Decision _____

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 Service Effective on January 1, 2001 (U39M).	Application 00-07-043 (Filed July 27, 2000)

OPINION ON REQUEST FOR INTERVENOR COMPENSATION

This decision grants intervenor compensation awards to Aglet Consumer Alliance (Aglet) and The Utility Reform Network (TURN) for contributions to Decision (D.) 02-02-043 in the amount of $21,983.05. Separate payments are to be made in the following amounts: $21,296.19 to Aglet; $686.86 to TURN.

1. Background

In D.02-02-043, we granted Pacific Gas and Electric (PG&E) an attrition increase of $150,838,00, based on the effect of inflation in 2001 on 1999 forecast expenses and rate base. In its 2001 Attrition Rate Adjustment (ARA) application, PG&E had sought an attrition increase of $184,575,000.

On September 19, 2000, the assigned Administrative Law Judge (ALJ) held a prehearing conference. Aglet and TURN entered appearances and indicated that they would act jointly in this proceeding. Hearings were held, starting June 6, 2001. The case was submitted on August 1, 2001, upon receipt of briefs. Aglet and TURN actively participated in this proceeding. They jointly conducted discovery, served prepared testimony, participated in evidentiary hearings, filed briefs, and filed comments on the proposed decision.

By a request timely filed on April 29, 2002, Aglet and TURN presented a claim for compensation for substantial contributions to D.02-02-043. On May 28, 2002, PG&E filed a response to the request for compensation.

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.[1] Section 1804(a) requires an intervenor to file a notice of intent (NOI) to claim compensation within prescribed time periods. The NOI must present information regarding the nature and extent of the customer's planned participation and an itemized estimate of the compensation the customer expects to request.[2] It may also request a finding of eligibility.

Other code sections address requests for compensation filed after a Commission decision is issued. 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

---

[1] All statutory citations are to the Public Utilities Code.

[2] 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. In today's decision, "customer" and "intervenor" are used interchangeably.

> 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 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

On October 17, 2000, Aglet and TURN filed a timely notice of intent to claim compensation (NOI). After review of the NOI, the ALJ found both Aglet and TURN eligible to file for intervenor compensation by ruling dated October 23, 2000.

4. Timeliness of Request

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. D.02-02-043 was adopted by the Commission on February 21, 2001, but was not mailed until February 26, 2002. The 60th day after mailing was Saturday, April 27, 2002. The request for compensation was timely filed on April 29, 2002, the first working day thereafter.

5. Substantial Contribution to Resolution of Issues

A party may make a substantial contribution to a decision in one of several ways. It may offer a factual or legal contention upon which the Commission

relied in making a decision or it may advance a specific policy or procedural recommendation that the ALJ or Commission adopted.[3] 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.[4] Where a party has participated in settlement negotiations and endorses a settlement of some or all issues, the Commission uses its judgment and the discretion conferred by the Legislature to assess requests for intervenor compensation.[5]

Aglet and TURN are entitled to intervenor compensation because they made substantial contributions to D.02-02-043 in a number of areas and assisted in development of a full and complete record. During hearings the ALJ requested that parties discuss the meaning of attrition in the context of the 1999 PG&E general rate case. Aglet and TURN briefed this issue, providing argument that previously approved attrition procedures depended on economic conditions. D.02-02-043 adopts this position, and refers specifically to Finding of Fact 1 in D.85-12-076 which was cited by Aglet and TURN in its argument.

---

[3] Section 1802(h).

[4] 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 issues involved). (See also, D.89-09-103, Order modifying D.89-03-063.) (In certain exceptional circumstances, the Commission may find that a party has made a substantial contribution in the absence of the adoption of any of its recommendations. Such a liberalized standard should be utilized only in cases where a strong public policy exists to encourage intervenor participation because of factors not present in the usual Commission proceeding. These factors must include (1) an extraordinarily complex proceeding, and (2) a case of unusual importance. Additionally, the Commission may consider the presence of a proposed settlement.)

[5] *See* D.98-04-0590, *mimeo.* at 41.

(D.02-02-043, *mimeo.* at 5.) We conclude that Aglet and TURN contributed to the Commission's discussion on this issue. Additionally, as a result of the combined arguments of Aglet, TURN, and the Office of Ratepayer Advocates (ORA), the Commission rejected PG&E's request for two years of inflation-related escalation for expenses.

Aglet and TURN made a substantial contribution as the parties who introduced the issue of how PG&E's financial problems and bankruptcy affected the need for attrition relief. They addressed this issue in testimony and briefs. In D.02-02-043, we discussed PG&E's financial condition and the bankruptcy in some detail, noting that the impact on capital costs is unclear. (D.02-02-043, *mimeo.* at 13-17, Finding of Fact 8.) We concluded that it is reasonable to conclude that PG&E's financial problems would impact capital spending. Accordingly, we made the capital-related portion of PG&E's attrition increase subject to true-up should actual 2001 capital-related costs be lower than assumed. (*Id.*, Findings of Fact 9 and 11; Ordering Paragraph 1.) Aglet and TURN contributed to the decision by introducing this issue into the proceeding.

Aglet and TURN contributed to our interpretation of D.00-02-046 regarding how attrition should be calculated. Aglet and TURN argued that the Commission meant to approve a single year attrition adjustment based on modified formulas from past years. (Aglet and TURN opening brief, p. 6.) While we authorized two years of rate base growth, we supported the concept of an attrition increase method for 2001 based on one year of cost growth. (D.02-02-043, *mimeo.*, Finding of Fact 3.)

On the issue of the Vegetation Management Balance Account (VMBA), the Commission rejected the recommendations of Aglet and TURN that overcollections should be refunded to customers. Aglet and TURN do not seek

compensation for professional hours allocated to this issue. However, they do seek compensation for $392.15 in costs incurred to engage JBS Energy to review PG&E's request and recorded vegetation management costs. We find it reasonable to grant an award of these expenses, because while we rejected the Aglet and TURN position, the analysis of records performed by the expert was of benefit to our decision-making process.

Aglet and TURN argue that it is reasonable to provide compensation for participation on other miscellaneous issues on which they did not prevail. They voluntarily reduce the request for compensation by 50% of professional hours allocated to these other issues. We agree that on these issues Aglet and TURN's participation made a substantial contribution to our deliberative process, and it is reasonable to compensate 50% of the professional time expended. These issues include the following: pleadings filed regarding reconfirmation of the hearing schedule (Ruling, dated April 26, 2001); review of the issue of whether to defer consideration of a financial audit of capital expenditures; treatment of income taxes for 2001.

6. Reasonableness of Requested Compensation

Advocate's Fees

James Weil (2000-2002)	80.4 hrs. @ $220	$17,688.00
" " (travel and prep. of comp. request)	26.9 hrs at $110	$ 2,959.00
Advocate Fees Subtotal		$20,647.00

Experts' Fees

Gayatri Schilberg (2001)	3.41hrs. @ $115	$ 392.15

Expert Fees Subtotal	$ 392.15

Other Costs	
Photocopying	$ 447.06
Postage/overnight	$ 200.59
Travel (mileage,tolls,etc.)	$ 228.00
Other Costs	$ 21.25
Fax	$ 47.00
Costs Subtotal	$ 943.90
TOTAL:	**$21,983.05**

6.1 Overall Benefits of Participation

In D.98-04-059, the Commission adopted a requirement that a customer demonstrate that its participation was "productive," as that term is used in § 1801.3, where the Legislature provided guidance on program administration. (See D.98-04-059, *mimeo.* at 31-33, and Finding of Fact 42.) D.98-04-059 explained 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. D.98-04-059 directed customers 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.

In this instance it is not possible to precisely quantify the savings to ratepayers resulting from the participation of Aglet and TURN. Their participation contributed to adoption of $33,737,000 less in attrition increase than was requested by PG&E. We conclude that while the contributions of Aglet and TURN do not account for the entire savings, the amount of compensation requested does not exceed the value to ratepayers of their participation. The

contribution of Aglet and TURN was significant, and their request is small in comparison to the savings to ratepayers.

The participation of Aglet and TURN did not duplicate the efforts of ORA. Their testimony provided argument and analysis not presented by ORA.

All of these factors lead us to conclude that the participation of Aglet and TURN was productive, avoided unreasonable duplication with other parties, and yielded ratepayer benefits substantially in excess of the costs incurred.

6.2 Hours Claimed

Aglet and TURN submit time logs to document the hours claimed by it advocate, Weil, and its expert, Schilberg. The logs include a daily breakdown of hours by activity. We note that no compensation is sought for time expended by counsel for TURN, and that some time expended by Weil is not charged, or is reduced by 50% where Aglet and TURN did not fully prevail on an issue. We find that Aglet and TURN have adequately and reasonably supported the 110.71 hours for which they claim compensation.

6.3 Hourly Rates

Section 1806 requires the Commission to compensate eligible parties at a rate that reflects the "market rate paid to persons of comparable training and experience who offer similar services." Aglet requests Commission approval for the following hourly rates: $220 per hour for Weil's professional work performed during the years 2000, 2001, and 2002; $110 per hour for travel and preparation of the compensation request in 2000 and 2002. The Commission has previously awarded Weil compensation at these rates and we will utilize those rates in this proceeding. (*See, e.g.*, D. 00-07-015; D.02-04-039.)

An hourly rate of $115 per hour is requested for witness Schilberg of JBS Energy. The Commission previously adopted this rate for this witness and we will utilize it in this proceeding. (*See, e.g.*, D.02-06-070.)

6.4 Other Costs

Compensation is sought for expenses in the amount of $943.90 for photocopying, postage, travel costs, and other direct expenses. Aglet and TURN have included detailed supporting documentation. TURN's portion of these expenses is shown on Attachment A as $151.20. The remainder, $792.70 was incurred by Aglet. We find these expenses reasonable.

7. Award to TURN

We award Aglet and TURN $21,983.05 for contributions to D.02-02-043. In their request, Aglet and TURN document that $21,296.19 of professional fees and expenses were incurred by Aglet, and $686.86 of costs were incurred by TURN. They request that separate payments be made to them. We will so order. 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 the 75th day after Aglet and TURN filed their compensation request. Interest will continue until the utility makes full payment.

As in all intervenor compensation decisions, we put Aglet and TURN on notice that the Commission Staff may audit records related to this award. Adequate accounting and other documentation to support all claims for intervenor compensation must be made and retained. The records should identify specific issues for which Aglet and TURN request compensation, the actual time spent, the applicable hourly rate, and any other costs for which compensation is claimed.

8. Waiver of Comment Period

Pursuant to Rule 77.7(f)(6), the otherwise applicable 30-day period for public review and comment is being waived.

Findings of Fact

1. Aglet and TURN have made a timely request for compensation for their contribution to D.02-02-043.

2. Aglet and TURN contributed substantially to D.02-02-043.

3. The participation of Aglet and TURN was productive in that the costs claimed for their participation were less than the benefits realized.

4. TURN and Aglet request an hourly rate of $220 for Weil's professional work performed in 2000, 2001, and 2002. An hourly rate of $110 is requested for Weil's travel time and preparation of the compensation request. These rates have previously been approved by the Commission.

5. TURN and Aglet request an hourly rate of $115 for Schilberg of JBS Energy. This rate has previously been approved by the Commission.

6. The hours claimed for work and travel time performed by Weil and Schilberg are itemized and reasonable.

7. The miscellaneous costs incurred by Aglet and TURN are reasonable.

Conclusions of Law

1. Aglet and TURN have fulfilled the requirements of §§ 1801-1812, which govern awards of intervenor compensation.

2. Aglet and TURN should be awarded $21,983.05 for their contribution to D.02-02-043.

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 TURN may be compensated without unnecessary delay.

O R D E R

IT IS ORDERED that:

1. Aglet Consumer Alliance (Aglet) and The Utility Reform Network (TURN) are awarded $21,983.05 in compensation for their substantial contribution to Decision 02-02-043.

2. Pacific Gas and Electric Company (PG&E) shall pay Aglet and TURN the award granted by Ordering Paragraph 1. Separate payments shall be made as follows: $21,296.19 to Aglet and $686.86 to TURN. Payment shall be made 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 H.15, with interest, beginning with the 75th day after April 29, 2002, the date the request of Aglet and TURN was filed.

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

4. This proceeding is closed.

This order is effective today.

Dated _____, at San Francisco, California.

Compensation Decision Summary Information

Compensation Decision(s):	
Contribution Decision(s):	D.02-02-043
Proceeding(s):	A.00-07-043
Author:	Maloney
Payer(s):	Pacific Gas and Electric Company

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Reason Disallowance
Aglet Consumer Alliance	4/29/02	$21,296.19	$21,296.19	
The Utility Reform Network	4/29/02	$ 686.86	$ 686.86	

Witness Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Gayatri	Schilberg	Economist	Aglet Consumer Alliance/The Utility Reform Network	$115	2001	$115
James	Weil	Policy expert	Aglet Consumer Alliance	$220	2000	$220
James	Weil	Policy expert	Aglet Consumer Alliance	$220	2001	$220
James	Weil	Policy expert	Aglet Consumer Alliance	$220	2002	$220