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**PUBLIC UTILITIES COMMISSION**505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3298**FILED**11/12/21  
01:45 PM

November 12, 2021

**Agenda ID #20089  
Adjudicatory**

TO PARTIES OF RECORD IN INVESTIGATION 19-06-015:

This is the proposed decision of Administrative Law Judge Sophia Park. Until and unless the Commission hears the item and votes to approve it, the proposed decision has no legal effect. This item may be heard, at the earliest, at the Commission's December 16, 2021 Business Meeting. To confirm when the item will be heard, please see the Business Meeting agenda, which is posted on the Commission's website 10 days before each Business Meeting.

Parties to the proceeding may file comments on the proposed decision as provided in Rule 14.3 of the Commission's Rules of Practice and Procedure. Electronic copies of comments should also be sent to the Intervenor Compensation Program at [icompcoordinator@cpuc.ca.gov](mailto:icompcoordinator@cpuc.ca.gov).

/s/ ANNE E SIMON

Anne E. Simon  
Chief Administrative Law Judge

AES:smt

Attachment

Decision PROPOSED DECISION OF ALJ PARK (Mailed 11/12/2021)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Investigation on the Commission's Own Motion into the Maintenance, Operations and Practices of Pacific Gas and Electric Company (U39E) with Respect to its Electric Facilities; and Order to Show Cause Why the Commission Should not Impose Penalties and/or Other Remedies for the Role PG&E's Electrical Facilities had in Igniting Fires in its Service Territory in 2017.

Investigation 19-06-015

**GRANTING INTERVENOR COMPENSATION TO  
THOMAS R. DEL MONTE FOR SUBSTANTIAL  
CONTRIBUTION TO DECISION 20-05-019**

<b>Intervenor: Thomas R. Del Monte</b>	<b>For contribution to Decision 20-05-019 (Issued 5/8/2020)</b>
<b>Claimed: \$254,539.50</b>	<b>Awarded: \$47,237.10</b>
<b>Assigned Commissioner: Clifford Rechtschaffen</b>	<b>Assigned ALJ: Sophia Park</b>

**PART I: PROCEDURAL ISSUES**

<b>A. Brief description of Decision:</b>	The decision approved with modifications a contested settlement proposed by Pacific Gas & Electric Company (PG&E), the Commission's Safety and Enforcement Division, the Commission's Office of the Safety Advocate, and the Coalition of California Utility Employees, which purports to resolve all issues in this investigation concerning the penalties and other remedies that should be imposed on
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	PG&E for the role its electrical facilities played in igniting wildfires in its service territory in 2017 and 2018.
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**B. Intervenor must satisfy intervenor compensation requirements set forth in Pub. Util. Code §§ 1801-1812<sup>1</sup>:**

	<b>Intervenor</b>	<b>CPUC Verification</b>
<b>Timely filing of notice of intent to claim compensation (NOI) (§ 1804(a)):</b>		
1. Date of Prehearing Conference:	August 13, 2019	Verified
2. Other specified date for NOI:	NA	
3. Date NOI filed:	September 12, 2019	Verified
4. Was the NOI timely filed?		Yes
<b>Showing of eligible customer status (§ 1802(b)) or eligible local government entity status (§§ 1802(d), 1802.4):</b>		
5. Based on ALJ ruling issued in proceeding number:	A.19-04-014 et al. ( <i>See also</i> Attch E – Del Monte Customer PG&E Utility Bill)	Verified
6. Date of ALJ ruling:	September 25, 2019.	Verified
7. Based on another CPUC determination (specify):	NA.	
8. Has the Intervenor demonstrated customer status or eligible government entity status?		Yes
<b>Showing of “significant financial hardship” (§1802(h) or §1803.1(b)):</b>		
9. Based on ALJ ruling issued in proceeding number:	A.19-04-014 et al.	Verified
10. Date of ALJ ruling:	September 25, 2019.	Verified
11. Based on another CPUC determination:	NA	
12. Has the Intervenor demonstrated significant financial hardship?		Yes
<b>Timely request for compensation (§ 1804(c)):</b>		

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

13. Identify Final Decision:	D.20-05-019	Verified
14. Date of issuance of Final Order or Decision:	May 8, 2020.	Verified
15. File date of compensation request:	July 7, 2020.	Verified
16. Was the request for compensation timely?	Yes	

**C. Additional Comments on Part I:**

#	Intervenor’s Comment(s)	CPUC Discussion
1	On June 8, 2020, Del Monte and one other party filed Applications for Rehearing (AFR) in this proceeding. Due to the long lead times between claim and final ruling and the expected delay in resolving the AFRs, Del Monte chooses to exclude all time and expense incurred preparing and filing the Del Monte’s AFR from this request for compensation. A second claim will be requested separately upon resolution of the AFR, if and as appropriate.	Noted

**PART II: SUBSTANTIAL CONTRIBUTION**

**A. Did the Intervenor substantially contribute to the final decision (see § 1802(j), § 1803(a), 1803.1(a) and D.98-04-059):**

Intervenor’s Claimed Contribution(s)	Specific References to Intervenor’s Claimed Contribution(s)	CPUC Discussion

<p><b><i>1. Treatment of Disallowances</i></b></p> <p>Del Monte argued with other intervenors that the disallowances outlined in the settlement agreement (SA) are insufficient “penalties” because it was unclear that the categories and amounts that PG&amp;E proposed as disallowances would be ratepayer recoverable and, therefore, not a penalty.</p> <p>Del Monte also argued that SA should be modified to increase the penalty given nature of PG&amp;E’s violations.</p> <p>The <i>POD</i> and <i>Final Decision</i> adopted the reasoning for a disallowance to be a penalty and have value as a deterrence, it must be paid for by shareholders not ratepayers.</p>	<p><i>Thomas Del Monte &amp; Wild Tree Foundation Joint Comments in Opposition of Settlement Agreement</i> (January 16, 2020) at 20-23.</p> <p><i>Id</i> at 23-25</p> <p><i>Final Decision</i> at 31 (reiterating the Commission’s interpretation that the disallowances be borne by shareholders).</p> <p><i>Id</i> at 35-40 (discussing how disallowances must be shareholder funded not ratepayer funded).</p> <p><i>Id</i> at 34 (“... For the reasons discussed above, the penalties imposed here are justified, and but for PG&amp;E’s financial condition, even higher penalties might have been warranted.”)</p>	<p>Del Monte mischaracterizes the findings made in the final decision. The issue of whether the disallowances should be shareholder or ratepayer funded was not at issue in the proceeding. Rather, the relevant issue was whether the costs the settling parties proposed be disallowed would have otherwise been recoverable from ratepayers.</p> <p>Wild Tree Foundation (Wild Tree) and Del Monte did address the issue of whether the financial obligations set forth in the settlement agreement were adequate. However, with the exception of the issue regarding imposition of a fine, addressed below, Wild Tree and Del Monte’s contributions were duplicative of positions taken by the Public</p>
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		<p>Advocates Office (Cal Advocates) and The Utility Reform Network (TURN) without bringing significant additional value to the positions of the other parties.</p>
<p><b>2. Imposition of a Fine</b></p> <p>Disallowances aside, Del Monte and Wild Tree Foundation jointly were the only parties to argue before the <i>POD</i> that it would be unlawful for the Commission to approve the SA with no fine and would also be inconsistent with Commission precedent for the Commission to approve a settlement agreement that did not contain an actual fine to be paid into the general fund.</p> <p>Del Monte and Wild Tree Foundation jointly also compiled a table of six previous Commission enforcement actions analyzing the penalties for each to serve as a guide to compare the SA to recent precedent.</p> <p>Del Monte argued that the penalty was insufficient to account for the management failures and recommended that the penalty amount be increased to penalize the utility for these failures</p>	<p><i>Thomas Del Monte &amp; Wild Tree Foundation Joint Comments in Opposition of Settlement Agreement</i> (January 16, 2020) at 25-28.</p> <p><i>Id.</i> at 20-23.</p> <p><i>Id.</i> at 25.</p>	<p>Wild Tree and Del Monte offered distinct analyses and recommendations on the issue of the imposition of a fine, which made a substantial contribution to the final decision on this issue.</p>

<p>Noting Del Monte and Wild Tree Foundation’s arguments, the <i>POD</i> adopted this reasoning in combination with the disallowance recoverability uncertainty discussed above to impose a \$200 million fine on shareholders.</p> <p>The <i>Final Decision</i> left nearly all of the <i>POD</i>’s reasoning intact and required that there be a \$200 million fine “in the form of a fine payable to the General Fund” but introducing a new and contested concept of “permanently suspended fines” in order to release PG&amp;E from any financial obligation to pay the fine on the theory that it is the “opprobrium” (<i>i.e.</i> public disgrace) of imposition of an actual fine that satisfies the Commission’s duty to impose fines sufficient to deter future bad behavior, despite the “fine” never actually being imposed.</p> <p>Del Monte still stridently disagrees that a “permanently suspended” fine meets the legal, precedential, or ethical requirements this proceeding presented to the Commission. However, winning that argument is unnecessary to demonstrate substantial contribution on this issue because the <i>Final Decision</i> still retains the argued-for fine and the reasoning for its appropriateness thereby demonstrating a substantial contribution to the proceeding.</p>	<p>POD at 45-47.</p> <p>Final Decision at 47-50.</p>	
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<p><b>3. Settlement Negotiations</b> – Del Monte attended and actively participated in numerous in-person and remote settlement discussions. Del Monte did not join the settlement approved by D.20-05-019. However, it is clear under D.98-04-059 that intervenors are not required to join a settlement in order to receive compensation for participation in the settlement process. <i>See for e.g.</i>, D.98-04-059 at 42-43 (citing D.94-10-029, slip op., at 6-7.). Nevertheless, it is reasonable to use Del Monte’s settlement attendance record as demonstrated in the filed status updates, descriptions of settlement work entries in the attached timesheets, and the advocacy demonstrated in Del Monte’s non-confidential filings as strong evidence of substantial contribution in advocating for ratepayer interests and PG&amp;E accountability. Del Monte’s advocacy acted as a counterbalance to the unprecedented influence that PG&amp;E’s federal bankruptcy proceedings and AB 1054’s June 30, 2020 deadline inflicted upon this proceeding.</p> <p>Ultimately, Del Monte contends that his involvement in the settlement negotiations significantly contributed to shaping the final version of the settlement agreement in material ways involving scope and scale.</p>	<p>Rule 12.6 requires confidentiality regarding settlement discussions amongst parties. At the Commission’s May 7, 2020 Voting Meeting, the Assigned Commission noted that “in fact, the settlement that was reached only included a subset of the parties in this proceeding and was vigorously contested by the others.” <i>See</i> video at <a href="http://www.adminmonitor.com/ca/cpuc/voting_meeting/20200507/timestamp2:04:35-2:04:51">http://www.adminmonitor.com/ca/cpuc/voting_meeting/20200507/timestamp2:04:35 – 2:04:51</a>. Del Monte’s record in this proceeding makes clear he was one of those vigorously contesting the settlement agreement. It is reasonable to assume that this vigor was present in all his actions in this proceeding, including the confidential settlement negotiations.</p>	<p><i>See</i> discussion in Part III.D., below.</p>
<p><b>4. Tubbs Fire Testimony</b></p> <p>Del Monte served and filed expert testimony, Buske Testimony, as evidence that CAL FIRE’s Tubbs Fire investigation was wrong in process and conclusions and that vegetation contact with PG&amp;E power lines was the actual ignition and source of Tubbs Fire. The physical evidence presented was discovered by the Tubbs Fire civil plaintiffs after CAL FIRE’s investigation concluded that it was unable to find an ignition source. Del Monte was able to</p>	<p>As stated in the Final Decision, Del Monte</p>	<p>Del Monte fails to demonstrate that his claimed contributions on this issue resulted in a substantial contribution to the final decision. Del Monte does not provide any reference to the final decision that</p>



<p>access this information, and hire Kenneth Buske, an accomplished fire investigator, to evaluate the newly discovered Tubbs Fire evidence and to evaluate the evidence submitted by SED in this proceeding that vindicated PG&amp;E. This testimony and evaluation of evidence was submitted by Del Monte to serve one of the main purpose of the scoping memo, as described below.</p> <p>The OII’s Ordering Paragraph #1 defined one of the purposes of this proceeding as being, “to evaluate the reports of the Safety and Enforcement Division and the California Department of Forestry and Fire Prevention.” OII at 20 Issue #2 of August 23, 2019 scoping memo and ruling defined the scope of this OII to investigate and determine whether PG&amp;E committed violations regarding facts as identified in the formal OII, as opposed to the facts presented in SED Fire Reports, which were addressed in Issue #1.</p> <p>On October 9, 2019, it was ruled that intervenors would be allowed to file testimony.</p> <p>In response to the above, Del Monte prepared and filed testimony regarding new on the cause, origin, and factual circumstances surrounding the Tubbs Fire and why the CAL FIRE and SED Tubbs Fire investigational reports were wrong. The new evidence – discovered after the completion of CAL FIRE and SED’s Tubbs Fire Report – indicated PG&amp;E’s equipment ignited the Tubbs Fire. This evidence included the factual elements necessary to prove violations of laws and general orders governing vegetation management and reporting of such violations.</p> <p>It was Del Monte’s expectation that the Commission’s OII’s stated purpose of evaluating the CAL FIRE and SED testimonial fire reports included accepting and weighing relevant evidence supporting that the reports made material errors leading to incorrect or incomplete conclusions.</p>	<p><i>Final Decision at 70-71.</i></p>	<p>supports his claim of a substantial contribution. The California Department of Forestry and Fire Protection (CAL FIRE)’s determination regarding the cause of ignition of the Tubbs Fire is not an issue that was within the scope of issues to be decided in the proceeding. (D.20-12-015 at 24-25.) See further discussion in Part III.D., below.</p>
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<p>Nevertheless, the <i>Final Decision</i> directly states that the Commission considered evidence and expert testimony submitted by Del Monte. The Commission stated that it “reviewed and considered these documents in assessing whether the settlement agreement is reasonable in light of the whole record, consistent with the law, and in the public interest.”</p> <p>It appears unprecedented that a party in a Commission proceeding was denied requested evidentiary hearings without notice that there would not be evidentiary hearings, refused requested procedural instruction on how parties were expected to submit testimony into the record, and denied the right to submit testimony on the grounds that because hearings were not held and PG&amp;E objected to Del Monte’s evidence, and ignored Del Monte’s multiple objections and Motion to Strike SED’s Tubbs Fire testimony and evidence. This denial of right allowed Settling Parties to nullify the potential for regulatory enforcement on the evidence Del Monte presented. To rule that Del Monte’s Tubbs Fire evidence did not substantially contribute to this proceeding would belie the legislative intent and plain language as stated in PUC § 1801.3(b) that grants intervenors the opportunity to effectively and efficiently investigate and provide testimony to evaluate the SED and CAL FIRE reports, a purpose expressly stated in the Scoping Memo of this proceeding.</p>	<p><i>Final Decision</i> at 70-71.</p> <p>Email exchange between Del Monte, Service List, and Presiding Officer, available in <i>Thomas Del Monte Application for Rehearing</i> (June 8, 2020) at 22-23.</p> <p>See for e.g., <i>Del Monte Motion for Expedited Ruling on the Request for Ruling Removing the Tubbs Fire from this Proceeding and for a Shortened Response Period for the Motion to Compel</i> (November 20, 2019).</p> <p><i>Motion by Thomas Del Monte to Strike the CAL FIRE and SED Reports Related to the Tubbs Fire</i> (February 24, 2020).</p>	
<p><b>5. Identified PG&amp;E Material Violations that Took Place During the Investigation that Harmed the Regulatory Process.</b></p> <p>During this proceeding and after notice given to PG&amp;E of the non-compliance, PG&amp;E refused to comply with the requirements of Resolution E-4184 by failing to file with the Commission an incident report as show by the evidence Del Monte presented that such reporting is required when it became a “subject of significant public</p>	<p>See <i>Thomas Del Monte &amp; Wild Tree Foundation Joint Comments in Opposition of Settlement Agreement</i> (January 16, 2020) at 25-28 (discussing the factual and legal basis for PG&amp;E’s violation).</p>	<p>Del Monte fails to demonstrate that his claimed contributions on this issue resulted in a substantial contribution to the final decision. Del Monte does not provide any reference to the</p>

<p>attention or media coverage and are attributable or allegedly attributable to utility facilities” when: on September 26, 2019, when (unknown to SED) NBC Bay Area published the story “Photos Show PG&amp;E Lines Sparked Tubbs Fire: Expert”<sup>2</sup> creating a duty to report to the Commission under Appendix B of Resolution E-4184. This news story covered the same evidence Del Monte presented in this proceeding. The PG&amp;E party with the duty to file a report on is proceeding was PG&amp;E’s regulatory director, Meredith E. Allen, in charge of the Tubbs Fire reporting. Meredith Allen was also an active participant in negotiating the the approved settlement agreement. Any report that meets the reporting requirements of E-4184 likely would have called into question SED’s reliance on CAL FIRES’s conclusion regarding the Tubbs Fire and provide notice of the need for further investigation as required by the Public Utilities Code.</p> <p>One must keep in mind that attorney-client privilege does not cover the information on which there is a legal duty to report and not doing so is a crime. In this case, the legal duty to report is derived from Resolution E-4184 and its criminal nature is derived by Pub. Util. Code, § 13576. Intent to deceive can be inferred by PG&amp;E’s continued failure to report on the reportable incident after being notified of the violation in Del Monte’s filings.</p> <p>As stated in a previous Commission investigation decision, harm to the regulatory process, including failures to report, and the utilities actions taken to disclose and rectify the violation must be taken into account by the Commission when evaluating the reasonableness of an uncontested settlement agreement. Commission precedent states that</p>	<p>Investigation 17-04-009 Decision 18-11-006 at 10, 11.</p> <p><i>Final Decision</i> at 19.</p>	<p>final decision that supports his claim of a substantial contribution. See further discussion in Part III.D., below.</p>
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<sup>2</sup> *Id* at 38-40. See also, NBC BayArea story available here: <https://www.nbcbayarea.com/news/local/photos-show-pge-lines-sparked-tubbs-fire-expert/182112/>.

<p>contested settlements are to be afforded a higher degree of scrutiny. Despite the Commission’s unwillingness to investigate or consider allegations of criminal failures to report taking place within and concerning material facts to the Commission’s own formal investigation, the act of Del Monte making the allegations put PG&amp;E on notice of its future reporting obligations, which has the potential to make ratepayers safer.</p>		
<p><b>6. Discovery Rights of Intervenors</b> Del Monte filed a Motion to Compel PG&amp;E to provide data request responses. PG&amp;E argued that due to Del Monte’s role in this proceeding, he was not entitled to any discovery other than that provided to other parties. The Presiding Officer ruled in favor of Del Monte on that issue.</p>	<p><i>Assigned Administrative Law Judge’s Ruling Granting in Part, and Denying in Part, the Motion of Thomas Del Monte to Compel Discovery</i> (December 12, 2019) at 2-3.</p>	<p>See discussion in Part III.D., below.</p>
<p><b>7. Bringing to Light PG&amp;E’s Extra-Proceeding Tubbs Fire Admission that PG&amp;E was in Violation of Vegetation Management Safety Laws in the Exact Area the Tubbs Fire Ignited.</b> SED inadvertently filed a document within its voluminous Camp Fire investigation filing that was from PG&amp;E’s criminal probation court. In this document PG&amp;E admitted related to the Tubbs Fire that it was in violation of Pub. Res Code § 4292 for failing to do several years’ worth of required vegetation management on the very same property CAL FIRE determined to be where the Tubbs Fire started and covering the very same area that contained the PG&amp;E wires-vegetation contact evidence Del Monte presented to demonstrate PG&amp;E equipment started the Tubbs Fire. The admission also implicated other violations of Pub. Res. Code § 4293, Pub. Util. Code § 451, and GO 95, Rule 35. Del Monte brought this to the Commission’s attention demonstrate that both CAL FIRE’s and SED’s Tubbs Fire</p>	<p><i>See for e.g. Thomas Del Monte &amp; Wild Tree Foundation Joint Comments in Opposition of Settlement Agreement</i> (January 16, 2020) at 41.</p>	<p>Del Monte fails to demonstrate that his claimed contributions on this issue resulted in a substantial contribution to the final decision. Del Monte does not provide any reference to the final decision that supports his claim of a substantial contribution. CAL FIRE’s determination regarding the cause of ignition of the Tubbs Fire is not an issue that was within the scope of issues to</p>

<p>conclusions of “no violations” was simply wrong and merited further investigation to discover the actual root cause of the Tubbs Fire.</p> <p>The Commission chose not to require the SA to acknowledge this admitted or address it in the <i>Final Decision</i> in evaluating the reasonableness of the SA’s claim that PG&amp;E violated no safety laws in relation to the Tubbs Fire.</p> <p>Nevertheless, PG&amp;E Tubbs Fire violations of safety laws, the information fits squarely into the issues of the OII Ordering Paragraphs #1 and # 2 and Issue #2 of August 23, 2019 scoping memo and, therefore, the investigative diligence demonstrated by Del Monte to uncover this admission is a substantial contribution to the record of this proceeding. Further, drawing attention to PG&amp;E’s Tubbs Fire admission may provide intervenors in subsequent proceedings with information to contest the justness and reasonableness of PG&amp;E’s recovery of costs related to the Tubbs Fire.</p>		<p>be decided in the proceeding. (D.20-12-015 at 24-25.) <i>See</i> further discussion in Part III.D., below.</p>
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**B. Duplication of Effort (§ 1801.3(f) and § 1802.5):**

	Intervenor’s Assertion	CPUC Discussion
<p><b>a. Was the Public Advocate’s Office of the Public Utilities Commission (Cal Advocates) a party to the proceeding?<sup>3</sup></b></p>	Yes	Verified
<p><b>b. Were there other parties to the proceeding with positions similar to yours?</b></p>	Yes	Verified
<p><b>c. If so, provide name of other parties:</b></p> <p>Del Monte’s potions overlapped significantly with Wild Tree Foundation. Consequently, several filings were made jointly between Wild Tree Foundation and Del Monte when there was sufficient overlap in positions to avoid undue duplication.</p>		Verified

<sup>3</sup> The Office of Ratepayer Advocates was renamed the Public Advocate’s Office of the Public Utilities Commission pursuant to Senate Bill 854, which the Governor approved on June 27, 2018.

<p>To some extent, Del Monte’s position overlapped with the Public Advocates Office (Cal Advocates), TURN, City and County of San Francisco (CCSF) and the Safety and Enforcement Division (SED) in this proceeding.</p>	
<p><b>d. Intervenor’s claim of non-duplication:</b>                  SED investigated each fire in this proceeding. Del Monte restricted his investigations to the wildfires where it was demonstratable that: 1) SED had made material, fundamental mistakes (Tubbs Fire) as necessary for the evaluation ordered by the OII Ordering Paragraph # 1; and 2) the Camp Fire for which SED’s report failed to investigate the scope and length of time PG&amp;E had known about the potential for the C-clamps to fail, which ultimately ignited the Camp Fire. Further, intervenors were deprived of SED’s Camp Fire report until late in the proceeding requiring intervenor independent investigation.</p> <p>Del Monte and his co-counsel spent approximately 20 hours coordinating efforts with other parties. The majority of those hours were spent coordinating with Wild Tree Foundation in relation to joint filings. The intervenor time saved by the joint filings, alone, allowed for substantial ratepayer savings well in excess of all 20 coordination hours. The non-joint-filing coordination time, particularly with Cal Advocates and TURN, allowed for additional resources savings by coordinating areas of concentration.</p> <p>Del Monte was the only intervenor to conduct an in-depth investigation into the Tubbs Fire in this proceeding. SED had already concluded its Tubbs Fire investigation prior to this proceeding, conducted no further Tubbs Fire investigation during this Investigation proceeding, and refused to consider new evidence that compellingly demonstrating the factual basis of their testimony included material errors. The 22 people killed by the Tubbs Fire and other affected ratepayers deserved an advocate in this proceeding to present the newly discovered factual evidence implicating PG&amp;E that had come to light in the PG&amp;E’s civil trial and bankruptcy proceeding. Both TURN and POA filed supporting comments on Del Monte’s Tubbs Fire investigation regarding how the Commission was no longer within its authority to allow settling parties to determine potential regulatory penalties for the Tubbs Fire.</p> <p>Del Monte submits that its compensation in this proceeding should not be reduced for duplication. Rather, the Commission should find that there was no undue duplication, as any duplication served to materially supplement, complement, or contribute to the showing of another party and, therefore, is fully compensable under Pub. Util. Code Section 1802.5.</p>	<p><i>See discussion in Part III.D., below.</i></p>

**C. Additional Comments on Part II:**

#	Intervenor’s Comment	CPUC Discussion
1)	<p>Del Monte and Wild Tree Foundation were the only parties to this proceeding to point out that the Proposed Settlement did not include an actual fine and cited authority on the precedent holding that a fine were necessary. This resulted in the POD issuing an additional \$200 million fine payable to the general fund. Despite the Assigned Commissioner’s successful efforts to eliminate any penalty effect of the fine by making it “permanently suspended,” the “fine” remained in the Final Decision.</p>	<p>Noted</p>
2)	<p>Del Monte was the only non-settling party to file testimony evaluating the validity of the SED and CAL FIRE Tubbs Fire reports as ordered in this OII’s Ordering Paragraph #1 and scoped as Issue #2 of August 23, 2019 scoping memo. Ordering Paragraph #1 orders parties to “to evaluate the reports of the Safety and Enforcement Division and the California Department of Forestry and Fire Prevention.” The August 23, 2019 scoping memo Issue #2 stated the following matters are in the scope of this proceeding, “Did PG&amp;E violate any provisions of the Pub. Util. Code, GO, Commission decision, or any other applicable regulations with respect to its maintenance and/or operation of its electric facilities as identified in <i>this investigation?</i> [emphasis added].” Issue #2 clearly demonstrates that this OII was to include further investigation on the wildfires of this proceeding. Especially, in the context of Issue #1 being reserved consideration of the SED investigations, and this proceeding being an investigation into the wildfires including the Tubbs Fire, there is no reasonable basis to rule that efforts expended presenting evidence on the Tubbs Fire and advocating for its factual implications to be considered by the</p>	<p>See discussion in Part III.D., below.</p>

	<p>Commission are efforts appropriate for compensation under the Intervenor Compensation Program.</p> <p>The Presiding Officer and Assigned Commissioner’s choice to not hold evidentiary hearings to get to the bottom of the cause of 22 ratepayer deaths and to consider the factual allegations in determining the reasonableness, and lawfulness of the SA cannot affect the ability, is not something that intervenors can be expected to anticipate. Pursuing the truth in the second most destructive wildfire in California history is the type of contribution that the Intervenor Compensation program was designed to support. Therefore, Del Monte’s time preparing testimony and arguing for the interests of the killed and living ratepayers’ victims by the Tubbs Fire voice to be considered should be not be discounted or excluded from compensation.</p>	
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**PART III: REASONABLENESS OF REQUESTED COMPENSATION**

**A. General Claim of Reasonableness (§ 1801 and § 1806):**

	<b>CPUC Discussion</b>
<p><b>a. Intervenor’s claim of cost reasonableness:</b>                      Del Monte’s request for intervenor compensation seeks an award of \$254,539.50 as the reasonable his participation in this investigation. These costs are reasonable in light of the issues that Del Monte addressed and the benefits to PG&amp;E customers from disallowances secured in approved SA.</p> <p>As explained above, Del Monte’s primary contributions in this proceeding include participation in settlement discussions, successfully arguing that it would be unreasonable and inconsistent with law for the Commission to approve a settlement agreement that does not contain a fine, augmenting the Commission’s investigation ability on the Tubbs Fire, and bringing to light PG&amp;E failures to report material matters to the Commission as required by Resolution E-4184.</p>	<p>Del Monte has failed to demonstrate that the claimed costs are reasonable.</p> <p><i>See further discussion in Part III.D., below.</i></p>



<p><b>b. Reasonableness of hours claimed:</b>                  Del Monte’s request for award contains a total of 602.13 attorney hours and 49.55 expert hours to this proceeding. This proceeding involved several unprecedented features over a compressed schedule – 18 utility implicated wildfire investigations jammed into one proceeding, an external deadline for participation in a voluntary program (AB 1054 wildfire fund) imposed in these proceedings, intervenors denied the ability question the validity of evidence presented by opposing parties in evidentiary hearings, objected to evidence filed by opposing parties deemed to deemed unchallengeable by the Presiding Officer, and intervenor testimony excluded from factual consideration on the basis that Commission Rule 13.8(c) only allows testimony into the evidentiary record without cross-examination if there is no objection while ignoring Del Monte’s numerous objections to SED’s Tubbs Fire testimony and evidence including a timely filed motion to strike. The gravity of the subject of this investigation and unprecedented nature this proceeding’s circumstances requiring far more research, planning, motion drafting, and comment drafting to effectively advocate for Del Monte’s and residential ratepayers’ interests.</p> <p>Further, PG&amp;E’s For these reasons, the Commission should find that Del Monte’s efforts have been productive and reasonable.</p>		<p>Del Monte has failed to demonstrate that the hours claimed are reasonable. See discussion in Part III.D., below.</p>											
<p><b>c. Allocation of hours by issue:</b></p>		<p>See discussion in Part III.D., below.</p>											
		<table border="1"> <tr> <th colspan="3">Combined Totals</th> </tr> <tr> <th>Hrs</th> <th>\$</th> <th>%</th> </tr> <tr> <td><b>645.84</b></td> <td><b>\$252,332.50</b></td> <td><b>100.0%</b></td> </tr> </table>			Combined Totals			Hrs	\$	%	<b>645.84</b>	<b>\$252,332.50</b>	<b>100.0%</b>
Combined Totals													
Hrs	\$	%											
<b>645.84</b>	<b>\$252,332.50</b>	<b>100.0%</b>											
<b>Code</b>	<b>Description</b>												
GP	General work necessary for participation which does not necessarily vary with the number of issues.	43.30	\$16,960.00	6.7%									
Test	Time spend by Del Monte and expert witness Ken Buske to prepare served testimony.	84.05	\$33,620.00	13.0%									
Icomp	Icomp related admin such as NOI, Claim, etc. Billed at 1/2 time rate.	25.60	\$5,070.00	4.0%									
Settl	Participation in settlement discussion meetings both in-person in San Francisco and by teleconference.	57.20	\$22,880.00	8.9%									

SM1, 1	Work attributable to issue #1 of August 23, 2019 scoping memo and ruling, excluding related but non-disclosable work subject to the confidentiality rules associated with settlement discussions. SM1, 1: Did PG&E violate General Order (GO) 95 and/or Resolution E-4148 as identified in the SED Fire Report?	28.00	\$10,725.00	4.3%	
SM1, 2	Work attributable to issue #2 of August 23, 2019 scoping memo and ruling. SM1, 2: Did PG&E violate any provisions of the Pub. Util. Code, GO, Commission decision, or any other applicable regulations with respect to its maintenance and/or operation of its electric facilities as identified in this investigation?	14.60	5,840.00	2.3%	
SM1, 3	Work attributable to issue #3 of August 23, 2019 scoping memo and ruling. SM1, 3: What penalties should be imposed for any proven violation(s) found above pursuant to Pub. Util. Code §§ 701, 2107 and 2108?	7.00	\$2,800.00	1.1%	
SM1, 4	Work attributable to issue #4 of August 23, 2019 scoping memo and ruling. SM1, 4: What other remedies or corrective actions should be imposed in response to any proven violation(s) found above pursuant to Pub. Util. Code §§ 701, 2107 and 2108?	16.03	\$6,410.00	2.5%	

<p>SM1, 5</p>	<p>Work attributable to issue #4 of August 23, 2019 scoping memo and ruling. SM1, 5: What if any systemic issues contributed to ignition of the wildfires at issue in this OII? Identify issues and/or systems that could be put in place to prevent future problems that could ignite wildfires. Identify related proceedings where the issues and systems identified (supra) should be further considered or implemented.</p>	<p>0.88</p>	<p>\$350.00</p>	<p>0.1%</p>	
<p>SM3, 1</p>	<p>Work attributable to issue #1 of December 5, 2019 scoping memo and ruling. SM3, 1: Did PG&amp;E violate General Order (GO) 95, GO 165, Decision 16-04-055, as amended by Resolution E-4184, and/or Public Utilities (Pub. Util.) Code § 451 as identified in SED's Camp Fire Report?</p>	<p>5.94</p>	<p>\$2,375.00</p>	<p>0.9%</p>	
<p>SM3, 2</p>	<p>Work attributable to issue #2 of December 5, 2019 scoping memo and ruling. SM3, 2: Did PG&amp;E violate any provisions of the Pub. Util. Code, GOs, Commission decisions, or any other applicable regulations with respect to its maintenance, operations, and/or reporting of its electric facilities as identified in this investigation?</p>	<p>8.43</p>	<p>\$3,370.00</p>	<p>1.3%</p>	
<p>#</p>	<p>Work related several specific scoping memo issues not easily distinguishable to a specific</p>	<p>52.60</p>	<p>\$21,040.00</p>	<p>8.1%</p>	

	issue. Includes responses to ALJ requests for briefings.				
Inves	Investigating the validity of the SED and CAL FIRE's testimony offered into the proceeding in the form of incident reports, as ordered by OII Ordering Paragraphs. Investigated validity of allegations for violations and lack of allegations and investigated the validity of the factual basis for allegations and lack of allegations, which relates to Issues #1-2 of August 23, 2019 scoping memo and ruling. This category could also be re-coded as SM1, 2 but because it could be broken out.	67.10	\$26,840.00	10.4%	
Coord	Coordination with other intervenors re. issues and to minimize duplication on various motions. Also includes coordination with the CPUC related to additional time required to remedy such things like, Del Monte's email being blocked from all CPUC recipients and other matters outside Del Monte's control.	19.50	\$7,800.00	3.0%	
Disc	Discovery issues that cannot be easily categorized - writing data requests, addressing discovery disputes, responding to data requests.	68.10	\$27,240.00	10.5%	
Motions	Motion drafting and commenting on procedural matters made necessary in	147.53	\$59,012.50	22.8%	

	proceeding, but not otherwise anticipated.				
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**B. Specific Claim:\***

CLAIMED						CPUC AWARD		
ATTORNEY, EXPERT, AND ADVOCATE FEES								
Item	Year	Hours	Rate \$	Basis for Rate*	Total \$	Hours	Rate \$	Total \$
Thomas Del Monte (atty)	2019	303.2	\$400	Del Monte has not yet had a rate ruling. Expected in A.19-04-015 et al.	\$121,280.00	60.64 [1]	\$380.00 [3]	\$23,043.20
Thomas Del Monte (atty)	2020	193.7	\$410	2019+2.35% rounded to nearest \$5 increment. Res ALJ-357.	\$79,417.00	38.74 [1]	\$390.00 [4]	\$15,108.60
Joe Kaatz (atty)	2019	66.95	\$350	No rate ruling yet. Attorney practicing law since 2011. Extensive energy law and policy experience. See attached resume.	\$23,432.50	13.39 [1]	\$350.00 [5]	\$4,686.50
Joe Kaatz (atty)	2020	15	\$360	2019+2.35% rounded to nearest \$5 increment. Res ALJ-357.	\$5,400.00	3.00 [1]	\$360.00 [6]	\$1,080.00
Kenneth Buske (expert)	2019	49.55	\$400	Fire investigator having conducted over 1,000 fire investigations. Electrical engineer. See Thomas Del Monte & Wild Tree Foundation Joint Comments in Opposition of Settlement Agreement (January 16, 2019), Attachment C – Prepared Direct Testimony of Ken Buske at 2, question 3. <sup>4</sup>	\$19,820.00	0.00 [2]	\$0 [2]	\$0.00 [2]
<b>Subtotal: \$249,349.50</b>						<b>Subtotal: \$43,918.30</b>		
INTERVENOR COMPENSATION CLAIM PREPARATION **								
Item	Year	Hours	Rate \$	Basis for Rate*	Total \$	Hours	Rate	Total \$

<sup>4</sup> Available <https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M325/K526/325526309.PDF> [last visited 7/7/2020]

Thomas Del Monte	2019	1.6	\$200	1/2 of above.	\$320.00	1.07 [7]	\$190.00	\$203.30
Thomas Del Monte	2020	22	\$205	1/2 of above.	\$4,510.00	14.74 [7]	\$195.00	\$2,874.30
Joe Kaatz (atty)	2020	2	\$180	1/2 of above.	\$360.00	1.34 [7]	\$180.00	\$241.20
<b>Subtotal: \$5,190.00</b>						<b>Subtotal: \$3,318.80</b>		
<b>TOTAL REQUEST: \$254,539.50</b>						<b>TOTAL AWARD: \$47,237.10</b>		

\*We remind all intervenors that Commission staff may audit the records and books of the intervenors to the extent necessary to verify the basis for the award (§1804(d)). Intervenors must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. Intervenors' records should identify specific issues for which it seeks 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.

\*Travel and Reasonable Claim preparation time are typically compensated at 1/2 of preparer's normal hourly rate

#### ATTORNEY INFORMATION

Attorney	Date Admitted to CA BAR <sup>5</sup>	Member Number	Actions Affecting Eligibility (Yes/No?) If "Yes", attach explanation
Thomas Del Monte	2009	265275	No
Joe Kaatz	2011	279766	No

#### C. Attachments Documenting Specific Claim and Comments on Part III:

Attachment or Comment #	Description/Comment
1	Certificate of Service
2	Attachment A – Del Monte Timesheet
3	Attachment B – Kaatz Timesheet
4	Attachment C – Kaatz Resume
5	Attachment D – Buske Timesheet
6	Attachment E – Del Monte PG&E Utility Bill

#### D. CPUC Comments, Disallowances, and Adjustments

Item	Reason
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<sup>5</sup> This information may be obtained through the State Bar of California's website at <http://members.calbar.ca.gov/fal/MemberSearch/QuickSearch>.

[1]	<p>We find Del Monte’s claimed attorney hours to be excessive because Del Monte has failed to demonstrate that all of the claimed hours were for efforts that made a substantial contribution to the final decision. As discussed in Part II.A., above, Del Monte made a substantial contribution to the issue of imposition of a fine but Del Monte’s contributions on other issues did not result in a substantial contribution to the final decision because they duplicated the positions taken by other parties in the proceeding without providing a meaningful input to the positions advocated by other parties; addressed issues outside the scope of the proceeding; or otherwise addressed issues that were not considered in the final decision.</p> <p>We also find Del Monte’s claimed hours to be excessive and unproductive when considering the hours claimed by intervenors who provided a comparable contribution to the proceeding. Del Monte jointly submitted filings with Wild Tree, including comments on the settlement agreement, appeal of the presiding officer’s decision, responses to appeals and request for review, and comments on the decision different. Del Monte’s contributions with respect to the issue of imposition of a fine, which is the sole issue for which we find Del Monte made a substantial contribution, were all jointly made with Wild Tree. (See D.20-05-019 at 17-18.) Based on our review of the final decision and filings in the proceeding, we do not find that Del Monte provided more of a substantial contribution to the final decision than Wild Tree. However, Wild Tree claims a total of 205.81 attorney hours (\$80,786.80),<sup>6</sup> whereas Del Monte claims a total of 628.4 attorney/expert hours (\$249,349.50).<sup>7</sup></p> <p>Specific examples of unproductive or excessive hours include:</p> <p>(a) Time spent for investigation and discovery. Del Monte fails to provide adequate description regarding the time spent on investigation and discovery and fails to explain how this investigation and discovery resulted in a substantial contribution to the final decision. Given that Del Monte also focused on issues that were not within the scope of the proceeding, it is unclear whether all of the time spent for investigation and discovery were on issues that were within the scope of the proceeding. Moreover, the time claimed appears to be excessive, for example, Del Monte claims to have spent 15.9 hours in a single day (November 24, 2019) to review a deposition.</p> <p>(b) Time spent on general participation and coordination. Del Monte fails to provide adequate description regarding the time spent on general participation and coordination and fails to explain how these claimed hours resulted in a substantial contribution to the final decision. Moreover, tasks</p>
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<sup>6</sup> Wild Tree’s Amended Intervenor Compensation Claim filed July 15, 2020 at 24-25. The claim’s reasonableness is subject to the Commission’s evaluation.

<sup>7</sup> Del Monte claims a total of 628.4 attorney/expert hours in Part. III.B of the Intervenor Compensation Claim Form but claims 620.24 hours (excluding 25.60 hours of Icomp time) in Part III.A.c.

	<p>such as time spent listening/watching to Commission voting meetings and clerical or administrative tasks (<i>e.g.</i>, addressing email issues, serving and filing documents, setting up file sharing) are not compensable. (<i>See, e.g.</i>, D.17-04-008, D.17-01-017.)</p> <p>Based on the foregoing, Del Monte has failed to demonstrate that all of the time claimed in the submitted timesheets were for efforts in preparing or presenting contentions or recommendations that made a substantial contribution to the final decision. (Pub. Util. Code Section 1802(j).) Del Monte's timesheets do not allocate time by issue (<i>i.e.</i>, by claimed contributions set forth in Part II.A), and therefore, the Commission is unable to verify how much of Del Monte's time was spent on issues that made a substantial contribution to the final decision. Given the lack of detail in Del Monte's timesheets, we find it reasonable to award Del Monte for 20% of the claimed attorney hours. We make this finding based on our finding that Del Monte has made a substantial contribution to one of the seven issues for which he claims a substantial contribution (or approximately 14%). (<i>See</i> Part II.A, above.) To this 14%, we find it reasonable to award additional hours to account for time for general participation in the proceeding.</p>
[2]	<p>Del Monte fails to demonstrate that the claimed hours for Buske were for efforts preparing or presenting contentions or recommendations that made a substantial contribution to the final decision. (Pub. Util. Code Section 1802(j).) As addressed in Part II.A., above, the sole issue for which we found Del Monte made a substantial contribution is the issue concerning imposition of a fine. From the submitted timesheet, there is no indication that Buske's time was expended preparing or presenting contentions or recommendations on this issue. Rather, it appears that Buske's time was spent investigating the cause of ignition of the Tubbs Fire, an issue that was outside the scope of this proceeding. (D.20-12-015 at 24-25.) Therefore, we do not find it reasonable to award intervenor compensation for Buske's claimed hours.</p>
[3]	<p>Adopting \$380 rate for 2019. Pursuant to Resolution ALJ-357, the 2019 hourly rate range for an attorney with 8-12 years of experience is \$350-\$410. Mr. Del Monte has been a practicing attorney since 2009.<sup>8</sup> As an attorney with 10 years of experience in 2019, he falls within the mid-range of the 8-12 years of experience tier.</p>
[4]	<p>Adopting \$390 rate for 2020. New rate based on Mr. Del Monte's 2019 rate adjusted to reflect Resolution ALJ-387 (2.55% COLA).</p>
[5]	<p>Adopting \$350 rate for 2019. New rate based on Resolution ALJ-357 for an attorney with 5-7 years of experience. Mr. Kaatz has been a practicing lawyer since 2012.</p>

<sup>8</sup> Del Monte did not submit a resume with his claim but did submit one with his claim filed in A.20-04-015 on February 19, 2020.



[6]	Adopting \$360 rate for 2020. New rate based on Mr. Kaatz’s 2019 rate adjusted to reflect Resolution ALJ-387 (2.55% COLA).
[7]	We find the requested claim preparation hours, 25.6 hours, to be excessive. As noted in Items [1] and [2], above, the claim has deficiencies. Also, a reduction in the substantive work area renders 25.6 hours spent on the claim preparation unreasonable. Finally, clerical tasks, such as coding, organizing or calculating are non-compensable. We, therefore, reduce the requested hours by 8.45 hours (or 33%), to reflect a more reasonable effort in the claim preparation area.

**PART IV: OPPOSITIONS AND COMMENTS**

**Within 30 days after service of this Claim, Commission Staff or any other party may file a response to the Claim (see § 1804(c))**

<b>A. Opposition: Did any party oppose the Claim?</b>	No
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<b>B. Comment Period: Was the 30-day comment period waived (see Rule 14.6(c)(6))?</b>	No
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**FINDINGS OF FACT**

1. Thomas R. Del Monte has made a substantial contribution to D.20-05-019.
2. The requested hourly rates for Thomas R. Del Monte’s representatives, as adjusted herein, are comparable to market rates paid to experts and advocates having comparable training and experience and offering similar services.
3. The claimed costs and expenses, as adjusted herein, are reasonable and commensurate with the work performed.
4. The total of reasonable compensation is \$47,237.10.

**CONCLUSION OF LAW**

1. The Claim, with any adjustment set forth above, satisfies all requirements of Pub. Util. Code §§ 1801-1812.

**ORDER**

1. Thomas R. Del Monte shall be awarded \$47,237.10.

2. Within 30 days of the effective date of this decision, Pacific Gas and Electric Company shall pay Thomas R. Del Monte the total award. Payment of the award shall include compound interest at the rate earned on prime, three-month non-financial commercial paper as reported in Federal Reserve Statistical Release H.15, beginning September 20, 2020, the 75<sup>th</sup> day after the filing of Thomas R. Del Monte's request, and continuing until full payment is made.
3. The comment period for today's decision is not waived.  
This decision is effective today.

Dated \_\_\_\_\_, at San Francisco, California.

**APPENDIX**

## Compensation Decision Summary Information

Compensation Decision:		Modifies Decision?	No
Contribution Decision(s):	D2005019		
Proceeding(s):	I1906015		
Author:	ALJ Sophia Park		
Payer(s):	Pacific Gas and Electric Company		

## Intervenor Information

Intervenor	Date Claim Filed	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
Thomas R. Del Monte	7/7/2020	\$254,539.50	\$47,237.10	N/A	See CPUC Disallowances and Adjustments, above.

## Hourly Fee Information

First Name	Last Name	Attorney, Expert, or Advocate	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Thomas	Del Monte	Attorney	\$400	2019	\$380.00
Thomas	Del Monte	Attorney	\$410	2020	\$390.00
Joe	Kaatz	Attorney	\$350	2019	\$350.00
Joe	Kaatz	Attorney	\$360	2020	\$360.00
Kenneth	Buske	Expert	\$400	2019	\$0.00

**(END OF APPENDIX**