

Decision 90 05 085 MAY 22 1990**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )	
GRAEAGLE WATER COMPANY to meter its )	
existing flat rate customers, )	
eliminate all flat rate water )	Application 88-09-033
service, and revise its metered rate )	(Filed September 15, 1988)
schedule (U-53W). )	

OPINION ON ELIGIBILITY

Feather River Park Homeowners Association (FRPHA) and Graeagle Property Owners Association (GPOA) have each filed a "Request for Finding of Eligibility for Compensation" for their participation in this proceeding, in which Graeagle Water Company (GWC) seeks authority to convert from a flat rate to a metered rate system. The requests are made under Rule 76.54 of Article 18.7 of the Commission's Rules of Practice and Procedure, which provides for a program of compensation to intervenors in rate proceedings. Pursuant to Rule 76.54(b), GWC filed responses to the requests. GWC opposes FRPHA's request and has no objection to GPOA's request. No other party filed a response.

I. DiscussionA. Applicability of Article 18.7

Rule 76.51 provides that the Commission's intervenor compensation rules in Article 18.7 apply in proceedings "to modify a rate or establish a fact or rule that may influence a rate." Since it is clear that a favorable ruling on GWC's application would both modify rates and establish facts and rules that may influence rates, the requests are appropriately considered under the provisions of Article 18.7.

**B. Timeliness of Requests**

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. Neither request was filed within 30 days after February 24, 1989, the date of the first prehearing conference. Thus, we must determine the time period for filing from June 9, 1989, the date of the close of the evidentiary record. Accordingly, the requests were due on July 24, 1989. FRPHA's request was filed July 14, 1989 and is therefore timely.

GPOA's request was filed with the Docket Office on July 26, 1989. Although the filing was two days late, we note that the request was dated July 12, 1989, that the verification was executed at Graeagle, California on July 12, 1989, and that the certificate of service was dated July 12, 1989 and shows service by mail to parties on that date. We acknowledge the difficulty that parties such as GPOA may have meeting filing deadlines when they are unfamiliar with our filing procedures, are located in remote areas of the state, and must rely on U. S. Mail service. Moreover, although the evidentiary record was closed with the conclusion of hearings on June 9, the matter was not submitted for decision until several months after July 24, 1989 as the parties agreed to an extended briefing schedule. (Briefs were filed on November 20, 1989, and by ruling of the administrative law judge the brief of G. I. Patterson was accepted on February 16, 1990.) Finally, we note that there are no objections regarding the timeliness of GPOA's filing. For all of the foregoing reasons we find that good cause exists for accepting the filing.

**C. Qualification of FRPHA  
as a "Customer"**

GWC argues that FRPHA is a "commercial enterprise" representing owners of 35 cabins for hire and a 9-hole golf course open to the general public, that as a commercial enterprise it does not represent the interests of residential customers, and that

FRPHA therefore does not fall into any of the categories of customers eligible for funding under Article 18.7.<sup>1</sup>

Rule 76.52(e) defines "customer" as follows:

"...any participant representing consumers, customers, or subscribers of any electrical, gas, telephone, telegraph, 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...."

We do not interpret Rule 76.52(e) or Public Utilities Code § 1802(e), which Rule 76.52(e) mirrors, as narrowly as GWC urges. We have considered the legislative history of Senate Bill (SB) 4, which is codified at § 1801 et seq., with respect to the definition of customer in a previous eligibility determination. (Decision (D.) 88-12-034 in Application 85-01-034 et al.) While the question of the rules' applicability to residential customers only was not directly at issue in that determination, we noted that early versions of SB 4 limited eligibility to residential customers, but also that an amendment to the legislation broadened the eligible parties by deletion of the word "residential" throughout the bill. (D.88-12-034, mimeo. p. 6.) Rule 76.52(e) sets forth three alternative categories of representatives qualifying as customers. Only the last of these makes reference to residential customers. FRPHA does not allege that its articles of incorporation or bylaws authorize the representation of residential

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<sup>1</sup> FRPHA is composed of the non-resident owners of the 35 cabins. Neither FRPHA nor GWC states whether each owner is a separate customer of GWC and we make no finding on this point.

customers. Thus, the third alternative, the only one restricted to residential customers, is inapplicable to FRPHA in any event.

FRPHA is clearly a participant representing its own interest as a customer. We believe that Rule 76.52(e) should be construed broadly to assure eligibility of all qualified representatives, whether or not they represent residential customers, and whether they represent one customer or many.<sup>2</sup> We conclude that FRPHA qualifies under the definition. It does not lose its customer status merely because it is also a commercial enterprise.

D. Significant Financial Hardship

Rule 76.54(a) requires a request for finding of eligibility to include:

- "(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...."

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

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<sup>2</sup> In opposing the application because of the impact metering would have on it as a large user of water, FRPHA undoubtedly represents the interests of other large users who would face similar impacts if metering is authorized.

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."

Rule 76.55 specifically provides that the Commission's ruling on eligibility shall address whether a showing of significant financial hardship has been made. We address separately the adequacy of FRPHA's and GPOA's showings below.

1. FRPHA

In our judgment, FRPHA has an interest not otherwise adequately represented, and representation of that interest is necessary for a fair determination of the proceeding. FRPHA is the only active party opposing all aspects of the application. FRPHA therefore meets the first part of the two-part definition of financial hardship.

The second part of the definition, as it applies to FRPHA, requires that we find that the customer cannot afford to pay the costs of effective participation in this proceeding. As GWC points out in its protest, FRPHA's filing does not demonstrate that participation without an award would impose a significant financial hardship. The only financial information in the filing that even begins to make the required showing is the assertion that "the net financial return to each [rental cabin] owner is negligible, reflecting an annual return to each owner of probably less than five percent on investment." The requisite showing has not been made.

Moreover, as we have previously stated, our intervenor compensation program "does not compensate intervenors that otherwise have the financial means and incentive to participate." (D.89-10-037, mimeo. p. 2.) In determining whether a customer can afford to pay for its participation and whether it has adequate incentive to do so, it is appropriate to compare the customer's

financial interest in the outcome of the proceeding which would result from its successful participation with the reasonable cost of its participation. Without adjudging whether its estimate is reasonable, we note that FRPHA has projected a total cost of \$28,000 for its participation in this proceeding. FRPHA also states that if the proposed metered rate schedule is implemented, "an increase from its current annual bill of \$8,500.00 to at least \$30,000.00 is a realistic possibility." Using FRPHA's own estimates it can be seen that the cost of its participation does not substantially outweigh the outcome it hopes to achieve through that participation.

In conclusion, FRPHA has not made the requisite showing of significant financial hardship as a result of its participation, and we are precluded from finding it eligible for compensation. No other aspects of FRPHA's filing require discussion, and the discussion which follows addresses only the eligibility of GPOA.

2. GPOA

In our judgment, GPOA represents an interest not otherwise adequately represented by any other party, and representation of that interest is necessary for a fair determination of the proceeding. The interest of homeowners represented by GPOA overlaps but does not duplicate that of FRPHA. In particular, GPOA recommends metering for large customers such as FRPHA and retention of flat rates for the individual homeowners it represents. Water Utilities Branch makes virtually the opposite recommendation. GPOA therefore meets the first part of the two-part definition of financial hardship.

For an organization like GPOA, Rule 76.52(f)(2) weighs the economic interests of the organization's individual members against the costs of effective participation. As discussed below, GPOA's estimate of compensation to be sought for participation is \$1,870.47. While we do not at this time reach a conclusion about the reasonableness of the estimate, we can and do conclude that the

economic interests of its members are individually much smaller than the costs that GPOA can be expected to incur as a result of its participation.

We recognize that this request does not present us with a factual situation which is typical of eligibility requests. We often are asked to determine the eligibility of organizations whose primary or sole purpose for existence is to represent utility ratepayers, most of whom are not members of or contributors to the organization but are nevertheless potential beneficiaries of the organization's participation. In this case, we note from our review of the record that GPOA is a group of approximately 490 homeowners in Graeagle and that GWC has approximately 600 residential customers. It is reasonable to conclude from this that the residential customers represented by GPOA constitute a substantial majority of GWC's residential customers, and indeed of all the customers. Since Rule 76.61 requires that any compensation which ultimately may be awarded to GPOA shall be included in the utility's rates on a dollar-for-dollar basis, to be fully recovered within one year of the award, the effect of an award may be of comparable magnitude to the effect that a direct assessment of members by GPOA for its participation costs would have. Nevertheless, Rule 76.52(f)(2) requires that the economic interest of the individual members be considered. We conclude that the terms of the rule are satisfied by GPOA's request.

In addressing the significant financial hardship issue under Rule 76.54(a)(1), parties are required to provide a summary of finances, distinguishing between grant funds committed to specific projects and discretionary funds. GPOA provided a summary of its finances identifying available funds and expenditures for the fiscal year 1988-89. All of its income is from membership dues; there are no grant funds.

We conclude that GPOA 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.

**E. Statement of Issues**

Rule 76.54(a)(2) requires a statement of issues that the party intends to raise. GPOA had already presented its testimony at the time it filed its request. In its filing, GPOA indicates that its intent in this proceeding was to obtain the services of an independent expert to advise the membership and the Commission on issues of water use, relative consumption, financial impact on customers, and practical effects of metering for Graeagle. We find that GPOA has complied with Rule 76.54(a)(2).

**F. Estimate of Compensation to be Sought and Budget**

Rule 76.54(a)(3) requires an estimate of the compensation to be sought. Rule 76.54(a)(4) requires a budget for the party's presentation. GPOA indicates that it will seek full compensation for the services of its consulting engineer. It determined that it could not afford an attorney for this proceeding and did not engage one. The engineer's services have already been rendered and a bill for \$1,870.47 for services has been presented to GPOA. A copy of the engineer's statement is attached to the filing. This fully meets the requirements of Rules 76.54(a)(3) and 76.54(a)(4).

**G. Conclusion**

We have determined that GPOA has shown that its participation in this proceeding would pose a significant financial hardship, as defined in Rule 76.52(f), has submitted the summary of finances required by Rule 76.54(a), and has met the other requirements of Rule 76.54(a). No party has objected to the request for determination of eligibility or raised the issue of the appropriateness of a common legal representative. Therefore, GPOA is eligible to claim compensation for its participation in this case.



Findings of Fact

1. A favorable ruling on GWC's application would both modify rates and establish facts and rules that may influence rates.

2. FRPHA's request was filed timely.

3. GPOA's request was filed two days late on July 26, 1989, but the request was dated July 12, 1989, the verification was executed at Graeagle, California on July 12, 1989, and the certificate of service was dated July 12, 1989 and shows service by mail to parties on that date.

4. Parties such as GPOA may have difficulty meeting filing deadlines when they are unaccustomed with our filing procedures, are located in remote areas of the state, and must rely on U. S. Mail service.

5. FRPHA represents its own interest as a customer.

6. FRPHA has an interest not otherwise adequately represented, and representation of that interest is necessary for a fair determination of the proceeding.

7. The expected cost of FRPHA's participation in this proceeding does not substantially outweigh the financial benefit of the outcome it hopes to achieve through that participation.

8. GPOA represents an interest not otherwise adequately represented by any other party, and representation of that interest is necessary for a fair determination of the proceeding.

9. The economic interests of GPOA's members are individually much smaller than the costs that GPOA can be expected to incur as a result of its participation.

Conclusions of Law

1. The requests of FRPHA and GPOA for findings of eligibility for compensation are appropriately considered under the provisions of Article 18.7.

2. Good cause exists for accepting GPOA's filing although it was two days late.

3. Rule 76.52(e) should be construed broadly to assure eligibility of all qualified representatives, whether or not they represent residential customers, and whether they represent one customer or many.

4. FRPHA qualifies as a customer under Article 18.7

5. FRPHA has not made the requisite showing of significant financial hardship as a result of its participation, and we are precluded from finding it eligible for compensation.

6. GPOA has shown that its participation in this proceeding would pose a significant financial hardship, and has met the other requirements of Rule 76.54(a).

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

O R D E R

IT IS ORDERED that:

1. The request of Feather River Park Homeowners Association for a finding of eligibility for compensation for its participation in this proceeding is denied.

2. The request of Graeagle Property Owners Association (GPOA) for a finding of eligibility for compensation is accepted for filing.

3. GPOA is eligible to claim compensation for its participation in this proceeding.

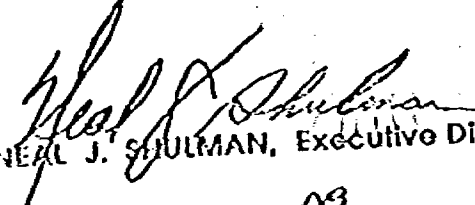
This order is effective today.

Dated MAY 22 1990, 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

  
NEAL J. SCHULMAN, Executive Director

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