

Decision 08-09-035 September 18, 2008

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of the Application of Golden State Water Company (U133W) for an Order Pursuant to Public Utilities Code Section 851 Approving a Settlement in a Water Rights Adjudication, and for an Order Pursuant to Section 454 Approving the Proposed Ratemaking Treatment of the Costs of the Adjudication and Settlement.

Application 06-02-026  
(Filed February 24, 2006)

**DECISION GRANTING INTERVENOR COMPENSATION  
TO DONALD R. WARD FOR THE ORCUTT AREA ADVISORY GROUP, INC.  
FOR SUBSTANTIAL CONTRIBUTION TO DECISION 08-04-007**

This decision awards Orcutt Area Advisory Group, Inc. \$1,430 for its substantial contribution to Decision 08-04-007. This represents a reduction of \$200.00 for excessive hours requested for intervenor compensation preparation.

**1. Background**

In Phase I of this proceeding, Orcutt Area Advisory Group, Inc. (Orcutt) received an award of \$11,976.72 in compensation for its substantial contribution. The Commission authorized a second phase to this proceeding and extended the statutory deadline for completing this proceeding. This is Orcutt's second request for compensation in this matter. Rule 17.2 of the Commission's Rules of Practice and Procedure (Rules) states that a party found eligible in one phase of a proceeding remains eligible in later phases, including rehearing, in the same proceeding.

## 2. Requirements for Awards of Compensation

The intervenor compensation program, which is set forth in Pub. Util. Code §§ 1801-1812,<sup>1</sup> 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 prehearing conference, pursuant to Rule 17.1, 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).)

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<sup>1</sup> All subsequent statutory references are to the Public Utilities Code unless otherwise indicated.

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).

### **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.

Orcutt's NOI was timely under § 1804(c). The prehearing conference was held on April 19, 2006. Orcutt filed a timely NOI on May 15, 2006. A final decision was issued on April 10, 2008, and Orcutt's request for intervenor compensation was filed within 60 days on April 28, 2008. No party opposes the request.

In its NOI, Orcutt asserted financial hardship. On July 7, 2006, Administrative Law Judge (ALJ) John E. Thorson ruled Orcutt meets the financial hardship condition pursuant to §1802(g).

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 July 7, 2006 ruling found Orcutt a "representative who has been authorized" pursuant to § 1802(1)(b). The finding of financial hardship is also affirmed in D.07-05-041.

### **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 materially supplemented, complemented, or contributed to the presentation of the other party and thereby 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.<sup>2</sup>

With this guidance in mind, we turn to the claimed contributions Orcutt made to the proceeding. Orcutt's participation in this proceeding included:

- A. Providing a local perspective to all parties regarding this effort;
- B. Following closely all meetings of the Nipomo Community Service District (NCSD) Board of Directors and advising all parties that NCSD had virtually abandoned the pipeline project and had began searching for alternatives. This was the direct cause of the second phase and the extension of the statutory deadline as ordered in the last sentence of D.07-05-041; and
- C. Proposing to dismiss Application 06-02-026.

Ultimately, the Commission did dismiss the application.

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<sup>2</sup> D.98-04-059, 79 CPUC2d 628 at 653.

#### 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.

Orcutt coordinated its efforts with sources located outside of the local area (Santa Monica and Nipomo), thus, avoiding duplication issues.

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

#### 5. Reasonableness of Requested Compensation

Orcutt requests \$1,630 for its participation in this proceeding, as follows:

<b>Work on Proceeding</b>				
<b>Attorney/Staff</b>	<b>Year</b>	<b>Hours</b>	<b>Hourly Rate</b>	<b>Total</b>
Donald R. Ward	2007	3.5	\$100.00	\$350.00
Donald R. Ward	2008	8.5	\$100.00	\$850.00
Donald R. Ward	2008	8.0	\$ 50.00	\$400.00
Phone Costs			\$ 20.00	\$ 20.00
Photocopying			\$ 10.00	\$ 10.00
<b>Total:</b>			<b>\$1,630</b>	<b>\$1,630</b>

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

Orcutt has claimed compensation by presenting a breakdown of the hours it has invested. A review of the hours at the rate of compensation claimed is reasonable, with the exception of the hours claimed for preparing the intervenor compensation request, which we address below.

### **5.2. Intervenor Hourly Rates**

Orcutt seeks one hourly rate of \$100 for work performed in 2007 and 2008. This hourly rate was previously approved in D.07-08-021 and is adopted here.

### **5.3. Direct Expenses**

The itemized direct expenses submitted by Orcutt, include the following:

Printing & Photocopying	\$10.00
Telephone & Fax	\$20.00
Total Expenses	\$30.00

The cost breakdown included with the request shows the miscellaneous expenses to be commensurate with the work performed. We find these costs reasonable.

## **6. Productivity**

Orcutt requested eight hours of compensation for the preparation of intervenor compensation documents. We find this amount to be unreasonable

given a claim of 12 hours for substantial contribution, and reduce the claim by four hours for reasonable compensation.

**7. Award**

As set forth in the table below, we award Ward \$1,430.00:

<b>Work on Proceeding</b>				
<b>Attorney/Staff</b>	<b>Year</b>	<b>Hours</b>	<b>Hourly Rate</b>	<b>Total</b>
Donald R. Ward	2007	3.5	\$100.00	\$ 350.00
	2008	8.5	\$100.00	\$ 850.00
Work on Proceeding Total:				\$1,200.00

<b>Preparation of Compensation Request</b>				
<b>Attorney/Staff</b>	<b>Year</b>	<b>Hours</b>	<b>Hourly Rate</b>	<b>Total</b>
Donald R. Ward	2008	4	\$50.00 (1/2)	\$ 200.00
Compensation Request Total:				\$ 200.00

**CALCULATION OF FINAL AWARD**

Work on Proceeding	\$1,200.00
Compensation Request Preparation	\$ 400.00
Expenses	\$ 30.00
<b>TOTAL AWARD</b>	<b>\$1,430.00</b>

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 the Federal Reserve Statistical Release H.15, commencing on July 12, 2008, the 75th day after Ward filed its compensation request, and continuing until full payment of the award is made. This award is to be paid by Golden State Water Company.

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. Orcutt'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.

### **8. Waiver of Comment Period**

As provided by Rule 14.6(c)(6), we waive the otherwise applicable 30-day comment period for this decision.

### **9. Assignment of Proceeding**

John Bohn is the assigned Commissioner and Regina DeAngelis is the assigned Administrative Law Judge in this proceeding.

### **Findings of Fact**

1. Orcutt has satisfied all the procedural requirements necessary to claim compensation in this proceeding.
2. Orcutt has made a substantial contribution to D.08-04-007 as described herein.
3. Orcutt requested hourly rates for its representatives that are reasonable when compared to the market rates for persons with similar training and experience. Orcutt's request for compensation for the preparation of intervenor compensation was excessive, and is reduced by four hours.
4. Orcutt requested related expenses that are reasonable and commensurate with the work performed.
5. The total of the reasonable compensation is \$1,430.
6. The Appendix to this decision summarizes today's award.

### **Conclusions of Law**

1. Orcutt has fulfilled the requirements of §§ 1801-1812, which govern awards of intervenor compensation, and is entitled to intervenor compensation for its claimed expenses incurred in making substantial contributions to D.08-04-007.
2. Orcutt should be awarded \$1,430 for its contribution to D.08-04-007.

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

4. Application 06-02-026 should be closed.

**O R D E R**

**IT IS ORDERED** that:

1. Donald R. Ward for the Orcutt Area Advisory Group, Inc. (Orcutt) is awarded \$1,430 as compensation for its substantial contributions to Decision 08-04-007.

2. Within 30 days of the effective date of this decision, Golden State Water Company shall pay Orcutt, 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 July 12, 2008, the 75<sup>th</sup> day after the filing date of Orcutt's request for compensation, and continuing until full payment is made.

3. Application 06-02-026 is closed.

This order is effective today.

Dated September 18, 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:	D0809035	Modifies Decision? No
Contribution Decision(s):	D0804007	
Proceeding(s):	A0602026	
Author:	ALJ DeAngelis	
Payer(s):	Golden State Water Company	

**Intervenor Information**

<b>Intervenor</b>	<b>Claim Date</b>	<b>Amount Requested</b>	<b>Amount Awarded</b>	<b>Multiplier?</b>	<b>Reason Change/Disallowance</b>
Orcutt Area Advisory Group, Inc.	04-28-08	\$1,630	\$1,430	No	

**Advocate Information**

<b>First Name</b>	<b>Last Name</b>	<b>Type</b>	<b>Intervenor</b>	<b>Hourly Fee Requested</b>	<b>Year Hourly Fee Requested</b>	<b>Hourly Fee Adopted</b>
Donald	Ward	Expert	Orcutt Area Advisory Group, Inc.	\$100.00	2007	\$100.00
Donald	Ward	Expert	Orcutt Area Advisory Group, Inc.	\$100.00	2008	\$100.00

**(END OF APPENDIX)**