

Decision 22-01-005 January 13, 2022

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

**DECISION GRANTING COMPENSATION TO
WILD TREE FOUNDATION
FOR SUBSTANTIAL CONTRIBUTION TO DECISION 20-05-019**

Intervenor: Wild Tree Foundation	For contribution to Decision (D.) 20-05-019
Claimed: \$ 82,967.05	Awarded: \$42,575.65
Assigned Commissioner: Clifford Rechtschaffen	Assigned ALJ: Sophia Park

PART I: PROCEDURAL ISSUES

A. Brief description of Decision:	In D.20-05-019 the Commission approved with modifications a 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 concerned the penalties, fine, and other remedies imposed on 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 §§ 1801-1812¹:

	Intervenor	CPUC Verification
Timely filing of notice of intent to claim compensation (NOI) (§ 1804(a)):		
1. Date of Prehearing Conference:	8/13/2019	Verified
2. Other specified date for NOI:	n/a	
3. Date NOI filed:	9/12/2019	Verified
4. Was the NOI timely filed?		Yes
Showing of eligible customer status (§ 1802(b) or eligible local government entity status (§§ 1802(d), 1802.4):		
5. Based on ALJ ruling issued in proceeding number:	R.19-01-006	Verified
6. Date of ALJ ruling:	June 25, 2020 D.20-06-051	Verified
7. Based on another CPUC determination (specify):	n/a	
8. Has the Intervenor demonstrated customer status or eligible government entity status?		Yes
Showing of “significant financial hardship” (§ 1802(h) or § 1803.1(b)):		
9. Based on ALJ ruling issued in proceeding number:	R.19-01-006	Verified
10. Date of ALJ ruling:	June 25, 2020 D.20-06-051	Verified
11. Based on another CPUC determination (specify):	n/a	
12. Has the Intervenor demonstrated significant financial hardship?		Yes
Timely request for compensation (§ 1804(c)):		
13. Identify Final Decision:	D.20-05-019	Verified
14. Date of issuance of Final Order or Decision:	5/8/2020	Verified
15. File date of compensation request:	7/7/2020	Verified
16. Was the request for compensation timely?		Yes

¹ All section references are to California Public Utilities Code unless indicated otherwise.

C. Additional Comments on Part I:

#	Intervenor's Comment(s)	CPUC Discussion
7.	<p>The Wild Tree Foundation (Wild Tree) is a non-profit, 501(c)(3) tax exempt corporation registered with the State of California that advocates for the protection of the environment, climate, and wildlife. Wild Tree is eligible for intervenor compensation based upon rebuttable presumption of eligibility pursuant to D.20-06-051 and because it has previously met and continues to meet the Commission's long-standing definitions of eligibility. Wild Tree meets the definition of a Category 3 customer under the Public Utilities Code section 1802(b)(1)(C) as "representative of a group or organization authorized pursuant to its articles of incorporation or bylaws to represent the interests of residential customers..." Article 3, Section 3.3 of Wild Tree's Bylaws specifically authorizes the organization to represent the interests of residential ratepayers and seek intervenor compensation for doing so. A copy of Wild Tree's bylaws was submitted with its NOI. Wild Tree represents the interests of residential ratepayers (100 percent) and not small commercial customers receiving bundled electric service from an electrical corporation. Wild Tree also qualifies as a Category 3 customer as an environmental group that represents residential customers with concerns for the environment. (See D.98-04-059, footnote at 30.) The Commission has explained that, "With respect to environmental groups, we have concluded they were eligible [for intervenor compensation] in the past with the understanding that they represent customers . . . who have a concern for the environment which distinguishes their interests from the interests represented by Commission staff, for example." (D.88-04-066.) Wild Tree is such an environmental group because it represents customers with a concern for the environment that is different from other interests in this proceeding.</p>	<p>The Commission has previously found that Wild Tree meets the requirements of a Category 3 customer under Public Utilities Code Section 1802(b)(1)(C). (D.20-06-051 at 3.)</p>
11.	<p>Wild Tree is eligible for intervenor compensation based upon rebuttable presumption of eligibility pursuant to D.20-06-051 and because it has previously met and continues to meet the Commission's long-standing definitions of eligibility. Participation in this proceeding without intervenor compensation would pose a substantial financial hardship for Wild Tree because the economic interest of the residential ratepayers Wild Tree represents is small in comparison to the</p>	<p>The Commission accepts Wild Tree's assertion of significant financial hardship.</p>

#	Intervenor's Comment(s)	CPUC Discussion
	<p>costs of Wild Tree's effective participation. (See Pub. Util. Code § 1802, subd. (h)).</p> <p>The total sum that this proceeding - \$2.137 billion penalty: \$1.823 billion in disallowances for wildfire-related expenditures; \$114 million in System Enhancement Initiatives and corrective actions; and a \$200 million fine - is large, for any individual residential ratepayer that Wild Tree represents. The costs of participating individually thus would far outweigh the individual impacts of the outcome of this proceeding. Wild Tree has shown significant financial hardship and should be allowed to recover its costs in this proceeding.</p>	
15.	The Request was timely filed on 7/7/2020. This Amended Request was filed on 7/15/2020 to correct a mistake whereby the 2019 rate for April Maurath Sommer was mistakenly calculated with \$390 hourly rate instead of \$370.	The adopted 2019 rate for April Maurath Sommer is set forth in Part III.B, below.

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>Fine</p> <p>"PG&E's ongoing failure to address wildfire risk in its service territory is widely documented and such efforts should not be used as an excuse to not fully prosecute and sufficiently fine PG&E. The Camp Fire was ignited by PG&E equipment it failed to maintain <i>a year</i></p>	<p><i>A fine must be assessed - PG&E's efforts to prevent, detect, and rectify the violations</i></p> <p>"The Opposing Parties argue that PG&E's conduct and inadequate efforts to prevent, detect, disclose, and rectify violations weigh in favor of significant penalties and that the penalties set forth in the settlement agreement are inadequate. (<i>See, e.g.,</i> Del Monte/Wild Tree Comments at 33; TURN Comments at 16; Cal Advocates Reply Comments at 5.) . . . There are serious questions regarding PG&E's efforts to prevent,</p>	<p>Wild Tree and Del Monte filed joint comments on the settlement. Some of Wild Tree and Del Monte's arguments regarding PG&E's past conduct and the inadequacy of the terms of the settlement agreement were duplicative of arguments made by other parties in the proceeding.</p>

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<p><i>after</i> PG&E ignited fires across its territory in 2017. PG&E is still under probation as a convicted felon for obstruction of justice in the San Bruno explosion and has been found to have failed to meet the terms of its probation in regards to wildfire risk. New evidence is still being uncovered demonstrating PG&E's ongoing negligence and mismanagement such as evidence submitted to the court in the probation matter that PG&E was aware since 1987 that C hooks – like the one that failed and caused the Camp Fire – had failed strength tests.” (Joint Comments in Opposition of Settlement Agreement at p. 19; See also Appeal of Presiding Officers Decision Approving Settlement Agreement with Modifications at pp. 49-53 discussing PG&E's ongoing negligence and mismanagement.)</p> <p>“PG&E significant violations in the past makes it clear that a significant fine is required because past enforcement actions failed to prevent PG&E from continuing to violate the law. For</p>	<p>detect, and rectify the violations that are at issue in this proceeding. Some of SED's allegations span decades. Furthermore, PG&E has a demonstrated record of failing to comply with Commission directives, including those related to vegetation management. In SED's citation for the Butte Fire issued on April 25, 2017, SED stated that it found PG&E in violation of GO 95, Rule 31.1, 37 times since 1999. It is clear from the record that PG&E failed to take any meaningful steps to prevent or detect this significant number of violations. . . Moreover, although the Settling Parties assert that PG&E has made proactive efforts to address the issues raised in the OII, there are ongoing questions regarding whether PG&E has rectified its practices to avoid such incidents in the future.” (D.20-05-019 at pp. 23-24.)</p> <p>“There are serious questions regarding PG&E's efforts to prevent, detect, and rectify the violations that are at issue in this proceeding.” (D.20-05-019 at p. 75, Finding of Fact 8.)</p> <p>“PG&E has a demonstrated record of failing to comply with Commission directives, including those related to vegetation management.” (D.20-05-019 at p. 75, Finding of Fact 9.)</p>	<p>However, 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>

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<p>example, SED alleged numerous violations of GO 95, Rule 31.1 in regards to the 2017 and 2018 fires; PG&E has been cited for violations of GO 95, Rule 31.1, at least 37 times since 1999. And this was following a 1999 enforcement action where PG&E was fined for failing to comply with vegetation clearance standards. Per D.99-07-029, PG&E agreed to pay \$6 million in fines and to fund up to \$22.7 million in vegetation-related activities.” (Joint Comments in Opposition of Settlement Agreement at p. 33 with extended analysis at pp. 30-33.)</p> <p>“Effective deterrence also requires that the Commission recognize the financial resources of the public utility in setting a fine which balances the need for deterrence with the constitutional limitations on excessive fines. Some California utilities are among the largest corporations in the United States and others are extremely modest, one-person operations. What is accounting rounding error to one company is annual revenue to another. The</p>	<p><i>A fine must be assessed – ability to pay</i></p> <p>“The fact that PG&E is currently in bankruptcy proceedings is a factor the Commission must consider in assessing the financial resources of the utility that may weigh in favor of a lower penalty than ordinarily would be warranted. However, the Settling Parties do not provide sufficient information regarding the bankruptcy or PG&E’s plan of reorganization that would enable the Commission to assess whether the amount and structure of the financial obligations imposed by the settlement agreement are the limit of a reasonable penalty for punishing and deterring the conduct at issue without being excessive in light of PG&E’s financial resources. Information regarding the bankruptcy plan of reorganization is provided in only very general terms and the extent of PG&E’s ability to pay a larger penalty is not clear from the record.” (D.20-05-019 at p. 26.)</p> <p>“Del Monte and Wild Tree argue that the Settling Parties have put forth no evidence on PG&E’s ability to pay a fine</p>	

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<p>Commission intends to adjust fine levels to achieve the objective of deterrence, without becoming excessive, based on each utility's financial resources.'" (D.98-12-075 at p. 155.) PG&E is the largest utility in California and \$250 million in "financial obligations" would be on the level of an accounting rounding error to it. While PG&E did seek bankruptcy protection last year, this was not because it had more debt than assets but because it saw bankruptcy as a strategy to manipulate the system to minimize its costs from the 2017 and 2018 fires it caused. That strategy has apparently worked perfectly in regards to SED in this proceeding. But Movants have put forth no evidence on PG&E's ability to pay a fine and have not and cannot show that PG&E is unable to pay any fine." (Joint Comments in Opposition of Settlement Agreement at pp. 22-23.)</p> <p>"Movants claim, 'if approved, this would be the largest dollar amount ever imposed by the Commission in connection with alleged wildfire-related violations.'</p>	<p>and have not shown that PG&E is unable to pay a fine." (D.20-05-019 at p. 47.)</p>	

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<p>This misrepresents the nature of the Proposed Settlement on many accounts. First, this would be the smallest fine (\$0) imposed upon a utility for any violation. Second, the enforcement action is unprecedented in scope. There has likely never been an enforcement action that purports to address even two fires caused by a single utility in one proceeding, much less nineteen fires spread out over two years. Third, when compared to similar enforcement actions, the lack of a fine is shown to be even more unreasonable and ineffective. (Joint Comments in Opposition of Settlement Agreement at p. 18 with extended analysis at pp. 18-20.)</p> <p>“Given the scope of tragedy that PG&E’s actions and inactions caused, it is difficult to adequately compare it to other enforcement actions and settlement precedent. But there is no question that Commission precedent demonstrates that, in this case, a no-fine settlement reached in just a matter of months with scant record evidence would be in stark contrast to previous efforts</p>	<p><i>A Fine Must be Assessed – Consistency with Precedent</i></p> <p>“Del Monte and Wild Tree argue that the settlement is inconsistent with long-standing well-reasoned precedent. Del Monte and Wild Tree argue that it is difficult to adequately compare this proceeding to other enforcement actions and settlement precedent given the scope of harm and destruction that is at issue.(Del Monte/Wild Tree Comments at 25-27.)” (D.20-05-019 at p. 28.)</p> <p>“In reviewing the Commission precedent presented by the Settling Parties, the Commission does not find any previously issued decision that presents “reasonably comparable factual circumstances.” The loss of life, physical and economic harm, and destruction that are at issue in this proceeding are unprecedented and not comparable to the factual circumstances of prior enforcement proceedings. For example, the Settling Parties cite to some prior incidents that involved no reported fatalities or injuries. Other prior incidents involved one or two fatalities. In comparison, the incidents at issue in this case for which SED found violations involves 107 fatalities.</p> <p>Furthermore, the violations alleged in this proceeding involve 15 separate fires. There may be individual fires in this proceeding that are reasonably</p>	

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<p>to address utility violations. . .</p> <p>Movants claim that such a settlement would be in the public interest because it would be “largest dollar amount ever imposed by the Commission in a wildfire-related enforcement proceeding.” As explained above, this is factually inaccurate as there is no fine to be assessed and the “financial obligations” are mostly meaningless. Comparison to other settlement show how truly misleading such a contention is. The only investigation remotely comparable to that at hand was the San Bruno OII that was fully investigated and litigated over 3 years and for which a substantial fine was issued along with other serious penalties and meaningful corrective actions. But, even enforcement actions investigating far less severe violations still resulted in actual penalties paid by the investigated regulated entity. The following table provides a comparison of precedential Commission enforcement actions . . . (Table 1) . . . Notably, Movants fails to provide an adequate comparison to the only</p>	<p>comparable to prior incidents. However, there are others, such as the Camp Fire, for which the factual circumstances are not reasonably comparable to any prior incident. In any event, there is no prior Commission decision that addresses factual circumstances on the scale of all 15 of these fires.</p> <p>Del Monte and Wild Tree argue that the most comparable proceeding is the San Bruno OII, which was fully investigated and litigated and resulted in the Commission imposing penalties in the form of fines. . .</p> <p>Although San Bruno involved fully litigated investigations, such precedent may still be useful for assessing the potential range of outcomes that could result if this proceeding was fully adjudicated. However, there are factual differences between this proceeding and the San Bruno proceedings. The scope and severity of the physical and economic harm at issue in this proceeding are on a scale much greater than the physical and economic harm at issue in the San Bruno proceedings, which would weigh in favor of higher penalties. On the other hand, PG&E's financial condition is much different than during the San Bruno proceedings, which must be considered.</p> <p>There is one aspect of the settlement agreement that departs from Commission precedent. The Settling Parties note that almost all of the precedent they reference include a mix of fines, shareholder funding of programs, and/or remedial action plans. Notably, all of these prior Commission</p>	

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<p>investigation that is remotely equivalent, the San Bruno natural gas explosion investigation (I.12-01-007, I.11-02-016, and I.11-11-009). While the San Bruno Investigation involved natural gas infrastructure and explosion, it is the best comparison in terms of death and destruction caused by systemic safety failures and the failure to regulate PG&E.” (Joint Comments in Opposition of Settlement Agreement at pp. 25-27 with extended analysis at pp. 25-30.)</p>	<p>decisions included a fine payable to the General Fund. The proposed settlement agreement, however, does not include any fines.” (D.20-05-019 at pp. 29-30.)</p> <p>“Upon review of the facts of this case, the Commission finds that it is neither consistent with Commission precedent nor in the public interest for this investigation to conclude without the assessment of a fine. There is no question that PG&E’s electric facilities played a role in the 2017 and 2018 fires. PG&E faces a total of 45 alleged violations concerning these fires and does not contest 14 of these violations. Given the severity of the allegations, the assessment of no fine is not within a reasonable range of potentially litigated outcomes. . .</p> <p>Notably, all of the prior Commission decisions cited as precedent by the Settling Parties included a fine payable to the General Fund. In D.15-04-024, the Commission imposed a mix of fines, penalties, and other remedies in connection with the San Bruno proceedings. On its decision to impose a fine, the Commission explained: ‘we recognize both the statutory tool for penalties (<i>i.e.</i>, fines to the state General Fund) and the Commission’s long-standing policy and practice of imposing fines on [utilities] as a means of penalizing and deterring, and therefore require PG&E to pay \$300 million of the total penalties and remedies in the form of a fine to the state General Fund.’” (D.20-05-019 at p. 48.)</p> <p>“The significant loss of life, physical and economic harm, and destruction that are</p>	

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<p>“The lack of a fine for the dozens of violations that resulted in numerous catastrophes makes the Proposed Settlement against the public interest.</p>	<p>at issue in this proceeding are not comparable to the factual circumstances of prior enforcement proceedings.” (D.20-05-019 at p, 76, Finding of Fact 12.)</p> <p><i>A Fine Must be Assessed – Public Interest</i></p> <p>“Del Monte and Wild Tree also oppose the proposed settlement agreement. They argue that the settlement agreement is not in the public interest because: (1) it does not include a fine, which is an integral part of Commission enforcement actions in order to effectively deter future violations by the perpetrator and others; . . . and (4) in stark contrast to previous utility enforcement actions, it is ‘a no-fine settlement reached in just a matter of months with scant record evidence.’” (D.20-05-019 at p. 17.)</p> <p>“The Opposing Parties argue that the settlement agreement is not in the public interest because the proposed penalty is not commensurate with the magnitude of the violations and the harm caused. TURN, Del Monte, and Wild Tree argue that the financial obligations set forth in the settlement agreement are not sufficient as a penalty because they do not consist of purely incremental financial obligations being imposed on PG&E and because PG&E may continue to receive tax savings from these expenses. Del Monte and Wild Tree also argue that the settlement agreement is not in the public interest because it does not include a fine payable to the General Fund.” (D.20-05-019 at p. 27.)</p>	

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<p>The lack of a fine and de minimis 'financial obligations' for which PG&E would be able to take substantial tax deductions is inconsistent with the law because it would not effectively 'defer future violations by the perpetrators or others.' and would therefore be a dereliction of the Commission's duty to enforce state law by prosecuting violations." (Joint Comments in Opposition of Settlement Agreement at p. 17.)</p> <p>"Movants claim, 'if approved, this would be the largest dollar amount ever imposed by the Commission in connection with alleged wildfire-related violations.' This misrepresents the nature of the Proposed Settlement on many accounts. First, this would be the smallest fine (\$0) imposed upon a utility for any violation. . . (Joint Comments in Opposition of Settlement Agreement at p. 18 with extended analysis at pp. 18-20.)</p> <p>"The POD does provide sufficient conclusions of law backed by substantial evidence that a fine is necessary but does not</p>	<p>"The Opposing Parties argue that PG&E should be penalized, and that the penalty must be commensurate with the magnitude of the alleged violations, the harm caused by the fires, and the utility's safety record. They argue that the terms of the settlement agreement do not provide for an adequate level of penalty in light of these considerations, and therefore, are not reasonable in light of the whole record or in the public interest. . . Based on review of the record in this proceeding, the Commission finds that the provision for penalties set forth in the proposed settlement agreement is inadequate for the following reasons: (1) the proposed penalty is not commensurate with the magnitude of the allegations and conduct that are at issue; (2) the effective value of the financial obligations imposed on PG&E is less than the asserted amount of \$1.675 billion given that PG&E may not otherwise have received ratepayer recovery for a substantial amount of the costs identified in the settlement agreement and that PG&E can be expected to receive significant tax savings associated with the financial obligations; and (3) the proposed settlement agreement is not in the public interest or consistent with Commission precedent because it does not impose any fines on PG&E." (D.20-05-019 at pp. 31-33.)</p> <p>"Del Monte and Wild Tree argue that a fine of \$0 is not in the public interest or in compliance with the law." (D.20-05-019 at p. 47.)</p> <p>"With the modifications adopted by this decision, the total penalties to be</p>	

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<p>provide sufficient justification for the amount of the fine. . . Appellants support the POD in regards to the conclusion that a fine must be assessed, even if the fine amount proposed is still far too low to sufficiently provide the deterrent effect that a fine is intended to provide.” (Appeal of Presiding Officers Decision Approving Settlement Agreement with Modifications at pp. 2-3.)</p> <p>“Despite the fact that this proceeding lacks an adequate record, in the POD, the Presiding Officer has provided substantial evidence and legal analysis supporting the conclusion of law that “it is neither consistent with Commission precedent nor in the public interest for this investigation to conclude without the assessment of a fine.” The Joint Parties’ position that a fine is an absolute necessity is substantially relied upon in the POD and the Joint Parties incorporate herein, by reference, the argument presented throughout our Opposition to Proposed Settlement on this point.” (Joint Opposition To Commissioner</p>	<p>imposed on PG&E is \$2.137 billion. In recognition of the number and severity of the allegations that are at issue in this investigation, the lives lost and homes destroyed, PG&E’s size, and the Commission’s long-standing policy and practice of imposing fines on utilities as a means of penalizing and deterring future misconduct, the Commission finds that, of the \$2.137 billion in penalties, it is reasonable to impose a fine of \$200 million.” (D.20-05-019 at p. 49.)</p> <p>“The assessment of no fine is not within a reasonable range of potentially litigated outcomes in this case.” (D.20-05-019 at p. 78, Finding of Fact 28.)</p> <p>“It is neither consistent with Commission precedent nor in the public interest for this investigation to conclude without the assessment of a fine.” (D.20-05-019 at p. 80, Conclusion of Law 5.)</p> <p>“The proposed settlement is not reasonable in light of the whole record.” (D.20-05-019 at p. 81, Conclusion of Law 8.)</p> <p>“The proposed settlement is not in the public interest.” (D.20-05-019 at p. 80, Conclusion of Law 9.)</p>	

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<p>Rechtschaffen's Request For Review Of The Presiding Officer's Decision Approving Proposed Settlement Agreement With Modifications at p. 6.)</p>		
<p>Financial Obligations</p> <p>"Over half of the costs that PG&E will allegedly not pursue ratepayer recovery for are costs that they would almost certainly not be able to recover in rates anyhow. . . The Proposed Settlement proposes that PG&E will not pursue ratepayer recovery for \$924 million of Catastrophic Event Memorandum Account ("CEMA") expenses for the Camp Fire and for 2017 "fires for which SED or CAL FIRE have alleged violations."² These costs – over half of the total \$1.625 billion that PG&E will supposedly not pursue – are per se not recoverable because it would be unreasonable for ratepayers to cover costs associated with catastrophes created by PG&E. CEMA funds are cost associated with disasters and with restoring utility services to</p>	<p><i>Financial Obligations</i></p> <p>"Del Monte and Wild Tree also oppose the proposed settlement agreement. They argue that the settlement agreement is not in the public interest because: . . . (2) the financial obligations agreed to in the settlement are de minimis given that PG&E likely would not have received ratepayer recovery for a substantial amount of the costs and given the tax benefits associated with the financial obligations . . ." (D.20-05-019 at p. 17.)</p> <p>"The Opposing Parties argue that the settlement agreement is not in the public interest because the proposed penalty is not commensurate with the magnitude of the violations and the harm caused. TURN, Del Monte, and Wild Tree argue that the financial obligations set forth in the settlement agreement are not sufficient as a penalty because they do not consist of purely incremental financial obligations being imposed on PG&E and because PG&E may continue to receive tax savings from these expenses." (D.20-05-019 at p. 27.)</p> <p>"The Settling Parties represent that the settlement agreement "requires PG&E to bear an additional \$1.675 billion in</p>	<p>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 above, Wild Tree and Del Monte's contributions were duplicative of positions taken by The Utility Reform Network (TURN) without bringing significant additional value to TURN's positions. The final decision reflects TURN's unique analyses and contributions but does not reflect any unique contributions by Wild Tree and Del Monte. For example, TURN</p>

² Proposed Settlement at p. 3.

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<p>customers; repairing, replacing, or restoring damaged utility facilities and; complying with governmental agency orders in connection with events declared disasters by competent state or federal authorities. The Public Utilities Code is clear that such costs are recoverable only following approval by the Commissions of a request by a utility where the Commission has made a finding of reasonableness.” (Joint Comments in Opposition of Settlement Agreement at pp. 20-21.)</p> <p>“PG&E cannot possibly demonstrate CEMA costs associated with catastrophes that they were responsible for causing to be reasonable and would not, therefore, be able to recover in rates the \$924 million in CEMA costs. Not pursuing rate recovery for the CEMA costs cannot then be considered an obligation. Deducting \$924 million for the unrecoverable CEMA costs from the total leaves \$702 million in supposed financial obligations.” (Joint Comments in Opposition of Settlement Agreement at p. 22 with</p>	<p>financial obligations to resolve this proceeding.” By implication, the Settling Parties believe that the settled amount of \$1.675 billion in financial obligations is commensurate. However, the Commission does not find that the effective value of the settled penalty is \$1.675 billion as represented by the Settling Parties.</p> <p>Based on review of the record in this proceeding, the Commission finds that the provision for penalties set forth in the proposed settlement agreement is inadequate for the following reasons . . . (2) the effective value of the financial obligations imposed on PG&E is less than the asserted amount of \$1.675 billion given that PG&E may not otherwise have received ratepayer recovery for a substantial amount of the costs identified in the settlement agreement and that PG&E can be expected to receive significant tax savings associated with the financial obligations . . .” (D.20-05-019 at p. 32.)</p> <p>“The Opposing Parties argue that the potential penalties, were the case fully litigated, may be greater than the settled amount by as much as \$750 million or more. Because the Commission finds that the proposed penalty is too low relative to the harm and that the effective value is likely substantially less than the proposed \$1.675 billion, the Commission finds that the settlement agreement is not reasonable in light of the whole record or in the public interest.</p> <p>The Commission finds that the settlement agreement should be modified to: (1) increase the financial obligations</p>	<p>provided distinct analyses regarding the use of disallowances in past enforcement actions, which contributed to the final decision on this issue. (D.20-05-019 at 35; TURN Comments Opposing Proposed Settlement at 8-10.) As another example, TURN’s distinct recommendations identifying substitute costs to be disallowed and a small increase in the amount of the disallowances to account for uncertainty regarding whether the costs would have otherwise been recoverable, contributed to the outcome in the final decision to increase the amount of the penalty to account for the uncertainty. (D.20-05-019 at 38-39; TURN Comments Opposing Proposed Settlement at 21-23.)</p>

Intervenor's Claimed Contribution(s)	Specific References to Intervenor's Claimed Contribution(s)	CPUC Discussion
<p>extended analysis at pp. 22-23.)</p> <p>“Appellants also state for the record that the ‘financial obligations’ are essentially meaningless because a majority of these costs would not be recoverable because PG&E could not show that it reasonably incurred costs related to fires it caused. That said, Appellants support the increase in the financial obligations in the POD over the Proposed Settlement.” (Appeal of Presiding Officer’s Decision Approving Settlement Agreement with Modifications at p. 2.)</p> <p>“As the Joint Parties have argued extensively, the financial obligations are, for the most part, meaningless because it amounts to no more than PG&E writing offs costs they would not be able to recover anyhow. But, if PG&E was then allowed to profit from the write-offs, the entire purpose of assessing penalties and fines would be utterly obviated. It is critical that the POD’s treatment of tax benefits stands or the Commission will fully and totally have failed its obligation to enforce state</p>	<p>to be imposed on PG&E by an additional \$462 million . . .” (D.20-05-019 at p. 33.)</p> <p>“In past enforcement actions, the Commission has used a mix of penalties, including fines to the General Fund, disallowances, and other remedies, to penalize a utility for violations and to deter similar behavior and violations in the future. Although the Commission has in the past used disallowances as a penalty in enforcement proceedings, such disallowances can only be effective as a penalty where shareholders are required to absorb costs that would otherwise be paid by ratepayers. To disallow ratepayer funding of costs that would not have been recoverable from ratepayers even in the absence of the enforcement action has little or no value as a penalty.” (D.20-05-019 at p. 35)</p> <p>“The Opposing Parties argue that it is uncertain whether these costs would have been recoverable from ratepayers. Pursuant to Pub. Util. Code § 451, the Commission must ensure that all charges demanded or received by any public utility are just and reasonable. A utility cannot recover costs from ratepayers absent Commission review of the costs for reasonableness and approval to recover in rates. There has been no finding by the Commission that the costs identified in the settlement agreement are reasonable. Even in the absence of the settlement agreement, it is possible that the Commission may have disallowed some of the costs set forth in the settlement agreement in the ordinary course of its reasonableness review of these costs pursuant to Pub. Util. Code</p>	

Intervenor's Claimed Contribution(s)	Specific References to Intervenor's Claimed Contribution(s)	CPUC Discussion
<p>laws and prosecute violations.” (Joint Opposition to Commissioner Rechtschaffen’s Decision Different at p. 15.)</p>	<p>§ 451. In particular, TURN, Del Monte, and Wild Tree argue that it is highly uncertain that the Commission would have authorized rate recovery of the CEMA costs identified in the settlement agreement. CEMA is used to record unexpected costs incurred as a result of significant events declared to be disasters by the state of California or federal authorities. These costs are recoverable in rates following a request by the affected utility, a Commission finding of their reasonableness, and approval by the Commission.</p> <p>The CEMA costs included in the settlement agreement relate to the 2017 and 2018 wildfires for which SED has alleged violations and CAL FIRE has made determinations that PG&E’s electrical facilities ignited. PG&E does not dispute that its equipment played a role in igniting in these fires. TURN, Del Monte, and Wild Tree argue that PG&E is not likely to be able to demonstrate the reasonableness of CEMA costs associated with catastrophes that it was responsible for causing. (TURN Comments at 13-14; Del Monte/Wild Tree Comments at 21-22.)” (D.20-05-019 at pp. 37-38.)</p> <p>“Upon review of the costs identified in the settlement, the Commission agrees with the Opposing Parties that argue that PG&E’s ability to recover all of the CEMA costs identified in the settlement is questionable. TURN observes that PG&E has not yet sought recovery of these costs. Moreover, in the past, the Commission has disallowed ratepayer recovery for costs related to fires caused by utility equipment where the</p>	

Intervenor's Claimed Contribution(s)	Specific References to Intervenor's Claimed Contribution(s)	CPUC Discussion
	<p>Commission found that the utility did not reasonably manage and operate its facilities prior to the fires. (<i>See e.g.</i>, D.17-11-033.)</p> <p>Given the substantial uncertainty regarding the recoverability of the settled CEMA costs, the effective value of these disallowances as a penalty is likely much lower than the stated \$924 million. It is unclear whether the Settling Parties took into account the likelihood of recoverability of these costs. However, the Commission finds that this uncertainty must be taken into account when assessing whether the penalty is adequate.</p> <p>To account for uncertainty and to ensure the penalty is commensurate with the scale of the 2017 and 2018 fires, the Commission finds that the settled penalty amount should be increased. The Commission finds that an appropriate modification is to adopt all of the disallowances in the settlement, and also increase the penalty amount by \$462 million, which is half the value of the disputed CEMA costs included in the settlement. This modification will help to ensure that the effective value of the penalty more closely approximates the amount proposed by the Settling Parties.” (D.20-05-019 at pp. 39-40.)</p> <p>“The provision for penalties set forth in the settlement agreement is inadequate and not commensurate with the magnitude of the allegations and conduct that are at issue.” (D.20-05-019 at p. 76, Finding of Fact 15.)</p>	

Intervenor's Claimed Contribution(s)	Specific References to Intervenor's Claimed Contribution(s)	CPUC Discussion
	<p>“The effective value of the financial obligations imposed on PG&E by the settlement agreement is less than the asserted amount of \$1.675 billion.” (D.20-05-019 at p. 76, Finding of Fact 16.)</p> <p>“PG&E may not have otherwise received ratepayer recovery for \$924 million in CEMA costs identified in the settlement agreement, which relate to the 2017 and 2018 wildfires for which SED has alleged violations.” (D.20-05-019 at p. 76, Finding of Fact 17.)</p> <p>“Disallowances are only effective as a penalty where shareholders are required to absorb costs that would otherwise be paid by ratepayers.” (D.20-05-019 at p. 76, Finding of Fact 18.)</p> <p>“There has been no finding by the Commission that the wildfire-related expenditures identified in the settlement agreement are reasonable.” (D.20-05-019 at p. 76, Finding of Fact 19.)</p> <p>“The significant uncertainty regarding the recoverability of the settled CEMA costs must be taken into account when assessing whether the penalty is adequate.” (D.20-05-019 at p. 76, Finding of Fact 20.)</p> <p>“The settled penalty amount should be increased to account for the uncertainty of the recoverability of the settled CEMA costs and to ensure that the penalty is commensurate with the scale of the 2017 and 2018 fires.”</p>	

Intervenor's Claimed Contribution(s)	Specific References to Intervenor's Claimed Contribution(s)	CPUC Discussion
	(D.20-05-019 at p. 76, Finding of Fact 21.)	
<p>Tax Treatment</p> <p>“Over half of the costs that PG&E will allegedly not pursue ratepayer recover for are costs that they would almost certainly not be able to recover in rates anyhow. The “financial obligations” are further decreased by the tax benefits PG&E will reap from deducting the “financial obligations” from their federal and state taxes. Fines, are not, of course, deductible but none of the “financial obligations” are fines so PG&E has stated it plans to benefit from almost \$500 million in tax breaks.³ At p. 21.)</p> <p>“Deducting \$924 million for the unrecoverable CEMA costs from the total leaves \$702 million in supposed financial obligations. This would be further decreased by PG&E’s ability to benefit from tax deductions which they estimate at \$468,725,300 of tax savings. This leaves – at</p>	<p><i>Tax Treatment</i></p> <p>“The Opposing Parties argue that the settlement agreement is not in the public interest because the proposed penalty is not commensurate with the magnitude of the violations and the harm caused. TURN, Del Monte, and Wild Tree argue that the financial obligations set forth in the settlement agreement are not sufficient as a penalty because they do not consist of purely incremental financial obligations being imposed on PG&E and because PG&E may continue to receive tax savings from these expenses.” (D.20-05-019 at p. 27.)</p> <p>“TURN, Del Monte, and Wild Tree argue that any tax benefits that result from the structure of the penalty would reduce the net impact and deterrent value of the adopted penalty.” (D.20-05-019 at p. 41.)</p> <p>“The POD modified the settlement agreement to require that ratepayers, rather than shareholders, receive the benefit of any tax savings associated with the financial obligations to be imposed on PG&E in this proceeding (‘tax benefit provision’).” (D.20-05-019 at p. 43.)</p> <p>“The financial obligations adopted in this decision are intended as penalties for the purpose of punishment and</p>	<p>Wild Tree and Del Monte’s position on this issue were duplicative of TURN’s position without bringing significant additional value. Wild Tree does not cite to any distinct analyses or recommendations it made on this topic that are reflected in the final decision. In contrast, the final decision does reflect TURN’s distinct analyses on this issue. For example, the final decision reflects TURN’s analyses regarding the lack of discussion in the settlement regarding potential tax benefits. (D.20-05-019 at 46; TURN Comments Opposing Proposed Settlement at 19-20.)</p>

³ I.19-06-015, *Pacific Gas and Electric Company’s (U 39 E) Response To December 30, 2019, Ruling Requesting Additional Information Regarding Settlement Agreement* (January 10, 2019).

Intervenor's Claimed Contribution(s)	Specific References to Intervenor's Claimed Contribution(s)	CPUC Discussion
<p>best – \$251,274,700 in ‘financial obligations.’” (Joint Comments in Opposition of Settlement Agreement at p. 22 with extended analysis at pp. 17-22.)</p> <p>“Appellants strongly support the aspect of the POD that any tax benefit from a settlement be to the benefit of ratepayers, not shareholders. It is important to note that the POD’s treatment of the tax benefits PG&E would otherwise reap themselves, are critical to making the ‘financial obligations’ meaningful as discussed in the POD.” (Appeal of Presiding Officer’s Decision Approving Settlement Agreement with Modifications at pp. 2-3.)</p> <p>“The Commission would not be forcing PG&E to do anything in regard to how it files its taxes or complies with tax laws. As a condition of settlement, PG&E would simply be required to provide ratepayers the tax benefits after such benefits are received as a result of the very favorable settlement terms that allow for write off of unrecoverable costs.” (Joint Opposition to Commissioner</p>	<p>deterrence, and therefore, it is not appropriate for these expenditures to be treated as they would be treated during the course of ordinary business. In order for the financial obligations adopted in this decision to have the appropriate punitive and deterrent impact, the Commission finds that ratepayers, rather than shareholders, should receive the benefit of any tax savings associated with these financial obligations. The Commission notes that if a fine were adopted for the same amount as the disallowances, the value of the penalty would be certain and there would be no associated tax savings.” (D.20-05-019 at pp. 45-46.)</p> <p>“[A]s PG&E realizes any tax savings associated with the shareholder obligations for operating expenses set forth in the settlement agreement, as modified by the decision, PG&E is directed to report these tax savings, with accompanying supporting testimony and underlying calculations, in its next General Rate Case (GRC) filing immediately following the realization of the savings. The amount of the tax savings shall be applied to wildfire mitigation expenses recorded in the WMPMA or FRMMA that would otherwise have been recovered from ratepayers but for this decision. This will ensure that ratepayers, not PG&E shareholders, benefit from the tax savings associated with treating the penalty as an ordinary business expense.” (D.20-05-019 at p. 47.)</p> <p>“In order for the penalties adopted in this decision to have the appropriate punitive and deterrent impact, ratepayers, rather</p>	

Intervenor's Claimed Contribution(s)	Specific References to Intervenor's Claimed Contribution(s)	CPUC Discussion
Rechtschaffen's Decision Different at p. 15.)	than shareholders, should receive the benefit of any tax savings associated with these financial obligations, consistent with IRS rules." (D.20-05-019 at pp. 77-78, Finding of Fact 27.)	
<p>Payment of Fine</p> <p>"PG&E's interpretation of the Fire Victim Claims as defined in the Tort RSA⁴ and its proposed reorganization plan⁵ to include Commission fines is contradicted by other parties to the Tort RSA ("Tort Claimants"), the Commission's legal staff and outside legal counsel, and the Bankruptcy Court. The Tort Claimants and the Commission disagreed with PG&E's interpretation that a Commission fine can be included as part of the Fire Victim Claims." (Joint Opposition to Commissioner Rechtschaffen's Decision Different at p. 9 with extended analysis at pp. 9-12.)</p>	<p><i>Payment out of Fire Victims Trust</i></p> <p>"In the event that the Commission imposes any fine, PG&E requests that the Commission order that the fine is a Fire Victim Claim under PG&E's PoR, will be paid out of the Fire Victims Trust, and will be subordinated to the Trust's payments to fire victims.</p> <p>The Commission does not find it appropriate for this fine to be included in the Fire Victims Trust because the fine is dissimilar in nature to the claims of the wildfire victims and should not compete with such claims." (D.20-05-019 at p. 50.)</p>	<p>Wild Tree fails to demonstrate that it made a substantial contribution to this issue. The Commission's conclusion that the fine should not be included in the Fire Victims Trust was included in the Decision Different (at 49), which was issued prior to Wild Tree's claimed contribution on this issue, and the final decision does not reflect any changes to the Decision Different on this issue. Wild Tree does not point to any legal or policy analysis it provided, which is reflected in the final decision.</p>

⁴ N.D. Cal. Bankr. Case no. 19-30088, *Motion to Approve Document Debtors Motion Pursuant to 11 U.S.C. sections 363(b) and 105(a) and Fed. R. Bankr. P. 6004 and 9019* (December 9, 2019) at Exhibit A - *Tort Claimants RSA*.

⁵ I.19-09-016, *PG&E Notice Of Amended Plan Of Reorganization* (December 13, 2019) at Exhibit A – *Plan of Reorganization*; I.19-09-016, *PG&E Notice Of Amended Plan Of Reorganization* (February 3, 2020) at Exhibit A – *Amended Plan*.

B. Duplication of Effort (§ 1801.3(f) and § 1802.5):

	Intervenor's Assertion	CPUC Discussion
a. Was the Public Advocate's Office of the Public Utilities Commission (Cal Advocates) a party to the proceeding?⁶	Yes	Verified
b. Were there other parties to the proceeding with positions similar to yours?	yes	Verified
c. If so, provide name of other parties: All positions - Thomas Del Monte; Some positions – TURN, Cal Advocates, City and County of San Francisco		Verified
d. Intervenor's claim of non-duplication: Wild Tree regularly communicated with other parties throughout the proceeding in regards to commonly held positions. Wild Tree filed joint briefs with intervenor Thomas Del Monte to ensure that commonly held positions were not duplicated. Ultimately, Wild Tree's positions did not have enough overlap with other intervenors to file joint briefs but Wild Tree's work was complementary, and not overly duplicative of other parties.		As addressed in Part II.A., above, Wild Tree's contributions on issues other than the issue of imposition of a fine were duplicative of positions taken by other parties in the proceeding. Wild Tree fails to demonstrate that its work on these other issues were complementary rather than overly duplicative of the work of other parties.

⁶ 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.

PART III: REASONABLENESS OF REQUESTED COMPENSATION

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

	CPUC Discussion
<p>a. Intervenor’s claim of cost reasonableness:</p> <p>Wild Tree’s advocacy contributed to a decision that will have a major impact on ratepayers in that its advocacy contributed to a decision determining how violations of the law will be enforced against PG&E. The resources Wild Tree expended in its advocacy are minimal relative to the resulting impacts and amount of penalties and fines - \$2.137 billion = \$1.823 billion in disallowances for wildfire-related expenditures; \$114 million in System Enhancement Initiatives and corrective actions; and a \$200 million fine. Wild Tree’s costs are reasonable in light of the amount of time, resources, and effort Wild Tree put into the proceeding as a party.</p>	See discussion in Part III.D., below.
<p>b. Reasonableness of hours claimed:</p> <p>Wild Tree spent a reasonable and prudent amount of time on this matter, working diligently addressing highly complex and complicated issue in an efficient and expedient manner. A single in-house attorney, experienced in practice before the Commission, drafted all filings for Wild Tree thereby leveraging many years of experience and expertise while limiting its costs. Due to the multi-faceted nature of this proceeding, a typical law firm would have expended significantly more resources than that spent by Wild Tree.</p>	See discussion in Part III.D., below.
<p>c. Allocation of hours by issue:</p> <p>Issue S: Participating in settlement negotiations and developing settlement position – 16.46 hours, 8%</p> <p>Issue PS: Responding to Proposed Settlement – 56.77 hours, 28%</p> <p>Issue L: Addressing applicable law regarding enforcement of violations and settlements – 37.59 hours, 18%</p> <p>Issue PO: Responding to Proposed Officers Decision – 64.73 hours, 31%</p> <p>Issue D: Responding to Decision Different – 6.20 hours, 3%</p>	See discussion in Part III.D., below.

	CPUC Discussion
Issue G: General preparation and coordination with other parties – 24.06 hours, 12%	

B. Specific Claim:*

CLAIMED						CPUC AWARD		
ATTORNEY, EXPERT, AND ADVOCATE FEES								
Item	Year	Hours	Rate \$	Basis for Rate*	Total \$	Hours	Rate \$	Total \$
April Maurath Sommer	2019	51.24	\$370.00	D.20-06-051 rate of \$370 for 2019	\$18,958.80	25.62 [1]	\$370.00	\$9,479.40
April Maurath Sommer	2020	154.57	\$400.00	2019 rate + (5% step increase as authorized in D.07-01-009) + (estimated 2% COLA increase for 2020) = \$396 rounded to the nearest \$5 increment of \$400 per D.08-04-010. The 2020 COLA resolution had not been issued and so 2% was selected as a reasonable estimate based on the 2017, 2018, and 2019 increases.	\$61,828.00	77.29 [1]	\$400.00 [2]	\$30,916.00
Subtotal: \$80,786.80						Subtotal: \$40,395.40		
INTERVENOR COMPENSATION CLAIM PREPARATION **								
Item	Year	Hours	Rate \$	Basis for Rate*	Total \$	Hours	Rate	Total \$
April Maurath Sommer	2020	7.26	\$200.00	½ \$400 rate for 2020 as explained above	\$1,452.00	7.26	\$200.00 [3]	\$1,452.00

CLAIMED						CPUC AWARD		
Marcus Friedman	2020	9.71	\$75.00	½ \$150 rate for 2020, \$150 is an appropriate rate for an experienced law clerk pursuant to average rate for law clerk awarded as recorded in the Hourly Rate Table, see Attachment 3 for more information	\$728.25	9.71	\$75.00 [4]	\$728.25
Subtotal: \$2,180.25						Subtotal: \$2,180.25		
TOTAL REQUEST: \$82,967.05						TOTAL AWARD: \$42,575.65		
<p>*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. Intervenor’s 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.</p> <p>**Travel and Reasonable Claim preparation time are typically compensated at ½ of preparer’s normal hourly rate</p>								
ATTORNEY INFORMATION								
Attorney		Date Admitted to CA BAR ⁷		Member Number		Actions Affecting Eligibility (Yes/No?) If “Yes”, attach explanation		
April Maurath Sommer		2008		257967		no		

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

Attachment or Comment #	Description/Comment
1	Certificate of Service
2	Timesheets
3	Marcus Friedman Bio and Resume

⁷ This information may be obtained through the State Bar of California's website at <http://members.calbar.ca.gov/fal/MemberSearch/QuickSearch>.

D. CPUC Comments, Disallowances, and Adjustments

Item	Reason
<p>[1]</p> <p>Disallowance for Duplication/Failure to Demonstrate Substantial Contribution</p>	<p>We reduce the claimed attorney hours by 50% based on the following:</p> <p>(1) Duplication of efforts. As addressed in Part II.A., above, Wild Tree made a substantial contribution to the issue of imposition of a fine but Wild Tree's contributions on other issues were duplicative of positions taken by TURN in the proceeding without providing a meaningful input to the positions advocated by TURN. In addition, Wild Tree and Del Monte participated jointly throughout much of the proceeding and failed to explain how the time each claimed for joint filings was non-duplicative.</p> <p>(2) Issues outside of scope. The filings of Wild Tree also addressed issues outside the scope of the proceeding. (See, e.g., Joint Comments in Opposition of Settlement Agreement, filed January 16, 2020, at pp. 34-56.) Any time expended on issues outside the scope of the proceeding did not make any substantial contribution to the final decision.</p> <p>Based on the foregoing, Wild Tree has failed to demonstrate that all of the time recorded in its 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).) Wild Tree's timesheets do not allocate time by issue (i.e., by claimed contributions set forth in Part II.A), and therefore, the Commission is unable to verify how much of Wild Tree's time was spent on issues that duplicated the efforts of other parties or were outside the scope of the proceeding. Under these circumstances and based on our review of Wild Tree's claimed contributions in Part II.A, we find a 50% reduction to the claimed hours to be reasonable.</p>
<p>[2]</p>	<p>Adopting \$400 rate for 2020. New rate based on Sommer's \$370 2019 rate adjusted to reflect Resolution ALJ-387 (2.55% COLA) plus a 5% step increase.</p>
<p>[3]</p>	<p>Adopted rate for 2020 is \$400. Icomp claim preparation is compensated at ½ the preparer's normal rate which in this case is at \$200.</p>
<p>[4]</p>	<p>Adopting \$150 rate for 2020 with corresponding Icomp claim preparation rate of \$75. The new rate is reasonable for an expert with 0-6 years of experience. Friedman is a third-year law student at the University of San Diego. He has drafted legal memoranda and presented</p>

Item	Reason
	his findings to the California Energy Commission and the California Legislature.

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 (<i>see</i> Rule 14.6(c)(6))?	No

Party	Comment	CPUC Discussion
Wild Tree Foundation	Wild Tree states its advocacy was not duplicative of other parties; in fact, on the issues in which the PD would deny Wild Tree compensation, other parties' participation was complementary of Wild Tree's advocacy.	<p>Pursuant to Section 1801.3(d), the Commission must determine that the intervenor's presentation and participation constituted a "substantial contribution" to the proceeding. This term is defined in Section 1802(j) to mean that in the judgement of the Commission, the presentation substantially assisted the Commission in making its decision because the decision adopted in whole or in part one or more factual, legal, or policy contentions advanced by the intervenor.</p> <p>The Legislature has further provided that the Commission is to avoid awarding fees for unproductive, unnecessary, or duplicative presentations of interests that are adequately represented. (Section 1801.3(f).) On the other hand, fees may be awarded for participation that "materially supplements, complements, or contributes to the presentation of another party," if the intervenor's participation makes a substantial contribution to the decision. (Section 1802.5.)</p> <p>These statutes invest the Commission with substantial discretion in determining what level of fees are reasonable. This is a judgement decision based on the evaluation of the facts surrounding the intervenor's participation. (<i>See, e.g.,</i> D.00-06-082, 2000 Cal. PUC LEXIS 305, *4-6.) This decision finds that Wild Tree did not provide a substantial contribution to the final decision on most of the substantive issues nor materially supplemented or complemented the contributions to the decision made by other parties to the proceeding.</p>

Party	Comment	CPUC Discussion
		<p>The burden to demonstrate substantial contribution is on the intervenor. Quotes from Wild Tree’s pleadings and to the final decision mentioning Wild Tree’s participation and positions do not necessarily demonstrate a substantial contribution. These passages in the decision merely summarize the arguments put forth by Wild Tree and do not show these arguments made a substantial contribution to the decision.</p> <p>The comments, similarly, present no evidence showing how Wild Tree’s non-compensable participation provided distinctive and valuable input. Wild Tree states in Part II.B of the claim that Wild Tree’s work “was complementary but not overly duplicative of other parties.” Where Wild Tree’s positions coincided with the positions of other parties on the same issues, Wild Tree provides no specific examples of its distinctive analyses that brought value to other parties’ positions. The only support to its argument is made in Wild Tree’s references to the issue of fines, which this decision compensates. The comments do not include references to the record created by the intervenor and other parties that would demonstrate that Wild Tree indeed materially complemented or supplemented other parties’ presentations which, in turn, substantially contributed to the final decision. Reductions under such circumstances are consistent with the approach the Commission has been using for years. (<i>See, e.g.</i>, D.20-06-051 at pp. 20-22; D.16-04-029 at 8.)</p>
	Wild Tree asserts its request does not include attorney hours for time spent on issues outside of the scope.	As discussed above, Wild Tree’s joint comments in opposition to the settlement included issues that have been found to be outside the scope of this proceeding. Wild Tree’s timesheets recorded hours of the attorney’s work on the opposition to the settlement as a whole, without distinguishing its issues. Wild Tree provides no support for its assertion that its claim “plainly does not include” hours spent on issues outside of the scope, and Wild Tree’s assertion is not verifiable based on its submitted timesheets.
	Wild Tree argues that the proposed decision errs in finding that Wild Tree failed to	Neither the claim nor the comments explain how each intervenor’s work was nonduplicative. For example, Wild Tree does not state how the joint intervenors allocated tasks, types of work, or issues between themselves.

Party	Comment	CPUC Discussion
	explain how the time each of the joint intervenors claimed was nonduplicative.	
	Wild Tree argues it should not be penalized for using the same time allocation method that TURN used in its 100% granted claim.	<p>D.21-03-035 granted TURN's claim in full based on the Commission's finding of TURN's significant contribution to the proceeding's substantive issues. Since TURN provided substantial contribution on these issues, the fact that its hours were not allocated by the substantive issues did not play a role in the award and is not mentioned in that decision.</p> <p>Here, since the Commission finds that Wild Tree did not contribute to some substantive issues and that its filings addressed issues outside the scope of the proceeding, the Commission explains how, absent an allocation by the intervenor of its hours by substantive issue, the decision approaches disallowances for the lack of contribution. Accordingly, characterizing this explanation as a "penalty" is misguided.</p>
	Wild Tree states that it was subjected to unfair bias by the Commission.	<p>Wild Tree provides no facts showing unfair bias against Wild Tree. The Commission has consistently reduced claims for a lack of substantial contribution, including for "unnecessary participation that duplicates the participation of similar interests otherwise adequately represented or participation that is not necessary for a fair determination of the proceeding." (Section 1801.3(f); <i>see, e.g.</i>, D.20-06-051 at pp. 20-22; D.16-04-029 at 8.)</p>
	Additional arguments	Additional arguments presented in the comments have been incorporated in the decision.

FINDINGS OF FACT

1. Wild Tree Foundation has made a substantial contribution to D.20-05-019.
2. The requested hourly rates for Wild Tree Foundation'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 \$42,575.65.

CONCLUSION OF LAW

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

ORDER

1. Wild Tree Foundation shall be awarded \$42,575.65.
2. Within 30 days of the effective date of this decision, Pacific Gas and Electric Company shall pay Wild Tree Foundation 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 75th day after the filing of Wild Tree Foundation's request, and continuing until full payment is made.
3. The comment period for today's decision was not waived.
4. Investigation 19-06-015 is closed.

This decision is effective today.

Dated January 13, 2022, at San Francisco, California.

ALICE REYNOLDS
President
CLIFFORD RECHTSCHAFFEN
GENEVIEVE SHIROMA
DARCIE HOUCK
Commissioners

APPENDIX
Compensation Decision Summary Information

Compensation Decision:	D2201005	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
Wild Tree Foundation	7/6/2020	\$82,967.05	\$42,575.65	N/A	See CPUC Comments, 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
April	Maurath Sommer	Attorney	\$370	2019	\$370.00
April	Maurath Sommer	Attorney	\$400	2020	\$400.00
Marcus	Friedman	Law clerk	\$150	2020	\$150.00

(END OF APPENDIX)