

Decision 22-04-049 April 21, 2022

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Implement
Public Utilities Code Section 451.2 Regarding
Criteria and Methodology for Wildfire Cost
Recovery Pursuant to Senate Bill 901.

Rulemaking 19-01-006

**DECISION GRANTING INTERVENOR COMPENSATION CLAIM TO PROTECT
OUR COMMUNITIES FOUNDATION**

Intervenor: Protect Our Communities Foundation	For contribution to Decision 19-06-027
Claimed: \$61,456.42	Awarded: \$46,377.57
Assigned Commissioner: Alice Reynolds ¹	Assigned ALJ: Robert Haga

PART I: PROCEDURAL ISSUES

A. Brief description of Decision:	This decision adopts a methodology to implement Public Utilities Code § 451.2(b) by determining the amount of disallowed costs from the 2017 wildfires the Commission will allow utilities to recover from ratepayers. The decision adopts a methodology for a stress test to consider a utility's financial status.
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B. Intervenor must satisfy intervenor compensation requirements set forth in Pub. Util. Code §§ 1801-1812²:

	Intervenor	CPUC Verification
Timely filing of notice of intent to claim compensation (NOI) (§ 1804(a)):		
1. Date of Prehearing Conference:	2/20/2019	Verified
2. Other specified date for NOI:	n/a	Verified

¹ This proceeding was reassigned from President Batjer to President Alice Reynolds on 3/3/2022.

² All section and "§" references are to California Public Utilities Code unless indicated otherwise.

3. Date NOI filed:	3/21/2019	The NOI was formally filed on March 22, 2019
4. Was the NOI timely filed?		Yes
Showing of eligible customer status (§ 1802(b) (§§ 1802(d), 1802.4):		
5. Based on ALJ ruling issued in proceeding number:	D.19-05-035 issued in A. 15-09-010	D.19-05-035 (A.15-09-010) did not make a finding of significant financial hardship pursuant to Section 1802(h). The findings in D.19-05-035 were based on the rebuttable presumption of eligibility stemming from the previous findings. Pursuant to Section 1804(b), those findings no longer apply to Protect Our Communities’ (POC) eligibility in this proceeding (more than a year passed between those findings and the commencement of this proceeding). A finding of eligibility has been more recently made in R.18-12-005 (Ruling of April 17, 2019, and D.20-04-017). Pursuant to Section 1804(b), that finding applies to POC’s eligibility in this proceeding.
6. Date of ALJ ruling:	5/30/19	April 17, 2019
7. Based on another CPUC determination (specify):	D.18-07-034 issued in A.15-09-010 on 7/30/18 D.18-09-039 issued in R.16-02-007 on 10/5/18 D.19-04-031 issued in A.15-09-013 on 5/3/19	See CPUC’s item 5, above.
8. Has the Intervenor demonstrated customer status?		Yes
Showing of “significant financial hardship” (§1802(h) or §1803.1(b)):		
9. Based on ALJ ruling issued in proceeding number:	D.19-05-035 issued in A. 15-09-010	D.19-05-035 (A.15-09-010) did not make a finding of significant financial hardship pursuant to Section 1802(h). The findings in D.19-05-035 were based on the rebuttable presumption of eligibility stemming from previous findings. Pursuant to Section

		<p>1804(b), those findings no longer apply to POC's eligibility in this proceeding (more than a year passed between those findings and the commencement of this proceeding).</p> <p>A finding of eligibility has been more recently made in R.18-12-005 (Ruling of April 17, 2019). Pursuant to Section 1804(b), that finding applies to POC's eligibility in this proceeding.</p>
10. Date of ALJ ruling:	5/30/19	April 17, 2019
11. Based on another CPUC determination (specify):	<p>D.18-07-034 issued in A.15-09-010 on 7/30/18</p> <p>D.18-09-039 issued in R.16-02-007 on 10/5/18</p> <p>D.19-04-031 issued in A.15-09-013 on 5/3/19</p>	See, Item 9, above.
12. Has the Intervenor demonstrated significant financial hardship?		Yes
Timely request for compensation (§ 1804(c)):		
13. Identify Final Decision:	D. 19-06-027	Verified
14. Date of issuance of Final Order or Decision:	7/8/2019	Verified
15. File date of compensation request:	9/6/2019	Verified
16. Was the request for compensation timely?		Yes

C. Additional Comments on Part I:

#	Intervenor’s Comment(s)	CPUC Discussion
5, 6, 7, 9, 10, 11, 13, 14, 15	<p>POC is eligible for intervenor compensation for the current proceeding because it has previously met and continues to meet the Commission’s long-standing definitions of eligibility.</p> <p>Participation in this proceeding posed a substantial financial hardship for POC because the economic interest of POC’s constituents and supporters is small in comparison to the costs of POC’s effective participation. <i>See</i> Pub. Util. Code § 1802(h). POC represents the interests of a specific constituency: Southern California and San Diego area residential and small business ratepayers, including ratepayers in smaller communities and those personally affected by California wildfires— whose interests are often not adequately represented in Commission proceedings. POC represents the interests of this constituency, and has and continues to be repeatedly determined by the Commission to fulfill the showing of eligible customer status and showing of significant hardship requirement.</p> <p>Specifically, the Commission has ruled that POC demonstrates a “customer” status pursuant to Section 1802(b)(1)(C) and has demonstrated significant financial hardship pursuant to Section 1802(h) in several decisions within this past year. <i>See</i> Section I(B) above.</p> <p>POC’s Intervenor Compensation request here is timely filed within 60 days of the Commission’s issuance of the aforementioned decisions. <i>See</i> Intervenor Compensation Guide, Sec. III.A.1 (“When to file a claim”) at p. 18 (2017).</p>	See CPUC’s items 5-12, above.

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
1. POC argued that a utility’s bankruptcy requires the Commission to modify its approach to take into account the utility’s decision to file for bankruptcy. POC rebutted the	The Commission adopted POC’s position that prohibits a bankrupt utility from accessing the Stress Test.	POC’s showing of substantial contribution to this issue is accepted. Multiple parties advocated for this

<p>investors and investor-owned utilities’ arguments that they are entitled to access the Stress Test.</p> <p>Reply Comments of Protect Our Communities Foundation on Order Instituting Rulemaking at pp. 8-12 (arguing for a need to address the bankruptcy issue; rebutting investors’ and investor-owned utilities’ arguments that they are entitled to access the Stress Test.)</p> <p>POC argued that any bankrupt utility should be ineligible to access the Stress Test because 1) the central element of proposal is the calculation of a utility’s Maximum Incremental Debt Capacity, and in order to arrive at a Maximum Incremental Debt Capacity with a value significantly above zero, a utility must have an investment-grade credit rating, 2) the proposal lacks any tangible metrics, principles, or factors for the Commission to use when evaluating a “pathway” to achieving an investment-grade credit rating, and 3) it would cause ratepayer harm. POC further argued that any utility that lacks an investment-grade rating should be ineligible to access the Stress Test for the same reasons.</p> <p>Comments of Protect Our Communities Foundation on the Staff Proposal at pp. 7-9 (in order to calculate Maximum Incremental Debt Capacity, a utility must have an investment-grade credit rating; no tangible metrics for the Commission to use when evaluating a “pathway” from bankruptcy to an investment-grade credit rating).</p> <p>Opening Comments of Protect Our Communities Foundation on the</p>	<p>D.19-06-027 at p. 21 (“POC argues that . . . the Commission should not allow ratepayer bailouts for a utility that lacks an investment-grade credit rating or is under investigation for an inadequate culture of safety because such a utility may not serve ratepayers in the near future.”), pp. 42-43 (“POC opposes allowing a utility below investment grade from using the Stress Test and that allowing a utility that ‘has chosen the protection of bankruptcy courts’ to use the Stress Test would result in significant ratepayer harm.”), p. 26 (“An electrical corporation that has filed for relief under chapter 11 of the Bankruptcy Code may not access the Stress Test to recover costs in an application under Section 451.2(b), because the Commission cannot determine the essential components of the corporation’s ‘financial status.’”), p. 55 (same), pp. 56-57 (same).</p>	<p>approach. To the extent that POC’s position was distinctive, we find that it substantially contributed to the decision-making.</p>
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<p>Proposed Decision at pp. 6-8 (proposed Decision correctly reasons that the Commission will not be able to determine a bankrupt utility’s financial status).</p> <p>Reply Comments of Protect Our Communities Foundation on the Proposed Decision at pp. 1-3 (rebutting utilities’ arguments that the Commission can determine the financial status of an bankrupt utility) (“In light of the uncertainty that accompanies a bankruptcy proceeding, the Commission simply cannot ascertain a bankrupt utility’s financial position.”)</p>		
<p>2. POC urged the Commission to consider the amount of dividends paid by a utility in the past, as well as decisions to continue or cease paying dividends over time.</p> <p>Comments of Protect Our Communities Foundation on Order Instituting Rulemaking at pp. 4-6.</p> <p>Reply Comments of Protect Our Communities Foundation on Order Instituting Rulemaking, at p. 2; <i>Id.</i> at pp. 12-13 (Commission should consider past discretionary decisions, including issuance of dividends).</p> <p>Comments of Protect Our Communities Foundation on the Staff Proposal at pp. 9-12 (“Commission must consider the distribution of funds to shareholders when the utility should have been planning to reserve its cash to satisfy potential wildfire liabilities.” Otherwise, a utility may manipulate the Stress Test framework by paying</p>	<p>Consistent with POC’s position, the Commission adopted TURN’s proposal that considers dividends paid by a utility in the past year. D.19-06-027 at pp. 30-31 (noting that “[n]umerous parties focused on the concept of requiring adjustments to dividend policies or counting dividends” towards excess cash, the commission decided to count prior dividends towards excess cash).</p>	<p>The Commission did not adopt POC’s proposal to modify the Staff Proposal’s regulatory adjustment to include an examination of the utility’s prior discretionary actions five years prior to the applications.³</p> <p>With respect to POC’s support of TURN’s proposal, we note that many parties supported TURN’s approach.</p> <p>To the extent that POC’s input was distinctive, we find that POC provided some limited contribution to the decision-making on this issue.</p>

³ Comments on Staff Proposal filed on April 24, 2019, at p. 11.

<p>extensive dividends or increasing discretionary spending to deplete its cash reserves before applying for a ratepayer bailout. Commission should evaluate a utility’s past discretionary actions, including payment of dividends, when deciding on the amount of any regulatory adjustment.); D.19-06-027 at 38 (“POC is concerned with a utility manipulating the Stress Test and depleting cash reserves by increasing dividends or discretionary spending”).</p> <p>POC supported The Utility Reform Network’s (“TURN’s”) proposal to count dividends in the past year towards excess cash “as it represents a logical extension of POC’s proposal that the Commission examine the utility’s prior discretionary actions, including the payment of dividends, that led to the utility’s financial situation being so dire as to request a bailout.” Reply Comments of Protect Our Communities Foundation on the Staff Proposal, at pp. 4-5 (supporting TURN’s proposal, including specifically counting dividends in the past year towards excess cash); Reply Comments of Protect Our Communities Foundation on the Proposed Decision, at pp. 8-9 (same).</p>		
<p>3. POC argued that Pub. Util. Code § 451.2(a)-(b) limits the Stress Test to wildfires with an ignition date in 2017. The decision adopted a methodology that is limited to wildfires with an ignition date in 2017. Reply Comments of Protect Our Communities Foundation on</p>	<p>The Commission cited POC’s position and adopted a methodology that only applies to costs from wildfires with an ignition date in 2017. D.19-06-027 at pp. 12-13 (“POC states the scope of this proceeding, and § 451.2(a)-(b), are limited to wildfires with an ignition</p>	<p>POC’s demonstration of contributions to this issue is accepted, in part. This position was held by multiple parties (see, for example, D.19-06-027 at 12-14). We find that although POC’s position was not unique, it</p>

<p>Order Instituting Rulemaking at pp. 4-8.</p>	<p>date in 2017.”); <i>Id.</i> at p. 53 (“Public Utilities Code Section 451.2 . . . governs the Commission’s review of applications by electrical corporations that request recovery of costs and expenses from wildfires in 2017.”); <i>Id.</i> at p. 3 (“This decision adopts a methodology . . . [to] determine the maximum amount the corporation can pay for 2017 catastrophic wildfire costs . . . as required by Public Utilities Code Section 451.2(b).”).</p>	<p>provided a limited contribution to this issue.</p>
<p>4. POC argued that Stress Test costs should be considered in a formal application proceeding with evidentiary hearings. Comments of Protect Our Communities Foundation on the Staff Proposal at pp. 13-14.</p>	<p>The decision requires a formal application process, citing to POC’s argument regarding the merits of evidentiary hearings. D.19-06-027 at pp. 50-51 (“[A] utility seeking to recover Stress Test Costs must request application of the Stress Test, either as a second phase within an existing application . . . or by filing a new application with the Commission . . . we agree that the normal process of litigation before the Commission as described by POC will produce an evidentiary record upon which we can make full and informed decisions.”).</p>	<p>POC’s demonstration of its contribution to this issue is accepted. This position was held by multiple parties; however, POC’s presentation on this issue was distinctive, and discussed in D.19-06-027.</p>
<p>6. POC argued that the determination of Stress Test costs in advance of a prudence decision is a waste of administrative resources. Comments of Protect Our Communities Foundation on the Staff Proposal at pp. 24-25. Reply Comments of Protect Our</p>	<p>The Commission adopts POC’s position and does not allow the determination of Stress Test costs in advance of a prudence decision. D.19-06-027 at pp. 50-51 (The “utilities and investors would prefer to have the Customer Harm Threshold calculated before a</p>	<p>POC’s taking credit for this determination finds no basis in the record. D.19-06-027 refers to and agrees with, the Staff Proposal’s approach, and also considers TURN’s recommendation (D.19-06-027 at pp. 38-39).</p>

<p>Communities Foundation on the Proposed Decision at pp. 14-15.</p>	<p>§ 451.2(a) determination is made as to what costs, if any, are not just and reasonable. The Commission is not convinced that the process proposed by the utilities could work, nor do we believe it is consistent with the purpose and language of § 451.2.”).</p>	<p>However, to the extent that POC provided a distinctive reason for not adopting the utilities’ position, POC may have provided a limited contribution to the Commission’s deliberations on this issue.</p>
<p>7. POC argued that tax benefits from wildfires should accrue solely to the ratepayer’s benefit. Reply Comments of Protect Our Communities Foundation on the Staff Proposal at p. 9. POC pointed out internal inconsistencies in the proposed decision’s discussion of this issue an urged the Commission to clarifications. POC requested that the “Commission should modify the Proposed Decision’s discussion of tax benefits to clearly state that all tax benefits from wildfire costs should accrue to ratepayers, and that utilities are required make any necessary accounting adjustments to maximize these tax benefits for ratepayers’ benefit.” Opening Comments of Protect Our Communities Foundation on the Proposed Decision at pp. 13-14.</p>	<p>The Commission included POC’s requested clarification that tax benefits belong to ratepayers, not utility shareholders. The Commission changed the PD to reflect POC’s recommendation. D.19-06-027 states: “Our intent is that a utility should not capture any tax benefit and those should be applied against the relief the utility is requesting from ratepayers.” D.19-06-027 at p. 33 (compare to Proposed Decision at p. 33).</p>	<p>POC’s demonstration of its substantial contribution to this issue is accepted.</p>
<p>8. POC recommended the Commission consider the totality of the circumstances regarding a utility’s financial status when making decisions regarding cost recovery for wildfire events. Comments of Protect Our Communities Foundation on Order Instituting Rulemaking at p. 3; <i>Id.</i> pp. 5-6; Comments of Protect Our Communities Foundation on the Staff Proposal at pp. 1-3; Comments</p>	<p>The Commission cited POC’s position. D.19-06-027 at p. 12 (“Protect Our Communities Foundation (POC) recommends the Commission consider the totality of the circumstances regarding a utility’s financial status when making decisions regarding cost recovery for wildfire events”).</p>	<p>POC’s argument against adopting rules in this proceeding did not contribute to D.19-06-027. Rather than adopting rules, POC recommended considering the totality of the circumstances regarding a utility’s financial status at the time an application for wildfire cost recovery</p>

<p>of Protect Our Communities Foundation on the Staff Proposal at pp. 4-5</p>		<p>will be filed. POC’s participation on this issue did not contribute to D.19-06-027.</p>
<p>9. POC argued that the Staff Proposal is an impermissible delegation of a policymaking and ratemaking power to the credit rating agencies. Comments of Protect Our Communities Foundation on the Staff Proposal at pp. 15-23; Opening Comments of Protect Our Communities Foundation on the Proposed Decision at pp. 3-6</p>	<p>The Commission considered POC’s legal arguments. D.19-06-027 at p. 21 (“POC claims the Staff Proposal is flawed because it is premised on an illegal delegation of Commission authority to a self-interested third party, <i>citing, S. California Edison Co. v. Pub. Utilities Com., 227 Cal. App. 4th 172, 195 (2014), as modified (June 18, 2014).</i>”).</p>	<p>This argument was rejected by the Commission. POC’s participation on this issue did not contribute to D.19-06-027.</p>
<p>10. POC argued that the methodology should include ratepayer protection measures. POC supported TURN’s ratepayer protection proposal. Comments of Protect Our Communities Foundation on the Staff Proposal at pp. 24; Reply Comments of Protect Our Communities Foundation on the Staff Proposal at pp. 4-7; Opening Comments of Protect Our Communities Foundation on the Proposed Decision at pp. 8-13.</p>	<p>The decision requires ratepayer protection measures, D.19-06-027 at p. 47 (“[R]atepayer protections are needed to achieve the Legislative directive of determining the maximum amount an electrical corporation can pay without materially impacting its ability to provide adequate and safe service OR harming ratepayers.”), including one aspect of the proposal advocated by POC and TURN: counting dividends issued in the past year towards excess cash. D.19-06-027 at pp. 31 (requiring dividends paid by a utility in the past year to count towards excess cash).</p>	<p>This claim overlaps, in part, with the issue no. 2, above. We find that POC made a partial contribution, pursuant to Section 1802.5.</p>
<p>11. POC argued that a utility that lacks an adequate culture of safety should not be able to access the Stress Test because such a utility may not serve ratepayers in the near future. Comments of Protect Our Communities Foundation on the</p>	<p>The Commission considered POC’s position. D.19-06-027 at p. 21 (“POC argues that . . . the Commission should not allow ratepayer bailouts for a utility that lacks an investment-grade credit rating or is under investigation for an</p>	<p>POC provided no contribution on this issue. Section 451.2(b) requires the Commission to “determine the maximum amount the corporation can pay without harming ratepayers or materially</p>

Staff Proposal at pp. 5-9; D.19-06-027 at p. 21.	inadequate culture of safety because such a utility may not serve ratepayers in the near future.”)	impacting its ability to provide adequate and safe service...” ⁴ POC’s recommendation was not adopted nor addressed in D.19-06-027.
12. POC urged the Commission to use a robust dataset of the previous ten years’ monthly cash-on-hand to define excess cash. POC Staff Proposal Comments at 25	The Commission considered POC’s position. D.19-06-027 at p. 29 (POC would use a more expansive foundation, calculating excess cash based on the monthly cash-on-hand for the previous ten years.”).	D.19-06-027 did not adopt POC’s position, but, to the extent that POC’s approach was a part of the discussion on the excess cash issue, we find that POC contributed to D.19-06-027.
13. POC opposed the Energy Producers and Users Coalition’s (“EPUC”) proposal to raid investments in the public purpose program’s energy efficiency and distributed energy resources. Reply Comments of Protect Our Communities Foundation on the Staff Proposal at p. 10.	D.19-06-027 did not discuss or adopt EPUC’s proposal.	This issue was not mentioned in D.19-06-027. POC did not contribute on this matter.

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? ⁵	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: TURN, Mussey Grade Road Alliance, Wild Tree Foundation, City and County of San Francisco.		Also, Public Advocate’s Office, Joint Renewable Parties, Coalition of California Utility Employees, Natural Resources Defense Council, and others.

⁴ Assigned Commissioner’s Scoping Memo and Ruling of March 29, 2019 at p. 3.

⁵ The Office of Ratepayer Advocates was renamed the Public Advocate’s Office of the Public Utilities Commission pursuant to Senate Bill No. 854, which the Governor approved on June 27, 2018.

	Intervenor's Assertion	CPUC Discussion
<p>d. Intervenor's claim of non-duplication:</p> <p>POC took many positions that were unique from other intervenors, including other consumer advocate and environmental advocate organizations. Differing approaches and positions of the intervenors resulted in POC advancing numerous arguments that other parties did not address, including:</p> <ul style="list-style-type: none"> • that the Staff Proposal is an impermissible delegation of a policymaking and ratemaking power to the credit rating agencies; • the need for a robust requirement for the submission of historical data regarding a utility's cash on hand; • not to allow a utility that lacks an investment-grade credit rating or is under investigation due to an inadequate culture of safety to access the Stress Test, and; • opposing EPUC's proposal to raid investments in the public purpose program's energy efficiency and distributed energy resources. <p>Where there was overlap in interests, POC made a diligent effort to coordinate with other parties in what was an extremely accelerated proceeding. In advance of most filings in this proceeding, POC communicated with representatives of other parties including TURN and Mussey Grade Road Alliance. POC also coordinated with and submitted a Joint Motion for Public Participation Hearings on March 5, 2019 with TURN, Wild Tree Foundation, and Mussey Grade Road Alliance, and a Joint Response to the Application of Pacific Gas and Electric Company for Rehearing of Decision 19-06-027 with TURN on August 22, 2019.</p> <p>In advance of filing comments, POC learned that TURN planned to put forward its own ratepayer protection proposal. POC supported TURN's ratepayer protection proposal rather than developing its own ratepayer protection proposal in order avoid duplication of efforts.</p> <p>When some overlap of positions advanced by other parties occurred, POC acknowledged it in its comments and did not spend an undue amount of time making arguments that were also raised by other parties.</p>		<p>Noted</p>

PART III: REASONABLENESS OF REQUESTED COMPENSATION

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

	CPUC Discussion
<p>a. Intervenor’s claim of cost reasonableness: POC’s advocacy, reflected in this request for compensation of \$61,456.42 substantially contributed to a decision that will impact California ratepayers. POC’s costs and fees are small compared to the benefits that California ratepayers are likely to realize from POC’s contributions. POC participated in every phase of R. 19-01-006 and in every commenting and briefing opportunity with respect to the numerous issues addressed in the Decisions.</p> <p>POC’s suggestions aided in the Commission’s understanding the underlying issues in this proceeding, and the Commission substantively agreed with POC on numerous occasions, as specified above in Section II of this form.</p> <p>POC’s costs are therefore reasonable in light of the amount of time, resources, and effort POC invested in this proceeding.</p>	<p>With the reductions and adjustments made in this decision, the requested costs are reasonable.</p>
<p>b. Reasonableness of hours claimed: POC has been an active participant throughout the entirety of R. 19-01-006, submitting comments at nearly every opportunity, briefing, and attended the workshops and hearings.</p> <p>POC relied primarily on contract attorneys from Shute, Mihaly, and Weinberger, with whom POC regularly works. POC kept the costs lower by having an associate attorney draft all comments, pleadings, and attend workshops, while a senior attorney did some editing.</p> <p>The coordination and internal strategy needed to navigate this accelerated proceeding was necessary, and there was no duplication in roles. All hours claimed in this request were reasonably necessary to the achievement of POC’s substantial contributions, and no unnecessary duplication of effort is reflected in the attached timesheets.</p> <p>The approximately 10 hours spent by POC to put together this intervenor compensation request is reasonable given that one person was responsible for compiling all the materials and analyzing the final decision in D. 19-06-027.</p> <p>Additionally, POC’s in-house staff counsel aided with the preparation of this form in order to keep costs reasonable. POC is not requesting compensation of its in-house counsel’s efforts.</p>	<p>With the reductions and adjustments made in this decision, the claimed hours of work on the proceeding are reasonable.</p>
<p>c. Allocation of hours by issue: <u>General Participation (GP)</u> — 30%</p>	<p>Noted.</p>

	CPUC Discussion
<p>General participation work is work that is essential to participation in the proceeding that typically spans multiple issues and/or is necessary for participating in the proceeding. This includes but is not limited to reviewing general rulings, Scoping memos, other parties’ comments, and attending and participating in prehearing conferences, workshops, other Commission-sponsored events, and work coordinating with other parties on general issues, and internal strategy.</p> <p><u>Staff Proposal (SP)</u> – 23% Evaluating and commenting on the mechanics of the staff proposal, including ratepayer protection measures, excess cash, the need for formal proceedings, the timing of the application, and tax benefits. When these issues were addressed before the Staff Proposal was released, they are also included in this category.</p> <p><u>Bankruptcy (B)</u> – 23% Evaluating and commenting on the impact of bankruptcy and below investment-grade credit ratings on the stress test.</p> <p><u>Dividends (D)</u> – 15% Evaluating and commenting on the impact of dividends on the stress test.</p> <p><u>Impermissible Delegation (ID)</u> – 10% Legal research and authoring comments on the stress test as an impermissible delegation of the Commission’s policymaking and ratemaking power.</p>	

B. Specific Claim:*

CLAIMED						CPUC AWARD		
ATTORNEY, EXPERT, AND ADVOCATE FEES								
Item	Year	Hours	Rate	Basis for Rate*	Total \$	Hours	Rate ⁶	Total
Catherine Engberg	2019	20.6	\$440	D.18-07-034; D. 19-05-035 (previously approved rate + 2.35% per Res. ALJ-357)	\$9,064	13.77 [1-4]	\$440	\$6,058.80
Yochanan Zakai	2019	141.7	\$340	D.08-04-010; Resolution ALJ-357	\$48,178	111.08 [1-5]	\$340	\$37,767.20
Subtotal: \$57,242.00						Subtotal: \$43,826.00		

⁶ This hourly rate for has been approved in D.21-02-027.

OTHER FEES								
Describe here what OTHER HOURLY FEES you are Claiming (paralegal, travel **, etc.):								
Item	Year	Hours	Rate	Basis for Rate*	Total \$	Hours	Rate	Total
Yochanan Zakai travel	2019	3.00	\$170		\$510.00	0.00 [6]		\$0.00
					<i>Subtotal: \$510.00</i>	<i>Subtotal: \$0.00</i>		
INTERVENOR COMPENSATION CLAIM PREPARATION **								
Item	Year	Hours	Rate	Basis for Rate*	Total \$	Hours	Rate	Total
Yochanan Zakai	2019	13.9	\$170	half of \$340	\$2,363	13.90	\$170	\$2,363.00
Catherine Engberg	2019	0.7	\$220	half of \$440	\$154.00	0.70	\$220	\$154.00
					<i>Subtotal: \$2,517.00</i>	<i>Subtotal: \$2,517.00</i>		
COSTS								
#	Item	Detail			Amount	Amount		
1	Photocopies	Photocopy charges @ \$.10 per page.			\$21.00	\$21.00		
2	Online Research	LexisNexis Legal Research			\$13.57	\$13.57		
3	Travel	Air fare for travel to April 2019 workshop			\$503.59	\$0.00		
4	Travel	Hotel for April 2019 workshop			\$159.81	\$0.00		
5	Travel	Air fare for travel to February 2019 pre-hearing conference			\$370.28	\$0.00		
6	Travel	Hotel for pre-hearing February 2019 conference			\$119.17	\$0.00		
					<i>Subtotal: \$1,187.42</i>	<i>Subtotal: \$34.57</i>		
					<i>TOTAL REQUEST: \$61,456.42</i>	<i>TOTAL AWARD: \$46,377.57</i>		
<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. 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.</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	Member Number	Actions Affecting Eligibility (Yes/No?) If "Yes", attach explanation
Catherine Engberg	2002	220376	No
Yochanan Zakai	Admitted to Oregon State Bar in 2013	Oregon State Bar Member No. 130369	No

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

Attachment or Comment #	Description/Comment
1	Certificate of Service
2	Biography of Yochanan Zakai. POC requests an hourly rate of \$340 for Yochanan Zakai’s work in 2019. Mr. Zakai graduated from the University of Oregon School of Law in 2012 and then worked for the Washington State Utilities and Transportation for four years. He was admitted to the Oregon State Bar in 2013. His relevant experience began in 2010 as a law clerk with the Hawaii Public Utilities Commission. His work on intervenor compensation claim preparation in this docket will be compensated at half his regular hourly rate.
3	Spreadsheet of Hours and Expenses
4	Travel Receipts

D. CPUC Comments, Disallowances, and Adjustments

Item	Reason
[1] Lack of Substantial Contribution Part II(A) Intervenor’s Issue 8	Section 1802(j) defines substantial contribution as follows: “Substantial contribution” means that, in the judgment of the commission, the customer’s presentation has substantially assisted the commission in the making of its order or decision because the order or decision has adopted in whole or in part one or more factual contentions, legal contentions, or specific policy or procedural recommendations presented by the customer.” To support its claim of substantial contribution, POC often refers to the parts of the decision in which the Commission summarizes parties’ (including POC) comments

Item	Reason
	<p>(D.19-06-027 at pp. 7-14; 17-25; 41-43). A summary of the party’s comments does not necessarily mean that it met the standard of Section 1802(j).⁷</p> <p>The aim of this proceeding was</p> <p style="padding-left: 40px;">...to develop criteria and methods to determine “the maximum amount an [electrical] corporation can pay without harming ratepayers or materially impacting its ability to provide adequate and safe service.”⁸</p> <p>Throughout the length of this proceeding, POC argued against the stated goal of this rulemaking to develop, consistent with Section 451.2(a), such criteria and methods. POC recommended forgoing this goal and, instead, considering the totality of the circumstances regarding a utility’s financial status at the time when an application is filed.⁹ This argument did not align with the purposes of this rulemaking, and it did not contribute to D.19-06-027. D.19-06-027 did not address nor did it rely on, POC’s contentions.</p>
<p>Part II(A), Intervenor’s issue 9</p>	<p>POC argued that Staff’s proposal to use the credit rating agencies information when determining the maximum incremental debt capacity constitutes an impermissible delegation of the Commission’s policy- and ratemaking powers to the credit rating agencies.¹⁰ This argument was based on inapplicable legal theory and facts irrelevant to this rulemaking. D.19-06-027 did not address nor did it rely on, POC’s contentions. POC’s participation on this matter did not contribute to D.19-06-027.</p>
<p>[2] Deficiencies in Allocation of Hours by Issue</p>	<p>We note that POC’s allocation of hours by issue (Part III(A)(c)) is not a reliable source to use in the analysis of the reasonableness of hours. POC indicates that 30% of its hours were spent on “General Participation.” Normally, the “general work” category includes work for which allocation which allocation by issue is almost impossible. It should not include work spent on identifiable substantive issues. Normally, intervenors may record under the “General Participation” activities a certain amount of an intervenor’s preliminary preparation and analysis required to gain a general knowledge of the proceeding. The general knowledge may not be allocable to</p>

⁷ See, for example, D.04-05-004 at 8 (“The only reference we make to Greenlining’s agreement ... regarding underserved communities in D.03-11-015 is in the section entitled ‘Comments on Draft Decision,’ where we merely recite, but do not rely on, the ... agreement.”)

⁸ Order Instituting Rulemaking 19-01-006 at 4.

⁹ Comments on the OIR of February 11, 2019, at 1-6; reply comments on the OIR of February 25, 2019, at 1-3; comments on Staff Proposal of April 24, 2019 at 2 and 4-5; and reply comments on Staff Proposal of May 1, 2019, at 2.

¹⁰ Comments on Staff Proposal of April 24, 2019 at 4, and 15-25; reply comments on Staff Proposal of May 1, 2019, at 2; and comments on the Proposed Decision of June 13, 2019, at 1-5.

Item	Reason
	<p>particular issues, and yet for an intervenor to participate effectively, it must first gain this general knowledge.¹¹</p> <p>Many of POC’s activities, categorized as “General Participation,” are inherently issue-specific. We advise POC that in the future, if the Commission determines a lack of substantial contribution, hours miscategorized as “general participation” can be subjected to the corresponding issue-specific proportional reductions.¹²</p> <p>Another cluster of multiple issues is the “Staff Proposal” issue to which POC allocates 23% of its hours. All these hours can be allocated to each of the issues (or, at least, to the major ones) separately (it appears, though, that at least one of the “Staff Proposal” issues – the “timing of the application” – was not discussed in POC’s pleadings and/or is not within the scope of the proceeding). Further, no hours were allocated to the issue 8, although this issue was on the forefront of POC’s advocacy. Finally, at least in one instance, the time records associate a task of non-substantive nature (“direct filing”) with the “Impermissible Delegation” issue.</p> <p>Because of the lack of substantial contribution to the proceeding’s issue, an adequate allocation of hours by issue becomes an important tool in determining reductions.</p>
<p>[3] Disallowances for the lack of substantial contribution</p>	<p>We have determined that POC did not contribute to the issues 8 and 9. We have also noted problems with POC’s allocation of hours by issue. Since, pursuant to Section 1802(j), this decision must make disallowances for a lack of substantial contribution, we use verifiable criteria to more accurately allocate POC’s hours by issue.</p> <p>POC does not allocate its hours of work to the issue 8, although this issue occupies a considerable place in this intervenor’s advocacy. In accordance with our practice, we base our determinations on the weight this issue had in POC’s pleadings.¹³ To illustrate – POC devotes, approximately, 25% of the substantive text of the comments on the Order Instituting Rulemaking (OIR) (at 1, 2, 5, and 6) to this issue. We reduce, accordingly, POC’s hours spent preparing the comments by 25%.</p> <p>Because of the POC’s allocation of hours deficiencies, we use the same approach with respect to the issue 9. For example, POC devotes, approximately, 40% of the substantive text of the comments on Staff Proposal to the issue 8 (at 4, 15-23, and 25). Accordingly, we make the following</p>

¹¹ See, for example, D.10-04-023 at 12, explaining types of the activities that can be categorized as “General Participation.”

¹² See, for example, D.09-05-013 at 5-6.

¹³ See, for example, D.14-09-023 at 23-24.

Item	Reason
	<p>disallowances: Catherine Engberg’s hours of work: 4.04; Yochanan Zakai’s hours of work: 26.82.</p> <p>With respect to POC’s participation at the prehearing conference and workshop, disallowances for the lack of substantial contribution have been made, as follows: Yochanan Zakai – 2.00 hours.</p>
<p>[4] Non-compensable clerical and administrative costs</p>	<p>The Commission has disallowed a compensation for clerical and administrative tasks that are subsumed in the professional fees.¹⁴ Consistent with this practice, we disallow compensation for the time spent on setting up a file, service list issues, filing, calendaring, etc. The total of 2.45 hours is disallowed for Catherine Engberg and of 1.70 for Yochanan Zakai.¹⁵</p>
<p>[5] Unproductive Effort</p>	<p>Pursuant to Section 1801.3(f), we reduce Yochanan Zakai’s unproductive effort by 0.10 hour (March 13, 2019 timesheet entry).</p>
<p>[6] Non-compensable travel</p>	<p>POC does not justify an attorney for the California-based organization to traveling to California from another state when it has Bay Area-based attorney also working on these issues. We disallow travel hours and costs, as follows: Yochanan Zakai: 3.00 hours; travel costs (airfare and lodging): \$1,152.85.</p>

PART IV: OPPOSITIONS AND COMMENTS

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

FINDINGS OF FACT

1. Protect Our Communities Foundation has made a substantial contribution to D.19-06-027.
2. The requested hourly rates for Protect Our Communities Foundation’s representatives are comparable to market rates paid to experts and advocates having comparable training and experience and offering similar services.

¹⁴ See, for example, D.11-07-024 at pp. 18.

¹⁵ Where POC combines several tasks in one timesheet entry, we use estimates to determine the amount of time spent on the non-compensable tasks.

3. The claimed costs and expenses, as adjusted herein, are reasonable and commensurate with the work performed.
4. The total of reasonable compensation is \$46,377.57.

CONCLUSION OF LAW

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

ORDER

1. Protect Our Communities Foundation shall be awarded \$46,377.57.
2. Within 30 days of the effective date of this decision, Pacific Gas and Electric Company, Southern California Edison Company, San Diego Gas & Electric Company, Liberty Utilities, Bear Valley Electric Service, and PacifiCorp dba Pacific Power, shall pay Protect Our Communities Foundation their respective shares of the award, based on their California-jurisdictional electric revenues for the 2019 calendar year, to reflect the year in which the proceeding was primarily litigated. If such data is unavailable, the most recent electric] revenue data shall be used. 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 November 20, 2019, the 75th day after the filing of Protect Our Communities Foundation'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 April 21, 2022, at San Francisco, California.

ALICE REYNOLDS
President
CLIFFORD RECHTSCHAFFEN
GENEVIEVE SHIROMA
DARCIE L. HOUCK
JOHN R.D. REYNOLDS
Commissioners

APPENDIX

Compensation Decision Summary Information

Compensation Decision:	D2204049	Modifies Decision?	No
Contribution Decision(s):	D1906027		
Proceeding(s):	R1901006		
Author:	ALJ Robert Haga		
Payer(s):	Pacific Gas and Electric Company, Southern California Edison Company, San Diego Gas & Electric Company, Liberty Utilities, Bear Valley Electric Service and PacifiCorp dba Pacific Power		

Intervenor Information

Intervenor	Date Claim Filed	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
Protect Our Communities Foundation	9/6/2019	\$61,456.42	\$46,377.57	N/A	Lack of substantial contribution, non-compensable cost (clerical/administrative), unproductive effort, out-of-state travel

Hourly Fee Information

First Name	Last Name	Attorney, Expert, or Advocate	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Catherine	Engberg	Expert	\$440	2019	\$440
Yochanan	Zakai	Attorney	\$340	2019	\$340

(END OF APPENDIX)