

ALJ/BTC/btr

Decision 90 01 041 JAN 24 1990

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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

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

OPINION ON ELIGIBILITY

On August 25, 1989, Toward Utility Rate Normalization (TURN) filed a "Request for Finding of Eligibility for Compensation" for its participation in this proceeding. The request is made under Rule 76.54 of the Commission's Rules of Practice and Procedure.

Rule 76.54 requires filing of a request for eligibility either within 30 days of the first prehearing conference or within 45 days after the close of the evidentiary record. TURN did not file its request within 30 days after the first prehearing conference in this case, thus we must determine whether the filing fell within 45 days after the close of the evidentiary record. TURN first submits that in light of "the unusual procedural history of this case--in which hearings were scheduled but no formal evidence was ever taken--'the close of the evidentiary record' is a somewhat nebulous concept." TURN suggests treating the en banc hearing of July 20, 1989, as the close of the record, because that hearing was fully reported and appears to be the final formal meeting of the parties in this proceeding. In the alternative, TURN asks the Commission to establish a different deadline for filing the eligibility request, as permitted under Rule 76.54(c).

More than two years ago, on August 17, 1987, the administrative law judge issued a ruling on a motion by the Natural Resources Defense Council and granted parties 30 days to file

requests for finding for eligibility for compensation in this proceeding. TURN did not file its request within that period. However, we note that the ruling made it clear that the deadline established in the ruling was "in addition to the other deadlines established in Rule 76.54." The ruling stated that "parties will have an opportunity to file for eligibility within the deadlines triggered" by subsequent prehearing conferences or evidentiary hearings. Under the 1987 ruling, then, TURN is not precluded from filing for eligibility by its failure to file within the deadline established in the ruling if it meets some other established deadline.

It is unclear at this time whether additional hearings will be held in this proceeding. Because of this uncertainty, we see no reason to require TURN to postpone filing its request for eligibility. We will treat TURN's request as a motion to set a different deadline for the filing. We will grant the motion and establish December 31, 1989, as the deadline, so TURN's request is timely.

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 76.54(a)(1) eliminates the need for redundant showings that participation in the proceeding will pose a significant financial hardship for the customer:

"If the customer has met its burden of showing financial hardship in the same calendar year, ...the customer shall make reference to that decision by number to satisfy this requirement."

TURN states that the Commission found in Decision (D.) 89-04-021 that it met its burden of showing significant financial hardship for 1989. Thus, TURN has met the requirement of Rule 76.54(a)(1).

Statement of Issues

Rule 76.54(a)(2) requires the party to submit a statement of issues that the party intends to raise. TURN had already completed its expected participation in this proceeding at the time of the filing of its request. TURN advocated postponing the scheduled hearings on sales forecasts and urged the Commission to reconsider the course of the proceeding before implementing the provisions of D.87-05-071 and D.88-03-008. TURN, therefore, meets this requirement by referring to the issues that it actually raised during this proceeding.

Estimate of the Compensation

Rule 76.54(a)(3) requires an estimate of the compensation to be sought. Again, TURN refers to the actual time it spent participating in this case, multiplied by the hourly compensation that TURN will seek for its attorney in the request for compensation that TURN expects to file in this case. In addition, TURN's estimate includes other reasonable costs, primarily postage and copying costs. The total estimate is \$16,000.

Budget

Rule 76.54(a)(4) requires a budget for the party's presentation. Since TURN is viewing its participation retrospectively, it refers to its estimate of the compensation it will seek as its budget. The resulting budget is \$16,000.

Common Legal Representative

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 for eligibility may designate a common legal representative. No party commented on the appropriateness of a common legal representative, and we find no need to designate such a representative in this proceeding.

Conclusion

We have determined that TURN has met the four requirements of Rule 76.54(a). In addition, no party has responded to TURN's request or raised the issue of the appropriateness of a common legal representative. Therefore, TURN is eligible for compensation for its participation in this case.

Findings of Fact

1. TURN's request for eligibility was timely filed and addresses all four elements required by Rule 54(a) of the Commission's Rules of Practice and Procedure.

2. In D.89-04-021, the Commission found that TURN had demonstrated that its participation would pose a significant financial hardship as defined in Rule 76.52(f).

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

Conclusions of Law

1. TURN's request should be treated as a motion to establish a different deadline for the filing of the request for eligibility.

2. TURN's motion should be granted and December 31, 1989, should be established as the deadline for filing of requests for finding of eligibility for compensation in this proceeding.

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

O R D E R

IT IS ORDERED that Toward Utility Rate Normalization is eligible to claim compensation for its participation in this proceeding.

This order is effective today.

Dated JAN 24 1990, at San Francisco, California.

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

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

Wesley Franklin

WESLEY FRANKLIN, Acting Executive Director

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