

Decision 99-09-023 September 2, 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 and Related Assets Pursuant to Public  
Utilities Code Section 851. (U 39 E)

Application 98-01-008  
(Filed January 15, 1998)

**OPINION**

This decision grants Southeast Alliance for Environmental Justice (SAEJ) an award of \$20,226.45 in compensation for its contribution to Decision (D.) 99-04-026 and D.98-10-029.

**1. Background**

SAEJ intervened in Pacific Gas and Electric Company's (PG&E) initial Application (A.) 96-11-020 for divestiture of several of its power plants. SAEJ sought to persuade the Commission that the Hunter's Point plant should be severed from that application, as its proximity to other Bay Area plants such as Potrero required that the environmental impact of its sale be evaluated in conjunction with the sale of other Bay Area plants. PG&E eventually filed a motion to withdraw the Hunter's Point portion of its application, and SAEJ received compensation for its contribution to that outcome, D.99-01-020.

On January 15, 1998, in A.98-01-008, PG&E again sought Commission approval to sell and transfer its Hunters Point plant, this time in conjunction with the Potrero, Pittsburg, and Contra Costa plants and its Geysers geothermal plants.

PG&E filed an amendment to its application on July 17, 1998. The amendment disclosed that PG&E had withdrawn the Hunters Point plant from the proposed auction, pursuant to a July 9, 1998 agreement with the City and County of San Francisco (CCSF). The agreement, which provided for transfer of the Hunters Point plant to CCSF and for its eventual decommissioning, was approved by the Commission in D.98-10-029.

The Commission gave PG&E permission to continue the auction process for its remaining plants in D.98-07-092. The Commission subsequently ruled that it would be inappropriate for PG&E to accept final bids until the environmental mitigation measures that may be required are identified. PG&E filed a motion to modify this ruling: in particular PG&E sought to avoid the post-environmental certification briefing prior to the Commission's approval of the final bids. PG&E's motion was denied. In D. 98-11-064, the Commission certified that the Final Environmental Impact Report (EIR) prepared in response to PG&E's amended application complies with the California Environmental Quality Act. That report includes proposed mitigation measures. The Commission ultimately approved the sale of the remaining plants in D.99-04-026.

## **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. 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 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 § 1806.

### **3. NOI to Claim Compensation**

SAEJ timely filed its NOI after the first prehearing conference and was found to be eligible for compensation in this proceeding by a ruling dated April 29, 1998. The same ruling found that SAEJ had demonstrated significant financial hardship.

#### **4. Contributions to Resolution of Issues**

SAEJ contends that it contributed substantially to the settlement between PG&E and CCSF over the disposition of the Hunters Point plant, approved by the Commission in D.98-10-029. SAEJ claims that it encouraged a settlement by continually contesting the appropriateness of selling the Hunters Point plant. SAEJ argues that it convinced the Commission that the environmental impact of selling the plant would have to be considered as a factor in determining whether the sale was in the public interest. Additionally, SAEJ states that it suggested to CCSF that it consider municipal ownership of Hunters Point as an alternative to ownership by a private company. Finally, SAEJ claims that it contributed by encouraging CCSF to examine the environmental benefits to surrounding communities that would accrue were the plant decommissioned.

SAEJ's claim that it substantially contributed to the final disposition of Hunters Point is valid. CCSF chose to purchase the Hunters Point plant, with the intent to ultimately cease power generation at the plant, and entered into a settlement with PG&E to that effect. The Commission has acknowledged the efficiency of settlement as a means of resolving issues and the importance of community participation in negotiated outcomes. The position advocated by SAEJ was adopted in the settlement and approved by the Commission in D.98-10-029. SAEJ's extensive contribution to the settlement is corroborated by the statement of Dian Grueneich, outside counsel for CCSF. We therefore find that SAEJ's contribution to the settlement warrants compensation.

SAEJ argues that it contributed to the divestiture of the remaining Bay Area power plants by convincing the Commission that EIR findings bear directly on whether a given sale is in the public interest. SAEJ likewise claims that it persuaded the Commission that final EIRs must be examined prior to granting approval to the sale of the power plants. The Commission expressly adopted

SAEJ's proposal in D.98-07-029. We therefore find SAEJ's claim that it contributed to the divestiture process is valid.

**5. The Reasonableness of Requested Compensation**

SAEJ requests compensation of \$20,226.45<sup>1</sup> as follows:

Alan Ramo, Attorney:

57.65 hours @ \$230/hr. \$13,259.50

15.77 hours @ \$115/hr. 1,813.55

Anne Eng, Attorney:

28.63 hours @ \$180/hr. 5,153.40

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**Total Professional Hours \$20,226.45**

**5.1 Hours Claimed**

SAEJ documented the claimed hours by presenting a daily breakdown of hours for Mr. Ramo and Ms. Eng with a brief description of each activity. The hourly breakdown presented by SAEJ reasonably supports its claim for total hours. Given the substantial role SAEJ performed in setting the Hunters Point plant on the path to decommissioning, as well as the results SAEJ achieved in persuading the Commission to change its EIR review and bidding procedure, we believe that the hours spent by SAEJ are reasonable.

**5.2 Hourly Rates**

In D.99-10-020, the Commission set Mr. Ramo's 1997 rate at \$220 per hour and Ms. Eng's rate at \$170 per hour. SAEJ proposes an increase in the rate

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<sup>1</sup> SAEJ requests \$20,656.35 in compensation. The correct amount is \$20,226.45. The \$429.90 difference appears to be due to an arithmetic error. Also, Ramo's April 9, 1998 entry for drafting compensation request is reduced \$15 to reflect the correct billing rate of \$115 per hour and not \$130 per hour as listed on Mr. Ramo's timesheet.

of each attorney by \$10 per hour. In light of the Mr. Ramo's and Ms. Eng's additional year of experience before the Commission, and the efficiency with which SAEJ accomplished its goals by promoting a settlement, we find the fees requested by Mr. Ramo and Ms. Eng reasonable.

## **6. Award**

We award SAEJ \$20,226.45 calculated as described above.

Consistent with previous Commission decisions, we will order that interest be paid on the award (calculated at the three-month commercial paper rate), commencing August 18, 1999, (the 75<sup>th</sup> day after SAEJ filed its compensation request) and continuing until PG&E makes full payment.

As in all intervenor compensation decisions, we put SAEJ on notice that the Commission may audit SAEJ's 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, and any other costs for which compensation may be claimed.

## **7. Section 311(g)(2) - Uncontested/decision grants relief requested**

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code § 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

## **Findings of Fact**

1. SAEJ has made a timely request for compensation for its contribution D.99-04-026 and D.98-10-029.

2. SAEJ has made a showing of significant financial hardship by demonstrating the economic interests of its individual members would be extremely small compared to the costs of participating in this proceeding.

3. SAEJ contributed substantially to D.99-04-026 and D.98-10-029.

4. SAEJ has requested hourly rates for attorneys and experts that are no greater than the market rates for individuals with comparable training and experience.

### **Conclusions of Law**

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

2. SAEJ should be awarded \$20,226,45 for its contribution to D.99-04-026 and D.98-10-029.

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 \$20,226.45 in compensation for its substantial contribution to Decision (D.) 99-04-026 and D.98-10-029.

2. Pacific Gas and Electric (PG&E) shall pay SAEJ \$20,226.45 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 August 18, 1999, and continuing until full payment is made.

3. This proceeding is closed.

This order is effective today.

Dated September 2, 1999, at San Francisco, California.

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