

Decision 00-09-068 September 21, 2000

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company
for Authority, Among Other Things, to Increase
Rates and Charges for Electric and Gas Service
Effective on January 1, 1999.

(U 39 M)

Application 97-12-020
(Filed December 12, 1997)

Investigation into the Reasonableness of
Expenses Related to the Out-Of-Service Status of
Pacific Gas and Electric Company's El Dorado
Hydroelectric Project and the Need to Reduce
Electric Rates Related To This Non-Functioning
Electric Generating Facility.

Investigation 97-11-026
(Filed November 19, 1997)

Application of Pacific Gas and Electric Company
for Authority, Among Other Things, to Decrease
its Rates and Charges for Electric and Gas Service,
and Increase Rates and Charges for Pipeline
Expansion Service.

(Electric and Gas) (U 39 M)

Application 94-12-005
(Filed December 9, 1994)

Order Instituting Investigation Into Rates,
Charges, and Practices of Pacific Gas and Electric
Company.

Investigation 95-02-015
(Filed February 22, 1995)

TABLE OF CONTENTS

Title	Page
OPINION ON REQUESTS FOR INTERVENOR COMPENSATION	2
1. Background.....	2
2. Requirements for Awards of Compensation.....	2
3. NOI to Claim Compensation	4
4. Substantial Contribution to Resolution of Issues.....	6
5. The Reasonableness of Requested Compensation.....	8
5.1 Overall Benefits of Participation	12
5.2 Hours Claimed.....	16
5.3 Hourly Rates.....	18
5.4 Other Costs	29
6. Award.....	30
Findings of Fact	33
Conclusions of Law	34
ORDER.....	34

OPINION ON REQUESTS FOR INTERVENOR COMPENSATION

This decision addresses four unopposed requests for intervenor compensation and makes the following compensation awards for contribution to Decision (D.) 00-02-046, Pacific Gas & Electric Company's (PG&E) test year 1999 general rate case: \$85,428.64 to the Agricultural Energy Consumers Association (AECA); \$62,186.56 to Redwood Alliance (Redwood); \$406,938.70 to The Utility Reform Network (TURN); and \$97,204.97 to James Weil.

1. Background

In the proceedings which led to the issuance of D.00-02-046, the Commission reviewed PG&E's revenue requirement for test year 1999. PG&E requested a combined electric and gas revenue requirement increase of \$1.193 billion. Litigation of contested issues required about 51 days of hearing and some schedule delays. The Office of Ratepayer Advocates (ORA) and other parties opposing the requested relief participated extensively. The Commission deliberated extensively on the Administrative Law Judge's (ALJ) proposed decision and two alternates before issuing D.00-02-046, which established PG&E's revenue requirement for test year 1999, and increased PG&E's electric and gas revenue requirements by approximately \$470 million.

2. Requirements for Awards of Compensation

Intervenors who seek compensation for their contributions in Commission proceedings must file requests for compensation pursuant to Pub. Util. Code §§ 1801-1812. (All statutory citations are to the Pub. Util. Code.) Section 1804(a) requires an intervenor to file a notice of intent (NOI) to claim compensation within 30 days of the prehearing conference or by a date established by the

Commission. The NOI must present information regarding the nature and extent of the customer's¹ planned participation and an itemized estimate of the compensation the customer expects to request. The NOI may request a finding of eligibility.

Other code sections address requests for compensation filed after a Commission decision is issued. Section 1804(c) requires an eligible customer to file a request for an award within 60 days of issuance of a final order or decision by the Commission in the proceeding. Intervenor timely filed their requests for an award of compensation on April 25, 2000. Under § 1804(c), an intervenor requesting compensation must provide “a detailed description of services and expenditures and a description of the customer’s substantial contribution to the hearing or proceeding.” Section 1802(h) states that “substantial contribution” means that,

“in the judgment of the Commission, the customer’s presentation has substantially assisted the Commission in the making of its order or decision because the order or decision has adopted in whole or in part one or more factual contentions, legal contentions, or specific policy or procedural recommendations presented by the customer. Where the customer’s participation has resulted in a substantial contribution, even if the decision adopts that customer’s contention or recommendations only in part, the commission may award the customer compensation for all reasonable advocate’s fees, reasonable expert fees, and other reasonable costs incurred by the

¹ To be eligible for compensation, an intervenor must be a customer as defined by § 1802(b). In D.98-04-059 (footnote 14) we affirmed our previously articulated interpretation that compensation be proffered only to customers whose participation arises directly from their interests as customers. (See D.88-12-034, D.92-04-051 and D.96-09-040.)

customer in preparing or presenting that contention or recommendation.”

Section 1804(e) requires the Commission to issue a decision that determines whether the customer has made a substantial contribution and what amount of compensation to award. The level of compensation must take into account the market rate paid to people with comparable training and experience who offer similar services, consistent with § 1806.

3. NOI to Claim Compensation

All four intervenors timely filed their NOIs after the first prehearing conference. A May 20, 1998 ALJ ruling found AECA and TURN eligible for compensation in this proceeding. However, this ruling found that the Commission decision AECA relied upon to create a rebuttable presumption of significant financial hardship² granted AECA compensation for 61.6% of its otherwise allowable intervenor costs, because AECA had demonstrated that the economic interest of 61.6% of its members was small compared to the cost of participation. The ALJ's May 20, 1998, ruling directed that if AECA seeks compensation for more than 61.6% of its participation costs in PG&E's general rate case, it should include an appropriate showing of significant financial hardship in its request for compensation. AECA limits its request for

² Section 1804(a)(2)(B) allows the customer to include within the NOI a showing that participation in the hearing or proceeding would pose a significant financial hardship. Alternatively, such a showing shall be included with the request for compensation. If a customer has received a finding of significant financial hardship in any proceeding, § 1804 (b)(1) creates a rebuttable presumption that the customer is eligible for compensation in other proceedings which commence within one year of the date of the finding.

compensation to 61.6% of its costs, and thus need not make a further showing of significant financial hardship.

The May 20, 1998 ALJ ruling directed Redwood and Weil to make a further showing regarding their qualifications as a “customer” pursuant to § 1802(b). This ruling also found Weil had made a sufficient showing of significant financial hardship in order to claim intervenor compensation in this proceeding, but that Redwood should make a showing of significant financial hardship in its request for intervenor compensation. A subsequent July 30, 1998 ALJ ruling found Redwood and Weil to be “customers” as defined in § 1802(b).

As required by the May 20 ALJ ruling, Redwood makes a showing of significant financial hardship in its request for intervenor compensation.

Section 1802(g) defines “significant financial hardship” to mean:

“either that the customer cannot afford, without undue hardship, to pay the costs of effective participation, including advocate’s fees, expert witness fees, and other reasonable costs of participation, or that, in the case of a group or organization, the economic interest of the individual members of that group or organization is small in comparison to the costs of effective participation in the proceeding.”

Redwood attached financial information to its request demonstrating that it has met the “cannot afford to pay standard” in § 1802(g) because it cannot, without undue hardship, afford to pay for its costs of participation. We find on the basis of this financial information that Redwood has shown significant financial hardship.

4. Substantial Contribution to Resolution of Issues

A party may make a substantial contribution to a decision in one of several ways.³ It may offer a factual or legal contention upon which the Commission relied in making a decision,⁴ or it may advance a specific policy or procedural recommendation that the ALJ or Commission adopted.⁵ A substantial contribution includes evidence or argument that supports part of the decision even if the Commission does not adopt a party's position in total.

The parties requesting intervenor compensation state that they made a substantial contribution to the following issues.

AECA

AECA states that it has made a substantial contribution by

- (1) investigating PG&E's corporate policy issues underlying its filing, and
- (2) bringing an additional perspective (customers' willingness to pay more for more reliable service) to one of PG&E's themes (that customers demand reliability). Additionally, AECA states that after careful evaluation, it supported Commissioner Wood's alternate decision, which was ultimately adopted by the Commission.

Redwood

Redwood states that it has made a substantial contribution to two nuclear plant decommissioning issues, (1) authorization of early decommissioning expenditures at Humboldt Bay, and (2) rejection of ORA and the Federal

³ Section 1802(h).

⁴ *Id.*

⁵ *Id.*

Executive Agency's recommendations that no additional funds be collected for Diablo Canyon's eventual decommissioning. Redwood's compensation request is limited to its participation on these two issues.

TURN

TURN states that it has made a substantial contribution regarding service quality; electric distribution expenses; electric distribution capital; gas distribution expenses; gas distribution capital; common and miscellaneous administrative and general expenses; common and miscellaneous capital depreciation; and Section 376 costs (i.e., certain costs relating to implementation of electric restructuring.)

With respect to Section 376 costs, TURN explains that it has sought and been awarded compensation for some of TURN's work in a separate proceeding. However, the hours devoted to the Section 376 issue in this general rate case concerned the treatment here of the restructuring implementation costs, and TURN has not been compensated for these costs in the Section 376 proceeding.

Weil

Weil states that he has made a substantial contribution regarding electric bypass forecasts; electric production expenses; electric distribution expenses; recorded cost ratemaking; injuries and damages; postage; uncollectibles, meter reading; customer service expenses, attrition; the Major Additions Adjustment Clause; and the filing of PG&E's next general rate case.⁶

⁶ Weil states that he opposed PG&E's request for interim relief, which the Commission approved in D.98-12-078. In D.99-06-002, the Commission granted Weil a compensation award for his contribution to D.98-12-078 and Weil has removed all hours and costs related to interim relief from the request we review in today's decision.

Weil has reduced his time to reflect the percentage of his contribution and to account for duplication. For example, he requests compensation for 100% of his time on several issues, and a reduced percentage on other issues where there was greater duplication or where another party's position may have ultimately prevailed. (Weil requests the listed reductions for his time spent on the following issues: 5% for electric production expenses; 70% for electric distribution issues; 10% for customer service expenses; 10% for administrative and general expenses; 5% for attrition; and 25% for other issues.) We find Weil's proposed reductions reasonable.

We agree that AECA, Redwood, TURN, and Weil made substantial contributions to D.00-02-046 in the areas they identify. We adopted AECA, Redwood, TURN, and Weil's identified proposals in whole or in part and benefited from these participants' policy discussion on all of those issues which they addressed.

5. The Reasonableness of Requested Compensation

The four intervenors request compensation as follows:

AECA

AECA requests compensation in the amount of \$101,082.75 as set out below. This amount constitutes 61.6% of its total cost of participation.

Attorneys Fees

Peter W. Hanschen, 250.5 hours at \$300/hour	\$ 75,150.00
18.75 hours at \$325/hour	\$ 6,093.75
20.75 hours at \$350/hour	<u>\$ 7,262.50</u>
Subtotal for Hanschen	\$ 88,506.25

Economic Consultant Fees:

Steven Moss, 206 hours at \$130/hour	\$ 26,780.00
--------------------------------------	--------------

Richard McCann, 131 hours at \$130/hour	\$ 17,030.00
---	--------------

Subtotal for Economic Consultants	\$ 43,810.00
-----------------------------------	--------------

AECA Executive Director's Participation

Michael Boccadoro, 170.2 hours at \$125/hour	\$ 21,275.00
--	--------------

Fee Subtotal	\$153,591.25
---------------------	---------------------

Other Costs

Local travel/transportation	\$ 673.76
-----------------------------	-----------

Photocopying	\$ 6,735.74
--------------	-------------

Postage	\$ 942.27
---------	-----------

Courier/Messenger	\$ 366.48
-------------------	-----------

Telecommunications	\$ 323.61
--------------------	-----------

Facsimile	\$ 1,253.82
-----------	-------------

Computer Research	\$ 208.45
-------------------	-----------

Costs Subtotal	\$ 10,504.13
-----------------------	---------------------

Total Fees and Expenses	\$ 164,095.38
-------------------------	---------------

61.6% of Total Fees and Expenses	\$ 101,082.75
---	----------------------

Redwood

Redwood requests compensation in the amount of \$ 62,186.56⁷ as follows:

Attorneys and Paralegal-Project Manager Fees

Scott Fielder, 71.48 hours at \$150/hour	\$ 10,722.00
--	--------------

62.9 hours at \$150/hour	\$ 9,435.00
--------------------------	-------------

37.3 hours at \$75/hour	\$ 2,797.50
-------------------------	-------------

⁷ Redwood made an inadvertent \$0.24 cent mathematical error in calculating its requested compensation for Adams. These figures correct that error.

James S. Adams, 66 hours at \$37.50/hour	\$ 2,475.00
139.62 hours at \$75/hour	<u>\$ 10,471.50</u>

Subtotal Attorneys and Paralegal-Project Manager Fees	\$ 35,901.00
--	---------------------

Expert Witness Fees and Costs

Bruce Biewald, 166 hours at \$110/hour	\$ 18,260.00
Expert Witness Expenses	<u>\$ 1,085.87</u>

Subtotal Expert Witness Fees and Costs	\$ 19,345.87
---	---------------------

Costs	\$ 6,939.69
--------------	--------------------

(Including copying, postage, and travel expense incurred by Fielder)

Total Fees and Expenses	<u>\$ 62,186.56</u>
--------------------------------	----------------------------

TURN

TURN requests compensation in the amount of \$ 407,099.45 as follows:

Attorneys Fees

Robert Finkelstein, 4.5 hours at \$235/hour	\$ 1,057.50
457.0 hours at \$250/hour	\$114,250.00
89.25 hours at \$265/hour	\$ 23,651.25
23.75 hours at \$132.50/hour	\$ 3,146.87

Theresa Mueller, 273.25 hours at \$205/hour	\$ 56,016.25
---	--------------

Michael Florio, 2.0 hours at 290/hour	\$ 580.00
22.5 hours at \$300/hour	<u>\$ 6,750.00</u>

Subtotal for Attorneys Fees:	\$205,451.87
-------------------------------------	---------------------

Expert Witness Fees and Expenses

JBS Energy Inc.

William Marcus, 271.0 hours at \$145/hour	\$ 39,295.00
17.58 hours at \$150/hour	\$ 2,637.00
Gayatri Schilberg, 481.5 hours at \$105/hour	\$ 50,557.50
29.74 hours at \$110/hour	\$ 3,271.40
Jeff Nahigian, 239.75 hours at \$85/hour	\$ 20,378.75
6 hours at \$95/hour	\$ 570.00
Ron Faubion, 32.15 hours at \$50/hour	\$ 1,607.50
JBS Expenses	<u>\$ 1,772.57</u>
JBS Subtotal	\$ 120,089.72

Diversified Utility Consultants, Inc.

Jacob Pous, 360.5 hours at \$125/hour	\$ 45,062.50
Sara Coleman, 45.5 hours at \$100/hour	\$ 4,550.00
Don Martin, 37 hours at \$45/hour	\$ 1,665.00
DUCI expenses	\$ 4,236.78
DUCI Subtotal	<u>\$ 55,514.28</u>

Expert Fee and Expense Subtotal \$ 175,604.00

Enhancement for Exceptional Results

25% of subtotal for work allocated to depreciation	\$ 19,224.69
--	--------------

Other Costs

Photocopying	\$ 3,969.47
Postage	\$ 1,005.81
Facsimile	\$ 355.70
Federal Express/Delivery costs	\$ 857.41
Telephone	\$ 576.62

Computer research (Lexis charges)	\$ 53.88
Costs subtotal	\$ 6,818.89
Total Fees and Expenses	<u>\$ 407,099.45</u>

Weil

Weil requests compensation in the amount of \$ 97,204.97 as follows:

Fees

James Weil, 396.4 hours at \$200/hour	\$ 79,280.00
25.7 hours at \$220/hour	\$ 5,654.00
65.7 hours of travel time at \$100/hour	\$ 6,570.00
26.1 hours of compensation time at \$110/hour	<u>\$ 2,871.00</u>
Subtotal Fees	\$ 94,375.00

Costs

Photocopying	\$ 1,081.86
Postage	\$ 642.94
Travel (tolls, parking, mileage, transportation)	\$ 839.85
Facsimile and Telephone	\$ 274.37
Expense Adjustment	<u>\$ (9.05)</u>
Subtotal Costs	\$ 2,829.97
Total Fees and Expenses	<u>\$ 97,204.97</u>

5.1 Overall Benefits of Participation

Section 1801.3(f) provides, in part, that the Commission should administer the intervenor compensation statute “in a manner that avoids unproductive or unnecessary participation that duplicates the participation of similar interests otherwise adequately represented...”

Duplication

In D.98-04-059, the Commission interpreted the goal of reducing duplication with some flexibility, especially in multiparty cases such as this general rate case.

“The Commission has recognized that administering this standard requires flexibility. In multiparty proceedings, parties’ positions likely will overlap. However, a party that is basically aligned with other parties may make its own suggestions, adopted by the Commission, that provide measurable and significant ratepayer benefits. Such participation, at least to that extent, seems compensable under this standard, especially in light of § 1802(h). (D.98-04-059, at p. 32.)

The May 20, 1998 ALJ ruling advised the parties that to the extent their efforts merely duplicated those of other parties, they were at risk of receiving reduced or no compensation for those efforts. The ruling further advised the parties to coordinate to the extent possible to avoid unnecessary duplication.

A major general rate case will have many participants, and most have the same goal of convincing the Commission to set PG&E’s authorized revenue requirement at what they believe to be the lowest reasonable level. Necessarily, there may be some overlap in the parties’ participation. The parties seeking compensation explain that they took all reasonable steps to keep duplication to a minimum and to ensure that when it did occur, the work complemented and assisted the showing of other parties. Furthermore, the parties have reduced their requests to reflect duplication, where appropriate. Because of these efforts and the showings of the four participants requesting compensation, we do not believe that these requests should be further reduced for duplication.

Productive Representation

In D.98-04-059, the Commission adopted a requirement that a customer must demonstrate that its participation was “productive,” as that term is used in § 1801.3, where the Legislature gave the Commission guidance on program administration. (See D.98-04-059, at pp. 31-33, and Finding of Fact 42). In that decision, we discuss the fact that participation must be productive in the sense that the costs of participation should bear a reasonable relationship to the benefits realized through such participation. Customers are directed to demonstrate productivity by assigning a reasonable dollar value to the benefits of their participation to ratepayers. This exercise assists us in determining the reasonableness of the request and in avoiding unproductive participation.

AECA

In this phase of PG&E’s general rate case, the Commission set a revenue requirement for PG&E. AECA states it believed that PG&E’s requested increase was greatly inflated, and if approved, would have a direct effect on the rate charged agricultural customers. Therefore, AECA participated both in this phase of the general rate case, as well as in the rate design phase, where it had focused its energy in past general rate cases.

Because AECA coordinated with other intervenors to avoid duplication, AECA focused on investigating PG&E’s corporate policy underlying its filing and also offered policy testimony on reliability issues. The ALJ’s proposed decision discussed much of this policy testimony, and the adopted decision did so as well. (See D.00-02-046, at p. 45.) In addition, AECA supported the alternate decision which the Commission adopted.

Although it is difficult to specifically quantify these benefits, through AECA’s participation, the Commission had a record on which to assess PG&E’s

corporate policy, and to put PG&E's requested revenue requirement increase in proper context. AECA's testimony also contributed to the Commission's overall understanding and consideration of one of the most fundamental issues in the case, that is, the need to improve and maintain system reliability, and the ratepayer cost to do so. However, AECA did not make as full of a showing on productivity as we would have liked. To account for this, we reduce AECA's award by 10%, or by \$9,492.07. We find AECA's participation was productive in that the adjusted costs it claims for its participation were less than the overall benefits realized.

Redwood

Redwood states that that its adopted recommendations will reduce ratepayer costs by about \$47 million if the Humboldt Bay nuclear plant is decommissioned early. Moreover, Redwood states that ratepayers may also avoid future costs as a result of the timely collection of funds for the Diablo Canyon nuclear plant's eventual decommissioning.

Although we cannot precisely quantify the dollar amount of Redwood's participation, Redwood's participation was productive because the benefits realized from its participation fall in the millions of dollars. We therefore find that Redwood's participation was productive in that the costs it claims for participation were less than the benefits realized.

TURN

TURN states that there can be no doubt that its participation in this general rate case was productive, because the total amount of compensation it seeks is substantially less than some of the smaller revenue reductions achieved through its participation. For example, TURN's contribution on the gas distribution expense helped to achieve a \$2 million reduction in PG&E's revenue

requirement. TURN also states that it was primarily responsible for the Commission's rejection of PG&E's requested \$282 million revenue increase for depreciation expenses.

We find that TURN's participation was productive in that the costs it claims for participation were less than the benefits realized. TURN participated in many issues in this large case, and the two examples discussed above demonstrate the cost-effectiveness of its participation.

Weil

Weil states that his participation in this general rate case was productive, because the total amount of compensation he seeks is substantially less than the revenue reductions achieved through his participation. For example, Weil's efforts resulted in a \$468,000 savings in postage expenses, and a \$1 million savings in estimated uncollectibles. Weil's efforts are also partially responsible for a \$5,189,000 reduction in the business attraction and retention activities revenue requirement, and are also largely responsible for \$7,390,000 savings due to reduced breach of contract costs. Additionally, Weil enumerates other monetary and nonmonetary benefits which resulted from his participation. We find that Weil's participation was productive in that the costs he claims for participation were less than the benefits realized.

5.2 Hours Claimed

All four intervenors documented the claimed hours by presenting a daily breakdown of the hours spent for their advocates' (attorneys and paralegals) time, with a brief description of each activity. Also, the claimed hours are segregated by issue where feasible. All four intervenors also documented the claimed hours of their experts by presenting a breakdown of hours spent, although in some cases the breakdown was not a daily breakdown. The hourly

breakdowns presented by these four intervenors reasonably support their respective claims for total hours.

Several specific issues merit mentioning briefly. First, several intervenors have charged for advocate fees for general activities that could not reasonably be divided by issue. These include activities such as reviewing the application, hearing transcripts, the proposed and alternate decisions, etc. We find such an allocation appropriate in a case of this magnitude and complexity, where it is difficult to segregate each task by issue because one task could embrace many issues (i.e. reviewing the initial application, proposed and alternate decisions, etc.)

Second, AECA has not allocated its activities by issue. Because we find that AECA made a substantial contribution to the issues it participated in, and do not reduce the hours of claimed compensation further than AECA has reduced them, AECA's failure to properly allocate its time by issue does not present a problem in this request. However, in future requests, AECA should more specifically allocate its time by issue in the event the Commission finds AECA did not substantially contribute to a given issue.

Finally, Weil requests compensation for his participation in advice letter compliance filings connected to this general rate case. Weil explains that his protest to PG&E's compliance advice letter raised three issues: the disparity between text and tables regarding uncollectibles rate, a proposed Gas and Electric Supply memorandum account, and a proposed gas refund plan. In response to Weil's protest, PG&E modified the gas refund plan and filed an amended advice letter. The modifications satisfied Weil's concern, he notified the Energy Division that he would not protest the amended advice filing, and the refund plan is now underway.

Weil submits that he made a substantial contribution to the modified gas refund plan, and requests compensation for 50% of his time spent on the protest and subsequent communications with PG&E. Weil does not concede compensation for the other two issues raised by the advice letter, but agrees that any compensation request must await a Commission resolution or decision.

Because Weil substantially contributed to the advice letter on the requested issue, the advice letter is a compliance filing which relates to this general rate case, and the time spent for this effort is reasonable, we approve Weil's inclusion of time spent on the advice letter in his compensation request. (See generally D.98-11-049, which granted Weil compensation for his participation in the advice letter process.)

5.3 Hourly Rates

AECA

AECA seeks \$300/hour for work performed by its attorney Peter W. Hanschen in 1998, \$325/hour for work performed in 1999, and \$350/hour for work performed in 2000.⁸ AECA states that during the course of the proceeding, Hanschen changed law firms, having first been a partner at Graham & James LLP, and later a partner with Morrision & Foerster LLP. AECA represents that the rates above are the rates Hanschen billed AECA.

AECA states that these rates are comparable to the rates charged by others with commensurate experience and expertise. Hanschen has practiced in the energy area and before this Commission for more than 25 years. He was formerly an attorney in PG&E's legal department and was the head of its

⁸ AECA bills 0.1 of an hour for work performed in early 1999 at the 1998 hourly rates.

regulatory section. He has represented AECA since its founding ten years ago, and is familiar with energy issues and how they relate to agriculture.

AECA does not cite to our past decisions addressing Hanschen's hourly rate. In D.96-08-040, 67 CPUC2d 562, addressing numerous compensation requests in the electric restructuring proceeding, the Commission approved similar hourly rates for Hanschen and Florio, TURN's most experienced attorney. (See 67 CPUC2d at p. 578-79, approving \$250/hour for Hanschen for 1995 and 1996, and 67 CPUC2d at p. 591, approving \$250/hour for Florio in 1995 and \$260/hour for 1996.) The latest Commission decision addressing Hanschen's rate is D.98-10-051, where the Commission approved Hanschen's requested hourly rate of \$250/hour for work performed in 1996 and 1997.

In D.99-11-049, the Commission approved a \$300 hourly rate for Florio for his professional work performed during the fiscal year July 1, 1998 through June 30, 1999. This rate was in part based on the average partner rate of \$309/ hour in an *Of Counsel* survey of reported ranges of partner hourly rates. We therefore find Hanschen's hourly rate of \$300/hour falls within a reasonable range for work performed in 1998, even though it is a substantial increase (20%) over the hourly rate we approved for Hanschen in 1997. However, given that \$300/hour is a substantial increase in Hanschen's approved hourly rate, we do not believe it appropriate to increase this hourly rate further for work performed in 1999 and 2000 in this proceeding. This result is also consistent with the hourly rate we approve below for Florio for work performed in 1999 and 2000. We therefore approve an hourly rate of \$300/hour for all of Hanschen's professional work in this proceeding.

The Commission's policy is to compensate travel time at half of the approved hourly rate. Hanschen bills his full hourly rate for travel time on

May 27, 1998 and February 17, 2000. Since these billings do not specifically segregate travel and professional time, we direct that five hours billed on these dates should be compensated at half of Hanschen's hourly rate, and reduce AECA's award accordingly. In future compensation requests, AECA should segregate and appropriately bill for its travel time.

AECA seeks \$130/hour for work performed by Steven Moss and Richard McCann, economic consultants from M. Cubed. Moss is a co-founder with M. Cubed and a former principal with Foster Associates, Inc. He has presented testimony and conducted analysis on economic, environmental and energy issues before various California legislative and regulatory bodies, including the Commission, and has led studies into the economic characteristics and water usage patterns of Central Valley agriculture. Prior to joining Foster Associates, Moss was on the staff of the U.S. House of Representatives and the U.S. Office of Management and Budget. He holds a B.S. from the University of California, Berkeley, and a Master of Public Policy from the University of Michigan, Ann Arbor.

McCann, a partner in M. Cubed, specializes in environmental and energy resource economics and policy. He has testified before the Commission, as well as other regulatory agencies. McCann received a Ph.D in Agriculture and Resource Economics from the University of California, Berkeley. Prior to joining M. Cubed, McCann held professional positions with Foster Associates, QED Research, Inc. and Dames & Moore.

AECA's request states that the Commission has found Moss' and McCann's rates to be reasonable in other Commission proceedings, but does not state what those other proceedings were, or what hourly rate was approved. In the most recent decision addressing Moss' hourly rate, D.98-10-051, the

Commission approved \$100/hour for Moss' work performed in 1996 and 1997. The Commission also approved an hourly rate of \$100 for both Moss and McCann for work performed in 1994 and 1995. (See 67 CPUC2d at 579.) Moss and McCann have not sought an increase in this \$100 hourly rate for several years, nor have they addressed in this filing why such an increase is appropriate here. We believe that an increase of 30% is excessive, and find more reasonable a rate of \$120/hour for professional work performed by Moss and McCann during 1998 in this proceeding. This increase in hourly rate reflects additional experience both experts have gained in participating in Commission proceedings, as well as inflation costs.

AECA also seeks \$125/hour for the work of Executive Director Michael Boccadoro. We found that rate reasonable in D.98-10-051 and we apply it here. However, Mr. Boccadoro billed his full hourly rate for 6.1 hours spent on June 29, 1998 for traveling to and attending a meeting with intervenors, and did not segregate these activities. Other intervenors billed between 2-3 hours to prepare for and attend this same meeting. Therefore, we determine that 3 hours of Boccadoro's time should be billed at half the hourly rate for travel, and reduce the award accordingly. In future applications, AECA should segregate and appropriately charge for its travel time.

Redwood

Redwood seeks \$150/hour for work performed by its attorney, Scott L. Fielder. Redwood seeks compensation for 74% of Fielder's hours spent on professional services, excluding hours spent on non-productive issues. Redwood also appropriately seeks compensation for half of Fielder's hourly rate for hours spent on travel and compensation-related activities.

Fielder was awarded a J.D. from Southwestern University School of Law in 1978. He has practiced criminal law and civil litigation for approximately 19 years. During that time, he has also tried many nuclear power plant cases before this Commission and the Atomic Licensing Safety Board. \$150/hour is a reasonable hourly rate, and we approve this rate for the professional work Fielder performed in this proceeding.

Redwood seeks \$110/hour for professional services rendered by Bruce Biewald. Biewald received a B.S. in Architecture, Building Technology, and Energy Use in Buildings in 1981 from the Massachusetts Institute of Technology. He attended Harvard University Extension School in 1989/90, taking graduate courses in micro and macroeconomics. Since 1996, Biewald has been president of Synapse Energy Economics, Inc. in Cambridge, Massachusetts. He is a consultant on a wide variety of energy and economic issues, including nuclear and fossil power plant costs and performance, nuclear plant decommissioning and radioactive waste issues. In 1986, he testified before this Commission on Diablo Canyon decommissioning cost and collection issues. Biewald has also testified before numerous other state utility commissions, and the Federal Energy Regulatory Commission. A rate of \$110/hour is reasonable, in the range of rates we approve for AECA's and TURN's respective experts, and we approve it for Biewald's professional work performed in this proceeding.

Redwood has also attached receipts for other costs incurred and billed by Biewald, including airplane, hotel, shuttle, and meal costs. These costs total \$1,085.87, and we approve them as reasonable.

Redwood seeks \$75/hour for professional work performed by its paralegal-project manager James S. Adams, and half of this hourly rate for travel time. Redwood seeks compensation for 74% of Fielder's hours spent on

professional services, excluding hours spent on non-productive issues. We have previously found this \$75/hour rate reasonable, and we apply it here.

TURN

TURN seeks \$250/hour for Finkelstein for work performed in 1998 and \$265/hour for work performed in 1999, and half the 1999 hourly rate for work performed on intervenor compensation issues. TURN seeks \$205/hour for work performed by Mueller in 1997-98. TURN seeks \$290/hour for work performed by Florio for 1997-98 and \$300/hour for work performed in 1999-2000. We have already approved these rates in other proceedings for similar work. We approve these rates again here.

Marcus, Principal Economist for JBS Energy, and Schilberg, Senior Economist, bore primary responsibility for presenting TURN's testimony on all issues except depreciation. Marcus' testimony addressed policy issues as well as electric and gas capital as well as administrative and general expenses, among other issues. Schilberg's testimony focused primarily on service quality and tree trimming issues. Whenever possible, Marcus and Schilberg delegated work related to the specific review of PG&E's testimony, workpapers, and data request responses to Nahigian and Faubion. JBS Energy allocated its time to the following tasks: NOI, application review, and testimony development; hearing assistance and preparation; briefing assistance; and review of proposed and alternate decision and related comments. JBS billed TURN for half of the time JBS employees spent on travel.

TURN seeks \$145/hour, \$105/hour, and \$85/hour for work performed in 1997 and 1998 by Marcus, Schilberg, and Nahigian respectively, and \$150/hour, \$110/hour, and \$95/hour for work performed in 1999 by these

three persons. We have already approved these rates in other proceedings for similar work and approve these rates again here.

TURN seeks \$50/hour for work performed by Faubion. TURN states that Faubion performed much the same work for JBS Energy as did Helmich, his predecessor. This work includes preliminary analysis of data request responses and other tasks related to the preparation and presentation of JBS Energy's final testimony or draft sections of TURN's brief. TURN states that although Fabion does perform clerical tasks as well, JBS Energy only billed TURN for that portion of Fabion's time devoted to tasks that are more "professional" in nature. TURN justifies Faubion's requested \$50/hour by stating that the Commission, in D.98-08-016, has previously approved a \$45/hour rate for similar work done by Helmich in 1996 and 1997, and increased that rate to \$50/hour (albeit for one hour of work) in D.99-02-006.

In D.99-11-006, at p. 14, we declined to award any compensation for Faubion because Utility Consumers Action Network sought compensation for clerical work performed by Faubion. However, TURN requests compensation for Faubion's professional services rendered in a Commission proceeding, which TURN characterizes as work similar to that performed by Helmich. We only increased Helmich's compensation award from \$45 to \$50/hour (for only one hour of work at the higher rate) after he had participated in many Commission proceedings. Because this is the first compensation award for Faubion, we find an hourly rate of \$45/hour reasonable.

Jacob Pous and Diversified Utility Consultants, Inc. (DUCI)

About one quarter of the total revenue requirement increase which PG&E originally sought related to changes in its depreciation practices. TURN

retained DUCI to undertake a detailed review of PG&E's depreciation practices. This is the first time TURN seeks compensation from the Commission for DUCI.

TURN seeks \$125/hour for work performed by Jacob Pous, Principal of DUCI. Pous bore primary responsibility for developing and presenting TURN's depreciation testimony and also assisted with preparing the briefs on depreciation issues. Pous delegated work to lower priced firm members at DUCI when appropriate to minimize the total cost of service to TURN. TURN states that DUCI charged TURN \$125/hour for Pous' work.

Pous graduated from the University of Missouri with a B.S. in Engineering in 1972, and obtained a M.A. in Management from Rollins College in 1980. Pous has also completed a series of depreciation programs sponsored by Western Michigan University, and has attended numerous other utility related seminars.

Since 1972, Pous has worked in the utility field, first as an employee of Kansas City Power & Light Company, then in an independent consulting engineering firm. After ten years with that firm, Pous resigned to create DUCI in 1986. As a principal of DUCI, Pous has presented and prepared many electric, gas, and water analyses in both retail and wholesale proceedings, with clients (including public utility commissions) throughout the United States.

TURN submits that Pous' qualifications are similar to those of Marcus, the Principal Economist for JBS Energy. In D.00-05-006, the Commission discussed Marcus' qualifications: Marcus graduated from Harvard College with an A.B. magna cum laude in Economics in 1974, and received a M.A. in Economics from the University of Toronto in 1975. Marcus has been directly involved in the field of energy and policy and utility regulation for over twenty years, and has appeared often before this Commission.

Marcus has much more experience appearing before this Commission than does Pous. We award Marcus a rate of \$145/hour for work performed in 1997 and 1998, and \$150/hour for work performed in 1999. Pous' requested rate of \$125/hour, which is below Marcus' current rate, is reasonable given that this is Pous' first appearance before this Commission and we approve it for the work performed in this proceeding.

TURN seeks \$100/hour for work performed by Sara Coleman in this proceeding. Coleman is a Certified Public Accountant licensed to practice in Texas where DUCI is located. Coleman has worked three years with the public accounting firm of Arthur Andersen, and three and a half years as a regulatory accountant with the Texas Public Utilities Commission. To demonstrate the reasonableness of its request, TURN refers to D.96-08-040, 67 CPUC2d 562, addressing compensation requests in the electric restructuring proceeding. The decision includes a broad survey of the range of expert fees incurred by intervenors in that proceeding. The Commission noted that the range of approved hourly rates for expert witness-related work on behalf of qualifying intervenors was \$100 to \$175 in 1995. (67 CPUC2d at p. 580.)

Coleman has regulatory experience, although this is the first time Coleman has appeared in this Commission's proceedings. TURN's requested hourly rate of \$100/hour for work performed by Coleman in this proceeding in 1998 is reasonable and we approve it.

TURN seeks \$45/hour for work performed by Don Martin in this proceeding. TURN states that Martin has extensive experience in computer modeling and data management. Since being employed by DUCI, Martin has assisted Pous in analyzing numerous depreciation studies. TURN submits that in the data intensive field of performing and critiquing depreciation studies,

Martin's work is especially valuable. TURN believes Martin's work is similar to that performed by Helmich for JBS Energy in 1997, and should establish the reasonableness of the requested hourly rate for Martin's work in 1998. We agree that \$45/hour is a reasonable rate for Martin's work in this proceeding.

Enhancement

TURN seeks a 25% enhancement (calculated as \$19,224.69) to its baseline compensation request for the portion of the fee award covering work which TURN and DUCI performed on depreciation-related issues. TURN believes this enhancement is appropriate because of the exceptional results it achieved on depreciation issues.

After the Commission has determined an appropriate base level of compensation, the Commission has, in certain cases, awarded an enhancement, or upward adjustment to that base level. In D.88-02-056, at pp. 3-4, the Commission set forth factors that can be considered in making this determination.

"A. Fee level

1. The experience, reputation, and ability of the attorney.
2. The skill required to perform the legal service properly.
3. Customary fee.

B. Compensable Hours

4. The time and labor required (reasonable number of hours to present case).
5. Efficiency of presentation.
6. Novelty and difficulty of the issues.
7. Duplication of effort.

C. Degree of Success

8. Dollar amount involved
9. Degree of importance of the issue.
10. The results obtained (partial or complete success on the issue).

“Of course, these factors are not to be applied in a rigid manner. Some factors will apply to particular elements at times and at other times the factors will be considered in adjusting the overall award. These final adjustments can logically take the form of flat dollar amounts, percentage increases/decreases to either the base award or number of hours, and finally the hourly fee can be enhanced or reduced.”

The Commission has awarded TURN an enhancement to all or part of its base compensation on many occasions. (See D.88-02-056 [25% enhancement based on the dollar amount involved and TURN’s level of success]; D.93-04-048 [20% enhancement based on TURN’s degree of success, the novel and complex issues, TURN’s efficiency and skill, and the contingent nature of the litigation]; D.94-09-022 [35% enhancement based on the substantial dollars involved, TURN’s degree of success, the complexity and risks involved, the contingent nature of the litigation, and the exceptional skill of TURN’s attorney]; D.96-09-024, 67 CPUC2d 678, 690-91 [25% enhancement for TURN’s 1995 work on Phase 1 issues based on the substantial dollars involved, TURN’s degree of success, the difficulty and complexity of the litigation, TURN’s efficiency, and the contingent nature of the litigation.]

TURN’s requested 25% enhancement for its work performed on depreciation-related issues is justified. TURN achieved a remarkable degree of success on these issues, because without TURN’s work, PG&E’s proposed changes to its depreciation parameters, and particularly to its net salvage values, would have resulted in an increase of as much as \$282 million in PG&E’s depreciation and amortization expense. In D.00-02-046, the Commission instead authorized PG&E no increase for these items. TURN’s participation on these issues was also efficient, because one attorney was assigned to the depreciation issues, as well as many of other issues. TURN’s enhancement request is also

justified because the depreciation issues concerned substantial dollars (depreciation accounted for about one quarter of PG&E's initial requested increase in revenue requirement.) Finally, TURN's scope of work, and therefore its risks, were larger than usual. The risks were even greater because TURN was working with a consultant firm that had never before appeared before this Commission. For these reasons, we grant TURN a 25% enhancement for both its attorney and consultant time spent on depreciation-related issues.

Weil

Weil requests an hourly rate of \$200 for professional work performed in 1999 and \$220 for such work performed in 2000. We follow D.00-07-015 and establish Weil's compensation rate at \$200/hour for professional time in 1999, and \$220 for such work performed in 2000. Weil's rate for travel and compensation-related activities is half of the above hourly rates.

5.4 Other Costs

All intervenors request reimbursement for copying, postage, travel and other miscellaneous expenses incurred during their participation in this proceeding. With two exceptions set forth below, these costs are reasonable in a case of this magnitude and should be compensated in full. AECA requests compensation for \$6,735 for photocopying expenses. The requested expense is excessive and far greater than other intervenors' requests for such expenses. For example, TURN's photocopying expenses are approximately \$4,000, while Redwood and Weil each request approximately \$1,000 for photocopying. The scope of AECA's participation falls roughly somewhere between that of TURN's and the other intervenors'. We therefore limit AECA's photocopying charges to a reasonable level of \$3,000. We apply similar rationale in reducing AECA's request for facsimile expenses from \$1,253.82 to \$800.

6. Award

We make the following awards of intervenor compensation, calculated as described above.

AECA

We award AECA \$85,428.64. The award (about \$15,500 less than AECA's total request) is adjusted as discussed in this decision and is summarized below:

Attorneys Fees

Peter W. Hanschen, 285 hours at \$300/hour (adjusted)	\$ 85,500.00
5 hours at \$150/hour (adjusted)	<u>\$ 750.00</u>
Subtotal for Hanschen (adjusted)	\$ 86,250.00

Economic Consultant Fees:

Steven Moss, 206 hours at \$120/hour (adjusted)	\$ 24,720.00
Richard McCann, 131 hours at \$120/hour (adjusted)	\$ 15,720.00
Subtotal for Economic Consultants (adjusted)	\$40,440.00

AECA Executive Director's Participation

Michael Boccadoro, 167.2 hours at \$125/hour (adjusted)	\$ 20,900.00
3 hours at \$62.50 (adjusted)	<u>\$ 187.50</u>

Fee Subtotal (adjusted) \$147,777.50

Other Costs

Local travel/transportation	\$ 673.76
Photocopying (adjusted)	\$ 3,000.00
Postage	\$ 942.27
Courrier/Messenger	\$ 366.48
Telecommunications	\$ 323.61
Facsimile (adjusted)	\$ 800.00
Computer Research	<u>\$ 208.45</u>

Costs Subtotal (adjusted)	\$ 6,314.57
TOTAL FEES AND EXPENSES (adjusted)	\$154,092.07
61.6% OF TOTAL FEES AND EXPENSES (adjusted)	\$ 94,920.71
10% reduction on productivity issue	\$ 9,492.07
TOTAL AWARD	\$ 85,428.64

Redwood

We award Redwood \$ 62,186.56 as summarized in Section 5 above.

TURN

We award TURN \$ 406,938.70. The compensation we award TURN for attorneys fees , enhancement, and other costs are summarized in Section 5 above. We adjust TURN's request concerning its expert fees only regarding Faubion's hourly rate, which we set at \$5 less than the requested rate. This results in an award that is \$160.75 less than TURN requested.

Weil

We award Weil \$97,204.97, as summarized in Section 5 above.

Consistent with previous Commission decisions, we will order that interest be paid on the award amount (calculated at the three-month commercial paper rate), commencing July 9, 2000, (the 75th day after the above-mentioned intervenors filed their compensation requests) and continuing until the utility makes its full payment of award.

As in all intervenor compensation decisions, we put AECA, Redwood, TURN, and Weil on notice that the Commission Staff may audit all intervenors' records related to these awards. Thus, AECA, Redwood, TURN, and Weil must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. AECA, Redwood, TURN, and Weil's records should identify specific issues for which they request compensation, the

actual time spent by each employee, the applicable hourly rate, fees paid to consultants, and any other costs for which compensation may be claimed.

PG&E's Comments

PG&E does not oppose any of the intervenor's requests, but makes its own request. PG&E wants to ensure that it is able to recover in rates all monies paid pursuant to this decision, and questions whether two recent Commission decisions will permit this. PG&E explains that it records the electric amounts of a paid intervenor compensation award in the Streamlining Residual Account (SRA). The amounts recorded in the SRA are then recovered through electric rates approved in the annual Revenue Adjustment Proceeding. PG&E explains that D.99-10-057, Conclusion of Law 4 on p. 36 states that "Sections 368(a) and 367(a) do not permit utilities to carry over after the rate freeze those costs incurred in the rate freeze." The Commission denied rehearing of this decision in D.00-03-058. According to PG&E, these decisions raise the possibility that, if the electric rate freeze ends before it recovers all the intervenor compensation amounts awarded by this decision, the Commission may not allow PG&E to recover in rates the remaining electric portions of these amounts after the rate freeze ends.

PG&E states that it is pursuing two remedies to correct what it views to be legal errors in prior Commission decisions. First, PG&E has filed a writ of review of D.99-10-057 and D.00-03-058 in the California Court of Appeal (Case No. A090780). PG&E has also filed a separate proposal in A.00-03-038 requesting the Commission allow PG&E to transfer balances in the SRA to the Transition Revenue Account on a monthly basis as costs are incurred. PG&E requests the Commission order that same relief in this decision for the amounts awarded here.

PPG&E raises its claimed legal error and separate proposal in other forums where all participants of the above-cited decisions should have an opportunity to participate. Therefore, we do not address this issue here.

Pursuant to Pub. Util. Code § 311(g)(3) and Rule 77.7 (f)(6) of the Commission's Rules of Practice and Procedure, the 30-day comment period for draft decisions is waived because this is a decision on requests for compensation.

Findings of Fact

1. AECA, Redwood, TURN, and Weil have made timely requests for compensation for their contributions to D.00-02-046.
2. Redwood has made a showing of significant financial hardship by demonstrating that it cannot, without undue hardship, pay for its costs of participation in the proceeding which led to the issuance of D.00-02-046.
3. AECA, Redwood, TURN, and Weil all contributed substantially to D.00-02-046.
4. AECA, Redwood, TURN, and Weil coordinated their efforts to keep duplication to a minimum and reduced their compensation requests where duplication did occur.
5. Redwood, TURN, and Weil's participation was productive in that the costs claimed for participation were less than the benefits realized. AECA's participation was productive in that the adjusted costs claimed for participation were less than the benefits realized.
6. The approved hourly rates for AECA, Redwood, TURN, and Weil's attorneys and experts are no greater than the market rates for individuals with comparable training and experience.
7. Intervenors should be compensated at half of their attorneys' or experts' hourly rates for travel time.

8. Redwood's, TURN's, and Weil's miscellaneous costs approved by this decision are reasonable. AECA's miscellaneous costs are excessive and should be compensated only to the extent approved by this decision.

9. A 25 percent enhancement for TURN's attorney and consultant time spent on depreciation-related issues is reasonable, based on the substantial amount of dollars involved, the degree of importance of these issues, TURN's degree of success, the difficulty of the litigation, and TURN's efficiency.

Conclusions of Law

1. AECA, Redwood, TURN, and Weil have fulfilled the requirements of Sections 1801-1812 which govern awards of intervenor compensation.

2. AECA should be awarded \$85,428.64 to for its contribution to D.00-02-046.

3. Redwood should be awarded \$62,186.56 for its contribution to D.00-02-046.

4. TURN should be awarded \$406,938.70 for its contribution to D.00-02-046.

5. Weil should be awarded \$97,204.97 for his contribution to D.00-02-046.

6. This order should be effective today so that AECA, Redwood, TURN, and Weil may be compensated without unnecessary delay.

O R D E R

IT IS ORDERED that:

1. The Agricultural Energy Consumers Association (AECA) is awarded \$85,428.64 in compensation for its substantial contribution to Decision (D.) 00-02-046.

2. The Redwood Alliance (Redwood) is awarded \$62,186.56 in compensation for its substantial contribution to D.00-02-046.

3. The Utility Reform Network (TURN) is awarded \$406,938.70 for its substantial contribution to D.00-02-046.

4. James Weil (Weil) is awarded \$97,204.97 for his substantial contribution to D.00-02-046.

5. Pacific Gas and Electric Company (PG&E) shall pay AECA, Redwood, TURN, and Weil their respective awards within 30 days of the effective date of this order. PG&E shall also pay interest on the award at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release G.13, with interest, beginning July 9, 2000, and continuing until full payment is made.

This order is effective today.

Dated September 21, 2000, at San Francisco, California.

LORETTA M. LYNCH

President

HENRY M. DUQUE

JOSIAH L. NEEPER

RICHARD A. BILAS

CARL W. WOOD

Commissioners