

Called
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Decision 92-02-067 February 20, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the
Commission's own motion to establish
rules and procedures governing
utility demand-side management.

R.91-08-003
(Filed August 7, 1991)

ORIGINAL

Order Instituting Investigation on
the Commission's own motion to
establish procedures governing
demand-side management and the
competitive procurement thereof.

I.91-08-002
(Filed August 7, 1991)

O P I N I O N

On October 9, 1991, the Natural Resources Defense Council (NRDC) filed a Request for Finding of Eligibility for Compensation under Article 18.7 (Rule 76.51 through 76.62) of the Commission's Rules of Practice and Procedure (Rules). On November 13, 1991, at the request of the assigned administrative law judge, NRDC filed a supplement to its request for eligibility (Supplement). The Supplement clarified NRDC's eligibility in light of a recent grant to the organization from the San Francisco-based Energy Foundation. No response to NRDC's request or Supplement 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." The purpose of this Rulemaking proceeding and companion Investigation is to establish rules and procedures for the evaluation, funding and implementation of utility demand-side management (DSM) programs. It is clear that this Rulemaking and Investigation may "modify a

rate or establish a fact or rule that may influence a rate;" therefore, NRDC's request is appropriately considered under the provisions of Rule 76.51.

NRDC is an interested party in these proceedings and, therefore, is a party under Rule 76.52(d).

NRDC is a customer under Rule 76.52(e) because it represents the interests of its 26,000 members residing in California, some of whom are served by the utilities involved in these proceedings.

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 in these proceedings was held on September 9, 1991; therefore, NRDC's filing is timely.

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;
- "(4) A budget for the customer's presentation."

The adequacy of NRDC's filing on each of these items is addressed in turn 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."

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, NRDC states that it represents the environmental concerns of its membership with respect to the utilities' pursuit of DSM programs. According to NRDC, the interests of these customers is "to ensure the aggressive pursuit of all cost-effective opportunities to save energy, as required by California law...." NRDC states that its participation in these proceedings will focus on the promotion of sufficient incentives to encourage utility management interest in DSM.

We conclude that NRDC represents an interest that, although it overlaps with parts of other parties' interests, is an interest not otherwise adequately represented. In addition, we conclude that representation of this interest is necessary for a fair determination of these proceedings. Thus, NRDC has met the first part of the test of significant financial hardship.

For an organization like NRDC, Rule 76.52(f)(2) weighs the economic interests of the organization's individual members against the costs of effective participation. On the matter of

economic interests, NRDC states that it represents 26,000 members who reside in California. Although some of its California members may eventually receive lower electricity rates because of NRDC's participation, we find that the individual economic benefit to NRDC's members is small in comparison to the costs of participating in these proceedings, and thus NRDC meets the requirements of Rule 76.52(f)(2).

Although NRDC has shown that it falls within the definition of "significant financial hardship" of Rule 76.52(f), Rule 76.54 further requires a party requesting a finding of eligibility to submit a summary of finances distinguishing between grant funds committed to specific projects and discretionary funds. NRDC attached a financial statement for the year ending March 31, 1991, to its request and provided supplementary information on a recent grant of \$330,000 from the Energy Foundation. The financial statements included a balance sheet broken down into restricted funds, a capital fund, and the unrestricted general fund. Part of the capital fund is also restricted.

NRDC points out that it has already exceeded the restricted funds available for its participation in these proceedings and that money from the unrestricted general fund has been used to support NRDC's participation. The statements show that most of NRDC's revenues are restricted and that money from the general fund has been used to balance out a deficit that was incurred by the restricted California Energy Project, the source of NRDC's participation in these proceedings. In its Supplement, NRDC explains that the Energy Foundation grant is targeted for expanded and new NRDC initiatives, and is principally committed to work unrelated to the California Energy Project. NRDC anticipates a shortfall of approximately \$50,000 for California Energy Project expenditures for the fiscal year beginning April 1, 1991, including the cost of participating in these proceedings.

Statement of Issues

Rule 76.54(a)(2) requires a statement of issues that the party intends to raise. NRDC believes that it is too early in the Rulemaking and Investigation to identify all the specific issues it will raise. However, as a preliminary set, NRDC refers to the incentive mechanisms for utility DSM activities, in particular, the issue of limiting efficiency budgets or imposing caps on shareholder incentives. NRDC also plans to participate in the development of pilot bidding programs in these proceedings. In light of the early stage of these proceedings, we find that NRDC has complied adequately with Rule 76.54(a)(2).

We anticipate that these issues will also be thoroughly reviewed and addressed by Division of Ratepayer Advocates and several other parties. This may necessitate an analysis of duplication of 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. NRDC argues that its participation in these proceedings has already entitled it to compensation of \$3,841.50 and that it will request compensation for its attorney's time at the rate of \$175 per hour in later phases of these proceedings. Additional expenses are estimated to be 10% of the requested attorney's fees. NRDC estimates that the total cost of its participation in these proceedings will not exceed \$50,000.

Budget

Rule 76.54(a)(4) requires a budget for the party's presentation. NRDC essentially repeats its estimate of the compensation that will be sought to comply with this requirement.

These figures are preliminary, and their reasonableness will be reviewed in the compensation stage of these proceedings.¹

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 current need to designate such a representative in this proceeding.

Conclusion

NRDC 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). For purposes of this proceeding only, NRDC has met the other three requirements of Rule 76.54(a). In addition, no party has raised the appropriateness of a common legal representative. Therefore, NRDC is eligible for an award of compensation for its participation in this case.

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 filing under Rule 76.56. As discussed in this order, we will examine carefully

¹ NRDC requests compensation in the amount of \$3,841.50 for its participation to date. It is premature to consider this request, at this time, since the Commission has not yet made determinations on any of the issues that NRDC raised in its filed comments. NRDC should resubmit its request for compensation at a later date, once the Commission has issued an order or decision that resolves the issues for which NRDC will seek compensation. See Rules 76.52(h), 76.56.

the reasonableness of expenditures as well as any duplication of issues in intervenors' future requests for compensation.

NRDC 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. NRDC's request for eligibility was timely filed and addresses all four elements required by Rule 76.54(a) of the Commission's Rules.

2. NRDC represents the interests of its California members, 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. NRDC has demonstrated that its participation in these proceedings would pose a significant financial hardship under Rule 76.52(f) and Rule 76.54(a)(1).

4. There is no need at this time to designate a common legal representative for the interests NRDC represents in this proceeding.

Conclusion of Law

NRDC should be found eligible under Article 18.7 of our Rules to claim compensation for its participation in these proceedings.

O R D E R

IT IS ORDERED that the Natural Resources Defense Council is eligible to claim compensation for its participation in these proceedings.

This order is effective today.

Dated February 20, 1992, at San Francisco, California.

DANIEL Wm. FESSLER
President
JOHN B. OHANIAN
NORMAN D. SHUMWAY
Commissioners

Commissioner Patricia M. Eckert,
being necessarily absent, did
not participate.

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


NEAL J. SHULMAN, Executive Director