

Decision No. 91909 JUN 17 1980**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's)
 own motion into procedures for)
 determination of Compensation for)
 Costs of Participation or Inter-)
 vention in Electric Ratemaking)
 Proceedings by Electric Consumers.)

OII No. 39
 (Filed March 13, 1979)

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O P I N I O N

On November 9, 1978, President Carter signed the Public Utility Regulatory Policies Act of 1978,^{1/} hereinafter referred to as PURPA or the Act. Section 121 of the Act authorizes any electric consumer (among others) to intervene and participate as a matter of right in any ratemaking proceeding or other appropriate regulatory proceeding relating to rates or rate design which is conducted by a state regulatory authority. Section 122 of PURPA establishes the electric utilities' liability to compensate such consumer intervenors for certain fees and costs incurred to prepare and advocate their positions. The Section further provides that a consumer may collect such fees and costs in a civil action unless the state regulatory authority has adopted a reasonable procedure for determining the amount of, and for including an award of, such fees and costs in its order in the proceeding.^{2/}

On March 13, 1979, the Commission commenced this proceeding "for the purpose of determining the need for and establishing a procedure for the determination and award of fees and costs to intervenors in electric ratemaking proceedings...".

A prehearing conference was held April 5, 1979, before Administrative Law Judge Robert T. Baer and the matter was taken off calendar pending the filing of concurrent opening and closing comments by the parties. Comments were filed by San Diego Gas & Electric Company (SDG&E), Southern California Edison Company (Edison), Pacific Gas and Electric Company (PG&E), Toward Utility Rate Normalization (TURN), and the staff. Attached to the closing comments of Edison was a petition for a proposed report. No party has objected to the use of the proposed report procedure.

^{1/} Public Law 95-617, 16 USC 2601 et seq., 92 Stat. 3117.

^{2/} Sections 121 and 122 of the Act are attached hereto as Appendix A.

A proposed report, prepared by Administrative Law Judge Robert T. Baer, was mailed December 27, 1979, to all parties. At a public hearing held on February 4, 1980, written and oral comments on the proposed report were received and the proceeding was submitted, subject to the filing of concurrent opening and closing briefs.^{3/}

The briefs of the parties made numerous cogent arguments which will require discussion and which will necessitate amendment to the rules proposed by Edison and attached to the proposed report.

I. The Public Utilities Regulatory Policy Act

A. Generally

To properly understand the context in which this decision is reached, it is essential to delineate the PURPA. Title I of PURPA establishes certain federal standards which must be considered in public hearings. The State Regulatory Authority must make determinations as to whether each standard is appropriate to carry out the purposes of the Title. The federal standards are:

1. Cost-of-Service
2. Declining Block Rates
3. Time-of-Day Rates
4. Seasonal Rates
5. Interruptible Rates
6. Load Management Techniques

^{3/} By stipulation two TURN pleadings, "Comments" and "Proposed Rules," both filed February 5, 1980, and a staff document entitled "Comments" and dated January 24, 1980, were considered their opening briefs. Opening briefs were also filed by SDG&E, PG&E, Edison, and Alice Q. Howard (Howard). All of the above filed closing briefs except PG&E and Howard.

In addition to the ratemaking standards, the Title establishes standards governing certain regulatory practices. In this category are the following:

1. Master Metering
2. Automatic Adjustment Clauses
3. Information to Consumer
4. Procedure for Termination of Electrical Service
5. Advertising

B. Purposes

Title I of PURPA sets forth its purposes as the encouragement of (1) conservation of energy supplied by electric utility, (2) optimization of the efficiency of use of facilities and resources by electric utility, and (3) equitable rates to electric consumers.

C. Consumer Representation

PURPA contains explicit provisions for consumer representation in state regulatory proceedings considering PURPA issues. These provisions are found in Sections 121 and 122 of the Act, 16 USC 2631 and 2632, attached hereto as Appendix A.

The consumer representation provisions include the right to intervene,^{4/} access to information,^{5/} and compensation for costs of participation.^{6/} This decision deals exclusively with the question of compensation for costs of participation.

^{4/} Section 121(a)

^{5/} Section 121(b)

^{6/} Section 122(a) and (b)

II. The Role of Public Participation

While our decision is reached pursuant to the requirements of PURPA Section 122, it is important to state this Commission's basis for support of public participation generally.

The proceedings of the Commission, particularly general rate proceedings, are quite lengthy and technical in nature. Our hearings can be intimidating to the average citizen. Views of the utility are advocated and rigorously supported by utility counsel backed by substantial analytical resources, all funded by the ratepayers as an expense of operation. Our staff is charged with the responsibility to represent the public interest.^{7/} Notwithstanding often severe budgetary constraints, our staff performs yeoman work in this regard.

Yet even the most dedicated staff cannot be all things to all people. By definition, the broad public interest they seek to represent is a melding of many particular interests. We serve the interests of many different kinds of consumers, each of which has different and often conflicting views of their consumer interests.

For those whose economic stake justifies the expense, counsel and analytical resources are often retained to represent their interest. But the economic stake of most ratepayers, though substantial, comes nowhere near the cost of a serious effort to protect that interest. Despite the best efforts of all concerned, these interests can easily be overlooked.

^{7/} See Section II(c) 1 at p. 9, following

Thus, we find that broad public participation is essential for the maintenance of the integrity of our processes. We ask the ratepayers to pay the costs of utilities to protect their interests. Taxpayers pay the costs of our staff in protecting a broad public interest. We consider it a small price to ask the ratepayers to pay to ensure we have heard and considered as many of their views as possible on the record in our proceedings.

III. Section 122 Issues

A. Scope of Sections 121 and 122

The provisions of Section 121 (Intervention in Proceedings) are much broader than the provisions of Section 122 (Consumer Representation). That is, while "the Secretary [of Energy], any affected electric utility, or any electric consumer of an affected electric utility, may intervene and participate as a matter of right in any ratemaking proceeding or other appropriate regulatory proceeding relating to rates or rate design..." under Section 121, the right to receive compensation for the costs of such intervention and participation is limited under Section 122 to electric consumers who substantially contribute to the approval, in whole or in part, of a position relating to any standard set forth in Subtitle B. Under Section 122(a) (3) the Commission may further limit the right to receive compensation: (1) to those who show that "but for the ability to receive such an award, participation or intervention...may be a significant financial hardship", and (2) to those "persons with the same or similar interests [who] have a common legal representative."

B. Coverage of the Act

Section 102(a) provides:

"This title applies to each electric utility in any calendar year, and to each proceeding relating to each electric utility in such year, if the total sales of electric energy by such utility for purposes other than resale exceeded 500 million kilowatt-hours during any calendar year beginning after December 31, 1975, and before the immediately preceding calendar year."

According to the information furnished by the Secretary of Energy to the Commission staff, PG&E, SDG&E, Edison, California-Pacific Utilities Company (now CP National), Pacific Power & Light Company, and Sierra Pacific Power Company have annual sales, excluding sales for resale, of more than 500 million kWhs and are thus subject to PURPA.

C. Optional Methods

Section 122 of PURPA provides three optional methods to achieve the funded representation of consumer interests. Two methods described in Section 122(a)(2), court disposition or commission procedure, rely on ratepayer funds paid through the utility. The third method is a vaguely described "alternate means" described in Section 122(b). As discussed below, court proceedings are an undesirable approach and "alternate means" have not as of yet been provided. It follows that we adopt a commission procedure to ensure adequately funded consumer representation in our proceedings.

1. Alternate Means

There is a lack of clarity as to the nature of the "alternate means" mentioned in Section 122(b). Some could conclude that Congress sought to ensure an alternate means of consumer representation while others could conclude that Congress sought an alternate means to provide adequate compensation.

The Conference Committee report supports the view that both were intended. Regarding "Section 122 - Consumer Representation", the report states:

"Section 122 is a modified version of the House provision with respect to consumer representation. The purpose of this section is to provide a mechanism to assure that the interests of electric consumers will be represented at the State level in proceedings dealing with the standards set forth in subtitle B. The mechanism chosen for this purpose is either of two options. One makes the utility liable to provide compensation directly to electric consumers who substantially contribute to the approval, in subtitle B. The mechanism chosen for this purpose is either of two options. One makes the utility liable to provide compensation directly to electric consumers who substantially contribute to the approval, in whole or in part, of a position advocated by the consumer in a proceeding concerning the utility relating to any standard set forth in this title by creating a right of action against the utility. The second option provides that the State or State regulatory authority or nonregulated utility may have a program to otherwise provide adequate compensation to persons described in subsection (b). Such a program may include an adequately funded office of public counsel which adequately represents the interests of persons described in paragraphs (1) and (2) of subsection (b)."

From this statement of congressional intent, we conclude that Section 122(b) is intended to ensure adequate consumer representation with adequate compensation being a key element in the evaluation.

An "adequately funded office of public counsel" is offered as an example of such representation. No such office or agency has yet been created in California. The only office which could conceivably be considered a public counsel would be our own Commission staff counsel.

Given our conclusion above regarding the intention of Congress with respect to Section 122(b) "Alternative Means", it is appropriate to determine whether the participation of the staff in a given proceeding may be equivalent to the "adequately funded office of public counsel" mentioned in the conference report, thus obviating the need for utility-provided compensation under Section 122(a).

Under our interpretation of Section 122(b) the "State...[may have] provided an alternative means for providing adequate [representation] to persons" mentioned in the section. Section 307 of the Public Utilities Code provides that:

"The commission may appoint as attorney to the commission an attorney at law of this State... The attorney shall represent and appear for the people of the State of California and the commission in all actions and proceedings involving any question under this part or under any order or act of the commission..."

Moreover, Section 309, of the Public Utilities Code authorizes the Commission's Executive Director to:

"...employ such officers, examiners, experts, engineers, statisticians, accountants, inspectors, clerks, and employees as the executive director deems necessary to carry out the provisions of this part or to perform the duties and exercise the powers conferred upon the commission by law..."

How the Commission has implemented these statutory provisions is described in the Commission's Annual Report to the Governor and Legislature for Fiscal Year 1959-1960 in a section dealing with the Staff Counsel Program:

"In order that the public interest might be fully protected, the Commission some time ago initiated what is known as the staff counsel program. This program contemplates a vigorous and informed participation in rate and other proceedings before this Commission by an attorney to ensure that only such rate increases as have been demonstrated to be just and reasonable shall be approved by this Commission.

"The staff counsel program contemplates the designation of a member of the Commission's Legal Division to appear in many formal proceedings before the Commission in order to represent adequately the public interest by presenting evidence prepared by staff experts, by cross-examining witnesses, and by assisting consumers and public witnesses in presenting testimony. Staff counsel is required to prosecute the matter in hand with diligence and make certain that a full and complete record is developed so that the interests of the consuming public are most fully represented in order that the Commission will have before it all available evidence before any decision is made. The program has afforded greater opportunities to the general public and consumers to express their views to the Commission and participate in formal proceedings before it because of the staff counsel's assistance." (Pages 141-142.)

The Staff Counsel Program, as described, has continued to the present. Staff attorneys and experts are assigned to virtually every significant utility rate application or other proceedings bearing on rates or rate design.

The Commission cannot, however, say that in all cases the staff will adequately represent the persons described in Section 122(b). As noted above, the staff is charged with representing the broad public interest. Often, this will be a compromise of many interests, including those of the utility. The staff may conclude that the public interest is not the same as the interests of those consumers described in Section 122(b). Further, there are many differing and often competing consumer interests in any proceeding considering PURPA issues. Any staff would be hard pressed to represent all of these interests adequately.

Nevertheless, in order to avoid burdensome exactions upon the public, we conclude that a consumer is not eligible for compensation for presenting the same evidence on the same issues as the staff. In order to be eligible for compensation, a consumer must raise a different issue, present or elicit new or different evidence, or take a different position from that of the staff.

This showing may be made in the preliminary proceeding suggested in Section 122(a)(3) and established by the regulation adopted herein. The showing must also be made in any respect for compensation made by the consumer. We emphasize the risk to the consumer that a finding of eligibility for compensation made in a preliminary proceeding is no guarantee of compensation. On the other hand, a finding in a preliminary proceeding that a consumer is raising an issue or position identical to that of the staff does not prevent a consumer, at his or her own risk, from proceeding to present a case and seek compensation later on the grounds that a substantial contribution has been made beyond that or different from that of the staff. Above all, the citizens of the State should not be required to pay twice for the same service, once as taxpayers (to fund the staff's participation), and again as ratepayers (to fund the consumer's participation).

Another suggested "alternate means" should be mentioned briefly. We are aware that the State of Wisconsin, through recent legislation, has created an elected Citizens Utility Board, funded by voluntary contributions from ratepayers, to advocate for residential consumers in utility matters. Though we will watch the work of this board with interest, such a program is also not an "alternate means" presently available in California.

2. Court Disposition

SDG&E opposes reimbursement of intervenors through civil litigation, arguing that:

"Reliance on the courts would lead to a multiplicity of civil litigation on matters which can better be resolved outside of the judicial context." (SDG&E Opening Comments, p.5).

Edison also opposes disposition of intervenors' claims by civil litigation. It argues that:

"Compensation through civil litigation...would be time consuming and costly to both persons entitled to compensation and the utility from which compensation is sought. Even though the utility would, in Edison's opinion, have the advantage in this type

of proceeding, the type of adversary relationship which would likely develop in litigation of a consumer's contribution, i.e., the quality and quantity of the consumer's efforts, and of reasonable costs is not desirable. In matters before the Commission the parties frequently find themselves involved in the same proceedings thereby making an adversary relationship limited to the substantive issues more important than would normally be the case in the courts where such contacts are much more infrequent." (Edison's Opening Comments, p. 5.)

Although Edison generally opposes court disposition it does so with one caveat. Edison believes that unless the intervenor is required to meet the burden of justifying imposition on ratepayers of its costs of participation, it would be preferable to deal with the problem through court litigation. In other words, Edison contends that the Commission should establish procedural safeguards to ensure that ratepayers are not burdened with needless costs.

Neither TURN nor PG&E commented on court disposition of intervenors' claims.

One argument favoring court disposition does suggest itself. Disposition of intervenors' claims may well lengthen rate proceedings in which those claims are advanced. As the length of a Commission proceeding increases, the cost to the Commission of processing the matter increases. Thus, by electing not to establish a reimbursement procedure the Commission may be able to shift some costs, for which no provision is made in the Commission's budget, to the courts.

This is, of course, the narrow view of the matter. In terms of overall cost to the taxpayers of the State of California, it would doubtless be less expensive for the Commission to dispose of intervenors' claims in its final decision in a rate proceeding. Further, there is no evidence that disposition of compensation claims by consumer representatives will lengthen rate proceedings. To the contrary, we express a clear intent that no such delay occur and adopt rules which will cause no such delay.

3. Commission Procedure

We are left with a Commission adopted procedure as our chosen method to ensure adequately funded consumer representation. It is not merely by eliminating other options that we select this approach. It is consistent with current practices as well. Today, ratepayer funds pay for the representation of utility interests before this Commission, subject to the judgment of the Commission regarding the prudence and propriety of the expenditure. We find it entirely appropriate that ratepayer funds also pay for the effective representation of consumer interests before the Commission, particularly the interests of those meeting the criteria of Section 122. We also find it proper that expenditures for this purpose be subject to our judgment regarding its prudence and propriety.

D. Substantial Contribution

Section 122(a)(1) limits compensation to consumers who have "substantially contributed to the approval, in whole or in part, of a position advocated by such consumer...and relating to any standard set forth in subtitle B....."

In interpreting this restraint, we feel compelled to note that our decision-making process, like that of any public body, is neither mechanistic nor subject to mechanistic evaluations. Our proceedings are extremely complex, are lengthy, involve the expression of many views, and take into account rapidly changing realities.

We reject the evaluation process set forth in the proposed report as cumbersome, certain to lead to delay, and too mechanistic. Judgment must be employed on matters of this type. It is this judgment we have been asked to exercise upon appointment as Commissioners.

It is not necessary to utilize so complex an approach in order to follow the mandate of Section 122(a). There are many questions about the terms used in Section 122(a) which require the exercise of judgment by the commission. We adopt rules which provide guidance to this exercise of discretion but do not rely on precise formulae to resolve all concerns.

The phrase "position advocated by such consumer" is an example of language in the section which requires flexibility in interpretation. Some would construe this to mean the specific end result in a decision advocated by the consumer. Others would construe this to mean a factual or legal contention upon which a recommendation is based.

Similar questions arise regarding the nature of a "substantial contribution". Decision-making is a process. Substantial contributions are made in many ways and at many times in the process. A record is more than a dry tabulation of facts leading to a clear decision.

Persuasively raising a new issue at a prehearing conference can change the nature of a proceeding. The vigorous juxtaposition of conflicting facts and opinions in a brief can be far more important to a decision than any of the facts or opinions standing alone. Intense cross-examination of a single key witness can contribute more than any entire affirmative presentation.

Equally difficult questions arise in interpreting the phrase "relating to any standard set forth in subtitle B". This language appears to permit compensation for either promoting or opposing a PURPA standard. Nor is it clear whether compensation can be awarded as either inconsistent with another PURPA standard or as contrary to the objectives of the Act itself.

However, the Conference Report indicates:

"The conferees intend that the phrase 'substantially contribute to the approval, in whole or in part', be broadly construed by the State agencies, non-regulated utilities, and the Courts to effectively provide for compensation commensurate with the contribution to the approval of one or more of the standards. (U.S. Code Congressional and Administrative News, 95th Congress, Second Session 1978, p. 7817, Joint Explanatory Statement of the Committee of Conference.)

We conclude that the Congress intended this section to be broadly construed.

TURN proposes a very broad rule, as follows:

"The determination of which parties are entitled to compensation shall be made by the Commission after considering whether the party's participation substantially contributed to implementation of the purposes of PURPA in the decision of the Commission. These purposes are to encourage conservation of energy, efficient use of resources, and equitable electric rates." (TURN's Comments, p. 4.)

We feel that the rule proposed by TURN is overboard in that it omits any reference to the PURPA standards. Almost any participation in an electric rate proceeding could arguably fall under its rubric and thus qualify for compensation.

However, TURN does direct us to a decisive element in determining compensable participation: promoting the purposes of the Act. Under PURPA, the State Regulatory Commissions must determine through public, evidentiary hearings whether the purposes stated above would be best fostered by adopting and implementing each standard. The requirements on the state commissions are spelled out in the Act and provide for a maximum amount of public participation in the consideration of the standards.

PURPA requires that we consider the PURPA standards to determine which standards, if adopted, would best implement the purposes of the Act. Yet not any representation directed toward the purposes of PURPA can be compensated as suggested by TURN. The representation must "relate to" a PURPA standard, though not necessarily urge its adoption, to qualify for compensation under Section 122(a). Further, the representation must make a substantial contribution to our adoption, at least in part, of the consumer's position as to which standards or modifications thereof would best implement the purposes of the Act. Finally, our decision must approve or incorporate a factual contention, legal contention, or specific recommendation advocated by the consumer.

E. Reasonable Fees

Pursuant to Section 122(a), only reasonable fees may be awarded to an eligible consumer representative. The issue of reasonable fees has been the subject of considerable controversy in this proceeding.

The Commission staff stated in its opening comments:

"In developing a standard of what constitutes adequate representation, information should be developed on the cost of representation of the electric utility and of amounts budgeted by the State for comparable Staff representation.

"The Commission might consider the difference between the electric utility costs and the normal amounts budgeted by the State as a bench mark for determining the amount to be made available for intervenor consumer representation. These additional amounts could be shared by consumer representatives, or awarded to any one."

* * *

"In any event, it is clear that detailed utility costs are essential to develop reasonable appraisal of the economics involved in Commission rate-making proceedings. Accordingly, the utilities should be directed to prepare and file in this proceeding in a timely fashion such detailed costs."

In its conclusion the staff asks the Administrative Law Judge to order the filing of "exhibits detailing regulatory expenses in electric rate-making proceedings before this Commission and reconciling such [expenses] with the claimed comparable regulatory expenses in their most recent rate increase application before the Commission."

TURN in its opening comments concurred with the staff's proposal. TURN argued:

"A starting point for determining reasonableness of intervenors' costs would be a comparison to utilities' costs. For instance, AT&T spent over \$1 million in one docket in an FCC proceeding in 1975."

Accordingly, TURN requested that "...all utilities subject to the instant legislation submit an exhibit with respect to their costs of regulatory activities in their last major rate application."

Both Edison and SDG&E opposed the staff's and TURN's suggestion that utility costs should be explored in this proceeding. Edison stated:

"It is obvious that the utilities' regulatory expenses in rate making proceedings are irrelevant to any consideration of the adequate representation of a consumer in connection with Section 122. As the Staff recognizes, the compensation for intervenors is limited to PURPA Subtitle B issues. In any rate making proceeding, the utility will submit evidence and witnesses on various subject which go far beyond the narrow confines of PURPA Subtitle B standards. Any suggestion that the utility's costs of representation would be comparable or relevant to costs incurred by the consumer ignores this fact."
(Edison's Closing Comments, p. 6.)

Under the heading "Staff and TURN Seek Irrelevant Data"

SDG&E stated:

"The Commission Staff (Staff Comments, p. 8) and TURN (TURN Comments, p. 7) request the Commission to order the utilities to produce 'information...on the cost of representation...' in order to provide a standard for adequate compensation for consumers. As was stated at the Prehearing Conference (Tr. 3) San Diego Gas & Electric Company ('SDG&E') fails to see how the utilities' costs are relevant to this investigation. This OII was commenced:

"for the purpose of determining the need for and establishing a procedure for the determination and award of fees and costs to intervenors in electric rate making proceedings pursuant to Section 122 of PURPA.' (OII, p. 2.)

"The utilities' costs are wholly unrelated to either the question of need for such compensation or to the establishment of such a procedure.

"PURPA requires compensation only to a consumer who:

"substantially contributed to the approval, in whole or in part, of a position advocated by such a consumer...relating to any standard set forth in Subtitle B.'

"Further, compensation is limited under the act to:

"reasonable attorney's fees, expert witness fees, and other reasonable costs incurred in preparation and advocacy...'

"Consequently, it is evident that reimbursable costs under PURPA are those which the consumer actually incurred in advocating the adoption of a Subtitle B standard, not those of the utilities.

"A broad range of issues are covered by the utility general rate cases. The identification of the costs incurred in pursuing such cases to individual issues is almost impossible. It is unrealistic to equate the utility's task of preparing and presenting an entire general rate case with that of advocating adoption of eleven specifically identified issues. Comparison of a consumer's costs with the Commission Staff's costs of conducting a general rate case is likewise invalid. Any standard of reasonableness adopted for the consumer advocate seeking compensation must reflect the scope of his task as it actually exists, and must not be tied to the utilities' or Staff's expenses in pursuing a rate proceeding.

"For the reasons stated above, SDG&E submits that these requests by the Staff and TURN should be denied. Their subject matter is irrelevant to this proceeding, and if produced would tend to divert the course of the proceeding from its stated goals." (SDG&E's Closing Comments, pp. 1-2.)

We conclude that the costs of representation of the utilities, or for that matter, the Commission staff are not relevant to this decision to adopt a Commission procedure for compensation. Reasonableness can only be determined on the basis of the individual case in which a person's background, the depth and breadth of work in the proceeding and many other factors can be considered.

We do not decide, however, that such information will never be relevant. In the event questions arise regarding the reasonableness of compensation being sought by any consumer, the costs incurred by the utilities and our staff may constitute the most comparable means of evaluation. This comparison should neither be undertaken in a vacuum nor are total costs of representation particularly useful. What would be relevant in a case of contested compensation are the hourly rates paid for persons of comparable experience and training, if the person is employed by the consumer or the comparable consulting fees paid for a person of similar experience and training, if the persons' services have been retained for the particular proceeding.

F. Preliminary Proceeding

Section 122(a)(3) provides:

"The procedure adopted by (the Commission)... under paragraph (2) may include a preliminary proceeding to require that -

"(A) as a condition of receiving compensation under such procedure such consumer demonstrate that, but for the ability to receive such award, participation or intervention in such proceeding may be a significant hardship for such consumer, and

"(B) persons with the same or similar interests have a common legal representative in the proceeding as a condition to receiving compensation." (Emphasis added)

We conclude that a preliminary proceeding will be necessary for the orderly consideration of requests for determination of eligibility for compensation of various consumers.

The Commission has before it conflicting recommendations concerning the timing of a consumer's showing regarding eligibility for an award of compensation. Edison's proposed Rules 2.7 and 3.1 require the filing of the consumer's showing twenty days before the prehearing conference. The staff proposal requires the consumer's showing to be made or filed "(a)t the time the consumer is identified as an intervenor in the proceeding...." TURN proposes that the "eligibility filing be required within 20 days after the party enters an appearance". SDG&E suggests that within thirty days after the first prehearing conference (or by Day 38 of the Regulatory Lag Plan) the consumer should file a statement showing that it intends to adopt a position different from that of the utility. The staff should then be required to state in its showing filed on Day 70 whether it intends to take a position different from that of the intervenor. If the staff will not be duplicating the intervenor's position, the Commission should certify that the intervenor will be eligible to be considered for an award of compensation at the close of the proceeding.

SDG&E's suggestion is the most reasonable. It will allow the determination to be made in a single ruling as to which intervenors are eligible to be considered for compensation and which intervenors ought to appear through a common legal representative.

However, we see no need to allow staff 32 days in which to respond. Accordingly, our adopted rule will require a staff response within 10 days of the eligibility filings or within 30 days of the commencement of the proceeding, whichever is later, and a Commission decision at the first regularly scheduled conference after the staff response. This will permit adequate time for a considered decision while allowing consumers found eligible for compensation to begin preparation at the earliest possible time.

We also recognize that there will be instances when significant PURPA issues are not adequately developed in the record but this fact is not perceived until well after the preliminary proceeding. Therefore, we also adopt a truncated procedure to be used any time after hearings have commenced. To use this rule, a consumer must further demonstrate in the eligibility filing that absent participation by the consumer, an important issue relating to a PURPA standard has not or will not be adequately considered in the record of the proceeding. Under this truncated procedure, the consumer's eligibility filing must be filed within five days of the date of the consumer's appearance, staff must respond within five working days, and the Commission will decide at the first regularly scheduled conference after the staff response.

In any preliminary proceeding, there are two issues to be decided: Significant hardship and common legal representation.

1. Significant Hardship

Among the two optional showings required pursuant to Section 122(a)3 is that:

"...such consumer demonstrate that, but for the ability to receive such award, participation or intervention in such proceeding may be a significant hardship for such consumer,..."

Neither the Act nor the Conference Report contain specific guidance as to the meaning of the term "significant hardship". We also note that both the provision for the preliminary finding of hardship and the standard of hardship are in the permissive "may" rather than in the mandatory "shall" or "will". Thus we conclude that Congress intended to leave substantial discretion to the states in evaluating hardship.

We find guidance in Section 122(b). Here, in describing the alternative means by which it intends for consumer representation to be adequately compensated, Congress states clearly those interests it feels require such compensation. Specifically, these are persons:

"(1) who have, or represent, an interest -

"(A) which would not otherwise be adequately represented in the proceeding, and

"(B) representation of which is necessary for a fair determination in the proceeding, and

"(C) who are, or represent an interest which is, unable to effectively participate or intervene in the proceeding because such persons cannot afford to pay reasonable attorneys' fees, expert witness fees, and other reasonable costs of preparing for, and participating or intervening in, such proceeding (including fees and costs of obtaining judicial review of such proceeding)."

We adopt this language as the test for significant hardship. We also adopt language utilized by the Idaho Public Utilities Commission and offered by TURN. The Idaho Commission has concluded that eligibility can be demonstrated,

"...in the case of a group or organization, by showing 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."
Section 3(a), Order No. 15131, Idaho Public Utilities Commission.

This showing may be made by any group or organization as a prima facie showing of hardship.

We specifically reject the suggestion of some parties to require extensive filings of financial information as a condition of eligibility for funding. In all likelihood, only a handful of professional groups or organizations maintain detailed balance sheets or income statements. Any individual consumer or ad hoc organization would be precluded from receiving compensation simply for an inability to meet such a requirement. We find this contrary to the purposes of Section 122.

On the other hand, staff has proposed that a mere statement of financial need should suffice as a demonstration of need. We find this inadequate as a basis for a Commission determination of need. Thus, we will require that a summary financial description be filed, including a budget for the presentation.

2. Common Legal Representative

PURPA provides that if the Commission adopts a "reasonable procedure" under Section 122(a)(2), it "may include a preliminary proceeding to require that...persons with the same or similar interests have a common legal representative as a condition to receiving compensation." (Section 122(a)(3)(B)) The purposes of such a rule are to minimize cumulative evidence being offered by multiple parties advocating the same positions and to avoid casting a burden upon the ratepayers, who might otherwise be required to fund several parties with similar interests all advocating the same positions. We will impose such a requirement of common representation of similar interests. Both the staff and any consumer seeking compensation should address this issue in their filings pursuant to the adopted rules.

IV. Timing of Payments

An issue addressed nowhere in the Act or in the Conference Report is the precise timing of the compensatory payments. TURN suggests that the Commission consider a procedure for awarding grants to consumers in advance of their participating in an electric rate proceeding. This suggestion is contrary to Section 122(a), which contemplates an award of reasonable attorneys' fees, expert witness fees, and other reasonable costs only after a consumer has made a substantial contribution. On the other hand, Edison has suggested a procedure which would add at least 90 days to an electric rate case and would require substantial briefing and debate of questionable merit.

We conclude that an award of compensation can be made only when it can be demonstrated that a substantial contribution has been made. More specifically, when a consumer who has been found eligible for compensation can demonstrate to the Commission that he or she has made a substantial contribution to a Commission decision or order adopting, in whole or in part, a position of the consumer relating to our consideration of a PURPA standard in a manner calculated to promote the purposes of the Act, we shall grant compensation. Such contributions may include, but are not limited to those discussed in Section III(D) of this decision.

Finally, we adopt a simplified procedure permitting comments by the parties prior to a Commission decision. These procedures do not include supplementary hearings or briefs on the question of compensation. Such hearings or briefs would add little to our passing judgment on a contribution to our decision. They would certainly bring needless delay to any PURPA proceeding. They also raise a significant risk that more taxpayer and ratepayer funds would be spent considering a request for compensation than were being sought by the consumer in the request.

Recovery of Electric Utility
Expense for Compensation Paid to Consumers

We will make every reasonable effort in rate proceedings for the expense of utilities in paying compensation to be recovered through the rates set. Ordinarily this would occur by placing the total of compensation payments in the adopted test year results of operation (after appropriate amortization), thereby setting rates based on revenue requirement that includes an allowance for the utility's expense.

The investigatory proceeding presents a different situation in that rates are not being established. For these proceedings, ordinarily involving more than one electric utility, we will direct compensation to be paid by utilities in the proportion that their respective number of customers have to the total compensation awarded. These amounts will not be significant given the total expense outlay of electric utilities.

Conclusions of Law

1. The Commission may and should establish a procedure to compensate qualified electric consumers for their participation in electric utility rate proceedings.

2. A consumer's participation must relate to one of the 11 subtitle B standards.

3. In order to qualify for compensation a consumer must advocate a position on a PURPA standard and that position must be adopted in whole or in part by the Commission.

4. Advance payments of a consumer's estimated costs of participation should not be made.

5. Consumers advocating the same or similar positions should be represented by a common legal representative in order to qualify for compensation.

6. A consumer should not be compensated for presenting the same evidence and advocating the same position as the Commission staff.

7. A preliminary procedure should be established to determine a consumer's eligibility for compensation.

8. A consumer should be required to demonstrate that, but for the ability to receive an award of compensation, its intervention or participation may be a significant financial hardship.

9. A consumer's showing of financial hardship should include the financial information required by the following rules.

10. The rules in Appendix B are reasonable, are consistent with the provisions of PURPA, and should be adopted. *Existing Rules of Practice and Procedure which are referred to as applicable in Appendix B are attached as Appendix C for informational purposes.*

11. The effective date of the following order should be the date of signature because of the compelling public interest in getting a compensation program underway; however, the adopted rules should not be effective until 40 days after the effective date of the following order to enable compliance with Section 11423(b) of the Government Code.

O R D E R

IT IS HEREBY ORDERED that the rules attached as Appendix B are adopted as part of the Commission's Rules of Practice and Procedure and they shall be effective forty days from the effective date of this order.

The effective date of this order is the date hereof.

Dated JUN 17 1980, at San Francisco, California.

I will file a written dissent
Vernon L. Sturgeon

John E. Coyne

President

Robert J. DeLoach
Richard M. Poirier

Commissioners

Commissioner Richard D. Gravelle, being necessarily absent, did not participate in the disposition of this proceeding.

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(E) advertising which promotes the use of energy efficient appliances, equipment or services, or

(F) any explanation or justification of existing or proposed rate schedules, or notifications of hearings thereon.

16 USC 2626.

SEC. 116. REPORTS RESPECTING STANDARDS.

(a) STATE AUTHORITIES AND NONREGULATED UTILITIES.—Not later than one year after the date of the enactment of this Act and annually thereafter for ten years, each State regulatory authority (with respect to each State regulated electric utility for which it has ratemaking authority), and each nonregulated electric utility, shall report to the Secretary, in such manner as the Secretary shall prescribe, respecting its consideration of the standards established by sections 111(d) and 113(b). Such report shall include a summary of the determinations made and actions taken with respect to each such standard on a utility-by-utility basis.

(b) SECRETARY.—Not later than eighteen months after the date of the enactment of this Act and annually thereafter for ten years, the Secretary shall submit a report to the President and the Congress containing—

- (1) a summary of the reports submitted under subsection (a),
- (2) his analysis of such reports, and
- (3) his actions under this title, and his recommendations for such further Federal actions, including any legislation, regarding retail electric utility rates (and other practices) as may be necessary to carry out the purposes of this title.

16 USC 2627.

SEC. 117. RELATIONSHIP TO STATE LAW.

(a) REVENUE AND RATE OF RETURN.—Nothing in this title shall authorize or require the recovery by an electric utility of revenues, or of a rate of return, in excess of, or less than, the amount of revenues or the rate of return determined to be lawful under any other provision of law.

(b) STATE AUTHORITY.—Nothing in this title prohibits any State regulatory authority or nonregulated electric utility from adopting, pursuant to State law, any standard or rule affecting electric utilities which is different from any standard established by this subtitle.

(c) FEDERAL AGENCIES.—With respect to any electric utility which is a Federal agency, and with respect to the Tennessee Valley Authority when it is treated as a State regulatory authority as provided in section 3(17), any reference in section 111 or 112 to State law shall be treated as a reference to Federal law.

Subtitle C—Intervention and Judicial Review

16 USC 2631.

SEC. 121. INTERVENTION IN PROCEEDINGS.

(a) AUTHORITY TO INTERVENE AND PARTICIPATE.—In order to initiate and participate in the consideration of one or more of the standards established by subtitle B or other concepts which contribute to the achievement of the purposes of this title, the Secretary, any affected electric utility, or any electric consumer of an affected electric utility may intervene and participate as a matter of right in any ratemaking proceeding or other appropriate regulatory proceeding relating to rates or rate design which is conducted by a State regulatory authority (with respect to an electric utility for which it has ratemaking authority) or by a nonregulated electric utility.

(b) ACCESS TO INFORMATION.—Any intervenor or participant in a proceeding described in subsection (a) shall have access to informa-

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tion available to other parties to the proceeding if such information is relevant to the issues to which his intervention or participation in such proceeding relates. Such information may be obtained through reasonable rules relating to discovery of information prescribed by the State regulatory authority (in the case of proceedings concerning electric utilities for which it has ratemaking authority) or by the nonregulated electric utility (in the case of a proceeding conducted by a nonregulated electric utility).

(c) **EFFECTIVE DATE; PROCEDURES.**—Any intervention or participation under this section, in any proceeding commenced before the date of the enactment of this Act but not completed before such date, shall be permitted under this section only to the extent such intervention or participation is timely under otherwise applicable law.

SEC. 122 CONSUMER REPRESENTATION.

16 USC 2632

(a) **COMPENSATION FOR COSTS OF PARTICIPATION OR INTERVENTION.**—

(1) If no alternative means for assuring representation of electric consumers is adopted in accordance with subsection (b) and if an electric consumer of an electric utility substantially contributed to the approval, in whole or in part, of a position advocated by such consumer in a proceeding concerning such utility, and relating to any standard set forth in subtitle B, such utility shall be liable to compensate such consumer (pursuant to paragraph (2)) for reasonable attorneys' fees, expert witness fees, and other reasonable costs incurred in preparation and advocacy of such position in such proceeding (including fees and costs of obtaining judicial review of any determination made in such proceeding with respect to such position).

(2) A consumer entitled to fees and costs under paragraph (1) may collect such fees and costs from an electric utility by bringing a civil action in any State court of competent jurisdiction, unless the State regulatory authority (in the case of a proceeding concerning a State regulated electric utility) or nonregulated electric utility (in the case of a proceeding concerning such nonregulated electric utility) has adopted a reasonable procedure pursuant to which such authority or nonregulated electric utility—

(A) determines the amount of such fees and costs, and

(B) includes an award of such fees and costs in its order in the proceeding.

(3) The procedure adopted by such State regulatory authority or nonregulated utility under paragraph (2) may include a preliminary proceeding to require that—

(A) as a condition of receiving compensation under such procedure such consumer demonstrate that, but for the ability to receive such award, participation or intervention in such proceeding may be a significant financial hardship for such consumer, and

(B) persons with the same or similar interests have a common legal representative in the proceeding as a condition to receiving compensation.

(b) **ALTERNATIVE MEANS.**—Compensation shall not be required under subsection (a) if the State, the State regulatory authority (in the case of a proceeding concerning a State regulated electric utility), or the nonregulated electric utility (in the case of a proceeding concerning such nonregulated electric utility) has provided an alternative means for providing adequate compensation to persons—

(1) who have, or represent, an interest—

(A) which would not otherwise be adequately represented in the proceeding, and

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(B) representation of which is necessary for a fair determination in the proceeding, and

(2) who are, or represent an interest which is, unable to effectively participate or intervene in the proceeding because such persons cannot afford to pay reasonable attorneys' fees, expert witness fees, and other reasonable costs of preparing for, and participating or intervening in, such proceeding (including fees and costs of obtaining judicial review of such proceeding).

(c) **TRANSCRIPTS.**—The State regulatory authority or nonregulated electric utility, as the case may be, shall make transcripts of the proceeding available, at cost of reproduction, to parties or intervenors in any ratemaking proceeding, or other regulatory proceeding relating to rates or rate design, before a State regulatory authority or nonregulated electric utility.

(d) **FEDERAL AGENCIES.**—Any claim under this section against any Federal agency shall be subject to the availability of appropriated funds.

(e) **RIGHTS UNDER OTHER AUTHORITY.**—Nothing in this section affects or restricts any rights of any participant or intervenor in any proceeding under any other applicable law or rule of law.

16 USC 2633.

SEC. 121. JUDICIAL REVIEW AND ENFORCEMENT.

(a) **LIMITATION OF FEDERAL JURISDICTION.**—Notwithstanding any other provision of law, no court of the United States shall have jurisdiction over any action arising under any provision of subtitle A or B or of this subtitle except for—

(1) an action over which a court of the United States has jurisdiction under subsection (b) or (c) (2); and

(2) review of any action in the Supreme Court of the United States in accordance with sections 1257 and 1258 of title 28 of the United States Code.

(b) **ENFORCEMENT OF INTERVENTION RIGHT.**—(1) The Secretary may bring an action in any appropriate court of the United States to enforce his right to intervene and participate under section 121 (a), and such court shall have jurisdiction to grant appropriate relief.

(2) If any electric utility or electric consumer having a right to intervene under section 121 (a) is denied such right by any State court, such electric utility or electric consumer may bring an action in the appropriate United States district court to require the State regulatory authority or nonregulated electric utility to permit such intervention and participation, and such court shall have jurisdiction to grant appropriate relief.

(3) Nothing in this subsection prohibits any person bringing any action under this subsection in a court of the United States from seeking review and enforcement at any time in any State court of any rights he may have with respect to any motion to intervene or participate in any proceeding.

(c) **REVIEW AND ENFORCEMENT.**—(1) Any person (including the Secretary) may obtain review of any determination made under subtitle A or B or under this subtitle with respect to any electric utility (other than a utility which is a Federal agency) in the appropriate State court if such person (or the Secretary) intervened or otherwise participated in the original proceeding or if State law otherwise permits such review. Any person (including the Secretary) may bring an action to enforce the requirements of this title in the appropriate State court, except that no such action may be brought in a State court with respect to a utility which is a Federal agency. Such review or

Article 18. 5. Rules for Implementation
of PURPA Section 122(a)(2)

76.01. (Rule 76.01) Purpose. The purpose of this article is to establish procedures for awarding reasonable fees and costs to consumers of electric utilities pursuant to PURPA Section 122(a)(2).

76.02. (Rule 76.02) Definitions. When used in this article:

(a) "PURPA" means Public Utility Regulatory Policies Act of 1978.

(b) "Compensation" means reasonable attorneys' fees, expert witness fees, and other reasonable costs.

(c) "PURPA position" means a factual contention, legal contention, or specific recommendation promoting one of the following PURPA purposes and relating to one or more of the following PURPA subtitle B standards:

1. PURPA purposes:

- (A) Conservation of energy supplied by electric utilities
- (B) Optimization of the efficiency of use of facilities
- (C) Equitable rates to electric consumers

2. PURPA Ratemaking Standards:

- (A) Cost of Service - S 111(d)(1)
- (B) Declining Block Rates - S 111(d)(2)
- (C) Time-of-Day Rates - S 111(d)(3)
- (D) Seasonal Rates - S 111(d)(4)
- (E) Interruptible Rates - S 111(d)(5)
- (F) Load Management Techniques - S 111(d)(6)

3. Other PURPA Standards:

- (A) Master Metering - S 113(b)(1)
- (B) Automatic Adjustment Clauses - S 113(b)(2)
- (C) Information to Consumers - S 113(b)(3)
- (D) Procedures for Termination of Electric Service - S 113(d)(4)
- (E) Advertising - S 113(d)(5)

(d) "Consumer" means any retail electric consumer of an electric utility, any authorized representative of such a consumer, or any representative of a group or organization authorized, pursuant to articles of incorporation or by-laws, to represent the interests of consumers.

(e) "Expert witness fees" means recorded or billed costs incurred by a consumer for an expert witness with respect to a PURPA issue.

(f) "Other reasonable costs" means reasonable out-of-pocket expenses incurred by a consumer with respect to a PURPA issue not exceeding twenty-five percent (25%) of the total of reasonable attorneys' fees and expert witness fees awarded.

(g) "Party" shall mean any interested party, respondent, utility, or Commission staff of record in a proceeding.

(h) "Proceeding" shall mean any application, case, investigation, or other procedure of the Commission in which a PURPA position is considered subsequent to the effective date of PURPA.

(i) "Reasonable fees" shall be computed at prevailing market rates for persons of comparable training and experience who are offering similar services. In no event shall such fees exceed those paid by the Commission or the utility, whichever is greater, for persons of comparable training and experience who are offering similar services.

76.03. (Rule 76.03) Consumer's Request. Within thirty days after the first prehearing conference in a proceeding the consumer shall file with the Commission's Docket Office and serve on the parties known or contemplated at that time a Request for Finding of Eligibility for Compensation, in compliance with Rules 2, 3, 4, 6, and 7 and with an attached certificate of service on appearances by mail, setting forth the following:

(a) A showing that, but for the ability to receive compensation under these rules, participation or intervention in the proceeding may be a significant financial hardship for such consumer. Such showing shall include a specific budget for the representation and a summary description of the finances of the consumer which distinguishes between grant funds committed to specific projects and discretionary funds.

(b) A statement of the PURPA issues which the consumer intends to raise in the proceeding, together with a statement of the consumer's position on each such issue.

(c) A showing addressing representation of persons with the same or similar interests by a common legal representative.

(d) An estimate of the compensation to which the consumer believes it may be entitled to at any stage of the proceeding and the basis for such estimate, including a budget.

(e) For a consumer who claims to represent the interests of other consumers, a showing which includes the articles of incorporation, by-laws, membership structure, composition of Board of Directors, and newsletter circulation, if any, along with a summary description of the previous work of the consumer.

76.04. (Rule 76.04) Showing of Other Parties. The Commission staff shall file with the Commission's Docket Office a statement within ten days after the consumer's filing or 30 days after the commencement of the proceeding, whichever occurs later declaring whether it intends to take a position different from the consumer.

Any other party may file comments on a consumer's request within ten days after the request is filed. All filings under this Rule shall comply with Rules 2, 3, 4, 6, and 7, and be accompanied by a certificate of service on appearances by mail.

76.05. (Rule 76.05) Commission Ruling. At the first regularly scheduled conference after the statement of the Commission staff has been filed, the Commission shall issue a ruling as to the following items:

(a) Whether or not the consumer has met its burden of showing "significant financial hardship" pursuant to Rule 76.05(c).

(b) A designation, if appropriate, of the "common legal representative" to represent persons with the same or similar interests as provided for in PURPA Section 122(a)(2), which designation shall be binding for the remainder of the proceeding.

(c) Whether or not "Significant financial hardship" has been shown by consumers:

(1) who have, or represent, an interest -

(A) which would not otherwise be adequately represented in the proceeding, and

(B) representation of which is necessary for a fair determination in the proceeding, and

(C) who are, or represent an interest which is, unable to effectively participate or intervene in the proceeding because such persons cannot afford to pay reasonable attorneys' fees, expert witness fees, and other reasonable costs of preparing for, and participating or intervening in, such proceeding (including fees and costs of obtaining judicial review of such proceeding).

- (2) who, in the case of a group or organization, demonstrate 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 76.05(c)1(C).

76.06. (Rule 76.06) Compensation Filings of Consumer. Following issuances of a Commission order or decision during a proceeding pursuant to Rule 76.05 a consumer may file a request for compensation with the Docket Office. The filing shall comply with Rules 2, 3, 4, 6, and 7, and shall have a certificate of service on appearances by mail attached. Such request shall include a detailed description of hourly services and expenditures or invoices for which compensation is sought and shall describe how the consumer has substantially contributed to the adoption, in whole or in part, in a Commission order or decision, of a PURPA position advocated by the consumer relating to a PURPA standard. "Substantial contribution" shall be that contribution which, in the judgment of the Commission, substantially assists the Commission to promote a PURPA purpose in a manner relating to a PURPA standard by the adoption, at least in part, of the Consumer's position.

76.07. (Rule 76.07) Staff Audit of Consumer's Records. At the direction of the Commission, the Commission staff may audit the records and books of the consumer to the extent necessary to verify that compensation sought is reasonable. Within twenty days after completion of the audit, if any, an audit report shall be filed with the Commission.

76.08. (Rule 76.08) Commission Decision

Within 30 days of the filing of a request for compensation or within 20 days after the filing of the staff audit report, if any, the Commission shall issue a decision describing the contribution found to have been made and the compensation awarded.

76.09. (Rule 76.09) Payment of Compensation. The electric utility shall pay any award of compensation to the consumer within 30 days after the Commission's decision is issued, unless a timely application for rehearing with respect to the issue of compensation is filed, in which case no payment will be required until an order denying rehearing or an order after rehearing is issued.

76.10 (Rule 76.10) Consumer Request After Hearings Commence

(a) A consumer who has not requested a finding of eligibility for compensation pursuant to Rule 76.03 may make such a request after hearings have begun. Such request shall not be granted unless all the requirements of Rule 76.03 are met and the consumer can demonstrate that absent participation by the consumer, an important issue relating to a PURPA standard has not or will be adequately considered in the proceeding. In no event may such a request be filed after Day 110 in an electric rate case subject to the Regulatory Lag Plan as adopted by Resolution No. M-4706 (adopted June 5, 1979).

(b) A request pursuant to this Rule shall be filed within five days of the date of the appearance by the consumer in the proceeding. Any comment by the staff or any party, in the nature of that described in Rule 76.04, shall be filed within five working days of the consumer's request. A ruling in the nature of that described in Rule 76.05 shall at the first regularly scheduled conference after the filing of the consumer's request. All filings pursuant to this Rule shall comply with Rules 2, 3, 4, 6, and 7 and shall have a certificate of service on appearances by mail attached.

(END OF APPENDIX B)

APPENDIX C
(Existing Rules of Practice and Procedure
Applicable to Appendix B)

TITLE 20 PUBLIC UTILITIES COMMISSION
(Register 77, No. 30—7-23-77)

6.1

SUBCHAPTER 1. RULES OF PRACTICE AND PROCEDURE

PREFACE

The following rules of practice and procedure before the California Public Utilities Commission were promulgated by Decision No. 72329 in Case No. 4924 and Case No. 7234. These rules, effective July 14, 1967, are issued under authority contained in the Public Utilities Code (Stats. 1951, Ch. 764, as amended) particularly Section 1701 thereof.

The rules of practice and procedure apply to formal proceedings before the Commission. Informal requests for relief or assistance may be made by letter, by telephone, or in person. Matters thus presented, if their nature so warrants, will be taken up by the Commission's staff with the parties involved in an effort to assist them in arriving at an amicable informal adjustment of the matter.

All communications should be addressed to California Public Utilities Commission, State Building, San Francisco, California 94102, or State Building, 107 South Broadway, Los Angeles, California 90012.

The former rules, prepared with the assistance of practitioners, were filed with the Secretary of State pursuant to Government Code, Section 11380. They were printed as Title 20 of the California Administrative Code. Such former rules, as amended, are hereby repealed effective July 14, 1967.

Article 1. Code of Ethics

1. (Rule 1) Code of Ethics. Any person who signs a pleading or brief, enters an appearance at a hearing, or transacts business with the Commission, by such act represents that he is authorized to do so and agrees to comply with the laws of this State; to maintain the respect due to the Commission, members of the Commission and its Administrative Law Judges; and never to mislead the Commission or its staff by an artifice or false statement of fact or law.

NOTE: Authority cited for Chapter 1: Public Utilities Code (Stats. 1951, Ch. 764 as amended), particularly Section 1701 thereof.

History: 1. Amendment filed 7-19-77; designated effective 6-28-77 by Resolution A-4690, see Section 11445, Government Code (Register 77, No. 30). For prior history, see Register 67, No. 22.

Article 2. Formal Requirements for All Pleadings and Briefs

2. (Rule 2) Form and Size. Pleadings and briefs shall be type-written or printed upon paper 8½" wide and 11" long, and exhibits annexed thereto shall be folded to the same size. Unless printed, the impression shall be on one side of the paper only and shall be double-spaced, except that footnotes and quotations in excess of a few lines may be single-spaced. Pleadings shall be bound on the left side. Reproductions may be by any process, provided all copies are clear and permanently legible. (See Rule 75.)

History: 1. Amendment filed 1-27-71; designated effective 7-1-71 (Register 71, No. 5).

3. (Rule 3) Title and Docket Number. All documents presented for filing shall show the caption for the proceeding, the docket number, and the title of the document, and leave sufficient space in the upper right-hand corner for a time and date stamp.

Documents initiating new proceedings shall leave a space for the docket number.

History: 1. Amendment filed 10-10-75; designated effective 9-30-75 by Resolution A-4415, see Section 11445, Gov. Code (Register 75, No. 41).

4. (Rule 4) Signatures. The original of each application, petition, complaint, answer, or amendment shall be signed in ink by each party thereto. If such party is a corporation or association, the pleading may be signed by an officer thereof. Any attorney for or representative of a party shall also sign such pleading, and show his address and telephone number.

Motions, notices, briefs, and petitions for rehearing may be signed by an attorney or representative.

5. (Rule 5) Verification. Applications or amendments thereto shall be verified by each applicant. Complaints or amendments thereto shall be verified by at least one complainant. Answers shall be verified by at least one of the defendants filing the same. If the party filing the pleading is a corporation or association, the pleading may be verified by an officer thereof.

Verification may be made before a notary public or by certification or declaration under the penalty of perjury.

6. (Rule 6) Signature and Verification by Attorney. Except in transfer proceedings (see Rule 35), the attorney for a party may sign and verify a pleading if such party is absent from the county where the attorney has his office, or from some cause is unable to sign and verify such pleading. When a pleading is signed and verified by the attorney, he shall set forth in the affidavit the reasons why the verification is not made by such party.

7. (Rule 7) Copies. Unless otherwise required by the Commission, and except as to complaints (see Rule 11), there shall be filed with the Commission an original and twelve conformed copies of each pleading, or amendment thereof, and the original and twelve copies of each brief or petition for rehearing or petition for leave to intervene.

8. (Rule 8) Amended Pleadings. Amendments to pleadings, and amended pleadings, may be filed before hearing, provided they are served upon all known interested parties, filed at least five days before the hearing, and contain a certification of service. Thereafter, pleadings may be amended as permitted, or directed, by the Commission or the presiding officer.

I respectfully dissent:

Thirteen months after the enactment of PURPA the California Supreme Court issued its decision in TURN v. Public Util. Com. (1979) 25 C 3d 891, 913, in which it held that the Commission was without authority to award attorney fees and costs in quasi-legislative ratemaking proceedings. The Commission is bound by this holding unless the Legislature confers such authority ^{1/} or unless PURPA preempts this field of regulation.

At the outset of our consideration of the preemption issue we are confronted with Section 117 of PURPA which states:

"Nothing in this title prohibits any State regulatory authority...from adopting, pursuant to State law, any standard or rule affecting electric utilities which is different from any standard established by this subtitle."

Thus, at least with respect to the standards listed in Section 111(d) ^{2/} and 113(b) ^{3/} the Commission is under no legal obligation to adopt the standards. Its duty under the statute ends when it has considered the standards and reported its action on each standard. It may decline to adopt a standard on condition that it reports in writing its reasons for such action.

^{1/} At this time the Legislature has not done so.

^{2/} Cost of service, declining block rates, time-of-day rates, seasonal rates, interruptible rates, and load management techniques.

^{3/} Master metering, automatic adjustment clauses, information to consumers, procedures for termination, and advertising.

With respect to Section 112 (Consumer Representation) the Commission is not even subject to the above-mentioned minimal requirements. It is not required to consider the issue of compensation of intervenors nor must it report or explain its actions with respect to such issue.

The thrust of Section 122 is to create in qualifying ^{4/} electric consumers a cause of action for reasonable attorneys' fees, expert witness fees, and other reasonable costs enforceable against the electric utility by civil action in any state court of competent jurisdiction in order to compensate them for their qualifying participation in an electric rate proceeding. That cause of action now exists. It is not dependent on action by the Commission or by the Legislature. Any qualifying electric consumer who was a party to an electric rate proceeding could bring a civil action against an electric utility to recover his fees and costs at any time after the enactment of PURPA on November 9, 1978.

The statute provides for two methods of avoiding court litigation on the issue of fees and costs. Neither of the methods is required. First, the "State regulatory authority," i.e., the Commission, may adopt a

"...reasonable procedure pursuant to which such authority...

^{4/} In order to acquire standing as a plaintiff in such a civil action an electric consumer must be a consumer of the electric utility to which the proceeding relates, and must have "substantially contributed to the approval, in whole or in part, of a position advocated by such consumer...and relating to any standard set forth in Subtitle B... (Section 122 (a) (1).)

"(A) determines the amount of such fees and costs, and

"(B) includes an award of such fees and costs in its order in the proceeding." (Section 122(a)(2).)

The second method by which court litigation may be avoided is described in Section 122(b). In that provision Congress indicates that compensation to qualifying electric consumers by means of court litigation shall not be required.

"...if the State [or] the State regulatory authority...has provided an alternate means for providing adequate compensation [S/] to persons

"(1) who have, or represent, an interest

"(A) which would not otherwise be adequately represented in the proceeding, and

"(B) representation of which is necessary for a fair determination in the proceeding, and


"(2) who are, or represent, an interest which is unable to effectively participate or intervene in the proceeding because such persons cannot afford to pay reasonable attorneys' fees, expert witness fees, and other reasonable costs of preparing for, and participating or intervening in, such proceeding (including fees and costs of obtaining judicial review of such proceeding)."

From the Conference Committee report it is clear that Congress intended by the provisions of Section 122(b) "an adequately funded office of public counsel," or some similar agency, to represent the interests of the persons described in Section 122(b)(1) and (2).

S/ Appendix B explains that "representation" was intended, rather than "compensation".

It is patently obvious that the language of Section 122 does not require any action by the Commission; nor, more importantly, does it confer any authority upon the Commission. Congress has left to the discretion of the Commission, or to the Legislature, in the case of Section 122(b), whether it will act or not. Such permissive language is irreconcilable with the applicability of the doctrine of federal preemption in this instance.

I therefore submit that this Commission lacks the jurisdiction assumed by the present decision.


VERNON L. STURGEON
Commissioner