

Decision 07-05-019 May 3, 2007

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Joint Application of Southern California Edison Company and San Diego Gas & Electric Company for the 2005 Nuclear Decommissioning Cost Triennial Proceeding to Set Contribution Levels for the Companies' Nuclear Decommissioning Trust Funds and Address Other Related Decommissioning Issues.

Application 05-11-008
(Filed November 10, 2005)

Application of Pacific Gas and Electric Company in Its 2005 Nuclear Decommissioning Cost Triennial Proceeding.

Application 05-11-009
(Filed November 10, 2005)

**OPINION ON COMPENSATION FOR SUBSTANTIAL CONTRIBUTIONS TO
DECISION 07-01-003 BY SCOTT L. FIELDER, INTERVENOR IN THE
TRIENNIAL REVIEW OF NUCLEAR DECOMMISSIONING TRUSTS AND
RELATED DECOMMISSIONING ACTIVITIES**

1. Summary

This decision grants \$60,507 in compensation for substantial contributions to Decision (D.) 07-01-003 to Scott L. Fielder (Fielder), who intervened as a customer of Pacific Gas and Electric Company (PG&E). We find that Fielder's contributions benefit customers of Southern California Edison Company (Edison) and San Diego Gas & Electric Company (SDG&E) as well as PG&E's customers, and we therefore direct PG&E to pay 70%, Edison to pay 20%, and SDG&E to pay 10% of the award, and any interest. This proceeding is closed.

2. Background

In D.07-01-003, dated January 11, 2007, the Commission adopted an all-party settlement for Edison and SDG&E which resolved all issues in a Joint Application (A.) 05-11-008. We also adopted a separate settlement for PG&E in A.05-11-009 which resolved all ratemaking issues exclusive of the issues litigated by PG&E and a customer-intervenor, Fielder. We declined to create an Independent Board of Consultants to oversee or advise on the decommissioning of Humboldt Unit 3. We did, however, provide guidelines applicable to all three applicants concerning the necessity to ensure that the utilities employ sufficient, well-trained and experienced personnel to plan and direct the complex task of decommissioning a retired nuclear generating facility. We did not adopt Fielder's proposals concerning the storage costs of radioactive waste materials or contingency factors. We did, however, direct the parties to perform in-depth analyses of storage costs and contingencies for the next triennial proceedings for all three utilities.

3. Requirements for Awards of Compensation

The intervenor compensation program, enacted in Pub. Util. Code §§ 1801-1812, requires California jurisdictional utilities to pay the reasonable costs of an intervenor's participation if the intervenor makes a substantial contribution to the Commission's proceedings.¹ 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 Subsequent statutory references are to the Public Utilities Code.

1. The intervenor must satisfy certain procedural requirements including the filing of a sufficient notice of intent (Notice) to claim compensation within 30 days of the prehearing conference, or in special circumstances at other appropriate times 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 should 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), 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. (§§ 1802(i), 1803(a).)
6. The claimed fees and costs are 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).

For discussion here, we combine the procedural issues in Items 1 - 4, followed by separate discussions Items 5 - 6.

4. Procedural History

Notice of these two applications appeared in the Commission’s Daily Calendar on November 16, 2005. The Commission preliminarily categorized them as ratesetting in Resolution ALJ 176-3162, dated November 18, 2005. The January 18, 2006 scoping ruling confirmed the categorization as ratesetting, and the need for hearings. The scoping ruling also consolidated the applications. The Division of Ratepayer Advocates (DRA), the Federal Executive Agency

(FEA),² The Utility Reform Network (TURN), and Fielder all served testimony in the proceeding. All parties served timely rebuttal and other supplemental testimony as allowed or required by the assigned Administrative Law Judge (ALJ). The two settlements were admitted as Exhibits 18 and 19 at evidentiary hearings. These settlements resolved all issues for Edison and SDG&E in A.05-11-008 and resolved all issues except those litigated by PG&E and Fielder in A.05-11-009. Parties filed opening briefs or comments on the settlements on June 23, 2006, and replies on July 14, 2006.

Fielder filed a Notice of Intent to Claim Compensation (Notice) on February 2006 and an ALJ's Ruling dated February 14, 2006 found Fielder was eligible for compensation. Fielder filed a timely Request for Compensation (Request) on March 13, 2007, up-dated as allowed by the ALJ on March 15, 2007.

Section 1802(b)(1) defines a "customer as: A) a participant representing consumers, customers or subscribers of a utility; B) a representative who has been authorized by a customer; or C) a representative of a group or organization authorized pursuant to its articles of incorporation or bylaws to represent the interests of residential or small business customers. Fielder is a customer representing himself, satisfying § 1802(b)(1)(A). (Ruling dated February 14, 2006.)

5. Financial Hardship

An intervenor seeking compensation must show that, without undue hardship, it cannot pay the reasonable costs of effective participation in the proceeding. A participant representing consumers (§ 1802(b)(1)(A), above) must disclose its finances to the Commission to make this showing. These showings

² FEA participated only in the settlement for A.05-11-008.

may be made under an appropriate protective order. Fielder did not seek a protective order. Such a finding is normally made in the ALJ's preliminary ruling as to whether the customer will be eligible for compensation (§ 1804(b)). Fielder chose to defer demonstration of hardship to the Request.

As described in D.98-04-059, customers described in § 1802(b)(1)(A), above, must disclose their gross and net monthly income, monthly expenses, cash and assets, including equity in real estate. Subsequent rulings have determined that it is reasonable to exclude the equity of a participant's personal residence from this disclosure.

Section 1802(g) defines significant financial hardship:

Significant financial hardship' means either that the customer cannot afford, without undue hardship, to pay the costs of effective participation, including advocate's fees, expert witness fees, and other reasonable costs of participation, or that, in the case of a group or organization, the economic interest of the individual members of the group or organization is small in comparison to the costs of effective participation in the proceeding.

Fielder asserts that he cannot afford to intervene without compensation. There is no public benefit to publishing Fielder's personal financial condition in detail in this opinion. Fielder's Request (p. 4.) demonstrated, however, that as a result of billable hours spent on these proceedings, rather than in his usual law practice, he had a net operating loss. We also note that Fielder's energy costs as a customer are less than \$5,000 annually. Thus his benefits are far less than the costs incurred. We therefore find Fielder has met the significant hardship test and is eligible for compensation for any substantial contributions to the decision.

6. Substantial Contribution

In evaluating whether a customer made a substantial contribution to a proceeding we consider whether the Commission adopted one or more of the

factual or legal contentions, or specific policy or procedural recommendations put forward by the customer. (*See* § 1802(i).) If the customer's contentions or recommendations paralleled those of another party, we consider whether the customer's participation materially supplemented, complemented, or contributed to the presentation of the other party or to the development of a fuller record that assisted the Commission in making its decision. (*See* §§ 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.

Should the Commission not adopt any of the customer's recommendations, compensation may be awarded if, in the judgment of the Commission, the customer's participation substantially contributed to the decision or order. For example, if a customer provided a unique perspective that enriched the Commission's deliberations and the record, the Commission could find that the customer made a substantial contribution. With this guidance in mind, we turn to the claimed contributions Fielder made to the proceeding.

Fielder initially raised six (6) issues in this case:

1. The need for additional protection of the decommissioning trust funds.
2. The need for an Independent Board of Consultants for Humboldt Unit 3.

3. Revision of the cost estimates for Low Level Radioactive Waste burial.
4. Contingency factor for the decommissioning cost estimates.
5. Decommissioning cost estimate adequacy; and,
6. Cost effectiveness of re-licensing and continued operations.

As noted in his request, Issue 6 was ruled outside the scope of the proceeding and was dropped. (Request, p. 6.) Fielder devoted most of his efforts (60%) in the proceeding on issues 2 and 3, above. (Request, Exhibit F.) Fielder was the only intervenor to litigate issues outside the settlements.

As cited in the summary of D.07-01-003 and repeated herein, the decision did not adopt the specific recommendations as proposed by Fielder. The decision did adopt specific requirements for all three utilities to address the adequacy of decommissioning staff (Issue 2), and to present far more detailed studies and conservative forecasts of both waste storage costs and contingencies in the next triennial proceeding. (Issues 3 and 4, above.) In addition, the PG&E settlement specifically included additional trust fund protections (Issue 1) and the settlement also included a settlement on the overall cost estimates. (Issue 5.) Thus, Fielder asserts that he made substantial contributions.

We find that absent Fielder's participation there would have been no detailed discussion on the need for adequate oversight of decommissioning by trained and experienced professionals. The decision established specific criteria and reporting on decommissioning personnel for subsequent proceedings that was directly attributable to Fielder's participation. No other party raised this issue. Fielder did lose on his specific proposal for an independent board of consultants to oversee the decommissioning process. Nevertheless, Fielder made a substantial contribution on Issue 2.

We find that absent Fielder's participation the testimony by DRA proposed a lower waste storage cost than was proposed by PG&E or Edison. Fielder, however, demonstrated that neither the applicants nor DRA adequately reflected the absence of a currently available and viable waste storage option, at any cost. The decision adopted specific requirements for the parties to study and forecast waste storage costs in subsequent proceedings that was directly attributable to Fielder's participation and would not have been considered with only DRA's recommendations in the record.³ Therefore Fielder made a second substantial contribution (Issue 3).

Fielder also raised an issue on the inadequacy of cost forecast contingencies where the other parties were instead focusing on reducing contingencies and all other costs generally. As noted in the decision, the goal of the nuclear decommissioning triennial reviews is to ensure there are sufficient funds to pay the final reasonable costs of decommissioning California's nuclear power stations. The triennial reviews are not an exercise to set the lowest reasonable rates for service: they are intended to ensure sufficient funds are available when the plants eventually retire from service. The decision adopted specific requirements for all parties to study and forecast contingencies in subsequent proceedings that were directly attributable to Fielder's participation and would not have been considered with only DRA's and TURN's recommendations in the record. Therefore Fielder made a third substantial contribution (Issue 4).

³ We note other parties participated on this and other issues as well, but no other party also raised the same specific recommendations raised by Fielder or that were adopted in the decision as a result of Fielder's input.

Fielder participated in the overall settlement of PG&E's application that included the adoption of an adequate overall decommissioning cost forecast for the test period. We will therefore find that as a party to the settlement Fielder made a fourth substantial contribution.

Fielder's fifth substantial contribution was the inclusion of further safeguards of the trust funds which was included in the PG&E settlement.

(Issue 1.)

7. Contributions of Other Parties

Section 1801.3(f) requires an intervenor to avoid unnecessary participation that duplicates that of similar interests otherwise adequately represented by another party, or that unnecessary for a fair determination of the proceeding. Section 1802.5, however, allows an intervenor to be eligible for full compensation if their participation materially supplemented, complemented, or contributed to that of another party if that participation made a substantial contribution to the commission order. In a proceeding involving multiple participants, it may be impossible to completely avoid some duplication of the work of other parties. As already noted, Fielder was either the sole proponent or took a contrarian's position on four of the five issues where he made substantial contributions. It is therefore reasonable to find that Fielder's work served to supplement, complement, or contribute to the showing of the other very active parties in this proceeding.

8. Reasonableness of Requested Compensation

Fielder requests \$60,507 for its participation in this proceeding, as follows:

Compensation Request Allocated by Hours and Cost						
	Issue 1 Trust Fund Safeguard 25%	Issue 2 Board of Consultants 30%	Issue 3 Low Level Radiation Waste 30%	Issue 4 Contingency 7.5%	Issue 5 Cost Estimate 7.5%	Total
Fielder 237.9 hours @ \$250/HR	59.475 hours	71.37	71.37	17.842	17.842	
Cost	\$14,868.75	\$17,842.50	\$17,842.50	\$4,460.63	\$4,460.62	\$59,475
Adams 95.5 hours @ \$160/HR	23.875 hours	28.65	28.65	7.1625	7.1625	
	\$3,820.00	\$4,584.00	\$4,584.00	\$1,146.00	\$1,146.00	\$15,280
Swift 69 hours @ \$75/HR	17.25 hours	20.7	20.7	5.175	5.175	
TOTAL	\$1,293.75	\$1,553.50	\$1,552.50	\$388.12	\$388.13	\$5,175
Fielder's Expenses						\$188
Swift's Expenses						\$215
						\$80,3334
One-third Reduction						\$19,825
Final Request ⁴						\$60,509

Fielder notes there was a contribution of \$1,000 which offset some costs, and one consultant, Michael Manetas, donated his time. More significantly, Fielder proposed a voluntary one-third reduction (\$19,825) to his fees because his positions were not adopted as proposed.

In general, the components of this request must constitute reasonable fees and costs of the customer's preparation for and participation in a proceeding that

⁴ Rounding effects.

resulted in a substantial contribution. The issues we consider to determine reasonableness are discussed below:

8.1 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.

Fielder documented his claimed hours by presenting a daily breakdown of the hours, accompanied by a brief description of each activity. The hourly breakdown reasonably supports the claim for total hours. We note that in Exhibit F, which allocated costs to issues, and in Exhibit A, which accounted for Fielder's detailed activities, that there were no reductions in rate for travel (usually compensated at 50% of the authorized billing rate) and no request at all for preparing either the Notice or the Request (also usually compensated at 50% of the authorized billing rate). We will forego any adjustments for travel or allowances to prepare the Notice and Request because Fielder has already reduced the total hours by one-third.

8.2 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.

Fielder was admitted to the California State Bar in 1978 and thus has been licensed for almost 30 years, well over the 13+ range shown below. He has occasionally appeared before the Commission on decommissioning matters. Setting an appropriate rate for compensation is not easy. D.07-01-009, the Commission's latest review of compensation, indicated that an individual with

no recently authorized rate may justify a new rate as if the representative were new to Commission proceedings. (Slip Op., p. 7.) Additionally, we have adopted ranges of rates that correspond to years of experience as a guide to setting hourly rates. D.07-01-009 adopted the following range:⁵

Hourly Intervenor Rate Ranges for 2006 and 2007

Years of Experience	2006 Range	2007 Range
Attorneys:		
0 - 2	\$140 - \$195	\$145 - \$200
3 - 4	\$190 - \$225	\$195 - \$230
5 - 7	\$260 - \$280	\$270 - \$290
8 - 12	\$280 - \$335	\$290 - \$345
13+	\$280 - \$505	\$290 - \$520

Fielder's requested rate of \$250 is below the low-level for a practitioner with 13+ years of experience, but Fielder is not a regular practitioner before the Commission. We will adopt the \$250 hourly rate as reasonable given Fielders years in practice but limited experience before the Commission.

Paralegal rates of \$75 per hour for Swift are within the range of rates awarded for other paralegal support⁶ and we adopted them.

Fielder asks for a rate of \$165 per hour for James Adams. In D.07-01-009 the Commission adopted an overall range of \$115 - \$370, a wide range that reflects the wide ranges of experience and qualifications possessed by the many experts that appear before the Commission. The requested rate of \$165

⁵ Portion of table from D.07-01-009, Slip Op., p. 8. For 2006, rates adopted in D.05-11-031 x 3%, rounded to nearest \$5. For 2007, rates adopted for 2006 x 3%, rounded to nearest \$5.

⁶ See for example, \$90/hour for paralegal support to Disability Rights Advocates and \$110 to The Greenlining Institute in D.06-09-008.

is below the mid-point (\$242.50) of the overall range but is around the mid-point for the 0 - 6 year range of experience. Fielder is not a regular practitioner before the Commission and in the request did not offer a comparison of Adam's experience and qualifications to other more frequent experts who appear before us. We therefore refer to his qualifications in his testimony and compare his experience to other more frequent expert witnesses.

Adams is an Environmental Planner employed by the California Energy Commission since 1999. He holds a B.A. in Political Science and a M.A. in Social Science, both from California State University at Humboldt. He has worked as a consultant over the years and worked on previous nuclear proceedings at the Commission. The requested rate is within the lower ranges of adopted rates for experts of relatively limited experience (not being a full-time consultant) and for experts without a Ph.D. The rate of \$165 per hour is therefore reasonable in light of Adams' experience and education.

8.3 Productivity

D.98-04-059 directed customers to demonstrate productivity by assigning a reasonable dollar value to the benefits of their participation to ratepayers. The costs of a customer's participation should bear a reasonable relationship to the benefits realized through their participation. This showing assists us in determining the overall reasonableness of the request.

Fielder did not identify dollar value benefits by issue in the request. The settlement did result in a lower revenue requirement when compared to PG&E's original request. The changes adopted for the next triennial review, based on Fielder's recommendations, may lead to a substantially superior record on decommissioning staff competency, waste storage costs, and contingency costs, (Issues 2, 3 and 4) than was created by PG&E, Edison, and SDG&E in this

proceeding. Fielder's recommendations on waste storage could dramatically increase the costs – but the goal of the triennial proceeding is to ensure enough money is available for decommissioning – so this would be a benefit if actual costs prove to be higher than the other parties have recently forecast. Other interested parties are also expected to make more substantial showings on these issues in the next triennial nuclear decommissioning proceeding. Additionally, the settlement included Fielder's proposed additional safeguards on the trust funds. (Issue 1.) Taken as a whole, these outcomes constitute a productive contribution to D. 07-01-003 that benefit the ratepayers of all three utilities.

8.4 Direct Expenses

Fielder seeks \$403 for travel, photocopying, postage, telephone/fax, etc. The cost breakdown included with the request shows the miscellaneous expenses to be commensurate with the work performed. We find these costs reasonable.

9. Award

We award Fielder the full request of \$60,507. Consistent with previous Commission decisions, we order that interest be paid on the award amount.

Although Fielder intervened principally in PG&E's A.05-11-009, the decision found most of his recommendations to also be applicable to Edison and SDG&E in A.05-11-008, so that the ratepayers of these companies will benefit, for example, by the more detailed future analysis of waste storage costs and contingencies, as well as the required reporting on decommissioning personnel competency and experience. It is therefore reasonable to assign a portion of the compensation to Edison and SDG&E. Allocation of the award could be based on various factors, including the relative size of the funds, the impact of the recommendations on the utility, etc. The Commission has discretion on how to fairly allocate compensation between utilities. The point of allocating Fielder's

award between all three applicants is primarily to acknowledge the policy implications of Fielder's adopted recommendations to all customers of nuclear-utilities facing similar risks and issues – *e.g.*, competent staff for decommissioning, and valid estimates of waste storage costs and contingencies. Therefore, we will assign \$12,000 to Edison (approximately 20% of \$60,507) and \$6,000 to the smaller SDG&E (approximately 10%). PG&E shall pay the balance of \$42,507.

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. Fielder's records should identify specific issues for which it requested compensation, the actual time spent by each employee or consultant, the applicable hourly rate, fees paid to consultants, and any other costs for which compensation was claimed.

10. Waiver of Comment Period

This is an intervenor compensation matter. Accordingly, as provided by Rule 14.6(c)(6) of our Rules of Practice and Procedure, we waive the otherwise applicable 30-day comment period for this decision.

11. Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and Douglas Long is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. Fielder has satisfied all the procedural requirements necessary to claim compensation in this proceeding.
2. Fielder made a substantial contribution to D.07-01-003 as described herein.

3. Fielder requested hourly rates for its representatives that are reasonable when compared to the market rates for persons with similar training and experience.

4. Fielder requested related expenses that are reasonable and commensurate with the work performed.

5. The total of the reasonable compensation is \$60,507.

6. Fielder's contributions benefit the ratepayers of all three applicants: PG&E, Edison, and SDG&E.

7. The appendix to this opinion summarizes today's award.

Conclusions of Law

1. Fielder has fulfilled the requirements of §§ 1801-1812, which govern awards of intervenor compensation, and is entitled to intervenor compensation for its claimed compensation incurred in making substantial contributions to D.07-01-003.

2. Fielder should be awarded \$60,507 for its contribution to D.07-01-003, plus interest commencing on the 75th day after the filing of the compensation request.

3. The award may be allocated between the three utilities because ratepayers of all three companies benefit from Fielder's contributions.

4. Per Rule 14.6(c)(6), the comment period for this compensation decision may be waived.

5. This order should be effective today so that Fielder may be compensated without further delay.

6. This proceeding should be closed.

O R D E R

IT IS ORDERED that:

1. Scott L. Fielder (Fielder), is awarded \$60,507 as compensation for its substantial contributions to Decision (D.) 07-01-003.
2. Interest shall 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) commencing on May 28, 2007, the 75th day (first business day) after Fielder filed the compensation request, and continuing until full payment of the award is made.
3. Within 30 days of the effective date of this decision, Pacific Gas and Electric Company (PG&E), Southern California Edison Company (Edison), and San Diego Gas & Electric Company (SDG&E) shall pay Fielder their respective shares of the award and interest: PG&E, 70%; Edison, 20%; and SDG&E, 10%.
4. The comment period for today's decision is waived.
5. Application (A.) 05-11-008 and A.05-11-009 are closed.

This order is effective today.

Dated May 3, 2007, 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:	D0705019	Modifies Decision? N/A
Contribution Decision(s):	D0701003	
Proceeding(s):	A0511008 and A0511009	
Author:	ALJ Long	
Payer(s):	Pacific Gas and Electric Company; Southern California Edison Company, and San Diego Gas & Electric Company.	

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
Scott L. Fielder	3/12/07	\$60,507	\$60,507	No	N/A

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Scott	Fielder	Attorney	Scott L. Fielder	\$250	2006	\$250
Susan	Swift	Paralegal	Scott L. Fielder	\$75	2006	\$75
James	Adams	Expert	Scott L. Fielder	\$165	2006	\$165
Michael	Manetas	Engineer	Scott L. Fielder	\$0	2006	\$0

(END OF APPENDIX)