

Decision 00-04-015 April 6, 2000

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Pacific Gas and Electric Company for Authority to Establish Post-Transition Period Electric Ratemaking Mechanisms.

Application 99-01-016
(Filed January 15, 1999)

San Diego Gas & Electric Company for authority to implement Post Rate Freeze Ratemaking Mechanism.

Application 99-01-019
(Filed January 15, 1999)

Southern California Edison Company (U 338-E) to: (1) Propose a Method to Determine and Implement the End of Rate Freeze; and (2) Propose Ratemaking Which Should Be in Place After the End of the Rate Freeze Periods.

Application 99-01-034
(Filed January 15, 1999)

Application of SAN DIEGO GAS & ELECTRIC COMPANY: (1) informing the Commission of the Probable Timing of the End of its Electric Rate Freeze, (2) for Authorization to Change Electric Rates Through Implementation of Interim Ratemaking Mechanisms Concurrent with Termination of the Electric Rate Freeze, and (3) for Authorization to Change Electric Rates by Adding New, and Revising or Terminating Existing, Rate and Revenue Mechanisms and Rate Designs. (U 902-E)

Application 99-02-029
(Filed February 19, 1999)

OPINION AWARDING COMPENSATION

This decision grants James Weil (Weil) an award of \$6,975.51 in compensation for his contribution to Phase 1 of this proceeding which resulted in Decision (D.) 99-10-057.

1. Background

Pacific Gas & Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E), and Southern California Edison Company (Edison) filed applications with the California Public Utilities Commission to establish post-transition period electric ratemaking mechanisms. D.99-10-057 addressed ratemaking, accounting, and other issues related to the end of the transition period and rate freeze prescribed for PG&E, SDG&E, and Edison. Phase 1 of the proceeding was limited to the mechanics of ending the current electric rate freeze. During Phase 1 only Weil and The Utility Reform Network (TURN) represented the interests of small customers.

On December 24, 1999, Weil filed his request for compensation for his performance of the following tasks: (1) reviewing the details of the purchased electric commodity account (PECA) proposed by PG&E for the booking of commodity costs after the end of its rate freeze and recommended to the Commission that it withhold approval of PECA details for PG&E, as well as for SDG&E and Edison, until Phase 2 or until the utilities propose specific tariff provisions; (2) arguing in favor of Commission oversight for utility discretion to purchase different energy products; (3) requesting that the Commission refer to "reasonable employee transition costs" in approving any ratemaking treatment in Phase 1; and (4) arguing that the utilities should provide forecasts of the end of the rate freeze.

On January 21, 2000, PG&E filed a response to Weil's request for compensation challenging Weil's claims that he made a substantial contribution to the Commission's order and alleging that his contributions, if any, were duplicative of those made by other parties. On February 7, 2000, Weil filed a reply to PG&E's response taking exception to the opposition advanced and seeking additional compensation for the cost of his reply.

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 §§ 1801-1812. (All statutory citations are to Pub. Util. Code unless otherwise noted.) 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 significant financial hardship.

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 that determines whether the customer has made a substantial contribution and what amount of compensation to award. 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 § 1806.

3. NOI to Claim Compensation

Weil timely filed his NOI on March 22, 1999. Weil's NOI included a demonstration of customer status, discussion of the adequacy of representation, a statement of the nature and extent of planned participation, a compensation estimate, and a citation to a rebuttable presumption of eligibility for compensation pursuant to § 1804(b)(1).

4. Eligibility for Compensation

Pursuant to an administrative law judge's (ALJ) ruling issued March 19, 1998, in A.97-10-014 et al. a rebuttable presumption of Weil's eligibility for compensation pursuant to §1804(b)(1) was created. On March 26, 1999, the assigned ALJ in this proceeding ruled that Weil met the requirements of § 1804 with regard to eligibility for compensation. Weil was found to be a customer under § 1802(b) representing customer interests that would be otherwise underrepresented in this proceeding. The March 26, 1999, ALJ ruling also found that Weil and The Utility Reform Network (TURN) were the only representatives

of small customers in the proceeding.¹ Pursuant to Rule 76.76 of the Commission's Rules of Practice and Procedure, we therefore conclude that Weil is eligible to receive intervenor compensation in all phases of this proceeding.

5. Substantial Contributions

A party may make a substantial contribution to a decision in several ways.² It may offer a factual or legal contention upon which the Commission relied in making a decision.³ Or it may advance a specific policy or procedural recommendation that the ALJ or Commission adopted.⁴ 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.⁵ The Commission has provided compensation even when the position advanced by the intervenor is rejected.⁶

Weil believes he substantially contributed to D.99-10-057 in Phase 1 of the proceeding in four areas. First, on the issue of purchased electric commodity account (PECA), he was the only party to review the details of the PECA proposed by PG&E. SDG&E and Edison proposed similar accounts for the booking of commodity costs after the end of each utility's rate freeze. Weil did

¹ March 26, 1999, ruling, p. 2.

² Pub. Util. Code § 1802(h).

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ 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).

not oppose the adoption of the PECA in general, but did recommend that the Commission withhold approval of PECA details until Phase 2 of the proceeding or until the utilities proposed specific tariff provisions. The Commission cited the concerns raised by Weil in D.99-10-057 and stated, "We will explore in Phase 2 whether dollar-for-dollar recovery of such costs is appropriate and related ratemaking issues, as Weil and ORA propose."⁷ In the Conclusion of Law in the Decision the Commission stated, "In Phase 2 of this proceeding, the parties should be permitted to consider refinements to the accounting and ratemaking proposals adopted in this decision."⁸

PG&E challenged Weil's contribution to this issue on the grounds that Weil failed to prevail on this issue and because other parties, not just Weil and ORA, agreed that the issue of how utility electric procurement is to be regulated in the post-transition period should be deferred to Phase 2. Weil's reply to the PG&E response argues that "failure to prevail in every respect is not grounds for denial of compensation."

Whenever a Commission proceeding involves an extraordinary level of participation from parties and intervenors, we must consider both whether an intervenor has made a substantial contribution and to what extent, if any, that contribution duplicated the contribution of any other intervenor. When we considered whether duplication of contribution warranted a reduction in an award in a previous decision on intervenor compensation, we concluded that:

" . . . because of the extraordinary level of participation required of both parties and intervenors throughout these proceedings, we find

⁷ D.99-10-057, *mimeo.*, at p. 25.

⁸ D.99-10-057, *mimeo.*, at p. 38.

that a reduction in the amount awarded to intervenors based on duplication of effort is unwarranted The cooperative efforts participated in by the intervenors, . . . are essential in building a California consensus."⁹

Following the conclusion set forth above, we decline to reduce Weil's request for compensation on the PECA issue.

Second, Weil argued for Commission oversight of utility discretion or flexibility to purchase different energy products through the Power Exchange (PX) or other markets. PG&E had proposed that its purchase of commodity electricity through the PX after the transition period should not be subject to reasonableness review. The Commission cited Weil's concerns in the Decision and stated "We agree with ORA and Weil that this is not the forum in which we are prepared to modify regulatory oversight of energy purchasing decisions. We will consider the matter further in Phase 2."¹⁰ The Commission continued on and concluded "The Commission should continue to oversee utility purchasing practices and should not in this order modify the mandatory 'buy-sell' obligation."¹¹

PG&E claimed Weil should not be compensated for this oversight issue since this issue was deferred to Phase 2 at the start of the evidentiary hearing in Phase 1 by agreement of several of the parties. Weil in his reply to PG&E alleges that the prepared testimony of PG&E's witness Mark Huffman

⁹ Order Instituting Rulemaking on the Commission's Proposed Policies Governing Restructuring California's Electric Services Industry and Reforming Regulation, R.94-04-031, *mimeo.*, at p. 5 (citing D.96-08-040, slip op. at 25.).

¹⁰ D.99-10-057, *mimeo.*, at p. 28.

¹¹ D.99-10-057, *mimeo.*, at p. 38.

contained the argument that its costs of electricity procured through the California Power Exchange should be exempt from reasonableness review. Weil claims PG&E stuck to this position and did not withdraw the cited testimony.

We agree that Weil made a substantial contribution to the oversight issue and should be compensated.

Third, in characterizing ratemaking treatment of employee transition costs after the rate freeze, PG&E described "recorded" or "incurred" employee transition costs without admitting that all such costs are subject to reasonableness review. Weil requested that the Commission refer to "reasonable employee transition costs" as necessary in approving any ratemaking treatment in Phase 1. The Commission did find that any adopted ratemaking treatment that may involve employee transition costs assumes that such costs are only those determined by the Commission to be reasonable.¹²

PG&E asserts that Weil is not due any compensation on this issue since all he did was "clarify the obvious" and his work did not contribute to the resolution of any contested issue. Weil's reply claims he was the only party to point out that PG&E's testimony on this topic ignored that all employee transition costs must be determined to be reasonable before they can be included in rates.

We agree that Weil made a substantial contribution to the employee transition cost issue by emphasizing the necessity of a reasonableness review, and he should be compensated.

And fourth, Weil opposed PG&E's arguments during Phase 1 that it should not be required to provide forecasts of the end of the rate freeze. Weil's

¹² D.99-10-057, *mimeo.*, at p. 28.

argument was that many customers are not well-equipped to make their own forecasts, no harm would ensue from a forecast, and customers would benefit from the information. The Commission found that utility forecasts may be useful to customers and ordered PG&E and Edison to provide estimates of the end of the rate freeze.¹³

PG&E disputes Weil's claims that he is due compensation on this topic since the Commission did not mention his position in D.99-10-057. Weil alleges he prevailed on this issue and is due compensation.

The Commission did not mention Weil, or any other contributor, by name in adopting its position on the forecast of the rate freeze. The decision discusses the positions taken by several parties, including PG&E, Edison, TURN, and others. Although Weil has already agreed to a reduction for duplication on this issue, we will further reduce the requested compensation by 50% to adjust for the contribution of others. Weil sought compensation for 3.3 hours of professional time at \$200 per hour on this issue. We will award him compensation for 1.7 hours of professional time at his requested and approved rate.

5.1 Duplication of Work

In addition, both Weil and TURN represented small customers in the proceeding, but they addressed different issues in Phase 1 so there was little duplication of work. TURN focused on estimates of the value of hydroelectric assets, criteria for ending the rate freeze, Diablo Canyon cost-recovery, and allocation of reliability must run costs and post-transaction revenue requirements.

¹³ D.99-10-057, *mimeo.*, at pp. 34 and 40.

Weil, on the other hand, focused his comments on the proposed decision that preceded D.99-10-057, purchased electric commodity accounting, and employee transition costs. Weil's work did not generally duplicate the efforts of TURN, the Office of Ratepayer Advocates (ORA) or any other parties to the proceeding, and to the extent that they may have, Weil has conceded a 10% reduction in his compensation request.

We agree that Weil made substantial contributions to D.99-10-057 in the areas he identifies. Although we did not adopt every element of Weil's position on all four issues, we adopted Weil's proposals in whole or in part and benefited from Weil's policy discussion on all of those issues which he addressed. (D.99-10-057, *mimeo.*, pp. 25, 28, 34, 38, and 40.)

6. The Reasonableness of Requested Compensation

Weil requests compensation in the amount of \$6,832.13 as follows:

\$4,080.00	20.4 Hours professional time at \$200 per hour ¹⁴
1,890.00	18.9 Hours travel and compensation time at \$100 per hour
150.27	Copies
212.23	Postage
173.63	Travel (vehicle mileage, bridge tolls, parking)
<u>6.00</u>	Fax charges
Total \$6,832.13	

Weil's request includes all of his time and costs for Phase 1 of this proceeding with four exceptions: (1) he concedes a 10% reduction for duplication of the work of others on PG&E forecasts of the end of the rate freeze; (2) he seeks no compensation for his time spent on volatility of commodity

¹⁴As discussed above, Weil requested 3.3 hours for professional time spent on the issue of forecasting the end of the rate freeze. We are reducing that request by 50% and allowing 1.7 hours for professional time on this topic.

prices; (3) he seeks no compensation for time spent on decision language regarding the mandatory buy/sell requirement; and (4) he seeks no compensation for administrative time.

6.1 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 § 1801.3, where the Legislature gave the Commission guidance on program administration.¹⁵ Participation must be productive in the sense that the costs of participation should bear a reasonable relationship to the benefits realized through such participation. Although it is not possible to identify the precise savings associated with each one of the four issues on which Weil made a substantial contribution, the Commission believes the ratepayers are further protected through the efforts of Weil in this proceeding. Specifically, on the first issue involving PECA, the ratepayers are protected from the risk of adoption of PG&E's ratemaking proposals without further review of specific tariff terms; on the second issue of Commission oversight, ratepayers are protected from the risk that after the transition period the utilities will operate without adequate incentives for efficient operation; on the third issue of employee transition costs, it is not possible to identify the precise savings associated with this issue; and on the fourth issue of forecasting the rate freeze, customers and competitors may benefit.

We find Weil's participation was productive in that the costs he claims for his participation are reasonable in light of the benefits realized.

¹⁵ D.98-04-059, *mimeo.*, at pp. 31-33, Findings of Fact 42.

6.2 Hours Claimed

Weil documented the claimed hours by presenting a daily breakdown of hours for his professional services that included a spreadsheet summary of hours and direct costs and an allocation of hours by subject. Weil also included a statement of his qualifications. The hourly breakdown presented by Weil reasonably supports his claim for total hours. Given the quality and comprehensiveness of Weil's contributions, we believe that the many hours spent by Weil was time well spent. We will reduce his requested hours for duplication of effort on the topic of forecast the end of the rate freeze by 50%, reducing his overall requested compensation by 1.6 hours or \$320.

6.3 Hourly Rates

Weil requests an hourly rate of \$200 for professional work performed on D.99-10-057, 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 a travel and compensation rate of \$100 per hour for work in 1998 (D.99-06-002, at *mimeo.*, 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 hourly rates of \$200 for professional work and \$100 for travel time for work done by Weil in this proceeding are reasonable.

6.4 Other Costs

Weil requests \$542.13, or 7.9% of the total compensation request of \$6,832.13 for other costs including copying, postage, fax charges, bridge tolls, and parking fees. We find Weil's request for costs reasonable.

6.5 Time and Costs for Reply

Weil requests an additional \$423.38 for the costs of preparing his reply to PG&E's opposition to his compensation request. Weil seeks 3.6 hours of professional time at \$100 per hour, plus \$63.38 for costs. We will allow those requested fees and costs.

7. Award

We award Weil \$6,975.51 calculated as described below

Weil's original request of \$6,832.13 is reduced by \$320.00 representing the 1.6 hour reduction on the rate freeze forecasting issue to \$6,552.13. Weil is then allowed \$423.38 for fees and costs for his reply, for a total of \$6,975.51.

We will assess responsibility for payment among PG&E, SDG&E, and Edison, based on 1998 retail sales.

As in all intervenor compensation decisions, we put Weil on notice that 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 rate, fees paid to consultants, and any other costs for which compensation may be claimed.

Comments on Draft Decision

The draft decision of the ALJ in this matter was mailed to the parties in accordance with Section 311(g) of the Public Utilities Code and Rule 77.1 of the Rules of Practice and Procedure. No comments were received.

Findings of Fact

1. Weil has made a timely request for compensation for his contribution to D.99-10-057. 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.99-10-057.
3. Weil's request for 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 that govern awards of intervenor compensation.
2. Weil should be awarded \$6,975.51 for his contribution to D.99-10-057.
3. PG&E, SDG&E, and Edison should pay to Weil that pro-rata portion of the award based upon each utility's respective 1998 retail kilowatt-hours of electricity sold in 1998.
4. 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 \$6,975.51 in compensation for its substantial contribution to Decision 99-10-057.
2. Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company shall each pay to Weil that pro rata portion

A.99-01-016 et al. ALJ/CAB/tcg

based upon each utility's respective 1998 retail kilowatt-hours of electricity sold in 1998, within 30 days of the effective date of this order.

3. This order is effective today.

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

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