

Decision 90 08 035 AUG 8 1990

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and
Electric Company for authority among
other things, to increase its rates
and charges for electric and gas
service.

(Electric and Gas) (U 39 M)

And Related Matter.

Application 88-12-005
(Filed December 5, 1988)

I.89-03-033
(Filed March 22, 1989)

O P I N I O N

Pursuant to Rule 76.56 of the Rules of Practice and Procedure, Energy and Resource Advocates, Inc. (ERA) requests compensation for its contributions to Decision (D.) 89-12-057, Pacific Gas and Electric Company's (PG&E) general rate case. ERA seeks total compensation of \$24,004.55. ERA has been found eligible for compensation in this proceeding by D.90-01-010.

Itemization of Costs

A. The Requested Rates

ERA seeks hourly rates of:

- \$110 for its attorney, Bryan Gaynor,
- \$ 75 for its paralegal, James Adams, and
- \$ 75 for its expert witness, Larry Goldberg.

In D.89-09-103 we found the rates of \$110 for Gaynor and \$75 for Adams to be reasonable for work they performed in Commission proceedings in 1988. Since ERA is requesting the same hourly rates in this proceeding, we find the rates to be reasonable.

The qualifications of Goldberg are attached to his testimony. We find the rate of \$75 to be consistent with rates we have awarded to other similarly qualified experts in other proceedings.

B. ERA's Contribution to the Decision

Rule 76.56 requires a substantial contribution as a condition for compensation, and Rule 76.52(g) defines substantial contribution as one which:

"substantially assisted the Commission in the making of its order or decision because the order or decision had adopted in whole or in part one or more factual contentions, legal contentions, or specific policy or procedural recommendations presented by the customer."

ERA raised four principal issues in this proceeding:

1. The adequacy of the Humboldt decommissioning cost estimate.
2. The need for a change in the Commission's energy policy based on PG&E's near term need for additional capacity.
3. The need to increase or at least maintain funding levels of demand side management (DSM) programs.
4. The need to develop indigenous resources.

ERA states that it has made a substantial contribution on one of these four principal issues. Regarding the need to maintain or increase funding levels of DSM programs, ERA cites two specific points on which it made a substantial contribution:

1. The need for a superweatherization pilot program.

ERA's testimony recommended that PG&E fund a superweatherization pilot program. In response to this recommendation, PG&E informed ERA that it had undertaken planning for a pilot program similar to but not identical with the program that ERA recommended. Following the close of the evidentiary record, ERA and PG&E submitted a letter summarizing PG&E's pilot program. In D.89-12-057, the

Commission held that PG&E "may...conduct the pilot program suggested by ERA if it believes that superweatherization could help improve the effectiveness of its weatherization program." (p. 38.)

We find that ERA has made a substantial contribution on the issue of superweatherization. The Commission has adopted, at least in part, the recommendation by ERA regarding the superweatherization pilot program.

2. The sufficiency of the Cambridge study. Both PG&E and the California Energy Commission cited a study by Cambridge Systematics in support of their positions in the proceeding. ERA witness Goldberg presented testimony critical of the study. ERA also pursued this issue in cross-examination and in its brief.

In D.89-12-057 we note "apparent shortcomings" in this study. Although the decision refers only to Cal Neva's opposition to the Cambridge study, it is clear that ERA made a substantial contribution on this issue. The Commission adopted ERA's position that the Cambridge Systematics study was flawed.

While we find that ERA made a substantial contribution on these two points, we observe that both points are relatively minor aspects of a much larger case. DSM was only one of many issues reviewed in the general rate case, and the two points described above were but small aspects of the DSM issue.

C. Apportionment of Costs

D.85-08-013 established explicit guidelines for allocation of the costs of participating in Commission proceedings. We specified several different categories of work activity:

- "1) Allocation by Issue is Straightforward. Testimony, briefs, applications for rehearing, and petitions for modification are usually organized on the basis of issues, and thus it seems relatively easy for intervenors to keep track of the time spent writing on each issue. Indeed, our experience has been that intervenors are almost always able to allocate time spent in these stages of a case. We expect

intervenors to continue to do so.
(D.85-08-012 at 14)"

- *2) Allocation by Issue is almost Impossible. When initially preparing to participate in a case, offset or otherwise, it is often simply impossible to segregate hours by issue, because this is the stage where an intervenor is learning about the case and preliminarily identifying the issues and how they interrelate. Thus we see no reason to require a strict allocation of initial general preparation time. If in our opinion an intervenor makes a substantial contribution on all or most of the issues it addresses, or if we determine that the significance of the issues on which the intervenor prevails justifies full compensation even though there hasn't been strict allocation (D.85-02-027), the intervenor should receive compensation for all of its initial preparation time. If the intervenor is less successful, in our judgment, initial preparation time may be compensated on a pro-rata basis, according to the proportion of successful issues to total issues addressed. (D.85-08-012 at 15)"

ERA's request for compensation is not organized in accordance with D.85-08-012. Instead of carefully and specifically allocating time by issue and by participant, ERA presents an "estimate" of the time it devoted to the principal issues in the case. ERA estimates that 30% of its total time was devoted to DSM issues. Of the time devoted to DSM issues, ERA "estimates" that 90% of this time was devoted to the two points for which compensation is claimed. Therefore, ERA estimates that 27% of its total time should be eligible for compensation. Assuming that Goldberg, Adams, and Gaynor each devoted an equal percentage of their time to the issues eligible for compensation, ERA requests compensation for 27% of the total hours recorded by each person.

We find that ERA's method of allocation is not acceptable. ERA's assertion that 30% of its total time was devoted

to DSM is not supported by the time sheets of Adams or Gaynor. ERA's assertion that substantially all of the time devoted to DSM issues was devoted to the two points for which it seeks compensation is not supported by the time sheets or by ERA's work product in this proceeding.

Goldberg's time sheets reflect the most detailed breakdown. His time sheets reflect 36 out of 212 hours devoted to superweatherization and the Cambridge report. We will award compensation for 36 hours of Goldberg's time.

Gaynor's time sheets show only 5.6 hours allocated to superweatherization. None of Gaynor's time is specifically allocated to the Cambridge study. We will award compensation for 6 hours of Gaynor's time devoted to superweatherization.

Adam's time sheets are less specific than Goldberg's or Gaynor's time sheets. No time is specifically allocated to superweatherization or the Cambridge study. Some time is allocated to very broad issues, such as DSM or Diablo Canyon, but it is not presented in sufficient detail for us to make an award for time actually devoted to the specific points on which ERA made a substantial contribution.

In addition to compensation for time devoted to the specific issues on which it prevailed, ERA is also eligible for compensation for initial preparation time. Where, as here, a party has not made a substantial contribution on most issues or where the significance of the issues on which it has prevailed does not justify full compensation for initial preparation time, it is our practice to award compensation for initial preparation on a pro-rata basis, according to the proportion of successful issues to the total issues addressed.

Unfortunately, ERA has not provided us with an estimate of its initial preparation time, and such time is quite difficult to ascertain from the time sheets. In the absence of more specific information, we believe that it is reasonable to allow compensation

for initial preparation equal to 10% of the total hours recorded by Goldberg, Gaynor, and Adams.

We also observe that Adams incurred an extraordinarily high number of hours (505) and costs (\$5,394) for someone who was neither a witness nor an attorney. While the role of a "paralegal" can be an asset to a case and substantially reduce an attorney's time and expense, Adams' limited role in this case and the limited number of issues on which ERA participated do not justify the extraordinarily high number of hours he has recorded.

D. Other Reasonable Costs

ERA reports \$1,234.59 in costs for Gaynor and \$5,394 in other ERA costs. These costs for Gaynor and ERA cover such items as phone bills, photocopying, airfare, and postage. ERA inexplicably requests compensation for only 27% of Gaynor's costs, but requests 100% of other ERA costs.

The costs requested for Gaynor are specifically itemized, and appear reasonably necessary to support his participation in the case. We will allow full compensation for these costs.

The "other ERA costs" are not specifically itemized. In light of ERA's limited role in the case, expenses of \$5,394 in addition to those incurred by counsel appear to be excessive. Even if we account for the fact that ERA is located in Arcata, a phone bill of \$1,651 and travel expenses (excluding airfare) of \$1,680 require more specific justification. In the absence of such justification, we will authorize compensation for 50% of "other ERA costs".

Summary

Based on the foregoing discussion, we will award compensation to the ERA as follows:

Goldberg		
Specific issues	(36 hrs. x \$ 75/hr.)	\$ 2,700
Initial prep.	(21 hrs. x \$ 75/hr.)	1,575
Gaynor		
Specific issues	(6 hrs. x \$110/hr.)	660
Initial prep.	(12 hrs. x \$110/hr.)	1,320
Adams		
Initial prep.	(50 hrs. x \$ 75/hr.)	3,750
Gaynor's costs		1,235
Other ERA Costs	(50% of \$5,394)	<u>2,697</u>
	TOTAL	\$13,937

As discussed in previous Commission decisions, this order will provide for interest commencing on June 27, 1990 (the 75th day after ERA filed its request) and continuing until full payment of the award is made.

ERA is placed on notice it may be subject to audit or review by the Commission Advisory and Compliance Division. Therefore, adequate accounting records and other necessary documentation must be maintained and retained by the organization in support of all claims for intervenor compensation. Such recordkeeping systems should identify specific issues for which compensation is being requested, the actual time spent by each employee, the hourly rate paid, fees paid to consultants, and any other costs for which compensation may be claimed.

Findings of Fact

1. ERA requests \$24,004.55 in compensation for its participation in this proceeding.
2. ERA made a substantial contribution on two aspects of the DSM portion of this proceeding.

3. ERA's requested hourly rates are reasonable.
4. ERA's allocation of time between issues is not consistent with Commission guidelines.
5. ERA estimates that 27% of its total time was devoted to the two points on which it made a substantial contribution.
6. ERA's estimate that 27% of its total time was devoted to superweatherization and a critique of the Cambridge study is not supported by its time sheets or its work product.

Conclusions of Law

1. ERA's request for hourly rates of \$110 for Gaynor and \$75 for Goldberg and Adams is reasonable and should be adopted.
2. ERA's allocation of time to various issues is not reasonable and should not be adopted.
3. It is reasonable to award ERA compensation for all hours which were specifically allocated to the two issues on which it contributed, as well as compensation for initial preparation equal to 10% of the total hours recorded by each participant.
4. ERA's request for \$1,235 in costs for Gaynor is reasonable and should be granted.
5. ERA's estimate of other ERA costs is not itemized or adequately explained and it appears to be excessive. It is reasonable to allow compensation for 50% of other ERA costs.

O R D E R

IT IS ORDERED that:

1. Energy Resource Advocates, Inc.'s (ERA) request for compensation is granted in the amount of \$13,937.

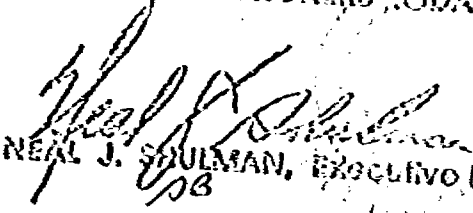
2. Pacific Gas and Electric Company shall, within 15 days of the effective date of this order, remit to ERA \$13,937, plus interest calculated at the three-monthly commercial paper rate from June 27, 1990, until full payment is made.

This order is effective today.

Dated AUG 8 1990, at San Francisco, California.

G. MITCHELL WILK
President
FREDERICK R. DUDA
STANLEY W. HULETT
JOHN B. CHANAN
PATRICIA M. ECKERT
Commissioners

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


NEAL J. SULMAN, Executive Director