

**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' 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

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

November 16, 2018

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

I. INTRODUCTION

The Joint Parties maintain that the data the Commission ordered in Decisions 17-09-026 and 18-02-004 to be produced and shared through the DRP portal, including the ICA and LBNA maps and underlying data, as well as the Grid Needs Assessment and Distribution Deferral Opportunities Report data should all be made public immediately, subject only to a registration requirement. In particular, the Joint Parties believe that maps of the distribution system, which serve as the foundation for these DRP data, is not confidential. While 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, to date the IOUs have failed to properly designate this information.

The Joint Parties believe that the history of this proceeding supports their position on information redaction. Despite this fact, the Joint Parties have engaged in good faith to negotiate an appropriate Non-Disclosure Agreement (“NDA”) that would be applicable in instances in which confidential information is in fact at issue.

¹ 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.

A. History of Proceeding Supports Joint Parties Position

Both Decision 17-09-026, which addressed Track 1 Demonstration Projects A (ICA) and B (LNBA), and Decision 18-02-004 which addressed Track 3 Policy Issues, Sub-Track 1 (Growth Scenarios), and Sub-Track 3 (Distribution Investment and Deferral Process), require the IOUs to “create and publish network models of their entire primary distribution systems for ICA calculations, which will also host LNBA results.”² In addition, Decision 18-02-004 requires the IOUs to file two new reports—a Grid Needs Assessment (GNA), which documents the forecasting assumptions, and a Distribution Deferral Opportunities Report (DDOR), which must document planned investments and candidate deferral opportunities. In addition, the Decision requires the IOUs’ GNAs and DDORs to provide characterizations of circuits according to certain data types and attributes,³ and that such data be made publicly available in an online map form, as a pop-up layer atop the circuit models being developed for the ICA. In comments leading up to Decisions 17-09-026 and D. 18-02-004, the IOUs did not express concern regarding the confidentiality of any of this type of information due to physical or cyber security concerns. Rather their concerns, to the extent they existed, focused solely on information which they deemed to be market sensitive.⁴

² See D. 18-02-004, p 40.

³ With respect to the GNA, the information to be made available on the ICA map, included: (1) substation, circuit, and/or facility ID: identify the location and system granularity of grid need; (2) distribution service required: capacity, reactive power, voltage, reliability, resiliency, etc. (3) anticipated season or date by which distribution upgrade must be installed; (4) existing facility/equipment rating: MW, kVA, or other; and (5) forecasted percentage deficiency above the existing facility/equipment rating over five year. With respect to the DDOR, the information to be made available on the map with respect to each planned investment included: (1) project description: (2) substation; (3) circuit; (4) deficiency (MW/kVA, %); (5) project type: type of equipment to be installed: (6) project description: additional identifying information: (7) distribution service required: capacity, reactive power, voltage, reliability, resiliency, etc.; (8) in-service date; (9) deferrable by DERs, Y/N?; and (10) estimated LNBA range.

⁴ See Joint Opening Comments of Pacific Gas and Electric Company, San Diego Gas and Electric Company and Southern California Edison Company on Proposed Decision on Track 3 Policy Issue, Sub-Track 1 (Growth Scenarios) and Sub-Track 3 (Distribution Investment and Deferral Process), R. 14-08-

Despite the fact that the IOUs' confidentiality concerns had been focused on purported market sensitive information, the Commission afforded them an opportunity to propose, through a Tier 2 Advice Filing, distribution system planning data redaction criteria that would work to ensure the physical and cyber security of the electric system.⁵ The Commission ultimately determined that the Tier 2 Advice Letters submitted by the IOUs were inconsistent and deficient both in their identification of allegedly protected classes of data, as well as in their identification of the data redaction criteria that they proposed to utilize.⁶ Accordingly, the Commission gave the IOUs a second chance to propose, by way of motion, data redaction criteria. Again the Commission determined that the IOUs' "failed to provide the necessary granularity and consistency that would allow [a ruling] that any of the identified data categories and subcategories should be redacted."⁷ To date the IOUs still have not provided a description with any degree of specificity of the information which is necessary to "ensure the physical and cyber security of the electric system."

013 (January 8, 2018), p. 10 (requesting confidential treatment of only estimated costs of the conventional projects that are or will be the subject of active solicitations). *See also* Administrative Law Judge's Ruling Ordering Pacific Gas and Electric Company Southern California Edison Company, and San Diego Gas & Electric Company to file Separate Motions for Confidential. treatment and Redaction of Distribution System Planning Data Ordered by Decisions 17-09-026 and 18-02-004, R. 14-08-013 (June 8, 2018), p.3 (setting forth list of potentially market-sensitive information which the IOUs provided at December 16, 2016 workshop in this proceeding).

⁵ D. 18-02-004, Ordering Paragraph 2. G.

⁶ Administrative Law Judge's Ruling Ordering Pacific Gas and Electric Company Southern California Edison Company, and San Diego Gas & Electric Company to file Separate Motions for Confidential. treatment and Redaction of Distribution System Planning Data Ordered by Decisions 17-09-026 and 18-02-004, R. 14-08-013 (June 8, 2018) pp. 5-6.

⁷ Administrative Law Judge's Ruling Addressing Pacific Gas and Electric Company Southern California Edison Company, and San Diego Gas & Electric Company Claims for Confidential Treatment and Redaction of Distribution System Planning Data Ordered by Decisions 17-09-026 and 18-02-004, R. 14-08-013 (July 24, 2018), p. 18.

B. The Joint Parties have Engaged in Good Faith Negotiations Regarding a NDA

On October 5, 2018, the Joint Parties were provided a draft NDA by the IOUs that was intended for use with any necessary redactions of the distribution system planning data ordered by Decisions 17-09-026 and 18-02-004. The draft NDA stated that the agreement “is limited to information and data as identified in Attachment A, which is in the possession or control of the Utility and for which an NDA is required prior to disclosure to a requesting party.” Moreover, the draft NDA stated that the data “shall be used only for the purpose(s) as identified by Recipient and described below in Attachment B; and for no other secondary purpose” and that the Recipient would be required to take security measures to protect the data which included “written policies regarding information security, disaster recovery, third-party assurance auditing, and penetration testing that are consistent with the Utility’s cyber-security and physical security policies and standards attached as Attachment E.” Attachments A, B and E, however, were not provided with the draft NDA.

On October 10, 2018, the Joint Parties responded to the IOUs informing them of the difficulty of offering meaningful response to the NDA in the absence of Attachments A, B and E, and providing examples as to why the absence of these attachments resulted in this difficulty. On the same day, Christopher Warner of Pacific Gas and Electric Company (“PG&E”), on behalf of the IOUs, acknowledged receipt of the Joint Parties’ response and stated the IOUs’ intention to reply in a meaningful fashion. No additional response from the IOUs was received by the Joint Parties until, after being prompted by the Joint Parties regarding the lack thereof, the IOUs responded on November 8, 2018. In that response the IOUs placed the onus on the Joint Parties to provide a “markup” of the NDA, “fill in Attachments A and B,” “provide suggested language

for Attachment E” and then send back to the IOUs. Only after receipt of such, would the IOUs convene a meet and confer session.

Despite the IOUs’ failure to address the Joint Parties substantive concerns with the NDA as set forth in their October 10, 2018 correspondence with the IOUs, the Joint Parties, on November 13, 2018, transmitted to the IOUs a “markup” of the draft NDA along with associated comments. In doing so, the Joint Parties made clear that all edits to and comments on the draft NDA were premised on the Joint Parties’ position that the NDA is intended to cover only narrowly defined, site specific information about facilities designated as critical energy infrastructure.

The IOUs responded to the Joint Parties November 13 transmission by providing an alternate NDA. While this new alternate NDA may address certain of the Joint Parties concerns, it does not address the fundamental issue of the scope of the information to be covered by any NDA. The Joint Parties have not had the opportunity to coordinate their comments on the alternate NDA and provide such to the IOUs.

II. RESPONSE TO QUESTIONS

A. Registration for Access to Information

- *Who can register and what would be the criteria for determining if one can register?*

As referenced above, it is the Joint Parties belief that, as a general principle, the location of a piece of utility distribution infrastructure and the underlying information regarding that equipment is public information. Accordingly, any member of the public can register for access to that information. Name, affiliation (company or organization) and a valid email address should be the only information that is required for this registration process.

- *Under what circumstances would IOUs deny registration (and hence, access)?*

The Joint Parties cannot conceive of a basis upon which an IOU would deny a member of the public access to public information. If, however, an IOU has a legitimate basis for denying access (i.e. reasonable basis to believe the party requesting access is a bad actor), it should notify the registrant of such denial by way of the email address provided and in doing so, state the basis for the rejection. Any basis for denying should be stated with sufficient specificity so as to allow the registrant to make a reasoned determination of whether to appeal the denial to the Commission, as addressed below.

- *What would the appeal process be if an entity is denied registration?*

At the time the IOU provided notice of the denial of registration, as reference above, it should be required to provide the denied person/entity with a pro forma registration denial appeal form. The form will provide the then current email address of the Administrative Law Judge (“ALJ”) presiding over the Distribution Resource Plan proceeding, or successor docket. Any submitted appeal form should state the registrants arguments rebutting the IOU’s basis for denying access to the requested information. Once an appeal has been submitted, the presiding ALJ should have ten business days to act on the appeal.

B. Stakeholder Needs

- *What is the information that stakeholders need access to in order to perform their business operations?*

The DRP data the Commission required to be created and shared via the public access portal serves a variety of different purposes, both those directly related to the performance of business operations and also those related to the numerous public policy efforts underway at the Commission that rely on this data. The Commission’s orders in the DRP proceeding have emphasized the importance of transparency as an end in itself. For example, the Commission stated that the public release of the GNA data is intended “to provide transparency into the

assumptions and results of the distribution planning process” that generates the IOUs’ deferral solicitations, grid modernization investments, and hosting capacity upgrades.⁸ Increased transparency into the planning process is intended to allow stakeholders to hold the IOUs’ accountable as they identify cost-effective investments and deferral opportunities. This accountability is not a direct benefit to stakeholders’ businesses, but a benefit to the public as a whole.

Lack of access to any of the data the Commission has required to be shared will have some impact on the ability of stakeholders to both perform business operations (e.g., project siting and scoping, project development, customer communications and potentially compensation rates that may be developed via the Integrated Distributed Energy Resources proceeding or other proceedings) and to participate effectively in the Commission’s DRP, IDER and other policy related dockets and solicitations (e.g., various policy and research purposes). All of the data included in the ICA and LNBA are necessary for project development, each piece of information assists in some manner with the identification of appropriate project locations, assessment of interconnection costs, and identification of the potential value of the locations. The categories of ICA and LNBA data were identified and developed through the extensive stakeholder processes because they provide valuable information to enable project development that is in alignment with Commission policies and goals. Indeed, in D.17-09-025, the Commission has identified a number of use cases for the LNBA, such as integrating the LNBA into the Commission’s cost effectiveness tools, which are highly cumbersome if not impossible under a framework where access is limited through an NDA.

⁸ CA Pub. Util. Comm. (“CPUC”), Dkt. R.14-08-013, D.18-02-004, Decision on Track 3 Policy Issues, Sub-Track 1 (Growth Scenarios) and Sub-Track 3 (Distribution Investment and Deferral Process), Feb. 15, 2018, at 33. The GNA data must include, integrated into a “GNA map layer,” demand and DER growth forecasts, ICA planning values, substation/circuit/facility IDs, equipment ratings, and forecasted deficiencies over five years. *Id.* at 36.

The data provided in the GNA and DDOR are critical to enable developers to respond to distribution deferral solicitations. This information includes the network value, the sizing and locations of equipment, including location, capacity, ratings, operational settings or scheduling of individual network elements such as voltage regulators, load tap changers, and capacitors. Potential participants in these solicitations, and those evaluating the appropriateness of these solicitations in the context of the Commission's dockets, also need to have geographic awareness which helps to identify how the customer types and sizes affect loading on a particular network element.

- *What would be the business impact if the stakeholders cannot get access to this information?*

The purpose of making available the specific data points outlined in Decisions 17-09-26 and 18-02-004 is to provide critical system, pricing, and locational transparency. Preventing DER providers from accessing the information necessary to understand distribution system conditions and the interactions of load and DERs on the system would necessitate that they develop their projects and associated responses to solicitations in the dark. This can lead to the unnecessary expenditures of substantial time and resources, including but not limited to unnecessary interconnection upgrade costs; time wasted by the customer, developer and utility in preparing and evaluating interconnection applications at locations that are not ultimately viable due to upgrade costs; development of proposals for projects that ultimately are not successful in solicitations as they are unable to provide specific services or to address site-specific system needs, etc. This loss of situational awareness will lead to higher costs and few DERs being deployed in areas most suitable for interconnection. As penetration of DERs increases, it will be more difficult to identify and retain customers if developers lack access to data that will enable them to assess likely upgrade costs at a customer's site. Customers are less likely to pursue DER

investments if there is uncertainty regarding substantial costs elements of a project.

For some of the forthcoming solicitations for distribution deferral projects, it may be impossible for developers to effectively participate in the solicitations at all if they do not have access to the data. In the context of the GNA, the lack of effective participation is unlikely to allow for “the Commission and stakeholders to ensure that the candidate deferral shortlist meets the objective of maximizing ratepayer benefits of DERs per Pub. Util. Code §769(b)(3).”⁹

C. Nondisclosure Agreements (NDA)

- *Who would have to sign an NDA?*

The NDA would be signed by the applicable IOU and the Recipient requesting access to the information. The Recipient could be either an individual on behalf of itself or an individual who has the authority to sign for a particular entity.

- *What specific information (e.g. circuit locations, other infrastructure locations, ICA data, LNBA data, GNA data, DDOR data, other) would be subject to the NDA?*

The Joint Parties, consistent with the Commission’ decisions as well as previous IOU comments in this docket, do not believe that there are broad categories of data which should be subject to a NDA. While there may be the need for confidentiality with respect to narrowly defined, site specific information about facilities designated as critical energy infrastructure, to date the IOUs have failed to properly designate this information. Thus, Joint Parties believe that the only information that should be subject to an NDA is information about particular equipment that has been shown to qualify as critical energy infrastructure and for which it has been determined that an NDA is the only way to maintain sufficient security for that information.

⁹ See D.18-02-004, p. 33.

- *How long would the NDA be in effect?*

This is still a matter of negotiations between the Joint Parties and the IOUs. While the draft NDA places the onus on the recipient of the data to destroy or return the data to the IOU upon termination of the agreement, it is not clear when the agreement would terminate.

- *Which individuals (e.g. stakeholders, stakeholder employees or consultants) would have to sign the NDA?*

This issue is still a matter of negotiations between the Joint Parties and the IOUs. While, as currently drafted, only one individual, having the authority to do so, would need to sign the NDA on behalf of the recipient of the information, the question has arisen as to who would be required to sign an NDA *certificate* agreeing to comply with the agreement. As currently drafted, the Joint Parties are concerned that the NDA would unnecessarily restrict the flow of information within a company, restrict the ability of parties to communicate with their customers, and would also restrict interactions with the Commission.

- *What NDA provisions could interfere with either stakeholder reasonable access to information or the achievement of public policy outcomes?*

The Joint Parties believe that many portions of the NDA provided by the IOUs would significantly hamstring the ability of stakeholders to utilize the DRP data for business or policy purposes. The conversation about these provisions of the NDA is hindered by the lack of agreement about what data would require the signing of an NDA, but examples of the types of provisions that are currently of concern are listed below. The Joint Parties noted the problems with these provisions in the markup of the NDA and associated comments thereon that they provided to the IOUs on November 13. As referenced above, certain of these concerns may have been addressed by the alternate NDA.

- Provisions which suggest that the data covered by the NDA will not be sufficiently limited such that it only includes information which is unlikely to already be publicly available.
- Provisions which refer to additional undefined security requirements that a Recipient would be required to follow.
- References to data security requirements that must be followed which are either vague or, in other cases, unrealistic for the majority of parties needing access to the DRP data to be able to maintain.
- Overbroad statements that any release of data would necessarily result in irreparable harm, without a showing by the utility that such harm has actually been incurred.
- Provisions which expose Recipients to unreasonable liability for harm to the utility's business which are unrelated to security risks resulting from release of the data.
- Practical concerns regarding how the data is to be managed and shared with customers and employees within an entity that need to be able to discuss and use the data.
- Provisions which allow the utility unrestricted ability to audit the books, financial information, of Recipients and their contractors and customers.

The Joint Parties will continue dialogue with the IOUs regarding the NDA to the extent those conversations are productive. We anticipate, however, that it is going to be difficult to reach full agreement on the NDA absent direction from the Commission on what data it may need to cover.

Respectfully submitted this 16th day of November, 2018, at San Francisco, California.

GOODIN, MACBRIDE,
SQUERI & DAY, LLP¹⁰
Jeanne B. Armstrong
505 Sansome Street, Suite 900
San Francisco, CA 94111
Telephone: (415) 392-7900
E-Mail: jarmstrong@goodinmacbride.com

By /s/ Jeanne B. Armstrong
Jeanne B. Armstrong

Attorneys for the Solar Energy Industries
Association

1062132.3

3326/027/X203724.v1

¹⁰ In accord with Rule 1.8 of the Commission's Rules of Practice and Procedure, counsel for the Solar Energy Industries Association has been authorized to sign this pleading on behalf of the Interstate Renewable Energy Council, Inc., California Energy Storage Alliance, Clean Coalition, the California Solar & Storage Association, Tesla, Inc. and Vote Solar.