

Decision 09-11-030 November 20, 2009

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Joint Application of San Diego Gas & Electric Company (U902G), Southern California Gas Company (U904G), and Pacific Gas and Electric Company (U39G) to Reallocate the Costs of Natural Gas Public Purpose Programs and Other Mandated Social Programs Among Customer Classes.

Application 07-12-006  
(Filed December 11, 2007)

**DECISION GRANTING INTERVENOR COMPENSATION TO  
CONSUMER FEDERATION OF CALIFORNIA FOR  
SUBSTANTIAL CONTRIBUTIONS TO DECISION 09-03-024**

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## APPENDIX

**DECISION GRANTING INTERVENOR COMPENSATION TO  
CONSUMER FEDERATION OF CALIFORNIA FOR  
SUBSTANTIAL CONTRIBUTIONS TO DECISION 09-03-024**

This decision awards Consumer Federation of California \$87,358.70 for its substantial contributions to Decision 09-03-024. This represents a decrease of \$37,502.80 or approximately 30% from the amount requested due to the excessive hours claimed; inconsistencies between the requested time claimed and supporting documents; and elimination of reimbursement for travel expenses. Today's award will be allocated to the affected utilities. This proceeding is closed.

**1. Background**

This proceeding was initiated to change the cost allocation methods currently being used by the utilities to recover their costs of public purpose programs (PPPs) with a single, unified equal percent of base revenue cost allocation method. The utilities currently have six PPPs being funded through surcharges on their gas rates. During the pendency of this proceeding, the establishment of two new PPPs was being considered in other proceedings.

A majority of the utilities recover the costs of their PPPs through an Equal Cents Per Therm cost allocation method.<sup>1</sup> In Decision (D.) 09-03-024, the Commission denied the application filed by San Diego Gas & Electric Company (SDG&E), Southern California Gas Company (SoCalGas), and Pacific Gas and Electric Company (PG&E) for authority to change the cost allocation methods by

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<sup>1</sup> The other cost allocation methods used by the utilities to recover the PPP costs are the direct benefit method and equal percent margin contribution method.

which their natural gas customers are charged for the costs of their PPPs to a single Equal Percent of Base Revenue cost allocation method.

The Utility Reform Network, A World Institute for Sustainable Humanity, Aglet Consumer Alliance, Disability Rights Advocates, and Consumer Federation of California (CFC) opposed the application.

## **2. Requirements for Awards of Compensation**

The intervenor compensation program, set forth in Pub. Util. Code §§ 1801-1812,<sup>2</sup> 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).)

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<sup>2</sup> All subsequent statutory references are to the Public Utilities Code unless otherwise indicated.

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.

In a proceeding in which a PHC is held, the intervenor must file and serve its NOI between the date the proceeding was initiated until 30 days after the PHC is held. (Rule 17.1(a)(1).) The PHC in this matter was held on February 28, 2008. CFC timely filed its NOI on April 1, 2008.

In its NOI, CFC asserted financial hardship. On April 23, 2008, the Administrative Law Judge (ALJ) ruled that CFC meets the financial hardship condition pursuant to § 1802(g).

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. (§ 1802(b)(1)(A))

through (C).) On April 23, 2008, the ALJ issued a ruling finding that CFC is a customer pursuant to § 1802(b)(1)(C).

Regarding the timeliness of the request for compensation, CFC filed its request for compensation on May 14, 2009, within 60 days of D.09-03-024 being issued.<sup>3</sup> No party opposed the request. In view of the above, we affirm the ALJ's ruling and find that CFC 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

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<sup>3</sup> D.09-03-024 was issued on March 17, 2009.

contributed. It is then a matter of judgment as to whether the customer's presentation substantially assisted the Commission.<sup>4</sup>

With this guidance in mind, we turn to the claimed contributions CFC made to the proceeding.

### **3.1. Categorization of the application and the need for hearings**

CFC argued the application should be categorized as "quasi-legislative" because the application sought to establish policy "affecting an entire industry." CFC further contended that evidentiary hearings were necessary to resolve factual disputes. Although the proceeding was categorized as ratesetting, D.09-03-024 determined that evidentiary hearings were necessary. Information and evidence obtained during the hearings materially aided the Commission in its decision. Thus, CFC's efforts advocating for hearings qualify as a substantial contribution.

### **3.2. Allocation Method**

CFC opposed replacing the current allocation method used, Equal Cents Per Therm with unified Equal Percent of Base Revenue cost allocation. CFC argued that the current allocation method fairly spreads the cost of PPPs to customers in proportion to the amount of gas they use. D.09-03-024 concluded that cost allocations of PPPs should be fair and equitable. D.09-03-024 concluded that cost should be "allocated to customer classes in a manner that appropriately assigns costs relative to the expected share of program benefits."<sup>5</sup> The Equal Percent of Base Revenue cost allocation method precludes consideration of an

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<sup>4</sup> D.98-04-059, 79 CPUC2d 628 at 653.

<sup>5</sup> D.09-03-024 at 18.

individual program's purpose and intended benefit. Although the D.09-03-024 denied Applicants' request to change from Equal Cents Per Therm method to Equal Percent of Base Revenue allocation method consistent with CFC's position, the decision relied on the more detailed and extensive contributions of other intervenors to make its decision.<sup>6</sup> Therefore, we find that while D.09-03-024 affirmed CFC's position, CFC failed to make a substantial contribution to this issue.

### **3.3. Impact of Allocation Method on California Business Climate**

CFC argued there was no evidence showing that commercial and industrial customers were adversely affected by the growing charges for PPPs. CFC maintained Applicants failed to show businesses had shut down, reduced operations or were considering leaving the state because of the cost of PPPs.<sup>7</sup> CFC unsuccessfully attempted to obtain the names of these customers through data requests, three motions to compel, and during cross-examination.<sup>8</sup> The time expended by CFC's on these motions was not a substantial contribution.

However, CFC strongly advocated that public participation hearings were necessary to obtain additional information and evidence about the business climate in California. CFC contended that, contrary to Applicants' assertion,

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<sup>6</sup> D.09-03-024 specifically cited the contributions of The Utility Reform Network and the Division of Ratepayer Advocates in identifying the flaws in Applicants' contentions. See D.09-03-024 at 16-17.

<sup>7</sup> CFC filed motions to compel the Applicants, Agricultural Energy Consumers Association, and California Manufacturers and Technology Association to provide specific customer information. ALJ Galvin ruled against CFC in all instances.

<sup>8</sup> CFC billed over 25 hours to its work on the three Motions to Compel.

energy costs were merely one component of business costs and that the costs of PPPs were not making it more likely that business would leave California.<sup>9</sup> Public participation hearings were held in Compton, San Diego, Oakland, and Bakersfield.<sup>10</sup> Business customers' feedback, obtained during the public participation hearings and from evidentiary hearings, showed natural gas costs have a direct impact on the economic viability of food processors,<sup>11</sup> but Applicants failed to show that reallocation of the costs of public participation programs would improve the business climate in California.<sup>12</sup> The Commission concluded that there was no conclusive evidence that the costs of PPPs adversely impacted the California economy or competitiveness of California businesses.<sup>13</sup> Therefore, we find that CFC made a substantial contribution to D.09-03-024 on this issue.

#### **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

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<sup>9</sup> D.09-03-024 at 12 and 20.

<sup>10</sup> CFC and PG&E were directed by the ALJ to help coordinate the public participation hearings by coordinating proposed dates and locations for the hearings.

<sup>11</sup> D.09-03-024 at 11.

<sup>12</sup> D.09-03-024 at 21.

<sup>13</sup> *Id.*

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

CFC actively avoided duplication with other parties by working with the other consumer groups to jointly address issues where their positions were in accord with each other. When CFC filed separately, it generally took positions that provided unique contributions enriching the Commission’s deliberations and contributing to the proceeding.

On the issues where CFC’s position coincided with that of other parties, we find that only limited duplication occurred, as discussed above, since CFC’s recommendations or supporting argument materially supplemented, complimented, or contributed to the presentation of those parties. We conclude that it would have been virtually impossible to avoid some duplication among these parties, and, therefore, we decline to reduce the award further for unnecessary duplication of the effort.

### **5. Reasonableness of Requested Compensation**

CFC requests \$124,861.50 for its participation in this proceeding, as follows:

<b>Work on Proceeding</b>				
<b>Attorney/Staff</b>	<b>Year</b>	<b>Hours</b>	<b>Hourly Rate</b>	<b>Total</b>
Alexis Wodtke	2008	343.4	\$350.00	\$120,190.00
Alexis Wodtke	2009	5.1	\$350.00	\$1,785.00
<b>Subtotal:</b>		<b>348.5</b>		<b>\$121,975.00</b>

### Preparation of NOI and Compensation Request

Attorney/Staff	Year	Hours	Hourly Rate	Total
Alexis Wodtke	2008	2.0	\$175	\$350.00
Alexis Wodtke	2009	13.4	\$175	\$2,345.00
<b>Subtotal</b>		<b>15.4</b>		<b>\$2,695.00</b>
<b>Subtotal Hourly Compensation:</b>				<b>\$124,670.00</b>
<b>Expenses</b>				<b>\$191.50</b>
<b>Total Requested Compensation</b>				<b>\$124,861.50</b>

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 resulted in a substantial contribution. Our assessment of the reasonableness of CFC's claim is discussed below.

#### 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.

CFC documented its claimed hours by presenting a daily breakdown of the hours of its attorney, including a brief description of each activity. While CFC did make some contribution, we conclude that the total size of CFC's claim appears somewhat excessive relative to the extent of its contribution. CFC seeks compensation for all of the time that it spent on participation in the proceeding, including time spent advocating positions that the Commission ultimately rejected. For example, CFC sought specific customer information from the applicants, Agricultural Energy Consumers Association, and California Manufacturers and Technology Association. ALJ Galvin denied CFC's motions

to compel these parties to divulge that information and similarly denied CFC's alternative motions to strike their testimony as uncorroborated hearsay should the information not be divulged.<sup>14</sup> In addition, CFC spent time during evidentiary hearings trying to obtain the information and was similarly unsuccessful in obtaining the information sought.

CFC requests compensation for 16.4 hours to summarize the public participation hearing transcripts. This expenditure of time appears excessive, particularly in combination with the subsequent 43.6 hours spent researching and drafting CFC's brief that included information obtained from the public participation hearings.

CFC also requests compensation for work that is clerical or administrative. For example, CFC requests compensation for 5.2 hours to "develop a summary of others' briefs, outline and begin drafting the reply brief." This seems excessive in light of the subsequent 20 hours spent drafting, revising, and finalizing CFC's reply brief. In addition, CFC requested compensation for time spent sending data requests and letters to other parties in the proceeding. We also find small inconsistencies between the time CFC reports for attending certain meetings in San Francisco in 2008, based on the hours shown on the parking receipts for the days of the meetings.<sup>15</sup> We conclude that while CFC should receive some compensation for its contributions, its claim should be reduced somewhat to recognize excessive claim amounts, hours spent on positions that were rejected,

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<sup>14</sup> CFC billed over 25 hours of time for the three motions to compel.

<sup>15</sup> One example is that CFC billed 2.6 hours to attend the PHC on February 28, 2008. CFC provided a parking receipt for the same date but that receipt charged for only 1.5 hours of parking.

and time spent on clerical tasks which do not constitute a “substantial contribution.”

The supporting documentation provided in CFC’s request is not sufficiently detailed to produce a precise assessment of disallowances for each discrete item.<sup>16</sup> Therefore, we shall instead apply a uniform percentage disallowance to CFC’s overall claim of hours. This approach is in keeping with our practice in past intervenor compensation claims, we have disallowed costs based upon a range of percentages.<sup>17</sup> In a number of instances, we have applied disallowance percentages between 10% and 33%. Given the circumstances related to this particular situation, CFC made a substantial contribution in two out of three areas, as discussed above in Section 3, we conclude that CFC’s total claim exceeds a reasonable limit. Accordingly, we shall apply a disallowance equal to 30% of CFC’s total claimed compensation costs. After the reductions and disallowances we make to this claim as discussed above, the remainder of CFC’s hourly breakdown reasonably supports its claim for total hours.

## **5.2. Intervenor Hourly Rates**

We next take into consideration whether the claimed fees and costs are comparable to the market rates paid to advocates having comparable training and experience and offering similar services. CFC seeks an hourly rate of \$350

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<sup>16</sup> For example, one of CFC’s billing entries reads “Talk to DisabRA re PPP hearings; continue review of SCE/SDG&E responses to data requests and letter requesting supplemental responses & send; draft and send letter to ALJ re dates & times for public participation.”

<sup>17</sup> D.09-08-024.

for Alexis Wodtke, for work performed in 2008/2009. We previously approved this rate for 2008 in D.09-07-015 and for 2009 in Resolution ALJ-235. We adopt it here.

### **5.3. Direct Expenses**

CFC itemized direct expenses include the following:

<b>Printing &amp; Photocopying</b>	\$89.70
<b>Travel</b>	\$101.80
<b>Total Expenses</b>	\$191.50

The expenses for printing and photocopying CFC's exhibits are reasonable and commensurate with the work performed. Our practice is to disallow expenses associated with routine travel to attend meetings in San Francisco. For example, in D.07-05-043 we held:

We . . . deny compensation for hours and expenses for consultant travel and attorney parking. Absent extenuating circumstances, it is not reasonable to award compensation for individuals' time and expenses to commute from their homes to attend Commission hearings, or parking expenses. D.07-05-043 at 15.

CFC has not claimed extenuating circumstances. We find it is not reasonable to award compensation for travel expenses claimed by CFC to attend Commission hearings.

### **6. Productivity**

D.98-04-059 directed customers to demonstrate productivity by assigning a reasonable dollar value to the benefits of their participation to ratepayers. (D.98-04-059 at 34-35.) 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.

CFC states its participation was productive and prevented residential customers from shouldering an additional \$90 million cost of the public participation programs currently being paid for by business customers. CFC's efforts, along with that of other consumer groups, prevented a change in the allocation method that would have shifted those costs to residential customers. Our own analysis of CFC's claim of productivity is outlined in Section 5.

## 7. Award

As set forth in the table below, we award CFC \$87,358.70.

<b>Work on Proceeding</b>				
<b>Attorney/Staff</b>	<b>Year</b>	<b>Hours</b>	<b>Hourly Rate</b>	<b>Total</b>
	2008	343.4	\$350	\$120,190.00
	2009	5.1	\$350	\$1,785.00
<b>Subtotal:</b>		<b>348.5</b>		<b>\$121,975.00</b>

<b>Preparation of NOI and Compensation Request</b>				
<b>Attorney/Staff</b>	<b>Year</b>	<b>Hours</b>	<b>Houly Rate</b>	<b>Total</b>
	2008	2.0	\$175	\$350.00
	2009	13.4	\$175	\$2,345.00
<b>Subtotal:</b>				<b>\$2,695.00</b>

### **CALCULATION OF FINAL AWARD**

Total Requested Compensation	\$124,670.00
Minus 30% Reduction	(\$37,401.00)
Adjusted Compensation Award	\$87,269.00
Adjusted Expenses	\$89.70
<b>TOTAL AWARD</b>	<b>\$87,358.70</b>

Pursuant to § 1807, we order SDG&E, SoCalGas, and PG&E 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) commencing on July 28, 2009 the 75<sup>th</sup> day after CFC 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. CFC'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. Accordingly, as provided by Rule 14.6(c)(6) of the Commission's Rules of Practice and Procedure, we waive the otherwise applicable 30-day comment period for this decision.

#### **9. Assignment of Proceeding**

Timothy Alan Simon is the assigned Commissioner, and Michael J. Galvin is the assigned ALJ in this proceeding.

#### **Findings of Fact**

1. CFC has satisfied all the procedural requirements necessary to claim compensation in this proceeding.
2. CFC made a substantial contribution to D.09-03-024 as described herein.
3. CFC requested hourly rates for its representatives that are reasonable when compared to the market rates for persons with similar training and experience.

4. CFC requested related printing expenses that are reasonable and commensurate with the work performed.
5. CFC requested related expenses for travel that are not compensable.
6. The total of the reasonable compensation is \$87,358.70.
7. Appendix to this decision summarizes today's award.

### **Conclusions of Law**

1. CFC has fulfilled the requirements of §§ 1801-1812, which govern awards of intervenor compensation, and is entitled to intervenor compensation for its claimed expenses, as adjusted herein, incurred in making substantial contributions to D.09-03-024.
2. CFC should be awarded \$87,358.70 for its contribution to D.09-03-024.
3. This order should be effective today so that CFC may be compensated without further delay.
4. This proceeding should be closed.

## **O R D E R**

### **IT IS ORDERED** that:

1. Consumer Federation of California is awarded \$87,358.70 as compensation for its substantial contributions to Decision 09-03-024.
2. Within 30 days of the effective date of this decision, San Diego Gas & Electric Company, Southern California Gas Company, and Pacific Gas and Electric Company shall pay claimant 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 July 28, 2009,

the 75<sup>th</sup> day after the filing date of claimant's request for compensation, and continuing until full payment is made.

3. The comment period for today's decision is waived.
4. This proceeding is closed.

This order is effective today.

Dated November 20, 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**

<b>Compensation Decision:</b>	D0911030	<b>Modifies Decision?</b> N
<b>Contribution Decision(s):</b>	D0903024	
<b>Proceeding(s):</b>	A0712006	
<b>Author:</b>	ALJ Michael J. Galvin	
<b>Payer(s):</b>	San Diego Gas & Electric Company, Southern California Gas Company, and Pacific Gas and Electric Company	

**Intervenor Information**

<b>Intervenor</b>	<b>Claim Date</b>	<b>Amount Requested</b>	<b>Amount Awarded</b>	<b>Multiplier?</b>	<b>Reason Change/Disallowance</b>
Consumer Federation of California	May 14, 2009	\$124,861.50	\$87,358.70	No	Failure to discount travel time; excessive hours; inconsistencies between requested time and supporting documents.

**Advocate Information**

<b>First Name</b>	<b>Last Name</b>	<b>Type</b>	<b>Intervenor</b>	<b>Hourly Fee Requested</b>	<b>Year Hourly Fee Requested</b>	<b>Hourly Fee Adopted</b>
Alexis	Wodtke	Attorney	Consumer Federation of California	\$350	2008	\$350
Alexis	Wodtke	Attorney	Consumer Federation of California	\$350	2009	\$350