Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the Commission's own motion to determine the impact on public benefits associated with the expiration of ratepayer charges pursuant to Public Utilities Code Section 399.8.	Rulemaking 11-10-003 (Filed October 6, 2011)

DECISION GRANTING REQUEST OF CONSUMER FEDERATION OF CALIFORNIA FOR INTERVENOR COMPENSATION FOR SUBSTANTIAL CONTRIBUTIONS TO DECISION 11-12-035

Claimant: **Consumer Federation of California**	**For contribution to D.11-12-035**
Claimed ($): $14,095	**Awarded ($): 11,050 (reduced 22%)**
Assigned Commissioner: **Michael R. Peevey**	**Assigned Administrative Law Judge (ALJ):** **Julie A. Fitch**
Claim Filed:	**February 8, 2012**

PART I: PROCEDURAL ISSUES

A. Brief Description of Decision:	The Decision addressed authority to institute a new surcharge, known as the Electric Program Investment Charge (EPIC), in place of the Public Goods Charge. The EPIC is instituted on an interim basis, subject to refund, until further evaluation of programs in Phase 2.

B. Claimant must satisfy intervenor compensation requirements set forth in Public Utilities Code §§ 1801-1812:

	Claimant	CPUC Verified
Timely filing of notice of intent to claim compensation (NOI) (§ 1804(a)):		
1. Date of Prehearing Conference:	October 27, 2011	Correct
2. Other Specified Date for NOI:	N/A	
3. Date NOI Filed:	November 04, 2011	Correct
4. Was the NOI timely filed?		Yes
Showing of customer or customer-related status (§ 1802(b)):		
5. Based on ALJ ruling issued in proceeding number:	Rulemaking (R.) 09-08-009	Correct
6. Date of ALJ ruling:	October 27, 2010	Correct date: November 2, 2010
7. Based on another the Commission's determination (specify):		N/A
8. Has the Claimant demonstrated customer or customer-related status?		Yes
Showing of "significant financial hardship" (§ 1802(g)):		
9. Based on ALJ ruling issued in proceeding number:		R.09-08-009
10. Date of ALJ ruling:		November 2, 2010
11. Based on another the Commission's determination (specify):		
12. Has the Claimant demonstrated significant financial hardship?		Yes

Timely request for compensation (§ 1804(c)):		
13. Identify Final Decision:	D.11-12-035	Correct
14. Date of Issuance of Final Order or Decision:	December 21, 2011	Correct
15. File date of compensation request:	February 08, 2012	Correct
16. Was the request for compensation timely?		Yes

PART II: SUBSTANTIAL CONTRIBUTION

A. Claimant's description of Claimant's contribution to the final decision (*see* § 1802(i), § 1803(a) & D.98-04-059).

Contribution	Citation to Decision or Record (Provided by Claimant)	Showing Accepted by CPUC
1. Continued Funding for Research, Development and Demonstration (RD&D) and Renewable Programs, Once Funded by the Public Good Charge (PGC). In the question of authority, Consumer Federation of California (CFC) expressed its concerns about continuing the funding of RD&D and renewable programs absent statutory authority. CFC also raised an alternative argument about the appropriateness of continued funding of RD&D and Renewables at current levels absent program reform. CFC advocated that, should funding continue, there should be reform in programs. For example, CFC expressed the concern of continuing funding at current levels because there	Although the Commission ultimately decided to continue funding, the Commission stressed that the collection of funds will be done on an interim basis and subject to refund, pending thorough evaluation of programs: 1. "CFC is concerned that if a law is not passed to specifically confer authority on the Commission to continue the RD&D and Renewables program currently funded by the PGC, it may be beyond the authority of the Commission to continue these programs as if the law were still in place. Further, assuming authority does exist, CFC contends that it is unfair to have ratepayers pay for programs where ratepayers are not direct beneficiaries of the programs. CFC believes ratepayers may be paying twice for RD&D programs which are funded through general rate cases (GRCs), and that it is not	Yes. See, CPUC comment 1 in Part II.C.

may be overlap of funding where ratepayers might be paying twice for certain programs. CFC also commented on the reforming programs to more adequately prioritize ratepayer benefits.	appropriate to continue funding existing RD&D programs at current levels after the end of 2011. D.11-12-035 at 9. 2. "We agree with the comments of several parties that the PIER program has been successful in many ways, and the benefits of these programs should continue. We also agree with several commenters that there is room for improvement. While we have determined that we have authority to continue funding RD&D which are in the ratepayers' and public interest, we intend to consider whether some of the programs currently funded by the PGC are no longer necessary, are no longer in the public interest. We will then apply such considerations to funding under the new surcharge." D.11-12-035 at 31. 3. CFC Opening Comments to Order Instituting Rulemaking (OIR), Filed October 20, 2011 at 2-10 4. CFC Reply Comments to OIR, Filed October 25, 2011 at 2-4. 5. CFC Opening Comments to Proposed Decision, Filed December 5, 2011 at 2-7.	
2. <u>Test for Programs under and Policy Direction from § 399.8.</u> CFC disagreed with the Commission's interpretation of the test for programs under § 399.8 in the Commission's	1. **CFC Opening Comments to the Proposed Decision,** Filed December 5, 2011 at 2-4. 2. "Based on comments, we have made several revisions to the Proposed Decision, including . . . deletion of dicta and Conclusion of	Yes. See, CPUC comment 1 in Part II.C.

Proposed Decision. The Commission stated in the Proposed Decision that the § 399.8 provides for specific funding levels for "prudent investments in energy efficiency, renewable energy, and research, development and demonstration," but does not limit itself to programs with ratepayer benefits. Thus, the test for programs under § 399.8 has been whether they are in the public interest." CFC argued that § 399.8 prioritizes ratepayer benefits. As a result, CFC argued that the public interest should be taken into consideration, but only after ratepayers' interests are met.	Law regarding the test for programs under and policy direction from § 399.8. D.11-12-035 at 35. (Dicta can be found at 20 of Proposed Decision; Conclusion of law #2 of Proposed Decision at 38.)	
3. <u>Inclusion of § 451 'Just and Reasonable' Analysis.</u> CFC argued that because EPIC is a new surcharge, it is a new rate subject to a 'just and reasonable' examination authorized under § 451. Although, the Commission did not give a § 451 analysis for RD&D programs and Renewables in the Decision, the Commission did add language in the final decision that the	1. "Based on comments, we have made several revisions to the Proposed Decision, including … addition of language regarding the applicability of § 451 to our Phase 2 review of EPIC-funded programs…. D.11-12-035 at 35. 2. CFC Opening Comments to the Proposed Decision, Filed December 05, 2011 at 3, 6 and 7. 3. "In general, the Commission has clear power to "fix rates, establish rules ... and prescribe a uniform	Yes. See, CPUC comment 1 in Part II.C.

Commission will include a § 451 analysis in Phase 2 review of EPIC-funded programs.	system of accounts for all public utilities subject to its jurisdiction."[1] By statute, the Commission is additionally authorized to "supervise and regulate every public utility in the State and may do all things, whether specially designated in this part or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction."[2] Section 451 provides in part that "All charges demanded or received by any public utility … for any product or commodity furnished or to be furnished or any service rendered or to be rendered shall be just and reasonable." D.11-12-035 at 16.	

B. Duplication of Effort (§§ 1801.3(f) & 1802.5):

	Claimant	CPUC Verified
a. Was the Division of Ratepayer Advocates (DRA) a party to the proceeding?	**Yes**	**Yes**
b. Were there other parties to the proceeding with positions similar to yours?	**Yes**	**Yes**
c. Names of these parties: DRA and The Utility Reform Network (TURN). These positions were similar in the broader sense that we advocated for some form of RD&D and Renewable Energy program reform and		**Yes**

improvements; however the nuances of each consumer group's arguments differed significantly.	
d. Claimant's description of how Claimant coordinated with DRA and other parties to avoid duplication or how Claimant's participation supplemented, complemented, or contributed to that of another party: CFC did not duplicate arguments of DRA or other parties. There is always some confluence of opinion when more than one consumer group participates, but each group seems to have a particular take on the subject and makes an original contribution. For example, CFC's position differed when it came to the Commission's authority to continue funding. In addition, CFC used different arguments than DRA and TURN when it came to focusing on issues related to program evaluation and reform. CFC identified possible flaws within the RD&D and Renewable program which warrant further evaluation to minimize redundancy and overlap, such as there may be projects that are being recovered both in GRCs and funded by system benefits charge. As a result of possible redundancy ratepayers may be paying twice for programs. CFC advocated for the inclusion of a § 451 analysis of EPIC-funded programs. CFC also disagreed with the Commission's interpretation of the test under § 399.8. This position was not mentioned by either TURN or DRA.	We made no reductions to CFC's claim for duplication with other parties.

C. Additional Comments on Part II:

#	Claimant	CPUC	Comment
1,3	X		The Commission instituted this Rulemaking after the Legislature failed to extend PGC funding for RD&D and Renewable Energy programs. The OIR issued sought a breadth of information from parties. The initial comments on the OIR were instrumental in the Commission's final scoping memo, of which the Commission, using parties comments, finalized which issues would be addressed in which Phase. Some of CFC positions may be positions that the Commission chose to expound upon in Phase 2; however, it is important that CFC \introduced its positions on issues in this expedited

			Phase 1 so that the Commission now has a clearer and more focused idea on what issues to concentrate on and evaluate in depth. For example, because of CFC's comments to add § 451 analysis, the Commission, decided to add the § 451 language, even though the actual analysis will not take place until Phase 2. As a result, the CFC contributed to this Decision by pinpointing certain issues that should be focused on in this proceeding, even though some of these issues will be analyzed in the ensuing phase.
1		X	The Commission discussed and analyzed many important arguments and recommendations made by CFC. While CFC's position was mostly rejected, CFC made significant contributions to the proceeding and the subject decision by raising important issues for the Commission's consideration, as reflected in the decision.

PART III: REASONABLENESS OF REQUESTED COMPENSATION

A. General Claim of Reasonableness (§§ 1801 & 1806):

Claimant's explanation as to how the cost of claimant's participation bore a reasonable relationship with benefits realized through claimant's participation	**CPUC Verified**
There will be monetary benefits for ratepayers based on CFC's participation, although it is difficult to estimate a specific amount of monetary benefits. Some of the CFC's contributions adopted by the final decision will result in a more focused evaluation of current RD&D and Renewable Energy programs. Because of CFC's contribution, the Commission has added a just and reasonable § 451 applicability language, and the analysis will take place in phase 2 of this proceeding. The Commission has also acknowledged the need for RD&D and Renewables program reform and will formally evaluate programs to see where there is redundancy or overlap in programs, potentially resulting in lower utility bills for ratepayers.	Yes
CFC worked efficiently and recorded hours rounding down to the nearest decimal.	After the reductions made in this decision,

	the remaining hours are reasonable and warrant

B. Specific Claim*:

CLAIMED						CPUC AWARD		
ATTORNEY, EXPERT, AND ADVOCATE FEES								
Item	**Year**	**Hours**	**Rate**	**Basis for Rate**	**Total $**	**Hours**	**Rate**	**Total $**
Nicole A. Blake, Attorney	2011	62.30	$200	See Attachment 2	$12,460	51.50	$200	$10,300
				Subtotal:	***$12,460***		***Subtotal:***	***$10,300***
INTERVENOR COMPENSATION CLAIM PREPARATION **								
Item	**Year**	**Hours**	**Rate**	**Basis for Rate**	**Total $**	**Hours**	**Rate**	**Total $**
Nicole A. Blake	2011	3.20	$100	See, Attachment 2	$320	1.50	$100	$150.00
Nicole A. Blake	2012	13.15	$100		$1,315	6.00	$100	$600.00
				Subtotal:	***$1,635***		***Subtotal:***	***$750***
				TOTAL REQUEST $:	**14,095**	**TOTAL AWARD:**		**$11,050**

* 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. Claimant's records should identify specific issues for which it 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.
** Reasonable claim preparation time typically compensated at ½ of preparer's normal hourly rate (the same applies to the travel time).

C. CPUC Comments and Disallowances:

#	Reason
Hourly Rate	CFC requests the rate of $200 for its attorney Blake's work. Blake was admitted to the California Bar in January of 2010.[3] In October of 2011, when Blake started working on this proceeding, she was an attorney for CFC for 1 year and 9 months. The hourly rate range for attorneys with 0–2 years of experience, as provided in D.08-04-010 and Resolution ALJ-267, is $150 - $205. We find the requested rate of $200 reasonable for the work Blake performed in this rulemaking.[4]
Excessive Hours	Preparation of the Comments. CFC spent 19.65 hours drafting its opening comments on the OIR, 13.30 hours – reply comments on the OIR, and 17.15 – opening comments on the proposed decision (PD).5 Based on our reasonableness analysis, we approve all hours spent on the opening comments on the OIR because they formulate CFC's arguments and provide information in support of CFC's position on the issues of the proceeding, on which CFC provided substantial contributions (although not necessarily prevailed). However, we find a number of the hours spent on the reply comment on the OIR unreasonable. These short comments add no significantly new analysis or arguments to the CFC's views expressed in the opening comments. We reduce the request by 10.80 hours. CFC's analysis contained in the comments on the PD was consistent with CFC's opening comments on the OIR. Although repetitious, in part, of the comments on the OIR, the comments on the PD substantially contributed to our analysis of the staff proposal. We do not make

[3] See, information at http://members.calbar.ca.gov/fal/MemberSearch/QuickSearch.

[4] We note that at the time CFC filed this intervenor compensation claim, its previous claim filed in R.08-12-009, had not been considered by the Commission. In that claim, CFC requested the rate of $175 for Blake's work in 2010.

[5] These hours do not include hours spent reading the OIR, parties' comments, or the PD, which we allow.

	reductions in this area. Preparation of the NOI and Intervenor Compensation Claim. Most of the CFC's NOI duplicates its NOIs filed earlier in other proceedings.[6] We allow 1.50 hours sufficient to prepare a short paragraph with information specific to the subject proceeding. CFC spent 13.15 hours preparing its intervenor compensation claim. We allow 6 hours for this task, which is sufficient to prepare a claim involving the work of one attorney during a two-month time span, culminating in one decision.

PART IV: OPPOSITIONS AND COMMENTS

A. Opposition: Did any party oppose the Claim?	No

B. Comment Period: Was the 30-day comment period waived (*see* Rule 14.6(2)(6))?	Yes

FINDINGS OF FACT

1. Consumer Federation of California has made a substantial contribution to Decision 11-12-035.

2. The requested hourly rates for Consumer Federation of California's representative are comparable to market rates paid to experts and advocates having comparable training and experience and offering similar services.

3. The claimed hours, as adjusted herein, are reasonable and commensurate with the work performed.

4. The total of the reasonable compensation is $11,050.

CONCLUSION OF LAW

1. The claim, with any adjustment set forth above, satisfies all requirements of Public Utilities Code Sections 1801-1812.

ORDER

[6] See, for example, CFC's NOI filed on May 19, 2011, in R.10-12-007.

1. Consumer Federation of California is awarded $11,050.

2. Within 30 days of the effective date of this decision, Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company shall pay Consumer Federation of California their respective shares of the award, based on their California-jurisdictional electric revenues for the 2011 calendar year, reflecting 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 April 23, 2012, the 75th day after the filing of Consumer Federation of California's request for intervenor compensation, and continuing until full payment is made.

3. The comment period for today's decision is waived.

   This decision is effective today.

Dated _____, at San Francisco, California.

APPENDIX

Compensation Decision Summary Information

Compensation Decision:		**Modifies Decision?**	**No**
Contribution Decision:	D1112035		
Proceeding:	R1110003		
Author:	ALJ Julie A. Fitch		
Payers:	Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company		

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
Consumer Federation of California	2/8/12	$14,095	$11,050	No	Excessive hours

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Nicole A.	Blake	Attorney	Consumer Federation of California	$200	2011	$200
Nicole A.	Blake	Attorney	Consumer Federation of California	$200	2011	$200

(END OF APPENDIX)