

Decision 89 04 021

APR 12 1989

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and
Electric Company for authority
to revise its gas rates and tariffs
effective January 1, 1989, pursuant
to Decision Nos. 87-12-039 and
88-07-070.

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) Application 88-09-032
) (Filed September 15, 1988)

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) APR 12 1989

OPINION ON ELIGIBILITY FOR COMPENSATION

On February 21, 1989, Toward Utility Rate Normalization (TURN) filed in this docket a Request for Finding of Eligibility for Compensation, under Article 18.7 of the Commission's Rules of Practice and Procedure. No response to TURN's request has been filed by any other party.

Article 18.7 contains the requirements to be met by intervenors seeking compensation "for reasonable advocate's fees, reasonable expert witness fees, and other reasonable costs...of participation or intervention in any proceeding of the Commission initiated on or after January 1, 1985, to modify a rate or establish a fact or rule that may influence a rate." Pacific Gas and Electric Company's (PG&E) annual cost allocation proceeding is an application in which PG&E seeks a rate increase of about \$298 million and therefore clearly falls within the definition of applicable proceedings.

Rule 76.54 requires filing of a request for eligibility within 30 days of the first prehearing conference or within 45 days of the close of the evidentiary record. TURN's request was filed within 45 days after the close of hearings in Phase I of this proceeding. We have previously accepted an eligibility filing after the close of the record in one phase of a multi-phase proceeding (see Decision (D-) 87-04-032), and will do so in this case in order to avoid a circumstance where TURN's request for

compensation for work in Phase I would be delayed until submittal of this case in Phase II.

Rule 76.54(a) requires that a request for eligibility include four items:

- (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.

The adequacy of TURN's filing on each of these items is addressed below.

Significant Financial Hardship

Rule 76.52(f) defines "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."

TURN submits that it represents an interest--the residential customer class--that would not otherwise be adequately represented in this proceeding. TURN states that the Commission has specifically found, in D.85-06-028, that activities of the Division of Ratepayer Advocates do not obviate the need for residential class representation.

For an organization like TURN, 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, TURN states it represents the interests of several constituent groups such as the Golden State Mobilehome Owners League, the International Association of Machinists, and San Francisco Consumer Action, whose members include individual residential customers of PG&E, as well as approximately 45,000 members, many of whom receive utility service from PG&E. TURN submits that the economic interests of these individual members are obviously small in comparison to the costs of effective participation in this proceeding. As discussed below, TURN's estimated cost of participation in this phase of this proceeding is \$65,000.

While not reaching any conclusions about the reasonableness of TURN's estimated budget, we agree with TURN that the economic interests of its members are individually much smaller than the amounts TURN has estimated to have spent in this proceeding. We conclude that TURN, as an experienced organization representing residential customers, meets the requirements of Rule 76.52(f)(2).

In addressing the significant financial hardship issue under Rule 76.54(a)(1), TURN is also required to provide a summary of finances distinguishing between grant funds committed to specific projects and discretionary funds. TURN provided such information for the twelve months ending June 30, 1988.

During that period, TURN's total income was about \$535,000. Of this amount, over \$170,000 was required to cover the costs of a direct mail campaign, leaving \$365,000 for other activities. Expenses other than direct mail totalled \$285,000, leaving \$175,000 at the end of the fiscal year. TURN states that most of its funding comes from member contributions and intervenor compensation.

At the end of 1988, TURN's fund balance fell to \$3,800, following a year-end solicitation. During 1989, TURN will continue to rely on individual donations and intervenor compensation for the bulk of its income. TURN received an intervenor compensation award of \$245,373.92 in D.89-03-018 and expects increased costs for direct mail, office space and staffing needs in 1989. TURN states that without intervenor funding, it will not be able to effectively participate in CPUC proceedings and will suffer significant financial hardship.

We conclude that TURN has met the requirements of Rule 76.54(a)(1) and has shown that its 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. TURN states that the issues raised by it in this proceeding are already matters of record, as set forth in prepared testimony and concurrent opening brief. TURN concentrated most of its efforts on PG&E's estimates of system throughput, with emphasis on the construction of PG&E's models. It also addressed the allocation of the balance in the Negotiated Revenue Stability Account. In Phase II of this proceeding, TURN intends to focus on attrition issues.

A review of the record in this proceeding provides clear evidence that TURN has complied with Rule 76.54(a)(2).

Estimate of the Compensation to be Sought

Rule 76.54(a)(3) requires an estimate of the compensation to be sought. TURN estimates it may request about \$65,000 for its work in Phase I of this proceeding, based on 300 hours of attorney/witness time at a proposed hourly rate of \$200, plus \$5,000 for "other reasonable costs," primarily postage and copying expenses. TURN does not provide an estimate of costs for Phase II since the scope of the proceeding, according to TURN, is still somewhat unclear. TURN's request in Phase II, however, is certain to be much smaller.

In view of the TURN's participation in this proceeding up to this point, TURN has complied with Rule 76.54(a)(3).

Budget

Rule 76.54(a)(4) requires a budget for the party's presentation. TURN's estimated budget for Phase I of this case is \$65,000. TURN has not yet estimated a budget for Phase II.

TURN has complied with Rule 76.54(a)(4). The reasonableness of this estimate will be considered if and when TURN requests compensation in this proceeding.

Conclusion

We have determined that TURN has shown that its participation in this proceeding would pose a significant financial hardship, as defined in Rule 76.52(f), and has submitted the summary of finances required by Rule 76.54(a)(1). This "significant financial hardship" determination will carry over to TURN's participation in other proceedings in 1989.

For purposes of this proceeding only, TURN has met the full requirements of Rule 76.54(a). In addition, no party has responded to TURN's request. We find TURN to be eligible for an award of compensation for its participation in this case.

TURN is placed on notice that it may be subject to audit or review by the Commission Advisory and Compliance Division, therefore adequate accounting records or other necessary

documentation must be maintained by the organization in support of all claims for intervenor compensation. Such record keeping systems should identify specific issues for which compensation is being requested, the actual time spent by each employee, the hourly rate paid, fees paid to consultants and any other costs incurred for which compensation may be claimed.

Findings of Fact

1. TURN'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. TURN represents the interests of individual residential customers not otherwise adequately represented in this proceeding who, as individuals, have a small economic interest in comparison to the costs of effective individual participation.

3. TURN has demonstrated that its participation in this proceeding would pose a significant financial hardship under Rule 76.52(f) and Rule 76.54(a)(1).

Conclusions of Law

1. TURN should be found eligible under Article 18.7 of our rules to claim compensation for its participation in this proceeding.

2. The determination that TURN has met its burden of showing that its participation in this proceeding would pose a significant financial hardship should carry over to TURN's participation in other proceedings in 1989.

ORDER

IT IS ORDERED that:

1. Toward Utility Rate Normalization (TURN) is eligible to claim compensation for its participation in this proceeding.

2. The determination that TURN has met its burden of showing that its participation in this proceeding would pose a significant financial hardship shall carry over to TURN's participation in other proceedings in 1989.

This order is effective today.

Dated APR 12 1989, at San Francisco, California.

G. MITCHELL WILK
President
STANLEY W. HULETT
JOHN B. OHANIAN
PATRICIA M. ECKERT
Commissioners

Commissioner Frederick R. Duda
being necessarily absent, did
not participate.

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

Victor Weiss
Victor Weiss, Executive Director
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