

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company
for Review and Recovery of Costs Recorded in the
Electric Restructuring Costs Account (ERCA) for
1999 and Forecast for 2000 and 2001. (U 39 E)

Application 00-07-013
(Filed July 11, 2000)

**OPINION GRANTING INTERVENOR COMPENSATION
TO AGLET AND TURN FOR SUBSTANTIAL CONTRIBUTIONS
TO DECISION 04-12-017**

This decision awards Aglet Consumer Alliance (Aglet) and The Utility Reform Network (TURN) \$49,997.53 in compensation for their contribution to Decision (D.) 04-12-017. The proceeding is closed.

1. Background

This proceeding has its roots in the complex restructuring of the electric utility industry pursuant to Assembly Bill (AB) 1890 beginning in 1996. In particular, it involves elements of electric utility industry restructuring costs from 1999 through 2002 incurred by Pacific Gas and Electric Company (PG&E or applicant). The costs here are mostly for computers, computer programming, meters, billing, and applicant's role as scheduling coordinator.¹

¹ A more detailed summary of the procedural history is contained in Attachment B to D.04-12-017.

In early 2004, applicant amended its Electric Restructuring Costs Account (ERCA) application to seek recovery of approximately \$116 million.² Five days of hearing were held in August 2004. On August 13, 2004, Aglet and TURN joined PG&E and the Office of Ratepayer Advocates (ORA) in sponsoring an all-party Settlement Agreement. We adopted the Settlement Agreement on December 2, 2004 in D.04-12-017. Aglet and TURN now seek recovery of their costs leading to D.04-12-017.

2. Requirements for Awards of Compensation

The intervenor compensation program, enacted in Pub. Util. Code §§ 1801-1812, requires California jurisdictional utilities to pay the reasonable costs of an intervenor's participation if the intervenor makes a substantial contribution to the Commission's proceedings. The statute provides that the utility may adjust its rates to collect the amount awarded from its ratepayers. (Subsequent statutory references are to the Public Utilities Code unless otherwise indicated.)

All of the following procedures and criteria must be satisfied for an intervenor to obtain a compensation award:

1. The intervenor must satisfy certain procedural requirements including the filing of a sufficient notice of intent (NOI) to claim compensation within 30 days of the prehearing conference (or in special circumstances, at other appropriate times that we specify). (§ 1804(a).)
2. The intervenor must be a customer or a participant representing consumers, customers, or subscribers of a utility subject to our jurisdiction. (§ 1802(b).)

² Costs booked to ERCA include both capital costs and expenses.

3. The intervenor should file and serve a request for a compensation award within 60 days of our final order or decision in a hearing or proceeding. (§ 1804(c).)
4. The intervenor must demonstrate “significant financial hardship.” (§§ 1802(g), 1804(b)(1).)
5. The intervenor’s presentation must have made a “substantial contribution” to the proceeding, through the adoption, in whole or in part, of the intervenor’s contention or recommendations by a Commission order or decision. (§§ 1802(i), 1803(a).)
6. The claimed fees and costs are comparable to the market rates paid to experts and advocates having comparable training and experience and offering similar services. (§ 1806.)

For discussion here, the procedural issues in Items 1-4 above are combined, followed by separate discussions on Items 5 and 6.

3. Procedural Issues

The prehearing conference in this matter was held on February 6, 2004. Aglet and TURN jointly filed a timely NOI on March 4, 2004. The NOI included their claim of financial hardship. On April 2, 2004, Administrative Law Judge (ALJ) Burton W. Mattson found that Aglet and TURN are customers under the Public Utilities Code and that each had met the significant financial hardship condition.

Aglet and TURN jointly filed a request for compensation on January 18, 2005, within the required 60 days of D.04-12-017 being issued.³ Aglet and TURN

³ No party opposes the request.

have satisfied all the procedural requirements necessary to make their request for compensation.

4. Substantial Contribution

In evaluating whether a customer made a substantial contribution to a proceeding we look at several things. First, did the ALJ or Commission adopt one or more of the factual or legal contentions, or specific policy or procedural recommendations put forward by the customer? (See § 1802(i).) Second, if the customer's contentions or recommendations paralleled those of another party, did the customer's participation materially supplement, complement, or contribute to the presentation of the other party or to the development of a fuller record that assisted the Commission in making its decision? (See §§ 1802(i) and 1802.5.) As described in §1802(i), the assessment of whether the customer made a substantial contribution requires the exercise of judgment.

In assessing whether the customer meets this standard, the Commission typically reviews the record, composed in part of pleadings of the customer and, in litigated matters, the hearing transcripts, and compares it to the findings, conclusions, and orders in the decision to which the customer asserts it contributed. It is then a matter of judgment as to whether the customer's presentation substantially assisted the Commission.⁴

Should the Commission not adopt any of the customer's recommendations, compensation may be awarded if, in the judgment of the Commission, the customer's participation substantially contributed to the decision or order. For example, if a customer provided a unique perspective that enriched the Commission's deliberations and the record, the Commission could

find that the customer made a substantial contribution. With this guidance in mind, we turn to the claimed contributions Aglet and TURN made to the proceeding.

TURN and Aglet point out that either separately or together they participated actively throughout this proceeding. For example, TURN filed a protest on August 18, 2000 to PG&E's original ERCA application. The proceeding was then interrupted by California's energy crisis in 2000-2001. When the proceeding was reactivated in 2004, Aglet and TURN agreed to participate jointly.

Aglet and TURN jointly participated in prehearing conferences and conducted discovery. They served joint testimony in opposition to applicant's request. They actively participated in five days of evidentiary hearing (including cross-examining witnesses, presenting their own joint testimony subject to cross-examination, and participating on a panel in support of the Settlement Agreement). They actively participated in settlement discussions and, with other parties, collectively prepared the settlement document and joint motion for adoption of the Settlement Agreement. In addition, TURN's attorneys Finkelstein and Goodson spent time coordinating TURN's efforts with Aglet and ORA.

Applicant here requested approximately \$116 million in capital and operating costs booked to ERCA. Aglet and TURN jointly recommended applicant recover no costs. ORA also recommended that applicant recover no costs. All active parties settled upon applicant recovering \$80 million over one

⁴ D.98-04-059, 79 CPUC2d, 628 at 653.

year beginning January 1, 2005, with applicant also agreeing to remove approximately \$30 million in capital costs from rate base effective January 1, 2007.

The adopted Settlement Agreement results in a \$36 million (31%) reduction from applicant's request, plus an additional reduction in rate base of about \$30 million beginning in 2007. Taken as a whole, the active participation by Aglet and TURN made a substantial contribution to D.04-12-017.

Moreover, Aglet and TURN specifically state that they made conscious efforts to avoid duplication with ORA. For example, Aglet and TURN assert that they focused on regulatory goals and the regulatory asset created in D.03-12-035,⁵ exclusion of ERCA revenues from financial projections PG&E presented in the Commission's proceeding on PG&E's bankruptcy, intentions of parties in a 1998 settlement regarding electricity restructuring costs, and interest charges on claims by ERCA vendors against the bankruptcy estate. On the other hand, Aglet and TURN say that ORA addressed ERCA costs in relation to AB 1890 and the end of the rate freeze, cash flows associated with PG&E's bankruptcy settlement, reasonableness of ERCA costs, and accounting issues.

We conclude that the cooperation of Aglet and TURN in their joint showing reduced duplication of effort between Aglet and TURN. Their directed focus similarly reduced duplication of effort with ORA. While Aglet, TURN, and ORA all made the same initial recommendation on ERCA cost recovery, their

⁵ D.03-12-035 is the Commission's decision adopting a Modified Settlement Agreement regarding PG&E's plan of reorganization and emergence from bankruptcy in Investigation 02-04-026.

advocacy was coordinated so as to supplement, complement, or contribute to their respective recommendations.

Aglet and TURN made a substantial contribution as described above. After we have determined the scope of a customer's substantial contribution, we then look at whether the compensation requested is reasonable.

5. Reasonableness of Requested Compensation

Aglet and TURN request \$49,997.53 for their joint participation in this proceeding, as follows:

**TABLE 1
COMPENSATION REQUEST**

ITEM	AMOUNT
Aglet	
124.3 hours of Weil's professional time at \$250 per hour	\$31,075.00
48.0 hours of travel and compensation time at \$125 per hour	6,000.00
Aglet copies	146.93
Aglet postage, overnight delivery	41.58
Aglet FAX charges	40.00
Aglet travel (bridge tolls, parking, vehicle mileage)	596.75
Aglet Subtotal	\$37,900.26
TURN	
4.25 hours of Finkelstein's professional time at \$280 per hour	\$ 1,190.00
4.00 hours of Finkelstein's professional time at \$395 per hour	1,580.00
2.00 hours of Goodson's professional time at \$190 per hour	380.00
TURN copies	32.40
TURN postage	0.55
TURN LEXIS charges	4.32
TURN Subtotal	\$ 3,187.27
Financial Consultant	
40.5 hours of Czahar's professional time at \$220 per hour	\$ 8,910.00
TOTAL REQUEST	\$49,997.53

The components of this request must constitute reasonable fees and costs of the customer's preparation for and participation in a proceeding that resulted in a substantial contribution. Thus, only those fees and costs associated with the customer's work that the Commission concludes made a substantial contribution are reasonable and eligible for compensation.

To assist us in determining the reasonableness of the requested compensation, D.98-04-059 directed customers to demonstrate productivity by assigning a reasonable dollar value to the benefits of their participation to ratepayers. The costs of a customer's participation should bear a reasonable relationship to the benefits realized through their participation. This showing assists us in determining the overall reasonableness of the request.

We conclude that the effect of the participation of Aglet and TURN far exceeded their requested fees and other costs. That is, even the slightest contribution on the part of Aglet and TURN to the rejection of \$36 million now, and \$30 million more in 2007, greatly exceeds the compensation request of less than \$50,000. The record demonstrates, however, that Aglet and TURN made more than a slight contribution. They participated actively through protests, discovery, hearings, cross-examination, settlement discussions, and joint sponsorship of the Settlement Agreement. Thus, we find that the joint efforts of Aglet and TURN have been productive.

Next, we must assess whether the hours claimed for the customer's efforts that resulted in substantial contributions to Commission decisions are reasonable. Aglet and TURN documented their claimed hours by presenting a daily breakdown of the hours spent by Weil, Finkelstein and Goodson, accompanied by a brief description of each activity. They similarly included a copy of the invoice of financial consultant Czahar, showing the date for billed

hours with a description of each activity. Aglet and TURN state that they seek no compensation for administrative time, in accordance with Commission practice, citing D.99-06-002, mimeo., at pp. 8-10 (86 CPUC2d 591, 595-6.)

We conclude that the hourly breakdown reasonably supports the claim for total hours. The bulk of the work in this proceeding occurred in 2004, with a small amount at the time of the original application in 2000. This proceeding involved complex questions and issues of law, policy, fact and expert opinion regarding industry restructuring beginning in 1996; the intent and interpretation of a settlement that led to establishing ERCA in 1999;⁶ the effect, if any, of the end of rate freeze in 2001 on ERCA cost recovery;⁷ the effect, if any, on ERCA cost recovery of the Modified Settlement Agreement regarding PG&E's reorganization from voluntary bankruptcy in 2003; accounting; and the reasonableness of capital and operating costs. The claimed total hours are reasonable given the scope, complexity and timeframe of this proceeding.

Finally, in determining compensation, we take into consideration the market rates for similar services from comparably qualified persons. Aglet seeks an hourly rate of \$250 for professional work performed by Weil in 2004, and \$125 for travel time in 2004 and preparation of the compensation request in 2005. The Commission has previously approved \$250 per hour for professional work and \$125 per hour for compensation request preparation time for work

⁶ See D.99-05-031 (86 CPUC2d 388).

⁷ See D.04-01-026, wherein the Commission found that the rate freeze ended on January 18, 2001.

performed by Weil in 2004.⁸ We find these rates reasonable for professional time and travel in 2004, and compensation preparation time in 2005, as requested by Aglet.

TURN seeks an hourly rate of \$280 for professional work performed by Finkelstein in 2000, and \$395 in 2004. We previously approved a rate of \$280 per hour for professional work performed by Finkelstein in 2000, and we find this rate reasonable.⁹

We previously approved a rate of \$365 per hour for professional work performed by Finkelstein in 2003.¹⁰ We also recently found that it is reasonable to use an 8% escalation rate to set hourly rates for work performed in 2004.¹¹ Upon applying that escalation rate, we find the requested rate of \$395 per hour for Finkelstein's professional work in 2004 is reasonable.¹²

TURN seeks an hourly rate of \$190 for professional work performed by Goodson in 2004. We previously approved a rate of \$190 per hour for Goodson's 2004 professional work, and we find this rate reasonable.¹³

Aglet and TURN seek an hourly rate of \$220 for professional work performed by Czahar in 2004. We previously awarded compensation for

⁸ See D.04-12-039, mimeo., at pp. 5-8 and Finding of Fact 2 at p. 9.

⁹ See D.00-11-002, mimeo., at pp. 6-7, Finding of Fact 3 at p. 9.

¹⁰ See D.03-08-041, mimeo., p. 7.

¹¹ See Resolution ALJ-184 adopted August 19, 2004, page 9, Finding 4.

¹² An 8% adjustment to \$365 yields \$394.20, which we round to \$395.

¹³ See D.04-12-033, mimeo., at pp. 9-10 and Finding of Fact 2 at p. 12.

Czahar's professional work in 2002 at a rate of \$220 per hour.¹⁴ Aglet and TURN seek no increase here. We find a rate of \$220 per hour for Czahar's professional work in 2004 reasonable.

Finally, Aglet and TURN note that hourly rates for intervenors are subject to adjustment in 2005¹⁵ and, even though they seek no increase in hourly rates from 2004 to 2005 here, they do not waive the opportunity to do so in other proceedings. We accept this qualification.¹⁶

The itemized direct expenses submitted by Aglet and TURN include costs for travel, bridge tolls, parking, photocopying, postage, fax and LEXIS. These expenses total \$862.53 (1.7% of the total compensation request). The cost breakdown included with the request shows the miscellaneous expenses to be commensurate with the work performed. We find these costs reasonable.

Consistent with our expectations, Aglet and TURN allocated their hours to various issue and cost categories. We would use this allocation if we disallowed certain categories of work effort. None are disallowed here.

6. Award

As set forth in Table 1 above, we award Aglet and TURN \$49,997.53. Consistent with previous Commission decisions, we order that interest be paid on the award amount at the rate earned on prime, three-month commercial

¹⁴ See D.03-07-010, mimeo., at p. 15 and Finding of Fact 9 at 17.

¹⁵ Resolution ALJ-184 (adopted August 19, 2004), which contemplates new intervenor compensation rates being adopted about the end of April 2005.

¹⁶ The only hourly rate for 2005 at issue in this compensation request is \$125 per hour (half of the associated professional rate) for 8.2 hours by Weil preparing the compensation request.

paper, as reported in Federal Reserve Statistical Release H.15 commencing the 75th day after Aglet and TURN filed their compensation request, and continuing until full payment of the award is made. The award is to be paid by PG&E as the regulated entity in this matter.

Aglet and TURN ask that the award be paid directly to Aglet, and Aglet will disperse the portions as appropriate. We adopt their request, and direct PG&E to pay the full award to Aglet.

We remind all intervenors that Commission staff may audit their records related to this award, and that intervenors must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. The records of Aglet and TURN must each identify specific issues for which they requested compensation, the actual time spent by each employee or consultant, the applicable hourly rate, fees paid to consultants, and any other costs for which compensation was claimed.

7. Close Proceeding

This proceeding was closed when we issued D.04-12-017, and reopened when Aglet and TURN filed their request for compensation. All matters are now complete, and we again close this proceeding.

8. Waiver of Comment Period

This is an intervenor compensation matter. Accordingly, as provided by Rule 77.7(f)(6) of our Rules of Practice and Procedure, we waive the otherwise applicable 30-day comment period for this decision.

9. Assignment of Proceeding

Geoffrey F. Brown is the Assigned Commissioner, and Burton W. Mattson is the assigned ALJ in this proceeding.

Findings of Fact

1. Aglet and TURN made a substantial contribution to D.04-12-017 as described herein.
2. The requested hourly rates for attorneys and experts are reasonable when compared to the market rates for persons with similar training and experience.
3. The total of the reasonable compensation is \$49,997.53.

Conclusions of Law

1. Aglet and TURN have fulfilled the requirements of Pub. Util. Code §§ 1801-1812, which govern awards of intervenor compensation, and they are entitled to intervenor compensation for their claimed compensation incurred in making substantial contributions to D.04-12-017.
2. Aglet and TURN should be awarded \$49,997.53 for their contributions to D.04-12-017.
3. Per Rule 77.7(f)(6), the comment period for this compensation decision may be waived.
4. This order should be effective today so that Aglet and TURN may be compensated without further delay.

O R D E R**IT IS ORDERED** that:

1. Aglet Consumer Alliance (Aglet) and The Utility Reform Network (TURN) are awarded \$49,997.53 as compensation for their substantial contributions to Decision 04-12-017.
2. Within 30 days of the effective date of this decision, Pacific Gas and Electric Company shall pay Aglet the total award. Payment of the award shall include interest at the rate earned on prime, three-month commercial paper as reported

in Federal Reserve Statistical Release H.15, beginning April 3, 2005, the 75th day after the filing date of Aglet and TURN's request for compensation, and continuing until full payment is made.

3. The comment period for today's decision is waived.
4. Application 00-07-013 is closed.

This order is effective today.

Dated _____, at San Francisco, California.

Compensation Decision Summary Information

Compensation Decision:		Modifies Decision?
Contribution Decision(s):	D0412017	
Proceeding(s):	A0007013	
Author:	ALJ Mattson	
Payer(s):	Pacific Gas and Electric Company	

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
Aglet/The Utility Reform Network	1/18/05	\$49,997.53	\$49,997.53	No	

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
James	Weil	Policy Expert	Aglet Consumer Alliance	\$250 \$250 [1]	2004 2005	\$250 \$250 [1]
Robert	Finkelstein	Attorney	The Utility Reform Network	\$280 \$395	2000 2004	\$280 \$395
Hayley	Goodson	Attorney	The Utility Reform Network	\$190	2004	\$190
Raymond	Czahar	Financial Expert	Aglet Consumer Alliance/The Utility Reform Network	\$220	2004	\$220

[1] The actual request and award is \$125 per hour for time preparing the compensation request. This is requested and granted at one half the hourly rate for professional level work, making the request and award for the professional rate \$250 per hour for 2005. Aglet does not waive the right to seek a higher rate for work in 2005 in other proceedings depending upon the outcome of the procedure adopted in Resolution ALJ-184 for 2005.