

Decision 98-10-007 October 8, 1998

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

Application of Pacific Gas and Electric Company  
(U 39 E) for Recovery of 1996 Non-Nuclear  
Generation Capital Additions Costs.

Application 97-10-014  
(Filed October 3, 1997)

**ORIGINAL**

And Related Matters.

Application 97-10-015  
(Filed October 3, 1997)  
Application 97-10-024  
(Filed October 3, 1997)

**OPINION**

This decision grants James Weil an award of \$18,487.78 in compensation for his contribution to Decision (D.) 98-05-059.

**1. Background**

This application addresses the reasonableness of Pacific Gas & Electric Company's (PG&E) non-nuclear capital additions for 1996. On February 10, 1998, Weil entered an appearance at the second prehearing conference. The Commission scheduled hearings in the matter. Prior to the hearing date, PG&E, Office of Ratepayer Advocates (ORA), and Weil reached an agreement on all contested issues concerning PG&E. No party opposed the agreement and no hearings were held on its substance.

Subsequently, the Commission issued D.98-05-059 which, among other things, adopted the parties' agreement regarding PG&E's 1996 capital additions and closed the proceeding with respect to PG&E. Weil here seeks compensation

for those elements of the order addressing PG&E's capital additions. His request for compensation was filed 16 days following the issuance of D.98-05-059 and is therefore timely.

## **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(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 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. NOI to Claim Compensation**

On March 9, 1998, Weil filed a timely NOI. On March 19, 1998, the assigned Administrative Law Judge (ALJ) issued a ruling in response to the NOI, finding that Weil is a customer for purposes of PU Code §§ 1801-1812, that his participation in the proceeding would cause significant financial hardship and that he is eligible to claim compensation.

### **4. Contributions to Resolution of Issues**

A party may make a substantial contribution to a decision in three ways.<sup>1</sup> He may offer a factual or legal contention upon which the Commission relied in making a decision.<sup>2</sup> Or he may advance a specific policy or procedural recommendation that the ALJ or Commission adopted.<sup>3</sup> A substantial contribution includes evidence or argument that supports part of the decision even if the Commission does not adopt a party's position entirely.<sup>4</sup> The Commission has provided compensation even when the position advanced by the intervenor is rejected.<sup>5</sup>

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<sup>1</sup> PU Code § 1802(h).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> D.89-03-063 (awarding San Luis Obispo Mothers For Peace and Rochelle Becker compensation in Diablo Canyon Rate Case because their arguments, while ultimately unsuccessful, forced the utility to thoroughly document the safety issues involved).

In this instance, the Commission needed to determine whether PG&E should be permitted to recover capital additions made to its rate base in 1996. The agreement we adopted resolved that matter, disallowing about \$3.95 million of PG&E's requested amount of \$57.4 million. Weil's recommended disallowances totaled \$3.54 million. The record supports Weil's contention that his recommendations differed from those of other parties, such as ORA, and that Weil made a significant contribution to the final outcome of the proceeding.

#### 5. The Reasonableness of Requested Compensation

Weil requests compensation in the amount of \$18,850.78 as follows:

Non-Clerical Hours	(82.5 hrs. @ \$200/hr.)	\$16,500
Clerical hours	(12.1 hrs. @ \$30/hr.)	\$ 363
Travel time and time for preparing compensation request	(13.8 hrs. @ \$100/hr.)	\$ 1,380
Photocopying, phone, mileage, postage		\$ 607.78
Total		\$18,850.78

##### 5.1. Hours Claimed

The total amount of time requested by the Weil is reasonable, including only permissible activities, such as reviewing the application, drafting testimony, attending hearings, and settlement conferences.

##### 5.2. Hourly Rates

Section 1806 requires the Commission to compensate eligible parties at a rate which reflects the "market rate paid to persons of comparable training and experience who offer similar services."<sup>6</sup>

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<sup>6</sup> PU Code § 1806.

Weil seeks compensation at the rate of \$200 per hour for work on substantive matters, \$100 an hour for travel time and work drafting the compensation request, and \$30 an hour for administrative work.

Weil states he has a master's degree and doctoral degree in engineering from the University of California at Berkeley and more than 21 years of experience in the utility industry. His experience includes 14 years with the Commission staff, seven of which were as ALJ. In support of his request for an hourly rate of \$200, Weil surveyed nine consultants who testified in 1996 on behalf of various parties in PG&E's pipeline general rate case. The median hourly rate charged by these consultants, after adjusting for inflation through 1997, was \$205 and the average amount was \$247. Weil states his consulting fee in several PUC proceedings has been \$200 an hour. Weil's request is in line with the hourly rates we granted in D.98-04-025 to Terry Murray and Francois Bar, witnesses with qualifications comparable to Weil's. Weil has reasonably supported his request for an hourly rate of \$200 and we will grant it. Consistent with our usual practice, we grant half of that amount for time spent traveling and for time spent drafting the compensation request, as Weil proposes.

Weil seeks \$30 an hour for administrative work. Although we have granted separate fees for clerical work (see, for example, D.98-05-036), we have never done so in cases where the principal received professional level fees. Professional fees assume overheads and are set accordingly. Weil's fees are set at levels comparable to those of other professionals. We therefore deny additional recovery for clerical work.

### **5.3. Other Costs**

The costs Weil claims for such items as postage, photocopying, and telephone calls are a small percentage of his request and are reasonable in light of

the work he accomplished in the proceeding. We grant Weil's request for these costs.

**6. Award**

We award Weil \$18,487.78 for his contributions to D.98-05-059.

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 October 4, 1998, the 75<sup>th</sup> day after Weil filed his compensation request and continuing until the utility makes full payment of the award.

**Findings of Fact**

1. Weil has made a timely request for compensation for his contribution to D.98-05-059.
2. Weil made a substantial contribution to D.98-05-059.
3. Weil has requested hourly rates that may be considered market rates for individuals with comparable training and experience. They are set at a level that assumes overhead costs are included.
4. The miscellaneous costs incurred by Weil are reasonable.

**Conclusions of Law**

1. Weil has fulfilled the requirements of Sections 1801-1812 which govern awards of intervenor compensation.
2. Weil should be awarded \$18,487.78 for his contribution to D.98-05-059.
3. This order should be effective today so that Weil may be compensated without unnecessary delay.

**O R D E R**

**IT IS ORDERED that:**

1. James Weil is awarded \$18,487.78 in compensation for his substantial contribution to Decision 98-05-059.
2. Pacific Gas and Electric Company shall pay James Weil \$18,487.78 within 30 days of the effective date of this order plus 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 October 4, 1998 and continuing until full payment is made.
3. Application 97-10-014 is closed.

This order is effective today.

Dated October 8, 1998, at Laguna Hills, California.

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