

Decision 91-11-014 November 6, 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation on the Commission's own motion to develop policies and procedures for addressing the potential health effects of electric and magnetic fields of utility facilities.

ORIGINAL

I.91-01-012

(Filed January 15, 1991)

OPINION ON ELIGIBILITY FOR COMPENSATION

This decision addresses the following Requests for a 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):¹

- o Toward Utility Rate Normalization (TURN), filed on August 23, 1991;
- o The Fund For The Environment (FFTE), filed on August 30, 1991;
- o Sun Yung Kim (Kim), filed on September 3, 1991;
- o Citizens Concerned About EMFs (CCAEC), filed on September 13, 1991.

1 We recently established a separate up-front compensation mechanism for members of the California Electromagnetic Fields (EMF) Consensus Group. (See Decision (D.) 91-10-016.) CCAEC and FFTE are eligible for up-front compensation for their participation in that Group. In order to also receive compensation for participating in the evidentiary hearing process, CCAEC and FFTE need to apply for intervenor compensation under Rules 76.51 through 76.62. Although also a member of the EMF Consensus Group, TURN has elected to apply for intervenor compensation for all of its participation in this proceeding. Kim is not a member of EMF Consensus Group.

On September 19, 1991, Pacific Gas & Electric Company (PG&E) filed a response to these Requests.

Rule 76.51 et seq. contain 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." The purpose of this investigation is to examine the Commission's potential role in mitigating possible health effects from (1) electric and magnetic fields created by electric utility power systems, or (2) fields emitted by cellular radiotelephone towers. 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.

TURN, FFTE, CCAE and Kim are interested parties in this proceeding and, therefore, are parties under Rule 76.52(d).

TURN, FFTE, CCAE and Kim are customers under Rule 76.52(e) because the consumers they represent are served by corporations subject to the jurisdiction of the Commission.²

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. The first prehearing conference (PHC) in this investigation was held in Los Angeles on July 26, 1991, and was continued one month later

² Under our previous interpretation of Rule 76.52(e), TURN is considered a customer by the nature of its raison d'être as a representative of residential customers. Kim, CCAE and FFTE, on the other hand, are considered customers because they represent the broader interest of at least some other consumers, customers or subscribers. See D.86-05-007.

As described above, the first element of demonstration of "significant financial hardship" is a showing that "the customer has or represents an interest not otherwise adequately represented, representation of which is necessary for a fair determination of the proceeding." In its Request, FFTE states that it represents its organization's environmental and health concerns along with, on behalf of Concern for Tenants Rights of Beverly Hills, interests of renters residing in that area. CCAE represents residents in the San Ramon community who are exposed to electromagnetic fields. Kim is intervening on behalf of herself and other El Cerrito residents who reside or work in the vicinity of cellular towers. TURN represents the general interest of all residential customers.

In its response, PG&E argues that Kim does not meet the above requirement because "the interests of residential customers are adequately represented by Citizens Concerned About EMFs and by the Fund For The Environment." We disagree. Although Kim's interest may overlap with parts of other parties' interests, she is clearly representing concerns specific to her community, as are CCAE and FFTE. Moreover, we have found more than one participant eligible for compensation in connection with representing residential ratepayers in past proceedings. As we stated in D.85-01-009, it is possible that the efforts of more than one representative are necessary to represent the residential ratepayer class adequately.³

Accordingly, we find that Kim, CCAE, FFTE and TURN each represent an interest that is not otherwise represented. In addition, we conclude that representation of each interest is necessary for a fair determination of this proceeding. Thus Kim, CCAE and FFTE have met the first element of the test of significant financial hardship. As we will discuss below, TURN's compliance

³ D.85-01-009, mimeo. pp. 4-5.

with this criterion has already been established in another proceeding.

To qualify under the second element of "significant financial hardship" (see above), we require that individuals and organizations provide detailed documentation of their finances. The filing should also make the distinction between discretionary and committed grant funds, if applicable. As we stated in D.86-05-007:

"Business customers, not-for-profit corporations, and other organizational customers have ready access to their annual income and expense statements and year-end balance sheets. These are a convenient summary of finances that should enable the Commission to determine whether the customer has the resources to pay for representation.

"Individual customers should likewise be prepared to disclose their finances. We have struggled to select a means for eliciting the necessary information from individuals. While the Commission has no desire to intrude into the private affairs of individuals, it also needs enough information to justify the allocation of funds collected through rates from the general body of ratepayers to compensate particular individuals for their advocacy. An analogous financial disclosure requirement is in place in the State's civil courts." (D.86-05-007, mimeo. pp. 10-11.)

We have previously found that TURN has met its burden to demonstrate that participation would pose a significant hardship, as defined in Rule 76.52(f). This finding, in D.91-05-029, applies for calendar year 1991. We conclude that the finding also satisfies the requirement of Rule 76.54(a)(1) for this proceeding.

For CCAE, FFTE and Kim, on the other hand, we must examine the specific documentation of financial hardship in their request. CCAE states that it is a grassroots organization, without membership dues or grants. All expenses caused by CCAE's activities (including participation in this proceeding) are paid "by the founding members out of their pockets, with no compensation

for lost wages or fees from anyone." CCAE does not provide any financial information on its founding members. FFTE's only reference to financial hardship is a statement that they "...simply do not have the fiscal resources to fully and effectively participate in these proceedings unless that PUC assists in funding our efforts." Kim summarizes her financial situation as "a working woman who suffered significant financial hardship." These statements alone are not sufficient to support a finding of significant financial hardship. Therefore, CCAE, FFTE and Kim have not satisfied Rule 76.52(f)(2)'s requirements for demonstration of significant financial hardship.

Statement of Issues

Rule 76.54(a)(2) requires a statement of issues that the party intends to raise. TURN, CCAE, FFTE and Kim believe that it is too early in the proceeding to identify the specific issues they will raise. However, as a preliminary set, they each refer to the issues raised in their filed comments to the Order Instituting Investigation (OII). These include the biological effects of EMFs, the Commission's general strategy regarding EMFs, policy issues regarding customer education programs, the equitable sharing of research and mitigation costs by utility customers and shareholders, and policies related to the funding of additional scientific research. In light of the early stage of this investigation, we find that TURN, CCAE, FFTE and Kim have complied adequately with Rule 76.54(a)(2).

We anticipate that these issues will also be thoroughly reviewed and addressed by DRA and several other parties. This may necessitate an analysis of duplication issues when we review intervenors' compensation requests at a later stage in this proceeding.

Estimate of the Compensation to be Sought

Rule 76.54(a)(3) requires an estimate of the compensation to be sought. TURN estimates that it will request approximately \$52,250 in this proceeding. Kim estimates an annual budget of \$20,000. CCAE projects that it will need approximately \$30,000 for this proceeding, minus payments received from up-front funding as a member of the EMF Consensus Group. FFTE does not present an estimate of compensation in its request.

Budget

Rule 76.54(a)(4) requires a budget for the party's presentation. TURN's, Kim's and CCAE's budgets are identical to their estimates of compensation. These figures are preliminary, and their reasonableness will be reviewed in the compensation stage of this proceeding. FFTE does not present a budget in its request.

Common Legal Representative

Rule 76.54(b) allows other parties to comment on the request, including a discussion of whether a common legal representative under Rule 76.59 is appropriate. Under Rule 76.55, our decision on the request may designate a common legal representative. No party commented on the appropriateness of a common legal representative, and we find no need to designate such a representative in this proceeding.

Conclusion

As discussed above, CCAE's, FFTE's and Kim's requests are deficient in one or more areas. All three have failed to provide sufficient financial information for us to evaluate their claims of significant financial hardship. In addition, FFTE has failed to provide an estimate of compensation and a budget. Though we cannot find CCAE, FFTE and Kim eligible at this time, we will authorize the filing of an amended pleading within 60 days to correct the noted deficiencies.

We found in D.91-05-029 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 met the requirements of Rule 76.54(a). With regard to the other three requirements of Rule 76.54(a), we find that TURN's showings are adequate, given the early stage of this proceeding. Therefore, TURN is eligible for an award of compensation for its participation in this proceeding.

We wish to remind the parties that a finding of eligibility for an award of compensation is not a guarantee that the participant will ultimately receive an award. That determination depends on our finding pursuant to a filing under Rule 76.56. As discussed in this order, we will examine carefully the reasonableness of expenditures as well as any duplication of issues in intervenors' future requests for compensation.

Intervenors are also placed on notice that they 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.

We note that CCAE, FFTE and Kim are first-time intervenors in our proceedings and urge them to carefully examine the requirements of Article 18.7 of our Rules before submitting a compensation request. CCAE, FFTE and Kim may wish to contact our Public Advisor as they prepare their amended eligibility filings as well as their compensation requests.

Findings of Fact

1. Toward Utility Rate Normalization (TURN), the Fund For The Environment (FFTE), Citizens Concerned About EMFs (CCA) and

Sun Yung Kim (Kim) filed timely requests for eligibility in this proceeding.

2. TURN's request for eligibility addresses all four elements required by Rule 76.54(a) of the Commission's Rules of Practice and Procedure.

3. By D.91-05-029, we found that TURN's participation in proceedings during 1991 would pose a significant financial hardship under Rule 76.52(f) and Rule 76.54(a)(1).

4. CCAE, FFTE and Kim have not met all the requirements of Rule 76.54 for a finding of eligibility.

5. There is no need at this time to designate a common legal representative for the interests intervenors represent in this proceeding.

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 requests of the FFTE, CCAE and Kim for a finding of eligibility for compensation should be denied without prejudice.

3. The FFTE, CCAE and Kim should be allowed an opportunity to amend their requests for a finding of eligibility under Article 18.7 of our rules.

ORDER

IT IS ORDERED that:

1. Toward Utility Rate Normalization is eligible to claim compensation for its participation in this proceeding.

2. The requests of the Fund For The Environment, Citizens Concerned About EMFs and Sun Yung Kim for a finding of eligibility to claim compensation are denied without prejudice.

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3. Citizens Concerned About EMFs and Sun Yung Kim shall file an amendment to their requests for a finding of eligibility for compensation within 60 days from today to address the financial hardship issue. Parties wishing to respond may do so within 20 days thereafter.

4. The Fund For The Environment shall file an amendment to its request for a finding of eligibility for compensation within 60 days from today to address the financial hardship issue, and to present an estimate of required compensation and a budget. Parties wishing to respond may do so within 20 days thereafter.

This order is effective today.

Dated November 6, 1991, at San Francisco, California.

PATRICIA M. ECKERT
President

JOHN B. JOHANIAN
DANIEL Wm. FESSLER
NORMAN D. SHUMWAY
Commissioners

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

NEAL J. SHULMAN, Executive Director