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Decision 92-02-044 February 20, 1992

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 November 1, 1991; and adjust its gas rate effective January 1, 1992; and for Commission order finding that PG&E's gas and electric operations during the reasonableness review period from January 1, 1990 to December 31, 1990 were prudent.

ORIGINAL

Application 91-04-003  
(Filed April 1, 1991)

(U 39 M)

INTERIM OPINION ON ELIGIBILITY

This decision addresses the request of Agricultural Energy Consumers Association (AECA) filed November 8, 1991 for a finding of eligibility for compensation in this proceeding under Article 18.6 of the Rules of Practice and Procedure. AECA is a California tax-exempt nonprofit membership corporation representing 40,000 agricultural producers, with funding provided solely through membership fees. Its bylaws list representation of agricultural consumers in matters pending before this Commission as a principal organizational purpose. AECA participated in the revenue allocation phase of this proceeding.

On November 25, 1991, the Commission's Division of Ratepayer Advocates (DRA) and California Large Energy Consumers Association (CLECA) filed responses, opposing AECA's request for eligibility. On December 9, Pacific Gas and Electric Company (PG&E) filed a response stating that AECA should submit additional information before being considered eligible for compensation.

Rule 76.54 sets forth the criteria to be considered eligible for intervenor compensation. We consider these criteria below.

1. Financial Hardship

For an intervenor to be considered eligible for compensation, Rule 76.54(a) requires: "A showing by the customer that participation in the hearing or proceeding would pose a significant financial hardship." "Significant financial hardship" means both of the following, as defined in Rule 76.52(f):

1. That, in the judgment of the Commission, the customer has or represents an interest not otherwise adequately represented, representation of which is necessary for a fair determination of the proceeding; and,
2. Either that the customer cannot afford to pay the costs of effective participation, including advocate's fees, expert witness fees, and other reasonable costs of participation and the cost of obtaining judicial review, or that, in the case of a group or organization, the economic interest of the individual members of the group or organization is small in comparison to the costs of effective participation in the proceeding.

We consider each of these criteria below.

1.1 Representation of an Interest Not  
Otherwise Adequately Represented

1.1.1 Parties' Positions

AECA asserts that its participation was essential to the adequate representation of customers who use electricity to pump water for agricultural purposes. AECA believes that the California Farm Bureau Federation (CFB) was unable to provide economic analysis and expert witnesses necessary to the adequate representation of agricultural customers in this proceeding.

DRA and CLECA argue that AECA failed to show that it represents an interest not otherwise represented, and that it contributed nothing of substance to the proceeding. CLECA believes that CFB represents the very same consumers as does AECA, and that

AECA draws "razor-fine distinctions" between its positions and those of CFB.

### 1.1.2 Discussion

Although we recognize that AECA and CFB share common interests, we conclude that AECA represents a somewhat different constituency distinguishable from that of CFB. AECA represents the combined interests of some 15 commodity associations whose membership differs from that of CFB. AECA also represents 35 California agricultural water districts not represented by any other party in this proceeding. Accordingly, we conclude that AECA satisfies the requirement of Rule 76.52(f) with respect to its representation of agricultural customers' interests. As with other intervenors seeking compensation, the burden of proof will be on AECA to demonstrate that it is entitled to an award for specific costs based upon a showing that it has made "a substantial contribution to the adoption, in whole or in part, of the Commission's order or decision." (Rule 76.53(a).)

Both AECA and CFB presented similar testimony on certain issues, particularly on economic hardships on agricultural customers. Rule 76.53(c) specifies that any compensation to which a customer may otherwise be entitled may be reduced in proportion to the amount of any material duplication of other parties' contributions. Accordingly, although AECA may meet eligibility criteria, its entitlement to any award is subject to the provisions of Rule 76.53(c). In any claim for compensation, AECA should seek to distinguish in more detail the contribution it made on the issue of economic impacts relative to that made by CFB.

### 1.2 Financial Stake Relative to Cost of Participation

#### 1.2.1 Parties' Positions

AECA asserts that the average annual billing effect on agricultural customers in this proceeding does not amount to a sufficient "stake" to justify participation by individual AECA

members. In its initial request, AECA computed \$429 as the financial stake of the average agricultural customer in the outcome of the revenue allocation proceeding. This is based on an average annual utility bill of \$4,294 in 1990 for the agricultural class applied to the highest percentage increase proposed for that class minus the average increase expected for all accounts (i.e., 10%).

Most of its members contribute \$50 per year or less to the organization, according to AECA, although precise statistics on the distribution of the size of membership dues were not provided. Based upon an average stake of \$429 and the average AECA membership contributions of \$50 or less, AECA believes that the benefit to the average member is so small as to discourage and effectively prevent individual participation.

DRA and CLECA argue that AECA is a large, well-funded special interest organization, financially capable of participating in Commission proceedings in the absence of compensation. DRA believes AECA should be found ineligible for compensation if its collective membership funding allows it to participate in the proceeding without significant financial hardship. DRA notes that AECA's initial request provided no information about the stake of its largest members in PG&E's revenue allocation proceeding. PG&E also called for AECA to provide additional information as to the range of bills of its members.

AECA filed a reply to parties' comments on December 20, 1991 in which it provided additional information as to the range of utility bills of its members. According to AECA, the electric bills of its members range from a few hundred dollars to approximately \$3 million. However, the vast majority of AECA members have bills significantly less than \$25,000 annually. Parties also dispute the cost of AECA members' participation relative to their financial stake. While AECA states its average dues per member are \$50 per year, CLECA computes AECA's average cost of participation in this proceeding at only around \$2 per

member (i.e., \$77,000 budget/40,000 members). CLECA likewise computes AECA's annual budget as being \$2 million (i.e., 40,000 members \* \$50 dues per member). AECA responds that CLECA erroneously assumes it has 40,000 dues-paying members, while in reality, only a fraction of the 40,000 producers actually pay individual dues. Thus, AECA's budget is less than \$2 million.

### 1.2.2 Discussion

AECA fails to provide adequate information to allow a full assessment of the organization's ability to participate absent funding. Although AECA notes that its largest members incur utility bills of up to about \$3 million annually, it fails to report the number of members with bills in this range, or the amount of dues funded by its larger members. Although the financial stake of an average agricultural customer is relatively small, measurements based on mere averages provide limited insight, given the extreme range in the size of AECA's members.

In Decision (D.) 89-10-037, we stated that a large industrial customer whose bill exceeds \$1 million per year would generally not meet the financial hardship criterion for intervenor compensation. The reasonable impact of such a customer's successful participation in a rate case could easily pay for that customer's participation fairly quickly. Also, the benefit of such participation would accrue mainly to the relatively small group of similarly situated ratepayers, rather than to the general body of ratepayers.

The financial stake of customers with bills in the \$1 million-to-\$3 million range would generally have a sufficient financial stake in a rate proceeding to warrant a denial of intervenor compensation. Granted, the majority of AECA's members may be small enough, taken individually, to meet the financial stake test, theoretically. But the existence of larger dues-paying members cannot be ignored in assessing eligibility.

The question is: Does the financial stake of the larger dues-paying members of AECA constitute a sufficient incentive for

AECA to intervene in PG&E's revenue allocation proceeding, absent any expectation of intervenor compensation? If the answer is "yes," then it is irrelevant that many other dues-paying members had relatively small financial stakes, viewed individually. The cost of intervention could well cause financial hardship on such customers if they sought to participate apart from alliance with larger agricultural customers who pay dues to AECA. By belonging to AECA, smaller customers receive the benefits of its representation made possible by collective membership dues, particularly those of its largest members.

AECA also claims it is the successor to Power Users Protection Council (PUPC), an organization to which we awarded intervenor compensation in D.89-10-037. AECA has not provided sufficient information for us to verify this claim. It has not provided sufficient comparative information regarding the two entities' membership composition and organizational goals to support a conclusion that AECA and PUPC have similar essential characteristics. Even if we assume that AECA truly is the successor organization, we do not automatically conclude that it meets the same eligibility criteria as we found for PUPC. As we said in D.89-10-037, "PUPC is growing, and its eligibility in future proceedings will be carefully reconsidered."

We noted in that decision that although PUPC consisted of large members, none approached the size of the extreme example of a customer with a \$1 million utility bill. The same cannot be said of AECA. Although PUPC's membership consisted of a range of small and large customers, the annual bill of its largest member was only \$57,850, as found in D.89-10-037. This is considerably less than the \$3 million bill range of AECA's largest members.

We must consider the cost of participation as well as the potential impact on utility bills. While AECA challenges CLECA's assumption that its budget was \$2 million per year, AECA doesn't disclose the correct budget figure. AECA fails to disclose how

many actual dues-paying members it has, or the amount of dues paid by its largest members. AECA also states that most of the producers whom it represents belong to trade groups which, in turn, are members of AECA. Given this arrangement, apparently the AECA average dues of \$50 per "member" represent a collective payment by trade groups rather than by individual producers.

Accordingly, it is unclear how the \$50 dues translates into cost for an individual average customer. It is also unclear whether a portion of the \$50 average dues may be committed for other purposes unrelated to this proceeding. Rule 76.54(a)(1) requires that: "A summary of the finances of the customer shall distinguish between grant funds committed to specific projects and discretionary funds." AECA has failed to distinguish whether or to what extent any of its membership funds are committed versus discretionary. AECA must disclose this information to be found eligible for compensation.

To assess fully AECA's compensation eligibility relative to the financial hardship criterion of Rule 76.52(f), additional information is also required regarding the financial stake of the larger members of AECA relative to the organization's costs of participation. For example, AECA must demonstrate that the financial stake of its members with bills in the \$1 million-to-\$3 million range was not sufficient incentive to intervene in PG&E's revenue allocation proceeding absent the expectation of intervenor funding through the Commission's rules.

In the ordering paragraphs to this decision, we have designated the additional information required of AECA to make a final determination of its eligibility with respect to financial hardship

## 2. Statement of Issues Addressed in Hearings

AECA has complied with Rule 76.54(a)(2) which calls for a statement of the issues the customer intends to raise in the proceeding in which compensation is sought. During the revenue

allocation hearings, AECA raised the primary issue of what is the appropriate cap on agricultural rates.

3. Estimate of Compensation to Be Sought

Rule 76.54(a)(3) requires an estimate of intervenor compensation to be sought. AECA has complied with this rule by estimating that its costs of participation in this proceeding could amount to as much as \$77,650. In the event its contribution to the proceeding extends to fewer than all issues it has raised, AECA states that it will seek a lesser amount of compensation.

4. Proposed Budget

Rule 75.54(a)(4) requires a budget for the customer's presentation. AECA presented an itemization of its estimate of \$77,650 as Appendix A of its request, including tabulations of total hours worked and related hourly billing rates.

5. Timeliness of Filing

Rule 76.54 directs intervenors to file a request for compensation within 30 days of the first prehearing conference or within 45 days after the close of the evidentiary record. AECA has complied with this requirement by filing 28 days after the submission of the revenue allocation phase of this proceeding.

Findings of Fact

1. AECA filed a Request for Finding of Eligibility for Compensation on November 8, 1991.

2. AECA is a nonprofit organization, representing 40,000 agricultural producers within California.

3. AECA participated in this proceeding, sponsoring as its primary issue the appropriate cap on revenue allocation for agricultural customers.

4. AECA's request was opposed by DRA and CLECA primarily on the basis that AECA failed to demonstrate financial hardship.

5. PG&E responded to AECA's request by calling for additional information on the range of average utility bills of its members.



6. Some indeterminate number of producers represented by AECA have average annual utility bills as high as \$3 million, although the majority have bills averaging less than \$25,000.

7. Since a number of AECA members are trade groups rather than individuals, the data presented on average dues paid per member does not permit an accurate determination of the total funds available to AECA through member dues, or the amount of discretionary funds available.

8. The additional information required of AECA required to issue a final opinion on eligibility for compensation is set forth in the following order.

Conclusions of Law

1. AECA has not presented sufficient information to demonstrate that it satisfies the financial hardship criteria as required by Rule 76.54(a).

2. Except for the financial hardship requirement, AECA has otherwise satisfied the preliminary requirements for eligibility for compensation under Rule 76.54.

3. A final conclusion on AECA's eligibility under the financial hardship test of Rule 76.54(a) is deferred pending receipt of further information from AECA as noted in the order to this decision.

INTERIM ORDER

IT IS ORDERED that:

1. To be considered further for compensation eligibility, Agricultural Energy Consumers Association (AECA) should submit the following additional information in a supplemental filing:

- a. The numerical distribution of the 40,000 producers which AECA represents, segregated among the following categories, based on latest and best available billing data.

PRODUCERS WITH ANNUAL  
UTILITY BILLS BETWEEN:

# OF PRODUCERS

AVERAGE  
UTILITY BILL

\$1 million - \$3 million  
\$25,000 - \$999,999  
less than \$25,000

SUMMARY TOTAL

b. AECA should indicate:

- (1) The amount of total AECA funds for 1991 available to fund the budget for intervention in this proceeding and the amount of funds, if any, committed to specific projects, as required by Rule 76.54(a)(1);
- (2) The amount of total dues provided through individual and trade group members representing producers with utility bills in the \$1 million-to-\$3 million range; and
- (3) The amount of its total 1991 budget.

c. To the extent AECA seeks to represent itself as the successor to Power Users Protection Council (PUPC) as support for its request, AECA should elaborate on the composition of its membership relative to that of PUPC. In particular, AECA should indicate if its membership is limited to pumping customers, as was PUPC. If not, AECA should distinguish the nature and

interests of its membership composition  
relative to that of PUPC.

This order is effective today.

Dated February 20, 1992, at San Francisco, California.

DANIEL Wm. FESSLER  
President

JOHN B. OHANIAN  
NORMAN D. SHUMWAY  
Commissioners

Commissioner Patricia M. Eckert,  
being necessarily absent, did  
not participate.

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

  
NEAL J. SHULMAN, Executive Director  
PB