

Decision **PROPOSED DECISION OF ALJ DUDNEY (Mailed 3/7/2016)****BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of Southern California Edison Company (U338E) for Authority to, among other things, Increase its Authorized Revenues for Electric Service in 2015, and to reflect that increase in Rates.	Application 13-11-003 (Filed November 12, 2013)
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**DECISION DENYING COMPENSATION TO
SMALL BUSINESS UTILITY ADVOCATES**

Intervenor: Small Business Utility Advocates (SBUA)	For contribution to Decision (D.) 15-11-021
Claimed: \$36,005.60	Awarded: \$00.00
Assigned Commissioner: Carla J. Peterman	Assigned ALJ: Kevin Dudney

PART I: PROCEDURAL ISSUES

A. Brief description of Decision:	Decision (D.) 15-11-021 authorizes SCE's General Rate Case revenue requirement for 2015-2017. This decision approves a test year revenue requirement of \$5,182 million and also authorizes attrition rate adjustments of \$209 million (4.04%) for 2016 and an additional \$272 million (5.04%) for 2017.
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**B. Intervenor must satisfy intervenor compensation requirements set forth in Pub. Util.
Code §§ 1801-1812:**

	Intervenor	CPUC Verified
Timely filing of notice of intent to claim compensation (NOI) (§ 1804(a)):		
1. Date of Prehearing Conference (PHC):	February 11, 2014	Verified.
2. Other specified date for NOI:		
3. Date NOI filed:	March 12, 2014	Verified.
4. Was the NOI timely filed?		Yes, Small Business Utility Advocates (SBUA) timely filed the Notice of Intent to claim intervenor compensation.

Showing of customer or customer-related status (§ 1802(b)):		
5. Based on ALJ ruling issued in proceeding number:	A.14-11-001	Verified, although the correct proceeding number is R.14-11-001.
6. Date of ALJ ruling:	August 24, 2015	Verified.
7. Based on another CPUC determination (specify):		
8. Has the Intervenor demonstrated customer or customer-related status?		Yes, SBUA demonstrated appropriate status in the proceeding.
Showing of “significant financial hardship” (§ 1802(g)):		
9. Based on ALJ ruling issued in proceeding number:	A.14-11-001	Verified, although the correct proceeding number is R.14-11-001.
10. Date of ALJ ruling:	August 24, 2015	Verified.
11. Based on another CPUC determination (specify):		
12. Has the Intervenor demonstrated significant financial hardship?		<p>The Commission allows intervenors to present a rebuttable presumption of significant financial hardship. For this presumption to apply, the date of the finding of the financial hardship must be within one year of filing date of the proceeding in which the intervenor seeks compensation. The Commission’s Ruling in R.14-11-001 does not meet this requirement. <i>See</i> Pub. Util. Code § 1804(b)(1).</p> <p>The Commission additionally found SBUA demonstrated significant financial hardship in a Ruling filed on July 25, 2013 in A.13-04-012. This Ruling issued within</p>

		<p>one year of November 12, 2013.</p> <p>Therefore, SBUA demonstrated significant financial hardship in the current proceeding.</p>
Timely request for compensation (§ 1804(c)):		
13. Identify Final Decision:	D.15-11-021	Verified.
14. Date of issuance of Final Order or Decision:	November 12, 2015	Verified.
15. File date of compensation request:	January 11, 2015	January 12, 2016.
16. Was the request for compensation timely?		<p>No. SBUA did not timely file the request for intervenor compensation. An intervenor may file a request for compensation after issuance of a decision that resolves an issue in which the intervenor believes it made a substantial contribution, but in no event later than 60 days after the issuance of the decision closing the proceeding. <i>See</i> Rule 17.3 and Pub. Util. Code § 1804(c). Here, the final decision issued on November 12, 2015 and the final date for filing a request for compensation was January 11, 2016.</p> <p>According to the Commission’s records, SBUA filed the request for compensation at 5:33:14 p.m. on January 11, 2016. As the Commission’s Rules provide that “[w]hen a statute or Commission decision, rule, order, or ruling sets a time limit</p>

	<p>for performance of an act . . . [i]f [that] act occurs after 5:00 p.m., it is deemed as having been performed on the next day.” Rule 1.15, CPUC Rules of Practice and Procedure.</p> <p>Because SBUA did not timely file the request for intervenor compensation it is not entitled to compensation in the present proceeding.</p>
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C. Additional Comments on Part I (use line reference # as appropriate):

#	Intervenor’s Comment(s)	CPUC Discussion
9-10	<p>SBUA is a California nonprofit organization and the economic interests of its members are small relative to the costs of participating in a general rate case. <i>See</i> PUC § 1802(g). SBUA is the only party in this proceeding that focused <i>exclusively</i> on the small commercial customer class as a whole, whose interests diverge from residential ratepayers and mid- to large-sized businesses on the issue of revenue allocation, rate design, and on other energy matters.</p> <p>Because small commercial customers usually cannot afford their own representation, there is a danger that the interests of this group of customers is overlooked or marginalized. The Commission has recognized that adequate representation requires not only the broad efforts of the Office of Ratepayers Advocates (ORA) but also the participation of parties with special interests.</p>	Verified.

PART II: SUBSTANTIAL CONTRIBUTION

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

Intervenor’s Claimed Contribution(s)	Specific References to Intervenor’s Claimed Contribution(s)	CPUC Discussion
<p>This GRC proceeding covered an array of issues associated with SCE’s revenue requirements for electric service and electric generation utility functions.</p>	<p>References to Final Decision: D.15-08-005 (Final Decision), pp. 5-7 (reference to SBUA testimony and opening brief, respectively). <i>See also</i> Final Decision, pp. 27-28, 195, 226, and</p>	<p>Because SBUA did not timely file the request for intervenor compensation, the Commission cannot</p>

<p>SBUA was an active participant in this proceeding. SBUA’s expert submitted testimony on a variety of issues impacting small businesses, and SBUA addressed additional issues throughout the proceeding, including in attempts to reach a settlement with SCE. The Commission should find that SBUA’s efforts, on behalf of the small commercial customer class, are beneficial for the public interest and reflect a substantial contribution to this proceeding.</p> <p>SBUA describes its role in further detail below and submits this is a reasonable approach to demonstrate its contribution in this proceeding. SBUA also engaged in significant settlement efforts, which, although confidential, are reflected in SBUA’s hourly time sheets. Although settlement negotiations were not successful, the failure to reach settlement is always a risk, especially give the complex nature of GRC proceedings. Nonetheless, settlement efforts are valuable and good faith efforts to reach settlement should be considered reflective of parties’ substantial contributions. The Commission should encourage intervenors’ to attempt to reach settlement agreements to avoid protracted and time-intensive litigation.</p> <p>Should the Commission wish to see some other analysis of SBUA’s substantial contribution or additional details, SBUA requests that it be so informed and provided an opportunity to supplement this intervenor compensation claim.</p>	<p>317, as further discussed below.</p> <p><u>References to Claimant’s Presentations:</u></p> <p>SBUA Direct Testimony, served on June 10, 2014.</p> <p>SBUA Rebuttal Testimony, served on September 15, 2014.</p> <p>SBUA Opening Brief (December 1, 2014).</p> <p><i>See also</i> SBUA Motion for Party Status (February 5, 2014).</p>	<p>compensate the intervenor. As such, we have not made any determination on SBUA’s claimed contributions to A.13-11-003.</p> <p>Further, we note that the correct Final Decision is D.15-11-021.</p>
<p>A. Tracking Spend on Small Businesses and Increasing Contracting Opportunities for Small Commercial Customers</p>	<p>Final Decision, p. 317 (Commission discussion of SBUA’s proposal to track spending on small businesses).</p>	<p>Because SBUA did not timely file the request for intervenor compensation, the</p>

<p>SBUA advocated that SCE should track and publish information regarding its spending on small businesses and, related thereto, to increase contracting opportunities for small commercial customers. SBUA’s expert opined that SCE should track the percentage of spend it does directly with small businesses and publish that information to the public. SBUA Direct Testimony, pp. 7-8. SBUA further argued that, as a policy matter, SCE should pay special attention to the small businesses in SCE’s territory and explore ways to assist this customer class. <i>Id.</i>, pp. 3-4.</p> <p>The Commission determined that any tracking of spend on small businesses “should be done on a statewide basis” and if SBUA chooses to pursue this further, it may engage “in a generic rulemaking such as R.14-10-009 so that all relevant stakeholders may participate.” Final Decision, p. 317. The Commission’s consideration and discussion of this issue is valuable to ratepayers and especially to small commercial customers.</p>	<p>SBUA Opening Brief, pp. 4-8 (policy reasons for assisting small commercial customers), pp. 8-10 (SBUA’s proposal to track spend on small businesses).</p> <p>SBUA Direct Testimony, pp. 4, 7, and 8 (discussion of SBUA’s proposals for tracking spend on small businesses).</p> <p>SBUA Rebuttal Testimony, p. 3 (discussion of need to track spend on small businesses).</p>	<p>Commission cannot compensate the intervenor. As such, we have not made any determination on SBUA’s claimed contributions to A.13-11-003.</p>
<p>B. Customer Service and Outreach for Small Commercial Customers</p> <p>SBUA argued to condition any approved SCE customer service expenditures on the requirement that SCE designate certain Customer Service Representatives to assist small commercial customers. SBUA Opening Brief, pp. 10-11. SBUA further argued, for example, that SCE was moving to quickly with respect to Customer Service software projects. SBUA Direct Testimony, p. 6.</p> <p>The Commission did not specifically address many SBUA’s arguments related to customer services for small commercial customers and explicitly</p>	<p>Final Decision, p. 195 (discussing SBUA’s arguments related to Customer Services software projects).</p> <p>SBUA Opening Brief, pp. 10-11 (SBUA’s proposals related to Customer Service Representative).</p> <p>SBUA Direct Testimony, pp. 6, 8-11 (recommendations related to customer service and outreach).</p> <p>SBUA Rebuttal Testimony, pp. 3-7 (recommendations related to customer service for small commercial customers).</p>	<p>Because SBUA did not timely file the request for intervenor compensation, the Commission cannot compensate the intervenor. As such, we have not made any determination on SBUA’s claimed contributions to A.13-11-003.</p>

<p>rejected SBUA’s requests related to Customer Service software projects. SBUA believes this is valuable information to discuss and consider in general rate cases; however, because the Commission did not discuss or did not agree with SBUA on these matters, SBUA is discounting the hours it is requesting compensation for accordingly (see below).</p>		
<p>C. Other Small Commercial Customer Issues</p> <p>SBUA was an active participant in advocating for a variety of other small business interests in this rate proceeding.</p> <p>For incentive compensation, SBUA opposed rate recovery of Long Term Incentives (LTI) on the grounds that SCE had not clearly shown benefits to ratepayers. SBUA Opening Brief, p. 12; SBUA Direct Testimony, pp. 22-23; SBUA Rebuttal Testimony, pp. 12-13. For economic development spending, SBUA argued that 30% of this funding be used to support the retention of small businesses. SBUA Direct Testimony, p. 6. For expenditures on peakers and spare transformers, SBUA argued that SCE be required to pool shared transformers with other utilities.</p> <p>The Commission agreed with SBUA that LTI was not justified and disagreed with SBUA regarding economic development spending and shared transformers. Because the Commission considered but only partially agreed with SBUA’s recommendations in these areas, SBUA is discounting the hours it is requesting compensation for accordingly (see below).</p>	<p>Final Decision, p. 226 (agreeing with SBUA and directly quoting SBUA’s position that LTI “do not have a direct relationship to utility services”).</p> <p>SBUA Opening Brief, pp. 12-13 (SBUA’s opposition to LTI).</p> <p>SBUA Direct Testimony, pp. 6, 17 (recommendations regarding spare transformers), p. 18 (recommendations related to economic development services funding), pp. 22-23 (opposition to incentive compensation).</p> <p>SBUA Rebuttal Testimony, pp. 12-13 (opposition to incentive compensation).</p> <p><i>See also</i> Final Decision, pp. 27-28 (discussing SBUA’s positions on peakers), pp. 202-203 (discussing SBUA’s positions on economic development spending).</p>	<p>Because SBUA did not timely file the request for intervenor compensation, the Commission cannot compensate the intervenor. As such, we have not made any determination on SBUA’s claimed contributions to A.13-11-003.</p>

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

	Intervenor’s Assertion	CPUC Discussion
a. Was the Office of Ratepayer Advocates (ORA) a party to the proceeding?	Yes	Yes.
b. Were there other parties to the proceeding with positions similar to yours?	Yes	Yes.
<p>c. If so, provide name of other parties:</p> <p>The following parties submitted testimony or filed comments or briefs resolved by D.15-08-005:</p> <p>SCE, ORA, The Utility Reform Network (TURN); California City-County Street Light Association (CAL-SLA); California Coalition of Utility Employees (CUE), San Diego Gas & Electric Company (SDG&E), and the Joint Minority Parties, a group consisting of National Asian American Coalition, Ecumenical Center for Black Church Studies, Jesse Miranda Center for Hispanic Leadership, Los Angeles Latino Chamber of Commerce, National Hispanic Christian Leadership Conference, and Christ Our Redeemer AME Church (collectively, JMP).</p>		<p>Verified.</p> <p>We note that the correct Final Decision is D.15-11-021.</p>
<p>d. Intervenor’s claim of non-duplication:</p> <p>SBUA’s advocacy differed from that of other ratepayer advocates in that SBUA is unique with a focus <i>exclusively</i> on the interests of small business community. SBUA sought to reduce overlap of efforts by presenting unique perspectives on the concerns of small commercial customers as a group as opposed to other customer classes.</p> <p>Early in the proceeding, for example on March 12 and 17, 2014, SBUA reached out to ORA and TURN to ensure any necessary coordination of efforts related to small businesses and to ensure that the parties were aware of each other’s positions. Resources were maximized and SBUA’s efforts were supportive rather than duplicative. In a proceeding involving multiple participants, the Commission has recognized is virtually impossible for any party to completely avoid some duplication of the work of other parties. In this case, SBUA took all reasonable steps to keep such duplication to a minimum.</p>		<p>Because SBUA did not timely file the request for intervenor compensation, the Commission cannot compensate the intervenor. As such, we have not made any determination on SBUA’s claim of non-duplication.</p>

PART III: REASONABLENESS OF REQUESTED COMPENSATION

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

a. Intervenor’s claim of cost reasonableness: Dollar per result.	CPUC Discussion

<p>SBUA’s main objective for the proceeding was to protect and advance the interests of small commercial customers. The Commission discussed SBUA’s positions, made recommendations regarding tracking spend on small businesses, and adopted SBUA’s position on incentive compensation. SBUA’s participation was beneficial for small commercial customers. Moreover, SBUA has discounted its overall request for intervenor compensation by 35% because the Commission did not adopt all of SBUA’s recommendations. In total, SBUA seeks an award of approximately \$36,000, including expenses and all other fees and costs, which is reasonable in light of SBUA’s participation in the proceeding. Although not all of these benefits are quantifiable, the participation of SBUA helps to protect and advance the interests of an important customer class and is in the public interest.</p> <p>In assessing SBUA’s substantial contribution, the Commission also should factor its desire to encourage participation of a broad range of customer interests and policies encouraging settlement. In this proceeding, SBUA actively negotiated and attempted to reach settlement with SCE on a number of issues of importance to small commercial customers. Although no settlement was reached, the attempts to settle are beneficial because they offer the prospect of reaching compromises that reduce the burden of full litigation on the parties and the Commission. Along with this the Commission should weigh the consequence of placing customers at risk for participating in settlement efforts (but not reaching a settlement) and consequential incentive to litigate in order to show substantial contribution.</p> <p>In sum, the Commission should conclude that SBUA’s overall request is reasonable and SBUA’s participation was productive and provided worthwhile input for the Commission.</p>	<p>Because SBUA did not timely file the request for intervenor compensation, the Commission cannot compensate the intervenor. As such, we have not assessed SBUA’s claim of cost reasonableness.</p>
<p>b. Reasonableness of hours claimed:</p> <p>In its NOI, SBUA estimated that it would expend 150 hours of time by counsel and 100 hours of time by experts. SBUA’s attorney James Birkelund devoted approximately 84.6 hours to this proceeding, or a total of slightly over 2 weeks worth of time. SBUA’s expert Michael Brown devoted approximately 63.3 hours to this proceeding, or a total of a little over 1.5 weeks of time. These amounts of time spent are reasonable for a complex rate case involving numerous parties, settlement negotiations, and a revenue award of approximately \$5,182 million in the test year alone.</p> <p>Furthermore, SBUA is <i>discounting the hours it is requesting compensation for by 35%</i> to increase the reasonableness of its request and reflect the fact that the Commission disagreed with several of SBUA’s positions. SBUA further attempted to limit its hours in the proceeding based on an analysis of SCE’s positions in response to SBUA’s expert testimony while at the same time maintaining key points of advocacy on behalf of SBUA’s members.</p> <p>SBUA’s attorney James Birkelund served as the lead attorney for SBUA in this proceeding. He played a wide-ranging role advocating in this proceeding as well as researching, analyzing, and drafting various SBUA positions and issues for SBUA’s expert testimony. Mr. Birkelund also took the lead for SBUA in</p>	<p>Because SBUA did not timely file the request for intervenor compensation, the Commission cannot compensate the intervenor. As such, we have not assessed the reasonableness of SBUA’s hours claimed.</p>

<p>attempted settlement discussions with SCE. SBUA seeks compensation for 55 hours of his work, which is a 35% discount on his actual hours and well below his total hours estimated in SBUA’s NOI. This is a reasonable request given the high demand on legal services to participate in a complex GRC, as here.</p> <p>Michael Brown served as SBUA’s expert witness and played a lead role in developing testimony. Mr. Brown submitted direct testimony and rebuttal testimony. He analyzed other parties’ proposals and had an instrumental role in identifying and promoting small commercial customer interests in this proceeding. SBUA seeks compensation for approximately 38.5 hours of his work, which is a 35% discount on his actual hours and well below his hours estimated in SBUA’s NOI. This amount is a reasonable request given the high demand on experts to participate in a complex GRC, as here, and the detailed nature of analyzing and promoting positions on behalf an entire customer class (i.e., small commercial customers).</p>	
<p>c. Allocation of hours by issue:</p> <p>SBUA has assigned the following issue codes:</p> <ul style="list-style-type: none"> A. Tracking Spend on Small Commercial Customers and Contracting Opportunities for Small Businesses – 15.8 hours or 16% B. Customer Service and Outreach to Small Commercial Customers – 16.8 hours or 18% C. Other Issues (incentive plans, economic development, expenditures on peakers, etc.) – 35.4 hours or 37% E. General (coordination, procedural issues) – 15.4 hours or 16% F. Settlement Efforts – 12.7 hours or 13% <p>SBUA asserts that the categories above are well defined to allow SBUA to accurately assign hours to various tasks in its time entries. Should the Commission wish to see different information on this point or some other breakdown of SBUA’s hourly work, SBUA requests that we be so informed and provided an opportunity supplement this request accordingly.</p> <p>SBUA submits that all of the hours claimed were reasonably and efficiently expended and should be fully compensated. SBUA also is submitting 15.7 hours for preparing this compensation request and the NOI.</p>	<p>Verified.</p>

B. Specific Claim:*

CLAIMED						CPUC AWARD		
ATTORNEY, EXPERT, AND ADVOCATE FEES								
Item	Year	Hours	Rate \$	Basis for Rate*	Total \$	Hours [1]	Rate \$	Total \$
James	2014	53.0	\$415	D.15-12-042	\$21,995.00	00.00	\$00.00	\$00.00

Birkelund								
James Birkelund	2015	2.0	\$415	As above	\$830.00	00.00	\$00.00	\$00.00
Michael Brown	2014	38.5	\$200	D.15-12-042	\$ 7,700.00	00.00	\$00.00	\$00.00
Brittney Marra	2014	16.5	\$110	See Comment 6	\$1,815.00	00.00	\$00.00	\$00.00
Subtotal: \$32,340.00						Subtotal: \$00.00		
INTERVENOR COMPENSATION CLAIM PREPARATION **								
Item	Year	Hours	Rate \$	Basis for Rate*	Total \$	Hours	Rate	Total \$
James Birkelund	2015	2.8	\$208.00	½ of approved 2015 rate	\$582.40	00.00	\$00.00	\$00.00
James Birkelund	2016	12.9	\$208.00	½ of approved 2015 rate	\$2,683.20	00.00	\$00.00	\$00.00
Michael Brown	2015	4	\$100.00	½ of approved 2015 rate	\$400.00	00.00	\$00.00	\$00.00
Subtotal: \$ 3,665.60						Subtotal: \$00.00		
COSTS								
#	Item	Detail			Amount	Amount		
1	Costs Incurred by James Birkelund	All costs incurred by SBUA are waived. See Comment 1.			\$0.00	\$00.00		
2	Costs Incurred by Expert M. Brown	All costs incurred by Mr. Brown are waived. See Comment 1			\$0.00	\$00.00		
Subtotal: \$0.00						Subtotal: \$00.00		
TOTAL REQUEST: \$36,005.60						TOTAL AWARD: \$00.00		
<p>**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. Intervenors' 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.</p> <p>**Travel and Reasonable Claim preparation time typically compensated at ½ of preparer's normal hourly rate</p>								

ATTORNEY INFORMATION			
Attorney	Date Admitted to CA BAR ¹	Member Number	Actions Affecting Eligibility (Yes/No?) If "Yes", attach explanation
James Birkelund	March 2000	206328	No

C. Attachments Documenting Specific Claim and Comments on Part III

Comment #	Intervenor's Comment(s)
Comment 1	SBUA is not claiming any office costs in this request or reimbursements for other expenses. SBUA has used electronic mail communication, phone, and conference calls to reduce filing and meeting costs and keep overall costs to a minimum, helping to add to the reasonableness of its claim.
Comment 2 Time Keeping	A daily listing of the specific tasks performed by Mr. Birkelund and Mr. Brown in connection with this proceeding is set forth in Attachments 1 and 2, respectively. SBUA's attorney and expert maintained detailed time records indicating the number of hours devoted to work on this case. As discussed above, the hours claimed by Mr. Birkelund and Mr. Brown on the proceeding proper are discounted 35% from actual hours billed.
Comment 3	2016 Compensation Time: Because no merits work was done in 2016, SBUA seeks compensation for any time spent in 2016 preparing this request in 2016 at 2015 rates. SBUA reserves the right to seek an increase in 2016 rates in future filings, as may be appropriate.
Comment 6	SBUA seeks a 2013 hourly rate of \$110 for Brittney Marra. She provided services in a advocate capacity for purposes of this proceeding, including meetings with small businesses throughout SCE territory, and her hours should be compensated accordingly. Her claimed hours are also discounted 35% from actual hours worked. Ms. Marra's qualifications and background are included in Attachment 3.

D. CPUC Disallowances and Adjustments:

Item	Reason
[1]	Because SBUA did not file the request for compensation within 60 days, as required by Pub. Util. Code § 1804(c), the Commission must deny the request for compensation.

PART IV: OPPOSITIONS AND COMMENTS
Within 30 days after service of this Claim, Commission Staff
or any other party may file a response to the Claim (see § 1804(c))

A. Opposition: Did any party oppose the Claim?	No.
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¹ This information may be obtained through the State Bar of California's website at <http://members.calbar.ca.gov/fal/MemberSearch/QuickSearch>.

<p>B. Comment Period: Was the 30-day comment period waived (see Rule 14.6(c)(6))?</p>	<p>No.</p>
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Party	Comment	CPUC Discussion
<p><u>Small Business Utility Advocates</u></p>	<p>On March 28, 2016 <u>Small Business Utility Advocates (SBUA)</u> timely filed comments on the proposed decision denying compensation. <u>SBUA claims that it commenced filing the claim for intervenor compensation prior to the 5:00 p.m. deadline and that no party would suffer prejudice by the Commission accepting the claim.</u></p> <p><u>SBUA states it took all necessary actions prior to the 5:00 p.m. submission deadline and that its submission was compliant with CPUC filing procedures. SBUA claims that the Commission’s Electronic Filing System User Guide states that filings that were not filed “due solely to such technical failures” will not be marked as having been filed on the next business day. SBUA attached a declaration attesting that it attempted file prior to 5:00 p.m. Because SBUA attempted to timely file, it would be arbitrary and capricious for the Commission to deny the claim as untimely.</u></p> <p><u>Alternatively, SBUA</u></p>	<p><u>Pursuant to § 1804(c) of the California Public Utilities Code, an intervenor may file a request for compensation within 60 days of the issuance of a final decision or order. As interpreted in the Commission’s Rules of Practice and Procedure, “[a] request for an award of compensation may be filed after the issuance of a decision that resolves an issue on which the intervenor believes it made a substantial contribution, but in no event later than 60 days after the issuance of the decision closing the proceeding.” Rule 17.3, California Public Utilities Commission Rules of Practice and Procedure. In addition, Rule 1.15 states that documents submitted to the Commission after 5:00 p.m. are deemed filed on the following day.</u></p> <p><u>Here, Decision 15-11-021 constitutes the final decision closing the proceeding. Pursuant to Rule 1.15, time is computed by excluding the first day (i.e., the day of the act or event from which the designated time begins to run) and including the last day. If the last day falls on a Saturday, Sunday, holiday or other day when the Commission offices are closed, the time limit is extended to include the first day thereafter. The Decision issued on November 12, 2015. The 60th day following the issuance of the Decision was January 11, 2016. SBUA did not complete its request for compensation until after the 5:00 p.m. deadline and the submission is deemed as having been filed on January 12, 2016. Intervenor’s request was not timely filed.</u></p> <p><u>SBUA’s citation to the <i>Commission’s Electronic Filing System User Guide</i>, (which is citing Rule 1.13), deals with the inability of the Docket Office to accept documents due to a technical error (and not with the filer’s inability to submit documents). Rule 1.13 states,</u></p> <p><u>“The Docket Office shall deem the electronic filing system to be subject to a technical failure on a given day if it is unable to accept filings continuously or intermittently over the course of any period of time greater than one hour after 12:00 noon that day, in which case filings due that day shall be deemed filed that day if they are filed the next day the system is able to accept filings.”</u></p> <p><u>The Docket Office was able to accept filings continuously on January 11 and, therefore, Rule 1.13 does not apply. SBUA’s</u></p>

	<p>claims Rule 1.2 of the Commission's Rules of Practice and Procedure allows the Commission to permit deviations from the Rules, for special cases and good cause shown. SBUA alleges that the facts here are similar to those facts in A.11-05-017, relating to Center for Accessible Technology's (CforAT) claim for intervenor compensation. In that proceeding, which is currently pending, Commissioner Florio's Alternate Proposed Decision (APD) would grant compensation to CforAT, despite untimely filing its request. The APD relies on Rule 1.2 and potentially finds that the 5:00 p.m. deadline can be waived since no party was harmed by CforAT's late filing and the since the request occurred on the 60th day. SBUA notes that its claim, filed on the 60th day, meets the statutory requirements of §1804(c) of the Public Utilities Code and that the Commission should find that SBUA demonstrated good cause for acceptance of the claim.</p> <p>SBUA notes prior instances where the Commission waived the 5:00 p.m. filing deadline for late-filed compensation requests. In addition, SBUA notes that the APD in</p>	<p>document was not properly formatted and the Commission's Docket Office was not able to accept.</p> <p>As noted by SBUA, there have been past decisions that awarded compensation despite untimely filed requests for compensation. However, we have since determined that the Commission does not have the discretion to grant awards on claims that are not filed in accordance with §1804(c). See e.g., D.15-07-017, D.14-12-034 (in A.10-07-009), was unanimously approved by the Commission. It addressed a request to waive Rule 1.15 and determined that the Commission would not waive the Rule. The facts addressed by D.14-12-034 are similar to those of SBUA. Specifically, San Diego Gas & Electric Company (SDG&E) encountered difficulties with electronic filing and was not able to file an application for rehearing before the 5:00 p.m. deadline established by Rule 1.15. The application for rehearing was received after 5:00 p.m. and the Docket Office recorded the document as filed on the following day. The application for rehearing was rejected as untimely.</p> <p>As stated in the D.14-12-034, "SDG&E argues that because this 5:00 p.m. deadline is established by Commission Rules and not by statute, the Commission has the discretion to accept SDG&E's Application under Rule 1.2 which allows deviations from own Rules." D.14-12-024 at 8-9. SBUA's comments on today's decision make the same argument. However, as we found in D.14-12-034, "Rule 1.2 allows us to deviate from our rules in special cases and for good cause but it does not require us to do so. It is within our discretion to determine when deviation from our Rules is appropriate. The purpose of Rule 1.15 was to establish a defined cut-off time because we determined that it is important to establish a common understanding of the deadline by which an act must be performed. (Resolution ALJ-260 at 9.) Without strict compliance we would be in the position of having to consider how late or what reasons amount to good cause, something that could lead to claims of unfair treatment or bias. Adopting a bright-line rule for the filing of applications for rehearing ensures orderly processes, alleviates unpredictability, and ensures all parties are treated fairly and equally." Id. at 9 (emphasis added). Rule 1.15, and its 5:00 p.m. deadline, was adopted by the Commission in order to "to establish a common understanding of the deadline by which an act must be performed. (Resolution ALJ-260 at 9.) Although we could have adopted an 11:59 p.m. deadline for electronic filings, we did not. We also did not include a specific provision in the Rule 1.15 to allow for extensions to 11:59 p.m. for good cause for filed documents." Id. at 8.</p>
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	<p><u>A.11-05-017, distinguishes D.14-12-034, since that Decision deals with Applications for Rehearing, which implicate appellate rights, while intervenor compensation requests do not deal with such rights. The APD states the Intervenor Compensation Program should encourage participation, as directed by statute, and the Rules should liberally be construed to facilitate the participation.</u></p>	<p><u>SBUA states that the unanimous holding of D.14-12-034, that the Commission’s 5:00 p.m. deadline cannot be waived, should not apply here since that Decision dealt with appellate rights, while today’s Decision does not. The Commission disagrees with this interpretation as it implies that our Rules can be selectively followed based on the “type” of Decision or Proceeding in question. The Commission must apply our Rules evenly and consistently to all parties and in all situations. No section of the Public Utilities Code finds that the Commission’s rules should be applied differently to intervenor compensation versus other decisions. To find otherwise would devalue the importance and significance of the intervenor compensation program, while arbitrarily and capriciously imposing unpredictable and variable filing requirements on parties.</u></p> <p><u>Section 1801.3(b) of the Public Utilities Code states that the intervenor compensation program shall be “administered in a manner that encourages the effective and efficient participation” of intervenors. The consistent application of rules and statutes encourages effective and efficient participation by allowing parties a transparent view into the Commission’s decisionmaking process. It is easy to understand the process by which the Commission makes our decisions when our clear-cut, longstanding rules are appropriately applied. When we make case-by-case determinations on the relative merits of untimely filed claims we undermine our ability evenly apply the Public Utilities Code and the Rules of Practice and Procedure. Such a failure to consistently apply the Rules defeats a fundamental purpose of the intervenor compensation program by encouraging parties to act ineffectively and inefficiently.</u></p> <p><u>The Public Utilities Code, the Commission’s Rule of Practice and Procedure, and precedent are clear. Documents filed after 5:00 p.m. on the final date for acceptance are deemed as filed on the following day. As it applies to claims for intervenor compensation, if a request for compensation is not filed within 60 days of the issuance of a final decision or order closing the proceeding, the request is not timely and the intervenor is not eligible to receive compensation.</u></p> <p><u>Our Rules make clear that documents filed after 5:00 p.m. are deemed as having been filed on the following day.</u></p> <p><u>SBUA’s request was not timely filed. SBUA elected to wait until the final hour before the deadline to begin filing the request for compensation. SBUA has filed numerous documents with the Commission and is well aware of our Rules. No statute or Rule requires intervenors to wait until the last moment to file a</u></p>
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	<p><u>claim for compensation. Here, SBUA left the filing for the last moment and failed to complete the electronic process before our deadline.</u></p> <p><u>The Commission must deny Small Business Utility Advocates' request for compensation since the document was not timely filed.</u></p>
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If not:

Party	Comment	CPUC Discussion

FINDINGS OF FACT

1. Pub. Util. Code § 1804(c) requires intervenors to file requests for awards within 60 days following issuance of a final decision.
2. Rule 1.15 of the Commission’s Rules of Practice and Procedure states that documents filed after 5:00 p.m. are deemed as having been filed on the following day.
3. SBUA filed its request for compensation after 5:00 p.m. on the 60th day following the issuance of the final decision.
4. No hourly rates are set in today’s decision.

CONCLUSION OF LAW

1. The Claim fails to satisfy all requirements of Pub. Util. Code §§ 1801-1812.

ORDER

1. Small Business Utility Advocates’ claim for intervenor compensation shall be denied.
2. Small Business Utility Advocates’ shall not request compensation for any work performed in this proceeding as part of a future compensation request in a different proceeding.
3. The comment period for today’s decision is not waived.
4. This decision is effective today.

Dated _____, at San Francisco, California.

APPENDIX
Compensation Decision Summary Information

Compensation Decision:		Modifies Decision?	No
Contribution Decision(s):	D1511021		
Proceeding(s):	A1311003		
Author:	ALJ Dudney		
Payer(s):	N/A		

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
Small Business Utility Advocates (SBUA)	01/12/2016	\$36,005.60	\$00.00	N/A	<i>Did not timely request for compensation</i>

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Adop
James	Birkelund	Attorney	SBUA	\$415.00	2014	N/A
James	Birkelund	Attorney	SBUA	\$415.00	2015	N/A
James	Birkelund	Attorney	SBUA	\$416.00	2016	N/A
Michael	Brown	Expert	SBUA	\$200.00	2014	N/A
Michael	Brown	Expert	SBUA	\$200.00	2015	N/A
Brittney	Mara	Advocate	SBUA	\$110.00	2014	N/A

(END OF APPENDIX)

Document comparison by Workshare Compare on Tuesday, May 24, 2016
9:41:16 AM

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Document 2 ID	file:///d:/jt2/Desktop/A1311003 Dudney Agenda Dec Rev. 1 2-3-16.docx
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Deletion	
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Style change	
Format change	
Moved deletion	
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Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

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