

Decision 89 10 037 OCT 12 1989

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company for authority to adjust its electric rates effective August 1, 1986.
 (Electric) (U 39 M)

Application 86-04-012
 (Filed April 4, 1986)

O P I N I O N

Summary

This decision awards Power Users Protection Council (PUPC) \$30,706 for its contribution to Decision (D.) 87-04-028 in Pacific Gas and Electric Company (PG&E) Application (A.) 86-04-012.

Eligibility Request

PUPC filed a Request for Finding of Eligibility for Compensation on January 2, 1987. In its request PUPC states that it is a non-profit organization, representing farmers, run by volunteers, and funded through donations and fund raising activities. Additionally, PUPC argues that because the financial interests of its individual members are small in comparison to the cost of participation in this proceeding it would experience a financial hardship without compensation for its expenses.

While other parties addressed issues for the entire agricultural class, PUPC's representation was focused on rate design for farmers who use electricity to pump water for agricultural purposes. Without PUPC's participation the interests of this narrow group of customers would not have been adequately represented. Additionally, PUPC had only received \$23,544.84 in donations when its eligibility request was filed, which is just over half of its compensation request. Since all funding for PUPC has been from contributions and no grants have been received, it is clear that without additional funding PUPC could not pay the costs of effective participation. Finally, PUPC states that although

its members in total should receive substantial benefits from D.87-04-028, individually the benefits are small compared to the cost of participation.

In D.88-03-020 we required PUPC to provide additional information in support of its eligibility request. On March 20, 1989, PUPC responded with the following information. The average annual PG&E electric bill of its members is \$19,929.21 and annual bills range from a low of \$180.00 to a high of \$57,850.26.

PUPC's request for a finding of eligibility for compensation requires us to construe the financial hardship criterion for eligibility under our intervenor compensation rules. We conclude that PUPC satisfies that criterion.

Our intervenor compensation program is funded through the rates of the respective utilities. The program serves to enhance the record (and consequently to enhance the quality of our decisions) by aiding the presentation of significant views that, given the financial and other burdens of formal participation in our proceedings, might not otherwise be heard.¹

The program targets those situations in which an important aspect of the public good might be overlooked because the persons mostly interested in that aspect would suffer financial hardship in participating. Correspondingly, the program does not compensate intervenors that otherwise have the financial means and incentive to participate.² Two examples will help illustrate the what and why of this distinction.

1 This program is one of several means by which we promote broad participation in our proceedings. For example, the Commission has a Public Advisor, with offices in San Francisco, Los Angeles, and (most recently) San Diego. The Public Advisor provides information on our regulations and procedures and on the various proceedings at the Commission.

2 We stress that an intervenor's expenses of participation may not all be compensable even if the intervenor meets the financial hardship criterion and prevails in the proceeding. The intervenor must make a detailed showing to establish, among other things, that the claimed expenses were actually incurred and reasonably necessary.

An industrial customer whose electricity bill exceeds \$1 million per year would generally not meet the financial hardship criterion. First, the reasonable impact of such a customer's successful participation in an electric utility rate case could easily pay for that participation fairly quickly. Second, the benefit of such participation would probably be captured by that customer and the relatively small group of similarly situated customers. Little if any direct benefit would accrue to the general body of ratepayers.

At the other extreme, a customer with an annual electricity bill of \$100 probably would satisfy the financial hardship criterion. Successful participation by such a customer could affect hundreds of thousands of residential and small commercial ratepayers in the service territory of a sizeable electric utility. That customer might see a change of only a few dollars on the customer's own bill and yet have a cumulative impact measured in millions of dollars.

Participation by such a customer is difficult. First, the customer has no reasonable chance of ever recovering the cost of participation through savings on the customer's own bill. Second, if the customer were to seek voluntary contributions from similarly situated ratepayers, the customer would have to mount a mammoth and expensive outreach effort. An organization of small ratepayers generally must devote a proportionally greater part of its efforts and budget to organizing, and less to actual participation at the Commission, as compared to an organization of industrial customers, since the latter are less numerous and may already be known to each other through, e.g., trade groups.

PUPC's membership consists of large customers, though not nearly so large as in our extreme example. Most of PUPC's members have a substantial incentive to lower their electricity bills and a reasonable expectation that successful participation could enable them to lower those bills significantly. A small group of PUPC members could fund a considerable effort at the Commission. On the

other hand, the incentive of the individual members is not so great as to support participation at any but a very modest level.

We also note that formation of an intervenor group is time-consuming and costly. Furthermore, the original members must bear these burdens disproportionately, and there is a strong incentive for others in the class of affected customers to "free ride" on the efforts of these original members.

On balance, we think PUPC has established eligibility, based on its circumstances during its participation in this proceeding. PUPC is growing, and its eligibility in future proceedings, should it choose to seek compensation, will be carefully reconsidered.³

Compensation Request

On May 12, 1987 PUPC filed its Request for Compensation in the amount of \$41,337 stating that it made a substantial contribution to D.87-04-028. In PUPC's request it argues that it was the only party to present testimony on the issue of agricultural bypass and that as a result of its involvement in the proceeding PG&E submitted a revised demand forecast, which was ultimately adopted. Additionally, PUPC points out that it was a party to the stipulation on agricultural rate design adopted in D.87-04-028.

PG&E filed its response to PUPC's request on June 11, 1987. In its response PG&E states that PUPC's participation on the issue of agricultural bypass was unique and on rate design issues was important but not unique. Finally, PG&E argues that PUPC's expert witness fees are too high, claimed hours are excessive, and expenses for A. J. Yates should be disallowed.

³ It should be noted that a group of very large consumers would probably fail the hardship test even at the group's inception, since the members would be large enough to bear the costs of participation as individuals.

Agricultural rate design was originally addressed in the summer of 1986, in the rate design hearings associated with PG&E's general rate case. However, on December 5, 1986 PG&E filed a motion on behalf of itself, the Division of Ratepayer Advocates, California Farm Bureau Federation, and PUPC requesting that a stipulation among these parties concerning agricultural time-of-use rate structure be considered. D.87-04-028 adopted the stipulation with some modifications.

Discussion

We agree with PG&E that PUPC's testimony on agricultural bypass was unique and led to our adoption of PG&E's revised demand forecast. PG&E's original testimony in this proceeding assumed an increase in agricultural demand during the forecast period. As a result of PUPC's testimony, PG&E revised its demand forecast to reflect a lower demand for the agricultural class. Therefore, we find that PUPC should receive its full request for this issue.

Due to PUPC's involvement with the adopted stipulation in D.87-04-028 considerable savings in hearing time and expert witness and attorney fees were realized. We commend the parties involved in the stipulation for their efforts and encourage parties to participate in similar endeavors which have the potential for saving hearing time and reducing proceeding costs. Although the stipulation was adopted and resulted in a substantial contribution to D.87-04-028, it was not adopted in its entirety. Therefore, we will allow 75% of PUPC's fees and full recovery of its expenses for its participation in the stipulation.

Since Yates did not officially appear on PUPC's behalf and there is no showing on how he contributed to D.87-04-028, we will adopt PG&E's recommendation and not authorize recovery of his fees and expenses.

PG&E also recommends that PUPC hours and expenses which occurred after the hearings concluded should be disallowed because there is no indication of formal PUPC participation in the proceeding after that date. Since the record indicates that PUPC's formal participation ended on the final day of hearings,

PG&E also recommends that PUPC hours and expenses which occurred after the hearings concluded should be disallowed because there is no indication of formal PUPC participation in the proceeding after that date. Since the record indicates that PUPC's formal participation ended on the final day of hearings, January 22, 1987, we will not allow PUPC's requested expenses incurred after that date.

Additionally, PG&E states that PUPC hours categorized as non-productive yield no benefit and should be disallowed. However, it is apparent from PUPC's request that hours categorized as non-productive are actually non-productive travel hours. PUPC has requested compensation for these hours at one-half its hourly rate for productive time. This is consistent with our treatment of travel time in D.86-09-042 in which we articulated our general policy with respect to travel time. We will allow PUPC to recover costs for non-productive travel hours.

PG&E's final argument is that PUPC's hourly rate of \$60 is too high for an organization which is a novice in the ratemaking arena. While PUPC is new to ratemaking, they are experts in the agricultural industry. It was their expertise in the agricultural industry that substantially influenced the outcome of this proceeding. We consider their hourly rate of \$60 to be reasonable. Additionally, we find PUPC's requested rates for lodging, \$87/day, and meals, \$25/day, reasonable.

The following table is a summary of PUPC's compensation request and our adopted level of compensation.

Summary of Compensation Request

	<u>Requested</u>	<u>Adopted</u>
Jeff Fabbri		
Productive Hours	\$10,680	\$ 7,365
Travel Hours	1,080	990
Expenses	2,625	2,337
Jim Crettol		
Productive Hours	10,500	7,035
Travel Hours	450	180
Expenses	1,543	832
Chris Siemens		
Productive Hours	9,300	9,105
Travel Hours	540	540
Expenses	2,322	2,322
A. J. Yates		
Productive Hours	2,160	0
Travel Hours	0	0
Expenses	<u>137</u>	<u>0</u>
Total	\$41,377	\$30,706

Since this decision was not issued within 75 days from the date of PUPC's request, as required by Public Utilities Code Section 1804, we will allow interest on the award. Interest should be calculated in the same manner as the deferred account established in D.86-06-079 and should accrue from the 76th day after PUPC's request was filed until payment of the award is made, except that no interest should be paid for the period May 8, 1988 - March 20, 1989.

On March 9, 1988, D.88-03-020 requested additional information in support of PUPC's eligibility request. PUPC did not respond until March 20, 1989. We believe that 60 days is an adequate response time and will not burden ratepayers with additional interest due to PUPC's delay.

Finally, PUPC is placed on notice it may be subject to audit or review by the Commission's Advisory and Compliance Division, therefore adequate accounting records and other necessary documentation must be maintained in support of all claims for intervenor compensation. Such record-keeping systems should identify specific issues for which compensation is being requested, the actual time spent by each employee, the hourly rate paid, fees paid to consultants, and any other costs incurred for which compensation may be claimed.

Findings of Fact

1. PUPC filed a Request for Finding of Eligibility for Compensation on January 2, 1987.
2. PUPC is a non-profit organization, representing farmers, run by volunteers, and funded through donations and fund raising activities.
3. PUPC members, on average, are substantial users of electricity but still modest in comparison to the cost of participation in this proceeding. Also, PUPC was in its formative stages during this proceeding, so that the burdens of such formation and participation fell disproportionately on its original members.
4. On May 12, 1987 PUPC filed a Request for Compensation in the amount of \$41,337.
5. PUPC was the only party to present testimony on the issue of agricultural bypass.
6. PG&E revised its original demand forecast to reflect a lower demand for the agricultural class.
7. PG&E's revised demand forecast was adopted.
8. PUPC was party to the stipulation concerning agricultural rate design.
9. The stipulation on agricultural rate design was adopted by D.86-04-028 with some modifications.

10. A. J. Yates did not officially appear on PUPC's behalf and no justification was provided for his claimed fees and expenses.

11. PUPC did not formally participate in A.86-04-012 after January 22, 1987.

12. PUPC requests recovery for non-productive travel time.

13. PUPC witnesses are experts in the agricultural industry.

14. This decision was not issued within 75 days of PUPC's request as required by Public Utilities Code Section 1804.

Conclusions of Law

1. PUPC's representation of farmers in PG&E's service territory was necessary for a fair determination of agricultural rate design.

2. PUPC has made an adequate showing of significant financial hardship under Rule 76.25.

3. PUPC should be found eligible for compensation.

4. PUPC's participation on the issue of agricultural bypass was unique.

5. PUPC should be awarded its full request for the agricultural bypass issue.

6. PUPC should be awarded 75% of its requested fees and 100% of its requested expenses for its participation in the stipulation on agricultural rate design.

7. PUPC should not be awarded fees and expenses for A. J. Yates.

8. PUPC should not be awarded its request for fees and expenses incurred after January 22, 1987.

9. PUPC should be awarded fees for travel time.

10. PUPC's requested hourly fees are reasonable.

11. PG&E should pay PUPC interest on the award from the 76th day after PUPC's request was filed until payment of the award, except that interest should not be paid for period May 8, 1988 -

March 20, 1989. Interest should be calculated in the same manner as the deferred account established in D.86-06-079.

12. The adopted compensation of \$30,706, plus interest, is reasonable and should be awarded to PUPC.

ORDER

IT IS ORDERED that Pacific Gas and Electric Company shall pay to Power Users Protection Council, within 10 days of the effective date of this decision, a compensation award of \$30,706, plus interest, computed at the three-month commercial paper rate from March 18, 1987 until the date paid, except that interest shall not be paid for the period May 8, 1988 - March 20, 1989.

This order is effective today.

Dated October 12, 1989, at San Francisco, California.

G. MITCHELL WILK
President
FREDERICK R. DUDA
STANLEY W. HULETT
JOHN B. OHANIAN
PATRICIA M. ECKERT
Commissioners

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY.

Wesley Franklin

WESLEY FRANKLIN, Acting Executive Director

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