

Decision 12-06-011 June 7, 2012

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Integrate and Refine Procurement Policies and Consider Long-Term Procurement Plans.

Rulemaking 10-05-006
(Filed May 6, 2010)

DECISION GRANTING INTERVENOR COMPENSATION TO L. JAN REID FOR SUBSTANTIAL CONTRIBUTION TO THE PROCUREMENT REVIEW AND COST ALLOCATION MECHANISM GROUPS OF PACIFIC GAS AND ELECTRIC COMPANY

This decision awards L. Jan Reid \$34,889.20 for his substantial contributions to the procurement review group and cost allocation mechanism group of Pacific Gas and Electric Company (PG&E) between July 1, 2010, and September 30, 2011. Today's award payment will be allocated to PG&E, pursuant to Decision 00-01-020.

1. Background

The procurement review groups (PRGs) were established in Rulemaking (R.) 01-10-024, to help the investor-owned utilities (IOUs) in meeting their service obligations to customers immediately after the electricity crisis. R.10-05-006 is the successor to the procurement policies R.08-02-007, R.06-02-013, R.04-04-003, and R.01-10-024. In the ongoing procurement process, the PRG members are, in fact, peer reviewers working with the IOUs on the design and implementation of their procurement plans. Members include the Energy Division and Division of Ratepayer Advocates' staff, and consumer and ratepayer groups.

The Commission has found in previous proceedings that intervenors' work in peer review groups and program advisory groups is compensable if all necessary conditions are met. We stated:

The regulatory framework we adopt in this decision requires ... the active involvement and expertise of nonmarket participants, through continuing the procurement review group (PRG) process adopted in D.02-08-071 and providing intervenor compensation to those parties eligible to receive the awards for their work in this process and in the on-going review of procurement advice letters and expedited applications [footnote omitted]. We make the finding here that participation in the procurement review process discussed above by nonmarket participants who are eligible to request intervenor compensation should be fully compensated because their active participation makes a significant contribution to this proceeding.¹

The Commission has already recognized L. Jan Reid's (Reid) continuing contributions to PRGs in the past. More recently, in Decision (D.) 11-03-019, we confirmed Reid's continuing contributions to PRGs.² (§§ 1801-1812.)

2. Requirements for Awards of Compensation

The intervenor compensation program, which is set forth in §§ 1801-1812, 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.

¹ D.02-10-062 issued in R.01-10-024, at 3-4.

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

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. 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 1-4 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 its NOI no later than 30 days after the PHC is held. (Rule 17.1(a)(1).) The PHC in this matter was held on June 14, 2010. The NOI due date was extended by the additional 30 days.³ Reid timely filed his NOI on August 9, 2010. In his NOI, Reid asserted significant financial hardship. In D.11-03-019 issued in this proceeding, we found that Reid met the significant financial hardship element of the eligibility to claim intervenor compensation, pursuant to § 1802(g). This finding is applicable to the subject compensation request.⁴

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).) In his NOI, Reid asserts a customer status as defined in § 1802(b)(1)(A). Reid states he receives electric and gas services from PG&E at his residence in Northern California and, although he represents himself in this proceeding, his participation will benefit all residential customers of PG&E. In his compensation request, Reid explains how his participation in

³ Ruling of June 22, 2010 in this proceeding.

⁴ A party found eligible for an award of compensation in one phase of a proceeding remains eligible in later phases ... in the same proceeding (Rule 17.2 of the Commission Rules of Practice and Procedure).

the PRG and cost allocation mechanism group (CAMG) of Pacific Gas and Electric Company (PG&E) benefits broader interests of PG&E's residential customers. We confirm Reid's customer status under § 1802(b)(1)(A).⁵

Regarding the timeliness of the request for compensation, the PRG and CAMG activities are ongoing and the Commission has not established any mandatory timelines for requesting compensation in this process. Reid filed his request on October 24, 2011, within less than a month from the end of the subject PRG and CAMG cycle. This request was filed within the reasonable time limit. We consider it to be timely. No party opposed Reid's claims. Reid has satisfied all procedural requirements necessary to make this request for compensation.

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.)

⁵ D.11-03-019 also determined that Reid was eligible to receive an award as a § 1802(b)(1)(A) customer, in this proceeding.

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.⁶

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

Reid requests compensation for his participation in the PG&E's PRGs and CAMG. Details of these groups' activities are protected by confidentiality rules. D.07-11-024 requires that intervenors participating in these groups include in their requests enough non-confidential information for the Commission's findings under §§ 1801-1812. These intervenors must indicate the types of programs, policies, practices or documents reviewed in connection with the PRG work and how that work contributed to an outcome that benefited ratepayers. They must explain how their work added value to the PRG process because of the intervenor's unique analysis, perspective or work product or because of specific expertise or skills of the intervenor. These intervenors must also demonstrate reasonable collaboration with other group members to minimize duplication of effort.⁷ Reid's request meets these requirements.

⁶ D.98-04-059, 79 CPUC 2d 628 at 653.

⁷ D.07-11-024 at 5-6.

Reid asserts that his participation in PG&E's PRG allowed him to identify issues in advance of an application and to focus on disputed cases that he believed were the highest priority for ratepayers. Many issues raised by Reid were resolved in the PRG process, thereby reducing the litigation efforts. As a result of Reid's participation, PG&E has withdrawn or modified its numerous proposals. Reid's unique analysis and work product added value to the PRG process. In PRG meetings covered by this request, Reid was the only group member to perform independent modeling of the cost effectiveness of electric utility contracts. Reid evaluated gas options, non-renewable capacity contracts, Renewables Portfolio Standard contracts, bilateral contracts, and bids received in request for offer solicitations, using his Black Model. In the past, we recognized similar contributions, for example, in D.06-11-048, where we approved proposed contracts and noted that Reid demonstrated using his Black model, that all of them were cost-effective.⁸ Here, we find that Reid's participation substantially contributed to PG&E's PRG and CAMG.

Reid indicates what information he analyzed and commented on in the course of his participations. We reviewed the volume of his work and weighed it against the hours he claims. Reid's work appears to be efficient.

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

⁸ D.06-11-048 at 12.

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 asserts that he contributed his unique analysis and work product to the PRG, including the use of his Black model. Among the PRG members, Reid holds a M.S. degree in Applied Economics and Finance, completed courses in risk management, regulation, negotiation, and project management. He developed financial models and testified in the Commission proceedings. Reid asserts that his contributions were different from the work of other PRG members as he focused on subject areas consistent with his expertise, and provided independent estimates of the cost-effectiveness of various contracts. Because Reid is an economist, his work tended to focus on the underlying economics of various utility proposals, while other group participants focused on other aspects of PG&E's proposals.

Reid indicates that he collaborated with a number of PRG members during the subject period of time. Reid's time records reflect his communications with the Energy Division and Division of Ratepayer Advocates' staff. Reid also communicated with representatives of The Utility Reform Network and Coalition of California Utility Employees. Reid notes that he does not request compensation for many of these communications.

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

Reid requests \$34,889.20 for his participation in PG&E's PRG and CAMG, between July 1, 2010, to September 30, 2011, as follows:

Work on Proceeding				
Expert	Year	Hours	Hourly Rate	Total
L. Jan Reid	2010	118.20	\$185.00	\$21,867
L. Jan Reid	2011	65.60	\$185.00	\$12,136.00
Subtotal:				\$34,003.00
Preparation of NOI and Compensation Request				
Expert	Year	Hours	Hourly Rate	Total
L. Jan Reid	2011	9.20 ⁹	\$92.50	\$851.00
Subtotal:				\$851.00
Expenses				\$35.20
Total Requested Compensation				\$34,889.20

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.

⁹ We note there was a minor typographical error in the number of hours. According to the time records, it should be 9.20 hours; the requested dollar amount, too, corresponded to 9.20 hours of work. Reid erroneously indicated 9.60 hours. We correct the error here.

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.

Reid documented his claimed hours by presenting a daily breakdown of his hours, accompanied by a brief description of each activity. Reid also indicates what types of information and documents he reviewed and commented on for the PRG and CAMG. The hourly breakdown reasonably supports the 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 experts and advocates having comparable training and experience and offering similar services.

Reid seeks an hourly rate of \$185.00 for the work performed in 2010. This rate was previously adopted in D.11-03-019. He requests the same hourly rate of \$185.00 for the work performed in 2011, which was also adopted in D.11-08-015. We confirm these rates.

5.3. Direct Expenses

The itemized direct expenses submitted by Reid include costs of copying and envelopes. The cost breakdown included with the request shows the miscellaneous expenses to be commensurate with the work performed. In general, these costs are reasonable; however, we were surprised by the large (228) number of copies of the intervenor compensation request. The Commission

encourages electronic filing and e-mail service, where paper copies are required only for the assigned administrative law judge and commissioner.¹⁰ Six large envelopes indicated in Reid's claim appear to be unnecessary, as well. While we are not making any disallowances at this time, we warn Reid that if in the future requests similar costs are not either justified or waived as negligible, we will disallow them.

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. Reid's participation in the PRG helped to resolve many issues in advance of the formal application proceeding, thereby reducing expensive and lengthy litigation. PG&E has withdrawn or modified numerous proposals as a result of Reid's participation, with millions of ratepayer's dollars saved. Monetary savings also resulted from the more efficient than in the formal proceedings discovery process. Additional costs of litigation were saved by determining, prior to the advice letter filings, whether or not Reid should file protest with respect to more than a dozen advice letters. It is not possible to determine the exact size of these savings; however, it can be said with certainty, that, taken as a whole, these actual savings far exceed the requested compensation. Thus, we find that Reid's efforts have been productive.

¹⁰ Order Instituting Rulemaking at 25-26.

7. Award

As set forth in the table below, we award Reid \$34,889.20.

Work on Proceeding				
Expert	Year	Hours	Hourly Rate	Total
L. Jan Reid	2010	118.20	\$185.00	\$21,867
L. Jan Reid	2011	65.60	\$185.00	\$12,136.00
Subtotal:				\$34,003.00
Preparation of NOI and Compensation Request				
Expert	Year	Hours	Hourly Rate	Total
L. Jan Reid	2011	9.20	\$92.50	\$851.00
Subtotal:				\$851.00
Direct Expenses				\$35.20
Total Requested Compensation				\$34,889.20

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 7, 2012, the 75th day after 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. 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.

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 Peter V. Allen is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. Reid has satisfied all the procedural requirements necessary to claim compensation in this proceeding.
2. Reid made a substantial contribution to the procurement review group and the cost allocation mechanism group of PG&E as described herein.
3. Reid requested hourly rates for his work that are reasonable when compared to the market rates for persons with similar training and experience.
4. Reid requested related expenses that are reasonable and commensurate with the work performed.
5. The total of the reasonable compensation is \$34,889.20.
6. The appendix to this decision summarizes today's award.

Conclusions of Law

1. Reid has fulfilled the requirements of §§ 1801-1812, which govern awards of intervenor compensation, and is entitled to intervenor compensation for his claimed expenses incurred in making substantial contributions to the procurement review group and the cost allocation mechanism group of PG&E.
2. Reid should be awarded \$34,889.20 for his contribution to the procurement review group and the cost allocation mechanism group of PG&E.

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

O R D E R

IT IS ORDERED that:

1. L. Jan Reid is awarded \$34,889.20 as compensation for his substantial contributions to the procurement review group and the cost allocation mechanism group of Pacific Gas and Electric Company.

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 7, 2012, the 75th day after the filing date of L. Jan Reid's request for compensation, and continuing until full payment is made.

This order is effective today.

Dated June 7, 2012, at San Francisco, California.

MICHAEL R. PEEVEY
President
TIMOTHY ALAN SIMON
CATHERINE J.K. SANDOVAL
MARK J. FERRON
Commissioners

I abstain.

/s/ MICHEL PETER FLORIO
Commissioner

APPENDIX

Compensation Decision Summary Information

Compensation Decision:	D1206011	Modifies Decision? No
Contribution Decision(s):		
Proceeding(s):	R1005006	
Author:	ALJ Peter Allen	
Payer:	Pacific Gas and Electric Company	

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
L. Jan Reid	10/24/11	\$34,889.20	\$34,889.20	No	

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	2010	\$185
L. Jan	Reid	Expert	L. Jan Reid	\$185	2011	\$185

(END OF APPENDIX)