

Decision 08-12-018 December 4, 2008

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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

Rulemaking 06-02-013
(Filed February 16, 2006)

**DECISION GRANTING INTERVENOR COMPENSATION
TO AGLET CONSUMER ALLIANCE
FOR SUBSTANTIAL CONTRIBUTION TO DECISION 07-09-044**

This decision awards Aglet Consumer Alliance \$20,350.05 in compensation for its substantial contributions to Decision 07-09-044. Today's award payment will be allocated to the affected utilities. This proceeding remains open.

1. Background

In Decision (D.) 06-07-029, the Commission adopted a cost-allocation methodology that allows the advantages and costs of new generation to be shared by all benefiting customers in an investor-owned utility's (IOU) service territory. The decision designated that the IOUs should procure the new generation through long-term power purchase agreements (PPA). The capacity and energy from the PPA are unbundled and the rights to the capacity are to be allocated among all the load serving entities in the IOU's service territory.

The energy revenues are to be determined by the results of periodic energy auctions for the PPA energy rights.¹ The Commission ordered in D.06-07-029

¹ D.06-07-029 at 31, Item #16.

that the utilities develop implementation proposals for the energy auctions and that the Energy Division hold workshops “prior to the IOUs’ filing their Implementation Proposals, and subsequent workshops as needed.”²

On September 25, 2006, an Assigned Commissioner’s Ruling/Scoping Memo was issued that directed the utilities to file their implementation proposals for the energy auction by October 20, 2006. The IOUs made their filing on October 20, and a workshop for all parties was subsequently conducted on November 1, 2006.

On November 17, 2006, the assigned Administrative Law Judge (ALJ) issued a ruling establishing a schedule for the submission of new or revised energy auction proposals on December 12, 2006, to be followed by a workshop on December 18, 2006. At the December 18 workshop, it became evident that there were many complex, interrelated issues related to the energy auction. As a result, the parties agreed that it would be appropriate to refer issues regarding the energy auction process and products to mediation in an effort to resolve many of the underlying issues.

On January 3, 2007, ALJ Kenneth Koss was appointed to oversee mediation efforts to develop the energy auction process and products. After the first noticed mediation session, the parties agreed to continue meeting to work towards the development of a settlement agreement. From January 2007 forward, a number of parties were actively involved in negotiating numerous aspects of the energy auction process and products. The parties engaged in almost 20 negotiating sessions, either face-to-face or telephonic, and exchanged

² *Id.*

detailed draft proposals. As a result of these intensive mediation efforts, a multi-party settlement was reached regarding principles for the process and products for the energy auction.³ The auction described in the settlement agreement is essentially a sealed bid auction with an undisclosed minimum bid price.

The motion to approve the Settlement regarding Energy Auction Principles was filed on May 11, 2007. During the 30-day comment period, no comments were filed on the proposal. The Settlement has been uncontested since its presentation.

In D.07-09-044, the Commission adopted all provisions of the Joint Settlement Agreement (Settlement Agreement/Settlement) presented by Settling Parties outlining Principles for the process and products to be included in the energy auction established by the Commission in D.06-07-029, except for two specific clarifications of the Settlement's proposed allocation of resource adequacy capacity and several other general clarifications.

2. Requirements for Awards of Compensation

The intervenor compensation program, which is set forth in Pub. Util. Code §§ 1801-1812,⁴ requires California jurisdictional utilities to pay the

³ The Settling Parties include Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), San Diego Gas & Electric Company (SDG&E), Constellation Energy Commodities Group, Inc., Constellation NewEnergy, Inc. (Constellation), Western Power Trading Forum (WPTF), the Division of Ratepayer Advocates (DRA), Aglet Consumer Alliance (Aglet), J. Aron & Company, The Utility Reform Network (TURN), Mirant Corporation; Mirant California, LLC, Mirant Delta, LLC (collectively Mirant), Alliance for Retail Energy Markets (AREM), and Barclays Bank, PLC.

⁴ All subsequent statutory references are to the Public Utilities Code unless otherwise indicated.

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 (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 February 28, 2006. Aglet timely filed its NOI on March 30, 2006.

On November 15, 2005, an ALJ ruling, issued in Application 05-06-006 *et al.*, found that Aglet met the financial hardship condition, pursuant to § 1802(g). That ruling creates a rebuttable presumption of eligibility for Aglet, pursuant to § 1804(b)(1) because it met the financial hardship condition in another proceeding within one year of the commencement of this proceeding.

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).) On April 24, 2008, the Commission issued D.08-04-053 that found Aglet a customer pursuant to § 1802(b)(1)(C).

Regarding the timeliness of the request for compensation, Aglet filed its request for compensation on November 6, 2007, within 60 days of D.07-09-044 being issued.⁵ No party opposed the request. In view of the above, we find that

⁵ D.07-09-044 was issued on September 21, 2007, one day after it was adopted on September 20, 2007.

Aglet 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, 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.)

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 Aglet made to the proceeding.

Aglet alleges that its involvement was extensive and included participation in 20 Commission-sponsored mediation sessions, preparation of an energy auction proposal and comments on the proposed decision, and

⁶ D.98-04-059, 79 CPUC2d 628 at 653.

participation in a workshop. Normally we expect an intervenor to demonstrate a direct connection between the positions it took during a proceeding and either an ALJ's proposed decision or the decision adopted by the Commission. In this case, Aglet failed to provide this direct connection because Aglet believed it was barred by Rule 12.6 which prohibits parties from disclosing the detail of negotiations that led to the adopted settlement. We agree with Aglet that given the unique circumstances of this request, we cannot expect Aglet to demonstrate a direct connection. However, we can conclude from Aglet's request, it did substantially contribute to the settlement. Specifically, in its contribution request, Aglet identified 13 issues that were part of the settlement agreement upon which Aglet claims to have made a substantial contribution. None of the utilities, who will have to pay this contribution request if approved, have objected. Given the confidential nature of settlement discussions and no objections by participants in the settlement discussions to Aglet's claim of substantial contribution, we conclude that Aglet made a substantial contribution to D.07-09-044 through its participation in settlement discussions.

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 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.

Regarding contributions by other parties, we agree with Aglet that in a proceeding involving multiple participants, it is virtually impossible to

completely avoid some duplication of the work of other parties. Aglet states that it took all reasonable steps to keep duplication to a minimum and to ensure that its work served to supplement, complement, or contribute to the showing of the other very active parties in this proceeding, DRA and TURN. (§ 1802.5.) Aglet states that it collaborated closely with DRA and TURN throughout the mediation sessions held from January 10, 2007 to May 14, 2007. We find that Aglet has reasonably avoided duplicating the work of other participants.

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

Aglet requests \$20,350.05 for its participation in this proceeding, as follows:

Work on Proceeding				
Attorney/Staff	Year	Hours	Hourly Rate	Total
James Weil	2006	1.8	\$260	\$ 468.00
James Weil	2007	4.0	\$280	\$ 1,120.00
Jan Reid	2006	31.3	\$155	\$ 4,851.50
Jan Reid	2007	69.3	\$170	\$11,781.00
Subtotal:				\$18,220.50

Preparation of NOI and Compensation Request				
Attorney/Staff	Year	Hours	Hourly Rate	Total
James Weil	2007	6.4	\$140	\$ 896.00
Jan Reid	2007	14.3	\$ 85	\$ 1,215.50
Subtotal Hourly Compensation:				\$ 2,111.50
Expenses				\$ 18.05
Total Requested Compensation				\$20,350.05

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.

Aglet documented its claimed hours by presenting a daily breakdown of the hours of its attorneys, accompanied by a brief description of each activity. 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.

Aglet seeks an hourly rate of \$260 for Weil for work performed in 2006. We previously approved this rate for Weil in D.06-10-018, and adopt it here. Aglet seeks an hourly rate of \$280 for Weil for work performed in 2007. We previously approved this rate for Weil in D.07-05-037 and adopt it here. Aglet seeks hourly rates of \$155 and \$170 for Reid for work performed in 2006 and 2007, respectively. We previously approved these rates for Reid in D.06-11-032 (\$155/hour) and D.07-05-037 (\$170/hour), and adopt them here.

5.3. Direct Expenses

The itemized direct expenses submitted by Aglet include the following:

Printing & Photocopying	\$12.80
Postage & Delivery	\$ 5.25
Total Expenses	\$18.05

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

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, pp. 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.

Aglet claims that it contributed to the proceeding in a manner that was productive and will result in benefits to ratepayers that exceed the costs of participation. Aglet did not identify precise monetary benefits to ratepayers. However, Aglet claims, its substantial contribution on the bid evaluation issue will likely result in lower winning bids in the energy auction which results in lower energy costs for ratepayers. We agree that to the extent Aglet's contribution results in energy auctions with lower winning bids, ratepayers benefit monetarily by having lower energy costs. Thus, we find that Aglet's efforts have been productive.

7. Award

As set forth in the table below, we award Aglet \$20,350.05:

Work on Proceeding

Attorney/Staff	Year	Hours	Hourly Rate	Total
James Weil	2006	1.8	\$260	\$ 468.00
James Weil	2007	4.0	\$280	\$ 1,120.00
Jan Reid	2006	31.3	\$155	\$ 4,851.50
Jan Reid	2007	69.3	\$170	\$11,781.00
Work on Proceeding Total:				\$18,220.50

Preparation of NOI and Compensation Request

Attorney/Staff	Year	Hours	Hourly Rate	Total
James Weil	2007	6.4	\$140	\$ 896.00
Jan Reid	2007	14.3	\$85	\$1,215.50
NOI and Compensation Request Preparation Total:				\$2,111.50

CALCULATION OF FINAL AWARD

Work on Proceeding	\$18,220.50
NOI and Compensation Request Preparation	\$ 2,111.50
Expenses	\$ 18.05
TOTAL AWARD	\$20,350.05

Pursuant to § 1807, we order PG&E, SDG&E, and SCE 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 20, 2008, the 75th day after Aglet filed its compensation request, and continuing until full payment of the award is made.

We direct PG&E, SDG&E, and SCE to allocate payment responsibility among themselves based upon their California-jurisdictional gas and electric revenues for the 2007 calendar year, to reflect the year in which the proceeding was primarily litigated.

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. Aglet'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), we waive the otherwise applicable 30-day public review and comment period for this decision.

9. Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner, and Carol Brown 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.07-09-044 as described herein.
3. Aglet requested hourly rates for its representatives that are reasonable when compared to the market rates for persons with similar training and experience.
4. Aglet requested related expenses that are reasonable and commensurate with the work performed.
5. The total of the reasonable compensation is \$20,350.05.

6. The Appendix to this decision summarizes today's award.

Conclusions of Law

1. Aglet 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.07-09-044.

2. Aglet should be awarded \$20,350.05 for its contribution to D.07-09-044.

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

4. This proceeding should remain open.

O R D E R

IT IS ORDERED that:

1. Aglet Consumer Alliance (Aglet) is awarded \$20,350.05 as compensation for its substantial contributions to Decision 07-09-044.

2. Within 30 days of the effective date of this decision, Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E), and Southern California Edison Company (SCE) shall pay Aglet their respective shares of the award. We direct PG&E, SDG&E, and SCE to allocate payment responsibility among themselves, based on their California-jurisdictional electric revenues for the 2007 calendar year, to reflect the year in which the proceeding was primarily litigated. 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 20, 2008, the 75th day after the filing date of Aglet's request for compensation, and continuing until full payment is made.

3. Rulemaking 06-02-013 remains open.

This order is effective today.

Dated December 4, 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:	D0812018	Modifies Decision? N
Contribution Decision(s):	D0709044	
Proceeding(s):	R0602013	
Author:	ALJ Brown	
Payer(s):	Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company	

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
Aglet Consumer Alliance	11/6/2007	\$20,350.05	\$20,350.05	No	

Advocate Information

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

(END OF APPENDIX)