

Decision 08-11-027 November 6, 2008

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Integrate
Procurement Policies and Consider Long-Term
Procurement Plans.

Rulemaking 06-02-013
(Filed February 16, 2006)

**DECISION GRANTING INTERVENOR COMPENSATION TO AGLET
CONSUMER ALLIANCE FOR SUBSTANTIAL CONTRIBUTIONS TO THE
PROCUREMENT REVIEW GROUPS IN THIS PROCEEDING**

This decision awards Aglet Consumer Alliance (Aglet) \$16,708.27 in compensation for its substantial contributions to the Procurement Review Groups of Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company, as detailed below. This represents a slight decrease from the amount requested due to ineligible expenses claimed by Aglet. This proceeding remains open to address further long-term procurement issues.

1. Background

Rulemaking (R.) 06-02-013 is our long-term procurement proceeding for review and approval of the integrated long-term procurement plan (LTPP) for Pacific Gas and Electric Company (PG&E), Southern California Edison (SCE) and San Diego Gas & Electric Company (SDG&E), the investor-owned electric utilities (IOUs). R.06-02-013 is the successor to R.01-10-024 and R.04-04-003 (both now closed proceedings). We find the subject rulemaking, the 2006 LTPP, a reasonable forum for an intervenor to seek further Procurement Review Group (PRG)-related compensation.

In R.01-10-024, we established the PRGs to facilitate the IOUs ability to meet their service obligations to customers immediately after the electricity crisis. The expectation was that the PRG process, although strictly advisory, would allow parties in upcoming utility filings to identify potentially contentious issues in advance and to work on a solution before the utilities filed their applications. In the continuing procurement process, the PRG members serve as peer reviewers working with the IOUs on an on-going basis as the utilities design and implement their procurement plans. Members consist of staff from the Commission's Energy Division and the Division of Ratepayer Advocates, as well as other consumer and ratepayer groups, including Aglet.

Today's decision addresses three separate requests by Aglet for compensation for its PRG work for work performed from October 1 to December 31, 2006 for all three IOUs, and preparation of this compensation request. No party opposed these requests.

2. Requirements for Awards of Compensation

The intervenor compensation program, set forth in Pub. Util. Code §§ 1801-1812,¹ requires California jurisdictional utilities to pay the reasonable costs of an intervenor's participation if that party 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.

¹ All 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 (PHC), pursuant to Rule 17.1 of the Commission's Rules of Practice and Procedure (Rules), or at another appropriate time 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 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) and 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 or as otherwise found by the Commission. (§§ 1802(i) and 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).

3. Procedural Issues

The first PHC in this proceeding was held on February 28, 2006 by assigned Administrative Law Judge (ALJ) Carol Brown. Aglet filed its timely NOI on March 3, 2006.

Section 1802(b)(1) 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. In this case, Aglet is a customer as defined in § 1802 (b)(1)(C).

An intervenor seeking compensation must show that, without undue hardship, it cannot pay the reasonable costs of effective participation in the proceeding. In the case of groups or organizations, significant financial hardship is demonstrated by showing that the economic interest of individual members is small compared to the overall costs of effective participation. (Pub. Util. Code § 1802(g).)

Aglet asserted financial hardship in its NOI. On November 15, 2005, an ALJ ruling, issued in Application 05-06-006 *et al.*, found that Aglet met the financial hardship condition, pursuant to § 1802(g). That ruling creates a rebuttable presumption of eligibility for Aglet, pursuant to § 1804(b)(1), because it met the financial hardship in another proceeding within one year of the commencement of this proceeding.

Aglet filed the subject request for compensation on January 17, 2007. Aglet requests compensation for its work in PRGs which are on-going in nature, we find that Aglet's filings are timely. In light of the above, Aglet has satisfied all the procedural requirements necessary to make its request for compensation in this proceeding.

4. Substantial Contribution

Aglet has been an active and productive participant as a member of the PRG for each of the three electric utilities. In Decision (D.) 02-10-062, the Commission stated that "participation in the procurement review process ... by non-market participants who are eligible to request intervenor compensation should be fully compensated because their active participation makes a

significant contribution to this proceeding” (pp. 3-4). Aglet’s consultant Jan Reid participated in the three PRGs on behalf of Aglet. Reid is an expert and has participated in the PRG of PG&E since July 2005, the PRG of SCE since August 2005, and the PRG of SDG&E since January 2006.

Decision 07-11-024 laid out requirements that entities eligible to claim intervenor compensation must meet to request funding for PRG activities. Aglet’s requests that we consider today pre-date the adoption of D.07-11-024. Although Aglet failed to provide the Commission with additional information to address the areas in which their participation made a substantial contribution, historically Aglet’s contributions in PRG proceedings have involved: analyzing and preparing comments on various issues for discussion at the PRG meetings; the development of models to evaluate capacity contracts; gas options; hedging targets; and renewable contracts. In the past, Aglet’s participation in the PRGs has allowed issues to be identified in advance of a utility application, so these issues can be resolved in a more expeditious and efficient manner than through litigation.

Because the request here was made before we clarified these requirements, in the interest of fairness, the Commission is approving Aglet’s award in this proceeding. Aglet has submitted a spreadsheet outlining its participation as a member of the PRG and has contributed substantially to the development of the process and the resource portfolio planning. Aglet’s future requests for intervenor compensation however, need to include an assessment of all areas as outlined in D.07-11-024. In this proceeding, we find Aglet’s claim for substantial contribution to be reasonable.

5. Reasonableness of Requested Compensation

Aglet requests \$17,148.65² for its participation in the PRG's of all three IOU's for the period shown below.

PG&E (October 1-December 31, 2006):

\$2,309.50	14.9 hours, Reid professional time at \$155.00
85.25	1.1 hours, Reid work on compensation request at \$77.50
126.00	0.9 hours, Weil work on compensation request at \$140.00
<u>10.34</u>	Expenses
\$2,531.09	Total

SCE (October 1-December 31, 2006):

\$12,245.00	79.0 hours, Reid professional time at \$155.00
93.50	1.1 hours, Reid work on compensation request at \$85.00
356.50	4.6 hours, Reid travel time at \$77.50 ³
83.88	Reid travel expense ⁴
126.00	0.9 hours, Weil work on compensation request at \$140.00
<u>10.34</u>	Expenses
\$12,915.22	Total

SDG&E (October 1-December 31, 2006):

\$1,472.50	9.5 hours, Reid professional time at \$155.00
93.50	1.1 hours, Reid work on compensation rate at \$85.00
126.00	0.9 hours, Weil work on compensation request at \$140.00
<u>10.34</u>	Expenses
\$1,702.34	Total

The total compensation request is \$17,148.65. The components of this request must constitute reasonable fees and costs when compared to market rates

² Aglet calculates the total requested amount of \$17,158.10, however, the correct amount is \$17,148.65. We correct this and other minor computation errors and use these corrected figures in this decision.

³ Disallowed (See D.07-05-037, p.11; D.07-04-010, p.12)

⁴ Disallowed (See D.07-05-037, p.11; D.07-04-010, p.12)

for similar services from comparably qualified persons. Jan Reid and James Weil have both appeared as experts before the Commission in other proceedings. The Commission has previously awarded Jan Reid's professional work at \$155 per hour in 2006 in D.06-11-032 for 2006 and \$170 per hour in D.07-05-037 for 2007, and we adopt these rates here. James Weil has previously been awarded \$260 per hour in 2006 in D.06-10-018 and \$280 per hour in 2007 in D.07-05-037 and we adopt these rates here.⁵

Aglet seeks compensation for 2007 hours and expenses for Reid's travel to San Francisco to attend certain PRG meetings. The Commission has previously determined that an individual's commute from their homes to San Francisco is routine commuting and thus not compensable. (*See* D.07-05-037, p11; D.07-04-010, p.12.) Accordingly, we disallow Aglet's hours and expenses for travel. We find the itemized direct expenses for photocopying and postage to be commensurate with the work performed and reasonable.

6. Award

We award Aglet \$16,708.27 for its participation in the PRGs of PG&E, SCE and SDG&E for the period of October 1, 2006 through December 31, 2006. We direct PG&E to pay \$2,531.09, SCE to pay \$12,474.84 and SDG&E to pay \$1,702.34. These amounts represent the specific compensation amounts requested by Aglet for substantial contributions to each of the PRGs for these companies. Consistent with previous Commission decisions, we order that after

⁵ Intervenor compensation matters were correctly charged at half of the professional hourly rate. Since some documents for intervenor compensation matters were prepared in 2007, when hourly rates were increased (to \$170 for Reid and to \$280 for Weil), hourly rate for work on intervenor compensation matters was correctly calculated based on these higher rates.

April 2, 2007 (the 75th day after Aglet filed its compensation request), interest be paid on Aglet's award amount at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release H.15. Interest will continue on this award until each utility makes full payment.

We remind Aglet that Commission staff may audit its records related to the award and that Aglet must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. Aglet's records should identify specific issues for which it 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 is claimed.

7. Waiver of Comment Period

This is an intervenor compensation matter. Accordingly, as provided by Rule 14.6(c)(6) of the Commission's Rules of Practice and Procedure, we waive the otherwise applicable 30-day public review and comment period for this decision.

8. Assignment of Proceeding

President Michael Peevey is the assigned Commissioner, and Carol Brown is the assigned ALJ in this proceeding.

Findings of Fact

1. Aglet has satisfied all of the procedural requirements necessary to claim compensation in this proceeding.
2. Aglet made a substantial contribution to the PRGs during the compliance and implementation phases of this proceeding, as described herein.
3. Aglet requested hourly rates for its representatives that are reasonable when compared to the market rates for persons with similar training and experience.

4. Except for travel expenses, Aglet has requested related expenses, as adjusted herein, that are reasonable and commensurate with the work performed.

5. The total of the reasonable compensation is \$16,708.27

6. The Appendix to this opinion summarizes today's award. **Conclusions of Law**

1. Aglet has fulfilled the requirements of Pub. Util. Code §§ 1801-1812, which governs awards of intervenor compensation, and is entitled to compensation, as adjusted herein, incurred in making substantial contributions to the PRGs for PG&E, SCE and SDG&E during the periods of this proceeding described herein.

2. Aglet should be awarded \$16,708.27 for its contribution to the PRGs.

3. This is an intervenor compensation matter. Pursuant to Rule 14.6(c)(6), the comment period for this compensation decision may be waived.

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

O R D E R

IT IS ORDERED that:

1. Aglet Consumer Alliance (Aglet) is awarded \$16,708.27 as compensation for its substantial contributions to the work of the Procurement Review Groups (PRG) in this proceeding, following the directives of Decision (D.) 04-12-048 and D.07-11-024.

2. Within 30 days of the effective date of this decision, Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company shall pay that portion of the compensation award associated with its PRG, as described herein, and as required by Pub. Util. Code § 1807. 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 April 2, 2007, the 75th day after the filing date of Aglet's January 17, 2007 request for compensation and continuing until full payment is made.

3. The comment period for today's decision is waived.
4. This proceeding remains open.

The order is effective today.

Dated November 6, 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:	D0811027	Modifies Decision? No
Contribution Decision(s):	R0602013 and Related Procurement Review Groups	
Proceeding(s):	R0602013	
Author:	ALJ Brown	
Payer(s):	Pacific Gas and Electric Company, Southern California Edison Company, San Diego Gas & Electric Company	

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
Aglet Consumer Alliance	01-17-07	\$17,158.10	\$16,708.27	No	Disallow Travel Expenses and hours

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Jan	Reid	Expert	Aglet Consumer Alliance	\$155.00	2006	\$155.00
Jan	Reid	Expert	Aglet Consumer Alliance	\$170.00	2007	\$170.00
James	Weil	Expert	Aglet Consumer Alliance	\$260.00	2006	\$260.00
James	Weil	Expert	Aglet Consumer Alliance	\$280.00	2007	\$280.00

(END OF APPENDIX)