

Decision 96-02-011 February 7, 1996

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of SOUTHERN CALIFORNIA EDISON COMPANY (U 338-B) for Authority to Increase Its Authorized Level of Base Rate Revenue Under the Electric Revenue Adjustment Mechanism for Service Rendered Beginning January 1, 1992 and to Reflect This Increase in Rates. (U 338-B)

Application 90-127018
(Filed December 7, 1990)

ORIGINAL

AGCA, therefore, is requested to be the name. Therefore, AGCA requests that the OPINION DECIDING AGRICULTURAL ENERGY CONSUMERS ASSOCIATION'S REQUEST FOR COMPENSATION in AGCA

to a finding of significant financial hardship for purposes of

Summary
Agricultural Energy Consumers Association (AECA) is

awarded compensation of \$22,676.17 for its contribution to Decision (D.) 95-04-026 dated April 5, 1995, in Southern California Edison

Company's (Edison) 1994 Rate Design Window proceeding, to interest of the individual members of the group or organization

Eligibility
On March 3, 1994, AECA filed a Notice of Intent to Claim

Compensation. On March 29, 1994, the administrative law judge (ALJ) issued a ruling finding AECA eligible for an award of compensation.

In a separate proceeding, Edison's Energy Cost Adjustment Clause (ECAC) proceeding (Application (A.) 93-05-044), AECA

received a finding of significant financial hardship in D. 95-02-093 (Conclusion of Law 6). In that decision, the Commission found that

AECA had demonstrated "significant financial hardship" as defined by Public Utilities (PU) Code § 1802(g). (D. 95-02-093, mimeo at

15.) The Commission awarded AECA compensation for its representation of small energy consumers, deriving a formula which

essentially allocated costs on a per-member basis for AECA members

of AECA's incurred costs of participation.

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in Edison's service area. (Id. at 19-20.) This formula allowed
AECA recovery of 86.05% of its costs of participation.

In this proceeding, AECA now requests compensation for participation where it represented essentially the same small energy consumers as in Edison's ECAG proceeding. AECA states that the membership statistics relied on by the Commission in issuing D.95-02-093 have not changed to any material extent since they were submitted in the previous proceeding. The bases underlying the Commission's finding of significant financial hardship just over six months ago are represented to be the same. Therefore, AECA requests that the Commission consider the information presented by AECA in its previous request for finding of eligibility to support a finding of significant financial hardship for purposes of establishing AECA's eligibility for an award of intervenor compensation in this proceeding.

Under PU Code § 1802(g), significant financial hardship means in the case of a group or organization, the economic interest of the individual members of the group or organization is small in comparison to the costs of effective participation in the proceeding. Although AECA has some members with very large economic interests in the outcome of this proceeding, PU Code § 1812 states that a group or association that represents small agricultural customers shall not be deemed ineligible for compensation solely because it also represents large customers. In D.95-02-093, we performed a detailed comparison of the economic interests of various sizes of AECA's members and the cost of participation in that case. We concluded that "for those AECA members with electric bills below \$50,000 dollars (sic), the cost of effective participation is large in comparison with the economic interest of the individual customer. We found that AECA had demonstrated a significant financial hardship with regard to those customers, and we awarded compensation for a corresponding portion of AECA's incurred costs of participation.

In this case, AECA asks us to make the same finding based on the analysis of D.95-02-093, because the composition of its membership has not changed materially since D.95-02-093 was issued. However, the analysis in D.95-02-093 included a careful evaluation of the amount that the members of AECA stood to gain or lose, depending on the outcome of the case, and a detailed assessment of AECA's actual and potential costs of participation. AECA's bare statement that its membership has not materially changed neglects to address the other items of the analysis.

We remind AECA of the statutory requirement of making a showing of eligibility, including significant financial hardship, for each of its requests for compensation. Section 1812(a)(1) requires a statement that a group shall not be deemed ineligible because of its representation of large agricultural customers does not compel us to find the group eligible in the absence of the showing required by statute.

Accordingly, pursuant to an ALJ ruling requiring AECA to supplement its request for compensation on October 3, 1995, AECA provided the required analysis to show that the economic interest of its numbers impacted by adoption of TUPA 6 (D.95-04-026) is small in comparison to AECA's cost of effectively participating in the proceeding. AECA's analysis is summarized below.

Adoption of Schedule TUPA 6 has potential benefits for all of AECA's members. Of these benefitted members, 74 were small agricultural customers, 1 and 12 were large agricultural customers. While the benefits to customers in this case are significant,

The maximum economic interest at stake for each customer class is...

...percentage in this case. Thus, AECA submits that it should be eligible to recover 86.02% of its costs of participation. This allocates 13.92% of the cost of participation to the large agricultural customers who will potentially benefit from the new schedule. We agree that AECA should recover 86.02% of its costs.

1 Pursuant to D.95-02-093, "small agricultural customers" are identified as those with annual bills of less than \$50,000, a reasonable...

Annual Electric Bill Maximum Economic Interest

| | |
|--------------------|----------|
| \$250,000 and over | \$27,007 |
| 125,000 - 249,999 | 648 |
| 50,000 - 124,999 | 213 |
| 25,000 - 49,999 | 127 |
| Under \$25,000 | 31 |

Average for All AECA Members \$ 605

Average for Small Agricultural Customers \$ 79

AECA participated in this proceeding only as to the settlement which adopted Schedule TOU-PA-6. Therefore, its cost of participation can be applied 100% to the cost of obtaining the benefit of Schedule TOU-PA-6. According to AECA, its total cost of participating in the settlement and adoption of Schedule TOU-PA-6 was \$27,365.32. When this total cost of participation is divided by the number of members of AECA who have benefitted, the total cost of effective participation to each member was \$318.20. AECA requested compensation for 86.05% of the time and expenses that it devoted to this proceeding. This request was based on the Commission's previous establishment of 86.05% (74/86) in D.95-02-093, as the percentage of AECA customers whose economic interest in that case was considered small when measured against the cost of participation. That equation was derived by comparing the benefit to each customer class with the cost of participation. While the benefits to customers in this case are significantly less than those considered in D.95-02-093, AECA will accept the same percentage in this case. Thus, AECA submits that it should be eligible to recover 86.05% of its costs of participation. This allocates 13.95% of the cost of participation to the large agricultural consumers who will potentially benefit from the new schedule. We agree that AECA should recover 86.05% of its reasonably incurred expenses in this proceeding as those identified as "small agricultural customers" in

Timeliness of Filing In D.95-04-026 issued April 5, 1995, decided issues related to Edison's proposal for Schedule TOU-PA-6, a new rate schedule for existing agricultural water pumping customers who would, without the rate, convert from electric motors to natural gas internal combustion engines. D.95-04-048 was a final order or decision under Rule 76.72 of the Commission's Rules of Practice and Procedure. On May 26, 1995, AECA filed a Request for Award of Compensation. AECA's filing meets the timeliness requirements of PU Code § 1804(c). Without further findings of fact or legal conclusions, AECA's filing meets the timeliness requirements of PU Code § 1804(c).

Substantial Contribution Under PU Code § 1803, before awarding compensation, the Commission must find that the customer made a "substantial contribution" as that term is defined in PU Code § 1802(h).

We find that AECA made a substantial contribution by participating in all aspects of the case related to the Schedule TOU-PA-6 rate option. This rate option, which applies to both natural gas and diesel bypass of the system, was bifurcated due to the objections stated by Southern California Gas Company (SoCalGas) to the natural gas bypass option (TOU-PA-6B). AECA's efforts in the case were focused specifically on the approval of both aspects of the TOU-PA-6 bypass rate options. As a direct result of AECA's participation, both the diesel bypass and the natural gas bypass options were adopted by the Commission. The diesel bypass option (TOU-PA-6A) was adopted as a part of

D.94-05-038 on June 5, 1994. AECA participated in the discussions and negotiations that led to the development of a Settlement Agreement that proposed the TOU-PA-6 rate option. The Settlement was entered into by Edison, the Division of Ratepayer Advocates (DRA), California Farm Bureau Federation (CFBF), and AECA. The Settlement Agreement was opposed by SoCalGas and addressed in two days of evidentiary hearings.

hearing. AECA was a leading force drawing attention to the bypass issue as it related to agricultural water pumping customers, and it documented the threats and the existence of agricultural bypass of the system and the significant cost that this bypass would impose on the utility. The decision states that "AECA agrees with Edison's contention that the threat of bypass is real and imminent and if allowed to occur will result in a significant loss of contribution to Edison's fixed costs. AECA provided two witnesses who testified that the threat of bypass is immediate" (D.95-04-026, p.12). Also, AECA's arguments are reflected in the decision's findings of fact which state: "Without Schedule TOU-PA-6, Edison's existing agricultural water pumping customers would likely convert from electric motors to natural gas, internal combustion engines, taking with them their contribution to Edison's fixed costs" (D.95-04-026 p.21).

In support of the bypass rates, AECA argued that Edison had clearly demonstrated that agricultural bypass of the system is a "textbook example of uneconomic bypass" (AECA testimony as cited in D.95-04-026, p.13). In addition, AECA argued that Edison's bypass rates were not only consistent with established standards for bypass deferral rates, but also complied with criteria adopted by the Commission for utility bypass situations (p.13). These elements of AECA's arguments in support of the bypass deferral rates were incorporated into the Commission's decision when the rates were adopted by D.95-04-026.

One of the issues that was the focus of the debate between Edison and SoCalGas was the issue of long-run marginal cost (LRMC). SoCalGas argued that the approval of the proposed bypass rates would send rates spiraling downward and would drive Edison and SoCalGas rates below LRMC. AECA pointed out that this contention was false and that built into the TOU-PA-6 schedule was a floor that would be equal to LRMC plus 1%. As a result, AECA argued that the natural gas bypass rate would contribute to

Edison's fixed costs. In addition, AECA pointed out that the bypass rate is not below SoCalGas rates, but rather that the rate would be set so that the cost of running an existing electric motor and the purchase of a natural gas engine would be equal. The Commission acknowledged AECA's contribution in its decision: "And as pointed out by AECA, any downward spiral of rates, will be of SoCalGas doing, not Edison's, if these customers are not lost to both Edison and SoCalGas because of lower diesel engine pumping costs." (D.95-04-026, p. 19.)

Lastly, in relation to the Commission's stated goal of fostering competition in the utility markets, AECA argued that it would make no sense for the Commission to allow one utility to discount its rates while not allowing another utility the same opportunity. The decision reached a similar conclusion and stated: "In summary, we conclude that it would be patently unfair and contrary to the Commission's policy of fostering competition in the gas and electric industry to foreclose Edison from competing to retain its existing customers" (D.95-04-026, p. 20).

In summary, we agree that AECA made a substantial contribution to D.95-04-026 as that term is defined in PU Code § 1802 (h).

AECA's Request

AECA states that considerable time was spent researching and documenting the prevalence of uneconomic bypass in rural southern California counties. Considerable effort also was expended responding to the arguments of SoCalGas against both the proposal and the Settlement Agreement. AECA has reviewed its claim as to its attorneys' and experts' fees and has eliminated any hours which seemed excessive. Consequently, AECA is requesting compensation only for those hours that it believes to be reasonable for the tasks performed in the context of the proceeding.

AECA acknowledges that parties seeking compensation must allocate attorney hours to specific issues (D.85-08-012). However,

since AECA's participation in this case was devoted entirely to the TOU-PA-6 bypass rate issue, and that issue was the only one that was not previously settled by the interim decision, AECA believes there is no need for detailed allocation as is typically performed.

The following is a summary of AECA's requests for compensation. A more detailed breakdown of the time devoted to this proceeding by AECA's representatives is set forth in its filing.

AECA Attorney Fees

| | | | | | |
|------------------|------------|---|----------|---|--------------------|
| Peter Hanschen | 47.25 hrs. | x | \$260.00 | = | \$12,285.00 |
| Melissa Wakeman | 210 hrs. | x | 195.00 | = | 39,900.00 |
| Elizabeth Willes | 11.4 hrs. | x | 118.00 | = | 1,345.20 |
| Marcus Milam | 2 hrs. | x | 160.00 | = | 320.00 |
| (Non-Attorney) | 225 hrs. | x | 60.00 | = | 13,500.00 |
| Subtotal | | | | | \$14,155.20 |

AECA Expert Witness & Consulting Fees

| | | | | | |
|-----------------|-----------|---|--------|---|-------------------|
| Steven Moss | 46.0 hrs. | x | 100.00 | = | \$4,600.00 |
| Richard McCann | 26.5 hrs. | x | 100.00 | = | 2,650.00 |
| Subtotal | | | | | \$7,250.00 |

Other Reasonable Costs

| | | |
|-------------------------|---|-------------------|
| Photocopying Expenses | = | \$2,343.34 |
| Postage Costs | = | 347.77 |
| Telephone & Fax Charges | = | 472.49 |
| Travel Expenses | = | 209.91 |
| Expert Witness Expenses | = | 129.28 |
| Attorney Expenses | = | 103.33 |
| Subtotal | | \$3,806.12 |

Supplement to Request for Finding of Eligibility for Intervenor Compensation

Subtotal \$ 2,154.00

TOTAL = **\$27,365.32**

AECA acknowledges that parties seeking compensation must allocate attorney hours to specific issues (D.82-08-012). However, for the tasks performed in the context of the proceeding, compensation only for those hours that it believes to be reasonable which seemed excessive. Consequently, AECA's request for compensation for its attorneys' and expert fees and costs was appropriate.

In accordance with D.95-02-093, AECA is seeking 86.05% of this total expenditure for a total compensation request of \$23,547.86.² AECA retained the services of Graham & James, a law firm. AECA requests for its lead attorney Peter Hanschen an hourly rate of \$260, which is \$10 higher than the rate awarded by D.95-02-093. AECA states that as of January 1, 1995, its lead attorney's billing rate was increased to \$275 per hour. AECA's request does not reflect this rate increase and instead remains at the rate billed for the majority of the work in 1994. As such, the numbers above will be lower than the rates in the detailed billing AECA received from Graham & James. According to AECA, the rates set forth by Graham & James for the services of Hanschen and others are established entirely by the market rates paid to attorneys of comparable training and experience. AECA argues that Graham & James, by necessity, must keep its rates in line with the market rates. Moreover, the rates charged to AECA are the standard billing rates that the firm charges to all clients. As such, Graham & James rates meet the requirements of PU Code § 1806 that rates should not be higher than the market rates. AECA submits that the rates charged by Graham & James are commensurate with the experience of the lawyers who worked on the cases. Hanschen, a partner with Graham & James, has been practicing before the Commission for 20 years, making frequent appearances in numerous Commission proceedings. Prior to being with Graham & James, Hanschen headed the regulatory section of Pacific Gas and Electric Company's legal staff. Melissa Wakeman and Elizabeth Willes were associates of the firm whose services were utilized

(2) In D.95-02-093, p. 20, the Commission allocated 13.95% as the share associated with representation of large agricultural customers which would not be compensated (see PU Code § 1812).

for research and other tasks where Hanschen's expertise was not required. Malcom Milam was an administrative assistant who was utilized to reduce costs when it was economical to do so. With regard to the qualifications of the expert witnesses retained by AECA, Steven Moss has presented testimony and conducted analysis on environmental and energy issues before various California legislative and regulatory bodies including the ADWA Commission. Moss has also led studies into the economic characteristics and water use patterns of Central Valley agriculture. Richard McCann has prepared testimony and analysis on numerous issues including air quality, water use and quality as well as electricity planning for several organizations, including the California Coordinating Council, South Coast Air Quality Management District, Metropolitan Water District and Sacramento Municipal Utilities District.

With regard to the requested hourly rate of \$260 for Peter Hanschen for work in 1994 and 1995, we will award compensation for Hanschen's time based on an hourly rate of \$235 for work done prior to July 17, 1994, and \$250 for work done after that date. As we stated in D-95-08-051, mimeo. p. 19, the applicable "market rate" for "similar services" and work performed in 1994 in proceedings before the Commission was set by the hourly rate approved for Toward Utility Rate Normalization (TURN). And the hourly rate for 1994 hours approved for TURN's attorney Michel Florio is \$235 for work done before July 17, 1994, and \$250 for work done after that date. (D-95-04-050, Findings of Fact 6 and 7). We will use the \$250 rate for work done in 1995 as we have not yet established any higher rate as a reasonable "market rate" for this period and the hours billed in 1995 are relatively few (27).

With regard to the hourly rates requested for Melissa Waksman - \$195, Elizabeth Willes - \$118, Marcus Milam - \$60, Steven Moss as \$100 and Richard McCann - \$100, we find these rates are reasonable. When we compare these rates to the rates previously

authorized for TURN's witnesses, we believe the rates requested by AECA are consistent with PU Code § 1806.

We now turn to the question as to whether the hours billed are reasonable. We note that no party protested this aspect of AECA's claim. We have no reason to believe that AECA is seeking compensation for work that was not performed. AECA has provided billing detail for its attorneys and for its expert witnesses. And, since there was only one issue in the case, all of the hours are allocated to that one issue. We find the hours billed for AECA's attorneys and expert witnesses to be reasonable given the nature and complexity of the case.

AECA has requested that other reasonable costs in the amount of \$3,806.12 be included. No party protested this or any other aspect of AECA's request. We find these additional costs to be reasonable.

In summary, we will reduce AECA's total request by \$771 (19.9 hours x \$25 plus \$27.35 hours x \$10) for the adjustment to the requested hourly rate of Hanschen.

Lastly, AECA requests \$2,154.00 for preparing its October 3, 1995 Supplement to Request for Finding of Eligibility for Intervenor Compensation. As stated above, AECA's initial showing was deficient and ignored the analysis in D.95-02-093, which included a careful analysis of the amount the members of AECA stood to lose or gain, depending on the outcome of the case.

Generally, intervenors who file deficient applications, resulting in additional work in response to Commission requests for supplementation, are not compensated for that additional work. We note that this is not the case of an unsophisticated or first-time intervenor, nor those filing supplemental information in response to a protest. In this instance, we will make a one-time exception for AECA, in light of the relatively recent (D.95-02-093) emergence of specific membership analysis required, and caution AECA to provide this information routinely in future requests.

Accordingly, we will allow compensation for preparation of the supplemental request.

The adopted compensation award is:

| | |
|---------------------------------------|--------------------|
| AECA Attorney Fees | \$13,384.20 |
| AECA Expert Witness & Consulting Fees | 7,250.00 |
| Other Reasonable Costs | 3,806.712 |
| Supplemental Request | \$1,912.00 |
| | \$26,352.92 |
| TOTAL | \$22,676.17 |

AECA 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 recordkeeping 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. AECA was found eligible to file a request for compensation in this proceeding in the ALJ's ruling of March 29, 1994.

2. In February, 1995, in D.95-02-093, Conclusion of Law 6, AECA was found to have demonstrated significant financial hardship as defined by PU Code § 1802(g).

3. AECA filed a timely request on May 26, 1995 for an award of compensation for its contribution to D.95-04-026.

In this instance, we will make a one-time exception for AECA in light of the relatively recent (D.95-02-093) emergence of specific membership analysis required, and caution AECA to provide this information routinely in future requests.

This amount reflects hourly rates of \$250 and \$118, for a total of \$1,912.00.

4. AECA's involvement in this proceeding made a significant contribution to D.95-04-026.

5. AECA is an organization that represents small, as well as large, agricultural electric customers.

6. The economic interest of AECA members that have annual bills in excess of \$50,000 is large in comparison to the cost of effective participation.

7. For AECA members with bills below \$50,000, the economic interest is small in comparison with the cost of effective participation.

Conclusions of Law

1. PU Code, § 1812 prohibits the Commission from denying compensation for parties that represent small agricultural consumers solely because the organization also has large agricultural consumers.

2. It is reasonable to exclude AECA members with annual bills in excess of \$50,000 when considering whether AECA is eligible for compensation.

3. The February, 1995, finding of significant financial hardship to AECA made in D.95-04-026 in A.93-05-044 should be applied in this proceeding.

4. AECA should be awarded compensation for its contribution to D.95-04-026 in the amount of \$22,676.17.

...proceeding made a significant contribution to D.92-04-026.

IT IS ORDERED that Agricultural Energy Consumers Association (AECA) is awarded \$22,676.17 in compensation for its contribution to Decision 95-04-048. Southern California Edison Company shall, within 30 days of the effective date of this order, pay AECA \$22,676.17 plus interest at the rate earned on prime, three-month commercial paper, as reported in the Federal Reserve Statistical Release G-13, with interest beginning August 3, 1995, and continuing until the full payment is made.

This order is effective today.

Dated February 7, 1996, at San Francisco, California.

...parties that represent small agricultural consumers solely because the organization also has large...

DANIEL Wm. FESSLER
President

GREGORY CONLON

JESSIE J. KNIGHT, JR.

HENRY M. DUQUE

JOSIAH L. NEPPER

Commissioners

...finding of significant financial...

...AECA made in D.92-04-026 in A.93-02-044 should be...

...applied in this proceeding.

...AECA should be awarded compensation for its contribution...

...in the amount of \$22,676.17.