

Decision No. 92378 NOV 4 1980

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of PACIFIC GAS AND ELECTRIC)
COMPANY, for authority, among other things,)
to increase its rates and charges for)
electric and gas service to partially)
offset the effects of financial and)
operational attrition.)
(Electric and Gas))

Application No. 59902
(Filed August 27, 1980)

ORDER DENYING PETITION
FOR AWARD OF ATTORNEY'S FEES

On October 10, 1980 an organization titled Cut Utility Rates Today (CURT) filed its "Petition for Award of Attorney's Fees, Witness and Exhibit Fees and Cost of Participation: Declaration of William B. Hancock in support of Petition." By its terms the document "petitions this Commission for approval of application to implement Article 18.5, Rules for Implementation of Public Utility Regulatory Policies Act of 1978 (hereinafter 'PURPA') Section 122 (a) (2) to establish procedures for an eventual award of Reasonable Fees and Costs to consumers of electric utilities."

The petition alleges that but for the ability to receive compensation under the rules established in Decision No. 91909 dated June 17, 1980 CURT has no other income. The petition further alleges that CURT has not applied for grant funds from any other source.

The petition further alleges that CURT will raise the following PURPA issues, including but not limited to: equitable rates to electric and gas customers, conservation of energy supplied by electric utilities, optimization of the efficiency of use of facilities and resources by electric utility, cost of service, block and tier rates, time-of-day rates, seasonal rates,

interruptible rates, load management techniques, information to consumers, and advertising. The petition makes various other allegations concerning the nature of the proposed participation in this proceeding to force the company to reduce costs, expenses, change company rules and policies, and to change the composition of the board of directors.

Pacific Gas and Electric Company (PG&E) and the Commission staff filed comments and statements regarding the petition as permitted by Rule 76.04 of the Commission's Rules of Practice and Procedure.

PG&E's Comments

PG&E in its comments stated that CURT's petition is defective for numerous reasons and must be denied. PG&E cites Rule 76.03(b) which requires a consumer to file a "statement of the PURPA issue which the consumer intends to raise in the proceeding, together with a statement of the consumer's position on each such issue." PG&E further states that CURT merely repeats the "PURPA purposes" and the "PURPA Ratemaking Standard" set forth in Rule 76.02(c) 1 and 2 and offers no statement as to its position on these issues. Without such a statement, PG&E comments that the Commission cannot determine what contribution, if any, CURT could make concerning PURPA standards, or whether CURT's positions on these standards are likely to duplicate those of the staff. ✓

PG&E further alleges that the numerous areas CURT recites it intends to explore are totally unrelated to the PURPA standards.

PG&E further comments that CURT's proposed compensation schedule is not credible. PG&E points out that CURT is seeking \$300 an hour to question PG&E's executive officers and directors, and only \$250 an hour to question the staff. PG&E also comments that CURT's claim for \$10,000 for its costs associated with the public hearings is absurd since public witness hearings are designed for nontechnical presentation from the general public and are not the place to address specific PURPA issues.

PG&E also comments that CURT fails to support its claim that it represents certain types of customers as required in Rules 76.03(c) and 76.03(e). It further comments that other parties before the Commission in this proceeding such as TURN and the staff also claim to represent the same types of customers and questions who will be the common legal representative for the group. For all the above reasons PG&E recommends that CURT's request for compensation must be denied.

Staff Statement

The staff in its statement indicates that although it is required by Rule 76.04 to state whether it intends to take a position different from the consumer filing a Request for Finding of Eligibility for Compensation, it is unable to do so since CURT does not specify what position, if any, it intends to take on each of the issues set forth in Section (b) of its petition.

The staff further states that it believes that the additional issues CURT mentions it intends to pursue in Section (g) of its petition are irrelevant to the issues raised by Application No. 59902 and would be more advantageously considered in other pending Commission proceedings.

The staff also submits that the \$10,000 expense request for participation in public witness hearings would be of no benefit to PG&E's customers and should be denied. The staff takes no position at this time on the reasonableness of any of the other four expense categories totaling \$33,250. The staff recommends that CURT be allowed to file another request for eligibility for compensation during the evidentiary hearings in this proceeding pursuant to Rule 76.10.

Discussion

Petitioner makes assertion that it intends to raise certain PURPA issues in this proceeding by reciting the PURPA purposes, ratemaking standards, and items 3(c) and 3(e) under other

PURPA standards as shown in Rule 76.02 but fails to recite CURT's position on each of such issues raised. It further fails to make a showing addressing representation of persons with the same or similar interests by a common legal representative (Rule 76.03(c)). CURT's response to Rule 76.03(e) contained in Section (g) of its petition is deficient in that it merely indicates that it is a partnership of William B. Hancock and C. Crockett Mushet who have been active in many rate cases and OIIs since April 1980. While Rule 76.03(e) is couched in language which would apply to a nonprofit corporation, the fact that such a consumer group is a partnership would not reduce the requirements for full disclosure required in Rule 76.03(e). Moreover, while the Commission in Decision No. 91909 recognized the need for greater public participation in its electric rate proceedings, we are also aware that the payments of such fees are borne by the ratepayers of the utility. In order to avoid needless costs and duplication in costs to ratepayers and taxpayers, the Commission adopted certain rules under Article 18.5, Rules for Implementation of PURPA Section 122(a)(2). It is essential that filings for intervenor fees be in substantial compliance with such rules. We also note that the rules assume a rate increase proceeding under the Commission's NOI procedures and that it was necessary to modify the filing date requirements set forth in such rules for the purpose of this proceeding.

Since CURT states that it represents minorities, poor and retired people, small businesses, other ratepayers who have neither the time nor expertise to represent themselves, as well as stockholders of PG&E, its showing must reveal how such authority for representation was granted to CURT.

Although the Commission staff recommends that CURT be permitted to file another request for eligibility for compensation during the evidentiary hearings in this proceeding pursuant to Rule 76.10, such rule applies only to a consumer who has not previously requested a finding of eligibility.

CURT's motion filed on October 28, 1980 to dismiss PG&E's comments on its petition for award of intervenors fees is without legal basis since Article 18.5, Rules for Implementation of PURPA Section 122(a)(2) does not provide for a response to comments filed by any other parties to the consumer's request. Therefore, whatever substantive or procedural rights CURT may possess under Article 18.5 were not affected by PG&E's inadvertent omission of CURT from the service list.

Findings of Fact

CURT's petition for award of attorney's fees, witness and exhibit fees, and cost of participation is grossly inadequate and does not meet the requirements of Rule 76.03 of the Commission's Rules of Practice and Procedure.

Conclusion of Law

Petitioner's request should be denied.

IT IS ORDERED that the petition of Cut Utility Rates Today for award of attorney's fees, witness and exhibit fees, and cost of participation is denied.

The effective date of this order is the date hereof.

Dated NOV 4 1980, at San Francisco, California.

John E. Byrne President
Hermon L. Peterson
Richard W. Swales
Charles J. P. Smith
Edward M. Jennings Commissioners