

Decision 05-12-015

December 1, 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)

ORDER DENYING REHEARING
OF DECISION (D.) 05-09-010

I. SUMMARY

Manfred F. Gildner ("Gildner") filed an application for rehearing of Decision (D.) 05-09-010. In that decision, we awarded Gildner \$6,725 in intervenor compensation for his substantial contributions to D.05-03-022, which approved a settlement in Phase 2 of the test year 2003 general rate case of Southern California Edison Company ("Edison").

On July 26, 2004, Gildner filed a motion to intervene in this proceeding. His interest primarily focused on one area of rate design, regarding the limited issue of the reasonableness of an earlier transfer of customers to Baseline Region 16 from Baseline Region 17. The rate in Baseline Region 16 was higher than the rate in Baseline Region 17. Gildner's recommendation to transfer the affected customers back to

Baseline Region 17 was incorporated into the Phase 2 settlement agreement and approved in D.05-03-022.

Gildner met all of the procedural requirements for an award of intervenor compensation, including filing a timely NOI on September 24, 2004, and request for intervenor compensation on April 19, 2005. In his request, Gildner allocated his time by activity, but failed to provide detailed description of services and expenditures as required by Public Utilities Code Section 1804(c).¹

On September 9, 2005, we issued D.05-09-010. The decision held Gildner substantially contributed to the settlement filed on November 10, 2004, but found his time and requested hourly rate to be excessive. We compensated Gildner \$6,725 for 50 hours of work at \$110 per hour. This was a significant reduction from Gildner's original request of \$109,125 (354 hours at \$300 per hour).

Manfred F. Gildner timely filed an application for rehearing of Decision (D.) 05-09-010. The application for rehearing alleges: (1) the decision was unreasonable in calculating 50 hours represented Gildner's substantial contribution in the proceeding; and (2) the decision failed to use the hourly market rate associated with an expert in rate allocation. The application for rehearing also requests oral argument, pursuant to Rule 86.3 of the California Public Utilities Commission's Rules of Practice and Procedure.

We have reviewed each and every allegation raised in the application for rehearing, and are the opinion that good cause does not exist for granting rehearing. Accordingly, rehearing of D.05-09-010 is denied.

¹ Section references are to the Public Utilities Code unless otherwise noted.

II. DISCUSSION

A. **The Commission acted reasonably in limiting Gildner's compensation to 50 hours.**

Gildner argues the Commission erred in limiting his compensation to 50 hours. (Rehrg. App., p. 2.) Gildner's originally sought 525 hours in his request for compensation, filed on April 19, 2005. Gildner later reduced his claim to 354 hours on May 31, 2005, after Edison filed a response to deny the request or significantly reduce the amount of the request.

In D.05-09-010, we held Gildner's claim for intervenor compensation was excessive. We decided to limit his hours to Phase 2 of the proceeding (which Gildner labels "Phase 4" in his request), when Gildner first filed his Motion to Intervene. Gildner allocated his time as follows:

"PHASE 4: I have filed the Motion to Intervene. The following is a list of time spent and category up to and including the Settlement Agreement.

1. Obtaining maps – 20 hours
2. Consultations with affected ratepayers – 40 hours
3. Phone conversations with Public Advisors and CPUC – 32 hours
4. Phone conversations (and e-mails) with SCE – 18 hours
5. Travel to and from San Francisco – 12 hours
6. Time spent in filing all motions, mailing, service lists, etc. – 30 hours
7. Appearances at pre-hearing, hearing, DRNAG (Del Rosa Neighborhood Action Group), etc. – 20 hours
8. Time spent in obtaining, writing and distributing pamphlets and booklets – 34 hours."

(See D.05-09-010, p.6.) This amounts to a total of 204 hours.

After reviewing Gildner's distribution of time for this phase, we further reduced his compensable hours. Section 1804(c) requires that requests for compensation include at a minimum a detailed description of services and expenditures. Gildner failed

to provide any specific dates, time spent, list of attendees, or specific tasks accomplished at each of the formal hearings and conferences and settlement conferences he attended. (D.05-09-010, p. 8.) When this occurs, the Commission has the discretion to limit compensation to what it deems reasonable.²

The issue of concern here is whether 50 hours is reasonable to compensate Gildner's participation in the instant proceeding. We believe our judgment was not an abuse of discretion, as Gildner's requested hours were, in fact, excessive, unproductive and inefficient. For example, the 20 hours of what Gildner labels as "Appearances at pre-hearing, hearing, DRNAG (Del Rosa Neighborhood Action Group), etc." is vague and appears overly excessive. Gildner appeared in one prehearing conference which lasted approximately one hour. Gildner does not provide specific information of his role or participation in the hearings, nor does he describe the DRNAG appearance. He attended relatively informal settlement conferences, but his interest was very limited to a single issue. Gildner filed one comment regarding Edison's proposed settlement agreement, a single page in length. In addition, 30 hours of "filing all motions, mailing, service lists, etc." is excessive. Administrative tasks are never compensated where the principal receives professional-level fees, as these fees assume overhead such as clerical work. (*Opinion Awarding Compensation* [D.00-02-044], *supra*, 2000 Cal. PUC LEXIS 197, *84-85.)

² Cost allocation as required by Section 1804(c) is vital in the intervenor compensation program. As we stated in *Opinion Awarding Compensation*, [D.00-02-044] (2000) ___ Cal.P.U.C. 3d ___, 2000 Cal. PUC LEXIS 197, at **50-51:

"We want to avoid guesswork -- that is, our looking at the pleadings and determining how much time *we think* was spent on each issue -- and the customers are in the best position to know how much time they spent on each issue. However, absent the appropriate allocation, we will make a judgment. Keeping careful records has the added benefit of forcing the intervenor to discipline its participation to the statutory mandates of efficiency, effectiveness, necessity, productivity, and uniqueness. As a result, the intervenor likely will receive compensation for more of its time, and the discipline engendered will lead to more effective advocacy on behalf of ratepayers. Intervenors should begin this discipline when stating in their NOI the nature and extent of their planned participation, in light of the scoping memo ruling; the Commission should hold them to their plans in conducting the proceeding."

Absent a detailed record, we looked to other factors in determining what hours were compensable. As our decision noted, Gildner's hours appear disproportionate to that of other intervenors. Gildner claims 204 hours for his interest in one narrow issue regarding the Baseline transfer. By contrast, in *Opinion Granting The Utility Reform Network Intervenor Compensation For Its Substantial Contribution To Decision 05-03-022* [D.05-07-020] (2005) ___ Cal.P.U.C.3d ___, 2000 Cal. PUC LEXIS ___, we found TURN a much more active and productive participant, awarding their claim for 186 hours on all issues of this phase of the proceeding. (D.05-09-010, p. 9, fn 1.) It is understandable Gildner would have spent extra time preparing due to his lack of experience. However, "we must consider both the benefit of having the participation of a customer...and our obligation to ensure that ratepayers receive value when they compensate such customers." (*Opinion Awarding Compensation* [D.00-02-044], *supra*, 2000 Cal. PUC LEXIS 197, at *69; see also, Pub. Util. Code, §§ 1801.3(b) & 1801.3(f).) Therefore, given the comparison between the two participants—TURN's comprehensive participation and Gildner's interest to a single issue—it is reasonable to award Gildner 50 hours of intervenor compensation. As such, no legal error was made.

B. The Commission applied a reasonable market rate.

Gildner next argues that based on his experience in this proceeding, the Commission should have calculated an hourly rate associated with an expert in rate allocation. He states:

"After four years, I became an expert in baseline, Trust Transfer Account, Legislative Rate Reduction, AB 1890, Regions, tiered billing and many, many more aspects of designing rate allocations for the residential ratepayers. When I started out, I did not have experience in Commission proceedings, but after four years, I do now. I have appeared before the CPUC over four times. I feel that I qualify to be classified as an expert in rate allocation for the residential ratepayer."

(Rehrg. App., p. 2.) Therefore, Gildner believes he is entitled to a compensation rate higher than \$110 per hour.³ This argument has no merit.

Section 1806 provides, “The computation of compensation awarded pursuant to Section 1804 shall take into consideration the market rates paid to persons of comparable training and experience who offer similar services.” A market rate of \$110 per hour is reasonable for Gildner, who is not an expert. Prior to filing the motion to intervene, Gildner had no training or experience on rate allocation. Gildner also had a limited interest on a single issue of a Baseline transfer. In contrast, TURN’s experts participated actively in all areas of Phase 2 of this proceeding, and submitted extensive testimony concerning marginal cost methods, allocation, and rate design. Its consultants were also integral in reviewing numerous spreadsheets with revenue allocation results from various testimony and settlement proposals. (D. 05-07-020, p. 3.) TURN’s experts were awarded an average of \$163 per hour in intervenor compensation. (D.05-07-020, p.12.) Therefore, in regard to Gildner’s award, we held: “We cannot award more to a non-expert participating in one area of Phase 2. When compared to other intervenor awards for persons with vastly more experience we have no basis to compensate Gildner at the level requested.” (D.05-09-010, p. 9.)

Instead, the decision based Gildner’s rate on a recent intervenor compensation award in Rulemaking (R.) 01-10-001, granted to an expert in electrical wires and facilities who had long experience in Commission proceedings. That expert was given a rate of \$110 per hour. (*Opinion Granting Intervenor Compensation to William Adams for Contributions to Decision 05-01-030* [D.05-06-053, pp. 8-9 (slip op.)] (2005) ___ Cal.P.U.C.3d ___, 2005 Cal. PUC LEXIS ___.) Consequently, absent an argument that Gildner’s qualifications exceed the expert’s in D.05-06-053, the

³ Gildner’s original request for compensation was for \$300 per hour. He bases this on information provided by the Public Advisor that the cost of representation by an advocate would be \$325 per hour. We assume an “advocate” in this billing context means a licensed attorney. Gildner’s application for rehearing does not raise further arguments that he should be compensated at this rate.

Commission is justified in topping Gildner's intervenor compensation rate at \$110 per hour.

C. The request for oral argument should be denied.

Gildner also requests oral argument in his application for rehearing pursuant to Rule 86.3(a) of the Commission's Rule of Practice and Procedure. (Rhrq. App., p. 1.) This rule sets forth the general criteria for oral arguments, and states the following:

“(a) An application for rehearing will be considered for oral argument if the application or a response to the application (1) demonstrates that oral argument will materially assist the Commission in resolving the application, *and* (2) the application or response raises issues of major significance for the Commission because the challenged order or decision:

- (i) adopts new Commission precedent or departs from existing Commission precedent without adequate explanation;
- (ii) changes or refines existing Commission precedent;
- (iii) presents legal issues of exceptional controversy, complexity, or public importance; and/or
- (iv) raises questions of first impression that are likely to have significant precedential impact.”

(Code of Regs., tit. 20, §86.3, subd. (a), emphasis added.)

Gildner's rehearing application fails to “demonstrate that the oral argument will materially assist the Commission in resolving the application.” This is the first prong of Rule 86.3(a). Thus, the request should be rejected on grounds of failing to comply with this requirement.

In addition, D.05-09-010 does not adopt or depart from existing Commission precedent. We have addressed similar issues since *Re Commission's Intervenor Compensation Program* [D.98-04-059] (1998) 79 Cal.P.U.C.2d 628, which adopted revisions to the intervenor compensation program. Subsequent related decisions,

including D.00-02-044, have also reduced intervenor compensation pursuant to Section 1804(c), when intervenors fail to be efficient or keep an adequate record of time.

III. CONCLUSION

For the reasons set forth above, good cause does not exist for the granting of rehearing. Accordingly, the Application for Rehearing, filed by Manfred F. Gildner is denied. Further, the request of Manfred F. Gildner for an oral argument on the applications for rehearing is denied.

THEREFORE, IT IS ORDERED that:

1. Application for rehearing of Decision (D.) 05-09-010, filed by Manfred F. Gildner is hereby denied.
2. The request for oral argument on the application for rehearing is denied.
3. Application 02-05-004 and Investigation 02-06-002 are hereby closed.

This order is effective today.

Dated December 1, 2005, at San Francisco, California.

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

Commissioner Susan P. Kennedy, being necessarily absent,
did not participate.