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Decision 89 03 034 MAR 2 2 1989

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Rulemaking Proceeding on the)
Commission's Own Motion to Revise)
Electric Utility Ratemaking)
Mechanisms in Response to Changing)
Conditions in the Electric Industry.)

Mailed

I.86-10-001 / MAR 23 1989
(Filed October 1, 1986)

OPINION ON NRDC'S REQUEST FOR COMPENSATION

Summary

Natural Resources Defense Council (NRDC) requests compensation of \$3,716.50 for its contribution to Decision (D.) 88-07-058. We find that NRDC made a substantial contribution to this decision, and we award compensation of \$3,566.50.

Introduction

On April 27, 1988, in D.88-04-066, we found NRDC eligible for compensation for its substantial contributions to decisions in this proceeding, and in D.88-07-025, we awarded NRDC compensation of \$14,004.31 for its contribution to D.88-03-008.

NRDC filed its second supplemental request for compensation on August 22, 1988, for its contribution to D.88-07-058.

Rule 76.56 of the Commission's Rules of Practice and Procedure governs requests for compensation:

"Following issuance of a final order or decision by the Commission in the hearing or proceeding, a customer who has been found by the Commission...to be eligible for an award of compensation may file within 30 days a request for an award. The request shall include, at a minimum, a detailed description of services and expenditures and a description of the customer's substantial contribution to the hearing or proceeding...."

Rule 76.52(h) defines "final order or decision" to mean "an order or decision that resolves the issue(s) for which

compensation is sought." Although D.88-07-058 was not designated as a final opinion, it resolved the issues for which NRDC seeks compensation.

D.88-07-058 was decided on July 22, 1988. NRDC's filing of August 22 was therefore not made within 30 days of the date of the decision. For calculating the due dates of applications for rehearing, however, Rule 85 defines the date of issuance as "the date when the Commission mails the order of decision to the parties in the action or proceeding." A similar approach makes sense for the filing of requests for compensation. Since D.88-07-058 was mailed on July 25, NRDC's filing of August 22 was made within 30 days of the date of issuance of the decision. Thus, the filing met the deadlines of Rule 76.56.

NRDC submits that its efforts led the Commission to adopt NRDC's basic positions on financing conservation payments as alternatives to rate discounts to avoid bypass, on defining measures that qualify for the conservation payments, and on extending the conservation guideline beyond anti-bypass contracts to contracts for incremental sales. In addition, although the Commission rejected one detail of NRDC's proposals, it adopted an analogous provision governing use of previously authorized conservation funds in connection with special contracts.

NRDC's efforts resulting in its contribution fell into four general categories.

First, it responded to a petition for modification filed by the Commission's Division of Ratepayer Advocates (DRA) on April 7, 1988. However, NRDC is not seeking compensation for the time devoted to this filing.

Second, NRDC spent 15.5 hours preparing for and participating in a workshop held on June 2, 1988. The workshop focused on conservation alternatives to electric rate discounts and addressed all of the issues on which NRDC believes it made a substantial contribution. NRDC's preparation included a review of

the three major electric utilities' nonresidential conservation programs. NRDC prepared a written submission for the participants.

Third, NRDC responded to the request of the Chair of the workshop for written summaries of the parties' positions. NRDC's representative spent six hours preparing this Post-Workshop Memorandum.

Fourth, NRDC spent 2.4 hours responding to a joint petition for modification filed by Pacific Gas and Electric Company (PG&E), Southern California Edison Company (Edison), and San Diego Gas & Electric Company (SDG&E) on June 13, 1988.

D.88-07-058 addressed the petitions of DRA and the three utilities and considered the results of the workshop.

No party responded to NRDC's request for compensation.

Issue To Be Decided

Rule 76.58 requires the Commission not only to determine whether NRDC made a substantial contribution to D.88-07-058, but also to describe that substantial contribution and to set the amount of the compensation to be awarded. According to Rule 76.52(g), an intervenor has made a "substantial contribution" when:

"...in the judgment of the Commission, the customer's presentation has substantially assisted the Commission in the making of its order or decision because the order or decision had adopted in whole or in part one or more factual contentions, legal contentions, or specific policy or procedural recommendations presented by the customer."

Substantial Contribution

We agree with NRDC's assertion that it has made a substantial contribution to D.88-07-058. In that decision, we specifically agreed with NRDC's and DRA's view that load building should not be included in the options to be presented as part of the conservation menu. We adopted NRDC's proposal for financing the conservation items, and this was NRDC's most significant

contribution to the decision. We also extended the conservation guideline to contracts for incremental sales, as NRDC had urged.

We cannot agree, however, with NRDC's contention that it made a significant contribution on the issue of the flexibility of the conservation menu. The discussion in D.88-07-058 reaffirms our earlier conception of the menu, and we did not adopt or endorse the "open-ended offer" that NRDC advocated. NRDC did not submit a detailed allocation of its time according to specific issues; we estimate that about one hour of the time devoted to the Post-Workshop Memorandum was spent on the flexibility issue. We will reduce the compensation awarded to NRDC to reflect our conclusion that NRDC did not make a significant contribution on the issue of the flexibility of the conservation menu.

We conclude that NRDC made a significant contribution to the decision's resolution of the issues of financing conservation items, excluding load building from the conservation menu, and extending the conservation guideline to contracts from incremental sales. NRDC's submission on the flexibility of the conservation menu did not contribute significantly to the decision.

Compensation

Rule 76.60 sets the bounds for the calculation of compensation:

"[The calculation] shall take into consideration the compensation paid to persons of comparable training and experience who offer similar services. The compensation awarded may not, in any case, exceed the market value of services paid by the Commission or the public utility, whichever is greater, to persons of comparable training and experience who are offering similar services."

NRDC requests compensation for 23.9 hours of Senior Staff Attorney Ralph Cavanagh's time at the rate of \$150 per hour, or \$3,585.00, and for \$131.50 of its photocopying and postage expenses, for a total request of \$3,716.50.

In D.88-07-025, we approved an hourly rate of \$150 for Mr. Cavanagh's time. We find that the requested hourly rate of \$150 is reasonable and does not exceed the market rate for an attorney of Mr. Cavanagh's training, experience, and expertise.

We conclude that the time claimed for NRDC's contribution, except for the one hour we have allocated to the issue of the flexibility of the conservation menu, is within the bounds of reasonableness. We will authorize compensation for 22.9 hours of Mr. Cavanagh's time, or \$3,435.00. We also find that NRDC's requested expenses are reasonable and should be included in its compensation.

NRDC is therefore entitled to compensation of \$ 3,566.50.

Allocation

No one addressed the question of how to allocate NRDC's compensation among the utilities involved in this proceeding. The proceeding has so far focused on revising ratemaking mechanisms for PG&E, Edison, and SDG&E. It is reasonable to allocate the responsibility for paying NRDC's compensation equally among these three utilities.

Conclusion

NRDC is entitled to compensation of \$3,566.50, to be paid by PG&E (\$1,188.84), Edison (\$1,188.83), and SDG&E (\$1,188.83).

As discussed in previous Commission decisions, this order will provide for interest commencing on November 5, 1988 (the 75th day after NRDC filed its request) and continuing until full payment of the award is made.

NRDC is placed on notice it may be subject to audit or review by the Commission Advisory and Compliance Division. Therefore, adequate accounting records and other necessary documentation must be maintained and retained by the organization in support of all claims for intervenor compensation. Such record-keeping systems should identify specific issues for which compensation is being requested, the actual time spent by each

employee, the hourly rate paid, fees paid to consultants and any other costs for which compensation may be claimed.

Findings of Fact

1. NRDC has requested compensation totaling \$ 3,716.50 for its participation in this proceeding.

2. NRDC was found eligible for compensation in D.88-04-066.

3. NRDC made a significant contribution to D.88-07-058 on the issues of financing conservation items, excluding load building programs from the conservation menu, and extending the conservation guideline to contracts for incremental sales.

4. NRDC did not make a significant contribution to D.88-07-058 on the issue of the flexibility of the conservation menu.

5. An hourly rate of \$150 is a reasonable fee for an attorney of Mr. Cavanagh's training, experience, and expertise.

6. For the issues on which it made a significant contribution, the time claimed for NRDC's participation in this proceeding is reasonable.

7. The other costs claimed in connection with NRDC's participation in this proceeding are reasonable.

8. Since its inception, this proceeding has focused on the revision of ratemaking mechanisms for only PG&E, Edison, and SDG&E.

Conclusions of Law

1. NRDC made a substantial contribution to D.88-07-058.

2. PG&E should be ordered to pay NRDC \$1,188.84, plus any interest accrued after November 5, 1988.

3. Edison should be ordered to pay NRDC \$1,188.83, plus any interest accrued after November 5, 1988.

4. SDG&E should be ordered to pay NRDC \$1,188.83, plus any interest accrued after November 5, 1988.

ORDER

IT IS ORDERED that:

1. Pacific Gas and Electric Company (PG&E) shall pay Natural Resources Defense Council (NRDC) \$1,188.84 within 15 days as compensation for NRDC's substantial contribution to D.88-07-058. PG&E shall also pay NRDC interest on this amount, calculated at the three-month commercial paper rate, beginning November 5, 1988, and continuing until full payment of the award is made.

2. Southern California Edison Company (Edison) shall pay NRDC \$1,188.83 within 15 days as compensation for NRDC's substantial contribution to D.88-07-058. Edison shall also pay NRDC interest on this amount, calculated at the three-month commercial paper rate, beginning November 5, 1988, and continuing until full payment of the award is made.

3. San Diego Gas & Electric Company (SDG&E) shall pay NRDC \$1,188.83 within 15 days as compensation for NRDC's substantial contribution to D.88-07-058. SDG&E shall also pay NRDC interest on this amount, calculated at the three-month commercial paper rate, beginning November 5, 1988, and continuing until full payment of the award is made.

This order is effective today.

Dated MAR 22 1989, at San Francisco, California.

G. MITCHELL WILK
President
FREDERICK R. DUDA
STANLEY W. HULETT
JOHN B. OHANIAN
Commissioners

Commissioner Patricia Eckert,
present but not participating

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY.



Victor Weisner, Executive Director

