

MAY 18 1983

ORIGINAL

Decision 83 05 044

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
SAN DIEGO GAS & ELECTRIC COMPANY for)
authority to increase its rates and)
charges for electric, gas and steam)
service.)

Application 82-12-57
(Filed December 24, 1982)

COMMISSION RULING ON REQUEST FOR FINDING
OF ELIGIBILITY FOR PURPA COMPENSATION

On March 31, 1983, the San Diego County Welfare Rights Organization (WRO) filed a request for finding of eligibility for compensation under Rule 76.03 of the Commission's Rules of Practice and Procedure. WRO states that it will address issues related to cost of service, time-of-use rates and consumer information. Responses to WRO's request were filed by San Diego Gas & Electric Company (SDG&E), applicant in this proceeding, on April 8, 1983 and by the Commission staff on April 11, 1983. WRO filed a reply to those responses on May 2, 1983.

Rule 76 was established to implement provisions of the Public Utility Regulatory Policy Act of 1978 (PURPA) providing for compensation of consumer organizations participating in Commission rate proceedings. Under Rule 76.05 the Commission is required, among other things, to issue a ruling on whether or not a consumer (WRO in this case) wishing to participate in a rate proceeding before the Commission and receive compensation under PURPA for the cost of that participation "has met its burden of showing 'significant financial hardship' pursuant to Rule 76.05(c)."

In opposing a finding of financial hardship, SDG&E claims, and it is confirmed by the record, that WRO is being represented in

this proceeding by the Legal Aid Society of San Diego (Legal Aid), and that nothing in the record indicates Legal Aid's participation on behalf of WRO is contingent upon receipt by WRO of PURPA funding.

We are not persuaded by this argument. As recently as October of 1982, the California Supreme Court stated that legal aid assistance does not bar recovery of attorney's fees in a civil matter. In Folsom v Butte County Association of Governments, 32 Cal 3d 668, pp. 682-3, the court observed that organizations like Legal Aid of San Diego are:

"...established under the Legal Services Corporation, a 'private nonmembership nonprofit corporation' (42 U.S.C. § 2996b(a) [italics added]) that has been held not an agency of the federal government. (Spokane Cty. Legal Serv., Inc. v. Legal Serv. Corp. (E.D.Wash. 1977) 433 F.Supp. 278, 280; see also 42 U.S.C. § 2996d(e)(1).) Though the corporation is not allowed to accept fee-paying clients (id., § 2996f(b)(1)), Congress clearly intended that it be eligible for fees on the same basis as 'private' practitioners. Thus fee awards have been made both in favor of (see, e.g., Tasby v. Estes (N.D.Tex. 1976) 416 F.Supp. 644; Card v. Dempsey (E.D.Mich. 1978) 445 F.Supp. 942) and against the corporation (see, e.g., Flora v. Moore (N.D.Miss. 1978) 461 F.Supp. 1104)."

We see no reason not to apply this well-established policy to PUC proceedings. SDG&E's response also implies that a promise to reimburse Legal Aid is required in order to establish need. We disagree. Just as attorney's fees in civil cases can be awarded to attorneys and not their clients, it is assumed that attorney's fees in our proceedings will be awarded to those actually undergoing the expenses of representation. In this instance, the fees would be awarded to Legal Aid.

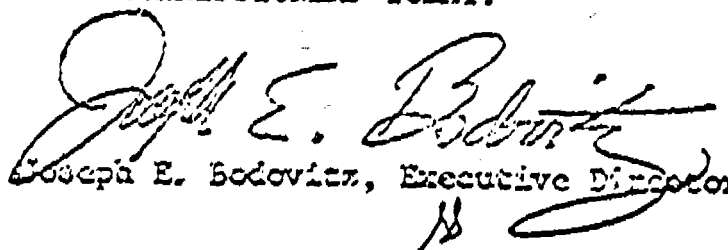
We find that WRO has met its burden of showing significant financial hardship and that it intends to pursue issues which are properly the subject of PURPA fees; we conclude, and rule, that WRO is eligible for PURPA compensation in this proceeding.

This ruling is effective today.

Dated MAY 18 1983, at San Francisco, California.

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

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


Joseph E. Bodovitz, Executive Director