

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)

**OPENING COMMENTS OF THE CALIFORNIA STATE ASSOCIATION OF
COUNTIES ON THE ADMINISTRATIVE LAW JUDGE'S RULING REQUESTING
COMMENTS**

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The California State Association of Counties (CSAC) respectfully submits these Opening Comments on the Administrative Law Judge’s Ruling Requesting Comments, issued in this Rulemaking (R.) 17-05-010 (Electric Rule 20) on September 3, 2020 (September 3 ALJ Ruling). These Opening Comments are timely filed and served pursuant to the California Public Utilities Commission’s (Commission’s or CPUC’s) Rules of Practice and Procedure and the September 3 ALJ Ruling.

**I.
BACKGROUND**

CSAC is a nonprofit mutual benefit corporation under the California Nonprofit Mutual Benefit Corporation Law. CSAC is a lobbying, advocacy and service organization which represents all 58 counties of the State of California. CSAC is focused on advancing the vital public interest in effective, efficient and responsive local government. CSAC, under the name of the County Boards of Supervisors Association of California began meeting in 1895 and was later renamed CSAC in 1991 and is based in Sacramento, California. CSAC’s long-term objective is to significantly improve the fiscal health of all California counties so they can adequately meet the demand for vital public programs and services. CSAC has also been actively participating in the de-energization rulemaking (R.18-12-005) and the public safety power shutoff investigation (I.19-11-013).

II. SUMMARY

On February 13, 2020, the ALJ issued a Ruling (1) Issuing and Entering into the Record an Energy Division Staff Proposal for Improving the Electric Tariff Rule 20 Undergrounding Program (Staff Proposal); (2) Requesting Comments on the Pacific Gas and Electric Company's Rule 20A Audit Report; and (3) Setting a Schedule for Comment (February 13 ALJ Ruling). CSAC submitted Opening Comments on the February 13 ALJ Ruling on April 21, 2020.

The September 3 ALJ Ruling asks for party comments on several issues regarding Rule 20 reform, in light of developments related to COVID-19. The September 3 ALJ Ruling directs parties to reference earlier comment(s) and indicate any change in position in light of COVID-19. In addition, attached to the September 3 ALJ Ruling are three attachments: Rule 20A 10-Year Wind Down Implementation Staff Proposal (Attachment 1), Proposal for Rule 20B and Rule 20C Set Program Funding and Authorization (Attachment 2) and Cost Containment and Cost Transparency Proposal (Attachment 3).

III. CSAC COMMENTS ON RULE 20 REFORM ISSUES IDENTIFIED IN THE SEPTEMBER 3 ALJ RULING

A. Impact of the Current Economic Crisis on Continuing the Rule 20 Programs.

The September 3 ALJ Ruling asks parties whether it is reasonable to “continue to commit ratepayer funds to an aesthetic program.”¹ CSAC urges the CPUC to maintain the existing Rule 20A program with some modifications, as it is not solely focused on aesthetics, and the current recession does not warrant elimination of the program. In addition to being used for aesthetic purposes, proposed projects that meet the following criteria, as noted in page 22 of the Staff Proposal, also qualify for Rule 20A undergrounding:

¹ September 3 ALJ Ruling.

- Such undergrounding will avoid or eliminate an unusually heavy concentration of overhead electric facilities
- The street or road or right-of-way is extensively used by the general public and carries a heavy volume of pedestrian or vehicular traffic
- Wheelchair access is limited or impeded (SDG&E only)
- The street or road or right-of-way adjoins or passes through a civic area or public recreation area or an area of unusual scenic interest to the general public
- The street or road or right-of-way is considered an arterial street or major collector as defined in the Governor's Office of Planning and Research General Plan Guidelines

CSAC also supports refining the current Rule 20 public interest criteria and urges the Commission to expand it to include safety and reliability. It is important that counties interested in using the program for aesthetic purposes continue to have that option in order to improve the aesthetics of unincorporated communities. Additionally, it would be very beneficial to counties to expand the public interest criteria to include safety and reliability, such as wildfire hazard mitigation and for undergrounding along evacuation routes. In light of the dangerous wildfires the state has experienced in recent years, it would be valuable for counties to have the option to use the Rule 20A program for these purposes. Conversion of powerlines to underground would eliminate safety issues that could arise as a result of poles or wires blocking evacuation routes during natural disasters, and it would also increase traffic safety, as above-ground infrastructure reduces road user visibility and can lead to accidents. Counties expect the Rule 20A program to garner greater community support by expanding the public interest criteria to include safety and reliability.

While there is ample evidence that counties are facing significant economic challenges due to the pandemic-induced recession, the specific revenue impacts across all local jurisdictions in California remain unclear. Accordingly, it is too early to make significant changes to the Rule 20 program based on the perceived economic impacts of the COVID-19 pandemic, especially if any such changes would require greater contributions of funding from local governments in order to complete undergrounding projects.

Transaction and use taxes and the Bradley-Burns sales tax (“sales tax”) are significant discretionary revenue sources for California cities and counties. While retail sales and the resulting sales tax revenues decreased significantly nationwide in April, by August 2020 retail sales nationwide were already 2.6% percent higher than August 2019.²

The composition of sales, however, has changed, which will have varying implications for local jurisdictions depending on the make-up of local economies. For example, sales by vehicle dealers nationwide were 4% higher in August 2020, while sales by bars and restaurants were 15% lower.³ Moreover, a shift to online purchases during the pandemic will also have implication for the distribution of local sales tax revenues. According to the United States Commerce Department, consumers spent \$200.72 billion online in the second quarter of 2020, a 44.4% increase from \$138.96 billion for the same quarter the prior year.⁴ While “the Bradley-Burns sales tax is generally allocated to the jurisdiction where the sale is negotiated or the order is taken, the transactions and use tax is allocated to the district where the goods are delivered or

² Legislative Analyst’s Office; U.S. Retail Sales Update: August 2020; September 16, 2020; <https://lao.ca.gov/LAOEconTax/Article/Detail/545>

³ *Id.*

⁴ United States Department of Commerce, 2nd Quarter 2020 Retail E-Commerce Sales Report, August 18, 2020; <https://www.census.gov/retail/index.html>.

placed into use.”⁵ Accordingly, online sales may mean a windfall for transactions and use tax revenues for jurisdictions where many consumers are shopping at home, with decreases in revenues in jurisdictions where physical stores are located as transactions increasingly occur online.

Property taxes are a major discretionary revenue source for California counties. In fiscal year 2017-18, nearly a quarter of all county revenue was generated from local property taxes.⁶ While property tax payments due in April 2020 were not delayed, a significant recession could reduce property values, consistent with changes already occurring in the commercial rental market, sparking downward assessments and reductions in sales prices.⁷

Some local jurisdictions in California have tourist-based economies where aesthetic concerns are directly related to the desirability of their community as compared to competing tourist destinations. The COVID-19 pandemic resulted in significant reductions in transient occupancy tax (“TOT”) revenues, as orders to shelter in place reduced travel and tourism.⁸ For example, while the average county generated less than 1% of its total revenue from TOT in 2017-18, 22% of Mariposa County’s 2017-18 revenues came from TOT.⁹ Mariposa County’s fiscal year 2020-21 budget projected a nearly 40% reduction in TOT revenue.¹⁰

Given the uncertainty in the broader economic picture and the variation in impacts to the revenues of individual local governments attributed to the COVID-19 pandemic, it is vital that local governments continue to have access to the critical resources that the Rule 20A program

⁵ HdL Companies, Local Government Guide to California Sales, Use and Transaction Tax, November 2018, <https://www.hdlcompanies.com/images/Sales-Tax/HdL-CA-Sales-Tax-Booklet.pdf>.

⁶ CSAC Datapile, September 2020, <https://www.counties.org/post/datapile>.

⁷ UC Berkeley Labor Center, Fiscal Impacts of COVID-19 and California’s Economy, May 14, 2020, <https://laborcenter.berkeley.edu/fiscal-impacts-of-covid-19-and-californias-economy>.

⁸ *Id.*

⁹ CSAC Datapile, September 2020, <https://www.counties.org/post/datapile>

¹⁰ Mariposa County Budget Information, September 2020, <https://www.mariposacounty.org/7/Budget>.

provides in order to move forward with projects. It is too early to fully understand the implications of the COVID-19 crisis on local government revenues and individual ratepayers, aside from the fact that some segments of revenue were significantly impacted in the second quarter of 2020 due to the pandemic. Such impacts will, however, likely make it more difficult for local governments to complete undergrounding projects that rely on commitment of local matching funds, and could extend the time horizon for completing projects that rely on any such local funding.

B. Increasing Participation of Underserved and Disadvantaged Communities in Rule 20 Programs in Light of the Economic Crisis.

The September 3 ALJ Ruling asks parties whether “in light of the recession,” it would be feasible for underserved and disadvantaged communities to participate in the Staff Proposal’s equity criteria for underserved and disadvantaged communities if it were implemented for the reformed program.¹¹ CSAC remains strongly opposed to the Staff Proposal’s recommendation to sunset the Rule 20A program and replace it with a modified Rule 20B program with tiered ratepayer contributions. As noted in the comments CSAC previously submitted in response to the Staff Proposal, the proposed ratepayer contribution would create additional barriers for historically underserved communities in completing undergrounding projects. This would not have been a feasible program proposal prior to the start of the current recession and would be less feasible during this time. The proposal does not resolve the equity issues that small and disadvantaged communities face in completing undergrounding projects. Small and disadvantaged communities often cannot leverage the types of funds needed to complete Rule 20B projects and may take longer to recover from the recession. Since Rule 20A undergrounding is paid for by ratepayers from across counties, not just those located in underserved or

¹¹ September 3 ALJ Ruling.

disadvantaged communities, Rule 20A undergrounding could help better serve those communities than Rule 20B or Rule 20C, which require direct financial participation from individual utility customers.

CSAC also opposes the recommendation to replace Rule 20A allocations with a grant-based program. As noted in CSAC's previous response to the Staff Proposal, a grant-based program would create additional barriers to participation by many communities, particularly disadvantaged communities and smaller communities. These communities often lack the staff capacity to apply for and operate grant-based programs, especially now due to the local economic challenges that have arisen since the start of the pandemic. County general fund revenues have decreased, although the severity of impacts has varied across jurisdictions. While there are some signs of recovery, including the aforementioned nationwide recovery in retail sales in August, the economic prognosis is unclear and counties may soon be in a position in which they must furlough staff, lay off staff, or freeze hiring of new staff if significant revenue sources, including property tax, are affected.

C. Rule 20A Program Wind Down Implementation Details.

The September 3 ALJ Ruling asks parties for comments on the Staff Wind Down Implementation Proposal contained in Attachment 1.¹² As previously noted, CSAC is opposed to eliminating the Rule 20A program and has concerns with the accelerated timeline summarized in the Staff Wind Down Implementation Proposal included in Attachment 1. However, if the CPUC decides to move forward with the wind down implementation proposal, CSAC asks that the CPUC consider the following requests:

Delay execution of the Staff Wind Down Implementation Proposal. While CSAC opposes the wind down of the Rule 20A program, we request that the process to sunset the Rule

¹² September 3 ALJ Ruling.

20A program begin in 2022 so that counties have ample time to prepare for it. Counties are currently facing economic challenges and are responding to the pandemic and wildfires. Beginning the process to sunset the Rule 20A program in late 2020 or early 2021 would put counties on very short notice at a time when they are responsible for responding to significant challenges.

Set timeline to form an underground district to be no less than 18 months. Rather than requiring local governments to notify their electric utility of their commitment to allocate and use some or all of their Rule 20A work credits within nine months of the CPUC approval of their utility's Advice Letter to be considered an "Active Community" (noted in (b) of Attachment 1), CSAC asks that the CPUC consider extending the deadline from nine months to 18 months. It typically takes more than nine months to establish a district, which requires the following: local agency to prioritize undergrounding locations, meet with elected, outreach to communities, meet with utilities to establish proper district boundaries, prepare the boundary map and route to utilities for review and concurrence. The final step is to conduct a public hearing and prepare government documents. This does not factor in the potential for modifications as a result of community outreach. Eighteen months is a much more reasonable timeline for this milestone.

Allow work credit trading among local governments. This can be an effective way for counties to leverage resources for their projects. While CSAC opposes the elimination of the Rule 20A program, counties and cities, many of which have historically received allocations of work credits that are too small to realistically complete an undergrounding project in their jurisdiction, should be allowed to trade these work credits with any other local jurisdiction within the relevant service territory. The Staff Proposal proposes an arbitrary limitation to only allow

trading of work credits from an individual county to a city or cities within the county's jurisdiction.¹³ Under such a proposal, three California counties (Mariposa, Trinity and Alpine) would be functionally precluded from any such trading, as there are no incorporated cities within the county boundaries. Moreover, cities would be prohibited from trading their work credits altogether.

There is no rational basis for allowing counties to trade with individual cities within their jurisdiction, while precluding any other type of trading because the costs of Rule 20A undergrounding projects are ultimately spread across all ratepayers in the utility's service area. Counties vary significantly in the number of incorporated jurisdictions located within their boundaries; ranging from zero in the aforementioned counties, to 88 within the County of Los Angeles.¹⁴ Under the CPUC staff proposal, jurisdictions in counties with fewer cities would be disadvantaged compared to jurisdictions in counties with a greater number of potential trading partners. Counties with fewer cities tend to be more rural and less populous than urban counties, and therefore receive smaller allocations of Rule 20A work credits under the current allocation formula. Ratepayers in these jurisdictions continue to support undergrounding projects in other jurisdictions in their local electrical utility's service territory. While CSAC favors a continuation with the Rule 20A program, with modifications as suggested elsewhere in our comments, allowing continued trading of work credits during a phase-out period would ensure that smaller and relatively disadvantaged communities, both cities and counties, are able to exchange work credits for funding that can be used for other community priorities.

¹³ See e.g., Staff Proposal, at pp. 8-9.

¹⁴ California State Association of Counties, Cities within Each County, September 2020, <https://www.counties.org/cities-within-each-county>.

Require utilities to submit Tier 2 Advice Letter publicly. The information that the utility is required to submit to the CPUC via the Tier 2 Advice letter (referenced in Attachment 1 (d)(iii)) should be posted on the utility's website in order for the public to have access to it.

D. Proposal for Rule 20B and Rule 20C Set Program Funding and Authorization Period.

The September 3 ALJ Ruling asks parties for comments on each component of the Rule 20B and Rule 20C proposal contained in Attachment 2.¹⁵ One of the primary objectives of the rulemaking proceeding is to allow smaller and disadvantaged communities with greater access to the Rule 20 program. However, as previously noted, CSAC has significant concerns that eliminating the Rule 20A program and modifying Rule 20B to incorporate tiered ratepayer contributions is unlikely to achieve this objective. The ratepayer contribution would likely be insufficient to reduce the barriers that currently prevent smaller and more disadvantaged communities from participating in the Rule 20 program.

The September 3 ALJ Ruling also asks whether the Commission should establish a complaint resolution process or procedure specifically to address complaints of participants facing challenges coordinating with the utilities' Rule 20B and Rule 20C program.¹⁶ CSAC recommends that the CPUC establish a complaint resolution or procedures specifically to address complaints of participants facing challenges coordinating with the utilities' Rule 20B and Rule 20C program.

E. Cost Containment and Cost Transparency for Undergrounding Projects.

The September 3 ALJ Ruling asks parties to comment on the "best mechanisms available to put downward pressure on costs, and the cost containment and cost transparency proposals in

¹⁵ September 3 ALJ Ruling.

¹⁶ September 3 ALJ Ruling, Attachment 2, Question j.a.

Attachment 3.”¹⁷ CSAC supports measures to enhance transparency and improve accountability to ensure that Rule 20A credits are maximized. Accountability metrics should include disclosure of change orders leading to cost increases and sharing the cause for the change. If the cost increase is caused by the utility or the contractor, the cost should not be absorbed by Rule 20A credits. In some cases, it has been difficult to assess whether or not the utility has been spending funds in a cost-effective and appropriate manner. Further, the process by which contractors are selected and funds spent are not always readily available, which leads to a lack of transparency by the utility company. Implementing additional oversight measures to ensure cost containment and cost transparency would lead to greater public trust and confidence in public works projects.

Attachment 3 to the September 3 Ruling sets forth several questions for the Parties:

- a. *Should the Commission adopt additional program management oversight such as a list of enforcement violations that may become citations in the event of a failure to maintain prudent program management practices?*

CSAC is supportive of additional program management oversight to ensure that the utilities are maintaining prudent program management practices. In some cases, it appears that the utilities do not have enough staff dedicated to the Rule 20A program and that delays are sometimes the result of insufficient staffing levels at the utility company.

- b. *The February Staff Proposal describes enhanced annual reporting recommendations for the Rule 20A reports on work credit allocation and project completion (see pages 47-48.) What, if any, additional end of year program activity, cost ratios, and/or oversight metrics should the Commission require in the utility’s reports to ensure reasonable and prudent program administration?*

CSAC suggests that project progress updates and explanations for any delays be added to the annual reporting recommendations for Rule 20A reports on work credit allocation and project completion.

¹⁷ September 3 ALJ Ruling.

- c. *Currently local governments generally do not build their own facilities and receive reimbursement under the Rule 20A program. There are exceptions. SCE recently allowed the City of Newport Beach to manage and bid a Rule 20A project. SDG&E contracted the City of San Diego to construct and inspect Rule 20A project service laterals between 2016 and 2019. PG&E is currently awarding design-build contracts, including electric design, due to staff shortages.*
- i. *Should the local government be able to request to plan, design/engineer, bid, construct, and/or manage undergrounding projects and receive funding from the utility under wind down Rule 20A, modified 20B, and/or modified Rule 20C programs for such project work?*

CSAC is supportive of giving local governments the option to request to plan, design/engineer, bid, construct, and/or manage undergrounding projects and receive funding from the utility under the wind down plan Rule 20A, modified 20B, and/or modified Rule 20C programs for such project work if they choose to do so. However, counties should not be required to perform and manage all elements of Rule 20, as they may not have the in-house capacity or expertise to lead and complete undergrounding projects on their own.

- ii. *Please provide examples of how much money a local government saves when they perform a project task as part of a Rule 20A project, what causes the cost savings, and how.*

CSAC does not have a response to this question at this time, but reserves the right to address this issue in Reply Comments.

- iii. *What percentage of project funds should be provided to the local government at which stages to ensure sufficient funds to incentivize timely, on-budget completion?*

Local governments that perform and manage all elements of Rule 20 projects should be provided with 100% of funds up front to allow local agencies to complete projects as timely as possible, especially small rural agencies, which often do not have funds available to front the money and wait for reimbursement.

- d. *If local governments were to be authorized to perform/manage all elements of a Rule 20 project, the utility would still determine acceptable design criteria for a project, but utility personnel or contractors would not need to be directly involved in project construction beyond inspection. Should the utility be able to charge an overhead fee on the Rule 20A, 20B, and/or 20C project to determine the acceptable design criteria for the project and inspect? How much?*
- i. *Should the utility charge an overhead fee if a communications provider performs/manages the project? If so, what is a reasonable cap?*

CSAC does not have a response to this question at this time, but reserves the right to address this issue in Reply Comments.

F. Comments on the AzP Supplement.

The September 3 ALJ Ruling asks parties for comments on the Supplement to the Final Audit Report Dated October 21, 2019 (Supplement) prepared by AzP Consulting, LLC (AzP)¹⁸ CSAC supports efforts to enhance transparency and improve accountability with regards to the costs of utility undergrounding districts. CSAC supports CPUC implementation of checks, balances, and disclosures for the utilities to adhere to in order to allow local governments to validate final utility undergrounding district costs.

G. Commission Determination on any Outstanding Issues from Administration of Rule 20 Programs for its Inception through December 31, 2020.

The September 3 ALJ Ruling asks parties to comment on whether the Commission “should review Rule 20A, 20B, and 20C programs, what the Commission should review of the implementation of each of the Rule 20 programs, and how findings should inform the future of Rule 20 programs.”¹⁹ CSAC urges the CPUC to maintain the Rule 20A program with modifications to enhance transparency and improve accountability for undergrounding utility districts and to expand the public interest criteria to include safety and reliability. CSAC believes that slight modifications to the programs would be more successful than its elimination. Many

¹⁸ September 3 ALJ Ruling.

¹⁹ September 3 ALJ Ruling.

communities, including disadvantaged communities, have utilized the existing Rule 20A program and completed many underground utility district projects, which has enhanced unincorporated communities. While there are some issues with the program, it would be more beneficial to make modifications to it in order to strengthen it, rather than completely eliminate it. The proposed elimination to the Rule 20A program would create additional barriers for disadvantaged communities in completing undergrounding projects.

IV. CONCLUSION

CSAC appreciates the opportunity to submit these Opening Comments. As discussed above, CSAC continues to support the Rule 20A program with the modifications proposed in these Comments. It is too early to understand the implications of the COVID-19 pandemic on revenues and local economies, so the perceived impacts of the pandemic-caused recession should not be used as a rationale for changes in the Rule 20A program.

Respectfully submitted,

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