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Decision 92-11-036 November 23, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of  
 PACIFIC GAS AND ELECTRIC COMPANY  
 for authority to: (i) increase its  
 authorized rate of return on common  
 equity, (ii) adjust its authorized  
 capital structure, (iii) adjust its  
 cost factors for embedded debt and  
 preferred stock, and (iv) increase  
 its overall rate of return for  
 calendar year 1993.  
 (Electric and Gas) (U 39 M)

And Related Matters.

ORIGINAL

Application 92-05-009  
(Filed May 8, 1992)

Application 92-05-010  
(Filed May 8, 1992)

Application 92-05-012  
(Filed May 11, 1992)

Application 92-05-013  
(Filed May 8, 1992)

Application 92-05-014  
(Filed May 8, 1992)

Application 92-05-016  
(Filed May 8, 1992)

OPINION ON ELIGIBILITY FOR COMPENSATION

On September 8, 1992, Utility Consumers' Action Network (UCAN) filed in this docket a Request for Finding of Eligibility for Compensation (UCAN Request), under Article 18.7 (Rules 76.51 through 76.62) of the Commission's Rules of Practice and Procedure. No response to UCAN's Request has been filed by any other party. On October 16, 1992, Toward Utility Rate Normalization (TURN) also

filed in this docket a Request for Finding of Eligibility for Compensation (TURN Request). On November 16, 1992, PG&E filed a response to TURN'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.) In this annual cost of capital proceeding, the Commission sets the return on rate base for each of the energy utilities to be incorporated into rates effective January 1. It is clear that this proceeding may "modify a rate or establish a fact or rule that may influence a rate" and that UCAN's and TURN's Requests are appropriately considered under the provisions of Article 18.7.

Both TURN's and UCAN's Requests were filed within 45 days after the close of the record in this proceeding, and their Requests are therefore filed timely under Rule 76.54(a).

Both UCAN and TURN are interested parties in this proceeding and therefore each is a party under Rule 76.52(d).

Both UCAN and TURN are customers under Rule 76.52(e) because each organization's raison d'etre is the representation of residential customers. See Decision (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 UCAN's and TURN's Requests on each of these items is addressed in turn below.

Significant Financial Hardship

Rule 76.54(a)(1) permits an intervenor to satisfy its showing of significant financial hardship, as defined in Rule 76.51(f), by referencing a previous decision in the same calendar year in which this burden was met. UCAN was found to have met the significant financial hardship test for calendar year 1992 in D.92-07-066. TURN was found to have met its burden of showing financial hardship for 1992 in D.92-10-056.

PG&E contends TURN has not shown that participation in the hearing proceeding would pose significant financial hardship as required by Rule 76.54(a)(1). PG&E bases this contention on the allegation UCAN represented TURN in this proceeding, as stated in UCAN's Request. TURN's Request acknowledges this fact and admits that UCAN's Request seems to have included appropriate compensation for TURN in its request. However, TURN believes that UCAN's Request does not explicitly seek a finding of eligibility for TURN. Therefore, TURN states it has filed its request to eliminate any possible ambiguity. PG&E objects to the lack of detail on the overlap of activities by the two intervenors. PG&E requests we not rely on our previous determination in D.92-10-056 that TURN has met the significant financial hardship requirement for this reason. At a minimum, PG&E requests we reduce UCAN's monetary request or require TURN to explain how its request is not duplicative of UCAN's.

The record shows that although UCAN did largely represent TURN in this proceeding, TURN represented both parties at the last day of hearings on September 2, 1992, due to a conflict in the schedule of UCAN's counsel. TURN's Request also notes it is paying

a share of the expert witness fees of the witness jointly presented by TURN and UCAN. TURN's budget is minimal and we believe that duplication can be properly addressed in our final decision on compensation. We do believe, however, that when intervenors pool resources, the best course is to file a joint request for eligibility. Because UCAN's Request is not a joint request, TURN's Request is proper procedurally. In order for TURN to share in the compensation awarded UCAN, TURN also must qualify for eligibility under our Rules and cannot rely on a finding of eligibility for UCAN. We conclude that both UCAN and TURN have met the requirements of Rule 76.54(a)(1) and have shown that their respective participation in this proceeding poses a significant financial hardship.

Both UCAN and TURN represent the interest of residential ratepayers. They have pooled their resources in representing these interests, with UCAN taking the lead role. For this reason, TURN requests that UCAN and TURN be authorized to file a joint request for compensation. 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. We appreciate UCAN's and TURN's efforts to pool resources to attempt to avoid duplication of issues. UCAN and TURN should file a joint request for compensation, which must set forth clearly how the award should be allocated between them. We will also address any possible duplication of issues in the final decision granting compensation to UCAN and TURN.

Statement of Issues

Rule 76.54(a)(2) requires a statement of issues that the party intends to raise. Both UCAN's and TURN's Requests were filed after the close of the evidentiary record. UCAN denominates its issues as those pertaining to financial risk, setting of return on common equity and capital structure changes due to purchased power

strategies. UCAN observes it presented, on both its and TURN's behalf, an expert witness and contends its arguments differed from those of the Division of Ratepayer Advocates (DRA). UCAN also contends that it was very active in discovery and all procedural matters. TURN's Request adopts the statement of issues presented in UCAN's Request.

We find that UCAN and TURN have each complied with Rule 76.54(a)(2). Since UCAN and TURN did not present testimony on the purchased power capital structure changes, their joint compensation request should clearly set forth their contribution on this issue and why it is not duplicative of DRA's and Federal Executive Agencies' positions.

Estimate of the Compensation to be Sought

Rule 76.54(a)(3) requires an estimate of the compensation to be sought. UCAN indicates that its estimate is \$75,000. Its budget does not break down this total estimate. TURN indicates that its estimate is \$9,000, which is broken down in its budget. We find that UCAN and TURN have complied adequately with Rule 76.54(a)(3).

Budget

Rule 76.54(a)(4) requires a budget for the party's presentation. UCAN has presented a preliminary budget of \$75,000 in attorneys' time, expert costs and incidentals. UCAN contends that its annual budget does not provide a breakdown of costs for this specific proceeding. TURN posits a preliminary budget of \$9,000, estimating advocate fees of \$3,675, UCAN's share of the fees and expenses of UCAN/TURN's expert witness Hill, and approximately \$150 for other reasonable costs, primarily copying expenses and postage. 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. No comments on common legal representation were received. We also note that UCAN and TURN pooled their resources in this proceeding, with UCAN trying all issues except for one hearing day when TURN's counsel only was present. We conclude that UCAN and TURN need not have been represented by a common legal representative.

Conclusion

We have determined that both UCAN and TURN have shown that each's participation in this proceeding would pose a significant financial hardship, as defined in Rule 76.52(f). For purposes of this proceeding only, UCAN and TURN have met the other three requirements of Rule 76.54(a). In addition, we have found that it is not appropriate to appoint a common legal representative. Therefore, UCAN and TURN are eligible for an award of compensation for their participation in this proceeding.

Findings of Fact

1. UCAN'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. TURN'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.

3. PG&E responded timely to TURN's Request. No responses to UCAN's Request were filed.

4. When intervenors pool resources but each requests compensation for their respective non-duplicative participation, each intervenor must qualify under Article 18.7 of our Rules and may file joint requests for eligibility and for compensation thereunder.

5. UCAN was found to have met its burden of showing financial hardship for calendar year 1992 in D.92-07-066.

6. TURN was found to have met its burden of showing financial hardship for calendar year 1992 in D.92-10-056.

7. UCAN 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).

8. TURN 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).

9. Due to UCAN's and TURN's pooling of resources in this proceeding, there is no need at this time to designate a common legal representative for the interests UCAN and TURN represent.

10. UCAN and TURN should file a joint request for compensation which must clearly set forth how the award should be allocated between them.

Conclusions of Law

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

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

O R D E R

IT IS ORDERED that:

1. Utility Consumers' Action Network (UCAN) and Toward Utility Rate Normalization (TURN) are eligible to claim compensation for their respective participation in this proceeding.

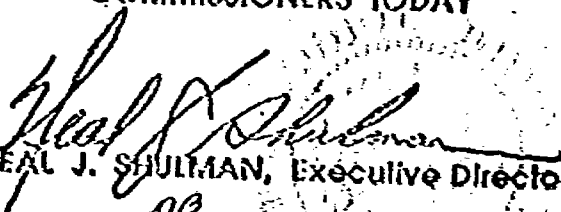
2. UCAN and TURN shall file a joint request for compensation, in this proceeding, which shall set forth clearly how the award should be allocated between them.

This order is effective today.

Dated November 23, 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