Decision **PROPOSED DECISION OF ALJ YACKNIN (Mailed 3/26/14)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of San Diego Gas & Electric Company (U 902 E) for Authority to Enter into Purchase Power Tolling Agreements with Escondido Energy Center, Pio Pico Energy Center and Quail Brush Power.	Application 11-05-023 (Filed May 19, 2011)

DECISION DENYING COMPENSATION TO CALIFORNIA ENVIRONMENTAL JUSTICE ALLIANCE FOR FAILURE TO MAKE A SUBSTANTIAL CONTRIBUTION TO DECISION 13-03-029

Claimant: California Environmental Justice Alliance	**For contribution to Decision 13-03-029**
Claimed ($): $155,631.00	**Awarded ($): $0.00** (reduced 100%)
Assigned Commissioner: Michael R. Peevey	**Assigned Administrative LawJudge:** Hallie Yacknin

PART I: PROCEDURAL ISSUES

A. Brief Description of Decision:	Decision (D.) 13-03-029 determines a local capacity requirement need and directs San Diego Gas & Electric Company (SDG&E) to procure up to 298 megawatts (mW) of local generation capacity beginning in 2018. The decision grants SDG&E authority to enter into a power purchase tolling agreement with Escondido Energy Center. The decision denies authority to enter into power purchase tolling agreements with Pio Pico Energy Center (Pio Pico) and Quail Brush Power (Quail Brush), without prejudice to a renewed application for their approval if amended to match the timing of the identified need, or upon a different showing of need.

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 (PHC):	January 31, 2012	Verified
2. Other Specified Date for NOI:	n/a	
3. Date NOI Filed:	February 29, 2012	Verified
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.)11-05-023	Verified
6. Date of ALJ ruling:	April 23, 2012	Verified
7. Based on another CPUC determination (specify):	n/a	
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.11-05-023	Verified
10. Date of ALJ ruling:	April 23, 2012	Verified
11. Based on another CPUC determination (specify):	n/a	
12. Has the Claimant demonstrated significant financial hardship?		Yes
Timely request for compensation (§ 1804(c)):		
13. Identify Final Decision:	D.13-03-029	Verified
14. Date of Issuance of Final Order or Decision:	March 28, 2013	Verified
15. File date of compensation request:	May 23, 2013	Verified
16. Was the request for compensation timely?		Yes

PART II: SUBSTANTIAL CONTRIBUTION

A. Did the Claimant substantially contribute to the final decision (*see* § 1802(i), § 1803(a) & D.98-04-059).

Intervenor's Claimed Contribution	CPUC Discussion
SDG&E's Spreadsheet Analysis • CEJA recommended that the Commission not rely on SDG&E's spreadsheet analysis to determine local capacity requirement (LCR) need. The Commission agreed that the spreadsheet analysis was not appropriate to determine LCR need.	No substantial contribution. CEJA's presentations challenged SDG&E's spreadsheet analysis for assuming a G-1/N-1 scenario and for its assumptions regarding Otay Mesa's capacity in the event of a forced outage, the retirement of once-through cooling plants, and the amount of demand response (DR), uncommitted energy efficiency (EE), energy storage, and combined heat and power (CHP). CEJA advocated that the assumed amounts of DR, EE, energy storage, and CHP should be the standardized planning assumptions from the 2010 Long-Term Procurement Plan (LTPP) Joint Scoping Memo. D.13-03-029 does not adopt any of these positions: D.13-03-029 declines to use SDG&E's spreadsheet analysis on an entirely different basis than CEJA presented (it is unduly simplistic as compared to the California Independent System Operator's (CAISO) study which uses power flow and transient stability programs) and adopts SDG&E's assumptions of the amount of DR, EE, energy storage, and CHP for purposes of adjusting the results of the CAISO's study. (*See* below.)
CAISO's OTC Study • CEJA advocated against relying on the results of CAISO's Once Through Cooling (OTC) study for determining LCR need because of the improbability of CAISO's modeling assumptions. The Commission recognized the shortcomings of CAISO's modeling and adjusted the input assumptions in the final	No substantial contribution: CEJA's presentations challenged the CAISO's OTC study for its modeling assumptions with regard to reliability criteria, for the availability of other options and solutions for meeting capacity needs, and the and for assuming zero DR, EE, energy storage, and CHP, which CEJA advocated should be the standardized planning assumptions from the 2010 LTPP Joint Scoping Memo. D.13-03-029 did not endorse CEJA's challenges with regard to reliability criteria assumptions and the availability of other options and solutions for meeting capacity needs. D.13-03-029 did not endorse CEJA's recommendations with regard to the amount of DR, EE, and energy storage

decision.	that should be assumed and adopts SDG&E's assumptions of these amounts instead. To the extent that CEJA's challenge to the CAISO's assumption of zero DR, EE, energy storage, and CHP contributed to D.13-03-029's determination to adjust the results of the OTC study by SDG&E's assumed amounts of these resources, CEJA's participation duplicated that of the Division of Ratepayer Advocates. (*See* Part II. B below.)
<u>LCR Need</u> • CEJA argued that LCR need should be reduced from CAISO's results. The Commission reduced the LCR need ranging from the 300 MW to 730 MW that CAISO requested to an LCR need ranging from -87 MW (surplus) to 343 MW.	This is not a separate issue. The purpose of the SDG&E spreadsheet analysis and CAISO's OTC study is for determining the LCR need. (*See* discussions above.)
<u>Loading Order</u> • CEJA argued that SDG&E should be required to follow the loading order when authorizing the procurement of additional generation resources. The Commission agreed that it was appropriate to take into account additional generation resources, consistent with the California Energy Action Plan.	This is not a stand-alone issue. It goes to the determination of reasonable assumptions of DR, EE, energy storage and CHP amounts. (*See* discussions above.)
<u>Uncommitted Energy Efficiency</u> • CEJA advocated for the inclusion of uncommitted energy efficiency (EE) in determining whether to authorize procurement of additional generation resources. CEJA argued that	This is not a stand-alone issue. It goes to the determination of reasonable assumptions of DR, EE, energy storage and CHP amounts. (*See* discussions above.)

CAISO's forecast of zero uncommitted EE was overly conservative. The Commission included consideration of uncommitted EE in its evaluation of LCR need.	
<u>Demand Response</u> • CEJA advocated for the inclusion of demand response (DR) in determining whether to authorize procurement of additional generation resources. CEJA argued that CAISO's forecast of zero DR was overly conservative. The Commission included consideration of DR in its evaluation of LCR need.	This is not a stand-alone issue. It goes to the determination of reasonable assumptions of DR, EE, energy storage and CHP amounts. (*See* discussions above.)
<u>Incremental Combined Heat and Power</u> • CEJA advocated for the inclusion of incremental CHP in determining whether to authorize procurement of additional generation resources. CEJA argued that CAISO's forecast of zero incremental CHP was overly conservative. The Commission included consideration of incremental CHP in its evaluation of LCR need.	This is not a stand-alone issue. It goes to the determination of reasonable assumptions of DR, EE, energy storage and CHP amounts. (*See* discussions above.)
<u>SONGS</u> • CEJA argued that the SONGS outage should not be considered when determining whether there is an LCR need.	No substantial contribution. The CPUC did not agree that SONGS was beyond the scope of the proceeding. D.13-03-029 finds that there is no record evidence of need to meet SDG&E's resource requirements as a result of SONGS.

The Commission agreed that SONGS was beyond the scope of the proceeding, and therefore would not factor into the final decision.	CEJA's presentation on this issue consists of the following argument: "In a last attempt to further justify its LCR need, SDG&E also cites to the SONGs outage even though information about SONGs is not in the record. Nor is it convincing since SONGS is not a generation plant within the SDG&E area. Furthermore, even if SONGs was not in service, it is likely that preferred resources could fill the need given the fact that CAISO and SDG&E are planning to use demand response and conservation measures to meet the need this summer. SDG&E's claim that it will fulfill an "imminent capacity shortfall" without "forc[ing] out preferred resources" is unwarranted. SDG&E's LCR need calculations thus violate the loading order, and do not support the three power plants at issue here." (Footnotes omitted.) This presentation is insubstantial and did not substantially contribute to D.13-03-029.
<u>Renewable Integration</u> • CEJA asserted that renewable integration need should not be considered in the evaluation of LCR need. The Commission agreed to limit its evaluation to whether the PPTAs were needed for LCR purposes, not renewable integration. .	No substantial contribution. CEJA's cited presentation on this issue is briefing and testimony of B. Powers to the effect that DR can help integrate renewable energy, and testimony of J. Firooz reporting statements by the CAISO that it had not yet performed studies to determine renewable integration needs within LCR areas. D.13-03-029 finds that the record does not support a finding that the PPTAs are needed to support renewable resources integration. The discussion in the briefing and testimony of B. Powers is not on point. The testimony of J. Firooz is insubstantial with respect to this issue and did not substantially contribute to D.13-03-029's finding.

Pio Pico Energy Center • CEJA advocated for the denial of authority to enter into a PPTA with Pio Pico. CEJA argued that even if there was a need for new resources in the SDG&E local area, Pio Pico should not be approved to fill that need. The Commission agreed that it was not reasonable to authorize the Pio Pico PPTA.	No substantial contribution. CEJA advocated that, even if there were an LCR need, the Pio Pico project should not be approved to fill that need. D.13-03-029 did not agree. D.13-03-029 did not reject the Pio Pico project as a candidate for filling the LCR need. D.13-03-029 denies authority to enter in the PPTAs on the sole basis that they are scheduled to come on line in 2016 ahead of the LCR need and without prejudice to seeking approval of the PPTAs if amended to match the timing of the identified need.
Quail Brush Power • CEJA advocated for the denial of authority to enter into a PPTA with Quail Brush. CEJA argued that even if there was a need for new resources in the SDG&E local area, Quail Brush should not be approved to fill that need. The Commission agreed that it was not reasonable to authorize the Quail Brush PPTA.	No substantial contribution. CEJA advocated that, even if there were an LCR need, the Quail Brush project should not be approved to fill that need. D.13-03-029 did not agree. D.13-03-029 did not reject the Quail Brush project as a candidate for filling the LCR need. D.13-03-029 denies authority to enter in the PPTAs on the sole basis that they are scheduled to come on line in 2016 ahead of the LCR need and without prejudice to seeking approval of the PPTAs if amended to match the timing of the identified need.

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

	Claimant	CPUC Verified
a. Was the Office of Ratepayer Advocates (ORA)[1] a party to the proceeding?	Yes	Verified
b. Were there other parties to the proceeding with positions similar to	Yes	Verified

[1] The Division of Ratepayer Advocates was renamed the Office of Ratepayer Advocates effective September 26, 2013, pursuant to Senate Bill No. 96 (Budget Act of 2013), which was approved by the Governor on September 26, 2013.

yours?		
c. If so, provide name of other parties: The Division of Ratepayer Advocates and Natural Resources Defense Council were the primary parties taking positions similar to CEJA. UCAN was also involved in the earlier part of the proceeding.		Verified
d. Intervenor's Claim of Non-Duplication: During the proceeding, CEJA identified three parties as having positions similar to its own: the Natural Resources Defense Council, the Division of Ratepayer Advocates, and UCAN. CEJA was in regular contact with these organizations to discuss positions and ensure that duplication was avoided. Before submitting briefs and testimony in the case, CEJA discussed proposed coverage with these parties. CEJA coordinated with UCAN when UCAN was active in the proceeding, and coordinated with NRDC and DRA throughout the proceeding. When similar issues were covered, CEJA provided analysis, studies, and expert opinions which highlighted its own arguments from its perspective as an alliance of environmental justice organizations. The result was a complementary showing that built off each other toward common objectives. A review of the final decision reveals that when multiple parties worked on an issue, the results were cumulative, not duplicative. Multi-party participation was necessary in light of the several parties advocating opposing positions for nearly every issue. When coordinating with other parties, CEJA covered issues in its testimony that similar parties did not include. For example, CEJA was the only environmental public interest party that provided an extensive analysis of CAISO's LCR study. In particular, CEJA provided extensive testimony about the input and transmission assumptions that CAISO relied on in its OTC study. CEJA also conducted rounds of discovery to obtain information about the assumptions used in the study. Finally, CEJA extensively researched and cited to available programs and legal authorities in its briefing to support its positions. As a result of these analyses, the Final		CPUC Discussion: CEJA's participation with respect to its challenge to the CAISO's assumption of zero DR, EE, energy storage and CHP duplicated that of DRA and, with respect to EE, that of NRDC: DRA's presentations challenged the CAISO's OTC study for assuming zero DR, EE, energy storage and CHP, which DRA advocated should be the standardized planning assumptions from the 2010 LTPP Joint Scoping Memo. To the extent that CEJA's other presentations were unique to it, they did not substantially contribute to the decision.

Decision referenced CEJA's contributions throughout the decision.	

C. Additional Comments on Part II:

#	Claimant's Additional Assertion	CPUC Discussion
1	CEJA substantially contributed to the development of the record by conducting extensive discovery that was included in the record. CEJA conducted extensive discovery of SDG&E and CAISO that contributed to the development of the record.	Offering discovery into evidence is not "substantial contribution" unless the evidence that was offered substantially helped the CPUC in the making of its order or decision.

PART III: REASONABLENESS OF REQUESTED COMPENSATION

A. General Claim of Reasonableness (§§ 1801 & 1806): Because we find no substantial contribution, we do not reach this issue.

B. Specific Claim: Because we find no substantial contribution, we do not reach this issue.

C. CPUC Disallowances & Adjustments:

#	Reason
1.	No substantial contribution from the majority of CEJA's presentation. To the extent that CEJA's presentation contributed to D.13-03-029, it duplicated that of ORA.
2.	Because we disallow 100% of the requested compensation, we do not reach the issue of reasonableness of the claim amount, hours or fees.

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))?	No

If not:

Party	Party's Comment	CPUC Discussion
CEJA	CEJA asserts that D.13-03-029 adopted CEJA's position that it should not assume zero MW for energy efficiency, demand response, and combined heat and power.	As discussed above, to the extent that CEJA advanced the position that the CPUC should assume greater than zero MW for energy efficiency, demand response, and combined heat and power, its presentation duplicated that of ORA and, by the assumptions in its spreadsheet model, the applicant SDG&E. D.13-03-029 rejected CEJA's recommended assumptions of MW amounts and adopted SDG&E's assumptions over CEJA's objections.
CEJA	CEJA asserts that it did not unnecessarily duplicate ORA's and NRDC's presentations related to EE, DR, and CHP.	As discussed above, D.13-03-029 rejected CEJA's, ORA's and NRDC's recommended assumptions of MW amounts and adopted SDG&E's assumptions related to EE, DR, and CHP. Thus, to the extent there the deviations between these parties' presentations related to EE, DR, and CHP, they did not substantially contribute to the rejection of the CAISO's assumption of

		zero MW or to the determination of reasonable assumptions related to EE, DR, and CHP.
CEJA	CEJA asserts that D.13-03-029 adopted its position that it should not rely on SDG&E's spreadsheet analysis.	As discussed above, D.13-03-029 did not rely on SDG&E's spreadsheet analysis for reasons unrelated to CEJA's presentation. CEJA's mere statement of position in alignment with the decision's result does not demonstrate substantial contribution.
CEJA	CEJA asserts that D.13-03-29 rejected the Pio Pico and Quail Brush contracts consistent with CEJA's position.	As discussed above, D.13-03-029 rejected the Pio Pico and Quail Brush contracts for reasons unrelated to CEJA's presentation. CEJA's mere statement of position in alignment with the decision's result does not demonstrate substantial contribution.
CEJA	CEJA asserts that D.13-03-029 did not factor renewable integration and SONGS retirement consistent with CEJA's position.	As discussed above, CEJA's presentation on this issue was insubstantial, and the mere fact of its position in alignment with the decision's result does not demonstrate substantial contribution.
NRDC	NRDC asserts that the proposed decision (PD) applies an unduly restrictive approach to intervenor compensation by denying compensation primarily on the rationale that the Final Decision did not adopt CEJA's specific recommendation, rather than assessing whether the party's advocacy has assisted the CPUC in its regulatory process by enriching the CPUC's deliberations and record.	To the contrary, while the PD notes that CEJA did not prevail on the positions it presented, the PD denies compensation on the further basis that CEJA's presentations did not enrich the CPUC's deliberations and record and that, to the extent that any aspect of CEJA's presentations enriched the CPUC's deliberations (i.e., the general observation that the CPUC should not assume zero EE, DR, or CHP), that general observation was duplicative of ORA's presentation. The mere fact that a party presents evidence and argument does not demonstrate that such evidence and argument assisted the CPUC its deliberations; by that standard, all parties would be entitled to intervenor compensation by virtue of having introduced evidence and offered argument into the record, without regard to its substantive merits.
NRDC	NRDC asserts that CEJA coordinated	To the extent that CEJA made presentations

	with other stakeholders and therefore, its efforts should not be deemed to all be either duplicative or non-complementary.	that were not duplicative and that complemented those of other stakeholders, those presentations did not enrich the CPUC's deliberations.
ORA	ORA contends that the PD's finding of no substantial contribution is based on the erroneous finding that CEJA's participation duplicated that of other parties; ORA corroborates CEJA's assertion that it coordinated with other parties to avoid duplication.	CEJA's non-duplicative presentations did not substantially contribute to the proposed decision. To the extent that CEJA contributed to the proposed decision by making the general case that the CPUC should not assume zero EE, DR, and CHP, that general presentation duplicated the showings of ORA and other parties.
ORA	ORA observes that it is important for the CPUC to hear the perspective of environmental justice organizations, and contends that denying intervenor compensation to such organizations will discourage them from participating in CPUC proceedings.	PU Code § 1802(i) does not define "substantial contribution" by reference to the intervenor's perspective or motivation for participating in the proceeding. It defines "substantial contribution" to mean that, "in the judgment of the commission, the customer's presentation has substantially assisted the commission in the making of its order or decision…." In any event, the scoping memo did not identify as an issue, and CEJA did not present evidence or argument regarding, the environmental justice implications that may have been raised by the application.

FINDINGS OF FACT

1. California Environmental Justice Alliance has not made a substantial contribution to Decision 13-03-029.

CONCLUSION OF LAW

1. The Claim should be denied.

ORDER

1. The Claim of California Environmental Justice Alliance is denied.

2. The comment period for today's decision is not waived.

This decision is effective today.

Dated _____, at San Francisco, California.

APPENDIX

Compensation Decision Summary Information

Compensation Decision:		**Modifies Decision?**	No
Contribution Decision(s):	D1303029		
Proceeding(s):	A1105023		
Author:	ALJ Yacknin		
Payer(s):	N/A		

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
California Environmental Justice Alliance	5/24/2013	$155,631.00	$0.00	No	Failure to make a substantial contribution.

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
n/a	n/a	n/a	n/a	n/a	n/a	n/a

(END OF APPENDIX)