



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE
STATE OF CALIFORNIA

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Application of Pacific Gas and Electric Company)
for Approval and Recovery of Costs Associated)
with its Fuel Cell Project (U 39 E))

Application 09-02-013
(Filed March 2, 2009)

Application Of Southern California Edison)
Company (U 338-E) for Authority to Implement)
and Recover in Rates the Cost of its Proposed)
Fuel Cell Installation Program for State)
Universities.)

Application No. 09-04-018
(Filed April 27, 2009)

OPENING BRIEF OF SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E)

DOUGLAS K. PORTER
GLORIA M. ING
WALKER A. MATTHEWS III

Attorneys for
SOUTHERN CALIFORNIA EDISON COMPANY

2244 Walnut Grove Avenue
Post Office Box 800
Rosemead, California 91770
Telephone: (626) 302-6879
Facsimile: (626) 302-3990
E-mail: walker.matthews@sce.com

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OPENING BRIEF OF SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E)

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OPENING BRIEF OF SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E)

Pursuant to the briefing schedule set by Administrative Law Judge (ALJ) Duda in connection with the above-captioned proceeding, Southern California Edison Company (SCE) respectfully submits this opening brief in support of SCE’s Application for Authority to Implement and Recover in Rates the Cost of SCE’s Proposed Fuel Cell Installation Program for State Universities (Fuel Cell Program). As explained in detail below, the evidence submitted in this proceeding, as well as California public policy, strongly favors the California Public Utilities Commission’s (Commission) approval of SCE’s Application.

I.

INTRODUCTION

In its Application, SCE requests Commission approval for SCE to install, own, and operate three fuel cell units with a combined total capacity of up to 3.0 MW at three state universities in southern California: 1) California State University-San Bernardino (CSU San Bernardino); 2) California State University-Long Beach (CSU Long Beach); and 3) University of California Santa Barbara (UC Santa Barbara).¹ SCE requests authority to recover approximately \$21.6 million in direct capital costs necessary to purchase and install the fuel cells.² SCE is proposing the Fuel Cell Program primarily as a demonstration project to promote the development of fuel cell technology in the state of California (State).³

SCE has sufficiently demonstrated in this proceeding that its proposed Fuel Cell Program and ratepayer funding of the program's costs is reasonable. Fuel cell technology offers a number of benefits as a clean generation resource. As a highly efficient distributed generation technology, fuel cells are potentially a high availability, high reliability, baseload resource with reduced greenhouse gas (GHG), sulfur dioxide (SoX), nitrous dioxide (NoX), and particulate matter (PM) emissions.⁴ SCE's Fuel Cell Program will demonstrate these benefits to the public in an educational setting at state universities.

In addition, the Fuel Cell Program is consistent with State policies for reducing GHG emissions and utilizing distributed generation technology, and has the full endorsement and support of the Governor's Office and other California agencies.⁵ Indeed, the proposed Fuel Cell Program supports the Governor's Green Building Action Plan for state facilities under Executive Order S-20-04, and furthers State legislative policies for reducing GHG emissions under Assembly Bill (AB) 32 and utilizing cleaner sources of distributed generation technology under

¹ Exhibit 104C (SCE Direct Testimony) at pp. 1, 13.

² Exhibit 104C (SCE Direct Testimony) at p. 1.

³ Exhibit 104C (SCE Direct Testimony) at p. 1; Exhibit 105C (SCE Rebuttal Testimony) at p. 3.

⁴ Transcript at 230:16-26 (Nelson).

⁵ Exhibit 104C (SCE Direct Testimony) at pp. 1-2; Exhibit 105C (SCE Rebuttal Testimony) at pp. 3-4.

Senate Bill (SB) 1298.⁶ Further, because the fuel cell facilities will be installed at state universities, the Fuel Cell Program will enhance the State's overall intellectual capital regarding fuel cell technology. As a utility-owned asset, SCE will gain experience in operating fuel cells to the direct benefit of SCE's customers.

Because the evidentiary record in this proceeding establishes that SCE's proposal and costs are reasonable, the Commission should approve SCE's Application. SCE provides a summary of specific recommendations in Appendix A.

II.

PROCEDURAL AND FACTUAL BACKGROUND

A. Summary of SCE's Fuel Cell Program

On April 27, 2009, SCE filed Application (A.) 09-014-018 requesting authorization to implement and recover in rates the cost of SCE's proposed Fuel Cell Program.⁷ As described in SCE's testimony, SCE's Fuel Cell Program will consist of three separate fuel cell facilities installed at CSU San Bernardino, CSU Long Beach, and UC Santa Barbara.⁸ The fuel cell facilities installed at CSU San Bernardino and CSU Long Beach will utilize cogeneration (combined heat and power) technology, utilizing the waste heat from the fuel cells in the universities' respective water heating systems.⁹ The fuel cell facility installed at UC Santa Barbara will be an electric-only fuel cell system in which the exhaust heat from the fuel cell is recycled within the fuel cell itself to generate electricity at a higher efficiency.¹⁰ The fuel cells will directly interconnect with SCE's distribution system and will serve SCE load.¹¹

⁶ Exhibit 104C (SCE Direct Testimony) at pp. 1-2; Exhibit 105C (SCE Rebuttal Testimony) at pp. 3-4.

⁷ On February 20, 2009, Pacific Gas & Electric Company (PG&E) filed A.09-02-013 requesting approval of a similar program. Similar to SCE's proposal, PG&E proposes installing utility-owned fuel cell facilities at state university campuses. PG&E's project will have a total capacity of 2.9 MW, and will cost \$21.3 in capital costs.

⁸ Exhibit 104C (SCE Direct Testimony) at p. 13.

⁹ Exhibit 104C (SCE Direct Testimony) at p. 13.

¹⁰ Exhibit 104C (SCE Direct Testimony) at p. 13.

¹¹ Exhibit 101 (SCE Supplemental Testimony) at p. 5.

SCE intends to procure the fuel cell systems and turn-key installation services through an open request-for-proposal (RFP) process for each university site.¹² SCE will own and operate the fuel cell units over the expected 10-year life of the fuel cells.¹³ The universities will provide the ground space for the fuel cells, and provide rights-of-way for gas and electric utilities as in-kind contributions to the project.¹⁴ The two universities hosting the combined heat and power fuel cell installations, CSU San Bernardino and CSU Long Beach, will also be responsible for the operations and maintenance (O&M) of those portions of the system that mechanically integrate the fuel cells' exhaust heat with the universities' respective water heating systems.¹⁵

B. Summary of Fuel Cell Program Costs and Cost Recovery Request

As explained in SCE's testimony, SCE estimates approximately \$21.6 million in direct capital costs necessary to purchase and install the fuel cells, and \$8.9 million of incremental non-fuel related O&M and A&G expenses over the expected 10-year life of the fuel cells.¹⁶ These costs represent the expense to purchase, install, and maintain the fuel cells at the three host university sites.¹⁷ Because SCE's capital cost estimate is based upon a conceptual design of the fuel cell facilities, SCE has also included a ***necessary*** contingency that will cover scope modifications required during the final development and engineering phase of the Fuel Cell Program prior to the installation of the fuel cells.¹⁸

SCE also requests Commission approval to use approximately \$10.8 million of uncommitted Self Generation Incentive Program (SGIP) funds to buy-down 50% of the initial program capital costs.¹⁹ Currently, SCE has approximately \$39 million in uncommitted SGIP funds recorded in SCE's Self Generation Program Incremental Cost Memorandum Account

¹² Exhibit 104C (SCE Direct Testimony) at p. 15.

¹³ Exhibit 104C (SCE Direct Testimony) at pp. 20-21.

¹⁴ Exhibit 105C (SCE Rebuttal Testimony) at p. 6.

¹⁵ Exhibit 105C (SCE Rebuttal Testimony) at p. 6.

¹⁶ Exhibit 104C (SCE Direct Testimony) at p. 23.

¹⁷ Exhibit 104C (SCE Direct Testimony) at p. 23.

¹⁸ Exhibit 104C (SCE Direct Testimony) at p. 19.

¹⁹ Exhibit 104C (SCE Direct Testimony) at p. 1.

(SGPICMA).²⁰ SCE believes the use of SGIP funds, which is intended, in part, to promote the development of fuel cell technology, is appropriate for its Fuel Cell Program given that fuel cell development under SGIP has lagged to date.²¹ The use of SGIP funds will reduce ratepayer funding for the program's cost.²²

C. Summary of Intervenor's Arguments

Several intervenors submitted protests opposing SCE's Application, including the Division of Ratepayer Advocates (DRA), The Utility Reform Network (TURN), Western Power Trading Forum (WPTF), Debenham Energy LLC (Debenham), California Municipal Utilities Association (CMUA), and California Energy Storage Alliance (CESA).

DRA and TURN argue that the capital costs for SCE's proposed program are too high, and that the Commission should substantially reduce SCE's cost recovery, including SCE's requested contingency.²³ TURN argues, in particular, that the utilities should reduce the scope and costs of the programs by eliminating the electric-only fuel cell installations, and charge the universities for the waste heat generated by the fuel cells and utilized by the universities.²⁴

WPTF argues against utility-owned generation (UOG) and argues that the utilities should procure the fuel cells through Requests for Offers (RFO) to independent power producers.²⁵ In addition, WPTF and CMUA argue against SCE's proposal to charge the costs of the Fuel Cell Program to all customer classes.²⁶

²⁰ Exhibit 104C (SCE Direct Testimony) at pp. 4-6.

²¹ Exhibit 104C (SCE Direct Testimony) at pp. 4-6.

²² Exhibit 104C (SCE Direct Testimony) at pp. 4-6.

²³ Exhibit 204C (DRA Second Amended Report) at pp 21-26.

²⁴ Exhibit 300C (TURN Direct Testimony) at pp. 1-5.

²⁵ Exhibit 400 (WPTF Direct Testimony) at pp. 3-8.

²⁶ Exhibit 400 (WPTF Direct Testimony) at pp. 3-8.

DRA, WPTF, CESA, and Debenham oppose SCE's requests to access uncommitted SGIP funds on various grounds.²⁷ TURN disagrees, and argues that SCE should be allowed to use SGIP funds to buy-down the capital costs of SCE's Fuel Cell Program.²⁸

D. Scoping Memo Issues

On April 27, 2009 and June 22, 2009, the Commission held prehearing conferences (PHC) to discuss the procedural schedule and scope of the proceeding. On June 22, 2009, ALJ Duda granted DRA's motion for consolidation (filed on May 19, 2009).

On June 25, 2009, the Assigned Commissioner, President Michael R. Peevey, issued the Scoping Memo for the proceeding, which identified the following issues:²⁹

1. Are the applications by PG&E and SCE reasonable from a ratepayer perspective and should the Commission approve the Fuel Cell Projects proposed by PG&E and SCE, as well as each utility's proposed ratemaking for its respective project, either as presented in the applications or with modifications?
2. Do the applications by PG&E and SCE meet the Commission's criteria for utility-owned generation as set forth in Decision (D.) 07-12-052 and other relevant Commission orders?
3. Did PG&E and SCE perform competitive solicitation for the Fuel Cell Projects according to applicable Commission guidance?
4. Should the Commission grant requests by PG&E and SCE for recovery of any stranded costs associated with each utility's Fuel Cell Project through a non-bypassable charge for a 10-year period following commercial operation? Should municipal departing load and distributed generation customers be exempt from such stranded costs as set forth in D.08-09-012?

²⁷ Exhibit 204C (DRA Second Amended Report) at p. 7; Exhibit 400 (WPTF Direct Testimony) at p. 11; Exhibit 500 (CESA Direct Testimony) at pp. 1-5; Exhibit 600 (Debenham Direct Testimony) at pp. 1-4.

²⁸ Exhibit 300C (TURN Direct Testimony) at p. 9.

²⁹ June 25, 2009 Scoping Memo.

5. Should SCE be allowed to use uncommitted SGIP funds to pay for a portion of the Fuel Cell Project?
6. The Commission has or is currently developing a number of programs that ostensibly support development of fuel cells. These include the SGIP, as well as a feed-in tariff for combined heat and power (CHP) plants in Rulemaking 08-06-024. Given this policy context, what additional benefits do ratepayers receive from the installation and utility ownership of fuel cells as proposed by PG&E and SCE when compared to these other programs?

III.

SUMMARY OF ARGUMENT

SCE addresses each of Scoping Memo Issues and intervenors' principal arguments in Section IV below.

Specifically, Section IV.A addresses Scoping Memo Issue No. 1 concerning whether SCE's Fuel Cell Program and costs are reasonable from a ratepayer perspective. In this section, SCE explains that the proposed program and costs are reasonable, given that the program, among other things, provides direct environmental benefits, fulfills important State policy goals, and is endorsed by the Governor's Office and other California agencies.

Section IV.B addresses Scoping Memo Issue Nos. 2 and 3 concerning whether SCE's Fuel Cell Program meets the criteria for UOG and competitive solicitation under D.07-12-052 and other applicable Commission decisions. This section explains that the Fuel Cell Program meets all applicable criteria for UOG and competitive solicitation because it is a "preferred resource."

Next, Section IV.C addresses Scoping Memo Issue No. 4 concerning SCE's cost recovery proposal. As explained in this section, all customers should pay the costs of the Fuel Cell Program because the program is a demonstration project that supports State policy and benefits the State as a whole.

Section IV.D addresses Scoping Memo Issue No. 5 concerning SCE's proposal to use SGIP funds. This section argues that using SGIP funds for SCE's Fuel Cell Program is appropriate given that fuel cell development under SGIP has lagged to date, and there are uncommitted SGIP funds available. The use of SGIP funds will reduce ratepayer funding for the program's costs.

Finally, Section IV.E addresses Scoping Memo Issue No. 6 concerning the development of other programs to support the development of fuel cell technology. In this section, SCE argues that the Commission should approve SCE's Fuel Cell Program as one program of many that the Commission may develop to support fuel cell development.

IV.

ARGUMENT

A. SCE's Fuel Cell Program and Costs Are Reasonable.

1. SCE's Fuel Cell Program is a Beneficial Demonstration Project That Supports State Policy and Will Provide Many Direct Benefits to SCE Customers.

SCE's Fuel Cell Program is a demonstration project designed to promote the development of fuel cell technologies in this State. The program will provide a number of direct benefits.

First, fuel cells are a clean generation technology. As explained in SCE's testimony, fuel cell technology offers a low-emissions and highly-efficient solution for distributed generation.³⁰ Fuel cell technology generates electricity more efficiently than other similarly-sized combustion technologies, resulting in reduced GHG, SoX, NoX, and PM emissions.³¹ The low GHG

³⁰ Exhibit 105C (SCE Rebuttal Testimony) at p. 3.

³¹ Exhibit 105C (SCE Rebuttal Testimony) at p. 3.

emissions provided by fuel cell technology is particularly beneficial in SCE's service territory, including areas such as the Los Angeles basin and San Bernardino County, which have very strict emissions requirements for new generation.³² The Fuel Cell Program will demonstrate these benefits and promote the technology within SCE's service territory to the direct benefit of SCE's customers.³³ Further, as an ancillary benefit to SCE's customers, the fuel cells proposed by SCE will directly interconnect with SCE's distribution system and will serve SCE load with clean, low emissions.³⁴

Second, SCE's proposal supports State policies goals and objectives including, among other things, Executive Order S-20-04 (Governor's Green Building Action Plan), AB 32 (plan of reducing GHG emissions), and SB 1298 (plan for utilizing cleaner sources of distributed generation technology).³⁵ An important indicator that its request is reasonable, SCE's proposal has the full endorsement and support of the Governor's Office and other California Agencies.³⁶

During evidentiary hearings, DRA posed a number of questions contending that these benefits, and in particular, the educational benefits cited by SCE are minimal and unimportant. DRA's criticism is without merit. State universities offer a unique public platform for SCE to demonstrate the fuel cell technologies.³⁷ The universities will be able to incorporate the fuel cell systems into their respective school programs, and as vital community institutions, offer an opportunity for the public to learn about the technology.³⁸ This includes incorporating the technologies into the curriculum at the schools, offering visual demonstrations of the technology to students and the public, and making available, as permitted, the operating and performance characteristics of the fuel cell systems for public knowledge.³⁹ DRA's argument that these educational benefits are not meaningful is insupportable. It is abundantly straightforward that

³² Exhibit 105C (SCE Rebuttal Testimony) at p. 3.

³³ Exhibit 105C (SCE Rebuttal Testimony) at p. 3.

³⁴ Exhibit 101 (SCE Supplemental Testimony) at p. 5.

³⁵ Exhibit 104C (SCE Direct Testimony) at pp. 1-2; Exhibit 105C (SCE Rebuttal Testimony) at pp. 3-4.

³⁶ Exhibit 104C (SCE Direct Testimony) at pp. 1-2; Exhibit 105C (SCE Rebuttal Testimony) at pp. 3-4.

³⁷ Exhibit 105C (SCE Rebuttal Testimony) at p. 5.

³⁸ Exhibit 105C (SCE Rebuttal Testimony) at p. 5.

³⁹ Exhibit 105C (SCE Rebuttal Testimony) at p. 5.

installing the fuel cells at State universities will provide the educational benefits to students and the public who have the opportunity to study and observed them.

2. SCE's Costs Are Reasonable.

DRA and TURN both argue that SCE's program costs unreasonable.⁴⁰ DRA proposes certain disallowances for a number of the capital and O&M costs proposed by SCE, arguing that the Commission should hold SCE to "whatever published standard[s] are available",⁴¹ and TURN proposes that Commission should eliminate the electric-only facilities to reduce program costs.⁴² SCE's cost estimate is sound,⁴³ and DRA's and TURN's proposals to reduce program costs are not warranted.

a) The Published Standards Cited By DRA Confirm SCE's Cost Estimate.

The "published standards" relied upon by DRA come from a 2008 report prepared for the Environmental Protection Agency, entitled "Technology Characterization: Fuel Cells" (EPA Report).⁴⁴ The EPA Report identifies that all cost estimates provided in the report were made in 2007 and given in 2007\$.⁴⁵ DRA essentially adopts the estimates provided in the EPA Report to calculate its proposed disallowances and estimate (DRA's Proposal). As such, DRA's Proposal is in 2007\$.⁴⁶ But the capital cost estimates in SCE's direct testimony were generated in 2009\$.⁴⁷ Consequently, DRA's reliance on the EPA Report to propose certain disallowances is

⁴⁰ Exhibit 204C (DRA Direct Testimony) at pp. 21-29; Exhibit 300C (TURN Direct Testimony) at pp. 1-5.

⁴¹ Exhibit 204C (DRA Direct Testimony) at p. 22.

⁴² Exhibit 300C (TURN Direct Testimony) at p. 2.

⁴³ SCE developed its costs estimates in conjunction with a nationally recognized engineering firm, Black & Veatch. The cost estimates were generated from conceptual designs produced for each of the universities identifying and accounting for the uniqueness of each installation. Exhibit 105C (SCE Rebuttal Testimony) at p. 8.

⁴⁴ Exhibit 204C (DRA Direct Testimony) at p. 22 (citing the "Technology Characterization: Fuel Cells. December 2008. Prepared by Energy and Environmental Analysis, Inc., and ICF Company. Prepared for Environmental Protection Agency, Combined Heat and Power Program.)

⁴⁵ Exhibit 105C (SCE Rebuttal Testimony) at p. 7.

⁴⁶ Exhibit 105C (SCE Rebuttal Testimony) at p. 7.

⁴⁷ Exhibit 105C (SCE Rebuttal Testimony) at p. 7.

grossly misplaced, given that DRA is essentially comparing a 2007 estimate to a 2009 estimate – a flawed “apples-to-oranges” comparison. To make a more appropriate “apples-to-apples” comparison (to the extent one can even be made),⁴⁸ DRA’s Proposal should, at the least, be adjusted from 2007\$ to 2009\$. When this is done, the supposed difference between DRA’s Proposal and SCE’s estimate are minimal, particularly with respect to the total capital cost estimate.⁴⁹ In fact, when adjusted to 2009\$ and for unique site costs, DRA’s Proposal substantially supports SCE’s cost estimate, as demonstrated in SCE’s rebuttal testimony, Tables SCE-1, SCE-2 and SCE-3.⁵⁰ Accordingly, to the extent DRA argues that the Commission should rely on “published standards,” those standards confirm that SCE’s total capital cost estimate is sound and reasonable.

On a related note, DRA’s recommendation to disallow capital costs that exceed particular line items in DRA’s Proposal is similarly unwarranted. Again, any cost comparison between DRA’s Proposal (including any line-by line comparison) and SCE’s estimate is not useful because DRA’s Proposal is provided in 2007\$, whereas SCE’s estimate is provided in 2009\$.⁵¹ Moreover, the proposed cap on any single line item is unwarranted given that DRA provides no detail of the equipment or work that is contained in each line item.⁵² As explained above, when DRA’s Proposal is adjusted to 2009\$, it supports SCE’s overall capital cost estimate.

Although DRA’s estimate for O&M expenses generally tracks SCE’s O&M estimate, DRA’s proposed disallowances and estimate for O&M expenses are defective for the same reasons discussed above.

⁴⁸ DRA’s witness, Mr. Anthony Mazy, also admitted during cross-examination that he did not contact any vendors, determine the EPA Report’s methodology, or confirm whether the scope of the project described in the EPA Report was comparable to the full cell projects proposed by SCE and PG&E, casting further doubt on whether EPA Report should have any bearing in this proceeding. (Transcript 239:13-240:15) (Mazy).

⁴⁹ Using a combined GDP and Labor inflator, SCE calculates an approximately 3.88% increase in the EPA estimate from 2007\$ to 2009\$. See Exhibit 105C at 7 and Appendix A.

⁵⁰ Exhibit 105C (SCE Rebuttal Testimony) at Appendix A (confidential).

⁵¹ Exhibit 105C (SCE Rebuttal Testimony) at p. 7.

⁵² Exhibit 105C (SCE Rebuttal Testimony) at p. 7.

In sum, the Commission should not adopt DRA’s flawed capital and O&M estimates, which is given in unadjusted 2007\$, and should instead rely on SCE’s capital cost and O&M estimates, which are provided in 2009\$.

b) The Commission Should Not Eliminate the Electric-Only Fuel Cell Installation.

The Commission also should not adopt TURN’s cost-cutting recommendation of eliminating the electric-only fuel cell installation at UC Santa Barbara. The electric-only fuel cell installation is an important and worthwhile aspect to the SCE’s Fuel Cell Program.⁵³ As SCE explained in its testimony, the demonstration of an electric-only fuel cell is beneficial because this newer technology has not been studied or demonstrated at a commercial scale to any great extent.⁵⁴ In addition, because the electric-only fuel cells tends to be smaller in size, SCE believes that the electric-only demonstration will show that “there are many locations where this type and size of equipment could be used to potentially provide improved service at a lower cost to electric customers” in SCE’s service territory to the direct benefit of SCE’s customers.⁵⁵

3. The Contingency Included By SCE is Necessary To Cover Scope Modifications Made During Final Engineering.

As part of their overall strategy to reduce program costs, DRA and TURN both argue that the Commission should reduce the contingency included by SCE.⁵⁶ According to DRA, the contingency is excessive in light of various “known” contingencies applied in other industries.⁵⁷ TURN similarly argues that the contingency included by SCE exceeds past Commission-authorized contingency rates for other generation projects (such as Mountainview) and

⁵³ Exhibit 104C (SCE Direct Testimony) at p. 13.

⁵⁴ Exhibit 104C (SCE Direct Testimony) at p. 13.

⁵⁵ Exhibit 104C (SCE Direct Testimony) at p. 13.

⁵⁶ Exhibit 204C (DRA Second Amended Report) at p. 26; Exhibit 300C (TURN Direct Testimony) at p. 3.

⁵⁷ Exhibit 204C (DRA Second Amended Report) at p. 26.

distribution projects.⁵⁸ DRA and TURN do not understand the purpose of SCE's contingency, which is an absolutely necessary and legitimate part of SCE's overall budget for the Fuel Cell Program. And their reliance on contingencies approved by the Commission for different projects or used in other industries is misplaced.

DRA and TURN fundamentally misunderstand the reason SCE must include a contingency, and appear to assume that SCE's contingency is merely padding. This is not the case. As SCE explained in its testimony, the contingency is a necessary part of SCE's cost estimate.⁵⁹ The contingency represents costs that SCE is likely to incur due to scope modifications made during the final development and engineering of the Fuel Cell Program but cannot categorize or define at this time.⁶⁰

SCE's cost estimate for the Fuel Cell Program is based upon a conceptual design and studies performed one year ago.⁶¹ Therefore, the contingency is necessary to cover scope modifications required during the final development and engineering phase of the Fuel Cell Program, and accommodate site specific construction and design requirements before SCE installs the fuels cells at the host university sites.⁶² In fact, the EPA report cited in DRA's Proposal states that "installed costs can vary significantly depending on the scope of the plant equipment, geographical area, competitive market conditions, special site requirements, prevailing labor rates, and whether a system is a new or retrofit application."⁶³ Accordingly, the EPA report also confirms that SCE's contingency is a necessary and reasonable part of SCE's overall estimate to cover scope modifications based on special site requirements and changing market conditions.

Furthermore, contrary to DRA's and TURN's erroneous contentions, contingencies approved in other Commission proceedings for other projects or used in other industries should

⁵⁸ Exhibit 300C (TURN Direct Testimony) at p. 3.

⁵⁹ Exhibit 104C (SCE Direct Testimony) at p. 19; Exhibit 105C (SCE Rebuttal Testimony) at p. 9.

⁶⁰ Exhibit 104C (SCE Direct Testimony) at p. 19; Exhibit 105C (SCE Rebuttal Testimony) at p. 9.

⁶¹ Exhibit 105C (SCE Rebuttal Testimony) at p. 9.

⁶² Exhibit 104C (SCE Direct Testimony) at p. 19; Exhibit 105C (SCE Rebuttal Testimony) at p. 9.

⁶³ Exhibit 105C (SCE Rebuttal Testimony) at p. 8.

not be indiscriminately be applied to SCE's cost estimate for the Fuel Cell Program as though there is a universal standard for applying contingencies. Simply put, the amount of contingency applied to a particular project's costs is dependent upon, among other things, the level of engineering and planning completed, and the nature of the technology. For example, a project with only conceptual engineering completed will have a higher contingency than the same project with more detailed engineering completed the nature of the technology.⁶⁴ And a project involving newer, advanced technology will have a higher contingency than a project involving older, well-established technology. It would be inappropriate and unsound for the Commission to apply in this proceeding a contingency amount approved in a separate proceeding for another project, because the scope and level of engineering underlying that project may not be comparable to the level of engineering completed for SCE's Fuel Cell Program. As opposed to those projects where a smaller contingency may be appropriate, SCE's Fuel Cell Program is in the conceptual design phase, which means that a larger contingency is required to cover scope modifications made during final engineering. Furthermore, the specific siting needs of the state universities, which each have unique requirements justify a larger contingency.⁶⁵

On a related note, TURN's argument that there is no reason to apply a contingency for the cost of the fuel cells mischaracterizes what SCE's contingency covers. SCE is not estimating a contingency on a line item basis. Instead, SCE has estimated a contingency based upon the total capital cost of the Fuel Cell Program.⁶⁶ Eliminating contingency on a line item basis will hinder SCE's ability to cover scope modifications for the project made during final engineering.⁶⁷ In other words, SCE did not estimate a contingency for the cost of the fuel cells and other line item costs such as installation costs. Instead, SCE determined the overall project

⁶⁴ DRA and TURN may argue that SCE should complete its detailed engineering first in order to reduce the contingency for program costs, but the additional engineering likely has costs commensurate with the contingency.

⁶⁵ Exhibits 105C (SCE Rebuttal Testimony) at p. 9.

⁶⁶ Exhibit 104C (SCE Direct Testimony) at p. 19.

⁶⁷ Exhibit 104C (SCE Direct Testimony) at p. 19.

costs based upon a conceptual design, and then included a contingency to cover scope modification made during final engineering.⁶⁸

4. Levelized Costs Should Not Determine Reasonableness.

DRA and TURN also argue that the projected levelized costs of the fuel cell facilities demonstrate that SCE's costs for the Fuel Cell Program are not reasonable.⁶⁹ The Commission should not base its decision in this proceeding solely upon the projected levelized costs for SCE's proposed fuel cell facilities.⁷⁰ Doing so would miss the point that the primary purpose of SCE's Fuel Cell Program, which purpose is to demonstrate the fuel cell technology and promote the technology to the public. Although costs is certainly a valid issue, it is not the only issue. The Commission should consider what role utilities can play as a tool of the Commission to implement programs that could potentially reduce costs. In particular, the Commission should note that the Fuel Cell Program has the potential to promote the development of fuel cells and eventually reduce costs.

5. The Current Planned Commercial Relationship Between The Universities and SCE Makes Sense.

TURN recommends that SCE charge the universities the value of the waste heat generated by the cogeneration fuel cell facilities, and estimates the value of the thermal energy exhaust of a single cogeneration unit to be about \$90,000 per year.⁷¹ TURN's recommendation is impractical, and would add unnecessary commercial complexity to SCE's Fuel Cell Program. While SCE is not charging for the value of the waste heat, the universities are providing ground space for the units and rights-of-way for gas and electric utilities as in-kind contributions to the

⁶⁸ Exhibit 104C (SCE Direct Testimony) at p. 19.

⁶⁹ Exhibit 204C (DRA Second Amended Report) at p.1; Exhibit 300C (TURN Direct Testimony) at p.10.

⁷⁰ At ALJ Duda's direction, SCE submitted Exhibits 107 and 108C to provide projected levelized costs for SCE's proposed fuel cell facilities.

⁷¹ Exhibit 300C (TURN's Direct Testimony) at pp. 6-7.

project.⁷² In addition, SCE will not be guaranteeing the waste heat to the universities, who will therefore have to maintain dual thermal systems in the event the fuel cells are out for maintenance or other reasons.⁷³ Further, the universities hosting the cogeneration facilities will be responsible for O&M on the portions of the systems that mechanically integrate the exhaust heat to the respective universities' water heating systems.⁷⁴ The current planned commercial structure between SCE and the universities is balanced and makes sense, given that the purpose of the Fuel Cell Program primarily is to demonstrate the fuel cell technology. If SCE sought to charge the universities the value of the waste heat generated, it would necessarily change the general commercial structure describe above.

B. SCE's Fuel Cell Program Meets The Commission's Criteria for Utility-Owned Generation and Competitive Solicitation of Projects.

WPTF argues that the Commission should not authorize SCE to implement the Fuel Cell Program as UOG. As WPTF sees it, SCE is obligated to pursue the Fuel Cell Program through a competitive RFO in accordance with the LTPP Decision (D.) 07-12-052. WPTF is wrong.

SCE's request to operate the Fuel Cell Program as UOG is fully consistent with D.07-12-052. This decision provides that certain "preferred resources" are appropriate for UOG. As provided in D.07-12-052, these resources include "energy efficiency, demand response, renewable energy, **distributed generation**, and **clean fossil fuel**."⁷⁵ The decision further provides that a "utility may only develop a clean fossil-fuel UOG outside the RFO process if it utilizes an advanced or emerging technology that the market is unlikely to develop."⁷⁶

Here, given that the proposed fuel cells are distributed generation, they are a "preferred resource" under at least one of the criteria provided in D.07-12-052, and are therefore

⁷² Exhibit 104C (SCE Rebuttal Testimony) at p. 6.

⁷³ Exhibit 104C (SCE Rebuttal Testimony) at p. 6.

⁷⁴ Exhibit 104C (SCE Rebuttal Testimony) at p. 6.

⁷⁵ D.07-12-052 at p. 211, n. 240.

⁷⁶ D.07-12-052 at p. 211, n. 240 (emphasis added).

appropriate for UOG. In addition, no party has disputed (or can dispute) that fuel cell technology is an advanced and emerging resource that the market is unlikely to develop. This is demonstrated by the scarcity of fuel cell projects in the State. SCE presented evidence that fuel cell capacity in California is approximately 12 MW from only 20 projects, as compared to the 1,300 completed SGIP projects currently operating in California using other renewable and clean technologies.⁷⁷ Indeed, DRA acknowledged in its testimony that “the fuel cell business environment is far from well developed and competitive.”⁷⁸ Therefore, the proposed fuel cells are also “preferred resources” under D.07-12-052 as a clean fossil fuel that the market is unlikely to develop.⁷⁹

C. SCE’s Cost Recovery Proposal is Reasonable Given the Broad Benefits Provided By SCE’s Fuel Cell Program.

SCE’s cost recovery proposal ensures that all customers will share in paying the above-market costs of the Fuel Cell Program, regardless of their choice of energy provider or when they transferred from SCE as their energy service provider. WPTF and CMUA argue that the Commission should prohibit SCE from recovering program costs through either a Non-Bypassable Charge associated with any “Stranded Costs”, or from any customers other than bundled service customers.⁸⁰ In support, WPTF and CMUA argue that SCE’s Fuel Cell Program is a “new generation” project under D.04-12-048.⁸¹ WPTF and CMUA further argue that D.08-09-012 exempts Municipal Departing Load (MDL) and Customer Generation Departing Load customers from paying "new generation" Non-bypassable charges, or the inclusion of associated costs in the Cost Responsibility Surcharges (CRS).⁸² WPTF and CMUA argue that the

⁷⁷ Exhibit 104C (SCE Direct Testimony) at pp. 4-5.

⁷⁸ Exhibit 204C (DRA Second Amended Report) at p. 20.

⁷⁹ D.07-12-052.

⁸⁰ Exhibit 400 (WPTF Direct Testimony) at pp. 3-8.

⁸¹ Exhibit 400 (WPTF Direct Testimony) at pp. 3-8.

⁸² Exhibit 400 (WPTF Direct Testimony) at pp. 3-8.

Commission should apply the “new generation” exemption in this proceeding.⁸³ WPTF’s and CMUA’s exemption argument is incorrect.

As stated above, SCE is not installing fuel cells as a “new generation” project to serve forecast customer load in 2010 and beyond.⁸⁴ Rather, as stated previously, SCE is pursuing the Fuel Cell Program as a demonstration project in order to promote the benefits of fuel cell technology to the public.⁸⁵ Although the energy produced by the fuel cells will be consumed by bundled service customers and paid for by those customers at prevailing market price, it is overly simplistic to characterize SCE’s Fuel Cell Program as a “new generation” project when SCE is not proposing the project with the objective of serving load.⁸⁶ The serving of load just happens to be an ancillary benefit of the Fuel Cell Program, not the primary purpose of the program. Based on this key difference, the proposed fuel cells are not “new generation” as defined in D.04-12-048, and no group of customers should be exempt from the recovery of costs associated with SCE’s Fuel Cell Program because all customers will benefit.⁸⁷ The departing load exemptions included in Decision 08.09-012 does apply to the Fuel Cell Program.⁸⁸

D. The Use of Uncommitted SGIP Funds is Appropriate to Buy-Down the Initial Capital Costs of SCE’s Fuel Cell Program.

In its Application, SCE requested the Commission to authorize SCE to use uncommitted SGIP funds to buy-down 50% of the capital costs for SCE’s Fuel Cell Program in order to reduce the incremental impact of the project costs for SCE’s customers.⁸⁹ TURN agrees with

⁸³ Exhibit 400 (WPTF Direct Testimony) at pp. 3-8.

⁸⁴ Exhibit 105C (SCE Rebuttal Testimony) at p. 11.

⁸⁵ Exhibit 105C (SCE Rebuttal Testimony) at p. 11.

⁸⁶ Exhibit 105C (SCE Rebuttal Testimony) at p. 11.

⁸⁷ WPTF and CMUA argue that SCE’s cost recovery proposal for the Fuel Cell Program is fundamentally inconsistent with SCE’s cost recovery proposal for SCE’s Solar PV Application (A.08-03-015), approved by the Commission in D.09-06-049. The proposals are not inconsistent. As opposed to the Fuel Cell Program, which is a demonstration project, SCE’s Solar PV Program was proposed as both a demonstration project and a 125MW-250 MW “new generation” project intended to serve forecast load.

⁸⁸ D.08.09-012

⁸⁹ Exhibit 104C (SCE Direct Testimony) at p. 1.

SCE that it is appropriate for the Commission to authorize both SCE and PG&E to use SGIP funds for the utilities' respective fuel cell projects.⁹⁰ For various reasons, DRA, WPTF, CESA, and Debenham all object to SCE's request.⁹¹ These objections are without merit.

The Commission created SGIP to support the development of nascent clean generating technologies, including fuel cells.⁹² To date, however, the SGIP has not been as successful in furthering fuel cell technologies as it has with other technologies such as small-scale solar.⁹³ Indeed, through five years of the program, the total fuel cell capacity operating in California has grown from 200 kW to approximately 12 MW.⁹⁴ While on a percentage basis this appears to be an impressive increase, the anticipated and desired widespread adoption of fuel cells has not occurred in California. SCE's Fuel Cell Program is a unique opportunity to demonstrate and support the development of fuel cell technologies in the state. This opportunity is consistent with the original purpose of SGIP, as explained above. Therefore, it is appropriate for the Commission to authorize SCE to use uncommitted SGIP funds for SCE's Fuel Cell Program. The program is designed to promote fuel cell technology, which is one of the technologies that the Commission created SGIP to fund.

Further, contrary to assertions of several intervenors, SCE's SGIP is adequately funded to meet the funding requests made by developers who may apply for SGIP funds for eligible technologies.⁹⁵ Even assuming the Commission approves SCE's request to use \$10.8 million of uncommitted SGIP funds, there still will be sufficient 2009 funds available for all new SGIP applications.⁹⁶ For these reasons, it makes sense to reduce capital costs for SCE's Fuel Cell Program by using SGIP funds.

⁹⁰ Exhibit 300C (TURN Direct Testimony) at p. 9.

⁹¹ Exhibit 204C (DRA Second Amended Report) at p. 7; Exhibit 400 (WPTF Direct Testimony) at p. 11; Exhibit 500 (CESA Direct Testimony) at pp. 1-5; Exhibit 600 (Debenham Direct Testimony) at pp. 1-4.

⁹² Exhibit 105C (SCE Rebuttal Testimony) at pp. 12-13.

⁹³ Exhibit 105C (SCE Rebuttal Testimony) at p. 11.

⁹⁴ Exhibit 105C (SCE Rebuttal Testimony) at p. 11.

⁹⁵ Exhibit 105C (SCE Rebuttal Testimony) at p. 11.

⁹⁶ Exhibit 105C (SCE Rebuttal Testimony) at p. 11.

E. SCE's Fuel Cell Program Will Not Interfere With Any Other Commission Programs That Promote Fuel Cell Technology.

Scoping Memo Issue No. 6 appears to concern whether SCE's Fuel Cell Program may interfere with other programs the Commission has approved or may approve to promote fuel cell technology. Commission approval of SCE's Fuel Cell Program is not mutually exclusive of other programs may approve, and does not mean the Commission cannot pursue other programs to support the development of fuel cell technology in this State. Indeed, the Commission should approve SCE's Fuel Cell Program as just one program of many to support fuel cell development. As referenced in Section IV.D, there are sufficient SGIP funds available for new applications submitted by developers interested in developing a fuel cell facility.⁹⁷ Further, because the fuel cell facilities will be installed at state universities, SCE's Fuel Cell Program will enhance the State's overall intellectual capital regarding fuel cell technology, benefiting other programs the Commission may develop to promote fuel cell technology.

V.

CONCLUSION

For the foregoing reasons, the Commission should approve SCE's Application. SCE provides a summary of specific recommendations in Appendix A.

⁹⁷ Exhibit 105C (SCE Rebuttal Testimony) at p. 11.

Respectfully submitted,

DOUGLAS K. PORTER
GLORIA M. ING
WALKER A. MATTHEWS III

/s/ Walker A. Matthews III

By: Walker A. Matthews III

Attorneys for
SOUTHERN CALIFORNIA EDISON COMPANY

2244 Walnut Grove Avenue
Post Office Box 800
Rosemead, California 91770
Telephone: (626) 302-6879
Facsimile: (626) 302-3990
E-mail: walker.matthews@sce.com

December 30, 2009

Appendix A

SUMMARY OF RECOMMENDATIONS

APPENDIX A

SUMMARY OF RECOMMENDATIONS

Pursuant to Rule 13.11 of the Commission's Rules of Practice and Procedure, Southern California Edison Company (SCE") makes the following recommendations for proposed findings of fact, conclusions of law and ordered relief:

Proposed Findings of Fact

1. Southern California Edison ("SCE") filed this Application on April 27, 2009 requesting authorization to implement and recover in rates the cost of SCE's proposed Fuel Cell Program.

2. As a highly-efficient distributed generation technology, fuel cells are potentially a high-availability, high-reliability, baseload resource with reduced greenhouse gas (GHG) emissions.

3. SCE's Fuel Cell Program is consistent with State public policies for reducing GHG emissions and utilizing distributed generation technology, and has the full endorsement and support of the Governor's Office and other California agencies.

4. SCE's Fuel Cell Program supports the Governor's Green Building Action Plan for state facilities under Executive Order S-20-04, and furthers State legislative policies for reducing greenhouse gas (GHG) emissions under Assembly Bill (AB) 32 and utilizing cleaner sources of distributed generation technology under Senate Bill (SB) 1298.

5. Because the fuel cell facilities will be installed at state universities, SCE's Fuel Cell Program will enhance the State's overall intellectual capital regarding fuel cell technology.

6. As a utility-owned asset, SCE will gain experience in operating fuel cells to the direct benefit of SCE's ratepayers.

7. SCE's Fuel Cell Program is a demonstration project that will promote the development of fuel cell technologies in this State.

Proposed Conclusions of Law:

1. SCE's Fuel Cell Program and costs are reasonable. The Fuel Cell Program fulfills important State policies and objectives, and is endorsed by the Governor's Office and other California agencies.
2. SCE's Fuel Cell Program meets the criteria set forth in D.07-12-05 for utility-owned generation.
3. SCE's Fuel Cell Program is not a "new generation" project as defined in D.04-12-048.
4. No group of departed customers should be exempt from the recovery of costs associated with SCE's Fuel Cell Project pursuant to D.08-09-012.
5. SCE's cost recovery proposal is reasonable and fair. Because SCE's Fuel Cell Program is primarily a demonstration project that supports State of California public policy goals and benefits the State as a whole, all customer classes should pay the costs of the program.
6. It is reasonable to use uncommitted SGIP funds to buy down 50% of the capital costs of SCE's Fuel Cell Program in order to reduce ratepayer funding for the program's costs.
7. SCE's Fuel Cell Program does not interfere with other Commission programs to promote fuel cell technology.

Proposed Order:

1. SCE's Fuel Cell Program, as described in its application, is approved.
2. SCE is authorized to incur and recover costs necessary to install and operate fuel cell facilities at CSU San Bernardino, CSU Long Beach, and UC Santa Barbara, including up to \$21.6 million in direct capital costs and \$8.9 million of incremental non-fuel related O&M and A&G expenses over the 10-year life of the fuel cells.
3. SCE is authorized to use \$10.8 million of uncommitted funds from its Self Generation Program Incremental Cost Memorandum Account (SGPICMA) to buy-down 50% of the capital costs for SCE's Fuel Cell Program.
4. SCE is authorized to record the actual capital revenue requirement and any incremental operating costs incurred in a Fuel Cell Program Memorandum Account (FCPMA) and transfer the balance monthly to the generation sub-account of Base Revenue Requirement Balancing Account (BRRBA).

5. SCE is authorized to include the estimated above-market costs of the annual Fuel Cell Program revenue requirement in its calculation of all vintages of the Cost Responsibility Surcharges (CRS) applicable to Direct Access, Departing Load and Community Choice Aggregation customers.

6. The Commission finds that if recorded direct capital expenditures are less than \$21.6 million and its actual annual incremental O&M expenses are less than \$8.9 million of incremental non-fuel related O&M and A&G expenses over the 10-year life of the fuel cells, then the recorded direct capital expenditures and O&M expenses are reasonable.

7. SCE is authorized to include the operation of the FCPMA as part of SCE's annual ERRA Reasonableness proceeding. SCE is directed to file testimony in the annual ERRA Reasonableness applications, in support of recorded capital costs in excess of \$21.6 million or O&M expenses in excess of \$8.9 million of incremental non-fuel related O&M and A&G expenses over the 10-year life of the fuel cells.

8. Application 09-04-018 is closed.

CERTIFICATE OF SERVICE

I hereby certify that, pursuant to the Commissioner's Rules of Practice and Procedure, I have this day served a true copy of OPENING BRIEF OF SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E) on all parties identified in the attached service list(s).

Transmitting the copies via e-mail to all parties who have provided an e-mail address.
First class mail will be used if electronic service cannot be effectuated.

Executed this **30th day of December, 2009**, at Rosemead, California.

/s/ Veronica Flores

Veronica Flores
Project Analyst
SOUTHERN CALIFORNIA EDISON COMPANY

2244 Walnut Grove Ave.
Post Office Box 800
Rosemead, California 91770



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Parties

STEVEN D. PATRICK
ATTORNEY AT LAW
SEMPRA ENERGY
555 WEST FIFTH STREET, STE 1400
LOS ANGELES, CA 90013-1011
FOR: SDG&E; SOCAL GAS COMPANY

DANIEL W. DOUGLASS
ATTORNEY AT LAW
DOUGLASS & LIDDELL
21700 OXNARD STREET, SUITE 1030
WOODLAND HILLS, CA 91367
FOR: WESTERN POWER TRADING FORUM;
ALLIANCE FOR ENERGY MARKETS;DIRECT
ACCESS CUSTOMER COALITION

CONNOR J. FLANIGAN
SOUTHERN CALIFORNIA EDISON COMPANY
PO BOX 800
2244 WALNUT GROVE AVE.
ROSEMEAD, CA 91770
FOR: SOUTHERN CALIFORNIA EDISON CO.

GLORIA ING
ATTORNEY AT LAW
SOUTHERN CALIFORNIA EDISON COMPANY
2244 WALNUT GROVE AVENUE
ROSEMEAD, CA 91770
FOR: SOUTHER CALIFORNIA EDISON COMPANY

MITCHELL SHAPSON
CALIF PUBLIC UTILITIES COMMISSION
LEGAL DIVISION
ROOM 4107
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214
FOR: DRA

MARCEL HAWIGER
ATTORNEY AT LAW
THE UTILITY REFORM NETWORK
115 SANSOME STREET, SUITE 900
SAN FRANCISCO, CA 94104
FOR: THE UTILITY REFORM NETWORK

RANDALL J. LITTENEKER
ATTORNEY AT LAW
PACIFIC GAS AND ELECTRIC COMPANY
PO BOX 7442, B30A
SAN FRANCISCO, CA 94120
FOR: PACIFIC GAS AND ELECTRIC COMPANY

SCOTT BLAISING
ATTORNEY AT LAW
BRAUN & BLAISING MCLAUGHLIN, P.C.
915 L STREET, SUITE 1270
SACRAMENTO, CA 95814
FOR: CALIFORNIA MUNICIPAL UTILITIES
ASSOCIATION

LYNN HAUG
ATTORNEY AT LAW
ELLISON, SCHNEIDER & HARRIS, LLP
2600 CAPITOL AVENUE, SUITE 400
SACRAMENTO, CA 95816-5905
FOR: FUELCELL ENERGY, INC.

ANN L. TROWBRIDGE
ATTORNEY AT LAW
DAY CARTER & MURPHY LLP
3620 AMERICAN RIVER DRIVE, SUITE 205
SACRAMENTO, CA 95864
FOR: MERCED IRRIGATION DISTRICT;
MODESTO IRRIGATION DISTRICT; CALIFORNIA
CLEAN DG COALITION

Information Only

RICHARD SHAW
DIRECTOR - BUSINESS DEVELOPMENT
FUELCELL ENERGY, INC.
3 GREAT PASTURE ROAD
DANBURY, CT 06813

HUGH YAO
SOUTHERN CALIFORNIA GAS COMPANY
555 W. 5TH ST, GT22G2
LOS ANGELES, CA 90013

CASE ADMINISTRATION
SOUTHERN CALIFORNIA EDISON COMPANY
2244 WALNUT GROVE AVENUE, PO BOX 800
ROSEMEAD, CA 91770

DOUGLAS K PORTER
SOUTHERN CALIFORNIA EDISON COMPANY
2244 WALNUT GROVE AVENUE
ROSEMEAD, CA 91770

DON LIDDELL
ATTORNEY AT LAW
DOUGLASS & LIDDELL
2928 2ND AVENUE
SAN DIEGO, CA 92103

CENTRAL FILES
SAN DIEGO GAS AND ELECTRIC COMPANY
8330 CENTURY PARK COURT, CP-32DI
SAN DIEGO, CA 92123

DEAN A. KINPORTS
REGULATORY AFFAIRS
SAN DIEGO GAS & ELECTRIC COMPANY
8330 CENTURY PARK COURT CP32D
SAN DIEGO, CA 92123

ANTHEA LEE
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE STREET, MC B9A
SAN FRANCISCO, CA 94105

BROOKE A. REILLY
PACIFIC GAS & ELECTRIC COMPANY
77 BEALE STREET, ROOM 970
SAN FRANCISCO, CA 94105

SUNCHEETH BHAT
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE ST, MC B9A
SAN FRANCISCO, CA 94105

CASSANDRA SWEET
DOW JONES NEWSWIRES
201 CALIFORNIA ST., 13TH FLOOR
SAN FRANCISCO, CA 94111

HILARY CORRIGAN
CALIFORNIA ENERGY MARKETS
425 DIVISADERO ST. SUITE 303
SAN FRANCISCO, CA 94117-2242

BILL MANHEIM
PACIFIC GAS AND ELECTRIC COMPANY
PO BOX 770000, MAIL CODE B30A
SAN FRANCISCO, CA 94177

CASE COORDINATION
PACIFIC GAS AND ELECTRIC COMPANY
PO BOX 770000 MC B9A
77 BEALE STREET
SAN FRANCISCO, CA 94177

JOSEPHINE WU
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE STREET, MC B9A
SAN FRANCISCO, CA 94177

CASE COORDINATION
PACIFIC GAS AND ELECTRIC COMPANY
PO BOX 770000; MC B9A
SAN FRANCISCO, CA 94177

RICHARD A. BROMLEY
39 TAM OSHANTER
ALAMO, CA 94507

JOSEPH R. HEINZMANN
REGIONAL DIRECTOR OF BUSINESS DEVELOPMNT
FUELCELL ENERGY, INC.
1580 WHITMAN ROAD
CONCORD, CA 94518
FOR: FUELCELL ENERGY, INC.

SEAN P. BEATTY
 SR. MGR. EXTERNAL & REGULATORY AFFAIRS
 MIRANT CALIFORNIA, LLC
 696 WEST 10TH ST., PO BOX 192
 PITTSBURG, CA 94565

MRW & ASSOCIATES, LLC
 1814 FRANKLIN STREET, SUITE 720
 OAKLAND, CA 94612

MRW & ASSOCIATES, INC.
 1814 FRANKLIN STREET, SUITE 720
 OAKLAND, CA 94612

ERIN GRIZARD
 THE DEWEY SQUARE GROUP
 921 11TH STREET, 10TH FLOOR
 SACRAMENTO, CA 95814

RALPH R. NEVIS
 DAY CARTER & MURPHY LLP
 3620 AMERICAN RIVER DR., SUITE 205
 SACRAMENTO, CA 95864
 FOR: CALIFORNIA CLEAN DG COALITION,
 MERCED IRRIGATION DISTRICT, MODESTO
 IRRIGATION DISTRICT

JORDAN WHITE
 SENIOR ATTORNEY
 PACIFICORP
 825 NE MULTNOMAH STREET, SUITE 1800
 PORTLAND, OR 97232

MARK TUCKER
 PACIFICORP
 825 NE MULTNOMAH, SUITE 2000
 PORTLAND, OR 97232

State Service

ANTHONY MAZY
 CALIF PUBLIC UTILITIES COMMISSION
 ELECTRICITY PLANNING & POLICY BRANCH
 ROOM 4209
 505 VAN NESS AVENUE
 SAN FRANCISCO, CA 94102-3214
 FOR: DRA

DAVID PECK
 CALIF PUBLIC UTILITIES COMMISSION
 ELECTRICITY PLANNING & POLICY BRANCH
 ROOM 4103
 505 VAN NESS AVENUE
 SAN FRANCISCO, CA 94102-3214

DOROTHY DUDA
 CALIF PUBLIC UTILITIES COMMISSION
 DIVISION OF ADMINISTRATIVE LAW JUDGES
 ROOM 5109
 505 VAN NESS AVENUE
 SAN FRANCISCO, CA 94102-3214

JAIME GANNON
 CALIF PUBLIC UTILITIES COMMISSION
 ENERGY DIVISION
 AREA 4-A
 505 VAN NESS AVENUE
 SAN FRANCISCO, CA 94102-3214

KEVIN R. DUDNEY
 CALIF PUBLIC UTILITIES COMMISSION
 ENERGY DIVISION
 AREA 4-A
 505 VAN NESS AVENUE
 SAN FRANCISCO, CA 94102-3214

MERIDETH STERKEL
 CALIF PUBLIC UTILITIES COMMISSION
 ENERGY DIVISION
 AREA 4-A
 505 VAN NESS AVENUE
 SAN FRANCISCO, CA 94102-3214

MICHAEL COLVIN
 CALIF PUBLIC UTILITIES COMMISSION
 POLICY & PLANNING DIVISION
 ROOM 5119
 505 VAN NESS AVENUE
 SAN FRANCISCO, CA 94102-3214

NEAL REARDON
 CALIF PUBLIC UTILITIES COMMISSION
 ENERGY DIVISION
 AREA 4-A
 505 VAN NESS AVENUE
 SAN FRANCISCO, CA 94102-3214

RAHMON MOMOH
 CALIF PUBLIC UTILITIES COMMISSION
 ELECTRICITY PLANNING & POLICY BRANCH
 ROOM 4102
 505 VAN NESS AVENUE
 SAN FRANCISCO, CA 94102-3214
 FOR: DRA

LINDA KELLY
 ELECTRICITY ANALYSIS OFFICE
 CALIFORNIA ENERGY COMMISSION
 1516 9TH STREET, MS 20
 SACRAMENTO, CA 95814

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Parties

DANIEL W. DOUGLASS
 ATTORNEY AT LAW
 DOUGLASS & LIDDELL
 21700 OXNARD STREET, SUITE 1030
 WOODLAND HILLS, CA 91367
 FOR: WESTERN POWER TRADING FORUM,
 ALLIANCE FOR RETAIL ENERGY MARKETS

WALKER MATTHEWS
 SOUTHERN CALIFORNIA EDISON COMPANY
 2244 WALNUT GROVE AVE.
 ROSEMEAD, CA 91770
 FOR: SOUTHERN CALIFORNIA EDISON COMPANY

DON LIDDELL
 ATTORNEY AT LAW
 DOUGLASS & LIDDELL
 2928 2ND AVENUE
 SAN DIEGO, CA 92103
 FOR: CALIFORNIA ENERGY STORAGE
 ALLIANCE/DEBENHAM ENERGY, LLC

MITCHELL SHAPSON
 CALIF PUBLIC UTILITIES COMMISSION
 LEGAL DIVISION
 ROOM 4107
 505 VAN NESS AVENUE
 SAN FRANCISCO, CA 94102-3214
 FOR: DRA

MARCEL HAWIGER
 ENERGY ATTORNEY
 THE UTILITY REFORM NETWORK
 115 SANSOME STREET, SUITE 900
 SAN FRANCISCO, CA 94104
 FOR: THE UTILITY REFORM NETWORK

SCOTT BLAISING
 ATTORNEY AT LAW
 BRAUN & BLAISING MCLAUGHLIN, P.C.
 915 L STREET, SUITE 1270
 SACRAMENTO, CA 95814
 FOR: CALIFORNIA MUNICIPAL UTILITIES
 ASSOCIATION

Information Only

CASE ADMINISTRATION
 SOUTHERN CALIFORNIA EDISON COMPANY
 2244 WALNUT GROVE AVENUE, PO BOX 800

CONNOR J. FLANIGAN
 SOUTHERN CALIFORNIA EDISON COMPANY
 PO BOX 800

ROSEMEAD, CA 91770

2244 WALNUT GROVE AVE.
ROSEMEAD, CA 91770
FOR: SOUTHERN CALIFORNIA EDISON CO.

DOUGLAS K PORTER
SOUTHERN CALIFORNIA EDISON COMPANY
2244 WALNUT GROVE AVENUE
ROSEMEAD, CA 91770

GLORIA M. ING
ATTORNEY AT LAW
SOUTHERN CALIFORNIA EDISON COMPANY
2244 WALNUT GROVE AVENUE
ROSEMEAD, CA 91770

EVELYN C. LEE
ATTORNEY AT LAW
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE STREET, MC B30A
SAN FRANCISCO, CA 94105

CASSANDRA SWEET
DOW JONES NEWSWIRES
201 CALIFORNIA ST., 13TH FLOOR
SAN FRANCISCO, CA 94111

HILARY CORRIGAN
CALIFORNIA ENERGY MARKETS
425 DIVISADERO ST. SUITE 303
SAN FRANCISCO, CA 94117-2242

CASE COORDINATION
PACIFIC GAS AND ELECTRIC COMPANY
PO BOX 770000 MC B9A
77 BEALE STREET
SAN FRANCISCO, CA 94177

MRW & ASSOCIATES, LLC
1814 FRANKLIN STREET, SUITE 720
OAKLAND, CA 94612

ERIN GRIZARD
THE DEWEY SQUARE GROUP
921 11TH STREET, 10TH FLOOR
SACRAMENTO, CA 95814

LYNN HAUG
ATTORNEY AT LAW
ELLISON, SCHNEIDER & HARRIS, LLP
2600 CAPITOL AVENUE, SUITE 400
SACRAMENTO, CA 95816-5905

ANN L. TROWBRIDGE
ATTORNEY AT LAW
DAY CARTER & MURPHY LLP
3620 AMERICAN RIVER DRIVE, SUITE 205
SACRAMENTO, CA 95864
FOR: CALIFORNIA CLEAN DG COALITION

JORDAN WHITE
SENIOR ATTORNEY
PACIFICORP
825 NE MULTNOMAH STREET, SUITE 1800
PORTLAND, OR 97232

MARK TUCKER
PACIFICORP
825 NE MULTNOMAH, SUITE 2000
PORTLAND, OR 97232

State Service

DOROTHY DUDA
CALIF PUBLIC UTILITIES COMMISSION
DIVISION OF ADMINISTRATIVE LAW JUDGES
ROOM 5109
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

MICHAEL COLVIN
CALIF PUBLIC UTILITIES COMMISSION
POLICY & PLANNING DIVISION
ROOM 5119
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

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Parties

STEVEN D. PATRICK
 ATTORNEY AT LAW
 SEMPRA ENERGY
 555 WEST FIFTH STREET, STE 1400
 LOS ANGELES, CA 90013-1011
 FOR: SDG&E; SOCAL GAS COMPANY

DANIEL W. DOUGLASS
 ATTORNEY AT LAW
 DOUGLASS & LIDDELL
 21700 OXNARD STREET, SUITE 1030
 WOODLAND HILLS, CA 91367
 FOR: WESTERN POWER TRADING FORUM;
 ALLIANCE FOR ENERGY MARKETS;DIRECT
 ACCESS CUSTOMER COALITION

CONNOR J. FLANIGAN
 SOUTHERN CALIFORNIA EDISON COMPANY
 PO BOX 800
 2244 WALNUT GROVE AVE.
 ROSEMEAD, CA 91770
 FOR: SOUTHERN CALIFORNIA EDISON CO.

GLORIA ING
 ATTORNEY AT LAW
 SOUTHERN CALIFORNIA EDISON COMPANY
 2244 WALNUT GROVE AVENUE
 ROSEMEAD, CA 91770
 FOR: SOUTHER CALIFORNIA EDISON COMPANY

MITCHELL SHAPSON
 CALIF PUBLIC UTILITIES COMMISSION
 LEGAL DIVISION
 ROOM 4107
 505 VAN NESS AVENUE
 SAN FRANCISCO, CA 94102-3214
 FOR: DRA

MARCEL HAWIGER
 ATTORNEY AT LAW
 THE UTILITY REFORM NETWORK
 115 SANSOME STREET, SUITE 900
 SAN FRANCISCO, CA 94104
 FOR: THE UTILITY REFORM NETWORK

RANDALL J. LITTENEKER
 ATTORNEY AT LAW
 PACIFIC GAS AND ELECTRIC COMPANY
 PO BOX 7442, B30A
 SAN FRANCISCO, CA 94120
 FOR: PACIFIC GAS AND ELECTRIC COMPANY

SCOTT BLAISING
 ATTORNEY AT LAW
 BRAUN & BLAISING MCLAUGHLIN, P.C.
 915 L STREET, SUITE 1270
 SACRAMENTO, CA 95814
 FOR: CALIFORNIA MUNICIPAL UTILITIES
 ASSOCIATION

LYNN HAUG
ATTORNEY AT LAW
ELLISON, SCHNEIDER & HARRIS, LLP
2600 CAPITOL AVENUE, SUITE 400
SACRAMENTO, CA 95816-5905
FOR: FUELCELL ENERGY, INC.

ANN L. TROWBRIDGE
ATTORNEY AT LAW
DAY CARTER & MURPHY LLP
3620 AMERICAN RIVER DRIVE, SUITE 205
SACRAMENTO, CA 95864
FOR: MERCED IRRIGATION DISTRICT;
MODESTO IRRIGATION DISTRICT; CALIFORNIA
CLEAN DG COALITION

Information Only

RICHARD SHAW
DIRECTOR - BUSINESS DEVELOPMENT
FUELCELL ENERGY, INC.
3 GREAT PASTURE ROAD
DANBURY, CT 06813

HUGH YAO
SOUTHERN CALIFORNIA GAS COMPANY
555 W. 5TH ST, GT22G2
LOS ANGELES, CA 90013

CASE ADMINISTRATION
SOUTHERN CALIFORNIA EDISON COMPANY
2244 WALNUT GROVE AVENUE, PO BOX 800
ROSEMEAD, CA 91770

DOUGLAS K PORTER
SOUTHERN CALIFORNIA EDISON COMPANY
2244 WALNUT GROVE AVENUE
ROSEMEAD, CA 91770

DON LIDDELL
ATTORNEY AT LAW
DOUGLASS & LIDDELL
2928 2ND AVENUE
SAN DIEGO, CA 92103

CENTRAL FILES
SAN DIEGO GAS AND ELECTRIC COMPANY
8330 CENTURY PARK COURT, CP-32DI
SAN DIEGO, CA 92123

DEAN A. KINPORTS
REGULATORY AFFAIRS
SAN DIEGO GAS & ELECTRIC COMPANY
8330 CENTURY PARK COURT CP32D
SAN DIEGO, CA 92123

BROOKE A. REILLY
PACIFIC GAS & ELECTRIC COMPANY
77 BEALE STREET, ROOM 970
SAN FRANCISCO, CA 94105

SUNCHETH BHAT
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE ST, MC B9A
SAN FRANCISCO, CA 94105

CASSANDRA SWEET
DOW JONES NEWSWIRES
201 CALIFORNIA ST., 13TH FLOOR
SAN FRANCISCO, CA 94111

HILARY CORRIGAN
CALIFORNIA ENERGY MARKETS
425 DIVISADERO ST. SUITE 303
SAN FRANCISCO, CA 94117-2242

BILL MANHEIM
PACIFIC GAS AND ELECTRIC COMPANY
PO BOX 770000, MAIL CODE B30A
SAN FRANCISCO, CA 94177

CASE COORDINATION
PACIFIC GAS AND ELECTRIC COMPANY
PO BOX 770000 MC B9A
77 BEALE STREET
SAN FRANCISCO, CA 94177

JOSEPHINE WU
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE STREET, MC B9A
SAN FRANCISCO, CA 94177

CASE COORDINATION
PACIFIC GAS AND ELECTRIC COMPANY
PO BOX 770000; MC B9A
SAN FRANCISCO, CA 94177

RICHARD A. BROMLEY
39 TAM OSHANTER
ALAMO, CA 94507

JOSEPH R. HEINZMANN
REGIONAL DIRECTOR OF BUSINESS DEVELOPMNT
FUELCELL ENERGY, INC.
1580 WHITMAN ROAD
CONCORD, CA 94518
FOR: FUELCELL ENERGY, INC.

SEAN P. BEATTY
SR. MGR. EXTERNAL & REGULATORY AFFAIRS
MIRANT CALIFORNIA, LLC
696 WEST 10TH ST., PO BOX 192
PITTSBURG, CA 94565

MRW & ASSOCIATES, LLC
1814 FRANKLIN STREET, SUITE 720
OAKLAND, CA 94612

MRW & ASSOCIATES, INC.
1814 FRANKLIN STREET, SUITE 720
OAKLAND, CA 94612

ERIN GRIZARD
THE DEWEY SQUARE GROUP
921 11TH STREET, 10TH FLOOR
SACRAMENTO, CA 95814

RALPH R. NEVIS
DAY CARTER & MURPHY LLP
3620 AMERICAN RIVER DR., SUITE 205
SACRAMENTO, CA 95864
FOR: CALIFORNIA CLEAN DG COALITION,
MERCED IRRIGATION DISTRICT, MODESTO
IRRIGATION DISTRICT

JORDAN WHITE
SENIOR ATTORNEY
PACIFICORP
825 NE MULTNOMAH STREET, SUITE 1800
PORTLAND, OR 97232

MARK TUCKER
PACIFICORP
825 NE MULTNOMAH, SUITE 2000
PORTLAND, OR 97232

State Service

ANTHONY MAZY
CALIF PUBLIC UTILITIES COMMISSION
ELECTRICITY PLANNING & POLICY BRANCH
ROOM 4209
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214
FOR: DRA

DAVID PECK
CALIF PUBLIC UTILITIES COMMISSION
ELECTRICITY PLANNING & POLICY BRANCH
ROOM 4103
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

DOROTHY DUDA
CALIF PUBLIC UTILITIES COMMISSION
DIVISION OF ADMINISTRATIVE LAW JUDGES
ROOM 5109
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

JAMIE GANNON
CALIF PUBLIC UTILITIES COMMISSION
ENERGY DIVISION
AREA 4-A
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

KEVIN R. DUDNEY
CALIF PUBLIC UTILITIES COMMISSION
ENERGY DIVISION
AREA 4-A
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

MERIDETH STERKEL
CALIF PUBLIC UTILITIES COMMISSION
ENERGY DIVISION
AREA 4-A
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

MICHAEL COLVIN
CALIF PUBLIC UTILITIES COMMISSION
POLICY & PLANNING DIVISION
ROOM 5119
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

NEAL REARDON
CALIF PUBLIC UTILITIES COMMISSION
ENERGY DIVISION
AREA 4-A
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214

RAHMON MOMOH
CALIF PUBLIC UTILITIES COMMISSION
ELECTRICITY PLANNING & POLICY BRANCH
ROOM 4102
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3214
FOR: DRA

LINDA KELLY
ELECTRICITY ANALYSIS OFFICE
CALIFORNIA ENERGY COMMISSION
1516 9TH STREET, MS 20
SACRAMENTO, CA 95814

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