

Decision _____

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 THE UNION OF CONCERNED SCIENTISTS FOR SUBSTANTIAL CONTRIBUTIONS TO DECISIONS 11-12-052 AND 11-12-020

This decision awards Union of Concerned Scientists \$14,008.95 for its substantial contributions to Decisions 11-12-052 and 11-12-020. This represents a decrease of \$ 270.00 or 1.9% from the amount requested due to the limited substantial contributions to one of the proceeding's issues. Today's award payment will be paid from the intervenor compensation program fund.

1. Background

Senate Bill (SB) 1078 established the California Renewables Portfolio Standard (RPS) program effective January 1, 2003. As adopted, it modified program design and structure for renewable resource procurement. It specifically sought to increase the amount of California's electricity generated by renewable resources in order to achieve multiple important, expressly stated benefits.¹ To achieve these objectives, statutes require that each California retail

¹ The stated RPS program benefits (as updated by SB 2 (1X)) include, but are not limited to: displacing fossil fuel consumption; adding new electrical generating facilities;

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seller² procure a minimum quantity of electricity products from eligible renewable energy resources.³ This quantity is measured as a specified percentage of total kilowatt-hours sold to the retail seller's end-use customers each compliance period. At the time this rulemaking was initiated, compliance periods were annual.⁴ SB 2 (1 X)⁵ institutes three compliance periods, each involving more than one year. The Commission's goal in this proceeding was to establish the quantity of electricity products from eligible resources to be procured by each retail seller for each compliance period. The Commission has reviewed multiple RPS procurement plans and administration of solicitation cycles in a number of proceedings, including the latest Rulemaking (R.) 08-08-009 and the current R.11-05-005. This rulemaking has incorporated the record from R.08-08-009 and brought forward remaining issues.

reducing air pollution; meeting climate change goals by reducing greenhouse gas emissions; promoting stable retail rates; implementing RPS-related transmission and land use planning activities, etc. (*See*, Cal. Pub. Util. Code § 399.11.) All subsequent code section references are to the Public Utilities Code unless noted otherwise.

² A retail seller is an entity engaged in the retail sale of electricity to an end-use customer located in California. Retail sellers under the Commission's jurisdiction for RPS purposes include electrical corporations, community choice aggregators and electric service providers (§ 399.12(j).)

³ Eligible renewable resources are determined by the California Energy Commission (CEC), and may include the following: photovoltaic, wind, geothermal, solar thermal, biomass, digester gas, landfill gas, small hydroelectric, in-conduit hydroelectric, hydroelectric incremental generation from efficiency improvements, ocean wave, ocean thermal, tidal current, fuel cells using renewable fuels, and municipal solid waste conversion. (§ 399.12 and Public Resources Code § 25741.)

⁴ Sections 399.15(a) and (b)(2).

⁵ SB 2 (1X) (Simitian), Stats. 2011, ch. 1, enacted in the 2011-2012 First Extraordinary Session of the Legislature, will "go into effect on the 91st day after adjournment of the special session at which the bill was passed." (Gov't. Code § 9600(a).) The 2011-2012

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Decision (D.) 11-12-020 sets the new RPS procurement quantities required by new § 399.15(b) for all retail sellers (investor-owned utilities (IOU), community choice aggregators, and electric service providers). In D.11-12-052, the Commission implements some of the many changes to the RPS program made by recent legislation, with the focus on new § 399.16 establishing three new portfolio content categories for RPS procurement and setting minimum and maximum quantities of procurement in each category.

2. Requirements for Awards of Compensation

The intervenor compensation program set forth in §§ 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).);

First Extraordinary Session adjourned on September 10, 2011, making SB 2 (1X) effective on December 10, 2011.

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).); and
6. The claimed fees and costs must be reasonable (§ 1801), and 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).

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. Union of Concerned Scientists (UCS) filed its NOIs in a timely manner in the predecessor proceedings, including R.06-02-012 (NOI of May 8, 2006) and R.08-08-009 (updated NOI of October 14, 2008). In this proceeding, the Order Instituting Rulemaking (OIR) ordered intervenors to update their NOI within 30 days of the date of the issuance of the OIR, which was May 10, 2011. UCS timely filed its amended NOI on June 7, 2011. On September 14, 2006, in R.06-02-012, Administrative Law Judge (ALJ) Anne E. Simon issued a ruling finding UCS eligible under § 1804(a), including a finding of significant financial hardship (Ruling at 8 of September 14, 2006, in R.06-02-012). Since R.11-05-005

incorporated the record of R.08-08-009,⁶ which was a continuation of R.06-02-012, where UCS was found eligible, the ALJ's ruling of September 14, 2006, applies to this proceeding.

Section 1802(b)(1) defines a "customer" as:

- 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 September 14, 2006, the ALJ issued a ruling in R.06-02-012 that found UCS a customer pursuant to § 1802(b)(1)(C.)

Regarding the timeliness of the request for compensation, UCS filed its request for compensation on February 9, 2012, within 60 days of the date of December 21, 2011, when D.11-12-052 was mailed. No party opposed the request. In view of the above, we affirm the ALJ's ruling and find that UCS has satisfied all the procedural requirements necessary to make its request for compensation in this proceeding.

We find that UCS is eligible to request 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

⁶ See, OIR 11-05-005, at opening paragraph 2.

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.⁷

With this guidance in mind, we turn to the claimed contributions UCS made to the proceeding. First, we summarize the claimed contributions to each of the decisions, and then make our findings with the regard to these claims.

3.A. Substantial Contribution Claims Related to D.11-12-052

1. Implementation Priority of New § 399.20. The OIR requested comments on how the Commission should prioritize the implementation of § 399.20 (per SB 32). UCS opposed the IOUs' comments that this issue is a "Tier 3 priority" and requested to prioritize this issue, but in a track that is separate and parallel to a proceeding dealing with more overarching RPS implementation needs. The July 8, 2011 scoping memo and ruling contains a schedule prioritizing RPS implementation issues that mirrored the priorities suggested by UCS.

⁷ D.98-04-059, 79 CPUC2d 628 at 653.

2. Delivery Requirement for RPS Eligibility. UCS opposed proposals from Shell Energy and Western Power Trading Forum to adopt the CEC's definition of "firmed and shaped" electricity and the delivery requirements associated with that definition of products. D.11-12-052 affirms the fact that the definition of RPS "delivery" must change, since the meaning was changed by SB 2 (1X), and references UCS's comments.
3. Removal of Confusing Language in the Proposed Decision (PD). UCS analyzed the PD provisions to have two basic tenets to employ in the process of deciding into which category an RPS-eligible transaction should fall. UCS explained why including such tenets into a CPUC decision-making framework could be problematic and confusing. The final decision does not include this language.
4. Defining California Balancing Authority (CBA). UCS submitted a detailed suggestion to the Commission on the issue of how CBA should be defined. D.11-12-052 defines CBA in a way that is consistent with the UCS's suggestion.
5. Firm Transmission Rights. UCS provided substantial information to determine what types of data would be necessary to verify an RPS transaction that fits the criteria of § 399.16(b)(1). UCS explained that the Commission could assume transactions that use firm transmission are directly delivering into a CBA without substituting electricity from another source (except for real-time ancillary services) but clarified that firm transmission was not a necessary criterion for meeting this category. D.11-12-052 verifies that firm transmission is not a necessary criterion, and cites UCS's comments.
6. Real-Time Ancillary Services. UCS pointed out that "real-time ancillary services" will not necessarily always be provided by the host balancing authority, and therefore the Commission should not require that such services come from one specific area of the country. D.11-12-052 refused to adopt UCS's position.
7. Data Verification for RPS Transactions. UCS provided information regarding data verification for RPS transactions that do not have a direct interconnection to a CBA, are not dynamically transferred into California, but would still fall into the portfolio content category described in § 399.16(b)(1). UCS urged the Commission to require retail sellers to submit hourly metered data for these transactions, and to reject several parties' proposals that suggested such transactions could be verified with the

Western Renewable Generation Information System certificates.

D.11-12-052 confirms that the delivery schedule for such transactions must at least be hourly. The Commission agrees with UCS that the retail seller must be prepared to prove real-time delivery of RPS-eligible electricity with hourly generation data if the generator is not directly interconnected to a CBA or dynamically transferred, if it is to be classified under § 399.16(b)(1).

8. “Firmed and Shaped” Transactions: Definition for “Incremental” Electricity. UCS provided recommendations on how the language of § 399.16(b)(2) should be interpreted and transactions falling into this category verified. UCS offered three specific criteria to guide verification of § 399.16(b)(2) products. UCS opposed the IOU proposal to simply define “incremental” electricity as any electricity that is affixed to a contract signed on or after June 1, 2010. UCS suggested a definition for “incremental”, which was “electricity that is not in the portfolio of the retail seller at the time the contract is executed. D.11-12-052 rejects the IOU’s proposed definition of “incremental”. The decision specifically references UCS’s suggested definition of “incremental” and adopts language that is consistent with UCS’s recommendation.
9. Defining “Firmed and Shaped” Transactions. UCS recommended how to define RPS transactions that fall into the category described in § 399.16(b)(2), by offering three criteria that each transaction should meet in order to maximize ratepayer value. UCS provided substantial evidence to support the value of these criteria. D.11-12-052 adopts all but one of UCS’s proposed criteria for “firmed and shaped” transactions meeting the requirements of § 399.16(b)(2).
10. Pipeline Biomethane. UCS urged the Commission to refrain from determining the portfolio content category for pipeline biomethane until the CEC has made a determination on overall RPS eligibility. A product content category for pipeline biomethane was included in the PD; however, it was removed from the final decision.

3.B. Substantial Contribution Claims Related to D.11-12-020

1. Implementation Priority of Establishing the Total Procurement Requirement Created by SB 2 (1X). UCS urged the Commission to rank the implementation priority of establishing the total procurement requirement created by SB 2 (1X) as a “Tier 1” priority. The subsequent Ruling of the Commission identifies this issue as “Tier 1.”
2. Linear Trend for Reasonable Progress. UCS urged the Commission to adopt a linear trend as a way to calculate “reasonable progress” in RPS procurement throughout the second two compliance years. D.11-12-020 adopts this linear trend method as the way to calculate the total compliance requirement throughout the second and third compliance periods.

We agree with the majority of UCS’s substantial contribution claims. We find a limited contribution to the issue of the real-time ancillary services, where UCS’s position was rejected (Section 3.A.6 of the above decision). To the extent that UCS’s participation provided information and argument that allowed the Commission to consider the full range of positions, thereby assisting the Commission’s informed judgment, we compensate a portion of the hours related to this issue. Our reduction in this area is discussed in Section 5.1, below.

4. 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. Section 1802.5, however, allows an intervenor to be eligible for full compensation where its participation materially supplements, complements, or contributes to the presentation of another party if that participation makes a substantial contribution to the Commission order.

UCS states that it consistently coordinated its efforts with other parties to avoid duplication of effort and ensure efficiency. We note that UCS’s assertions

are supported by the time records information. UCS also explains that if any duplication occurred it was unavoidable due to parties' sometimes similar interests, and the overwhelming number and scope of issues taken on by UCS. We agree. We also find that where UCS's contribution was not unique, it advanced its position that was distinct from other parties'. RPS proceedings are very complicated and the Commission benefits from fresh light to be shed on these issues. We do not reduce the award for duplication of efforts.

5. Contributions of Other Parties

UCS requests \$14,278.95 for its participation in this proceeding is as follows:

Work on Proceeding				
Staff	Year	Hours	Hourly Rate	Total
Laura Wisland, Senior Energy Analyst	2011	102.52	\$135	\$13,840.20
<i>Work on Proceeding Subtotal:</i>				\$13,840.20
Preparation of Compensation Request⁸				
Staff	Year	Hours	Hourly Rate	Total
Laura Wisland, Senior Energy Analyst	2011	6.5	\$67.50	\$438.75
<i>Preparation of Compensation Request Total:</i>				\$483.75
Total Requested Compensation				\$14,278.95

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.

⁸ Compensation claim preparation time is compensated at 1/2 normal rate.

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 are necessary for the substantial contribution. UCS documented its claimed hours by presenting a daily breakdown of the hours of its attorneys, accompanied by a brief description of each activity. The hourly breakdown reasonably supports the claim for total hours.

UCS's time records identify two issues, cumulative in nature: RPS Portfolio Content Categories and RPS Procurement Targets. UCS's contributions claims are based on sub-issues that are not identified in the time records. We have found that UCS provided only partial contribution on the issue of the real-time ancillary services. Since no hours were specifically allocated to this sub-issue, in order to adjust hours spent on it, we estimate that it occupied, approximately, 4.00 hours of UCS's time.⁹ We disallow half of that time (2.00 hours).

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 having comparable training and experience and offering similar services. UCS seeks an hourly rate of \$135.00 for

⁹ The issue of the real-time ancillary services was discussed in UCS's reply comments on the implementation of new portfolio content categories for the RPS program, filed on August 19, 2011, and in the comments on the PD, filed on October 27, 2011. UCS spent approximately the total of 23.25 hours preparing these comments.

Laura Wisland, for work performed in 2011. We previously approved this rate in D.11-07-022, 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. UCS indicates that in a policy proceeding it is extremely difficult to estimate the monetary benefits of an intervenor's participation; however, UCS's contributions in developing reasonable, and effective rules for defining portfolio content categories and total RPS compliance requirements will benefit ratepayers. The Legislature has found that increasing the amount of renewable energy resources "may promote stable electricity prices, protect public health, improve environmental quality, stimulate sustainable economic development, create new employment opportunities, and reduce reliance on imported fuels, "among other benefits."¹⁰ California's deployment of renewable energy resources will also provide protection from the risk of volatile market energy prices in the years to come. UCS's work materially assisted the Commission in developing RPS program requirements that will result in the development of cost-effective renewable resources and as such has contributed to more productive and efficient expenditure of the billions of dollars of RSP-related expenditures.

¹⁰ Section 399.11(b); *see also* § 399.11(c).

We find that the costs of UCS's participation bear a reasonable relationship to the magnitude of UCS's contributions, and that UCS's participation was productive.

7. Award

As set forth in the table below, we award UCS \$14,008.95.

Work on Proceeding				
Staff	Year	Hours	Hourly Rate	Total
Laura Wisland, Senior Energy Analyst	2011	100.52	\$135	\$13,570.20
Work on Proceeding Total:				\$13,570.20
Preparation of Compensation Request Total				
Staff	Year	Hours	Hourly Rate	Total
Laura Wisland, Senior Energy Analyst	2011	6.50	\$67.50	\$438.75
Preparation of Compensation Request Total:				\$438.75
CALCULATION OF FINAL AWARD				
Work on Proceeding				\$13,570.20
NOI and Compensation Request Preparation				\$438.75
TOTAL AWARD				\$14,008.95

This OIR 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.¹¹ D.11-12-052 and D.11-12-020 affect all California retail sellers under the Commission's jurisdiction for RPS purposes.¹² As a broad array of the utilities is involved in this matter, we find it appropriate to authorize 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

¹¹ OIR at 15 and 24.

¹² D.11-12-020, footnote 7, at 4; § 399.12(j); D.11-12-052, and ordering paragraphs at

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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 24, 2012, the 75th day after UCS filed its 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. UCS'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.

8. Waiver of Comment Period

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

9. Assignment of Proceeding

Mark J. Ferron is the assigned Commissioner, and Anne E. Simon and Regina DeAngelis are the assigned ALJs in this proceeding.

Findings of Fact

1. UCS has satisfied all the procedural requirements necessary to claim compensation in this proceeding.

75 – 83. See also footnote 2 of this decision.

2. UCS made a substantial contribution to D.11-12-052 and D.11-12-020 as described herein.

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

4. UCS requested related expenses that are reasonable and commensurate with the work performed.

5. The total of the reasonable compensation is \$14,008.95.

6. The Appendix to this decision summarizes today's award.

Conclusion of Law

1. UCS 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.11-12-052 and D.11-12-020.

2. UCS should be awarded \$14,008.95 for its contribution to D.11-12-052 and D.11-12-020.

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

O R D E R

IT IS ORDERED that:

1. Union of Concerned Scientists is awarded \$14,008.95 as compensation for its substantial contributions to Decisions 11-12-052 and 11-12-020.
2. Within 30 days of the effective date of this decision, the 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 24, 2012, the 75th day after the filing date of the Union of Concerned Scientists'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:	D12-	Modifies Decision? No
Contribution Decisions:	D11-12-052, D11-12-020	
Proceeding:	R11-05-005	
Author:	ALJ Anne E. Simon	
Payer:	CPUC Intervenor Compensation Program Fund	

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier	Reason Change/Disallowance
Union of Concerned Scientists	2/9/12	\$14,278.95	\$14,008.95	No	Limited contribution on one of the issues.

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Laura	Wisland	Expert	Union of Concerned Scientists	\$135	2011	\$135

(END OF APPENDIX)