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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Application of Southern California Edison Company (U338E) for Approval of its 2009-2011 Energy Efficiency Program Plans and Associated Public Goods Charge (PGC) and Procurement Funding Requests	Application 08-07-021 (Filed July 21, 2008)
And Related Matters	Application 08-07-022 Application 08-07-023 Application 08-07-031 (Filed July 21, 2008)

RESPONSE OF PACIFIC GAS AND ELECTRIC COMPANY
TO APPLICATION FOR REHEARING OF D.09-09-047 FILED BY
WOMEN'S ENERGY MATTERS

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Dated: November 17, 2009

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I. INTRODUCTION

Pursuant to Rule 16.1 of the California Public Utilities Commission's (Commission) Rules of Practice and Procedure, Pacific Gas and Electric Company (PG&E) files this response in opposition to the Application for Rehearing of Decision 09-09-047 filed by Women's Energy Matters (WEM). WEM's Application is an improper attempt to reopen and reargue issues that were addressed and decided over the course of two years in this consolidated proceeding. Although WEM indiscriminately includes many legal citations in its pleading, WEM provides no analysis linking the facts on the record in this proceeding to the legal citations. WEM fails to demonstrate any legal error in the Commission's decision authorizing the California investor owned utilities (IOUs) 2010-2012 energy efficiency portfolios and budgets. Therefore, WEM's Application must be denied.

II. DISCUSSION

A. WEM's Application Is An Improper Restatement Of Arguments That The Commission Has Properly Resolved In D.09-09-047

WEM's Application fails to meet the standards for an Application for Rehearing set forth in the Commission's Rules and the Public Utilities Code. Commission Rule 16.1 provides that "[t]he purpose of an application for rehearing is to alert the Commission to a legal error…" The Rule provides further that "[a]pplications for rehearing shall set forth specifically the grounds on which the applicant considers the …decision of the Commission to be unlawful or erroneous, and must make specific references to the record or law." WEM's lengthy Application fails to identify any legal error in the Commission's Decision. Instead, WEM improperly uses its Application as an opportunity to reargue many issues that were either properly resolved by the Commission in D.09-09-047 or explicitly determined to be out of scope in this proceeding. WEM has been reprimanded by the Commission for this same conduct in the past and WEM should again be reminded by the Commission that Applications for Rehearing may not be used to restate arguments. (See e.g., D.07-08-033, rejecting WEM's Application for Rehearing and stating that the "problems with WEM's filing include failure to specify grounds for rehearing, failure to cite to the law or the record, restating arguments that have been finally resolved in earlier decisions…and arguing issues that are not properly before [the Commission] at this point." p.2). WEM's current Application for Rehearing again includes each of the flaws identified by the Commission above and likewise should be rejected.

1. WEM Improperly Restates Its Argument Advocating Independent Administration Of Energy Efficiency Programs

WEM dedicates a significant portion of its Application to restating its argument that the Commission should order independent administration of energy efficiency programs. (WEM Application pp.1,3,4,10-11, 16-22). As acknowledged in WEM's Application, the Commission stated that the issue of whether the utilities should continue to administer energy efficiency programs for the next cycle of energy efficiency was not within the scope of the proceeding. (*See*

Scoping Memo p.11, dated November 25, 2008). Notwithstanding the clear statement in the Scoping Memo, WEM continued to argue for independent administration of energy efficiency programs. This Application is a continuation of WEM's argument on an issue that the Commission deemed out of scope in this proceeding. Moreover, WEM has not demonstrated how the Commission committed legal error by continuing utility administration of energy efficiency programs for 2010-2012.

The drafting of WEM's Application suggests that WEM believes that repeating arguments made during the proceeding and making unsubstantiated legal conclusions are tantamount to evidence of legal error. For example, WEM's Application states that WEM and other parties protested utility administration and demanded independent administration throughout the proceeding. (WEM Application pp. 18). The Application contains a bullet list of arguments previously cited by WEM as the basis for independent administration. (Id.). These statements are irrelevant to this Application because they do not evidence any legal error. WEM's Application and recitation of previous arguments demonstrates a fundamental lack of understanding as to the proper basis of an Application for Rehearing. The Commission's decision not to accept WEM's proposals on independent administration is properly within the Commission's discretion.

Beyond its improper restatement of arguments, WEM's attempt to satisfy the standard for an Application for Rehearing by inserting irrelevant legal citations without analysis and asserting unsupported legal conclusions is also deficient. Rule 16.1 provides that an Application for Rehearing must make specific references to the record or law when stating that a Commission decision is unlawful. WEM's Application contains numerous declarations that the Commission acted unlawfully in D.09-09-047. However, WEM fails to provide any legal support for its statements. For example, WEM states that "[c]learly the record in this proceeding supported *and the law requires* independent administration of at least some of the programs in the 2010-2012 cycle…." (emphasis in original) (WEM Application, p.19). Despite its emphasis on a legal

requirement, WEM fails to include any legal citation to support this and the numerous other conclusory statements included in its Application.

2. WEM Improperly Restates Its Arguments With Regard To CCA Programs And Continues To Mischaracterize PG&E's Local Government Energy Efficiency Activities Without Identifying Any Legal Error

WEM's dissatisfaction with the Commission's resolution of evidence in the record is not a proper basis for an Application for Rehearing. Similar to the issue of independent administration discussed above, WEM uses its Application as another opportunity to mischaracterize PG&E's energy efficiency activity with local governments and reargue its support of CCA programs. (See WEM Application rearguing that PG&E misuses EE funds to convince local governments to reject CCA, p.11). WEM's accusations are false. In this proceeding, PG&E has stated on the record that "[i]n no case has PG&E or will PG&E "link" or "condition" any local government's receipt of public goods charge funds on the local government's decision whether to participate in a CCA program or not." (See PG&E Comments on PD, p.23).

In D.09-09-047, based on the record in this proceeding, the Commission explicitly determined that there was not clear evidence in the record to substantiate WEM's false accusations against PG&E. Specifically, the Commission stated that "[w]hile we have no clear evidence in the record on this point, we will require utilities not to use energy efficiency funds in any way which would discourage or interfere with a local government's efforts to consider or to become a Community Choice Aggregator." (emphasis added) (See D.09-09-047, p.272). Consistent with this guidance, PG&E does not use energy efficiency funds to discourage or interfere with local governments' CCA efforts. WEM's repeated misrepresentations and accusations against PG&E in this proceeding have been reviewed and addressed by the Commission. Beyond its unsupported accusations, WEM has failed to point to any evidence in the record that demonstrates that the Commission committed legal error by not "order[ing] an

investigation or impos[ing] sanctions" on PG&E. (WEM Application, pp.11-12) WEM's Application fails to recognize that the Commission is not obligated to accept WEM's desired resolution of an issue as a substitute for the Commission's reasoned review and resolution of evidence in the record.

B. WEM's Application Mischaracterizes The Commission's Holdings In D.09-09-047

WEM's Application contains significant misstatements regarding the Commission's resolution of issues in D.09-09-047. For example, WEM states that D.09-09-047 "authorized IOUs to claim credit for energy savings achieved with federal stimulus funds – which would result in a denial of credit to the federal government, which is a violation of the intent of [American Recovery and Reinvestment Act]." (WEM Application p.10). This statement is false and WEM fails to cite to the record to support its inaccurate statement. Contrary to WEM's assertion, the Commission affirmed in D.09-09-047 that its existing attribution rules would govern projects that included both federal stimulus funds and ratepayer funds. See D.09-09-047, p.103 Specifically, with respect to leveraging ARRA and ratepayer funds, D.09-09-047 provides that "utilities should only claim savings to the Commission from measures receiving ratepayer funds, and should not claim savings from any non-resource program or project that does not receive ratepayer funded incentive dollars." D.09-09-047, p.103. This explicit statement by the Commission is in direct contrast to WEM's assertion. Further, despite a lengthy discussion of ARRA, WEM fails to identify any language in the Commission's decision that is a violation of law.

Another example of WEM's exaggerated or false assertions regarding D.09-09-047 is the allegation that the Decision unlawfully puts utilities in charge of many functions of local governments such as drafting local codes and standards and school curricula…." WEM Application, p.14. Again, this statement is false and WEM provides no supporting reference. WEM's Application is replete with inaccurate statements that misrepresent the Commission's

holdings as set forth in D.09-09-47. Such disregard for the accuracy of the record and the Decision in this proceeding is improper and further highlights the fact that WEM's Application for Rehearing is baseless.

III. CONCLUSION

WEM's Application for Rehearing fails to satisfy the Commission's standard for rehearing and should be denied. The Application for Rehearing is an improper attempt by WEM to restate arguments that have already been addressed by the Commission in this proceeding or ruled out of scope. Notwithstanding the large number of pages submitted by WEM, the Application fails to set forth a single legal error committed by the Commission in D.09-09-047. Further, WEM's filing contains numerous misrepresentations of the record. WEM's Application for Rehearing should be denied.

Respectfully Submitted,

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By: /s/
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PACIFIC GAS AND ELECTRIC COMPANY

Dated: November 17, 2009

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 Pacific Gas and Electric Company, Law Department, PO Box 7442, San Francisco, CA 94120.

On the 17th of November, 2009, I caused to be served a true copy of:

RESPONSE OF PACIFIC GAS AND ELECTRIC COMPANY TO APPLICATION FOR REHEARING OF D.09-09-047 FILED BY WOMEN'S ENERGY MATTERS

by electronic mail to the following CPUC service list:

A.08-07-021; A.08-07-022; A.08-07-023; and A.08-07-031.

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 17th day of November, 2009.

By: /s/

PATRICIA A. KOKASON