

ORIGINAL

Decision No. 92794 MAR 17 1981

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.)
(Electric and Gas))

Application No. 60153
(Filed December 23, 1980)

ORDER DENYING PETITION
FOR AWARD OF ATTORNEY'S FEES

On February 2, 1981, 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."^{1/} The document petitions this Commission for an award of fees and costs under one or both of the following:

- A. Article 18.5, Rules for Implementation of Public Utility Regulatory Policies Act of 1978, Section 122(a)(2).
- B. If for any reason CURT fails to qualify under the above, CURT requests the Commission for an award of reasonable fees and costs under Article XII, Section 2 of the California Constitution Section 701 of the Public Utilities Code, and the decision in Consumers Lobby Against Monopolies v Public Utilities Commission (1979) 25 Cal 3d 891.

CURT's petition recites the three Public Utility Regulatory Policies Act of 1978 (PURPA) purposes set forth in Rule 76.02(c)1. and the following two PURPA ratemaking standards:

- A. Cost of service.
- B. Load management techniques.

^{1/} On February 23, 1981 CURT filed an amended petition setting forth an additional issue relating to PG&E's conservation audits, some hourly cost figures for its participation, and a revision of the issues set forth in its initial petition.

CURT's petition then states that the following specific issues to be addressed are:

1. Improper design and construction of Pittsburgh Power Plant Unit 7.
2. Reduction of the Allowance for Funds Used During Construction (AFUDC) for Humboldt Bay Nuclear Power Plant Unit 3.
3. Adjustment of maintenance expenses and related expenses for Humboldt Bay Nuclear Power Plant Unit 3.

CURT's petition further alleges that:

- A. It represents all California ratepayers as a consumer advocate.
- B. The staff and other parties in this proceeding have chosen not to pursue the issues set forth in its petition.
- C. Because of the complexity of the issues and the uncertainty of the cooperation of the utility with regard to discovery, it is difficult to project the budget for the total fees and costs in this proceeding. Therefore, CURT urges the Commission to consider the proposal of an award of fees and costs based upon the actual hours spent by CURT in reaching resolution of the issues.
- D. CURT was formed under California law on June 20, 1980, and does not ask and has not asked for funds from public and private institutions for its participation in this case.

Pacific Gas and Electric Company (PG&E) and the Commission staff filed comments regarding the petition in accordance with Rule 76.04 of the Commission's Rules of Practice and Procedure.

PG&E's Comments

PG&E in its comments state that CURT's petition suffers from three obvious defects. First, PG&E alleges that CURT's petition fails to indicate what CURT's position will be on the PURPA issues

to be addressed in this proceeding. PG&E states that the three issues set forth in CURT's petition do not relate to any of the standards set forth in Rule 76.02 or Sections 111(d) and 113(b) of PURPA (16 U.S. C. Sections 2621 and 2623). Accordingly, PG&E states that CURT would not be entitled to compensation for its presentation on these matters because, as the Commission has stated,

"...not any representation directed toward the purposes of PURPA can be compensated. . . . The representation must 'relate to' a PURPA standard, though not necessarily urge its adoption, to qualify for compensation under Section 122(a)." (Decision No. 91909, p. 15.)

The second defect in the petition, according to PG&E, is that CURT failed to make a showing needed to demonstrate that without compensation its participation in this proceeding would constitute a "significant financial hardship".

The third defect mentioned in PG&E's comments is the failure of CURT to provide a budget for its participation in this proceeding as required by Rule 76.03(d).

PG&E's comments also question the citing of Article XII, Section 2 of the California Constitution, Section 701 of the Public Utilities Code, and the decision in Consumers Lobby Against Monopolies v Public Utilities Commission (1979) 25 Cal 3d 891 because Consumers Lobby Against Monopolies clearly holds that none of the cited provisions empowers the Commission to award attorney's fees and costs to intervenors in rate cases.

Staff Comments

With reference to CURT's petition the staff made the following comments:

- "1. Pittsburgh Power Plant Unit 3. Design and construction costs associated with this facility have been reviewed by the staff. The ratemaking treatment for this facility was adopted by the Commission in PGE, D. 89316, A. 57284 at sheet 39. The

present staff treatment is consistent with that adopted by the Commission, and consequently, the staff will not make an issue of these costs in this proceeding.

"2. Humboldt Bay - AFDC.

"3. Humboldt Bay - Maintenance Expenses.

"The treatment of these items was adopted by D. 91107. (See pages 32-33, infra.) The staff will not propose any different treatment in this proceeding and will review PGE's showing and recommend reasonable levels for these items. It cannot be said from CURT's petition whether the staff position will differ from that of CURT."

Discussion

A thorough review of the petition and the comments offered by PG&E and the Commission staff indicate that CURT has failed to comprehend the provisions of Article 18.5 of the Commission's Rules of Practice and Procedure and, in particular, Rule 76.02(c) and Rule 76.03(a), (b), (c), and (d). It is obvious from a reading of Decision No. 91909 that a representation to be compensable must not only be directed toward the purposes of PURPA but must also relate to a PURPA standard. CURT has not only failed to relate its issues to a PURPA standard but also has failed to advocate its position on such PURPA standard. CURT's petition is also deficient in that it provide no budget for its participation in this proceeding nor does it make a showing that, but for the ability to receive compensation under Article 18.5 of the Commission's Rules of Practice and Procedure, participation may be a significant financial hardship for CURT. We are also concerned with CURT's assertion that it represents all California ratepayers as a consumer advocate with nothing to support such broad representation.

We further note that the purpose of staff comments is to advise the Commission whether it intends to take a position different from the consumer and not for the purpose of a petitioner to file an amendment to correct deficiencies in its original pleading.

Finding of Fact

CURT's petition for award of attorney's fees, witness and exhibit fees, and cost of participation, including its February 23, 1981 amendment, is inadequate and does not meet the requirements of Rule 76.03 of the Commission's Rules of Practice and Procedure.

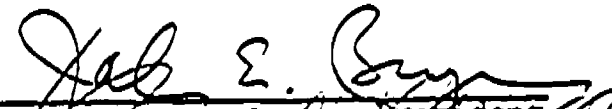
Conclusion of Law

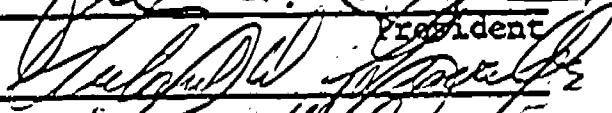
CURT's request should be denied.

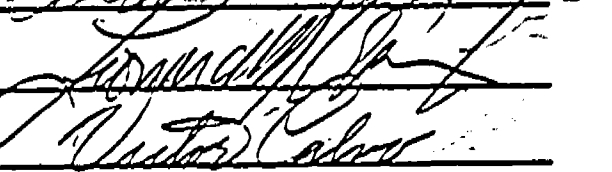
IT IS ORDERED that the petition of Cut Utility Rates Today for award of attorney's fees, witness and exhibit fees, and cost of participation is denied.

The effective date of this order is the date hereof.

Dated MAR 17 1981, at San Francisco, California.



President




Commissioners