

Decision 01-11-047 November 29, 2001

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Southern California Edison Company (E 3338-E) for Authority to Institute a Rate Stabilization Plan with a Rate Increase and End of Rate Freeze Tariffs.	Application 00-11-038 (Filed November 16, 2000)
Emergency Application of Pacific Gas and Electric Company to Adopt a Rate Stabilization Plan. (U 39 E)	Application 00-11-056 (Filed November 22, 2000)
Petition of The Utility Reform Network for Modification of Resolution E-3527.	Application 00-10-028 (Filed October 17, 200)

OPINION ON REQUEST FOR INTERVENOR COMPENSATION

This decision awards Aglet Consumers Alliance (Aglet) \$100,147.63 in compensation for its contribution to Decisions (D.) 01-03-081, D.01-03-082, D.01-04-005, and D.01-05-064.

1. Background

Aglet's compensation request is large, but it covers contributions to many decisions at the heart of the current energy crisis. In these decisions, adopted during different phases of the proceeding, the Commission addressed the requests of Pacific Gas and Electric Company (PG&E) and Southern California Edison Company (Edison) for immediate rate increases in response to extraordinary circumstances in California's wholesale power markets. The first phase concluded with an increase in rates for PG&E and Edison customers of

one-cent per kilowatt-hour (kWh) in D.01-01-018. Prior to D.01-01-018, the Commission issued D.00-12-067 which consolidated the above-captioned applications and a petition (docketed as A.00-10-028) filed by The Utility Reform Network (TURN) as one proceeding with different phases.

D.01-03-082, issued in the second phase, is an interim opinion granting PG&E and Edison authority to increase rates by an additional three-cents per kWh over those rates adopted in D.01-01-018. In this second phase five issues were considered:

- a. Review of the independent audits of PG&E and Edison, and determination of whether or not the Commission should grant further rate increases.
- b. TURN's accounting proposal to reconcile various balancing and memorandum accounts.
- c. Consideration of whether the rate freeze under Assembly Bill (AB) 1890 has ended on a prospective basis.
- d. Greenlining/Latino Issues Forum's California Alternative Rates for Energy (CARE) proposal.
- e. Parties' proposals for tiered residential rates.

D.01-03-082 concludes that the utilities are experiencing serious financial shortfalls in revenues necessary to provide adequate electric service to their customers. D.01-03-082 also adopted changes in accounting rules proposed by TURN; the rules recognize amounts utilities realized both on their sales of capital assets and in revenues from selling electricity generated by their own plants. D.01-03-082 exempted low-income customers from the rate increase while stating that the rate freeze under AB 1890 has not ended. Finally, D.01-03-082 provided opportunity for parties to comment on a concurrent Assigned Commissioner Ruling regarding tiered residential rates.

D.01-03-081 and D.01-04-005 are part of the third phase. They address the issues of implementing AB 1X, signed into law February 1, 2001, and codified in § 360.5.¹ AB 1X authorizes the California Department of Water Resources (DWR) to purchase electric power for sale directly to retail end-use customers served by utilities. AB 1X contains mechanisms to pay for this power, and establishes the California Procurement Adjustment (CPA) which sets the amount of the utility retail rate to be transferred to DWR to pay for power purchases. D.01-03-081 requires utilities to provide DWR with monies collected for power paid for by DWR, sets out the proposed method to calculate the CPA, calculates for each utility a proposed CPA rate, and otherwise implements § 360.5. D.01-04-005 applies the CPA rate to determine CPA revenue used by the DWR in the process of issuing bonds and addresses comments of parties on the CPA methodology proposed in D.01-03-081.

In the fourth phase, D.01-05-064 allocated the three-cents per kWh authorized in D.01-03-082 to customer classes. The Commission adopted five tiers for residential usage, excluding CARE and medical baseline customers. All shortfalls in revenue were allocated to non-exempt sales for residential usage above 130% of baseline amounts, and to commercial and industrial customers. Agricultural customers were limited to increases of 15 to 20% depending on their tariff schedule.

Aglet timely filed its compensation request on May 29, 2001. In addition to compensation for the professional hours spent on the proceeding, and other related costs, Aglet has requested the Commission to approve a “risk premium”

¹ All statutory references are to the Public Utilities Code.

and require any utility payments to Aglet be within five days of the effective date of the Commission's order. Aglet argues that the risk premium, an increase of \$30 per hour in the rate of its Director, James Weil, is necessary to reflect the uncertainty of receiving any compensation award given the current financial conditions of Edison and PG&E. The request for a five-day payment period also is intended to minimize the uncertainty of receiving any compensation adopted in this order.

On June 29, 2001, Edison filed opposition to Aglet's request. Edison states that Aglet made no substantial non-duplicative contribution to the proceeding, and that Aglet has not justified any risk premium. Edison believes that Aglet's positions were sufficiently covered by other parties, particularly The Utility Reform Network (TURN), and that Aglet's arguments were rejected by the Commission. Edison also argues that Aglet's request for a risk premium and payment acceleration has neither precedent nor justification. Edison recommends that the Commission deny Aglet any compensation, or alternatively limit the compensation to those matters where Aglet made a "unique contribution," and reject any a risk premium or acceleration in payment.

In reply, Aglet states that Edison is incorrect in its application of the "substantial contribution" standard set by § 1802(h), and that a "unique contribution" is not required. The statutory standard is that a customer's presentation "has substantially assisted the commission in the making of its order or decision." Aglet believes its work has not been duplicative but contributed through coordination and cooperation with other parties. Furthermore, Aglet argues that Edison has not explained when an issue has been sufficiently covered by another party. Finally, Aglet believes that there is no need for a precedent regarding payment of a risk premium or an accelerated

payment. As a result of the additional work entailed in filing this reply, Aglet increased its compensation request by \$1,072.23.

Edison filed a motion for leave to file late its opposition to Aglet's request for compensation. In the motion, Edison explains that it should have filed its opposition on June 28, 2001, instead of June 29, 2001, which would be 30 days after the filing of Aglet's request for compensation. Edison's motion states it miscalculated the days for filing its pleading. Aglet argues that § 1804(c) does not permit any extension of time requirements and therefore Edison's motion cannot be granted. Given the minimum delay (one day), and that there is no harm to the parties, we will grant Edison's motion to file its opposition late, although we remind all parties to adhere to the filing requirements in § 1804.

2. Requirements for Awards of Compensation

Intervenors who seek compensation for their contributions in Commission proceedings must file requests pursuant to §§ 1801-1812. Section 1804(a) requires an intervenor to file a notice of intent (NOI) to claim compensation within 30 days after the prehearing conference or by a date established by the Commission. Here, Aglet timely filed its NOI after the first prehearing conference. The NOI must present information regarding the nature and extent of the customer's² planned participation and an itemized estimate of the compensation the customer expects to request.

² To be eligible for compensation, an intervenor must be a "customer" as defined by § 1802(b). In D.98-04-059 (footnote 14) we affirmed our previously articulated interpretation that compensation be proffered only to customers whose participation arises directly from their interests as customers. (See D.88-12-034, D.92-04-051, and D.96-09-040.) Today's decision, like the statute, uses "customer" and "intervenor" interchangeably.

The customer, either at the NOI stage or later, must also show that the costs of effective participation, if not compensated, would constitute a “significant financial hardship” (as defined by § 1802(g)) for the customer. Regarding Aglet, we had made a recent finding of significant hardship by ruling on September 22, 2000 in another proceeding (A.99-09-029). This recent finding, pursuant to § 1804(b)(1), creates a rebuttable presumption of Aglet’s eligibility for compensation in other Commission proceedings, such as the consolidated proceedings here, that start within a year of the finding. No one has challenged this presumption, so we find Aglet continues to be eligible under the statute and prior ruling.

Other code sections address requests for compensation filed after a Commission decision is issued. Section 1804(c) requires an eligible customer to file a request for an award within 60 days of issuance of a final order or decision by the Commission in the proceeding. Aglet timely filed its request for an award of compensation on May 29, 2001. Under § 1804(c), an intervenor requesting compensation must provide “a detailed description of services and expenditures and a description of the customer’s substantial contribution to the hearing or proceeding.” Section 1802(h) states that “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. Where the customer’s participation has resulted in a substantial contribution, even if the decision adopts that customer’s contention or recommendations only in part, the commission may award the customer compensation for all reasonable advocate’s fees, reasonable expert fees, and other reasonable costs incurred by the

customer in preparing or presenting that contention or recommendation.”

Section 1804(e) requires the Commission to issue a decision that determines whether the customer has made a substantial contribution and what amount of compensation to award. The level of compensation must take into account the market rate paid to people with comparable training and experience who offer similar services, consistent with § 1806.

3. Substantial Contribution to Resolution of Issues

Under § 1802(h), a party may make a substantial contribution to a decision in one of several ways. It may offer a factual or legal contention upon which the Commission relied in making a decision, or it may advance a specific policy or procedural recommendation that the ALJ or Commission adopted. A substantial contribution includes evidence or argument that supports part of the decision even if the Commission does not adopt a party’s position in total.³

Aglet states its participation in D.01-03-082 focused on the relationship between the utilities and their holding companies, and certain rate relief issues. Aglet argued in support of TURN’s petition to revise accounting rules during the

³ The Commission has provided compensation even when the position advanced by the intervenor is rejected. D.89-03-063 (awarding San Luis Obispo Mothers For Peace and Rochelle Becker compensation in Diablo Canyon Rate Case because their arguments, while ultimately unsuccessful, forced the utility to thoroughly document the safety issues involved). See also D.89-09-103, order modifying D.89-03-063. (In certain exceptional circumstances, the Commission may find that a party has made a substantial contribution in the absence of the adoption of any of its recommendations. Such a liberalized standard should be utilized only in cases where a strong public policy exists to encourage intervenor participation because of factors not present in the usual Commission proceeding. These factors must include 1) an extraordinarily complex proceeding, and 2) a case of unusual importance. Additionally, the Commission may consider the presence of a proposed settlement.)

transition period, and against utility claims of retroactive ratemaking. Additionally, Aglet argued against an end to the rate freeze under AB 1890. Although the Commission did not adopt Aglet's proposals on the holding companies or on rate relief, we recognize Aglet's substantial contribution in support of the change in accounting rules, particularly for its arguments against including certain non-transition costs in the Transition Cost Balancing Account. We also recognize its substantial contribution in arguing against ending the rate freeze. We adopted both of these positions in D.01-03-082. Furthermore, while we did not adopt Aglet's contentions on the holding companies, we believe they substantially contributed to a better understanding of these relationships. Since the Commission did not adopt Aglet's positions on rate relief or holding companies, Aglet voluntarily reduced its professional time on these issues by 50%, and the reduction is reflected in today's award. Although Aglet made this voluntary reduction in its compensation request, we have not made a final determination of the role of holding companies relative to utilities. Therefore, we are providing notice to Aglet that if a future Commission opinion adopts its position relative to holding companies, Aglet will have an opportunity to seek compensation for that 50% portion not included in this request.

In D.01-03-081 and D.01-04-005, we addressed the implementation of AB 1X and associated issues. In this phase of the proceeding Aglet argued that the utilities have a continuing obligation to serve customers, and that DWR is not required to provide all "net-short" energy. In D.01-03-081 we noted Aglet's position on this matter in our footnote (p.12, footnote 10), which is our adopted position. In D.01-03-081 Aglet also argued for not allowing the utilities to retain revenues not explicitly included in the categories covered by § 360.5. We adopted Aglet's position on these issues (D.01-03-081, pp. 19-20; D.01-04-005,

pp.12-13) and believe that they made a substantial contribution to excluding revenues which are not associated with generation costs. We emphasized our position on these excluded costs when we requested comments on proposed Findings of Fact (p.29, D.01-03-081) and when we adopted these findings in D.01-04-005 (p.24). As noted by our discussion of generation costs in both decisions, we recognize the substantial contribution Aglet provided on this issue.

In D.01-05-064, we allocated the three-cent increase in rates to customer classes authorized by D.01-03-082. Aglet participated on three major allocation issues. On the first issue, Aglet recommended a minimum revenue requirement, without amortization of shortfalls. However, after DWR provided the Commission its revenue requirement of about \$9.2 billion on May 2, 2001, it was apparent that we could not adopt a minimum revenue requirement. While we were unable to adopt Aglet's recommendation, we believe Aglet's participation was useful and substantially contributed to our overall resolution on this issue.

On the second issue, Aglet proposed that allocation of the revenue requirement to non-exempt customer classes be by equal cents per kWh, and that the shortfalls created by reducing the surcharge to exempted customer classes should be allocated to all other customers. As discussed in D.01-05-064, and in our findings (Findings of Fact 13, p.56), we adopted this position. Although we did not reference Aglet, nevertheless we believe Aglet's participation and its arguments provided a substantial contribution on this issue.

On the third issue, Aglet recommended a tiered rate design for residential customers, while opposing tiered rates for commercial customers. As adopted by D.01-05-064, we choose to provide five tiers for residential rate design, and did not adopt rate tiers for commercial customers. (D.01-05-064, pp. 35-38). We have also made other rate design determinations which are consistent with the

positions taken in Aglet's brief. Some of these proposals were also made by other parties, however, taken as a whole, we believe they support Aglet's argument that it made a substantial contribution on rate design issues.

We agree with Aglet that the standard of substantial contribution under § 1802 does not require a unique contribution by a customer, as argued by Edison. Instead, as clearly stated in the statute, a customer's presentation must substantially assist the Commission in making its order or decision. We also agree that Aglet's substantial contribution does not duplicate the work of TURN or any other party, but was a cooperative effort to further their position in this proceeding. As described in § 1802.5, participation by a customer that materially supplements, complements, or contributes to the presentation of another party may be fully eligible for compensation.

4. Reasonableness of Requested Compensation

Aglet requests \$113,100.13, as follows:

Professional Fees

James Weil	360.4 hours @ \$250 per hour = \$	90,100.00
	142.7 hours @ \$125 per hour =	<u>17,837.50</u>
	Subtotal	\$107,937.50

Other Costs

Copies	\$	2,182.96
Postage and overnight delivery		1,121.02
FAX Charges		218.00
Bridge Tolls		90.00
Parking		290.50
Vehicle Mileage		<u>1,260.15</u>
	Subtotal	\$ 5,162.63
	TOTAL	\$113,100.13

4.1 Overall Benefits of Participation

In D.98-04-059, the Commission adopted a requirement that a customer must demonstrate that its participation was “productive,” as that term is used in § 1801.3, where the Legislature gave the Commission guidance on program administration. (Mimeo. at 31-33, and Findings of Fact 42). In that decision, we discuss the requirement that participation must be productive in the sense that the costs of participation should bear a reasonable relationship to the benefits realized through such participation. Customers are directed to demonstrate productivity by assigning a reasonable dollar value to the benefits of their participation to ratepayers. This exercise assists us in determining the reasonableness of the request and in avoiding unproductive participation.

We did not attribute our adopted positions in D.01-03-081, D.01-03-082, D.01-04-005 and D.01-05-064 to specific parties, although we have discussed their various contributions throughout. Furthermore, we have considered the substantial contributions of Aglet through its cross-examination, briefs, and other participation in this proceeding. We believe that Aglet’s participation was productive and assisted us in making decisions on certain disputed issues. The results of these decisions provided savings to ratepayers.

While we did not adopt the arguments presented by Aglet on holding companies and limiting rate relief, we profited by Aglet’s arguments, its opposition to ending the rate freeze, and its support for the accounting changes, proposed by TURN, which we did adopt. The ratepayer savings on these two adopted recommendations exceed the amount of Aglet’s requested compensation.

As discussed in D.01-03-081 and D.01-04-005, we adopted Aglet arguments that the four categories of costs in § 360.5 do not include some of the

items requested by the utilities. Overall, the value of the disallowed items as recommended by Aglet are greater than the requested compensation on these issues.

Finally, we note that Aglet's note design recommendation were valuable for the surcharge revenue requirement adopted in D.01-05-064. Aglet and TURN recommended that the revenue shortfall, estimated at \$400 million each for Edison and PG&E, created by exempting residential usage up to 130% of baseline, be allocated to all non-exempt classes. Furthermore, Aglet proposed a proportionality in residential rate tiers above Tier 2, and opposed commercial rate tiering. Our adopted decision included both of these recommendations. The difference between the revenues proposed by the utilities and those in our adopted rate design for residential customers exceed \$500 million each for Edison and PG&E, which is far greater than Aglet's request either overall or with regard to this portion of the proceeding.

4.2 Hours Claimed

Aglet documented its claimed hours through detailed records of time spent in the different phases of this proceeding. The records indicate both the professional hours and the activities associated with the hours. In its request, Aglet has included 29.6 hours pertaining to issues in those phases of the proceeding (A.00-11-038 et al.) which were deferred from an earlier request filed March 5, 2001 and which we have included in our adopted compensation award. The hourly breakdowns and allocation of hours reasonably support the claimed hours for Aglet.

4.3 Hourly Rates

Aglet requests an hourly rate of \$250 per hour and a travel compensation rate of \$125 per hour for work done during 2001. These rates include its request for a risk premium.

We do not agree with Aglet's request either for a "risk premium" or for a requirement that utilities make compensation payments within five days of the effective date of this order. We understand Aglet's concern that as a potential creditor of PG&E and Edison, it may be uncertain when payment of any compensation award would be realized. However, we are reluctant to begin increasing compensation awards on the basis of payment uncertainty by utilities. To do so would open up many financial issues and arguments and unnecessarily delay our consideration of the many compensation requests of customers. We believe that § 1807 which provides for timely payment within 30 days, adequately addresses this issue, as well as our provision for the accrual of interest beyond the 75th day of the request as adopted in this order.

Therefore, we have reduced these rates to a professional hourly rate of \$220 per hour and a travel compensation rate of \$110 per hour. These rates were previously awarded by the Commission in D.00-11-002. We find these hourly rates to be reasonable and consistent with past hourly rates for comparable work.

4.4 Other Costs

Aglet requests \$ 5,162.63 for other costs (photocopying, postage, fax, bridge tolls, parking and vehicle mileage). These costs have been itemized by date, amount and activity. Based on the scope of Aglet's work, documents needed, the number of phases of the proceeding and the size of the service list (238), these costs appear reasonable.

5. Award

We award Aglet \$ 100,147.63. Our calculation is based on fees the hourly rate as described above plus other costs.

We will assess responsibility for payment equally among PG&E and Edison, for the original request, but will assess Edison for all of our adopted costs for Aglet's response to Edison (\$964.23).

Consistent with previous Commission decisions, we will order that interest be paid on the award amount (calculated at the three-month commercial paper rate), commencing August 11,2001 (the 75th day after Aglet filed its compensation request) and continuing until each utility makes its full payment of award.

As in all intervenor compensation decisions, we put Aglet on notice that the Commission Staff may audit Aglet's records related to this award. Thus, Aglet must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. Aglet's records should identify specific issues for which it requests compensation, the actual time spent by each employee, the applicable hourly rate, fees paid to consultants, and any other costs for which compensation may be claimed.

Findings of Fact

1. Aglet has made a timely request for compensation for its contribution to D.01-03-081, D.01-03-082, D.01-04-005 and D.01-05-064 in this proceeding.
2. Aglet has made a showing of significant financial hardship by demonstrating the economic interests of its individual members would be extremely small compared to the costs of participating in this proceeding.
3. Aglet contributed substantially to D.01-02-081, D.01-03-082, D.01-04-005, and D.01-05-064.

4. Aglet has requested hourly rates for attorneys and experts that, without the risk premium, are no greater than the market rates for individuals with comparable training and experience.

5. Aglet has requested hourly rates for its expert James Weil that, without the risk premium, have already been approved by the Commission.

6. \$220 per hour is a reasonable compensation rate for James Weil's professional services considering his experience, effectiveness, and rates paid other experts.

7. The miscellaneous costs incurred by Aglet are reasonable.

8. Edison filed an opposition to Aglet's compensation request which was filed one day later than required.

Conclusions of Law

1. Aglet has fulfilled the requirements of §§ 1801-1812 which govern awards of intervenor compensation.

2. Aglet should be awarded \$100,147.63 for its substantial contribution to D.01-03-081, D.01-03-082, D.01-04-005, and D.01-05-064.

3. Per Rule 77.7(f)(6) of the Commission's Rules of Practice and Procedure, the comment period for this compensation decision may be waived.

4. This order should be effective today so that Aglet may be compensated without unnecessary delay.

O R D E R

IT IS ORDERED that:

1. Aglet is awarded \$100,147.63 in compensation for its substantial contribution to Decision (D.) 01-03-081, D.01-03-082, D.01-04-005 and D.01-05-064.

2. Pacific Gas and Electric Company (PG&E) shall pay Aglet \$49,591.70 and Southern California Edison Company (Edison) shall pay Aglet \$50, 555.93, within 30 days of the effective date of this order. PG&E and Edison shall also pay interest on the award at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release G.13, with interest, beginning August 11, 2001 and continuing until full payment is made.

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

This order is effective today.

Dated November 29, 2001 at San Francisco, California.

LORETTA M. LYNCH

President

HENRY M. DUQUE

RICHARD A. BILAS

CARL W. WOOD

GEOFFREY F. BROWN

Commissioners