

Decision 00-01-009 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 William Adams (Adams) an award of \$27,460.15 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**

Adams 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, 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.<sup>1</sup> It may offer a factual or legal contention upon which the Commission relied in making a decision.<sup>2</sup> Or it 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 in total.<sup>4</sup> The Commission has provided compensation even when the position advanced by the intervenor is rejected.<sup>5</sup>

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

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<sup>1</sup> Pub. Util. Code Section 1802(h).

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

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

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

<sup>5</sup> 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).

Consumer Services Division (CSD), Adams, and James Weil (Weil). Adams and Weil acted jointly throughout most of the proceeding.<sup>6</sup> 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.

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<sup>6</sup> Weil filed a separate Request for Award of Compensation on August 31, 1999.

Adams requests compensation in the amount of \$34,138.90 as follows:

\$27,162.50	217.3 hours professional time, at \$125 per hour
3,668.75	58.7 hours travel and compensation time, at \$62.50 per hour
1,772.00	Consultant – John Sevier
522.80	Travel (vehicle mileage, bridge tolls, taxi fare, parking)
+ 657.00	Fax, telephone charges
33,783.13	Total Original Request
355.77	Response to PG&E's opposition to fee request
\$34,138.90	Total

The request includes Adams' time and costs for this proceeding. No compensation was included for time spent on tree wire issues (24.6 hours).

Additionally, Adams requests compensation for the cost of responding to PG&E's opposition to his fee request as follows: 5.0 hours at an hourly rate of \$62.50, plus an estimated \$43.27 for copying and postage costs for a total of \$355.77. Including this amount, Adams' request is for a total amount of \$34,138.90.

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.

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

### **5.2 Hourly Rate**

#### **Adams**

Adams requests an hourly rate of \$125 for professional work performed during 1998 and 1999, and one half of that rate for travel time and for preparation of his compensation request. In D.99-05-017, the Commission awarded him an hourly rate of \$75 for work performed. However, he believes that this rate is not representative of market rates for engineers of his knowledge

and experience. To justify his requested hourly rate of \$125, Adams provided copies of letters from lawyers familiar with his work as an electrical expert and the rates charged by other experts in this field.

We believe that an hourly rate of \$125 is excessive for Adams' services. A rate of \$100 per hour is reasonable and in line with rates paid to other consultants, i.e., JBS Energy, Inc. staff.<sup>7</sup> Accordingly, we will reduce Adams' request by \$6,228.75<sup>8</sup> to reflect the lower hourly rate.

### 5.3 Consultant's Services

#### Sevier

During the rebuttal phase of the proceeding, Adams and Weil engaged arborist and safety consultant John Sevier to prepare testimony to rebut PG&E's responsive testimony regarding program quality. (Rebuttal Testimony of John Sevier on PG&E Tree Trimming Practices, Exhibit AW5.) Adams requests compensation in full for his costs, which amount to \$1,772. A copy of Sevier's invoice, his qualifications, and documents to justify Sevier's hourly rate of \$150 were included in Adams' request for compensation.

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#### <sup>7</sup> Hourly Rates:

Schilberg \$100, D.97-10-026  
Helmich \$ 40, D.98-02-016  
Ruszovan \$ 80, D.97-05-070

#### <sup>8</sup> Adjustment:

217.3 hours x \$25.00 = \$5,432.50  
58.7 hours x \$12.50 = 733.75  
5.0 hours x \$12.50 = 62.50  
Total \$6,228.75

A summary of Sevier's invoice is as follows:

Re: PG&E Tree Trimming Investigation (I.) 98-09-007

December 20, 1998: Location, 9000 Atascadero Avenue

Inspection 3.0 hours @ \$150 .....	\$ 450.00
Equipment Fee – Boom Truck .....	200.00
Photos .....	11.00

February 22, 1999: Location, Estrella Road

Inspection 3.5 hours @ \$150 .....	525.00
Equipment Fee – Boom Truck .....	200.00
Photos .....	11.00
Drafting Testimony 2.0 hours @ \$150 .....	300.00
Phone conferences re testimony 0.5 hour @ \$150 .....	75.00
TOTAL	\$1,772.00

Sevier's request for an hourly rate of \$150 is excessive. In D.99-05-017 (p. 28), Sevier was compensated at an hourly rate of \$75 per hour for work performed from 1995 to 1997. We believe that a rate of \$100 per hour for work performed in 1998 is reasonable. Accordingly, Sevier's charges are reduced by \$450.<sup>9</sup>

#### 5.4 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

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<sup>9</sup> Adjustment:

3.0 hours x \$50.00 =	\$150
3.5 hours x \$50.00 =	175
2.0 hours x \$50.00 =	100
0.5 hours x \$50.00 =	<u>25</u>
Total	\$450



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 Adams' request for compensation, as modified by this decision, is reasonable in terms of the benefits realized.

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

## **6. Award**

We award Adams \$27,460.15,<sup>10</sup> 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

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<sup>10</sup>  $\$34,138.90 - \$6,228.75 - \$450 = \$27,460.15$

paper rate), commencing December 4, 1999, (the 75<sup>th</sup> day after Adams filed his compensation request) and continuing until the utility makes its full payment of award.

As in all intervenor compensation decisions, we put Adams on notice that the Commission staff may audit his records related to this award. Thus, Adams must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. Adams' 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. Adams has made a timely request for compensation for his contribution to D.99-07-029. Adams 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. Adams contributed substantially to D.99-07-029.

3. For Adams, an hourly rate of \$100 per hour for professional work performed during 1998 and 1999, is reasonable.

4. For Sevier, an hourly rate of \$100 per hour for professional work performed during 1998 and 1999, is reasonable.

5. The miscellaneous costs incurred by Adams are reasonable.

6. Adams' participation was productive in that the benefits realized from the settlement outweigh the cost of his participation.

**Conclusions of Law**

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

2. Adams should be awarded \$27,460.25 for his contribution to D.99-07-029.

3. This order should be effective today so that Adams may be compensated without unnecessary delay.

**O R D E R**

**IT IS ORDERED** that:

1. William Adams (Adams) is awarded \$27,460.15 in compensation for his substantial contribution to Decision 99-07-025.

2. Pacific Gas and Electric Company (PG&E) shall pay Adams \$27,460.15 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 December 4, 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