

Decision 07-08-021 August 23, 2007

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

In the Matter of the Application of Golden State Water Company (U 133 W) for an Order pursuant to Public Utilities Code Section 851 approving a Settlement in a Water Rights Adjudication, and for an Order pursuant to Section 454 approving the proposed Ratemaking Treatment of the costs of the Adjudication and Settlement.

Application 06-02-026  
(Filed February 24, 2006)

**OPINION GRANTING INTERVENOR COMPENSATION  
TO DONALD R. WARD FOR THE ORCUTT AREA ADVISORY GROUP, INC.  
FOR SUBSTANTIAL CONTRIBUTIONS  
TO DECISION 07-05-041**

This decision awards Donald R. Ward for the Orcutt Area Advisory Group, Inc. (Ward) \$11,976.72 in compensation for his substantial contributions to Decision (D.) 07-05-041. This represents a slight decrease from the amount requested due to ineligible expenses claimed by Ward. This proceeding remains open.

**1. Background**

Golden State Water Company (Golden State) initiated this proceeding by filing an Application on February 24, 2006 seeking Commission authorization to enter into a stipulation with various other parties to resolve many of the issues pending in the superior court adjudication of the Santa Maria groundwater basin. The Division of Ratepayer Advocates (DRA) and others protested the

application. The assigned Administrative Law Judge (ALJ) referred this matter to mediation and parties made progress on resolving their disputes. However, new uncertainties regarding the underlying state court litigation have prevented the parties from fully resolving matters related to this Application. Accordingly, parties submitted a partial settlement of this proceeding to the Commission. The Commission approved this partial settlement in D.07-05-041. The proceeding remains open to address the other matters not included in the settlement because of the uncertainties regarding the state court litigation.

## **2. Requirements for Awards of Compensation**

The intervenor compensation program, which is set forth in Pub. Util. Code §§ 1801-1812,<sup>1</sup> 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 other appropriate time that we specify. (Section 1804(a).)

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<sup>1</sup> All subsequent statutory references are to the Public Utilities Code unless otherwise indicated.

2. The intervenor must be a customer or a participant representing consumers, customers, or subscribers of a utility subject to our jurisdiction. (Section 1802(b).)
3. 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. (Section 1804(c).)
4. The intervenor must demonstrate “significant financial hardship.” (Sections 1802(g) and 1804(b)(1).)
5. The intervenor’s presentation must have made a “substantial contribution” to the proceeding, through the adoption, in whole or in part, of the intervenor’s contention or recommendations by a Commission order or decision or as otherwise found by the Commission. (Sections 1802(i) and 1803(a).)
6. The claimed fees and costs must be reasonable (Section 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 (Section 1806), and productive (D.98-04-059).

In the following discussion, the procedural issues in Items 1-4 above are combined and a separate discussion of Items 5-6 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 a proceeding in which a PHC is held, the intervenor must file and serve its NOI between the date the proceeding was initiated until 30 days after the PHC is held. (Rule 17.1(a)(1).) The PHC in this matter was held on April 19, 2006. Ward timely filed his NOI on May 15, 2006.

In his NOI, Ward asserted financial hardship. On July 7, 2006, the ALJ ruled that Ward met the financial hardship condition pursuant to § 1802(g).

Section 1802(b)(1) defines a “customer” as: (A) a participant representing consumers, customers or subscribers of a utility; (B) a representative who has been authorized by a customer; or (C) a representative of a group or organization authorized pursuant to its articles of incorporation or bylaws to represent the interests of residential or small business customers. (Section 1802(b)(1)(A) through (C).) The ALJ’s July 7, 2006 ruling found Ward a customer pursuant to § 1802(b)(1)(B).

Ward filed his request for compensation on June 11, 2007, within 60 days of D.07-05-041 being issued. No party opposed the request.

In view of the above, we affirm the ALJ’s July 7, 2006 ruling and find that Ward has satisfied all the procedural requirements necessary to make his request for compensation in this proceeding.

### **3. Substantial Contribution**

In evaluating whether a customer made a substantial contribution to a proceeding, we look at several things. First, whether the Commission adopted one or more of the factual or legal contentions, or specific policy or procedural recommendations put forward by the customer. (Section 1802(i).) Second, if the customer’s contentions or recommendations paralleled those of another party, whether the customer’s participation unnecessarily duplicated or materially supplemented, complemented, or contributed to the presentation of the other party or to the development of a fuller record that assisted the Commission in making its decision. (Sections 1801.3(f) and 1802.5.)

As described in § 1802(i), the assessment of whether the customer made a substantial contribution requires the exercise of judgment.

In assessing whether the customer meets this standard, the Commission typically reviews the record, composed in part of pleadings of the customer and, in litigated matters, the hearing transcripts, and compares it to the findings, conclusions, and orders in the decision to which the customer asserts it contributed. It is then a matter of judgment as to whether the customer's presentation substantially assisted the Commission.<sup>2</sup>

Should the Commission not adopt any of the customer's recommendations, compensation may be awarded if, in the judgment of the Commission, the customer's participation substantially contributed to the decision or order. For example, if a customer provided a unique perspective that enriched the Commission's deliberations and the record, the Commission could find that the customer made a substantial contribution. With this guidance in mind, we turn to the claimed contributions Ward made to the proceeding. Ward claims that his participation constitutes substantial contribution because he participated fully in all aspects of the proceeding by filing a protest, attending the prehearing conference, engaging in mediation and reviewing the settlement adopted by the Commission in D.07-05-041.

D.07-05-041 reflects the significant impacts of Ward's advocacy. The adopted settlement reflects a compromise on recovery of litigation expenses, consistent with Ward's position. Accordingly, we find that Ward made a substantial contribution to D.07-05-041.

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<sup>2</sup> D.98-04-059, 79 CPUC2d 628 at 653.

**3.1. Contributions of Other Parties**

Section 1801.3(f) requires an intervenor to avoid participation that unnecessarily duplicates that of similar interests otherwise adequately represented by another party, or participation unnecessary for a fair determination of the proceeding. Section 1802.5, however, allows an intervenor to be eligible for full compensation if its participation materially supplements, complements, or contributes to that of another party if that participation makes a substantial contribution to the Commission order.

Regarding contributions by other parties, in a proceeding involving multiple participants, it is virtually impossible to completely avoid some duplication of the work of other parties. Ward states that he took all reasonable steps to keep duplication to a minimum and to ensure that his work served to supplement, complement, or contribute to the showing of the other very active party in this proceeding, DRA. We agree with Ward’s assessment.

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

**4. Reasonableness of Requested Compensation**

Ward requests \$12,676.72 for its participation in this proceeding, as follows:

<b>Work on Proceeding</b>				
<b>Attorney/Staff</b>	<b>Year</b>	<b>Hours</b>	<b>Hourly Rate</b>	<b>Total</b>
Ward	2006	69.5	\$100	\$6,950.006,950
	2007	4.5	\$100	\$ 450

<b>Work on Proceeding</b>				
<b>Attorney/Staff</b>	<b>Year</b>	<b>Hours</b>	<b>Hourly Rate</b>	<b>Total</b>
<b>Subtotal:</b>				<b>\$7,400</b>
<b>Other Fees<sup>3</sup></b>				
<b>Item</b>	<b>Year</b>	<b>Hours</b>	<b>Hourly Rate</b>	<b>Total</b>
Travel (Ward)	2006	30	\$ 50	\$1,500
<b>Preparation of NOI and Compensation Request<sup>4</sup></b>				
<b>Attorney/Staff</b>	<b>Year</b>	<b>Hours</b>	<b>Hourly Rate</b>	<b>Total</b>
Ward	2006	26	\$ 50	\$1,300
	2007	8	\$ 50	\$ 400
<b>Subtotal Hourly Compensation:</b>				<b>\$ 1,700</b>
<b>Costs</b>				<b>\$ 2,076.72</b>
<b>Total Requested Compensation</b>				<b>!E20 Is Not In Table</b>

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

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

<sup>3</sup> Hourly rates are reduced 50% for travel.

<sup>4</sup> Hourly rates are reduced 50% for preparation of the NOI and compensation request.

Ward documented his claimed hours by presenting a daily breakdown of the hours of he worked, accompanied by a brief description of each activity. The hourly breakdown reasonably supports the claim for total hours

#### **4.2. Intervenor Hourly Rates**

We next take into consideration whether the claimed fees and costs are comparable to the market rates paid to experts and advocates having comparable training and experience. Ward seeks an hourly rate of \$100 for 2006 and 2007. This rate is supported by D.07-01-009 and, as Ward requested, we adopted the hourly rate of \$100 for Ward for years 2006 and 2007.

#### **4.3. Productivity**

In D.98-04-059, we directed customers to demonstrate productivity by assigning a reasonable dollar value to the benefits of their participation to ratepayers. The costs of a customer's participation should bear a reasonable relationship to the benefits realized through its participation. This showing assists us in determining the overall reasonableness of the request. Ward's participation was productive in that the impact of that participation far exceeded fees and other costs. The settlement approved in D.07-05-041 provides a significantly better outcome for ratepayers than the proposal by Golden State in its Application.

#### **4.4. Direct Expenses**

The itemized direct expenses submitted by Ward include the following:



<b>Printing &amp; Photocopying</b>	\$ 40.00
<b>Postage:Membership Mailing</b>	\$300.00
<b>Telephone &amp; Fax</b>	\$ 73.00
<b>Travel-Mileage</b>	\$739.20
<b>Hotel Expenses</b>	\$524.52
<b>Meals</b>	\$400.00
<b>Total Expenses</b>	\$2,076.72

With the exception of the cost for meals and postage, the cost breakdown included with the request shows the miscellaneous expenses to be commensurate with the work performed. We find these costs reasonable. We do not, however, compensate for meals in any circumstances nor do we compensate intervenors for mailings to its members.

## 5. Award

As set forth in the table below, we award Ward \$11,976.72.

<b>Work on Proceeding</b>				
<b>Attorney/Staff</b>	<b>Year</b>	<b>Hours</b>	<b>Hourly Rate</b>	<b>Total</b>
Ward	2006	69.5	\$100	\$6,950.006,950
	2007	4.5	\$100	\$ 450
<b>Subtotal:</b>				<b>\$7,400</b>
<b>Other Fees</b>				
<b>Item</b>	<b>Year</b>	<b>Hours</b>	<b>Hourly Rate</b>	<b>Total</b>
Travel (Ward)	2006	30	\$ 50	\$1,500
<b>Preparation of NOI and Compensation Request<sup>5</sup></b>				
<b>Attorney/Staff</b>	<b>Year</b>	<b>Hours</b>	<b>Hourly Rate</b>	<b>Total</b>
Ward	2006	26	\$ 50	\$1,300
	2007	8	\$ 50	\$ 400
<b>Subtotal:</b>				<b>\$ 1,700</b>
<b>Total Expenses</b>				<b>\$ 1,376.72</b>
<b>FINAL AWARD</b>				<b>\$11,976.72</b>

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 August 25, 2007, the 75<sup>th</sup> day after Ward 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. Ward's records should identify specific issues for which it

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<sup>5</sup> Hourly rates are reduced 50% for preparation of the NOI and compensation request.

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.

## **6. Waiver of Comment Period**

This is an intervenor compensation matter. Accordingly, as provided by Rule 14.6(c)6) of the Commission's Rules of Practice and Procedure, we waive the otherwise applicable 30-day public review and comment period for this decision.

## **7. Assignment of Proceeding**

John A. Bohn is the assigned Commissioner, and Regina M. DeAngelis is the assigned ALJ in this proceeding.

### **Findings of Fact**

1. Ward has satisfied all the procedural requirements necessary to claim compensation in this proceeding.
2. Ward made a substantial contribution to D.07-05-041, as described herein.
3. Ward requested hourly rates for himself that are reasonable when compared to the market rates for persons with similar training and experience.
4. Ward requested related expenses that, as adjusted herein, are reasonable and commensurate with the work performed.
5. The total of the reasonable compensation is \$11,976.72.
6. The appendix to this opinion summarizes today's award.

### **Conclusions of Law**

1. Ward has fulfilled the requirements of §§ 1801-1812, which govern awards of intervenor compensation, and is entitled to intervenor compensation for his claimed expenses, as adjusted herein, incurred in making substantial contributions to D.07-05-041.

2. Ward should be awarded \$11,976.72 for his contribution to D.07-05-041.
3. This order should be effective today so that Ward may be compensated without further delay.
4. This proceeding remains open.

**O R D E R**

**IT IS ORDERED** that:

1. Donald R. Ward for the Orcutt Area Advisory Group, Inc. (Ward) is awarded \$11,976.72 as compensation for his substantial contributions to Decision 07-05-041.
2. Within 30 days of the effective date of this decision, Golden State Water Company shall pay Ward the total award. Payment of the award shall include interest at the rate earned on prime, three-month commercial paper as reported in Federal Reserve Statistical Release H.15, beginning August 25, 2007, the 75<sup>th</sup> day after the filing date of Ward's request for compensation, and continuing until full payment is made.
3. This proceeding remains open.

This order is effective today.

Dated August 23, 2007, at San Francisco, California.

MICHAEL R. PEEVEY  
President  
DIAN M. GURENEICH  
JOHN A. BOHN  
RACHELLE B. CHONG  
TIMOTHY ALAN SIMON  
Commissioners



**APPENDIX**

## Compensation Decision Summary Information

<b>Compensation Decision:</b>	D0708021	<b>Modifies Decision?</b> No
<b>Contribution Decision(s):</b>	D0705041	
<b>Proceeding(s):</b>	A0602026	
<b>Author:</b>	ALJ DeAngelis	
<b>Payer(s):</b>	Golden State Water Company	

## Intervenor Information

<b>Intervenor</b>	<b>Claim Date</b>	<b>Amount Requested</b>	<b>Amount Awarded</b>	<b>Multiplier?</b>	<b>Reason Change/Disallowance</b>
Donald R. Ward for the Orcutt Area Advisory Group, Inc.	6/11/07	\$12,676.72	\$11,976.72	No	Ineligible expenses

## Advocate Information

<b>First Name</b>	<b>Last Name</b>	<b>Type</b>	<b>Intervenor</b>	<b>Hourly Fee Requested</b>	<b>Year Hourly Fee Requested</b>	<b>Hourly Fee Adopted</b>
Donald	Ward	Expert	Donald R. Ward for the Orcutt Area Advisory Group, Inc.	\$100	2006	\$100
Donald	Ward	Expert	Donald R. Ward for the Orcutt Area Advisory Group, Inc.	\$100	2007	\$100

**(END OF APPENDIX)**