

State of California



Fair Political Practices Commission

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(916) 322-5662 322-5660 322-5901 322-6441

June 20, 1985

Janice E. Kerr
General Counsel
California Public Utilities Commission
California State Building
San Francisco, CA 94102

Re: Your Request for Advice on
Behalf of Commissioner
Priscilla Grew
Our File No. A-85-142

Dear Ms. Kerr:

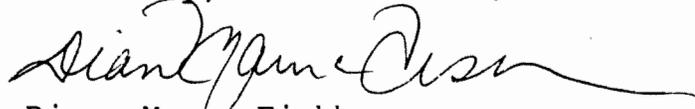
This letter is sent to confirm our telephone conversation of June 18, 1985 regarding the above request for advice. I told you that we would be unable to respond to the request prior to the California Public Utilities Commission (CPUC) meeting scheduled for June 21, 1985.

We also briefly discussed the complex factual and legal circumstances which led up to this request for advice. It is my understanding that Diane I. Fellman, CPUC Counsel, has come to the conclusion that the decisions on Interim Standard Offer No. 4 and on the transmission line access investigation will not materially affect Kelco Corporation, in which Commissioner Grew has an investment, within the meaning of Government Code Section 87103. She based her conclusions on the fact that Kelco is already under contract with San Diego Gas and Electric and is operational and on the CPUC policy not to make any decisions which will affect small power producers such as Kelco that are already operational. As I pointed out to you during our conversation, I cannot make an independent judgment on Ms. Fellman's conclusions without a more complete understanding of the situation. However, I can confirm that the statute does not require a public official to disqualify herself from a decision where there will be no effect on a business entity in which she has an investment.

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Accordingly, we agreed that I would not respond to the advice request unless I heard from you again. If our advice is needed and requested, additional information concerning the decisions may be required.

Sincerely,

A handwritten signature in cursive script, appearing to read "Diane Maura Fishburn". The signature is written in dark ink and is positioned above the typed name.

Diane Maura Fishburn
Counsel
Legal Division

DMF:plh



ADDRESS ALL COMMUNICATIONS
TO THE COMMISSION

CALIFORNIA STATE BUILDING
SAN FRANCISCO, CA 94102
TELEPHONE: (415) 557-

1824

Public Utilities Commission

STATE OF CALIFORNIA

June 7, 1985

FILE NO.

Diane M. Fishburn
•Staff Counsel
Fair Political Practices Commission
P.O. Box 807
Sacramento, CA 95804

•Re: Request for advice on behalf of Priscilla Grew
File No. A-85-077

— Dear Ms. Fishburn:

This responds to your April 26, 1985 letter to Janice E. Kerr requesting additional information on pending CPUC decisions involving small power producers and cogenerators in regard to the above advice request.

Description of Statutory Authority

The California Public Utilities Commission (CPUC) regulates the prices paid by investor-owned utilities to qualifying facilities under the authority of the Public Utilities Regulatory Policies Act of 1978 (PURPA), 16 U.S.C. Section 874 et seq. PURPA requires utilities to buy electricity at "avoided cost" from private facilities which meet certain qualifications regarding technology and size.¹ These qualifying facilities, or QFs as they are generally known, are small power producers under 80 MW which use renewable energy and cogenerators of any size which use oil, natural gas or biomass as a primary fuel. The Federal Energy Regulatory Commission (FERC) delegated to the states' agencies with ratemaking authority responsibility for setting "avoided cost" and implementing the intent of PURPA in the rules it promulgated. (See 18 CFR Section 292.301 et seq.)

In developing a comprehensive regulatory approach under this authority, the CPUC found it difficult to have all contracts result from negotiations between the utility and QF. Instead, it chose to institute a series of standard offers with approved prices and contract terms which the utilities were required to sign. This increased the QF's bargaining power. The standard offers included prices for both long-run and short-run commitments. Of course, the QF remained free to enter into negotiated agreements for avoided cost payments. Another critical aspect was the Commission's insistence that once parties

¹ In brief, avoided costs are those which the utility would have incurred but for the presence of the small power producer or cogenerator.

executed a contract, its terms could not be changed by retroactive Commission action.

Relation of Standard Offers to Kelco

For purposes of Commissioner Grew's advice request, I will briefly outline the process Kelco followed when it entered into its contract with San Diego Gas and Electric. As one of the first companies to negotiate an agreement with a utility, Kelco signed a "non-standard" contract with SDG&E. It received Commission approval of terms which contained the conditions under which SDG&E would pay for Kelco's electricity.

Kelco's cogeneration facility is now operating and selling electricity to SDG&E. Since approval of Kelco's contract, no terms have been changed by direct Commission action. Through Commission rate case decisions, only the provisions of that contract which allow for price changes at the time the CPUC adopts new incremental energy rates (IERS)² have been affected.

Currently pending before the Commission are two proceedings directly affecting QFs: interim Standard Offer No. 4 (S.O. #4) and transmission line access investigation. Interim S.O. #4 addresses the prices for long-run standard contracts which the utilities will have to pay future QFs. The transmission line investigation deals with QFs which have not yet established a direct interconnection with a utility. In both proceedings, QFs which are already operational, such as Kelco, are not affected and will not be directly affected by any Commission decision which has a prospective impact on QFs.

I submit that the distinction between Kelco and other QFs is that a QF that is operational cannot be affected by any Commission decision which prospectively impacts QFs in general that are not yet interconnected to the utility. Therefore, it appears that if there are no original assets in Commissioner Grew's blind trust upon which a CPUC decision would have a material financial effect under Government Code Section 87103, then she no longer has to disqualify herself from decisions affecting QFs other than those already operational.

Please call me for further clarification.

Very truly yours,



Diane I. Fellman
Principal Counsel

DIF:rg

cc: Janice E. Kerr
Priscilla Grew

² These different IERS become the basis of new prices.