

Decision 00-01-008 January 6, 2000

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's Own Motion into the Operations and Practices of Pacific Gas and Electric Company in Connection with Public Utilities Code Section 451, General Order 95, and Other Applicable Standards Governing Tree-Line Clearances.

Investigation 98-09-007
(Filed September 3, 1998)

OPINION

This decision grants James Weil (Weil) an award of \$51,529.78 in compensation for his contribution to Decision (D.) 99-07-029.

1. Background

This proceeding is an enforcement investigation into the tree trimming practices of Pacific Gas and Electric Company (PG&E). Evidentiary hearings began March 16, 1999 and were suspended March 22 when the parties indicated they had signed a memorandum of understanding outlining terms for a proposed settlement. On April 2, the parties filed a joint motion for approval and adoption of the settlement agreement. The assigned administrative law judge (ALJ) held an additional day of hearing on April 7 to receive previously-served exhibits and to provide an opportunity for testimony on the settlement.

2. Requirements for Awards of Compensation

Intervenors who seek compensation for their contributions in Commission proceedings must file requests for compensation pursuant to Pub. Util. Code Sections 1801-1812. (All statutory citations are to Pub. Util. Code.) 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 the customer's planned participation and an itemized estimate of the compensation the customer expects to request. The NOI 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. NOI to Claim Compensation

Weil timely filed his NOI after the first prehearing conference and was found to be eligible for compensation in this proceeding by an ALJ's ruling dated

November 12, 1998. The same ruling found that a rebuttable presumption of eligibility exists for Weil pursuant to Pub. Util. Code Section 1804(b)(1).

4. Contributions to Resolution of Issues

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

The Commission in D.99-07-029 adopted a settlement whereby PG&E shareholders would fund up to \$22.7 million in vegetation-related activities and programs over the next five years and make an immediate, one-time \$6 million contribution to the California general fund. The settlement also established various forward-looking vegetation management inspection and compliance requirements. The parties to the settlement were PG&E, the Commission's Consumer Services Division (CSD), William Adams (Adams), and Weil. Adams

¹ Pub. Util. Code Section 1802(h).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ D.89-03-96 (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).

and Weil acted jointly throughout most of the proceeding.⁶ No other party participated in the evidentiary hearings or settlement negotiations.

Adams and Weil served extensive testimony and exhibits setting forth and supporting their positions before evidentiary hearings began. They raised their own issues and supplemented the showing of CSD. Those issues include customer refusals, overhead line inspections, climbable trees, program quality, standards of review for Commission penalties, and the many elements of the adopted settlement.

5. The Reasonableness of Requested Compensation

Adams and Weil submitted separate requests for compensation. Therefore, we address their requests separately.

⁶ Adams filed a separate Request for Award of Compensation on September 20, 1999.

Weil requests compensation in the amount of \$51,529.78 as follows:

\$45,440.00	227.2 hours professional time, at \$200 per hour
3,650.00	36.5 hours travel and compensation time, at \$100 per hour
587.19	Copies
167.98	Postage
256.34	Travel (vehicle mileage, bridge tolls, taxi fare, parking)
<u>+ 815.00</u>	Fax, telephone charges
50,916.51	Total Original Request
613.27	Response to PG&E's opposition to fee request
\$51,529.78	Total

The request includes Weil's time and costs for this proceeding, with two exceptions. No compensation was included for administrative time (5.8 hours) or for time spent on tree wire issues (14.9 hours).

Additionally, Weil requests compensation for the cost of responding to PG&E's opposition to his fee request as follows: 5.7 hours at an hourly rate of \$100, plus an estimated \$43.27 for copying and postage costs for a total of \$613.27. Including this amount, Weil's request is for a total amount of \$51,529.78.

PG&E agrees that Adams' and Weil's efforts warrant compensation; however, PG&E contends that their requests need to be adjusted in several areas. According to PG&E, allocations of time to all major issues are not adequately documented and a 20% adjustment should be made for duplication of work.

Adams and Weil respond that cooperation between themselves avoided duplication of work. They assert that while they held identical positions on most if not all issues, that fact does not demonstrate duplication of effort. They believe that their informal agreement to participate jointly allowed them to present similar views to the Commission efficiently. Adams focused on field inspections

and testimony, while Weil concentrated on procedural motions, discovery, coordination with CSD, hearing room advocacy, and settlement negotiations.

Stating that it rarely comments on intervenor compensation matters, and in view of PG&E's opposition to the request for compensation, CSD filed comments expressing appreciation of the contribution of both Adams and Weil. Also, CSD does not believe that Adams and Weil duplicated each others efforts, as PG&E has charged.

5.1 Hours Claimed

The Commission has always attempted to avoid duplication of work on the part of intervenors. In this proceeding, there was very little, if any difference of opinion between Adams and Weil. However, as explained by them, there was a clear demarcation between the responsibilities of each in their effort to jointly present their allegations that PG&E had allowed its tree trimming and vegetation management programs to become less than effective. Also, we note CSD's appreciation of the contribution of Adams and Weil, and CSD's opinion that there was no duplication of effort.

Weil documented the claimed hours by presenting a daily breakdown of hours with a brief description of each activity. Given the prepared testimony issued by Weil, and the scope of this proceeding, we agree that the hours claimed are reasonable.

5.2 Hourly Rate

Weil requests an hourly rate of \$200 for professional work performed during 1998 and 1999, and one half of that rate for travel time and for preparation of his compensation request. The Commission has previously awarded Weil compensation at \$200 per hour for professional work and \$100 per hour for travel time for work in 1998 (D.99-06-002, p. 8). He does not request a

higher rate for work in 1999 in this proceeding but reserves his right to seek compensation at a higher hourly rate for work in 1999 in other proceedings.

We agree that an hourly rate of \$200 for professional work and \$100 for travel time for work done by Weil in this proceeding is reasonable.

5.3 Overall Benefits of Participation

In D.98-04-059, the Commission adopted a requirement that a customer must demonstrate that its participation was "productive," as that term is used in Pub. Util. Code § 1801.3, where the Legislature gave the Commission guidance on program administration. (See D.98-04-059, mimeo., at 31-33, and Finding of Fact 42). In that decision, we discuss the fact that participation must be productive in the sense that the costs of participation should bear a reasonable relationship to the benefits realized through such participation. Customers are directed to demonstrate productivity by assigning a reasonable dollar value to the benefits of their participation to ratepayers. This exercise assists us in determining the reasonableness of the request and in avoiding unproductive participation.

In terms of dollars and cents, under the settlement, PG&E's shareholders will fund up to \$22.7 million in vegetation-related activities and programs over the next five years and make an immediate, one-time \$6 million contribution to the California general fund. Adams and Weil do not claim that the whole amount of the settlement was entirely due to their efforts. Nevertheless, we believe that the participation of Adams and Weil was productive in that the benefits realized from their participation clearly outweigh the cost of their participation. We agree that Weil's request for compensation is reasonable in terms of the benefits realized.

Also, we agree that Weil should be compensated, as requested, for preparation of his reply to PG&E's opposition to his request for compensation.

6. Award

We award Weil \$51,529.78, calculated as described above.

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 November 14, 1999, (the 75th day after Weil filed his compensation request) and continuing until the utility makes its full payment of award.

As in all intervenor compensation decisions, we put Weil on notice that the Commission staff may audit Weil's 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 each employee, the applicable hourly rates, fees paid to consultants, and any other costs for which compensation may be claimed.

7. Comments on Draft Decision

The draft decision of the ALJ in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g) and Rule 77.1 of the Rules of Practice and Procedure. No comments were filed.

Findings of Fact

1. Weil has made a timely request for compensation for his contribution to D.99-07-029. Weil has made a showing of significant financial hardship by demonstrating that his economic interest would be extremely small compared to the costs of participating in this proceeding.

2. Weil contributed substantially to D.99-07-029.

3. For Weil, an hourly rate of \$200 per hour, which has already been approved by the Commission in D.99-06-002 for work in 1998, is reasonable.

4. The miscellaneous costs incurred by Weil are reasonable.

5. Weil's participation was productive in that the benefits realized from the settlement outweigh the cost of his participation.

Conclusions of Law

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

2. Weil should be awarded \$51,529.78 for his contribution to D.99-07-029.

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 (Weil) is awarded \$51,529.78 in compensation for his substantial contribution to Decision 99-07-025.

2. Pacific Gas and Electric Company (PG&E) shall pay Weil \$51,529.78 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 November 14, 1999, and continuing until full payment is made.

This order is effective today.

Dated January 6, 2000, at San Francisco, California.

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

I abstain.

/s/ LORETTA M. LYNCH
Commissioner