

Decision 00-03-044 March 16, 2000

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company
to Recover 1997 and 1998 Non-Nuclear
Generation Capital Additions Costs in The
Competition Transition Charge Pursuant to
Public Utilities Code Section 367.

Application 98-07-058
(Filed July 30, 1998)

OPINION DENYING COMPENSATION

1. Summary

This decision denies the request of The Utility Reform Network (TURN) for an award of \$9,440.27 in intervenor compensation in connection with TURN's work on this proceeding. We deny the award because TURN filed its Notice of Intent (NOI) to claim compensation nine months late. By statute, the NOI must be filed within 30 days of the prehearing conference. (Pub. Util. Code § 1804(a)(1).) TURN's sole basis for requesting leave to file a late NOI is attorney oversight.

While at one time we occasionally excused a belated NOI filing, in 1998 we issued a decision¹ placing great importance on the NOI as a tool to ensure intervenor accountability.² Therefore, we will hold TURN to the statutory NOI filing standard and deny compensation in this proceeding.

¹ *Order Instituting Rulemaking on the Commission's Intervenor Compensation Program, R.97-01-009; Order Instituting Investigation on the Commission's Intervenor Compensation Program, I.97-01-010, Decision (D.) 98-04-059.*

² *See Application of Pacific Gas and Electric Company for Authorization to Sell Certain Generating Plants and Related Assets Pursuant to Public Utilities Code Section 851, Application 96-11-020, Assigned Commissioners' Ruling on Eligibility to Claim*

Footnote continued on next page

2. Background

TURN filed its NOI on August 20, 1999. By its own admission, TURN should have filed the NOI on or before November 12, 1998, 30 days after the October 13, 1998 initial prehearing conference and nine months before TURN actually filed the NOI.³ TURN explains that its failure to file the NOI was due purely to attorney oversight, and that it did not realize its error until August 1999, when it filed its request for compensation.

3. Purpose of NOI

We reaffirmed the importance of the NOI in D.98-04-059, our Rulemaking examining the intervenor compensation process. Our findings there contradict TURN's assertion that the NOI is only important to a "one-time participant in Commission proceedings [and] represents little more than a formality for a frequent participant such as TURN."⁴

While D.98-04-059 did not hold that exceptions to the NOI filing requirement would never be granted, it stressed several benefits of the NOI requirement:

- "The information filed in the [NOI provides] a basis for a more critical preliminary assessment of whether an intervenor will represent customer interests that would otherwise be underrepresented. While many preliminary rulings and decisions

Intervenor Compensation, *mimeo.*, at 2-3 (granting motion for late-filed NOI prior to D.98-04-059, but noting that in the future D.98-04-059 would cause Commission to be "much more reluctant to grant an exception similar to the one being made in this ruling") (SAEJ Ruling).

³ Motion of The Utility Reform Network for the Acceptance of a Late-Filed Notice of Intent to Claim Compensation (Motion) at 1.

⁴ *Id.* at 2-3.

addressing eligibility have raised the issue of duplication of participation, the issue of underrepresented interests is not usually addressed of late. The nature and extent of the customer's planned participation, in combination with the scope of the proceeding as detailed in the scoping memo ruling, should enable the presiding officer to make a more critical preliminary assessment of whether an intervenor will represent customer interests that would otherwise be underrepresented."⁵

- "The information filed in the [NOI provides] a basis for a more critical preliminary assessment of whether the participation of third-party customers is necessary. The nature and extent of the customer's planned participation, in combination with the scope of the proceeding as detailed in the scoping memo ruling, should enable the [Administrative Law Judge (ALJ)] to make a preliminary assessment. Where, as the result of the [NOI], the ALJ preliminarily determines that the participation of third-party customers is not necessary, the ALJ shall issue a ruling (otherwise discretionary under § 1804(b)(1))."⁶
- "The statute requires the customer, at the stage where the Notice of Intent is filed, to provide a statement of the nature and extent of the customer's planned participation. At this stage, the customer has therefore provided the Commission with the issue(s) it intends to address, as best as the customer can at that early stage of the proceeding."⁷

We later made clear that applicants failing to meet the NOI requirement subsequent to April 23, 1998, when D.98-04-059 was effective, would face an uphill battle in establishing eligibility for compensation:

In making an exception for SAEJ [and awarding intervenor compensation despite a late-filed NOI], we note that SAEJ filed its

⁵ D.98-04-059, *mimeo.*, at 27.

⁶ *Id.* at 32.

⁷ *Id.* at 45.

NOI prior to the issuance of D.98-04-059. In D.98-04-059, the Commission placed great importance on the NOI as a tool to ensure accountability and as a control mechanism. *In the future, we will hold intervenors to the standards set forth in D.98-04-059 and the Commission may be much more reluctant to grant an exception similar to the one being made in this ruling.*⁸

Moreover, the NOI is a *statutory* requirement. Section 1804(a)(1) provides that "A customer who intends to seek an award under this article *shall*, within 30 days after the prehearing conference is held, file and serve on all parties to the proceeding a notice of intent to claim compensation." (Emphasis added.)

While we have occasionally waived this requirement despite the statute's mandatory language, we indicated in D.98-04-059 that we would be reluctant to do so in the future.⁹ Furthermore, in the prior cited cases, the NOI was only a few days late, or, in the case of a new intervenor, 55 days late. Those cases cannot be likened to this one, in which TURN filed its NOI nine months after it was due. Moreover, in the SAEJ Ruling, the intervenor was seeking compensation for the first time.

Even if we do have discretion to accept a new or revised NOI in some cases, TURN does not suggest that this case presents circumstances appropriate to the exercise of that discretion. Under Section 1804(a), we could provide for a new or revised NOI if, within the 30-day NOI filing period, a party could not reasonably be expected to identify the issues as to which it would participate.¹⁰

⁸ See SAEJ Ruling, *supra* n.2 (emphasis added). TURN participated in the proceeding in which this Ruling was issued.

⁹ See, e.g., SAEJ Ruling, *supra* n.2 (accepting NOI filed 55 days late); D.92-02-032 (accepting NOI filed several days late); D.98-18-016 (NOI three days late).

¹⁰ SAEJ Ruling, *supra* n.2, citing D.97-12-107.

However, TURN nowhere asserts that it was unable to identify such issues prior to November 12, 1998, or that new issues arose in this proceeding after that date, on which TURN concedes its NOI was due. Rather, it bases its motion for late filing solely on attorney inadvertence.

On this record, there is no good cause to grant TURN's request. We will deny compensation in this proceeding.

4. Comments on Draft Decision

The draft decision of ALJ Sarah R. Thomas in this matter was mailed to the parties in accordance with Section 311(g) of the Public Utilities Code and Rule 77.1 of the Rules of Practice and Procedure. TURN filed comments on March 2, 2000, which did not contest the outcome here, but rather addressed a remark TURN made in its own motion. TURN's comments do not cause us to change the draft decision.

Findings of Fact

1. TURN filed its NOI on August 20, 1999, more than nine months after its November 12, 1998 due date.
2. TURN filed its NOI subsequent to our April 23, 1998 Decision in D.98-04-059, which emphasized the importance of the NOI requirement.
3. TURN does not allege that it was unable, prior to November 12, 1998, to identify the issues as to which it would participate.

Conclusions of Law

1. Under all of the circumstances presented, TURN's failure to file a timely NOI renders it ineligible for intervenor compensation in this proceeding.
2. This decision should be made effective immediately to reemphasize the importance of timely filing of the NOI.

O R D E R

IT IS ORDERED that:

1. The Motion of The Utility Reform Network (TURN) for the Acceptance of a Late-Filed Notice of Intent to File Compensation, and the accompanying Request for An Award of Compensation to [TURN] For Substantial Contribution to Decision 99-06-085, are both denied.

2. This proceeding is closed.

This order is effective today.

Dated March 16, 2000, at San Francisco, California.

RICHARD A. BILAS
President
HENRY M. DUQUE
JOSIAH L. NEEPER
CARL W. WOOD
LORETTA M. LYNCH
Commissioners