

Decision **PROPOSED DECISION OF ALJ VIETH** (Mailed 11/5/2007)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Joint Application of SFPP, L.P. (PLC-9 Oil), CALNEV PIPE LINE, L.L.C., KINDER MORGAN, INC., and KNIGHT HOLDCO LLC for Review and Approval under Public Utilities Code Section 854 of the Transfer of Control of SFPP, L.P. and CALNEV PIPE LINE, L.L.C.

Application 06-09-016
(Filed September 18, 2006)

Joint Application of The Goldman Sachs Group, Inc., American International Group, Inc., Carlyle Partners IV, L.P., Carlyle/Riverstone Global Energy and Power Fund III, L.P., for Exemption Under Section 852 of the Public Utilities Code for Certain Future Transactions Involving Non-Controlling Interests in California Public Utilities.

Application 06-09-021
(Filed September 22, 2006)

OPINION DENYING REQUEST OF CONSUMER FEDERATION OF CALIFORNIA FOR INTERVENOR COMPENSATION IN REGARD TO DECISION 07-05-061

This decision denies the request for intervenor compensation filed by the Consumer Federation of California (CFC) in regard to Decision (D.) 07-05-061. The statutory intervenor compensation program does not apply to oil pipeline utilities.

1. Background

The Commission-regulated, intrastate-portions of SFPP, L.P. (SFPP) and its affiliate, Calnev Pipe Line, L.L.C. (Calnev) are public utility pipelines which

serve as common carriers of refined petroleum products, such as gasoline, diesel fuel, and jet fuel.

D.07-05-061 does two things: (1) it approves, pursuant to Pub. Util. Code § 854,¹ a transfer of indirect control over jurisdictional portions of SFPP and Calnev from Kinder Morgan, Inc. (KMI) to Knight Holdco, LLC (Knight Holdco); and (2) it grants a limited exemption from § 852 to Goldman Sachs Group, Inc. (Goldman Sachs) and American International Group, Inc. (AIG), two of the investors in Knight Holdco. The § 852 exemption covers only non-controlling, passive investments by Goldman Sachs and AIG in the stock of California utilities. It does not change their statutory obligation under § 854 to obtain advance Commission approval before acquiring controlling interests in such utilities.

Approval of the transfer of control from KMI, a publicly-traded corporation, to Knight Holdco, a private limited liability company, provided the legal authority for investors in Knight Holdco to finalize their acquisition of KMI and its numerous business enterprises. In addition to Goldman Sachs and AIG, the investors include Richard Kinder, the Chairman and CEO of KMI, and several other individuals involved in KMI's management, as well as two other financial entities, Carlyle Partners IV and Carlyle/Riverstone Global Energy and Power Fund III, L.P.

2. Requirements for Awards of Compensation

The intervenor compensation program, enacted in §§ 1801-1812, requires *specified* California jurisdictional utilities to pay the reasonable costs of an

intervenor's participation if the intervenor makes a substantial contribution to a Commission's proceeding. Section 1801.3(a) extends the program "to all formal proceedings of the commission involving **electric, gas, water, and telephone utilities.**" (§ 1801.3(a), emphasis added.)

If a specified utility is involved, then all of the following procedures and criteria must be satisfied for an intervenor to obtain a compensation award:

1. The intervenor must satisfy certain procedural requirements including the filing of a sufficient notice of intent (NOI) to claim compensation within 30 days of the prehearing conference (PHC), or in special circumstances at other appropriate times that we specify. (§ 1804(a).)
2. The intervenor must be a customer or a participant representing consumers, customers, or subscribers of a utility subject to our jurisdiction. (§ 1802(b).)
3. The intervenor should file and serve a request for a compensation award within 60 days of our final order or decision in a hearing or proceeding. (§ 1804(c).)
4. The intervenor must demonstrate "significant financial hardship." (§§ 1802(g), 1804(b)(1).)
5. The intervenor's presentation must have made a "substantial contribution" to the proceeding, through the adoption, in whole or in part, of the intervenor's contention or recommendations by a Commission order or decision. (§§ 1802(i), 1803(a).)

¹ Unless otherwise stated hereafter, all references to a section or sections are to the Public Utilities Code.

6. The claimed fees and costs must be reasonable (§ 1801), necessary for and related to the substantial contribution (D.98-04-059), comparable to the market rates paid to others with comparable training and experience (§ 1806), and productive (D.98-04-059).

We have the following pleadings before us: CFC's request for intervenor compensation filed July 30, 2007; Joint Applicants' response opposing the request filed August 29, 2007; CFC's reply filed August 31, 2007; and CFC's motion filed September 14, 2007 requesting the acceptance of certain other documents on a late-filed basis.

3. Discussion

CFC argues that it was found eligible to file for intervenor compensation by the Administrative Law Judge's (ALJ) March 7, 2007 ruling on its Notice of Intent (NOI), it made a substantial contribution to D.07-05-061, and, therefore, it should be awarded \$119, 643.11 in compensation. Joint Applicants, the proponents of the two applications in this consolidated docket, argue that the intervenor compensation program does not apply to SFPP and Calnev because they are oil pipeline utilities, and that even if oil pipelines were covered by the program, CFC did not prevail on most of the positions it advanced. Joint Applicants also contend that CFC was inefficient and needlessly litigious, which thereby unreasonably elevated its cost of participation.

First we turn to § 1801.3(a), which provides, in relevant part,

It is the intent of the Legislature that:

- (a) The provisions of this article shall apply to all formal proceedings of the commission involving electric, gas, water, and telephone utilities.

Witkin advises that “[t]he views of the Legislature, as evidenced by passage of a law in accordance with a particular interpretation, are persuasive as to legislative intent.”² The plain meaning of § 1801.3(a) is clear and not susceptible to dispute – the statute lists the utilities covered by the intervenor compensation program and oil pipelines are not among them.³ Here the ALJ’s March 7, 2007 ruling failed to consider the application of § 1801.3 and instead proceeded to review CFC’s eligibility and significant financial hardship showings, largely on the basis of preliminary rulings of eligibility in two prior rulemakings.⁴ While we regret this error, the ALJ’s March 7, 2007 ruling on CFC’s unopposed NOI is not dispositive. Section 1804(b)(2) provides, in relevant part: “Failure of the [ALJ’s NOI] ruling to point out similar positions or potential duplication or any other potential impact on the ultimate claim for compensation shall not imply approval of any claim for compensation.”

We turn next to CFC’s contention (in its reply) that the scope of this consolidated docket actually concerned not just the two oil pipelines but also the kinds of utilities named in § 1801.3(a). With respect to Application (A.) 06-09-016, CFC argues that the Commission-imposed conditions on the transfer of control established precedent applicable to other utility transfers. CFC argues that since it recommended some of those conditions and since it represented

² Witkin, 7 Summary of California Law, 10th Edition, § 126.

³ The Commission has determined, previously, that the intervenor compensation program does not apply to proceedings involving household goods carriers. *See* D.00-09-070.

⁴ It appears the ALJ was not alone in failing to consider the applicability of § 1801.3 at the NOI stage. CFC did not raise it and Joint Applicants did not oppose CFC’s NOI. Joint Applicants’ opposition to CFC’s request raises the issue for the first time.

utility customers at large rather than customers of SFPP or Calnev, it should receive compensation. With respect to A.06-09-021, CFC first observes that the four financial institution investors in Knight Holdco (Goldman Sachs, et al.) sought an exemption from § 852 “for future acquisitions of non-controlling interests in the capital stock of California utilities.” (CFC reply at 2, quoting A.06-09-021 at 7.) CFC then argues that because such future acquisitions might involve electric, gas, water, or telephone utilities, the scope of A.06-09-021 included such utilities.

CFC’s logic suffers from several fatal problems. For one thing, A.06-09-016/A.06-09-021 were filed and subsequently categorized as ratesetting proceedings, not quasi-legislative proceedings. Section 1701.1(c) defines these types of generic proceedings, clarifying that the former concern “a specific company,” while the latter “may establish rules affecting an entire industry.” Furthermore, the thrust of CFC’s argument is at odds with the long-established mandate of § 1708 which requires actual notice and an opportunity to be heard before the Commission may change existing rates or practices applicable to either a specific utility or some larger group. In other words, the Commission may not establish precedent for utilities at large in an application that names a single company.

Since these problems require us to deny CFC’s request, we need not consider the merits of its claimed substantial contribution to D.07-05-061. Were we to do so, however, it is doubtful we would allow the full request. CFC did not prevail on many of the issues it raised in connection with A.06-09-016 and did not prevail at all on the position it advanced regarding A.06-09-021.

4. September 14, 2007 Motion

CFC's motion, filed September 14, 2007, asks the Commission to accept, on a late-filed basis, certain documentation inadvertently omitted from its request. The motion is unopposed. Granting the motion will not prejudice any party and will ensure that the record is complete. The motion should be granted.

5. Comments on Proposed Decision

This is an intervenor compensation matter. Typically, as provided by Rule 14.6(c)(6) of our Rules of Practice and Procedure, we waive the otherwise applicable 30-day comment period. However, because the proposed decision disallows CFC's claim, we mailed the ALJ's proposed decision for comment. CFC filed comments on November 26, 2007.

CFC misunderstands the rationale for the proposed decision's denial of CFC's claim. The basis is statutory; as Conclusion of Law 1 states: "Section 1801.3(c) does not include oil pipelines within the intervenor compensation program." CFC's comments reiterate that the scope of this consolidated docket actually encompassed electric, gas, water, and telephone utilities - as well as oil pipelines. CFC's previous reply to Joint Applicants' response to CFC's compensation request makes the same argument - and the proposed decision explains why that argument is unpersuasive. CFC's comments provide no authority permitting a different result. Absent such authority, we cannot interpret § 1801.3(c) to reach other California utilities, not named as applicants here, and then order such utilities to pay intervenor compensation for work done in this consolidated docket. Neither do CFC's equitable arguments permit a different result. Even if the Commission were to find that CFC had made a substantial contribution to D.07-05-061 and that an award would not conflict with the California Supreme Court's *CLAM* decision, no common fund exists

from which the Commission might order intervenor compensation payments.
(See *Consumers Lobby Against Monopolies [CLAM] v PUC*, 25 Cal.3d 891.)

6. Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner, and Jean Vieth is the assigned ALJ in this proceeding.

Finding of Fact

No party will be prejudiced by granting CFC's unopposed motion to accept exhibits on a late-filed basis and granting the motion will ensure that the record is complete.

Conclusions of Law

1. Section 1801.3(c) does not include oil pipeline utilities within the intervenor compensation program.
2. CFC's request for intervenor compensation must be denied.
3. CFC's unopposed motion to accept exhibits on a late-filed basis should be granted.
4. Though per Rule 14.6(c)(6), the comment period for this compensation decision may be waived, the proposed decision should be mailed for comment in this instance.
5. This order should be effective today in order to provide certainty to CFC, SFPP, and Calnev.

O R D E R

IT IS ORDERED that:

1. The request for intervenor compensation filed July 7, 2007 by Consumer Federation of California (CFC) is denied.

2. CFC's September 14, 2007 motion to accept exhibits on a late-filed basis is granted.

3. Application (A.) 06-09-016 and A.06-09-021 are closed.

This order is effective today.

Dated _____, at San Francisco, California.

Compensation Decision Summary Information

Compensation Decision:		Modifies Decision? No
Contribution Decision(s):	D0705061	
Proceeding(s):	A0609016/ A0609021	
Author:	ALJ Vieth	
Payer(s):	None	

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
Consumer Federation of California	7/30/07	\$119,643.11	0	No	Program not applicable to oil pipeline utilities

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Alexis K.	Wodtke	Attorney	Consumer Federation of California	\$345	2007	No Award
Tyson	Slocum	Policy Expert	Public Citizen, on behalf of Consumer Federation of California	\$180	2007	No Award