



FILED

02-01-11
Agenda ID # _____
04:59 PM

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of California American Water Company (U 210 W) for a Certificate of Public Convenience and Necessity to Construct and Operate Its Coastal Water Project to Resolve the Long-Term Water Supply Deficit in its Monterey District and to Recover All Present and Future Costs in Connection Therewith in Rates.	Application A.04-09-019 (Filed September 20, 2004; Amended July 14, 2005)
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Amended CLAIM AND DECISION ON REQUEST FOR INTERVENOR COMPENSATION

Claimant: The Public Trust Alliance	For contribution to D.10-12-016
Claimed (\$):	Awarded (\$):
Assigned Commissioner: John A. Bohn	Assigned ALJ: Angela K. Minkin
I hereby certify that the information I have set forth in Parts I, II, and III of this Claim is true to my best knowledge, information and belief. I further certify that, in conformance with the Rules of Practice and Procedure, this Claim has been served this day upon all required persons (as set forth in the Certificate of Service attached as Attachment 1).	
Signature:	/s/
Date: 2/1/2011	Printed Name: Patricia M. Nelson

PART I: PROCEDURAL ISSUES (to be completed by Claimant except where indicated)

A. Brief Description of Decision: Decision approving Regional Project, adopting Settlement Agreement and issuing Certificate of Public Convenience and Necessity for California American water facilities

B. Claimant must satisfy intervenor compensation requirements set forth in Public Utilities Code §§ 1801-1812:

	Claimant	CPUC Verified
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Timely filing of notice of intent to claim compensation (§ 1804(a)):		
1. Date of Prehearing Conference:	March 13, 2009	
2. Other Specified Date for NOI:	April 13, 2009	
3. Date NOI Filed:	April 12, 2009	
4. Was the notice of intent timely filed? Yes, see scoping memo of March 26, 2009, setting filing date of April 13, 2009.		
Showing of customer or customer-related status (§ 1802(b)):		
5. Based on ALJ ruling issued in proceeding number:	A.04-09-019	
6. Date of ALJ ruling:	December 9, 2010	
7. Based on another CPUC determination (specify):		
8. Has the claimant demonstrated customer or customer-related status?		
Showing of "significant financial hardship" (§ 1802(g)):		
9. Based on ALJ ruling issued in proceeding number:	A.04-09-019	
10. Date of ALJ ruling:	December 9, 2010	
11. Based on another CPUC determination (specify):		
12. Has the claimant demonstrated significant financial hardship?		
Timely request for compensation (§ 1804(c)):		
13. Identify Final Decision	D.10-12-016	
14. Date of Issuance of Final Decision:	December 3, 2010, but time extended per Rule 17.3 re filing of application for rehearing addressing issues on which Public Trust Alliance believes it made significant contribution.	
15. File date of compensation request:	2/1/2011	
16. Was the request for compensation timely?		

C. Additional Comments on Part I (use line reference # as appropriate):

#	Claimant	CPUC	Comment
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1			On May 15, 2009, the Public Trust Alliance (“PTA”) filed supplemental information regarding its relationship to its parent organization RRI, to assist ALJ Minkin in determining whether PTA met the definition of a customer. On May 29, 2009, Judge Minkin issued a ruling finding that the environmental and ratepayer perspectives were adequately represented by other parties to the proceeding and finding PTA ineligible for intervenor compensation on the ground that its contribution was likely to be duplicative. Judge Minkin made no finding on PTA’s status as a customer or on issue of financial hardship. On December 9, 2010, in response to PTA’s request to reconsider her finding of ineligibility, ALJ Minkin reversed her decision regarding duplicative participation and made findings that PTA/RRI qualified as a customer and that its participation as an intervenor would represent a financial hardship absent compensation.

PART II: SUBSTANTIAL CONTRIBUTION (to be completed by Claimant except where indicated)

A. In the fields below, describe in a concise manner Claimant’s contribution to the final decision (see § 1802(i), § 1803(a) & D.98-04-059) (For each contribution, support with specific reference to final or record.)

Contribution	Citation to Decision or Record	Showing Accepted by CPUC
1. Addressing public health impacts related to boron and second pass technology	Settlement agreement p. 16: “The Parties further agree that intervenor PTA has made a substantial contribution to this Proceeding in areas vital to public health and safety.” PTA argument accepted in D.10-12-016, pp. 120-122.	
2. Public Trust impacts to be considered	WPA section 6.7 D.10-12-016 p. 97.	
3. PTA argued for municipal advisor role rather than voting membership for Cities and no voting participation by MPWMD.	Same position adopted in D.10-12-016 (reference to parties’ arguments, no specific reference to PTA arguments).	
4. PTA was an active participant in negotiations and an active supporter of the Settlement Agreement. The Commission adopted the Settlement Agreement as proposed with no significant modifications	D.10-12-016, p. 55	

<p>5. PTA consistently supported the Regional Project as the alternative that best serves the public and the environment. The Commission found that the Regional Project “best serves . . . the environment”.</p>	<p>D.10-12-016, p. 57 and Appendix B at pp. 4-5.</p>	
<p>6. PTA consistently argued for the Regional Project as the best and most timely alternative to resolve the water constraints addressed in the Cease and Desist Order implemented by the State Water Resources Control Board. The Commission concluded “The Regional Project provides the most expeditious, feasible and cost-effective alternative to address the water supply constraints on the Monterey Peninsula.”</p>	<p>D.10-12-016, p. 169, finding 72.</p>	

B. Duplication of Effort (§§ 1801.3(f) & 1802.5):

	Claimant	CPUC Verified
<p>a. Was DRA a party to the proceeding? (Y/N)</p>	<p>Y</p>	
<p>b. Were there other parties to the proceeding? (Y/N)</p>	<p>Y</p>	
<p>c. If so, provide name of other parties: See Service List. Other parties with similar interests were Surfrider Foundation and Citizens for Public Water.</p>		
<p>d. Describe how you coordinated with DRA and other parties to avoid duplication or how your participation supplemented, complemented, or contributed to that of another party:</p> <p>DRA: We took positions in opposition to DRA on issues relating to boron and second-pass desalination on the ground that a greater margin of safety was more consistent with public trust concepts. In briefing and in workshops, we consistently addressed contracting concepts from a different perspective than DRA.</p> <p>Surfrider and Citizens for Public Water: We consulted with these parties throughout the proceedings, supporting their concerns about public participation and briefing them on public trust doctrine principles relevant to those concerns. We complemented Surfrider’s focus on ocean and coastal</p>		

resources with our concern for river ecosystems. We complemented Surfrider’s perspective with our knowledge of proceedings at the State Water Resources Control Board proceedings addressing the water supply deficit in Monterey County. We addressed fish survival issues outside of the scope of these parties’ organizational missions.	
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C. Additional Comments on Part II (use line reference # or letter as appropriate):

#	Claimant	CPUC	Comment
1			The settlement agreement filed by the parties implementing the Regional Project notes that “The Parties further agree that intervenor PTA has made a substantial contribution to this Proceeding in areas vital to public health and safety.” Settlement Agreement p. 16.
2			PTA educated other parties involved in the proceedings about the importance of the public trust doctrine, enabling them to be more effective in formulating their positions. This kind of consultation is demonstrated by our timesheet entries and those of other parties such as Surfrider and S. Kasower.

PART III: REASONABLENESS OF REQUESTED COMPENSATION (to be completed by Claimant except where indicated)

A. General Claim of Reasonableness (§§ 1801 & 1806):

Concise explanation as to how the cost of claimant’s participation bears a reasonable relationship with benefits realized through participation (include references to record, where appropriate)	CPUC Verified
<p>In re Pacific Gas and Elec. Co. 2007 WL 3052687, Cal.P.U.C.,2007 notes that “D.98-04-059 directed customers to demonstrate productivity by assigning a reasonable dollar value to the benefits of their participation to ratepayers. The costs of a customer's participation should bear a reasonable relationship to the benefits realized through its participation. This showing assists us in determining the overall reasonableness of the request.”</p> <p>The Public Trust Alliance advocated for ratepayer interests that go beyond short-term pocketbook impacts. It is by its nature difficult to assign a dollar value to avoided public health impacts related to boron. Nevertheless, D.10-12-016 recognized that a concern for future generations and avoided health impacts is a valid concern that provides a real benefit to citizens of Monterey. See p. 124 et seq.</p> <p>It is similarly difficult to assign a precise value to the ecosystem impacts avoided by the implementation of the most expeditious of the water supply alternatives proposed. Nevertheless, these are real and tangible benefits that PTA helped to bring about by supporting the Regional Project and the settlement agreement that implements the project.</p>	

In re Pacific Gas and Elec. found that an intervenor who could not identify precise monetary benefits to ratepayers nevertheless was a productive participant in the proceedings and that savings attributed to its participation would greatly exceed its compensation request. The Commission also accepted that participation providing intangible benefits, while hard to quantify, can be productive.

This principle has been specifically applied to environmental benefits, as Surfrider notes in its request for compensation [citing D.10-06-045 at p. 16].

In order to keep the time spent by PTA on the case to reasonable levels, we did not conduct discovery for information that was more than adequately pursued by other parties. We also cut hours spent on legal research where the research was not sufficiently productive. We believe that the effort we expended on briefing was commensurate with the complexity of the issues and was necessary because we addressed issues from a perspective that would not otherwise have been expressed. Although the time PTA spent on this case was more than initially estimated, it was necessitated by the contentious nature of several issues and the added dimension of extended settlement and ADR and the difficulty of estimating costs and other impacts of a novel project.

B. Specific Claim:

CLAIMED						CPUC AWARD			
ATTORNEY AND ADVOCATE FEES									
Item	Year	Hours	Rate \$	Basis for Rate*	Total \$	Year	Hours	Rate \$	Total \$
Michael Warburton	2009-2010	179.9	\$535	18 yr.-plus envtl. advocacy	96,246.50				
Patricia Nelson	2009-2010	239.5	\$280	6 yrs. envtl. Advocacy experience	67,060				
Subtotal:					163,306.50	\$			
						Year	Hours	Rate \$	Total \$
Subtotal:						Subtotal:			
OTHER FEES									
Describe here what OTHER HOURLY FEES you are claiming (paralegal, travel, etc.):									

Item	Year	Hours	Rate \$	Basis for Rate*	Total \$	Year	Hours	Rate \$	Total \$
Michael Warburton	2009 - 2010	44.6	267.50	Half rate travel time and costs	11,930.50				
[Person 2]									
Subtotal:					11,930.50	Subtotal:			
INTERVENOR COMPENSATION CLAIM PREPARATION **									
Item	Year	Hours	Rate \$	Basis for Rate*	Total \$	Year	Hours	Rate \$	Total \$
Patricia Nelson	2009 - 2011	48.8	140	Half rate for compensation-related or paralegal tasks	6,832				
[Preparer 2]									
Subtotal:					6,832	Subtotal:			
COSTS									
#	Item	Detail			Amount	Amount			
	Warburton travel costs	Home - Marina, CA consists of 230 miles at .55/mile. Home - Monterey, CA consists of 240 miles at .55/mile Home - Pacific Grove, CA consists of 240 miles at .55/mile			1402.50				
Subtotal:					1402.50	Subtotal:			
TOTAL REQUEST \$:					183,471.50	TOTAL AWARD \$:			
<p>When entering items, type over bracketed text; add additional rows as necessary. *If hourly rate based on CPUC decision, provide decision number; otherwise, attach rationale. **Reasonable claim preparation time typically compensated at ½ of preparer's normal hourly rate.</p>									

C. Attachments or Comments Documenting Specific Claim (Claimant completes; attachments not attached to final Decision):

Attachment or Comment #	Description/Comment
1	Certificate of Service
2	Timesheet of Michael Warburton
3	Travel time and costs of Michael Warburton
4	Timesheet of Patricia Nelson
5	Timesheet of Patricia Nelson for work on compensation matters and paralegal tasks
6	Statement of Qualifications of Advocates

D. CPUC Disallowances & Adjustments (CPUC completes):

#	Reason

PART IV: OPPOSITIONS AND COMMENTS
 Within 30 days after service of this claim, Commission Staff
 or any other party may file a response to the claim (see § 1804(c))

(CPUC completes the remainder of this form)

A. Opposition: Did any party oppose the claim (Y/N)?

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If so:

Party	Reason for Opposition	CPUC Disposition

B. Comment Period: Was the 30-day comment period waived (see Rule 14.6(c)(6)) (Y/N)?

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If not:

Party	Comment	CPUC Disposition

FINDINGS OF FACT

1. Claimant [has/has not] made a substantial contribution to Decision (D.) _____.
2. The claimed fees and costs [, as adjusted herein,] are comparable to market rates paid to experts and advocates having comparable training and experience and offering similar services.
3. The total of reasonable contribution is \$_____.

CONCLUSION OF LAW

1. The claim, with any adjustment set forth above, [satisfies/fails to satisfy] all requirements of Public Utilities Code §§ 1801-1812.

ORDER

1. Claimant is awarded \$_____.
2. Within 30 days of the effective date of this decision, _____ shall pay claimant the total award. Payment of the award shall include interest at the rate earned on prime,

three-month commercial paper as reported in Federal Reserve Statistical Release H.15, beginning _____, 200__, the 75th day after the filing of claimant's request, and continuing until full payment is made.

3. The comment period for today's decision [is/is not] waived.
4. [This/these] proceeding[s] [is/are] closed.
5. This decision is effective today.

Dated _____, at San Francisco, California.

**Attachment 1:
Certificate of Service by Customer**

I hereby certify that I have this day served a copy of the foregoing **CLAIM AND ORDER ON REQUEST FOR INTERVENOR COMPENSATION** by (check as appropriate):

- hand delivery;
- first-class mail; and/or
- electronic mail

to the following persons appearing on the official Service List:

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venskus@lawsv.com
rmcglathlin@bhfs.com
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Intervenor Compensation Program Coordinator
lcompcoordinator@cpuc.ca.gov

Executed this [1st] day of [February], 2011, at San Rafael,
California.

/s/

[Signature]
Virginia Nelson, 170 Holmes Ave. San
Rafael, CA 94903

[Printed name and address]