

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company (U39E) for Approval of Demand Response Agreements.	Application 07-02-032 (Filed February 28, 2007)
Southern California Edison Company's (U228E) Application for Approval of a Demand Response Resource Purchase Agreement for 2007 and 2008.	Application 07-02-033 (Filed February 28, 2007)

OPINION GRANTING INTERVENOR COMPENSATION TO WOMEN'S ENERGY MATTERS FOR CONTRIBUTIONS TO DECISION 07-05-029

This decision awards compensation in the amount of \$9,445.58 to Women's Energy Matters (WEM) for contributions to Decision (D.) 07-05-029. This represents a decrease of \$213.75 from the amount requested due to our correction of computation errors and adjustment of the requested hourly rate for the WEM representative.¹ This proceeding is closed.

1. Background

D.07-05-029 approved the applications of Pacific Gas and Electric Company (PG&E) and Southern California Edison Company (SCE) to enter into specified contracts with aggregators who agreed to participate in certain

¹ WEM's pleading states that it requests \$9,289.33. However, on the basis of its accounting, and after correcting computational errors, WEM actually seeks \$9,659.33.

“demand response” efforts, that is, those contracts that would reduce customer demand during identified periods. PG&E sought authority to enter into five-year agreements with demand response aggregators that would provide between 35 megawatts (MW) and 46 MW of demand response by August 2007, between 107 MW and 129 MW by August 2008, and between 132 MW and 149 MW in 2009 to 2011. SCE sought authority to enter into a two-year agreement with a demand response aggregator, lasting from 2007 until 2008 that would provide up to 40 MW of demand response capacity by June 2008.

The Division of Ratepayer Advocates (DRA), The Utility Reform Network, and EnerNOC filed comments on the applications. DRA opposed the agreements, raising concerns about some of the terms of the agreements and questioning whether the capacity is required. WEM raised a concern about the allocation of associated costs and related accounting. As one of the contracting parties, EnerNOC stated its support for the applications.

The Commission conducted a prehearing conference in these consolidated matters at which the assigned Administrative Law Judge (ALJ) asked a number of questions about the need for the capacity and the cost-effectiveness of the contracts. The applicant utilities agreed to file additional information and other parties were provided an opportunity to file additional comments. DRA, Alternative Energy Resources (AER), WEM and EnerNOC filed comments addressing the additional information SCE and PG&E provided and on the ALJ’s proposed decision.

D.07-05-029 concluded that the agreements proposed by PG&E and SCE would be attractive enhancements to the utilities’ demand response portfolios and approved them.

2. Requirements for Awards of Compensation

The intervenor compensation program, enacted in Pub. Util. 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 a Commission order, decision, or proceeding. 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, or in special circumstances at another appropriate time 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 must 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).)
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 must be 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).

The following section addresses Items 1-4 above, followed by separate discussions on Items 5-6.

3. Procedural Issues

WEM filed an NOI in this proceeding and is a “customer” for purposes of qualifying for intervenor compensation, consistent with § 1804(b). In its request for compensation, WEM claims it will experience significant financial hardship as a result of participating in this proceeding. It adequately demonstrates that its members are residential customers and that the benefits to them individually will be very small compared to the costs of participation. We find that WEM satisfies the criteria for a finding of financial hardship, pursuant to § 1802(g). WEM filed its request for compensation within 60 days of the issuance of D.07-05-029. WEM also supplied Appendix A to the request, containing detailed breakdown of the time spent on work in this proceeding. In view of the above, WEM has satisfied all the procedural requirements necessary to make their requests for compensation in this proceeding.

4. WEM’s Substantial Contribution

In evaluating whether a customer made a substantial contribution to a proceeding, we consider whether the Commission adopted one or more of the factual or legal contentions, or specific policy or procedural recommendations put forward by the customer. If the customer’s contentions or recommendations paralleled those of another party, we consider whether the customer’s participation materially supplemented, complemented, or contributed to the presentation of the other party or to the development of a fuller record that

assisted the Commission in making its decision. The assessment of whether the customer made a substantial contribution requires the exercise of judgment.

Should the Commission not adopt any of the customer's recommendations, compensation may 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.

WEM states it was active in all parts of this proceeding. WEM filed responses to the ALJ's questions on April 17, 2007. On April 27, 2007, it filed comments on the ALJ's proposed decision. WEM states its written materials analyzed each contract's costs and the nature of the demand response each would provide. It states it objected to the contracts on the basis that they would not provide capacity in the regions of the state where they would be most needed, that is, where congestion is most serious. WEM states it also addressed the need for more demand response in the near future and the costs of the contracts under the circumstances. WEM states it avoided duplication of effort wherever possible and that much of its work was unique.

PG&E and SCE filed a joint protest to WEM's request for compensation. The protest asserts WEM made no meaningful contribution to the proceeding, that WEM's response to the ALJ's questions did not include any insight or analysis, and that most of WEM's work was duplicative of the work of others.

Discussion. WEM's April 17 comments focused on PG&E's contracts. Its comments raised concerns that the contracts did not provide any incentive for demand response to be provided where it would be needed most, that is, in constrained geographic areas. Its comments observed that the contracts might

not produce the capacity the contracts anticipated and that the contracts appeared more expensive than necessary. Its April 27 comments on the ALJ's proposed decision raised similar issues and recommended that the PG&E contracts for demand response be delayed until 2008 because PG&E did not need capacity in 2007.

The Commission did not adopt WEM's recommendations. It did, however, benefit from the insights WEM provided. While its comments were terse, the time allotted for comments was extremely short. At the request of SCE and PG&E, the Commission expedited the processing of these applications in ways that could not have permitted discovery or in-depth analysis of the contracts or their potential impacts. For example, the Commission conducted a prehearing conference on April 4, 2007, a week after protests were filed. Comments in response to the ALJ's questions were due 13 days thereafter and comments on the proposed decision were due only 23 days after the prehearing conference. The utilities cannot expect the parties to move this quickly and then complain that the parties' analysis is too superficial to be considered useful.²

WEM contributed to D.07-05-029 even though we did not adopt its recommendations. The Commission has many times granted compensation in cases where the intervenor did not prevail but still made a contribution to a Commission decision.³ WEM raised important issues regarding the need for capacity and the costs of the contracts, which we considered in our deliberations.

² Contrary to the utilities' understanding, WEM did provide "visualizations" of demand response commitments in the unredacted, nonpublic version of its April 17, 2007 comments.

³ See, e.g., D.04-12-054 and D.06-06-018.

We, therefore, find that WEM made a significant contribution to D.07-05-029. Although some of the issues WEM raised were also considered by DRA, WEM's participation materially complemented that of other parties and qualifies for compensation consistent with § 1802.5.

5. WEM's Requested Compensation

WEM requests \$9,659.33⁴ for its participation in this proceeding, as follows:

Work on Proceeding				
Attorney/Staff	Year	Hours	Hourly Rate	Total
Donn Davey	2007	35.75	\$175.00	\$6,256.25
Barbara George	2007	11.75	\$185.00	\$2,173.75
Subtotal				\$8,430.00
Preparation of NOI and Compensation Request and Travel⁵				
Attorney/Staff	Year	Hours	Hourly Rate	Total
Donn Davey	2007	5.5	\$87.50	\$481.25
Barbara George	2007	7.5	\$90.00	\$675.00
Subtotal				\$1,156.25
Expenses				\$73.08
Total Requested Compensation				\$9,659.33

⁴ WEM requested \$9,216.25 for advocate work and \$32.43 in direct expenses (*see*, p. 7 of the request). However, the requested amount was miscalculated. The table below corrects calculation errors in the request. The tables also bring the requested amount in accord with Appendix A to the request, by including, among other things, time and expenses that were inadvertently omitted from the request.

⁵ Hourly rates are reduced 50% for preparation of the NOI and compensation request, and for travel.

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. 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.

5.1. Hours Claimed

WEM claims about 47 hours for work in this proceeding conducted by Davey and George, as follows:

Donn Davey	35.75 ⁶	\$175.00	\$6,256.25
Barbara George	11.75	\$185.00	\$2,173.75

WEM provides timesheets of work conducted, broken down by issue area. WEM claims half of the applicable rate for work on the compensation request and an hour of travel, as Commission rules require. SCE and PG&E complain that the time WEM claims for work on the intervenor compensation request is excessive because it comprises 20% of all hours claimed. The number of hours claimed represents a high percentage of total hours claimed partly because WEM claims so few hours for its substantive work. It seeks compensation for 11.25 hours for work on the compensation request, which is modest compared to

⁶ 40.25 hours indicated in the request are not consistent with timesheets. Also, it appears that WEM included in this amount time spent on intervenor compensation matters. We correct the errors here to reflect a number of hours as reflected in the timesheets in Appendix A.

the hours claimed by other intervenors in other proceedings for drafting compensation requests.

D.98-04-059 states our intent to assess whether the costs of a customer's participation bears a reasonable relationship to the benefits of an intervenor's participation. It would not be possible to assign a dollar value to WEM participation in a proceeding like this. However, the benefits to customers of WEM's participation are likely to outweigh the modest costs WEM claims. Overall, we find WEM's hours to be reasonable for the work WEM undertook in this proceeding.

5.2. Attorney and Expert Rates

We consider here 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.

Two experts worked in this proceeding. Neither has a current rate set by the Commission. We address each below.

Donn Davey. WEM requests an hourly rate for Davey of \$175. WEM states Davey has 25 years of experience in the fields of building energy performance, DNA sequence processing and green building design. WEM states the hourly rate requested is reasonable because consultants with Davey's experience regularly receive more than \$175 an hour. WEM provides no materials to support this hourly rate. The rate is nevertheless within the range adopted for experts in D.07-01-009. Although that range applies to experts with experience in matters related to relevant utility regulation – and WEM has not demonstrated that Davey has such experience – the rate is at the low end of the range. We therefore find it reasonable.

Barbara George. WEM seeks a 2007 rate of \$185 for George. The Commission's last adopted hourly rate for George was the rate of \$150 for her work undertaken in 2003-2004 (D.06-04-018). In D.07-01-009, the Commission authorized a 3% cost-of-living adjustment (COLA) for work performed in calendar year 2006, and an additional 3% COLA for work performed in 2007. Further, that decision authorized individual intervenor representatives an annual 5% "step increase" beginning with 2007 work. With the application of 3% COLA and 5% "step increase," we find reasonable the hourly rate of \$170.00⁷ for Barbara George's work undertaken in 2007. We adopt it here.

5.3. Direct Expenses

WEM seeks \$73.08 in costs for work in this proceeding, a very small sum, which we find reasonable.

⁷ D.05-11-031 did not authorize an increase in intervenor rates for 2005 over those rates authorized for 2004. (D.05-11-031, p. 15.) Application of 3% COLA increases to Ms. George's rate of \$150 for the years 2006 and 2007 and of 5% "step increase" for the year 2007, rounded to the nearest \$5.00, results in the rate of \$170.00 for the year 2007.

6. WEM's Award of Compensation

As set forth in the table below, we award \$9,445.58 in compensation to WEM.

Work on Proceeding				
Attorney/Staff	Year	Hours	Hourly Rate	Total
Donn Davey	2007	35.75	\$175.00	\$6,256.25
Barbara George	2007	11.75	\$170.00	\$1,997.50
Subtotal				\$8,253.75
Preparation of NOI and Compensation Request and Travel⁸				
Attorney/Staff	Year	Hours	Hourly Rate	Total
Donn Davey	2007	5.5	\$87.50	\$481.25
Barbara George	2007	7.5	\$85.00	\$637.50
Subtotal				\$1,118.75
Expenses				\$73.08
Total Requested Compensation				\$9,445.58

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 October 23, 2007, the 75th day after WEM filed its compensation request, and continuing until full payment of the award is made.

Commission staff is authorized to audit an intervenor's records related to the award. Intervenors must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. WEM's records should identify specific issues for which it requested compensation, the

⁸ Hourly rates are reduced 50% for preparation of the NOI and compensation request, and for travel.

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

Consistent with Rule 14.6(c)(6) of the Commission's Rules of Practice and Procedure, we waive the otherwise applicable 30-day comment period for this decision.

8. Assignment of Proceeding

Rachelle B. Chong is the assigned Commissioner, and Kim L. Malcolm is the assigned ALJ in this proceeding.

Findings of Fact

1. WEM has satisfied all the procedural requirements necessary to claim compensation in this proceeding.
2. WEM made a substantial contribution to D.07-05-029 as described herein.
3. WEM's requested hourly rates for its representatives, as adjusted herein, are reasonable and consistent with D.07-01-009.
4. WEM's requested related expenses that are reasonable and commensurate with the work performed.

Conclusions of Law

1. WEM has fulfilled the requirements of Pub. Util. Code §§ 1801-1812, which govern awards of intervenor compensation, and is entitled to intervenor compensation for its contributions to D.07-07-047 in the amount of \$9,445.58.
2. PG&E should be required to pay WEM the amount awarded herein because WEM's contributions focused on PG&E's subject contracts.
3. This order should be effective today so that WEM may be compensated without further delay.

O R D E R

IT IS ORDERED that:

1. Women's Energy Matters (WEM) is awarded \$9,445.58 as compensation for its substantial contributions to Decision 07-05-029.
2. Within 30 days of the effective date of this decision, Pacific Gas and Electric Company shall pay the award granted herein. 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 on October 23, 2007, the 75th day after the filing date of WEM's request for compensation, and continuing until full payment is made.
3. Application (A.) 07-02-032 and A.07-02-033 are closed.

This order is effective today.

Dated _____, at San Francisco, California.

Appendix

Compensation Decision Summary Information

Compensation Decision:		Modifies Decision? NA
Contribution Decision(s):	D0705029	
Proceeding(s):	A0702032, A0702033	
Author:	ALJ Malcolm	
Payer(s):	Pacific Gas & Electric	

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
Women's Energy Matters	07/10/07	\$9,659.33	\$9,445.58	no	Adjusted hourly rate; correction of computation errors

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Donn	Davey		Women's Energy Matters	175	2007	175
Barbara	George		Women's Energy Matters	185	2006	170

(END OF APPENDIX)