Decision **PROPOSED DECISION OF COMMISSIONER BOHN**
(Mailed 9/19/2006)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Rulemaking on the Commission's Intervenor Compensation Program.	Rulemaking 06-04-022 (Filed April 27, 2006)

OPINION ADOPTING AMENDMENTS TO THE INTERVENOR COMPENSATION RULES AND REVISING THE INTERVENOR COMPENSATION PROGRAM

I. Summary

We adopt our proposed amendments to the Commission's Rules of Practice and Procedure (Rules) regarding intervenor compensation as set forth in the appendix attached to this decision. The amendments (1) codify Commission precedent regarding eligibility and compensable costs, (2) provide intervenors with greater flexibility in filing notices of intent, (3) enact accounting and documentation requirements to facilitate Commission review and determination of eligibility and compensable costs, and (4) adopt a mechanism for providing notices of intent to claim compensation for judicial review costs.

We also revise the intervenor compensation program to eliminate the intervenor compensation fund adopted in Decision (D.) 00-01-020. In lieu of the intervenor compensation fund mechanism, intervenor compensation payment responsibility in quasi-legislative rulemakings will be allocated among all utilities in the affected industry or industries with California-jurisdictional revenues over a stated amount ($10 million for water utilities, $50 million for energy and telecommunications utilities).

II. Procedural Summary

Following the issuance of the order instituting rulemaking (OIR), the Chief Administrative Law Judge (ALJ) sent our Notice of Proposed Regulatory Action to the Office of Administrative Law which duly printed the notice in the California Regulatory Notice Register of May 19, 2006. The OIR was also sent to persons on a service list commonly used for such procedural purposes.

Opening comments on the rules amendments and program revision were received on or before July 5, 2006 from the Greenlining Institute, Latino Issues Forum, San Diego Gas & Electric Company and Southern California Gas Company (jointly), Pacific Gas and Electric Company, and the "Joint Parties" consisting of The Utility Reform Network (TURN), Aglet Consumer Alliance, Green Power Institute, Utility Consumers' Action Network, Disability Rights Advocates, Consumer Federation of California, Union of Concerned Scientists, San Luis Obispo Mothers for Peace, and Latino Issues Forum.[1] Reply comments were received from Southern California Edison Company, Pacific Bell Telephone Company (a.k.a. AT&T California), California-American Water Company, Public Advocates, Inc., and Pacific Gas and Electric Company on July 17, 2006 and, with the permission of the ALJ, from TURN on July 18, 2006.

The OIR attached the proposed amendments in strikethrough-and-underline format relative to the Rules of Practice and Procedure that were in effect as of that date. On July 20, 2006, the Commission issued D.06-07-006 adopting comprehensive amendments to the Rules of Practice and Procedure,

[1] Although Latino Issues Forum is not listed as a member of the Joint Parties in their opening comments, it indicates in its separate comments that it has signed on to and fully supports the comments of the Joint Parties.

including the rules that are the subject of this OIR. Specifically, this OIR addresses Rules 76.73, 76.74, and 76.75. D.06-07-006 repeals Rule 76.73, as proposed (and unopposed in comments) in this OIR, makes minor edits to Rules 76.74 and 76.75, and renumbers them as Rules 17.1 and 17.4, respectively. Accordingly, on the expectation that the Rules of Practice and Procedure adopted in D.06-07-006 will be codified before this proceeding is closed, the amendments adopted in this decision are shown in the attachment relative to the newly adopted rules.

III. Rules Amendments

A. Timing of Notice of Intent

Pub. Util. Code § 1804(a)(2)[2] requires an intervenor to file a notice of intent to claim intervenor compensation within 30 days of a prehearing conference (PHC), if any is held. The proposed rule will allow an intervenor to seek an earlier determination of eligibility before undertaking a significant amount of work in the proceeding, which also benefits the Commission by providing an early indication of the range of parties intending to take an active part in a proceeding, the interests those parties would represent, and at least a tentative list of the issues those parties would raise. The proposed rule also clarifies the time for filing notices of intent in proceedings in which a PHC is not held.

The Joint Parties support the clarification, but comment that the proposed amendment does not necessarily address all situations that may entitle or merit allowing an intervenor to file a notice of intent. For example, a PHC may be scheduled even if (and possibly after) the events that are associated with an *ex*

[2] Subsequent statutory references are to the Public Utilities Code unless otherwise indicated.

parte proceeding occur; under these circumstances, the proposed amendment would contravene the statute by requiring an earlier time for filing notices of intent. In order to cure this problem, we modify the proposed amendment to the rule to provide the opportunity under all circumstances to file notices of intent within 30 days of the PHC if one is held.

As another example, the Joint Parties note that an intervenor may not learn of a proceeding until after the 30-day period has passed, whether or not the 30-day period has been triggered by a PHC; under the statute and the rule as currently written, the ALJ may set a different deadline for filing notices of intent to address special circumstances such as where new issues emerge later in the proceeding. These situations do not prompt us to modify the proposed rule. To the extent that an intervenor has cause to file a notice of intent outside of the statutory time period, the intervenor may state that cause in a motion to file a late notice of intent. If an ALJ finds it appropriate to set a different deadline for filing notices of intent to address special circumstances such as where new issues emerge later in the proceeding, Rule 1.2[3] provides the authority to do so.

California-American Water Company (Cal-Am) does not oppose the amendments regarding the timing of the notices of intent, but seeks clarification that the time to respond to them runs from when they are filed. Although our current rules do not reflect the statutory provision, Cal-Am's proposal is consistent with § 1804(a)(2)(C). For consistency and completeness, we modify the proposed rule to reflect the statutory requirement regarding the time for responding to notices of intent.

---

[3] "Old" Rule 84.

B. Amended Notice of Intent

Section 1804(a)(1) anticipates that parties might be unable to identify the scope of their planned participation and budget within 30 days after the PHC, and provides that the Commission may determine procedures for accepting new or revised notices of intent. The proposed rule amendments provide the opportunity for intervenors to file an amended notice of intent after the issuance of the scoping memo, which determines the issues in a proceeding.[4]

No party opposes this rule amendment. However, Cal-Am recommends that updates to notices of intent be strictly limited to the scope of issues defined in the scoping memo. Giving notice of an intent to claim compensation for work that is beyond the scope of a proceeding does not give rise to a right to compensation. It is unnecessary to modify the proposed rule in order to enforce this premise.

C. Estimated Cost of Participation

Section 1804(a)(2) requires the notice of intent to state the nature and extent of the planned participation, and an itemized estimate of the expected compensation for that participation. Our proposed rule requires, more specifically, that the intervenor provide the itemized estimate with reference to the specific issues upon which the intervenor intends to participate (except that the notice of intent may include a category of general costs not attributable to a particular issue). This will facilitate the ALJ's ability, under § 1804(b)(2), to provide guidance regarding the intervenor's realistic expectation for compensation.

---

[4] See Rule 7.3.

The Joint Parties assert that intervenors' issue-specific cost estimates will be too sketchy at the NOI-filing stage to serve any purpose. To reflect this "reality," the Joint Parties propose modifying the rule to clarify that the estimate should be the intervenor's "best estimate" or "best effort." We reject the proposed modification. The statute and the rule implementing it serve the purpose of enabling the Commission to provide guidance to the intervenor before the intervenor has incurred significant costs that are likely not to be compensable. The Joint Parties offer no reason why it is more difficult to estimate the cost of participation on an issue-specific basis as opposed to an aggregate basis. Indeed, we would expect that a conscientious estimate of the total cost of participation will take into account the cost of participating on specific issues. In any event, the plain language of the statute and the plain meaning of the word sufficiently convey that the "estimate" is not expected to be a certainty.

San Diego Gas & Electric Company and Southern California Gas Company (jointly) recommend modifying the proposed rule to state that the general costs should be reasonably related to the issues identified in the notice of intent. We decline to modify the rule to define what is reasonable and what is not; our decisions provide our interpretation of what constitutes "reasonable" costs under the statute.

D. Economic Interest

Our proposed rule requires intervenors to identify their economic interest in the proceeding for purposes of determining the intervenor's customer status, which is a prerequisite for eligibility for intervenor compensation. This rule reflects a long line of decisions that have denied customer status under § 1802(b) to intervenors who participate in proceedings in order to advance their own

business interests, as opposed to the interests of utility ratepayers as a group. (*See, e.g.,* D.04-06-002, D.05-01-006, and D.05-02-054.)

The Joint Parties object to this requirement because it could be read to deem ineligible groups, such as environmental groups and Disability Rights Advocates, whose interest in the proceeding may not be strictly economic as utility ratepayers. The Joint Parties propose modifying the rule to clarify that public interest groups who do not stand to gain financially from their participation in the proceeding, irrespective of whether or not they are primarily representing customers' interests in lower bills, will always be eligible.

We do not adopt new standards of eligibility for intervenor compensation in this rulemaking. We have granted customer status to organizations, such as environmental groups, that represent ratepayer interests that are not solely economic, recognizing that participation in Commission proceedings by parties representing the full range of affected interests is important. The proposed rule does not create or change existing substantive standards. Rather, it merely requires the presentation of information which the Commission, in a long line of decisions, has found to be relevant to a determination of customer status.[5]

---

[5] In *Order Instituting Rulemaking on the Commission's Intervenor Compensation Program; Order Instituting Investigation on the Commission's Intervenor Compensation Program*, D.98-04-059, the Commission reasoned: "With respect to environmental groups, we have 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." (D.98-04-059, 1998 Cal. PUC LEXIS 429 at *49, fn. 14.)

The Joint Parties also object that the proposed rule may conflict with the governing statute by creating an additional standard for the determination of customer status beyond that required by the definition in § 1802(b)(1). We disagree. As we explained in the OIR:

> We also address the relationship between the determination of customer status and the other prerequisites to intervenor compensation. Section 1802(b) is somewhat ambiguous, defining the term "customer" by reference to that very term: "customer" is defined as a participant representing "customers," a representative authorized by a "customer," or a representative of a group or organization authorized to represent the interest of residential "customers." However, while virtually all California citizens and entities are subscribers of utilities subject to the Commission's jurisdiction, the intervenor compensation statutes are not reasonably interpreted to confer "customer" status on all subscribers. Rather, we interpret § 1804 to require that the intervenor's participation in the proceeding be on behalf of its interest as a customer.[6]

In addition, the Joint Parties object that the proposed rule may conflict with the governing statute by requiring a showing of significant financial hardship in the notice of intent, contrary to § 1804(a)2)(B) which permits the showing to be made in the request for compensation. There is no such conflict. Section 1802(g) sets forth alternate definitions of "significant financial hardship," neither of which are the equivalent of a statement of economic interest.[7] The first

---

[6] Pub. Util. Code § 1802(g) reflects this principle by defining "significant financial hardship," with respect to groups, by reference to the economic interest of its members.

[7] "Significant financial hardship" means either that the customer cannot afford, without undue hardship, to pay the costs of effective participation, including advocates 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

Footnote continued on next page

definition makes no reference to an intervenor's economic interest in the proceeding. The second definition requires a group or organization, not simply to state its economic interest, but to quantify the economic interest of its individual members relative to the costs of participation. In contrast, the proposed rule merely requires a qualitative statement of economic interest without regard to the customer's financial ability to participate in the proceeding.

E. Notice of Intent Regarding Costs of Judicial Review

Pursuant to § 1804(a), intervenors must file a notice of intent, early in the proceeding, which includes an estimate of the costs for which they may seek compensation. Although costs of obtaining judicial review are compensable, it is neither the practice nor practicable for intervenors to identify and estimate the budget for obtaining judicial review at the start of a Commission proceeding, when they must give notice of intent to claim compensation. As a result, requests for compensation for judicial review costs may be made well after a proceeding has been closed, and with no prior notice of the estimated costs or the issues to be litigated. Our proposed rule requires intervenors to provide this notice within 30 days after the commencement of any judicial review. This will provide the notice required by § 1804(a) with respect to compensation for costs of judicial review, and will afford the Commission the opportunity to point out, in ruling on the notice, "similar positions, areas of potential duplication in showings, unrealistic expectation for compensation, and any other matter that may affect the customer's ultimate claim for compensation" as anticipated in § 1804(b)(2).

---

organization is small in comparison to the costs of effective participation in the proceeding.

The Joint Parties seek two clarifications of the term "commencement." First, for purposes of judicial review in state courts, the Joint Parties recommend that the time for filing the notice run from the date that a writ is filed. Second, for an action filed in federal court, the Joint Parties recommend that the time for filing the notice of intent run from the date of an action of which the intervenor is likely to be aware. We appreciate the point that intervenors may not necessarily receive notice of the commencement by a third party of a federal court action involving the Commission.[8] Accordingly, we modify the proposed rule to require that the time for filing the notice of intent run from the date that the intervenor first appears or files a pleading in the judicial action.

The Joint Parties do not oppose the requirement that the supplemental notice of intent identify issues and estimate costs of participation so long as there is no dispute that it is subject to § 1804(b)(2) and the statute's provision that a failure to identify an issue or precisely estimate costs in the notice of intent would not preclude an award of reasonable compensation. We confirm that the supplemental notice of intent is subject to § 1804(b)(2).

The Joint Parties object to the proposed rule's required showing that the intervenor's work on judicial review would "supplement, complement or contribute to the Commission's defense of its decision" as unnecessary and providing no value. Specifically, the Joint Parties assert that this showing may be met by merely quoting the Court of Appeal's statement in *Southern California Edison Co.* v. *CPUC* (2004) 117 Cal.App.4th 1039, 12 Cal.Rptr.3d 441, 449-450, that

[8] In contrast, notice is uniformly required in state court proceedings where, pursuant to California Rule of Court 58(a)(1), the writ is served on parties to the underlying proceeding.

"it is important that the customer perspective be fully represented when a matter shifts to a judicial forum." The Joint Parties also assert that this showing may be met by merely stating that participation is necessary to ensure that the customer interest continues to be defended in the event that the Commission "changes its mind" by settling the complaint or "abandoning a previously issued agency decision."

The Joint Parties' objections to the rule appear to miss its purpose and the purpose of § 1804, which is to reduce intervenors' risk of incurring costs that will not be compensated. Section 1804(b)(2) outlines a process for the Commission to give a non-binding assessment of whether intervenors have a realistic expectation for compensation. The proposed rule requires intervenors to present sufficient information to allow the Commission to provide this assessment. There is no argument that the Joint Parties' hypothetical showing in response to the rule is of little value: The fact that it is important for the customer perspective to be fully represented and the possibility that the Commission may settle a judicial complaint do not provide any insight into whether an intervenor might realistically expect to be compensated. As the Court of Appeal noted, an intervenor is not necessarily entitled to compensation where its presentation in court adds nothing to the claims already presented by the Commission.[9] In the interest of those intervenors who might want a realistic assessment of whether their costs of participation in judicial review are likely to be compensated, the rule provides direction as to what is required to enable that assessment.

---

[9] *Southern California Edison, supra* at 1052 n.13.

F. Costs Prior to Start of Proceeding

The proposed rules provide that the request for compensation may include reasonable costs of participation that were incurred before the start of the proceeding. This provision codifies the principle that costs associated with participation in a proceeding before the start of the proceeding, if reasonable, are compensable. For example, parties may participate in workshops or briefings by utilities regarding an impending application, or begin case planning on a proceeding that has been scheduled but not yet filed. (*See, e.g.,* D.05-05-046 and D.04-08-025.)

San Diego Gas & Electric Company and Southern California Gas Company (jointly) recommend modifying the proposed rule to provide that preliminary costs incurred before the start of a proceeding should be compensable if reasonably related to the issues which the intervenor identified in the notice of intent. Pacific Gas and Electric Company supports this recommendation, and further recommends that the rule provide examples of preliminary work eligible for compensation. We decline to modify the rule to define what is reasonable and what is not; our decisions provide our interpretation of what costs are "reasonable" under the statute.

G. Accounting of Costs

Section 1804(c) requires the filing of requests for an award of compensation within 60 days following issuance of a final order or decision, and that they include a detailed description of services and expenditures, and a description of the customer's substantial contribution. Our proposed rule requires, more specifically, that intervenors maintain and provide an account of the costs that references costs to tasks performed and issues in the proceeding. This requirement will enable the Commission to identify the costs associated

with the intervenor's substantial contribution, and to conduct reasonableness analysis.

The Joint Parties request that the Commission clarify if the record-keeping and allocation reflected in the records generally submitted by TURN in its intervenor compensation requests satisfy the new rules; if not, the Joint Parties request that the Commission issue a template illustrating the identification of task and issue that would satisfy the new rules. We confirm that TURN's requests for compensation have usually met our expected standard under the rule. Because the appropriate level of identification of task and issue will depend on the complexity of the proceeding, we decline to adopt a template at this time.

The Greenlining Institute (Greenlining) opposes the rule. Greenlining asserts that the proposed accounting requirements are more difficult for organizations that do not derive a major portion of their funds from the Commission, as compared to organizations that receive most of their funding through the intervenor compensation program. We are not aware of any basis for this assertion. We also see no statutory basis for imposing lesser accounting standards on an intervenor, depending on the source of most of its funds.

As we understand its further objection, Greenlining also objects that preparing a detailed account of costs is a waste of time (and money) if the request for compensation is denied on the basis that the intervenor did not make a substantial contribution to a Commission proceeding. Greenlining's objection actually goes to the statutory requirement that the request for compensation include a showing of both substantial contribution and reasonableness of costs. Given the statutory requirement, any intervenor that hopes to be compensated for its efforts must plan from the very start of a proceeding both the positions it expects to advocate and the costs it expects to incur.

H. Participation by Multiple Intervenors

The statute is clear that an intervenor may receive compensation for participation that materially supplements, complements or contributes to the participation of other parties, including Commission staff. (*See* §§ 1801.3(f) and 1802.5.) In order to assist the Commission in making that necessary determination, the proposed rule requires that, in a proceeding with multiple intervenors, the request include a showing and detailed accounting that the participation for which the intervenor requests compensation was efficiently coordinated with the participation of any party with similar interests.

The Joint Parties recommend modifying the proposed rule to require this showing only in circumstances where the intervenors' presentations overlapped. The Joint Parties point out that often, in proceedings with a number of intervenors, each addresses distinct issues with no overlap. To clarify the proposed rule, we modify it to permit, in the alternative, a showing that the intervenor's presentation did not overlap the presentation of other intervenors.

I. Other Comments on the Rules as Originally Proposed

Greenlining and Public Advocates, Inc. (Public Advocates) recommend that the Commission consider the adoption of multipliers for calculating intervenor compensation awards.

Greenlining, Public Advocates, and Latino Issues Forum recommend that the Commission use this rulemaking to explore how to encourage greater and more effective intervention from underserved communities.

Public Advocates recommends that the Commission adopt the provisions of Code of Civil Procedure § 1021.5 for purposes of determining awards of intervenor compensation in Commission proceedings, and points out that under

this private attorney general fees practice, there is no need to account for costs by reference to particular issues.

These comments raise issues that are beyond the scope of this rulemaking.

IV. Intervenor Compensation Fund

We proposed, in this rulemaking, to eliminate the intervenor compensation fund mechanism adopted in D.00-01-020 for paying intervenor compensation awards in quasi-legislative rulemaking proceedings affecting an entire industry or multiple industries. We proposed to replace the intervenor compensation fund with a funding mechanism that would allocate payment responsibility to only those utilities (within the affected industry or industries) with California-jurisdictional revenues over specified thresholds. After further consideration and based on comments on the proposal, we decline to adopt the proposal at this time. We continue to be concerned about ways to effectively budget compensation awards in these situations and may consider this or other proposals at a later date.

V. Comments on Changes to the Rules as Originally Proposed, and Other Comments on the Proposed Decision

The proposed decision in this rulemaking was mailed to all persons on the service list used in this proceeding, including all persons who filed written comments on the OIR, on September 19, 2006 in accordance with Pub. Util. Code § 311(g)(1) and Rule 14.2(a). The proposed decision included an appendix showing the full text of the rules as originally proposed with the changes discussed herein clearly indicated, and was mailed under cover of a notice of the time for filing comments on the draft decision. Consistent with that notice,

comments were filed on or before October 10, 2006; no reply comments were filed.[10]

We have reviewed the comments and made revisions throughout the decision as appropriate.[11] We address particular comments here.

Verizon, SureWest Telephone, and the Joint Commenters[12] assert that the adopted funding mechanism violates § 1807, which provides that awards "shall be paid by the public utility which is the subject of the hearing, investigation, or proceeding, as determined by the commission [….]" We disagree with this assertion. For all the reasons discussed previously, the adopted mechanism and its threshold provisions reasonably reconcile § 1807 with the Legislative intent that the intervenor compensation be run efficiently (§ 1801.3(b)), and are within our authority pursuant to § 701.

The Joint Commenters assert that the adopted mechanism may violate the First Amendment of the U.S. Constitution by requiring utilities to fund political or ideological speech with which they disagree. Although the Joint Commenters state that they do not challenge the intervenor compensation fund mechanism for this reason, this Constitutional challenge is essentially a challenge to the

---

[10] For purposes of Cal. Admin. Code, Tit. 1, § 44, the public availability period for review and comment to the changes to the rules as originally proposed began on September 19, 2006, and ended on the date of this order.

[11] No party commented on the changes to the Rules as originally proposed in the OIR, and we make no further changes to the Rules in this order.

[12] The Joint Commenters are Cox California Telcom, L.L.C.; New Cingular Wireless PCS, LLC; Spring Communications Company, L.P.; Sprint Telephony PCS, L.P.; Sprint Spectrum L.P. as agent for Wireless Co., L.P. and Nextel of California, Inc.; Time Warner Telecom of California, L.P.; and XO Communications Services, Inc.

intervenor compensation statutes themselves. This is not the proper forum for challenging the constitutionality of a California statute.

SureWest Telephone and the Joint Commenters assert that the proposed decision is flawed for failing to adequately explain the mechanism, such as identifying the timeframe for determining the revenues for purposes of calculating the percentage allocation of compensation responsibility, and explaining how the funding is to be collected. We refer SureWest Telephone and the Joint Commenters to our orders granting intervenor compensation in proceedings involving multiple utilities and clarify that, consistent with current practice, the intervenor compensation order will identify the responsible utilities' compensation responsibility and direct them regarding the payment procedure. (*See, e.g.,* D.05-04-049, Ordering Paragraphs 2 and 3.)

VI. Text of the Adopted Rules

We adopt the amended Rules 17.1 and 17.4 (former Rules 76.74 and 76.75) of the Commission's Rules of Practice and Procedure, Title 20, Division 1, of the California Code of Regulations as shown in the appendix to today's decision.

VII. Assignment of Proceeding

Commissioner John A. Bohn is the assigned Commissioner and Hallie Yacknin is the assigned ALJ in this proceeding.

Findings of Fact

1. The amendments to Rules 17.1 and 17.4 (former Rules 76.74 and 76.75) of the Commission's Rules of Practice and Procedure, Title 20, Division 1, of the California Code of Regulations, shown in the appendix to today's decision, will codify Commission precedent regarding eligibility and compensable costs, provide intervenors with greater flexibility in filing notices of intent, and enact

accounting, documentation and notice requirements to facilitate Commission review and determination of eligibility and compensable costs.

2. The proposed amendments were noticed in the Commission's Notice of Proposed Regulatory Action printed in the California Regulatory Registry of May 19, 2006.

3. The OIR proposing the amendments was served on those persons appearing on a service list commonly used for such procedural purposes.

4. The period for commenting on the proposed amendments set forth in the OIR remained open for more than 45 days following the publication of the Notice of Proposed Regulatory Action.

5. The period for commenting on the changes to the proposed amendments, set forth in the proposed decision in this proceeding, remained open for 25 days following the issuance of the proposed decision in this proceeding. The proposed decision was served on all persons appearing on the service list commonly used for such procedural purposes as modified to include other persons who requested to be placed on the service list, and includes all parties who filed comments on the OIR.

6. It is reasonable to adopt the amendments to the rules, as shown in the appendix attached to this decision.

7. The cost of the intervenor compensation fund adopted in D.00-01-020 has been unpredictable, resulting in the diversion of user fee funds from other Commission budgetary expenses.

8. Allocating intervenor compensation payment responsibility, in quasi-legislative rulemakings affecting an entire industry or industries, among water utilities with California-jurisdictional revenues (as most recently reported to the Commission) of more than $10 million, and/or electricity, gas, or telephone

utilities with California-jurisdictional revenues of more than $50 million, will equitably allocate payment responsibility without unduly increasing the administrative burden on utilities and intervenors.

Conclusions of Law

1. The Commission should adopt the amendments in the attached appendix to the Rules of Practice and Procedure.
2. The Commission should eliminate the intervenor compensation fund adopted in D.00-01-020, and adopt the funding mechanism proposed in the OIR.
3. This order should be effective immediately.
4. This rulemaking should be closed.

O R D E R

IT IS ORDERED that:

1. The amendments to the Rules of Practice and Procedure, as shown in the attached appendix to today's decision, are adopted.
2. The Chief Administrative Law Judge shall take all appropriate steps to submit the newly adopted rules to the Office of Administrative Law for purposes of approval and printing them in the California Code of Regulations, thereby giving them effect.
3. The intervenor compensation fund adopted in Decision 00-01-020 is eliminated.
4. In any quasi-legislative rulemaking affecting an entire industry or industries, any water utility with California-jurisdictional revenues (as most recently reported to the Commission) of more than $10 million, and/or any electricity, gas, or telephone utility with California-jurisdictional revenues of more than $50 million, will be allocated a share of payment responsibility for any

intervenor compensation awarded in the proceeding, based on the ratio of its California-jurisdictional revenues to the revenues of all utilities with payment responsibility.

5. Rulemaking 06-04-022 is closed.

This order is effective today.

Dated _____, at Fresno, California.

APPENDIX A

Proposed Rules Amendments to Article 17 of the Commission's Rules of Practice and Procedure

17.1. (Rule 17.1) Notice of Intent to Claim Compensation

(a) A notice of intent to claim compensation may be filed:

(i) in a proceeding in which a prehearing conference is held, ~~there has been a preliminary determination that hearing is needed,~~ any time after the start of the proceeding until 30 days after the prehearing conference.

(ii) without limitation to the time for filing if a prehearing conference is later held, in a proceeding in which there has been a preliminary determination that hearing is not needed, any time after the start of the proceeding until 30 days after the time for filing responsive pleadings (e.g., protests, responses, answers, or comments).

(iii) without limitation to the time for filing if a prehearing conference is later held, in a petition for rulemaking, any time after the petition is filed until 30 days after the time for filing responses. If the petitioner intends to request compensation, the petition itself may include a notice of intent.

(iv) in a proceeding ~~In cases where no prehearing conference is scheduled or~~ where the Commission anticipates that the proceeding will take less than 30 days, the administrative law judge may establish a deadline for filing a notice of intent.

~~(b) In cases where parties cannot reasonably identify issues within the time for filing the notice of intent, or where new issues emerge after the time set for filing, the Administrative Law Judge may specify an appropriate procedure for accepting new or revised notices of intent.~~

(b) An amended notice of intent may be filed within 15 days after the issuance of the scoping memo in the proceeding.

(c) The notice of intent shall identify all issues on which the intervenor intends to participate and seek compensation, and shall separately state the expected budget for participating on each issue. The notice of intent may include a category of general costs not attributable to a particular issue.

(d) The notice of intent shall provide either (1) verification of the intervenor's customer status pursuant to Pub. Util. Code Section 1804(b)(1)(A) or (B), or (2) a copy of articles of incorporation or bylaws demonstrating the intervenor's customer status pursuant to Pub. Util. Code Section 1804(b)(1)(C). If current articles or bylaws have already been filed with the Commission, the notice of intent need only make a specific reference to such filings.

(e) The notice of intent shall state the intervenor's economic interest in the proceeding, as that interest relates to the issues on which the intervenor intends to participate.

(f) An intervenor who intends to request compensation for costs of judicial review ~~to subsection (a)~~ shall file a supplemental notice of intent within 30 days after the ~~commencement of any~~ date that the intervenor first appears or files a pleading in the judicial review proceeding. The supplemental notice of intent shall identify the issues upon which the intervenor intends to participate in judicial review, and an itemized estimate of the compensation that the intervenor expects to request by reference to those identified issues. If the intervenor intends to support the Commission's decision on review, the supplemental notice of intent shall include a showing of why the intervenor expects that its participation in judicial review will supplement, complement or contribute to the Commission's defense of its decision.

(g) Responses to notices of intent to claim compensation shall be filed within 15 days of service of the notice.

Note: Authority cited: Sections 1701, Public Utilities Code. Reference: Section 1804, Public Utilities Code.

17.4. (Rule 17.4) ~~Reply to Response to~~ Request for ~~Award of~~ Compensation, Reply to Responses

(a) The request for compensation shall identify each issue resolved by the Commission for which the intervenor claims compensation, and shall specify the pages, findings, conclusions and/or ordering paragraphs in the Commission decision which resolve the issue.

(b) The request for compensation shall include time records of hours worked that identify:

(1) the name of the person performing the task;

(2) the specific task performed;

(3) the issue that the task addresses, as identified by the intervenor; and

(4) the issue that the task addresses, as identified by the scoping memo, if any.

(c) The request for compensation shall itemize each expense for which compensation is claimed.

(d) The request for compensation may include reasonable costs of participation in the proceeding that were incurred prior to the start of the proceeding.

(e) The request for compensation may include reasonable advocate's fees, reasonable expert witness fees, and other reasonable costs incurred as a result of an application for rehearing.

(f) If the proceeding involved multiple intervenors, the request for compensation shall include a showing that the participation materially supplemented, complemented, or contributed to the presentation of any other party with similar interests, or that the participation did not overlap the presentation of other intervenors.

(g) The party may file a reply to responses to its request for an award of compensation within 15 days after service of the response.

Note: Authority cited: Sections 1701, Public Utilities Code. Reference: Section 1804, Public Utilities Code.

(END OF APPENDIX A)