

Decision 00-04-059 April 20, 2000

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Rulemaking on the Commission's Own Motion to Solicit Comments and Proposals on Distributed Generation and Competition in Electric Distribution Service.

Rulemaking 98-12-015
(Filed December 17, 1998)

OPINION REGARDING THE APPEAL AND PROTEST OF SOLAR DEVELOPMENT COOPERATIVE TO THE ADMINISTRATIVE LAW JUDGE'S RULING OF OCTOBER 13, 1999

I. Summary

This decision affirms the October 13, 1999 ruling of the assigned Administrative Law Judge (ALJ). In that ruling, Solar Development Cooperative (SDC) and Eileen Smith were ruled ineligible to claim intervenor compensation in this proceeding because neither one qualified as a "customer" in accordance with Public Utilities Code § 1802(b).¹

II. Background

SDC filed a motion with the Commission on May 18, 1999 seeking permission to late-file its notice of intent (NOI) to claim intervenor compensation in accordance with § 1801 and following. SDC's motion was granted in the July 1, 1999 ALJ ruling. That ruling also directed SDC or its President, Smith, to file an amended NOI. The original NOI that was attached to SDC's motion failed to describe the customer category that applied to SDC or Smith, and did not

¹ All code section references are to the Public Utilities Code.

explain how SDC or Smith met the § 1802(b) definition of a "customer" as required by Decision (D.) 98-04-059.

On July 20, 1999, SDC and Smith filed an amended NOI entitled "Solar Development Cooperative/Smith's Amended Motion Of Notice Of Intent To Claim Compensation."² In the October 13, 1999 ALJ ruling, it was ruled that SDC and Smith were ineligible to claim intervenor compensation because neither one of them qualified under the three categories of customer as set forth in § 1802(b).

On October 28, 1999, SDC filed its "Appeal and Protest of Administrative Law Judge's Ruling Dated October 13, 1999 Regarding Notice of Intent To Claim Compensation" (Appeal). In accordance with Rule 65 of the Commission's Rules of Practice and Procedure, the assigned ALJ referred SDC's Appeal to the Commission for action. (November 1, 1999 ALJ Ruling, pp. 2-3.) No one filed any response to SDC's Appeal.

The draft decision of the assigned ALJ was mailed to the parties in accordance with § 311(g) on February 23, 2000. No comments to the draft decision were filed.

III. Position of SDC

We note that SDC's Appeal contains many extraneous references and materials that do not pertain to the issue that confronts us.³ The sole issue before us is whether the October 13, 1999 ALJ ruling regarding the eligibility of SDC and Smith to claim intervenor compensation should be affirmed. Accordingly,

² The Commission's Docket Office struck the words "Motion Of" from the title of the amended NOI.

³ See pp. 6-7, 11, 17-18, 20-23, and appendices.

only those portions of the Appeal that directly address this issue are relevant to today's decision.

SDC states that in its amended NOI, SDC/Smith met all of the customer categories for the purposes of the intervenor compensation statutes, and that its Appeal contains more evidence to substantiate this. SDC seeks a determination as to whether a customer must have an electricity bill in the customer's name. SDC asserts that if one is required to have an electricity bill in one's name, such a requirement discriminates against those citizens who indirectly benefit from electricity but do not have an electricity bill. SDC contends that the:

"Evidence, statutes and related caselaw does not specifically indicate that an Intervenor must have an electricity bill in their name to be classified as a 'customer' whether representing its own interests or whether 'its position 'represents' the interests of customers."

SDC also asserts that there needs to be a clear set of rules about the intervenor compensation rules in a brochure with applicable case law. SDC contends that this will allow potential participants to decide whether to intervene, and whether they will qualify for intervenor compensation.

SDC also contends that "Smith represents SDC as an executive of this small solar energy company." (Appeal, p. 6.) In addition, SDC contends that SDC/Smith represents all consumers affected by the role of the UDCs in distributed generation, including residential ratepayers, small commercial, corporate clients, and utility distribution companies. In support of SDC's assertion that SDC/Smith represents residential ratepayers, two letters were attached to the Appeal. The letters are dated January 25, 1994 and February 24, 1997. SDC also asserts that Smith's resume, which was attached to the Appeal, "clearly illustrates the significant papers SDC/Smith has written as an

international advocate and representative for residential consumers...." (Appeal, p. 8.) SDC also cites to several other articles in which SDC contends that SDC/Smith were acting on behalf of residential customers. (See Appeal, pp. 8-10.)

SDC also asserts that it is a "for-profit cooperative" and that "Small business mission statements could be adequately compared to non-profit corporation by-laws." (Appeal, pp. 19-20.)

SDC's Appeal also states that:

"If Intervenor Compensation laws are not working, too vague or venerable [sic] to manipulation in interpretation, then they need to be referred to Committee and restructured to meet the goals and realities of the emerging competitive electric industry." (Appeal, p. 12.)

In addition, SDC questions the practice of paying intervenor compensation to non-profit organizations claiming hardship, when "they demand \$100 to \$350 an hour fees for expert testimony" and for legal fees. SDC also raises the issue of standardized compensation and an up-front payment to intervenors.

SDC also asserts that the basic costs of participation should be awarded even if an intervenor's input is not substantially reflected in a Commission decision, and that all citizens should be allowed to intervene in a Commission proceeding.

SDC also states at p. 2 of its Appeal that:

"The Commission alleges the issues we have raised are not the type of antitrust issues they address. Please clarify."

Furthermore, SDC states at pp. 18 to 22 that consumer education should include a discussion about distributed generation and self-generation technology as a choice in the competitive electricity market.

IV. Discussion

We first address SDC's contention that the customer must have an electricity bill in the customer's name. Section 1802(b) addresses this point. A customer is defined in this subdivision as follows:

" 'Customer' means any participant representing consumers, customers, or subscribers of any electrical ... corporation that is subject to the jurisdiction of the commission; any representative who has been authorized by a customer; or any representative of a group or organization authorized pursuant to its articles of incorporation or bylaws to represent the interests of residential customers, but does not include any state, federal, or local government agency, any publicly owned public utility, or any entity that, in the commission's opinion, was established or formed by a local government entity for the purpose of participating in a commission proceeding." (Pub. Util. Code § 1802(b).)

The term "customer," as described in this subdivision, has a two part meaning. The first meaning refers to the three categories of who can file an NOI to claim compensation. (D.98-04-059, p. 28.) The second meaning refers to a customer of the regulated utility. (*Id.* at pp. 28-29.) A customer of a regulated utility, means by definition, that the person or entity is served by the utility. This is made clear by § 1801 which states that the purpose of the intervenor compensation provisions "is to provide compensation ... to public utility customers...."

The Commission stated in D.98-04-059 at p. 20 that under the intervenor compensation statute:

"an intervenor is eligible for compensation when he is a customer, and his participation in a proceeding involving an electric, gas, water, or telephone utility presents a significant financial hardship. To determine eligibility, two questions must

be addressed: Is the intervenor a 'customer?' Will participation present a significant financial hardship?" (Emphasis added.)

It is clear, based on both the clear language of the statutes, and the Commission's interpretation of those statutes, that in order to be eligible for an award of intervenor compensation, a "participant representing consumers" in a Commission proceeding must be an "actual customer" of the utility. If one is acting as a "representative authorized by a customer," that means one or more customers of the utility has to authorize the representative to represent the customers' views in a proceeding. If the entity seeking intervenor compensation is a "representative of a group or organization," then that group or organization must have articles of incorporation or bylaws which authorize it to represent the views of residential customers. (D.98-04-059, p. 28.) Thus, an intervenor must meet one of the above statutory requirements. The existence of an electricity bill in the intervenor's name is one way an intervenor can show it meets the statutory definition as an actual customer. As discussed below, despite ample opportunity, SDC has failed to make a proper showing.

SDC and Smith had two opportunities to explain how they met the definition of a customer. Those opportunities arose in the original NOI and the amended NOI. Both of those NOIs failed to adequately address how SDC or Smith met the definition of a customer, as pointed out in the ALJ rulings of July 1, 1999 and October 13, 1999.

In the July 1, 1999 ruling, the ALJ wrote:

"It is unclear from a reading of the NOI as to who the customer is for the purposes of the intervenor compensation statutes, i.e., whether Smith consider herself to be the customer, or whether SDC qualifies as the customer. Although there are several reference to 'we,' 'our,' and 'she' in the NOI, there are also references to the 'party,' the 'respondent,' and 'SDC.' The NOI

also fails to describe the customer category that SDC or Smith falls within. That is, the NOI fails to describe whether the intervenor is a 'participant representing consumers,' a 'representative who has been authorized by a customer,' or a 'representative of a group or organization authorized pursuant to its articles of incorporation or bylaws to represent the interests of residential customers.' The NOI of SDC/Smith also fails to explain how Smith or her company meets the definition of a customer under § 1802(b) as required by D.98-04-059."

Although SDC and Smith were given the opportunity to file an amended NOI to provide the details of who "is seeking intervenor compensation status, the customer category that SDC or Smith falls within, and how SDC or Smith meets the definition of a customer,"⁴ SDC and Smith failed to provide that information in the amended NOI. SDC/Smith did not qualify as a "participant representing consumers" because neither SDC or Smith was an actual customer of the utility. SDC/Smith admitted in their amended NOI that "SDC/SMITH does not have an electric bill in their individual or business name." (October 13, 1999 ALJ Ruling, p. 9.)

SDC and Smith did not qualify under the second category of customer because no utility customer authorized SDC or Smith to be the customer's representative. (*Id.*) Although SDC contends in its Appeal that the two letters attached to the Appeal demonstrate that SDC/Smith were authorized to represent residential customers, those two letters were not attached to the amended NOI. Furthermore, both of those letters were dated well before the initiation of this rulemaking on December 17, 1998. In addition, there is nothing

⁴ July 1, 1999 ALJ Ruling, p. 16...

in those two letters to suggest that SDC or Smith were authorized to represent the interests of those two letter writers in this rulemaking.

SDC and Smith also failed to qualify as a "representative of a group or organization authorized pursuant to its articles of incorporation or bylaws to represent the interests of residential customers." Although SDC contends that its business mission statement should be accepted as evidence of SDC's representation of the interests of residential customers, SDC admitted in its amended NOI that "we do not have an official set of bylaws as we are not at this time incorporated." In addition, SDC's mission statement did not contain any statement that it represents the interests of residential customers. (October 13, 1999 ALJ Ruling, pp. 9-10.) As noted in footnote 14 of D.98-04-059, intervenor compensation is to be "proffered only to customers whose participation arises directly from their interests as customers." As a "for-profit cooperative" whose mission statement does not refer to the representation of the interests of residential customers, SDC/Smith fail to qualify for intervenor compensation under this third form of "customer."

As for SDC's argument that the Commission should have a brochure with applicable case law to guide potential intervenors regarding their eligibility for intervenor compensation, we note that SDC and Smith were made aware in the July 1, 1999 ALJ Ruling of what requirements SDC and Smith had to meet in order to qualify for intervenor compensation.

SDC suggests that if the intervenor compensation statutes are not working or too vague, that the statutes should be referred "to Committee and restructured," and that the costs of participation should be awarded even if the intervenor's input is not reflected in the Commission's decision. SDC is in essence, recommending that the existing intervenor compensation statutes be clarified or revised. As discussed above, the plain language of the statutes

require that a person or entity requesting intervenor compensation must fall within one of the three categories of customers. If SDC seeks to alter or revise the definition of who should be considered a customer, SDC should pursue legislative means to amend the intervenor compensation statutes. As for SDC's contention that the basic costs of participation should be compensated to all citizens who intervene, even if the intervenor does not prevail, that is an issue that requires legislative change to what is meant by the term "substantial contribution" in § 1802(h).

SDC also questions the amount of intervenor compensation requested by non-profit organizations for expert testimony and for legal fees. The Appeal of the ALJ ruling pertaining to SDC/Smith is not the proper place to raise this kind of issue. If SDC or Smith or any other party dispute a request for an award of intervenor compensation, that party has a right under § 1804(c) to file a response to the request for an award of intervenor compensation.⁵

SDC also raises the issue of standardized compensation and up-front payments to an intervenor. In addition, SDC seeks to clarify what kinds of antitrust issues can be raised, and that customers should be educated about distributed generation or self-generation technologies.⁶ However, none of those issues are germane to the ALJ's October 13, 1999 ruling. The sole issue before us is whether the ruling correctly determined that SDC and Smith were ineligible to claim intervenor compensation in this proceeding.

⁵ Alternatively, if the issue of compensation is raised in the notice of intent, a party may file a statement responding to the NOI. (Pub. Util. Code § 1804(a)(2)(C).)

⁶ SDC's assertions regarding antitrust and consumer education issues are not at issue in this decision. Instead, those two issues relate to what the Commission adopted in D.99-10-065 at pp. 99 to 102. (See November 1, 1999 ALJ Ruling, p. 3.)

For all of the reasons stated in the above discussion, and for the reasons set forth in the ALJ ruling of October 13, 1999, we affirm the ALJ's ruling that SDC and Smith are ineligible to claim intervenor compensation in this proceeding. SDC's appeal and protest of this ALJ ruling is denied.

Findings of Fact

1. SDC filed a motion with the Commission on May 18, 1999 seeking permission to late-file its NOI.
2. SDC's motion of May 18, 1999 was granted in the ALJ ruling of July 1, 1999.
3. The July 1, 1999 ruling directed SDC or Smith to file an amended NOI because the original NOI failed to describe the customer category that applied to SDC/Smith, and did not explain how SDC or Smith met the definition of a customer.
4. SDC/Smith filed an amended NOI on July 20, 1999.
5. The October 13, 1999 ALJ ruling determined that SDC and Smith were ineligible to claim intervenor compensation because neither one of them qualified under the three categories of customer as set forth in § 1802(b).
6. SDC filed its appeal and protest to the October 13, 1999 ALJ ruling on October 28, 1999.
7. SDC's appeal was referred to the Commission for action on November 1, 1999.
8. Section 1801 states that the purpose of the intervenor compensation statutes is to provide compensation to public utility customers.
9. In determining eligibility for intervenor compensation, one of the questions to be addressed is whether the intervenor is a customer.

10. SDC and Smith had two opportunities to explain how they met the definition of a customer.

11. SDC and Smith failed to adequately address how they met the definition of a customer in both the original NOI and in the amended NOI.

12. Intervenor compensation is to be proffered only to customers whose participation arises directly from their interests as customers.

13. SDC and Smith were made aware of what requirements they had to meet in order to qualify for intervenor compensation.

14. Alteration of a statute requires legislative action.

Conclusions of Law

1. The sole issue before us is whether the October 13, 1999 ALJ ruling regarding the eligibility of SDC and Smith to claim intervenor compensation should be affirmed.

2. The term "customer," as described in § 1802(b), has a two-part meaning.

3. A customer of a regulated utility, means by definition, that the person or entity is served by the utility.

4. A "participant representing consumers" must be an actual customer of the utility.

5. A "representative authorized by a customer" must be authorized by one or more customers of the utility to represent their interests in the proceeding.

6. A "representative of a group or organization" must have articles of incorporation or bylaws which authorize it to represent the views of residential customers.

7. The ALJ ruling should be affirmed, and SDC's appeal and protest of the ruling should be denied.

O R D E R

IT IS ORDERED that:

1. The "Appeal and Protest Of Administrative Law Judge's Ruling Dated October 13, 1999 Regarding Notice of Intent To Claim Compensation," which was filed by Solar Development Cooperative (SDC) on October 28, 1999, is denied.

2. The October 13, 1999 Administrative Law Judge's ruling that SDC and Eileen M. Smith were ineligible to claim compensation in this proceeding is affirmed.

3. This proceeding is closed.

This order is effective today.

Dated April 20, 2000, at San Francisco, California.

LORETTA M. LYNCH

President

HENRY M. DUQUE

JOSIAH L. NEEPER

RICHARD A. BILAS

CARL W. WOOD

Commissioners