

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Improve Public Access To Public Records Pursuant to the California Public Records Act	Rulemaking 14-11-001 (Filed November 6, 2014)
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AWARDS INTERVENOR COMPENSATION TO BAYVIEW/HUNTERS POINT COMMUNITY LEGAL FOR SUBSTANTIAL CONTRIBUTION TO DECISION 16-08-024

Intervenor: Bayview/Hunters Point Community Legal (“BHPCL” or “Bayview”)	For contribution to Decision (D.) 16-08-024
Claimed: \$27,509.48	Awarded: \$22,403.80
Assigned Commissioner: Michael Picker	Assigned ALJ: Rafael L. Lirag

PART I: PROCEDURAL ISSUES

A. Brief description of Decision:	The decision implements an updated and clarified process for submitting potentially confidential documents to the Commission based on the process adopted in prior decision, D06-06-066, to ensure consistency across industries and to expedite the Commission’s review of requests for confidential treatment in response to California Public Records Act requests. It also provides guidance for developing a process that the Commission can use to determine whether a potentially confidential document can be disclosed, with the goal of consistent treatment and prompt disclosure of non-confidential documents.
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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):	3/3/2015	Verified.
2. Other specified date for NOI:		
3. Date NOI filed:	3/23/2015	Verified.
4. Was the NOI timely filed?	Yes, Bayview/Hunter Point Community Legal (Bayview) timely filed the notice of intent to claim intervenor compensation.	

PROPOSED DECISION

Showing of customer or customer-related status (§ 1802(b)):		
5. Based on ALJ ruling issued in proceeding number:	I.14-08-022	Verified.
6. Date of ALJ ruling:	12/9/2014	Verified.
7. Based on another CPUC determination (specify):		The Commission confirmed Bayview's status in Decision 15-07-014.
8. Has the Intervenor demonstrated customer or customer-related status?		Yes, Bayview demonstrated appropriate status.
Showing of "significant financial hardship" (§ 1802(g)):		
9. Based on ALJ ruling issued in proceeding number:	I.14-08-022	Verified.
10. Date of ALJ ruling:	9/2014	12/09/2014
11. Based on another CPUC determination (specify):		
12. Has the Intervenor demonstrated significant financial hardship?		Yes, Bayview demonstrated a rebuttable presumption of significant financial hardship.
Timely request for compensation (§ 1804(c)):		
13. Identify Final Decision:	D.16-08-024	Verified.
14. Date of issuance of Final Order or Decision:	8/25/2016	Verified.
15. File date of compensation request:	10/24/2016	Verified.
16. Was the request for compensation timely?		Yes, Bayview timely filed the request for intervenor compensation.

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
1. The Commission opened this Order Instituting Rulemaking (OIR) to increase public access to records that Commission-regulated entities have provided to the Commission, while ensuring that confidential records remain confidential. The OIR proposed that the Commission adopt a revised General Order		Verified.

<p>(GO) 66-D to replace the current 66-C, and attached a copy for the parties to comment on.</p> <p>BHPCL was an active and integral part of this Decision and the Commission should find that the resulting decision reflects BHPCL’s substantial contribution. The resulting decision is due, in part, to BHPCL’s comments and reply comments on the OIR, its participation in the prehearing conference, its reply comments to the regulated entities’ comments on the Assigned Commissioner’s Scoping Memo and Ruling comments, reply comments, and its participation in the February 2, 2016 workshop, discussing types of records that are public or confidential.</p> <p>BHPCL commented on the OIR and the proposed GO 66-D. It also submitted reply comments on the OIR.</p> <p>On March 25, 2015, BHPCL participated in a prehearing conference (PHC) on the OIR, where the parties discussed the proposed GO 66-D, its potential interaction with past and present practices of the Commission (including those implemented by D.06-06-066), and the interpretation of Public Utilities Code Section 583.</p> <p>On August 25, 2015, an Assigned Commissioner’s Scoping Memo and Ruling (ACR) was issued in response to the parties’, including BHPCL’s, comments and reply comments to the OIR and their participation in the PHC. The ACR directed the parties to comment on the legal framework</p>	<p>D.16-08-024 at 3-5.</p> <p><i>Id.</i> at 4.</p> <p><i>Id.</i> at 4-5.</p> <p><i>Id.</i> at 5.</p>	<p>The Commission notes, however, the Assigned Commissioner’s Ruling issued on August 11, 2015.</p>
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<p>set forth in the draft proposal. BHPCL served reply comments in response to the regulated entities' comments on the ACR and proposed a workshop to be held to discuss the possibility of establishing certain types of records to be public or confidential. BHPCL participated in this workshop on February 2, 2016.</p>		
<p><i>2. Delegation of Legal Authority</i> The delegation of legal authority to the Commission's Legal Division to handle California Public Records Act (CPRA) requests was a key part of the process proposed in the ACR. Under that delegated authority, the Legal Division would determine whether submitted records should be afforded confidential treatment without further formal action by the full Commission. Bayview supported the delegation of legal authority to the Legal Division as being more efficient and consistent with the California Constitution, as it would improve public access to records.</p>	<p><i>Id.</i> at 12. ACR Comments of Bayview at 12.</p>	<p>Verified.</p>
<p><i>3. Section 583</i> In contrast to Bayview supporting delegation to the Legal Division, CIC and the Joint Utilities strongly opposed delegation, arguing that Section 583 "requires that the Commission make individualized, case-by-case determinations as to whether confidential information should be disclosed." The Commission disagreed with this interpretation and adopted Bayview's approach, providing that "Bayview [BHPCL] presents a more logical approach on legal and policy grounds:</p>	<p>D.16-08-024 at 13, 15-16. Bayview ACR Reply Comments at 4.</p>	<p>Verified.</p>

<p>Taken as a whole, section 583 does not require a commission order or proceeding to release all information furnished to the commission. Some information, such as non-confidential information, can be released without a Commission order or proceeding. Even if a commission order is required, under <i>In Re Southern California Edison Company</i>, D.91-12-019, 42 CPUC 2d 298, 300 (1991), the Commission may delegate its authority to its Legal Decision, such as in this proceeding.”</p> <p>BHCPL’s comments contributed to the Commission adopting the following conclusion of law: “Commission review of potentially confidential documents submitted to the Commission shall be delegated to the Commission’s Legal Division.” Further, the Commission ordered that, “Authority for reviewing requests for confidential treatment of documents is delegated to the Commission’s Legal Division.</p> <p>The Commission also agreed with BHPCL that the CIC and the Joint Utilities approach “would unnecessarily delay the Commission’s response to Public Records Act requests, and add an unnecessary hurdle for those requesting information.”</p>	<p>D.16-08-024 at 30-31.</p> <p>D.16-08-024 at 17. Bayview ACR Reply Comments at 4.</p>	
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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	Verified.
b. Were there other parties to the proceeding with positions similar to yours?	Yes	Verified.
c. If so, provide name of other parties: City and County of San Francisco (San Francisco) The Utility Reform Network (TURN) The Commission’s Office of Ratepayer Advocates (ORA)		Yes.
d. Intervenor’s claim of non-duplication: The interests of the customers represented by BHPCL are unique and are not adequately represented by the parties in the case. Its customers live in the most impoverished areas of San Francisco and represent those who potentially have the most difficulty accessing public records. Having provided individual representation to such customers over the past four years, BHPCL has a unique understanding of their needs that are not reflected by other parties. The Commission directed the parties to address the proposal that the Commission’s interpretation of Section 583 in R.05-06-040 apply with equal force to all records submitted to the Commission, not only those related to energy procurement. (D.16-08-024 at 9). San Francisco, TURN, ORA and BHPCL addressed this issue, supporting the proposed legal framework. Unlike San Francisco, TURN, and ORA, BHPCL provides a prospective from the least sophisticated and most impoverished customers’ point of view—the customers who potentially face the most difficulty accessing public records. BHPCL’s representation is to ensure that everyone has access to public records, as guaranteed by the California Constitution, not only those with the sophistication or resources to navigate the complexities of obtaining public records from the Commission. Because BHPCL works with these customers individually, it believes it has a unique understanding of their challenges that the other parties do not. Thus, unlike the other parties, BHPCL supported the legal framework because it presents a more efficient process, which is more in line with in the California Constitution, helping everyone access public records. (See D.16-08-024 at 12.)		Agreed, Bayview did not engage in excessive duplication with other parties.

PART III: REASONABLENESS OF REQUESTED COMPENSATION

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

a. Intervenor’s claim of cost reasonableness: BHPCL’s request for \$27,509.48 reflects the work that BHPCL contributed to this Decision. While savings to ratepayers cannot be quantified, BHPCL’s	CPUC Discussion Verified.
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<p>participation ensured that its stakeholders as well as the public would benefit from this Decision, ensuring an efficient process for releasing public records, which the public have the right to access, while protecting records that are confidential and thus, worthy of protection.</p>	
<p>b. Reasonableness of hours claimed:</p> <p>BHPCL submits that the hours claimed are reasonable given the significance of this case. This case will shape the way records are submitted to the Commission and how the Commission will process requests for such records going forward. The more streamlined and efficient process set forth in this decision will ensure that Californians will have the right to access public records, as set forth by the California Constitution.</p> <p>Onki Kwan was BHPCL’s lead attorney for this case. She along with attorney, Guy Noyes, drafted comments and reply comments on this case and participated in a workshop, where the parties discussed categories of documents that are confidential and not confidential.</p> <p>BHPCL’s request for compensation covers work performed in 2014, 2015, and 2016. Its request for compensation is consistent with ALJ-303, ALJ-308, ALJ-329, and D1510047. Ms. Kwan has practiced law for four years as of 2014, five years as of 2015, and six years as of 2016. Mr. Noyes was admitted to the bar in December 2015 and is a first year attorney and worked as a law clerk from 2014-2015.</p> <p>In 2014, the Commission approved the rate of \$215 for Ms. Kwan and the rate of \$185 for law clerk, Mark Desrosiers. BHPCL’s request for compensation for 2014 is consistent with the rates set forth in that decision.</p> <p>For 2015, the Commission sets the hourly rates for 5-7 year attorneys from \$300-\$320 and for 3-4 year attorneys from \$215-\$250 (ALJ-308). For 2016, the Commission sets the rates hourly for 5-7 year attorneys from \$305-\$325 (ALJ-329). For 2015, BHPCL requests a step-up in compensation for Ms. Kwan for an additional year of practice or \$250. BHPCL believes this is reasonable because it reflects a single step up from her approved 2014 rate and is below the suggested hourly rate for five year attorneys.</p> <p>For 2016, BHPCL requests an additional step up in compensation for an additional year of practice or \$305. BHPCL believes this is reasonable because it reflects two steps up from her approved 2014 rate, reflecting two additional years of practice and is on the low end for the rates the Commission set for attorneys with five to seven years of experience.</p>	<p>Verified.</p>
<p>c. Allocation of hours by issue:</p> <p>The Preliminary Scoping Memo in this case set forth the following issues:</p> <ol style="list-style-type: none"> 1. Does the proposed revised general order comply with the CPRA setting forth written guidelines for access to Commission records, consistent with the Legislature’s intent to make agency records accessible to the public? 	<p>Verified.</p>

2. Does the proposed revised general order reasonably improve the public's access to public records and increase transparency of the Commission's CPRA procedures without compromising the Commission's compliance with applicable laws and protection of confidential information? If not, please explain.
3. What categories of documents (both safety-related and non-safety related) should the Commission disclose, if any, in response to a CPRA request without a vote of the Commission?

Based on the parties' comments on the preliminary scoping memo, the Commission revised the issues as follows:

1. Are documents submitted to the Commission subject to disclosure unless exempt from disclosure by the PRA or some other law?
2. Is the proposed GO 66-D lawful and appropriate?
3. Does the proposed GO 66-D comport with §583 of the Public Utilities Code?
4. Should the Commission provide notice to submitters that their documents are to be disclosed?
5. Is the procedure for resolving public records requests adequate?
6. Should there be a fee waiver?
7. What is the effect of the proposed GO 66-D on documents already submitted to the Commission?
8. Does the proposed GO 66-D improve public access to public records?

BHPCL has allocated its time on its timesheets based on the following codes:

GP – General Preparation – work that generally does not vary with the number of issues BHPCL addresses in this case

GH – General Hearing – Hearing related work that was not issue-specific. For example, attending the prehearing conference.

SETT – Settlement – work that includes discussing substantive settlement issues with other parties and drafting comments and reply comments.

COMP – Compensation – work on BHPCL's compensation request and compensation-related activities, such as the NOI.

PRA – Public Records Act – work related to the California Public Records Act, including work on issues set forth in the OIR.

OIR – Order Instituting Rulemaking – Where ever possible, BHPCL allocated time to a specific issue area. However, the issues in the Order Instituting Rulemaking (OIR) relate to each other in such a way that it is not feasible to work on one independently of another.

SM – Scoping Memo – Where ever possible, BHPCL allocated time to a specific issue area. However, the issues in the Scoping Memo (SM) relate to each

other in such a way that it is not feasible to work on one independently of another.

BHPCL has allocated its time by code and issue number.

B. Specific Claim:*

CLAIMED						CPUC AWARD		
ATTORNEY, EXPERT, AND ADVOCATE FEES								
Item	Year	Hours	Rate \$	Basis for Rate*	Total \$	Hours	Rate \$	Total \$
Onki Kwan	2014	13.5	\$215	D1510047	\$2902.50	13.50	215.00	\$2,902.50
Onki Kwan	2015	45	\$250	ALJ-308	\$11,250	45.00	215.00 <i>See</i> D.15-10-047.	\$9,675.00
Onki Kwan	2016	25.9	\$305	ALJ-329	\$7,899.50	25.90	220.00 <i>See</i> Res. ALJ-329.	\$5,698.00
Guy Noyes	2014	8.16	\$130	D1510047	\$1060.80	8.16	100.00 <i>See</i> Res. ALJ-303. [1]	\$816.00
Guy Noyes	2015	10.32	\$130	D1510047	\$1341.60	10.32	100.00 <i>See</i> Res. ALJ-308	\$1,032.00
Guy Noyes	2016	5	\$165	ALJ-329	\$825.00	5.00	165.00 <i>See</i> Res. ALJ-329.	\$825.00
Subtotal: \$25,279.40						Subtotal: \$20,948.50		
OTHER FEES								
Describe here what OTHER HOURLY FEES you are Claiming (paralegal, travel **, etc.):								
Item	Year	Hours	Rate \$	Basis for Rate*	Total \$	Hours	Rate	Total \$
Onki Kwan	2015	0.5	\$125	Travel time for hearings – half hourly rate	\$62.50	00.00 [2]	107.50	\$00.00
Onki Kwan	2016	0.5	\$152.5	Travel time for hearings – half hourly rate	\$76.25	00.00	110.00	\$00.00
Guy Noyes	2015	0.5	\$65	Travel time for hearings –	\$32.50	00.00	50.00	\$00.00

CLAIMED						CPUC AWARD		
ATTORNEY, EXPERT, AND ADVOCATE FEES								
				half hourly rate				
Guy Noyes	2016	0.5	\$82.5	Travel time for hearings – half hourly rate	\$41.25	00.00	82.50	\$00.00
<i>Subtotal: \$212.50</i>						<i>Subtotal: \$00.00</i>		
INTERVENOR COMPENSATION CLAIM PREPARATION **								
Item	Year	Hours	Rate \$	Basis for Rate*	Total \$	Hours	Rate	Total \$
Onki Kwan	2016	13.23	152.5	ALJ-329	\$2,017.58	13.23	110.00	\$1,455.30
<i>Subtotal: \$2,017.58</i>						<i>Subtotal: \$1,455.30</i>		
TOTAL REQUEST: \$27,509.48						TOTAL AWARD: \$22,403.80		
<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?			
Onki Kwan	6/3/2011			276931	No			
Guy Noyes	12/4/2015			306683	No			

C. CPUC Disallowances and Adjustments:

Item	Reason
[1]	In 2014, Noyes' was not admitted to the California Bar. The Commission will compensate Noyes at a rate similar to other law students. For Noyes' work in 2015, all work occurred prior to Bar admission.
[2]	The Commission does not compensate travel time for commuting of less than 90 miles.

¹ This information may be obtained through the State Bar of California's website at <http://members.calbar.ca.gov/fal/MemberSearch/QuickSearch> .

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.
B. Comment Period: Was the 30-day comment period waived (<i>see</i> Rule 14.6(c)(6))?	Yes.

FINDINGS OF FACT

1. Bayview/Hunters Point Community Legal has made a substantial contribution to Decision 16-08-024.
2. The requested hourly rates for Bayview/Hunters Point Community Legal'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 \$22,403.80.

CONCLUSION OF LAW

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

ORDER

1. Bayview/Hunters Point Community Legal shall be awarded \$22,403.80.
2. Within 30 days of the effective date of this decision, the Commission's Intervenor Compensation Fund shall pay Bayview/Hunters Point Community Legal the total award. Payment of the award shall include compound interest at the rate earned on prime, three-month non-financial commercial paper as reported in Federal Reserve Statistical Release H.15, beginning January 7, 2017, the 75th day after the filing of Intervenor's request, and continuing until full payment is made.
3. The comment period for today's decision is waived.
4. This decision is effective today.

Dated _____, at San Francisco, California.

APPENDIX A**Compensation Decision Summary Information**

Compensation Decision:		Modifies Decision?	No.
Contribution Decision(s):	D1608024		
Proceeding(s):	R1411001		
Author:	ALJ Lirag		
Payer(s):	California Public Utilities Commission - Intervenor Compensation Fund		

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change / Disallowance
Bayview/Hunters Point Community Legal	10/24/2016	\$27,509.48	\$22,403.80	No.	See CPUC Disallowances and Adjustments, above.

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Onki	Kwan	Attorney	Bayview	\$215.00	2014	\$215.00
Onki	Kwan	Attorney	Bayview	\$250.00	2015	\$215.00
Onki	Kwan	Attorney	Bayview	\$305.00	2016	\$220.00
Guy	Noyes	Law Student	Bayview	\$130.00	2014	\$100.00
Guy	Noyes	Attorney	Bayview	\$130.00	2015	\$100.00
Guy	Noyes	Attorney	Bayview	\$165.00	2016	\$165.00

(END APPENDIX)