

Decision 06-04-018 April 13, 2006

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of the Application of Pacific Gas and Electric Company (U 39 E) for a Certificate of Public Convenience and Necessity Authorizing the Construction of the Jefferson-Martin 230 kV Transmission Project.

Application 02-09-043  
(Filed September 30, 2002)

**OPINION GRANTING INTERVENOR COMPENSATION  
TO 280 CORRIDOR CONCERNED CITIZENS, CALIFORNIANS  
FOR RENEWABLE ENERGY, AND WOMEN'S ENERGY MATTERS  
FOR SUBSTANTIAL CONTRIBUTIONS TO DECISION 04-08-046**

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**OPINION GRANTING INTERVENOR COMPENSATION  
TO 280 CORRIDOR CONCERNED CITIZENS, CALIFORNIANS  
FOR RENEWABLE ENERGY, AND WOMEN'S ENERGY MATTERS  
FOR SUBSTANTIAL CONTRIBUTIONS TO DECISION 04-08-046**

This decision awards 280 Corridor Concerned Citizens (280 Citizens), Women's Energy Matters (WEM), and Californians for Renewable Energy (CARE) intervenor compensation for their contributions to Decision (D.) 04-08-046, in the following amounts: \$718,501.61 to 280 Citizens, \$126,713.40 to CARE, and \$35,125.70 to WEM.

In their requests for intervenor compensation, these three parties cumulatively requested almost \$1.6 million. We have scrutinized the requests closely, taking into account the complexity and the high degree of public interest in this proceeding, and as a result the awards granted to 280 Citizens, CARE, and WEM are approximately two-thirds, one-half, and one-third, respectively, of the amount requested. This proceeding is closed.

**1. Background**

In D.04-08-046, we granted a certificate of public convenience and necessity (CPCN) to Pacific Gas and Electric Company (PG&E) to construct a 230 kilovolt (kV) transmission line between PG&E's Jefferson and Martin substations, along with related facilities in the County of San Mateo. We found in D.04-08-046 that the Jefferson-Martin transmission project is needed in order to allow PG&E to continue to reliably meet electric demand in the San Francisco Peninsula area beginning in 2007. The project also has diversification, economic, and environmental benefits that warrant its construction more quickly than that. We found that a combination of the Jefferson-Martin project and additional transmission reinforcements north of the Martin substation and south of the Jefferson substation would allow closure of the Hunters Point power plant in

San Francisco, bringing additional economic and environmental benefits. We adopted a construction cost cap of \$206,988,000 for the authorized Jefferson-Martin project.

Responding to public concern regarding potential health effects from exposure to electric and magnetic fields (EMF), D.04-08-046 required several changes to PG&E's preliminary EMF management plan for the Jefferson-Martin project. Concurrent with D.04-08-046, we initiated Rulemaking (R.) 04-08-020 to consider potential improvements to our EMF regulations.

Several parties intervened and participated actively during the environmental review, evidentiary hearing, and briefing process in the subject proceeding. Like other intervenors, 280 Citizens, CARE, and WEM each took positions aimed at protecting the interests of its members. With different constituents, the positions taken by these parties were widely divergent. 280 Citizens sought to influence the route and timing of the new Jefferson-Martin transmission project in the southern portion of the area through which the line will be built. CARE wants the existing Hunters Point power plant to be shut down as quickly as possible and, with that goal in mind, opposed route alternatives that could delay construction of the Jefferson-Martin project. WEM likewise advocated for closure of Hunters Point, focusing on the extent to which the Jefferson-Martin line would change the load serving capacity of the transmission system in the project area. WEM also addressed distributed generation, energy efficiency, energy conservation, and demand response programs as alternatives to the transmission project, and raised concerns regarding potential conflicts of interest in the preparation of cost estimates for the Jefferson-Martin project.

PG&E opposes 280 Citizens' request for compensation in part, does not take a position on CARE's request, and opposes WEM's request in its entirety. PG&E argues that 280 Citizens exaggerated its influence on the D.04-08-046 and has not shown a substantial contribution on many issues for which it claims a contribution. PG&E asserts that the Commission did not adopt any of WEM's positions, in whole or in part, and that WEM did not make a substantial contribution to D.04-08-046 in any other respect.

## **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).)
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 reasonable and 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**

280 Citizens, WEM, and CARE have satisfied all the procedural requirements necessary to make their requests for compensation, as explained below. WEM’s compensation claim regarding its showing of significant financial hardship is discussed separately below.

The prehearing conference in this matter was held on January 30, 2003. 280 Citizens filed its timely NOI on February 7, 2003 and supplemented its NOI on March 27, 2003. On May 6, 2003, the assigned Administrative Law Judge (ALJ) found 280 Citizens to be a customer under the Public Utilities Code, that it met the significant financial hardship condition, and that it would be eligible for compensation. 280 Citizens filed its request for compensation on October 22, 2004, within 60 days of D.04-08-046 being issued, and supplemented its request on November 1, 2004.

On December 5, 2003, CARE filed a motion to intervene out of time with an attached NOI. WEM filed a petition to intervene out of time and an NOI on



December 2, 2003, and amended these filings on December 15, 2003. On March 11, 2004, the assigned ALJ ruled to accept CARE's NOI as timely, found insufficient information to determine whether CARE meets the definition of customer or the significant financial hardship condition, and allowed CARE to amend its NOI on or before March 25, 2004. CARE filed a supplement to its NOI on March 25, 2004. On May 10, 2004, the assigned ALJ found that CARE was a customer under the Public Utilities Code, met the significant financial hardship condition, and would be eligible for compensation. CARE timely filed its request for compensation on October 7, 2004, and filed corrections to its request on October 29, 2004. In response to requests by the ALJ, CARE provided supplemental information via several e-mails, which have been placed in the correspondence file in this proceeding.

The March 11, 2004 ALJ ruling also accepted WEM's amended NOI and found that WEM is a customer under the Public Utilities Code as a representative of Dorothy J. Edwards and Jesse Mason, PG&E ratepayers, but that WEM had not provided documentation necessary to show significant financial hardship. WEM timely filed its request for compensation on October 22, 2004, and amended its request on April 1, 2005. WEM also filed supplemental information regarding its compensation request on October 26 and November 1, 2004. On October 27, 2004, WEM filed a motion for leave to file under seal certain confidential materials regarding its clients' personal financial information, along with a motion for protective order regarding this information. These motions were granted by ALJ ruling dated November 10, 2004.

#### **4. WEM Showing of Financial Hardship**

An intervenor seeking compensation must show that, without undue hardship, it cannot pay the reasonable costs of effective participation in the

proceeding. An intervenor representing consumers (§ 1802(b)(1)(A)) or a representative authorized by a customer (§ 1802(b)(1)(B)) must disclose his or her finances to the Commission, under appropriate protective order, to make this showing. To receive a hardship finding under these subsections, an intervenor must show that the represented consumers “cannot afford, without undue hardship, to pay the costs of effective representation, including advocate’s fees, expert fees, witness fees and other reasonable costs of participation.” (§ 1802(g).) The Commission evaluates the hardship associated with a customer’s participation in view of the customer’s financial circumstances and the specifics of the proceeding, assessing what constitutes undue hardship on a case by case basis.

Here, WEM is a representative authorized by a customer because Edwards and Mason are PG&E customers represented by WEM. Both Edwards and Mason live in public housing near the Hunters Point power plant. Edwards is retired, and Mason receives Supplemental Security Income (SSI) benefits. WEM submitted Edwards’ annual certification for eligibility for public housing and information regarding Mason’s eligibility for SSI. Based on the information presented, we find that the cost of representation in this proceeding would present a significant financial hardship for both of them.<sup>1</sup>

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<sup>1</sup> As described in D.98-04-059, represented customers must generally disclose their gross and net monthly income, monthly expenses, cash and assets, including any equity in real estate other than the participant’s personal residence, in order to assist us in determining whether the customer’s participation in the proceeding will create an undue financial hardship. Here, WEM did not provide this information for either Edwards or Mason. However, since eligibility for public housing and SSI benefits is restricted to persons with limited incomes, we find significant financial hardship in this case. WEM is cautioned that in future proceedings it must submit complete and timely information regarding customers’ finances with its application for intervenor compensation in order to qualify for a hardship finding.

## **5. 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.<sup>2</sup>

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.<sup>3</sup>

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<sup>2</sup> D.98-04-059, 79 CPUC2d 628 at 653.

<sup>3</sup> See D.03-12-019, discussing D.89-03-063 (31 CPUC2d 402) (awarding San Luis Obispo Mothers for Peace and Rochelle Becker compensation in the Diablo Canyon Rate Case

With this guidance, we turn to the claimed contributions of each intervenor requesting compensation.

### **5.1. 280 Citizens**

280 Citizens participated actively throughout the Jefferson-Martin proceeding. It protested PG&E's application, participated in the environmental review process, conducted and responded to discovery, submitted extensive prepared testimony, conducted cross-examination, filed briefs, and commented on the proposed and alternate decisions. 280 Citizens submits that it made a substantial contribution regarding several issues, including the route for the Jefferson-Martin project, the Commission's environmental review, need and timing for the project, EMF issues, community values, seismic issues, visual impacts, construction impacts, project costs, and biological impacts. We discuss 280 Citizens' contributions on specific issues below.

#### **5.1.1. Project Route**

280 Citizens opposed both PG&E's proposed overhead route (Route 1A) and PG&E's underground alternative (Route 1B) for the southern portion of the Jefferson-Martin project. Commencing with scoping comments during the environmental review process, 280 Citizens identified a number of alternative routes and route segments aimed at reducing adverse impacts on residential areas, schools, and daycare facilities in the southern portion of the project area.

In its briefs, 280 Citizens stated that it supported the Partial Underground Alternative (PUA), developed by the Commission's environmental consultant, "or a variation thereof." During the evidentiary hearings, 280 Citizens expressed a preference for a Modified PUA (MPUA) that would have relocated part of the

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because their arguments, although ultimately unsuccessful, forced the utility to thoroughly document the safety issues involved.

underground portion of the PUA up to 25 feet to the west to reduce EMF exposure on nearby residences.

One alternative route that 280 Citizens suggested during the scoping process, which it called the Underground to Trousdale Drive route, was the same, in essential respects, as the adopted hybrid underground/overhead route, which combines the southernmost part of underground Route 1B with the portion of the overhead Route 1A north of Trousdale Drive. The Draft Environmental Impact Report (DEIR) did not analyze all portions of this hybrid route combination. In particular, the DEIR did not analyze the needed transition west of Trousdale Drive between the underground and overhead route segments. However, the Final Environmental Impact Report (FEIR) provided the complete environmental analysis needed to allow us to approve this hybrid route. The Commission found that the adopted hybrid route avoids Route 1B's adverse effects along Trousdale Drive and El Camino Real and is more consistent with community values and wishes.

We find that 280 Citizens made a significant contribution on routing issues by assisting in development of a full evidentiary record on PG&E's proposed project and potential alternative routes. While not its preferred route, the Underground to Trousdale Drive route, which 280 Citizens suggested early in the environmental review process, led to the hybrid route adopted in D.04-08-046. 280 Citizens, along with other intervenors, opposed Route 1B due to traffic impacts, residential hazards, and emergency response times during construction, and also due to on-going EMF exposures. 280 Citizens' evidence and advocacy assisted the Commission in its decision to reject the portion of Route 1B along Trousdale Drive and El Camino Real even though the FEIR had identified that route as environmentally superior. We note that portions of the

PUA and MPUA would have followed Route 1A, including the part of Route 1A included in the hybrid route adopted in D.04-08-046. Thus, while 280 Citizens did not prevail on the portion of the route south of Trousdale Drive, the Commission adopted the portion of 280 Citizens' recommended PUA/MPUA route north of Trousdale Drive.

PG&E asserts that 280 Citizens' support of routes after they had been rejected from full analysis in the EIR process did not make a substantial contribution to D.04-08-046. PG&E argues that such routes could not be adopted lawfully and therefore were irrelevant. PG&E's concern appears to be aimed primarily at 280 Citizens' support of the MPUA and, in its comments on the proposed decision, a West of Skyline (Boulevard) alternative to a portion of the hybrid route recommended in the proposed decision. For reasons stated below, we agree with PG&E that 280 Citizens did not substantially contribute to D.04-08-046 regarding certain MPUA and West of Skyline issues.

In D.04-08-046, we rejected the southernmost portions of both the MPUA and the PUA because of visual and biological impacts. While the MPUA would have reduced EMF exposure along the portion that deviated from the PUA--a concern not taken into account in the FEIR's determination not to analyze that portion of the MPUA--we did not find in D.04-08-046 that this portion of the MPUA warranted the further environmental analysis necessary before we could approve it in compliance with California Environmental Quality Act (CEQA). We find that 280 Citizens' advocacy of the portion of the MPUA that differed from the PUA did not make a substantial contribution to D.04-08-046.

280 Citizens characterized its West of Skyline alternative as a variation of a route segment that the FEIR declined to analyze fully. While this alternative would reduce EMF exposure to residents along Skyline Boulevard, in

D.04-08-046 we determined that it would increase EMF levels to other residences. We did not accept 280 Citizens' request that the West of Skyline route alternative receive a full environmental assessment. We find that 280 Citizens' late advocacy of this route segment did not make a substantial contribution to D.04-08-046.

PG&E argues additionally that 280 Citizens did not make a contribution in that it continued to oppose Route 1A after PG&E no longer endorsed that route. As 280 Citizens points out, PG&E supported Route 1A in its prepared testimony and never withdrew its request for that route, and the DEIR, FEIR, and D.04-08-046 all evaluated Route 1A. We find that 280 Citizens' on-going opposition to Route 1A contributed to our assessment of that route in D.04-08-046.

#### **5.1.2. Environmental Review**

280 Citizens participated throughout the Commission's environmental review process, arguing that PG&E failed to consider alternatives that could avoid or mitigate potentially significant adverse environmental effects. As described in Section 5.1.1, 280 Citizens suggested several alternative routes for the southern portion of the project, including an underground/overhead route identical in essential respects to the hybrid southern route approved in D.04-08-046. 280 Citizens' participation during the environmental review process enhanced the development and assessment of route alternatives and assisted the Commission in ensuring full compliance with CEQA. We find that 280 Citizens made a significant contribution to D.04-08-046 regarding the environmental review.

### **5.1.3. Project Need and Timing**

PG&E asserted that the Jefferson-Martin project would be needed by late 2005 for reliability purposes. 280 Citizens maintained that the project would not be needed until after 2012.

In D.04-08-046, the Commission found that the Jefferson-Martin project would be needed for reliability purposes in 2007, although we approved construction of the project sooner than 2007 in order to capture diversification, economic, and environmental benefits. The Commission agreed with 280 Citizens that PG&E's March 2003 demand forecast should be used to assess the timing and need for the Jefferson-Martin project, contrary to PG&E's position that earlier, higher demand forecasts should also be considered. While supporting closure of the Hunters Point power plant as soon as technically possible, the Commission also agreed with 280 Citizens that Hunters Point could operate beyond 2005 if needed. We find that 280 Citizens made a substantial contribution to D.04-08-046 regarding the above issues.

280 Citizens asserted that PG&E's Supplementary Guide grid planning criteria should not be applied in evaluating the Jefferson-Martin project. While it does not appear that the California Independent System Operator (ISO) is required by statute to use the Supplementary Guide, in D.04-08-046 we did not find sufficient basis to deviate from the ISO's conclusion that these planning criteria should be used. We find that 280 Citizens did not make a substantial contribution to D.04-08-046 regarding the planning criteria.

The Commission rejected inclusion of planned City and County of San Francisco (CCSF) combustion turbines in the resource mix used in the need analysis, contrary to the position of 280 Citizens and Office of Ratepayer



Advocates (ORA)<sup>4</sup>. We also rejected 280 Citizens' position that the need analysis should assume that certain existing transmission lines in the area would be re-rated. 280 Citizens did not convince us to deviate from prior policies as articulated in D.02-12-066 regarding the treatment of resources that have not completed the regulatory approval process (the CCSF turbines) or are not planned (the transmission line re-rates), and we find that 280 Citizens did not make a substantial contribution to D.04-08-046 on the resource mix criteria.

The Commission found that PG&E reflected the near-term development of conservation, energy efficiency, and distributed generation satisfactorily in its load forecasting methodology. 280 Citizens and WEM described policies and programs established in recent years to increase reliance on these sources, and took issue with PG&E's omission of any explicit effect of these initiatives from its load forecasts. 280 Citizens did not provide any evidence, however, that the near-term development of such resources is sufficiently certain to be relied upon for transmission planning purposes. We find that 280 Citizens did not make a substantial contribution to D.04-08-046 on this forecasting issue.

In summary, we find that 280 Citizens made a substantial contribution to D.04-08-046 on some, but not all, aspects of project need and timing.

#### **5.1.4. EMF Issues**

280 Citizens' routing recommendations were based, in part, on its concerns regarding EMF exposure to residences along PG&E's proposed route.

280 Citizens submitted scientific studies that reported an association between EMFs and certain diseases, provided an independent evaluation of magnetic

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<sup>4</sup> The Commission's Office of Ratepayer Advocates is now the Division of Ratepayer Advocates (DRA). The change was effective January 1, 2006, pursuant to Senate Bill 608.

field levels along several route alternatives, and presented testimony from residents along the route. It asked the Commission to adopt a standard that transmission-related magnetic field exposure should not exceed one milliGauss at residential property boundaries, to be achieved through either routing changes or undergrounding of the line.

As described in Section 5.1.1, the Commission adopted only a portion of the project route 280 Citizens recommended. However, as it notes, we agreed with it that EMF exposure from the project would significantly exceed what residents are likely to receive daily and that the risk of EMF exposure should be taken into account in determining the route for the project. However, we declined to adopt the numerical EMF exposure standard that 280 Citizens proposed.

Overall, we find that 280 Citizens made a significant contribution to the Commission's consideration of public concerns regarding potential health and safety risks of EMF exposure. 280 Citizens was instrumental in developing the record regarding EMF risks, the need to consider EMF exposure levels in routing the project, and the need to modify PG&E's proposed EMF Management Plan for the Jefferson-Martin project. In addition, 280 Citizens' advocacy contributed to the recommendation in the proposed decision that we open a new rulemaking to consider modifications to our EMF policies. We acted on that recommendation with our initiation of R.04-08-020.

#### **5.1.5. Community Values**

The Commission adopted a hybrid route for the southern portion of the Jefferson-Martin project "in express consideration of the community values" expressed by intervenors including 280 Citizens regarding "the perceived importance of avoiding construction impacts and EMF exposure in populated

areas along this portion of the route” (D.04-08-046, *mimeo.* at 125). We find that 280 Citizens made a substantial contribution to the Commission’s decision in this regard.

#### **5.1.6. Seismic Issues**

280 Citizens cross-examined PG&E’s seismic experts and introduced several exhibits during cross-examination that provided information regarding the impact of recent large earthquakes on electric utility facilities and seismic design approaches PG&E has used in the past to address seismic issues. 280 Citizens argued in briefs that seismic issues should not preclude Commission consideration of a Glenview Drive transition tower or a Sneath Lane transition station alternative for connecting a southern overhead portion of the Jefferson-Martin project to the northern underground segment. This argument countered PG&E’s initial assertion that seismic concerns would preclude a transition station other than at San Bruno Avenue, a location that faced strenuous opposition by the City of San Bruno. 280 Citizens also asserted that the existence of earthquake faults that cross Trousdale Drive would drastically increase construction costs of the Trousdale Drive segment of Route 1B.

The Commission approved the Glenview Drive transition tower alternative. While this location is closer than the San Bruno Avenue location to the active trace of the San Andreas fault, the FEIR concluded that the seismic risk can be mitigated to a less-than-significant level. We rejected the Trousdale Drive segment of Route 1B, due to seismic and other concerns.

PG&E asserts that 280 Citizens did not make a substantial contribution on seismic issues since it did not present any testimony or evidence supported by a qualified expert. However, we find that 280 Citizens’ participation contributed to development of the record on seismic issues and assisted the Commission in

assessing alternative transition station locations and route options. Thus, we find that 280 Citizens made a substantial contribution to D.04-08-046 in this regard.

#### **5.1.7. Visual Impacts**

280 Citizens submits that it made a substantial contribution to the Commission's determination regarding visual impacts associated with the proposed project, in particular that it demonstrated that the proposed project would cause significant unmitigable impacts on residents living on Lexington Avenue in the San Mateo Highlands and on Black Mountain Road in Hillsborough. The FEIR and the Commission agreed that the proposed project would cause significant unmitigable visual impacts at these points.

PG&E argues that, since the MPUA advocated by 280 Citizens would have created significant unmitigable visual impacts, 280 Citizens did not make a substantial contribution regarding visual impacts. In D.04-08-046, the Commission rejected the southernmost portion of the proposed project and the PUA, and implicitly the MPUA, due in part to their significant, unavoidable, and permanent visual impacts. While 280 Citizens' preferred route had its own significant visual impacts, 280 Citizens nevertheless made a substantial contribution to D.04-08-046 because it enhanced the record regarding the visual impacts of the proposed project, which led the Commission to choose another alternative, the underground Route 1B, along that portion of the route.

#### **5.1.8. Construction Impacts**

280 Citizens states that it made a significant contribution to the Commission's consideration of construction impacts through San Mateo Highlands and Hillsborough, and in particular along Skyline Boulevard and Trousdale Drive. While the FEIR found Route 1B environmentally superior, the

Commission adopted a hybrid route, in part because it avoids construction impacts on residences and businesses along Trousdale Drive. This determination was based in part on the record developed by 280 Citizens and the City of Burlingame regarding construction impacts. We find that 280 Citizens made a significant contribution to D.04-08-046 in this regard because it helped develop a full record on this issue, and the Commission adopted its position in this respect.

#### **5.1.9. Project Costs**

280 Citizens submits that it made a substantial contribution to the Commission's consideration of project costs. PG&E and 280 Citizens were the only parties to provide cost estimates for the proposed Jefferson-Martin project and alternative routes. 280 Citizens states that its cost analyses forced PG&E to develop more fully the basis for its own cost estimates. 280 Citizens maintains that the record it helped develop will serve the Commission and PG&E's ratepayers if PG&E returns to the Commission in the future seeking an increase in the cost cap.

As part of its opposition to Route 1B, 280 Citizens asserts that PG&E underestimated Route 1B costs due to the presence of underground utilities along Trousdale Drive and El Camino Real and also seismic faults along Trousdale Drive. In D.04-08-046, we rejected that portion of Route 1B, in part because of the identified construction and seismic concerns. In Sections 5.1.6 and 5.1.8 of today's decision, we find that 280 Citizens made a substantial contribution to D.04-08-046 on construction and seismic issues related to Route 1B. The associated cost impacts were an integral part of 280 Citizens' showing in opposition to Route 1B. Because 280 Citizens prevailed regarding this portion of Route 1B, we find that 280 Citizens' cost analysis of Route 1B made a contribution to D.04-08-046.

280 Citizens asserted that, while underestimating Route 1B costs, PG&E overestimated costs of the PUA and the MPUA. 280 Citizens provided a cost estimate of the MPUA, the route that it preferred during the evidentiary hearings. The MPUA differed from the PUA only in that portions of the underground segments of the PUA would be moved as much as 25 feet to reduce impacts on bordering residences. 280 Citizens estimated construction costs for the MPUA using an “all-in per-mile” approach and argued that PG&E’s cost estimates were “artificially detailed” because engineering had not been performed. The hybrid route we adopted contains the northernmost portion of the PUA/MPUA. However, our determination of the “maximum cost determined to be reasonable and prudent” pursuant to § 1005.5(a) was based on PG&E’s detailed cost estimates for the hybrid route. We find that 280 Citizens did not make a substantial contribution to D.04-08-046 regarding the cost of the PUA/MPUA.

#### **5.1.10. Biological Impacts**

280 Citizens maintains that it made a substantial contribution to the Commission’s consideration of the biological impacts of alternative routes. 280 Citizens presented a rebuttal witness to counter PG&E’s assertions that undergrounding segments of the line through serpentine soil-based habitats, as proposed in the PUA and the MPUA, would create significant biological impacts. The expert witness testified regarding the condition of serpentine soil-based habitats along potential project routes, the decades-long absence of the Bay Checkerspot Butterfly from the area in which the PUA or the MPUA would be constructed, and steps that could be taken to mitigate trenching impacts and restore the quality of the habitat.

PG&E submits that 280 Citizens did not make a substantial contribution on biological impacts because during the hearings it continued to advocate the MPUA, which had been rejected from consideration in the FEIR due in part to its adverse impacts on biological resources, and also because 280 Citizens' witness admitted that Route 1B would have less impact on biological resources.

280 Citizens' rebuttal testimony regarding the biological impacts of undergrounding applied to both the PUA--a route alternative that was analyzed fully in the FEIR--and the MPUA, and supplemented the FEIR's analysis in this regard. We find that 280 Citizens made a substantial contribution in that it helped develop the record regarding biological impacts of route alternatives.

## **5.2. CARE**

CARE presented testimony, cross-examined witnesses, and filed briefs and comments on the proposed decisions. As a representative of low-income residents of the Bayview Hunters Point neighborhood, CARE states that it was uniquely positioned "to advocate primarily for the most expedient alternatives that avoid processing or potential construction delay, while at the same time choosing the environmentally superior option when the options were essentially equal with regard to delay."

CARE presented evidence concerning the current environmental impact of the Hunters Point and Potrero power plants and argued that the plants should be closed as soon as possible. CARE also submitted evidence and argument concerning potential delays and environmental impacts associated with certain route alternatives.

CARE's position aligned closely with that of PG&E and the ISO, i.e., that the Jefferson-Martin project should be built on the schedule proposed by PG&E and the ISO and along the route proposed by PG&E. However, CARE provided

a unique perspective and supplemented the record regarding impacts of the Hunters Point units in the Bayview Hunters Point neighborhood and the interests of that community in closure of those units. In determining that the Jefferson-Martin project should be built at the earliest possible time, before it is needed for reliability purposes, the Commission gave “great weight to the community values of the Hunters Point and Bayview neighbors” (D.04-08-046, *mimeo.* at 125). For these reasons, we find that CARE provided a substantial contribution to D.04-08-046. Like 280 Citizens, CARE also made a substantial contribution because it helped develop the evidentiary record regarding potential biological impacts of route alternatives under consideration.

On March 3 and April 26, 2004, CARE submitted motions in which it requested that the record be reopened regarding the impacts of trenching on biological resources in serpentine grasslands. In its motions, CARE described a site visit undertaken on February 28, 2004<sup>5</sup> and requested an opportunity to present additional evidence based on that site visit. The ALJ denied CARE’s request and in D.04-08-046 we affirmed the ALJ’s ruling in that regard. CARE’s February 2004 site visit and its subsequent motions did not make a substantial contribution to D.04-08-046, and CARE should not receive compensation for its efforts in this regard.

### **5.3. WEM**

WEM presented testimony, cross-examined witnesses, and filed briefs. To further its stated goal of closing the Hunters Point power plant, WEM advocated that current transmission constraints south of the San Mateo substation and within San Francisco’s 115 kV cable system could reduce or even eliminate the

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<sup>5</sup> According to time records submitted with CARE’s compensation request, the site visit may have occurred on February 26, 2004.



Jefferson-Martin project's ability to increase the load serving capability of the transmission system in the area. WEM entered as evidence several documents that, it asserted, raised questions regarding PG&E's and the ISO's portrayal of the capabilities of the existing transmission system and the date Hunters Point could be closed. It also cross-examined several witnesses regarding the load serving capability of the transmission system and the extent to which the Jefferson-Martin line would change the amount of power available to San Francisco. WEM addressed energy efficiency as an alternative for providing reliability in the affected area. WEM also questioned PG&E witnesses about a "potential conflict of interest in the preparation of cost estimates by a no-bid consultant that is also a potential bidder on the construction itself."

WEM maintains that its participation resulted in a more in-depth investigation that led to the Commission being satisfied that PG&E and the ISO are remedying the transmission constraints WEM highlighted. WEM concludes that its participation helped the Commission become better prepared to monitor progress toward closure of Hunters Point and to track the costs and benefits of the Jefferson-Martin project.

PG&E opposes WEM's compensation request, arguing that WEM did not make a substantial contribution to D.04-08-046 in any respect. PG&E asserts that WEM's prepared testimony provided no factual information, that WEM undertook inefficient, lengthy, and worthless cross-examination of witnesses, and that WEM's briefs misstated the evidentiary record.

PG&E argues that WEM misinterpreted PG&E and ISO reports, and that WEM erred in asserting that construction of the Jefferson-Martin project could impede, rather than assist, closure of the Hunters Point plant, since all of the other needed transmission upgrades already were contained in PG&E's 2003

transmission expansion plan. PG&E also maintains that WEM presented no evidence that conservation and renewable energy could be available in lieu of the Jefferson-Martin project, noting that, to the contrary, the FEIR and the Commission expressly found that these sources would not be sufficient to ensure reliable electric service in the affected area.

We find that WEM's scrutiny forced PG&E and the ISO to address more thoroughly the impact of Jefferson-Martin on the load serving capability of the transmission system. As an example, WEM cross-examined regarding PG&E's statement that the Jefferson-Martin project would add up to 351 megawatts (MW) of load serving capability to the San Mateo-Martin corridor compared to the ISO's testimony that the project would increase the transmission system's load serving capability by 230 MW. WEM's participation elicited that the 351 MW increase relied upon by PG&E assumed no transmission limitations either south of the San Mateo substation or north of the Martin substation. By contrast, as established by WEM cross-examination of an ISO witness (D.04-08-046, *mimeo.* at 37, ftn.18), the ISO recognized that transmission constraints exist in both areas and assumed that those constraints will be alleviated somewhat (but not completely) by other projects in PG&E's transmission expansion plan. We find that WEM's participation assisted the Commission in evaluating need for the Jefferson-Martin project and thus contributed substantially to the Commission's decision. However, as discussed in Section 6.3, WEM's compensation is reduced because of the inefficiency of its participation.

We find that WEM did not make a substantial contribution with respect to the treatment of energy efficiency and renewable energy in assessing need for the proposed project. As noted above, D.04-08-046 found that PG&E reflected these

sources satisfactorily in its load forecasting methodology. We also find that WEM did not make a substantial contribution regarding costs. D.04-08-046 did not address WEM's vague assertions regarding potential conflicts of interest in PG&E's preparation of cost estimates.

On March 3, 2004, WEM submitted a motion to reopen the record "on the basis that the Commission should consider information regarding (1) a proposed merchant transmission line across San Francisco Bay, (2) ISO power flow studies which WEM asserts demonstrate that the Jefferson-Martin project may reduce load serving capability in the San Francisco area, and (3) the possibility of imminent global climate collapse due to failure of the 'Ocean Conveyor' which drives ocean currents." The ALJ denied WEM's motion, and we affirmed that ruling in D.04-08-046. WEM's efforts related to this motion did not make a substantial contribution to D.04-08-046 and should not be compensated.

## **6. Reasonableness of Requested Compensation**

280 Citizens, CARE, and WEM made substantial contributions as described above. After we have determined the scope of a customer's substantial contribution, we look at whether the compensation requested is reasonable.

In general, to be compensable the components of an intervenor's request must constitute reasonable fees and costs of the customer's preparation for and participation in a proceeding that resulted in a substantial contribution. The issues we consider to determine reasonableness are discussed below for each intervenor.

### **6.1. 280 Citizens' Request**

2880 Citizens requests \$1,067,081.20 for its participation in this proceeding. From the detailed documentation accompanying the request, we calculate the request to be \$1,067,168.74, as indicated in Table 1 and Table 2.<sup>6</sup>

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<sup>6</sup> The slight discrepancy between 280 Citizens' stated request and our calculation appears to be due to rounding differences.

**Table 1**  
**280 Citizens Compensation Request**

<u>Attorneys</u>	<u>Year</u>	<u>Rate</u>	<u>Hours</u>	<u>Total</u>
Edward O'Neill	2002	\$ 315.00	14.1	\$ 4,427.85
"	2003	435.00	148.9	64,764.98
"	2004	470.00	430.8	202,475.22
Christopher Hilen	2003	330.00	289.0	95,385.40
"	2004	360.00	456.3	164,264.40
Jeffrey Gray	2003	285.00	312.4	89,029.25
"	2004	310.00	365.6	113,348.92
<u>Paralegals</u>				
Barbara Nielsen	2003	145.00	6.1	884.50
"	2004	155.00	17.1	2,656.70
Judy Pau	2003	135.00	34.0	4,585.50
"	2004	145.00	5.2	749.17
<u>Experts</u>				
William Stephenson	2003-2004	225.00	211.0	47,475.00
Gary Tassainer	2003-2004	210.00	365.5	76,755.00
Rick Frandsen	2003-2004	150.00	55.5	8,325.00
Lyle Vance	2003-2004	135.00	90.1	12,163.50
Dennis Murphy	2003-2004	225.00	34.0	7,650.00
Jeffrey Shields	2003-2004	225.00	508.5	114,412.50
<u>Intervenor Compensation and Travel Time</u>				
O'Neill	2002	157.50	0.3	47.25
"	2003	217.50	8.6	1,870.50
"	2004	235.00	21.7	5,099.50
Hilen	2003	165.00	4.1	676.50
"	2004	180.00	51.8	9,324.00
Gray	2003	142.50	20.2	2,878.50
"	2004	155.00	8.0	1,240.00
Pau	2003	67.50	0.2	13.50
Tassainer	2003-2004	105.00	40.5	4,252.50
Subtotal				1,034,741.63
Expenses				32,427.11
<b>TOTAL</b>				<b>\$1,067,168.74</b>

**Table 2**  
**280 Citizens Expenses Request**

Copying	\$ 19,810.41
Fax and telephone	37.00
Lexis-Nexis	3,241.15
Filing/courier fees	2,433.07
Travel expenses	6,878.35
Database, transcripts	27.13
 Total Expenses	 \$ 32,427.11

280 Citizens states that it voluntarily omitted from its request one-third of the time its legal counsel spent on route alternatives and environmental review, recognizing that some of the time devoted to these issues was not as efficient or productive as 280 Citizens desired. Consistent with Commission policy (D.02-11-019), 280 Citizens requests compensation for travel and intervenor compensation-related time at half the usual hourly rate, rather than by reducing the number of hours by half. 280 Citizens did not request compensation for Lara Lighthouse and Katie Carlin, residents of the San Mateo Highlands and Burlingame, respectively, who presented non-expert testimony addressing EMF and other community concerns.

280 Citizens did not quantify the benefits of its participation to ratepayers, noting that the Commission has recognized that it can be difficult, if not impossible, to assign specific ratepayer benefits to the contribution of intervenors in proceedings involving non-economic issues where no revenue requirement, revenue allocation, or rate design are at issue. (See D.01-11-023.) We agree that it is difficult to assign specific ratepayer savings to 280 Citizens' contribution in this proceeding. Nonetheless, it is clear that ratepayers have benefited because 280 Citizens' participation assisted the Commission in assessing need for the

Jefferson-Martin project, determining the best route for the project, and adopting changes to PG&E's EMF Management Plan. The Commission finds that 280 Citizens' participation in this proceeding has been productive.

PG&E suggests that the Commission discount 280 Citizens' compensation due to overlapping work performed by the County of San Mateo, Burlingame, Hillsborough, and other government entities on construction impacts, potential impediments to construction, and seismic issues. 280 Citizens responds that it coordinated with these other intervenors to reduce the likelihood of any duplication. 280 Citizens states that it took the lead role in the evidentiary hearings on nearly every issue that it and these other intervenors addressed and that it supplemented their contribution in a few other areas.

We agree that 280 Citizens' position was similar in some respects to positions taken by governmental entities along the southern portion of the route. However, 280 Citizens took a more active role, in terms of providing more extensive expert testimony, more extensive cross-examination, and more comprehensive briefing. The submitted time records support 280 Citizens' statement that it coordinated with the other entities. We find that 280 Citizens' participation in this proceeding supplemented or complemented the efforts of the governmental entities but did not in any material way duplicate their participation.

#### **6.1.1. Hours Requested**

280 Citizens allocated its time to 16 categories of issues and provided a daily breakdown of hours with a brief description of each activity. Table 3

describes these categories, along with the hours expended and the amount of requested compensation related to each category.<sup>7</sup>

**Table 3**  
**280 Citizens Compensation Request by Category**

Category	Description	Before Allocation of Category 10 Hours		Adjusted by Allocation of Category 10 Hours	
		Total Hours	Total Cost	Requested Hours	Requested Cost
1	Project need and timing	1,083.5	\$288,168	1,130.75	\$ 306,078.25
2	Community values, land use	23.8	7,662	71.1	25,572.25
3	Health and safety, incl. EMF	412.3	126,681	506.8	162,501.50
4	Project route	887.4	276,021	754.6	230,666.42
5	Visual impacts	27.2	9,321	50.8	18,275.63
6	Construction impacts	88.3	27,822	111.9	36,777.13
7	Project costs	228.1	58,814	251.7	67,768.63
8	Seismic issues	27.9	12,673	51.5	21,628.13
9	Biological impacts	195.3	67,746	218.9	76,700.63
10	Time not directly allocated	472.5	179,103	0	0
11	Travel time	84.5	25,917	84.5	12,958.50
12	Intervenor compensation	70.9	24,888	70.9	12,443.75
13	Administrative and clerical	204.2	33,320	0	0
14	Other non-compensable time	62.6	21,357	0	0
15	Environmental review	227.5	72,835	196.0	63,384.33
16	Other compensable time	19.5	4,138	0	0
<b>Total</b>		<b>4,115.5</b>	<b>\$1,236,463</b>	<b>3,499.5</b>	<b>\$1,034,755.13</b>

Time spent on activities involving multiple issues that, in 280 Citizens' view, could not be allocated directly to a single issue was tracked in Category 10 and was subsequently allocated among the specific issues. The requested hours and compensation, as indicated in the rightmost columns in Table 3, reflect this allocation of Category 10 time. As reflected in the requested hours in Table 3,

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<sup>7</sup> The slight discrepancies between the total requests indicated in Table 1 and Table 3 are due to rounding differences.



280 Citizens does not seek compensation for administrative and clerical time (Category 13), other non-compensable time (Category 14),<sup>8</sup> or for 19.5 hours (Category 16) that 280 Citizens states would otherwise be compensable.

PG&E suggests that the Commission reduce the compensation award to 280 Citizens because of claimed inefficiencies in its representation. PG&E asserts that 280 Citizens over-staffed the evidentiary hearings and, in particular, frequently had two or three attorneys present at the hearings. 280 Citizens responds that the time its attorneys spent in the hearing room was productive and efficient. It explains that its attorneys divided responsibilities, that each 280 Citizens attorney needed to participate in the hearing when other parties were cross-examining a witness for whom the attorney had responsibility, that it was uncertain about the length of time each witness would be on the stand, and that its attorneys spent time performing other work related to the proceeding when not involved in witness examination. We find 280 Citizens' explanation adequate and do not make the reduction PG&E suggests.

PG&E suggests that the billing categories used by 280 Citizens indicate an overlap among issue areas. PG&E's concern appears to arise because of the detailed manner in which 280 Citizens maintained its records, e.g., 280 Citizens' Category 3 ("health and safety, including EMF issues") arguably could be viewed as a subset of Category 2 ("community values and land use conflicts"). However, in reviewing 280 Citizens' billing records, we see no evidence of duplicate billings.

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<sup>8</sup> From our review of 280 Citizens' detailed time records, Category 14, "Other non-compensable time," reflects activities such as meetings with elected officials and time spent on formation of 280 Citizens, press activities, public information, and an unsuccessful motion to reopen the record for the receipt of photographs included in its comments on the proposed decision.

PG&E claims that none of 280 Citizens' experts made any significant contribution and, thus, that none of their costs warrant compensation. PG&E also asserts that 280 Citizens has not demonstrated that the costs associated with experts who did not testify are reasonable. We agree with 280 Citizens that in some instances it may be more cost efficient for individuals with lower rates to perform certain tasks. Compensation should not be denied simply because tasks were undertaken by non-testifying experts. A policy that only work performed by testifying experts is compensable would provide an incentive for those experts to perform all of the work in support of their testimony, resulting in possible increased costs for intervenors and, ultimately, ratepayers. Such an outcome would be counter to the goal in § 1801.3(b) of encouraging efficient participation.

After addressing the hours devoted to activities involving multiple issues (Category 10), we evaluate the reasonableness of the hours 280 Citizens claims for each of the relevant issue areas, and evaluate its request regarding travel time and time spent on compensation issues.

#### **6.1.1.1. Category 10 Hours**

280 Citizens states that its attorneys and paralegals spent 472.5 hours that could not be allocated directly to individually tracked issues, which it reports in Category 10. This category includes activities such as 280 Citizens' protest, preparation for and participation at the prehearing conference, discovery, responding to procedural motions, general planning for the proceeding, coordination with other parties, testimony and transcript corrections, and preparation of briefs and comments on the proposed and alternate decisions. We accept 280 Citizens' tracking of such costs in a general category to be allocated among the substantive issues. While unusual, an allocation of such costs is

reasonable in this instance because of the multiple issues addressed by 280 Citizens and detailed in its compensation request, the large number of hours that could not be allocated directly to the individual issues, and the resulting impacts on the amount of the compensation request.

Based on our review of 280 Citizens' records, it was reasonable for 280 Citizens to accumulate the multi-issue hours in Category 10, with two exceptions. First, 280 Citizens included time related to a public participation hearing. We have consistently indicated since 1996 (D.96-08-040, 67 CPUC2d 562,577, and as recently as D.04-09-050, *mimeo.* at 12) that we do not award compensation for time spent by a party related to public participation hearings, as such hearings are an opportunity for non-parties to address the Commission. In total, 2.2 hours of attorney O'Neill's time and 1.1 hours of attorney Gray's time related to the public participation hearing should be disallowed. Second, recognizing that 280 Citizens did not request compensation for time spent on its unsuccessful motion to reopen the record filed on July 1, 2004, we disallow 1.5 hours of Gray's time related to review of PG&E's response to 280 Citizens' motion.

280 Citizens states that its allocation of Category 10 hours reflects the approximate percentage of 280 Citizens' total multi-issue time spent on each of the substantive issues, but provides no support for this assertion. We find it reasonable to allocate Category 10 time in proportion to the hours reported for 280 Citizens' attorneys and paralegals in each of the substantive categories. On that basis, we adopt an allocation of Category 10 hours as indicated in Table 4.

**Table 4**  
**Allocation of 280 Citizens' Category 10 Hours**  
**To Substantive Issues**

<u>Category</u>	<u>Description</u>	<u>Requested</u>	<u>Adopted</u>	<u>Allocated Hours</u>
1	Project Need and Timing	10%	25%	11.69
2	Community Values	10%	1%	4.7
3	Health and Safety, including EMF	20%	13%	60.8
4	ProjectRoutes	25%	33%	154.3
5	Visual Impacts	5%	3%	14.0
6	Construction Impacts	5%	3%	14.0
7	Project Costs	5%	5%	23.4
8	Seismic Issues	5%	1%	4.7
9	Biological Issues	5%	8%	37.4
15	Environmental Review	10%	10%	46.8

With removal of 4.8 hours from Category 10, as discussed, we address compensation for the remaining 467.7 hours in conjunction with our review of each of the substantive categories to which they are allocated.

#### **6.1.1.2. Project Route (Category 4)**

280 Citizens reports that its attorneys and paralegals devoted 634.8 hours to development and advocacy of alternative routes. In addition, witness Tassainer spent 140 hours assessing load flow and other aspects of potential routes and expert (non-witness) Vance spent 48.1 hours assisting in the load flow analyses. Witness Shields spent 64.5 hours addressing right-of-way and other routing issues. These records show that over 70% of the hours spent on routing issues by 280 Citizens were logged by attorneys and paralegals.

While maintaining that each of the suggested alternative routes warranted review and analysis, 280 Citizens acknowledges that, “Whether they all warranted the time 280 Citizens devoted to their analysis is, however, admittedly debatable.” As a result, 280 Citizens voluntarily removed from its compensation request one-third of its attorney and paralegal hours devoted to routing issues, as well as one-third of the Category 10 hours allocated to routing issues.

In Section 5.1.1, we find that 280 Citizens made a substantial contribution on routing issues, but not regarding its advocacy of the West of Skyline route segment or the portion of the MPUA that differed from the PUA. From the detailed documentation, we estimate that 280 Citizens’ attorneys spent at least 130 hours on the West of Skyline alternative. While the documentation does not allow us to make a comparable assessment of hours spent addressing the MPUA, it is clear that support of the MPUA was a major focus of 280 Citizens’ efforts in this proceeding. One-third of its attorney and paralegal hours, as 280 Citizens suggests, is not a sufficient reflection of the time spent on routing issues that did not contribute to D.04-08-046. Weighing 280 Citizens’ extensive advocacy of these route segments and its substantial contribution in other respects, including identification of the Underground to Trousdale Drive hybrid route, we find that removal of one-half of 280 Citizens’ attorney and paralegal time and one-half of its consultants’ time spent on routing issues is a reasonable reduction to reflect its limited contribution on routing issues. We also remove one-half of Category 10 time allocated to routing issues from the compensation award.

**6.1.1.3. Environmental Review  
(Category 15)**

280 Citizens includes within this category its time spent participating in the scoping process for the environmental review, preparation of comments on the DEIR, and review of the FEIR. 280 Citizens reports that its attorneys devoted 189 hours and witness Shields 38.5 hours on this environmental review. 280 Citizens voluntarily excludes from its compensation request one-third of its attorneys' hours and related Category 10 time from its compensation request, acknowledging that some of the time devoted to environmental review was not efficient or productive.

With 280 Citizens' voluntary exclusion of one-third of its attorneys' hours, we find that the remaining time spent on environmental review is reasonable and should be compensated. Consistent with 280 Citizens' treatment, we remove from the compensation award one-third of the Category 10 time allocated to environmental review.

**6.1.1.4. Project Need and Timing  
(Category 1)**

280 Citizens devoted more time to project need and timing than any other issue. 280 Citizens states that its attorneys and paralegals spent 484.5 hours on project need and timing. Witness Stephenson spent 211 hours addressing reliability criteria, transmission line re-rating, and other aspects of the transmission system. Shields spent 388 hours on other aspects of 280 Citizens' showing regarding project need and timing. Thus, about 45% of the time 280 Citizens spent on project need and timing issues was logged by its attorneys and paralegals.

PG&E argues that the testimony of 280 Citizens' witnesses regarding project need had numerous deficiencies which should be considered in

determining compensation. As described in Section 5.1.3, we find that 280 Citizens made a substantial contribution on some but not all aspects of project need and timing. 280 Citizens' compensation should be reduced due to its lack of contribution regarding reliability criteria; treatment of the CCSF turbines; the re-rating of existing transmission lines in the area; and the treatment of conservation, energy efficiency, and distributed generation in PG&E's load forecast. 280 Citizens' time records, while detailed, do not allow us to segregate the time spent on those aspects of its participation. In our judgment, 280 Citizens' attorney and paralegal hours, as well as related consultant hours, devoted to project need and timing issues should be reduced by two-thirds in light of its limited contribution. We also reduce the portion of Category 10 hours allocated to this topic by two-thirds.

#### **6.1.1.5. Project Costs (Category 7)**

280 Citizens' attorney devoted 94.6 hours to the issue of project costs. Witnesses Tassainer and Shields spent 88 and 3.5 hours, respectively, addressing project costs, with Tassainer providing alternative cost estimates for Route 1B and the MPUA. Vance spent another 42 hours on preparation of a cost model in support of Tassainer's testimony.

In Section 5.1.9, we find that 280 Citizens made a substantial contribution regarding costs of Route 1B, but did not make a substantial contribution regarding costs of the PUA/MPUA. Accordingly, we reduce 280 Citizens' hours devoted to cost issues, along with the portion of Category 10 hours allocated to this topic, by one-half.

#### **6.1.1.6. Remaining Substantive Issues**

280 Citizens' attorneys and paralegals spent 240.8 hours on EMF and other health and safety issues (Category 3); witnesses Tassainer and Shields devoted

106 hours and 10 hours, respectively, and Frandsen spent another 55.5 hours providing EMF modeling and analysis in support of Tassainer's testimony.

280 Citizens reports that its attorneys spent 19.8 hours and witness Shields spent 4 hours on the issue of community values (Category 2).

280 Citizens' attorneys spent 27.9 hours on seismic issues (Category 8) and 27.2 hours on visual impacts (Category 5). Its expert witnesses did not address these topics.

280 Citizens reports that its attorneys and paralegals spent 56.8 hours addressing construction impacts and other impediments to routes (Category 6). Expert Tassainer devoted 31.5 hours to this issue.

280 Citizens' attorneys and paralegals spent 161.3 hours, and expert Murphy spent 34 hours on biological issues (Category 9).

In Section 5.1, we find that 280 Citizens made a substantial contribution regarding each of these issues. The hourly breakdown reasonably supports the claim for total hours on these issues. We have reviewed the record and find that the level of hours is reasonable in light its contribution on each of these issues, and we award compensation for the entirety of 280 Citizens' effort, and for the portion of Category 10 time allocated to these categories.

#### **6.1.1.7. Travel Time**

280 Citizens requests compensation for 44 hours of travel time for its attorneys and 40.5 hours for expert Tassainer, and bills this time at one-half the regular hourly rates. We do not compensate 280 Citizens for 1.5 hours of O'Neill's travel time related to a public participation hearing, or for 3 hours of travel time for attorney Hilén and 2.5 hours for O'Neill related to the West of Skyline Boulevard alternative. With those exceptions, we find reasonable and



award compensation for the remaining 77.5 hours of 280 Citizens' submitted travel time.

#### **6.1.1.8. Time Spent on Compensation Request**

280 Citizens submits 70.9 hours for its attorneys and paralegals spent on compensation issues, billed at one-half the regular hourly rates. In light of the complexity of this proceeding and 280 Citizens' detailed documentation, which we found very helpful in assessing 280 Citizens' compensation request, we award compensation for all the time 280 Citizens devoted to preparing its compensation request.

#### **6.1.2. Market Rate Standard**

Next we take into consideration whether 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. For guidance, we set forth principles for setting intervenors' hourly rates in Resolution ALJ-184, and in D.05-11-031. Here, 280 Citizens seeks compensation for the work of three attorneys, two paralegals, and six outside consultants, as summarized earlier in Table 1.

##### **6.1.2.1. Attorneys**

For attorney O'Neill, 280 Citizens requests hourly rates of \$315 for work performed in 2002, \$435 for 2003, and \$470 for 2004. We find these rates reasonable. We previously approved a \$315 rate for O'Neill for 2001 in D.02-11-024, and adopt it here for his 2002 work. In D.04-08-025, we previously approved a \$435 rate for O'Neill for 2003 work, and we adopt that rate here. The requested rate of \$470 for 2004 is approximately 8% above the 2003 rate,

consistent with the guidelines for 2004 rates set forth in Resolution ALJ-184, and is adopted here.

For attorney Hilen, 280 Citizens is requesting hourly rates of \$330 for 2003, and \$360 for 2004. In D.02-11-024, we previously approved rates for Hilen of \$275 for 2000, and \$285 for 2001. 280 Citizens submits that Hilen was responsible for a number of major issues, including cross-examination of witnesses. Hilen has practiced law for 15 years, including 12 years in administrative and regulatory law. The requested rate of \$330 for 2003 is 16% above Hilen's 2001 rate, and the requested \$360 rate for 2004 is approximately another 10% above the requested 2003 rate. The guidelines in D.05-11-031 call for increases of 3% per year, for 2005 work, for representatives whose last authorized rate was before 2004. Though Hilen's work was in 2003 and 2004, we will use the same principle here and adopt a rate of \$305 for 2003, and \$315 for 2004.

For attorney Gray, 280 Citizens is requesting hourly rates of \$285 for work performed in 2003, and \$310 for 2004. In D.04-08-025, we previously approved a \$285 rate for Gray for 2003, and adopt that rate here. The requested \$310 rate for Gray for 2004 is approximately 8% above the 2003 rate and consistent with Resolution ALJ-184. We also adopt that rate here.

#### **6.1.2.2. Paralegals**

280 Citizens seeks compensation for work by paralegal Nielsen at hourly rates of \$145 for 2003, and \$155 for 2004. We previously approved the requested 2003 rate in D.04-08-025, and adopt it here. The hourly rate requested for Nielsen for 2004 represents an approximate 7% increase from 2003 and, consistent with Resolution ALJ-184, is reasonable.

280 Citizens seeks compensation for work by paralegal Pau at hourly rates of \$135 for 2003, and \$145 for 2004. We previously approved the \$135 rate for

Pau for 2003 in D.04-08-025, and adopt that rate here. An hourly rate of \$145 for Pau for 2004 represents an increase of 7.4% above the 2003 rate and, consistent with Resolution ALJ-184, is reasonable.

#### **6.1.2.3. Expert Witnesses and Consultants**

280 Citizens seeks recovery of the costs of expert witness Stephenson at a rate of \$225 for work performed in 2003 and 2004. The Commission has not approved a compensation rate previously for Stephenson.

Stephenson provided analysis, expert consultation, and testimony regarding transmission capacity into the project area, the probability of PG&E's planning contingencies occurring in the future, and the likelihood of the project preventing a future blackout. Stephenson also evaluated and analyzed power flow data provided by PG&E and developed independent power flow models.

Stephenson has a B.S. in Electrical Engineering, and is a licensed Electrical Engineer specializing in transmission planning and generation consulting. From 1967 through 1993, Stephenson was employed by PG&E in positions of increasing responsibility in transmission planning, and ultimately was in charge of transmission planning for the San Francisco/Peninsula area. Since leaving PG&E, Stephenson has been a consultant, advising clients on issues related to electric transmission and generation. Stephenson testified before the Commission on two previous occasions, most recently with respect to San Diego Gas & Electric Company's application for approval of the Valley-Rainbow transmission project.

280 Citizens compares Stephenson's background, qualifications, and experience with those of Wayne Schmus and Anton Smeerdyk. All three are experienced electrical engineers, familiar with transmission planning. The

Commission previously approved an hourly rate of \$190 for Schmus for work performed in 2001 and \$190 for Smeerdyk for work performed in 2000-2001.

We find that Stephenson, Schmus, and Smeerdyk have comparable education, training and experience. We therefore will consider the hourly rates previously awarded to Schmus and Smeerdyk in setting an hourly rate for Stephenson. An hourly rate of \$225 for work Stephenson performed in 2003 and 2004 is excessive. Using the 3% annual increase formula set forth in D.05-11-031 for representatives whose last authorized rate was prior to 2004, results in rates for Stephenson of \$200/hour for 2003, and \$210 for 2004. Thus, for Stephenson we adopt here rates of \$200/hour for 2003, and \$210/hour for 2004.

280 Citizens seeks recovery of the costs of expert witness Tassainer at a rate of \$210 for work performed in 2003 and 2004. The Commission has not approved previously a compensation rate for Tassainer, who has a B.S. degree in Electrical Engineering and is a licensed professional engineer. Tassainer has over 30 years experience in engineering and management and has been a principal at Tasco Engineering, Inc. since 1982. His industrial and utility projects have included lighting, control, security systems, electrolytic process design, and underground distribution and transmission projects. He has designed substations, transmission lines, and generation facilities and has conducted a variety of studies related to electrical systems, including power factor studies, analyses on load following and exporting excess power generation, and feasibility studies for self generation or cogeneration facilities. He has served as project manager on generation and transmission projects.

Tassainer reviewed possible alternative routings for the Jefferson-Martin project and underground versus overhead or hybrid configurations, and served as a witness for 280 Citizens concerning routing and the effect of various route

designs on magnetic field levels. He performed modeling of EMF levels for different project alternatives, examined construction impediments and impacts of alternative routes, and evaluated PG&E's cost estimates for its proposed project and various alternative routes.

280 Citizens compares Tassainer's background, qualifications, and experience to those of Smeerdyk. Consistent with the rate awarded to Stephenson, we adopt rates for Stephenson of \$200/hour for 2003, and \$210/hour for 2004.

280 Citizens seeks recovery of the costs of consultant Frandsen at a rate of \$150 for work performed in 2003 and 2004. The Commission has not approved previously a compensation rate for Frandsen.

Frandsen holds a B.S. degree in Mechanical Engineering (1989) and an M.B.A. (1991), and is a licensed professional environmental engineer. He has been involved with environmental modeling and analysis, including modeling EMF levels, for over 15 years. Frandsen's work in EMF modeling has included analyzing both overhead and underground transmission lines.

In this proceeding, Frandsen used an Electric Power Research Institute (EPRI) model to evaluate the existing overhead 60 kV lines along the Jefferson-Martin route, PG&E's proposed route, and various alternative routes and configurations. Tassainer delegated much of the preliminary EMF modeling work to Frandsen.

280 Citizens states that the Commission has not approved previously a rate for an engineer with precisely Frandsen's education and experience. However, 280 Citizens draws comparisons with an hourly rate of \$150 established for 2003 for Roland Hwang, a Senior Policy Analyst at Natural Resources Defense Council (NRDC), and Sheryl Carter, a Policy Analyst at

NRDC. Hwang has a B.S. (1986), a Masters degree in Mechanical Engineering (1988), and a Masters in Public Policy (1992). Carter has a Masters in Technology, Energy and Environmental Policy (1993) and has approximately 13 years' experience in energy policy and utility regulation. Based on this comparison of educational background and experience, 280 Citizens asserts the \$150 rate for 2003 and 2004 is reasonable for Frandsen.

Although Hwang, Carter, and Frandsen share similar credentials, it appears that the backgrounds of Hwang and Carter may have a greater emphasis on public policy analysis, while in this proceeding, Frandsen performed modeling to analyze the project and EMF levels. In D.02-11-019, we awarded an hourly rate of \$180 to engineer Frech for work performed in 2000-2002. We noted that Frech had both engineering and business degrees and had extensive experience in analyzing electromagnetic fields created by power lines and other sources of electromagnetic radiation. Frech had also worked as a business consultant specializing in the analysis of electric and magnetic fields for approximately 14 years as of 2002.

We believe that Frandsen's background, training and experience more closely resemble those of Frech than those of Hwang and Carter. In view of the hourly rate we have previously awarded to Frech, we find that the requested hourly rate of \$150 per hour for Frandsen for work performed in 2003 and 2004 is reasonable.

280 Citizens seeks recovery of the costs of consultant Vance at a rate of \$135 for work performed in 2003 and 2004. The Commission has not approved previously a compensation rate for Vance.

Vance holds a B.S. in Aerospace Engineering (1990) and is a licensed electrical engineer. He has specific expertise in performing feasibility analysis

for large electric generation and transmission projects. For this proceeding, Vance analyzed the electrical feasibility of various alternative route designs by conducting load flow analysis, fault studies, fuse and relay coordination studies, and system stability analysis. Vance also analyzed PG&E's cost estimates for the proposed project and alternate routes. Tassainer delegated certain work to Vance so it could be performed at a billing rate lower than that charged by Tassainer.

In view of the hourly rates awarded to Frech and to Frandsen above, and the fact that Vance does not have an advanced degree, we believe that an hourly rate of \$135 is reasonable and adopt this rate for Vance for 2003 and 2004.

280 Citizens seeks recovery of the costs of expert witness Murphy, a conservation biologist, at a rate of \$225 for work performed in 2003 and 2004. The Commission has not approved previously a compensation rate for Murphy, who has a B.S. degree (1974) and a Ph.D. (1981). From 1983 until 1997, Murphy served in the Center for Conservation Biology at Stanford University, first as its Director and then as its President, before joining the faculty at the University of Nevada, Reno, where he is Research Professor in the Biology Department and director of the graduate program in Ecology, Evolution, and Conservation Biology.

280 Citizens reports that Murphy has led efforts to create habitat conservation plans for spotted owls in the Pacific Northwest, birds and butterflies in California, and the desert tortoise in Southern Nevada. He has published extensively, including several dozen papers on plant and animal species associated with serpentine soil-based grasslands on the San Francisco Peninsula. Murphy provided expert consultation and testimony for 280 Citizens evaluating potential impacts of the MPPA on areas of serpentine grassland and

steps that could be taken to mitigate construction impacts and restore the serpentine grassland.

280 Citizens compares Murphy's credentials to those of Bill Trush, a fisheries biologist who provided expert services to the California Hydropower Reform Coalition in the PG&E bankruptcy proceeding evaluating downstream impacts of dams and planning and implementation of river restoration plans. The Commission approved an hourly rate for Trush of \$200 for work performed in 2002 (D.04-08-025). Trush holds Ph.D. (1989), M.S. (1979), and B.S. (1974) degrees. According to D.04-08-025, Trush is an adjunct professor in the Fisheries Department at California State University at Humboldt and is the president and co-founder of a firm specializing in the downstream impact of dams and the planning and implementation of river restoration plans.

We agree with 280 Citizens that Murphy's education, qualifications, and experience are comparable to those of Trush. In view of the \$200 hourly rate approved for Trush's work in 2002, we find that the requested hourly rate of \$225 for Murphy's work is excessive for 2003. In light of D.05-11-031, a \$210/hour rate for 2003, and a \$220 rate for 2004 is reasonable.

280 Citizens seeks recovery of the costs of expert witness Shields at an hourly rate of \$225 for work performed in 2003 and 2004. The Commission has not approved previously a compensation rate for Shields. Shields holds a B.S. in Natural Resource Planning and Interpretation and has worked in the electric power industry for 25 years. Shields served as Director of the Land Use Planning Department of Trinity County, California for four years, then spent seven years as the CEO/General Manager of the Trinity County Public Utility District, then 10 years as the CEO/General Manager of Emerald Public Utility District in



Eugene, Oregon. He also has worked for Enron, energy industry consulting firms, and the South San Joaquin Irrigation District.

Shields served as 280 Citizens' overall policy witness and provided expert consultation and testimony on transmission and generation resource planning, load forecasts, alternative generation resources, distributed generation, renewable initiatives, demand reduction, and alternative transmission routes.

280 Citizens compares Shields' background and experience to those of Michael McDonald, for whom the Commission approved an hourly rate of \$250 for 2003 (D.04-08-025). Like Shields, McDonald has been involved in the electric industry since the 1970s. McDonald spent nine years as Assistant City Manager and then City Manager of the City of Healdsburg, which operates a municipal utility, and 13 years as General Manager of the Northern California Power Agency. McDonald later worked for Enron North America leading its power origination group. Given the similar industry experience, 280 Citizens submits that an hourly rate of \$225 for Shields' work, compared to the \$250 hourly rate approved for McDonald, is appropriate.

We agree with 280 Citizens that the backgrounds, qualifications, and experience of Shields and McDonald are comparable. In view of the \$250 hourly rate approved for McDonald in D.04-08-025, an hourly rate of \$225 for Shield's work in 2003 and 2004 is reasonable, and we approve it here.

### **6.1.3. Expenses**

280 Citizens seeks recovery of expenses totaling \$32,427.11, including copying, travel, legal research, filing, fax, transcripts, database and other costs, as shown in Table 2. We find that the claimed expenses are reasonable and should be allowed, with the exception of \$95.00 claimed for expenses incurred by attorney Hilan for parking at his office during testimony preparation. It is not

appropriate for counsel to receive intervenor compensation for normal, everyday parking expenses at their own offices while performing work on a Commission proceeding. 280 Citizens is therefore entitled to recover a total of \$32,332.11 for its expenses in this proceeding.

## 6.2. CARE's Request

CARE requests \$255,482.08 for participation in this proceeding.<sup>9</sup> Based on the provided documentation,<sup>10</sup> we compute the request as \$254,960.13, as indicated in Tables 5 and 6.

**Table 5**  
**CARE Compensation Request**

	<u>Year</u>	<u>Rate</u>	<u>Hours</u>	<u>Total</u>
<u><b>Attorneys</b></u>				
John Gabrielli	2003-2004	\$ 300.00	117.4	\$ 35,220.00
Stephan Volker	2004	400.00	56.3	22,520.00
Joshua Harris	2004	225.00	110.6	24,885.00
Gretchen Dent	2004	275.00	9.72	2,672.08
Terry Franke	2004	300.00	0.5	150.00
<u><b>Paralegals</b></u>				
Melissa Moffitt	2004	120.00	29.5	3,540.00
Marnie Riddle	2004	90.00	4.0	360.00
Scott Yundt	2004	120.00	16.0	1,920.00
<u><b>CARE Representatives</b></u>				
Michael Boyd	2003-2004	150.00	349.0	52,350.00
Lynne Brown	2003-2004	125.00	346.0	43,250.00
<u><b>Experts</b></u>				
Shawn Smallwood	2003-2004	200.00	157.5	31,00.00
David Wright	2004	200.00	34.0	6,800.00
William Powers	2003-2004	200.00	10.5	2,100.00
Bob Sarvey	2003-2004	200.00	83.6	16,720.00

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<sup>9</sup> In its original request, CARE sought \$269,915.79. It later revised this figure downward to \$255,482.08.

<sup>10</sup> CARE double-counted certain expenses, as acknowledged in a January 28, 2005 e-mail to the ALJ.

	<u>Year</u>	<u>Rate</u>	<u>Hours</u>	<u>Total</u>
<b><u>Intervenor Compensation and Travel</u></b>				
Gabrielli	2004	150.00	13.8	2,070.00
Volker	2004	200.00	5.6	1,120.00
Harris	2004	112.50	9.9	1,113.75
Boyd	2004	75.00	37.5	2,812.50
Smallwood	2003-2004	100.00	9.0	900.00
Wright	2004	100.00	4.0	400.00
<b>Subtotal</b>				<b>\$253,968.33</b>
Expenses				\$ 991.80
<b>TOTAL</b>				<b>\$254,960.13</b>

**Table 6**  
**CARE Expenses Request**

Copying	\$ 550.17
Internet research	81.15
Postage	149.30
Travel expenses	131.69
Film, processing	16.53
Meals	53.96
Telephone	9.00
<b>Total Expenses</b>	<b>\$ 991.80</b>

CARE maintains that it contributed to the proceeding in a manner that was productive and resulted in benefits to ratepayers in comparison to the costs of participation, although it did not attempt to quantify those benefits. CARE submits that ratepayer benefits resulted because it ensured that the environmental concerns associated with the Hunters Point and Potrero plants would be addressed quickly. In D.04-08-046, the Commission concluded that the Jefferson-Martin project should be built promptly in order to reap diversification,

economic, and environmental benefits, even though we found the project would not be needed for reliability purposes until 2007. Our conclusion was based, in part, on CARE's showing regarding environmental benefits of closing Hunters Point and possibly reducing Potrero generation as well. While difficult to quantify, it is clear that ratepayers will benefit due to earlier construction of the Jefferson-Martin project. The Commission finds that CARE's participation in this proceeding has been productive in relation to the award to CARE authorized in today's decision.

#### **6.2.1. Hours Requested**

CARE provided a daily breakdown of hours with a brief description of each activity, but did not allocate the time among issues it addressed in the proceeding. In response to inquiries by the ALJ, CARE provided additional information regarding its compensation request, including a partial allocation of the claimed hours into several categories. While helpful, the additional detail was insufficient to allow a complete categorization and assessment of CARE's compensation request by issue. As discussed later, some of CARE's time is disallowed. We caution CARE to provide adequate detailed supporting documentation, including an allocation of time among issues, in any future compensation requests. Next, we assess the remaining hours submitted for each individual.

##### **6.2.1.1. CARE Site Visit and Motions to Reopen the Record**

As described in Section 5.2, we do not award compensation related to CARE's February 2004 site visit and its unsuccessful motions to reopen the record. Based on our review of CARE's submission, we remove 3.1 hours of Gabrielli's time, 1.5 hours of Volker's time, 7.4 hours of Harris' time, 13.5 hours of Boyd's time, 12.5 hours of Smallwood's time (four of which appear to be travel

time), and all of Wright's time as related to the February 2004 site visit and CARE's subsequent motions.

#### **6.2.1.2. Public Participation Hearings and Commission Meetings**

CARE included in its compensation request time spent preparing for and attending one of the public participation hearings. As we discuss in Section 6.1.1.1, we do not award compensation for time spent by a party related to public participation hearings. In total, 0.8 hours of Gabrielli's time, eight hours of Boyd's time (including 1.5 hours of travel), and eight hours of Brown's time related to the public participation hearing should be removed.

CARE also included in its compensation request time spent identifying non-members to speak at the two Commission meetings during which we considered the Jefferson-Martin project. Just as we do not compensate parties' time devoted to public participation hearings, we exclude 13.5 hours of Boyd's time (including 1.5 hour of travel time) and two hours of Brown's time spent arranging for members of the public to speak at the Commission meetings.

CARE asks for compensation for both Boyd's and Brown's attendance at the August 19, 2004 Commission meeting. It is reasonable to compensate one CARE representative, but not two. We remove five hours of Brown's time spent attending this Commission meeting. Additionally, we find the eight hours Boyd submitted for attendance at the Commission meeting to be excessive, and we remove three hours from the request.

#### **6.2.1.3. Activities Unrelated to This Proceeding**

CARE included in its request a number of hours, largely after reply briefs were filed, for work that was outside the scope and unrelated to this proceeding. These activities related to ongoing events involving the Hunters Point Naval

Shipyard, Federal Energy Regulatory Commission proceedings, a civil rights complaint, the Potrero 115 transmission line project, R.04-08-020, and other matters. We remove 20 hours of Gabrielli's time and 12.25 hours of Boyd's time spent on such activities unrelated to this proceeding.

#### **6.2.1.4. Time Spent on Compensation Issues**

CARE's daily billing records indicate that its NOI and intervenor compensation request required more hours than CARE reported in response to the ALJ's inquiry. Based on the billing records, we allocate 16.9 hours of Gabrielli's time, 10.5 hours of Volker's time, 10.7 hours of Harris' time, and 15.25 hours of Boyd's time to NOI and request issues. In light of the complexity of this proceeding, we award compensation for the full amount of time CARE devoted to compensation issues.

#### **6.2.1.5. Attorneys and Paralegals**

CARE obtained legal services from two law firms during this proceeding, and requests compensation totaling \$37,290.00 for the Gabrielli Law Office and \$58,130.83 for the Law Offices of Stephan C. Volker. CARE also consulted with attorney Franke of CalAware regarding CARE's California Public Records Act request to ORA (now DRA), and requests compensation for 0.5 hour of Franke's time.

Gabrielli's office assisted CARE throughout the proceeding, commencing with CARE's petition to intervene. Gabrielli assisted with preparation of CARE's testimony and advised CARE throughout the evidentiary hearings on strategy, testimony, and cross-examination, but did not attend the hearings. Gabrielli assisted in CARE's first motion to reopen the record.

Volker's office provided legal and professional services beginning February 3, 2004, as the evidentiary hearings were concluding. In addition to

Volker, attorneys Harris and Dent and paralegals Moffitt, Riddle, and Yundt provided services to CARE. Billing records indicate that Volker's office drafted CARE's opening and reply briefs, its second motion to reopen the record, comments on the proposed and alternate decisions, and CARE's request for intervenor compensation.

We are concerned that CARE's use of two law firms resulted in inefficiencies in the preparation of CARE's filings subsequent to its retaining Volker. Volker's billing records indicate significant charges related to research and review of testimony and the record, activities that undoubtedly repeated Gabrielli's earlier efforts to some extent. In addition, while Volker's office drafted CARE's filings subsequent to its retention, the documentation indicates that Gabrielli continued to be consulted regarding such filings. In addition, both Gabrielli and Volker's office reviewed other parties' briefs, the proposed and alternate decisions, and parties' responsive comments. Because of these inefficiencies, we reduce by 20% the hours billed by Volker's firm and Gabrielli's hours after February 3, 2004, the date Volker's firm was retained. With that reduction (which does not apply to time spent on intervenor compensation matters) and other adjustments described in preceding subsections of this order, we approve compensation for the remaining hours submitted for Gabrielli and for Volker's firm. We also allow compensation for Franke's time.

#### **6.2.1.6. Boyd**

Boyd is President of CARE. As a policy expert, he submitted initial and rebuttal testimony regarding community values of the Bayview Hunters Point community and describing existing and potential sources of electricity to serve the San Francisco area. Boyd was not cross-examined, and his testimony was received into evidence by stipulation. Boyd attended most of the evidentiary



hearings and conducted the bulk of CARE's cross-examination of other witnesses. He signed CARE's pleadings until Volker's firm was retained in February 2004. Boyd's participation and testimony made a substantial contribution regarding community values in the Bayview Hunters Point community. CARE asks compensation for 349 hours of Boyd's time.

In preceding subsections, we adjust Boyd's time in several respects. With those adjustments (a reduction in the aggregate of about 50 hours), we find the remainder of Boyd's time to be reasonable.

#### **6.2.1.7. Brown**

Brown submitted short initial and rebuttal testimony<sup>11</sup> addressing existing environmental and public health conditions in the Bayview Hunters Point neighborhood and expressing the community's desire that the Hunters Point and Potrero plants be shut. Brown is a low-income member of CARE who resides in the Bayview Hunters Point community. Brown was not cross-examined, and his testimony was received into evidence by stipulation. Brown's testimony assisted in CARE's substantial contribution regarding community values in the Bayview Hunters Point neighborhood. CARE asks compensation for 346 hours of Brown's time.

CARE requests compensation for Brown's time on more than a full-time basis between November 7, 2003 (the first day for which CARE requests any compensation) and December 19, 2003, and on about a half-time basis between January 5, 2004 and the completion of evidentiary hearings on February 5, 2004. CARE also requests compensation for eight hours of Brown's time later in 2004.

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<sup>11</sup> Brown's initial prepared testimony contained about three pages of text, plus a resolution of the San Francisco Department of Public Health and a press release regarding childhood asthma. Brown's rebuttal testimony consisted of a single page.

For each day, CARE provides a description of Brown's activities and the total number of hours requested for that day. However, CARE does not break down Brown's daily hours by issue or activity. On most days, Brown reports that he engaged in organization and education of the Bayview Hunters Point community, read documents related to the Jefferson-Martin proceeding, and/or discussed matters with Boyd. Brown spent part of four days preparing his testimony. On ten days, Brown reports that he prepared for or attended the evidentiary hearings. Because Brown's daily log typically reports more than one activity each day but does not separate the hours accordingly, we use our discretion in evaluating this portion of CARE's request. We caution CARE that we may disallow future compensation requests if it does not provide adequately detailed supporting documentation.

In a preceding subsection of this order, we exclude 15 hours of Brown's time devoted to public participation hearings and Commission meetings. As discussed further below, we find that most of the remaining hours submitted for Brown should not be compensated because the time was not related to CARE's contribution in this proceeding or was not spent efficiently.

CARE requests compensation for 192 hours of Brown's time on 30 days when, CARE reports, Brown read documents such as the application, the Proponents Environmental Assessment, the FEIR, prehearing conference statements, testimony, and electricity resource and transmission planning documents. CARE's documentation typically reports that Brown spent 6 or 8 hours each day reading one specified document each day and, on about one-third of the days, engaging in other activities including community organizing and testimony preparation. The regularity of the reported hours and activities raises concerns regarding the accuracy of this documentation. Further, we see no

indication that Brown's time reported as devoted to reading the identified documents contributed either to his testimony – which was limited to existing conditions in the Bayview Hunters Point community – or to other aspects of CARE's contribution. We find that CARE should not receive compensation for Brown's extensive reading efforts because they did not assist in CARE's contribution in this proceeding.

CARE indicates that Brown spent 10 hours researching and discussing a Peninsula Medical Center Replacement Project Revised DEIR. Because it does not appear that this document is related to the Jefferson-Martin proceeding or that Brown's activities regarding it assisted in CARE's contribution, we do not grant compensation for this time.

Brown reports that he devoted part of four days to preparation of his direct testimony, in addition to other activities those days. Because Brown's testimony assisted in CARE's substantial contribution, we award compensation for 20 hours as our estimate of the time Brown spent preparing his testimony in this proceeding.

CARE requests compensation for Brown's activities related to community organizing and education on 27 days prior to the evidentiary hearings. Brown reports 177 hours on those days, including unspecified amounts of time spent on other activities on most of the days. While CARE's representation of the concerns of the Bayview Hunters Point community contributed to D.04-08-046, CARE has not established that the extensive amount of community outreach reported by Brown was all related to CARE's participation in this proceeding and necessary to support the contribution that CARE made to D.04-08-046. Some portion of this time was spent on matters not related to this proceeding, including CARE's "ongoing battle over HP Naval Shipyard," as mentioned in

several of the daily entries. Taking these concerns into account, we allow compensation for 30 hours as an estimate of the amount of Brown's time related to community organizing that assisted in CARE's substantial contribution regarding community values in the Bayview and Hunters Point neighborhoods.

Brown reports that he spent time on several days investigating "claims made by opponents to J-M project." Because CARE has not established any connection between Brown's efforts in this respect and CARE's contribution in this proceeding, we do not allow compensation for this time.

Brown indicates that he discussed matters with Boyd on 13 different days prior to the evidentiary hearings and reports 79 hours on those days. Recognizing that some of Brown's time was spent on other activities and that his discussions with Boyd included other topics such as the naval shipyard, we allow compensation for 20 hours as an estimate of Brown's time spent in discussions with Boyd that contributed to CARE's contribution in this proceeding.

Brown attended several days of the evidentiary hearings. CARE's compensation request includes 48 hours for Brown's reported attendance on January 16, 20, 26, 28, and 29, and February 4, 2004,<sup>12</sup> in addition to 23 hours spent on other days preparing for the hearings. In contrast to CARE's claim, the transcripts reveal that Brown attended the evidentiary hearings on January 14, 26, 28, 29 and 30, and February 2, 2004. On those days, following Boyd's cross-examination of ISO, CCSF, and 280 Citizens witnesses, Brown briefly questioned the witnesses by reading prepared questions, often a single question per witness. Brown showed at most a limited ability to deviate from the

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<sup>12</sup> Boyd's time sheets indicate that he drove Brown to the evidentiary hearings on January 12, 16, 20, 26, 28 and 28, and February 2 and 4, 2004.

prepared script, choosing, for example, not to respond to objections. We conclude that Boyd could have asked Brown's prepared questions at least as effectively as Brown. Because Brown's attendance at the evidentiary hearings did not assist in CARE's contribution in other ways, we conclude that Brown's attendance was not efficient, and we exclude the 71 hours of Brown's time related to the evidentiary hearings.

In summary, we allow compensation for 65 hours of Brown's time as an estimate of time spent in preparation of testimony, community outreach, and discussions with Boyd that assisted in CARE's contribution to D.04-08-046.

#### **6.2.1.8. Smallwood**

Smallwood submitted initial testimony regarding potential environmental impacts of PG&E's Route 1B and the "no project" alternative, in which the Hunters Point and Potrero power plants would continue to operate. Smallwood's work focused on biological impacts. No party cross-examined Smallwood, and his prepared testimony was received into evidence by stipulation. CARE requests compensation for 166.5 hours of Smallwood's time, including 9 hours of travel time.

Smallwood's records indicate that he spent 56 hours preparing his testimony. In Section 5, we find that CARE's testimony supplemented the FEIR's analysis regarding biological impacts and made a substantial contribution to D.04-08-046. The time Smallwood spent preparing his testimony is reasonable, and we allow compensation for these hours.

In addition to disagreeing with 280 Citizens' analysis of biological issues, CARE spent significant time prior to and during the hearings challenging the credibility and ethics of 280 Citizens' witness Murphy, who testified regarding biological impacts of route alternatives. CARE cross-examined Murphy and

introduced several exhibits containing news articles and other sources critical of Murphy's past activities. However, CARE did not pursue its assertions regarding Murphy's credibility.

The FEIR found, similar to Murphy's and 280 Citizens' position, that biological impacts created by trenching through serpentine grassland could be mitigated to less than significant levels. The testimony of both Murphy and Smallwood, in addition to the FEIR and other evidence, assisted us in understanding potential biological impacts of the PUA and other route alternatives. CARE's efforts in questioning Murphy's credibility were not helpful in our consideration of biological issues, did not assist in CARE's contribution in this proceeding, and do not merit compensation.

According to CARE's documentation, Smallwood logged 43 hours (including about two hours of travel time) reviewing Murphy's published papers and court transcripts and otherwise researching Murphy's "past behavior as a biological consultant." Smallwood also spent 29 hours preparing for and participating in Murphy's cross-examination<sup>13</sup> and reviewing the resulting transcript. The remainder of Smallwood's time was spent on preparation of CARE's brief. While it is difficult to isolate their time devoted to this effort, both Gabrielli and Boyd also spent time on CARE's efforts to challenge Murphy's credibility.

We recognize that knowledge of Murphy's prior work may have had some usefulness as CARE developed its understanding of Murphy's testimony in this proceeding. However, it appears that Smallwood's extensive research into Murphy's prior activities was primarily for the purpose of attacking Murphy's

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<sup>13</sup> During CARE's cross-examination of Murphy, Boyd asked questions about Murphy's credentials and Smallwood asked more substantive questions.

credibility. Lacking quantification of the amount of time Gabrielli and Boyd devoted to this effort, we find that 43 hours of Smallwood time spent researching Murphy's past activities to be unproductive, and remove this time from CARE's compensation request. With the exception of this time and the adjustment described in Section 6.2.1.2 related to CARE's February 2004 site visit, we find the remainder of Smallwood's hours to be reasonable.

#### **6.2.1.9. Powers**

Powers submitted prepared testimony comparing potential environmental impacts of PG&E's Route 1B for the Jefferson-Martin project and the "no project" alternative, which would involve continued generation from the Hunters Point plant. Powers was not cross-examined, and his testimony was received into evidence by stipulation. We find that Powers' testimony contributed to our determination on project timing, and overall to D.04-08-046 and the 10.5 hours he spent in preparation is reasonable.

#### **6.2.1.10. Sarvey**

CARE requests compensation for expert Sarvey, who previously assisted CARE regarding several energy projects before the California Energy Commission. Sarvey reviewed the FEIR, testimony of other parties, and other related documents; prepared cross-examination questions; and consulted with CARE on a daily basis throughout the hearings. While CARE requests compensation for 83.6 hours for Sarvey, its day-by-day documentation of Sarvey's time totals only 77.4 hours. With this adjustment, we find that Sarvey's time is reasonable and should be compensated.

#### **6.2.2. Market Rate Standard**

CARE maintains that the reasonableness of its proposed hourly rates is supported by the prevailing market rates for attorneys of like experience and for

experts practicing in their representative fields. We address the requested hourly rates below.

**6.2.2.1. Law Offices of Stephan C. Volker**

Volker is a 1974 graduate of U.C. Davis School of Law, associate attorney Dent is a 2002 graduate of U.C. Berkeley School of Law, associate attorney Harris is a 2003 graduate of U.C. Davis School of Law, law clerk Moffitt is a 2004 graduate of U.C. Berkeley School of Law, law clerk Riddle is a 2004 graduate of U.C. Berkeley School of Law, and Yundt is a third-year student at University of San Francisco School of Law.

Volker has 30 years' experience practicing environmental law in California. CARE submits that the market value of Volker's services is between \$400 and \$500 per hour, but requests an award of \$400 per hour for work performed in 2004. CARE also asserts that the 2004 hourly rates of \$225 requested for Harris, \$275 for Dent, \$120 for law clerks Moffit and Yundt, and \$90 for law clerk Riddle, are all within the current market range for their respective levels of experience.

We previously awarded an hourly rate of \$250 for Volker for work performed in both 2002 and 2003.<sup>14</sup> With an 8% upward adjustment, consistent with Resolution ALJ-184, we find an hourly rate of \$270 for Volker for work performed in 2004 is reasonable. CARE has not presented sufficient evidence to justify an increase above this amount.

We previously have not awarded hourly rates for Dent and Harris. For comparison, we consider the rates awarded in other cases to attorneys with comparable experience. In D.05-04-049, we awarded \$190 per hour rates for

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<sup>14</sup> D.05-02-003 and D.03-01-058.



junior associates for work performed in their fifth year of experience, \$180 for work performed in their fourth year of experience, and \$170 for work performed in the second and third year of experience for the years 2001 through 2004. In other cases, we have awarded higher hourly rates to attorneys who have recently graduated from law school. For example, in D.04-08-025, we awarded attorney Bonham, who had practiced law since 2000, an hourly rate of \$185 for her work in 2001, \$195 for 2002, and \$220 for 2003. In D.04-02-026, we granted an hourly rate of \$175 per hour to attorney Schue for work performed in her third year of legal practice in 2003. In addition, in D.04-05-050 and D.04-05-048, we awarded an hourly rate of \$190 to attorney Edington of TURN for work performed in 2003, which was his first year of legal practice.

We will grant Dent an hourly rate of \$190 for her work as a second year associate in 2004. We base this hourly rate on an average of the hourly rates previously awarded to attorneys Bonham and Schue.

We will grant Harris an hourly rate of \$190 for work performed as a first year associate in 2004. This rate is consistent with the amount awarded to first year attorneys employed by TURN in D.04-05-050 and D.04-05-048.

We also previously have not addressed hourly rates for law clerks Moffitt, Riddle, and Yundt. In D.03-05-065, we granted an hourly rate of \$95 for work performed by law clerk Goodson in 2002, during the summer between her second and third years of law school. Based on D.03-05-065, the requested hourly rate of \$90 for law clerk Riddle, who graduated from law school in 2004, for work performed in 2004 is reasonable. Law clerk Moffitt is a law school graduate, and Yundt a third-year law student. The requested hourly rate of \$120 for Moffitt and Yundt is overly high, and instead we grant them an hourly rate of \$105.

#### **6.2.2.2. Gabrielli Law Office**

CARE requests an hourly rate of \$300 for attorney Gabrielli for work performed in 2003-04. We previously have not established an hourly rate for Gabrielli, who has practiced law since 1979.

CARE has not provided detailed information regarding Gabrielli's qualifications and experience that would be helpful in establishing an hourly rate. In D.05-06-024, we awarded attorney Beckman, a senior attorney at NRDC, who had been practicing law for 15 years and had extensive environmental law experience, an hourly rate of \$275 for work performed in 2002, 2003, and 2004. In D.04-05-010, we awarded attorney Spellicsy, the former general counsel for the Planning and Conservation League, who had 18 years of legal experience, an hourly rate of \$250 for work performed in 2002. Although Gabrielli has more years in legal practice than either Spellicsy or Beckman, he appears not to have substantial experience practicing before the Commission and has not demonstrated extensive subject matter expertise that would justify a higher hourly rate. Moreover, although Gabrielli assisted CARE with motions, prepared CARE's testimony, and advised CARE throughout the hearing on strategy, testimony and cross-examination, Gabrielli did not appear at the hearing. Based on his limited role in the litigation, we award Gabrielli an hourly rate of \$250 for his work in 2003, and \$270 for 2004. The latter rate is the same that we award Volker for 2004 work.

#### **6.2.2.3. Francke**

CARE requests an hourly rate of \$300 for Francke, general counsel and founder of Californians Aware, a nonprofit corporation which supports open government, free speech and freedom of the press. We previously have not established an hourly rate for Francke.

Francke graduated from law school in 1979. Before founding Californians Aware, he was legal counsel for the California Newspaper Publishers Association from 1980 to 1990 and served as Executive Director and General Counsel of the California First Amendment Coalition from 1990-2004. He has previously taught courses on media law at Stanford University and served on the Task Force on Privacy and Public Access, appointed to advise the standing committee on court technology at the California Judicial Council from 1996-97. He is also a former member of the Advisory Committee for the National Center for Courts and the Media at the University of Nevada, Reno. Based on Francke's background, qualifications, and experience, we find that an hourly rate of \$270 is reasonable for the brief consultation Franke provided to CARE in 2004.

#### **6.2.2.4. Boyd**

CARE requests a rate of \$150 per hour for Boyd, CARE's President, and states it is reasonable and reflects the market value of his unique contributions to the proceeding. We previously have not established an hourly rate for Boyd.

Boyd has a Bachelor's degree in physics, and has worked as an engineer from 1982 to 2002. In this proceeding, he acted more as an advocate for the Bayview Hunters Point community than as an engineer.

In D.04-09-050, we granted an hourly rate of \$100 per hour for Rochelle Becker, a policy expert and advocate for San Luis Obispo Mothers for Peace, based on her contributions to D.04-05-055, PG&E's Test Year 2003 General Rate Case. Becker holds a business degree and has more than 20 years of experience representing San Luis Obispo Mothers for Peace in Commission and other administrative agency proceedings and attending local meetings on nuclear safety issues. We believe that Boyd's role as a community advocate in this case is roughly comparable to that of Becker's participation compensated in

D.04-05-055. Based on the hourly rate of \$100 previously awarded to Becker for work performed in 2001-2004, we believe that an hourly rate of \$100 for Boyd's work is appropriate for 2003 and 2004.

#### **6.2.2.5. Brown**

CARE requests an hourly rate of \$125 for Brown, a CARE community representative in Bayview Hunters Point. We previously have not established an hourly rate for Brown.

Brown attended San Francisco City College. He moved to Bayview Hunters Point in 1996 and has been a community activist and advocate there since 1997.

Our previous decisions provide limited guidance regarding an appropriate hourly rate for community activists or advocates with Brown's experience. In D.04-09-050, we awarded San Luis Obispo Mothers for Peace hourly rates of \$35 per hour for time spent by Zamek, Von Ruden, and Rafferty for research and \$50 per hour for time spent by citizens Wagner and Schumann to prepare their declarations. We noted that each of these individuals had several years of experience working with San Luis Obispo Mothers for Peace or other local community organizations and that these hourly rates were less than those commonly awarded to recent college graduates without any experience. Based on D.04-09-050, we find that an hourly rate of \$50 for Brown is reasonable for 2003 and 2004.

#### **6.2.2.6. Smallwood, Powers, and Sarvey**

CARE maintains the \$200/hour rate requested for Smallwood, Powers, and Sarvey is reasonable and within the market range for persons with their experience. We previously have not established hourly rates for them. CARE

did not provide information regarding hourly rates awarded to other professionals with comparable experience.

Smallwood has Ph.D. and M.S. degrees in Ecology, and a B.S. in anthropology. He has been a Senior Ecologist with BioResource Consultants since 1999, and a System Ecologist with the Institute for Sustainable Development since 1995. He is also a part-time faculty member at California State University at Sacramento, and has taught courses in contemporary environmental issues, natural resources conservation, mammalogy, behavioral ecology, and ornithology. He has published in his field and has given public presentations of research results at professional meetings.

Smallwood's background, qualifications, and experience are similar to those of hydrologist Purkey and biologist Trush, both of whom were awarded an hourly rate of \$200 for work performed in 2002 in D.04-08-025. Like Smallwood, Purkey and Trush both hold M.S. and Ph.D. degrees. Purkey is a senior hydrologist for the National Heritage Institute. Trush is an adjunct professor at the Fisheries Department at California State University at Humboldt, and president of a consulting firm that specializes in evaluation of the downstream impacts of dams and the planning and implementation of river restoration plans. Based on the \$200 hourly rates awarded to Trush and Purkey for work performed in 2002, the requested hourly rate of \$200 for Smallwood for work performed in 2003 and 2004 is reasonable, and we approve it here.

Powers holds a B.S. degree in mechanical engineering and a masters degree in public health – environmental sciences. He is a registered professional mechanical engineer in California. Since 1994, he has worked as a consultant through Powers Engineering in San Diego. He has approximately 20 years of experience in his field.

Powers' background, qualifications, and experience are similar to those of engineer Frech, who holds a B.S. degree in mechanical engineering and an advanced degree, and engineer Frandsen, who holds a B.S. degree in mechanical engineer and an M.B.A., is a licensed professional environmental engineer, and has over 15 years of experience in his field. In D.02-11-019, we granted an hourly rate of \$180 to engineer Frech for work performed in 2000-2002. We have also approved the requested hourly rate of \$150 for Frandsen for his work on behalf of 280 Citizens in this proceeding.

In view of the hourly rate of \$180 awarded to engineer Frech for his work in 2002, we find that the requested hourly rate of \$200 for Powers for work performed in 2003 is excessive. An hourly rate of \$185 is reasonable for Powers for 2003.

Sarvey holds a bachelor's degree in business administration and an M.B.A. from California State University at Hayward. He has worked with CARE on a number of energy-related projects before the California Energy Commission from 2001 to 2004. He also served as a member of the Advisory Board for the San Joaquin Valley Air Pollution Control district in 2000 and 2001.

In D.04-05-010, we granted an hourly rate of \$110 to Tim McRae, Director of Special Projects for the Planning and Conservation League in 2003 and 2004. McRae holds both a bachelors and a masters' degree and at that time had approximately four years of experience as an advocate. We stated that McRae's background, qualifications, and experience were comparable to those of Devra Bachrach, a staff scientist at NRDC, to whom we had previously awarded an hourly rate of \$100 for his work in R.02-10-001 in 2003. Bachrach also holds a bachelors and an advanced degree and at that time had approximately four years of experience.

Sarvey's background, qualifications, and experience are comparable to those of McRae and Bachrach. We therefore find that the requested hourly rate of \$200 for Sarvey is unreasonably high and reduce his hourly rate for work performed in 2004 to \$110 per hour.<sup>15</sup>

### **6.2.3. Expenses**

After adjustment for double-counted expenses, CARE requests compensation for expenses totaling \$991.80, including copying, postage, travel, and other expenses, as detailed in Table 6. We remove \$111.54 of expenses related to CARE's February 2004 site visit. We also remove \$53.96 spent on lunches during the evidentiary hearings, since we do not normally compensate such expenses, and because we do not award compensation for Brown's attendance at the hearings. With these adjustments, CARE's expenses are commensurate with the work performed. We find the remaining \$826.30 reasonable.

### **6.3. WEM's Request**

WEM's initial request for compensation totaled \$56,988.20. In its April 1, 2005 supplement, WEM requests an additional \$48,663, stating its total compensation request is \$105,651.20. Correcting for computational errors, we calculate that WEM's request at \$106,325.70, as follows:

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<sup>15</sup> We note that this hourly rate is also more consistent with the \$100 hourly rate previously awarded to Becker of San Luis Obispo Mothers for Peace in D.04-09-050. Although Sarvey holds an advanced degree and Becker has only a bachelor's degree, Becker has at least 20 years of experience in representing Mothers for Peace in Commission and other administrative proceedings, as compared with Sarvey's three years of experience working with CARE on issues before the California Energy Commission.

<b>Table 7</b>				
<b>WEM Compensation Request</b>				
	<u>Year</u>	<u>Rate</u>	<u>Hours</u>	<u>Total</u>
<b>INITIAL REQUEST</b>				
<u>Professional Services</u>				
Barbara George	2003	\$150	91.75	\$ 13,762.50
"	2004	150	256.00	38,400.00
<u>Travel and Intervenor Compensation</u>				
Barbara George	2003	75	6.25	468.75
"	2004	75	42.75	3,206.25
<u>Expenses</u>				
Copying				857.57
Postage				160.02
Travel expenses				208.11
Subtotal expenses				1,225.70
Total Initial Request				\$ 57,063.20
<b>SUPPLEMENTAL REQUEST</b>				
<u>Professional Services</u>				
Barbara George	2003	150	121.75	18,262.50
Maurice Campbell	2003	200	155.00	31,000.00
Total Supplemental Request				\$ 49,262.50
<b>TOTAL</b>				<b>\$106,325.70</b>

WEM did not quantify the benefits of its participation to ratepayers. As explained in Section 5.3, WEM's participation helped clarify the record regarding the impact of the Jefferson-Martin project on the load serving capability of the transmission system. This enhancement of the record assisted the Commission in evaluating need for the Jefferson-Martin project and, thus, made a substantial contribution to D.04-08-046. It is difficult to assign specific ratepayer savings to



WEM's contribution in this proceeding. Nonetheless, it is clear that ratepayers have benefited from WEM's participation because it assisted the Commission in evaluating need for the Jefferson-Martin project. The Commission finds that WEM's participation in this proceeding has been productive.

### **6.3.1. Hours Requested**

Barbara George, Executive Director of WEM, submitted testimony, cross-examined other parties' witnesses, and filed briefs in this proceeding. The ALJ denied a PG&E motion to strike George's testimony, and her testimony was received into evidence. George was not cross-examined.

In Section 5.3, we find that WEM made a significant contribution to D.04-08-046 in that WEM's participation assisted the Commission in evaluating need for the Jefferson-Martin project, but that WEM did not make a substantial contribution with respect to energy efficiency, renewable energy, project costs, or its unsuccessful motion to reopen the record. WEM's compensation request provides a daily breakdown of George's hours with a brief description of each activity. While WEM's request does not allocate the claimed hours among the issues addressed in WEM's showings, its supporting documentation provides sufficient detail for us to determine an appropriate amount of compensation in light of WEM's limited contribution to D.04-08-046.

#### **6.3.1.1. WEM Motion to Reopen the Record**

Based on our review of WEM's submission, we remove 15.25 hours of George's time in 2004, including time reviewing an ISO study for the Large Core subgroup, as related to WEM's unsuccessful motion to reopen the record.

#### **6.3.1.2. Time Spent on Compensation Issues**

WEM identifies that George spent 25.25 hours drafting and filing WEM's intervenor compensation request. Based on George's daily records, we allocate an additional hour of George's time in 2003 as an estimate of the time she spent preparing the NOI. With that adjustment, we award compensation for the 26.25 hours George spent on compensation issues.

#### **6.3.1.3. Travel**

WEM requests compensation for 24.25 hours of travel time for George. Consistent with D.05-01-007, we do not compensate WEM for travel undertaken to file documents, when a messenger service would have been more efficient. After removing 2.25 hours claimed for this purpose, we find the remaining 22 hours of George's travel time reasonable.

#### **6.3.1.4. Remainder of November 1, 2004 Compensation Request**

In its initial request, WEM seeks compensation for 331.5 hours of George's time in addition to hours addressed in the two preceding subsections. We must determine how much of this time was associated with WEM's substantial contribution to the Commission's assessment of need for the Jefferson-Martin project.

WEM's primary concern in this proceeding related to transmission constraints that could reduce the ability of the Jefferson-Martin project to increase the load serving capability of the transmission system in the area. While WEM did not allocate its time and costs among issues, it is clear that the bulk of George's time was devoted to this topic. We use our discretion to estimate that George spent 80 hours on issues on which WEM did not substantially contribute, namely, energy efficiency, renewable energy, and project costs. We remove these

80 hours and caution WEM that we may make larger disallowances in the future if it again fails to allocate its time and costs among issues.

Regarding the remaining 251.5 hours, we share some of PG&E's concerns regarding the efficiency of WEM's participation in this proceeding. George's cross-examination of other parties' witnesses was repetitive and inefficient, even with repeated curtailments by the ALJ. While George's efforts made a substantial contribution to D.04-08-046, much of the useful information obtained through cross-examination could have been elicited more efficiently through discovery or other means outside of the hearing room. Much of the lengthy cross-examination appears to have occurred due to George's misunderstandings of PG&E and ISO transmission studies and how those analyses had been refined over time. In addition to inefficient cross-examination, George's confusion regarding the PG&E and ISO analyses was reflected in her testimony and briefs. We reduce George's time by 50 hours to reflect the inefficiency of George's presentation. We find reasonable the remaining 201.5 hours of George's time submitted in WEM's November 1, 2004 compensation request.

#### **6.3.1.5. April 1, 2005 Supplemental Request for Compensation**

WEM's supplement seeks compensation for an additional 121.75 hours of George's time and for 155 hours for Campbell, whom WEM characterizes as a technical consultant for WEM.<sup>16</sup> WEM states that the supplemental request for George represents time that was submitted in R.01-08-028, an energy efficiency rulemaking, but for which the Commission denied compensation in D.05-01-007.

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<sup>16</sup> In time records attached to the April 1, 2005 supplemental request, George refers to Campbell as a community member. Campbell's statement of qualifications indicates that he is a community activist. Campbell has an M.B.A. and prior work experience in the computer industry.

WEM previously had not requested compensation for Campbell in either R.01-08-028 or this proceeding. WEM's supplemental request provides a daily breakdown of George's and Campbell's hours included in the request, with a brief description of each activity.

In the supplement, WEM describes its work during 2003. WEM states that it "had its hands full" with the energy efficiency rulemaking and, while interested in the Jefferson-Martin project, "we still did not feel we could handle another proceeding" (Third Supplement Request at 8). WEM describes that it held two workshops<sup>17</sup> in fall 2003 "to train community members how to intervene at the [Commission]" and that George "discussed the Jefferson Martin proceeding as an example of a proceeding in which community members could intervene." WEM describes that Lynne Brown, Jesse Mason, and others attended the workshops and expressed a desire to have community representation in the Jefferson-Martin proceeding. WEM states that it agreed to intervene with Brown as its client. After Brown decided to work with CARE, Mason and his sister Dorothy Edwards became WEM's clients.

WEM asserts that its efforts submitted for compensation in R.01-08-028 were also applicable to the Jefferson-Martin project but that WEM did not include those hours in its initial Jefferson-Martin compensation request to avoid double-billing. WEM explains that, after D.05-01-007 denied compensation for WEM's time subsequent to D.03-04-055, WEM submitted these hours for George, as well as Campbell's hours, in its third supplement in this proceeding.

Much of George's time for which compensation was denied in R.01-08-028 involved contacting community members and others with regard to community

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<sup>17</sup> WEM requests compensation for these workshops, which George's time sheets characterize as environmental justice workshops.

efforts to close the Hunters Point power plant. In D.05-01-007, we found that WEM's references to the pilot Peak Energy Program in its time entries appeared to be an effort to connect general community activism with respect to the power plant to the energy efficiency proceeding. We found the connection indirect at best and denied compensation. We commented that several of WEM's time entries reflected work related to the Jefferson-Martin project and that such work was not compensable in the energy efficiency rulemaking.<sup>18</sup>

WEM has not established that its time submitted in the third supplement assisted in its contribution in this proceeding. As D.05-01-007 notes, much of George's time now before us in WEM's third supplement was related to community organizing to close the Hunters Point power plant. The connection of such activities to the Jefferson-Martin proceeding is even more tenuous than to the energy efficiency rulemaking, since at that time WEM was not considering participation in this proceeding. We find that such activities did not assist in WEM's substantial contribution in this proceeding. In addition, to the extent hours in the supplement were related to energy efficiency, they are not compensable in this proceeding since WEM did not make a substantial contribution with respect to the inclusion of energy efficiency in assessing need for the Jefferson-Martin project.

We find that none of the hours in WEM's supplemental request assisted in WEM's clarification of the record in this proceeding regarding the load serving capability of the transmission system. In the course of activities aimed at hastening closure of the Hunters Point plant, WEM attended meetings in 2003 at which transmission issues and PG&E's plans to pursue the Jefferson-Martin

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<sup>18</sup> In its third supplement, WEM mischaracterizes D.05-01-007 as determining that all of the hours rejected in that decision were applicable to the Jefferson-Martin project.

project were discussed. WEM became aware of the relevance of transmission constraints and the possible contribution that the Jefferson-Martin line could make toward closure of the Hunters Point plant. However, as WEM acknowledges, WEM viewed its activities during that time as related primarily to energy efficiency and closure of the Hunters Point plant. The submitted time records confirm that only after WEM decided to intervene in the Jefferson-Martin proceeding did George begin to review documents specific to this proceeding. That time was included in WEM's initial compensation request, which we assess in the previous subsection. The fact that WEM became aware of transmission issues and discussed the Jefferson-Martin project at a workshop earlier in 2003 is not sufficient to find that those hours assisted in WEM's substantial contribution in this proceeding.

WEM did not mention Campbell in any of its filings in this proceeding prior to the third supplemental request.<sup>19</sup> Campbell's time records indicate that his activities focused primarily on energy efficiency and environmental justice issues, with some attention paid to transmission issues relevant to closure of the Hunters Point plant and brief and peripheral attention paid to Jefferson-Martin. On August 11, 2003, he drafted a Community First Coalition (CFC) position on San Francisco energy issues, including Hunters Point, Jefferson-Martin, and San Francisco's proposed combustion turbines. He attended a CFC meeting on September 26, 2003 at which, among other things, the Jefferson-Martin project was discussed. Campbell briefly reviewed the Jefferson-Martin EIR on-line on October 16, 2003 and forwarded the Jefferson-Martin application and PEA to George on November 11, 2003. Campbell's hours submitted in the supplement

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<sup>19</sup> We note that WEM could have included Campbell's hours in its initial compensation request in this proceeding without "double billing" with its then-pending intervenor compensation request in R.01-08-028.

end in early December 2003. George's time records do not indicate that she conferred with Campbell in developing WEM's position in this proceeding. We find that Campbell's and George's time records do not support WEM's assertion that Campbell's efforts assisted in WEM's contribution to D.04-08-046. In summary, we conclude that none of George's and Campbell's time included in WEM's third supplemental request assisted in WEM in its substantial contribution to D.04-08-046.

### **6.3.2. Hourly Rates**

WEM requests compensation for George at \$150 per hour in 2003 and 2004. WEM claims half that rate for travel related to the proceeding and for preparation of its intervenor compensation request. We previously approved this same rate for George in D.05-01-007, and adopt it here for both years.

### **6.3.3. Expenses**

WEM requests compensation for expenses totaling \$1,225.70, including copying, postage, and travel expenses, as detailed in Table 7. WEM's reported expenses are commensurate with the work performed and we accept them as reasonable. We note that WEM submits bills for four fuel purchases, which we allow in this instance. We prefer to compensate automobile usage at the standard federal rate for mileage and instruct WEM that any future intervenor compensation requests should be consistent with this practice.

## **7. Awards**

As set forth in the tables below, we award \$718,501.61 to 280 Citizens, \$126,713.40 to CARE, and \$35,125.70 to WEM.

**Table 8**

### **Compensation Awarded to 280 Citizens**

<u>Attorneys</u>	<u>Year</u>	<u>Rate</u>	<u>Hours</u>	<u>Total</u>
O'Neill	2002	\$315.00	9.50	\$ 2,992.50

O'Neill	2003	435.00	110.82	48,206.70
O'Neill	2004	470.00	336.00	157,920.00
Hilen	2003	305.00	238.27	72,672.35
Hilen	2004	315.00	374.06	117,828.90
Gray	2003	285.00	196.98	56,139.30
Gray	2004	310.00	166.07	51,481.70

**Paralegals**

Nielsen	2003	145.00	6.10	884.50
Nielsen	2004	155.00	14.19	2,199.45
Pau	2003	135.00	15.65	2,112.75
Pau	2004	145.00	3.67	532.15

**Experts**

Stephenson	2003	200.00	30.67	6,134.00
Stephenson	2004	210.00	39.67	8,330.70
Tassainer	2003	200.00	168.00	33,600.00
Tassainer	2004	210.00	83.50	17,535.00
Frandsen	2003-2004	150.00	55.50	8,325.00
Vance	2003-2004	135.00	45.05	6,081.75
Murphy	2003	210.00	6.00	1,260.00
Murphy	2004	220.00	28.00	6,160.00
Shields	2003-2004	225.00	280.50	63,112.50

**Intervenor Compensation and Travel Time**

O'Neill	2002	157.50	0.30	47.25
O'Neill	2003	217.50	7.10	1,544.25
O'Neill	2004	235.00	19.20	4,512.00
Hilen	2003	152.50	4.10	625.25
Hilen	2004	157.50	48.80	7,686.00
Gray	2003	142.50	20.20	2,878.50
Gray	2004	155.00	8.00	1,240.00
Pau	2003	67.50	0.20	13.50
Tassainer	2003	100.00	24.00	2,400.00
Tassainer	2004	105.00	16.50	1,732.50

<b>Subtotal</b>				<b>\$ 686,169.50</b>
Expenses				32,332.11
<b>TOTAL</b>				<b>\$ 718,501.61</b>



**Table 9**  
**Compensation Awarded to CARE**

<u>Attorneys</u>	<u>Year</u>	<u>Rate</u>	<u>Hours</u>	<u>Total</u>
Gabrielli	2003	\$250.00	29.80	\$ 7,450.00
Gabrielli	2004	270.00	52.86	14,272.20
Volker	2004	270.00	39.92	10,778.40
Harris	2004	190.00	81.92	15,564.80
Dent	2004	190.00	7.78	1,478.20
Franke	2004	270.00	0.50	135.00
 <u>Law Clerks</u>				
Moffitt	2004	105.00	23.60	2,478.00
Riddle	2004	90.00	3.20	288.00
Yundt	2004	105.00	12.80	1,344.00
 <u>CARE Representatives</u>				
Boyd	2003-2004	100.00	299.75	29,975.00
Brown	2003-2004	50.00	65.00	3,250.00
 <u>Experts</u>				
Smallwood	2003-2004	200.00	108.00	21,600.00
Powers	2003	185.00	10.50	1,942.50
Sarvey	2004	110.00	77.40	8,514.00
 <u>Travel and Intervenor Compensation</u>				
Volker	2004	135.00	10.50	1,417.50
Gabrielli	2003	125.00	1.10	137.50
Gabrielli	2004	135.00	15.80	2,133.00
Harris	2004	95.00	10.70	1,016.50
Boyd	2003-2004	50.00	36.25	1,812.50
Smallwood	2004	100.00	3.00	300.00
 <b>Subtotal</b>				<b>\$125,887.10</b>
Expenses				\$ 826.30
 <b>TOTAL</b>				 <b>\$ 126,713.40</b>

**Table 10**  
**Compensation Awarded to WEM**

	<u>Year</u>	<u>Rate</u>	<u>Hours</u>	<u>Total</u>
George	2003	\$150.00	55.20	\$ 8,280.00
George	2004	150.00	146.30	21,945.00
<b><u>Travel and Intervenor Compensation</u></b>				
George	2003	75	6.25	468.75
George	2004	75	42.75	3,206.25
Expenses				\$ 1,225.70
<b>TOTAL</b>				<b>\$ 35,125.70</b>

Consistent with previous Commission decisions, we order that interest be paid on the award amounts (at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release H.15) commencing the 75th day after each intervenor filed its compensation request and continuing until PG&E makes full payment of the award.

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. Each intervenor's records should identify specific issues for which it 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. Assignment of Proceeding**

Dian M. Grueneich is the Assigned Commissioner, and Charlotte F. TerKeurst is the assigned ALJ in this proceeding.

## **8. Comments on Draft Decision**

This is an intervenor compensation matter. Pursuant to Rule 77.7(f)(6) of the Commission's Rules of Practice and Procedure, the otherwise applicable 30-day period for public review and comment is waived.

## **Findings of Fact**

1. 280 Citizens, CARE, and WEM have met all the procedural requirements necessary to claim compensation in this proceeding.
2. 280 Citizens, CARE, and WEM each made a substantial contribution to D.04-08-046, as described herein.
3. The requested hourly rates for attorneys and experts, and related expenses, for 280 Citizens, CARE, and WEM, as adjusted herein, are reasonable when compared to the market rates for persons with similar training and experience.
4. The total of the reasonable compensation for 280 Citizens is \$718,501.61.
5. The total of the reasonable compensation for CARE is \$126,713.40.
6. The total of the reasonable compensation for WEM is \$35,125.70.
7. The appendix to this decision summarizes today's awards.

## **Conclusions of Law**

1. 280 Citizens, CARE, and WEM have fulfilled the requirements of Pub. Util. Code §§ 1801-1812, which govern awards of intervenor compensation, and are entitled to intervenor compensation for their claimed compensation, as adjusted herein, incurred in making substantial contributions to D.04-08-046.

2. 280 Citizens should be awarded \$718,501.61 for its contribution to D.04-08-046.

3. CARE should be awarded \$126,713.40 for its contribution to D.04-08-046.

4. WEM should be awarded \$35,125.70 for its contribution to D.04-08-046.

5. Public review and comment regarding today's decision should be waived.

6. This order should be effective today so that 280 Citizens, CARE, and WEM may be compensated without further delay.

7. This proceeding should be closed.

## **O R D E R**

### **IT IS ORDERED** that:

1. 280 Corridor Concerned Citizens (280 Citizens) is awarded \$718,501.61 as compensation for its substantial contributions to Decision (D.) 04-08-046.

2. Californians for Renewable Energy (CARE) is awarded \$126,713.40 for its substantial contributions to D.04-08-046.

3. Women's Energy Matters (WEM) is awarded \$35,125.70 for its substantial contributions to D.04-08-046.

4. Within 30 days of the effective date of this decision, Pacific Gas and Electric Company shall pay 280 Citizens, CARE, and WEM the respective awards. 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 December 21, 2004 for CARE, and January 5, 2005 for 280 Citizens and WEM, the 75<sup>th</sup> day after the filing date of each party's request for compensation, and continuing until full payment is made.

5. Public review and comment regarding today's decision is waived.
6. Application 02-09-043 is closed.

This order is effective today.

Dated April 13, 2006, at San Francisco, California.

MICHAEL R. PEEVEY  
President  
GEOFFREY F. BROWN  
DIAN M. GRUENEICH  
JOHN A. BOHN  
RACHELLE B. CHONG  
Commissioners

**APPENDIX****Compensation Decision Summary Information**

<b>Compensation Decision:</b>	D.06-04-018	
<b>Contribution Decision(s):</b>	D.04-08-046	
<b>Proceeding(s):</b>	A.02-09-043	
<b>Author:</b>	TerKeurst	
<b>Payer(s):</b>	Pacific Gas and Electric Company	

**Intervenor Information**

<b>Intervenor</b>	<b>Claim Date</b>	<b>Amount Requested</b>	<b>Amount Awarded</b>	<b>Multiplier ?</b>	<b>Reason Change/Disallowance</b>
280 Citizens	10/22/2004	\$1,034,755.13	\$718,501.61	NO	Reductions in compensable hours, permitted expenses, travel time, and requested hourly rates
WEM	10/22/2004	\$105,325.70	\$35,125.70	NO	Reductions in compensable hours and travel time
CARE	10/7/2004	\$254,960.13	\$126,713.40	NO	Reductions in requested hourly rates and compensable hours

**Advocate Information**

<b>First Name</b>	<b>Last Name</b>	<b>Type</b>	<b>Intervenor</b>	<b>Hourly Fee Requested</b>	<b>Year Hourly Fee Requested</b>	<b>Hourly Fee Adopted</b>
Ed	O'Neill	Attorney	280 Citizens	\$315	2002	\$315
"	"	"	"	\$435	2003	\$435
			"	\$470	2004	\$470
Christopher	Hilen	Attorney	280 Citizens	\$330	2003	\$305
"	"	"	"	\$360	2004	\$315
Jeffrey	Gray	Attorney	280 Citizens	\$285	2003	\$285
"	"	"	"	\$310	2004	\$310
Barbara	Nielsen	Paralegal	280 Citizens	\$145	2003	\$145
"	"	"	"	\$155	2004	\$155
Judy	Pau	Paralegal	280 Citizens	\$135	2003	\$135
"	"	"	"	\$145	2004	\$145

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
William	Stephenson	Engineer	280 Citizens	\$225	2003	\$200
"	"	"	"	\$225	2004	\$210
Gary	Tassainer	Engineer	280 Citizens	\$210	2003	\$200
"	"	"	"	\$210	2004	\$210
Rick	Frandsen	Engineer	280 Citizens	\$150	2003	\$150
"	"	"	"	\$150	2004	\$150
Lyle	Vance	Engineer	280 Citizens	\$135	2003	\$135
"	"	"	"	\$135	2004	\$135
Dennis	Murphy	Biologist	280 Citizens	\$225	2003	\$210
"	"	"	"	\$225	2004	\$220
Jeffery	Shields	Electricity Policy Expert	280 Citizens	\$225	2003	\$225
"	"	"	"	\$225	2004	\$225
Stephan	Volker	Senior Attorney	CARE	\$400	2004	\$270
Gretchen	Dent	Attorney – 2 <sup>nd</sup> Year Associate	CARE	\$275	2004	\$190
Joshua	Harris	Attorney – 1 <sup>st</sup> Year Associate	CARE	\$225	2004	\$190
Melissa	Moffett	Law clerk	CARE	\$120	2004	\$105
Marnie	Riddle	Law Clerk	CARE	\$90	2004	\$90
Scott	Yundt	Law Clerk	CARE	\$120	2004	\$105
John	Gabrielli	Senior Attorney	CARE	\$300	2003	\$250
"	"	"	"	\$300	2004	\$270
Terry	Franke	Senior Attorney	CARE	\$300	2004	\$300
Michael	Boyd	Community Advocate	CARE	\$150	2003-2004	\$100
Lynne	Brown	Community Advocate	CARE	\$125	2003-2004	\$50
Shawn	Smallwood	Ecologist	CARE	\$200	2003-2004	\$200
Bill	Powers	Engineer	CARE	\$200	2003	\$185
Bob	Sarvey	Analyst	CARE	\$200	2004	\$110
David	Wright	Biologist	CARE	\$200	2004	\$0
Barbara	George	Community Advocate	Women's Energy Matters	\$150	2003-2004	\$150
Maurice	Campbell	"	"	\$200	2003	\$0

**(END OF APPENDIX)**