

Decision DRAFT DECISION OF ALJ THOMAS (Mailed 4/12/2004)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of the Joint Application of Southern California Gas Company (U 904 G) and San Diego Gas & Electric Company (U 902 M) for Authority to Continue Funding of LEV Programs.

Application 02-03-047
(Filed March 25, 2002)

Application of Southern California Edison Company (U 338-E) to Extend the Operation of its Electric Vehicle Adjustment Clause Mechanism and Related Accounts Until the Date of the Commission's Final Decision in SCE's Test Year 2003 General Rate Case Proceeding.

Application 02-03-048
(Filed March 25, 2002)

Application of Pacific Gas and Electric Company for Review of and Authorization for Recovery of Costs Relating to Its Low Emission Vehicle (LEV) Program for 2002 through 2005.

Application 02-03-049
(Filed March 25, 2002)

(U 39 E)

OPINION DENYING INTERVENOR COMPENSATION

This decision denies the request of Raymond Tate, Jr., for intervenor compensation for contributions to Decision (D.) 03-10-086 (which approved continued ratepayer funding for utility low-emission vehicle (LEV) programs)

because Tate failed to timely file a Notice of Intent (NOI) as required by § 1804(a)¹ and does not meet the definition of a “customer” under § 1802(b).

I. Background

In March 2002, Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), San Diego Gas and Electric Company (SDG&E) and Southern California Gas Company (So Cal Gas) (together utilities) filed applications for continued funding of their LEV programs. Tate, chairman of Liberty Fuels, Inc. (LFI), subsequently intervened in the proceeding, opposing continued ratepayer funding of certain utility LEV programs.

On May 21, 2002, a prehearing conference (PHC) was held in this matter. Tate filed his NOI on July 1, 2002. In the NOI, Tate argued that LFI, a for-profit alternative fuel and alternative fuels equipment vendor, qualifies as a “customer” as defined in § 1802(b), because LFI is a utility customer and a “consumer service enterprise authorized pursuant to its articles of incorporation to represent the interests of itself and it’s (sic) customers and subscribers.” The NOI estimated that Tate would seek intervenor compensation in the amount of \$180,935.00 for labor costs and \$3,500 for expenses based on his participation in this proceeding.

On December 30, 2003, Tate filed a request for intervenor compensation that sought an award of \$269,622² based on his contributions to the proposed decision of the assigned Administrative Law Judge (ALJ), the proposed alternate decision of Commissioner Loretta Lynch, and the alternate decision of

¹ All Code references are to the Public Utilities Code, unless otherwise stated.

² Tate is requesting an award of \$266,301 for labor performed by himself, his counsel, and various consultants, and \$3,321 for expenses incurred in connection with this participation in this proceeding.

Commissioner Susan Kennedy, which the Commission adopted as D.03-10-086 on October 30, 2003. PG&E opposes Tate's request on several grounds.³

II. Requirements for Intervenor Compensation Award

The intervenor compensation program, enacted by the Legislature in Pub. Util. Code §§ 1801-12, requires that the intervenor satisfy all of the following procedures and criteria to obtain a compensation award:

- A. The intervenor must be a customer or a participant representing consumers, customers, or subscribers of a utility subject to our jurisdiction. (§ 1802(b).)
- B. The intervenor must satisfy certain procedural requirements including the filing of a sufficient notice of intent to claim compensation within 30 days of the prehearing conference (or in special circumstances, at other appropriate times that we specify). (§ 1804(a).)
- C. The intervenor must file and serve a request for a compensation award within 60 days of our final order or decision in a hearing or proceeding. (§ 1804(c).)
- D. The intervenor must demonstrate "significant financial hardship." (§§ 1802(g), 1804(b)(1).)
- E. The intervenor's presentation must have made a "substantial contribution" to the proceeding, through the adoption, in whole or in part, of the intervenor's contention or recommendations by a Commission order or decision. (§§ 1802(h), 1803(a).)
- F. The claimed fees and costs must be comparable to the market rates paid to people with comparable training and experience and offering comparable services. (§ 1806.)

³ PG&E filed timely opposition to Tate's request on January 29, 2004. Tate filed a response to PG&E's opposition on February 9, 2004.

III. Discussion

A. Late Filing of Tate's NOI

Section 1804(a) states in pertinent part:

A customer who 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. . . .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. (Emphasis added.)

Tate has failed to meet this requirement. Since the PHC was held on May 21, 2002, under § 1804(a), Tate's NOI should have been filed no later than June 20, 2002.⁴ However, Tate did not file his NOI until July 1, 2002, 11 days after the deadline. Tate did not file a motion seeking leave to file the NOI late or include any explanation of the late filing in his NOI.

As indicated in D.00-03-044, we are generally reluctant to waive the requirements of § 1804 for timely filing of the NOI, and Tate has presented no arguments that would justify acceptance of his late-filed NOI here. Tate's argument that the ruling of the assigned ALJ granting his motion to intervene impliedly granted Tate status to claim compensation is without merit.

⁴ Under Rule 76.74, the assigned ALJ may establish a different deadline for the filing of NOIs in any of the following circumstances: (a) if no PHC will be held, (b) if the Commission anticipates that the proceeding will be completed in less than 30 days, (c) if the parties cannot reasonably identify issues within the time set by § 1804(a), or (d) if new issues emerge after the deadline for filing NOIs. However, since none of these circumstances existed in this case, the ALJ did not set a different timeline for filing the NOI, and Tate was required to comply with § 1804(a).

We note that Tate, who is not an attorney, represented himself in evidentiary hearings in this proceeding. However, Tate's request for intervenor compensation seeks reimbursement for 153 hours of work allegedly performed by attorneys who consulted with him regarding this case.⁵ Therefore, Tate had access to legal advice regarding requirements for the filing of a NOI. Moreover, many persons participate in Commission proceedings without counsel. An intervenor must comply with statutory requirements and Commission Rules, whether or not the intervenor retains counsel.

Since Tate has not met the statutory requirement for timely filing of his NOI, he is not eligible for an award of intervenor compensation.

B. Customer Status

Even if Tate had timely filed his NOI, he is not eligible for an award of compensation because he fails to qualify as a customer pursuant to § 1802(b).

As stated in D.98-04-059, under the intervenor compensation statutes:

An intervenor is eligible for compensation when he is a customer, and his participation in a proceeding involving an electric, gas, water, or telephone utility presents a significant financial hardship. To determine eligibility, two questions must be addressed: Is the intervenor a "customer?" Will participation present a significant financial hardship?⁶

Section 1802(b)(1) defines customer to mean any of the following:

- A. A participant representing consumers, customers, or subscribers of any electrical, gas, telephone, telegraph, or

⁵ Tate's request for intervenor compensation seeks \$5,600 for 16 hours of work performed by John Moran, Esq., General Counsel, \$35,700 for 102 hours of work performed by Terri Mandel, Esq., and \$5,250 for 35 hours of work performed by Jodi Chall, Esq.

⁶ D.98-04-059, *mimeo.*, at p. 20.

- 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.⁷

The Commission requires a participant to specifically identify in its NOI how it meets the definition of customer.⁸

Tate's NOI claims that LFI is a customer because:

LFI is a for-profit enterprise with long-standing interest in implementing its technologies and refueling services that a successful alternative fuel program in California requires. LFI is very involved in the issues addressed in this proceeding, namely low emission vehicle programs operated by investor owned utilities.

LFI and it's (sic) customer base, lives and purchases gas services within the territories of PG&E, SCE, and SDG&E. This qualifies the LFI Section 1802(b) (sic).

As pointed out by PG&E in its opposition to Tate's request, LFI is the developer of equipment that converts natural gas into liquefied natural gas and of a refueling station for natural gas vehicles. As an intervenor, Tate opposed continued LEV program funding of the Idaho National Engineering and Environmental Laboratory (INEEL) project, on the ground that PG&E's ability to use ratepayer funds for this purpose gave PG&E an unfair competitive

⁷ "Customer" does not include any state, federal, or local government agency, any publicly owned public utility, or any entity that, in the commission's opinion, was established or formed by a local governmental entity for the purpose of participating in a commission proceeding. Section 1802(b)(2).

advantage over non-utility businesses that might develop this technology and enabled PG&E to unfairly monopolize the market. D.03-10-086 described Tate's participation as follows:

Liberty Fuels (Liberty), an equipment developer, opposes the utilities' applications.

Liberty claims that the utilities have used ratepayer funds to monopolize the Natural Gas Vehicle market and that continued funding will provide the utilities with an unfair advantage over the private sector. In support of its allegations, Liberty says that past spending has been inappropriately devoted to lobbying and promotional efforts that are contrary to D.95-11-035.

Additionally, Liberty claims, utility Research, Development & Demonstration (RD&D) efforts have been directed toward developing new products that should be undertaken by private companies. As a case in point, Liberty suggests that natural gas compressor manufacturers are better suited to conduct RD&D for such products than the utilities.⁹

Although Tate raised a number of issues related to LEV program expenditures, we find that he participated in the proceeding primarily to protect his economic interests as a competitor of PG&E in the development of the natural gas liquifier and related technology. Our past decisions have made it clear that intervenors who participate in proceedings in order to advance their own business interests do not qualify as customers under § 1802(b) and are not eligible for intervenor compensation.¹⁰

⁸ D.98-04-059.

⁹ D.03-10-086, *mimeo.*, at p. 15.

¹⁰ See D.88-12-034, D.98-04-059, *mimeo.*, at p. 29, fn 14; Administrative Law Judge Ruling Denying Compensation, Rulemaking 99-10-025, dated January 28, 2000.

In addition to asserting his interest in the LEV proceeding as an equipment developer, Tate claims to be a customer because LFI and LFI's customers purchase gas from PG&E, Edison, and SDG&E. However, in order to qualify for intervenor compensation as a representative of utility customers, consumers, or subscribers, the intervenor must be an actual customer whose interests in the proceeding arise primarily from its role as a customer of the utility, and it must represent the broader interests of at least some other consumers, customers, or subscribers.¹¹ Tate's response states that although PG&E provided LFI with natural gas to operate and demonstrate LFI's small-scale liquefier at approximately 50 pounds-per-square-inch (psi) from 1997 to 1999, PG&E has not provided LFI with natural gas at 50 psi for Liberty's demonstration liquefier to be set up in Fremont, California for the past year and a half. Therefore, it is unclear whether LFI is currently a PG&E natural gas customer.

Tate's participation in this proceeding related primarily to his role as a competitor of PG&E and other utilities in the development of a liquefied natural gas compressor and related technology, rather than as a utility customer. Moreover, Tate has presented no evidence that utility customers in LFI's customer base have authorized him or LFI to represent their interests in this proceeding or that LFI's articles of incorporation or by-laws authorize LFI to represent utility customers.¹²

¹¹ D.88-12-034.

¹² See D.00-04-059, in which the Commission upheld the ALJ's determination that Solar Development Cooperative (SDC) was not a "customer," in part because SDC failed to present adequate evidence of authorization by utility customers to represent their interests in the proceeding, and SDC did not have by-laws or articles of incorporation that authorized it to represent utility customers.

As a result, although Tate may have contributed to the Commission decision in this matter, Tate and LFI do not qualify as customers eligible for intervenor compensation under § 1802 (b). Since Tate is not eligible to request intervenor compensation, it is not necessary to determine whether his participation was “substantial,” or his requested fees and costs reflect “market rates,” within the meaning of the statute.

IV. Conclusion

For all the above reasons, Tate’s request for intervenor compensation is denied.

V. Comments on Draft Decision

We circulated this draft decision for public review and comment. No comments were received.

VI. Assignment of Proceeding

Carl W. Wood is the Assigned Commissioner. Sarah R. Thomas is the assigned ALJ in this proceeding.

Findings of Fact

1. Tate, chairman of LFI, participated in this proceeding as an intervenor.
2. The PHC in this proceeding was held on May 21, 2002.
3. Tate did not file his NOI until July 1, 2002.
4. In order to meet the statutory deadline for timely filing of a NOI, Tate’s NOI should have been filed no later than June 22, 2002.
5. Tate did not file a motion to leave to submit a late NOI or explain his late filing in the NOI or his request for intervenor compensation.
6. Tate participated in this proceeding primarily as a business competitor to PG&E in the development of the natural gas liquefier and related technology, rather than as a PG&E customer.

7. Tate presented no evidence that utility customers have authorized him or LFI to represent their interests in this proceeding or that LFI's articles of incorporation or by-laws authorize LFI to represent utility customers.

8. Tate and LFI did not prove they are currently PG&E natural gas customers.

Conclusions of Law

1. Under § 1804(a), a customer who intends to seek an award of intervenor compensation must generally file and serve a NOI within 30 days after the PHC is held.

2. Since Tate's NOI was not filed within the statutory timeframe, and he has shown no reason to excuse his late filing, Tate's request for intervenor compensation should be denied.

3. Under the intervenor compensation statutes, an intervenor must qualify as a customer under § 1802(b) in order to be eligible for an award of compensation.

4. In order to qualify as a representative of utility customers, an intervenor must be an actual customer of the utility whose interests in the proceeding arise primarily from its role as a utility customer, and must represent the broader interests of at least some other customers, consumers, or subscribers.

5. Since neither Tate nor LFI qualifies as a customer under § 1802(b), Tate is not eligible for an award of intervenor compensation, and his request for intervenor compensation should be denied.

6. Today's order should be made effective immediately.

O R D E R

IT IS ORDERED that:

1. The request of Raymond Tate, Jr., for an award of intervenor compensation is denied.

2. These proceedings are closed.

This order is effective today.

Dated_____ 2004, at San Francisco, California.

Compensation Decision:	D
Contribution Decision(s):	D0310086
Proceeding(s):	A0203047, A0203048, A0203049
Author:	ALJ Thomas
Payer(s):	

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
Raymond Tate, Jr.	12/30/03	\$269,622.00	0	None	Failure to file timely Notice of Intent, eligibility denied.

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
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