

Decision 06-05-006 May 11, 2006

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

In the Matter of the Application of California-American Water Company (U210W) for Authority Pursuant to Public Utilities Code Section 454 to Restructure and Consolidate its Rates for its Monterey and Felton Districts.

Application 04-08-012  
(Filed August 11, 2004)

**OPINION DENYING FELTON FLOW'S REQUEST FOR INTERVENOR COMPENSATION FOR CONTRIBUTIONS TO DECISION 05-09-004**

This decision finds that Felton FLOW<sup>1</sup> did not make a substantial contribution to Decision (D.) 05-09-004, and denies its request for \$49,719 in intervenor compensation. This proceeding is closed.

**Background**

In California-American Water Company's (CalAm) test years 2003 and 2004 water general rate case for Felton District, the Commission issued D.04-05-023 finding reasonable a 34.6% increase for 2003 and a further 7.1% for 2004, but deferred imposing the higher rates out of concern for their possible rate shock effect on Felton customers. Instead, CalAm was required to continue charging its then-current Felton rates, to accumulate the shortfall in a balancing

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<sup>1</sup> Felton FLOW (FLOW) has also referred to itself as "Felton Friends of Locally Owned Water," the name under which this compensation request was filed. In entering its official appearance at the prehearing conference, its primary representative asked the Commission to officially refer to it as the former. (RT, page 2.)

account, and to file a new application proposing district consolidation and a method to amortize the shortfall. CalAm subsequently filed Application (A.) 04-08-012 proposing to consolidate Felton District with Monterey District for ratemaking, to tailor the resulting ratemaking procedures so as to insulate Felton from Monterey's steeply inverted rate structure and extraordinary water supply costs, and to recover the large and growing balancing account from customers of both districts.

Four parties opposed CalAm and actively participated in the proceeding: the Commission's Division of Ratepayer Advocates (DRA, then known as the Office of Ratepayer Advocates); FLOW; the County of Santa Cruz; and Monterey Peninsula Water Management District (MPWMD). The Commission held public participation hearings in Monterey and Felton in December 2004 and four days of evidentiary hearing in January, February and March 2005. The record was submitted on closing briefs on April 29, 2005. On September 8, 2005, the Commission issued D.05-09-004 concluding that consolidating Felton and Monterey Districts was not in the public interest. CalAm was ordered to implement the previously suspended D.04-05-023 rates and to recover the balancing account from Felton customers over a six-year period.

### **Requirements for Awards of Compensation**

The intervenor compensation program, enacted in Pub. Util. Code §§ 1801-1812, requires California jurisdictional utilities to pay the reasonable costs of an intervenor's participation if the intervenor makes a substantial

contribution to a Commission proceeding.<sup>2</sup> 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 filing a sufficient notice of intent to claim compensation (NOI) within 30 days of the prehearing conference (or in special circumstances, at other appropriate times that we specify). (§ 1804(a).)
2. The intervenor must be a participant representing consumers, customers, or subscribers of a utility subject to our jurisdiction; a representative who has been authorized by a customer; or a representative of a group or organization authorized to represent the interests of residential customers. (§ 1802(b).)
3. The intervenor should file and serve a request for a compensation award within 60 days of a final order or decision in a hearing or proceeding. (§ 1804(c).)
4. The intervenor must demonstrate “significant financial hardship.” (§§ 1802(g), 1804(b)(1).)
5. The intervenor’s presentation must have made a “substantial contribution” to the proceeding through the adoption, in whole or in part, of the intervenor’s contention or recommendations by a Commission order or decision. (§§ 1802(i), 1803(a).)
6. The claimed fees and costs must be reasonable (§ 1801), necessary for and related to the substantial contribution (D.98-04-059), comparable to the market rates paid to others

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<sup>2</sup> All statutory references are to the Public Utilities Code.

with comparable training and experience (§ 1806), and productive (D.98-04-059).

We evaluate FLOW's compliance with these criteria below.

### **Procedural Issues**

The Administrative Law Judge (ALJ) held a prehearing conference on September 20, 2004, and FLOW filed its NOI on October 20. FLOW's filing was timely.

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 customers. FLOW is an unincorporated association formed to advance the interests of Felton residents and ratepayers in ensuring clean, affordable water utility service in the community. Its initial NOI filing lacked either articles or incorporation or bylaws that would demonstrate that it was authorized to represent the interests of residential customers, but instead included a request that it be allowed additional time to pass bylaws if they were essential to finding it eligible. The ALJ granted the request, and FLOW filed a supplement its NOI on December 8, 2004.

Under Section 1804(a)(2)(C), "Within 15 days after service of the notice of intent to claim compensation, the administrative law judge may direct the staff, and may permit any other interested party, to file a statement responding to the notice." CalAm filed such a statement on November 4, 2004 opposing FLOW's NOI. On November 19, 2004, FLOW filed a timely reply to CalAm's response as permitted under the Commission's Rules of Practice and Procedure, Rule 76.75. On December 15, 2004 the assigned ALJ ruled that FLOW is indeed an

organization authorized to represent the interests of residential customers, and thus is a customer of the third type as defined in Section 1802(b)(1)(C), and that it had met the financial hardship test. We affirm the ALJ's ruling.

FLOW timely filed its request for compensation on November 7, 2005, within 60 days of D.05-09-004 being issued.<sup>3</sup> We find that FLOW has satisfied all of the procedural requirements (Items 1 through 4 above) necessary to claim intervenor compensation in this proceeding.

### **Substantial Contribution**

In evaluating whether a customer made a substantial contribution to a proceeding, we look at several things. First, we consider whether the ALJ or Commission adopted one or more of the factual or legal contentions or specific policy or procedural recommendations put forward by the customer.<sup>4</sup> Second, if the customer's contentions or recommendations paralleled those of another party, we consider whether the customer's participation 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.<sup>5</sup> Assessment of whether the customer made a substantial contribution as described in § 1802(i) requires the exercise of judgment.

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<sup>3</sup> Section 1804(c). CalAm thereupon filed the timely response permitted under Section 1804(c), opposing FLOW's compensation request in its entirety. In our discussion of FLOW's claimed substantial contributions below, we have considered CalAm's grounds for opposing FLOW to the extent it is necessary to do so.

<sup>4</sup> § 1802(i).

<sup>5</sup> § 1802.5.

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>6</sup>

Should the Commission not adopt any of the customer's recommendations, compensation may be awarded if, in the Commission's judgment, 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.<sup>7</sup> With this guidance in mind, we turn to the contributions FLOW claims to have made to this proceeding.

### **FLOW's Claimed Contributions**

FLOW's compensation filing lists the grounds upon which it claims to have successfully opposed CalAm's proposed consolidation, and specifically cites several as substantial contributions.<sup>8</sup> We quote them below, then address FLOW's involvement in each in turn:

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<sup>6</sup> D.98-04-059, 79 CPUC2d 628 at 653.

<sup>7</sup> See D.03-12-019, discussing D.89-03-063 (31 CPUC2d 402) (awarding San Luis Obispo Mothers for Peace and Rochelle Becker compensation in the Diablo Canyon Rate Case because their arguments, although ultimately unsuccessful, forced the utility to thoroughly document the safety issues involved).

<sup>8</sup> Grounds as set forth in FLOW's compensation request, pages 4 and 5; repeated in part as substantial contributions at pages 9 through 11.

- (1) [CalAm] failed to adequately address the Commission's objectives in instituting this proceeding since other available alternative consolidations would provide greater benefits for Felton residents with much less impact on the rates of customers in other districts;
- (2) it failed to comply with the Division of Ratepayer Advocates consolidation guidelines;
- (3) it failed to provide the benefits Commission precedent requires for consolidating water utility districts;
- (4) it was strenuously opposed by the local Felton community as well as every other customer group participating in the proceeding;
- (5) it would require Monterey ratepayers to provide a subsidy to Felton ratepayers at a time when Monterey ratepayers are facing enormous increases in their own rates and potentially severe rate shock as a result of costly proposals to address water shortages in the Monterey District;
- (6) it would obscure the true cost for Cal-Am to provide service in Felton and may inappropriately affect the then pending special election in Felton to determine whether bonds should be authorized for the public acquisition of the Felton District;
- (7) it would not even be consistent with Cal-Am's own long term objective of consolidating all districts statewide, except Monterey; and
- (8) finally, a superior means of addressing the concerns of Felton residents regarding high rates and rate shock is available and being pursued – the public acquisition of the facilities by a public agency with access to tax exempt financing.

### **Alternative Consolidation (Issue 1)**

FLOW argued that combining Felton District with Sacramento and Larkfield Districts would be a superior alternative to mitigate high rates and rate shock in Felton. In its prepared direct testimony, FLOW correctly credits Santa Cruz for initiating that proposal in A.02-09-030, and renewing it in this proceeding.<sup>9</sup> We rejected that alternative in D.05-09-004.<sup>10</sup>

### **Consolidation Guidelines (Issue 2)**

We did find that a Felton-Monterey consolidation would meet only one of the four DRA guidelines, and that was one factor on which the decision relied in rejecting the proposal.<sup>11</sup> FLOW, however, merely endorsed the evidentiary presentations of others in this area.<sup>12</sup> Neither FLOW's testimony nor any of its exhibits provided significant supporting evidence, and it did little that contributed to the record on this topic.

### **Consolidation Precedents (Issue 3)**

In its opening brief, FLOW states that CalAm's proposal "fails to provide the benefits Commission precedent requires for consolidating water utility districts...."<sup>13</sup> In D.05-09-004, we did note and discuss earlier decisions that

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<sup>9</sup> Exhibit F-1, the prepared direct testimony of Tod Landis for FLOW, pages 20, 21.

<sup>10</sup> D.05-09-004, pages 28 and 29, and Finding of Fact 18.

<sup>11</sup> D.05-09-004, page 7 *et seq.*, and Findings of Fact 3, 4, and 5.

<sup>12</sup> Compare FLOW's minimal participation in this topic with, *e.g.*, DRA's Exhibit ORA-1.

<sup>13</sup> FLOW opening brief, page 1.

CalAm had cited as precedent in support of its application.<sup>14</sup> However, beyond the single statement in its opening brief, and FLOW's references to the DRA guidelines and rate shock, FLOW made little if any mention during the proceeding of what Commission precedent may require for consolidating water districts in California, and did not develop the record in this area.

#### **Community Opposition (Issue 4)**

FLOW is correct that consolidation as proposed was strenuously opposed by the local community. We cited as an important factor in our decision the many letters and e-mails we received in opposition from concerned customers in both districts, and the strident opposition of speakers at the well attended public participation hearing in Felton.<sup>15</sup> However, while many of those writers and speakers were aligned with FLOW, we see little nexus between their writing to us and attending the public participation hearing on the one hand, and the counsel costs FLOW seeks to recover on the other. And, contrary to its claims, FLOW was not "the only party that represented the local Felton District ratepayers in this proceeding." DRA participated vigorously throughout the proceeding. In contrast to FLOW's primary focus on service quality and prospective public acquisition (both issues rejected as considerations in the decision), DRA developed a record more relevant to our decision, examining in depth the operating and accounting methods and details of CalAm's proposal, suggesting realistic ratemaking measures and rate designs, and presenting evidence to support a number of arguments we accepted.

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<sup>14</sup> D.05-09-004, page 12.

<sup>15</sup> D.05-09-004, page 26 *et seq.*

### **Rate Effects (Issue 5)**

FLOW contributed little to the discussion of the rate effects CalAm's proposed consolidation would have on either Felton or Monterey customers. In the 23 pages of testimony and 16 attachments in its only pre-served exhibit, Exhibit F-1, FLOW made at most only minor reference to the specific rate effects consolidation with Monterey would have, and provided no original analysis. Most of FLOW's primary exhibit, all six of its other exhibits, and all of its witnesses addressed primarily service problems and other issues that ultimately had no impact on the outcome. In contrast, both CalAm and DRA presented and analyzed the rate and revenue requirement effects in depth, and we found those presentations helpful in reaching our decision.

### **Election Effect (Issue 6)**

FLOW did argue in the proceeding that combining Felton and Monterey Districts would obscure CalAm's true cost of providing service in Felton and might thereby inappropriately affect the then-pending special election on public acquisition. However, it was Santa Cruz that provided the bulk of the background material on the Mello-Roos Community Facilities District and had us take official notice of the progress the County, San Lorenzo Valley Water District, and Felton voters were making toward public acquisition.<sup>16</sup> In the decision, we explicitly rejected the possibility of public acquisition as a factor in

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<sup>16</sup> D.05-09-004 at page 23 and footnote 38; and RT 182, 183. All but two of Santa Cruz' eleven exhibits pertained in some way to public acquisition; FLOW provided two pertinent documents in Exhibit F-1, tabs 14 and 15.

granting or denying the application.<sup>17</sup> FLOW's efforts on this topic did not make a substantial contribution to the proceeding.

### **Long-Term Objectives (Issue 7)**

FLOW's compensation request states, "Felton FLOW also pointed out that Cal-Am's proposed consolidation of the Felton and Monterey Districts is not even consistent with its own long term objective of consolidating all districts statewide, except Monterey."<sup>18</sup> This is true; FLOW twice pointed out the inconsistency in its opening brief.<sup>19</sup> However, it was MPWMD that first drew this information out of CalAm's witness and developed it on cross-examination, not FLOW.<sup>20</sup> FLOW, following up on MPWMD's cross-examination, focused on using it to support its ultimately rejected proposal to consolidate Felton with Sacramento and Larkfield.<sup>21</sup> FLOW's effort here did not constitute "substantial contribution" in the sense required by Section 1801(i).

### **Public Acquisition Alternative (Issue 8)**

FLOW has consistently argued that a superior means of addressing Felton residents' concerns over high rates and rate shock is available and being pursued: public acquisition of the facilities by a public agency with access to tax

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<sup>17</sup> D.05-09-004, page 25 and Finding of Fact 15.

<sup>18</sup> FLOW's compensation request, page 10.

<sup>19</sup> FLOW opening brief at pages 2, 7 and 8.

<sup>20</sup> RT 339-343.

<sup>21</sup> RT 351.

exempt financing. In this respect, FLOW joins Santa Cruz and MPWMD.<sup>22</sup> As we noted earlier, however, Santa Cruz provided more factual evidence to develop the record in this area than did FLOW. In any case, we explicitly rejected the possibility of public acquisition as a factor in granting or denying the application. FLOW's efforts on this issue did not make a substantial contribution to the proceeding.

### **FLOW's Reply Comments**

FLOW also claims to have made a substantial contribution through its reply comments on the ALJ's proposed decision:

Felton FLOW also opposed the Administrative Law Judge's Proposed Decision on grounds that, while it rejected Cal-Am's consolidation proposal which Felton FLOW supported, it did nothing to mitigate rate shock in Felton. Administrative Law Judge McVicar responded to these concerns, and to ORA's similar objections, by modifying the Proposed Decision to phase in Cal-Am's recovery of its balancing account balance over six years, thereby mitigating, to some degree, rate shock in Felton. [Footnotes omitted.]<sup>23</sup>

As we noted in the Comments on the Proposed Decision section of D.05-09-004, "After considering the comments and replies, the principal hearing officer revised his proposed decision to endorse a combination of the CalAm and ORA recommendations." FLOW's late-filed comments on the proposed decision were rejected and played no part.<sup>24</sup> Under Rule 77.5, "Replies to comments..."

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<sup>22</sup> D.05-09-004, pages 5-6, and 24.

<sup>23</sup> FLOW's compensation request, page 11.

<sup>24</sup> D.05-09-004, footnote 49.

shall be limited to identifying misrepresentations of law, fact or condition of the record contained in the comments of other parties.” Thus, FLOW’s reply to the other parties’ comments could not, and did not, affect the change as it claims.

As the discussion above demonstrates, FLOW’s assertions that its presentation made a substantial contribution to the adoption, in whole or in part, of the Commission’s order in this proceeding are not supported by the record. We conclude that FLOW’s request for compensation in this proceeding should be denied.

**Reasonableness of Requested Compensation**

FLOW requests \$49,719.60 for its participation in this proceeding:

<b>Name</b>	<b>Expertise</b>	<b>Year</b>	<b>Hours</b>	<b>Rate</b>	<b>Amount</b>
<b>Substantive Work</b>					
Edward O'Neill	Attorney	2004	33.7	\$435	\$14,659.50
		2005	76.9	435	33,451.50
Jeffrey Gray	Attorney	2004	0	285	0
		2005	5.0	285	1,425.00
Judy Pau	Paralegal	2004	4.1	135	553.50
		2005	7.8	135	1,053.00
<b>Subtotal</b>					51,142.50
Less 15% Discount					7,671.38
<b>Subtotal</b>					43,471.12
<b>Intervenor Comp</b>					
Edward O'Neill	Attorney	2004	10.9	\$435	\$4,741.50
		2005	3.5	435	1,522.50
Jeffrey Gray	Attorney	2004	0	285	0
		2005	2.0	285	570.00
Judy Pau	Paralegal	2004	2.5	135	337.50
		2005	7.0	135	945.00
<b>Subtotal</b>					8,116.50
Less 50% Discount					4,058.25
<b>Subtotal</b>					4,058.25
<b>Travel</b>					
Edward O'Neill	Attorney	2005	3.5	\$435	\$1,522.50
<b>Subtotal</b>					1,522.50
Less 50% Discount					761.25
<b>Subtotal</b>					761.25
<b>Subtotal Counsel</b>					48,290.62
Expenses					1,428.98
<b>Total Claim</b>					<b>\$49,719.60</b>

FLOW's compensation request relates entirely to professional fees of its attorneys and seeks nothing for the time of its members. The Commission requires intervenors to allocate their time by specific issue to the extent feasible. FLOW did not, claiming there was little basis for doing so here. Instead, FLOW allocated its time to three categories: substantive issues in the aggregate, intervenor compensation work, and travel. FLOW reduced the substantive issues category by 15% to reflect its judgment that work related to service issues may not have contributed to the Commission's decision sufficiently to warrant compensation. The latter two categories were reduced by one-half in compliance with the Commission's standard practice of allowing compensation for preparing the notice of intent and the compensation claim, and for travel, at one-half the otherwise-applicable rates.

In general, the components of a request must constitute reasonable fees and costs of the customer's preparation and participation that resulted in a substantial contribution in a proceeding. Because we conclude that FLOW did not make a substantial contribution in this proceeding, it is not necessary to assess to what degree FLOW's hours and costs are related to the work performed, whether the fees and costs are comparable to the market rates paid to experts and advocates having comparable training and experience and offering similar services, and whether the claimed costs bear a reasonable relationship to the benefits realized through FLOW's participation.

### **Waiver of Comment Period**

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

### **Assignment of Proceeding**

Michael Peevey is the Assigned Commissioner in this proceeding and James McVicar is the assigned ALJ.

### **Findings of Fact**

1. FLOW has satisfied the procedural requirements necessary to request an award of compensation in this proceeding.
2. The Commission in D.05-09-004 denied CalAm's proposal to consolidate Felton and Monterey Districts, an outcome FLOW supported.
3. The elements in the record upon which D.05-09-004 was based were developed by parties other than FLOW.
4. FLOW did not make a substantial contribution to D.05-09-004.
5. The appendix to this opinion summarizes today's order.

### **Conclusions of Law**

1. FLOW has not fulfilled all of the requirements of Sections 1801-1812 governing awards of intervenor compensation.
2. FLOW is not entitled to intervenor compensation for its claimed contributions to D.05-09-004.
3. FLOW's claim for intervenor compensation should be denied.
4. Per Rule 77.7(f)(6), the comment period for this compensation decision may be waived.
5. For administrative efficiency, this order should be made effective today.

## **O R D E R**

**IT IS ORDERED** that:

1. Felton FLOW's request for an award of intervenor compensation for substantial contributions to Decision 05-09-004 is denied.

2. The comment period for today's decision is waived.
3. Application 04-08-012 is closed.

This order is effective today.

Dated May 11, 2006, at San Francisco, California.

MICHAEL R. PEEVEY  
President  
GEOFFREY F. BROWN  
DIAN M. GRUENEICH  
RACHELLE B. CHONG  
Commissioners

Commissioner John A. Bohn, being necessarily absent, did not participate.

### Compensation Decision Summary Information

<b>Compensation Decision:</b>	D0605006
<b>Contribution Decision(s):</b>	D0509004
<b>Proceeding(s):</b>	A0408012
<b>Author:</b>	ALJ McVicar
<b>Payer(s):</b>	California-American 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>
Felton FLOW	November 7, 2005	\$49,719.60	0	No	Failure to make substantial contribution

### 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>
Edward	O'Neill	Attorney	Felton FLOW	\$435	2004	N/A
Edward	O'Neill	Attorney	Felton FLOW	\$435	2005	N/A
Jeffrey	Gray	Attorney	Felton FLOW	\$285	2005	N/A
Judy	Pau	Paralegal	Felton FLOW	\$135	2004	N/A
Judy	Pau	Paralegal	Felton FLOW	\$135	2005	N/A