

Decision S2 05 0S1 MAY 18 1982

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own )  
motion into adoption of procedures for )  
termination of electric and gas service.)

OII 49  
(Filed May 22, 1979)

(See Decision 93533 for appearances.)

SUPPLEMENTAL OPINION

On May 22, 1979 the Commission issued Order Instituting Investigation (OII) 49 to fulfill one of the requirements of the Public Utility Regulatory Policies Act of 1978 (PURPA),<sup>1</sup> namely, to inquire into the termination practices of gas and electric corporations. Responses were filed in 1979 by each of the utility respondents. Toward Utility Rate Normalization (TURN) replied to these responses. The administrative law judge issued a proposed report and held one day of hearing in San Francisco and one in Los Angeles. Several of the parties (including TURN) filed closing comments. On September 15, 1981, Decision (D.) 93533 concluded the proceeding.

On March 9, 1981 TURN filed a request for a finding of eligibility for compensation under Article 18.5 (Rules for Implementation of PURPA § 122(a)(2)) of the Rules of Practice and Procedure (D.91909, dated June 17, 1980, as amended by D.92602, dated January 6, 1981 in OII 39). Pacific Gas and Electric Company (PG&E), Southern California Edison Company (Edison), and Southern California Gas Company (SoCal) filed responses opposing the request.

<sup>1</sup> Public Law 95-617, 16 USC 2601, 92 Stat. 3117.

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Discussion

TURN first attempts to qualify itself for an award of compensation by showing that it represents an interest "which would not otherwise be adequately represented in the proceeding." (Rule 76.05(c) (1) (A).) TURN alleges that although numerous parties participated in this case, most were special interest groups who represented small portions of the residential ratepayer body. TURN contends that it was the only participant which adequately represented the interests of "ALL" portions of the residential ratepayer body (emphasis in original). ✓

The utilities counter that TURN was only one of several groups representing residential customers. TURN mentions only three: Southern California Prison Coalition, American Association of Retired Persons, and Center for Independent Living. But also participating were Los Angeles County Department of Consumer Affairs; California/Nevada Community Action Association; Community Services Department, San Bernardino County; California Rural Legal Assistance; Western Center on Law and Poverty; National Retired Teachers Association; and Citizens/Labor Energy Coalition. In addition, several individuals represented themselves as residential consumers.

It cannot be concluded that without TURN residential consumers would not be adequately represented in this case. (Rule 76.05(c) (1) (A).)

TURN next alleges that representation of the residential class was necessary for a fair determination in this proceeding. (Rule 76.05(c) (1) (B).) This is obvious and none of the utilities contested this point.

Finally, TURN contends that absent an award of compensation to TURN, residential customers would have been unable to participate effectively in this case because of inability to afford the necessary fees and costs. (Rule 76.05(c) (1) (C).)

Edison points out that this case was conducted as a rule-making proceeding. The procedures adopted did not require advance submission of prepared testimony, and parties could choose to testify orally or in writing. Witnesses were not sworn and no cross-

examination was conducted. Many individuals appeared and spoke on behalf of themselves or their organizations without help of counsel. No expert witnesses were used. This is unlike the typical rate proceeding in which expert witnesses and counsel are necessary for effective participation.

Given the form of proceeding and the fact that many persons participated effectively on behalf of residential customers without legal counsel or expert witnesses, it cannot be concluded that residential consumers were "unable to effectively participate or intervene because such persons cannot afford to pay reasonable attorneys fees, expert witness fees, and other reasonable costs..." (Rule 76.05(c)(1)(C).)

While we have just concluded that TURN has not satisfied Rule 76.05(c)(1)(C), our rules do provide an alternative to satisfying that test. Rule 76.05(c)(2) states that:

"At the first regularly scheduled conference after the statement of the Commission staff has been filed, the Commission shall issue a ruling as to the following items:"

\* \* \*

"(c) Whether or not 'significant financial hardship' has been shown by consumers:"

\* \* \*

"(2) who, in the case of a group or organization, demonstrate that 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. Such showing shall constitute a prima facie demonstration of need as required by Rule 76.05(c)(1)(C)."

TURN attempts to bring itself within the scope of 76.05(c)(2) by alleging that:

"While TURN is not a general membership organization, it does represent the interests of several constituent groups, such as the California Legislative Council for Older Americans, the 98,000 family members of the Consumers Cooperative of Berkeley, San Francisco Consumer Action, the members of the 100

organizations of the Consumer Federation of California, and the California Gray Panthers, whose members are individual residential customers of the California gas and electric utilities (those organizations are represented on TURN's Board of Directors). The economic interests of these individual members are small in comparison to the costs of effective participation in this proceeding." (Request, pp. 2-3.)

Since we have already found that the costs of effective participation in this proceeding are small for any party whether it be an organization or an individual, we find that TURN cannot avail itself of this provision. Unlike a general rate case or major energy cost adjustment proceeding where attorneys and expert witnesses must be hired to prepare and present testimony, cross-examine, and file briefs on behalf of the client at substantial cost, no similar undertakings were necessary in this case. Only two days of hearing were held, one in San Francisco and one in Los Angeles. TURN appeared only at the San Francisco hearing, which began at 9:30 a.m. and ended at 12:15 p.m. Many lay persons appeared for themselves and their groups and made cogent and convincing presentations either orally or in writing. The contrast between the economic interest of an individual and the cost of participation, which we would expect to exist in virtually every rate proceeding and investigation, was just not present in this rulemaking proceeding.

Our finding that TURN is ineligible to seek compensation only indicates that under the peculiar facts and circumstances of this case TURN has not made the requisite showing. As late as August 4, 1981, in D.93371 we awarded TURN substantial compensation in general rate Application (A.) 58605 of Pacific Power & Light Company. Our staff has expressed concern that our decision in that case may be in conflict with our disposition in this proceeding. We have

already alluded to the differences between this brief rulemaking proceeding and the typical protracted general rate proceeding. It should also be noted that in A.58605 TURN was able to show significant financial hardship under Rule 76.05(c)(1)(C). This is not a heavy burden in a rate proceeding. D.93371 did not turn upon the provisions of Rule 76.05(c)(2), nor was that section mentioned. Our decision in this proceeding is factually and legally distinct from D.93371 for reasons we have discussed at some length above and does not involve a repudiation of and is not in conflict with it.

Since TURN has failed to show a "significant financial hardship" under Rule 76.05, it is not necessary to consider in detail the other issues raised by the utilities. Suffice it to say that we agree that TURN's presentation with a few minor exceptions duplicates the staff position, the positions of other parties, or the Department of Energy's Voluntary Guidelines. In D.91909 we said, and still believe:

"[A] consumer is not eligible for compensation for presenting the same evidence on the same issues as the staff... [T]he citizens of the State should not be required to pay twice for the same service, once as taxpayers (to fund the staff's participation) and again as ratepayers (to fund the consumers participation)." (Pages 10-11.)

TURN's proposed budget for OII 49 consists of attorney fees of \$7,500 (100 hours at \$75.00/hr.) and other costs of \$128.25. No breakdown is provided. Rule 76.06 requires that a request for compensation:

"...shall include a detailed description of hourly services and expenditures or invoices for which compensation is sought..."

TURN's budget is not stated in sufficient detail to satisfy Rule 76.06.

#### Findings of Fact

1. Many individual residential customers and groups of residential customers participated in this proceeding.
2. Even without TURN's participation the interests of the residential customer would have been adequately represented.
3. Many groups of residential customers and individual residential customers participated effectively without legal counsel or expert witnesses.
4. The subject of this proceeding consisted of matter within the knowledge and competence of the average citizen.
5. The procedures used did not require most of the participants to seek the help of counsel or experts.

6. TURN's budget lacked detail.

7. TURN's presentation largely duplicated the presentation of the staff, other parties, and the Guidelines of the Department of Energy.

Conclusions of Law

1. TURN has failed to show a "significant financial hardship" under Rule 76.05.

2. TURN's budget is not stated in sufficient detail to satisfy Rule 76.06.

3. TURN is ineligible for compensation under our Rules.

4. TURN's request for a finding of eligibility for compensation should be denied.

SUPPLEMENTAL ORDER

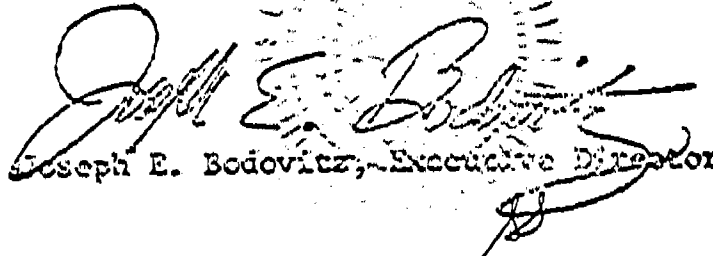
IT IS ORDERED that the request of Toward Utility Rate Normalization for a finding of eligibility for compensation under Article 18.5 of the Rules of Practice and Procedure is denied.

This order becomes effective 30 days from today.

Dated MAY 18 1982, at San Francisco, California.

JOHN E. BRYSON  
President  
RICHARD D. GRAVELLE  
LEONARD M. GRIMES, JR.  
VICTOR CALVO  
PRISCILLA C. GREW  
Commissioners

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

  
Joseph E. Bodovitz, Executive Director



Discussion

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organizations of the Consumer Federation of California, and the California Gray Panthers, whose members are individual residential customers of the California gas and electric utilities (these organizations are represented on TURN's Board of Directors). The economic interests of these individual members are small in comparison to the costs of effective participation in this proceeding." (Request, pp. 2-3.)

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Our staff has expressed concern that our decision in that case may be in conflict with our disposition in this proceeding. We have

~~6. TURN's members are not individuals but other consumer organizations.~~ Kh

67. TURN's budget lacked detail.

78. TURN's presentation largely duplicated the presentation of the staff, other parties, and the Guidelines of the Department of Energy.

Conclusions of Law

~~1. TURN has failed to comply with the requirements of Rule 76.05(c)(1)(A), (c)(1)(C), and (c)(2).~~

1 2. TURN has failed to show a "significant financial hardship" under Rule 76.05. K

2 3. TURN's budget is not stated in sufficient detail to satisfy Rule 76.06.

3 4. TURN is ineligible for compensation under our Rules.

4 5. TURN's request for a finding of eligibility for compensation should be denied.