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Decision 97-05-032 May 6, 1997

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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of California-American Water Company (U 210 W) for an order authorizing it to increase its rates for water service in its Monterey Division.

Application 96-03-008
(Filed March 5, 1996)

OPINION

This decision grants Cal-Am Rate Payers (C.A.R.P.) an award of \$18,817.06 for its contribution to Decision (D.) 96-12-005 in the general rate case proceeding of the Monterey District of California-American Water Company (Cal-Am).

1. Background

As part of its general rate case Application (A.) 96-03-008, Cal-Am requested a rate increase of 11.20% in 1997, 2.46% in 1998 and 2.02% in 1999. In addition, Cal-Am proposed an alternative rate design which included a high consumption surcharge, a low-income rate, and a consumption variation balancing account. Among other things, Cal-Am also proposed to consolidate its Hidden Hills Subdivision into the Monterey District for ratemaking purposes and apply its Monterey District tariffs to the subdivision.

An all-party settlement was reached in this case after settlement discussions and one day of evidentiary hearings. No briefs were submitted.

The Settlement Agreement results in rate increases of 6.73% in 1997, 2.52% in 1998 and 2.17% in 1999. Among other things, the Settlement Agreement provides for a new rate structure designed to better encourage conservation efforts without placing undue burden on customers with fixed low incomes. Parties agreed to an experiment where most residential customers would pay only half the monthly fixed service charge that would have been charged under Cal-Am's historic rate design. Cal-Am's fixed low-income customers would pay no service charge at all, but would pay for the water they

consume. A balancing account was established so that Cal-Am could recover any balances above 5% of gross annual revenues during this rate case cycle.

The Settlement Agreement also requires Cal-Am to submit information to the Commission regarding the status of major water supply project(s) and directs Cal-Am to pursue payments from Pebble Beach that are currently under dispute.

C.A.R.P. is a citizen's association comprised of two former Chairwomen of the Monterey Peninsula Water Management District. C.A.R.P. filed intervenor testimony on a broad range of issues, testified at the hearing and participated in the settlement discussions. C.A.R.P. filed an Application For An Award Of Reasonable Attorney's Fees and Costs on January 31, 1997. There were no responses or protests to C.A.R.P.'s request.

2. Requirements for Awards of Compensation

Intervenors who seek compensation for their contributions in Commission proceedings must file requests for compensation pursuant to Public Utilities (PU) Code §§ 1801-1812. Section 1804(a) requires an intervenor to file a notice of intent (NOI) to claim compensation within 30 days of the prehearing conference or by a date established by the Commission. The NOI must present information regarding the nature and extent of compensation and may request a finding of eligibility.

Other code sections address requests for compensation filed after a Commission decision is issued. Section 1804(e) 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 which 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.

3. Timeliness and Eligibility

C.A.R.P. was found eligible for compensation in an earlier phase of this proceeding by an Administrative Law Judge's (ALJ) Ruling dated June 13, 1996. C.A.R.P.'s showing of financial hardship was also accepted in that ruling.

C.A.R.P. filed its request for an award of compensation on January 31, 1997, which satisfies the requirements of Section 1804(c) that such requests be filed within 60 days following the issuance (mailing) of a final decision.

In view of the above, we find that C.A.R.P.'s request for compensation satisfies the eligibility and filing time requirements.

4. Contributions to Resolution of Issues

In any proceeding involving multiple intervenors, we must consider (1) if the intervenor has made a substantial contribution to the decision of the Commission, satisfying the requirements of § 1802, and (2) to what extent, if any, such contribution duplicated that of any other intervenor.

C.A.R.P. submits that its activities in this phase constitute a substantial contribution warranting full compensation, even though the issues in this case were addressed in an all-party settlement. C.A.R.P. summarizes its contributions to the final decision as follows:

- C.A.R.P. advanced progress toward a reliable water supply for Cal-Am ratepayers by persuading the Office of Ratepayer Advocates (ORA, formerly the Division of Ratepayer Advocates) to a deadline of 12/31/96 for Cal-Am to submit sufficient information to allow completion of a major supply project(s);
- C.A.R.P. facilitated dialogue among the parties that led to the modified settlement proposal for the Program for Alternative Rates for low-income households;
- C.A.R.P. caused Cal-Am to initiate arbitration proceedings to recover \$167,143 for ratepayers from Pebble Beach, and
- C.A.R.P. caused express restrictions to be placed on Cal-Am's consolidation of the Hidden Hills Subdivision and Cal-Am's uses for the Carmel Valley three million gallon storage tank.

Section 1801.3(f) requires that intervenor compensation be "administered 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." In this instance, an assessment of whether C.A.R.P.'s contribution meets the criteria of § 1802 in a nonduplicative manner is complicated by the fact that all issues were settled. As a result, our decision in this proceeding does not resolve each issue by adopting a position advocated by a particular party. Nor are we privy to the debate among interested parties in the settlement process, the relative influence of individual parties on the outcome, or even whether parties present the same positions in settlement discussions as they did in their original testimony.

Nonetheless, our review of the record and D.96-12-005 convinces us that C.A.R.P. made a significant contribution to the debate by identifying issues that were ultimately addressed by the settlement, and by participating actively in the proceeding. However, we cannot ascertain that C.A.R.P.'s participation was entirely nonduplicative of the efforts of ORA. In the past, when the level of duplication was difficult to ascertain, we have applied a duplication discount factor of 10% to 26% to the hours claimed by

intervenor. For example, in D.88-12-085, we applied a duplication discount factor of 26% to the hours claimed for compensation where the Commission adopted a settlement. In D.91-12-055 and D.93-06-022, we applied duplication adjustments of 10%. More recently, we have applied a 10% duplication discount to requests for compensation that involve settlements. (See, for example, D.96-06-029, D.96-11-020 and D.96-11-040.) We believe that a similar adjustment is reasonable in this case.

5. The Reasonableness of Requested Compensation

C.A.R.P. requests compensation in the amount of \$22,745.10 as follows:

Jane Haines, Attorney	
126.67 hours @ \$175/hour	\$22,167.00
Copying, postage, phone, other:	578.10
TOTAL:	\$22,745.10

5.1. Hours Claimed

C.A.R.P. documented the claimed hours by presenting a daily breakdown of hours with a clear description of each activity. However, C.A.R.P. did not allocate the hours by issue, as we have required in the past. (See, D.90-09-080 at pp. 17-31 and D.95-03-007 at pp. 8-9.) We find C.A.R.P.'s documentation adequate in this instance since the issues were not litigated and addressed individually in the decision. However, we remind C.A.R.P. that any future requests for compensation should include an issue-by-issue breakdown of hours and associated expenses, consistent with our guidelines.

C.A.R.P. has claimed approximately 16 days of attorney time for participating in this proceeding, which is about twice the amount originally estimated in its NOI. With the duplication adjustment noted above, we find this amount of time to be reasonable. C.A.R.P.'s clear documentation of activities convinces us that the time spent was appropriate to the tasks accomplished. We also note that C.A.R.P. has not requested

compensation for attorneys' fees or other costs incurred with respect to C.A.R.P.'s request to file a late NOI, per the assigned ALJ's ruling dated May 28, 1996.

5.2. Hourly Rates

C.A.R.P. requests an hourly rate of \$175 for Jane Haines. Ms. Haines states that this is the same hourly rate that the Superior Court in Monterey has awarded her for litigation services.

We find that a \$175/hour rate for Ms. Haines is within the range approved for attorneys with similar experience. (See, for example, the attorney fees awarded Ms. Mueller, Mr. Shames, and Mr. Krautkraemer in D.96-08-040.) C.A.R.P.'s request for Ms. Haines' work in 1996 is also within the associate rates reported for the Bay Area firms that responded to the 1996 Of Counsel survey, confirming our assessment that this request is reasonable. (See D.97-02-048.)

C.A.R.P. requests full hourly rates for Ms. Haines for the preparation of C.A.R.P.'s compensation request. As we discussed in D.96-08-023, we have held that compensation requests are essentially bills for services, and do not require a lawyer's skill to prepare. Accordingly, we have reduced the attorney's rate for time spent preparing the compensation request, typically by one-half. (See, for example, D.93-06-022, p. 6; D.93-09-086, p. 9; and D.91-12-074, p. 14.) However, we have also recognized exceptions to this policy when the compensation claim involves technical and legal analysis deserving of compensation at higher rates. (See D.93-10-023 and D.97-02-048.) We do not believe that C.A.R.P.'s compensation request is such a case. Accordingly, we authorize recovery for time spent preparing the compensation request at one-half the attorney's hourly rate. Ms. Haines has identified nine hours of time devoted to this task. (Ms. Haines response to ALJ Gottstein's inquiry; E-mail note dated 2/21/97, 9:36 a.m.)

It has also been our policy to compensate travel time at one-half the normal rate, unless the applicant provides a detailed showing that the time was used to work on issues for which we grant compensation. (See D.93-09-086, pp. 11-12; D.96-08-023, p.8.) C.A.R.P. has made no such showing. Accordingly, we reduce the hourly rate for the 12

hours of travel time included in C.A.R.P.'s request. (See Ms. Haine's response to ALJ Gottstein inquiry; E-mail note dated 2/21/97; 12:03 p.m.)

With the exceptions noted above, we find C.A.R.P.'s requested hourly rates to be reasonable and consistent with our past treatment of attorney fees for comparable work.

In addition, we find C.A.R.P.'s request for \$578.10 for ancillary expenses is reasonable. We note that these expenses are relatively small, equaling less than 2.5% of attorney's fees.

6. Award

We award C.A.R.P. \$18,817.06, calculated as follows:

Jane Hanes, Attorney

105.67 hours @ \$175/hour	\$18,492.25
21 hours @ \$8.75/hour	<u>1,837.50</u>
Subtotal	\$20,329.75

Copying, postage, phone, other	<u>578.10</u>
Subtotal	\$20,907.85

Less 10% duplication adjustment	<u>< 2,090.79 ></u>
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TOTAL AWARD	\$18,817.06
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Consistent with previous Commission decisions, we will order that interest be paid on the award amount (calculated at the three-month commercial paper rate), commencing April 16, 1997 (the 75th day after C.A.R.P. filed its compensation request) and continuing until the utility makes its full payment of award.

As in all intervenor compensation decisions, we put C.A.R.P. on notice that the Commission may audit or review C.A.R.P.'s records related to this award. Therefore, adequate accounting records and other necessary documentation must be maintained and retained by the organization in support of all claims of compensation. Such record-keeping systems should identify specific issues for which compensation is requested, the actual time spent by each employee, the hourly rate paid, fees paid to consultants, and any other costs for which compensation is claimed.

Findings of Fact

1. C.A.R.P. is eligible for intervenor compensation and has made a timely request for compensation for its contribution to D.96-12-005.
2. C.A.R.P. made substantial contributions to D.96-12-005 by identifying issues addressed by the all-party settlement and by actively participating in the evidentiary hearing and settlement discussions in this proceeding.
3. Some duplication of effort by parties is likely during settlement negotiations.
4. C.A.R.P. has requested hourly rates for attorneys and experts that are no greater than the market rates for individuals with comparable training and experience.
5. C.A.R.P. requested full attorney rates for travel time and preparation of its compensation request.
6. The miscellaneous costs incurred by C.A.R.P. are less than 2.5% of C.A.R.P.'s request for attorney fees and represent reasonable levels for xeroxing, postage and other ancillary costs.

Conclusions of Law

1. C.A.R.P. has filled the requirements of Sections 1801-1812 which governed awards of intervenor compensation.
2. Consistent with prior practices, C.A.R.P.'s requested attorney rates for travel time and preparation of C.A.R.P.'s compensation request should be reduced by half.
3. A ten percent (10%) discount should be applied to the amount of intervenor compensation awarded to C.A.R.P., in order to account for duplication of effort by other parties.
4. C.A.R.P. should be awarded \$18,817.06 for its contribution to D.96-12-005.
5. This order should be effective today so that C.A.R.P. may be compensated without unnecessary delay.

O R D E R

IT IS ORDERED that:

1. Cal-Am Rate Payers (C.A.R.P.) is awarded compensation for its substantial contribution to Decision 96-12-005.

2. California-American Water Company (Cal-Am) shall pay C.A.R.P. \$18,817.06 within 30 days of the effective date of this order. Cal-Am shall also pay interest on the award at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release G.13, with interest, beginning April 16, 1997, and continuing until full payment is made.

3. Application 96-03-008 is closed.

This order is effective today.

Dated May 6, 1997, at San Francisco, California.

P. GREGORY CONLON
President
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
RICHARD A. BILAS
Commissioners