

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Oversee the
Resource Adequacy Program, Consider
Program Refinements, and Establish Annual
Local Procurement Obligations.

Rulemaking 11-10-023
(Filed October 20, 2011)

**MOTION OF THE UTILITY REFORM NETWORK
SEEKING PERMISSION TO LATE-FILE NOTICE OF INTENT
TO CLAIM INTERVENOR COMPENSATION**



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I. INTRODUCTION

Pursuant to Rule 11.1 of the Commission's Rules of Practice and Procedure, The Utility Reform Network (TURN) respectfully requests permission to late-file our Notice of Intent to Claim Compensation (NOI) in this proceeding. The late-filed NOI accompanies this motion.

Section 1804(a) of the Public Utilities Code (PU Code) requires the filing of a Notice of Intent (NOI) within 30 days after a prehearing conference is held and provides for certain exceptions to this rule. In the instant proceeding, the Commission's Order Instituting Rulemaking (OIR) directed that NOIs must be filed no later than 30 days after the mailing of the OIR.¹

The Commission issued OIR 11-10-023 on October 27, 2011. As explained below, due to inadvertent error, TURN failed to file an NOI on the due date of November 28, 2011.² TURN now requests that the Commission find that it is appropriate under the unusual circumstances at hand to accept TURN's late-filed NOI. In the alternative, the Commission could permit TURN to file the NOI but limit TURN's eligibility for intervenor compensation to the time period before the deadline for filing an NOI, November 28, 2011, and the time period starting on the date of this motion, May 10, 2012.

II. BASIS FOR REQUESTED RELIEF

A. TURN's Error Was Inadvertent.

Late in the day on Friday, May 4, 2012, TURN staff attorney Hayley Goodson, newly

¹ OIR 11-10-023, p. 11.

² The thirtieth day after October 27, 2011 fell on a Saturday, making the deadline for filing an NOI November 28, 2011.

assigned as TURN's representative in this proceeding, began reviewing the case file in preparation for the filing of comments on Monday, May 7. Ms. Goodson was recently assigned to replace TURN attorney Marybelle Ang as TURN's representative while Ms. Ang is on parental leave from TURN. In the course of Ms. Goodson's review, she discovered that it appeared that TURN had not filed an NOI. TURN immediately began the process of seeking to confirm that an omission had indeed occurred, including contacting Ms. Ang (who is TURN's attorney with the least experience with intervenor compensation matters) and reviewing our internal records, which resulted in the unfortunate conclusion that no NOI had been filed. TURN is submitting this motion accompanied by our late-filed NOI today, as soon as practicable after our discovery of this inadvertent omission.

B. The Commission Should Exercise Its Discretion and Permit Filing of TURN's NOI.

The Commission has the discretion to accept a late-filed NOI, consistent with its duty pursuant to PU Code § 1801.3(b) to administer the intervenor compensation program "in a manner that encourages the effective and efficient participation of all groups that have a stake in the public utility regulation process." The Commission has previously granted motions for approval to file out-of-time NOIs.³ The Commission has also denied late-filed NOIs.⁴

TURN fully acknowledges that the effective and efficient participation standard includes the intervenor being responsible for recognizing Commission directives included in an OIR and

³ D.98-08-016 (granting motion by NRDC); ALJ Ruling of September 29, 1998 in A.98-05-038 (granting motion by TURN); ALJ Ruling of April 20, 2001 in A.00-11-038 (granting motion by Golden State Power Cooperative); ALJ Ruling of June 25, 2001 in A.00-06-023 (granting motion by TURN); ALJ Ruling of May 15, 2010 in P.09-06-022 (granting motion by TURN even though the NOI was filed eight months late).

⁴ In D.04-08-009 the Commission denied in part TURN's motion for acceptance of a late-filed NOI, due partly to the fact that the NOI was filed 17 months after the statutory deadline. However, the Commission granted compensation for work completed prior to the prehearing conference that triggered the NOI deadline (R.02-06-041). In D.00-03-044 the Commission denied a late-filed NOI that was filed after the proceeding had been closed. In A.07-10-013 the ALJ denied TURN's motion to accept a late-filed NOI that should have been filed 30 days after the PHC. In that case TURN filed its NOI and motion 44 days late.

acting in a manner consistent with those directives. However, denial of this motion and a refusal to find TURN eligible to seek intervenor compensation in this proceeding would substantially harm TURN, both in terms of our ability to continue to participate in a proceeding that we expect will benefit from that participation, and our ability to recover the significant costs and expenses already incurred for this proceeding. In this regard, TURN notes that it has been found to have made substantial contributions on Resource Adequacy issues in the past.⁵ Therefore, TURN submits that permitting the late-filing of the NOI under the present circumstances is the outcome most consistent with the legislative intent underlying the intervenor compensation statute.

C. In the Alternative, the Commission Could Permit Late-Filing But Limit the Finding of Eligibility Based on a Specific Date.

TURN urges the Commission to permit late-filing of the NOI and make the usual determination of TURN's eligibility for all of its work in this proceeding, as the late filing was due to inadvertent error which TURN promptly sought to remedy upon its discovery. However, should the Commission seek an outcome that imposes some adverse consequence on TURN due to its mistake, TURN suggests permitting the late-filing, but including an effective date in any finding of eligibility. For example, TURN could be deemed eligible for the proceeding other than during the period from November 28, 2011 (when the NOI was due) until today (when the NOI was submitted). This would preclude TURN from including in a future compensation request the numerous hours devoted to this proceeding during this time period by TURN's attorneys, primarily Ms. Ang's time plus a few hours of Ms. Goodson's time, and by TURN's

⁵ See, *i.e.*, D.11-08-012, p. 8, issued in R.09-10-032, granting intervenor compensation to TURN for substantial contributions to D.10-06-036 and D.10-12-038 (agreeing that TURN's participation resulted in improvements to the Commission's Resource Adequacy program that should result in reduced customer costs, as these improvements help to protect ratepayers from being saddled with the costs of utility over-procurement and/or market power problems that can drive up costs, while also preventing costs associated with inadequate electric supply); D.09-11-029, issued in R.08-01-025, granting intervenor compensation to TURN for substantial contributions to D.08-06-031 and D.09-06-028; and D.07-03-011, issued in R.05-12-013, granting intervenor compensation to TURN for substantial contributions to D.06-06-064 and D.06-07-031.

