

A-81-512

State of California



Fair Political Practices Commission

P.O. BOX 807 • SACRAMENTO, 95804 ••• 1100 K STREET BUILDING, SACRAMENTO, 95814

Technical Assistance	••	Administration	••	Executive/Legal	••	Enforcement	••	Statements of Economic Interest
(916) 322-5662		322-5660		322-5901		322-6441		322-6444

February 1, 1982

Scott R. Keene
 City Attorney - Petaluma
 Law Offices of Joseph A. Forest
 920 Sherman avenue
 P.O. Box 205
 Novato, CA 94948

Re: Request for Written Advice

Dear Mr. Keene:

Thank you for your request for written advice on behalf of William Perry, City Councilmember for the City of Petaluma. Mr. Perry owns stock in PG&E, valued in excess of \$2,000. Petaluma has a growth control ordinance. As a result, development in Petaluma is limited, and no development can exceed 400 units in size. New developments may or may not have trunk-line utility services already in place. New developments "have the potential effect of expanding PG&E's customer base." You desire to know whether approval of such developments could involve a conflict of interest for Mr. Perry. However, in your most recent (1/21/82) letter you state as follows:

At this time the City does not make this request with respect to any particular project.

The City is concerned in obtaining some guidelines as to how it should proceed in the approval of future subdivisions. The purpose of our request was to bring this complicated issue before the FPCC and to obtain some advice and/or suggestions as to how to proceed in future cases. . . . some direction from your office would be of assistance in this regard.

Without specific facts, we may not render specific advice. However, I shall endeavor to respond to your request for guidance.

Government Code Section 87100^{1/} requires that a public official not make, participate in making, or in any way use his official position to influence, a governmental decision in which he knows or has reason to know he has a financial interest. Section 87103 describes a financial interest as existing:

if it is reasonably foreseeable that the decision will have 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 one thousand dollars (\$1,000).

Section 82034 defines an investment to include ownership of stock in a business entity. Consequently, in Mr. Perry's case, he clearly has an investment in PG&E which exceeds \$1,000. We must then turn to the question of determining whether there will be the requisite effect upon PG&E.

We find help in the Commission's regulation, 2 Cal. Adm. Code Section 18702. With respect to this issue it states as follows:

(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 . . . 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 . . . the effect of the decision will be to increase or decrease:

^{1/}All statutory references are to the Government Code unless otherwise specified. The Political Reform Act includes Government Code Sections 81000-91014.

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

1. One hundred thousand dollars (\$100,000); or
2. One percent if it 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 it 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 it is one thousand dollars (\$1,000) or more.

Current assets are deemed to be decreased by the amount of any expenses incurred as a result of a governmental decision.

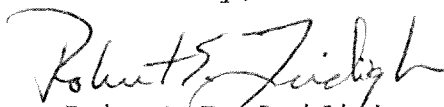
Clearly, a financial effect on PG&E as the supplier of gas/electric services to such a development will be distinguishable from its effect on the public generally. Therefore, the only question to be addressed is whether or not it is foreseeable that the effect will be material.

It is likely that in a development limited to 400 units or less, the effect upon PG&E will not meet the percentage tests of 2 Cal. Adm. Code Section (b)(1)(A), (B) or (C). The question will be whether any of the absolute thresholds are met; i.e., will the project alter gross revenues by \$100,000, net income by \$50,000 or current assets or liabilities by \$100,000. That is where your inquiry should focus first.

Scott R. Keene
February 1, 1982
Page Four

I hope that the foregoing information has been of assistance to you. Should you need further assistance or desire specific advice in the future when a specific project is pending, please do not hesitate to contact me at (916) 322-5901.

Sincerely,



Robert E. Leidigh
Counsel
Legal Division

REL:plh

Law Offices of Joseph A. Forest

JOSEPH A. FOREST
SCOTT R. KEENE

920 SHERMAN AVENUE, P. O. BOX 205
NOVATO, CA 94948

January 21, 1982

JAN 23 10 01 AM '82

21512


Mr. Robert Leidigh
Fair Political Practices Commission
P.O. Box 807
Sacramento, CA 95804

Dear Mr. Leidigh:

After our recent telephone conversation I made inquiry with the City of Petaluma concerning our earlier request involving PG&E projects. At this time the City does not make this request with respect to any particular project.

The City is concerned in obtaining some guidelines as to how it should proceed in the approval of future subdivisions. The purpose of our request was to bring this complicated issue before the FPPC and to obtain some advice and/or suggestions as to how to proceed in future cases. I realize that this seeks an advisory opinion, however, some direction from your office would be of assistance in this regard.

Sincerely,



Scott R. Keene

SRK:ss

cc: John L. Scharer

Law Offices of Joseph A. Forest

JOSEPH A. FOREST
SCOTT R. KEENE

F P P C
920 SHERMAN AVENUE, P. O. BOX 205
NOVATO, CA 94948
DEC 29 8:58 AM '81

December 28, 1981

Barbara A. Millman
Chief, Legal Division
Fair Political Practices Commission
P.O. Box 807
Sacramento, CA 95804

Attn: Robert Leidigh

Dear Ms. Millman:

This office serves as City Attorneys for the City of Petaluma and is requesting this opinion on behalf of certain members of that City Council. Due to the particular circumstances described below, this is an urgency request as the facts involve matters which must be voted upon at the January 4, 1982 council meeting.

Question presented: Does a city councilman's ownership in PG&E stock, valued in excess of \$2,000.00, preclude that official from voting upon a resolution addressed to the federal government opposing competitors from taking over PG&E's hydroelectric licenses. The relevant facts are set forth below.

Facts: Councilman William Perry has asked for my advice as to whether he must refrain from discussion and voting upon certain matters effecting Pacific Gas & Electric in which he owns stock in excess of \$2,000.00.

At the last City Council meeting, representatives of PG&E requested that the City of Petaluma vote upon a resolution directed to the federal government opposing competition from the Northern California Power Agency for the relicensing of certain PG&E hydroelectric plants. A complete description of the relevant facts are set forth in the attached newspaper article which appeared in the Argus Courier, a local Petaluma newspaper.

We would very much appreciate your review of these facts and to issue written advice as to whether there is a conflict and, if so, whether the resolution may be voted upon as a matter of

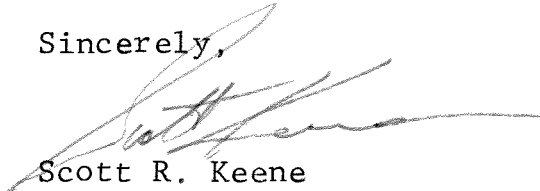
Barbara A. Millman
December 28, 1981
Page 2

necessity. Also, we would appreciate your advice as to whether the members of the Council who own PG&E stock in excess of \$2,000.00 would be precluded from voting upon the approval of subdivisions and other developments which have the potential effect of expanding PG&E's customer base. If you, or any member of your staff, needs any additional information in this regard, please feel free to contact me.

Finally, since the above-referenced resolution should be voted upon at the January 4, 1982 Council meeting in order to be of any meaningful effect, we would appreciate your response before that date.

Thank you for your consideration in this regard.

Sincerely,



Scott R. Keene

SRK:ss

cc: Mr. John L. Scharer, City Manager
City Council of the City of Petaluma

Hydroelectric power struggle: council listens

By MARTIN BRODY
Staff Writer

"power struggle" is developing over the control of hydroelectric facilities in the north part of the state, and Petaluma city officials don't want local residents to wind up short-circuited by way of energy rate increases.

Pacific Gas and Electric Co., one of the combatants in the battle, attempted to drum up support from the Petaluma City Council Monday night.

Although the sentiment of some council members was to back PG&E in its fight, the council declined to jump headlong into the fray.

The council indicated it would consider at a future meeting a resolution that takes into account "protection" of Petaluma residents in regard to energy costs.

"We need your help and are requesting a resolution from the city of Petaluma opposing those seeking to takeover PG&E's hydroelectric plants," Mike Warren, PG&E manager for the Petaluma-Cotati area, told the council in his attempt to enlist support.

The battleground is the Feather River, where PG&E owns and operates two hydroelectric power plants, and the Mokelumne River, where PG&E has four plants.

PG&E's long-term licenses for the plants expire in the fall of 1982 and competition for the new licenses is heating up. The city of Santa Clara is seeking control of the Mokelumne River project while the Northern California Power agency (NCPA) plans to apply for the license to control the Feather River plants.

NCPA is a joint powers authority established in the late 1960s "for the purpose of developing alternative energy sources and to provide a broader base from which to respond to PG&E rate increases," stated Mayor William Proctor of Healdsburg in a letter to the Petaluma City Council. Healdsburg, which owns and operates its own electrical utility, is a member of NCPA along with about a dozen cities and utility districts.

"NCPA has not only been successful in keeping wholesale rates down, but in so doing has established principals used in retail rate considerations which have resulted in substantial savings to all PG&E customers," Proctor stated.

PG&E, however, contends the electricity costs will increase if it loses control of its plants on the Feather and Mokelumne rivers, which now serve some nine million people and most of the farms and businesses in the central and northern sections of the state.

Warren said loss of PG&E control would result in "very significant" cost increases in the future, estimated at 30 cents per month for the average customer.

Warren said the hydroelectric power generated by the contested plants would be removed from the PG&E system for use by NCPA members. He said excess energy could be used by five Southern California cities (Anaheim, Azusa, Banning, Colton and Riverside) that have joined with NCPA in seeking the Feather River license.

(Continued on page 2, col. 1)

City council listens to power struggle plea

(Continued from page 1)

"The cheapest of power sources in the PGandE system, electricity from falling water, will be lost to our customers and it will have to be replaced with power generated by high priced fuels," Warren said. "We have all experienced the rising costs of fuel which have

caused utility rates to increase dramatically in the last several years."

He said the hydroelectric plants have become "increasingly valuable as partial protection against escalating fossil-fuel prices." The fuel cost benefits directly to our customers from the two projects, at issue is \$100 million per year, he said.

"PGandE has used the argument that the loss of this hydro power will require that they replace this power with more expensive electricity from fossil-fuel plants," said Proctor in his letter. "In fact, Healdsburg and the other NCPA members participating in this effort currently purchase their power from PGandE."

"Any power we would receive from the Feather River would result in a corresponding decrease in the amount we would need to purchase from PGandE. The transaction would not have an effect on PGandE's overall demand," Proctor stated.

PG&E obtained its licenses under the 1920 Federal Water Power Act. In 1980, in a decision made by the Federal Energy Regulatory Commission, a "preference clause" was included in the licensing procedure.

This decision, which PG&E is contesting in the courts, states if two or more

applications are equal in terms of how the applicants would develop hydroelectric resources, licensing preference is to be given to municipal electric utilities.

"The PGandE has done a fantastic job supplying power to Northern California," said council member Albert Battaglia. He said he disagrees with the energy commission decision, saying the preference clause shouldn't be part of a free enterprise system.

In response, council member James Harberson noted others say PG&E is a monopoly trying to "stifle competition." He said his main concern is to "protect the (energy) rate interests" of Petaluma residents.

Council member Roland Bond agreed. "I think all of us are concerned about the costs to our citizens."

Vice mayor Jack Cavanagh said, "Basically, I'm in favor of the Pacific Gas and Electric Company." Added William Perry, "I would be in support of PGandE."

"The sentiment seems to be we will support PGandE," said Mayor Fred Mattei, but the council then said it would consider a resolution noting the concern about rate increases.

John Balshaw said the council should take a "neutral position," noting the issue is in the courts, and "let the chips fall where they may."

DEC 21 1981

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PACIFIC GAS AND ELECTRIC COMPANY

PG&E + 220 WESTERN AVENUE • P. O. BOX 911 • PETALUMA, CALIFORNIA 94952 • (707) 763-2401

December 15, 1981

*Resolution supporting -
.. Fed regulatory agency not
take any action that results
in increased rates to local
citizens.*

Honorable Fred Mattei
City of Petaluma
P.O. Box 61
Petaluma, CA 94952

Honorable Fred Mattei:

In 1980 the Federal Energy Regulatory Commission (FERC) issued a decision concerning relicensing of hydroelectric power plant facilities under the Federal Power Act that could have far reaching effects upon some 3.4 million electric customers served by the Pacific Gas and Electric Company.

FERC, originally known as the Federal Power Commission has, under the Federal Water Power Act passed in 1920, the right to issue new licenses and re-new existing licenses for the use of federal land and waterways for the develop-ment and operation of hydroelectric power plants. These licenses were typically issued for up to a 50-year period, at the end of which time the licensee would apply for a renewal. License renewal would allow the original license holder to continue to provide low-cost electricity to its residential, agricultural, commercial, and industrial customers, customers whose rates had supported creation of the project in the first place.

The 1980 FERC decision announced that municipal electric utilities holding no prior interest in a given hydroelectric project would be given a preference over the project's developer should the merits of the applications be otherwise equally balanced. This means that facilities constructed, owned, and operated by a public service utility like PG&E have been placed under the threat of being transferred to strangers to the project who played no role in its development, all with resulting severe economic injury to the region and to the customers served by that utility.

*Reply - Support PG&E
Brief - Support no rate increase*

*Protecting the
prices to the citizens of
Petaluma.
By motion of the Council -*

This decision patently discriminates against both the utility customers, who by their years of historical and continuous use and payment for electric service have earned a completely legitimate expectation that they will continue to benefit from their utility's projects, and against the typical investor whose holdings in the Company depend for their value on the Company's continued soundness.

Two of PGandE's own major hydroelectric projects are now due for relicensing. These projects now provide a substantial amount of electricity to some 3.4 million metered customers. This equates to over 9 million people served and to the vast bulk of the farms and businesses in Central and Northern California. These projects, each consisting of multiple hydroelectric plants, are the Rock Creek-Cresta power plants on the Feather River and the Mokelumne River power plants. The City of Santa Clara, a city of some 87,000 people, is seeking control of the Mokelumne River Project. Northern California Power Agency member cities, Palo Alto, Alameda, Biggs, Gridley, Lompoc, Redding, Roseville, Ukiah and the Plumas-Sierra Rural Electric Cooperative and the five Southern California cities of Anaheim, Azusa, Banning, Colton, and Riverside are seeking control of the Rock Creek-Cresta Project on the Feather River.

Just what are the consequences to our customers if these people succeed in their scheme to take away these projects? The cheapest of power sources in the PGandE system, electricity from falling water, will be lost to our customers and it will have to be replaced with power generated by high priced fuels. PGandE places no mark-up on the cost it incurs to purchase fossil fuel for its power plants and those costs are passed directly into our customers' rates. We have all experienced the rising costs of fuel which have caused utility rates to increase dramatically in the last several years. Because of these increases the hydroelectric plants constructed by PGandE for the benefit of its customers have become increasingly valuable as partial protection against escalating fossil-fuel prices. The fuel cost benefits directly to our customers from the two threatened projects is now on the order of \$100,000,000 per year, every year. That is the

bait that has Santa Clara and the other special interest entities trying so eagerly to divert the benefits of our projects from our customers to themselves. Since these fuel cost benefits will, in all probability, increase at least as fast as inflation the potential continuing loss to our customers over the remaining life of the projects will mount up at the rate of \$1 billion every 10 years.

This threat of losing the benefits of these two hydroelectric projects is very, very real. Most recently the Sacramento Municipal Utility District, a district already receiving a large share of benefits from existing federal hydroelectric projects, indicated that it would join in the NCPA/Southern California scheme to take over the Feather River Project. With respect to that plan to send the Feather River's hydroelectric benefits out of the PGandE service area, we must point out that in addition to the devastating fuel cost losses, our customers will also have to withstand the economic and environmental costs of constructing new oil or coal-fired generation through the inefficient operation of these hydroelectric plants to meet the electrical needs of a few versus their current use as parts of PGandE's highly integrated and efficient system of combined hydroelectric and thermal facilities, a system designed to maximize the efficiency of both.

PGandE is seeking in the courts to reverse the FERC's erroneous reading of the Federal Power Act. Failing that, relief will be sought in Congress. All possible remedies will be pursued. In the mean time, administrative proceedings will be going forward before FERC in which those seeking to take over these projects must try, somehow, to show that their operation of the projects would be as much in the public interest as PGandE's continued operation. We believe that there is no public interest justification for their plan to take from the many and give to the few. Regardless of "preference".

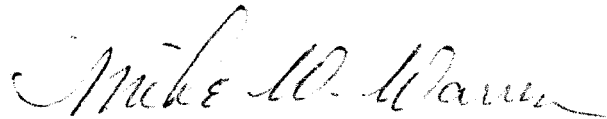
We need your help and are requesting a resolution from the City of Petaluma opposing those seeking to takeover PGandE's hydroelectric projects.

The intent of this letter is to inform you of the critical nature of the relicensing issue. While we will do everything possible to protect our rights,

and the rights of our customers, we respectfully request that you make an individual effort to make your own thoughts on this matter known to the decision makers.

If we can offer any assistance, provide you with further information or answer any of your questions, please contact us.

Sincerely,



MIKE W. WARREN, Manager
Petaluma-Cotati Area

MWW:dab

cc: Mr. Al Battaglia ✓
Mr. John Balshaw
Mr. G. Roland Bond
Mr. Jack Cavanagh
Mr. William Perry
Mr. James Harberson
Mr. John Scharer

December 30, 1981

Scott R. Keene
Petaluma City Attorney
Law Offices of Joseph A. Forest
920 Sherman Avenue
Novato, CA 94948

A-81-512

Re: Request for Written Advice on Behalf of William Perry,
Petaluma City Councilmember

Dear Mr. Keene:

Thank you for your telephone call and your letter, both of December 28, 1981, requesting written advice as to possible conflicts of interest on the part of members of the Petaluma City Council. You have done a fine job of compiling the factual material we need with respect to the resolution issue in such a short time frame. As stated in your letter, the facts and the questions presented for our advice are as follows:

FACTS

Question presented: Does a city councilman's ownership in PG&E stock, valued in excess of \$2,000, preclude that official from voting upon a resolution addressed to the federal government opposing competitors from taking over PG&E's hydroelectric licenses. The relevant facts are set forth below:

Facts: Councilman William Perry has asked for my advice as to whether he must refrain from discussion and voting upon certain matters effecting PG&E in which he owns stock in excess of \$2,000.

At the last City Council meeting, representatives of PG&E requested that the City of Petaluma vote upon a resolution directed to the federal government opposing competition from the Northern California Power Agency for the relicensing of certain PG&E hydroelectric plants. A complete description of the relevant facts are set forth in the attached newspaper article which appeared in the Argus Courier, a local Petaluma newspaper.

We should very much appreciate your review of these facts and to issue written advice as to whether there is a conflict and, if so, whether the resolution may be voted upon as a matter of necessity. Also, we would appreciate your advice as to whether the members of the Council who own PG&E stock in excess of \$2,000 would be precluded from voting upon the approval of subdivisions and other developments which have the potential effect of expanding PG&E's customer base.

Because of the short time between our receipt of your letter (December 29, 1981) and the date of the proposed decision (January 4, 1982), we will address only the resolution issue in this letter. By separate letter, we will respond to your subdivision question.

ANALYSIS

The Political Reform Act (Government Code Sections 81000-91014^{1/}) requires that:

No public official at any level of state or local government shall make, participate in 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.

Section 87100.

Section 87103 provides, in pertinent part, as follows:

An official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have 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 one thousand dollars (\$1,000).

* * *

Investment is defined by Section 82034 in the following pertinent terms:

^{1/} All statutory references made are to the Government Code unless otherwise noted.

Scott R. Keene
December 30, 1981
Page Three

"Investment" means any financial interest in or security issued by a business entity, including but not limited to common stock, preferred stock ... owned directly or indirectly ... by the public official ... or his or her immediate family....

It is clear that Councilman Perry has a financial interest in PG&E in excess of \$1,000, and that he is a public official. The question then becomes one of whether his official actions will foreseeably have a material financial effect on PG&E distinguishable from their effect on the "public generally." It is clear from the documents that you enclose that the ultimate decision on the re-licensing of PG&E will be made by the Federal Energy Regulatory Commission (FERC). However, it is equally clear from PG&E's solicitations for the resolution that it believes that Mr. Perry and his colleagues on the City Council can have an effect upon the decision by the FERC. This is underscored by some of the closing statements in PG&E's letter to the City Council, which states:

We need your help and are seeking a resolution from the City of Petaluma opposing those seeking to take over PG&E's hydroelectric projects.

* * *

...we respectfully request that you make an individual effort to make your own thoughts on this matter known to the decision makers.

This ability of the Petaluma City Council to foreseeably affect the FERC decision is confirmed by the opposing letter from the Mayor of Healdsburg -- one of the entities competing with PG&E for the license -- who asks that the Petaluma City Council not support PG&E's position. Councilman Perry's actions in conjunction with other Councilmembers to adopt or not adopt a resolution, will constitute participating in the making of a governmental decision, which will foreseeably have an effect on PG&E.

The Fair Political Practices Commission has adopted guidelines^{2/} for determining whether the foreseeable effect of a decision will constitute a material financial effect on a business in which a public official has an investment. In its letter to the Council, PG&E asserts that the financial impact of the pending FERC licensing decision will be "on

^{2/} 2 Cal. Adm. Code Section 18702(a), (b)(1). (Copy attached.)

Scott R. Keene
December 30, 1981
Page Four

the order of" \$100 million per year. On the other hand, the City of Healdsburg, in its opposing letter, seeks to minimize the impacts on PG&E. However, the Healdsburg letter does concede that increased costs to PG&E "may be as high as 1¢ per day for an average customer." While it is not clear exactly what is meant by that statement, simple arithmetic shows that at \$3.65^{3/} per year, multiplied by PG&E's 3.4 million electric customers,^{3/} comes to a sum in excess of \$10 million annually. In either case, these sums^{4/} far exceed those set forth in the Commission's guidelines.^{4/} Consequently, we conclude that there will be a material financial effect on PG&E. That effect will clearly be distinguishable from the effect on the public generally. Even if we considered PG&E's 3.4 million electric customers to constitute a "significant segment of the public generally,"^{5/} the effect on the average customer (\$3.65 per annum) is readily distinguishable from the effect on PG&E (\$10 million to \$100 million per annum).

CONCLUSION

Therefore, we conclude that Mr. Perry may not participate in consideration of a resolution in support of or in opposition to the renewing of PG&E's license for these two hydroelectric projects.

LEGALLY REQUIRED PARTICIPATION

You have also asked "whether the resolution may be voted upon as a matter of necessity." Section 87101 states:

Section 87100 does not prevent any public official from making or participating in the making of any decision to the extent his participation is legally required for the action or decision to be made. The fact that an official's vote is needed to break a tie does not make his participation legally required for purposes of this section.

^{3/} Information furnished by PG&E's Office of Governmental Relations.

^{4/} See footnote 2, supra.

^{5/} 2 Cal. Adm. Code Section 18703. (Copy enclosed.)

Scott R. Keene
December 30, 1981
Page Five

The Commission has interpreted this section by regulation^{6/} and through an opinion.^{7/} Under those interpretations, the exemption permitted for "legally required participation" would not apply in the case of disqualification of one councilmember among seven. However, you indicated to me in your telephone call that there may be other councilmembers who own more than \$1,000 worth of PG&E stock. In the event that four or more councilmembers were thus disqualified, then the procedure described in the Hudson Opinion would apply.

Should you have any further questions, please do not hesitate to call me at 916/322-5901.

Sincerely,

Robert E. Leidigh
Counsel
Legal Division

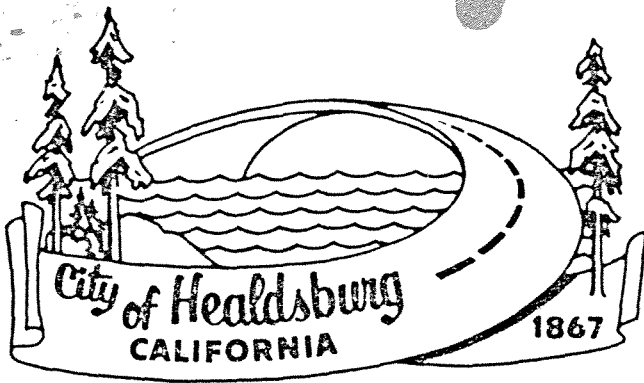
REL:km
Enclosures

^{6/} 2 Cal. Adm. Code Section 18701. (Copy enclosed.)

^{7/} Hudson Opinion, 4 FPPC Opinions 13, No. 77-007, February 7, 1978. (Copy enclosed.)

DEC 21 1981

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CITY of HEALDSBURG
City Hall — Administrative Offices

126 Matheson Street
Healdsburg, CA 95448

707-433-9425

RECEIVED

DEC 18 1981

MAYOR

December 17, 1981

Mayor Mattei
City of Petaluma
Post and English Street
Petaluma, CA 94952

Dear Mayor Mattei and members of the Petaluma City Council:

At your December 21st Council meeting, the Pacific Gas and Electric Company will make a presentation to you regarding the licensing process for a hydro electric facility operated by PG&E on the Feather River. Since Healdsburg is directly involved in this issue, we would appreciate an opportunity to give you our input prior to your decision. Unfortunately, that input will have to be made by way of this letter as we also meet on December 21st and will not be able to attend your meeting.

In brief, PG&E owns and operates two small hydro electric facilities on the Feather River under a license issued approximately 30 years ago by the Federal Power Commission, now known as the Federal Energy Regulatory Commission (FERC). This license expires in the fall of 1982 and the law allows PG&E to reapply for this license and allows for competing applications from other utilities or agencies. The law further provides that the determination as to who shall receive the license will be made by FERC on the basis of which application demonstrates the best utilization of the resource. Finally, the law includes what is referred to as the "preference clause" which provides that if two or more applications are equal in terms of how they would develop hydro electric resources, licensing preference will be given to municipal applicants. It is this preference clause that concerns PG&E and is the basis for Healdsburg's involvement.

3. Property Taxes

PG&E has stated that the county in which the plant is located will lose substantial property taxes if the public agencies take over. As you may know, we would definitely not be exempt from property taxes and would likely pay more than PG&E presently pays since the facilities would be assessed at current market value upon sale in accordance with Proposition 13.

4. Cost of Power

PG&E has stated that if they lose this facility, their customers will pay substantially more for electricity. Our calculations show that this increase may be as high as 1¢ per day for an average customer. This does not, however, take into account the fact that as a result of the competition for this license, PG&E will, out of necessity, consider ways of improving the efficiency of this facility. Whichever agency is successful, the result will be a more efficient utilization of the resource, something which would not necessarily have occurred without this relicensing requirement.

These are the main issues involved. There is, however, one additional point which I would ask you to consider. With Proposition 13 and the changes in Washington, cities, as you know, are looking at every conceivable way of attaining self sufficiency. In the area of utility operations, recent changes in the law have made it easier for cities to get into the utility business and many cities, special districts and other local governments are banding together forming Public Utility Districts, and providing electrical service to their citizens themselves, often at substantial savings to the consumer. While those of us in the electrical business have known for some time that municipal electrical operations provide many advantages to our residents, it is our feeling that more and more cities are going to come to this realization, particularly as budget constraints worsen. As this occurs, the value of local governments sticking together will undoubtedly become more apparent. The preference clause was included in the Federal Power Act in the public interest and I submit to you that it is in the interest of all public agencies to support these principals and each other.

TELEPHONE ADVICE

Attorney: Leidy
Date: 12/28/81
Advice Letter: # A-81-12-512

Person Requesting Advice: Scott Keene
City of Petaluma

Telephone: (~~415~~) (415) 892-8181

Type of Question: PG&E has application w/ Fed. Gov't. for hydro power - City would like to keep PG&E in there - PG&E wants resolution supporting their application. All 7 council members are stockholders in PG&E of more than \$1,000.

Advice: Respond to letter requesting written advice.