Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to update the Commission's policies and procedures related to electromagnetic fields emanating from regulated utility facilities.	Rulemaking 04-08-020 (Filed August 19, 2004)

OPINION GRANTING INTERVENOR COMPENSATION TO 280 CORRIDOR CONCERNED CITIZENS, LEEKA KHEIFETS, AND CITIZENS CONCERNED ABOUT EMFS FOR SUBSTANTIAL CONTRIBUTIONS TO DECISION 06-01-042

TABLE OF CONTENTS

Title **Page**

OPINION GRANTING INTERVENOR COMPENSATION
TO 280 CORRIDOR CONCERNED CITIZENS, LEEKA KHEIFETS,
AND CITIZENS CONCERNED ABOUT EMFS
FOR SUBSTANTIAL CONTRIBUTIONS TO DECISION 06-01-042 2
I. Summary 2
II. Background 2
III. Requirements for Awards of Compensation 4
IV. Substantial Contribution 6
A. 280 Citizens 7
1. Utility EMF Design Guidelines and Field Reduction Measures 7
2. Choosing the Location for EMF Modeling or Measurement 8
3. Underground Lines 8
4. Undeveloped Land 8
5. The 4% "Low-Cost" Benchmark 9
6. Measuring EMF Mitigation 9
7. New Scientific Data and Studies 9
8. Standardizing EMF Design Guidelines 10
B. Kheifets 10
C. CCAE 11
1. Current EMF Mitigation Policy 12
2. Expansion of the First Priority Mitigation Class 12
3. Implementation of Equal Mitigation for an Entire Class 13
V. Reasonableness of Requested Compensation 13
A. 280 Citizens 13
B. Kheifets 16
C. CCAE 17
VI. Hours and Costs Related to and Necessary for Substantial Contribution 18
A. 280 Citizens 18
B. Kheifets 18
C. CCAE 19
VII. Market Rate Standard 19
A. 280 Citizens 19
B. Kheifets 20
C. CCAE 22
VIII. Productivity 23

A. 280 Citizens 23
B. Kheifets 24
C. CCAE 24
IX. Direct Expenses 25
A. 280 Citizens 25
B. Kheifets 25
C. CCAE 25
X. Award 26
A. 280 Citizens 26
B. Kheifets 27
C. CCAE 28
XI. Waiver of Comment Period 29
XII. Assignment of Proceeding 29
Findings of Fact 30
Conclusions of Law 30
ORDER 31

OPINION GRANTING INTERVENOR COMPENSATION TO 280 CORRIDOR CONCERNED CITIZENS, LEEKA KHEIFETS, AND CITIZENS CONCERNED ABOUT EMFS FOR SUBSTANTIAL CONTRIBUTIONS TO DECISION 06-01-042

I. Summary

This decision awards 280 Corridor Concerned Citizens (280 Citizens), Leeka Kheifets (Kheifets), and Citizens Concerned About EMFs (CCAE) intervenor compensation for their contributions to Decision (D.) 06-01-042, in the following amounts: $54,095.68 (280 Citizens), $14,540.00 (Kheifets), and $37,067.28 (CCAE). The awarded compensation constitutes a decrease, by $4,360.00 for Kheifets and $154.00 for CCAE, from the amounts requested. This proceeding is closed.

II. Background

The Commission opened Rulemaking (R.) 04-08-020 to address public concerns regarding exposure to electromagnetic fields (EMF) for transmission and substation projects. This issue has consistently generated strong public opinion. The rulemaking identified three issues to explore:

1. The results of the Commission's current "low-cost/no-cost" EMF mitigation policy and the need for modifications.
2. Improvement in the implementation of the existing "low-cost/no-cost" mitigation policy.
3. As new EMF-related scientific data becomes available, new or revised Commission EMF mitigation policies.

D.06-01-042 addressed policies to mitigate EMF and, as a measure of low-cost mitigation, continued the use of a benchmark of 4% of transmission and substation project costs. D.06-01-042 also adopted rules and policies to improve

utility design guidelines for reducing EMF, and provided for a utility workshop to implement these policies and standardize design guidelines.

The adopted policies and rules govern underground transmission lines, application of the 4% benchmark to EMF priority classes, EMF modeling techniques, and the location for measuring EMF mitigation. Utilities were also directed to initiate standardized field reduction techniques and to develop EMF mitigation tables.

During development of the scope of the proceeding, parties, including CCAE and 280 Citizens, recommended inclusion of extraneous issues not included in the rulemaking.[1] However, the Assigned Commissioner's Scoping Memo and Ruling (Scoping Memo) excluded these issues and focused the proceeding on the three matters adopted in the rulemaking. The Scoping Memo also provided an opportunity for parties to comment on the utilities' design guidelines and application of the guidelines to field management plans (FMP) in transmission projects.

Although no evidentiary hearings were held, 280 Citizens, Kheifets, and CCAE, as well as other parties to the proceeding, commented on the design guidelines and FMP submitted by utilities. 280 Citizens and Southern California Edison Company (SCE) recommended the standardization of design guidelines. This proposal was adopted, and implementation was included in a utilities workshop ordered by D.06-01-042. The comments of parties provided the basis for many of the adopted policies in D.06-01-042, although other recommendations were rejected as either unworkable or potentially too costly.

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[1] Comments of 280 Citizens and CCAE recommended including electric distribution lines and EMF impacts on property values, among other matters.

None of the parties' comments provided any new scientific information on EMF, the third issue in R.04-08-020; instead SCE and 280 Citizens recommended closing the proceeding and monitoring new EMF scientific data through the Commission's Energy Division. This recommendation was adopted.

III. Requirements for Awards of Compensation

The intervenor compensation program, enacted in Pub. Util. Code §§ 1801-1812, requires California-jurisdictional utilities to pay the reasonable costs of an intervenor's participation if the intervenor makes a substantial contribution to the Commission's proceedings. The statute provides that the utility may adjust its rates to collect the amount awarded from its ratepayers. (Subsequent statutory references are to the Public Utilities Code unless otherwise indicated.)

All of the following procedures and criteria must be satisfied for an intervenor to obtain a compensation award:

1. The intervenor must satisfy certain procedural requirements including the filing of a sufficient notice of intent (NOI) to claim compensation within 30 days of the prehearing conference (PHC), or in special circumstances at other appropriate times that we specify. (§ 1804(a).)
2. The intervenor must be a customer or a participant representing consumers, customers, or subscribers of a utility subject to our jurisdiction. (§ 1802(b).)
3. The intervenor should file and serve a request for a compensation award within 60 days of our final order or decision in a hearing or proceeding. (§ 1804(c).)
4. The intervenor must demonstrate "significant financial hardship." (§§ 1802(g), 1804(b)(1).)
5. The intervenor's presentation must have made a "substantial contribution" to the proceeding, through the adoption, in whole

or in part, of the intervenor's contention or recommendations by a Commission order or decision. (§§ 1802(i), 1803(a).)

6. The claimed fees and costs are reasonable (§ 1801), necessary for and related to the substantial contribution (D.98-04-059), comparable to the market rates paid to others with comparable training and experience (§ 1806), and productive (D.98-04-059).

For discussion here, the procedural issues in Items 1-4 above are combined, followed by separate discussions on Items 5-6.

Procedural Issues

The first PHC in this matter was held on October 28, 2004, and a second PHC on April 5, 2005. 280 Citizens, Kheifets, and CCAE have satisfied all the procedural requirements necessary to make their requests for compensation, as explained below.

280 Citizens filed its NOI on November 29, 2004, well before the second PHC. An assigned Administrative Law Judge (ALJ) ruling dated December 30, 2004 found that 280 Citizens is a customer pursuant to § 1802(b)(1)(C),[2] and met the financial hardship condition pursuant to § 1802(g). 280 Citizens filed its request for compensation on March 27, 2006, within 60 days of D.06-01-042 being issued.[3]

Kheifets filed an NOI on December 3, 2004, well before the second PHC. A March 21, 2005 ALJ ruling found Kheifets to be a customer pursuant to § 1802(b)(1)(B), and that Kheifets had established significant financial hardship pursuant to § 1802(g). The March 21, 2005 ALJ ruling found Kheifets eligible to

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[2] All references are to the Pubic Utilities Code unless otherwise noted.

[3] Due to an inability to access the internet service list, 280 Citizens amended its certificate of service on April 10, 2006.

claim compensation. Kheifets filed her request for compensation on March 27, 2006, within 60 days of D.06-01-042 being issued.

CCAE timely filed an NOI on November 26, 2004. A December 30, 2004 ALJ ruling found CCAE to be a customer, pursuant to § 1802(b)(1)(C), and that CCAE had established significant financial hardship pursuant to § 1802(g). The December 30, 2004 ALJ ruling found CCAE eligible to claim compensation. On March 27, 2006, CCAE requested a two-week extension of time to file its request for compensation due to special circumstances. The assigned ALJ granted this request on March 29, 2006. On April 10, 2006, CCAE filed its request for compensation within the two-week extension period, and therefore its filing is timely.

IV. Substantial Contribution

In evaluating whether a customer made a substantial contribution to a proceeding, we look at several things. First, did the ALJ or Commission adopt one or more of the factual or legal contentions, or specific policy or procedural recommendations put forward by the customer? (See § 1802(i).) Second, if the customer's contentions or recommendations paralleled those of another party, did the customer's participation materially supplement, complement, or contribute to the presentation of the other party or to the development of a fuller record that assisted the Commission in making its decision? (See §§ 1802(i) and 1802.5.) As described in § 1802(i), the assessment of whether the customer made a substantial contribution requires the exercise of judgment.

> In assessing whether the customer meets this standard, the Commission typically reviews the record, composed in part of pleadings of the customer and, in litigated matters, the hearing transcripts, and compares it to the findings, conclusions, and orders in the decision to which the customer asserts it contributed. It is

> then a matter of judgment as to whether the customer's presentation substantially assisted the Commission.[4]

Should the Commission not adopt any of the customer's recommendations, compensation may be awarded if, in the judgment of the Commission, the customer's participation substantially contributed to the decision or order. For example, if a customer provided a unique perspective that enriched the Commission's deliberations and the record, the Commission could find that the customer made a substantial contribution. With this guidance in mind, we turn to the claimed contributions made to the proceeding.

A. 280 Citizens

280 Citizens participated actively throughout the proceeding and attended both of the PHCs. In response to an ALJ ruling, 280 Citizens offered recommendations on issues to be considered in the proceeding, and later submitted comments on the issues adopted in the Scoping Memo. 280 Citizens provided comments on the utilities' design guidelines and application of the design guidelines to representative FMPs. 280 Citizens' substantial contribution to specific issues addressed in D.06-01-042 is discussed below.

1. Utility EMF Design Guidelines and Field Reduction Measures

280 Citizens proposed standardizing the utility design guidelines to include measures used by one utility and not another. 280 Citizens also urged that the utilities expand their lists of EMF reduction measures and consider less typical measures. The Commission adopted some of these recommendations,

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[4] D.98-04-059, 79 CPUC 2d, 628 at 653.

and also ordered utilities to convene a workshop for this purpose.[5] We find that 280 Citizens made a substantial contribution on both of these issues.

2. Choosing the Location for EMF Modeling or Measurement

280 Citizens contended that the edge of the utility right-of-way (ROW) is the appropriate location for EMF modeling or measurement, or that the measurement should occur at points generally used by the public. The Commission adopted the ROW border as the point for EMF measurement, a location generally already used by the utilities. While the Commission rejected using points generally used by the public as a location for EMF measurement, it noted that in some unique circumstances, other locations might be considered. Although we did not adopt all of 280 Citizens' proposals on this matter, their input provided a substantial contribution to our adopted position.

3. Underground Lines

280 Citizens recommended that although transmission lines may be located underground, such placement should not prohibit additional EMF reduction measures. The Commission adopted this position, although it noted that any additional mitigation cost should achieve significant further EMF mitigation. On this issue, 280 Citizens provided a substantial contribution.

4. Undeveloped Land

The Commission did not adopt 280 Citizens' recommendation regarding "low-cost"[6] mitigation measures for rural, agricultural, and undeveloped land.

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[5] See, D.06-01-042, *mimeo.*, pp. 16-17.

[6] Low-cost mitigation is generally defined as mitigation costs that do not exceed 4% of total project cost.

However, the Commission stated that no-cost mitigation measures should always be applied in all locations, including rural, agricultural, and undeveloped land. While the Commission did not adopt 280 Citizens' position regarding low-cost mitigation for undeveloped land, it did agree that no-cost measures should always be applied to all projects, and to that extent 280 Citizens made a substantial contribution on this issue.

5. The 4% "Low-Cost" Benchmark

280 Citizens argued that mitigation costs should not be limited to 4% of project costs where additional mitigation costs would result in substantial reduction in EMFs, particularly where exposure involved "large numbers of people." Although the Commission rejected this argument, it provided exceptions to the 4% low-cost benchmark under unique circumstances. To this extent, 280 Citizens made a substantial contribution on this issue.

6. Measuring EMF Mitigation

The Commission rejected 280 Citizens' proposal to require actual measurements of EMF, and therefore on this issue, 280 Citizens did not make a substantial contribution.

7. New Scientific Data and Studies

280 Citizens recommended that the Commission: (1) continue to review new scientific studies on EMF and consider the assignment of Commission staff; (2) close the rulemaking and implement EMF policies; and (3) open a new rulemaking when new scientific data is available. The Commission adopted all of these recommendations regarding the development of new scientific data and studies, and therefore 280 Citizens made a substantial contribution on these issues.

8. Standardizing EMF Design Guidelines

280 Citizens proposed that utilities amend their EMF design guidelines to include measures listed in the guidelines of one utility but not another, and to expand design guidelines to include less typical mitigation measures. These proposals led to the Commission ordering the utilities to convene a workshop for the purpose of standardizing design guidelines. Thus on this issue, 280 Citizens made a substantial contribution which was noted and adopted by the Commission.

B. Kheifets

Kheifets participated in the PHCs and commented on the proposed scope of the proceeding. She also submitted comments on the utilities' FMPs, and replied to the comments of other parties on FMPs. Kheifets specific contributions to the proceeding and D.06-01-042 are discussed below.

As noted in her request for compensation, Kheifets' major contribution to this proceeding involved her knowledge and experience working in the area of EMF-related scientific data. Using this background, Kheifets focused her comments on the adequacy of no-cost and low-cost mitigation measures, and on EMF policies adopted worldwide. In particular, Kheifets, argued against adopting specific EMF exposure limits, and explained that future scientific studies are likely to recommend no-cost and low-cost EMF mitigation measures, similar to those adopted in D.06-01-042. D.06-01-042 cited her comments on anticipated EMF scientific studies and adopted the use of no- and low-cost mitigation measures. Kheifets also recommended that the strengths of each utility's design guidelines should be combined. D.06-01-042 adopted this position by ordering a workshop among the utilities to standardize design guidelines. On this issue and particularly with regard to the development of

new scientific data and studies, Kheifets made a substantial contribution to D.06-01-042.

C. CCAE

CCAE jointly participated with Fund for the Environment (Fund); however, CCAE has filed a separate compensation request, and states its request is only for expenses incurred by CCAE, and none by Fund. Thus, the discussion below addresses CCAE's substantial contribution to D.06-01-042 and only CCAE's participation in this proceeding.

CCAE participated in the PHCs, provided comments regarding the scope of the proceeding, and submitted a prehearing statement in the April 2005 PHC. In its prehearing statement, CCAE recommended measurement of EMF levels and comparisons to EMF levels "associated with negative health impacts."[7] CCAE further recommended the collection of various data, including data relative to a sample of constructed transmission lines, as well as the use of modeling for determining EMF measurements.

Later, CCAE provided comments on the various sample FMPs including recommendations for EMF measurements based on EMF levels of 2 and 4 milligauss. CCAE also submitted reply comments addressing the 4% benchmark, EMF measurements to validate modeling, expansion of mitigation measures, land use priority, EMF design guideline, and disagreement over the findings of epidemiologic studies.

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[7] Joint Prehearing Conference Statement of CCAE and Fund, p. 2.

1. Current EMF Mitigation Policy

CCAE states it identified the need for data on transmission lines, which in turn led to a review of the utilities' design guidelines. CCAE explains that in response to this proposal, utilities provided 13 FMPs for which the Commission's no-cost/low-cost mitigation policy was applied. This review of how the utilities implemented design guidelines formed the basis for improvements in the Commission's no-cost/low-cost mitigation policies. CCAE's recommendations and participation on this issue provided a substantial contribution to D.06-01-042.

2. Expansion of the First Priority Mitigation Class

Following the review of EMF design guidelines, CCAE proposed that residential areas be included in the first priority mitigation class, along with schools and licensed day-care centers. CCAE argues that although the Commission did not adopt CCAE's proposed addition of residential areas to the first priority mitigation class, the Commission did include hospitals in the first priority, thereby reflecting CCAE's inclusion of health-related facilities in this priority class.[8]

CCAE is correct that D.06-01-042 included hospitals in the first priority. However, CCAE's proposal included "long-term health-related facilities" as one of a number of locations[9] for measuring EMF before and after mitigation, and not as a separate priority class. Therefore, while CCAE contributed to the

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[8] *Id*.

[9] CCAE included long-term health care facilities as well as schools, pre-schools, residences and workplaces as locations for measuring EMF. (Joint Comments of CCAE and Fund, p. 2, July 26, 2005.)

consideration of hospitals in this priority class, it was not a specific proposal, and did not result in a substantial contribution on this issue.

3. Implementation of Equal Mitigation for an Entire Class

CCAE states that prior to D.06-01-042, Pacific Gas and Electric Company's (PG&E) design guidelines required that every area within a priority group must receive equal mitigation treatment, otherwise no low-cost measure will be applied to this priority group or to lower priority groups. CCAE argued that this principle should not be applied in design guidelines, and instead, priorities within a group should be set based upon proximity to the project, people exposed and exposure levels. D.06-01-042 adopted a modification of CCAE's position and requested utilities to modify their design guidelines such that residences most impacted by EMF will receive some mitigation. We find that on this issue CCAE made a substantial contribution to D.06-01-042.

After we have determined the scope of a customer's substantial contribution, we then look at whether the compensation requested is reasonable.

V. Reasonableness of Requested Compensation

A. 280 Citizens

280 Citizens requests $54,095.68 for its participation in, and contribution to, this proceeding. 280 Citizens' request voluntarily excludes attorney hours for time spent on issues for which 280 Citizens believes it was not productive, as noted below. In addition, 280 Citizens explains that it was represented by two different law firms, and therefore, 280 Citizens requests that we specify, as closely as possible, the compensation amounts awarded to each law firm. Accordingly, the requests by law firm are as follows:

Dietrich Law Firm

Attorney/Paralegal	Year	Hours	Hourly Rate[10]	Amount ($)
Dietrich (attorney)	2005 and 2006	129.4	$280	$36,232.00
Dietrich (attorney)[11]	2005 and 2006	42.2	140	5,908.00
Dietrich (paralegal)[12]	2005 and 2006	9.3	110	1,023.00
Dietrich (paralegal)[13]	2005 and 2006	4.4	55	242.00
Deductions (by issue)				
Prioritizing land use		1.0	280	-280.00
4% Benchmark		1.8	280	-504.00
Measuring EMF		1.0	280	-280.00
			Subtotal Labor	**$42,341.00**
Expenses				
LEXIS				$508.80
Photocopies				63.37
Postage				19.56
			Subtotal Expenses	**$591.73**

[10] 280 Citizens notes that travel time and time related to preparation of the compensation request are at one-half the professional's usual rate.

[11] Hours spent on travel and intervenor compensation request preparation.

[12] 280 Citizens explains that when Dietrich performs work as a paralegal he charges a lower rate for services.

[13] Hours incurred for the preparation of the intervenor compensation request.

Dietrich Law Total	**$42,932.73**

Davis Wright Tremaine LLP

Attorney/ Paralegal	Year	Hours	Rate[14]	Amount ($)
O'Neill (attorney)	2004, 2005, 2006	21.4	$435	$9,309.00
O'Neill (attorney)	2004, 2005, 2006	4.8	217.50	1,044.00
O'Neill (attorney)	2004, 2005, 2006	0.6	217.50	130.50
Pau (paralegal)	2004, 2005, 2006	4.5	135	607.50
			Subtotal Labor	**$11,091.00**

Expenses

Photocopies	16.95
Filing Fee (specialized legal services)	55.00
Subtotal Expenses	**$71.95**
Davis Wright Tremaine LLP Total	**$11,162.95**
280 Citizens' Total Request	**$54,095.68**

B. Kheifets

Kheifets requests $18, 900 for her time and expenses in this proceeding as follows:

Expert	Year	Hours	Hourly Rate	Amount ($)
Kheifets	2004	15	$290	$4,350.00
Kheifets	2005	32	290	9,280.00
Kheifets	2006	15	290	4,640.00
			Subtotal Labor	**$18,270.00**

Expenses

Photocopying	$10.00
Postage	30.00
Phone Costs	100.00
Travel	490.00
Subtotal Expenses	**$630.00**
Total Request	**$18,900.00**

[14] Travel time and time related to preparation of the compensation request are at one-half the professional's usual rate.

C. CCAE

CCAE requests $37,221.28 for its participation in this proceeding as follows:

Expert/Clerical	Year	Hours	Hourly Rate[15]	Amount ($)
Peter Frech	2004	17.5	$200	$3,500.00
Peter Frech	2004	8.0	100	800.00
Peter Frech	2004	3.0	100	300.00
Clerical	2004	2.0	18	36.00
			Subtotal Labor (2004)	**$4,636.00**
Peter Frech	2005	146.25	200	$29,250.00
Peter Frech	2005	3.0	100	300.00
Clerical	2005	4.0	18	72.00
			Subtotal Labor (2005)	**$29,622.00**
Peter Frech	2006	6.25	200	$1,250.00
Peter Frech	2006	16.0	100	1,600.00
Clerical	2006	2.0	18	36.00
			Subtotal Labor (2006)	**$2,886.00**
Expenses (2004, 2005, 2006)				
Public Transportation				$18.80
Transportation (private car)				7.68
Meals				10.00
Photocopies				19.98
Postage				20.82
			Total Expenses	**$77.28**
			Total Request	**$37,221.28**

In general, the components of this request must constitute reasonable fees and costs of the customer's preparation for and participation in a proceeding that

[15] Travel time and time spent on preparation of intervenor compensation, billed at one-half of normal billing rate.

resulted in a substantial contribution. The issues we consider to determine reasonableness are discussed below:

VI. Hours and Costs Related to and Necessary for Substantial Contribution

We first assess whether the hours claimed for the customer's efforts that resulted in substantial contributions to Commission decisions are reasonable by determining to what degree the hours and costs are related to the work performed and necessary for the substantial contribution.

A. 280 Citizens

280 Citizens documented its claimed hours by presenting a daily breakdown of the hours of its attorneys and paralegals, accompanied by a brief description of each activity. The hourly breakdown reasonably supports the claim for total hours. As noted above, 280 Citizens voluntarily excluded hours spent on activities for issues on which it did not prevail, and therefore we need not exclude from 280 Citizens' award compensation for these issues.

B. Kheifets

Kheifets documented her claimed hours by providing an appendix to her award compensation claim. The appendix provides a brief description of each activity, and the associated hours. A review of the appendix shows that Kheifets calculated her award request for work on intervenor compensation matters, including preparation of her NOI, at her full hourly rate, rather than one-half of the hourly rate as required by Decision 98-04-059 (p. 51). We have corrected the compensation calculation by applying the one-half rate to the intervenor compensation activities in 2004 and 2005.

C. CCAE

CCAE documented its claimed hours by providing a daily breakdown of the hours of its expert, accompanied by a brief description of each activity by issue. Although CCAE believes that the total number of hours claimed is reasonable, we find an exception to this total. The exception concerns three hours of professional time for the issue of expansion of the first priority mitigation class, an issue for which CCAE failed to make a substantial contribution. With this exception, we find that the remaining hours are reasonable.

VII. Market Rate Standard

We next take into consideration whether the claimed fees and costs are comparable to the market rates paid to experts and advocates having comparable training and experience and offering similar services.

A. 280 Citizens

280 Citizens seeks an hourly rate of $435 for O'Neill, for work performed in 2004, 2005, and 2006. We previously approved this rate in D.06-05-006 for work performed in 2004 and 2005, and adopt it here for 2004-2006. 280 Citizens explains that it is requesting the same rate.

Similarly, 280 Citizens seeks an hourly rate of $135 for Pau for work performed in 2004, 2005, and 2006. We previously approved this same rate for Pau in D.06-05-006 for work performed in 2004 and 2005, and adopt it here for 2004-2006.

280 Citizens requests an hourly rate of $280 for Dietrich, for work performed in 2005 and 2006. The Commission has not previously approved a rate for Dietrich. Dietrich graduated from law school and became a member of the California State Bar in 1995. The requested rate for Dietrich falls within the

range for attorneys with 8-12 years of experience.[16] We find that $280 per hour is a reasonable rate for Dietrich given his experience, and adopt it here for 2005 and 2006.

280 Citizens requests an hourly rate of $110 for Dietrich for work as a paralegal in 2005 and 2006. The Commission has not previously approved a rate for Dietrich as a paralegal. In D.06-04-018, we approved rates for Nielsen and Pau working as paralegals in our award to 280 Citizens. These rates were between $135 and $155 per hour for work performed in 2003 and 2004. Furthermore, we approve a rate of $135 per hour for Pau as discussed above. We find that $110 per hour is a reasonable rate for Dietrich working as a paralegal.

B. Kheifets

Kheifets seeks an hourly rate of $290 for work performed in 2004, 2005, and 2006. Kheifets states this rate is supported by her specialized experience and is less than the hourly fees requested by other intervenors. In support of her requested hourly rate, Kheifets states that she is professor of Epidemiology at the University of California at Los Angeles, was head of the Radiation Program at the World Health Organization, and managed the EMF program for the Electric Power Research Institute. In addition, Kheifets is or has been a member of various national organizations involved in EMF research.[17]

We have not previously established an hourly rate for Kheifets. In D.05-11-031 (p. 16), we stated that first-time representatives must make a

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[16] D.05-11-031 (p. 11) in the Commission's Intervenor Compensation Rulemaking, determined that the range of hourly rates for attorneys with 8-12 years of experience should be $270-$325.

[17] See Kheifets' NOI, November 27, 2004.

showing in the compensation request to justify their proposed hourly rate taking into consideration rates previously awarded to representatives with comparable training and experience. As Kheifets has not made this comparability showing in her request, we consider her background, training, and experience in determining a reasonable rate.

Our previous decisions provide limited guidance regarding appropriate hourly rates for experts with high academic achievement and unique experience, who are also participating in a proceeding for the first time. In D.06-04-018, we considered a reasonable hourly rate for expert Smallwood, who has Ph.D. and M.S. degrees in Ecology, and worked as a Senior Ecologist and a System Ecologist. Smallwood also is a part-time faculty member at California State University at Sacramento, and has taught courses and published works in his field. D.06-04-018 found that an hourly rate of $200 was reasonable for Smallwood for work performed in 2003 and 2004, after determining that his background, qualifications, and experience were similar to hydrologist Purkey and biologist Trush.[18] Both Purkey and Trush hold M.S. and Ph.D. degrees in their respective fields. Purkey is a senior hydrologist for the National Heritage Institute, while Trush is an adjunct professor at California State University at Humboldt. D.04-08-025 found that an hourly rate of $200 was reasonable for both Purkey and Trush for work performed in 2002.

Although these adopted rates provide some guidance, we also recognize that Kheifets' background and qualifications uniquely relate to the scientific subject matter in this proceeding, and her requested rate is for work performed

[18] See D.04-08-025.

in 2004, 2005, and 2006. Furthermore, her experience and knowledge in the area of EMF at the worldwide level bring additional credibility to her contribution to D.06-01-042. In consideration of her unique background and experience, and comparable rates for other experts appearing before the Commission, an hourly rate of $260 is reasonable for her work in 2004, 2005, and 2006.

C. CCAE

CCAE requests an hourly rate of $200 for Frech, an increase of $20 per hour above the $180 rate we approved in D.02-11-019 for work performed from 2000 to 2002. CCAE states that it is requesting this higher rate as Frech billed CCAE at this rate for work performed in 2005. In support of the increased rate, CCAE explains that Frech has both electrical engineering and business degrees, is knowledgeable about electric line reliability and costs, and has served on various advisory panels addressing EMF issues.

As discussed above, we consider the background, qualifications, and experience, as well as any unique abilities that an expert might contribute to a proceeding in our determination of a reasonable rate. Other considerations are the comparable rates adopted for similar experts and the years in which work was performed. We do not consider the rate which an expert may charge an intervenor since that is a matter between the intervenor and the expert. In this regard, we note that CCAE's NOI estimated that Frech would bill his work at $180 per hour, and that CCAE's request for compensation does not explain the higher billing rate.

Nonetheless, we have considered that our adopted rate of $180 per hour for Frech was for work in 2000 to 2002, and that a $20 per hour increase

(approximately 11%) for work in 2004, 2005, and 2006 is reasonable.[19] Therefore, we adopt the requested rate of $200 per hour for Frech for work in 2004, 2005, and 2006.

We also note that CCAE requests compensation for eight hours of clerical work in 2004, 2005 and 2006. We consider that the hourly rate adopted for costs of representation includes any necessary clerical costs. Therefore, we will not include these eight clerical hours in our adopted compensation award.

VIII. Productivity

D.98-04-059 directed customers to demonstrate productivity by assigning a reasonable dollar value to the benefits of their participation to ratepayers. The costs of a customer's participation should bear a reasonable relationship to the benefits realized through that participation. This showing assists us in determining the overall reasonableness of the request.

A. 280 Citizens

280 Citizens did not quantify the benefits of its participation to ratepayers, noting that the Commission has recognized that it can be difficult, if not impossible, to assign specific ratepayer benefits to the contributions of intervenors in proceedings involving non-economic issues where no revenue requirement, revenue allocation, or rate design is at issue. (See D.01-11-023). We agree that it is difficult to assign specific ratepayer savings to 280 Citizens contribution in this proceeding. Nonetheless, it is clear that ratepayers have benefited because 280 Citizens' participation assisted the Commission in

[19] D.05-11-031 (*mimeo.*, p. 14), citing Commission Resolution ALJ-184, deemed an increase of 8% from 2003 to 2004 as reasonable.

updating its EMF mitigation policy, improving utilities' design guidelines, and recommending a procedure for continuing to assess new scientific data. 280 Citizens also points out that the likely capital costs of electric facilities affected by EMF mitigation measures significantly exceed 280 Citizens' compensation request. The Commission finds that 280 Citizens' participation in this proceeding has been productive.

B. Kheifets

Kheifets' states that her participation provided a unique expertise on EMF issues, as she was the only party to be a member of both national and international research groups and committees on EMF. Kheifets states that her most valuable contribution was to focus attention on the adequacy of the current low-cost/no-cost reduction measures and policies adopted worldwide.

We agree. Although Kheifets cannot identify precise monetary benefits to ratepayers, her participation reinforced our adoption of low-cost/no-cost mitigation policies. As a consequence, utility spending on mitigation measures is made more efficient, and effective, and thus ratepayers benefit. Thus, we find that Kheifets efforts have been productive.

C. CCAE

CCAE contends that CCAE's cost of participation significantly exceeds the expected capital expenditures and EMF mitigation measures associated with future electric utility facilities. CCAE also points out that this proceeding dealt with policy issues rather than specific revenue requirements and thus assigning a dollar value to participation is impractical.

CCAE is correct, as we cannot assign specific dollar values to its participation. However, we find that CCAE's recommendations assisted us in determining how to apply mitigation costs to different customer classes, and in a

methodology for reviewing utility design guidelines. We expect that improvements in utility design guidelines will result in significant savings to ratepayers. Thus, we find that CCAE's efforts have been productive.

IX. Direct Expenses

A. 280 Citizens

The itemized direct expenses submitted by 280 Citizens include costs for LEXIS, photocopying, postage, and a legal filing fee and total $663.68. The cost breakdown included with the request shows the miscellaneous expenses to be commensurate with the work performed. We find these costs reasonable.

B. Kheifets

The itemized direct expenses submitted by Kheifets include costs for travel, photocopying, postage and telephone, and total $630.00. Kheifets' reported expenses are commensurate with the work performed and we accept them as reasonable. We note that Kheifets submits her travel request as a total amount, rather than explaining each item of travel, such as automobile or airline travel. Although we will allow the total travel in this instance, we instruct Kheifets that any future intervenor compensation request should provide a more detailed breakdown of travel costs.

C. CCAE

CCAE requests compensation for expenses totaling $77.28, including photocopies, postage, and travel (vehicle mileage, tolls, parking, and meals). We do not provide compensation for meals. Therefore, we have deducted $10.00 from CCAE's direct expenses. We find the remaining costs of $67.28 reasonable.

X. Award

A. 280 Citizens

As set forth in the table below, we award 280 Citizens $54,095.68. As requested by 280 Citizens, we show the compensation award by law firm.

Dietrich Law Firm

Attorney	Year	Hourly Rate	Hours	Amount
Dietrich (attorney)	2005 and 2006	$280	129.4	$36,232.00
Dietrich (attorney)	2005 and 2006	140[20]	42.2	5,908.00
Dietrich (paralegal)	2005 and 2006	110	9.3	1,023.00
Dietrich (paralegal)	2005 and 2006	55[21]	4.4	242.00
Deductions		280	3.8	- 1,064.00
		Subtotal Labor		**$42,341.00**
Expenses				591.73
	Subtotal (Dietrich Law Firm)			**$42,932.73**

Davis Wright Tremaine LLP

Attorney/Paralegal	Year	Hourly Rate	Hours	Amount
O'Neill (attorney)	2004, 2005, 2006	$435.00	21.4	$9,309.00
O'Neill (attorney)	2004, 2005, 2006	217.50[22]	4.8	1,044.00
O'Neill (attorney)	2004, 2005, 2006	217.50[23]	0.6	130.50
Pau (paralegal)	2004, 2005, 2006	135	4.5	607.50
		Subtotal Labor		**$11,091.00**
Expenses				71.95
	Subtotal (Davis Wright Tremaine LLP)			**$11,162.95**
Total Compensation Awarded to 280 Citizens				**$54,095.68**

B. Kheifets

As set forth in the table below, we award Kheifets $14,540.00.

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[20] One-half of normal rate for travel and intervenor compensation work.

[21] *Id.*

[22] *Id.*

[23] *Id.*

Expert	Year	Hourly Rate	Hours	Amount
Kheifets	2004	$260	15	$1,300.00
Kheifets	2004	130[24]	10	1,300.00
Kheifets	2005	260	32	8,320.00
Kheifets	2006	260	8	2,080.00
Kheifets	2006	130[25]	7	910.00
			Subtotal Labor	**$13,910.00**
Expenses				630.00
			Total Compensation Awarded to Kheifets	**$14,540.00**

C. CCAE

As set forth in the table below, we award CCAE $37,067.28.

Expert	Year	Hourly Rate	Hours	Amount
Peter Frech	2004	$200	17.5	$3,500.00
Peter Frech	2004	100[26]	11.0	1,100.00
Peter Frech	2005	200	146.25	29,250.00
Peter Frech	2005	100[27]	3.0	300.00
Peter Frech	2006	200	6.25	1,250.00
Peter Frech	2006	100[28]	16.0	1,600.00
			Subtotal Labor	**$37,000.00**
Expenses				67.28
			Total Compensation Awarded to CCAE	**$37,067.28**

[24] *Id.*

[25] *Id.*

[26] *Id.*

[27] *Id.*

[28] *Id.*

Consistent with previous Commission decisions, we order that interest be paid on the award amount (at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release H.15) commencing on (1) June 10, 2006, the 75th day after 280 Citizens and Kheifets filed their compensation requests, and continuing until full payment of the awards are made, and (2) June 23, 2006, the 75th day after CCAE filed its compensation request, and continuing until full payment of the award is made.

We direct PG&E, SCE, and San Diego Gas & Electric Company to allocate payment responsibility among themselves based upon their California-jurisdictional electric revenues for the 2005 calendar year, to reflect the year in which the proceeding was primarily litigated.

We remind all intervenors that Commission staff may audit their records related to the award and that intervenors must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. 280 Citizens', Kheifets', and CCAE's records should identify specific issues for which each requested compensation, the actual time spent by each employee or consultant, the applicable hourly rate, fees paid to consultants, and any other costs for which compensation was claimed.

XI. Waiver of Comment Period

This is an intervenor compensation matter. Accordingly, as provided by Rule 77.7(f)(6) of our Rules of Practice and Procedure (Rules), we waive the otherwise applicable 30-day comment period for this decision.

XII. Assignment of Proceeding

Michael R. Peevey is the Assigned Commissioner, and Bruce DeBerry is the assigned ALJ in this proceeding.

Findings of Fact

1. 280 Citizens, Kheifets, and CCAE have satisfied all the procedural requirements necessary to claim compensation in this proceeding.

2. CCAE requested, and was granted, a two-week extension of time to file its compensation request. CCAE's compensation request is timely filed.

3. 280 Citizens, Kheifets, and CCAE made substantial contributions to D.06-01-042 as described herein.

4. 280 Citizens', Kheifets', and CCAE's requested hourly rates for their representatives, as adjusted herein, are reasonable when compared to the market rates for persons with similar training and experience.

5. 280 Citizens', Kheifets', and CCAE's requested related expenses, as adjusted herein, are reasonable and commensurate with the work performed.

6. The total of the reasonable compensation for 280 Citizens is $54,095.68.

7. The total of the reasonable compensation for Kheifets is $14,540.00

8. The total of the reasonable compensation for CCAE is $37,067.28.

9. The appendix to this opinion summarizes today's award.

Conclusions of Law

1. 280 Citizens, Kheifets, and CCAE have fulfilled the requirements of Pub. Util. Code §§ 1801-1812, which govern awards of intervenor compensation, and are entitled to intervenor compensation for their claimed compensation, as adjusted herein, incurred in making substantial contributions to D.06-01-042.

2. 280 Citizens should be awarded $54,095.68 for its contribution to D.06-01-042.

3. Kheifets should be awarded $14,540.00 for her contribution to D.06-01-042.

4. CCAE should be awarded $37,067.28 for its contribution to D.06-01-042.

5. Per Rule 77.7(f)(6), the comment period for this compensation decision may be waived.

6. This order should be effective today so that 280 Citizens, Kheifets and CCAE may be compensated without further delay.

7. This proceeding should be closed.

O R D E R

IT IS ORDERED that:

1. 280 Corridor Concerned Citizens (280 Citizens) is awarded $54,095.68 as compensation for its substantial contributions to Decision (D.) 06-01-042.

2. Leeka Kheifets (Kheifets) is awarded $14,540.00 as compensation for her substantial contributions to D.06-01-042.

3. Citizens Concerned About EMFs (CCAE) is awarded $37,067.28 as compensation for its substantial contributions to D.06-01-042.

4. Within 30 days of the effective date of this decision, Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company shall pay 280 Citizens, Kheifets, and CCAE their respective shares of the award. Each utility's share shall be calculated based upon its California-jurisdictional electric revenues for the 2005 calendar year. Payment of the awards for 280 Citizens and Kheifets shall include interest at the rate earned on prime, three-month commercial paper as reported in Federal Reserve Statistical Release H.15, beginning June 10, 2006, the 75th day after the filing date of 280 Citizens' and Kheifets' requests for compensation, and continuing until full payment is made. Payment of the award for CCAE shall include interest at the rate earned on prime, three-month commercial paper as reported in Federal Reserve Statistical Release H.15, beginning June 23, 2006, the 75th day after the

filing date of CCAE's request for compensation, and continuing until full payment is made.

5. The comment period for today's decision is waived.
6. Rulemaking 04-08-020 is closed.

This order is effective today.

Dated _____, at San Francisco, California.

APPENDIX

Compensation Decision Summary Information

Compensation Decision:	
Contribution Decision(s):	D0601042
Proceeding(s):	R0408020
Author:	ALJ DeBerry
Payer(s):	Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
280 Citizens	3/27/2006	$54,095.68	$54,095.68	No	
Leeka Kheifets	3/27/2006	$18,900.00	$14,540.00	No	Reduction in Hourly Rate. 50% hourly rate for Intervenor Compensation work.
CCAE	4/10/2006	$37,221.28	$37,067.28	No	No compensation for clerical time or meals.

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
William	Dietrich	Attorney	280 Citizens	$280	2005 and 2006	$280
William	Dietrich	Paralegal	280 Citizens	$110	2005 and 2006	$110
Ed	O'Neill	Attorney	280 Citizens	$435	2004, 2005, and 2006	$435
Judy	Pau	Paralegal	280 Citizens	$135	2004, 2005, and 2006	$135
Leeka	Kheifets	Expert	Leeka Kheifets	$290	2004, 2005, and 2006	$260
Peter	Frech	Expert	CCAE	$200	2004, 2005, and 2006	$200

(END OF APPENDIX)