Decision 13-09-043 September 19, 2013

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of PacifiCorp (U901E), an Oregon Company, for an Order Authorizing a Rate Increase Effective January 1, 2011 and Granting Conditional Authorization to Transfer Assets, pursuant to the Klamath Hydroelectric Settlement Agreement.	Application 10-03-015 (Filed March 18, 2010)

DECISION GRANTING COMPENSATION TO THE CONSERVATION GROUPS FOR SUBSTANTIAL CONTRIBUTIONS TO DECISION 12-10-028

Claimant: American Rivers, California Trout, and Trout Unlimited (Conservation Groups). *See* Claim §1(C), Comment 1.	**For contribution to Decision (D.) 12-10-028**
Claimed: $7,336	**Awarded:** $7,308
Assigned Commissioner: Michael R. Peevey	**Assigned ALJ:** Seaneen M. Wilson
Claim Filed:	12/28/2012

PART I: PROCEDURAL ISSUES

A. Brief Description of Decision:

D.12-10-028 approved PacifiCorp's request to modify D.11-05-002 in order to revise the Klamath surcharge rate and period over which such surcharge is collected. It specifically granted PacifiCorp authority to: (i) collect the Klamath surcharge over less than eight years; and (ii) revise the Klamath surcharge amount collected each month from its California customers within the two percent annual cap required pursuant to OP 6 of D.11-05-002 and Section 4.1.1.B of the Klamath Hydroelectric Settlement Agreement.

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 (§ 1804(a)):		
1. Date of Prehearing Conference:	June 19, 2012	Correct
2. Other Specified Date for NOI:		
3. Date NOI Filed:	July 18, 2012	Correct
4. Was the notice of intent timely filed?		Yes
Showing of customer or customer-related status (§ 1802(b)):		
5. Based on ALJ ruling issued in proceeding number:	Application (A.) 10-03-015 (Claim § 1(C), Comment 2)	Correct
6. Date of ALJ ruling:	September 6, 2012	Correct
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:	A.10-03-015 (Claim § 1(C), Comment 3)	Correct
10. Date of ALJ ruling:	September 6, 2012	Correct
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.12-10-028	Correct
14. Date of Issuance of Final Decision:	November 1, 2012	Correct
15. File date of compensation request:	December 28, 2012	Correct
16. Was the request for compensation timely?		Yes

C. Additional Comments on Part I:

#	Claimant	CPUC	Comment
1	Conservation Groups	Correct	This Claim for Intervenor Compensation refers to American Rivers, California Trout, and Trout Unlimited collectively known as "Conservation Groups."
2	Conservation Groups	Correct	Each of the Conservation Groups represents the interests of residential and small business customers of PacifiCorp. In Section 3.1.2 (at 5) of her "Ruling Regarding Notice of Intent to Claim Compensation" (September 6, 2012), the ALJ found that each group is a customer within the third meaning of Pub. Util. Code § 1802(b)(1)(c).
3	Conservation Groups	Correct	In Section 3.1.2 (at 6) of her "Ruling Regarding Notice of Intent to Claim Compensation," the ALJ found that each of the Claimant Conservation Groups met the requirements of Pub. Util. Code §1804(a), including the requirement that it establish financial hardship.

PART II: SUBSTANTIAL CONTRIBUTION

A. Claimant's description of its contribution to the final decision (*see* § 1802(i), § 1803(a) & D.98-04-059)

Contribution	Citation to Decision or Record	Showing Accepted by CPUC
We organize our contributions to correspond to the Conclusions of Law in D.12-10-028.		Yes
Conservation Groups highlighted that PacifiCorp's request was necessary to collect the funds by December 31, 2019, that the delays resulted from the amount of time it took to establish trust accounts, which PacifiCorp had no control over, and that the original decision contemplated that "the amount of the Klamath surcharge may be revised…." *See* Opening Brief at 3.	D.12-10-028 found at 24: 3. Since: (a) the delay in collecting the authorized surcharge was out of PacifiCorp's control; (b) PacifiCorp is required pursuant to the KHSA to collect $13.76 million from California customers by December 31, 2019; and (c) PacifiCorp's proposed revised Klamath surcharge is within the two percent cap, the Commission should grant PacifiCorp's request to modify D.11-05-002.	
Conservation Groups demonstrated the inaccuracy of DRA's argument that Section 4.3 of the KHSA requires a	D.12-10-028 found at 24, 25-26: 4. Section 4.3 of the KHSA does not limit when the Commission,	

Secretarial Determination to be issued prior to making adjustments to the surcharge and that the Commission could resolve the issues before it independent of a Secretarial Determination. *See* Reply Brief at 4.	which is not a party to the KHSA, can adjust the California Klamath surcharge. 11. Because the purpose of Section 4.3 of the KHSA is to ensure that certain adjustments are made, after consultation among the relevant parties to the KHSA after the Secretarial Determination, this section evinces no intent to prevent the Commission, which is not a party to the KHSA, from adjusting the California Klamath surcharge at an earlier time, due to the fact that intervening events have made some of the assumptions underlying the Commission's own prior decision, no longer accurate.	
Conservation Groups highlighted that any arguments regarding uncertainty of the implementation of the KHSA were beyond the scope of the proceeding and, though not addressing the merits of such arguments, noted that they contested them. *See* Reply Brief at 3.	D.12-10-028 found at 25: 8. While properly outside the scope of the current proceeding, even if we were to look at the parties concerns regarding the achievement of milestones in order to determine whether to grant PacifiCorp's current request, these concerns would not change our conclusion.	
Conservation Groups highlighted that SCWUA's request for daily transfer of funds, rather than every 15th day of the month, was beyond the scope of the proceeding. *See* Reply Brief at 3.	D.12-10-028 found at 25: 9. SCWUA's suggestion that the deposit date of the Klamath surcharge should be revised has nothing to do with whether or not PacifiCorp should collect the authorized total surcharge of $13.76 million over a shorter period of time.	
Conservation Groups were the only parties that provided a reply brief to the comments on the proposed decision.	D.12-10-028 found at 19: On October 16, 2012, reply comments were filed jointly by AR, CT, and TU.	

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?	Yes	Correct
c. Name of other parties (if applicable): The other parties in this proceeding were: County of Siskiyou (including Siskiyou County Flood Control and Water Conservation District and Siskiyou Power Authority), Karuk Tribe, Yurok Tribe, Klamath Water Users Association (KWUA), Pacific Coast Federation of Fishermen's Associations (PCFFA), Institute for Fisheries Resources (IFR), Siskiyou County Water Users Association and Rich Marshall (jointly referred to as SCWUA), Conservation Groups, and Applicant PacifiCorp.		In addition to parties listed, The Utility Reform Network was also a party to this proceeding.
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: Conservation Groups jointly filed Opening and Reply Briefs. Their three attorneys and other policy staffers, located in multiple locations, used conference calls and emails to coordinate the review of the briefs. Mr. Niiro was the lead drafter of the Opening and Reply Briefs, with Mr. Roos-Collins reviewing, to avoid any duplication in that task. Conservation Groups also discussed drafts with PCFFA, IFR, the Karuk Tribe, and PacifiCorp to minimize duplication of effort.		We make no reductions to the Conservation Group's claim for unnecessary duplication of effort with other parties.

PART III: REASONABLENESS OF REQUESTED COMPENSATION

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

Claimant's explanation of how its participation bore a reasonable relationship with benefits realized through its participation.	CPUC Verified
Conservation Groups claim $7,336 in intervenor compensation. As shown above, we contributed substantially to the Commission's decision to approve PacifiCorp's request for modification of D.11-05-002. As signatories of the KHSA, our participation was consistent with our obligation to support implementation of the KHSA through rate recovery and otherwise. The Commission's approval will permit continuing implementation.	Except as noted below (in Parts III-B and IIID) regarding specific hourly rates, we agree that the Conservation Group's hours are reasonable and that its efforts resulted in measurable benefits to customers, which far outweigh the cost of its participation

B. Specific Claim:*

CLAIMED						CPUC AWARD			
ATTORNEY AND ADVOCATE FEES									
Item	**Year**	**Hours**	**Rate $**	**Basis for Rate***	**Total $**	**Year**	**Hours**	**Rate$**	**Total $**
Richard Roos-Collins	2012	4.75	$376	Claim § III.C, Comment 1	$1,786	2012	4.75	$370	$1,758
Nicholas Niiro	2012	23.5	$200	Claim § III.C, Comment 2	$4,700	2012	23.5	$200	$4,700
				Subtotal:	**$6,486**			***Subtotal:***	**$6,458**
EXPERT FEES									
Item	**Year**	**Hours**	**Rate $**	**Basis for Rate***	**Total $**	**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 $**
				Subtotal:	NA			***Subtotal:***	
INTERVENOR COMPENSATION CLAIM PREPARATION **									
Item	**Year**	**Hours**	**Rate $**	**Basis for Rate***	**Total $**	**Year**	**Hours**	**Rate $**	**Total $**
Nicholas Niiro	2011	8.5	$100	Claim § III.C, Comment 3	$850	2012	8.5	$100	$850
				Subtotal:	**$850.00**			***Subtotal:***	**$850.00**
COSTS									
#	**Item**	**Detail**			**Amount**				**Amount**
				Subtotal:				***Subtotal:***	
				TOTAL REQUEST:	**$7,336**			**TOTAL AWARD:**	**$7,308**

* We remind all intervenors that Commission staff may audit their records related to the award and that intervenors must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. Claimant's records should identify specific issues for which it requested compensation, the actual time spent by each employee or consultant, the applicable hourly rates, fees paid to consultants, and any other costs for which compensation was claimed. The records pertaining to an award of compensation shall be retained for at least three years from the date of the final decision making the award.

**Reasonable claim preparation time typically compensated at ½ of preparer's normal hourly rate.

C. Additional Comments on Part III (Attachments not attached to final Decision):

Comment #	Description/Comment
Comment 1	The requested rate for Richard Roos-Collins is based on the adopted rate in prior cases, adjusted by 3% per year. Specifically, in D.11-09-038, the Commission adopted an hourly rate of $365 for Mr. Roos-Collins for work performed in 2010-2011. The requested rate is $365 (2011) increased by 3% interest on a simple (non-compounded) basis for one year.
Comment 2	The requested rate for Nicholas Niiro is based on his expertise. He has a B.S. in Biochemistry (UCLA) and a J.D. (Georgetown). Prior to joining the Water and Power Law Group PC, Mr. Niiro worked for Trial Partners, a national litigation consulting firm (2006-2012). At Trial Partners, he specialized in advising clients on environmental and toxic tort matters.
Comment 3	This rate is ½ of Nicholas Niiro's proposed rate for substantive work.

D. CPUC Disallowances & Adjustments:

#	Reason
Adjustment to Richard Roos-Collins' 2012 hourly rate.	After reviewing the Conservation Groups' comments, the Commission awards Richard Roos-Collins a 2012 hourly rate of $370 per hour for work completed in 2012. This is based on Richard Roos-Collins award of $365 per hour for work completed in 2010-2011 (*see* D.11-09-038) and Resolution ALJ-281, which states that the cost of living adjustment for 2012 is 2.2%. Instead of using the Conservation Group's percentage increase of 3%, we used 2.2% rounded to the nearest $5 (total disallowance of $28).

PART IV: OPPOSITIONS AND COMMENTS

A. Opposition: Did any party oppose the claim?	No
B. Comment Period: Was the 30-day comment period waived (*see* Rule 14.6(c)(6))?	Yes

FINDINGS OF FACT

1. The Conservation Groups have made a substantial contribution to D.12-10-028.
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 $7,308.

CONCLUSION OF LAW

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

ORDER

1. American Rivers, California Trout, and Trout Unlimited (collectively known as the "Conservation Groups") is awarded $7,308.
2. Within 30 days of the effective date of this decision, PacifiCorp shall pay American Rivers, California Trout, and Trout Unlimited (collectively known as the "Conservation Groups") 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 March 13, 2013, the 75th day after the filing of the Conservation Groups' request, and continuing until full payment is made.

3. The comment period for today's decision is waived.

This order is effective today.

Dated September 19, 2013, at San Francisco, California.

MICHAEL R. PEEVEY
President
MICHEL PETER FLORIO
CATHERINE J.K. SANDOVAL
MARK J. FERRON
CARLA J. PETERMAN
Commissioners

APPENDIX

Compensation Decision Summary Information

Compensation Decision:	D1309043	**Modifies Decision?** No
Contribution Decision(s):	D1210028	
Proceeding(s):	A1003015	
Author:	ALJ Seaneen M. Wilson	
Payer(s):	PacifiCorp	

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier	Reason Change/Disallowance
American Rivers, California Trout, and Trout Unlimited (collectively known as the "Conservation Groups")	12/28/2012	$7,336	$7,308	No	Incorrect hourly rate

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Richard	Roos-Collins	Attorney	Conservation Groups	$376	2012	$370
Nicholas	Niiro	Attorney	Conservation Groups	$200	2012	$200

(END OF APPENDIX)