

Decision 03-01-058 January 30, 2003

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

Application of Valenica Water Company (U34-W)  
seeking approval of its updated Water  
Management Program as ordered in Commission  
Resolution W-4154 dated August 5, 1999.

Application 99-12-025  
(Filed December 17, 1999)

**OPINION ON REQUEST  
FOR INTERVENOR COMPENSATION**

This decision awards the Angeles Chapter of the Sierra Club (Sierra Club) \$46,990.96 for its contribution to Decisions (D.) 00-10-049 and D.01-11-048 granting Valencia Water Company (Valencia) permission to expand its service area.

**1. Background**

In this proceeding, the Commission reviewed Valencia's Water Management Program (WMP) in conjunction with its Advice Letters (ALs) 88 and 90 requesting authorization to expand its service area. The proceeding entailed an interim decision by the Commission, numerous rulings, two prehearing conferences (PHCs), testimony by 18 expert witnesses, eight days of hearings covering 1,100 transcript pages, and receipt into evidence of 66 exhibits. Sierra Club was an active participant in this proceeding.

Valencia opposes Sierra Club's request for compensation on the grounds that the request was not timely filed and Sierra Club's participation duplicated and overlapped that of the County of Ventura (Ventura). We address these issues below.

## **2. Requirements for Awards of Compensation**

Intervenors who seek compensation for their contributions in Commission proceedings must file requests for compensation pursuant to Pub. Util. Code §§ 1801-1812. Section 1804(a) requires an intervenor to file a Notice of Intent (NOI) within 30 days of the PHC or by a date established by the Commission. Other code sections address requests for compensation filed after a Commission decision is issued. Section 1804(c) requires an intervenor requesting compensation to provide “a detailed description of services and expenditures and a description of the customer’s substantial contribution to the hearing or proceeding.” Section 1802(h) states that “substantial contribution” means 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. Where the customer’s participation has resulted in a substantial contribution, even if the decision adopts that customer’s contention or recommendations only in part, the commission may award the customer compensation for all reasonable advocate’s fees, reasonable expert fees, and other reasonable costs incurred by the customer in preparing or presenting that contention or recommendation.”

Section 1804(e) requires the Commission to issue a decision that determines whether or not the customer has made a substantial contribution and the amount of compensation to be paid. The level of compensation must take into account the market rate paid to people with comparable training and experience who offer similar services, consistent with § 1806.

Section 1801.3(f) states the intent of the Legislature that the Commission administer intervenor’s fees and expenses in a manner that avoids unproductive or unnecessary participation that duplicates the participation of similar interests

otherwise adequately represented, or participation that is not necessary for a fair determination of the proceeding.

### **3. Notice of Intent to Claim Compensation**

By Assigned Commissioner's Ruling dated December 14, 2000, Sierra Club was found eligible to claim intervenor compensation in this proceeding pursuant to § 1804(b).

### **4. Timeliness**

Section 1804(c) provides that:

“(c) Following issuance of a final order or decision by the commission in the hearing or proceeding, a customer who has been found, pursuant to subdivision (b), to be eligible for an award of compensation may file within 60 days a request for an award. . . “

On June 19, 2002, the California Supreme Court mailed its Order Denying Sierra Club's Petition for Review. Sierra Club filed its request for compensation on July 24, 2002. Therefore, for purposes of this compensation award, we will consider Sierra Club's compensation request timely filed.<sup>1</sup>

### **5. Contribution to Resolution of Issues**

Sierra Club states that it made a substantial contribution to this proceeding in two respects. First, Sierra Club argues that its Motion for Determination of Applicability of California Environmental Quality Act (CEQA) filed May 30,

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<sup>1</sup> Section 1801.3 states:

“It is the intent of the Legislature that; (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.”

2000, together with the Reply in Support of Motion of Sierra Club for Determination of the Applicability of CEQA filed July 14, 2000, resulted in this Commission's Interim Opinion, dated October 19, 2000, finding CEQA applicable to this proceeding, and directing Valencia to comply with CEQA requirements for environmental review (D.00-10-049). The Commission's Interim Opinion subsequently resulted in Valencia's preparation of its Proponent's Environmental Assessment (PEA) in accordance with this Commission's regulations implementing CEQA. Sierra Club claims that Valencia's preparation of its PEA as a result of the Sierra Club's motion substantially assisted the Commission in addressing the merits of Valencia's Application for approval of its updated WMP.

However, Ventura preceded Sierra Club in raising these issues by filing its Motion on May 22, 2000.<sup>2</sup> Ventura also timely filed its Reply Brief in support of the motion, a week before Sierra Club filed its Reply Brief. Because Sierra Club's filings followed after Ventura's and pursued nearly identical issues, the time spent by Sierra Club on these filings did not result in a substantial contribution to D.00-10-049. However, Sierra Club's cross-examination on these issues during the evidentiary hearings was unique and resulted in a substantial contribution. We address our specific reduction in hours for the time that did not result in a substantial contribution below.

Second, Sierra Club states that its participation through submission of argument and evidence with regard to the potential cumulative watershed effects of the proposal by Valencia's parent corporation, Newhall Land and

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<sup>2</sup> The ALJ raised the likelihood that the filing might be unnecessary at hearing, see reporter's transcript dated May 22, 2000, Vol. 1, pp. 2-4.

Farming Company, to construct a large residential development in the future, including its proposal to develop over 21,000 houses in its Newhall Ranch project, resulted in the Commission ruling that its approval of Valencia's WMP did not authorize the extension of water service to the proposed Newhall Ranch. The Commission directed that "[e]xtending service to large-scale future developments, such as those that may result from the Newhall Ranch Specific Plan, will call for review of more current information, such as the 2000 UWMP or a future update to this WMP. If Valencia proposes to serve this development, it must file an application, an updated WMP and advice letter for such a project." (D.01-11-048 p. 35.) Sierra Club also raised several issues during the consideration of the WMP on which it did not prevail. However, the issues raised were useful to the Commission's consideration of the WMP and resulted in a more informed decision by the Commission. Therefore, all of Sierra Club's time associated with the hearings and briefings leading to D.01-11-048 made a substantial contribution.

## **6. Overall Benefits of Participation**

In D.98-04-059, the Commission adopted a requirement that a customer demonstrates its participation was "productive," as that term is used in § 1801.3, where the Legislature gave the Commission guidance on program administration. (See D.98-04-059, mimeo. at pp. 31-33, and Finding of Fact 42.) In that decision we discuss the requirement that participation must be productive in the sense that the costs of participation should bear a reasonable relationship to the benefits realized through such participation.

The intervention of Sierra Club and Ventura in this proceeding resulted in an exhaustive review by the Commission of the adequacy of water supplies available to meet Valencia's current requirements, including the proposed

service area expansions covered by ALs 88 and 90. Allegations regarding the inadequacy of water supplies to meet these needs have been dispelled, thereby boosting customer confidence and reinforcing property values, to the benefit of all Valencia's customers. We, therefore, conclude that Sierra Club's participation, although not subject to precise quantification, was productive and meets the requirements of § 1801.3.

## **7. Reasonableness of Requested Compensation**

Sierra Club provided a description of its services and expenditures and requested compensation in the amount of \$57,440.96. Sierra Club's request is summarized below:

### **Attorney's fees**

|                   |                          |               |
|-------------------|--------------------------|---------------|
| Stephan C. Volker | 223.0 hours x \$250/hour | = \$55,750.00 |
|-------------------|--------------------------|---------------|

### **Other Costs**

|                                |                 |
|--------------------------------|-----------------|
| Copying, postage, airfare etc. | <u>1,690.96</u> |
|                                | 57,440.96       |

### **7.1 Hours Claimed**

Sierra Club described the general tasks performed by Volker during specific months but did not always allocate time to particular tasks. Sierra Club also failed to separately identify time spent traveling to evidentiary hearings by Volker. A reasonable allocation of time for travel is 8.0 hours during each month in which evidentiary hearings occurred (May 2000, June 2000, and June 2001) given that Volker's offices are in Oakland, CA and the hearings were held in Los Angeles, CA. We find that the hours claimed associated with preparing for, traveling to, and participating in the May 2000, June 2000, and June 2001 evidentiary hearings are reasonable, as well as the time claimed in October 2000, and July and August 2001. The remainder of the claimed hours did not result in a substantial contribution to the Commission's decisions. Thus we will authorize

compensation for 169.2 hours for professional services and 24.0 hours for travel.

The hours claimed and compensated breakdown as follows:

|                  |  |                                      |   |
|------------------|--|--------------------------------------|---|
| May 2000         | EH/preparation<br>Travel<br>Motion related | 47.7 hours<br>8.0 hours<br>9.8 hours | Compensable<br>Compensable<br>Not compensable |
| June 2000        | EH/preparation<br>Travel<br>Motion related | 18.3 hours<br>8.0 hours<br>2.0 hours | Compensable<br>Compensable<br>Not compensable |
| July 2000        | Motion related                             | 18.0 hours                           | Not compensable                               |
| October 2000     | Comments                                   | 15.9 hours                           | Compensable                                   |
| May/June 2001    | EH/preparation<br>Travel                   | 18.3 hours<br>8.0 hours              | Compensable<br>Compensable                    |
| July/August 2001 | Briefs                                     | 42.3 hours                           | Compensable                                   |

## **7.2 Hourly Rates**

Attorney Volker states that he has over 27 years experience as a practicing environmental lawyer in California and has been awarded attorney's fees at the hourly rate of \$300 based on his extensive experience in the field of environmental litigation. We conclude that based on Volker's experience, the requested hourly rate of \$250 for services provided in 2000 and 2001 is reasonable. Consistent with past practice, travel time will be compensated at half the authorized professional rate.

## **7.3 Other Costs**

We have reviewed Sierra Club's summary of out of pocket expenses for postage, facsimile, copying, telephone charges, airfare, mileage, lodging, parking, and meals and find them reasonable given the scope of this proceeding.

## **7.4 Award**

Sierra Club is awarded \$46,990.96 as detailed below.

|                      |             |             |             |
|----------------------|-------------|-------------|-------------|
| Volker, professional | 169.2 hours | \$250/hour  | \$42,300.00 |
| Volker, travel       | 24.0 hours  | \$125/hour  | \$ 3,000.00 |
|                      |             | Other Costs | \$ 1,690.96 |
|                      |             | Total       | \$46,990.96 |

Consistent with previous Commission decisions, we will order Valencia to pay the award to Sierra Club plus any interest due (calculated at the three-month commercial paper rate), commencing October 7, 2002 (the 75<sup>th</sup> day after Sierra Club filed its compensation request) and continuing on the unpaid amount until full payment of the award.

As in all intervenor compensation decisions, we put Sierra Club on notice that the Commission staff may audit Sierra Club's records related to this award. Thus, Sierra Club must retain adequate accounting and other documentation to support its claim for intervenor compensation.

## **8. Public Review and Comment**

Pursuant to Rule 77.7(f)(6), the otherwise applicable 30-day period for public review and comment of this compensation decision is being waived.

## **9. Assignment of Proceeding**

Geoffrey Brown is the Assigned Commissioner and Bertram Patrick is the assigned Administrative Law Judge in this proceeding.

## **Findings of Fact**

1. Sierra Club has made a timely request for compensation for its contribution to D.01-11-048.
2. Sierra Club has made a showing of significant financial hardship by demonstrating the economic interests of its individual members would be small compared to the costs of participating in this proceeding.



3. Throughout this proceeding, Sierra Club had a pattern of filing its motions, testimony, and briefs after Ventura had done so.

4. Because Ventura and Sierra Club pursued nearly identical issues and Sierra Club's pleadings were filed after Ventura's, Sierra Club's time spent on those pleading did not result in a substantial contribution.

5. Sierra Club's claimed Other Costs are reasonable given the scope of this proceeding.

6. The adopted hourly rate for attorney Volker is no greater than the market rate for individuals with comparable training and experience.

7. The hours claimed for attorney Volker, with the exception of the time associated with the pleadings described above, are reasonable given the scope of this proceeding.

8. The appendix to this Opinion summarizes today's award.

### **Conclusions of Law**

1. Sierra Club has fulfilled the requirements of §§ 1801-1812, which govern awards of intervenor compensation.

2. Sierra Club should be awarded \$46,990.96 for its contribution to D.00-10-049 and D.01-11-048.

3. Per Rule 77.7(f)(6) of the Commission's Rules of Practice and Procedure, the comment period for this compensation decision is being waived.

4. This order should be effective today so that Sierra Club may be compensated without unnecessary delay.

**O R D E R**

**IT IS ORDERED** that:

1. The Angeles Chapter of the Sierra Club (Sierra Club) is awarded \$46,990.96 in compensation for its substantial contribution to Decision (D.) 00-10-049 and D.01-11-048.

2. Valencia Water Company (Valencia) shall pay Sierra Club \$46,990.96 within 30 days of the effective date of this order. Valencia shall also pay interest on the award at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release H.15, with interest, beginning October 7, 2002, and continuing until full payment is made.

3. The comment period for today's decision is being waived.

4. This proceeding is closed.

This order is effective today.

Dated January 30, 2003, at San Francisco, California.

MICHAEL R. PEEVEY

President

CARL W. WOOD

LORETTA M. LYNCH

GEOFFREY F. BROWN

SUSAN P. KENNEDY

Commissioners

## APPENDIX

### Compensation Decision Summary Information

|                                  |                        |
|----------------------------------|------------------------|
| <b>Compensation Decision(s):</b> | D0301058               |
| <b>Contribution Decision(s):</b> | D0010049, D0111048     |
| <b>Proceeding(s):</b>            | A9912025               |
| <b>Author:</b>                   | ALJ Patrick            |
| <b>Payer(s):</b>                 | Valencia Water Company |

### Intervenor Information

| <b>Intervenor</b> | <b>Claim Date</b> | <b>Amount Requested</b> | <b>Amount Awarded</b> | <b>Reason Change/Disallowance</b>  |
|-------------------|-------------------|-------------------------|-----------------------|--|
| Sierra Club       | 7/9/02            | \$57,440.96             | \$46,990.96           | Failure to make substantial contribution; failure to discount travel time. |

### Advocate Information

| <b>First Name</b> | <b>Last Name</b> | <b>Type</b> | <b>Intervenor</b> | <b>Hourly Fee Requested</b> | <b>Year Hourly Fee Requested</b> | <b>Hourly Fee Adopted</b> |
|-------------------|------------------|-------------|-------------------|-----------------------------|----------------------------------|---------------------------|
| Stephan           | Volker           | Attorney    | Sierra Club       | \$250                       | 2000                             | \$250                     |
| Stephan           | Volker           | Attorney    | Sierra Club       | \$250                       | 2001                             | \$250                     |

(END OF APPENDIX)