

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

_____)
Order Instituting Rulemaking on the Commission's)
Own Motion to Adopt New Safety and Reliability)
Regulations for Natural Gas Transmission and)
Distribution Pipelines and Related Ratemaking)
Mechanisms.)
_____)

R.11-02-019
(Filed February 24, 2011)

**RESPONSE OF SOUTHERN CALIFORNIA GAS COMPANY (U 904 G), SAN DIEGO
GAS & ELECTRIC COMPANY (U 902 M), AND SOUTHERN CALIFORNIA EDISON
COMPANY (U 338 M) TO JOINT MOTION OF THE BLACK ECONOMIC COUNCIL,
LATINO BUSINESS CHAMBER OF GREATER LOS ANGELES, AND THE
NATIONAL ASIAN AMERICAN COALITION TO CREATE A RATEPAYER
CONFIDENCE FUND**

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Pursuant to Rule 11.1(e) of the Rules of Practice and Procedure of the California Public Utilities Commission (the Commission), Southern California Gas Company (SoCalGas), San Diego Gas & Electric Company (SDG&E), and Southern California Edison Company (SCE)¹ submit the following Response to the Motion of the Black Economic Council, Latino Business Chamber of Greater Los Angeles and the National Asian American Coalition (collectively, the Moving Parties) to Create a Ratepayer Confidence Fund (Joint Motion), filed October 4, 2011.

¹ In accordance with Rule 1.8(d), counsel for SoCalGas/SDG&E has been authorized by SCE to file this Response on its behalf.

I. Introduction And Summary.

In the Joint Motion, the Moving Parties “move that a Ratepayer Confidence Fund of up to one million dollars be set aside and administered by the CPUC to allow parties to apply for funds to hire experts to compliment, supplement and/or disagree with the experts hired by the limited number of parties herein, who are participating in the technical aspects of this case.”² The Moving Parties do not offer any legal basis for this request. Nor do the Moving Parties provide any recommendations for how the California Public Utilities Commission (Commission) could “set aside” this one million dollar fund, who should be required to finance this fund, or how the Commission would administer or allocate these funds among “the limited number of parties” to this proceeding. Moving Parties base their motion entirely upon their unverified factual assertions that “virtually none of the regular non-profit intervenors have the expertise to question PG&E’s proffered experts on technical matters” and “this fund would allow the public, through the non-profit intervenors, to better scrutinize PG&E’s testimony in regards to technical matters throughout the case proceedings.”³

As explained below, the Joint Motion must be denied as contrary to California’s Intervenor Compensation statute. Although the Intervenor Compensation Provisions⁴ of the Public Utilities Code are to be interpreted broadly to encourage participation in Commission proceedings, the Commission does not have the authority to award ratepayer-funded compensation to an intervenor without first making a determination that the intervenor made a substantial contribution to a proceeding. Absent such a finding, a request for intervenor compensation must be denied.

Moreover, even if the Commission could lawfully grant the Joint Motion, it is unclear how the Commission could possibly administer such a program in an equitable manner.

Therefore, the Joint Motion should be denied.

² Joint Motion, p. 3.

³ *Id.*

⁴ The phrase “Intervenor Compensation Provisions” is used herein to refer to Article 5: Intervenor’s Fees and Expenses, Public Utilities Code sections 1801-1812.

II. The Joint Motion for Funding Should Be Denied as Inconsistent with the Intervenor Compensation Statute.

The California Legislature enacted the Intervenor Compensation Provisions of the Public Utilities Code “to provide compensation for reasonable advocate’s fees, reasonable expert witness fees, and other reasonable costs to public utility customers of participation or intervention in any proceeding of the commission.”⁵ The provisions “apply to all formal proceedings of the commission involving electric, gas, water, and telephone utilities.”⁶

The Intervenor Compensation Provisions declare that it is the intent of the Legislature that “[i]ntervenors be compensated for making a substantial contribution to proceedings of the commission, as determined by the commission in its orders and decisions.”⁷ And that “[i]ntervenor compensation be awarded to eligible intervenors in a timely manner, within a reasonable period *after* the intervenor has made the substantial contribution to a proceeding that is the basis for the compensation award.”⁸

Section 1803 specifies the conditions for an award of compensation:

The commission shall award reasonable advocate’s fees, reasonable expert witness fees, and other reasonable costs of preparation for and participation in a hearing or proceeding to any customer who complies with Section 1804 and satisfies both of the following requirements:

- (a) The customer’s presentation makes a substantial contribution to the adoption, in whole or in part, of the commission’s order or decision.
- (b) Participation or intervention without an award of fees or costs imposes a significant financial hardship.

Accordingly, “making a substantial contribution is a prerequisite to an award of compensation.”⁹

⁵ Pub. Util. Code § 1801.

⁶ *Id.*, § 1801.3 (a).

⁷ *Id.*, § 1801.3(d).

⁸ *Id.*, § 1801.3(e). (emphasis added)

⁹ *SCE v. The Utility Reform Network*, 117 Cal. App. 4th 1039, 1052 (2004).

The Joint Motion attempts to circumvent the requirements of the Intervenor Compensation Provisions, by seeking an order of the Commission establishing a fund for intervenors' expert witness fees to be paid *before* intervenors make a substantial contribution in the proceeding. As such, the relief requested would violate Public Utilities Code section 1803(a), and must be denied.

III. Even If the Commission Could Lawfully Award Intervenor Compensation in Advance of a Finding of Substantial Contribution, Joint Parties Offer No Framework for Equitable Administration of Such a Fund.

As noted in the Introduction above, the Joint Parties offer no suggestion for how the Commission could equitably administer or allocate the requested funds among “the limited number of parties” to this proceeding.¹⁰ The Intervenor Compensation Provisions guide the Commission in equitably awarding intervenor compensation by, among other things, setting forth eligibility requirements and guidelines for computation of the amount of an award. Because the funds are sought in advance of any showing of substantial contribution and outside the framework of the Intervenor Compensation Provisions, SoCalGas, SDG&E and SCE can discern no equitable basis upon which the Commission might determine (1) who would be eligible to obtain access to the funds, and (2) how the funds would be equitably apportioned among the parties in the proceeding. Without a framework to guide the allocation of funds, any allocation of such funds would be vulnerable to challenges that the allocations were arbitrary and/or inequitable. Therefore, even if the Joint Movants could get around the legal infirmities inherent in their request, the Commission must deny the request as impractical and administratively infeasible.

¹⁰ See Joint Motion, p. 3.

IV. Conclusion.

For the foregoing reasons, the Commission should deny the Joint Motion.

Respectfully submitted,

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