

Decision **PROPOSED DECISION OF ALJ YIP-KIKUGAWA** (Mailed 7/28/2014)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of Pacific Gas and Electric Company for Approval of Modifications to its SmartMeter™ Program and Increased Revenue Requirements to Recover the Costs of the Modifications (U39M).

Application 11-03-014
(Filed March 24, 2011)

**DECISION GRANTING COMPENSATION TO ECOLOGICAL OPTIONS NETWORK
FOR SUBSTANTIAL CONTRIBUTION TO DECISION 12-02-014**

Intervenors: Ecological Options Network (EON)	For contribution to D.12-02-014
Claimed (\$): \$40,260.00	Awarded (\$): \$17,667.00 (reduced 56.1%)
Assigned Commissioner: Michael R. Peevey	Assigned ALJ: Amy Yip-Kikugawa

PART I: PROCEDURAL ISSUES

A. Brief Description of Decision:	This decision modifies Pacific Gas and Electric Company's (PG&E) SmartMeter Program to include an opt-out option for residential customers of 1) analog gas and electric meters, 2) continued proceeding to phase two to discuss community-wide opt-out and 3) to further consider cost and cost allocation issues in phase two.
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B. Intervenor must satisfy intervenor compensation requirements set forth in Public Utilities Code §§ 1801-1812:

	Intervenor	CPUC Verified
Timely filing of notice of intent to claim compensation (NOI) (§ 1804(a)):		
1. Date of Prehearing Conference (PHC):	5/6/2011	Verified
2. Other Specified Date for NOI:		
3. Date NOI Filed:	6/06/2011	Verified
4. Was the NOI timely filed? Yes		Yes
Showing of customer or customer-related status (§ 1802(b)):		
5. Based on Administrative Law Judge (ALJ) ruling issued in proceeding number:	Application (A.) 11-03-014	Verified
6. Date of ALJ ruling:	Oct. 25, 2011	Verified
7. Based on another CPUC determination (specify):		
8. Has the Intervenor demonstrated customer or customer-related status? Yes. Category 3		Yes
Showing of "significant financial hardship" (§ 1802(g)):		
9. Based on ALJ ruling issued in proceeding number:	A.11-03-014	Verified
10. Date of ALJ ruling:	Oct. 25, 2011	Verified
11. Based on another CPUC determination (specify):		
12. Has the Intervenor demonstrated significant financial hardship? Yes.		Yes
Timely request for compensation (§ 1804(c)):		
13. Identify Final Decision:	Decision (D.) 12-02-014	Verified
14. Date of Issuance of Final Order or Decision:	2/9/2012	Verified
15. File date of compensation request:	4/9/2012	Verified
16. Was the request for compensation timely? Yes		Yes

C. Additional Comments on Part I:

#	Intervenor	CPUC	Comment
	EON		EON Co-Directors Mary Beth Brangan and James Heddle have been researching and reporting on wireless RF issues for over a decade. We produced the award-winning, nationally and internationally broadcast documentary <i>Public Exposure: DNA, Democracy and the Wireless Revolution</i> in 2001, used by communities and city and regional planners worldwide. The EON YouTube Channel contains dozens of video reports on the science and politics of wireless issues. We have published numerous newspaper articles, given many radio interviews, and have published mixed media articles on these issues on EON's extensive blog. On the basis of our more than ten years of professional experience, we qualify for the 'expert' category of intervenor in

			accordance with Resolution ALJ-267.
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PART II: SUBSTANTIAL CONTRIBUTION

A. In the fields below, describe in a concise manner Intervenor’s contribution to the final decision (see § 1802(i), § 1803(a) & D.98-04-059).

Contribution	Specific References to Intervenor’s Presentations and to Decision	Showing Accepted by CPUC
<p>1. EON assiduously represented the interests and concerns of our network subscribers and our local and regional constituencies throughout the proceeding with the objective of assisting the CPUC in integrating public input into its policy-making process. This was accomplished by our participation as parties in the proceeding, for which we are seeking compensation.</p>	<p>EON consistently advocated for three of the main elements of the final interim decision: (1) retention of analog meters; (2) continuation of the proceeding for the purpose of considering additional pricing considerations as well as (3) consideration of community-wide opt-out. EON prevailed on all three of these issues.</p>	<p>As a preliminary matter, we note that “prevailing” on an issue is not a requirement for awarding intervenor compensation. The intervenor must show that it has made a substantial contribution, as defined in Pub. Util. Code Section 1802(i). Here, we agree that EON made a substantial contribution, but as noted in our discussion of the EMF Safety Network (Network)’s claim, we also find that there was significant overlap with the positions of other parties, including DRA, Network, and Aglet.</p>
<p>2. Participation in the portion of this proceeding covered by this request met the requirements as defined in Section 1802(i) of the PU Code for establishing a substantial contribution to the Commission’s decision. Should the Commission not adopt any of the intervenor’s recommendations, compensation may be awarded if, in the judgment of the Commission, the party’s participation substantially contributed to the decision or order. For example, if an intervenor provided a unique perspective</p>	<p>The Commission has elaborated on this statutory standard as follows: “A party may make a substantial contribution to a decision in various ways. It may offer a factual or legal contention upon which the Commission relied in making a decision. Or it may advance a specific policy or procedural recommendation that the ALJ or Commission adopted. A substantial contribution</p>	<p>Yes</p>

<p>that enriched the Commission’s deliberations and the record, the Commission could find that the intervenor made a substantial contribution. With this guidance in mind, we turn to the claimed contributions EON made to D.12-02-014</p>	<p>includes evidence or argument that supports part of the decision, even if the Commission does not adopt a party's position in total. The Commission has provided compensation even when the position advanced by the intervenor is rejected. (D.99-08-006, 1999 Cal. PUC LEXIS 497, *3-4).”</p>	
<p>3. General Activities – A wide range of activities are required in order to participate in the Proceeding and it is difficult to assign specific issues to the time invested. Such activities include review of all documents filed by the parties and the CPUC, consultation with experts and other parties, attendance at pre-hearing conferences and workshops, reseaching, drafting and filing protests and comments.</p>	<p>See attached Exel spreadsheet for an accounting of EON time spent on these activities.</p>	<p>See above</p>
<p>4. EON’s input as an intervening party was repeatedly referenced in D.12-02-014 in both the body of the text (6 times) and in the footnotes comprising the decision (4 times).</p>	<p>See Decision 12-02-014, at 4, 10, 11, 14, 20, 28, 30, 36-38.</p>	<p>Yes, but see above regarding duplication</p>
<p>5. Both in our initial Protest filed April 25, 2011, and in our Comments on the Proposed Decision filed December 12, 2011, EON consistently advocated for retention of analog meters. We presented extensive evidence that the RF antennas are not the only source of RF emissions in SmartMeters. We reported on our extensive consultations with professional and academic electrical engineers who demonstrated that wireless meters all contain a switching-mode power supply (SMPS), known to produce electro-magnetic pollution in the form of high-frequency ‘transients’ which propagate throughout the local circuitry</p>	<p>In her October 18, 2011 Administrative Law Judge’s Ruling Seeking Clarification, ALJ Amy Yip-Kikugawa included among her questions, “Is there RF emission when the meter is not transmitting?” In their response, PG&E acknowledged that SmartMeters, “like all digital circuitry” emit RF in addition to their wireless transmission functions. While PG&E did not refer to it by name, the source of RF emissions in digital circuitry is the SMPS, which</p>	<p>The health effects of RF emissions (as extensively discussed in EON’s protest) were specifically excluded from the scope of this proceeding. The narrow issue of compliance with FCC requirements was also addressed by DRA, Network, and Aglet. The ALJ specifically cautioned EON that duplication of effort would not be</p>

<p>and affect both electronics and biological systems.</p>	<p>‘steps-down’ the incoming voltage to a much lower level.</p>	<p>compensated or would be significantly reduced.</p>
<p>6. Specifically, as our unique contribution, we focused in our filings – on the basis of extensive research and consultations with electrical engineering experts - (A) that RF antennas are not the only source of electro-magnetic emissions from wireless ‘smartmeters;’ (B) that the Switching Mode Power Supply [SMPS] component in wireless meters is widely known to cause transient spikes, or ‘dirty electricity’ in the household and local neighborhood circuitry; and (C) that the proposed ‘radio off’ option would not address this RF emission source.</p>	<p>This contention was confirmed by both PG&E and SDG&E in their responses to ALJ Yip-Kikugawa’s “Ruling Seeking Clarification” issued Oct. 18, 2011.</p> <p>[see PG&E Response #9, at 13 and SDG&E Responses #9 and #10, at 10]</p> <p>While this fact was not specifically referenced in the final D.12-02-014, it is reasonable to assume that our extensive research and documentation of this information was a relevant factor in that ruling, since it showed that the ‘radio off’ option would not fully address RF issues.</p>	<p>(See above.) Research done outside of this proceeding will not be compensated.</p>
<p>7. In our comments on Commissioner Peevey’s Proposed Decision, filed December 12, 2011, EON again stressed that the, “‘Radio-Off’ option ignores other radiofrequency radiation emission sources from ‘smart’ meters.” We explained, that the proposed ‘Radio-off’ option fails to address at least three other sources of electro-magnetic pollution caused by ‘smart’ meter components – namely high frequency transients propagated throughout the residential circuit wiring by the switching mode power supply (SMPS) and the digital clock, and electro-magnetic pollution propagated by neighboring ‘smart’ meters in the local ‘mesh network.’ All these sources are measurable and intense in their effects both on customers and the environment.”</p>	<p>See EON Comments, at 8, 9 and 11.</p> <p>In his final D.12-02-014, issued 2/9/2012, Commissioner Peevey noted [at 18-19], “The proposed decision also did not find the analog meter option reasonable.... In light of parties’ comments on the proposed decision, however, we revise the proposed decision and now adopt an analog meter opt-out option.”</p>	<p>Yes, but again, there was significant overlap with other parties.</p>

<p>8. EON also advocated for continuing the Proceeding to consider the issue of community-wide opt-out, which is also an element of the Final Decision.</p>	<p><i>See</i> EON Comments, at 1 & 11, paragraph 5. <i>See</i> Decision 12-02-014, pp. 2 & 3; at 37, paragraph 12; at 38, paragraphs 9 & 13.</p> <p>These are some examples supporting our contention that EON’s input contributed to CPUC policy setting on the opt-out issue.</p>	<p>Yes, but there was significant overlap with other parties, including Town of Fairfax et al., County of Lake.</p>
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B. Duplication of Effort (§§ 1801.3(f) & 1802.5):

	Intervenor	CPUC Verified
<p>a. Was the Office of Ratepayer Advocates (ORA)¹ a party to the proceeding?</p>	<p>Yes</p>	<p>Verified</p>
<p>b. Were there other parties to the proceeding with positions similar to yours? Yes.</p>	<p>Yes, in part.</p>	<p>In fact, there were several parties with similar positions, as noted above and as acknowledged by EON.</p>
<p>c. If so, provide name of other parties: Depending on individual issues, other parties with similar concerns included Aglet, Wilner Associates, EMF Safety Network, Fairfax, Alameda, CCSF, Lake County and CARE.</p>		<p>Verified</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: We communicated with other intervenors via numerous on-going exchanges of phone and e-mail discussions to make sure we were not duplicating efforts. We were complementary and supplemented the issues focused by Network, Fairfax and Marin County, having as our main focus the RF emissions from the SMPS.</p>		<p>It is not clear that EON provided a supplementary or complementary effort. Instead, much of their work duplicated that of several other parties, as noted above.</p>

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: public resources), which was approved by the Governor on September 26, 2013.

PART III: REASONABLENESS OF REQUESTED COMPENSATION

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

<p>a. Concise explanation as to how the cost of Intervenor’s participation bears a reasonable relationship with benefits realized through participation:</p>	<p>CPUC Verified</p>
<p>As noted above, EON consistently advocated for three of the main elements of the final interim decision: (1) retention of analog meters; (2) continuation of the proceeding for the purpose of considering additional pricing considerations as well as (3) consideration of community-wide opt-out. As documented in the forgoing, EON prevailed on all three of these issues.</p>	<p>D.98-04-059 directs customers to demonstrate the productivity of their participation by assigning a reasonable dollar value to the benefits of their participation to ratepayers. (D.98-04-059 at 34-35.) EON has failed to do this. However, as we determined for Aglet and for Network, it is reasonable to determine that the benefit of expanded rights for ratepayers outweigh the costs of EON’s participation in this proceeding.</p>
<p>b. Reasonableness of Hours Claimed.</p> <p>The EON team divided our intervenor tasks; James focused on synthesizing research, writing first drafts and computer formatting; Mary Beth communicated and coordinated with other parties, monitored data flow and process, researched and did final edits. Therefore, we did not duplicate efforts. Considering the ratepayer funds and public health concerns at stake, EON’s costs can be seen to be reasonable.</p>	<p>EON has claimed 177.05 hours for participating in this proceeding. This is excessive for a proceeding of this type, that did not include hearings. As a point of reference, Aglet was awarded compensation for 67 hours in 2011. In addition, it is not clear that both Heddle and Brangan needed to participate, as we discuss below.</p>
<p>c. Allocation of Hours by Issue</p>	<p>Yes, although the</p>

EON's Excel attachment categorizes Mary Beth Brangan's and James Heddle's professional hours as including 'all EON's issues' as listed above. James SMPS 15 hrs = 13%, All 56 hrs. = 50%, General 37 hrs. = 33%, Cost 4 = 3%. Mary Beth SMPS 15.5 hrs. = 14% All 72.45 hrs. = 63% General 25.6 hrs. = 23%, Cost .3 hrs = 0%	allocation of issues to "General" or "All" is not sufficient to determine the reasonableness of hours allocated to the issues addressed in the proceeding. We apply a 10% deduction to hours categorized as "all."
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B. Specific Claim:*

CLAIMED						CPUC AWARD		
ATTORNEY, EXPERT, AND ADVOCATE FEES								
Item	Year	Hours	Rate	Basis for Rate*	Total \$	Hours	Rate	Total \$
James Heddle	2011	89	\$200	Resolution ALJ-267	\$17,800.00	62.4	\$120	\$7,488.00
Mary Beth Brangan	2011	88.05	\$200	Resolution ALJ-267	\$17,610.00	48	\$155	\$7,440.00
Mary Beth Brangan	2012	9.2	\$200			7.8	\$155	\$1,209.00
Subtotal:					\$35,410.00	Subtotal:		\$16,137.00
INTERVENOR COMPENSATION CLAIM PREPARATION **								
Item	Year	Hours	Rate	Basis for Rate*	Total \$	Hours	Rate	Total \$
James Heddle	2012	23	\$100	Resolution ALJ-267	\$2,300.00	25.5	\$60	\$1,530.00
Mary Beth Brangan	2012	25.5	\$100	Resolution ALJ-267	\$2,550.00	0	\$0	\$0.00
Subtotal:					\$4,850.00	Subtotal:		\$1,530.00
TOTAL REQUEST \$:					\$40,260.00	TOTAL AWARD \$:		\$17,667.00

*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.

**Reasonable claim preparation time typically compensated at 1/2 of preparer's normal hourly rate.

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

Attachment or Comment #	Description/Comment
1	Certificate of Service
2	Service List
3	Time Records of Mary Beth Brangan and James Heddle

D. CPUC Disallowances and Adjustments:

#	Reason
1. Reasonableness of hours claimed by Heddle and Brangan	EON has claimed 177.05 to participate in this narrowly-focused proceeding. As we noted above, this is excessive, even for inexperienced intervenors. In addition, while Brangan appears to have participated as an advocate, Heddle's role was more akin to that of a paralegal or a law clerk. We therefore reduce the hours that will be compensated by deducting hours allocated to "SMPS" (which, as described above, refers to "dirty electricity." We therefore reduce Heddle's hours by 14 and Brangan's hours by 15.5. We also apply a 10% reduction to hours categorized as "all." Finally, as we did with Network, we reduce the allowed hours claimed by 15% to account for duplication and overlap with DRA, Network, Fairfax, Lake, Aglet, and other parties. These calculations result in 62.4 hours allowed for Heddle. We note that Brangan claimed 88.05 hours for 2011 but the time records indicate a total of 78.15 hours for 2011 and 10.2 hours for 2012, in addition to the hours claimed for preparation of the intervenor compensation request, which we have deducted from the total. Total hours compensated for Brangan are 48 hours in 2011 and 7.8 hours in 2012.
2. Hourly rate(s) for James Heddle.	Heddle's work appears to be that of a paralegal or law clerk, which is consistent with writing first drafts, synthesizing research, and computer formatting. We therefore adopt the rate of \$120 per hour for his work in this proceeding. Resolution ALJ-281 does not set forth a scale for law clerks or paralegals, but D.12-03-051, a recent decision for compensation for work performed in 2009, set the rate at \$110 per hour. Here, we increase the 2009 rate authorized in that decision by a step increase of 5% for both 2010 and 2011, which results in a rate rounded to \$120 per hour.
3. Hourly rate(s) for Mary Beth Brangan.	Brangan's work appears to be that of an advocate, rather than an expert, particularly based on the number of documentaries that have been produced and the campaigns that have been coordinated. Resolution ALJ-281 sets expert/advocate rates at \$130-\$190 per hour for individuals with 0-6 years of experience. We find that it is reasonable to compensate Brangan at \$155 per hour, the first step on the mid-range of experience for experts in 2011 and 2012.
4. Hours claimed for preparation of intervenor compensation	Both Heddle and Brangan claim a total of 48.5 hours to prepare the intervenor compensation request. As a point of reference, we note that Network claimed 32.4 hours for both preparation of the NOI and the intervenor compensation claim. We reduce the hours compensated for EON's claim to the hours claimed

request.	by Heddle, i.e., 25.5, which is reasonable for both the preparation of the NOI and the compensation request.
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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))?	No
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If not:

Party	Comment	CPUC Disposition
	No comments were received.	

FINDINGS OF FACT

1. Ecological Options Network made a substantial contribution to Decision 12-02-014.
2. The requested hourly rates for Ecological Options Network'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 compensation is \$17,667.00.

CONCLUSION OF LAW

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

ORDER

1. Ecological Options Network is awarded \$17,667.00.
2. Within 30 days of the effective date of this decision, Pacific Gas and Electric Company shall pay Ecological Options Network 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 June 23, 2012, the 75th day

after the filing of Ecological Options Network's request, and continuing until full payment is made.

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

4. Application 11-03-014 remains open.

This decision is effective today.

Dated _____, at San Francisco, California.

APPENDIX**Compensation Decision Summary Information**

Compensation Decision:		Modifies Decision?	No
Contribution Decision(s):	D1202014		
Proceeding(s):	A1103014		
Author:	ALJ Amy Yip-Kikugawa		
Payer(s):	Pacific Gas and Electric Company		

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
Ecological Options Network (EON)	4/9/12	\$40,260.00	\$17,667.00	N/A	Disallowance of hours compensated as reasonable, reduction in hourly rate for Heddle and for Brangan

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
James	Heddle	Paralegal	EON	\$200	2011	\$120
Mary Beth	Brangan	Advocate	EON	\$200	2011	\$155
Mary Beth	Brangan	Advocate	EON	\$200	2012	\$155

(END OF APPENDIX)