

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF NEW YORK**

**IN THE MATTER OF A REVIEW OF UTILITY CODES OF
CONDUCT AS IMPACTED BY REFORMING THE
ENERGY VISION**

CASE 15-M-0501

**PROCEEDING ON MOTION OF THE COMMISSION IN
REGARD TO REFORMING THE ENERGY VISION.**

CASE 14-M-0101

**COMMENTS OF THE CLEAN COALITION ON STAFF'S PROPOSED GUIDING
PRINCIPLES FOR REVISED UTILITY CODES OF CONDUCT**

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I. INTRODUCTION

Pursuant to Secretary Kathleen H. Burgess’s *Notice Soliciting Comments and Scheduling Meeting*, dated April 5, 2016, the Clean Coalition offers the following comments on the *Staff’s Proposed Guiding Principles for Revised Utility Codes of Conduct* (“Staff’s Proposed Principles”). We agree with the Public Services Commission (“Commission”) that establishing a set of guiding principles for utilities is critical to ensuring that conflicts related to ownership and dispatch of distributed energy resources (“DER”) are minimized.

II. DESCRIPTION OF PARTY

The Clean Coalition is a nonprofit organization whose mission is to accelerate the transition to renewable energy and a modern grid through technical, policy, and project development expertise. The Clean Coalition drives policy innovation to remove barriers to procurement and interconnection of DER—such as local renewables, advanced inverters, demand response, and energy storage—and we establish market mechanisms that realize the full potential of integrating these solutions. The Clean Coalition also collaborates with utilities and municipalities to create near-term deployment opportunities that prove the technical and financial viability of local renewables and other DER. The Clean Coalition participates in numerous proceedings before state and Federal agencies throughout the United States.

III. COMMENTS

Staff’s Proposed Principles offered a core set of guiding principles for adoption by utilities, asked stakeholders to comment on whether existing utility codes of conduct already address the issues, and inquired how such provisions may be strengthened in light of the Reforming the Energy Vision (“REV”) initiative. The Clean Coalition provides these high-level comments in response.

A. Agreement with Comments from Other Parties

The Clean Coalition agrees with many of the suggestions made by the Advanced Energy Economy Institute (“AEEI”) in its *Informal Comments of AEEI on the Code of Conduct Revisions Necessary for the REV Process—Development of Principles*, dated June 2, 2015 (“AEEI Informal Comments”). First, the Clean Coalition supports AEEI’s proposal for a

common set of principles to act as a floor for all utilities operating within the state. Requiring utilities to meet common standards would create a level playing field for DER providers and minimize incentives for collusion or uncompetitive behavior. The utilities currently include many of these principles in their codes of conduct, and we recognize that utilities sometimes set their codes of conduct to a higher standard. Requiring adoption of minimum standards should not prevent utilities from taking additional action to prevent improper behavior.

Second, the Clean Coalition supports the proposal in AEEI's Informal Comments to require the code of conduct to apply between utility departments offering competitive services ("CSD") and departments managing the distributed system platform ("DSP"). Generally, we see the CSD-DSP relationship as highly problematic as it will be difficult to ensure utility compliance between departments, and we urge the Commission to prohibit it. However, to the extent that the Commission allows it, we recommend that the utility's code of conduct should apply between departments with conflicting roles just as they would apply to actions between the utility and its affiliates. Potential anticompetitive behavior seems just as, if not more, likely within the same organization as it would be between affiliates, and therefore those actions should be subject to standards as well. AEEI proposes lists of principles for each type of relationship (Utility-Affiliate and Utility CSD-DSP), and the Clean Coalition suggests that the principles covering the two types of relationships should be harmonized as much as possible in order to maintain clarity. We also emphasize that a utility CSD should not be allowed to participate in competitive solicitations.

Third, the Clean Coalition supports adoption of all of the principles included in the AEEI Informal Comments. Beyond those recommendations, the Clean Coalition suggests the additional refinements to the Staff's Proposed Principles.

B. Additional Refinements to the Staff's Proposed Principles

In addition to recommending adoption of the principles in the AEEI Informal Comments, the Clean Coalition offers the following additions or edits to the Staff's Proposed Principles.

No Preferential Treatment/Sharing of Information

The Staff's Proposed Principles included a principle that the regulated utility will not disclose information provided by other third parties to utility affiliates. AEEI proposed that there be non-disclosure agreements in place for information supplied by competitive DER providers to

utility affiliates. The Clean Coalition recommends taking this recommendation one step further and extending a similar requirement between branches within any utility performing both CSD and DSP responsibilities. Employees within utility departments managing competitive solicitations should sign a non-disclosure agreement to prevent that information from being shared outside of the department. Utilities must also ensure that all employees, including those managing DSP services, understand that competitive information is confidential to the department receiving that information. This principle will prevent utilities from garnering an unfair advantage by being able to use submitted information to further develop their own DER products and services. Additionally, this principle aims to instill confidence in DER providers that information within their competitive solicitations would remain protected and would not be used to better tailor utility proposals.

Transparency

Utilities should make pricing and cost allocation data regarding affiliate or CSD-department projects publicly available. Given the Commission's recognition that utilities should only own DER in certain limited scenarios where market prices are prohibitive, it seems fair to require utilities to disclose pricing and cost allocations in the rare scenarios where utilities will own and manage DER projects. This will ensure full transparency by permitting external verification that the costs undertaken by the utility cannot reasonably furnish the needed DER. The published pricing and cost information would ensure that utilities and their affiliates are not able to disguise project costs under other projects or general costs.

Additionally, the AEEI Informal Comments suggested that the Commission should maintain the ability to audit utilities and their affiliates. We agree that the right of the Commission to audits should be captured in utility codes of conducts in order to ensure that the principles are effective in practice. Furthermore, the Clean Coalition recommends that the Commission extend its right to audit to include the ability to conduct audits when a single utility has both CSD and DSP responsibilities.

Dispute Resolution

We agree with Commission Staff that there must be some mechanism for ensuring compliance and addressing any issues that arise. We understand that protocols for managing disputes are currently under development in Case 15-M-0108 *In the Matter of Regulation and Oversight of Distributed Energy Resource Providers and Products*. Beyond the efforts underway

in that proceeding, the Clean Coalition recommends that the Commission’s order on codes of conduct clearly provide for Commission oversight and include guidance on procedures to filing complaints. Utilities can—and should—take an active role in managing potential conflicts internally, but the Commission should retain authority for oversight and to hear appeals.

As an example, the California Public Utilities Commission (“PUC”) Rules and Regulations define the process for formal complaints, allowing any party to submit a written complaint citing any act or omission by any public utility that violates any law or rule of the Commission.¹ California public utilities further endorse this authority in their tariff language. For example, the Pacific Gas & Electric Company (“PG&E”) confirms the authority California PUC to resolve disputes between the utility and any resource owner.² The PG&E Tariff also provides a less formal dispute resolution process for minor complaints through use of by a utility ombudsman committed to resolving complaints within 10 days of receipt. Having multiple avenues for relief provides California DER owners flexibility in managing their complaints, but affirmation from the utilities for cooperation with the Commission’s audit authority would institutionalize their cooperation. For this reason, we recommend including such a statement in the codes of conduct.

IV. CONCLUSION

The Clean Coalition appreciates the opportunity to comment on the development of utility codes of conducts, and we look forward to collaborating on this matter in the future.

Respectfully submitted,
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¹ Cal. P.U.C. Rules of Practice and Procedure, Article 4.

² See Pacific Gas & Electric Company, *Electric Rule 21: Generating Facility Interconnections Tariff*, Cal. P.U.C. Sheet No. 34817-E (Nov. 3, 2015) at 185.