



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE
STATE OF CALIFORNIA

FILED

06-10-10
04:59 PM

Order Instituting Rulemaking on the) Rulemaking 09-08-009
Commission's Own Motion to Consider) (Filed August 20, 2009)
Alternative-Fueled Vehicle Tariffs, Infrastructure)
And Policies to Support California's Greenhouse)
Gas Emissions Reduction Goals.)

OPENING COMMENTS OF LOS ANGELES DEPARTMENT OF WATER AND
POWER TO THE PROPOSED DECISION IN PHASE 1 ON JURISDICTION OF THE
COMMISSION OVER THE SALE OF ELECTRICITY AT RETAIL TO THE PUBLIC
FOR THE SOLE USE AS A MOTOR VEHICLE FUEL.

SYNDI DRISCOLL, Deputy City Attorney
Los Angeles City Attorney's Office
LOS ANGELES DEPT. OF WATER AND POWER

111 North Hope Street, Room 340
Los Angeles, CA 90012
Post Office Box 51111, Room 340
Los Angeles, CA 90051
Telephone: (213) 367-4363
Facsimile: (213) 241-1452
E-mail: syndi.driscoll@ladwp.com

Dated: June 10, 2010

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

| | | |
|--|---|-------------------------|
| Order Instituting Rulemaking on the |) | Rulemaking 09-08-009 |
| Commission's Own Motion to Consider |) | (Filed August 20, 2009) |
| Alternative-Fueled Vehicle Tariffs, Infrastructure |) | |
| And Policies to Support California's Greenhouse |) | |
| Gas Emissions Reduction Goals. |) | |

OPENING COMMENTS OF LOS ANGELES DEPARTMENT OF WATER AND
POWER TO THE PROPOSED DECISION IN PHASE 1 ON JURISDICTION OF THE
COMMISSION OVER THE SALE OF ELECTRICITY AT RETAIL TO THE PUBLIC
FOR THE SOLE USE AS A MOTOR VEHICLE FUEL.

I.
INTRODUCTION AND SUMMARY

Pursuant to Rule 14.3(a) of the Rules of Practice of Procedure of the California Public Utilities Commission (Commission or CPUC), the City of Los Angeles (City) through the Los Angeles Department of Water and Power (LADWP) respectfully files its Opening Comments on the Proposed Decision (PD) in Phase 1 on Jurisdiction of the Commission over the sale of electricity at retail to the public for the sole use as a motor vehicle fuel. LADWP is a proprietary department of the City, a municipal corporation.

The dedication and hard work of ALJ DeAngelis, Commissioner Ryan and the Commission Staff leading to the PD in Phase 1 of this Rulemaking is appreciated. Although the proceeding is designed to adopt rules and procedures to address the parties concerns, including that the Commission expeditiously clarifies the extent of its regulatory authority over the sale of electricity to the public for the sole use as a motor

vehicle fuel, it also preserves other difficult and important issues for a thorough review during Phase 2.

The following is a summary of LADWP's concern with regards to the PD:

- The PD does not take into consideration the scenario where a municipality, such as LADWP, has not opened up its service territory for retail sales by other entities which, if not properly clarified, may consequently lead to frivolous litigation.

LADWP does not intend to comment on all positions taken by other parties.

However, LADWP reserves the right to comment on them in Reply Comments in response to the other parties' arguments. LADWP will also continue to monitor the practical application of this Rule as it is implemented and reserves the right to make suggested changes to it in Phase 2, as necessary.

II.

DISCUSSION

Application of the PD will essentially circumvent the City's rights under the California Constitution, Article XI, Section 9.

The PD only addresses why the Commission has taken the position against asserting jurisdiction over EV charging stations. It, however, does not address the municipalities' exclusive rights to their service territory. LADWP's main governing body is the Los Angeles City Council, not the Commission, and sub-metering for net-profit for third-party providers under the LADWP service territory is prohibited by the California State Constitution and the Los Angeles City Charter. The PD needs to address this scenario and make this clarification.

The City is a charter city organized under the California State Constitution. As a municipal corporation, the City has the exclusive right under Article XI, Section 9 of the

State Constitution to furnish electric service to its inhabitants. Article XI, Section 9

states:

(a) A municipal corporation may establish, purchase, and operate public works to furnish its inhabitants with light, water, power, heat, transportation, or means of communication. It may furnish those services outside its boundaries, except within another municipal corporation which furnishes the same service and does not consent.

(b) Persons or corporations may establish and operate works for supplying those services upon conditions and under regulations that the city may prescribe under its organic law.

"The constitutional authority for municipalities to create public utilities is found in the California Constitution, Article XI, Section 9...."¹ Article XI, Section 9(a) also permits municipal corporations to "furnish those services outside its boundaries."² California Constitution Section 9(b) states that third-parties may only provide electric service within a city's boundaries "upon conditions and under regulations that the city may prescribe under its organic law." The organic law of the City is the Los Angeles City Charter.

Section 101 of the City's charter provides that "the City...shall have all powers possible for a charter City to have under the constitution and laws of this state as though they were specifically enumerated in the Charter, subject only to the limitations contained in the Charter." Further, Section 672(b) of the charter provides that the "Board of Water and Power Commissioners shall have the possession, management and control of...*all* the electric energy rights, lands, rights-of-way, sites, facilities and property used for the generation, transportation, distribution and delivery of power for the benefit of the City, its inhabitants and its customers." [emphasis added] When viewed in light of the express

¹ *Grason Electric Company v. Sacramento Municipal Utility District* (1985) 770 F.2d 833, 837.

² *Modesto Irrigation District v. Pacific Gas and Electric Company* 309 F. Supp.2d 1156, 1164.

language of the state constitution, the City Charter Section 101 and the sweeping language of Section 672 itself providing for City "possession, management and control of...all the electric energy rights, lands, rights-of-way, sites, facilities and property used for the generation, transportation, distribution and delivery of power for the benefit of the City, its inhabitants and its customers," [emphasis added] the inescapable conclusion is that the right is exclusive. Section 390 is further evidence of the City's right to be the exclusive provider of electricity within the City.

Section 390(a) of the Los Angeles City Charter further provides:

"The City may grant franchises for fixed terms, permits or privileges (Franchises) for the construction and operation of plants or works necessary or convenient for furnishing the City and its inhabitants with transportation, communication, terminal facilities, water, light, heat, *power*, refrigeration, storage, or any other public utility or service (Public Utility Service). The Council may prescribe the terms and conditions of the grant, and shall prescribe by ordinance the procedure for making these grants, subject to the limitations provided in the Charter and applicable law." [emphasis added]

Even without the well-established and explicit protections afforded to the City by the California Constitution and City Charter, it has long been the policy of this state to support and recognize exclusive service areas for utilities. This policy is reflected in a variety of statutes and legal decisions. "We conclude that the statutes here evidence a clearly articulated and affirmatively expressed state policy to displace competition with regulation in the area of electrical power and light." *Grason Electric Company v. Sacramento Municipal Utility District* (1985) 770 F.2d 833, 838; (court reviewed supporting authorities, citing the United States Supreme Court in *Town of Hallie v. City of Eau Claire* (1985) 105 S.Ct. 1713, 1720.) "Under California law, there is a strong legislative policy in favor of service area agreements between electric corporations and

districts to avoid duplication of electric distribution facilities and services, waste of materials, waste of manpower and the resulting economic loss and to promote more efficient and economic methods of distributing electric power and energy." California Public Utilities Commission Decision No. 03-04-032 in *Pacific Gas and Electric Company v. Turlock Irrigation District*, CPUC Case No. 02-01-012, relying on *Public Utilities Code* Section 8101 et seq.³ In addition, the *Pacific Gas and Electric Company* decision cited California *Public Utilities Code* Section 9601(c).⁴ "We also believe that Section 9601(c), which requires reciprocity agreements between districts and electric corporations before they may serve each other's customers, expresses a legislative policy in favor of coordination and cooperation among electric distribution providers." (See fn. 47 of decision in *Pacific Gas and Electric Company*, supra.).

Therefore, the CPUC PD is not binding or conclusive on municipals. As mentioned above, the main governing body for the LADWP is the Los Angeles City Council. Making this clarification by the CPUC may potentially avoid frivolous litigation with third parties seeking to provide electric vehicle services in LADWP's service territory.

³ *Public Utilities Code* Section 8101 "Declaration of Policy" states: "Under certain conditions the sale and distribution of electric power and energy in the same geographical area both by an electrical utility and by an irrigation district, results in duplication of service, waste of materials, increase in costs, waste of manpower and economic loss, and is detrimental to the efficiency and best interests of such districts. It is the policy of this State to induce such utilities and irrigation districts to prevent or remove such economic waste and to adopt more efficient and economic methods of distribution of electric power and energy, and to that end encourage the definition of areas to be served or not to be served by each."

⁴ *Public Utilities Code* Section 9601(c) states: "No local publicly owned electric utility or electrical corporation shall sell electric power to the retail customers of another local publicly owned electrical utility or electrical corporation unless the first utility has agreed to allow the second utility to make sales of electric power to the retail customers of the first utility."

III.

Conclusion

The LADWP urges the Commission to take into consideration the rights of municipalities under the California Constitution. Although the Commission has effectively decided that ‘...ownership or operation of a facility that sells electricity at retail to the public for use only as a motor vehicle fuel and the selling of electricity at retail from that facility to the public for use only as a motor vehicle fuel does not make the corporation or person a public utility’, the Commission needs to address municipal service territory rights to avoid potential frivolous litigation in the deployment of Alternative-Fueled Vehicles.

Dated this 10th day of June, 2010

Respectfully submitted,

/s/ Syndi Driscoll

SYNDI DRISCOLL, Deputy City Attorney
Los Angeles City Attorney’s Office
LOS ANGELES DEPT. OF WATER AND POWER

111 North Hope Street, Room 340
Los Angeles, CA 90012
Post Office Box 51111, Room 340
Los Angeles, CA 90051
Telephone: (213) 367-4500
Facsimile: (213) 241-1452
E-mail: syndi.driscoll@ladwp.com

VERIFICATION

I, Syndi Driscoll, am the Deputy City Attorney representing the Los Angeles Department of Water and Power in this Rulemaking 09-08-009. I declare the following:

1. I am authorized to make this verification on behalf of the Los Angeles Department of Water and Power (LADWP);
2. I prepared and reviewed the Opening Comments of the Los Angeles Department of Water and Power to The Proposed Decision in Phase I on Jurisdiction of the Commission Over the Sale of Electricity at Retail to the Public For the Sole Use as a Motor Vehicle Fuel.
3. The matters stated within LADWP's Comments are true and accurate to the best of my knowledge and belief.

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

Executed on this 10th day of June, 2010 at Los Angeles, California.

By: /s/ Syndi Driscoll
Syndi Driscoll, Deputy City Attorney

CERTIFICATE OF SERVICE

I, Than Aung, hereby certify that I have on this 10th day of June 2010 caused a copy of the foregoing document entitled: OPENING COMMENTS OF LOS ANGELES DEPARTMENT OF WATER AND POWER TO THE PROPOSED DECISION IN PHASE 1 ON JURISDICTION OF THE COMMISSION OVER THE SALE OF ELECTRICITY AT RETAIL TO THE PUBLIC FOR THE SOLE USE AS A MOTOR VEHICLE FUEL to be served on all parties in R.09-08-009 by sending this document via electronic mail or by United States Mail, first-class postage prepaid to each of the parties whose e-mail was not provided as reflected on the attached service list.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 10th day of June 2010 at Los Angeles, California.

/s/ Than Aung
Than Aung
Los Angeles Dept. of Water & Power
Power System
Regulatory Standard and Compliance Group
111 North Hope Street, Room 1246
Los Angeles, California CA 90012
Phone: 213-367-3367
E-Mail: Than.Aung@ladwp.com

R. 09-08-009 SERVICE LIST
LAST CHANGED: June 8, 2010

Sent via E-Mail:

a.vogel@sap.com
aaron.singer@bmw.com
abb@eslawfirm.com
AChavez@ecotality.com
aconway@dmv.ca.gov
Adrene.Briones@ladwp.com
agc@cpuc.ca.gov
ahl@cpuc.ca.gov
ahuang@arb.ca.gov
andrea.moreno@sce.com
andrew.mcallister@energycenter.org
angie_doan@plugsmart.net
Ann.Bordetsky@betterplace.com
atrowbridge@daycartermurphy.com
axtw@pge.com
AYergin@gridpoint.com
bchang@svlg.org
bcragg@gmssr.com
bdicapo@caiso.com
Bob@EV-ChargeAmerica.com
Bob@EV-ChargeAmerica.com
bock@avinc.com
bsl@cpuc.ca.gov
BWT4@pge.com
californiadockets@pacificorp.com
carmine.marcello@hydroone.com
Case.Admin@sce.com
case.admin@sce.com
cassandra.sweet@dowjones.com
cchilder@arb.ca.gov
cem@newsdata.com
chappella@co.monterey.ca.us
cjuennen@ci.glendale.us
cjlw5@pge.com
clu@cpuc.ca.gov
colleenquin@gmail.com
coutwater@libertyplugins.com
cread@ecotality.com
crv@cpuc.ca.gov
ctd@cpuc.ca.gov
cwl@cpuc.ca.gov
dave.barthmuss@gm.com
david.eaglefan@gmail.com
david.patterson@na.mitsubishi-motors.com
david@dwassociates.us
dfugere@foe.org

dgrandy@caonsitegen.com
Diane.Fellman@nrgenergy.com
diarmuid@teslamotors.com
dickinson@avin.com
dietrichlaw2@earthlink.net
dmodisette@cmua.org
DNiehaus@SempraUtilities.com
Douglas.Marx@PacifiCorp.com
dsiry@codaautomotive.com
edwin.lee@sfgov.com
EGrizard@deweysquare.com
ek@a-klaw.com
ekeddie@arb.ca.gov
eks@cpuc.ca.gov
ELL5@pge.com
epetrill@epri.com
e-recipient@caiso.com
eric@ethree.com
fcc@cpuc.ca.gov
fdms@electradrive.net
ffletcher@ci.burbank.ca.us
filings@a-klaw.com
flangit@ci.azusa.ca.us
forest.williams@mindspring.com
fxg@cpuc.ca.gov
gina@wspa.org
gmorris@emf.net
GO'Neill@energy.state.ca.us
gtd@cpuc.ca.gov
helsel@avinc.com
hillary.dayton@fluor.com
hugh.mcdermott@betterplace.com
jamie@jknappcommunications.com
Janet.Combs@sce.com
Jason.Wolf@betterplace.com
jay@pluginamerica.org
jellman@winnr.com
jguzman@nossaman.com
jhall@calstart.org
jharris@volkerlaw.com
jheibult@nrdc.org
jlehman@anaheim.net
jluckhardt@downeybrand.com
jme@pge.com
jody_london_consulting@earthlink.net
johanna.partin@sfgov.com

Julee@ppallc.com
julian.durand@qualcomm.com
jung.zoltan@epa.gov
jviera@ford.com
jw2@cpuc.ca.gov
jwiedman@keyesandfox.com
Karin.Corfee@kema.com
kevin.webber@tema.toyota.com
kfox@keyesandfox.com
kldavis@midamerican.com
kleacock@dmcgreen.com
klynch@cityofpasadena.net
kmorrow@etecevs.com
krose@dmv.ca.gov
kwalsh@fiskerautomotive.com
llhg@pge.com
lau@cpuc.ca.gov
lburrows@vpvp.com
Leila.Barker@ladwp.com
leilani.johnson@ladwp.com
liddell@energyattorney.com
lmh@eslawfirm.com
lms@cpuc.ca.gov
lwt@cpuc.ca.gov
Marcelo.DiPaolo@ladwp.com
marcreheis@wspa.org
martin.liptrot@ge.com
mbaumhefner@nrdc.org
mc3@cpuc.ca.gov
mc4@cpuc.ca.gov
mdjoseph@adamsbroadwell.com
mgo@goodinmacbride.com
michael.schmitz@iclei.org
michelle.mishoe@pacificorp.com
mike.ferry@energycenter.org
mkarwa@leviton.com
mlaherty@cisco.com
mmattes@nossaman.com
mnelson@mccarthylaw.com
mpsweeney@earthlink.net
mrw@mrwassoc.com
mschreim@core.com
mwt@cpuc.ca.gov
npedersen@hanmor.com
nsuetake@turn.org
Oscar.Alvarez@ladwp.com
Oscar.Herrera2@ladwp.com
philm@scdenergy.com
pierojd@udel.edu
Priscila.Castillo@ladwp.com

pva@cpuc.ca.gov
Ralph.Moran@bp.com
regrelcuccases@pge.com
richard.lowenthal@coulombtech.com
rl4@cpuc.ca.gov
rmd@cpuc.ca.gov
robertgex@dwt.com
roberto.bocca@weforum.org
rpopple@teslamotors.com
saluja@capricornllc.com
sas@a-klaw.com
SAZ1@pge.com
sbadgett@riversideca.gov
Scott.Briasco@ladwp.com
scr@cpuc.ca.gov
SDPatrick@SempraUtilities.com
Sean.Beatty@mirant.com
sephra.ninow@energycenter.org
sfr@sandag.org
sfr2@pge.com
shears@ceert.org
siobhan.foley@energycenter.org
ska@cpuc.ca.gov
slsarris@greenfuseenergy.com
smk@cpuc.ca.gov
smui@nrdc.org
ssmyers@att.net
Sven.Thesen@betterplace.com
svolker@volkerlaw.com
syndi.driscoll@ladwp.com
tatsuaki.yokoyama@tema.toyota.com
than.aung@ladwp.com
tjl@a-klaw.com
toconnor@edf.org
trae@kpcb.com
ttutt@smud.org
vic@theprossergroup.com
vsmith@qualcomm.com
wwester@smud.org
xingxin.liu@sap.com
Yulee@theICCT.org

Sent via U.S. Mail:
CRAIG MACDONALD
710 HIGHLAND AVENUE
SAN MATEO, CA 94401

CRAIG MCDONALD
710 HIGHLAND AVENUE
SAN MATEO, CA 94401