submit Tier 2 advice letters to establish IIJA Memorandum Accounts within 60 days of the issuance of this Resolution. Establishing a sub-account within this memorandum account will allow the IOUs to track the tax impacts associated with IIJA federal grants and provide a measure of certainty, albeit with a final cost recovery determination contingent upon a future application reasonableness review.

Reasonableness Review of Infrastructure Investment and Jobs Act (IIJA) Grant Related Costs

The Commission recognizes that developing competitive applications to IIJA grant opportunities requires a significant investment of time and resources. The Commission also recognizes that the IOUs seek certainty in cost recovery for associated costs and matching funds incurred to meet IIJA grant award requirements. In their responses to Commission President Reynolds' November 28, 2022 letter, the IOUs proposed various mechanisms for how projects that receive IIJA Grant funding should be treated regarding approval for cost recovery:

- SCE requested authority to recover costs through a Tier 3 advice letter for projects not already included in their General Rate Case (GRC). SCE cited prior Commission practice in the case of the American Recovery and Reinvestment Act (ARRA) of 2009 where the Commission directed SCE to use a Tier 3 advice letter in the Smart Grid Rulemaking to apply for incremental funding to meet DOE cost share obligations for ARRA funding.[20]
- Bear Valley Electric Service requested a memorandum account with approval and recovery through a Tier 2 advice letter process.[21]

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[19] SDG&E letter to Alice Reynolds dated December 20, p.2, SoCalGas letter to Alice Reynolds dated December 23, 2022, p.2, Bear Valley Electric Service letter the Commission, dated December 20, 2022, p. 1.

[20] SCE letter to Alice Reynolds dated December 22,2022, p. 2.

[21] Bear Valley Electric letter to Alice Reynolds dated December 20, 2022, p.1.

- SDG&E noted, generally, that "…there must be a process in place that will allow SDG&E to recover its match amount from ratepayers, including standard cost-of-service ratemaking elements (i.e., O&M, taxes, depreciation, and return)" and stated more specifically that "Timing of DOE funding opportunities is unlikely to coincide with the normal GRC cycle, nor will there be enough time to follow the standard process for submitting projects for CPUC review and approval." SDG&E pointed to DOE short timelines and recommended that the Commission "…issue an order directing advice letter filing to establish a memorandum account prior to submitting any application to DOE for IIJA funding. The advice letter will include a project description and as many details as are available at the time of DOE submission, as well as a proposal for future disposition of the memorandum account (i.e., how the final balance would be collected in rates). Approval to include any balance in rates, however, would be subject to a reasonableness review prior to any rate recovery. Such review would be limited to a determination of whether costs were reasonably incurred and accounted for, but not whether it was prudent to pursue the project in the first place. Objections to the prudency of projects would be considered as part of the advice letter process."[22]

We agree with the need for the Commission to identify a clear process the IOUs will utilize when applying for cost recovery of IIJA related costs. Furthermore, in cases where projects are not already included within an IOU's GRC, the GRC cycle may not optimally align with the IIJA grant cycle. However, we disagree with the IOUs' recommendations that the advice letter process is an appropriate procedural vehicle for approving the use of ratepayer funds.

Evaluation of ratepayer costs for projects receiving IIJA, IRA, or CHIPS grant funding must be consistent with existing Commission practice and directives in other relevant regulatory proceedings. Therefore, we adopt two procedural options through which the IOUs may request project funding: 1) a utility can seek prospective ratemaking treatment through its GRC, which occurs every three to four years; or 2) via a separate project stand-alone application if earlier cost recovery is needed.

Regardless of which pathway is taken, the Commission's statutory responsibility is to examine the reasonableness of the proposed or incurred costs. The application process provides the appropriate forum to assess the reasonableness of IOU IIJA, IRA, or CHIPS project costs presented to the Commission because it is litigated in a public proceeding

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[22] SDG&E letter to Alice Reynolds dated December 20, 2022 p.2.

initiated by the requesting utility and includes robust public participation from stakeholders. These stakeholders propound discovery, review the details of the costs, submit briefs and testimony, cross-examine witnesses in evidentiary hearings, and may or may not propose settlements. Together, this information forms the evidentiary record on which the Commission will base its determination of whether costs are reasonable and therefore should be borne by ratepayers.

Thus, we find that these two processes are the most appropriate procedural vehicles by which the IOUs can pursue cost recovery requests related to federal funding awards. Where projects are not already included within the GRC, or within another formal regulatory proceeding or process, the IOUs should file a formal application with the Commission requesting approval for project spending and cost recovery. The cost recovery application should align with Commission directives in other relevant regulatory proceedings, as applicable.

Given the potential for the complex nature of many of the projects likely to be proposed and awarded, the application process provides the optimal and most appropriate forum for scrutiny in compliance with the Commission's rules. Further, a separate project application allows for a rigorous review process, on a flexible schedule that can adapt to the IIJA, IRA, or CHIPS grant award timeline, which can be streamlined or expanded depending on the record of the proceeding.

We also acknowledge SCE's comment that the "CPUC should provide guidance confirming that IOUs may consider joint projects in the event that such projects would provide broad regional benefits within the state that otherwise might be less achievable through only individually sponsored projects."[23] Many projects that may be attractive for IIJA grant consideration require regional solutions and creative, collaborative thinking. The Commission encourages the IOUs to work together to apply for and implement collaborative IIJA grant projects. In cases where multiple IOUs work together on a single project, applications for cost recovery may be filed jointly.

Grant Reporting

In order to ensure transparency and oversight, the Commission and public must remain informed on how the IOUs are utilizing IIJA, IRA, or CHIPS grants and match funding. Commission President Reynolds' November 28, 2022 letter to the IOUs requested

[23] SCE letter to Alice Reynolds dated December 22, 2022, p. 4.

comment on "tracking and oversight of awarded funding to ensure reductions in costs to utility customers."

Most utilities that replied interpreted the question to mean tracking of monetary receipts for recovery. Two IOUs, Southwest Gas and Bear Valley Electric Service, responded with suggestions for informational tracking via an advice letter. Southwest Gas suggested that the Commission could require "…the IOUs to report, either through an advice letter or other compliance report, on any funding received and demonstrate how project costs will be offset by the funding and reduce cost impact to customers."[24] Bear Valley Electric Service suggested a similar approach: "The advice letter would detail the actual federal funding and how the funding was utilized as well as provide full accounting of the project expenses incurred. This process would provide transparency on how funds were utilized to the Commission and other interested parties."[25]

We agree with the IOUs that providing regular updates on federal funding through the advice letter process would keep the Commission and the public informed on the tracking and prudent use of IIJA, IRA, and CHIPS grants and ratepayer matching funds to comply with DOE requirements and demonstrate benefits to ratepayers. As the DOE's grant award schedule is not known, starting in Q3 of 2023, the IOUs shall each submit quarterly Tier 1 Information-Only advice letters containing, at a minimum, the following information:

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<tr><th>Table 2: Quarterly Advice Letter Requirements</th></tr>
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For applications:

Status of applications submitted to DOE (under review, not awarded, awarded, etc.) including timeframe, the grant section number, and project name
Descriptions of projects proposed in grant applications, or anticipated use of funding, requested grant level (and commensurate ratepayer matching funds)
Identify partners on the applications (other IOUs or POUs, State agencies, Tribes, etc.)
Assessment of future award opportunities including match requirements and the expected source(s) for any match funding

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[24] Southwest Gas letter to Alice Reynolds dated December 23, 2022, p.2.
[25] Bear Valley Electric Service letter to Alice Reynolds dated December 22, 2022, p.2.

- For awards:
    - A description of each awarded project
    - Project timeline and development status
    - Total award, funds expended and remaining, amount of ratepayer funding contributed, related match funding from other grants or programs, and grant or funding expiration date for any awards or matching awards
    - Related proceedings (i.e., GRCs, wildfire mitigation, or other forums) where the project may be reviewed or may be used to meet other criteria
    - An explanation of how the proposed project(s) maps to existing State priorities, including electric and gas customer rate and bill reductions, safety improvements, reliability enhancements and greenhouse gas emission reductions
    - Project status including any delays, challenges, or lessons learned
    - A narrative of costs incurred in alignment with the IIJA Memorandum Account
    - Identify if any projects are in State-designated disadvantaged communities or on Tribal lands

If, at a future time, IOUs are eligible to apply for federal funding through the IRA or CHIPS, IOUs should follow the same process described here for IIJA grants to report on grant progress for projects accessing IRA or CHIPS funding starting in the quarter that funding is applied for. The IOUs should consolidate all relevant federal grant reporting in the same quarterly advice letter report.

Disadvantaged Communities Considerations

The State has disadvantaged communities advancement goals aimed at improving public health, quality of life, and economic opportunity in California's most burdened communities, and at the same time, reducing pollution that causes climate change. The Commission developed an Environmental and Social Justice (ESJ) Action Plan to guide its decisions and make sure its broad regulatory authority continues to advance equity throughout the state.[26]

In D.20-08-046, the Commission defined disadvantaged vulnerable communities (DVC) as: 1) Communities in the 25% highest scoring census tracts according to the most

[26] The ESJ Action Plan is available on the Commission's website: https://www.cpuc.ca.gov/esjactionplan

current versions of the California Communities Environmental Health Screening Tool (CalEnviroScreen),[27] 2) all California tribal lands, 3) census tracts that score in the highest 5% of Pollution Burden within CalEnviroScreen, but do not receive an overall CalEnviroScreen score due to unreliable public health and socioeconomic data, and 4) census tracts with median household incomes less than 60% of state median income.[28] The California Environmental Protection Agency (CalEPA) CalEnviroScreen tool identifies California communities by census tract that are disproportionately burdened by, and vulnerable to, multiple sources of pollution.

D.20-08-046 orders the IOUs to submit vulnerability assessments of climate risks to utility operations and services, as well as to utility assets the IOUs have direct control over. D.20-08-046 further ordered the IOUs to develop Community Engagement Plans for working directly with DVCs to provide foundational input to informing the IOUs vulnerability assessments. These strategies are reflected in the ESJ Action Plan which calls for improved climate resiliency,[29] air quality,[30] and economic conditions[31] in disadvantaged communities. These strategies and goals are consistent with the Commission's interest in the IOUs seeking IIJA grants in investments that advance equity and directly benefit disadvantaged communities.

COMMENTS

Public Utilities Code section 311(g)(1) provides that this Resolution must be served on all parties and subject to at least 30 days public review. Any comments are due within 20 days of the date of its mailing and publication on the Commission's website and in accordance with any instructions accompanying the notice. Section 311(g)(2) provides that this 30-day review period and 20-day comment period may be reduced or waived upon the stipulation of all parties in the proceeding.

The 30-day review and 20-day comment period for the draft of this resolution was neither waived nor reduced. Accordingly, this draft resolution was mailed to parties

[27] Current CalEnviroScreen version 4.0 can be accessed here: https://oehha.ca.gov/calenviroscreen/report/calenviroscreen-40

[28] D.20-08-046, *Decision on Energy Utility Climate Vulnerability Assessments and Climate Adaptation in Disadvantaged Communities*. Filed in R.18-04-019 (Sep. 2020). Accessible at: https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M346/K285/346285534.PDF

[29] ESJ Action Item 4.1, p. 24.

[30] ESJ Action Items 2.1-2.5, p. 23-24.

[31] ESJ Action Items 7.1-7.3, p. 25.

for comments, and will be placed on the Commission's agenda no earlier than 30 days from today.

FINDINGS

1. The Infrastructure Investment and Jobs Act (IIJA) presents a significant opportunity to attract federal funding to finance IOU infrastructure needed in California to support zero carbon emissions, grid reliability, safety, and bill affordability for electric and gas customers.
2. The Inflation Reduction Act (IRA) and Creating Helpful Incentives to Produce Semiconductors and Science Act (CHIPS) also offer federal funding to increase energy efficiency and support clean energy infrastructure.
3. California's electric and gas IOUs requested guidance on numerous regulatory issues in order to develop competitive grant proposals.
4. Electric and gas IOUs requested regulatory guidance on a cost recovery mechanism for projects funded with IIJA grants.
5. Electric and gas IOUs requested clarification on how to track costs for IIJA grant projects.
6. Electric and natural gas IOUs have requested clarification on how to treat tax implications of IIJA grant funding.
7. Barring specific guidance from the Internal Revenue Service (IRS) indicating otherwise, we find it likely that federal IIJA grants received by an IOU will be considered taxable income at the federal level. Barring specific guidance from the California Franchise Tax Board stating otherwise, federal grants related to the 2021 IIJA are not likely to considered taxable income for State of California tax purposes.
8. An application process is the appropriate procedural vehicle for IOUs to seek cost recovery for matching funds and other costs related to federal IIJA grants.
9. The IOUs may seek ratemaking treatment for IIJA related costs through its General Rate Case (GRC).
10. The IOUs may submit a stand-alone project application separate from the GRC process to seek cost recovery for IIJA related costs.
11. The IOUs may collaborate with each other to jointly apply for IIJA grants.

12. In cases where the IOUs work together on a single project, applications for cost recovery may be filed jointly.
13. IOUs should follow the same process for IRA or CHIPs.

THEREFORE, IT IS ORDERED THAT:

1. Pacific Gas and Electric (PG&E), Southern California Edison (SCE), San Diego Gas & Electric (SDG&E), Southern California Gas (SoCalGas), Southwest Gas, Bear Valley Electric Service, Liberty Utilities and PacifiCorp, are each directed to file a Tier 2 advice letter to establish an Infrastructure Investment and Jobs Act (IIJA) Memorandum Account within 60 days of the issuance of this Resolution. The IIJA Memorandum Account will track the costs for projects that are awarded federal funding to inform future match funding cost recovery requests.
2. PG&E, SCE, SDG&E, SoCalGas, Southwest Gas, Bear Valley Electric Service, Liberty Utilities and PacifiCorp should establish a sub-account within the IIJA Memorandum Account to track the tax impacts of the federal grant awards. The sub-account should include not only tracking of tax liabilities related to federal grant awards, but also any related tax benefits such as the impact of depreciation.
3. The IOUs may request cost recovery through one of two procedural vehicles: 1) General Rate Case applications or 2) standalone project applications. These options are consistent with existing Commission practice for cost recovery of ratepayer funds.
4. Starting in Q3 of 2023 until 2026, or until all projects funded with IIJA grants are completed and implemented, each IOU shall submit quarterly Tier 1 Information-Only advice letters containing, at a minimum, the information requested in Table 2 of this Resolution.
5. If funding to IOUs becomes available through the IRA or CHIPS, IOUs should follow the same processes outlined in this resolution for IIJA grants when seeking cost recovery or tax treatment of federal funds received under those programs.

This Resolution is effective today.

I certify that the foregoing Resolution was duly introduced, passed, and adopted at a conference of the Public Utilities Commission of the State of California held on April 6, 2023; the following Commissioners voting favorably thereon:

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Rachel Peterson
Executive Director