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Decision 83 05 112 JUN 29 1983**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation by)
 Rulemaking into the adoption of new)
 Rules of Practice and Procedure to)
 process and administer requests for)
 attorney and witness fees and others)
 expenses of participants in)
 Commission proceedings.)

OII 100
 (Filed November 13, 1981)

ORDER MODIFYING DECISION (D.)
83-04-017 AND DENYING REHEARING

Applications for rehearing of D.83-04-017 have been filed by The Pacific Telephone and Telegraph Company (Pacific), Pacific Gas and Electric Company (PG&E), Southern California Gas Company (SoCal) and John C. Lakeland, an interested party. General Telephone Company of California (General) filed a petition for modification. We have carefully considered each and every allegation of error and request for modification in these documents and are of the opinion that good cause for granting rehearing has not been shown. However D.83-04-017 should be modified in several respects to correct possible ambiguities and to make it conform in all respects to our original intentions.

First, we do not believe our implementation of the new rules should be stayed pending on expression of the Legislature's will with respect to Senate Bill 4 (Montoya) as some of the applicants suggest. The need to obtain adequate public participation in our proceedings, which we discussed fully in D.83-04-017, is compelling. Although we recognize that the Legislature, by way of Senate Bill 4 or any other piece of legislation may ultimately affect the manner and scope of our awards of fees to such participants, we should not delay implementing such an important program on that account. This

would not be the first instance where the Legislature has supported one of our own decisions by subsequent legislation. Section 739, Public Utilities Code (Lifeline Utility Rates) is one which comes quickly to mind.

As to those allegations which question our jurisdiction to award costs pursuant to the rules we adopted, we believe our discussion of that issue in D.83-04-017 was an adequate response.

The assertion that funding such awards through utility rates constitutes a violation of freedom of speech was noted in D.83-04-017 at pages 9 and 10, mimeo. However it has come to our attention that the merits of this assertion were not fully discussed and no conclusion of law was provided. Therefore, D.83-04-017 is modified to provide such a discussion and conclusion.

Finally, a number of modifications to specific rules were requested by various parties. We have carefully considered these and are of the opinion that, except as noted below, no such modifications are appropriate at this time.

- (a) The following phrase should be added to Rule 76.22(d) to make it conform to our original intent:

"... nor any entity which in the Commission's reasoned opinion was established or formed by a governmental entity for the purpose of participating in a Commission proceeding"

- (b) Rules 76.23, 76.24, 76.26, 76.28 and 76.31(b) should be modified to require that filings under those rules shall also comply with Rule 5. This requirement was inadvertently omitted.

- (c) The title of Rule 76.32 should be changed to more clearly describe its content.

The actual text of these proposed amendments is attached as Appendix A.

No other issues need be discussed. Therefore, good cause appearing,

IT IS ORDERED that:

1. D.82-04-017 is modified as follows:

- (a) The following language is inserted on page 13, immediately before the heading "General Comments on Proposed Rules:"

"We are likewise not persuaded that requiring a utility, and ultimately its ratepayers, to fund awards of reasonable expenses pursuant to the rules we adopt by this decision constitutes a violation of their free speech guarantees under the U.S. and California Constitutions. Pacific has not pointed to any decision of a court or regulatory agency which has so held. The decision in Abood vs. Detroit Board of Education, 431 U.S. 209 (1977), on which Pacific relies, is clearly distinguishable on its facts. Even if we were to assume, arguendo, that it applies to utilities and their customers, it would appear to prevent a utility from passing on to its customers its own expenses in hearings before this Commission as much as it would those of public participants.

In any event we rely on our mandate to set just and reasonable rates based upon a utility's reasonable expenses, plus a fair return on its investment (Sections 451, 453, 454 and 728, Public Utilities Code in our determination that awards for public participation made pursuant to the attached rules are reasonable expenses of a utility for ratemaking purposes.

- (b) On page 58, mimeo., Conclusions of Law 10 and 10(a) are added and read as follows:

"10. Requiring a utility and, ultimately, its ratepayers to fund awards made under the attached rules is not a violation of their freedom of speech guarantees in the United States and California Constitutions.

"10(a) The amounts of such awards are reasonable expenses of the funding utility for ratemaking purposes."

2. Rehearing of D.83-04-017 as modified herein is denied.

3. Except as granted herein, modification is denied.

This order is effective today.

Dated June 29, 1983, at San Francisco, California.

LEONARD M. GRIMES, JR.
President

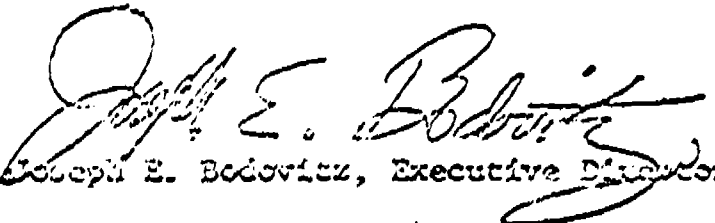
VICTOR CALVO
PRISCILLA C. GREW
DONALD VIAL

Commissioners

I abstain.

WILLIAM T. BAGLEY, Commissioner

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


Joseph E. Bodovitz, Executive Director

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APPENDIX A

Article 18.6

(Procedures for Awarding Reasonable
Compensation to Public Participants in
Commission Proceedings)

The Commission Proposes to Amend Certain of The Rules In Article 18.6 To Read In Full As Follows:

Rule 76.22(d) "Participant" means any individual, group of individuals, organization, association, partnership, or corporation taking part or intending to take part in a Commission proceeding. For the purpose of these rules the term participant does not include governmental entities nor any entity which, in the Commission's reasoned opinion, was established or formed by a governmental entity for the purpose of participating in a Commission proceeding.

76.23 (Rule 76.23) Participant's Request.

As soon after the commencement of a proceeding as is reasonably possible, but in any event before the beginning of evidentiary hearings in the proceeding, or after evidentiary hearings are completed, the participant shall file with the Commission's Docket Office and serve on all the parties to the proceeding a Notice of Intent to Claim Compensation, in compliance with Rules 2, 3, 4, 5, 6, and 7 and with an attached certificate of service by mail on appearances. In all cases, the Notice of Intent must set forth the following:

76.24 (Rule 76.24) Showing of Other Parties.

The Commission staff and any other party to the proceeding may file a statement within 15 days after the participant's filing commenting on any portion that filing and making appropriate recommendations to the Commission. The filings under this Rule shall comply with Rules 2, 3, 4, 5, 6, and 7 and be accompanied by a certificate of service by mail on appearances.

76.26 (Rule 76.26) Compensation Filings of Participant.

Within 30 days following the issuance of a Commission order or decision for which a ruling under Rule 76.25 has been made, a participant may file a request for compensation with the Docket Office. The filing shall comply with Rules 2, 3, 4, 5, 6, and 7 and shall have attached a certificate of service by mail on appearances.

76.28 (Rule 76.28) Protests.

Within 30 days of the filing of a request for compensation or within 20 days after the filing of the staff audit, if any, whichever is later, the Commission staff or any other party may file a protest with the Commission's Docket Office. The filings under this Rule shall comply with Rules 2, 3, 4, 5, 6, and 7 and be accompanied by a certificate of service by mail on parties.

76.31(b) (Rule 76.31(b))

A request under the Rule shall be filed within five days of the date of the appearance by the participant in the proceeding. Comments by the staff or any party, in the nature of that described in Rule 76.25, shall be made within 20 days after the filing of the participant's request. All filings under this Rule shall comply with Rules 2, 3, 4, 5, 6, and 7 and shall have attached a certificate of service by mail on parties.

76.32 (Rule 76.32) Application of Rules to Pending and Prospective Proceedings.

These rules will apply to issues raised subsequent to the effective date of the order promulgating these rules in any pending cases, applications, investigations, and rulemakings, and to all cases, applications, and investigations filed on or after the effective date of the order promulgating these rules, without regard to the formal status of the matter on the effective date of these rules. A proceeding will be deemed initiated on the date an application or complaint is filed or an order instituting investigation is issued. Times for filing various requests and responses set forth in these rules shall be adhered to except that any Commission decision on the requests will be held in abeyance until these rules become effective.

(END OF APPENDIX A)

- (c) Rules 76.31(a) and (b) should be modified to make them consistent with the requirement in Rule 76.23 that no filings under those rules may be made during the period the evidentiary hearings are underway.
- (d) The title of Rule 76.22 should be changed to more clearly describe its content.

The actual text of these proposed amendments is attached as Appendix A.

No other issues need be discussed. Therefore, good cause appearing,

IT IS ORDERED that:

1. D.82-04-017 is modified as follows:

- (a) The following language is inserted on page 13, immediately before the heading "General Comments on Proposed Rules:"

"We are likewise not persuaded that requiring a utility, and ultimately its ratepayers, to fund awards of reasonable expenses pursuant to the rules we adopt by this decision constitutes a violation of their free speech guarantees under the U.S. and California Constitutions. Pacific has not pointed to any decision of a court or regulatory agency which has so held. The decision in Abood vs. Detroit Board of Education, 431 U.S. 209 (1977), on which Pacific relies, is clearly distinguishable on its facts. Even if we were to assume, arguendo, that it applies to utilities and their customers, it would appear to prevent a utility from passing on to its customers its own expenses in hearings before this Commission as much as it would those of public participants.

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2. Rehearing of D.83-04-017 as modified herein is denied.

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Dated JUN 29 1983, at San Francisco, California.

LEONARD M. GRIMES, JR.
President

VICTOR CALVO
PRISCILLA C. GREW
DONALD VIAL
Commissioners

I obtain:

WILLIAM T. BAGLEY, Commissioner

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76.31 (Rule 76.31) Participant Request After Hearing.

(a) A participant who has not requested a finding of eligibility for compensation under Rule 76.23 may make such a request after evidentiary hearings have been completed. Such request shall not be granted unless good cause for the late request is shown and unless the requirements of Rule 76.23 are met and unless the participant can demonstrate that, absent participation by the participant, an important issue has not or will not be adequately considered in the proceeding.

(b) A request under the Rule shall be filed within five days after the completion of the evidentiary hearings. Comments by the staff or any party, in the nature of that described in Rule 76.25, shall be made within 20 days after the filing of the participant's request. All filings under this Rule shall comply with Rules 2, 3, 4, 5, 6, and 7 and shall have attached a certificate of service by mail on parties.

76.32 (Rule 76.32) Application of Rules to Pending and Prospective Proceeding.

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