

Decision 25-03-030

March 13, 2025

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Southern California Edison Company (U338-E) for Authority to Establish Its Authorized Cost of Capital for Utility Operations for 2022 and Reset the Annual Cost of Capital Adjustment Mechanism.

And Related Matters

Application 21-08-013

Application 21-08-014

Application 21-08-015

**ORDER MODIFYING DECISION 24-09-048 AND DENYING
REHEARING OF THE DECISION, AS MODIFIED**

I. SUMMARY

This Order addresses the application for rehearing of Decision (D.) 24-09-048 (or Decision) filed by the Protect Our Communities Foundation (PCF).¹ In the Decision, we resolved PCF's intervenor compensation claim for contributions to D.21-12-029, D.22-11-018 and D.23-11-046. We found that PCF made a substantial contribution to the proceeding but modified the amount awarded to appropriately reflect excessive and duplicative hours charged by PCF. The Decision awarded PCF \$420,421.15 of the \$618,327.95 requested in its claim.

PCF timely filed an application for rehearing of the Decision. In its rehearing application, PCF alleges that in reducing its requested award we abused our discretion, failed to proceed in the manner required by law, made findings and

¹ Unless otherwise noted, citations to Commission decisions and resolutions are to the official pdf versions, which are available on the Commission's website at <https://www.cpuc.ca.gov/proceedings-and-rulemaking/locate-documents/>.

conclusions not supported by substantial evidence, and the Decision conflicts with PCF's "freedom of expression and petition" and due process rights. (App. Rehg. at 3.)

We have carefully considered the arguments raised in the application for rehearing and do not find grounds for granting rehearing. We modify D.24-09-048, as set forth below, to award PCF certain hours disallowed by the Decision and to clarify the Decision in several respects. Rehearing of D.24-09-048, as modified, is denied.

II. DISCUSSION

A. **The 25% reduction in PCF's requested award for excessive and duplicative hours is reasonable.**

Pursuant to section 1802, subd. (j),² if in our judgment, a customer has made a substantial contribution to a Commission decision, we may award the customer reasonable fees and costs incurred in making the substantial contribution. Exercising our discretion, we routinely reduce awards where we find intervenors have charged excessive or duplicative hours. Reviewing courts will not disturb the Commission's determination unless abuse of discretion is found. (See *The Utility Reform Network v. Public Utilities Com.* (2008) 166 Cal.App.4th 522, 537 (noting the Commission's wide discretion in rate determinations under § 1806).)

PCF disputes the Decision's 25% reduction to all non-claim preparation hours. (App. Rehg. at 8.) PCF claims that duplication of hours cannot be found since no other intervenor "exclusively" represents the interests of San Diego and Southern California residential ratepayers. (*Ibid.*) This argument is unpersuasive. Section 1801.3, subd. (f) requires the Commission to administer the intervenor compensation program "in a manner that avoids unproductive or unnecessary participation that duplicates the participation of similar interests otherwise adequately represented." PCF provides no citation for claiming the statute allows for compensation based on the location of the customers. Instead, in determining whether duplication exists, the Commission will consider whether intervenors avoid duplication of effort. (See, e.g., D.12-08-042 at 5.)

² Unless otherwise specified, all section references are to the Public Utilities Code.

The Decision found PCF's participation duplicated participation of similar interests (Decision at 8) and cautioned PCF to "delineate a unique position in joint efforts to prevent future reductions for duplicative efforts." (Decision at 41.) As an intervenor seeking compensation, PCF has the burden of proof to show that it did not duplicate the efforts of other intervenors. (Cal. Code Regs., tit. 20, § 17.4, subd. (f); D.98-04-059 at 33.) Yet, PCF failed to demonstrate that it took steps to avoid unnecessary duplication of efforts with other parties. In its rehearing application, PCF claims that since the scoping memo required all parties to address the issues identified, the Commission cannot reduce PCF's award on that basis for duplication of effort. (App. Rehg. at 9.) However, this argument lacks merit. Intervenors should be aware of the need to coordinate their efforts to avoid duplication of effort and thus avoid overpayment by ratepayers.

PCF argues that the Commission cannot characterize PCF's time spent as duplicative (App. Rehg. at 8) when the Decision "noted" the various intervenors in the proceeding coordinated their efforts to ensure their participation was effective (Decision at 18) and "noted" the reasonableness of PCF's claim (Decision at 24). This argument lacks merit. To the extent PCF is arguing that "noting" and "verifying" means the same as "finding" and "determining," it provides no supporting authority for this proposition. PCF also fails to cite any authority that "noting" and "verifying" the claims made in intervenor compensation filings prevents the Commission from then analyzing those claims, making findings based on the evidence in the record before it, and ensuring by way of reductions that ratepayers do not pay for excessive and/or duplicative efforts, as was done here. For example, after indicating that the reasonableness of PCF's claim is "noted" (Decision at 24), the Decision goes on to state: "[h]owever, *see* Part III D. CPUC Comments, Disallowances, and Adjustments," where we detail our reasons for the disallowances to PCF's claims. (Decision at 37-41.) Thus, PCF's contention that the Commission is foreclosed from making reductions after it has noted or verified PCF's arguments lacks merit.

Similarly, PCF argues that the Commission cannot find its hours to be excessive, when the Decision “fails to identify a single hour that was not necessary to PCF’s participation in this proceeding.” (App. Rehg. at 8.) While PCF argues that the Decision fails to identify time entries or filings which would support any reduction in compensation, its attempt to shift the burden of proving reasonableness of hours to the Commission fails. The burden of proof is on the intervenor applicant to show reasonableness of its hours, by showing that time spent did not duplicate efforts of other intervenors and that each hour was spent productively to make a substantial contribution to the decision. (See § 1801.3, subd. (f); § 1802, subd. (j); Cal. Code Regs., tit. 20, § 17.4, subd. (f); D.98-04-059 at 33.) Here, PCF has not shown that our reduction in claimed hours to ensure ratepayers only pay for value received is an abuse of our discretion.

The Decision’s findings regarding excessive hours are based on the entire record.³ We contrast here the compensation claim filed by The Utility Reform Network (TURN), an active intervenor in all phases of the proceeding. TURN’s claim requested compensation for the same three decisions totaling about one half of PCF’s request and we granted almost all of TURN’s requested compensation. This comparison supports our finding that PCF’s compensation request is excessive. (See, e.g., D.21-06-022 at 3.) If the Commission determines that the requested fees are based on excessive hours, it is well-established that the requested fees are not reasonable within the meaning of the intervenor compensation statutes. (See, e.g., D.98-04-059 at 33.)

The record also provides evidence of PCF’s duplicative hours. For example, PCF’s reply brief repeats arguments made by other intervenors in their opening briefs. From this, we can reasonably infer that at least some of the hours spent on PCF’s reply brief were not only duplicative but excessive as well. Ratepayers should not pay for time PCF spent repeating arguments from opening briefs from other intervenors that

³ PCF contends that the number of entries is not a reason for a reduction (App. Rehg. at 9), yet the Decision made no such finding. Instead, the Decision simply indicates the number of entries. (Decision at 41.)

have already been presented to the Commission. (See § 1802, subd. (j); D.05-06-031 at 6 (“An intervenor who, for example, merely endorses the position of another party has not made a substantial contribution.”).)

These examples show that the Decision’s finding in this case that some of PCF’s 784.82 claimed hours were excessive and duplicative (Decision at 38) has record support. Commission decisions must be supported by findings and those findings in turn must be supported by substantial evidence in light of the whole record. (§ 1757, subds. (a)(3) & (4); *So. Cal. Edison Co. v. Public Utilities Com.* (2005) 128 Cal.App.4th 1, 10.) Review of the Commission’s factual findings is limited to whether those findings are “supported by substantial evidence in light of the whole record.” (*Clean Energy Fuels Corp. v. Public Utilities Com.* (2014) 227 Cal.App.4th 641, 649.) The 25% reduction is based on the record and thus, within the Commission’s discretion to make.

PCF also claims that the 25% reduction should not be applied to all hours, since the partial contributions found in Part II.B (Decision at 19) relate only to the evidentiary hearing, which constitutes 64% of PCF’s claimed hours. (App. Rehg. at 8.) This argument is unpersuasive since the Decision also states that the 25% reduction constitutes “deductions [that] reflect participation that did not materially supplement, complement, or contribute to resolving the issues of the case, unproductive or unnecessary participation, participation that duplicates the participation of similar interests, and participation that was not necessary for a fair determination of the proceeding.” (Decision at 41.) While PCF dismisses this statement as “conclusory” (App. Rehg. at 9), PCF is mistaken. On the contrary, this factual finding is based on the record. The record shows that the 25% reduction is not only based on the partial substantial contribution in Part II.B, but also relies on Part II.A, where the Decision finds on page 8 that other parties made similar arguments. This reduction is within our discretion to ensure ratepayers do not pay excessive costs. Thus, PCF’s claim that the 25% reduction in all hours is arbitrary (App. Rehg. at 8) because it was based solely on the poor evidentiary hearing showing is without merit.

To clarify the basis for the 25% reduction across all hours, we modify our rationale on page 41 to emphasize that the 25% reduction across all non-claim preparation hours is for duplication of effort and excessive hours in general. In addition, we clarify that the disallowance is based on both the partial substantial contribution due to the 64% of hours spent on the evidentiary showing found in Part II.B at page 41, as well as on Part II.A, which finds on page 8 that other parties made similar arguments.

B. The 5% additional reduction should be limited to the hours spent on testimony and the evidentiary hearing.

The Decision reduced PCF's hours by an additional 5%, finding that PCF's participation during the evidentiary hearings "was not productive, did not materially supplement existing information, did not assist the Commission with grappling with the issues, and did not substantially contribute to the decision-making process." (Decision at 38.) In response to PCF's comments on the proposed decision, the Decision refers to the 64% of PCF's time spent on the evidentiary hearings as a reason to uniformly reduce PCF's compensation by an additional 5% reduction across all hours. (Decision at 41-42.) PCF disagrees. (App. Rehg. at 11-12.) PCF claims that its testimony was unique and supplemented arguments by other intervenors. In addition, PCF argues that reducing all hours by 5%, instead of just 64% of hours related to the evidentiary showing, is arbitrary. (*Id.* at 12.)

We uphold the statements in the Decision as to why an additional 5% reduction is warranted based on PCF's unproductive and unnecessary participation as reflected in its testimony and during evidentiary hearings. (See, e.g., Decision at 19.) It is within our discretion to reduce compensation based on finding that intervenor participation was unproductive or unnecessary, as was the case here. However, we agree that the rationale for the 5% reduction applies only to the time spent on the evidentiary showing. Therefore, we modify the Decision to apply the additional 5% reduction only to the 64% of PCF's non-claim preparation hours spent on testimony and the evidentiary hearing rather than to all hours. Given the 25% reduction to all hours discussed above,

the result is that 30% of the hours spent on the testimony and evidentiary hearing and 25% of the remaining non-claim hours are disallowed. This increases the amount of compensation granted to PCF by \$7,141.79 from \$420,421.15 to \$427,562.94, as shown in the attached appendix.

C. The 2023 and 2024 rates for Ms. Dickenson are reasonable.

Section 1806 mandates that “[t]he computation of compensation awarded pursuant to section 1804 shall take into consideration the market rates paid to persons of comparable training and experience who offer similar services.” (§ 1806.) The Commission has “wide discretion in determining what the market rate should be based on the evidence in the record.” (§ 1806; *The Utility Reform Network v. Public Utilities Com.*, *supra*; D.08-01-044 at 4; D.21-06-022 at 4.)

PCF argues that the Commission erred in awarding its Executive Director Ms. Dickenson a 2021 hourly rate of \$590 (instead of the requested rate of \$650) and then escalating that rate for 2023 and 2024. (App. Rehg. at 9-11.) PCF contends that the Commission should have credited Ms. Dickenson for all her years as a practicing attorney instead of focusing on her years of practice related to the Commission. (App. Rehg. at 9.) PCF also contests the Commission’s reliance on a prior decision as a basis for setting Ms. Dickenson’s rate, claiming that D.22-10-030 had a different record and utilized a different legal analysis than in the instant case. (App. Rehg. at 12.) In this case, PCF sought a higher rate for Ms. Dickenson by providing an updated resume, which it claims supports a higher 2021 rate.

PCF’s arguments are unpersuasive. As explained below, Ms. Dickenson’s 2021 rate was previously set in a final Commission decision and affirmed in other recent Commission decisions. Moreover, the updated resume showing 21 years of experience as an Attorney V applies to the 2023 rate, not to the 2021 rate. Ms. Dickenson became an attorney in December, 2002, giving her 19 years of attorney experience as of December 2021. Extrapolating from the 19 years shown in the original resume for the 2021 rate results in 21 years of experience for the 2023 rate, which is what the Decision used in

calculating the 2023 and 2024 rates for Ms. Dickenson.

The Decision relies on D.22-10-030. (D.22-10-030, reh. den. D.23-08-053.) D.22-10-030 found that the requested 2021 hourly rate of \$650 per hour for Ms. Dickenson was too high and \$590 per hour was a reasonable rate. (D.22-10-030 at 26, 28.) The decision on rehearing (D.23-08-053) affirmed the rates set in D.22-10-030 and was not the subject of a writ petition by PCF.⁴ Thus, the findings in D.22-10-030 and D.23-08-053 are final and conclusive in all collateral proceedings, including this one. (§ 1709.)⁵ PCF's attempts to relitigate the Commission's prior rate determinations amount to an impermissible collateral attack on these prior Commission decisions. Even if not barred, PCF's allegations fail for the reasons stated in the decision on rehearing of D.22-10-030 (see D.23-08-053 at 4-6,) and D.23-11-050. Thus, PCF's arguments as to why we should have revised Ms. Dickenson's 2021 rate, which was then escalated in the Decision for 2023 and 2024, are unavailing.

PCF also contests the following statement in the Decision: "[i]n PCF's request Ms. Dickenson is listed as both a Legal Director IV and Attorney V, however a single role must be chosen for rate determination purposes." (Decision at 37.) PCF points out that the Decision for the first time determined Ms. Dickenson's rate based solely on the Legal Director role. (App. Reh. at 13.) The application for rehearing then states: "[b]ut then the Decision inconsistently and arbitrarily relies on a past decision [D.22-10-030] which did **not** determine Ms. Dickenson's rate based on a single role." (App. Reh. at 14, emphasis in original.) PCF is correct that D.22-10-030 considered both Dickenson's role as a Legal Director IV and Attorney V in calculation of her 2021 rate. Therefore, we modify the Decision to remove the statement that a single role must be chosen.

With that modification, we deny rehearing of the appropriate rate for Ms. Dickenson since her 2023 and 2024 rates of \$635/hour and \$660/hour, respectively,

⁴ For other decisions that follow D.22-10-030, see also D.23-09-023 and D.23-11-050.

⁵ See also, D.23-09-023 and D.23-11-050, which also follow D.22-10-030.

based on escalation of her 2021 rate of \$590, fall within the ranges found in the Market Rate Study Hourly Rate Chart⁶ for Legal Director – IV of \$518.55 to \$832.67 for 2023 and \$545.91 to \$860.03 for 2024 and for Attorney V of \$534.32 to \$747.04 for 2023 and \$560.95 to \$773.67 for 2024 and are thus based on the record in this case, within our discretion, and per se reasonable.

III. CONCLUSION

With the modifications discussed above, we have determined that good cause has not been demonstrated to grant rehearing of D.24-09-048. Rehearing of D.24-09-048, as modified below, is denied.

THEREFORE, IT IS ORDERED that:

1. Decision 24-09-048 is modified as follows:
 - a) Page 41, the third sentence in the CPUC Discussion section is deleted and a new sentence is added which reads: “We find the uniform reduction of 25% to non-claim preparation hours is appropriate, to address both the partial contributions verified in Part II.B and the duplication found in Part II.A. Thus, the 25% reduction across all hours is for duplication of effort and excessive hours in general and is not solely based on the unproductive testimony and evidentiary showing.”
 - b) \$420,421.15 is modified to \$427,562.94 in the “Awarded” box on page 1, in Finding of Fact 4 on page 42, and in Ordering Paragraph 1 on page 43.
 - c) The table setting forth the claimed fees and CPUC award on pages 25-27 is deleted and replaced with the table in the attached appendix.
 - d) In section III.D, CPUC Comments, Disallowances, and Adjustments, page 37, item 6, the first sentence is revised to delete the phrase “however, a single role must be chosen for rate determination purposes.” The remainder of

⁶ The Commission adopted the Market Rate Study hourly rates in Resolution ALJ-393. The Hourly Rate Chart (Effective January 1, 2021) is available at: <https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.cpuc.ca.gov%2F-%2Fmedia%2Fcpuc-website%2Fdivisions%2Fadministrative-law-judge-division%2Fdocuments%2Ficomp-materials%2Fhourlyratechart-03182024-v2.xlsm&wdOrigin=BROWSELINK>

item 6 is deleted and replaced with the following sentence:
“This rate is established in D.22-10-030 and D.23-08-053
and affirmed in D.23-11-050, final and conclusive
decisions.”

2. The Protect Our Communities Foundation is awarded an additional
\$7,141.79.

3. Within 30 days of the effective date of this decision, Southern California Edison Company, Pacific Gas and Electric Company, and San Diego Gas & Electric Company shall pay their respective shares of the award, based on their California-jurisdictional electric revenues for the 2022 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 March 23, 2024, the 75th day after the filing of The Protect Our Communities Foundation’s request, and continuing until full payment is made.

4. Rehearing of Decision 24-09-048, as modified herein, is denied.
5. These proceedings, Application 21-08-013 et al. are closed.
6. This order is effective today.

Dated March 13, 2025, at Santa Clara, California.

ALICE REYNOLDS

President

DARCIE L. HOUCK

JOHN REYNOLDS

KAREN DOUGLAS

Commissioners

Commissioner Matthew Baker recused himself and did not participate in the vote of this item.

APPENDIX 1

CLAIMED						CPUC AWARD		
ATTORNEY, EXPERT, AND ADVOCATE FEES								
Item	Year	Hour s	Rate \$	Basis for Rate*	Total \$	Hour s	Rate \$	Total \$
Malinda Dickenson [Legal Director, Attorney]	2022	275.6	\$670	See Comment # 2.	\$184,652	200.10 [7]	\$610.00 [1]	\$122,061.00
Malinda Dickenson [Legal Director, Attorney]	2021	28.5	\$650	See Comment # 3.	\$18,525	21.17 [7]	\$590.00 [1]	\$12,487.35
Mark Ellis [Expert]	2022	281.62	\$1035	See Comment # 5.	\$291,476.70	197.61 [7]	\$1,035.00 [2]	\$204,526.87
Mark Ellis [Expert]	2021	84.4	\$1000	See Comment # 6.	\$84,400	59.54 [7]	\$1,000.00 [2]	\$59,540.00
Loretta Lynch [Attorney]	2022	27.4	\$715	See Comment # 7.	\$19,591	19.73 [7]	\$715.00 [3]	\$14,106.95
Loretta Lynch [Attorney]	2021	10.6	\$690	D.22-10-030; D.23-10-018	\$7,314	7.85 [7]	\$690.00 [3]	\$5,416.50
Julia Severson [Advocate]	2022	49	\$120	D.23-08-020	\$5,880	36.69 [7]	\$120.00 [4]	\$4,402.50
Julia Severson [Advocate]	2021	27.7	\$115	D.22-01-017; D.22-08-022	\$3,185	20.40 [7]	\$110.00 [4]	\$2,244.28
Subtotal: \$615,024.20						Subtotal: \$424,785.44		

CLAIMED						CPUC AWARD		
INTERVENOR COMPENSATION CLAIM PREPARATION **								
Item	Year	Hour s	Rate \$	Basis for Rate*	Total \$	Hour s	Rate \$	Total \$
Jonathan Webster [Attorney]	2024	2.5	\$135 + escala tion	½ of hourly rate. See Comment # 4.	\$337.5	0.00 [5]	N/A [5]	\$0.00
Julia Severson [Advocate]	2021	3.5	\$57.5 0	½ of hourly rate. See D.22-08-022	\$201.25	3.50	\$55.00 [4]	\$192.50
Malinda Dickenson [Legal Director, Attorney]	2024	6	\$350 + escala tion	½ of hourly rate. See Comment # 1.	\$2,100	6.00	\$330.00 [6]	\$1,980.00
Malinda Dickenson [Legal Director, Attorney]	2022	1.5	\$335	½ of hourly rate. See Comment # 2.	\$502.50	1.50	\$305.00 [1]	\$457.50
Malinda Dickenson [Legal Director, Attorney]	2021	.5	\$325	½ of hourly rate. See Comment # 3.	\$162.50	0.50	\$295.00 [1]	\$147.50
Subtotal: \$3,303.75						Subtotal: \$2,777.50		
TOTAL REQUEST: \$618,327.95						TOTAL AWARD: \$427,562.94		