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03-03-11
08:00 AM

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Integrate
and Refine Procurement Policies and
Consider Long-Term Procurement Plans.

Rulemaking 10-05-006
(Filed May 6, 2010)

**ADMINISTRATIVE LAW JUDGE'S RULING
REGARDING NOTICE OF INTENT TO CLAIM COMPENSATION**

1. Summary

This ruling responds to the notice of intent to claim compensation filed in this docket by The Vote Solar Initiative pursuant to Public Utilities Code, Section 1804.

2. Background – Standards for NOI Review

Under Pub. Util. Code § 1804(a)(1), a “customer who intends to seek an award under this article shall, within 30 days after the prehearing conference (PHC) is held, file and serve on all parties to the proceeding a notice of intent to claim compensation.” Section 1804(a)(2) sets forth the information that an notice of intent to claim compensation (NOI) must include.

Pursuant to Decision (D.) 98-04-059, the preliminary ruling on eligibility must determine whether the intervenor is a customer, as defined in § 1802(b). The intervenor must qualify as a customer in one of three ways: as a participant representing consumers [§ 1802(b)(1)(A)]; a representative authorized by a customer [§ 1802(b)(1)(B)]; or a representative of a group or organization that is authorized by its bylaws or articles of incorporation to represent the interests of residential customers [§ 1802(b)(1)(C)]. Participation in Commission proceedings

by parties representing the full range of affected interests is important and assists the Commission in ensuring that the record is fully developed and that each customer groups receives adequate representation.

Section 1804(a)(2)(B) provides that only those customers for whom participation or intervention would pose a significant financial hardship may receive intervenor compensation. Section 1802(g) defines “significant financial hardship” to mean “either that the customer cannot without undue hardship afford to pay the costs of effective participation, including advocate’s fees, expert witness fess, and other reasonable costs of participation, or that, in the case 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.”

If the intervenor includes a financial hardship showing in the NOI, the preliminary ruling shall address the showing rather than deferring it to the request. Section 1804(b)(1) provides that “[a] finding of significant financial hardship shall create a rebuttable presumption of eligibility for compensation in other Commission proceedings commencing within one year of the date of that finding.”

In addition to the required assessment of eligibility, the preliminary ruling may address other issues raised by the NOI, such as the nature and cost of planned participation.

3. Discussion

3.1. Eligibility

The Vote Solar Initiative (Vote Solar) filed its NOI on August 13, 2010, more than thirty days after the PHC held on June 14, 2010. On June 22, 2010, the Administrative Law Judge (ALJ) in this proceeding issued a ruling granting

parties an additional 30 days to file NOIs, extending the deadline to August 13, 2010.¹ Vote Solar's NOI is timely. No opposition was filed.

Vote Solar received an award of compensation as a category 2 customer most recently in D.06-09-004. This is the first time that Vote Solar seeks qualification as a category 3 customer.

Vote Solar is a California non-profit, public benefit corporation with Internal Revenue Code (IRC) § 501(c)(3) status, working to fight global warming, increase energy independence, decrease fossil fuel dependence, and foster economic development by bringing solar energy into the mainstream. Vote Solar works principally at the state level, helping to implement the suite of policies necessary to build robust, sustainable and long-term solar markets. Vote Solar was founded in 2002 and has approximately 50,000 members nationwide, approximately 8,000 of which are Californians. The vast majority if the approximately 8,000 Californian members are individuals receiving electric service from one of the California investor-owned utilities (IOU). Vote Solar states that the interests of these customers in this proceeding, and in energy issues in general, are unique and are not adequately represented by other parties that have intervened in the case. Vote Solar is the only non-profit organization dedicated solely to the advancement of solar energy solutions, and Vote Solar's non-profit status prevents Vote Solar's members from having a direct economic interest in, or gain from, Vote Solar's activities.

¹ See Administrative Law Judge's Ruling Revising the Schedule for the Proceeding and Regarding Staff's Proposals for Resource Planning Assumptions-Part 2 (Long Term Renewable Resource Planning Standards), issued on June 22, 2010, Ordering Paragraph 5 at 8.

Vote Solar's California non-profit, public benefit corporation and IRC § 501(c)(3) status is maintained through a relationship, known as "fiscal sponsorship," with The Tides Center (Tides). As stated in the its Amended and Restated Articles of Incorporation of The Tides Center (Article), which Vote Solar has attached to the NOI filed in this proceeding, Tides is a "nonprofit public benefit corporation and is not organized for the private gain of any person. Tides is organized under the Nonprofit Public Benefit Corporation Law for public purpose... [which includes] "the nurture and development of competently managed charitable and educational non profit activities." The Articles and Bylaws, as originally filed in 1994 and subsequently amended, are found at Attachment 1 to Vote Solar's NOI.

As stated at page 2 of Tides "fiscal sponsorship" service manual, found at Attachment 2 of this document, "fiscal sponsorship" is:

...a cost effective way to implement programs, bring together groups to collaborate around an issue, or test new approaches to social change. It enables individuals and organizations to start new programs without establishing a new, separate nonprofit organization. Tides, the country's leading fiscal sponsor, has set the benchmark in providing infrastructure and services to hundreds of nonprofit projects nationwide. As the charity of record, Tides receives charitable donations and grants for projects and is legally and financially responsible for all project activities. Fiscally sponsored projects are not separate entities; they are an integral part of Tides.

Vote Solar states that it operates under the umbrella of Tides, which through the concept of "fiscal sponsorship," enables Vote Solar to efficiently pool back office and administrative resources with other non-profits.

Due to the unique function of Tides, the Tides' Articles and Bylaws, which through "fiscal sponsorship" are likewise the Articles and Bylaws of Vote Solar,

Vote Solar argues that they are by necessity general and broad, and therefore do not conveniently lend themselves to an easy interpretation of a category 3 customer. We agree. Fortunately, the introductory paragraph of the Memorandum of Understanding (MOU) governing the relationship between Tides and Vote Solar,² clarifies that Tides “actively promotes change toward a healthy society, one which is founded on principles of social justice, broadly shared economic opportunity, a robust democratic process, and sustainable environmental practices. The MOU states under the heading “Structure of Relationship” that approved projects, such as Vote Solar, become direct activities of Tides and thus receive Tides’ California non-profit, public corporation and IRC § 501(c)(3) status.

Taken together, Vote Solar submits that the Articles, Bylaws and MOU clearly establish Vote Solar’s Category 3 status, described in the Commission’s Intervenor Compensation Program Guide (Guide)³, which states:

Certain other environmental organizations may also qualify as Category 3 customers even if the above requirements are not specifically stated in the articles or bylaws as long as the Category 3 customer seeks to protect the broader interest in the environment held by residential ratepayers, most of the membership consists of residential or small commercial electric customers and the financial hardship requirements are met.

This language in the Guide is consistent with Commission precedent stating:

² See Attachment 3 to Vote Solar’s NOI.

³ <http://dpcs.cpuc.ca.gov/PUBLISHED/REPORT/101138.thm>

With respect to environmental groups, the Commission has concluded they were eligible in the past with the understanding that they represent customers whose environmental interests include the concern that, e.g., regulatory policies encourage the adoption of all cost-effective conservation measures and discourage unnecessary new generating resources that are expensive and environmentally damaging. (D.88-04-066, mimeo. at 3.) They represent customers who have a concern for the environment which distinguishes their interests from the interests represented by Commission staff, for example.⁴

Vote Solar meets the third definition of customer, as set forth in § 1802(b), because it is an organization whose official mission is to represent the interests of utility customers. Because of Vote Solar's unique "fiscal sponsorship", with Tides, to the extent that intervenor compensation is ultimately awarded, that compensation should be awarded to Tides, which can then allocate the funds to Vote Solar.

Vote Solar intends to be active throughout Track 1 and Track III of this proceeding. As issues evolve in Track II, Vote Solar will also likely participate in that track to the extent that it involves solar related issues. Specific areas of Vote Solar interest include, but may not be limited to: 1) all items related to long-term renewables planning and integration; 2) replacement generation, particularly as it relates to the impact of "once through cooling" regulation; 3) identification of resources to meet greenhouse gas reduction goals; and 4) adoption of rules and policies governing procurement issues. Vote Solar will attend workshops, participate in evidentiary hearings, collaborate with other parties to avoid overlap and encourage settlement, and will submit comments and briefs.

⁴ D.06-09-004 at 30, fn. 14.

The economic interests of individual Vote Solar members are small when compared to the costs of effective participation. Vote Solar represents the interests of California Vote Solar members who are IOU customers. These customers share an interest in Vote Solar's mission to fight global warming, increase energy independence, decrease fossil fuel dependence, and foster economic development by bringing solar energy into the mainstream. The ultimate impact of this interest, however, is extremely broad in nature and relates directly to the public good, versus benefits which can be quantified on an individual basis. Because of the economics of public versus individual benefits, the individual benefit in theory approaches zero. A near zero benefit is extremely small relative to the estimated \$67,500⁵ financial burden these customers would incur without Vote Solar's representation.

Vote Solar is eligible to apply for intervenor compensation in this rulemaking. However, a finding of significant financial hardship in no way ensures compensation. (§ 1804(b)(2).) Like all intervenors, Vote Solar must demonstrate that its participation resulted in a substantial contribution to the proceeding by the unique presentation of facts or arguments that were relied upon by the ALJ or California Public Utilities Commission (Commission) in resolving this proceeding.

⁵ Vote Solar incorrectly estimates its expenses at \$68,000. Based on the information it has provided, the correct amount totals \$67,500. We correct this error here.

3.2. Other Issues

Section 1804(a)(2)(A)(ii) requires that NOIs include an itemized estimate of the compensation the customer expects to receive. Vote Solar projects a total budget of \$67,500 broken down as follows:

Attorney and Expert Fees	Amount \$
Kelly M. Foley (attorney) 150 hrs @ \$325/hr.	48,750
TBD (Expert) 75 hrs @ \$250/hr.	18,750
TOTAL estimate	\$67,500

Rule 17.1(c) requires an NOI to itemize the estimated compensation by issue. A portion of an intervenor’s estimated compensation may also be designated as general costs that are not allocable to any particular issue. Vote Solar’s NOI does not give an approximate budget for its participation on each issue. I remind Vote Solar here that its claim for compensation must provide this information. In addition, Vote Solar, like all intervenors, must keep daily records of time and costs spent on each issue by participant on each issue for which it intends to request compensation.

IT IS RULED that:

1. The Vote Solar Initiative filed a timely notice of intent to claim compensation that meets the requirements of Rule 17.1 and California Public Code Section 1804(a).
2. The Vote Solar Initiative is a “customer” as that term is defined in Public Utilities Code § 1802(b)(1)(C).
4. It would be a significant financial hardship for The Vote Solar Initiative to participate in this proceeding without an award of fees or costs.
5. The Vote Solar Initiative is eligible to request intervenor compensation in this proceeding. This finding of eligibility does not ensure that The Vote Solar

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Initiative will receive compensation. To the extent such finding is awarded, the award will be made to The Tides Center, who can then allocate the funds to The Vote Solar Initiative.

Dated March 3, 2011, at San Francisco, California.

 /s/ PETER V. ALLEN
Peter V. Allen
Administrative Law Judge