

Decision PROPOSED DECISION OF ALJ THOMAS (Mailed 8/14/2008)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of PACIFICORP (U 901 E), an Oregon Company, for a Permit to Construct the Line 75 115kV Conversion Project Pursuant to General Order 131-D.

Application 05-12-011
(Filed December 13, 2005)

Application of PACIFICORP (U 901 E), an Oregon Company, for a Permit to Construct the Weed Segment Project Pursuant to General Order 131-D.

Application 07-01-046
(Filed January 26, 2007)

**DECISION GRANTING SECOND REQUEST
FOR INTERVENOR COMPENSATION OF DON AND JUDY MACKINTOSH**

This decision grants the second request of Don and Judy Mackintosh (the Mackintoshes) for intervenor compensation in this proceeding. The first decision, Decision (D.) 08-07-019, awarded a portion of the Mackintoshes' request for compensation related to D.07-03-043 and D.06-10-047. This second decision awards partial compensation for the Mackintoshes' substantial contribution to D.07-12-018.

While the Mackintoshes' second request is for \$45,643.04¹ in compensation, for various reasons set forth herein, we reduce that amount by \$14,005.29, and award \$31,637.76.

1. Background

This proceeding involved PacifiCorp's request to upgrade transmission lines in the Yreka-Weed area of Northern California. The decision for which the Mackintoshes seek compensation here, Decision (D.) 07-12-018, granted PacifiCorp final approval to construct the southern portion of the line (and related facilities) and certified an Environmental Impact Report (EIR) prepared to analyze the environmental impact of that construction.²

PacifiCorp raises several challenges to the compensation request, most of which we addressed in our first compensation decision, D.08-07-019. First, PacifiCorp asserts that the Notice of Intent (NOI) was not timely filed. In D.08-07-019, we agreed that the NOI was filed late, but we noted that since it was timely served and filed late due only to inadvertence, which caused no harm to other parties, we excused the late filing.

Second, PacifiCorp alleges the Mackintoshes are not customers eligible for compensation. D.08-07-019 analyzed this claim in detail and found that the Mackintoshes qualify for compensation because their efforts benefited not only

¹ In the Mackintoshes' original request filed on February 5, 2008, the requested amount was \$45,846.32; however, on May 5, 2008, when the intervenors supplied a summary of the requested compensation, they adjusted the requested amount to \$45,643.04.

² The prior decisions (D.06-10-047 and D.07-03-043) for which we have already awarded \$183,612.10 in compensation respectively approved installation of the northern portion of the line and ordered the EIR's preparation.

them, but everyone living near or traveling through the undisturbed valley where PacifiCorp proposed to site the new line. Thus, the Mackintoshes did not act only out of self-interest. Therefore, the Mackintoshes are customers eligible for compensation.

Third, PacifiCorp challenges the amount of compensation requested for several reasons. We agree with many of PacifiCorp's points and reduce the award accordingly, as well as for additional reasons.

2. Requirements on Awards of Compensation

The intervenor compensation program, enacted in Pub. Util. Code §§ 1801-1812,³ 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. 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 NOI to claim compensation within 30 days of the prehearing conference (PHC), 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 Subsequent statutory references are to the California Public Utilities Code unless otherwise indicated.

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), 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 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).

We move to a discussion of each of these factors.

3. Procedural Issues

3.1. NOI

D.08-07-019 accepted the Mackintoshes’ late-filed NOI because it was timely served and filed late due only to inadvertence, which caused no harm to other parties. We so find here as well, and accept the late filing.

3.2. Customer Status

D.08-07-019 also found that even though the Mackintoshes acted in part out of self-interest by preventing a transmission line from crossing their property, they also acted to preserve a scenic valley for other residents and travelers in the area. We thus found that the Mackintoshes qualified as “customers” eligible to receive intervenor compensation. We so find again here.

3.3. Significant Financial Hardship

In D.08-07-019, we found that the Mackintoshes would suffer significant financial hardship if required to bear the cost of participation on their own.

PacifiCorp did not dispute this claim by the Mackintoshes after examining their financial data, filed under seal, pursuant to a nondisclosure agreement. Thus, we find the Mackintoshes also meet the significant financial hardship test here.

In view of the above, we find that the Mackintoshes have satisfied all the procedural requirements necessary to make their request for compensation in this proceeding.

3.4. Request for Compensation

Pursuant to § 1804(c), a request for compensation must be filed within 60 days of our final order or decision in a proceeding. D.07-12-018 was issued on December 7, 2007. The Mackintoshes filed their second request within 60 days, on February 5, 2008. Therefore, the request is timely.

On March 6, 2008, PacifiCorp filed a response to the Mackintoshes' request for compensation opposing the request. On March 20, 2008, the intervenors filed a reply to PacifiCorp's response. We address the responsive and reply comments throughout this decision.

4. 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, we look at whether the customer's contentions or recommendations paralleled those of another party, and whether the customer's participation unnecessarily duplicated or 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. (§§ 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.⁴

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 the Mackintoshes made to the proceeding.

The Mackintoshes state that they made a substantial contribution to D.07-12-028 in the following manner:

- For over two years, the Mackintoshes argued that the best option from an environmental and electrical perspective was to complete the project within the existing right-of-way. The Commission agreed in D.07-12-018.
- The Mackintoshes argued that alternative routes, such as the one they proposed, deserved a closer look. The Commission

⁴ D.98-04-059, 79 CPUC2d 628 at 653.

therefore ordered preparation of an EIR, and certified the EIR in D.07-12-018.

- The EIR concluded, and the Commission agreed, that the preferable project was one substantially similar to the Mackintoshes' original proposal. The Commission chose the environmentally superior alternative, known as "Mackintosh/ALJ Variation A." That alternative is a variation on "Option 5" that the Mackintoshes proposed in December 2005.
- The Mackintoshes' "Option 5" proposal was to upgrade, using a pole-for-pole transfer if necessary, the existing line between Weed Substation and Weed Junction from 69 kV to 115 kV, within the existing right-of-way. The proposal required installation of a new 115/69 kV transformer at Weed Substation. The route the Commission adopted also involved certain pole for pole transfers and a 115/69 kV transformer at Weed Substation.
- The Final EIR contains certain revisions from the Draft EIR that the Mackintoshes suggested. *See* Final EIR at 2-70.

In its response, PacifiCorp does not dispute that the Mackintoshes made a substantial contribution, but instead objects to the reasonableness of the requested amounts. We agree with several of PacifiCorp's objections, as we discuss below.

We are satisfied that the Mackintoshes made a substantial contribution to this proceeding. D.07-12-018 completed our review of PacifiCorp's application, approved the route proposed by the Mackintoshes (albeit in a slightly different configuration) and certified the environmental document essential to an analysis of whether the project could proceed. Thus, we find that the Mackintoshes made a substantial contribution to the outcome of D.07-12-018.

5. Reasonableness of Requested Compensation

The Mackintoshes originally requested \$45,846.32 for their contributions to D.07-12-018. In a May 5, 2008 email message, the Mackintoshes supplemented their request with a summary that adjusted the requested amount to \$45,643.04, as follows:

Work on EIR				
Meyers, Nave, Riback, Silver & Wilson	Year	Hours	Rate (\$)	Total (\$)
Attorneys				
Brian Crossman	2007	128.70	200.00	23,800.00
Sky Woodruff	2007	27.10	270.00	7,317.00
Sky Woodruff	2008	0.30	280.00	84.00
Kit Faubion	2007	0.30	0.00	0.00
Paralegal: Patti McBride	2007	0.50	0.00	0.00
Total Work on EIR				31,201.00
Work on Proposed Decision				
Meyers, Nave, Riback, Silver & Wilson	Year	Hours	Rate (\$)	Total (\$)
Attorneys				
Brian Crossman	2007	3.80	200.00	760.00
Sky Woodruff	2007	0.30	270.00	81.00
Total Work on Proposed Decision				841.00
Work on Compensation Claim				
Meyers, Nave, Riback, Silver & Wilson	Year	Hours	Rate (\$)	Total (\$)
Attorneys				
Brian Crossman	2007	55.00	100.00	5,500.00
Brian Crossman	2008	13.40	102.50	1,373.50
Sky Woodruff	2007	15.60	135.00	2,106.00
Sky Woodruff	2008	1.30	140.00	182.00
Paralegal: Hammond East	2007	9.50	65.00	617.50
Paralegal: Hammond East	2008	12.80	67.50	864.00
Total Work on Compensation Claim				10,643.00
Sub-Total Attorney & Paralegal Fees:				42,685.00
<i>5% In House Costs:</i>				2,134.25
<i>Additional Expenses:</i>				
Legal Research (Westlaw/LexisNexis)				304.30
Copying Expenses				37.76
Delivery and Mailing Expenses				503.40
Travel Expenses				113.36
Total Additional Expenses:				
Sub-Total In House Costs & Additional Expenses:				3,093.07
Total Request				45,778.07
<i>Adjustments:</i>				
Legal Research				-7.36
Delivery and Mailing Expenses				-71.00
Travel Expenses				-56.68
Total Request Adjusted:				45,643.04
NOTES:				
<ul style="list-style-type: none"> The \$23,800.00 charge for Attorney Crossman's work on the EIR reflects that some time spent was not charged, as detailed in the time sheets for the second compensation request. Compensation is no longer being requested for Patti McBride's time. "Adjustments" are for additional expenses that should have been charged at half-rate either because the expenses were travel related or incurred pursuant to preparation and filing of the compensation claims. 				

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

6. 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.

We disallow compensation for several tasks, based both on PacifiCorp's comments and on our own analysis, as discussed below. The awarded amount is \$14,005.29 less than the requested amount.

6.1. Self-Interested Efforts

Some of the work the Mackintoshes claim in their request benefited them directly without bringing benefits to other PacifiCorp customers. Thus, the issue of PacifiCorp's right to entry regarding the Mackintoshes' property relates only to the Mackintoshes' interests and we deny compensation for that work. We therefore disallow 1.40 hours of Brian Crossman's time and 5.50 hours of Sky Woodruff's time in 2007.

The Mackintoshes' work on the issue of "construction of the Mackintoshes' road" also constituted self-interested effort. We therefore disallow compensation for 2.00 hours of Crossman's work on this issue in 2007.

6.2. Flat 5% Administrative Fee

PacifiCorp objects to the Meyers, Nave law firm's assessment of a flat 5% "administrative fee" on its bill. We agree.

As we held in D.08-07-019, it is inappropriate to compensate the Mackintoshes for a flat 5% administrative fee assessed by their law firm. We do not allow an additional award for administrative overhead. *See, e.g.,* D.98-11-049, 1998 Cal. PUC LEXIS 805, *5.1.3 (“Professional fees assume overheads and are set accordingly. We therefore deny additional recovery for clerical work.”). We thus disallow the 5% fee assessed by the Mackintoshes’ counsel. This disallowance is \$2,134.25.

6.3. Excessive Filing Fees

PacifiCorp objects that the Mackintoshes have requested \$494.29 for recovery of “rush” filing fees. PacifiCorp states that these fees are excessive given the fact that the Commission has had an easy-to-use electronic filing system in place for over a year. The Commission began accepting electronically filed documents in September 2006. We agree that these fees were not reasonably incurred in light of the Commission’s electronic filing procedures and therefore disallow these expenses.

6.4. Intervenor Compensation Matters

PacifiCorp also contends that the Mackintoshes spent an excessive amount of time on preparing their intervenor compensation request and asks us to disallow a portion of this time. We agree. The Mackintoshes spent 107.60 hours on intervenor compensation matters – more than 40% of the total time (268.60 hours) requested here.

First, the Mackintoshes seek recovery for 22.30 hours for “assembling costs” associated with the compensation claim for paralegal Hammond East. The Mackintoshes fail to demonstrate the reasonableness of the many hours they claim to produce a spreadsheet of costs. The spreadsheet is an itemization of time billed to this case. It appears simply to be a print-out of the Meyers, Nave

timekeeping record for this case. We do not see how printing out contemporaneous time records prepared as part of the firm's normal timekeeping process could have taken more than 22.00 hours to accomplish. We therefore disallow this amount and all of East's time.⁵

PacifiCorp urges us to disallow compensation for the Mackintoshes' failure to comply with the Commission's Rules of Practice and Procedure when they filed a Motion for Protective Order and a reply brief. These activities took 3.80 hours of Crossman's time and 1.10 hour of Woodruff's time in 2007. We agree that as a matter of basic fairness, PacifiCorp should not have to pay for this error.

In addition, the Mackintoshes request compensation for 0.20 hours of Crossman's time spent on "Review of PUC Agenda" on January 29, 2008. They associate this activity with the preparation of the intervenor compensation claim. However, the task does not relate to this proceeding, so we disallow the time.

After the reductions discussed above, the remaining 80.20 hours are still excessive for a simple request for compensation like this one, especially because this is not the first request for compensation prepared by these intervenors. We reduce the authorized amount of time by two thirds and allow a total of 27.00 hours for compensation-related work.

⁵ PacifiCorp also objects to the amount of time the Mackintoshes' attorneys spent on their first request for compensation. Those objections are not timely, and we disregard them here. However, we did reduce the portion of the Mackintoshes' award attributable to preparation of the first request based on arguments PacifiCorp timely made at that juncture.

7. Hourly Rates

In D.08-07-019, we set 2007 hourly rates for some of the Mackintoshes' attorneys and paralegals. We use the same rates here, as follows:

Name	Rate
Brian Crossman	\$175.00
Sky Woodruff	\$270.00

For attorney Crossman's work in 2008, the Mackintoshes request a rate of \$205.00. Recently, the Commission issued D.08-04-010, setting attorney hourly rates for 2008. The decision allows rates of \$200.00-235.00 for attorneys with three to four years of experience. D.08-04-010, *mimeo.*, p. 8. Pursuant to these provisions, we adopt the \$205.00 requested 2008 rate for Crossman.

To establish paralegal East's hourly rate for his work in 2008, we apply the 3% cost of living adjustment to his 2007 rate of \$100.00 and adopt a 2008 rate of \$105.00.

The Mackintoshes also included in their timesheets hours of work of M. Kathleen Faubion and Patti McBride. However, the intervenors do not request compensation for Faubion's and McBride's work, so we take no action regarding these advocates.

8. 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 its participation. This showing assists us in determining the overall reasonableness of the request.

The rerouting of the transmission line did not result in any real cost savings, as the route PacifiCorp proposed and the route we adopted cost approximately the same amount. While it is difficult to place a value on the preservation of Hoy Valley, a pristine, spring filled area, preserving it surely was a “productive” endeavor. We find the Mackintoshes’ work was productive.

9. Direct Expenses

The itemized direct expenses submitted by the Mackintoshes include costs for copying, delivery, postage, printing, Lexis and Westlaw on-line services. With the exception of the rush delivery costs discussed in Section 6.3 of this decision, the cost breakdown included with the request shows the miscellaneous expenses to be commensurate with the work performed and reasonable. We grant the Mackintoshes \$391.38 in direct costs.

10. Award

As set forth in the tables below, we award the Mackintoshes the amount of \$31,637.76:

Work on EIR				
Meyers, Nave, Riback, Silver & Wilson	Year	Hours	Rate (\$)	Total (\$)
Attorneys				
Brian Crossman	2007	125.30	175.00	21,927.50
Sky Woodruff	2007	21.60	270.00	5,832.00
Sky Woodruff	2008	0.30	280.00	84.00
Sub-Total Work on EIR		147.20		27,843.50
Work on Proposed Decision				
Meyers, Nave, Riback, Silver & Wilson	Year	Hours	Rate (\$)	Total (\$)
Attorneys				
Brian Crossman	2007	3.80	175.00	665.00
Sky Woodruff	2007	0.30	270.00	81.00
Sub-Total Work on Proposed Decision		4.10		746.00
Work on Compensation Claim				
Meyers, Nave, Riback, Silver & Wilson	Year	Hours	Rate (\$)	Total (\$)
Attorneys				
Brian Crossman	2007	17.07	87.50	1,493.63
Brian Crossman	2008	4.40	102.50	451.00
Sky Woodruff	2007	4.83	135.00	652.05
Sky Woodruff	2008	0.43	140.00	60.20
Sub-Total Work on Compensation Claim		26.73		2,656.88
Direct Expenses:				
Legal Research (Westlaw / LexisNexis)				296.94
Copying Expenses				37.76
Travel Expenses				56.68
Sub-Total Direct Expenses:				391.38
Total Award				31,637.76
Difference Between Request and Award				14,005.29

PacifiCorp shall pay the award to the Mackintoshes within 30 days of issuance of this decision. Consistent with previous Commission decisions, PacifiCorp should also pay interest 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 April 20, 2008, the 75th day after the Mackintoshes filed their 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. The Mackintoshes' records should identify specific issues for which they 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.

11. Comments on Proposed Decision

This is an intervenor compensation matter. Ordinarily, we do not allow comments on such decisions; however, in view of the disallowances here, we allow a 30-day comment period for this decision. No party filed comments.

12. Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and Sarah R. Thomas is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. The Mackintoshes have satisfied all the procedural requirements necessary to claim compensation in this proceeding.

2. The Mackintoshes acted both out of self-interest and for a broader purpose. We award compensation because even though the Mackintoshes acted in part out of self-interest by preventing a transmission line from crossing their property, they also acted to preserve a scenic valley for other residents and travelers in the area.

3. The issue of PacifiCorp's right to entry regarding the Mackintoshes' property relates only to the Mackintoshes' interests.

4. The Mackintoshes' work on the issue of "construction of the Mackintoshes' road" constituted self-interested effort.

5. The Mackintoshes' request for \$494.29 for recovery of "rush" filing fees is excessive.

6. The Mackintoshes spent an excessive amount of time on preparing their intervenor compensation request.

7. The Mackintoshes made substantial contributions to D.07-12-018 as described herein.

8. The Mackintoshes request hourly rates that, as adjusted herein, are reasonable when compared to the market rates for persons with similar training and experience.

9. The Mackintoshes requested related expenses that, as adjusted herein, are reasonable and commensurate with the work performed, with the exceptions noted in this decision.

10. The total reasonable compensation is \$31,637.76.

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

Conclusions of Law

1. The Mackintoshes may receive compensation despite their late filing of the NOI.

2. The Mackintoshes meet the definition of a customer pursuant to Pub. Util. Code § 1802(b)(1)(A).

3. We should disallow compensation for purely self-interested efforts: PacifiCorp's right to entry on the Mackintoshes' property, and issues related to "construction of the Mackintoshes' road."

4. It is inappropriate to compensate the Mackintoshes for a flat 5% administrative fee assessed by their law firm. We do not allow an additional award for administrative overhead.

5. We should disallow compensation for "rush filing fees" since the Commission had an e-filing system in place during the relevant period that would have obviated the need for such fees.

6. We should disallow compensation for 2/3 of the time the Mackintoshes' attorneys spent on preparing their intervenor compensation request because such time was excessive.

7. The Mackintoshes have fulfilled the requirements of Pub. Util. Code §§ 1801-1812, which govern awards of intervenor compensation, and are entitled to intervenor compensation for their claimed expenses, as adjusted herein, incurred in making substantial contributions to D.07-12-018.

8. The Mackintoshes should be awarded \$31,637.76 for their contribution to D.07-12-018.

9. This order should be effective today so that the Mackintoshes may be compensated without further delay.

O R D E R

IT IS ORDERED that:

1. Don and Judy Mackintosh (the Mackintoshes) are awarded \$31,637.76 as compensation for their substantial contributions to Decision 07-12-018.

2. Within 30 days of the effective date of this decision, PacifiCorp shall pay the Mackintoshes the total amount of the 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 April 20, 2008, the 75th day after the filing date of the Mackintoshes' request for compensation, and continuing until full payment is made.

3. Application (A.) 05-12-011 and A.07-01-046 are closed.

This order is effective today.

Dated _____, at San Francisco, California.

APPENDIX

Compensation Decision Summary Information

Compensation Decision:		Modifies Decision? No
Contribution Decision(s):	D0712018	
Proceeding(s):	A0512011, A0701046	
Author:	ALJ Thomas	
Payer(s):	PacifiCorp	

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/ Disallowance
Don and Judy Mackintosh	February 5, 2008	\$45,643.04	\$31,637.76	No	Self-interest effort expenses, excessive hours, inefficient work, non-compensable expenses (administrative fees, rush delivery); adjusted hourly rates.

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Brian	Crossman	Attorney	Don and Judy Mackintosh	\$200.00	2007	\$175.00
Brian	Crossman	Attorney	Don and Judy Mackintosh	\$205.00	2008	\$205.00
Sky	Woodruff	Attorney	Don and Judy Mackintosh	\$270.00	2007	\$270.00
Sky	Woodruff	Attorney	Don and Judy Mackintosh	\$280.00	2008	\$280.00

(END OF APPENDIX)