

Decision 09-05-011 May 7, 2009

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Carole Dominguez,

Complainant,

vs.

Pacific Gas and Electric Company (U39E),

Respondent.

Case 07-03-006
(Filed March 8, 2007)

**DECISION GRANTING INTERVENOR COMPENSATION
TO CALIFORNIANS FOR RENEWABLE ENERGY FOR SUBSTANTIAL
CONTRIBUTION TO DECISION 08-02-001**

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**DECISION GRANTING INTERVENOR COMPENSATION
TO CALIFORNIANS FOR RENEWABLE ENERGY FOR SUBSTANTIAL
CONTRIBUTION TO DECISION 08-02-001**

This decision awards CALifornians for Renewable Energy \$33,363.84 in compensation for its substantial contributions to Decision 08-02-001. The award is reduced by \$18,109.50 (approximately 35%) from the amount requested due to: the disallowance of routine travel to the Commission, reduced hourly rates for two attorneys, unproductive effort, and a reduction in excessive hours to reflect our standards of reasonableness. Today's award payment will be paid by Pacific Gas and Electric Company. This proceeding is closed.

1. Background

Pacific Gas and Electric Company (PG&E) constructed a natural gas pipeline, Line 401 (L-401), in an existing easement across a property owned by the federal government, known as the Antenna Farm, in 1993. In 2006, the property was transferred to the City of Tracy (City). After extensive debate in the local community, the City decided to develop a youth athletic facility on the property.

Under U.S. Department of Transportation (DOT) regulations¹ and Commission General Order (GO) 112-E, the City's decision to use the site for a youth athletic facility will change the classification of L-401 from Class 1 to Class 3 in accordance with 49 Code Federal Regulations (CFR) Section 192.5, because of the increased density of use of the property. As a result, PG&E was required to either: (a) reduce the operating pressure of L-401, (b) replace segments of L-401, or (c) apply for a waiver of these requirements.

¹ See 49 CFR Part 192 *et seq.*

In March 2004, PG&E applied to the Commission for a waiver of the above requirements for the portion of L-401 covered by the youth athletic facility and, based on the pipeline integrity management principles set forth in DOT regulations,² proposed alternative safety and mitigation measures to protect the public. On December 14, 2004, the Commission granted PG&E's waiver request in Resolution SU-58. Resolution SU-58 also requires PG&E to comply with certain safety and mitigation measures, including construction on this site.

On October 17, 2006, the City approved a contract, referred to in the City Council agenda as a construction contract, for the removal of antenna poles and guy wires from the property. According to the proposed settlement agreement, City staff did not notify PG&E of this proposed work, and PG&E therefore did not install temporary construction fencing or implement other safety measures required by Resolution SU-58 during this work on the site.

On March 8, 2007, Carole Dominguez, (Complainant), a resident of Tracy, filed this complaint against PG&E. The Complaint raised the following issues:

- **PG&E had fraudulently obtained a waiver of pipeline safety requirements in Commission Resolution SU-58.** Complainant alleged that PG&E had fraudulently obtained the waiver of GO 112-E and DOT Natural Gas Safety Standards for L-401 in Resolution SU-58, by misrepresenting to the Commission that there was no local opposition to City's youth athletic facility project or concerns within the community regarding the safety of L-401, based on its proximity to the youth athletic facility.
- **Resolution SU-58 Does Not Resolve Safety Problems Related to the Pipeline.** Complainant further alleged that the safety and mitigation measures required by Resolution SU-58 do not fully resolve the safety problems created by the presence of L-401

² See 49 CFR Subpart O (Section 192.901 *et seq.*)

under the site for City's youth athletic facility. Complainant also alleged that L-401 is a risk to national security because the safety and mitigation measures specified in Resolution SU-58 do not adequately address the risk of explosion in the event of a terrorist attack.

- **PG&E Violated the Terms of Resolution SU-58 by Failing to Install Protective Fencing During the Removal of Poles from the Athletic Facility Site.** Complainant alleged that PG&E failed to comply with the safety and mitigation measures required by Resolution SU-58 during construction on the site that occurred when City's contractor removed 175 antenna poles and guy wires from the property. Complainant alleged that the removal of poles and guy wires constitutes construction under Resolution SU-58, because City approved a construction contract with a contractor for this work, and the removal of the poles and the guy wires required excavation and the use of heavy machinery and equipment. According to the complaint, L-401 could have been disturbed, either accidentally or intentionally, during this work.

Complainant also alleged that, despite her previous request, the Commission Consumer Protection and Safety Division staff failed to notify her of any upcoming Commission action related to L-401 and the site of the youth athletic facility, and neither she nor other concerned members of the local community were contacted regarding the Commission hearing on Resolution SU-58 or PG&E's waiver request.

PG&E filed an answer to the complaint on April 12, 2007. In the answer, PG&E claimed that the complaint should be dismissed and Resolution SU-58 should be upheld for the following reasons:

- **Complainant Failed to Follow Proper Procedures to Seek Review of Resolution SU-58.** No protests to Resolution SU-58 were filed, and Complainant has not filed either an application for rehearing or a petition for modification. Complainant therefore failed to follow the required Commission procedures to seek review of Resolution SU-58. Moreover, Complainant waited

over two years after the Commission's approval of Resolution SU-58 before filing this complaint.

- **PG&E and the Commission Gave the Legally Required Notice of the Waiver Application and Adoption of Resolution SU-58.** PG&E gave the legally required notice of the waiver application by notifying the Commission and the federal DOT Office of Pipeline Safety of its waiver application. The Commission also gave public notice of the hearing on Resolution SU-58 by posting the agenda for the December 18, 2004 business meeting.
- **PG&E did not misrepresent to the Commission that there was no public opposition to the project.**
- **PG&E did not violate Resolution SU-58 during the removal of poles and guy wires from the site.** PG&E stated that since the removal of poles and guy wires from the site was not "construction" of the youth athletic facility, PG&E was not required to comply with the requirements of Resolution SU-58 for protective fencing and other safety measures during these activities.

Decision (D.) 08-02-001 approved a settlement among the parties that fully resolves the issues in the complaint related to the safety of the PG&E natural gas pipeline located under property in the City, on which the City planned to develop a youth athletic facility. D.08-02-001 found that the settlement was reasonable in light of the whole record, was consistent with the applicable law, and was in the public interest, as required by Rule 12.1(d).³

It also found that Resolution SU-58, which granted PG&E a waiver of 49 CFR 192.611 and required additional subsidy and risk mitigation measures related to a portion of the natural gas pipeline located under property on which

³ All Rule citations are to the Commission Rules of Practice and Procedure, unless otherwise stated.

City planned to develop a youth athletic facility, was moot and is no longer in effect.

2. Requirements for Awards of Compensation

The intervenor compensation program, set forth in Pub. Util. Code §§ 1801-1812, requires California jurisdictional utilities to pay the reasonable costs of an intervenor's participation if that party makes a substantial contribution to the Commission's proceedings. The statute provides that the utility may adjust its rates to collect the amount awarded from its ratepayers.

All of the following procedures and criteria must be satisfied for an intervenor to obtain a compensation award:

1. The intervenor must satisfy certain procedural requirements including the filing of a sufficient notice of intent (NOI) to claim compensation within 30 days of the prehearing conference (PHC), pursuant to Rule 17.1 of the Commission's Rules of Practice and Procedure (Rules), or at another appropriate time that we specify. (§ 1804(a).)
2. The intervenor must be a customer or a participant representing consumers, customers, or subscribers of a utility subject to our jurisdiction. (§ 1802(b).)
3. The intervenor must file and serve a request for a compensation award within 60 days of our final order or decision in a hearing or proceeding. (§ 1804(c).)
4. The intervenor must demonstrate "significant financial hardship." (§§ 1802(g) and 1804(b)(1).)
5. The intervenor's presentation must have made a "substantial contribution" to the proceeding, through the adoption, in whole or in part, of the intervenor's contention or recommendations by a Commission order or decision or as otherwise found by the Commission. (§§ 1802(i) and 1803(a).)
6. The claimed fees and costs must be reasonable (§ 1801), necessary for and related to the substantial contribution (D.98-04-059),

comparable to the market rates paid to others with comparable training and experience (§ 1806), and productive (D.98-04-059).

In the discussion below, the procedural issues in Items 1-4 above are combined and a separate discussion of Items 5-6 follows.

2.1. Preliminary Procedural Issues

Under § 1804(a)(1) and Rule 17.1(a)(1), a customer who intends to seek an award of intervenor compensation must file an NOI before certain dates.

Under § 1804(a)(1), a customer who intends to seek an award of intervenor compensation shall, within 30 days after the PHC is held, file and serve on all parties to the proceeding an NOI. A PHC was held on May 21, 2007. CARE timely filed its NOI on June 20, 2007. Administrative Law Judge's Ruling of August 16, 2007, found that CARE is eligible to request compensation in this proceeding. The ruling determined that CARE had met the definition of a "customer" under § 1802(b)(1)(C) as a non-profit organization authorized pursuant to its bylaws to represent the interests of residential customers, or to represent small commercial customers that receive bundled electric service from an electric corporation.

In its NOI, CARE asserts financial hardship. CARE estimates the cost of its participation in the proceeding as \$264,500, including attorney's fees, fees paid to experts and land appraisers and other costs.⁴ The August 16, 2007 ruling found that CARE had met the showing for significant financial hardship, as defined in § 1802(g).

⁴ CARE's estimate was based on the assumption that its case would proceed to evidentiary hearings.

Regarding the timeliness of the request for compensation, CARE filed its request for compensation on April 11, 2008, within 60 days of the issuance of D.08-02-001. No party opposed the request. In view of the above, we affirm the ALJ's ruling and find that CARE has satisfied all the procedural requirements necessary to make its request for compensation in this proceeding.

3. Substantial Contribution

In evaluating whether a customer made a substantial contribution to a proceeding, we look at several things. First, we look at whether the Commission adopted one or more of the factual or legal contentions, or specific policy or procedural recommendations put forward by the customer. (§ 1802(i).) Second, if the customer's contentions or recommendations paralleled those of another party, we look at whether the customer's participation unnecessarily duplicated or materially supplemented, complemented, or contributed to the presentation of the other party. (§§ 1801.3(f) and 1802.5.)

As described in § 1802(i), the assessment of whether the customer made a substantial contribution requires the exercise of judgment.

In assessing whether the customer meets this standard, the Commission typically reviews the record, composed in part of pleadings of the customer and, in litigated matters, the hearing transcripts, and compares it to the findings, conclusions, and orders in the decision to which the customer asserts it contributed. It is then a matter of judgment as to whether the customer's presentation substantially assisted the Commission.⁵

With this guidance in mind, we turn to the claimed contributions CARE made to the proceeding. CARE asserts in its claim for compensation that the

⁵ D.98-04-059, 79 CPUC2d 628 at 653.

purpose of its intervention was to ensure that ratepayers and the public were not harmed by the pipeline waiver, and asserts that the review performed by its expert was critical in the development of the Settlement Agreement with PG&E, which, amongst other issues, resulted in PG&E agreeing to withdraw their waiver application and agreeing to replace the 36-inch pipeline under the Sports Park parcel after construction.

CARE engaged in settlement negotiations, which included two half-day mediation sessions, conducted by ALJ DeBerry. CARE's expert geologist, soil scientist and pipeline expert, Dr. Robert F. Curry, examined PG&E's pigging information and aerial photographs of the pipeline corridors and provided his input during the mediation sessions.

We agree with CARE that the information provided by its expert and its participation in the proceeding were helpful to the parties in the mediation and in reaching an agreement that resolved the safety issues raised in the complaint.

CARE's claim of substantial contribution is affirmed.

Complainant Dominguez, CARE, and Robert Sarvey have all agreed to request dismissal of the complaint and their motions to intervene, and have consented to the terms of the proposed settlement agreement. CARE's claim of substantial contribution is affirmed.

4. Contributions of Other Parties

Section 1801.3(f) requires an intervenor to avoid participation that duplicates that of similar interests otherwise adequately represented by another party, or participation unnecessary for a fair determination of the proceeding. Section 1802.5, however, allows an intervenor to be eligible for full compensation where its participation materially supplements, complements, or contributes to

the presentation of another party if that participation makes a substantial contribution to the Commission order.

CARE alleges that it avoided duplication of its efforts with other intervenors. CARE represented the interests of residential customers in the City of Tracy and asserts that the expert opinion of Dr. Curry was unique and contributed directly to the resolution of this proceeding. We affirm that CARE made reasonable efforts to avoid duplicating the efforts of others.

After we have determined the scope of a customer's substantial contribution, we then look at whether the amount of the compensation request is reasonable.

5. Reasonableness of Requested Compensation

CARE requests \$51,473.34 in reimbursement for its substantial contribution to D.08-02-001 as follows:

| | |
|--|--------------------|
| Law Offices of Stephan Volker (including expenses) | \$41, 132.77 |
| Robert Curry, Registered Professional Geologist | \$ 3,770.57 |
| Michael Boyd, CARE President | \$ 5,820.00 |
| Lynne Brown, CARE Vice President | \$ 420.00 |
| Terry Franke, Attorney | \$ 330.00 |
| Total | \$51,473.34 |

In its request for compensation, CARE lumps expenses for Stephan Volker, Joshua Harris, Allie Umott, Marcus Eichenberg and direct expenses (except for travel related expenses for Robert Curry) all under the category of Law Offices of Stephan C. Volker. In a more detailed fashion, we breakdown CARE's request as follows:

| Work on Proceeding | | | | |
|--|-------------|--------------|--------------------|--------------------|
| Attorney/Staff | Year | Hours | Hourly Rate | Total |
| Stephan Volker, Attorney | 2007/2008 | 49.7 | \$500 | \$ 24,850.00 |
| Joshua Harris, Attorney | 2007 | 38.2 | \$220 | \$ 8,404.00 |
| Terry Franke, Attorney | 2007 | 1.0 | \$330 | \$ 330.00 |
| Allie Umott, Associate ⁶ | 2007 | 10.3 | \$105 | \$ 1,081.50 |
| Marcus Eichenberg, Associate | 2007 | 9.5 | \$105 | \$ 997.50 |
| Robert Curry, Expert | 2007 | 16.5 | \$225 | \$ 3,712.50 |
| Michael Boyd, Advocate | 2007 | 44.0 | \$120 | \$ 5,280.00 |
| Lynne Brown, Advocate | 2007 | 4.0 | \$105 | \$ 420.00 |
| Subtotal Hourly Compensation: | | | | \$45,075.50 |
| Half Rate Time- Travel, Preparation of NOI and Compensation Request | | | | |
| Attorney/Staff | Year | Hours | Hourly Rate | Total |
| Stephan Volker (Travel) | 2007 | 8 | \$250 | \$ 2,000.00 |
| Michael Boyd (Travel) | 2007 | 3 | \$ 60 | \$ 180.00 |
| Michael Boyd (NOI Prep) | 2007 | 6 | \$ 60 | \$ 360.00 |
| Stephan Volker (NOI/Comp) | 2007/2008 | 4.7 | \$250 | \$ 1,175.00 |
| Joshua Harris (NOI/Icomp) | 2007/2008 | 22.7 | \$110 | \$ 2,497.00 |
| Subtotal Travel Time | | | | \$ 2,180.00 |
| Subtotal NOI Compensation: | | | | \$ 4,032.00 |
| Subtotal of Direct Expenses | | | | \$ 185.84 |
| Total Requested Award | | | | \$51,473.34 |

In general, the components of this request must constitute reasonable fees and costs of the customer's preparation for and participation in a proceeding which resulted in making a substantial contribution. The issues we consider to determine reasonableness are discussed below.

⁶ CARE fails to separate Umott's travel hours (billed at 1/2 hourly rate) from the ours billed for her paralegal services.

5.1. Hours and Costs Related to and Necessary for Substantial Contribution

We first assess whether the hours claimed for the customer’s efforts that resulted in substantial contributions to Commission decisions are reasonable by determining to what degree the hours and costs are related to the work performed and necessary for the substantial contribution. CARE has submitted an hourly breakdown of tasks performed by each of its participants. We have reduced the hours by some participants for reasons as follows:

| | |
|----------------|--|
| Stephan Volker | disallowance of routine travel (reduced 5 hrs). <i>See</i> D.07-05-043 and D.07-10-014., and excessive hours on compensation matters given the product produced (reduced 2.1 hours). |
| Joshua Harris | excessive/unproductive efforts (reduced 5.7 hrs), These reductions are described in Section 6 in more detail. Excessive time on compensation matters given the product produced (reduce 16.7 hrs). |
| Allie Umott | disallowance for routine travel (reduced 2.9 hrs). <i>See</i> D.07-05-043 and D.07-10-014. and clerical work reduced (5.4 hrs). <i>See</i> D.05-11-031. |
| Michael Boyd | disallowance of routine travel (reduced 2.0 hrs). <i>See</i> D.07-05-043 and D.07-10-014, excessive time spent on compensation matters given the product produced (reduced 3.0 hrs) and excessive/unproductive efforts (reduced .5 hrs). These reductions are described in Section 6 in more detail. |
| Terry Franke | failed to articulate (unclear) on how “discussing PRA responses with M. Boyd” was work that was relative to and necessary for CARE’s substantial contribution (reduced 1.0 hrs). |

5.2. Hourly Rates

We next take into consideration whether the claimed fees and costs are comparable to the market rates paid to experts and advocates having comparable training and experience and offering similar services.

CARE requests an hourly rate of \$500 for its attorney Stephan Volker. CARE submits that according to the Public Utilities Code Section 1806, that Volker’s market rate of \$500-\$650 per hour, should be considered by the

Commission when calculating his assigned rate for this proceeding, and have submitted various exhibits in support of Volker's rates in non-Commission proceedings. CARE argues that Volker's hourly rates historically before the Commission have not taken into account his market rate and therefore have erroneously locked him into a much lower rate than his market rate. In its award request CARE asks that Volker's hourly rate be reevaluated without reference to previously assigned rates, which were not based on his market rate, as required by § 1806. Contrary to CARE's assertion, § 1806, *et seq.*, does not require this Commission to determine and award the hourly rate an individual attorney receives based on their practice outside the Commission. CARE has incorrectly stated this Commission's obligation under § 1806.

Section 1806 does not direct us to accept as a given an individual attorney's hourly rate based on what he or she makes outside the Commission. Rather, the statute directs that we "take into consideration the market rates paid to persons of comparable training and experience who offer similar services." Under these guidelines, the Commission therefore has discretion in determining the hourly rate. Section 1806 directs us to set intervenor rates relative to rates paid to attorneys that practice before this Commission. Specifically, § 1806 directs that:

The compensation awarded may not, in any case, exceed the comparable market rate for services paid by the commission or the public utility, whichever is greater, to persons of comparable training and experience who are offering similar services.
(Pub. Util. Code § 1806.)

We assert that the Commission has properly interpreted and implemented Section 1806 through its decisions, including the ones adopting an annual process (*see* D.05-11-031 and Resolution ALJ-184), those setting Volker's hourly

rates (*see* D.06-04-018, D.06-06-025 and D.07-12-004) and also those challenged in R.06-03-004 (*see* D.08-04-060).

Resolution ALJ-184 provides that:

... an intervenor may request an adjustment to an adopted hourly rate, but must show good cause for doing so. For example, if a court of regulatory agency awarded the advocate a higher hourly rate for work in the same calendar year, the intervenor may ask us to use the higher rate. The burden is on the intervenor to justify the higher rate. The burden is on the intervenor to justify the higher rate, and in the example just given, we would expect the intervenor to address, among the other things, the standard used by the court or agency in setting the higher rate and the comparability of the work performed at the Commission to the work performed at the court or agency.

Additionally, CARE has submitted copies of 2004-2006 court cases to support the fact that Volker's hourly rate outside of Commission proceedings is in excess of what he has received in compensation for his participation in Commission matters. However, CARE fails to make the analysis required in Resolution ALJ-184. We find that CARE has not presented sufficient evidence to increase Volker's hourly rate over the rates previously established by the Commission. As previously established in D.07-12-004, we award an hourly rate of \$2902 for Stephan Volker for work performed in 2007, and adopt an hourly rate of \$330, based on two (5% step raises plus a 3% cost of living allowance (COLA)), for his the work he performed in 2008. We adopt this rate here.

We note that CARE did not properly request the two 5% step raises in its request for compensation. The only mention of step raises for Volker in CARE's request for compensation occurs in Footnote 3, which merely states: "CARE recognizes that D.07-01-009 generally allows only two 5% step increases per level of experience" However, under D.08-04-010, an intervenor must clearly and separately request a step raise in the compensation request, and the

compensation request must include a statement regarding whether the requested step increase is the first or second such increase for that individual within a given level of experience.⁷ CARE failed to follow this procedure and did not specifically request the two step raises until it filed comments on the proposed decision. Although we have accommodated CARE's request by granting two step raises for Volker here, we emphasize that properly requesting step raises is the responsibility of the intervenor. In future claims, the Commission may not grant CARE's request for step raises if CARE fails to follow the correct procedure.

CARE requests an hourly rate of \$220 for attorney Joshua Harris' work performed in 2007 and 2008. We have previously adopted a rate of \$200 for his work in D.07-12-004 and we apply this same rate to his 2007 work in this proceeding. We apply a 5% step raise and a 3% COLA increase for his work in 2008 and adopt an hourly rate of \$215 here.

CARE requests an hourly rate of \$225 for Robert Curry, an expert geologist, soil scientists and pipeline expert. In D.07-12-004, he was previously awarded a rate of \$125 for the work he performed in 2000. Because his work took place more than four years ago, we reevaluate his hourly rate here. Curry received his PhD from the University of California Berkeley in 1967 in Geomorphology & Paleoclimatology. From 1967-1976 he was a research hydrologist for the U.S. Geological Survey. He has served as a professor of environmental geology at various universities in the United States and is currently a senior scientist and research coordinator for the Watershed Institute.

⁷ See D.08-04-010 at 12.

Curry has extensive memberships on advisory panels and commissions including the U.S. Senate, Public Works & Environment Committee, where he has served as a panel member on such topics as Ocean Dumping, Eutrophication and Hazardous Wastes. In addition, Curry has been a panel chairman investigating such topics as: Risk Impacts Panel for Power Generation, Teton Dam Failure, and Reclamation and Economic Valuation of Soil; has served as a research advisor for the Sierra Club, and has participated in providing congressional testimony in numerous cases involving ecological concerns and environmental impact subjects from 1969-1983. In this proceeding, Curry's evaluation of PG&E's pigging data required a high level of specialized knowledge of pipeline monitoring technology and his participation was instrumental in the adoption of a Settlement Agreement between the parties. CARE's request for an adoption of an hourly rate of \$225 for his expertise is within the adopted range of \$115-\$370 for experts with his background and experience and we adopt this rate here.

CARE requests an hourly rate of \$120 for advocate Michael Boyd based on his previously approved rate of \$115 in D.07-12-007 for work performed in 2006, in addition to a cost-of-living increase of 3%. We find this rate to be reasonable and adopt it here.

CARE requests an hourly rate of \$105 for advocate Lynne Brown based on his previously assigned rate of \$100 in D.07-12-007 for work performed in 2006, in addition to a cost-of-living increase of 3%. We find this rate to be reasonable and adopt it here.

CARE requests an hourly rate of \$330 for attorney Terry Franke, based on his previously assigned rate of \$300 in D.06-04-018 for work performed in 2004 in

addition to the cost-of-living increases that have occurred since 2004. Because we do not authorize hours for Franke, we make no ruling on his rate.

CARE requests hourly rates for its third-year law associates, Allie Umott and Marcus Eichenberg of \$105. This rate is reasonable when applying the 2007 rate of \$100 for legal associates in addition to a 3% cost-of-living increase. Here we adopt an hourly rate of \$105 for both of these individuals.

5.3. Direct Expenses

CARE has submitted a request for the following direct expenses:

| | |
|--|------------------|
| Photocopying | \$ 97.40 |
| Postage | \$ 22.82 |
| Telephone | \$ 7.55 |
| Travel - Dr. Curry 115 miles @ \$0.505 | \$ 58.07 |
| Total | \$ 185.84 |

We find these costs to be reasonable and commensurate with the work performed and approve them without adjustment.

6. Productivity

The proposed settlement resolves a significant dispute between the parties, and achieves a result that resolves safety concerns raised by local residents of the City without interfering with PG&E’s obligation to provide natural gas to its customers. Furthermore, by reaching a settlement through mediation, the parties have avoided the need for further time-consuming and expensive litigation and the consumption of additional Commission resources. The proposed settlement is productive and also in the best interest of the public.

CARE requests that the hours reduced for preparation of its intervenor compensation claim be restored because this request is not a normal claim and

required more hours than routinely needed. We disagree. The bulk of the information submitted by CARE for this claim consisted of documents submitted to substantiate Volker’s hourly rates. Since the same documents have been attached to other claims, this information required no additional hours for preparation. Except for the time spent to justify the hourly rate requested for Volker, CARE’s claim was not complicated, nor should it have been difficult to prepare.

Listed below are explanations for the reductions taken for Joshua Harris (5.7 hrs.) and the reductions taken for Michael Boyd (.5 hrs.):

Reductions for Joshua Harris

| Date | Task | Requested Hours | Approved Hours | Justification |
|------------------|--|------------------------|-----------------------|--|
| 7-24-07 | Prepare petition for modification; review emails; organize files | 5.0 | 1.0 | Preparation of petition that was never filed, and no Commission decision had been issued |
| 8-7-07 8-8-07 | Prepare and file motion to extend; review email; telephone call with party | 6.9 | 5.5 | Excessive hours given the scope of the task |
| 10-16-07 | Check case status | .30 | 0 | Description of work performed vague |
| Total | | 12.20 | 6.5 | |

Reductions for Michael Boyd

| Date | Task | Requested Hours | Approved Hours | Justification |
|--------------|---|------------------------|-----------------------|----------------------|
| 3-21-07 | Docket office rejects motion to intervene, communicate with complainant | .5 | 0 | Unproductive efforts |
| Total | | .5 | 0 | |

7. Award

We award CARE \$29,434.84, as follows:

| Work on Proceeding | | | | |
|--|-------------|--------------|--------------------|---------------------|
| Attorney/Staff | Year | Hours | Hourly Rate | Total |
| Stephan Volker, Attorney | 2007 | 49.5 | \$290 | \$ 14,355.00 |
| Stephan Volker, Attorney | 2008 | .2 | \$330 ⁸ | \$ 66.00 |
| Joshua Harris, Attorney | 2007 | 32.5 | \$200 | \$ 6,500.00 |
| Allie Umott, Associate ⁹ | 2007 | 2.0 | \$105 | \$ 210.00 |
| Marcus Eichenberg, Associate | 2007 | 9.5 | \$105 | \$ 997.50 |
| Robert Curry, Expert | 2007 | 16.5 | \$225 | \$ 3,712.50 |
| Michael Boyd, Advocate | 2007 | 43.5 | \$120 | \$ 5,220.00 |
| Lynne Brown, Advocate | 2007 | 4.0 | \$105 | \$ 420.00 |
| Subtotal Hourly Compensation: | | | | \$ 31,481.00 |
| Half Rate Time - Travel, Preparation of NOI and Compensation Requests | | | | |
| Attorney/Staff | Year | Hours | Hourly Rate | Total |
| Stephan Volker (Travel) | 2007 | 3 | \$140 | \$ 435.00 |
| Michael Boyd (Travel) | 2007 | 1 | \$ 60 | \$ 60.00 |
| Michael Boyd (NOI Prep) | 2007 | 3 | \$ 60 | \$ 180.00 |
| Stephan Volker (NOI/IComp) | 2007 | 2.6 | \$145 | \$ 377.00 |
| Joshua Harris (NOI/Icomp) | 2008 | 6.0 | \$107.50 | \$ 645.00 |
| Subtotal Travel Time | | | | \$ 495.00 |
| Subtotal NOI and Compensation: | | | | \$ 1,202.00 |
| Subtotal of Direct Expenses | | | | \$ 185.84 |
| Total Award | | | | \$ 33,363.84 |

Pursuant to § 1807, we order PG&E as the regulating entity to pay this award. Consistent with previous Commission decisions, we order that interest be paid on the award amount (at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release H.15)

⁸ Second step raise for attorney in this range.

⁹ See footnote on page 11.

commencing on June 3, 2008 , the 75th day after CARE filed its compensation request, and continuing until full payment of the award is made.

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. CARE'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.

8. Waiver of Comment Period

This is an intervenor compensation matter. As provided in Rule 14.6(c)(6) of our Rules of Practice and Procedure, we normally waive the otherwise applicable 30-day comment period for this proposed decision. Because the Commission is sizably reducing the amount requested in this award, we allowed comments on this proposed decision. CARE timely filed comments on April 1, 2009. PG&E timely filed reply comments on April 6, 2009.

In its comments, CARE asks the Commission to reconsider awarding Volker the requested hourly rate of \$500. CARE also argues that the rate assigned to Volker in D.07-12-004, which was the basis for the rate awarded in this decision, was incorrectly calculated as \$280 per hour, when the correct rate is \$290 per hour; that the proposed decision fails to explain the basis for its reduction in hours for tasks performed by Harris, and improperly reduces the time spent on the complex compensation request in this CASE. PG&E's reply

comments argue that CARE failed to properly request and substantiate its request for two 5% step increases in Volker's hourly rates.

We have considered the comments of the parties and made changes throughout the decision as appropriate.

9. Assignment of Proceeding

Timothy Alan Simon is the assigned Commissioner, and Myra J. Prestidge is the assigned ALJ in this proceeding.

Findings of Fact

1. CARE has satisfied all the procedural requirements necessary to claim compensation in this proceeding.
2. CARE made a substantial contribution to D.08-02-001 as described herein.
3. CARE requested hourly rates for its representatives, as adjusted herein, that are reasonable when compared to the market rates for persons with similar training and experience.
4. CARE's request includes hourly compensation, as adjusted herein, that is reasonable and commensurate with the work performed.
5. CARE has submitted direct expenses which are reasonable.
6. The total of the reasonable compensation is \$33,363.84.
7. Appendix to this decision summarizes today's award.

Conclusions of Law

1. CARE have fulfilled the requirements of §§ 1801-1812, which govern awards of intervenor compensation, and are entitled to intervenor compensation for its claimed expenses, as adjusted herein, incurred in making substantial contributions to D.08-02-001.
2. CARE should be awarded \$33,363.84 for its contribution to D.08-02-001.

3. This order should be effective today so that CARE may be compensated without further delay.
4. This proceeding should be closed.

O R D E R

IT IS ORDERED that:

1. CALifornians for Renewable Energy is awarded \$33,363.84 in compensation for its substantial contributions to Decision 08-02-001. Within 30 days of the effective date of this decision, Pacific Gas and Electric Company shall pay CALifornians for Renewable Energy 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 3, 2008, the 75th day after the filing date of CALifornians for Renewable Energy's request for compensation, and continuing until full payment is made.

2. Case 07-03-006 is closed.

This order is effective today.

Dated May 7, 2009, at San Francisco, California.

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
TIMOTHY ALAN SIMON
Commissioners

APPENDIX**Compensation Decision Summary Information**

| | | |
|----------------------------------|----------------------------------|-----------------------------|
| Compensation Decision: | D0905011 | Modifies Decision? N |
| Contribution Decision(s): | D0802001 | |
| Proceeding(s): | C0703006 | |
| Author: | ALJ Prestidge | |
| Payer(s): | Pacific Gas and Electric Company | |

Intervenor Information

| Intervenor | Claim Date | Amount Requested | Amount Awarded | Multiplier? | Reason Change/Disallowance |
|-----------------------------------|-------------------|-------------------------|-----------------------|--------------------|---|
| CALifornians for Renewable Energy | 03-20-08 | \$51,473.34 | \$33,363.84 | No | Unapproved hourly rates, disallowance of routine travel, excessive hours, unproductive effort, disallowance of clerical work. |

Advocate Information

| First Name | Last Name | Type | Intervenor | Hourly Fee Requested | Year Hourly Fee Requested | Hourly Fee Adopted |
|-------------------|------------------|-------------|-----------------------------------|-----------------------------|----------------------------------|---------------------------|
| Stephan | Volker | Attorney | CALifornians for Renewable Energy | \$500 | 2007 | \$280 |
| Stephan | Volker | Attorney | CALifornians for Renewable Energy | \$500 | 2008 | \$300 |
| Joshua | Harris | Attorney | CALifornians for Renewable Energy | \$220 | 2007 | \$200 |
| Joshua | Harris | Attorney | CALifornians for Renewable Energy | \$220 | 2008 | \$215 |
| Allie | Umott | Associate | CALifornians for Renewable Energy | \$105 | 2007 | \$105 |
| Marcus | Eichenberg | Associate | CALifornians for Renewable Energy | \$105 | 2007 | \$105 |
| Michael | Boyd | Advocate | CALifornians for Renewable Energy | \$120 | 2007 | \$120 |
| Lynne | Brown | Advocate | CALifornians for Renewable Energy | \$105 | 2007 | \$105 |

(END OF APPENDIX)