Docket No.: A.09-02-013 and A.09-04-018

Exhibit No.: ____________________

Date: September 14, 2009

Witness: Janice Lin

REBUTTAL TESTIMONY OF JANICE LIN ON BEHALF OF THE CALIFORNIA ENERGY STORAGE ALLIANCE REGARDING THE PACIFIC GAS & ELECTRIC COMPANY AND SOUTHERN CALIFORNIA EDISON COMPANY REQUEST FOR APPROVAL OF PROPOSED FUEL CELL PROJECTS

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I. Introduction

The California Energy Storage Alliance ("CESA") filed opening testimony to address Southern California Edison Company's ("SCE's") request to the Commission to utilize Self Generation Incentive Program ("SGIP") funding to offset 50% of the initial capital cost of its proposed development of three fuel cell installations of up to 3 MW at various state universities in SCE's service territory.[1] In this rebuttal testimony, CESA (i) provides further information to support its Protest to SCE's Application based on developments since its opening testimony was served on September 14, 2009, and. (ii) responds to the opening testimony of TURN. It is becoming clearer every day that the SGIP budget that SCE seeks to tap into for its own use is a rapidly moving target for eligible SGIP funding applicants to rely on in planning their projects.

II. SCE's Claim Of 'Underutilized Funding' Is Clearly Premature.

Uncertainty as to the availability of budgeted SGIP funds is accelerating due to a number of internal and external events in addition to SCE's attempt to convert the SGIP to a funding source for utility projects. The Commission itself is calling for review of the SGIP budget, and the utilities are seeking to divert the current budget to causes in an apparently random manner. From the perspective of an eligible SGIP applicant, these cumulative events result in dramatic uncertainty in the availability and amount of SGIP funds. Because significant development capital must be expended over a long period of time to develop an eligible SGIP project, this

[1] SCE's application was consolidated with a similar application related to Pacific Gas and Electric Company by ALJ Duda in her ruling from the bench at the June 22 prehearing conference that granted the May 19, 2009 motion to consolidate filed by the Division of Ratepayer Advocates ("DRA"). This ruling was subsequently confirmed in the Assigned Commissioner's and Administrative Law Judge's Scoping Memo and Ruling issued June 25, 2009 ("Scoping Memo").

uncertainty will negatively impact the likelihood of successful SGIP project development by eligible applicants, particularly for energy storage.

First, On September 17, 2009, Administrative Law Judge J. Dorothy Duda issued an *Administrative Law Judge's Ruling Requesting Comments on the Self Generation Incentive Program Budget for 2010 and 2011* ("SGIP Budget Ruling"), seeking comments on a proposal for simplifying the SGIP budget and carryover funding for 2010 and 2011 and rectifying irregularities among the four investor owned utilities ("IOUs") in their accounting for SGIP funds.[2] In seeking comments, the SGIP Budget Ruling identified certain relevant background information, with salient points including:

Legislation awaiting the Governor's signature (SB 412, Kehoe would allow collections from ratepayers for SGIP in 2010 and 2011, extend administration of the program until January 1, 2016, and expand program eligibility to distributed non-generation resources that manage peak load and achieve reductions in greenhouse gas emissions.

Energy storage technologies are allowed to receive incentives of $2 per watt when coupled with SGIP eligible generation technologies.

A pending decision in the proceeding would approve a petition by Bloom Energy Corporation to expand eligibility for renewable incentives for SGIP projects that use fuel delivered through directed biogas contracts.[3]

The SGIP Budget Ruling also directed PG&E, SCE, SoCalGas, and SDG&E, in cooperation with CCSE, to verify the accuracy of SGIP funding data in attached Tables through September 1, 2009.

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[2] Opening Comments were required to be filed by September 28, 2009, and Reply Comments were due on October 5, 2009.

[3] The petition was subsequently approved and D.0909-048 was issued on September 24, 2009.

On September 23, 2009, ALJ Duda issued a *Partial Extension for SGIP Budget Data* allowing the IOUs an extension of time to file the required budget data until the date of this rebuttal testimony, October 5, 2009. The deadline to file Reply Comments on October 5, 2009 remained unchanged. Along with other parties, CESA filed Opening Comments responding to the SGIP Budget Ruling on September 28, 2009.[4] Whether any Reply Comments will have been filed by the close of business today is unknown; and CESA does not have access to any budget data that may have been submitted pursuant to the SGIP Budget Ruling.

Second, PG&E was also among the parties that filed Opening Comments, including the following remarkable topic in addition to those raised by the SGIP Budget Ruling:

> "In addition to the issues listed is the Ruling, there are two other topics that should be raised. First, there are additional parties seeking to spend SGIP funds. In Application 09-02-013, PG&E seeks to recover the cost of three Utility owned fuel cell projects, and TURN has suggested that rather than rate basing the projects, the costs should be taken from the SGIP budget. In addition, PG&E filed an Advice Letter on September 11, 2009, requesting the authority to use up to $7 million in SGIP funds to increase funding for PG&E's Relief for Energy Assistance through Community Help Program. (AL 3045-G/3522-E). If either proposal is approved, this may affect the SGIP dollars that need to be recovered from ratepayers.
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> Second, there are a number of issues not addressed in the Ruling that would need to be addressed if these suggestions are approved. For example, if no new SGIP program budget dollars are permitted after 2011, but the program continues until 2015, then the dropout and waiting list rules might need to be

[4] CESA's Opening Comments were necessarily qualified by a reservation of rights as to any material information provided in response to the SGIP Budget Ruling.

augmented and clarified, as there may be a large waiting list for available dollars." (PG&E Opening Comments, p. 5).

PG&E's Opening Comments directly address the uncertainty of the budget given its many alternative uses. Finally, it should be noted that on the same day that opening testimony was due in this proceeding the Commission approved a resolution granting Southern California Gas Company and San Diego Gas and Electric Company the authority to increase funding for unrelated programs by transferring funds from the SGIP: "On February 20, 2009, SDG&E and SoCalGas (the Joint Utilities) submitted advice letter filings seeking Commission authorization to transfer funds from their over-collected balancing accounts; the Rate Design Settlement Component Balancing account ("RDSBA"), the Post-2005 Gas Energy Efficiency Balancing Account ("PGEEBA"), and the Self Generation Program Memorandum Account ("SGPMA") to increase funding for their charitable Neighbor-to-Neighbor ("NTN") and Gas Assistance Fund ("GAF") programs. The NTN and GAF funds help pay electric and gas bills of customers experiencing temporary financial hardship. These programs are funded by shareholders, utilities' employees and voluntary contributions from ratepayers."[5]

III. Rebuttal to TURN

TURN notes that PG&E proposes to construct its three fuel cell projects with shareholder capital and rate base the assets, while SCE proposes to expense approximately 50% of the estimated installed capital costs ($10.8 million) using a portion of the uncommitted balance in the SGIP Incremental Cost Memorandum Account, used to fund projects subsidized through the SGIP. TURN uncritically accepts SCE's argument in the Application that using SGIP funds is consistent with state policy. Based on that assumption, without any analysis or explanation,

[5] Resolution E-4251, at p. 1. Ordering Paragraph Number 3 stated, "The funds authorized under this resolution are for one time only and its approval is not meant to set any precedent for future funding of this or any other similar program." (at page 17).

TURN concurs "that it is appropriate to use SGIP funds for these projects."[6] TURN then goes even further and recommends that "the Commission authorize both SCE and PG&E to expense all capital costs for the fuel cell installations from SGIP funds."[7] Of course, it is impossible to square testimony with TURN's Protest: "The state has implemented a ratepayer subsidy program to *private installations* of fuel cells through the Self-Generation Incentive Program. However, that program in no way enunciates a policy of promoting full ratepayer payment for utility ownership of fuel cells. A public policy that promotes "public-private" partnership by providing a *partial subsidy* for private installations is not equivalent to a policy that supports full public *ownership* of the installation. [Emphasis in original]" [8]

CESA understands TURN's frustration with the costs of the utilities' fuel cell applications and the burdens they will undoubtedly place on all ratepayers. Nevertheless, TURN's understandable concern over the high costs of the proposals is not a reasonable ground on which to blithely ignore state law and raid the SGIP funds when Commission policy expressly prohibits utilities from using SGIP funds to fund utility projects.[9] As noted in CESA's opening testimony, this policy was established in D.01-03-073, which provides in pertinent part: "The following entities are not eligible for incentives under this program: *Utility distribution companies themselves or their facilities.*"[10] (Emphasis added) As CESA and other parties[11] explained in opening testimony, in D.04-12-045, the Commission clarified this policy as follows:

> "Decision 01-03-073 prohibited utility distribution companies from receiving SGIP incentives. The Working Group seeks clarification as to which distribution companies are excluded from the program.

[6] TURN opening testimony at p. 9.
[7] *Id*, emphasis in original.
[8] TURN Protest, at p. 2.
[9] SCE Application, at p. 4.
[10] D.01-03-073, Attachment 1, at p. 25.
[11] Western Power Trading Forum ("WPTF"), at pp. 11-12; Debenham Energy, LLC ("Debenham"), at pp. 3-4; Division of Ratepayer Advocates ("DRA"), at pp. 7-8.

We clarify that public and investor-owned gas or electricity distribution utilities which generate or purchase electricity or natural gas for wholesale or retail sales, are not eligible to receive incentives."[12]

Given the Commission's clear and unambiguous prohibition on the use of SGIP funds by utilities, the Commission should categorically reject TURN's proposal that both SCE and PG&E should be permitted to expense all capital costs for the fuel cell installations from SGIP funds. Allowing SCE to utilize a significant portion of finite SGIP funding for utility-owned fuel cell projects would not only set a dangerous precedent, but would also certainly reduce available funding to qualified applicants for all of the eligible technology classes. Successful market development requires certainty and time. If SCE were allowed to ignore an obvious conflict of interest to utilize SGIP funds for their own Project, this would have a 'chilling' effect on the commercial market for all eligible technologies as it would call into question the availability of remaining funds for private sector development.

IV. Recommendation

The Commission should disregard TURN's Opening Testimony and reject SCE's proposal to use SGIP funds for its Project. Absent the imposition of this condition, the Commission should reject the SCE application entirely. This completes my rebuttal testimony.

[12] D.04-12-045, at p. 23 (emphasis added).