

**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 09-04-018  
(Filed April 17, 2009)

**PACIFIC GAS AND ELECTRIC COMPANY'S (U 39-E)  
REPLY BRIEF IN SUPPORT OF ITS APPLICATION TO APPROVE  
AND RECOVER IN RATES THE COSTS OF ITS FUEL CELL PROJECT**

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**I. INTRODUCTION AND SUMMARY OF ARGUMENT**

This Reply Brief of Pacific Gas and Electric Company (PG&E) is submitted in accordance with the schedule set by Administrative Law Judge Duda at the Prehearing Conference on October 14, 2009 and responds to arguments in the Opening Briefs of the Division of Ratepayer Advocates (DRA), The Utility Reform Network (TURN), and the Western Power Trading Forum (WPTF). Some of the arguments of these parties were already addressed in the Opening Brief filed by PG&E on December 30, 2009. This brief does not repeat arguments and citations to the record already addressed in that brief.

The record in this proceeding strongly supports adoption of PG&E's proposed Fuel Cell Project as just, reasonable, and in the public interest. The CPUC should reject the following arguments of DRA, TURN, and WPTF:

- The argument of DRA that the entire application should be rejected as not in the public interest.

- The argument of DRA that the application should be dismissed for failure to comply with the Notice requirements of the Commission’s Rules of Practice and Procedure.
- The argument of TURN that the solid oxide “electric only” facility should be eliminated.
- The argument of TURN that the contingency rates in the capital cost forecast should be reduced.
- The argument of TURN that the lease agreements with the California State Universities (CSUs) should be revised to assign to PG&E the value of waste heat supplied to the CSUs.
- The argument of TURN that the costs associated with community education and outreach should be eliminated.
- The argument of WPTF that this proposal is at odds with the Commission’s requirements for Utility-Owned Generation (UOG).
- The argument of WPTF that this generation should be treated differently than other new world generation with respect to departing load charges.

We note with interest that DRA’s Opening Brief included no discussion of many topics in its testimony, such as its proposal to disallow various elements of capital costs and O&M costs proposed by PG&E. PG&E assumes that by not briefing these topics, DRA has abandoned these arguments. Similarly, PG&E was delighted to see that TURN now takes the position that requiring the lease agreements with the CSUs to be revised to require payment for campus use of waste heat “may be unproductive due to other contributions from the campuses...”<sup>1/</sup>

The Fuel Cell Project will support and help to advance state energy goals. These goals will be advanced through gathering new information about fuel cell operations, education and outreach efforts, and demonstration of the technology. These installations, together with the

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<sup>1/</sup> TURN Opening Brief p. 18.

well-designed education and outreach efforts, should provide a valuable stimulus to the fuel cell industry. The Commission should approve the Application as proposed.

## **II. THE FUEL CELL PROJECT COMPLEMENTS AND ADVANCES STATE PROGRAMS AND GOALS**

### **A. The Fact That Fuel Cells Have Been Around For Many Years Is Not A Reason To Abandon Hope For This Promising Technology**

In its testimony and at hearing, PG&E's witnesses explained the potential advantages of fuel cells in advancing state energy policy, including the fact that they do not produce particulates or unburned hydrocarbons, have very low nitrogen oxide and sulfur oxide emissions, and can play a role in reducing greenhouse gas emissions by utilizing fuels with low or neutral carbon content at high electrical efficiencies.<sup>2/</sup> DRA and TURN do not dispute these advantages.

In addition, the testimony validates that California has encouraged clean forms of electrical generation, such as fuel cells, through legislation and at the Commission. DRA and TURN dispute the need for this particular program, but do not dispute the notion that California supports the development of fuel cell technology.

Instead, TURN and DRA challenge this particular proposal to advance fuel cells, making various arguments. First, they both argue that fuel cell technology has been around for decades.<sup>3/</sup> However, the same is true of photovoltaic (PV) technology. Notwithstanding the long-standing existence of PV technology, the CPUC directed the utilities to provide various incentives to customers through the Self-Generation Incentive Program (SGIP) beginning in 2001, and the California Solar Initiative (CSI) beginning in 2006. These programs have helped California to become the national leader in PV installations. The Commission and its staff correctly report that the CSI is a great success. For example, the October 2009 CSI Staff Report notes that

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<sup>2/</sup> PG&E Supplemental Testimony, Exh. 2, p. 1-3 (PG&E/Witness Jan Berman).

<sup>3/</sup> DRA Opening Brief pp. 1-3; TURN Opening Brief pp. 3-6. DRA and TURN also criticized the lack of information provided by Applicants on national and world fuel cell markets. However, as discussed in the text, when the Commission adopted the California Solar Initiative, it did not claim that would transform the global or national solar market. Instead, the Commission claimed that CSI would help advance solar power **in California**, which has been the case.

California has now reached a cumulative 509 MW of installed solar at 52,714 sites, with PV panel prices decreasing in the last year.<sup>4/</sup> Even more impressive is the fact that, to date, more PV projects have been installed in California than in the rest of the country combined.

The same cannot be said of the success of the incentives offered for fuel cell installations. DRA claims that “Generous incentives for fuel cell development are now in place and no more incentives are necessary.”<sup>5/</sup> However, this claim is nonsense. Other parts of DRA’s Opening Brief acknowledge that the SGIP has resulted in the installation of only 22 fuel cell projects.<sup>6/</sup> The lack of success to date in incenting fuel cell installations, or the fact that the technology has been around for years, are not valid reasons to throw in the towel on this promising technology. Instead, they are reasons to look for useful and cost effective **new** ways to advance fuel cells.

**B. The Project Will Provide Significant Benefits Advancing Understanding of Fuel Cell Technology**

In its testimony and at hearing, PG&E demonstrated that its Fuel Cell Project will advance fuel cell technologies in California in various ways. First, PG&E witnesses explained in detail that it will allow PG&E to better understand fuel cell operations and processes. This benefit was addressed in PG&E testimony<sup>7/</sup> and DRA did not discuss this topic or rebut this showing.

Instead, DRA devoted long portions of its brief to criticizing the proposed community education and outreach elements of this proposal. It describes these elements as too “amorphous” and “speculative.”<sup>8/</sup> It complains in particular that the education element has not been adequately developed. However, the evidence in the record demonstrates a great deal of

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<sup>4/</sup> The October staff report can be found at [http://www.cpuc.ca.gov/NR/rdonlyres/4B614602-0E76-4533-A03A-BC01B6A89831/0/ProgrReportOct09Final\\_3\\_withcover.pdf](http://www.cpuc.ca.gov/NR/rdonlyres/4B614602-0E76-4533-A03A-BC01B6A89831/0/ProgrReportOct09Final_3_withcover.pdf).

<sup>5/</sup> DRA Opening Brief p. 2.

<sup>6/</sup> DRA Opening Brief p. 3.

<sup>7/</sup> PG&E Opening Brief p. 5.

<sup>8/</sup> DRA Opening Brief p. 4.

detail and passion for the educational elements in this proposal. In particular, California State University, East Bay (CSU East Bay) faculty prepared a detailed proposal for utilizing the Fuel Cell Project into its curriculum and its campus, featuring faculty from multiple disciplines. This report includes a discussion of specific research opportunities, a detailed curriculum proposal, tours and system monitoring. Specific classes and majors and how this project would be incorporated into their curriculum are discussed in detail.<sup>9/</sup> DRA complains that there is no information from the other campuses, but San Francisco State University (SF State) has stated that the Fuel Cell Project will significantly enhance the university's programs including its Master of Business Administration program in sustainability, its undergraduate/graduate programs in science, engineering and environmental studies, and other listed programs.<sup>10/</sup>

DRA claims that a fuel cell is "little more than a collection of boxes," and that there is nothing a student could learn from visits to a fuel cell.<sup>11/</sup> In the reports included in testimony, the CSUs profoundly disagreed. For example, SF State stated that "By making the Fuel Cell available, both virtually and through actual site tours, the Project will also be a valuable resource for the Bay Area's educational, technological and scientific communities."<sup>12/</sup> Similarly, in its proposal, CSU East Bay described the advantages of having the equipment on campus in terms of education, tours, and system monitoring, and research.<sup>13/</sup>

### **C. DRA's Proposal That Students Travel To Remote Fuel Cells Is Not An Adequate Substitute**

DRA devoted substantial hearing time and briefing space to the argument that students could simply travel to existing fuel cell facilities, without the need to install any new equipment.

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<sup>9/</sup> PG&E Supplemental Testimony, Exh. 2, Attachment 2B (PG&E/Witness Scott Loveless).

<sup>10/</sup> PG&E Supplemental Testimony, Exh. 2, pp. 2-7 to 2-8, and Attachment 2C (PG&E/Witness Scott Loveless).

<sup>11/</sup> DRA Opening Brief p. 6.

<sup>12/</sup> PG&E Supplemental Testimony, Exh. 2, Attachment 2C (PG&E/Witness Scott Loveless).

<sup>13/</sup> PG&E Supplemental Testimony, Exh. 2, Attachment 2B p. 6 (PG&E/Witness Scott Loveless).

If such equipment is open to the public, such tours might be a possibility. However, simply relying on the possibility of student travel to distant installations is not going to advance fuel cell technology in this state. This proposal would make the equipment available and visible to a new generation of students at multiple campus locations, participating in multiple research, education, and other programs.

**D. DRA’s Argument That This Project Violates CSU Energy Policy Is Meritless**

DRA argues that the proposal violates the CSU Energy Plan, citing an Executive Order of the CSU Chancellor.<sup>14/</sup> That Order encourages the CSU campuses to consider cost-effective energy alternatives, including energy efficiency, renewable projects, cogeneration projects, and other clean self-generation. Those are all worthy goals that this Commission and PG&E both support. However, the CSU Energy Plan is not applicable to this project. This is utility-owned generation serving PG&E’s distribution grid, not serving campus load. Moreover, there is nothing in that Order preventing CSU campus from pursuing other alternatives that advance their educational goals, and complement the state’s air and energy goals. This project serves all those purposes.

**III. THE PROPOSED COSTS AND RATEMAKING ARE REASONABLE**

**A. The Proposed Capital Cost Contingency Factors Should Be Included**

DRA apparently abandoned its challenges to the proposed capital costs, which were not addressed in its opening brief. TURN argued that contingency factors should be reduced for equipment costs and installation costs.<sup>15/</sup> However, PG&E’s proposed contingency factors are appropriate and justifiable for these costs for this type of project.

One of the reasons for requiring the requested contingency for equipment is the fact that the engineering, procurement and construction (EPC) contracts with the fuel cell equipment vendors have not yet been executed, and there is still some uncertainty and risks associated with

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<sup>14/</sup> DRA Opening Brief pp. 5-6, citing Hearing Exh. 200.

<sup>15/</sup> TURN Opening Brief pp. 14-18.

the site and support needs for a portion of the project work.<sup>16/</sup> TURN argues that PG&E could seek review of any increase in costs, but this alternative would push the project back indefinitely. While PG&E hopes that it can bring these projects on line for a cost under its total estimate, if some cost increases occur, there would not be time to file a new application to seek Commission approval of the increase. The contingency covers items for which PG&E retains risks and uncertainty.

Similarly, a contingency factor for installation costs is essential here. Installation of electric generation on populous CSU campuses increases the risks and uncertainty associated with the project. Those uncertainties and challenges include allowable work hours, acceptable noise levels, additional safety measures, and traffic restrictions that can require multiple mobilizations of construction crews and increase costs, which justify the contingency factors.<sup>17/</sup> In addition, any material changes in scope of work will require coordination and consent of the host universities.<sup>18/</sup>

TURN argues that the proposed contingency factors are at odds with those approved in other Commission decisions. However, neither case it cites supports its claim. First, TURN cites D.06-11-048 (approved Colusa and Humboldt generation projects) for the proposition that the contingency for owner's costs should be capped at 5%. However, the text it quotes, and other portions of that decision make clear that the addressing cost uncertainty depends on the facts and the costs at issue. For example, the Commission there stated:

DRA recommends that we remove a portion of costs associated with the Humboldt project's electrical and fuel interconnection costs on the basis that they **represent a 50% contingency** on top of their actual estimated costs. This is not the case. Rather, as PG&E explains, the selected electrical interconnection cost estimate falls near the lower end of the range of its

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<sup>16/</sup> Transcript pp. 133-137 (PG&E witness Bergmann). PG&E has negotiated the major terms and conditions of the EPC contracts with the vendors, but until the contracts are finalized, some uncertainty remains. (PG&E Supplemental Testimony, Exh. 2, p. 2-5, PG&E witness Scott Loveless).

<sup>17/</sup> PG&E Rebuttal Testimony, Exh. 4, pp. 3-1 to 3-2 (PG&E/Witness David Bergmann).

<sup>18/</sup> PG&E Rebuttal Testimony, Exh. 4, pp. 3-1 to 3-2 (PG&E/Witness David Bergmann).

estimated costs. Likewise, the selected fuel interconnection cost estimate falls within the range of its estimated costs, albeit at the top of the range.... [W]e find that the cost estimate ranges are reasonable.... In making this finding, we take into account that the capital cost estimate will be trued up to reflect actual costs if it turns out that PG&E's selected cost estimates overstate them....

D.06-11-048 at page 19. Similarly, in that Decision, the Commission rejected the claim that requiring review of uncertain costs is essential to avoiding cost overruns, stating:

we recognize PG&E's interest in obtaining some amount of certainty of cost recovery before undertaking these large projects, the public interest in avoiding unnecessary regulatory reviews, and the fact that PG&E's capital cost estimates including owner's costs have been scrutinized in this proceeding....

D.06-11-048 at page 18.

The second authority cited by TURN is a Proposed Decision issued in A.09-02-022 (the Rate Design Window case) issued on Dec. 22, 2009. This not a final Commission decision, and this week PG&E filed comments asking for changes to this portion of the Proposed Decision. Moreover, the stated rationale does not apply here. There, the Proposed Decision says the utility would have ample opportunity in other expected proceedings for the Commission to consider expected costs before they are incurred. That is simply not true here.

The contingency rates are within reasonable levels for the proposed projects. In addition, if the actual capital cost is less than the forecast, PG&E will true-up revenues to reflect the lower amount. In this way, customers receive the benefit of any savings in capital spending.<sup>19/</sup> TURN did not provide a rational basis for disallowing any capital costs, and PG&E's forecast should be adopted.

## **B. Operations and Maintenance Costs**

In its Opening Brief, DRA did not address O&M costs, and no other party raised an issue about O&M costs. (TURN's proposal to delete the community education and outreach costs is addressed below). PG&E's proposed O&M forecast is reasonable and should be adopted by the Commission.

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<sup>19/</sup> PG&E Supplemental Testimony, Exh. 2, p. 5-2 (PG&E/Witness Joe O'Flanagan).

### C. Ratemaking and Non-bypassable Charges

In its testimony and opening brief, PG&E laid out various elements of its proposed ratemaking for this project. Only one aspect of this proposal drew any discussion in the Opening Briefs. WPTF argued that PG&E should not be allowed to collect non-bypassable charges associated with the Fuel Cell Project. PG&E proposed to implement the non-bypassable charge cost recovery for the Fuel Cell Project consistent with the Commission's direction in D.08-09-012, with this new world generation treated exactly like other new world generation.<sup>20/</sup>

WPTF acknowledges that various Commission decisions authorize non-bypassable charge recovery for new world generation, but it argues that such decisions authorize such recovery only for generation "acquired as a result of the procurement process."<sup>21/</sup> However, not one of these decisions addresses whether a non-bypassable charge rules apply only to generation procured through a Request For Offers (RFOs) for third party-owned generation. As PG&E explained in detail in its Opening Brief, the Commission has not required RFOs in all circumstances in the procurement process.

Finally, WPTF argues that the non-bypassable costs here are very small, likely to be de minimis. However, it then argues that "Despite the dollars involved, the principle is important."<sup>22/</sup> PG&E agrees. If approved by the Commission, the Fuel Cell Project will be part of PG&E's new world generation supply portfolio, and for non-bypassable charge collection purposes, it should be included in that portfolio exactly like all other new world generation.

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<sup>20/</sup> Transcript p. 166 (PG&E/O'Flanagan).

<sup>21/</sup> WPTF Opening brief pp. 13-17.

<sup>22/</sup> WPTF Opening brief p. 19.

#### IV. THE PROJECT IS CONSISTENT WITH CPUC DECISIONS ON UTILITY-OWNED GENERATION

The WPTF claims that PG&E's proposal should be rejected because it fails to comply with Commission directions on UOG. In fact, as discussed extensively in PG&E's Opening Brief, this proposal is consistent with prior decisions, and should be approved.<sup>23/</sup>

WPTF argues that a competitive RFO is required here. However, as explained at hearing and in the Opening Brief, it is not clear that the UOG requirements are applicable in this proceeding. In Decision 07-12-052, the Commission indicated that the UOG requirements primarily address "conventional generation resources" and that there may be "additional factors associated with utility-ownership of renewable and other loading order or non-conventional resources that have not been fully vetted in this proceeding."<sup>24/</sup> The Commission concluded that "the appropriate treatment of UOG for accomplishing resource-specific policy goals will be identified within the appropriate proceedings, and the treatment of utility ownership of conventional generation in this LTPP decision does not prejudice those proceedings in any manner."<sup>25/</sup> Indeed, WPTF cites later language from that decision stating that an RFO is not needed for "advanced or emerging technology that the market is unlikely to develop." As discussed in testimony and at hearing, the market has not succeeded very well in inciting the installation of this promising technology.

Second, even if the UOG requirements cited by WPTF were applicable, they are fully satisfied in this proceeding. PG&E demonstrates that holding a competitive RFO is infeasible here. As a demonstrative project developed in coordination with the State and located on CSU campuses, both the State and our host universities have indicated a preference for utility ownership of the facilities.<sup>26/</sup> WPTF tried to refute that showing, but its only complaint is that

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<sup>23/</sup> Note also that Assembly Bill 1613 (2007) stated that "It is the intent of the Legislature to support and facilitate both customer- and **utility-owned** combined heat and power systems." (emphasis added).

<sup>24/</sup> D.07-12-052 at 197, n. 233.

<sup>25/</sup> Id.

<sup>26/</sup> PG&E Supplemental Testimony, Exh. 2, p. 1-6 (PG&E/Witness Jan Berman), attachment 1 B, and

PG&E failed to discuss with the CSUs the Commission’s general preference for competitive RFOs. However, as PG&E witness Jan Berman explained on the stand, since both CSUs have a strong preference for PG&E to own these facilities, it was not appropriate to have that discussion.<sup>27/</sup> WPTF essentially argues that unless the CSUs agree to allow third party ownership by an unknown third party, PG&E’s project will not be permitted. However, since that alternative has been rejected by the CSUs, this argument would essential kill this project. In these unique circumstances, the Fuel Cell Project should be approved.

**V. OTHER INTERVENOR PROPOSALS SHOULD BE REJECTED**

**A. TURN’s Proposal To Eliminate The Utility Community Outreach And Education Efforts Should Be Rejected**

In its opening brief, TURN recommended eliminating the costs for community outreach and education associated with the project.<sup>28/</sup> This recommendation should be rejected. As explained in its Opening Brief, the proposed community outreach and education program will maximize the educational benefits of the fuel cell facilities both on campus and in their surrounding communities. This would not be a “greenwashing” campaign in any way. This work will not duplicate the education programs of the two universities, but will complement and supplement them. The efforts will include maintaining the educational kiosks, updating utility educational material, coordinating with the two universities in developing class curriculum and hosting tours of the facilities.<sup>29/</sup> PG&E’s requested costs associated with community outreach and education should be included.

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attachment 2A (PG&E/Witness Scott Loveless); PG&E Rebuttal Testimony, Exh. 4, p. 1-4 (PG&E/Witness Jan Berman); and Transcript pp. 41, 45-47, 56 (PG&E Jan Berman and Scott Loveless testimony).

<sup>27/</sup> Transcript at pages 44-45 (PG&E/Jan Berman testimony).

<sup>28/</sup> TURN Opening Brief pp. 18-19.

<sup>29/</sup> PG&E Rebuttal Testimony, Exh. 4, page 2-2 (PG&E/Witness Scott Loveless).

**B. TURN’s Proposal To Eliminate The Solid Oxide Fuel Cell Facility Should Be Rejected**

TURN proposes to eliminate the 0.2 MW solid oxide fuel cell (SOFC) facility at SF State, which it calls an “electric-only” project.<sup>30/</sup> This proposal should be rejected.

As PG&E explained in its Opening Brief and its rebuttal testimony, while the capital cost of the SOFC facility is more than the capital cost for each of the Molten Carbonate Fuel Cell (MCFC) facilities on a per kilowatt basis, the demonstrative attributes of the project is greatly enhanced by the installation and operation of two distinct technologies side-by-side at SF State. In addition, the SOFC vendor is the sole California fuel cell manufacturer with commercially available large scale stationary fuel cell technology.<sup>31/</sup> Moreover, the SOFC facility has a lower heat rate than the MCFC facility, and it is the only fuel cell that has a heat rate approximately equal to that of a modern combined cycle plant.<sup>32/</sup>

TURN does not dispute these advantages. Instead, it simply thinks the price is too high. PG&E respectfully disagrees, and submits that adding this limited, distinct technology will be a worthy addition to this demonstration project.

**C. TURN’s Proposal To Modify the Lease Agreements Should Be Rejected**

TURN no longer recommends that PG&E renegotiate the lease agreements with the two universities to require compensation for campus use of the waste heat produced by the fuel cell facilities. However, it does argue that the agreements should be modified to assign to PG&E any potential value of avoided greenhouse gas (GHG) emissions.<sup>33/</sup> However, as explained in PG&E’s rebuttal testimony, no current GHG regulation or emissions allowance market is in

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<sup>30/</sup> TURN Opening Brief pp. 7-12.

<sup>31/</sup> PG&E Rebuttal Testimony, Exh. 4, pages 2-1 to 2-2 (PG&E/Witness Scott Loveless).

<sup>32/</sup> PG&E Supplemental Testimony, Exh. 2, pages 2-4 (PG&E/Witness Scott Loveless). TURN argues at page 10 of its Opening brief that the CO2 emissions from the SOFC equipment will be higher than those from a combined cycle plant. In fact, they will be approximately equal. PG&E Supplemental Testimony Ex. 2, page 2-6 (PG&E/Witness Scott Loveless).

<sup>33/</sup> TURN Opening Brief p. 20.

place that would assign separate value to the GHG emissions avoided by use of the waste heat. PG&E did not include GHG emissions in the lease agreements negotiated with the two CSUs and does not know if they would accept such terms.<sup>34/</sup>

## **VI. PG&E GAVE BROAD AND CLEAR NOTICE OF THE FILING OF THIS APPLICATION**

In its Opening Brief, DRA seeks dismissal of this Application due to alleged failure to comply with the Notice requirements of Rule 3.2(b) through (d) of the CPUC's Rules of Practice and Procedure. As explained below, DRA's argument is without merit and should be rejected.

As a general matter and as explained in PG&E's Opening Brief, PG&E sent broad public notice of its application by notice to government agencies, by publication in newspapers, and by customer bill inserts. These notices gave interested parties detailed information on this application. DRA does not dispute that PG&E provided adequate public notice of the substance of its Application; rather, DRA quibbles with details such as whether PG&E included both a mailing address and an email address for the Commission. Such details are not grounds for the Commission to dismiss an application.

It is not the Commission's practice to dismiss applications for minor errors in the Notice. For example, in PG&E's 2009 ERRRA forecast case, intervenors argued that PG&E's notice to customers had been inadequate. The Commission agreed with the intervenors but nevertheless refused to dismiss the application:

The notice provided for this application was the same as we approved in D.08-02-018 [PG&E's 2008 ERRRA forecast case]. However, the notice did not indicate the percentage rate change for departing load customers as required by Section 454(a).

There is no reason to believe that this oversight would significantly disadvantage departing load customers or that the cost of additional notice would be justified, PG&E shall correct this oversight in future applications by providing notice fully in compliance with Section 454(a) as well as Rule 3.2(d).

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<sup>34/</sup> PG&E Rebuttal Testimony, Exh. 4, page 2-4 (PG&E/Witness Scott Loveless).

D.08-12-029, *mimeo*, p. 8. In other words, even though it found a minor violation of the notice requirements, the Commission did not dismiss the application. Instead, it ordered PG&E to correct its oversight in future applications.

With respect to DRA's specific arguments about compliance with notice requirements, the Commission should reject most of them as meritless. PG&E addresses each in turn below.

First, DRA complains that it does not have a copy of the actual transmittal letter PG&E sent to the government agencies and claims that "PG&E has not met it[s] burden to show that it complied with the notice requirement [of Rule 3.2(b)]."<sup>35/</sup> However, there was no separate transmittal letter, only the notice itself, which DRA has had for months. It was adequate to meet the Rule 3.2(b) standard by "stating in general terms the proposed increase in rates." That rule requires no separate transmittal letter for its government notices.

Second, DRA objects that the notices by publication violated Rule 3.2(c) because they had minor errors, such as not stating that the application may be examined in any CPUC or PG&E office and their addresses, and in some circumstances were published on March 3-4, rather than March 2.<sup>36/</sup> While DRA may be correct that the notices did not comply with the exact wording of Rule 3.2(c) or may have missed the publication window by one or two days, the remedy for such minor errors is not to dismiss the Application. Having been alerted to these minor errors, PG&E will endeavor to ensure that future newspaper notices comply with the exact wording of Rule 3.2(c).

Moreover, as explained in the declaration from its advertising consultant attached to PG&E's Proof of Rule 3.2(c) compliance, PG&E sought the earliest possible publication dates at 55 newspapers in its service territories, and requested that those notices run on March 2<sup>nd</sup>. DRA is correct that in some cases, these publications did not run until March 3 or 4<sup>th</sup>. PG&E has been discussing with the Public Advisor's Office and with others at the Commission issues related to

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<sup>35/</sup> DRA Opening Brief pp. 8-9.

<sup>36/</sup> DRA Opening Brief p. 9.

the publication process, as the availability of timely access to newspaper publications has decreased, and has discussed with Commission staff and others on a Commission working group whether changes to Rule 3.2(c) would be in the public interest. However, any suggestion that PG&E takes its publication responsibilities lightly or that it is somehow misleading the Commission are simply not true. PG&E has encouraged DRA to participate in the Commission working group effort underway in this area.

Third, DRA objects that the notice served with customer bills was inadequate and inconsistent with Rule 3.2(d) in a) not including PG&E's mailing address (although it did include PG&E's phone number); b) failing to include the e-mail address of the CPUC (in fact, the e-mail for the Commission's Public Advisor was included) and c) failing to state that the address of the CPUC included in the Notice may be used to receive further notices.<sup>37/</sup> The language in the Notice gave the address of the Public Advisor's Office and described the Commission's process for litigating the application and receiving public input, and this language was reviewed and approved by the Public Advisor's office. PG&E therefore understood this language was sufficient. As a result of the critique by DRA, PG&E has reviewed the text it uses in the bill inserts with the Public Advisors Office, and together they have made various changes to later bill inserts, including adding the PG&E mailing address, which should have been included here. If the Commission wants further changes to be made in the language used in bill inserts in future cases, PG&E will comply, but dismissal of this Application is not an appropriate remedy.

Fourth, DRA argues that any cost recovery must be capped at the amount included in its original notice, which was \$44.5 million for non-fuel costs over ten years.<sup>38/</sup> PG&E strongly disagrees. PG&E is aware of no such restriction on the Commission's authority. Public Utilities Code Section 454 simply states: "Except as provided in Section 455, no public utility shall

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<sup>37/</sup> DRA Opening Brief pp. 10-11.

<sup>38/</sup> DRA Opening Brief p. 11.

change any rate...except upon a showing before the commission and a finding by the commission that the new rate is justified.” That same section sets forth the notice requirements that public utilities proposing such rate changes must comply with, but nothing in that section limits the Commission’s authority to approve a different revenue or rate change. To the contrary, Section 701 specifically gives the Commission authority to “do all things, whether specifically designated in this part or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction.”

As explained in its Supplemental Testimony, after submitting the Application, PG&E changed the selected technology originally chosen, and decreased the size of the SOFC equipment.<sup>39/</sup> The net effect of these changes was to increase the expected capital costs from \$21.3 million to \$21.5 million.<sup>40/</sup> However, these are prudent changes made after the original notice, which were discussed at the hearing and not challenged by any party. It is fully within the Commission’s authority to approve such changes notwithstanding the fact that the associated revenue requirements were not included in the initial notice.

In conclusion, any minor defects with PG&E’s notice of the instant Application are not material, and were not raised by DRA in a timely and lucid manner.<sup>41/</sup> Now that the hearing has been concluded, with the public having broad and clear notice of this application, dismissal of the Application is not warranted and would constitute an egregious waste of party and Commission resources.

## **VII. CONCLUSION**

PG&E’s Fuel Cell Project advances key California and Commission policies by expediting the development of a new source of energy in a cost-effective manner. The record in this proceeding provides substantial evidence in support of the public interest in Commission

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<sup>39/</sup> PG&E Supplemental Testimony, Exh. 2, pages 2-2 to 2-4 (PG&E/Witness Scott Loveless).

<sup>40/</sup> PG&E Supplemental Testimony, Exh. 2, page 1-2 (PG&E/Witness Jan Berman).

<sup>41/</sup> See discussion in PG&E’s Opening Brief at page 24, fn. 70.

approval. In addition, other parties in the proceeding have failed to develop a factual record to support their claims that this project should be rejected. For these and the specific reasons discussed in the foregoing sections, PG&E requests that the Commission act expeditiously to approve the Fuel Cell Project as proposed.

Respectfully submitted,

RANDALL J. LITTENEKER

By: \_\_\_\_\_ /s/  
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PACIFIC GAS AND ELECTRIC COMPANY

January 13, 2010

CERTIFICATE OF SERVICE BY ELECTRONIC MAIL

I, the undersigned, state that I am a citizen of the United States and am employed in the City and County of San Francisco; that I am over the age of eighteen (18) years and not a party to the within cause; and that my business address is 77 Beale Street, San Francisco, California 94105.

On January 13, 2010, I served a true copy of:

**PACIFIC GAS AND ELECTRIC COMPANY'S (U 39-E)  
REPLY BRIEF IN SUPPORT OF ITS APPLICATION TO APPROVE  
AND RECOVER IN RATES THE COSTS OF ITS FUEL CELL PROJECT**

- [XX] By Electronic Mail – serving the enclosed via e-mail transmission to each of the parties listed on the official service list for Applications 09-02-013 and 09-04-018 with an e-mail address.
- [XX] By U.S. Mail – by placing the enclosed for collection and mailing, in the course of ordinary business practice, with other correspondence of Pacific Gas and Electric Company, enclosed in a sealed envelope, with postage fully prepaid, addressed to those parties listed on the official service list for Applications 09-02-013 and 09-04-018 without an e-mail address.

I certify and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on this 13<sup>th</sup> day of January, 2010, at San Francisco, California.

/s/

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PATRICIA KOKASON