

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Valenica Water Company (U34-W) seeking approval of its updated Water Management Program as ordered in Commission Resolution W-4154 dated August 5, 1999.

Application 99-12-025
(Filed December 17, 1999)

**OPINION ON REQUEST
FOR INTERVENOR COMPENSATION**

This decision awards the Angeles Chapter of the Sierra Club (Sierra Club) \$29,565.96 for its contribution to Decisions (D.) 00-10-049 and D.01-11-048 granting Valencia Water Company (Valencia) permission to expand its service area.

1. Background

In this proceeding, the Commission reviewed Valencia's Water Management Program (WMP) in conjunction with its Advice Letters (ALs) 88 and 90 requesting authorization to expand its service area. The proceeding entailed an interim decision by the Commission, numerous rulings, two prehearing conferences (PHCs), testimony by 18 expert witnesses, eight days of hearings covering 1,100 transcript pages, and receipt into evidence of 66 exhibits. Sierra Club was an active participant in this proceeding.

Valencia opposes Sierra Club's request for compensation on the grounds that the request was not timely filed and Sierra Club's participation duplicated and overlapped that of the County of Ventura (Ventura). We address these issues below.

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. Section 1804(a) requires an intervenor to file a Notice of Intent (NOI) within 30 days of the PHC or by a date established by the Commission. 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 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. Notice of Intent to Claim Compensation

By Assigned Commissioner's Ruling dated December 14, 2000, Sierra Club was found eligible to claim intervenor compensation in this proceeding pursuant to § 1804(b).

4. Timeliness

Section 1804(c) provides that:

“(c) Following issuance of a final order or decision by the commission in the hearing or proceeding, a customer who has been found, pursuant to subdivision (b), to be eligible for an award of compensation may file within 60 days a request for an award. . . .”

On June 19, 2002, the California Supreme Court mailed its Order Denying Sierra Club's Petition for Review. Sierra Club filed its request for compensation on July 24, 2002. Therefore, for purposes of this compensation award, we will consider Sierra Club's compensation request timely filed.¹

5. Contribution to Resolution of Issues

Sierra Club states that as required by § 1804(c) it made a substantial contribution to this proceeding in two respects. First, the Motion of the Sierra Club for Determination of Applicability of California Environmental Quality Act (CEQA) filed May 26, 2000, together with the Reply in Support of Motion of Sierra Club for Determination of the Applicability of CEQA filed July 14, 2000, resulted in this Commission's Interim Opinion, dated October 19, 2000, finding

¹ Section 1801.3 states:

“It is the intent of the Legislature that; (b) the provisions of this article shall 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.”

CEQA applicable to this proceeding, and directing Valencia to comply with CEQA requirements for environmental review (D.00-10-049). The Commission's Interim Opinion subsequently resulted in Valencia's preparation of its Proponent's Environmental Assessment (PEA) in accordance with this Commission's regulations implementing CEQA. Sierra Club claims that Valencia's preparation of its PEA as a result of the Sierra Club's motion substantially assisted the Commission in addressing the merits of Valencia's Application for approval of its updated WMP.

Second, Sierra Club states that its participation through submission of argument and evidence with regard to the potential cumulative watershed effects of the proposal by Valencia's parent corporation, Newhall Land and Farming Company, to construct a large residential development in the future, including its proposal to develop over 21,000 houses in its Newhall Ranch project, resulted in the Commission ruling that its approval of Valencia's WMP did not authorize the extension of water service to the proposed Newhall Ranch. The Commission directed that "[e]xtending service to large-scale future developments, such as those that may result from the Newhall Ranch Specific Plan, will call for review of more current information, such as the 2000 UWMP or a future update to this WMP. If Valencia proposes to serve this development, it must file an application, an updated WMP and advice letter for such a project." (D.01-11-048 p. 35.) Accordingly, Sierra Club claims that it has made a substantial contribution to the Commission's decision as required by § 1804(c).

Section 1801.3(f) requires the Commission to administer intervenor's fees and expenses in a manner that avoids unproductive or unnecessary participation that duplicates the participation of similar interests otherwise adequately

represented, or participation that is not necessary for a fair determination of the proceeding.

We agree that Sierra Club and Ventura were clearly representing different interests and one party could not have adequately represented the interests of the other. However, we believe the record in this proceeding supports a reduction to Sierra Club's fee request for the reasons discussed below.

Ventura and Sierra Club pursued nearly identical issues and the aspects of the adopted decisions to which Sierra Club claims to have made a substantial contribution were also the result of Ventura's timely motions, testimony, and briefs. Sierra Club cannot claim the entire credit for the Commission's Interim Decision (D.00-10-049) which required Valencia to provide a PEA at the outset of this proceeding. Likewise, Sierra Club cannot claim the entire credit for the Commission's Final Decision (D.01-11-048) which, among other things, requires Valencia to submit a new application, an updated WMP and an advice letter if it decides to serve the proposed Newhall Ranch project. In other words, Sierra Club has failed to distinguish its contribution from Ventura's with regard to the two issues for which it claims substantial contribution.

Sierra Club has not allocated counsel's time to take into account the issues on which it did not prevail. Sierra Club apparently seeks compensation for virtually all of its counsel's time spent on participation in this proceeding despite the fact that the contributions Sierra Club claims to have made to the Commission's decisions relate to only a small fraction of the issues and allegations Sierra Club presented in the course of this proceeding.

Furthermore, a more serious concern to us is that throughout the course of this proceeding Sierra Club trailed behind Ventura in raising and presenting issues. Both parties argued vigorously for their positions. The clearest

distinction between their showings, without getting into the details of their arguments, was that Ventura submitted its motions, testimony and briefs before Sierra Club, and on a more timely basis.² In view of the overlap and duplication of effort, and failure to allocate time by issue, we conclude that a 50% reduction of claimed attorney hours is appropriate. This means that Sierra Club will be compensated for 50% of its attorney hours plus all Other Costs, which are reasonable given the scope of this proceeding.

6. Overall Benefits of Participation

In D.98-04-059, the Commission adopted a requirement that a customer demonstrates its participation was “productive,” as that term is used in § 1801.3, where the Legislature gave the Commission guidance on program administration. (See D.98-04-059, mimeo. at pp. 31-33, and Finding of Fact 42.) In that decision we discuss the requirement that participation must be productive in the sense that the costs of participation should bear a reasonable relationship to the benefits realized through such participation.

The intervention of Sierra Club and Ventura in this proceeding resulted in an exhaustive review by the Commission of the adequacy of water supplies available to meet Valencia’s current requirements, including the proposed service area expansions covered by ALs 88 and 90. Allegations regarding the inadequacy of water supplies to meet these needs have been dispelled, thereby

² For example, see D.00-10-049, mimeo p. 4, the Commission’s interim decision on the applicability of CEQA to this proceeding. Ventura and Sierra Club filed their motions for determination of CEQA applicability on May 22 and 30, 2000 respectively. Their reply briefs were filed on July 7 and 14, 2000 respectively. Also, see reporter’s transcript dated May 22, 2000, Vol. 1, p.p. 2-4. There is no basis for Sierra Club to claim that the outcome of D.00-10-049 was due solely to its motion.

boosting customer confidence and reinforcing property values, to the benefit of all Valencia's customers. We, therefore, conclude that Sierra Club's participation, although not subject to precise quantification, was productive and meets the requirements of § 1801.3.

7. Reasonableness of Requested Compensation

Sierra Club provided a detailed description of its services and expenditures and requested compensation in the amount of \$57,440.96. Sierra Club's request is summarized below along with our adjustment for duplication as discussed above:

<u>Attorney's fees</u>		
Stephan C. Volker	223.0 hours x \$250/hour	= \$55,750.00
<u>Other Costs</u>		
Copying, postage, airfare		<u>1,690.96</u>
		57,440.96
<u>Less: Adjustment for duplication</u>		\$27,875.00
(55,750 X 0.50)		
	Total	\$29,565.96

Attorney Volker states that he has over 27 years experience as a practicing environmental lawyer in California and has been awarded attorney's fees at the hourly rate of \$300 based on his extensive experience in the field of environmental litigation. We conclude that based on Volker's experience, the requested hourly rate of \$250 for services provided in 2000 and 2001 is reasonable.

Consistent with previous Commission decisions, we will order Valencia to pay the award to Sierra Club plus any interest due (calculated at the three-month commercial paper rate), commencing October 7, 2002 (the 75th day after Sierra

Club filed its compensation request) and continuing on the unpaid amount until full payment of the award.

As in all intervenor compensation decisions, we put Sierra Club on notice that the Commission staff may audit Sierra Club's records related to this award. Thus, Sierra Club must retain adequate accounting and other documentation to support its claim for intervenor compensation.

8. Public Review and Comment

Pursuant to Rule 77.7(f)(6), the otherwise applicable 30-day period for public review and comment of this compensation decision is being waived.

9. Assignment of Proceeding

Geoffrey Brown is the Assigned Commissioner and Bertram Patrick is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. Sierra Club has made a timely request for compensation for its contribution to D.01-11-048.
2. Sierra Club has made a showing of significant financial hardship by demonstrating the economic interests of its individual members would be small compared to the costs of participating in this proceeding.
3. Ventura and Sierra Club pursued nearly identical issues and the Commission's decisions in this proceeding reflect the contribution of both Ventura and Sierra Club.
4. Throughout this proceeding Sierra Club had a pattern of filing its motions, testimony and briefs after Ventura had done so.
5. Sierra Club has not identified any issues on which its position was distinguishable from Ventura's position.

6. It is reasonable to apply a 50% discount to Sierra Club's claimed attorney hours for duplication of effort and failure to allocate time by issue.

7. Sierra Club's claimed Other Costs are reasonable given the scope of this proceeding.

8. The adopted hourly rate for attorney Volker is no greater than the market rate for individuals with comparable training and experience.

9. The hours claimed for attorney Volker are reasonable given the scope of this proceeding.

10. The appendix to this Opinion summarizes today's award.

Conclusions of Law

1. Sierra Club has fulfilled the requirements of §§ 1801-1812, which govern awards of intervenor compensation.

2. Sierra Club should be awarded \$29,565.96 for its contribution to D.00-10-049 and D.01-11-048.

3. Per Rule 77.7(f)(6) of the Commission's Rules of Practice and Procedure, the comment period for this compensation decision is being waived.

4. This order should be effective today so that Sierra Club may be compensated without unnecessary delay.

O R D E R

IT IS ORDERED that:

1. The Angeles Chapter of the Sierra Club (Sierra Club) is awarded \$29,565.96 in compensation for its substantial contribution to Decision (D.) 00-10-049 and D.01-11-048.

2. Valencia Water Company (Valencia) shall pay Sierra Club \$29,565.96 within 30 days of the effective date of this order. Valencia shall also pay interest on the award at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release H.15, with interest, beginning October 7, 2002, and continuing until full payment is made.

3. The comment period for today's decision is being waived.

4. This proceeding is closed.

This order is effective today.

Dated _____, at San Francisco, California.

APPENDIX**Compensation Decision Summary Information**

Compensation Decision(s):	
Contribution Decision(s):	D010049
Proceeding(s):	A9912025
Author:	ALJ Patrick
Payer(s):	Valencia Water Company

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Reason Change/Disallowance
Sierra Club	7/9/02	\$57,440.96	\$29,565.96	Duplication; failure to allocate by issue.

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Stephan	Volker	Attorney	Sierra Club	\$250	2000	\$250
Stephan	Volker	Attorney	Sierra Club	\$250	2001	\$250

(END OF APPENDIX)