

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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

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

And Related Matters.

Application 11-03-015
Application 11-07-020

DECISION GRANTING COMPENSATION TO THE CENTER FOR ACCESSIBLE TECHNOLOGY FOR SUBSTANTIAL CONTRIBUTION TO DECISION 14-12-078

Intervenor: Center for Accessible Technology (CforAT)	For contribution to Decision (D.) 14-12-078
Claimed: \$40,898.66	Awarded: \$40,874.66 (reduced .01%)
Assigned Commissioner: Michael Picker	Assigned ALJ: Amy C. Yip-Kikugawa

PART I: PROCEDURAL ISSUES

A. Brief description of Decision:	The Decision adopts fees for residential customers who opt-out of smart meters and addresses the applicability of the Americans with Disabilities Act (ADA) and other disability laws to such opt-outs.
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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):	5/6/11 (Phase 1) 5/16/12 (Phase 2)	Verified
2. Other specified date for NOI:		
3. Date NOI filed:	6/28/12 (see note below)	Verified; authorized by e-mail from ALJ on July 18, 2012

4. Was the NOI timely filed?		
Showing of customer or customer-related status (§ 1802(b)):		
5. Based on ALJ ruling issued in proceeding number:	A.14-04-013 et al.	Verified
6. Date of ALJ ruling:	8/26/14	Verified
7. Based on another CPUC determination (specify):		
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:	A.14-04-013 et al.	Verified
10. Date of ALJ ruling:	8/26/14	Verified
11. Based on another CPUC determination (specify):		
12. Has the Intervenor demonstrated significant financial hardship?		Yes
Timely request for compensation (§ 1804(c)):		
13. Identify Final Decision:	D.14-12-078	Verified
14. Date of issuance of Final Order or Decision:	12/23/14	Verified
15. File date of compensation request:	2/23/14	2/23/15
16. Was the request for compensation timely?		Yes

C. Additional Comments on Part I:

#	Intervenor’s Comment(s)	CPUC Discussion
I.B.3	CforAT did not become a party to the proceeding until after Phase 2 was initiated. CforAT filed our NOI on 6/28/12, which was the same day that we filed our motion for party status. Because we were not a party at the time the NOI was first due, the filing contemporaneous to the motion for party status was appropriate. CforAT’s Motion for Party Status was granted by an informal email ruling issued by the ALJ on July 12, 2012. No action was taken on CforAT’s NOI.	The Commission accepts this assertion.

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>1. In response to the Phase 2 Scoping Memo issued on June 6, 2012, specifically requesting briefing on whether opt-out fees violate the Americans with Disabilities Act (ADA) and state law, and whether the ADA and state law limit the Commission's ability to adopt opt-out fees, CforAT moved to become a party to the proceeding to address these legal issues on behalf of our constituency of utility customers with disabilities.</p>	<p>CforAT's Notice of Intent, filed on June 28, 2012, at p. 3 ("CforAT only intends to address the legal issues raised in the Phase 2 Ruling regarding the applicability of access laws to the Opt-Out Decisions").</p>	
<p>2. CforAT provided detailed and comprehensive briefing on the applicability of various disability laws, including the ADA, the federal Rehabilitation Act, California anti-discrimination statutes and Public Utilities Code § 453(b).</p>	<p><i>See generally</i> CforAT's Revised Opening Brief on Legal Issues (CforAT Opening Brief), filed on July 16, 2012 (because CforAT was not a party to the proceeding until shortly before the deadline for briefing, we were unaware that the initial briefing deadline had been changed. CforAT first proffered a brief at the initial deadline, but the brief was never filed because no action had been taken on our then-pending Motion for Party Status. When informed about the extended briefing deadline, CforAT withdrew the initial proffered brief, which had already been served on the service list, and filed the brief that was subsequently accepted into the record at the revised deadline).</p>	<p>Yes</p>
<p>3. CforAT did not take a position on any question as to whether wireless smart meters can result in health impacts for customers, and noted expressly</p>	<p>CforAT Opening Brief at p. 1.</p>	<p>Not a Contribution</p>

<p>that such questions had been found to be outside of the scope of this phase of the proceeding.</p>		
<p>4. CforAT noted that any actual evaluation of the extent to which an individual customer might be subject to protections under the ADA and other disability laws would first require a determination in an appropriate forum of whether smart meters can result in health impacts in general and whether an individual customer can demonstrate health impacts in particular. CforAT then analyzed the legal impacts that would flow from any such showing.</p>	<p>CforAT Opening Brief at pp. 1-3.</p>	<p>Yes</p>
<p>5. While the legal issues regarding disability issues were expressly identified for briefing in the Phase 2 Scoping Memo, no other party addressed them in any substantial manner.</p>	<p><i>See</i> Proposed Decision of ALJ Yip-Kikugawa Regarding Smart Meter Opt-Out Provisions (PD) at p. 56 (“CforAT provides the most thorough legal analysis supporting the position that the ADA and/or California anti-discrimination laws limit the Commission’s ability to adopt opt-out fees for those residential customers who elect to have an analog meter for medical reasons.”). <i>See also</i> Alternate Proposed Decision of President Michael Peevey Regarding Smart Meter Opt-Out Provisions (APD) at p. 58. Because the PD and the APD did not differ with regards to their analysis of disability issues, additional citations are to the PD. Additionally, the language of the APD Revision 1 on the issue of disability access was incorporated into the final decision without further substantive changes. Because it is easier to see the revisions in the redlined document, citations are to the APD Revision 1</p>	<p>Yes</p>

	(Redline). CforAT's entire 18-page Opening Brief addressed in detail issues regarding the ADA (pp. 3-12), California state law (pp. 12-14) and the federal Rehabilitation Act (pp. 14-18). <i>See also</i> CforAT's Reply Brief on Legal Issues (CforAT Reply), filed on July 30, 2012, at pp. 1-2 (summarizing the minimalist legal arguments set out by the utilities in support of opt-out fees notwithstanding disability access laws).	
6. When the PD and the APD were issued, they inappropriately sought to issue findings as to whether smart meters can cause health impacts, even as they noted the fact that this issue had been expressly determined to be outside of the scope of the proceeding.	<i>Compare</i> PD at p. 6 ("The Scoping Memo expressly excluded consideration of health and safety impacts of smart meters from this phase of the proceeding. Accordingly, we will not address the alleged health and safety impacts of smart meters here) (citations omitted), <i>id</i> at p. 55 ("Although the scope of this second phase does not consider the alleged health impacts of smart meters, the Scoping Memo asked for briefing on" accessibility issues), with PD at p. 60 (asserting that the Commission cannot identify RF/EMF sensitivities as disabilities due to a lack of evidence in the record).	Not a Contribution
7. CforAT argued in comments and through the ex parte process that this was in error. The Final Decision corrected the error and properly found the factual issues to be outside of the scope of the decision.	CforAT Opening Comments on PD and AD, filed on November 18, 2014 (CforAT Opening Comments) at pp. 2-4; <i>see also</i> CforAT Notice of Ex Parte Communications (CforAT's Ex Parte Notice), filed on December 4, 2014 at p. 1 and in attachments. The improper discussion of health impacts was removed in a revision to the APD and was not included in the final decision. <i>See</i> APD Revision 1 (Redline), issued on December 14, 2014 at pp. 67-68.	Yes
8. The initial PD failed to note that Title II of the ADA applies to all public entities, including the Commission. This was	<i>Compare</i> PD at pp. 56-57 with APD Revision 1 (Redline) at pp. 61 and 68, and <i>see</i> CforAT Opening Comments at pp. 6-7; <i>see also</i> CforAT's Ex Parte	Yes, <i>see</i> p. 65 of Final Decision.

corrected in response to CforAT’s comments.	Notice at p. 1 and attachments.	
9. The initial PD claimed that the ADA did not apply to smart meter opt-outs. In response to CforAT’s comments, this was revised to acknowledge that there is no legal authority currently addressing the question of whether the ADA and state anti-discrimination statutes apply to people who claim RF sensitivity. While the final decision adopts opt-out fees even for individuals who make such a claim, it recognizes that “there may be a need to reconsider this issue in the future should a court or agency determine that RF sensitivity can trigger ADA requirements.”	<i>Compare</i> PD at pp. 61-65 with APD Revision 1 (Redline) at pp. 68-73 and <i>see</i> CforAT Opening Comments at pp. 4-5. <i>see also</i> CforAT’s Ex Parte Notice at pp. 1-2 and attachments	Yes
10. Overall, the final decision provides substantially more discussion and analysis of the legal standards regarding disability access than was included in the initial PD. The added discussion is primarily based on the legal analysis provided by CforAT.	<i>Compare</i> PD at pp. 61-65 with APD Revision 1 (Redline) at pp. 68-73 for revised discussion of legal standards, and <i>see</i> CforAT Opening Comments at pp. 4-8.	Yes

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

	Intervenor’s Assertion	CPUC Discussion
a. Was the Office of Ratepayer Advocates (ORA) a party to the proceeding?¹	Yes	Verified
b. Were there other parties to the proceeding with positions similar to yours?	There was some degree of overlap	Verified

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>between CforAT’s position and that of other parties</p>	
<p>c. If so, provide name of other parties:</p> <p>Multiple parties opposed opt-out fees for reasons that included, but were not exclusive to, concerns about disability rights issues and applicability of disability laws. Such parties include: The People’s Initiative Foundation; the County of Marin, County of Santa Cruz, Town of Fairfax, city of Marina, City of Seaside, City of Capitola, City of Santa Cruz, Town of Ross and the Alliance for Human and Environmental Health (filing collectively as “Counties”); Wilner and Associates; UCAN; Southern Californians for Wired Solutions to Smart Meters (SCWSSM), Center for Electrosmog Protection (CEP), Stop Smart Meters Irvine; and EMF Safety Network.</p> <p>Other intervenors such as TURN and Aglet, as well as the Office of Ratepayer Advocates, did not focus on the legal issues addressed by CforAT.</p>		<p>Verified</p>
<p>d. Intervenor’s claim of non-duplication:</p> <p>CforAT intervened in this proceeding specifically to focus on the interaction between the Commission’s efforts to address an opt-out process for smart meters and various legal requirements created by state and federal disability rights statutes. CforAT took no position on whether smart meters can cause health impacts, which was the focus of most of the active parties who opposed opt-out fees. Rather, CforAT sought to provide the Commission with an analysis of various disability statutes, which could then be applied when any appropriate forum makes a determination as to whether smart meter sensitivity can result in a disability (a question outside the scope of this proceeding).</p> <p>CforAT was the only party to provide a comprehensive, substantive legal analysis of disability law as it applies to utilities. Other parties who opposed opt-out fees included concerns that such fees as applied to people who have health concerns about smart meters would violate disability access laws, but such parties did not provide detailed legal analysis in their briefs. Even the IOUs who took the opposite legal position provided substantially less legal analysis.</p> <p>As noted in CforAT’s detailed time records, CforAT engaged in discussions with other parties as appropriate to coordinate concerns and avoid any duplication of effort.</p> <p>ORA and other intervenors such as TURN and Aglet were more focused on issues of cost allocation, which CforAT did not address.</p>		<p>Verified</p>

PART III: REASONABLENESS OF REQUESTED COMPENSATION

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

a. Intervenor’s claim of cost reasonableness:	CPUC Discussion
<p>The only substantive issue addressed by CforAT was the legal question of the extent to which state and federal statutes barring discrimination against people with disabilities impact the Commission’s actions with regard to smart meter opt-outs. In particular, CforAT provided extensive legal briefing addressing issues directly raised in the Phase 2 Scoping Memo. While the Commission did not adopt CforAT’s arguments in full, CforAT’s work to develop the legal analysis with regard to smart meter opt-outs benefited the Commission as it considered legal issues of first impression. The final decision incorporates substantial aspects of the legal analysis provided by CforAT, which would not have been available to the Commission barring CforAT’s participation.</p>	<p>Verified</p>
<p>b. Reasonableness of hours claimed:</p> <p>The total amount of time claimed by CforAT represents our focused effort on an issue where we were uniquely placed to provide information and legal analysis specifically requested by the Commission regarding the interaction between disability access laws and opt-out fees. In addition to this specific contribution, CforAT monitored the proceeding to follow developments, while keeping our time constrained.</p> <p>While CforAT’s final request exceeds the estimates set forth in our NOI, the total time spent on developing legal analysis, providing input and briefing to the Commission, addressing legal and policy concerns about the initial proposed decision through comments and ex parte participation, and following all aspects of the proceeding, were appropriate and reasonable.</p>	<p>Verified</p>
<p>c. Allocation of hours by issue:</p> <p>CforAT intervened in this proceeding specifically to address the legal issues raised in the Phase 2 Ruling regarding the applicability of access laws to the Opt-Out Decisions. This issue, noted in our records as “ADA” was our exclusive substantive focus. As appropriate in order to follow the activity in the proceeding, we also reviewed and addressed additional ongoing matters raised by other parties (such as reviewing testimony and other filings, appearing by phone at a settlement conference, etc.); all time spent on issues other than the legal issue is classified in our time records as “General Participation.”</p> <p>Our totals are as follows:</p>	<p>Verified</p>

<p>2012: Total hours: 68.5</p> <ul style="list-style-type: none"> • ADA: 48.2 hours (70%) • General Participation 20.3 hours (30%) <p>2013: Total hours: 3.2</p> <ul style="list-style-type: none"> • ADA: 0 hours • General Participation: 3.2 hours (100%) <p>2014* Total hours: 16.1</p> <ul style="list-style-type: none"> • ADA: 11.4 hours (71%) • General Participation: 4.7 hours (29%) <p>*2014 time includes a small number of time entries in 2015, billed at 2014 rates, reviewing applications for rehearing and other relevant activity that took place prior to the filing of this compensation request. CforAT reserves the right to seek an adjustment to our rates for 2015 in a future request.</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 \$
Melissa W. Kasnitz	2012	68.5	\$430	D.13-04-008	\$29,455	68.5	\$430.00 ²	\$29,455.00
Melissa W. Kasnitz	2013	3.2	\$440	D.13-11-007	\$1,408	3.2	\$440.00 ³	\$1,408.00
Melissa W. Kasnitz	2014	16.1	\$450	ALJ-303 (authorizing 2.58% COLA to 2013 rate)	\$7,245	16.1	\$450.00 ⁴	\$7,245.00
Subtotal: \$38,108.00						Subtotal: \$38,108.00		
INTERVENOR COMPENSATION CLAIM PREPARATION **								
Item	Year	Hours	Rate \$	Basis for Rate*	Total \$	Hours	Rate	Total \$
Melissa W. Kasnitz	2012	1.2	\$215	½ Standard Rate	\$258	1.2	\$215.00	\$258.00

² Approved in D.13-12-026.

³ Approved in D.15-03-035.

⁴ Approved in D.15-03-013.

Melissa W. Kasnitz	2015 (billed at 2014 rate)	11.0	\$225	Billed at ½ standard rate for 2014	\$2475	11	\$225.00	\$2,475.00
Subtotal: \$2,733.00						Subtotal: \$2,733.00		
COSTS								
#	Item	Detail			Amount	Amount		
	Printing	Print PD & AD on DREDF printer (160 pages at \$0.25/page)			40.00	\$16.00 ^[A]		
	Postage	Mailing hard copies of filed documents to the Commission as detailed in attachment			\$17.66	\$17.66		
TOTAL REQUEST: \$40,898.66						TOTAL AWARD: \$40,874.66		
<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>								
ATTORNEY INFORMATION								
Attorney		Date Admitted to CA BAR⁵		Member Number		Actions Affecting Eligibility (Yes/No?) If "Yes", attach explanation		
Melissa W. Kasnitz		12/24/1992		162679		No, but includes periods of inactive status prior to 1997		

C. Attachments Documenting Specific Claim and Comments on Part III:

Attachment or Comment #	Description/Comment
1	Certificate of Service
2	Time Records – Merits (Melissa W. Kasnitz, 2012-2014)
3	Time Records - Compensation
4	Costs

⁵ This information may be obtained through the State Bar of California's website at <http://members.calbar.ca.gov/fal/MemberSearch/QuickSearch>.

D. CPUC Disallowances and Adjustments:

Item	Reason
A	The Commission reimburses printing and copying costs at .10 cents per page.

PART IV: OPPOSITIONS AND COMMENTS

A. Opposition: Did any party oppose the Claim?	No
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B. Comment Period: Was the 30-day comment period waived (<i>see</i> Rule 14.6(c)(6))?	Yes
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FINDINGS OF FACT

1. CforAT has made a substantial contribution to D.14-12-078.
2. The requested hourly rates for CforAT's representatives 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 compensation is \$40,874.66.

CONCLUSION OF LAW

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

ORDER

1. Center for Accessible Technology shall be awarded \$40,874.66.
2. Within 30 days of the effective date of this decision, Pacific Gas and Electric Company, San Diego Gas & Electric Company, Southern California Edison Company, and Southern California Gas Company shall pay Center for Accessible Technology their respective shares of the award, based on their California-jurisdictional electric revenues for the 2012 calendar year, to reflect the year in which the proceeding was primarily litigated. 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 May 09, 2015, the 75th day after the filing of Center for Accessible Technology'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 _____, 2015, at San Francisco, California.

APPENDIX

Compensation Decision Summary Information

Compensation Decision:		Modifies Decision?	No
Contribution Decision(s):	D1412078		
Proceeding(s):	A1103014; A1103015; A1107020		
Author:	ALJ Yip-Kikugawa		
Payer(s):	Pacific Gas and Electric Company, San Diego Gas & Electric Company, Southern California Edison Company, and Southern California Gas Company		

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
Center for Accessible Technology	02/13/15	\$40,898.66	\$40,874.66	N/A	Reductions for printing costs.

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Melissa	Kasnitz	Attorney	CforAT	\$430.00	2012	\$430.00
Melissa	Kasnitz	Attorney	CforAT	\$440.00	2013	\$440.00
Melissa	Kasnitz	Attorney	CforAT	\$450.00	2014	\$450.00

(END OF APPENDIX)