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Decision 92-08-034 August 11, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

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

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

And Related Matters.)

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

OPINION ON ELIGIBILITY FOR COMPENSATION

In Decision (D.) 92-04-030 (April 8, 1992), we denied without prejudice the request of Senior Utility Ratepayers of California (SUROC) for a finding of eligibility to claim compensation. We permitted SUROC to file an amended request for a finding of eligibility for compensation within 60 days of the order. We gave parties until 20 days thereafter to respond. On June 1, 1992, SUROC filed in this docket an Amended 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. No party has filed a response to SUROC's Request.

Article 18.7 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." (Rule 76.51.) Since the Commission initiated Investigation 87-11-033 to reexamine the entire regulatory framework for local exchange carriers, it is

clear that this proceeding may "modify a rate or establish a fact or rule that may influence a rate" and that SUROC's Request is appropriately considered under the provisions of Article 18.7.

A January 24, 1992 Administrative Law Judge's ruling set a filing date under Rule 76.54 for the filing of eligibility requests. In D.92-04-030, we found that the original SUROC request was timely submitted under the ruling and then permitted it to be amended. SUROC's Request is timely filed under Rule 76.54.

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

SUROC filed its Articles of Incorporation as a nonprofit corporation on May 28, 1992. Article III states that the specific purposes of the corporation are "to: (i) compile, study and disseminate data relating to rates paid for public utility usage by California senior citizens; (ii) educate senior citizens on public utility rates and usage generally; and (iii) educate relevant California public utility regulatory authorities regarding the specific and unique needs of senior citizens." SUROC is a customer under Rule 76.52(e) because its raison d'etre, as demonstrated by its Articles of Incorporation, is the representation of senior citizen residential customers. See D.86-05-007 mimeo. at p. 5 (May 7, 1986).

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 SUROC's Request 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."

SUROC submits that it represents an interest--the elderly residential customer class on both fixed and variable incomes--that would not otherwise be adequately represented in this proceeding. However, Toward Utility Rate Normalization (TURN) has already been granted eligibility for compensation in this proceeding. As we observed in D.92-04-030, TURN already represents the Gray Panthers and the California Legislative Council for Older Americans along with the entire residential customer class and small business customers. Due to this, we did express concerns over duplicative representation of senior citizen ratepayers in D.92-04-030. However, we also recognized that TURN and SUROC are cooperating in this proceeding.

SUROC asserts that the elderly customers on fixed incomes are being set apart as having a separate problem from other residential customers in this proceeding. SUROC cites a customer

letter in which GTE California Incorporated allegedly stated that it had approached state officials about offering discounted Lifeline service to senior citizens on fixed incomes. (Request at p. 2.) SUROC also contends that there are so many diverse groups of all stripes within the TURN constituency in this proceeding, it is impossible for TURN to carry the burden of adequate representation of them all. SUROC claims that TURN's total constituency in this proceeding numbers approximately 29,000,000 customers.

We have often stated that it is possible that the efforts of more than one representative are necessary to represent the residential ratepayer class adequately. See, D.85-01-009, mimeo. pp. 4-5 and D.91-11-014, mimeo. p. 4. It is our policy to encourage effective representation of diverse subgroups within the residential customer class. We believe that SUROC's specific targeting of elderly residential customers, in the face of TURN's broad mandate to represent all residential customers plus small business customers, is necessary to adequately represent the senior citizens' interests. This conclusion is further buttressed by TURN's assistance to SUROC and SUROC's willingness to cooperate in order to avoid duplication of issues. We reiterate our concerns, but can adequately address them in the final decision granting compensation to SUROC and TURN. We conclude that SUROC has met the test of Rule 76.52(f)(1).

For an organization like SUROC, 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, SUROC states that it represents the interests of 3,135,552 elderly Californians. It also asserts it represents the interests of numerous constituent groups including the California Senior Legislature, the Los Angeles City/County Caucus, The Triple A Council of California, and the 4,000 members of Oasis. SUROC has also made its position known to AARP and, although it

does not represent them, hopes to work with them. SUROC submits that the economic interests of these individual members are obviously small in comparison to the costs of effective participation in this proceeding. As discussed below, SUROC's preliminary budget for participation in this proceeding is proposed to be \$6,315.

While not reaching any conclusions about the reasonableness of SUROC's proposed budget, we agree with SUROC that the economic interests of its members are individually much smaller than the amounts SUROC can be expected to spend. We reiterate our opinion expressed in D.85-06-028 and elsewhere that there is a need for organized groups with the requisite experience and resources to represent residential customers and to participate in our proceedings on a continuing basis. We conclude that SUROC, as such an organization, meets the requirements of Rule 76.52(f)(2).

In addressing the significant financial hardship issue under Rule 76.54(a)(1), SUROC is also required to provide a summary of finances distinguishing between grant funds committed to specific projects and discretionary funds. SUROC provided such information in a pro forma financial statement for May 28, 1992, the date of its incorporation.

SUROC is a newly formed organization. Its pro forma financial statement shows anticipated accounts receivable, which are an award of compensation and expenses in this proceeding, as \$6,300. Pending their receipt, a seed loan from its founder, Mr. Wolfe, of \$1,100 has been advanced. However, SUROC also refers to the fact that this money "is discretionary and will remain within the corporation." (Request at p. 4.) On the expense side, SUROC anticipates operational expenses, devoted to this proceeding, of \$6,070 for a total revenue of \$1,330. At present it has no grant funds. No salaries will be paid.

SUROC hopes to expand its efforts past this proceeding into other Commission proceedings affecting its constituency. As a

start-up organization, without the compensation program, there is no question that its participation on behalf of its constituency would be severely truncated.

We conclude that SUROC has met the requirements of Rule 76.54(a)(1) and has shown that its participation in this proceeding would pose a significant financial hardship.

Statement of Issues

Rule 76.54(a)(2) requires a statement of issues that the party intends to raise. SUROC states that its constituency, of citizens age 65 or older, is largely on fixed or declining incomes. It contends that the proposed tariffs in this proceeding discriminate against the elderly. It advocates no increase in telephone rates for the elderly and/or asserts a reorientation of the tariff is in order. SUROC has proposed a "Senior Line" rate be adopted and has attached its proposed rate structure to its Request. Alternatively, SUROC is advocating that the "Morris Act" [sic]¹ be revised and that seniors be extended more consideration through the adoption of additional plans for Lifeline as suggested by the Federal Communications Commission.

We find that SUROC has complied with Rule 76.54(a)(2).

Estimate of the Compensation to be Sought

Rule 76.54(a)(3) requires an estimate of the compensation to be sought. SUROC indicates that it will seek \$6,315. Its budget breaks down this total estimate. We find that SUROC has complied adequately with Rule 76.54(a)(3).

Budget

Rule 76.54(a)(4) requires a budget for the party's presentation. SUROC has presented a preliminary budget of \$6,315,

1 Though cited as the Morris Act in the Request, SUROC appears to mean to refer to the Moore Universal Telephone Service Act, PU Code § 871 et seq.

estimating advocate fees of \$4,560, and other reasonable fees and expenses of \$1,700. However, an additional reimbursement of the \$55 corporation filing fee for SUROC is included and should not be part of the budget for this proceeding. These figures are necessarily preliminary and their reasonableness will be reviewed at the compensation stage of this proceeding.

Common Legal Representative

Rule 76.54(b) allows other parties to comment on the Request, including a discussion of whether a common legal representative is appropriate. Under Rule 76.55 our decision on the Request may designate a common legal representative. As we observed when we discussed this issue in D.92-04-030, "the SUROC budget is de minimis and legal assistance from TURN is being voluntarily accepted." D.92-04-030 mimeo p. 21. We concluded that SUROC need not be represented by a common legal representative. Although we reserved the right to revisit the issue, at this juncture we still see no need to designate a common legal representative.

Conclusion

We have determined that SUROC 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). This "significant financial hardship" determination will carry over to SUROC's participation in other proceedings in 1992.

For purposes of this proceeding only, SUROC has met the other three requirements of Rule 76.54(a). In addition, no party has responded to SUROC's Request and we have found that it is not appropriate to appoint a common legal representative. Therefore, SUROC is eligible for an award of compensation for its participation in this proceeding.

Findings of Fact

1. SUROC's Request was timely filed and addresses all four elements required by Rule 76.54(a) of the Commission's Rules of Practice and Procedure.

2. SUROC represents the interests of individual elderly 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. SUROC 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).

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

Conclusions of Law

1. SUROC should be found eligible under Article 18.7 of our rules to claim compensation for its participation in this proceeding.

2. The determination that SUROC has met its burden of showing that its participation in this proceeding would pose a significant financial hardship should carry over to SUROC's participation in other proceedings in 1992.

ORDER

IT IS ORDERED that:

1. Senior Utility Ratepayers of California (SUROC) is eligible to claim compensation for its participation in this proceeding.
2. The determination that SUROC has met its burden of showing that its participation in this proceeding would pose a significant financial hardship shall carry over to SUROC's participation in other proceedings in 1992.

This order is effective today.

Dated August 11, 1992, at San Francisco, California.

DANIEL Wm. FESSLER
President
PATRICIA M. ECKERT
NORMAN D. SHUMWAY
Commissioners

Commissioner John B. Ohanian,
being necessarily absent, did
not participate.

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


NEAL J. SHULMAN, Executive Director