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Decision 09-09-045 September 24, 2009

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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

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

**DECISION GRANTING INTERVENOR COMPENSATION
TO SUSTAINABLE CONSERVATION
FOR SUBSTANTIAL CONTRIBUTIONS TO DECISION 07-07-027**

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**DECISION GRANTING INTERVENOR COMPENSATION
TO SUSTAINABLE CONSERVATION
FOR SUBSTANTIAL CONTRIBUTIONS TO DECISION 07-07-027**

This decision awards Sustainable Conservation \$21,482.75 in compensation for its substantial contributions to Decision 07-07-027. This represents a decrease of \$8,910.75 (29%) from the \$30,394.50 amount requested due to a lack of substantial contribution, duplication with RCM International, and a simple miscalculation. Today's award is allocated to the three largest affected utilities for payment. This proceeding is closed.

1. Background

California electrical corporations must make a tariff available to public water and wastewater agencies for the purchase of electricity generated from certain electric generation facilities powered by renewable resources. They may make the terms of the tariff available in the form of a standard contract.¹

Decision (D.) 07-07-027 (Decision) adopts tariffs and standard contracts for the purchase of this electricity from water and wastewater customers. The result is a simple and streamlined mechanism for certain generators to sell electricity to the utility without complex negotiations and delays. We also adopt similar tariffs and standard contracts for the purchase of electricity from other customers on the same simple and streamlined basis. Sustainable Conservation participated in the proceeding leading up to the Decision, and seeks compensation here for its contribution.

¹ Pub. Util. Code § 399.20 (Assembly Bill (AB) 1969 (Yee) Stats. 2006, Chapter 731.) All code references are to the Public Utilities Code unless noted otherwise.

2. Requirements for Awards of Compensation

The intervenor compensation program, as it is set forth in Pub. Util. Code §§ 1801-1812, 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).)
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 and 3 above are combined and a separate discussion of Items 2 and 4-6 follows.

2.1. Initial Procedural Issues

NOIs are to be filed within 30 days of the PHC. Alternatively, in cases where the schedule would not otherwise reasonably allow parties to identify issues within the stated timeframe, or where new issues emerge subsequent to the time set for filing, the Commissioner or Administrative Law Judge (ALJ) may determine an appropriate procedure for accepting new or revised NOIs. (§ 1804(a)(1); Rule 17.1.)

NOIs were due by July 27, 2006 (*i.e.*, 30 days after the PHC). Sustainable Conservation states, however, that the August 21, 2006 Scoping Memo specifically identified biomass for the first time as an issue upon which the Commission sought comment. Sustainable Conservation filed its NOI on October 10, 2006, concurrently with a petition to intervene and before the filing of initial comments. In its NOI, Sustainable Conservation asserted it is a Category 3 customer under § 1802(b)(C), and claimed significant financial hardship. No party objected to the NOI or asserted it is was untimely. An ALJ Ruling dated October 30, 2006 found the NOI to be timely filed. We affirm that the NOI was timely filed.

Sustainable Conservation filed this instant request for compensation on October 15, 2008, within 60 days of the issuance of Rulemaking (R.) 08-08-009 on August 26, 2008, which closed R.06-05-027.

3. Customer Status

The October 30, 2006 eligibility ruling, found that Sustainable Conservation had not established its eligibility for intervenor compensation as a Category 3 customer, nor demonstrated significant financial hardship. The

ruling concluded that Sustainable Conservation could further address its eligibility in a subsequent pleading or request for compensation.

On September 24, 2007, within 60 days of the date of D.07-07-027, Sustainable Conservation filed a claim for \$30,394.50. On February 21, 2008, Sustainable Conservation amended its claim to assert, among other things, that it was a Category 1 customer. On July 10, 2008, we denied the claim, finding that Sustainable Conservation failed to establish significant financial hardship as a Category 1 customer.²

On October 15, 2008, Sustainable Conservation filed the claim we consider today. It requests \$30,394.50, the same amount of money denied in D.08-07-021, for its significant contributions to D.07-07-027. In its claim, Sustainable Conservation reasserts its Category 3 customer status. Because we narrowly examined its prior claim based on Sustainable Conservation's customer Category 1 assertion at that time, and Sustainable Conservation has now broadened and updated its customer showing, we review its eligibility in this light.

Sustainable Conservation includes information in its October 15, 2008 request that it believes establishes that the organization consistently met the requirements of an organization eligible for compensation under a Category 3 claim. Sustainable Conservation maintains, as it has since filing its first Notice of Intent to Claim Intervenor Compensation in October 2006, that it was eligible to receive intervenor compensation as a Category 3 customer because it is a:

... representative of a group or organization authorized pursuant to its articles of incorporation or bylaws to represent the interests of

² D.08-07-021.

residential customers, or to represent small commercial customers who receive bundled service from an electrical corporation.³

Sustainable Conservation first amended its bylaws in September 2006, prior to filing its NOI. At that time, Article 3 of the organization's bylaws were amended to include as part of its mission:

To represent interests related to the Corporation's conservation activities in regulatory, judicial and legislative proceedings.⁴

On October 2, 2008, Sustainable Conservation amended and clarified its bylaws, and on October 15, 2008 provided a copy for Commission review. The full bylaws as amended are included as Attachment B in this most recent claim and now state that the organization's mission includes:

- (b) To represent interests related to the Corporation's conservation activities in regulatory, judicial and legislative proceedings.
- (c) To represent the interests of California residential electrical and natural gas customers and small commercial electrical and natural gas customers, including those who receive bundled electrical and/or natural gas service from investor-owned electrical and/or natural gas services corporations, in an environmentally and economically sustainable California.⁵

Based on this latest information, we find that Sustainable Conservation is clearly a Category 3 customer as of October 2008 when it modified its bylaws to explicitly reflect its representation of residential and small commercial customers. However, because the request for compensation covers a time period prior to this more recent bylaw modification, we must consider whether the ALJ

³ § 1802(b).

⁴ Intervenor Compensation Claim of Sustainable Conservation dated October 15, 2008 at 3.

correctly ruled in the October 30, 2006 ruling that Sustainable Conservation was not eligible as a Category 3 customer.

The October 30, 2006 ALJ Ruling found that Sustainable Conservation had not met its burden of showing that it represented residential or small commercial ratepayers consistent with the requirements of § 1802(b)(1)(C). For example, the ALJ noted that Sustainable Conservation is not a membership organization but rather a donor organization and thus, based on the information provided in the NOI, it was difficult to determine whether Sustainable Conservation truly represented the interests of residential or small commercial ratepayers. In addition, the ALJ's review of Sustainable Conservation's objectives and purposes, as set forth in the bylaws, did not provide a direct nexus to representing residential or small commercial customers.

In its October 15, 2008 request, Sustainable Conservation states that it represents customers with a concern for the environment and sustainable agricultural practices, particularly renewable energy that reduces methane emissions. Sustainable Conservation goes on to cite D.98-04-059 at 29, fn 14, the longstanding Commission practice with respect to determining eligibility of environmental organizations:

With respect to environmental groups, we have concluded they were eligible in the past with the understanding that they represent customers whose environmental interests include the concern that, e.g., regulatory policies encourage the adoption of all cost-effective conservation measures and discourage unnecessary new generating resources that are expensive and environmentally damaging.

⁵ Sustainable Conservation Bylaws, Article 3, Section 3.1.

Sustainable Conservation argues that we should apply this same standard in reviewing its eligibility as has been applied to other environmental organizations.

We have taken this opportunity to review the bylaws of many of the organizations that have been found eligible for intervenor compensation in the past and conclude that, while many of the organizations that have been awarded compensation have explicit language in their bylaws authorizing their representation of residential and/or small commercial customers,⁶ there are numerous other participants in our proceedings that have been found eligible as Category 3 customers whose bylaws do not contain an explicit reference to representation of residential or small commercial customers. For the most part, the organizations whose bylaws are less explicit with respect to ratepayer representation have a broader purpose than just appearing before the California Public Utilities Commission. For example, the Natural Resources Defense Council (NRDC) has regularly appeared at the Commission, and received intervenor compensation, for the past 20 years. NRDC's bylaws authorize it to "represent members' interests in regulatory and judicial proceedings within the scope of the activities of the Corporation." The activities of the corporation include to "preserve, protect and defend natural resources, wildlife and environment against encroachment, misuse and destruction."⁷ Consumer Federation of California, National Consumer Law Center, and Disability Rights

⁶ See, for example, the bylaws of Greenlining Institute at <http://docs.cpuc.ca.gov/EFILE/NOTICE/86628.PDF>, Attachment A.

⁷ See NRDC bylaws submitted at <http://docs.cpuc.ca.gov/EFILE/NOTICE/86678.PDF>, Attachment 1 and 2.

Advocates also all have bylaws that are not specific to representation of ratepayers.⁸ All of these organizations represent groups that have a stake in the outcomes of our proceedings and bring with them a public interest perspective.

Pub. Util. Code § 1801.3(b) indicates that the Legislature intends for us to administer the provisions of §§ 1801 et seq. in a manner “that encourages the effective and efficient participation of all groups that have a stake in the public utility regulation process.” The ALJ’s more narrow reading of the requirements of § 1802(b)(1)(C) which resulted in the ruling that Sustainable Conservation was not a Category 3 customer appears inconsistent with longstanding Commission practice and would foil the legislative intent that our administration of the intervenor compensation statutes encourage participation.

After reviewing Sustainable Conservation’s October 2006 NOI, the October 30, 2006 ALJ Ruling, D.08-07-021, Sustainable Conservation’s October 15, 2008 request for compensation, Pub. Util. Code §§ 1801 et seq., and bylaws and rulings on eligibility of other intervenors, we conclude that Sustainable Conservation could and should have been found eligible as a Category 3 customer based on its original bylaws. Therefore, we conclude that Sustainable Conservation meets the criteria as a customer for purposes of intervenor compensation and we may consider its entire request for compensation.

4. Significant Financial Hardship

Regarding significant financial hardship, a

... notice of intent may also include a showing by the customer that participation in the hearing or proceeding would pose a significant

⁸ Based on bylaws or articles of incorporation filed in R.06-03-004, R.04-12-001, and R.04-12-001, respectively.

financial hardship. Alternatively, such a showing shall be included in the request submitted pursuant to subdivision (c).
(§ 1804(a)(2)(B).)

As is permissible, Sustainable Conservation includes its showing of significant financial hardship in its October 15, 2008 claim.

In relevant part, “significant financial hardship” means that:

... in the case of a group or organization, the economic interest of the individual member of the group or organization is small in comparison to the costs of effective participation in the proceeding.
(§ 1802(g).)

Sustainable Conservation states that it is supported by approximately 400 donors and estimates the average electric bill for its donors is \$1,200, which it points out is far less than the costs Sustainable Conservation has incurred for its participation in the issuance of D.07-07-027. We agree. The economic interest of the average donor is small in comparison to the costs of effective participation in the proceeding. It is unlikely that the average donor to Sustainable Conservation will see financial benefits that exceed the costs of its participation.⁹ We conclude

⁹ The average cost per donor of the intervention is \$76.00 (\$30,094.50/400 donors). It is unlikely that the donors will see financial benefits in bill reductions of 6.3% or more. ($76/1200=0.063$). We assess this claim based on average cost and benefit per average donor given the relatively modest size of this claim and the reduced award. We note from documentation provided by Sustainable Conservation, however, that individual donors may see significant benefits. In future claims, if any, Sustainable Conservation may need to address the concerns we identified in D.08-07-021. The need to do so may depend upon the positions advocated, the impact of the proceeding’s outcome on Sustainable Conservation’s donors, whether any individual donor has a financial interest different from that of the group which is incompatible with our prior rulings on financial interest, or other relevant factors. (See D.08-07-021, in particular, footnote 4; also Appendix 2 at 5-8.)

that Sustainable Conservation has shown that its participation without an award of intervenor compensation would pose a significant financial hardship.

5. Substantial Contribution

We look at several things when evaluating whether a customer made a substantial contribution to a proceeding. 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 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.¹⁰

With this guidance in mind, we turn to the claimed contributions Sustainable Conservation made to the proceeding.

Sustainable Conservation's involvement in this proceeding was focused on issues relating to tariffs and contracts for biogas digesters. Sustainable Conservation participated in this proceeding through workshop participation

¹⁰ D.98-04-059, 79 CPUC2d 628 at 653.

and by submitting comments and reply comments on utility proposals and the proposed decision. Additionally, they coordinated efforts with other stakeholders to minimize duplication of efforts. Their specific contributions are detailed below.

5.1. Tariff Expansion to Other Eligible Facilities

Throughout the proceeding, Sustainable Conservation argued that the tariff developed to implement AB 1969 should be expanded beyond water and wastewater treatment agencies to other eligible facilities without further deliberation.¹¹ Sustainable Conservation explained the value to the State of having dairy farmers enter into power purchase agreements with utilities on a larger scale, and reminded the Commission of its previous findings on the benefits of biogas generation. We agreed, directing Pacific Gas and Electric Company (PG&E) and Southern California Edison Company (SCE) to expand their offerings to other eligible generators using the same basic terms used for the water/wastewater program.¹² We find that Sustainable Conservation made a substantial contribution on this matter.

5.2. Excess Sales Option

Sustainable Conservation argued that the tariff should allow generators to be sized for the available fuel source, allowing the generator to use on-site generation facilities to meet on-site need, then selling any excess generation to

¹¹ "Opening Comments of Sustainable Conservation and RCM International (RCM) on Assembly Bill 1969 Implementation Proposals," May 2, 2007 at 2-3; "Reply Comments of Sustainable Conservation and RCM on Assembly Bill 1969 Implementation Proposals," May 9, 2007 at 1-2; "Comments of Sustainable Conservation on Proposed Decision of ALJ Mattson on AB 1969 Implementation," July 16, 2007 at 1.

¹² D.07-07-027 at 46-48, Findings of Fact 23-30 at 57, Conclusions of Law 24-25 at 61.

the utility.¹³ Sustainable Conservation supported the proposal of PG&E in this regard, and provided information to the Commission about the economics of biogas digesters for dairies. The Decision adopts the excess sales option.¹⁴

The Decision further acknowledges the contribution of Sustainable Conservation in stating:

We are also persuaded by Sustainable Conservation and RCM International (RCM) that the seller's decision on how small or large to make the generation facility may be influenced, if not driven, by the choice of full buy/sell or excess sales. We must establish the right framework and incentives for the proper sizing of facilities, while at the same time providing equitable treatment to customers, ratepayers, and stakeholders.¹⁵

We find that Sustainable Conservation made a substantial contribution on this matter.

5.3. No Program Termination Date

Sustainable Conservation urged the Commission to deny a PG&E proposal to terminate the program after five years. Sustainable Conservation suggested the Commission monitor the program at predetermined points in times to determine whether steady progress is being made.¹⁶ The Decision declined to adopt an automatic sunset for the program, stating that the tariff will be closed to new customers when the allocation is met. The Decision also stated that the

¹³ Sustainable Conservation Opening Comments at 3-5; Sustainable Conservation Comments on Proposed Decision at 1-2; Sustainable Conservation, et al. Reply Comments on Proposed Decision at 1-4.

¹⁴ D.07-07-027 at 36-38; Findings of Fact 18-20 at 56; Conclusions of Law 20-21.

¹⁵ *Id.* at 36.

¹⁶ Sustainable Conservation Opening Comments at 6.

Commission's expectation is that the utilities will keep the Commission informed about program progress.¹⁷ We find that Sustainable Conservation made a substantial contribution on this matter.

5.4. Full Market Price

Sustainable Conservation argued that payments for the electricity under this tariff should be at the full market rate, and there should not be a 10% reduction to cover administrative costs, as PG&E proposed.¹⁸ The Decision agreed, noting that the legislation is clear that the rate is to be set at the market price as determined by the Commission.¹⁹ We find that Sustainable Conservation made a substantial contribution on this matter.

5.5. Importance of Interconnection

Sustainable Conservation urged that the Commission ensure timely responses by utilities to requests from customer generators for interconnection.²⁰ The Decision agreed with Sustainable Conservation "... that the timely response to an interconnection request is important to prevent interconnection from becoming a barrier to project completion."²¹ While we did not adopt specific tariff language recommended by Sustainable Conservation, we stated our intent

¹⁷ D.07-07-027 at 47-48.

¹⁸ Sustainable Conservation Reply Comments at 3.

¹⁹ D.07-07-027 at 21-22; Finding of Fact 11; Conclusion of Law 14.

²⁰ Sustainable Conservation Opening Comments at 6-7; Sustainable Conservation Comments on Proposed Decision at 2; Sustainable Conservation Reply Comments on Proposed Decision at 4-5.

²¹ D.07-07-027 at 40.

to “enforce the requirement of timely review and disposition of an interconnection request ...”²²

Although we did not adopt Sustainable Conservation’s specific tariff-related recommendations, we acknowledge that they helped to build the record and contributed to a more thorough analysis. We find that Sustainable Conservation made a substantial contribution on this matter.

5.6. Frequency of Payments

Sustainable Conservation pointed out an inconsistency between the payment policies of the utilities, where some will pay a generator quarterly if the amount owed by the utility to the generator is less than \$50, and others will not pay the generator until the amount owed is greater than \$1,000, with an annual true-up at the end of the calendar year.²³ The Proposed Decision emphasizes the importance of all sellers being paid on a timely, reasonable basis, and states:

We encourage SCE and SDG&E to make payments when balances are as low as \$50, especially in the context of a seller selecting the “excess sales” choice, but we do not require it here.²⁴

We find that Sustainable Conservation made a substantial contribution on this matter.

5.7. Ownership of Renewable Energy Credits

Sustainable Conservation requested the Commission clarify that any renewable energy credits (RECs) associated with on-site renewable generation are to be allocated according to proportionate use. That is:

²² *Id.* at 42.

²³ Sustainable Conservation Opening Comments at 6; Sustainable Conservation Comments on Proposed Decision at 2.

... a utility purchasing renewable energy under the tariff gets only those RECs associated with the amount of net energy purchased, and not any RECs associated with energy used on-site.²⁵

In the discussion on the excess sales option, the Decision adopts a PG&E proposal wherein “PG&E will acquire only the RECs associated with the energy it [PG&E] purchases.”²⁶ In the next section, we extend that same approach to SCE and San Diego Gas & Electric Company (SDG&E). The Decision affirms the position asserted by Sustainable Conservation, and we find that Sustainable Conservation made a substantial contribution on this matter.

5.8. Treatment of Net Greenhouse Gas Emissions

Sustainable Conservation asked the Commission to clarify that the only environmental attributes that a utility would get through a purchase under this tariff are those associated with the actual amount of energy purchased by the utility and/or any emissions associated with underlying operations on a farm or other facility. More specifically, Sustainable Conservation and RCM asked that the Commission clarify a Commission finding regarding net greenhouse gas (GHG) emissions from biomass, which they said was made in Attachment 7 to D.07-01-039. They asked that the Commission clarify that farmers do not need to buy additional offsets when selling biogas-derived renewable energy.²⁷

In response, we decided that:

Sustainable Conservation and RCM’s request that the Commission clarify a finding regarding GHG emission from biomass (made in

²⁴ D.07-07-027 at 42.

²⁵ Sustainable Conservation Reply Comments at 2-3.

²⁶ D.07-07-027 at 35.

²⁷ *Id.* at 57.

Attachment 7 to D.07-01-039) is beyond the scope of this proceeding.²⁸

We find that Sustainable Conservation did not make a significant contribution on this matter.

5.9. Summary

In summary, we find that Sustainable Conservation made a substantial contribution to D.07-07-027 in 7 out of 8 areas they supported and should be compensated subject to our reasonableness and productivity analysis below.

6. Contributions of Other Parties

An intervenor must avoid participation that duplicates similar interests otherwise adequately represented by another party, or is unnecessary for a fair determination of the proceeding. (§ 1801.3(f).) An intervenor may be eligible for full compensation, however, 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. (§ 1802.5.)

Sustainable Conservation asserts that it coordinated its efforts with other parties to avoid duplication of effort. In particular, Sustainable Conservation says it coordinated with other parties that worked on biogas issues, including the Inland Empire Utility Agency, RCM, Western United Dairymen, and the California Farm Bureau Federation. Additionally, Sustainable Conservation reports that it helped organize pleadings and participation in the workshops. Although some redundancy may be unavoidable (due to the similarity of parties' interests), Sustainable Conservation states that it sought to avoid such

²⁸ D.07-07-027, Finding of Fact 31, at 57.

duplication to the extent possible, and to mitigate it when it was unavoidable. By coordinating efforts with the parties listed above, Sustainable Conservation concludes that it assisted in consolidating the participation of several parties to help reduce the number of filings.

Because Sustainable Conservation and RCM²⁹ filed several pleadings jointly, and no explanation of their respective efforts on the pleadings was provided, it is difficult to confirm Sustainable Conservation's claim that there was no unnecessary duplication of effort on the issues between active parties. RCM has not sought compensation for its efforts and would likely not qualify for eligibility under the intervenor compensation statutes. RCM could have filed pleadings without Sustainable Conservation, made the same points, and won on the same issues, without ratepayers having to pay anything. Similarly, California Farm Bureau Federation filed a joint pleading with RCM and Sustainable Conservation.³⁰ Sustainable Conservation's claim does not identify how much effort was contributed by each entity.

We may award full compensation to an intervenor even when some duplication occurs when the intervenor demonstrates that its participation materially supplemented, complemented, or contributed to the presentation of another party, and helped develop the record, thereby making a substantial contribution. We are satisfied that the participation of Sustainable Conservation materially supplemented and complemented the presentation of other active parties, such as Inland Empire Utility Agency. Sustainable Conservation fails,

²⁹ RCM designs and builds biogas digesters.

³⁰ Joint Reply Comments on the Proposed Decision. (See D.07-07-027 at 53.)

however, to adequately demonstrate the degree to which its work materially supplemented, complemented or contributed to the presentation of RCM.

Therefore, we reduce this intervenor compensation award to Sustainable Conservation by 20% to address this issue of duplication, primarily with RCM.³¹ Absent any explanations regarding participation responsibilities, this is a reasonable assumption.³² We reduce this amount again by 12.5% to reflect the percentage of issues (1 out of 8) where Sustainable Conservation failed to make a substantial contribution.³³

³¹ The majority of the pleadings were filed jointly with RCM. California Farm Bureau Federation filed jointly only in the reply comments on the Proposed Decision.

³² We have similarly reduced claims by other intervenors. For example, “[i]n the past, when the level of duplication was difficult to ascertain, we have applied a ‘duplication discount factor’ of 10% to 26% to the hours claimed by intervenors.” (D.96-06-029, cited in D.96-11-040, 69 CPUC2d 253, 258.) In June 1996, we reduced the compensation of The Utility Reform Network (TURN) by 10% not based on the certainty of duplication, but because “[o]ur concern with TURN’s participation is that it may have duplicated to some extent the contributions of other parties.” (*Id.*) We did so again in November 1996 on a subsequent claim for compensation based not on the actuality, but the potential, of duplication. We said: “[i]n view of this high potential for duplication, we think the 10% discount we are applying to TURN’s compensation is eminently reasonable.” (D.96-11-040, 69 CPUC2d 253, 259.) In this case, Sustainable Conservation collaborated with RCM. RCM had a financial interest in the outcome. To the extent Sustainable Conservation provided value to the showing of RCM, it is unclear why RCM should not have paid those costs (or pay them now) rather than asking for reimbursement from the ratepayers. Absent a showing by Sustainable Conservation of the amount of contribution made by those with whom it coordinated (*e.g.*, RCM, Western United Dairymen, California Farm Bureau Federation), we are unable to decipher the amount of duplication, or the degree to which Sustainable Conservation materially supplemented, complemented, or contributed to the presentation of RCM and California Farm Bureau Federation. We, therefore, apply a “duplication discount factor” here of 20%.

³³ Sustainable Conservation failed to identify its work by issue, as required by Commission rules. (Rule 17.4(b).) We excuse this failure given that this is Sustainable

Footnote continued on next page

After we have determined the scope of a customer’s substantial contribution, we then look at whether the amount of the compensation request is reasonable.

7. Reasonableness of Requested Compensation

Sustainable Conservation requests \$30,394.50³⁴ for its participation in this proceeding, as follows:

Work on Proceeding				
Attorney/Staff	Year	Hours	Hourly Rate	Total
A. Dusault	2006	18.5	\$220	\$ 4,070.00
A. Dusault	2007	52.5	\$220	\$ 11,550.00
J. London	2006	22.1	\$175	\$ 3,867.50
J. London	2007	50.5	\$180	\$ 9,090.00
Subtotal:				\$ 28,577.50

Preparation of NOI and Compensation Request (1/2 Rate)				
Attorney/Staff	Year	Hours	Hourly Rate	Total
A. Dusault	2007	4.0	\$110	\$ 440.00
J. London	2006/2007	15.1	\$ 90	\$ 1,359.00
Subtotal Hourly Compensation:				\$ 1,799.00
Total Requested Compensation:				\$ 30,376.50

In general, the components of this request must constitute reasonable fees and costs of the customer’s preparation for and participation in a proceeding in

Conservation’s first claim for intervenor compensation. We also do this to promote a speedier and inexpensive determination of the issues given the time Sustainable Conservation and the Commission have already spent on this claim. (Rule 1.2.)

³⁴ Sustainable Conservation miscalculated the requested amount. We correct the calculation error here. The correct total of the claim, based on the requested hours and rates should be \$30,376.50.

which the intervenor has made a substantial contribution. The issues we consider to determine reasonableness are discussed below.

7.1. 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.

Sustainable Conservation has documented its claim by presenting a daily breakdown of hours for its participants. It fails, however, to identify its claimed hours by issue as required by Rule 17.4(b). Sustainable Conservation must comply with this requirement in future claims. We also adjust the award for duplication as described above.

Additionally, we note that there are two minor calculation errors in the claim. The first involves the 2007 hours claimed for Dusault. We total the number at 50.5, not the 52.5 total requested by Sustainable Compensation. The second involves the ½ hourly rate requested for London's preparation of the NOI in 2006. Previously, an hourly rate of \$175.00 was adopted for London's 2006 work in D.06-11-038. Sustainable Conservation however requests 4.6 hours to be compensated at \$90, when the correct amount should be \$87.50. We use these corrected figures in computing the final award.

Although we have not reduced the number of hours that Sustainable Conservation claims it has spent on the preparation of its NOI and request for compensation, we note that a total of 19.1 hours is relatively high compared to other similar claims, particularly given the relative brevity of the claim. Sustainable Conservation is new to Commission proceedings and we will expect

that with time and an increase in experience, these hours will be reduced. We also note that many of the 19.1 hours were spent on the claim that we denied in D.08-07-021. While we could remove those hours (*e.g.*, because they relate to the Category 1 claim not the Category 3 claim reviewed here), we decline to do so given the unique situation and because Sustainable Conservation did not seek compensation for time to prepare the 2008 request.

7.2. 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.

Sustainable Conservation seeks an hourly rate of \$175 for London, for work performed in 2006 and \$180 for work performed in 2007. We previously approved the 2006 rate for London in D.06-11-038 and we adopt the same rate here. The 2007 rate request of \$180 for London is also reasonable when adding a 3% cost-of-living allowance, and we adopt it here.

This is Allen Dusault's first request for intervenor compensation. Dusault has more than 20 years of experience in water quality issues, waste management, transportation, agriculture, and energy generation that spans the public, private, and non-profit sectors. He started his career as a soil scientist in Virginia and then moved onto senior positions with the Massachusetts Department of Environmental Protection, where he managed solid waste programs, Laidlaw Waste Systems and was the East Coast Director of Recycling.

Additionally, Dusault helped launch a conservation tillage initiative to transform how crops are grown in California, and is currently developing carbon credit programs (in anticipation of the implementation of the state's Global Warming Solutions Act, AB 32) for crop agriculture and dairies. Dusault is the

Program Director of the organization's Sustainable Agriculture program and oversees several projects, including a renewable fuels initiative and the development of sustainably produced biodiesel, biomethane and bioethanol in California.

Dusault holds an MBA from the University of Redlands, an MS in Resource Management from the University of Guelph in Ontario, Canada, and a BS in soil science from the University of Wisconsin, Madison. Dusault provided direction and analysis on all aspects of Sustainable Conservation's participation, helping to draft written documents, coordinate efforts with other parties and ensure that all information submitted in the proceeding was accurate.

Sustainable Conservation requests an hourly rate of \$220 for Dusault's work conducted in 2006/2007. This rate is within the range of \$150-\$380 per hour identified in D.08-04-010 for intervenors with more than 13 years of professional experience. In support of its request, Sustainable Conservation cites several awards made to other intervenors with similar experience and responsibility within their organization. Specifically, in D.07-06-032, the Commission approved an hourly rate of \$232 for work performed by Alan Nogee, Director of the Clean Energy Program for the Union of Concerned Scientists and in D.06-11-038, the Commission approved an hourly rate of \$215 for the 2006 work of Daniel Lashof, Deputy Director of the Climate Center for the Natural Resources Defense Council.

We approve the hourly rate of \$220 for Dusault's work in 2006-2007 as an expert. This hourly rate is within the reasonable range (\$150-\$380) as identified in D.08-04-010 for expert witnesses with 13 years or more of experience.

7.3. Direct Expenses

Sustainable Conservation has no direct expenses for which it seeks compensation.

8. Productivity

D.98-04-059 directed customers to demonstrate productivity by assigning a reasonable dollar value to the benefits of their participation to ratepayers.

(D.98-04-059 at 34-35.) 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.

Sustainable Conservation submits that they worked efficiently through the electronic filing and serving of its documents by using the Commission's e-file system to reduce costs. Sustainable Conservation incurred minimal postage costs, but makes no request for reimbursement.

Sustainable Conservation states that its emphasis in this proceeding has been to represent customers with a concern for the environment and sustainable agricultural practices, particularly renewable energy that reduces methane emissions. This focus distinguished the organization's interest from the interests represented by other consumer and environmental advocates who intervened in this case, according to Sustainable Conservation. Through its participation, Sustainable Conservation enhanced the Commission's understanding of the issues that should be considered as the Commission deliberates on how to increase the amount of small renewable distributed generation in California. Although a monetary benefit to taxpayers cannot be precisely identified, we agree that through Sustainable Conservation's participation, many social benefits are addressed which, though hard to quantify, are substantial. Thus, we find that Sustainable Conservation's efforts have been productive.

9. Award

As set forth in the table below, we award Sustainable Conservation \$21,482.75 as follows:

Work on Proceeding				
Attorney/Staff	Year	Hours	Hourly Rate	Total
A. Dusault	2006	18.5	\$220.00	\$ 4,070.00
A. Dusault	2007	50.5	\$220.00	\$ 11,110.00
J. London	2006	22.1	\$175.00	\$ 3,867.50
J. London	2007	50.5	\$180.00	\$ 9,090.00
Subtotal Hourly Compensation:				\$ 28,137.50

Preparation of NOI and Compensation Request (1/2 Rate)				
Attorney/Staff	Year	Hours	Hourly Rate	Total
A. Dusault	2007	4.0	\$110.00	\$ 440.00
J. London	2006	4.6	\$87.50	\$ 402.50
J. London	2007	10.5	\$90.00	\$ 945.00
Subtotal NOI/Icomp Preparation:				\$ 1,787.50
Total Unadjusted Compensation:				\$ 29,925.00
Reduction for Duplication (20% for hourly compensation):				\$ 5,627.50
Reduction for Lack of Substantial Contribution: (12.5%)				\$ 2,813.75
Total Compensation Award:				\$ 21,482.75

R.06-05-027 affected the following electrical corporations: SCE, PG&E, SDG&E, PacifiCorp, Sierra Pacific Power Company, Bear Valley Electric Service Division of Golden State Water Company, and Mountain Utilities. To avoid imposing an administrative burden of allocating very small shares of the award to the smaller entities, we allocate responsibility of payment of the award to SCE,

PG&E, and SDG&E.³⁵ We direct SCE, PG&E, and SDG&E to allocate payment responsibility amongst them based upon their California-jurisdictional gas and electric revenues for the 2007 calendar year, to reflect the year in which the proceeding was primarily litigated.

Pursuant to § 1807, we order PG&E, SDG&E, and SCE to pay this award. 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 December 29, 2008, the 75th day after Sustainable Conservation 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. Sustainable Conservation'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.

10. Other Outstanding Matters

Sustainable Conservation filed a second claim with respect to other work (specifically related to contributions to D.08-02-010 and Resolution E-4137) in

³⁵ The allocation to Mountain Utilities would be less than \$1.00, for example, using the allocation to utilities of the 250 megawatt program total. (See D.07-07-027 at 9; \$21,482.75 times 0.001%.)

R.06-05-027. An amendment to the second claim was filed in R.08-08-009, the successor proceeding. For administrative simplicity, we will handle the second claim and its amendment in R.08-08-009.

11. Comments on Proposed Decision

This is an intervenor compensation matter. Although we may waive the otherwise applicable 30-day public review and comment period for this decision as provided by Rule 14.6(c)(6), we have issued the proposed decision for comment. Opening comments were filed by Sustainable Conservation and TURN on June 29, 2009. No replies were filed. No changes to the decision have been made as a result of the comments.

12. 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. Sustainable Conservation has satisfied all the procedural requirements necessary to claim compensation in this proceeding. Sustainable Conservation made a substantial contribution to D.07-07-027 as described and adjusted herein.

2. Sustainable Conservation requested hourly rates for its representatives that are reasonable when compared to the market rates for persons with similar training and experience.

3. The total of the reasonable compensation is \$21,482.75.

4. The Appendix to this decision summarizes today's award.

Conclusions of Law

1. Sustainable Conservation has fulfilled the requirements of §§ 1801-1812, which govern awards of intervenor compensation, and is entitled to intervenor

compensation for its claimed expenses, as adjusted herein, incurred in making substantial contributions to D.07-07-027.

2. Sustainable Conservation's amended claim filed on February 22, 2009, should be handled in R.08-08-009.

3. Sustainable Conservation should be awarded \$21,482.75 for its contribution to D.07-07-027.

4. This order should be effective today so that Sustainable Conservation may be compensated without further delay.

5. This proceeding should be closed.

O R D E R

IT IS ORDERED that:

1. Sustainable Conservation is awarded \$21,482.75 as compensation for its substantial contributions to Decision 07-07-027.

2. Sustainable Conservation's amended claim filed on February 22, 2009 will be resolved by a decision in Rulemaking 08-08-009.

3. Within 30 days of the effective date of this decision, Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company shall pay Sustainable Conservation their respective shares of the award. We direct the three utilities to allocate payment responsibility among them, based on their California-jurisdictional gas and electric revenues for the 2007 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 December 29, 2008, the 75th day after the filing date of

Sustainable Conservation's request for compensation, and continuing until full payment is made.

4. Rulemaking 06-05-027 is closed.

This order is effective today.

Dated September 24, 2009, at San Francisco, California.

MICHAEL R. PEEVEY
President
RACHELLE B. CHONG
TIMOTHY ALAN SIMON
Commissioners

I dissent.

/s/ DIAN M. GRUENEICH
Commissioner

I reserve the right to file a dissent.

/s/ JOHN A. BOHN
Commissioner

I reserve the right to file a concurrence.

/s/ RACHELLE B. CHONG
Commissioner

APPENDIX**Compensation Decision Summary Information**

Compensation Decision:	D0909045	Modifies Decision? N
Contribution Decision(s):	D0707027	
Proceeding(s):	R0605027	
Author:	ALJ Division	
Payer(s):	Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company	

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
Sustainable Conservation	10/15/08	\$30,394.50	\$21,482.75	No	Simple miscalculations, failing to make a substantial contribution, and duplication of efforts.

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Allen	Dusault	Expert	Sustainable Conservation	\$220	2006	\$220
Allen	Dusault	Expert	Sustainable Conservation	\$220	2007	\$220
Jody	London	Expert	Sustainable Conservation	\$175	2006	\$175
Jody	London	Expert	Sustainable Conservation	\$180	2007	\$180

(END OF APPENDIX)

Commissioner Bohn's Dissent on D.09-09-045

I dissent from this decision. We have gone to absurd lengths in this proceeding to assist Sustainable Conservation in its quest to be eligible for and receive intervenor compensation. The fact of the matter is, based on the information it provided to this Commission, Sustainable Conservation is not eligible for intervenor compensation for its work on D.07-07-027.

Let me be clear - I fully support the intervenor compensation program. I am mindful of the fact, however, that the Intervenor Compensation Statute is meant to address a particular problem, i.e., that the Commission may benefit from the participation of certain groups in its proceedings that (a) cannot afford to participate in our proceedings and (b) represent the interests of ratepayers. The Legislature, by including specific limitations in the Intervenor Compensation Statute about who should be eligible for and receive intervenor compensation, made its intent clear that the intervenor compensation program should be administered to further these goals. By voting out this decision, a majority of this Commission has chosen to not follow the language of the Statute and the Legislature's intent with regard to the intervenor compensation program.

I disagree with the outcome of this decision for three fundamental reasons: (1) Sustainable Conservation's request for intervenor compensation was not timely filed; (2) Sustainable Conservation did not meet the definition of a Category 3 customer when it participated in D.07-07-027; and (3) Sustainable conservation has not demonstrated significant financial hardship. I emphasize that all of these reasons are focused on process. I do not pass judgment on Sustainable Conservation's contribution to the decision at issue, D.07-07-027. In fact, based on my discussions with the assigned ALJ and others, Sustainable Conservation

provided valuable input into this proceeding, and, I hope, will continue to do so in future proceedings.

Sustainable Conservation's request for intervenor compensation filed on October 10, 2008 is untimely because the request is for the same work on the same decision as a claim the Commission considered and rejected in a prior Commission decision, D.08-07-021. This decision appears to set the following novel precedent: if the Commission, in a final decision, rejects an intervenor's request for intervenor compensation on the grounds that it did not qualify as a particular class of customer, that intervenor may file another request for intervenor compensation claiming to be eligible as another class of customer. This is an absurd result. It is a waste of Commission resources and it frustrates the intent of the Intervenor Compensation Statute. Intervenors should not get a second bite of the apple by being given the opportunity to file repetitive or duplicative requests for intervenor compensation. Moreover, Sustainable Conservation failed to avail itself of the appropriate procedural avenues, namely, to file an application for rehearing or a petition for modification of D.08-07-021.

By adopting this decision, the Commission has chosen to leave the door wide open for potential future abuse of the Commission's intervenor compensation program. Parties who are found to be ineligible because they do not qualify for intervenor compensation by Commission decision may simply refile requests, perhaps intending to wear down the Commission with multiple requests or waiting for the terms of Commissioners to expire with the hope that new appointees will give them a more favorable result.

Sustainable Conservation also does not qualify as a Category 3 customer. Sustainable Conservation was on notice as of October 30, 2006, that its Bylaws were deficient. Because Sustainable Conservation's

Bylaws do not meet the statutory requirements of Public Utilities Code section 1802(b)(1)(C), it does not qualify as a Category 3 customer. In reaching this determination, I did not consider Sustainable Conservation's Revised Bylaws of October 2, 2008 in determining whether it qualifies as a Category 3 customer as they were revised fifteen months after the decision upon which Sustainable Conservation's claim for intervenor compensation is based. This Commission cannot, as a matter of process, grant intervenor compensation to a party that is not eligible during the time period for which it is requesting intervenor compensation.

Lastly, Sustainable Conservation has not demonstrated significant financial hardship as required by the Intervenor Compensation Statute. The purpose of the significant financial hardship requirement is that the Commission has a duty to ensure that residential and small commercial customers only pay for intervenor compensation or groups that meet the statutory requirements. There are many groups out there that do good work in worthwhile areas, but this Commission is only supposed to provide intervenor compensation to groups that meet the statutory requirements, and at this time, Sustainable Conservation does not qualify.

Sustainable Conservation provided very limited information on financial hardship in its most recent request for intervenor compensation despite the fact that this Commission informed Sustainable Conservation D.08-07-021 that it had not made a sufficient showing in its Original and Amended Claims to allow the Commission "to determine whether Sustainable Conservation has the type of financial interest in the outcome of this proceeding that may render it ineligible for intervenor compensation. . ." (D.08-07-021, Appendix B, p. 7.) We encouraged Sustainable Conservation to, in the future, "further explain whether any donors or members of its Board of Directors have a financial interest in a proceeding in which Sustainable Conservation is seeking intervenor compensation

should it pursue eligibility as either a Category 1 or 3 customer.” (D.08-07-021, Appendix B, pp. 7-8.). Sustainable Conservation did not provide any additional information in its most recent Claim, and has not made an adequate showing of significant financial hardship for its work on D.07-07-027.

I do not conclude that Sustainable Conservation cannot demonstrate significant financial hardship, but rather, that it simply has not provided sufficient information in order to make a finding of significant financial hardship at this time. I note that the Commission must be careful in determining who is eligible for intervenor compensation. This decision seems to stand for the proposition that it does not matter if a request for intervenor compensation is timely filed, if an intervenor meets the statutory definition of “customer”, or if an intervenor has established significant financial hardship. Under this decision, groups that may profit from their advocacy in our proceedings may also be found eligible for, and indeed awarded, intervenor compensation. The Legislature did not intend for this Commission to award intervenor compensation to groups that have a financial interest in the outcome of a decision or a proceeding, and I do not think that this Commission should be opening the door to this possibility.

For the aforementioned reasons, I dissent from this decision.

John A. Bohn

**Concurrence of Commissioner Rachelle Chong
Decision Granting Intervenor Compensation to
Sustainable Conservation - Item 33
September 24, 2009**

I believe that Sustainable Conservation has met the burden of proving that it is a Category 3 customer.

Sustainable Conservation's bylaws (prior to amendment) generally noted that its mission was to "represent interests related to the Corporation's conservation activities in regulatory, judicial and legislative proceedings." Commissioner Bohn's Alternate takes issue with the group's bylaws, because they do not include explicit language that the group's purpose was to represent residential and/or small commercial customers. However, I was persuaded by the Proposed Decision and evidence that we have many other participants that have been deemed eligible Category 3 customers, whose bylaws do not contain the explicit language in Pub. Util. Code Section 1801(b)(1)(C).

I understand, for example, that the bylaws of the National Resources Defense Council (NRDC) contain language very similar to Sustainable Conservation's bylaws. The NRDC has been an eligible I Comp participant at the CPUC for 20 years.

Further, I am persuaded that the legislative intent was for us to administer these provisions in a manner that encourages "effective and efficient participation of *all groups* that have a stake" in our process.

I understand that the Alternate finds it improper that Sustainable Conservation is seeking to “revisit” the issue of its eligibility. However, even though the CPUC voted earlier that Sustainable Conservation is not eligible under Category 1, we had *not voted on the prior ALJ ruling* that Sustainable Conservation is not a Category 3 customer.

The current item on whether Sustainable Conservation meets Category 3 status is the *first time* the Commission is considering this issue. Because of some of the unique factors in this case and because I believe that initial ALJ ruling was incorrect, I do not agree that it is improper that we consider Sustainable Conservation’s claim as a Category 3 customer at this time.

The remainder of the item outlines that Sustainable Conservation has met the other prongs of the test to demonstrate that it is an eligible Category 3 customer, and that it has made a substantial contribution.

Dated September 24, 2009, at San Francisco, California.

/s/ RACHELLE B. CHONG
RACHELLE B. CHONG
Commissioner