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Decision 91-03-051 March 22, 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Sayles Hydro Associates, )  
 Complainant, )  
 vs. )  
 Pacific Gas and Electric )  
 Company, )  
 Defendant. )

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**ORIGINAL**

Case 87-03-032  
(Filed March 17, 1987)

OPINION ON ELIGIBILITY FOR COMPENSATION

On May 1, 1990, Save Our Streams Council, Inc. (SOS or intervenor) filed a 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 (Rules). On May 16, 1990, Pacific Gas and Electric Company (PG&E) filed a response to the SOS request. PG&E did not oppose the request for a finding of eligibility for compensation. The underlying complaint involved assertions by Sayles Flat Hydro Associates (Sayles) that PG&E had exhibited bad faith in failing to negotiate a reasonable resolution of a dispute concerning transmission costs. In Decision (D.) 90-12-074, we found that dispute to be moot, because of Sayles' failure to comply with performance provisions in its power sales contract. SOS participated as an intervenor.

Rule 76.51 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." Because this proceeding concerns the contractual rights of a small power

producer to receive payments from PG&E and its ratepayers for delivered power, it is clear that this proceeding may "modify a rate or establish a fact or rule that may influence a rate;" therefore, intervenor's request is appropriately considered under the provisions of Rule 76.51.

Since SOS was granted status as an intervenor in this proceeding, it is a party under Rule 76.52(d).

In its request for eligibility, SOS has made no assertion that it is a customer under Rule 76.52(e). However, in its Petition for Intervention, SOS stated that approximately 60% of its members are PG&E ratepayers. As such, SOS is a customer; under Rule 76.52(e).

Rule 76.54(a) 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. This request was filed several months after the prehearing conference that led to the hearings in the underlying matter, but well before the close of the evidentiary record. Therefore, the request is timely.

Rule 76.54(a)(1)-(4) 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;
- "(4) A budget for the customer's presentation."

The adequacy of intervenor's filing on each of these items is addressed in turn below.

Significant Financial Hardship

In response to a petition for modification in I.84-04-077, we issued D.90-01-049, which found that SOS's involvement in Commission proceedings of this nature represents a significant financial hardship. That decision was issued on January 24, 1990. As is our practice, we will not require SOS to justify a hardship finding more than once in the same calendar year. Thus, we find a significant financial hardship exists.

Statement of Issues

Rule 76.54(a)(2) requires a statement of issues that the party intends to raise. In its Petition for Intervention, SOS discussed nine issues that it said it would pursue if allowed to participate in this proceeding. We will not repeat each issue here. Most issues related to the question of whether Sayles should be excused from its contractual obligation to provide power to PG&E by a specific date. That question is relevant to a determination of Sayles' rights to the relief sought.

Estimate of the Compensation to be Sought

Rule 76.54(a)(3) requires an estimate of the compensation to be sought. SOS estimated that its compensation request would total \$20,708.94.

Budget

Rule 76.54(a)(4) requires a budget for the party's presentation. SOS has provided such a budget, specifying the anticipated costs not by issue, but by phase of the proceeding. Hearing-related costs are separated from post-hearing costs or those related to specific motions. While this budget is sufficient for a finding of eligibility, SOS should accompany any Request for Compensation with a breakdown of costs as they relate to the litigation of each specific issue.

Common Legal Representative

Under Rule 76.55 our decision on the request may designate a common legal representative. In this instance, no party has suggested the need for a common legal representative.

Conclusion

We have found that intervenor has shown that its participation in this proceeding would pose a significant financial hardship, as defined in Rule 76.52(f). This "significant financial hardship" determination only applies to SOS's participation in other proceedings in 1990. SOS will be required to present a new justification for a finding of hardship in future proceedings.

For purposes of this proceeding only, SOS has met the other three requirements of Rule 76.54(a). Therefore, SOS is eligible to seek compensation for its participation in this case.

SOS is placed on notice that it may be subject to audit or review by the Commission Advisory and Compliance Division; therefore, adequate accounting records and other necessary documentation must be maintained 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. SOS'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. SOS 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. SOS 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).

4. Since a decision on the merits of the underlying complaint has already been issued, this order should be effective immediately to allow for rapid consideration of any subsequent request for compensation.

Conclusion of Law

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

ORDER

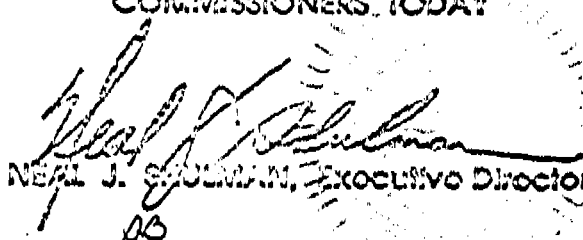
IT IS ORDERED that Save Our Streams Council, Inc. is eligible to claim compensation for its participation in this proceeding.

This order is effective today.

Dated March 22, 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. SPOLERMAN, Executive Director