Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Examine the Commission's Post-2008 Energy Efficiency Policies, Programs, Evaluation, Measurement, and Verification, and Related Issues.	Rulemaking 09-11-014 (Filed November 20, 2009)

DECISION GRANTING REQUEST OF CONSUMER FEDERATION OF CALIFORNIA FOR INTERVENOR COMPENSATION FOR SUBSTANTIAL CONTRIBUTIONS TO DECISION 11-12-038

Claimant: Consumer Federation of California	**For contribution to Decision (D.) 11-12-038**
Claimed ($): $11,115.00	**Awarded ($): 7,560.13**
Assigned Commissioner: Mark J. Ferron	**Assigned ALJs: Darwin Farrar and Julie A. Fitch**

PART I: PROCEDURAL ISSUES

A. Brief Description of Decision:	Decision makes additional PEEBA[1] funds available to backfill the PGC[2] funding so that electric EE[3] programs are funded in 2012 at the currently authorized level, but does not decide whether or which EE programs will require the current level of funding after 2012.

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:	March 18, 2010	Correct
2. Other Specified Date for NOI:	N/A	
3. Date NOI Filed:	November 18, 2011	Correct
4. Was the NOI timely filed?		The late-filed Notice of

[1] Procurement Energy Efficiency Balancing Account.

[2] The Public Goods Charge.

[3] Energy Efficiency.

		Intent (NOI) is accepted. See, CPUC's comments in Part I.C.
Showing of customer or customer-related status (§ 1802(b)):		
5. Based on ALJ ruling issued in proceeding number:	R.10-12-007	Correct
6. Date of ALJ ruling:	July 5, 2011	Correct
7. Based on another CPUC determination (specify):		
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:		
10. Date of ALJ ruling:		
11. Based on another CPUC determination (specify):		
12. Has the Claimant demonstrated significant financial hardship?		See, CPUC's comment in Part I.C.
Timely request for compensation (§ 1804I):		
13. Identify Final Decision:	D.11-12-038	Correct
14. Date of Issuance of Final Order or Decision:	12/19/2011	Correct
15. File date of compensation request:	02/14/2012	Correct
16. Was the request for compensation timely?		Yes

C. Additional Comments on Part I:

#	Claimant	CPUC	Comment
4	**CFC**		Consumer Federation of California (CFC) late-filed an NOI for Rulemaking (R.) 09-11-014. In September, the Legislature failed to reauthorize funding for the PGC past December 31, 2011. Commissioner Ferron issued a ruling and scoping memo seeking comments on a proposal to continue funding for EE Programs. This issue was not foreseen at the time the March 18, 2010, Prehearing Conference (PHC) was held and represents a new set of issues. CFC was given permission to late-file an NOI to claim compensation. The Commission has not yet ruled on CFC's NOI to claim compensation.
4		**CPUC**	Under Public Utilities Code § 1804(a)(1):[4] "[a] customer who intends to seek an award under this article shall, within 30 days after the prehearing conference is held, file and serve on all parties to the proceeding a notice of intent to claim compensation." The statute further provides that "[i]n

[4] All subsequent statutory references are to the California Public Utilities Code unless noted otherwise.

			cases where no PHC is scheduled . . . the Commission may determine the procedure to be used in filing these requests." CFC intervened after the Assigned Commissioner's ruling of September 28, 2011, expanded the scope of this proceeding by including the issue of EE programs funding continuation. The ruling did not schedule a PHC and did not address intervenor compensation filings. CFC filed its comments on the ruling on October 11, 2011, and waited until November 18, 2011, to file its NOI. Although CFC does not explain why it did not file its NOI earlier, we accept the filing, for the following reasons: The purpose of an NOI is to apprise other parties of the intervenor's planned extent of participation, likely costs, and intention to seek compensation (§1804). In its October 11, 2011 motion for party status, CFC informed parties of its participation, issues, and intention to seek compensation.[5] Therefore, parties were apprised of these matters early enough. The delay in the NOI filing was not as significant as to adversely affect any party. No objection to the NOI was filed.
12		CPUC	Ruling of July 5, 2011, in R.10-12-007 made a finding of CFC's eligibility, including significant financial hardship, to claim compensation. Pursuant to § 1804(b)(2), that finding extends to CFC's participation in this proceeding.

PART II: SUBSTANTIAL CONTRIBUTION

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

Contribution	Specific References to Claimant's Presentations and to Decision	Showing Accepted by CPUC
<u>1. ACR's Proposal establishing Precedent.</u> CFC argued its concern that the approval of the ACR proposal will establish a precedent so that PEEBA[6] funds will be permanently augmented to include the dollar amount that originally would have been collected by the PGC.	1. "We emphasize that today's decision is limited to the final year of already approved 2010-2012 program cycle since the Commission has not made any final determinations beyond this point. Nothing in the ACR proposal or today's decision should be construed as prejudging particular programs or whether a portion of the PEEBA should be used to backfill lost PGC revenues beyond 2010-2012 cycle." **D.11-12-038 at 9.**	Although the September 28, 2011 ruling and the subsequent proposed decision did not contemplate a funding beyond 2012, we find that CFC made a contribution on this matter.

[5] October 11, 2011 motion, at 2.

[6] Procurement Energy Efficiency Balancing Account.

2. Commission's Authority to augment PEEBA funds to backfill funding once collected by the Public Goods Charge. CFC also argued (along with CLECA) that the Legislature failed to reenact the Public Goods Charge for a Reason and, absent Legislative approval, the Commission now lacks the authority to continue the PGC, albeit in a different form.	The Commission disagreed with CFC's position: "We … conclude that the ACR[7] proposal is not inconsistent with any legislative intent." **D.11-12-038** at 8. **CFC's Opening Comments to the ACR's September 28th Ruling and Scoping Memo**, filed October 11, 2011, at 3-7. **CFC Reply Comments to the ACR's September 28th Ruling and Scoping Memo**, filed October 19, 2011, at 1-3. **Opening Comments to Decision Regarding Continuation of Funding,** filed December 5, 2011, at 3.	CFC's argument led to the discussion on the Commission's authority on this matter. We find that CFC made a contribution to this matter.
3. Augmenting PEEBA is the equivalent of raising rates CFC argued (along with CLECA) that substituting former PGC with PEEBA funds would be the equivalent of raising rates. Specifically, CFC argued that the expiration of PGC will automatically result in a rate decrease; after such the Commission will augment PEEBA a minute after January 1, 2012 *after* the PGC has been eliminated and rates decreased, which will automatically result in a rate increase. CFC argued that even though ratepayers may not see a change on their bill, this	The Commission disagreed with CFC's position: "Finally, both CLECA and CFC disagree with the [Investor-owned Utilities] IOUs' contention that backfilling the PGC will not result in a rate increase. CLECA claims, "the very act of backfilling the expired funding will wipe out a rate decrease," and CFC asserts that augmenting PEEPA account would be equivalent to raising rates. These arguments are unpersuasive. The Legislature's failure to pass new legislation cannot be construed as calling for a rate decrease…." **D.11-12-038** at 9. **CFC's Opening Comments to the ACR's September 28th Ruling and Scoping Memo**, filed October 11, 2011 at 7 and 8; **CFC Reply Comments to the ACR's September 28th Ruling and Scoping Memo**, filed October 19, 2011 at 2; **CFC's Opening Comments to Decision Regarding Continuation of Funding**, filed December 5, 2011 at 4	CFC's argument led to the discussion on the Commission's authority on this matter. We find that CFC made a contribution to this matter.

[7] Assigned Commissioner's Ruling and Scoping Memo of September 28, 2011.

does not mean that there was not an impact on customers' rates.	and 5.	

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**	**Correct**
b. Were there other parties to the proceeding with positions similar to the Claimant's?	**Yes**	**Yes**
c. If so, provide name of other parties: CFC's position was most closely aligned with California Large Energy Consumers Association (CLECA).		**Yes**
d. Claimant's description of how Claimant coordinated with DRA and other parties to avoid duplication or of how Claimant's participation supplemented, complemented, or contributed to that of another party: Both CLECA and CFC opposed the ACR's proposal for similar reasons. However, the nuances of our opposition differed. CFC and CLECA represent different interests. CLECA is an organization that represents large industrial and commercial customers of IOUs, whereas CFC's representation centers mainly around residential customers of IOUs. The details CFC's and CLECA's arguments were not duplicative. For example, on the issue of the Commission's authority to continue funding, CFC argued that the Commission lacked authority to continue funding absent legislative approval whereas CLECA argued that the PGC allocation methodology is based on explicit statutory requirement that was adopted and implemented for each IOU in their respective GRC proceedings. CFC's advocacy on the issue of the continuing funding helped elicit a necessary exchange of ideas among parties beyond other ratepayer advocacy groups representing residential utility customers, namely DRA and The Utility Reform Network (TURN).		**Yes**

C. Additional Comments on Part II:

#	Claimant	CPUC	Comment
1-3	**CFC**		Although CFC did not prevail in these issues, CFC provided meaningful opposition by generating necessary dialogue among parties on issues that deserve perspectives from every interest group. CFC feels that its participation provided information and argument that allowed the Commission to consider the full range of positions, thereby assisting the

			Commission's informed judgment based on a more complete record. CFC's contribution to the record on these particular issues superseded contributions from analogous ratepayer advocacy groups, such as DRA and TURN. As a result, CFC offered a perspective on behalf of utility customers that resulted in the Commission making a sound, well reasoned decision, and thus constitutes a substantial contribution to the record and the Commission's decision-making process.

PART III: REASONABLENESS OF REQUESTED COMPENSATION

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

a. Explanation by Claimant as to how the cost of Claimant's participation bore a reasonable relationship with benefits realized through participation There will be monetary benefits for ratepayers based on CFC's participation, although it is difficult to estimate a specific amount of monetary benefits. Although the Commission disagreed with CFC's policy arguments to continue funding, the Commission did acknowledge the CFC's concerns of establishing precedent and potentially continuing funding using PEEBA beyond the 2010-2012 program cycle. As a result, the Commission did emphasize that the decision to continue funding using PEEBA is limited to the final year of the already approved 2010-2012. As a result, the Commission will not continue this funding without further evaluation of EE programs and funding mechanisms.	**CPUC Verified** With the reductions and adjustments set forth in this decision, the requested compensation is reasonable.
b. Reasonableness of Hours Claimed. CFC worked efficiently and recorded hours rounding down to the nearest decimal.	See, section C.
c. Allocation of Hours by Issue **See Attachment 3.**	See, section C.

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	2011	49.5	$200	D.12-09-017	$9,900.00	34.28	$200	$6,856.00
				Subtotal:	$9,900.00		***Subtotal:***	$6,856.00

INTERVENOR COMPENSATION CLAIM PREPARATION **								
Item	**Year**	**Hours**	**Rate**	**Basis for Rate***	**Total $**	**Hours**	**Rate**	**Total $**
Nicole A. Blake	2011	2.50	$100	D.12-09-017	$250	1.25	$100	$125.00
Nicole A. Blake	2012	9.65	$100		$965	5.65	$102.50	$579.13
				Subtotal:	$1,215		***Subtotal:***	$704.13
				TOTAL REQUEST $:	**$11,115**		**TOTAL AWARD $:**	**$7,560.13**

* 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.

C. CPUC Disallowances, Adjustments, and Comments:

#	Reason
Non-compensable Costs	We disallow, in accordance with the Commission's practice, the total of 0.75 hour[8] spent on non-compensable administrative or clerical tasks, described in the time records as "filing."[9]
Analysis of Hours Spent on Substantive Work	We carefully reviewed CFC's documents filed in this proceeding, D.11-12-038, CFC's claim, and the time records. We find that the requested hours are excessive as discussed below. CFC's participation focused, in part, on the issues outside the scope of the proceedings. For example, a large portion of CFC's comments on the September 28, 2011 ruling focuses on performance aspects of the EE programs and requests that the current programs be reviewed, evaluated, and restructured.[10] CFC's discussion revolves around EE programs that had already been analyzed and approved. CFC's comments on the proposed decision criticized it for not setting next steps for the funding beyond 2012.[11] All these matters were outside the scope of the proceeding as defined by September 28, 2011 ruling. All work outside the scope of the proceeding

[8] *See*, time records dated October 11 and 19, and December 5, 2011, that refer to the clerical tasks. We estimate that a filing of CFC's single document required approximately 0.25 hour.

[9] *See*, e.g., D.98-11-049, 1998 Cal. PUC LEXIS 805, *5.1.3 ("Professional fees assume overheads and are set accordingly. We therefore deny additional recovery for clerical work.").

[10] *See*, October 11, 2011 comments in response to the assigned commissioner's ruling and scoping memo regarding continuation of funding for energy efficiency programs at 4, 5, 7, 8, 9; and October 19, 2011 reply comments at 1 and 2.

[11] *See*, CFC's December 5, 2011 comments, at 2-3.

	did not contribute to the decision, and is non-compensable. Also, even if all of CFC's comments were on point, the requested hours would still be unreasonable. Pages of the original substantive analysis in CFC's three sets of comments filed in this proceeding sum to approximately eleven pages.[12] 48.25 hours[13] requested for working on these comments are excessive.[14]
Reductions in the Area of Substantive Work	CFC allocates its hours to two issues: "authority to continuing funding" and "general preparation" (Attachment 3 to the claim), which does not include more specific substantive issues CFC addressed. Based on our analysis of CFC's participation and filed documents, we determine that 30% of the requested substantive hours were spent on the unproductive participation discussed above.
Reductions in the Intervenor Compensation Matters Area	We disallow 0.25 hours spent filing the NOI (clerical task). We also reduce, as excessive, hours spent preparing the NOI by 1.00 hour, and the claim - by 4.00 hours.
Hourly rate for 2012 work	Resolution ALJ-281 issued on September 18, 2012, adopted the cost-of-living adjustment (COLA) of 2.2% for intervenor's professional hourly rate for work performed in 2002. CFC did not request this adjustment because of the timing of Resolution ALJ-281, and not from any error or omission by the requesting intervenor. To avoid further delay and additional filings, we apply the COLA to the requested hours worked in 2012, even though the request does not specifically refer to Resolution ALJ-281 or otherwise request a COLA. We adopt a new rate of $205[15] for Blake's work in 2012. The rate has been adjusted to the nearest $5.00, in accordance with our practice. Blake's work in 2012 was limited to the intervenor compensation matters, compensable at one half of her newly adopted hourly rate.

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

[12] These pages do not include introduction, procedural background and summary information.

[13] These hours do not include a task of preparing CFC's October 11, 2010 procedural motion that we estimate at 0.50 hour, and clerical tasks.

[14] For example, reading the proposed decision leading to D.11-12-038, took 1.50 hours (November 17, 2011), a clearly unreasonable amount of time for that short and concise document.

[15] The new rate has been rounded to the nearest $5.00, in accordance with our practice.

FINDINGS OF FACT

1. Consumer Federation of California's late filed Notice of Intent to Claim Internvenor Compensation should be granted.

2. Consumer Federation of California has made a substantial contribution to D.11-12-038.

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

4. The claimed costs, as adjusted herein, are reasonable and commensurate with the work performed.

5. The total of reasonable contribution is $7,560.13.

CONCLUSION OF LAW

The Claim, with any adjustment set forth above, satisfies all requirements of Public Utilities Code §§ 1801-1812.

ORDER

1. Consumer Federation of California's late filed Notice of Intent to Claim Intervenor Compensation is granted.

2. Consumer Federation of California is awarded $7,560.13.

3. Within 30 days of the effective date of this decision, Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison 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, to reflect the year in which the proceeding leading to Decision 11-12-038 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 29, 2012, the 75th day after the filing of Consumer Federation of California's request, and continuing until full payment is made.

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

5. This decision is effective today.

Dated _____, at San Francisco, California.

APPENDIX

Compensation Decision Summary Information

Compensation Decision:	D	**Modifies Decision?**	**No**
Contribution Decision:	D1112038		
Proceeding:	R0911014		
Author:	ALJ Farrar		
Payer:	Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company		

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
Consumer Federation of California	2/14/12	$11,115	$7,560.13	No	Non-compensable clerical work; unproductive participation; 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	2012	$205