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MAR 17 1981

ORIGINAL

Decision No. \_\_\_\_\_

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of PACIFIC GAS AND )  
 ELECTRIC COMPANY for authority, )  
 among other things, to increase )  
 its rates and charges for )  
 electric and gas service. )  
 (Electric and Gas) )

Application No. 60153  
 (Filed December 23, 1980)

ORDER ON REQUEST FOR FINDING OF  
 ELIGIBILITY FOR COMPENSATION OF TURN

On February 2, 1981, Toward Utility Rate Normalization (TURN) filed its "Request for Finding of Eligibility for Compensation" (petition) in the above-titled proceeding pursuant to Article 18.5 of the Commission's Rules of Practice and Procedure implementing the Public Utility Regulatory Policies Act of 1978 (PURPA) Section 122(a)(2).

TURN's petition alleges that TURN's planned participation in this proceeding meets all three significant financial hardship tests set forth in Rule 76.05(c). TURN states that it represents the interest of the residential customer class which would not otherwise be adequately represented in the proceeding. TURN further states that the representation of the residential class is obviously necessary for a fair determination in this proceeding since residential is numerically the largest customer class and not well-represented like the industrial and commercial classes. TURN alleges that the absence of a residential class representative would result in an imbalance in the record in the case. TURN further states that absent an award of compensation to TURN, residential customers would be unable to effectively participate in this matter because of inability to afford the necessary fees and costs.

TURN's petition states that while it 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 Consumers Cooperative of Berkeley, San Francisco Consumer Action, the Consumer Federation of California, and the Gray Panthers, whose members are individual residential customers of Pacific Gas and Electric Company (PG&E). TURN states that these organizations are represented on TURN's Board of Directors.

TURN in Appendix B to its petition alleges that it maintains its books of account on a cash basis with separate accounts for nonadvocacy special projects. For the fiscal year July 1, 1979, to June 30, 1980, TURN states that its income, exclusive of nonadvocacy special projects, was approximately \$81,000, while expenses totaled about \$74,000. TURN further alleges that of the \$81,000 total income, \$27,000 was received on a one-time, nonrenewable basis for advocacy in two specific Public Utilities Commission rate proceedings and that no such funding has been received for this proceeding.

TURN estimates that its budget for Application No. 60153 would be \$177,000 and that approximately \$125,000 would be subject to compensation as follows:

Estimated TURN Budget for Application No. 60153

	<u>Total Budget</u>	<u>PURPA Related Budget</u>
Attorneys' Fees <sup>1/</sup> 1,248 hours @ \$75	\$ 93,600	\$ 62,400 <sup>4/</sup>
Expert Witness Fees <sup>2/</sup> 4 x 160 hours x \$75	48,000	36,000 <sup>5/</sup>
Other Costs <sup>3/</sup> 25 percent of Fees	<u>35,400</u>	<u>26,550<sup>6/</sup></u>
	\$177,000	\$124,950

Assumptions

1. Based on 52 scheduled hearing dates and two days of preparation, briefing, etc. for each day of hearing.
2. Based on four weeks for research, preparation of testimony, and appearance at hearings by each of four anticipated witnesses.
3. Rough estimate due to uncertainty of possible travel costs, long distance telephone charges, copying, and postage for TURN filings, etc.
4. Two-thirds devoted to PURPA issue.
5. Three witnesses PURPA-related.
6. Three-fourths of other costs PURPA-related.

TURN's petition states that at this stage of the proceeding, without the benefit of answers to its data requests or knowledge of the intended positions of the Commission staff, it is impossible to state definitely exactly what TURN's final position will be on each PURPA issue. TURN states that the following list of issues and positions must be considered preliminary and subject to later modification as information becomes available:

Cost of Service - TURN will present an expert witness on electric revenue spread and rate design who will provide recommendations for compliance with the cost of service and lifeline PURPA standards. While the exact details of such testimony will not be known until shortly before the April 1 filing date for interested party testimony, TURN specifies at this time its position that these standards are not properly implemented by a revenue spread such as that proposed by PG&E, which allocates a greater percentage increase to the residential class than the system average increase.

Time-of-Day Rates - Depending upon the answers to its data requests and other information to be developed, TURN may take the position that PG&E's proposed residential Schedule D-7 is not cost justified. Whether or not this become TURN's final position on the issue will be clearly indicated in its opening brief.

Load Management Techniques - Again depending upon information yet to be developed, TURN may counter PG&E's assertion that Phase 2 of the conservation voltage regulation program is not cost-effective. If this position is ultimately proven, the utility would realize significant energy and capacity savings.

Information to Consumers - According to TURN PG&E's proposed response to this standard is vague at best. TURN plans to offer a significant package of proposals for implementation of this standard, the details of which are as yet unavailable. Subsequent testimony and briefing will fully address this issue.

Advertising - It is TURN's position that PG&E's inclusion of certain bill stuffers with customers' bills and the inclusion of certain controversial materials in the dividend mailings to stockholders violate the PURPA advertising standard. This issue will be further developed in the course of the proceeding.

TURN further states PURPA issues may arise in the course of the proceeding which are not anticipated at this time. TURN states that its opening brief in this proceeding will set out in detail each PURPA issue and TURN's final position on such issues.

PG&E and the Commission staff filed comments regarding TURN's petition pursuant to Rule 76.04 of the Commission's Rules of Practice and Procedure.

PG&E's Comments

PG&E in its comments states that TURN's petition is deficient in three respects and should therefore be rejected in its present form. PG&E states that TURN has failed to give more than the barest hint of what its positions on the PURPA standards in this proceeding will be, thereby making it impossible for PG&E, the staff, and any other interested parties to make a meaningful response to TURN's pleading.

Second, PG&E states that TURN fails to demonstrate that participation in this proceeding without PURPA funding would impose a significant financial hardship on TURN. PG&E states that TURN has failed to file a summary of finances that distinguishes between grant funds and discretionary funds as required under Rule 76.03(a).

Third, PG&E states that TURN fails to set forth a sufficiently specific budget for TURN's participation in this proceeding as required under Rule 76.03(a) and (d). PG&E states that although TURN seeks \$125,000 for its work on PURPA-related issues in this proceeding, it is very vague about what sort of presentation it will make. PG&E further comments that TURN's budget indicates it expects to call four expert witnesses, but its petition identifies only one area (cost of service) where it clearly will present expert testimony.

PG&E concludes that even under the most liberal construction of Rule 76.03, TURN's filing is fatally vague, and the Commission should therefore rule that at the present time TURN is not entitled to compensation under PURPA Section 122.

Staff Comments

The staff on February 10, 1981, filed its comments on the petitions of Cut Utility Rates Today (CURT) and TURN for compensation. In connection with TURN's petition, the staff comments that TURN, on page 3 of its filing, states "it is impossible to state definitely exactly what TURN's final position will be on each PURPA issue." Hence, the staff finds it difficult to comment wherein its position may differ from that of TURN. The staff offered the following with respect to TURN's stated issues:

- "a. Cost of Service. The staff will develop a full showing with respect to cost of service, but cannot state that such showing will result in any position materially different from any to be proposed by TURN.
- "b. Time-of-Day Rates. The staff position will be that Schedule D-7 is experimental and need not necessarily be cost based.
- "c. Load Management Techniques. The staff supports the load management programs of the electric utilities and believes that in general they are cost effective.
- "d. Information to Consumers. The staff will present evidence with respect to implementation of this standard. Since TURN does not indicate its position, the staff cannot say where or if its position might differ from TURN's.
- "e. Advertising. The staff position is to oppose any dissemination of advertising materials by PGE that violates the PURPA advertising standard."

Proposed Report

A proposed report prepared by Administrative Law Judge K. Tomita on TURN's petition in the above-titled proceeding was mailed to all parties on March 3, 1981 with comments or exceptions to be filed not later than March 9, 1981. This followed our directive made at our conference of March 3, 1981.

TURN filed its comments on the proposed report on March 9, 1981, taking exception to the proposed report in the following areas: ✓

1. TURN is seeking eligibility and not compensation at this time; therefore, the Commission should grant TURN the right to proceed with the full knowledge that any possible award depends on TURN's making a substantial contribution.
2. The proposed report would essentially require that a case be litigated between the consumer and the staff prior to the actual commencement of hearings and indeed prior to the preparation of any testimony or exhibits. TURN further comments that under the proposed report the consumer's attorney who prepares the eligibility filing would have to dictate the party's position rather than the expert witnesses who actually study the data and prepared testimony and that such a procedure is hardly conducive to responsible, informed consumer participation.
3. The only issues that needed to be decided are financial hardship and common legal representation as set forth in Rule 76.05; there is no need to determine whether staff and consumer positions will be the same or different at this stage of the proceeding. ✓
4. TURN has made an adequate showing for eligibility purposes and the vagueness of its budget is not unreasonable. TURN further comments that despite vigorous fund-raising efforts no funding has been offered or secured from cities or counties for this proceeding.

Motion to Suspend Regulatory Lag Plan

On March 5, 1981, TURN filed a motion to suspend the Regulatory Lag Plan for failure of the Commission to issue a decision on TURN's petition at the next regularly scheduled conference after its filing, or on February 18, 1981. TURN requests a suspension for filing of prepared testimony until May 4, 1981, which would leave TURN with the same period of preparation that would have resulted from a timely ruling on February 18, 1981.

Discussion

In Decision No. 91909 in Order Instituting Investigation No. 39 (OII 39) the Commission recognized the need for greater public participation in its electric rate proceedings and, therefore, adopted Article 18.5, Rules for Implementation of Public Utility Regulatory Policies Act of 1978, Section 122(a)(2) establishing procedures for awarding reasonable fees and costs to consumers of electric utilities. While recognizing the need for greater public participation, the Commission is also aware that the payments of such fees are borne by the ratepayers of the utility and the cost to fund the staff's participation is borne by the taxpayers; therefore, it is essential that needless costs and duplication in costs to ratepayers and taxpayers must be avoided. In order to avoid such duplications, the adopted rules provide that a consumer is not eligible for compensation for presenting the same evidence on the same issues as the staff.

This is one of the first major general electric rate proceedings in which a consumer is filing a request under the new Rules of Practice and Procedure adopted in Decision No. 91909. While we believe that the proposed report provides one interpretation of the rules adopted in Decision No. 91909, we are aware that the process of qualifying and awarding intervenor fees under the proposed rules



is still in an experimental stage. Therefore, in this proceeding, we believe that a liberal interpretation of the rules should be made as to the type of showing we should require for a filing of the consumer's request under Rule 76.03. As we gain more experience with the process of qualification and awarding of intervenor fees it may well be that in the future we will require more strict adherence to such rules. Alternatively, we may revise or clarify the rules if, after further consideration, TURN's contentions that revisions to the rules are necessary appear to be, in fact, correct. We recognize that application of our rules for intervenor compensation in the time constraints of our Regulatory Lag Plan can create uncertainty and place some very stiff demands on petitioners and other parties.

Despite our liberal interpretation of the rules in regard to the filing of the consumer's request under Rule 76.03, we must point out that TURN's proposed budget appears vastly overstated. TURN, of course, bears the burden of demonstrating the reasonableness of any requested PURPA award in its compensation filing pursuant to Rule 76.06. In fact, it should be on notice that at the outset we believe the amount of time it proposes to devote to PURPA issues in this proceeding appears excessive. We would encourage TURN to narrow its focus on PURPA issues considerably.

In regard to TURN's motion for suspension of the Regulatory Lag Plan for filing of exhibits and testimony to May 4, 1981, we are not of the opinion that TURN's motion should be granted. The staff has requested an extension for filing of certain exhibits at the second prehearing conference on March 13, 1981 in this application. Intervenors, including TURN, requested an extension for the filing of intervenors' presentations. A reasonable extension for filing of intervenor exhibits has been authorized at the second prehearing conference. This issue does not require further action in this opinion.

#### Findings of Fact

1. Since this is the first major general electric rate proceeding filed since the adoption of rules relating to intervenor fees, it is reasonable that a liberal interpretation should be given to the rules as to the type of showing necessary for a filing under Rule 76.03 of the Rules of Practice and Procedure.

2. From the description of TURN's proposal, it appears that there may be potential that TURN will take a position relating to PURPA-related issues which will be different from that of the staff.

3. TURN has demonstrated "significant financial hardship" as defined in Rule 76.05(c).

4. No basis has been shown for designation of a "common legal representative" pursuant to Rule 76.05(b).

5. TURN is eligible for PURPA compensation in Application No. 60153.

6. In order to actually receive compensation, TURN must further demonstrate a substantial contribution that differs from that of the staff relating to a PURPA issue which the Commission adopts in this proceeding. Such showing should be made in a compensation filing after the alleged contribution has been made pursuant to Rule 76.06.

7. While TURN has been found eligible for compensation, it must still face the risk that its contribution will not be sufficiently different from the staff's to justify compensation.

8. TURN must demonstrate the reasonableness of any requested PURPA award in its compensation filing pursuant to Rule 76.06.

9. TURN's motion for suspension of the filing date for exhibits and testimony to May 4, 1981 is not justified.

10. A mere finding of eligibility for compensation in no way guarantees that any compensation will ultimately be awarded.

Conclusion of Law

TURN's request for a finding of eligibility to receive compensation should be granted.

IT IS ORDERED that:





1. Toward Utility Rate Normalization (TURN) has met the requirements of Rule 76.05 and is found eligible for compensation in Application No. 60153.

2. TURN's motion for suspension of the Regulatory Lag Plan is denied.

3. A finding of eligibility for compensation in no way implies or otherwise guarantees that compensation will actually be awarded.

The effective date of this order is the date hereof.

Dated MAR 17 1981, at San Francisco, California.

  
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President  
  
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Commissioners