



FILED

02-22-10

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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company for Approval and Recovery of Costs Associated with its Fuel Cell Project. (U39E)

Application 09-02-013
(Filed February 20, 2009)

Application of Southern California Edison Company (U338E) 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 27, 2009)

**ADMINISTRATIVE LAW JUDGE'S RULING
ON MOTIONS FOR CONFIDENTIALITY**

This ruling addresses several outstanding motions for confidential treatment of testimony, exhibits, and filings in the above-captioned consolidated proceedings. There was no opposition to any of these motions.

On March 27, 2009, Pacific Gas and Electric Company (PG&E) filed a motion to file confidential information supporting its application for a Fuel Cell Project under seal. At the prehearing conference of April 27, 2009, I retitled PG&E's motion as a motion to seal the evidentiary record since the motion pertained to prepared testimony and exhibits which were served but not yet filed. Subsequently, at hearings on December 9 and 10, 2009, PG&E requested confidential treatment of these same documents which were marked and admitted as exhibits at the hearing.

PG&E seeks confidentiality of its forecasts of the cost of its proposed utility-owned fuel cell generating facilities which are the subject of its application, as well as the scoring analysis used in the procurement material

supporting its application. The capital costs and operations and maintenance (O&M) costs of each of the fuel cell facilities that together comprise the Fuel Cell Project have been aggregated and included in public versions of PG&E's filings, testimony, and exhibits. PG&E contends that public dissemination of the capital costs, O&M costs, and contingency factors for services and material procured from third party vendors would undermine the competitive resource procurement process that PG&E uses to minimize the cost of utility-retained generation. In addition, PG&E seeks confidential treatment of a report by an Independent Evaluator (IE) and the IE's quantitative analysis of PG&E's scoring and evaluation of bids for the Fuel Cell Project. PG&E seeks confidential treatment of this information under the rules adopted by the Commission in Decision 06-06-066 and attaches a matrix table pursuant to that order demonstrating the confidentiality of the information.

On April 27, 2009, Southern California Edison Company (SCE) filed a motion seeking confidential treatment of portions of its testimony which estimate the cost of SCE's proposed Fuel Cell Project. This information includes SCE's estimated capital costs, installation costs, and O&M costs of the fuel cell units, and a project contingency percentage. According to SCE, its ratepayers would be harmed if potential bidders had access to this cost information and could use it to the detriment of SCE's ratepayers while SCE is negotiating with fuel cell vendors.

On January 4, 2010, The Utility Reform Network (TURN) filed a motion to file its opening brief under seal because the brief contains information that both PG&E and SCE claim is confidential.

The three motions described above should be granted. The information for which PG&E and SCE seek confidentiality pertains to cost estimates for utility-

retained generation which the two utilities seek to procure through a bidding process with fuel cell vendors. Disclosure of this cost information to the public and potential bidders could undermine the competitive procurement process and negotiations with potential fuel cell vendors. Disclosure of the contingency factors in the applications could lead to disclosure of competitively sensitive bid information. Both utilities have made public versions of their testimony and exhibits available which aggregate the cost information for each utility's Fuel Cell Project and do not reveal the cost estimates for discrete fuel cell facilities that fall within the overall project. PG&E and SCE have made this confidential cost information available to parties in these proceedings, subject to non-disclosure agreements.

Therefore, **IT IS RULED** that:

1. The motions filed by Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE) and The Utility Reform Network (TURN) to seal the evidentiary record and file confidential information under seal are granted.

2. The exhibits marked confidential at the hearings of December 9 and 10, 2009, and in TURN's brief filed on December 30, 2009, shall remain under seal and not be made accessible or disclosed to anyone other than the Commission and its staff, except upon execution of an appropriate non-disclosure agreement with PG&E and/or SCE, or on the further order or ruling of the Commission, the assigned Commissioner, the assigned Administrative Law Judge (ALJ), or the ALJ then designated as the Law and Motion Judge.

Dated February 22, 2010, at San Francisco, California.

/s/ DOROTHY J. DUDA

Dorothy J. Duda
Administrative Law Judge

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Dated February 22, 2010, at San Francisco, California.

/s/ CRISTINE FERNANDEZ
Cristine Fernandez

N O T I C E

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