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Decision 92-04-030 April 8, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of Alternative
Regulatory Frameworks for Local
Exchange Carriers.

And Related Matters.

I.87-11-033
(Filed November 25, 1987)

Application 85-01-034
Application 87-01-002

I.85-03-078

OII 84

Case 86-11-028

I.87-02-025

Case 87-07-024

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OPINION ON ELIGIBILITY FOR COMPENSATION

On January 27, 1992, intervenors American G.I. Forum, Latino Issues Forum, and the Mexican-American Political Association (the Hispanic Parties) filed a Request for Finding of Eligibility for Compensation (Request) under Article 18.7 (Rules 76.51 through 76.62) of the Commission's Rules of Practice and Procedure (Rules). No response to the Hispanic Parties' request has been filed by any other party. On January 24, 1992, Senior Utility Ratepayers of California (SUROC) served on the parties its Request for Finding of Eligibility for Compensation (SUROC Request).¹

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's purpose is to align the rate designs of all local exchange carriers (LECs) in California with the Commission's new regulatory framework for LECs, it is clear that this proceeding may "modify a rate or establish a fact or rule that may influence a rate"; therefore, intervenors' requests are appropriately considered under the provisions of Rule 76.51.

The Hispanic Parties

The Hispanic Parties are interested parties in this proceeding and, therefore, are parties under Rule 76.52(d).

Each of the Hispanic Parties is a customer under Rule 76.52(e). The American G.I. Forum (G.I. Forum) is an organization comprising primarily Hispanic veterans throughout California, the

¹ The SUROC Request was not filed with our Docket Office, although it was served on parties.

Latino Issues Forum (L.I.F.) is a Hispanic think-tank based in California, and the Mexican-American Political Association (MAPA) is a political action association with 2,000 delegates in California. The Request declares the Hispanic Parties "are statewide organizations, with members throughout the service areas and using and paying for the services of Pacific Bell and GTE." (Request at p. 4.) Although not specifically alleged to be members of the organizations, the Hispanic Parties contend they also represent the interests of Hispanics who would like universal and lifeline services had they the pertinent information about obtaining them. Thus, the Hispanic Parties are "actual customers of the utility who represent more than their narrow self-interest; they...also represent the broader interest of at least some other consumers, customers, or subscribers." (Decision (D.) 86-05-007 at p. 4.) In this proceeding, the interests of all Hispanic customers and potential customers are so represented by the Hispanic Parties.

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. However, because this proceeding has been conducted in several phases, by Administrative Law Judge (ALJ) Ruling dated January 16, 1992, any party who had not filed a request for compensation eligibility was directed to do so by January 27, 1992, the date the Phase III Implementation Rate Design (IRD) hearings began. The Hispanic Parties' filing is timely under the ruling.

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 the Hispanic Parties' 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."

The Hispanic Parties contend that the present phase of this proceeding seeks to shift over \$1,000,000,000 per year from California's larger businesses' rates to rates for residential customers and small businesses. Toward Utility Rate Normalization (TURN), which has already been certified as eligible for compensation in this proceeding, represents, inter alia, the California Gray Panthers, the Consumer Cooperation of Berkeley, the California Legislative Council for Older Americans and San Francisco Consumer Action. (D.88-07-035 at p. 4.) Additionally, TURN represents individual residential and small business

customers. But TURN represents no specifically designated racial minority groups. The Hispanic Parties contend they represent the Spanish-speaking residents of California and the 8.1 million Hispanics in California, both those with and without telephones. Their particular interest in these proceedings is the "failure to achieve universal service and lifeline service for those eligible, in the Hispanic community as well as other communities of color" (Request at p. 4). Their contention is that the bill impact analyses, already filed as evidence in this proceeding, show that the impact of the proposed rate increases for Category I residential service customers varies disproportionately by race, by income, and by age. TURN has not raised this contention. Instead it advocates no increase in residential customer rates at all and makes no claim of disproportionate impact on any particular class of residential customer. TURN views low-income customers as one homogeneous group but does argue they are not getting fair access to telephone service.

We find that the Hispanic Parties represent an interest not otherwise adequately represented, representation of which is necessary for a fair determination of this proceeding.

The second prong of the significant financial hardship test requires that, in this proceeding, the economic interest of the individual members of the group or organization be small in comparison to the costs of effective participation in the proceeding. In analyzing financial hardship, Rule 76.54(a)(1) requires that a summary of the finances of the customer shall be provided and shall distinguish between grant funds committed to specific projects and discretionary funds.

In D.86-05-007, we differentiated the test of financial hardship to be utilized dependent upon the definition of customer under which the intervenor fell. "[I]ndividual customers must meet the 'cannot afford to pay' test, while groups or organizations have the option of employing the comparison test." (D.86-05-007 at

p. 7.) As we did in D.86-11-079, we utilize the comparison test to assess the second prong of the financial hardship test as to the organizations comprising the Hispanic Parties.

The Request cites the "numerous corporate parties and leading law firms, the depth and breadth of technical matters at issue, the billions of dollars at stake, and over seventy days of evidentiary hearings anticipated" to support the contention that it is neither practical nor economically feasible for the individual members of the Hispanic Parties to effectively participate in this proceeding. As we have observed, "it is our view that participation by several parties helps to ensure full development of the record, especially since the larger utilities...have a greater depth of resources to commit to the hearing process than do any of the parties representing...public interest concerns..." (In re AT&T Communications of California, Inc., 22 CPUC 2d 329, 408 (1986).) We agree that it would not be cost-effective for the Hispanic Parties to represent their small economic interests absent funding eligibility.

However, we raise one caveat in making this determination. Generally in such intervenor participation, the intervenor organization has no financial stake in the outcome of the matters at issue. Instead, usually the beneficiaries are the ratepayers at large or in this case, the class of Hispanic ratepayers. Should any of the proposals advanced by the Hispanic Parties involve any funding of programs of the organizations comprising the Hispanic Parties, we may reopen our consideration of this prong of the test. We also will strictly scrutinize the Hispanic Parties' compensation request for any claims related to such self-serving proposals. We therefore direct that time and other expense records be kept in a manner which distinguishes between any expenditures of time and money which inures to the benefit of the ratepayers versus those which would result in

receipt of funds or grants by any of the organizations comprising the Hispanic Parties.

Since the Hispanic Parties are organizations, under Rule 76.54, they must also provide a summary of finances distinguishing between grant funds committed to specific projects and discretionary funds. (Rule 76.54(a)(1). An analysis of the information per organization is set forth below.

The G.I. Forum is asserted to have income and expenditures of \$10,000 per year, and no discretionary funds. All income is expended upon telephone, postage, a newsletter, reimbursement for travel, and other operational expenses. No salaries are paid. However, this information was supplied via a declaration of the attorney for G.I. Forum and was not supported by a current annual income and expense statement and year-end balance sheet. By ALJ Ruling dated March 13, 1992, such information was requested, supported by a declaration of an officer of the G.I. Forum. Pursuant to G.I. Forum's motion, the ALJ granted an extension of time to file until April 3, 1992.

On April 3, 1992, Public Advocates submitted the Declaration of Leo Avila, the California State Chair of the G. I. Forum. Attached to it was a financial statement for the G. I. Forum for January 1, 1991 through December 31, 1991. It disclosed that G. I. Forum had total income in 1991 of \$16,214.50 and total expenses of \$14,027.83. Due to a bank balance brought forward, the total net income at year end was \$5472.32. However, Avila declares that this net income is not discretionary but is committed to payment of ongoing expenditures as listed on the financial statement. Avila further states that G. I. Forum is exempt from taxation as a nonprofit organization under Internal Revenue Code (IRC) section 501(c)(3). We find that G. I. Forum has met the financial hardship test.

MAPA's income from memberships is alleged to be approximately \$8,000 per year, plus approximately \$8,000 in income from two conventions. Expenditures for staff salaries and travel are approximately \$12,000 annually with additional annual expenses of approximately \$4,000 for voter registration and education. MAPA allegedly has no discretionary funds. This information was also supplied by attorney's declaration with no accompanying financial information. In the March 13, 1992 ALJ Ruling, financial statements and a declaration of an officer of MAPA were also requested. Pursuant to MAPA's motion, the ALJ granted an extension of time for filing until April 3, 1992.

On April 3, 1992, Public Advocates submitted the Declaration of Ben Benavidez, the state and national president of MAPA. Attached to the declaration was a financial report dated December 30, 1991. The financial report is only a month-end income and expense statement for the month of December 1991, showing income of \$1863.50 and expenses of \$2598.23. At the bottom of the report is an entry: "Ending balance--12/7/91 \$11,847.67." The declaration of Benavidez states that this balance is year-end income, largely collected from dues. It is stated to be committed to payment of the operational expenses of MAPA over the following year. None of the money is committed to grants. No indication of year-end expenses is given although the figure \$12,598.20 is to the far right of the expenses heading on the report. Other figures in this column are also unexplained and do not correlate to the monthly figures. This figure is not addressed in the declaration. Benavidez swears to the information contained in the previous declaration of the Public Advocates attorney. He also declares MAPA to be a tax-exempt nonprofit organization under IRC section 501(c)(3).

We are troubled by the lack of detail in the financial report, especially when compared to that of the G. I. Forum, an equally small nonprofit organization. We also believe the figures

found in the far right-hand column should have been explained in the declaration. Our decisions are clear that the intervenor bears the burden of proof on financial hardship and must submit clear financial statements. The poor condition of the financial report offered us does not meet our standards. We will not rest decisions of financial hardship upon inference or supposition. Clear proof is the requisite. When intervenors are represented by counsel in seeking eligibility, we expect counsel to carefully scrutinize the financial data provided us to ensure it complies with this Commission's standards for completeness and clarity. This is especially true when, as here, the ALJ specified the financial data to be submitted in line with our decisions. Yet after an extension was granted, MAPA's financial information clearly did not comply with her ruling. We find that MAPA does not meet the financial hardship test.

L.I.F. is a nonprofit, activist, Hispanic think-tank based in California and exempt from taxation under 26 U.S.C. § 501(c)(3). L.I.F. supplied a December 31, 1991 balance sheet and a statement of support and expenditures, comparison of actual to budget, for the month of December 1991. By declaration of its counsel, L.I.F. averred that the \$53,766.63 shown as equity on the balance sheet was partially comprised of \$24,000 in grant funds committed to a project on environmental racism and that L.I.F. has less than \$1,000 in discretionary funds. As to the \$29,766.63 unaccounted for, the attorney's declaration merely stated that as the December 1991 summary indicates, without additional income in the next two months, L.I.F. "will be broke." Yet the summary discloses that the only deficit budgeted on a year-to-date basis arose from support from foundations, corporations, earned fees, and individuals, resulting in a projected year-to-date deficit of \$23,297.76 against the unexplained \$29,766.63 in remaining equity. There was no explanation of any reasonably anticipated further support monies nor any indication as to whether L.I.F. is on a

calendar year or fiscal year in terms of analyzing the December 1991 statement. In the March 13, 1992 ALJ Ruling, L.I.F. was directed to submit financial data regarding grant funds specifically committed to projects and to explain the remaining \$29,766.63 of equity shown on its December 31, 1991 balance sheet. L.I.F. was to specify whether its budget is on calendar year or identified fiscal year basis. A declaration of an officer of L.I.F. was to accompany the data and address the contention that without additional income in two months, L.I.F. "will be broke." The declaration was to explain any reasonably anticipated income and what income had been received since December 31, 1991. Pursuant to L.I.F.'s motion, an extension of time for filing was granted.

On April 3, 1992, L.I.F. submitted the declaration of John Gamboa, executive director of L.I.F. Attached to it were the previously filed December 31, 1991 balance sheet and statement of support and expenditures comparison of actual to budget for the month of December 1991. Also enclosed was a statement of support and expenditures as of November 30, 1991 which also functions as an annual statement of income and expenses. Gamboa's declaration states that the L.I.F. budget was based on a November through October fiscal year. Gamboa avers that the statement shows that income was below budget by \$91,817.93 and while expenses were cut to \$40,469.12 below budget, a deficit of \$51,348.81 remained at fiscal year end. The December balance sheet's equity figure was further explained by stating that not only was \$24,000 committed to a project on environmental racism, but also that \$25,000 are restricted funds from a grant by Telecommunication Education Trust to complete a project on Consumer Latino Leadership. This commitment was not referenced in the original filing. Therefore, only \$4,800 remains uncommitted. We agree this satisfactorily explains the equity shown on the December 31 balance sheet. We also note that the December statement shows a deficit of

\$20,567.76. Income received since 1991 was reported at \$79,000, with \$75,000 of this amount being restricted grants committed to specific projects and only \$4000 committed to administrative overhead. Gamboa declares that during the time this income was received, L.I.F continued to incur expenses at approximately \$25,000 to \$30,000 per month. We find that L.I.F. has met the financial hardship test.

We conclude that G.I. Forum and L.I.F. have met the financial hardship test, but that MAPA has not.

Statement of Issues

Rule 76.54(a)(2) requires a statement of issues that the party intends to raise.

The Hispanic Parties question the rate increases proposed by Pacific Bell and GTE California Incorporated (GTE). They observe that, at present, many Hispanic households are without telephone service and are unaware of the availability of Universal Lifeline Telephone Service. They assert that if the restructuring shifts over \$1 billion per year from business rates to rates of basic residential customers, many Hispanic households will remain unlikely to have phone service. Specifically, the Hispanic Parties:

- "challenge the economic justifications alleged for the proposed increases, questioning (a) whether rate rebalancing is needed because the proposed reductions in toll rates might increase revenues to Pacific Bell and GTE, (b) whether one key rationale for increasing lifeline and basic rates, alleged cross-subsidies, is inconsistent with existing cost recoveries for those services, and (c) the dumping of all embedded costs upon the monopoly local loop (i.e., lifeline and residential customers), including embedded costs of new technologies, while basing intra-LATA toll rates on long-run incremental costs.

- "The Hispanic Parties propose that the Public Utilities Commission require Pacific Bell and GTE to demonstrate, as a precondition for any

rate increase, (1) that any rate increase will ensure the Commission's and the Legislature's basic policy of universal and affordable residential telephone service, (2) that any rate increase will effect [sic] universal service equally for all segments of California's public (at least 95 percent respectively of Hispanic, African-American, Asian, and low-income households in California), (3) that any rate increase will ensure that at least 95 percent of all residents of California eligible by law for Universal Lifeline Telephone Service are fully aware of the nature, price, and benefits of that service, and (4) that installation and inside wiring charges for lifeline residents be borne by the rest of the network, or at least be payable by installments spread over twelve months.

"...[T]he Hispanic Parties propose that the Public Utilities Commission (5) first audit Pacific Bell's and GTE's costs, including an analysis by cost recovery, and determine how much of a subsidy, if any, exists, (6) if some subsidy exists, order it to be shared across the network, thus modifying greatly the proposed rate increase, (7) delay any rate increase for at least one year to determine the true impact of intra-LATA toll competition upon Pacific Bell's and GTE's revenues, (8) properly allocate embedded costs, and (9) not make Phase III the massive and final restructuring with so many unanswered questions and key decisions on Open Network Architecture, co-location, and unbundling due over the next two years." (Request at pp. 7-8.)

While the issues raised are laudable, we are concerned that in many instances they overlap concerns already being advanced by TURN, which has participated extensively in I.87-11-033 since its inception. TURN was certified as eligible for compensation almost four years ago in D.88-07-035. TURN is representing all residential ratepayers and small business customers. Therefore, we caution the Hispanic Parties that we will strictly scrutinize their request for compensation under Rule 76.53(c) and deny compensation

for any duplication of other intervenors' presentations or contributions. In order to minimize the risk of such duplication, the Hispanic Parties might wish to tailor their contributions to the specific issues affecting the Hispanic community they represent in unique ways from residential ratepayers or low-income residential ratepayers as homogeneous groups. These appear to be enumerated issues 2, 3, and 4 quoted above. However, the risk of a reduction for duplication is the Hispanic Parties' to assume, if they so desire.

Estimate of the Compensation to be Sought

Rule 76.54(3) requires an estimate of the compensation to be sought.

The legal representatives of the Hispanic Parties have estimated they will seek compensation in the amount of \$210,000 as a result of participation in this phase of the proceeding. We question the necessity for such a high estimate in light of our previous comments in regard to the statement of issues to be addressed by the Hispanic Parties and for the reasons noted below in our discussion of their budget.

Budget

Rule 76.54(4) requires a budget for the party's presentation.

The estimate of fees and expenses of \$210,000 is budgeted as follows:

"Attorneys' fees

Robert Gnaizda (270 hours @ \$315 per hour)	\$ 85,050.00
Armando Menocal (5 hours @ \$315 per hour)	1,575.00
Edith Adame (50 hours @ \$210 per hour)	10,500.00
Carmela Castellano (175 hours @ \$125 per hour)	21,875.00
Mark Savage (250 hours @ \$165 per hour)	41,250.00

"Attorneys' expenses

Telephone, postage, photocopies, faxes, etc.	1,000.00
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"Experts' fees

Tom Hargadon (160 hours @ \$250 per hour)	40,000.00
John Gamboa (48 hours @ \$125 per hour)	6,000.00
Juan Gonzales (15 hours @ \$125 per hour)	<u>1,875.00</u>

"TOTAL (Request at p. 9.)	\$209,125.00"
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We are extremely skeptical of the reasonableness of this budget. We observe that TURN, which has been an intervenor in this proceeding from its inception, has utilized only one attorney to represent its diverse group of residential ratepayers and small business owners. While we make fee awards based on each attorney's experience, we do observe that the last award made to TURN granted that counsel \$160 an hour. Yet the Hispanic Parties' budget requires approximately twice that hourly rate for the services of two attorneys for the Hispanic Parties. A staff attorney for L.I.F. is budgeted for \$210 per hour, or 31% more an hour than the TURN counsel last received. Only one attorney is budgeted at less than \$160 an hour, with another counsel budgeted at \$165 an hour. We also note that while five attorneys are listed in the budget, no paralegals or law clerks are reflected. While we will conduct our review of the reasonableness of the budgeted figures in the compensation stage of this matter, we note that the Hispanic Parties will have to strictly justify the use of more than one attorney and why work performed by attorneys could not have been more cost-effectively performed by paralegals and/or law clerks. This potential staffing of the proceeding is particularly troublesome in light of our previous observations as to the limited nature of the issues specifically affecting the Hispanic Parties, our concerns over duplication of efforts of other intervenors, and our statements concerning possible self-interest of the Hispanic Parties in remedies proposed by them as intervenors.

Hispanic Parties' Motion

On April 3, 1992, in addition to filing the supplemental financial data and declarations requested by the ALJ, the Hispanic Parties filed a Motion for Fairness and Justice in The Commissioners' Consumer Intervenor Program (motion). The motion requested a hearing on the eligibility issues, that the Commission issue a clear policy statement that representation of California consumers' interests is necessary and welcome in the instant

proceeding and that Pacific Bell and GTE be ordered to submit a statement of fees and expenses incurred in this proceeding since November 1987 and each calendar year thereafter for in-house and outside experts, attorneys, and staff, for use in determining adequate representation. It also requested that the Hispanic Parties be found eligible for compensation. Due to our findings on behalf of L.I.F. and G.I. Forum in this opinion and MAPA's failure to carry its burden of proof on documentation of financial hardship, we find the motion to be largely moot. We therefore deny the motion.

Conclusion

We have found that L.I.F. and G.I. Forum have shown that their participation in this proceeding would pose a significant financial hardship, as defined in Rule 76.52(f), and have submitted the summary of finances required by Rule 76.54(a). This "significant financial hardship" determination will carry over to both L.I.F.'s and G.I. Forum's participation in other proceedings in 1992.

For purposes of this proceeding only, L.I.F. and G.I. Forum have met the other three requirements of Rule 76.54(a).

Therefore, L.I.F. and G.I. Forum are eligible for an award of compensation for their participation in this proceeding.

MAPA has not shown its participation would pose a significant financial hardship under Rule 76.54(a)(1). Therefore, it does not qualify as eligible for compensation under our Rules. Since we have found MAPA herein to meet all other requirements for eligibility, we will permit them to file an amended request for eligibility addressing only the issue of financial hardship under Rule 76.54(a)(1).

L.I.F. and G.I. Forum are 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 recordkeeping systems should identify specific issues for which compensation is being requested and should distinguish between issues which would inure to the benefit of L.I.F. or G.I. Forum by way of receipt of grants or funds. The records must reflect 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.

SUROC

Although minor deficiencies of the Hispanic Parties' Request were able to be cured in response to an ALJ Ruling, the SUROC filing is more problematic. SUROC is alleged to be a newly formed nonprofit California corporation. From the SUROC Request, it is unclear if the incorporation process is complete. Mr. G. Edward Wolfe is the sole founder of SUROC which has been totally funded by him. This appears to be Mr. Wolfe and SUROC's first intervenor request. Mr. Wolfe first indicated his intent to claim compensation in this proceeding by way of a letter, dated January 2, 1992, addressed to the Commission's Docket Office and not served on any party.² No mention of SUROC was made in the letter. SUROC did not enter appearance in this proceeding until March 4, 1992. In response to ALJ Amaroli's January 16, 1992 Ruling, SUROC, by G. Edward Wolfe, served a Request for Finding of Eligibility for Compensation on all parties in I.87-11-033. However, the SUROC Request was not filed as required under Rules 2 through 7.

A review of the SUROC Request discloses that it was prepared only with reference to Rule 76.54, with no understanding

² This letter was an attempt to comply with Rule 76.23, which is part of the intervenor compensation award program for proceedings predating January 1, 1985 and which does not apply to I.87-11-033.

of the relationship between that specific rule and other provisions of Rules 76.51 through 76.58, and the decisional law thereunder. For example, SUROC bases financial hardship on the statement that its presence "is obvious when a simple individual conducts an advocacy of this type confronted with the funds of the State of California and two large national corporations." (SUROC Request at p. 2.) No facts are asserted which would support a finding of significant financial hardship as defined in Rule 76.52(f) and our decisional law. Due to the fact TURN already represents the Gray Panthers and the California Legislative Council for Older Americans, the test of Rule 76.52(f)(1) is of special concern since SUROC represents senior citizens. Similarly, there is no factual basis alleged to support a finding that SUROC is a customer under Rule 76.52(e). The SUROC Request also does not set forth the required financial data for the corporation or Mr. Wolfe as its founder and financier. The estimate of compensation and budget do appear to be properly presented, based on the narrow issues SUROC raises. Those issues are that the tariffs do not represent a fair distribution of costs for senior citizen subscribers and seniors should receive discounted rates. Because of TURN's representation of senior citizens groups, we have concerns regarding duplication of issues as to SUROC.

Based on the number of deficiencies in the SUROC Request, and Mr. Wolfe's lack of familiarity with our intervenor compensation program, we agree that an ALJ Ruling requesting supplementation of the SUROC Request would not have cured timely the deficiencies. However, we will find that the SUROC Request was timely submitted under the January 16, 1992 ALJ Ruling and permit it to be properly filed under Rules 2-7 in amended form. For this reason, the SUROC Request is being denied without prejudice. We also want to make Mr. Wolfe and SUROC aware of our Public Advisor's Office which also has a Los Angeles office convenient to him. We suggest that Mr. Wolfe and SUROC consult with our Public Advisor's

Office in Los Angeles to obtain any necessary assistance in preparing and filing an amended Request for Eligibility for Compensation that complies with our rules and decisional law.

Common Legal Representative

In the January 16, 1992 ALJ Ruling, four parties, SUROC, the Hispanic Parties, TURN, and California/Nevada Community Action Association (Cal/Neva) were directed to file requests for eligibility, had they not already done so, no later than January 27, 1992. The requests were directed to address whether it is appropriate to designate a common legal representative in this proceeding as is permitted by Rule 76.59. Parties who had previously filed requests were permitted to supplement those requests to address the common legal representative issue. Parties requesting eligibility for compensation were also directed to confer, prior to February 5, 1992, to discuss the potential for voluntary common legal representation and to advise ALJ Amaroli in writing as to any agreement reached, no later than February 7, 1992.

TURN has previously been declared eligible for compensation in this proceeding. On January 27, 1992 it made a supplemental filing to address the issue of common legal representation. TURN strongly opposed the designation of a common legal representative and noted that the Commission had never appointed one in the ten-year history of its statutory authority so to do. TURN asserted that appointment of a common legal representative would seriously interfere with an intervenor's attorney/client relationship and infringe on an intervenor's right to be represented by counsel of its own choosing. TURN opined that Rule 76.53, permitting a reduction in compensation where there has been duplication of effort, is more efficacious than utilizing a common legal representative. TURN expressed a willingness to work with other intervenors and parties with similar interests to pool resources and attempt to avoid duplication of effort.

The SUROC Request did not address the common legal representative issue.

The Hispanic Parties' Request also opposed the appointment of a common legal representative. It asserted that California's Hispanic residents had no common interest with residential ratepayers in general or Cal/Neva, SUROC, and TURN in particular. It objected to use of one common legal representative for California's diverse consumer base, especially in a proceeding involving shifting of over \$1 billion per year to residential and small business customers. The Hispanic Parties cited the enormous funding of counsel and experts for parties not representing consumers in this proceeding as opposed to the lesser resources of the consumer groups. Thus, the Hispanic Parties requested that no other legal representative be designated to represent the interests of Hispanic consumers and that they not be required to represent the other consumer interests at stake in this proceeding.

Cal/Neva did not file a request for eligibility for compensation in this proceeding. However, on February 4, 1992, Cal/Neva sent ALJ Amaroli a letter strongly opposing the designation of a common legal representative for all consumer advocates. Cal/Neva asserted that the concerns of low-income consumers are not identical to those of ratepayers as a whole. Cal/Neva contended that the principle of appointment of a common legal representative could jeopardize the effective representation of a broad spectrum of interests in the hearing process.

On February 6, 1992, SUROC wrote ALJs Amaroli and Lee stating that it was amenable to having counsel for TURN as its counsel during testimony and cross-examination, "realizing that while we have common interests we also have broader obligations to the viewpoint of our respective organizations."

By letter dated February 7, 1992, TURN notified ALJs Amaroli and Lee that, pursuant to discussions with Cal/Neva and SUROC, it would offer the services of its counsel for the limited

purpose of representation of the witnesses for Cal/Neva and SUROC on direct and cross-examination. TURN noted that neither group was represented by legal counsel. However, TURN also cautioned that its assistance should not be construed as TURN's endorsement of the SUROC and Cal/Neva testimony and proposals or SUROC and Cal/Neva's endorsement of TURN's testimony and proposals.

The Hispanic Parties did not submit further information on informal cooperation.

While Public Utilities (PU) Code §§ 1804 and 1805 and Rules 76.55 and 76.59 permit the Commission to appoint a common legal representative "if determined appropriate," such a designation has never been made. No legislative history exists to clarify the standard this Commission should utilize to make such a determination in the exercise of our statutory discretion. Some guidance is ascertainable from PU Code § 1805's admonition that: "[i]n a case where the commission designates a common legal representative, no compensation shall be awarded to customers with the same or similar interests who participate or intervene in the hearing or proceeding." (Emphasis added.) The term "same or similar interests" indicates that this Commission need not find identical interests between intervenors before appointing a common legal representative. Our discretion extends to the appointment of a common legal representative when there are similar interests. Therefore, we may designate a common legal representative for an intervenor's interest which is not otherwise adequately represented and is necessary to a fair determination of the proceeding when similar intervenor interests are present. And, we may chose so to do if a customer fails the Rule 76.52 (f)(1) test because its interests are adequately represented, but we believe some input from that customer is necessary to a fair determination of the proceeding. Therefore, intervenor groups should not view this portion of our statutes and rules as bar to full intervenor participation. We view it as equally applicable to broaden

arguments made to this Commission or as a case-management tool for the increasingly complex and contentious nature of many of our proceedings.³

Having stated our broad policy on this issue, we nevertheless find that this proceeding is an inappropriate one in which to utilize common legal representation for practical reasons. First, our authority to designate a common legal representative arises under the statutes and rules on grants of intervenor compensation. While Cal/Neva has agreed to cooperate with TURN, we believe the Commission has no authority to require use of a common legal representative by a party which does not request eligibility for intervenor compensation. Cal/Neva has made no such filing. We do applaud their voluntary effort to pool resources with TURN.

Second, SUROC's request for eligibility is being denied without prejudice. We reserve the right to revisit this issue in the amended SUROC Request. However, we observe that the SUROC budget is de minimis and legal assistance from TURN is being voluntarily accepted. Therefore, the issue appears moot as to SUROC.

Finally, the only parties at present who might be required to utilize a common legal representative are TURN and the Hispanic Parties. Each is represented by its own legal counsel. We have found that the specific Hispanic community class of consumers is not adequately represented by TURN's broad representation of all residential ratepayers as a group plus small

3 In exercising our discretion, we may look to case law under Code of Civil Procedure (CCP) § 387(b), and existing Federal Rules of Civil Procedure (F.R.C.P.) 24 (a)(2) upon which it is based, regarding mandatory intervention unless a person's interest is adequately represented by existing parties and to standards for certification of class representatives under CCP § 382 and F.R.C.P. 23. (See generally Blake v. Pallan, 554 F. 2d 947 (9th Cir. 1977).)

business interests. We note that TURN is employing only one attorney in this massive proceeding to represent all these interests. He has now agreed to assist SUROC and Cal/Neva. We have declared our intent to strictly scrutinize the Hispanic Parties' future filing for compensation for duplication of issues and justification of their heavy staffing of counsel. Under these circumstances, we believe it would not be equitable to designate a common legal representative.

Findings of Fact

1. The Hispanic Parties' 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. The Hispanic Parties represent 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. Only L.I.F. and G.I. Forum have demonstrated that their participation in this proceeding would pose a significant financial hardship under Rule 76.52(f) and Rule 76.54(a)(1).

4. MAPA has failed to carry its burden of proof on financial hardship under Rule 76.54(a)(1). However, it has met all other criteria under Article 18.7 of our Rules.

5. SUROC has not met all the requirements of Rule 76.54 for a finding of eligibility.

6. There is no need at this time to designate a common legal representative for the interests that the Hispanic Parties represent in this proceeding.

Conclusions of Law

1. L.I.F. and G.I. Forum should be found eligible under Article 18.7 of our Rules to claim compensation for their participation in this proceeding.

2. MAPA should not be found eligible under Article 18.7 of our Rules.

3. The determination that L.I.F. and G.I. Forum have met their burden of showing that their participation in this proceeding would pose a significant financial hardship should carry over to their participation in other proceedings in 1992.

4. The Motion for Fairness and Justice in the Commissioners' Consumer Intervenor Program should be denied.

5. The requests of SUROC and MAPA for a finding of eligibility for compensation should be denied without prejudice.

6. SUROC and MAPA should be allowed an opportunity to amend their requests for a finding of eligibility under Article 18.7 of our Rules. MAPA's amended request should only address a showing of financial hardship under Rule 76.54(a)(1) as it has met all other criteria under our Rules.

7. The filing of SUROC's and MAPA's amended requests with our Docket Office within 60 days of our order should be deemed timely under the January 16, 1992 ALJ Ruling.

ORDER

IT IS ORDERED that:

1. The American G.I. Forum and Latino Issues Forum are eligible to claim compensation for their participation in this proceeding.

2. The Mexican-American Political Association (MAPA) is not eligible to claim compensation for its participation in this proceeding and its request is denied without prejudice. MAPA may file an amended request for a finding of eligibility for compensation, addressing the issue of financial hardship under Rule 76.54(a)(1), within 60 days from today. Parties wishing to respond may do so within 20 days thereafter. MAPA has met all other criteria for eligibility for compensation.

3. The determination that the American G.I. Forum and Latino Issues Forum have met their burden of showing that their

participation in this proceeding would pose a significant financial hardship shall carry over to their participation in other proceedings in 1992.

4. The Motion for Fairness and Justice in the Commissioners' Consumer Intervenor Program is denied.

5. The request of Senior Utility Ratepayers of California for a finding of eligibility to claim compensation is denied without prejudice.

6. Senior Utility Ratepayers of California may, within 60 days from today, file an amended request for a finding of eligibility for compensation. Parties wishing to respond may do so within 20 days thereafter.

This order is effective today.

Dated April 8, 1992, at San Francisco, California.

DANIEL Wm. FESSLER
President

JOHN B. OHANIAN
PATRICIA M. ECKERT
NORMAN D. SHUMWAY
Commissioners

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


NEAL J. SHULMAN, Executive Director