

Decision 13-10-014 October 3, 2013

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Integrate and Refine Procurement Policies and Consider Long-Term Procurement Plans.

Rulemaking 10-05-006
(Filed May 6, 2010)

DECISION GRANTING COMPENSATION TO COMMUNITIES FOR A BETTER ENVIRONMENT FOR SUBSTANTIAL CONTRIBUTIONS TO DECISIONS (D.) 12-01-033 and 12-04-046

Claimant: Communities for a Better Environment (CBE)	For contribution to: Decisions (D.) 12-01-033 and D.12-04-046
Claimed (\$): \$56,091.00	Awarded (\$): \$50,890.50 (reduced 9.3%)
Assigned Commissioner: Michael R. Peevey	Assigned ALJ: Peter V. Allen

PART I: PROCEDURAL ISSUES

- A. Brief Description of Decision:**
- D.12-01-033:** This decision approved with modifications the plans of the three major California electric utilities to procure electricity for their bundled customers, consistent with Pub. Util. Code § 454.5. In addition, the decision provided guidance to the utilities for their future bundled procurement plans.
- D.12-04-046:** This decision approved a proposed settlement resolving most issues relating to generation need through 2020, concluding there was no evidence that new generation would be needed within Pacific Gas and Electric Company (PG&E) and Southern California Edison Company (SCE) territories. It also addressed utility solicitations aimed at plants operating without a contract.
- This decision also allowed, subject to several conditions, the utilities to contract with once-through cooling plants beyond the Water Control Board compliance date; rejected SCE's proposal for a new general auction mechanism; ruled that utility-owned generation be procured only after a request for other offers has failed; allowed, subject to

conditions, these utilities to purchase greenhouse gas (GHG) compliance instruments; and mandated certain disclosures related to GHG compliance.

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

	Claimant	CPUC Verified
Timely filing of notice of intent to claim compensation (NOI) (§ 1804(a)):		
1. Date of Prehearing Conference:	June 14, 2010	Correct
2. Other Specified Date for NOI:	August 13, 2010	Correct
3. Date NOI Filed:	August 13, 2010	Correct
4. Was the NOI timely filed?		Yes
Showing of customer or customer-related status (§ 1802(b)):		
5. Based on Administrative Law Judge (ALJ) ruling issued in proceeding number:	Application (A.) 09-04-001	Correct
6. Date of ALJ ruling:	December 1, 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:	A.09-04-001	Correct
10. Date of ALJ ruling:	December 1, 2011	Correct
11. Based on another CPUC determination (specify):		
12. Has the Claimant demonstrated significant financial hardship?		Yes
Timely request for compensation (§ 1804(c)):		
13. Identify Final Decision:	D.12-04-046	Correct
14. Date of Issuance of Final Order or Decision:	April 19, 2012 ¹	April 24, 2012
15. File date of compensation request:	June 15, 2012	Correct
16. Was the request for compensation timely?		Yes

¹ Please note although the Decision Date is April 19, 2012, the Date of Issuance is April 24, 2012.

C. Additional Comments on Part I:

#	Claimant	CPUC	Comment
7	X		At the time it filed its NOI in August 2010, CBE’s “customer” status had not yet been decided. CBE’s NOI sets forth CBE’s “customer” status at 2-3.
8	X		At the time it filed its NOI in August 2010, CBE’s “significant financial hardship” had not yet been decided. CBE’s NOI sets forth CBE’s “significant financial hardship” at 6.
		X	The Commission accepts the ruling in A.09-04-001 that found CBE’s showing(s) of customer status and significant financial hardship. This ruling is accepted and applied in this proceeding.

PART II: SUBSTANTIAL CONTRIBUTION

A. In the fields below, describe in a concise manner Claimant’s contribution to the final decision:

Contribution	Specific References to Claimant’s Presentations and to Decision	Showing Accepted by CPUC
1.(a) Track I Settlement: CBE engaged in this proceeding for the primary express purpose of preventing unnecessary procurement of new gas-fired generation where it organizes – in SCE and PG&E territory. D.12-04-046 acknowledged that CBE sought specific findings concerning long-term need and local area need in PG&E and SCE territory. D.12-04-046 made those specific findings.	CBE Motion for Party Status, at 2. D.12-04-046, at 9-10. D.12-04-046, at 11-12.	Yes
1.(b) Track I Settlement: D.12-04-046 adopts the Track I Settlement Agreement.	D.12-04-046 at 9-10; D.12-04-046 Order Paragraph #1; Track I Settlement Agreement; CBE Track I/III Opening Brief at 3.	Yes
1.(c) Track I Settlement: CBE’s comments seeking specific findings approving the Track I Settlement are not limited to procurement needs by 2020 – CBE’s Opening Brief seeks a finding that the record does not support new generation for PG&E and SCE at all. This is a particular concern to CBE, which intervened in proceedings A.09-09-021, A.09-04-001, and A.12-03-026 in order to address PG&E’s attempts to procure new	D.12-04-046 at 11 ftnt 9; D.12-04-046, at 12.	Yes

<p>generation that did not address a need identified in the previous LTPP.</p> <p>In two places, D.12-04-046 emphasizes that there is no evidence of need for new generation by 2020 or thereafter, squarely addressing CBE’s concern.</p>		
<p>2. SCE Generation Auction Proposal: CBE argued that the Commission should reject SCE’s suggestion to open a new proceeding to address its proposal for a new generation auction through California Independent System Operator (CAISO), and that the Commission should also reject the suggestion.</p> <p>D.12-04-046 notes that many parties opposed the creation of this new proceeding, and rejects SCE’s proposal.</p>	<p>D.12-04-046 at 27-28; D.12-04-046 Conclusion of Law #4; D.12-04-046 Order Paragraph #4; CBE Track I/III Opening Brief at 5-6.</p>	<p>Yes</p>
<p>3. OTC Contracting: CBE urged the Commission to limited contracts with OTC facilities, based on sound policy and environmental concerns.</p> <p>While D.12-04-046 did not adopt the one year contracting limit for which CBE advocated, it did impose limits on contracts with OTC facilities in response to comments by CBE and its allies.</p>	<p>CBE Track I/III Opening Brief at 4-5. D.12-04-046 at</p>	<p>Yes; D. 12-04-046 at 17-23.</p>
<p>4. Renewable Integration Products: CBE argued that SCE’s request to add “Renewable Integration Products” to the list of approved procurement products should be rejected because the explanation of these products was far too vague.</p> <p>D.12-01-033 adopts this position in whole.</p>	<p>D.12-01-033 at 28-30; D.12-01-033 Findings of Fact #12; D.12-01-033 Conclusions of Law #12; D.12-01-033 Order Paragraph #7; CBE Track II Opening Comments at 2; CBE Track II Reply Br. at 6; Exhibit 1000: Testimony of J. May at 20.</p>	<p>Yes</p>
<p>5. SCE’s Preferred Assumptions: CBE argued that that SCE’s Preferred Assumptions led to inflated energy forecasts by using energy efficiency saving estimations that were lower than other utilities and in direct contravention of Commission policy and recent developments concerning energy efficiency.</p>	<p>D.12-01-033 at 16-17, 22; Exhibit 1000: Testimony of J. May at 2-10.</p>	<p>Yes</p>

<p>D.12-01-033 takes note of the significant attention that CBE and other organizations gave to SCE’s assumptions on energy efficiency and demand response, and emphasizes that requirements relating to the two would not be changed in this proceeding.</p> <p>With some exceptions, D.12-01-033 permitted SCE to use its Preferred Assumptions for the first five years, but required that the standard assumptions be used after that.</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:</p> <p>Pacific Environment, Sierra Club California, The Utility Reform Network, Center for Energy Efficiency and Renewable Technologies, Natural Resources Defense Council, Green Power Institute, Vote Solar Initiative.</p>		Yes
<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>CBE worked closely with allies Pacific Environment and Sierra Club California, and coordinated with other parties, to avoid duplication. When similar issues were covered, CBE provided analysis, studies, and expert materials that highlighted its own arguments and added to other common arguments. Rather than duplicating the expert testimony its allies prepared, CBE focused its Track II expert analysis on narrow issues of special concern to its members: flaws in SCE assumptions that could result in over procurement; oil refinery CHP; and ambiguous language of specific concern. CBE coordinated with allies to conduct a joint ex parte meeting regarding the Tracks I and III decision. CBE met with other parties to negotiate the Track I settlement that resolved CBE’s concerns in SCE and PG&E territory, obviating its need to submit expert testimony on system plans.</p> <p>This close coordination allowed CBE to make singular arguments of specific concern to its members. CBE members are particularly affected by procurement targeting renewables integration, which SCE and PG&E have cited as the basis for long-term contracts CBE has had to oppose. For that reason, CBE was particularly engaged in the initial discussions, advocating for use of the E3 model, which CBE believed was better able to model actual conditions than the alternative, simplistic model. Additionally, many CBE members live close to oil refineries and decisions concerning CHP at</p>		Verified; we make no reduction to CBE’s hours for duplication of efforts with other parties.

<p>refineries will affect them. CBE members care very much about renewables procurement – incentives such as renewable energy credits and the loading order have a clear, foreseeable impact on their goals to achieve a reliable, just distributed generation system.</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:</p>	<p>CPUC Verified</p>
<p>CBE is asking for \$56,091 in fees and costs for helping negotiate a settlement agreement, preparing expert testimony, and advocating legal and policy positions before the Commission. CBE’s efforts in negotiating the settlement and several of its arguments before the Commission have helped avoid the procurement of unneeded generation, the procurement of ill-defined products that would expose ratepayers to risk and undermine settled policy, and the misuse of this proceeding to create a new auction process that would also undermine public participation.</p> <p>CBE’s efforts have also raised several important criticisms regarding SCE’s proposed assumptions, which are critical for modeling future need.</p> <p>CBE’s constituents will realize both economic and environmental benefits due to the participation of CBE and other organizations in this proceeding. Procurement of unneeded generation leads to rate increases, which would collectively dwarf the amount of money CBE is requesting. Moreover, this generation can have severe environmental impacts through the operation of existing generation facilities and the potential construction of new facilities. Similarly, allowing utilities to purchase vaguely defined products for renewable integration would have a serious potential to undermine the 33% RPS and the public policies behind it, which are critical to ensuring California’s future environmental health. While the negative impacts on public health and on environmental resources are difficult to measure, CBE strongly believes they justify the hours spent advocating for its positions. Lastly, CBE and other organizations successfully argued against the use of this proceeding, or the creation of a new proceeding, to litigate the creation of a new auction proceeding, to be run through CAISO, that would have further limited the ability of the public to meaningfully participate in the process. This participation is critical to ensuring that future procurement decisions are made after full consideration of the relevant factors and impacts.</p>	<p>Verified</p>
<p>b. Reasonableness of Hours Claimed.</p> <p>CBE’s hours were extremely reasonably spent, especially in light of the excellent result achieved and its contributions to that result. CBE’s hours divide into four categories: Track I, including work around system need; Track II, including work specifically on SCE Bundled Plan: Analysis and advocacy concerning renewables integration products, use of standard planning assumptions; Track III, addressing rules; and General, which included time spent reviewing documents, participating in some workshops,</p>	<p>Verified</p>

<p>and coordinating with allies to ensure CBE's efforts were strategic and efficient.</p> <p>CBE excluded time spent analyzing and advocating for consideration of Combined Heat and Power, and for application of new RECs procurement rules to this proceeding. The Commission dismissed these concerns, and CBE does not argue it made a substantial contribution meriting intervenor compensation.</p> <p>The rates requested for these tasks are at the low end of the ranges authorized by the CPUC for attorneys, experts, and law students. These considerations are reflected in the attached timesheets.</p>	
<p>c. Allocation of Hours by Issue:</p> <p>Track I (A) 30% Track II (B) 42% Track III (C) 3% General (D) 25%</p>	Verified

B. Specific Claim:*

CLAIMED						CPUC AWARD		
ATTORNEY, EXPERT, AND ADVOCATE FEES								
Item	Year	Hours	Rate	Basis for Rate*	Total \$	Hours	Rate	Total \$
Shana Lazerow	2010	28.8	\$350	See comment 1.	\$10,080	28.8	\$300	\$8,640.00
Shana Lazerow	2011	88.1	\$355	See comment 1.	\$31,276	88.1	\$315	\$27,751.50
Shana Lazerow	2012	9.4	\$360	See comment 1.	\$3,384	9.4	\$320	\$3,008.00
Julia May	2011	59.8	\$150	See comment 1.	\$8,970	59.8	\$155	\$9,269.00
Subtotal:					\$53,710	Subtotal:		\$48,668.50
INTERVENOR COMPENSATION CLAIM PREPARATION **								
Item	Year	Hours	Rate	Basis for Rate*	Total \$	Hours	Rate	Total \$
Shana Lazerow	2010	1	\$175	half 2010 rate	\$175	1	\$150	\$150.00
Shana Lazerow	2012	6.7	\$180	half 2012 rate	\$1,206	6.7	\$160	\$1,072.00
Joel Tadmor	2012	10	\$100	rate awarded law students in D.11-03-025	\$1000	10	\$100	\$1,000.00
Subtotal:					\$2,381	Subtotal:		\$2,222.00
TOTAL REQUEST \$:					\$56,091	TOTAL AWARD \$:		\$50,890.50

*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
Shana Lazerow	June 4, 1998	195491

C. Comments and Attachments on Part III:

Attachment or Comment #	Comment
Comment 1	<p>Ms. Lazerow is Chief Litigation Attorney at CBE. She graduated from law school at the University of California, Los Angeles in 1997. Based on Resolution ALJ-267, her requested rate of \$350 is the lowest reasonable rate for an attorney of her experience. ALJ-267 authorizes a 5% annual increase, which is reflected in the \$5/year increase in Ms. Lazerow’s rate.</p> <p>Ms. May is Senior Staff Scientist a CBE. For more than twenty years, Ms. May has been providing technical advice to community members concerning environmental and energy-related matters. Ms. May holds a BS in Electrical Engineering from University of Michigan, Ann Arbor (1981). Based on Resolution ALJ-267, her requested rate of \$150 is the lowest reasonable rate for an expert of her experience.</p> <p>Resumes for Ms. Lazerow and Ms. May are attached hereto as attachment 3.</p>

D. CPUC Disallowances & Adjustments:

#	Reason
1. Adoption of Ms. Lazerow’s 2010 hourly rate.	After reviewing Ms. Lazerow’s credentials and Resolution ALJ-267, the Commission adopts a rate of \$300 per hour for Ms. Lazerow in 2010. In 2010, Ms. Lazerow had 12 years of experience as a licensed attorney in the state of California. Resolution ALJ-267 sets the range for attorneys with 8-12 years of experience at \$300-\$355 per hour. As this is the first Commission proceeding in which Ms. Lazerow has applied for an hourly rate, it is appropriate to adopt the “lowest reasonable rate for an attorney with her experience” (CBE Comment 1 above). Thus, Ms. Lazerow is awarded the rate of \$300 per hour for work she completed in 2010.
2. Adoption of Ms. Lazerow’s 2011 hourly rate.	In 2011 Ms. Lazerow has 13 years of experience as a licensed attorney in the state of California. Resolution ALJ-267 places attorney with 13 or more years of experience in the hourly range of \$300-\$535 per hour. In reviewing both ALJ-267 and D.08-04-010, which outlines the proper procedures in applying step-increases, the Commission awards Ms. Lazerow a rate of \$315 per hour for work completed in 2011. This rate applies the 5% step-increase addressed in CBE’s comments above. CBE is to note that per D.08-04-010, an intervenor is allowed to request an annual 5% step-increase twice within each level of experience. Since Ms. Lazerow is now within the level of 13+ years of experience, she is only allowed to request the 5% increase once more. After such, she will need to rely solely on cost-of-living (COLA) adjustments to increase her hourly rate.

<p>3. Adoption of Ms. May's 2011 hourly rate.</p>	<p>After reviewing Ms. May's credentials and ALJ-267, the Commission adopts a rate of \$155 per hour for Ms. May in 2011. Ms. May obtained her Bachelors in Science in 1981, and has since been working at various organizations in the scientific field. Resolution ALJ-267 sets the range for experts/others with 13+ years of experience at \$155-\$390 per hour. As this is the first Commission proceeding in which Ms. May has applied for an hourly rate it is appropriate to adopt the "lowest reasonable rate for an expert of her experience" (CBE Comment 1 above). Thus, Ms. May is awarded the rate of \$155 per hour for work she completed in 2011.</p>
<p>4. Adoption of Mr. Tadmor's 2012 hourly rate.</p>	<p>D.11-03-025 at 12, "D.07-04-032 approved an hourly rate of \$100 per hour for work as a law student. This rate takes into account that law students received academic credits for work they perform. Generally speaking, these are second and third year law students." CBE provided Mr. Tadmor's transcripts and current resume via email. As such, Commission staff was able to verify that Mr. Tadmor received credit for his work at CBE. A rate of \$100 per hour is adopted for work Mr. Tadmor completed in 2012.</p>
<p>5. Increase in 2012 hourly rates.</p>	<p>Abiding by Resolution ALJ-281 2012 hourly rates are automatically raised to reflect the 2.2% Cost-of-Living Adjustment adopted by the resolution.</p>

PART IV: OPPOSITIONS AND COMMENTS

<p>A. Opposition: Did any party oppose the Claim?</p>	<p>No</p>
<p>B. Comment Period: Was the 30-day comment period waived (see Rule 14.6(2)(6))?</p>	<p>Yes</p>

FINDINGS OF FACT

1. Communities for a Better Environment (CBE) has made a substantial contribution to Decisions (D.) 12-01-033 and D.12-04-046.
2. The requested hourly rates for Communities for a Better Environment's representatives 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 are reasonable and commensurate with the work performed.
4. The total of reasonable contribution is \$50,890.50.

CONCLUSION OF LAW

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

ORDER

1. Communities for a Better Environment is awarded \$50,890.50.
2. 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 Communities for a Better Environment 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 was primarily litigated. Payment of the award shall include compound interest at the rate earned on prime, three-month non-financial commercial paper as reported in Federal Reserve Statistical Release H.15, beginning August 29, 2012 , the 75th day after the filing of Communities for a Better Environment'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 October 3, 2013, at San Francisco, California.

MICHAEL R. PEEVEY
President
MICHEL PETER FLORIO
CATHERINE J.K. SANDOVAL
MARK J. FERRON
CARLA J. PETERMAN
Commissioners

APPENDIX

Compensation Decision Summary Information

Compensation Decision:	D1310014	Modifies Decision?	No
Contribution Decision(s):	D1201033; D1204046		
Proceeding(s):	R1005006		
Author:	ALJ Peter Allen		
Payer(s):	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
Communities for a Better Environment (CBE)	June 15, 2012	\$56,091.00	\$50,890.50	No	Rate adoption(s); ALJ-281.

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Shana	Lazerow	Attorney	CBE	\$350	2010	\$300
Shana	Lazerow	Attorney	CBE	\$355	2011	\$315
Shana	Lazerow	Attorney	CBE	\$360	2012	\$320
Julia	May	Expert	CBE	\$150	2011	\$155
Joel	Tadmor	Law Student	CBE	\$100	2012	\$100

(END OF APPENDIX)