

Decision 11-12-015 December 1, 2011

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

In the Matter of the Application of San Diego Gas & Electric Company (U902E) for Authorization to Recover Unforeseen Liability Insurance Premium and Deductible Expense Increases as a Z-Factor Event.

Application 09-08-019  
(Filed August 31, 2009)

**DECISION DENYING INTERVENOR COMPENSATION TO RUTH HENRICKS FOR LACK OF SUBSTANTIAL CONTRIBUTION TO DECISION 10-12-053**

Claimant: Ruth Henricks (Henricks)	For contribution to Decision (D.) 10-12-053
Claimed: \$123,522	Awarded: \$0.00 (reduced 100%)
Assigned Commissioner: Timothy Alan Simon	Assigned ALJ: Maribeth A. Bushey

## **1. Summary**

This decision denies intervenor compensation to Ruth Henricks for failing to make a substantial contribution to Decision 10-12-035. This proceeding is closed.

## **2. Background**

San Diego Gas & Electric Company (SDG&E) applied to the Commission for authorization to increase its electric and natural gas revenue requirement by \$28,884.00 to reflect unforeseen liability insurance premium and deductible expense, and to create a new advice letter and amortization process for future post-test year ratemaking adjustment. SDG&E contended that the unforeseen liability insurance premium and deductible expense met the Commission's standard for treatment as unexpected and uncontrollable events which occurred after test year ratemaking has been completed, and thus qualified for an adjustment to revenue requirement colloquially referred to as a "Z-factor" adjustment.

The Utility Consumers' Action Network (UCAN), Division of Ratepayer Advocates (DRA), and Henricks protested the application. Henricks challenged SDG&E's assertions that the increased premium and deductible are exogenous or external to SDG&E. Henricks stated that the precipitating events for the wildfire insurance premium increases were that certain wildfires that occurred in 2007 were caused by SDG&E. Henricks concluded that SDG&E has not reasonably incurred these premium increases and its request for Z-factor relief should be denied.

On December 16, 2010, in Decision (D.) 10-12-053 the Commission (1) granted SDG&E's request for Z-factor treatment for 2009-2010 to recover the

cost of increased insurance premiums amounting to \$28,884,000, and (2) authorized SDG&E to file Tier-3 advice letters for 2011-2012.

On February 18, 2011, Henricks filed its claim for intervenor compensation for \$123,522.

### **3. Opposition to Henricks' Claim**

SDG&E and UCAN opposed Henricks' claim. SDG&E stated that Henricks' request for compensation should be denied in its entirety in accordance with Pub. Util. Code §§ 1801, 1801.3, 1802, 1803(a), 1804(c) and 1808, because Henricks: (i) failed to provide a "substantial contribution" to the decision; (ii) improperly attempted to delay and obstruct the orderly and timely fulfillment of the Commission's responsibilities; and (iii) requested compensation for fees and costs that are demonstrably unreasonable. SDG&E emphasized that because utility ratepayers will ultimately bear the cost of any compensation awards granted to Henricks, the Commission must closely scrutinize and deny Henricks' compensation request.

SDG&E explained that under § 1803(a), in order to qualify for a compensation award, an intervenor must, among other requirements, demonstrate that it has made a "substantial contribution" to a Commission decision. This requires a finding 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."

SDG&E reviewed Henricks' substantive presentation in its prepared direct testimony. In addition to disputing the factual assertions, SDG&E asserted that Commission could not have relied on any of the factual claims included in

Hendricks' testimony because the only version of Hendricks' testimony entered into the record was so heavily redacted as to be unintelligible. Only the first page is decipherable, with the remaining 19 pages impossible to read and fewer than 15 words of text are viewable on two pages. SDG&E noted that apparently Hendricks' counsel failed to enter an unredacted confidential version of the testimony into the record of this proceeding, thus leaving only the undecipherable redacted testimony for Commission review. SDG&E concluded that the substance of the testimony was not entered into the record and thus did not substantially assist the Commission in making its decision.

SDG&E similarly asserted that the Commission did not rely on any of the arguments Hendricks made in pleadings. Hendricks' compensation request lists 10 references to Hendricks' presentation in D.10-12-053, but SDG&E contended that these references were simply the five-paragraph summary of Hendricks' presentation in the section of the decision entitled "Evidence and Argument Presented," which merely summarized the arguments offered by each party and did not address the merits of parties' claims. SDG&E referred to previous Commission decisions finding that a distinction exists between mere recitation of the claims offered by an intervenor, and actual reliance by the Commission on such claims in a manner that establishes that a substantial contribution has been made. That a decision simply acknowledges a party's participation "does not constitute a substantial contribution. SDG&E concluded that the lack of any explicit discussion in the Decision of Hendricks' arguments, beyond the summary described above, shows that Hendricks did not make a substantial contribution.

SDG&E also argued that pursuant to Pub. Util. Code § 1808 the Commission should deny Hendricks request because Hendricks' participation was obstruction rather than helpful to the process of resolving the application.

SDG&E stated that Henricks' counsel the Commission's rules and thereby caused significant delay. Specifically, Henricks' counsel burdened the process by failing to properly file and serve Henricks' pleadings, including repeatedly failing to serve the assigned Administrative Law Judge (ALJ) and assigned Commissioner, filing several frivolous motions, ignoring relevant Commission rules concerning preparation of witness testimony, serving additional testimony without permission from the ALJ in plain violation of Rule 13.8, and attaching a confidential document to a motion served (but not filed) prior to the evidentiary hearing. SDG&E provided lengthy quotations from the record in support of its assertions.

SDG&E also challenged the reasonableness of Henricks' claimed fees and costs. SDG&E stated, among other things, that the requested hourly rates for counsel were too high given counsel's inexperience and ineffectiveness.

UCAN agreed with SDG&E that Henricks failed to demonstrate a substantial contribution to the Commission's decision. As did SDG&E, UCAN stated that each of the citations to D.10-12-053 in Henricks' request is merely to the summary of evidence and arguments presented in the proceeding and fails to show that any of the evidence or arguments presented by Henricks were actually utilized by the Commission. In fact, UCAN noted, Henricks does not attempt to explain how Henricks' evidence and arguments substantially contributed to the proceeding, nor does Henricks cite discussion sections of either the ALJ's proposed decision or the Commission's final decision indicating where either decision appeared to be considered, relied upon, or otherwise used any of Henricks' arguments or evidence. UCAN conducted its own review of the evidentiary record, the proposed decision and the final decision and did not find any instance where the Commission or the ALJ utilized or gave weight to the

contributions of Henricks. UCAN also pointed out that even though the proposed decision denied Z-factor recovery based on Commission precedent and because the costs were neither exogenous nor beyond management's control, not one of Henricks' purported contributions indicates Henricks presented any testimony or evidence that influenced the proposed decision. UCAN concluded that Henricks had not made a substantial contribution to the proceeding.

UCAN also challenged the reasonableness of the compensation requested by Henricks. UCAN stated that the number of hours requested by Henricks is unreasonable because Henricks unnecessarily lengthened the proceeding and was inefficient in her work effort, as shown in the requested duplicative hours of two attorneys and a law clerk. UCAN also pointed out that Henricks' representatives wasted time through their unwillingness to adhere to the rules of the Commission. Among other things, Henricks filed multiple motions, many of which a quick review of the Commission's Rules of Practice and Procedure would have shown to be pointless. UCAN offered as examples "Motion of Protestor Ruth Henricks in Opposition to Three Day Notice of Grant of Request for Individual Ex Parte Meeting by San Diego Gas & Electric Company (U 902 E)" and "Protestor Henricks' Motion to Disqualify Commissioner Timothy Simon from Proceeding A.09-08-019."

#### **4. Requirements for Awards of Compensation and Evaluation of Henricks' Request**

The intervenor compensation program, which is set forth in Pub. Util. Code §§ 1801-1812,<sup>1</sup> requires California jurisdictional utilities to pay the

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<sup>1</sup> All subsequent statutory references are to the Public Utilities Code unless otherwise indicated.

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 Commission's Rules of Practice and Procedure (Rules), or at another appropriate time 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 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 otherwise 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 1-4 above are combined and a separate discussion of Items 5-6 follows.

#### **4.1. Preliminary Procedural Issues**

Under § 1804(a)(1) and Rule 17.1(a)(1), a customer who intends to seek an award of intervenor compensation must file an NOI before certain dates.

Henricks incorporated her NOI into her “Protest of Ratepayer Ruth Hendricks” which was filed on September 18, 2009. The assigned ALJ issued a ruling on May 26, 2010, finding that Hendricks NOI was timely filed and that Henricks has satisfied the requirements for eligibility to request compensation, pursuant to compliance with Pub. Util. Code §§ 1801-1812 and the Commission’s regulations. In addition, the May 26, 2010 ruling cautioned that the finding in no way guaranteed such an award.

Henricks has filed under seal balance sheets and profit and loss statements for the year 2010 for the two businesses she owns and has demonstrated that effective participation in the proceeding without the opportunity for compensation would impose a significant financial hardship, as defined by Pub. Util. Code § 1802(g), if she were to participate in this proceeding without the possibility of receiving compensation.

Henricks timely filed her request for intervenor compensation on February 18, 2011.

We affirm the finding of eligibility to claim intervenor compensation in the May 26, 2010, ruling, and find that Henricks has demonstrated significant financial hardship. Therefore, we conclude that Henricks has satisfied all the procedural requirements necessary to make a request for compensation in this proceeding.

#### **4.2. Substantial Contribution**

In evaluating whether a customer made a substantial contribution to a proceeding, we look at several things. First, we look at 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, we look at whether the customer's participation unnecessarily duplicated or materially supplemented, complemented, or contributed to the presentation of the other party. (§§ 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.<sup>2</sup>

With this guidance in mind, we have reviewed the claimed contributions Henricks made to the proceeding and find that Henricks has not shown any substantial contribution to this proceeding.

As stated by UCAN and SDG&E, in the section of Henricks' request for compensation that addresses substantial contribution, Part II A., Henricks refers only to the decision's description of the evidence and argument Henricks' presented as the basis for her claim of substantial contribution.<sup>3</sup> These passages in the decision, however, merely summarize the information put forth by Henricks and do not show how any of this information made a substantial

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<sup>2</sup> D.98-04-059, 79 CPUC2d 628 at 653.

<sup>3</sup> Henricks Request for Intervenor Compensation at 3 - 4.

contribution to the decision. Henricks has not shown any reference to the discussion sections of decision indicating where the decision appeared to consider, rely upon, or otherwise use any of Henricks arguments or evidence. The Commission has pointed out that a distinction exists between the mere recitation of the claims offered by an intervenor, and its actual reliance on such claims in a manner that establishes that a substantial contribution has been made.<sup>4</sup> Simply acknowledging a party's participation "by itself cannot constitute a substantial contribution."<sup>5</sup>

As stated above, § 1802(i) defines substantial contribution as the customer's presentation that substantially assisted the Commission in the making of its decision because it has adopted factual and legal contentions, or policy recommendations presented by the intervenor. Section 1802.5 allows compensation for an intervenor's participation which materially supplements, complements, or contributed to the presentation of another party, provided that the intervenor's own participation makes a substantial contribution to a Commission order or decision. Merely helping another party to participate effectively does not constitute a substantial contribution by the intervenor, nor does such help seem reasonably necessary to the intervenor's own substantial contribution. Our review of the D.10-12-053 does not reveal any areas in which Henricks made a substantial contribution or where Henricks assisted other parties in joint efforts which aided the Commission in the making of its decision

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<sup>4</sup> See D.04-05-004, at 11.

<sup>5</sup> See D.04-05-004, at 11-12.

because it adopted factual and legal contentions, or policy recommendations presented by Henricks.

In reviewing Henricks' claim for compensation beyond Part II A., which is intended to address substantial contribution, we find that in Part II B., Duplication of Effort, Henricks asserts that three separate is requested "motions" were "critical to establish a proper record of the hearing."<sup>6</sup> These motions addressed the final oral argument before the Commission, (2) requested SDG&E to provide a witness with personal knowledge of the insurance purchased by SDG&E, and (3) opposed late admission of exhibits. As to the request to final oral argument, the Commission held the final oral argument pursuant to statute, but nothing presented by Henricks at the final oral argument influenced either the Commission's decision or the ALJ's proposed decision. As to the request to require SDG&E to provide another witness regarding insurance, the request was denied because SDG&E had already provided a witness with appropriate knowledge. As to the opposition to late admission of certain exhibits, admission was granted over Henricks' opposition by ALJ ruling dated May 26, 2010. In short, none of these three motions assisted the Commission either procedurally or substantively, within the provisions of § 1802(i).

In Part III A; the section of the claim for compensation that addresses reasonableness of the requested compensation, Henricks stated that she provided a "necessary investigator to challenge the sufficiency of SDG&E's factual assertions in briefs and prepared testimony."<sup>7</sup> As noted above, however,

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<sup>6</sup> Henricks Request for Intervenor Compensation at 5.

<sup>7</sup> Henricks Request for Intervenor Compensation at 6.

Henricks' testimony presented for the Commission's evidentiary record was so heavily redacted as to be unreadable. The request also asserted that: "Henricks' arguments and factual contributions are discussed throughout the ALJ's proposed decision and the adopted decision showing that its participation was important in ensuring a thorough evaluation of the Z-factor criteria."<sup>8</sup> A careful review of D.10-12-053, however, shows no references to Henricks' presentation other than in the "evidence presented" section discussed above.

Section 1802.5 allows an intervenor to be eligible for full compensation where its participation materially supplements, complements, or contributes to the presentation of another party if that participation makes a substantial contribution to the Commission order. However, Henricks did not assert that her participation materially supplemented, complemented, or contributed to the presentation of another party. We find that Henricks' participation did not assist any other party and therefore does not qualify for compensation under § 1802.5.

As set forth above, we have reviewed Henricks' assertions of substantial contribution and have evaluated other statements in Henricks' request for intervenor compensation. With respect to D.10-12-053, we find that Henricks as not shown that she made a substantial contribution. Henricks' showing of substantial contribution to the decision consists only of extensive quotes from the decision that describe Henricks' participation and positions. These passages do not show how Henricks may have made a substantial contribution to the Commission's consideration of the issues in this proceeding. On the contrary, the passages show that Henricks failed to influence the

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<sup>8</sup> Id.

Commission on any of the various substantive issues that she raised, and that she provided no information or analysis relied upon by the ALJ or the Commission in their deliberations. Accordingly, we conclude that Henricks' claim for intervenor compensation should be denied.

Due to this conclusion, there is no need to evaluate the reasonableness of Henricks' claim.

### **5. Comment on Proposed Decision**

Pub. Util. Code § 311, subdivision (g)(1), provides that a decision must be served on all parties and be subject to at least 30 days review and comment prior to a vote of the Commission. Rule 14.6(c)(6) provides that this 30-day comment period may be waived on proposed decisions issued in proceedings in which no hearings were conducted for a decision on a request for compensation pursuant to § 1801 et seq. Here, because of the denial of the request, the proposed decision of ALJ Maribeth A. Bushey was mailed to the parties in accordance with § 311 and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. On November 7, 2011, SDG&E filed comments supporting the proposed decision.

### **6. Assignment of Proceeding**

Timothy Alan Simon is the assigned Commissioner, and Maribeth A. Bushey is the assigned ALJ in this proceeding.

### **Findings of Fact**

1. Henricks has satisfied all the procedural requirements necessary to claim compensation in this proceeding.
2. Henricks did not make a substantial contribution to D.10-12-053 as described herein.

**Conclusions of Law**

1. Henricks has not fulfilled the requirements of §§ 1801-1812, which govern awards of intervenor compensation, and is not entitled to intervenor compensation for her participation in the proceeding leading to D.10-12-053.
2. Henricks' request for intervenor compensation for her participation in the proceeding leading to D.10-12-053 should be denied.
3. This order should be effective today.
4. This proceeding should be closed.

**O R D E R**

**IT IS ORDERED** that the Request for Intervenor Compensation filed by Ruth Henricks on February 18, 2011, is denied and this proceeding is closed.

This order is effective today.

Dated December 1, 2011, San Francisco, California.

MICHAEL R. PEEVEY  
President  
TIMOTHY ALAN SIMON  
CATHERINE J.K. SANDOVAL  
MARK J. FERRON  
Commissioners

I. abstain.

/s/ MICHEL PETER FLORIO  
Commissioner

**APPENDIX**

## Compensation Decision Summary Information

Compensation Decision:	D1112015	Modifies Decision? No
Contribution Decision:	D1012053	
Proceeding:	A0908019	
Author:	ALJ Maribeth A. Bushey	
Payer:	San Diego Gas & Electric Company	

**Intervenor Information**

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
Ruth Henricks	02-18-11	\$123,522	\$0.00	No	lack of substantial contribution

**Advocate Information**

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Michael	Aguirre	Attorney	Ruth Henricks	\$400	2009/2010	NA
Maria	Severson	Attorney	Ruth Henricks	\$330	2009/2011	NA
Kevin	Christensen	Expert/ Law Clerk	Ruth Henricks	\$ 50	2009/2011	NA

(END OF APPENDIX)