

Decision S4 CS 034

AUG 1 1984

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
SAN DIEGO GAS & ELECTRIC COMPANY )  
for authority to increase its rates )  
and charges for electric, gas and )  
steam service. )

Application 82-12-57  
(Filed December 24, 1982)

ORDER ON REQUEST FOR AWARD OF  
PUBLIC PARTICIPANT COMPENSATION

By his petition filed April 9, 1984 as amended May 21, 1984, Edward J. Neuner (Neuner) requests an award of public participant compensation in the amount of \$2,000 for his participation in this proceeding. The \$2,000 would cover \$1,875 for 25 hours of professional services at \$75 per hour plus \$125 in other costs. Neuner is a university professor who appeared in this proceeding as a specialist in the economics and regulation of public utilities. He did not testify; however, through cross-examination of witnesses and filing of a brief, he challenged the current policy and budget for San Diego Gas & Electric Company's (SDG&E) conservation programs.

Neuner makes his request under Article 18.6 of the Commission's Rules of Practice and Procedure (Rules). Rule 18.6 requires participants to (1) file a notice of intent to claim compensation (Rule 76.23) and (2) file a request for compensation (Rule 76.26). The notice of intent must include a showing that, but for the ability to receive compensation under the Rules, participation or intervention in the proceeding may be a significant financial hardship for the participant. It also requires a specific budget and a statement of the nature and extent of planned participation. The compensation filing requires participants to give a detailed description of the services for which compensation is sought and how the participant made a substantial contribution to a Commission decision which adopted, at least in part, the position of the participant. Neuner combined into one filing, including the

amendment, the requirements of Rules 76.23 and 76.26. We find this to be satisfactory in this case. No protests to or comments on Neuner's request were made by other parties to this proceeding.

Financial Hardship

Neuner makes his showing of financial hardship required by Rule 76.23(a) under the factors set forth in subsections (A), (B), and (C) of Rule 76.25(a)(1). Neuner claims that in the absence of adequate and independent representation on the issue of conservation, ratepayers of SDG&E could have been burdened by the levels of conservation expenses proposed by SDG&E and the Commission staff (staff). He believes a fair determination of the reasonableness of proposed conservation expenditures requires an expert economic analysis of energy conservation benefits and costs and a testing under cross-examination of assumptions underlying proposed SDG&E and staff conservation policies. The record is clear that Neuner represented an interest which would not otherwise have been adequately represented in this proceeding; and his promotion of that interest was necessary for a fair determination of the appropriate treatment of conservation policy and expenses.

Neuner points out that effective participation in regulatory proceedings requires the payment of costs for expert witnesses and advocates and associated services. Rule 76.25(a)(1)(C) provides that a person representing an interest in a proceeding meets the burden of showing significant financial hardship if such person cannot afford to pay advocate and expert witness fees and other reasonable costs of participation. Neuner believes there would be no reason for an individual to participate unless that individual desired to, in effect, make a charitable donation, which he does not think the Commission had in mind when it adopted the public participant compensation program.

We believe it is clear that Neuner's participation in this proceeding was possible only because he is an economist and was willing and able to act as his own attorney by cross-examining

witnesses and filing a brief. If he had had to hire an economist and an attorney to represent his interest, Neuner would probably have been unable to afford to participate. Participating himself rather than hiring others to represent him must not serve to preclude a finding of financial hardship. As a matter of policy, this Commission should not rely on individual volunteerism for the development of important regulatory issues.

We agree with Neuner that he meets the financial hardship test. Even though he might be able to afford the time and income lost because of his participation in this proceeding, it is not fair that he should assume such a burden; Rule 76.23(a) requires us to find only that participation "may be a significant financial hardship." Individuals who make a substantial contribution in our proceedings should not have to pay others for their participation nor donate their own time and resources.

Neuner's Budget

Neuner submitted the following budget which we will accept as complying with Rules 76.23(b) and 76.26.

|  |         |
|--|---------|
| Professional services: 25 hours @ \$75/hr. | \$1,875 |
| 5 hrs. - hearings/cross-examination        |         |
| 10 hrs. - analysis of exhibits             |         |
| 10 hrs. - preparation of brief             |         |

Other costs:

Typing, copying, mailing, and  
transportation

125  
Total \$2,000

Neuner claims the \$75 per hour fee is reasonable for a person of his training and experience and is below his usual hourly charge for professional consulting services he performs. However, he states it is a rate that was approved in previous Commission decisions. We find it is a reasonable hourly charge given the background and training that Neuner has. Based on the observations of the assigned Administrative Law Judge (ALJ) during the hearings, the time claimed by Neuner for his participation is also reasonable.

Neuner's Participation

As noted earlier, Neuner's participation in this proceeding consisted of cross-examination of witnesses and the filing of a concurrent closing brief. As we indicated in Decision (D.) 83-12-065, Neuner raised some important conservation policy issues which we carefully considered in our deliberations leading to that decision. We also note that Neuner recommended the lowest conservation expense level of all participants, about \$14.2 million compared to the staff and SDG&E of \$25.7 and \$29.7 million respectively. (SDG&E did recommend an alternate level of \$16.4 million which it claimed could satisfy all necessary conservation programs.)

In D.83-12-065 we adopted a conservation, load management, and cogeneration policy for SDG&E (Mimeo, pp. 110-111). That policy was influenced considerably by the participation of Neuner in this proceeding. We consider D.83-12-065 reflects the substantial contribution made by Neuner to both the establishment of a "hold the line" conservation policy and the level of conservation expenses authorized SDG&E.

Findings of Fact

1. Under Article 18.6 of the Commission's Rules, Neuner requests an award of \$2,000 for his participation in this proceeding.
2. No showings on Neuner's request have been made by other parties to this proceeding.
3. Neuner has complied with Rule 76.23.
4. Neuner has met the burden of showing significant financial hardship.
5. Neuner made a substantial contribution to the policy on and expense levels of conservation adopted by the Commission in D.83-12-065.
6. An award of compensation to Neuner in the amount of \$2,000 is reasonable.
7. Because Neuner has already expended the time covered by and some of the funds included in the award, this decision should be effective on the date signed.

Conclusion of Law

Neuner has complied with the requirements of Article 18.6 of this Commission's Rules and should be awarded compensation in the amount noted in the following order.

IT IS ORDERED that:

1. Within 30 days from the effective date of this order, San Diego Gas & Electric Company (SDG&E) shall pay to Edward J. Neuner \$2,000.
2. In its first general rate case following this decision, SDG&E shall include in its revenue requirement an additional amount of \$2,000.
3. The effective date of this order is stayed pending resolution of TURN v Pacific Gas and Electric Company (S. F. \_\_\_\_\_) presently pending in the California Supreme Court.

This order is effective today.

Dated     AUG 1 1984    , at San Francisco, California.

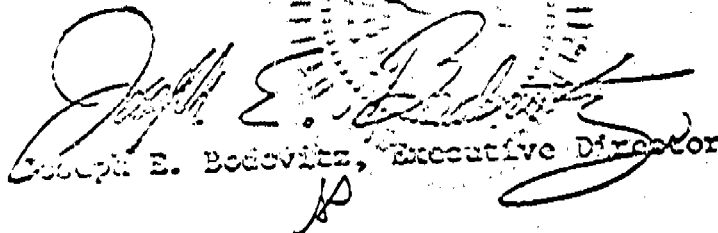
Commissioner Priscilla C. Crow,  
being necessarily absent, did  
not participate

Commissioner William T. Bagley  
being necessarily absent, did  
not participate.

LEONARD M. GRIMES, JR.  
President

VICTOR CALVO  
DONALD VIAL  
Commissioners

I CERTIFY THAT THIS DECISION  
WAS APPROVED BY THE  
COMMISSIONERS

  
Joseph E. Bodovitz, Executive Director