

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to
Advance Demand Flexibility
Through Electric Rates.

Rulemaking 22-07-005
(Filed July 14, 2022)

**JOINT REPLY OF
CALIFORNIA EFFICIENCY + DEMAND MANAGEMENT COUNCIL,
CALIFORNIA SOLAR & STORAGE ASSOCIATION,
CENTER FOR ENERGY EFFICIENCY AND RENEWABLE TECHNOLOGIES,
CLEAN COALITION,
SOLAR ENERGY INDUSTRIES ASSOCIATION, AND
UTILITY CONSUMERS' ACTION NETWORK
TO JOINT UTILITIES' RESPONSE TO
JOINT MOTION FOR PUBLIC PARTICIPATION HEARINGS**

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The California Efficiency + Demand Management Council (Council), California Solar & Storage Association (CALSSA), Center for Energy Efficiency and Renewable Technologies (CEERT), Clean Coalition, Solar Energy Industries Association (SEIA), and Utility Consumers' Action Network (UCAN), collectively, the "Joint Parties," respectfully and jointly reply to the Joint Response of Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company (collectively, the "Utilities") to the Joint Motion for Public Participation Hearings ("Joint Response") filed by the Joint Parties on July 13, 2023. The Joint Response was timely filed on July 28, 2023. No other responses were filed to the Joint Motion.

In compliance with Rule 11.1(f), on July 31, 2023, the Joint Parties requested permission to file a Joint Reply to the Joint Response. That request was granted and this filing was authorized by Administrative Law Judge (ALJ) Wang in a procedural email sent on July 31, 2023. With that authorization, this Joint Reply is timely filed and served pursuant to Rules 1.8

and 11.1(f) of the Rules of Practice and Procedure of the California Public Utilities Commission (CPUC or Commission).¹

I. INTRODUCTION

Only the Utilities responded to the Joint Parties’ Motion for Public Participation Hearings. In their Joint Response, the Utilities claim that they “support transparency and active participation in this proceeding on behalf of all affected interests, including residential customers.”² However, while not saying so directly, the Joint Response seeks to dissuade the Commission from hearing *directly* from residential customers and holding Public Participation Hearings (PPH) in this proceeding by claiming that the Public Participation Hearings requested by the Joint Parties are “premature” and are “ordered” in a “typical ratemaking proceeding” pursuant to Rule 13.1(b).³ Further, the Joint Response raises concerns over the logistics, timing, and scope of a PPH, seeking to push any such hearing off until the end of 2023.⁴

The Joint Parties dispute the merits of all of these claims, as addressed in detail below. There is no limitation on the *Commission* ordering Public Participation Hearings in a proceeding it has initiated (i.e., a rulemaking) that directly affects ratepayers; there is no basis on which to delay holding Public Participation Hearings in Track A of this Rulemaking, where the scope – fixed charge rates – has been known since the Scoping Memo was issued in November 2022; and there are no “logistical” issues in scheduling or scoping Public Participation Hearings here, where the Commission has done so many times before. The Joint Parties, therefore, again

¹ CALSSA is filing this Joint Reply on behalf of itself and the following parties, which have provided authorization for it to do so pursuant to Rule 1.8(d) of the Commission’s Rules of Practice and Procedure: California Efficiency + Demand Management Council, Center for Energy Efficiency and Renewable Technologies, Clean Coalition, Solar Energy Industries Association, and Utility Consumers’ Action Network.

² Joint Response, at p. 1.

³ *Id.*, at pp. 2-3.

⁴ *Id.*, at pp. 3-4

request that the Commission promptly grant their Motion for Public Participation Hearings filed on July 13, 2023.

**II.
PUBLIC PARTICIPATION HEARINGS ARE NOT “UNIQUE” IN RULEMAKINGS
AND ARE NOT LIMITED TO UTILITY RATE APPLICATIONS.**

Of immediate concern to the Joint Parties is the apparent claim by the Utilities in opposition to the Joint Motion that there is questionable authority and precedent for the Commission to order Public Participation Hearings in this Rulemaking. Thus, the Joint Response states: “[B]ecause this rulemaking proceeding involves many different proposals submitted at the direction of the Commission rather than a single utility ‘application to increase any rate,’ it is unlike the typical ratemaking proceeding in which Public Participation Hearings are ordered under Rule 13.1(b).”⁵ The Joint Response further argues against a Public Participation Hearing being held in this Rulemaking because of its “unique” “procedural nature.”⁶

This statement is a complete misreading of Rule 13.1(b) and is contrary to the Commission’s regulatory authority. First, Rule 13.1(b) does not mandate the holding of a Public Participation Hearing in a utility rate application, but only involves “notice” for any that “*may* be set in the proceeding.”⁷ Second, the Commission clearly *has* the authority to hold Public Participation Hearings in this proceeding. It is inaccurate to say the Commission “*may* have discretion to order Public Participation hearings when appropriate.”⁸ Rule 13.1(b) does not preclude the Commission from ordering a Public Participation Hearing in any proceeding that it has initiated, including a Rulemaking. To do so would certainly be contrary to and an

⁵ Joint Response, at pp. 2-3.

⁶ *Id.*, at p. 3.

⁷ Commission Rules of Practice and Procedure, Rule 13.1(b); emphasis added.

⁸ Joint Response, at p. 3, n. 6; emphasis added.

inappropriate constraint on the Commission’s authority and jurisdiction to regulate investor-owned utilities to ensure “safe, clean, and affordable utility services and infrastructure.”⁹ Third, the Joint Response fails to specify what is so “unique” about this Rulemaking that should cause the Commission not to order Public Participation Hearings in a proceeding in which such a hearing is so clearly necessary.

Instead, as confirmed in the Joint Motion, Public Participation Hearings have been *ordered by the Commission* in multiple, complex rulemakings that affect customer interests or rates “to give an opportunity for the public to communicate directly with the Commission” about the issues being considered in the proceeding, including one that addressed the same issue (fixed charge rates) as being considered here.¹⁰ In that rulemaking (R.12-06-013), the Commission ordered “sixteen [16] PPHs” that were “throughout California” in order “to obtain public input regarding the Commission’s rulemaking and the rate design proposals submitted by the IOU[s].”¹¹

Clearly, no law or fact prevents the Commission from ordering Public Participation Hearings in this Rulemaking. Instead, as stated in the Joint Motion, it is incumbent upon the Commission to hold Public Participation Hearings in this Rulemaking to notice and hear *directly* from residential customers, not just those that may speak on their “behalf,”¹² on the impact of the major change to California electric rate structure being considered here, namely the potential addition of an “income-graduated fixed charge for residential rates for large investor-owned

⁹ <https://www.cpuc.ca.gov/about-cpuc/cpuc-overview/about-us>

¹⁰ Joint Motion, at pp. 5-7, quoting from R.23-01-007 (Diablo Canyon Extension) ALJ’s Ruling of May 17, 2023, at p. 1.

¹¹ D.15-07-001, at p. 23; emphasis added.

¹² Joint Response, at p. 1.

electric utilities.”¹³ This step is clearly necessary in this Rulemaking where concerns regarding fixed charges have previously been raised by customers of these same large Utilities.¹⁴

**III.
THE JOINT MOTION FOR PUBLIC PARTICIPATION HEARINGS IN THIS
PROCEEDING IS NOT “PREMATURE,” AND THOSE HEARINGS MUST BE
APPROPRIATELY SCOPED BY THE COMMISSION, NOT THE UTILITIES, AND
TIMELY SCHEDULED FOR NEEDED PUBLIC INPUT**

The Joint Response also seeks to delay Public Participation Hearings being held in this Rulemaking claiming that they are “premature” or create “logistical” problems or time constraints for the Utilities.¹⁵ In doing so, the Joint Response requests that any such Public Participation Hearing, “if necessary,” should be delayed until after Track A Reply Briefs are filed in November 2023 and should allow the Utilities, “at minimum, two months of lead time to properly notice.”¹⁶ The Utilities also dispute that eight (8) in-person Public Participation Hearings are necessary where “a virtual hearing” would suffice.¹⁷

First, none of these claims diminish the need for Public Participation Hearings being held in this Rulemaking, as described above and in the Joint Motion.

Second, the Joint Parties do recognize that a reasonable period of time is required to notice and prepare for such hearings. However, by the Commission acting promptly to grant the Joint Motion, those Public Participation Hearings can and should be scheduled to begin no later than October 2023. This timeframe is vitally important to permit parties to learn of and take into account any residential ratepayer concerns with income-graduated fixed charges *before* briefs are filed. As the Commission has stated regarding input at Public Participation Hearings in a Rulemaking impacting residential rates, that input is incorporated into its deliberations and

¹³ Scoping Memo (November 2, 2022), at p. 2.

¹⁴ D.15-06-001, at pp. 23-25.

¹⁵ Joint Response, at pp. 2-4.

¹⁶ *Id.*; footnote omitted.

¹⁷ *Id.*, at p. 4.

“provide[s] valuable assistance in understanding the perspective of customers and others who are affected by our decisions.”¹⁸

Third, the Utilities ask that “that they be allowed to comment on the scope and manner of the Public Participation Hearings should the Commission deem them necessary or appropriate.”¹⁹ While the Utilities may need to be involved in confirming locations and providing notice for the Public Participation Hearings, there is no basis for them to “comment on the scope or manner” of those hearings. That is a job for the Commission, especially in the context of a Rulemaking.

Finally, eight (8) in-person Public Participation Hearings in a proceeding addressing a major residential rate change is not excessive, as the 16 such hearings held in R.12-06-013 demonstrate, and those 8 represent a minimum number required to provide statewide public input on that rate change. Further, while “virtual hearings” could be considered *in addition* to the in-person Public Participation Hearings, they are clearly no substitute for the direct and in-person interaction between the public and Commissioners and staff. The in-person Public Participation Hearing also allows for the Commission to better take into account and consider the geographic and demographic impacts of this rate change that cannot be realized in a “virtual” setting.

IV. CONCLUSION

For the reasons stated herein and in the Joint Motion, the Joint Parties move again for the Commission to promptly grant the Joint Motion and order the requested Public Participation Hearings in Track A of this Rulemaking. Nothing stated in the Utilities’ Joint Response does or should prevent the Commission from granting that relief.

¹⁸ D.15-06-001, at p. 25.

¹⁹ *Id.*, at p. 4.

Respectfully submitted on
Behalf of the Joint Parties,

August 7, 2023

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