

Decision 99-01-020 January 20, 1999

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company
for Authorization to Sell Certain Generating
Plants for Related Assets Pursuant to Public
Utilities Code Section 851.

(U 39E)

ORIGINAL

Application 96-11-020
(Filed November 15, 1996)

OPINION

This decision grants Southeast Alliance for Environmental Justice (SAEJ) an award of \$67,045.95 in compensation for its contribution to Decision (D.) 97-09-046.

1. Background

In this application, Pacific Gas and Electric Company (PG&E) originally sought authority, pursuant to Public Utilities (PU) Code § 851, to auction and sell four plants (Hunters Point, Oakland, Moss Landing, and Morro Bay). However, on June 25, 1997, after the matter had been submitted, PG&E amended its application to withdraw its request for the Hunters Point plant. According to PG&E's amendment, Hunters Point plant would be included "... in the application it will file in the next several months for authorization to sell its remaining power plants in the Bay Area ..."

PG&E requested a three-phased decision process. In the first phase or first interim decision, PG&E requested that (a) the proposed sale of the plants be found in the public interest; (b) the proposed sale process be approved; (c) the proposed sale process be found to determine the fair market value of the plants absent some significant irregularity; and (d) the proposed accounting and

ratemaking treatment of the sales be approved. SAEJ seeks compensation for its contribution to this first interim decision.

In D. 97-09-046, the first interim decision, the Commission permitted PG&E to commence an auction of the plants, subject to the Commission's final review and approval of definitive agreements following the auction. Further, the Commission decided that PG&E may not accept final bids until the Commission approves a mitigated negative declaration and the Federal Energy Regulatory Commission (FERC) approves the form of agreement with the Independent System Operator (ISO).

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's 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 PU Code § 1806.

3. NOI to Claim Compensation

SAEJ late-filed its NOI 85 days after the second prehearing conference and after an evidentiary hearing was held. The administrative law judge (ALJ) found that SAEJ was not eligible for compensation in this proceeding by a ruling dated September 29, 1997. On October 28, 1997, SAEJ filed a request for the Commission to make a finding of eligibility. In response, in D.97-12-107, the Commission referred the request of SAEJ for a finding of eligibility to the assigned Commissioners. On September 15, 1998, the matter was reassigned to ALJ DeUlloa. On October 27, 1998, Commissioners Bilas and Conlon issued an Assigned Commissioners' Ruling (ACR) that found that SAEJ is eligible to claim intervenor compensation. The same ruling found that SAEJ had demonstrated significant financial hardship.

4. Contributions to Resolution of Issues

SAEJ asserts that it has substantially contributed to D.97-09-046 in two ways. SAEJ claims that it has prevailed in its argument that it would be in the public interest and the interest of all parties if the Hunters Point facility was separated from PG&E's divestiture application. Second, SAEJ claims that it prevailed in its argument that California Environmental Quality Act (CEQA) review should be concluded prior to the auction.

4.1. Hunters Point Facility

SAEJ contends that from the very beginning of this proceeding, it has recommended that the Hunters Point facility be severed from PG&E's application and that it be considered together with the Potrero facility in the context of the Bay Area grid as a whole. In support of its contention, SAEJ cites its "Prehearing Conference Statement and Protest" in which SAEJ noted Hunters Point's special relationship with the Potrero power plant. SAEJ also points to its "Motion to Modify the Assigned Commissioner's Prehearing Conference Ruling and Require an Environmental Impact Report on the Proposed Sale of the Hunters Point Power Plant" dated March 14, 1997.

In its motion dated March 14, 1998, SAEJ requested that:

"If the time required to perform an adequate EIR for the proposed Hunters Point sale would render it impossible for other, noncontroversial aspects of the PG&E proposal to proceed on schedule, then the CPUC should sever consideration of the Hunters Point proposal from the rest of PG&E's application, in order to undertake a meaningful CEQA review process for the Hunters Point proposal."

SAEJ also asserts that at hearing it conducted the only cross-examination on the Hunters Point matter. Further, SAEJ contends that it submitted numerous declarations from experts supporting the special circumstances of Hunters Point before and during the draft mitigation comment period. Additionally, SAEJ argues that the draft initial study validated SAEJ's concerns that Hunters Point contained significant environmental impacts requiring a full environmental review.

SAEJ makes a valid claim of substantial contribution. Insofar as it affects the Hunters Point plant, SAEJ moved to modify the ACR to require an environmental impact report before the Commission acted on PG&E's request. PG&E opposed SAEJ's motion, and the City and County of San Francisco (CCSF)

supported the motion. At evidentiary hearing, the only issue addressed was SAEJ's concern regarding the Hunters Point plant.

On May 23, 1997, the ALJ issued a proposed decision which deferred the determination of whether the sale of the plants is in the public interest until the Commission completed an environmental impact report (EIR). On June 25, 1997, PG&E amended its application to sever Hunters Point from the application.

Although SAEJ's motion was made moot by PG&E's amendment, we find that SAEJ's participation in this proceeding supports a finding that SAEJ was a factor in motivating PG&E to amend its application. Overall, we find that SAEJ's concerns regarding Hunters Point made a substantial contribution to D.97-09-046.

4.2. CEQA

SAEJ asserts that it made a substantial contribution to D.97-09-046 by recommending and advocating that the application process integrate CEQA and FERC review into the process. SAEJ's request for intervenor compensation notes that when PG&E first made its application that it:

"...seemed to properly embrace an appropriate order for CEQA review followed by auctions to implement divestiture. However, once its overly-optimistic time schedule began to unwind, PG&E ... seemed to get off-track by separating CEQA concerns from the divestiture process."

The record reflects that SAEJ advocated the integration of CEQA and FERC into the review process for the sale of PG&E's power plants. Conclusion of Law 5 in D.97-09-046 reflects some of SAEJ's concerns by stating that PG&E should not be permitted to solicit final bids "...until we have adopted a negative declaration and the FERC has approved the form of agreement with the ISO." We find that SAEJ has made a substantial contribution with respect to CEQA issues.

5. The Reasonableness of Requested Compensation

SAEJ requests compensation¹ in the amount of \$82,994.47 as follows:

Environmental Law Community Clinic

Attorney's Fees

Anne Simon
81.5 hours x \$250 = \$20,375.00

Law Students' Fees

Wendy Anderson
52.25 hours x \$75 = \$ 3,918.75

Ingrid Ebrele
41.4 hours x \$75 = \$ 3,105.00

William Kim
19.75 hours x \$75 = \$ 1,481.25

Patrick Sullivan
9.5 hours x \$75 = \$ 712.50

Other Costs = \$ 496.07

TOTAL = \$30,088.57

Golden Gate School of Law - Environmental Law and Justice Clinic

Attorneys' Fees

Alan Ramo
107.52 hours x \$250 = \$26,880.00

Anne Eng
45.05 hours x \$200 = \$ 9,010.00

Jennifer Dhillon
38.9 hours x \$125 = \$ 4,862.50

Expert Fees

Eugene P. Coyle
65.5 hours x \$100 = \$ 6,550.00

Other Costs = \$ 5,603.48

TOTAL = \$52,905.98

¹SAEJ compensation request was broken down under the headings of two law clinics, Environmental Community Clinic and Environmental Law and Justice Community Clinic. We follow SAEJ's breakdown in this decision.

5.1. Hours Claimed

SAEJ documented the claimed hours by presenting a daily breakdown of professional hours with a brief description of each activity. However, SAEJ does not provide a breakdown of hours by issue. Since SAEJ only addresses two issues in this application and we find SAEJ eligible for compensation for both issues, the matter is moot. However, SAEJ is placed on notice that any future requests for compensation should also provide a breakdown of time and costs by substantive issue. (See D.98-04-059.) Except as described below, the hourly breakdown presented by SAEJ reasonably supports its claim for total hours.

Ramo requests compensation for 107.52 hours and of these 15.08 hours are attributed to preparing SAEJ's compensation request. Similarly, Simon requests 81.5 hours and of these 7.05 hours are attributed to preparing the compensation request. The Commission's practice is to compensate attorneys at one-half their hourly rate for preparation of compensation requests. Thus, Ramo's and Simon's hours are adjusted accordingly for time spent preparing their compensation request.

Simon, Anderson, and Eberle request compensation for 2.2, 3, and 6.7 hours, respectively, regarding Eberle's "ideas" for the second interim decision. The hours requested apply to matters outside the scope of the first interim decision and thus compensation for these hours is denied.

Dhillon claims 4 hours for attending Commission Conferences. Attendance at Commission Conferences is generally not a compensable activity. Dhillon's hours are adjusted accordingly.

5.2. Hourly Rates

SAEJ justifies its hourly rate of \$250 per hour for Simmons (for work performed from late 1996 to 1997) by pointing out that she has 22 years experience as an attorney, currently is Director of the Environmental Law

Community Clinic (ELCC) (1994 to present), formerly a partner at a small community based law practice (1976-1981), served as a staff attorney at NOW Legal Defense Fund (1981-1983), practiced as a staff attorney at the Center for Constitutional Rights (1983-1987), and worked as an ALJ (1987-1989) and Chief ALJ (1989-1994) in the Massachusetts Department of Environmental Protection. We find SAEJ's requested hourly rate of \$250 for Simmons excessive in comparison to those we have approved in the past. Recently, in D.98-11-051, we awarded rates of \$250 (Long) and \$260 (Florio) to attorneys with significant experience practicing before the CPUC in 1997. In D.98-10-007, we awarded a rate of \$200 to Weil, a new intervenor with significant prior Commission experience. In D.98-11-020, we awarded a rate of \$195 (Mueller) to an attorney with several years experience practicing before the Commission. Consistent with rates set for other attorneys practicing before the Commission and in light of Simmons' extensive experience, we set the 1997 rate for Simmons at \$220.

SAEJ requests an hourly rate of \$75 per hour for each of four law students working at ELCC. ELCC is a clinical training placement, primarily for students at the University of California, Berkeley School of Law (Boalt Hall), and also for students attending other law schools. Law students receive course credit by working under the supervision of Simmons. The Commission has consistently awarded law clerks \$55 per hour. (See D.96-06-029, D.95-12-049.) However, in D.98-05-014, in the Commission's most recent decision awarding compensation for work by a law clerk, the Commission awarded an hourly rate of \$10 per hour as requested. We find SAEJ's requested hourly rate of \$75 for law clerks excessive and reduce the hourly rate to \$55 per hour which is consistent with those rates we have approved in the past.

SAEJ justifies its hourly rate of \$250 per hour for Ramo by pointing out that he has been a member of the California State Bar since 1974, for the past 16 years

has focused upon environmental law, is currently employed at the Golden Gate University School of Law as an Associate Professor and Director of the Environmental Law and Justice Clinic (ELJC), and has previously litigated matters before the California Energy Commission in proceedings adjudicating the application of San Francisco Energy Company for certification of its proposed Hunters Point power plant. SAEJ further points out that Ramo's normal rate is \$300 per hour, a fee that has been accepted by the US Justice Department in fee settlement in two separate environmental cases in the past three years. However, after reviewing market rates for practitioners before the Commission and because Ramo has not previously practiced before the Commission, SAEJ requests a rate of \$250 per hour representing a 17% discount from Ramo's normal rate. We find SAEJ's requested hourly rate of \$250 for Ramo excessive and set the 1997 rate for Ramo at \$220.

SAEJ justifies its hourly rate of \$200 per hour for Eng by pointing out that she currently is a full time faculty member and staff attorney for ELJC. Further, SAEJ states that Eng is a graduate of the Columbia University Law School receiving her J.D. in 1988 and has focused on environmental law since graduating. Eng has been with ELJC for three years and served as co-counsel in California Energy Commission proceedings. We find the requested rate for Eng excessive and instead set the 1997 rate for Eng at \$170.

SAEJ requests an hourly rate of \$125 per hour for Dhillon, a recent graduate of Golden Gate University of Law. It is unclear from the request whether Dhillon is a member of the state bar. Thus, we set the 1997 rate for Dhillon at \$85 per hour.

SAEJ requests an hourly rate of \$100 per hour for Gene Coyle, SAEJ's expert witness that testified at hearing. Coyle's hourly rate is consistent with that of other experts. Thus, we set the 1997 rate for Coyle at \$100 per hour.

Golden Gate School of Law - Environmental Law and Justice Clinic

Attorneys' Fees

Alan Ramo				
92.44 hours x	\$220	=	\$20,336.80	
15.08 hours x	\$110	=	\$ 1,658.80	
Anne Eng				
45.05 hours x	\$170	=	\$ 7,658.50	
Jennifer Dhillon				
34.9 hours x	\$85	=	\$ 2,966.50	
Expert's Fees				
Eugene P. Coyle				
65.5 hours x	\$100	=	\$ 6,550.00	
Other Costs		=	\$ 4,482.78	
Sub-total (ELJC)		=	\$43,653.38	
TOTAL (SAEJ)		=	\$67,045.95	

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 11, 1998 (the 75th day after SAEJ filed its compensation request) and continuing until the utility makes its full payment of award.

As in all intervenor compensation decisions, we put SAEJ on notice that the Commission may audit SAEJ records related to this award. Thus, SAEJ must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. SAEJ'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. SAEJ has made a request for compensation for its contribution to D.97-09-046.

2. SAEJ contributed substantially to D.97-09-046.
3. The hourly rates as set in this decision for attorneys, law students, and experts are no greater than the market rates for individuals with comparable training and experience.
4. The miscellaneous costs incurred by SAEJ, as reduced by this decision, are reasonable.

Conclusions of Law

1. Southeast Alliance for Environmental Justice (SAEJ) has fulfilled the requirements of PU Code §§ 1801-1812 which govern awards of intervenor compensation.
2. SAEJ should be awarded \$67,045.95 for its contribution to D.97-09-046.
3. This order should be effective today so that SAEJ may be compensated without unnecessary delay.

O R D E R

IT IS ORDERED that:

1. Southeast Alliance for Environmental Justice (SAEJ) is awarded \$67,045.95 in compensation for its substantial contribution to Decision 97-09-046.
2. Pacific Gas and Electric Company (PG&E) shall pay SAEJ \$67,045.95 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

A.96-11-020 ALJ/JRD/naz

Federal Reserve Statistical Release G.13, with interest, beginning January 11, 1998, and continuing until full payment is made.

This order is effective today.

Dated January 20, 1999, at San Francisco, California

RICHARD A. BILAS
President
HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioners