

Decision 87 10 072 OCT 28 1987

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application Of Pacific Gas and Electric Company, For Authorization To Establish A Rate Adjustment Procedure For Its Diablo Canyon Nuclear Power Plant; To Increase Its Electric Rates to Reflect The Cost Of Owning, Operating, Maintaining and Eventually Decommissioning Unit 1 Of The Plant; And To Reduce Electric Rates Under Its Energy Cost Adjustment Clause And Annual Energy Rate To Reflect Decreased Fuel Expense.

(Electric)

Application 84-06-014
(Filed June 6, 1984,
amended December 21, 1984)

And Related Matter.

Application 85-08-025
(Filed August 12, 1985)

**OPINION ON
REDWOOD ALLIANCE'S REQUEST FOR COMPENSATION**

Summary

Redwood Alliance (Redwood) requests compensation of \$78,387.98 for its contribution to Decision (D.) 87-03-029, a decision in these proceedings which authorized Pacific Gas and Electric Company (PG&E) increased rates to cover the cost of decommissioning PG&E's Diablo Canyon Nuclear Power Plant. We find that Redwood made a substantial contribution to D.87-03-029, and we award the compensation requested.

Introduction

We found Redwood to be eligible for compensation in these proceedings by D.87-01-015 dated January 14, 1987.

On April 15, 1987, Redwood filed its Request for Compensation asking \$78,387.98¹ for its substantial contributions to the Commission's decision on the amount to be funded for the decommissioning of the Diablo Canyon Nuclear Power Plant. Redwood claims its efforts substantially contributed, in whole or in part, to the Commission's decision to (1) reject PG&E's 25% contingency factor in favor of a 50% contingency factor and, (2) recognize the Decommissioning Act of 1985 (the Act) as the governing authority for estimating the costs of decommissioning California's nuclear facilities.

In support of its request, Redwood maintains that the key dispute in this case revolved around how large the contingency factor should be to cover unknowns such as the rising cost of waste burial, changes in regulations, and the cost of decommissioning capital additions. Redwood argued for a contingency that was as high as 100% of the base estimate, whereas PG&E and the Commission's Public Staff Division (PSD) maintained that only 25% should be adopted. As detailed in D.87-03-029, Redwood made a complete showing in support of its position, calling an expert witness, submitting more than 120 pages of prepared testimony, cross-examining other witnesses, and filing briefs. By adopting the 50% factor in lieu of 25%, Redwood claims the Commission has secured greater assurance the fund will be adequate, preserved equity between present and future ratepayers, and insured that less money will have to be collected from ratepayers in the long run. Finally, Redwood points out that it was the only intervenor which supported by testimony and exhibits more than the 25% factor recommended by PG&E and the PSD.

¹ By letter from its counsel dated April 22, 1987, Redwood amended its request from \$79,487.98 to \$78,387.98 to correct an error in its original filing.

PG&E's Protest

On May 13, 1987, PG&E filed a protest to Redwood's request. First, PG&E questions whether Redwood represents a unique and separate interest that is not presently represented in these proceedings. It claims there are a number of groups in the case that are already supported by ratepayer or public funding such as the PSD and the Attorney General (AG). PG&E points out that both the PSD and the AG are active in the proceeding, including the hearings that were held on the decommissioning issue. Second, PG&E questions the significance of the contribution of Redwood to D.87-03-029. PG&E acknowledges that Redwood actively argued for a 100% contingency which was rejected by the Commission in favor of 50%, a figure supported by the AG. Third, PG&E claims the record does not support Redwood's assertion that it was instrumental in the Commission recognizing that the Act is the governing authority for estimating decommissioning costs, citing that both PG&E and PSD referenced the Act in their testimony and workpapers. Fourth, PG&E challenges some of the specific data used to build up the cost of Redwood's participation. It also claims Redwood held depositions that were unproductive.

In its concluding sentence of the protest, PG&E states that it "...simply asks the Commission to carefully consider the Redwood Alliance's request in light of the record evidence."

Redwood replied to PG&E's protest to its request on June 4, 1987. First, Redwood submits that PG&E's argument that Redwood should be denied compensation because there are other participants being supported by ratepayers or public funds must be rejected as an incorrect statement of the law. We agree. PSD argued a position that was different from Redwood's and which was rejected by the Commission; and the AG participated through counsel only, presenting no evidence of his own but obviously relying on the record made by Redwood. This compensation request is subject to Article 18.6 of our Rules of Practice and Procedure (Rules).

(See D.87-01-015 which found Redwood eligible for compensation.) We find nothing in our Rules or the law which sets a limit on the number of intervenors who may participate in a proceeding or how those participants' funding affects their participation. As long as intervenors have a legitimate interest in a proceeding and do not unnecessarily burden the record, we have always allowed their participation. In fact, we have welcomed it because often intervenors will develop facts for the record that are overlooked by other participants.

Second, Redwood attacks PG&E's contention that Redwood made no substantial contribution to the decommissioning decision as meritless. Redwood maintains that PG&E's attempt to ascribe the adopted 50% factor to the participation of the AG ignores the fact that the AG's arguments were based on Redwood's prepared testimony and its theory of the case. We concur with Redwood on this point. Without Redwood's showing, the AG would have had little on which to base his arguments even though they were competently made.

Third, Redwood cites PG&E's attempt to keep a copy of the Act out of the record as proof that PG&E did not want the Act applied in this case. We have reviewed the record on this point (Tr. 10246-10248) and find that PG&E was not attempting to keep a copy of the Act out of the record but was trying only to make sure that a true and correct copy was being shown its witness for cross-examination purposes. Regardless, as D.87-03-029 will show, the Commission is well aware of the Act and its application to decommissioning issues.

Fourth, Redwood claims, contrary to the position of PG&E, that it is only applying for compensation based on its productive hours, productive hours being those applied by Redwood to the two issues on which it prevailed. We have reviewed the detail supplied by Redwood and find it reasonably reflects the effort that would have to go into presenting its position and participating. There were six days of hearing on just the issue of decommissioning, five

witnesses testified and presented 11 exhibits totaling over 300 pages, and opening and closing briefs were filed. No issues concerning the depositions Redwood took were raised during the hearings so we must assume they served their usual purpose of shortening the hearing process. Redwood's primary issue, the appropriate percentage add-on for contingencies, moved the Commission to adopt an annual accrual for decommissioning Diablo of about \$8.5 million more than recommended by PG&E and PSD.

Attorney General's Position

By letter to the Commission dated June 12, 1987, the Attorney General took issue with PG&E's protest to Redwood's request. The AG stated that contrary to PG&E's suggestion in its protest, Redwood made a substantial contribution to the decommissioning decision, and the contribution did not duplicate the efforts of either the PSD or the AG. Also, the AG pointed out that he would not have participated in the decommissioning phase of this case if he had not been alerted by the issues raised by Redwood and, further, could not have formulated the position he took in the case without Redwood's testimony and exhibits. In the AG's opinion, Redwood's contribution to the decommissioning decision was both unique and substantial because it provided the factual and legal underpinnings for the final order. These comments support our conclusion that Redwood Alliance made a substantial contribution to the proceeding.

Issues to be Decided

Rule 76.29 requires that after the filing of a request for compensation, the Commission shall issue a decision describing the contribution found to have been made by the participant, in this case Redwood, and the compensation to be awarded. Also, the decision must specify the basis for finding a substantial contribution and for setting the award of compensation.

Rule 76.26 defines "substantial contribution" as that contribution which, in the judgment of the Commission, greatly

assists the Commission to promote a public purpose in a matter relating to an issue by the adoption, at least in part, of the participant's position.

Substantial Contribution

We agree with Redwood's assertion that it made a substantial contribution to D.87-03-029. In that decision we said: "...we are convinced by the Redwood Alliance's general testimony that increasingly stringent nuclear plant regulations and the rising cost of nuclear plant waste disposal are going to continue to add to the cost of decommissioning nuclear plants.

"For the purposes of this decision ... we find that a 50 percent contingency factor will account for the added uncertainties of regulation changes and waste disposal." (Mimeo P.12) See also, Findings 10 and 12 of that decision, which further reflect our acceptance of Redwood's position.

Compensation

Redwood's itemized expenses backing up its request are shown on Table 1. In its request, Redwood submitted 14 pages of detail to back up the \$78,387.98 shown on Table 1. That detail was by day, by activity to hundredths of an hour for Fielder, Adams, Savage, and Agnello. The times shown for each individual were segregated between productive and unproductive time, productive time, as noted earlier, being time spent on issues on which Redwood prevailed. That time detail is summarized on Table 1. For example, Fielder's productive time totaled 430.46 hours and his unproductive time, 72.15 hours, a ratio of 86/14. It appears that Redwood made a reasonable effort to segregate its time so that it requests compensation for only the time spent on productive issues.

The hourly fee of \$100 requested by Redwood for its attorney is reasonable when compared to awards we have made recently. For example, we accepted fees of \$135 to \$175 for Toward Utility Rate Normalization's (TURN) attorneys in D.87-07-042, A.86-09-030. Also, the \$50 per hour for paralegal work is

TABLE 1

Scott L. Fielder - Intervenors' Attorney

Hours billed at \$100 per hour:	430.46	
Hours not billed as they were incurred on unproductive issues	72.15	
Total Fee Request		\$43,046.00

James Adams - Paralegal

Hours billed at \$50 per hour:	252.99	
Hours not billed as they were incurred on unproductive issues	22.00	
Total Fee Request		12,649.50

J. A. Savage (Participant)

Hours billed at \$50 per hour:	5.25	
Total Fee Request		262.50

Patrick Agnello (Participant)

Hours billed at \$50 per hour:	10.00	
Total Fee Request		500.00

Consultant Fees:

ESRG (Witness Bruce Biewald)		12,682.49
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Other Costs:

Depositions & Transcripts	\$1,595.00	
Travel	2,014.75	
Communications	2,223.43	
Duplicating, Printing	1,625.84	
Mail and Shipping	1,218.07	
Documents Purchased	500.40	
Miscellaneous	70.00	
Total Other Costs		<u>9,247.49</u>

TOTAL REQUEST		\$78,387.98
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reasonable. The work of the other two participants was minor and appeared from the detailed activity record to be substantially similar to the paralegal's work. We find their time and the \$50 hourly rate to be reasonable. In accepting the fees, we also note the novelty and difficulty of the issues litigated. This is the first case we have processed under the Act, and although all parties participated productively, Redwood made a unique and effective presentation on the application of provisions of the Act, most importantly, the sections dealing with the effects of future decommissioning cost changes.

Redwood engaged the consulting firm of Energy Systems Research Group, Inc. (ESRG) to prepare and present its evidence. Attached to Redwood's request is the invoice from ESRG for its work. The bulk of the some 30 working days spent on preparation of its report, Exhibit 100, was done by a research associate from the firm who also testified for Redwood. He received \$328 per day, or \$41 per hour. The next largest labor contribution was by a senior scientist who was paid for 2.75 days at \$632 per day. The firm incurred travel expenses of \$1,061 and other miscellaneous expenses of \$670. We find the total consulting expense of \$12,682.49 to be reasonable for the preparation of Redwood's evidence, witness fees, and related expenses. ✓

We find the other expenses incurred by Redwood of \$9,247.49 for depositions, travel, communications, clerical costs, etc., to be reasonable.

As we have done in previous compensation decisions, this order will provide for interest commencing on June 29, 1987, the 75th day after Redwood filed its request, and continuing until payment of the award is made.

Findings of Fact

1. D.87-01-015 dated January 14, 1987 found Redwood eligible for compensation under Article 18.6 of the Rules.

2. Redwood has requested compensation of \$78,387.98 for its participation in the decommissioning phase of these proceedings and for its substantial contribution to D.87-03-029.

3. As detailed in the discussion and findings of D.87-03-029, Redwood's position on the appropriate contingency factor to apply to the base decommissioning cost estimates for Diablo and its recommendations on the application of the provisions of the Act were, in part, adopted by the Commission in and constituted a substantial contribution to D.87-03-029.

4. Redwood has satisfactorily separated its costs of participation relating to those issues on which it did and did not prevail.

5. Compared to other recent fees the Commission has approved, Redwood's request for an hourly fee of \$100 for its attorney and \$50 per hour for its other participants is reasonable.

6. The fee of \$12,682.49 billed Redwood by its consultants for their participation on behalf of Redwood is reasonable.

7. The other expenses incurred by Redwood of \$9,247.49 for depositions, travel, communications, clerical costs, etc., are reasonable.

8. An award of \$78,387.98 to Redwood for its participation in the decommissioning phase of these proceedings is reasonable.

Conclusions of Law

1. Redwood has complied with the provisions of Article 18.6 of the Commission's Rules and should be awarded \$78,387.98 for its substantial contribution to D.87-03-029.

2. Because the work to earn the award has already been done, this order should be effective today.

O R D E R

IT IS ORDERED that:

1. Pacific Gas and Electric Company (PG&E) shall pay Redwood Alliance (Redwood) \$78,387.98 within 15 days of the effective date of this order for Redwood's substantial contribution to D.87-03-029.

2. PG&E shall also pay interest to Redwood, calculated at the three-month commercial paper rate, on the principal amount of the award ordered in Ordering Paragraph 1 commencing on June 29, 1987, and continuing until payment of the award is made.

3. In its first general rate case or attrition proceeding following this decision, PG&E shall include in its revenue requirement an additional amount equal to the award and interest granted by this decision. ✓

This order is effective today.

Dated **OCT 28 1987** |, at San Francisco, California.

STANLEY W. HULETT
President
DONALD VIAL
FREDERICK R. DUDA
G. MITCHELL WILK
JOHN B. OHANIAN
Commissioners

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY.


Victor Weisser, Executive Director

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