



**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

FILED
9-13-17
08:00 AM

Application of Southern California Edison
Company (U338E) for Approval of Energy
Efficiency Rolling Portfolio Business Plan

Application 17-01-013

And Related Matters.

Application 17-01-014

Application 17-01-015

Application 17-01-016

Application 17-01-017

**GREENFAN® INC. AND VERIFIED® INC. RESPONSE TO SOUTHERN
CALIFORNIA GAS COMPANY (U 904 G) MOTION TO STRIKE PORTIONS OF
COMMENTS FILED BY GREENFAN® INC. AND VERIFIED® INC. RELATED TO
THE SOLICITATION PROCESS PROPOSALS**

September 12, 2017

Sudip Kundu
Kundu PLLC
1300 I Street NW, Suite 400E
Washington, DC 20005
www.kundupllc.com
Office: 202-749-8372, Cell: 202-834-2881
E-mail: sudipkund@gmail.com

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Application of Southern California Edison Company (U338E) for Approval of Energy Efficiency Rolling Portfolio Business Plan	Application 17-01-013
And Related Matters.	Application 17-01-014 Application 17-01-015 Application 17-01-016 Application 17-01-017

GREENFAN® INC. AND VERIFIED® INC. REPOSE TO SOUTHERN CALIFORNIA GAS COMPANY (U 904 G) MOTION TO STRIKE PORTIONS OF COMMENTS FILED BY GREENFAN® INC. AND VERIFIED® INC. RELATED TO THE SOLICITATION PROCESS PROPOSALS

I. Introduction

Pursuant to Rule 11.1 of the Commission’s Rules of Practice and Procedure, GreenFan® Inc. (“GreenFan®”) and Verified® Inc. (“Verified®”) respectfully files this response to oppose the motion to strike filed by Southern California Gas Company (“SoCalGas”). SoCalGas seeks to strike portions of the August 18, 2017 comments filed by GreenFan® and Verified®. San Diego Gas & Electric Company (“SDG&E”) reply comments stated that “GreenFan Inc. and Verified Inc.’s comments also contain unsubstantiated, serious allegations against SDG&E relating to alleged ‘potential’ copyright infringement, trademark infringement, patent infringement, and antitrust violations. GreenFan Comments at pp. 17-22; Verified Comments at pp. 16-21. The Commission should disregard these allegations in their entirety.” See SDG&E reply comments at pages 2 and 3. Southern California Edison (“SCE”) reply comments stated that “for the purpose of reviewing and approving the IOUs’ Business Plans, the Commission should disregard GreenFan’s and Verified’s comments regarding the workpaper.” See SCE reply comments at page 6. SCE reply comments also stated that “While

not all statewide programs are cost-effective, the Commission does not require that each EE program be cost-effective; rather, it requires PAs to maintain a cost-effective portfolio, which SCE has done consistently. Therefore, the Commission should disregard GreenFan's and Verified's assertion. Therefore, the Commission should disregard GreenFan's and Verified's assertion." See SCE reply comments at page 9.

The GreenFan® and Verified® comments regarding workpaper issues are essential to support the positions of GreenFan® and Verified® regarding the third party solicitation process. The SCE Business Plan (BP) provides evidence of three programs that are not cost effective including: 1) commercial TRC 0.97 (\$91.2M), 2) agriculture TRC 0.15 (\$3.3M), and 3) public TRC 0.62 (\$20.5M). These three non-cost effective programs represent approximately 40% or \$115 million (M) of the total 2018-25 SCE budget. The SCE residential program has an average budget of \$94.8M and TRC of 1.22, and including this program with the other three provides an average budget of \$232.8M and TRC of 0.93 representing 73% of the total 2018-2025 SCE budget which supports the GreenFan® and Verified® comments that most of the SCE programs are not cost effective (QED - Quod Erat Demonstrandum).¹ Additional evidence to support the GreenFan® and Verified® comments can be provided upon request, specifically regarding copyright, trademark and patent infringement.²

On pages 2 and 3 of its Reply Comments SDG&E stated the following, "SDG&E welcomes any third party who wants to prepare and pay for the development of workpapers, using their own funds, to support measures they propose to offer." GreenFan® and Verified® point out that if SDG&E's statement contradicts its actions. If it was serious about welcoming workpapers paid for and prepared by third parties, SDG&E would have submitted the 2012, 2013 and 2016 Verified® EFC® workpapers, which they have had in their possession for years. The SDG&E reply comments represent yet another Rule 1.1 violation which should not be tolerated by the Commission or any party to this proceeding.

¹ SCE February 10, 2017. Southern California Edison Company's (U 338-E) Amended Energy Efficiency Rolling Portfolio Business Plan Application 17-01-013. See p. 3, Table 1: SCE EE Portfolio Cost-Effectiveness Forecast 2018-2020. See p. 28, Table 9 (total budget), p. 77, Table 19 (residential budget), p. 112, Table 29 (commercial budget), p. 156, Table 42 (agriculture budget), p. 193, Table 52 (public budget).

² GreenFan® and Verified® comments cited the California Business & Professional Code § 17500, Copyright Infringement (17 U.S.C. § 501), Lanham Act (15 U.S. Code § 1125), Sherman Act (15 U.S. Section § 1), and Patent Infringement (35 U.S.C. § 271).

While SDG&E and SCE comments request the Commission to disregard the comments of GreenFan® and Verified®, they and Pacific Gas & Electric Company (“PG&E”) did not file a motion to strike nor did they join in the SoCalGas motion to strike. Evidence is provided herein to explain why the GreenFan® and Verified® comments are within the scope of this proceeding regarding why the IOUs should not be involved in the third party solicitation evaluation process, statewide or emerging technologies program implementation, and workpaper development or submittal process.

The purported basis for the SoCalGas motion to strike and SDG&E/SCE request to disregard is that GreenFan® and Verified® filed comments that included portions outside the scope of the April 14, 2017 Scoping Memo. *See* Motion at 1-2. These portions describe actions by SoCalGas, SDG&E and SCE that have caused harm to GreenFan® and Verified®. As such, the portions sought to be stricken or disregarded substantiate the view of GreenFan® and Verified®: that IOUs should not be tasked with administering the third party solicitation process, statewide emerging technologies programs or workpaper development and submittal process. Because these processes are identified in the Scoping Memo, the portions of the comments sought to be stricken or disregarded are, in fact, within the scope of this proceeding. Therefore, the SoCalGas motion to strike and the SDG&E/SCE request to disregard should be denied.

The GreenFan® and Verified® comments focused on three key elements that were lacking in the IOU third party solicitation process proposals: (1) lack of defining a meaningful Procurement Review Group (PRG) with Independent Evaluator (IE) oversight to provide a rigorous and fully transparent third party solicitation and selection process for 100% of the EE budget, (2) Lack of justification regarding why the IOUs should continue to implement 40% of the total energy efficiency budget for statewide and emerging technology programs, and (3) Lack of information regarding IOU involvement with workpaper development, submittal, and pilot programs required by CPUC Decision 12-05-15 Ordering Paragraph (OP) 144. The portions of the comments SoCalGas moves to strike constitute evidence supporting the positions of GreenFan® and Verified® as to these elements. Put differently, the portions sought to be stricken are the justification why the IOU third party solicitation process proposals should be denied. The portions of GreenFan® and Verified® comments are therefore within the scope of this proceeding.

Moreover, GreenFan® and Verified® are mindful and respectful of the Administrative Law Judge’s (“ALJ’s”) ruling regarding comments being within the scope. While the motion identifies this ruling, it fails to explain why the statements sought to be stricken do not comply with it. They do. The IOU third party solicitation process proposal was explicitly part of the Scoping Memo. And while SoCalGas may not like the exposure on third party solicitation—an issue it has been ineffective on, this is not a basis to strike or disregard the GreenFan® and Verified® comments. To do so would only invite a “business as usual” approach by IOUs whose third party solicitation proposals are lacking with respect to rigorous PRG and IE oversight, statewide emerging technologies programs or third party workpaper development and submittal.

II. The GreenFan® and Verified® Comments Are Within the Scope of This Proceeding

The April 14, 2017 Scoping Memo set forth 26 issues as part of “[a] high level summary of the scope of issues in this proceeding.” *See* Scoping Memo at § 2.1. Four overall questions were identified in the Scoping Memo on page 4 (issues no. 1-4).

1. Should the Commission adopt, modify, or deny the Business Plan applications?
2. Should the Commission adopt or modify the proposed budgets?
3. Are the costs and benefits of the proposed business plans reasonable and justifiable?
4. Do the business plan proposals put the overall energy efficiency portfolio of the Commission on a path to contribute substantially to the goal of doubling the amount of energy efficiency in buildings by 2030?

Page 3 of the GreenFan® and Verified® comments answered “Deny” to the first question, “Modify” to the second question, “No” to the third question, and “No” to the fourth question.

Another issue was identified in the Scoping Memo on page 5 (issue no. 5).

5. Conformance with guidance provided in D.16-08-019, including with respect to: a. administration of statewide programs b. third party programs, c. baseline policy” and D.16-08-19 provided the

following CPUC guidance on page 73.

“Basically, all program design and delivery would be presumed to be conducted by third parties, unless the utility specifically made a case for why the program activity must be conducted by utility personnel.

Page 22 of GreenFan® and Verified® comments recommended “The entire portfolio needs to be competitively bid to third parties using the Independent Evaluator.”

Another issue was identified in the Scoping Memo on page 6 (issue no. 15).

15. Third party solicitation process and timing, including whether or how to utilize procurement review group and/or independent evaluator structure, parties’ eligibility for intervenor compensation, etc.

Page 4 of the GreenFan® and Verified® comments, “focus on three key elements lacking in the IOU third party solicitation process proposals: (1) statewide programs, (2) emerging technologies programs, and (3) workpaper development.” GreenFan® and Verified® Inc. believe “these three elements must be included in the third party solicitation to advance the Commission’s EE procurement goals, safeguard the prudent use of ratepayer funds, and provide the Commission and stakeholders with sufficient transparency to ensure meaningful oversight of the procurement process.”

Another issue was identified in the Scoping Memo on page 6 (issue no. 19).

19. Utility retention of selected portfolio functions: a. justification for not bidding out to third parties, b. potential cost implications.

Page 5 of the GreenFan® and Verified® provided examples of current statewide programs being non-cost-effective “due to improper loading order where non cost-effective measures receive greater incentives or measures that require very little effort receive incentives and no energy savings occur as a result of the program design. These examples indicate significant ongoing issues with IOU program administration. The IOUs have been implementing non-cost effective programs for many years causing unintended negative consequences for ratepayers contrary to the goals of the Commission in D.16-08-019. Therefore, the statewide programs need to be bid out to third parties in order to implement cost effective and comprehensive energy efficiency programs to help California achieve the long term energy efficiency savings goals required under Senate Bill 350.”

Another issue was identified in the Scoping Memo on page 6 (issue no. 21).

21. Though safety issues are not central to this proceeding, there are safety implications of all activities designed to install equipment in homes and businesses in California, and we will be mindful of this during this proceeding.

Page 22 of the GreenFan® and Verified® comments provided the following discussion of safety implications of all activities designed to install equipment in homes and businesses. “Proprietary workpapers also provide a threshold for product performance whereby the proprietary product is tested by an independent laboratory (such as Intertek®) to verify minimum performance criteria to achieve energy savings and tested for safety by Underwriters Laboratory® (UL®) for UL-listing or Intertek® for ETL-listing. Products claiming to perform similarly to a proprietary product should not be allowed to take advantage of the proprietary workpapers without independent testing and workpaper development which is very expensive costing hundreds of thousands of dollars. Given their importance, workpapers constitute intellectual property (IP) and should be protected from potential infringers looking to take the work of innovators without just compensation. The current IOU process allows any product that claims to meet the criteria established in a proprietary workpaper to receive the same incentives and energy savings without any rigorous independent testing of performance which puts ratepayers at risk for receiving non-compliant products which do not meet minimum performance standards for energy savings and safety.”

The GreenFan® and Verified® comments were explicit in that they related to the third party solicitation process, an issue identified in the Scoping Memo. The GreenFan® and Verified® comments are, therefore, within the scope of this proceeding. In fact, the SoCalGas Motion to Strike fails to argue that the comments do not fall within Scoping Memo issues number 1-5, 15, 19, and 21 quoted above.

The GreenFan® and Verified® comments take the position that IOUs, as administrators of the third party solicitation process, have been wholly ineffective in developing useful emerging technologies, encouraging and mentoring workpapers for submittal for CPUC Ex Ante Review, and implementing emerging technologies pilot programs to provide cost effective energy efficiency savings to ratepayers. Rather than propose cost effective ET pilot programs, the IOUs are proposing “business as usual” ET programs that would waste \$18 million per year on IOU administration and consultant studies of non-cost effective emerging technologies where

IOU-sponsored studies are performed without adequate peer-review or stakeholder involvement which would intentionally categorize and misrepresent emerging technologies within electric-only or gas-only “silos” that would “exterminate” technologies. As part of this ineffectiveness, the GreenFan® and Verified® comments describe that allowing IOUs to administer third party solicitation, statewide and emerging technologies programs and workpaper development and submittal harms third parties, including their intellectual property. As a result, the GreenFan® and Verified® comments respectfully submit that IOUs should not administer the third party solicitation process nor be involved with implementing statewide or emerging technologies programs nor be involved with workpaper development and submittal.

As proof of these positions, the GreenFan® and Verified® comments detail their own experiences with the efforts and resources spent in developing useful patented and trademarked technology that benefits ratepayers, rigorous copyrighted workpapers to support the energy savings, and effective useful lifetime and net to gross ratio only to have these efforts quashed by the actions of SoCalGas (and its contractor BRL). Notwithstanding the actions of SDG&E in plagiarizing the copyrighted 2012 Verified® Efficient Fan Controller® (EFC®) workpaper and the actions of SCE to do the same. The unconscionable effort to induce potential patent infringement by SDG&E and SCE are particularly egregious given that John Walsh notified them of his patented EFC® product at the Emerging Technologies Forums in 2011 and 2012. The IOUs were also aware that the 2012 Verified® EFC® workpaper clearly stated that the EFC® was “patent pending” (see Page 1). All of the IOUs were notified of issued patents, trademarks and copyrights. The fact that the IOUs do not have policies or procedures in place to respect Intellectual Property (IP) indicates a significant lack of respect for emerging technologies and the CPUC Rules of Practice and Procedures, Rule 1.1.

Any person who signs a pleading or brief, enters an appearance, offers testimony at a hearing, or transacts business with the Commission, by such act represents that he or she is authorized to do so and agrees to comply with the laws of this State; to maintain the respect due to the Commission, members of the Commission and its Administrative Law Judges; and never to mislead the Commission or its staff by an artifice or false statement of fact or law.³

³ Note: Authority cited: Section 1701, Public Utilities Code. Reference: Section 1701, Public Utilities Code. See <http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M164/K610/164610801.PDF>

These actions support the view of GreenFan® and Verified® that the IOUs will be ineffective implementers of the third party solicitation process since past behavior has not respected IP owned by third party inventors and manufacturers who might or might not participate in the third party solicitation process. The IOU third party solicitation process proposals do not describe any policies or procedures to respect third party IP. The SoCalGas Motion to Strike seeks to exclude examples of the harm SoCalGas has caused GreenFan® and Verified®, which is an improper attempt at “sanitizing” SoCalGas’ own impropriety as to third parties. This should not be sanctioned, especially where the comments are directly related to issues in the Scoping Memo.

Each portion identified in the Motion to Strike relates to the improper publication of information regarding inauthentic or damaged products setup and “tested” improperly by BR Laboratories (“BRL”) on behalf of SoCalGas. SoCalGas commissioned BRL to purportedly “test” a GreenFan® EFC® product and a competitor’s product potentially infringing on IP owned by GreenFan®. See GreenFan® and Verified® Comments page 8. The testing was published as a report, and as described in the GreenFan® and Verified® comments, contained numerous inaccuracies. The dissemination of the report, including through the ETCC website, has harmed the commercial business interests of GreenFan®. Please refer to the GreenFan® and Verified® Comments pages 8 through 10. While SoCalGas removed the BRL report from the ETCC website, it continued to publish an abstract of the BRL report, and other competitors manufacturing products which potentially infringe on GreenFan® IP made the BRL report available online.

It is this kind of damage to a third party that demonstrates and substantiates the GreenFan® and Verified® comments that IOUs should not be in charge of the third party solicitation process or be allowed to continue implementing statewide and emerging technologies programs or workpaper development and submittal. Without this evidence, it would be impossible for the Commission to understand and evaluate how the IOUs will perform in the future based on past performance as to the third party solicitation process, statewide and emerging technologies programs and workpaper development. Furthermore, this evidence demonstrates to the Commission and third party innovators that the third party submittal process under the purview of IOUs lack sufficient transparency to evaluate whether or not any adverse IP

issues could arise from the third party proposals. Specific products or technologies that third parties include in their proposals need to be vetted to prevent IP infringement which has been occurring under IOU management. At this time, it is difficult for third party inventors or manufacturers to determine whether or not IP infringement is occurring. This can have a serious impact on safety with respect to installing non UL-listed products in UL-listed appliances such as HVAC equipment. This can also have a significant impact on the estimated energy savings when unlicensed technologies are installed without adequate workforce education and training, and where infringing products do not perform properly, all of which will cause unintended negative consequences for ratepayers.

Technology Innovation is required to achieve the Commission's goals to double energy efficiency savings by 2030 (i.e., the TRC test needs to double). The current IOU management process unintentionally discourages innovation by allowing untested and potentially infringing products to be deployed in energy efficiency programs, placing new product categories, energy savings, and safety for ratepayers at significant risk. The current process facilitates IP theft in two ways: 1) by allowing infringing products with no independent testing and energy savings certification to participate in programs based on proprietary workpapers and product development from the original inventors, or 2) by providing free testing or workpaper development paid by ratepayers at no cost to infringers where the testing and workpapers potentially infringe on IP or provide findings for infringing products that are not safety tested. Arbitrarily assigning the energy savings and safety performance characteristics of innovative and proven proprietary technologies to unproven infringing products that have not undertaken any performance verification or worse yet, unjustly allocating R&D, workpaper development, copyrights, trademarks patents and WE&T investments of proprietary products to infringing products opens up significant risk to ratepayers, contractors, program implementers, and IOUs. Clearly, the current process needs to advance the Commission's EE procurement goals, safeguard the prudent use of ratepayer funds, and provide the Commission and stakeholders with sufficient transparency to ensure meaningful oversight of the procurement process. This will prevent further commercial punishment and the illegal misappropriation of IP from the proprietary technology inventors who enhance the energy efficiency sector.

The comments of GreenFan® and Verified® may well be the first time these important ethical and legal issues have been brought to the attention of the Commission to protect small

businesses making significant contributions to California's Green economy in terms of intellectual property. According to the U.S. Department of Commerce, IP accounts for more than \$6 trillion or 35% of U.S. GDP, drives 52% of U.S. exports and supports 45 million American jobs.⁴ The Office of the Director of National Intelligence estimates that IP theft remains a grave threat to the United States with an annual cost exceeding \$225 billion in counterfeit goods, pirated software, and theft of trade secrets and could be as high as \$600 billion.⁵ IP theft negatively impacts health, safety (UL-listing), warranties, and savings from energy efficiency products. Infringement harms small business innovation, costs jobs, and reduces tax revenues. Small businesses are essential not merely in developing patented technologies, but also in developing meaningful patented technologies and providing quality workforce education and training for proper installation of patented technologies that can save hundreds of millions of dollars on energy bills for ratepayers and small businesses throughout the United States.

The comments of GreenFan® and Verified® provide evidence of the IOUs failure to respect IP, copyrights, trademarks and patents which are protected under the U.S. Constitution. In order for California to achieve the goal of doubling energy efficiency savings by 2030, third party innovation and IP must be encouraged and respected per US law. The full uncensored comments of GreenFan® and Verified® must be considered in order to advance the Commission's EE procurement goals to safeguard the prudent use of ratepayer funds, as well as provide the Commission and stakeholders with sufficient transparency to ensure meaningful oversight of the procurement process. For the reasons stated above, the SoCalGas motion to strike should be denied. Furthermore, the SDG&E and SCE request for the Commission to disregard the comments of GreenFan® and Verified® should also be denied. Rather than filing a motion to strike comments or disregard comments submitted by GreenFan® and Verified®, the IOUs should be working cooperatively with GreenFan®, Verified®, and other third parties to submit rigorous third party workpapers, respect third party manufacturers who establish fair and sustainable product pricing to support workforce education and training, conduct cost effective emerging technology pilot programs which provide incentives for UL-listed products which are

⁴ <https://www.uschamber.com/issue-brief/protect-intellectual-property>

⁵ Update to the IP Commission Report: The Theft of American Intellectual Property: Reassessments of the Challenge and United States Policy. The Commission on the Theft of American Intellectual Property by the National Bureau of Asian Research. The Report of the Commission on the Theft of American Intellectual Property (also known as the IP Commission Report) was published in May 2013. This update was published in February 2017. http://www.ipcommission.org/report/IP_Commission_Report_Update_2017.pdf

licensed by patent holders, and adopt policies and procedures to encourage IOU employees to respect IP, sustainable product pricing, and avoid infringement of IP in the future.

III. Conclusion

GreenFan® and Verified® believe their comments are not only within the scope of this proceeding, but are also required for the Commission to fully implement a successful and transparent third party solicitation process to encourage innovation and achieve the long term goals to double energy efficiency savings by 2030. Therefore, the SoCalGas motion to strike certain portions of the comments filed by GreenFan® and Verified® should be denied.

Furthermore, the SDG&E and SCE request for the Commission to disregard certain portions of the comments filed by GreenFan® and Verified® should also be denied.

Dated: September 12, 2017



Sudip Kundu

Kundu PLLC

1300 I Street NW, Suite 400E

Washington, DC 20005

www.kundupllc.com

Office: 202-749-8372, Cell: 202-834-2881, Email: sudipkun@gmail.com,

sudip.kundu@kundupllc.com

Attorneys for the GreenFan® Inc. and Verified® Inc.