

Decision 08-08-023 August 21, 2008

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company for Expedited Issuance of a Certificate of Public Convenience and Necessity for the Colusa Power Project. (U39E)

Application 07-11-009
(Filed November 14, 2007)

**DECISION DENYING INTERVENOR COMPENSATION
TO CARE FOR FAILURE TO MAKE A SUBSTANTIAL CONTRIBUTION
TO DECISION 08-02-019**

This decision denies Californians for Renewable Energy, Inc. (CARE) compensation for its failure to make a substantial contribution to Decision (D.) 08-02-019. This proceeding is closed.

1. Background and summary

In D.06-11-048 (issued in Application (A.) 06-04-012), the Commission approved, among other things, the Colusa Power Project (Colusa Project), a new 657 megawatt (MW) combined cycle generating facility. As initially approved, the Colusa Project was to be developed and built under a purchase and sale agreement (PSA) and, once completed and performance-tested, delivered to Pacific Gas and Electric Company (PG&E) for PG&E to own and operate as a utility asset subject to cost of service ratemaking and a cap on recoverable capital costs. Subsequently, the Colusa Project developer informed PG&E that it did not intend to proceed with the project. Rather than allow the project to fail, PG&E executed an agreement to acquire the assets and permitting related to the Colusa

Project, and filed this application requesting a Certificate of Public Convenience and Necessity (CPCN) to construct the Colusa Project, subject to the ratemaking and cap on recoverable capital costs previously adopted in D.06-11-048.

CARE protested the application on the bases that the project need was not demonstrated using current data and considering greenhouse gas emissions as required by Rulemaking (R.) 06-02-013, and the California Energy Commission's (CEC) environmental review of the project was flawed.¹ The January 9, 2008, Scoping Memo and Ruling of the Assigned Commissioner ruled that these issues were beyond the scope of this proceeding.

D.08-02-019 concluded that, so long as the project rate impact remains identical to that of the project as originally approved in D.06-11-048, the change in builder from the developer to PG&E did not materially change the project. Accordingly, D.08-02-019 granted the request for a CPCN, subject to conditions to ensure that the project rate impact remains the same.

CARE requests an award of compensation in the amount of \$29,905. We deny the request because CARE did not substantially contribute to D.08-02-019.

2. Requirements for Awards of Compensation

The intervenor compensation program, which is 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

¹ The CEC is the lead agency responsible for conducting environmental review of the Colusa Power Project under the California Environmental Quality Act (CEQA) and the Warren-Alquist Energy Resources Conservation and Development Act (Warren-Alquist Act).

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

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 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 a proceeding in which a PHC is held, the intervenor must file and serve its NOI between the date the proceeding was initiated until 30 days after the PHC is held. (Rule 17.1(a)(1).) The PHC in this matter was held on January 7, 2008. CARE timely filed its NOI on January 28, 2008.

In its NOI, CARE asserted financial hardship. On February 21, 2008, the ALJ ruled that CARE meets the financial hardship condition pursuant to § 1804(b)(1).

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).) The ALJ’s February 21, 2008, ruling found that CARE is a customer pursuant to § 1802(b)(1)(C).

Regarding the timeliness of the request for compensation, CARE filed its request for compensation on April 14, 2008, within 60 days of D.08-02-019 being issued.

In view of the above, we affirm the ALJ’s ruling and find that CARE has satisfied all the procedural requirements necessary to make its request for compensation in this proceeding.

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, we look at if the customer’s contentions or recommendations paralleled those of

another party, whether the customer's participation unnecessarily duplicated or 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. (§§ 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

With this guidance in mind, we turn to the claimed contribution CARE made to the proceeding.

CARE alleges that it made a substantial contribution to D.08-02-019 by highlighting the issue that the Colusa Project was "sited"⁴ without considering the amount of fuel consumption that the configuration of its system would require, which contributed in turn "to the understanding of the greenhouse gas impacts caused by the Colusa Power Project." CARE acknowledges that this issue was excluded from the scope of this proceeding. However, CARE states that it is presenting this issue, which it developed in this proceeding, in A.07-12-021, PG&E's application for authority to enter into long-term natural gas

³ D.98-04-059, 79 CPUC2d 628 at 653.

⁴ CARE does not define the term "sited." We interpret it to refer to the CEC's "siting" authority, that is, authority to approve the construction of power plants pursuant to the Warren-Alquist Act.

transportation arrangements with Ruby Pipeline. CARE states that it is seeking compensation “for developing the greenhouse gas emission comparison in this proceeding and not wait[ing] for the A.07-12-021 compensation request” because the April 8, 2008 Administrative Law Judge’s ruling in A.07-12-021 compels it to do so.

More precisely, the April 8, 2008 Administrative Law Judge’s Ruling Regarding Notice of Intent to Claim Intervenor Compensation states as follows:

CARE’s NOI states at page 6 that CARE “will provide an analysis of the impacts and cost effectiveness to PG&E’s ratepayers of the Colusa CPCN which CARE is challenging.” This proceeding will not address the merits of the Colusa CPCN. The proper proceeding to do so is A.07-11-009 where CARE is a party. Any expenses that CARE incurs in the instant proceeding (A.07-12-021) regarding the merits of the Colusa CPCN will not be compensated. (At p. 2, footnote omitted.)

While the ALJ ruling appropriately notes that CARE’s analysis of the merits of the Colusa Project is beyond the scope of that proceeding, it is not determinative (or even instructive) of whether CARE has made a substantial contribution to D.08-02-019, the decision in this proceeding. If CARE makes a substantial contribution to the resolution of A.07-12-021 and is otherwise eligible, it may seek compensation in that proceeding for its costs that are reasonably related and necessary to that substantial contribution. Whether it does so and the reasonableness of its claimed costs will be determined in that proceeding.

With respect to this proceeding, D.08-02-019 does not adopt any of the factual or legal contentions, or specific policy or procedural recommendations put forward by CARE as required for compensation under § 1802(i). In particular, D.08-02-019 did not address the issue of greenhouse gas impacts caused by the Colusa Power Project, to which CARE claims it substantially

contributed, because it is beyond the scope of this proceeding. CARE did not substantially contribute to D.08-02-019.

4. Contributions of Other Parties

Section 1801.3(f) requires an intervenor to avoid participation that unnecessarily 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 if its participation materially supplements, complements, or contributes to that of another party if that participation makes a substantial contribution to the Commission order.

Because D.08-02-019 does not adopt any of the factual or legal contentions, or specific policy or procedural recommendations put forward by CARE, we do not reach this issue.

5. Reasonableness of Requested Compensation

In general, the requested compensation 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. 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.

Because CARE did not make a substantial contribution to D.08-02-019, we do not reach these issues.

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. 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.

Because CARE did not make a substantial contribution to D.08-02-019, we do not reach this issue.

7. Comments on Proposed Decision

The proposed decision in this matter was mailed to parties in accordance with § 311 of the Pub. Util. Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. CARE's comments, filed on July 28, 2008, fail to identify any error.

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. CARE has satisfied all the procedural requirements necessary to claim compensation in this proceeding.
2. CARE did not make a substantial contribution to D.08-02-019.
3. The appendix to this decision summarizes today's denial of award.

Conclusions of Law

1. CARE should not be awarded compensation for its claimed substantial contribution to D.08-02-019.
2. This order should be effective today.
3. This proceeding should be closed.

O R D E R

IT IS ORDERED that:

1. Californians for Renewable Energy, Inc.'s request for an award of compensation for substantial contribution to Decision 08-02-019 is denied.
2. Application 07-11-009 is closed.

This order is effective today.

Dated August 21, 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:	D0808023	Modifies Decision?
Contribution Decision(s):	D0802019	
Proceeding(s):	A0711009	
Author:	ALJ Yacknin	
Payer(s):	Pacific Gas and Electric Company	

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
Californians for Renewable Energy, Inc.	4/14/08	\$29,905	\$0	no	failure to make substantial contribution

(END OF APPENDIX)