Decision 08-07-020 July 10, 2008

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company for Approval of a Long-Term Core Hedge Program for Core Natural Gas Supplies.	Application 06-05-007 (Filed May 5, 2006)

DECISION GRANTING INTERVENOR COMPENSATION TO AGLET CONSUMER ALLIANCE FOR SUBSTANTIAL CONTRIBUTIONS TO DECISION 07-06-013

This decision awards compensation to Aglet Consumer Alliance (Aglet) for its contributions to Decision (D.) 07-06-013. We award Aglet $28,221.29, which is a reduction from its amended request of $ 30,972.19.

1. Background

Pacific Gas and Electric Company (PG&E) filed this application in May 2006 seeking approval of a program that would permit PG&E to recover the cost of gas hedging in rates. PG&E proposed to recover the costs dollar-for-dollar without including the costs in its Core Procurement Incentive Mechanism and without being subject to retroactive reasonableness review. The Commission had already approved PG&E's proposals for purchasing hedging instruments during the 2005-2006 and the 2006-2007 winter seasons in D.05-10-015 and D.06-08-027. These orders encouraged PG&E to purchase hedging instruments and approved confidential treatment of its purchasing plans. The effect of these decisions was to give prior approval to a detailed

hedge plan with the goal of protecting utility gas rates from increases due to price spikes in wholesale gas markets.

The subject application sought authority to purchase gas hedges for seven years following a pre-approval of its annual plan by way of an annual expedited advice letter process. PG&E's proposal would permit it to spend ratepayer funds on hedging instruments. Ratepayers would assume all costs of these purchases and receive all of the benefits in terms of stable rates. PG&E's application also proposed a collaborative review process with non-utility parties that would obviate the need for an application process and permit an expedited advice letter process.

The Division of Ratepayer Advocates (DRA) filed a protest to PG&E's application. PG&E, DRA, The Utility Reform Network (TURN) and Aglet subsequently engaged in settlement discussions and filed a motion to adopt settlement on December 20, 2006. School Project for Utility Rate Reduction (SPURR) and Lodi Gas Storage, LLC (Lodi) protested the settlement. The Commission held an evidentiary hearing on February 14, 2007 and the parties filed opening briefs on March 9, 2007 and reply briefs on March 19, 2007.

The Commission adopted the proposed settlement in D.07-06-013. Aglet seeks compensation for its work leading to the resolution of issues in that decision.

2. Requirements for Awards of Compensation

The intervenor compensation program, enacted in Pub. Util. Code §§ 1801-1812,[1] requires California jurisdictional utilities to pay the reasonable

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

costs of an intervenor's participation if the intervenor makes a substantial contribution to a Commission order, decision, or proceeding. 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:

(a) 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, or in special circumstances at other appropriate times that we specify. (§ 1804(a).)

(b) The intervenor must be a customer or a participant representing consumers, customers, or subscribers of a utility subject to our jurisdiction. (§ 1802(b).)

(c) 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).)

(d) The intervenor must demonstrate "significant financial hardship." (§§ 1802(g), 1804(b)(1).)

(e) 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).)

(f) 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).

3. Procedural Issues

Aglet filed a timely NOI in this proceeding and has received a finding of significant financial hardship. It is a "customer" for purposes of qualifying for intervenor compensation, consistent with Section 1802(b)(1)(c).

Aglet filed its request for compensation within 60 days of the issuance of D.07-06-013. No party opposed the request. In view of the above, Aglet has satisfied all the procedural requirements necessary to make a request for compensation in this proceeding.

4. Aglet's Substantial Contribution

In evaluating whether a customer made a substantial contribution to a proceeding, we consider whether the Commission adopted one or more of the factual or legal contentions, or specific policy or procedural recommendations put forward by the customer. If the customer's contentions or recommendations paralleled those of another party, we consider whether the customer's participation materially supplemented, complemented, or contributed to the presentation of the other party or to the development of a fuller record that assisted the Commission in making its decision. The assessment of whether the customer made a substantial contribution requires the exercise of judgment.

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 Aglet's contributions in the proceeding.

Aglet states it was active in all parts of this proceeding. It signed the settlement and participated in the evidentiary hearing conducted to review it. It states it made a number of specific policy and technical recommendations to the settling parties that would promote ratepayer protections. It states it participated on issues relating to the regulatory processes for developing and reviewing PG&E's annual gas hedging plan, the customer risk preference study, the way the hedging plan would be structured and regulatory reporting by PG&E. In particular, Aglet states it contributed to the element of the settlement that provided for dollar-cost averaging.

Aglet has demonstrated that it contributed to the settlement adopted by D.07-06-013 and thereby made a substantial contribution to D.07-06-013. In this case, Aglet states its positions differed from those of DRA and TURN and that its work emphasized issues that took advantage of its expert's knowledge and skills. We find that Aglet here complemented the work of other consumer groups in this proceeding.

5. Aglet's Requested Compensation

Aglet originally requested $29,951.94 for its participation in this proceeding as follows:

Work on Issues of the Proceeding

Item	Year	Hours	Rate	Total
James Weil	2006	18.10	$260.00	$ 4,706.00
James Weil	2007	7.40	$280.00	$ 2,072.00
Jan Reid	2006	91.60	$155.00	$14,198.00
Jan Reid	2007	31.80	$170.00	$ 5,406.00
Subtotal				**$26,382.00**
Other Fees [travel]				
Item	**Year**	**Hours**	**Rate**	**Total**
Jan Reid	2006	9.10	$ 77.50	$ 705.25

Jan Reid	2007	9.00	$ 85.00	$ 765.00
Subtotal				**$ 1,470.25**
Intervenor Compensation Claim Preparation				
Item	**Year**	**Hours**	**Rate**	**Total**
James Weil	2006	1.20	$130.00	$ 156.00
James Weil	2007	6.20	$140.00	$ 868.00
Jan Reid	2007	9.30	$ 85.00	$ 790.50
Subtotal				**$ 1,814.50**

Costs	
Copies	$ 12.80
Postage	$ 9.99
Fax	$ 2.00
Travel (Reid) Parking, mileage	$ 260.40
Subtotal	**$ 285.19**
TOTAL REQUEST	**$29,951.94**

Aglet sought to increase its request[2] by $1,020.25 to cover the costs of responding to the Administrative Law Judge's (ALJ) direction that it augment its request for compensation to provide (1) a description of the elements of the settlement to which it claimed it contributed, (2) an explanation of how Aglet contributed rather than a simple assertion that it did, and (3) a description of

[2] Aglet improperly included this requested increase in the body of its December 7, 2007, motion for leave to file confidential materials under seal, and also in the body of the confidential amendment to request for award of compensation attached thereto. The inclusion of the requested increase in the motion for leave to file under seal violates Rule 1.7(a) which requires the use of separate documents to ask the Commission or the ALJ to take essentially different types of action. The inclusion of the requested increase in the amendment violates Rule 1.12(a) which requires permission of the ALJ; Aglet did not request, and the ALJ did not grant, permission to file this amendment. Notwithstanding its procedural deficiencies, we deny compensation for these additional costs for being unreasonable, as discussed below.

Aglet's claimed contribution to the resolution of PG&E's advice letter 2841-G rather than a simple assertion that it was "through participation in CHAG," as follows:

Amendment to Compensation Request

Item	Year	Hours	Rate	Total
James Weil	2007	3.00	$140.00	$ 420.00
Jan Reid	2007	7.00	$ 85.00	$ 595.00
Postage				$5.25
Subtotal				**$ 1,020.25**
TOTAL AMENDED REQUEST				**$ 30,972.19**

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. 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.

5.1. Attorney and Expert Rates

We consider here 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. Aglet seeks hourly rates for its experts, James Weil and Jan Reid, that the Commission has already approved. D.06-10-018 approved a 2006 hourly rate for Weil of $260 and D.07-05-037 approved a 2007 hourly rate of $280. D.06-11-032 approved an hourly rate of $155 for Reid and D.07-05-037 approved an hourly rate of $170. We apply these rates here.

5.2. Hours Claimed

Aglet requests compensation for about 160 hours for the work of Reid and Weil in this proceeding. Aglet billed the hours spent on drafting the compensation request and for travel time at one-half the requested hourly rate.

The total dollar amount Aglet seeks for its professional work in this proceeding is modest compared to the requests intervenors have sought in some proceedings. This may be partially attributable to the fact that three consumer groups worked on the issues, presumably coordinating their work to promote efficiency. In addition, the proceeding was abbreviated.

We disallow compensation for travel time sought for Reid, which is not reasonable in light of the circumstances here. Aglet seeks 18.1 hours for Reid's travel from Santa Cruz to San Francisco to attend meetings. Apparently, Reid lives in the Santa Cruz area. In D.07-04-010, the Commission denied compensation for an intervenor's time and costs associated with "routine commuting," stating that:

> An intervenor's fees are assumed to cover such overhead costs [including routine commuting], just as they cover administrative costs. If an intervenor has extraordinary travel costs, that are reasonable and justified …. we will continue to compensate them.

D.07-10-014 also recently addressed the issue of compensating intervenors for travel time, stating the Commission considers several factors when determining the reasonableness of travel costs, for example:

(1) the size of the travel time/expense award;

(2) the amount of travel time/expenses compared to the total award for participation;

(3) whether the travel is routine and fairly considered to be compensated by the other hourly compensation provided;

(4) whether the travel expenses were reasonably incurred; and

(5) whether there were less expensive means to participate in the Commission's proceeding.

Our first consideration in administering the intervenor compensation program is the promotion of ratepayer interests. Here, Aglet seeks almost $1,500 in compensation for its consultant to drive to meetings in San Francisco. The time for related travel is not spent productively on behalf of ratepayers and Aglet has not justified ratepayers' assumption of these costs. Accordingly, we disallow them. We will continue to reimburse intervenors for travel time when it is reasonable and necessary; for example, for attending hearings and meetings outside the Bay Area, where the intervenor must hire an expert from a distant location where such expertise is not available locally or where we find travel costs are otherwise reasonable.

In addition, we disallow compensation for the 10 hours and costs of preparation and filing Aglet's amendment to its request for compensation, which is not reasonable under the circumstances here. The amendment was filed in response to the ALJ's invitation to Aglet to cure its failure to identify how it made a substantial contribution to the proceeding. Specifically, Aglet's request for compensation did not offer any explanation or discussion on how it made a substantial contribution to identified issues in the proceeding beyond its mere assertion that it did so. Aglet's mere assertion that it made a substantial contribution does not constitute an adequate showing of having done so, especially where, as here, there is no independent record evidence of Aglet's participation in the proceeding. As an experienced practitioner before the Commission, we expect Aglet to know this and to make the required showing without further prompting from the ALJ and incurring additional costs beyond

the 16.7 hours of professional time that it claimed for preparation of the original compensation request.

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 its participation. Aglet states it cannot assign a value to its participation in a proceeding like this. We agree with Aglet, however, that the benefits to customers of Aglet's participation are likely to outweigh the costs.

5.4. Direct Expenses

Aglet seeks $285.19 in expenses for work in this proceeding, which includes the costs of a small survey, postage, and copying but is mostly for the cost of Reid's travel described as "parking, mileage" in the request for compensation. We disallow travel costs as we explain in Section 5.2 of the decision. The remaining costs are reasonable considering the work conducted in this proceeding.

6. Aglet's Award of Compensation

As set forth in the table below, we award $28,221.29 in compensation to Aglet.

Work on Issues of the Proceeding

Item	Year	Hours	Rate	Total
James Weil	2006	18.10	$260.00	$ 4,706.00
James Weil	2007	7.40	$280.00	$ 2,072.00
Jan Reid	2006	91.60	$155.00	$14,198.00
Jan Reid	2007	31.80	$170.00	$ 5,406.00
Subtotal				**$26,382.00**

Intervenor Compensation Claim Preparation				
Item	**Year**	**Hours**	**Rate**	**T otal**
James Weil	2006	1.20	$130.00	$ 156.00
James Weil	2007	6.20	$140.00	$ 868.00
Jan Reid	2007	9.30	$ 85.00	$ 790.50
Subtotal				**$ 1,814.50**
Costs				
Copies				$ 12.80
Postage				$ 9.99
Fax				$ 2.00
Subtotal				**$ 24.79**
TOTAL AWARD				**$28,221.29**

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 October 27, 2007, the 75th day after Aglet filed its compensation request, and continuing until full payment of the award is made.

Commission staff is authorized to audit an intervenor's records related to the award. Intervenors must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. Aglet's records should identify specific issues for which it requested compensation, the actual time spent by each employee or consultant, the applicable hourly rate, fees paid to consultants, and any other costs for which compensation was claimed.

7. Comments on Proposed Decision

The proposed decision of the Administrative Law Judge Division in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Aglet filed comments on June 13, 2008.

8. Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner, and Hallie Yacknin is the assigned ALJ in this proceeding.

Findings of Fact

1. Aglet has satisfied all the procedural requirements necessary to claim compensation in this proceeding.

2. Aglet made a substantial contribution to D.07-06-013 as described herein.

3. Aglet's requested hourly rates for its experts have already been found to be reasonable and consistent with D.07-01-009.

4. Aglet's request is excessive because Aglet requests compensation for drafting testimony Aglet never submitted and because Aglet seeks compensation for unreasonable travel time. Aglet's request is otherwise reasonable and commensurate with the work performed.

Conclusions of Law

1. Aglet has fulfilled the requirements of Pub. Util. Code §§ 1801-1812, which govern awards of intervenor compensation, and is entitled to intervenor compensation for its contributions to D.07-06-013 in the amount of $28,221.29.

2. This decision should be effective today so that Aglet may be compensated without further delay.

O R D E R

IT IS ORDERED that:

1. Aglet Consumer Alliance (Aglet) is awarded $28,221.29 as compensation for its substantial contributions to Decision 07-06-013.

2. Within 30 days of the effective date of this decision, Pacific Gas and Electric Company shall pay Aglet the total award granted herein. 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 October 27, 2007, the 75th day after Aglet filed its compensation request, and continuing until full payment of the award is made.

3. Application 06-05-007 is closed.

This order is effective today.

Dated July 10, 2008, 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:	D0807020	**Modifies Decision? No**
Contribution Decision(s):	D0706013	
Proceeding(s):	A0605007	
Author:	Administrative Law Judge Division	
Payer(s):	Pacific Gas and Electric Company	

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
Aglet Consumer Alliance	8/13/07	$30,972.19	$28,221.29	No	Excessive hours; non-compensable travel time and costs.

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
James	Weil	Expert	Aglet Consumer Alliance	$260 $280	2006 2007	$260 $280
Jan	Reid	Expert	Aglet Consumer Alliance	$155 $170	2006 2007	$155 $170

(END OF APPENDIX)