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Decision 98-10-051 October 22, 1998

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of PACIFIC GAS AND ELECTRIC COMPANY for Authority, Among Other Things, to Decrease its Rates and Charges for Electric and Gas Service, and Increase Rates and Charges for Pipeline Expansion Service.

(Electric and Gas (U 39 M))

Application 94-12-005
(Filed December 9, 1994)

ORIGINAL

OPINION AWARDING COMPENSATION

This decision grants Agricultural Energy Consumer's Association (AECA) an award of \$30,644.87 in compensation for its contribution to Decision (D.) 97-09-047.

1. Background

D.97-09-047 resolves the 1997 Electric Rate Design Window proceeding for Pacific Gas and Electric Company (PG&E) which was filed as part of Application (A.) 94-12-005, PG&E's 1996 General Rate Case (GRC). A synopsis of the procedural history for the Electric Rate Design Window follows. After evidentiary hearing and the submission of briefs, a proposed decision was mailed on June 2, 1997. Oral argument before the Commission was held on June 19, 1997. Thereafter, the parties held settlement discussions and on July 3, 1997, the Settling Parties (among them, AECA) filed a Settlement Agreement. We issued our decision (D.97-09-047), rejecting the Settlement Agreement but approving some of the proposals it contained, on September 3, 1997.

D.97-09-047 adopts several new optional rate schedules under the provisions of Public Utilities (PU) Code § 378, enacted as part of Assembly Bill (AB) 1890, which allows the Commission to authorize "new optional rate schedules and tariffs, including new service offerings, that accurately reflect the loads, locations, conditions of service, cost of service, and market opportunities of customer classes and subclasses." These optional rate schedules are: Schedule AG-7, an optional agricultural tiered rate; Schedules E-36 and E-37, optional oil pumping rates; Schedules E-TD and E-TDI, optional rates for pricing flexibility to help avoid uneconomic bypass of PG&E's transmission and distribution (T&D) system; and Schedule AG-8, an optional rate schedule for avoiding fuel-switching by certain agricultural customers.

D.97-09-047 resulted in the adoption of six new rate schedules, four of which are agricultural schedules designed to provide agricultural customers with additional options for managing their electricity usage to minimize costs. By a request timely filed on November 3, 1997, AECA makes a claim for compensation for its participation in PG&E's 1997 Electric Rate Design Window proceeding. In its response filed December 1, 1997, PG&E states support for all aspects of the request.

2. Requirements for Awards of Compensation

Intervenors who seek compensation for their contributions in Commission proceedings must file requests for compensation pursuant to 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 on 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 Section 1806.

3. Eligibility

In a recent decision in this proceeding, D.98-02-099, we awarded AECA \$21,111.02 of its \$31,959.44 request for compensation for contribution to D.97-03-017, which resolved Phase 2 of PG&E's 1996 GRC. We determined that AECA had timely filed its NOI. We also determined, that within the meaning of Sections 1802(g) and 1812, AECA had established that, for 61.6% of its members within PG&E's service territory, effective participation in the proceeding would

impose significant financial hardship. Accordingly, we approved 61.6% of the participation costs we found AECA had reasonably incurred.

AECA demonstrates that its membership and financial circumstances during this phase of the proceeding have not changed since Phase 2. Consequently, our prior determination, that AECA is eligible for compensation at the rate of 61.6% of its reasonably incurred participation costs, is dispositive here.

4. Contributions to Resolution of Issues

AECA represents that it substantially contributed to D.97-09-047 in three areas: 1) support for the position that the optional rate schedules are not prohibited by AB 1890; 2) support for Schedules AG-7 & AG-8; and 3) developing competitive balance in Schedules E-TD and E-TD/I. We examine each of these assertions in turn.

4.1 Interpretation of AB 1890

D.97-09-047 discusses the contested, threshold issue of whether or not PG&E's proposed optional rate schedules are permitted or prohibited by Section 378, which was enacted as a part of AB 1890, and concludes that each schedule must be examined for compliance with the five factors listed in the statute. While D.97-09-047 declines to interpret Section 378 as broadly as AECA (and PG&E) recommended, it rejects the various contentions of other parties that the statute bars consideration of the proposed optional rate schedules, and in so doing, expressly notes agreement with some of AECA's arguments.

(D.97-09-047, mimeo, p. 19 and p. 21; see also Findings of Fact 1-3, Conclusions of Law 1.) We agree that AECA made a substantial contribution to D.97-09-047 on this issue.

4.2 Schedules AG-7 and AG-8

D.97-09-047 adopts Schedule AG-7, a voluntary, time-of-use, agricultural tiered rate which automatically bills customers at the Tier 1 rate if they have low monthly operating hours or at the Tier 2 rate if their monthly usage is higher. AECA, together with Farm Bureau, argued for adoption of the schedule, pointing out that because agricultural energy usage is so dependent on weather-related factors that are hard to predict, agricultural customers have great difficulty identifying a least-cost rate schedule. AECA urged, however, that PG&E undertake an education program to explain to prospective customers not only the benefits but the risks of the new schedule. PG&E incorporated this recommendation in its proposal. (D.97-09-047, mimeo. pp. 22, 24; see also Findings of Fact 4.)

D.97-09-047 also adopts Schedule AG-8, which provides PG&E pricing flexibility to compete to retain agricultural water pumping customers who are contemplating uneconomic bypass of PG&E's system by switching to natural gas or diesel fueled engines. AECA was very supportive of this rate and, as we note in D.97-09-047, persuasively argued that PG&E is facing robust competition in this area. (D.97-09-047, mimeo. p. 53; see also Findings of Fact 8.)

We agree that AECA made a substantial contribution to D.97-09-047 on these issues.

4.3 Schedules E-TD and E-TDI

D.97-09-047 adopts modified versions of PG&E's proposed Schedules E-TD and E-TDI. Both schedules, as adopted, provide PG&E with flexibility to set transmission and distribution (T&D) rates in order to compete with other T&D providers and avoid uneconomic bypass of PG&E's system.

Schedule E-TD is a tool PG&E can use to attempt to retain existing customers; Schedule E-TDI applies to new customers.

AECA, along with other parties, initially opposed both proposals, arguing that they were designed to enable PG&E to prolong its monopoly status against nascent competitors, particularly irrigation districts. However, AECA supported the Settlement Agreement, which included revised proposals for Schedules E-TD and E-TDI. We note in D.97-09-047 that, to address a concern of AECA's (one shared by Farm Bureau), the Settlement Agreement proposed to expand customer eligibility to include a larger number of agricultural users, by reducing the minimum demand threshold from 200 kW to 20 kW, which is the level used in AB 1890 to define the small commercial class. The Settlement Agreement also included certain limitations on the applicability of these proposed schedules in order to protect emerging competition. D.97-09-047 adopts Schedules E-TD and E-TDI with these modifications, along with other modifications that were not part of the Settlement Agreement. We agree that AECA made a substantial contribution to D.97-09-047 on these issues.

(D.97-09-047, mimeo, p. 43; see also Findings of Fact 7, 8, and 10.)

5. The Reasonableness of Requested Compensation

AECA claims its participation cost is \$50,382.73 and requests compensation for 61.6% of this sum, or \$31,007.24. In fact, addition of the elements of AECA's request, listed below, totals a slightly smaller figure, \$50,336.43; 61.6% of this sum is \$31,007.24. AECA's mathematical error is no doubt inadvertent.

Attorney's Fees

Peter W. Hanschen (131.1 hours at \$250/hr) \$32,775.00

Economic Consultant Fees

Steven Moss (61.0 hours at \$100/hr) \$6,100.00

AECA Executive Director's Participation

Michael Boccadoro (73.3 hours at \$125/hr) \$9,162.50

Other Reasonable Costs

Local Travel/Transportation	\$ 133.00
Process Services	\$ 155.00
Photocopying	\$ 936.97
Postage	\$ 51.91
Air Courier	\$ 176.55
Telecommunications	\$ 40.43
Messenger	\$ 23.83
Facsimile	\$ 781.24
Other Costs Subtotal	\$2,298.93

Total Costs \$50,336.43¹

COMPENSATION REQUESTED (61.6% of total costs) \$31,007.24²

¹ This is the corrected sum.

² This is the corrected sum.

5.1 Hours Claimed

AECA states that it participated in all aspects of the Rate Design Window on three major issues (all issues except the optional oil pumping rates, Schedules E-36 and E-37). AECA apportions its effort as follows: 15% -- support for the position that the optional rate schedules are not prohibited by AB 1890; 35% -- support for Schedules AG-7 & AG-8; and 50% -- developing competitive balance in Schedules E-TD and E-TD/I.

AECA participated by providing expert testimony, engaging in cross-examination and oral argument, filing briefs, and entering into the settlement negotiations which resulted in the Settlement Agreement, which AECA signed. AECA's compensation request includes detailed time records for Peter Hanschen, Michael Boccadero, and Steven Moss, and describes the activities of each by date and time. AECA documents Mr. Hanschen's and Mr. Boccadero's time from February through October 1997 and Mr. Moss' time from February through April 1997.

However, in one respect AECA's request requires adjustment. We decline to award compensation for the two hours Mr. Hanschen spent reviewing the compensation request prepared by Mr. Boccadero. We have held in numerous prior decisions that compensation requests are essentially bills for services and do not require a lawyer's skill to prepare. (See, for example, D.86-09-046, D.92-04-042, and D.93-09-086, and D.98-04-059.) Where an attorney has prepared a request, we have generally reduced the attorney's rate by one-half. In this case, where the request was prepared by AECA's executive director, we find no reasons to award compensation for additional review.

5.2 Hourly Rates

AECA requests an hourly rate of \$250 per hour for the work of attorney Peter Hanschen, a partner with Graham & James. AECA documents Mr. Hanschen's work in this proceeding from early 1997 through the fall. AECA requests the same rate for Mr. Hanschen's work that we approved in D.98-02-099, our decision on AECA's compensation request for its Phase 2 participation. We apply that rate here.

AECA requests an hourly rate of \$100 for its expert Steven Moss. We approved that rate in D.98-02-099 and we apply it here as well.

Finally, AECA requests \$125 per hour for the work of Executive Director Michael Boccadoro. We found that rate reasonable in D.98-02-099 and we apply it here.

5.3 Other Costs

With the exception of air courier costs, AECA's costs for copying, postage, travel, and other miscellaneous expenses incurred during its participation in this proceeding are reasonable and should be compensated in full. We believe the air carrier costs are excessive, and as we have done previously, we will reduce them. (See, for example, D.96-08-040, mimeo. p. 36.) We will award compensation for one-half of AECA's air courier costs, or \$88.28.

6. Award

We award AECA \$30,644.87. This award is summarized below:

Attorney's Fees

Peter W. Hanschen	(131.1 hours at \$250/hr)	\$32,775.00
	(less 2 hours, for review of compensation request)	<u>- 500.00</u>
Adjusted Attorney's Fees Claim		\$32,275.00

Economic Consultant Fees

Steven Moss	(61.00 hours at \$100/hr)	\$ 6,100.00
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AECA Executive Director's Participation

Michael Boccadoro	(73.3 hours at \$125/hr)	\$ 9,162.50
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Other Costs

Local Travel/Transportation	\$ 133.00
Process Services	\$ 155.00
Photocopying	\$ 936.97
Postage	\$ 51.91
Air Courier (\$176.55 less ½)	\$ 88.28
Telecommunications	\$ 40.43
Messenger	\$ 23.83
Facsimile	\$ <u>781.24</u>
Adjusted Other Costs Subtotal	\$2,210.66

Adjusted Costs Subtotal	<u>\$49,748.16</u>
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COMPENSATION AWARDED (61.6% of adjusted costs) \$30, 644.87

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 January 17, 1998 (the 75th day after AECA filed its compensation request) and continuing until the utility makes its full payment of award.

As in all intervenor compensation decisions, we put AECA on notice that the Commission Energy Division may audit AECA's records related to this award. Thus, AECA must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. AECA's records should identify specific issues for which it requests compensation, the

actual time spent by each employee, the applicable hourly rate, fees paid to consultants, and any other costs for which compensation may be claimed.

Findings of Fact

1. AECA has made a timely request for compensation for its contribution to D.97-09-047.
2. D.98-02-099, a recent decision in this proceeding, awarded AECA compensation for substantial contribution to D.97-03-017, which resolved Phase 2 of PG&E's 1996 GRC.
3. D.98-02-099 determined that AECA had timely filed its NOI.
4. D.98-02-099 determined that AECA has established that, for 61.6% of its members within PG&E's service territory, effective participation in the proceeding would impose significant financial hardship.
5. AECA contributed substantially to D.97-09-047 on three issues: 1) support for the position that the optional rate schedules are not prohibited by AB 1890; 2) support for Schedules AG-7 & AG-8; and 3) developing competitive balance in Schedules E-TD and E-TD/I.
6. It would be reasonable to compensate AECA for its costs of preparation and participation on the three issues to which it made a substantial contribution.
7. AECA claims compensation for two hours its attorney spent reviewing the compensation request prepared by its executive director.
8. In prior decisions we have held that compensation requests are essentially bills for services and do not require a lawyer's skill to prepare.
9. We should reduce AECA's request by the two hours its attorney spent reviewing the compensation request prepared its executive director.
10. AECA requested hourly rates for attorneys and experts that are no greater than the market rates for individuals with comparable training and experience.

11. The miscellaneous costs incurred by AECA are reasonable, with the exception of air courier costs, which are excessive.

12. In D.96-08-040 we reduced a request for air courier costs which we deemed to be excessive.

13. We should reduced AECA's request for air courier costs by one-half and award only \$88.28.

Conclusions of Law

1. Our determination in D.98-02-099, that AECA is eligible for compensation at the rate of 61.6% of its reasonably incurred participation costs, is dispositive here.

2. AECA has fulfilled the requirements of Sections 1801-1812 which govern awards of intervenor compensation.

3. We will reduce AECA's award by \$500.00, which represents the two hours its attorney spent reviewing the compensation request prepared its executive director.

4. We will reduce AECA's award for air courier costs by one-half and award \$88.28.

5. AECA should be awarded \$30,644.87 for its contribution to D.97-09-047.

6. This order should be effective today so that AECA may be compensated without unnecessary delay.

O R D E R

IT IS ORDERED that:

1. Agricultural Energy Consumers Association (AECA) is awarded \$30,644.87 in compensation for its substantial contribution to Decision 97-09-047.

2. Pacific Gas & Electric (PG&E) shall pay AECA \$30,644.87 within 30 days of the effective date of this order. PG&E 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 January 17, 1998, and continuing until full payment is made.

This order is effective today.

Dated October 22, 1998, at San Francisco, California.

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