

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 AWARDING INTEVENOR COMPENSATION TO SIERRA CLUB CALIFORNIA FOR SUBSTANTIAL CONTRIBUTION TO DECISION 13-05-034

Claimant: Sierra Club California (Sierra Club)	For contribution to Decision (D.) 13-05-034¹
Claimed: \$7,891	Awarded: \$7,891
Assigned Commissioner: Mark J. Ferron	Assigned ALJ: Regina DeAngelis

PART I: PROCEDURAL ISSUES

A. Brief Description of Decision:	Adopting Joint Standard Contract for Section 399.20 Feed-in Tariff Program and Granting in part Petition for Modification in D.12-05-035.
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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:	July 11, 2011	Correct
2. Other Specified Date for NOI:		
3. Date NOI Filed:	June 9, 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:	Application (A.) 10-03-014	Correct
6. Date of ALJ ruling:	November 30, 2010	Correct

¹ In this request for compensation, Sierra Club notified the Commission of a typographical error it made in two requests for compensation (still pending) filed in this same proceeding (re: D.12-05-035 and D.13-01-041). Sierra Club, however, makes no changes to the amount requested for compensation to correct the typographical error.

7. Has the Claimant demonstrated customer or customer-related status?		Yes
Showing of “significant financial hardship” (§ 1802(g)):		
8. Based on ALJ ruling issued in proceeding number:	A.10-03-014	Correct
9. Date of ALJ ruling:	November 30, 2010	Correct
10. Has the Claimant demonstrated significant financial hardship?		Yes
Timely request for compensation (§ 1804(c)):		
11. Identify Final Decision:	D.13-05-034	Correct
12. Date of Issuance of Final Order or Decision:	May 30, 2013	Correct
13. File date of compensation request:	July 29, 2013	Correct
14. Was the request for compensation timely?		Yes

PART II: SUBSTANTIAL CONTRIBUTION

A. Claimant’s description of its claimed contribution to the final decision:

Sierra Club’s Claimed Contribution	Citation to Decision or Record	Showing Accepted by CPUC
<p>1. Substantial Contributions related to the Petition for Modification related to the price adjustment mechanism</p> <p>Sierra Club made substantial contributions to the decision through comments in response to prior ALJ Rulings and Proposed Decision, and through comments on the Clean Coalition/CALSEIA Petition for Modification. Sierra Club coordinated with Clean Coalition and commented on draft versions, although we did not formally sign on to the Petition for Modification of D.12-05-035 filed on November 13, 2012.</p> <p>Also see Sierra Club’s April 8, 2013 Opening Comments on the Proposed Decision at 1.</p> <p><u>Re-MAT Price Adjustment Period Length</u> “Because both petitions request that we modify the FiT program’s price adjustment intervals from bi-monthly to monthly and that we reduce the length of the program from 24 to 12 months.” (Decision at 9-10)</p> <p>The FD also states that “each utility must divide</p>	<p><u>1. Re-MAT Price Adjustment Period Length</u> “Because both petitions request that we modify the FiT program’s price adjustment intervals from bi-monthly to monthly and that we reduce the length of the program from 24 to 12 months.” (Decision at 9-10) “It is reasonable to modify aspects of the ReMAT mechanism to prevent unreasonable price increases and promote administrative ease.” (Finding of Fact 2)</p> <p><u>2. Re-MAT program capacity in each interval.</u> “Re-MAT program capacity is far too small to provide valid price discovery and the bimonthly capacity should be increased.” (Clean</p>	<p>Yes</p>

<p>the total program capacity by 24 and then assign one-third into each product type” (p.44). However, this figure should be 12, not 24, since the FD creates a 24-month long program consisting of 12 two-month period.” (Sierra Club and Clean Coalition June 29, 2012 Application for Re-hearing, at 11)</p> <p><u>Re-MAT program capacity in each interval.</u></p> <p>“Re-MAT program capacity is far too small to provide valid price discovery and the bimonthly capacity should be increased.” (Clean Coalition/CALSEIA PFM at 4)</p> <p>Sierra Club drafted portions of this section, and discussed these policy objectives with Clean Coalition during the drafting process. Sierra Club did not sign onto the document due to issues related to other sections.</p> <p>Sierra Club also commented on this issue during the Commission’s consideration of D.12-05-035: “We note that the proposed mechanism to decrease the price requires sufficient capacity to measure whether the monthly allotment is representative of a price that stimulates market demand. A larger monthly allocation is more likely to accurately represent this quality, whereas a smaller allocation could fill with just a few projects, resulting in a premature reduction of the price and an expected 2 month delay to the program for the market to remain flat and again increase to re-start each time this occurs.” (Sierra Club April 16, 2013 Comments on PD at 5)</p>	<p>Coalition/CALSEIA PFM at 4)</p> <p>“In many instances, too few megawatts would be offered by the IOUs under the megawatt allocation process adopted in D.12-05-035, which may hinder the advancement of the program by providing insufficient opportunities for eligible projects.” (Finding of Fact 1)</p> <p>“In response to the petitions for modification, we find that the megawatt allocation process adopted in D.12-05-035 for PG&E, SCE and SDG&E may hinder the advancement of the program because it may result in too few megawatts being offered during each bi-monthly program period. We maintain the bi-monthly price-adjustment intervals but increase the total number of megawatts that the IOUs must offer for each product type....” (Decision at 10)</p>	
<p>2. <u>Support for Clean Coalition Proposed Standard Contract</u></p> <p>See Sierra Club September 10, 2012 comments at 4.</p>	<p>“On August 15, 2012, Clean Coalition filed a contract in this proceeding, referred to as a “model contract” to be used in lieu of the draft joint standard contract developed by the IOUs at the direction of the assigned Commissioner and ALJ. The Agricultural Energy Consumers Association (AECA) and Sierra Club state support</p>	<p>Yes</p>

	<p>for the alternative contract on the basis that it is workable but does not elaborate further. That said, we considered Clean Coalition’s comments regarding the needs of small developers and address them in our discussion of specific sections of the standard contract.” (Decision at 37)</p>	
<p>3. <u>Specific Standard Form PPA Terms</u></p> <p><u>Forecasting</u></p> <p>Sierra Club September 10, 2012 Reply Comments at 3</p>	<p>1. <u>Forecasting</u></p> <p>SEIA, CALSEIA, Sierra Club, and AECA suggest that sellers have the option to forecast and pay the buyer a reasonable cost for this service....We find that providing sellers with the option of paying the buyer a reasonable fee for the forecasting service is reasonable. This outcome furthers our goal of streamlining the FiT contracting process by reducing the burden on the small developers without subjecting ratepayers to additional costs or risks. (Decision at 61-62)</p>	<p>Yes</p>
<p><u>Resource Adequacy Concerns</u></p> <p>“Sierra Club California strongly agrees with CALSEIA and Clean Coalition that Resource Adequacy should be incorporated for projects that are equal to or lesser than the minimum coincident load of the local substation, and thus eligible for higher TOD factors....” (Sierra Club California Reply Comments to Third Revised Standard Form Contract, September 10, 2012)</p>	<p>2. <u>Resource Adequacy Concerns</u></p> <p>“Section 4.4.3 provides that “Seller shall cooperate in good faith with Buyer to pursue and obtain any and all Capacity Attributes...” Clean Coalition states that the term is overbroad and should be stricken. Accordingly, the IOUs are directed to revise the draft</p>	<p>Yes</p>

<p>Sierra Club additionally commented on the program effective date, insurance requirements, and telemetry. Although the Commission did not agree with Sierra Club and other parties on all of these issues, Sierra Club’s comments assisted the Commission to develop a record of full consideration of important issues for this new program.</p>	<p>joint standard contract to clarify that sellers are provided the option to convert, at their discretion, to Full Capacity Deliverability Status in accordance with § 399.20(i) and D.12-05-035.” (Decision at 47)</p>	
<p>4. <u>Correction to request RE; D.13-01-041</u></p> <p>On page 4 of Sierra Club’s Request for Compensation for substantial contribution to D.13-01-041, a typo was included in the copy filed with the Commission. The word “not” should read “now” at the last paragraph, second column. The correct version should read:</p> <p>Interpretation of PURPA, avoided cost, FERC Orders, and the Commission’s jurisdiction.</p> <p>See Sierra Club May 31, 2011 Opening Comments on OIR at 7-8; Sierra Club Opening Comments on ALJ Ruling on July 21, 2011 at 5-7.</p>	<p>Ordering dd-gg (Decision at 36-37) See Ordering 1d, 1f, 1g and 1ww. Sierra Club Comments in response to several ALJ rulings commented extensively on these issues. Ordering 1ww clarifies that the basis of the revised Decision is the Commission’s own policy and now adopts Sierra Club’s interpretation of PURPA (in part).</p>	<p>We note Sierra Club’s explanation for its error in submitting its earlier claims (still pending) in the same proceeding. These claims relate to its claim of substantial contribution to D.13-01-041 and D.12-05-035.</p>

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

Claimant		CPUC Verified
<p>a. Was the Office of Ratepayer Advocates (ORA) a party to the proceeding?</p>	<p>Yes</p>	<p>Correct</p>
<p>b. Were there other parties to the proceeding with positions similar to yours?</p>	<p>Yes</p>	<p>Correct</p>
<p>c. If so, provide name of other parties: Clean Coalition, CALSEIA, SEIA, CEERT, and Sustainable Conservation</p>		<p>Correct</p>
<p>d. Claimant’s description of how it coordinated with ORA and other parties to avoid duplication or how claimant’s participation supplemented, complemented, or contributed to that of another party:</p> <p>Sierra Club coordinated with Clean Coalition, CALSEIA, SEIA, CEERT and Sustainable Conservation through e-mail correspondence and telephone calls. Sierra Club principally coordinated with Clean Coalition on specific issues related to proposing improvements to the decision and the Draft PPA. Sierra Club coordinated to submit Joint Comments where possible and minimized duplication through editing joint comments. In the case of the Petition for Modification, some topics were drafted and developed jointly even though Sierra Club did not</p>		<p>We make no reductions to Sierra Club’s claim for duplication of efforts with other parties.</p>

eventually sign on. To minimize duplication, Sierra Club did not proceed to draft separately because joint text was included in the filing on record.	
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PART III: REASONABLENESS OF REQUESTED

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

Claimant’s explanation as to how the cost of its participation bore a reasonable relationship with benefits realized through participation: (include references to record, where appropriate)	CPUC Verified
Sierra Club’s cost of participation related to the Application for Rehearing, Petition for Modification, and Comments on the Draft PPA is small in comparison to the importance of the clarifications and modifications achieved. The Commission found that the improvement to the program monthly allocation will promote cost efficiency by improving the ability of the ReMAT to develop a tariff price resembling the market price. Modification to the PPA will improve the ability of the PPA to function more effectively as a standard contract that can save ratepayers transactional/soft costs over the course of the program.	Yes
Reasonableness of Hours Claimed:	CPUC Verified
Sierra Club participated actively in this proceeding, commenting on rulings requesting comment and collaborating with parties on the Application for Rehearing and Petition for Modification. These comments made substantial contributions to the proceeding, and result in a claim for a small amount of hours that account for the reasonable costs of drafting these filings and reviewing the resulting decision.	We find Sierra Club’s compensation request is reasonable.
Allocation of Hours by Issue	CPUC Verified
Sierra Club allocates all hours drafting the Application for Rehearing and Petition for Modification to the overall issue of revisions to the Section 399.20 Feed-in tariff program, primarily the price adjustment mechanism and monthly allocation system. Hours drafting comments on the PPA or Proposed Decision were related to proposing improvements to the standard form contract.	Sierra Club properly allocates its time by major issue as required by Rule 17.4.

B. Specific Claim*:

CLAIMED						CPUC AWARD			
ATTORNEY, EXPERT, AND ADVOCATE FEES									
Item	Year	Hours	Rate \$	Rate Rationale	Total \$	Year	Hours	Rate \$	Total \$
A. Katz	2012	21.0	205	Adopted here, see Part III, Section 3	4,305	2012	21.0	205	4,305

A. Katz	2013	14.0	220	Adopted here, see Part III, Section 3	3,080	2013	14.0	220	3,080
Subtotal: \$7,385					Subtotal: \$7,385				
INTERVENOR COMPENSATION CLAIM PREPARATION **									
Item	Year	Hours	Rate \$	Rate Rationale	Total \$	Year	Hours	Rate \$	Total \$
A. Katz	2013	4.6	110	1/2 rate adopted here	506	2013	4.6	110	506
Subtotal: \$506					Subtotal: \$506				
TOTAL REQUEST: \$7,891					TOTAL AWARD: \$7,891²				
<p>*We remind all intervenors that Commission staff may audit their records related to an 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 rate, fees paid to consultants and by 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.</p> <p>**Reasonable claim preparation is typically compensated at 1/2 of preparer's normal hourly rate.</p>									
Attorney		Date Admitted to CA BAR ³			Member Number		Actions Affecting Eligibility (Yes/No?) If "Yes", attach explanation		
Andy Katz		December 2009			#264941-active		No		

C. CPUC Adoptions:

Adoptions	
2012 hourly rate for A. Katz	In D.12-05-032, the Commission approved the hourly rate of \$190 for Katz's 2011 work. Here, Sierra Club requests an hourly rate of \$205 for Katz's 2012 work. This reflects a second 5% step-increase ⁴ in addition to the 2.2% cost-of-living (COLA) increase approved in Resolution ALJ-281 for 2012 intervenor work. The requested hourly rate is reasonable and comparable to market rates paid to experts and advocates having comparable training and experience and offering similar services. We adopt the 2012 hourly rate of \$205 (rounded to the nearest \$5 increment) for Katz's 2012 work here.
2013 hourly rate for A. Katz	To Katz's approved 2012 rate, Sierra Club requests the Commission apply a first step increase (Katz moved into the 3-4 year attorney level during this proceeding), in addition to the 2% COLA approved for 2013 intervenor work in

² Rounded to nearest dollar.

³ This information was obtained at: <http://www.calbar.ca.gov/>.

⁴ D.08-04-010 at 8 approved step increases for intervenor representatives with recently adopted rates, but limits the step increases to two annual increases of no more than 5% each year, within any given level of experience for each individual.

	Resolution ALJ-287. The requested hourly rate is reasonable and comparable to market rates paid to experts and advocates having comparable training and experience and offering similar services. We adopt the 2013 hourly rate of \$220 (rounded to the nearest \$5 increment) for Katz's 2013 work here.
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PART IV: OPPOSITIONS AND COMMENTS

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

1. Sierra Club made a substantial contribution to D.13-05-034.
2. Sierra Club requested hourly rates for its attorney that are reasonable and comparable to market rates paid to experts and advocates having comparable training and experience and offering similar services.
3. Sierra Club's hours are reasonable and commensurate with the work performed.
4. The total of reasonable contribution is \$7,891.

CONCLUSION OF LAW

1. Sierra Club's claim satisfies all requirements of Pub. Util. Code §§ 1801-1812.

ORDER

1. Sierra Club California is awarded \$7,891. Within 30 days of the effective date of this decision, Pacific Gas and Electric Company, Southern California Edison Company and San Diego Gas & Electric Company shall pay this award. We direct Pacific Gas and Electric Company, Southern California Edison Company and San Diego Gas & Electric Company to allocate payment responsibility among themselves, based on their 2012 California-jurisdictional electric revenues, reflecting 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 September 12, 2012, the 75th day after the filing of Sierra Club California's request, and continuing until full payment is made.
2. The comment period for today's decision is waived.
3. This decision is effective today.

Dated _____, at San Francisco, California.

APPENDIX**Compensation Decision Summary Information**

Compensation Decision:		Modifies Decision? No
Contribution Decision:	D1305034	
Proceeding:	R1105005	
Author:	ALJ Regina DeAngelis	
Payees:	Pacific Gas and Electric Company, Southern California Edison Company and San Diego Gas & Electric Company	

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
Sierra Club California	07/29/13	\$7,891	\$7,981	No	None

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Andy	Katz	Attorney	Sierra Club California	\$205	2012	\$205 ¹
Andy	Katz	Attorney	Sierra Club California	\$220	2013	\$220 ²

(END OF APPENDIX)

¹ Applies the second 5% step-increase approved in D.08-04-010 for attorneys in the 0-2 yr. level of experience in addition to the 2.2% COLA approved in Resolution ALJ-281 for 2012 intervenor work.

² Applies the first 5% step increase approved in D.08-04-010 for attorneys in the 3-4 yr. level of experience in addition to the 2.0% COLA approved in Resolution ALJ-289 for 2013 intervenor work.