

Decision **DRAFT DECISION OF ALJ DIVISION** (Mailed 11/18/03)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of Southern California Gas Company
for authority to update its gas revenue
requirement and base rates. (U 904 G)

Application 02-12-027
(Filed December 20, 2002)

Application of San Diego Gas & Electric
Company for authority to update its gas and
electric revenue requirement and base rates.
(U 902 M)

Application 02-12-028
(Filed December 20, 2002)

Order Instituting Investigation on the
Commission's Own Motion into the Rates,
Operations, Practices, Service and Facilities of
Southern California Gas Company and San Diego
Gas & Electric Company.

Investigation 03-03-016
(Filed March 13, 2003)

**DECISION DENYING LOCAL 483 UTILITY WORKERS UNION OF AMERICA
ELIGIBILITY FOR INTERVENOR COMPENSATION****Summary**

This decision denies eligibility that was requested in a Notice of Intent
(Notice) filed by Local 483 Utility Workers Union of America (Local 483) on

March 29, 2003 and the Amended Notice filed on May 20, 2003. It addresses the requirements of the Pub. Util. Code§ 1804.¹

We find that Local 483 Utility Workers Union of America (Local 483) is not eligible to request compensation in this proceeding because it does not meet the statutory definition of “customer” specified in 1802(b).²

Typically the assigned Administrative Law Judge (ALJ) rules in consultation with the assigned Commissioner on the eligibility of an interested party that files a Notice. Because our Rules of Practice and Procedure do not provide for interlocutory appeal of such rulings, this matter is being referred directly to the Commission so that Local 483 may have a definitive order of the Commission before the end of phase I in Application (A.) 02-12-037.

Timeliness of Filing Notice for Intervenor Compensation

Under § 1804(a)(1), “[a] customer who intends to seek an award under this article shall, within 30 days after the prehearing conference is held, file and serve on all parties to the proceeding a notice of intent to claim compensation.” A first Prehearing Conference (PHC-1) was held in San Francisco, Ca., on February 7, 2003³. At that time the parties were unable to provide sufficient information on the availability of expert staff to allow the ALJ to set a schedule. Further, parties had not sufficiently reviewed the applications to provide an informed view of the issues to be litigated in these consolidated proceedings. A second prehearing

¹ All statutory references are to the Public Utilities Code.

² Local 483 filed a Notice of Intent (Notice) on March 29, 2003 and an Amended Notice on May 20, 2003.

³ Local 483 filed a petition to intervene in these proceedings on February 18, 2003 after PHC-1. It was placed on the consolidated service list as an interested party at PHC-1.

conference (PHC-2) was held on March 14, 2003. Local 483's Notice was filed fifteen days later. Therefore, Local 483's Notice is timely filed under § 1804(a)(1).

Definition of a Customer

Pursuant to Decision (D.) 98-04-059, we must determine, as a threshold matter, whether the intervenor is a customer, as defined in § 1802(b) by identifying whether the intervenor is:

- (i) a participant representing consumers, or
- (ii) a representative authorized by a customer, or
- (iii) a representative of a group or organization that is authorized by its bylaws or articles of incorporation to represent the interests of residential ratepayers.

The Commission requires a participant to specifically identify in its Notice how it meets the definition of customer and, if it is a group or an organization, provide a copy of its articles or bylaws, noting where in the document the authorization to represent residential ratepayers can be found. (Decision (D.) 98-04-059, 70 CPUC 2d 628, (April 23, 1998) 648-649; see, also, fn. 13-16.)

A rebuttable presumption of eligibility pursuant to section 1804(b)(1) does not exist for Local 483. Local 483 has not previously filed for eligibility for intervenor compensation.

Local 483's Claim as a Customer

On the un-numbered page 1 of both its Notice and Amended Notice, Local 483 states that it believes it qualifies as a customer pursuant to § 1802(b) "as a 'participant representing consumers'" (category (i), above). Pursuant to Decision (D.) 98-04-059, 70 CPUC 2d 628, 648, "[a] 'participant representing consumers' is

an actual customer who represents more than his own narrow self-interest; a self-appointed representative.”

According to its Notice and Amended Notice, Local 483 is a non-profit labor organization that is an affiliation of 250 members with no full time staff, regular employees or office clerical help. Although Local 483’s members may incidentally be residential customers of Southern California Gas Company or San Diego Gas & Electric Company, Local 483 does not assert that it is an actual customer of either utility. Moreover, Local 483 is not a “self-appointed representative.” Rather, as it asserts, Local 483 is a non-profit labor organization with 250 members who pay monthly dues. Local 483’s “Constitution”⁴ states in Article I, Section A, that it has “jurisdiction over those employees of Pacific Enterprises who, by agreement, certification or other means it is authorized to represent.” Thus, Local 483’s authority is pursuant to the agreement or authorization of its members.

Local 483 has not provided any documentation to show that it members wanted, authorized and expected ratepayer representation and not labor-related representation, under category (ii) or (iii). (As explained in (D.) 98-04-059, 70 CPUC 628, 648, “[a] ‘representative authorized by a customer’ connotes a more formal arrangement where a customer, or a group of customers, selects a presumably more skilled person to represent the customers’ views in a proceeding.” And, a category (iii) customer is “a formally organized group (with

⁴ See Local 483’s “Constitution” at: <http://home.inreach.com/uwua483/bylaws.htm>. Local 483 did not serve copies of its articles of incorporation or by-laws in this proceeding on other parties. Although entitled “Constitution” the document’s internet link describes it as “bylaws.”

articles of incorporation and/or bylaws) authorized to represent the views of residential customers.” (Id. at 648.)

In order to be eligible for intervenor compensation, Local 483 must establish that it satisfies the intended purpose of ratepayer representative compensation as set forth in § 1801.3 (b):

“The provisions of this article shall be administered in a manner that encourages the effective and efficient participation of all groups that have a stake in the public utility regulation process.” (Emphasis added.)

Clearly Local 483 has “a stake” in the regulatory process. That stake potentially has two conflicting interests; first, the self-interest of the employee members of Local 483 who may wish to ensure their continued employment; personal working conditions and wages; or increased staff levels, which would mean a larger membership base for the union. *Article II – Objectives: Section A* of Local 483’s constitution states that it is to “protect, maintain and advance the interests of the workers, to improve working conditions, and to secure adequate remuneration.” These goals are potentially in conflict with the interests of ratepayers as matters unfold in public utility regulatory proceedings. The representation of the interests of its members as residential customers simply is not the focus of Local 483’s existence. The terms of its constitution are clearly and solely focused on labor relations with an employer. Whether Local 483’s members reside within the utilities’ service territory is not controlling absent the authorization required by section 1802(b). Local 483’s interests contrast sharply with the clear objectives of The Utility Reform Network (TURN), Aglet Consumer Alliance (Aglet), and others, which are organized primarily to represent small customers. The sole purpose of intervenor compensation is to

allow under-represented residential customers to participate in Commission proceedings.

Moreover, the typical retail customer is not eligible to join to Local 483 in the same open fashion that a customer might decide to join or subscribe to TURN or Aglet. Local 483's Constitution restricts membership⁵ as follows:

"Membership in this Local shall be confined only to those who can meet the provisions of Article III, (Membership) Section five (5)⁶, of the Utility Workers Union of America National (UWUA) Constitution". This reference by Local 483 does not cite the UWUA National Constitution's Article III Section One, which is more directly applicable and also more restrictive:

- (i.) "This organization shall be composed of local unions having for their membership men and women employed in and around energy, electric, gas, steam, water, telecommunications, generation, service, and related industries and organizations, including entities that are

⁵ Article X, Membership, Section A.

⁶ <http://www.uwua.org/newpage8.htm>. "Section 5. Any member accepting membership" in other various proscribed organizations are **not** allowed union membership too. (i.e., there are politically-based affiliations which are prohibited so individuals may not have simultaneous membership in the union too).

"The National Union and the local union to which the member belongs shall be his/her exclusive representative for the purpose of collective bargaining in respect to rates of pay, wages, hours of employment or other conditions of employment, and for the negotiation and execution of contracts with employers covering all such matters including contracts requiring his membership or the continuance of his/her membership in the union as a condition of his/her employment or continued employment, and contracts requiring the employer to deduct, collect, or assist in collecting from his/her wages any dues, fees, assessments, fines, or other contributions payable to the National Union or his/her local union." (Emphasis added.)

the successors, subsidiaries, affiliates, mergers and acquisitions of employers whose employees are represented by the local union, and any other place now under the jurisdiction of the National Union as well as officers, staff representatives or employees of the National Union or local unions. These local unions shall, within the limits established by their respective charters, admit to membership all who apply and conform to the National Constitution and Bylaws of the respective local union. Persons having supervisory power, excluding the right to hire and fire, shall be eligible for membership subject to the approval of the National Union.”
(Emphasis added.)

These restrictions on membership are at odds with the Commission’s stated intent in D. 98-04-059⁷ that “compensation may be proffered only to customers whose participation arises directly from their interests as customers.” See also D.02-06-047 dated June 22, 2002 in footnote 4⁸ (mimeo, page 3). As also quoted above, members of Local 483 must be employees of Pacific Enterprises, the parent company of the applicant prior to the merger and formation of Sempra. Local 483’s interest arises directly from its members’ interests as employees of the utility and nothing in its constitution specifically authorizes it to represent the interests of residential customers. *See* D.00-04-059, 2000 Cal.

⁷ Footnote 14. in part, we “affirm our previously articulated interpretation that compensation be proffered only to customers who participation arises directly from their interests as customers.”

⁸ “To be eligible for compensation, an intervenor must be a customer as defined by § 1802(b). In D.98-04-059 (footnote 14), we affirmed our previously articulated interpretation that compensation be proffered only to customers whose participation arises directly form their interest as customers. (See D.88-12-034, D.92-04-051, and D.96-09-040.) Today’s decision, like the statute, uses “customer” and “intervenor” interchangeably.”

PUC LEXIS 374 (2000), at *11-12. In *Article II – Objectives, Section C*, of its constitution, Local 483 is empowered to “to secure legislation in the interest of all working people.” Local 483 interprets this authorization to extend to representation of residential ratepayer interests in regulatory processes as well.⁹ This argument is unconvincing. Local 483, as noted above, has not shown that its members want, authorize or expect ratepayer representation. The membership has no expectation that one of the goals of the organization is the furtherance of their interests as public utility customers in Commission proceedings (Pub. Util. Code § 1801).¹⁰

A thorough review of the constitutions of both Local 483 and the national UWUA shows that neither ever refers to “consumers”, “ratepayers” or “customers” anywhere in the documents. The only reference in Local 483’s Constitution to the “public” is with respect to the furtherance of trade unionism: to “increase public understanding and support of the labor movement”¹¹. The constitution does not support Local 483 eligibility under categories (ii) or (iii). In sum, Local 483 does not meet the requirements to qualify as a customer under categories (i), (ii) or (iii).

Significant Financial Hardship

Finally, Local 483 does not satisfy the standard for “significant financial hardship” defined in section 1802(g) as it applies to a category (i) “participant

⁹ Electronic communication to the assigned ALJ, April 11, 2003.

¹⁰ Notably, the National Union has intervened in this proceeding, but is not seeking intervenor compensation.

¹¹ Article II Section C.

representing consumers.” Local 483 is required to demonstrate that significant financial hardship will occur as a result of its participation here. (*See* Section 1802(g).) D. 98-04-059 determined that a “participant” suffers significant financial hardship when he “cannot afford, without undue hardship, to pay” the costs of effective participation. (70 CPUC 2d 628, 650) This can become an evaluation of the customer’s personal financial circumstances regardless of what the individual may stand to lose or gain by participating in a specific case.

As an alleged category (i) customer, Local 483 failed to provide any information regarding the financial resources of the consumers it purports to represent, its individual members. D.98-04-059, (ID 652, 653), requires participants seeking a finding of significant financial hardship to disclose their finances to the Commission, under appropriate protective order. As described in D.98-04-059, this means disclosure of gross and net monthly income, monthly expenses, and cash and assets. Local 483 did not provide the required information to support its conclusion that the consumers it purports to represent “cannot afford, without undue hardship, to pay the costs of effective participation.” *See* 1802(g).

Local 483 appears to be confused on its precise eligibility, stating that it is a (category (i)) “participant representing consumers” the first definition under §1802(b). However, Local 483 did not provide the appropriate financial information that would support customer status under this particular provision of § 1802(b).¹² Local 483 made a hardship claim more appropriate to customer

¹² As a category (i) customer, Local 483 would have to demonstrate that undue financial hardship will occur as a result of its participation here. (*See* Section 1802(g).) D.98-04-059, *slip op.* at p. 36, requires participants seeking a finding of significant financial

Footnote continued on next page

status under category (iii): a representative of a group or an organization authorized in its articles of incorporation or bylaws to represent the interests of residential customers. However, as explained above, Local 483 does not qualify under that definition of customer either.

Other Issues

There is no need to address 1) nature and extent of Local 483's proposed participation; 2) proposed budget; or (3) any "significant financial hardship" to Local 483 as a group or organization, because Local 483 does not meet the threshold eligibility.

Comments on Draft Decision

The draft decision of the ALJ Division in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and rule 77.7 of the Rules of Practice and Procedure. Comments were filed on _____ and reply comments were filed on _____.

Assignment of Proceeding

Carl W. Wood is the Assigned Commissioner and Douglas M. Long is the assigned ALJ in these proceedings.

hardship to disclose their finances to the Commission, under appropriate protective order. As described in D.98-04-059, this means that category (i) customers must disclose their gross and net monthly income, monthly expenses, cash and assets, including equity in real estate. Subsequent rulings have determined that it is reasonable to exclude the equity of a participant's personal residence from this disclosure.

Findings of Fact

1. Local 483 is a non-profit labor organization.
2. The purpose of Local 483's existence is to represent utility employees in collective bargaining under the general direction of the Utility Workers Union of America National.
3. Local 483, under its Constitution, only has collective bargaining jurisdiction over those employees of Pacific Enterprises who, by agreement, certification or other means it is authorized to represent.
4. Local 483 is not a participant representing consumers, as defined in § 1802(b) in category (i).
5. Local 483 is not a representative authorized by a customer, as defined in § 1802(b) in category (ii).
6. Local 483 is not organized to, or authorized by its constitution, to represent residential ratepayers, as defined in § 1802(b) in category (iii).
7. Local 483 does not meet any of the three customer definitions set forth in § 1802(b).

Conclusion of Law

Local 483 is not a customer as defined under § 1802 (b) and therefore it is ineligible for intervenor compensation.

O R D E R

IT IS ORDERED that Local 483 Utility Workers Union of America (Local 483) has not met the eligibility requirements of Pub. Util. Code § 1804(a), and it will not be compensated for its participation in this proceeding.

This order is effective today.

Dated _____, at San Francisco, California.