

Decision 07-10-031 October 18, 2007

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of California American Water Company (U210W) for authorization to increase rates for water service in its Monterey District by \$9,456,100 or 32.88% in the year 2006; by \$1,894,100 or 4.95% in the year 2007; and by \$1,574,600 or 3.92% in the year 2008; and for an order authorizing sixteen (16) Special Requests with revenue requirements in the sum of \$3,815,900 in the year 2006; in the sum of \$5,622,300 in the year 2007; and in the sum of \$8,720,500 in the year 2008. The total increase in rates for water service combined with the sixteen Special Requests could increase revenues by \$13,272,000 or 46.16% in the year 2006; \$7,516,400 or 17.86% in the year 2007; and by \$10,295,100 or 20.73% in the year 2008.

Application 05-02-012
 (Filed February 16, 2005)

And Related Matter.

Application 05-02-013
 (Filed February 16, 2005)

OPINION GRANTING INTERVENOR COMPENSATION TO FELTON FRIENDS OF LOCALLY OWNED WATER (FELTON FLOW) FOR SUBSTANTIAL CONTRIBUTIONS TO DECISION 06-11-050

This decision awards \$67,396.75 in compensation to Felton Friends of Locally Owned Water (Felton FLOW) for its substantial contributions to Decision (D.) 06-11-050.¹ Application (A.) 05-02-012 and A.05-02-013 are closed.

1. Background

In D.06-11-050, the Commission resolved the general rate case (GRC) applications of California-American Water Company (Cal-Am) for the Monterey and Felton districts and for Cal-Am's general office expenses. The decision sets rates for a three-year GRC period beginning January 1, 2006.

We adopted in D.06-11-050 a partial settlement between Cal-Am and the Division of Ratepayer Advocates (DRA) for the Monterey district and the General Office expenses, but rejected the two parties' proposed settlement for the Felton district. The Monterey Peninsula Water Management District opposed the Monterey district settlement and Felton FLOW opposed all three settlements.

For the Felton proposed settlement, we did not find reasonable the amount proposed for the Highway 9 project and the level of general and administrative expenses; we also adopted an adjustment for lobbying activities by employees.

For Felton district issues outside the proposed settlement, we retained the existing rate design, adopted DRA's proposal for a low-income program, and adopted a rate increase cap of 50% for the next 12 months. We recognized that a formal process for public acquisition of the district had started with the passage in July 2006 of Measure W. We committed to vigilantly overseeing future plant investment in the Felton district as the acquisition goes forward.

¹ Due to computational errors, Felton FLOW's request for \$68,894.95 is adjusted downward by \$1,498.20.

For the Monterey district for 2006, we adopted a rate increase of 10.29%, together with a three-year 3% surcharge for pension costs and a four-year surcharge for recovery of Carmel River Dam costs; the total 2006 increase was 17.03%. For the Felton District for 2006, we adopted a rate increase of 20.87%, which includes a pension cost surcharge.

Evidentiary hearings were held in July and August of 2005, the record submitted on October 21, 2005, and D.06-11-050, which closed the proceeding, was issued on November 30, 2006.

2. Requirements for Awards of Compensation

The intervenor compensation program, enacted in Pub. Util. Code §§ 1801-1812, requires California jurisdictional utilities to pay the reasonable costs of an intervenor's participation if the intervenor makes a substantial contribution to the Commission's proceedings. The statute provides that the utility may adjust its rates to collect the amount awarded from its ratepayers. (Subsequent statutory references are to the 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), or in special circumstances at other appropriate times that we specify. (§ 1804(a).)
2. The intervenor must be a customer or a participant representing consumers, customers, or subscribers of a utility subject to our jurisdiction. (§ 1802(b).)
3. The intervenor should file and serve a request for a compensation award within 60 days of our final order or decision in a hearing or proceeding. (§ 1804(c).)

4. The intervenor must demonstrate “significant financial hardship.” (§§ 1802(g), 1804(b)(1).)
5. The intervenor’s presentation must have made a “substantial contribution” to the proceeding, through the adoption, in whole or in part, of the intervenor’s contention or recommendations by a Commission order or decision. (§§ 1802(i), 1803(a).)
6. The claimed fees and costs are 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).

For discussion here, the procedural issues in Items 1-4 above are combined, followed by separate discussions on Items 5-6.

3. Procedural Issues

The PHC in this matter was held on April 5, 2005. Felton FLOW timely filed its NOI on May 5, 2005. In its NOI, Felton FLOW asserted financial hardship. On May 20, 2005, Cal-Am filed a response to the NOI urging the Commission to find Felton FLOW ineligible for intervenor compensation because it asserts Felton FLOW will not make a substantial contribution to the proceeding, its participation will be duplicative, and granting intervenor compensation will further burden ratepayers.

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.

On July 6, 2005, Administrative Law Judge (ALJ) Walwyn ruled that Felton FLOW is a customer pursuant to § 1802(b)(1)(C), and meets the financial

hardship condition, pursuant to § 1804(b)(1), because it met this requirement in another proceeding within one year of the commencement of this proceeding.

Felton FLOW filed its request for compensation on January 29, 2007, within 60 days of D.06-11-050 being issued.² In view of the above, we find that Felton FLOW 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, did the ALJ or Commission adopt one or more of the factual or legal contentions, or specific policy or procedural recommendations put forward by the customer? (See § 1802(i).) Second, if the customer's contentions or recommendations paralleled those of another party, did the customer's participation materially supplement, complement, or contribute to the presentation of the other party or to the development of a fuller record that assisted the Commission in making its decision? (See §§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.³

² No party opposes the request.

³ D.98-04-059, 79 CPUC2d 628 at 653.

Should the Commission not adopt any of the customer's recommendations, compensation may be awarded if, in the judgment of the Commission, the customer's participation substantially contributed to the decision or order. For example, if a customer provided a unique perspective that enriched the Commission's deliberations and the record, the Commission could find that the customer made a substantial contribution. With this guidance in mind, we turn to the claimed contributions Felton FLOW made to the proceeding.

Felton FLOW participated actively throughout the proceeding and while it focused its participation on issues pertaining primarily to the Felton District, it also raised issues affecting the Monterey district as well as general office allocations affecting all California districts.

In its request for compensation, Felton FLOW asserts it made a significant contribution through Commission adoption of its recommendations and Commission adoption of alternative approaches for addressing issues raised by Felton FLOW in each of the following areas:

1. The Commission's rejection of Cal-Am's request for a leverage adjustment to the authorized return on equity for the Monterey and Felton Districts;
2. The Commission's finding that the costs incurred by Cal-Am on the Highway 9 main replacement project were excessive and its exclusion of \$50,000 in such costs from rates;
3. The Commission's finding that Cal-Am improperly included political lobbying expenses in its operations and maintenance (O&M), administrative and general (A&G) and General Office expenses and its reduction of employee related costs in these accounts by 5%;

4. The Commission's finding that significant problems exist with Cal-Am's customer service, and order of additional tracking and reporting regarding customer service issues;
5. The Commission's finding that Cal-Am's A&G expenses have increased significantly since 2003 without sufficient justification and reduction in A&G expenses included in rates;
6. The Commission's finding that Cal-Am failed to sufficiently explain its General Office expenses and its order that additional information in justification of these expenses be provided in Cal-Am's next general rate case;
7. The Commission's finding that Cal-Am's justification for including in rates an acquisition premium for AWW's acquisition of Citizens' facilities was "weak" and its order that additional justification be provided in Cal-Am's next general rate case;
8. The Commission's finding that additional investment by Cal-Am in capital projects in the Felton District may unnecessarily increase the cost to the public of acquiring the Felton District facilities and its order prohibiting Cal-Am from investing in additional capital projects in the Felton District without prior review by the Commission through an advice letter filing; and
9. The Commission's finding that even with the reductions in revenue requirement ordered by the Commission, absent mitigation, the Commission's decision would result in rate shock in the Felton District and its order deferring of a portion of the increase for one year in order to mitigate rate shock.⁴

⁴ January 29, 2007 request, pages 10-11.

In addition to the above, Felton FLOW also asserts that its participation contributed to the following additional concessions made by Cal-Am during the course of the proceeding and reflected in the Commission's decision:

1. Cal-Am's agreement to defer further work on the Bull Creek project, as advocated by Felton FLOW; and
2. Cal-Am's agreement to forgo recovery of \$100,000 in costs incurred to complete the compliance audit ordered by the Commission as a result of errors and inconsistencies in Cal-Am's application and testimony.⁵

We find that Felton FLOW made a substantial contribution on each issue it cites and generally it was the only party raising the issue. On the issue of Cal-Am's request for a leverage adjustment, the DRA also advocated this position, however, in D.06-11-050, we cite the specific contribution Felton FLOW made that is separate from DRA's in our discussion of the leverage adjustment.⁶ In the matter of Cal-Am forgoing recovery of \$100,000 in costs incurred to complete the compliance audit ordered by the Commission, the formal record does not attribute Cal-Am's decision to the advocacy of any specific party.

The issues on which Felton FLOW made a substantial contribution resulted in significant savings to Cal-Am ratepayers in Felton, Monterey, and other districts, as will be discussed in detail in a later section.

5. Reasonableness of Requested Compensation

Felton FLOW requests \$68,894.95 for its participation in this proceeding. With corrections for mathematical calculation errors of \$1,498.20, following is a summary of the request:

⁵ *Id.* at 12.

⁶ *See* D.06-11-050, *mimeo.* at 18.

| Work on Proceeding | | | | |
|--|-------------|----------------------------------|--------------------|--------------------------|
| Attorney/Staff | Year | Hours <small>7</small> | Hourly Rate | Total⁸ |
| O'Neill, E., Attorney | 2005 | 107.2 | \$470.00 | \$ 50,384.00 |
| O'Neill, E., Attorney | 2006 | 6.2 | \$485.00 | \$ 3,007.00 |
| Gray, Jeff, Attorney | 2005 | 4.3 | \$310.00 | \$ 1,333.00 |
| Hilen, C., Attorney | 2006 | 8.9 | \$325.00 | \$ 2,892.50 |
| Pau, J., Paralegal | 2005 | 10.7 | \$145.00 | \$ 1,551.50 |
| Pau, J., Paralegal | 2006 | 2.5 | \$150.00 | \$ 375.00 |
| Subtotal Work on Proceeding: | | | | \$ 59,543.00 |
| Preparation of NOI and Compensation Request | | | | |
| Attorney/Staff | Year | Hours | Hourly Rate | Total |
| O'Neill, E., Attorney | 2005 | 7.4 | \$235.00 | \$ 1,739.00 |
| | 2006 | 24.00 | 242.00 | \$ 5,808.00 |
| Subtotal NOI and Request: | | | | \$ 7,547.00 |
| TOTAL hourly fees: | | | | \$ 67,090.00 |
| Expenses: | | | | \$ 306.75 |
| TOTAL REQUEST: | | | | \$ 67,396.75 |

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.

⁷ Number of hours in this column reflects a 50% voluntary reduction by Felton FLOW of the hours of work on the issues of customer service and public acquisition.

⁸ Amounts in this column reflect corrections of computation errors made in the request. For example, in some instances, the request indicates hourly fees charged for zero hours of work in 2005 of Christopher A. Hilen (*see*, Appendix B to the request.).

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 a Commission decision are reasonable by determining to what degree the hours and costs are related to the work performed and necessary for the substantial contribution.

Felton FLOW documents the claimed hours of its attorneys and paralegal by presenting a daily breakdown of the hours and a brief description of each activity. As required by the Commission, Felton FLOW allocates its time by specific issue to the extent feasible. On two issues, customer service and public acquisition of the Felton District, it chose to voluntarily reduce the amount it is requesting by 50%, due to the fact that the economic savings to ratepayers it achieved on these issues as a result of its participation is not as significant as it hoped to achieve.

We find the hourly breakdown submitted by Felton FLOW reasonably supports the claim for total hours.

Of importance, Felton FLOW is not requesting any compensation for the considerable time and expense incurred by its members in participating in this proceeding. Numerous members devoted significant time to conducting interviews with ratepayers, reviewing Cal-Am's filing, obtaining and analyzing additional documents, preparing testimony, and attending hearings and Commission meetings.

5.2. Market Rate Standard

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.

Felton FLOW uses the 2004 hourly rates previously established for each person and applies these rates to 2005 work. In accordance with D.07-01-009, Felton FLOW increases its 2005 hourly rates by a 3% cost-of-living adjustment (COLA) for work performed in calendar year 2006.

For attorneys Edward O'Neill, Jeffrey Gray, and Chris Hilen and paralegal Judy Pau, Felton FLOW requests the 2004 hourly rates approved for them in D.06-04-018 be applied to 2005, with a 3% increase for 2006. Using the 2004 rates approved in D.06-04-018, we find it reasonable here to approve a 2005 rate of \$470 for Mr. O'Neill, \$310 for Mr. Gray, \$315 for Mr. Hilen, and \$145 for Ms. Pau. In accordance with D.07-01-009, we approve a 3% increase to 2005 rates for work performed in 2006.

Felton FLOW requests these rates for time spent on substantive issues and requests one-half of the hourly rate for time spent on travel and intervenor compensation. This is consistent with our policy in previous decisions. We find these rates and the methodology by which they are applied reasonable.

5.3. Productivity

D.98-04-059 directed customers to demonstrate productivity by assigning a reasonable dollar value to the benefits of their participation to ratepayers. The costs of a customer's participation should bear a reasonable relationship to the benefits realized through their participation. This showing assists us in determining the overall reasonableness of the request.

Felton FLOW quantifies the economic benefits of its participation as follows:

- (1) rejection of Cal-Am's request for a 50 basis point "leverage adjustment" to the return on equity for the Felton and Monterey Districts, which Felton FLOW estimates represents savings to ratepayers of

approximately \$145,000 in the Monterey District and approximately \$6,000 in the Felton District;

- (2) a reduction of \$50,000 in the amount included in Felton District rates for the Highway 9 main replacement project;
- (3) 5% reductions in employee related O&M, A&G and General Office expenses included in Felton District rates which, according to the comments of Commissioner Bohn, results in a reduction of approximately \$14,000 in Felton District payroll costs;
- (4) additional reductions of \$91,000 in A&G expenses as a result of Cal-Am's failure to adequately explain the increase over 2003 actual A&G expenses; and
- (5) Cal-Am's agreement to forgo recovery from ratepayers of \$100,000 in costs incurred to complete the compliance audit ordered by the Commission.⁹

In addition to these quantifiable economic benefits, Felton FLOW's participation also contributed to the following economic and non-economic benefits that cannot be easily quantified:

- (1) the Commission's finding that Cal-Am has significant customer service problems and order requiring additional tracking and reporting regarding customer service;
- (2) the Commission's order that General Office expenses were not adequately explained and requiring additional information concerning these expenses in Cal-Am's next general rate case;
- (3) the Commission's finding that Cal-Am's justification for including an acquisition adjustment for the Citizens'

⁹ January 29, 2007 request at 18.

acquisition was “weak” and order requiring additional justification in Cal-Am’s next general rate case;

- (4) the Commission’s finding that additional investment by Cal-Am in capital projects in the Felton District may unnecessarily increase the cost to the public of a public acquisition and requiring Cal-Am to file an advice letter with the Commission prior to undertaking any additional capital projects;
- (5) Cal-Am’s agreement to defer further work on the Bull Creek project pending a possible public acquisition; and
- (6) the Commission’s deferral of a portion of the rate increase in Felton to mitigate rate shock.¹⁰

We find that Felton FLOW’s participation in this proceeding provided the Commission the valuable perspective of a community organization. Further, Felton FLOW has clearly demonstrated that the overall quantifiable benefit of its participation exceeds the amount of intervenor compensation it requests here. We find that Felton FLOW’s participation was clearly “productive” within the meaning of D.98-04-059.

5.4. Direct Expenses

The itemized direct expenses of \$306.75 submitted by Felton FLOW include costs for travel, photocopying, and filing fees. We find these costs reasonable.

6. Award

As set forth in the table below, we award Felton FLOW \$67,396.75.

¹⁰ *Id.* at 18-19.

| Work on Proceeding | | | | |
|----------------------------------|-------------|--------------|--------------------|--------------------|
| Attorney/Staff | Year | Hours | Hourly Rate | Total |
| O'Neill, E., Attorney | 2005 | 107.2 | \$470.00 | \$50,384.00 |
| O'Neill, E., Attorney | 2006 | 6.2 | \$485.00 | \$ 3,007.00 |
| Gray, Jeff, Attorney | 2005 | 4.3 | \$310.00 | \$ 1,333.00 |
| Hilen, C., Attorney | 2006 | 8.9 | \$325.00 | \$ 2,892.50 |
| Pau, J., Paralegal | 2005 | 10.7 | \$145.00 | \$ 1,551.50 |
| Pau, J., Paralegal | 2006 | 2.5 | \$150.00 | \$ 375.00 |
| Work on Proceeding Total: | | | | \$59,543.00 |

| Preparation of NOI and Compensation Request | | | | |
|--|-------------|--------------|--------------------|-------------------|
| Attorney/Staff | Year | Hours | Hourly Rate | Total |
| O'Neill, E., Attorney | 2005 | 7.4 | \$235.00 | \$1,739.00 |
| O'Neill, E., Attorney | 2006 | 24.00 | \$242.00 | \$5,808.00 |
| NOI and Compensation Request Preparation Total: | | | | \$7,547.00 |

| CALCULATION OF FINAL AWARD | |
|--|---------------------|
| Work on Proceeding | \$ 59,543.00 |
| NOI and Compensation Request Preparation Total: | \$ 7,547.00 |
| Expenses | \$ 306.75 |
| TOTAL AWARD | \$ 67,396.75 |

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 April 14, 2007, the 75th day after Felton FLOW filed its compensation request, and continuing until full payment of the award is made.

7. 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.

8. Assignment of Proceeding

John A. Bohn is the assigned Commissioner and Christine M. Walwyn is the assigned ALJ in this proceeding.

Findings of Fact

1. Felton FLOW has satisfied all the procedural requirements necessary to claim compensation in this proceeding.
2. Felton FLOW made a substantial contribution to D.06-11-050 as described herein.
3. In D.06-04-018, the Commission found that Felton FLOW's requested hourly rates for its representatives were reasonable when compared to the market rates for persons with similar training and experience.
4. Felton FLOW requested related expenses that are reasonable and commensurate with the work performed.
5. The total of the reasonable compensation is \$ 67,396.75.
6. The appendix to this opinion summarizes today's award.

Conclusions of Law

1. Felton FLOW has fulfilled the requirements of Pub. Util. Code §§ 1801-1812, which govern awards of intervenor compensation, and is entitled to intervenor compensation for its claimed compensation incurred in making substantial contributions to D.06-11-050.
2. Felton FLOW should be awarded \$ 67,396.75 for its contribution to D.06-11-050.
3. Pursuant to Rule 14.6(c)(6), the comment period for this compensation decision may be waived.
4. This order should be effective today so that Felton FLOW may be compensated without further delay.

5. A.05-02-012 and A.05-02-013 should be closed.

O R D E R

IT IS ORDERED that:

1. Felton Friends of Locally Owned Water (Felton FLOW) is awarded \$67,396.75 as compensation for its substantial contributions to Decision 06-11-050.
2. Within 30 days of the effective date of this decision, California-American Water Company shall pay Felton FLOW 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 April 14, 2007, the 75th day after the filing date of Felton FLOW's request for compensation, and continuing until full payment is made.
3. The comment period for today's decision is waived.
4. Application (A.) 05-02-012 and A.05-02-013 are closed.

This order is effective today.

Dated October 18, 2007, 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**

| | | |
|----------------------------------|-----------------------------------|------------------------------|
| Compensation Decision: | D0710031 | Modifies Decision? No |
| Contribution Decision(s): | D0611050 | |
| Proceeding(s): | A0502012 and A0502013 | |
| Author: | ALJ Walwyn | |
| Payer(s): | California-American Water Company | |

Intervenor Information

| Intervenor | Claim Date | Amount Requested | Amount Awarded | Multiplier? | Reason Change/Disallowance |
|---------------------------------------|-------------------|-------------------------|-----------------------|--------------------|-----------------------------------|
| Felton Friends of Locally Owned Water | 1/29/2007 | 68,894.95 | \$67,396.75 | No | Computation Errors |

Advocate Information

| First Name | Last Name | Type | Intervenor | Hourly Fee Requested | Year Hourly Fee Requested | Hourly Fee Adopted |
|-------------------|------------------|-------------|---------------------------------------|-----------------------------|----------------------------------|---------------------------|
| Edward W. | O'Neill | Attorney | Felton Friends of Locally Owned Water | \$470 | 2005 | \$470 |
| Edward W. | O'Neill | Attorney | Felton Friends of Locally Owned Water | \$485 | 2006 | \$485 |
| Jeffrey P. | Gray | Attorney | Felton Friends of Locally Owned Water | \$310 | 2005 | \$310 |
| Christopher A. | Hilen | Attorney | Felton Friends of Locally Owned Water | \$325 | 2006 | \$325 |
| Judy | Pau | Paralegal | Felton Friends of Locally Owned Water | \$145 | 2005 | \$145 |
| Judy | Pau | Paralegal | Felton Friends of Locally Owned Water | \$150 | 2006 | \$150 |

(END OF APPENDIX)