

Mailed

SEP 27 1990

Decision 90-09-081 September 25, 1990

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
own motion into the transmission
system operations of certain
California electric corporations
regarding transmission constraints
on cogeneration and small power
production development.

1.84-04-077
(Filed April 18, 1984)

(U 39 E)

O P I N I O N

On April 24, 1990, Save Our Streams Council, Inc. (SOS) filed a request for an award of compensation for its participation in a recent phase of this proceeding. SOS had participated in this proceeding by protesting the Petition for Modification of Decision (D.) 87-04-039 (Joint Petition) jointly filed by Pacific Gas and Electric Company (PG&E) and Division of Ratepayer Advocates (DRA) on January 27, 1989. We rejected the Joint Petition in D.89-07-058.

In D.90-01-049, issued January 24, 1990, we granted the request of SOS for a finding of eligibility for compensation under Article 18.6 of the Commission's Rules of Practice and Procedure.

Earlier, SOS had filed a motion for compensation which claimed actual expenditures of \$12,624.94. PG&E had criticized this motion as premature because, among other things, a finding of eligibility had yet to be made. In D.90-01-049, while finding SOS to be eligible for compensation, we directed the organization to file a new request for compensation. We further advised SOS to identify, in the new filing, the issues concerning which it claims to have made a substantial contribution and to itemize its expenses by issue.

The earlier motion of compensation from SOS included certain expenses related to preparation for hearings. No hearings were held in response to the Joint Petition. PG&E argued that it was inappropriate to compensate SOS for the preparation for hearings that did not take place. In D.90-01-049, we expressed our agreement with PG&E's argument, stating "under the existing rules, the line must be drawn after activities which contributed to the decision. Since hearings were not held, hearing-related expenses should not be included the request."

On April 24, 1990, SOS filed an amendment to its request for compensation which increased the requested amount to \$13,655.18. SOS requested \$4,220.64 for expenses "unrelated to hearing preparation", \$8,236.45 for "expenses related to hearing preparation" and \$1,198.09 "for expenses for preparation of amended motion for compensation."

In continuing to request compensation related to preparation for hearings, SOS objected to the conclusion contained in D.90-01-049 that compensation should not be awarded for work which did not ultimately contribute to the Commission's decision. SOS argues that it was prudent, at the time, to prepare for a hearing. SOS reports that it perceived from the administrative law judge "strong signals of urgency in resolving the issues of the petition in the protest," and that hearings might be scheduled for some time in July. In fact, the Joint Petition was resolved on the pleadings, and no hearings were held or scheduled.

PG&E filed a protest to the First Amended Request for Compensation on May 21, 1990. PG&E continued to protest the awarding of fees for work done in preparation for hearings, since hearings were never held. We agree, and will not award compensation for work done in preparation for hearings. The argument of SOS that it was prudent to prepare for hearings is irrelevant since fees can only be awarded for work which contributed to the Commission's decision.

PG&E further objects to the request for compensation because it fails to itemize expenses by issue. As PG&E correctly points out, D.90-01-049 directs SOS to "file a new request for compensation which identifies the issues concerning which it claims to have made a substantial contribution and itemizes its expenses by issue." In its protest, SOS had objected to the Joint Petition for three reasons:

1. Implementation of the Joint Petition might lead to unquantified economic injury to ratepayers.
2. The Joint Petition is inconsistent with the joint report of the California Energy Commission and the CPUC in response to Senate Bill 1970, related to qualifying facility (QF) contract administration issues.
3. The Joint Petition is inconsistent with this Commission's guidelines on contract administration.

SOS' failure to break its costs down by issue is not a fatal flaw, since its arguments in each of these areas contributed to the Commission's ultimate decision.

The Commission's Rules of Practice and Procedure, Rule 76.26, emphasizes that, in order to receive compensation, the participant must have substantially contributed to the Commission's decision by raising new or different arguments in support of a position or by taking a position different from that of the staff or any other party. In this instance, SOS opposed the position taken jointly by DRA and PG&E, presented strong arguments supporting its position, and prevailed.

All of the costs designated by SOS as relating to "nonhearing efforts" as well as the preparation of the amended request for compensation appear to be reasonable. Therefore, we will award SOS \$5,418.73 for its work related to the Joint Petition and the Request for Compensation.

Consistent with previous Commission decisions, this order will provide for interest commencing on July 8, 1990 (the 75th day after SOS filed its request) and continuing until full payment of the award is made.

SOS is placed on notice that 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. SOS spent \$4,220.64 preparing its response to the Joint Petition of PG&E and the DRA to modify D.87-04-039.
2. SOS spent \$8,236.45 in preparation for hearings.
3. No hearings were held or scheduled.
4. SOS spent \$1,198.09 in preparing its amended motion for compensation.
5. The position taken by SOS in response to the Joint Petition contributed to the resolution of that petition in D.89-07-058.
6. SOS was found eligible for compensation in D.90-01-049.

Conclusions of Law

1. SOS made a substantial contribution to D.87-04-059.
2. SOS should be compensated for its expenses related to its protest of the Joint Petition (\$4,220.64) and its request for compensation (\$1,198.09) totaling \$5,418.73.
3. SOS should not be compensated for costs incurred in preparation for hearings which were never held.
4. PG&E should pay SOS \$5,418.73 plus interest calculated at the 3-month commercial paper rate.

ORDER

IT IS ORDERED that Pacific Gas and Electric Company (PG&E) shall pay Save Our Streams Council, Inc. (SOS) \$5,418.73 within 15 days as compensation for SOS's substantial contribution to D.89-07-058. PG&E shall also pay SOS interest on this amount, calculated at the 3-month commercial paper rate, beginning July 8, 1990, and continuing until full payment of the award is made.

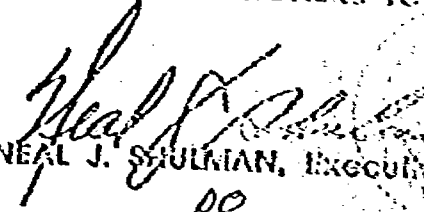
This order is effective today.

Dated September 25, 1990, at San Francisco, California.

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

Commissioner John B. Ohanian,
being necessarily absent, did
not participate.

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


NEAL J. SHULMAN, Executive Director
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