Decision _____

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

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| Application of Pacific Gas and Electric Company for Authority to Establish Its Authorized rates of return on Common Equity for Electric Utility Operations and Gas Distribution for Test Year 2003. (U 39 M) | Application 02-05-022 (Filed May 8, 2002) |
| And Related Matters. | Application 02-05-025<br>Application 02-05-026<br>Application 02-05-031 |

# OPINION ON REQUEST FOR INTERVENOR COMPENSATION

## I. Summary of Award

We award Aglet Consumer Alliance (Aglet) $57,195,[1] for its substantial contribution in establishing test year 2003 returns of equity (ROE) for Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), Sierra Pacific Power Company (Sierra), and San Diego Gas and Electric Company (SDG&E). Aglet's participation in this consolidated proceeding assisted the Commission in saving ratepayers more than $300 million relative to the utilities requested ROEs.

## II. Background

Individual cost of capital applications were filed by PG&E, SCE, Sierra, and SDG&E for authority to increase their 2003 test year ROEs, pursuant to

[1] Amounts are rounded up to the nearest dollar.

Decision (D.) 89-01-040.[2] PG&E sought to increase its electric operations ROE to 12.50% from 11.22% and its gas distribution operations ROE to 12.25% from 11.22%, which would result in a $133.5 million increase in its electric revenues and a $22.3 million increase in its gas revenues. SCE sought to increase its electric operations ROE to 13.00% from 11.60%, which would result in a $128 million increase in its electric revenues. Sierra sought to increase its California electric operations ROE to 12.50% from 10.80%, which would result in a $362,000 increase in its California electric revenues. SDG&E sought to increase its electric and gas operations ROE to 12.50% from 10.60%, which would result in a $24.5 million increase in its electric revenues and $6.5 million in its gas revenues.

In Decision (D.) 02-11-027, we authorized PG&E to continue earning an 11.22% ROE on its electric and gas distribution operations and SCE to continue earning an 11.60% ROE on its electric operations. We also authorized Sierra to earn a 10.90% ROE for its California electric operations, and SDG&E a 10.90% ROE for its electric and gas operations.

PG&E, SCE, Sierra, SDG&E, Aglet, the Federal Executive Agencies (FEA), and Office of Ratepayer Advocates (ORA) actively participated in this proceeding. Only Aglet requested compensation.

## III. Requirements for Awards of Compensation

An intervenor who seeks compensation for his or her contributions in Commission proceedings must file a request for compensation pursuant to

[2] 30 CPUC2d 576 at 610 (1989).

§§ 1801-1812.[3] Section 1804(a) requires an intervenor to file a notice of intent (NOI) to claim compensation within prescribed timeframes. 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.[4] The NOI may also request a finding of eligibility.

Section 1803 provides for the award of fees to customers who make a substantial contribution and whose participation without compensation would impose a significant financial hardship. To be eligible for compensation, an intervenor must be a customer as defined by Section 1802(b).

Other code sections address the filing of requests for compensation. 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

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[3] All statutory references are to the Public Utilities Code unless otherwise stated.

[4] 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 form their interest as customers. (*See* D.88-12-034, D.92-04-051, and D.96-09-040.) Today's decision, like the statute, uses "customer" and "intervenor" interchangeably.

> 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 expert fees, and other reasonable cost 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.

## IV. Notice of Intent to Claim Compensation

On July 8, 2002, Aglet filed its NOI and on July 22, 2002, the assigned Administrative Law Judge (ALJ) ruled that the NOI was deemed timely and qualified Aglet as a Category III customer.[5] That same ruling found Aglet had demonstrated a rebuttal presumption that it will face a significant financial hardship in this proceeding.

## V. Request for an Award of Compensation

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. Except for PG&E, the final decision in this proceeding was D.02-11-027, dated November 7, 2002. The decision kept open PG&E's application so that it could true up its test year 2003 ROE with changes in its

[5] A Category III customer is a representative of a group or organization formally organized with articles of incorporation or bylaws that authorize the entity to represent the views of residential customers, membership of which includes residential ratepayers of the applicant. (*See* § 1802(b).)

capital structure, long-term debt and preferred stock costs, and risk that results from it implementing the financing contemplated by a Chapter 11 plan approved by the Bankruptcy Court. Although PG&E's application remains open, it is open only to address its ROE impact of a subsequent event. Hence, D.02-11-027 should be treated as a final decision for all activities that led up to the issuance of that decision.

Aglet's January 13, 2003, compensation request was timely filed, pursuant to § 1804(c).

## VI. Substantial Contribution

A party may make a substantial contribution to a decision in one of several ways, as described in Section 1802(h). 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 Commissioner adopted. 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.[6]

### A. Aglet

Aglet represents that it made a substantial contribution. For example the Commission accepted Aglet's argument to include electric utility generation and distribution risks as part of the scope of this proceeding. Another example

[6] The Commission has provided compensation even when the position advanced by the intervenor was rejected. *See* D.89-03-063 (awarding San Luis Obispo Mothers For Peace and Rochelle Becker compensation in the Diablo Canyon rate case because their arguments, while ultimately unsuccessful, required the utility to document thoroughly the safety issues involved.)

was the argument of Aglet that an upward ROE adjustment was not necessary because the risks perceived by the utilities were diversifiable.[7]

A substantial contribution was also claimed by Aglet for its submittal of evidence and arguments on market conditions, trends, creditworthiness, interest rate forecasts, and quantitative financial models based on subjective inputs, risk factors, and interest coverage.[8] Aglet represents that these activities assisted the Commission in deciding not to analyze individual risks facing the utilities, keeping PG&E and SCE's ROE at the currently authorized level, increasing Sierra's ROE by only 10 basis points, and increasing SDG&E's ROE only 30 basis points above their last authorized ROE. Although the Commission did not set forth all of the details of its reasoning in the decision, each of these conditions was cited as a basis of the informed judgment that led to the final decision.[9]

Aglet further identified the Commission's implicit agreement with its position when the Commission did not accept PG&E's claims about the feasibility of the Commission's plan of reorganization.[10]

Aglet concludes from these examples that it substantially contributed to the Commission's decision that authorized ROEs lower than those requested by the utilities, saving ratepayers more than $300 million.[11]

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[7] D.02-11-027, p.22.

[8] Exhibit 32.

[9] D.02-11-027 at 25.

[10] Exhibit 36 at 2.

[11] The difference between the utilities' requested and adopted ROE.

### B. Opposition

PG&E and SCE filed oppositions to Aglet's compensation request. PG&E argues Aglet's compensation request is excessive because Aglet included time for duplicative work by Aglet and its consultant, parts of the request is vague, and Aglet overstated its representation of residential and small commercial customers.

PG&E recommended a 50% reduction in Weil's 39.2 hours allocated to financial model because Aglet's consultant Czahar, who was retained to do the financial modeling, spent a similar amount of time (44 hours) on that activity. However, Aglet explained in its February 10, 2003, response that the closeness of total hours between Weil and Czahar was coincidental. Czahar's time was spent on technical modeling work and discussions with Weil regarding the cross-examination of utility witnesses and defense of Weil's testimony. Weil's time was spent preparing testimony, testifying, cross-examining other financial model witnesses, and writing briefs. Aglet adequately explained the difference between the financial modeling time of Weil and Czahar.

PG&E's vagueness concern applied to 82.35 hours allocated to qualitative analysis and 45.9 hours of general work because Aglet did not segregate these hours by issue. There is no merit to this concern. Aglet allocated Weil's time to major issues or subjects as required by the Commission. More specifically, D.98-04-059 stated that regardless of whether we take a broad or narrow view of what constitutes a "contention or recommendation " under

§ 1802(h), we will continue to require allocation of costs and time by task and substantive issue.[12]

The qualitative analysis category in this ROE proceeding reasonably meets the task requirement of D.98-04-059 because the Commission itself took a broad view of qualitative risks factors in determining reasonable ROE ranges in this proceeding. For example, we considered and weighed the evidence of Aglet and others on market conditions, trends, creditworthiness, forecast of interest rates, quantitative financial models based on subjective inputs, risk factors, and interest coverage.

As to PG&E's concern with the category of other issues, Aglet explained that the category included its work on the scope of the proceeding, credit quality, gas service risks, PG&E's reorganization plan, and receipt of additional evidence. Had Aglet taken the time to micro-allocate its category of other issues to specific categories the end result would differ only to the extent that Aglet would be entitled to compensation for the time it spent to complete that task. However, we do not find it productive to do so given the minimal time (17.7 hours) spent in the category of other issues.

PG&E's third concern was whether "Aglet is a unique representative of residential and small commercial customers in that it alone solely represents these constituents, in contrast to ORA." Aglet clarified that § 1801.3(b) of the Public Utilities Code provides for the intervenor compensation program to be administered in a manner that encourages the effective and efficient participation of all groups that have a stake. There is a difference between these intervenors in

[12] 79 CPUC2d 628 at 674, Finding of Fact 20 (1998).

that Aglet represents only residential and small business customers and ORA represents all customers including large business and industrial customers.

As an added defense to this representation issue, Aglet cited D.98-04-059, 79 CPUC 2d 628, a decision where the Commission encouraged the presentation of multiple points of view, even on the same issues, provided that the presentations are not redundant.[13] Unlike ORA, Aglet did not recommend the establishment of optimum capital structures. Aglet also conducted quantitative financial analyses differently than ORA. We find no redundant presentations in this proceeding.

SCE opposed an award to Aglet on the basis that Aglet did not make any contribution to the decision. Although the decision did not specifically state which of Aglet's positions were adopted in whole or in part, Aglet did play an important part in crafting D.02-11-027. For example, Aglet provided the Commission with a perspective distinctly separate from ORA and from other interested parties into the reasonableness of the individual utility's capital structure, debt, and ROE cost, as illustrated in Appendix A of D.02-11-027. More importantly, Aglet's participation enabled us to weigh residential and small commercial customers interest being represented by Aglet in adopting ROEs from the utilities.[14]

As stated by Aglet in its compensation request and illustrated in Appendix A to D.02-11-027, its evidence and arguments on market conditions, trends, creditworthiness, interest rate forecasts, and quantitative financial models

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[13] *Id* at 677, 679.

[14] D.02-11-027 at p. 17.

based on subjective inputs, risk factors**,** and interest coverage assisted us in issuing D.02-11-027. Aglet has made a substantial contribution to D.02-11-027.

## VII. Reasonableness of the Requested Compensation

In D.98-04-059, the Commission adopted a requirement that a customer demonstrate his or her participation was "productive," as that term is used in § 1801.3, where the Legislature gave the Commission guidance on program administration. In that decision, we discussed the requirement 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.

### A. Aglet

Aglet does not determine the dollar impact of its showing in this proceeding. However, it did substantiate that its participation was productive because its testimony contributed to the Commission establishing ROEs for the utilities that resulted in keeping the ROEs of PG&E and SCE at their current level and increasing Sierra's ROE only one-seventh of its requested increase and SDG&E's ROE by one-third of its requested increase. These adopted ROEs resulted in an overall $10 million annual increase in rates compared to the utilities requested $315 million annual increase. This equates to more than $300 million in ratepayer savings, of which Aglet played an active part in justifying the lower ROE's than requested by the utilities. Considering these factors, we find that Aglet's participation was productive.

We turn to the reasonableness of Aglet's request. Aglet seeks $57,195 in compensation for its participation in this proceeding. The total requested compensation is approximately $33,000 below its $90,460 NOI budget. Of its requested compensation, $47,470 pertains to the activities of Aglet's Director Weil and $9,725 to its consultant Czahar.

### 1. Director Weil

Aglet seeks $47,470 in compensation for the work Weil did in this proceeding as summarized in the following table.

| Item | Hours x Rate = Amount | | |
|---|---|---|---|
| Director Weil - Direct | 195.0 | $220 | $ 42,900 |
| - Indirect | 27.3 | 110 | 3,003 |
| - Other Cost | | | 1,013 |
| - Reply Cost[15] | | | 554 |
| Total | | | $47,470 |

Aglet maintained a detailed summary of time spent by Weil with hours broken down by date, major activity, and description of work. Aglet is seeking compensation for 195 of the 234 direct hours spent by Weil in this

[15] This category represents a $554 supplemental request for the time it took Weil to respond to PG&E's response to the compensation request (4.7 hours times $110 hourly rate plus $16 reproduction and $21 postage).

proceeding during 2002 and 2003.[16] To facilitate a detailed review of its fee request, Aglet provided a summary of Weil's requested professional hours by major issues as follows.

| Issue | Hours |
|---|---|
| Qualitative Analysis | 82.3 |
| Interest Rates | 9.9 |
| Financial Models | 39.2 |
| Other Issues[17] | 17.7 |
| General Work[18] | 45.9 |
| Total Hours | 195.0 |

Our prior discussion of Aglet's substantial contribution and productivity substantiate that Aglet's hours are reasonable. Hence, we make no adjustment to the requested hours of Weil.

Aglet is seeking a $220 hourly rate for the professional time that Weil spent on this proceeding. Consistent with Commission precedent D.98-04-059 (1998), 79 CPUC 2d – 628, 675, Aglet seeks $110, half the 2002 and 2003 requested hourly rate, for the indirect time he spent in this proceeding. Weil's indirect time includes travel time between his offices and the Commission's offices, and for time he spent preparing Aglet's compensation request.

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[16] Weil did not seek compensation for 39.1 hours of his work on activities such as an ROE differential between electric and gas operations and time spent in seeking the exclusion of information in SCE's reply brief, both of which were rejected by the Commission.

[17] Other issues include scope of the proceeding, credit quality, gas service risks, PG&E reorganization plan, and receipt of additional evidence.

[18] General work includes initial review, attendance at the PHC and discovery.

Section 1806 requires our compensation awards to consider the market rates paid to persons of comparable training and expertise offering similar services. The compensation awarded may not, in any case, exceed the comparable market rate for services paid by the Commission or by the public utility; whichever is greater, to persons of comparable training and experience who are offering similar services.

The hourly rate requested by Aglet for Weil in this proceeding is the same rate found reasonable for Weil in 2000 by the Commission in D.00-07-015, D.00-07-047, and D.00-11-002, and we will use that rate here. The indirect time is charged at half of the direct hourly rate, consistent with our compensation guidelines set forth in D.98-04-059 and should be approved without any adjustment.[19]

Aglet also seeks $1,013 for other and $554 in reply costs incurred as a result of its participation in this proceeding. Approximately $763 of the other cost is for reproduction and postage; the remaining $250 is for bridge toll, parking, and mileage reimbursement. These costs represent approximately 2.00% of Aglet's total compensation request. As detailed in footnote 15, reply costs represents the amount of time and cost to respond to PG&E's opposition of its compensation request. Aglet has adequately substantiated its other and reply costs and should be compensated for these requested amounts.

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[19] 79 CPUC2d 628 at 675 (1998).

### 2. Consultant Czahar

Aglet seeks $9,725 in compensation for the work its consultant Czahar did in this proceeding, as summarized in the following table:

| Item | Hours | x Rate | = Amount |
|---|---|---|---|
| Consultant Czahar - Direct | 44.0 | $220 | $ 9,680 |
| - Other | | | 45 |
| Total | | | $ 9,725 |

Aglet seeks the same $220 hourly rate for Czahar that has previously been approved for Weil. A copy of Czahar's resume was attached to the compensation request as Attachment B.

In D.01-10-024 we found Czahar's experience and training to be comparable to that of Weil who was compensated $220 an hour in 2000.[20] However, Czahar was only awarded a $190 hourly rate in that proceeding because his specific performance was not comparable to that of Weil's. We find no such distinction between the performance of Weil and Czahar in this proceeding. Hence, Czahar should be compensated at the $220 hourly rate for his work in this proceeding during 2002.

Aglet also seeks $45 for the recovery of other costs Czahar incurred as a result of his participation in this proceeding. Other costs consisted of reproduction, telephone, and postage. These costs are reasonable and should be recovered. Aglet has adequately substantiated Czahar's cost and should be compensated for the full $9,725.

[20] D.01-10-024, slip. 21-22.

## VIII. Award

Aglet has substantially assisted the Commission in this proceeding. Consistent with § 1802(h), Aglet is entitled to compensation from PG&E, SCE, Sierra, and SDG&E that totals $56,641. We assess the responsibility for payment between PG&E, SCE, Sierra, and SDG&E based on each utility's share of 2002 jurisdictional electric and gas revenues.

Consistent with prior decisions, we will order that interest be paid on the award amount (calculated at the three-month commercial paper rate) commencing March 29, 2003, (*i.e.*, the 75th day after the compensation requests were filed) and continuing until the award is paid in full.

As in all intervenor compensation decisions, we put Aglet on notice that the Commission staff may audit their records related to this award. Thus, Aglet must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. These records should identify specific issues for which they requested compensation, the actual time spent by each person, the applicable hourly rate, fees paid, and any other costs for which compensation has been claimed.

## IX. Waiver of Comment Period

This is a compensation matter pursuant to §§ 1801-1812. Accordingly, pursuant to rule 77.7(f)(6) of the Commission's Rules of Practice and Procedure, the otherwise applicable 30-day period for public review and comment is being waived.

## X. Assignment of Proceeding

Geoffrey Brown and Michael R. Peevey are the Assigned Commissioners and Michael J. Galvin is the assigned Administrative Law Judge in this proceeding.

## Findings of Fact

1. Aglet filed a timely intervenor compensation request for its contribution to D.02-11-027.

2. Aglet has satisfied the significant financial hardship requirement.

3. Aglet has substantially contributed to D.02-11-027.

4. Aglet maintained a detailed summary of time spent by its director in this proceeding.

5. The $220 hourly rate for work performed by Aglet's director is the same rate approved in a prior Commission proceeding for his work performed in 2000.

6. Aglet's hours and rates regarding time spent in traveling to hearings and in preparing its compensation request are reasonable.

7. The costs incurred by Aglet for reproduction, postage, 57 travel expenses for bridge toll, parking, and mileage reimbursement are reasonable.

8. Czahar's experience and training are similar to that of Weil.

9. Czahar's $220 hourly rate and time spent in this proceeding during 2002 are reasonable.

10. Other costs incurred by Czahar are reasonable.

## Conclusions of Law

1. Aglet has fulfilled the eligibility requirements of Pub. Util. Code § 1801 *et seq.*

2. Aglet should be award $57,195 for its substantial contribution to D.02-11-027.

3. Per Pub. Util. Code § 311(g)(3) and Rule 77.7(f) (6), the public review and comment period for this compensation decision should 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 $57,195 in compensation for its substantial contribution to Decision (D.) 02-11-027.

2. Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), Sierra Pacific Power Company (Sierra), and San Diego Gas and Electric Company (SDG&E) shall pay Aglet $57,195 in proportion to their respective 2002 jurisdictional electric and gas revenues within 30 days of the effective date of this order. PG&E, SCE, Sierra, and SDG&E shall also pay interest on the award at the rate earned on prime, three-month commercial paper, as reported in the Federal Reserve Statistical Release H.15, commencing March 29, 2003 and continuing until full payment is made.

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

4. Application (A.) 02-05-022 remains open for the receipt of an amended application that trues-up PG&E's test year 2003 return on equity from its implementation of the financing contemplated by a Chapter 11 plan approved by the Bankruptcy Court that enables PG&E to emerge from Chapter 11.

5. Application 02-05-025, A.02-05-026, and A.02-05-031 are closed.

This order is effective today.

Dated _____, at San Francisco, California.

## Compensation Decision Summary Information

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|---|---|
| **Compensation Decision(s):** | |
| **Contribution Decision(s):** | D0211027 |
| **Proceeding(s):** | A0205022, A0205025, A0205026, A0205031 |
| **Author:** | ALJ Galvin |
| **Payer(s):** | Pacific Gas and Electric Company, Southern California Edison Company, Sierra Pacific Power Company, San Diego Gas & Electric Company. |

## Intervenor Information

| Intervenor | Claim Date | Amount Requested | Amount Awarded | Reason Change/Disallowance |
|---|---|---|---|---|
| Aglet | 1 / 13 / 2003 | $57,195 | $57,195 | |

## Advocate Information

| First Name | Last Name | Type | Intervenor | Hourly Fee Requested | Year Hourly Fee Requested | Hourly Fee Adopted |
|---|---|---|---|---|---|---|
| James | Weil | Policy Expert | Aglet Consumer Alliance | $220<br>$220 | 2002 2003 | $220<br>$220 |
| Raymond | Czahar | Financial Analyst | Aglet Consumer Alliance | $220 | 2002 | $220 |