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

Application by SACRAMENTO  
NATURAL GAS STORAGE, LLC, for a  
Certificate of Public Convenience and  
Necessity for Construction and Operation  
of Natural Gas Storage Facilities and  
Requests for Related Determinations.

Application 07-04-013  
(Filed April 9, 2007)

**ADMINISTRATIVE LAW JUDGE'S RULING  
DENYING SACRAMENTO NATURAL GAS STORAGE, LLC'S  
MOTION TO COMPEL RESPONSES TO DISCOVERY REQUESTS,  
REQUEST FOR ISSUANCE OF SUBPOENAS, AND MOTION TO EXPEDITE**

**Background**

On August 5, 2011, Sacramento Natural Gas Storage, LLC, (SNGS) filed a motion requesting an order from the Commission compelling the Avondale Glen Elder Neighborhood Association (AGENA) to provide further responses to several SNGS discovery requests propounded in this proceeding (Motion to Compel), and a companion request for the issuance of subpoenas to direct non-party witnesses to appear for deposition and to produce relevant documents

(Request for Subpoenas).<sup>1</sup> On August 17, 2011, SNGS filed a motion (Motion to Expedite) requesting an expedited ruling on the Motion to Compel.

On August 19, 2011, AGENA filed its response in opposition to the Motion to Compel and the Request for Subpoenas (AGENA Response).<sup>2</sup> On September 1, 2011, SNGS filed a reply to the AGENA Response, as authorized by the Administrative Law Judge (ALJ) on August 22, 2011.

### **Motion to Expedite**

The Motion to Expedite is denied.

According to the Motion to Expedite, because no timely responses were filed, the Motion to Compel is unopposed and ripe for ruling.<sup>3</sup> As noted above, The Motion to Compel filed on August 5, 2011 did not include the required proposed ruling, and this defect was not cured until August 11, 2011, when SNGS re-filed and re-served the Motion to Compel. As a result, parties had until August 21, 2011 to file and serve responses to the motion. AGENA timely filed and served the AGENA Response.

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<sup>1</sup> Pursuant to Rule 11.3(a), a motion to compel or limit discovery, among other things, must include a proposed ruling that clearly indicates the relief requested. The Motion to Compel filed on August 5, 2011 did not include the required proposed ruling. On August 11, 2011, SNGS re-filed and re-served the Motion to Compel, including the required proposed ruling.

<sup>2</sup> Pursuant to Rule 11.3(b), responses to motions to compel or limit discovery must be filed and served within 10 days of the date that the motion was served.

<sup>3</sup> The Motion to Expedite states that, because the Motion to Compel was filed on August 5, 2011, responses to the Motion to Compel were due by August 15, 2011.

### **Motion to Compel and Request for Subpoenas**

The Motion to Compel and Request for Subpoenas are denied.

SNGS seeks to compel discovery and obtain subpoenas to verify whether AGENA is eligible for intervenor compensation. The Motion to Compel states that SNGS seeks to shine a light on whether AGENA's participation in this proceeding "has actually been authorized by AGENA's members and is being conducted in accordance with AGENA's bylaws." According to SNGS, because AGENA was not properly authorized by its membership to participate in this proceeding and due to other irregularities<sup>4</sup> AGENA is not a "customer" as defined by either § 1802(b)(1)(B) or § 1802(b)(1)(C).<sup>5</sup>

The Motion to Compel asserts that the requested information is directly relevant to AGENA's claim for intervenor compensation because it concerns the threshold issues of whether (1) AGENA's opposition to the SNGS Project (Proposed Project) was authorized by a valid vote of the AGENA membership, consistent with the organization's bylaws; and (2) the individuals who have purported to represent AGENA as its officers in opposing the Proposed Project have done so under a valid election under AGENA's bylaws.

The Motion to Compel states that discovery responses from AGENA indicate that no valid vote was held to oppose the Proposed Project, that no valid election of officers was held in 2007 or thereafter, and that further discovery is

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<sup>4</sup> The Motion to Compel alleges that no valid election of AGENA officers was held in 2007 and 2008, no valid vote was taken to oppose the Proposed Project, and, in 2009, AGENA changed its organizational structure from an unincorporated association into a corporation without the requisite statement of conversion.

<sup>5</sup> The Motion to Compel states that discovery responses establish that AGENA does not qualify as a "customer", as defined by § 1802(b)(1)(A).

needed to verify whether (1) AGENA qualifies as a “customer” as defined by the Public Utilities Code and (2) to demonstrate whether AGENA ceased to exist as an organization functioning under its bylaws during this proceeding after its filing of the Notice of Intent to Claim Compensation (NOI), and thereby ceased to be a “customer” eligible for intervenor compensation under § 1802(b)(1).<sup>6</sup>

The August 18, 2008 ALJ’s ruling (August 18 Ruling) addressing AGENA’s eligibility for intervenor compensation determined AGENA to be a “customer” pursuant to § 1802(b)(1)(B) based on the sworn declarations of Sam Butler and Ethel Gilliam attesting they authorized AGENA to represent their interests as gas and electric customers residing in the City of Sacramento and living in close proximity of the Proposed Project.

SNGS argues that, before AGENA can represent Butler and Gilliam, AGENA must be authorized by its members to do so. Therefore, according to SNGS, AGENA can not represent Butler and Gilliam because AGENA’s bylaws require a majority of a quorum to permit AGENA to act as Butler’s and Gilliam’s representative, and no majority of a quorum has done so.

Pub. Util. Code<sup>7</sup> § 1801, *et seq.*, (the Intervenor Compensation Statutes) provide compensation for reasonable advocate's fees, reasonable expert witness fees, and other reasonable costs to public utility customers of participation or

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<sup>6</sup> For the reasons set forth in the Motion to Compel, the Request for Subpoenas requests the issuance of subpoenas to former and purported current officers of AGENA and/or purported officers or board members of AGENA, Inc., compelling each such person to appear and respond under oath before a certified deposition reporter to questioning by counsel for SNGS, and to produce documents under the control of such persons.

<sup>7</sup> All statute citations are to the Public Utilities Code.

intervention in any Commission proceeding.<sup>8</sup> Section 1802(b)(1) defines “customer” as any of the following: (A) A participant representing consumers, customers, or subscribers of any electrical, gas, telephone, telegraph, or water corporation that is subject to the jurisdiction of the Commission; (B) a representative authorized by a customer; or (C) a representative of a group or organization that is authorized by its articles of incorporation or bylaws to represent the interests of residential customers or , or to represent small commercial customers who receive bundled electric service from an electrical corporation. Each definition of “customer” in § 1802(b)(1) is separate and independent of the other definitions.

Decision (D.) 98-04-059 in Rulemaking (R.) 97-01-009, as modified by D.99-02-039, adopted revisions to the Commission’s intervenor compensation program. The adopted revisions were intended to broaden participation by customers in our proceedings and to improve the effectiveness of that participation. D.98-04-059 adopted principles to serve, among other things, as a guide in considering future requests for compensation.

Among the principles adopted in D.98-04-059 is the principle that “Eligibility standards should not unduly discourage first-time and small-party intervenors.” In arriving at this principle, the Commission addressed arguments that, with respect to groups or organizations, the Commission should have some

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<sup>8</sup> Section 1801.3 states, among other things, that it is the Legislature’s intent that the provisions of the Intervenor Compensation Statutes be administered in a manner that encourages the effective and efficient participation of all groups that have a stake in the public utility regulation process. Section 1801.3(b).

assurance that the positions advocated by the customer fairly reflect the views of the organization's purported constituents.<sup>9</sup>

The Commission rejected the proposal that an intervenor who purports to represent a large group of consumers be required to demonstrate that its organizational structure provides an opportunity for its constituents to express their views on the issues and to participate in the group's decision making function. In rejecting the proposal, D.98-04-059 states:

The statute [§ 1802(b)(1)(C)] merely requires any group to be authorized in its articles of incorporation or bylaws to represent the interests of residential customers. While it presumes the group has a membership, it does not require the group to have a membership with voting rights. A voting membership is not a prerequisite to incorporation, and we are not inclined to advocate that it be made a requirement of the group form of 'customer'.<sup>10</sup>

Thus, even if AGENA was determined to be a "customer" pursuant to § 1802(b)(1)(C), which it is not, AGENA is not required to further show that it was authorized by its members to participate in this proceeding. As a result, it is

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<sup>9</sup> In particular, certain parties to R.97-01-009 argued that an intervenor who purports to represent a large group of consumers (1) be required to demonstrate that its organizational structure provides an opportunity for its constituents to express their views on the issues and to participate in the group's decision making function; and (2) in the event the organizational structure delegates decision making to a board of directors, the group should be required to demonstrate that its constituents participated in the selection of the board of directors or other decision making body. 79 CPUC 2d 628, 648-649.

<sup>10</sup> D.98-04-059 further states that the statute requires that a group or organization be authorized by its articles of incorporation or bylaws to represent the interests of residential ratepayers, and that this requirement should be evaluated at the Notice of Intent stage by the administrative law judge.

irrelevant to AGENA's eligibility for intervenor compensation whether AGENA's opposition to the Proposed Project was authorized by a valid vote of the AGENA membership, or whether the individuals who have purported to represent AGENA as its officers in opposing the Proposed Project have done so under a valid election under AGENA's bylaws.

Pursuant to § 1802(b)(1)(B), a representative need only show that it has been authorized by a customer for the Commission to determine that the representative is a "customer" eligible for intervenor compensation. As noted above, the August 18 Ruling based its determination that AGENA is a "customer," pursuant to § 1802(b)(1)(B), on the sworn declarations of Butler and Gilliam, two gas and electric customers residing in the City of Sacramento and living in close proximity of the Proposed Project.

The argument that AGENA must be authorized by its members before it can represent Butler and Gilliam is not supported by the Intervenor Compensation Statutes or Commission decisions, and is inconsistent with the Legislature's intention that the Intervenor Compensation Statutes be administered in a manner that encourages the effective and efficient participation of all groups that have a stake in the public utility regulation process.

If a representative shows that it has been authorized by a customer, pursuant to § 1802(b)(1)(B), the representative is not required to further demonstrate that it has been authorized by its membership in order for the Commission to find that the representative is a "customer" eligible for intervenor compensation. Therefore, it is irrelevant to AGENA's eligibility for intervenor compensation whether AGENA's members authorized AGENA to participate in this proceeding or whether AGENA's representatives in this proceeding have acted without authorization from AGENA's members.

**IT IS RULED** that Sacramento National Gas Storage, LLC's Motion to Compel and Request for Subpoenas are denied.

Dated September 19, 2011, at San Francisco, California.

/s/ RICHARD SMITH

Richard Smith  
Administrative Law Judge