

Decision 09-09-024 September 10, 2009

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

Order Instituting Rulemaking to Determine  
Issues Relating to the California Utilities'  
Procurement of Natural Gas Supplies from  
Liquefied Natural Gas Sources.

Rulemaking 07-11-001  
(Filed November 1, 2007)

**DECISION GRANTING INTERVENOR COMPENSATION TO RATEPAYERS  
FOR AFFORDABLE CLEAN ENERGY FOR INTERVENOR COMPENSATION  
FOR SUBSTANTIAL CONTRIBUTION TO DECISION 08-10-025**

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**DECISION GRANTING INTERVENOR COMPENSATION TO RATEPAYERS  
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FOR SUBSTANTIAL CONTRIBUTION TO DECISION 08-10-025**

**1. Summary**

This decision awards Ratepayers for Affordable Clean Energy \$4,607.34 for its substantial contributions to Decision 08-10-025. This represents a decrease of \$53,945.50 or approximately 92% from the amount requested due to a lack of substantial contribution, excessive hours, unproductive effort, misallocation of hours and adjusted hourly rates. Today's award payment will be allocated to the affected utilities. This proceeding is closed.

**2. Background**

This rulemaking was initiated by the Commission to provide guidelines over whether and how the respondent utilities (Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E), and Southern California Gas Company (SoCalGas)) should enter into procurement contracts with liquefied natural gas (LNG) suppliers, and the process under which the respondent utilities may seek pre-approval for the procurement contracts with LNG suppliers. Decision (D.) 08-10-025 declined to develop special guidelines or procedures for the utilities' solicitation and procurement of LNG supply at this time, or for the approval of cost recovery related to LNG supply. LNG supply procurement and cost recovery should continue to be subject to the procedures that apply to the procurement and cost recovery for natural gas supply generally.

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

The intervenor compensation program, which is set forth in Pub. Util. Code §§ 1801-1812,<sup>1</sup> requires California jurisdictional utilities to pay the reasonable costs of an intervenor's participation if that party makes a substantial contribution to the Commission's proceedings. 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), pursuant to Rule 17.1 of the Commission's Rules of Practice and Procedure (Rules), or 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) and 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 or as otherwise found by the Commission. (§§ 1802(i) and 1803(a).)

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

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).

In the discussion below, the procedural issues in Items 1-4 above are combined and a separate discussion of Items 5-6 follows.

### **3.1. Preliminary Procedural Issues**

Under § 1804(a)(1) and Rule 17.1(a)(1), a customer who intends to seek an award of intervenor compensation must file an NOI before certain dates.

Order Instituting Rulemaking (OIR) 07-11-001 directed intervenors to file the NOIs by December 4, 2007.<sup>2</sup> Ratepayers for Affordable Clean Energy (RACE) filed its NOI with the approval of the Administrative Law Judge (ALJ) two days later, on December 6, 2007.

Section 1802(b)(1) defines three categories of a “customer”: (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. (§ 1802(b)(1)(A) through (C).) On January 22, 2008, a ruling on the NOI issued, finding that RACE was eligible to claim compensation in this proceeding. The ruling found that RACE qualified as a customer under § 1802(b)(1)(C), as an organization authorized by its articles to represent the interests of residential customers.

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<sup>2</sup> OIR 07-11-001, at 14.

In its NOI, RACE requested a finding of significant financial hardship, pursuant to § 1802(g). Section 1802(g) provides that in the case of the § 1802(b)(1)(C) customer, “significant financial hardship” means that the economic interest of the individual members of the group or organization is small in comparison to the costs of effective participation in the proceeding (§ 1802(g).) The January 22, 2008 ruling found that participation in this proceeding would pose significant financial hardship for RACE.

We affirm the January 22, 2008 ruling’s findings on RACE’s eligibility to claim intervenor compensation. RACE timely filed its request for compensation on December 15, 2008, within 60 days of the issuance date of D.08-10-025.<sup>3</sup> We find that RACE has satisfied all the procedural requirements necessary to make its request for compensation in this proceeding.

On December 30, 2008, SCE and SDG&E filed an opposition to the request, based on the lack of substantial contributions to D.08-10-025. The Commission has examined their argument.

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

In evaluating whether a customer made a substantial contribution to a proceeding, we look at several things. First, we look at whether the Commission adopted one or more of the factual or legal contentions, or specific policy or procedural recommendations put forward by the customer. (§ 1802(i).) Second, if the customer’s contentions or recommendations paralleled those of another party, we look at whether the customer’s participation unnecessarily duplicated

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<sup>3</sup> October 16, 2008.

or materially supplemented, complemented, or contributed to the presentation of the other party. (§§ 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>4</sup>

With this guidance in mind, we turn to the claimed contributions RACE made to the proceeding. In subsections 3.1 through 3.3, below, we state RACE's claims of substantial contributions followed by our analysis of each such claim and of written comments provided by RACE. RACE does not allocate costs and time by substantive issues, as we require;<sup>5</sup> which precludes us from calculating compensable hours based on specific issues. We will base calculations of the award on the text of RACE's comments that contributed to D.08-10-025. We direct RACE to allocate, in future requests for compensation, its costs and time by issues whenever multiple issues are involved.

RACE filed four sets of comments in this proceeding: opening and reply comments on the OIR and opening and reply comments on the proposed decision (PD) leading to D.08-10-025. Comments on the PD were filed late. On November 17, 2008, RACE filed a motion to late-file these comments. Since the comments were timely served on parties (on October 6 and 13, 2008,

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<sup>4</sup> D.98-04-059, 79 CPUC2d 628 at 653.

respectively), a late filing was not prejudicial to them. No party objected to the motion. We grant the motion in this decision.

#### **4.1. RACE's Claimed Contributions to The Issue of Long-Term LNG Contracts**

RACE claims that it prevailed on a key issue regarding long-term LNG contracts<sup>6</sup>. RACE explains that because of its contribution, a central premise of the OIR – that long-term LNG contracts were necessary and beneficial – was rejected. RACE further claims that Finding of Fact 3 was consistent with RACE's recommendations, which arose from concerns over the possible impacts to consumers and to the environment with long-term LNG contracts. RACE explains further that Finding of Fact 3 supported RACE's comparative analysis of domestic natural gas over imported LNG, and RACE's conclusion that LNG would be inappropriate for California ratepayers. Moreover, RACE claims that the body of the final decision reflects RACE's position. To summarize, RACE claims that its position, overall, influenced the CPUC's analysis of long-term supply issues and is reflected in the final decision.<sup>7</sup>

We reject the majority of these claims. The issues in this rulemaking were (1) whether the utilities can negotiate long-term LNG supply contracts to guarantee supply at reasonable cost, (2) whether utilities should continue to purchase without regard to supply source (e.g., LNG or domestic), (3) what procedures should be used to solicit LNG supply and to approve LNG supply contracts. More generally, the question was, should we direct or require the

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<sup>5</sup> D.98-04-059, at 48.

<sup>6</sup> Request, Attachment A at 3-4.

<sup>7</sup> In support of its argument, RACE refers to D.08-10-025, at 2, 8, and Finding of Fact 3.

utilities to enter into long-term LNG contracts. The rulemaking and decision did not resolve whether LNG is needed or whether it would have a positive affect on California index market prices, as those questions were already resolved by prior Commission decision.

With a few minor exceptions, RACE focused on issues that were not subject to this proceeding, such as the need for LNG supply, its positive affect on California index market prices, and environmental concerns linked to the purchase of LNG. Both the PD and the decision rejected RACE's attempts to re-litigate or address these matters.<sup>8</sup>

In its opening comments on the OIR, RACE argued that LNG is not needed and that it will not provide the benefits of supply diversity (e.g., increase supply and have a positive effect on California market index prices.) This was not at issue, and D.08-10-025 did not adopt RACE's position.<sup>9</sup> RACE states that the decision adopted RACE's recommendation that utilities should not enter into long term contracts for LNG. To the contrary, the decision leaves it to utilities' discretion to enter into long-term contracts for LNG. RACE's discussion on greenhouse gas, nitrogen oxide emissions, and cost of LNG was beyond the scope of this proceeding. This discussion did not contribute to D.08-10-025. Therefore, most of these comments did not contribute to D.08-10-025.

Only in one instance do we find these comments provided a contribution. D.08-10-025 mentions that El Paso, along with California Environmental Council (CE Council) *and RACE*, cautioned against long-term procurement at that time,

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<sup>8</sup> PD, at 8 and 19; D.08-10-025, at 8 (footnote 2), 18 and 21.

<sup>9</sup> See, D.08-10-025, footnote 2, at 8.

given the current and expected near-term market conditions.<sup>10</sup> Four pages of RACE's opening comments on the OIR contained its analysis related to this issue, and we find that they contributed to D.08-10-025, however, this issue was not major or critical to this proceeding.

The four pages (at 9-13) of the opening comments that discussed this issue represent 8.2% of RACE's work product and the portion that provided contributions to D.08-10-025. 91.8% of the opening comments did not contribute to D.08-10-025. Accordingly, we reduce each representative's time (Briggs (year 2008) – 3.0 hours; Powers (year 2007) – 2.0 hours and (year 2008) 44.0 hours; Cox (year 2007) – 7.0 hours; Cox (year 2008) – 13.0 hours) spent on these opening comments by 91.8%.

#### **4.2. RACE's Claim That D.08-10-025 Incorporated RACE's Findings**

RACE states that its reply comments on the OIR responded in large part to the assertions of other parties and that its contribution to D.08-10-025 was that the PD incorporated the points being made by other parties that RACE challenged or responded to.<sup>11</sup> In support of its claim, RACE refers to the decision's discussion of the report of PG&E's consultant Wood McKenzie (Report). RACE explains that it challenged the assertions on natural gas supply and demand in the Report and D.08-10-025 cited the Report to demonstrate that the Commission did not share Wood McKenzie's view. RACE represents that its reply comments provided a unique, detailed critique of the Report, and advised

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<sup>10</sup> D.08-10-025 at 7.

<sup>11</sup> Request, Attachment A at 4.

the Commission not to rely on the Report.<sup>12</sup> RACE states that the Commission reached the same conclusion; and therefore, RACE provided substantial and unique contribution on an issue that the Commission addressed in some length in the PD and D.08-10-025.<sup>13</sup>

We reject RACE's argument that its reply comments contributed to the decision's discounting of the Report's merits. D.08-10-025 discounted the Report's leap from the premise that LNG will improve supply diversity and reduce California market prices, to its conclusion that California utilities must enter into long-term contracts in order for that to occur. Part I of RACE's reply comments merely challenged the premise that LNG will improve supply diversity or have positive impact on California market prices. D.08-10-025 did not revisit this issue. Part III of the comments requested evidentiary hearing and challenged the value of a long-term contract that anticipates interruption of delivery. D.08-10-025 does not ascribe to this view. Rather, the decision acknowledged the need to look at a contract as a whole, not accept or reject any particular contract term in isolation. Part IV of the comments urged the Commission not to order LNG contracts simply in order to support Sempra LNG's Costa Azul LNG terminal, and recommended mothballing the facility. This was entirely beyond the scope of this proceeding. Part V of the comments listed disputed issues which require evidentiary hearing. All of the issues listed relate to the need for LNG which is beyond the scope of the proceeding. Part VI of reply comments presented argument for the need to hold evidentiary hearing

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<sup>12</sup> Request, Attachment A at 4.

<sup>13</sup> In support of its claims, RACE refers to D.08-10-025 at 9 and 10.

on the issues of LNG benefits. Again, this was beyond the scope of the proceeding. Therefore, Parts I, III, IV, V, and VI of the reply comments on the OIR provided no contribution to D.08-10-025.

We find, however, that to the extent that Part II of these comments challenged SDG&E/SoCalGas' recommended procedure for LNG solicitation, the comments provided substantial contribution to D.08-10-025.

Based on the analysis above, less than three pages (at 6-8) or 21.4% of fourteen pages of the reply comments substantially contributed to D.08-10-025. 78.6% of the comments did not contribute. Accordingly, we reduce each representative's time (Briggs - 23.85 hours; Powers - 33.0 hours; Cox - 12.0 hours) spent on the comments in 2008 by 78.6%.

#### **4.3. RACE's Claim That RACE's Questioning of the Need for LNG Was Appropriate and Significant**

RACE claims that it was appropriate to address the issue of need because the OIR itself raised questions about the need, and that issue was important in this proceeding.<sup>14</sup> RACE contends that it contributed significant data and analysis demonstrating that there is no proven need for LNG in California, and that without this contribution, the Commission would have been less able to conclude, as it did, that the record in this proceeding does not support the conclusion that "utility contracts for long-term LNG supply ... [will] provide additional ratepayer benefits."<sup>15</sup> RACE asserts that its showing on the lack of

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<sup>14</sup> Request, Attachment A at 5-6.

<sup>15</sup> RACE refers to the PD at 9 and D.08-10-025 at 9.

need contributed to the CPUC's conclusion that long-term contracts are not in the best interests of ratepayers.

We reject most of these contentions. RACE's comments on the PD discuss supply diversity benefits and environmental implications of long-term LNG contracts, which were outside the scope of the proceeding. We found only a few sentences that related to the issues of this proceeding, where RACE opposes head-to-head competition between LNG and domestic gas and suggests a pre-approval process for supply contracts. Although RACE's positions did not prevail, it contributed, although in a minor way, to the Commission's consideration of this question.

Approximately, one page<sup>16</sup> or 7.7% of thirteen pages of the opening comments on the PD provided minor contributions on the issues of head-to-head competition between LNG and domestic gas and suggestions on long-term LNG supply contract procedure. 92.3% of the comments did not contribute. Accordingly, we reduce RACE's time (Briggs - 15.50 hours; Powers - 14.0 hours; Cox - 4.0 hours) spent on these comments by 92.3%.

Part I of RACE's reply comments on the PD requests the Commission to consider the issues of an inherent instability of supply, significant greenhouse gas emission penalty, and potentially elevated emissions of nitrogen oxides. All of these issues were not a part of this proceeding. Parts II and III of the comments try to re-litigate or bring within the scope of this proceeding the issues of need for LNG and foreign and domestic natural gas production.

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<sup>16</sup> A few sentences on pages 5 and 11 constitute, in sum, approximately one page.

RACE's reply comments on the PD provided no contributions to the final decision, and we disallow RACE's time (Briggs – 3.85 hours; Powers – 11.0 hours; Cox – 2.0 hours) spent on these comments.

## **5. Contributions of Other Parties**

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

RACE states that the only party with whom overlap was anticipated was Community Environment Council but a duplication of effort was avoided by communicating on issues of common interest before spending time on those issues. In the light of the fact that most of RACE's efforts were directed at issues outside the scope of this proceeding, we find that RACE's participation did not unnecessarily duplicate other parties' efforts.

## **6. Reasonableness of Requested Compensation**

RACE requests \$58,552.84 for its participation in this proceeding, as follows:

<b><u>Work on Proceeding</u></b>				
<b>Attorney/Staff</b>	<b>Year</b>	<b>Hours</b>	<b>Hourly Rate \$</b>	<b>Total</b>
Cory Briggs	2007	5.25	\$450.00	\$2,362.50
Cory Briggs	2008	48.20 <sup>17</sup>	\$450.00	\$21,690.00
<b>Subtotal:</b>				<b>\$24,052.50</b>
<b>Experts</b>	<b>Year</b>	<b>Hours</b>	<b>Rate \$</b>	<b>Total</b>
Bill Powers	2007	2.00	\$250.00	\$500.00
Bill Powers	2008	102.00	\$250.00	\$25,500.00
Rory Cox	2007	7.00	\$150.00	\$1,050.00
Rory Cox	2008	32.00	\$150.00	\$4,800.00
<b>Subtotal:</b>				<b>\$31,850.00</b>
<b><u>Preparation of NOI and Compensation Request<sup>18</sup></u></b>				
<b>Staff</b>	<b>Year</b>	<b>Hours</b>	<b>Rate \$</b>	<b>Total</b>
Cory Briggs	2008	6.90	\$225.00	\$1,552.50
Bill Powers	2008	2.00	\$125.00	\$250.00
Rory Cox	2008	6.00	\$75.00	\$450.00
<b>Subtotal:</b>				<b>\$2,252.50</b>
<b><u>Costs</u></b>				
<b>Item</b>				<b>Total</b>
Westlaw				\$384.21
Overnight				\$13.63
<b>Subtotal:</b>				<b>\$397.84</b>
<b>TOTAL REQUEST:</b>				<b>\$58,552.84</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

<sup>17</sup> RACE's timesheets reflect 48.70 hours of Briggs's actual time. We base our analysis and calculations on the timesheet data.

<sup>18</sup> At half professional hourly rate.

resulted in a substantial contribution. The issues we consider to determine reasonableness are discussed below.

### **6.1. 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.

RACE documented its claimed hours by presenting a daily breakdown of the hours of its attorney and experts, accompanied by a brief description of each activity. In general, the hourly breakdown reasonably supports the claim for total hours. We noticed, however, that Cory Briggs' 2007 professional hours include 4.75 hours spent on the intervenor compensation matters. We re-allocate these hours to the intervenor compensation matters category. We also noticed that Briggs' timesheet reports that on October 25, 2008, he reviewed and analyzed final decision and made a list of the issues to discuss with client regarding potential for rehearing. Since this work was undertaken after the issuance of the final decision and the rehearing request never materialized, we find this effort unproductive and disallow this time (1.50 hours).

RACE spent more than 190<sup>19</sup> hours participating in this proceeding. We note that, in contrast, The Utility Reform Network (TURN), while D.08-10-025 acknowledged TURN's substantial contributions, claims compensation for less than 30 hours of work on five important aspects of this proceeding.

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<sup>19</sup> Based on the timesheets attached to the request.

Under the intervenor compensation statute, RACE’s compensable hours are limited to those relevant to and necessary for its contribution. To achieve the reasonable compensable time, we apply a two-step approach. First, we compute hours associated with RACE’s substantial contributions based on the percentage of pages in RACE’s comments that contributed to D.08-10-025, as described in Section 3, above.

The table below summarizes our computations:

**Table 1: Comment Time Relevant to RACE’s Contributions**  
**(Substantial Contributions Analysis)**

Portion of Comments That Contributed to Decision	Name/Year	Claimed Hours	Portion of Hours Based on % in Column 1
1	2	3	4
<i>Opening Comments on OIR</i>			
8.2%	Briggs (2008)	3.0	0.25
“	Power (2007)	2.0	0.16
“	Powers (2008)	44.0	3.61
“	Cox (2007)	7.0	0.57
“	Cox (2008)	13.0	1.07
<b>Hours Subtotal:</b>		<b>69.00</b>	<b>5.66</b>
<i>Reply Comments on OIR</i>			
21.4%	Briggs (2008)	23.85	5.10
“	Powers (2008)	33.00	7.06
“	Cox (2008)	12.00	2.57
<b>Hours Subtotal:</b>		<b>68.85</b>	<b>14.73</b>
<i>Opening Comments on Proposed Decision</i>			
7.7%	Briggs	15.50	1.19
“	Powers	14.0	1.08
“	Cox	4.00	0.31
<b>Hours Subtotal:</b>		<b>33.50</b>	<b>2.58</b>

<i>Reply Comments on Proposed Decision</i>			
0.0%	Briggs	3.85	0.00
"	Powers	11.00	0.00
"	Cox	2.00	0.00
<b>Hours Subtotal:</b>		<b>16.85</b>	<b>0.00</b>

Second, we assess whether RACE's hours that contributed to D.08-10-025<sup>20</sup>, were reasonable. In making this assessment, we look at facts relevant to RACE's participation in the proceeding. We take into our consideration that the issues to which RACE contributed were not complex and represented minor issues in this proceeding, that the impact on the decision of RACE's comments was minimal, and that the comments did not involve complex or time consuming analysis and research on the part of RACE.

Based on these facts, we determine that no more than 12 hours of work would reflect the time which was reasonably required to make contributions of the same extent, level, quality, and value that RACE provided in this proceeding. To achieve the reasonable amount of time, we need to reduce each representative's hours relevant to RACE's contributions to D.08-10-025 (as determined in step one above) by an additional 50%. We note that although practically all hours of the substantive work were spent on comments, Briggs spent 0.50 hours on RACE's motion for party status filed in 2007. This task was also relevant to RACE's contributions to D.08-10-025, and we include it in our calculations below.

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<sup>20</sup> See, Table 1, Column 4.

Table 2 below demonstrates calculations of the reasonable time spent on this proceeding that we will compensate.

**Table 2: Calculation of the Total Allowed Time (Reasonableness Analysis)**

Item	Briggs	Briggs	Powers	Powers	Cox	Cox	Total <sup>21</sup>
Year	2007	2008	2007	2008	2007	2008	
<b>Comment Hours Related to Contributions (Table 1, Column 4)</b>	0.00	6.54	0.16	11.75	0.57	3.94	
<b>Non-Comment Hours Related to Contributions (Motion for Party Status)</b>	0.50	-	-	-	-	-	
<b>Total Hours Related to Contributions:</b>	0.50	6.54	0.16	11.75	0.57	3.94	
<b>Hours Allowed (with 50% reduction to achieve reasonable hours):</b>	0.25	3.27	0.08	5.87	0.29	1.97	<b>11.7</b>

We also assess here a reasonableness of RACE's time spent on preparing documents for intervenor compensation claim. RACE requests the total of 19.65 hours of work on these matters. In analyzing this request, we consider several factors. First, RACE's NOI and request for compensation did not involve issues which would require time-consuming analysis and research or legal analysis. Second, RACE used the Commission's standardized form for preparing its request, but did not complete form sections on substantial contribution and reasonableness.<sup>22</sup> RACE's failure to complete critical parts of the form defeats the purpose of using the form. RACE provides certain relevant information in

<sup>21</sup> Rounded to the second decimal.

<sup>22</sup> Parts II.A and III.A of the form, respectively.

attachments to the form. However, we accept and require certain attachments only when they provide documents supporting the claim (such as timesheets), additional information or additional explanations (with the emphasis on the word “additional”). Finally, all three of RACE’s representatives spent their time drafting this simple request for compensation, which represents an inefficient use of the time and resources.

Based on the foregoing, 19.65 hours of work on the documents of this complexity and quality is excessive. We reduce RACE’s time to ten hours that more adequately reflect what was necessary to produce these intervenor compensation documents. To achieve this result, we reduce each representative’s time spent on these matters by 49%.

## **6.2. Intervenor 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.

RACE requests the rate of \$450 for Briggs’s work in 2007. Briggs has practiced law since 1995, with emphasis on environmental law. In the past, Briggs requested (and we approved in D.08-12-015) the 2007 rate of \$250, which is below the rate range of \$290-345 for attorneys with 8-12 years of experience (*see*, D.08-04-010 at 5). His rate of \$250 should be increased based on his years of experience, although we note that Briggs’ environmental law experience was irrelevant in this rulemaking. D.08-04-010 explains: “any rate below the range of rates for a given experience level in a given year may be increased to at least the bottom of the rate range.” (D.08-04-010 at 8). In accordance with this provision, we adopt the rate of \$300 for Briggs’ work in 2007. To establish his reasonable rate for 2008, we apply the 3% cost-of-living adjustment and 5% step increase to

his 2007 rate, and round the result to the nearest \$5.00, all as authorized in D.08-04-010. The result of \$325 is within the 2008 rate range of \$300-\$535 for attorneys with 13+ years of experience, and is hereby approved.

RACE requests the rate of \$250 for Powers' work in both 2007 and 2008. According to the request, Powers he has been a professional engineer for more than 13 years. He works as the chairman of the Border Power Plant Working Group. He participated in the Commission's proceedings: in R.04-01-025, Powers was RACE's primary technical resource on the issue of need for LNG and addressed California's long-term natural gas supply, safety and environmental issues associated with the LNG terminal proposal for the Port of Long Beach. We find that the requested rate is within the rate range for experts with 13+ years of experience, pursuant to D.08-04-010, and we approve this rate.

RACE requests the rate of \$150 for Cox. He graduated with an M.A. in International Relations in 2000; was Pacific Environment's Communications Coordinator since 1998 and has been its California Program Director since 2006; is the project manager for [www.RaceForCleanEnergy.org](http://www.RaceForCleanEnergy.org); represents and advocates for RACE before the CPUC and other regulatory agencies; and authored reports on energy policy, including "Collision Course: How Liquefied Natural Gas Will Undermine Clean Energy in California." It appears that Cox's experience in the issues within the Commission's jurisdiction probably began in 2006, when Cox became Pacific Environment's Program Director (although it is not clear what program), which would bring him within the range of experts with 0-6 years of experience, according to D.08-04-010. It also appears that Cox's experience has been focusing on environmental issues that were outside the scope of this proceeding. Considering these factors, we find that a lower rate more adequately responds to his experience and we adopt the rate of \$130 for the

year 2007. To establish Cox's 2008 rate, we apply to his 2007 rate 3% cost-of-living adjustment and 5% step increase, authorized in D.08-04-010, and adopt the resulting rate of \$140 for the year 2008.

### 6.3. Direct Expenses

The itemized direct expenses submitted by RACE include the following:

<b>Litigation Support/Research (Westlaw/Lexis)</b>	\$384.21
<b>Overnight Courier</b>	\$13.63
<b>Total Expenses</b>	\$397.84

The cost breakdown included with the request shows the miscellaneous expenses to be commensurate with the work performed. We find these costs reasonable.

## 7. Productivity

D.98-04-059 directed customers to demonstrate productivity by assigning a reasonable dollar value to the benefits of their participation to ratepayers.<sup>23</sup> The costs of a customer's participation should bear a reasonable relationship to the benefits realized through its participation. This showing assists us in determining the overall reasonableness of the request.

RACE asserts that the Commission's decision not to "develop special guidelines or procedures for the utilities' solicitation and procurement of LNG supply at this time, or for the approval of cost recovery related to LNG supply"<sup>24</sup> was a point of view expressed by RACE and supported by evidence submitted

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<sup>23</sup> D.98-04-059, at 34-35.

<sup>24</sup> D.08-10-025 at 2.

by RACE. RACE explains that the cost of LNG on the world market is up to three times as high as that of North American natural gas, and the Commission’s decision will avoid an increase in utility bills. Therefore, RACE contends, RACE contributed to the savings for ratepayers.

We disagree with RACE’s description of its contributions because it is not supported by the record. Contributions, as described by RACE here, simply did not occur: in fact, RACE incurred unreasonable costs working on issues outside the scope of this proceeding. With the exception of a few minor inputs, RACE’s participation was unproductive and its costs unreasonable as compared to the benefits realized through RACE’s participation. Our disallowances reflect its low productivity.

We encourage RACE to participate in the Commission’s proceedings more efficiently and productively, by focusing RACE’s capabilities on providing substantial contributions to issues before the Commission, including deeper analysis and research or unique perspectives on merits of the proceeding.

**8. Award**

As set forth in the table below, we award RACE \$4,607.34.

<b>Work on Proceeding</b>				
<b>Attorney</b>	<b>Year</b>	<b>Hours<sup>25</sup></b>	<b>Hourly Rate</b>	<b>Total</b>
Cory Briggs	2007	0.3	\$300.00	\$75.00
Cory Briggs	2008	3.3	\$325.00	\$1,062.75
<b>Experts</b>				
Bill Powers	2007	0.1	\$250.00	\$20.00
Bill Powers	2008	5.9	\$250.00	\$1,467.50
Rory Cox	2007	0.3	\$130.00	\$37.70
Rory Cox	2008	2.0	\$140.00	\$275.80

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<sup>25</sup> All hours are rounded to the second decimal.

<b>Work on Proceeding Total:</b>	<b>\$2,938.75</b>
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<b>Preparation of NOI and Compensation Request</b>				
	<b>Year</b>	<b>Hours</b>	<b>Hourly Rate</b>	<b>Total</b>
Cory Briggs	2007	2.4	\$150.00	\$360.00
Cory Briggs	2008	3.5	\$162.50	\$568.75
Bill Powers	2008	1.0	\$125.00	\$125.00
Rory Cox	2008	3.1	\$70.00	\$217.00
<b>Compensation Document Preparation Total:</b>				<b>\$1,270.75</b>
<b>CALCULATION OF FINAL AWARD</b>				
Work on Proceeding				\$2,938.75
NOI and Compensation Request Preparation				\$1,270.75
Expenses				\$397.84
<b>TOTAL AWARD</b>				<b>\$4,607.34</b>

Pursuant to § 1807, we order PG&E, SDG&E, and SoCalGas to pay this award. We direct these utilities to allocate payment responsibility among themselves based upon their California-jurisdictional gas and electric revenues for the 2008 calendar year, to reflect the year in which the proceeding was primarily litigated. 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 February 28, 2009, the 75<sup>th</sup> day after RACE filed its compensation request, and continuing until full payment of the award is made.

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. RACE's records should identify specific issues for which it

requested 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.

### **9. Comment on Proposed Decision**

Public Utilities Code Section 311, subdivision (g)(1), provides that a decision must be served on all parties and be subject to at least 30 days review and comment prior to a vote of the Commission. Rule 14.6(c)(6) provides that this 30-day comment period may be waived on proposed decisions issued in proceedings in which no hearings were conducted for a decision on a request for compensation pursuant to § 1801 et seq. Here, because of a significant reduction of the requested amount, the proposed decision of ALJ Hallie Yacknin was mailed to the parties in accordance with § 311 and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. No comments were filed.

### **10. Assignment of Proceeding**

Michael Peevey is the assigned Commissioner, and Hallie Yacknin is the assigned ALJ in this proceeding.

#### **Findings of Fact**

1. RACE has satisfied all the procedural requirements necessary to claim compensation in this proceeding.
2. RACE made a substantial contribution to D.08-10-025 as described herein.
3. RACE requested hourly rates for its representatives that, as adjusted herein, are reasonable when compared to the market rates for persons with similar training and experience.

4. The total of the reasonable compensation, as adjusted herein, is \$4,607.34.
5. Appendix to this decision summarizes today's award.
6. RACE's comments on the proposed decision were served in the timely fashion and their late-filing was not prejudicial to parties to the proceeding.

### **Conclusions of Law**

1. RACE has fulfilled the requirements of §§ 1801-1812, which govern awards of intervenor compensation, and is entitled to intervenor compensation for its claimed costs, as adjusted herein, incurred in making substantial contributions to D.08-10-025.
2. RACE should be awarded \$4,607.34 for its contribution to D.08-10-025.
3. RACE's November 17, 2008 motion requesting permission for late-filing of opening and reply comments on the proposed decision should be granted.
4. This order should be effective today so that RACE may be compensated without further delay.
5. This proceeding should be closed.

## **O R D E R**

### **IT IS ORDERED** that:

1. Ratepayers for Affordable Clean Energy is awarded \$4,607.34 as compensation for its substantial contributions to Decision 08-10-025.
2. Within 30 days of the effective date of this decision, Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Gas Company shall pay Ratepayers for Affordable Clean Energy their respective shares of the award. We direct Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Gas Company to allocate payment responsibility among them, based on their respective California jurisdictional gas

revenues for the 2008 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 February 28, 2009, the 75<sup>th</sup> day after the filing date of Ratepayers for Affordable Clean Energy's request for compensation, and continuing until full payment is made.

3. Ratepayers for Affordable Clean Energy's November 17, 2008 motion requesting permission to late-file opening and reply comments on the proposed decision is granted.

4. Rulemaking 07-11-001 is closed.

This order is effective today.

Dated September 10, 2009, San Francisco, California.

MICHAEL R. PEEVEY  
President  
DIAN M. GRUENEICH  
JOHN A. BOHN  
RACHELLE B. CHONG  
TIMOTHY ALAN SIMON  
Commissioners

## APPENDIX

## Compensation Decision Summary Information

<b>Compensation Decision:</b>	D0909024	<b>Modifies Decision?</b> No
<b>Contribution Decision(s):</b>	D0810025	
<b>Proceeding(s):</b>	R07-11-001	
<b>Author:</b>	ALJ Hallie Yacknin	
<b>Payer(s):</b>	PG&E, SDG&E, SoCalGas	

## Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
Ratepayers for Affordable Clean Energy (RACE)	12/15/08	\$58,552.84	\$4,607.34	No	Lack of substantial contribution; excessive hours, unproductive effort, misallocation of hours, adjusted hourly rates

## Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Cory	Briggs	Attorney	Ratepayers for Affordable Clean Energy	\$450	2007	\$300
Cory	Briggs	Attorney	Ratepayers for Affordable Clean Energy	\$450	2008	\$325
Rory	Cox	Expert	Ratepayers for Affordable Clean Energy	\$150	2007	\$130
Rory	Cox	Expert	Ratepayers for Affordable Clean Energy	\$150	2008	\$140
Bill	Powers	Expert	Ratepayers for Affordable Clean Energy	\$250	2007	\$250
Bill	Powers	Expert	Ratepayers for Affordable Clean Energy	\$250	2008	\$250

(END OF APPENDIX)