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Decision 89 09 103 SEP 27 1989

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Pacific Gas & 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 Costs of Owning, Operating Maintaining and Eventually Decommissioning Units 1 and 2 of the Plant; and to Reduce Electric Rates Under Its Energy Cost Adjustment Clause and Annual Energy Rate to Reflect Decreased Fuel Expenses.	Application 84-06-014 (Filed June 6, 1984)
And Related Matter.	Application 85-08-025 (Filed August 12, 1985)

ORDER MODIFYING DECISION 89-03-063 AND DENYING REHEARING

The Redwood Alliance (Alliance) has filed an application for rehearing of Decision 89-03-063, in which we granted intervenors' fees and costs jointly to the San Luis Obispo Mothers for Peace and Rochelle Becker (the San Luis Obispo parties) and denied such fees and costs to the Alliance.

We have carefully considered all of the allegations of error raised in the Alliance's application. Although we have concluded that the application for rehearing should be denied, upon reconsideration, we believe that the decision should be

modified as set forth in the attached revised pages to Decision 89-03-063.

THEREFORE, for good cause appearing,

IT IS HEREBY ORDERED:

1. That Decision 89-03-063 is modified by replacing pages 2 through 4 with the following Revised Pages 2-12, attached hereto.

2. That a rehearing of Decision 89-03-063 is denied.

3. That the Executive Director should serve a copy of this decision on the parties to Applications 84-06-014 and 85-08-025.

This Order is effective today.

Dated September 27, 1989, at San Francisco, California.

G. MITCHELL WILK
President
STANLEY W. HULETT
JOHN B. OHANIAN
PATRICIA M. ECKERT
Commissioners

Commissioner Frederick R. Duda, being necessarily absent, did not participate.

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

Wesley Franklin

WESLEY FRANKLIN, Acting Executive Director

Two major issues in the settlement hearing were whether performance based pricing would have an adverse effect on plant safety and whether the safety committee would function effectively. The San Luis Obispo parties presented extensive evidence on these two issues and cross-examined witnesses in detail. The evidence and cross-examination of the San Luis Obispo parties caused the proponents of the settlement, PG&E, the Attorney General, and the Division of Ratepayer Advocates, to detail on the record the impact of the settlement on safety which, in turn, gave us a thorough understanding of the safety issues involved in the structuring of the settlement.

The Redwood Alliance has also filed a request for compensation. It seeks $65,387.20. It too was found eligible to claim compensation in Decision 88-12-083.

The Alliance has not allocated the time it has claimed by issues. In Decision 85-02-028, we stated that where the intervenor fails to allocate time by issues, we will use other methods, such as proration, to allocate time for them. (See also, D.85-08-012 at 6.) As we explained in Decision 85-08-012 at page 6:

> In the past, when an intervenor has failed to allocate time issues, we have considered several factors in determining the number of compensable hours: first, the number of issues on which the intervenor makes a significant contribution compared to the total issues addressed by the intervenor; second, the significance to the Commission decision of the issues on which a contribution was or was not made; and third, the type of proceeding.

Further, the burden is on the intervenor seeking compensation to prepare careful time records. (D.85-08-012 at 16.) We have previously advised the Alliance to familiarize

itself with our rules and procedure concerning intervenor compensation claims. (D.86-09-046 at 4.)

The Alliance has claimed compensation as follows: $9,968.75 in attorneys fees for 79.75 billable hours of attorney time at $125 per hour, as well as $1,083.20 in attorney costs, $27,150 in paralegal fees for 362 billable hours of paralegal time at $75 per hour; $23,178.99 in expert witness fees and costs, and $4006.30 for "other reasonable costs" including postage, telephone, printing, and travel expenses. While we have found $125 per hour a reasonable fee for attorneys with experience in Commission proceedings, we note that Mr. Gaynor does not have such experience. The Commission may reduce an attorney's hourly rate where the attorney does not possess an adequate degree of experience in Commission proceedings. (See e.g., D.68-04-012 at 12.) Accordingly, we believe that an hourly rate of $110 is a more reasonable fee for Mr. Gaynor in this proceeding. This reduces Mr. Gaynor's claim to $8,772.50. Mr. Adams, the Alliance's paralegal, on the other hand, is an experienced participant and we find that $75 per hour is a reasonable fee for his services. However, we note that 45 hours of the 362 hours Mr. Adams has claimed were spent on travel and are discussed below. Accordingly, we will consider Mr. Adams' claim as one for 317 billable hours of paralegal time devoted to the time spent on issues and claimed as compensable which, at $75 per hour, amounts to a claim of $23,775.

In evaluating whether or not a party has made a substantial contribution, our Rules of Practice and Procedure clearly provide that an intervenor must contribute "to the adoption, in whole or in part, of the Commission's order or decision." (Rule 76.53(a).) We have routinely required that a party must demonstrate in its request for compensation that at

least some of its recommendations were adopted in whole or in part in the final decision to qualify under this standard.

However, in certain exceptional circumstances, which we wish to clarify in this order, the Commission may find that a party has made a substantial contribution in the absence of the adoption of any of its recommendations. Such a liberalized standard should be utililzed only in cases where a strong public policy exists to encourage intervenor participation because of factors not present in the usual Commission proceeding. These factors must include: 1) an extraordinarily complex proceeding, requiring technical or legal skills not demanded by the majority of Commission proceedings, such that the cost of participation by counsel or the presentation of expert testimony in such a case is significantly greater than the norm, and 2) a case of unusual importance, either as a precedent for a significant ratemaking policy change or because of the extraordinary financial impact of the case on rates or on the fiscal health of the utility.

One other factor which supports the need to encourage intervenor participation may also be considered, if both of the other two required conditions are met. That third factor is the presence of a proposed settlement, negotiated and filed by less than all the parties to a proceeding. If, as required above, the case is extraordinarily complex and of unusual importance, intervenors who have not participated in the negotiation of a settlement should be strongly encouarged to participate, in order to ensure that their input, which was not present during the negotiations, is not lost. This allows for a less restrictive evaluation of the significance of the contribution of such parties in the case. We have evaluated the participation of the San Luis Obispo parties and the Alliance in light of these principles.

The Alliance concentrated on the issues of floor payments, safety, decommissioning, cost effectiveness and the binding effects of the settlement on the Commission. Although the Alliance concentrated on the above referenced areas, it did not make a substantial contribution in all those areas. The Alliance itself concedes this. Accordingly, the Alliance has only sought compensation for its contribution to the cost effectiveness, floor payment, decommissioning and binding issues.

We find that the Alliance made a substantial contribution, in part, to the issue of the disposition of floor payments. We were much concerned with the floor payment provision. (D.88-12-083, as modified at 140.) The Alliance was the first party to raise the issue in its comments of July 29, 1988 with respect to the question of the proper distribution for floor payment funds should the balance in the floor payment account exceed the value of the plant on abandonment. (See D.88-12-083, as modified at 140-141.) However, this issue was more fully developed by the Commission's CACD staff and the presiding ALJ. The Alliance devoted approximately 15 percent of its energy to this issue. Nevertheless, because the issue was more fully developed by others, we will award the Alliance for only that portion of its contribution to this issue which we think was substantial. Accordingly, the Alliance is entitled to an award of 10 percent of the total recoverable amount of its claim for compensation for its substantial contribution to the issue of floor payments.

The Alliance also made a substantial contribution in its exploration of the impact of the settlement on decommissioning costs and incentives. The testimony of Dr. Bernow introduced the conflict between accounting treatment of operations and maintenance costs, which are paid by ratepayers. Further, the Alliance participated actively in the technical

workshops to develop some of the questions and answers on decommissioning that appear in exhibit 515. The Commission recognized the Alliance's expertise in decommissioning earlier in this proceeding by awarding intervenor compensation for contributions to Decision 87-03-029. Accordingly, for its contribution to this issue, the Alliance is entitled to an award of 10 percent of the total amount of recoverable time claimed.

The Alliance was the only party to raise the issue of the cost effectiveness of running the plant. However, for reasons stated in Decision 88-12-083, as modified, we found that the evidence presented by the Alliance on this issue was preliminary, inadequate and not persuasive. (D.88-12-083, as modified at 186.) The Alliance contends that a policy concern underlying the cost effectiveness argument concerns the question of the binding effect of the agreement on future Commissions. (See D.88-12-083, as modified at 61.) While this issue is important to the settlement agreement, the theory connecting these two issues is tenuous at best. Other parties pursued and developed this question more fully and we do not think that the Alliance's contribution to it was substantial.

The Alliance has sought compensation for travel time. In Decision 86-09-046 we determined that some compensation should be allowed for travel time which is reasonable and necessary to the intervenor's participation. (D.86-09-046 at 1.) We then determined that "absent any showing as to what proportion of the travel time was spent in working on issues for which compensation is granted, a reasonable accounting for travel hours in this case is to include necessary and reasonable travel time at one-half the authorized hourly rate." (D.86-09-046 at 1.) The claim submitted by the Alliance fails to list the amount of time its attorney is claiming as travel time. We note that he has submitted a claim for travel expenses based on two round trip air

flights to San Francisco. Mr. Adams, the Alliance's paralegal, has claimed reimbursement for travel time for a total of 45 hours. Although the claim neglects to specify, it appears from the length of the trips involved that the Alliance's paralegal did not utilize air travel which would, in the ordinary course of business, be the standard method of travel for the distances involved. (See D.86-09-046 at 2.) As we stated in Decision 86-09-046, "we do not believe the ratepayers are served by having to pay the equivalent of an hourly fee for such an extensive number of travel hours, which clearly do not represent the most efficient use of the attorney's, paralegal's, or witnesses time." (D.86-09-046 at 2.) This observation holds true here. Accordingly, we will, as we did in Decision 86-09-046, award travel time at one-half the authorized hourly rate ($110 an hour for attorney time and $75 per hour for nonattorney time) for the hours representing reasonable travel time.

It appears to us that the reasonable amount of air travel time per round trip air flight between San Francisco and Arcata would be three hours and two hours between San Francisco and San Luis Obispo. (See D.86-09-046 at 2.) Therefore, we will award the Alliance, $330 for its attorney's travel time and $843.75 for its paralegal's travel time. Because the claim fails to specify any travel time for Dr. Bernow, no award will be made.

Because we have concluded that the Alliance should be compensated proportionally for its participation in the settlement proceedings, we find that it should recover its costs which total $28,268.49, on the same prorated basis, which is equivalent to 20 percent. We therefore find that the Alliance should be compensated $5,653.69 for reasonable costs.

Accordingly, we will award the Alliance and all of its agents a total of $13,336.89 for its participation in the Diablo Canyon settlement proceeding.

Findings of Fact

1. The presentation of the San Luis Obispo parties made a substantial contribution to Decision 88-12-083.

2. The compensation requested by the San Luis Obispo parties is based on approximately 560 hours of the participants' time at $50 per hour plus reasonable expenses for travel, telephones, stationery, and postage, etc.

3. An award of compensation to the San Luis Obispo parties of $35,228.41 is reasonable.

4. The presentation of the Redwood Alliance made a substantial contribution, in part, to Decision 88-12-083 on the issues concerning floor payments and decommissioning.

5. That the Redwood Alliance has sought compensation in the amount of $65,387.20, claiming 79.75 hours of attorney time at $125 per hour, 362 hours of paralegal time at $75 per hour, $23,178.99 in expert witness fees and costs, and $5089.50 in costs, including, travel, telephone, postage and printing.

6. Redwood Alliance's attorney does not possess a reasonable degree of experience in Commission proceedings to support a claim for $125 per hour.

7. A reasonable hourly rate for the Redwood Alliance's attorney in the settlement proceedings is $110.

8. $75 per hour is a reasonable hourly rate for the Redwood Alliance's paralegal who is an experienced participant in Commission proceedings.

9. Redwood Alliance has claimed time for travel. Air travel is the standard and most reasonable form of travel for the distances involved here. The reasonable amount of air travel time per round trip air flight between San Francisco and Arcata would be three hours and two hours between San Francisco and San Luis Obispo. Accordingly, we will award travel time at one-half the hourly rate of $110 for attorney time and $75 for paralegal time.

10. Of the total 362 hours claimed by Redwood Alliance's paralegal, 45 were spent on travel. Because we are awarding travel time at one-half of the hourly rate, we will deduct the 45 hours from the total claim and award Redwood Alliance $843.75 for the paralegal's travel time. The remaining 317 hours will be treated as the total amount of time Redwood Alliance has claimed for its paralegal's participation in the issues raised in this matter.

11. Redwood Alliance's attorney has submitted expenses for two round trip air fares between Arcata and San Francisco. Accordingly, we will award Redwood Alliance $330 for attorney travel time.

12. Redwood Alliance's expert witness has not claimed travel time and none will be awarded.

13. Given the Redwood Alliance's substantial contribution on the issue of floor payments, we will allow compensation of

$3254.75 amounting to 10 percent of Mr. Gaynor's and Mr. Adam's claimed time.

14. Given the Redwood Alliance's substantial contribution on the issue of decommissioning, we will allow compensation of $3254.75 amounting to 10 percent of Mr. Gaynor's and Mr. Adam's claimed time.

15. Redwood Alliance did not make a substantial contribution on the issue of cost effectiveness and the issue of binding future Commissions. Redwood Alliance did not claim compensation for its contribution to the safety issue.

16. Redwood Alliance has claimed a total of $28,268.49 in costs. Given Redwood Alliance's substantial contribution to the issues of floor payments and decommissioning, we believe that it is reasonable to allow compensation for $5,653.60, which amounts to 20 percent of the total costs claimed.

17. A total award of $13,336.89 to the Redwood Alliance is reasonable.

18. The Diablo Canyon settlement proceeding involved an extremely complex matter, requiring more than the usual level of technical expertise from participants (thereby increasing the cost of participation).

19. The Diablo Canyon settlement proceeding further involved issues of extreme importance in the setting of a ratemaking mechanism for such an extended period of time.

20. A number of the intervenors including the Redwood Alliance and the San Luis Obispo parties did not participate in the settlement negotiations.

Conclusions of Law

1. The San Luis Obispo parties should be compensated for their substantial contribution to Decision 88-12-083 on the issue of safety, consistent with the preceeding discussion and findings.

2. The Redwood Alliance should be compensated for its substantial contribution to Decision 88-12-083 on the issues of floor payments and decommissioning, consistent with the preceeding discussion and findings.

3. The factors set forth in the above findings numbers 18 thru 20, justify the Commission's departure from its usual strict interpretation of the intervenor compensation rules, and further justify the Commission's award of compensation to the Redwood Alliance and the San Luis Obispo parties even though their positions were not adopted by the Commission in whole or in part.

ORDER

IT IS ORDERED that Pacific Gas and Electric Company (PG&E) shall pay the San Luis Obispo Mothers for Peace and Rochelle Becker (the San Luis Obispo Parties) jointly, $35,228.41, within 15 days from today, as compensation for the San Luis Obispo parties' substantial contribution to Decision 88-12-083. PG&E shall also pay the Redwood Alliance $13,336.89 within 15 days from today, as compensation for the Redwood Alliance's substantial contribution to Decision 88-12-083.

This Order is effective today.

Dated: _____, at San Francisco, California.

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least some of its recommendations were adopted in whole or in part in the final decision to qualify under this standard.

However, in certain exceptional circumstances, which we wish to clarify in this order, the Commission may find that a party has made a substantial contribution in the absence of the adoption of any of its recommendations. Such a liberalized standard should be utililzed only in cases where a strong public policy exists to encourage intervenor participation because of factors not present in the usual Commission proceeding. These factors must include: 1) an extraordinarily complex proceeding, requiring technical or legal skills not demanded by the majority of Commission proceedings, such that the cost of participation by counsel or the presentation of expert testimony in such a case is significantly greater than the norm; 2) a case of unusual importance, either as a precedent for a significant ratemaking policy change or because of the extraordinary financial impact of the case on rates or on the fiscal health of the utility.

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