

Decision 99-06-002 June 3, 1999

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of PACIFIC GAS AND ELECTRIC COMPANY for Authority, Among Other Things, to Increase Rates and Charges for Electric and Gas Service Effective on January 1, 1999.
(U 39 M)

Application 97-12-020
(Filed December 12, 1997)

Investigation into the reasonableness of expenses related to the out-of-service status of Pacific Gas and Electric Co.'s El Dorado hydroelectric project and the need to reduce electric rates related to this non-functioning electric generating facility.

Investigation 97-11-026
(Filed November 21, 1997)

O P I N I O N

This decision grants James Weil an award of \$4,936.17 in compensation for his contribution to Decision (D.) 98-12-078.

1. Background

This application is the test year 1999 general rate case for Pacific Gas and Electric Company (PG&E). On January 29, 1998, Weil entered an appearance at the prehearing conference. On March 2, 1998, Weil filed a notice of intent to claim compensation (NOI).

The Commission approved D.98-12-078 on December 17, 1998; it is a final order as defined in Rule 76.72 of the Commission's Rules of Practice and Procedure because it resolved issues necessary to grant interim rate relief to PG&E, following 50 days of hearings. Weil here seeks compensation for his contributions to the interim decision on tariff refund provisions, interim relief for

recorded cost ratemaking, and balancing account interest rate. This compensation request, filed on the 59th day following the interim order, is timely.

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 (Pub. Util.) Code §§ 1801-1812¹. 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. (Pub. Util. Code § 1804(a).)

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."

¹ All statutory references are to the Public Utilities Code unless otherwise indicated.

3. NOI to Claim Compensation

On March 2, 1998, the 30th day after the prehearing conference, Weil filed a timely NOI. Weil's NOI estimated a total compensation of \$128,500 for the entire case. Subsequently, on May 20, 1998, the assigned Administrative Law Judge (ALJ) Mark Wetzell issued the first part of a two-part ruling finding Weil eligible for compensation. Based on a previous showing of financial hardship in another proceeding that had commenced within one year of this proceeding, ALJ Wetzell first found that Weil had shown financial hardship under Section 1802(g). Then, on July 30, 1998, following an amendment to the NOI, ALJ Wetzell issued a ruling finding that Weil qualified as a customer under Pub. Util. Code § 1802(b). We affirm those rulings here.

4. Underrepresentation, Necessity, Necessary for a Fair Determination of the Proceeding and Productivity

In our discussion in D.98-04-059,² we emphasize the necessity for certain findings in support of an order awarding compensation. For eligibility to seek compensation, an intervenor must show undue financial hardship and customer status, as well as an indication that the customer interests he or she represents would otherwise be underrepresented. At the compensation award stage, underrepresentation, and several other factors, are reviewed in the assessment of the usefulness of the intervenor's participation. Weil showed that he was the

² We disagree with Weil when he urges that the procedure arising from Rulemaking 97-01-009 and Investigation 97-01-010, and set forth in D.98-04-059, issued and effective April 23, 1998, does not apply here. It is applicable first because the final ruling on eligibility was not complete until after the effective date of D.98-04-059. It is also applicable because in Ordering Paragraph 9 at p. 92, the Chief Administrative Law Judge is directed to ensure that the Administrative Law Judges conform the procedure used to assess eligibility for and awards of intervenor compensation to the changes to the intervenor compensation program administration adopted. This award of compensation decision follows, by many months, the effective date of D.98-04-059.

only party solely representing residential and small commercial customers, thereby adding a focus otherwise lacking. Without his participation, those customers would have been underrepresented. (D.98-04-059, Finding of Fact 13 at slip op. p. 83.)

In D. 98-04-059, slip op. at p. 31, we also note the touchstones in Section 1801.3(f) for the administration of the compensation program: Productive, Necessary and Needed Participation. Weil's participation was necessary in that he did not duplicate the work of the Office of Ratepayer Advocates and his contributions provided independent benefits to ratepayers. His participation was necessary for a fair determination of the proceeding in that the issues he addressed were relevant, within the scope of the proceeding and within the Commission's jurisdiction. Moreover, Weil participated in a productive manner. A perusal of his time records indicates that his use of time was efficient. The adoption of several of his recommendations shows that his participation was effective. While some of the benefits of Weil's participation are intangible, we agree that the factor by which he reduced his cost request (.25) operates as a reasonable proxy for monetizing the value of the benefit realized from that participation in relation to its actual cost.

5. Contributions to Resolution of Issues

Section 1804(e) requires the Commission to issue a decision that determines whether or not the customer has made a substantial contribution and the amount of compensation to be paid. A party may make a substantial contribution to a decision in three ways.³ He may offer a factual or legal

³ Pub.Util. Code § 1802(h).

contention upon which the Commission relied in making a decision.⁴ Or he may advance a specific policy or procedural recommendation that the ALJ or Commission adopted.⁵ A substantial contribution includes evidence or argument that supports part of the decision even if the Commission does not adopt a party's position entirely.⁶ The Commission has provided compensation even when the position advanced by the intervenor is rejected.⁷

In this instance, the Commission needed to determine whether PG&E should be permitted to have interim rate relief pending the final resolution of its 1999 general rate case. Although Weil did not prevail on the major issue, nor on the important issue of reliance on balancing accounts, he did prevail regarding tariff refund provisions, interim relief for recorded cost ratemaking, and balancing account interest rate.

Indeed, the Commission adopted his recommendation that PG&E's interim rate tariff should explicitly state that interim revenue requirement debits are subject to refund or downward adjustment. (D.98-12-078, Ordering Paragraph 3, slip op. at pp. 23-24.) For the group of customers that Weil represents, this was an important contribution. The Commission also adopted his recommendation that interim relief should apply to PG&E's hydroelectric and geothermal revenue requirements, which operate under recorded cost ratemaking. (D.98-12-078, Finding of Fact 13, slip op. at p. 22.) Further, the

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ D.89-03-063 (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).

Commission adopted Weil's recommendation that the balancing account bear interest at published commercial paper rates. (D.98-12-078, Ordering Paragraph 3, slip op. at p. 24.) Additionally, Weil contributed by advising PG&E of errors in its Advice letters (issued in compliance with D. 98-12-078). PG&E corrected the errors.

The adopted recommendations inform ratepayers of the possibility of reduced rates, safeguard the potential for the return of interest at an adequate and fair rate, and reduce the risk of error due to late implementation of forecast test year ratemaking. The record supports Weil's contention that his recommendations differed from those of other parties, such as ORA, and that Weil made a significant contribution to the final outcome of the proceeding.

6. The Reasonableness of Requested Compensation

Weil requests compensation in the amount of \$5,083.17 as follows:

Weil Hours	(19.8 hrs. @ \$200/hr.)	\$ 3,960.00
Travel time and time for preparing compensation request	(7.0 hrs. @ \$100/hr.)	\$ 700.00
Administrative hours	(4.9 hrs. @ \$ 30/hr.)	\$ 147.00
Copies		\$ 108.29
Postage		\$ 58.08
Mileage @ 31¢ & travel costs		\$ 84.62
FAX & telephone		\$ 25.18
Total		\$ 5,083.17

6.1 Hours Claimed & Allocation to issues

Weil allocated his costs by major issues in conformance with D.85-08-012. In keeping with Commission practice, he did not allocate to specific issues the hours devoted to initial review of the application and

protective order, attendance at the prehearing conference or the preparation of the NOI.

In total, 47.6 hours were allocated to Interim Relief, one category out of twelve. Additionally, Weil selected an interim relief issue allocation factor of 0.118. He based this selection on page counts for his testimony, briefs and proposed decision comments related to the interim relief, contrasted to other issues. All hours and costs logged in the case were multiplied by this issue allocation factor.

Additionally, Weil estimated that he prevailed on 25% of the contested interim relief issues. He calculated this percentage by noting that the discussion in D.98-12-078 had three sections. He prevailed on none of the issues in the first two sections, but on $\frac{3}{4}$ of the issues in the third section. ($0 \times \frac{1}{3} + 0 \times \frac{1}{3} + \frac{3}{4} \times \frac{1}{3} = \frac{1}{4}$.) Thus, the 47.6 hours for Interim Relief is further limited by the factor of .25 for those sub-issues on which Weil made a substantial contribution. We think that this method of determining what portion of total hours is compensable for participation in the interim relief segment of the case is sound.

Weil documented his hours by submitting a spreadsheet reflecting date, number of hours broken down by professional, travel or administrative, and activity. A review of the time records submitted indicates that permissible activities, such as reviewing the application, drafting briefs, attending hearings, and testifying are included in the time records. We note, however, that Weil has segregated hours spent on administrative tasks as well.

The time records adequately support Weil's claim of total hours spent on interim relief. Weil is a professional consultant who performed efficiently and added value to the proceeding. We will address his claim for compensation for the administrative hours in the next section.

6.2 Hourly Rates

Section 1806 requires the Commission to compensate eligible parties at a rate that reflects the "market rate paid to persons of comparable training and experience who offer similar services."⁸

Weil seeks compensation at the rate of \$200 per hour for work on substantive matters, \$100 per hour for travel time and work drafting the compensation request, and \$30 per hour for administrative work.

Weil's resume indicates that he has a master's degree and doctoral degree in engineering from the University of California at Berkeley and many years of experience in the utility industry. His experience includes 14 years with the Commission staff, seven of which were as ALJ with the Commission. In support of his request for an hourly professional rate of \$200, and a \$100 rate for travel time and preparation of the compensation request, Weil cited three other decisions in which the Commission had awarded him compensation at these rates during a contemporaneous timeframe. (D.98-10-007, D.98-11-049, and D.98-12-037.) Weil has reasonably supported his request for an hourly rate of \$200 and we will grant it. Consistent with our usual practice, we grant half of that amount for time spent traveling and for time spent drafting the compensation request, as Weil proposes.

Weil seeks \$30 per hour for administrative work. Although we have granted separate fees for clerical work (see, for example, D.98-05-036) and administrative support in the form of compiling the request for compensation (D.98-01-007), we have never done so in cases where the principal received professional level fees and did the work himself. In prior decisions, we have

⁸ Pub. Util. Code § 1806.

held that professional fees assume overheads and are set accordingly. Consequently, we rejected Weil's previous requests for administrative compensation. (D.98-10-007, D.98-11-049, and D.98-12-037.) Here, Weil raises two arguments in support of his request for administrative compensation.

First, Weil argues that as a consultant, he usually delivers between one and six copies of a report and his professional rate includes those deliverables. In contrast, he asserts, this proceeding required copying for and service on large service lists.

Second, Weil contends that many consultants do bill for administrative work. He proffers as Attachment C a copy of a PG&E consultant's bill from another Commission proceeding in which the hourly billing rate for administrative work is \$45 and a rate sheet from an office support company charging \$30 per hour for administrative services. Additionally, Attachment C includes a proposed contract from a PG&E appraiser; it makes reference to separate billing rates for the provision of report production, printing, copying, telephone, facsimile and computer services.

While these documents indicate that administrative costs are sometimes billed separately, we do not think that they show a practice in the industry of separate billing for these costs by representatives of parties in these cases. Although we recognize that separate billing may indeed be a trend that at some point should inform our decisions on compensation for intervenors, Weil has not presented the proof to support a change in our practice at this time.

Based on our view that Weil's fees as a professional incorporate administrative and clerical overhead, we see a distinction between compensation for the hard costs of reproducing multiple copies of documents to meet the requirements of the service lists, and compensation for the time spent in producing the multiple copies. While Weil can request compensation for time

spent drafting the Prehearing Conference Statement and the costs of copying it, he cannot receive compensation for the time spent copying it for service. We therefore deny recovery for administrative/clerical work.

6.3 Other Costs

The costs Weil claims for such items as postage, photocopying, and telephone calls, while not completely broken out in unit rates, are a small percentage of his request and are reasonable in light of the duration and substance of this proceeding. We grant Weil's \$276.17 request for these costs.

7. Comments on Draft Decision

The draft decision of the ALJ in this matter was mailed to the parties in accordance with Pub. Util. § 311(g) and Rule 77.1 of the Rules of Practice and Procedure on April 27, 1999. No comments were filed.

8. Award

We award Weil \$4936.17 for his contributions to D.98-12-078. This is the full amount of the request minus the compensation for administrative hours.

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 May 4, 1999, the 75th day after Weil filed his compensation request and continuing until the utility makes full payment of the award.

Findings of Fact

1. Weil, a customer who has adequately shown undue financial hardship, has made a timely request for compensation for his contribution to D.98-12-078.
2. Weil made a substantial contribution to D.98-12-078.

3. Weil has requested hourly rates that may be considered market rates for individuals with comparable training and experience. They are set at a level that assumes overhead costs are included.

4. The miscellaneous costs incurred by Weil are reasonable.

5. Weil's productive, needed and necessary participation resulted in an overall benefit that exceeded his costs.

Conclusions of Law

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

2. Weil should be awarded \$4,936.17 for his contribution to D.98-12-078.

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 is awarded \$4,936.17 in compensation for his substantial contribution to Decision 98-12-078.

2. Pacific Gas and Electric Company shall pay James Weil \$4,936.17 within 30 days of the effective date of this order plus 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 May 4, 1999 and continuing until full payment is made.

This order is effective today.

Dated June 3, 1999, at San Francisco, California.

RICHARD A. BILAS
President
HENRY M. DUQUE
JOSIAH L. NEEPER
LORETTA M. LYNCH
TAL C. FINNEY
Commissioners