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Decision 92-04-051 April 22, 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)

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)

OPINION ON REQUEST OF ENERGY RESOURCE ADVOCATES FOR FINDING OF ELIGIBILITY FOR COMPENSATION

On February 13, 1992, Energy Resource Advocates (ERA) 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). At the request of the assigned administrative law judge (ALJ), ERA filed supplemental information on March 4, 1992.<sup>1</sup> No response to ERA's request or supplemental filing has been filed by any other party.

Timeliness of Filing

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 evidentiary record for Pacific Gas and Electric Company's (PG&E) proposed demand-side management (DSM) bidding pilot program

<sup>1</sup> See ALJ Ruling dated February 20, 1992.

originally closed on November 18, 1992.<sup>2</sup> However, by ALJ Ruling dated January 16, 1992, submission of the case was set aside to obtain additional cost information from PG&E by January 31, 1992. Therefore, ERA's February 13, 1992 filing is timely, based on the 45-day rule.

Applicability of Article 18.7

Article 18.7 of the Rules, based on Public Utilities Code § 1801 et seq., has the following purpose:

"to provide compensation for reasonable advocate's fees, reasonable expert witness fees, and other reasonable costs to public utility customers of participation or intervention in any proceeding of the Commission...to modify a rate or establish a fact or rule that may influence a rate."  
(Rule 76.51.)

Rule 76.51 creates a two-prong test regarding the applicability of Article 18.7 to ERA's request. First, the proceeding in which compensation is sought must be "to modify a rate or establish a fact or rule that may influence a rate." The purpose of this Rulemaking and companion Investigation is to establish rules and procedures for the evaluation, funding, and implementation of utility DSM programs. In particular, the current phase of this proceeding addresses the funding and design of DSM pilot bidding programs, where third parties can compete to provide DSM services to utility customers. It is clear that this proceeding may "modify a rate or establish a fact or rule that may influence a rate"; therefore, ERA's request is appropriately considered under the provisions of Rule 76.51.

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<sup>2</sup> This Rulemaking/Investigation is being conducted in several distinct phases. Thus far, PG&E's DSM bidding pilot is the first phase that has gone to hearings. ERA is requesting eligibility for its participation in those hearings.

The second relevant requirement in Rule 76.51 is that ERA must show that it is a public utility "customer" within the meaning of Article 18.7. Rule 76.52(e) defines "customer" as follows:

"any participant representing consumers, customers, or subscribers of any electrical, gas, telephone, telegraph, or water corporation subject to the jurisdiction of the Commission; any representative who has been authorized by a customer, or any representative of a group or organization authorized pursuant to its articles of incorporation or bylaws to represent the interests of residential customers...."

ERA is a nonprofit corporation whose principal purpose, as stated in its bylaws, is to "represent the general public at large, and the residential and small commercial customer in particular, before local, state, and federal agencies that have authority concerning the use of energy and natural resources." ERA has a membership of 2,843 consisting primarily of residential ratepayers in rural areas of Northern California. Among the membership are several small businesses, nonprofit organizations, and nonaffiliated associations. ERA states that it is representing the interests of all ratepayers in this proceeding, but "especially rural small commercial clients who could receive the benefits of the proposed DSM bidding program but who otherwise would not be represented." ERA has only volunteer staff and officers, and completes all contract work by subcontracting to independent consultants.<sup>3</sup>

For its participation in this proceeding, ERA subcontracted to Mr. Larry Goldberg, who is the General Manager of

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<sup>3</sup> Based on ERA's financial statements, it appears that ERA is currently participating in one contract, with the U.S. Fish and Wildlife Department, for a total of \$38,360. In addition, ERA receives annual membership fees totally \$250.

Sequoia Technical Services (Sequoia), as well as the board secretary of ERA. Mr. Goldberg presented expert testimony and cross-examined witnesses on behalf of ERA. Mr. Goldberg's involvement in this proceeding as a subcontractor to ERA presents us with a set of facts unique among the many requests which have been made for eligibility for compensation under Article 18.7. This is because, as General Manager of Sequoia, Mr. Goldberg has a direct economic interest in this phase of the proceeding that arises due to Sequoia's role as a potential bidder in the DSM solicitation, rather than as a customer of PG&E.<sup>4</sup> As described in ERA's supplemental filing, Sequoia is a for-profit energy management company (ESCO) serving 20 counties of Northern California by providing comprehensive energy management services. Sequoia has contracted with PG&E, Western Area Power Administration, the California Energy Extension Service, and a wide variety of private clients.

As we stated in Decision (D.) 88-12-034, we believe that the Legislature intended the compensation provided under Article 18.7 to be proffered only to parties (or their representatives) whose self-interests and participation in the proceeding arise directly from their interests as customers. Except for the fact that a nonprofit entity served to sponsor Mr. Goldberg's involvement, Mr. Goldberg's interest and participation in this proceeding did not differ in material respects from that of several other ESCO representatives who participated appropriately at their own cost. Similar to other

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<sup>4</sup> In contrast, ERA's involvement in PG&E's 1990 general rate case proceeding (for which ERA received intervenor's compensation) focused on program planning/design for a utility-sponsored DSM program, one in which ESCOs could not participate through competitive bidding.

ESCO representatives, Mr. Goldberg's testimony and cross-examination focused on specific aspects of the bid evaluation process and utility/ESCO interface that affect the interests of his company as a bidder.<sup>5</sup> In particular, Mr. Goldberg addressed the issues of free ridership adjustments to estimated program savings, the allocation of utility administrative costs to specific bid proposals, acceptable methods for verifying ESCO-delivered savings, utility shareholder incentives issued on private sector contract work, and the nature of third-party contracting for DSM resources. During cross-examination of his direct testimony, Mr. Goldberg presented his opinion on these issues with continual reference to the experience and potential bidding involvement of Sequoia, as illustrated in the following transcript excerpts:<sup>6</sup>

"We, as Sequoia Technical Services, we work with the small commercial center as one example, and we have found that there are demonstrable savings which can be evidenced in the form of productivity enhancement, in the form of increased occupancy rates in motels and hotels, and other facilities, which are certainly a result of the efforts we do....

"When we work with commercial clients, that by convincing them to use a cold-water washing system for their dishes with a different kind of soap instead of hot water, there is a savings right there.... Those changes are documentable, and we would like to be able to be given credit for the savings.

"We feel that energy accounting is a very important and underrated area in the entire energy field, and it essentially involves tracking utility bills and costs over time. It's through that continuous tracking...where

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5 See Exhibit 21 and Reporter's Transcript pages 185-205, 287-292, 315-334, 348-375, 485-492, 536-537.

6 See Reporter's Transcript pages 348-375.

we would trace the savings and the longevity persistence of those savings. Obviously, it's in our best interest as an ESCO under this particular program to maintain those savings.

"I know for the various efforts that we [Sequoia] put on, our internal administrative costs vary widely between programs.... If we were to be in a bidding situation on a bid such as PG&E's, we would like to quantify the administrative costs internally....

"For example, if an ESCO, and I'll use my company as an example, were to approach PG&E with a measurement and evaluation plan, the only administrative costs that I would expect would be if there was a combined marketing effort, in which case I would support that and pay for it or could share the cost....

"In our case we're not looking at thousands of facilities. We may only be looking at 30, 40 maybe 50 facilities that would be monitored if we participate in the bid like this, and I believe that the costs could very easily be calculated primarily on an hourly basis for our employees....

"The problem I have is that the kinds of [DSM] packages that my company and others that I know of will be doing will require much more statistically-involved [software] packages to be able to measure...savings.... And frankly I question whether PG&E has the expertise...to evaluate these packages without external assistance."

Although ERA may represent the broader interests of some other consumers or customers, Mr. Goldberg's participation in this instance appears to serve primarily Sequoia's interest as a potential bidder. As a result, we conclude that ERA does not represent customers in this phase of the proceeding and thus is not a "customer" as defined by Rule 76.52(e). ERA does not meet the threshold test in Rule 76.51 to establish applicability of Article 18.7 and its request for a finding of eligibility for

compensation under Article 18.7 should be denied. We need not address the other requirements of Article 18.7.

Our finding of ineligibility for ERA in this phase of the proceeding is not intended to prejudge ERA's eligibility if it chooses to participate in later phases of this proceeding. The scope of this Rulemaking and companion Investigation is broad, and the issues taken up in latter phases of this proceeding may not create the conflict of interest described above. However, we put ERA and other nonprofit organizations that seek a finding of eligibility on notice that we will carefully scrutinize the interests of their representatives in phases of this proceeding that involve competitive bidding.

Findings of Fact

1. ERA's request for eligibility was timely filed.
2. In D.88-12-034 we determined that "participant representing consumers, customers or subscribers" in Rule 76.52(e) should be interpreted to apply only to actual customers of a utility whose self-interests in a proceeding arise primarily from their role as customers of the utility and who represent the broader interests of at least some other consumers, customers or subscribers.
3. ERA's participation in this proceeding was subcontracted to Mr. Goldberg, who is General Manager of Sequoia, as well as the board secretary of ERA.
4. Sequoia is a for-profit energy management company that, as a potential bidder, has a direct economic interest in the outcome of PG&E's DSM pilot bidding program.
5. ERA's participation in this phase of the proceeding, as represented by Mr. Goldberg, serves primarily the interest of Sequoia as a potential bidder in PG&E's bidding pilot.
6. ERA is not a "customer" as defined by Rule 76.52(e) in this phase of the proceeding.

7. ERA is not eligible for compensation under Article 18.7 for this phase of the proceeding.

Conclusion of Law

ERA should not be found eligible under Article 18.7 of our rules to claim compensation for its participation in this phase of the proceeding.

ORDER

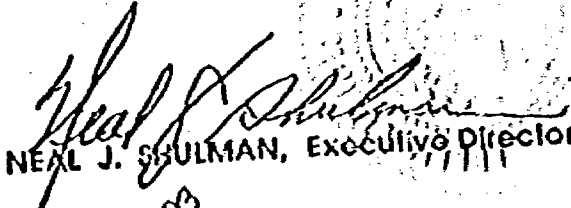
IT IS ORDERED that the Request of Energy Resource Advocates for Finding of Eligibility for Compensation for its participation in this phase of the proceeding is denied.

This order is effective today.

Dated April 22, 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