Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Southern California Edison Company (E 3338 E) for Authority to Institute a Rate Stabilization Plan with a Rate Increase and End of Rate Freeze Tariffs.	Application 00-11-038 (Filed November 16, 2000)
Emergency Application of Pacific Gas and Electric Company to Adopt a Rate Stabilization Plan.	Application 00-11-056 (Filed November 22, 2000)
Petition of The Utility Reform Network for Modification of Resolution E-527.	Application 00-10-028 (Filed October 17, 2000)

O P I N I O N

This decision awards Aglet Consumer Alliance (Aglet) $22,593.61 in compensation for its contribution to Decision (D.) 01-01-018.

1. Background

D.01-01-018, issued January 4, 2001, is an interim opinion responding to emergency requests of Pacific Gas and Electric Company (PG&E) and Southern California Edison Company (Edison) to raise rates on an interim basis, subject to refund. These emergency requests were filed in PG&E's Rate Stabilization Plan Application (A.) 00-11-038, and Edison's Rate Stabilization Plan A.00-11-056. Prior to D.01-01-018 the Commission issued D.00-12-067, December 21, 2000,

which consolidated these applications and a petition filed by The Utility Reform Network (TURN). In addition, the Commission incorporated the record developed in the post-transition ratemaking proceedings (Phase 3 of A.99-01-016 et al.) in its consideration of the Rate Stabilization Plan applications.

In D.01-01-018, the Commission implemented an immediate, interim surcharge of one cent per kilowatthour (kWh) on an equal cents per kWh basis. The result was to increase rates by 9% for residential customers, 7% for small business customers, 12% for medium commercial customers, and 15% for large commercial and industrial customers. Edison's low income customers and those eligible for PG&E's California Alternative Rates for Energy (CARE) were exempted. The Commission provided these increases in order to improve the ability of the applicants to cover costs of procuring in wholesale markets energy they could not produce themselves to serve their loads.

These surcharge revenues are tracked in a balancing account subject to refund, and are applied to the ongoing wholesale electricity procurement costs. In taking this action the Commission invoked its emergency authority, noting that rates charged by PG&E and Edison were frozen at 1996 levels, yet both utilities are compelled to purchase wholesale electric power at so-called market based rates that are not just and reasonable, as found by the Federal Emergency Regulatory Commission (FERC). As a result, the applicants contend they are experiencing severe financial difficulties.

In approving an interim rate increase subject to refund, the Commission balanced the public interest between moderating rate increases and ensuring the ability of applicants to procure and deliver power. The Commission explained the emergency nature of current cash flow, short-term access to capital markets, and the potential for problems with system reliability as a consequence of cash

flow constraints and inability to borrow. While the utilities requested a substantially greater increase in rates than those granted and an end to the rate freeze, they also proposed that ratepayers would bear the burden of higher rates and not shareholders. In its response to these requests, the Commission noted many benefits received by shareholders as a result of restructuring, and the transfer of funds from their utilities to the holding companies.

D.01-01-018 adopted a rate increase subject to refund for a 90-day interim period. A number of other issues will be considered by the Commission in the next phase of these proceedings, including accounting issues, ratemaking to ensure that power produced from retained assets is dedicated to serve native load, utilities' cost cutting efforts, pursuit by utilities of remedies at FERC or the courts, application of holding company assets or guarantees to utility power procurement requirements, conservation, rate design, additional CARE discounts, consumer education, condemnation efforts to ensure generation availability, and whether utilities should issue additional rate reduction bonds.

Due to the emergency claimed by applicants, there were no briefs or written comments preceding D.01-01-018.

2. Procedural Matters

Pursuant to Rule 77.7 (f)(6), concerning decisions (such as today's decision) on intervenor compensation requests, the otherwise applicable 30-day period for public review and comment is being waived.

3. 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 after the prehearing conference or by a date established by the Commission. The NOI must present information regarding the nature and extent of the customer's[1] 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 Commissions in the proceeding. Aglet timely filed its request for an award of compensation on March 5, 2001. 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

[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 interest as customers. (*See* D.88-12-034, D.92-04-051, and D.96-09-040.)

> contention or recommendations only in part, the commission may award the customer compensation for all reasonable advocates fees, reasonable expert fees, and other reasonable costs incurred by the customer in preparing or presenting that contention or recommendation."

Section 1804(3) 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.

4. NOI to Claim Compensation

Aglet timely filed its NOI January 26, 2001, after the first prehearing conference and was found to be eligible for compensation in this proceeding by a ruling dated April 20, 2001. The same ruling found that Aglet had established significant financial hardship.

5. Substantial Contribution to Resolution of Issues

A party may make a substantial contribution to a decision in one of several ways.[2] It may offer a factual or legal contention upon which the Commission relied in making a decision,[3] or it may advance a specific policy or procedural

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[2] Section 1802(h).

recommendation that the ALJ Commission adopted.[4] A substantial contribution

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[3] *Id.*

[4] *Id.*

includes evidence or argument that supports part of the decision even if the Commission does not adopt a party's position in total.[5]

Aglet contends it provided a substantial contribution through active participation in the hearings as demonstrated through its discovery, introduction of utility documents, and oral argument. Aglet focused on two primary issues in the proceeding, the granting of minimum relief to the utilities, and the role of the holding companies. Aglet also requested that shareholders share the pain associated with utility cash flow problems. While Aglet's contribution is not explicitly discussed in D.01-01-018, Aglet believes the Commission's adoption of a minimum rate increase (one cent per kWh), and the Commission's language indicating further study of the relationship between the utilities and their holding companies in future phases of these proceedings suggests Aglet's proposals were essentially adopted.

We agree that Aglet made a substantial contribution in this phase of the proceeding on those issues it identifies in D. 01-01-018. Aglet, as well as other parties, recommended rate increases which were significantly less than those requested by applicants. Furthermore, Aglet substantially contributed in regard to the relationship between the utilities and their holding companies, an issue we will address during the next phases of this proceeding. We also commend Aglet for its substantial contribution to the implementation accounting which resulted in changes to PG&E's and Edison's advice letters filed in response to D.01-01-018.

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[5] The Commission has provided compensation even when the position advanced by the intervenor is rejected. D.89-03-063 (awarding San Luis Obispo Mothers For Peace and Rochelle Becker compensation in Diablo Canyon Rate Case because their arguments, while ultimately unsuccessful, forced the utility to thoroughly document the safety issue involved.)

6. The Reasonableness of Requested Compensation

Professional Fees

James Weil	78.6 hours X $220	= $17,292.00
	39.7 hours X $110	= 4,367.00
	Subtotal	= $21,659.00

Other Reasonable Costs

Photocopying	= $ 347.22
Postage	= $ 124.99
Travel Expenses (bridge tolls, parking, transit fares, vehicle mileage)	= $ 456.40
Fax Charges	= $ 6.00
Subtotal:	= $ 934.61
Total =	$ 22,593.61

6.1 Overall Benefits of Participation

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, *mimeo.* at 31-33, and Finding of Fact 42). In that decision we discuss the requirement that 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.

We did not attribute our adopted rate relief (one cent per kWh for PG&E and Edison) to a specific party. Nevertheless, we considered the arguments of

Aglet for minimal rate relief, and similar arguments of other parties, in reaching our decision on this issue. The adopted increase was substantially less than that requested by applicants. The substantial contribution provided in Aglet's arguments assisted us in resolving this issue. We note that small changes in rates for PG&E or Edison result in substantial increases in overall annual revenues. For example, a 10% increase in our adopted one cent per kWh change in rates is about $80 million in annual revenues for each utility, which significantly exceeds Aglet's request of $22,593.

The role of the holding companies is an issue still to be decided. In D.01-01-018, we discussed this role, and our intention to further explore the options for using holding company assets or guarantees for utility power procurement requirements. While the relationship between the utilities and their holding companies on power procurement is unresolved, Aglet substantially contributed to the overall outcome in D.01-01-018 on this issue, and our desire to include it during the next phases of this proceeding. As with rate increases, the potential dollar values of this issue are substantial.

6.2 Hours Claimed

Aglet documented its claimed hours through detailed records of time spent on the various aspects of this proceeding. The records indicate both the professional hours spent, and the activities associated with the hours. In its request Aglet has requested 3.5 hours incurred in work on issues from A.99-01-016, et al, which was incorporated into this proceeding. Aglet also deferred 29.6 hours spent working on issues in the next phase of this proceeding. The hourly breakdowns and allocation of hours to different activities reasonably support the claimed hours for Aglet.

6.3 Hourly Rates

Aglet requests an hourly rate of $220 per hour and a travel compensation rate of $110 per hour for work done at the end of the year 2000 and for 2001. These rates were previously awarded Aglet by the Commission in D.00-076-015 and D.00-11-02. We find these hourly rates to be reasonable and consistent with past hourly rates for comparable work.

6.4 Other Costs

Aglet requests $934.61 for other costs (photocopying, postage, fax, bridge tolls, parking and vehicle travel). These costs have been itemized by date, amount and activity. Based on the scope of Aglet's work, documents needed, and the size of the service list (116), these costs appear reasonable.

7. Award

We award Aglet $22,593.61, calculated as described above. We will assess responsibility for payment equally among PG&E and Edison. 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 May 19, 2001, the 75th day after Aglet filed its compensation request and continuing until the utilities make full payment of the awards.

As in all intervenor compensation decisions, we put Aglet on notice that the Commission Staff may audit Aglet records related to this award. Thus, 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 requests 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.

Findings of Fact

1. Aglet has made a timely request for compensation for its contribution to D.01-01-018.

2. Aglet has made a showing of significant financial hardship by demonstrating the economic interests of its individual members would be extremely small compared to the costs of participating in this proceeding.

3. Aglet contributed substantially to D.01-01-018.

4. Aglet has requested hourly rates for experts that are no greater than the market rates for individuals with comparable training and experience.

5. Aglet has requested hourly rates for its expert James Weil that have already been approved by the Commission.

6. The miscellaneous costs incurred by Aglet are reasonable.

Conclusions of Law

1. Aglet has fulfilled the requirements of §§ 1801-1812 which govern awards of intervenor compensation.

2. Aglet should be awarded $22,593.61 for its contribution to D.01-01-018.

3. Per Rule 77.7(f)(6) of the Commission's Rules of Practice and Procedure, the comment period for this compensation decision may be waived.

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

O R D E R

IT IS ORDERED that:

1. Aglet Consumer Alliance (Aglet) is awarded $22,593.61 in compensation for its substantial contribution to Decision 01-01-018.

2. Pacific Gas and Electric Company (PG&E) shall pay Aglet $11,296.81, its share of the total award 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 May 19, 2001 and continuing until full payment is made.

3. Southern California Edison Company (Edison) shall pay Aglet $11,296.81, its share of the total award within 30 days of the effective date of this order. Edison 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 May 19, 2001 and continuing until full payment is made.

4. The comment period for today's decision is waived.

This order is effective today.

Dated _____, at San Francisco, California.