

Decision 10-05-017 May 6, 2010

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company and PG&E Corporation for Limited Exemption from Rule V.E of the Commission's Affiliate Transaction Rules (U39M).

Application 08-07-014
(Filed July 9, 2008)

DECISION GRANTING INTERVENOR COMPENSATION TO L. JAN REID FOR SUBSTANTIAL CONTRIBUTION TO DECISIONS 08-09-013 AND 09-09-021

1. Summary

This decision awards L. Jan Reid \$14,097.93 for his substantial contributions to Decisions 08-09-013 and 09-09-021. This represents a decrease of \$2,441.08 or 14.8% from the amount requested due to excessive hours and non-compensable (clerical) expenses. Today's award will be allocated to the affected utility. This proceeding is closed.

2. Background

This proceeding was initiated by the request of Pacific Gas and Electric Company (PG&E) and PG&E Corporation for a limited exception from Rule V.E of the California Public Utilities Commission Affiliate Transaction Rules, to allow Peter Darbee, PG&E Corporation's Chairman of the Board, Chief Executive Officer (CEO) and President to serve as PG&E's President and CEO, while the Companies continued to share regulatory affairs, lobbying, and legal services, for as long as PG&E Corporation did not have significant non-Commission-regulated subsidiaries. The applicants concurrently filed a

motion for an interim relief. Decision (D.) 08-09-013 granted the motion pending final disposition of the application. D.08-12-009 extended the temporary authorization for the waiver. On July 2, 2009, the applicants filed a motion to terminate the application based upon changed circumstances that rendered the matter moot. As the applicants explained, on July 1, 2009, PG&E's Board of Directors voted to appoint Christopher P. Johns to serve as PG&E's President effective August 1, 2009. With the appointment of Johns, Darbee, while continuing to serve as PG&E Corporation's Chairman of the Board, CEO, and President, ceased to be a key PG&E officer under the Affiliate Transaction Rule V.E. D.09-09-021 granted the applicants' motion.

L. Jan Reed actively participated in the proceeding from its inception and now claims compensation for his contributions to D.08-09-013, D.08-12-009, and D.09-09-021 under the Commission's intervenor compensation program

3. Requirements for Awards of Compensation

The intervenor compensation program, which is set forth in Pub. Util. Code §§ 1801-1812,¹ 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

¹ All subsequent statutory references are to the Public Utilities Code unless otherwise indicated.

- 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. To seek a compensation award, 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 1-3 above are combined and a separate discussion of Items 4-6 follows.

3.1. 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 September 16, 2008. L. Jan Reid timely filed his NOI on October 14, 2008.

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) – (C).)

In his NOI, L. Jan Reid asserts he is a customer under § 1802(b)(1)(A). L. Jan Reid states he receives electric and gas service from PG&E at his residence address in Northern California and, although he represents himself in this proceeding, his participation will benefit all residential customers of PG&E. The NOI describes Reid’s own economic interests in the proceeding and the issues on which he plans to participate to the benefits of other PG&E’s customer. In his protest to the application, Reid states:

I receive electric and gas service from PG&E at 3185 Gross Road, Santa Cruz, California, 95062. I believe that if the Commission grants PG&E's application without further review, the appointment of Mr. Darbee as CEO of PG&E Company may lead to an increase in PG&E Company’s energy procurement costs, which would harm all PG&E Company customers.

With Reid’s interest in the proceeding arising primarily from his role as a customer of the utility and also from the broader interests of other customers, Reid’s status falls within the characteristics of the § 1802(b)(1)(A). The April 15, 2008 ruling in Application (A.) 07-12-021 concluded that Reid was a customer under the provisions of 1802(b)(1)(A). Since Reid’s customer status has not changed, we reaffirm Reid’s customer status.

In his NOI, L. Jan Reid asserted financial hardship based on the rebuttable presumption principle, pursuant to § 1804(b)(1). The Commission found L. Jan Reid met the § 1802(g) requirements in A.07-12-021 within one year of the

commencement of this proceeding (Administrative Law Judge Ruling dated April 15, 2008). That finding extends to this proceeding under § 1804(b)(1).

Regarding the timeliness of the request for compensation, L. Jan Reid filed it on November 6, 2009, within 60 days of D.09-09-021 being issued.² No party opposed the request.

In view of the above, we find that L. Jan Reid has satisfied all the procedural requirements necessary to make its request for compensation in this proceeding.

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, 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

² D.09-09-021 issued on September 11, 2009.

then a matter of judgment as to whether the customer's presentation substantially assisted the Commission.³

With this guidance in mind, we turn to L. Jan Reid's claimed contributions.

Reid asserts he contributed to the following three matters considered in this proceeding: a temporary waiver of Affiliate Rule V.E, extension of the temporary waiver, and withdrawal of the application.

Reid stated that his July 18, 2008 response to PG&E's Motion for Interim Decision Granting Limited Temporary Waiver of Affiliate Transaction Rule V.E contributed to the temporary waiver issue. L. Jan Reid opposed the motion: among other things, he warned the Commission of the serious conflict of interest that may occur if PG&E purchases energy or capacity from a company partly owned by PG&E Corporation via the investment relationship, which would create profit opportunities for PG&E Corporation at ratepayer expense. (Reid's July 18, 2008 response at 3.) Reid's protest to the application also states:

A serious conflict of interest may occur if PG&E Company purchases energy or capacity from a company which is partly owned by PG&E Corp. via the investment relationship. In that case, PG&E Company may be creating profit opportunities for PG&E Corp. at ratepayer expense.

It is clear that Affiliate Rule V.E is needed to protect ratepayer interests in this instance. Therefore, the Commission should not waive Affiliate Rule V.E when it processes the instant application. (Reid's July 18, 2008 protest to the application at 4.)

Reid claims D.08-09-013 addressed the conflict of interest issue by providing, as follows:

³ D.98-04-059, 79 CPUC2d 628 at 653.

PG&E's Rule II.B affiliates must not expand their existing activities or enter into new commitments throughout the duration of the temporary waiver, and no new holding company capital investment commitments shall be undertaken and no new holding company subsidiaries shall be formed during the waiver period. (D.08-09-013, Ordering Paragraph 1(d) at 15.)

On October 16, 2008, PG&E, on behalf of all active parties, requested an extension of the temporary waiver granted in D.08-09-013. D.09-12-009 granted the request. Reid asserts that since he was one of the active parties requesting the extension, his participation in this matter contributed to the decision.

Finally, in the matter of the withdrawal of the application, Reid refers to his response to the motion for interim relief and his protest to the application where he explained:

Additionally, there is no good reason why Mr. Darbee should hold both positions. PG&E Company can appoint an interim CEO who is employed only by PG&E Company. The interim appointment could last until PG&E Company chooses a permanent CEO who is not employed by PG&E Corp. (July 18, 2008 protest and July 18, 2008 response to PG&E's motion for the interim relief at 5.)

Reid asserts that by approving the applicants' request to close the proceeding, Commission reached the same result that he sought in the above argument.

D.09-09-021, Ordering Paragraph 2 at 5-6 concluded:

Because upon his appointment, Mr. Johns became the functional equivalent of the Utility Chief Executive Officer, PG&E and PG&E Corporation no longer formally nor functionally share a Chief Executive Officer. As a result, with the appointment of Mr. Johns as President of the utility, both companies are now in compliance with Rule V.E.

Reid believes his participation provided substantial contributions to D.08-09-013, D.08-12-009, and D.09-09-021.

We agree, in part, with Reid's description of his contributions to this proceeding. Reid filed the following documents on the merits of the application:

Date	Document
7/18/08	Protest
7/18/08	Response to PG&E Motion for Interim Decision Granting Limited, Temporary Waiver of Affiliate Transaction Rule V.E
8/25/08	Comments on proposed decision (PD) granting motion for temporary waiver of Affiliate Transaction Rule V.E
1/20/09	Opening Brief (jointly with PG&E and PG&E Corporation)
2/2/09	Reply Brief (jointly with PG&E and PG&E Corporation)

Initially, Reid opposed the application and the applicants' motion for a temporary waiver of Affiliate Transaction Rule V.E.⁴ Among his concerns was a serious conflict of interest that may occur if PG&E purchases energy or capacity from a company which is partly owned by PG&E Corporation via the investment, and that PG&E may be creating profit opportunities for PG&E Corporation at ratepayer expense. (Protest at 4, Response to PG&E's motion at 3.) Reid opposed the PD granting the motion, contending that if adopted, that decision would adversely impact ratepayers, and that there was potentially a serious conflict of interest between PG&E and PG&E Corporation. (Reid's comments on the proposed decision at 2-3.) D.08-09-013 discussed these concerns.

⁴ Oppositions to the motion were filed by several other parties, including The Utility Reform Network (TURN), Division of Ratepayer Advocates (DRA), and jointly California Farm Bureau Federation and California Large Energy Consumers Association.

D.08-09-013 granted the temporary waiver of Rule V.E, subject to conditions set forth in that decision, for a limited period not to exceed 120 days from the effective date of D.08-09-013, or upon the adoption of a final decision. Although Reid's position did not prevail, we find that he contributed to this issue because his argument helped the Commission to design strict safeguards preventing a conflict of interest and adverse risk to ratepayers that could occur as a result of the temporary waiver of Rule V.E. The Commission agreed with parties that the limited exemption sought in the application raised important questions that would require careful consideration in the next phase of the proceeding.

After the adoption of D.08-09-013, a PHC was held, a Ruling Providing Schedule and Scoping Memo issued, and discovery conducted. Multiple parties, including Reid, asked the Commission to extend the schedule to provide additional time to prepare testimony. As a condition to the schedule extensions, the parties agreed to an extension of the temporary waiver. D.08-12-009 granted the extensions: "... in view of the extensions in the procedural schedule that have been authorized, it is appropriate to extend the duration of the temporary waiver from Rule V.E to continue until a final decision on the application is issued" (D.08-12-009 at 2). Reid's participation on this issue was directed at the procedural convenience to have more time to prepare his testimony and did not involve a work on the merits. We disallow Reid's time spent on this matter (0.1 hour)⁵ since it did not contribute to this proceeding.

⁵ Request at 14 (allocation of professional time by major issue).

In November 2008, Reid negotiated a separate settlement agreement (attached to the applicants' rebuttal testimony) with the applicants. The agreement addressed key issues of the proceeding as well as resolved the applicants' differences with Reid (*see*, Ruling of December 30, 2008 at 2-3). In his testimony of December 4, 2008, Reid urged the Commission to approve the settlement. He argued that the settlement contained protections that would provide significant benefits to PG&E ratepayers and constitute a significant improvement over the current regulatory system. (Reid's testimony at 4.)

Subsequently, PG&E, PG&E Corporation and L. Jan Reid filed joint opening and reply briefs urging the Commission to grant the application as modified by the settlement agreement and arguing against the positions of non-settling intervenors, including TURN, DRA, and Independent Energy Producers Association (Opening Brief at 8-13; Reply Brief at 1-12).

Although D.09-09-021 resolves the matter procedurally rather than substantively, Reid attempts to establish that his input influenced the decision in some substantive rather than procedural way. Reid refers to his response to the motion for an interim relief where he explained that there was no good reason for Darbee to hold both positions and suggests that PG&E could appoint an interim CEO who is employed only by PG&E and would serve until PG&E chooses a permanent CEO (Response at 5). Reid asserts that since Johns is not an employee of PG&E Corporation, and is a functional equivalent of CEO of PG&E, the result Reid initially sought was eventually established by the Commission when it granted PG&E's motion to close the proceeding. (Request at 9.) In fact, Reid is trying to demonstrate that he had control over the closure of the proceeding. We recognize the fact that no decision on the merits of the application was adopted.

The Commission in its past decisions awarded intervenor compensation in the absence of a decision on the merits.⁶ For example, in D.06-06-026, we stated that to deny compensation because the proceeding was closed for reasons beyond the intervenor's control would be "unfair, inconsistent with the intent of the intervenor compensation statutes, and either discourage future participation or create an inappropriate incentive for intervenors to champion continued litigation" (D.06-06-026 at 5-6). Here, D.09-09-021 granted the applicants' request to terminate the proceeding without further action because, in view of subsequent events, the application has become moot. Consistent with our policy, we conclude that Reid's request should be granted.

5. 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.

Reid participated in the proceeding in a manner that did not repeat the work of other parties. Reid represented customer interests that would otherwise be underrepresented in this proceeding. He and TURN were the only active parties that represented residential and small commercial customers, and DRA represented the interests of all customers. To avoid duplication with TURN and

⁶ For example, D.02-08-061, D.02-07-030, or D.06-06-026.

DRA, Reid conferred with these parties during this proceeding, as evidenced by Reid's timesheet. We also note that Reid was the only party who negotiated and entered into a settlement agreement with the applicants.

6. Reasonableness of Requested Compensation

L. Jan Reid requests \$16,539.00 for his participation in this proceeding, as follows:

Work on Proceeding				
Intervenor	Year	Hours	Hourly Rate	Total
L. Jan Reid	2008	80.20	\$185	\$14,837.00
L. Jan Reid	2009	9.20	\$185	\$1,702.00
Total Requested Compensation				\$16,539.00

Reid does not claim compensation for his time spent preparing the NOI, request for intervenor compensation, and for his direct expenses.

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. The issues we consider to determine reasonableness are discussed below.

6.1. 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. Reid 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 have but a few concerns.

Considering the nature of Reid's protest and response to PG&E's motion, we believe that approximately 22.50 hours of work on these documents is excessive: they repeat, in general, each other, and Reid's position presented there did not involve a time-consuming research or analysis. To come up with the reasonable amount of time required to prepare documents of the same complexity and length, we reduce Reid's hours by 15% or 3.35 hours.

We find unreasonable spending approximately 18.90 hours on writing Reid's testimony. This four-page document repeats Reid's original position regarding the application, summarizes the PG&E/Reid settlement, and requests its approval. To reflect hours reasonably required to prepare Reid's testimony, we reduce his time spent on this task by 50% or 9.50 hours.

We noticed instances of clerical tasks, which we do not compensate (sending documents on October 9 and 22, November 3 and 7, and December 3, 2008, and January 16, 2009). The timesheet combines these tasks with professional tasks. We assume that a clerical task required a minimum of 5 minutes, and disallow the total of 30 minutes (5 minutes x 6 tasks), accordingly.

6.2. Intervenor Hourly Rates

Reid requests and we approve, an hourly rate of \$185.00 for his work in 2008 and 2009, the same rate we adopted in D.09-11-027.

7. 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.

Reid indicates that he contributed to the proceeding in a manner that was productive and will result in benefits to ratepayers that exceed the costs of participation. Reid states that if the Commission would grant all of the authority sought in the application, and it had resulted in an increase of just \$1/megawatt hour (MWH) for an electricity plant that produced 40,000 MW of electricity annually, ratepayers would have to pay an additional \$40,000 annually or over twice the compensation Reid requests in this proceeding.

We also note that a conclusion of the proceeding without a full-blown litigation saves litigation costs. Reid's participation, from this angle, was productive, regardless of whether or not he contributed to the actual procedural closure, since Reid reached a settlement with the applicants.

8. Award

As set forth in the table below, we award L. Jan Reid \$14,097.93.

Work on Proceeding				
Intervenor	Year	Hours	Hourly Rate	Total
L. Jan Reid	2008	67.01	\$185	\$12,395.93
L. Jan Reid	2009	9.20	\$185	\$1,702.00
TOTAL AWARD		76.21		\$ 14,097.93

Pursuant to § 1807, we order 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 January 20, 2010, the 75th day after L. Jan Reid filed his 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. L. Jan Reid'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.

9. 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.

10. Assignment of Proceeding

John Bohn is the assigned Commissioner, and Thomas R. Pulsifer is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. L. Jan Reid has satisfied all the procedural requirements necessary to claim compensation in this proceeding.
2. L. Jan Reid has met the customer status and financial hardship requirements rendering him eligible to claim intervenor compensation in this proceeding.
3. L. Jan Reid made substantial contributions to D.08-09-013 and D.09-09-021, as described herein.
4. L. Jan Reid requested hourly rates that are reasonable when compared to the market rates for persons with similar training and experience.
5. The total of the reasonable compensation is \$14,097.93.
6. Appendix to this decision summarizes today's award.

Conclusions of Law

1. L. Jan Reid has fulfilled the requirements of §§ 1801-1812, which govern awards of intervenor compensation, and is entitled to intervenor compensation for his claimed expenses, as adjusted herein, incurred in making substantial contributions to D.08-09-013 and D.09-09-021.

2. L. Jan Reid should be awarded \$14,097.93 for his contributions to D.08-09-013 and D.09-09-021.

3. This order should be effective today so that L. Jan Reid may be compensated without further delay.

4. This proceeding should be closed.

O R D E R

IT IS ORDERED that:

1. L. Jan Reid is awarded \$14,097.93 as compensation for his substantial contributions to Decision (D.) 08-09-013 and D.09-09-021.

2. Within 30 days of the effective date of this decision, Pacific Gas and Electric Company shall pay L. Jan Reid 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 January 20, 2010, the 75th day after the filing date of L. Jan Reid's request for compensation, and continuing until full payment is made.

3. Application 08-07-014 is closed.

This order is effective today.

Dated May 6, 2010, at San Francisco, California.

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
TIMOTHY ALAN SIMON
NANCY E. RYAN
Commissioners

APPENDIX

Compensation Decision Summary Information

Compensation Decision:	D1005017	Modifies Decision? No
Contribution Decision(s):	D0809013, D0909021	
Proceeding(s):	A0807014	
Author:	ALJ Pulsifer	
Payer:	Pacific Gas and Electric Company	

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
L. Jan Reid	11/6/09	\$16,539.00	\$14,097.93	No	Excessive hours, non-compensable costs (clerical)

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
L. Jan	Reid	Expert	L. Jan Reid	\$185	2008	\$185
L. Jan	Reid	Expert	L. Jan Reid	\$185	2009	\$185

(END OF APPENDIX)