

**PUBLIC UTILITIES COMMISSION**505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298**FILED**01-15-08
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January 15, 2008

Agenda ID #7301
Ratesetting

TO PARTIES OF RECORD IN APPLICATION 99-09-053

This is the proposed decision of Administrative Law Judge (ALJ) Jean Vieth. It will not appear on the Commission's agenda for at least 30 days after the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the proposed decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the proposed decision as provided in Article 14 of the Commission's Rules of Practice and Procedure (Rules), accessible on the Commission's website at www.cpuc.ca.gov. Pursuant to Rule 14.3, opening comments shall not exceed 15 pages.

Comments must be filed either electronically pursuant to Resolution ALJ-188 or with the Commission's Docket Office. Comments should be served on parties to this proceeding in accordance with Rules 1.9 and 1.10. Electronic and hard copies of comments should be sent to ALJ Vieth at xjv@cpuc.ca.gov and the assigned Commissioner. The current service list for this proceeding is available on the Commission's website at www.cpuc.ca.gov.

/s/ ANGELA K. MINKIN
Angela K. Minkin, Chief
Administrative Law Judge

ANG:rbg

Attachment

Decision **PROPOSED DECISION OF ALJ VIETH** (Mailed 1/15/2008)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of Pacific Gas and Electric
Company to Market Value Hydroelectric
Generating Plants and Related Assets
Pursuant to Public Utilities Code
Sections 367(b) and 851.

(U 39 E)

Application 99-09-053
(Filed September 30, 1999)

**OPINION DENYING REQUEST OF FRIENDS OF THE EEL RIVER AND
CALIFORNIA SPORTFISHING PROTECTION ALLIANCE
FOR INTERVENOR COMPENSATION
IN CONNECTION WITH DECISION (D.) 07-12-004**

This decision denies the joint request of Friends of the Eel River (Friends) and California Sportfishing Protection Alliance (California Sportfishing) for additional intervenor compensation in the amount of \$7,805. Intervenors make this claim for preparing comments on the proposed decision underlying D.07-12-004, which awarded them approximately \$77,671 in compensation. We find that on two of the four issues raised in the comments, Friends and California Sportfishing provided information and argument/analysis that should have been provided in the original request for intervenor compensation; on two other issues, the comments failed to influence D.07-12-004. Thus, on the first two issues, the comments constitute an unproductive effort and excessive hours; on the second two, intervenors failed to make a substantial contribution to D.07-12-004.

1. Background

This docket lay dormant for a number of years following a hiatus brought about by the California energy crisis, the subsequent bankruptcy filing by Pacific Gas and Electric Company (PG&E) and the eventual settlement of the bankruptcy litigation. As provided in the bankruptcy settlement, D.07-04-011 dismissed this application without a determination on the merits. D.07-04-011 also authorized intervenors to file requests for compensation, as the Commission had done in several prior instances where lengthy dockets were closed without decisions on the merits.

D.07-07-031 made an intervenor compensation award to Toward Utility Rate Normalization (TURN) for their substantial contribution to D.07-04-011. Subsequently, D.07-12-004 awarded Friends and California Sportfishing, jointly, \$77,671.48 for substantial contribution to D.07-04-011; it also awarded intervenor compensation to California Hydropower Reform Coalition. Both D.07-07-031 and D.07-04-011 review Commission precedent for the awards ordered and we need not repeat that analysis here.

2. Discussion

Friends and California Sportfishing, jointly, seek additional intervenor compensation, in the amount of \$7,805 for their alleged substantial contributions to D.07-12-004. That decision's award, \$77,671.48, recognized their contributions to this docket and to Applicatin (A.) 98-05-014 and A.98-05-022, which have been deemed to be precursors to this docket.

Friends and California Sportfishing seek the following compensation:¹

	Year	Hours	Rates	
Attorney Fees (Comp)				
Stephen C. Volker	2007	21.00	\$100.00 (1/2) ²	\$ 4,725
Joshua A. H. Harris	2007	30.80	\$225.00 (1/2) ³	\$ 3,080
TOTAL				\$ 7,805

The claimed substantial contribution to D.07-12-004 is this: The proposed decision would have denied approximately \$25,000 sought in connection with A.98-05-014 and A.98-05-022 and would have set the hourly rate for attorney Riddle at \$150/hour, rather than at \$200/hour. Because of the size of the disallowance relative to the original request (Friends and California Sportfishing sought a little more than \$90,000), the Commission mailed the proposed decision for comment.⁴ Friends and California Sportfishing, jointly, filed comments on November 14, 2007; the proposed decision was revised thereafter to recommend an increase in the award; and we adopted the revised recommendation at our December 6, 2007 public meeting. Friends and California Sportfishing argue that because their comments on the proposed decision resulted in revisions that increased the intervenor compensation award to them, they made a substantial

¹ An Amendment to Request, filed January 4, 2008, includes the billing records associated with this request for additional intervenor compensation.

² D.07-12-004 approved this rate for Harris.

³ D.07-12-004 approved an hourly rate for Volker of \$290/hour (or \$145/hour at ½ rate).

⁴ We may waive comment on proposed decisions in intervenor compensation matters if we choose to do so. (See Rule 14.6(c)(6) of the Commission's Rules of Practice and Procedure.)

contribution – and should be compensated for preparing those comments. We disagree and deny the award for reasons all related to the content of the comments.⁵

The Friends and California Sportfishing comments focus on four issues: compensation for participation in A.98-05-014/A.98-05-022, the hourly rate for attorney Riddle, the hourly rate for attorney Volker, and the reasonableness of the time spent on preparation of the initial compensation request. With respect to the first two issues, the comments include supplemental support for the compensation sought, though as we explain in greater detail below, that support should have been included in the original request. With respect to the third issue – Volker’s hourly rate -- the comments largely repeat arguments made in the original request (and in prior requests in other dockets). The comments also largely reiterate the Friends and California Sportfishing position on the fourth issue.

The proposed decision would have denied Friends and California Sportfishing compensation for participation in A.98-05-014/A.98-05-022, characterizing that part of the request as “both untimely and filed in the wrong docket.” (Proposed Decision at p. 7.) When the Commission dismissed this application (by D.04-07-011), we included a conclusion of law and an ordering paragraph that TURN and other intervenors had asked us to include:

⁵ We question, but do not address here, whether seeking additional compensation for discretionary comments on a proposed decision in intervenor compensation matter properly falls within the intervenor compensation program framework. Among other things, the “significant financial hardship” standard set out in Public Utilities Code Section 1802(g) may create a conflict, since an intervenor clearly has a self-interest in increasing its compensation award.

D.04-07-011, Conclusion of Law 3: The right of eligible parties to request intervenor compensation in this proceeding should be protected.

D.04-07-011, Ordering Paragraph 3: Eligible parties may request intervenor compensation.

We did not mention A.98-05-014/A.98-05-022, which the Commission had closed in 2000 (by D.00-03-011). Therefore, in seeking compensation beyond the express authorization of D.04-07-011, it was incumbent upon Friends and California Sportfishing to explain not only what substantial contribution they believed they had made (which the original request does at length) but also why they should be compensated in this docket for that contribution. Though the original request repeatedly characterizes A.98-05-014/A.98-05-022 as the precursor to this docket, it does not explain why the request filed by Friends and California Sportfishing is timely. Instead, the request merely cites (without further argument or analysis) a previous award to TURN and states: “For example, in D.04-03-031, the Commission granted TURN’s request for compensation for work done in both A.99-12-024 and in that proceeding’s predecessor, A.98-05-014.” (Request at 15.) The request does not discuss, for example, why Friends and California Sportfishing failed to request compensation after D.00-03-011 issued to close A.98-05-014/A.98-05-022, or why TURN filed for compensation for its participation in A.98-05-014/A.98-05-022 in a docket different from this one.

The comments, however, explain why Friends and California Sportfishing believe D.04-03-031 (the TURN award) represents a meaningful precedent *vis a vis* their own request and the revised proposed decision, adopted by D.07-12-004, accepts the intervenors position. Had the original request included this analysis,

a more efficient use of resources – both our own and intervenors -- would have resulted.⁶

On this issue of Riddle's hourly rate, the comments provide the year that she was admitted to the bar, which was not included in the original request. Instead the request stated only that Ms. Riddle graduated from U.C. Berkeley School of Law in 2004. Riddle's prior hourly rate, set while she was a law student, was based on the scale for paralegals, not attorneys. Because the scale we use to set an attorney's market rate relies, in part, upon years of experience after admission to the bar, this omission from the original request resulted in a lower hourly rate in the proposed decision. After the information was provided, Riddle's rate was increased in the revised proposed decision and this higher rate was adopted in D.07-12-004. Again, however, the resource expenditure was inefficient.

⁶ D.07-12-004 explains:

While the Commission closed A.98-05-014/A.98-05-022 without a decision on the merits, the focus on valuation issues, for PG&E, already had shifted to A.99-09-053. Based on their participation on CEQA issues in A.98-05-014/A.98-05-022, Friends and California Sportfishing claim credit for the Commission's establishment of a CEQA phase in A.99-09-053. They point to D.04-03-031 as precedent for their claim. That decision makes a combined intervenor compensation award to TURN of approximately \$48,700.00. The majority of the award, about \$42,000, is for substantial contribution in A.99-12-024, SCE's hydroelectric divestiture docket (a parallel proceeding to A.99-09-053); the remaining \$6,700 is for participation in A.98-05-014/A.98-05-022. Under the unique circumstances presented here, and to afford comparable treatment with TURN, we will authorize compensation in today's decision to Friends and California Sportfishing for their participation in A.98-05-014/A.98-05-022, even though that participation occurred some eight years ago. (D.07-12-004 at 7.)

On the issue of Volker's hourly rate, D.07-12-004 adopted the recommendation in the proposed decision without change. Therefore, the comments did not influence that portion of the award at all.

Finally, while D.07-12-004 adopted the recommendation of the revised proposed decision and increased to a little more than \$7,000 the award for compensation-related work, that increase was wholly attributable to allowance of the A.98-05-014/A.98-05-022 claim. The comments argued for allowance of all compensation-related work (\$10,000 +) but that argument failed.

Therefore, the comments directly influenced only two of the four issues they addressed, and they did so by providing information or argument/analysis that should have been provided in the original request. The request for \$7,805 in additional compensation should be denied.

3. Comments on Proposed Decision

The proposed decision of the ALJ in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on _____, and reply comments were filed on _____ by _____.

4. Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and Jean Vieth is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. The comments of Friends and California Sportfishing provided information and argument/analysis on two issues that should have been provided in the original request for intervenor compensation. Therefore, the

time devoted to preparation of comments on these issues constitutes an unproductive effort and excessive hours.

2. The comments of Friends and California Sportfishing on two other issues failed to influence D.07-12-004. Therefore, on those two issues these intervenors did not make a substantial contribution to D.07-12-004.

Conclusions of Law

1. The request of Friends and California Sportfishing for an additional \$7,805 in compensation for their comments on the proposed decision underlying D.07-12-004 should be denied.

2. This order should be effective today in order to provide certainty to intervenors and other parties.

O R D E R

IT IS ORDERED that the Request of Friends of the Eel River and California Sportfishing Protection Alliance for an Award of Compensation for Substantial Contributions to Decision 07-12-004 is denied.

This order is effective today.

Dated _____, at San Francisco, California.

APPENDIX**Compensation Decision Summary Information**

Compensation Decision:		Modifies Decision? No
Contribution Decision(s):	D0712004	
Proceeding(s):	A9909053	
Author:	ALJ Vieth	
Payer(s):	Pacific Gas and Electric Company	

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
Friends of the Eel River and California Sportfishing Protection Alliance	12/14/07	\$7,805	\$0	No	failure to make substantial contribution; unproductive effort/excessive hours

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Stephen C.	Volker	Attorney	Friends of the Eel River/California Sportfishing Protection Alliance	\$500	2007	N/A
Joshua A. H.	Harris	Attorney	Friends of the Eel River/California Sportfishing Protection Alliance	\$225	2007	N/A

(END OF APPENDIX)

INFORMATION REGARDING SERVICE

I have provided notification of filing to the electronic mail addresses on the attached service list.

Upon confirmation of this document's acceptance for filing, I will cause a Notice of Availability of the filed document to be served upon the service list to this proceeding by U.S. mail. The service list I will use to serve the Notice of Availability of the filed document is current as of today's date.

Dated January 15, 2008, at San Francisco, California.

/s/ ROSCELLA GONZALEZ
Roscella Gonzalez