

Decision 02-11-019 November 7, 2002

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking into
Implementation of Assembly Bill 1149, Regarding
Underground Electric and Communications
Facilities.

Rulemaking 00-01-005
(Filed January 6, 2000)

OPINION ON REQUEST FOR INTERVENOR COMPENSATION

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ATTACHMENT

OPINION ON REQUEST FOR INTERVENOR COMPENSATION

We grant intervenor compensation awards to The Utility Reform Network (TURN), California Alliance for Utility Safety and Education (CAUSE), Citizens Concerned About EMFs (CCAЕ), and 19th Street Neighbors (19SN) for contributions to Decision (D.) 01-12-009 in the following amounts: \$71,822.16 to TURN; \$56,659.05 to CAUSE; \$26,764.63 to CCAЕ; and \$29,733.00 to 19SN.

1. Background

In D.01-12-009, we revised the rules governing the State’s program to convert overhead electric and communications distribution and transmission lines to underground. In that decision, we expanded Rule 20A criteria; extended the use of Rule 20A funds; allowed cities to mortgage 20A funds for five years; required standardized reporting forms from the utilities; improved communication between utilities and residents; and ordered the creation of an up-dated Undergrounding Planning Guide.

In addition, we identified issues to be examined in a Phase 2 proceeding including (1) whether or not to establish standards for conversion projects so third parties can competitively bid on projects with no compromise of quality, safety, or reliability; (2) whether incentive mechanisms are an effective cost management tool; (3) whether there should be a “breakpoint” in allowing new overhead and pole line installations or whether the current exemption process is working; (4) whether there are benefits to listing the charges for undergrounding as a line item on utility bills; (5) whether there is a fair and equitable, competitively neutral recovery mechanism for telecommunications carriers and cable companies to recover their undergrounding costs; (6) whether adjustments in the Rule 20A allocation formula are appropriate; and (7) whether there are

reforms to the statewide conversion program that are more properly within the legislative domain.¹

This proceeding was designed to implement Assembly Bill (AB) 1149 (Stats. 1999, Ch. 844), which required us to study ways to amend, revise, and improve the rules for the conversion of existing overhead electric and communications lines to underground service. We were specifically directed to study ways to (1) eliminate barriers to undergrounding and to prevent uneven patches of overhead facilities; (2) enhance public safety; (3) improve reliability; and (4) provide more flexibility and control to local governments. In response, the Energy Division convened workshops to encourage discussion among parties on the required AB 1149 issues as well as to identify other issues we should address. Concurrently, we held eight public participation hearings (PPHs) throughout the state. In the workshops, respondent utilities and telecommunications companies, local governments, interest groups, and concerned citizens took part. Many subsequently submitted written comments. In the PPHs, over 140 individuals and organizations made oral presentations, and an equal number submitted written comments in response to inserts in their monthly utility bills. Following the final PPH, we distributed a preliminary summary of issues, to which many parties made additional written comments.

On April 24, 2001, Assigned Commissioner Henry Duque sent a letter to all members of the Legislature with his recommendations for legislative action and a summary of the results of our hearings. His recommendations included

¹ Although we concluded in D.01-12-009 that the proceeding should remain open, we instead close this docket in this decision and direct staff to draft and submit for our consideration a new rulemaking with the scope substantially as set forth in D.01-12-009 for Phase 2.

(1) funding for an undergrounding ombudsperson and staff to oversee all conversion projects; (2) new financing mechanisms for communities for Rule 20B and 20C projects; (3) funding for an appeals process at the Commission for complaints from citizens and communities on any aspect of the undergrounding process; and (d) increased current funding for undergrounding from the State's general revenue.

As discussed in more detail below, all intervenors whose requests for compensation are covered by this order filed timely notices of intent and requests for intervenor compensation. No opposition was received to TURN's request. Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), and San Diego Gas & Electric Company (SDG&E) all objected, in whole or in part, to CAUSE's request and CCAE's request. All three utilities plus the Coalition of California Utility Employees objected to 19SN's request.

2. Requirements for Awards of Compensation

Intervenors who seek compensation for their contributions in Commission proceedings must file requests for compensation pursuant to Pub. Util. Code §§ 1801-1812. Section 1804(a) requires an intervenor to file a notice of intent (NOI) to claim compensation within prescribed time periods. The NOI must present information regarding the nature and extent of the intervenor's planned participation and an itemized estimate of the compensation the intervenor expects to request. It may also request a finding of eligibility. To be eligible, an intervenor must establish that it is a "customer" as defined in § 1802(b),² and that

² The intervenor compensation statute uses "customer" and "intervenor" interchangeably, as we do in today's decision.

participation without an award of fees or costs would impose a significant financial hardship (§ 1803(b)).

Other code sections address requests for compensation filed after a Commission decision is issued. 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. Notices of Intent

- (i) On March 13, 2000, TURN filed its NOI. On April 10, 2000, assigned Administrative Law Judge (ALJ) Carol Brown ruled that TURN had met the requirements and was eligible to seek compensation.

- (ii) On March 9, 2000, CAUSE filed its NOI and on April 10, 2000, ALJ Brown ruled that CAUSE had met the requirements and was eligible to seek compensation.
- (iii) On March 8, 2000, CCAE filed its NOI and on June 12, 2000, ALJ Brown ruled that CCAE had met the requirements and was eligible to seek compensation.
- (iv) On March 10, 2000, 19SN filed its NOI and on April 11, 2000, ALJ Brown ruled that 19SN had met the requirements and was eligible to seek compensation. Because 19SN was represented in the proceeding by Utility Design, Inc. (UDI), an engineering firm that designs utility line extensions that had its own commercial interests in the outcome of our rulemaking, ALJ Brown's ruling included the requirement that UDI segregate the time and expense spent advocating its own position from that of 19SN.

4. Timeliness of Requests for Compensation

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. D.01-12-009 was adopted by the Commission on December 11, 2001, and mailed on December 12, 2001. The 60th day after mailing was Sunday, February 10, 2002. Therefore, the requests were due on the next business day, i.e., February 11, 2002. All four claimants filed their requests on February 11, 2002.

5. Substantial Contribution to Resolution of Issues

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. Where a party has participated in settlement negotiations and endorses a settlement of some or all issues, the Commission uses its judgment and the discretion conferred by the Legislature to assess requests for intervenor compensation. We address each intervenor's efforts in turn.

A. TURN

TURN is entitled to intervenor compensation because it made substantial contributions to D.01-12-009 in a number of areas. In particular, TURN

- Opposed additional funding for the undergrounding program due to adverse rate impacts, absent further action by the Legislature;
- Opposed unfettered local control of Rule 20A projects;
- Supported maintaining the requirement that projects prove a General Public Benefit under Commission control;
- Opposed proposals that would dilute the criterion of General Public Benefit; and
- Made additional proposals for improving the undergrounding rules and policies.

D.01-12-009 incorporated many of TURN's substantive positions and recommendations. Specifically, our decision

- Did not expand the Rule 20A program to require additional ratepayer contributions;
- Did not grant cities unfettered local control;
- Retained a focus on the public interest;
- Did not include fires and earthquakes as criteria for application of Rule 20A;

- Required that “arterial streets” and “major collectors” should be as defined in the Governor’s Office of Planning and Research Guidelines; and
- Required property owners to advance funds before Rule 20A funds could be used for Rule 20B engineering studies.

TURN’s most valuable contribution was to focus attention on the economic and safety costs of undergrounding and the potential inequity involved in requiring utility customers to shoulder the entire financial burden of an expanded undergrounding program. TURN made a substantial contribution to D.01-12-009.

B. CAUSE

The request of CAUSE mirrors in many respects the request of CCAE, with whom it worked closely during the proceedings. Its major contribution, like that of CCAE, was in helping to create a standardized statewide database. By agreement among various interested parties, CAUSE’s lead attorney acted as the draftsman of a Master Data Request regarding the cost, benefit, safety, and reliability of undergrounding. The responses to this data request will be used to create the standardized database.

SCE argues that CAUSE did not make a substantial contribution to D.01-12-009³ and asks us to deny intervenor compensation altogether or, in the

³ SCE argues that it was unnecessary for CAUSE to hire lawyers in connection with a non-litigated proceeding and that much of the work on the Master Data Request for which CAUSE claims credit was actually done by a member of the Commission Staff. We disagree. All intervenors other than CCAE were represented by counsel; SCE has not objected, for example, to TURN’s request, approximately half of which consists of counsel fees and expenses. Because CCAE coordinated its effort with CAUSE, CCAE did not require its own counsel. Further, counsel for CAUSE did substantial work on the Master Data Request in addition to the work done by Commission Staff.

alternative, to reduce it to an award of out-of-pocket costs incurred by the citizens who chose to participate. PG&E concedes that CAUSE's contribution was substantial but asks us to cap the award at \$30,000.

C. CCAE

Although we did not accept most of its proposals for inclusion in the final decision, CCAE is entitled to intervenor compensation. CCAE advocated an important requirement that we ultimately adopted, namely, to require the utilities to establish a statewide uniform database to track the safety, cost, and reliability of overhead and underground lines. This database will enable us to make more informed decisions regarding replacement of overhead with underground lines. While CCAE was not alone in urging the creation of such a database, it took a leading role and we believe its contributions were substantial.

D. 19SN

The request of 19SN presents particular problems not present in any of the other requests. As noted above, 19SN was represented in the proceedings by UDI, an engineering firm with its own economic interests in the outcome of the proceedings. In her ruling authorizing 19SN to seek compensation, ALJ Brown directed that the request should separate work done by UDI in its representative capacity from work done on its own behalf. This portion of ALJ Brown's ruling has not been followed. 19SN and UDI argue that because of the considerable overlap between their positions, they are in fact unable to make the separation called for by ALJ Brown. Instead, they propose to allocate one-half of the total cost of their presentation to UDI and seek intervenor compensation only for the remaining half.

19SN's failure to separate work done on its behalf from work done on UDI's behalf has not been lost on those making objections to the request, but we

believe their objections go too far. The fact that both UDI and 19SN may support a particular measure does not mean that 19SN has no independent basis for supporting that measure above and beyond the economic benefit its adoption might confer on UDI. Similarly, the fact that 19SN has a specific desire to have its residential area included in a nearby Section 20A project, does not render the equity concerns underlying that desire irrelevant to our consideration. In fact, we believe that the presentation of 19SN focused our attention on the patchwork nature of current Section 20A projects and underscored the need for an undergrounding planning process that would try to minimize such outcomes. It is not merely the lack of aesthetics that troubles 19SN but the perceived unfairness of paying for improvements that benefit everyone around them but not themselves. The issues of who should pay and how much and in what way are central to the entire undergrounding discussion, whether taking place in Commission-sponsored venues or in the Legislature. 19SN is typical of neighborhood groups around the state who find themselves in similar positions and typically feel powerless to change them. Their presence in the proceedings served to remind us of the need to find procedures for allocating scarce Section 20A resources that are more equitable than the current procedures, a matter that we plan to take up at a later date. We find that 19SN made a substantial contribution, distinct from UDI; we will resolve the question of expense allocation between UDI and 19SN in Section 8D below.

6. Overall Benefits of Participation

In D.98-04-059, the Commission adopted a requirement that a customer demonstrate that its participation was “productive,” as that term is used in § 1801.3, where the Legislature provided guidance on program administration. (See D.98-04-059, *mimeo.* at 31-33, and Finding of Fact 42.) D.98-04-059 explained

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. D.98-04-059 directed customers 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.

However, the general requirement of productivity has to be interpreted within the confines of a particular proceeding. Not all proceedings lend themselves readily to quantification of their benefits. In particular, proceedings such as this one, consisting primarily of exploration of alternative policy ideas, yield benefits that are difficult to quantify. Not surprisingly, each of the intervenors has found it impossible to put a dollar figure on the benefits it claims to have engendered through its participation. Accordingly, in trying to value the benefits associated with an intervenor's participation, we have primarily looked at how many of an intervenor's positions we ultimately adopted; to what extent an intervenor's positions were also urged by others; and whether an intervenor's presentation gave us new insights.

We also need to take into account the Legislature's determination, expressed in the various statutes that address the undergrounding issue, that this is an important matter that should have major resources devoted to it. While the utilities have argued that undergrounding is merely an aesthetic issue, we note that the ubiquitous presence of poles and wires has significant environmental impacts including use of right-of-way corridors and visual obstruction. Further, undergrounding receives substantial attention from planning agencies and courts. Formulating better policies will ultimately save time and money in those venues. For these reasons, we believe it is appropriate to compensate the

intervenors to some degree for their participation in the workshops, even though they cannot assign a specific benefit to each hour of time spent there.

Much of the time in the workshops was spent discussing issues that we ultimately chose to defer to our later rulemaking proceeding. The intervenors participated in good faith in those discussions and deserve to have their contributions recognized. However, we believe the later rulemaking proceeding is the appropriate venue to consider compensation requests that relate to deferred topics, and we have adjusted the awards in this proceeding accordingly.

In summary, the awards we make today reflect evaluations of contributions to the decision and the workshops, as well as deferrals of compensation requests related to issues that are the subject of future rulemaking.

7. Hours Claimed

All intervenors have submitted time logs to support the hours claimed by their professionals. The logs include a daily breakdown of hours by activity. We find that all intervenors have adequately supported the hours for which they claim compensation but, as noted above, this is not equivalent to a finding that hours charged were reasonable in number.

The following tables set forth the hours claimed, rates requested, total fees requested, and other costs claimed by the various professionals in this proceeding for each year of such professional's participation. Unless otherwise indicated, hours claimed equal hours billed less a 50% reduction in hours related to preparation of fee requests and any additional voluntary reductions taken by the professionals involved.

A. TURN

First Name	Last Name	Type	Hours	Rate	Year	Total
Marcel	Hawiger	Attorney	3.35	190	2001	\$ 636.50
Marcel	Hawiger	Attorney	17.75	190	2002	3,372.50
Paul	Stein	Attorney	144.75	200	2000	28,950.00
Robert	Finkelstein	Attorney	3.75	280	2000	1,050.00
William	Marcus	Economist	3.08	150	2000	462.00
Gayatri	Schilberg	Economist	194.84	105/115	2000	20,458.20
Gayatri	Schilberg	Economist	31.80	115/130	2001	3,657.00
Gayatri	Schilberg	Economist	39.03	130	2002	5,073.90 ⁴
Jeffrey	Nahigian	Economist	35.25	95	2000	3,348.75
Jeffrey	Nahigian	Economist	1.50	115	2001	172.50
Copying						2,711.45
Other Expense						1,929.36
Total Claim						\$71,822.16

B. CAUSE

First Name	Last Name	Type	Hours	Rate	Year	Total
Steven	Weissman	Attorney	164.4	\$315	2000	\$ 51,786.00
Alvin	Pak	Attorney	12.6	\$315	2002	3,969.00
Marc	Mihaly	Attorney	34.8	\$315	2000	10,962.00
Marc	Mihaly	Attorney	0.2	\$315	2001	63.00
Marc	Mihaly	Attorney	0.2	\$315	2002	63.00
Janette	Schue	Attorney	26.75	\$165	2000	4,413.75
Janette	Schue	Attorney	23.5	\$165	2001	3,877.50
Janette	Schue	Attorney	12.1	\$165	2002	1,996.50
Karen	Johanson	Ratepayer Advocate	164.2	\$100	2000	16,420.00
Karen	Johanson	Ratepayer Advocate	25.1	\$100	2001	2,510.00
Joan	Tukey	Ratepayer Advocate	45.1	\$100	2000	4,510.00
Joan	Tukey	Ratepayer	2.0	\$100	2002	200.00

⁴ Rates for Schilberg were adjusted as of each July 1 during the proceeding, which is the beginning of the fiscal year for her employer. The dollar figures shown for years 2000 and 2001 represent the product of the hours shown times rates in effect when each hour was recorded.

		Advocate				
Copying						2,412.46
Travel						2,606.16
Other Expenses						1,054.43
Total						\$106,843.80

C. CCAE

First Name	Last Name	Type	Hours	Rate	Year	Total
Peter	Frech	Engineer	203.00	180	2000	\$ 36,540.00
Peter	Frech	Engineer	34.50	90 ⁵	2000	3,105.00
Peter	Frech	Engineer	21.50	180	2001-2	3,870.00
Peter	Frech	Engineer	12.00	90	2002	1,080.00
Expenses						1,182.13
Total						\$ 45,777.13

D. 19SN

First Name	Last Name	Type	Hours	Rate	Year	Total
Roger	Poynts	Engineer	72.7	160	2000	\$ 11,632.00
Connie	Easterly	Attorney	202.8	210	2000	42,588.00
Connie	Easterly	Attorney	52.2	210	2001	10,962.00
Travel						1,009.00
Total						\$ 66,191.00
50% Reduction ⁶						\$ 33,095.50

⁵ Frech has reduced his hourly rate for travel and fee-related work by 50% rather than reducing the hours claimed for such work. Frech's method for making this adjustment is actually our preferred method, as this method makes the adjustment more obvious (and thus easier to check) than halving the claimed hours.

⁶ Represents intervenor's proposed equal division of time between itself and its representative UDI, which has an independent interest in the outcome of this proceeding.

8. Reasonableness of Claimed Compensation

A. TURN

TURN's request for \$71,822.16 is unopposed. It is supported by documentation that establishes the scope of the work done and the hourly rates of the professionals involved. The requested hourly rates for TURN's attorneys have all been approved by the Commission in prior proceedings and range from \$190 to \$280 per hour. TURN also billed through without markup the fees and charges of its energy consultant, JBS Energy Inc. The hourly rates of the professionals in that firm at the time their work began were \$150 for a senior consultant, \$105 for a mid-level consultant, and \$95 for a lower level consultant. TURN requests that we adopt increased hourly rates for Schilberg for fiscal years 2000 and 2001 of \$115 and \$130, respectively, and a \$115 rate for Nahigian for fiscal year 2001. We approved a \$115 rate for Schilberg in D.02-06-070. While the percentage increases requested for these experts are larger than typical, TURN has supported them by providing resumes and summaries of the work experience of Nahigian and Schilberg and comparisons of their requested rates with rates paid to others offering similar expertise and services. The increased rates have been adequately documented and we approve them.

Although TURN's positions on a number of topics were shared with other commentators on the proposed rules, TURN's compensation need not be reduced simply because of those shared views. The intervenor statutes allow the Commission to award full compensation even where a party's participation has overlapped in part with the showings made by other parties. (Pub. Util. Code § 1802.5.) Moreover, as discussed in section 4, most of TURN's positions were unique to it among the intervenors or were put forward with unusual clarity. Our decision substantially embodied most of those positions; and accordingly, we award TURN the full amount of its compensation request.

B. CAUSE

Both PG&E and SCE object to the size of the CAUSE request for compensation. The utilities point to the large legal bills incurred by CAUSE and urge us to reject or reduce these bills. CAUSE defends its legal expenditures as necessary aspects of its effective participation in the proceedings.

An examination of the CAUSE compensation request reveals the following breakdown of legal fees by issue as required by D.98-04-059:

1. NOI	26.0 hours	\$ 6,300.00
2. Undergrounding Program	76.4 hours	\$15,987.50
3. Information Flow	66.0 hours	\$12,636.50
4. Standardized Information Format	173.05 hours	\$32,775.25
5. Updated Planning	66.0 hours	\$12,636.50
6. Mortgaging Funds	66.0 hours	\$12,636.50
7. Request for Fee Award	37.50 hours	\$ 7,288.50

We find this request troubling. To begin with, approximately 13.5% of the total fee requested (\$13,588.50 of a total request of \$100,770.75) is for preparation of documents that either seek permission to be compensated or seek compensation. While we recognize that the requested hours incorporate a 50% reduction, as required by our rules, we still find it remarkable that so much time should have been devoted to the preparation of relatively standardized documents.⁷ By way of comparison, attorneys for TURN spent 0.50 hours drafting its NOI and 12.75 hours drafting its request for compensation, which

⁷ On an undiscounted basis, preparation of the NOI and the compensation request is stated to have required in excess of 100 hours of senior attorney time.

time was then halved for compensation purposes. Because the amounts requested by CAUSE for these activities are still excessive even after the hours reductions taken, we will apply a further discount of 50% to time spent preparing the NOI and the compensation request by Weissman, Johanson, Tukey, and Pak.

Second, CAUSE was represented by two law firms in succession. While we understand that the second firm had necessarily to educate itself about what its predecessor had done, we are unclear why costs for duplicated work should be passed on to the utilities and their ratepayers. Accordingly, we reduce the request by 4 hours of Mihaly's time and 4 hours of Schue's time.

Finally, CAUSE did not prevail on most of the issues on which its time was spent. We did not expand the undergrounding program although we made minor modifications to it. We did not create the position of undergrounding ombudsman or institute a Rule 20A appellate process, both of which CAUSE urged. The local governments, and not CAUSE, urged the extension of the Rule 20A mortgage period from three to five years, although CAUSE endorsed the proposal.

However, in two areas CAUSE made substantial contributions to our final decision. In part as a result of CAUSE's advocacy, we required that the *Underground Utilities Conversion Planning Guide* be updated. Second, we required the creation of a standardized report format for data relating to the costs and benefits of undergrounding. In this area, CAUSE took the lead, participated actively in the workshops, did much of the drafting, and coordinated its efforts with CCAE and the municipalities.

To summarize, approximately 53% of the hours for which CAUSE requests compensation, excluding hours spent preparing the NOI and the request for compensation (239.05 hours from a total of 447.45), were devoted to

positions that we ultimately adopted and that CAUSE took or shared the lead in advocating. Subject to the reductions for other reasons noted above, we believe these hours qualify for intervenor compensation.

Regarding the hourly rates requested, CAUSE provides documentation from annual surveys of law firm rates and our prior fee awards to support the request for approval of a rate of \$315 per hour for Weissman, Pak, and Mihaly. The documentation also includes biographical data about the individual attorneys.

To support a claim for a specific hourly rate, the intervenor needs to show two things: that the requested rate is a competitive market rate for professionals with relevant qualifications and experience; and that the individual professional requesting compensation is entitled, by virtue of qualifications and experience, to charge that rate. CAUSE has carried this burden in connection with the rates sought, which we approve. Rates for Mihaly and Schue were adopted in D.02-05-005 and we rely on them here. The law firm rate surveys and individual biographies demonstrate that Weissman and Pak each have substantial knowledge and experience, and that requested rate is supported by market data. Weissman and Pak were both attorneys and/or administrative law judges for the Commission prior to entering private practice. Each of them has outstanding educational and professional credentials as well as extensive experience in regulatory matters.

The final hourly rates for which approval is sought are \$100 for Karen Johanson and Joan Tukey. We have previously approved this rate for Johanson in D.00-02-044 and we approve it again here. We have not previously been asked to approve a rate for Tukey. However, her background and experience mirrors that of Johanson, with whom she co-founded CAUSE, and we approve that rate for her today.

Out-of-pocket expenses incurred by CAUSE personnel to attend public hearings and for document copying are also on the high side, but none appears to be so excessive as to warrant further reduction.

In summary, we think that the fee request filed by CAUSE is excessive with respect to hours claimed, and have adjusted the final compensation award as follows:

Professional	Time Requested	Time Allowed	Rate Allowed	Year	Fees Allowed	Total
Weissman	164.40	84.20	315	2000	26,523.00	\$ 26,523.00
Pak	12.60	6.30	315	2002	1,984.50	1,984.50
Mihaly	35.00	13.20	315	2000	4,158.00	4,158.00
Mihaly	0.20	0.10	315	2002	31.50	31.50
Schue	50.25	24.55	165	2000	4,050.75	4,050.75
Schue	12.10	6.05	165	2002	998.25	998.25
Johanson	178.70	102.30	100	2000	10,230.00	10,230.00
Johanson	10.60	5.30	100	2002	530.00	530.00
Tukey	45.10	19.80	100	2000	1,980.00	1,980.00
Tukey	2.00	1.00	100	2002	100.00	100.00
Expenses						6,073.05
Total						\$ 56,659.05

C. CCAE

This fee request parallels that of CAUSE in several respects, not surprisingly in that the two organizations coordinated their appearances during the proceedings. However, as CCAE admits in its fee application, the Commission did not adopt any of its recommendations and deferred consideration of life cycle costs and other matters it had addressed in workshops and comments. As we noted above, in unusual cases we can award intervenor compensation even if we reject the positions advanced by the intervenor. Typically, this occurs when the intervenor presents an analysis of an issue that provides us with new insight, so that even if we do not adopt the intervenor's

recommendation, its presentation has enhanced our understanding. In this case, we are unable to say that the participation of CCAE provided that kind of helpful analysis. As the utilities have pointed out in their comments on the intervenor petitions in this proceeding, the safety and reliability case for undergrounding has yet to be made. Undergrounding remains, at this point in time, primarily an aesthetic issue about which the comments of CCAE, based on unproven assumptions about safety and reliability, were not helpful.

In one area, we find that CCAE, in common with CAUSE and others, did provide useful inputs to us, namely, in their advocacy of the development of standardized data collection formats for cost, safety, and reliability data. While CCAE can hardly claim full credit for this point, we believe it is entitled to some credit and our award reflects that belief.

Peter Frech is the sole professional for whose time CCAE seeks compensation, so it is to his time records that we now turn. As a preliminary matter, we note that over half of the time for which full compensation is requested was for attendance at prehearing conferences (PHCs), PPHs, and workshops, 114.75 hours out of 224.50 total. Another 20.25 hours were spent in meetings with other intervenors (primarily CAUSE). The remaining 89.50 hours were devoted to preparing submissions on issues of interest to CCAE.

(1) Time Allocated to Specific Issues

Approximately half of the time allocated to specific issues was allocated to matters in which we considered and acted on a position put forward by CCAE. The remaining half of the allocated time was devoted to matters we deferred for later consideration. As to the latter, we believe it appropriate to defer the request for compensation until such time as the subsequent proceedings are held, and we reduce the award accordingly. CCAE requested

compensation for 89.50 hours allocated to specific issues. We hold that 48.75 hours allocated to specific issues are eligible for compensation at this time.⁸

(2) Meetings With Other Intervenor

Meetings with CAUSE were designed to eliminate duplication of effort and coordinate responses to us. An examination of CAUSE's professional time records is generally in agreement with the time records submitted by Frech. To the extent that attending such meetings achieved the goal of coordination and avoided duplication of effort, it is an activity entitled to compensation.

(3) Attendance at PHCs, PPHs, and Workshops

Subject to the general requirement of productivity, participation in PHCs and Commission-sponsored workshops are activities that qualify for intervenor compensation. Attendance at PPHs is generally not an activity for which an intervenor can claim compensation. PPHs are intended to provide an opportunity for presentations by the public at large rather than parties, so intervenors cannot be said to have made a contribution by their attendance. 5.50 hours of Frech's time were spent attending a PPH and we reduce the request by that amount, leaving a balance of 99.75 hours of unallocated time. We apply to this balance the same 50% discount we have applied to the time allocated to specific issues and award compensation for 49.875 hours.

CCAЕ also asks us to approve an hourly rate of \$180 for Frech. As we noted above, we approve hourly rates that reflect the prevailing market for persons of similar qualifications and experience. Frech is an engineer with

⁸ Because we are closing this proceeding, CCAЕ may submit a claim for the time spent in this proceeding on issues that were deferred for later consideration in the subsequent proceeding if it can demonstrate that it made a substantial contribution to the Commission's decision on those issues.

extensive experience analyzing the electric and magnetic fields created by power lines and other sources of electromagnetic radiation. He holds both engineering and business degrees and has been a business consultant specializing in electric and magnetic fields since 1988. His qualifications and experience are comparable to those of experts for whom we have approved similar hourly rates, and we approve this rate.

The following summarizes the results of the preceding paragraphs:

Professional	Time Requested	Time Allowed	Rate Allowed	Year	Fees Allowed	Total
Peter Frech	224.50	118.875	180	2000-2	21,397.50	\$ 21,397.50
Peter Frech	46.50	46.50	90	2000-2	4,185.00	\$ 4,185.00
Expenses						\$ 1,182.13
Total						\$ 26,764.63

D. 19SN

In allowing 19SN to seek intervenor compensation, ALJ Brown required that the fee request separate the activities of UDI on its own behalf from those it undertook on behalf of 19SN. In its fee request, 19SN states that such separation is not possible because most of the positions advanced by UDI were held in common by the two organizations. Instead, 19SN and UDI propose to seek reimbursement for one-half of the total fees incurred as a practical alternative to attempting to unscramble the egg of their combined appearance. In that connection, 19SN voluntarily reduced its fee request by 50% from \$66,190, representing the total value of professional time expended on the proceeding, to \$33,095. To achieve this voluntary reduction, 19SN reduced the number of hours recorded by attorney Connie Easterly from 255 to 127.50 and the number of hours recorded by consultant Roger Poynts from 72.7 to 36.35. 19SN has also voluntarily reduced its request for expense reimbursement from \$1,009 to \$504.50.

To determine the reasonableness of this compensation request, we have compared the time and expenses of 19SN with those of the other applicants. In doing so, we have recognized that 19SN, alone among the intervenors, represents that very large segment of the public which finds the current method of undergrounding project selection and allocation of Section 20A funds to be arbitrary at best. While we did not ultimately adopt the positions put forward by 19SN, we feel they were effective spokespersons for that portion of the public. 19SN reminded us that undergrounding is an intensely local matter that affects neighborhoods, or parts of neighborhoods, one at a time. It is a source of considerable friction between the “haves” and “have nots” when Section 20A funds are doled out. Part of our responsibility to the public is to adopt rules that make the process as fair and transparent as possible. Several of the actions we took, such as updating the undergrounding guide and including arterial streets as factors in the undergrounding planning process, were responsive to the arguments of 19SN.

As we noted in our discussion of the CCAE fee request, attendance by an intervenor at a PPH is not usually compensated because parties to formal proceedings are not usually allowed to speak at PPHs.⁹ Accordingly we reduce Easterly’s requested hours by 14 and Poynts by 1. We also reduce out-of-pocket costs by \$262.50 (requested for the cost of attendance at various PPHs). Although we are mindful that 19SN did not follow ALJ Brown’s directions with regard to the segregation of time by issue, we believe that its voluntary 50%

⁹ We note that, according to the time records submitted with the 19SN fee request, Roger Poynts of UDI made a presentation at the July 31, 2000 PPH in San Francisco. We assume this presentation was made on behalf of UDI and not as a representative of 19SN.

reduction in total compensation requested is a reasonable alternative and, coupled with the above adjustment, reduces its request to an amount that is consistent with the value of the contribution made.

UDI has specified the hourly rates of its principals as \$160 and \$210, respectively, for Roger Poynts and Connie Easterly, the only two professionals acting on behalf of 19SN, and requested that we approve these rates. Poynts is a civil engineer and land surveyor who has participated in Commission proceedings for more than a dozen years. In D.00-12-005 we approved a rate of \$145/hour for his work in 1997-98. We approve the \$160 rate requested for this proceeding. Easterly has also participated in Commission proceedings in years past and was approved at the rate of \$175/hour in the same decision. Her current rate of \$210 is in the mid-range of rates for attorneys of her background and experience and we approve it for this proceeding.

The following table summarizes the effects of these adjustments:

Professional	Time Requested	Time Allowed	Rate Allowed	Year	Fees Allowed	Total
Easterly	101.4	87.4	210	2000	\$ 18,354.00	\$ 18,354.00
Easterly	26.1	26.1	210	2001	5,481.00	5,481.00
Poynts	36.35	35.35	160	2001	5,656.00	5,656.00
Expenses						242.00
Total						\$ 29,733.00

9. Awards

We award \$71,822.16 to TURN, \$56,659.05 to CAUSE, \$26,764.63 to CCAE, and \$29,733.00 to 19SN. As in all intervenor compensation decisions, we put the intervenors on notice that the Commission Staff may audit records related to this award. Adequate accounting and other documentation to support all claims for intervenor compensation must be made and retained. The records should identify specific issues for which intervenors request compensation, the actual

time spent, the applicable hourly rate, and any other costs for which compensation is claimed.

The named respondents in this proceeding were PG&E, SCE, SDG&E, and all telecommunications carriers. Because of the difficulty in allocating responsibility for payment of the award to the named respondents and because this is a policy proceeding affecting multiple industries, payment will be made from the intervenor compensation program fund, as described in D.00-01-020. Intervenors that have never received payment of an award from the Commission must provide their taxpayer identification number to ensure payment along with a completed STD 204 Payee Data Record form, available at <http://www.documents.dgs.ca.gov/osp/pdf/std204.pdf> to the below address. For assistance completing Section 1 of STD 204, call the phone number below.

California Public Utilities Commission
Attention: Fiscal Office
505 Van Ness Avenue, Room 3000
San Francisco, CA 94102
(415) 703-2306

10. Waiver of Comment Period

Pursuant to Rule 77.7(f)(6), the otherwise applicable 30-day period for public review and comment is being waived.

11. Assignment of Proceeding

Henry Duque is the Assigned Commissioner and Carol Brown is the assigned ALJ in this proceeding.

Findings of Fact

1. All intervenors filed timely NOIs and made timely requests for compensation for their contribution to D.01-12-009.
2. All intervenors contributed substantially to D.01-12-009.

3. We adopted most of the positions advanced by TURN and rejected most of the positions advanced by the other intervenors.

4. The hours claimed for work and travel time performed by professionals are adequately documented.

5. All of TURN's hours were productive.

6. CAUSE spent an inordinate amount of attorney time on preparation of its NOI and compensation application and a substantial amount of professional time arguing for positions on issues whose resolution we deferred. It also billed for duplicative effort by two law firms.

7. CAUSE contributed substantially to the development of a master data request and to revision of the Undergrounding Guide, and efficiently coordinated its efforts with those of other intervenors.

8. CCAE spent a substantial amount of professional time arguing for positions on issues whose resolution we deferred.

9. CCAE contributed substantially to the development of a master data request and efficiently coordinated its efforts with those of other intervenors.

10. 19SN spent a substantial amount of professional time arguing for positions on issues whose resolution we deferred.

11. 19SN contributed substantially to our decision to modify the criteria for the use of Section 20A funds and to an understanding of the underlying conflicts among different interest groups with regard to undergrounding.

12. For the reasons set out above, we deferred or rejected compensation for some of the fees and costs claimed by the intervenors other than TURN.

13. Except as modified herein, the miscellaneous costs incurred by the intervenors are reasonable.

Conclusions of Law

1. Staff should prepare for Commission consideration a new rulemaking to address Phase 2 issues as defined in D.01-12-009.
2. Subject to the modifications made in this opinion, all intervenors have fulfilled the requirements of §§ 1801-1812, which govern awards of intervenor compensation.
3. TURN should be awarded \$71,822.16 for its contribution to D.01-12-009.
4. CAUSE should be awarded \$56,659.05 for its contribution to D.01-12-009.
5. CCAE should be awarded \$26,764.63 for its contribution to D.01-12-009.
6. 19SN should be awarded \$29,733.00 for its contribution to D.01-12-009.
7. 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.
8. This order should be effective today so that the intervenors may be compensated without unnecessary delay.

O R D E R

IT IS ORDERED that:

1. The Utility Reform Network is awarded \$71,822.16 for its substantial contribution to Decision (D.) 01-12-009.
2. California Alliance for Utility Safety and Education is awarded \$56,659.05 for its substantial contribution to D.01-12-009.
3. Citizens Concerned About EMFs is awarded \$26,764.63 for its substantial contribution to D.01-12-009.
4. 19th Street Neighbors is awarded \$29,733.00 for its substantial contribution to D.01-12-009.
5. The awards granted by Ordering Paragraphs 1 through 4 shall be paid from the intervenor compensation program fund, as described in D.00-01-020,

within 30 days of the effective date of this order. Payments of the awards shall include interest at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release H.15, beginning with April 4, 2002, the 75th day after the filing date of the intervenors' requests for compensation and continuing until full payment is made.

6. Commission Staff shall prepare a new rulemaking to address Phase 2 issues as defined in D.01-12-009.

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

This order is effective today.

Dated November 7, 2002, at San Francisco, California.

LORETTA M. LYNCH

President

HENRY M. DUQUE

CARL W. WOOD

GEOFFREY F. BROWN

MICHAEL R. PEEVEY

Commissioners

Compensation Decision Summary Information

Compensation Decision(s):	D0211019
Contribution Decision(s):	D0112009
Proceeding(s):	R0001005
Author:	ALJ Brown
Payer(s):	Commission

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Reason for Change/ Disallowance
Citizens Concerned About EMFs	2/11/02	\$45,777.13	\$26,764.63	Excessive fees
California Alliance for Utility Safety and Education	2/11/02	\$106,843.80	\$56,659.05	Excessive fees
Nineteenth Street Neighbors	2/11/02	\$33,095.00	\$29,733.00	Excessive fees
The Utility Reform Network	2/11/02	\$71,822.16	\$71,822.16	

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Peter	Frech	Engineer	Citizens Concerned About EMFs	\$180	2000-01	\$180
Karen	Johanson	Policy expert	California Alliance for Utility Safety and Education	\$100	2000-01	\$100
Joan	Tukey	Policy expert	California Alliance for Utility Safety and Education	\$100	2000-01	\$220
Roger	Poynts	Engineer	Nineteenth Street Neighbors	\$160	2000-01	\$160
Gayatri	Schilberg	Economist	The Utility Reform Network	\$130	2000-01	\$130
Jeff	Nahigian	Economist	The Utility Reform Network	\$115	2000-01	\$115
Steven	Weissman	Attorney	California Alliance for Utility Safety	\$315	2000	\$315

			and Education			
Alvin	Pak	Attorney	California Alliance for Utility Safety and Education	\$315	2000-01	\$315
Marc	Mihaly	Attorney	California Alliance for Utility Safety and Education	\$315	2000-01	\$315
Janette	Schue	Attorney	California Alliance for Utility Safety and Education	\$165	2000-01	\$165
Connie	Easterly	Attorney	Nineteenth Street Neighbors	\$210	2000-01	\$210
Marcel	Hewiger	Attorney	The Utility Reform Network	\$190	2001-02	\$190
Paul	Stein	Attorney	The Utility Reform Network	\$200	2000	\$200
Robert	Finkelstein	Attorney	The Utility Reform Network	\$280	2000	\$280

(END OF ATTACHMENT)