

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company (U39E) for Approval of Amended Purchase and Sale Agreement Between Pacific Gas and Electric Company and Contra Costa Generating Station LLC and for Adoption of Cost Recovery and Ratemaking Mechanisms.

Application 12-03-026
(Filed March 30, 2012)

**DECISION GRANTING COMPENSATION TO COMMUNITIES FOR
A BETTER ENVIRONMENT FOR SUBSTANTIAL CONTRIBUTION
TO DECISIONS (D.) 12-12-035 AND D.13-04-032**

Claimant: Communities for a Better Environment (CBE)	For contribution to D.12-12-035, and as modified, D.13-04-032
Claimed (\$): 77,715.00	Awarded (\$): \$62,113.00 (reduced 20.1%)
Assigned Commissioner: Peevey	Assigned ALJ: Yacknin

PART I: PROCEDURAL ISSUES (to be completed by Claimant except where indicated)

A. Brief Description of Decision:	Decision (D.) 12-12-035 granted approval to Pacific Gas and Electric Company (PG&E) for its amended purchase and sale agreement (PSA) with Contra Costa Generating Station (CCGS) for the Oakley Generating Station. The Commission opted to approve the amended PSA rather than adopt the Proposed Decision of ALJ Yacknin, which would have denied the utility's application for a number of reasons, including the fact that the Commission has never determined that the Oakley Project is needed.
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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 (PHC):	5/22/12	Correct
2. Other Specified Date for NOI:	N/A	N/A
3. Date NOI Filed:	6/21/12 and amended 7/26/12	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.) 12-03-026	Correct
6. Date of ALJ ruling:	8/15/12	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.12-03-026	Correct
10. Date of ALJ ruling:	8/15/12	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.13-04-032	Correct
14. Date of Issuance of Final Order or Decision:	4/19/13	Correct
15. File date of compensation request:	5/23/13	June 7, 2013
16. Was the request for compensation timely?		Yes

PART II: SUBSTANTIAL CONTRIBUTION

A. In the fields below, describe in a concise manner 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>In A.06-11-007, the Commission recognized that it may benefit from an intervenor’s participation even where the Commission did not adopt any of the intervenor’s positions or recommendations. The Commission held that an intervenor’s opposition can provide important information regarding all issues that needed to be considered in deciding whether to approve a particular application. Such opposition allows the Commission to properly and thoroughly analyze all aspects leading to a decision/consider the consequences of adopting or rejecting applications.</p> <p>Furthermore, the Commission has also held that contribution to an ALJ’s Proposed Decision (PD) is evidence of a substantial contribution even if the Commission does not adopt the PD’s recommendations. (For example, see D.11-05-044.)</p> <p>CBE therefore requests that the Commission find a substantial contribution warranting an award of intervenor compensation for the reasonable costs and expenses incurred by CBE as follows:</p>		<p>Accepted</p>

<p>1. The Commission had to determine whether the Oakley PSA was barred by the settlement agreement in the 2010 LTPP (D.12-04-026).</p> <p>In the PD, the ALJ determines that there is no specific, unique need warranting approval of the Oakley plant. In order to come to this conclusion, the ALJ cited to D.12-04-026 in which the settling parties agreed that further analysis was needed before any renewable integration resource need determination was made. The ALJ agreed with CBE, using the same language as argued in CBE’s Opening and Reply Briefs, that the Oakley PSA was “premature” and should have been submitted following the close of the 2012 LTPP. CBE’s briefing further contained more detail as to the procedures and workshops of the Commission’s long term procurement process – an analysis essential to the ALJ’s finding of a premature application.</p> <p>Similarly, throughout the evidentiary hearings, CBE’s cross examination of witnesses targeted whether PG&E had indeed fully analyzed the use and effectiveness of existing renewables in order to properly make such an integration determination. This line of questioning laid the path to make the argument at the briefing stage, citing the very same section of D.12-04-026 as cited by the ALJ, that PG&E should wait for further studies from the Commission’s long term procurement process.</p>	<p>PD Sections 7.2 and 8.1, at 12, 14, 15.</p> <p>CBE Opening Brief at 2-4; 12-14.</p> <p>CBE Reply Brief at 5-8.</p> <p>CBE Written Comments to the Proposed Decisions at 2-4; 6-7.</p> <p>CBE Reply Comments to the Proposed Decisions at 4-5.</p>	<p>Accepted</p>
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<p>2. The Commission had to determine whether, for purposes of meeting a requirement of D.10-07-045, the Oakley plant had all necessary permits.</p> <p>Although the PD did not reach the issue of whether the Oakley plant had all necessary permits, the Alternate Proposed Decision (APD) analyzes CBE’s arguments.</p> <p>CBE conducted cross examination of PG&E witnesses Royall and Maring in order to gather evidence relating to this determination (for instance, pertaining to the start of construction date of the Oakley plant). Thereafter, at the briefing stage, CBE argued that the Oakley project lacked both an incidental take permit from the Fish and Wildlife Service as required under the Endangered Species Act, and also a Prevention of Significant Deterioration permit under the Clean Air Act.</p> <p>In opposition, PG&E also spent a significant amount of time arguing that the Oakley project did in fact have all necessary permits, citing to hundreds of pages of documents from both the CEC and BAAQMD.</p> <p>In order to properly give this issue scrutiny, it was essential for the Commission to have both sides of the argument. CBE was the only party to make such an argument, and although CBE’s conclusion was not adopted, the Commission should consider the substantial contribution CBE’s analysis of permitting requirements, the CEC and BAAQMD documents, and the regulatory framework of those</p>	<p>APD Section 6.1, at 10-12.</p> <p>D.13-04-032 at 11.</p> <p>CBE Opening Brief at 3-11.</p> <p>CBE Reply Brief at 2-4.</p> <p>CBE Reply Comments to the Proposed Decisions at 1.</p> <p>CBE Ex Parte Communications to Commissioners Sandoval and Ferron.</p>	<p>No substantial contribution. D.13-04-032 rejects CBE’s position, and the proposed decision did not address it.</p>
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<p>agencies, that CBE provided in order for the Commission to properly analyze all aspects leading to its decision.</p> <p>Similarly, as a party that had previously issued 60 Day Notices to PG&E regarding its lack of the above permits, CBE was particularly positioned to discuss this matter with the Commissioners at Ex Parte meetings.</p> <p>Finally, D.13-04-032, modifying D.12-12-035, also analyzed whether the Oakley project had all necessary permits. In order to determine compliance with the Clean Air Act, the Commission revisited the question of whether construction of the Oakley project began before or after July 1, 2011. In answering this question, the Commission relied upon the cross examination of PG&E witnesses Maring and Royall. The Commission cites to portions of CBE’s cross examination of these witnesses for support of its determination. Therefore, it is clear that CBE’s examination elicited essential testimony for the Commission’s consideration in deciding when the Oakley project began construction.</p>		
<p>3. The Commission had to determine whether, for purposes of meeting D.10-07-045, there was a “final” CAISO study regarding renewables integration.</p> <p>A central issue identified by the Scoping Memo was whether the CAISO had issued its final study regarding renewables resources</p>	<p>PD Sections 7.2 and 8.1, at 12-13, 14-15.</p> <p>APD Sections 6.2 and 7.1, at 12-14, 17-19.</p> <p>D.13-04-032 at 4-9.</p> <p>CBE Opening Brief at 12-15.</p>	<p>Accepted</p>

<p>integration.</p> <p>CBE spent a significant portion of its briefing arguing that PG&E’s “final” study constituted hearsay and that no other documents tended to a contrary finding. In particular, PG&E had argued that CEC and BAAQMD documents supported its position. Given CBE’s experience in dealing with both the CEC and BAAQMD, CBE was well positioned to argue to the contrary.</p> <p>CBE argued that the ultimate determination of system need would not occur until the close of Track 2 of the 2012 LTPP. The ALJ agreed in the PD, also citing to the same settlement agreement as noted above. The ALJ further agreed with CBE’s contention that the risks of overprocurement outweighed any risk of any new generation.</p> <p>Furthermore, at the evidentiary hearings, CBE’s cross examination was geared towards answering the question of whether PG&E had properly considered renewable resources. It immediately follows that any such studies factor into whether there was any subsequent application, and therefore existence, of the CAISO’s final renewable resource integration study.</p> <p>CBE also produced a chart relied upon by other parties at the Ex Parte stage of the proceeding. CBE’s efforts clearly showed how the Commission should determine need in its long term procurement process, not on hearsay; the ALJ’s PD agreed.</p>	<p>CBE Reply Brief at 5-8.</p> <p>CBE Written Comments to the Proposed Decisions at 2-5.</p> <p>CBE Reply Comments to the Proposed Decisions at 1-4.</p> <p>CBE Ex Parte Communications to Commissioners Sandoval and Ferron.</p> <p>CBE Application for Rehearing at 5-10.</p>	
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<p>The Commission’s subsequent responses to this hearsay issue further reflect CBE’s substantial contribution in two respects. First, the APD acknowledges CBE’s hearsay argument, nevertheless coming to a different conclusion for other reasons. Second, in D.13-04-032, the Commission also addresses the hearsay issue. CBE spent a significant portion of time at the rehearing stage briefing this hearsay issue. Although the Commission ultimately found such a claim to have “no merit,” the Commission also made clear that D.13-04-032 would now modify the ALJ’s prior evidentiary ruling regarding hearsay. But for CBE’s persistence in opposition to the Commission’s perceived procedural error, the Commission would not have revisited its analysis, thereby necessitating the issuance of D.13-04-032 to clarify its position.</p> <p>Similarly, the Commission also saw the need to analyze its authority to make such a ruling, or, to determine whether it had correctly followed its own procedures. The Commission’s analysis directly stemmed from CBE’s opposition in its application for rehearing. CBE’s application for rehearing focused on the Commission’s Rules of Practice and Procedure, prompting the Commission to do the same in D.13-04-032. Although the Commission ultimately disagreed with CBE, an analysis to that effect was critical to maintain the integrity of the Commission’s decision and findings.</p>		
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<p>Moreover, in D.13-04-032, the Commission determined that its reliance on the ALJ's identified hearsay evidence did not create a due process violation, reasoning that the parties, including CBE, had notice and an opportunity to be heard in relation to that hearsay evidence. CBE's participation was therefore not only a substantial contribution, but essential to the Commission's determination regarding the use of evidence initially ruled as hearsay. Without the input of CBE, on behalf of its members, the Commission would have violated the due process rights of CBE's members.</p>		
<p>4. The Commission had to determine whether the Oakley PSA was barred by D.10-07-045/whether PG&E identified a "unique reliability" need.</p> <p>Similarly, as noted above, CBE spent a significant amount of time arguing that there was no unique reliability need for the Oakley plant. In the PD, the ALJ agrees with CBE, requiring PG&E to wait for the Commission to come to that determination in its long term planning process. Specifically, agreeing with CBE, the ALJ finds that there is only evidence for a general, versus unique and specific, reliability need.</p>	<p>PD Section 8.1, at 14-15.</p> <p>CBE Opening Brief at 14-16.</p> <p>CBE Reply Brief at 7-8.</p> <p>CBE Written Comments to the Proposed Decisions at 6-8.</p> <p>CBE Reply Comments to the Proposed Decisions at 3-5.</p>	<p>Accepted</p>
<p>5. The Commission had to determine whether the Oakley PSA was a reasonable contract/whether it was the "least cost best fit" alternative.</p>	<p>PD Section 8.3 at 20.</p> <p>APD Section 7.3, at 22-23.</p>	<p>Accepted</p>

<p>CBE’s cross examination of PG&E witnesses specifically addressed whether PG&E had properly considered the effectiveness of renewable resources. This line of questioning directly pertained to an issue in the Scoping Memo of whether Oakley was the least cost/best fit option.</p> <p>The PD found it “impossible to determine whether the Oakley project is the least-cost, best-fit alternative” for substantially the same reason: how can one identify a yet to be determined need?</p> <p>In combination with the lack of a final CAISO study on the issue, PG&E’s lack of consideration of renewables is particularly significant in coming to such a conclusion. Moreover, CBE raised the issue of the Loading Order, a priority for the Commission in considering least cost/best fit methods of generation, and a factor that it had to consider in order to properly analyze this issue.</p>	<p>CBE Opening Brief at 16-19.</p> <p>CBE Reply Brief at 8-10.</p> <p>CBE Written Comments to the Proposed Decisions at 5-6.</p> <p>CBE Reply Comments to the Proposed Decisions at 3.</p>	
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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 yours?	Yes	Verified
<p>c. If so, provide name of other parties:</p> <p>Independent Energy Producers (IEP), The Utility Reform Network (TURN), Californians for Renewable Energy (CARE), Western Power</p>		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.

<p>Trading Forum (WPTF), and Fairfield Energy Center and Madera Energy Center (Fairfield/Madera).</p>	
<p>d. Describe how you coordinated with ORA and other parties to avoid duplication or how your participation supplemented, complemented, or contributed to that of another party:</p> <p>In order to avoid duplication of arguments, CBE consulted with DRA, TURN and CARE during the evidentiary hearings. CBE therefore cooperatively conducted cross-examination of witnesses, drawing on CBE’s experience in dealing with the issue of renewable resources and permitting requirements from other government agencies, including the Bay Area Air Quality Management District. For instance, 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. CBE ensured that these concerns were conveyed when the Commission had to answer the question of whether there was any need for the Oakley plant to integrate renewable resources.</p> <p>Continuing to the briefing stage, CBE similarly drafted arguments focused on these areas and geared towards answering the questions raised in the Scoping Memo. CBE made every effort to avoid duplication of issues. Close coordination with other parties allowed CBE to make singular arguments of specific concern to its members. When similar issues were covered, CBE provided analysis and studies that highlighted its own arguments and added to other common arguments. For instance, CBE used a TURN exhibit to illustrate the effectiveness of renewables, an issue not touched on, but tending to the same eventual goal as TURN.</p> <p>Finally, CBE also coordinated with allies to conduct ex parte meetings and applications for rehearing, also ensuring non-duplication of issues and supplementing, complementing and contributing to other parties’ similar interests.</p>	<p>Verified</p>

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>The Oakley Project is a more than \$1 billion investment and will generate annual revenue in excess of \$200 million. Evidently, such a large investment will have an impact on not only PG&E ratepayers, but also those throughout California.</p>	<p>CPUC Verified</p> <hr/> <p>Verified</p>
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<p>Although the Commission does not ultimately adopt CBE’s position, the Commission should nevertheless recognize CBE’s substantial contribution and participation as reasonable. CBE was uniquely positioned amongst the parties in two distinct areas. First, CBE provided a thorough overview of permitting requirements to answer an integral question confronting the Commission. Second, CBE brought its knowledge of renewable resources to the attention of the Commission. A central question in this proceeding revolved around the 33% RPS. In order for the Commission to make any decision to meet this statewide goal, the Commission has stated its support and reliance on the Loading Order; that any procurement must follow that priority. From the evidentiary hearings to the Ex Parte meetings, CBE consistently conveyed this message to the Commission. Without CBE’s participation, the Commission would not have considered this priority. CBE’s participation is therefore reasonable, especially in light of the impact the Oakley project will now have on ratepayers throughout California – again, a central concern of the Loading Order.</p>	
<p>b. Reasonableness of Hours Claimed.</p> <p>CBE’s hours were extremely reasonably spent. CBE’s hours divide into 5 categories, as noted in the attached timesheets.</p> <p>CBE has excluded all time for all communications, internally between attorneys and an expert, and also between allies that would have to either duplication of time or duplication of issues. CBE also does not argue that 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 and experts. These considerations are reflected in the attached timesheets.</p>	<p>Verified</p>

B. Specific Claim:*

CLAIMED						CPUC AWARD		
ATTORNEY, EXPERT, AND ADVOCATE FEES								
Item	Year	Hours	Rate	Basis for Rate*	Total \$	Hours	Rate	Total \$
Shana Lazerow	2012	58.9	\$360		\$27,576.00	38.3	\$320 ²	\$12,416.00
Roger Lin	2012	165.7	\$250		\$41,425.00	150.5	\$285	\$42,892.50
Jillian Kysor	2012	20.1	\$250		\$5,025.00	20.1	\$155	\$3,115.50
Julia May	2012	21.7	\$170		\$3,689.00	21.7	\$170	\$3,689.00
Subtotal:					\$77,715.00	Subtotal:		\$62,113.00

*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 ³	Member Number	Actions Affecting Eligibility (Yes/No?) If "Yes", attach explanation
Shanna Lazerow	June 4, 1998	195491	No
Roger Lin	January 13, 2007	248144	No
Jillian Kysor ⁴	December 10, 2012	287526	No

C. Attachments Documenting Specific Claim and Comments on Part III:

Attachment or Comment #	Description/Comment
1	Certificate of Service
2	Timesheets (4)
3	Resumes of three attorneys and expert

² Approved in D.13-10-014.

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

⁴ California Bar lists Kysor as currently living in Atlanta, Georgia. However, after reviewing her current resume, Kysor is listed as currently working for CBE in Oakland, California.

D. CPUC Disallowances & Adjustments:

#	Reason
1. Disallowance for hours associated with Oakley plant permits.	Disallowance of hours associated with the issue of whether the Oakley plant had all necessary permits, as CBE did not substantially contribute to that issue. The following hours are disallowed relating to the permit issue: 20.1 hours, from Shana Lazerow's total time billed; and 15.2 hours, from Roger Lin's total time billed.
2. Adoption of Roger Lin's hourly rates(s).	Resolution ALJ-281 sets 2012 attorney rates with 5-7 years of experience at \$285-\$305 per hour. Lin became a licensed attorney with the State Bar of California in January 2007. As such, he falls into the 5-7 year range for attorney rates. After reviewing Lin's credentials, the Commission adopts the rate of \$285 per hour for work Lin completed in this proceeding in 2012. Although this rate is higher than what was requested, the rate of \$285 per hour is reflective of Lin's years of experience as a licensed attorney.
3. Adoption of Jillian Kysor's hourly rate(s).	Resolution ALJ-281 sets 2012 attorney rates with 0-2 years of experience at \$155-\$210 per hour. Kysor became a licensed attorney with the State Bar of California in January 2012. As such, she falls into the 0-2 year range for attorney rates. After reviewing Kysor's credentials, the Commission adopts the rate of \$155 per hour for work Kysor completed in this proceeding in 2012. Although this rate is lower than what was requested, the rate of \$155 per hour reflects Kysor's experience as well as the Commission's pre-established rate ranges for attorneys.
4. Adoption of Julia May's hourly rate(s).	Resolution ALJ-281 sets 2012 expert rates with 13-plus years of experience at \$160-\$400 per hour. May received her B.S. in electrical engineering in 1981. May has served as a design engineer, research associate, program director, and most recently a lead scientist/consultant for CBE. Although May does not have a higher degree than a B.S. her years of work experience place her in the 13-plus year range for experts. As such, the Commission adopts the rate of \$170 per hour for work May completed in this proceeding in 2012. This rate is reflective of May's years of experience as well as the Commission's pre-established rate ranges for experts.

PART IV: OPPOSITIONS AND COMMENTS

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

FINDINGS OF FACT

1. Communities for a Better Environment has made a substantial contribution to Decisions (D.) 12-12-035 and D.13-04-032.
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 compensation is \$62,113.00.

CONCLUSION OF LAW

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

ORDER

1. Communities for a Better Environment is awarded \$62,113.00.
2. Within 30 days of the effective date of this decision, Pacific Gas and Electric Company shall pay Communities for a Better Environment the total award. Payment of the award shall include interest at the rate earned on prime, three-month non-financial commercial paper as reported in Federal Reserve Statistical Release H.15, beginning August 21, 2013, 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.

This decision is effective today.

Dated _____, at San Francisco, California.

APPENDIX**Compensation Decision Summary Information**

Compensation Decision:		Modifies Decision?	No
Contribution Decision(s):	D1212035, D1304032		
Proceeding(s):	A1203026		
Author:	ALJ Yacknin		
Payer(s):	Pacific Gas and Electric Company		

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier ?	Reason Change/Disallowance
Communities for a Better Environment (CBE)	6/7/13	\$77,715.00	\$62,113.00	No	Change in hourly rates; failed to substantially contribute to permitting issue.

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Shana	Lazerow	Attorney	CBE	\$360	2012	\$320 ¹
Roger	Lin	Attorney	CBE	\$250	2012	\$285
Jillian	Kysor	Attorney	CBE	\$250	2012	\$155
Julia	May	Expert	CBE	\$170	2012	\$170

(END OF APPENDIX)

¹ Adopted in Decision 13-10-014.