



ALJ/ES2/nd3 12/6/2023

FILED

12/06/23

10:22 AM

R2301007

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Implementing Senate Bill 846
Concerning Potential Extension of
Diablo Canyon Power Plant
Operations.

Rulemaking 23-01-007

**ADMINISTRATIVE LAW JUDGE'S RULING DENYING MOTION
BY CALIFORNIANS FOR GREEN NUCLEAR POWER, INC.
TO LATE-FILE NOTICE OF INTENT FOR INTERVENOR COMPENSATION**

This ruling denies the motion filed by Californians for Green Nuclear Power, Inc. (CGNP) to late-file its notice of intent (NOI) to request intervenor compensation in this proceeding.

1. Legal and Factual Background

On November 8, 2023, CGNP filed a motion to late-file its NOI to request intervenor compensation in this proceeding (Motion). CGNP, in its Motion, points to the "aggressive" pace of the proceeding and asks the California Public Utilities Commission (Commission) to exercise its discretion in granting CGNP's request, but otherwise does not explain why it failed to timely file its NOI.¹ Attached to the Motion is CGNP's NOI to claim intervenor compensation.

Public Utilities (Pub. Util.) Code Section 1804(a)(1) states, "A customer who, or eligible local government entity that, intends to seek an award under this article shall, within 30 days after the prehearing conference is held, file and serve on all parties to the proceeding a notice of intent to claim compensation." This

¹ Motion at 2.

requirement is echoed in Rule 17.1(a) of the Commission's Rules of Practice and Procedure,² and was included in both the January 12, 2023 Order Instituting Rulemaking (OIR) initiating this proceeding³ as well as the April 6, 2023 Assigned Commissioner's Scoping Memo and Ruling (Scoping Memo).⁴

The prehearing conference (PHC) in this proceeding was held on March 17, 2023; accordingly, NOIs for intervenor compensation were due on April 17, 2023.⁵ As stated above, CGNP's NOI was filed on November 8, 2023, more than six months after the statutory deadline.

2. CGNP's Request Must be Denied

The statutory requirement as to an NOI's timeliness is mandatory and confers limited discretion to excuse intervenors who fail to comply. Specifically, the statute allows the Commission to exercise some discretion in setting new deadlines for filing NOIs only in the following circumstances:

- In cases where no PHC is scheduled, or where the Commission anticipates the proceeding will take less than 30 days;
- In cases where the schedule would not reasonably allow parties to identify issues within the timeframe set forth above; or
- Where new issues emerge subsequent to the time set for filing, the Commission may determine an appropriate procedure for accepting new or revised notices of intent.⁶

² All references to Rules or Rule are to the Commission's Rules of Practice and Procedure.

³ OIR at 12.

⁴ Scoping Memo at 17.

⁵ The 30th day from the date of March 17 fell on Sunday, April 16. Pursuant to Rule 1.15, if the due date falls on a weekend or holiday the time limit is extended to include the first day thereafter.

⁶ Pub. Util. Code Section 1804(a)(1).

None of the above circumstances are present here. While the Commission has waived the 30-day statutory requirement in select instances in the past,⁷ the Commission has also indicated it would be reluctant to do so in the future.⁸ More recent orders have consistently held that the Commission has “no discretion to allow a party to late-file an NOI.”⁹

It is clear from testimony and filings that CGNP actively participated throughout the course of this proceeding; as such, CGNP’s request is not taken lightly. However, it is also clear that the deadline for filing NOIs cannot be changed at the Commission’s discretion, and that none of the exemptions in Pub. Util. Code Section 1804(a)(1) apply. Therefore, CGNP’s Motion is denied. This ruling does not prevent CGNP from continuing to participate in this proceeding at its own cost. In the event another PHC is held,¹⁰ or should one or

⁷ See, e.g., Decision (D.) 02-04-007. The Utility Reform Network filed a late NOI on September 12, 2001, along with a motion seeking approval to late file by one day. Because of the events of September 11, the motion was granted.

⁸ D.00-03-044 at 6; D.04-05-004 at 8.

⁹ See December 14, 2017 Ruling on National Housing Law Project’s NOI in Rulemaking (R.) 14-07-027 at 5 (“Section 1804(a)(1) contains specific provisions on the timeliness of the NOIs and gives the Commission no discretion to allow a party to late-file an NOI.”); also, November 6, 2019 Ruling Denying Small Business Utility Advocates’ Motion to Late-File NOI in R.16-02-007 at 3 (“The Commission has consistently rejected late-filed NOIs.”); December 5, 2019 Ruling on Kern County Taxpayers Association’s NOI in Application (A.) 18-12-009 at 6 (explaining that Pub. Util. Code Section 1804(a) gives the Commission discretion to allow late-filed NOIs only in certain specified circumstances); March 28, 2022 Ruling Denying Motion by Public Water Now Requesting Leave for Late Filing of NOI in A.21-11-024 at 2 (“The deadline and other provisions of Section 1804(a)(1) are statutory and may not be waived or extended by the Commission.”); September 22, 2022 Ruling Rejecting Utility Workers Union of America, Local 132’s NOI in A.21-05-011, *et. al.* at 6 (“Th[e] statutory requirement [provided in Section 1804(a)(1)] is mandatory and confers no discretion on the Commission to excuse customers who fail to comply.”); March 13, 2023 Ruling Rejecting Hispanics in Energy’s NOI in R.21-03-010 at 7 (“The deadline for filing NOIs cannot be changed at the Commission’s discretion.”).

¹⁰ See D.14-08-034 at 4-8.

more new issues emerge in the proceeding (including in Phase 2 of the proceeding) and the assigned Commissioner or assigned Administrative Law Judge determines an appropriate procedure for accepting new NOIs, CGNP may file its NOI, accordingly.

IT IS RULED that:

1. The November 8, 2023, motion by Californians for Green Nuclear Power, Inc. to late-file its notice of intent to request intervenor compensation is denied.

2. Californians for Green Nuclear Power, Inc. may file its notice of intent (NOI) to request compensation in this proceeding if another prehearing conference is held, or if one or more new issues emerge in the proceeding and the assigned Commissioner or assigned Administrative Law Judge determines an appropriate procedure for accepting new NOIs.

Dated December 6, 2023, at San Francisco, California.

/s/ EHREN D. SEYBERT

Ehren D. Seybert
Administrative Law Judge