

ORIGINAL

Decision 84 09 066 September 6, 1984

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application of)  
Environmental Defense Fund for the )  
Commission to authorize an award )  
for its attorney fees and expert )  
witness costs for its participation )  
in OII 26. }

Application 82-11-43  
(Filed November 23, 1982)

O P I N I O N

Environmental Defense Fund (EDF) seeks an award of attorney fees and expert witness costs for its participation in OII 26. OII 26 was an investigation into the electric resource plan and alternatives of Pacific Gas and Electric Company (PG&E) and the ratemaking implications and options relating to the various plans. It was issued in 1978 and was concluded by Decision (D.) 82-09-066, issued September 22, 1982. EDF's pleading seeking attorney fees and expert witness fees was filed two months later and was given a new application number by the Docket Office.

PG&E and the Commission staff filed briefs on May 6, 1983 in response to EDF's application. The staff supports the application, if EDF can make a showing of financial hardship but opposes an award to EDF if it would result in a windfall to EDF, that is, if EDF has been previously compensated for its work. The staff also urges the Commission to

advise EDF to limit its request to expenses directly related to its OII 26 presentations. PG&E opposes the application. EDF filed a reply brief on June 6, 1983, wherein it has demonstrated that it meets the significant financial hardship test previously applied by this Commission.

Because of its participation in Application (a.) 59308, the Harry Allen/Warner Valley Energy System (Allen/Warner) certification proceeding, EDF was aware of the Commission's intention to enact rules and procedures for fee and cost applications (OII 100, issued November 13, 1981). Since the new rules and procedures could not be followed until they were issued, EDF sought, in this application, filed well before the Commission's decision in OII 100, an interim order determining that EDF is eligible for an award in OII 26 pending the issuance of, and EDF's compliance with, the new rules and procedures to arise out of OII 100.

On April 6, 1983 the Commission issued D.83-04-017 in OII 100 wherein it adopted Article 18.6 of the Rules of Practice and Procedure, containing procedures for awarding reasonable fees and costs to participants in its proceedings. The decision was effective on the date of issuance. In Rule 76.32 of Article 18.6 the Commission explained how the rules would apply as follows:

"These rules will apply to issues raised subsequent to the effective date of the order promulgating these rules in any pending cases, applications,

investigations, and rulemakings, and to all cases, applications, and investigations filed on or after the effective date of the order promulgating these rules, without regard to the formal status of the matter on the effective date of these rules..." (D.83-04-017, pp. 56-57.)

In the two paragraphs of the opinion immediately before adopted Rule 76.32 the Commission explained its reasons for adopting that rules, as follows:

"We agree that it serves us and prospective participants well if it is clear at the outset to which proceedings the rules apply. These rules are intended to apply to issues raised subsequent to the effective date of this order in pending proceedings and to proceedings initiated after the date on which the rules have become effective. A proceeding will be deemed initiated on the date an application or complaint is filed or an order instituting investigation is issued.

"The application of these rules to issues raised subsequent to the effective date of this order and to matters filed on or after the effective date of the order promulgating these rules is in no way designed to affect the requests of EDF for compensation for its participation in A.59308 and OII 26. These requests are presently pending before us and will be addressed on their own merits in each proceeding."

It is clear from the quoted language that the Commission specifically reserved its authority to decide the issues raised by EDF's then pending requests for compensation in A.59308 and OII 26.

By indicating that these pending requests would be addressed on their merits in each proceeding, the Commission signalled its intention to review these requests under its extant authority to make compensation awards. We find that EDF is eligible for an award of fee for its participation in OII 26 under our traditional Section 701 authority. Our decision gives EDF thirty days to file a verified statement setting forth the amount of such fees and costs and justifying their reasonableness. Staff and PG&E will have fifteen days to respond to EDF's statement.

A discussion of our jurisdiction to make this eligibility determination follows:

EDF cites CLAM v PUC, 25 Cal.3 d 891 (1979), D.93724, dated November 13, 1981, in A.59308,<sup>1/</sup> and OII 100 in support of its claim that the Commission has authority to award fees and costs in OII 26. We will consider each of these authorities in turn.

CLAM v PUC actually involved two consolidated cases. In CLAM v PUC the court held that CLAM was entitled to an award of fees; however, in TURN v PUC the court held that TURN was not

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<sup>1/</sup> EDF's request for compensation for its application in A.59308 was resolved by agreement with the affected utility companies. See D.83-10-044, dated October 19, 1983, in A.59308.

entitled to an award of fees. While CLAM is cited for a variety of propositions by all parties, it is actually not controlling on any of them. This is so for the reasons stated by the Commission in its Answer to Petitions for Writ and Review filed in September 1983 in Supreme Court Cases SF 24603, 24605, and 24606. In its answer the Commission defends D.83-04-017 in

OII 100 adopting Rules of Procedures for awarding fees in our proceedings. The principal issue in the three petitions for writ of review is whether the Commission has authority to adopt rules for awarding fees to participants in its proceedings. The Commission contends that CLAM v PUC is not controlling on that question because of the lack of majority opinion on any principle of law.

The answer argues as follows:

"The Petitioners assert that CLAM is controlling on the question now at issue [the Commission's authority to adopt rules for awarding fees] because it decided reimbursement of attorney fees could only be awarded in a quasi-judicial proceeding. However, this assertion is not borne out by the decision itself. As the Commission points out in D.93724, the justices whose concurrences were necessary to decide each of the two cases disposed of concurred in the result but

not in the rationale.<sup>2/</sup> Only Justice Mosk believed the question of the Commission's jurisdiction to award attorney fees turned on whether the proceeding was quasi-legislative (where no jurisdiction was believed to exist) or quasi-judicial. Chief Justice Bird and Justices Newman and Tobriner believed the Commission has jurisdiction to award fees in any proceedings (whether quasi-legislative or not) which is 'on the record'. (CLAM, supra, at p. 918.)

"In contrast, Justices Clark, Richardson and Manuel agreed with Justice Mosk that the Commission lacked authority to award fees in ratemaking proceedings, but did so in the belief that the enactment of Section 1021.5 of the Code of Civil Procedure barred the Commission from awarding fees in any proceeding. On that basis these three judges would have affirmed both Decisions. (Id. at pp. 916, 917.

"Given this lack of agreement among the members of the court, CLAM is not binding precedent for any of the opinions discussed above."

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<sup>2/</sup> [Footnote not in quote.] In paragraph 1 of Justice Richardson's concurring and dissenting opinion, which was also signed by Justices Clark and Manuel, he says: "I concur with parts I, III, and IV of the majority opinion and in its holding that the Public Utilities Commission lacks the authority to award attorney fee's in quasi-legislative ratemaking proceedings." However, it is obvious from the succeeding paragraphs of his concurring and dissenting opinion that he agrees only with the holding of Mosk's opinion, since his reasoning applies equally to awards of attorney fees in quasi-legislative and quasi-judicial proceedings.

The answer cites Article VI, Section 2 of the California Constitution, a number of California Supreme Court cases, and Witkin's California Procedure, which discusses split decisions and concludes that: "Such a decision, however, it not a binding precedent on the reasons assigned in any of the opinions, for all are minority opinions. (6 Witkin California Procedure, Appeal Section 491.)" It concludes:

"It necessarily follows that CLAM merely disposed of the two cases it addressed. CLAM does not support the petitioners's assertion that the Commission's jurisdiction to award fees is limited to quasi-judicial, reparation proceedings. Even less is it support for their suggestion that CLAM bars the Commission from adopting the comprehensive set of rules by which it proposes to administer fee awards."

Thus, CLAM v PUC does not provide a rationale for determining whether or not the Commission has authority to award fees for participants in its proceedings or to enact rules for making such awards. The most that can be said for the case is that, by a sum of different opinions, CLAM won and TURN lost.

We next address EDF's citation of D.93724 in A.59308, the Allen/Warner certification proceeding. D.93724 is devoted mainly to distinguishing the opinion of Justice Mosk in CLAM. The decision concludes that although the Allen/Warner proceeding is quasi-legislative under CLAM, EDF may nevertheless apply for

compensation for its participation in that proceeding, because the Commission has resolved the underlying policy concerns expressed by Justice Mosk in CLAM. What D.93724 does not do, however, is to set forth what constitutional or statutory provisions or decisional law constitute the basis of the Commission's jurisdiction for awarding compensation to participants in its proceedings.

EDF also cites OII 100 for the proposition that the Commission has authority to award fees and costs in OII 26. OII 100 was issued November 13, 1981, on the same day that D.93724 in A.59308 was issued. An initiatory order, OII 100 merely cites D.93724 for the proposition that "this Commission has the jurisdiction to award attorney, witness and related fees to public participants...and all Commission proceedings and what have traditionally been described as quasi-legislative proceedings (e.g., application proceedings and certain Commission investigations) as well as in quasi-judicial proceedings." No rationale was mentioned beyond that supplied by reference to D.93724.

We believe there are constitutional and statutory provisions that authorize us to award attorney fees. Article XII, Section 2 of the California Constitution states: "Subject to statute and due process, the Commission may establish its own procedures."



Consistent with that Constitutional provision, the legislature has enacted Public Utilities Code Section 1701,<sup>3/</sup> which states:

"All hearings, investigations, and proceedings shall be governed by this part and by rules of practice and procedure adopted by the Commission..." Citing these provisions, our staff argued in OII 100 that the Commission has authority to determine its own procedures and to issue procedural rules setting up a public participation program based upon the reimbursement of certain fees and expenses incurred by qualifying participants. Although D.83-04-017 did not explicitly rely on those provisions to support its establishment of procedural rules to compensate participants in Commission proceedings, that reliance may be implied from Conclusion of Law 5, which states: The Commission may...establish a procedure to compensate qualified public participants for their participation in matters before the Commission." In our brief to the Supreme Court in answer to the petitions for writs of review regarding D.83-04-017 we have cited Section 1701 as a basis for concluding that the Commission has jurisdiction to issue the procedural rules such as those in OII 100.

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<sup>3/</sup> All references hereafter to section numbers are to the Public Utilities Code unless otherwise indicated.

The Commission also has the power and jurisdiction under Section 701 to supervise and regulate public utilities and to do whatever is necessary and convenient in the exercise of that supervision and regulation. The California Supreme Court has limited the scope of Section 701 only to the extent that the things which the Commission may do in the supervision and regulation of public utilities must be cognate and germane to that power and jurisdiction. Justice Mosk in CLAM recognized the necessity of public participation in our proceedings. The Commission's findings and conclusions in OII 100 established the relationship between compensation and the participation of the public in our proceedings. There can be no doubt then that compensation of the public for their participation in our proceedings is closely related to our supervision and regulation of our public utilities and is in fact necessary and convenient in the exercise of that supervision and regulation. We have no hesitation in saying as a general proposition that the compensation of participants in our proceedings is cognate and germane to our supervision and regulation. It is appropriate, relevant to, and has an affinity to our regulation.

We conclude that Section 701 authorizes us to award compensation to EDF for its participation in OII 26.<sup>4/</sup> The factual details of that participation are key to our conclusion.

Many of the issues which were examined in OII 26 were raised initially in PG&E's 1978 general rate case where EDF appeared and presented testimony regarding the company's resource plan. Although we did not adopt EDF's request for a rate of return penalty in that case, we were highly impressed with its showing which stressed the importance of conservation and alternative energy resources in utility resource planning.

EDF's participation in the 1978 rate case led us to issue OII 26 where we intended specifically to consider PG&E's planning process and determine whether a rate of return penalty for

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<sup>4/</sup> We note that, but for the restrictions on filing which we placed on applications for fees pursuant to OII 100, EDF's application would have been covered by those rules. While the application does not, strictly speaking, fall within those rules, this Commission may, for purposes of regulatory consistency, use the OII 100 rules as a model for analyzing EDF's ultimate Request for Fees. Since EDF itself has already met the spirit of the generic OII 100 rules in response to staff's concerns, with respect to a showing of financial hardship (Reply of EDF, filed June 6, 1983) it is reasonable to expect EDF to pattern its Request for Fees after the requisites of Rule 76.26 (Article 18.6).

imprudent planning was appropriate. When we issued OII 26, we strongly urged EDF to participate in that investigation.<sup>5/</sup>

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5/ The importance of EDF's contribution to the 1978 general rate case is evident from the decision we issued in that proceeding. In D.89316, 84 CPUC 258, 287, we stated:

The EDF participated extensively, and presented numerous meritorious suggestions and observations. We are impressed by witness Willey's testimony. Today we are issuing OII 26 to fully explore PG&E's resource planning, both short-and long-term for as EDF points out:

"The Commission's recent experience with SDGE and Sundesert shows the importance of timely review, by it, of at least the major elements of a utility's long-range supply plan. It also highlights the importance of undertaking such review in comprehensive fashion, not merely plant by plant as each one is proposed. (EDF opening brief, p. 13.)

In addition to OII 26, we are ordering PG&E to commence immediately studies on, among other things, generating facility repowering. We would not be discharging our duty to the ratepaying public if we failed to actively oversee the reasonableness of proposed utility resource plans.

EDF believes PG&E has set its conservation goals too low and understates the potential for conservation. It is EDF's recommendation that PG&E's rate of return be reduced resulting in a gross revenue reduction of \$79.8 million.

With regard to the significance we attached to OII 26, we stated:

"We expect timely responses by PG&E to the data requests of the staff and interested parties in that OII, for the issues to be addressed are critical and we must explore them as rapidly as possible. The policy conclusions we reach as a result of OII 26, in which EDF may and should participate, will be implemented. And in subsequent rate proceedings we can insure prudent resource policies are followed; if they are not, we can impute the operating efficiency as suggested by EDF in adopting a reasonable test year results of operations. Id. at 289. (Emphasis Added)

OII 26 was divided into three phases. Phase I concerned repowering, maintenance, and small hydroelectric generation. Phase II dealt with PG&E's efforts in the area of cogeneration. Phase III dealt with the methodological validity and usefulness of EDF's computer model ELFIN. EDF is requesting fees and costs for its participation in Phases II and III.

Phase II: The Cogeneration Penalty

As OII 26 unfolded, most of the attention focused on the issues raised in Phase II and Phase III. Phase II on cogeneration was taken up first. Seventeen days of hearings were held beginning in April 1979. Although EDF did not present witnesses in this phase of the investigation, it actively cross-examined PG&E and staff witnesses and filed an extensive brief. The testimony of EDF witnesses in PG&E's 1978 rate case was incorporated into the record of OII 26 by official notice. Throughout Phase II, EDF maintained that PG&E's cogeneration efforts were inadequate and that the Commission should impose a rate of return penalty on the company.

In D.91107 issued on December 19, 1979, we adopted EDF's recommendation and assessed a 20 basis point (\$14.4 million) penalty against PG&E for inadequate development of cogeneration, 2 CPUC#2d 596, 728-29. In that decision, we stated:

"In Decision No. 91109, in OII 26, issued today, we have found PG&E's efforts to promote the development of cogeneration to have been seriously inadequate. Upon this basis we have concluded that PG&E's authorized return on equity for its Electric Department operations should be reduced by 20 basis points. The record as to other aspects of PG&E's conservation effort is inadequate to justify imposition of a further negative rate of return adjustment.

PG&E's lack of success or initiative in developing cogeneration capacity has been an issue in PG&E's two previous rate applications (Application Nos. 55509/10 and 57284/5). More recent review of this issue in OII 26 has demonstrated that PG&E, despite the Commission's continued promotion of cogeneration, has continued to neglect this promising new source of capacity. There is evidence in the record of OII 26 of a substantial currently available utility-identified cogeneration potential of at least 2,000-3,000 MW in PG&E's service area that PG&E has not vigorously pursued, despite its consideration of some projects since the early 1970's.

Thus, we found in Decision No. 91109 in OII 26 that the arguments regarding the insufficiency of PG&E's cogeneration program continue to be compelling. We therefore conclude that a reduction should be made in PG&E's authorized rate of return in this general rate proceeding to reflect PG&E's poor performance.

EDF's contribution to this outcome is evident from an examination of Section E of D.91109, 3 CPUC2d at 28-33, where we discussed PG&E's performance in the cogeneration area. In that section, we set forth in considerable detail our reasons for finding PG&E's efforts inadequate and extensively referred to the hearing record developed in Phase II. In numerous instances, our decision cites facts elicited by EDF through cross-examination of company witnesses.<sup>6/</sup>

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<sup>6/</sup> For example, cross-examination by EDF established that:

- (1) While management had identified significant cogeneration potential as early as 1977, there was no direct link between identification of this potential and its ultimate consideration in the utility's resource plan, whereby funds could be budgeted for its development. (TR 612-525)
- (2) Even the most promising cogeneration potential (e.g., a large natural gas user) may not find itself in PG&E's resource plan. (TR 622-3, 681-2)
- (3) Management's initial recognition of significant cogeneration potential was not adequately pursued for consideration in the resource planning process. (TR 614-17)
- (4) Of 46 potential cogenerators using natural gas which PG&E identified in 1975, the company was studying only 8 for development. (TR 995-96)

Phase III: ELFIN Methodology

Phase III was devoted to examining the ELFIN computer model developed by EDF for financial and cost analysis of utility resource plans. The output of that model had been an important element of Willy's testimony in the 1978 rate case. Hearings were held on this subject in late-1979. EDF presented two witnesses who testified at length about the ELFIN model. EDF also cross-examined PG&E witnesses and filed a brief addressing the Phase III issues.

While Phase III did not result in the type of dramatic action we took in Phase II, it has had farreaching results. Phase III and EDF's active participation therein established the theoretical and practical usefulness of computer models in analyzing utility resource plans. In D.82-09-066, we recognized the value of such models in examining resource planning from a cost and financial perspective. We stated:

"The advances made in our ability to analyze utility resource plans and the implementation of avoided cost pricing for small power purchases stemmed in large part from the initial phases of OII 26. Notwithstanding our decision not to adopt a particular approach to analyzing resource plans as Commission policy or to validate a particular computer model for use by staff and other parties, we concur with EDF that the phase of hearings in OII 26 regarding these topics was highly productive. The testimony and evidence presented by all parties greatly enhanced our knowledge of computer-based supply planning."  
Id. at 17.



In that decision, we also acknowledged the practical value of the ELFIN model and pointed out that it had been used by our staff in the Harry Allen/Warner Valley and OII 42 proceedings. Id. 12.

Subsequent experience has confirmed the value of computer models in resource planning. In fact, the importance of these models as analytical tools is so great that we recently provided for all interested parties to have "total and complete access" to the GRASS and MARCOST models used by PG&E. D.83-12-068 at p. 358. The procedures governing such access are now being developed in the OIR 2 proceeding.

#### Findings of Fact

1. EDF's participation in PG&E's 1978 general rate case was a key factor in our issuance of OII 26.
2. In Phase II, EDF actively cross-examined PG&E and staff witnesses and filed an extensive brief on the adequacy of PG&E's cogeneration efforts.
3. EDF's cross-examination of company witnesses helped to establish the inadequacy of PG&E's performance in the cogeneration area.
4. EDF's participation substantially contributed to the assessment of a \$14.4 million penalty against PG&E in Phase II.

5. In Phase III, EDF presented two witnesses, cross-examined PG&E witnesses, and filed a brief on the ELFIN model.

6. EDF's participation in Phase III helped provide a new analytical framework for examining utility resource plans and demonstrated the economic benefits of conservation and alternative energy development.

#### Conclusion of Law

1. CLAM v PUC is not controlling on the question of the Commission's authority to award compensation to participants in its proceedings because it lacks a majority opinion other than as to the ultimate disposition of the two cases.

2. Under Article XII, Section 2 of the California Constitution, the Commission has authority to establish its own procedures.

3. Under Section 1701, the Commission has authority to adopt its own rules of practice and procedure.

4. Acting under the authority granted by Article XII, Section 2 of the California Constitution and Section 1701 the Commission in OII 100 adopted rules of procedure providing for awards of compensation to participants in its proceedings. (D.83-04-017, dated April 6, 1983.)

5. Section 701 authorizes the Commission to supervise and regulate public utilities and to do whatever is necessary and convenient in the exercise of that supervision and regulation, so long as the Commission's actions are cognate and germane to that power and jurisdiction.

6. Compensation of participants in our proceedings is cognate and germane to our supervision and regulation of public utilities.

7. Section 701 authorizes the Commission to award compensation to participants in our proceedings.

8. An award of compensation to EDF for its participation in EDF is necessary, convenient, cognate, and germane to our regulation of public utilities for the reasons set forth in the discussion.

9. EDF's application for an order finding it eligible for an award of compensation for its participation in OII 26 should be granted.

10. EDF filed a reply brief on June 6, 1983, wherein it has demonstrated that it meets the significant financial hardship test previously applied by this Commission.

O R D E R

1. Within 30 days of the effective date of this decision, Environmental Defense Fund (EDF) shall file a verified statement setting forth its attorney's fees, expert witness fees, and other costs which are directly related to its participation in Phase II and Phase III of OII 26. This statement shall be supported with information justifying the reasonableness of such fees and costs.

2. Pacific Gas & Electric Company (PG&E) and the Commission Staff shall have 15 days from the day EDF files its statement to file comments on EDF's request.

This order becomes effective 30 days from today,

Dated September 6, 1984 at San Francisco, California.

I will file a written  
concurrence.

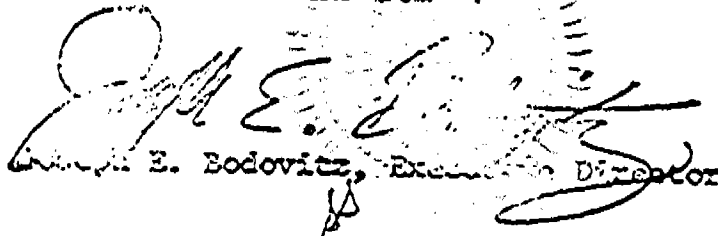
LEONARD M. GRIMES, JR.  
President

Leonard M. Grimes, Jr.  
President  
Victor Calvo  
Priscilla C. Grew  
Donald Vial  
Commissioners

I dissent.

WILLIAM T. BAGLEY  
Commissioner

I CERTIFY THAT THIS DECISION  
WAS APPROVED BY THE ABOVE  
COMMISSIONERS FOR

  
George E. Bodovitz, Executive Director

A.82-11-43  
D.84-09-006

COMMISSIONER LEONARD M. GRIMES, JR., Concurring:

In this order, we perform an act of recognition which, in my opinion, is long overdue. Technically, we are declaring that the Environmental Defense Fund is eligible to be awarded intervenor funding for its participation in a Commission investigation. More significantly, we are acknowledging a pioneering effort which helped change the way utilities and regulators view the electric generation resource planning process. I think it is fair to say that there was one set of realities before EDF presented its proposals to this Commission and a different set of realities today. I also feel confident in saying that, for many reasons, things will never be the same again.

It may be easy to forget that there was a time, only a handful of years ago, when electric utility resource plans did not contain alternative energy elements, when those utilities were not purchasing power from small private producers, when they were certainly not offering "avoided cost" payments to small power producers. This was also a time when utilities were not always pushed to demonstrate that they were pursuing the lowest cost projects and when Commission did not always delve into the computer programs underlying utility resource plans.

It is not realistic to give EDF all of the credit for the fact that these things have changed. On the other hand it cannot be denied that EDF performed a pivotal role. That organization presented expert testimony in the 1978 PG&E rate case and supported its analysis with the product of its own computer program. EDF argued that PG&E was not pursuing a least-cost resource plan and that they were, therefore, underemphasizing conservation, load management, cogeneration and other alternative sources.

In response, this Commission established OII 26 and incorporated all of EDF's work by reference. In that investigation, we first found PG&E's efforts to develop cogeneration to be insufficient. We then penalized PG&E's shareholders in a manner that returned over \$14 million to the company's ratepayers. More importantly, we sent a message to all of California's electric utilities and the financial community that was clearly understood. Soon, alternative generating sources were seriously introduced into all of their resource plans.

In OII 26, we also established the "avoided cost" pricing standard for utility small power purchases and that standard was later adopted nationally. In addition, that investigation helped to solidify the use of computerized planning analysis by our own staff. We enhanced our understanding of how computerized planning works and, today, we require that utility planning models be made available to all intervenors. As a New York Times editorial put it at the time, it was as if we were bringing the umpire in from the outfield and putting him behind the plate where he can call the balls and strikes.

In short, EDF was a catalyst in moving this Commission's regulation in directions we should be quite proud of. We are certainly proud of our own staff and its contributions in developing all of these ideas, but we should also be determined to encourage the type of creative intervention exemplified by EDF's efforts in conjunction with OII 26.



LEONARD M. GRIMES, JR., Commissioner

September 6, 1984  
San Francisco, California

Decision 84 09 006 SEP 6 1984

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PG&E and the staff of the Commission's Legal Division filed briefs on May 6, 1983 in response to EDF's application. The staff supports the application, if EDF can make a showing of financial hardship but opposes an award to EDF if it would result in a windfall to EDF, that is, if EDF has been previously compensated for its work. The staff also urges the Commission to

entitled to an award of fees. While CLAM is cited for a variety of propositions by all parties, it is actually not controlling on any of them. This is so for the reasons stated by our Legal Division in its Answer to Petitions for Writ and Review filed in September 1983 in Supreme Court Cases SF 24603, 24605, and 24606. In its answer the staff attorney defends the Commission's D.83-04-017 in OII 100 adopting Rules of Procedures for awarding fees in our proceedings. The principal issue in the three petitions for writ of review is whether the Commission has authority to adopt rules for awarding fees to participants in its proceedings. Our staff's answer contends that CLAM v PUC is not controlling on that question because of the lack of majority opinion on any principle of law. The staff's answer argues as follows:

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"It necessarily follows that CLAM merely disposed of the two cases it addressed. CLAM does not support the petitioners's assertion that the Commission's jurisdiction to award fees is limited to quasi-judicial, reparation proceedings. Even less is it support for their suggestion that CLAM bars the Commission from adopting the comprehensive set of rules by which it proposes to administer fee awards."

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The Commission also has the power and jurisdiction under Section 701 to supervise and regulate public utilities and to do whatever is necessary and convenient in the exercise of that supervision and regulation. The California Supreme Court (in CLAM) has limited the scope of Section 701 only to the extent that the things which the Commission may do in the supervision and regulation of public utilities must be cognate and germane to that power and jurisdiction. Justice Mosk in CLAM recognized the necessity of public participation in our proceedings. The Commission's findings and conclusions in OII 100 established the relationship between compensation and the participation of the public in our proceedings. There can be no doubt then that compensation of the public for their participation in our proceedings is closely related to our supervision and regulation of our public utilities and is in fact necessary and convenient in the exercise of that supervision and regulation. We have no hesitation in saying as a general proposition that the compensation of participants in our proceedings is cognate and germane to our supervision and regulation. It is appropriate, relevant to, and has an affinity to our regulation.

5. Section 701 authorizes the Commission to supervise and regulate public utilities and to do whatever is necessary and convenient in the exercise of that supervision and regulation, so long as the Commission's actions are cognate and germane to that power and jurisdiction.

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7. Section 701 authorizes the Commission to award compensation to participants in our proceedings.

8. An award of compensation to EDF for its participation in EDF is necessary, convenient, cognate, and germane to our regulation of public utilities for the reasons set forth in the discussion.

9. EDF's application for an order finding it eligible for an award of compensation for its participation in OII 26 should be granted.

10. EDF filed a reply brief on June 6, 1983, wherein it has demonstrated that it meets the significant financial hardship test previously applied by this Commission.

11. Since further filings are needed to determine what constitutes a reasonable recovery, this order should be made effective on date of signature.

O R D E R

1. Within 30 days of the effective date of this decision, Environmental Defense Fund (EDF) shall file a verified statement setting forth its attorney's fees, expert witness fees, and other costs which are directly related to its participation in Phase II and Phase III of OII 26. This statement shall be supported with information justifying the reasonableness of such fees and costs.

2. Pacific Gas & Electric Company (PG&E) and the Commission Staff shall have 15 days from the day EDF files its statement to file comments on EDF's request.

This order is effective immediately.

Date SEP 6 1984 at San Francisco, California.

I will file a written concurrence.

LEONARD M. GRIMES, JR.  
Commissioner

LEONARD M. GRIMES, JR.  
President  
VICTOR CALVO  
PRISCILLA C. GREW  
DONALD VIAL  
Commissioners

I dissent.

WILLIAM T. BAGLEY Commissioner