

Chronology of Western Riverside Council of Governments (Western Riverside) protest of Energy Commission ARRA Awards

January-February 2009

U.S. DOE awarded \$226 million of State Energy Program (SEP) American Recovery and Reinvestment Act (ARRA) to the Energy Commission for energy efficiency upgrades to homes and business, energy reduction measures and related job creation.

October 2009

The Energy Commission issued guidelines for \$110 million of these SEP funds (SEP-110) under three separate solicitations, including one to be used as financing mechanisms based on the “Property Assessed Clean Energy” or “PACE” programs. PACE financing involves using property tax assessments to finance energy efficiency upgrades.

February 2010

The Energy Commission finalized the \$110 million (SEP 110) solicitation, including a \$30 million award to five out of 20 entities that had bid for the PACE-related financing proposal. One of the proposals in this financing solicitation, Western Riverside Council of Governments, was disqualified because it failed to meet the “efficiency first” requirement stated in the guidelines. Upon disqualification, Western Riverside appealed to the State Department of General Services (DGS) however, DGS dismissed Western Riverside’s protest because it was not timely.

April 2010

Western Riverside petitioned the Riverside County Superior Court (for a Writ of Mandate).

May 2010

Riverside County Superior Court orders DGS to hear the protest and also prohibits the Energy Commission from spending the \$30 million pending hearing of the protest.

June 2010

DGS and Energy Commission filed to stay the Riverside County Superior Court’s “Writ of Mandate” that holds back spending of the funds arguing that:

- 1) The Western Riverside proposal was far inferior to the prevailing proposals in terms of jobs created, energy savings, funding leveraged and all other aspects;
- 2) The Western Riverside allegations are erroneous and without merit; and
- 3) The State of California should not suffer the delays in using, or risk losing, the Recovery Act dollars that are intended to help end the recession and stimulate a recovery now.

July 2010

On July 2, the Riverside County Superior Court heard the argument on the stay and ruled against the Energy Commission. On July 6 the Federal Housing Finance Agency (FHFA) effectively pulled the plug on all PACE programs nationwide rendering the Energy Commission's \$30 million financing awards unviable. On July 28, the Energy Commission canceled the financing solicitation and the five PACE-related proposed awards. DGS canceled any review of the protest since there was no longer a solicitation.

September 2010

To bridge the financing and maximize coordination between all of the \$110 State Energy Program funds, the Energy Commission approved a contract with the California Statewide Communities Development Agency (CSCDA) "Energy Upgrade California" which effectively replaces the prior solicitation which was the subject of the Western Riverside litigation.

October 2010

Western Riverside announced through a thinly veiled threat contained in a letter to the Energy Commission requesting information about the newly announced Energy Upgrade California proposal implying that they may apply for a contempt order against the Energy Commission.

Where we are now

First, the notion of a contempt charge against the CEC is absurd. Western Riverside would need to prove that the Energy Commission was in collaboration with the FHFA, USDOE and Fannie Mae and Freddie Mac to contrive the demise of the PACE model (which the CEC has strongly endorsed since its inception) all in order to avoid the spurious Western Riverside lawsuit.

So what does Western Riverside really want? We believe the answer lies in a quote from a July 2, 2010 Riverside county Superior court proceeding. At the conclusion of the hearing, the judge asked the Western Riverside attorney, "Should I not take into consideration the potential harm to Californians?" The Western Riverside attorney responded, "No...not today." The Western Riverside attorney went on to say that "what we had argued (at this hearing) was that there was available money still in the State to cover the potential grant that Western Riverside might receive."