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Decision PROPOSED DECISION OF ALJ SULLIVAN (Mailed 3/9/2011)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Consider Smart Grid Technologies Pursuant to Federal Legislation and on the Commission's own Motion to Actively Guide Policy in California's Development of a Smart Grid System.

Rulemaking 08-12-009
(Filed December 18, 2008)

**DECISION GRANTING INTERVENOR COMPENSATION TO
THE CONSUMER FEDERATION OF CALIFORNIA FOR SUBSTANTIAL
CONTRIBUTION TO DECISION 10-06-047**

This decision awards Consumer Federation of California \$12,668.87 for its substantial contributions to Decision 10-06-047. This represents a decrease of \$24,798.63 or 66.19% from the amount requested due to unproductive effort, sub-standard compensation claim, undocumented costs, and excessive hours. Responsibility for today's award payment will be allocated to the affected utilities.

1. Background

This rulemaking is a result of Governor Arnold Schwarzenegger signing into law Senate Bill (SB) 17 (Padilla) which went into effect on January 1, 2010. SB 17 directs the Commission to "determine the requirements for a Smart Grid Deployment plan consistent with the policies set forth in the bill and federal law" by July 1, 2010. The older procedural history leading to this phase of this proceeding can be found in Decision (D.) 09-12-046 and the assigned

Commissioner and Administrative Law Judge's (ALJ) Joint Ruling of September 28, 2009.

D.09-12-046 set policies to promote access to electricity usage and price information by consumers and authorized third parties that required implementation rules. D.09-12-046 ordered an additional phase of the proceeding in order to develop the rules necessary to implement these policies, consistent with the Energy Independence and Security Act of 2007 (H.R. 6, 110th Congress, or EISA), the public interest, and state privacy rules.

Pursuant to SB 17 and in consultation with the Energy Commission, Independent System Operator and other key stakeholders, the subsequent proceeding, D.10-06-047, set the forth the Commission's criteria for the use, the development and the review of Smart Grid Deployment Plans. These criteria were as follows:

1. How should the Commission use Smart Grid Deployment Plans? The Commission identified three different roles that a deployment plan could play: a) Creating a baseline against which the Commission could measure progress; b) Providing utilities with approved deployment plans that guide investment during review of the project and help in the determination of whether a specific project is reasonable and consistent with the Commission's overall Smart Grid vision; Provide the utility investing in an approved project with an elimination of after the fact reasonableness reviews.¹
2. What elements must a Smart Grid Deployment Plan have? The decision required utilities to follow a common outline in preparing their Smart Grid Deployment Plans. That

¹ D.10-06-047 at 17.

outline consists of eight topics: a) Smart Grid Vision Statement; b) Deployment Baseline; c) Smart Grid Strategy; d) Grid Security and Cyber Security Strategy; e) Smart Grid Roadmap; f) Cost Estimates; g) Benefits Estimates; and h) Metrics.² In addition the decision set requirements for each of these sections concerning the topics that the Smart Grid Deployment Plans must address, the information that the deployment plans must provide and how the deployment plans must link each section and topic back to the policies set forth in SB 17 and the relevant federal law.

3. How should the Commission consider/approve deployment plans? The decision determined that a single proceeding involving the relevant Investor Owned Utilities (IOUs) would ensure the most efficient and through review of the initial Smart Grid Deployment Plans.³
4. How should the Commission review/consider specific smart grid investments? The decision determined that the IOUs should file an annual report that describes their current initiatives in regards to Smart Grid deployments and investments. Each annual report is to include: A summary of the utility's deployment of Smart Grid technologies during the past year and its progress toward meeting its Smart Grid Deployment Plan; the costs and benefits of Smart Grid deployment to ratepayers during the past year and current initiatives for Smart Grid deployments and investments.⁴

² D.10-06-047 at 29.

³ *Id.* at 88.

⁴ *Id.* at 100.

2. Requirements for Awards of Compensation

The intervenor compensation program, which is set forth in Pub. Util. Code §§ 1801-1812,⁵ 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).)
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

⁵ All subsequent statutory references are to the Public Utilities Code unless otherwise indicated.

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 1-4 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 dates 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 March 27, 2009 and Consumer Federation of California (CFC) timely filed its NOI on April 16, 2009.

In its NOI, (CFC) asserted financial hardship. On May 13, 2009 the ALJ ruled that CFC meets 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. (§ 1802(b)(1)(A) through (C).) On May 13, 2009 the ALJ issued a ruling that found CFC a customer pursuant to § 1802(b)(1)(A).

Regarding the timeliness of the request for compensation, CFC filed its request for compensation on August 23, 2010, within 60 days of D.10-06-047 being issued. No party opposed the request. In view of the above, we affirm the ALJ's ruling and find that CFC has satisfied all the procedural requirements necessary to make its 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, 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. (§ 1802(i).) Second, if the customer's contentions or recommendations paralleled those of another party, we look at whether the customer's participation unnecessarily duplicated or materially supplemented, complemented, or contributed to the presentation of the other party. (§§ 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.⁶⁷

⁶ D.98-04-059, 79 CPUC2d 628 at 653.

⁷ Joint Ruling, R.08-12-009.

With this guidance in mind, we turn to the claimed contributions CFC made to the proceeding. The Commission analyzed CFC's position on each of the issues described in Section 1 of this decision.

It is difficult to evaluate CFC's contribution to D.10-06-047. CFC commented on many aspects of the proceeding, however, their comments were inconsistent, sometimes making an insightful comment, sometimes far off base and garbled. The instant request for compensation, as it relates to CFC's asserted contributions to the decision does not directly follow the format or frame the relevant issues, as set forth in the revised February 8, 2010 Scoping Ruling or as presented in the body of D.10-06-047. CFC has framed the issues in a manner meant to highlight its contribution to the proceeding⁸ and gloss over its omissions and/or failures. In addition CFC has requested compensation for "the remaining 90 percent of time not charged to D.09-12-046"⁹ without specific citations or references to how that work is applicable to the instant decision.

On the issue of how the Smart Grid Deployment plans should be used, the Commission found that CFC was the single commenter stating that a deployment plan can serve in lieu of a subsequent reasonableness review. CFC also argued for a detailed cost benefit analysis at the time of the filing of the deployment plan. This argument was found to be unpersuasive as information on Smart Grid technologies is developing rapidly and undertaking a detailed

⁸ CFC Request for Award of Compensation (filed 8/23/10) at 2.

⁹ CFC Request for Award of Compensation at 12.

review of costs and benefits far in advance of an investment could not yield reliable results.¹⁰ We find that CFC did not contribute to this issue.

On the issue of what elements a Smart Grid Deployment Plan should have, CFC asserts that it contributed to this issue as “some” of the elements suggested by CFC were similar to those elements included in the list proposed by the utilities and adopted by the Commission. The most generous reading of this section finds that CFC’s criteria are the same as less than half of the adopted criteria. CFC is not referenced in this portion of the decision. We find the CFC’s contribution to this issue was limited.

CFC has claimed contribution on the issue of the Metrics the IOUs use to implement deployment of the Smart Grid. CFC noted that D.10-06-047 mentioned CFC’s comments on the issue of metrics.¹¹ The comment referenced by CFC does not indicate anything more than the Commission noted CFC’s point of view, as was done for a number of intervenors. The Commission declined to adopt an initial set of metrics, instead it determined that a workshop was needed in order to create successful metrics that would allow the Commission and stakeholders to measure the state of the grid.¹² We find that CFC’s contribution on this issue was limited.

On the issue of how the Commission should consider and approve Smart Grid Deployment plans, including the issue of consumer requirements and education, CFC emphasized the importance of a targeted educational effort and

¹⁰ D.10-06-047 at 22.

¹¹ CFC Request for Award of Compensation at 8.

¹² D.10-06-047.

that consumers need to understand the reasons for the Smart Grid Deployment and the advantages that the system could offer.¹³ CFC's recommendations for consumer education were important and adopted in the decision. We find that CFC contributed on this issue.

On the issues of Cyber-Security and access to information, CFC argued that there should be protections in place to guard against unauthorized access or disruption caused by disgruntled employees, industrial espionage and other factors.¹⁴ In addition CFC argued the authorized access to consumer information via the Smart Grid by third-parties must be controlled and made secure.¹⁵ CFC's comments and the importance of security, privacy and their review of the law were well done and on point. We find that CFC contributed on this issue.

¹³ CFC Request for Award of Compensation at 9.

¹⁴ *Id.* at 10.

¹⁵ *Id.* at 11.

5. Reasonableness of Requested Compensation

CFC requests \$37,467.50 for its participation in this proceeding, as follows:

Work on Proceeding				
Attorney	Year	Hours	Hourly Rate	Total
Alexis K. Wodtke	2009/10 ¹⁶	97.3 ¹⁷	\$350.00	\$34,055.00
Preparation of NOI and Compensation Request				
Attorney	Year	Hours	Hourly Rate	Total
	2009/10 ¹⁸	19.5 ¹⁹	\$175.00	\$3,412.50
Total Requested Compensation				\$37,467.50

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.

5.1. 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.

¹⁶ It is impossible to discern with any degree of certainty to which year CFC has allocated its hours.

¹⁷ We have corrected here for CFC's erroneous figure of 185.3 hours. CFC's timesheets are less than clear, however, the amount of compensation, requested, \$34,055.00, would equal 97.3 hours at \$350.00 per hour.

¹⁸ Supra, note 16.

¹⁹ We have corrected here for CFC's erroneous figure of 18.5 hours. The amount of compensation requested, \$3412.50, would equal 19.5 hours at \$175.00 per hour.

CFC believes that the total number of hours claimed is reasonable given the scope of this proceeding and the complexity of the issues. We disagree. CFC's²⁰ itemization of services and expenditures contains numbers that simply do not add up. When the Commission requested clarification on its numbers CFC was less than helpful. The breakdown of hours and issues provided as Exhibit A to the instant request, similarly, do not add up. We have spent an inordinate amount of time trying to decipher CFC's intent, with little success. CFC's claim that the remaining 90 percent of its time not charged to D.09-12-046 should be compensated in the instant proceeding is not supported. The instant request does not accurately allocate CFC's time and costs among the issues. We cannot determine what, if any, relevance the D.09-12-046 claims have to the instant proceeding.

As noted previously, CFC's categorization of the issues in D.10-06-047 do not comport with the issues identified in the Scoping Ruling and the Decision. We have reviewed CFC's breakdown of time and issues contained in its spreadsheet.²¹ We have determined that CFC made contributions in the areas of: Privacy/Security-2.7 hours, Metrics-5.7 hours, Cyber-Security-10.2 hours and Access to Information/Privacy-14.3 hours. All other time is disallowed. This is a reduction of ~~62.5~~[66.19](#) percent. We have also reduced the time claimed for preparation of the compensation request by ~~62.5~~[66.19](#) percent. We caution CFC that we may make even larger disallowances in the future if it again files a

²⁰ CFC Request for Award of Compensation, at 12.

²¹ *Id.*, Exhibit A.

request that fails to accurately account for hours and allocate its time and costs accurately among the issues.

5.2. 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 and offering similar services.

CFC seeks an hourly rate of \$350.00 for attorney Alexis Wodtke, for work performed in 2009 and 2010. We previously approved this rate for Wodtke in D.97-07-015 and D.09-11-030, and adopt it here.

6. Productivity

D.98-04-059 directed customers to demonstrate productivity by assigning a reasonable dollar value to the benefits of their participation to ratepayers. (D.98-04-059, at 34-35.) 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. CFC states that there will be monetary benefits arising out of this rulemaking. CFC goes on to state that it cannot value these benefits nor predict if they will actually materialize. CFC asserts that a Smart Grid Vision Statement, cost benefit analysis, as well as metrics will benefit consumers. In the instant request and in subsequent communications with the Commission, CFC has been unable and/or unwilling to articulate or demonstrate a significant or productive contribution to this decision, but with the reductions adopted, we find that the approved hours were productive.

7. Award

As set forth in the table below, we award \$~~14,052.50~~[12,688.87](#).

Work on Proceeding				
Attorney	Year	Hours	Hourly Rate	Total
Alexis K. Wodtke	2009/10	32.90	\$350.00	\$11,515.00
Preparation of Compensation Request				
Attorney	Year	Hours	Hourly Rate	Total
Alexis K. Wodtke	2009/10	6.59	\$175.00	\$1,153.87
CALCULATION OF FINAL AWARD				
TOTAL AWARD				\$12,668.87

8. Comments on Proposed Decision

Although this is an intervenor compensation matter where, as provided by Rule 14.6(c)(6) of our Rules of Practice and Procedure, the otherwise applicable 30-day comment period for this decision can be waived, in view of the reductions of the requested amount, we provide parties an opportunity to comment. The proposed decision in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. [No reply comments were filed.](#)

9. Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and Timothy J. Sullivan is the assigned ALJ in this proceeding.

Findings of Fact

1. CFC has satisfied all the procedural requirements necessary to claim compensation in this proceeding.
2. CFC made a substantial contribution to D.10-06-047 as described herein.

3. CFC requested hourly rates for its representatives that are reasonable when compared to the market rates for persons with similar training and experience.

4. The total of the reasonable compensation is \$12,668.87.

5. The appendix to this decision summarizes today's award.

Conclusions of Law

1. CFC has fulfilled the requirements of §§ 1801-1812, which govern awards of intervenor compensation, and is entitled to intervenor compensation for its claimed expenses, as adjusted herein, incurred in making substantial contributions to D.10-06-047.

2. CFC should be awarded \$12,668.87 for its contribution to D.10-06-047.

3. This order should be effective today so that CFC may be compensated without further delay.

O R D E R

IT IS ORDERED that:

1. Consumer Federation of California is awarded \$12,668.87 as compensation for its substantial contributions to Decision 10-06-047.

2. Within 30 days of the effective date of this decision, Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E), and Southern California Edison (SoCal Edison) shall pay Consumer Federation of California their respective shares of the award. We direct PG&E, SDG&E, and SoCal Edison to allocate payment responsibility among themselves, based on their California-jurisdictional gas and electric revenues for the 2010 calendar year, to reflect the year in which the proceeding was primarily litigated. 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 November 8, 2010, the 75th day after the filing date of Consumer Federation of California's request for compensation, and continuing until full payment is made.

3. Rulemaking 08-12-009 remains open.

This order is effective today.

Dated _____, at San Francisco, California.

APPENDIX

Compensation Decision Summary Information

Compensation Decision:		Modifies Decision? NO
Contribution Decision(s):	D1006047	
Proceeding(s):	R0812009	
Author:	ALJ Sullivan	
Payer(s):	Southern California Edison Company, San Diego Gas & Electric, and Pacific Gas and Electric Company.	

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
Consumer Federation of California	8/23/10	\$37,467.50	\$12,668.87	NO	Unproductive effort, sub-standard compensation claim, undocumented costs, and excessive hours

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Alexis	Wodtke	Attorney	Consumer Federation of California	\$350.00	2009	\$350.00
Alexis	Wodtke	Attorney	Consumer Federation of California	\$350.00	2010	\$350.00

(END OF APPENDIX)

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