

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

Rulemaking on the Commission’s Own Motion to Solicit Comments and Proposals on Distributed Generation and Competition in Electric Distribution Service.

R. \_\_\_\_\_

**ORDER INSTITUTING RULEMAKING**

**Summary**

By this order, we open a rulemaking proceeding to consider whether the Commission should pursue reforms in the structure and regulatory framework governing electricity distribution service. The purpose of this proceeding is to gather additional information to assist us in framing proposals to the Legislature and our stakeholders for whatever reforms may be necessary in light of current developments in California’s electric industry.

This rulemaking will provide the opportunity for the Commission to begin consulting with the Legislature and collaborating with the Administration, interested stakeholders, and other state/local agencies who may have jurisdiction or interest in electric distribution and generation issues. In particular, we believe that our consideration of issues focusing on distributed generation and/or distribution competition will benefit from a collaborative effort among the Commission, the California Energy Commission (CEC), and the California Electricity Oversight Board (EOB). This process will allow us to work with these parties to identify the range of issues on distributed generation and distribution competition, and their interrelationships; explore whether we should undertake a focused analysis of distributed generation or a more comprehensive consideration of distribution competition issues; and determine those issues we

can address more narrowly and more expeditiously. At the end of this process, we anticipate issuing a proposal that reflects our coordination with the CEC and the EOB, outlining the specific steps we will undertake, in cooperation with the Legislature, in addressing the issues and considering proposed changes in our regulatory policies and rules.

We solicit comments and proposals regarding the scope and substance of issues that need to be addressed, possible policy options, and the procedural steps that the Commission could pursue in adopting and implementing needed reforms that are consistent with the state's goals and objectives in electric restructuring. We invite responses to our questions in Appendix A of this rulemaking. Respondents shall and interested parties may file opening comments on or before March 17, 1999, and reply comments on or before May 17, 1999. Given the collaborative efforts we intend to undertake with the CEC and the EOB in this proceeding, respondents and interested parties should also provide copies of their comments to these two agencies.

### **Background**

A confluence of events has prompted the Commission to initiate this rulemaking proceeding. Various industry participants have urged the Commission to examine the utility distribution company's (UDC) role in distributed generation (DG).<sup>1</sup> The California Alliance for Distributed Energy

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<sup>1</sup> Also referred to as "distributed energy resources" (DER) or "distributed resources" (DR). DG generally refers to generation, storage, or demand-side management (DSM) devices, measures, and/or technologies that are connected to or injected into the distribution level of the transmission and distribution (T&D) grid (i.e., "below" the bulk power transmission system). Micro-turbines, fuel cells, photovoltaics, wind turbines, and flywheels are some examples of DG technologies. Because these devices are more modular and flexible than a large central power station, they can be located at the customer's premises on either the system side or the

*Footnote continued on next page*

Resources (CADER)<sup>2</sup> briefed the Commissioners on DG in May 1998. A group of 23 signatories sent a letter dated June 5, 1998, to all Commissioners specifically requesting that the Commission initiate an order instituting a rulemaking (OIR) on the role of the UDCs in facilitating DG, and the bundling or unbundling of energy and ancillary services injected into the distribution system.<sup>3</sup>

In response, we invited several participants to a dialogue on DG issues during a roundtable on August 3, 1998.<sup>4</sup> The roundtable, although not a formal proceeding, provided the participants an opportunity to further discuss and share their views with all the Commissioners on the following topics:

(1) definition of DG; (2) the role of the UDC in DG implementation; (3) incentives and barriers confronting DG in California; (4) treatment of DG with respect to competition transition charges (CTC), stand-by charges, and interconnection standards; and (5) actions that the Commission should undertake to facilitate DG. Participants suggested that the Commission convene follow-up meetings or

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customer side of the meter, or at other points in the distribution system such as a UDC substation. DG covers a wide range of technologies and is not exclusively limited to co-generation.

<sup>2</sup> CADER was formed in October 1996, under the sponsorship of the CEC. It is a consortium of manufacturers, users, energy service companies, engineering firms, utilities, power providers, research organizations, regulators, financial institutions, and others created to focus on DER's entry into a competitive electricity market.

<sup>3</sup> Attached to the letter was a Statement of Signatories, a definition of terms, and a list of core questions proposed for the OIR (hereinafter, collectively referred to as "June 5th Statement").

<sup>4</sup> Commissioner Neeper presided over the roundtable. All the other Commissioners, as well as Pacific Gas & Electric Company (PG&E), San Diego Gas & Electric Company, Southern California Edison Company, Allied Signal, New Energy Ventures, CEC, Energy Service Companies, Natural Resources Defense Council, and the Commission's Office of Ratepayer Advocates, participated.

workshops to focus on some of the more specific issues raised. No subsequent roundtable or workshop has been convened to date.

At the same time, the Commission has adopted several resolutions which raised issues on distribution competition in a broader context. In Resolution E-3528 dated April 23, 1998, for example, we found that the formation of the Patterson Water District will not substantially impair the ability of PG&E to provide adequate service at reasonable rates in the remainder of its service area. We further stated in the same resolution that “allowing for the construction of duplicative facilities provides a competitive check on the ability of the utility to pass through unreasonable costs to ratepayers in distribution rates.” We made a similar finding in Resolution E-3549, regarding the formation of the McAllister Ranch Irrigation District. PG&E, however, has argued that the formation of such districts essentially “snatch[es] territory from PG&E” and results in duplication of facilities that could substantially increase PG&E’s costs to serve its remaining territory.<sup>5</sup> PG&E requested that the Commission initiate a comprehensive investigation where the Commission can thoughtfully explore the implications of increasing distribution competition, rather than simply addressing these issues in a piecemeal fashion. PG&E encouraged the Commission to examine the overall future role of the UDC and to view DG as one important component of the investigation.<sup>6</sup>

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<sup>5</sup> See PG&E’s July 6, 1998, comments to Energy Division regarding formation of McAllister Ranch Irrigation District (Resolution E-3549).

<sup>6</sup> Dede Hapner’s August 20, 1998, letter to the Commissioners regarding the August 3, 1998, roundtable on DG.

On September 3, 1998, during our deliberations on Resolution E-3549, we raised the question as to whether the Commission should consider a more general look at distribution competition and how the formation of irrigation districts comports with the Commission's competition policies. We noted that there may be a relationship between distribution competition and DG, and requested the staff of the Energy Division and the Division of Strategic Planning (DSP) to reflect on the issues and recommend to us a future course of action. We issue this rulemaking, as staff has suggested, to further explore these topics and formally solicit input from all interested parties.

### **Discussion**

We recognize that consideration of DG issues may relate to distribution competition, as our staff and other industry participants have noted. Installation of DG devices, particularly at the customer side of the meter, provides an alternative means of generating power that may either supplement or supplant demand for bulk power served through the transmission and distribution (T&D) system of the UDC. Competing energy providers could use DG to supply power to direct access customers. End-use customers could use DG to self-generate power on-site. The extent to which distributed power from DG replaces or reduces the demand for bulk power has implications on the amount of power delivered using the UDCs' T&D facilities. Thus, allowing an open market for the installation of DG devices by energy service providers and end-users may be inextricably linked to competition for the UDC's existing electric distribution services and facilities.

Given DG's potential impact on the UDC's distribution function, it may not be workable for the Commission to initiate a proceeding focusing only on DG without also addressing the broader questions regarding distribution

competition. The formation of irrigation districts and other publicly-owned utilities has implications for distribution competition, as PG&E has pointed out, which may be appropriate to further explore in this rulemaking as well.

Furthermore, we note the potential for privately-owned housing, commercial, and industrial developments to install in-house capability to generate electricity (possibly using DG technologies) and distribute power to end-users within the development, in lieu of the UDC's power supply and distribution services.<sup>7</sup> Such a scenario also has implications for the UDC's distribution function.

The Commission should examine DG and distribution competition to ensure that its policies in these areas are consistent with the Commission's and Legislature's objectives and goals in restructuring the electric industry. These include, among others, open competition in electric generation; the separation of a utility's monopoly and competitive functions and services; the provision of customer choice in selecting a power supplier; lower electric rates and costs to customers while maintaining reliable and high quality service; and efficient, low cost, and non-discriminatory operation of the T&D grid.

We issue this rulemaking to initiate a process that provides interested parties and stakeholders, especially the Legislature, with an opportunity for up-front input on both the substance and scope of DG and distribution competition issues. We emphasize that we do not intend to define new policies in this proceeding. Rather, our intent is to gather additional information to assist us in framing the issues and developing proposals for further reforms in the structure and regulatory framework governing electricity distribution service. This

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<sup>7</sup> A related issue is whether the use of master-metering and sub-metering in residential and commercial developments could potentially impact the UDC's distribution function and promote direct access and distribution competition.

process will allow us to identify the range of issues on DG and distribution competition, and their interrelationships; explore whether we should undertake a focused analysis of DG or a more comprehensive consideration of distribution competition issues; and determine those issues we can address more narrowly and more expeditiously. We plan to consult with the Legislature and collaborate with the Administration, interested stakeholders, and other state/local agencies who may have jurisdiction or interest in electric distribution and generation issues, during the course of this proceeding. At the end of this process, we plan to issue a proposal outlining the specific steps we will undertake, in cooperation with the Legislature, in addressing the issues and considering proposed changes in our regulatory policies and rules.

We recognize that the breadth of issues surrounding DG and/or distribution competition has statewide policy implications and cuts across the jurisdictional interests and responsibilities of other government entities. In particular, we believe that collaborative efforts among this Commission, the CEC, and the EOB at this stage of the process would ensure that a coordinated proposal or set of proposals is provided to the Legislature with respect to how various DG and distribution competition issues are to be addressed. We therefore invite the CEC and the EOB to participate in the process and collaborate with the Commission in the information gathering, analysis, and policy proposal development envisioned in this proceeding. We anticipate issuing a proposal to the Legislature as a result of this proceeding, which reflects our coordination with the CEC and the EOB. To this end, we shall require the respondents in this proceeding and interested parties to also provide copies of their comments to these two agencies.

If we decide to embark on an investigation on distribution competition, a fundamental issue that must be addressed is the future vision of the electric

industry and the UDC's ultimate role in this restructured energy market. The signatories of the June 5th statement urged us to focus on the UDC's role with respect to the planning, owning, leasing, dispatching, interconnecting, or facilitating the optimal utilization of DG, and to consider whether to unbundle generation and ancillary services injected at the distribution level from the UDC's distribution function.<sup>8</sup> PG&E, on the other hand, has advocated for a broader look at the overall future role of the UDC. We require respondents and ask parties to provide their views and comments on these contrasting objectives. In addition, we invite interested parties to provide comprehensive responses to the questions posed in Appendix A of this rulemaking.<sup>9</sup> Respondents and interested parties may also include in their responses and comments other information that they deem to be relevant and helpful in formulating proposals for structural and regulatory reforms, and charting a future course of action in addressing DG and distribution competition.

### **SB 960 (Stats. 1996, Ch. 856) Preliminary Scoping Memo**

The rules and procedures implementing many of the reforms contained in Senate Bill (SB) 960 are found in Article 2.5 of our Rules of Practice and Procedure (Rules), which are posted on the Commission's web site ([www.cpuc.ca.gov](http://www.cpuc.ca.gov)). Pursuant to Rule 4(a), the rules in Article 2.5 shall apply to this proceeding.

Pursuant to Rule 6(c)(2), we preliminarily determine the category of this rulemaking proceeding to be "quasi-legislative," as the term is defined in

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<sup>8</sup> June 5th Statement, p. 1.

<sup>9</sup> Pending further discussions with the CEC and the EOB, we may pose additional questions, if required, through an Assigned Commissioner's Ruling.



Rule 5(d). As indicated earlier, this OIR is exploratory. Our intention is to solicit comments and proposals on possible policy options, the scope and substance of issues to address, and the procedural steps to pursue in adopting and implementing needed reforms in the structure and regulation of electricity distribution service that are consistent with the state's goals and objectives in electric restructuring. Our initial focus will be the comments received in response to the questions contained and issues raised in Appendix A of this rulemaking. Depending on the comments received, we may open up a subsequent comprehensive rulemaking with more detailed policy proposals and rules on the issues that need to be addressed.

Consistent with the quasi-legislative category of this proceeding, we anticipate that there may be full panel hearings to receive information on legislative facts.<sup>10</sup> At this time we do not anticipate holding an evidentiary hearing since we do not foresee a need to receive testimony regarding adjudicative facts.<sup>11</sup>

The proposed timetable for this proceeding is set forth in Appendix B of this order. An initial service list for this proceeding shall be developed by having the respondents and other individuals or entities interested in this proceeding mail a written request to the Commission's Process Office no later than February 26, 1999. Each request shall contain the following information:

- Name of person receiving documents

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<sup>10</sup> Rule 8(f)(3) defines "legislative facts" as general facts that help decide questions of law, policy and discretion.

<sup>11</sup> Rule 8(f)(1) defines "adjudicative facts" as facts which answer questions such as who did what, where, when, how, why, or with what motive or intent.

- Name of organization
- Address, city, state, and zip code
- E-mail address
- Indicate the party status that the individual or entity is requesting<sup>12</sup>
- Indicate whether you prefer service by mail or by E-mail

For the purposes of this proceeding, an “interested party” is defined as someone who will submit opening comments in response to this rulemaking. An interested party receives all formally filed documents, and any exhibits and testimony that may be submitted. The “respondents” are the utilities named in this rulemaking. The respondents receive the same information that an interested party receives. The state service category is for Commission staff, divisions, or branches, or Legislators or other State agencies who are monitoring the proceeding. The state service category receives the same information that an interested party receives. The information only category are for those persons who only want notice of the hearing, rulings, proposed decisions, and Commission decisions.<sup>13</sup>

Any party who is interested in participating in this rulemaking but is unfamiliar with the Commission’s procedures should contact the Commission’s Public Advisor Offices in Los Angeles [(213) 897-3544] or San Francisco [(415) 703-2074].

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<sup>12</sup> The written request shall indicate whether the entity is a “respondent,” “interested party,” “state service,” or “information only.”

<sup>13</sup> If the entity selects the information only category, and requests service by mail, that entity will be billed at the current page rate for copies of the proposed decisions and the Commission decision.

The Process Office shall develop an initial service list based upon the written requests that it receives. This initial service list shall be posted on the Commission's web site on or before March 8, 1999.<sup>14</sup>

Respondents and interested parties shall file their opening comments with the Commission's Docket Office on or before March 17, 1999, and serve the comments on the initial service list. In addition, the comments shall be served on the Directors of the Energy Division and the DSP, the assigned ALJ, the CEC, and the EOB.<sup>15</sup>

Reply comments shall be filed on or before May 17, 1999, and served in the manner stated above.

Entities who request that they be placed in the information only category of the service list may also request an E-mail copy of the opening comments and reply comments by directly contacting the respondents and interested parties.

We will be posting significant documents (e.g., rulings and decisions) in this proceeding on the Commission's web site. Some may find it convenient to follow this proceeding by checking the web site.

Consistent with Rule 6(e), we expect this proceeding to be concluded within 18 months.

As required by Rule 6(c)(2), parties shall include in their opening comments any objections they may have regarding: (1) the categorization of this proceeding as a rulemaking; (2) the determination to hold a hearing for the

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<sup>14</sup> A copy of the service list may also be obtained by calling the Process Office on or after March 8, 1999.

<sup>15</sup> We will announce the contact persons in the CEC and EOB through an ALJ or Assigned Commissioner's Ruling.

presentation of legislative facts; and (3) the preliminary scope and timetable for this proceeding as described in this order. Any party who believes that an evidentiary hearing is required should file a motion no later than ten days after the filing of reply comments. Any such motion must identify and describe (1) the material issues of fact, and (2) the adjudicative evidence the party proposes to introduce at the requested hearing. Any right that a party may otherwise have to an evidentiary hearing will be waived if the party does not submit a timely motion requesting an evidentiary hearing.

Following the receipt of comments and motions requesting an evidentiary hearing, if any, the assigned Commissioner shall issue a ruling that finalizes the category, scope and schedule of this proceeding (Rules 6(c)(2) and 6.3). After the issuance of this ruling, parties may file and serve an appeal to the Commission regarding the assigned Commissioner's ruling on category (Rule 6.4).

Commissioner Henry Duque and ALJ John S. Wong are assigned to this proceeding.<sup>16</sup>

### **Ex Parte Communications**

This proceeding is subject to Rule 7 which specifies standards for engaging in ex parte communications and the reporting of such communications.

Pursuant to Rules 7(a)(4) and 7(d), ex parte communications will be allowed in this proceeding without any restrictions or reporting requirements until the assigned Commissioner makes an appealable determination of category.

Following the Commissioner's determination, the applicable ex parte

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<sup>16</sup> Pursuant to Rule 5(k)(3), the assigned Commissioner is the presiding officer in a quasi-legislative proceeding, except that the assigned ALJ shall act as the presiding officer in the Commissioner's absence at any hearing other than a formal hearing as defined in Rule 8(f)(2).

communication and reporting requirements shall depend on such determination unless and until the determination is modified by the Commission pursuant to Rule 6.4 or 6.5.

**IT IS ORDERED** that:

1. A rulemaking is instituted on the Commission's own motion to consider whether the Commission should pursue further reforms in the structure and regulatory framework governing electricity distribution service. The intent of this proceeding is to solicit comments and proposals on the scope and substance of issues that need to be addressed, possible policy options, and the procedural steps that the Commission could pursue in adopting and implementing needed reforms that are consistent with the state's goals and objectives in electric restructuring.

2. Pacific Gas and Electric Company, San Diego Gas & Electric Company, Southern California Edison Company, Sierra Pacific Power Company, Pacific Power & Light, Southern California Gas Company, Southwest Gas Corporation, and WP Natural Gas are hereby named as respondents to this proceeding.

3. Respondents shall file and serve their opening comments to the questions and issues raised in this rulemaking with the Commission's Docket Office on or before March 17, 1999, in accordance with Rules 2, 2.1, 2.2, 2.3 and 2.5 of the Commission's Rules of Practice and Procedure. The opening comments shall also be served on the Directors of the Energy Division and Division of Strategic Planning, the assigned Administrative Law Judge, the California Energy Commission, and the California Electricity Oversight Board. Other interested parties may also file opening comments in accordance with the same schedule. Reply comments shall be filed and served on or before May 17, 1999.

4. On or before February 26, 1999, the respondents, and other individuals or entities who desire to be on the service list shall send a written request to the Commission's Process Office in the format described in this order.

5. An initial service list for this proceeding shall be created by the Process Office and posted on the Commission's web site ([www.cpuc.ca.gov](http://www.cpuc.ca.gov)) on or before March 8, 1999. Parties may also obtain the service list by contacting the Commission's Process Office at (415) 703-2021.

6. The category of this rulemaking is preliminarily determined to be "quasi-legislative" as that term is defined in Rule 5(d) of the Commission's Rules of Practice and Procedure (Rule).

7. As required in Rule 6(c)(2), parties shall state in their opening comments any objections regarding the categorization of this proceeding as quasi-legislative, the need for hearing for the presentation of legislative facts, the determination to not hold hearing for the presentation of adjudicative facts, and/or the preliminary scoping memo, including the description of issues and the timetable for resolving this proceeding.

8. Any party who believes that an evidentiary hearing for the presentation of adjudicative facts is required in this proceeding must file a motion requesting such a hearing no later than ten (10) days after the filing of reply comments. Any such motion must identify and describe (a) the material issues of fact, and (b) the adjudicative evidence the party proposes to introduce at the requested hearing. Any party that does not submit a timely motion for an evidentiary hearing shall have waived any rights to an evidentiary hearing that may exist.

9. The Executive Director shall cause a copy of this order to be posted on the Commission's web site ([www.cpuc.ca.gov](http://www.cpuc.ca.gov)) and served upon all California electric and natural gas corporations, and all interested parties in Rulemaking (R.) 94-04-031/Investigation 94-04-032, and R. 98-01-011.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.

## APPENDIX A

### Rulemaking Questions

1. From a policy perspective, does consideration of DG necessarily require a broader, more comprehensive look at distribution competition and the role of the UDC?
2. Where has competition, as it relates to distribution, emerged or not emerged in California? Has there been growth in irrigation, municipal, and other public utility districts in the existing service areas of the UDCs? What has been the market penetration of DG, self-generation, and T&D substitutes in California?
3. Is there a need for further reforms in the structure and regulatory framework governing electricity distribution service, in light of current market developments described in your response to Q2 above? If so, what are they? What is the UDC's ultimate role in this restructured energy market?
4. How would competition in distribution service be effected? Please give specific examples or scenarios manifesting competition in distribution facilities and/or services. What is the Commission's role and the roles of other state/local agencies?
5. What should be the Commission's role in facilitating the optimal use of DG? What about the roles of other state/local agencies?
6. How would the integrity, reliability, safety, and efficiency of the T&D system be affected by a more competitive electric distribution and/or DG market? Please provide policy options.
7. What are the regulatory jurisdictional effects, if any, of allowing more competition in distribution and/or DG? Please provide policy options.
8. Provide an assessment of the possible environmental impacts of increased competition in distribution and/or DG. Please provide policy options.
9. Provide an assessment of the possible social, economic, and labor impacts, including implications for public purpose programs (i.e., energy efficiency and low-income programs), of increased competition in distribution and/or DG. Please provide policy options.
10. What are the ratemaking consequences of introducing or encouraging more competition in distribution and/or DG? Please provide policy options.
11. Describe the potential costs of promoting competition in distribution and/or DG? What are the potential stranded costs? What are the benefits? How should the potential costs and benefits be analyzed and quantified?



12. Does competition in electric distribution service have implications on the delivery infrastructure for natural gas? Please describe any such interrelationship and the resulting impacts on customer benefits, the environment, and regulatory structure?
13. What procedural steps should be pursued? Should there be a more focused analysis of DG issues, or a more comprehensive consideration of issues surrounding distribution competition? Are there issues which are more appropriately considered in workshops, full panel hearings, and/or other procedural forums?

**(END OF APPENDIX A)**

## **APPENDIX B**

### **Proposed Timetable for the Rulemaking**

<b>December 17, 1998</b>	Commission issues rulemaking.
<b>February 26, 1999</b>	Last day to submit written requests to the Process Office to be placed on the service list.
<b>March 8, 1999</b>	Initial service list posted on Commission's web site
<b>March 17, 1999</b>	Opening comments to be filed with Commission's Docket Office and served on the initial service list.  Comments should include any objections to the categorization of the proceeding, the need for hearings, and the preliminary scoping memo.
<b>May 17, 1999</b>	Reply Comments due.
<b>May 27, 1999</b>	Motions for evidentiary hearings due.
<b>June 4, 1999</b>	Reply to motion(s) due. (Rule 45(f).)
<b>August 1999</b>	Ruling by the Assigned Commissioner on the final scope, schedule, need for hearing, and categorization of this proceeding. (Rule 6.3.)  Appeals of categorization may be filed no later than ten days after the Assigned Commissioner's Ruling. (Rule 6.4(a).)  Response to appeals may be filed no later than fifteen days after the date of categorization from which timely appeal has been taken. (Rule 6.4(b).)

**(END OF APPENDIX B)**