

Decision 98-05-013 May 7, 1998

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the matter of the application of Southern California Gas Company for Authority to Close its Branch Offices Located in Fullerton and Irvine, California.

(U 904 G)



Application 96-06-053  
(Filed June 27, 1996)

**O P I N I O N**

This decision awards The Save Our Services Coalition (SOS) \$6,205.85 in compensation, from its requested \$7,835.85 costs of participation in this proceeding, for its substantial to Decision (D.) 97-04-031.

**1. Background**

Southern California Gas Company (SCG) filed the instant application to close its Fullerton and Irvine branch offices. The Commission's Office of Ratepayer Advocates (ORA) and SOS filed protests to the application. The Utility Reform Network (TURN) entered an appearance at a prehearing conference and was recognized as a party. An evidentiary hearing was held, at which SCG and ORA presented witnesses. No other party participated. ORA and SCG filed opening and reply briefs, and comments were filed by them as well as TURN.

Early in the proceeding, SOS and SCG entered into a settlement. In the settlement, SCG agreed, in brief, to:

1. grant brief payment extensions beyond the extensions that it would otherwise have granted to customers who state they need some additional time to be able to submit payments of overdue bills because of closure of the subject offices.

2. conduct an analysis of the residences of customers who used the subject offices to determine whether the alternative payment agencies are at least as convenient on average.
3. develop and implement a program for quality assurance for the alternative payment agencies.

SOS agreed to move to withdraw its protest of the application and its request for hearing. SCG and SOS summarized their settlement in the Motion to Withdraw, stating that the three actions SCG agreed to take were within its management discretion and therefore did not require Commission authorization. On September 13, 1996, the Administrative Law Judge noted SOS's request to withdraw, stated that, by withdrawal, SOS waives its rights as a party, and removed SOS from the service list of the proceeding.

## **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 information regarding the nature and extent of compensation and may request a finding of eligibility. Eligible intervenors are customers for whom participation presents a significant financial hardship.

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 on 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**

As noted in the Administrative Law Judge's (ALJ) Ruling Pursuant to Rule 76.71, SOS timely filed its NOI after the first prehearing conference. The ALJ found SOS is a customer and that it must demonstrate significant financial hardship.<sup>1</sup>

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

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<sup>1</sup> The ALJ found SOS to qualify "as a 'customer' as a 'group or organization authorized pursuant to its articles of incorporation or bylaws to represent the interests of residential customers' pursuant to PU Code Section 1802(b)." While we agree that SOS qualifies as a customer, we do not find that they qualify as a formal group authorized pursuant to articles or bylaws to represent residential customers. SOS made no such assertion and provided no documentation in its Notice of Intent or in its Request.

the individual members of that group or organization is small in comparison to the costs of effective participation in the proceeding."

SOS represents that it is a not-for-profit corporation authorized to speak on behalf of a coalition of agencies in the Los Angeles Metropolitan Area that represent low income, elderly, and minority ratepayers in SCG's territory and workers employed by SCG. SOS's member agencies are:

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

Therefore, we find that SOS qualifies as a customer because it has been authorized by groups of customers to represent their interests. As established in D.86-05-007, the appropriate standard for determining the significant financial hardship of such a group is the "comparison test;" that is, the economic interest of the group or organization is small in comparison to the costs of effective participation.

#### **4. Request for Compensation**

SOS represents that the economic interests at stake for individual members in this proceeding were the increased cost and expense of travelling to other branch offices in the Orange County area as opposed to being able to use safe and convenient Authorized Payment Agencies. Given the costs of public transportation or the costs associated with use of a personal vehicle to travel the SCG-estimated 11.6 miles to the next closest branch office or payment agency, SOS submits that the economic interest at stake for one individual is in the range of \$1.70 to \$4.00 per trip. It further argues that the cost of effective participation

is \$7,835.85. It states that, based on the number of customers who used the branch offices (213,746), the cost of participation per customer is \$0.037.<sup>2</sup>

On the face of its own pleading, SOS fails to demonstrate that participation presents a significant financial hardship. Using SOS's figures, its members have an economic interest in participating since by spending three cents they can save \$1.67 to \$3.97. But SOS, in comparing the economic interest at stake for a member with that member's share of the total costs of participation, has misapplied the group financial hardship standard. It is appropriate to look at the economic interest of the individual members, but that must be compared with the *total* cost of effective participation, not just that member's *share*. When evaluating the financial hardship of residential ratepayer groups, the Commission has applied the standard by assessing the individual member's economic interest with the total costs of participation and sometimes concludes that it would not be cost effective for an individual residential ratepayer to bear the costs "separately on their own behalf." (See, e.g., D.85-06-028, *mimeo.* at 3.)

Two additional issues raised by SOS's effort to demonstrate significant financial hardship are worth stating. First, we believe SOS may have understated the economic interest of some of its members. Its utility employee members may have had an economic interest in preserving the utility jobs associated with the branch office closures SOS protested. Further, although not stated, SOS appears to assume that, on average, its members would make only one trip to the next closest branch office or payment agency in a given year, and that the additional

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<sup>2</sup> In its Request, SOS states that the cost of participation per customer ( $\$7,835.85/213,746$ ) is \$0.37, which appears to be a typographical error of shifting the decimal point.

time spent in traveling the further distance comes at no cost to the member. These assumptions may understate the economic interest at stake.

Second, SOS places the cost of participation at \$7,835.85. But approximately \$1,630 of SOS's costs were incurred after it withdrew its protest and was no longer a party to the proceeding. Therefore, these were not costs of participation in a Commission proceeding and should not be included in assessing significant financial hardship.

Given the ultimate outcome of the proceeding, where SCG branch offices were closed and utility jobs not necessarily preserved as a result of the SCG and SOS settlement, we believe any understatement of SOS's economic interest is insignificant. We therefore compare the \$1.70 to \$4.00 economic interest to the \$6,205.85 cost of effective participation and conclude that SOS has demonstrated that participation without an award of fees or costs imposes a significant financial hardship.

#### **4.1. Substantial Contribution**

SOS submits that the settlement it entered into with SCG substantially assisted the Commission in the making of D.97-04-031 in that the settlement represented specific policy and procedural recommendations that were adopted by the Commission.

We agree with SOS that D.97-04-031 "closely reflected SOS's ultimate position in this proceeding" as stated in the settlement it made with SCG. However, this "reflection" is not the direct result of any presentation by SOS that substantially assisted the Commission. Our decision considered the applicable standard, the positions of SCG and ORA regarding the adequacy of the alternatives and the notice of the closures, whether the withdrawal of the branch offices was from rural communities, whether the closures were based on rational decisionmaking, and whether the closures had a disproportionate effect on

certain customers. The settlement addressed the adequacy of the alternatives, the issue the Commission identified as "the crucial one." After considering these issues, we made certain findings and conclusions.

The SOS and SCG settlement was not discussed in our decision, nor were the specific actions SCG agreed to take. However, in its testimony and briefs, SCG relies on the additional steps it agreed to in the settlement as part of its supporting argument on the adequacy of the alternatives to the branch offices.<sup>3</sup> Although SOS's contribution to our decision was indirect, it was substantial. Had SOS continued to participate in the proceeding and filed a brief, its contribution may have been more direct, but at additional, and largely unnecessary, expense. The fact that SOS limited its participation to an alternative dispute resolution procedure and thereby reduced its costs of participation should not compromise its ability to obtain compensation for its reasonable fees and costs.

#### **4.2. Hours Claimed**

SOS requests compensation for 33 attorney hours (six of which were spent preparing the compensation request) and 23.25 hours of project coordinator's time. The hours claimed are reasonable, except for the time requested after SOS was no longer a party to the proceeding.

#### **4.3. Hourly Rates**

The hourly rates requested for attorney Edward G. Poole, \$185, and for project coordinator Fabian Nunez, \$75, are the same rates approved by the

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<sup>3</sup> The program of quality assurance for APAs, one of the SCG/SOS commitments, is mentioned in SCG's Opening Brief, p. 8, with reference to Witness Byrd's Exhibit 1.

Commission in D.98-02-012 for similar services.<sup>4</sup> It is reasonable to apply those rates here.

**4.4. Other Expenses**

SOS requests a total of \$557.10 in miscellaneous expenses for copying, postage, travel, overnight mail, and the like. To the extent these costs were incurred while SOS was a party to the proceeding, we find them reasonable.

**5. Award**

SOS should be awarded \$6,205.85 of its requested \$7,835.85 costs of participation for its substantial contribution to this proceeding. SCG is the utility which is the subject of the proceeding and shall therefore be directed to pay the award.

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 September 10, 1997 (the 75<sup>th</sup> day after June 27, 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.

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<sup>4</sup>The hourly rate requested for the 6 hours spent by the attorney in preparing the Request for Compensation was \$90.00.



### **Findings of Fact**

1. Save Our Services Coalition has made a timely request for compensation for its participation in this proceeding, which was resolved in D.97-04-031.
2. SOS qualifies as a customer because it has been authorized by groups of customers to represent their interests.
3. SOS has demonstrated that the economic interest of the individual members of the group is small in comparison to the costs of effective participation.
4. Although SOS's contribution to our decision was indirect, it was substantial.
5. The hours claimed are reasonable, except for the time requested after SOS was no longer a party to the proceeding.
6. The hourly rates requested for attorney Edward G. Poole, \$185, and for project coordinator Fabian Nunez, \$75, are the same rates approved by the Commission in D.98-02-012 for similar services. It is reasonable to apply those rates here.
7. To the extent the miscellaneous costs incurred by SOS were incurred while SOS was a party to the proceeding, we find them reasonable.

### **Conclusions of Law**

1. SOS has demonstrated that participation in this proceeding without an award of fees or costs imposes a significant financial hardship, as defined in Section 1802(g) and required in Section 1803 of the PU Code governing awards of intervenor compensation.
2. SOS's Request for Compensation should be granted, in part.
3. As of September 13, 1996, SOS was no longer a party to the proceeding.
4. SOS should be awarded \$6,205.85 of its requested \$7,835.85 costs of participation for its substantial contribution to this proceeding.

5. SCG is the utility which is the subject of the proceeding and should therefore be directed to pay the award.

6. This order should be effective today to avoid further delay in resolving this matter.

**O R D E R**

**IT IS ORDERED that:**

1. The Save Our Services Coalition is awarded \$6,205.85 of its requested \$7,835.85 costs of participation for its substantial contribution to D.97-04-031.

2. Southern California Gas Company (SCG) shall pay SOS \$6,205.85 within 30 days of the effective date of this order. SCG shall also pay interest at the rate earned on prime, three-month commercial paper, as reported in the Federal Reserve Statistical Release G.13, beginning September 10, 1997 and continuing until full payment is made.

3. This proceeding is closed.

This order is effective today.

Dated May 7, 1998, at San Francisco, California.

RICHARD A. BILAS  
President  
P. GREGORY CONLON  
HENRY M. DUQUE  
JOSIAH L. NEEPER  
Commissioners

Commissioner Jessie J. Knight, Jr.,  
being necessarily absent, did not  
participate.