



FILED

5-24-16
02:59 PM

SCR/ek4 5/24/2016

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company for Authority, Among Other Things, to Increase Rates and Charges for Electric and Gas Service Effective on January 1, 2017. (U39M)

Application 15-09-001
(Filed September 1, 2015)

ADMINISTRATIVE LAW JUDGE'S RULING REJECTING FRIENDS OF THE EARTH'S NOTICE OF INTENT TO CLAIM INTERVENOR COMPENSATION

Customer (party intending to claim intervenor compensation): Friends of the Earth

Assigned Commissioner: Michael Picker

Administrative Law Judge: Stephen C. Roscow

PART I: PROCEDURAL ISSUES
(Completed by the Party intending to claim intervenor compensation)

A. Status as "customer" (see Pub. Util. Code § 1802(b)):¹ The party claims "customer" status because the party is (check one):	Applies (check)
1. A Category 1 customer is an actual customer whose self-interest in the proceeding arises primarily from his/her role as a customer of the utility and, at the same time, the customer must represent the broader interests of at least some other customers. In addition to describing your own interest in the proceeding you must show how your participation goes beyond just your own self-interest and will benefit other customers.	<input type="checkbox"/>
2. A Category 2 customer is a representative who has been authorized by actual customers to represent them. Category 2 involves a more formal arrangement where a customer or a group of customers selects a more skilled person to represent the customer's views in a proceeding. A customer or group of customers may also form or authorize a group to represent them, and the group, in turn, may authorize a representative such as an attorney to represent the group. A representative authorized by a customer must identify the residential customer(s) being represented and provide authorization from at least one customer. See D.98-04-059 at 30.	<input type="checkbox"/>

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

<p>3. A Category 3 customer is a formally organized group authorized, by its articles of incorporation or bylaws to represent the interests of residential customers or small commercial customers receiving bundled electric service from an electrical corporation.² Certain environmental groups that represent residential customers with concerns for the environment may also qualify as Category 3 customers, even if the above requirement is not specifically met in the articles or bylaws. <i>See</i> D.98-04-059, footnote at 3.</p>	<input checked="" type="checkbox"/>
<p>The party's explanation of its customer status must include the percentage of the intervenors members who are residential ratepayers or the percentage of the intervenors members who are customers receiving bundled electric service from an electrical corporation, and must include supporting documentation: (i.e., articles of incorporation or bylaws).</p> <p>Friends of the Earth ("FOE") is a non-profit organization within the meaning of Section 501(c)(3) of the United States Internal Revenue Code. FOE has worked for over forty years to reduce economic drivers that encourage environmental degradation from nuclear energy and address the threats to human health and the environment that nuclear power poses. FOE and its affiliates have used, and continue to use, technical and policy expertise to combat irresponsible nuclear development in state, federal and international arenas, including Iowa, Missouri, North Carolina, various federal agencies and throughout the Pacific Rim. FOE's nuclear campaign works to reduce risks for people and the environment by supporting efforts to close and defund existing nuclear reactors and fighting proposals to design and build new reactors.</p> <p>FOE's focus on preventing the procurement of irresponsible nuclear energy generators qualifies it for Category 3 customer status. FOE is specifically authorized by its bylaws, articles of incorporation and policy manual to "transfor[m] the economy so it protects the environment and enhances people's well being", a necessary corollary of which is the representation of the interests of residential and small commercial customers of electric utilities. <i>See</i> Cal. Pub. Util. Code § 1802(b)(1)(C). Article 1 of FOE's Bylaws authorizes FOE to participate in regulatory proceedings to further its purpose of preventing the development of nuclear resources:</p> <p style="padding-left: 40px;">In pursuit of these purposes, the Corporation will conduct research and education and other activities consistent with [Section 501(c)(3) tax status].</p> <p>FOE's members share its core purposes. FOE members are required to make dues payments. <i>See</i> FOE Bylaws, Art. V, Sec. 5.01. FOE advances the interests of its</p>	

² Intervenors representing either a group of residential customers or small commercial customers who receive bundled electric service from an electrical corporation, must indicate in Part I, Section A, Item #4 of this form, the percentage of their members who are residential customers or the percentage of their members who receive bundled electric service from an electrical corporation. The NOI may be rejected if this information is omitted.

members, a group which includes residential ratepayers located in California.

Friends of the Earth's nuclear campaign works to reduce the risks to people and the environment posed by nuclear energy by providing independent expert review, testimony, and working accountability and transparency in public proceedings. The organization works to ensure that public safety is not endangered by nuclear reactors and that neither ratepayers nor taxpayers are unfairly allocated the costs of nuclear facilities throughout the country.

FOE's organizational purposes, and its members' shared interest in those purposes, are consistent with Commission guidance on Category 3 customer eligibility with regard to environmental groups. Indeed, Commission precedent shows that FOE's Bylaws adequately establish the members' broad interest in the environmental and societal impacts the Commission has previously recognized as sufficient to establish Category 3 status:

"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, mimeo, fn 14 at 16-17.

The Commission's Intervenor Compensation Program Guide ("Guide") also supports FOE's Category 3 status. The Guide states that certain environmental organizations may qualify as Category 3 customers "as long as these organizations seek to protect the broader interests in the environment held by residential ratepayers, and address the customers' environmental concerns." FOE's focus on reducing economic drivers for environmentally harmful technologies is of considerable benefit to residential ratepayers in California. This places FOE within the spectrum of groups that the Commission has previously recognized as representing residential ratepayer concerns. See, e.g., D. 11-03-025 at 3-4; D.09-09-045 at 6.

FOE's California membership represents over 20% of its total nationwide membership. All of FOE's California members are in the residential class, including residential customers of electrical corporations subject to the Commission's jurisdiction. FOE therefore satisfies the statutory threshold to qualify as a Category 3 customer, authorized by its bylaws to "engage in programs to reduce the cost and waste of energy and energy resources and fuels," a necessary corollary of which is the representation of the interests of residential and small commercial customers of electric utilities in California. FOE respectfully requests that the Commission recognize FOE's Category 3 customer status so that FOE may further the interest of its members and California residential ratepayers in demonstrating that California's

power needs can be reliably met without the Diablo Canyon Power Plant (DCPP) through continued investment in safe, clean and responsible technologies such as renewable energy and energy efficiency.	
Do you have any direct economic interest in outcomes of the proceeding? ³	
Yes: <input type="checkbox"/> No: <input checked="" type="checkbox"/>	
FOE is a Section 501(c)(3) non-profit organization and does not have any direct economic interest in the outcome of this proceeding. FOE has no opportunity for direct financial benefit from the Commission's disposition of issues in this case. The consideration of rate recovery from, and future operations of, the DCPP does not provide a direct financial benefit to FOE and FOE's activities are pursuant to its educational, scientific, and charitable purposes, as described in Article I of its Bylaws. <i>See</i> Attachment 2.	
If "Yes", explain:	
B. Conflict of Interest (§ 1802.3)	Check
1. Is the customer a representative of a group representing the interests of small commercial customers who receive bundled electric service from an electrical corporation?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
2. If the answer to the above question is "Yes", does the customer have a conflict arising from prior representation before the Commission?	<input type="checkbox"/> Yes <input type="checkbox"/> No
C. Timely Filing of Notice of Intent (NOI) (§ 1804(a)(1)):	Check
1. Is the party's NOI filed within 30 days after a Prehearing Conference? Date of Prehearing Conference: 10/29/2015	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
2. Is the party's NOI filed at another time (for example, because no Prehearing Conference was held, the proceeding will take less than 30 days, the schedule did not reasonably allow parties to identify issues within the timeframe normally permitted, or new issues have emerged)?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
2a. The party's description of the reasons for filing its NOI at this other time:	
2b. The party's information on the proceeding number, date, and decision number for any Commission decision, Commissioner ruling, Administrative Law Judge's ruling, or other document authorizing the filing of NOI at that other time:	

PART II: SCOPE OF ANTICIPATED PARTICIPATION
(Completed by the Party intending to claim intervenor compensation)

A. Planned Participation (§ 1804(a)(2)(A)(i)):
The party's statement of the issues on which it plans to participate: As FOE noted in its motion for party status, FOE stands ready to make the case against the continuing cost-effectiveness of DCPP ⁴ as a generating resource in PG&E's fleet. FOE intends to address the reasonableness of any rates requested for the DCPP, whether PG&E's GRC application

³ See Rule 17.1(e).

⁴ Diablo Canyon Power Plant.

improperly includes costs to address the imprudence of PG&E's actions with respect to operation of the DCCP, and whether PG&E has failed to include safety improvements that are necessary to meet the requirements of its Nuclear Regulatory Commission license.

FOE anticipates that its expert testimony will substantially contribute to the Commission's consideration of the reasonableness and prudence of PG&E's decisions and investments in DCCP and its actions regarding the future of the plant. FOE expects to fully participate on the issues of cost recovery related to DCCP expenses.

The party's explanation of how it plans to avoid duplication of effort with other parties:

FOE's contribution to this proceeding will be distinct from all other parties due to FOE's combination of extensive technical experience related to nuclear policy. FOE's members will not be adequately represented without FOE's participation. FOE will continue to communicate with other intervening parties, as necessary, to avoid duplication of effort and encourage settlement of issues.

The party's description of the nature and extent of the party's planned participation in this proceeding (to the extent that it is possible to describe on the date this NOI is filed).

FOE, through its attorney(s) and technical expert(s), plans: to participate in all meetings and workshops scheduled by the Commission in this proceedings; to engage in strategic planning with other parties to avoid duplication of effort and encourage settlement of issues; to participate in evidentiary hearings, if any; to submit comments and briefing, if any; and to undertake all other activities reasonably necessary to effectively participate or substantially contribute to a determination regarding the reasonableness of any rates requested for the DCCP.

B. The party's itemized estimate of the compensation that the party expects to request, based on the anticipated duration of the proceeding (§ 1804(a)(2)(A)(ii)):

Item	Hours	Rate \$	Total \$	#
ATTORNEY, EXPERT, AND ADVOCATE FEES				
Ellison Folk	250	\$570/hr	\$142,500	
Tori Ballif Gibbons	200	\$250/hr	\$50,000	
Nuclear Engineer (to be determined)	75	\$350/hr	\$26,250	
Economist (to be determined)	100	\$300/hr	\$30,000	
Renewable Energy Expert/Economist (to be determined)	100	\$300/hr	\$30,000	
				Subtotal: \$278,750
COSTS				
Travel			\$7,500	
				Subtotal: \$7,500
				TOTAL ESTIMATE: \$286,250

Estimated Budget by Issues: All of these costs will be incurred in connection with FOE's argument that the PG&E's application for funds for the operation of and capital improvements to Diablo Canyon Power Plant are not reasonable and prudent and fail to include all costs necessary to ensure compliance with PG&E's NRC license to operate Diablo Canyon.

PART III: SHOWING OF SIGNIFICANT FINANCIAL HARDSHIP
(Completed by Party intending to claim intervenor compensation)

A. The party claims “significant financial hardship” for its Intervenor Compensation Claim in this proceeding on the following basis:	Applies (check)
1. “[T]he customer cannot afford, without undue hardship, to pay the costs of effective participation, including advocate’s fees, expert witness fees, and other reasonable costs of participation” (§ 1802(g)); or	<input type="checkbox"/>
2. “[I]n the case of a group or organization, the economic interest of the Individual members of the group or organization is small in comparison to the costs of effective participation in the proceeding” (§ 1802(g)).	<input checked="" type="checkbox"/>
3. A § 1802(g) finding of significant financial hardship in another proceeding, made within one year prior to the commencement of this proceeding, created a rebuttable presumption in this proceeding (§ 1804(b)(1)). Commission’s finding of significant financial hardship made in proceeding number: Date of Administrative Law Judge’s Ruling (or CPUC Decision) in which the finding of significant financial hardship was made:	<input type="checkbox"/>
B. The party’s explanation of the factual basis for its claim of “significant financial hardship” (§ 1802(g)):	
<p>As estimated in Part II, Section B, the economic interests of an individual FOE member are small in comparison to the cost of effective participation in this proceeding. FOE’s members wish to further FOE’s objectives to promote safe and cost-effective energy sources, goals that go beyond an easily identified individual economic interest. These are goals that represent a broader public interest perspective, consistent with the Legislature’s intent that the Commission encourage participation by “administer[ing] the provisions of §§ 1801 et seq. in a manner ‘that encourages the effective and efficient participation of all groups that have a stake in the public utility regulation process.’” D.06-05-027, mimeo, at 9.</p> <p>FOE’s purposes for participating in this proceeding reflect the broader public interest of safe and cost-effective electric generation. The benefits of FOE’s participation to a particular member are difficult to isolate from this broader public benefit. This means that the cost of participation \$286,250 is much greater than any one individual member’s benefit. The Commission’s disposition of scoped issues could result in a range of potential ratepayer impacts, from positive to negative, but none of those foreseeable impacts on individual member-ratepayers approaches the magnitude of the costs of full and effective participation in this proceeding.</p>	

ADMINISTRATIVE LAW JUDGE RULING

1. The Notice of Intent (NOI) is rejected for the following reasons:	<input checked="" type="checkbox"/>
<p>The NOI has not demonstrated the party's status as a "customer" for the following reason(s):</p> <p>FOE claims it is eligible as a category 3 customer under § 1802(b)(1)(C). FOE asserts this status as an environmental organization. Section 1802(b)(1)(C) requires that an organization claiming this status must be authorized pursuant to its articles of incorporation or bylaws to represent the interests of residential customers, or to represent small commercial customers of the electric utility. Under the statute, a party must establish that it is so authorized.</p> <p>Environmental organizations representing residential customers who have a concern for the environment are also considered eligible pursuant to the Commission's interpretation of the statute.⁵</p> <p>An organization claiming customer status under § 1802(b)(1)(C) must provide a copy of its articles or bylaws, noting where in the document it is so authorized.⁶ The Articles or bylaws must include some language that indicates that the organization is authorized to advocate or litigate the interests of these customers before the Commission, government agencies, or in judicial proceedings. The Commission reviews the submitted documents to ensure that the organization's representatives are participating with authority to make the commitment of resources, as a precondition to eligibility to later request ratepayer-funded intervenor compensation. FOE explains that its bylaws and articles of incorporation (a copy of FOE's Articles of Incorporation has not been provided) authorize it to enhance people's wellbeing, a necessary corollary of which is the representation of the interests of residential and small commercial customers of electric utilities. FOE refers to the following provisions in the bylaws:</p> <p style="text-align: center;">Section 1.02. <u>Purpose</u>. The Corporation is organized for the charitable and educational purposes of working to create a just and healthy world by defending the</p>	<input checked="" type="checkbox"/>

⁵ D.98-04-059 fn. 14 at 30.

⁶ Rule 17.1(d); D.98-04-059 at 91.

environment and human health while advancing social and economic justice, by ... transforming the economy so it protects the environment and enhances people's wellbeing, and by building movements in the United States and globally working for those ends. In pursuit of these purposes, the Corporation will conduct research and education and other activities consistent with Section 1.04.⁷

These provisions do not authorize FOE to represent environmental interests before government agencies or in judicial proceedings, compared to, for example, Sierra Club's governing documents. Absent the required authorization (affirmative or reasonably inferable), FOE has not established §1802(b)(1)(C) eligibility to claim compensation.

The ruling does not preclude Friends of the Earth from participating, at its own costs, in this proceeding.

Since the NOI does not demonstrate FOE's customer status, other issues, such as the scope of anticipated participation and significant financial hardship, are not discussed in this Ruling.

IT IS RULED that:

1. The Notice of Intent filed by Friends of the Earth is rejected.



Dated May 24, 2016, at San Francisco, California.

/s/ STEPHEN C. ROSCOW

Stephen C. Roscow
Administrative Law Judge

⁷ Section 1.04. Tax Status. The Corporation shall operate so as to be consistent with Section 501(c)(3) of the Internal Revenue Code.