BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

FILED
07-18-11
04:59 PM

In the Matter of the Application of the Nevada Hydro Company for a Certificate of Public Convenience and Necessity for the Talega-Escondido/Valley-Serrano 500-kV Interconnect Project.	A.10-07-001 (Filed July 6, 2010)

REPLY COMMENTS OF THE DIVISION OF RATEPAYER ADVOCATES ON THE PROPOSED DECISION REGARDING PHASE 1 ISSUES

I. INTRODUCTION

Pursuant to the Rule 14.3 of the Commission's Rules of Practice and Procedure the Division of Ratepayer Advocates ("DRA") hereby submits its reply comments on the Proposed Decision on Phase 1 issues ("PD"). Specifically, DRA replies to the Comments of the Nevada Hydro. DRA believes that Nevada Hydro should compensate DRA for its expert witness through the reimbursable contracting process used by the Commission in other proceedings, and the PD should be modified to clarify that DRA and Nevada Hydro should not enter into a contract. Also, DRA agrees with the PD's determination that the Public Utilities Code applies to Nevada Hydro for the pendency of this proceeding and disagrees with Nevada Hydro's interpretation of prior Commission decisions on intervenor compensation.

II. DISCUSSION

A. Nevada Hydro Should Compensate DRA for its Expert Witness Expenses Through the Reimbursable Contract Process Used in Other CPCN Proceedings

In its Opening Comments on Phase 1 issues, DRA described the reimbursable contract process used by the Commission in major transmission CPCN proceedings. As described in DRA's February 11 Comments, these procedures include: 1) Expert Consultant

performs work and submits invoices under the terms and conditions of the Department of General Services- approved agreement; 2) DRA's Contract Manager, the Commission's Contracts Office, and the Commission's Fiscal Office approve the invoice for payment; 3) Payment is delivered to the Consultant; 4) Contract Officer invoices the CPCN Applicant for reimbursement; 5) Applicant delivers reimbursement payment to the Fiscal Office; and 6)Fiscal Office directs the reimbursement payment to the DRA Budget.

The PD states, "we agree that this is a reasonable approach and direct Nevada Hydro to enter into a reimbursable contract *arrangement* with DRA to fund DRA's consultants in this manner." (emphasis added). In its Opening Comments, Nevada Hydro states that this incorrectly directs Nevada Hydro into a contract with DRA. *See* Nevada Hydro Comments at 14. Because the PD states that it agrees with the approach outlined by DRA, it is not clear that the PD expects DRA and Nevada Hydro to enter into a contract. Rather, the discussion in the PD seems to support the progressive invoicing used by the Commission's fiscal office for CPCN proceedings. However, Ordering Paragraph 4 does require that Nevada Hydro enter into a contract with DRA and to file and serve a confirmation of this contract. Because DRA proposes that Nevada Hydro pay the Commission's contract office through the reimbursable contract process and not to contract with or pay DRA directly, Ordering Paragraph 4 should be removed to be consistent with the discussion in the PD.

B. Commission Precedent Does Not Preclude Requiring Intervenor Compensation Unless Nevada Hydro Becomes a Public Utility

The PD correctly finds that "given that Nevada Hydro will become a public utility if a CPCN is issued, we must conclude that the requirements of the Pub. Util. Code ["PU Code"] will apply during the pendency of the proceeding." PD at 12. Because Nevada Hydro is subject to the PU Code during the pendency of this proceeding, the PD also holds that the company is required to pay intervenor compensation, whether or not it is ultimately granted a CPCN and certified as a public utility. *See* PD at 12-13. Nevada Hydro argues that "clear Commission precedent precludes requiring intervenor compensation until Nevada Hydro becomes a public utility." Nevada Hydro Comments at 3. This is not the case, and the decisions cited by Nevada Hydro make no such holding.

First, Nevada Hydro states that D.07-03-014 (and its rehearing decision, D.07-11-049) holds that the Commission cannot impose intervenor compensation on non public utilities. *See* Nevada Hydro Comments at 3-4. However, those decisions merely state the fact that the intervenor compensation statutes do not apply to non public utilities, even if the Commission still has some jurisdiction over these entities, i.e. video service providers. *See* D.07-11-049, 2007 Cal. PUC LEXIS 627 at *3. Here, unlike in that proceeding, the applicant is seeking to become a public utility.

Next, Nevada Hydro cites D.96-06-029 as holding that the Commission cannot order an applicant to pay intervenor compensation until after it becomes a public utility. *See* Nevada Hydro Comments at 4. Again, Nevada Hydro mischaracterizes the Commission's holding. In that proceeding, the Commission found that two parties, GTEC and Pacific Bell, would have to pay intervenor compensation and rejected GTEC's request that other CLCs also contribute intervenor compensation for the intervenors' contribution to D.95-07-054. The Decision states, "*no CLC had yet applied for a CPCN*, let alone received one" when D.95-07-054 was issued. 1996 Cal. PUC LEXIS 717 at *33 (emphasis added). In that proceeding, the Commission stated that other entities that had not yet even applied for a CPCN should not have to pay intervenor compensation even though these entities could eventually apply for Commission certification as public utilities and could eventually have to pay intervenor compensation. Therefore, the PD is correct that the Public Utilities Code should apply to Nevada Hydro through the pendency of this proceeding and the company is bound by the intervenor compensation and DRA expert witness reimbursement provisions.

III. CONCLUSION

DRA believes that Nevada Hydro should compensate DRA for its expert witness through the reimbursable contracting process used by the Commission's Fiscal Office in other proceedings, and the PD should clarify that DRA and Nevada Hydro should not into a contract. Also, DRA agrees with the PD's determination that the Public Utilities Code

applies to Nevada Hydro for the pendency of this proceeding and disagrees with Nevada Hydro's interpretation of prior Commission decisions on intervenor compensation.

Respectfully Submitted,

/s/ GREGORY HEIDEN

Gregory Heiden
Staff Counsel

Attorney for the Division of Ratepayer Advocates
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Phone: (415) 355-5539
Fax: (415) 703-2262
E-mail: gxh@cpuc.ca.gov

July 18, 2011