

Decision \_\_\_\_\_

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

Application of Pacific Gas and Electric Company for Approval of an Agreement Concerning Certain Generation Assets Known as "Contra Costa 8" Pursuant to a Settlement and Release of Claims Agreement Approved by the Commission on January 14, 2005, for Authority to Recommence Construction, and for Adoption of Cost Recovery and Ratemaking Mechanisms Related to the Acquisition, Completion, and Operation of the Assets.

Application 05-06-029  
(Filed June 17, 2005)

(U 39 E)

**OPINION ON INTERVENOR COMPENSATION AWARD TO  
CALIFORNIANS FOR RENEWABLE ENERGY, INC.  
FOR SUBSTANTIAL CONTRIBUTIONS TO DECISION 06-06-035**

This decision awards Californians for Renewable Energy, Inc. (CARE) \$22,645 in compensation for its substantial contribution to Decision (D.) 06-06-035. The award is approximately \$6,300 less than requested. This proceeding is closed.

**Background**

Pacific Gas and Electric Company (PG&E) filed the subject application requesting authority to enter into an agreement for a new combined cycle, 530 megawatt electric generating facility known as Contra Costa 8 (CC8). PG&E seeks approval to accept, construct, and operate CC8, and to establish related funding and cost recovery mechanisms. PG&E also requested authorization for a

non-bypassable surcharge (NBC), to recover above-market costs from departing loads, for 30 years to parallel the 30-year life of the project, instead of 10 years as previously authorized in D.04-12-048.

Parties in this proceeding showed little opposition to the project itself, but some had concerns over the length of the term of the NBC. PG&E, along with other parties, but not CARE, reached a stipulation that the scope of the proceeding should focus solely on the term of the NBC. CARE concentrated on urging the Commission to consider the applicability of the California Environmental Quality Act (CEQA) to the CC8 project. Evidentiary hearings (EH) on the length of the NBC were scheduled. PG&E, The Utility Reform Network, the Commission's Division of Ratepayer Advocates,<sup>1</sup> and the California Unions for Reliable Energy reached a settlement agreement before the scheduled EH. This agreement included a 30-year NBC.

The settlement agreement was circulated for comments and the only issue in dispute was the time-frame of the NBC: Merced and Modesto Irrigation Districts and the City and County of San Francisco disputed the 30-year NBC. Although CARE was not a party to the settlement agreement, it actively supported the 30-year NBC. An EH was held only to address the time-frame of the NBC. During this time, CARE continued to pursue its interest in the applicability of CEQA to the project.

D.06-06-035 adopted the settlement agreement. Consistent with D.04-12-048, a 10-year NBC was adopted instead of the 30-year NBC proposed in the settlement.

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<sup>1</sup> Formerly the Office of Ratepayer Advocates.

**Requirements for Awards of Compensation**

The intervenor compensation program, enacted in Public Utilities Code Sections 1801-1812,<sup>2</sup> 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 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 (PHC), or in special circumstances at other appropriate times that we specify. (Section 1804(a).)
2. The intervenor must be a customer or a participant representing consumers, customers, or subscribers of a utility subject to our jurisdiction. (Section 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. (Section 1804(c).)
4. The intervenor must demonstrate "significant financial hardship." (Sections 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. (Sections 1802 (h), 1803(a).)

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<sup>2</sup> Statutory references are to the California Public Utilities Code and rule references are to the Commission's Rules of Practice and Procedure, unless otherwise indicated.

6. The claimed fees and costs are reasonable (Section 1801), necessary for and related to the substantial contribution (D.98-04-059), comparable to the market rates paid to experts and advocates having comparable training and experience (Section 1806), and productive (D.98-04-059).

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

### **Procedural Requirements**

The PHC in this matter was held on August 11, 2005. CARE timely filed its NOI the same day. CARE asserted financial hardship in its NOI.

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 September 15, 2005, the assigned Administrative Law Judge (ALJ) ruled that CARE is a customer pursuant to Section 1802(b)(1)(C), and meets the financial hardship condition, pursuant to Section 1802(g).

CARE filed its request for compensation on July 25, 2006, within 60 days of D.06-06-035 being issued.<sup>3</sup> We affirm the ALJ’s ruling and find that CARE has satisfied all the procedural requirements necessary to make its request for compensation in this proceeding.

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<sup>3</sup> No party opposes the request.

**Substantial Contribution**

In evaluating whether a customer made a substantial contribution to a proceeding, we look at several things. First, did the ALJ or Commissioner adopt one or more of the factual or legal contentions, or specific policy or procedural recommendations put forward by the intervenor? (*See* Section 1802(h).) 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* Sections 1802(h), 1802.5.) As described in Section 1802(h), 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>4</sup>

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

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<sup>4</sup> D.98-04-059, 79 CPUC 2d, 628 at 653.

decision or order.<sup>5</sup> With this guidance in mind, we turn to the claimed contributions CARE made to the proceeding.

CARE was actively involved throughout this proceeding. During that time, CARE continued to urge the Commission to consider CEQA issues raised by the CC8 facility. CARE represents low-income residential customers of color who reside within the geographic area of Pittsburg and Antioch, the CC8 project location. CARE brought a unique perspective to the proceeding and assisted the Commission in developing a more complete record in this proceeding.

Early in the proceeding, CARE filed a Motion for Determination of Applicability of CEQA to the CC8 project. PG&E responded to the motion, and CARE replied. CARE also prepared testimony and rebuttal testimony for the scheduled December 5, 2005 EH. CARE prepared a Motion to Strike testimony of PG&E witnesses, and attended the EH on December 5, 2005. CARE also filed reply comments to the draft decision adopting the 30-year NBC.

CARE substantially contributed by bringing the unique perspectives of the CEQA issues into the proceeding. Citing of the CC8 facility previously was authorized by the California Energy Commission (CEC), as siting authority and lead agency for CEQA oversight. CARE's primary concern was that CEC's CEQA review was completed in 2001. CARE requested this Commission to consider whether the passage of time, changed circumstances and new environmental regulations necessitated a new CEQA review.

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<sup>5</sup> See D.03-12-019, discussing D.89-03-063 (31 CPUC 2d 402) (awarding San Luis Obispo Mothers for Peace and Rochelle Becker compensation in the Diablo Canyon Rate Case because their arguments, although ultimately unsuccessful, forced the utility to thoroughly document the safety issues involved).

Although we ultimately determined we did not have concurrent responsibility with the CEC to conduct CEQA review of CC8, CARE's motion and additional filings required us to take a more focused look at the CEQA aspects of the project.

CARE was the only party that raised CEQA issues, and the Commission's deliberations and the record in the proceeding were enriched on this topic. We find that CARE made a substantial contribution to the Commission's final decision with the CEQA discussion. D.06-06-035 includes a robust discussion of the arguments raised by CARE, and responded to by PG&E, regarding the CEQA issues. These issues otherwise would not be part of the record.

CARE filed a motion on June 20, 2005, shortly after PG&E filed its application, seeking clarification on certain generation assets. We find that this work did not make a substantial contribution to the proceeding and we will adjust the amount awarded to CARE accordingly.

On November 21, 2005, CARE filed a motion to strike the rebuttal testimony of PG&E's witnesses. This motion was duplicative of CARE's November 15, 2005, reply that raised the same points and authorities. We find that this motion did not contribute to the Commission's development of the record, and we also adjust CARE's award accordingly in this regard.

### **Contributions of Other Parties**

CARE coordinated its efforts with other public interest advocates, as well as with the applicant. We find that CARE did not duplicate the work of other parties as it raised an issue, CEQA review, not raised by any other active party. In addition, its perspective that low-income residential customers of color would be affected by the geographic location of the CC8 project was not developed by

the other ratepayer advocate. Overall, we find CARE's work was not duplicative.

After determining that CARE made a substantial contribution to the proceeding and the Commission's final decision, we now look at whether the compensation requested is reasonable.

### **Reasonableness of Requested Compensation**

CARE requests \$28,925 for its participation in this proceeding, as follows:

#### **Attorney Fees:**

<b>Attorney</b>	<b><u>Year</u></b>	<b><u>Hours</u></b>	<b><u>Total</u></b>
John Gabrielli	2005-06	54 @ \$200	\$10,800
	2006	4 @ \$100*	\$400

#### **Experts:**

Michael Boyd	2005-06	43 @ \$125	\$5,375
	2005-06	39 @ \$150	\$5,850
	2006	10 @ \$62.50*	\$625
Lynne Brown	2005-06	14 @ \$75	\$1,050
	2006-06	14 @ \$100	\$1,400
	2006	16 @ \$37.50*	\$600

#### **Consultants:**

Robert Sarvey	2005	7.5 @ \$150	\$1,125
Dr. Shawn Smallwood	2005	5.5 @ \$200	\$1,100
Jim MacDonald	2005	6 @ \$100	<u>\$600</u>

**TOTAL** **\$28,925**

\*Compensation Claim Preparation @ ½ authorized hourly rate

In general, the components of this request must constitute reasonable fees and costs of the intervenor'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**

CARE claimed different hourly rates for its two representatives, Boyd and Brown, for work as advocates on the one hand, and as experts on the other. CARE did not adequately show a distinction between the “advocate” work and the “expert” work. Here, we consider all of the work performed by Boyd and Brown in this proceeding as that of an expert.

CARE documented its claimed hours by presenting a detailed breakdown of the hours of its representatives along with a brief description of each activity. The hourly breakdown reasonably supports the claim for total hours, except as noted below.

For work related to the June 20, 2005, Request for Clarification, we disallow 10 hours for Boyd, 4.5 hours for Gabrielli, and 4.5 hours for Brown. For work related to the November 21, 2005, Motion to Strike, we disallow six hours for Boyd, and seven hours for Gabrielli.

Brown requested compensation for 16 hours for preparing the compensation request. CARE shows these hours as “document service.” We find these hours excessive in light of the total amount requested, and total number of hours claimed. We also note that document service can be accomplished by messenger service. In view of the above, we disallow 10 hours for Brown for time related to the compensation request.

**Market Rate Standard**

CARE seeks hourly rates of \$125 for work performed by Boyd as an advocate, and \$150 as an expert, for 2005 and 2006. CARE seeks a rate of \$75 for Brown as an advocate, and \$100 as an expert, for work in 2005 and 2006. In D.06-04-018, we previously adopted rates of \$100 for Boyd and \$50 for Brown for

work performed in 2003-2004. In Resolution ALJ-184, we found that a general hourly rate increase of 8% was reasonable for 2004 work, above rate previously authorized for 2003. In D.05-11-031, we found that no general rate increase was reasonable for 2005 work above rates authorized for 2004; and that as a guideline, a reasonable minimum rate for experts for 2005 work was \$110. In D.07-01-009, we found that a general increase of 3% was reasonable for 2006 work, above rates previously authorized for 2005. Considering the above, we adopt rates here for Boyd of \$120 for 2005 ( $\$110 + 8\%$ ), and \$125 for 2006 (2005 rate + 3%). For Brown, we adopt a rate of \$100 for 2005 and 2006 (the higher of the two amounts requested for Brown).

For attorney Gabrielli, CARE requests a rate of \$200 for 2005-06. In D.06-04-018, we previously approved a rate of \$240 for Gabrielli for 2003-04 work. We adopt the requested rate of \$200 here for 2005-06.

For consultant Smallwood, CARE requests a rate of \$200 for 2005 work. We previously approved this same rate in D.06-04-018 for 2003-04 work, and adopt it here for 2005.

For consultant Sarvey, CARE requests a rate of \$150 for 2005 work. In D.06-04-018, we previously approved a rate of \$110 for Sarvey for 2003-04. Here, we adopt a rate of \$120 for Sarvey ( $\$110 + 8\%$ ) for 2005.

For consultant MacDonald, CARE requests a rate of \$100 for 2005. We adopt that rate here considering the minimum rate of \$110 found reasonable in D.05-11-031 for experts for 2005 work.

### **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.

CARE states that its emphasis on CEQA and the total impact on the inhabitants of the geographic area where the CC8 facility exists will benefit the low-income ratepayers as this agency will be cognizant of the mitigation measures that reduce these impacts. While the Commission determined it did not have concurrent responsibility with the CEC to conduct CEQA review of the facility, the fact that CARE brought the environmental impacts issue to the proceeding, could bring about ratepayer savings in the future. It is hard to identify precise monetary benefits to ratepayers, but the CC8 facility will bring lasting benefits to PG&E ratepayers. Our approval of the CC8 facility was facilitated by the thorough vetting of the CEQA issue raised by CARE.

**Related Expenses**

CARE claimed no expenses.

**Award**

As set forth in the table below, we award CARE \$22,645.

**Attorney Fees:**

<b>Attorney</b>	<b><u>Year</u></b>	<b><u>Hours</u></b>	<b><u>Total</u></b>
Gabrielli	2005	34.5 @ \$200	\$6,900
	2006	8 @ \$200	\$1,600
	2006	4 @ \$100*	\$400

**Experts:**

Boyd	2005	56 @ \$120	\$6,720
	2006	10 @ \$125	\$1,250
	2006	10 @ \$62.50*	\$625
Brown	2005	19.5 @ \$100	\$1,950
	2006	4 @ \$100	\$400
	2006	4 @ \$50*	\$200

**Consultants:**

Sarvey	2005	7.5 @ \$120	\$900
Smallwood	2005	5.5 @ \$200	\$1,100
MacDonald	2005	6 @ \$100	<u>\$600</u>

**Total** **\$22,645**

\*Compensation Claim Preparation @ ½ authorized hourly rate

The award is to be paid by PG&E as the regulated entity in this proceeding. Consistent with previous Commission decisions, we will order that interest be paid on the award amount<sup>6</sup> commencing on October 8, 2006, the 75<sup>th</sup> day after CARE filed its compensation request, and continuing until full payment of the award is made.

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<sup>6</sup> At the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release H.15.

We remind all intervenors that Commission staff may audit their records related to this award, and that intervenors must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. CARE's records should identify specific issues for which it requested compensation, the actual time spent by each employee, the applicable hourly rate, fees paid to consultants, and any other costs for which compensation was claimed.

**Waiver of Comment Period**

This is an intervenor compensation matter. Accordingly, as provided by 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.

**Assignment of Proceeding**

Michael R. Peevey is the assigned Commissioner and Carol A. Brown is the assigned ALJ in this proceeding.

**Findings of Fact**

1. CARE has satisfied all the procedural requirements necessary to claim compensation in this proceeding.
2. CARE made a substantial contribution to D.06-06-035, as set forth herein.
3. CARE's requested hourly rates for attorneys and experts that, as adjusted herein, are reasonable when compared to the market rates for persons with similar training and experience.
4. The total of these reasonable fees is \$22,645.
5. The appendix to this opinion summarizes today's award.

**Conclusions of Law**

1. CARE has fulfilled the requirements of Public Utilities Code Sections 1801-1812, which govern awards of intervenor compensation, and is entitled to intervenor compensation for its claimed fees and expenses incurred in making substantial contributions to D.06-06-035.
2. CARE should be awarded \$22,645 for its contributions to D.06-06-035.
3. Pursuant to Rule 14.6(c)(6), the comment period for this compensation decision may be waived.
4. Today's order should be made effective immediately so that CARE may be compensated without further delay.
5. This proceeding should be closed.

**O R D E R**

**IT IS ORDERED** that:

1. Californians for Renewable Energy (CARE) is awarded \$22,645 as compensation for its substantial contributions to Decision 06-06-035.
2. Within 30 days of the effective date of this decision, Pacific Gas and Electric Company (PG&E) shall pay this award to CARE.
3. PG&E shall also pay interest on the award beginning October 8, 2006, at the rate earned on prime, three-month commercial paper as reported in Federal Reserve Statistical Release H.15, and continuing until full payment is made.
4. The comment period for today's decision is waived.
5. Application 05-06-029 is closed.

This order is effective immediately.

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

**APPENDIX****Compensation Decision Summary Information**

<b>Compensation Decision:</b>		<b>Modifies Decision?</b>
<b>Contribution Decision(s):</b>	D0606035	
<b>Proceeding(s):</b>	A0506029	
<b>Author:</b>	ALJ Brown	
<b>Payer(s):</b>	Pacific Gas and Electric Company	

**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>
Californians for Renewable Energy, Inc. (CARE)		\$28,925	\$22,645	No	Substantial Contribution; Hourly Rates

**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>
Michael	Boyd	Expert	CARE	\$125-\$150	2005	\$120
Michael	Boyd	Expert	CARE	\$125-\$150	2006	\$125
Lynne	Brown	Expert	CARE	\$75-\$100	2005	\$100
Lynne	Brown	Expert	CARE	\$75-\$100	2006	\$100
John	Gabrielli	Attorney	CARE	\$200	2005	\$200
John	Gabrielli	Attorney	CARE	\$200	2006	\$200
Robert	Sarvey	Expert	CARE	\$150	2005	\$120
Shawn	Smallwood	Expert	CARE	\$200	2005	\$200
Jim	MacDonald	Expert	CARE	\$100	2005	\$100

**(END OF APPENDIX)**