

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



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Application of Southern California Edison  
Company for Authority to Implement and  
Recover in Rates the Cost of its Proposed Fuel  
Cell Installation Program

Application No. 09-04-018  
(Filed April 27, 2009, 2000)

**PROTEST OF THE CALIFORNIA ENERGY STORAGE ALLIANCE**

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**CALIFORNIA ENERGY STORAGE ALLIANCE**

June 1, 2009

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**PROTEST OF THE CALIFORNIA ENERGY STORAGE ALLIANCE**

In accordance with Rule 2.6 of the Rules of Practice and Procedure of the Public Utilities Commission of the State of California (“Commission”), the California Energy Storage Alliance (“CESA”)<sup>1</sup> hereby files its protest to Southern California Edison’s (“SCE’s”) application for approval and recovery in rates of its proposed fuel cell installation program to install, own, and operate three fuel cell units with a combined total capacity of up to 3.0 MW on three separate university campuses, at an estimated total installation cost of \$21.6 million. CESA is an *ad-hoc* advocacy group made up of energy storage and renewable energy system integrators, consultants and energy storage system manufacturers. CESA’s mission is to expand the role of energy storage to promote faster adoption of renewable energy and a more stable and secure electricity grid in California.

**I. INTRODUCTION.**

CESA does not comment on the general merits of the authority sought in the Application.<sup>2</sup> Rather, CESA strenuously objects specifically to SCE’s unprecedented proposal in the Application to improperly lay claim to funds set aside by the Commission for use by

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<sup>1</sup> The California Energy Storage Alliance presently consists of A123Systems, Inc., Chevron Energy Solutions, Fluidic Energy Inc., Ice Energy, Inc., StrateGen Consulting, ExtremePower Solutions and ZBB Energy Corporation.

<sup>2</sup> 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 ownership of generation resources outside of a competitive request for proposals, as articulated in D.07-12-052, issued December 20, 2007, and D.08-11-008, issued November 6, 2008.

eligible applicants for funding under the Commission's Self Generation Incentive Program ("SGIP").<sup>3</sup> CESA's members are potential eligible applicants for SGIP funding, and would necessarily be harmed if the amount of available SGIP funding is reduced because funds are appropriated by SCE for its own use.<sup>4</sup>

In the Application, SCE makes the following bold statement of its intentions regarding the SGIP:

"SCE proposes that the Commission authorize SCE to use existing SGIP funds to pay for the costs associated with the fuel cell installations. Presently, SCE has unspent and uncommitted SGIP funds totaling approximately \$39 million that are currently recorded in the Self Generation Program Incremental Cost Memorandum Account ("SGIPICMA"). SCE proposes to use \$10.8 million of that amount to fund 50% of the Fuel Cell Program's estimated direct capital cost.

SCE recognizes that the Commission does not typically allow utilities to be eligible for SGIP incentives. However, SCE believes its proposal to use SGIP funds is appropriate for this program. Fuel cell development has not progressed in California under the SGIP and -- unlike solar projects -- utilities lack the incentive to invest in fuel cell technology. By pursuing its Fuel Cell Program, SCE believes it can further the use of fuel cell technology in California. Accordingly, SCE is requesting that the Commission permit SCE to utilize SGIP funds for utility-owned fuel cell facilities, and is filing this application so the Commission may consider and address the legal, policy, and ratemaking issues surrounding SCE's proposal [footnotes deleted]." (Application, pp. 4-5).

For the reasons set forth below, it is abundantly clear that -- if accepted -- SCE's proposal would abruptly reverse years of uniform and consistent Commission (i.e., not "typical") policy expressly prohibiting conflicts of interest that would be created with utility participation in the SGIP.

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<sup>3</sup> Currently eligible technologies are wind, fuel cells, and advanced energy storage coupled with eligible technologies.

<sup>4</sup> CESA takes no position on the Division of Ratepayer Advocate's pending Motion to Consolidate this Application with a comparable Application filed by PG&E (A.09-02-013, filed February 20, 2009). The DRA's Motion painstakingly itemizes the points of similarity between the SCE and PG&E Applications, but CESA must respectfully point out that there is one differentiating factor that is not mentioned in its Motion -- namely the very subject of this Protest.

It would be grossly inequitable to allow SCE to assert a lack of progress in fuel cell commercialization as a reason to deny potential applicants other eligible technologies (wind and advanced energy storage) the chance to compete for finite budgeted SGIP funding – thus creating a self-fulfilling prophecy of doom for non-utility fuel cell development. Only last November, the Commission added advanced energy storage technologies as eligible for SGIP funds, provided that they are coupled with a current eligible generation technology.<sup>5</sup> Changes to the SGIP Handbook required by the Commission have not yet been fully implemented and the SGIP Program Administrators have not yet begun accepting applications for incentive reservations. Thus, demand for SGIP funds created by the addition of advanced energy storage to the eligible technology list is not yet known. SCE’s claim of ‘underutilized’ funding is not only a poor argument for reversing years of precedent to the contrary, but also premature and may prove very inaccurate once energy storage applications are submitted.

**II. CESA OBJECTS TO SCE’S IMPROPER ATTEMPT TO APPROPRIATE SELF GENERATION INCENTIVE PROGRAM FUNDS FOR ITS OWN USE.**

CESA does not object to SCE’s ownership of fuel cells sited on the premises of its customers. Rather, CESA objects to the obvious and insurmountable conflict of interest that SCE would create if it were to be allowed to (i) administer the SGIP for applicants competing with each other for incentive funding, and at the same time (ii) compete with the same applicants for the same finite amount of available incentive funds the same time. SCE says that the Commission does not “typically allow utilities to be eligible for incentives.” On the contrary, on more than one occasion, the Commission has said that utility distribution companies are simply not eligible to participate in the SGIP because of conflicts of interest that could arise (D.01-03-

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<sup>5</sup> D.08-1-044, issued November 21, 2008.

073, issued March 27, 2001, and D.04-12-045, issued December 16, 2004). In D.04-12-045, the Commission said:

“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.

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.” (page 23).

It is true, as SCE correctly notes at page 5 of its Application, that in D.06-08-028, issued August 24, 2006, the Commission expressed a willingness to consider SDG&E’s proposal to be allowed to participate in the California Solar Initiative (“CSI”) *because the CSI is administered independently by the California Center for Sustainable Energy*. In the event, SDG&E has thus far declined the Commission’s invitation to file such an application with a detailed description of the legal, policy and ratemaking concerns surrounding its proposal. Certainly, the Commission should require a better reason to consider SCE’s proposal than “SCE is willing to pursue this application because of the full endorsement and support of the Governor’s office and other California agencies.” (Application, at page 4).

### **III. PROPOSED CATEGORY.**

CESA agrees with SCE that the Application should be designated as a “ratesetting” proceeding.

### **IV. NEED FOR HEARING.**

At this time, CESA does not have sufficient information to know whether hearings may or may not be required. CESA takes issue with numerous assertion of fact in the Application regarding the SGIP, but they may not require hearings to be dealt with fairly.

**V. ISSUES TO BE CONSIDERED.**

For the reasons stated herein, the SGIP portion of SCE's Application should be summarily rejected. If it is not, at a minimum, the Commission would need to require SCE to develop a record to justify the obvious conflict of interest it would create with a detailed description of the legal, policy and ratemaking concerns that would be raised.

**VI. PROPOSED SCHEDULE.**

At this time, CESA does not sufficient information to comment on SCE's proposed schedule.

**VII. CONCLUSION.**

CESA urges the Commission to reject SCE's unjustifiable attempt to serve as an administrator of the SGIP and compete at the same time with program applicants for available SGIP funds.

Respectfully submitted,



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Counsel for the  
**CALIFORNIA ENERGY STORAGE ALLIANCE**

June 1, 2009

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a copy of *Protest of the California Energy Storage Alliance* on all parties of record in proceeding *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 June 1, 2009, at Woodland Hills, California.

  
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Michelle Dangott

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