Decision 18-12-009 December 13, 2018

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

DECISION GRANTING INTERVENOR COMPENSATION TO SCOTT J. RAFFERTY FOR SUBSTANTIAL CONTRIBUTION TO DECISION 17-05-013

Table of Contents

Title **Page**

DECISION GRANTING INTERVENOR COMPENSATION TO SCOTT J. RAFFERTY FOR SUBSTANTIAL CONTRIBUTION TO DECISION 17-05-013

Summary

This decision awards Scott J. Rafferty $33,855 for substantial contributions to Decision 17-05-013 regarding two contested issues in this proceeding. This represents a decrease of $558,140 or 94.3% from the amount requested, due to disallowances for other claimed contributions that the Commission finds did not make a substantial contribution to the Decision. This proceeding remains open.

1. Background

In Decision (D.) 17-05-013 the Commission addressed a comprehensive settlement agreement (Settlement Agreement) in Pacific Gas and Electric Company's (PG&E) 2017 test year General Rate Case (GRC). The Commission approved the Settlement Agreement with two modifications, resolved two contested issues, and directed PG&E to take a number of other actions. The decision authorized GRC revenue requirement increases of $88 million for 2017, $444 million for 2018 and $361 million for 2019.

Scott J. Rafferty seeks $591,995 in compensation for substantial contributions to D.17-05-013.[1]

[1] On May 10, 2017 the assigned Administrative Law Judge denied the April 5, 2017 "Motion of Collaborative Approaches to Utility Safety Enforcement [CAUSE] to be Relieved of Obligations Imposed by Ruling Denying Eligibility for Intervenor Compensation and to be Found Eligible". As explained herein, the same ruling addressed the April 5, 2017 amended Notice of Intent to claim intervenor compensation of CAUSE and found CAUSE ineligible to claim intervenor compensation, but ruled that Scott J. Rafferty is preliminarily determined to be eligible for intervenor compensation in this proceeding. To ensure clarity, this decision preserves references to CAUSE in quoted material, but references Rafferty for all other purposes.

2. Requirements for Awards of Compensation

Because this decision makes substantial reductions to the claimed amount, this section of the decision provides a detailed review of the intent of the Commission's intervenor compensation program.

The intervenor compensation program, which is set forth in Pub. Util. Code §§ 1801-1812,[2] requires California jurisdictional utilities to pay the reasonable costs of an intervenor's participation if that party 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.

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), pursuant to Rule 17.1 of the Commission's Rules of Practice and Procedure (Rules), or at another appropriate time 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. To seek a compensation award, the intervenor must 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) and 1804(b)(1).)

[2] All subsequent statutory references are to the Public Utilities Code unless otherwise indicated.

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 or as otherwise found by the Commission. (§§ 1802(i) and 1803(a).)
6. The claimed fees and costs must be 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).

In the discussion below, the procedural issues in Items 1-3 above are combined and a separate discussion of Items 4-6 follows.

2.1. Preliminary Procedural Issues

Under § 1804(a)(1) and Rule 17.1(a)(1), a customer who intends to seek an award of intervenor compensation must file an NOI before certain dates. In this proceeding, Rafferty filed an NOI in his capacity as the Executive Director of CAUSE on November 30, 2015, seeking eligibility for CAUSE as a Category 3 customer (2015 NOI). On July 25, 2016 the assigned Administrative Law Judge (ALJ) issued a ruling rejecting the 2015 NOI and providing additional guidance in the event that CAUSE decided to file an amended NOI. On August 10, 2016 CAUSE filed an amended NOI (2016 Amended NOI). On February 2, 2017 the assigned ALJ issued a ruling rejecting the 2016 Amended NOI, and providing additional guidance in the event that CAUSE decided to file another amended NOI. On April 5, 2017 CAUSE filed its second amended NOI (2017 Amended NOI).

The 2017 Amended NOI, as well as the 2015 CAUSE motion for party status, included the statement that "if CAUSE is not granted Category 3 status for any reason, CAUSE requests that Category 1 or 2 status be granted to CAUSE

or its president", Scott J. Rafferty.[3] On May 10, 2017 the assigned ALJ issued a ruling addressing the 2017 Amended NOI and found CAUSE ineligible to claim intervenor compensation, but ruled that Scott J. Rafferty is preliminarily determined to be eligible for intervenor compensation as a Category 1 customer in this proceeding. Rafferty requested the Commission's finding on financial hardship be deferred to the decision on his compensation claim, so that matter is addressed below.

Regarding the timeliness of the request for compensation, Rafferty filed his request for compensation on July 17, 2017, within 60 days of D.17-05-013 being issued. No party opposed the request. In view of the above, we find that Rafferty has satisfied the procedural requirements necessary to make his request for compensation in this proceeding.

2.2. Financial Hardship

Section 1804(a)(2)(B) requires a customer or eligible local government entity to include a showing of "significant financial hardship" in either its NOI or Claim. Section 1802(h) defines two standards for significant financial hardship that depend on customer category: the "Undue Hardship Test" and the "Comparison Test." The Undue Hardship Test applies to Category 1 customers such as Rafferty. (*See* D.98-04-059). Under this standard the customer must certify that he or she cannot afford to pay the costs of effective participation in the proceeding without undue hardship, and submit supporting financial information demonstrating the undue hardship. In general, the customer must disclose to the Commission his or her gross and net monthly income, monthly

[3] 2017 Amended NOI at 3; November 30, 2015 Motion for Party Status by Collective Approaches to Utility Safety Enforcement at 2-3.

expenses, cash and assets, including equity in real estate, and any other relevant financial information. (*See* D.98-04-059.[4]) The customer may request that the Commission treat this information as confidential by filing a motion to file confidential information under seal. (*See* Rule 11.4 and 1.13(b)(2)). The customer must explain how the provided financial information demonstrates undue hardship.[5] The finding on financial hardship is normally made in the ALJ's preliminary ruling as to whether the customer will be eligible for compensation, but the intervenor may also request that the finding be deferred to the Commission's decision on the claim for compensation, as Rafferty has done here. (Section 1804(b).) Rafferty included with his compensation claim a motion to file under seal his showing of financial hardship. That motion is granted.

In his showing, Rafferty provided a declaration stating that based on his estimate of the cost of effective participation as compared to his income, expenses and assets, he did not have the resources to pay for the costs of effective participation in this proceeding. Rafferty supported this declaration by filing confidential information about his annual income, annual expenses, cash, and other assets.

Based on this information, we find that Rafferty has demonstrated significant financial hardship. However, as we routinely emphasize in all intervenor compensation matters, a finding of significant financial hardship in no

---

[4] Subsequent rulings have determined that it is reasonable to exclude the equity of a participant's personal residence from this disclosure.

[5] For example: "My monthly gross and net income, monthly expenses, cash, and assets are shown in the attached documents. Based on my estimate of the cost of effective participation as compared to my income, expenses, and assets, I do not have the resources to pay for the costs of effective participation." California Public Utilities Commission, Intervenor Compensation Program Guide (April 2017) at 14.

way ensures compensation.[6] The level of compensation depends on our findings regarding Rafferty's claims of substantial contribution to D.17-05-013. We take up that review in the next section.

3. Substantial Contribution

The intervenor compensation statute defines "substantial contribution" as follows:[7]

> "Substantial contribution" means that, in the judgment of the commission, the customer's presentation has substantially assisted the commission in the making of its order or decision because the order or decision has **adopted in whole or in part** one or more **factua**l contentions, **legal** contentions, or **specific** policy or procedural recommendations presented by the customer.
>
> Where the customer's participation has resulted in a substantial contribution, even if the decision adopts that customer's contention or recommendations only in part, the commission may award the customer compensation for all reasonable advocate's fees, reasonable expert fees, and other reasonable costs incurred by the customer in preparing or presenting that contention or recommendation.

To comply with the intervenor compensation statutes, we look at several things when evaluating whether a customer made a substantial contribution to a proceeding. First, as directed by § 1802(j) we look at whether the Commission adopted one or more of the factual or legal contentions, or specific policy or procedural recommendations put forward by the customer. Second, if the customer's contentions or recommendations paralleled those of another party,

[6] California Public Utilities Commission, Intervenor Compensation Program Guide, April 2017 at 8.

[7] § 1802(j), emphasis added.

we look at whether the customer's participation unnecessarily duplicated or materially supplemented, complemented, or contributed to the presentation of the other party.[8]

The Commission described how it assesses whether the customer meets these standards in D.98-04-059, its decision in its Rulemaking and Investigation of the Commission's Intervenor Compensation Program.[9] 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 he or she contributed.[10] As described in § 1802(j), it is then a matter of judgment as to whether the customer's presentation substantially assisted the Commission.

Finally, the Commission explains in D.98-04-059 how the intervenor compensation program, as structured, meets the intent of the Legislature:[11]

> When it codified the intervenor compensation program, the Legislature struck a balance between competing goals: to encourage the effective and efficient participation of all groups that have a stake in the public utility regulation process while avoiding unproductive or unnecessary participation that duplicates the participation of others.
>
> Three tools affect this balance: eligibility, based on financial hardship, and substantial contribution, which, when applied together, ensure that compensated intervention **provides value to the ratepayers who fund it**.

[8] §§ 1801.3(f) and 1802.5.

[9] Rulemaking 97-01-009, Order Instituting Rulemaking on the Commission's Intervenor Compensation Program and Investigation 97-01-010, Order Instituting Investigation on the Commission's Intervenor Compensation Program.

[10] D.98-04-059, 79 CPUC2d 628 at 653.

[11] *Id*. at 643, emphasis added.

With this guidance in mind, we turn to Rafferty's claimed contributions to D.17-05-013.

Rafferty asserts substantial contribution on ten matters related to D.17-05-013:[12]

1. Safety;
2. Settlement;
3. Compensation Metrics;
4. Rate Case Cycle;
5. Gas Leak Maintenance;
6. Monitor Costs;
7. Possible Remedy If Post- Settlement Cost Reductions Were Not Reflected In Application;
8. Standard for Evaluating Settlements;
9. Catalyst for Acceptance of Modifications; and
10. Undergrounding

As discussed in detail below, with the exception of (4) Rate Case Cycle, (5) Gas Leak Maintenance, and (7) Post-Settlement Cost Reductions, this decision finds that Rafferty made no substantial contribution to D.17-05-013, as that term is defined by § 1802(j).

3.1. Safety

The scoping memo for this proceeding stated that the Commission would address the question of whether PG&E's proposed risk management, safety culture, governance and policies, and investments will result in the safe and reliable operation of its facilities and services. The scope also included documentation and review of how PG&E finances safety efforts, particularly

[12] Rafferty Claim, Part II, Substantial Contribution.

how the Commission evaluates compensation of PG&E's executive leadership around questions of safety.

In his November 30, 2015 Motion for Party Status and his NOI (filed as CAUSE), Rafferty states "CAUSE is being created in response to President Picker's suggestion that the Commission may expand the role of safety intervenors in relevant proceedings, as part of a larger process to ensure that regulated utilities have the strongest safety systems, driving toward zero safety incidents to the extent consistent with just and reasonable rates." Because Rafferty self-identifies as a safety-focused intervenor, it is important evaluate his claims of substantial contribution with reference to the safety issues identified in the scoping memo.

3.1.1. Intervenor's Claimed Contribution

Rafferty asserts that he provided extensive testimony and advocacy in support of the use of international standards and broader involvement of line employees in achieving continuous improvement in safety conditions, which the settlement included.[13]

3.1.2. Specific References to Intervenor's Claimed Contribution

Rafferty provides the following references to support his claims of substantial contribution to D.17-05-013 on safety matters.

- D.17-05-013 at 41 (summarizing Settling Parties' litigation positions): CAUSE provided recommendations concerning the implementation of international standards and broader involvement of field employees in assessing safety conditions.

[13] Rafferty Intervenor Compensation Claim at 6, emphasis added.

- Integrated Planning Process (Section 3.2.8.8)
    - D.17-05-013 at 193 (summarizing CAUSE testimony and quoting from the Settlement Motion):

      CAUSE submitted testimony regarding safety and identification and mitigation of hazards, recommending that PG&E engage in an ongoing examination of its safety practices to achieve continuous improvement.

      Section 3.2.8.8 of the Settlement Agreement requires PG&E to attempt to improve its ability to identify specific actions or specific locations that require remediation on an urgent basis, and to attempt to develop measurements to evaluate and compare the cost- effectiveness of specific initiatives to mitigate risk.

- Disclosure of Safety Metrics (Section 3.2.8.9

  PG&E presented testimony regarding its measurement and benchmarking of performance in relation to various safety metrics. During the settlement process, CAUSE and other Settling Parties agreed that PG&E should disclose its performance under various safety metrics. Specifically, Section 3.2.8.9 requires that PG&E shall provide to Settling Parties on request monthly data, if available, for each LOB [Line of Business] showing the following safety metrics:…

- Safety Standards and Benchmarking (Section 3.2.8.10)
    - D.17-05-013 at 194 (summarizing CAUSE's testimony):

      CAUSE presented testimony proposing that the Commission rely on international standards to supervise the development of management systems that will require utilities to develop, maintain and document compliance with regulatory mandates.

3.1.3. Discussion

As noted above, in order to evaluate claims of substantial contribution, 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 he or she contributed." The Commission has made clear that its reason for conducting this review is to "ensure that compensated intervention provides value to the ratepayers who fund it."

To establish the overall context for our review of Rafferty's claim, we begin by noting that in large GRCs such as this one, we have consistently placed the burden of proof on the applicant utility. As such, in this proceeding PG&E had the burden of proving that it should be granted the relief sought in its application, and of affirmatively establishing the reasonableness of all aspects of that application. However, the counterpoint to this requirement is the burden of producing evidence; the Commission places that burden on intervenors in the proceeding:[14]

> [W]here other parties propose a result different from that asserted by the utility, they have the burden of going forward to produce evidence, distinct from the ultimate burden of proof. The burden of going forward to produce evidence relates to raising a reasonable doubt as to the utility's position and presenting evidence explaining the counterpoint position.

We have reviewed Rafferty's written testimony (Exhibit CAUSE-1, served April 29, 2016) and we find that it does not meet this burden of production, and for that reason does not provide sufficient foundation for Rafferty's request for compensation in this proceeding. The testimony consists of 11 pages of text and an undated, 23-page PowerPoint attachment.[15] Although Rafferty does "propose a result different from that asserted by the utility" his testimony neither

[14] D.87-12-067, 27 CPUC2d 1, 22.

[15] Rafferty's timesheets show that the only time claimed to "prepare and revise testimony" began 11 days before intervenor testimony was due to be completed and served.

produces "evidence raising a reasonable doubt as to the utility's position" nor presents "evidence explaining the counterpoint position." Exhibit CAUSE-1 contains no citations to PG&E's testimony, and therefore is of no value to the Commission for the purpose of evaluating and reaching decisions on PG&E's safety showing.[16] The testimony states that "CAUSE will advocate for a specific form of collaboration known as 'bubble-up'" and "CAUSE proposes that the Commission rely on international standards to supervise the development of management systems that will require utilities to develop, maintain, and document compliance with regulatory mandates."[17] As shown below, the Commission did not adopt either recommendation in D.17-05-013, either in whole or in part.

Our finding is verified by our examination of Rafferty's claim for contribution: Rafferty's specific references to claimed contributions (summarized above) do not cite anything in D.17-05-013 that confirms that Rafferty made a "substantial contribution" to the Commission's final decision on any safety matter.

First, the reference to D.17-05-013 at page 41 cites text that only summarizes Settling Parties' litigation positions; this is not evidence of substantial contribution.

Second, Rafferty describes his testimony "regarding safety and identification and mitigation of hazards, recommending that PG&E engage in an ongoing examination of its safety practices to achieve continuous improvement"

[16] Slide 12 of the PowerPoint attachment includes a "see also" reference to a 65-page volume of PG&E workpapers, but no page reference.

[17] Exhibit CAUSE-1 at 1 and 6.

and links this to Section 3.2.8.8 of the Settlement Agreement, which states, in relevant part, the following (emphasis added):

> PG&E will attempt to improve its ability to identify specific actions or specific locations that require remediation on an urgent basis. This includes methods to increase the frequency and/or reliability of input from front line employees and customers. PG&E also agrees to attempt to develop measurements to evaluate and compare the cost-effectiveness of specific initiatives to mitigate risk (emphasis added).

Section 3.2.8.8 of the Settlement does not verify substantial contribution by Rafferty. It states only that PG&E will attempt to improve its ability to identify specific actions or specific locations that require remediation on an urgent basis, and will attempt to develop measurements to evaluate and compare the cost-effectiveness of specific initiatives to mitigate risk. Rafferty makes two specific recommendations in Exhibit CAUSE-1:

- CAUSE proposes that the Commission rely on international standards to supervise the development of management systems that will require utilities to develop, maintain, and document compliance with regulatory mandates.
- CAUSE advocates that Bubble-up be adopted by utilities throughout California.

There is no language in D.17-05-013 that either wholly or partially adopts either recommendation. Section 1804(e) requires that "if the Commission determines that a substantial contribution has been made, it must describe it, and determine the amount of compensation to be paid." We cannot "describe" a substantial contribution by Rafferty to Section 3.2.8.8 of the Settlement because the plain language of Section 3.2.2.8 reflects neither of Rafferty's recommendations. Therefore, we cannot find that a substantial contribution to Section 3.2.8.8 of the Settlement has been made as claimed by Rafferty.

Third, Section 3.2.8.9 of the Settlement Agreement states that PG&E shall provide a list of safety metrics for each line of business to Settling Parties: "annually for the prior calendar year," … "on request," … monthly data, if available. In our judgement, an agreement by PG&E to provide data to parties (not to the Commission), for an unspecified purpose, does not constitute a "substantial contribution" to D.17-05-013 as that term is defined in Section 1802 (j). Approval of a comprehensive settlement that includes a provision that PG&E shall provide certain information to the Settling Parties cannot be interpreted as a statement by the Commission that it either wholly or partially adopts Rafferty's recommendation, such that a substantial contribution has been made to D.17-05-013.

Fourth and finally, regarding Section 3.2.8.10 of the Settlement Agreement, while Rafferty describes his testimony accurately, his assertion that the settlement included "the use of international standards and broader involvement of line employees in achieving continuous improvement in safety conditions" (emphasis added) is not accurate. The import of Section 3.2.8.10 is best captured by the description of that Section in the accompanying Joint Motion:[18]

> CAUSE presented testimony proposing that the Commission rely on international standards to supervise the development of management systems that will require utilities to develop, maintain and document compliance with regulatory mandates.
>
> In rebuttal, PG&E stated that it follows many recognized standards, but that PG&E must balance the cost of certification against its benefits.

[18] Joint Motion at 54, citations omitted, emphasis added.

> Section 3.2.8.10 requires that where possible, PG&E will consider using voluntary consensus standards when developing management systems or processes to improve safety, security, cybersecurity, facility inspections, and asset management.
>
> In its next GRC, PG&E shall disclose management system standards and other safety standards that it uses, and, until such time, PG&E shall provide various information to Settling Parties.

There is no indication in this text, nor in Section 3.2.8.10 of the Settlement Agreement, that would support a conclusion that in D.17-05-013 the Commission adopted Rafferty's recommendation that "the Commission rely on international standards to supervise the development of management systems." The Commission neither wholly nor partially adopted this recommendation and thus, we find no substantial contribution here.

In summary, we find that Rafferty made no substantial contribution to D.17-05-013 on safety issues. We reach this finding even though Rafferty stated at the outset of this proceeding that "CAUSE is being created in response to President Picker's suggestion that the Commission may expand the role of safety intervenors in relevant proceedings, as part of a larger process to ensure that regulated utilities have the strongest safety systems, driving toward zero safety incidents to the extent consistent with just and reasonable rates." The Commission's intention to support robust intervention on safety issues remains unchanged, but that intervention must be shown by the intervenor seeking compensation to have provided value to the ratepayers who fund it. As shown above, examination of D.17-05-013 and its findings, conclusions, and ordering paragraphs fails to disclose any instance where Rafferty "substantially assisted" the Commission in the making of its order or decision, as defined in statute.

Because no substantial contribution has been demonstrated, Rafferty's claim for intervenor compensation on safety issues must be denied. Rafferty claims 509 hours for safety-related activities (45% of total hours claimed, equaling approximately $250,000 in compensation at Rafferty's requested hourly rate). Therefore, the 509 hours claimed by Rafferty for substantial contribution to D.17-05-013 on safety issues are disallowed.

3.2. Settlement

3.2.1. Intervenor's Claimed Contribution

As noted above, in D.17-05-013 the Commission approved nearly all of the Settlement Agreement in this proceeding. The settlement was signed by every party that submitted written testimony in this proceeding, including Rafferty.

Rafferty asserts that he contributed to the negotiation, examination, and acceptance of the terms of the settlement, as it was originally proposed, including an extensive review of the economic reasonableness of the proposed rate increase, as well as participation in a series of individual meetings and calls, as well as conference meetings and calls. Rafferty states that "due to the settlement privilege, no details are provided as to the content of these calls and meetings".

3.2.2. Specific References to Intervenor's Claimed Contribution

Rafferty provides the following references to support his claims of substantial contribution to the settlement [process]:

- D.17-05-013 at 12: "…on April 29, 2016, the following intervenors served testimony: … CAUSE…".
- D.17-05-013 at 13-14: "The Settling Parties are: … CAUSE…".
- D.17-05-013 at 14-15: On August 18, 2016 the following parties filed comments on the Settlement Agreement: PG&E, CUE and EDF (jointly on the second contested

issue); ORA and PG&E (jointly on the first contested issue); CFC; and A4NR. On August 25, 2016 the following parties filed reply comments on the Settlement Agreement: PG&E, CUE and EDF (jointly); ORA and PG&E (jointly on the first contested issue); and CFC. Pages 14-15.

- D.17-05-013 at 36-37: "The Settling Parties explain that they represent a variety of interests other than those of PG&E. … CAUSE represents the interests of consumers with a focus on utility safety."

3.2.3. Discussion

There is no disagreement that Rafferty (as CAUSE) was a settling party. However, the Commission has clearly stated that it does not believe that a party's participation in an "alternative to litigation process" (such as the settlement in the instant proceeding), "in and of itself, is sufficient participation to bring value to ratepayers, warranting compensation."[19] None of the four references provided by Rafferty and listed above demonstrate contribution to the settlement. Examination of the opinion, findings, conclusions, and ordering paragraphs of D.17-05-013 fails to disclose any instance where Rafferty "substantially assisted" the Commission in the making of its order or decision regarding the settlement, as defined in the statute. In this decision, we have already found that Rafferty made no substantial contribution on safety issues, *i.e.*, the testimony that served as the basis for Rafferty's participation in the settlement discussions. Because we find no substantial contribution by Rafferty on that core substantive issue, we also find that Rafferty made no substantial contribution to the settlement. In the absence of a substantial contribution, Rafferty's claim for intervenor compensation related to the settlement in this

[19] 79 CPUC2d 628 (D.98-04-059).

proceeding must be denied. Rafferty claims 419 hours for settlement-related activities (37% of total hours claimed, over $200,000 in compensation at Rafferty's requested hourly rate). Therefore, the 419 hours claimed by Rafferty for substantial contribution to D.17-05-013 regarding the settlement in this proceeding are disallowed.

3.3. Compensation Metrics

3.3.1. Intervenor's Claimed Contribution

Rafferty asserts that he avoided duplication with NAAC/NDC's advocacy for linking executive compensation to safety performance, but contributed to the discussion and resolution of this issue in the course of the settlement. CAUSE asserts that he also supported this effort by promoting specific safety metrics.

Rafferty also asserts that "while the majority of [my] specific contributions to the settlement are privileged, PGE-43 does reflect an agreed statement on the future evaluation of how metrics are used in setting executive compensation that is specifically attributed to CAUSE."

3.3.2. Specific References to Intervenor's Claimed Contribution

Rafferty provides the following references to support his claims of substantial contribution to D.17-05-013 on "compensation metrics".

- Rafferty Direct Testimony at 12, 35;
- PG&E-43, n. 3 (agreed conditions regarding future evaluation of metrics)
- PG&E-40 (addendum to settlement on executive compensation) [NDC also responsible for this contribution]
- D.17-05-013 at 30-31:

  For this reason, the intent of the Scoping Memo has been addressed by further developing the record at the August

> 30, 2016 Settlement Workshop and through several additional exhibits prepared and filed by PG&E.
>
> As we highlight below, the Commission notes the cooperation of PG&E and the other Settling Parties in making this record, beginning with their presentations and discussions at the Settlement Workshop, and continuing with the collaborative preparation and review of late-filed exhibits.

- 4.2.6.2. Compensation (Section 3.2.6.2)

  > In its testimony, NDC offered a number of comments with respect to PG&E's executive compensation. Among those, NDC noted that while PG&E's current incentive structure appears to emphasize safety, including safety metrics totaling 50 % of the STIP,…

- Section 3.2.8.9 of the Settlement Agreement:

  > CAUSE and other Settling Parties agreed that PG&E should disclose its performance under various safety metrics.

3.3.3. Discussion

The references to Rafferty's claimed contribution are not supportive of Rafferty's claim of a substantial contribution to D.17-05-013 on "compensation metrics."

First, although Rafferty's cited direct testimony does reference using data and metrics to tie executive compensation to safety performance (Exhibit CAUSE-1 at 12, 35), the Commission did not adopt any recommendation made in Exhibit CAUSE-1:

> Page 12:
>
> Bubble-up will provide consistent data on the quality of implementation and on the substantive precursors of risk. This is a more effective means to tie executive compensation to safety performance.
>
> Page 35 (*i.e.*, page 15 of PowerPoint attachment):

> Title: Bubble up could provide a basis to implement executive accountability.
>
> Third bullet: But the bubble-up paper trail provides regular metrics to measure senior management's risk management record – even if no disaster occurs. Salaries, bonus, and deferred compensation should reflect safety performance, as measured by bubble-up results.

In D.17-05-013, the Commission did not adopt Rafferty's recommended "Bubble up" approach to collaborative regulation, so Rafferty's citations to the sections of his testimony quoted above do not support his claim of a substantial contribution to the decision.

Second, and contrary to Rafferty's claim, his reference to footnote 3 in Exhibit PG&E-43 is not indicative of a substantial contribution to D.17-05-013. Exhibit PG&E-43 is a late-filed exhibit entitled "Late Filed Exhibit on Executive Compensation and Safety." Footnote 3 is a reference to PG&E's description of the parties and Commission staff that provided comments on the draft exhibit "that have been reflected in this final version." Footnote 3 indicates that is was included by PG&E at the request of CAUSE and includes the statement that "CAUSE observes that Exhibits A, C and D [of the Exhibit] disclose elements of discretion, subjectivity, and limits on data quality that were not apparent in earlier testimony" but does not indicate what those elements might be. The Commission did not rely on this statement or the recommendations in footnote 3 in D.17-05-013.

Third, and contrary to Rafferty's claim, regarding his reference to Exhibit PG&E-40, that Exhibit is a document distributed by PG&E at the August 30, 2016 workshop to review the Settlement Agreement. It is not an "addendum to settlement on executive compensation" and there is no indication in the record in this proceeding that either Rafferty or NDC were "responsible

for this contribution." Exhibit PG&E-40 is entitled "Pacific Gas and Electric Company Executive Compensation" and was authored by PG&E's Senior Vice President Human Resources.

Fourth, D.17-05-013 does discuss the proceeding record regarding safety, and the linkage between safety and executive compensation, and describes how the intent of the Scoping Memo has been addressed by further developing the record via the Settlement Workshop, the additional exhibits prepared and filed by PG&E, and the cooperation of PG&E and the other Settling Parties in making this record.

Fifth, and contrary to Rafferty's claim, Section 3.2.6.2 of the Settlement Agreement does not reference CAUSE. The Joint Motion states "Section 3.2.6.2 of the Agreement addresses NDC and PG&E's comments on executive compensation."

Sixth, and contrary to Rafferty's claim, we addressed Section 3.2.8.9 of the Settlement Agreement earlier in this decision and found that an agreement by PG&E to provide data to parties (not to the Commission), for an unspecified purpose, does not constitute a "substantial contribution" to D.17-05-013.

The timesheets submitted with Rafferty's compensation request identify the following activities within Rafferty's overall category of "safety":

- 27-Sep-16: review of PGE-8, PGE-27, TURN-9, PGE-40, PGE-6- ch 16; [LEG 4] testimony, propose revisions to PGE-43 to reflect need for evaluation of the safety metrics used in executive compensation, avoid prejudice to future proceedings; privileged settlement discussions (7 hours)
- 28-Sep-16: extensive email to PG&E and further discussions proposing revisions to PG&E-43 re executive compensation (7.5 hours).

We find that Rafferty should be compensated for the 14.5 hours spent reviewing and discussing the document that PG&E produced as Exhibit PG&E-43.

3.4. Rate Case Cycle (Third Post-Test Year)

Settling Parties were unable to reach consensus on two contested issues in this proceeding. One of these issues was whether the Commission should approve a third post-test year for PG&E, as proposed by ORA. Settling Parties presented their respective positions on the contested issues through opening and reply comments on the joint motion to adopt the settlement.

3.4.1. Intervenor's Claimed Contribution

Rafferty asserts that in collaboration with TURN, CAUSE successfully argued against a third post-test year.

Rafferty also states "as CAUSE discussed at the workshop, the formulation of the 'Z- factor' allowing recovery of certain exogenous changes during post-test years is consistent with liability rules that promote safety. More specific explanations of CAUSE's contributions are subject to the settlement privilege and will be made available on request of the Commission with the consent of the settling parties."[20]

3.4.2. Specific References to Intervenor's Claimed Contribution

Rafferty provides the following references to support his claims of substantial contribution to D.17-05-013 regarding the third post-test year:

[20] Rafferty Claim at 7-8.

- TURN/CAUSE joint comments August 18, 2016 at 2-10.[21]
- D.17-05-013 at 52:

  In its testimony, ORA proposed a third attrition year in 2020, so that this proceeding would result in a four-year (2017-2020) rate case cycle. In the Joint Motion, Settling Parties report that the parties were unable to gain consensus on whether the term of PG&E's next GRC should be three or four years.

  TURN, A4NR, CAUSE and CFC recommend that the term of PG&E's next GRC be three years - the test year and two post-test years.

  PG&E and ORA recommend that the term of PG&E's next GRC be four years - the test year and three post-test years.

- D.17-05-013 at 197:

  The parties were unable to gain consensus on whether the term of this GRC should be three or four years. PG&E and ORA recommend that the term of this GRC be four years: the 2017 test year and three post-test years, 2018-2020. TURN, A4NR, CAUSE and CFC recommend that the term this GRC remain at three years - the 2017 test year and two post-test years, 2018-2019. We find that it would be premature to resolve this matter in this decision.

- D.17-05-013 at 52:

  In past attrition mechanisms, we have included a provision identified as a Z-factor, to cover certain unforeseen exogenous events that may occur between test years. The Z-factor is a mechanism designed to prevent both windfall profits and large financial losses as a result of changes in costs outside of utility control.

[21] Opening Comments of The Utility Reform Network and Collaborative Approaches to Utility Safety Enforcement on the "Contested Issues" Identified in the Proposed Settlement.

3.4.3. Discussion

The references to Rafferty's claimed contribution are partially supportive of Rafferty's claim of a substantial contribution to the D.17-05-013 on the rate case cycle. The jointly filed comments with TURN did oppose the third test-year, and the Commission did decline to adopt a third test-year, though not for the reasons offered by TURN and CAUSE.[22] Contrary to Rafferty's claim, the discussion of the Z-factor in D.17-05-013 makes no reference to his statements at the post-settlement workshop.

The timesheets submitted with Rafferty's compensation request identify 31.75 hours spent on the analysis of third post-test year for comments on settlement, although some of those hours are mixed with other activities (August 15-18, 2016). We find that Rafferty should be compensated for these hours.

3.5. Gas Leak Maintenance

To establish a new balancing account to record costs to comply with gas leak management requirements that may emerge from Commission Rulemaking R.15-01-008. Settling Parties again presented their respective positions on this contested issue through opening and reply comments on the joint motion to adopt the settlement.

3.5.1. Intervenor's Claimed Contribution

Rafferty asserts that with TURN, CAUSE successfully argued that the PG&E's proposal for a gas leak management account should be denied without prejudice.

[22] D.17-05-013 at 197-198.

3.5.2. Specific References to Intervenor's Claimed Contribution

Rafferty provides the following references to support his claims of substantial contribution to D.17-05-013 regarding the "gas leak management" contested issue:

- D.17-05-013 at 198-199.
- TURN/CAUSE joint comments August 18, 2016 at 10-18.
- 4.3.2. Gas Leak Management (Section 4.2 of the Settlement Agreement [contested issue]):[23]

  The parties were unable to reach consensus on whether PG&E should be authorized in this GRC decision to establish a new balancing account to record costs to comply with gas leak management requirements that may emerge from Commission Rulemaking R.15-01-008.

  CUE, EDF and PG&E recommend that such a balancing account be established in this proceeding. TURN, CAUSE and CFC oppose the recommendation.

3.5.3. Discussion

The references to Rafferty's claimed contribution are supportive of Rafferty's claim of a substantial contribution to the D.17-05-013 on the gas leak management contested issue. The jointly filed comments with TURN did oppose authorization of the new balancing account, and the Commission did decline to authorize the account, though not for the reasons offered by TURN and CAUSE.[24]

[23] The quoted text is copied from D.17-05-013 at 198.

[24] D.17-05-013 at 199-200.

The timesheets submitted with Rafferty's compensation request identify 10 hours spent on the analysis of gas leak management (August 17 and 26, 2016). We find that Rafferty should be compensated for these hours.

3.6. Monitor Costs

The proposed decision (PD) and the alternate proposed decision (APD) in this proceeding noted PG&E's conviction in August 2016 on five counts of violations of pipeline integrity management regulations of the Natural Gas Pipeline Safety Act and one count of obstructing a federal agency proceeding. Among other things, PG&E's sentence included oversight by a third-party monitor. The PD and the APD stated that "the Commission should determine whether or not PG&E intends to seek recovery in rates for the costs that it will incur in connection with the monitorship imposed by the court. Therefore, PG&E shall include in its comments on this proposed decision a statement that explains its proposed ratemaking treatment for the costs that it will incur in connection with the monitorship imposed by the court."[25] PG&E submitted the requested information in its opening comments on the PD, filed and served on March 20, 2017. In D.17-05-013 the Commission discussed PG&E's response and declined PG&E's request to adopt its suggested ratemaking treatment for these costs, stating "our purpose in seeking this information was to clarify and document PG&E's intentions in this matter, and we appreciate PG&E's response. We will review PG&E's actions in subsequent proceedings."[26]

[25] February 20, 2017 Proposed Decision of assigned ALJ at 133.

[26] *Id*. at 232.

3.6.1. Intervenor's Claimed Contribution

In his claim, Rafferty notes that the proposed decision solicited comments from PG&E regarding the costs of the federal monitor required by the criminal sentencing order issued by Judge Henderson on Jan. 9, 2017 (after the settlement). Rafferty states that CAUSE argued that the costs imposed by the monitorship should be borne by shareholders, but that this liability should be limited by a principle of proximate cause (since to some extent all gas activities will be affected), and observes that no other intervenor took a position, but this appears to be congruent with the position taken by PG&E.

Rafferty argues that given the absence of comments from other parties, the conceptual agreement between CAUSE and PG&E as to the appropriate limits of shareholder responsibility should be viewed as a "substantial contribution" in that it likely reflects the ratemaking treatment that PG&E will seek.

Rafferty further states that after considerable analysis from the potentially adverse point of view of promoting safety, CAUSE agrees with PG&E that such limits are justified.

3.6.2. Specific References to Intervenor's Claimed Contribution

Rafferty provides the following references to support his claims of substantial contribution to D.17-05-013 regarding the costs of the federal monitor:

> Compare PG&E Opening Comments on PD at 13:
>
> "PG&E's shareholders will cover the direct costs of the monitorship. This shall include all amounts paid to the monitor or persons hired by the monitor pursuant to the monitor's authority…
>
> PG&E's shareholders will also cover the expenses of the group being formed at PG&E that will be dedicated to assist with the work of the monitor and address the monitor's needs….
> Please note that the activities of the monitor will likely impact,

> to varying degrees, the work of scores of employees across the organization. (For example, consider these very comments on the topic.)
>
> PG&E does not expect the work of those impacted by the activities of the monitor in the course of their regular jobs (such as the author of these comments) to be covered by shareholders. Further, it is also possible that the monitor may recommend operational changes or improvements that affect future costs.
>
> PG&E expects that such costs would be evaluated as would other similar costs in future ratemaking proceedings.

With

CAUSE Opening Comments on PD at 10-11:

> There should be a rebuttable presumption that costs proximately caused by requirements imposed by the federal monitor will not be recovered in rates. … PG&E may argue that the probation so transforms the company that every cost will increase due to the probation, so this presumption is limited to those costs identifiably and proximately caused by compliance with a specific mandate of the Monitor."
>
> (Proposed Decision at 4.1.11.1 at 133; D17-05-013 at 131:
>
> The Commission should determine whether or not PG&E intends to seek recovery in rates for the costs that it will incur in connection with the monitorship imposed by the court. Therefore, PG&E shall include in its comments on this proposed decision a statement that explains its proposed ratemaking treatment for the costs that it will incur in connection with the monitorship imposed by the court. Conclusion 17.

3.6.3. Discussion

We deny Rafferty any compensation for substantial contribution to D.17-05-031 regarding the costs of the federal monitor. The Commission did not request input from other parties on this matter, and Rafferty's comments were

filed on the same day as PG&E's comments: since Rafferty did not address PG&E's response, we can find no contribution to the Commission's final decision on this matter.

3.7. Possible Remedy If Post- Settlement Cost Reductions Were Not Reflected In Application

Decision 17-05-013 required PG&E to submit proof that it would not be collecting in rates any funds rendered unnecessary by $300 million in spending reductions that it announced—outside of the context of its GRC application—on January 11, 2017.

3.7.1. Intervenor's Claimed Contribution

In his compensation claim, Rafferty noted that the proposed decision raised another issue outside of the settlement: PG&E's decision to cut $300 million in expenses after the settlement was agreed but before it is approved.

Rafferty states that "again, CAUSE believes it was the only intervenor to comment. Although the final decision did not alter the discussion of this issue or cite any of the parties' comments, it did strengthen Conclusion of Law 15, consistent with CAUSE's recommendation, by committing the Commission to take remedial action if necessary."

3.7.2. Specific References to Intervenor's Claimed Contribution

Rafferty provides the following references to support his claims of substantial contribution to D.17-05-013 regarding the possible remedy if post- settlement cost reductions were not reflected in application:

- CAUSE Opening Comments on the PD at 13:

> The proposed revenue requirement should be reduced to any extent that it includes any of the $300 million in cost savings that PG&E subsequently announced.
>
> CAUSE expects to reply to any explanation that PG&E offers in its comments regarding the relationship between the reported costs, on the basis of which TURN and ORA negotiated the overall revenue requirement and the savings announced to the press on January 11, 2017. *See* discussion PD at 126, ff.; Ordering Clauses 4-6 at 221-222.[27]

- D.17-05-013, Ordering Clause 15, at 245: 15.

  > PG&E should demonstrate to the Commission that it will not collect in rates any funds rendered unnecessary by the $300 million in spending reductions that it announced on January 11, 2017 and the Commission should require PG&E to take remedial action if it fails to do so.

3.7.3. Discussion

The timesheets submitted with Rafferty's compensation request identify a total of 10.5 hours spent preparing "separate opening comments" on the PD (March 17 and 18, 2017). We find that Rafferty should be compensated for one-quarter of these hours for the portion of the comments that addressed PG&E's $300 million spending reduction. We round that value to 2.5 hours.

3.8. Standard for Evaluating Settlements

The PD of the ALJ in this proceeding was mailed for public comment on February 27, 2017. The PD approved the comprehensive Settlement Agreement in the proceeding, with several modifications of provisions of the Settlement Agreement found to be either not reasonable in light of the whole record, not consistent with law, or not in the public interest. The PD also resolved two

[27] Rafferty's references to "Ordering Clauses" appear to refer to Findings of Fact or Conclusions of Law.

contested issues. On March 20, 2017 CAUSE (Rafferty), the Alliance for Nuclear Responsibility, and the remaining settling parties each filed comments addressing the Commission's standard for evaluating settlements.

3.8.1. Intervenor's Claimed Contribution

Rafferty asserts that he participated in the research and drafting of the joint comments on the PD with regard to the standard for considering settlements and proposing modifications, but that "the settlement privilege precludes disclosure of the substance of these contributions." Rafferty further asserts that "ultimately, CAUSE filed separately and was the only party to support the authority of the Commission to modify a proposed settlement in order to make it conform to the public interest."

Rafferty states that "CAUSE has carefully adjusted the hours to exclude any time spent arguing that the utility should be made whole for the costs of any modification in order "to preserve the fundamental bargain," which the decision (at 223) criticized. In the context of certain settlement processes, it is possible to calculate a revenue adjustment to meet the costs faced by a utility to fulfill a modification in a manner that does not unduly prejudice the legitimate expectations of other parties."

This argument was mooted by PG&E's acceptance of the modification.

3.8.2. Specific References to Intervenor's Claimed Contribution

- D.17-05-013 at 217

  CAUSE states that the Commission should clarify the standards that it will use to evaluate settlements, especially those reached prior to a full evidentiary hearing, to articulate more clearly when modifications are appropriate.
- D.17-05-013 at 220-223

[The entire discussion (at 220-223) of the standard proposed by the joint parties and by A4NR implicitly adopts the most essential position of CAUSE, that the Commission can evaluate an individual provision for conformity with the public interest and propose modifications without regard to the benefits of the settlement as a whole. Furthermore, the discussion avoids citing precedents advocated by the settling parties but criticized by CAUSE, such as those comparing the standard with review of federal class action settlements]

- D.17-05-013 at 223-224

  In comments on the PD, CAUSE agrees with the other settling parties that the Commission should not evaluate reasonableness issue by issue. However, CAUSE also argues that the Commission should modify any single provision that, as proposed, contravenes the public interest, interest, "ideally doing so with any adjustments necessary to preserve the fundamental bargain that the parties sought."[citing CAUSE Opening Comments at 5]

3.8.3. Discussion

Rafferty's citations to D.17-05-013 are incomplete and omit the portions of the decision that state that Rafferty's comments on the PD are not convincing. First, at the beginning of the section discussing parties' comments regarding the Commission's standard for review of settlements the Commission states "as explained below, the comments and reply comments on the Commission's standard for review of settlements offer no compelling reasons to change [the PD or] the APD."[28] Second, in a later discussion of CAUSE's specific comments, the Commission states "we have explained above why we disagree with CAUSE's first point" and "we find CAUSE's suggestion in this regard [supporting

[28] D.17-05-013 at 217. The Commission notes on page 216 that the APD reaches the same result as the PD, using identical language.

modification of single provisions of a settlement, as the PD and the APD have done, but in a manner that preserves the 'fundamental bargain' of the settlement] impractical and inconsistent with our Rules."[29]

We find that the Commission did not adopt Rafferty's recommendations regarding the Commission's standard for evaluating settlements in D.17-05-013, either in whole or in part. In the absence of a substantial contribution, Rafferty's claim for intervenor compensation on this matter must be denied.

3.9. Catalyst for Acceptance of Modifications

The PD and APD, as well as D.17-05-013, included an order that Settling Parties shall have 15 days from the date of the final decision to file and serve a "Notice To Accept PG&E's Adopted Test Year 2017 Revenue Requirement," or to file a "Motion Requesting Other Relief." In comments filed on the APD, Settling Parties suggested that the Commission adopt several "alternative provisions" that address the certain concerns raised in the APD and stated that "if the proposed alternative provisions in these Opening Comments are adopted, the Settling Parties hereby represent that there would be no need for the 'Notice of Acceptance' or 'Motion for Other Relief' required in the APD. In D.17-05-013 the Commission adopted one of the two suggestions. The Settling Parties filed and served the required "Notice to Accept Alternative Terms to the August 3, 2016 Settlement Agreement" on May 26, 2017.

3.9.1. Intervenor's Claimed Contribution

Rafferty asserts that he indicated that he would accept the proposed modifications in the proposed decision PD as an alternative to the settlement:

[29] *Id.* at 223-224.

Although this was strongly criticized by PG&E initially (as noted in the decision), CAUSE did not abrogate the settlement. It simply indicated that it would accept the modifications in the alternative without seeking additional relief.

This is precisely what PG&E and other settling parties did after the alternative proposed decision (APD). CAUSE's position had a catalytic effect, which is a basis for inclusion in its IC claim.

CAUSE also participated very actively in the preparation of the joint comments on the APD, which it adopted in its entirety.

3.9.2. Specific References to Intervenor's Claimed Contribution

- Joint Parties' Opening Comments on the APD at 2:

  While the Settling Parties still support the original provisions set forth in the Settlement Agreement, these Opening Comments provide an alternative approach recommended by the Settling Parties to address the considerations raised in the APD concerning these three topics.

  In these Opening Comments, the Settling Parties have taken the time afforded by the issuance of the APD to agree upon alternative provisions that address the specific concerns raised in the APD.

3.9.3. Discussion

We do not find that the fact that Settling Parties filed a Notice to Accept as directed by D.17-05-013 supports Rafferty's assertion that his position in comments on the PD "had a catalytic effect" that led to that action. Rafferty offers no proof to support his assertion. In the absence of a substantial contribution here, Rafferty's claim for intervenor compensation on this item must be denied.

3.10. Undergrounding

In D.17-05-013 the Commission determined that PG&E should establish a Rule 20A balancing account that tracks the annual capital and expense costs for Rule 20A undergrounding projects, on a forecast and recorded basis, so that overcollected balances in the account remain available for future Rule 20A projects.

3.10.1. Intervenor's Claimed Contribution

Rafferty devotes several pages of his claim to describing his claimed contributions on this issue. Rafferty asserts that CAUSE's comments on the APD provided extensive input into the safety benefits that the audit could realize with appropriate siting decisions. Rafferty seeks recognition that his "extensive analysis of Rule 20A enables the impending audit to consider safety impacts, which should be acknowledged as a substantial contribution." Rafferty states that his analysis including the following:

- CAUSE filed almost 15 pages of comments analyzing the precedents of this Commission and the municipal ordinances and actions that they require. These are matters of law, not required to be entered into the evidentiary record.
- CAUSE cautioned against undue disregard for prior decisions about prioritization based on safety and coordination with road projects, which would constitute legal error.
- Given SB 512, CAUSE also demonstrated that it would be legal error not to consider safety in any decision addressing Rule 20A.
-
- Recognizing that a small number of background references were factual in nature, CAUSE provided three pages of explanation as to why a waiver under Rule 1.2 was appropriate to allow the Commission to take notice.

3.10.2. Specific References to Intervenor's Claimed Contribution

- CAUSE's Opening Comments on the APD at 18-21.

  Request for Liberal Construction of Rules of Procedure or Deviation Therefrom [provided bases for taking notice of background facts regarding nature of danger from overhead conduit in certain areas]:

- CAUSE's Opening Comments on the APD at 5-16.

  Legal analysis of the issues raised by reform of Rule 20A.

- Excerpt from Table of Contents of CAUSE's Opening Comments:

  Undergrounding has safety benefits, when it is economically feasible. [5] Given endemic overruns and delays, the work credit process simply does not work. [11] Safety budgets should not be allocated among political entities. [14]

  - Proposed Decision: Section 6.2, Comments on Rule 20A Issues in the APD.

CAUSE includes extensive comments on Rule 20A matters that rely on material outside the evidentiary record in this proceeding. As noted above, Rule 14.3 (c), requires that comments shall focus on factual, legal or technical errors in the proposed decision and in citing such errors shall make specific references to the record or applicable law. Comments which fail to do so will be accorded no weight. Much of CAUSE's comments fail to make specific references to the record, and for this reason we accord them no weight

3.10.3. Discussion

None of the references cited above by Rafferty verify a substantial contribution on this issue. As Rafferty acknowledges in his claim by quoting the

text from the APD above, the Commission stated in D.17-05-013 that it accorded CAUSE's comments no weight in reaching its decision on Rule 20A matters:[30]

In addition to this direct statement by the Commission that Rafferty made no substantial contribution on Rule 20A issues, we note here that in D.17-05-013 we determined that the audit was necessary "in order to ensure that PG&E has fully accounted for annual Rule 20A budgeted amounts, and to ensure that localities will receive the full benefit of these funds."[31] The required audit is a financial and program audit, not an audit of PG&E's safety practices. For those reasons, Rafferty's attempts to introduce safety-related concepts into the audit matter decided in D.17-05-013 were rejected by the Commission, and do not merit compensation.[32]

In the absence of a substantial contribution on these matters, Rafferty's claim for intervenor compensation related to the Rule 20A issues in this proceeding is denied. Rafferty claims 34 hours for Rule 20A-related activities. Therefore, the 34 hours claimed by Rafferty for substantial contribution to D.17-05-013 regarding the Rule 20A issues in this proceeding are disallowed.

4. Reasonableness of Requested Compensation

Rafferty requests $591,995 for his participation in this proceeding, as shown in the table below:

---

[30] Rafferty's claim cites this text in the APD, but the same text is found in D.17-05-013. *See* D.17-05-013 at 224.

[31] D.17-05-013 at 75.

[32] Reinforcing this conclusion, we note that during the voting meeting that the Commission adopted D.17-05-013, it issued Rulemaking 17-05-010, its *Order Instituting Rulemaking to Consider Revisions to Electric Rule 20 and Related Matters*. The initial scope of R.17-05-010 included a number of safety questions. *See* R.17-05-010 at 19-23.

ATTORNEY, EXPERT, AND ADVOCATE FEES				
Item	**Year**	**Hours**	**Rate $**	**Total $**
Scott J. Rafferty	2015	143.5	$490	$70,315
Scott J. Rafferty	2016	568	$495	$281,160
Scott J. Rafferty	2017	421	$495	$208,395
			Subtotal:	***$559,870***
INTERVENOR COMPENSATION CLAIM PREPARATION				
Item	**Year**	**Hours**	**Rate $**	**Total $**
Scott J. Rafferty	2017	128.5	$250	$32,125
			Subtotal:	**$32,125**
			TOTAL REQUEST:	***$591,995***

In general, the components of this request must constitute reasonable fees and costs of Rafferty's preparation for and participation in this proceeding that resulted in a substantial contribution. The issues we consider to determine reasonableness are discussed below.

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

Regarding the hours claimed by Rafferty for work that resulted in substantial contributions to D.17-05-013, we assess whether the claim is reasonable by determining the degree to which the hours and costs are related to the work performed, and therefore necessary for the substantial contributions we identified above. The manner in which Rafferty tracked and summarized his hours made this a difficult task, as we explain below.

In his claim, Rafferty provides the breakdown of hours by task shown in Table 1 on the following page:

Table 1
Allocation of Hours: Rafferty Compensation Claim, page 18

Line #	Task	Hours	%
1	Preparation	45	4%
2	Process	68	6%
3	Safety	510	45%
4	Settlement	419	37%
5	PTY-Gas Leaks	57	5%
6	20A	34	3%
	Grand Total	**1,133**	**100%**

The descriptions of the tasks in Table 1 differ from the descriptions of the tasks in Rafferty's timesheets (Claim, Attachment 3), which are shown below in Table 2:

Table 2
Allocation of Hours: Rafferty Timesheets

Line #	Task	Hours	Subtotals	%
1	Prep	30		
	Total Preparation		**30**	**3%**
2	Process	44		
3	Process Burden	12		
	Total Process		**56**	**5%**
4	Safety Process	22		
5	Safety	333		
6	Safety Burden	32		
	Total Safety		**387**	**34%**
7	Settle	258		
8	Settle 20A	23		
9	Settle Burden	23		
	Total Settlement		**304**	**27%**
10	Contested Issue	49		
11	Safety Contested Issue	6		
	Total Contested Issues		**55**	**5%**
12	20A	16		
	Total Rule 20A		**16**	**1%**
13	Burden	290		
	Total Burden		**290**	**26%**
	Grand Total	**1,133**	**1,133**	**100%**

The lists of tasks in both Table 1 and Table 2 sum to 1,333 hours, but the more detailed list in Table 2 includes an additional category that is not included in Table 1: "Burden."[33] This category alone accounts for 290 hours, or 25% of the hours listed on Rafferty's timesheets. For this reason, the two summaries of Rafferty's hours cannot be reconciled. The claimed hours are further confused because Rafferty lists ten matters in his claim and seeks compensation for all ten matters (see page 10 above). However, Rafferty provides no hourly breakdown of the time spent on these ten matters, instead listing only four substantive topics as shown in Table 1, lines 3-6.[34]

For the most part, we can work around this problem because we have found that Rafferty made no substantial contributions in the areas of Safety, Settlement, and Rule 20A (Table 1, lines 3, 4 and 6). This leaves us to determine the reasonableness of the hours claimed for Preparation, Process, "PTY-Gas Leaks" (*i.e.*, the two contested issues in this proceeding) and "Possible Remedy If Post- Settlement Cost Reductions Were Not Reflected In Application". Of the ten matters for which Rafferty seeks compensation, this corresponds to: (4) Rate Case Cycle, (5) Gas Leak Maintenance, and (7) Post- Settlement Cost Reductions, plus Preparation and Process.

We determined above the number of compensable hours for the hours claimed for the two contested issues and the "Possible Remedy". For the hours

[33] Rafferty's general timesheet category of "Burden" is also distinguished from these additional categories on Rafferty's timesheets: "Process Burden", "Safety Burden", "Settle Burden".

[34] For example, Rafferty's timesheets show 8 hours spent on "continued review of draft joint opening comments; review US v PGE sentencing order, phone call with AUSA, research into other precedents for monitor, goals of sentencing commission guidelines, denial of Rule 29 motion" but the time is categorized as "Safety".

claimed for Preparation and Process, we must account for the inconsistencies between the hours-by-task presented in Table 1 versus Table 2. To do this, we will rely on the timesheet version of the hours shown in Table 2. Rafferty's timesheet descriptions of his daily and hourly actions provide sufficient detail to evaluate each recorded activity. Thus, we evaluate whether 30 hours of Preparation is reasonable, not the 45 hours shown in Table 1, and we evaluate whether 44 hours of Process is reasonable, not the 68 hours shown in Table 1. Based on a line-by-line review of those claimed hours on Rafferty's timesheets, we award 29.5 hours for Preparation and 21.25 hours for Process. We have reduced the award for Process hours to remove time shown on the timesheets for time spent in unproductive meetings with individuals, time spent reviewing D.17-05-013 (which is not a contribution to that decision) and to reduce compensation for preparation of the NOI. The Commission has previously reduced claimed hours spent preparing and filing a defective NOI.[35]

We award no compensation for any hours dedicated to "Burden", whether assigned by Rafferty to his general or task-specific categories. Our review of those hours on Rafferty's timesheets identified no entries where these reported hours made a substantial contribution to D.17-05-013 by providing value to the ratepayers who fund intervenor compensation awards, which is the fundamental requirement that underlies the intervenor compensation statutes. In additional comments provided with his claim, Rafferty asserts that he should be compensated for "time reasonably spent" addressing procedural matters related to the formatting of his documents, which were rejected by Commission staff

[35] D.15-01-043 at 11.

because the documents did not meet the Commission's technical requirements.[36] Similarly, Rafferty asserts that time spent to remedy problems with his NOI that were identified by staff and the ALJ was burdensome and "precluded CAUSE from recruiting experts or taking extensive discovery."[37] The ALJ rulings speak for themselves, and we do not fault Commission staff for its efforts to verify the eligibility of intervenors in our proceedings. As we have stressed throughout this decision, we are obligated by statute to ensure that intervenors who seek compensation are, in fact, eligible to do so, and that those intervenors found to be eligible are only compensated for substantial contributions to our decisions.[38]

Our overall determination of compensable hours is shown in Table 3 below:

[36] Rafferty Claim at 15.

[37] *Ibid.*

[38] Decision 98-04-059 at 19-20: "When it codified the intervenor compensation program, the Legislature struck a balance between competing goals: to encourage the effective and efficient participation of all groups that have a stake in the public utility regulation process while avoiding unproductive or unnecessary participation that duplicates the participation of others. Three tools affect this balance: eligibility, based on financial hardship, and substantial contribution, which, when applied together, ensure that compensated intervention provides value to the ratepayers who fund it. These three tools come together in the directive embodied in § 1803, and the key definitions [in § 1802] which give § 1803 meaning."

Table 3
Summary of Compensable Hours

Task	Requested	Awarded
Contested Issue: Rate Case Cycle	31.75	31.75
Gas Leak Maintenance	10.0	10.0
Possible Remedy If Post- Settlement Cost Reductions Were Not Reflected In Application	10.5	2.5
Preparation	29.5	29.5
Process	43.5	21.25
Total	**125.25**	**95.0**

4.2. Preparation of Claim

Rafferty seeks compensation for 128.5 hours spent preparing his claim for compensation, an amount of time that far exceeds the hours claimed for the same task by other intervenors in this proceeding (TURN claimed 25 hours, A4NR claimed 20 hours, SBUA claimed 19 hours, EDF claimed 18 hours, NAAC claimed 17 hours, and CforAT claimed 10 hours. The only other outlier, CFC, claimed 67 hours for preparation of its claims).

The Commission has previously denied compensation for excessive hours for preparation of claims:[39]

> …an intervenor's compensation claim must be a reasonably routine part of an intervenor's business before the Commission. It should largely be a routine linking of already identified issues (e.g., issues identified in the intervenor's "Notice of Intent to Claim Intervenor Compensation" and the Scoping Memo) to hours recorded by issue each day over the course of the proceeding. … Ratepayers should only be required to compensate an intervenor for the reasonable cost of an efficiently prepared Claim.

[39] D.15-05-017 at 48.

We compensate Rafferty for 18 hours spent preparing his claim. This number is the average of the hours spent by other intervenors in this proceeding, excluding the other outlier, CFC, from that calculation.

4.3. Intervenor Hourly Rates

We next take into consideration whether the claimed fees and costs are in compliance with Section 1806, which requires that the computation of compensation awarded shall take into consideration "the market rates paid to persons of comparable training and experience who offer similar services." The Commission also noted that the rates tend to fall within well-defined ranges, "based on length of relevant experience and roughly corresponding to the associate, partner, and senior partner levels within a law firm."[40] In 2007, the Commission determined that intervenor representatives with a rate last authorized at least four years prior to the pending request may seek a new rate as if that individual were new to Commission proceedings.[41]

Rafferty notes that he does not appear in the Commission's current rate table; his last rate in a Commission proceeding was $360 per hour for his contributions to D.07-07-006 as an "expert". Rafferty also notes that the Commission's current rate table indicates that it now sets hourly rates for lawyers who testify without regard to the range for experts. Rafferty asserts that almost all of his activities in the instant proceeding are appropriately compensated on the scale for attorneys. We agree that Rafferty should be compensated as an attorney without regard to his prior Commission-related

[40] Resolution ALJ-184, August 19, 2004 at 3. Resolution ALJ-184 is the Commission's resolution adopting the process of setting hourly rates for intervenors.

[41] D.07-01-009, Ordering Paragraph 4.

work as an expert. Because ten years have passed since Rafferty's last compensation award, and that award compensated Rafferty as an expert, not an attorney, consistent with D.07-01-009 we will determine Rafferty's rate as an attorney "as if that individual were new to Commission proceedings."

Rafferty requests a rate of $490 per hour, asserting that this represents 85% of the top range for attorneys of his experience (*i.e.*, 13 or more years).[42] We do not agree that Rafferty has over 13 years of relevant experience, which should be practice before the Commission or in similar administrative law settings. We also find that the rates we set for Rafferty must reflect his level of proficiency with the Commission's procedures, which the record shows is not at the level of other intervenors in this proceeding. Our findings are consistent with the Commission's resolution adopting the process of setting hourly rates for intervenors:[43]

> Finally, the adopted rate carries our expectation about the level of the advocate's performance; to the extent that the advocate performs above or below that level in a particular proceeding we would consider augmenting or reducing the hourly rate.
>
> For example, we expect that advocates with experience before the Commission have a certain level of knowledge about our Rules of Practice and Procedure and filing requirements, so a seasoned advocate who fails to follow these rules would not be performing at a level consistent with what we would

[42] Rafferty appears to have made a calculation error: he requests $490 per hour in 2015, but 85% of the top rate in 2015 ($570 per hour) is $485 per hour. Rafferty's requested rates for 2016 and 2017 reflect similar calculation errors (current rates are provided in Resolution ALJ-345 at 4, Table 2). Rafferty also requests $250 per hour for claim preparation, but the correct rate would be $585 per hour x .85, divided by 2, or $248.63 per hour.

[43] Resolution ALJ-184 at 3.

> expect from someone of that training and experience. Thus, in that circumstance, we may consider awarding a lower hourly rate for the advocate's work in that proceeding.

We establish rates for Rafferty equal to $320 per hour in 2015, $325 per hour in 2016 and $330 per hour in 2017. These rates are the bottom of the range for attorneys with 8-12 years of experience.

With respect to Rafferty's level of experience, and the relevancy of that experience, we first note that a review of Rafferty's resume indicates that prior to this proceeding most of his work was as a policy expert or an economist. Rafferty held positions as an attorney at three prior positions:

- Associate, O'Melveny and Myers (5/1979-81)
- Counsel, House Subcommittee on Telecommunications, Energy and Commerce Committee (1981-1983)
- Principal, Law Offices of Scott Rafferty (2002 - 2010)

Together, these positions would total over 13 years of experience only if Rafferty worked full calendar years at each job where a starting month is not indicated on his resume. In terms of depth of experience, Rafferty's work as an attorney in the 1980's ended over 30 years ago, and Rafferty indicates that some of his time while more recently running his own law office was spent as "Executive Director for Peninsula Ratepayers Association," not as an attorney (as noted by Rafferty, in D.07-07-006 the Commission compensated Rafferty for his work in this position as an expert, not as an attorney). Furthermore, until the current case, little of Rafferty's work as an attorney involved appearing before regulatory commissions such as this one. Therefore, we conclude Rafferty's rate as an attorney should be set with reference to attorneys with 8-12 years of experience.

In order to determine where we should set Rafferty's rate in the range for attorneys with 8-12 years of experience, we consider the Commission's statement of its intent in Resolution ALJ-184, quoted above: "the adopted rate carries our expectation about the level of the advocate's performance" and "we expect that advocates with experience before the Commission have a certain level of knowledge about our Rules of Practice and Procedure and filing requirements, so a seasoned advocate who fails to follow these rules would not be performing at a level consistent with what we would expect from someone of that training and experience." We conclude that the level of Rafferty's performance in this proceeding warrants setting his rate at the bottom of the scale for attorneys with 8-12 years of experience.

In reaching these determinations, we are bound by statute and Commission precedent to ensure that compensated intervention provides value to the ratepayers who fund that compensation. Based on our review of Rafferty's claim, as well as his timesheets and other supporting attachments, we conclude that Rafferty's hourly rate should reflect the many instances where he burdened the Commission's staff on matters that are rarely, if ever, raised by more seasoned practitioners at the Commission.

For example, we note that Rafferty's timesheets document over 300 hours (out of a total of 1,333 hours) spent on tasks coded by Rafferty as some form of "Burden." Many of these hours appeared to be spent in disputes with the Commission's Docket Office or Intervenor Compensation Coordinator, contesting procedural matters that a more seasoned practitioner would have simply addressed as requested by Commission staff. In addition, the ALJ rulings regarding the Rafferty/CAUSE Notices of Intent document repeated instances of missed filing deadlines, illegible formatting and typographical errors. These are

procedural mistakes that more seasoned practitioners do not make in formal filings with this Commission. For these reasons, we conclude that Rafferty's hourly rates for 2015-2017 should be set at the bottom of the range for attorneys with 8-12 years of experience.

5. Productivity

Intervenors are required to demonstrate that their participation was "productive, necessary, and needed for a fair determination of the proceeding."[44] Specifically, D.98-04-059 directed customers to demonstrate productivity by assigning a reasonable dollar value to the benefits of their participation to ratepayers.[45] Therefore, we review the compensation claim to ensure that the costs of a customer's participation bear a reasonable relationship to the benefits realized through its participation. This showing assists us in determining the overall reasonableness of the request.

5.1. General Claim of Reasonableness (§ 1801 and § 1806):

Rafferty asserts that there will be monetary benefits for ratepayers because of his participation in this proceeding, because the settlement commits PG&E to increased reliance on international standards, both in setting specific metrics and in developing management systems that will promote compliance with mitigate safety risks and increase regulatory compliance. Rafferty states that this will reduce the direct cost of accidents and liability insurance recovered in rates, as well as additional social costs borne by employees, ratepayers, and members of the public. Furthermore, Rafferty state that (in coordination with TURN) he

[44] *See* § 1801.3(f) and D.98-04-059 at 31-33.

[45] D.98-04-059, at 34-35.

protected ratepayers from the risks that a third post-test year would allow escalations not justified by costs, and that changes in maintenance schedules would increase cost without regard to safety mitigation. Rafferty asserts that these savings are substantial compared to the amount of the claim.

5.2. Reasonableness of Hours Claimed:

Rafferty asserts that "despite the unusual burdens described below, which consumed 30% of total hours," he was extremely efficient in this proceeding. In his discussion, Rafferty faults Commission staff for the delayed approval of his NOI and for rejecting a number of his filings because they were not compliant with the Commission's electronic filing protocols.

5.3. Discussion

We have already discussed our decision not to approve hours Rafferty labels as "Burden" and our concerns regarding Rafferty's repeated confrontations with Commission staff, which he recounts again in this section of his claim. In addition, the three rulings by the assigned ALJ addressing each of Rafferty's NOI filings provide extensive explanations of the reasons for the delayed approval of Rafferty's NOI. Those rulings, along with our review of Rafferty's timesheets, demonstrate that to the extent Rafferty encountered the "unusual burden" he cites, that burden was entirely self-created. For that reason, this decision compensates Rafferty for his substantial contributions to D.17-05-013 as required by statute, but provides no compensation for Rafferty's procedural difficulties.

6. Award

As set forth in the table below, we award ^ $^.

CLAIMED						CPUC AWARD		
ATTORNEY, EXPERT, AND ADVOCATE FEES								
Item	**Year**	**Hours**	**Rate $**	**Basis for Rate***	**Total $**	**Hours**	**Rate $**	**Total $**
Scott J. Rafferty	2015	143.5	$490		$70,315	42.25	$320	$13,520
Scott J. Rafferty	2016	568	$495		$281,160	8.50	$325	$2,763
Scott J. Rafferty	2017	421	$495		$208,395	44.25	$330	$14,603
				Subtotal: $ 559,870				***Subtotal: $30,885***
OTHER FEES **Describe here what OTHER HOURLY FEES you are Claiming (paralegal, travel **, etc.):**								
Item	**Year**	**Hours**	**Rate $**	**Basis for Rate***	**Total $**	**Hours**	**Rate**	**Total $**
				Subtotal: $0				***Subtotal: $0***
**INTERVENOR COMPENSATION CLAIM PREPARATION ** **								
Item	**Year**	**Hours**	**Rate $**	**Basis for Rate***	**Total $**	**Hours**	**Rate**	**Total $**
Scott J. Rafferty	2017	128.5	$250		$32,125	18	$165	$2,970
				Subtotal: $32,125				***Subtotal: $2,970***
COSTS								
#	**Item**	**Detail**			**Amount**	**Amount**		
					$0			*$0*
				TOTAL REQUEST: $591,995				***TOTAL AWARD: $33,855***

ATTORNEY INFORMATION			
Attorney	**Date Admitted to CA BAR[46]**	**Member Number**	**Actions Affecting Eligibility (Yes/No?) If "Yes", attach explanation**
Scott Rafferty	2003	224389	No

[46] This information may be obtained through the State Bar of California's website at http://members.calbar.ca.gov/fal/MemberSearch/QuickSearch.

Pursuant to § 1807, we order PG&E to pay this award. 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 September 30, 2017, the 75th day after Rafferty filed his compensation request, and continuing until full payment of the award is made.

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. Rafferty's records should identify specific issues for which he requested compensation, the actual time spent by each employee or consultant, the applicable hourly rates, fees paid to consultants, and any other costs for which compensation was claimed. The records pertaining to an award of compensation shall be retained for at least three years from the date of the final decision making the award.

7. Comment Period

The proposed decision of the ALJ in this matter was mailed to the parties on April 27, 2018 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.[47] Comments were filed on August 20, 2018 by Mr. Rafferty

[47] At Mr. Rafferty's request, the ALJ extended the deadline for opening comments on the PD by rulings dated May 14, 2018, June 25, 2018 and August 9, 2018. In addition to the comments filed and served by Mr. Rafferty on August 20, 2018, Mr. Rafferty also attempted, unsuccessfully, to file and serve supporting "exhibits." On September 7, 2018 the ALJ sent Mr. Rafferty and the service list instructions regarding how Mr. Rafferty could submit those exhibits for inclusion in the record, but Mr. Rafferty did not

Footnote continued on next page

(hereinafter, "Rafferty Comments") and, jointly, by the other Settling Parties that signed the August 3, 2016 Settlement Agreement (hereinafter, "Comments of the Other Settling Parties"). No reply comments were filed.

Pursuant to Rule 14.3 (c), "[c]omments shall focus on factual, legal or technical errors in the proposed or alternate decision and in citing such errors shall make specific references to the record or applicable law. Comments which fail to do so will be accorded no weight. Comments proposing specific changes to the proposed or alternate decision shall include supporting findings of fact and conclusions of law."

Mr. Rafferty faults the PD in five broad areas, which we address below. The other Settling Parties acknowledge that there is no clear nexus between the proposals in Mr. Rafferty's testimony and the contents of the Settlement Agreement.[48] Nevertheless, the other Settling Parties waive the confidentiality afforded by Rule 12.6 "for the limited and sole purpose of identifying the provisions of the Settlement to which Mr. Rafferty provided a meaningful contribution."[49] The other settling parties do not explain what they mean by

---

reply. On November 13, 2018 the ALJ issued a ruling setting a November 20, 2018 deadline for Mr. Rafferty to respond to the September 7, 2018 instructions, stating that in the absence of a response from Mr. Rafferty, "the formal record of comments on the PD shall consist of the documents currently posted on the Docket Card for this proceeding…". Mr. Rafferty did not respond by the November 20, 2018 deadline so the exhibits dated August 20, 2018 are not part of the record considered by the Commission.

[48] August 20, 2018 Comments of the Other Settling Parties on the proposed decision at 3.

[49] *Ibid.*, emphasis added. Rule 12.6 provides in relevant part as follows:

> No discussion, admission, concession or offer to settle, whether oral or written, made during any negotiation on a settlement shall be subject to discovery, or admissible in any evidentiary hearing against any

Footnote continued on next page

"meaningful contribution" or whether that term has any relationship to our statutory obligation to determine whether an intervenor made a substantial contribution to our decision. We also note that the other Settling Parties did not take the opportunity to file reply comments stating their agreement with Mr. Rafferty's assertions in his own opening comments. In any case, we consider the comments of the other Settling Parties as we address Mr. Rafferty's comments below.

As we explain below, having reviewed Mr. Rafferty's comments and the comments of the other Settling Parties, we have determined that no substantive changes should be made to the PD.

7.1. Safety-related Contributions

The first section of Mr. Rafferty's comments respond to the PD's finding that Mr. Rafferty did not make any safety-related contributions to this proceeding. Mr. Rafferty asserts that "CAUSE achieved all the commitments to safety that it reasonably could have, since the case settled before the evidentiary hearing."[50]

Mr. Rafferty asserts that his written testimony (Exhibit 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*

---

participant who objects to its admission. Participating parties and their representatives shall hold such discussions, admissions, concessions, and offers to settle confidential and shall not disclose them outside the negotiations without the consent of the parties participating in the negotiations.

[50] Rafferty Comments at 4.

application."[51] We have further reviewed the record in response to Mr. Rafferty's comments and we disagree with his characterization of PG&E's application. First, PG&E devoted an entire volume of opening testimony to "Safety, Risk And Integrated Planning" (Exhibit PG&E-2). Chapter 2 of that exhibit addresses "Safety of the Public and Employees" and explains PG&E's intent to "implement a safety management system so that our teams are aligned in an integrated and systematic approach to safety and all activities and groups within the Company follow the same processes, methods and standards."[52] We disagree with Mr. Rafferty that Exhibit CAUSE-1 introduced concepts that were not a part of PG&E's application.

Furthermore, Mr. Rafferty's comments on this PD concede that PG&E's rebuttal testimony (Exhibit PG&E-21) stated that the company was "aligned" with most of CAUSE's proposals "even before the settlement process began."[53] We note that by "aligned" PG&E meant that it was already engaged in the activities that Mr. Rafferty recommended.[54]

Mr. Rafferty asserts that 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" which he describes as "substantial, possible unprecedented,

---

[51] *Ibid.,* emphasis added.

[52] Exhibit PG&E-2 at page 2-2.

[53] Rafferty Comments at 4.

[54] *See* Exhibit PG&E-21, Question and Answer 4, where PG&E provides detailed examples of activities already underway as of May 2017 when it rebutted CAUSE's testimony, several months before the settlement discussions began.

commitment[s] by PG&E to improve safety performance."[55] We address each of these Sections below.

First, regarding Section 3.2.8.8 of the Settlement Agreement (Risk Management and Integrated Planning Process) Mr. Rafferty asserts that "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." We agree with the discussion in the PD that at best, PG&E made a "commitment" to attempt to do certain things and this is different than a binding commitment to deliver specific results.

Second, regarding Section 3.2.8.9 of the Settlement Agreement (Disclosure of Safety Metrics) the PD concluded that "an agreement by PG&E to provide data to parties (not to the Commission), for an unspecified purpose, does not constitute a 'substantial contribution' to D.17-05-013 as that term is defined in Section 1802 (j)." In his comments on the PD, Mr. Rafferty asserts that "PG&E may be the first utility to agree to release detailed safety metrics on a monthly basis" and states that this provision involved substantial negotiation.[56] The other Settling Parties state that this provision "itemizes a variety of safety metrics and ensures that PG&E will make a good faith effort to provide non-confidential data, topics raised by Mr. Rafferty's testimony and addressed by the settlement due to his participation in the proceeding and settlement discussions."[57]

---

[55] Rafferty Comments at 4, emphasis added.

[56] *Id.* at 6.

[57] Comments of the Other Settling Parties at 3.

In our own review of Exhibit CAUSE-1, we cannot locate any testimony where Mr. Rafferty raises these topics, as the other Settling Parties assert. For this reason, we disregard their suggestion that Mr. Rafferty made a "material contribution" here. We agree with the PD's conclusion that Mr. Rafferty has not demonstrated a substantial contribution to D.17-05-013. As such, we are particularly reluctant to compensate Mr. Rafferty for time spent in the "substantial" negotiations referenced in his comments. We note, as did the PD, the point of view expressed by the Commission in D.98-04-059: "When it codified the intervenor compensation program, the Legislature struck a balance between competing goals: to encourage the effective and efficient participation of all groups that have a stake in the public utility regulation process while avoiding unproductive or unnecessary participation that duplicates the participation of others." Section 3.2.8.9 of the Settlement Agreement does not demonstrate that Mr. Rafferty's participation was productive or necessary.

Third, regarding Section 3.2.8.10 of the Settlement Agreement (Safety Standards and Benchmarking) the PD found to be inaccurate Mr. Rafferty's assertion that the Settlement Agreement included "the use of international standards and broader involvement of line employees in achieving continuous improvement in safety conditions." In comments on the PD, Mr. Rafferty asserts that this settlement provision "reflects a significant shift in PG&E policy to give greater consideration to management systems developed by industry, not government agencies."[58] The other Settling Parties state that this provision "addresses the use of 'voluntary consensus standards' that were promoted by

[58] Rafferty Comments at 5.

Mr. Rafferty in his opening testimony and an area addressed by the settlement due to his participation in the proceeding and settlement discussions."[59]

Our review of the record confirms that Mr. Rafferty did promote the concept of voluntary consensus standards in his opening testimony. However, the proceeding record also confirms that PG&E, in its rebuttal testimony a month later and two months prior to any settlement, agreed with CAUSE's proposal "that the Commission rely on international standards to supervise the development of management systems that will require utilities to develop, maintain and document compliance with regulatory mandates."[60] PG&E then explained further:

> PG&E is, and has been, supportive of management systems to help develop, maintain and document compliance with regulatory mandates. As mentioned in CAUSE's testimony, PG&E follows many recognized standards, including American Petroleum Institute Recommended Practice 1173, International Organization for Standardization (ISO) 55001 and Publicly Available Specification 55.5 Additionally, our supplier quality assurance group was certified in ISO 9001 in early 2016.
>
> Additional focus and development of management systems may continue to strengthen our compliance in safety areas. Nonetheless, as the Office of Ratepayer Advocates cautions in its testimony, PG&E must balance the cost of certification against its benefits. As mentioned in Exhibit (PG&E-2), Chapter 2, one major initiative for the Company is to develop a safety management system (SMS) to manage its safety risks. An SMS ensures all policies, processes and

[59] Comments of the Other Settling Parties at 3.

[60] Exhibit PG&E-21 at page 2-1, citing Exhibit CAUSE-1 at 5.

> organizational structures are aligned and executed consistently across the Company.[61]

In short, Exhibit PG&E-21 confirms that Section 3.2.8.10 of the Settlement Agreement does not "reflect a significant shift in PG&E policy" as claimed by Mr. Rafferty. The language in the Settlement Agreement simply affirms that PG&E will continue the activities that—according to PG&E's rebuttal testimony served several months earlier—were already underway. We concur with the PD's conclusion that no compensation is warranted for Mr. Rafferty's contribution to Section 3.2.8.10 of the Settlement Agreement.

The other Settling Parties specify a fourth provision of the Settlement Agreement to which they contend Mr. Rafferty provided a "meaningful contribution": Section 3.2.8.6 (Safety). The Settling Parties state that "this provision recognizes the importance of input on safety issues from field personnel that was a key component of the 'bubble up' concept promoted by Mr. Rafferty in his opening testimony and an area addressed by the settlement due to his participation in the proceeding and settlement discussions."[62]

Mr. Rafferty did not cite this provision in his comments on the PD. Nor did he cite Section 3.2.8.6 in his claim for compensation. Neither the August 2, 2016 Joint Motion for Settlement nor the Settlement Agreement itself specifically credited CAUSE for a contribution to Section 3.2.8.6, as was done in other instances. Most importantly, PG&E already addressed the "bubble up" concept in its April, 2016 rebuttal testimony and described initiatives that were already underway or would begin shortly: "[t]o take advantage of, and learn from, the

---

[61] *Id.* at page 2-1 to 2-2, emphasis added.

[62] Comments of the Other Settling Parties at 3.

knowledge of these front line employees, PG&E has implemented several companywide programs to emphasize personal and leadership safety accountability as well as to promote the importance of a questioning attitude."[63]

After detailing a number of examples, PG&E concludes this section of its rebuttal by responding to CAUSE's recommendations for "peer review" and "verifying compliance" with regulatory requirements: "PG&E generally agrees with CAUSE's 'bubble up' philosophy. However, PG&E does not agree with CAUSE's specific recommendations, nor that these recommendations could be 'quickly implemented and will immediately change corporate culture.'"[64]

Section 3.2.8.6 is a short paragraph in the Settlement Agreement: three sentences specify activities that PG&E "shall continue" to undertake, while the other sentence states that PG&E "shall provide" training "which includes instruction on the importance of receiving input on safety issues from field personnel." However, that sentence must be construed in harmony with PG&E's statement in rebuttal testimony that such efforts are already underway, which we cited above: "[t]o take advantage of, and learn from, the knowledge of [PG&E's] front line employees, PG&E has implemented several companywide programs to emphasize personal and leadership safety accountability as well as to promote the importance of a questioning attitude." For this reason, and absent any explanation from the other Settling Parties as to what Mr. Rafferty's "meaningful contribution" to Section 3.2.8.6 may have been, we decline to compensate Mr. Rafferty here.

---

[63] Exhibit PG&E-21 at page 2-3.

[64] Exhibit PG&E-21 at page 2-2 and 2-3, citing Exhibit CAUSE-1 at 7-9 and the PowerPoint attachment to CAUSE-1, slide 23.

Finally, regarding Mr. Rafferty's claim of "advocacy for safety during the ALJ's undergrounding proceeding", we can only observe that the ALJ did not, in fact, conduct an "undergrounding proceeding." PG&E's budget forecast for undergrounding was always part of the scope of this GRC, but Mr. Rafferty's comments on the ALJ's PD did not address any aspect of undergrounding that was within that scope.

7.2. Support for the Settlement Process

The second section of Mr. Rafferty's comments concern the PD's finding that Mr. Rafferty should not be compensated for any contributions toward the Settlement Agreement. We address those comments below, but we note at the outset that Mr. Rafferty asserts, with no support, that "the Commission grants time spent in negotiations with limited scrutiny." Were the Commission to actually approach compensation requests with this mindset, it would be acting contrary to both statute and Commission precedent by failing to ensure that compensated intervention provides value to the ratepayers who fund that compensation. Mr. Rafferty also contends, incorrectly, that in this proceeding "no one else represented safety." The discussions of safety in the Settlement Motion refer to input by TURN, ORA, and "the Settling Parties" as a whole, in addition to CAUSE.

Mr. Rafferty then proceeds to modify the "allocation of hours by issue" that every intervenor is required to provide with their claim for compensation, stating "I now subdivide the time claimed into four categories…". Such a modification of his original claim is not permitted under the rules of the compensation program, so we do not revisit this reorganized material here. We do address each of the activities claimed in Mr. Rafferty's new categories, and conclude that he offers no convincing argument that meets his obligation

pursuant to Rule 14.3 (c) to focus on factual, legal or technical errors in the proposed decision and in citing such errors shall make specific references to the record or applicable law.

7.2.1. Evaluation of the Economic Case

Mr. Rafferty asserts that "[b]efore 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. Since we have already agreed with the PD's finding that Mr. Rafferty did not contribute to the Settlement Agreement, we will not compensate him for his assessment of the "economic case" either.

7.2.2. Technical Support and General Negotiation

Mr. Rafferty asserts that "[a]ssistance in the preparation of the settlement and joint motion is normally sufficient to support all time spent in settlement discussions without further detail, citing D.06-11-032. That decision is distinguishable from the matter before us in this proceeding, because in D.06-11-032 the Commission found that the parties receiving compensation had made a substantial contribution to the settlement in the proceeding, and consequently compensated them for time spent pursuing that settlement. This differs from our decision today because we do not make such a finding that Mr. Rafferty contributed to the settlement addressed in D.17-05-013.

7.2.3. Specific Negotiations with PG&E

Mr. Rafferty seeks compensation for "all discussions with PG&E during the two-month settlement period that related to safety." Mr. Rafferty asserts that "[i]ndependent of the substantive contribution these provisions made, the Commission should recognize this time as support for the settlement." There is a circularity to this argument that the PD did not discuss. Mr. Rafferty only gained access to the settlement discussions because he was an active party that filed

testimony in this proceeding; all such parties were invited to the settlement discussions. However, the PD reviewed Mr. Rafferty's testimony and found that it does not meet his burden of production as a party in this proceeding, and for that reason does not provide sufficient foundation for his request for compensation. Nevertheless, that inadequate testimony allowed Mr. Rafferty into the settlement discussions, and he now seeks compensation for the hours spent in those discussions. The PD further found that he did not contribute to the Settlement Agreement, and the comments of the other Settling Parties on the PD concede that there is no clear nexus between the proposals in Mr. Rafferty's testimony and the contents of the Settlement Agreement. We see no benefit as a result of Mr. Rafferty's negotiations with PG&E, nor do we find that we should grant Mr. Rafferty's request that we recognize this time as support for the settlement. No compensation is warranted for Mr. Rafferty's negotiations with PG&E.

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

On March 20,2017 all the Settling Parties with the exception of CAUSE and the Alliance for Nuclear Responsibility filed and served opening comments on the proposed decision of the ALJ that addressed the Settlement Agreement. On the same day, CAUSE filed and served its own comments on the PD. In his comments on the PD addressing his compensation claim, Mr. Rafferty argues that he should also be compensated for those 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."[65]

The Commission addressed CAUSE's comments on the PD, as well as CAUSE's March 27, 2017 reply comments, in D.17-05-013:

> The opening and reply comments on the PD, as well as the opening comments on the APD, filed by CAUSE are procedurally improper for a number of reasons. Because CAUSE includes arguments in those comments in support of its future request for intervenor compensation, we discuss these improprieties here in order to assist the Commission when it evaluates any claim submitted by CAUSE.[66]

The Commission went on to describe and cite "significant material" in CAUSE's comments and reply comments barred by Rule 14.3 (c).[67] The Commission further noted that CAUSE's reply comments were filed after the Commission's 5 p.m. deadline and improperly responded to PG&E's reply comments that had been filed earlier the same day. Nothing in CAUSE's comments or reply comments assisted us in deciding the issues in this proceeding, and we support the determination in the PD that no compensation is warranted for CAUSE's March 20,2017 comments on the ALJ's PD, or the March 27, 2017 reply comments.

7.3. "Procedural Burdens" and Claim Preparation

The third section of Mr. Rafferty's comments on the PD address the PD's rejection of compensation for "time spent responding to procedural burdens and preparing this claim." We agree with the PD that any time identified by Mr.

---

[65] Rafferty Comments on compensation claim PD, at 9.

[66] D.17-05-013 at 238.

[67] *Id.* at 238-240.

Rafferty as spent responding to "burdens" did not, by his own description, make a substantial contribution to D.17-05-013. We also support the PD's determination that Mr. Rafferty should receive compensation for time spent preparing his claim that is commensurate with the compensation received by all other intervenors for their own claim preparation, not seven times as many hours (equal to the 128 hours claimed by Mr. Rafferty divided by the average of 18 hours claimed by other intervenors).

7.4. Disputes with Commission Staff

The fourth section of Mr. Rafferty's comments on the PD address other aspects of the "burden" claimed by Mr. Rafferty due to his difficulties with compliance with filing requirements. Again, those hours did not result in a substantial contribution to D.17-05-013 and are not reimbursable.

7.5. Hourly Rate

The fifth and final section of Mr. Rafferty's comments on the PD address the PD's reduction of the hourly rate claimed by Mr. Rafferty. Here, Mr. Rafferty makes a false statement about the PD:

> 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.[68]

In fact, the PD summarized the information provided by Mr. Rafferty in his compensation claim. There, Mr. Rafferty states

> Dr. Rafferty does not appear in the Commission's rate table. In I.04-02-007, Dr. Rafferty acted primarily as an expert witness, as there were few legal or procedural issues. Decision 07-07-006 [I.04-02-007]

[68] Rafferty Comments at 16.

> (7/23/2007) at 13-14, which gave Dr. Rafferty the top rate for experts - $360 in 2006. D.07-07-006 reduced the requested rate of $365 on the basis that the 2006 top range for experts was $360 at the time…[69]

This Commission bases its decisions on compensation matters on the information provided by the intervenor in its claim. It is not our responsibility, nor that of the ALJ, to sort out conflicting information like that provided by Mr. Rafferty in his claim. As such, Mr. Rafferty's allegation that the PD misrepresented prior Commission decisions is improper. Furthermore, Mr. Rafferty's characterization of the PD's determination of his hourly rate as a "false and disparaging claim" is not supported by our review of the PD's discussion, which reviewed Mr. Rafferty's relevant experience in detail in order to justify its determination of the proper rate for Mr. Rafferty as an attorney. Mr. Rafferty did not identify any factual, legal or technical errors in the proposed decision's determination of his hourly rate. Therefore, we have not modified this section the PD.

8. Assignment of Proceeding

Michael J. Picker is the assigned Commissioner, and Stephen C. Roscow is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. Exhibit CAUSE-1, served April 29, 2016 does not provide sufficient foundation for Scott J. Rafferty's request for compensation.

2. Where specified in this decision, Scott J. Rafferty has made a substantial contribution to D.17-05-013.

---

[69] Rafferty (CAUSE) Intervenor Compensation Claim at 22, emphasis added.

3. The requested hourly rates for Scott J. Rafferty, as adjusted herein, are comparable to market rates paid to attorneys having comparable training and experience and offering similar services.

4. The claimed costs, as adjusted herein, are reasonable and commensurate with the work performed.

5. The total of reasonable compensation is $33,855.

Conclusions of Law

1. The Claim, with the adjustments set forth above, satisfies all requirements of Pub. Util. Code §§ 1801-1812.

2. General Order 66-C § 2.2 excludes from public inspection "[r]ecords or information of a confidential nature furnished to, or obtained by the Commission." The personal financial information filed by Scott J. Rafferty is confidential in nature and making it generally available for public inspection would unnecessarily intrude on his privacy.

3. The personal financial information filed by Scott J. Rafferty at the Commission should remain under seal, and should not be made accessible to anyone other than Commission staff, the assigned Commissioner, the assigned ALJ, or the ALJ then designated as the Law and Motion Judge.

4. The comment period for today's decision should not be waived.

O R D E R

IT IS ORDERED that:

1. Scott J. Rafferty is awarded $33,855 as compensation for his substantial contributions to Decision 17-05-013.

2. Within 30 days of the effective date of this decision, Pacific Gas and Electric Company shall pay claimant the total award. Payment of the award shall include compound interest at the rate earned on prime, three-month non-

financial commercial paper as reported in Federal Reserve Statistical Release H.15, beginning September 30, 2017, the 75th day after the filing of Scott J. Rafferty's request, and continuing until full payment is made.

3. The motion filed by Scott J. Rafferty for leave to file his personal financial information under seal is granted as set forth in the body of this ruling. This information shall remain under seal and shall not be disclosed to anyone other than Commission staff, the assigned Commissioner, the assigned Administrative Law Judge (ALJ), or the ALJ then designated as the Law and Motion Judge.

4. The comment period for today's decision is not waived.

This order is effective today.

Dated December 13, 2018, at San Francisco, California.

MICHAEL PICKER
President
CARLA J. PETERMAN
LIANE M. RANDOLPH
MARTHA GUZMAN ACEVES
CLIFFORD RECHTSCHAFFEN
Commissioners