

FEB 4 1998

Decision 98-02-012 February 4, 1998

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Southern California Gas Company (U 940-G) for Authority to Revise its Rates Effective January 1, 1997, in its Biennial Cost Allocation Proceeding.

Application 96-03-031
(Filed March 15, 1996)

ORIGINAL

In the Matter of the Application of San Diego Gas & Electric Company (U 902-G) for Authority to Revise its Rates Effective January 1, 1997, in its Biennial Cost Allocation Proceeding

Application 96-04-030
(Filed April 15, 1996)

OPINION

Summary

In this decision we award intervenor compensation in the amount of \$56,874.71 to the Save Our Services Coalition (SOS) for its contribution to Decision (D.) 97-04-082.

1. Background

On March 15, 1996, Southern California Gas Company (SoCalGas) filed its Biennial Cost Application Proceeding (BCAP) Application (A.) 96-03-031 for a \$137.7 million annual rate decrease. On April 15, 1996, San Diego Gas & Electric Company (SDG&E) filed its BCAP application, A.96-04-030 for a \$42 million rate decrease. SDG&E requested that its application be consolidated with SoCalGas's application.

A prehearing conference was held on April 26, 1996 for both applications. The proceedings were consolidated and hearings set. Hearings were held in San Francisco from August 1-29, 1996 on SoCalGas's application and from September 3-5, 1996 on SDG&E's application. Opening briefs were filed September 27 and October 11, 1996 for SoCalGas and SDG&E respectively. Reply briefs were filed October 15 and October 22, 1996. The consolidated case was submitted on October 22, 1996.

SoCalGas and SDG&E filed updates to their BCAP requests on October 15 and October 25, 1996, respectively.

On January 22, 1997 the Administrative Law Judge's (ALJ) proposed decision was mailed to all parties for comments pursuant to Rules 77.2-77.5 of the Commission's Rules of Practice and Procedure. On March 26, 1997 an alternate order of Commissioner Knight was mailed to all parties for comments as well. D.97-04-082 was issued April 23, 1997.

On June 4, 1997 The Utility Reform Network (TURN) and the City of Long Beach filed petitions for rehearing of D.97-04-082. By Ordering Paragraph 2 of D.97-10-026 we reinterpreted Rule of Practice and Procedure 76.72 such that these petitions do not prevent us from awarding intervenor compensation in this proceeding at this time.

On July 3, 1997, SOS filed its request for compensation for its contribution to D.97-04-082.¹ This request was filed more than 60 days after issuance of D.97-04-082. Under our prior interpretation of Rule 76.72 we could have dismissed the request without prejudice to SOS refiling after we addressed matters on rehearing. Alternatively, we could have held our decision on the request until after our decision on rehearing. However, since we have subsequently reinterpreted Rule 76.74, we will treat SOS's filing as if it was filed on October 9, 1997, the day our reinterpretation was adopted in D.97-10-026. This is the earliest date on which a filing under our new interpretation could have been made.

No responses to this filing were received.

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

¹ Request for Award of Compensation Of The Save Our Services Coalition, SOS, July 3, 1997.

established by the Commission. The NOI must present 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(c) 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. NOI to Claim Compensation

By an Administrative Law Judge's Ruling dated July 1, 1996, SOS was found eligible to claim compensation in A.96-03-031 provided that it includes in its request for compensation a sufficient showing of 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."

SOS represents that it is a coalition of agencies in the Los Angeles Metropolitan Area that represent union employees as well as low income, elderly, and minority ratepayers in SoCalGas's territory. SOS's member agencies are:

One Stop Immigration and Education Center
The Alliance for Immigrant Rights
Congress of California Seniors
Wages for Housework
Utility Workers Union of America, AFL-CIO, Local 132

SOS further represents that the economic interests at stake for individual customers, for the issues for which reimbursement is requested by SOS in this proceeding, is approximately \$52.80 per customer. This is derived by multiplying a \$2.20 increase in the monthly customer charge times the 24-month BCAP period. SOS's claimed cost of participation in this proceeding is \$62,690.13.

In order to apply Section 1802(g) to SOS in this proceeding, we must address what constitutes an "individual member" of SOS. Were we to decide that each of the five member agencies of SOS constitutes an "individual member," the member's economic interest would be \$52.80 times the number of customers represented by the member. This could lead to findings that "individual members" do not have "significant financial hardship." We will not do this.

Each of the member agencies could have participated individually, in which case "individual member" would have meant individual ratepayer. This would have led to a finding of "significant financial hardship." It also would likely have led to a greater overall cost of participation and a less efficient proceeding. Therefore, we will take "individual member" to mean the individual customers of SoCalGas represented by SOS's member agencies.

The Utility Workers Union of America, AFL-CIO, Local 132 (Union) presents an additional factor that must be addressed. Individual union members, all of whom are SoCalGas employees, could have additional economic interests such as jobs, wages, and benefits which are significantly greater than utility bill impacts. In this case, however, given the positions taken by SOS for which it is requesting compensation, it appears that the only significant economic effects on union members are utility bill impacts.

For the reasons stated above, we find that SOS has satisfied our requirements for "significant financial hardship" in this proceeding.

4. Contributions to Resolutions of Issues

SOS requests compensation related to three issues in this proceeding: monthly customer charge, tier differential, and revisions to the baseline rates only in connection with SoCalGas.

a. Monthly Customer Charge

SoCalGas proposed a significant increase in customer charges over the next five years. The Office of Ratepayer Advocates (ORA), TURN, and SOS opposed the proposal and sought to retain the current \$5 customer charge. We rejected SoCalGas's proposal in part because we agreed with SOS's contention that variables were left out of SoCalGas's presentation supporting its argument that new homes subsidize older homes.

b. Tier Differential

SoCalGas proposed to reduce the residential tier differential to approximately 10%. ORA, TURN, and SOS opposed the proposal. We rejected SoCalGas's proposal in part because of SOS's argument that tier 1 usage is for basic usage and therefore consumers have less ability to control it, and that SoCalGas's proposal would encourage tier 2 users to be less conservative.

c. Baseline

SoCalGas proposed to reduce its summer and winter baseline quantities. ORA, TURN, and SOS opposed the proposal and wanted to retain the then current quantities or at most reduce the summer quantity to 15 therms to comply with statute. We reduced the summer baseline quantity to 15 therms to comply with statute, and left the winter baseline quantities unchanged. This result was due to our agreement with the argument made by ORA, TURN, and SOS that SoCalGas failed to present sufficient evidence to justify its proposal.

SOS's contribution to the issues of the monthly customer charge and tier differential was complementary to ORA's and TURN's contributions. However, we

find that there was some duplication on the issue of baseline and will reduce the award for the issue by 10%. SOS has not broken down its total costs by issue. We will therefore, reduce the overall award by 3-1/3%. SOS is cautioned to provide a breakdown of costs by issue in its future intervenor compensation filings.

5. The Reasonableness of Requested Compensation

SOS requests compensation in the amount of \$60,636.38 as follows:

Attorney and Expert Witness Fees

Edward G. Poole	184.50 hours at \$185.00	\$34,132.50
Fee Request Preparation	10.00 hours at \$95.00 ²	950.00

Attorney's Costs

Travel/Transportation	\$ 354.10	
Photocopying	\$1,128.46	
Postage	\$ 251.35	
Telephone charges	\$ 560.17	
Messenger charges	\$ 69.68	
Facsimile charges	\$ 598.50	
Overnight mail charges	\$ 72.50	
Copies of CPUC decisions	\$ 88.96	
Total Attorney's Costs		\$ 3,123.72

Project Coordinator's Participation

Fabian Nunez	197.5 hours at \$75.00	\$ 14,812.50
Expenses (travel and auto rental)		\$ 1,435.51

Economic Consultant Fees

James Hurdle	20 hours at \$200.00	\$ 4,000.00
Expenses		\$ 2,182.15

TOTAL		\$ 60,636.38
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² Billed at approximately one half of the full rate.

Applicant's original request was for \$62,690.13. In a letter dated October 30, 1997, applicant corrected an error in Mr. Nunez's time reducing the number of hours from 207 down to 197.5.

5.1 Hours Claimed and Other Costs

SOS documented the hours claimed for Mr. Poole by presenting a daily breakdown of the hours with a brief description of each activity. A breakdown of expenses was also provided. For Mr. Nunez, SOS presented a breakdown of hours by month with a description of the tasks involved. Expenses were broken down into travel and auto rental. For Mr. Hurdle, an invoice for total hours was presented along with a breakdown of expenses.

This documentation satisfies us that the hours and expenses were reasonably incurred for this proceeding. However, as noted previously, hours and expenses should be broken down by issue. Additionally, consultant hours and expenses also need to be broken down by issue. In this instance, these flaws will be overlooked because only three issues are addressed in the request for compensation, the consultant hours are small, and SOS and its attorney have not previously filed for intervenor compensation. SOS and its attorney should make sure that all future intervenor compensation filings satisfy all filing requirements completely.

5.2 Hourly Rates

The time period covered by SOS's request is April 1996 through May 1997. For this period SOS requests hourly rates for Mr. Poole, Mr. Nunez, and Mr. Hurdle of \$185, \$75, and \$200, respectively.

SOS describes Mr. Poole as a partner in the law firm of Anderson, Donovan and Poole with over 10 years of practice before the Commission. Attorney fees awarded by the Commission to experienced attorneys for services performed during 1995 and 1996 typically ranged from \$160 to \$260 per hour. The \$185 rate requested for Mr. Poole is at the low end of this range and is therefore reasonable.

SOS's Mr. Nunez is represented as the project coordinator for this proceeding. Mr. Nunez also serves as the executive director of SOS. Mr. Nunez, for the hours being claimed, did not serve as an expert witness. His duties included the following:

- attended meeting, hearings, workshops, and settlement meetings,
- coordinated work with other parties,
- searched for an expert witness, and
- prepared and reviewed correspondence, data requests and responses, briefs, and comments on the proposed decision.

Such duties are above the clerical level but would not be paid as high as an expert witness. The \$75 rate is reasonable for his services.

SOS's economic consultant, Mr. Hurdle is described as having received a Ph.D. in Economics in 1975. He has been employed as an economic consultant involved in proceedings before the Federal Energy Regulatory Commission, the Federal Trade Commission and various state regulatory bodies.

Expert witness fees approved by the Commission for 1995 and 1996 have varied primarily between \$75 and \$135. The amount paid is dependent upon the qualifications of the witness as well as the task performed. In this case the task, which took 20 hours, was not overly complex and occurred between July and September of 1996. We will allow a rate of \$125.

As in our usual practice, we will allow half of the hourly rates for time spent traveling. The only travel time included in this request is 3 hours for Mr. Poole.

6. Award

We award SOS \$56,874.71, calculated as follows:

Attorneys' Fees

Edward G. Poole	181.50 hours at \$185.00	\$33,577.50
Fee Request Preparation And Travel	13.00 hours at \$185.00 x 0.5	1,202.50

Attorney's Costs

Travel/Transportation	\$ 354.10	
Photocopying	\$1,128.46	
Postage	\$ 251.35	
Telephone charges	\$ 560.17	
Messenger charges	\$ 69.68	
Facsimile charges	\$ 598.50	
Overnight mail charges	\$ 72.50	
Copies of CPUC decisions	\$ 88.96	
Total Attorney's Costs		\$ 3,123.72

Project Coordinator's Participation

Fabian Nunez	197.5 hours at \$75.00	\$ 14,812.50
Expenses (travel and auto rental)		\$ 1,435.51

Economic Consultant Fees

James Hurdle	20 hours at \$125.00	\$ 2,500.00
Expenses		\$ 2,182.15

Subtotal	\$ 58,833.88
Less 3-1/3% for duplication	\$ 1,959.17
TOTAL	\$ 56,874.71

We will assess responsibility for payment to SoCalGas since SOS did no significant work regarding SDG&E.

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 December 24, 1997 (the 75th day after October 9, 1997) and continuing until the utility makes full payment of the award.

As in all intervenor compensation decisions, we put SOS on notice that the Commission's Energy Division may audit SOS's records related to this award. Thus,

SOS must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. SOS'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. SOS was found eligible to request compensation in this proceeding by ALJ ruling dated July 1, 1996.

2. SOS has satisfied our requirements for financial hardship.

3. SOS's request for compensation for its contribution to D.97-04-082 will be treated as timely, and as if filed on October 9, 1997.

4. No responses to this filing were received.

5. SOS contributed substantially to D.97-04-082.

6. The hourly rates approved herein are no greater than the market rates for individuals with comparable qualifications.

7. Time spent for traveling, and preparation of the request for compensation (attorney only) will be reimbursed at half of the full hourly rate.

8. The miscellaneous costs incurred by SOS are reasonable.

9. A 3-1/3% reduction overall for duplication is reasonable.

10. On June 4, 1997, TURN and the City of Long Beach filed for rehearing of D.97-04-082.

11. In Ordering Paragraph 2 of D.97-10-026 we decided that Rule of Practice and Procedure 76.72 shall be read to allow an intervenor to file a request for compensation after a final order or decision has been made in a case on which the intervenor believes it has made a substantial contribution, regardless of the pendency of an application for rehearing.

Conclusions of Law

1. SOS has fulfilled the requirements of Sections 1801-1812 which govern awards of intervenor compensation.
2. SOS should be awarded \$56,874.71 for its contribution to D.97-04-082.
3. This order should be effective today so that SOS may be compensated without unnecessary delay.

O R D E R

IT IS ORDERED that:

1. The Save Our Services Coalition (SOS) is awarded \$56,874.71 in compensation for its substantial contribution to Decision 97-04-082.
2. Southern California Gas Company (SoCalGas) shall pay SOS \$56,874.71 within 30 days of the effective date of this order. SoCalGas shall also pay interest at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release G.13, beginning December 24, 1997 and continuing until full payment is made.

This order is effective today.

Dated February 4, 1998, at San Francisco, California.

RICHARD A. BILAS
President
P. GREGORY CONLON
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioners