

August 17, 2010

Raj Naidu
Water Division, Tariff Unit
California Public Utilities Commission
505 Van Ness Avenue, Room 4005
San Francisco, CA 94102

SUBJECT: Joint Protest of Southern California Edison Company, Pacific Gas & Electric Company, and San Diego Gas & Electric Company to Four Advice Letters Seeking Commission Authority for In-Conduit Hydro-Electric Generation Using Operational Energy Efficiency Program Funds.

Dear Mr. Naidu:

Southern California Edison Company (SCE), Pacific Gas and Electric Company (PG&E), and San Diego Gas & Electric Company (SDG&E) (Joint Energy IOUs) hereby submit this protest to Golden State Water Company Advice Letter 1409-W, California American Water Company Advice Letter 853-W, California Water Service Company Advice Letter 1997-W, and San Jose Water Company Advice Letter 419-W (Advice Letters, Water IOUs). In the Advice Letters, the Water IOUs seek authority to:

- 1) Commence the implementation of a Research, Development and Demonstration (RD&D) program for the design and construction of prototype, high-technology pressure-reducing equipment to reduce the kilowatt (kW) loss or increase the efficiency at least 50% by using the Operational Energy Efficiency Program (OEEP) to recover the kilowatt hour (kWh) energy being lost in 2010. This program is also expected to provide precision control of flow and pressure for the water distribution system.
- 2) Receive expedited approval from the California Public Utilities Commission (CPUC or Commission) such that the RD&D kW demand reduction and kWh electrical energy recovery projects can be commenced as soon as possible, and
- 3) Track all reasonable construction and associated costs (the return of and return on such assets) to the Operational Energy Efficiency Memorandum Account previously authorized by the Commission in Decision (D.)10-04-030 (OEEP Decision).

The Joint Energy IOUs support creative approaches to clean and sustainable power production, and fully support the collaboration on the OEEP as approved by the OEEP Decision. However, the Joint Energy IOUs do not agree with the assertion made in the Advice Letters that the proposed projects are a “natural extension” of the OEEP, which was a collaborative effort between the Commission, the California Water Association (CWA), PG&E, and SCE that was

adopted in the OEEP Decision. The OEEP Decision approved funding for a pilot program designed to study potential energy usage reductions related to water pumping.

One of the major aims of the pilot is to determine whether potential water/energy savings are cost effective and should be included in the Joint Energy IOUs' energy efficiency (EE) portfolios in the upcoming program cycle. The projects that the Water IOUs are proposing in these Advice Letters do not qualify as EE projects as defined by statute; they are renewable generation projects that should be undertaken under the Joint Energy IOUs' "feed-in" tariffs. It would be inappropriate for the Commission to characterize these programs as qualifying for funding through Commission-adopted EE programs and the Commission should not approve the tracking of these generation project costs in the Operational Energy Efficiency Memorandum Account adopted in the OEEP Decision.¹

In addition, this protest responds to three specific questions posed by the Division of Water and Audit (Water Division) staff at an August 9, 2010, meeting at the CPUC.

DISCUSSION

A. The Advice Letters Do not Belong in an EE Proceeding and Should Be Considered in Another Proceeding

The Joint Energy IOUs protest the Advice Letters on the following six (6) grounds:

1. The Relief Requested in the Advice Letter Would Violate Statute or Commission Order, or is Not Authorized by Statute or Commission Order on Which the Utility Relies.

Although the Water IOUs mention their EE endeavors in their respective Advice Letters, these are clearly generation projects.² The EE Policy Manual defines an EE Measure as:

*"An energy using appliance, equipment, control system, or practice whose installation or implementation results in reduced energy use (purchased from the distribution utility) while maintaining a comparable or higher level of energy service as perceived by the customer. In all cases energy efficiency measures decrease the amount of energy used to provide a specific service or to accomplish a specific amount of work (e.g., kWh per cubic foot of a refrigerator held at a specific temperature, therms per gallon of hot water at a specific temperature, etc). For the purpose of these Rules, solar water heating and stand-alone solar-powered water circulators are eligible energy efficiency measures. (Per D.07-11-004, OP 1.)"*³

¹ Only California American Water Company Advice Letter 853 included proposed revisions to the Operational Energy Efficiency Memorandum Account for parties to review.

² At the August 9, 2010 meeting, Water Division staff asked attendees to comment on whether these projects could truly be characterized as EE Measures. This section responds to this question.

³ EE Policy Manual, v.4.0, Appendix B, p.5. The Commission's *Decision Determining Evaluation, Measurement And Verification Processes For 2010 Through 2012 Energy Efficiency Portfolios*, issued April 21, 2010, includes savings from behavioral programs as EE. (D.10-04-029, OP 14).

The Advice Letters themselves make clear that these projects are, in fact, renewable generation, as they generate energy to feed the grid from the renewable source of in-conduit hydro, and that the projects are not designed to perform the same water depressurization using less energy. As such, these are not EE Measures. All four Advice Letters describe the “annual energy generation” that will come from these “‘combustion-free’ project(s),” describe how such generation “complies with Governor Schwarzenegger’s Executive Order S-14-08 to generate 33% of the electricity consumed in the state from renewable energy sources,” and call the proposals “renewable energy project(s)”⁴

The Commission has found that inclusion of such generation projects within the scope of EE is inappropriate. In D.05-04-051, the Commission found that solar water heaters could be considered EE Measures because “the effect of solar water heating is indistinguishable from other efficiency measures that reduce natural gas or electricity consumption at the end user site (such as water heater wraps, pipe insulation, etc.)”⁵

However, the Commission contrasted solar heating measures with other measures that would not constitute EE due to the fact that those measures generated power for the system in similar fashion to those proposed in these Advice Letters. The Commission stated “[i]n contrast, photovoltaic and solar-thermal electric technologies generate electricity and therefore should be considered renewable technologies. In sum, solar water heating reduces end-use energy consumption, while photovoltaic and solar-thermal electric are energy production technologies.”⁶ In D.07-11-004, the Commission included stand-alone solar powered water circulators as EE Measures. The Commission found that “*it is reasonable to add stand-alone solar-powered water circulators as an eligible energy efficiency technology because the technology saves energy at the end-use, and **does not generate power for the system.***”⁷ The projects proposed in these Advice Letters would generate power for the system and do not constitute EE Measures.

In D.07-12-050, the Commission approved funding for pilot water conservation projects with “the utilities’ unspent energy efficiency funds from prior years.”⁸ In D.08-11-057, the Commission addressed petitions for modification of D.07-12-050 and amended the decision to include funding for OEEP projects.⁹ The Joint Energy IOUs are obligated to spend those funds

⁴ Golden State Advice Letter No. 1408-W, July 15, 2010 at pages 3 and 4, California Water Service Company Advice Letter No 1997, July 16, 2010, at pages 3 and 4, San Jose Water Company Advice Letter No. 419, July 16, 2010, at page 3, and California American Water Company Advice Letter No. 853, July 14, 2010 at pages 3 and 4..

⁵ D.05-04-051, p.29.

⁶ *Id.*, pp.29-30.

⁷ D.07-11-004, p.6, emphasis added.

⁸ D.07-12-050, p.102.

⁹ D.10-04-030 modified by D.08-11-057 increased the funding for OEEP from unspent water embedded energy pilot funds and established the Operational Energy Efficiency Memorandum Account.

in accordance with Commission policy. The EE Policy Manual v.4.0 prohibits using EE funds,¹⁰ for programs such as those proposed in these Advice Letters.¹¹ Because these are not EE projects, it would be a violation of Commission policy to characterize them as such by allowing the Water IOUs to consider these projects an extension of the OEEP.

2. The Analysis, Calculations, or Data in the Advice Letters Contain Material Error or Omissions.

As filed, the Advice Letters contain material errors or omissions that render them deficient.

First and foremost, as discussed above, the Advice Letters erroneously characterize these projects as EE as opposed to generation. In addition, the Advice Letters fail to identify the applicable Joint Energy IOUs' tariffs applicable for the projects and omit other critical details. The Advice Letter of California Water Service Company erroneously states: "PG&E's Electric Schedule NEM (Net Energy Metering Service) would be the applicable tariff for this project." However, PG&E's NEM tariff applies exclusively to solar and wind generation, as governed by statute. There is no provision for in conduit hydro generation in that tariff. Both Golden State Water Company and California American Water Company fail to identify a method for interconnection with the utility grid. None of the four Advice Letters discuss the costs of interconnection. That said, San Jose Water Company appropriately identifies PG&E's Tariff E-SRG as a suitable vehicle for interconnection to the grid. PG&E agrees that this "feed-in" tariff is the appropriate and applicable tariff for these projects, not the OEEP.

Improperly characterizing these generation projects as EE and failure to identify the applicable interconnection tariffs constitute material error or omission that renders the Advice Letter filings deficient.

3. The Relief Requested in the Advice Letters Is Pending before the Commission in a Formal Proceeding

California American Water Company incorrectly suggests that an energy tariff for the electric generation from this R&D project will need to be negotiated.¹² However, the Joint Energy IOUs already have an approved tariff in place, whereby Public Water and Waste Water Agencies may sell electricity generated at small renewable facilities (1.5 MW or smaller) at an established price. This tariff—also referred to as a "feed-in" tariff or a "standardized contract" — like the type envisioned here, would allow customers (such as the Water IOUs discussed herein) to sell their power to an electric utility. Furthermore, the CPUC is now considering expansion of the existing "feed-in" tariff to larger generators, perhaps up to 10 MW in size.¹³ The CPUC is expected to issue a draft decision on this topic in the third quarter of 2010. Additional work to

¹⁰ Energy efficiency activities are funded through the following mechanisms: electric public goods charges as authorized by Public Utilities (PU) Code Sections 381 and 399; gas surcharges, as authorized by PU Code Sections 890-900, and procurement rates, as authorized by the Commission. EE Policy Manual, p. 1.

¹¹ "Electric PGC collections must fund electric energy efficiency programs." EE Policy Manual, p.6.

¹² Advice Letter 853-W, p. 7.

¹³ See Rulemaking 08-08-009

develop a tariff for the projects would duplicate existing tariffs and duplicate efforts already underway in a formal CPUC proceeding.

4. The Relief Requested in the Advice Letters Requires Consideration in a Formal Hearing, or is Otherwise Inappropriate for the Advice Letter Process.

While the Joint Energy IOUs appreciate the efforts of the Water IOUs to propose new integrated technologies, an advice letter filing is not a procedurally proper mechanism for these proposals, as they would amend the EE Policy Manual, eliminate the distinction between EE and generation projects, and render meaningless current Commission policy regarding the limitations on the use of EE funds.¹⁴ General Order (GO) 96-B, Section 5.1 states “the advice letter process provides a quick and simplified review of the types of utility requests that are expected neither to be controversial nor to raise important policy questions.”¹⁵ The Advice Letters are controversial and do raise important policy questions both discussed herein. Further, these projects call for an unspecified amount of ratepayer funding, from unspecified sources, with unverified information regarding the amount of power to be generated or cost-effectiveness of the projects. Finally, it is noteworthy that when the Commission has considered whether measures such as stand-alone solar heaters and circulators constitute EE Measures, the Commission has done so in response to petitions to modify the EE Policy Manual filed in the active EE rulemaking.

However, implementation of such sweeping changes to EE policy through the advice letter process is inappropriate and unnecessary. As San Jose Water Company states, there is an existing “feed-in” tariff under which these generation projects can proceed. If these projects are pursued under the existing “feed-in” tariff the advice letter process would seem to be sufficient. Otherwise, an application incorporating these projects with a public hearing should be required as the appropriate process to ensure that ratepayer money is being spent appropriately and responsibly.

5. The Relief Requested in the Advice Letters is Unjust, Unreasonable, or Discriminatory.

The Commission should not entertain the notion of disregarding its own established policy on a case-by-case basis. This would effectively allow private interests to take advantage of the advice letter process to improperly use EE funding to support non-EE projects for their own benefit, where the Commission has clearly stated that such an opportunity is not appropriate or generally available. To do so would be discriminatory and would create an improper precedent that could jeopardize the effectiveness of EE program administration and planning. It would be impossible for the Commission, the energy utilities, stakeholders representing customer groups, or customers themselves to have any assurance as to the actual program design, budget and rate impacts of the EE programs if non-EE programs are arbitrarily added and funded with EE funds, without the benefit of the thorough review of an application process.

¹⁴ At the August 9, 2010 meeting, Water Division asked attendees to comment whether the Water IOUs’ proposals should be served as advice letter filings or whether they need to be brought as an application or petition to modify. This section addresses this question.

¹⁵ GO-96-B, Section 5.1, p.8.

6. The Water IOUs Did Not Properly Serve or Give Notice of the Advice Letter.

On July 27, 2010, the Joint Energy IOUs first were informed of the Water IOUs' respective Advice Letters. Originally filed with the Commission between July 14 and July 16, these Advice Letters were not served to the Joint Energy IOUs nor were they served to the standard service list in this proceeding (Post-2008 Rulemaking 09-11-014 or Embedded Energy Efficiency Pilot Programs A.07-01-026, et al.) , including active parties such as NRDC, TURN, and DRA.¹⁶ Because the Joint Energy IOUs were not notified of the filing in a timely fashion as would be expected per direction from Standard Practice U-8-W, they requested and received an extension to file protests on Tuesday, August 17, 2010 in response to the Advice Letters.¹⁷ The Advice Letters have now been served on the service list for this proceeding, A.07-01-024.

B. Responses to Water Division's Questions Presented at the August 9, 2010 Meeting.

1. Why are these projects not considered Energy Efficiency?

This question was answered in sections A.1.

2. Why is the Advice Letter process insufficient?

This question was answered in sections A.6.

3. Are there other instances of similar in-conduit hydro projects?

At the August 9, 2010 meeting, Water Division asked parties to comment whether any similar proposals were in existence, such that these projects may not be legitimately characterized as RD&D. This is an important question that cannot be answered from the information provided in the Advice Letters. In its protest, DRA suggests that other similar projects are, in fact, ongoing, calling into question whether the instant projects are characterized as RD&D. In fact, as DRA points out, one of the projects in the San Jose Water Company filing (Hostetter) has been considered and rejected by the CPUC.

¹⁶ Communications with Water Division staff on July 27, 2010 first indicated the existence of these Advice Letters. Further communications with Water IOUs requested Advice Letters referenced in July 27 communication, and the Advice Letters were received on July 28.

¹⁷ Located at http://docs.cpuc.ca.gov/word_pdf/REPORT/83103.pdf, pp.7-8, section 19.

Conclusion

For the reasons discussed herein, the Commission should not include the in-conduit hydro-electric generation projects proposed in the Advice Letters within the OEEP as these are not EE Measures and should not be funded with EE funds. Furthermore, if the Commission intends to consider whether the projects proposed in the Advice Letters constitute EE Measures, the Commission should require the Water IOUs to re-serve these Advice Letters to the service list for the current EE Rulemaking, R.09-11-014.

Southern California Edison Company

/s/ AKBAR JAZAYERI

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Service List A.07-01-024
Service List R.09-11-014