

Decision 89 05 023 MAY 10 1989

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA
MARCO

In the Matter of the Application of)
SOUTHERN CALIFORNIA EDISON COMPANY,)
(U 338-E) for (i) authority to)
transfer recovery of San Onofre)
Nuclear Generating Station Unit)
Nos. 2 and 3 Post-COD investment-)
related costs to base rates)
pursuant to previously adopted)
procedures, and (ii) related sub-)
stantive and procedural relief.)

MAY 11 1989

Application 87-05-031
(Filed May 18, 1987)

In the Matter of the Application of)
SAN DIEGO GAS & ELECTRIC COMPANY,)
for authority to (i) increase its)
base electric rates to reflect the)
transfer of San Onofre Nuclear)
Generating Station Units 2 and 3)
Post-COD investment-related costs)
to base rates, and (ii) reduce its)
electric Major Additions Adjustment)
Billing Factor (MAABF) rates to)
reflect the transfer of the invest-)
ments to base rates.)
(U 902-E))

Application 87-07-044
(Filed July 23, 1987)

OPINION

Summary

Consumers Coalition of California (CCC) requests compensation of \$22,400.54 for its participation in this proceeding. We conclude that CCC has not made a substantial contribution to Decision (D.) 88-12-033, and therefore is not entitled to compensation.

Introduction

By a Request for Compensation filed January 3, 1989, CCC alleges that it made a substantial contribution to D.88-12-033 in

Application (A.) 87-05-031 of Southern California Edison Company (SCE) and A.87-07-044 of San Diego Gas & Electric Company (SDG&E).

The proceeding deals with the reasonableness and associated ratemaking for San Onofre Nuclear Generating Station Units 2 and 3 (SONGS 2&3) post-Commercial Operating Date (COD) expenditures. D.88-12-033, issued on December 9, 1988, approved two stipulations without change, and ordered rate changes that transferred revenue recovery for post-COD expenditures from the Major Additions Adjustment Clause to base rates.

The first stipulation is between the Division of Ratepayer Advocates (DRA), SCE, and SDG&E and deals with the reasonableness of post-COD expenditures for SONGS 2&3. In this stipulation the parties agreed to a level of disallowance for ratemaking purposes. The second stipulation is between DRA and SCE and deals with ratemaking treatment for SCE's share of the post-COD investment. SDG&E is not a party to this stipulation and requested different ratemaking treatment.

D.88-12-033 also found that CCC meets the requirements of eligibility, entitling CCC to request compensation for its participation in this proceeding.

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...."

CCC's filing of January 3, 1989 was therefore made within 30 days of the decision.

CCC's claims of substantial contributions relate to the reasonableness stipulation.

CCC alleges that it made a substantial contribution by bringing to the attention of the Commission studies and research that should have been used as a basis of the reasonableness stipulation, rather than to verify it. CCC further states that it established a standard of review of the information, processes, and procedures that DRA should use to examine and evaluate data received from SCE and SDG&E, in order to determine terms and conditions in arriving at this or any other stipulation. CCC contends that the parties represented by it have a right to know the process that resulted in the stipulation.

CCC further states that it called for cross-examination of the following witnesses: O'Donnell for DRA; Bishop for O'Brien, Krietzberg & Associates (OKA), retained by DRA to review the post-COD SONGS plant additions; Beckman for Technical Analysis Corporation, a subcontractor to OKA; and Peavy and Hamlin for SCE. CCC claims that this resulted in entering into the record the exact process by which the stipulation was arrived at, for Commission examination.

CCC witness O'Brien expressed concern over reasonableness stipulation issues.

SCE filed a response in opposition to the CCC's claim for compensation. SCE argues that CCC did not influence the rate adopted by the Commission and that none of CCC's recommendations were adopted in the Commission's final decision. SCE concludes that CCC failed to make a substantial contribution to the proceeding, and therefore is not entitled to compensation.

Discussion

The threshold issue is whether CCC made a substantial contribution to the hearing or proceeding. If it did, we must then determine the proper compensation, considering in what areas the substantial contributions were made and the degree of success, the appropriate fee level, and number of compensable hours.

Rule 76.52(g) defines "substantial contribution" as when:

"...in the judgement 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."

CCC's participation in this proceeding includes an opening statement, testimony of CCC witness O'Brien, cross-examination of other parties' witnesses, and filing of opening and reply briefs. The factual contentions, legal contentions, and specific policy or procedural recommendations made by CCC are set forth in the testimony of CCC witness O'Brien and its pleadings, and relate to the reasonableness stipulation.

These contentions can be summarized as follows:

1. The reasonableness stipulation should not be adopted by the Commission.
 - a. The disallowance of \$41.3 million agreed to in the reasonableness stipulation is too low.
 - b. The Commission should order further investigation into post-COD expenditures.
 - c. CCC brought to the attention of the Commission information and a "standard of review" that should have been used by DRA in arriving at the stipulation.
 - d. CCC, through cross-examination, entered into the record the process by which the stipulation was reached.
2. Ratepayers should pay only for energy, not for the actual cost of the profit-making center of SONGS 2&3 and its additions.
3. Ratepayers should not be required to pay for consultants used by DRA to review the post-COD expenditures, since the need for consultants was caused by the improper construction management of SCE and SDG&E.

Regarding the first contention, the Commission concluded that \$41.3 million was a reasonable disallowance amount, considering the OKA estimated range of questionable expenditures of \$38.6 million to \$68.6 million. OKA was commissioned by DRA to perform a preliminary review of the reasonableness of SONGS post-COD expenditures. OKA identified those expenditures that it deemed questionable and that would require further investigation in order to determine whether they were reasonable or not.

In adopting the reasonableness stipulation we explained that the OKA range was merely an indication of the range of questionable expenditures. Once studied in detail, it is likely that some questionable expenditures identified by OKA would either be found reasonable, or there would not be sufficient evidence to support a recommendation of unreasonableness. We concluded that if the reasonableness of these expenses were studied further, litigated, and decided by the Commission, the amount of disallowance would likely be less than the \$68.6 million upper level of questionable expenditures. We decided that the stipulated level of \$41.3 million in disallowances is reasonable and not too low. Therefore, further investigation was not warranted.

CCC alleges that it brought forth information and a "standard of review" that should have been used by DRA as a basis of the stipulation. However, that is not a relevant basis for compensation. A party is entitled to compensation only if its contentions or recommendations are adopted, in whole or in part, in our decision. CCC's contention regarding information that "should have been used" by DRA was not adopted, in whole or in part, in our decision.

CCC also claims that its substantial contribution includes cross-examination of witnesses for DRA and SCE, which entered into testimony the process by which the stipulation was reached. CCC's cross-examination of DRA and SCE witnesses resulted in some minor clarification of testimony.

While we welcome effective cross-examination, in this case we cannot conclude that CCC, through its cross-examination of witnesses, made a substantial contribution in assisting the Commission in its decision.

CCC also recommended that ratepayers pay for energy but not for the "profit-making center." CCC means that ratepayers should not pay for the investment, including return, on SONGS 2&3, but rather should pay only for the incremental costs of producing the energy.

Under traditional ratemaking principles at the Commission, a utility is allowed to earn a reasonable rate of return on rate base to compensate it for its investment in capital facilities such as SONGS 2&3 that are deemed used and useful to the ratepayer. In granting the certificate of public convenience and necessity for SONGS 2&3, the Commission assured SCE and SDG&E of such ratemaking for reasonable expenditures. O'Brien's recommendation involves significantly different ratemaking principles. The Commission rejected O'Brien's recommendation in its decision.

CCC's third recommendation was that ratepayers should not pay for the cost of the DRA consultant. CCC argued that the ratepayer should not have to pay to prove that the construction was not reasonable, since the fault was SCE's, not the ratepayers'.

In D.88-12-033 we concluded that these costs, which are insignificant compared to the project costs, are a normal cost of regulation. Since this effort is undertaken to protect the ratepayers' interests, the costs should be borne by the ratepayers.

In the opinion of the administrative law judge, this record was fully developed by the presentations of DRA and applicants. CCC's presentation did not add anything of substance.

Because the Commission did not adopt in whole or in part any of CCC's factual or legal contentions, nor CCC's policy or procedural recommendations, we conclude that CCC has not made a

substantial contribution to the proceeding as required by Section 76.52(g) in order to be eligible for intervenor funding.

We will deny CCC's claim for compensation.

Findings of Fact

1. CCC has requested compensation totaling \$22,400.54 for its participation in this proceeding.
2. CCC was found to be eligible for compensation in D.88-12-033.
3. CCC presented recommendations to the Commission on the reasonableness stipulation.

Conclusions of Law

1. CCC did not make any substantial contributions to D.88-12-033, as defined in Rule 76.52(g).
2. CCC is not entitled to compensation for its participation in this proceeding.

ORDER

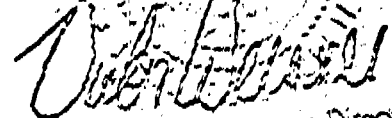
IT IS ORDERED that the request of Consumers Coalition of California for compensation for its participation in this proceeding is denied.

This order becomes effective 30 days from today.

Dated MAY 10 1989, at San Francisco, California.

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

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


Victor Weisbur, Executive Director
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