

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

Order Instituting Rulemaking to Consider Smart Grid Technologies Pursuant to Federal Legislation and on the Commission's own Motion to Actively Guide Policy in California's Development of a Smart Grid System.

Rulemaking 08-12-009
Filed December 18, 2008

**Response of the
California Independent System Operator Corporation
To Division of Ratepayer Advocates' Appeal of Categorization**

Pursuant to Rule 7.6 of the Rules of Practice and Procedure of the California Public Utilities Commission, the California Independent System Operator Corporation (the "ISO") responds to the Appeal of Categorization filed by the Division of Ratepayer Advocates ("DRA") in this proceeding on June 8, 2009. DRA argues that this proceeding should be recategorized as ratesetting because the Assigned Commissioner has proposed to consider – in addition to the numerous non-rate related issues – general issues regarding rate recovery of utility investments and expenses necessary to match Department of Energy funding grants under the American Recovery and Reinvestment Act of 2009 ("ARRA").

The ISO appreciates DRA's concern that the issues regarding the ARRA raised in the Assigned Commissioner's supplemental scoping memo ultimately might impact rate recovery. However, that fact alone does not require that the instant proceeding be re-categorized as ratesetting. Under the California Public Utilities Code, a ratesetting case is one "in which rates are established for a specific company" CAL. PUB. UTIL.

CODE § 1701.1(c)(3). Here, the Assigned Commissioner’s supplemental scoping memo does not propose to establish rates for individual companies. Instead, the supplemental scoping memo suggests that this proceeding may consider generic rules that eventually will apply to all utilities based on the specific facts and circumstances presented by that utility. The Commission’s own rules are clear that such a proceeding that “investigates rates or practices for an entire regulated industry” is quasi-legislative. CAL. PUB. UTIL. COMM’N, RULES OF PRAC. & PROC. 1.3(d).

More importantly, the core issues in this proceeding relate to developing policies (not rates) to deploy a smart grid in California. The recent workshop agendas issued in this proceeding confirm that the difficult work that needs to be accomplished deals with policy issues, not rate issues. The California Public Utilities Code states that quasi-legislative cases are “cases that establish policy” CAL. PUB. UTIL. CODE § 1701.1(c)(1). This proceeding’s focus on policy reflects that the Commission’s initial categorization of this proceeding as quasi-legislative was appropriate. Definitional issues aside, the instant proceeding also deals with high-level public policy issues the resolution of which depends on a free flow of communication and an unfettered exchange of information between the Commission and interested parties, including DRA. The rules governing a quasi-legislative proceeding will best foster such a dialogue.

For the above-stated reasons, the ISO recommends that the Commission deny DRA’s appeal. However, as stated above, the ISO appreciates DRA’s point of view and, if necessary, the Commission could adopt an alternative approach to address DRA’s concerns while maintaining the character of the current proceeding. Specifically, the Commission could consider maintaining the current categorization of this proceeding as

quasi-legislative but impose procedures and rules relevant to ratesetting cases for those issues addressing utility rate recovery of investments and expenses necessary to match Department of Energy funding grants under the ARRA. Such an alternative approach would represent a fair accommodation of the competing concerns raised in DRA's appeal. In no event, however, should the entire proceeding be converted from a quasi-legislative proceeding to a ratesetting proceeding.

Respectfully submitted,

/s/David S. Zlotlow

Nancy Saracino
Vice-President, General Counsel, Corporate
Secretary

Anthony J. Ivancovich
Assistant General Counsel-Regulatory

David S. Zlotlow
Counsel

California Independent System
Operator Corporation
151 Blue Ravine Road
Folsom, CA 95630
Tel: (916) 608-7007
Fax: (916) 608-7296

Dated: June 12, 2009

CERTIFICATE OF SERVICE

I hereby certify that I have served, by electronic mail and U.S. Mail, Response of the California Independent System Operator Corporation to Division of Ratepayer Advocates' Appeal of Categorization in Docket No. R.08-12-009.

Executed on June 12, 2009, at Folsom, California.

/s/ Jane Ostapovich

Jane Ostapovich
An Employee of the California
Independent System Operator