

Decision \_\_\_\_\_

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Ordering Instituting Rulemaking to Continue  
Implementation and Administration of  
California Renewables Portfolio Standard  
Program

Rulemaking 06-05-027  
(Filed May 25, 2006)

**OPINION GRANTING INTERVENOR COMPENSATION TO GREEN POWER  
INSTITUTE FOR SUBSTANTIAL CONTRIBUTIONS TO DECISION 06-10-050**

This decision awards the Green Power Institute (GPI) \$29,622 in compensation for its substantial contributions to Decision (D.) 06-10-050. The amount awarded is the amount requested. This proceeding remains open to address specific additional matters.

**1. Background**

Senate Bill 1078, effective January 1, 2003, established the California Renewables Portfolio Standard (RPS) Program. The RPS requires each California electrical corporation or retail seller, with limited exception, to procure a minimum quantity of electricity from eligible renewable energy resources. The amount must increase by at least 1% each year, and reach 20% of total retail sales no later than 2010. The legislation directs the Commission and the California Energy Commission to implement and administer the RPS Program, including setting procurement targets and adopting rules for flexible compliance.

D.06-10-050 adopted a primary guide for reporting RPS Program targets and results. It consolidates, defines and clarifies the concepts and terms used for reporting and compliance. The reporting and compliance methodology applies

equally to all load serving entities (LSEs). Any unique aspects of the rules as they apply to electric service providers, community choice aggregators and small and multi-jurisdictional investor owned utilities will be determined in Rulemaking (R.) 06-02-012. This proceeding remains open to address specific additional matters.

## **2. Requirements for Awards of Compensation**

The intervenor compensation program, enacted in Public Utilities Code §§ 1801-1812, requires California jurisdictional utilities to pay the reasonable costs of an intervenor's participation if the intervenor makes a substantial contribution to the Commission's proceedings.<sup>1</sup> The statute provides that the utility may adjust its rates to collect the amount awarded from its ratepayers.

All of the following procedures and criteria must be satisfied for an intervenor to obtain a compensation award:

1. The intervenor must satisfy certain procedural requirements including the filing of a sufficient notice of intent (NOI) to claim compensation within 30 days of the prehearing conference (PHC), or in special circumstances at other appropriate times that we specify. (§ 1804(a).)
2. The intervenor must be a customer or a participant representing consumers, customers, or subscribers of a utility subject to our jurisdiction. (§ 1802(b).)
3. The intervenor should file and serve a request for a compensation award within 60 days of our final order or decision in a hearing or proceeding. (§ 1804(c).)
4. The intervenor must demonstrate "significant financial hardship." (§§ 1802(g), 1804(b)(1).)

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<sup>1</sup> All statutory references are to the Public Utilities Code unless noted otherwise.

5. The intervenor's presentation must have made a "substantial contribution" to the proceeding, through the adoption, in whole or in part, of the intervenor's contention or recommendations by a Commission order or decision. (§§ 1802(i), 1803(a).)
6. The claimed fees and costs are reasonable (§ 1801), necessary for and related to the substantial contribution (D.98-04-059), comparable to the market rates paid to others with comparable training and experience (§ 1806), and productive (D.98-04-059).

For discussion here, the procedural issues in Items 1-4 above are combined, followed by separate discussions on Items 5-6.

### **3. Procedural Issues**

The PHC in this matter was held on June 22, 2006. GPI timely filed its NOI to claim intervenor compensation on July 21, 2006. In its NOI, GPI asserted financial hardship. The Administrative Law Judge's (ALJ) ruling issued on October 30, 2006, found GPI eligible to claim intervenor compensation in this proceeding. GPI's circumstances with respect to eligibility have not changed.

Section 1802(b)(1) defines a "customer" as: (A) a participant representing consumers, customers or subscribers of a utility; (B) a representative who has been authorized by a customer; or (C) a representative of a group or organization authorized pursuant to its articles of incorporation or bylaws to represent the interests of residential or small business customers.

On October 30, 2006, ALJ Mattson ruled that GPI is a customer pursuant to § 1802(b)(1)(C). The ruling also finds that GPI meets the financial hardship condition through a rebuttable presumption of eligibility, pursuant to §1804(b)(1), because GPI met this requirement in another proceeding within one year of the commencement of this proceeding.

GPI has a long history of appearing before this Commission, and has previously been found eligible and been awarded intervenor compensation in

earlier proceedings. No new, different or contrary facts are presented here, or otherwise known, that would suggest GPI is no longer eligible. GPI continues to be eligible here.

GPI filed its request for compensation on December 20, 2006, within 60 days of D.06-10-050 being issued. We affirm the ALJ's ruling and find that GPI has satisfied all the procedural requirements necessary to make its request for compensation in this proceeding.

#### **4. Substantial Contribution**

In evaluating whether a customer made a substantial contribution to a proceeding we look at several things. First, did the ALJ or Commission adopt one or more of the factual or legal contentions, or specific policy or procedural recommendations put forward by the customer? (See § 1802(i).) Second, if the customer's contentions or recommendations paralleled those of another party, did the customer's participation materially supplement, complement, or contribute to the presentation of the other party or to the development of a fuller record that assisted the Commission in making its decision? (See §§ 1801.3(f) and 1802.5.) As described in § 1802(i), the assessment of whether the customer made a substantial contribution requires the exercise of judgment.

In assessing whether the customer meets this standard, the Commission typically reviews the record, composed in part of pleadings of the customer and, in litigated matters, the hearing transcripts, and compares it to the findings, conclusions, and orders in the decision to which the customer asserts it contributed. It is then a matter of judgment as to whether the customer's presentation substantially assisted the Commission.<sup>2</sup>

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<sup>2</sup> D.98-04-059, 79 CPUC 2d 628 at 653.

Should the Commission not adopt any of the customer's recommendations, compensation may still be awarded if, in the judgment of the Commission, the customer's participation substantially contributed to the decision or order. For example, if a customer provided a unique perspective that enriched the Commission's deliberations and the record, the Commission could find that the customer made a substantial contribution. With this guidance in mind, we turn to the claimed contributions GPI made to the proceeding.

GPI contends its involvement was extensive and included contributions to D.06-10-050 in the areas of simplified reporting and compliance protocols, timing and format of compliance reports, earmarking, and clarifying resource neutrality issues. GPI states it participated in a workshop on February 16, 2006; in informal meetings and conference calls; and filed initial and reply comments in R.04-04-026 and R.06-05-027. The Commission has awarded full compensation even where the intervenor's positions were not adopted in full, especially in proceedings with a broad scope. (See D.98-04-028, 79 CPUC 2d 570, 573-574.)

GPI points out that D.06-10-050 adopts its recommendations in the area of a simplified reporting and compliance system. D.06-10-050 found GPI's recommended reporting and compliance system easier to understand and administer and that GPI's system reasonably incorporates necessary incentives, is consistent with the letter and spirit of the law and, based on GPI's data, reasonable.<sup>3</sup>

GPI asserts it was opposed to delaying the dates for two annual RPS Compliance Reports and was the only party to propose a spreadsheet format in

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<sup>3</sup> See D.06-10-050, at 18-19.

its comments. D.06-10-050 reaffirms the original, annual due dates of March 1 and August 1 as recommended by GPI, and referenced the GPI spreadsheet reporting format in Conclusions of Law 19.

GPI points out that in its reply comments it argued against the extension of earmarking beyond three years as sought by the utilities. We rejected the utilities' argument, denied the extension, and confirmed GPI's analysis stating: "We are not persuaded [by the utilities]. Rather, GPI has it right."<sup>4</sup>

Finally, GPI states that its opposition to guiding principle number 8, titled "Resource Neutrality," of Southern California Edison's proposal was the basis for the Commission's modification of the Draft Decision. After clarifying its objections in comments on the Proposed Decision, the Commission modified the decision to apply guiding principle 8 to only the compliance methodology area of the RPS Program rather than to all aspects of the Program.<sup>5</sup>

Here, GPI achieved a high level of success on the issues it raised and we believe the items detailed by GPI demonstrate its substantial contribution to D.06-10-050.

### **Contributions of Other Parties**

Section 1801.3(f) requires an intervenor to avoid unnecessary participation that duplicates that of similar interests otherwise adequately represented by another party, or unnecessary for a fair determination of the proceeding. Section 1802.5, however, allows an intervenor to be eligible for full compensation if their participation materially supplements, complements, or contributes to that of

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<sup>4</sup> Id. at 27.

<sup>5</sup> Id. at 8-9.

another party if that participation makes a substantial contribution to the Commission's order.

GPI states that it coordinated its efforts with other parties in the proceeding to avoid duplication of effort. Although GPI admits that some amount of duplication occurred on all sides of contentious issues, GPI states it avoided repetition to the extent possible and minimized it where it was unavoidable. We accept GPI's characterization of its efforts.

## 5. Reasonableness of Requested Compensation

GPI requests \$29,622 for its participation in this proceeding, as follows:

<b>Intervenor</b>	<b>Hourly Rate</b>	<b>Hours</b>	<b>Total</b>
Greg Morris	\$220	124.5	\$ 27,390
Int. Comp. Req. Prep	\$110	9.0	\$ 990
Valerie Morris	\$ 31	29.5	\$ 915
Zoë Harrold	\$ 31	7.0	\$ 217
Filing and Service Costs			\$ 110
<b>TOTAL REQUEST</b>			<b>\$ 29,622</b>

In general, the components of this request must constitute reasonable fees and costs of the customer's preparation for and participation in a proceeding that resulted in a substantial contribution. The issues we consider to determine reasonableness are discussed below:

### **Hours and Costs Related to and Necessary for Substantial Contribution**

We first assess whether the hours claimed for the customer's efforts that resulted in substantial contributions to Commission decisions are reasonable by

determining to what degree the hours and costs are related to the work performed and necessary for the substantial contribution.

GPI documented its claimed hours by presenting a daily breakdown of the hours of its attorney and research associates accompanied by a brief description of each activity. The hourly breakdown reasonably supports the claim for total hours.

### **Hourly Rates**

We next take into consideration whether the claimed fees and costs are comparable to the market rates paid to experts and advocates having comparable training and experience and offering similar services.

GPI seeks an hourly rate of \$220 for Greg Morris, for work performed in 2006. We previously approved this rate in D.06-08-013, and adopt it here. For research associates Valerie Morris and Zoë Harrold, D.06-10-012 approved the rate of \$31 an hour for GPI research associates and we adopt it here as well.

### **Productivity**

D.98-04-059 directed customers to demonstrate productivity by assigning a reasonable dollar value to the benefits of their participation to ratepayers. The costs of a customer's participation should bear a reasonable relationship to the benefits realized through their participation. This showing assists us in determining the overall reasonableness of the request.

Although GPI cannot define explicit monetary benefits derived from its participation, it points out that the most important benefits of a successful RPS program are environmental and health improvements. Although hard to measure monetarily, environmental and health improvements are beneficial results for ratepayers.

Finally, GPI asserts that even in the absence of defined financial benefits, the Commission has recognized the overall benefits derived from intervenors that help develop a record to assess the reasonableness of a utility's operations and particularly its preparedness and performance in the future.

We agree. The benefits flowing from GPI's participation in this proceeding, though hard to quantify, are substantial. Thus, we find that GPI's efforts have been productive and ultimately confer upon ratepayers long-term financial and other benefits.

### **Direct Expenses**

The itemized direct expenses submitted by GPI include costs for postage, messenger and parcel service and total \$110.00. The cost breakdown included with the request shows the miscellaneous expenses to be commensurate with the work performed. We find these costs reasonable.

## **6. Award**

As set forth in the table below, we award GPI \$29,622.

<b>Intervenor</b>	<b>Hourly Rate</b>	<b>Hours</b>	<b>Total</b>
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Valerie Morris	\$ 31	29.5	\$ 915
Zoë Harrold	\$ 31	7.0	\$ 217
Filing and Service Costs			\$ 110
<b>TOTAL REQUEST</b>			<b>\$ 29,622</b>

Consistent with previous Commission decisions, we order that interest be paid on the award amount (at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release H.15) commencing on

March 5, 2007, the 75th day after GPI filed its compensation request, and continuing until full payment of the award is made.

We direct Pacific Gas and Electric Company, San Diego Gas & Electric Company and Southern California Edison to allocate payment responsibility among themselves based upon each company's California-jurisdictional electric revenues for the 2006 calendar year, the year in which the proceeding was primarily litigated. We decline to allocate payment responsibility to other respondent LSEs. The award amount spread among all LSEs would be quite small for LSEs other than the three largest investor owned utilities (IOU). The benefit of more equal award contribution among all respondents does not justify the increased administrative burden. Also, the three largest IOUs were the focus of the case, did the bulk of the work, and D.06-10-050 directs only the three largest IOUs to develop and propose a final spreadsheet. Given all these factors, it is appropriate to require contribution from them alone.

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. GPI's records should identify specific issues for which it requested compensation, the actual time spent by each employee or consultant, the applicable hourly rate, fees paid to consultants, and any other costs for which compensation was claimed.

## **7. Waiver of Comment Period**

This is an intervenor compensation matter. Accordingly, as provided by Rule 14.6(c)(6) of our Rules of Practice and Procedure, we waive the otherwise applicable 30-day comment period for this decision.

**8. Assignment of Proceeding**

Michael R. Peevey is the assigned Commissioner, and Burton W. Mattson is the assigned ALJ in this proceeding.

**Findings of Fact**

1. GPI has satisfied all the procedural requirements necessary to claim compensation in this proceeding.
2. GPI made a substantial contribution to D.06-10-050 as described herein.
3. GPI requested hourly rates for its representatives that are reasonable when compared to the market rates for persons with similar training and experience.
4. GPI requested related expenses that are reasonable and commensurate with the work performed.
5. The total reasonable compensation is \$29,622.

**Conclusions of Law**

1. GPI has fulfilled the requirements of Pub. Util. Code §§ 1801-1812, which govern awards of intervenor compensation, and is entitled to intervenor compensation for its claimed compensation D.06-10-050.
2. GPI should be awarded \$29,622 for its contribution to D.06-10-050.
3. Pursuant to Rule 14.6(c)(6), the comment period for this compensation decision may be waived.
4. This order should be effective today so that GPI may be compensated without further delay.

**O R D E R**

**IT IS ORDERED** that:

1. The Green Power Institute (GPI) is awarded \$29,622 as compensation for its substantial contributions to Decision (D.) 06-10-050.

2. Within 30 days of the effective date of this decision, Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison, shall pay GPI their respective shares of the award. Each utility's share shall be calculated based on its California jurisdictional revenues for the 2006 calendar year, to reflect the year in which the proceeding was primarily litigated. Payment of the award shall include interest at the rate earned on prime, three-month commercial paper as reported in Federal Reserve Statistical Release H.15, beginning March 5, 2007, the 75<sup>th</sup> day after the filing date of GPI's request for compensation, and continuing until full payment is made.

3. The comment period for today's decision is waived.

This order is effective today.

Dated \_\_\_\_\_, 2007, at San Francisco, California.

### Compensation Decision Summary Information

<b>Compensation Decision:</b>		<b>Modifies Decision?</b> N
<b>Contribution Decision(s):</b>	D0610050	
<b>Proceeding(s):</b>	R0605027	
<b>Author:</b>	Burton W. Mattson	
<b>Payer(s):</b>	Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison	

### Intervenor Information

<b>Intervenor</b>	<b>Claim Date</b>	<b>Amount Requested</b>	<b>Amount Awarded</b>	<b>Multiplier?</b>	<b>Reason Change/Disallowance</b>
Green Power Institute	12/10/07	\$29,622	\$29,622	N	

### Advocate Information

<b>First Name</b>	<b>Last Name</b>	<b>Type</b>	<b>Intervenor</b>	<b>Hourly Fee Requested</b>	<b>Year Hourly Fee Requested</b>	<b>Hourly Fee Adopted</b>
Gregory	Morris	Attorney	Green Power Institute	\$220	2006	\$220
Valerie	Morris	Research Assoc.	Green Power Institute	\$31	2006	\$30
Zoë	Harrold	Research Assoc.	Green Power Institute	\$31	2006	\$30