hydrogen energy

April 26, 2010

VIA MESSENGER AND E-MAIL

Michael R. Peevey
President
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
E-mail: mp1@cpuc.ca.gov

Re: Hydrogen Energy California LLC

Dear President Peevey:

On behalf of Hydrogen Energy International LLC ("HEI") and its Kern County-based project, Hydrogen Energy California LLC ("HECA"), we wish to express our thanks and gratitude for the continuing support the California Public Utilities Commission has given to HECA and its objectives. As you know, HECA 's objective in California is to study, develop, if shown to be commercially and technically feasible, and sell the power output from a first-of-a-kind integrated combined cycle ("IGCC") facility that will produce hydrogen for low-carbon power generation and capture carbon dioxide for use in enhanced oil recovery ("EOR") and sequestration.

However, we need to again ask for your support and help to implement the guidance and direction provided by the Commission in its orders relating to a partial co-funding of the HECA feasibility studies by Southern California Edison Company (SCE). Specifically, there is a need for the Commission to provide assurance that the three utilities working to negotiate one or more potential power purchase agreements ("PPA(s)") with HECA is not potentially an anti-competitive activity.

By way of background, in the body of Resolution E-4227A, the Commission stated:

"While this advice letter was filed by SCE, we encourage the other two investor-owned utilities ... to become partners in the HECA Study project and for all utilities to work together on commercializing carbon capture and storage... If the California utilities work together, the costs and risks of this and other CCS projects can be shared broadly so that the benefits can be realized by all Californians"

Prior to issuance of the final Resolution, both HEI and SCE requested that the Commission add an ordering paragraph, consistent with the language of the Resolution,

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that the Commission urge all utilities to jointly open negotiations for PPAs with HECA. This request was also included in testimony and not opposed at hearings or in briefs to the administrative law judge. The final order did not include such an ordering paragraph and the only reference remained the above quote from the body of the Resolution.

Because of the concern that there may be lack of clarity on whether a single reference in the Resolution is sufficiently robust to address concerns about exposure to claims that the utilities are acting in concert, there has been grave reluctance by at least one utility to negotiate any PPA with the other two, or separately, with HECA as a sole counter party. In order to progress negotiations, it is clear that the Commission will need to address this concern in some form. Until that happens, the negotiations that have already been significantly delayed are at risk of further delay. This delay is particularly troubling because of external commitments related to federal funding in support of the proposed Project.

Similar to the draft Resolution issued on April 8, 2010 in connection with the Community Choice Aggregation program, the Commission could issue a Resolution at its next meeting. The Commission's Energy Division Staff could instigate a Resolution that would encourage the utilities to promptly commence negotiations with HECA to implement the Commission's previous statements in Resolution E-4227A and Decision 09-12-014 and as required by state energy policy. The Resolution would also clarify that such joint negotiations are consistent with state energy policy, the recent Commission resolution and decision, and the Commission's authority and the utilities' obligation under Public Utilities Code sections 743.1, 748(a), 2842, 2843, 8341 and Executive Order S-7-04 and S-3-05.

As you are aware, on July 1, 2009, HEI was selected by the National Energy Technology Laboratory (NETL) of the U.S. Department of Energy ("DOE") for negotiations leading to a $308 million award under the DOE's Funding Opportunity Announcement entitled "Clean Coal Power Initiative – Round 3" (CCPI-3). The DOE required, as a condition to entering into a Cooperative Agreement and thus access the CCPI-3 funding, that HEI demonstrate a plan for the HECA facility to achieve commercial power sales through a PPA. The DOE also expressed its desire to expedite its typical negotiation period and executed the HECA Cooperative Agreement on September 30, 2009.

The need to keep this Project on schedule is critical. Indeed, the DOE stated: "The timely permitting and development of the HECA Project are critically important to the DOE because funding appropriated under the American Recovery and Reinvestment Act (ARRA) must be expended by September 2015. The current project schedule offers virtually no cushion regarding expenditure of ARRA funding by that date. Therefore, should overall project delays be incurred due to permitting delays, DOE project funding from the ARRA could be jeopardized."

With the need for prompt action and with Commission encouragement, on September 18, 2009, HEI and SCE entered into a Letter Agreement that provides, in part, that they will use good faith efforts to negotiate and execute a term sheet by December 10, 2009, and agree upon, by approximately July 1, 2010, one or more PPA(s) in a form sufficient for submittal to the CPUC for approval. A similar Letter Agreement was executed with Pacific Gas & Electric Company on September 21, 2009. The SCE Letter Agreement was used to provide the demonstration of commitment to commercial power sales required by the DOE. The HECA Cooperative Agreement was then executed on September 30, 2009.

In addition to the Letter Agreements, HECA executed a Joint Negotiations Agreement ("JNA") proposed by the utilities. The JNA has not resolved all concerns, and the resulting delay has become a major impediment to HECA Project implementation and the schedule and expectations of the DOE. HECA stands ready and willing to discuss term sheets and terms and conditions of a PPA with all three electric investor-owned utilities, but cannot do so until this issue is resolved.

Therefore, we hope and urgently request that this Commission engage with HECA and the utilities to provide the form of regulatory assurance required. HECA is ready to meet with the Commission and utilities to determine what additional processes, if any, are necessary to proceed and how best to provide the regulatory assurance.

Thank you for your prompt consideration of this urgent request.

Sincerely,

Jonathan Briggs, President

cc: All Commissioners
Julie Fitch
Frank Lindh (all via email and messenger)
Brian K. Cherry, Pacific Gas and Electric Company
Dan Skopec, Sempra/San Diego Gas & Electric Company
Bruce Foster, Southern California Edison Company (all via email and US Mail)

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