

STATE OF CALIFORNIA

Public Utilities Commission
San Francisco

M e m o r a n d u m

Date: April 17, 2012

To: The Commission
(Meeting of April 19, 2012)

From: Lynn Sadler, Director
Office of Governmental Affairs (OGA) — Sacramento

Subject: **AB 2590 (Blumenfield) – Distribution generation:
interconnection.
As introduced: February 24, 2012**

LEGISLATIVE SUBCOMMITTEE RECOMMENDATION: OPPOSE

SUMMARY OF BILL:

This bill would first require the California Public Utilities Commission (“CPUC”) to prepare and publish an annual report on distributed generation interconnection studies conducted by electrical corporations in the previous year. Second, the bill would require the CPUC to require an electrical corporation to publish online specified queue information, updated on a monthly basis, for all interconnection projects. Third, the bill would require the CPUC to convene a rulemaking either parallel to, or jointly with, the California Independent System Operator (“CAISO”) to conform confidentiality rules with respect to interconnection requests and studies, including a requirement to enforce a presumption of non-confidentiality.

SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION:

As written, this bill’s premise is that all records related to interconnection requests and studies should be made public. There is currently an open CPUC proceeding that is examining, among other interconnection issues, the publication of distribution system interconnection queues, reporting on utility compliance with interconnection timelines, reporting on the costs of interconnection studies, and the scope of confidentiality as applied to interconnection records. In addition, a proposed CPUC resolution substantially overhauls the CPUC’s confidentiality rules with respect to records held by the CPUC. Thus, this bill’s policy of non-confidentiality is in part already being implemented by the CPUC, and in part runs counter to interconnection confidentiality rules recently developed through a CPUC-led multi-party settlement process. Finally,

some terms used in the draft language are ambiguous and may result in program changes unintended by the author.

SUMMARY OF SUGGESTED AMENDMENTS:

None.

DIVISION ANALYSIS (Energy Division):

Since this bill was introduced, a major settlement¹ has been filed in the CPUC's open interconnection proceeding that addresses confidentiality rules, reporting, and data related to interconnection. In addition, a draft resolution on the CPUC's own motion proposing substantial revisions to the CPUC's confidentiality rules has been issued for public comment.² As a result, two open CPUC proceedings are presently considering confidentiality rules in general and with respect to distribution system interconnection.

a. The substance of the bill's reporting requirement is being addressed by the CPUC in its consideration of the Motion for Approval of the Rule 21 Settlement.

This bill establishes a new annual CPUC reporting requirement incorporating approximately thirteen data points related to interconnection applications and

¹ *Motion for Approval of Settlement Agreement Revising Distribution Level Interconnection Rules and Regulations* ("Motion for Approval of the Rule 21 Settlement"), filed 3/16/2012 in CPUC Order Instituting Rulemaking (R.) 11-09-011. The attachments to the Motion for Approval of the Rule 21 Settlement include a Settlement Agreement ("Settlement Agreement"), a Proposed Rule 21 Revised Tariff ("Proposed Rule 21 Tariff"), Proposed Rule 21 Interconnection Agreements ("Proposed Rule 21 IAs"), and Proposed Rule 21 Interconnection Requests ("Proposed Rule 21 IRs") (jointly, the "Proposed Rule 21 Settlement"). The Settling Parties are: Aloha Systems, California Farm Bureau Federation, Center for Energy Efficiency and Renewable Technologies, Clean Coalition, Interstate Renewable Energy Council, Pacific Gas & Electric, San Diego Gas & Electric, Sierra Club, Solar Energy Industries Association, Southern California Edison, SunEdison, Sunlight Partners, Sustainable Conservation, and Vote Solar Initiative (jointly, "Settling Parties"). The Motion for Approval of the Rule 21 Settlement is available at <http://docs.cpuc.ca.gov/efile/MOTION/162852.pdf>.

² Proposed Resolution No. L-436, *Resolution Adopting New Regulations Regarding Public Access to Records of the California Public Utilities Commission and Requests for Confidential Treatment of Records* ("Proposed Resolution L-436"), posted at http://docs.cpuc.ca.gov/WORD_PDF/COMMENT_RESOLUTION/162152.pdf. Proposed Resolution L-436 is presently scheduled to be considered by the CPUC at the 4/19/2012 meeting.

studies.³ Of those data points, all but two are included the queue publication provisions in the Proposed Rule 21 Tariff.⁴ The report required by this bill is a straightforward data report, and does not require analysis of interconnection applications and study data, or the establishment of benchmarks or measures of progress. As a result, this reporting requirement does not add information to the data already proposed for publication by the Settling Parties within the Motion for Approval of the Rule 21 Settlement.

The bill identifies two additional data points for inclusion in the annual report beyond those proposed for publication by the Settling Parties: (i) the personnel working on interconnection matters for each utility, and (ii) a comparison between interconnection study costs charged to applicants and study costs actually incurred by the utility. If the CPUC approves the Motion for Approval of the Rule 21 Settlement, Energy Division staff will implement a series of actions to monitor the compliance of PG&E, SCE, and SDG&E (jointly, "IOUs") with the Proposed Rule 21 Tariff. Monitoring actions will include: regular reports on IOU processing of interconnection requests within the new timeframes;⁵ a comparison of actual study costs against the new study deposits for Detailed Study;⁶ and reporting on the results of any disputes initiated under the new dispute resolution provisions.⁷

³ Proposed Pub. Util. Code section 321.9(a)(2)(A)-(M) would include the number of personnel and consultants working on interconnection matters for each electrical corporation; date of the interconnection application; queue position date; county and state location; study group, if in a cluster study; size of project; technology type; interconnection procedure status for each project; interconnection voltage; whether an interconnection agreement has been signed; initial requested in-service date; current requested in-service date; and interconnection studies completed for each project (with dates of completion, costs charged to applicants, actual costs to the electrical corporations completing the studies, and status of the application).

⁴ Proposed Rule 21 Tariff, Sec. E.5.d(i)-(ii). Requires the IOUs to publish online queues containing: assigned [interconnection request] number; queue position; date the interconnection request was received by the utility; date the interconnection request was determined to be complete and valid; applicant's requested review process; original and currently requested in-service date; agreed-upon or actual commercial operation date; maximum summer and winter electrical output; type of generating or storage facility; fuel source; proposed point of interconnection location by substation/area, circuit, county, and state.

⁵ See Settlement Agreement, Sec. II.G.1-3 (identifying Settling Parties' minimum proposed requirements for staff proposal on reporting requirements to be filed in R.11-09-011).

⁶ See Settlement Agreement, Attachment B, Recommended Scope of Phase 2 Issues ("Study deposits, pursuant to which the IOUs shall collect and provide data on the actual cost of system impact studies and facilities studies"). See also Proposed Rule 21

a. The bill's queue publication requirement is being addressed by the CPUC in its consideration of the Motion for Approval of the Rule 21 Settlement.

The Proposed Rule 21 Tariff puts forward a queue publication requirement nearly identical to the bill's proposed queue publication requirement, as set out in detail above.⁸ The CPUC is likely to consider the Motion for Approval of the Rule 21 Settlement in the summer of 2012, and if approved, the queue publication provisions would immediately go into effect.

b. The CPUC is actively considering revisions to rules implementing California law addressing the confidentiality of documents submitted to the CPUC.

On March 20, 2012, the CPUC issued Proposed Resolution L-436, which, if adopted, would comprehensively update the CPUC's regulations governing public access to CPUC records, including documents submitted by utilities to the CPUC. Thus, to the extent that the proceeding required by this bill would address CPUC confidentiality rules for records submitted by utilities, it would be premature to act on the bill before the Commission has an opportunity to consider Proposed Resolution L-436.

c. In establishing an enforceable presumption of non-confidentiality for all interconnection-related records, the bill overrides the consensus-based negotiations of the Settling Parties to the Motion for Approval of the Rule 21 Settlement.

The proceeding required by the bill would also address the confidentiality rules where records related to interconnection requests and studies are held by the utilities – i.e., not submitted to the CPUC. For such records, the bill requires that

Tariff, Sec. E.3.a (setting out Detailed Study deposit amounts).

⁷ Proposed Rule 21 Tariff, Sec. F.1.d and Sec. K.

⁸ Proposed Rule 21 Tariff, Sec. E.5.d states, "Distribution Provider shall publish and update monthly on its website the interconnection queue for all Interconnection Requests governed by this Rule with a Point of Interconnection on Distribution Provider's Distribution System that have been assigned a queue position." To provide a basis for publication of an integrated queue incorporating interconnection requests for exporting generating facilities queued under both Rule 21 and the utility's FERC-jurisdictional wholesale distribution tariff, the proposed Rule 21, Sec. E.5.d further states, "Nothing here prohibits Distribution Provider from publishing this queue combined with other interconnection requests to Distribution Provider's Distribution System."

the CPUC open a proceeding “parallel to, or jointly with,” the CAISO, and that the CPUC and the CAISO “harmonize” their interconnection-related confidentiality rules.⁹ The bill further requires that “a presumption of non-confidentiality be enforced at all times[.]”¹⁰

The presently effective Rule 21 applies a blanket confidentiality provision to all interconnection-related records.¹¹ Recognizing that the blanket confidentiality provision placed unnecessary limits on interconnection-related information, the Settling Parties negotiated certain revisions in the Proposed Rule 21 Tariff. Those revisions clarify the scope and limitations on interconnection-related confidential information, and deliberately align the confidentiality provisions more closely with the utilities’ Federal Energy Regulatory Commission (“FERC”)-jurisdictional wholesale distribution tariffs.¹² In addition, the Proposed Rule 21 Tariff explicitly identifies the interconnection data to be published in the online queues as non-confidential.¹³

At the same time, however, the Settling Parties specifically retained a basic provision in the Proposed Rule 21 Tariff that information related to the “present or planned business” of the interconnection applicant shall be treated as confidential.¹⁴ Developers of renewable distributed generation compete in a marketplace; certain records transferred between an interconnection applicant and the utility could be used by competing developers in a manner that harms ratepayers. Such records may include proprietary technological information, cost estimates, and interconnection study results. By requiring a “presumption of non-confidentiality” at the outset of the required proceeding with respect to all interconnection request and interconnection study records, this bill does not allow for consideration of whether some interconnection records should be held confidential in order to guard against

⁹ Proposed Pub. Util. Code sec. 321.9(c).

¹⁰ *Id.*

¹¹ D. 00-11-001, page 4 (ordering IOUs to adopt a specific confidentiality statement within Rule 21, stating: “Any information pertaining to Generating and/or Interconnection Facilities provided to an Electrical Corporation by an Electricity Producer shall be treated by the Electrical Corporation in a confidential manner.”) That confidentiality rule has not been subsequently modified. See D.00-12-037 (adopting full text of Rule 21).

¹² Motion for Approval of Rule 21 Settlement, p. A-5.

¹³ Proposed Rule 21 Tariff, Sec. D.7.b.

¹⁴ Proposed Rule 21 Tariff, Sec. D.7.a, “Confidential Information shall include, without limitation, confidential, proprietary or trade secret information relating to the present or planned business of Applicant, Customer, Producer, or Distribution Provider [...] including all information relating to a Party’s technology, research and development, business affairs, and pricing.

anti-competitive actions. It also overrides the consensus-based negotiations of the Settling Parties to the Proposed Rule 21 Settlement.

d. Ambiguous draft language in the bill may lead to unintended outcomes.

The bill contains several ambiguous phrases that may lead to unintended outcomes:

- *“The commission shall annually prepare and make available to the public a detailed report on each distributed generation interconnection study...”* does not define “distributed generation” or “interconnection study.” The author may intend that “distributed generation” refer to exporting generating facilities, which are the category of interconnection customers for which detailed studies are more likely to be performed (as opposed to net energy metering or non-export generating facilities). However, without clarity, the number of interconnection applications to be included in the report could vary widely.
- *“The commission shall review all electrical corporation data...but shall ensure that the information is accurate through verification with third parties when possible”* is not defined. It is not clear whether the author intends for “verification” to occur via a formal audit or less formal means. Further, where verification may involve examining confidential records, the bill does not make clear which third parties should be deemed eligible to handle confidential information.

PROGRAM BACKGROUND:

Rule 21 to accommodate today’s volume of exporting generating facilities applying for interconnection to the distribution system. The Motion for Approval of the Rule 21 Settlement was filed in R.11-09-011 on March 16, 2012, following an intensive confidential settlement process involving approximately 80 parties, including the IOUs, the CAISO, ratepayer advocates, independent power producers, renewable energy advocates, best practices organizations, and state and federal agencies. By consensus of the Settling Parties, the Proposed Rule 21 Tariff and Settlement Agreement specifically address the issues related to confidentiality and reporting of interconnection data, both in the Proposed Rule 21 Tariff and in the Settling Parties’ recommended scope of Phase 2.

The CAISO tariff, and the confidentiality rules contained within it, are generally subject to FERC jurisdiction. CPUC implementation of the bill could result in litigation, particularly over questions of jurisdiction and/or federal preemption. While the CPUC may be able to interpret and implement the bill in a way that avoids jurisdiction and preemption issues, this bill presents potentially serious legal issues and litigation risk.

FERC's general parameters regarding confidentiality related to interconnection are set out in an order addressing small (below 20 megawatts) generator interconnection procedures.¹⁵ The CAISO and each IOU have interconnection tariffs that are subject to FERC jurisdiction, and any modifications to those tariffs are subject to FERC approval. As noted above, the Settling Parties drew from confidentiality provisions contained in the IOUs' FERC-jurisdictional tariffs in developing the proposed new provisions within the Proposed Rule 21 Tariff. The Settling Parties also considered the interconnection-related data that will aid the marketplace without revealing business-sensitive information in developing the proposed new provisions.

LEGISLATIVE HISTORY:

None.

FISCAL IMPACT:

Total Fiscal Impact: \$386,055.

Existing Energy Division public utilities regulatory analysts are engaged in implementing the CPUC's procurement programs and present interconnection activities. This bill creates new reporting requirements, monitoring activities, and confidentiality policy, and therefore creates work duties that are not similar to present existing work duties. To implement this bill without additional staff resources would require redirecting staffing resources away from pre-existing programs implementing present CPUC policy.

Existing Administrative Law Judges are fully occupied with proceedings already underway. The introduction of a new proceeding will require additional administrative law judge resources not presently available to be redirected.

Existing Public Utilities Counsel resources are not presently engaged in litigation over the jurisdictional and/or federal preemption questions raised by the bill, nor in enforcement actions or other litigation related to the contents of this bill. To the extent this bill may lead to new litigation, it will require additional counsel resources not presently available to be redirected.

STATUS:

AB 2590 is scheduled to be heard before the Assembly Utilities and Commerce Committee on April 23, 2012.

¹⁵ Standardization of Small Generator Interconnection Agreements and Procedures, Order No. 2006, FERC Stats. & Regs. ¶ 31,180 (2005) ("Order No. 2006"), pages 34-36.

SUPPORT/OPPOSITION:

Support: None on file.

Opposition: Pacific Gas & Electric Company (PG&E)
San Diego Gas & Electric (SDG&E)
Southern California Edison (SCE)

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BILL LANGUAGE:

BILL NUMBER: AB 2590 INTRODUCED
BILL TEXT

INTRODUCED BY Assembly Member Blumenfield

FEBRUARY 24, 2012

An act to add Section 321.9 to the Public Utilities Code, relating to distributed generation.

LEGISLATIVE COUNSEL'S DIGEST

AB 2590, as introduced, Blumenfield. Distributed generation: interconnection.

Existing law requires the Public Utilities Commission, in consultation with the Independent System Operator and the State Energy Resources Conservation and Development Commission, to study, and submit a report biennially to the Legislature and the Governor, on the impacts of distributed energy generation on the state's distribution and transmission grid.

This bill would require the commission to annually prepare and make available to the public a report with prescribed information on distributed generation interconnection studies conducted by electrical corporations in the previous year. The bill would require the commission to require an electrical corporation to publish online specified queue information, updated on a monthly basis, for all interconnection projects, including withdrawn and rejected projects. Because a violation of an order or decision of the commission implementing that requirement would be a crime, the bill would impose a state-mandated local program by expanding the definition of a crime. The bill would require the commission to convene a rulemaking either parallel to, or jointly with, the Independent System Operator to harmonize confidentiality rules with respect to interconnection requests and interconnection studies.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 321.9 is added to the Public Utilities Code, to read:

321.9. (a) (1) The commission shall annually prepare and make available to the public a detailed report on each distributed generation interconnection study conducted by an electrical

corporation in the previous year.

(2) The report shall include, but is not limited to, all of the following information:

- (A) Number of electrical corporation personnel and consultants working on interconnection matters for each electrical corporation.
- (B) Date of the interconnection application.
- (C) Queue position date.
- (D) County and state location.
- (E) Study group, if in a cluster study.
- (F) Size of project.
- (G) Technology type.
- (H) Interconnection procedure status for each project.
- (I) Interconnection voltage.
- (J) Whether an interconnection agreement has been signed.
- (K) Initial requested in-service date.
- (L) Current requested in-service date.
- (M) Interconnection studies completed for each project, with the dates of completion of these studies, costs charged to applicants, actual costs to the electrical corporations completing the studies, and status of the application.

(3) The commission shall review all electrical corporation data on this matter but shall ensure that the information is accurate through verification with third parties when possible.

(b) The commission shall require an electrical corporation to publish online detailed queue information, updated on a monthly basis, for all interconnection projects, including withdrawn and rejected projects, including, but not limited to, all of the following information:

- (1) Date of application.
- (2) Queue position date.
- (3) County and state location.
- (4) Study group, if in a cluster study.
- (5) Size of project.
- (6) Technology type.
- (7) Interconnection procedure status for each project.
- (8) Interconnection voltage.
- (9) Whether an interconnection agreement has been signed.
- (10) Initial requested in-service date.
- (11) Current requested in-service date.
- (12) Interconnection studies completed for each project, with the dates of completion of these studies.

(c) The commission shall convene a rulemaking either parallel to, or jointly with, the Independent System Operator to harmonize confidentiality rules with respect to interconnection requests and interconnection studies. This rulemaking shall revise existing rules of the commission implementing Section 583, including, but not limited to, commission Decision 06-06-066, relating to issues over which the state has jurisdiction. The revised rules shall require a presumption of nonconfidentiality be enforced at all times and shall require the commission, Independent System Operator, or electrical corporation, as applicable, to provide a written statement demonstrating why any particular information should be deemed confidential.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or

infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.