

Decision 09-01-035 January 29, 2009

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

Carole Dominguez,

Complainant,

vs.

Pacific Gas and Electric Company,

Defendant.

Case 07-03-006  
(Filed March 8, 2007)

**DECISION GRANTING INTERVENOR COMPENSATION  
TO ROBERT SARVEY FOR SUBSTANTIAL CONTRIBUTION  
TO DECISION 08-02-001**

**1. Summary**

This decision awards Robert Sarvey \$14,028.75 in compensation for his substantial contributions to Decision 08-02-001. The award is reduced by \$525 (3.6%) to disallow clerical work. Today's award payment will be paid by Pacific Gas and Electric Company. A Settlement Agreement between the parties resolved all issues in the complaint, and closes the proceeding.

**2. Background**

Pacific Gas and Electric Company (PG&E) constructed a natural gas pipeline, Line 401 (L-401), in an existing easement across a property owned by the federal government, known as the Antenna Farm, in 1993. In 2006, the property was transferred to the City of Tracy (City). After extensive debate in

the local community, the City decided to develop a youth athletic facility on the property.

Under U. S. Department of Transportation (DOT) regulations<sup>1</sup> and Commission General Order (GO) 112-E, the City's decision to use the site for a youth athletic facility will change the classification of L 401 from Class 1 to Class 3 in accordance with 49 Code Federal Regulations (CFR) Section 192.5, because of the increased density of use of the property. As a result, PG&E was required to either: (a) reduce the operating pressure of L 401, (b) replace segments of L 401, or (c) apply for a waiver of these requirements.

In March 2004, PG&E applied to the Commission for a waiver of the above requirements for the portion of L 401 covered by the youth athletic facility and, based on the pipeline integrity management principles set forth in DOT regulations,<sup>2</sup> proposed alternative safety and mitigation measures to protect the public. On December 14, 2004, the Commission granted PG&E's waiver request in Resolution SU-58. Resolution SU-58 also requires PG&E to comply with certain safety and mitigation measures, including also, construction on this site.

On October 17, 2006, the City approved a contract, referred to in the City Council agenda as a construction contract, for the removal of antenna poles and guy wires from the property. According to the proposed settlement agreement, City staff did not notify PG&E of this proposed work, and PG&E therefore did not install temporary construction fencing or implement other safety measures required by Resolution SU-58 during this work on the site.

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<sup>1</sup> See 49 CFR Part 192 *et seq.*

<sup>2</sup> See 49 CFR Subpart O (Section 192.901 *et seq.*)

On March 8, 2007, Carole Dominguez, Complainant (Complainant), a resident of Tracy, filed this complaint against PG&E. The Complaint raised the following issues:

- **PG&E had fraudulently obtained a waiver of pipeline safety requirements in Commission Resolution SU-58.** Complainant alleged that PG&E had fraudulently obtained the waiver of GO 112-E and DOT Natural Gas Safety Standards for L 401 in Resolution SU-58, by misrepresenting to the Commission that there was no local opposition to City's youth athletic facility project or concerns within the community regarding the safety of L 401, based on its proximity to the youth athletic facility.
- **Resolution SU-58 Does Not Resolve Safety Problems Related to the Pipeline.** Complainant further alleged that the safety and mitigation measures required by Resolution SU-58 do not fully resolve the safety problems created by the presence of L 401 under the site for City's youth athletic facility. Complainant also alleged that L 401 is a risk to national security because the safety and mitigation measures specified in Resolution SU-58 do not adequately address the risk of explosion in the event of a terrorist attack.
- **PG&E Violated the Terms of Resolution SU-58 by Failing to Install Protective Fencing During the Removal of Poles from the Athletic Facility Site.** Complainant alleged that PG&E failed to comply with the safety and mitigation measures required by Resolution SU-58 during construction on the site that occurred when City's contractor removed 175 antenna poles and guy wires from the property. Complainant alleged that the removal of poles and guy wires constitutes construction under Resolution SU-58, because City approved a construction contract with a contractor for this work, and the removal of the poles and the guy wires required excavation and the use of heavy machinery and equipment. According to the complaint, L 401 could have been disturbed, either accidentally or intentionally, during this work.

Complainant also alleged that despite her previous request the Commission's Consumer Protection and Safety Division (CPSD) staff failed to

notify her of any upcoming Commission action related to L 401 and the site of the youth athletic facility, and neither she nor other concerned members of the local community were contacted regarding the Commission hearing on Resolution SU-58 or PG&E's waiver request.

PG&E filed an answer to the complaint on April 12, 2007. In the answer, PG&E claimed that the complaint should be dismissed and Resolution SU-58 should be upheld for the following reasons:

- **Complainant Failed to Follow Proper Procedures to Seek Review of Resolution SU-58.** No protests to Resolution SU-58 were filed, and Complainant has not filed either an application for rehearing or a petition for modification. Complainant therefore failed to follow the required Commission procedures to seek review of Resolution SU-58. Moreover, Complainant waited over two years after the Commission's approval of Resolution SU-58 before filing this complaint.
- **PG&E and the Commission Gave the Legally Required Notice of the Waiver Application and Adoption of Resolution SU-58.** PG&E gave the legally required notice of the waiver application by notifying the Commission and the federal DOT Office of Pipeline Safety of its waiver application. The Commission also gave public notice of the hearing on Resolution SU-58 by posting the agenda for the December 18, 2004 business meeting.
- **PG&E did not misrepresent to the Commission that there was no public opposition to the project.**
- **PG&E did not violate Resolution SU-58 during the removal of poles and guy wires from the site.** PG&E stated that since the removal of poles and guy wires from the site was not "construction" of the youth athletic facility, PG&E was not required to comply with the requirements of Resolution SU-58 for protective fencing and other safety measures during these activities.

Decision (D.) 08-02-001 approves a settlement among the parties that fully resolves the issues in the complaint, which relate to the safety of a PG&E natural

gas pipeline located under property in the City, on which the City plans to develop a youth athletic facility and finds that the settlement is reasonable in light of the whole record, is consistent with the applicable law, and is in the public interest, as required by Rule 12.1(d).<sup>3</sup>

D.08-02-001 also found that Resolution SU-58, which granted PG&E a waiver of 49 CFR 192.611 and required additional subsidy and risk mitigation measures related to a portion of the natural gas pipeline located under property on which City planned to develop a youth athletic facility, was moot and no longer in effect.

Robert Sarvey (Sarvey) is a Tracy resident and business owner, who intervened in this proceeding because he felt that the PG&E natural gas pipeline located under the site of the youth athletic facility to be constructed by the City of Tracy is a safety risk to persons using the athletic facility.

### **3. Requirements for Awards of Compensation**

The intervenor compensation program, set forth in Pub. Util. Code §§ 1801-1812,<sup>4</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:

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<sup>3</sup> All Rule citations are to the Commission Rules of Practice and Procedure, unless otherwise stated.

<sup>4</sup> All subsequent statutory references are to the Public Utilities Code unless otherwise indicated.

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.

### **3.1. 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.

Under § 1804(a)(1), a customer who intends to seek an award of intervenor compensation shall, within 30 days after the PHC is held, file and serve on all

parties to the proceeding a NOI. Two PHC's were held on April 30, 2007 and May 18, 2007. In a ruling dated July 30, 2007, Administrative Law Judge (ALJ) Prestidge ruled that Sarvey's NOI, filed on June 22, 2007, was timely filed.

In his NOI, Sarvey asserts financial hardship. Sarvey estimated the cost of his participation in the proceeding as \$49,100, which included the hiring of experts, transportation, and postage and copying expenses. Sarvey has also submitted financial information regarding his estimated monthly income and expenses, assets, and liabilities, which demonstrate that his planned participation in the proceeding would result in an undue financial hardship. The July 30, 2007, ruling on ALJ Prestidge found that Sarvey had met the showing for significant financial hardship, pursuant to Section 1802(g).

As to the customer status of the intervenor, the July 30, 2007 ruling found that Sarvey is a customer under Section 1802(b), qualified to request compensation.

Regarding the timeliness of the request for compensation, Sarvey filed his request for compensation on March 20, 2008, within 60 days of the issuance of D.08-02-001. No party opposed the request. In view of the above, we affirm the ALJ's ruling and find that Sarvey has satisfied all the procedural requirements necessary to make his 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, 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.<sup>5</sup>

With this guidance in mind, we turn to the claimed contributions Sarvey made to the proceeding. Sarvey asserts in his claim for compensation that the purpose of his intervention was to demonstrate that the proposed site had significant hazards which were not assessed in the waiver process. Additionally, he alleged that PG&E had not fulfilled its obligations under SU-58 and had violated the waiver. He argued that PG&E did not qualify for the waiver because the waiver which was granted (SU-58) failed to meet the requirements of DOT 49 CFR Part 192, Subpart O, Integrity Management Rules. Because other projects are planned at the site and adjacent to the site, the possibility that the pipeline needed to be replaced was a pending issue. Alvin Greenberg, Sarvey's risk management expert, uncovered data on five leaks on the Chevron crude oil pipeline, which lies in the same pipeline corridor as L 401. All five of the leaks occurred in Tracy between 2001 and 2005. This risk assessment information was critical in the adoption of the Settlement Agreement with PG&E which, amongst

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<sup>5</sup> D.98-04-059, 79 CPUC2d 628 at 653.

other issues, resulted in PG&E agreeing to withdraw its waiver application and agreeing to replace the 36-inch pipeline under the sports park parcel after construction. Sarvey and his experts resolved a major dispute between the parties, which resolved safety concerns that were raised by local residents of the City, without interfering with PG&E's obligations to provide natural gas to its customers.

The parties met for two mediation sessions conducted by ALJ DeBerry, which led to the proposed settlement in this case. On August 31, 2007, the parties filed a joint motion for adoption of the proposed settlement agreement.

Under the proposed settlement agreement, PG&E has agreed to replace the relevant portion of L 401 (between mileposts 325,44 and 326,35) in a manner that meets the requirements of GO 112-E and related federal regulations, in order to address the safety concerns raised in this proceeding.

Since PG&E has agreed to replace the relevant portions of L 401, the parties agree that Resolution SU-58, which granted PG&E's waiver request, is now moot. The parties therefore moved for rescission of Resolution SU-58. Complainant, Sarvey, and CARE agreed to request dismissal of the complaint and their motions to intervene, and consented to the terms of the proposed settlement agreement. Sarvey requests no personal compensation for his efforts and expenses other than those incurred in the hiring of his expert, Alvin Greenberg (Risk Science Associates). Sarvey's claim of substantial contribution is affirmed.

## **5. 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.

Sarvey alleges that his approach was unique and did not duplicate the efforts of other parties because he took a risk-based approach and utilized the Tracy Youth Sports Park EIR, the City of Tracy’s General Plan, plus over 3,000 pages of documents received in discovery to establish his position in mediation. We affirm that Sarvey’s work did not duplicate the efforts of other intervenors.

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.

**6. Reasonableness of Requested Compensation**

Sarvey requests \$14,553.75 in reimbursement for his expert, Dr. Alvin Greenberg as follows:

**Professional Time**

<b>Tasks</b>	<b>Hours</b>	<b>Hourly Rate</b>	<b>Totals</b>
Research pipeline safety requirements	18.25	\$215	\$ 3,923.75
Prepare data requests	6.50	\$215	\$ 1,397.50
Review data responses	19.25	\$215	\$ 4,138.75
Write risk report	20.00	\$215	\$ 4,300.00
Phone consultation	1.25	\$215	\$ 268.75
Clerical work	15.00	\$ 35	\$ 525.00
<b>Totals</b>	<b>80.25</b>		<b>\$ 14,553.75</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.

### **6.1. 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.

Sarvey has submitted a breakdown by task of the professional time that his expert spent on this case. Sarvey includes a request for reimbursement for 15 hours of clerical work, which the Commission does not allow. In keeping with this practice, we disallow \$525.00 from the final award. All other hours reasonably support Sarvey's claim for an award.

### **6.2. 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.

Sarvey requests an hourly rate of \$215.00 for Greenberg for his work as an expert in 2007. Greenberg has no previously adopted hourly rates by the Commission. Greenberg has had over two decades of technical and administrative responsibility in the preparation of human and ecological risk assessments, hazardous materials handling and risk management/prevention, and infrastructure vulnerability assessments. He is a member of several state and federal advisory committees, including the California EPA Advisory

Committee on Stochastic Risk Assessment Methods, the US EPA Workgroup on Cumulative Risk Assessment, the Cal/EPA Peer Review Committee of the Health Risks of Using Ethanol in Reformulated Gasoline and the California Air Resources Board Advisor Committee on Diesel Emissions and the Cal/EPA Department of Toxic Substance Control Program Review Committee. The 2007 hourly rate request of \$215 is reasonable for a professional expert given his level of experience and is adopted here.

**6.3. Direct Expenses**

No direct expenses were requested.

**7. Productivity**

The proposed settlement resolves a significant dispute between the parties, and achieves a result that resolves safety concerns raised by local residents of the City without interfering with PG&E’s obligation to provide natural gas to its customers. Furthermore, by reaching a settlement through mediation, the parties have avoided the need for further time-consuming and expensive litigation and the consumption of additional Commission resources. The proposed settlement is not only productive, but is also in the best interest of the public.

**8. Award**

As set forth in the table below, we award Sarvey \$14,028.75:

**Professional Time**

<b>Tasks</b>	<b>Hours</b>	<b>Hourly Rate</b>	<b>Totals</b>
Research pipeline safety requirements	18.25	\$215	\$ 3,923.75
Prepare data requests	6.50	\$215	\$ 1,397.50
Review data responses	19.25	\$215	\$ 4,138.75

Write risk report	20.00	\$215	\$ 4,300.00
Phone consultation	1.25	\$215	\$ 268.75
<b>Totals</b>	<b>65.25</b>		<b>\$ 14,028.75</b>

Pursuant to § 1807, we order PG&E, the regulated entity, 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 June 3, 2008, the 75<sup>th</sup> day after Sarvey filed his compensation request, and continuing until full payment of the award is made.

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. Sarvey'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.

#### **9. 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.

#### **10. Assignment of Proceeding**

Timothy Alan Simon is the assigned Commissioner, and Myra J. Prestidge is the assigned ALJ in this proceeding.

### **Findings of Fact**

1. Sarvey has satisfied all the procedural requirements necessary to claim compensation in this proceeding.
2. Sarvey made a substantial contribution to D.08-02-001 as described herein.
3. Sarvey requested hourly rates for its representatives that are reasonable when compared to the market rates for persons with similar training and experience.
4. Excluding the request for reimbursement for clerical work, Sarvey's request includes hourly compensation that is reasonable and commensurate with the work performed.
5. The total of the reasonable compensation is \$14,028.75.
6. The Appendix to this decision summarizes today's award.

### **Conclusions of Law**

1. Sarvey has fulfilled the requirements of §§ 1801-1812, which govern awards of intervenor compensation, and is entitled to intervenor compensation for its claimed expenses, as adjusted herein, incurred in making substantial contributions to D.08-02-001.
2. Sarvey should be awarded \$14,028.75 for his contribution to D.08-02-001.
3. This order should be effective today so that Sarvey may be compensated without further delay.
4. Case 07-03-006 is closed.

## **O R D E R**

### **IT IS ORDERED** that:

1. Robert Sarvey is awarded \$14,028.75 as compensation for his substantial contributions to Decision 08-02-001. Within 30 days of the effective date of this decision, Pacific Gas and Electric Company shall pay Sarvey 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 June 3, 2008, the 75<sup>th</sup> day after the filing date of Sarvey's request for compensation, and continuing until full payment is made.

2. Case 07-03-006 is closed.

This order is effective today.

Dated January 29, 2009, 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**

<b>Compensation Decision:</b>	D0901035	<b>Modifies Decision?</b> N
<b>Contribution Decision(s):</b>	D0802001	
<b>Proceeding(s):</b>	C0703006	
<b>Author:</b>	ALJ Prestidge	
<b>Payer(s):</b>	Pacific Gas and Electric 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>
Robert Sarvey	03-20-08	\$14,553.75	\$14,028.75	No	Disallow clerical work

**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>
Greenberg	Alvin	Expert	Robert Sarvey	\$215	2007	\$215

**(END OF APPENDIX)**