

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

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)

**OPENING BRIEF OF THE CALIFORNIA ENERGY
STORAGE ALLIANCE**

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December 30, 2009

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**OPENING BRIEF OF THE CALIFORNIA ENERGY
STORAGE ALLIANCE**

Pursuant to Rule 13.11 of the Commission’s Rules of Practice and Procedure and the direction of Administrative Law Judge (“ALJ”) Dorothy J. Duda, the California Energy Storage Alliance (“CESA”)¹ hereby submits this opening brief regarding the consolidated Application of Pacific Gas & Electric Company (“PG&E Application”) filed on February 20, 2009, and the Application of Southern California Edison Company (“SCE Application”) filed on April 27, 2009.

I. INTRODUCTION

CESA urges the Commission to reject only one particular aspect of the SCE Application on the grounds that SCE has failed to adequately demonstrate that, as SCE itself acknowledges, Commission policy expressly prohibits utilities from using SGIP incentive monies to fund utility projects. The Commission’s policy against use of SGIP funds by utilities was established in

¹ The California Energy Storage Alliance presently consists of A123 Systems, Inc., Altair Nanotechnologies, Beacon Power, Chevron Energy Solutions, Debenham Energy Solutions, XtremePower Solutions, Fluidic Energy Inc., Ice Energy, Inc, Suntech Power, SustainX, Inc., Powergetics, Inc., Prudent Energy, PVT Solar, and ZBB Energy Corporation.

D.01-03-073, and D.0412-045 which state in no uncertain terms that utility distribution companies are not eligible for incentives under the SGIP.² First, CESA objects to the obvious and insurmountable conflict of interest that SCE would create if it were to be allowed to administer the SGIP by processing applications that are competing with each other for finite incentive funds, and compete at the same time, with those applicants, for the same finite amount of available SGIP incentive funding.³ Second, CESA also objects to the “transfer” of SGIP funds proposed by SCE on the independent ground that it would be a direct violation of (i) the Commission’ *Decision Adopting Self Generation Incentive Program Budget and Other Operation Details for 2009 through 2011*⁴ providing detailed guidance for utility management of the SGIP budget as of the date that the SCE Application was filed (April 7, 2009), and (ii) the Commission’s *Decision Adopting Self Generation Incentive Program Budget for 2010-1011*⁵ – is issued only days ago.

II. SCE SHOULD NOT BE ALLOWED TO TRANSFER FUNDS FROM THE SELF GENERATION INCENTIVE PROGRAM TO FUND ITS OWN FUEL CELL PROGRAM.

The *Assigned Commissioner’s and Administrative law Judge’s Scoping Memo and Ruling*, issued on June 25, 2009, stated that the scope of these consolidated proceedings would include the following question: “5. Should SCE be allowed to use uncommitted SGIP funds to pay for a portion of the Fuel Cell Project?” (p. 4).

² CESA takes no position on whether SCE can, or should, be able to persuade the Commission that its proposal is consistent with Commission policy with regard to utility acquisition or ownership of generation resources outside of Commission-approved competitive selection processes.

³ See, CESA’s Protest of SCE Fuel Cell Application, filed June 6, 2009, at p. 3.

⁴ D.09-01-013. issued January 30, 2009.

⁵ D.09-12-047, issued December 17, 2009.

In the December 17, 2009 decision referred to above, the Commission re-stated the fundamental purpose of the SGIP in the clearest possible terms:

“The Commission established the Self-Generation Incentive Program (SGIP) in 2001 to provide incentives to businesses and individuals who invest in distributed generation (DG), i.e., generation installed on the customer’s side of the utility meter that provides electricity for a portion or all of that customer’s electric load. (*See* Decision (D.) 01-03-073).” (Mimeo, pp. 1-2).

The foregoing statement by the Commission should certainly lay to rest SCE’s initial “best shot” at responding to CESA’s conflict of interest objection in the following manner⁶:

“. . . SCE is following the Commission’s guidance in D.06-08-028 by filing this application to request the Commission’s authorization to use uncommitted SGIP funds for the limited purpose of funding its Fuel Cell Program. In effect, SCE is asking the Commission to “step in” as project administrator, and to independently evaluate the merits of SCE’s proposal. The Commission’s independent review of SCE’s request effectively addresses any conflict of interest concerns, and is thus consistent with D.01-03-073 and D.04-12-045.” (p. 3).

Of course, D.06-08-028, cited by SCE, dealt with the California Solar Initiative – not the SGIP – and is inapplicable. Later in the same filing, SCE goes on to quote the Division of Ratepayer Advocates (DRA’s) concise expression of the unavoidable problem with SCE’s Application:

“. . . DRA is concerned that the Commission’s approval of SCE’s proposal will set a “terrible” precedent, presumably by opening the door for utilities to compete with other customers for SGIP funds. [Footnote deleted]’ (p. 6).

On cross-examination at hearings held in this proceeding on December 10, 2009, SCE’s policy witness, Mark Nelson, testified as follows⁷:

“Q. You proposed to utilize a portion of the existing uncommitted SGIP funds that you have collected from all customers to pay down 50 percent of the initial project capital costs; correct?

A. Yes, we do.

⁶ Southern California Edison’s Reply to Protests, filed June 11, 2009.

⁷ Testimony of Mark Nelson, December 10, 2009.

Q. Why does your testimony not deal with the fact that utilities are ineligible for incentives under the SGIP program?

A. Well, we're not requesting an incentive under the SGIP program. What we're requesting is that some of the over-collected funds be transferred such that they could be used as a buy-down, if you will, to reduce the first capital cost.

Q. But was there a conscious decision that it was better simply not to mention the prior Commission decision with regard to the eligibility of utilities for SGIP funds?

A. No. I think that because we knew that we were not eligible directly for SGIP, that we needed to approach the Commission and ask, you know, again for essentially a transfer of the funds.” (Transcript pp. 197-198).

Earlier, on October 6, 2009, the DRA had protested Pacific Gas and Electric’s (“PG&E’s”) Advice Letter 3522-E/3045-G quietly requesting authorization to transfer ratepayer funds from the SGIP budget to its charitable assistance program, Relief for Energy Assistance through Community Help (REACH), without any notice to SGIP stakeholders, as follows:

“Contrary to PG&E's assertion that the SGIP funds are ‘uncommitted,’ the Commission in D.09-01-013 explicitly ordered PG&E to administer and implement SGIP in accordance with all previous Commission decisions for renewable and nonrenewable projects. Furthermore, in January 2009, the Commission allocated an additional \$83 million in SGIP funding for activities that have nothing to do with the goals of PG&E's REACH program.

D.09-01-013 provides specific direction to PG&E regarding unspent funds: PG&E must carry those funds over to 2009, and to transfer any unspent SGIP funds related to solar photovoltaic activities to the California Solar Initiative (CSI), as directed in D.06-12-033. PG&E's proposal to transfer SGIP funds to its REACH program will violate D.09-01-013.” (p. 3).

Having been alerted by PG&E’s Advice Letter 3522-E/3045-G, on October 12, 2009, that it was in fact preceded by a comparable advice letter filing made by San Diego Gas & Electric and Southern California Gas Company, the DRA promptly filed an Application for Rehearing of

the Commission's approval of Advice Letters 2065-E/1842-G and 3963-G (again without notice to SGIP stakeholders)⁸:

“SoCalGas asserts that the balance in its SGIP account is currently in overcollection and can be used to fund the GAF program. But, the Commission maintains overcollections for future work on DG. However, the way the SGIP is currently structured, all the utilities have an over collection. For example, Southern California Edison (SCE) currently has an SGIP overcollection of approximately \$100 million. In D.09-01-013, the Commission made a conclusion of law that unspent monies and overcollections by all the utilities, including SoCalGas, should be carried over to the next years. Therefore, the resolution E-4251 must be modified to let SoCalGas carry over the overcollection, otherwise the resolution will directly conflict with D.09-01-013.” (p. 3).

III. SUMMARY AND CONCLUSION

The Commission should reject SCE's Application, because it attempts to “transfer” SGIP funds to its own account the Commission's contrary to settled SGIP eligibility policy and recent Commission decisions purely for political expediency. Giving SCE's proposal any credence at all would completely undermine the credibility of the SGIP. Otherwise, eligible applicants for SGIP incentives would have no basis to rely on funds being there when they are legitimately called upon. For the reasons discussed above, CESA urges the Commission to reject SCE's request to transfer SGIP funds for its own use.

Respectfully submitted,



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December 30, 2009

⁸ Application of the Division of Ratepayer Advocates for Rehearing of Resolution E-4251, filed October 12, 2009.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of *Opening Comments of the California Energy Storage Alliance* on all parties of record in 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 December 30, 2009, at Woodland, California.



Michelle Dangott

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