

Decision 99-10-003 October 7, 1999

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation into the operations and practices of the San Diego Gas and Electric Company in connection with its compliance with requirements to maintain proper clearance between power lines and vegetation.

Investigation 98-04-010
(Filed April 9, 1998)

OPINION

This decision grants William Adams (Adams) an award of \$3,031.20 in compensation for his contribution to Decision (D.) 98-12-025.

1. Background

The Commission initiated Investigation (I.) 98-04-010 to determine whether San Diego Gas & Electric Company (SDG&E) violated General Order 95 and other Commission orders regarding tree trimming. Specifically, I.98-04-010 focused on whether SDG&E had (1) complied with the tree trimming rules adopted in D.97-01-044; (2) provided the Commission accurate information on its tree trimming program; (3) caused several fires by its tree trimming practices; or (4) otherwise violated Commission rules regarding tree trimming.

The investigation concluded in a Settlement Agreement (Settlement) between SDG&E and Consumer Services Division (CSD) adopted by the Commission in D.98-12-025. Attached to the Settlement is a statement "In

Support of the Settlement" signed by William Adams¹. Under the terms of the Settlement, SDG&E agrees to pay the Commission a \$1,000,000 penalty, to reimburse the California Department of Forestry for the cost of fighting the fires, and to spend \$200,000 on an advertising campaign to educate consumers on the importance of keeping foliage away from power lines. The Settlement also states that CSD reviewed SDG&E's tree trimming program and found it adequate to comply with applicable Commission regulations, so long as SDG&E consistently and fully implements it.

2. Requirements for Awards of Compensation

Intervenors who seek compensation for their contributions in Commission proceedings must file requests for compensation pursuant to Pub. Util. Code §§ 1801-1812. (All statutory citations are to the Pub. Util. Code.) 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.

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

¹ Although the Settlement has attached to it Adams' statement in support of the Settlement, Adams does not appear to be a party to the Settlement. The first paragraph of the Settlement explicitly identifies CSD and SDG&E as the only parties to the Settlement.

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 that 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

Adams timely filed his NOI after the first prehearing conference. In a Ruling dated August 12, 1998, Administrative Law Judge (ALJ) Malcolm found Adams eligible to receive compensation but made no finding as to whether Adams' participation would cause him financial hardship. In a ruling under I.98-09-007, dated November 12, 1998, ALJ McVicar found that Adams had demonstrated significant financial hardship. Section 1804(b)(1) provides that a ruling finding financial hardship creates a rebuttable presumption of hardship in other Commission proceedings commencing within one year of the date of that finding. Since this proceeding started within one year of ALJ McVicar's finding, Adams is entitled to a presumption of financial hardship. No one has protested Adams' claim that his financial situation is unchanged. We find that Adams' participation in this proceeding would result in significant financial hardship were he not to receive compensation. We therefore conclude that Adams is eligible to receive intervenor compensation.

4. Contributions to Resolution of Issues

Adams' participation in the settlement negotiations focused on one major concern, SDG&E's handling of customer refusals to trim foliage away from power lines (customer refusals). Adams contends that SDG&E responded inadequately to customer refusals, and thus allowed dangerous conditions to persist. Adams' request for compensation states: "In this proceeding it is in essence my one concern: refusals and how they are filed and followed to resolution to finally getting the tree trimmed."

It is difficult to determine the degree to which Adams contributed to the Settlement since nowhere in the Settlement is the issue of customer refusals mentioned. Instead of relying upon language in the Settlement to show substantial contribution, Adams explicitly cites his own statement submitted in support of the settlement to justify substantial contribution. As a general matter, a substantial contribution is not demonstrated when an intervenor cites its own pleading as evidence of a substantial contribution. Instead, an intervenor's request should point to language in a Commission decision or settlement that demonstrates that the intervenor has made a substantial contribution.

However, D.98-12-025 does refer to customer refusals when it notes that Adams and CSD are satisfied with SDG&E's procedures for dealing with homeowners who refuse to allow SDG&E to trim their trees. Adams may have brought the issue of customer refusals to the attention of CSD, such that they included it in their investigation. However, both the decision and Settlement appear to indicate that existing protocols, if followed, are satisfactory for dealing with homeowners who refuse to permit SDG&E to trim their trees. In particular, the Settlement states that: "...CSD has investigated SDG&E's Vegetation Management Program and, based on that review, believes that SDG&E has developed a Vegetation Management Program that, if properly maintained and

consistently implemented, should allow it to fully comply with the Commission's rules and orders..." Adams' contribution, if any, to this program is unclear from Adams' request. There is no affirmative representation from Adams that he contributed to the program's development.

Additionally, Adams' and CSD's review may have overlapped. Since CSD was in the process of investigating all of SDG&E's violations of the Commission's tree trimming rules, including those SDG&E claimed were caused by customer refusals, Adams' role appears to duplicate CSD's efforts.

On the other hand, in D.98-12-025 the Commission discusses recent changes in SDG&E's tree-trimming program, including managing its own database rather than contracting that task out, as well as expanding the types of information that the database will track. Adams' concern that SDG&E did not have the ability to adequately follow-up on customer refusals may have contributed to SDG&E's decision to make improvements in its ability to monitor its tree-trimming program.

Adams' request also contends he made a substantial contribution with respect to Rule 35. However, neither the Settlement nor D.98-12-025 note any problem with SDG&E's interpretation of Rule 35. The Settlement recites CSD's contention that SDG&E was in violation of Rule 35 in 14 instances. However, CSD found that SDG&E's tree-trimming program, if followed, was compliant with Commission rules. To the extent that Adams was concerned with Rule 35 violations, we find his participation duplicative of the extensive investigation undertaken by CSD.

In D.98-04-059 the Commission comprehensively explained the intervenor compensation program. It explicitly acknowledged the difficulty of determining whether parties have contributed substantially to a settlement, noting the absence of a "paper trail" detailing the roles played by each party. As such, the

Commission in D.98-04-059 stated that a participant in proceedings which conclude in a settlement need not support the outcome to be eligible to receive compensation.

On the other hand, mere presence at settlement negotiations does not equate to a substantial contribution. The Commission must exercise judgment to determine whether a party substantially contributed to the agreement.

In the present case, we conclude that Adams made a substantial contribution to the proceeding by focusing on SDG&E's handling of customer refusals and providing additional motivation to SDG&E to diligently and effectively respond to those refusals. However, given the scope of the CSD investigation into SDG&E's program, which included examining SDG&E's claim that customer refusals were the cause of violations cited by CSD, we find the concerns Adams raised to be duplicative of the focus maintained throughout the proceeding by CSD.

5. The Reasonableness of Requested Compensation

Adams requests compensation in the amount of \$7,403.08 as follows:

Hourly Compensation

Attendance at conferences, meetings	7.6 hrs @ \$100	\$ 760
Preparation, review of documents	48.9 hrs @ \$100	\$4,890
Preparation of Request for Compensation	10.5 hrs @ \$50	\$ 525
Travel time	16.4 hrs @ \$50	<u>\$ 820</u>
Total hourly compensation		\$6,995

Other Costs

Mileage expenses	\$ 125.40
Taxi	\$ 14
Parking and Tolls	\$ 44.68
Airfare	\$ 94
Phone, Fax, and Copy	<u>\$ 130</u>
Total Costs	\$ 408.08

Total Request **\$7,403.08**

5.1. Hours Claimed

Adams documented the claimed hours by presenting daily breakdowns with a brief description of each activity. This proceeding, curtailed by a settlement, was limited in scope. The hourly breakdown presented by Adams corresponds to that scope. However, in light of the whole record, we reduce Adams' requested professional hours by 50% to account for (1) duplication of CSD's investigation, and (2) Adams' lack of explicit citations to D.98-12-025 or the Settlement in support of his claim of substantial contribution.

5.2. Hourly Rates

Adams requests a compensation rate of \$100 per hour. Earlier this year in D.99-08-017, the Commission found that Adams' experience warranted compensation at no more than \$75 per hour. As Adams has presented no evidence to refute the reasoning of that finding, we adhere to the compensation rate adopted in D.99-08-017. Adams' travel time should likewise be reduced to \$37.50 per hour.

5.3. Other Costs

Adams requests \$408.08 for other costs (e.g., mileage, copying, postage, and telephone). Adams failed to itemize the number of phone calls, mailings, and total number of pages he was required to copy to the seven addresses on the service list in this proceeding. Given that Adams filed and served only three documents on seven parties, his expenses of \$130 seem reasonable. In any future requests for compensation, however, Adams should itemize his phone calls, mailing, and copy charges so that the Commission can better evaluate their reasonableness and so that Adams can be assured that he receives adequate compensation for his expenditures.

6. Award

We award Adams \$3,031.20 as calculated below:

Hourly Compensation

Attendance at conferences, meetings	7.6 hrs @ \$ 75	\$ 570.00
Preparation, review of documents	48.9 hrs @ \$ 75	\$3,667.50
Preparation of Request for Compensation	10.5 hrs @ \$37.50	\$ 393.75
Travel time	16.4 hrs @ \$37.50	\$ <u>615.00</u>
Total hourly compensation		\$5,246.25
	÷ 50	\$2,623.12

Other Costs

Mileage expenses	\$ 125.40
Taxi	\$ 14.00
Parking and Tolls	\$ 44.68
Airfare	\$ 94.00
Phone, Fax, and Copy	\$ <u>130.00</u>
Total Costs	\$ 408.08

Total award: \$3,031.20

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 April 18, 1999, (the 75th day after Adams filed his compensation request) and continuing until the utility makes its full payment of award.

As in all intervenor compensation decisions, we put Adams on notice that the Energy Division may audit Adams' records related to this award. Thus, Adams must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. Adams' records should identify specific issues for which he requests compensation, the actual time spent by him, the applicable hourly rate, and any other costs for which compensation may be claimed.

7. Comments on Draft Decision

The draft decision of ALJ DeUlloa in this matter was mailed to the parties in accordance with § 311(g) and Rule 77.1 of the Rules of Practice and Procedure. No comments were received.

Findings of Fact

1. Adams has made a timely request for compensation for its contribution to D.98-12-025.
2. Adams has made a showing of significant financial hardship by demonstrating that in absence of compensation, the costs of participating in this proceeding would cause him significant undue hardship.
3. Adams contributed substantially to D.98-12-025.
4. Adams has requested an hourly rate for himself as an expert that exceeds the market rates for individuals with comparable training and experience. A market rate of \$75 per hour is a reasonable rate for a person with Adams expertise, experience, and training.
5. The miscellaneous costs incurred by Adams are reasonable.
6. Adams' participation in D.98-12-025 duplicated the work of Consumer Services Division.

Conclusions of Law

1. Adams has fulfilled the requirements of Sections 1801-1812 which govern awards of intervenor compensation.
2. Adams should be awarded \$3,031.20 for his contribution to D.98-12-025.
3. This order should be effective today so that Adams may be compensated without unnecessary delay.

O R D E R

IT IS ORDERED that:

1. William Adams (Adams) is awarded \$3,031.20 in compensation for his substantial contribution to Decision 98-12-025.
2. San Diego Gas & Electric Company (SDG&E) shall pay Adams \$3,031.20 within 30 days of the effective date of this order. SDG&E 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 April 18, 1999, and continuing until full payment is made.
3. Investigation 98-04-010 is closed.

This order is effective today.

Dated October 7, 1999, at Los Angeles, California.

RICHARD A. BILAS
President
HENRY M. DUQUE
JOSIAH L. NEEPER
JOEL Z. HYATT
CARL W. WOOD
Commissioners