

Decision 06-10-023

October 5, 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
230kV Transmission Project.

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

**ORDER MODIFYING DECISION (D.) 06-06-025 FOR PURPOSE OF
CLARIFICATION AND DENYING REHEARING, AS MODIFIED**

I. INTRODUCTION

In D.06-04-018, we set an hourly rate of \$270 for work performed by Californians for Renewable Energy's ("CARE") lead counsel, Mr. Volker, in 2004, although CARE had requested an hourly rate of \$400. (*Id.* at pp. 60-61 (slip op.)) Decision 06-04-018 found that this Commission considered the market rate standard set forth in Public Utilities Code section 1806, as presented by CARE, and awarded compensation based on an hourly rate of \$250 for work performed by Volker in both 2002 and 2003. (*Id.* at pp. 60-61 (slip op.)) No application for rehearing of D.06-04-018 was filed, and thus, this decision became final.¹

¹ D.06-04-018 became final and unappealable on June 16, 2006. We note that CARE's application for rehearing and the petition for modification could be considered an impermissible collateral attack of D.06-04-018.

In D.06-06-025, we denied CARE’s petition for modification of D.06-04-018 on the grounds that the \$270 hourly rate awarded to Mr. Volker in D.06-04-018 complies with existing Commission directives regarding intervenor hourly rates, including Resolution ALJ-184 (August 19, 2004). (D.06-06-025, pp. 1-2.) CARE timely filed an application for rehearing of D.06-06-025. In its rehearing application, CARE alleges that the Commission’s determination that Mr. Volker’s hourly rate of \$270 is arbitrary and capricious, and that it violates Public Utilities Code section 1806. In addition, CARE claims that D.06-04-018’s conclusion that the \$250 hourly rate awarded in D.05-02-003 and D.03-01-058, was for work performed in both 2002 and 2003 is in error.

After careful consideration of all the arguments presented in CARE’s application for rehearing of D.06-06-025, we are of the opinion that good cause for rehearing has not been demonstrated. We will however modify D.06-06-025 to clarify that D.06-04-018 may have misspoken regarding the time period for the \$250 hourly rate derived from D.03-01-058 and D. 05-02-003. Accordingly, CARE’s application for rehearing of D.06-06-025, as modified, is denied.

II. DISCUSSION

A. CARE fails to establish legal error.

CARE’s section 1806 argument has no merit. In D.06-06-025, we reviewed the rationale in D.06-04-018 for awarding the hourly rate of \$250 for the work Mr. Volker performed in 2004. We observed that D.06-04-018 was consistent with section 1806, which required the Commission “take into consideration the market rates paid to persons of comparable training and experience who offer similar services. (D.06-06-025, pp. 1-2, see also, *Opinion Granting Intervenor Compensation* [D.06-04-018], *supra*, pp. 37, 58-59, & 63 (slip op.)). We further noted that D.06-04-018 acted in a manner consistent with Resolution ALJ-184 and *Rulemaking to Set Hourly Rates for Purposes of Calculating Intervenor Compensation Awards, Pursuant to Public Utilities Code Section 1801 and Following, for Work Performed in Calendar Year 2005* [D.05-11-

031] (2005) ___ Cal.P.U.C.3d ___, wherein we adopted rates for individual advocates based on their specific training and experience, taking into consideration the compensation of persons with comparable training and experience.² Specifically, in D.06-06-025, we found the arguments set forth in CARE’s petition for modification unpersuasive. Most of the arguments were the same ones made during the proceeding that resulted in D.06-04-018. Thus, in D.06-06-025, we affirmed the \$250 hourly rate adopted in D.06-04-018, because it was consistent with section 1806 and Resolution ALJ-184. Accordingly, we acted reasonably, and not arbitrarily or capriciously.

We note that in its rehearing application, CARE continues to argue that the hourly rate set forth in D.06-04-18 was not commensurate with Mr. Volker’s years of legal practice in environmental law. (Application for Rehearing, pp. 6-7.) CARE reiterates the arguments it set forth in the petition for modification, but fails to specify how the Commission might have committed legal error in D.06-06-025 by rejecting the unpersuasive arguments set forth in the petition for modification on this issue. Accordingly, no legal error has been demonstrated, and rehearing is denied.

B. Modification of D.06-06-025 for Purposes of Clarification

In its petition to modify D.06-04-018 and application for rehearing of D.06-06-025, CARE asserts that:

D.06-04-018’s conclusion that the \$250 hourly rate awarded in D.05-02-003 and D.03-01-058, was for ‘work performed in both 2002 and 2003’, is in error. As this Commission noted in D.03-01-058, that award was ‘for service provided in 2000 and 2001.’ The much smaller award in D.05-02-003 was for work performed primarily in 2002.

² In response to Mr. Volker’s assertion that his prior rate should not be controlling, D.06-06-025 notes that “it may be appropriate to allow veteran representatives, under some circumstances, to make the same showing regarding their reasonable rate that we would allow a representative new to our proceedings” but defers this issue to current Commission efforts to develop hourly rates and declines to make the kind of piecemeal adjustments that CARE now requests. (D.06-06-025, p. 2.)

(Petition for Modification, p. 6, fn. 2, citations omitted; see also, Application for Rehearing, p. 4, fn. 2, citations omitted.) A review of D.03-01-058 and D.05-02-003 demonstrates that CARE's factual assertion may warrant clarification. (See *Opinion on Requestion for Intervenor Compensation* [D.03-01-058], *supra*, at p. 7; *Opinion on Second Request for Intervenor Compensation* [D.05-02-003], *supra*, at pp. 13 & 17, and attached Compensation Decision Summary.) Decision 06-04-018 inadvertently attributes the \$250 hourly rate for work done only in 2002 and 2003. (See *Opinion Granting Intervenor Compensation*, *supra*, at p. 61.) However, D.06-06-025, citing to D.05-02-003 and D.03-01-058, correctly notes that the Commission previously adopted a rate of \$250 for Volker's work performed between 2000 and 2003. (D.06-06-025, p. 2.) Although D.06-06-025 sets forth the correct time period for the work performed at a \$250 hourly rate, it does not acknowledge the error in D.06-04-018. Accordingly, we will modify D.06-06-025 to explain this issue.

That D.06-04-018 inadvertently attributed the \$250 hourly rate afforded Volker for his 2002 and 2003 work in D.05-02-003 to both D.05-02-003 and D.03-01-058 has no effect on the calculation of Mr. Volker's hourly rate in D.06-04-018 (as reaffirmed by D.06-06-025), because he also received \$250 an hour for work performed in 2000 and 2001. Mr. Volker's hourly rate in 2003, his most recent prior year in a proceeding before the Commission, was \$250. Pursuant to Resolution ALJ-184, an 8% escalation factor is applied to the hourly rate adopted for work performed in 2003. (Resolution ALJ-184, pp. 6-7.) Accordingly, and as noted in D.06-06-025, "increasing Volker's 2003 rate by 8% results in the \$270 rate adopted in D.06-04-018 for his 2004 work." (D.06-06-025, p.2.)

THEREFORE, IT IS ORDERED THAT:

1. D.06-06-025 is modified to add the following clarification to footnote 1 on page 2:

We note that D.06-04-018, p. 61 indicated that these decisions adopted an hourly rate of \$250 for work performed in both 2002 and 2003. We were mistaken as to the time period. D.03-01-058 provided an hourly rate of \$250 for

2000 and 2001, and D.05-01-058 provided the same \$250 hourly rate for work performed in 2002 and 2003.

2. CARE's Application for Rehearing of D.06-06-025, as modified, is hereby denied.

This order is effective today.

Dated October 5, 2006, at San Francisco, California.

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