

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Southern California Edison Company (U338E) for a Certificate of Public Convenience and Necessity Concerning the Antelope-Vincent 500 kV (Segment 2) and Antelope-Tehachapi 500 kV and 220 kV (Segment 3) Transmission Projects as Required by Decision 04-06-010 and as Modified by Subsequent Assigned Commissioner Ruling.

Application 04-12-008
(Filed December 9, 2004)

**DECISION GRANTING INTERVENOR COMPENSATION
TO LEONA VALLEY RESIDENTS AND LEONA VALLEY TOWN COUNCIL
FOR SUBSTANTIAL CONTRIBUTIONS TO DECISION 07-03-045**

This decision awards to Leona Valley Residents¹ and Leona Valley Town Council² (collectively, Leona Valley) \$11,641.75 in compensation for their substantial contributions to Decision (D.) 07-03-045. This represents a decrease of \$ 3,877.50 (or 25%) from the amount requested of \$15,519.25, plus interest from

¹ The Leona Valley Residents (LVR) who are parties to this proceeding are Marcy Watton, David Gattenbein, Alexis Upton-Knittle, Lloyd J. Cook, Melinda Janowitz, Richard and Guyla Clayton, Ralph and Dianne Ciaramella, Bernhard and Laurie Staschik, Christina and Matthew Fitzgerald, Dale L. Baer, Warwick and Karen Bryan, Ronald L. Bright, Jesse Valdez, and Carol and Robert Valdez.

² LVTC is a non-profit corporation incorporated in California whose purpose includes promotion of the common good of the community of Leona Valley, California. It holds regular public meetings and any registered voter residing in its geographic area is eligible to vote in its elections and to hold office in LVTC.

July 25, 2007. Today's award will be allocated to Southern California Edison Company (SCE). This proceeding is closed.

1. Background

SCE filed this application pursuant to Ordering Paragraph 8 of D.04-06-010, which required the utility to "file an application seeking a certificate authorizing construction of the first phase of Tehachapi transmission upgrades consistent with its 2002 conceptual study and the study group's recommendation within six months of the effective date of this order"³

SCE stated that based on its obligation under §§ 210 and 212 of the Federal Power Act (16 U.S.C. § 824(i) and (k)) and §§ 3.2 and 5.7 of the California Independent System Operator Tariff, it had determined that the project was needed to interconnect and integrate additional generation from several potential generators north of the Antelope Substation. The addition of a single 300 MW project northwest of Antelope would result in thermal overload of the existing Antelope-Mesa 220 kV transmission line. Segment 2 would prevent that overloading. In addition, Segment 2 would improve overall system reliability by increasing capacity between the Antelope and Vincent Substations, particularly in light of continued load growth in the Antelope Valley.⁴

SCE filed its application on December 9, 2004. A Prehearing Conference was held on April 27, 2006. The draft Environmental Impact

³ By Ruling dated October 21, 2004, in Investigation 00-11-001, the assigned Commissioner directed SCE to file two separate Certificate of Public Convenience and Necessity (CPCN) applications for the Tehachapi upgrades: one CPCN application for Segment 1 and one CPCN application for Segments 2 and 3.

⁴ SCE Proponent's Environmental Assessment (PEA), Volume 1, at page 2-2.

Report/Environmental Impact Statement (EIR/EIS) was issued on August 24, 2006.

Leona Valley concurrently filed a “Request to Intervene” and a “Notice of Intent to Claim Compensation” on November 8, 2006, in which Leona Valley argued that its intervention was necessitated by the Alternative 4 for Segment 2, which was first disclosed in the Draft EIR/EIS. Leona Valley’s intervention was granted in D.07-03-045.

D.07-03-045 was adopted on March 15, 2007. The proceeding was reassigned to Administrative Law Judge (ALJ) Victoria S. Kolakowski on June 15, 2007. The proceeding is now closed.

2. Requirements for Awards of Compensation

The intervenor compensation program, which is set forth in Pub. Util. Code §§ 1801-1812,⁵ requires California jurisdictional utilities to pay the reasonable costs of an intervenor’s participation if that party makes a substantial contribution to the Commission’s proceedings. The statute provides that the utility may adjust its rates to collect the amount awarded from its ratepayers.

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), pursuant to Rule 17.1 of the Commissioner’s Rules of Practice and Procedure (Rules), or at other appropriate time that we specify. (§ 1804(a).)

⁵ All subsequent statutory references are to the Public Utilities Code unless otherwise indicated.

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 must 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) and 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 or as other found by the Commission. (§§ 1802(i) and 1803(a).)
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).

In the discussion below, the procedural issues in Items 1-3 above are combined and a separate discussion of Items 4-6 follows.

2.1. Preliminary Procedural Issues

Section 1804(a)(1) and Rule 17.1(a)(1) require an intervenor to file and serve its NOI within 30 days after the PHC is held. The PHC in this matter was held on May 25, 2005. Leona Valley filed its NOI on November 8, 2006, concurrent with its late “Motion to Intervene.”

Ordinarily, we would not accept Leona Valley’s late NOI. However, in this case, Leona Valley’s participation was focused on a transmission route that was not publicly disclosed until August 24, 2006. The timing of Leona Valley’s NOI was reasonable under the circumstances, and no party objected to the NOI.

Section 1804(a)(1) provides that “where new issues emerge subsequent to the time set for filing, the commission may determine an appropriate procedure for accepting new or revised notices of intent.” Therefore, we accept Leona Valley’s NOI as though timely filed.

Section 1802(b)(1) defines a “customer” as: (A) a participant representing consumers, customers or subscribers of a utility; (B) a representative who has been authorized by a customer; or (C) a representative of a group or organization authorized pursuant to its articles of incorporation or bylaws to represent the interests of residential or small business customers. (§ 1802(b)(1)(A) through (C).) Leona Valley qualifies as a customer under paragraph C, as the Leona Valley Town Council (LVTC) represents the interests of Leona Valley’s registered voters, who are all within SCE’s service area and therefore SCE’s ratepayers.

2.2. Timeliness of Request for Compensation

Leona Valley filed its request for compensation on May 11, 2007. The filing was within 60 days of D.07-03-045 being issued. No party opposed the request.

In view of the above, we find that Leona Valley has satisfied all the procedural requirements necessary to make its request for compensation in this proceeding.

2.3. Financial Hardship

An intervenor seeking compensation must show that, without undue hardship, it cannot pay the reasonable costs of effective participation in the proceeding. A participant representing consumers (Paragraph A, above) or a representative authorized by a customer (Paragraph B, above) must disclose its finances to the Commission to make this showing. These showings may be made under an appropriate protective order. In the case of groups or organizations

(Paragraph C, above), significant financial hardship is demonstrated by showing that the economic interest of individual members is small compared to the overall costs of effective participation. (§ 1802(g).)

Leona Valley's participation is pursuant to Paragraph C. The economic interest of each individual resident of Leona Valley is small compared to the compensable costs of participation, which we establish herein to be \$11,641.75. Therefore we find that Leona Valley has demonstrated financial hardship.

3. Substantial Contribution

In evaluating whether a customer made a substantial contribution to a proceeding, we look at several things. First, whether the Commission adopted one or more of the factual or legal contentions, or specific policy or procedural recommendations put forward by the customer. (§ 1802(i).) Second, if the customer's contentions or recommendations paralleled those of another party, whether the customer's participation unnecessarily duplicated or materially supplemented, complemented, or contributed to the presentation of the other party or to the development of a fuller record that assisted the Commission in making its decision. (§§ 1801.3(f) and 1802.5.)

As described in § 1802(i), the assessment of whether the customer made a substantial contribution requires the exercise of judgment.

In assessing whether the customer meets this standard, the Commission typically reviews the record, composed in part of pleadings of the customer and, in litigated matters, the hearing transcripts, and compares it to the findings, conclusions, and orders in the decision to which the customer asserts it

contributed. It is then a matter of judgment as to whether the customer's presentation substantially assisted the Commission.⁶

Should the Commission not adopt any of the customer's recommendations, compensation may be awarded if, in the judgment of the Commission, the customer's participation substantially contributed to the decision or order. For example, if a customer provided a unique perspective that enriched the Commission's deliberations and the record, the Commission could find that the customer made a substantial contribution. With this guidance in mind, we turn to the claimed contributions Leona Valley made to the proceeding.

Most significantly, Leona Valley provided detailed written comments on the draft EIR/EIS. Leona Valley identified several areas in which these comments resulted in relevant revisions to the final environmental document.⁷ Because the EIR/EIS is a foundational document required to reach a decision in any proceeding covered by the California Environmental Quality Act (CEQA), contributions to the CEQA process are compensable under the intervenor compensation program.

All of Leona Valley's efforts related to an environmentally infeasible alternative route to the proposed transmission project that would have had a significant environmental and economic impact on the neighboring communities, including Leona Valley. We encourage public input on matters of significant general public concern.

⁶ D.98-04-059, 79 CPUC2d 628 at 653.

⁷ Leona Valley's environmental review contribution was excellent in this proceeding.

We therefore find that Leona Valley's participation in the environmental review made a significant contribution to D.07-03-045.

In addition, Leona Valley's comments on the proposed decision raised important issues which, while not adopted in the decision, did constitute a significant contribution to D.07-03-045.

3.1. Contributions of Other Parties

Section 1801.3(f) requires an intervenor to avoid participation that unnecessarily duplicates that of similar interests otherwise adequately represented by another party, or participation unnecessary for a fair determination of the proceeding. Section 1802.5, however, allows an intervenor to be eligible for full compensation if its participation materially supplements, complements, or contributes to that of another party if that participation makes a substantial contribution to the Commission order.

Leona Valley took all reasonable steps to avoid duplication in participating doing the environmental review. No other party was focused on Leona Valley's issues. As a party, Leona Valley represents both the LVR and LVTC, which itself avoided potential duplication. Furthermore, LVTC limited its participation to consideration of Alternative 4 and compliance with environmental laws. Therefore, there was no duplicative or wasted effort regarding the environmental review or the review of the proposed decision.

After we have determined the scope of a customer's substantial contribution, we then look at whether the compensation request is reasonable.

4. Reasonableness of Requested Compensation

Leona Valley requested \$15,337.50 for its participation in this proceeding, as follows:

Work on Proceeding				
Attorney	Year	Hours	Hourly Rate	Total
Alene M. Taber	2006	17.25	\$350.00	\$6,037.50
Dan A. Friedlander	2006	11.00	\$300.00	\$3,300.00
Alene M. Taber	2007	10.00	\$375.00	\$3,750.00
Subtotal				\$13,087.50
Preparation of NOI and Compensation Request⁸				
Attorney/Staff	Year	Hours	Hourly Rate	Total
Alene M. Taber	2006	6.00	\$375.00	\$2,250.00
Subtotal Hourly Compensation				\$15,337.50
Expenses				\$181.75
Total Requested Compensation				\$15,519.25

In general, the components of this request must constitute reasonable fees and costs of the customer's preparation for and participation in a proceeding that resulted in a substantial contribution. The issues we consider to determine reasonableness are discussed below:

4.1. Hours and Costs Related to and Necessary for Substantial Contribution

We first assess whether the hours claimed for the customer's efforts that resulted in substantial contributions to Commission decisions are reasonable by determining to what degree the hours and costs are related to the work performed and necessary for the substantial contribution.

Leona Valley documented its claimed hours by presenting a daily breakdown of the hours of its attorneys, accompanied by a brief description of

⁸ Hourly rates should be reduced 50% for preparation of the NOI and compensation request. However, Leona Valley did not properly adjust its request to account for this requirement.

each activity. In addition, Leona Valley provided a narrative description of the activities it performed and the number of hours spent on each issue. The hourly breakdown reasonably supports the claim for total hours.

4.2. Intervenor Hourly Rates

We next take into consideration whether the claimed fees and costs are comparable to the market rates paid to experts and advocates having comparable training and experience and offering similar services.

Leona Valley seeks for attorney Alene M. Taber an hourly rate of \$350.00 for work performed in 2006 and \$375.00 for work performed in 2007. In D.07-10-021, we adopted an hourly rate of \$280.00 for Taber for work performed in 2006, and an hourly rate of \$290.00 for work performed by Taber in 2007. We adopt those same rates herein.

Leona Valley seeks for attorney Dan A. Friedlander an hourly rate of \$300.00 for work performed in 2006. In D.07-10-021, we adopted an hourly rate of \$260.00 for Friedlander for work performed in 2006. We adopt the same rates herein.

4.3. Productivity—Cost-Benefit Analysis

D.98-04-059 directed customers to demonstrate productivity by assigning a reasonable dollar value to the benefits of their participation to ratepayers. The costs of a customer's participation should bear a reasonable relationship to the benefits realized through its participation. This showing assists us in determining the overall reasonableness of the request.

We agree that the value of contribution exceeds the requested amounts, and therefore find that Leona Valley's contribution was productive.

4.4. Direct Expenses

The itemized direct expenses submitted by Leona Valley include the following:

Printing and Photocopying	\$106.00
Postage and Delivery	\$75.75
Total Expenses	\$181.75

The cost breakdown included with the request shows the copying and postage/delivery expenses to be commensurate with the work performed. We find these costs reasonable.

5. Award

As set forth in the table below, we award Leona Valley \$11,641.75:

Work on Proceeding				
Attorney/Staff	Year	Hours	Hourly Rate	Total
Alene M. Taber	2006	17.25	\$280.00	\$4,830.00
Dan A. Friedlander	2006	11.00	\$260.00	\$2,860.00
Alene M. Taber	2007	10.00	\$290.00	\$2,900.00
Subtotal:				\$10,590.00
Preparation of NOI and Compensation Request⁹				
Attorney/Staff	Year	Hours	Hourly Rate	Total
Alene M. Taber	2007	6.00	\$145.00	\$870.00
Subtotal:				\$870.00
CALCULATION OF FINAL AWARD				
Total Hourly Compensation				\$11,460.00
Total Expenses				\$181.75
TOTAL Award				\$11,641.75

⁹ Hourly rates are reduced 50% for preparation of the NOI and compensation request.

Consistent with previous Commission decisions, we order that interest be paid on the award amount (at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release H.15) commencing on July 25, 2007, the 75th day after Leona Valley filed its compensation request, and continuing until full payment of the award is made. The award is to be paid by SCE as the regulated entity in this proceeding.

We remind all intervenors that Commission staff may audit their records related to the award and that intervenors must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. Leona Valley's records should identify specific issues for which it requested compensation, the actual time spent by each employee or consultant, the applicable hourly rates, fees paid to consultants, and any other costs for which compensation was claimed.

6. Waiver of Comment Period

This is an intervenor compensation matter. Accordingly, as provided by Rule 14.6(c)(6) of the Commission's Rules of Practice and Procedure, we waive the otherwise applicable 30-day public review and comment period for this decision.

7. Assignment of Proceeding

Dian M. Grueneich is the assigned Commissioner and Victoria S. Kolakowski is the assigned ALJ in this proceeding.

Findings of Fact

1. Leona Valley has satisfied all the procedural requirements necessary to claim compensation in this proceeding.
2. Leona Valley made a substantial contribution to the environmental review relied upon in D.07-03-045 as described herein.

3. Leona Valley requested hourly rates for its representatives that, as adjusted herein, are reasonable when compared to the market rates for persons with similar training and experience.

4. Leona Valley requested expenses for photocopying and postage that are reasonable and commensurate with the work performed.

5. The total of the reasonable compensation is \$11,641.75.

6. The appendix to this opinion summarizes today's award.

Conclusions of Law

1. Leona Valley has fulfilled the requirements of Pub. Util. Code §§ 1801-1812, which govern awards of intervenor compensation, and is entitled to intervenor compensation for its claimed compensation, incurred in making substantial contributions to D.07-03-045.

2. Leona Valley should be awarded \$11,641.75 for its contribution to D.07-03-045.

3. This order should be effective today so that Leona Valley may be compensated without further delay.

O R D E R

IT IS ORDERED that:

1. Marcy Watton, David Gattenbein, Alexis Upton-Knittle, Lloyd J. Cook, Melinda Janowitz, Richard and Guyla Clayton, Ralph and Dianne Ciaramella, Bernhard and Laurie Staschik, Christina and Matthew Fitzgerald, Dale L. Baer, Warwick and Karen Bryan, Ronald L. Bright, Jesse Valdez, and Carol and Robert Valdez, and the Leona Valley Town Council (Leona Valley) are awarded \$11,641.75 as compensation for their substantial contributions to Decision 07-03-045. Payment of the award shall be made to the "Jackson, DeMarco, Tidus, Peterson & Peckenpaugh Trust Account" administered by

Leona Valley's counsel. Payment shall include interest at the rate earned on prime, three-month commercial paper as reported in Federal Reserve Statistical Release H.15, beginning July 25, 2007, the 75th day after the filing date of Leona Valley's request for compensation and continuing until full payment is made.

2. Within 30 days of the effective date of this decision, Southern California Edison Company shall pay Leona Valley the total award.

3. Application 04-12-008 is closed.

This order is effective today.

Dated _____, at San Francisco, California.

APPENDIX**Compensation Decision Summary Information**

Compensation Decision:		Modifies Decision? N
Contribution Decision(s):	D0703045	
Proceeding(s):	A0412008	
Author:	ALJ Victoria S. Kolakowski	
Payer(s):	Southern California Edison Company	

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
Leona Valley Residents and Leona Valley Town Council	05/11/07	\$15,519.25	\$11,641.75	No	Adjusted requested hourly rates and rates for work related to intervenor compensation for Taber and Friedlander.

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Alene	Taber	Attorney	Leona Valley Residents and Leona Valley Town Council	\$350.00	2006	\$280.00
Alene	Taber	Attorney	Leona Valley Residents and Leona Valley Town Council	\$375.00	2007	\$290.00
Dan	Friedlander	Attorney	Leona Valley Residents and Leona Valley Town Council	\$300.00	2006	\$260.00

(END OF APPENDIX)