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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the Commission’s Own Motion to Consider Revising Energy Utility Tariff Rules Related to Deposits and Adjusting Bills as They Affect Small Business Customers.

Rulemaking 10-05-005
(Filed May 6, 2010)

**ADMINISTRATIVE LAW JUDGE’S RULING
ON ELIGIBILITY TO CLAIM INTERVENOR COMPENSATION**

Customer (party intending to claim intervenor compensation) California Small Business Association and California Business Roundtable	
Assigned Commissioner: John Bohn	Assigned ALJ: Bruce DeBerry

PART I: PROCEDURAL ISSUES

A. Status as “customer” (see Pub. Util. Code § 1802(b)): The party claims “customer” status because it (check one):	Applies (check)
1. Category 1: Represents consumers, customers, or subscribers of any electrical, gas, telephone, telegraph, or water corporation that is subject to the jurisdiction of the Commission (§ 1802(b)(1)(A))	
2. Category 2: Is a representative who has been authorized by a “customer” (§ 1802(b)(1)(B)).	
3. Category 3: Represents a group or organization authorized pursuant to its articles of incorporation or bylaws to represent the interests of residential customers, to represent “small commercial customers” (§ 1802(h)) who receive bundled electric service from an electrical corporation (§ 1802(b)(1)(C)), or to represent another eligible group.	X
4. The party’s explanation of its customer status, economic interest (if any), with any documentation (such as articles of incorporation or bylaws) that supports the party’s “customer” status. Any attached documents should be identified in Part IV.	
California Small Business Association (CSBA) is a 501(c)(6), nonprofit organization that grew out of the 1980 White House Conference on Small Business. It is a grassroots, volunteer-driven organization dedicated to helping members “grow their businesses,” informing members about government programs and other resources available to assist them and advocating the views of small business in Congress, California Legislature, and federal and state agencies. CSBA regularly polls its members on public policy issues affecting small businesses and receives guidance from its affiliate organization California Small Business Roundtable.	

California Small Business Roundtable (CSBRT) is a nonprofit organization incorporated to, among other things, provide general advocacy on behalf of small businesses in California, disseminate information relevant to such businesses and represent the interests of small businesses before various public agencies. Article III of its CSBRT's Articles of Incorporation states:

Because of the dependence of small businesses and all California residents on safe, reliable and fairly priced utility services, the purposes include representing the interests of small business and residential utility customers in all matters relating to the provision of electricity, natural gas, telecommunications, water and other utilities.

CSBRT has previously filed its Articles of Incorporation in other Commission proceedings including R. 05-04-005, R. 00-02-004, and A. 99-120-012.¹ A copy of CSBRT's Articles of Incorporation is attached.

CSBA/CSBRT and its small business members have an interest in this proceeding. According to the U.S. Small Business Administration, there are over 3.4 million small businesses in California. Small businesses employ approximately 7 million Californians or about 50 percent of the state's non-farm, private workforce. Small businesses owners depend on electric and/or gas service to operate and grow their businesses. As a result, small business owners have an interest in ensuring that the terms and conditions for these services (including deposit, back-billing and refund requirements) are fair and reasonable.

B. Timely Filing of NOI (§ 1804(a)(1)):	Check
1. Is the party's NOI filed within 30 days after a Prehearing Conference? Date of Prehearing Conference: _____	Yes ___ No <u>X</u>
2. Is the party's NOI filed at another time (for example, because no Prehearing Conference was held, the proceeding will take less than 30 days, the schedule did not reasonably allow parties to identify issues within the timeframe normally permitted, or new issues have emerged)?	Yes ___ No <u>X</u>
2a. The party's description of the reasons for filing its NOI at this other time: The OIR initiating this proceeding required that NOIs be filed within 30 days of the mailing of the rulemaking. Because of the press of other matters, CSBA/CSBRT previously did not plan to actively participate in this proceeding. However, as the Staff Report of July 28, 2010 notes, the Commission's Small Business Program Staff specifically invited CSBA and other small business organizations to attend the Workshop	

¹ The Commission has awarded compensation in D. 06-11-009 and interim awards referenced therein, D.02-01-064 and D. 05-02-017.

held on July 6, 2010 in this matter. (Small Business Program Staff Report, p. 1.) As reflected throughout the Staff Report, CSBA/CSBRT attended the Workshop, presented its views on the issues in this proceeding and actively participated in the discussion that led to a consensus on many of the issues. (*Id.*, pp. 9, 14, 15.) On August 6, 2010, they also submitted written comments on the Staff's Workshop Report. To date, CSBA/CSBRT are the only small business organizations to participate in this proceeding.

In view of the absence of other small business participation, CSBA/CSBRT would like to continue to participate on behalf of their small business members and the opportunity to request intervenor compensation if they make a substantial contribution to the proceeding.

2b. The party's information on the proceeding number, date, and decision number for any Commission decision, Commissioner ruling, or ALJ ruling, or other document authorizing the filing of its NOI at that other time:

CSBA/CSBRT has filed a separate motion to late file its NOI. The motion is pending.

PART II: SCOPE OF ANTICIPATED PARTICIPATION

A. Planned Participation (§ 1804(a)(2)(A)(i)):

- The party's description of the nature and extent of the party's planned participation in this proceeding (as far as it is possible to describe on the date this NOI is filed).

CSBA/CSBRT was invited by the Commission's Small Business Program Staff to attend the Workshop held on July 6, 2010. Betty Jo Toccoli, President of CSBA and Chair of CSBRT, attended, presented CSBA/CSBRT's position on the issues in this proceeding and actively participated in the discussion at the Workshop. Indeed, as reflected in the Workshop Report, it seems that CSBA/CSBRT were the only small business organizations offering comments at the Workshop.

CSBA/CSBRT would like to continue to participate in this proceeding on behalf of their small business members. CSBA/CSBRT filed Opening Comments on the Staff's Workshop Report. CSBA/CSBRT will also like to file Opening and Reply comments on the Proposed Decision and otherwise participate in the proceeding as necessary.

- The party's statement of the issues on which it plans to participate.

CSBA/CSBRT intends to focus on the following issues: (a) Whether the terms and conditions for back-billing and refunds should be modified and if so how, (b) Whether the terms and conditions for deposits should be modified and if so how, and (c) Whether the

definition of small business in the proposed rule or an alternative definition should be adopted.

At the workshop and in its written comments, CSBA/CSBRT supported the following: (a) Like residential customers, small business customers should not be back-billed for more than three months, (b) Small businesses should not be required to re-establish credit resulting from slow payment of any back-billed amount, (c) The refund period for overcharges should be consistent at three years regardless of whether the overcharges are due to a billing or metering error, (d) Utilities should charge only up to twice the average monthly bill, instead of twice the maximum monthly bill and (e) Adoption of demand and usage-based criteria (annual consumption of 40,000 kwh or less or an energy demand of 20 hw or less, annual consumption of less than 10,000 therms) to define “small business” as an alternative to the definition of “micro-business” in California Government Code Section 14837.

B. The party’s itemized estimate of the compensation that the party expects to request, based on the anticipated duration of the proceeding (§ 1804(a)(2)(A)(ii)):				
Item	Hours	Rate \$	Total \$	#
ATTORNEY FEES				
Carl K. Oshiro	40	\$400	\$16,000	
[Attorney 2]				
		Subtotal:	\$16,000	
EXPERT FEES				
[Expert 1]				
[Expert 2]				
		Subtotal:		
OTHER FEES				
[Person 1]				
[Person 2]				
		Subtotal:		
COSTS				
Postage, copying, etc.			\$1,200	
[Item 2]				
[Item 3]				
		Subtotal:	\$1,200	
TOTAL ESTIMATE \$:			\$17,200	
Comments/Elaboration (use reference # from above):				

The reasonableness of any fees and expenses requested will be established in the Request for Compensation if one is filed.

When entering items, type over bracketed text; add additional rows to table as necessary. Estimate may (but does not need to) include estimated claim preparation time. Claim preparation is typically compensated at ½ of preparer’s normal hourly rate.

PART III: SHOWING OF SIGNIFICANT FINANCIAL HARDSHIP

<p>A. The party claims “significant financial hardship” for its claim for intervenor compensation in this proceeding on the following basis:</p>	<p>Applies (check)</p>
<p>CSBA/CSBRT is not requesting a ruling on significant financial hardship at this time.</p>	
<p>1. “[T]he customer cannot afford, without undue hardship, to pay the costs of effective participation, including advocate’s fees, expert witness fees, and other reasonable costs of participation” (§ 1802(g)); or</p>	
<p>2. “[I]n the case of a group or organization, 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” (§ 1802(g)).</p>	
<p>3. A § 1802(g) finding of significant financial hardship in another proceeding, made within one year prior to the commencement of this proceeding, created a rebuttable presumption of eligibility for compensation in this proceeding (§ 1804(b)(1)).</p> <p>ALJ ruling (or CPUC decision) issued in proceeding number:</p> <p>Date of ALJ ruling (or CPUC decision):</p>	

B. The party’s explanation of the factual basis for its claim of “significant financial hardship” (§ 1802(g)) (necessary documentation, if warranted, is attached to the NOD):

**PART IV: THE PARTY’S ATTACHMENTS DOCUMENTING SPECIFIC
ASSERTIONS MADE IN THIS NOTICE**
(Documents are not attached to final ALJ ruling.)

Attachment No.	Description
1	Certificate of Service
2	CSBRT’s Articles of Incorporation

ADMINISTRATIVE LAW JUDGE RULING

	Check all that apply
1. The Notice of Intent (NOI) is rejected for the following reasons:	
a. The NOI has not demonstrated status as a “customer” for the following reason(s):	
b. The NOI has not demonstrated that the NOI was timely filed (Part I(B)) for the following reason(s):	
c. The NOI has not adequately described the scope of anticipated participation (Part II, above) for the following reason(s):	
2. The NOI has demonstrated significant financial hardship for the reasons set forth in Part III of the NOI (above).	
3. The NOI has not demonstrated significant financial hardship for the following reason(s):	
4. The ALJ provides the following additional guidance (see § 1804(b)(2)):	

IT IS RULED that:

	Check all that apply
1. The Notice of Intent is rejected.	
2. Additional guidance is provided to the customer as set forth above.	
3. The customer has satisfied the eligibility requirements of Pub. Util. Code § 1804(a).	X
4. The customer has shown significant financial hardship.	
5. The customer is preliminarily determined to be eligible for intervenor compensation in this proceeding. However, a finding of significant financial hardship in no way ensures compensation.	

Dated October 5, 2010, at San Francisco, California.

/s/ BRUCE DeBERRY

ADMINISTRATIVE LAW JUDGE

INFORMATION REGARDING SERVICE

I have provided notification of filing to the electronic mail addresses on the attached service list.

Upon confirmation of this document's acceptance for filing, I will cause a Notice of Availability of the filed document to be served upon the service list to this proceeding by U.S. mail. The service list I will use to serve the Notice of Availability of the filed document is current as of today's date.

Dated October 5, 2010, at San Francisco, California.

/s/ JOYCE TOM
Joyce Tom

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to ensure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074 or TDD# (415) 703-2032 five working days in advance of the event.