Decision **PROPOSED DECISION OF ALJ SIMON** (Mailed 7/20/2012)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Continue Implementation and Administration of California Renewables Portfolio Standard Program.	Rulemaking 11-05-005 (Filed May 5, 2011)

DECISION GRANTING INTERVENOR COMPENSATION TO L. JAN REID FOR SUBSTANTIAL CONTRIBUTION TO DECISION 11-12-020

1. Summary

This decision awards L. Jan Reid $9,492.12 for his substantial contributions to Decision (D.) 11-12-020. This represents a decrease of $7,597.72 or 44.6% from the amount requested due to the removal of hours spent on the issues outside the scope of D.11-12-020 (premature compensation claim), and due to excessive hours. Today's award will be paid from the intervenor compensation fund, pursuant to D.00-01-020.

2. Background

This rulemaking was initiated to continue the implementation and administration of California Renewables Portfolio Standard (RPS) Program. As a successor docket to Rulemaking 08-08-009, this proceeding involves oversight of the RPS Program. The ongoing administration required additional program modification and development, to implement recent legislation, i.e., Senate Bill 2 (1X) (Simitan), Stats. 2011, ch. 1, that made numerous changes to the RPS program, most notably, extending the RPS goal from 20% of retail sales of all California investor-owned utilities (IOUs), electric service provider (ESPs),

and community choice aggregators (CCAs) by the end of 2010, to 33% of retail sales of IOUs, ESPs, CCAs and publicly owned utilities by the end of 2020. In new Pub. Util. Code § 399.15(b),[1] the statute directs the Commission to set retail sellers' RPS procurement quantity requirements pursuant to certain statutory standards, by January 1, 2012. Decision (D.) 11-12-020 sets the new RPS procurement quantities required by the Code, for all retail sellers (IOUs, ESPs, and CCAs).

L. Jan Reid (Reid) has actively participated in this proceeding.

3. Requirements for Award of Compensation

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

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

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 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.

3.1. 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 June 13, 2011. Reid timely filed his NOI on July 5, 2011.

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).) Reid asserts he is a customer described in § 1802(b)(1)(A) as a participant representing consumers. D.98-04-059 explains that a "'participant representing consumers' is an actual customer who represents more than his own narrow self-interest; a self-appointed representative" (D.98-04-059 at 30). The NOI states that Reid receives residential electric and gas service from PG&E and although represents himself in this proceeding, his participation will benefit all residential customers of PG&E. D.11-03-019 found that Reid met the § 1802(b)(1)(A) definition of the "customer."[2] We make the similar finding here.

Reid asserted financial hardship based on the finding made in D.11-03-019,[3] pursuant to § 1802(g). Under the provisions of § 1804(b)(1), we are allowed to extend that finding to this proceeding.

Regarding the timeliness of the request for compensation, Reid filed his request for compensation on January 30, 2012, within 60 days of the issuance of D.11-12-020.[4] No party opposed the request. We find that Reid has satisfied all the procedural requirements necessary to make his request for compensation in this proceeding.

4. 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

---

[2] "With Reid's interest in the proceeding arising primarily from his role as a customer of the utility and also from the broader interests of other customers, Reid's status falls within the characteristics of § 1802(b)(1)(A)." (D. 11-03-019 at 5.)

[3] D.11-03-019 at 6.

[4] D.11-12-020 issued on December 5, 2011.

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.[5]

With this guidance in mind, we turn to the claimed contributions Reid made to the proceeding.

Quantitative Measures. Reid argues that the statutory language required that "quantities" be the measure of progress in RPS procurement in the intervening years of a compliance period[6] and does not allow purely qualitative measures.

We note that almost all parties, including The Utility Reform Network (TURN) and Coalition of California Utility Employees (CCUE), came to the same conclusion. D.11-12-020 stated that the reasonable progress for the

---

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

[6] *See* Section 399.15(b)(2)(B).

compliance periods should be determined by means of quantitative targets for the intervening years (D.11-12-020, Conclusion of Law 5 at 22). We find that Reid provided contributions on this issue.

RPS Targets. Based on his econometric study of the effect of compliance goals on RPS prices, Reid recommended certain annual RPS compliance goals[7] using the linear trend approach. Reid provided detailed explanations for his choice of the targets. The Commission adopted a recommendation of Alliance for Retail Energy Markets, Calpine Corporation, and Southern California Edison Company that the statutory language should be read to require simply 20% of total retail sales for the period, without any structure for the intervening years. D.11-12-020 noted that this recommendation was more consistent with the statutory language that identifies targets for "intervening years" only for the two later compliance periods. The Commission stated that although Reid's proposal met the statutory test of being "equal to an average of 20 percent of retail sales" for the 2011-2013 compliance period, it relied on specific targets for the intervening years, which were not part of the statutory description of this first compliance period. (D.11-12-020 footnote 19 at 11). Although Reid's specific recommendation was not adopted, we find that, in part, Reid's analysis contributed to the decision.

---

[7] Reid proposed targets of 19% in 2011, 20% in 2012, and 21% in 2013. Comments of L. Jan Reid on New Procurement Targets and Certain Compliance Requirements for the Renewables Standard Portfolio Program of August 30, 2011 (hereinafter referred to as August 30, 2011 comments), at 6-7.

Start of New Compliance Period. The ALJ's ruling of July 15, 2011, asked parties for their views on how the compliance period denominated "January 1, 2011 to December 31, 2013, inclusive," in new § 399.15(b)(1)A) should be treated.

Most parties, including Reid[8], asserted that the new compliance period requirements begin January 1, 2011. Reid argued that the intent of the Legislature in setting a beginning of the compliance period, was that the Commission should no longer account for a 20% RPS after December 31, 2010, and should begin to account for a 33% RPS requirement beginning on January 1, 2011. D.11-12-020 stated that "the 2011-2013 compliance period begins on January 1, 2011 and ends on December 31, 2013, by the express terms of the statute."[9] We find that Reid's analysis on this question contributed to the Commission's approach to this issue.

Linear Trend. The straight-line trend was proposed in the ALJ Ruling of July 15, 2011, and many parties, including Reid, supported that approach. Reid recommended that a linear trend (i.e., straight-line trend) be used to determine RPS targets for the years 2014-2020. D.11-12-020 specifically referred to Reid's and TURN/CCUE's argument against those who objected to any quantitative targets and proposed qualitative measures.[10] Reid contributed to this issue.

Flexible Compliance and Deficits. Although Reid claims compensation for his contributions to theses two issues, we cannot consider Reid's compensation claim in this decision. Under § 1801.3(d), intervenors are

---

[8] August 30, 2011 comments at 5.

[9] D.11-12-020 at 10.

[10] D.11-12-020 at 14.

compensated for making a substantial contribution to proceedings of the Commission, as determined by the Commission it its orders and decisions. The issues of flexible compliance and deficits were outside the scope of D.11-12-020. Reid's claim as it relates to these issues is premature and can be re-submitted after the decision or decisions on these issues.

Correction of Minor Error in the Proposed Decision (PD) Leading to D.11-12-020. Reid noticed a minor factual error in the PD regarding a number of the parties supporting a straw proposal for setting the target for each of the three years as 20% of retail sales.[11] The error was corrected in D.11-12-020.[12] We find that Reid contributed to this matter.

5. Contributions of Other Parties

Section 1801.3(f) requires an intervenor to avoid participation that duplicates that of similar interests otherwise adequately represented by another party, or participation unnecessary for a fair determination of the proceeding. § 1802.5 provides that "[p]articipation by a customer that materially supplements, complements, or contributes to the presentation of another party, including the commission staff, may be fully eligible for compensation if the participation makes a substantial contribution to a commission order or decision…"

Reid asserts that his participation did not duplicate that of other parties. Reid states that he as a matter of his practices does not participate on issues where his input would not be unique. Reid represented customer interests that

---

[11] Comments of L. Jan Reid on PD of ALJ Simon at 4.

[12] D.11-12-020 at 11.

would otherwise be underrepresented in this proceeding, and his participation was unique. Reid indicates that on several occasions in the course of the proceeding he conferred with the Division of Ratepayer Advocates (DRA) and TURN,[13] to avoid duplication of the efforts. We find that no unnecessary duplication of other parties' participation took place. Where Reid's position or argument aligned with the positions of other parties, especially, TURN and DRA, Reid used his independent analysis and thus materially supplemented or complemented the presentations made by other parties.

6. Reasonableness of Requested Compensation

Reid requests $17,045.67 for his participation in this proceeding, as follows:

Work on Proceeding				
Attorney/Staff	**Year**	**Hours**	**Hourly Rate**	**Total**
L. Jan Reid	2011	86.30	$185.00	$15,965.50
Subtotal:				**$15,965.50**
Preparation of NOI and Compensation Request				
Attorney/Staff	**Year**	**Hours**	**Hourly Rate[14]**	**Total**
L. Jan Reid	2011	2.90	$92.50	$268.25
L. Jan Reid	2012	8.30	$92.50	$767.75
Subtotal:				**$1,036.00**
Expenses				$44.17[15]
Total Requested Compensation				**$17,045.67**

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

[13] Reid states he does not claim compensation for all of these communications. Reid's intervenor compensation claim at 10, footnote 4.

[14] Work on intervenor compensation matters is compensated at ½ professional rate.

[15] Here, we have corrected a typographical error in the requested amount ($44.13).

resulted in a substantial contribution. The issues we consider to determine reasonableness are discussed below.

6.1. 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.

We have found that Reid's claim related to the issues of flexible compliance and deficits is premature because they were outside the scope of the issues addressed in D.11-12-020. We remove from the award the total of 24.40 hours spent on these matters. Reid may include these hours in his claim related to the decision or decisions concerning these matters. Hours in the subsequent analysis do not include the removed hours.

There were no evidentiary hearings in this proceeding, and the record on the issues addressed in D.11-12-020 was based largely on parties' comments. Reid's August 30, 2011 comments on new procurement targets and certain compliance requirements for the RPS Program contain the majority of Reid's analysis, argument and contributions in the proceeding's phase leading to D.11-12-020. Reid's September 12, 2011 reply comments on new procurement targets, in part, repeated recommendations made in the August 30th comments, and, in part, asserted Reid's position against opinions of several other parties. Reid's comments on the PD filed in November of 2011, mostly repeated Reid's position and argument already presented to the Commission. The comments also noted a minor factual error in the PD.

We carefully reviewed Reid's comments, comments of other parties, and the final decision, and find hours Reid spent on the September 12th, and November 17th and 22nd comments excessive as weighted against the value of his work's actual contributions to D.11-12-020, and research and analysis required to provide these contributions. We note that a significant portion of the claimed hours (86.30) was spent on the RPS targets issues (18.70 hours), where Reid's interpretation of the statute and his recommendation, were, in part, rejected by the Commission. We reduce hours spent writing the September 12th comments by one-third, and November comments by one-half, for the total of 14.03 hours. We take into consideration a modest hourly rate requested for Reid's work in this proceeding, and thus forego deeper disallowances.

Reid spent 2.90 hours to prepare his NOI, which we find excessive, and reduce by 1.00 hour, to reflect a more reasonable effort. Reid spent 8.30 hours preparing his compensation request. We find the hours excessive for the compensation matter involving one person's work over approximately five months, and one decision. We approve 4.5 hours for this task. We encourage the intervenor to use the Commission standardized forms for these documents, which is more time-efficient.[16]

6.2. 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.

---

[16] The forms and related Instructions can be downloaded from the Commission's website at http://www.cpuc.ca.gov/PUC/IntervenorCompGuide/.

Reid seeks an hourly rate of $185 for work performed in 2011. We previously approved this rate for Reid in D.11-08-015, and adopt it here. Reid's hourly rate for work on the intervenor compensation matters in 2012 at half professional hourly rate is based on the rate of $185.

6.3. Direct Expenses

The itemized direct expenses as reflected in the time records submitted by Reid in support of the request include the following:

Printing & Photocopying	$26.00
Postage & Delivery	$18.17
Total Expenses	$44.17

The cost breakdown included with the request shows the miscellaneous expenses to be commensurate with the work performed. We find these costs reasonable.

7. 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.

Reid asserts that although he contributed to the proceeding in a manner that was productive and will result in future benefits to ratepayers that exceed the cost of participation, assigning an actual dollar value to these benefits is difficult. Typically, it is difficult to quantify such benefits in the Commission's policy-making proceedings. We find, however, that contributions to the decision that ensures sufficient procurement from RPS-eligible resources result in future benefits to ratepayers that exceed the cost of Reid's participation in the process

leading to D.11-12-010. We find that, with the reductions and adjustments made by this decision, the requested amount is reasonable.

8. Award

As set forth in the table below, we award Reid $9,492.12.

Work on Proceeding				
Attorney/Staff	**Year**	**Hours**	**Hourly Rate**	**Total**
L. Jan Reid	2011	47.87	$185	$8,855.95
Work on Proceeding Total:				**$8,855.95**
Preparation of NOI and Compensation Request				
Attorney/Staff	**Year**	**Hours**	**Hourly Rate**	**Total**
L. Jan Reid	2011	1.90	$92.50	$175.75
L. Jan Reid	2012	4.50	$92.50	$416.25
NOI and Compensation Request Total:				**$592.00**
CALCULATION OF FINAL AWARD				
Work on Proceeding				$8,855.9
NOI and Compensation Request Preparation				$592.00
Expenses				$44.17
TOTAL AWARD				**$9,447.95**

The order instituting this rulemaking named as respondents all retail sellers, including large electric utilities, small electric utilities, multi-jurisdictional electric utilities, electric service providers and all current community choice aggregators.[17] D.11-12-020 affects all California retail sellers under the Commission's jurisdiction for RPS purposes, including electrical corporations, community choice aggregators and electric service providers.[18] As a broad array of the utilities is involved in this matter, we find it appropriate to authorize

[17] OIR at 15 and 24.

[18] D.11-12-020, footnote 7 at 4; § 399.12(j).

payment of today's awards from the Commission's intervenor compensation program fund, as described in D.00-01-020. 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 April 14, 2012, the 75th day after Reid 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. Reid's records should identify specific issues for which he requested compensation, the actual time he spent, the applicable hourly rates, 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.

9. Comments on the Proposed Decision

This is an intervenor compensation matter. As provided in Rule 14.6(c)(6) of our Rules of Practice and Procedure, we normally waive the otherwise applicable 30-day comment period for a proposed decision. Because the Commission is sizably reducing the amount requested in this award, we allow comments on this proposed decision. Comments were filed on August 9, 2012, by L. Jan Reid. Reid's comments have been carefully considered. A calculation error in the amount of $44.17 has been corrected but no other changes to the compensation award are warranted.

10. Assignment of Proceeding

Mark J. Ferron is the assigned Commissioner, and Anne E. Simon is the assigned ALJ for this portion of this proceeding.

Findings of Fact

1. L. Jan Reid has satisfied all the procedural requirements necessary to claim compensation in this proceeding.
2. L. Jan Reid made a substantial contribution to D.11-12-020 as described herein.
3. L. Jan Reid requested hours of work on some issues that were not considered in D.11-12-020.
4. L. Jan Reid requested hourly rates that are reasonable when compared to the market rates for persons with similar training and experience.
5. L. Jan Reid's requested related expenses that are reasonable and commensurate with the work performed.
6. The total of the reasonable compensation is $9,492.12.
7. The Appendix to this decision summarizes today's award.

Conclusions of Law

1. L. Jan Reid 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.11-12-020.
2. L. Jan Reid's request related to the issues that were not considered in D.11-12-020 is premature and is not awarded in this decision.
3. L. Jan Reid should be awarded $9,492.12 for his contribution to D.11-12-020.

4. This order should be effective today so that L. Jan Reid may be compensated without further delay.

O R D E R

IT IS ORDERED that:

1. L. Jan Reid is awarded $9,492.12 as compensation for his substantial contributions to Decision 11-12-020.

2. Within 30 days of the effective date of this decision, L. Jan Reid's award shall be paid from the intervenor compensation program fund, as described in Decision 00-01-020. 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 April 14, 2012, the 75th day after the filing date of L. Jan Reid's request for compensation, and continuing until full payment is made.

This order is effective today.

Dated _____, at San Francisco, California.

APPENDIX

Compensation Decision Summary Information

Compensation Decision:		**Modifies Decision? No**
Contribution Decision:	D1112020	
Proceeding:	R1105005	
Author:	ALJ Anne E. Simon	
Payer:	CPUC intervenor compensation fund	

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
L. Jan Reid	1/30/12	$17,045.67	$9,492.12	No	Excessive hours

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
L. Jan	Reid	Expert	L. Jan Reid	$185	2011	$185
L. Jan	Reid	Expert	L. Jan Reid	$185	2012	$185

(END OF APPENDIX)