

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



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Application of Pacific Gas and Electric Company for
Approval and Recovery of Costs Associated With its
Fuel Cell Project.
(U 39 E)

A.09-02-013
(Filed February 20, 2009)

Application Of Southern California Edison Company (U
338-E) for Authority to Implement and Recover in Rates
the Cost of its Proposed Fuel Cell Installation Program
for State Universities.

A.09-04-018
(Filed April 27, 2009)

REPLY BRIEF OF THE WESTERN POWER TRADING FORUM

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REPLY BRIEF OF THE WESTERN POWER TRADING FORUM

Pursuant to Rule 13.11 of the Commission’s Rules of Practice and Procedure and the directive of Administrative Law Judge (“ALJ”) Dorothy Duda, the Western Power Trading Forum (“WPTF”)¹ hereby submits this reply brief regarding the consolidated Application of Pacific Gas & Electric Company (“PG&E”) filed on February 20, 2009, and the Application of Southern California Edison Company (“SCE”) on April 27, 2009 (“Applications”).

I. SUMMARY OF ISSUES

In its opening brief, WPTF urged the Commission to reject these Applications on the grounds that PG&E and SCE failed to demonstrate that their respective Applications meet the stringent criteria for Utility Owned Generation (“UOG”) projects as set forth in Decision (“D.”)

¹ WPTF is a California non-profit, mutual benefit corporation. It is a broadly based membership organization dedicated to enhancing competition in Western electric markets in order to reduce the cost of electricity to consumers throughout the region while maintaining the current high level of system reliability. WPTF actions are focused on supporting development of competitive electricity markets throughout the region and developing uniform operating rules to facilitate transactions among market participants.

07-12-052² and Rulemaking (“R”) 06-02-013. With regard to those criteria, the Applications do not address the issue of market power or urgency, do not adequately support any claim that the utilities’ respective proposed fuel cell projects are a preferred resource or a unique opportunity and do not demonstrate that the projects are warranted by “truly extraordinary circumstances” or by the impracticality of holding a Request for Offers (“RFO”) as required by the Decision. In short, both SCE and PG&E have failed to make any credible case that either utility should be permitted to displace the competitive procurement process adopted by the Commission. Put simply, nothing contained in the PG&E or SCE opening briefs filed December 30, 2009, adequately rebut these facts. However, rather than reiterate the facts that support these positions, WPTF responds to misstatements of fact in the PG&E opening brief.

II. REBUTTAL TO PG&E MISSTATEMENTS OF FACT

The PG&E brief is inaccurate with regard to WPTF and the issues it has advocated in this proceeding. Namely, it states that WPTF was a party in the SCE Solar PV proceeding³ and it further states that the Commission rejected a WPTF request that the utility be required to conduct a competitive solicitation for its solar PV development. Finally, it also misstates the action taken by the Commission in that proceeding. Specifically, PG&E states at page 19 of its opening brief:

Similarly, in its action recently approving SCE’s Solar Photovoltaic Program (SPVP), the Commission approved utility-owned generation without requiring that utility first conduct a solicitation as requested by WPTF.

This statement is inaccurate and misleading, as discussed below in greater detail.

² *Opinion Adopting Pacific Gas and Electric Company’s, Southern California Edison Company’s, and San Diego Gas & Electric Company’s Long-Term Procurement Plans* (“Decision”).

³ A.08-03-015.

A. WPTF was not a party in the SCE Solar PV proceeding.

WPTF was neither a party in A.08-03-015 nor did WPTF make a competitive solicitation proposal. Therefore the statements that WPTF proposed that SCE be required to conduct a solicitation, and that the Commission rejected this proposal, are not true. These assertions suggest that there is existing precedent for the Commission to reject the actual request made by WPTF in these consolidated dockets; namely, that should the Commission be unwilling to reject the Applications in their entirety, it should condition its approval on (1) a requirement that each utility be required to hold a competitive RFO to determine if a competitive market option is feasible for the projects.

Therefore PG&E's statements in this regard should be disregarded, as should their suggestion that the decision in the SCE Solar PV proceeding did not involve a competitive bid requirement, as discussed in the following section.

B. The decision in the SCE Solar PV application imposed a 50% competitive bid obligation on the utility.

As noted above, PG&E states that in the SCE Solar PV decision D.09-06-049, "the Commission approved utility-owned generation without requiring that utility first conduct a solicitation as requested by WPTF." In fact, although WPTF was *not* a party, the Commission did on its own initiative impose a competitive bid obligation on SCE for half of its solar PV program, as follows:

Under the adopted program, SCE will own, install, operate and maintain 250 MW of distributed solar PV projects primarily in the one to two MW range, located in SCE's service territory, and will seek competitive bids for power purchase agreement (PPA) for electricity from another 250 MW of solar PV rooftops that are owned, installed, operated and maintained by independent power producers (IPPs).⁴ (*sic*)

⁴ D.09-06-049, at p. 2 (emphasis added).

Cites to this decision to impose a competitive bid solicitation for half of the program are found throughout the order. The decision also repeatedly referred to D.07-12-052, precisely the same decision cited frequently in the WPTF opening brief in support of its position. For example:

In D.08-11-004, the Commission found that Pacific Gas and Electric Company (PG&E) failed to follow the rules for UOG set forth in D.07-12-052 and dismissed PG&E's application.⁵

The Commission has clearly stated its preference for competitive markets for utility procurement of conventional generation. In D.07-12-052, the Commission noted that it favors a competitive market first approach while acknowledging that certain unique circumstances may warrant some form of utility ownership. The Commission stated in D.07-12-052 that it would consider UOG applications by the IOUs outside of an RFO on a case-by-case basis, but the applications "must fit into a unique circumstance, which are limited to market power mitigation, reliability, preferred resources, expansion of existing facilities, or be a unique opportunity, as described in the decision." Also, in addressing the circumstances for UOG outside the RFO process, the Commission stated that "...all long-term procurement should occur via competitive procurements, rather than through preemptive actions by the IOU, except in truly extraordinary circumstances." In cases where a utility requests a UOG because of a "truly extraordinary circumstance," the Commission required that IOUs make a showing that holding a competitive RFO would be infeasible.⁶

We have modified the PD to clarify the PPA portion of the SPVP. In order to ensure that the competitive PPA solicitations are administered appropriately, SCE shall use an IE to oversee the solicitations consistent with and pursuant to the requirements established in D.07-12-052.⁷

Put simply, the PG&E statements, both with regard to WPTF's alleged positions and the Commission's actions in the decision it issued in the SCE solar PV proceeding, are incorrect and should be rejected in their entirety.

⁵ Id at p. 12.

⁶ Id at p. 14 (footnotes omitted).

⁷ Id at p. 42.

III. REBUTTAL TO PG&E REGARDING THE ELIGIBILITY OF THE PROJECT FOR NON-BYPASSABLE CHARGES

In its opening brief, PG&E devotes little time to the issue of the fuel cell project's eligibility for nonbypassable charges. It simply reiterates the request and states that its proposal is, "consistent with the Commission's direction in D.08-09-012." This conclusion is incorrect. As noted in WPTF's opening brief, the very first page of that decision states that, "By this decision, we implement new generation non-bypassable charges (NBCs) previously established by Decision (D.) 04-12-048 and D.06-07-029." Next, it recites the language in D.04-12-048 that provides, "The ten-year recovery period should also apply to any utility-owned generation *acquired as a result of the procurement process*, commencing once the resource begins commercial operation."⁸ In other words, D.08-09-012 makes no changes to that decision. The wording of D.04-12-048 with regard to non-bypassable charges is also instructive:

*As the utilities will be acquiring their new resource needs through the competitive and transparent procurement process that we are adopting, it is our expectation that there should be little if any stranded costs.*⁹

Yet neither PG&E nor SCE elected to use a "transparent procurement process." The citation to D.08-08-012 as support for PG&E's nonbypassable charge proposal is unconvincing, inapplicable and should also be rejected.

As noted in WPTF's opening brief, should the fuel cell projects ultimately create stranded costs, those costs should be borne by PG&E and SCE shareholders, and not by ratepayers. As each utility has failed to comply with the Commission's procurement processes and, P.U. Code Section 380(g) offers no authority for such recovery, it is entirely fair and equitable that any risk

⁸ D.08-09-012, at p. 52 (emphasis added).

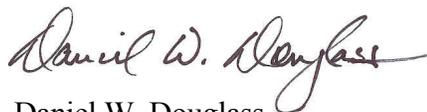
⁹ D.04-12-048, at p. 60 (emphasis added).

of stranded costs should be allocated to the utility's shareholders, regardless of how small those costs may actually prove to be.

IV. SUMMARY AND CONCLUSION

The Commission has repeatedly emphasized its desire to encourage competitive markets. For the sake of consistency, it needs to recognize that applications that attempt to distinguish their projects from the Commission's procurement policy, based on distinctions without a difference, undermine the Commission's "competitive markets first" policies. Should the Commission be unwilling to reject the Applications in their entirety, it should condition their approval on (1) a requirement that each utility be required to hold a competitive RFO to determine if a competitive market option is feasible for the projects; and (2) reject the utilities' proposed non-bypassable charges associated with any stranded costs that may arise from their respective fuel cell projects.

Respectfully submitted,



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January 13, 2010

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the *Reply Brief of the Western Power Trading Forum* on all parties of record in consolidated proceedings *A.09-02-013* and *A.09-04-018* by serving an electronic copy on their email addresses of record and by mailing a properly addressed copy by first-class mail with postage prepaid to each party for whom an email address is not available.

Executed on January 13, 2010, at Woodland Hills, California.



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