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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking Regarding Policies, Procedures and Rules for Regulation of Physical Security for the Electric Supply Facilities of Electrical Corporations Consistent with Public Utilities Code Section 364 and to Establish Standards for Disaster and Emergency Preparedness Plans for Electrical Corporations and Regulated Water Companies Pursuant to Public Utilities Code Section 768.6.

Rulemaking 15-06-009
(Filed June 11, 2015)

ASSIGNED COMMISSIONER'S PHASE I SCOPING MEMO AND RULING

Summary

Pursuant to Rule 7.3(a) of the Commission's Rules of Practice and Procedure (Rules),¹ this Scoping Memo and Ruling is being issued following the prehearing conference (PHC) held on February 2, 2017. This Scoping Memorandum and Ruling sets forth the procedural schedule, assigns the presiding officer, and addresses the scope of the proceeding and other procedural matters in this proceeding.

¹ All references to rules are to the Commission's Rules of Practice and Procedure, which are available on the Commission's website at <http://www.cpuc.ca.gov/proceedings/>.

1. Background

On June 11, 2015, the Commission approved an Order Instituting Rulemaking (OIR) to establish policies, procedures, and rules for the regulation of physical security risks to the electric supply facilities of electrical corporations consistent with Public Utilities (Pub. Util.) Code Section 364 (Phase I) and to establish standards for disaster and emergency preparedness plans for electrical corporations and regulated water companies consistent with Pub. Util. Code Section 768.6 (Phase II).

Among other things, Phase I of this rulemaking will consider whether any new rules, standards, or General Orders (GO) or modifications to other existing policies should apply to all electrical supply facilities within the jurisdiction of the Commission, including facilities owned by publicly-owned-utilities and rural electric cooperatives.

This rulemaking will be conducted in phases. Phase I will pertain to the requirements to address the physical security risks to the electrical supply facilities of electrical corporations. Phase II will be conducted at a later date to address emergency and disaster preparedness plans of electrical corporations and regulated water companies.

Scope, Schedule, and other procedural issues were discussed at the prehearing conference (PHC) on February 2, 2017. This ruling specifies the scope and schedule for resolving the issues presented in this proceeding.

2. Proceeding Category and Need for Hearings

This proceeding is considered to be quasi-legislative as defined in Rule 1.3(d). It appears that the issues presented in this proceeding may be resolved through comments and workshops without the need for evidentiary hearings. In the event that evidentiary hearings become necessary, the assigned Commissioner or

Administrative Law Judge (ALJ) will issue a ruling that sets forth the process and the schedule that will be followed in the event that hearings are necessary.

3. Scope and Schedule for Phase I

Through discussions in the PHC statements, at the PHC and in responses to rulings of the ALJ, the parties conducted an exchange that has helped to refine the scope of this rulemaking.

3.1 Scope of Phase I

The scope of this rulemaking is as follows:

1. What is currently in place in terms of physical security regulations at the state and federal level?
2. What are the key potential physical security risks to electrical distribution facilities?
3. What new rules, standards, or General Orders or modifications to existing policies should the Commission consider to help mitigate physical security risks to electrical distribution facilities?
4. Should the Commission go beyond the physical security regulations presented in the North American Electric Reliability Corporation (NERC) CIP-014-2 physical security regulations?
5. Should any new rules, standards, or General Orders or modifications to existing policies apply to all electrical supply facilities within the jurisdiction of the Commission, including publicly owned electrical utilities and rural electric cooperatives?
6. What regulations or standards should be established for small and multi-jurisdictional electric corporations?
7. What has changed since Metcalf² and what still needs to be accomplished in terms of physical security?

² In April 2013, a rifle attack occurred at Pacific Gas and Electric's (PG&E) Metcalf Transmission Substation south of San Jose, resulting in approximately \$15.4 million in damages. Although

8. Are there other factors not listed in Section 364(b) of the Pub. Util. Code that the Commission should consider when adopting any new rules, standards, or General Orders or modifications to existing policies during this rulemaking that will help to minimize attacks and the extent of damages?
9. What new rules or standards or modifications to existing policies should the Commission consider to allow for adequate disclosure of information to the public without disclosing sensitive information that could pose a physical security risk or threat if disclosed?
10. What is the role of cost and risk management in relation to the mitigation of any potential physical security risks to electrical supply facilities?
11. Should any new rules, standards, or General Orders or modifications to existing policies the Commission considers be prescriptive or performance based, or both?
12. What new rules, standards, or General Orders or modifications to existing policies should the Commission consider to ensure continued operation, reliability and safety during periods of emergencies and disasters as it relates to the physical security of electrical facilities?
13. How should this rulemaking proceed in order to ensure consistency with the NERC, Federal Energy Regulatory Commissions (FERC), the California Independent System Operator (CAISO), the Department of Homeland Security (DHS), the Federal Bureau of Investigations (FBI) and other regulatory agency regulations?
14. What ongoing processes should be instituted to ensure confidentiality of physical security information while

various changes in its security protocol were initiated following the rifle attack, burglars entered the Metcalf facility in late August 2014 and removed \$38,651 of tools and equipment.

providing adequate access to necessary information by the Commission³?

3.2 Schedule for Phase I

With the above in mind and based upon the discussions at the PHC, the following schedule shall be adopted for this proceeding:

Description	Date
PHC	February 2, 2017
Level-setting Workshop 1: Information Sharing, Protection, and Confidentiality/Establishing Proceeding Rules of Engagement for Input and Testimony on Sensitive Subjects/Establishing Protocols for Data Access and Transfer ⁴	Spring 2017
Level-setting Workshop 2: State, Federal, and Industry Standards and Responses/NERC CIP-014 and the post-Metcalf Environment ⁵	After Workshop 1
Scoping and Outcome Workshop 3: How SB 699 Legislative Directive Informs CPUC Response and Responsibility ⁶	Late Spring 2017

³ Despite the sensitive nature of the documents involved, we remind the utilities that even without the compulsion of a subpoena, the Commission may under Pub. Util. Code Sections 313, 314, 314.5, 315, 582, 584, 591, 701, 702, 1794 and 1795, compel information from a public utility, and that Commission staff has the general investigatory authority of the Commission. Specifically, we remind the utilities that pursuant to these provisions the Commission may direct the utilities to provide the requested information in a place and form of the Commission’s choosing. Any confidential or sensitive information should be marked as confidential pursuant to Section 583, which mandates the non-disclosure of such information.

⁴ Level-setting Workshop 1 will not have any opening or reply comments. A staff-prepared workshop digest will be circulated following Workshop1.

⁵ Level-setting Workshop 2 will not have any opening or reply comments. A staff-prepared workshop digest will be circulated following Workshop 2.

⁶ Scoping and Outcome Workshop 3 will have opening and reply comments. Typically opening comments will be served within two weeks of the conclusion of Workshop 3 and reply comments will be served within one week of service of the opening comments. The due dates for opening and reply comments will be set forth prior to the conclusion of Workshop 3. A staff-prepared workshop digest will be circulated following Workshop 3.

Outcome Workshop 4: Threat, Vulnerability and Impact Considerations/Identification and Prioritization ⁷	Early Summer
2017 staff-prepared short update to the 2015 physical security White Paper	July/August 2017
Outcome Workshop 5: Risk Mitigation/Policy- and Rulemaking/Scoping and Recommendations ⁸	Late Summer/Early Fall
Proposed Decision on Phase I Issues	February 2018
Comments on Proposed Decision	Pursuant to Rule 14.3(d)
Reply Comments on Proposed Decision	Pursuant to Rule 14.3(d)
Final Decision on Phase I Issues	April 2018

Pub. Util. Code Section 1701.5(a) provides that in a quasi-legislative proceeding, the Commission shall resolve the issues raised in the scoping memo within 18 months. However, Section 1701.5(b) provides that the assigned Commissioner may specify in the scoping memo a resolution date of more than 18 months if the scoping memo includes specific reasons for the necessity of a later date.

⁷ Workshop 4 will have opening and reply comments. Typically opening comments will be served within two weeks of the conclusion of Workshop 4 and reply comments will be served within one week of service of the opening comments. The due dates for opening and reply comments will be set forth prior to the conclusion of Workshop 4. A staff-prepared workshop digest will be circulated following Workshop 4.

⁸ Workshop 5 will have opening and reply comments. Typically opening comments will be served within two weeks of the conclusion of Workshop 5 and reply comments will be served within one week of service of the opening comments. The due dates for opening and reply comments will be set forth prior to the conclusion of Workshop 5. A staff-prepared workshop digest will be circulated following Workshop 5.

Due to the complexity of this rulemaking, the number of respondents involved, the number of diverse issues presented, and the potential need for multiple phases, this matter will not be concluded within 18 months. Therefore, it is preliminarily determined pursuant to Section 1701.5(b) that Phase I of this proceeding should be resolved within 24 months.

This schedule may be altered by the assigned Commissioner or the assigned ALJ.

If there are any workshops in this proceeding, workshops will be posted on the Commission's Daily Calendar to inform the public that a decision-maker or an advisor may be present at the workshop or meeting. Parties shall check the Daily Calendar regularly for such notices. In an effort to promote inter-agency coordination, workshops may be conducted with other governmental entities as appropriate.

4. Presiding Officer

Pursuant to Rule 13.2, Commissioner Rechtschaffen is the assigned Commissioner and Presiding Officer. Pursuant to Pub. Util. Code Section 1701.4 and Rule 13.2, Administrative Law Judge (ALJ) Gerald F. Kelly is the assigned ALJ to this proceeding.

5. Intervenor Compensation

A PHC was held in this matter on February 2, 2017. Pursuant to Pub. Util. Code Section 1804(a)(1), an individual who intends to seek an award of compensation must file and serve a notice of intent to claim compensation by March 6, 2017.

6. Ex Parte Communications

This is a quasi-legislative proceeding; therefore, *ex parte* communications are allowed without restriction or reporting requirements pursuant to Rule 8.3(a).

7. Filing, Service, and Service List

In this proceeding, there are several different types of documents participants may prepare. Each type of document carries with it different obligations with respect to filing and service.

Parties must file certain documents as required by the Commission Rules or in response to rulings by either the assigned ALJ or presiding officer. All formally filed documents must be filed with the Commission's Docket Office and served on the service list for the proceeding. Article 1 of the Rules contains the Commission filing requirements. Parties must file and serve all pleadings and serve all testimony, as set forth in Article 1 of the Commission's Rules. Parties are encouraged to file and serve electronically, whenever possible, as it speeds processing of the filings and allows them to be posted on the Commission's website. More information about electronic filing is available at www.cpuc.ca.gov/efile/.

This proceeding will follow the electronic service protocols adopted by the Commission in Rule 1.10 for all documents, whether formally filed or just served. This Rule provides for electronic service of documents, in a searchable format, unless the party or state service list member did not provide an e-mail address. If no e-mail address was provided, service should be made by U.S. mail. Concurrent e-mail service to ALL persons on the service list for whom an e-mail address is available, including those listed under "Information Only," is required. Parties are expected to provide paper copies of served documents upon request.

E-mail communication about this case should include, at a minimum, the following information on the subject line of the e-mail: *R.15-06-009 Phase I*. In addition, the party sending the e-mail should briefly describe the attached

communication; for example, *Comments on Proposed Decision*. Both an electronic and a hard copy should be served on the ALJ.

The official service list for this proceeding (the list) is available on the Commission's web page at:

https://ia.cpuc.ca.gov/servicelists/R1506009_83113.htm. Parties should confirm that their information on the service list is correct, and serve notice of any errors on the Commission's Process Office. Prior to serving any document, each party must ensure that it is using the most up-to-date service list. The list on the Commission's website meets that definition.

Any person interested in participating in this proceeding who is unfamiliar with the Commission's procedures or who has questions about the electronic filing procedures should contact the Commission's Public Advisor at (866) 849-8390 or (415) 703-2074, or (866) 836-7825 (TTY-toll free), or send an e-mail to public.advisor@cpuc.ca.gov.

IT IS RULED that:

1. The scope and schedule for Phase I of this proceeding are set forth above in Sections 3.1 and 3.2.
2. The Administrative Law Judge is authorized to modify the schedule adopted herein as necessary for the efficient administration of this proceeding.
3. If there are any workshops in this proceeding, notice of such workshops will be posted on the Commission's Daily Calendar to inform the public that a decision-maker or an advisor may be present at those meetings or workshops. Parties shall check the Daily Calendar regularly for such notices.
4. This proceeding is categorized as quasi-legislative; therefore, *ex parte* communications are allowed without restriction or reporting requirements.
5. Hearings are not necessary.

6. Pursuant to Public Utilities Code Section 1701.4 and Rule 13.2, Commissioner Clifford Rechtschaffen is the assigned Commissioner, and is the Presiding Officer. Administrative Law Judge (ALJ) Gerald F. Kelly is the assigned ALJ in this proceeding.

Dated March 10, 2017, at San Francisco, California.

/s/ CLIFFORD RECHTSCHAFFEN
Clifford Rechtschaffen
Assigned Commissioner