

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

Order Instituting Rulemaking to Modernize the
Electric Grid for a High Distributed Energy
Resources Future.

Rulemaking 21-06-017
(Filed June 24, 2021)

**CENTER FOR BIOLOGICAL DIVERSITY,
350 BAY AREA, AND
THE CLIMATE CENTER
REPLY COMMENTS
ON ELECTRIFICATION IMPACTS STUDY**

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Pursuant to Administrative Law Judges Lakhanpal and Hymes’ May 9, 2023 Ruling and June 30, 2023 Ruling revising the schedule for filing comments, the Center for Biological Diversity (the “Center”), 350 Bay Area, and The Climate Center provide the following reply comments on the Electrification Impacts Study and Research Plan (“EIS”).

I. Part 2 of the EIS Should Include Adequate Information to Prioritize DER Deployment in DAC and other ESJ Communities.

The Center, 350 Bay Area and The Climate Center concur with multiple party comments on the need to refine the methodology for Part 2 of the EIS to better plan for “equitable outcomes from electrification and increased DERs.”¹ An adequate methodology would: first, coordinate with this and related CEC proceedings to better forecast DER deployment and prepare for a high DER future that includes disadvantaged communities (“DAC”) and other environmental and social justice (“ESJ”) communities; second, incorporate non-energy benefits (“NEBs”) and

¹ See e.g. Vote Solar Opening Comments on EIS at 3.

accurate costs of DERs into cost-effectiveness and avoided cost determinations; and third, include the full suite of anticipated DERs or mitigation strategies.

A. The Commission Should Reject the Use of Historical Data and Instead Coordinate with Other Phases of this Proceeding and the CEC’s IEPR and Parallel DER Proceeding to Inform Part 2 of the EIS.

EIS Workshop Slides 38, 41 and 43 include DER modeling assumptions and limitations, which use historical data to represent future rates of adoption. As parties point out in their opening comments,² this risks leaving DACs—and other communities that have been so far unable to leverage DERs as fully as possible—behind in the clean energy transition.

While we agree with certain parties to use IEPR forecast data for Part 2 of the EIS,³ that data may be suitable for baseline determinations, but should be supplemented for projected growth of DERs in coordination with other tracks and phases of this proceeding, and the CEC’s parallel Order Instituting Investigation on DERs (“DER OIIP”), each of which assume a high DER future.

In opening comments at the Track 2 Outreach Plan Workshop in this proceeding, Energy Division clarified that this proceeding focuses on the anticipation of a high DER future. This objective involves ensuring that planning tools, processes and community engagement efforts are in place to facilitate rapid integration of DERs as we achieve a high DER future, or, preparing the grid to accommodate what is expected to be a high DER future and capture as much value as possible from DERs.

Similarly, the DER OIIP plays an integral and complementary role to prepare for a high DER future. As noted at the Track 2 Outreach Plan Workshop, the CEC proceeding examines

² See e.g. Vote Solar Opening Comments on EIS at 2.

³ See e.g. Public Advocates Office Comments on EIS, July 14, 2023 at 4.

the full range of benefits of DER and explores policy options to grow DER *beyond their current rate of adoption*. Anticipating a “high DER future,” both Commissions should also anticipate the success of these policy options and develop methods to forecast accordingly. This includes integrating both the growth scenarios and benefits (or “value” of DERs) for which the DER OIIP will develop the necessary methods, as detailed in the next section of this comment. *We stress the importance of resuming the CEC’s DER OIIP as soon as possible, which has paused following an encouraging kickoff workshop over a year ago on June 1, 2022.*

It is crucial for development of Part 2 of the EIS to coordinate with these cross-Commission efforts, in particular to realize significant benefits of DERs in DACs and other ESJ communities, and for the overall electrical system through decreased bulk and associated infrastructure investment to the benefit of all ratepayers.

B. Part 2 of the EIS Should Include Adequate Costs and Benefits of DERs.

“Value from DERs has failed to be fully captured in distribution planning as it currently exists, and this should be a major component of any Part 2 study and further recommendations for DPP going forward.”⁴ We agree.

As the Ninth Circuit stated in *Center for Biological Diversity v. National Highway Traffic Safety Administration* (“NHTSA”), where an agency must evaluate the costs and benefits of regulatory action, “it cannot put a thumb on the scale by undervaluing the benefits and overvaluing the costs” of that action.⁵ In that case, the court rejected as arbitrary the agency’s

⁴ Vote Solar Opening Comments on EIS at 7.

⁵ *Center for Biological Diversity v. Nat. Highway Traffic Safety Admin.* (“NHTSA”) (9th Cir. 2008) 538 F.3d 1172, 1198-1201 (agency rule was arbitrary and capricious for failing to adequately monetize environmental factors); *see also Nat. Ass’n of Home Builders v. E.P.A.* (D.C. Cir. 2012) 682 F.3d 1032, 1040 (“[W]hen an agency decides to rely on a cost-benefit analysis as part of its rulemaking, a serious flaw undermining that analysis can render the rule unreasonable.”); *California v. Bernhardt* (N.D. Cal. 2020) 472 F.Supp.3d 573, 615-16 (“Where an agency chooses to engage in a cost-benefit analysis, it cannot short shrift the benefits side of the equation by failing to monetize certain benefits.”), *appeal*

decision to ignore the benefits of carbon emissions reductions from increased gas mileage standards even though the agency admitted the value was not “zero.”⁶

Our prior comments in this proceeding have detailed the Commission and CEC’s ongoing work to determine the value of resiliency, local air quality improvements, and other societal or non-energy benefits. The SB 350 Low-Income Barriers Study – Part A, recommendations from the DAC Advisory Group, the 2020 SB 100 Joint Agency Report, and the CEC 2022 IEPR Update note that this work will allow for an adequate valuation of benefits of energy resources, in particular to DAC and other ESJ communities. In fact, today, the CEC is holding a workshop to discuss RFP-23-801, which seeks to “[develop] and [implement] approaches to evaluate the social costs and non-energy benefits of the deployment of clean energy resources.”⁷ While that work is ongoing, the value of these and other non-energy benefits is certainly not zero, warranting adequate consideration at all levels of distribution planning, and inclusion in Part 2 of the EIS.

Moreover, the DER Action Plan 2.0 aims to “align the CPUC’s vision and actions to maximize ratepayer and *societal value* of an anticipated high DER future.” Outdated cost and benefit analysis frameworks should not hinder the clean energy transition any longer, especially in DAC and other ESJ communities. We commend Kevala on its bottom up approach, but urge the Commission to provide adequate direction for Part 2 of the EIS to maximize the effectiveness

docketed, No. 20-16801 (9th Cir. Sept. 17, 2020); *Montana Environmental Information Center v. U.S. Office of Surface Mining* (D. Mont. 2017) 274 F.Supp.3d 1074, 1093-99 (agency analysis that quantified benefits but not costs was inadequate).

⁶ *NHTSA*, 538 F.3d at 1198, 1200; *see also High Country Conservation Advocates v. U.S. Forest Service* (D. Colo. 2014) 52 F.Supp.3d 1174, 1190-93 (finding an analysis of costs and benefits arbitrary where the record did not suggest that costs were zero, but “by deciding not to quantify the costs at all, the agencies effectively zeroed out the cost.”).

⁷ CEC RFP-23-801 available at <https://www.energy.ca.gov/solicitations/2023-07/rfp-23-801-social-costs-and-non-energy-benefits>.

of that approach, and incorporate NEBs and social costs to ensure adequate cost-effectiveness and avoided cost assessments for distribution planning.

Similarly on the other side of the ledger, Part 2 of the EIS must refine its assessment of the costs of DERs. We concur with the Sierra Club,⁸ Utility Consumers' Action Network, and other parties: “the price of DER is forecasted to decline,” and “the significant bill savings estimated for participating customers would significantly shorten the payback periods—thereby increasing DER adoption rates.”⁹

Finally in regards to costs, Part 2 of the EIS must reflect the reality of growing and targeted funding towards DERs, including the federal prioritization of investment to DERs. For instance, the federal Environmental Protection Agency (“EPA”) has recently clarified “three priority project categories that are particularly impactful to achieving the [federal Greenhouse Gas Reduction Fund] program objectives and the near-term climate goals of the United States.”¹⁰ The first priority project area EPA lists is “Distributed Power Generation and Storage.”¹¹ This includes “[p]rojects, technologies, or activities that generate and/or store zero-emissions power near to the point of use, instead of in centralized plants.”¹² Examples include distributed solar, stand-alone energy storage, and community-wide microgrids.¹³ EPA is also

⁸ Sierra Club Opening Comments on EIS at 4 (“DERs include many nascent technologies and still more technologies that have demonstrated year over year cost reductions. And as DER technologies become more available, associated costs like installation and insurance will predictably decrease. As just one example, insurance for battery storage has dropped as insurers become more comfortable with its risks.”)

⁹ UCAN Opening Comments on EIS at 4, 7.

¹⁰ EPA’s Implementation Framework for the Greenhouse Gas Reduction Fund, *available at* https://www.epa.gov/system/files/documents/2023-04/GGRF%20Implementation%20Framework_730am.pdf

¹¹ *Id.* at 16.

¹² *Id.*

¹³ *Id.*

developing a program—Solar for All—that seeks to concentrate distributed solar and storage in low-income and disadvantaged communities.

C. Part 2 of the EIS Should Include a Sufficient Range of DERs.

The Center, 350 Bay Area and The Climate Center concur with multiple party comments on the need to include an adequate range of DER technologies in Part 2 of the EIS.¹⁴ Examples of omitted mitigation strategies that should be included in Part 2 include: the full potential grid and ratepayer benefits of demand response options, including demand flexibility, virtual power plants and bi-directional electric vehicles. In particular, Track 2 of this proceeding will assess how a distribution system operator (“DSO”) can serve a high DER future. As Clean Coalition notes, “coordinated DER management has the potential to increase the value of DER to as much as 140% of the value that the average DER can create.”¹⁵ If the Commissions’ anticipated high DER future assumes a DSO, Part 2 of the EIS should include the relevant benefits of a DSO.

Overall, achievement of a high DER future will provide the needed brake to the acceleration of system infrastructure costs of bulk system transmission and distribution investments. This holds down the IOUs’ revenue requirement to the benefit of all households, especially those with higher energy burdens. In this regard, the Center, 350 Bay Area and The Climate Center concur with Sierra Club’s opening comments proposing energy equity and refined energy burden cost analysis for consideration in Part 2 of the EIS.¹⁶ We respectfully request the Commission to solicit additional party input as Kevala develops this and additional scenarios for Part 2 of the EIS.

¹⁴ See e.g. Vote Solar Opening Comments on EIS at 5-7; Clean Coalition Opening Comments on EIS at 2-3; Opening Comments of the Vehicle-Grid Integration Council on the EIS at 2-4; Mainspring Opening Comments on EIS at 3-4; Sierra Club Opening Comments on EIS at 4, 7.

¹⁵ Clean Coalition Opening Comments on EIS at 2.

¹⁶ Sierra Club Opening Comments on EIS at 9-11.

II. The EIS Must Anticipate Electrification of Transportation at Indirect Sources, Including Ports and Warehouses.

Community, environmental justice, health and environmental groups are aligned in the need to decrease transportation emissions from indirect sources, including warehouses and commercial marine ports.¹⁷ The Commission’s planning efforts, consistent with local and regional approaches to reduce this pollution, must consider mitigating and eliminating these disproportionate impacts to low-income communities of color.

We therefore concur with the Port of Long Beach on the need for the Commission and the EIS to anticipate the electrification of vessels, trains, boats, off-road vehicles, drayage trucks, and other sources of pollution from freight and goods movement.

III. Failure to Adequately Plan for Deployment of DERs in DAC and Other ESJ Communities Subjects the Commission to Potential Civil Rights Violations.

Title VI of the Civil Rights Act of 1964 prohibits programs or activities receiving federal financial assistance that affect human health or the environment from discriminating on the basis of race, color, or national origin.

California’s corollary Government Code section 11135 similarly prohibits programs or activities funded or administered by the state from exacerbating a disproportionate adverse impact on a protected class. Notably, a program or activity violates section 11135 even if there is no discriminatory intent.¹⁸

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¹⁷ See e.g. Letter to South Coast Air Quality Management District (September 2022) available at [http://www.scaqmd.gov/docs/default-source/rule-book/Proposed-Rules/pr-2306/2022-092022-southcoast-aqmd-indirect-source-rule-for-commercial-marine-ports-\(pr-2304\)-comment-letter-v1411.pdf?sfvrsn=8](http://www.scaqmd.gov/docs/default-source/rule-book/Proposed-Rules/pr-2306/2022-092022-southcoast-aqmd-indirect-source-rule-for-commercial-marine-ports-(pr-2304)-comment-letter-v1411.pdf?sfvrsn=8)

¹⁸ See *Darensburg v. Metropolitan Transp. Com’n*, 636 F.3d 511, 518 (9th Cir. 2011).

As Vote Solar and other parties detail in opening comments, we cannot repeat the mistakes of the past, and the limited hosting capacity of the grid in DACs is well documented.¹⁹ Especially with the federal and state funding and related programs designed to not only deploy but *prioritize* DERs, failing to similarly prioritize mitigation strategies in DACs will result in a disparate distribution of benefits and resultant harms.

The risk of disparate distribution of benefits is heightened as the State begins to retire gas power plants. SB 887 requires the CEC and CPUC in collaboration with CAISO to “[p]rovid[e] resource projections that . . . substantially reduce, no later than 2035, the need to rely on [gas plants] in local capacity areas.” This includes consideration of alternatives to transmission capacity upgrades—including non-wires alternatives—to meet electricity demand following retirement of gas plants.

As detailed in the 2022 IEPR Update:

While the state is transitioning to a clean energy future, many Californians are still burdened by the polluting energy system of the past and present and lack equitable access to clean, affordable, and reliable energy. As Lori Pesante with the Dolores Huerta Foundation emphasized at the July 20, 2022, IEPR workshop, we have been historically extractive in nature, extractive from our people, from our land, and from our resources.²⁰

To remedy past discrimination, the Commission must not only understand where distribution planning prioritization should occur, but also act on appropriate mitigation strategies, especially to deploy state and federal funds directed to DERs.²¹

¹⁹ See e.g. Vote Solar Opening Comments on EIS at 5, *citing* Brockway, A.M., Conde, J. & Callaway, D. Inequitable access to distributed energy resources due to grid infrastructure limits in California. *Nat Energy* 6, 892–903 (2021).

²⁰ 2022 IEPR Update at 15.

²¹ See also Vote Solar Opening Comments on EIS at 6 (“Understanding where distribution planning prioritization should occur, can be guided by looking through the lens not just of where the highest load will be, but where are the communities who can benefit most from a rapid transition and where the grid may not be ready to actively accommodate high levels of DER in 2023 and beyond.”)

Finally, Part 2 of the EIS should not be so static in regards to status quo rate structures. Instead, the Commission should explore its authority to set “just and reasonable rates” in conjunction with public and private electric vehicle adoption and electrification rates in a high DER future to accelerate achievement of the State’s climate and equity goals.

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Respectfully submitted,

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