

Decision 08-07-019 July 10, 2008

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of PACIFICORP (U 901 E), an Oregon Company, for Permit to Construct the Line 75 115kV Conversion Project Pursuant to General Order 131-D.

Application 05-12-011
(Filed December 13, 2005)

Application of PACIFICORP (U 901 E), an Oregon Company, for Permit to Construct the Weed Segment Project Pursuant to General Order 131-D.

Application 07-01-046
(Filed January 26, 2007)

**DECISION GRANTING INTERVENOR COMPENSATION
TO DON AND JUDY MACKINTOSH**

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DECISION GRANTING INTERVENOR COMPENSATION TO DON AND JUDY MACKINTOSH

This decision grants the request of Don and Judy Mackintosh (the Mackintoshes) for intervenor compensation for their claimed contribution to Decision (D.) 07-03-043 and D.06-10-047. While the Mackintoshes request \$267,600.78¹ in compensation, for various reasons set forth herein we reduce that amount by \$53,258.68, and award \$214,342.10. In particular, we have reduced the award to disallow any expenditure that benefited the Mackintoshes alone without causing benefits to the community at large.

We find that the Mackintoshes are eligible for compensation. Their actions in seeking to have the transmission line follow the existing right-of-way benefited residents of the Weed area, and the environment in general. We also find that the Mackintoshes made a substantial contribution to our decisions in this proceeding.

1. Background

In this proceeding, PacifiCorp sought permission to install an electric transmission line and related substation upgrades in the Yreka-Weed area of Northern California. Decision (D.) 06-10-047 and D.07-03-043, respectively, approved installation of a portion of the line, and required preparation of an Environmental Impact Report (EIR) to evaluate the impact of the remaining portion of the line. The Commission has since prepared the EIR and approved the remaining portion of the line in D.07-12-018; the Mackintoshes seek

¹ This amount was miscalculated. We explain and correct it below.

compensation for their work on D.07-12-018 in a separate request which we do not address here.

PacifiCorp raises several challenges to the compensation request. The key objection is that the Mackintoshes acted only out of self-interest in participating in this proceeding, and thus should receive no compensation. We disagree. PacifiCorp also claims that the Mackintoshes' notice of intent (NOI) to seek compensation was untimely filed, a claim with which we disagree, and seeks reductions in the amount of compensation for various reasons. We make several of the requested reductions as well as several of our own.

2. Requirements on Awards of Compensation

The intervenor compensation program, enacted in Pub. Util. Code §§ 1801-1812,² 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.

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 NOI to claim compensation within 30 days of the prehearing conference (PHC), or in special circumstances at other appropriate times that we specify. (§ 1804(a).)

² Subsequent statutory references are to the California Public Utilities Code unless otherwise indicated.

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 must 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 must be reasonable (§ 1801), necessary for and related to the substantial contribution (D.98-04-059), comparable to the market rates paid to others with comparable training and experience (§ 1806), and productive (D.98-04-059).

We move to a discussion of each of these factors.

3. Procedural Issues

3.1. NOI

It is undisputed that the Mackintoshes did not timely file their NOI (although they served it on time). However, we find that such failure is excused and does not preclude a finding of entitlement to compensation.

The PHC in this matter was held on June 20, 2006. The NOI was therefore due 30 days later on July 20, 2006. While the Mackintoshes served the NOI on all parties on July 20, 2006, due to inadvertence they did not file the NOI until August 1, 2006, after being notified by the assigned Administrative Law Judge (ALJ) that the NOI had not been filed. The Mackintoshes assert that the ALJ

implicitly allowed the late filing by noting that parties should respond to it,³ and we agree.

Even if the ALJ had not allowed the late filing, we would conclude it was inadvertent and non-prejudicial. The Mackintoshes clearly intended to submit the NOI timely by virtue of having served it on the due date. PacifiCorp—the only party that commented on the request for compensation—and the ALJ received the NOI on time. Thus, no one was prejudiced by the late filing.

We have occasionally excused late filings where the intervenor is new or if the NOI is only a few days late. *See, e.g.*, D.00-03-044. The Mackintoshes' 12-day delay in filing the NOI is significantly less than the delay the Commission deemed acceptable for a new intervenor in D.00-03-044.

Thus, we find that the late filing of the NOI is excused in this case, and that this requirement of the intervenor compensation statute does not preclude an award of compensation.

3.2. Customer Status

The Mackintoshes claim they are eligible for compensation as a customer of PacifiCorp. The kind of “customers” that may claim compensation are defined in § 1802(b)(1), which defines a “customer” as A) a participant representing consumers, customers or subscribers of a utility; B) a representative who has been authorized by a customer; or C) a representative of a group or organization authorized pursuant to its articles of incorporation or bylaws to represent the interests of residential or small business customers. The

³ *See Reply Comments of Don and Judy Mackintosh Regarding PacifiCorp's Response to the Mackintoshes' Request for Intervenor Compensation*, filed Oct. 25, 2007, Attachment C (e-mail message from ALJ Thomas).

Mackintoshes claim they meet the first category of customer and therefore hold Category 1 customer status.

PacifiCorp objects to the Mackintoshes' claim and asserts that the Mackintoshes acted purely out of self-interest: to protect their own scenic views and property values. We disagree. The Mackintoshes succeeded in persuading the Commission to require that PacifiCorp use the existing transmission corridor for the line upgrades. This position benefited not only the Mackintoshes, but everyone living near, or travelling through, the undisturbed valley where PacifiCorp proposed to site the new line.

The Mackintoshes correctly point out that we have accorded Category 1 customer status to customers that act out of self-interest, as long as they "also represent the broader interest of at least some other customers." D.86-05-007, 21 CPUC2d 99, 1986 Cal. PUC LEXIS 287, at *5-6; D.88-12-034, 30 CPUC2d 93, 1988 Cal. PUC LEXIS 770, at *9.

PacifiCorp argues that the Mackintoshes are disqualified as Category 1 customers for the same reason as the customer in D.88-12-034: because the self-interest arises out of a reason unrelated to their status as a utility customer. In D.88-12-034, the customer was interested in the case, involving inside telecommunications wiring, because it was a competitor of the incumbent telephone company, rather than because it used telephone service. Likewise, PacifiCorp appears to argue, the Mackintoshes are interested in PacifiCorp's transmission line not as electricity customers, but as homeowners, and therefore fail to qualify as Category 1 customers.

However, to agree with PacifiCorp would run contrary to a series of intervenor compensation cases that followed D.88-12-034, in which we awarded compensation to homeowners and homeowner groups who persuaded the

Commission to reroute transmission lines. *See, e.g.*, D.02-11-024, 1992 Cal. PUC LEXIS 719, at *4 (PG&E Tri-Valley transmission line; compensation awarded to homeowners' group found to be a Category 1 customer); *see also* D.06-04-018 (PG&E Jefferson-Martin transmission line; compensation awarded to homeowners' group found to be Category 3 customer); D.05-02-009, 2005 Cal. PUC LEXIS 71, at *6 (finding group eligible to represent customers under "expansive approach to customer eligibility"). Thus, the mere fact that the Mackintoshes' interest in the proceeding arises from their status as homeowners does not disqualify them from compensation.

Further, the Mackintoshes' self-interest was complemented by broader interests in their community and environment as a whole. The Mackintoshes raised numerous objections to the transmission line that encompassed issues relevant to the broader community, including preservation of the scenic valley around Hoy Road, preservation of views from neighboring properties, electrical deficiencies of PacifiCorp's proposal, and reliability concerns for the project. Further, while other neighbors participated in the case, the Mackintoshes were the only party opposing PacifiCorp's proposal that retained counsel and carried out a full-blown case in opposition to the original route. Finally, one of the exhibits introduced at hearing was a petition of a large number of other residents of the Weed area supporting rerouting of the line to avoid the Hoy Valley, consistent with the Mackintoshes' position.⁴ Thus, the Mackintoshes acted out of more than self-interest.

⁴ PacifiCorp notes that not all residents supported the Mackintoshes' point of view. The fact that other customers opposed the Mackintoshes' view does not disqualify the Mackintoshes from compensation if the Mackintoshes otherwise meet the requirements

Footnote continued on next page

To summarize, a Category 1 customer may act out of self-interest as long as it also embraces a broader purpose beyond its own self-interest. We find the Mackintoshes meet this test. Preserving the Hoy Valley did not benefit the Mackintoshes alone. All residents living in its vicinity will benefit, including the Luiz family and Pappas family, who participated informally at hearing, as well as the dozens of area residents who signed a petition (Ex. 107) to save the valley from the proposed line. Further, people traveling on the public road (Hoy Road) traversing the valley will also benefit. Thus, the Mackintoshes' efforts did not benefit them alone, but many others in the vicinity. Without the Mackintoshes' involvement, the Commission likely would not have focused on the visual impacts and hydrological concerns caused by routing the line through the Hoy Valley. Likewise, the Commission would not have had to order and adopt an EIR to consider routes other than the proposed route. Thus, the Mackintoshes' involvement caused the Commission to focus on important issues that no other party was raising in a formal way.

3.3. Significant Financial Hardship

It is not enough for a customer to meet one of the three categories of "customer" allowed to recover intervenor compensation. Such a customer must also demonstrate significant financial hardship if required to bear the cost of participation on its own. Section 1802 (g) defines "significant financial hardship" to mean "that the customer cannot without undue hardship afford to pay the

for Category 1 customer status. Thus, the e-mail from Meredith Seawell attached as Exhibit A to PacifiCorp's opposition to the Mackintoshes' request does not undermine the Mackintoshes' entitlement to compensation.

costs of effective participation, including advocate's fees, expert witness fees, and other reasonable costs of participation...." D.98-05-014, 80 CPUC2d 209 (1998).

In D.86-05-007, we generally addressed what would constitute sufficient documentation of significant financial hardship. In that decision, we concluded that participants seeking a finding of eligibility should provide detailed documentation along the lines of gross and net monthly income, monthly expenses, and cash and assets, including equity in real estate. In D.98-05-014, we concluded that where an individual intervenor's financial data demonstrated that the compensation requested would amount to a large portion of the intervenor's uncommitted annual compensation, it was reasonable to conclude that the intervenor had demonstrated undue hardship.

The Mackintoshes established financial hardship by submitting full financial data under seal. PacifiCorp obtained copies of all of the financial data pursuant to a nondisclosure agreement, and stated that it would comment if it objected to the Mackintoshes' claim of financial hardship. After reviewing the financial data, PacifiCorp explicitly waived its right to object to a finding of financial hardship. Thus, the issue of hardship was undisputed.

In view of the above, we find that the Mackintoshes have satisfied all the procedural requirements necessary to make their request for compensation in this proceeding.

3.4. Request for Compensation

Pursuant to § 1804(c), a request for compensation must be filed within 60 days of our final order or decision in a proceeding. D.07-03-043 issued on March 20, 2007. However, on April 19, 2007, PacifiCorp filed an application for rehearing of that decision. On July 12, 2007, the Commission denied the rehearing request in D.07-07-021. According to the Commission Rules of Practice

and Procedure (Rules) Rule 17.3, if an application for rehearing challenges a decision on an issue on which the intervenor believes it made a substantial contribution, the request for an award of compensation may be filed within 60 days of the issuance of the decision denying rehearing on that decision. The Mackintoshes filed their request on September 10, 2007, within 60 days of the issuance of D.07-07-021 denying PacifiCorp's request for rehearing of D.07-03-043. Therefore, the request is timely.

On October 10, 2007, PacifiCorp filed a response to the Mackintoshes' request for compensation opposing the request. On October 25, 2007, the intervenors filed a reply to PacifiCorp's response. We address the responsive and reply comments throughout this decision.

4. Substantial Contribution

In evaluating whether a customer made a substantial contribution to a proceeding, we look at several things. First, we look at whether the Commission adopted one or more of the factual or legal contentions, or specific policy or procedural recommendations put forward by the customer. (§ 1802(i).) Second, we look at whether the customer's contentions or recommendations paralleled those of another party, and whether the customer's participation unnecessarily duplicated or materially supplemented, complemented, or contributed to the presentation of the other party or to the development of a fuller record that assisted the Commission in making its decision. (§§ 1801.3(f) 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.⁵

Should the Commission not adopt any of the customer's recommendations, compensation may be awarded if, in the judgment of the Commission, the customer's participation substantially contributed to the decision or order. For example, if a customer provided a unique perspective that enriched the Commission's deliberations and the record, the Commission could find that the customer made a substantial contribution. With this guidance in mind, we turn to the claimed contributions the Mackintoshes made to the proceeding.

The Mackintoshes describe their substantial contribution in table form, which we reproduce in part here.

Mackintoshes' Recommendation <i>(As presented in briefs and comments)</i>	Commission Action / Finding <i>(As adopted in decisions and rulings)</i>
The Southern Portion of the proposed project is subject to controversy, and requires detailed consideration.	The Southern Portion of the proposed project is subject to controversy, and requires detailed consideration. (Interim Opinion Granting Application in Part, D.06-10-047, at 2.)
The Mitigated Negative Declaration (MND) is inadequate for approval of the Southern Portion; an EIR must be prepared.	The MND is inadequate for approval of the Southern Portion; an EIR must be prepared. (D.07-03-043, at 1, 17-18.)
Approval of the Northern Portion of the project does not preclude preparation of an EIR for the Southern	Approval of the Northern Portion of the project does not preclude preparation of an EIR for the Southern Portion. (<i>Id.</i> at 9, 17;

⁵ D.98-04-059, 79 CPUC2d 628 at 653.

Mackintoshes' Recommendation <i>(As presented in briefs and comments)</i>	Commission Action / Finding <i>(As adopted in decisions and rulings)</i>
Portion.	D.07-07-021, at 4.)
Alternative configurations could be constructed in the existing right-of-way.	There is at least one alternative configuration along the existing right-of-way that would not require widening the right-of-way. (D.07-03-043 at 2, 17.)
The alleged need to rush is entirely due to PacifiCorp's own conduct.	The alleged need to rush is entirely due to PacifiCorp's own conduct. (<i>Id.</i> at 2, 13-14, 17.)
PacifiCorp would not be able to secure new rights-of-way in time for a June 2007 completion.	PacifiCorp will have trouble securing new rights-of-way; Commission "seriously questions" whether in light of this trouble, PacifiCorp could complete the project by June 2007. (<i>Id.</i> at 3, 17.)
PacifiCorp's request for rehearing on the Commission's decision to require an EIR should be denied.	PacifiCorp's request for rehearing is denied. (D.07-07-021.)
Even under the standard expressed in Public Resources Code § 21166, requiring an EIR for the Southern Portion was appropriate.	Even under the standard expressed in Public Resources Code § 21166, requiring an EIR for the Southern Portion was appropriate. (<i>Id.</i> at 4.)
Commission did not err in determining that PacifiCorp can avoid curtailment of local load by discriminatorily curtailing its firm transmission.	Commission did not err in determining that PacifiCorp can avoid curtailment of local load by discriminatorily curtailing its firm transmission. (<i>Id.</i> at 7.)

Mackintoshes' Recommendation (As presented in briefs and comments)	Commission Action / Finding (As adopted in decisions and rulings)
Commission should adopt a finding of fact that there was no opportunity to consider testimony from evidentiary hearings at the time the Final MND (FMND) was adopted.	Finding of fact adopted. (<i>Id.</i> at 10.)
Commission should adopt a finding of fact that new information that became available after adoption of the FMND indicates that the Southern Portion of the proposed project may have new and significant impacts not considered in the FMND, as well as more severe impacts than those disclosed in the FMND.	Finding of fact adopted. (<i>Id.</i>)
Commission should adopt a conclusion of law that new information that became available after adoption of the FMND necessitated preparation of an EIR.	Conclusion of law adopted. (<i>Id.</i>)

In its response, PacifiCorp focuses less on whether the Mackintoshes made a substantial contribution than on whether the amount of its compensation request is reasonable, which we discuss below.

We are satisfied that the Mackintoshes made a substantial contribution to this proceeding. From the start, their desire was to achieve further environmental analysis of the proposed line, and to see it rerouted out of the Hoy Valley. In both of these endeavors – which were the key issues discussed in both decisions for which the Mackintoshes seek compensation – they were successful. While the EIR did not select their first choice of alternative routes for technical reasons, the physical path found to be environmentally superior in the EIR is the same path the Mackintoshes proposed. The difference is in the

infrastructure used. Thus, we find that the Mackintoshes made a substantial contribution to the outcome of D.07-03-043 and D.06-10-047.

5. Reasonableness of Requested Compensation

The Mackintoshes request \$267,600.78 for their participation in this proceeding for their contribution to D.07-03-043 and D.06-10-047, as follows:

Mackintosh Intervenor Compensation Claim Summary	
<i>Fee Type</i>	<i>Amount</i>
Attorney & Paralegal Fees (Includes compensation for William Stephenson)	\$259,188.85
Expert Consultant Fees	
Richard Renouf	\$1,035.00
Don Mackintosh	\$6,000.00
Additional Costs and Expenditures	\$1,376.93
TOTAL COMPENSATION REQUESTED	\$267,600.78

Unfortunately, the intervenors do not fully itemize their claim so as to make possible an easy analysis of the reasonableness of the request. In the table below, we itemize the requested compensation in compliance with the provisions of Rule 17.4(c). In any subsequent filing, we will require the Mackintoshes and their law firm to do this work. We base our summary on information in the Request and its Appendices B, C, and D. Our calculation results in a higher total.

Work on Proceeding				
<i>Meyers, Nave, Riback, Silver & Wilson law firm</i>	Year	Hours	Rate	Total
Attorneys				
Sky Woodruff	2006	132.60	\$250.00	\$33,150.00
Sky Woodruff	2007	139.80	\$270.00	\$37,746.00
Kyle La Londe	2006	93.60	\$225.00	\$21,060.00
Amrit Kulkarni	2006	9.20	\$250.00	\$2,300.00
Amrit Kulkarni	2007	5.40	\$270.00	\$1,458.00
Steven Berninger	2006	329.60	\$225.00	\$74,160.00
Brian Crossman	2006	96.60	\$195.00	\$18,837.00
Brian Crossman	2007	98.70	\$200.00	\$19,740.00
Chrystal James	2006	14.50	\$225.00	\$3,262.50
Chrystal James	2007	23.80	\$230.00	\$5,474.00

Paralegal: Hammond East	2006	0.40	\$125.00	\$50.00
Consultant: William M. Stephenson	2006	62.75	\$225.00	\$14,118.75
Law Firm professional fees				\$231,356.25
5% Monthly Administrative Fees				\$11,404.38
SUBTOTAL Law Firm				\$242,760.63
<i>Consultants /not included in the law firm's timesheets/</i>				
Richard Renouf	2006	23.00	\$45.00	\$1,035.00
Don Mackintosh	2006-07	60.00	\$100.00	\$6,000.00
SUBTOTAL Consultants /not included in Law Firm's timesheets				\$7,035.00
TOTAL Work on Proceeding				\$249,795.63
Intervenor Compensation Matters				
Sky Woodruff, Attorney	2006	4.10	\$125.00	\$512.50
Sky Woodruff, Attorney	2007	3.60	\$135.00	\$486.00
Steven Berninger, Attorney	2006	4.00	\$112.50	\$450.00
Kyle La Londe, Attorney	2006	7.50	\$112.50	\$843.75
Brian Crossman, Attorney	2007	88.30	\$100.00	\$8,830.00
Hammond East, Paralegal	2007	31.30	\$65.00	\$2,034.50
TOTAL Intervenor Compensation Matters		138.80		\$13,156.75
COSTS				\$5,579.01
Costs				
Costs of Don Mackintosh				1,376.93
TOTAL REQUEST				\$269,908.32

In general, the components of this request must constitute reasonable fees and costs for 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.

6. Hours and Costs Related to and Necessary for Substantial Contribution

We first assess whether the hours claimed for the customer's efforts that resulted in substantial contributions to Commission decisions are reasonable by determining to what degree the hours and costs are related to the work performed and necessary for the substantial contribution.

We disallow compensation for several tasks, based both on PacifiCorp's comments and on our own analysis, as discussed below. The awarded amount is \$83,988.68 less than the requested amount.

6.1. Flat 5% Administrative Fee

First, it is inappropriate to compensate the Mackintoshes for a flat 5% administrative fee assessed them by their law firm. We have held that the hourly rate charged by their attorneys should cover all overhead and administrative costs, and we do not allow an additional award for administrative overhead. *See, e.g.,* D.98-11-049, 1998 Cal. PUC LEXIS 805, § 5.1.3 ("Professional fees assume overheads and are set accordingly. We therefore deny additional recovery for clerical work."). The Mackintoshes acknowledge this fact: "In preparing their request, the Mackintoshes have acknowledged time spent on activities for which the Commission has not previously permitted compensation, such as administrative and clerical time."⁶

Of course, individual documented costs such as copying, overnight delivery and the like are compensated for below, as they always are in our intervenor compensation awards, but we see no basis for an additional charge for clerical and other administrative work, and deny this aspect of the claim. This disallowance is \$11,404.38.

6.2. Self-Interested Efforts

We agree with PacifiCorp that efforts the Mackintoshes expended purely on determining their own legal rights are not compensable as part of their substantial contribution to this proceeding. The affected issues involve whether

⁶ Request at 26.

PacifiCorp could take the Mackintoshes' property through an eminent domain proceeding, and whether the Mackintoshes had an obligation to give PacifiCorp a right of entry to their property. Efforts spent on the issue of a ½ acre permit exemption were also exclusively in the Mackintoshes' self interest.

With respect to the eminent domain issue, we disallow one third of the 7.90 hours attorney Berninger spent on various issues on September 13, 2006, and one third of the 4.30 hours attorney Woodruff's timesheets show for various tasks on November 1, 2006. This is our best estimate of the time spent. With respect to the right-of-entry issue, we disallow 18.20 hours by attorney La Londe and 3.40 hours by attorney Woodruff in 2006. With respect to the permit exemption issue, we disallow one half of 3 hours of attorney Berninger's and one half of 1.80 hours of attorney Woodruff's work on September 18, 2006.

6.3. Intervenor Compensation Matters

The Mackintoshes spent an excessive amount of time on preparing their intervenor compensation request, and we therefore disallow a portion of this time.

The Mackintoshes' attorneys spent 138.8 hours of work on the compensation request. We consider 138.8 hours for intervenor compensation matters excessive, especially given the extra work the request required of us. To bring this amount more in line with what we normally award to intervenors for this type of work, we disallow two-thirds of the claimed time.

6.4. Miscellaneous Items

The intervenors report more than 35 hours of work on their opposition to PacifiCorp's January 31, 2007 Motion to Shorten Comment and Review Period. We find that spending this amount of time on preparing the seven-page response to the procedural motion excessive. We adjust the time by reducing by one-half

the 23.8 hours spent on the opposition by attorney James and the 11.2 hours by attorney Woodruff.

We also agree with PacifiCorp that the Mackintoshes' expenses on an unsuccessful attempt to organize neighbors to challenge PacifiCorp's project are not compensable. We disallow 0.60 hours of attorney La Londe's time and 1.20 hours of Woodruff's time in 2006 spent on these attempts.

PacifiCorp argues that the intervenors' expenses to attend the Commission's business meeting on March 15, 2007, at which they could not have spoken as parties to the proceeding, are not compensable. We agree and disallow 4 hours of Woodruff's time in 2007 and related costs for him and the Mackintoshes.

6.5. Large Number of Attorneys Used on Proceeding

The Mackintoshes used a large number of attorneys on this case – at least 14 by their own admission. They attribute this fact both to the complexity of the case and attorney turnover at the Meyers Nave law firm. The intervenors do deduct approximately 13.9 hours of work by various attorneys from the total law firm bill. However, this amount does not, in our view, adequately account for the start-up and learning time that must have been necessitated by each of the new attorneys. (The total number of attorney hours Meyers Nave billed was in the hundreds.) While the "learning curve" time of one or even a few attorneys may sometimes be compensable, compensating for the learning time of 14 attorneys is excessive for a case of this size.

Thus, we reduce the amount of attorney fees by varying percentages as reflected in the *Amendment to Comments of Don and Judy Mackintosh on the Proposed Decision Granting Intervenor Compensation* filed on May 23, 2008. The turnover is

not attributable to the case or to PacifiCorp's conduct, and it therefore seems inappropriate to charge ratepayers for the related spending.

We have in the past reduced requests where the time billed reflects inefficiency. For example, in D.06-04-018, we reduced attorney hours by 20% where two sets of lawyers worked on the same documents. We have also reduced requests where the time billed reflects a learning curve.⁷ We find that a similar reduction here is reasonable for the professionals who did not work on the case over a long period of time.

6.6. Mackintosh Request for \$6,000

As part of their request, the Mackintoshes include \$6,000 for time and fees associated with Mr. Mackintosh's expertise as a long-time employee of PG&E. PacifiCorp appropriately objected to the lack of documentation of this award, and the Mackintoshes therefore submitted a log with their reply brief in support of compensation. There are two matters at issue here: 1) whether Mr. Mackintosh is entitled to compensation at all, and 2) the reasonableness of the amount requested for his time.

The Mackintoshes claim that if not for Mr. Mackintosh's professional experience, they could not have come up with transmission design alternatives for the line. Neither party briefs the issue of whether a customer who intervenes in part out of self-interest may recover an award for his own time as well as that of his attorneys and experts. Since the Mackintoshes bear the burden of proof that they are entitled to compensation, we find that they have failed to meet the

⁷ D.95-08-051, 61 CPUC2d 142, 1995 Cal. PUC LEXIS 656, at *21 (reduced number of hours and hourly rate due to learning curve); D.02-04-007, 2000 Cal. PUC LEXIS 1112, § 4.1 (25% reduction in hours claimed for learning time).

burden in this instance. They did not provide any evidence that Mackintosh qualified as an expert eligible for compensation. Further, Mr. Mackintosh acted at least in part out of self-interest. We believe \$6,000 is appropriately deducted from the award.

6.7. Well Data

We disagree with PacifiCorp about the compensability of time spent on matters related to whether the Mackintoshes would submit well logs and test borings from their property. While the Mackintoshes ultimately did not submit such data because they were concerned that the tests would damage their springs—an issue litigated at the hearings of this case—the reason they were planning to submit the data relates to an issue that we find relevant to the Mackintoshes’ substantial contribution.

When a party makes a substantial contribution to the outcome of a proceeding, we do not necessarily deduct amounts for issues on which they did not prevail. Here, in effect they did prevail in establishing that the land from which the well logs and test borings would have been taken was the inappropriate site for a transmission line. Even though they prevailed for reasons unrelated to the test borings, the issue of well logs and test borings did have some bearing on the decision not to route the line through the Hoy Valley. Thus, we do not impose a deduction here.

7. Hourly Rates

We next 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. We have not previously established rates for intervenors’ attorneys, paralegal or experts.

7.1. Sky Woodruff

For attorney Sky Woodruff, the lead counsel for the intervenors in this proceeding, the Mackintoshes request a rate of \$250 for his work in the year 2006 and \$270 for his work in the year 2007. Woodruff appeared before the Commission in Application (A.) 99-11-025 (Tri-Valley 2002 capacity increase project) and A.02-09-043 (Jefferson-Martin 230kV transmission project). By the year 2006, Woodruff had 8 years of experience in regulatory matters.

Based on Woodruff's years of experience, comparable market rates, his role in this proceeding, and his history of work on Commission proceedings, we approve the requested rate of \$250 for his work in 2006. The requested 2007 hourly rate of \$270 includes a 3% cost-of-living adjustment and 5% "step" increase added to Woodruff's 2006 rate. Such an increase is permissible under D.07-01-009, and we therefore approve the requested 2007 rate of \$270.

7.2. Amrit S. Kulkarni

For attorney Amrit S. Kulkarni, the Mackintoshes request a rate of \$250 for work in 2006 and \$270 in 2007, which includes a 3% cost-of-living adjustment and 5% "step" increase added to the 2006 hourly rate.

We find reasonable the requested rate of \$250 for the year 2006 and adopt it here. In 2006, Kulkarni had 8 years of legal experience, including work on regulatory matters. His involvement in this proceeding consisted of reviewing pleadings and advising on CEQA matters. Furthermore, the requested rate is less than rates authorized by the Commission for attorneys with 8 to 12 years of experience.

With respect to Kulkarni's 2007 rate, however, while it appears that he has the same years of legal experience as Sky Woodruff, we decline to apply a step increase to the 2006 rate as requested. Kulkarni is new to Commission work and

worked on limited number of issues in this proceeding. To establish his 2007 rate, we apply the 3% cost-of-living adjustment to his 2006 rate. The result is a rate of \$260 for Kulkarni's work in 2007.

7.3. Kyle La Londe

The Mackintoshes request a rate of \$225 for attorney Kyle La Londe's work in 2006. La Londe received his law degree in 2003. La Londe coordinated the intervenors' protest and prepared many initial filings.

According to D.07-01-009, the 2006 rate range for attorneys with 3 to 4 years of experience is \$190-\$225. The intervenors fail to justify a rate for La Londe at the highest end of the range. During the relevant period, La Londe had practiced law for 4 years and had not previously practiced before the Commission. Further, the intervenors request the rate of \$225 for Steven Berninger, a lead attorney on the case with 7 years of experience. The Mackintoshes have not justified the same rate for both attorneys.

In D.06-05-037, the Commission adopted the rate "near the middle of the range," where an attorney with 4 years of experience was practicing before the Commission for the first time. D.06-05-037, *mimeo.*, p. 15. Under similar circumstances here, we conclude that \$205 represents a reasonable hourly rate for La Londe's work in 2006, and we adopt this rate here.

7.4. Steven D. Berninger

The intervenors request a rate of \$225 for attorney Steven D. Berninger's work in 2006. They describe Berninger as an attorney with 7 years of environmental and land use experience, who took a lead role in this matter following La Londe's departure. Because the requested rate is below rates approved for attorneys with 5 to 7 years of experience in D.07-01-009, we find the rate reasonable and adopt it here.

7.5. Brian F. Crossman

The intervenors request an hourly rate of \$195 for attorney Brian F. Crossman's work in 2006 and \$200 for his work in 2007. According to the Request, in 2006 Brian F. Crossman was a first year associate at the Meyers, Nave firm, with a focus on land use and environmental laws. He took over for Berninger following his departure from the firm.

The Mackintoshes do not explain why Crossman is qualified for the highest rate in the range authorized in D.07-01-009 (\$140-\$195 for attorneys with 0 to 2 years of experience). They simply rely on D.06-04-018, which awarded \$190 to a first year associate. However, the Commission has also adopted a lower rate for a first year associate. *See, e.g.,* D.07-11-013 *mimeo.*, p. 13, n. 13 ("[A] \$165/hour rate is approximately the midpoint of the 2006 range for attorneys with 0 to 2 years' experience adopted in D.07-01-009").

We find that the rates of \$170 for Crossman's work in 2006 and \$175 for his work in 2007 are reasonable. The 2007 rate includes a 3% cost-of-living adjustment added to the 2006 rate. We adopt these rates here.

7.6. Chrystal B. James

The Mackintoshes seek an hourly rate of \$225 for attorney Chrystal B. James for 2006 and \$230 for 2007. The Mackintoshes do not explain why they seek the highest rate in the range of rates (\$190-\$225) authorized in D.07-01-009 for attorneys with 3-4 years practicing law. This proceeding was James's first appearance before the Commission, and she was not lead attorney here.

Based on these facts, the rates of \$205 for James's work in 2006 and \$210 for her work in 2007 appear to be reasonable. Her 2007 rate includes a 3% cost-of-living adjustment added to the 2006 hourly rate.

7.7. Paralegal Hammond East

The Mackintoshes request the rates of \$125 for paralegal Hammond East's work in 2006 and \$130 for his work in 2007. Unfortunately, the intervenors provide no information on East's experience or qualifications and simply rely on D.06-04-018, which adopted a rate of \$155 for paralegal Barbara Nielsen's work in 2004. There, Nielsen had a law degree, 23 years of paralegal experience, and had worked on Commission proceedings for many years. The Mackintoshes here do not show that East's experience and education are in any way comparable to Nielsen nor do they provide sufficient justification for requesting a high hourly rate for East.

Based on the average paralegal's rate approved by the Commission, hourly rates of \$95 for East's work in 2006 and \$100⁸ in 2007 are reasonable and we adopt these rates here.

7.8. Expert William Stephenson

The Mackintoshes request a 2006 rate of \$225 for expert William Stephenson, who had appeared before the Commission in the past. The intervenors base this rate on the 3% increase applied twice – to his 2004 rate (to establish the 2005 rate) and to his 2005 rate (to establish the 2006 rate). However, we have not established his 2005 rate, since Stephenson's prior work took place in 2004. D.06-04-018 approved a 2004 rate of \$210.

⁸ The intervenors calculate East's work on intervenor compensation matters in 2007 based on a half (\$65) of his full requested rate of \$130. However, unlike attorney's fees, no reduced fee is provided for paralegal's work on intervenor compensation matters.

The Commission allows the 3% cost-of-living increase over 2004 rates in limited situations, and Stephenson does not meet the requirements for increases contemplated in D.05-11-031:

Under the following conditions, a request justifying an increase in a previously authorized rate for a particular representative, for work performed in 2005, may be considered....

1. Where a representative's last authorized rate was for work done before 2004, an increase is reasonable, but we will limit the increase to 3% per year....
2. Where additional experience since the last authorized rate would move a representative to a higher level of qualification (*e.g.*, from intermediate to senior), an increase is reasonable to bring the representative's hourly rate within the range of the representative's peers at the higher level.
3. Where a representative's last authorized rate is below that of the range of rates shown in the tables above for representatives with comparable qualifications, an increase is reasonable....
(D.05-11-031, *mimeo.*, pp. 17-18.)

Accordingly, Stephenson's 2006 rate should be based on his 2004 rate plus a 3% cost-of-living adjustment, as authorized in D.07-01-009. The resulting rate is within the rate range adopted in that decision for experts with similar relevant experience. Based on the foregoing, we adopt a rate of \$215 for Stephenson's work in 2006.

7.9. Expert Richard Renouf

The intervenors request an hourly rate of \$45 for their expert Richard Renouf. This rate is well below the rate range established in D.07-01-009 for experts. We adopt the requested rate here.

8. Productivity

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

The rerouting of the transmission line did not result in any real cost savings, as the route PacifiCorp proposed and the route we adopted cost approximately the same amount. While it is difficult to place a value on the Hoy Valley, a pristine, spring filled area, preserving it surely was a "productive" endeavor. Were an intervenor required to demonstrate a monetary value of its accomplishments in every case, no case that resulted in intangible benefits would ever merit compensation. Our practice has been to be lenient with regard to the productivity requirement, and we find that such lenience is appropriate here. We find the Mackintoshes' work was productive.

9. Direct Expenses

The itemized direct expenses submitted by the Mackintoshes include reasonable costs for copying, delivery, postage, printing, Lexis and Westlaw on-line services. As noted above (*see*, section 6.4 of the decision) we do not allow costs (meals/lodging) for attendance at the Commission meeting or a \$305 charge attributable to the services of the Rusconi, Foster firm.⁹ Thus, we grant the Mackintoshes their claimed \$1,376.93 in costs, and subtract the disallowed amounts above.

⁹ *See* Mackintoshes' Request; Appendix D (lodging/meals); PacifiCorp Response, p. 15 and n.43.

10. Award

As set forth in the tables below, we award the Mackintoshes the amount of \$214,342.10.

AWARD				
Work on Merits				
<i>Law Firm</i>	Year	Hours	Rate	Total
<i>Attorneys</i>				
Sky Woodruff	2006	125.70	\$250.00	\$31,425.00
Sky Woodruff	2007	130.20	\$270.00	\$35,154.00
Kyle La Londe	2006	74.40	\$205.00	\$15,252.00
Amrit Kulkarni (minus 20% disallowance) ¹⁰	2006	7.36	\$250.00	\$1,840.00
Amrit Kulkarni (minus 20% disallowance)	2007	4.32	\$260.00	\$1,123.20
Steven Berninger (minus 5% disallowance)	2006	309.23	\$225.00	\$69,576.75
Brian Crossman (minus 10% disallowance)	2006	86.94	\$170.00	\$14,779.80
Brian Crossman (minus 10% disallowance)	2007	88.83	\$175.00	\$15,545.25
Chrystal James (minus 20% disallowance)	2006	11.60	\$205.00	\$2,378.00
Chrystal James (minus 20% disallowance)	2007	9.52	\$210.00	\$1,999.20
Paralegal: Hammond East	2006	0.40	\$95.00	\$38.00
Attorneys and paralegal work on the proceeding subtotal:				\$189,111.20
Consultant: William M. Stephenson (law firm timesheets)	2006	62.75	\$215.00	\$13,491.25
Consultant: Richard Renouf (separate timesheets)	2006	23.00	\$45.00	\$1,035.00
Consultants subtotal:				\$14,526.25
Intervenor Compensation Matters				
Sky Woodruff, Attorney	2006	1.40	\$125.00	\$175.00
Sky Woodruff, Attorney	2007	1.20	\$135.00	\$162.00
Steven Berninger, Attorney	2006	1.30	\$112.50	\$146.25
Kyle La Londe, Attorney	2006	2.50	\$102.50	\$256.25
Brian Crossman, Attorney	2007	29.30	\$87.50	\$2,563.75
Hammond East, Paralegal	2007	10.30	\$100	\$1,030.00
Intervenor compensation matters subtotal:		46.00		\$4,333.25
Costs				
Law Firm				\$5,579.01
Don Mackintosh				\$792.39
Costs subtotal				\$6,371.40

¹⁰ Each of these disallowances is reflected in the *Amendment to Comments of Don and Judy Mackintosh on the Proposed Decision Granting Intervenor Compensation* filed on May 23, 2008. We initially disallowed 20% across the board, but were persuaded by the Mackintoshes' comments to only disallow for those professionals who worked only for a brief period on the case.

TOTAL AWARD				\$214,342.10
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PacifiCorp shall pay the award to the Mackintoshes within 30 days of issuance of this decision. Consistent with previous Commission decisions, PacifiCorp should also pay interest on the award amount (at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release H.15) commencing on November 24, 2007, the 75th day after the Mackintoshes filed their compensation request, and continuing until full payment of the award is made.

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

11. Comments on Proposed Decision

This is an intervenor compensation matter. Ordinarily, we do not allow comments on such decisions; however, in view of the disallowances here, we allow a 30-day comment period for this decision. The Mackintoshes filed comments on May 15, 2008 and PacifiCorp filed reply comments on May 20, 2008. The Mackintoshes take issue with several of the disallowances; while PacifiCorp supports them. We find one of the Mackintoshes' contentions meritorious, and reject the others. The Mackintoshes point out that we disallowed 20% of its attorney time across the board for learning time, and that we should have disallowed only that time for attorneys that were truly

“learning” and allow the time for attorneys who worked on the case over time. We agree, and adjust the disallowance as reflected in the table above.

12. Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and Sarah R. Thomas is the assigned ALJ in this proceeding.

Findings of Fact

1. The Mackintoshes have satisfied all the procedural requirements necessary to claim compensation in this proceeding.
2. No one was harmed by the late filing of the NOI.
3. The Mackintoshes acted both out of self-interest and for a broader purpose.
4. The Mackintoshes made substantial contributions to D.07-03-043 and D.06-10-047 as described herein.
5. The Mackintoshes’ attorneys charged a flat 5% administrative overhead fee in addition to their hourly rate. The amount the attorneys charged based on this fee is \$11,404.38.
6. The requested amount of 138.8 hours for work performed on the intervenor compensation request is excessive, especially given the extra work the request required of us.
7. The Mackintoshes request compensation for more than 35 hours of attorney time spent on their opposition to PacifiCorp’s January 31, 2007 Motion to Shorten Comment and Review Period.
8. The Mackintoshes used a large number of attorneys on this case – at least 14 by their own admission.
9. The Mackintoshes request hourly rates that, as adjusted herein, are reasonable when compared to the market rates for persons with similar training and experience.

10. The Mackintoshes requested related expenses that, as adjusted herein, are reasonable and commensurate with the work performed, with the exceptions noted in this decision.

11. The total reasonable compensation is \$214,342.10.

12. The appendix to this decision summarizes today's award.

Conclusions of Law

1. The Mackintoshes may receive compensation despite their late filing of the NOI.

2. The Mackintoshes meet the definition of a customer pursuant to Pub. Util. Code § 1802(b)(1)(A).

3. The Mackintoshes 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 expenses, as adjusted herein, incurred in making substantial contributions to D.07-03-043 and D.06-10-047.

4. The hourly rate charged by attorneys seeking recovery for intervenor compensation should cover all overhead and administrative costs; we do not allow an additional award for administrative overhead.

5. Efforts the Mackintoshes expended purely on determining their own legal rights are not compensable as part of their substantial contribution to this proceeding.

6. We should disallow two-thirds of the claimed time for preparation of the intervenor compensation request because the claimed amount of time — 138.8 hours — is excessive in comparison to other intervenor compensation requests, especially since the ALJ had to revise the request to work with it.

7. Spending more than 35 hours on preparing a seven-page response to a procedural motion is excessive. We should adjust the time by reducing by

one-half the 23.8 hours spent on the opposition by attorney James and the 11.2 hours by attorney Woodruff.

8. The Mackintoshes' expenses on an unsuccessful attempt to organize neighbors to challenge PacifiCorp's project are not compensable.

9. Intervenors' expenses to attend the Commission's business meeting on March 15, 2007, at which they could not have spoken as parties to the proceeding, are not compensable.

10. While the "learning curve" time of one or even a few attorneys may sometimes be compensable, compensating for the learning time of 14 attorneys is excessive for a case of this size. We should reduce the claimed amount of attorney fees for professionals who did not work on this proceeding over a long period of time to compensate for this inefficiency.

11. The Mackintoshes bear the burden of proof that they are entitled to compensation, and they failed to meet the burden of proving that Mr. Mackintosh is an expert eligible for compensation. It is appropriate to deduct the \$6,000 the Mackintoshes claim for compensation to Mr. Mackintosh due to this failure to meet the burden of proof.

12. It is not clear whether an intervenor who acts in part out of self interest may recover for his own time working on a proceeding.

13. The Mackintoshes should be awarded \$214,342.10 for their contribution to D.07-03-043 and D.06-10-047.

14. This decision should be effective today so that the Mackintoshes may be compensated without further delay.

O R D E R

IT IS ORDERED that:

1. Don and Judy Mackintosh (the Mackintoshes) are awarded \$214,342.10 as compensation for their substantial contributions to Decision (D.) 07-03-043 and D.06-10-047.

2. Within 30 days of the effective date of this decision, PacifiCorp shall pay the Mackintoshes the total amount of the award. Payment of the award shall include interest at the rate earned on prime, three-month commercial paper as reported in Federal Reserve Statistical Release H.15, beginning November 24, 2007, the 75th day after the filing date of the Mackintoshes' request for compensation, and continuing until full payment is made.

This order is effective today.

Dated July 10, 2008, at San Francisco, California.

MICHAEL R. PEEVEY

President

DIAN M. GRUENEICH

JOHN A. BOHN

RACHELLE B. CHONG

TIMOTHY ALAN SIMON

Commissioners

APPENDIX

Compensation Decision Summary Information

Compensation Decision:	D0807019	Modifies Decision? No
Contribution Decision(s):	D0703043, D0610047	
Proceeding(s):	A0512011, A0701046	
Author:	ALJ Thomas	
Payer(s):	PacifiCorp	

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/ Disallowance
Don and Judy Mackintosh	09/10/07	\$267,600.78	\$214,342.10	No	Self-interest effort expenses, excessive hours, inefficient work, non-compensable expenses (administrative fees, lodging); adjusted hourly rates.

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Sky	Woodruff	Attorney	Don and Judy Mackintosh	\$250	2006	\$250
Sky	Woodruff	Attorney	Don and Judy Mackintosh	\$270	2007	\$270
Amrit S.	Kulkarni	Attorney	Don and Judy Mackintosh	\$250	2006	\$250
Amrit S.	Kulkarni	Attorney	Don and Judy Mackintosh	\$270	2007	\$260
Kyle	La Londe	Attorney	Don and Judy Mackintosh	\$225	2006	\$205
Steven D.	Berninger	Attorney	Don and Judy Mackintosh	\$225	2006	\$225
Brian F.	Crossman	Attorney	Don and Judy Mackintosh	\$195	2006	\$170
Brian F.	Crossman	Attorney	Don and Judy Mackintosh	\$200	2007	\$175
Chrystal B.	James	Attorney	Don and Judy Mackintosh	\$225	2006	\$205
Chrystal B.	James	Attorney	Don and Judy Mackintosh	\$230	2007	\$210
Hammond	East	Paralegal	Don and Judy Mackintosh	\$125	2006	\$95
Hammond	East	Paralegal	Don and Judy Mackintosh	\$130	2007	\$100
William	Stephenson	Expert	Don and Judy Mackintosh	\$225	2006	\$215
Richard	Renouf	Expert	Don and Judy Mackintosh	\$45	2006	\$45

(END OF APPENDIX)