

JUN 18 1992

Decision 92-06-056 June 17, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 SOUTHERN CALIFORNIA EDISON COMPANY)
 (U-338-E) for Authority to Increase)
 its Authorized Level of Base Rate)
 Revenue Under the Electric Revenue)
 Adjustment Mechanism for Service)
 Rendered Beginning January 1, 1992,)
 and to Reflect this Increase in)
 Rates.)

ORIGINAL
 Application 90-12-018
 (Filed December 7, 1990)

Application of PACIFIC GAS AND)
 ELECTRIC COMPANY for Authority to)
 Adjust its Electric Rates Effective)
 November 1, 1991; and to Adjust its)
 Gas Rates 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 30, 1990 Were Prudent.)

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

(U 39 M)

O P I N I O N

On November 8, 1991, the Agricultural Energy Consumers Association (AECA) filed a request for a finding of eligibility for intervenor compensation in Application (A.) 91-04-003 of Pacific Gas and Electric Company (PG&E) under the Commission's Rules of Practice and Procedure. By Decision (D.) 92-02-044, we deferred final determination of AECA's eligibility pending receipt of additional information from AECA showing that it met the "significant financial hardship" requirements under Rule 76.54(a)(1). On March 10, 1992, AECA submitted additional information in response to D.92-02-044.

On March 6, 1992, AECA also filed a request for eligibility for compensation for its intervention in A.90-12-018 of

Southern California Edison Company (Edison). AECA incorporates into its March 6 request some of the same information provided in the March 10 supplemental filing in A.91-04-003. On April 3, 1992, DRA filed a response in opposition to AECA's request in A.90-12-018. DRA incorporates by reference its earlier arguments raised in opposition to AECA's request for compensation in A.91-04-003. Edison also filed a response on April 6, 1992 in opposition to AECA's request in A.90-12-018, arguing that AECA's costs of participation are overstated and duplicative of other proceedings.

For the sake of efficiency, we will consolidate AECA's requests for a finding of eligibility in both of the referenced proceedings, and render a single determination of AECA's eligibility by this decision. However, the two dockets are not formally consolidated.

Significant Financial Hardship Test

Rule 76.52(f) sets forth the criteria which AECA must meet to demonstrate "significant financial hardship," as follows:

"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."

Thus, for an individual customer, a showing that the customer cannot afford to pay the costs of participation is sufficient to demonstrate "significant financial hardship." Since AECA is not an individual customer, but an organization, the rule requires a different test. AECA's claim that its total budgeted expenses fell short of its revenues during 1991 may be an indication of poor financial health but does not support a finding of "significant financial hardship." The hardship test for organizations requires

a measurement of the economic stake of the AECA membership in the outcome of the rate proceeding. AECA must show that the economic stake of its individual members is small in comparison to the cost to participate in the proceeding.

AECA's cost of participation is relatively easy to determine. In its initial filing in A.91-04-003, AECA estimated its cost of participation in that proceeding as being \$77,650. In A.90-12-018, AECA estimated its cost of participation was \$45,541. The measurement of AECA's economic stake in the outcome of the proceedings is more difficult to determine because of the diversity in the size of the utility bills of AECA's members.

We must determine whether the economic interests of AECA's individual members are "small" relative to AECA's cost of participation. In its initial request for compensation, AECA computed the financial stake of the agricultural customers in the outcome of the revenue allocation proceeding as 10% of the average customer's annual bill. AECA based the 10% figure on the difference between the highest percentage increase proposed in the proceeding and the average increase expected for all customer classes. Based upon an average annual utility bill of \$4,294, AECA thus computed \$429 as the financial stake of the average agricultural customer in the outcome of the proceeding. AECA concluded that this amount was so small as to discourage and effectively prevent individual participation.

In D.92-02-044, we found AECA's computation of financial stake to be deficient since a simple average of all agricultural utility bills obscures the vast size differences among individual customers who are AECA members. In response to our requirement in D.92-02-044 for more detailed information on the range of customers' bills, AECA's March 10 filing provides a stratification of a portion of its members by bill size. AECA claims to represent the interests of up to 40,000 agricultural producers in California.

AECA admits, however, that although it represents the collective interests of the membership of various cooperating associations, it does not have 40,000 dues-paying members. AECA had only 671 dues-paying members at the end of 1991. Of these members, AECA has billing data only for only 432 members which it presented in its March 10 response.

Financial Interests of AECA's Members

Based upon data for the 432 members, AECA presents the following extrapolated stratification of average annual utility bills for all 671 members:

<u>Range of Utility Bill</u>	<u># of Members</u>	<u>Average Utility Bill</u>
\$1 million - \$3 million	3	\$2,666,667
\$250,000 - \$999,999	66	466,604
\$125,000 - \$249,999	71	189,727
\$ 50,000 - \$124,999	100	89,275
\$ 25,000 - 49,999	136	37,495
Under \$25,000	295	11,308
Total Members	671	

While AECA earlier stated that "the vast majority of AECA members have bills significantly less than \$25,000 annually," (AECA Reply of December 20, 1991, pg. 5) its actual tabulation above shows that less than half of its members have bills less than \$25,000. In its March 9 filing, AECA did not explain or reconcile this contradiction or the discrepancy between its previous claim of a \$4,294 average bill relative to the much higher average bill data presented in its supplemental filing. Based upon AECA's own data, its earlier calculation of an average annual utility bill of \$4,294 for 1990 is found to be faulty and is rejected.

AECA states that only three of its members have annual utility bills exceeding \$1 million. Based upon an average bill of \$2.6 million for each of these customers, a 10% bill impact would equal about \$260,000 per customer, well beyond the combined \$123,191 costs of participation claimed by AECA in A.91-04-003 and

A.90-12-018. Yet, AECA reports that the three largest members contribute collectively only \$20,000 in annual dues.

AECA estimates that 66 of its next-largest members have average annual utility bills ranging from \$250,000 to \$999,999. Likewise, the financial stake of such members is not small relative to the cost of participation in the Edison and PG&E proceedings. Clearly, based upon AECA's own data on the range of customer bills, we cannot conclude that the economic interest of AECA's individual members, taken as a whole, is small relative to the cost of participation in the PG&E and Edison proceedings.

While AECA did not compute the specific percentage bill impact of its members in the Edison proceeding, we still conclude that, given the range in the size in members' bills, members' economic interests were not small relative to the cost of participation. Moreover, under the Commission's rules, the economic interest of AECA's members must be compared to the costs of effective participation in the proceeding. AECA's estimate of compensation, \$45,541 for A.90-12-018, is overstated in comparison to its level of effort. AECA provided 10 pages of testimony in A.90-12-018, wrote a seven-page Opening Brief (including a two-page Appendix B outlining the procedure for a marginal cost study which AECA requested Edison to perform), and added a four-page Reply Brief responding to TURN's interpretation of AB 2236.

There also appears to be question of double compensation. Since large portions of AECA's A.90-12-018 testimony were essentially cut-and-paste compilations from its testimony in PG&E's A.91-04-003, it would not be reasonable to compensate AECA twice to the extent no additional effort was expended in the later proceeding.

In summary, AECA's estimate of compensation in A.90-12-018 is overstated. When a more appropriate estimate of cost of participation is compared to the economic interests of its

individual members, AECA fails to meet the financial hardship requirement of Rule 76.52, cited above.

Use of Membership Dues to Fund Intervention

Although AECA concedes that its members had a financial stake in the PG&E proceeding of up to 10% of customer power bills, it simultaneously argues that even its largest members have not demonstrated that they have an economic incentive or financial resources to intervene individually or even to pay higher dues to AECA at the level required to fund costs of intervention.

We find this argument unpersuasive. To accept such an argument would require us to disregard the criteria of Rule 77.52 which compares the size of a party's financial stake relative to its cost of participation as the test of eligibility. While large agricultural customers have not intervened individually, they have limited incentive to do so as long as intervenor groups such as the California Farm Bureau Federation or AECA are actively representing their interests. Given the potential financial stake of AECA's largest members, it is plausible that such members may have intervened absent active intervention on their behalf by AECA or other entities. It is also plausible that AECA had the potential to induce at least some of its members to pay higher dues to fund its participation.

AECA's reported statistics on membership dues indicate that the level of assessed dues is significantly below the financial stake which AECA members had in the outcome of this proceeding. While AECA measures the financial stake of its members in A.91-04-003 alone as 10% of a customer's power bill, it assesses dues at the rate of only 0.25%-0.55% of customers' power bills. This disparity illustrates the untapped potential for AECA to seek additional funding through membership dues before coming to ratepayers at large.

Even at present dues levels, AECA has not demonstrated that ratepayer compensation is required in order to fund its costs

of intervention. AECA argues that it must have the resources both to maintain its organizational and fundraising activities, on the one hand, and to support effective intervention in Commission proceedings on the other. AECA states it can achieve these goals if the Commission finds it eligible for intervenor funding. In fact, taken by themselves, AECA's reported revenues of \$244,304 for the nine months ended December 31, 1991 would be more than enough to cover its claimed \$123,191 combined cost of participation in A.90-12-018 and A.91-04-003 absent AECA's other expenses.

Accordingly, it is not clear to what extent AECA's fiscal problems may be linked to its costs of participation before this Commission. AECA's budget shortfalls are caused at least in part by factors having nothing to do with intervenor participation.

We acknowledge that AECA's ability to fund all activities desired by its members may be constrained by the current recession and other financial difficulties faced by agricultural customers. However, AECA's general fiscal problems are not the responsibility of ratepayers at large. Our intervenor funding program is intended for the narrow purpose of funding participation in our proceedings subject to criteria defined in our Rules of Practice and Procedure. The fact that AECA incurred a deficit during 1991 because of costs unrelated to its intervention in either the Edison or PG&E proceeding is no justification to force ratepayers to supplement AECA member dues.

Power Users Protection Council

AECA also seeks to justify its request for eligibility by representing itself as the "direct outgrowth and replacement" for the Power Users Protection Council (PUPC), an organization for which we have previously granted intervenor funding eligibility. We find this justification to be untenable. Even conceding the argument that AECA is the successor to PUPC, we find no basis therein for a finding of eligibility for AECA. The eligibility finding for PUPC was based on a membership whose largest member had

a utility bill of only \$57,850. By contrast, AECA has about 70 members with bills 10 times this amount. AECA must be evaluated based on its present membership composition, not based upon past data for some selective fraction of its members.

Findings of Fact

1. D.92-02-044 deferred consideration of AECA's request for intervenor funding eligibility pending receipt of supplemental information regarding the range of annual utility bills of its membership and the level of dues received by AECA.

2. AECA provided supplemental information on these matters in a filing of March 9, 1992.

3. The majority of AECA's members have annual utility bills over \$25,000; approximately 70 members have annual bills over \$250,000.

4. AECA computed a proxy value for the financial interest of its members in the outcome of PG&E's revenue allocation proceeding by applying 10% to the average member's utility bill. No party contested the 10% impact assumption.

5. AECA's calculation of the financial stake of its membership as \$429 in its initial filing is unreliable and contradicted by the data on members' utility bills presented in its March 10 filing.

6. Based upon an assumed 10% billing impact, the financial stake of AECA's members in PG&E's revenue allocation proceeding exceeded \$50,000, on average, for its 70 largest members.

7. AECA's individual members' cost of participation in the referenced proceedings were small relative to their financial stake in the outcome of the proceedings, based upon the size of their utility bills.

8. AECA reported revenues of \$244,304 for the nine months ended December 31, 1991.

9. AECA's estimated cost of participation in PG&E's revenue allocation proceeding were \$77,650, and in Edison's A.90-12-018 were \$45,541.

Conclusions of Law

1. AECA's requests for intervenor compensation in A.91-04-003 and A.90-12-018 should be consolidated for purposes of this decision; however, the two dockets should not be formally consolidated.

2. AECA fails to satisfy the requirement of Rule 76.52 for "significant financial hardship" in that the economic interests of its individual members is not small in comparison to the cost of effective participation in A.91-04-003 and A.90-12-018.

3. AECA is not found eligible for intervenor compensation under Article 18.6 of the Commission's Rules of Practice and Procedure.

O R D E R

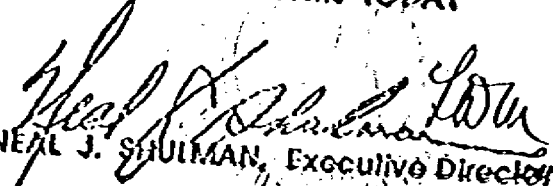
IT IS ORDERED that Agricultural Energy Consumers Association's request for intervenor eligibility in Application (A.) 91-04-003 and A.90-12-018 is denied.

This order is effective today.

Dated June 17, 1992, at San Francisco, California.

DANIEL Wm. FESSLER
President
JOHN B. OHANIAN
PATRICIA M. ECKERT
NORMAN D. SHUMWAY
Commissioners

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

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NEAL J. SHULMAN, Executive Director