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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Southern California Gas Company (U904G), San Diego Gas & Electric Company (U902G), Pacific Gas and Electric Company (U39G), and Southwest Gas Corporation (U905G) to Establish Hydrogen Blending Demonstration Projects.	Application 22-09-006

ADMINISTRATIVE LAW JUDGE'S RULING DENYING MOTION TO DISMISS

Summary

This ruling denies the Motion to Dismiss dated July 15, 2024, filed by Environmental Defense Fund, Sierra Club, Climate Action Campaign, and Utility Consumers' Action Network. As discussed in this ruling, this proceeding will move forward to the formal evidentiary process.

1. Background

In Decision (D.) 21-07-005 the Commission dismissed Application (A.) 20-11-004 without prejudice and directed the utilities that, if they were to develop hydrogen blending pilot projects to gather technical data, such pilots must possess six distinct features.[1] D.21-07-005 did not order the utilities to develop pilot projects. Instead, the utilities were simply given guidance in the event they chose to develop one or more pilot(s), as follows:

[1] D.21-07-005 at pp. 23 - 26.

> If the Joint Utilities seek funds to examine hydrogen blending, they must present a program to address necessary research and demonstration that is just and reasonable, efficient, and cost-effective. The following guidance is not exhaustive but gives the Joint Utilities and stakeholders direction on what we think must minimally be included in a future application.[2]

In September 2022, Southern California Gas Corporation (SoCal Gas), San Diego Gas & Electric Company (SDG&E), and Southwest Gas Corporation (SW Gas), following the Commission's optional guidance as set forth in D.21-07-005, filed the instant proceeding, A.22-09-006.[3]

In December 2022, the Commission issued D.22-12-057 in Rulemaking (R.) 13-02-008, which directed the three initial applicants in A.22-09-006 plus Pacific Gas and Electric Company (PG&E) to propose specific pilot projects to gather the scientific data necessary to develop a standard for hydrogen injection into California's gas infrastructure. D.22-12-057 directed the utilities to "propose[] pilot programs to test hydrogen blending in natural gas at concentrations above [0.1 percent],"[4] either by amending the existing application in A.22-09-006 or by filing a new application to open a new proceeding. The Commission also issued twelve directives applicable to each pilot project.[5]

Fifteen months later, on March 1, 2024, the four utilities, SoCal Gas, SDG&E, and SW Gas, plus PG&E (collectively, Joint Applicants), filed an Amended Joint Application in this proceeding seeking permission for individual Joint Applicants to undertake a total of five pilot projects that, together, would

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[2] *Id.* at 22-23.

[3] PG&E was <u>not</u> an initial applicant in proceeding A.22-09-006.

[4] D.22-12-057, at OP 7, pp. 68 -69.

[5] *Ibid.*

test the ability of the existing statewide gas infrastructure to transport safely natural gas blended with hydrogen above the level of 0.1 percent.

On July 15, 2024, Environmental Defense Fund, Sierra Club, Climate Action Campaign, and Utility Consumers' Action Network (Moving Parties) filed a Motion to Dismiss (MTD) the entire Joint Amended Application filed on March 1, 2024, by Joint Applicants.

The MTD opens[6] with the following three assertions: (1) each of the five pilot projects proposed by the Joint Applicants, if constructed as proposed, would violate Commission directives; (2) it would be an unacceptable waste of ratepayer money to build any one of the five proposed projects,[7] much more so if all five were constructed; and (3) to build and operate the five pilot projects would be an imprudent use of hydrogen.

In the MTD, the Moving Parties contend that the Amended Joint Application did not propose pilot projects that meet the requirements set by the Commission in D.22-12-057. The Moving Parties therefore request that the effort to test the statewide gas infrastructure for its ability to handle various degrees of hydrogen injection be halted immediately while the Commission clarifies, in other pending gas proceedings, the extent to which it wishes to pursue hydrogen blending. In other words, the Moving Parties contend that the Commission should clarify its policy goals regarding hydrogen blending before allowing construction of any hydrogen injection pilots.

[6] MTD, at pp. 1 – 2.

[7] The aggregated cost of constructing the five proposed projects has been estimated by the four Joint Applicants as more than $200 million. *See* MTD, at p. 6, Figure 1 (citing prepared but not admitted testimony of the Joint Applicants).

On July 30, 2024, the Joint Applicants filed a Joint Opposition Brief (Opposition) to oppose the MTD. Then, the Moving Parties requested and were granted an opportunity to respond to the arguments made by the Joint Applicants in the Opposition and, on August 9, 2024, the Moving Parties filed their Joint Reply Brief (Reply) in support of their MTD.

Other parties to the proceeding are split, with some supporting (Public Advocates Office of the Commission, Wild Tree Foundation, Southern California Generation Coalition, Orange Cove United and Leadership Counsel for Justice and Accountability) and others opposing (California Hydrogen Business Council, Green Hydrogen Coalition) the MTD.

2. Standards Applicable to this Motion to Dismiss

Rule 11.2 of the Commission's Rules of Practice and Procedure[8] requires that motions to dismiss be "based on the pleadings," which is a standard that mirrors the standard used consistently by state and federal courts throughout the United States. Because a motion to dismiss an application at the pleading stage is a challenge against the pleading itself, only three specific documents are relevant to this review: (1) the Amended Joint Application; (2) D.22-12-057; and, to a limited extent, (3) D.21-07-005. The Amended Joint Application will be reviewed against the pleading requirements established by D.22-12-057 and D.21-07-005 to determine whether the Amended Joint Application should be dismissed.

Consistent with Rule 11.2, no extraneous materials can be considered in this review of the MTD. The Moving Parties' other arguments, concerns, proposals, and positions regarding the issues surrounding the best use of

[8] All references to Rule or Rules in this ruling are to the Commission's Rules of Practice and Procedure, unless specified otherwise.

hydrogen in California, or information about what other nations or states have discovered about blending hydrogen with natural gas, may be relevant to consideration of the merits of the Joint Amended Application but are extraneous as to whether the Joint Amended Application does or does not meet the pleading requirements set forth above. The focus at this stage is on whether the Joint Amended Application is indisputably legally deficient for having failed to meet pleading directives issued by the Commission in D.22-12-057 and/or D.21-07-005.

The Moving Parties seek dismissal of the proceeding and contend that the Commission, ostensibly acting pursuant to Rule 2.1, ordered the Joint Applicants in D.22-12-057 and D.21-07-005 to include certain information in the Amended Joint Application or, more precisely, ordered the Joint Applicants not to file an Amended Joint Application without including certain information.[9]

Rule 2.1 establishes the standard for what kind of information and how much information an application must contain at a minimum. Rule 2.1 requires that "[a]ll applications shall state clearly and concisely the… relief sought." A "concise" statement is one that "is marked by brevity of expression" and is "free from all elaboration."[10] Thus, it is not necessary, indeed it is not desirable that every material aspect of a capital project be described and affirmed in an application unless Rule 2.1, or additionally D.22-12-057 or D.21-07-005 in this proceeding, requires it.

[9] For example, Moving Parties call for the dismissal of PG&E's proposed pilot project because the PG&E portion of the Amended Joint Application did not expressly affirm that PG&E would use clean renewable hydrogen in its pilot, which the Moving Parties allege was an affirmation that the Commission ordered included in the Amended Joint Application. *See* Joint Amended Application [] to Establish Hydrogen Blending Demonstration Projects, filed September 8, 2022, at pp. 15 – 16; MTD, at pp. 9 – 12.

[10] Merriam Webster's Collegiate Dictionary, 11th ed., at p. 258.

Finally, it should be noted that Moving Parties must show that there is a fatal pleading flaw with respect to each one of the five projects. Flaws that could easily be corrected during a proceeding are not fatal. Furthermore, a fatal flaw in a single project will not result in dismissal as to all five projects described in the Amended Joint Application; it will result in the dismissal of that part of the Amended Joint Application that concerns the flawed project.

3. Discussion

As discussed below, the MTD lacks merit and is denied.

3.1. Moving Parties' Contentions do not Confirm to Rule 2.1

Rule 2.1, subparts (a) through (c), lists three types of information that must be included in an application. The Amended Joint Application contains all the information required by subparts (a) through (c) and there are no disputes about those pieces of information. Compliance with subpart (d) is the issue that the MTD raises.

Subpart (d) calls for "[s]uch additional information as may be required by the Commission in a particular proceeding." The MTD and opposition papers contain extensive arguments regarding what "additional information," beyond Rule 2.1 subparts (a) – (c), D.22-12-057 and D.21-07-005 allegedly required the Joint Applicants to set forth in the Amended Joint Application. For example, as already noted, the parties argue over whether D.22-12-057 required the Joint Applicants to provide in their Joint Amended Application express assurances that the pilots will use "clean renewable hydrogen," as this phrase is defined elsewhere in the Decision. Consequently, Moving Parties assert that PG&E violated a requirement of D.22-12-057 by not expressly affirming in the Joint Amended Application that the hydrogen used in its pilot would conform to this definition.

Throughout the MTD, the Moving Parties make claims that the Amended Joint Application fails to provide descriptions of project elements allegedly required by the Commission in D.22-12-057 or D.21-07-005. However, Commission Rule 2.1 requires only a "concise" statement of the features of a project desired by an applicant, in this case, enough basic information to conceptualize and differentiate the elements of each project desired by an applicant.[11] Moreover, subsection (d) of Rule 2.1 states that, for a utility's application to be required to include additional information beyond a concise statement of the desired features of the proposed project, the Commission must order the utility to include it. As explained below, there are no orders from the Commission to the Joint Applicants to include additional information beyond the concise descriptions of the five projects that were provided in the Amended Joint Application.

3.2. Moving Parties' Contentions Regarding use of "Clean Renewable Hydrogen" Do Not Support Dismissal of any Proposed Project at this Stage of the Proceeding

The Moving Parties contend that D.22-12-057 required all proposed pilot projects to use "clean renewable hydrogen" exclusively and continuously. They argue that because the descriptions of the five pilot projects in the Amended Joint Application do not include express affirmations that each project would use, without exception, only "clean renewable hydrogen," the Joint Applicants failed to obey an order in D.22-12-057.[12]

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[11] It bears noting here that features an applicant may not desire included in its pilot project are not necessarily what the Commission will ultimately approve.

[12] MTD, at pp. 9 – 12; Reply, at pp. 5 - 10. The definition of "clean renewable hydrogen" in D.22-12-057 was "[h]ydrogen which is produced through a process that results in a lifecycle (*i.e.*, well-to-gate) GHG emissions rate of not greater than 4 kilograms of CO^2e per kilogram of

Footnote continued on next page.

As pointed out in the previous section, Rule 2.1 (d) authorizes the Commission to order utilities to include in their applications specific types of information deemed by the Commission to be necessary information for a specific proceeding. A critical question then is, did the Commission issue an order in D.22-12-057 requiring the Joint Applicants to affirm expressly in their Amended Joint Application that only clean renewable hydrogen would be used in each pilot project? There is certainly a detailed description in D.22-12-057 of what the Commission believes are the characteristics of "clean renewable hydrogen."[13] And ultimately, the evidentiary record of this proceeding may support the necessity to do so, but at this stage of the proceeding all that can be said is there is no order to be found in any of the Ordering Paragraphs (OP) of D.22-12-057 to the effect that the Joint Applicants must expressly affirm in their Amended Joint Application that they intend to use clean, renewable hydrogen in all the individual projects.

The Joint Applicants did describe the characteristics of the hydrogen that would be used for some of the projects, and three of those descriptions superficially resemble the definition of clean renewable hydrogen set forth in D.22-12-057. But the Amended Joint Applications' descriptions of PG&E's pilot project and SW Gas's pilot project fail to say anything definitive about the characteristics of the hydrogen they would use.[14] The absence in D.22-12-057 of

hydrogen produced and does not use fossil fuel as either a feedstock or production energy source." D.22-12-057, at p. 48.

[13] *Ibid*.

[14] PG&E and SW Gas have apparently disclosed in prepared testimony which they have served on the parties that they would obtain the hydrogen for their respective projects from third-party producers, but whether those producers would supply clean renewable hydrogen was not affirmed in the Amended Joint Application.

an order for the utilities to affirm in the Amended Joint Application the use of clean, renewable hydrogen in each of the pilot projects and the analogous absence of such information regarding the largest and third-largest projects proposed in the Amended Joint Application further suggest that the use of clean, renewable hydrogen in the pilot projects need not be litigated at the pleading stage of this proceeding [15]

The arguments by the Moving Parties are not persuasive otherwise. In their Reply, Moving Parties contend that because it is undisputed that at least some of the five pilot projects have been described as potentially using other than clean renewable hydrogen, the Joint Amended Application should be dismissed. However, this argument does not demonstrate a fatal flaw in the pleading; it simply represents a policy position presented in the MTD.[16]

As suggested in the sections above, motions to dismiss a pleading at the pleading stage of a proceeding are not an appropriate vehicle to decide policy issues. The only proper issue raised by the MTD for my consideration at this pleading stage is whether the Amended Joint Application fails to conform to mandatory pleading requirements. Policy determinations are outside of the purview of this MTD at the pleading stage.

Likewise, as I explained above, it is not permissible for me to rely on information from outside the four corners of the Amended Joint Application and the Ordering Paragraphs found in D.22-12-057, and D.21-07-005 to resolve the MTD. The Moving Parties' Reply Brief wanders far beyond the content of these three documents, citing potential evidence that may or may not prove relevant or

[15] D.22-12-055, OP 6 (j), at p. 78.

[16] Reply, at pp. 5-6.

admissible at a later stage of this proceeding, but is certainly not reviewable at the pleading stage of an application proceeding.

3.3. Moving Parties' Contentions Regarding "Open" and "Closed" Portions of the California Gas System Do Not Support Dismissal of any Proposed Project at this Stage of the Proceeding

In D.22-12-057, the Commission said in a Conclusion of Law that the "pilots should be performed in either a closed system or a mock-up of a real-world system."[17] The parties vigorously debate the meaning of "closed system," and its opposite, "open system." Whatever the meaning ascribed to this distinction, it remains beyond dispute that none of the Ordering Paragraphs in D.22-12-057 direct the Joint Applicants to affirm in the Amended Joint Application that all their proposed projects will be "closed" or that none of them will be "open."

As with the conflicting positions over the use of clean renewable hydrogen, the Moving Parties and Joint Applicants have very different interpretations of what D.22-12-057 means by its reference in its Conclusion of Law (COL) 17 to the use of "closed" portions of the California gas system for the pilot projects.[18] The disagreement is mostly centered on the SoCal Gas proposed pilot project in the City of Orange Cove, California, but it also includes SW Gas's proposed pilot in the City of Truckee, California and to a lesser extent SDG&E's proposed pilot project on the campus of UC San Diego and SoCal Gas's proposed pilot project on the campus of UC Irvine. All the issues raised in the MTD as to

[17] D.22-12-057, COL 17, at p. 62. The language quoted above in the text does not appear anywhere in the Ordering Paragraphs of D.22-12-057.

[18] *Cf.* MTD, at pp. 12 – 14 *and* Opp., at pp. 10 – 12.

what is a "closed" or "open" project and what the Commission ultimately deems acceptable with respect to the location of the projects and the safety conditions associated with those locations are matters that require additional information outside the four corners of the Joint Amended Application and therefore should be addressed at a later stage of the proceeding. In short, these arguments do not meet the standard for granting the requested dismissal of the Joint Amended Application. This ruling does not interpret the terms "open" and "closed." It is not proper to do so at this pleading stage of the proceeding.

The Moving Parties' further argument that D.22-12-057 requires the Joint Applicants to design "controlled environments" for the pilot projects is not persuasive. Like the word "closed," D.22-12-057 does not define the word "controlled." Accordingly, I will not dismiss the Amended Joint Application on the assertion that the pilot projects are indisputably not "controlled environments." This is a matter for litigation in a later stage of the proceeding.

3.4. Moving Parties' Contentions Regarding the Efficacy of the Applicants' Leakage Detection Measures Do Not Support Dismissal of any Proposed Project at this Stage of the Proceeding

Ordering Paragraph 7(k) of D.22-12-057 mandates that for each pilot project proposed in the Joint Amended Application the Joint Applicants must "describe[] rigorous hydrogen leak testing protocols that are consistent with leak testing and reporting elements identified in the University of California at Riverside's 2022 Hydrogen Blending Impact Study."[19]

The Moving Parties and Joint Applicants argue over whether the description of three of the five proposed pilots provided in the Amended Joint

[19] D.22-12-057, OP 7(k), at p. 70.

Application meet the Commission's directive in OP 7(k).[20] The Moving Parties argue that the descriptions of three of the five projects in the Amended Application do not demonstrate the ability to reliably detect leakage of any hydrogen, methane, or hydrogen/methane blends.[21] The Joint Applicants counter that the descriptions in the Amended Joint Application of the three pilot projects at issue on this leakage matter depict "rigorous hydrogen leak detection protocols and monitoring consistent with the University of Riverside [*sic*] Study in accordance with D.22-12-057."[22]

Rule 2.1 requires concise descriptions of the proposed projects in an application. Ordering Paragraph 7(k) and (l) order the Applicants to include in their projects leakage protection equipment and detection systems that measure up to that described in two, detailed, studies of the topic. Whether the leakage equipment and detection processes that the Joint Applicants intend to install in their respective projects measures up to the standard established by the Commission in OP 7(k) and 7(l) of D.22-12-057 is a quintessential example of fact-finding. Accordingly, the grounds advanced by the Moving Parties for immediate dismissal are inappropriate for dismissal at this stage of the proceeding.

Furthermore, it is premature to rule that the SW Gas proposed project should not be approved merely because a yet unidentified third-party will design the leak detection and protection equipment. Obviously, a representative

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[20] *Cf.* MTD at pp. 14 – 16 *and* Opposition, at pp. 12 – 13, 25 – 27. Ordering Paragraph 7(k) provides that each pilot project "describes rigorous hydrogen leak testing protocols that are consistent with leak testing and reporting elements identified in the University of California at Riverside's 2022 Hydrogen Blending Impacts Study." D.22-12-057, at p. 70.

[21] MTD, at p. 14.

[22] Opposition, at p. 26.

of the third-party organization will be required to testify and explain in detail the safety equipment and processes it recommends and appear at the hearing to defend its work. After that testimonial evidence is offered and subjected to cross-examination, the issue of whether the consultant's work satisfies the standards cited in OP 7(k) and (l) may be further briefed. D.22-12-057 did not order otherwise.

3.5. Moving Parties' Contentions Regarding Stakeholder Engagement Do Not Support Dismissal of any Proposed Project at this Stage of the Proceeding

In several different Conclusions of Law for D.22-12-057, the Commission suggested four ways by which the Applicants might engage stakeholders who might be affected by one or more of the pilot projects.[23] These desirable, but not mandatory, actions included:

- Considering the findings and recommendations of (i) the UC Riverside Study; (ii) existing and ongoing research, development, and demonstrations of hydrogen projects; and (iii) stakeholder feedback including the guidance set forth in D.22-12-057;[24]
- Conducting workshops coordinated with the Commission's Energy Division;[25]
- Discussing the impact of hydrogen blending on customers and communities at the workshops;[26] and,
- Submittal of a detailed plan for stakeholder engagement in the Amended Application that includes an explanation of how stakeholder input will be incorporated into the final

[23] D.22-12-057, at pp. 16 – 19.

[24] *Id.*, COL 7, at p. 61.

[25] *Id.*, COL 27, at p. 64.

[26] *Id.*, COL 31, at p. 65.

> designs of the projects and opportunities for compensation for parties and community-based organizations.[27]

Moving Parties contend that stakeholder input to date has been ignored by the Joint Applicants and that Joint Applicants have not gathered enough stakeholder input.[28] Once again, the Moving Parties' contentions call for fact gathering, which is not appropriate at this stage of the proceeding. Therefore, the assertions advanced by the Moving Parties are not a basis for dismissing any part or all the Joint Amended Application.

3.6. Moving Parties' Contentions Regarding Impacts to Disadvantaged Communities and Customers Do Not Support Dismissal of any Proposed Project at this Stage of the Proceeding

The Moving Parties contend that the Joint Applicants failed to consider the impacts of the pilot projects on disadvantaged communities and customers.[29] The Joint Applicants, in their response, vigorously deny that they failed to consider the interests of disadvantaged communities and customers.[30] Ordering Paragraph 11, which requires a single "workshop to obtain feedback… regarding how to… assess environmental impacts on customers, including disadvantaged communities," is the only requirement in D.22-12-057 regarding impacts on disadvantaged communities. [31]

With the absence of record evidence, it is inappropriate for any decisionmaker to decide whether an appropriate workshop took place and

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[27] *Id.*, COL 28, at pp. 64 - 65.

[28] MTD, at pp. 16 – 19.

[29] MTD, at pp. 19 - 23.

[30] Opposition, at pp. 35 – 40.

[31] D.22-12-057, OP 11, at pp. 71 – 72.

contributed worthwhile information to project designers regarding the effects of the pilots on disadvantaged communities.

At this stage of the proceeding, a record has not been made to address the Moving Parties' contentions regarding the value of the prior workshop. There must be an evidentiary hearing on this issue like the other issues discussed in this ruling. It is inappropriate to decide such a matter based on the competing assertions of the parties.

3.7. Moving Parties' Contentions Regarding use of Existing or other Funds for the Pilot Projects Do Not Support Dismissal of any Proposed Project at this Stage of the Proceeding

The Moving Parties assert that the Joint Applicants have not exerted "every reasonable attempt to use existing [Commission] and other funds before requesting new funds," namely, ratepayer contributions to the pilot projects.[32] The Joint Applicants protest that they have monitored the Commission's funding of all kinds of projects for the three years since D.21-07-005 was issued and they found none whatsoever targeting hydrogen projects.[33] The Joint Applicants further assert that they monitored funding of hydrogen projects by the California Energy Commission and by federal entities and found none that fit with the proposed projects.[34] They also claim that they have continually monitored federal funding sources up to the filing of the instant motion.[35] The Moving Parties contend that the assertions are not true.[36]

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[32] MTD, at pp. 23 -24 (*citing* the text of D.21-07-005 as distinguished from D.22-12-057).

[33] Opposition, at pp. 15-16.

[34] *Ibid.*

[35] *Id.* at p. 16.

[36] MTD, at pp. 23 -24.

There can be no question that the facts about how the Joint Applicants have sought to identify alternatives to ratepayer funding for the pilots are disputed.[37] The assertions made by the Moving Parties are not appropriate to grant a decision to dismiss at the pleading stage.

IT IS RULED that:

1. The Motion to Dismiss filed jointly by the Environmental Defense Fund, the Sierra Club, the Climate Action Campaign, and the Utility Consumers' Action Network is denied.

2. Within 30 days of the date of this ruling, the parties shall, after meeting and conferring, file a joint list of all issues proposed by the parties to be included in a Scoping Memo for this proceeding.

Dated October 28, 2024, at San Francisco, California.

/s/ CHARLES FERGUSON
Charles Ferguson
Administrative Law Judge

[37] However, we note that the Moving Parties, in their Reply Brief in support of their motion, do not challenge any of the Applicants' assertions regarding their (Joint Applicants') efforts to find other sources of funding. Nevertheless, we shall not draw any conclusions from Moving Parties' silence on this issue in their Reply Brief. They will be permitted to pursue the issue of Applicants' efforts to find alternative funding during the evidentiary hearing.