State of California
Fair Political Practices Commission
P.O. BOX 807 • SACRAMENTO, 95804 ••• 1100 K STREET BUILDING, SACRAMENTO, 95814
Technical Assistance (916) 322-5662 •• Administration 322-5660 •• Executive/Legal 322-5901 •• Enforcement 322-6441 •• Statements of Economic Interest 322-6444

February 25, 1985

Jan Damesyn
Senior Deputy County Counsel
County of Yolo
P.O. Box 127
Woodland, CA 95695

Re: Advice Letter No. A-84-111
Regarding Advice for Gary
Stone

Dear Ms. Damesyn:

As I previously advised you by telephone on February 13, we are revising our advice to you relative to Planning Commissioner Gary Stone relating to Question #2 posed in your advice request letter No. A-84-111. Our response was dated June 18, 1984.

The reason for the change is that new facts, not previously provided to us, have now come to light which alter our analysis and our conclusion in response to your question number 2, contained in that letter.

FACTS

There are two significant revisions to the material facts presented in your letter. First, Mr. Stone advises us that, as the manager of the Woodland PG&E office, he has conducted research into utility billings for recently-constructed single-family homes in Yolo County. His survey has determined that the average annual PG&E utility bill for such homes is approximately $1,000 -- much less than the $1,800 figure provided to us previously. When coupled with the Commission's newly-authorized "interim advice" materiality threshold for New York Stock Exchange and American Stock Exchange listed companies (which includes PG&E), this factual change alone would result in revising the 56-unit subdivision threshold upwards to 200 units.

However, the second change in the material facts eliminates the need for such computations altogether. We have very recently been advised by staff for the California Public

Utilities Commission (PUC) that increased or decreased energy sales by PG&E do not result in changes in its annualized gross revenues. Consequently, whatever guideline is applied (the old $100,000 guideline or the new "interim" guideline of $200,000) there is no effect on annualized gross revenues and hence no "material financial effect."

The arguments advanced in your letter regarding the neutralizing effects of the PUC's regulation of PG&E's "rate of return" to its shareholders, did not prove to work in practice. Staff of the PUC informs us that if PG&E ever did exceed its "rate of return" the overage would be kept by PG&E; only future returns would be adjusted to bring PG&E back on target. However, the PUC advises that sales revenues are adjusted to return or recoup any overage or shortfall in such a way that the adjusted revenues remain constant.

The tariffs which accomplish this were established by the PUC during the energy cirsis in order to eliminate any incentive on the part of PG&E to boost its sales. The tariffs (Electrical Rate Adjustment Mechanism [ERAM] and Sales Adjustment Mechanism [SAM]) set target sales revenue levels for PG&E.

If revenues from sales exceed the target level, the excess is carried as a liability to the balancing account and rates are adjusted downward to fall below the target level by a sufficient amount to effectuate a refund of the prior excess. If revenues from sales fall below the target level, a credit is shown from the balancing account and rates are adjusted upwards to not only achieve the target level but to also recoup the shortfall.

When asked the specific question of whether the building or not building of a subdivision of 1,000 units (for example) would have any effect on PG&E's tariff-adjusted annualized gross revenues, PUC staff replied that it definitely would not have any effect because of the operation of ERAM and SAM.

Thus, our conclusion in response to your question number 2 is now that a 56-unit (or 1,000-unit, etc.) subdivision decision would not require disqualification based upon a potential effect on PG&E's annualized gross revenues.

If PG&E would incur substantial expenditures in providing infrastructure or increased capacity as a result of the approval of any given project, those factors would have to be examined separately under the appropriate guidelines. Such may (or may not) be the case with regard to your question number 3 -- relating to the mininig operation, and you should provide us with additional facts in that regard. However, it is our understanding that in most residential subdivision situations

and with respect to office or commercial developments, infrastructure is provided by the developer and deeded over to PG&E, but does not become a part of its rate base. Consequently, for these developments the prospects for disqualification appear rather remote. For larger installations such as mining or industrial uses where PG&E becomes directly involved in infrastructure matters, the facts may dictate disqualification; however, these must be reviewed on a case-by-case basis.

Lastly, Mr. Stone has advised us that he has been advised to disqualify himself on decisions to permit building a warehouse because the warehouse might possibly be air conditioned and thereby utilize substantial electricity. Our original advice letter to you was based upon specific, concrete facts which you provided to us. Speculative facts about possible future energy use may not meet the standards for foreseeability, even if they might potentially be material in size. A review of the Commission's Thorner Opinion, 1 FPPC Opinions 198, No. 75-089, December 4, 1975, may be of assistance. A copy is enclosed for your convenience.

Should you have further questions regarding this letter, please do not hesitate to contact me at (916) 322-5901.

Sincerely,

Robert E. Leidigh
Counsel
Legal Division

REL:plh
Enclosure
cc: Gary Stone
Honorable Phillip Isenberg
William Galstan
Connie Barker
Kate Sproul
Dennis Lee
Charles Williams
Wilhelmina Andrade
Alice Harris
Joseph Kelly
Fred Scheidegger
Miriam Wickline
Bob Sangster
Sharon Donathan
Richard Ziegfried

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June 18, 1984

Jan K. Damesyn
Senior Deputy County Counsel
Courthouse, Room 103
Woodland, CA 95695

Re: Advice Letter No. A-84-111

Dear Ms. Damesyn:

Thank you for your request for advice on behalf of Yolo County Planning Commissioner, Gary Stone.

FACTS

Gary Stone is a member of the Yolo County Planning Commission. Mr. Stone is employed by Pacific Gas & Electric Company (hereinafter PG&E) as the manager of its Woodland office. He also owns over $1,000 in PG&E stock through the company's deferred compensation plan.1/ PG&E is a privately owned public utility that is regulated by the Public Utilities Commission. It is required to provide gas and electric services to anyone who applies for service in Yolo County. The PUC approves the rates charged by PG&E.2/ In 1982, PG&E's gross annual revenues were $6,785,095,000; its net income was $810,178,000; and its assets were $13,635,318,000.

1/ For purposes of this letter, you asked me to assume that the value of the stock is greater than $1,000.

2/ In approving rates, the PUC ensures that PG&E receives a "fair rate of return" on its "rate base." The "rate base" is the depreciated value of the plant, working capital, materials and supplies used in delivering utility service. In instances where private developers pay for the gas and electric distribution and transmission facilities for a development, the cost of the facilities is not included in the "rate base."

As a Planning Commissioner, Mr. Stone engages in activities which affect PG&E:

A. General and Specific Planning:

The Planning Commission makes recommendations to the Board of Supervisors on general planning matters. General planning involves designating areas for various types of development and formulating policies regarding that development. Once an area is developed, PG&E provides the necessary utility services. In some instances, the rezoning of an area increases the amount of utilities that will ultimately be required by an area, such as where an area is rezoned from agricultural to industrial use.

The Planning Commission also makes recommendations on specific planning and zoning decisions which may affect the amount of services that PG&E provides to particular parcels.

B. Subdivision Map Approvals:

The Planning Commission provides final approval on subdivision maps. This approval is subject to appeal to the Board of Supervisors. In approving a map, the Commission determines, among other things, whether the map is consistent with the general plan, and the appropriate timing and phasing of the subdivision. Once the subdivision is completed, PG&E's customers pay the rate approved by the PUC.[3/] If the development's construction is delayed, the rate payments to PG&E will also be delayed. In some instances, subdivision maps provide for easements that will be dedicated to PG&E.

C. Use Permits and Variances:

The Planning Commission provides final approval on use permits and variances, subject to appeal to the Board of Supervisors. The Commission also has appellate jurisdiction on certain decisions by the Zoning Administrator.[4/] If a use permit for the construction of a residential or commercial

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3/ For purposes of this letter, I have assumed, with your concurrence, that each new residence in Yolo County will purchase an average of $150 per month, or $1,800 per year, in utility services from PG&E.

4/ The Zoning Administrator is the Director of the Planning Department.

building is approved, it is likely that PG&E will supply the utility services to the completed building. The Commission's decisions concerning the permit may affect the amount of energy that the building will ultimately consume. In granting variances to development standards such as setbacks, height limitations and lot sizes, the Commission may also affect the energy that will be consumed by a particular residential or commercial building.

In your letter, you stated that Yolo County will be regulating a major mining operation by Homestake Mining Company.[5] With regard to the operation, the Planning Commission will:

1. Consider whether to grant a rezoning and a use permit to allow the mining company to develop the portion of the mine located in Yolo County (about 20%).[6]

2. Consider whether to grant a use permit for a reservoir. If approved, the water supply created will be transported to Lake County for use in the operation of a mill. The electricity required to supply that water will result in monthly payments to PG&E of $24,300, or approximately $290,000 per year. The reservoir will be built in 1984, filled in 1984 and 1985, and used in 1985.

3. Engage in decisionmaking concerning the reclamation project.

It is estimated that the total, multi-county mining operation will require the mining company to purchase about $602,643 per month, or approximately $7,200,000 per year, worth of electricity from PG&E. As stated above, approximately $290,000 of this amount is for electricity for the reservoir. Of the remaining $6,910,000, about 20% ($1,382,000) is attributable to that portion of the mine that will be constructed in Yolo County if the necessary approvals are obtained.

5/ The mining operation involves several counties.

6/ The mining company has already obtained the necessary approvals from Lake and Napa Counties and construction of the mine in these counties has begun.

QUESTIONS PRESENTED

1. Does the Political Reform Act require Commissioner Stone to disqualify himself on decisions concerning general plan amendments, specific planning and rezoning matters, subdivision map approvals, variances and use permits, or energy measures?

2. Does the Act require Commissioner Stone to disqualify himself from a decision on whether to allow the construction of a 56-lot subdivision that will provide PG&E with an additional $100,000 in annual revenue from the sale of gas and electricity?

3. With regard to the Homestake mining operation, does the Act require Commissioner Stone to disqualify himself on:

a. The decisions on whether to grant the rezoning and use permits necessary to allow the construction of 20% of the mine?

b. The decision on whether to grant the use permit for the reservoir?

CONCLUSIONS

1. Commissioner Stone is required to disqualify himself on decisions concerning general plan amendments, specific planning and rezoning matters, subdivision map approvals, variances and use permits, or energy measures, if the decision in question will foreseeably have a material financial effect on PG&E.

2. Commissioner Stone is required to disqualify himself from a decision on whether to allow the construction of a 56-lot subdivision that will provide PG&E with an increase in gross annualized revenues of $100,000 or more.

3. Commissioner Stone must disqualify himself from the decision on whether to grant the rezoning and use permits necessary to allow the construction of 20% of the Homestake Mine. He must also disqualify himself from the decision on whether to grant a use permit for the reservoir.

DISCUSSION

Government Code Section 87100[7/] prohibits a local public official from making, participating in the making, or in any way

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7/ Hereinafter all statutory references are to the Government Code unless otherwise indicated.

attempting to use his official position to influence[8] a governmental decision in which he knows or has reason to know he has a financial interest. An official has a "financial interest" in a decision within the meaning of Section 87103 if it is reasonably foreseeable that the decision will have a material financial effect on:

> (a) Any business entity in which the public official has a direct or indirect investment worth more than one thousand dollars ($1,000)....
>
> (c) Any source of income . . . aggregating two hundred fifty dollars ($250) or more in value provided to . . . the public official within 12 months prior to the time when the decision is made....

Commissioner Stone has an investment interest in PG&E worth over $1,000 and it is a source of income to him of $250 or more. He must disqualify himself from any decision which will foreseeably have a material financial effect on PG&E. A decision will have a "material" effect on PG&E if it will increase or decrease:

> (A) The annualized gross revenues by the lesser of:
>
> 1. One hundred thousand dollars ($100,000); or
>
> 2. One percent if the effect is one thousand dollars ($1,000) or more....
>
> (B) Annual net income by the lesser of:
>
> 1. Fifty thousand dollars ($50,000); or
>
> 2. One half of one percent if the effect is one thousand dollars ($1,000) or more; or

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[8] See the enclosed copy of 2 Cal. Adm. Code Section 18700 which defines the terms "making," "participating," and "using his official position to influence." Please note that the term "participating" includes making recommendations to the decisionmaker, which occurs when the Planning Commission makes recommendations to the City Council.

(C) Current assets or liabilities by the lesser of:

1. One hundred thousand dollars ($100,000); or

2. One half of one percent if the effect is one thousand dollars ($1,000) or more.

2 Cal. Adm. Code Section 18702

Because of PG&E's substantial gross revenues, net income and assets, the "dollar" tests, rather than the "percentage" tests, are used in determining whether a decision materially affects PG&E. (See the enclosed advice letters to Fish, No. A-82-022 and Keene, No. A-81-512.)

Response to Question #1:

Mr. Stone must disqualify himself on a decision concerning a general plan amendment, a specific planning or rezoning matter, a subdivision map approval, a use permit or variance, or an energy measure, if the facts indicate that the particular decision in question will have a material financial effect on PG&E.

A. General and Specific Planning:

In most situations, a general planning decision will not require Commissioner Stone's disqualification because the decision's financial impact on PG&E will be too remote.[9] For example, if the Planning Commission considers rezoning an area from agricultural to industrial, but no specific industrial projects are proposed for the area, the rezoning creates only the possibility that the area will actually be developed and that PG&E will be financially benefited by increased revenues. However, if a rezoning is being considered in connection with a particular project, there is a significant likelihood[10] that PG&E will be financially affected by the rezoning decision and

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9/ However, Commissioner Stone should examine the facts of each decision that he is confronted with.

10/ A decision's effect is "foreseeable" if there is a "substantial likelihood" that it will occur. (Thorner Opinion, No. 75-089, Dec. 4, 1975.)

Commissioner Stone's disqualification is required if the effect on PG&E will be material. (See the enclosed copy of the Biondo Opinion, No, 75-036, July 2, 1975.)[11]

B. Subdivision Map Approvals:

The Planning Commission's approval of a subdivision map is an essential, preliminary step in the construction of proposed residential dwellings. If a project is approved, it is foreseeable that PG&E will receive a $150 per month, or $1,800 per year, from the owner of each home constructed.[12] Thus, Mr. Stone must disqualify himself from the approval or disapproval of a subdivision map involving 56 or more units because the foreseeable effect of the map's approval is an increase in PG&E's gross annualized revenues of $100,000 or more.[13]

If the decision confronting the Planning Commission concerns the timing or phasing of a particular subdivision, Commissioner Stone must disqualify himself if any of the alternatives being considered will have a material financial effect on PG&E.[14] He must also disqualify himself if the approval of a map will provide PG&E with an easement of significant value.[15]

C. Use Permits and Variances:

If Commissioner Stone is confronted with a decision on a use permit or variance for a single residential unit, it is unlikely

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[11] If, at anytime in the future, Commissioner Stone, needs advice on whether he must disqualify himself from a particular decision, he can contact our office for advice.

[12] See footnote 3.

[13] The fact that the PUC must approve all rates charged by PG&E, and that PG&E's stockholders may not realize a stock increase from an increase in gross annual revenues, does not alter this analysis.

[14] For example, Mr. Stone must disqualify himself if the Commission is considering delaying a 56-unit subdivision one year.

[15] An easement's value is "significant" if it is worth $100,000 or more.

that the decision will have the necessary financial effect to require his disqualification. In the case of a use permit or variance for a commercial building, the particular facts of the situation must be considered.

Response to Question #2:

See my "Response to Question #1, Subsection B."

Response to Question #3:

Commissioner Stone must disqualify himself from the decisions on the rezoning and use permits for the mining operation because this decision will result in an increase in annual revenues to PG&E of $1,382,000. Similarly, he must disqualify himself from the decision on the use permit for the reservoir because it will increase PG&E's annual revenues by $290,000. In both cases, the dollar amount is greatly in excess of the $100,000 test for materiality in 2 Cal. Adm. Code Section 18702.

In your letter, you question the application of the "dollar" test (2 Cal. Adm. Code Section 18702) in determining whether a decision materially affects PG&E. In the past, this test has been consistently applied to PG&E and the advice in this letter is consistent with this advice. However, this Fall, the Commission plans to reconsider all of the tests for "materiality" contained in Section 18702. I will apprise the staff members working on this review of your concerns and I will advise you of any actions being considered. If you have any questions concerning the review of Section 18702, or the advice in this letter, please feel free to contact me at (916) 322-5901.

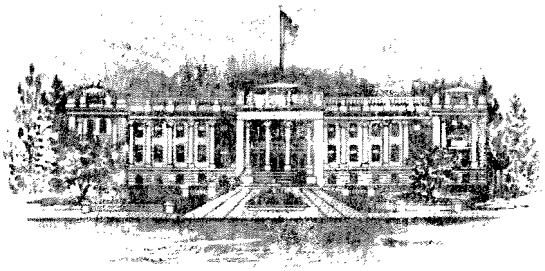
Very truly yours,

Janis Shank McLean

Janis Shank McLean
Counsel
Legal Division

JSM:plh
Enclosures

Call re Opinion / Postpone



COUNTY OF YOLO

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April 9, 1984

Fair Political Practices Commission
1100 K Street
Sacramento, CA 95814

Request No. 84-001

Date Received April 13, 1984

Response Due April 27, 1984

ATTN: Janis Shank McLean

RE: Opinion Request

Dear Ms. McLean:

The Honorable Charles Mack, County Counsel, County of Yolo, requests an opinion from the Fair Political Practices Commission on behalf of Gary Stone, Member of the Yolo County Planning Commission and employee and beneficial owner of stock of Pacific Gas & Electric Company, on the following issues:

1. Do County Planning Commission decisions concerning general plan amendments, specific plan adoptions, zoning amendments, subdivision approval, variances, use permits, energy measures and other planning commission business have a material financial effect on the Pacific Gas & Electric Company as the exclusive provider of public utility services in Yolo County, within the meaning of Government Code §87103 when P.G.&E. is not an applicant?

2. If so, does this determination apply to all Planning Commission decisions or only to specific types of decisions?

3. Does the determination apply to a 56

> lot subdivision that will provide to P.G.&E. $100,000 in revenue from gas and electricity per year when completed?
>
> 4. Does the determination apply to the issuance of permits for mining 20% of the ore body and for the reservoir of a gold mine which, when completed, may consume approximately $7,000,000 annually in electricity of which some $1,672,000 annually will be consumed in Yolo County?

Based on the particular facts, our conclusion is that the test for significant financial effect should be measured by the percentage guidelines of 2 California Administrative Code §18702 without regard to the fixed dollar minimums set forth therein. The thresholds should be (a) 1% of gross annual revenue; (b) ½ of 1% of net annual income; or ½ of 1% of any increase or decrease in current assets. This conclusion rests on the vast size of P.G.&E's annual revenues and assets and the tight regulatory control exercised by the PUC.

Analysis

Gary Stone is a member of the Yolo County Planning Commission and has been for approximately four years. The question is whether Gary Stone is precluded by his employment with P.G.&E. from participating in planning commission votes on development in Yolo County or impacted by Yolo County, and if so, at what threshold in terms of annual income to P.G.&E. or changes in total assets.

I. Applicable Statutes and Regulations

Government Code §87100 provides:

> No public official at any level of State or local government shall make, participate in the making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest.

Government Code §87102 provides that an official has a financial interest in a decision when that decision has a material financial effect, distinguishable from its effect on the

public generally, on:

(a) Any business entity in which the public official has a direct or indirect investment worth more than $1,000.

(c) Any source of income...aggregating $250 or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision was made.

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

The Fair Political Practices Commission has promulgated regulations more specifically defining material financial effect. 2 California Administrative Code §18702 provides as follows:

18702. Material Financial Effect.

(a) The financial effect of a governmental decision on a financial interest of a public official is material if the decision will have a significant effect on the business entity, real property or source of income in question.

(b) In determining whether it is reasonably foreseeable that the effects of a governmental decision will be significant within the meaning of the general standard set forth in paragraph (a), consideration should be given to the following factors:

(1) Whether, in the case of a business entity in which the public official holds a direct or indirect investment of one thousand dollars ($1,000) or more or in the case of a business entity in which the public official is a director, officer,

partner, employee, trustee or holds any position of management, the effect of the decision will be to increase or decrease:

(A) The annualized gross revenues by the lesser of:

1. One hundred thousand dollars ($100,000); or

2. One percent if the effect is one thousand dollars ($1,000) or more; or

(B) Annual net income by the lesser of:

1. Fifty thousand dollars ($50,000); or

2. One half of one percent if the effect is one thousand dollars ($1,000) or more; or

(C) Current assets or liabilities by the lesser of:

1. One hundred thousand dollars ($100,000); or

2. One half of one percent if the effect is one thousand dollars ($1,000) or more.

II. Materials Facts

A. Stone's Employment.

Stone is employed by Pacific Gas & Electric Company ("P.G.&E.") as the manager of the Woodland office. This is a managerial position, involving the exercise of some discretion as to methodology of providing services and managing personnel but does not include authority to accept or reject customers.

He is paid a salary, and is involved in a deferred compensation plan, by which he acquires a retirement account which includes P.G.&E. stock. For purpose of this opinion request, we are assuming that Stone's retirement account includes more than $1,000 worth of P.G.&E. stock.

P.G.&E. is a privately owned public utility regulated by the Public Utilities Commission ("P.U.C."). It also has a nonexclusive franchise to utilize County roadways in order to provide gas and electric services within Yolo County, which is issued by Yolo County. It is legally required to serve any user who applies for service in the County. In light of the scarcity of new energy sources, P.G.&E. has in recent years made a concerted effort and invested considerable sums to encourage its users to reduce their consumption.

As a public utility, P.G.&E.'s service area is designated by the P.U.C. and its rates are approved by the P.U.C. Within its service area, P.G.&E. sells gas or electricity to any person or entity requesting service pursuant to rules filed with the P.U.C. governing the conditions upon which service is rendered and the fees that may be charged. These rules are called "tariffs". A public utility is entitled to a "fair rate of return" on its "rate base". The "rate base" is the depreciated value of the plant, working capital, materials and supplies used in delivering a utility service, on which the company is allowed to earn a fair and reasonable rate of return. Once rate base is established, the P.U.C. sets a "fair rate of return" which is the percentage of return on the rate base. This percentage of return then is amortized back into the individual rates.

When a large development goes on line, the developers frequently must finance and construct all or a portion of their own gas and electric distribution and transmission facilities, then dedicate those back to P.G.&E., which will then provide service. Such dedicated works are not included in the rate base because P.G.&E. stockholders did not invest in those facilities. The operation and maintenance expenses incurred by P.G.&E. in connection with such developments are, if reasonable, recovered by the utility from its customers. P.G.&.E. charges this new development their regular rates as authorized by the current tariffs. In other types of developments. P.G.&.E. itself provides the gas and electric facilities to provide service, the cost of which is included in rate base.

According to its annual report, for the year 1982, P.G.&E. received gross annual revenue in the sum of $6,785,095,000.

An increase of $100,000 in gross revenue would, in percent terms, be an increase of .00147% or 147/10,000,000 while an increase of 1% would be about $68,000,000. Its net income for 1982 was $810,178,000. An increase of $50,000 in net income would be an increase of .00617% or 617/10,000,000 while an increase of ½ of 1% would be about $4,000,000. Its total assets at year end in 1982 were $13,635,318,000. A change of $100,000 in assets would be a change of .00073% or 73/10,000,000, while an increase of ½ of 1% would be about $68,000,000.

B. Stone's Duties as Planning Commissioner

1. General Planning. The Planning Commission does not have a final decision-making authority on a general plan, but makes recommendations to the Board of Supervisors. General planning involves designation of areas for different types of development and policies regarding the planning of that development. If a general plan amendment designates a previous agricultural area for future industrial development, that development by definition will be served by P.G.&E. Certain kinds of industries could require P.G.&E. to construct entire new high voltage service lines.

If the development proceeds, the revenue to P.G.&.E. is governed by the filed tariffs. Discretion is exercised by P.G.&E. regarding the methodology to extend the facilities, but not as to rates charged.

This same analysis would apply equally to specific planning and rezoning decisions.

2. Subdivision Map Approvals.

The Planning Commission has final approval on a subdivision map, subject to appeal to the Board of Supervisors. To approve the map, the Commission must find that it is consistent with the general plan, among other things. This decision involves limited discretion by the Commission, as well as the discretion regarding the timing and phasing of a particular subdivision. If development is deferred, income to P.G.&.E. likewise is deferred. The subdivision map may include easements to be dedicated to public utilities including P.G.&E. If the subdivision proceeds, revenue to P.G.&E. is controlled by applicable tariffs.

3. Use Permits and Variances. The Planning Commission makes decisions regarding use permits and variances. The Commission has final decision-making authority subject to

Board of Supervisors appeal; they also have appellate jurisdiction on certain decisions that are delegated to the Zoning Administrator (the Director of the Planning Department). Use permits and variances require a finding of general plan consistency, among other findings. They may require interpretations by the Planning Commission as to what is allowed by various provisions in the zoning ordinances.

These decisions may have direct and indirect effects on P.G.&E. If a use permit to construct a dwelling is approved, that dwelling would be most likely served by P.G.&E.. If the use permit is for a commercial building, the Commission could very well exercise discretion which would affect energy consumed by the particular building. Variances may be granted with respect to development standards like setbacks, height limitations and lot sizes. They are usually specific to particular structures and may affect energy consumption by that structure.

III. The Problem.

To illustrate the issues, two situations are posed. First, in the case of a residential subdivision which might come before a planning commission for approval, a residence may purchase an average of $150 per month or $1800 per year in service from P.G.&E. Thus, a 56 lot subdivision would increase gross annual revenues by slightly more than $100,000 (about $50,000 after taxes), the dollar maximum specified in §18702. However, it should be recognized that the benefit of these increased revenues, working through various adjustment mechanisms established by the PUC, benefit P.G.&E.'s customers rather than its stockholders because as revenues increase, rates must be adjusted downward.

Second, Yolo County is involved in the permitting and regulation of a mining operation by Homestake Mining Company. This is a major project involving several counties. The Yolo County Planning Commission must vote on the following:

1. Zoning to allow for digging that portion of the proposed mine which lies in Yolo County (about 20%).

2. Use permit for portion of proposed mine which lies in Yolo County.

3. Use permit for reservoir.

4. Reclamation plan.

The rezoning and use permit for the mine itself will permit the entire mining operation to occur with respect to the Yolo County portion of about 20% of the project. At the time of this writing, construction of the mine has already begun in Lake and Napa Counties, and additional permits allowing mining after construction have been issued, although some details have not been finally approved as yet. Thus granting or denying the zoning and mine use permit in Yolo County will determine only whether the projected mining operation occurs in Yolo County where 20% of the pit lies.

The granting of the use permit for the reservoir will have the effect of providing water which will be transported to Lake County and used in the operation of a mill. The water supply to be produced by this reservoir is projected to require electricity at an average per monthly purchase of services from P.G.&E. in the amount of about $24,300.00 or approximately $290,000.00 per year, a sum considerably in excess of the dollar maximum specified in §18702[1].

The reservoir will be built in 1984, filled in 1984 and 1985, and used in 1985.

The total mining operation is estimated to consume electricity at an average per monthly purchase of services from P.G.&E. in the amount of about $602,643.00 or approximately $7,200,000.00 per year. Yearly revenue generated as a consequence of approval of the Yolo County permits may be calculated as follows:

Total	$7,200,000.00
Water Supply	- 290,000.00
	6,910,000.00
Yolo County Portion	.20
Subtotal	$1,382,000.00
Water Supply	+ 290,000.00
	$1,672,000.00

The foregoing calculation attributes to Yolo County the entire

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[1] See Final EIR, p. 4-64, and Table 4.13, P. 4-66. Cost is energy required for water supply. Rates are based on an average of seasonal and peak time, part peak and off peak rates charged by P.G.&E. to heavy industrial users. The average rate used is $.068965 per kilowatt hour.

energy needs generated by the reservoir as well as 20% of the remainder of the total.

It should be noted, particularly with respect to the residential development yielding estimated annual gross revenue of $100,000, that if a P.G.&E. employee who participates in a planning commission is precluded by conflict of interest considerations from voting on whether or not that development should be permitted, or any other permits or needs which might effectively encourage or discourage the development, P.G.&E. employees as a class in effect would be precluded from serving on most planning commissions because they would be disqualified in so many situations from voting.

IV. The Solution.

Clearly, Planning Commission decisions have an impact on P.G.&E. Stone is an employee, owns more than $1,000 in stock and looks to P.G.&E. as a source of income, and so meets the statutory requirements for a potential financial interest. It is the nature of a public utility and the remoteness of the decisions made on the utility's financial position which gives rise to ambiguity in determining whether planning commission decisions have a material financial effect within the meaning of §87103.

In our view, a planning commission member who is a P.G.&E. employee should not be disqualified from participating in planning commission decisions (when P.G.&E. is not the applicant) due to his employment unless the potential financial impact of that decision on the company is indeed significant. In determining, "significance", two general factors must be considered:

1. Factors relating to limitations on increasing the rate of return or rate base imposed by the PUC.

2. The large amounts of revenue received and assets owned by the company.

In considering the above factors, several specific points come to mind:

1. P.G.&E. is required to provide service as needed in Yolo County. The decision to approve or deny a land development affects the scope of its duties but not the rate of return on its stockholder's investments. The rate of return is specified by the PUC in rate setting proceedings which do not focus on any particular land development project.

2. The P.G.&E. decisions regarding developers' contributions of capital facilities also are regulated by tariffs. These contributions are not included in rate base because no P.G.&E. capital is involved. Therefore, no return to P.G.&E. stockholders results.

3. P.G.&E. enjoys annual gross revenues of some $6,000,000,000. Therefore, for a Yolo County Planning Commission decision to have a significant financial effect on P.G.&E. so as to increase P.G.&E.'s gross annual revenue by 1% the dollar amount of the impact of the decision would have to be $60,000,000 gross annual revenue based on 1982 figures. A 56 lot subdivision generating $100,000 in annual revenue would not have a substantial financial effect on P.G.&E. in light of these facts.

4. Due to the workings of the various rate adjustment mechanisms established by the PUC, any revenues resulting from increased sales go to the benefit of P.G.&E.'s customers not its stockholders because of mandatory offsetting rate adjustments. Gross revenues are a particularly poor criterion for determining "significance" because any increase yields no net benefit to P.G.&E. due to the concomitant downward adjustment in rates required by the PUC.

One method of determining whether a significant financial effect of a given decision might occur which could be tailored to the situation of P.G.&E. employees and officers would be to apply the percentage of annual revenues and assets tests suggested by 2 California Administrative Code §18702 rather than applying the arbitrary dollar amounts of $100,000 gross revenue, $50,000 net income and $100,000 change in assets as absolute upper limits and presuming significant financial effect where these dollar amounts are met. The regulation criteria are not mandatory; they are only promulgated as factors to be considered in determining whether a significant financial effect occurs (§18702(b)). The percentage criteria would be more appropriately applied to P.G.&E. in light of the relative insignificance of a $100,000 increase in annual gross revenue or change in assets, or a $50,000 increase in net income to a company of its size and in light of its regulated status.

We are informed that several other Planning Commission members throughout the State are P.G.&E. employees. We seek your guidance in determining whether their planning commission duties have a material financial effect on their employer, P.G.&E., and if so, to what extent.

We very much appreciate your anticipated assistance in resolving this matter.

Very truly yours,

CHARLES R. MACK
COUNTY COUNSEL

Jan K. Damesyn

JAN K. DAMESYN
Senior Deputy County Counsel

JKD/bp

State of California
Fair Political Practices Commission
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Technical Assistance (916) 322-5662 •• Administration 322-5660 •• Executive/Legal 322-5901 •• Enforcement 322-6441

May 22, 1984

Jan K. Damesyn
Senior Deputy County Counsel
P.O. Box 127
Woodland, CA 95695

Re: A-84-111

Dear Ms. Damesyn:

Your letter requesting advice under the Political Reform Act has been referred to Janis Shank McLean, an attorney in the Legal Division of the Fair Political Practices Commission. If you have any questions about your advice request, you may contact this attorney directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or unless more information is needed to answer your request, you should expect a response by June 19, 1984.

Very truly yours,

Barbara A. Milman

Barbara A. Milman
General Counsel

BAM:plh