

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company for Expedited Approval of the Amended Power Purchase Agreement for the Russell City Energy Company Project. (U39E)

Application 08-09-007
(Filed September 10, 2008)

**ADMINISTRATIVE LAW JUDGE’S RULING GRANTING
MOTION BY GROUP PETITIONERS TO ACCEPT LATE FILING
OF NOTICE OF INTENT AND FINDING GROUP PETITIONERS ARE
NOT ELIGIBLE TO CLAIM INTERVENOR COMPENSATION**

On December 12, 2008, California Pilots Association (Calpilots), Skywest Townhouse Homeowners Association (Skywest), and Hayward Area Planning Association (HAPA) jointly filed a “Motion for Order to Accept Late Motion for Party Status and Late Notice of Intent to Claim Intervenor Compensation by Group Petitioners” (Motion). On December 16, 2008, I issued a ruling that allowed Calpilots, Skywest, and HAPA, all currently active California non-profit corporations, to collectively be given party status as “Group Petitioners” in this proceeding. That ruling noted that no order was required to permit a “late-filed motion for party status” because a motion seeking party status may be filed anytime. This ruling addresses the Motion as it relates to late-filing of a Notice of Intent to Claim Intervenor Compensation (NOI).

Pursuant to Pub. Util. Code § 1804(a)(1)¹ and Rule 17.1,² a customer who intends to seek an award of intervenor compensation must file and serve a NOI within 30 days of the prehearing conference (PHC). In this proceeding, the PHC was held on October 29, 2008, so the last date to file a timely NOI was December 1, 2008 because November 28 was a Friday holiday. Group Petitioners explained their late submission of the NOI as a result of misplaced reliance on a member of one of their groups who was tasked to monitor this proceeding but apparently failed to do so. Counsel for Group Petitioners further explained that by the time she became aware of the deadline, it had passed. The Motion by Group Petitioners for order accepting their late-filed NOI is granted based on a showing of good cause for the late filing.

**The Notice of Intent to
Claim Intervenor Compensation**

In a series of emails and a mailing, Group Petitioners have provided a NOI with attachments to be filed if the Motion is granted. (Attachment A to this Ruling.) In the interest of efficient administration of this case, I will now consider the merits of the NOI as submitted.

Customer Status

Group Petitioners do not meet the threshold test of eligibility for intervenor compensation because they did not establish that they are “customers” within the meaning of § 1802(b)(1). Three separate organizations comprise Group Petitioners and all must be “customers” for Group Petitioners to

¹ All subsequent statutory references are to the Public Utilities Code unless otherwise indicated.

² All references to “Rule” refers to the Commission’s Rules of Practice and Procedure (September 2006.)

qualify as an intervenor eligible to request compensation. In the NOI, Group Petitioners assert they are a category 3 “customer” as described in § 1802(b)(1)(C), which is 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.” However, the information provided with the NOI is insufficient to make that finding and, in fact, indicates that none of the organizations likely qualify.

For Skywest, the Articles of Incorporation state the “specific and primary purposes for which it is formed are to provide maintenance, preservation and architectural control of the residence Lots and Common Area and to promote the health, safety and welfare of the residents” None of the enumerated purposes or powers include advocacy for, or representation of, residential ratepayers in Commission proceedings. Group Petitioners even acknowledge that homeowner dues paid to Skywest are limited to uses “generally outside the scope of this proceeding.” Thus, Skywest appears to lack any authority to represent ratepayers in this proceeding. Similarly, the Amended Articles of Incorporation for HAPA state the “specific purpose of this Corporation is to engage in developmental planning for the City of Hayward, California to balance environmental, economic, and social needs.” This stated purpose does not include representation of the interests of residential or small commercial ratepayers in Commission proceedings. Finally, no articles of incorporation³ or

³ On January 20, 2009, counsel for Group Petitioners sent by email and regular mail a cover letter which claimed articles of incorporation for Calpilots had been inadvertently omitted from the NOI and were purportedly included with the letter. However, there

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by-laws were submitted for Calpilots, an organization described by Group Petitioners as aviators who are “residents of California who oppose paying higher utility rates in exchange for degradation of their local airports.” (Motion to Seek Party Status at 3.) It is unknown how many members of Calpilots are residential or small commercial ratepayers in the area to be served by the electricity anticipated from the Amended Power Purchase Agreement (PPA). Moreover, the general subject of this proceeding is whether the terms and conditions of the amended PPA for the Russell City Energy Company Project (RCEC) are just and reasonable and does not include issues relating to use of local airports. Therefore, no authority is shown for Calpilots to represent affected ratepayers in this proceeding.

“The intervenor compensation program is intended to encourage participation of all customers in Commission proceedings by helping them overcome cost barriers to effective and efficient participation ... and only those particular customer interests that would otherwise be underrepresented should be compensated.” (D.98-04-059 at 647.) Group Petitioners have not shown that their member organizations are authorized to represent ratepayers before the Commission nor have they shown that their participation would advance an underrepresented customer interest. Therefore, Group Petitioners do not qualify as a “customer” under the statute and are ineligible to claim intervenor compensation.

was nothing included with the email and the subsequently received hard copy of the letter only included articles of incorporation for Skywest and HAPA.

Significant Financial Hardship

Even if Group Petitioners were to later establish that they are a “customer,” they have not established “significant financial hardship” as a barrier to their participation in the proceeding. As set forth in § 1802(g), the relevant test for “significant financial hardship” depends on the type of “customer.” Category 3 groups and organizations must show that the economic interest of individual members is small in comparison to the costs of participation. (D.98-04-059 at 651.)

The NOI filed by Group Petitioners seeks a finding of “significant financial hardship,” but fails to adequately document the claim for any of its member organizations. In support of the request, Group Petitioners merely state in the NOI that the attached articles of incorporation establish “these are voluntary non-profit organizations” and (previously noted) that Skywest homeowner dues could not be used on this proceeding. This is inadequate.

Group Petitioners have not provided any documentation of their organizations’ members’ inability to pay the costs of participation. In order to make that finding, we would have to review the cost of participation and the average bills of the members of the organizations which Group Petitioners claim to represent. Therefore, Group Petitioners have not established significant financial hardship under the statute and are ineligible to claim intervenor compensation.

Estimate of Planned Participation and Compensation

Although this ruling finds Group Petitioners ineligible for intervenor compensation, their description in the NOI of planned participation and estimated compensation request invite comment. Group Petitioners have previously raised issues and arguments that focus on what they believe are

errors by other agencies in granting permits for the RCEC facility to be built. However, the permits to site and construct the RCEC power plant are neither within the scope of this proceeding nor the jurisdiction of the Commission. Thus, as stated in my ruling granting Group Petitioners party status, such arguments are misplaced in this proceeding.

Nonetheless, Group Petitioners' participation description refers to other agency proceedings and the compensation estimate includes unspecified fees for expert witnesses from the Federal Aviation Administration and the Department of Aeronautics. It is unclear how these items are likely to be relevant to the limited issues within the scope of this proceeding. The inclusion of such language suggests Group Petitioners may not be following my December 16, 2008, ruling granting party status which directed them to confine their activities in this proceeding to matters within the scope set forth in assigned Commissioner Peevey's Scoping Memo and Ruling issued November 17, 2008. Group Petitioners are reminded that they received party status for the purpose of participating in this proceeding within the parameters of the Scoping Memo. Party status may be withdrawn if Group Petitioners do not follow the terms of my prior ruling.

IT IS RULED that:

1. Group Petitioners' Notice of Intent to Claim Intervenor Compensation may be accepted for filing.
2. Group Petitioners are not a "customer" as defined by Public Utilities Code Section 1802(b).
3. Group Petitioners do not meet the "significant financial hardship" test as defined by Public Utilities Code Section 1802(g).

4. Group Petitioners are not eligible to claim intervenor compensation in this proceeding.

Dated January 23, 2009, at San Francisco, California.

/s/ MELANIE M. DARLING

Melanie M. Darling
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 January 23, 2009, at San Francisco, California.

/s/ ANTONINA V. SWANSEN
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**Last Updated on 22-JAN-2009 by: JVG
A0809007 LIST**

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