

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company (U39M) for Approval of Modifications to its SmartMeter Program and Increased Revenue Requirements to Recover the Costs of the Modifications.

Application 11-03-014
(Filed March 24, 2011)

DECISION AWARDING COMPENSATION TO AGLET CONSUMER ALLIANCE FOR SUBSTANTIAL CONTRIBUTION TO DECISION 12-02-014

Claimant: James Weil, for Aglet Consumer Alliance	For contribution to D.12-02-014
Claimed (\$): \$22,320.71	Awarded (\$): \$22,142.04
Assigned Commissioner: Michael Peevey	Assigned Administrative Law Judge (ALJ): Amy Yip-Kikugawa
Claim Filed:	April 9, 2012

PART I: PROCEDURAL ISSUES

A. Brief Description of Decision:	The decision modified PG&E’s Smart Meter program to allow customers to opt out of Smart Meter service in favor of metering using analog electric and gas meters. The decision adopted interim charges to opt out, and ordered PG&E to establish memorandum accounts to record opt out costs and revenues. The decision ordered a second phase to consider cost and cost allocation issues.
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B. Claimant must satisfy intervenor compensation requirements set forth in Public Utilities Code §§ 1801-1812:

	Claimant	CPUC Verified
Timely filing of notice of intent to claim compensation (NOI) (§ 1804(a)):		
1. Date of Prehearing Conference:	May 6, 2011	Correct
2. Other Specified Date for NOI:		
3. Date NOI Filed:	June 6, 2011	Correct
4. Was the NOI timely filed?		Yes
Showing of customer or customer-related status (§ 1802(b)):		
5. Based on ALJ ruling issued in proceeding number:	See comment below.	See CPUC Comment 1 in Part I.C.
6. Date of ALJ ruling:		
7. Based on another CPUC determination (specify):		
8. Has the Claimant demonstrated customer or customer-related status?		Yes
Showing of “significant financial hardship” (§ 1802(g)):		
9. Based on ALJ ruling issued in proceeding number:	See comment below.	See CPUC Comment 1 in Part I.C.
10. Date of ALJ ruling:		
11. Based on another CPUC determination (specify):		
12. Has the Claimant demonstrated significant financial hardship?		Yes
Timely request for compensation (§ 1804(c)):		
13. Identify Final Decision:	D.12-02-014	Correct
14. Date of Issuance of Final Order or Decision:	February 9, 2012	Correct
15. File date of compensation request:	April 9, 2012	Correct
16. Was the request for compensation timely?		Yes

C. Additional Comments on Part I:

#	Claimant	CPUC	Comment
5	Customer status		The Commission has not issued an eligibility ruling in response to Aglet’s NOI. Aglet is a Category 3 customer. See pp. 1-2 of the NOI for discussion of Aglet’s customer status.

9	Significant financial hardship		The Commission has not issued an eligibility ruling in response to Aglet’s NOI. See p. 4 of the NOI for discussion of significant financial hardship. The Commission did not issue a finding of financial hardship for Aglet in another proceeding within one year prior to PG&E’s filing of the instant application. However, on June 3, 2011, less than three months after PG&E filed the instant application, the Commission issued a ruling that determined that Aglet is eligible for compensation in A.10-11-015. The ruling included a finding of significant financial hardship.
1		X	Claimant’s NOI demonstrated that it is a Category 3 customer pursuant to § 1802(b)(3). Claimant’s NOI demonstrated significant financial hardship pursuant to § 1802(g).

PART II: SUBSTANTIAL CONTRIBUTION

A. Claimant’s description of its claimed contribution to the final decision.

Contribution	Specific References to Claimant’s Presentations and to Decision	Showing Accepted by CPUC
<p>1. <u>General hours</u>. Certain general activities are necessary for full participation in the proceeding, but time spent on the activities cannot be fairly assigned to specific issues. The activities include initial review of the application, initial discovery requests, review of discovery documents, review of protests filed by other parties, coordination with other customer interests, attendance at PHCs, and review of the many motions and pleadings filed by parties to the proceeding.</p>	<p>See Attachment 3 for listings and totals of Aglet’s time spent on general activities.</p>	<p>Yes</p>
<p>2. <u>Use of analog meters</u>. PG&E initially proposed that opt out customers would retain Smart Meters, and PG&E would turn off the radio within the meters. In reply comments to the proposed decision, PG&E changed its position to support use of analog meters. Along with other parties, Aglet opposed the</p>	<p>D.12-02-014, p. 4, first paragraph; PG&E reply comments, December 19, 2011, pp. 1-2.</p> <p>Aglet opening comments, December 12, 2011, pp. 1-2; D.12-02-014, pp. 18-19. See also e-mail from James Weil to ALJ Yip-Kikugawa submitted July 28, 2011 in response to her oral instructions, RT PHC-2, 197:1-10. The e-mail states,</p>	<p>Yes</p>

<p>“radio off” option.</p> <p>The Commission adopted the analog meter option. Aglet prevailed on this issue.</p>	<p>“Aglet generally supports an <u>analog meter option</u>”</p> <p>D.12-02-014, Ordering Paragraph 2.a, p. 39.</p>	
<p>3. <u>Cost analysis</u>. Aglet devoted most of its efforts to cost and rate analysis.</p> <p>The proposed decision that preceded D.12-02-014 explicitly relied on Aglet’s showing; D.12-02-014 recognized Aglet’s position on costs; and the Commission ordered further review costs in a subsequent phase of the proceeding.</p>	<p>Aglet protest, pp. 2-3; Aglet PHC participation, RT PHC-1, 6:21-7:4; Aglet workshop participation (not recorded); Aglet opening comments, pp. 2-5; Aglet reply comments, pp. 1-2.</p> <p>Proposed decision, November 22, 2011, p. 31, first full paragraph, “We agree with Aglet” See D.12-02-014, p. 23, first paragraph, p. 26, first full paragraph, and p. 35, second full paragraph.</p>	Yes
<p>4. <u>Interim rates</u>. Aglet argued that interim rates in the proposed decision were too high.</p> <p>The adopted interim rates in D.12-02-014 are lower than interim rates in the proposed decision. Aglet prevailed in part on this issue.</p>	<p>Aglet opening comments on proposed decision, December 12, 2011, p. 4.</p> <p>Compare proposed decision, Ordering Paragraph 2.d, and D.12-02-014, Ordering Paragraph 2.c.</p>	Yes
<p>5. <u>Memorandum accounts</u>. PG&E proposed that costs and revenues be recorded in balancing accounts, with no mention of reasonableness review.</p> <p>Aglet supported recording of costs in memorandum accounts, subject to future review by the Commission.</p> <p>The Commission approved memorandum accounts. Aglet prevailed on this issue.</p>	<p>Application, p. 2, paragraph (e); PG&E reply comments, December 19, 2011, pp. 2-5.</p> <p>Aglet protest, pp. 3-4; RT PHC-1, 7:4; Aglet opening comments, December 12, 2011, p. 5; Aglet reply comments, December 19, 2011, p. 3, last paragraph.</p> <p>D.12-02-014, discussion at pp. 32-33, Ordering Paragraph 2.d at p. 40.</p>	Yes

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

	Claimant	CPUC Verified
a. Was the Division of Ratepayer Advocates (DRA) a party to the proceeding?	Yes	Correct
b. Were there other parties to the proceeding with positions similar to yours?	Yes, in part	Correct
c. If so, provide name of other parties: Depending on individual issues, other parties with similar positions included The Utility Reform Network (TURN); EMF Safety Network (Network); Ecological Options Network; County of Lake; County of Mendocino; Town of Fairfax and associated parties; Wilner and Associates; and Alameda County Residents Concerned About Smart Meters.		Correct
d. Claimant’s description of how it coordinated with DRA and other parties to avoid duplication or how Claimant’s participation supplemented, complemented or contributed to that of another party: Aglet actively coordinated its work with TURN and Network; see Attachment 3, line items dated March 29, April 13, April 18, and November 28 2011. See also discussion with DRA on August 7, 2011. Aglet and DRA did not agree on major opt out program issues. For example, DRA generally supported PG&E’s proposed opt out option (D.12-02-014, discussion at p. 10), and Aglet opposed PG&E’s proposal (Aglet comments on proposed decision, December 12, 2011, pp. 1-3).		We made no reductions to Aglet’s claim for duplication with other parties.

PART III: REASONABLENESS OF REQUESTED COMPENSATION

A. Claimant’s explanation of how its participation bore a reasonable relationship with benefits realized through its participation:

	CPUC Verified
a. 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) The range of dispute regarding PG&E costs per opt out customer is roughly \$200 to \$600. (D.12-02-014, p. 25, Table 2; subject to a \$170 adjustment suggested by Aglet, Comments on Proposed Decision, pp. 3-4.) If PG&E’s estimate that 145,800 customers will opt out is accurate, the resulting revenue requirement at stake will be around \$60 million, plus monthly expenses. It is possible if not likely that the value of health and health care impacts associated with Smart Meter radio frequency emissions will exceed PG&E’s revenue requirements. Should Aglet’s contributions to this proceeding result in a small change to revenue requirements, rates or health impacts, the costs of such effects would greatly exceed Aglet’s cost of participation.	Yes
b. Reasonableness of Hours Claimed. As shown in Attachment 3, Time and Cost Records of James Weil, Aglet has spent less than 100 hours working on the first phase of the proceeding. Considering the ratepayer funds and public health concerns at stake, Aglet’s costs are reasonable.	Yes

<p>c. Allocation of Hours by Issue</p> <p>See Attachment 3, p. 4, for a listing of the substantive issues in which Aglet participated, along with Weil’s professional hours recorded or allocated to each issue. The time records categorize much of Weil’s time as “All Aglet Issues” because the scope of the proceeding was subject to change following two prehearing conferences, a workshop and various motions filed by other parties. Aglet allocated its time to the issues listed in Attachment 3 based on issues addressed in Aglet’s work products (protest; transcripts of the prehearing conferences; workshop proposal and notes; and comments on the proposed decision) and informed judgment. Although D.12-02-014 defers cost issues to a second phase of the proceeding, Aglet includes time spent on cost issues in this compensation request. The authorized interim rates and the Commission’s deferral of cost issues were informed by record information submitted by Aglet and other parties.</p> <p>The Commission has not acted on PG&E’s compliance advice letter. Therefore Aglet defers 10.1 hours of Weil’s time recorded for its advice letter protest.</p> <p>On March 29, 2012, ALJ Yip-Kikugawa issued a ruling that, among other things, denied Aglet’s motion to strike portions of PG&E’s prepared testimony. Therefore, Aglet has removed from the compensation request 3.2 hours of Weil’s time spent on the motion.</p> <p>The result of Aglet’s allocation of professional hours by issue is: general (29.8 hours); use of analog meters (3.7 hours); cost analysis (23.4 hours); interim rates (7.7 hours); memorandum accounts (3.7 hours); advice letter (0); and motion to strike (0).</p>	<p>See CPUC comment in Part III.C.</p>
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B. Specific Claim:

CLAIMED						CPUC AWARD		
ATTORNEY, EXPERT, AND ADVOCATE FEES								
Item	Year	Hours	Rate	Basis for Rate*	Total \$	Hours	Rate	Total \$
James Weil	2011	66.6	\$300	D.08-05-033, Ordering Par. 2	\$19,980	66.6	\$300	\$19,980
James Weil	2012	1.7	\$300	D.08-05-033, Ordering Par. 2	\$510	1.7	\$305	\$518.50
Subtotal:					\$20,490	Subtotal:		\$20,498.50
OTHER FEES								
Describe here what OTHER HOURLY FEES you are Claiming (paralegal, travel **, etc.):								
Item	Year	Hours	Rate	Basis for Rate*	Total \$	Hours	Rate	Total \$
Travel time waived								
Subtotal:						Subtotal:		

INTERVENOR COMPENSATION CLAIM PREPARATION **								
Item	Year	Hours	Rate	Basis for Rate*	Total \$	Hours	Rate	Total \$
James Weil (NOI)	2011	1.0	\$150	D.08-05-033, Ordering Par. 2	\$150	1.0	\$150	\$150.00
James Weil (Request)	2012	9.2	\$150	D.08-05-033, Ordering Par. 2	\$1,380	9.2	\$153	\$1,407.60
Subtotal:					\$1,530	Subtotal:		\$1,557.60
COSTS								
#	Item	Detail	Amount	Amount		Amount		
1	Postage	Discovery; pleadings	\$16.53					\$16.53
2	Copies	Aglet office copies, 631 at 11 cents	\$69.41					\$69.41
3	James Weil travel costs	Bridge tolls: \$18.00 Parking: \$30.00 Vehicle mileage (2011): 327 miles at 51 cents, \$166.77	\$214.77					
Subtotal:					\$300.71	Subtotal:		\$85.94
TOTAL REQUEST \$:					\$22,320.71	TOTAL AWARD \$:		\$22,142.04
*If hourly rate based on CPUC decision, provide decision number; otherwise, attach rationale.								
**Travel and Reasonable Claim preparation time typically compensated at ½ of preparer’s normal hourly rate.								

C. CPUC Disallowances, Adjustments, and Comments:

#	Reason
Allocation of Hours by Issue	<p>Aglet allocated 29.8 hours, or 43.6% of its total hours to “General” hours. As stated in D.10-04-023 at 13:</p> <p>We have also reviewed other activities that TURN lists under “General” but does not mention as examples of that category. We find that many of these activities (such as review of briefs filed by the Commission and preparation for oral) argument are inherently issue-specific. Although the activities may combine two or more issues, it would have been more accurate to allocate the hours spent on these activities among the issues that they covered, rather than do as TURN did and claim all the hours as “General.</p> <p>In accordance with the guidance provided in D.10-04-023, it would be more accurate for Aglet to allocate the “General” hours among the specific issues. Otherwise, such a large percentage of time, in combination with inadequate support for the hours, would lead us to conclude that the claim for “General” hours is excessive and that some hours should be disallowed.</p>

	<p>In an email to the Intervenor Compensation Coordinator, Aglet has re-allocated some of the “General” hours among the specific issues. The new allocation would allocate the hours as follows:</p> <table data-bbox="532 380 943 596"> <thead> <tr> <th><u>Issue</u></th> <th><u>Hours</u></th> </tr> </thead> <tbody> <tr> <td>General</td> <td>15.7</td> </tr> <tr> <td>Analog Meters</td> <td>5.1</td> </tr> <tr> <td>Cost analysis, rates</td> <td>31.9</td> </tr> <tr> <td>Interim rates</td> <td>10.5</td> </tr> <tr> <td>Memorandum accounts</td> <td>5.1</td> </tr> </tbody> </table> <p>Based on the revised allocation, we find the hours spent on each issue to be reasonable.</p>	<u>Issue</u>	<u>Hours</u>	General	15.7	Analog Meters	5.1	Cost analysis, rates	31.9	Interim rates	10.5	Memorandum accounts	5.1
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General	15.7												
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Hourly Rate	<p>Resolution ALJ-281, issued on September 13, 2012, adopted a 2.2% cost of living adjustment for 2012 intervenor rates. Claimant’s 2012 rates were adjusted to reflect this increase.</p>												
Travel	<p>The Commission awards fees and expenses for reasonable travel time but disallows compensation for time and expenses incurred during "routine travel".</p> <p>In D.10-11-032, the Commission further defined "routine travel" as travel that occurs with a one-way travel distance of 120 miles or less for attorneys, consultants and other experts participating in Commission matters. Travel time and expenses occurring within this parameter is considered to be "routine" in nature and non-compensable.</p> <p>All of Aglet's travel hours and expenses pertain to routine travel. Aglet has already waived Weil’s travel time from its compensation request. We disallow the travel costs requested by Weil.</p>												

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))

A. Opposition: Did any party oppose the Claim?	No
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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(2)(6))?	Yes
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If not:

Party	Comment	CPUC Disposition

FINDINGS OF FACT

1. Claimant has made a substantial contribution to Decision (D.) 12-02-014.
2. The requested hourly rates for Claimant’s representatives, as adjusted herein, are comparable to market rates paid to experts and advocates having comparable training and experience and offering similar services.
3. The claimed costs and expenses, as adjusted herein, are reasonable and commensurate with the work performed.
4. The total of reasonable contribution is \$22,142.04.

CONCLUSION OF LAW

1. The Claim, with any adjustment set forth above, satisfies all requirements of Public Utilities Code §§ 1801-1812.

ORDER

1. Claimant is awarded \$22,142.04.

2. Within 30 days of the effective date of this decision, Pacific Gas and Electric Company 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 June 23, 2012, 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 waived.
4. This decision is effective today.

Dated _____, at San Francisco, California.

APPENDIX

Compensation Decision Summary Information

Compensation Decision:		Modifies Decision? No
Contribution Decision(s):	D.12-02-014	
Proceeding(s):	A.11-03-014	
Author:	ALJ Amy Yip-Kikugawa	
Payer(s):	Pacific Gas and Electric Company	

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier	Reason Change/Disallowance
Aglet Consumer Alliance	4/9/12	22,320.71	\$22,142.04		Non-compensable costs (routine travel); adjustment of 2012 rates to reflect 2.2% cost of living increase.

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
James	Weil	Expert	Aglet Consumer Alliance	\$300	2011	\$300
James	Weil	Expert	Aglet Consumer Alliance	\$300	2012	\$305

(END OF APPENDIX)