Decision **PROPOSED DECISION OF COMMISSION PRESIDENT PEEVEY**
(Mailed 2/21/2012)

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)
And Related Matter.	Application 09-04-018

DECISION MODIFYING DECISION 10-04-028 REGARDING SOUTHERN CALIFORNIA EDISON COMPANY FUEL CELL PROJECTS

Summary

This decision modifies Decision (D.) 10-04-028 which granted approval to both Pacific Gas and Electric Company and Southern California Edison Company (SCE) to install utility-owned fuel cells on several University of California and California State University campuses.

D.10-04-028 is modified to: 1) direct SCE that in the event it is unable to complete the project at the host site approved in D.10-04-028, SCE shall make an effort to locate an alternative host site at another state university, college or community college or at another state institution; and 2) authorize SCE to complete the project at an alternative host site provided that the project is completed within the budget limits and conditions established in D.10-04-028.

Background

In April 2009, Southern California Edison Company (SCE) submitted an application requesting Commission approval to install, own, and operate three fuel cell units with a combined capacity of up to three megawatts (MW) on three University of California (UC) and California State University (CSU) campuses. SCE's application specified that CSU San Bernardino and CSU Long Beach would host fuel cells deployed in combined heat and power applications, and that UC Santa Barbara would host an electric-only fuel cell project. Earlier in 2009, Pacific Gas and Electric Company (PG&E) had submitted a similar application for three fuel cell projects of its own with a combined capacity of three MW. The Commission consolidated the PG&E and SCE applications due to similar issues of law and fact.

In Decision (D.) 10-04-028, the Commission approved both the PG&E and SCE applications with minor modifications, as set forth in the decision. The Commission concluded that fuel cells can play an important role in California's future energy mix and that the Commission should support the advancement of fuel cell technologies, which can supplement the Commission's Self Generation Incentive Program (SGIP) to advance fuel cell technologies. (D.10-04-028, Conclusions of Law 1-3.)

Implementation of D.10-04-028 proceeded immediately for both PG&E and SCE and five of the six fuel cell projects have been successfully installed or are in process. One of SCE's fuel cell projects at CSU Long Beach, however, has been abandoned. According to SCE testimony recently submitted in its 2012 General Rate Case (GRC), SCE does not intend to go forward with the project at CSU

Long Beach due to its inability to negotiate a reasonable ground lease with CSU Long Beach.[1] SCE's capital forecast in its GRC application indicates it has cancelled the project and is not pursuing an alternative location for the fuel cell project authorized in D.10-04-028.[2]

FuelCell Energy's Petition

On December 6, 2011, FuelCell Energy, Inc. (FCE) submitted a petition to modify D.10-04-028 and clarify that SCE should seek an alternate host site for the project. FCE is the vendor selected to provide the fuel cell for the CSU Long Beach project and it believes that with modest effort, SCE could locate an alternate host site at another campus or state institution and complete the project as authorized in D.10-04-028 and within the same budget.

According to FCE, D.10-04-028 contains no acknowledgement of the possibility that one or more projects might encounter siting issues and it contains no specific authorization to relocate the projects as needed. Further, FCE states that the decision does not instruct the utilities to seek alternate sites in order to achieve the objectives cited in the decision. FCE suggests the Commission modify D.10-04-028 and authorize SCE to pick an alternative site within the established budget limits and conditions set forth in D.10-04-028.

As FCE explains, SCE's original application identified potential "runners up" for project siting by describing how SCE chose the project sites from a list of eleven potential sites, which were narrowed down to four finalists. SCE's application stated that it notified the two sites that were not selected, California

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[1] *See* Application (A.) 10-11-015, Exhibit (Exh.) SCE-084 at 10: 11-12; and A.10-11-015, Reporter's Transcript (RT) at 4334: 19 – 4335: 9.

[2] *Id.*,Exh. SCE-084 at 10: 16-22.

State Polytechnic University at Pomona and CSU Fullerton, that it would reconsider pursuing installation at one of these sites if the fuel cell project did not move forward at one of the selected host sites. (*See* A.09-04-018, Exh. SCE-1 at 14, fn. 12.)

FCE's petition provides specific language to clarify D.10-04-028 and address the current situation. The language proposed by FCE directs SCE to seek alternate host sites and authorizes SCE to complete the project at an alternative site, provided that the project may be completed within the budget limits and conditions in D.10-04-028.

Timeliness of Petition

D.10-04-028 was effective on April 8, 2010. Rule 16.4(d) of the Commission's Rules of Practice and Procedure requires petitions to be filed and served within one year of the effective date of the decision. If more than one year has elapsed, the petition must explain why it could not have been presented within one year. FCE's petition for modification was filed on December 6, 2011, and it explains that its petition was not filed earlier because SCE only recently stated publicly its intention to abandon the fuel cell project at CSU Long Beach without seeking an alternate site. Therefore, FCE requests that its petition be accepted despite the fact it is beyond the one year deadline. FCE provides a reasonable explanation for filing beyond the one year deadline and we will accept and consider FCE's petition.

Responses to Petition

SCE and the Commission's Division of Ratepayer Advocates (DRA) oppose FCE's petition. SCE acknowledges that it cancelled the CSU Long Beach fuel cell project in early 2011 when it could not reach agreement with the university on the lease of campus space. According to SCE, CSU Long Beach

requested certain project management fees that the other universities had not requested. SCE opposes FCE's suggestion that the Commission direct SCE to seek an alternate location. Specifically, SCE asserts that it has already completed a feasibility study for the fuel cell project to identify optimal sites for fuel cell cogeneration and the CSU Fullerton and California State Polytechnic University at Pomona sites mentioned by FCE as "runners up" are not feasible within the Commission approved budget or conditions.

Moreover, SCE maintains that D.10-04-028 authorizes SCE to install up to three fuel cell facilities, and SCE is responsible to exercise competent managerial discretion in implementing the program. SCE claims it would be inappropriate for the Commission to grant the proposed modification when SCE has updated the costs in its 2012 GRC to remove the costs of the fuel cell project at CSU Long Beach. Nevertheless, SCE explains it remains committed to completing development of fuel cell facilities at the other locations in its original application, CSU San Bernardino and UC Santa Barbara.

DRA recommends the Commission deny the FCE petition on the basis that the project is unnecessary and will provide no benefit to ratepayers. DRA contends the project is duplicative of existing fuel cell demonstration projects and will be unnecessarily costly to ratepayers who already fund SGIP to provide incentives to fuel cell and wind technologies. DRA suggests, however, that should the Commission approve FCE's petition, the Commission should specify that the cost of the project at the new site shall not exceed the original amount approved in D.10-04-028.

Discussion

FCE requests a very narrow modification of D.10-04-028 to clarify that SCE can and should attempt to find another suitable site for the CSU Long Beach fuel

cell project, within the same budget and other conditions set forth by the Commission. FCE argues this modification is needed so that the benefits of SCE's fuel cell project, which were noted in D.10-04-028, can be achieved. FCE's requested modification is reasonable and should be adopted.

While SCE maintains that no other sites are feasible based on its November 2008 feasibility study, we find it reasonable that SCE should make another effort to consider alternatives now that the CSU Long Beach site has been abandoned. We also find it reasonable that depending upon the site characteristics, SCE may deploy either a combined heat and power (CHP) or electric-only fuel cell. Although the sites in SCE's original application were considered optimal based on the November 2008 feasibility study, this does not mean that alternative sites do not exist today. Indeed, SCE testified in the original case that it would reconsider other sites in the event the selected host sites did not work out. FCE's petition merely asks to clarify that this is allowed. Furthermore, FCE has generously offered to help SCE in this endeavor, and states that it has gained valuable experience working collaboratively and productively with PG&E on fuel cell siting.

DRA's argument opposing FCE's petition relitigates its earlier opposition to the original fuel cell applications. DRA's arguments were rejected in D.10-04-028 and we find no reason to change that determination here.

Finally, SCE argues that FCE's petition should be rejected because SCE has already removed the fuel cell project at CSU Long Beach from its 2012 GRC forecasts. We reject SCE's argument because SCE cannot predetermine an outcome in this petition based on what it chooses to file in its GRC.

Therefore, we will instruct SCE to make a reasonable effort in the next twelve months to explore alternative sites for either a CHP or electric-only fuel

cell at another state university, college or community college campus or at another state institution. In addition, we authorize SCE to complete a fuel cell project at an alternative site if it can be accomplished within the established budget and applicable conditions approved in D.10-04-028. Specifically, if SCE pursues an alternative site, the cost of the facility at the new site is limited to the dollar amounts approved in D.10-04-028 for both capital and operations and maintenance (O&M) costs, minus whatever SCE has spent on the two fuel cell projects it has already completed.

Comments on Proposed Decision

The proposed decision of the Commission President Peevey in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on March 12, 2012 by DRA, FCE, and SCE and reply comments were filed by FCE and SCE on March 19, 2012.

FCE supports the proposed decision, while both SCE and DRA oppose it. SCE states it has already determined that a feasible alternative site is not available. Despite its opposition to the proposed decision, SCE suggests that the Commission modify the proposed decision to allow SCE to consider siting either a CHP or electric-only fuel cell facility. SCE's suggested modification is a good one and the decision has been modified accordingly.

DRA comments that the proposed decision fails to specify appropriate budget limits and conditions for the project. This point is well-taken and the decision has been modified per DRA's suggestions regarding a budget limit. In addition, we will direct SCE to file a Tier 2 advice letter identifying any alternate site and specific costs for that site, within the existing budget limits.

DRA also comments that the proposed decision is outside the scope of the original decision because it expands potential host sites beyond state universities. We disagree as there is no reason any alternatively sited fuel cell cannot be used for educational purposes as envisioned by the original decision.

Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and Dorothy J. Duda is the assigned ALJ in this proceeding.

Findings of Fact

1. In D.10-04-028, the Commission approved the fuel cell projects of PG&E and SCE.
2. SCE cancelled the CSU Long Beach fuel cell project in early 2011 when it could not reach agreement with the university on the lease of campus space.
3. D.10-04-028 does not contain specific language allowing SCE to relocate its fuel cell projects and does not direct SCE to seek an alternate site if problems arise with the planned project locations.
4. In A.09-04-018, SCE identified alternate sites and stated it would reconsider other sites in the event the selected host sites did not work out.
5. FCE did not file its petition within one year of the effective date of D.10-04-028 because SCE only recently stated its intention to abandon the fuel cell project at CSU Long Beach.

Conclusions of Law

1. SCE should make an effort in the next 12 months to consider alternative sites for the abandoned CSU Long Beach fuel cell project.
2. D.10-04-028 should be modified to clarify that the project benefits are not specific to any specific host site and PG&E and SCE should seek an alternate site

for an approved CHP or electric-only fuel cell project at another campus or state institution, as needed.

3. D.10-04-028 should be modified to authorize PG&E and SCE to complete the fuel cell projects authorized in the decision at alternative sites, provided that the projects are completed within the budget limits and conditions set forth in D.10-04-028.

4. If SCE pursues an alternative site, the total cost of the facility at the new site should be limited to the capital costs and O&M costs approved in D.10-04-028 minus whatever SCE has spent on the two fuel cell projects it has already completed.

5. FCE's petition should be considered although it was filed more than a year after the Commission issued D.10-04-028.

O R D E R

IT IS ORDERED that:

1. The petition of FuelCell Energy, Inc. filed on December 6, 2011 is granted.
2. Decision 10-04-028 is modified as follows:

   a) Conclusion of Law 17 should be added to state:

   The project benefits identified in this decision are not specific to any specific host site, and Pacific Gas and Electric Company and Southern California Edison Company should seek an alternate site for an approved electric-only or combined heat and power fuel cell project at another campus or state institution, as needed.

   b) Ordering Paragraph 9 should be added to state:

   In the event that either Pacific Gas and Electric Company (PG&E) or Southern California Edison Company (SCE) is unable to complete a project authorized by this decision at the

host site initially identified in its respective application, PG&E and SCE shall seek alternate host sites at other state university, college or community college campuses or at other state institutions. PG&E and SCE are authorized to complete any project authorized by this decision at such alternative site, provided that the project is completed within the budget limits and conditions set forth in this decision.

3. Within 12 months of the effective date of this order, Southern California Edison Company shall make a reasonable effort to identify an alternative site for the California State University Long Beach fuel cell project approved in Decision 10-04-028.

4. Southern California Edison Company must file a Tier 2 advice letter identifying any alternative site and project costs and demonstrating that total costs will not exceed those adopted in Decision 10-04-028.

5. Application (A.) 09-02-013 and A.09-04-018 are closed.

This order is effective today.

Dated _____, at San Francisco, California.