

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation into the Gas Market Activities of Southern California Gas Company, San Diego Gas and Electric, Southwest Gas, Pacific Gas and Electric, and Southern California Edison and their impact on the Gas Price Spikes experienced at the California Border from March 2000 through May 2001.

Investigation 02-11-040
(Filed November 21, 2002)

Order Instituting Investigation Whether San Diego Gas & Electric Company, Southern California Gas Company and Their Holding Company, Sempra Energy, Respondents, Have Complied with Relevant Statutes and Commission Decisions, Pertaining to Respondents' Holding Company Systems and Affiliate Activities.

Investigation 03-02-033
(Filed February 27, 2003)

**ADMINISTRATIVE LAW JUDGE'S RULING
REGARDING NOTICE OF INTENT TO CLAIM
COMPENSATION AND OTHER PROCEDURAL MATTERS**

I. Summary

On June 27, 2003, Save Southwest Riverside County (SSRC) filed a Notice of Intent (NOI) to seek intervenor compensation for participation in Investigation (I.) 03-02-033, pursuant to Pub. Util. Code §§ 1801 et seq.¹ and Rule 76.71 of the

¹ All statutory references are to the Public Utilities Code.

Commission's Rules of Practice and Procedure. No opposition to the NOI has been filed. As required by § 1804(b) and in consultation with the Assigned Commissioner, I find that SSRC will be eligible for compensation in I.03-02-033.

In addition, I grant the petition of Recon Research Corporation (Recon) to intervene in I.02-11-040 and I.03-02-033.

II. NOI Requirements

A. Timely Filing

Under § 1804(a)(1), "[a] customer who intends to seek an award under this article shall, within 30 days after the prehearing conference is held, file and serve on all parties to the proceeding a notice of intent to claim compensation." The prehearing conference in I.03-02-033 occurred on May 29, 2003. The due date for NOIs was June 30, 2003. Since SSRC filed its NOI before the due date, the NOI is timely filed.

B. Relevance of Eligibility for Compensation in Other Proceedings

SSRC has been found eligible to receive intervenor compensation in two other Commission proceedings, by a May 21, 2001 Administrative Law Judge (ALJ) ruling in I.00-11-001 and by an August 9, 2001 ALJ ruling in Application (A.) 01-03-036. Both of those rulings contained findings of significant financial hardship for SSRC.

Section 1804(b)(1) provides that a finding of significant financial hardship in one Commission proceeding creates a rebuttable presumption of eligibility for compensation in other proceedings commencing within one year of the date of that finding. SSRC states that, although more than a year has elapsed since SSRC was found eligible to claim compensation in the two cited proceedings, no change has occurred since those rulings with respect to SSRC, its organization, or its membership that would affect its eligibility for intervenor

compensation. On that basis, SSRC asserts that it should be entitled to a presumption of eligibility for compensation in this proceeding.

Nothing in the intervenor compensation statute or in the Commission's rules provides for a rebuttable presumption of eligibility for compensation beyond the one-year period provided by § 1804(b)(1). Because it has been over a year since the Commission last assessed a showing by SSRC of significant financial hardship, there is no rebuttable presumption that SSRC is eligible for compensation in this proceeding. However, SSRC's NOI also contains a showing of significant financial hardship. As discussed later, the showing adequately supports the requested hardship finding.

C. Customer Status

Section 1802(b) defines the term "customer" as:

[A]ny participant representing consumers, customers, or subscribers of any electrical, gas, telephone, telegraph, or water 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...

The Commission has stated that a participant should explain how it meets the definition of customer and, if it is a group or organization, should provide a copy of its articles or bylaws noting where in the document the authorization to represent the interest of residential ratepayers can be found. Further, a group or organization should indicate what percentage of its membership are residential ratepayers. (Decision (D.) 98-04-059, mimeo. at 83 and 88.)

SSRC reports that it is an unincorporated non-profit association registered with the California Secretary of State and that it is authorized by its bylaws to represent and advocate the interests of customers of electric utilities in southwest Riverside County. On that basis, it asserts that it is a Category 3 customer. SSRC filed its bylaws with its NOI. The relevant portion of its bylaws states as follows:

2. PURPOSES AN (*sic*) ACTIVITIES

The general purposes of Save Southwest Riverside County (SSRC) are to advocate and protest for ratepayers and residents in Southwest Riverside County against overhead transmission lines that would impact their health and safety.

2.1 To achieve these purposes SSRC may: conduct investigations, appear in administrative proceedings before local, state or federal agencies; sue in court; testify and appear before legislative bodies; promote educational events; and engage in any other lawful activity and exercise any powers allowed by California to a nonprofit, unincorporated association to further its purposes.

SSRC submits that all of its Directors are residential utility customers, that residential utility customers constitute nearly all of SSRC's membership, that none of SSRC's Directors has a business-prospect interest in this proceeding, that SSRC is not a governmental entity, and that none of SSRC's Directors is such an entity.

SSRC reports that it was formed in response to a proposal by San Diego Gas & Electric Company (SDG&E) to construct the Valley-Rainbow 500 kV Interconnect Project and that it has developed and obtained information and expertise relevant to I.03-02-033 as a result of its involvement in Application 01-03-036 and I.00-11-001. SSRC states that its interest in I.03-02-033 is in providing input regarding the propriety of SDG&E's affiliate relations in the

context of the Valley-Rainbow Project application and that its intent is to help ensure that ratepayer-funded projects benefit the state's ratepayers as opposed to private corporations.

This showing is adequate to establish that SSRC meets the third definition of customer, as set forth in § 1802(b).

D. Significant Financial Hardship

Only those customers for whom participation or intervention would impose a significant financial hardship may receive intervenor compensation. Section 1804(a)(2)(B) allows the customer to include a showing of significant financial hardship in the NOI. Alternatively, the customer may make the required showing in the request for an award of compensation. SSRC has chosen to include its showing of significant financial hardship in the NOI.

For a group or organization, § 1802(g) defines that a significant financial hardship means that “the economic interest of the individual members of the group or organization is small in comparison to the costs of effective participation in the proceeding.” This wording suggests that a finding of significant financial hardship must be based on a comparison of the economic interest of the individual members of the group or organization to the costs of effective participation in the proceeding.

SSRC estimates that it will cost \$42,000 to participate in this proceeding. SSRC states that its members have no economic interest in this proceeding other than their general interest, as ratepayers, in ensuring that ratepayer-funded projects benefit ratepayers as opposed to private corporations. Thus, SSRC asserts, the economic interest of individual members of SSRC is negligible in comparison to the cost of participation.

It is clear that the cost of effective participation in this proceeding outweighs the economic interest of any individual member of SSRC. Therefore, I determine that SSRC has met the significant financial hardship test.

E. Nature and Extent of Planned Participation

Section 1804(a)(2)(A)(i) requires NOIs to include a statement of the nature and extent of the customer's planned participation in the proceeding to the extent this can be predicted.

SSRC anticipates that it will monitor the information submitted in this proceeding by SDG&E and other parties in order to ensure that it is consistent with the information SSRC has obtained in the context of the Valley-Rainbow proceeding. SSRC states that it may submit briefing regarding the scope of this proceeding, comment on the nature of any proposed audit review, comment on the results of such an audit, conduct discovery, cross-examine witnesses of other parties, and prepare briefing in the proceeding. SSRC also plans to prepare comments on any proposed decisions.

SSRC's showing meets the requirements of § 1804(a)(2)(A)(i).

F. Itemized Estimate of Compensation

Section 1804(a)(2)(A)(ii) requires that NOIs include an itemized estimate of the compensation the customer expects to request. While cautioning that there is considerable margin for error in its estimate because the scope and duration of the proceeding cannot be predicted with certainty, SSRC estimates that it will request compensation in the amount of approximately \$42,000 as indicated in the following table:

Amount	Description
\$26,750	Attorney fees (20 hours at \$325/hour; 50 hours at \$230/hour; 50 hours at \$175/hour)
\$11,250	Technical expert (50 hours at \$225/hour)
\$ 4,000	Travel, postage, photocopies, telephone and facsimile
\$42,000	Total

SSRC satisfactorily presents an itemized estimate of the compensation it expects to request. Its itemization fulfills the requirements of § 1804(a)(2)(A)(ii). This ruling in no way ensures compensation. As must any intervenor, SSRC must fully support its request for compensation, including substantiating that it has made a substantial contribution, and the reasonableness of the hours spent and hourly rates. Parties with similar interests are encouraged to coordinate efforts so that parties materially supplement, complement, or contribute to each other's presentations. Compensation will not be paid for participation on issues that are irrelevant, outside the scope of the proceeding, or beyond the Commission's jurisdiction to resolve.

SSRC is cautioned that it should carefully document the number of hours and hourly fees for counsel and technical experts and carefully allocate such expenses to specific issues pursued in this or other cases. It should also review Commission orders and, in preparing its compensation request, take into account the Commission's practices for reducing rates and hours claimed, e.g., for travel time and time spent on the compensation request itself.

III. Petition to Intervene

On June 6, 2003, Recon filed a petition to intervene in this proceeding pursuant to Rule 53 of the Commission's Rules of Practice and Procedure. Recon

states that, due to unforeseen circumstances, its representative was unable to attend the May 29, 2003 PHC in order to be placed on the service list in I.02-11-040 and I.03-02-033.

Recon states that it is an economic consulting firm that has represented numerous clients in natural gas and electric proceedings before the Commission. In Recon's view, the matters to be investigated and determinations to be made in this proceeding will have a material impact on the consulting advice it gives to its energy industry clients. Recon explains that its primary interest in this proceeding is "to advance all appropriate measures necessary to correct the structural defects in the natural gas and electric industries that led to the 2000-01 energy crisis." It states that it has no position at this time regarding any relief to be granted, except that "appropriate relief should be granted if it is found that the respondents undertook activities contrary to law or Commission policy, rules, or regulation."

No party filed a response to Recon's petition. It appears that Recon has stated fairly its interest in the proceeding. There is no prejudice to any party from Recon intervening at this time. Therefore, I grant Recon's petition to intervene.

Therefore, **IT IS RULED** that:

1. The Notice of Intent of Save Southwest Riverside County (SSRC) was timely filed.
2. SSRC is a customer as that term is defined in Pub. Util. Code § 1802(b), based on the authorization to represent the interests of residential ratepayers contained in its bylaws.
3. The participation of SSRC in this proceeding will pose a significant financial hardship as defined in § 1802(g).

4. SSRC has fulfilled the requirements of § 1804(a)(2)(A) by providing a statement of the nature and extent of its planned participation and an itemized estimate of the compensation it expects to request.

5. SSRC has met the requirements of § 1804(a) for eligibility for compensation.

6. A finding of eligibility in no way ensures compensation.

7. SSRC will be eligible to claim compensation as an intervenor, under §§ 1801 et seq.

8. The Petition to Intervene by Recon Research Corporation (Recon) is granted.

9. The following person is granted Interested Party status on behalf of Recon and is added to the Appearances portion of the service list in Investigation 02-11-040/I.03-02-033:

Andrew Safir, President
Recon Research Corporation
Suite 1604
6380 Wilshire Boulevard
Los Angeles, CA 90048
Telephone: (323) 655-3500
Facsimile: (323) 655-3495
E-mail: safir@reconcorp.com

Dated July 31, 2003, at San Francisco, California.

/s/ CHARLOTTE F. TERKEURST

Charlotte F. TerKeurst
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge’s Ruling Regarding Notice of Intent to Claim Compensation and Other Procedural Matters on all parties of record in this proceeding or their attorneys of record.

Dated July 31, 2003, at San Francisco, California.

/s/ ELIZABETH LEWIS
Elizabeth Lewis

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission’s policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at

I.02-11-040. I.03-02-033 CFT/hl2

(415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.