

Decision 11-04-028 April 14, 2011

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the Commission's Own Motion to Develop Standard Rules and Procedures for Regulated Water and Sewer Utilities Governing Affiliate Transactions and the Use of Regulated Assets for Non-Tariffed Utility Services (formerly called Excess Capacity)

Rulemaking 09-04-012
(Filed April 16, 2009)

**DECISION GRANTING INTERVENOR COMPENSATION
TO CONSUMER FEDERATION OF CALIFORNIA FOR SUBSTANTIAL
CONTRIBUTION TO DECISION 10-10-019**

This decision awards Consumer Federation of California \$80,185 for substantial contribution to Decision 10-10-019. This represents a decrease of \$10,360 or 11% from the amount requested due to excessive hours. Today's award payment will be allocated to the affected utilities.

1. Background

Before this Rulemaking began, six of the nine Class A water utilities had authorized affiliate transaction rules in place, and each utility's set of rules was unique. Over the previous 25 years, the Commission adopted affiliate transaction rules for the following Class A water utilities:

Utility Name	Decision Number
San Jose Water Company	85-06-023
California Water Service Company	97-12-011
Golden State Water Company	98-06-068
California-American Water Company	02-12-068
Valencia Water Company	04-01-051
Park Water Company	04-06-018/06-01-019

Decision (D.) 10-10-019 adopted standard rules for all Class A and B water and sewer utilities¹ regarding affiliate transactions and the use of regulated assets and personnel for non-tariffed utility products and services.

Before D.10-10-019, some water utilities operated under affiliate transaction rules adopted in Commission decisions approving applications to form holding companies. In those cases, the rules differed from case to case. Other water utilities had few or no affiliate transaction rules in place. The affiliate transaction rules adopted in D.10-10-019 provide consistent and understandable rules for all subject water and sewer utilities.

The newly adopted rules in D.10-10-019 address our goals of protecting ratepayers, ensuring the financial health of the utility, and preventing anti-competitive behavior in the competitive marketplace.

2. Requirements for Awards of Compensation

The intervenor compensation program set forth in Pub. Util. Code §§ 1801-1812,² 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

¹ All water and sewer utilities with 2,001 or more service connections.

² All subsequent statutory references are to the Public Utilities Code unless otherwise indicated.

- prehearing conference (PHC), pursuant to Rule 17.1 of the Commission's Rules of Practice and Procedure (Rules), or at another appropriate time that we specify. (§ 1804(a).)
2. The intervenor must be a customer or a participant representing consumers, customers, or subscribers of a utility subject to our jurisdiction. (§ 1802(b).)
 3. The intervenor must file and serve a request for a compensation award within 60 days of our final order or decision in a hearing or proceeding. (§ 1804(c).)
 4. The intervenor must demonstrate "significant financial hardship." (§§ 1802(g) and 1804(b)(1).)
 5. The intervenor's presentation must have made a "substantial contribution" to the proceeding, through the adoption, in whole or in part, of the intervenor's contention or recommendations by a Commission order or decision or as otherwise found by the Commission. (§§ 1802(i) and 1803(a).)
 6. The claimed fees and costs must be reasonable (§ 1801), necessary for and related to the substantial contribution (D.98-04-059), comparable to the market rates paid to others with comparable training and experience (§ 1806), and productive (D.98-04-059).

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

2.1. Preliminary Procedural Issues

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

In this rulemaking, NOI's were due by December 4, 2009, within 30 days of the issuance of the scoping memo. Consumer Federation of California timely filed its NOI on December 4, 2009.

In its NOI, Consumer Federation of California (CFC) asserted financial hardship. Pursuant to § 1804(b)(1), a rebuttable presumption of eligibility is

applied to CFC's participation here because the Commission found CFC met this requirement in another proceeding within one year of the commencement of this proceeding (Administrative Law Judge (ALJ) Ruling dated May 13, 2009, in Rulemaking (R.) 08-12-009).

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 May 13, 2009 in R.08-12-009, the ALJ issued a ruling that found CFC a customer pursuant to § 1802(b)(1).

Regarding the timeliness of the request for compensation, CFC filed its request for compensation on December 9, 2010, within 60 days of the issuance of D.10-10-019.³ On December 16, 2010, CFC filed an amended copy of its original request for compensation. California Water Association (CWA) filed a response in opposition to CFC's request for an award of compensation on January 18, 2011, within 30 days of the filing of CFC's amended request. We have reviewed CWA's opposition to CFC's request for an award of compensation and make adjustments to CFC's claim where appropriate. In view of the above, we affirm that CFC has satisfied all the procedural requirements necessary to make its request for compensation in this proceeding.

³ D.10-10-019 was issued on October 19, 2010.

3. Substantial Contribution

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

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

In assessing whether the customer meets this standard, the Commission typically reviews the record, composed in part of pleadings of the customer and, in litigated matters, the hearing transcripts, and compares it to the findings, conclusions, and orders in the decision to which the customer asserts it contributed. It is then a matter of judgment as to whether the customer's presentation substantially assisted the Commission.⁴

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

Through its participation, CFC submits that it identified rules adopted for energy utilities which were relevant to practices in the regulated water industry, and when adopted, will also prevent practices which escalate rates. CFC alleges it introduced evidence of practices of the Kinder Morgan Corporation, which CFC claimed weakened its utilities, and supported adoption

⁴ D.98-04-059, 79 CPUC2d 628 at 653.

of such practices as the first priority condition, ring-fencing and prohibitions on intra-company debt which should protect the stability of utility companies and avoid the cost of bankruptcy. We agree. CFC's advocacy in this proceeding supplemented the record and assisted the Commission in adopting a strong and comprehensive set of rules. While most consumers may not be directly affected by these rules, they guard against anti-competitive behavior so that competitors in industries related to water service can compete against the monopoly water provider and their affiliates, bringing about competitive choices and related benefits to consumers.

CFC was an active participant in all stages of the docket, including the labor-intensive workshop process. The workshops were valuable because they gave parties the opportunity to discuss the issues directly and allowed Staff direct input into the necessary elements for each of the rules.

CFC participated in a status report due on January 15, 2010 which was provided to the assigned Commissioner, the ALJ, and the service list. The report included a general description of the progress made in workshops, the potential for further progress through additional workshops or other non-litigation methods, and the issues likely requiring hearings.

CFC's comments pointed out the need for regulation and the consequences if utilities are permitted to engage in unregulated transactions with affiliates; CFC argued that reasonable practices for utilities with affiliatesg needed to be spelled out in Commission rules, in disagreement with California Water Service Company (Cal Water), but in agreement with the decision which found that rules were necessary and that customers need the Commission's protection from excessive rates which arise out of utilities' transactions with affiliate companies; CFC's participation helped to build the record on the

following issues: the need for regulation and the avoidance of subsidies; the need for rules; the Commission's authority to adopt rules affecting the water companies' affiliates; the need for consistency in rules; water utilities' affiliates; the Commission's authority to decide whether an affiliate is subject to the rules; application of energy rules; evidence of past bad practices with the water industry where concerns have arisen about the relationship between water utilities and their affiliates; whether or not the affiliate transaction rules applicable to large energy utilities are compatible and should be included in affiliate transaction rules for water and sewer utilities; consideration of the use of regulated assets and personnel for non-tariffed purposes; the deletion of existing rules; whether or not a utility's proprietary information can be shared with its affiliates; the need for a strict and efficient cost allocation procedure for shared services (based on cost causation principles); capital provided by the parent company (Adoption of Rule V.11.A); intra-company debt (Adoption of Rule V11.D); availability of affiliate witnesses; audit of transactions; annual reporting; out-of-state utility operations; non-tariffed products and services (NTP&S) assets.

4. Contributions of Other Parties

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

CFC states that it did not duplicate the work of other parties as its approach to the issues differed from that of other parties. CFC states that

although all parties' attention was focused on particular rules proposed by Staff, and modifications to those rules, CFC focused on its experience in the rulemaking on energy companies' affiliate transactions (Application (A.) 05-10-030), and its experience in the Kinder-Morgan merger case (A.06-09-016), as well as its familiarity with practices occurring in the first part of the twentieth century which led to enactment of the Public Utility Holding Company Act of 1935 (PUHCA).

CFC states that when several consumer groups participate in a proceeding such as this one, that there is always some confluence of opinion, but that each party has a particular take on the subject and as such makes an original contribution. CFC states that it became aware during the workshops that its position on non-tariffed utility products and services would not be adopted so it deferred to Division of Ratepayer Advocates (DRA) on the subject, thereby reducing litigated issues. In addition, we note that CFC's timesheets indicate coordination efforts with other parties, particularly DRA and the Utility Reform Network (TURN). TURN's claim filed in this same proceeding indicates that it avoided some specific issues (ring-fencing and other financial health issues) in an effort not to duplicate the work of other parties. CFC's comments addressed these issues and more.

While we make no reductions to CFC's claim for duplication of effort, we disagree with CFC's inference that unique or "original" contributions of parties will result in compensated efforts. We compensate intervenors only for those efforts which are productive and beneficial to ratepayers and for work which informs discussions, enhances the record, and most importantly for efforts which assist the Commission in developing its policies. We perform a separate analysis below on the productiveness of CFC's efforts.

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

5. Reasonableness of Requested Compensation

CFC requests \$90,545⁵ for its participation in this proceeding, as follows:

Work on Proceeding				
Attorney/Staff	Year	Hours	Hourly Rate	Total \$
Alexis Wodtke	2009	148.6	\$350	52,010
Alexis Wodtke	2010	96.4	\$350	33,740
Subtotal Professional Hours:				\$85,750
Preparation of NOI and Compensation Request⁶				
Attorney/Staff	Year	Hours	Hourly Rate	Total \$
Alexis Wodtke	2009	3.5	\$175	612.50
Alexis Wodtke	2010	23.9	\$175	4,182.50
Subtotal Compensation Preparation:				\$4,795
Total Requested Compensation				\$90,545

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.

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

⁵ CFC miscalculates its claim. We use the corrected figure of \$90,545 for consideration in this award.

⁶ Preparation of NOI and Compensation Request are compensated at ½ hourly rate.

determining to what degree the hours and costs are related to the work performed and necessary for the substantial contribution.

The purpose of R.09-04-012 was to create generic rules for all water and sewer companies with regard to transactions with a parent company and/or affiliates, and with regard to the use of regulated assets and personnel for non-tariffed utility products and services.

R.09-04-012 provided a series of questions to be addressed by parties in the proceeding. Parties filed prehearing conference statements on July 16, 2009, with reply comments on August 20, 2009. A prehearing conference was held on September 30, 2009. On November 4, 2009, a scoping memo was issued which indicated that all issues raised by parties in the prehearing conference statements filed in the docket were deemed to be within the scope of the proceeding, unless otherwise noted. The same ruling confirmed that issues in the proceeding were to be resolved through a series of workshops and filed comments. No parties requested evidentiary hearings nor were any held. Parties were advised that issues which were not resolved in the workshop process may be resolved or narrowed through the alternative dispute resolution (ADR) process.

CFC states that it maintained detailed time records indicating the number of hours spent each day on the review of documents in the proceeding, participation in workshops and the filing of comments. CFC believes that its hours are reasonable given the depth of its participation. CFC alleges that if there was any question as to whether its time was compensable, it voluntarily removed this time from its totals.

On January 18, 2011, CWA filed its opposition to CFC's request for an award of compensation.⁷ Contrary to CFC's claim of substantial contribution to D.10-10-019, CWA contends that "CFC's participation was of no help to the ultimate outcome of the proceeding, and that the ill-informed, disagreeable, doctrinaire, anti-utility approach it took served as a deterrent to successfully adopting balanced, reasonable rules for affiliate transactions and non-tariffed products and services. In addition to being a deterrent to an expeditious (and equitable) decision, CFC's participation required additional resources and expenditures to be made by the other parties in the proceeding, thereby raising the utilities' and customers' costs."⁸

In more detail,⁹ CWA breaks down CFC's claim of substantial contributions, referencing the decision, in support of its belief that CFC's claims of contributions are unfounded. In sum, CWA states that CFC proposed no factual or legal contentions of its own nor any new policy or procedural recommendations that the Commission ultimately adopted, but merely supported policies and procedures that the Commission or others have advanced does not qualify as a substantial contribution.

At the onset of our review, we note that it has been difficult to analyze CFC's asserted claims of contribution to the final decision. D.98-04-059 at 48 directs intervenors to allocate its time and costs by issue. CFC's timesheets provide the tasks performed by Wodtke, but do not allocate time by major issue.

⁷ See Response of California Water Association to the Request of The Consumer Federation of California for an award of Compensation, filed January 18, 2011.

⁸ Ibid at 2.

⁹ Ibid at 4.

Instead, Wodtke provides 56 issues (in vertical columns) on her timesheets and has placed check marks (in horizontal rows) under the topics where CFC alleges each issue was addressed. Although difficult to understand, the subjects listed in the columns do relate to issues within the scope of this Rulemaking.

CFC is not new to Commission proceedings. While we could reject CFC's claim or severely reduce this claim for omitting this requirement, we elect instead to perform our own independent review of the time and the content of each of the documents CFC has submitted in this proceeding. We admonish CFC however, that we will not apply this same level of detailed review to its future claims should it continue this deficient practice.

Although a number of CFC's specific recommendations were not adopted, we find CFC's advocacy was unique, productive and beneficial to ratepayers. CFC's work informed the discussions and enhanced the record, thereby assisting the Commission in developing its policies. We do however; make some disallowances to CFC's claim for excessive hours. The adjusted time more closely reflect our standards on reasonableness of hours.

CFC requests 62 hours to prepare its 24 page Reply PHC Statement filed on August 20, 2009. We find this time to be excessive given the scope of the task and the length of the document. We disallow 12 hours for this task.

CFC requests 22 hours to prepare its 6 page Reply Comments on the Proposed Decision Adopting Affiliate Rules filed on October 11, 2010. We find this time is also excessive given the scope of the task and the length of the document. We disallow 10 hours for this task.

CFC's requests 3.5 hours to prepare its NOI and 23.9 hours to prepare its claim for intervenor compensation. We disallow 2.0 hours for NOI preparation and 13.2 hours for claim preparation from CFC totals. The

disallowances bring CFC's hours for these tasks in line with the hours we have approved in TURN's claim for compensation. TURN was the only other intervenor with participation similar to CFC's to request compensation in this proceeding. To expedite CFC's time spent on these tasks in future Commission proceedings, we strongly urge CFC to use the expedited standardized forms provided for intervenors at

<http://www.cpuc.ca.gov/PUC/IntervenorCompGuide/standardized>.

5.2. Intervenor 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.

CFC seeks an hourly rate of \$350 for Wodtke's work performed in 2009 and 2010. We have previously approved this rate for Wodtke in D.09-11-030 and D.10-08-017. We apply these same rates to Wodtke's work here without further discussion.

5.3. Direct Expenses

CFC has no direct expenses for which it seeks compensation.

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.

As a result of CFC's participation, it alleges that the effects of water utilities' transaction with affiliates were identified and rules were adopted to prevent practices which inflate customers' rates. Also CFC supported the

adoption of such practices as the first priority condition, ring-fencing and prohibitions on intra-company debt which should protect the stability of the utility companies, thus avoiding the cost of bankruptcy. CFC states that its efforts were productive, although it is unable to estimate the value of these benefits to customers. After the reductions we make to CFC’s claim, we agree, and find the remainder of CFC’s hours productive and compensable.

7. Award

As set forth in the table below, we award CFC \$80,185.

Work on Proceeding				
Attorney/Staff	Year	Hours	Hourly Rate	Total \$
Alexis Wodtke	2009	136.6	\$350	47,810
Alexis Wodtke	2010	86.4	\$350	30,240
Work on Proceeding Total:				\$78,050
Preparation of NOI and Compensation Request				
Attorney/Staff	Year	Hours	Hourly Rate	Total \$
Alexis Wodtke	2009	1.5	\$175	262.50
Alexis Wodtke	2010	10.7	\$175	1,872.50
NOI and Compensation Request Total:				\$ 2,135
CALCULATION OF FINAL AWARD				
Work on Proceeding				\$78,050
NOI and Compensation Request Preparation				\$ 2,135
TOTAL AWARD				\$80,185

Pursuant to § 1807, we order the Class A Water Companies, to pay this award. Each company will pay a proportionate share based on their 2010 California jurisdictional water and sewer revenues. 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 February 22, 2011, the 75th 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 our Rules of Practice and Procedure, we waive the otherwise applicable 30-day comment period for this decision.

9. Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and David M. Gamson 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 has made a substantial contribution to D.10-10-019 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. The total of the reasonable compensation is \$80,185.
5. The 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.10-10-019.

2. CFC should be awarded \$80,185 for its contribution to D.10-10-019.

3. This order should be effective today so that CFC may be compensated without further delay.

O R D E R

IT IS ORDERED that:

1. Consumer Federation of California is awarded \$80,185 as compensation for its substantial contributions to Decision 10-10-019.

2. Within 30 days of the effective date of this decision, San Jose Water Company, California Water Service Company, Golden State Water Company, California-American Water Company, Valencia Water Company, Park Water Company, Suburban Water Company, San Gabriel Valley Water Company, and Great Oaks Water Company, shall each pay their proportionate share of the total award based on their 2010 California jurisdictional water and sewer revenues. 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 February 22, 2011, the 75th day after the filing of claimant's request, and continuing until full payment is made.

3. The comment period for today's decision is waived.

4. Rulemaking 09-04-012 is closed.

This order is effective today.

Dated April 14, 2011, at San Francisco, California.

MICHAEL R. PEEVEY

President

TIMOTHY ALAN SIMON

CATHERINE J.K. SANDOVAL

MARK FERRON

Commissioners

I abstain.

/s/ MICHEL PETER FLORIO

Commissioner

APPENDIX**Compensation Decision Summary Information**

Compensation Decision:	D1104028	Modifies Decision? No
Contribution Decision:	D1010019	
Proceeding:	R0904012	
Author:	ALJ David M. Gamson	
Payer(s):	San Jose Water Company, California Water Service Company, Golden State Water Company, California-American Water Company, Valencia Water Company, Park Water Company, Suburban Water Company, San Gabriel Valley Water Company, and Great Oaks Water Company.	

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
Consumer Federation of California	12-09-10	\$90,545	\$80,185	No	excessive hours

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Alexis	Wodtke	Attorney	Consumer Federation of California	\$350	2009	\$350
Alexis	Wodtke	Attorney	Consumer Federation of California	\$350	2010	\$350

(END OF APPENDIX)