

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company for Authority to Increase Electric Rates and Charges to Recover Costs Relating to California Solar Photovoltaic Manufacturing Development Facility (U39E)

Application 10-11-002
(Filed November 1, 2010)

DECISION GRANTING COMPENSATION TO THE GREENLINING INSTITUTE FOR SUBSTANTIAL CONTRIBUTIONS TO DECISION 12-05-014

Claimant: The Greenlining Institute (Greenlining)	For contribution to Decision (D.) 12-05-014
Claimed (\$): 14,637.50	Awarded (\$): 13,946
Assigned Commissioner: Michael R. Peevey	Assigned ALJ: Karl J. Bemesderfer

PART I: PROCEDURAL ISSUES**A. Brief Description of Decision:**

D.12-05-014 denies the application of Pacific Gas and Electric Company (PG&E) to invest \$9.9 million of ratepayer funds in Silicon Valley Technology Corporation (SVTC), a company that proposes to build a new solar panel fabrication facility, the Photovoltaic Manufacturing Development Facility (PVMDF), in Santa Clara County.

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:	January 13, 2011	December 20th 2010 and January 13th 2011
2. Other Specified Date for NOI:	n/a	
3. Date NOI Filed:	January 21, 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.) 10-02-005	Correct
6. Date of ALJ ruling:	March 29, 2010	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:	R.11-10-002 ¹	This finding is not applicable in this proceeding under Public Utilities Code Section 1804(b)(1)
10. Date of ALJ ruling:	Pending	
11. Based on another CPUC determination (specify):		See Comment
12. Has the Claimant demonstrated significant financial hardship?		Yes
Timely request for compensation (§ 1804(c)):		
13. Identify Final Decision:	D.12-05-014	Correct
14. Date of Issuance of Final Order or Decision:	May 10, 2012	Correct
15. File date of compensation request:	June 7, 2012	Correct
16. Was the request for compensation timely?		Yes

C. Additional Comments on Part I (use line reference # as appropriate):

#	Claimant	CPUC	Comment
9-10	X	Section 1802(g) defines “significant financial hardship” as follows: “Significant financial hardship” means that a customer cannot afford, without undue hardship to pay the costs of effective participation, including advocate’s fees, expert witness fees, and other reasonable costs of participation, or that, in the case of a group or organization, the economic interest of the individual members of the group or organization is small in comparison to the costs of effective participation in the proceeding. Greenlining is a Category 3 customer as defined in D.98-04-059 and as such must satisfy the “comparison test” for significant financial hardship by demonstrating that the economic interest of its members and constituencies in the instant proceeding is small relative to the cost of effective participation in the proceeding. In Attachment A to their intervenor	Greenlining’s last ruling finding significant financial hardship was issued on January 10, 2011, in R.09-08-009. That ruling is more than one year old, rendering it inapplicable to this claim. Greenlining set forth a new demonstration of significant financial hardship in its NOI in Application (A.) 11-10-002, which was filed on January 6, 2012. However, as of the time of this filing a ruling is still pending in that proceeding.

¹ Correspondence with Greenlining counsel on May 9, 2013 corrects this proceeding reference from R.11-10-002 to R.09-08-009 with an ALJ Ruling date of January 10, 2011. R.11-10-002 is not a Commission proceeding.

	<p>compensation claim, Greenlining shows that the highly technical nature of the proceeding required a great deal of financial expertise and sophisticated contract analysis. Greenlining satisfies the “comparison test” because in the instant proceeding, the money at issue, roughly \$17 million, would have been spread across all of PG&E’s customer classes so the cost of participation exceeds the financial benefit to be reaped by individual customers. In satisfying this test, Greenlining has successfully demonstrated significant financial hardship as appropriate for a Category 3 customer. We find that it would be a significant financial hardship for Greenlining to participate in this proceeding without an award of fees or costs.</p>	<p>Because it is uncertain whether a ruling will issue before this compensation request is addressed, Greenlining includes here, as Attachment A, its demonstration of significant financial hardship as it pertains to this proceeding.</p>
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PART II: SUBSTANTIAL CONTRIBUTION

A. Claimant’s 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
<p>A. Investment-related Costs & Benefits</p> <p>Greenlining argued that the deal amounts to a venture capital investment, with a high degree of risk borne by ratepayers with no direct benefit to those ratepayers, only possible general benefits – possibly lower costs for solar panels in the market generally, with no guarantee that PG&E ratepayers would themselves see lower solar panel costs, and that only if the Manufacturing Development Facility (MDF) succeeds. Greenlining argued this was an inappropriate use of ratepayer funds (§ 740.1(a)).</p> <p>Greenlining argued that the potential financial benefit to ratepayers, in the form of recovery of investment and an ownership stake in SVTC if it were to</p>	<p>Protest (to initial application), at 3-5; Joint PHC Statement, at 2; Protest to amended application, at 2; Opening Comments on PD/AD, at 3-4, 7-8.</p> <p>D.12-05-014, at 8-10, FOF 5.</p> <p>Opening Comments on PD/AD, at 9-12; Opening Comments in Response to 4/27/12 ALJ Ruling, at 2-3.</p>	<p>Yes</p> <p>Yes</p>

<p>become profitable, was speculative and disproportionately small for the amount of investment ratepayers were asked to contribute. Greenlining argued that this constituted misuse and unsound investment of ratepayer funds.</p> <p>Greenlining argued that an unacceptably high percentage of the total funds requested would go toward taxes, franchise fees, and “uncollectibles,” making the investment an inefficient use of ratepayer funds.</p> <p>Greenlining argued that the proposed governance structure for MDF did not give enough voice to ratepayer representatives, who have a vested interest in the direction the MDF would take. Greenlining argued that if the application were approved, the Commission should order a ratepayer committee to have voting rights regarding future investment decisions.</p>	<p>D.12-05-014, at 5, 7-8, FOF 4.</p> <p>Protest (to initial application) at 6.</p> <p>Opening Comments on PD/AD, at 13-14.</p>	<p>The decision moved on statutory construction grounds and did not rely on Greenlining’s argument on unacceptably high proportions of “uncollectibles” in the application. However, this argument did support the decision’s conclusion that investment in a for-profit start-up company is an inappropriate use of ratepayer funds.</p> <p>Again, the decision moved on statutory construction grounds and did not rely on Greenlining’s argument for the need for greater ratepayer participation in governance of the entity if the application were to be approved. However, this argument did support the decision’s conclusion that investment in a for-profit start-up company is an inappropriate use of ratepayer funds.</p>
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<p>B. Public Purpose/RD&D-related Costs & Benefits</p> <p>Greenlining argued that SVTC does not properly constitute the Research, Development & Demonstration (RD&D), because it is a commercial manufacturing incubator for other entities’ technologies, and thus should be denied as an inappropriate use of ratepayer funds.</p> <p>Greenlining further argued that even if the SVTC could be considered RD&D, it should have been brought through an established competitive process, rather than a standalone application.</p> <p>Greenlining noted that investment by PG&E would constitute bad public policy because it could create anti-competitive effects in the market.</p>	<p>Joint PHC Statement, at 1-2; Protest to amended application, at 2-3; Opening Comments on PD/AD, at 2-3, 5-7.</p> <p>D.12-05-014, at 4-5, 7.</p> <p>Opening Comments on PD/AD, at 4-5.</p> <p>Protest (to initial application), at 4.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p>
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B. Duplication of Effort (§§ 1801.3(f) & 1802.5):

	Claimant	CPUC Verified
<p>a. Was the Division of Ratepayer Advocates (DRA) a party to the proceeding?</p>	Yes	Yes
<p>b. Were there other parties to the proceeding with positions similar to yours?</p>	Yes	Yes
<p>c. If so, provide name of other parties: Western Power Trading Forum, Direct Access Customer Coalition, Marin Energy Authority, The Utility Reform Network, DRA, City & County of San Francisco, Californians for Renewable Energy, Consumer Federation of California</p>	Correct	
<p>d. Describe how you coordinated with DRA and other parties to avoid duplication or how your participation supplemented, complemented, or contributed to that of another party:</p> <p>All of the active consumer parties, including DRA and Greenlining, coordinated efforts throughout the proceeding to capitalize on each party’s different expertise and eliminate duplication of effort. In preparation for joint ex parte meetings, all party meetings, and filings, the consumer parties coordinated presentations so each party focused on discrete issues. Parties filed jointly where their positions were</p>	<p>There were multiple intervenors in this proceeding and they coordinated their efforts throughout. Lead arguments during the hearing were made by Sarah Thomas on behalf of DRA and</p>	

<p>sufficiently aligned, but separately when each had something different to say.</p>	<p>Matthew Freedman on behalf of TURN. Both indicated that they had discussed and coordinated their presentations with other intervenors. As a result of the coordination among the intervenors, all intervenors, including Greenlining, contributed to the development of the record.</p> <p>This is also supported by the Greenlining’s time sheets.</p>
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C. Additional Comments on Part II (use line reference # or letter as appropriate):

#	Claimant	CPUC	Comment
II(A)	X	Correct. Greenlining did file Opening Comments on the Proposed and Alternate Decisions on February 27, 2011.	Pages 11-12 of D.12-05-014 lists the parties that filed Opening Comments on the Proposed and Alternate Decisions, but erroneously leaves off Greenlining. Greenlining did in fact file Opening Comments.
II(A)	X	Correct	<p>While D.12-05-014, which is unusually brief, does not address all of the issues argued by Greenlining and listed in Table II(A) above, Greenlining submits that it made a substantial contribution to the record on these issues.</p> <p>The issue of taxes, franchise fees, and other uncollectibles was argued throughout the proceeding, and relates directly to PG&E’s argument that ratepayers would be “adequately compensated” for their investment through their ownership stake.</p> <p>The issue of governance, and the role of ratepayers in the governance process, also speaks to the benefits PG&E asserted would come from the investment, through their ownership stake. To this end, the Decision notes that parties argued for additional conditions intended to increase the probability of recovery of the investment (at 5).</p>

		<p>The Decision never reached the issue of whether this project was properly brought as a standalone application, or should have been included in one of the public, competitive bidding processes. It found that the project might be considered “development,” but because it found that there would be insufficient ratepayer benefit from the potential for reduced solar panel costs, it found that the project was not authorized by Pub. Util. Code §§ 740 and 740.1 (at 5-9). As such, it never reached the question of the proper venue for the application. However, Greenlining’s arguments on this point made a substantial contribution to the record.</p>
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PART III: REASONABLENESS OF REQUESTED COMPENSATION

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

<p>a. Concise explanation as to how the cost of Claimant’s participation bears a reasonable relationship with benefits realized through participation (include references to record, where appropriate)</p>	<p>CPUC Verified</p>
<p>Greenlining’s cost of participation in this proceeding were very low, at just over \$14,000. In contrast, ratepayers will save more than \$17 million dollars as a result of our advocacy, along with that of the other consumer parties. Greenlining’s participation represents a tiny fraction of the total amount ratepayers will save. As such, the cost of our participation was quite reasonable in relation to the total ratepayer savings resulting from this decision.</p>	<p>After making slight adjustments and disallowances to this claim, we find the remaining hours and costs to be reasonable and worthy of compensation</p>
<p>b. Reasonableness of Hours Claimed.</p> <p>Greenlining’s hours are reasonable, in part because of its efforts to coordinate with other parties, which allowed Greenlining to focus on certain issues of expertise. Greenlining’s hours roughly compare to the hours it anticipated in its NOI, with Ms. Chen claiming just over half the hours anticipated for her participation, but Mr. Young claiming more hours than anticipated. The proceeding was highly contentious, and involved two stages of amendment to the application, which were unanticipated at the time the NOI was filed.</p> <p>It should be noted that in some instances, Mr. Young spent more time on certain activities, including drafting filings, than perhaps a more experienced attorney would have. Mr. Young was a Fellow during most of the proceeding, in his first year of practice. This was one of the first proceedings in which he served as lead counsel for Greenlining. While his relative inexperience may have resulted in more time spent on certain tasks, that inexperience is also reflected in the low rate at which his time is billed. As such, it is reasonable for a new attorney to spend a little more time on certain tasks than a more experienced one.</p>	<p><i>See parts III. B and III. C.</i></p>

c. Allocation of Hours by Issue

Greenlining's time is allocated by issue category as follows:

A. Investment-related Costs & Benefits	51.54%
B. Public Purpose/RD&D-related Costs & Benefits	33.26%
C. General	15.2%
Total	100%

Greenlining has satisfied the requirement to provide a breakdown of its hours by major issue in accordance with guidance provided in D.98-04-059.

B. Specific Claim:

CLAIMED						CPUC AWARD		
ATTORNEY, EXPERT, AND ADVOCATE FEES								
Item	Year	Hours	Rate	Basis for Rate*	Total \$	Hours	Rate	Total \$
Stephanie Chen	2011	8.5	\$185	D.12-04-043	\$1,572.50	8.5	\$185	\$1573
Stephanie Chen	2012	3.3	\$185	D.12-04-043	\$610.50	3.3	\$190	\$627
Ryan Young	2010	11.9	\$125	D.12-04-043	\$1,487.50	11.9	\$125	\$1488
Ryan Young	2011	52.7	\$150	D.12-04-043	\$7,905.00	49.7	\$150	\$7455
Ryan Young	2012	17.7	\$150	D.12-04-043	\$2,655.00	15.9	\$150	\$2385
Subtotal:					\$14,230.50	Subtotal:		\$13,528
INTERVENOR COMPENSATION CLAIM PREPARATION **								
Item	Year	Hours	Rate	Basis for Rate*	Total \$	Hours	Rate	Total \$
Stephanie Chen	2012	4.4	\$92.5	D.12-04-043	\$407.00	4.4	\$95	\$418
Subtotal:					\$407.00	Subtotal:		\$418
TOTAL REQUEST \$:					\$14,637.50	TOTAL AWARD \$:		\$13,946

*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 seeks 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.

**Travel and Reasonable Claim preparation time typically compensated at ½ of preparer's normal hourly rate.

Attorney	Date Admitted to CA BAR	Member Number
Ryan Young	December 2010	274828
Stephanie Chen	August 2010	270917

C. CPUC Disallowances, Adjustments, and Comment:

#	Reason
Adoption of Stephanie Chen's hourly rate for 2012	Though Greenlining requests the same hourly rate of \$185 for Stephanie Chen awarded in D.12-04-043, the Commission adopts a rate of \$190 for Ms. Chen for 2012. We apply the recent Commission approved Resolution (Res.) ALJ-281 of September 13, 2012 to Ms. Chen's hours during the 2012 calendar year. Res. ALJ-281 applies a Cost of Living Adjustment (COLA) of 2.2% to intervenor rates for work done during the 2012 calendar year. This COLA adjustment, after rounding to the nearest \$5, results in a new rate for Ms. Chen for 2012 of \$190.
Adoption of Ryan Young's hourly rate for 2012	Greenlining requests the same hourly rate of \$150 for Ryan Young awarded in D.12-04-043. The Commission adopts a rate of \$150 for Mr. Young for 2012. We apply the recent Commission approved Res. ALJ-281 of September 13, 2012 to Mr. Young's hours during the 2012 calendar year. Res. ALJ-281 applies a COLA of 2.2% to intervenor rates for work done during the 2012 calendar year. This COLA adjustment, after rounding to the nearest \$5, results in the same rate for Mr. Young as requested, \$150 and hour.
Reductions to Ryan Young's time for Duplication/Overlap	Mr. Young's time has been reduced in 2011 and 2012 for duplication in time with Ms. Chen for workshop attendance on March 23, 2011 and All Party Attendance on March 19, 2012. Intervenors should not bill for time attending these meetings by more than one of their representatives.

PART IV: OPPOSITIONS AND COMMENTS

Within 30 days after service of this Claim, Commission Staff or any other party may file a response to the Claim (see § 1804(c))

A. Opposition: Did any party oppose the claim (Y/N)?

No

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

Yes

FINDINGS OF FACT

1. The Greenlining Institute has made a substantial contribution to Decision (D.) 12-05-014.
2. The requested hourly rates for The Greenlining Institute’s representatives as adjusted herein, are comparable to market rates paid to experts and advocates having comparable training and experience and offering similar services.
3. The claimed costs and expenses as adjusted herein are reasonable and commensurate with the work performed.
4. The total of reasonable contribution is \$13,946.

CONCLUSION OF LAW

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

ORDER

1. The Greenlining Institute is awarded \$13,946.
2. Within 30 days of the effective date of this decision, Pacific Gas and Electric Company shall pay The Greenlining Institute (Greenlining) the total award. 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 August 21, 2012, the 75th day after the filing of Greenlining's request, and continuing until full payment is made.
3. The comment period for today's decision is waived.
4. This decision is effective today.

Dated _____, at San Francisco, California.

APPENDIX

Compensation Decision Summary Information

Compensation Decision:		Modifies Decision? No
Contribution Decision(s):	D1205014	
Proceeding(s):	A1011002	
Author:	ALJ Karl J. Bemesderfer	
Payer(s):	Pacific Gas and Electric Company	

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier	Reason Change/Disallowance
The Greenlining Institute (Greenlining)	6/7/2012	\$14,637.50	\$13,946	No	Rate for Stephanie Chen in 2012 is increased, to reflect Cost-of-Living Adjustment. Resolution ALJ-281 (September 13, 2012). Hours for workshop and All party meeting attendance reduced for unnecessary duplication/ overlap.

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Stephanie	Chen	Attorney	Greenlining	\$185	2011	\$185
Stephanie	Chen	Attorney	Greenlining	\$185	2012	\$190
Ryan	Young	Advocate	Greenlining	\$125	2010	\$125
Ryan	Young	Attorney	Greenlining	\$150	2011	\$150
Ryan	Young	Attorney	Greenlining	\$150	2012	\$150

(END OF APPENDIX)