

PROPOSED DECISION

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Revise and Clarify Commission Regulations Relating to the Safety of Electric Utility and Communications Infrastructure Provider Facilities.

Rulemaking 08-11-005
(Filed November 6, 2008)

DECISION GRANTING COMPENSATION TO MUSSEY GRADE ROAD ALLIANCE FOR SUBSTANTIAL CONTRIBUTION TO DECISION 14-05-020

Intervenor: Mussey Grade Road Alliance (MGRA)	For contribution to Decision (D.) 14-05-020
Claimed: \$13,702.00	Awarded: \$13,662.50 (reduced 0.3%)
Assigned Commissioner: Michel Peter Florio	Assigned Administrative Law Judge (ALJ): Timothy Kenney

PART I: PROCEDURAL ISSUES

A. Brief description of Decision:	Decision granting in part and denying in part petition to modify D.12-01-032
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B. Intervenor must satisfy intervenor compensation requirements set forth in Pub. Util. Code §§ 1801-1812:

	Intervenor	CPUC Verified
Timely filing of notice of intent to claim compensation (NOI) (§ 1804(a)):		
1. Date of Prehearing Conference (PHC):	No PHC	Verified
2. Other specified date for NOI:		
3. Date NOI filed:	February 19, 2009	Verified
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:	R.08-11-005	Verified
6. Date of ALJ ruling:	March 16, 2009	Verified
7. Based on another CPUC determination (specify):	N/A	
8. Has the Intervenor demonstrated customer or customer-related status?		Yes

Showing of “significant financial hardship” (§ 1802(g)):		
9. Based on ALJ ruling issued in proceeding number:	R.08-11-005	Verified
10. Date of ALJ ruling:	March 16, 2009	Verified
11. Based on another CPUC determination (specify):	N/A	
12. Has the Intervenor demonstrated significant financial hardship?		Yes
Timely request for compensation (§ 1804(c)):		
13. Identify Final Decision:	D.14-05-020	Verified
14. Date of issuance of Final Order or Decision:	May 20, 2014	Verified
15. File date of compensation request:	July 18, 2014	July 17, 2014
16. Was the request for compensation timely?		Yes

C. Additional Comments on Part I:

#	Intervenor’s Comment(s)	CPUC Discussion
13.	<p>Work represented in this claim originated with the issuance of D.12-01-032, which required electrical utilities to prepare fire protection plans if their territory was in a high fire hazard district. These plans were filed as advice letters, which MGRA protested as inadequate. Utility replies and then comments by all parties culminated in the issuance of Resolution E-4576 on May 23, 2013. E-4576 partially supported MGRA claims, and directed utilities to file a petition to modify D.12-01-032 if they wanted an alternative interpretation. Several utilities did so, which led to the process leading to the issuance of D.14-05-020. D.14-05-020 supported a number of MGRA claims. As permitted by Rule 17.4(d) of the Rules of Practice and Procedure, MGRA’s compensation request will extend back to its initial protest of the utility Fire Protection Plans and comments on E-4576.</p>	Verified

PART II: SUBSTANTIAL CONTRIBUTION

A. Did the Intervenor substantially contribute to the final decision (see § 1802(i), § 1803(a), and D.98-04-059).

Intervenor’s Claimed Contribution(s)	Specific References to Intervenor’s Claimed Contribution(s)	CPUC Discussion
<p>Note:</p> <p>For definition of contribution types, see Comment 1 in Section C.</p> <p>For definition of issue, see Comment 2 in Section C.</p> <p>For reference abbreviations, see Comment 3 in Section C</p>		
<p>1. MGRA claimed that the proper interpretation of OP-4 and OP-5 of D.12-01-032 was to require worst-case scenario planning on the part of utilities, up to and including a 1,700 year recurrence interval for extreme events, and that this planning should specifically call out preventative measures that would be effective during extreme events.</p> <p>Primary</p> <p>Type: Con</p>	<p>D.14-05-020 – “p. 16 - We decline to grant the petition to the extent it does not require FPPs to explicitly address the situation described in D.12-01-032. This situation is a worst case scenario for weather-related ignitions of power-line fires to occur and burn out of control. The Commission held in D.12-01-032 that the central purpose of the FPPs required by the Decision is to ensure that electric IOUs prepare for this worst-case scenario: <i>We agree with MGRA that electric utilities should develop and implement FPPs to address situations where it is reasonably foreseeable that strong winds may exceed the structural limits of overhead electric facilities during periods of high fire danger.</i>”</p> <p>p. 3 - MGRA-1301-Prt – “Category IV infrastructure, the ASCE standard specifies that the wind speed used for load calculations (inclusive of safety factor) should correspond to a probability of exceedance of 3% in 50 years, or a 1700 year return interval.”</p>	<p>Yes</p>
<p>Primary</p>	<p>D.14-05-020 – p. 27 – “We disagree with the IOU Petitioners that it is imprudent to use the 3%/50-year wind-gust standard to determine the</p>	

<p>Type: Con</p>	<p>geographic scope of their FPPs because in Track 3 of this proceeding the Commission may adopt new boundaries for high fire-threat areas and new design standards for power-line facilities in high fire-threat areas. As MGRA and SCE note in their comments on the PD, 24 the 3%/50-year standard encompasses severe 3-second wind gusts with a 1,642-year return interval and is consistent with the American Society of Civil Engineers (ASCE) Standard 07-10, <i>Minimum Design Loads for Buildings and Other Structures</i>. This ASCE standard establishes a wind-load design standard based on severe 3-second wind gusts with a 1,700-year return interval for structures designated as Risk Category III or IV.”</p>	<p>Yes</p>
<p>3. MGRA argued that contingency criteria for power line fire prevention cannot be replaced by standard fire weather indicators such as “Red Flag Warnings”</p> <p>Primary</p> <p>Type: Con</p>	<p>D.14-05-020 – pp. 12-13 - “MGRA supports the proposed modifications to D.12-01-032 to the extent they would clarify the Commission’s intent in the Decision that severe winds should be used in conjunction with other fire-threat indicators to trigger fire-prevention measures. MGRA opposes the proposed modifications to the extent they would replace severe winds with routine fire-threat hazards.</p> <p>MGRA believes the IOU Petitioners’ request to replace severe 3-second wind gusts with unspecified fire-threat indicators would weaken public safety. This is because wind speed is directly related to the ignition and propagation of power-line fires.”</p> <p>D.14-05-020 - p. 19 – “As noted by MGRA, most Red Flag Warnings fall into the ‘other fire hazards’ category. So that our intent is clear, we will modify GO 166 to explicitly authorize, but not require, electric IOUs to address other fire hazards in their FPPs.”</p>	<p>Yes</p>

<p>4. MGRA argued that introduction of new data by SCE in the Decision comment phase was inappropriate due to lack of opportunity for rebuttal and skewed to argue that adoption of a 1,700 year return interval would have significant cost impacts.</p> <p>Initiator Type: SCE</p>	<p>D.14-01-020 – p. 29 – “While SCE presents pole-replacement costs as an “illustrative example” of a long-run fire-prevention measure, it has chosen an obviously expensive one.”</p> <p>Id. – “SCE did not provide cost data for pole replacements until its comments on the PD. Consequently, MGRA and SED did not have a reasonable opportunity to scrutinize the data and present informed rebuttal.”</p> <p>MGRA-1405-Rpl – p. 3 – “This data is new, and has not been subject to the opportunity for challenge due to its presentation at this late phase in the process (comments on a proposed decision).”</p> <p>MGRA-1405-Rpl – p. 4 – “While SCE presents pole replacement as an “illustrative” example of a countermeasure that could be taken, it has chosen an obviously expensive one.”</p>	<p>Yes</p>
<p>5. MGRA made argument related to E-4576 that resulted in the petition requirement that is the subject of the present Decision.</p> <p>Primary Type: Con</p>	<p>D.14-05-020 – p. 7 – “Of relevance to today’s decision, Resolution E-4576 addressed MGRA’s protest, in part, as follows:</p> <p><i>MGRA... argues that all the FPPs except SDG&E’s fail to address the requirement in OP 5(i) to specify how the utility will identify the occurrence of 3-second wind gusts that exceed the structural or mechanical design standards for overhead power-line facilities. The utilities in question contend that it is unnecessary to comply with OP 5(i) because the FPPs apply regardless of wind speed. We find that although there may be some merit to the utilities’ position, they should not have used their Tier 1 Compliance Advice Letters... to obtain a waiver from OP 5(i). To resolve this matter, we will provisionally accept the ALs filed by BVES, CalPeco, PG&E, and SCE with the requirement that the updated FPPs they submit with their next updated Emergency Response Plans pursuant to</i></p>	<p>Yes</p>

	<p><i>GO 166 comply fully with OP 5(i), or, alternatively, they file a petition to modify OP 5(i)."</i></p>	
<p>6. MGRA argued that recloser operation changes should not be viewed as a panacea for fire prevention.</p> <p>Alternative/Complimentary</p> <p>Type: Rec</p>	<p>MGRA-1301-Prt – p. 6 – “p. 6 - It is clear then why reliance on automatic reclosers as the sole mitigation for worst-case scenarios is not compliant with the intent of D.12-01-032. Instead, utilities should have in place infrastructure or a mechanism that will <i>prevent</i> ignitions under worst case (1700 year recurrence) conditions.</p> <p>MGRA-1404-Cmt – p. 3 – “by singling out how a utility can comply with D.12-01-032 OP 4, 5 and 6, the final decision should demonstrate to other California utilities what sort of approaches would bring them into compliance without overstepping and ‘approving’ the FPPs.”</p> <p>E-4576 – p. 20 – “It appears that MGRA’s underlying concern is that all the FPPs except SDG&E’s do not do enough to address the extreme fire-weather conditions listed in OP 4. We agree that SDG&E’s FPP provides a reasonable model for the other utilities. We expect the other utilities to follow SDG&E’s lead and work aggressively to put into place a comprehensive suite of countermeasures to better address the extreme fire-weather conditions listed in OP 4.”</p>	<p>Yes</p>

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

	Claimant	CPUC Verified
<p>a. Was the Office of Ratepayer Advocates (ORA) a party to the proceeding?¹</p>	<p>Yes</p>	<p>Verified</p>
<p>b. Were there other parties to the proceeding with positions similar to yours?</p>	<p>Yes</p>	<p>Verified</p>

¹ The Division of Ratepayer Advocates was renamed the Office of Ratepayer Advocates effective September 26, 2013, pursuant to Senate Bill No. 96 (Budget Act of 2013: public resources), which was approved by the Governor on September 26, 2013.

<p>c. If so, provide name of other parties: SED</p>	<p>Verified</p>
<p>d. Intervenor’s claim of non-duplication: MGRA’s concerns with the Fire Protection Plans as issued by the utilities were much broader and covered a much wider range of topics than those of specific concern to SED. Nevertheless we coordinated our activities with SED through teleconferences in order to minimize potential conflicts and duplication. SED also requested that CAL FIRE confer with MGRA and evaluate the MGRA position on the Petition for Modification. The result of this consultation was that SED’s position was in close alignment with MGRA.</p>	<p>Verified</p>

C. Additional Comments on Part II:

#	Intervenor’s Comment	
1	<p>Contribution Types</p>	<p>There are various types and levels of contribution that the Alliance interventions provided. These are defined and explained below.</p>
	<p>Primary</p>	<p>A Primary contribution is one in which the Alliance made a unique and definitive difference in supplying information not supplied by any other party. The Alliance can show that "but for" its intervention, the Decision would have likely reached a different conclusion.</p>
	<p>Initiator</p>	<p>In instances where the Alliance was an "Initiator", it was the first to bring a particular issue or analysis to the Commission's attention. Other parties subsequently made additions or improvements that were accepted by the Commission.</p>
	<p>Contributor</p>	<p>While not initiating an analysis or study, the Alliance made a significant contribution to it. Also, in decisions or conclusions which take into account many different factors, the Alliance's results contribute one or more of these factors.</p>
	<p>Improvement</p>	<p>The Alliance commented on an existing process or measure and its suggestion was adopted in the final decision.</p>
	<p>Complimentary</p>	<p>The Alliance chose a different method or analysis than that used in the Final Decision, but which is consistent with it and supports the same results.</p>
	<p>Alternative</p>	<p>The Alliance reached a conclusion or presented an analysis at variance with the Decision but which raised important points.</p>
2	<p>Abbreviations for issues that MGRA was involved in: Con: Contingency Planning / 1,700 year recurrence Rec: Adequacy of Recloser Operation as Fire Prevention</p>	

	SCE: Incorporation of SCE data into the record	
3	Abbreviations for citations to the record.	
	Abbreviation	Document
	MGRA-1301-Prt	MUSSEY GRADE ROAD ALLIANCE PROTEST APPLYING TO 2012 IOU FIRE-PREVENTION PLANS; APPENDIX A; January 7, 2013
	MGRA-1304-Cmt	MUSSEY GRADE ROAD ALLIANCE COMMENTS ON DRAFT RESOLUTION E-4576; April 25, 2013
	MGRA-1304-Rpl	MUSSEY GRADE ROAD ALLIANCE REPLY COMMENTS TO COMMENTS ON DRAFT RESOLUTION E-4576; April 30, 2013
	E-4576	RESOLUTION E-4576; May 23, 2013
	MGRA-1404-Cmt	MUSSEY GRADE ROAD ALLIANCE COMMENT ON THE PROPOSED DECISION OF COMMISSIONER FLORIO GRANTING IN PART AND DENYING IN PART THE PETITION TO MODIFY DECISION 12-01-032; April 25, 2014
	MGRA-1405-Rpl	MUSSEY GRADE ROAD ALLIANCE REPLY COMMENTS ON THE PROPOSED DECISION OF COMMISSIONER FLORIO GRANTING IN PART AND DENYING IN PART THE PETITION TO MODIFY DECISION 12-01-032; May 5, 2014
D.14-05-020	DECISION GRANTING IN PART AND DENYING IN PART THE PETITION TO MODIFY DECISION 12-01-032; May 20, 2014.	

PART III: REASONABLENESS OF REQUESTED COMPENSATION

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

a. Intervenor’s claim of cost reasonableness:	CPUC Verified <hr/> <i>See Below Sections</i>
<p>b. Reasonableness of hours claimed:</p> <p>The majority of the MGRA input was technical, and was prepared by MGRA expert witness Dr. Mitchell. Ms. Conklin worked on revisions and communications with other parties. Ms. Conklin also was involved in discussions with Energy Division and Commissioner staff in order to support the MGRA position.</p> <p>All communications were conducted by phone or email, so there are no accompanying travel reimbursements requested.</p> <p>Additionally, there are specific meetings by phone bridge attended by Dr. Mitchell for which no compensation is requested.</p>	Verified

<p>Dr. Mitchell requests a COLA adjustment of 2% as per ALJ-287 from his base rate last established as \$275/hr in D.13-10-008. This would raise the rate to \$280.50, which we round down to \$280/hr. This rate would apply to all work done in 2013 and 2014.</p> <p>Ms. Conklin requests an increase in compensation rate for 2013 and 2014 from the current \$110/hr to \$120/hr. The bases for this request are:</p> <ol style="list-style-type: none"> 1. Ms. Conklin requested a 2.2% increase for 2012 which was rejected in D.13-10-008 on the grounds that the requested increase would be less than the purported minimum increment of \$5/hr. This request is now resubmitted in conjunction with other incremental increases which will exceed the purported \$5/hr threshold for COLA adjustments. 2. The COLA for 2013 allowed by ALJ-287 is 2%. 3. Ms. Conklin is eligible for a step-increase of 5% in her compensation rate. 4. Combined, these adjustments allow for an increase of 9.7%. This would correspond to an hourly rate of \$120.67, which we round down to \$120/hr. 	
<p>c. Allocation of hours by issue:</p> <p>Mitchell Contingency: 30.3 Reclosers: 6.6 SCE: 3.8</p> <p>Conklin Contingency: 6.8 Reclosers: 0.8 SCE: 0.3</p>	<p>Verified</p>

B. Specific Claim:*

CLAIMED						CPUC AWARD		
ATTORNEY, EXPERT, AND ADVOCATE FEES								
Item	Year	Hours	Rate \$	Basis for Rate*	Total \$	Hours	Rate \$	Total \$
J. Mitchell	2013, 2014	40.7	\$280/hr	D.13-10-008; ALJ-287	\$11,396	40.7	\$280.00 ²	\$11,396.00
D. Conklin	2013, 2014	7.9	\$120/hr	D.13-10-008; ALJ-287	\$948	7.9	\$115.00 ³	\$908.50
Subtotal: \$12,344						Subtotal: \$12,304.50		

² Application of 2% Cost-of-Living Adjustment as approved by Res. ALJ-287 to Mitchell’s 2012 rate of \$275.00 as approved in D.13-10-038.

³ Application of 2% Cost-of-Living Adjustment as approved by Res. ALJ-287 to Conklin’s 2012 rate of \$110.00 as approved in D.13-10-038.

INTERVENOR COMPENSATION CLAIM PREPARATION **								
Item	Year	Hours	Rate \$	Basis for Rate*	Total \$	Hours	Rate \$	Total \$
J. Mitchell	2014	9.7	\$140/hr	D.13-10-008; ALJ-287	\$1,358	9.7	\$140.00	\$1,358.00
Subtotal: \$1,358						Subtotal: \$1,358.00		
TOTAL REQUEST: \$13,702						TOTAL AWARD: \$13,662.50		
<p>*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. Intervenor’s records should identify specific issues for which it seeks 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.</p> <p>**Travel and Reasonable Claim preparation time typically compensated at ½ of preparer’s normal hourly rate</p>								

C. CPUC Disallowances and Adjustments:

#	Reason
A.	Disallowance due to previously granted rate for Conklin’ s work.

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. MGRA has made a substantial contribution to D.14-05-020.
2. The requested hourly rates for MGRA’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 are reasonable and commensurate with the work performed.
4. The total of reasonable compensation is \$13,662.50.

CONCLUSION OF LAW

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

ORDER

1. Mussey Grade Road Alliance is awarded \$13,662.50.
2. Within 30 days of the effective date of this decision, the Commission's Intervenor Compensation Fund shall pay Mussey Grade Road Alliance (MGRA) the total award. Payment of the award shall include compound interest at the rate earned on prime, three-month non-financial commercial paper as reported in Federal Reserve Statistical Release H.15, beginning September 30, 2014, the 75th day after the filing of MGRA's request, and continuing until full payment is made.
3. The comment period for today's decision is waived.

This decision is effective today.

Dated _____, at San Francisco, California.

APPENDIX**Compensation Decision Summary Information**

Compensation Decision:		Modifies Decision?	No
Contribution Decision(s):	D1405020		
Proceeding(s):	R0811005		
Author:	ALJ Kenney		
Payer(s):	Commission's Intervenor Compensation Fund		

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
Mussey Grade Road Alliance	7/17/14	\$13,702.00	\$13,662.50	N/A	Lower Hourly Rate for Conklin

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Joseph	Mitchell	Expert	Mussey Grade Road Alliance	\$280	2013	\$280.00
Joseph	Mitchell	Expert	Mussey Grade Road Alliance	\$280	2014	\$280.00
Diane	Conklin	Advocate	Mussey Grade Road Alliance	\$120	2013	\$115.00
Diane	Conklin	Advocate	Mussey Grade Road Alliance	\$120	2014	\$115.00

(END OF APPENDIX)