

Decision 83 05 088 JUN 29 1983

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of SOUTHERN CALIFORNIA EDISON)
COMPANY and PACIFIC GAS AND)
ELECTRIC COMPANY for a Certificate)
that present and future public)
convenience and necessity require)
or will require the participation)
by Applicants and others in the)
construction and operation of six)
new coal fired steam electric)
generating units, to be known as)
Units 1, 2, 3, and 4, at a site)
in Nevada known as the Harry Allen)
Generating Station, and as Units 1)
and 2 at a site in Utah known as)
the Warner Valley Generating)
Station, together with other)
appurtenances to be used in)
connection with said generating)
stations.)

Application 59308
(Filed November 30, 1979;
amended January 7, 1980,
February 6, 1980, and
May 27, 1980)

ORDER GRANTING MOTIONS TO COMPEL AND FOR
EXTENSION OF TIME

Ordering Paragraph 1 of Decision (D.)93724 as modified by D.83-04-056 and D.83-05-020 provides that Environmental Defense Fund (EDF) may file a brief, on or before July 5, 1983, explaining why special circumstances in Application (A.)59308 may justify an award of compensation for attorney and witness fees and other reasonable related costs. Our decision further states:

"In its brief, EDF should clearly establish the causal relationship between its participation and the relief obtained in A.59308 and that its participation substantially contributed to the outcome of that proceeding. EDF should also include its claim for reasonable attorney and witness fees and other related costs supported by records, notes, etc. which establish how those fees and costs were determined."

On June 10 and June 14, 1983, EDF filed "Motions to Compel Production of Information on Claim for Counsel and Expert Witness Fees or, in the Alternative, for a Hearing at Which Witnesses and Documents will be Subpoenaed". The motions allege that on May 26, 1983, EDF served written data requests on counsel for Southern California Edison Company (Edison) and Pacific Gas and Electric Company (PG&E) requesting certain information within 10 working days and that Edison and PG&E have not complied with the data requests. The motions further allege that counsel for Edison and PG&E have informed EDF that they will not voluntarily comply with the data requests.

On June 20, 1983, EDF filed a motion for an extension of time to file its brief to a date 60 days after a ruling is issued on the motions to compel production of information. The motion states that "Because the applicants have refused to provide any of the relevant information, and because the Commission has not yet

compelled them to, it is not possible for EDF to file its brief in accordance with the schedule previously set by the Commission." The motion for extension of time is not opposed by Edison or PG&E.

On June 20, 1983, Edison filed a document opposing EDF's motion to compel. A similar filing was made by PG&E on June 23, 1983. The companies acknowledge that they were served with data requests by EDF and that they have refused to produce the information requested. The companies argue that the motions to compel should be denied and that the Commission should issue various protective orders to prevent EDF from obtaining discovery.

Discussion

Edison and PG&E make several arguments with respect to EDF's motions to compel. First, they maintain that the motions should be denied due to EDF's failure to obtain a subpoena duces tecum pursuant to the Commission's Rules of Practice and Procedure. Instead, EDF served data requests on the companies and filed its motions when it became apparent that the companies would not comply with the requests. While we agree that the procedure followed by EDF is somewhat unusual, we fail to see how Edison or PG&E have been disadvantaged in any way. From the beginning, the companies were fully aware of the information sought by EDF and the reasons for which this information was sought. Consequently, we see no reason to deny the motions on this basis.

Second, the companies maintain that producing the information would be oppressive and burdensome. We do not find this argument to be convincing. While the companies would have to review their files and produce the requested information, this burden does not appear to be unreasonable in light of the relevance of this information and the fact that much of it cannot be obtained elsewhere. This is particularly true with respect to information relating to whether the companies' decision to withdraw A.59308 was caused, in any way, by EDF's participation in our proceeding.

Third, Edison argues that the Commission's authority to compel production of information is limited to investigations or hearings before the Commission and that no "hearing" or "investigation" is now in progress. While the issues relating to certification of the Allen-Warner project are no longer pending, the issues relating to EDF's entitlement to attorney's fees and other costs and the amount of such fees and costs remain open. Under these circumstances, this Commission retains the power to compel discovery under Section 1794 of the Public Utilities Code.

Fourth, PG&E argues that EDF's motion should be denied on the grounds of relevance. It states that "Even if there had been any influence on PG&E's decision not to participate in [the Allen Warner Valley Energy System], it would be irrelevant to EDF's claim for fees." We disagree. This is precisely the burden we placed on EDF in D.83-04-056 and D.83-05-020. EDF should be allowed to obtain

information relating to whether a causal relationship existed between its participation in the Allen-Warner proceeding and either PG&E's or Edison's decision to withdraw the application. Obviously, much of the information on this question is in the hands of the companies.

PG&E also maintains, although less vigorously, that the other information requested by EDF is irrelevant. Again, we disagree. Questions 8 through 13 relate to the counsel, consultants, experts, and employees used by PG&E in the Allen-Warner proceeding and the compensation paid to these persons. These questions are relevant to determining what constitutes a reasonable level of fees. As PG&E is well aware, our practice is to compute such fees at prevailing market rates for persons of comparable training and experience who are offering similar services. In addition, we have provided that such fees shall not exceed those paid by the Commission or the utility. See, e.g. Rules 76.02(i) and 76.22(i). With respect to Questions 5 through 7, while this information may be less central than other information sought by EDF, it has the potential of shedding light on how PG&E and Edison reached their decisions to withdraw and whether EDF's participation was a factor in these decisions. Also, we note that the burden of providing this information is slight since the questions merely ask that the

companies state the date and manner in which they learned of the California Energy Commission's intention to oppose the Allen-Warner project.

Fifth, PG&E argues that EDF should be required to meet a number of threshold conditions before being entitled to discovery. These conditions include an adequate demonstration of financial hardship, a statement of facts which EDF believes justifies its claim for fees, and a showing of good cause for discovery. We see no reason to require the first two conditions at this point. We, however, expect EDF to cover these points in its brief. With respect to the third condition, we conclude that good cause does exist for granting the motions to compel.

Sixth, both Edison and PG&E request that we issue various protective orders to prevent EDF from pursuing further discovery. In particular, the companies request that we quash the notices of deposition of Edison President Howard Allen, PG&E Chairman Frederick Mielke, and other corporate officers. The companies take particular umbrage at EDF's intention to depose Messrs. Allen and Mielke. The companies maintain that they, first, should be given the opportunity to produce other witnesses who may be able to satisfy EDF's inquiries, and be required to produce their President and Chairman only after they have been shown to be indispensable parties. PG&E further states that Mr. Mielke is out of the country until July 15.

Based on the notices of deposition served on the companies, EDF's inquiries appear relevant to its request for fees. We will require the companies to produce witnesses who are competent to respond to EDF's inquiries. If after deposing these witnesses, EDF finds that depositions of Messrs. Allen and Mielke are still necessary, EDF should obtain a subpoena pursuant to Rules 59 and 60 of our Rules of Practice and Procedure. The subpoena should be served on the companies with a supporting affidavit which specifies the matters on which EDF desires to depose the witnesses, the relevance of these matters to EDF's claim for fees, and why other witnesses are incapable of providing the information sought by EDF. Pursuant to Rule 61, the companies can renew their motions to quash at that time.

Finally, Edison and PG&E mention in passing that some of the documents sought by EDF may be protected as the work product of their attorneys. We find that the companies' statements are simply too vague and too equivocal for us to issue a protective order at this time. If, on reviewing the documents requested by EDF, Edison or PG&E conclude that certain documents are privileged, it should move for a protective order at that time. We note that the companies will bear the burden of establishing that a particular document falls within the category of privileged work product. Thus, the companies'

motion should clearly specify the documents they believe are privileged and their reasons for believing that a privilege exists. EDF will be given an opportunity to respond to such motions and state why it believes no privilege arises or why denial of a privileged document would be unfairly prejudicial or unjust. Pending a ruling on a motion for protective order based on work product privilege, PG&E and Edison will be allowed to withhold the particular documents at issue.

Apart from these procedures, we will not impose any specific restrictions on the discovery process at this time. EDF, however, is placed on notice that it should carefully tailor its discovery efforts to obtain information which is relevant to its claim for attorney's fees and other costs. We also place Edison and PG&E on notice that they should cooperate with legitimate discovery requests.

We will grant EDF's request for an extension of time. EDF's brief should be filed on or before September 27, 1983. Reply briefs will be due 30 days after EDF's brief is filed. In order that parties can adhere to this schedule, our order will be made effective today.

Findings of Fact

1. On May 26, 1983, EDF served data requests on counsel for Edison and PG&E requesting certain information within 10 working days.

2. Edison and PG&E have not provided the information requested nor do they intend to voluntarily do so.

3. On June 10 and 14, 1983, EDF filed motions to compel the production of information.

4. On June 20 and 23, 1983, Edison and PG&E filed documents in opposition to EDF's motions to compel and requesting that we quash the notices of deposition of Howard Allen and Frederick Mielke and that various protective orders be issued.

5. On June 20, 1983, EDF filed a motion for a 60-day extension of time on the filing of its brief on attorney's fees and other costs. Neither Edison nor PG&E oppose this motion.

6. The information sought by EDF is relevant to this proceeding.

7. The burden of providing this information is not unreasonable.

8. The procedure used by EDF has not disadvantaged Edison or PG&E in any way.

Conclusions of Law

1. The Commission has the authority to compel discovery in this proceeding.

2. Good cause exists for granting EDF's motions to compel the production of information.

3. Good cause exists for granting EDF's motion for extension of time.

4. Edison's and PG&E's motions to quash and for protective orders should be denied.

5. Edison and PG&E should be allowed to file motions to quash and for protective orders according to the procedures described in this decision.

6. In order that parties may comply with the briefing schedule established, this order should be effective today.

IT IS ORDERED that:

1. Southern California Edison (Edison) shall furnish to Environmental Defense Fund (EDF) information requested in the "Data Request" attached to the motion filed June 10, 1983 and attached hereto as Appendix A no later than 10 working days after the effective date of this order.

2. Pacific Gas and Electric Company (PG&E) shall furnish to EDF the information requested in the "Data Request" attached to the motion filed June 14, 1983 and attached hereto as Appendix B no later than 10 working days after the effective date of this order.

3. Edison shall produce witnesses for deposition who are capable of testifying to the matters described in the "Notice of Deposition of Southern California Edison Company and Request for

Production of Documents" attached hereto as Appendix C. Such witnesses shall be produced within 30 days of the effective date of this order at a time and place agreed to by counsel for EDF and Edison. The documents described in Appendix C shall be produced according to the terms of Ordering Paragraph 1.

4. PG&E shall produce witnesses for deposition who are capable of testifying to the matters described in the "Notice of Deposition of Pacific Gas and Electric Company and Request for Production of Documents" attached hereto as Appendix D. Such witnesses shall be produced within 30 days of the effective date of this order at a time and place agreed to by counsel for EDF and PG&E. The documents described in Appendix D shall be produced according to the terms of Ordering Paragraph 2.

5. The time for the filing of briefs by EDF as permitted by D.93724 as modified by D.83-04-056 and D.83-05-020 is extended to September 27, 1983.

This order is effective today.

Dated JUN 29 1983, at San Francisco, California.

LEONARD M. GRIMES, JR.
President

VICTOR CALVO

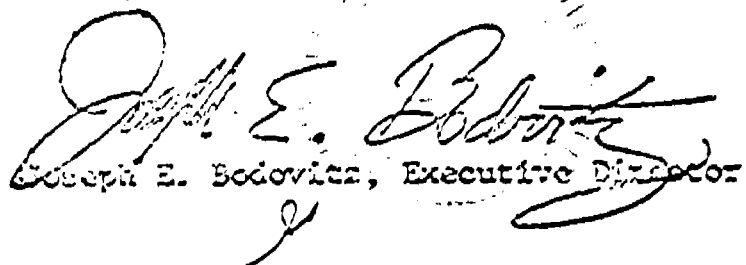
PRISCILLA C. GREW

DONALD VIAL

WILLIAM T. BAGLEY

Commissioners

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


Joseph E. Bodovitz, Executive Director

Appendix A

WILLIAM BENNETT TURNER
TURNER & SANDMANN
354 Pine Street
San Francisco, California 94104
(415) 391-8100

Attorney for
Environmental Defense Fund

BEFORE THE
PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of SOUTHERN CALIFORNIA EDISON)
COMPANY and PACIFIC GAS AND)
ELECTRIC COMPANY for a Certificate)
that present and future public)
convenience and necessity require)
or will require the participation)
by Applicants and others in the)
construction and operation of six) Application 59308
new coal fired steam electric)
generating units, to be known as)
Units 1, 2, 3 and 4, at a site in)
Nevada known as the Harry Allen)
Generating Station, and as Units 1)
and 2 at a site in Utah known as)
the Warner Valley Generating)
Station, together with other)
appurtenances to be used in)
connection with said generating)
stations.)
_____)

DATA REQUEST

Please produce for inspection and copying, within
ten working days, the following information:

1. All memoranda, studies, analyses, correspondence,

notes of conversations, other notes, other writings and documents of any kind (including charts, diagrams and computer printouts) constituting, summarizing, describing or referring to:

(a) the decision of Pacific Gas & Electric (PGandE) to withdraw Application 59308 (application for a Certificate of Public Convenience and Necessity for the Harry Allen-Warner Valley coal project) from consideration by the California Public Utilities Commission (CPUC);

(b) the decision that PGandE would make a public announcement of the decision to withdraw Application 59308; and

(c) the decision of when PGandE would make the public announcement of the decision to withdraw Application 59308.

2. All memoranda, studies, analyses, correspondence, notes of conversations, other notes, other writings and documents of any kind (including drafts or draft versions of all or any part of the final brief of PGandE in Application 59308, which was due to be submitted in February, 1981, in the CPUC proceeding) constituting, summarizing, describing or referring to the final position that PGandE would take in Application 59308 on submission to the CPUC for final decision.

3. The name, position as of January 1, 1981, and current position of every officer or employee of PGandE who

had authority to participate in and every official or employee who actually participated in any of the decisions described in request 1(a), (b) and (c) above.

4. State on what date PGandE reached each of the decisions described in request 1(a), (b) and (c) above.

5. State on what date and in what manner PGandE first learned of the California Energy Commission (CEC) staff intention to recommend that CEC adopt a position opposing the grant of a certificate in the CPUC proceeding, Application 59308.

6. State on what date and in what manner PGandE first learned that the CEC position described in request 5 above would be based, in whole or in part, on a proposed finding that the Harry Allen/Warner Valley project was unneeded due to the availability and feasibility of alternative energy sources.

7. State on what date and in what manner PGandE first learned that official action by the CEC on the recommended position referred to in request 5 above, and the proposed finding referred to in item 6 above, would take place at the CEC business meeting on February 11, 1981.

8. All documents constituting, summarizing, describing or referring to any retainer agreement, fee contract, invoice, statement or bill for services rendered, correspondence or other writing between PGandE and every outside law firm, attorney, expert and consultant engaged to render services in Application 59308.

9. All documents constituting, summarizing, describing or referring to records indicating (a) the time spent by employees of PGandE on Application 59308, and (b) the costs and expenses incurred by PGandE in Application 59308.


10. List the name and title of every PGandE employee, outside counsel, expert and consultant who rendered services on behalf of PGandE in Application 59308, and state (a) in general, the services performed by each such person; (b) the dates within which such services were performed; and (c) the number of hours spent by such person on Application 59308.

11. State whether each person identified in request 10 above kept contemporaneous time records of services rendered in Application 59308. If so, describe such records in a manner suitable for use in a subpoena.

12. The direct and indirect compensation (including pension and health benefits) of each person identified in request 10 above (a) at the time of the person's work on Application 59308 and (b) currently.

13. The overhead (including rent, depreciation, supplies, equipment, secretarial and support services, utilities including telephone, insurance, etc.) attributable to each person identified in request 10 above. Please describe the basis on which such overhead is calculated.

Dated: May 26, 1983



William Bennett Turner

Appendix B

WILLIAM BENNETT TURNER
TURNER & SANDMANN
354 Pine Street
San Francisco, California 94104
(415) 391-8100

Attorney for
Environmental Defense Fund

BEFORE THE
PUBLIC UTILITIES COMMISSION
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ten working days, the following information:

1. All memoranda, studies, analyses, correspondence,
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documents of any kind (including charts, diagrams and computer printouts) constituting, summarizing, describing or referring to:

(a) the decision of Southern California Edison Company (Edison) to withdraw Application 59308 (application for a Certificate of Public Convenience and Necessity for the Harry Allen/Warner Valley coal project) from consideration by the California Public Utilities Commission (CPUC);

(b) the decision that Edison would make a public announcement of the decision to withdraw Application 59308; and

(c) the decision of when Edison would make the public announcement of the decision to withdraw Application 59308.

2. All memoranda, studies, analyses, correspondence, notes of conversations, other notes, other writings and documents of any kind (including drafts or draft versions of all or any part of the final brief of Edison in Application 59308, which was due to be submitted in February, 1981, in the CPUC proceeding) constituting, summarizing, describing or referring to the final position that Edison would take in Application 59308 on submission to the CPUC for final decision.

3. The name, position as of January 1, 1981, and current position of every officer or employee of Edison who had authority to participate in and every official or employee

who actually participated in any of the decisions described in request 1(a), (b) and (c) above.

4. State on what date Edison reached each of the decisions described in request 1(a), (b) and (c) above.

5. State on what date and in what manner Edison first learned of the California Energy Commission (CEC) staff intention to recommend that CEC adopt a position opposing the grant of a certificate in the CPUC proceeding, Application 59308.

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7. State on what date and in what manner Edison first learned that official action by the CEC on the recommended position referred to in request 5 above, and the proposed finding referred to in item 6 above, would take place at the CEC business meeting on February 11, 1981.

8. All documents constituting, summarizing, describing or referring to any retainer agreement, fee contract, invoice, statement or bill for services rendered, correspondence or other writing between Edison and every outside law firm, attorney, expert and consultant engaged to render services in Application 59308.

9. All documents constituting, summarizing, describing or referring to records indicating (a) the time spent by employees of Edison on Application 59308, and (b) the costs and expenses incurred by Edison in Application 59308.

10. List the name and title of every Edison employee, outside counsel, expert and consultant who rendered services on behalf of Edison in Application 59308, and state (a) in general, the services performed by each such person; (b) the dates within which such services were performed; and (c) the number of hours spent by such person on Application 59308.

11. State whether each person identified in request 10 above kept contemporaneous time records of services rendered in Application 59308. If so, describe such records in a manner suitable for use in a subpoena.

12. The direct and indirect compensation (including pension and health benefits) of each person identified in request 10 above (a) at the time of the person's work on Application 59308 and (b) currently.

13. The overhead (including rent, depreciation, supplies, equipment, secretarial and support services, utilities including telephone, insurance, etc.) attributable to each person identified in request 10 above. Please describe the basis on which such overhead is calculated.

Dated: May 26, 1983



William Bennett Turner

Appendix C

WILLIAM BENNETT TURNER
TURNER & SANDMANN
354 Pine Street
San Francisco, California 94104
(415) 391-8100

Attorneys for
Environmental Defense Fund

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BEFORE THE
PUBLIC UTILITIES COMMISSION
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In the Matter of the Application)	
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that present and future public)	
convenience and necessity require)	Application 59308
or will require the participation)	
by Applicants and others in the)	NOTICE OF DEPOSITION OF
construction and operation of six)	SOUTHERN CALIFORNIA
new coal-fired steam electric)	EDISON COMPANY, AND
generating unitss, to be known as)	REQUEST FOR PRODUCTION
Units 1, 2, 3 and 4, at a site in)	OF DOCUMENTS
Nevada known as the Harry Allen)	(Pub. Utils. C. 1794;
Generating Station, and as Units 1)	<u>C.C.P. 2019)</u>
and 2 at a site in Utah known as)	
the Warner Valley Generating)	
Station, together with other)	
appurtenances to be used in)	
connection with said generating)	
stations.)	

TO THE PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on June 24, 1983, at 9:30
a.m., at the Center for Law in the Public Interest, 10951
West Pico Boulevard, Los Angeles, California, counsel for the
Environmental Defense Fund (EDF) will take the oral

deposition, pursuant to C.C.P. 2019(a)(6), of Southern California Edison Company (Edison), of 2244 Walnut Grove Avenue, Rosemead, California. Edison shall designate one or more officers, directors or managing agents, or other persons who consent, to testify on its behalf with regard to the following matters:

(a) The decision of Edison to withdraw Application 59308 (application for a Certificate of Public Convenience and Necessity for the Harry Allen/Warner Valley coal project) from consideration by the California Public Utilities Commission (CPUC);

(b) The decision that Edison would make a public announcement of the decision to withdraw Application 59308; and

(c) The decision of when Edison would make the public announcement of the decision to withdraw Application 59308.

The deposition will continue from day to day until completed.

PLEASE TAKE FURTHER NOTICE that the deponent designated by Edison is requested to bring with him and produce for inspection and copying at the deposition the following documents in Edison's possession or under its control:

1. All memoranda, studies, analyses, correspondence, notes of conversations, other notes, other writings and documents of any kind (including charts, diagrams and computer printouts) constituting, summarizing,

describing or referring to the decisions described in (a), (b) and (c) above.

2. All memoranda, studies, analyses, correspondence, notes of conversations, other notes, other writings and documents of any kind (including drafts or draft versions of all or any part of the final brief of Edison in Application 59308, which was due to be submitted in February, 1981, in the CPUC proceeding) constituting, summarizing, describing or referring to the final position that Edison would take in Application 59308 on submission to the CPUC for final decision.

Dated: June 9, 1983



William Bennett Turner

WILLIAM BENNETT TURNER
TURNER & SANDMANN
354 Pine Street
San Francisco, California 94104
(415) 391-8100

Attorneys for
Environmental Defense Fund

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Generating Station, and as Units 1)	<u>C.C.P. 2019)</u>
and 2 at a site in Utah known as)	
The Warner Valley Generating)	
Station, together with other)	
appurtenances to be used in)	
connection with said generating)	
stations.)	

TO THE PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on June 27, 1983, at 9:30
a.m., at the offices of Turner & Sandmann, 354 Pine Street,
San Francisco, California, counsel for the Environmental
Defense Fund (EDF) will take the oral deposition, pursuant to

C.C.P. 2019(a)(6), of Pacific Gas and Electric Co. (PGandE),
77 Beale Street, San Francisco, California. PGandE shall
designate one or more officers, directors or managing agents,
or other persons who consent, to testify on its behalf with
regard to the following matters:

(a) The decision of PGandE to withdraw Application
59308 (application for a Certificate of Public Convenience
and Necessity for the Harry Allen/Warner Valley coal project)
from consideration by the California Public Utilities
Commission (CPUC);

(b) The decision that PGandE would make a public
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(c) The decision of when PGandE would make the
public announcement of the decision to withdraw Application
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The deposition will continue from day to day until completed.


PLEASE TAKE FURTHER NOTICE that the deponent
designated by PGandE is requested to bring with him and
produce for inspection and copying at the deposition the
following documents in PGandE's possession or under its
control:

1. All memoranda, studies, analyses,
correspondence, notes of conversations, other notes, other
writings and documents of any kind (including charts,
diagrams and computer printouts) constituting, summarizing,
describing or referring to the decisions described in (a),

(b) and (c) above.

2. All memoranda, studies, analyses, correspondence, notes of conversations, other notes, other writings and documents of any kind (including drafts or draft versions of all or any part of the final brief of PGandE in Application 59308, which was due to be submitted in February, 1981, in the CPUC proceeding) constituting, summarizing, describing or referring to the final position that PGandE would take in Application 59308 on submission to the CPUC for final decision.

Dated: June 14, 1983



William Bennett Turner