

APR 10 1991

Decision 91-04-009 April 10, 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation)
 on the Commission's own motion to)
 implement the Biennial Resource)
 Plan Update following the)
 California Energy Commission's)
 Seventh Electricity Report.)

ORIGINAL

I.89-07-004
(Filed July 6, 1989)

OPINION ON ELIGIBILITY FOR COMPENSATION

On December 21, 1990, Toward Utility Rate Normalization (TURN) 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). No response to TURN's request has been filed by any other party.

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 investigation may substantially affect the future resource mix, and hence the costs, of the respondent utilities, it is clear that this proceeding may "modify a rate or establish a fact or rule that may influence a rate;" therefore, TURN's request is appropriately considered under the provisions of Rule 76.51.

TURN is an interested party in this proceeding and, therefore, is a party under Rule 76.52(d).

TURN is a "customer" under Rule 76.52(e) because it represents customers of electrical corporations subject to the jurisdiction of the Commission.

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. TURN's filing is timely, because it is filed together with TURN's concurrent brief at the submission of the current phase of this investigation.

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 TURN's filing on each of these items is addressed in turn below.

Significant Financial Hardship

Rule 76.52(f)(1)(2) 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."

As we will discuss later, TURN's compliance with this criterion has already been established in another proceeding.

Statement of Issues

Rule 76.54(a)(2) requires a statement of issues that the party intends to raise. TURN's participation regarding environmental factors and bidding structure are already matters of record in the current phase of this investigation.

Estimate of the Compensation to be Sought

Rule 76.54(a)(3) requires an estimate of the compensation to be sought. TURN has indicated that it may request approximately \$31,000 for its work in this case. This estimate of potential compensation is based on an assumed 200 hours of attorney time at an hourly rate of \$150, and \$1000 for "other reasonable costs," primarily postage, telecommunications and copying expenses. The precise amount of compensation and the reasonableness of the compensation sought will be addressed in TURN's compensation filing after the Commission has decided this matter.

Budget

Rule 76.54(a)(4) requires a budget for the party's presentation. TURN indicates its budget for this phase is \$31,000, as discussed above in connection with the compensation estimate.

Conclusion

We have previously found that TURN has met its burden to demonstrate that participation would pose a significant financial hardship, as defined in Rule 76.52(f). This finding, in Decision 90-09-024, applies for calendar year 1990, which is when TURN's work in the current phase of this proceeding was performed. We conclude that the finding also satisfies the requirement of Rule 76.54(a)(1) for this proceeding.

For purposes of the current phase of this proceeding only, TURN has met the other three requirements of Rule 76.54(a).

Therefore, TURN is eligible for an award of compensation for its participation in the current phase of this investigation.

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 and 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).

Conclusion of Law

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

ORDER

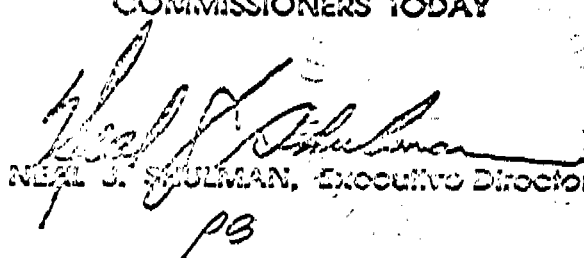
IT IS ORDERED that Toward Utility Rate Normalization is eligible to claim compensation for its participation in the current phase (Phase 1B) of this proceeding.

This order is effective today.

Dated April 10, 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 S. SCHULMAN, Executive Director