Decision 05-10-027 October 27, 2005

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Southern California Edison Company (U 338 E) for Authority to, Among Other Things, Increase its Authorized Revenues for Electric Service in 2003, and to Reflect that Increase in Rates.	Application 02-05-004 (Filed May 3, 2002)
Investigation on the Commission's Own Motion Into the Rates, Operations, Practices, Services and Facilities of Southern California Edison Company.	Investigation 02-06-002 (Filed June 6, 2002)

OPINION DENYING THE PETITION FOR MODIFICATION OF DECISION 05-06-031 OF THE GREENLINING INSTITUTE

The petition for modification of Decision (D.) 05-06-031, filed July 21, 2005, by the Greenlining Institute (Greenlining), is denied. D.05-06-031 granted intervenor compensation awards to Greenlining and other intervenors for their substantial contributions to D.04-07-022. No application for rehearing of D.05-06-031 was filed. This petition for modification seeks an upward adjustment to the rates awarded to attorney Itzel Berrio and expert Gelly Borromeo. The requested adjustments would result in an increase of $2,646 to Greenlining's award.

Petition

Greenlining claims that the rate of $160 that the Commission awarded to Borromeo in D.05-06-031 is far below her market rate. Greenlining argues that

based on Commission awards to experts of comparable training and who offer similar services to Borromeo, a $300 hourly rate for Borromeo fulfills the intervenor compensation requirements. Greenlining points out that the Commission awarded an even higher rate to an expert doing what Greenling asserts was similar work. Borromeo's qualifications were included in the request for compensation filed in this proceeding on September 14, 2004, and her biography and resume were attached to Greenlining's Supplement to Request for Intervenor Compensation filed in Rulemaking (R.) 03-02-035 on June 18, 2004.

In regard to Berrio, in D.05-06-031, the Commission adopted her 2002 rate of $265 awarded in D.03-10-062. Greenlining does not dispute this rate. However, Greenlining claims that the 2003 and 2004 rates awarded - $275 and $300, respectively – are below market rates. It asserts that attorneys with Berrio's experience are regularly awarded 2003 rates starting at $300. In support Greenlining cites the Pearl declaration included with Greenlining's request for compensation in Investigation (I.) 02-04-026 (the declaration discusses 2003 rates for attorneys with six years of experience). Greenlining states that the rates requested, $290 and $310 for 2003 and 2004 respectively, are consistent with market rates, and therefore, should apply to Berrio's work in this proceeding. Furthermore, Greenlining maintains, these rates are consistent with an 8% annual adjustment – an adjustment authorized by Resolution ALJ-184. The application of an 8% adjustment annually on the awarded 2002 rate of $265 would yield rates of $290 and $310 for Berrio's work in 2003 and 2004.

Opposition

Southern California Edison Company (SCE) opposes Greenlining's petition. It argues that the petition is without merit and should be rejected

because it has not presented new or changed facts that would justify a change in the Commission's awards issued in D.05-06-031.

SCE states that in its September 14, 2004 request for award of compensation, Greenlining requested a 2002 and 2003 hourly rate of $300 for Borromeo. As justification for the $300 rate, Greenlining compared Borromeo's qualification with another expert who was awarded an hourly rate of $300 in D.01-08-010. In D.05-06-031, the Commission rejected Greenlining's request for the $300 rate and instead awarded Borromeo an hourly rate of $160 based, on an extensive analysis of D.04-08-020 (where the Commission also awarded a $160 rate for Borromeo). SCE asserts that Greenlining seeks a second bite of the apple by requesting that Borromeo be awarded an hourly rate of $300, without providing new or changed facts that would justify its request.

In regard to Berrio, SCE argues that Greenlining is seeking for a second time, just as it did in September 14, 2004, that Berrio be awarded an hourly rate of $290 for 2003 and $310 for 2004. SCE submits that, similar to the situation with Borromeo, Greenlining has failed to provide new or changed facts that would justify its request for an hourly rate higher than that authorized in D.05-06-031.

Finally, SCE contends, the Commission should reject Greenlining's statement that a higher hourly rate for Berrio is consistent with 8% annual adjustment authorized in Resolution ALJ-184 because the Commission already had taken into account the 8% annual adjustment when it determined the 2004 hourly rate for Berrio in D.04-10-033.

Discussion

For Berrio, we adopted hourly rates in D.05-06-031 of $275 for work performed in 2003, and $300 for 2004. We adopted these same rates for Berrio in D.04-10-033, D.05-08-028 and D.05-08-015. The 2004 rate for Berrio is an

escalation of 8% above the 2003 rate (as deemed reasonable by Resolution ALJ-184). For Borromeo, we adopted an hourly rate in D.05-06-031 of $160/hour for work performed in 2002 and 2003 (no work for Borromeo in 2004). We adopted this same rate in D.04-08-020 for Borromeo for 2003 work.

The rates adopted for Borromeo in 2003, and for Berrio in 2003 and 2004, are within the same range of rates paid to pther intervenors with similar training and experience. The subject petition does not include any new or changed facts and does not justify an increase in these rates. For these reasons, the petition is denied.

Waiver of Comment Period

This is an intervenor compensation matter. Accordingly, as provided by Rule 77.7(f)(6) of our Rules of Practice and Procedure, we waive the otherwise applicable 30-day comment period for this decision.

Assignment of Proceeding

Susan P. Kennedy is the Assigned Commissioner and Robert Barnett is the assigned Administrative Law Judge in this proceeding.

Finding of Fact

There are no new or changed facts that justify granting the relief requested in Greenling's petition to modify D.05-06-031.

Conclusion of Law

For the reasons set forth in the forgoing discussion, the hourly rates adopted for Berrio and Borromeo are reasonable.

O R D E R

IT IS ORDERED that:

1. The petition for modification is dismissed.
2. Application 02-05-004 and Investigation 02-06-002 are closed.

This order is effective today.

Dated October 27, 2005, at San Francisco, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
SUSAN P. KENNEDY
DIAN M. GRUENEICH
JOHN A. BOHN
Commissioners