

ORIGINAL

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Decision May 18, 1983

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of PACIFIC GAS AND ELECTRIC COMPANY for authority, among other things, to increase its rates and charges for electric and gas service.

Application 82-12-48 (Filed December 20, 1982)

(Electric and Gas)

(See Appendix A for appearances.)

INTERIM OPINION

In accordance with Rule 76.05 of the Commission's Rules of Practice and Procedure and under the Public Utilities Regulatory Policies Act of 1978 (PURPA), we now issue our Finding of Eligibility for Compensation ruling on the petitions which we have received.

1. California City-County Street Light Association (CAL-SLA), Local Government Commission on Conservation and Renewable Resources (LGC), and School Committee for Reducing Utility Bills (SCRUB)

The Commission staff (staff) and Pacific Gas and Electric Company (PG&E) responded. Both take the position that a finding of eligibility for these petitioners should be denied. For substantially the reasons cited by staff and PG&E, we will deny eligibility for CAL-SLA, LGC, and SCRUB. These organizations are all either closely affiliated with or directly composed of local governmental bodies with taxing authority. The underlying reasons for our policy on this issue were addressed in Decision (D.) 82-06-065 dated June 15, 1982. In that decision we found Contra Costa County ineligible for compensation, and said:

"Contra Costa has not met its burden of showing 'significant financial hardship' under Rule 76.05(c)(1)(C) of the Commission Rules of Practice and Procedure. The allegation of a budget deficit of a major political subdivision of the State which has taxation powers is not sufficient to support a finding of inability to pay the costs of participation in a Commission proceeding.

"Rule 76.05(c)2 sets forth as a ground for eligibility that:

'...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. Such showing shall constitute a prima facie demonstration of need as required by Rule 76.95(c)1(C).'

It appears that the total economic interests or benefits to each of the residents of the county are small in comparison to the cost of participation. However, this is only a prima facie showing and is not conclusive.

Costa is an entity with the power of taxation. If we were to allow eligibility for the potential award of PURPA intervenor fees to entities that have the power of taxation, we would place PG&E's ratepayers in the position of funding activity that can and should be funded by taxpayers. These agencies participate on behalf of taxpayers. We never intended that governmental entities with the power of taxation be eligible for PURPA intervenor compensation; nor is there any indication in the legislative history of PURPA that Congress intended PURPA intervenor fees be provided to governmental entities with the power of taxation."

D.82-06-065 was affirmed by D.83-04-017 in OII 100 dated April 6, 1983, which established new Rules of Practice and Procedure (Rules) to award compensation to participants addressing issues beyond the scope of PURPA. In D.83-04-017 we defined the term "participant" in Rule 76.22(d) to exclude governmental entities for the reasons set forth above.

Each of the petitions we consider today was filed under existing Rules allowing compensation for PURPA-related issues. In this decision we will amplify further our reasons for precluding compensation awards to governmental entities.

We found from our review of PURPA that it did not contemplate that tax-funded organizations would be eligible for compensation. Rather, we believe the intent of PURPA was identical with our intent in recently adopting broader Rules to award participant compensation: to provide a means of compensating participant organizations which inherently have funding hardships because they lack a broad stable funding base. The consumer group with open membership which must rely on solicited funds, grants, and donations falls into the category of the participant which we envisioned would be eligible for compensation. In contrast, entities funded with tax revenues or with taxing authority have the ability, if they choose to exercise it, to fund participation in our proceedings.

Any compensation ultimately awarded under our existing or new Rules is passed on to all ratepayers as an item of utility expense regardless of governmental entity boundaries. It would not be fair or reasonable for all of PG&E's ratepayers in its service territory to bear participation expenses incurred by specific governmental organizations representing a discrete segment of PG&E's ratepayers when such organizations could be funded through taxing authority. If we were to find governmental entities eligible for compensation we would be shifting a governmental funding activity from taxpayers to ratepayers.

Historically, many cities, counties, other governmental entities, and state agencies have participated in our proceedings. We have welcomed their participation. We continue to welcome it. Our experience, however, has been that they have participated without

ratepayer-funded compensation. We believe these organizations can and will continue to participate when they determine that participation is in the interest of their taxpaying constituents. Choosing to participate, state agencies aside, is a matter of local concern; as such, it ought to remain locally funded, even though participation may have direct or incidental benefits for ratepayers outside the boundaries of the participating local governmental entity (or group of entities). Further, the best means of ensuring that participating organizations, either affiliated with or composed of governmental entities, are representing the direct interests of their constituents is for their participation to be funded through tax revenues.

We note that none of the above organizations are open to nonpublicly elected or appointed members, nor do they solicit any outside nongovernmental membership. LGC is composed entirely of governmental officials from various localities; CAL-SLA is composed exclusively of governmental bodies; and SCRUB is composed of public school districts. While LGC indicates it represents no particular governmental entity, the fact that its membership is composed entirely of elected officials places it in the category of an organization so closely tied to and identified with local governmental entities and the representative government process that in all fairness under our Rules it cannot be classified as a nongovernmental organization.

We find CAL-SLA, LGC, and SCRUB ineligible for compensation.

2. Lee M. Lambert and Robert D. Innes,
and Stephen S. Slauson

Lambert and Innes raise issues solely related to PG&E's requested cost of capital. Slauson raises issues associated with estimated salary and benefit expense levels, as well as construction

cost control. Since the relevant provisions of PURPA do not relate to determination of expense levels or rate of return, but rather to the division of costs among customer classes and the design of rates, we find that the issues raised are not appropriate PURPA issues. Petitioners' requests for compensation under PURPA are denied. We need not address the question of eligibility.

Petitioners may consider filing for compensation as set forth in D.83-04-017 dated April 6, 1983 in OII 100.

3. Toward Utility Rate Normalization

The issues TURN raise do fit within the division of cost/rate design framework discussed above. TURN and its constituent consumer class would suffer a significant financial hardship in raising these issues in this proceeding, absent the ability to potentially receive compensation. We find TURN eligible to claim compensation.

Findings of Fact

1. CAL-SLA, LGC, and SCRUB are either substantially affiliated with or are composed entirely of local governmental bodies with taxing authority and are therefore ineligible for compensation under the principles followed by this Commission in D.82-06-065 dated June 14, 1982 and D.83-04-017 in OII 100 dated April 6, 1983.

2. The issues raised by Lee M. Lambert and Robert D. Innes, and Stephen S. Slauson are not appropriate PURPA issues because they deal with the level of companywide expenses, rather than the allocation of those expenses to customer classes and the design of rates. Therefore, the question of PURPA eligibility need not be considered.

3. TURN raises issues relating to customer class cost allocation and rate design. These are appropriate PURPA issues.

4. TURN and its constituent consumer class would suffer a significant financial hardship absent the ability to receive compensation.

Conclusions of Law

1. The petitions of CAL-SLA, LGC, SCRUB, Lee M. Lambert and Robert D. Innes, and Stephen S. Slauson should be denied.
2. The petition of TURN should be granted.

INTERIM ORDER

IT IS ORDERED that:

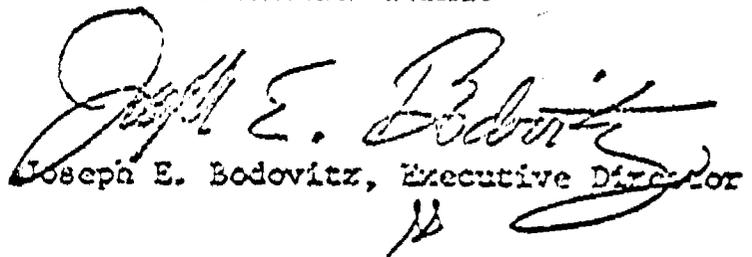
1. The petitions for a Finding of Eligibility for Compensation in A.82-12-48 of CAL-SLA, LGC, SCRUB, Lee M. Lambert and Robert D. Innes, and Stephen S. Slauson are denied.
2. The petition for a Finding of Eligibility for Compensation in A.82-12-48 of TURN is granted.

This order becomes effective 30 days from 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

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LIST OF APPEARANCES

Applicant: Peter W. Hanschen, William E. Edwards, Michael S. Hindus, and Gail A. Greely, Attorneys at Law, for Pacific Gas and Electric Company.

Interested Parties: Susan L. Steinhauser, John R. Bury, Charles R. Kocher, H. Robert Barnes, David N. Barry, III, Richard K. Durant, Frank J. Cooley, and Donald M. Clary, Attorneys at Law, for Southern California Edison Company; Robert M. Loch and Thomas D. Clarke, Attorneys at Law, for Southern California Gas Company; Biddle & Hamilton, by Richard L. Hamilton, Attorney at Law, for Western Mobilehome Association; Robert Kihel, by Thomas Vargo, for Naval Facilities Engineering Command; Bruce J. Williams, for San Diego Gas & Electric Company; Major Robert J. Boonstoppel and David A. McCormick, for Consumer Interest of U.S. Department of Defense and other affected Federal Executive Agencies; Downey, Brand, Seymour & Rohwer, by Philip A. Stohr, Attorney at Law, for Nabisco Brands, Inc., General Motors Corporation, and Union Carbide Corporation (under the designation "Industrial Users"); McCracken & Antone, by Michael D. McCracken, Attorney at Law, for California Street Light Association; Brobeck, Phleger & Harrison, by Richard C. Harper and Gordon E. Davis, Attorneys at Law, for California Manufacturers Association; Greve, Clifford, Diepenbrock & Paras, by Thomas S. Knox, Attorney at Law, for California Retailers Association; George Agnost, City Attorney, by Leonard Snaider, Deputy City Attorney, for the City and County of San Francisco; Gary D. Fay and Gregg Wheatland, Attorneys at Law, for California Energy Commission; William L. Knecht, Attorney at Law, for California Association of Utility Shareholders; Walters, Bukey & Shelburne, by Diana D. Halpenny, Attorney at Law, for Schools Committee for Reducing Utility Bills (SCRUB); Sara M. Hoffman, Energy Coordinator, for Contra Costa County; Randy Baldschun and Donald H. Maynor, Attorneys at Law, for City of Palo Alto; Michel Peter Florio, Attorney at Law, for Toward Utility Rate Normalization (TURN); Nancy R. Teater and William E. Swanson, for Stanford University; Anita P. Arriola, Attorney at Law, and Dan Becker, for Public Advocates; Brobeck, Phleger & Harrison, by William H. Booth, Attorney at Law, and Jane S. Kumin, Attorney at Law, for Natomas Company; Mark R.

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Farman, for Resource Management International, Inc.; Stephen S. Slauson, for Independent Electrical Contractors of Alameda County; Harry K. Winters, for University of California; William B. Marcus, for California Hydro Systems, Inc. and Independent Energy Producers Association; John W. Krautkraemer, Thomas J. Graff, and David B. Roe, for Environmental Defense Fund; Craig Merrilees, for Campaign for Economic Democracy; Nicholas R. Tibbetts, for Congressman Douglas H. Bosco; Douglas M. Grandy, for State Government Energy Task Force; Antone S. Bulich, Jr. and Allen R. Crown, Attorneys at Law, for California Farm Bureau Federation; Wayne L. Meek, for Simpson Paper Company; Barbara Kyle, for Citizens Action League; Rita Norton, for the City of San Jose; John T. Owens, for Williams Brothers Engineering Company; James F. Sorensen, for Friant Water Users Association; E. D. Yates, for California League of Food Processors; Robert G. MacFarlane and Richard Owen Baish, Attorney at Law, for El Paso Natural Gas Company; Norman J. Furuta, Attorney at Law, for the U.S. Department of the Navy; Susan L. Rockwell and Wayne L. Emery, Attorneys at Law, for United States Steel Corporation; Donald G. Salow, for Association of California Water Agencies; Hanna & Morton, by R. Lee Roberts, Attorney at Law, and Douglas K. Kerner, for Ultrasystems, Inc. and Occidental Geothermal, Inc.; John F. Powell, Attorney at Law, for Bay Area Air Quality Management District; John R. Vickland, Attorney at Law, for San Francisco Bay Area Rapid Transit District; Morrison & Foerster, by John M. Adler and Charles R. Farrar, Jr., Attorneys at Law, for United States Borax & Chemical Corporation; and Matthew V. Brady, Attorney at Law, Graham & James, by James D. Scueri, Attorney at Law, Lee Martin Lambert, and Robert B. Innes; for themselves.

Commission Staff: Michael Day and Thomas Corr, Attorneys at Law, Bruce DeBerry, and Martin J. O'Donnell.

(END OF APPENDIX A)



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