

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

Order Instituting Rulemaking on the Commission's own motion to consider alternative-fueled vehicle tariffs, infrastructure and policies to support California's greenhouse gas emissions reduction goals.

Rulemaking 09-08-009  
(Filed February 8, 2010)

**REPLY COMMENTS OF  
THE NATURAL RESOURCES DEFENSE COUNCIL AND  
FRIENDS OF THE EARTH ON  
PROPOSED DECISION ON JURISDICTIONAL ISSUES**

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## TABLE OF CONTENTS

|      |  |   |
|------|--|---|
| I.   | INTRODUCTION .....   | 1 |
| II.  | THE PROPOSED DECISION’S DISCLAIMER OF JURISDICTION IS TOO BROAD AND SHOULD BE NARROWED.....  | 1 |
| A.   | The Proposed Decision Should Be Modified to Reflect Commission Obligations in Addition to Natural Monopoly Regulation.....   | 2 |
| B.   | The Proposed Decision Should Be Modified to Assure that California’s Regulatory Framework for the Procurement of Electricity is Not Compromised.....                                     | 2 |
| III. | IF THE COMMISSION ADOPTS THE PROPOSED DECISION, IT WILL HAVE TO RELY ON ALTERNATIVE SOURCES OF AUTHORITY IN ORDER TO ADDRESS PHASE TWO ISSUES .....                                      | 3 |
| A.   | The Proposed Decision Defers Critical Issues to Phase Two and Could Make Such Issues More Difficult to Address.....  | 3 |
| B.   | Should the Proposed Decision’s Finding of No Jurisdiction Under Public Utilities Code Section 216 Be Adopted, the Commission will have to Rely on Alternative Sources of Authority ..... | 3 |
| IV.  | PHASE TWO ISSUES RAISED IN COMMENTS ON THE PROPOSED DECISION.....  | 4 |
| A.   | Costs Associated with Meters Should be Minimized; Separate Meters will Sometimes be Required.....  | 4 |
| B.   | The Notification Procedure Suggested in the Proposed Decision is Inadequate .....  | 5 |
| V.   | CONCLUSION.....  | 5 |

## **I. INTRODUCTION**

In accordance with Rule 14.3 of the Rules of Practice and Procedure of the California Public Utilities Commission (“Commission”), the Natural Resources Defense Council (“NRDC”), and Friends of the Earth (“FoE”) submit these reply comments on the *Proposed Decision of Commissioner Ryan on Jurisdiction of the Commission Over the Sale of Electricity at Retail to the Public for the Sole Use as a Motor Fuel* (“Proposed Decision” or “PD”).

NRDC and FoE agree with various parties that electric vehicle charging service providers should not be regulated as full utilities. However, we also join various parties in recognizing that the Proposed Decision’s disavowal of jurisdiction is excessively broad and should be modified in order to assure that the Commission retains authority to maintain the integrity of the grid, to achieve critical environmental mandates, and to implement Phase Two decisions.

## **II. THE PROPOSED DECISION’S DISCLAIMER OF JURISDICTION IS TOO BROAD AND SHOULD BE NARROWED**

Similar to NRDC and FoE, various parties – including the Division of Ratepayer Advocates (“DRA”), Southern California Edison (“SCE”), Pacific Gas and Electric (“PG&E”), and the North Coast River Alliance/Californians for Renewable Energy (“NCRA/CARE”) – express concern that the Proposed Decision disclaims jurisdiction so broadly that the decision could impact the Commission’s ability to meet its core mandates.<sup>1</sup> NRDC and FoE agree with this overarching concern, as well as the following specific concerns highlighted by other parties that should be addressed before the Commission adopts the Proposed Decision.

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<sup>1</sup> DRA, *Comments of the Division of Ratepayer Advocates on the Proposed Decision of Commissioner Ryan in Phase I on Jurisdiction of the Commission Over the Sale of Electricity at Retail to the Public for the Sole Use as a Motor Vehicle*, June 10, 2010 (“DRA, *Comments on PD*”), p. 7; SCE, *Opening Comments of Southern California Edison Company (U 338-E) the Proposed Decision of Assigned Commissioner Ryan*, June 10, 2010 (“SCE, *Comments on PD*”), p. 4; PG&E, *Opening Comments of Pacific Gas and Electric Company (U 39 E) on Proposed Decision on Jurisdictional Issues*, June 10, 2010 (“PG&E, *Comments on PD*”), p. 1; NCRA/CARE, *Opening Comments of Californians for Renewable Energy and North Coast Rivers Alliance on the Proposed Decision in Phase I on Jurisdiction of the Commission Over the Sale of Electricity at Retail to the Public For the Sole Use as Motor Vehicle Fuel*, June 10, 2010 (“NCRA/CARE, *Comments on PD*”), pp. 5-6.

**A. The Proposed Decision Should Be Modified to Reflect Commission Obligations in Addition to Natural Monopoly Regulation**

In our comments on the Proposed Decision, NRDC and FoE stated that the Proposed Decision should be modified to reflect the Commission's obligations to oversee various environmental performance standards, including the Renewable Portfolio Standard (RPS), Assembly Bill 32, and Senate Bill 1368.<sup>2</sup> DRA, SCE, and PG&E concur that the Proposed Decision does not adequately address the full extent of the Commission's obligations and mission.<sup>3</sup> NRDC and FoE made specific recommendations to modify the Proposed Decision in order to acknowledge the Commission's important role in grid management and the fact that the unplanned deployment of electric vehicle charging infrastructure could impact the stability of the electrical grid.<sup>4</sup> The Proposed Decision should better address these important concerns.<sup>5</sup>

**B. The Proposed Decision Should Be Modified to Assure that California's Regulatory Framework for the Procurement of Electricity is Not Compromised**

Throughout this proceeding, NRDC and FoE have consistently urged the Commission to make clear that its findings in this proceeding in no way disclaim jurisdiction over entities acting as load-serving entities and procuring electricity at wholesale.<sup>6</sup> Several other parties, including DRA, SCE, and PG&E, agree that, despite its stated intentions, the Proposed Decision does not adequately address this concern.<sup>7</sup> As recommended in our comments on the Proposed Decision, the Commission should adopt conclusions of law that make it clear that any entity acting as a

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<sup>2</sup> NRDC and FOE, *Comments of the Natural Resources Defense Council and Friends of the Earth on Proposed Decision on Jurisdictional Issues*, June 10, 2010 ("NRDC and FoE, *Comments on PD*"), p. 5-6.

<sup>3</sup> DRA, *Comments on PD*, p.6; SCE, *Comments on PD*, p. 5; PG&E, *Comments on PD*, p. 4.

<sup>4</sup> NRDC and FoE, *Comments on PD*, p. 7.

<sup>5</sup> See NRDC and FoE, *Comments on PD*, p. 7; DRA, *Comments on PD*, p.9; PG&E, *Comments on PD*, pp. 3, 6; SCE, *Comments on PD*, p. 5.

<sup>6</sup> NRDC and FOE, *Brief of the Natural Resources Defense Council and Friends of the Earth on Jurisdictional Issues*, February 8, 2010, p. 13; *Reply Brief of the Natural Resources Defense Council and Friends of the Earth on Jurisdictional Issues*, March 1, 2010, p. 3; *Comments on PD*, pp. 7-8.

<sup>7</sup> DRA, *Comments on PD*, p.8; SCE, *Comments on PD*, pp. 6-7; PG&E, *Comments on PD*, p. 4.

load-serving entity will continue to be subject to the Commission's jurisdiction.<sup>8</sup>

**III. IF THE COMMISSION ADOPTS THE PROPOSED DECISION, IT WILL HAVE TO RELY ON ALTERNATIVE SOURCES OF AUTHORITY IN ORDER TO ADDRESS PHASE TWO ISSUES**

**A. The Proposed Decision Defers Critical Issues to Phase Two and Could Make Such Issues More Difficult to Address**

San Diego Gas & Electric Company and Southern California Gas Company ("Sempra") state that in Phase Two: "the Commission should consider mechanisms to ensure continued service reliability at reasonable cost including accurate time variant prices for EV charging and subjecting EV charging services to potential curtailment if price signals alone fail to reduce utilization as necessary to preserve reliability during times of peak demand."<sup>9</sup> NRDC and FoE agree with Sempra that addressing such critical issues will be essential in Phase Two, however we note again that this task could be made all the more difficult if the Proposed Decision's disavowal of jurisdiction is adopted. To mitigate this risk, NRDC and FoE again recommend that the Decision acknowledge the importance of modifying and/or adopting rules such as those governing interconnection and the relationship between load-serving entities and charging service providers in order to address some of the most critical issues slated for Phase Two.<sup>10</sup>

**B. Should the Proposed Decision's Finding of No Jurisdiction Under Public Utilities Code Section 216 Be Adopted, the Commission will have to Rely on Alternative Sources of Authority**

Even if the Proposed Decision is modified as recommended immediately above and rules governing interconnection and the customer relationship between load-serving entities and charging service providers are implemented, some Phase Two issues will remain unaddressed. NRDC and FoE agree with SCE, that should the Proposed Decision's core finding of no jurisdiction under Public Utilities Code Section 216 be adopted, the Commission will have to

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<sup>8</sup> NRDC and FoE, *Comments on PD*, pp.7-8.

<sup>9</sup> Sempra, *Comments of San Diego Gas & Electric Company (U 902 M) and Southern California Gas Company (U 904 G) on Proposed Decision*, June 10, 2010 ("Sempra, *Comments on PD*"), p. 2.

<sup>10</sup> See NRDC and FoE, *Comments on PD*, pp. 12-13.

rely on alternative sources of authority, such as Senate Bill 626, in order to accomplish the legislative directives included in that bill (namely, ensuring the successful widespread deployment of electric vehicles) and the Commission's broader goals and obligations.<sup>11</sup> We had recommended a related conclusion of law making it clear that the Commission retained all authority granted to it under the California Constitution.<sup>12</sup> In light of SCE's comments, we modify our recommendation (as indicated by the strikethrough and underlining) to include the following conclusion of law:

The Commission retains all authority ~~granted to it under the California Constitution~~ not specifically disclaimed, including the authority granted to it under the California Constitution, and will exercise that authority in a targeted manner in order to assure that the integrity of the electrical grid is maintained and that core environmental goals are met.

#### **IV. PHASE TWO ISSUES RAISED IN COMMENTS ON THE PROPOSED DECISION**

##### **A. Costs Associated with Meters Should be Minimized; Separate Meters will Sometimes be Required**

SCE argues that the Proposed Decision should not be read to require unneeded separate meters.<sup>13</sup> NRDC and FoE agree that unnecessary costs should be avoided; however, we note that it will be important to assure that price signals reach end-users to promote charging at off-peak periods. Separate meters will sometimes be the only means of assuring such an outcome. In our comments on the Proposed Decision, NRDC and FoE noted that, without direct regulation, it is not at all clear that price signals will be passed on to end-users in multiple contexts.<sup>14</sup> In some cases, the Commission may have to require the use of time variant pricing, whether or not that is under a larger tariff structure, or via an electric vehicle specific tariff. In some instances, such as the shared charging station context, meters capable of tracking individual usage may be the only

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<sup>11</sup> SCE, *Comments on PD*, p. 4.

<sup>12</sup> NRDC and FoE, *Reply Brief of the Natural Resources Defense Council and Friends of the Earth on Jurisdictional Issues*, March 1, 2010, p. 8-9. NRDC and FoE, *Comments on PD*, p.11.

<sup>13</sup> SCE, *Comments on PD*, p. 10.

<sup>14</sup> See NRDC and FoE, *Comments on PD*, pp. 12-13.

means of assuring that appropriate price signals are sent.

**B. The Notification Procedure Suggested in the Proposed Decision is Inadequate**

PG&E states that the voluntary procedure suggested in the Proposed Decision whereby utilities and automobile manufacturers would develop a notification policy is “unlikely and impractical.”<sup>15</sup> NRDC and FoE supported the Proposed Decision’s proposal on this issue but, like PG&E, noted its shortcomings.<sup>16</sup> Specifically, it is voluntary and will not capture public charging stations. NRDC and FoE have stated many times that the Commission should require utilities and charging service providers to coordinate on the deployment of charging infrastructure.<sup>17</sup> We agree with PG&E that the Commission should require such a procedure, not simply hope for one. Charging service providers and load-serving entities should be required to develop such a procedure in collaboration with one another.

**V. CONCLUSION**

The Commission’s final Decision should reflect the changes recommended by NRDC and FoE in our comments and reply comments on the Proposed Decision.

Dated: June 15, 2010

Respectfully submitted,



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<sup>15</sup> PG&E, *Comments on PD*, p. 7.

<sup>16</sup> NRDC and FoE, *Comments on PD*, pp. 10-11.

<sup>17</sup> NRDC and FOE, *Brief of the Natural Resources Defense Council and Friends of the Earth on Jurisdictional Issues*, February 8, 2010, pp. 10-13; *Reply Brief of the Natural Resources Defense Council and Friends of the Earth on Jurisdictional Issues*, March 1, 2010, p. 5; *Comments on PD*, pp. 10-11.

## CERTIFICATE OF SERVICE

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I, Jody London, certify that I have, on this date, served a copy of “Reply Comments Of The Natural Resources Defense Council and Friends of the Earth on Proposed Decision on Jurisdictional Issues” on all known parties to R.09-08-009 by transmitting an e-mail message with the document attached to each party named in the official service list, and by serving a hard copy on the Administrative Law Judge.

I declare under penalty of perjury, pursuant to the laws of the State of California, that the foregoing is true and correct.

Dated June 15, 2010 in Oakland, California.



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Jody London



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