

Mailed

Decision 91-10-015 October 11, 1991

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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Sayles Hydro Associates,

Complainant,

vs.

Pacific Gas and Electric Company,

Defendant.

Case 87-03-032
(Filed March 17, 1987)

OPINION ON REQUEST OF SAVE OUR STREAMS FOR COMPENSATION

Pursuant to Rule 76.56 of the Rules of Practice and Procedure, Save Our Streams Council, Inc. (SOS) requests an award of compensation for its contribution to the proceeding underlying Decision (D.) 90-12-014. In that decision, the Commission dismissed a complaint filed by Sayles Hydro Associates (Sayles) as moot because of Sayle's failure to meet its five-year contractual deadline for providing power to Pacific Gas and Electric Company (PG&E). SOS intervened in the Sayles complaint to support the defendant, PG&E.

The SOS request for compensation totals \$20,951.74.¹ In support of the request, SOS identifies eight categories of involvement in which it claims its position was adopted by the Commission. For each, SOS has listed the number of hours spent by its attorney, paralegal and support staff; specified expenses for

¹ The First Amended Request is for \$20,749.74. However, the Request contains numerous errors in calculation. In some instances, numbers were not added correctly. In others, the 15% "Misc. A&O" figures did not reflect 15% of the preceding sum. We have recalculated all of the numbers. All references in this decision will be to the corrected amounts.

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copying, postage and telephone; and included a 15% add-on for "Misc. A&O." SOS has also listed costs related to filing its Request for Compensation.

PG&E opposes the entire request on several grounds.

First, PG&E argues that the request fails to meet the requirements of Rule 76.51 which states, in part, that:

"The purpose of this article is to provide compensation for reasonable advocate's fees, reasonable expert witness fees, and other reasonable costs to public utility customers of participation or intervention in any hearing or proceeding of the Commission...to modify a rate or establish a fact or rule that may influence a rate."

As PG&E points out, this case concerns the interpretation of PG&E's interconnection responsibilities under its electric Tariff Rule 21 and the validity of a force majeure claim made pursuant to an interim Standard Offer No. 4 Power Purchase Agreement (SO4). PG&E argues that, as such, the case does not "deal with" rates and does not adhere to Rule 76.51.

In D.91-03-051, in which we determined that SOS was eligible for compensation, we found that SOS met the requirement of Rule 76.51. During the hearings, Sayles made it clear that a favorable interpretation of PG&E's responsibilities under the interconnection agreement was crucial to the viability of the project under the SO4 contract. SOS sought to prevent Sayles from selling power to PG&E under that contract. The interim SO4 contract offered Sayles higher payments than it would receive under currently available standard offers. The result sought by SOS may reduce the cost of purchases from Sayles and thereby may influence rates.

Second, PG&E argues that SOS failed to make a substantial contribution to the Commission's decision, as required by Rule 76.53. As defined in Rule 76.52(g), a substantial contribution is one which:

reference is to the validity, determination, and amount of costs related to paralegal expenses during hearings. The claimed amounts appear reasonable. Ten days of hearing were held in separate clusters of five days, but SOS requests compensation for only four days. SOS requests per diem of \$78 for only a little more than half the hearing days. Although Henry, who participated in the hearings on behalf of SOS drove for several hours to arrive in San Francisco, SOS requests reimbursement for time lost during travel equivalent to only one-half day of his time. These amounts are not excessive.

Finally, PG&E argues that SOS is requesting costs in excess of the limitations in Section 76.52(c). PG&E points out that intervenor compensation should be limited to reasonable advocate's fees, reasonable expert witness fees, and other reasonable costs. The latter is defined in Section 76.52(c) as follows:

"'Other reasonable costs' means reasonable out-of-pocket expenses incurred by a customer not exceeding 25% of the total of reasonable advocate's fees and expert witness fees awarded."

PG&E argues that the bulk of the compensation requested by SOS appears to be for "nonadvocate/nonexpert witness costs." PG&E does not specify the costs it has in mind. Most of the costs are attributed to an attorney and a paralegal. The paralegal represented SOS in the hearings. These are certainly advocate-related costs. PG&E appropriately questions the 15% added to all costs representing "Misc. A&O." SOS has not defined this category, which is questionable in light of the fact that copying, postage, telephone, and travel costs are separately itemized. The 15% additions will not be reimbursed. These amounts equal \$2,732.83.

In addition, SOS has inappropriately requested reimbursement for expenses related to its Request for Compensation. In D.91-07-001, we concluded that we would no longer authorize

compensation for the cost of calculating and submitting a fee request. Thus, recovery will not be allowed for the \$109,950 charged to these activities. Since we have already disallowed "Misc. A&O" expenses of \$14.34 related to these activities, the net additional reduction is \$95.61.

All other charges are reasonable and shall be reimbursed. These total \$18,123.30. This decision will provide for interest commencing August 28, 1991 (the 75th day after SOS filed its First Amended Request) and continuing until full payment of the awards. PG&E has 30 days from the date of this decision to make payment to SOS.

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 recordkeeping systems should identify specific issues for which compensation is being requested, the actual time spent by each employee, the hourly rate paid, fees to consultants, and any other costs for which compensation may be claimed.

Findings of Fact

1. SOS requests \$20,951.74 in compensation for its participation in this proceeding.
2. PG&E opposes granting any amount of compensation to SOS in this proceeding.
3. SOS has substantially assisted the Commission in deciding issues related to establishing that the Ninth Circuit license suspension was not an event of force majeure and that the project failed to meet the five-year deadline because it did not receive its permit from the U. S. Forest Service in a timely manner.
4. The result sought by SOS may reduce the cost of purchases from Sayles and thereby may influence rates.

5. SOS has not adequately supported its request to add 15% to each category of reimbursement to reflect "Misc. A&O."

6. The costs described as "Misc. A&O" equal \$2,732.83.

7. SOS has requested an additional \$95.61 as reimbursement for costs incurred preparing its First Amended Request for Compensation.

8. In D.91-07-001, we concluded that we would no longer authorize compensation for the cost of calculating and submitting a fee request.

9. SOS has adequately described its schedule of activities and expenses related to the remaining \$18,123.30 for which it seeks reimbursement.

Conclusions of Law:

1. With the exception of the items discussed below, SOS's request for compensation should be granted.

2. SOS has failed to adequately support its request for \$2,705.85 in "Misc. A&O" and the request for that amount should be denied.

3. Because the Commission has determined that compensation should no longer be authorized for costs incurred in submitting a fee request for fees, the request for an additional \$90.81 related to such activities should also be denied.

4. In order to facilitate prompt reimbursement, this order should become effective immediately.

ORDER

IT IS ORDERED that: Save Our Streams Council, Inc. (SOS) is granted compensation for \$18,123.30 in expenses resulting from its participation in this proceeding.

2. Pacific Gas and Electric Company shall, within 30 days of the effective date of this order, remit to SOS \$18,123.30, plus interest calculated at the three-month commercial paper rate, from August 28, 1991, until full payment is made.

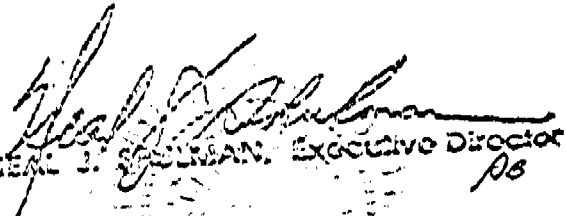
This order is effective today.

Dated October 11, 1991, at San Francisco, California.

JOHN B. OHANIAN
DANIEL Wm. FESSLER
NORMAN D. SHUMWAY
Commissioners

Commissioner Patricia M. Eckert,
being necessarily absent, did
not participate.

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


NEAL J. SPAULMAN, Executive Director
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