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Decision 91-03-008 March 13, 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 SCEcorp and its public utility)
 subsidiary SOUTHERN CALIFORNIA EDISON)
 COMPANY (U 338-E) and SAN DIEGO GAS &)
 ELECTRIC COMPANY (U 902-M) for)
 Authority to Merge SAN DIEGO GAS &)
 ELECTRIC COMPANY into SOUTHERN)
 CALIFORNIA EDISON COMPANY.)

Application 88-12-035
 (Filed December 16, 1988;
 amended April 17, 1989)

OPINION ON RATE WATCHERS' REQUEST
 FOR FINDING OF ELIGIBILITY FOR COMPENSATION

On September 18, 1990, Rate Watchers filed its Request for Finding of Eligibility for Compensation under Article 18.7 (Rules 76.51 through 76.62) of the Commission's Rules of Practice and Procedure. No party opposes Rate Watchers' filing. Article 18.7 specifies the requirements applicable to 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." (Rule 76.51.) Since the Southern California Edison Company/San Diego Gas & Electric Company (SDG&E) merger application, filed December 16, 1988, raises ratepayer net benefits and ratemaking issues, it is a proceeding which will "modify a rate or establish a fact or rule that may influence a rate." Therefore, Rate Watchers' Request for Finding of Eligibility is appropriately considered under the provisions of Article 18.7.

Timeliness of Rate Watchers' Request

Rule 76.54(a) requires that Requests for Eligibility be filed within 30 days of the first prehearing conference or within 45 days after the close of the evidentiary record. Evidentiary

hearings in this proceeding concluded on August 4, 1990, and Rate Watchers' Request for Eligibility was filed on September 18, 1990, within the 45-day time frame contemplated under the second option of Rule 76.54(a); therefore, Rate Watchers' request is timely.

Other Requisites of Rule 76.54

Rule 76.54 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. If the customer has met its burden of showing financial hardship in the same calendar year, as determined by the Commission under Rule 76.05, 76.25, or 76.55, the customer shall make reference to that decision by number to satisfy this requirement;
- "(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."

We now analyze Rate Watchers' showing, in compliance with these four requisites.

1. Significant Financial Hardship

Article 18.7 contains a two-pronged test to determine whether a party would, absent a finding of eligibility for compensation, face significant financial hardship:

- "(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."
(Rule 76.52(f).)

Rate Watchers asserts that it is a group of constructive advocates dedicated to promoting the best interests of ratepayers. Rate Watchers represents an interest--the residential customer class--that would not otherwise be adequately represented in this proceeding, notwithstanding the participation and similar goals of the Division of Ratepayers (DRA) (Decision (D.) 85-06-028). Rate Watchers has therefore met the first part of the Rule 76.52(f) standard.

As it applies to an organization such as Rate Watchers, the second part of Rule 76.52(f) focuses on the relatively small economic interest of the organization's individual members versus the overall cost of effective participation in the proceeding. Rate Watchers indicates that it receives no grants or membership dues from its members and is supported only by the contributions of members' time and limited financial resources. It contends that the economic interest of its members is very small compared to the costs of successful participation.

As the Commission noted in D.85-06-028:

"It is obviously impractical for individual residential ratepayers to do much other than to send us letters or make brief statements at our public hearings, and while we appreciate such input it does not develop evidence of record upon which we can make findings of fact...Realistically, then there must be organized groups which participate on behalf of residential ratepayers on an ongoing basis with a reserve of experience and resources so that

they can follow the continuing chain of ratemaking proceedings and participate effectively... [I]t would simply not be cost-effective for individual residential ratepayers to mount these expenditures separately on their own behalf." (D.85-06-028, mimeo. p. 30.)

Consistent with this prior decision, we believe that Rate Watchers, representing the interests of individual residential ratepayers, meets the second part of the Rule 76.52(f) standard.

2. Statement of Issues

Rate Watchers indicates that its overall focus in this proceeding is "the public interest aspect" and that it will raise issues related to the "nomogram" transmission import limits into the SDG&E's service territory. (Rate Watchers' Request, p. 2.)

To the extent that Rate Watchers' list of issues raises broad public interest matters which may be covered by several other parties including DRA, as representatives of the general ratepayer class, we will be required to analyze duplication issues at the compensation stage of this proceeding. However, for purposes of eligibility, Rate Watchers has satisfied the requirements of Rule 76.54(a)(2) by detailing the issues it raises in this proceeding.

3. Rate Watchers' Estimate of the Compensation That Will be Sought

Rule 76.54(a)(3) requires an estimate of the compensation that will be sought. Rate Watchers indicates that its estimate of the final compensation it will seek in this proceeding is approximately \$17,000.

4. Budget

Rule 76.54(a)(4) requires a budget for Rate Watchers' presentation. Rate Watchers indicates that the final accounting from all outside consultants, production sources, and its own internal out-of-pocket costs has not been tabulated. Rate Watchers states that due to the complexity and wide range of issues

necessarily covered in this proceeding, it will ask the Commission for an increase in its hourly rate of compensation, but that its final estimate is approximately \$17,000.

While Rate Watchers has satisfied the requisites of Rule 76.54(a)(4) by providing this information, its figures are necessarily preliminary, and we will review the reasonableness of its dollar request, including related hourly rate issues, at the compensation stage of this proceeding.

Conclusion

For purposes of this proceeding we have determined that Rate Watchers has met its burden of showing significant financial hardship because it has satisfied the two-pronged significant financial hardship test set forth in Rule 76.52(f). This determination will carry over to Rate Watchers' participation in other proceedings in calendar year 1991. (Rule 76.54(a)(1).)

For purposes of this merger proceeding only, we have also determined that Rate Watchers has adequately addressed the other three requirements of Rule 76.54 (statement of issues, budget and compensation estimates). Therefore, Rate Watchers is eligible for an award of compensation in this proceeding.

Findings of Fact

1. Rate Watchers' Request for Eligibility was timely filed and addressed all four elements specified in Rule 76.54(a) of Article 18.7 of the Commission's Rules of Practice and Procedure governing Intervenor Fees and Expenses.

2. Rate Watchers represents the interests of individual residential ratepayers not otherwise adequately represented, and who, as individuals, have a small economic interest in comparison to the costs of effective individual participation; therefore, Rate Watchers has demonstrated significant financial hardship under Rule 76.52(f).

Conclusions of Law

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

2. The determination that Rate Watchers has met its burden of showing significant financial hardship in this proceeding should carry over to other proceedings in which Rate Watchers participates in calendar year 1991.

ORDER

IT IS ORDERED that:

1. Rate Watchers is eligible to claim compensation for its participation in this proceeding.

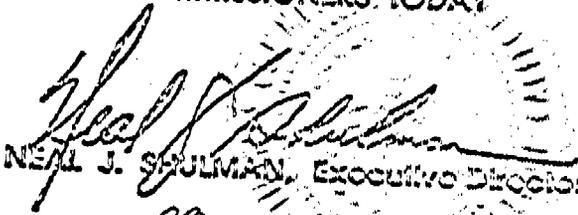
2. The determination that Rate Watchers has met its burden of showing significant financial hardship in this proceeding shall carry over to other proceedings in which Rate Watchers participates in calendar year 1991.

This order is effective today.

Dated March 13, 1991, at San Francisco, California.

PATRICIA M. ECKERT
President
G. MITCHELL WILK
JOHN B. OHANIAN
DANIEL WM. FESSLER
NORMAN D. SHUMWAY
Commissioners

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


NEAL J. SHULMAN, Executive Director