

Decision 90 09 024 SEP 12 1990

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
Pacific Gas and Electric Company for
authority to revise its gas rates and
tariffs effective April 1, 1990 in
its Annual cost Allocation
Proceeding.

Application 89-08-024
(Filed August 15, 1989)

OPINION ON ELIGIBILITY FOR COMPENSATION

On January 19, 1990 Toward Utility Rate Normalization (TURN) filed in this proceeding 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) second annual cost allocation proceeding is an application in which PG&E sought a rate increase of approximately \$143 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 on January 19, 1990, within 45 days after the close of hearings in this proceeding.

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; and
- (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 contends that it represents an interest - the residential customer class - that would not otherwise be adequately represented in this proceeding. TURN points out that the Commission has specifically found that participation of the Division of Ratepayer Advocates does not obviate the need for

residential class representation. (D.85-06-028, mimeo. at 2-3.) Circumstances have not changed in this regard since that time. Thus for 1990, TURN meets the requirement of Rule 76.52 (f)(1).

For an organization like TURN, Rule 76.52(f)(2) weighs the economic interests of the organization's individual members against the cost of effective participation. TURN states it represents the interests of several constituent groups such as the Golden State Mobilehome Owners League, the International Association of Machinists and Consumer Action, whose members include individual residential customers of PG&E, as well as approximately 50,000 individual members, many of whom receive utility service from PG&E. TURN submits that the Commission has consistently found that the economic interests of these individual members are tiny in comparison to the costs of effective participation in Commission proceedings. TURN points out that in every year since the current compensation rules were adopted, this Commission has found that TURN qualifies as a "customer" suffering significant financial hardship.

As discussed below, TURN's estimated cost of participation in this proceeding is \$75,000. While not addressing the reasonableness of TURN's estimated budget, we do 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) for 1990.

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 fiscal year ending June 30, 1989 and the last six months of 1989. During that 18-month period, TURN total income was approximately \$1 million. TURN notes that the total includes

an unusually large compensation award of \$250,000 (relating to three years of work in the gas restructuring proceeding). Direct mail campaign and other expenses left an end-of-1989-fiscal-year balance of \$330,000.

However, the last six months of 1989 were not nearly as lucrative for TURN. Total income was about \$255,000 including an \$80,000 Telecommunications Education Trust (TET) grant which cannot be used to support TURN's ongoing advocacy activities. Due to expenses of \$360,000 for this six-month period, TURN's 1989 year end balance dropped to \$255,000, a portion of which is restricted TET money.

TURN argues that intervenor compensation awards represent a significant and critical portion of TURN's total budget. TURN points out that its operating expenses have increased substantially, as the full effects of the organization's move to new office space and addition of new staff have been felt. TURN contends that without intervenor funding, it will not be able to effectively participate in Commission proceedings and will suffer significant financial hardship.

We agree that intervenor funding is a significant portion of TURN's budget that cannot be met from other sources. 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, particularly as set forth in its prepared testimony and briefs. TURN concentrated most of its efforts on the discount adjustment issue, as well as other matters such as interutility throughput, gas cost forecasting, residential rate design and the cogeneration shortfall account.

A review of the record and Decision 90-04-021 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. Before the decision was issued, TURN estimated it may request \$75,000 for its work in this case, based on an assumed 320 hours of attorney/witness time at a proposed hourly rate of \$200, plus \$10,000 in consulting fees for its second witness, plus \$1,000 for "other reasonable costs", primarily postage and copying expenses.

In light of TURN's participation in this proceeding, TURN has complied with Rule 76.54(a)(3).

Budget

Rule 76.54(a)(4) requires a budget for the party's presentation. As discussed above, TURN's estimated budget for this proceeding is \$75,000.

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 1990.

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 proceeding.

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 1990.

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 1990.

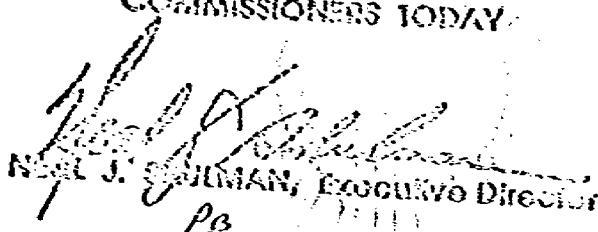
This order is effective today.

Dated SEP 12 1990, at San Francisco, California.

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

Commissioner John B. Ohanian,
being necessarily absent, did
not participate.

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


NEAL J. SULLIVAN, Executive Director
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