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Decision 96-11-048 November 26, 1996

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E) Authority to Increase Its Authorized Level of Base Rate Revenue Under The Electric Revenue Adjustment Mechanism For Service Rendered Beginning January 1, 1995, And To Reflect This Increase In Rates.	Application 93-12-025 (Filed December 27, 1993)
Order Instituting Investigation Into The Rates, Charges, And Practices Of SOUTHERN CALIFORNIA EDISON COMPANY Establishment Of The Utility's Revenue Requirement, And Attrition Request.	I.94-02-002 (Filed February 4, 1994)

ORIGINAL

OPINION

This decision grants Agricultural Energy Consumers Association (AECA) an award of $12,487.08 in compensation for its contribution to Decision (D.) 96-08-025. We reduce AECA's request by 10% to reflect duplication and make certain reduction to requested hourly rates as discussed below.

1. Background

AECA is requesting compensation for its participation in the phase of this proceeding addressing Southern California Edison Company's (SCE) flexible pricing options and related ratemaking treatment. SCE originally proposed a set of flexible pricing options during the revenue allocation and rate design phase of its general rate case (Phase 2A), but those options were separated from Phase 2A and addressed in a subsequent phase, Phase 2B. Hence, AECA's participation began in the summer of 1995, when SCE originally filed its proposal and continued through the first eight months of 1996 as these options were addressed in Phase 2B.

As part of its flexible option proposal, SCE recommended the continuation and expansion of an agricultural bypass deferral rate (TOU-PA-6) that had been adopted in SCE's 1994 Rate Design Window proceeding on an experimental basis. SCE also proposed a new time-related demand aggregation service as a pilot program in which agricultural customers with multiple accounts at different sites would be eligible to participate. AECA's participation in Phase 2B consisted of filing written testimony and comments on the assigned Administrative Law Judge's (ALJ) proposed decision in support of SCE's agricultural bypass deferral rate proposal. AECA's executive director also appeared at oral argument and commented in support of SCE's proposal. AECA did not conduct cross-examination or file briefs.1

AECA filed a Request For An Award Of Compensation on August 30, 1996. Supplementary information was filed at the request of the assigned ALJ on September 27, 1996. There were no protests to AECA's request.

2. Requirements for Awards of Compensation

Intervenors who seek compensation for their contributions in Commission proceedings must file requests for compensation pursuant to Public Utilities (PU) Code §§ 1801-1812. Section 1804(a) requires an intervenor to file a notice of intent (NOI) to claim compensation within 30 days of the prehearing conference or by a date established by the Commission. The NOI must present

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1 Although AECA states in its filing that it filed a brief in support of its proposal (Request p. 9), in fact, AECA did not file any briefs in Phase 2B.

information regarding the nature and extent of compensation and may request a finding of eligibility.

Other code sections address requests for compensation filed after a Commission decision is issued. Section 1804(e) requires an intervenor requesting compensation to provide "a detailed description of services and expenditures and a description of the customer's substantial contribution to the hearing or proceeding." Section 1802(h) states that "substantial contribution" means that

> "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 has adopted in whole or in part one or more factual contentions, legal contentions, or specific policy or procedural recommendations presented by the customer. Where the customer's participation has resulted in a substantial contribution, even if the decision adopts that customer's contention or recommendations only in part, the commission may award the customer compensation for all reasonable advocate's fees, reasonable expert fees, and other reasonable costs incurred by the customer in preparing or presenting that contention or recommendation."

Section 1804(e) requires the Commission to issue a decision which determines whether or not the customer has made a substantial contribution and the amount of compensation to be paid. The level of compensation must take into account the market rate paid to people with comparable training and experience who offer similar services, consistent with § 1806.

3. Timeliness and Eligibility

AECA timely filed its NOI after the first prehearing conference, but as allowed under PU Code § 1804(a)(2)(B) did not request a finding of significant financial hardship at that time.

By ruling dated March 29, 1996, the assigned ALJ found that AECA had complied with the requirements of PU Code § 1804 with the exception of demonstrating significant financial hardship.

AECA filed its Request For An Award Of Compensation on August 30, 1996, which satisfies the requirements of § 1804(c) that such requests be filed within 60 days following the issuance of a final decision. Although this proceeding remains open to address other issues, D.96-08-025 is a final order resolving SCE's request for flexible pricing and associated ratemaking issues for which compensation is sought by AECA.

In view of the above, we find that AECA's request for compensation satisfies the filing time requirements. With regard to eligibility, we address the one remaining issue, significant financial hardship, in the following section.

4.0 Significant Financial Hardship

Section 1802(g) defines "significant financial hardship" to mean:

> "either that the customer cannot afford, without undue hardship, to pay the costs of effective participation, including advocate's fees, expert witness fees, and other reasonable costs of participation, or that, 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."

Section 1812 addresses AECA's circumstances, i.e., as an organization that represents both large and small agricultural customers:

> "A group or association that represents the interests of small agricultural customers in a proceeding and that would otherwise be eligible for an award of compensation pursuant to

> Section 1804 without the presence of large agricultural customers, as determined by the commission, shall not be deemed ineligible solely because that group or organization also has members who are large agricultural customers."

AECA has demonstrated significant financial hardship to our satisfaction in three previous proceedings. As discussed further below, we have historically discounted AECA's compensation request to reflect the fact that the economic interest of AECA's larger members (those with bills of $50,000 or more) is large when compared to the per member cost of effective participation.

We first addressed this issue in SCE's 1993 Energy Cost Adjustment Clause proceeding, Application (A.) 93-05-044. In D.95-02-093, we concluded that the maximum economic interest of AECA members with bills greater than $50,000 was $2,369 to $20,542, compared with $165 in actual costs and $605 in estimated costs if the case had been fully litigated. For members with bills less than $50,000, we found that their economic interest in the outcome of the proceeding was relatively small ($316 to $1,284) in comparison to the costs of effective participation. Accordingly, we found that AECA was eligible to recover 86.05% of costs found reasonable. This percentage was derived by dividing the number of AECA members in SCE's service territory with annual bills less than $50,000 (77) by the total number of AECA members in SCE's service territory (86).

We also addressed AECA eligibility issues in D.96-02-011, where AECA was awarded compensation for its contribution to SCE's 1994 Rate Design Window proceeding. In that proceeding, AECA supported SCE's proposal to introduce TOU-PA-6 anti-bypass rates on an experimental basis. AECA presented an analysis, similar to that performed in D.95-02-093, which showed that the economic interest of its members with bills less than $50,000 was small in comparison to AECA's cost of effectively participating in the proceeding. Specifically, the average maximum economic interest for customers with annual bills below $50,000 ranged from $31 to $127, with an average of $79. The cost of effective participation to each member was $318.20. AECA recommended, and we agreed, to use the same percentage (86.05%) that was developed in D.95-02-093 to determine the percentage of eligible cost recovery.

The third award of compensation was for AECA's participation in the Commission's electric industry restructuring proceeding (Rulemaking 94-04-031 and companion Investigation 94-04-032). In D.96-08-040, we again adopted an analysis of significant financial hardship that divided AECA members into two groups: those for whom the cost of participation was not a significant financial hardship, and those for whom it was. We concluded that AECA members with bills less than $50,000 faced a significant financial hardship within the meaning of PU Code § 1802(g). In particular, members with bills below $25,000 had an average maximum economic interest of between $104 to $312, compared with the per member cost of participation of $102. Although we acknowledged that members with bills within the $25,000 and $50,000 range could conceivably fund an effort at the Commission, we found it appropriate to grant compensation to AECA for this group's participation given our call for widespread public participation in the proceeding.[2] In that case, which involved all three electric utilities, the AECA members found to have suffered a significant financial hardship comprised 69% of the AECA membership and,

[2] The economic interest for these members ranged from $368 to $1,104 compared to the cost of participation of $102.

accordingly, we discounted AECA's award of compensation to 69% of the total amount approved.

In this proceeding, AECA requests a finding of significant hardship that would authorize 86.05% of approved costs of participation. AECA believes, and we concur, that the analysis set forth in D.96-02-011 is applicable to its present request which involves rates affecting AECA members only in SCE's service territory.

In AECA's initial filing, AECA presented the exact same estimates of economic interest, by member size, submitted in support of its compensation request addressed by D.96-02-011. However, that analysis evaluated financial impacts from the perspective of an experimental TOU-PA-6 rate available to members with a minimum size engine of 75 horsepower. SCE's flexible pricing options in this proceeding proposed to expand eligibility to 50 horsepower engines. D.96-08-025 adopts that proposal. Accordingly, the assigned ALJ requested that AECA update its analysis to reflect this expanded eligibility.

AECA submitted its updated analysis on September 27, 1996, and make corrections to that submission on October 2, 1996. As in the past, 74 out of 86 AECA members (86.05%) in SCE's service territory have annual electric bills of less than $50,000. The maximum economic interest of AECA members in continuation of the experimental TOU-PA-6 rates is presented below:

TABLE 1

Average Maximum Economic Interest

Annual Electric Bill	Economic Interest as 6.5% of Total Bill	Maximum Economic Interest as Savings of 11% on Eligible Accounts
$250,000 and over	$37,983	$4,178
$125,000-$249,999	12,318	1,355
$50,000-$124,999	4,400	484
$25,000-$49,999	2,384	262
Under $25,000	588	65
Average for all AECA Members	$11,535	$1,269
Average for Small Agricultural Customers	$ 1,486	$ 164

As indicated in Table 1, the average maximum economic interest of AECA's smaller members (bills less than $50,000) in extending TOU-PA-6 is $65 to $262, with an average of $164. The actual cost of effective participation in this phase of the proceeding was approximately $205 per member. We agree with AECA that the aggregation pilot project will only affect a handful of AECA members, and the limited, unknown benefits would not appreciably affect this comparison. We conclude that, based on a comparison of the cost of participation and the prospective economic benefit resulting from Phase 2B, AECA members with bills less than $50,000 face a significant financial hardship within the meaning of PU Code § 1802(g). Based on the above analysis, AECA is eligible to receive compensation for 86.05% of the total amount approved.

4. Contributions to Resolution of Issues

In its Request for Compensation, it explains "the cost-effective strategy that AECA developed to best represent its members was to participate at key points with written submissions and oral presentations to the Commission and to try to work with

(SCE) in influencing its flexible pricing option program. (Request, pp. 8-7.) AECA argues that it contributed substantially to the resolution of issues by filing testimony supporting the expansion of TOU-PA-6 and by meeting with SCE and participating in phone calls prior to the submission of SCE's testimony.[3] AECA also points out that it filed comments on the ALJ's proposed decision and attended the oral argument to explain why TOU-PA-6 should be adopted permanently, the importance of the time-related demand aggregation rate, and why was it appropriate for SCE and the ratepayers to share in any net increased sale revenues resulting from the program.

In any proceeding involving multiple intervenors, we must consider (1) if the intervenor has made a substantial contribution to the decision of the Commission, satisfying the requirements of § 1802, and (2) to what extent, if any, such contribution duplicated that of any other intervenor.

We note that D.96-08-025 expands eligibility for SCE's TOU-PA-6 schedule and adopts a pilot time-related demand aggregation rate, consistent with AECA's recommendations. Although AECA did not present a specific ratemaking proposal in its testimony, AECA's comments at oral argument were consistent in principle with the ratemaking approach adopted by D.96-08-025. At the same time, it is impossible not to note some similarities in the positions put forth by the California Farm Bureau Federation

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3 Although AECA characterizes its discussions with SCE as occurring before the filing of SCE's testimony, we note that these discussions did in fact occur after SCE's rate design testimony in Phase 1A which described the continuation and expansion of TOU-PA-6. This is an important distinction from the perspective of intervenor compensation. Communications intended to shape the applicant's testimony prior to filing are not generally considered eligible for compensation by the Commission.

(Farm Bureau) in Phase 2B, which also represents agricultural customers. Farm Bureau participated in cross-examination, filed an opening brief, participated in oral argument, and filed comments on the ALJ's proposed decision. Like AECA, Farm Bureau focused its participation in Phase 2B on supporting SCE's proposal to expand TOU-PA-6 and introduce a demand aggregation option. At the same time, AECA and Farm Bureau supported different ratemaking treatments for SCE's flexible pricing.

Section 1801.3(f) requires that intervenor compensation be administered in a manner that avoids unproductive or unnecessary participation that duplicates the participation of similar interests otherwise adequately represented or participation that is not necessary for a fair determination of the proceeding. In previous decisions, we have reduced the amount of compensation awarded on the basis of duplication of contributions by intervenors. When partial duplication has occurred, we have seen fit to reduce the number of hours approved for compensation by 10%. (See, e.g., D.88-12-085; D.91-12-055; D.93-06-022; D.96-06-029; and D.96-08-024.) We will apply the same 10% adjustment in this case. In future rate design proceedings, we suggest that AECA consider coordinating and perhaps sharing resources with intervenors that have similar interests. We believe that this approach could reduce overall intervenor costs to ratepayers without diluting AECA's effectiveness.

5. The Reasonableness of Requested Compensation

AECA requests compensation in the amount of $15,223.79 as follows:

Attorney's Fees:	
Peter W. Hanschen (26.8 hours @ $260/hr)	$6,968.00
Economic Consultant Fees:	
Steven Moss (6 hours @ $100/hr.)	$ 600.00
Richard McCann (30 hours @ $100/hr.)	$3,000.00
Subtotal:	$3,600.00
AECA Executive Director's Participation:	
Michael Boccadoro (49.25 hours @ $125/hr.)	$6,156.25
Other Costs:	
Photocopying	$631.05
Postage	131.60
Telephone/Facsimile	158.90
Travel	40.00
Messenger	6.00
Subtotal:	$ 967.55
Total:	$17,691.80
Request (86.05% of Total)	$15,223.79

5.1 Hours Claimed

AECA documented the claimed hours by presenting a daily breakdown of hours for Mr. Hanschen and Mr. Boccadoro with a brief description of each activity. The claimed hours for AECA's economic consultants, while not broken down on a daily basis, were accompanied with a sufficient explanation of tasks to be adequately reviewed for reasonableness. In the future, we expect the same level of detail for AECA's consultant's claimed hours as presented for AECA's attorney and executive director.

We find that AECA's explanation of hours billed reasonably supports its claim for total hours.

5.2 Hourly Rates

AECA requests for its lead attorney Peter Hanschen an hourly rate of $260/hour, which is $10 higher than the rate recently awarded in D.96-08-040. Mr. Hanschen is a partner with Graham & James and has been practicing before this Commission for over 20 years. AECA argues that an increase to the current $250/hour rate is reasonable because, as we acknowledged in D.96-08-040, that rate is below the *Of Counsel Survey* average of all partners in 1995. (D.96-08-040, mimeo. p. 31-32.)

We decline to increase Mr. Hanschen's hourly rate above the level that AECA requested, and we have recently approved, for AECA's 1995 and 1996 participation in our electric industry restructuring proceeding. We note that the work conducted by Mr. Hanschen in this proceeding occurred predominately during the latter half of 1995 and beginning half of 1996. Hence, Mr. Hanschen was working on Phase 2B issues during the same timeframe he was also representing AECA on electric restructuring issues. It makes no sense to establish different hourly rates for Mr. Hanschen for work done in different Commission proceedings occurring at the same time. We note that Mr. Hanschen's participation in Phase 2B clearly did not require a higher degree of legal expertise relative to other concurrent proceedings, since AECA did not participate in cross-examination or file briefs in this phase.

AECA requests an hourly rate of $100 for its experts, Mr. Moss and Mr. McCann. We have previously approved this rate in D.96-02-011 and D.96-08-040, and find it equally applicable to the work performed in this proceeding.

Finally, AECA requests an hourly rate of $125 for the work of its Executive Director, Michael Boccadoro. As we discussed in some detail in D.96-08-040, we find this rate to be reasonable in comparison to rates we have previously approved for other experts. (D.96-08-040, mimeo. App. 33-34.)

AECA has requested compensation for photocopying, postage, telephone, facsimile, and other ancillary expenses in the amount of $967.55, or approximately 5.5% of AECA's total request. We note that AECA is passing on, in part, expenses that it had been billed by Graham & James. We find these additional costs to be reasonable.

In previous decisions, we have held that compensation requests are essentially bills for services, and do not require a lawyer's skill to prepare. Accordingly, we have reduced the attorney's rate for time spent preparing the compensation request. For attorneys in the hourly rate range of TURN's attorneys, we have reduced the rate by one-half. (See, for example, D.96-08-023, pp. 7-8; D.93-09-022, p. 6; D.93-09-086, p. 9; and D.91-12-074, p. 14.) However, we have also recognized exceptions to this policy rule when the compensation claim involves technical and legal analysis deserving of compensation at higher rates. (See D.93-10-023 and D.96-08-040.) We do not believe that AECA's compensation request in this phase of SCE's general rate case is such a case. Accordingly, we authorize recovery for time spent preparing the compensation request at one-half the attorney's hourly rate. AECA's filing identifies 5.9 hours of Mr. Hanschen's time devoted to this task.

It has also been our policy to compensate travel time at one-half the normal rate. (See D.93-09-086, pp. 11-12; D.96-08-023, p. 8.) AECA's filing does not break out travel time for AECA's consultants, but Mr. Boccadoro's hours indicate that he is claiming travel time to San Francisco from Sacramento on three occasions. We will reduce Mr. Boccadoro's compensation rate by one-half for 9 hours (3 round-trips, each 3 hours) of claimed compensation. In future requests, AECA should break out travel time for all claimed hours.

6. Award

We award AECA $12,487.08 calculated as described above.

Attorney's Fees:		
Peter W. Hanschen (20.9 hours @ $250/hr.)		$5,225.00
(5.9 hours @ $125/hr.)		737.50
	Subtotal:	$5,962.50
Economic Consultant Fees:		
Steven Moss (6 hours @ $100/hr.)		$ 600.00
Richard McCann (30 hours @ $100/hr.)		$3,000.00
	Subtotal:	$3,600.00
AECA Executive Director's Participation:		
Michael Boccadoro (40.25 hours @ $125/hr.)		$5,031.25
(9.00 hours @ $62.5/hr.)		562.50
	Subtotal:	$5,593.75
Other Costs:		
Photocopying		$ 631.05
Postage		$ 131.60
Telephone/Facsimile		$ 158.90
Travel		$ 40.00
Messenger		$ 6.00
	Subtotal:	$ 967.55
	Total:	$16,123.80
Compensation Award (90% x 86.05% of Total)		$12,487.08

Consistent with previous Commission decisions, we will order that interest be paid on the award amount (calculated at the three-month commercial paper rate), commencing November 13, 1996 (the 75th day after AECA filed its compensation request) and continuing until the utility makes its full payment of award.

As in all intervenor compensation decisions, we put AECA on notice that the Commission Advisory and Compliance Division may audit AECA records related to this award. Thus, AECA must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. AECA's records should identify specific issues for which it requests compensation, the actual time spent by each employee, the applicable hourly rate, fees paid to consultants, and any other costs for which compensation may be claimed.

Findings of Fact

1. AECA has made a timely request for compensation for its contribution to D.96-08-025.

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

3. The economic interests of AECA's smaller members (i.e., those with bills less than $50,000) would be small compared to the costs of participating in Phase 2B of this proceeding.

4. AECA members with bills less than $50,000 comprise 86.05% of AECA members within SCE's service territory.

5. AECA's participation in Phase 2B contributed substantially to D.96-08-025, but was duplicative in part with Farm Bureau's participation.

6. AECA's requested hourly rate for Mr. Hanschen is above the rate we recently approved for Mr. Hanschen's 1995 and 1996 work in Commission proceedings.

7. AECA's requested hourly rates for experts and AECA's executive director are consistent with the rates recently approved for these individuals.

8. Mr. Hanschen's claimed hours include 5.9 hours for preparation of AECA's compensation request.

9. AECA's Phase 2B compensation claim did not involve technical and legal analysis deserving of compensation for Mr. Hanschen at a $250 hourly rate.

10. Mr. Boccadoro's claimed hours include approximately 9 hours in travel time.

11. The miscellaneous costs incurred by AECA represent approximately 5.5% of AECA's total request and, in part, reflect expenses billed to AECA by Graham & James.

Conclusions of Law

1. AECA has fulfilled the requirements of §§ 1801-1812 which governed awards of intervenor compensation.

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. AECA has made an adequate showing of significant financial hardship.

4. It is reasonable to adjust the costs billed to AECA by Graham & James for Mr. Hanschen downward by $10 per hour.

5. It is reasonable to reduce Mr. Hanschen's rate by one-half for the hours spent preparing AECA's compensation request.

6. The hours billed by Graham & James for Mr. Hanschen's time are reasonable.

7. The hourly rate and the number of hours for Mr. Moss and Mr. McCann are reasonable.

8. It is reasonable to compensate Mr. Boccadoro's travel time at one-half of the normal rate, consistent with past practices.

9. In future requests for compensation, AECA should provide the same level of detail for its consultant's claimed hours as presented for AECA's attorney and executive director in this case. AECA should also break out travel time for all claimed hours.

10. The expenses of $967.55 for which AECA seeks compensation is reasonable.

11. It is reasonable to adjust AECA's request downward by 13.95% to reflect the cost of representing members with bills less than $50,000.

12. It is reasonable to adjust AECA's request downward by 10% for partial duplication, consistent with past practices.

13. AECA should be awarded $12,487.08 for its contribution to D.96-08-025.

14. This order should be effective today so that AECA may be compensated without unnecessary delay.

ORDER

IT IS ORDERED that:

1. AECA is awarded $12,487.08 in compensation for its substantial contribution to Decision 96-08-025.

2. Southern California Edison Company (SCE) shall pay AECA $12,487.08 within 30 days of the effective date of this order. SCE shall also pay interest on the award at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve

Statistical Release G.13, with interest, beginning November 13, 1996 and continuing until full payment is made.

This order is effective today.

Dated November 26, 1996, at San Francisco, California.

P. GREGORY CONLON
President
DANIEL Wm. FESSLER
JESSIE J. KNIGHT, JR.
JOSIAH L. NEEPER
Commissioners

Commissioner Henry M. Duque, being necessarily absent, did not participate.