

Decision 98-11-019 November 19, 1998

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

Application for Rehearing of Resolution E-3516  
Approving Pacific Gas and Electric Company's  
Request For Its 1998 Base Revenue Increase  
Attributable to Public Utilities Code Sections  
368(e) and 381(c).

Application 98-02-039  
(Filed February 20, 1998)

**ORIGINAL**

**OPINION AWARDING COMPENSATION**

This decision grants James Weil an award of \$12,246.07 in compensation for his contribution to Resolution E-3516 and Decision (D.) 98-04-069.

**1. Background**

Decision (D.) 98-04-069 rejects Application (A.) 98-02-039, the request by Pacific Gas and Electric Company (PG&E) for rehearing on the amount and methodology by which its 1998 base revenue requirement for safety and reliability programs should be increased. This subject was one of several decided on January 21, 1998 in Resolution E-3516, which addressed PG&E's Advice Letters (AL) 1692-E-B and 1703-E. Among other things, Resolution E-3516 granted PG&E a 1998 base revenue increase of approximately \$86 million (of a \$148 million request) for safety and reliability enhancements of its transmission and distribution systems; this sum was reduced by approximately \$9 million once the Independent System Operator assumed control of the State's transmission system on March 31, 1998.

James Weil (Weil), a PG&E customer, protested both advice letters on November 6, 1997. Following our issuance of Resolution E-3516, Weil tendered two pleadings, dated March 23, 1998: a request for compensation and a motion for protective order regarding personal financial information. PG&E opposed

Weil's request on April 7 and Weil responded on April 22. All of these pleadings were included in the formal file for this proceeding (A.98-02-039) by order of the Chief Administrative Law Judge on May 11, 1998. On June 29, 1998, Weil amended his compensation request to include D.98-04-069.

## **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 1801 states: "The purpose of this article [§§1801-1812] is to provide compensation for reasonable advocate's fees, reasonable expert witness fees, and other reasonable costs to public utility customers of participation of intervention in any proceeding of the Commission." (Emphasis added.) Section 1802(f) lists examples of formal and informal Commission proceedings.

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 Section 1806.

### **3. Eligibility**

#### **3.1. *Notice of Intent to Claim Compensation for Advice Letter Participation***

Weil's March 23 compensation request recognizes that we have infrequently been asked to award compensation for an Intervenor's participation in an advice letter proceeding, but asks that we find his participation here appropriate for compensation and his NOI timely.

Weil is correct that in Resolution ALJ-158, dated December 17, 1986, we stated that "[a]dvice letter filings are 'proceedings' before the Commission." (ALJ-158, p. 2.) We made an award in that resolution to the organization then known as Toward Utility Rate Normalization, but as PG&B alleges, we cautioned that our determination was not precedent for future advice letter proceedings. (Id.) However, we have not repudiated our determination that advice letter filings are Commission proceedings and subsequent amendment of §§ 1801-1812 has not called that determination into question. In determining whether to grant compensation here, we assess Weil's request based on application of its unique facts to statutory requirements.

Neither the Code nor our rules provide when an NOI must be filed in advice letter proceedings. Weil filed a joint NOI and compensation request within 60 days (adjusting for a weekend) after the issuance of Resolution E-3516. We conclude that this was reasonable and find that the NOI was filed on a timely basis.

**3.2. Significant Financial Hardship and Protective Order Regarding Personal Financial Information**

In D.98-10-007 we affirmed a March 19, 1998 administrative law judge ruling that Weil had established financial hardship with respect to participation in a proceeding (A.97-10-014) during early 1998 and awarded Weil compensation. Section 1804(b) provides that a finding of financial hardship creates a rebuttable presumption of eligibility in other proceedings commencing within one year of the date of that finding. Though the participation time period addressed by D.98-10-007 overlaps with this one, the underlying ruling issued after this proceeding had commenced and consequently does not create a rebuttable presumption of significant financial hardship here. Therefore, we review Weil's prima facie showing of financial hardship.

We begin by reviewing the three-part definition of "customer" in Section 1802(b): a participant representing consumers; a representative who has been authorized by customers; or a representative of a group or organization which meets certain statutory requirements. Weil's NOI states that he is a customer of PG&E, that he has represented himself in this proceeding, and that he has not been authorized to act on behalf of any other person or entity. Although Weil states that he does not represent "any other person," his NOI clarifies that the character of his participation in this proceeding was not limited to pursuing his personal financial interest as one of PG&E's customers, which

would be extremely small. Rather, Weil's participation addressed broader issues which effectively makes him a participant representing consumers.

Section 1802(g) defines "significant financial hardship" to mean:

"either that the customer cannot afford, without undue hardship, to pay the costs of effective participation, including advocate's fees, expert witness fees, and other reasonable costs of participation, or that, in the case of a group or organization, the economic interest of the individual members of that group or organization is small in comparison to the costs of effective participation in the proceeding."

Weil must meet the first of these tests; since he is not a group or organization, the second test is not applicable. In support of his claim, Weil generally describes his personal financial resources and submits more detailed personal financial information under seal; separately, by motion dated March 23, he asks us to order that this personal information be withheld from public inspection.

We grant Weil's motion for a protective order. Further, without disclosing Weil's financial circumstances with more specificity, we conclude that he has established that the costs of his participation here were substantial compared to either his annual expected net income or his net worth.

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

In three separate documents, the initial request, the response to PG&E's opposition, and the amended request, Weil argues that his participation over the course of this proceeding substantially contributed to Resolution E-3516 and to D.98-04-069. PG&E's opposition alleges that Weil's hours are excessive; its protest does not specifically challenge Weil's claim that he made a substantial contribution.

Weil accurately asserts that Resolution E-3516 adopted the major elements of his two advice letter protests: use of more recent CPI data; recalculation of the

1998 base revenue amount; and allocation of 86.53% (rather than 96.52%) of the adopted 1998 base revenue to distribution service. (See Resolution E-3516, Findings 10, 12, 20; Ordering Paragraph 4.) D.98-04-069 denies rehearing of the base revenue requirement calculation and notes, approvingly, the arguments of Weil, the Office of Ratepayers Advocates (ORA), and The Utility Reform Network (TURN) regarding statutory construction. (D.98-04-069, mimeo, p.6.)

From the standpoint of the impact on PG&B customers, the result of E-3516 and D.98-04-069 is an authorized revenue increase of about \$62 million less than the amount PG&B requested. We find that Weil made a substantial contribution to E.3516 and D.98-04-069.

5. **The Reasonableness of Requested Compensation**

Weil requests compensation in this proceeding as follows:

March 23, 1998 NOI/Compensation Request

Time

Non-Clerical Hours	(55.6 hours at \$200/hr)	\$ 11,120.00	
Clerical Hours	(5.0 hours at \$30/hr)	150.00	
Travel time	(5.3 hours at \$100/hr)	530.00	
	<b>Subtotal</b>		<b>\$11,800.00</b>
<b>Other Costs</b>			
Photocopying expense		39.55	
Postage costs		12.83	
Travel (vehicle mileage, tolls, parking)		66.62	
Fax charges		84.00	
	<b>Subtotal</b>		<b>\$ 203.00</b>
	<b>March 23<sup>rd</sup> Total Costs</b>		<b>\$12,003.00</b>

April 22, 1998 Response to PG&E Opposition to Compensation Request

Time

Non-Clerical Hours	(5.4 hours at \$200/hr)	\$ 1,080.00
Clerical Hours	(1.2 hours at \$30/hr)	36.00
	<b>Subtotal</b>	<b>\$ 1,116.00</b>

Other Costs

Photocopying expense		\$ 5.78
Postage costs		17.45
Travel (vehicle mileage)		1.24
Fax charges		30.00
	<b>Subtotal</b>	<b>\$ 54.47</b>

**April 22<sup>nd</sup> Total Costs \$ 1,170.47**

June 29, 1998 Amended Compensation Request

Time

Non-Clerical Hours	(7.2 hours at \$200/hr)	\$ 1,440.00
Preparation of Compensation Request	(4.2 hours at \$100/hr)	\$ 420.00
Clerical Hours	(2.4 hours at \$30/hr)	72.00
	<b>Subtotal</b>	<b>\$ 1,932.00</b>

Other Costs

Photocopying expense		\$ 12.27
Postage costs		3.85
Travel (vehicle mileage)		2.48
	<b>Subtotal</b>	<b>\$ 18.60</b>

**June 29<sup>th</sup> Total Costs \$ 1,950.60**

Total Compensation Request

Total Time	\$14,848.00
Total Costs	276.07
Total Time & Costs	\$15,124.07

**5.1. Hours Claimed**

**5.1.1 Non-Clerical Time Spent on Substantive Issues**

With respect to the underlying advice letter proceedings (the March 23 request), Weil allocates 45 hours of non-clerical time as follows: 3.3 hours to general review and preparation, 14.5 hours to inflation rates, 21.8 hours to base revenue definition, and 5.4 hours to allocation factors. The remaining 10.6 hours of non-clerical time Weil allocates to preparation of his compensation request. His April 22 response to PG&E's opposition to his compensation claim allocates another 5.4 hours of non-clerical time to discovery and preparation of the response. Weil's June 29 amended request allocates 7.2 hours of non-clerical time to review of PG&E's application for rehearing and preparation of his protest; 4.2 hours are allocated to preparation of the compensation request.

We separate time spent on compensation-related activities from Weil's other non-clerical activities and dispose of the latter first. Considering the unique facts and technical complexity of these advice letter proceedings and the detailed, valuable analytical work that Weil performed, we will fully compensate him for the 45 hours of work he documents in his March 23 filing. We will reduce by one-third (from 7.2 to 4.8) the number of hours we will allow for Weil's protest to PG&E's application for rehearing. Weil's efforts at this stage were similar to the efforts of ORA and TURN; while we conclude an adjustment for duplication of effort is appropriate, because we relied heavily on positions



Weil developed in the underlying proceeding we accord more weight to his contribution at the appeal level than we do to the other parties.

#### 5.1.2 Non-Clerical Time Spent on Compensation Activities

Weil reports a total of 14.8 hours spent on compensation-related activities. Weil's compensation request in this advice letter proceeding posed some unique legal and procedural issues. We find, on balance, that this claim is reasonable and will allow 14.8 hours for compensation-related activities.

#### 5.1.3 Clerical Time

Weil seeks compensation for 8.6 hours of clerical time. 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, such as Weil requests here. Professional fees assume overheads and are set accordingly. We therefore deny additional recovery for clerical work.

#### 5.2. Hourly Rates

Weil requests an hourly rate of \$200 per hour for professional (non-clerical) work performed between October 1997 and June 1998. In D.98-10-007 we set that rate for Weil for work he performed beginning in February 1998. The timeframe of this proceeding and that one are reasonably contemporaneous and we authorize compensation here at \$200 an hour, with one exception. We decline to award compensation at Weil's full hourly rate for compensation-related activities. We have held in numerous prior decisions that compensation requests are essentially bills for services. (See, for example, D.86-09-046, D.92-04-042, 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. Weil's professional rate of \$200 an hour is within the spectrum of rates we have authorized for legal counsel. As we did in D.98-10-007, we will allow Weil the rate of \$100 an hour for the compensation-related activities we approve.

As discussed previously, we disallow compensation for clerical activities. We find that compensation for travel time at \$100 per hour (one-half of Weil's professional rate) is reasonable.

**5.3. Other Costs**

The costs Weil claims for such items as postage, photocopying and fax are a small percentage of his request and are reasonable in light of the work he accomplished in this proceeding. We grant Weil's request for compensation for these costs.

**6. Award**

We award Weil \$12,246.07. This award is summarized below:

**Time**

Professional Fees	(49.8 hr at \$200/hr)	\$ 9,960.00
Preparation of Compensation Request	(14.8 hr at \$100/hr)	1,480.00
Travel time	(5.3 hours at \$100/hr)	530.00
	<b>Adjusted Subtotal</b>	<b>\$ 11,970.00</b>
<b>Other Costs</b>		
March 23 <sup>rd</sup> request		\$ 203.00
April 22 <sup>nd</sup> request		54.47
June 29 <sup>th</sup> request		18.60
	<b>Subtotal</b>	<b>\$ 276.07</b>
	<b>Adjusted Total Time &amp; Costs</b>	<b>\$ 12,246.07</b>

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 September 12, 1998 (the 75<sup>th</sup> day after Weil filed his amended

compensation request) and continuing until the utility makes its full payment of the award.

As in all Intervenor compensation decisions, we put Weil on notice that the Commission Energy Division may audit his records related to this award. Thus, Weil must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. Weil's records should identify specific issues for which he requests compensation, the actual time spent by any employees, the applicable hourly rate, fees paid to consultants, and any other costs for which compensation may be claimed.

#### **Findings of Fact**

1. When we issued Resolution ALJ-158 on December 17, 1986 we stated that it was not precedent for an award of intervenor compensation in future advice letter filings; however, we have not repudiated our determination that advice letter filings are Commission proceedings and subsequent amendment of Public Utilities Code Sections 1801-1812 has not called that determination into question.

2. Neither the Code nor our rules provide when an NOI must be filed in an advice letter proceeding.

3. Weil filed a joint NOI and compensation request within 60 days (adjusting for a weekend) after the issuance of Resolution E-3516.

4. Weil has made a showing of significant financial hardship by demonstrating that the costs of effective participation here were substantial compared to either his annual expected net income or his net worth.

5. Weil contributed substantially to Resolution E-3516 and D.98-04-069.

6. It is reasonable to compensate Weil for 49.8 hours of non-clerical time at a professional rate of \$200 per hour; this allowance includes a reduction by one-third (from 7.2 to 4.8 hours) for duplication of effort with respect to D.98-04-069.

7. In prior decisions we have held that compensation requests are essentially bills for services; we have reduced a lawyer's rate by one-half.

8. We should reduce by one half (from \$200 to \$100 per hour) the rate Weil requests for compensation-related activities.

9. Weil requests a professional rate of \$200 per hour which we allowed in D.98-10-007 and the work performed there was for a time period which overlaps with his participation here.

10. Professional rates are set at a level that assumes overhead costs are included.

11. The miscellaneous costs incurred by Weil are reasonable.

#### **Conclusions of Law**

1. Advice letter filings are "proceedings" before the Commission.

2. Weil has made a timely request for compensation for his contribution to Resolution E-3516 and D.98-04-069.

3. We grant Weil's motion for a protective order and will retain his personal financial information under seal.

4. Weil has fulfilled the requirements of Sections 1801-1812 which govern awards of intervenor compensation.

5. Weil should be awarded \$12,246.07 for his contribution to Resolution E-3516 and D.98-04-069.

6. 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 \$12,246.07 in compensation for its substantial contribution to Resolution E-3516 and Decision 98-04-069.

A.98-02-039 ALJ/XJV/eap\*\*

2. Pacific Gas and Electric Company shall pay Weil \$12,246.07 within 30 days of the effective date of this order. The utility 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 September 12, 1998, and continuing until full payment is made.

3. This proceeding is closed.

This order is effective today.

Dated November 19, 1998, at San Francisco, California.

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