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06-24-11
11:12 AM

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Utility Consumers' Action Network
for Modification of Decision 07-04-043 so as to Not
Force Residential Customers to Use Smart Meters.

Application 11-03-015
(Filed March 24, 2011)

**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 Southern Californians for Wired Solutions to Smart Meters pursuant to Public Utilities Code, Section 1804.¹

2. Background—Standards for Notice of Intent (NOI) Review

Under § 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.” The PHC occurred on May 6, 2011. Southern Californians for Wired Solutions to Smart Meters’ (SCWSSM) timely filed its NOI on June 2, 2011. No oppositions were filed.

Section § 1804(a)(2) sets forth those items that must be addressed in an NOI. Decision (D.) 98-04-059 provides that the preliminary ruling on eligibility

¹ Unless otherwise indicated, all future reference to Section means the Public Utilities Code.

must determine whether the intervenor is a customer, as defined in § 1802(b). The intervenor may qualify as a customer in one of three ways: as a participant representing customers (§ 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 group receives adequate representation.

Section 1804(a)(2)(B) provides that only those customers for whom participation or intervention would impose 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 fees, and other reasonable costs of participation, or that, in 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.”

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. SCWSSM's NOI

Section 1802(b)(1) defines a "customer" as: (1) a participant representing consumers, customers or subscribers of a utility; (2) a representative who has been authorized by a customer; or (3) a representative of a group or organization authorized pursuant to its articles of incorporation or bylaws to represent the interests of residential or small business customers. (§ 1802(b)(1)(A) through (C).)

SCWSSM states that it is a newly formed unincorporated non-profit association, with an application for registration pending with the State of California, Secretary of State. SCWSSM has members who are ratepayers in the SDG&E electric service area who may be adversely affected by wireless technologies implemented by electrical, gas, telephone and sewer corporations and agencies in California. SCWSSM's bylaws are attached to its NOI. Section .3 states that its "[m]embership is limited to California utility customers of record or, in the case of residential customers, members of their families/household, or disabled citizens adversely affected by wireless technology implemented by the utilities or agencies."

The relevant portion (Section 2) of SCWSSM's bylaws state that it is organized to represent, lobby and advocate all legal rights and the interests of residential and commercial customers and/or citizens affected adversely by wireless technologies implemented by electrical, gas, telephone and water corporations and agencies in California.

SCWSSM is a Category 3 customer.

4. Itemized Estimate of Expected Compensation

Section 1804(a)(2)(A)(ii) and Rule 17.1(c) require an NOI to provide an estimate of the total compensation the intervenor expects. SCWSSM’s NOI satisfied this requirement by providing the following table:

Item	Total \$
Martin Homec (attorney) 100 hrs @ \$225/hr ²	22,500
Expert 50 hrs @ \$250/hr	12,500
Photocopying, Mailing and Miscellaneous	1,000
Total Estimated Costs	36,000

Rule 17.1(c) requires an intervenor’s NOI to separately state the expected budget for participation on each major issue. A portion of the estimated compensation may also be designated as general costs that are not allocable to any particular issue. Although SCWSSM’s NOI has identified the issues on which it plans to participate, it fails to estimate its costs by major issue. I remind SCWSSM of the requirement to furnish this information to the Commission if it submits a request for compensation at a later date.

SCWSSM reasonably presents its estimated costs of participation.

5. Planned Participation

SCWSSM states that it intends to participate in all aspects of the proceeding by evaluating the San Diego Gas & Electric Company’s (SDG&E) opt-out proposal and, if needed, prepare rebuttal testimony, participate in evidentiary hearings, file briefs, and prepare comments on the proposed and alternate decisions which may be issued by the Commission.

² An hourly rate of \$185 was adopted for Homec’s 2010 work in D.11-01-024. In addition, ALJ-267 disallows cost-of-living increases for 2011 intervenor work.

SCWSSM reasonably states its planned participation.

6. Intervenor Cost Estimates and Duplication of Effort

Three intervenors have filed NOIs seeking eligibility for intervenor compensation in this case. The combined estimated costs of those interventions is presently at \$217,000 which is a large sum for a case such as this, especially considering the overlap in interests of CALifornians for Renewable Energy (CARE), Utility Consumers' Action Network (UCAN) and SCWSSM. Although there is no mention in SCWSSM's NOI of its intentions to collaborate with other parties with similar interests, I reiterate in this ruling that each intervenor will have the burden to demonstrate the reasonableness of the costs it may ultimately claim for compensation and to demonstrate that its efforts were not unreasonably duplicative of the work of other parties.

Part of the burden is that each intervenor must demonstrate that it has taken all reasonable steps to coordinate its participation with that of other similarly-interested parties. Each intervenor is responsible to understand the types of activities that are eligible for compensation and other policies regarding intervenor compensation, and to coordinate with other parties to minimize duplication of effort. CARE, UCAN and SCWSSM are under an obligation to meet and confer with each other and other parties likely to take the same or similar positions in this case and coordinate with other intervenors, and distinguish their participation from the work of other intervenors.

7. Significant Financial Hardship

Significant financial hardship means:

...either that the 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, or that, in 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 this proceeding.³

A Category 3 customer must meet the “comparison test” to establish significant financial hardship. This standard requires a demonstration that the economic interest of the group’s individual members is small in comparison to the costs of effective participation in the proceeding. A party may defer its showing of “significant financial hardship” until submitting a request for intervenor compensation. SCWSSM makes no such showing in its NOI. As such, this showing must be addressed in SCWSSM’s compensation claim if filed at a later date.

SCWSSM has met the preliminary criteria for eligibility to claim intervenor compensation, subject to later proof of significant financial hardship.

8. Other

The fact that an intervenor is eligible to request compensation in no way ensures that they will receive compensation. Compensation is limited to activities which result in a “substantial contribution” to the Commission’s decision because the decision has “adopted in whole or part one or more factual contentions, legal contentions, or specific policy or procedural recommendations presented by the ‘customer’”⁴ In addition, all intervenors must keep daily records of time and costs spent on each issue for which it intends to request compensation.

³ § 1802(g).

⁴ §§ 1801.3(d). 1802(i).

IT IS RULED, after consultation with the assigned Commissioner, that:

1. Southern Californians for Wired Solutions to Smart Meters is preliminarily determined to be eligible for compensation in this proceeding subject to later proof of significant financial hardship.
2. A preliminary finding in no way assures compensation.
3. Southern Californians for Wired Solutions to Smart Meters shall make every effort to reduce duplication of contribution.

Dated June 24, 2011, at San Francisco, California.

/s/ MICHELLE COOKE for

Amy Yip-Kikugawa
Administrative Law Judge