BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Consider Revisions to Electric Rule 20 and Related Matters	Rulemaking 17-05-010 (Filed May 11, 2017)

LEAGUE OF CALIFORNIA CITIES COMMENTS ON ASSIGNED COMMISSIONER REYNOLDS' PHASE 2 SCOPING MEMO

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COMMENTS OF THE LEAGUE OF CALIFORNIA CITIES ON THE ASSIGNED COMMISSIONER'S PHASE 2 SCOPING MEMO

Pursuant to Rule 6.2 of the California Public Utilities Commission ("CPUC") Rules of Practice and Procedure, the League of California Cities ("Cal Cities") submits the following comments concerning the Assigned Commissioner Alice Reynolds' Scoping Memo and Ruling dated August 16, 2022 ("Scoping Memo") setting forth the issues, need for hearing, schedule, category, and other matters necessary to scope this proceeding pursuant to Public Utilities Code Section 1701.1 and Article 7 of the Commission's Rules of Practice and Procedure.

I. Introduction

Cal Cities is an association of 479 California cities dedicated to protecting and restoring local control to provide for the public health, safety, and welfare of their residents, and to enhance the quality of life for all Californians. Because Rule 20 is a

statewide program that impacts each city within California by providing important funding to cities for the conversion of existing overhead electric facilities to underground, Cal Cities has a vested interest in the outcome of Rulemaking 17-05-010.

Previously in this rulemaking proceeding, Cal Cities submitted Comments on the Energy Division Staff Proposal for Improving the Electric Tariff Rule 20 Undergrounding Program (submitted on April 20, 2020), and Comments on the Proposed Phase I Decision Revising Electric Rule 20 and Enhancing Program Oversight (submitted on April 27, 2021). In our previous comments, Cal Cities:

- Urged the CPUC not to discontinue allocating work credits and not to ban the sale, trade or donation of unused work credits; and
- Cautioned the CPUC against relying too heavily on Rule 20B and 20C as replacements for Rule 20A based upon the Constitutional restrictions on local revenue raising authority.

Cal Cities appreciates this next opportunity to provide comments on the issues identified in the Assigned Commissioner Alice Reynolds's Scoping Memo.

II. General Comments

The Scoping Memo reviews the five issues that will be considered in Phase 2 of this proceeding. Cal Cities briefly comments on Issues No. 3 and No. 5 as follows:

A. Issue No. 3: Whether to add Rule 20A project eligibility criteria for wildlife safety and emergency-related undergrounding or otherwise modify Rule 20A project eligibility criteria.

Cal Cities strongly supports including wildlife safety and emergency-related undergrounding as eligible criteria for Rule 20A work credits. In February of 2020, Cal Cities' Board of Directors adopted a policy stating that Cal Cities "supports the inclusion of wildfire mitigation as an eligible project to receive California Public Utilities' Rule 20 funds and efforts to expand funding for Rule 20." Cal Cities is aware of PG&E's plan to underground approximately 10,000 miles of powerlines in or near high fire-threat areas. This important effort can be supplemented by Rule 20A locally-identified wildfire safety and emergency projects that might otherwise not be high priority for PG&E but hold great significance locally and for overall wildfire mitigation.

B. Issue No. 5: Whether the Commission or utilities should enhance engagement with local governments to inform utility investments in undergrounding for safety, resilience, or emergency-related purposes.

Cal Cities strongly supports the CPUC and the utilities enhancing engagement with local governments to inform utility investments in undergrounding for safety, resilience, or emergency-related purposes. Protecting the public welfare is a core municipal responsibility, and therefore cities play a critical role in undergrounding projects.

Indeed, California law requires cities' general plan safety elements to address the risk of fire for land classified as state responsibility areas and very high fire hazard severity zones.[1] Cities' general plan safety elements must also include a set of goals,

[1] Cal. Gov. Code, § 65302(g)(3).

policies, and objectives for the protection of the community from the unreasonable risk of wildfire and a set of feasible implementation measures designed to carry out these goals, policies and objectives.[2] Both private development projects and public works' projects are required to be consistent with these goals, policies, and objectives.[3] Enhanced engagement with local governments will provide the CPUC and utilities with the benefit of the information generated in general plans and will help to coordinate the shared interest of the CPUC, the utilities, and local governments in safe and resilient communities.

Enhanced engagement may also advance the development of much-needed housing in California. In 2018, the State California Environmental Quality Act ("CEQA") Guidelines[4] adopted by the Governor's Office of Planning and Research added "wildfire" to the list of environmental topics that should be analyzed in the Environmental Checklist, which is contained in Appendix G to the CEQA Guidelines. One inquiry to determine whether a housing development project will have a significant impact on the environment is: "Will the project require the installation or maintenance of associated infrastructure (such as roads, fuel breaks, emergency water sources, power lines or other utilities) that may exacerbate fire risk or that may result in temporary or ongoing impacts to the environment."[5] If this initial analysis concludes that the project may have a significant environmental impact, an Environmental Impact Report ("EIR") is

[2] *Id.*
[3] Cal. Gov. Code, § 65860.
[4] Title 14, Cal. Code Regs., §§ 15000 et seq.
[5] Title 14, Cal. Code Regs., § 15000, Appendix G, Section XX.

required. Requiring an EIR adds cost, delay, and litigation risk to a housing development project. Coordination, through enhanced engagement, between the Commission, the utilities and local governments on wildfire safety and land use policies in order to minimize fire risk may make it easier to approve and construct much-needed housing.

III. Response to Questions for Party Comments

A. Question No. 1: Should the Commission direct any of the investor-owned utilities to reallocate unused Rule 20A work credits of inactive communities to active projects with insufficient work credits in underserved and/or disadvantaged communities? If so, how should underserved communities and/or disadvantaged communities be defined and prioritized?

Decision (D.) 21-06-013 describes four "significant challenges" within the existing Rule 20 program:

- Inequitable Usage of Ratepayer Funds: "The program's design challenges coupled with the different sizes of communities hinders program participation and project completion."
- Outdated Program Eligibility Criteria: "Numerous communities expressed eagerness to update Rule 20A so that they can leverage the program to support wildfire mitigation and meet other community safety and reliability objectives rather than maintain the program's focus on aesthetic enhancement."
- Flawed Work Credits System: "Insufficient work credits and ever-increasing project cost estimates prevents communities from starting and completing projects."

- High Project Costs and Project Delays: "Communities shared many instances where project costs often exceeded design cost estimates and project timelines have been drawn out seven years or longer."

Cal Cities respectfully suggests that before directing the reallocation of unused Rule 20A work credits of inactive communities to active projects with insufficient work credits, the Commission consider a response to these significant challenges. For example, if the Commission chooses to broaden the use of Rule 20A funding to include wildfire mitigation, "inactive communities" may become "active."

B. Question No. 2: Are there any barriers to the conversion of Rule 20A projects with insufficient work credits to Rule 20B or Rule 20C projects? Should there be other mechanisms to enable local jurisdictions and individuals to contribute to the costs of Rule 20A projects with insufficient work credits?

Cal Cities suggests that further consideration be given to the following before considering the conversion of Rule 20A projects with insufficient work credits to Rule 20B or Rule 20C projects:

1. The Constitution's restrictions on local revenue-raising authority impose barriers to Rule 20B and Rule 20C projects.

Under Rule 20B, ratepayers reimburse around 20 to 40 percent of the costs of the project and the local government or private property applicant bears the balance of the project cost. For Rule 20C projects, the applicant – often an individual property owner or developer – pays for the full cost of undergrounding, less the cost of the estimated

salvage value and depreciation of the removed overhead electrical facilities.[6] The assessment districts and community facilities districts that have historically been used to fund Rule 20B and Rule 20C projects are subject to significant Constitutional restrictions and require property owner approval.[7] The Constitution's requirement to assess only "special benefit" is particularly challenging and limits the use of assessment districts for this purpose.[8] Similarly, the Constitution's elevated voter approval threshold for special taxes presents a significant barrier to the formation of a community facilities district. In light of these restrictions, reliance on Rule 20B or 20C projects as receptacles for unused Rule 20A funds will likely result in fewer undergrounding projects being completed.

2. Cal Cities urges the CPUC to consider whether ratepayers generally should contribute to projects that benefit private property owners primarily.

The projects funded through Rule 20A provide significant benefits to residents and commercial property owners in cities. Undergrounding improves community aesthetics by removing unsightly poles and wires, and benefits adjacent tree canopies. These aesthetic benefits improve residential and commercial property values. Further, undergrounding improves public safety by reducing the number of car-pole accidents, and other traffic-related incidents. Removing poles from the public right-of-way also has benefits for pedestrian traffic, particularly for those pedestrians with sight or mobility

[6] CPUC Decision (D.) 21-06-013, page 7.
[7] Cal. Str. & Hwy. Code, §§ 10000 et seq.; Cal. Const., Art XIIID, § 4
[8] See, for example, *Town of Tiburon v. Bonander* (2009) 180 Cal.App.4th 1057.

concerns. Underground power cables are safer to both people and wildlife. Undergrounding power cables can also strengthen utility systems and provide greater resilience and lower maintenance needs. Underground cables are better protected against extreme weather and other catastrophic events than overhead lines. The general (and broad) rate-payer base funds these general community benefits.

On the other hand, Rule 20B projects may be for any undergrounding purpose and ratepayers fund around 20 to 40 percent of the costs. As mentioned above, private property owners fund the majority of the cost which reflects the "special benefit" that these projects provide to private property. Rule 20C projects are paid for entirely by an individual property owner or developer.

Cal Cities urges the CPUC to consider whether ratepayers generally should contribute to projects that benefit private property owners primarily.

IV. Final Recommendation and Conclusion

A. Cal Cities urges the CPUC to expand the local government work credit trading exception.

D.17-05-010 Conclusion of Law #7 provided, in part: "The Commission should provide exceptions for intra-county donations of work credits from county government to cities and towns within the county and to allow credit pooling amongst two or more adjoining municipalities for a project with community benefit for the adjoining municipalities."

Cal Cities urges the CPUC to allow credit pooling and donations of work credits by and between municipalities that are not necessarily adjoining. For example, credit

pooling and donations of work credits by and between municipalities that are not necessarily adjoining reflects the reality that "local" issues are not restricted in all cases to the incorporated boundaries of adjoining cities. Expansion of the program in this way will allow locally-elected officials working closest to the public to determine what is in the best interest of their communities.

B. Cal Cities commits to continuing participation and engagement in the work of the CPUC.

Cal Cities remains committed to participating and engaging in these proceedings so that the CPUC may properly consider local government interests. Thank you for the opportunity to submit these comments. Cal Cities looks forward to continuing to work with the CPUC and its staff on these issues. We respectfully request that the Commission's Docket Office be directed to accept these comments for filing.

Dated: September 15, 2022

Respectfully submitted,

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