

BEFORE THE PUBLIC UTILITIES COMMISSION OF
THE STATE OF CALIFORNIA



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Application of Pacific Gas and Electric Company (U39M), San Diego Gas & Electric Company (U902E), and Southern California Edison Company (U338E) for Authority to Increase Electric Rates and Charges to Recover Costs of Research and Development Agreement with Lawrence Livermore National Laboratory for 21st Century Energy Systems.

A.11-07-008
(Filed July 18, 2011)

**PROTEST
OF THE DIVISION OF RATEPAYER ADVOCATES**

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I. INTRODUCTION AND SUMMARY

In accordance with Rule 2.6 of the Rules of Practice and Procedure of the California Public Utilities Commission (“Commission”), the Division of Ratepayer Advocates (“DRA”) submits this protest to the joint application of Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company for authority to increase electric rates in order to recover from ratepayers up to \$150 million to fund research and development (“R&D”) by the Lawrence Livermore National Laboratory (“LLNL”). The R&D would be conducted pursuant to an agreement between LLNL and the applicants (collectively, the investor-owned utilities or IOUs).¹

DRA recommends the Commission to dismiss or summarily deny this application because, among other reasons:

- The Commission may lack the authority to require ratepayers to fund the R&D in the manner proposed in this application.
- The proposal is insufficiently defined: the application does not define the purpose of the R&D or the research that will be undertaken.
- The requested funding could be duplicative of funding authorized in the General Rate Cases, Long-Term Procurement Planning proceedings, and/or other Commission proceedings.
- The application does not explain how the R&D by LLNL would benefit IOU ratepayers or why it should be funded by the IOUs’ ratepayers rather than by their shareholders and/or by other sources of funds.
- Assuming research of the type contemplated in the application would serve the public interest, the application does not explain why the research should not be

¹ The filing of this application (A.11-07-008) was noticed in the Commission’s Daily Calendar on July 20, 2011. On August 9, 2011, Acting Assistant Chief Administrative Law Judge Kotz granted DRA an extension of time to file a protest or response until Friday, September 2, 2011. Accordingly, this protest is timely.

funded through California’s Public Interest Energy Research (PIER) program, or why the LLNL is the appropriate entity to perform the research.

For these reasons and others identified in this protests, the application should be dismissed or summarily denied. DRA identifies a number of issues that the Commission would need to address in the event it decides to consider granting the IOUs’ request for ratepayer funding.

II. SUMMARY OF THE PROPOSAL

The IOUs seek authority to increase electric and gas rates in order to recover up to \$150 million for IOU-initiated research by LLNL. The R&D would be performed pursuant to a “five-year cooperative research and development agreement” between the IOUs and LLNL. The applicants call the agreement the “California Energy Systems for the 21st Century Project” and refer to it as the “CES-21 Project.”² They provide four illustrative examples of the type of research activities the IOUs and LLNL may undertake in the CES-21 Project. The examples given are:

- Cyber security
- Electric Resource Planning
- Electric and Gas Systems Operations
- Workforce Preparedness”³

No cost information related to ratepayer funding in these potential project areas is provided. Although these examples and other examples of possible projects are provided in Attachment A to the application, it is expressly stated in the application that no specific project activities are proposed.⁴

Funding for jointly approved IOU projects would be allocated to ratepayers as follows: PG&E 55%, SCE 35%, SDG&E 10%. The proposal also allows for non-joint

² Application, p. 1.

³ Id., pp. 2-3.

⁴ Id., pp. 4-5.

projects. The cost allocation for non-joint projects would be negotiated among the IOUs and subject to CES-21 Board of Directors approval.⁵

This application, according to the applicants, presents the following issues:

1. The proposed revenue requirements to support the requested ratepayer funding of the costs of the CES-21 Project are just and reasonable and the Commission should authorize the IOUs to reflect the adopted revenue requirements in their respective rates.
2. The IOUs have demonstrated that their requested ratepayer funding for recovery of the costs of the CES-21 Project is justified because it supports the State's implementation of energy and environmental policy goals for 2020 and beyond.⁶

In DRA's view the application presents other significant issues. These issues are identified in the next section.

III. ISSUES PRESENTED BY THE APPLICATION

In this Protest, DRA presents the issues it has identified based upon its preliminary review of the application. Discovery and research may bring to light additional issues. Accordingly, DRA reserves the right to raise additional issues in this proceeding.

The issues presented here are organized in three parts:

Part A raises the question of whether the Commission has the legal authority to approve ratepayer funding for the research proposed in the application.

Part B includes issues related to the lack of specificity in the proposal, the purpose of the research, the need for it, and the potential for duplicative funding.

Part C includes issues related to governance of the project and funding.

⁵ Id., p.13.

⁶ Id., pp. 17-18.

A. Does the Commission have the legal authority to approve ratepayer funding for the R&D described in the Application?

The Commission will recall that a few years ago, it attempted to create a ratepayer-funded “California Institute for Climate Change Solutions” (“CICS”) to do research related to climate change.⁷ DRA, TURN, and UCAN sought rehearing of that decision on the ground that the Commission had exceeded its authority by creating a new agency and funding its research with ratepayer funds.⁸ They attached to their rehearing application an April 28, 2008 legal opinion by the Legislative Counsel concluding that the Commission had indeed exceeded its authority in ordering ratepayer funding for the CICS. (The application for rehearing and the Legislative Counsel Memo are attached to this Protest as Attachment A.) In short order the Legislature passed, and the Governor signed, legislation ordering the Commission not to create or authorize ratepayer funding for “a research program for climate change unless expressly authorized to do so by statute.”⁹ Consequently, the Commission vacated its decision creating the CICS and dismissed the pending applications for rehearing as moot.¹⁰

There are significant differences between the CICS and the CES-21 proposal presented in this Application. The applicants here do not seek to create a new agency, for example, and the amount of ratepayer funding sought is \$150 million as opposed to \$600

⁷ Decision (D.) 08-04-039, modified by D.08-04-054.

⁸ Application for Rehearing of the Utility Reform Network, the Division of Ratepayer Advocates, and Utility Action Network for Rehearing of Decision 08-04-039, as Modified by Decision 08-04-054 (filed May 21, 2008 in Rulemaking (R.) 07-09-008). A copy of the Application for Rehearing is attached to this Protest as Attachment A and can also be found at <http://docs.cpuc.ca.gov/published/proceedings/R0709008.htm>.

⁹ The pertinent provision was included in the bill authorizing the State budget, Assembly Bill (AB) 1338 (Stats. 2008, ch. 760. See Sec.27 (a)). The Governor signed the bill on September 23, 2008 and it became effective immediately.

Section 27(b) of AB 1338 further states that this Section “does not constitute a change in, but is declaratory of, existing law.”

¹⁰ D.08-11-060.

million. Nevertheless, the Legislative Counsel’s review of the scope of the Commission’s authority to order ratepayer funding for R&D is instructive and much of it is relevant here.

The Legislative Counsel makes the important point that “the commission’s constitutional authority to fix the rates of public utilities empowers the commission to determine the compensation to be paid to public utilities *only for providing utility service.*”¹¹ Research of the type proposed in this application is not the provision of utility service.

The Constitution permits the Legislature to confer additional authority on the Commission beyond that specified in the Constitution,¹² and the Legislature has authorized the Commission to fund certain types of R&D activities from rates. This *statutory* authority is subject to specific conditions and requirements, however. There is, for example, a statutory scheme to fund R&D related to the State’s energy policy goals. The Legislature created the Public Interest Energy Research (PIER) program precisely to fund energy-related R&D that might further state policy goals and would not likely be funded by industry or other government agencies.¹³ The legislation establishing the PIER confers the authority to disburse those funds on the Energy Commission, however, and there are funding limits and other requirements.¹⁴

So, what would be the source of the Commission’s authority to authorize rate increases to fund the CES-21 Project? The application is silent on this question. The Commission, however, should consider this threshold question before it devotes resources to considering the application.

¹¹ Legislative Counsel Memo of April 28, 2008, p. 6 (emphasis added).

¹² Id., pp. 7-8 (citing Article XII, § 5 of the California Constitution).

¹³ Id. at p. 10; See Public Utilities Code §§ 381, 384, 399, 399.8, 890, 901 and Public Resources Code § 25620 et seq.

¹⁴ Public Utilities Code §§ 381, 399.7, 399.8.

B. The Purpose and Objectives of the CES-21 Is Unclear and the R&D Projects Have Not Been Defined

If the Commission considers the CES-21 proposal, the following issues should be addressed:

- Does the application establish a need for the research contemplated in the application? (In DRA’s view, it does not.)
- To the extent research may be needed in any of the areas noted in the application, have applicants shown that such research is not already required and/or funded under the aegis of Commission proceedings such as general rate cases, the Long-Term Procurement Planning (LTPP) process, SmartMeter and Smart Grid proceedings? How would ratepayers be protected against duplicative funding?
- To the extent research may be helpful in any of these areas, have applicants shown that such research is not being done or cannot be done, by the IOUs, California Independent System Operator (CAISO), the California Energy Commission (CEC) (including the public interest research (PIER) program administered by the CEC), other government agencies, and/or other industry?
- If specialized assistance from a research institute is needed, is LLNL the entity best suited to provide that assistance? Was a competitive solicitation done or were other research institutes considered (for example, the Lawrence Berkeley National Laboratory, which has an Energy and Environmental Sciences Division as well a National Energy Research Scientific Computing Center.¹⁵ Should they be?
- Regarding the research related to resource planning/integration of renewables, what data and/or tools would be provided? How would those data/tools differ from the renewable integration modeling work being performed under the

¹⁵ See <http://www.lbl.gov>.

- aegis of the current LTPP proceeding? How and when would the results of the research be provided in relation to the current LTPP proceeding? Would they be provided in time to be useful for the CPUC's decision-making in the LTPP?
- Are the purpose and objectives of the research adequately defined? (In DRA's view, they are not.) If not, who will determine the objectives, and how, and when? (See also questions concerning governance in Part C.)
 - Should the Commission approve a proposal that fails to define deliverables, timing, milestones, decision-making authority and structures to ensure quality control and accountability, or any information on costs?
 - Who would benefit from the proposed research, and how? How would the benefits to ratepayers and/or to the State be quantified or otherwise evaluated?
 - Would the Commission and its staff have full access to the research projects and related information?
 - Why do the IOUs need the LLNL to help them with "Workforce Preparedness"?

B. Governance and Funding

- Is it appropriate to place the cost burden of undefined proposed research on IOU ratepayers? What is the basis for the proposed allocation to the ratepayers of each of the IOUs, and is it appropriate? What about IOU shareholders?
- Are there additional entities that should contribute (such as municipal utilities and Direct Access customers)?
- Are there more appropriate sources of funding, such as the PIER program and various sources of federal funding for energy research?
- How would the CAISO participate and would it contribute financially?
- Is the proposed governance structure acceptable? If ratepayers fund the research, shouldn't they be represented on the board that makes the decisions on how the funds are used?

- Is the proposed treatment of Intellectual Property produced by the LLNL research fair to ratepayers and in the public interest? If not, what would be a better arrangement?

IV. CATEGORIZATION

DRA agrees with the applicants that this proceeding should be categorized as Ratesetting.

V. NEED FOR HEARINGS AND SCHEDULE

DRA makes no recommendation for a schedule at this time because it recommends that the Application be dismissed. If it is dismissed there is no need for hearings. If the Commission decides to consider granting ratepayer funding for the CES-21 Project, there are many factual and legal questions that would have to be answered, including those identified in this Protest. Hearings may be necessary to resolve some of the factual questions.

VI. CONCLUSION

The Application should be dismissed for the following reasons:

First, the Applicants have made no showing that there is a legal basis for the Commission to authorize the requested \$150 million of ratepayer funding for the CES-21 R&D Project. Nor have they shown, if the Commission has such authority, what the legally required conditions are for this type of R&D funding and whether those conditions have been met.

Second, the proposal is insufficiently defined. It fails to define deliverables, timing, milestones, decision-making authority and structures to ensure quality control and accountability, or any detailed information on costs. It is unclear how ratepayer funds would be spent and whether ratepayers would benefit.

If the Commission does not dismiss the Application on one or both of these grounds, it should first address the threshold issue of whether it has authority to approve the CES-21 proposal. Only if it determines that it does should it devote resources to further evaluation of the application.

Respectfully submitted,

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ATTACHMENT A