

BEFORE THE PUBLIC UTILITIES COMMISSION OF
THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the
Commission's Proposed Policies and
Programs Governing Post-2003 Low-
Income Assistance Programs.

R.04-01-006

And Related Matters

A.05-06-005
A.05-06-009
A.05-06-012
A.05-06-013

NOTICE OF INTENT TO CLAIM COMPENSATION

DISABILITY RIGHTS ADVOCATES
MELISSA W. KASNITZ
MARY-LEE E. KIMBER
449 15th Street, Suite 303
Oakland, CA 94612
Telephone: 510-451-8644
Fax: 510-451-8511
TTY: 510-451-8716
E-mail: pucservice@dralegal.org

October 7, 2005

Pursuant to Section 1804(a) of the Public Utilities Code, Disability Rights Advocates (DRA) hereby gives notice of our intent to claim compensation in this proceeding.¹ DRA is a non-profit legal center dedicated to the advancement of civil rights for people with disabilities. Assuming that DRA's Motion to Intervene is granted, the information provided below shall demonstrate that DRA meets the requirements to be found eligible for compensation.

DRA is an organization that has previously represented the interest of residential customers with disabilities before this Commission and it has been found to be eligible for Intervenor Compensation. *See* R.03-04-003, 3/8/05 ALJ Ruling and R.04-12-001, 11/22/04 ALJ Ruling. DRA's articles of incorporation specifically authorize our representation of the interests of disabled customers. More specifically, these articles state that we are a 501(c)(3) organization established to engage in public interest litigation and advocacy to protect the rights of people with disabilities. Therefore, pursuant to Section 1802(b), DRA is a "customer" as that term is used in the intervenor compensation statutes.²

Pursuant to D. 98-04-059, Finding of Fact 13, an intervenor must show that it will represent customer interests that would otherwise be underrepresented. To date, no party to this proceeding specifically represents the interests of disabled customers, a group that will be greatly affected by increased natural gas prices and the sufficiency of low-income

¹ DRA is filing a Motion to Intervene in this proceeding concurrent with this NOI.

² In D.98-04-059, the Commission directed intervenors to state in their NOIs which of three customer "categories" they fall within. DRA fits the third category as a "group or organization that is authorized by its bylaws or articles of incorporation to represent the interest of residential ratepayers." A copy of DRA's articles of incorporation has previously been submitted to the Commission in conjunction with R.03-04.003. Further copies can be provided if necessary.

assistance programs.³ Some of the issues facing people with disabilities are common to low income customers and other customers. To the extent possible, and in order to avoid any undue duplication, DRA will seek to coordinate its efforts with other parties that share our positions.⁴ However, issues remain that are unique to customers with disabilities.

The requirements of Section 1804(a)(2) of the Code are addressed below.

(1) **Section 1804(a)(2)(A)(i) – A statement of the nature and extent of the customer’s planned participation in the proceeding as far as it is possible to set it out when the notice of intent is filed.**

While the scope of this proceeding broadly addresses the issue of policies and programs governing post-2003 low-income assistance programs, it is now being used to address anticipated problems due an expected sharp increase in the price of natural gas. The Commission issued a Notice on September 13, 2005, and set up an *en banc* hearing on October 6, 2005, specifically to address this issue, and Commission staff contacted DRA to invite DRA’s participation. DRA is participating in the hearing and expects to continue its involvement to ensure that developments from the hearing are implemented. DRA expects its focus to center on two key issues that are significant to promoting the interests of persons with disabilities with regard to increased prices for natural gas. First, DRA will present the Commission with information on the role of the medical baseline allowance for persons with disabilities in the context of natural gas price increases.

³ While the consumer groups that are already parties to this proceeding may have many common interests with DRA, they are not likely to be as focused on the unique needs of people with disabilities, as evidenced by the fact that Commission staff specifically approached DRA regarding participation in the *en banc* hearing taking place on October 6, 2005.

⁴ DRA has already worked in conjunction with other consumer groups to submit comments in advance of the hearing on October 6, 2005.

Second, DRA will address the adequacy of proposed efforts to provide for persons with disabilities on fixed incomes. DRA's participation is important because these issues are not likely to be meaningfully addressed by other parties and the disabled community would thus be underrepresented.

Pub. Util. Code § 1804(a)(1) requires customers who intend to claim compensation to file a notice of intent within 30 days after the prehearing conference is held in the proceeding. However, the Commission has discretion to determine "an appropriate procedure for adopting new or revised notices of intent" in cases "where the schedule would not reasonably allow parties to identify issues within th[at] timeframe . . . or where new issues emerge subsequent to the time set for filing." DRA was not initially a party to this proceeding, and only evaluated participation in this proceeding when contacted by the Commission's staff on September 21, 2005. Following this conversation and DRA's agreement to participate in the October 6 *en banc* hearing, DRA moved promptly to file a Motion to Intervene and this NOI.

(2) **Section 1804(a)(2)(A)(ii) -- An itemized estimate of the compensation that the customer expects to request, given the likely duration of the proceeding as it appears at the time.**

DRA will seek compensation at market rates for work performed in connection with this proceeding. DRA is assuming that the Commission will take action on some of the proposals being raised at the *en banc* hearing and that there will be at least one round of comments prior to a proposed decision by the Commission. Based on this assumption, DRA estimates that we will devote roughly 100 hours of DRA attorney Mary-Lee Kimber's time (at a proposed hourly rate of \$190), and 35 hours of Managing Attorney Melissa W. Kasnitz's time (at a proposed hourly rate of \$495). DRA also currently

estimates that we will devote roughly 35 hours of a law clerk's time (at a proposed hourly rate of \$140). These hours and rates produce a total projected budget of approximately \$38,775 for this proceeding. Notwithstanding these estimates, there is little certainty at this time regarding proposals that may emerge from the October 6 hearing, and additional opportunities for comment, participation in further hearings, and/or participation in workshops that may be scheduled. For this reason, these estimates may be revised depending on further developments in this proceeding.

The amount of any future request for compensation will be dependent upon the Commission's final decision in this case. The reasonableness of hourly rates requested for DRA's representatives will be addressed in our Request for Compensation.

(3) Section 1804 (a)(2)(B) – A showing that participation in the hearing or proceeding would pose a significant financial hardship.

Participation in this proceeding constitutes a significant financial hardship for DRA. The definition of the term "significant financial hardship" is found in Section 1802(g) of the Code:

"Significant financial hardship" means either that the customer cannot without undue hardship afford to pay the costs of effective participation, including advocate's 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 organization is small in comparison to the costs of effective participation in the proceeding.

DRA represents the disabled customer class, a group that would not otherwise be adequately represented in this proceeding. The Commission has recognized that adequate representation requires not only the broad efforts of the CPUC Office of Ratepayer Advocates, which represents all customer classes, but also the participation of parties

with special interests. DRA represents the overall interests of more than 6,000,000 disabled Californians, a population that is highly dependent on natural gas for its disability-related heating and electric needs (i.e. life support, charging mobility devices and temperature-controlled environments). However, the economic interest of individual members of this group is small when compared to the costs of effective participation in PUC proceedings.

As a non-profit organization, DRA does not accept fees from its clients and receives no government funding. DRA relies primarily upon awards of attorneys' fees in litigation where DRA represents the prevailing party, as well as donations from private individuals, private foundations and corporate contributions as its sources of income. DRA also receives grants for certain special projects that advance the needs of disabled persons. However, no funds from any of these sources have been obtained to directly support DRA's participation in this proceeding. Therefore, our participation in this proceeding represents a significant financial burden. Absent eligibility for intervenor compensation, DRA would not have adequate resources to advocate for people with disabilities before the PUC. As a result of this hardship, DRA intends to seek compensation for participation in this proceeding.⁵

CONCLUSION

The information provided above satisfies the requirements of Section 1804(a) and supports a finding of "significant financial hardship." In addition, DRA has demonstrated that it will represent a group with interests that would otherwise be

⁵ More detailed information about DRA's financial position can be provided when DRA submits its actual request for compensation. However, it should be noted that the test for significant financial hardship looks to the economic interests of the individual members of the group being represented in comparison to the costs of effective participation, not the resources of the organization representing the interested group.

underrepresented in the Commission's consideration of the impact of the natural gas price increase on low-income customers. DRA asks the Commission for a prompt determination of its eligibility for compensation in these proceedings.

October 7, 2005

Respectfully submitted,

 /s\ Melissa W. Kasnitz
DISABILITY RIGHTS ADVOCATES
MELISSA W. KASNITZ
MARY-LEE E. KIMBER
Disability Rights Advocates
449 15th Street, Suite 303
Oakland, CA 94612
Telephone: 510-451-8644
Fax: 510-451-8511
TTY: 510-451-8716
E-mail: pucservice@dralegal.org