

**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 CENTER FOR SUSTAINABLE COMMUNITIES,
THE ENERGY INSTITUTE AT HAAS,
THE LOCAL GOVERNMENT SUSTAINABLE ENERGY COALITION, AND
THE CALIFORNIA CENTER FOR SUSTAINABLE ENERGY
ON ELECTRONIC FRONTIER FOUNDATION MOTION**

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I. Introduction

In accordance with the Rules of Practice and Procedure of the California Public Utilities Commission (“Commission”), the California Center for Sustainable Communities (“CCSC”), the Energy Institute at Haas (“Energy Institute”), the Local Government Sustainable Energy Coalition (“LGSEC”),¹ and the California Center for Sustainable Energy (“CCSE”), (“Joint Parties”) submit this response to the August 16, 2013 *Motion Of Electronic Frontier Foundation To Supplement Record On Working Group Report*. The Commission must reject the Motion because the Electronic Frontier Foundation (“EFF”), like all parties to this proceeding, had ample opportunity to participate in the Commission’s deliberations and follow the Commission’s established rules and protocols. EFF should not be given a second bite at the apple at this late date in the deliberations. By seeking and obtaining party status, EFF agreed to abide by the rules and procedures of the CPUC. Yet it is now seeking to contravene these rules without good cause or justification

II. Argument

In its *Motion*, EFF requests, without legal basis, an opportunity to supplement the record of this proceeding with additional documents. EFF first wants to enter into the record a written report on differential privacy techniques discussed at the May 22, 2013 workshop in this proceeding, at which EFF was an active participant. EFF then would like to submit a written response to the opening and reply comments of CCSC and the Energy Institute, both of which were submitted timely. EFF claims that it “...did not have sufficient time to review and respond to CCSC/Energy Institute’s allegations” under the standard time for submitting reply comments used for many years by parties before the Commission. EFF does not offer any explanation as to

¹ Across California, cities, counties, associations and councils of government, special districts, and non-profit organizations that support government entities are members of the LGSEC. Each of these organizations may have different views on elements of these comments, which was approved by the LGSEC’s Board.

what is different about this proceeding that would allow additional time for comments, nor does it explain why it should be treated differently than any of the other parties to this proceeding.

The Rulings in this proceeding demonstrate that EFF has been able to follow the Commission's rules. The May 13, 2013 Ruling responded to EFF by incorporating two memos developed by EFF into the record and timely providing parties an opportunity to comment on them. That same ruling also extended by two months the established schedule in this proceeding in order to allow production of the Working Group Report, in part to accommodate the May 22 workshop cited above.

The May 13 *Ruling* was clear that the Working Group Report would address the results of the Working Group meetings. All parties were therefore on notice that the comments and reply comments submitted on the Working Group Report could address any issues raised in the workshops. There was no page limit on those comments. EFF had ample opportunity to use the comments to introduce into the record any further documentation it believes would assist the record in this proceeding. It appears that EFF has determined that it could have more strongly presented its case by submitting this additional written document, the concepts contained in which parties discussed at the May 22 workshop. The Commission's deliberations should not be detained because a party was not sufficiently organized as it made its case.

In terms of EFF's request to submit an additional response to the opening and reply comments of CCSC and the Energy Institute, the Commission should deny that request. EFF has known since the February 27, 2013 Ruling that ordered the Working Group process the timeframes for submitting opening and reply comments. While these dates have been modified as the proceeding has moved forward, all parties have been provided ample notice of the time allotment for reply comments, which in all instances have been one week. That timeframe is

standard in Commission proceedings. All parties had the same time in which to review opening comments and submit reply comments. EFF should not be granted an additional opportunity that would further delay the schedule and create an additional burden for other parties to respond merely because it did not read the opening comments carefully.

Were the Commission to grant EFF's *Motion*, the Commission would empower a situation where all parties could continue to produce additional information and replies to replies – indefinitely. The Commission must adhere to some form of schedule in order to reach timely resolution of the issues before it. Indeed, should EFF's relief be granted, then all parties must be offered additional time to respond to these new comments to prevent unfairness.

As a further procedural point, the Commission's Rules of Practice and Procedure provide guidance on the process by which parties should request additional time. Rule 11.6 states:

Motions for extension of time limits established in these rules or in a ruling of an Administrative Law Judge or Commissioner may be made orally, by e-mail, or by letter to the Administrative Law Judge. If other parties to the proceeding are affected by the extension, the party requesting the extension must first make a good-faith effort to ask such parties to agree to the extension. The party requesting the extension must report the results of this effort when it makes its request.

EFF did not in advance make a good faith effort to ask other parties to agree to an extension for its reply comments, or an opportunity to submit additional replies.

III. EFF's Attachment B to Its Motion Purports to "Respond to Errors of Fact" Made by CCSC and the Energy Institute in Their Opening Comments

This section provides a response from CCSC and the Energy Institute to allegations in the EFF comments. Through EFF's comments it is apparent that EFF does not fully understand how economists use sophisticated regression and other empirical techniques to analyze important public policy questions. It is only with access to raw billing data that rigorous analyses of energy

pricing and programs can be performed. For example, using household-level monthly billing data from the California investor-owned utilities Professor Severin Borenstein has produced papers analyzing the income and regional distributional impacts of residential increasing block pricing and the income distributional impacts of implementing an opt-in dynamic pricing plan for residential customers. Professor Koichiro Ito has used these same data to examine the important question of whether residential customers respond to their marginal or tiered pricing in their bills or to their average price. Professor Ito will soon release a new paper that examines the impact of the electricity “20/20” program in 2005 on energy consumption.

To actually perform these analyses requires access to the raw data for a variety of reasons, beginning with the need to review the data for missing observations, outliers, etc. through to the research design, which may use a sharp discontinuity in the data that allows the researcher to evaluate the impact of a particular program. EFF simply asserts that the necessary regressions analyses can take place with the data after they have been processed through one of their techniques and gives a cite to one paper as proof. This is not responsive to the comments of CCSC and the Energy Institute and certainly cannot be described as correcting any “erroneous claims.” Based on EFF’s description of their differential privacy methods and the papers EFF had cited in their previous comments, CCSC and the Energy Institute as economists cannot use the data that EFF would have made available to provide the kinds of analyses that CCSC and the Energy Institute have done in the past. The summary statistics that EFF suggests should be made available obscure the necessary information to usefully measure the impacts of energy programs.

CCSC and the Energy Institute urge the Commission to reject EFF’s Motion for the reasons stated above. However, if the Commission were interested in a factual discussion of what can or cannot be done without access to the raw customer data by researchers, we urge the

Commission to convene a meeting where the parties can have a detailed discussion of how these types of analyses could be done with data provided in the form that EFF wants to have made available.

IV. Conclusion

For the reasons stated above, the Commission should deny EFF's *Motion*. This proceeding should continue pursuant to the established timelines.

Respectfully submitted,



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