

Decision 90 03 024 MAR 14 1990

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of PACIFIC GAS AND
ELECTRIC COMPANY for authority,
among other things, to increase its
rates and charges for electric and
gas service.

Application 88-12-005
(Filed December 5, 1988)

Order Instituting Investigation into
the rates, charges, and practices
of the Pacific Gas and Electric
Company.

I.89-03-033
(Filed March 22, 1989)

OPINION ON ELIGIBILITY

On October 27, 1989, Energy and Resources Advocates, Inc. (ERA) submitted a "Notice of Intent to Claim Compensation and Request for Finding of Eligibility for Compensation" for its participation in this proceeding. On January 18, 1990, ERA submitted a "Motion for Leave to Permit Late Filing and First Amendment to Request for Finding of Eligibility." The amended request for eligibility appears to supersede the earlier request, and this decision will concern only the allegations of the later filing. 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 within 30 days of the first prehearing conference or within 45 days after the close of the evidentiary record. The record in this case closed on September 20, 1989, and the last day for timely filing of requests for eligibility was thus November 6, 1989. ERA was not informed until November 13, 1989 that its October 27, 1989 request had not been filed because it lacked a proper verification.

ERA's motion for leave to permit late filing notes these facts and urges that ERA's place of business, more than 250 miles from San Francisco, forces ERA to file by mail rather than in

person. ERA believes that it would be immediately informed of any defects in its filings if it were able to file documents in person; filing by mail creates a week's delay in finding out about deficiencies in its submittals.

ERA also argues that the rejection of its filing was not in strict compliance with Rule 44, because it was informed by telephone of the defects of its submittal. Rule 44 calls for return of the document with a statement of the reasons for rejection.

ERA's argument that its submittal should be filed because Rule 44 was not strictly followed--because ERA was notified of the defects of its filing by telephone, rather than by mail--elevates form over substance to an absurd degree. If the Docket Office had followed Rule 44 to the letter, ERA would have found out about its deficiency even later, and it would have had to resubmit the returned document at an even later date. It is nonsense for ERA to argue that its request should be filed because the Docket Office paid it the courtesy of a quicker telephone call, rather than the physical return of the document as called for by Rule 44.

ERA's argument that its physical remoteness left it unaware of the defect in its filing until the deadline for filing had passed has more appeal. Because ERA was in substantial compliance with the requirements for filing its request for eligibility, we will grant ERA's motion and direct that its request for eligibility should be filed as of the date it was initially received by the Docket Office. Thus, we conclude that ERA's filing was timely.

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...."

ERA states that its bylaws include, as a principal organizational purpose, representation of the interests of residential customers in matters pending before the Commission and concerning the use of safe and efficient energy resources by California's public utilities. ERA also asserts that the interests of residential customers on issues related to the use of safe and efficient energy resources would not have been adequately represented in this proceeding without ERA's participation. ERA states that the interest it represents was previously represented by the Redwood Alliance. However, the Redwood Alliance choose not to participate in this case, and Alliance members formed ERA to make sure that the residential customer class would have an advocate on these issues.

We conclude that ERA 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, ERA has met the first prong of the test of significant financial hardship.

For an organization like ERA, 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, ERA states that it represents residential customers concerned with safe and efficient energy use who have no significant or disproportionate economic interest in the outcome of this case. Although some of its members may eventually benefit because of ERA's participation, ERA argues that these benefits will accrue to residential ratepayers at large and not just to ERA's members. In addition, 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 ERA's members is small in comparison to the costs of participating in this proceeding, and thus ERA meets the requirements of Rule 76.52(f)(2).

Although ERA has 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. ERA attached an extremely abbreviated financial statement for its 1989 fiscal year to its request. The financial summary shows gross income of \$3,000.00, expenses of \$9,000.00, for a net loss of \$6,000.00. ERA does not distinguish between grant funds committed to specific projects and discretionary funds, as required by Rule 76.54(a)(1).

It seems unlikely that ERA's expenses and income for its fiscal year would both come out in round numbers, down to the penny. We will assume that the figures in the financial summary are estimates, rather than the precise amounts available to ERA. We will further assume that ERA's status as a new organization made the use of these estimates necessary. Based on these assumptions, we will temporarily excuse ERA's failure to comply with Rule 76.54(a)(1). However, before any compensation will be granted to ERA, we will require an up-to-date financial summary and balance sheet. In its financial summary, ERA must also distinguish between grant funds committed to specific projects and discretionary funds, as required by the Rules.

Subject to these assumptions and with the conditions we have just expressed, we conclude that ERA 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. ERA had already completed its expected participation in this proceeding at the time of the filing of its request. ERA's testimony and briefs concentrated on the issues related to the need for additional expenditures on demand-side management programs, the inadequacy of the decommissioning fund for the Humboldt Bay Nuclear Power Plant, and the need for a superweatherization program. ERA therefore meets this requirement by referring to the issues that it actually raised in this proceeding.

Estimate of the Compensation

Rule 76.54(a)(3) requires an estimate of the compensation to be sought. ERA refers to the time spent participating in this case, multiplied by the hourly compensation that ERA will seek for its attorney and paralegal in the request for compensation that ERA intends to file in this case. In addition, ERA's estimate includes expert witness fees and other reasonable costs, primarily postage, telephone, facsimile, photocopying, and travel expenses. The total estimate is \$81,000.

Budget

Rule 76.54(a)(4) requires a budget for the party's presentation. ERA essentially repeats its estimate of the compensation that will be sought to comply with this requirement. The resulting budget is \$81,000.

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 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 ERA has shown that its participation in this proceeding would pose a significant financial hardship, as defined in Rule 76.52. ERA has not submitted the summary of finances required by Rule 76.54(a)(1), and we will not award compensation to ERA until it submits financial information in compliance with the Rules. ERA 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, ERA is eligible for an award of compensation for its participation in this case.

Findings of Fact

1. On October 27, 1989, ERA submitted a "Notice of Intent to Claim Compensation and Request for Finding of Eligibility for Compensation" for its participation in this proceeding.

2. On January 18, 1990, ERA submitted a "Motion for Leave to Permit Late Filing and First Amendment to Request for Finding of Eligibility."

3. ERA's request did not include a detailed financial summary and did not distinguish between grant funds committed to specific projects and discretionary funds, as required by Rule 76.54(a)(1) of the Rule of Practice and Procedure. ERA's request addressed the other three elements of Rule 76.54(a).

4. ERA states that it is an organization authorized by its bylaws to represent the interests of residential customers in matters before the Commission concerning the use of safe and efficient and efficient energy resources. This interest is not otherwise adequately represented in this proceeding, and representation of this interest is necessary for a fair determination of this proceeding. The economic interests of ERA's individual members is small in comparison to the costs of effective participation in this proceeding. ERA has thus demonstrated that

its participation in this proceeding will pose a significant financial hardship, as defined by Rule 76.52(f).

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

Conclusions of Law

1. ERA's request for finding of eligibility dated October 27, 1989, lacked a required verification, but otherwise substantially complied with filing requirements.

2. ERA's motion for leave to permit late filing should be granted, and ERA's request for eligibility should be filed as of the date it was received in the Docket Office.

3. ERA should be ruled eligible to claim compensation for its participation in this proceeding, but no compensation should be awarded ERA until it submits the financial information required by Rule 76.54.

O R D E R

IT IS ORDERED that:

1. The request for finding of eligibility submitted by Energy and Resource Advocates, Inc. (ERA) on October 27, 1989, shall be filed as of the date it was received in the Docket Office.

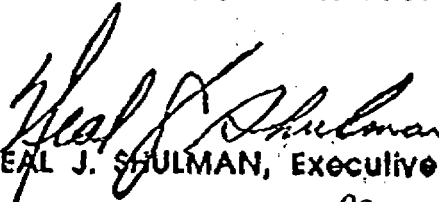
2. ERA is eligible to claim compensation for its participation in this proceeding, but no compensation shall be awarded ERA until it submits the financial information required by Rule 76.54 of the Commission's Rules of Practice and Procedure.

This order is effective today.

Dated MAR 14 1990, at San Francisco, California.

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

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


NEAL J. SHULMAN, Executive Director
DB