

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

Order Instituting Rulemaking Regarding
Policies, Procedures and rules for
Development of Distribution Resources
Plans Pursuant to Public Utilities Code
Section 769

Rulemaking No. 14-08-013
(Filed August 14, 2014)

And Related Matters.

Application No. 15-07-002
Application No. 15-07-003
Application No. 15-07-006

(NOT CONSOLIDATED)

In the Matter of the Application of
PacifiCorp (U901E) Setting Forth its
Distribution Resource Plan Pursuant to
Public Utilities Code Section 769.

Application 15-07-005
(Filed July 1, 2015)

And Related Matters.

Application No. 15-07-007
Application No. 15-07-008

JOINT PARTIES' SECOND STATUS REPORT

SHUTE, MIHALY
& WEINBERGER LLP
Sky C. Stanfield
396 Hayes Street
San Francisco, California 94102
Telephone: (415) 552-7272
Email: stanfield@smwlaw.com

*Attorneys for Interstate Renewable Energy
Council Inc.*

CALIFORNIA ENERGY STORAGE
ALLIANCE
Jin Noh
Policy Manager
2150 Allston Way, Suite 400
Berkeley, California 94704
Telephone: (310) 617-3441
Email: jnoh@storagealliance.org

GOODIN, MACBRIDE,
SQUERI & DAY, LLP
Jeanne B. Armstrong
505 Sansome Street, Suite 900
San Francisco, California 94111
Telephone: (415) 392-7900
Email: jarmstrong@goodinmacbride.com

*Attorneys for Solar Energy Industries
Association*

CLEAN COALITION
Kenneth Sahn White
Director, Policy & Economic Analysis
16 Palm Court
Menlo Park, CA 94025
Telephone: (831) 295 3734
Email: sahm@clean-coalition.org

VOTE SOLAR
Ed Smeloff
Managing Director, Regulatory Team
360 22nd Street, Suite 730
Oakland California 94612
Telephone: 415.817.5065
Email: ed@votesolar.org

KEYES & FOX LLP
Jason B. Keyes
436 14th Street, Suite 1305
Oakland, CA 94612
Telephone: (510) 314-8203
Email: jkeyes@keyesfox.com

Counsel to Tesla, Inc.

STEM
Jim Baak
Senior Manager, Regulatory Affairs - West
100 Rollins Road, Millbrae, CA 94030
Telephone: (925) 788-3411
Email: jim.baak@stem.com

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CALIFORNIA SOLAR & STORAGE
ASSOCIATION
Brad Heavner
Policy Director
1107 9th Street., No. 820
Sacramento, CA 95814
Telephone: 415.328.2683
Email: brad@calssa.org

THE PUBLIC ADVOCATES OFFICE
Amy Yip-Kikugawa
Attorney
505 Van Ness Avenue
San Francisco, California 94102
Telephone: 415.703.5256
Email: amy.yip-kikugawa@cpuc.ca.gov

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

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And Related Matters.	Application No. 15-07-002 Application No. 15-07-003 Application No. 15-07-006
(NOT CONSOLIDATED)	
In the Matter of the Application of PacifiCorp (U901E) Setting Forth its Distribution Resource Plan Pursuant to Public Utilities Code Section 769.	Application 15-07-005 (Filed July 1, 2015)
And Related Matters.	Application No. 15-07-007 Application No. 15-07-008

JOINT PARTIES' SECOND STATUS REPORT

In accord with the November 9, 2018, Administrative Law Judge's Ruling Ordering Parties to File and Serve Status Reports Regarding their Effort to Resolve Confidentiality Claims Raised by Pacific Gas and Electric Company, Southern California Edison Company and San Diego Gas and Electric Company (collectively referred to herein as the "Joint IOUs") as to Distribution Planning Data Ordered by Decisions 17-09-26 and 18-02-004 ("Ruling"), the Interstate Renewable Energy Council, Inc., the Solar Energy Industries Association, the California Energy Storage Alliance, Clean Coalition, the California Solar & Storage Association, Tesla, Inc., Vote Solar, Stem, and Public Advocates Office at the California Public Utilities

Commission¹ (collectively, the “Joint Parties”)² provide this joint status report regarding (1) confidentiality of the data the Commission required to be shared in the Distribution Resource Plan portal, including the Integration Capacity Analysis (“ICA”) and Locational Net Benefits Analysis (“LBNA”) maps; and (2) the need for a Non-Disclosure Agreement (“NDA”) or any other security measures with respect to that data.

I. INTRODUCTION

Since the submission of the Joint Parties initial Status Report³ they have continued their efforts to engage the Joint IOUs in negotiations regarding an appropriate NDA for distribution system planning data. Those efforts to date have not produced a successful resolution. As set forth in detail below, the Joint Parties believe that an impasse has been reached in such negotiations. Accordingly, the Joint Parties request that the Assigned Administrative Law Judge (“ALJ”) act to resolve this impasse by issuing a ruling that directs the IOUs to comply with his July 24, 2018 Ruling that addressed the IOUs’ claims for confidential treatment and redaction of distribution system planning data, as addressed more fully below.

II. STATUS OF NEGOTIATIONS BETWEEN PARTIES

A description of the negotiations between the Joint Parties and Joint IOUs regarding an appropriate NDA for distribution system planning data that occurred between October 5, 2018 and November 12, 2018 is set forth in the Joint Parties’ initial Status Report and is incorporated by reference herein.

¹ The Office of Ratepayer Advocates was renamed the Public Advocates Office of the Public Utilities Commission pursuant to Senate Bill No. 854, which was signed by the Governor on June 27, 2018 (Chapter 51, Statutes of 2018).

² In addition Sunrun Inc. and the Coalition for Community Access endorse this Status Report. Sunrun is not an individual party to this proceeding but has been actively participating as part of the Solar Energy Industries Association. The Coalition for Community Access has filed for party status.

³ See Joint Parties Status Report, R. 14-08-012 (November 16, 2018).

On November 13, 2018, the Joint IOUs provided the Joint Parties with a new form of NDA that differed significantly from the one provided on October 5. At the time that the Joint Parties submitted their initial Status Report, there had been insufficient time for the Joint Parties to review the new NDA and provide coordinated comments to the Joint IOUs. The Joint Parties undertook those actions on November 19, 2018. Specifically, having jointly reviewed the new NDA, the Joint Parties, by way of e-mail to Christopher Warner of PG&E and sent to all interested parties, relayed that the new NDA resolved certain of the concerns raised by the prior NDA, but it created others. Most importantly, the Joint Parties conveyed that the new NDA did nothing to resolve the core issue of dispute between the Joint Parties and the Joint IOUs -- i.e., what information should be covered by the NDA. As reflected in the Joint IOUs' Status Report, it is their position that the NDA should cover "the physical location of all IOU electric distribution facilities, including substations, feeders and circuits, would be subject to the NDA, as well as all related safety- and security-sensitive data."⁴ In contrast, the Joint Parties believe that maps of the distribution system, which serve as the foundation for the DRP data, is not confidential, and should not be subject to an NDA.⁵ The Joint Parties acknowledge that upon a showing by an IOU (which to date has not occurred) there may be a need for confidentiality with respect to narrowly defined, site-specific information about facilities shown to meet the definition of critical energy infrastructure.⁶

Given this fundamental disagreement, in their November 19 email to the Joint IOUs, the Joint Parties posed the idea of convening a call to discuss the potential for narrowing the scope

⁴ Joint Periodic Status Report of Pacific Gas and Electric Company, San Diego Gas & Electric Company Southern California Edison Company Pursuant to November 9, 2018 Administrative Law Judge Ruling, R. 14-08-013 (November 16, 2018), p. 5.

⁵ Joint Parties Status Report, R. 14-08-012 (November 16, 2018), p.2.

⁶ *Id.*

of the information subject to the NDA. The Joint IOUs initially responded on November 20th that they would be open to such a meeting and indicated they would get back to the Joint Parties on a proposed time. After not hearing anything back, on November 26th the Joint Parties sent a reminder inquiring into a potential time to meet, but the Joint IOUs have not yet responded with a date and time when they would be available to discuss these issues further.⁷

III. NEED FOR COMMISSION ACTION

The core area of disagreement between the Joint Parties and Joint IOUs -- i.e., what should be covered by the NDA - renders futile any further negotiations regarding the terms of a NDA. As an example, the current version of the NDA provided by the Joint IOUs states that the “Recipient shall be liable for any unauthorized disclosure or use by themselves and/or their employees, paralegal, or administrative staff.” While such a provision may be reasonable if the information covered by the NDA is narrowly prescribed, as requested by the Joint Parties, it is not reasonable if the NDA covers “the physical location of *all* IOU electric distribution facilities, including substations, feeders and circuits” - which is already public information. Similarly, the NDA has restrictions on the sharing of data between the Recipient and its employees and has no provision for the sharing of such information with a customer. Again this may be reasonable if the information covered by the NDA is narrowly defined, it is not reasonable if the NDA covers publically available information as the Joint IOUs request. Fundamentally it is very difficult to craft an NDA that creates workable provisions for parties to operate under if it is intended to cover virtually all information about the distribution system without limitation to information that is already public and without limitation to information that can easily be discerned and needs

⁷ The Public Advocates Office is not subject to an NDA, and has not participated in the review and discussion of the NDA. However, the Public Advocates Office joined the Joint Parties’ discussions on November 26, 2018 regarding the need for information being public. The Public Advocates Office is aligned with the other Joint Parties’ positions that IOU electric distribution facility information should be public absent a showing to the contrary.

to be able to be discussed freely with Commission staff, customers, consultants and other relevant parties. The risks imposed by the NDA would be grave and it also is unclear that such an NDA would actually result in meaningful protection of security sensitive data if so broadly drafted.

The IOUs have been directed to release the ICA maps and data by the end of the year. In addition, the utilities submitted their Distribution Investment Deferral Framework Solicitations just this week which will require access to DRP data. There is also an ongoing need for access to the LNBA, GNA and other DRP data. The Joint Parties have grave concerns that, given the Joint IOUs' position regarding the confidentiality of locational information, access to the maps and critical underlying data will be unjustifiably restricted. As noted above, the Joint Parties believe that attempts to further negotiate the terms of a NDA with the Joint IOUs will not be productive at this time.

Accordingly, the Joint Parties respectfully request that the Assigned ALJ issue a ruling that directs the IOUs to comply with his July 24, 2018 Ruling that addressed the IOUs' claims for confidential treatment and redaction of distribution system planning data. Therein, the ALJ set forth seven examples of facilities that may be Critical Energy Infrastructure Information ("CEII") and makes it incumbent on each IOU that desires to redact any data point from the DRP maps to demonstrate that such data point actually is CEII.⁸ To date, the IOUs have made no demonstration with respect to any of the information required to be published on the DRP maps, including locational information. Thus, the ALJ ruling should require that all DRP information,

⁸ The Joint Parties note that in addressing the necessary security for distribution assets, the Commission has preliminarily determined that they "do not typically rise to the level of critical infrastructure as defined in the federal Critical Infrastructure Protocols (CIPs)." See Proposed Phase 1 Decision on Order Instituting Rulemaking Regarding the Physical Security of Electrical Corporations, R. 15-06-009 (November 9, 2018) ("Physical Security PD"), p. 30.

other than confidential customer usage information, be published by the end of December. The Joint Parties note that the publication of such information, specifically locational information, is consistent with Commission precedent.⁹

If at some point a utility chooses to submit information about particular locations that it considers to be CEII according to the ALJ's identified categories, then the Commission can evaluate that showing at that time and it can be made confidential if an adequate case has been made that it needs to be protected in this manner.¹⁰ In this regard, the Joint Parties note that in a recently issued Proposed Decision in R. 15-06-009, utilizing the same categories of potential CEII identified in the ALJ Ruling, the Commission directed that these categories were to be used for the sole purpose of determining whether certain distribution infrastructure needed additional assessment.¹¹ Further analysis is then needed to see if there are actually potential risks associated with the piece of infrastructure.¹² Only then is it to be determined what security measures are to be taken - required confidentiality of locational information that is already publically available may not be necessary to protect the resource in question.¹³

In addition, the Joint Parties request that the Assigned ALJ make one practical modification to his July 24 Ruling. Namely, the ruling provides that if a stakeholder contends that it needs access to the CEII that has been redacted in the public version of the DRP maps, the stakeholder is to file a motion demonstrating the specific information needed, why that information cannot be obtained from another source, and how the information will be used. The

⁹ See D. 10-12-048 and Resolution E-4414 (requiring publication of locational information of IOUs' distribution system).

¹⁰ In other words, if an IOU submits a showing to the Commission that a particular data point is CEII, that data point must remain public until a ruling issued by the Commission.

¹¹ Physical Security PD, pp. 23-24.

¹² *Id.*, p. 24.

¹³ *Id.*, p. 25.

