



FILED

01-04-12
09:47 AM

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of San Diego
Gas & Electric Company (U902E) for
Adoption of its Smart Grid Deployment Plan.

Application 11-06-006
(Filed June 6, 2011)

And Related Matters.

Application 11-06-029
Application 11-07-001

**ADMINISTRATIVE LAW JUDGE'S RULING ON ADDITIONAL NOTICES OF
INTENT TO CLAIM COMPENSATION**

1. Summary

Following review of the Notices of Intent (NOIs) filed by the Environmental Defense Fund (EDF) and CALifornians for Renewable Energy (CARE), and after consultation with assigned Commissioner, this ruling makes a preliminary finding that EDF is eligible to request intervenor compensation and that the NOI of CARE is timely filed and CARE has customer status. CARE is directed to make its showing of significant financial hardship in any future compensation claim it may file in this proceeding.¹

¹ In its NOI, CARE cites to Decision (D.) 11-03-020 issued on March 10, 2011 in Application (A.) 09-09-021 in support of a valid rebuttable presumption for its most recent "showing" of significant financial hardship. Unfortunately, this decision relied on a rebuttable presumption issued in A.08-12-009 and was issued on May 13, 2009. Since a substantive finding of "significant financial hardship" was issued more than one

Footnote continued on next page

EDF and Utility Consumers' Action Network, like all parties who intend to seek intervenor compensation, must ensure that their party's efforts complement or supplement but do not duplicate the efforts of other parties with similar interest.

2. Timeliness

An intervenor who intends to seek compensation for participation in a Commission proceeding must file an NOI to claim intervenor compensation no later than 30 days after the prehearing conference (PHC), or a date otherwise set by the Commission. The prehearing conference in this matter was held on September 7, 2011. EDF's NOI was filed on September 29, 2011 and CARE's NOI was filed on October 6, 2011.

The NOIs were timely filed and no responses to the NOIs were filed.

3. Nature and Extent of Planned Participation

An NOI must state the nature and extent of the intervenor's planned participation. (§1804(a)(2)(i).) EDF's NOI satisfies this requirement. In particular, the NOI states that EDF's focus here is to ensure that the Smart Grid Deployment Plans (SGDPs) meet the environmental requirements set forth by Senate Bill (SB) 17 and the California Public Utilities Commission, particularly in the metrics and roadmap sections. EDF notes that since the issuance of D.10-06-047 (SGDPs) on June 28, 2010, it has spent a substantial amount of time developing an evaluation framework with San Diego Gas & Electric Company and plans to continue this level of participation.

year before the start of this proceeding, and we have no ruling on this issue in any pending compensation claims for CARE, it is not applicable here.

CARE’s NOI is vague with respect to its planned participation in this proceeding other than to cite the issues set forth in the scoping memo. CARE states that it has attended the prehearing conference and that it intends to participate fully in this proceeding to prepare for SGDPs, pursuant to SB 17.

We remind EDF and CARE that work performed prior to the filing dates of A.11-06-006, A.11-06-029, and A.11.07-001 or work that is conducted outside the scope of the proceeding is non-compensable.

4. Itemized Estimate of Expected Compensation

An NOI must provide an estimate of the total compensation that the intervenor expects to request. (§1804(a)(2)(ii).) EDF and CARE’s NOI satisfies this requirement by providing the following information:

EDF’s Estimate of Expected Compensation

| | Item | Amount \$ |
|-----------------------------|---|------------------|
| Lauren Navarro (Attorney 1) | 200 hrs at \$155 | 31,000 |
| Tim O’Connor (Attorney 2) | 400 hrs at \$155 | 62,000 |
| Karen Herter (Expert) | 250 hrs at \$ 160 | 40,000 |
| | Travel, postage, photocopies, telephone | 8,000 |
| Total | | \$133,000 |

CARE’s Estimate of Expected Compensation

| | Item | Amount \$ |
|-------------------------|--|-----------------------------|
| Martin Homec (Attorney) | 200 hrs at \$185 | 37,000 |
| Michael Boyd (Advocate) | 100 hrs at \$135 | 13,500 |
| Unidentified Expert | 100 hrs at \$250 | 25,000 |
| Joshua Hart (Advocate) | 50 hrs at \$125 | 6,250 |
| Unidentified Advocate | 50 hrs at \$125 | 6,250 |
| | Miscellaneous Costs (copying, mailing) | 4,000 |
| Total | | \$92,000² |

² CARE’s correct total is \$92,000, not \$90,000 as submitted.

An NOI must itemize the estimated compensation by issue, and may designate a portion of the estimated compensation as general costs that are not allocated to a particular issue. (Rule 17.1(c).) EDF and CARE have failed to satisfy this requirement in their NOIs. Should requests for compensation be filed in this proceeding at a later date, EDF and CARE must allocate its time per participants for each major issue in its timesheets. It is not possible to determine at this time the merits of EDF's or CARE's budgets, but I remind EDF, CARE, and all intervenors seeking compensation, that it must scrutinize their proposed budgets to ensure that it can demonstrate that the benefits of its participation justify the costs.

CARE's estimate of \$4,000 for copying and mailing is excessive in light of the ALJ's direction that all parties shall file and serve all pleadings and documents electronically, in accordance with Rule 1.10.³

5. Significant Financial Hardship

An NOI may include a showing of significant financial hardship. (§1804(a)(2)(B).) In making that showing, § 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.

EDF estimates the costs of effective participation in this proceeding to be about \$133,000.⁴ EDF represents that:

³ See Scoping Memo and Ruling of the Assigned Commissioner issued October 4, 2011 at 18.

⁴ EDF NOI at 3.

...the economic benefit to an individual EDF customer of participating in the proceeding is small when compared to the costs of effective participation by EDF as proposed. Similarly, the economic benefit to EDF as an organization that pays for electricity use in its offices in California is also small when compared to the costs of effective participation as proposed. Therefore, neither EDF nor its members will be able to recoup the value of savings achieved by the estimated cost of EDF's participation. The savings to any one of EDF's members or the organization itself are small when compared to the costs to effectively participate.

EDF is eligible for intervenor compensation in this proceeding.

As we have outlined above, CARE cites to an invalid rebuttable presumption, as it was issued more than 12 months before the commencement of this proceeding. CARE has failed to make the required showing of "significant financial hardship" in its NOI, and is directed to make this showing in any future claim for intervenor compensation it may file in this proceeding.

6. Customer

An NOI must demonstrate that the intervenor is a customer, as defined in (§1802(b) and Rule 17.1(d).) Section 1802(b)(1):

"Customer" means any of the following:

- (A) A participant representing consumers, customers, or subscribers or any electrical, gas, telephone, telegraph, or water corporation that is subject to the jurisdiction of the commission.
- (B) A representative who has been authorized by a customer.
- (C) A representative of a group or organization authorized pursuant to its articles of incorporation or bylaws to represent the interests of residential customers, or to represent small commercial customers who receive bundled electric service from an electrical corporation.

EDF states that it meets the third customer definition (a group or organization). EDF has attached a copy of its NOI filed in Rulemaking (R.) 08-12-009 as an attachment to the NOI it filed here, and asks that the Commission use the same information (current) to establish its Category 3 customer status in this proceeding. A copy of its by-laws filed in R.08-12-009 defines EDF as a “non-profit membership organization engaged in linking science, economics and law to create innovative, equitable and cost-effective solutions to society’s most urgent environmental problems.”⁵

EDF is a Category 3 customer.

CARE states that it meets the third customer definition (a group or organization). CARE reports that it is specifically authorized in its bylaws to represent the interests of residential customers before administrative bodies. CARE points out that it provided its corporate documents to the Commission on April 3, 2008 in A.07-12-021. (Rule 17.1(d).) CARE has been found previously to be a Category 3 customer.⁶ No information is known that would change that determination.

CARE is a Category 3 customer.

7. Conclusion and Consultation with Assigned Commissioner

EDF is eligible to request intervenor compensation. CARE is eligible to request intervenor compensation, subject to later verification of a showing of “significant financial hardship.” EDF’s and CARE’s request for compensation in no way ensures that it will receive compensation.

⁵ *Id.*, at 7.

⁶ April 8, 2008 Ruling in A.07-12-021.

To date, eight intervenors have filed NOIs seeking intervenor compensation in this case. The combined estimated costs of these interventions, is presently at \$825,800, a staggering sum for a case such as this, especially considering the potential for overlap in intervenor interests. Although there is no mention in either EDF or CARE'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 be required to demonstrate that its efforts were not unreasonably duplicative internally or 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 the duplication of effort. Each intervenor in this proceeding is under obligation to meet and confer with each other and other parties likely to take the same or similar positions in this case, coordinate with other intervenors, and to distinguish their participation from the work of other parties. We remind all intervenors that work on issues outside the scope of the proceeding are not compensable.

This ruling is made after consultation with the assigned Commissioner.
(§ 1804(b)(1).)

8. Claim

The Commission has developed streamlined methods for eligible intervenors to submit a claim.⁷ Hours that may later be accepted for compensation related to preparation of the claim will take into account whether or not the intervenor used the Commission's streamlined methods. Each intervenor, including EDF and CARE, should take this into consideration when later submitting its claim.

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

1. Environmental Defense Fund (EDF) and Californians for Renewable Energy, Inc. (CARE) filed a timely notice of intent to claim intervenor compensation (NOI). The NOI meets the requirements of Public Utilities Code §1804(a) and Rule 17.1 of the Commission's Rules of Practice and Procedure.
2. EDF and CARE are each Category 3 customers as defined by Public Utilities Code Section 1802(b)(1)(C).
3. It would be a significant financial hardship for EDF to participate in this proceeding without an award of fees and/or costs.
4. CARE has not established that it would suffer a "significant financial hardship" should it participate without an award of fees and/or costs. This showing must be made in any future claim for compensation that CARE may file in this proceeding.
5. EDF is eligible to request intervenor compensation in this proceeding. This finding of eligibility does not ensure that EDF will receive compensation.

⁷ See, for example, the Guide, sample documents and standardized forms on the Commission's web page: <http://www.cpuc.ca.gov/PUC/IntervenorCompGuide/>.

6. CARE is eligible to request intervenor compensation in this proceeding, subject to a later showing of “significant financial hardship.” A finding of eligibility at that time does not ensure that CARE will receive compensation.

Dated January 4, 2012, at San Francisco, California.

/s/ TIMOTHY J. SULLIVAN

Timothy J. Sullivan
Administrative Law Judge