

**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 THE PROPOSED
PHASE 1 DECISION REVISING ELECTRIC RULE 20 AND
ENHANCING PROGRAM OVERSIGHT**

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April 27, 2021

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Pursuant to Rule 14.3 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 proposed Phase 1 Decision Revising Electric Rule 20 and Enhancing Program Oversight, issued and entered into the record on April 7, 2021 (“Proposed Decision”).

I. Introduction

Cal Cities is an association of 476 California cities dedicated to protecting and restoring local control to provide for the public health, safety, and welfare of their residents, and to enhance 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 undergrounding of overhead electric infrastructure, Cal Cities and its members have a vested interest in the outcome of Rulemaking 17-05-010.¹

Cal Cities appreciates the opportunity to comment on the Proposed Decision. Cal Cities supports many of the decisions included in the Proposed Decision, including the decision not to establish a wind down period for the use of existing work credits, and the decision to implement transparency and accountability measures. Cal Cities also stands ready to confer with the Investor Owned Utilities (“IOUs”), as they update the Rule 20 Guidebook.

However, as further explained below, Cal Cities strongly opposes the Proposed Decision’s discontinuance of new work credit allocations after December 31, 2022, and its ban on trading, selling, or donating unused work credits. Cal Cities wishes to point out the Proposed Decision on these issues rests on a factual error—that, notwithstanding the Proposed Decision’s statement to the contrary, the practical impact of these decisions will be to sunset Rule 20A, leaving a large balance of unused, unusable work credits. Such a result is unacceptable, and appears to go unaddressed in Phase 2 of this rulemaking proceeding, as defined by the Proposed Decision.

¹ The significant benefits of Rule 20A are discussed at length in the record, but bear repeating here: 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, the potential for live-wire contact injuries, and the number of fires caused by downed-wire incidents. Removing poles from the public right-of-way also has benefits for pedestrian traffic, particularly for those pedestrians with sight or mobility concerns. Moreover, undergrounding generally results in improved system reliability and efficiency by reducing operation and maintenance costs, tree trimming costs, storm damage, and losses of electricity sales caused by power outages.

II. Comments

A. Cal Cities urges the CPUC not to discontinue allocating work credits or ban the sale, trade, or donation of unused work credits.

Cal Cities understands there are existing obstacles to the effective and efficient administration of the Rule 20A program. Section 3.2 of the February 13, 2020 CPUC Staff Proposal for Improving the Electric Tariff Rule 20 Undergrounding Program (“Staff Proposal”) revealed that there is a substantial balance of unused or uncommitted work credits and that many communities do not have enough work credit allocations to complete undergrounding projects. The Staff Proposal explains that these challenges stem from several underlying issues: reductions in funding, the exponentially increasing costs of undergrounding, a lack of transparency of the costs related to undergrounding, a lack of transparency in how Rule 20A projects are prioritized, insufficient staffing by IOUs for Rule 20A projects, and stringent criteria for determining which projects are eligible for Rule 20A funding have all contributed to inefficiencies in the delivery of Rule 20A projects.

Instead of tackling these issues head on and holding the IOUs accountable for the responsible stewardship of Rule 20A, the Proposed Decision inexplicably eliminates the allocation of work credits after December 31, 2022, without explaining how the \$1.56 billion² in unused and uncommitted Rule 20A work credits will be used or how future ratepayer contributions will be managed. All the while, the Proposed Decision states that

² Finding of Fact 3 in the Proposed Decision.

the CPUC will not sunset Rule 20A.³ This statement is factually irreconcilable with the record, which demonstrates that many cities cannot reap the benefits of a single Rule 20A project despite having contributed ratepayer funds for decades, because of the high cost of undergrounding and the low levels of work credit allocations to many cities.

Finding of Fact 6 in the Proposed Decision notes that many communities have not been able to accrue enough Rule 20A work credits for a single project. In addition, Page 29 of the Staff Proposal explains, “Smaller communities with insufficient allocations may save up work credits for decades but see the value of their saved allocations diminish in value due to inflation and rising project costs.” These facts combined with the Proposed Decision’s recommendation to discontinue the allocation of work credits after December 31, 2022 lead to the logical conclusion that, if the CPUC adopts the Proposed Decision, the Rule 20A program *will* sunset for cities for that have not accumulated sufficient work credits to complete a Rule 20A project by December 31, 2022.

This result will be exacerbated if the CPUC simultaneously bans the practice of selling, trading, or donating unused work credits. The record is replete with evidence that many cities across the state would not be able to complete Rule 20A projects but for the practice of trading, selling, or donating work credits.⁴ Work credit selling, trading, and donating is the only existing mechanism identified in the record that is available to ensure that both: (1) the \$1.56 billion in unused Rule 20A work credits can fully be utilized to

³ Conclusion of Law 2 in the Proposed Decision.

⁴ Comments on Staff Proposal by Cal Cities, the City of Foster City, the City of Laguna Beach, the City of Hayward, the City of Menlo Park, the City of Newport Beach, and the County of San Diego.

further the purposes of the Rule 20A program, and (2) communities that have thus far been unable to use work credits are able to derive some benefit from their ratepayer contributions.

If the CPUC does not wish to sunset Rule 20A, Cal Cities strongly urges the CPUC not to discontinue allocating work credits after December 31, 2022 and not to ban the sale, trade, or donation of unused work credits. If the CPUC takes issue with how work credits are currently being sold, traded, or donated, a work credit trading marketplace could be used—as the Staff Proposal suggests—to ensure that transactions are fair, promote accountability and transparency, and encourage efficiencies within the Rule 20A program.

B. If the CPUC does ban the sale, trade, or donation of unused work credits, Cal Cities urges the CPUC to clarify the effective date and recognize valid agreements that were executed prior to that date.

Prior to April 7, 2021, when the Proposed Decision was issued, the practice of selling, trading, or donating unused work credits was widely utilized and recognized by the IOUs as a way for communities to complete eligible Rule 20A undergrounding projects. As demonstrated by the Opening Comments of the Town of Los Altos Hills, many cities have made significant investments in planning projects that would not be able to move forward but for work credit trading or selling in reliance on the belief that IOUs would continue to recognize these transfers. If the CPUC ultimately decides to ban the sale, trade, or donation of unused work credits, the CPUC should work to ensure that the decision is implemented in an equitable manner that gives communities reasonable

assurances that investments and agreements made in good faith prior to the Proposed Decision's effective date are recognized and permitted to proceed.

IV. Conclusion

Cal Cities appreciates the CPUC's efforts to explore ways to enhance the Rule 20A program. Cal Cities joins in the CPUC's goal to improve the fair, efficient allocation of ratepayer funds to communities for the undergrounding of electric infrastructure throughout California. Unfortunately, the Proposed Decision does not achieve that end.

Therefore, we strongly urge the Commission to vote "NO" on this Proposed Decision.

We stand ready to work with the CPUC as the rulemaking proceeds to ensure that the Rule 20A program continues to provide public benefits to ratepayers across the state. We are dedicated to providing robust feedback as the CPUC continues to consider modifications to the existing Rule 20A criteria—particularly the addition of criteria to promote wildfire safety and emergency-related undergrounding—and ways to advance equity in the administration of the Rule 20A program

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Respectfully submitted,

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