

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

In the Matter of the Joint Application of Southern California Gas Company (U 904 G) and San Diego Gas and Electric Company (U 902 M) for Authority to Continue Funding of LEV Programs.

Application 02-03-047

Application of Southern California Edison Company (U 338 E) to Extend the Operation of its Electric Vehicle Adjustment Clause Mechanism and Related Accounts until the Date of the Commission's Final Decision in SCE's Test Year 2003 General Rate Case Proceeding.

Application 02-03-048

Application of Pacific Gas and Electric Company for Review of and Authorization for Recovery of Costs Relating to its Low Emission Vehicle (LEV) Program for 2002 through 2005 (U 39-E).

Application 02-03-049

**ADMINISTRATIVE LAW JUDGE RULING  
PERMITTING USA WASTE COMPANY TO PARTICIPATE IN  
PROCEEDING AND DENYING REQUEST OF USA WASTE FOR  
EXPEDITED BRIEFING SCHEDULE**

**Background**

In Decision (D.) 93-07-054, the Commission adopted policy guidelines to assist California investor-owned utilities (utilities) in developing and supporting

infrastructure for both low- and zero-emission vehicles<sup>1</sup> pursuant to Public Utilities Code Section 740.3. The Commission subsequently approved the applications of Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), Southern California Gas Company (SoCal), and San Diego Gas and Electric Company (SDG&E) for continued and, in some cases, increased funding for their LEV programs in D.95-11-035.

On February 11, 2002, USA Waste of California, Inc., (USA Waste)<sup>2</sup> filed a petition to modify D.95-11-035 to include funding for its liquefied natural gas (LNG) pilot program regarding research and development on the conversion of landfill gas to LNG. Since the funding authorized by D.95-11-035 had already expired by the terms of the decision, USA Waste's petition was denied. USA Waste was instructed to file the petition in A.02-03-047, and USA Waste's request for funding of its LNG program is incorporated into this proceeding.

At the prehearing conference, USA Waste requested an expedited schedule for addressing issues related to its proposal. Other parties were given the opportunity to respond to USA Waste's request. ORA did not object, but PG&E, SoCal Gas, and SDG&E raised concerns regarding both USA Waste's request for priority scheduling and the substance of USA Waste's petition.

The Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judge (ALJ) therefore directed USA Waste to file a brief to address the legal and public policy grounds on which the Commission would

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<sup>1</sup> In this ruling, low-emission vehicles are referred to as "LEVs." A reference to LEVs will also include zero-emission vehicles.

<sup>2</sup> USA Waste is a wholly-owned subsidiary of Waste Management, Inc.

have jurisdiction to hear USA Waste's request for funding of its LNG pilot program by utility ratepayers.<sup>3</sup> USA Waste timely filed its brief on July 12, 2002.

### **Discussion**

USA Waste contends that the Commission has jurisdiction to award USA Waste funding for its LNG program under its broad authority to authorize expenditures for research and development related to LEVs pursuant to Public Utilities Code Sections 740, 740.1, and 740.3.<sup>4</sup> However, the plain language of these statutes appears to limit their applicability to research and development performed by utilities.

For example, Section 740 states:

For purposes of setting the rates to be charged by every electrical corporation, gas corporation, heat corporation or telephone corporation for the services or commodities furnished by it, the commission may allow the inclusion of expenses for research and development. (Emphasis added.)

Section 740.1 requires the Commission to consider particular guidelines in “evaluating the research, development and demonstration programs proposed by electrical and gas corporations.” (Emphasis added.)

Section 740.3 further requires the Commission, in cooperation with certain public agencies, regulated electrical and gas corporations, and the motor vehicle industry, to evaluate and implement policies that facilitate the use of electric power and natural gas to fuel LEVs.

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<sup>3</sup> Reply briefs, if any, were to be filed by July 25, 2002. The Commission received no reply briefs.

<sup>4</sup> All statutory references are to the Public Utilities Code, unless otherwise stated.

None of these statutes direct the Commission to assist other non-utility businesses, such as waste management companies, in the development of LEVs, except for Section 743's requirement that the Commission work with the motor vehicle industry as well as utilities.

Moreover, D.93-07-054, which adopted guidelines for the Commission's current LEV program, refers extensively to utility programs to develop LEVs, and does not address LEV programs conducted by other types of businesses.

Based on this authority, this ruling provides procedural guidance to USA Waste. The Commission's final decision in this proceeding may find that USA Waste is not eligible to receive an award of LEV funding because USA Waste is not an electrical or gas corporation or a public utility.<sup>5 6</sup> However, USA Waste may continue to participate in this proceeding, subject to these cautionary statements.

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<sup>5</sup> USA Waste also argues that under Section 701, the Commission has broad power to take actions that are not expressly permitted by statute. Section 701 provides that the Commission may "supervise and regulate every public utility in the State and may do all things, whether specifically designated in this part or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction." However, USA Waste is not a public utility subject to the Commission's jurisdiction. It is not necessary to further address whether the Commission may award LEV program funding to USA Waste under Section 701 here.

<sup>6</sup> This ruling need not address whether USA Waste's LNG program would qualify as the use of natural gas to fuel LEVs pursuant to Section 740.3. This issue is reserved to the Commission's decision, if the Commission finds that it has jurisdiction to consider USA Waste's proposal.

USA Waste's request for an expedited schedule to address its issues is also denied, in order to maintain consistency and uniformity in the schedule for this proceeding.

**IT IS SO RULED.**

Dated August 9, 2002, at San Francisco, California.

/s/ MYRA J. PRESTIDGE

Myra J. Prestidge  
Administrative Law Judge

**CERTIFICATE OF SERVICE**

I certify that I have by mail, and by electronic mail, to the parties to which an electronic mail address has been provided, this day served a true copy of the original attached Administrative Law Judge’s Ruling Permitting USA Waste Company to Participate in Proceeding and Denying Request of USA Waste for Expedited Briefing Schedule on all parties of record in this proceeding or their attorneys of record.

Dated August 9, 2002, at San Francisco, California.

/s/ TERESITA C. GALLARDO  
Teresita C. Gallardo

**N O T I C E**

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