

Decision 15-05-049 May 21, 2015

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Petition to Adopt, Amend, or Repeal a Regulation Pursuant to Pub. Util. Code Section 1708.5.

Petition 12-11-006
(Filed November 8, 2012)

DECISION AWARDING INTERVENOR COMPENSATION TO CONSUMER FEDERATION OF CALIFORNIA FOR SUBSTANTIAL CONTRIBUTION TO D.14-01-035

Claimant: Consumer Federation of California (CFC)	For contribution to: D.14-01-035
Claimed (\$): 31,671.00 (See Part III.B.)	Awarded (\$): 30,905.50
Assigned Commissioner: Michael Picker	Assigned ALJ: ALJ Division¹

PART I: PROCEDURAL ISSUES

A. Brief Description of Decision:	The Commission declined to initiate a Rulemaking, and the Petition is denied without prejudice. Because of the importance of information privacy to CA consumers, the Commission intends to monitor the issues raised in the Petition and, if there appears to be a need for additional privacy rules in the future, would open a Rulemaking at that time.
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B. Claimant must satisfy intervenor compensation requirements set forth in Pub. Util. Code §§ 1801-1812:

	Claimant	CPUC Verified
Timely filing of notice of intent to claim compensation (NOI) (§ 1804(a)):		
1. Date of Prehearing Conference:	N/A	Yes.
2. Other Specified Date for NOI:	N/A	
3. Date NOI Filed:	January 8, 2013	Yes.
4. Was the NOI timely filed?		Yes.

¹ Jessica Hecht was the ALJ assigned to this proceeding.

Showing of customer or customer-related status (§ 1802(b)):		
5. Based on ALJ ruling issued in proceeding number:	R.13-02-008	Yes.
6. Date of ALJ ruling:	October 25, 2013	Yes.
7. Based on another CPUC determination (specify):	N/A	
8. Has the Claimant demonstrated customer or customer-related status?	Yes, Consumer Federation of California demonstrated the appropriate status as customer.	
Showing of “significant financial hardship” (§ 1802(g)):		
9. Based on ALJ ruling issued in proceeding number:	R.13-02-008	Yes.
10. Date of ALJ ruling:	October 25, 2013	Yes.
11. Based on another CPUC determination (specify):	N/A	
12. Has the Claimant demonstrated significant financial hardship?	Yes, Consumer Federation of California demonstrated significant financial hardship.	
Timely request for compensation (§ 1804(c)):		
13. Identify Final Decision:	D.14-01-035	Yes.
14. Date of Issuance of Final Order or Decision:	January 16, 2014	January 17, 2014
15. File date of compensation request:	March 16, 2014	March 12, 2014
16. Was the request for compensation timely?	Yes, the request for compensation was timely filed.	

PART II: SUBSTANTIAL CONTRIBUTION

A. Description of Claimant’s contribution to the final decision (see § 1802(i), § 1803(a) & D.98-04-059).

Intervenor’s Claimed Contribution	Specific References to Claimant’s Presentations and to Decision	Showing Accepted by CPUC
1. Application of Phone	Petition 12-11-006: to Adopt, Amend,	Agreed.

<p>Privacy Rules to wireless phone providers</p> <p>In the petition of CFC, TURN, and the PRCH, the parties asked the Commission to review and extend the privacy rules to wireless phone providers or, at a minimum, to update the existing privacy rules governing telephone utilities to include the newest wireless technologies.</p> <p>CFC advocated that the Commission should apply the same rules it had previously adopted for landline telephone services to wireless telephone service. CFC also urged the commission to consider the benefits to consumers of uniformity and consistency of privacy policies so that consumers are protected when using one kind of phone service but not when using others.</p> <p>D.14-01-035 essentially agreed. Consistent with CFC’s advocacy that privacy protection applicable to wireless providers, the Commission felt the rules are important and commission focus on the issue is needed now and in the future for both landline and wireless services. Consequently, the decision promises the Commission will monitor the issue going into the future.</p>	<p>or Repeal a Regulation Pursuant to Pub. Util. Code Section 1708.5, to formally apply Telecommunications customer privacy rules to wireless carriers; and to amend customer privacy rule language to include mobile phones with advanced computing ability and connectivity. pp. 9-12.</p> <p>Opening comments on Proposed Decision, pp. 1-3.</p> <p>D.14-01-035, p.2.</p>	
<p>2. Commission jurisdiction to apply privacy rules to</p>	<p>Petition 12-11-006, p.8, 10.</p>	<p>Agreed.</p>

<p>wireless telecom companies.</p> <p>CFC’s petition illustrated that the Commission had authority to apply its own privacy rules to wireless phone providers and third parties with which they contract.</p> <p>CFC argued that the Commission has the jurisdiction to apply privacy rules to wireless phone companies and third parties with whom those companies contract. In particular, CFC argued that, at a minimum, the Commission has the authority over wireless phone service providers serving California rate payers.</p> <p>D.14-01-035 agreed with CFC that the Commission has the authority to require wireless providers serving California rate payers to comply with privacy rules but held that the current rules coupled with other state and federal regulations are currently sufficient. The Commission decides to monitor the wireless carriers and wait for a substantial harm to occur before taking action.</p> <p>CFC submits that CFC’s advocacy was important for the Commission’s full consideration of this issue and, but for CFC’s petition, the Commission would not be monitoring these issues for needed action in the future.</p>	<p>Reply to Parties’ Comments of CFC, pp.2-3.</p> <p>Opening comments on Proposed Decision, pp. 3-4.</p> <p>D.14-01-035, pp.5-6.</p>	
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B. Duplication of Effort (§§ 1801.3(f) & 1802.5):

	Claimant	CPUC Verified
a. Was the Office of Ratepayer Advocates (ORA) a party to the proceeding?²	Yes	Yes.
b. Were there other parties to the proceeding with positions similar to yours?	No	Yes.
c. If so, provide name of other parties: N/A		TURN and PRCH.
d. Describe how you coordinated with ORA and other parties to avoid duplication or how your participation supplemented, complemented, or contributed to that of another party: CFC had several discussions with TURN and the PRCH to compare analysis and positions to avoid duplication. CFC took all reasonable steps to keep duplication to a minimum. No other party is requesting compensation so there is no risk of duplicate payments for overlapping efforts. Under these circumstances, CFC’s compensation in this proceeding should not be reduced for duplication.		Verified.

PART III: REASONABLENESS OF REQUESTED COMPENSATION

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

a. Concise explanation as to how the cost of Claimant’s participation bears a reasonable relationship with benefits realized through participation As with many petitions, the precise benefits to consumers from CFC’s participation in this docket are difficult to quantify. However, the issues at stake, namely privacy and CPUC jurisdiction, directly impact consumers. Privacy protections are critically important as consumers utilize more and more new technologies which may not have been anticipated by existing rules and which put their personal data and information at risk. The consumers always benefit greatly when personal data and information remains in their control and is only used in a manner consistent with the consumers’ wishes. The Commission has promised to follow the issue brought to its attention by the Petition and take further action at a more appropriate time.	CPUC Verified Verified.
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² The Division of Ratepayer Advocates was renamed the Office of Ratepayer Advocates effective September 26, 2013, pursuant to Senate Bill No. 96 (Budget Act of 2013: public resources), which was approved by the Governor on September 26, 2013.

<p>Without CFC’s petition, the Commission would not have been aware of the need for review and would not be monitoring the issues today.</p>	
<p>b. Reasonableness of Hours Claimed. CFC was the most active participant in the petition. Ms. Blake began as lead attorney incurring 85.35 hours in preparing and filing the petition. Starting in January 2013, Ms. Johnson was the lead attorney for CFC. Her total hours included in this request represent a little under 100 hour(s) of attorney time. Following January, 2013, Ms. Blake’s hours focused on bringing Ms. Johnson up-to-speed. Those hours are <u>uncharged</u>. \$17,500 was contributed from an outside source. This amount was <u>deducted</u> from CFC’s intervenor compensation claim. Denying compensation for application and petition efforts would have a chilling effect on parties. To allow compensation on only cases which move beyond the petition stage would limit public participation to only the few cases <i>guaranteed</i> of success rather than cases and issues pertinent and in need of redress. It would ultimately discourage the legitimate exercise of natural and legal rights. In light of the importance and complexity of the policy issues addressed, the Commission should find CFC’s request for intervenor compensation to be reasonable and grant it.</p>	<p>Verified, but <i>see</i> disallowances and reductions in Part III.C. The Commission notes that as stated in Rule 17.3 of the Commission’s Rules of Practice and Procedure, “[a] request for an award of compensation may be filed after the issuance of a decision that resolves an issue on which the intervenor believes it made a substantial contribution” Here, the Commission issued a Decision, D.14-01-035.</p>
<p>c. Allocation of Hours by Issue</p> <p>CFC has allocated its time entries by activity codes. The list of codes and their description is a follows:</p> <p>GP – General Preparation time for activities necessary to participate in the docket.</p> <p>L – Legal issues associated with the extent of the Commission’s jurisdiction over wireless telecommunication companies and applicable privacy rules.</p> <p>P– Issues associated with the application of privacy rules to wireless phone service.</p> <p># - Where time entries cannot easily be identified with a specific activity code. For these entries, the allocation of time spent on activities can be broken down as such: L 40%, P 60%</p>	<p>Verified.</p>

B. Specific Claim:

CLAIMED						CPUC AWARD		
ATTORNEY, EXPERT, AND ADVOCATE FEES								
Item	Year	Hours	Rate \$	Basis for Rate*	Total \$	Hours	Rate \$	Total \$
Nicole Blake	2013	85.35	\$205	D.12-09-017	17,496.75	83.85 [1]	\$210.00 [2]	17,608.50
Nicole Johnson	2013	97.40	\$305	D.13-02-008	28,685.25	96.9 [3]	\$290.00 [4]	28,101.00
Nicole Johnson	2014	.5	\$305	D.13-02-008	152.50	0.5	\$300.00 [5]	150.00
Subtotal: \$ 46,334.50						Subtotal: \$ 45,859.50		
INTERVENOR COMPENSATION CLAIM PREPARATION **								
Item	Year	Hours	Rate \$	Basis for Rate*	Total \$	Hours	Rate	Total \$
Nicole Johnson	2013	11.1	\$152.5 (½ \$305)	D.13-02-008	1,692.75	9.8 [6]	\$145.00	\$1,421.00
Nicole Johnson	2014	7.5	\$152.5 (½ \$305)	D.13-02-008	1,143.75	7.5	\$150.00	\$1,125.00
Subtotal: \$2,836.50						Subtotal: \$2,546.00		
COSTS								
#	Item	Detail			Amount	Amount		
1	Deduction	Third party grant.			(17,500)	(17,500)		
TOTAL REQUEST:						TOTAL AWARD:		
\$28,834.50 \$31,671.00						\$30,905.50		
<p>*The Commission notes a mathematical error, above. $46,334.50 + 2,836.50 - 17,500 = 31,671.00$. CFC's total request has been adjusted, accordingly.</p>								
<p>We remind all intervenors that Commission staff may audit its records related to the award and that intervenors must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. Claimant's records should identify specific issues for which it seeks compensation, the actual time spent by each employee or consultant, the applicable hourly rates, fee</p>								

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.

**Approved Travel and Reasonable Claim preparation time compensated ½ of preparer’s approved hourly rate.

Attorney	Date Admitted to CA BAR ³	Member Number	Actions Affecting Eligibility (Yes/No?) If “Yes”, attach explanation
Nicole Johnson	June 1, 2006	242625	No
Nicole Blake	January 4, 2010	268541	No

C. CPUC Disallowances and Adjustments:

Item	Reason
1.	The Commission does not compensate attorneys for work that is clerical in nature, as such compensation is factored into the rate. As such, 1.5 hours are deducted Blake’s award for clerical work performed on November 8, 2012 (.5 hour) and December 19, 2012 (1/2 of the 2 hours claimed for finalizing a draft).
2.	The Commission adopted a cost-of-living adjustment of 2% for 2013 in Resolution ALJ-287. After rounding the nearest five dollar increment, the Commission approves a 2013 rate of \$210 for Blake. Blake’s 2012 rate was set by the Commission in D.13-01-014.
3.	On August 29, 2013, Johnson claimed .2 hours for reviewing a press release for accuracy and replying to emails of joint parties. The work performed reviewing a press release did not contribute to the Commission’s decision in this proceeding. As such, .1 hours are deducted from Johnson’s claim. Similarly, on November 25, 2013, 4 hours were claimed for “meeting with boss to discuss Op.Eds and Lobbying.” Such work is not compensable and the hours have been removed from the award.
4.	Based on the experience listed on Johnson’s resume, the Commission sets a rate of \$290 for work performed in 2013.
5.	The Commission adopted a 2.58% cost-of-living adjustment for 2014 work in Res. ALJ-303. After being applied to Johnson’s rate, and rounded to the nearest five dollar increment, the Johnson’s 2014 rate is set at \$300.

³ This information may be obtained at: <http://www.calbar.ca.gov/>.

6.	Based on the records submitted, only 9.8 hours were spent on intervenor compensation work in 2013.
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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))

A. Opposition: Did any party oppose the Claim?	No.
B. Comment Period: Was the 30-day comment period waived (see Rule 14.6(2)(6))?	Yes.

FINDINGS OF FACT

1. CFC has made a substantial contribution to D.14-01-035.
2. The requested hourly rates for CFC’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 \$30,905.50.

CONCLUSION OF LAW

1. The Claim, with any adjustment set forth above, satisfies all requirements of Pub. Util. Code §§ 1801-1812.
2. Comments on today’s decision should be waived and the decision should be made effective immediately.

ORDER

1. Consumer Federation of California is awarded \$30,905.50.
2. Within 30 days of the effective date of this decision, the Commission Intervenor Compensation Fund shall pay Consumer Federation of California 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 May 26 2014, the 75th day after the filing of Consumer Federation of California’s request, and continuing until full payment is made.

3. The comment period for today's decision is waived.

This decision is effective today.

Dated May 21, 2015, at San Francisco, California.

MICHAEL PICKER

President

MICHEL PETER FLORIO

CATHERINE J.K. SANDOVAL

CARLA J. PETERMAN

LIANE M. RANDOLPH

Commissioners

APPENDIX

Compensation Decision Summary Information

Compensation Decision:	D1505049	Modifies Decision?	No
Contribution Decision(s):	D1401035		
Proceeding(s):	P1211006		
Author:	ALJ Division		
Payer(s):	Intervenor Compensation Fund		

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
Consumer Federation of California (CFC)	March 12, 2014	\$31,671.00 <i>See Part III.B.</i>	\$30,905.50	N/A	<i>See Part III.C.</i>

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Nicole	Blake	Attorney	Consumer Federation of California	\$205	2013	\$210.00
Nicole	Johnson	Attorney	Consumer Federation of California	\$305	2013	\$290.00
Nicole	Johnson	Attorney	Consumer Federation of California	\$305	2014	\$300.00

(END OF APPENDIX)