

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

Order Instituting Rulemaking to Consider
Alternative-Fueled Vehicle Programs, Tariffs,
and Policies.

Rulemaking 13-11-007
(Filed November 14, 2013)

COMMENTS OF CLEAN ENERGY FUELS CORP.

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Clean Energy Fuels Corp. (Clean Energy) submits these comments pursuant to the Order Instituting Rulemaking to Consider Alternative-Fueled Vehicle Programs, Tariffs, and Policies (OIR) issued on November 14, 2013

I. INTRODUCTION

The OIR represents a significant undertaking by the Commission to address the development of alternative fuel vehicle (AFV) markets. While the primary focus of the OIR appears to be electric vehicle (EV) markets, the OIR offers an opportunity to optimize policy and tariffs to promote further development of the natural gas vehicle (NGV) market. Indeed, the OIR expressly acknowledges a need to review its NGV policies.

Clean Energy appreciates the opportunity to assist the Commission in refining the rulemaking scope. These comments propose to include within the OIR's scope the appropriate role of the regulated utility in enabling the AFV markets. In examining this question, the Commission should review specifically its policy regarding utility ownership of NGV refueling infrastructure. Failure to

clarify and stabilize this policy carries the potential to deter third-party investment in California's AFV markets.

II. THE OIR'S SCOPE SHOULD INCLUDE A REVIEW OF COMMISSION POLICY REGARDING UTILITY OWNERSHIP OF NGV REFUELING INFRASTRUCTURE.

A. The General Scope Articulated by the OIR Leaves Room to Explore Utility Ownership of NGV Refueling Infrastructure.

The OIR's scope "*broadly includes all issues related to alternative-fueled vehicles adoption.*"¹ Within this scope, it identifies the role that NGVs can play in the state's policy:

*Compressed or liquefied NGV provide a lower-emission and commercial alternative to conventional transit buses, waste hauling, and medium/heavy duty trucks. Natural gas refueling stations in many circumstances are economically viable and continue to proliferate.*²

The OIR acknowledges, however, that NGV policy may need to be revisited:

*... in D.11-07-029, the Commission committed to continue examination of the current status of NGVs, in recognition of the fact that such vehicles play an important role in the Commission's overall goal of reducing GHG emissions. The Commission understands that the need may exist to reconsider policy to enhance NGV market development.*³

The broad scope of the Commission's inquiry invites consideration of a range of issues, including the future utility role in NGV infrastructure markets.

¹ OIR at 12.
² *Id.* at 11-12.
³ *Id.* at 19.

B. Questions Surrounding Utility Ownership of NGV Refueling Infrastructure Warrant a Holistic Review.

The Commission has not considered the utility’s role in competitive AFV markets since it issued D. 95-11-035, addressing a broad array of utility proposals for NGV and EV funding. Decision 95-11-035 prohibited the utilities from investing in ratepayer-funded refueling station programs.⁴ It also encouraged unregulated affiliates, rather than regulated utilities, to enter this market, highlighting the need to “*avoid giving the utility any market advantage, based on its monopoly status.*”⁵

The Commission affirmed its view of the utility role in competitive markets when it established the Affiliate Transaction Rules (ATRs) in D.97-12-088. The Commission aimed to use the ATRs to foster competition and protect utility customers by carefully separating the utility and any affiliate in a competitive market venture.⁶ In the Decision, the Commission explained why an unregulated affiliate, rather than the utility, should offer competitive services. The Commission identified the unfair advantages of a utility operating in a competitive market including brand equity and access to customer records and established billing service.⁷ The ATRs “*address nondiscrimination, disclosure and information, and separation standards*”⁸ in order to counteract potential unfair competition and ensure a level playing field when a utility affiliate enters a competitive market.⁹

⁴ D.95-11-035, 62 CPUC.2d 395, 1995 WL 768974 (Cal.P.U.C.) at *40.
⁵ D.95-11-035, 62 CPUC.2d 395, 1995 WL 768974 (Cal.P.U.C.) at *5.
⁶ D.97-12-088, 77 CPUC 2d 422, 1997 WL 812239 (Cal.P.U.C.) at *5.
⁷ D.98-08-035, 81 CPUC,2d 607, 1998 WL 722572 (Cal.P.U.C.) at *6.
⁸ D.98-08-035, 81 CPUC,2d 607, 1998 WL 722572 (Cal.P.U.C.) at *1.
⁹ D.97-12-088, 77 CPUC.2d 422, 1997 WL 812239 (Cal.P.U.C.) at *5.

The Commission's policy limiting utility participation in competitive AFV markets remained constant through 2011. In D.11-07-029, the Commission considered ownership of the meter, submeters and other electric vehicle service equipment (EVSE) in light of the utility's traditional boundary of ownership at the meter.¹⁰ It upheld the traditional boundary and prohibited utility ownership of EVSE downstream from the customer meter in order to maintain competitive markets and protect ratepayers.¹¹

After 17 years of consistent policy, the Commission made a 180 degree turn in 2012. In Decision 12-12-037, the Commission authorized Southern California Gas Company (SoCalGas) to enter the competitive NGV refueling infrastructure market as a utility, rather than through an affiliate. SoCalGas's Compression Services Tariff permits the utility to build, own and operate all of the equipment necessary for an NGV refueling station on customer property.¹² Although the service will be accounted for "above the line", the Commission accepted the utility's representation that the revenues will always cover costs and no cross subsidies will occur.¹³ The Commission has failed to make clear, however, the basis for its departure from its long-held belief that competitive entry by unregulated affiliates is superior to regulated utility entry.¹⁴

¹⁰ D.11-07-029, 2011 WL 3375600 (Cal.P.U.C) at *17. "*The customer-utility boundary, which determines ownership, has generally been defined in the single-meter setting [sic]. The meter that is used to measure a customer's billable usage and the equipment on the utility's side of the meter is owned by the utility, while equipment located on the customer's side of the meter is owned by the customer.*"

¹¹ D.11-07-029, 2011 WL 3375600 (Cal.P.U.C) at *17.

¹² See D.12-12-037 at 59, Finding of Fact 4 and 60, Finding of Fact 7, 8.

¹³ *Id.* at 61, Finding of Fact 18.

¹⁴ *Id.* at 58.

The recent departure from long-standing policy for NGVs, particularly while retaining the policy in the EV market, leaves the Commission's general policy for AFVs and its underlying rationale uncertain. The uncertainty is evidenced by the lack of clarity in the OIR, itself, in explaining the status of current policy:

While R.09-08-009 did not preclude addressing issues related to natural gas vehicles, the proceeding focused on PEVs, and policy related to natural gas vehicles (NGVs) did not change. Specifically, the IOUs are not prohibited from owning and operating compressed natural gas (CNG) infrastructure to service their own fleets, and they are allowed to make this infrastructure available to the public. However, a 1995 Commission decision ordered the utilities to divest their CNG assets on customer-owned property, limiting the ability of their public-access fueling stations to actively compete with non-regulated private sector providers.¹⁵

The OIR curiously makes no mention of D.12-12-037. The apparent uncertainty in AFV market policy warrants resolution through a holistic review.

C. Utility Ownership of NGV Refueling Infrastructure is an Important Factor in Considering the Future Role of the Utility.

The general issue of utility entry into competitive AFV infrastructure markets arose during the October 8, 2013, workshop sponsored by the Policy and Planning Division on "The Utility of the Future." A thought-provoking colloquy, initiated by Commissioner Peterman, centered on how the utility of the future will engage in competitive markets. A potential guidepost was suggested by Ann Smith, President of Southern California Gas Company, during the educational discussion. Ms. Smith observed that it might be appropriate to allow the utility to participate in competitive markets in situations in which the utility can

¹⁵ OIR at 8-9.

serve a particular public policy objective that may not be pursued by a competitor.

[I]f a lot of the initiatives are really driven more by public policy, then those are really things that, in my opinion, are really ripe for looking at how the utilities could be engaged to really help to develop that market. And then put some parameters around that, and at some point, maybe the market would be ripe for more of a free-market construct. But at least to get things started, I think the utilities are probably in the best position to do that, particularly with the very, very tough, affiliate transaction prohibitionist rules that are in place.

There may well be areas in which the utility, rather than an affiliate or an unregulated competitor, is better suited to serve public policy goals. As the Commission stated in D.11-07-029, it may be appropriate for the Commission to permit utility entry into a competitive market to serve “underserved” markets – markets where employing utility advantages might tip the scale toward more economic projects.¹⁶ Allowing a utility to leverage its monopoly advantages in these markets will not only advance the state’s policy goals, but it will do so with no injury to ratepayers or competition.

The question of utility affiliates also arose during the Utility CEO panel.

President Ron Litzinger of Southern California Edison observed:

...[W]hat are some things we could do to remove some of the hindrances... I think a good review of the affiliate rules is probably appropriate as part of this conversation....I think a review of the affiliate rules – they’ve got a place, they’re appropriate – but some of the overly burdensome stuff maybe we should probably take a look at and I think you’ll see it.

¹⁶ D.11-07-029 at 50.

Jessie Knight, CEO of San Diego Gas & Electric likewise encouraged a review of the rules “*so that the affiliate isn’t unnaturally disadvantaged by cost trying to get into the business...*”

Commissioner Peterman made an important observation, drawing the points of discussion together:

[W]ith our current structure, affiliates for example are not prohibited from investing in alternative transportation infrastructure such as charging, yet we’ve not seen that investment materialize, or it’s been slow to materialize, which kind of begs the question, if these are interesting businesses, you know, then why are we not seeing that investment, while at the same time there’s a persistent interest in having those businesses under the regulated utility?

She invited comments “*about what’s not working about the current structure and why we’re not seeing affiliates pursue those businesses.*”

The answer to these questions will broadly affect utility shareholders, ratepayers and non-utility market participants. Most critically, a careful boundary between utility and affiliate market participation is necessary to encourage continued non-utility investment in the California energy markets. If the utilities are permitted to enter the market with their competitive advantages – brand equity, a ready-built marketing and billing infrastructure, a lower cost of capital among others – non-utility competitors will be more reticent to invest in the state. Clean Energy encourages the Commission to open a generic investigation to review the issue holistically, as it did in the 1990s, so that it can avoid piecemeal policymaking.

III. CONCLUSION

Clean Energy requests that the Commission clarify the scope of this rulemaking to include a holistic examination of the proper role of regulated utilities in the NGV refueling infrastructure market. The failure to review this policy threatens to reduce private investment in California NGV markets. The hundreds of NGV refueling stations in California today were built almost entirely with the investment dollars of non-utility competitors. These same competitors supported state policy with key actions; for example, non-utility competitors participated in advancing natural gas as a clean fuel for goods movement to the benefit of the Port of Long Beach. After hundreds of millions of dollars of non-utility dollars have been invested to develop the market, the Commission has now elected to let the utility, capitalized by utility ratepayers and holding superior monopoly advantages, to enter into the market. This is not a positive message to send to the investment community. The Commission should clarify its message in this rulemaking.

Respectfully submitted,



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