

DOCKET**07-OIIP-1**DATE DEC 08 2008RECD. DEC 15 2008**DOCKET 07-OIIP-01
CALIFORNIA ENERGY COMMISSION****RESPONSE OF PACIFIC GAS AND ELECTRIC
COMPANY (U 39 E) TO APPLICATION OF LOS
ANGELES DEPARTMENT OF WATER AND POWER
FOR REHEARING OF DECISION NO. 08-10-037****CHRISTOPHER J. WARNER**

Pacific Gas and Electric Company
77 Beale Street
San Francisco, CA 94105
Telephone: (415) 973-6695
Facsimile: (415) 972-5220
E-Mail: CJW5@pge.com

Dated: December 8, 2008

Attorneys for
PACIFIC GAS AND ELECTRIC COMPANY

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

Order Instituting Rulemaking to Implement the
Commission's Procurement Incentive
Framework and to Examine the Integration of
Greenhouse Gas Emissions Standards into
Procurement Policies.

Rulemaking 06-04-009
(Filed April 13, 2006)

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I. INTRODUCTION

Pursuant to Public Utilities Code section 1731(b) and Rule 16.1(d) of the Commission's Rules of Practice and Procedure, Pacific Gas and Electric Company (PG&E) provides its response to the application for rehearing of Decision No. 08-10-037 (Final Opinion) filed by the Los Angeles Department of Water and Power (LADWP).

For the reasons stated below, LADWP's application for rehearing should be rejected because (a) it is a non-ripe challenge to AB 32 regulations that have not yet been adopted by the Air Resources Board; and (b) it fails to allege any justiciable legal errors by the Commission in exercising its authority to make advisory recommendations to the Air Resources Board under AB 32.^{1/}

II. DISCUSSION

A. LADWP's Application for Rehearing is a Non-Ripe Challenge to AB 32 Regulations that Have Not Yet Been Adopted

LADWP's application for rehearing is clearly non-ripe because on its face it alleges violations of law that "will" occur only "if...the Final Opinion's

^{1/} LADWP's request for reconsideration of the California Energy Commission's parallel Final Opinion in Docket # 07-OIIP-1 pursuant to Cal. Code Regs. Tit. 20, section 1720.4 should be rejected for the same reasons discussed herein.

Recommendations...[are] Adopted.”^{2/} In fact, the Final Opinion is strictly advisory, and its recommendations have not or are yet to be considered and adopted by the agency with authority to implement AB 32 regulations, the Air Resources Board. Thus, the application for rehearing is an indirect and non-ripe legal challenge to AB 32 regulations and decisions that have not yet been adopted by the Air Resources Board.

B. LADWP’s Application for Rehearing Does Not Raise Any Issues Subject to Rehearing Under Public Utilities Code Sections 1731 and 1732

Under Public Utilities Code sections 1731 and 1732, applications for rehearing are only available for the alleged “unlawfulness” of “any matters determined in the action or proceeding.” (Public Utilities Code sections 1731(b)(1); 1732.) Because none of the matters alleged to be unlawful in LADWP’s application have been “determined” in the Final Opinion, no rehearing lies. As discussed above, each of the legal errors alleged in LADWP’s application relate to regulations that the *Air Resources Board* has yet to issue under AB 32, *not to* matters that have been or will be “decided” by the *CPUC or Energy Commission*.

The authority of the Commissions to issue the Final Opinion derives solely from the advisory and consultative authority granted them by AB 32, specifically, Health and Safety Code section 38561(a), which requires the Air Resources Board in developing its AB 32 “scoping plan” to “consult with” the CPUC and Energy Commission “on all elements of its plan that pertain to energy-related matters....” Thus, AB 32 imposes no legal requirements on either the CPUC or Energy Commission, but only requires that the Air Resources Board “consult with” the two Commissions during its development of energy-related AB 32 regulations and programs. The only “matters determined” by the

^{2/} LADWP Application for Rehearing, pp. 5- 14.

Final Opinion are the two Commissions' non-binding recommendations to the Air Resources Board in fulfillment of the Air Resources Board's consultation obligation. Because LADWP's application for rehearing alleges no legal error in the Commissions' response to the Air Resources Board's consultation, no rehearing lies.

III. CONCLUSION

For the reasons stated above, LADWP's application for rehearing should be rejected.

Respectfully Submitted,

CHRISTOPHER J. WARNER

By: _____/s/
CHRISTOPHER J. WARNER

Pacific Gas and Electric Company
77 Beale Street
San Francisco, CA 94105
Telephone: (415) 973-6695
Facsimile: (415) 972-5220
E-Mail: CJW5@pge.com

Attorney for
PACIFIC GAS AND ELECTRIC COMPANY

Dated: December 8, 2008

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of **RESPONSE OF PACIFIC GAS AND ELECTRIC COMPANY (U39 E) TO APPLICATION OF LOS ANGELES DEPARTMENT OF WATER AND POWER FOR REHEARING OF DECISION NO. 08-10-037** on all known parties to R. 06-04-009 by

- transmitting an e-mail message with the document attached to each party on the official service list providing an email address; or
- by first-class mail, postage prepaid, to each party on the official service list not providing an email address.

Executed on December 8, 2008, at San Francisco, California.

/s/

Martie Way