



FEDERAL ELECTION COMMISSION
Washington, DC 20463

December 5, 1983

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1983-35

F.G. Von Huben, Vice President
Texas-New Mexico Power Company
501 West Sixth Street
Fort Worth, Texas 76102

Dear Mr. Von Huben:

This refers to your two letters dated October 4 and September 16, 1983, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the solicitation of voluntary political contributions from employees of the Texas-New Mexico Power Company ("the Company") who purchase Company stock through a Company sponsored savings plan, the "Thrift Plan."

You ask the Commission to consider the question whether Company employees who participate in the Company's employee savings plan are stockholders for purposes of contribution solicitations under the Act and Commission regulations. You specifically refer to Advisory Opinion 1983-17, issued to the Idaho Power Company, and suggest that a different result should be reached in your situation since the Company's Thrift Plan has "substantial differences which significantly differ from" the Idaho Power employee savings plan.¹ Your request explains that the Company proposes to solicit contributions to RGA-PAC, the separate segregated fund

¹ The Commission notes that Article V of the Thrift Plan contains two investment options for employee participants. Option A concerns the purchase of United States Government obligations. This opinion concerns only Option B investments: purchases by Thrift Plan participants of full shares of Company common stock.

established by the Company, from those employees who have purchased Company stock under the Thrift Plan.²

Under 114.1(h) of the Commission's regulations, a stockholder is defined as a person who has vested beneficial interest in stock, has the power to direct how that stock shall be voted, if it is voting stock, and has the right to receive dividends. The Commission views this regulation as prescribing three mandatory conditions for stockholder status: (1) a vested, beneficial ownership interest in the stock, (2) power to vote the stock, if it voting stock, and (3) the right to receive dividends on the stock to the extent dividends are declared.

As was the case in Advisory Opinion 1983-17, it is apparent here that Company employees owning Company stock through the Thrift Plan have both a vested beneficial interest and voting rights with respect to the stock. Article VII(1) of the Thrift Plan agreement states that the account of each participant employee shall be fully vested and nonforfeitable at all times. Article V(10) indicates that voting power is retained by the participant employees who may give voting instructions to the Thrift Plan trustee; shares may not be voted by the trustee in the absence of instructions from the employee for whose account the stock is held.

With respect to participants rights to receive dividends, the Thrift Plan indicates that all dividends paid on a participant's stock are received and credited by the Thrift Plan trustee to the participant's account. In addition, Company and employee contributions made to the participant's account, as well as the dividends received and credited to the account, are available for future stock purchases (or certain other investments) at the direction of the participant.

If desired, a participant may obtain actual possession of his or her dividends by withdrawing a portion of the value of his or her account. Partial withdrawals are limited: no more than two in the prior 24 months and no more than three in the prior 60 months. A partial withdrawal also results in a temporary reduction of future Company contributions that match the participant's future contributions to the Thrift Plan.³ In addition, a participant may withdraw the full value of Company stock purchased for his or her account with Company contributions if the employee has participated in the plan for at least five years.⁴

The foregoing effects of an employee's withdrawal from his/her Thrift Plan account are apparently intended to discourage such withdrawals. However, the Commission does not view them as significantly impairing the employee's right to receive dividends credited to his/her

² Documents filed with the Commission show the full name of RGA-PAC to be: Texas-New Mexico Power Company Responsible Government Association.

³ For example, if an employee withdraws 20 percent of his account and has been participating in the Thrift Plan for six years, the Company's level of matching contributions will decrease from 75 percent to 50 percent of the future contributions made by the employee until he has accrued another five years of participation.

⁴ Employees who have participated less than five years may withdraw the value of stock purchased on their behalf with Company contributions, but the value of Company contributions made in the 24 months preceding the withdrawal will be deducted from the value of such stock.

Thrift Plan account. This opinion is thus distinguishable from the situation of the employees who participated in the Idaho Power Employee Savings Plan. Advisory Opinion 1983-17. In that opinion the exercise of the right to withdraw from the plan was subject to several sanctions: all stock had to be withdrawn, employee contributions could not be resumed until one year after the withdrawal, and stock purchased for (and vested in) the employee's account with contributions made by Idaho Power could not be withdrawn at all unless employment ceased. In this case, however, the Company permits partial withdrawals, employee contributions may continue uninterrupted after a withdrawal, and stock purchased with Company contributions may be withdrawn even though employment continues.

Accordingly, the Commission concludes that Company employees who participate in the Thrift Plan, and have at least one full share of Company stock credited to their account, would be viewed as stockholders under Commission regulations at 11 CFR 114.1(h). Such employees may be solicited as stockholders for voluntary contributions to RGA-PAC in accordance with all other applicable provisions of the Act and Commission regulations. See, in particular, 2 U.S.C. 441b(b)(3) and 11 CFR 114.5.

This response constitutes an advisory opinion concerning application of the Act, or regulations prescribed by the Commission, to the specific transaction or activity set forth in your request. See 2 U.S.C. 437f.

Sincerely yours,

(signed)

Danny L. McDonald
Chairman for the Federal Election Commission

Enclosures (AO 1983-17)