

APR 28 1988

Decision 88 04 066 APR 27 1988**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Rulemaking Proceeding on the)
 Commission's Own Motion to Revise)
 Electric Utility Ratemaking)
 Mechanisms in Response to Changing)
 Conditions in the Electric Industry.)

I.86-10-001
 (Filed October 1, 1986)

OPINION ON ELIGIBILITY

On September 16, 1987, the Natural Resources Defense Council (NRDC) filed a "Request for Finding of Eligibility for Compensation and for Compensation" for its participation in this proceeding. The requests are made under Rules 76.53 and 76.54 of the Commission's Rules of Practice and Procedure.

To meet certain procedural requirements, NRDC had previously filed a "Motion to Establish Deadline for Filing of Request for Finding of Eligibility for Compensation," as authorized in such circumstances by Rule 76.54(c). The motion was granted in an Administrative Law Judge's (ALJ) Ruling of August 17, 1987. The ruling allowed parties to file requests for a finding of eligibility for compensation within 30 days. Thus, NRDC's eligibility request was filed on time.

Pacific Gas and Electric Company (PG&E) responded to NRDC's requests on October 16, 1987. PG&E commented on certain aspects of the request for compensation but took no position on NRDC's eligibility for compensation.

On October 28, 1987, the ALJ assigned to this proceeding issued a ruling instructing NRDC to amend its eligibility request to state certain required facts. The ruling also found NRDC's Request for Compensation to be premature. NRDC filed its amendment to the eligibility request on November 25, 1987. NRDC filed a second amendment to its eligibility request on March 18, 1988, to provide more recent financial information about the organization.

The Eligibility Request

Rule 76.54(a) sets out four requirements for a request for finding of eligibility:

"(1) A showing by the customer that participation in the hearing or proceeding would pose a significant financial hardship. A summary of the finances of the customer shall distinguish between grant funds committed to specific projects and discretionary funds....;

"(2) A statement of issues that the customer intends to raise in the hearing or proceeding;

"(3) An estimate of the compensation that will be sought;

"(4) A budget for the customer's presentation."

Significant Financial Hardship

Rule 76.52(f) defines the first of these requirements, "significant financial hardship," to mean both of the following:

"(1) That, in the judgment of the Commission, the customer has or represents an interest not otherwise adequately represented, representation of which is necessary for a fair determination of the proceeding; and

"(2) Either that the customer cannot afford to pay the costs of effective participation, including advocate's fees, expert witness fees, and other reasonable costs of participation and the cost of obtaining judicial review, or that, in the case of a group or organization, the economic interest of the individual members of the group or organization is small in comparison to the costs of effective participation in the proceeding."

The first element of a demonstration of "significant financial hardship" is a showing that "the customer has or represents an interest not otherwise adequately represented, representation of which is necessary for a fair determination of the proceeding." "Customer" is defined in Rule 76.52(e):

"'Customer' means any participant representing consumers, customers, or subscribers of any electrical, gas, telephone, or water corporation subject to the jurisdiction of the Commission; any representative who has been authorized by a customer, or any representative of a group or organization authorized pursuant to its articles of incorporation or bylaws to represent the interests of residential customers...."

For purposes of its filing, NRDC states that it represents the interests of its 12,607 members residing in California, some of whom are undoubtedly served by the utilities involved in this proceeding. It also represents the interests of its three trustees who reside in California, at least one of whom is a residential customer of PG&E, and the interests of NRDC as an organizational entity, whose San Francisco office is served by PG&E. NRDC seems to argue that these customers are concerned both with minimizing their costs for electricity and with ensuring that environmentally beneficial options are considered in electric utility regulation. According to NRDC's amendment, "the environmental interests of these customers include the concern that regulatory policies encourage the adoption of all cost-effective conservation measures and discourage irresponsible marketing techniques which might result in new generating resources that are not only expensive but environmentally damaging."

We conclude that NRDC represents an interest that, although it overlaps with parts of other parties' interests, is an interest not otherwise adequately represented. In addition, we conclude that representation of this interest is necessary for a fair determination of this proceeding. Thus NRDC has met the first prong of the test of significant financial hardship.

For an organization like NRDC, Rule 76.52(f)(2) weighs the economic interests of the organization's individual members against the costs of effective participation. On the matter of economic interests, NRDC states that it represents 12,607 members

who reside in California. Although some of its California members may eventually receive lower electricity rates because of NRDC's participation, NRDC argues that the economic interest represented by such savings is small in comparison to the costs of effective participation in this proceeding.

We agree that the individual economic benefit to NRDC's members is small in comparison to the costs of participating in this proceeding, and thus NRDC meets the requirements of Rule 76.52(f)(2).

Although NRDC has thus shown that it falls within the definition of "significant financial hardship" of Rule 76.52(f), Rule 76.54 further requires a party requesting a finding of eligibility to submit a summary of finances distinguishing between grant funds committed to specific projects and discretionary funds. NRDC attached a financial statement for the year ending March 31, 1986, to its request and provided a more recent financial statement for the year ending March 31, 1987, in its second amendment. The financial statements included a balance sheet broken down into restricted funds, a capital fund, and the unrestricted general fund. Part of the capital fund is also restricted. NRDC points out that it has already exceeded the restricted funds available for its participation in this proceeding and that money from the unrestricted general fund has been used to support NRDC's participation. The statements show that most of NRDC's revenues are restricted and that money from the general fund has been used to balance out a deficit that was incurred by the restricted California Energy Project, the source of NRDC's participation in this proceeding.

We conclude that NRDC has met the requirements of Rule 76.54(a)(1) and has shown that participation in this proceeding would pose a significant financial hardship.

Statement of Issues

Rule 76.54(a)(2) requires a statement of issues that the party intends to raise. NRDC states that it is concerned with least-cost energy planning policies and marketing of power. In this proceeding, its emphasis will be on mechanisms to ensure that all cost-effective conservation measures are acquired and that marketing of power is done in a responsible manner. NRDC therefore meets this requirement.

Estimate of the Compensation

Rule 76.54(a)(3) requires an estimate of the compensation to be sought. NRDC argues that its participation in this proceeding has already entitled it to compensation of over \$10,000 and that it will request compensation for its attorney's time at the rate of \$150 per hour for NRDC's participation in later phases of this proceeding. Additional expenses are estimated to be 10% of the requested attorney's fees.

Budget

Rule 76.54(a)(4) requires a budget for the party's presentation. NRDC essentially repeats its estimate of the compensation that will be sought to comply with this requirement.

Common Legal Representatives

Rule 76.54(b) allows other parties to comment on the request, including a discussion of whether a common legal representative is appropriate. Under Rule 76.55 our decision on the request may designate a common legal representative. No party commented on the appropriateness of a common legal representative, and we find no current need to designate such a representative in this proceeding.

Conclusion

We have determined that NRDC has shown that its participation in this proceeding would pose a significant financial hardship, as defined in Rule 76.52, and has submitted the summary of finances required by Rule 76.54(a)(1). NRDC has met the other

three requirements of Rule 76.54(a). In addition, no party has raised the appropriateness of a common legal representative. Therefore, NRDC is eligible for an award of compensation for its participation in this case.

Findings of Fact

1. NRDC's request for eligibility was timely filed and addresses all four elements required by Rule 76.54(a) of the Commission's Rules of Practice and Procedure.

2. NRDC represents the interests of its 12,000 members residing in California, its three trustees residing in California, and itself as an organization. These interests are not otherwise adequately represented in this proceeding, and representation of these interests is necessary for a fair determination of this proceeding. The economic interests of NRDC's individual members is small in comparison to the costs of effective participation in this proceeding. NRDC has thus demonstrated that its participation in this proceeding will pose a significant financial hardship under Rule 76.52(f).

3. It is not necessary at this time to designate a common legal representative for the interests NRDC represents in this proceeding.

Conclusion of Law

NRDC should be ruled eligible to claim compensation for its participation in this proceeding.

ORDER

IT IS ORDERED that Natural Resources Defense Council is eligible to claim compensation for its participation in this proceeding.

This order is effective today.

Dated APR 27 1988, at San Francisco, California.

STANLEY W. HULETT
President

DONALD VIAL
FREDERICK R. DUDA
G. MITCHELL WILK
JOHN B. OHANIAN
Commissioners

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY.

Victor Weissert

Victor Weissert, Executive Director