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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 and Gas Service Effective on January 1, 2017. (U39M)	Application 15-09-001 (Filed September 1, 2015)

COMMENTS ON THE AGENDA ID #16474 PROPOSED DECISION GRANTING INTERVENOR COMPENSATION TO SCOTT J. RAFFERTY FOR SUBSTANTIAL CONTRIBUTION TO DECISION 17-05-013 BY SCOTT J. RAFFERTY AND COLLABORATIVE APPROACHES TO UTILITY SAFETY ENFORCEMENT ("CAUSE")

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With increasing frequency and severity, our State suffers accidental and catastrophic losses linked to its utilities – pipeline explosions, a natural gas leak with global consequences, a dam that nearly failed, and wildfires ignited and/or made more difficult to contain by downed wires. For 20 months, my primary occupation was planning, organizing, and establishing Collaborative Approaches to Utility Safety Enforcement ("CAUSE"). CAUSE sought to apply the pioneering work of the late Professor Lesley McAllister on collaborative enforcement to improve the safety performance of California utilities. I had no illusions about the challenge of creating a consumer organization without a local grievance or a promise of lower rates. I never expected to recover for the start-up efforts of enlisting members, recruiting expert witnesses, making numerous trips to Sacramento to obtain guidance from legislators and their staffs, and planning the corporate form of what would have been a statewide organization, but this required another 1100 hours. My family lived off savings and paid every start-up cost. At the request of your Safety Advocate, CAUSE also appeared in the SCE rate case, for which over 100 hours of preparation and document review will likely never be compensated. For 16 months, I persisted because the ALJ gave oral and written assurances that CAUSE would be, or had been, found eligible for reimbursement.[1] Months later, as the proceeding ended, those promises were broken.

CAUSE not only made a "substantial contribution" to the PG&E rate case. CAUSE achieved ***all*** that we could have, given that the case settled before hearing. PG&E endorsed our principles, including them in the settlement the Commission adopted, but said the cultural shift would take many years.[2] By now, CAUSE would be pushing the pace of these changes in every relevant Commission proceeding. Before the North Bay Fires, CAUSE asked the Commission to abandon the funding mechanism that has imposed a 75-year embargo on projects to bury conduit anywhere in Napa County. The PD errs in claiming that CAUSE made no "substantial contribution" to support safety.

PG&E informed CAUSE of the possibility of settlement, I conducted an extensive review of the economic case that ORA and TURN made, having previously deferred on these issues to avoid

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[1] From: Roscow, Stephen C. Date: 28 October 2016 at 13:45 "I've reviewed your documents and approved them, so ***your Amended NOI has been accepted.*** That completes this long procedural journey, so ***thank you again for your patience.***"

[2] PGE Exh. 21: "***PG&E is generally aligned with CAUSE***… *PG&E agrees with CAUSE's assertion that safety requires a continuous and collaborative approach to identifying and mitigating hazards. Such an approach is particularly important for our front line employees who encounter safety issues on a daily basis…* ***PG&E generally agrees with CAUSE's "bubble up" philosophy****. But these activities, to be done well,* ***require a large cultural shift for our employees that we know will take time to implement and years to take root.***"

duplication. Even before CAUSE decided to enter the agreement, I proofed and edited the drafts extensively, providing many technical audits and case authorities. As the other settling parties have acknowledged, I made extensive, important and substantive changes that made the improved, clarified and tightened the language. While CAUSE continued to support the settlement as a reasonable compromise, it also recognized the authority of the Commission to propose modifications as conditions to its acceptance, a position all settling parties ultimately adopted. The PD eliminates all time spent making each of these substantial contributions to the settlement process.

CAUSE would have contributed so much more. But for the series of bureaucratic errors that escalated into the unjust denial of eligibility, CAUSE would by now be a substantial, statewide nonprofit corporation in service to this Commission, municipal utilities, self-governing districts and DWR. CAUSE also needed a ***timely*** determination to be fully effective in this case. By February 2016, I had to advise the expert witnesses whom I was recruiting[3] that I could no longer confirm an expectation of compensation, even on a deferred basis. Reluctantly, I filed testimony myself. The following month, I curtailed secretarial assistance and decided I could not pay discovery analysts out of my retirement savings. I still planned to make CAUSE's case at the evidentiary hearing, but even this option appeared all but foreclosed when I learned that a settlement was being negotiated.

Shortly after CAUSE entered the Settlement in August 2016, the ALJ assured me by phone that he would grant eligibility, and finally in October 2016, he wrote me to confirm that approval had occurred. Even then, his order did not formally issue. Instead, four months later, CAUSE was denied eligibility. While the parties were drafting comments on the PD in mid-March, a question arose as to whether Article 5.1 ("Resolution of Issues") precluded CAUSE from seeking to change the eligibility ruling. After extensive discussion with the lead settling parties, CAUSE proposed to remain within the Settlement, but to file separate comments (even though I had actively helped to draft the joint comments).

Two days before the Commission adopted D.17-05-013, the ALJ appeared to adopt the view that Article 5.1 precluded a settling party from disputing a procedural ruling, even if it occurred after the settlement.[4] The ALJ went on to hold that, even if CAUSE had not entered the settlement, it was "not proper" to seek review of his interlocutory ruling, because CAUSE's exclusion "had its own

[3] I must have been talking to the right people, because you contracted with two of them directly.
[4] Agenda ID #15548 (Rev. 1 PD) at 239, n.279. This footnote is oddly connected to CAUSE's comments on evaluating settlements (not a "resolved issue"), but cites PG&E's reply comments, which are not so limited.

long procedural history." He made no attempt to distinguish the cited precedent of D.03-12-035, in which the Commission qualified its adoption of an ALJ's procedural rulings to grant eligibility to the unincorporated association (UA) that I represented. The ALJ's logic entitled him to deny eligibility without being subject to your review.[5] To claim the Settlement banned CAUSE from even raising the issue is an extreme version of a "gag rule," which so offends the public interest that it normally dooms the entire settlement. D.05-12-025 at 4.4.1.

Under the aegis of State Senator Steven Glazer, I met with the Chief ALJ to resolve the fee claim and the economic injuries that these due process violations imposed on CAUSE.[B] I sought guidance on to how to present the time that was spent responding to abnormal procedural burdens placed by the ALJ, which totaled more than 329 hours (8 full work weeks). This time is conservatively stated, and the overall claim (1133 hours at $215/$410/$425) is consistent with opportunities that I could have realized had the staff simply disqualified CAUSE by the statutory deadline of December 2015. Still, I worried that the same staff who participated in obstructing CAUSE's participation might not accept such a large award. They could reduce it only by dismissing CAUSE's contributions, by deriding my qualifications, or even by questioning the accuracy of my timesheets. I candidly expressed concern that a further attack on my reputation might do more economic injury than the value of an award that was reduced by 50 or 60%. *To prevent such a dispute, I offered to reduce the entire award by 40%, a compromise not mentioned in the PD.* I never imagined a proposal to reduce my claim by 94%. The PD's attacks on my professional reputation, especially the reduction of the hourly rate, inflicts more economic damage than the entire, undiscounted claim.

$33,855 is not just compensation for 20 months of public service. Denials that CAUSE contributed to the settlement (and to the promotion of safety) lack any basis in fact. The 25% reduction of the hourly rate approved by unanimously by the Commission violates precedent and ignores my three decades of accomplishment protecting ratepayers in proceedings before Congress, federal courts, this body, and 13 other state commissions. In her memoir, Justice Sotomayor, who is familiar with my career, wrote that "a measure of integrity would remain evident over [my] distinguished life in public service."[6] I deserve reasonable reimbursement for the professional time I dedicated to my two-year attempt to help this Commission improve its enforcement of utility safety.

[5] The fact that D.17-05-013 adopted these revisions, denying your own authority to review interlocutory orders, raises the question as to whether it qualifies as a final agency action regarding A.15-09-001.
[6] Sotomayor, MY BELOVED WORLD at 191 (2013)

I. CAUSE ACHIEVED ALL THE COMMITMENTS TO SAFETY THAT IT REASONABLY COULD HAVE, SINCE THE CASE SETTLED BEFORE THE EVIDENTIARY HEARING

The PD held that CAUSE was entitled to absolutely nothing because its safety advocacy failed to meet three tests that had never been required before and never will be again. (1) Claiming my testimony did not challenge specific facts in PG&E's application, he ruled that CAUSE failed its "burden of producing evidence." (2) He dismissed the relevance of settlement provisions because none used the "Bubble Up" metaphor or quoted testimony verbatim. (3) Alternative approaches and compromises deserved no compensation. None of these criteria has any logical or legal merit.

I can locate no precedent that disqualifies an intervenor simply because its opening testimony did not provide a "foundation." The Commission makes awards to intervenors who file no testimony at all, especially in settlements. *e.g*, D.04-12-039; D.07-07-006. CAUSE-1 proposed engaging line employees and considering consensus standards in the development of safety management systems, a concept that was not part of PG&E's application. PG&E-21 "aligned" with most of these proposals even before the settlement process began. The Scoping Order called this a transitional rate case. CAUSE intended to use it as an opportunity for discovery and collaboration, but expected PG&E to develop policy on a continuous, less adversary basis monitored in S-MAP and RAMP proceedings.

A. Commitments Made By PG&E

Three sections of the settlement reflect PG&E's commitments to develop systems that collect insights into risk and mediation opportunities from every level of the company and to use international standards. I documented 355 hours for the development of this position, including research and the preparation of testimony, as set forth in the timesheets. Each reflects a substantial, possibly unprecedented, commitment by PG&E to improve safety performance.

1. Section 3.2.8.8^{C} - Engaging Line Employees

CAUSE regards PG&E as the industry leader in classifying types of risks and assessing their consequences. PG&E has pioneered classification of event types by likelihood and consequence (RET), and used this information to inform budget decisions (RIBA). But these tools do not identify ***which*** items of plant are most likely to fail, or even localize ***where*** urgent preventive measures would be most cost-effective. PG&E's added commitment to obtain more frequent input from line employees is very significant. It is substantial movement toward a system of increased attention to workers with first-hand knowledge of local risks and mediation opportunities. The ALJ dismisses this as a

mere "attempt" that does not guarantee results. The basic principle is to customize and enhance safety processes in order to achieve "continuous improvement." All management systems are "attempts" with no ultimate "results" because these effort to improve never ends.

The ALJ also argues this is not "Bubble Up," because the settlement language does not use the name that Allied Chemical gave to its pioneering initiative to collect safety concerns from every level of the company and relay them all the way up to the CEO and Board. Allied was simply an illustration of a management system used for the final quarter of the last century, during which time Allied and its successors enjoyed strong safety records. Bubble-up was one of four examples of collaborative enforcement that CAUSE put forth as potential models for the system PG&E would need to customize for itself, largely without precedent among utilities.[7] Allied created its process before the first attempt by international voluntary consensus organizations (VSOs) to design a management system of any kind. ISO 9000 (1987) specified systems to ensure products or services conform to quality requirements. Its success led to efforts to create standards for specialized management systems involving safety enforcement, which are the subject of Section 3.2.8.10.

2. Section 3.2.8.10[C] - Industry Management Systems

The Section reflects a significant shift in PG&E policy to give greater consideration to management systems developed by industry, not government agencies. PG&E originally intended to model its effort on Annex 19, a top-down air safety system developed by the UN. CAUSE expressed a preference for standards from Voluntary Consensus Standards Organizations (VCSOs), such as ISO and BSI. They have greater industry participation and are revised more quickly to incorporate proven innovations. PG&E already uses PAS 55 (BSI) for asset management. CAUSE agrees with PG&E that VCSO standards can have large licensing and certification costs, which explains our qualification "where possible." The ALJ underlines this term, as if to negate this contribution. *See* n.**Error! Bookmark not defined.**.

The ALJ also dismisses our achievement because 3.2.810 refers to "voluntary consensus standards" instead of "international standards," underlining the word "voluntary." CAUSE requested this change. The terms are usually interchangeable, but Annex 19 is one of the rare international standards written by state actors, not a VCSO. "Voluntary" only refers to membership in the

[7] CAUSE-1 at 24. Other models were peer inspections, such as INPO, ISO standards-based 3rd party certification, and corporate self-declarations with increased benefits or penalties. Despite some valuable lessons, the INPO system could not easily be extended to other utility operations.

international standards writing organization. VSCO standards are fully enforceable when incorporated into a contract, regulation, or statute. Even if PG&E's policy change to increase reliance on VCSO standards was all CAUSE achieved, and it was not, it would be a substantial contribution.

3. Section 3.2.8.9[C] – Disclosure of Safety Metrics

PG&E may be the first utility to agree to release detailed safety metrics on a monthly basis. The ALJ dismisses this contribution as having an "unspecified purpose," which fails to appreciate the need for this Commission to be publicly accountable for the safety performance of utilities.

This provision involved substantial negotiation, because PG&E-2 (at 2-3) had stated the utility's concern that metrics would decline as employees "people begin to report more and speak out more freely about safety incidents." For this reason, PG&E reserved the right to produce monthly data to CAUSE on a confidential basis, and to respond in good faith to any requests by CAUSE that data be published. This is a significant token of the continuing, collaborative relationship that PG&E agreed to engage in with CAUSE.

B. Advocacy for Safety During the ALJ's Undergrounding Proceeding

After the settlement, the judge initiated a review of how PG&E funds projects to bury conduit. Rule 20A strictly allocates "work credits" for burying conduit among every jurisdiction, which accrue until sufficient to fund a project. CAUSE argued that this mechanism had become unworkable. Cities invest years of planning, but funds are so limited that most proposed projects are delayed indefinitely, performed piecemeal, or cause "mortgaged credits" that ban further work in the jurisdiction for decades. A cost overrun in St. Helena should not preclude undergrounding in the entire county for 75 years, but the work credit system often results in such embargos. The process requires such persistence that most funds go to wealthy cities (and wealthy neighborhoods within major cities) for beautification, without any consideration of safety.[8]

Last month, CalFire attributed a number of fires, including Atlas in Napa County, to downed wires. Given SB 900, it is always legal error to give "no weight" to safety concerns ("the required audit is a financial and program audit, not an audit of PG&E's safety practices"). Now, the value analysis and argument that CAUSE submitted in favor of considering safety in allocating funds to bury conduit has become even clearer. PG&E's per-mile costs far exceed the national average, so undergrounding is not always the most economical safety mitigation. But along highways, in areas

[8] All current factors are esthetic. Cal. P.U.C. Sheet No. 30474-E.

prone to wind, in populated at-risk areas, as needed to protect reservoirs and escape routes, there are significant safety benefits that should be considered when selecting projects to remove utility poles.

It is in the public interest that there be a record for the Commission to assess a modification, especially one that the settling parties did not foresee.[9] Although most of its comments involve municipal actions, of which judicial notice is appropriate, CAUSE sought a waiver to introduce some critical facts into the record. The Commission should reimburse this high-quality contribution.

II. CAUSE SUPPORTED THE SETTLEMENT PROCESS.

Recognizing the overall benefits of settlement and respect for privileged discussions, the Commission grants time spent in negotiations with limited scrutiny. It is important that all affected interests by represented (*see* D.04-12-039), and no one else represented safety (*compare* D.08-12-054). Success in negotiating specific provisions is unnecessary and may inadmissible. D.01-10-024. CAUSE exercised discretion in providing details regarding its contribution to the settlement process and will continue to avoid unnecessary disclosures of settlement discussions. I now subdivide the time claimed into four categories – (1) economic evaluation of the settlement (67.25 hours); (2) drafting the joint motion, meetings and collective negotiation (89.75); (3) collaborating with PG&E on safety provisions (56); and (4) preparing joint and separate comments on the PD (82.25).

A. Evaluation of the Economic Case

CAUSE was not informed of settlement discussions until June 2, 2016, and did not enter the agreement until August 2, 2018. I had expected to make CAUSE's case for collaborative enforcement during the traditional rate case hearing.[10] Therefore, I had relied on TURN and ORA on economic issues. Before agreeing to the settlement, CAUSE needed to assess the strength of the economic case, and whether it was feasible to achieve a better outcome at a hearing, given that TURN and ORA would not provide support. I have testified on all aspects of a rate case, so I was well equipped to make such an evaluation. I also studied discovery regarding issues that had potential impacts on safety, such as gas leaks and the Z-factor. This independent evaluation persuaded me that the economic terms could be the best attainable, despite my strong preference for a full evidentiary hearing.

[9] The ALJ granted party status to Hayward and dedicated half the evidentiary hearing to questions he posed to them, and questions they posed to PG&E. CAUSE supports the equitable claims involved in Hayward's particular project, but the record also needed the long-term view of safety benefits in siting future projects.

[10] The traditional rate case hearing mitigates the imbalance of information between the utility and the public, I am skeptical of pre-hearing settlements. Unlike an early-stage settlement, negotiating on the eve of the hearing avoids few litigation costs, but loses the benefits of information that hearings provide.

This validation is a substantial contribution, and the necessary cost of an informed settlement.

B. Technical Support and General Negotiation

Assistance in the preparation of the settlement and joint motion is normally sufficient to support all time spent in settlement discussions without further detail. D.06-11-032. I attended every settlement conference to which CAUSE was invited (and was no passive observer). Even before CAUSE joined the settlement, I circulated five comprehensive technical revisions. The editorial changes reflected my long experience before other commissions, as well as my expertise in drafting and administrative law. Among many clarifications was the parties' adoption of the term "post-test year" instead of "attrition year," a term which is may not be understood by lay people and suggests that the effectiveness of regulation gradually reduces. My edits shortened sentences, spelled out acronyms when first used, and preferred the active voice. I helped the parties ensure that the settlement used precise language, avoided ambiguities, and was as accessible to the public as possible.[11]

I prepared the original language for 3.2.8.2, "Safe and Reliable Service," which was subsequently edited and adopted. CAUSE had extensive discussions with PG&E, TURN, and ORA about the adjustment of exogenous costs, so that the costs of avoidable disasters could not be passed on to ratepayers. CAUSE proposed the reference to "D.14-08-032 at 661" instead of trying to restate the Z-factor. PG&E agreed to replace "threshold" with "deductible," which will save ratepayers $10 million every time it invokes the Z-factor.

C. Specific Negotiations with PG&E

The 56 hours claimed includes all discussions with PG&E during the two-month settlement period that related to safety. There was extensive discussion of PG&E's philosophy and implementation and the roles that CAUSE might play, as well as negotiation of specific language for the settlement agreement. Independent of the substantive contribution these provisions made, the Commission should recognize this time as support for the settlement.

D. Comments on Intervenor Compensation, Settlement Evaluation, and Acceptance of Modifications.

I expected to sign the joint comments on the merits PD, until it was agreed that only by filing separate comments could I appeal the recent decision to deny CAUSE eligibility. After extensive

[11] I proofed and edited the joint motion, identified many of the citations, provided copies of the 21 case authorities, and source-cited the finished document.

discussions concluded that there was insufficient time to revise the settlement terms, CAUSE wrote the lead parties to propose that it remain within the Settlement, but file separate comments. While affirming my support for the settlement, I told them that I intended to indicate that the modifications were acceptable to CAUSE. There were no suggestions at the time that this was not appropriate.[D]

I had supplied citations for the joint comments on the standard for evaluating the settlement and made technical and substantive edits, several of which were accepted. However, another seasoned practitioner had already filed separate comments disputing the compromise language. I support his claim of 21.5 hours for this advocacy, but my opening comments added a contrary and authoritative perspective based on experience in several key cases in which commissions have rejected or modified settlements. The Commission should reimburse me both for my support of the joint comments, and CAUSE's separate comments, which asked the Commission to reverse the denial of its eligibility and detailed when it is appropriate to condition approval of a settlement on the modification of a specific term.

In 1990, I intervened to oppose a settlement granting NYT a $440 million rate increase agreed by all three state intervenors. After a month of depositions and formal hearings, the NYPSC rejected it unanimously. (Case 28961) I assisted the NY Attorney General in follow-on proceedings, including NYPSC's rulemaking on settlements (90-M-0255),[E] even after joining the staff of another commission and the state-federal joint board on separations and settlements[12]. Due to some salacious evidence, these cases received national press,[13] so there were many discussions at NARUC about the rejection. I urged the NYPSC not to ban all pre-hearing settlements or to impose modifications unilaterally, as an assembly task force suggested, but to follow most of the principles this Commission had just adopted. Thirteen years later, for Peninsula Ratepayers Association (Peninsula), I opposed the bankruptcy settlement as contrary to the public interest both due to (1) unnecessary derogation of jurisdiction and (2) specific provisions with no revenue impact.[F] The regulatory asset ordered by the Commission saved ratepayers $1 billion over 9 years, but other changes had no revenue impact. The Peninsula-CHRC stipulation increased transparency of land transfers to non-profits and limited their resale. Usually, the basis of the bargain between the utility and other settling

[12] FCC 18-99 explains the "big" joint board and its importance at the time.
[13] *e.g.*, "New Jolt for NYNEX: Bawdy Conventions," Wall St. Journal, 7/12/1990; Bloomberg 4/16/1995,

parties is overall revenue requirement, as to which the settlement as a whole must be reasonable.[14] In Rule 51.2(e) (now 12.1(d)) provided the "public interest" standard as a distinct basis for you to propose changes to specific provisions.[15] Modifications may protect hours at PG&E storefronts, prohibit "gag rules" (*e.g.*, D.05-12-021 at 4.4.1) or resolve other issues that you deem particularly important, especially when they do not disrupt the overall bargain. The distinction is supported by logic and plain language of Rule 12.1(d).[16] Just as no individual term can contravene state law, no term should violate the public interest, even if the settled revenue requirement is "reasonable in light of the whole record."

III. ALL TIME SPENT RESPONDING TO PROCEDURAL BURDENS AND PREPARING THIS CLAIM SHOULD BE ALLOWED.

The Commission should disregard the PD's further disallowances. The ALJ deducts as "unproductive" a phone call initiated by the Chair of the Nuclear Regulatory Commission, who was a champion of Professor McAllister's project and offered insights into collaborative enforcement at California utilities.[17] He deducted a call to the State Auditor office that yielded records withheld from PRA 17-84. These petty cavils reveal a more extensive lack of objectivity.

A. The Cost of Burdens Improperly Imposed on CAUSE Should Be Reimbursed.

CAUSE meticulously segregated 329 hours (8 person-weeks) of effort that should not have been required, which I labelled "burden." Every hour of burden occurred after December 2015 and could have been avoided if the ALJ denied eligibility within the statutory deadline. The ALJ refers (at 49) to this category generally and incorrectly as "300 hours out of a total of 1,333 hours." It is 329 out of 1,133 hours. Every hour is billable as "necessary for [CAUSE to make any] substantial contribution." D.05-11-031 at 10. The ALJ does not dispute specific entries, which he concedes (at 43) are "sufficiently detailed to evaluate," so all hours should be allowed.

CAUSE advocated for the Commission to reforms its records management processes to

- maintain a complete docket, in which pleadings are not arbitrarily rejected or placed "in queue" for 900 days;[G]

[14] In some cases, the motive for the settlement may be avoidance or resolution of collateral litigation. e.g., D.04-12-017. In Phase II of a rate case, the bargain involves rate design and may be more complex.
[15] e.g., D.14-11-040; D.10-06-015 at 11-12; D.14-11-020 (can "not contain terms which contravene statutory provisions or prior Commission decisions")
[16] "The Commission will not approve settlements, whether contested or uncontested, unless the settlement is reasonable in light of the whole record, consistent with law**, and in the public interest**."
[17] The PD does not identify the "unproductive" calls, but the size of the exclusion indicates that all time on dates including preparation of the NOI is disallowed, including ***, when these two occurred.

- prevent unauthorized destruction of electronic records, including those needed by courts to review the basis for excluding pleadings from the docket;[H]
- comply with the records act requests, including (a) disclosure of the list of so-called "fatal errors" that is used selectively used to exclude pleadings and (b) commitments to the State Auditor regarding the deadline for determining eligibility;[I]
- comply with state and federal laws on digital accessibility;[J] and
- recognize that a state agency cannot require home addresses of every member of an advocacy organization, even if it could protect these data from disclosure, which is unlikely.[K]

Assuming CAUSE's two years of persistence eventually bring integrity to the dockets and records of this Commission, the benefits to ratepayers will far exceed this award.

B. Claim Preparation Should Be Reimbursed.

I was efficient, but extraordinary careful, in preparing a claim that fully disclosed the nature of every entry for which I sought compensation so that it no reasonable examination could impeach my character. The PD's many errors show that my claim was subject to scrutiny that was not "routine," which it why I expended unusual "technical and legal analysis." D.98-04-059 at 53. There is no reasonable basis to disallow 86% of the 128.5 hours.

C. Errors and Inconsistencies that the ALJ Attributes to me Are his Own.

Tables 1 presents as "***my*** breakdown of hours" numbers that the ALJ estimated from a pie chart, and then complains of "inconsistencies" with his Table 2 that "cannot be reconciled." Exhibit L reconciles the ALJ's two manipulations of my data, both of which disregard clear explanations of how I excluded "burden." His assertion (fn. 42) that I inflated the claim preparation rate by $1.37 is also ungrounded; D.08-04-010 (at 13) requires hourly rates to be rounded to the nearest $5.

IV. RECENTLY PRODUCED EMAILS SHOW THAT STAFF's COMPLAINTS ABOUT CAUSE WERE MISPLACED.

As soon as the ALJ denied CAUSE's eligibility, I filed records act requests (17-84 and 17-85) to gain an understanding of why the ALJ violated the 30-day deadline[18] and solve the problem of the wrongfully rejected pleadings. Only three documents had been disclosed until a production of more than 2000 responsive emails last month, most of which existed at the time of the prior request.[I]

The belatedly disclosed emails show two attempts by your staff to blame CAUSE for its own errors and departures from settled precedents. The intervenor compensation coordinator (ICC) knew

[18] Your staff produced only one document in response to 17-84, but the State Auditor provided records that were either unlawfully withheld or destroyed.

that I planned to grow a large nonprofit corporation, but needed the finding of eligibility ***before*** I could recruit witnesses and grow a large base of dues-paying members. She knew I relied on decades of precedent granting eligibility to UAs, even "one-person shows." After the statutory deadline passed, unusual requirements may have started as excuses for the unlawful delay, but they escalated into pretexts to hold CAUSE in suspense for the entire proceeding. The rejected filings were known to be compliant. Both burdens are unjust, because your staff knew that I had committed 1133 hours in good-faith reliance on decades of precedent.[19]

The ICC has worked at this Commission for many years. From 1988 to 2016, the Commission made awards to Aglet Consumer Alliance (Aglet) in connection with over 300 decisions. Aglet was a UA with about 20 members, all known to its director, Jim Weil, who often served as its only witness and advocate, and recorded awards and disbursements on his personal Schedule C. Aglet's bylaws were the model for other UAs, including SDUCAN.[M] Mr. Weil helped me organize 20 neighbors as Peninsula during the PG&E bankruptcy. Peninsula received $97,500 and $48,411 in connection with the bankruptcy (I.02-04-026) and I.04-02-007. She was involved in both proceedings.

A. The Emails Show Eight Months of Delay Unrelated to the Usual Proof of Eligibility.

I intended to grow CAUSE into a substantial, incorporated entity, but CAUSE needed a presumption of eligibility ***before*** it could recruit expert witnesses and a large membership base. Before filing, I asked if a similarly-named corporation could assume CAUSE's eligibility after it was granted, which should have resolved the issues revealed in the new emails.[M] Emails, calls, and my request for an appointment went unanswered. On January 5, 7, and 13, 2016, I wrote asking if CAUSE could refile as a corporation without rendering its NOI untimely. Again, no response.

On January 4, 2016 (already past the 30-day deadline), an internal email from the ALJ seems to acknowledge that the only barrier to either status or eligibility was the existence of two members. CAUSE had twenty.[20] On February 17, 2016, the ALJ wrote me that he was granting party status, which I assumed would include eligibility, but he did neither.[21]

On July 25, 2016, nine months after filing, the ALJ questioned whether CAUSE had an

[19] Last month, the Commission may have changed decades of policy, imposing prospective requirements that another UA formalize its membership and structure, but still granted an award for work that UA's director had performed. D.17-07-018. The entity has the same bylaws that Aglet used.

[20] But the next day, the ICC requested a receipt for an optional SoS filing that two four weeks and two trips to Sacramento to obtain. It is not mentioned in the IC Guide and is irrelevant to legal status.

[21] She instructed me to ask the docket office to reject the filing and file an amended version with the required receipt.

identity separate from my own. I was glad to confirm that CAUSE had 20 members and to name its three directors. He criticized me for "comingling for tax purposes" because the Bylaws authorized me to open a ***separate*** bank account, something Aglet and other UAs never bothered with. I met all his conditions. Finally, on August 10, 2016, a week after I entered the Settlement, he told me he was finding CAUSE eligible, and confirmed approval in writing on October 28, 2016. But on February 2, 2017, CAUSE was ineligible again.

B. The Docket Office Rejected CAUSE Pleadings They Knew to Be Compliant.

In 2011, I managed the digitization of a federal agency's program records, so I know PDF/A. Here, I used PDF/A:3a, the accessible version of the latest specification for archival documents. It enables sight impaired ratepayers to use screen readers (as several CAUSE members do). The ALJ warned me "not to contest" rejections and "just go with it," but over 100 hours of research, experimentation and explanation and $500 of new software could not solve repeated rejections. ***Now, emails that were withheld in March 2017 show that several staff members knew all along that CAUSE's documents were 3a-compliant, and never told me that they required 1b (not accessible to the disabled)***. Exhibit N, a secret "cheat sheet" ***disclosed this morning,*** confirms what I suspected; the docket office was rejected fully-compliant PDF/A for reasons that a professional archivist could not predict. On July 7, 2017, a ruling in A.16-09-001 ascribed the rejections to my failure to use 1b. It went on to argue (at 5) that this defiant violation of filing rules justified all the prior discrimination inflicting on CAUSE.[22] To manufacture this excuse, they were willfully rejecting documents without basis – and admitted destroying the evidence of what they had done.[23] CAUSE was not the only voice stilled. When your staff rejected its PDF/A:3a-compliant comments in the rideshare rulemaking, the American Council of the Blind did not refile.[24]

To manipulate, conceal and even destroy public records is unworthy of the docket office.[25] Outside the ALJ division, most PDFs are PDF/A-compliant ***and*** accessible. Perhaps, your docket chief has relented. On April 13, 2018, he emailed a deputy: "What's PDF/A-3?" The deputy replied that there was "no problem accepting" a filing "created with a higher version of PDF/A."

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[22] "Any treatment different from that accorded to the referenced past intervenor may be attributed to the failure of CAUSE to comply with the statutes and rules."
[23] Email CPUCElectronicFiling to Rafferty, 3/10/17. This violates due process by precluding effective judicial review. Ringgold-Lockhart v. County of Los Angeles, 761 F.3d 1057, 1062 (9th Cir. 2014). Gov. Code 12275.
[24] R.12-12-011, Trans. 0000120102, 5/10/18. Unlike CAUSE, ACB had been told to use 1b. 0000120044, 4/25/18.
[25]

V. THE REDUCTION OF THE HOURLY RATE APPROVED BY THE COMMISSION IS UNPRECEDENTED AND PUNITIVE.

As noted above, I told the Chief ALJ that I was hesitant to apply as an individual for fear that your staff would attempt to excuse burdens they imposed on CAUSE by impugning my reputation, possibly causing greater economic damage than the entire award. For this reason, I sought a compromise award or at least guidance on how to present hours claimed in this unique situation. I never imagined a $33,855 award, but even more lacking in objectivity is the ALJ's decision to ignore three decades of contributions that I have made to utility regulation, to administrative law, and to electronic recordkeeping, and place me "at the bottom of the scale for attorneys with 8-12 years of experience." This false and disparaging claim could be used by agencies to challenge future fee awards under C.C.P.§1021.5. Just last month, a city awarded $30,000 award based on a $599 hourly rate.

A. The PD Misrepresents Prior Commission Decisions.

The ALJ writes, "in D.07-07-006 the Commission compensated Rafferty for his work in this position as an expert, not as an attorney." This is false. I filed legal comments and no economics testimony in this case. D.07-07-006 did set rates for others as "experts and consultants" (at 8) but identified me ***solely*** as an "attorney/advocate" (at 9).

> Rafferty graduated from Yale law school in 1979 and received a doctorate in economics from Oxford, where he was a Rhodes Scholar, in 1986 in a joint J.D./Ph.D. program. Rafferty worked for 10 different state governments, both as an attorney and an economist. He has designed systems of cost allocation and pioneered the use of sampling theory to support disallowances for unorthodox business transactions…. In evaluating the proper hourly rate, we look to the experience of a particular attorney, relevant market rate data, and the rates awarded to peers practicing before the Commission. Rafferty has over 13 years experience [12 years ago].

The Commission set my rate at $360 for 2006, which equates to $415 (2004-05) and $425 (2006) based solely on COLA. But since he redesignated my 141.5 hours in D.07-07-006 as an "economist," he goes on to question my entire legal practice: "some of his time running his own law office was spent as Executive Director for Peninsula Ratepayers Ass'n, not as an attorney." PD at 48. I have now appeared before 14 state commissions, most of them as an attorney as well as economist.

There appears to be no case in which you have ever lowered an attorney's rate, no matter how many years from his last appearance.[O] The ALJ miscites Res. ALJ-184 (2004) as entitling him to reduce established rate, even if I did "fail to follow filing rules," which is a misplaced accusation.[26]

[26]Res. ALJ-184 (2004) allows reducing a "seasoned advocate's" rate by a multiplier (<1), but only for that case.

B. The PD Misrepresents My Career in Public Service

I have served this Commission and 13 others since 1982, when I worked closely with President Bryson's staff to protect ratepayers during divestiture and enacted the Telecom for the Disabled Act, the first statute to require reasonable accommodation. The 1990 NYT rate case stopped a deregulatory stampede and gave telephony the decade it needed for competition to develop. During that decade, I pioneered innovations to help regulators prevent cross-subsidization – sampling audits, cost allocation manuals, portfolio cost-of-capital, peer inspections, even a landline franchise auction. In the three states where I testified, FASB 106 was denied regulatory treatment for telcos, avoiding an intertemporal subsidy that cost Pac Bell ratepayers almost $1 billion. I also used my understanding of regulation to help Poland and Vietnam privatize state industries. I provided the legal foundation for TURN's regulatory asset that saved ratepayers $1 billion in the bankruptcy. In 2003, each Commissioner interviewed me as a finalist to be this agency's General Counsel. (The incoming president reopened the search.)

Although I am an aggressive advocate, no Commission has ever before questioned my integrity.[27] In this case, it was my honor to defend opposing counsel against a charge that lacked perspective or merit.

I have never enjoyed bureaucratic security. Three times, I came into government with a goal, achieved it, and left within three years. I successfully persuaded my college to be the first to prohibit discrimination based on sexual orientation. I lobbied Congress to extend the Voting Rights Act to protect Latinos and other minorities outside the South. This year I filed the first Section 2 claim in Northern California in 30 years, initiated six CVRA actions, and prosecuted election writs from El Centro to Chico. 12 years ago, I organized the voter protection team for Jon Tester of Montana, whose 1600 vote margin changed control of the US Senate. President Obama asked me twice to organize election-day operations in Palm Beach, as Senator Kerry had before him. Other state regulators have always looked to this Commission for leadership. But for your staff to publish a claim that I have 4-12 years experience as an attorney, to try to reduce my modest hourly rate, and to reject, conceal, and even destroy public records in the process, is to betray the standards of candor and compassion that this leadership role requires.

Dated: October 20, 2018 /s/ Scott J. Rafferty

[27] When the Arizona courts reversed the Corporation Commission's adoption of my imputation for Yellow Pages, its very conservative chair asked my client, the consumer advocate, to direct me to calculate the adjustment on remand, because he trusted me and questioned the integrity of his own staff's calculation. I am afraid this honor did cost Arizona ratepayers.