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Decision 90-12-081 December 19, 1990

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Mary Healy and Gary Healy, )  
Complainants, )

vs.

Pacific Gas and Electric Company, )  
Defendant. )

ORIGINAL

Case 90-01-017

(Filed January 8, 1990)

Richard C. Burton, Attorney at Law, for

Mary and Gary Healy, complainants.

Jefferson C. Bagby, Attorney at Law, forPacific Gas and Electric Company,  
defendant.OPINIONSummary of Complaint

This decision grants the request of Mary and Gary Healy (complainants) to order Pacific Gas and Electric Company (PG&E) to build an electric line extension to serve the Willow Creek Campground (Willow Creek) under the free footage allowance provision of PG&E's tariffs. While the decision denies complainants' request for attorney's fees and costs, it allows them to file a supplemental request for the Advocate's Trust Fund.

Background

Complainants own Willow Creek which is located at 17548 Highway 49, Comptonville, California. Willow Creek contains 28 camping spaces, a bathhouse and laundry room, plus owners' living quarters and office. Willow Creek has electric wiring which has been inspected and approved by a licensed electrician. Each campsite at Willow Creek has hookup for power. Complainants use their own generators to provide power to Willow Creek's facilities.

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In 1981, Carl Marvin, Willow Creek's owner at that time, joined Russ Connelley, complainants' neighbor, and others in applying for an electric line extension from PG&E. PG&E informed Connelley that estimated revenues from Connelley's residence would not be adequate to support PG&E's investment and the extension will not be feasible under the free footage provisions of Rule 15(B)(1) of PG&E's tariff. Under the provisions of Rule 15(B)(1), overhead line extensions are made at PG&E's expense provided the length of line required does not exceed the free footage allowance. Free footage allowance for a line extension is based on the expected electric load the line extension would generate.

PG&E, however, agreed to install the extension under exceptional case provision of Rule 15(E)(7) which provides:

"In unusual circumstances, when the application of these rules appears impractical or unjust to either party, or in the case of the extension of lines of a higher voltage, the Utility or the applicant shall refer the matter to the Public Utilities Commission for special ruling or for the approval of special conditions which may be mutually agreed upon, prior to commencing construction."

PG&E estimated the cost of such extension to be approximately \$217,875. PG&E informed Connelley that an advance payment of the estimated costs of the extension would be required under Rule 15(E)(7).

PG&E also advised Connelley that construction of such uneconomic extension is usually postponed until the area develops to the point where the revenues generated by the extension will be sufficient to qualify the extension under the provision of Rule 15(B)(1).

Connelley and others postponed their plans to receive electric service from PG&E.

In November 1984, Marvin sold Willow Creek to complainants.

W01111 1A In January 1985, complainants requested PG&E for electric line extension for Willow Creek in accordance with the free footage allowed under Rule 15(B)(1) of PG&E's tariffs. 3001 3002

001 1A03 PG&E informed complainants that the closest power source was located approximately 8,600 feet from Willow Creek and that Willow Creek would not qualify for the necessary free footage allowance. PG&E also provided an estimate of complainants' share of an approximate cost of such an extension. Based on the estimated costs, complainants decided to postpone their plan to receive electric service. 3003 3004

002 1A05 In the fall of 1988 Connelley reapplied for electric service. On September 3, 1988, Connelley signed an Overhead Electric Extension and Service Agreement with PG&E. The Connelley extension, which was completed shortly thereafter, brought the power lines to 3,800 feet from Willow Creek. 3005 3006

003 1A07 About the same time when the Connelley extension was being negotiated and constructed, complainants requested a line extension. PG&E's Grass Valley District Representative, Ted Pierce, informed complainants that they would receive free footage allowance under Rule 15(B)(1) for only the permanent dwellings at Willow Creek and that no free footage allowance would be allowed for individual camper spaces since campers are not considered to be permanent dwellings. Pierce estimated that complainants would be entitled to only 1,100 feet of free footage. 3007 3008

004 1A09 In early 1989, Richard Ware took over Pierce's duties in PG&E's Grass Valley office. Ware visited Willow Creek and determined that complainants were entitled to 1,700 feet of footage allowance rather than the previously estimated allowance of 1,100 feet. The new manager later determined that if complainants installed all the electric load they planned to install, they would be allowed the required 3,800 feet of free footage allowance and that the Willow Creek extension could be built under the provisions 3009 3010

of Rule 15(B)(1). During the hearings, PG&E stipulated that Willow Creek qualifies for a free footage allowance of 7,600 feet.

While PG&E agreed that Willow Creek would qualify for the required free footage allowance, it informed complainants that the Grass Valley office had modified its policy regarding line extensions. According to the revised policy, the projected revenues generated by a line extension had to justify the cost of building such an extension. PG&E claimed that if the extension were to be built with the standard free footage allowance in accordance with the old policy, other ratepayers would be required to subsidize complainants. PG&E agreed to build the Willow Creek extension only if complainants paid in advance the \$20,000 tree trimming costs associated with building the line extension.

While PG&E required complainants to pay the tree trimming costs associated with their extension, it did not require Connelley and three other customers, Cecchini, Burgess, and Pena, to pay such costs. Table 1 shows a comparison of Willow Creek line extension costs with four other line extensions, which were built during 1988 and 1989. These extensions are in the vicinity of Willow Creek. It should be noted that advance payments shown on line 3 of Table 1 are for line extensions in excess of free footage allowance, not for tree trimming.

TABLE 1  
EXTENSION COMPARISONS

	WILLOW CREEK CAMP GROUND (HEALY)	CECCHINI + Moger + Cannon	CONNELLEY (3) + 4	BURGESS	PENA
1	Length of extension, feet	3,800	2,901	8,594	602
2	Rule 15 allowance, feet	3,900	2,915	8,845	635
3	Advance payment for excess	\$0	(\$0)	\$17,594	\$0
4	Estimated cost of extension (incl tree trimming of:)	\$47,500 \$14,763	\$45,131 \$10,000	\$115,823 \$36,000	\$6,778 \$600
5	Actual cost of extension	\$47,500	\$35,860	\$74,214	\$6,175
6	Average cost per foot	\$12.50	\$12.36	\$8.64	\$10.26
7	Type of Load:				
8	Residences	3	3	7	1
9	Commercial	1	0	0	0
10	Residential Contracted load:	[1990]	1988	1988	1989
11	Lights	3	3	7	1
12	Refrigerator	3	3	7	1
	Heat pump	0	0	2	0
	Range	3	3	3	0
15	Dishwasher	1	1	0	0
16	Freezer	1	1	6	0
17	Dryer	1	2	4	1
18	Water heater	0	3	2	0
19	Pressure system	0	3	7	1
20	Air conditioner	1	1	0	0
21	Heater	1	0	0	0
	Commercial Contracted Load:				
22	Lighting	2 kw	0	0	0
23	Lathe	5 hp	0	0	0
24	Compressor	6 hp	0	0	0
25	Water system pump	5 hp	0	0	0
26	Sewer pump	1 hp	0	0	0
27	Deficiency billing			\$10,944	
28	Average gross rev, Grass Valley	N/A	\$806	\$4,636	\$806
29	Actual gross annual revenue	\$4,800	\$642	\$1,700	\$432
30	Actual base annual revenue	\$2,400	\$350	\$850	\$215
31	Supported capital cost	\$11,494	\$1,676	\$4,071	\$1,030
32	Unsupported capital cost	\$36,008	\$34,184	\$70,143	\$5,145
33	Total Advance (Lines 3 + 27)	\$0	\$0	\$28,638	\$0
34	Annual expense to ratepayers	\$7,518	\$7,138	\$11,906	\$1,074

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Complainants found PG&E's offer unacceptable and filed

this complaint, Case (C.) 90-01-017 on January 8, 1990.

Hearings

Evidentiary hearings in the matter were held before

Administrative Law Judge (ALJ) Garde in Grass Valley on July 17 and August 16, 1990. The proceeding was submitted upon receipt of

concurrent briefs on September 24, 1990.

PG&E's Position

PG&E maintains that the policy of studying the economics

of line extensions has been its longstanding systemwide policy.

The Grass Valley office started applying it in 1989.

PG&E estimates the cost of building Willow Creek extension to be \$47,500 (including tree trimming costs). PG&E

contends that the estimated annual gross revenues from Willow Creek of \$4,800 would not justify building the extension. PG&E opines that if the extension were built under the standard free footage allowance, other ratepayers would end up subsidizing complainants by about \$7,500 per year. PG&E argues that even if complainants were to pay \$20,000 for tree trimming, other ratepayers would still subsidize Willow Creek by \$3,750 per year.

Further, PG&E argues that Willow Creek is a commercial operation and that any ratepayer subsidy to Willow Creek would in fact be a subsidy to complainants' profit.

In addition, PG&E contends that the Commission, as early as 1977, recognized that the current free footage allowances, established in 1960, needed to be reduced. The Commission instituted C.10260 with the objective of reducing the allowances. However, the Legislature, by enacting Public Utilities (PU) Code § 783 essentially froze the free footage allowances at their 1960 level. PG&E argues that free footage allowances are not based on revenues produced by the extension and that the only remedy to this problem lies in the application of Rule 15(E)(7). PG&E asserts

that application of Rule 15(E)(7) will be equitable to PG&E, Willow Creek, and ratepayers.

Complainants' Position

Complainants contend that they had applied for a line extension before PG&E's Grass Valley office changed its policy regarding line extensions. According to complainants, had PG&E not initially miscalculated the free footage allowance for Willow Creek, they would have qualified to get an extension under the standard free footage allowance provisions similar to the ones received by others shown in Table 1. Complainants maintain that PG&E is now retroactively applying its new policy in an attempt to recoup tree trimming cost from them where other persons similarly situated have not been so charged.

Discussion

The case presents one important issue: Did PG&E treat complainants differently than it treated other parties similarly situated?

The facts of the case clearly show that complainants are being asked to pay tree trimming charges when four other applicants were not assessed similar charges. The only explanation provided by PG&E for this discrepancy is that the initial free footage allowance calculations for Willow Creek were in error. By the time this error was corrected, PG&E had instituted its new line extension policy requiring economic justification of each extension. This is clear from the following direct examination of Ware by PG&E's counsel, Bagby.

"Q Okay. Then in 1988 why didn't -- why didn't you build the Willow Creek Campground extension on a free footage allowance?

"I mean it appears here that you built the Burgess and the Pena extensions in '89 which is after the Connelley extension was finished and yet it was -- and yet the Burgess and Pena extensions -- I mean, I would guess were built during the

time when you were building these free footages and  
footage allowance, uneconomical  
extensions?

"A Okay. When we looked at the Willow Creek  
Campground in with the Connelley  
extension or right around that time, based on the free footage allowance the  
Willow Creek Campground had and the  
distance there would have been twenty  
thousand dollars or so extra required  
even under the standard provisions.

"Just like Connelley had to put up  
seventeen, Willow Creek Campground would  
have had to put up twenty because their  
extension was thirty-eight hundred feet  
and they didn't have that money to put  
up." (Tr., Vol. 1, 112 and 113.)

Not only did PG&E miscalculate free footage allowance for  
Willow Creek, it had no clear guidelines regarding interpretation  
of Rule 15. PG&E service representatives, Ware and Pierce,  
interpreted the rule differently. This is evident from the  
following cross-examination of Ware by the ALJ:

"Q Very well. And turning to Exhibit 17,  
were any tree trimming costs assessed  
against the four owners that Mrs. Healy  
listed here?

"A No.

"Q Was there any reason why they were not  
assessed tree trimming charges that  
you're asking Mrs. Healy to fund at this  
time?

"A I really feel that the Cecchini job and  
the Connelly [sic] job that there should  
have been either some discussion about  
the economics of those jobs and maybe the  
tree trimming contributed or perhaps they  
should have been billed under E-7.

"I was not directly involved in those jobs  
nor did I work in the district at that  
time..." (Tr., Vol. 2, 267 and 268.)





the fact PG&E has chosen to treat this case as a test case in its attempt to circumvent the free footage allowance provided by Rule 15(B)(1). Complainants maintain that the primary beneficiary of PG&E's action would be its stockholders not the ratepayers, and accordingly the most appropriate action would be to assess the fees against the stockholders. Complainants specifically request that they be granted attorneys' fees and costs out of the Advocates' Trust Fund, or, in the alternative, be awarded intervenor's fees and expenses pursuant to the Commission's Rules of Practice and Procedures (the Commission's Rules) as set forth in Title 20 of the California Code of Regulations, with a further request that PG&E stockholders be made to indemnify either the trust fund or the ratepayers for the fees paid to complainants. We will consider complainants' request for recovery of expenses from either Advocates' Trust Fund or as intervenor's fee separately.

Advocates' Trust Fund

PG&E contends that complainants should not be provided compensation from the Advocates' Trust Fund because complainants have not demonstrated support for the amount requested. According to PG&E, complainants have not filed a budget stating the number of hours their attorney worked, his rate of compensation, his level of skill in practice before the Commission, nor have they provided an itemization of cost. PG&E asserts that the Commission, based on the information provided by complainants, will be unable to determine if payment of \$3,500 is reasonable.

In addition, PG&E maintains that complainants have not demonstrated that \$3,500 worth of attorneys' fees and costs would cause them financial hardship. While PG&E does not dispute that complainants have limited income from Willow Creek, PG&E opines that complainants have not provided any evidence of their income from Willow Creek or from other sources. PG&E believes that

complainants clearly had significant amounts of money to be able to purchase the fairly large campground property in a prime location on a well-travelled scenic highway.

Further, PG&E asserts that complainants also do not qualify for compensation from Advocates' Trust Fund because they do not represent consumer interest. According to PG&E, complainants initiated the complaint for their own economic interest to save \$20,000 in tree trimming costs.

#### Discussion

We agree with PG&E that complainants have not provided any information which would enable the Commission to make a finding of what would be a reasonable amount for attorneys' fees, in view of time spent, level of skill shown, and comparable fees paid to others practicing public utility law. Advocates' Trust Fund requires that such a finding be made before any award for compensation be made.

Complainants have also failed to demonstrate that their own economic interest is not sufficient to motivate participation (Advocates' Trust Fund Declaration of Trust at page 3).

We will deny complainants' request to receive compensation for attorneys' fees and costs from Advocates' Trust Fund, but will allow them to file in this docket, within 45 days of the mailing date of this decision, a supplemental request for funds from the Advocates' Trust Fund. We caution the complainants that their request must address the Advocates' Trust Fund guidelines in the Declaration of Trust (which is available from our Public Advisor's office).

#### Intervenor's Fee

There are three rules in the Commission's Rules that allow the Commission to award compensation under the Public Utility Regulatory Policies Act (PURPA) to consumers involved in proceedings before the Commission. Complainants are not entitled to recover attorneys' fees and costs under any of these rules.

of Rule 76.01 to establish a procedure for awarding reasonable fees and costs to consumers of electric utilities pursuant to PURPA Section 122(a)(2). Rule 76.01 establishes:

**"Procedures for awarding reasonable fees and costs, to consumers of electric utilities pursuant to PURPA Section 122(a)(2)."**

Rule 76.02(h) provides the definition for the proceedings under which Rule 76.01 fees and costs may be awarded. This section says that:

**"'Proceeding' shall mean any application, case, investigation or other procedure of the Commission related to, or involving electric rates or rate design which is initiated after the date the rules herein become effective and in which a PURPA position is considered."**

Rule 76.02(c) provides the following definition of PURPA positions:

**"(c) 'PURPA position' means a factual contention, legal contention, or specific recommendation promoting one of the following PURPA purposes and relating to one or more of the following PURPA subtitle B standards:**

**(1) PURPA purposes:**

**(A) Conservation of energy supplied by electric utilities**

**(B) Optimization of the efficiency of use of facilities**

**(C) Equitable rates to electric consumers**

**(2) PURPA Ratemaking Standards:**

**(A) Cost of Service - S 111 (d) (1)**

**(B) Declining Block Rates - S 111(d) (2)**

**(C) Time-of-Day Rates - S 111(d) (3)**

**(D) Seasonal Rates - S 111(d) (4)**

**(E) Interruptable Rates - S 111(d) (5)**

not (F) Load Management Techniques - S 111(d)(6) and

**(3) Other PURPA Standards:**

**(A) Master Metering - S 113(b)(1)**

**(B) Automatic Adjustment Clauses - S 113(b)(2)**

**(C) Information to Consumers - S 113(b)(3)**

**(D) Procedures for Termination of Electric Service - S 113(d)(4)**

**(E) Advertising - S 113(d)(5)"**

It is clear that the Willow Creek extension case is not a case wherein a "PURPA position is considered." Therefore, this complaint is not a "proceeding" for which compensation can be awarded under Rule 76.01.

**Rule 76.51**

Rule 76.51 states:

"The purpose of this article is to provide compensation for reasonable advocates' fees, reasonable costs to public utilities customers of participation or intervention in any proceeding of the Commission initiated on or after January 1, 1985, to modify a rate or establish a fact or rule that may influence a rate."

This complaint does not have rate modification as its purpose, nor does it establish a fact or rule that may influence a rate. The complaint is not a "rate" proceeding and therefore complainants cannot receive costs or attorneys' fees under Rule 76.51.

Finally, we note that complainants have failed to file for Finding of Eligibility for compensation which is required by Rule 76.54 of the Commission's Rules.

We will deny complainants' request for recovery of attorneys' fees and costs pursuant to the Commission's Rules.

Finally, we will consider complainants' requests for sanctions against PG&E's stockholders and to make the stockholders' indemnity either the Advocates' Trust Fund or the ratepayers for attorneys' fee and costs. There is no existing mechanism which provides for the Commission to take such action. Accordingly, we will deny complainants' request.

Comments on Proposed Decision

At the conclusion of the evidentiary hearings, PG&E made a motion requesting that the ALJ's proposed decision in this case be issued for comments pursuant PU Code § 311. PG&E's counsel stated the following in support of the motion:

"MR. BAGBY: And, your Honor, PG&E would make a motion that a proposed decision be issued in this case pursuant to Public Utilities Code Section 311 and as you know, complainants have indicated that they feel this is a test case, and if this truly is a test case, that it be appropriate for both parties to have an opportunity to provide comments on the decision before it becomes final.

"PG&E would request that that be done." (Tr. 1, Vol. 2, 279.)

Complainants' attorney, while not opposed to PG&E's request, expressed concern about this complaint being made a test case for such an important issue. He insisted that policy regarding such an important issue should only be established after active participation and assistance of the Commission staff.

We believe that this case involves miscalculation of complainants' free footage allowance by PG&E. It does not involve any policy issues regarding line extensions in general or interpretation of Rule 15. Accordingly, we will not use it as a test case.

As a rule, in customer complaint cases, we do not issue ALJ's proposed decisions for comments. We believe that all pertinent issues related to the complaint have been adequately

addressed in the briefs. Since this complaint is not being considered as a test case, we see no reason to issue the ALJ's proposed decision for comments pursuant to PU Code § 311. In addition, issuing the ALJ's decision for comments will further delay complainants from receiving their line extension. We will deny PG&E's motion.

#### Findings of Fact

1. Complainants own and operate Willow Creek.
2. Willow Creek is a campground containing 28 camping spaces, a bathhouse and laundry room; plus owners' living quarters, and office.
3. Willow Creek generates its own power.
4. In January 1985, complainants requested an electric line extension for Willow Creek in accordance with the free footage allowed under Rule 15(B)(1) of PG&E's tariff.
5. PG&E informed complainants that the closest power source was located approximately 8,600 feet from Willow Creek and that Willow Creek would not qualify for the necessary free footage allowance.
6. Under the provisions of Rule 15(B)(1), overhead line extensions are made at PG&E's expense provided the length of line required does not exceed the free footage allowance.
7. Free footage allowance for a line extension is based on the expected electric load the line extension would provide.
8. In the fall of 1988, Connelley, complainants' neighbor, received an electric line extension from PG&E in accordance with the free footage allowance provided by Rule 15(B)(1) of PG&E's tariff.
9. Three other residential customers, Cecchini, Burgess, and Pena, located in the vicinity of Willow Creek, received electric line extensions under Rule 15(B)(1).
10. The Connelley extension brought the power source to 3,800 feet from Willow Creek.

11. About the same time when the Connelley extension was being negotiated, complainants requested a line extension.

12. PG&E's Grass Valley district representative informed complainants that they would be entitled to only 1,100 feet of free footage allowance.

13. In early 1989, PG&E's Grass Valley district representative was replaced.

14. The new district representative determined that complainants were entitled to the required 3,800 feet of free footage allowance and that the Willow Creek extension could be built under the provision of Rule 15(B)(1).

15. During the hearings, PG&E stipulated that Willow Creek qualifies for a free footage allowance of 7,600 feet.

16. PG&E modified its policy regarding line extensions in 1989.

17. According to PG&E's new policy regarding line extensions, the projected revenues generated by a line extension had to justify the cost of building the extension.

18. PG&E decided to build the Willow Creek extension in accordance with its new line extension policy.

19. PG&E claims that building the Willow Creek extension under the free footage provisions of Rule 15(B)(1) would require other ratepayers to subsidize complainants.

20. PG&E agreed to build the Willow Creek extension only if complainants paid in advance the \$20,000 tree trimming costs associated with building the extension.

21. PG&E did not require Connelley, Cecchini, Burgess, or Pena to pay tree trimming costs associated with building their line extensions.

22. The Connelley, Cecchini, Burgess, and Pena extensions are being subsidized by other ratepayers of PG&E.

23. Complainants found PG&E's offer unacceptable and filed C.90-01-017.

24. Had PG&E not initially miscalculated the free footage allowance for Willow Creek, complainants would have qualified to



receive an extension under the standard free footage allowance provisions of Rule 15(B)(1) similar to the extensions received by Connelley, Cecchini, Burgess, and Penabaz.

25. Complainants request compensation for attorneys' fees and costs out of the Advocates' Trust Fund, or, in the alternative, request that they be awarded intervenor's fees pursuant to Title 20 of the Commission's Rules.

26. Complainants have not provided the necessary information required to determine the reasonableness of the requested attorneys' fees and cost.

27. Complainants have failed to show that their own economic interest is insufficient to motivate their participation.

28. Complainants, may be able to receive compensation by providing supplemental information with a reasonable time (45 days).

29. Complainants are not entitled to receive compensation under the Commission's Rules.

30. PG&E requests that since this complaint is to be made a test case, the ALJ's proposed decision in this proceeding be issued for comments pursuant to PU Code § 311.

31. This complaint concerns errors made by PG&E employees and is not to be used as a test case.

32. In complaint cases, the Commission does not issue an ALJ's proposed decision for comments pursuant to PU Code § 311.

#### Conclusions of Law

1. The Willow Creek extension should be built in accordance with the free footage provisions of Rule 15(B)(1).

2. Complainants should not be charged any tree trimming costs associated with building the Willow Creek extension.

3. Complainants' request for attorneys' fees and costs should be denied unless they file the required information.

4. PG&E's motion requesting the issuance of the ALJ's proposed decision for comments should be denied.

