

Decision 09-10-024 October 15, 2009

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of San Diego Gas & Electric Company (U 902 E) for a Certificate of Public Convenience and Necessity for the Sunrise Powerlink Transmission Project.

Application 06-08-010
(Filed August 4, 2006)

CLAIM AND DECISION ON REQUEST OF RANCHO PENASQUITOS CONCERNED CITIZENS FOR INTERVENOR COMPENSATION

Claimant: Rancho Penasquitos Concerned Citizens (RPCC)	For contribution to D.08-12-058
Claimed (\$): \$473,379.59	Awarded (\$): 461,013.00
Assigned Commissioner: Grueneich	Assigned ALJ: Vieth

PART I: PROCEDURAL ISSUES

A. Brief Description of Decision: Approval of a certificate of public convenience and necessity for the Sunrise Powerlink Transmission Project.

B. Claimant must satisfy intervenor compensation requirements set forth in Public Utilities Code §§ 1801-1812:

	As Stated by Claimant	CPUC Verified
Timely filing of notice of intent to claim compensation (§ 1804(a)):		
1. Date of Prehearing Conference:	1/31/06	Yes in A.05-12-014
2. Other Specified Date for NOI:	N/A	
3. Date NOI Filed:	3/02/06	Yes in A.05-12-014
4. Was the notice of intent timely filed?		

Showing of customer or customer-related status (§ 1802(b)):		
5. Based on ALJ ruling issued in proceeding number:	A.05-12-014	Yes
6. Date of ALJ ruling:	3/16/06	Yes
7. Based on another CPUC determination (specify):	N/A	
8. Has the claimant demonstrated customer or customer-related status?		Yes
Showing of “significant financial hardship” (§ 1802(g)):		
9. Based on ALJ ruling issued in proceeding number:	A.05-12-014	Yes
10. Date of ALJ ruling:	3/16/06	Yes
11. Based on another CPUC determination (specify):	N/A	
12. Has the claimant demonstrated significant financial hardship?		Yes
Timely request for compensation (§ 1804(c)):		
13. Identify Final Decision	D.08-12-058	Yes
14. Date of Issuance of Final Decision:	12/24/08	Yes
15. File date of compensation request:	2/23/09	Yes
16. Was the request for compensation timely?		Yes

C. Additional Comments on Part I:

#	Claimant	CPUC	Comment

PART II: SUBSTANTIAL CONTRIBUTION

A. Description of Claimant’s contribution to the final decision (*see* § 1802(i), § 1803(a) & D.98-04-059.)

Contribution	Citation to Decision or Record (Provided by Claimant)	Showing Accepted by CPUC
1. The entirety of RPCC’s position was adopted by the CPUC in its final decision. At page 88, the decision reads, “We adopt Rancho Peñasquitos’ Coastal Link Alternative, defined in Rancho Peñasquitos’ Phase 2 Reply Brief, as part of the Analytical Baseline. CAISO does not oppose Rancho Peñasquitos’ alternative and	D.08-12-058 – Section 6.14.7 at Pages 86-88. In addition, the ALJ and Commissioner Grueneich’s decisions both adopted RPCC’s position in its entirety as well.	Yes

<p>finds it an acceptable alternative to SDG&E’s proposed Coastal Link. SDG&E’s arguments are not convincing, particularly since, as Rancho Peñasquitos points out, SDG&E ignores the significantly lower costs and lesser environmental impacts of the Rancho Peñasquitos Coastal Link Alternative compared to SDG&E’s proposed Coastal Link.</p>		
<p>2. “RPCC argues that the \$33.8 million (\$35.5 million (\$2012)) Encina transformer included in SDG&E’s plan of service for the Coastal Link Alternative is not necessary if CAISO will approve a remedial action scheme. CAISO is responsible for making the final determination regarding whether the Encina transformer is necessary. Given the uncertainty associated with the need for the Encina transformer, which will not be resolved until CAISO speaks to this issue, we include it in the maximum reasonable cost we adopt here today. However, the maximum reasonable cost shall be reduced by \$35.5 million (2012\$) if the CAISO finds that the Encina transformer is unnecessary. RPCC has already followed up with the CAISO on this issue.</p>	<p>D.08-12-058 – Page 275</p>	<p>Yes</p>
<p>3. RPCC was the party who, while questioning Ali Yari during Phase I proceedings, discovered that SDG&E had looked into a new 230/500 kV substation and already reserved transformer equipment with long lead times, for an area near the border in the Jacumba area, presumably for the cross-border La Rumorosa wind project being developed by an arm of SDG&E’s parent company, Sempra. This questioning and follow-up questions by Judge Weissman of Yari on this subject were cited by assigned Commissioner Grueneich in her 7/24/07 decision to suspend Phase I proceedings. This is important to illustrate that though RPCC’s focus in this proceeding was on the Coastal link, counsel for RPCC kept abreast of the developments as a whole in this case and was familiar with the entire project and the importance of SDG&E not previously disclosing a new potential substation along the border and how that new substation might integrate into a new southern route for the Sunrise project.</p>	<p>A.06-08-010 7/24/07 Ruling of Commissioner Grueneich entitled, “ASSIGNED COMMISSIONER’S RULING ADDRESSING NEWLY DISCLOSED ENVIRONMENTAL INFORMATION” at pages 9-11.</p>	<p>Yes</p>

B. Duplication of Effort (§§ 1801.3(f) & 1802.5):

	Claimant	CPUC Verified
a. Was DRA a party to the proceeding? (Y/N)	Yes	Yes
b. Were there other parties to the proceeding? (Y/N)	Yes	Yes
c. If so, provide name of other parties: Please see the lengthy service list		
<p>d. Describe how Claimant coordinated with DRA and other parties to avoid duplication or how your participation supplemented, complemented, or contributed to that of another party:</p> <p>It was clear from the beginning that the ALJ expected the parties to avoid duplication of effort. RPCC immediately contacted DRA and UCAN to find out if these parties, who intended to study the line as a whole, would be looking at certain sections of the transmission line. RPCC was told that neither of these two parties would be undertaking a micro analysis of certain sections of the line. Therefore, RPCC undertook the analysis of looking at the Coastal link in particular. No other party focused on the Coastal link portion of the transmission line and RPCC therefore did not duplicate efforts of any other party.</p>		Yes

C. Additional Comments on Part II (use line reference # or letter as appropriate):

#	Claimant	CPUC	Comment

PART III: REASONABLENESS OF REQUESTED COMPENSATION

A. General Claim of Reasonableness (§§ 1801 & 1806):

Concise explanation by Claimant as to how the cost of claimant’s participation bears a reasonable relationship with benefits realized through participation (include references to record, where appropriate)	CPUC Verified
<p>But for RPCC’s participation, ratepayers would be saddled with at least \$72 million additional dollars in cost for the Sunrise Powerlink. (See footnotes citing to the records at pages. 86-88 of the decision wherein RPCC’s cost of service of \$84 million is compared to SDG&E’s cost of service of \$156 million). But for RPCC’s participation, the communities and the environment along SDG&E’s proposed coastal route would have suffered from new infrastructure that was not needed. In summary, the total cost of RPCC’s participation is less than \$500,000, yet RPCC saved ratepayers at least \$72 million and as much as \$107 million dollars over the cost of SDG&E’s proposed coastal link, not to mention the benefits to the community and the environment by not having a new line traverse 15 miles through suburban San Diego. The costs savings rise to \$107 million if the \$35 million cost of an Encina transformer is subtracted from RPCC’s cost of service. This issue will be</p>	<p>Yes. See D.08-12-058 at 274, fn 687, and at 275.</p>

<p>determined in the future with the assistance of the CAISO per the decision. RPCC's involvement produced "bang for the buck."</p> <p>It should also be noted that RPCC approached SDG&E in the spring of 2007, months before Phase I hearings began with the idea of "settling." RPCC did not hear anything back from SDG&E in this regard. During Phase I hearings in the summer of 2007, RPCC again approached SDG&E about settling. SDG&E asked for a written offer. RPCC provided same. SDG&E orally turned down RPCC's offer. The offer given to SDG&E was the same as that adopted by this Commission – no Coastal link.</p> <p>Not only did RPCC try to settle this matter with SDG&E, RPCC took steps to avoid unnecessary expense. RPCC intended to participate more fully in regards to the routing issues and EMF issues, but was convinced that its technical power flow analysis showing that Sunrise could be built for less cost without the proposed coastal link was very strong. RPCC therefore took a calculated risk that its argument would win the day at the end and did not spend the time and money on routing/environmental/EMF issues as RPCC initially planned.</p>	<p>No evidence of settlement discussions in record.</p> <p>Yes, applicant focused early on an alternative to the Coastal Link.</p>
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B. Specific Claim*:

CLAIMED						CPUC AWARD			
ATTORNEY AND ADVOCATE FEES									
Item	Year	Hours	Rate \$	Basis for Rate	Total \$	Year	Hours	Rate \$	Total \$
Harvey Payne	2006	172.4	\$300	See attachment A	\$51,720.00	2006	167.2	\$300	\$50,160
Harvey Payne	2007	487.2	\$310	D.08-04-010	\$151,032.00	2007	468.8	\$310	\$145,328
Harvey Payne	2008	256.1	\$320	D.08-04-010	\$81,952.00	2008	248.4	\$320	\$79,488
Harvey Payne	2009	2.5	\$330	D.08-04-010	\$825.00	2009	2.5	\$320	\$800
Subtotal:					\$285,529.00	Subtotal:			\$275,776
EXPERT FEES									
Item	Year	Hours	Rate \$	Basis for Rate	Total \$	Year	Hours	Rate \$	Total \$
William Stephenson	2006	147.5	\$215	D.08-07-019	\$31,712.50	2006	144.75	\$215	\$31,121
William Stephenson	2007	351.75	\$220	D.08-04-010	\$77,385.00	2007	346	\$220	\$76,120
William Stephenson	2008	256.00	\$225	D.08-04-010	\$57,600.00	2008	255	\$225	\$57,375

William Stephenson	2009	3.75	\$230	D.08-04-010	\$862.50	2009	3.75	\$225	\$844	
Subtotal:					\$167,560.00	Subtotal:				
Subtotal:					\$165,460					
OTHER FEES										
Describe here what OTHER HOURLY FEES you are claiming (paralegal, travel, etc.):										
Item	Year	Hours	Rate \$	Basis for Rate	Total \$	Year	Hours	Rate \$	Total \$	
Harvey Payne (travel)	2006	5.7	\$150	See attachment A	\$855.00	2006	5.7	\$150	\$855	
Harvey Payne (travel)	2007	25.3	\$155	D.08-04-010	\$3,921.50	2007	25.3	\$155	\$3,921	
Harvey Payne (travel)	2008	44.2	\$160	D.08-04-010	\$7,072.00	2008	44.2	\$160	\$7,072	
Subtotal:					\$11,848.50	Subtotal:				
Subtotal:					\$11,848					
INTERVENOR COMPENSATION CLAIM PREPARATION **										
Item	Year	Hours	Rate \$	Basis for Rate	Total \$	Year	Hours	Rate \$	Total \$	
Harvey Payne	2006	5.6	\$150	See attachment A	\$840.00	2006	5.6	\$150	\$840	
Harvey Payne	2009	20.0	\$165	D.08-04-010	\$3,300.00	2009	20.0	\$160	\$3,200	
Subtotal:					\$4,140.00	Subtotal:				
Subtotal:					\$4,040					
COSTS										
#	Item	Detail			Amount	Amount				
	PLEASE SEE	ATTACHED EXCEL SPREADSHEET – ATTACHMENT E				(less meals)			\$3,889	
Subtotal:					\$4,302.09	Subtotal:				
Subtotal:					\$3,889					
TOTAL REQUEST \$:					\$473,379.59	TOTAL AWARD \$:				
TOTAL AWARD \$:					\$461,013					

* 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. Claimant’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.

**Reasonable claim preparation time typically compensated at ½ of preparer’s normal hourly rate.

C. CPUC Disallowances & Adjustments:

#	Reason
Hourly Rates	The proposed rates for Payne and Stephenson are reasonable except that no Cost-of-Living Adjustments have been approved for 2009. Therefore, 2008 hourly rates are carried forward to 2009.
Reasonableness of claimed hours	<p>At the outset, we note that this was a long, involved proceeding which spanned more than three years and included an amended application, a CEQA process (with a recirculated DEIR), CAISO involvement, numerous disputes about scope, discovery, confidentiality, etc., required coordination between intervening parties, numerous hearings, witnesses, and exhibits, and complex briefing over two Phases of the proceeding. In order to make a relevant and thoughtful substantial contribution, applicant had to not only pursue its own issue priorities but also closely monitor the actions and filings of SDG&E and all other parties both to avoid duplication and to assure it had the most complete and current information to work with. That is not to say that time claimed by applicant was allowed without scrutiny, but to affirm that some value was attributed to keeping on top of actions and information as such became known during the proceeding.</p> <p>Harvey Payne: We are concerned that his time reports include some entries which appear to be administrative and/or non-legal activities including, e.g., review or dispatch of emails that confirm or create meeting or teleconference dates/location, explore filing problems with the CPUC Docket Office, discuss service issues and update addresses, inquire about the status of exhibit lists, and follow-up on promised data/documents that were not timely delivered or could not be read. In addition, we observe that some activity was not directly linked to applicant’s particular substantial contribution to D.08-12-058 regarding the alternative to the Coastal Link, e.g., attendance at meeting of local planning agency, letters and calls to local officials, and review of motions by other people to become a party and actions related to their compensation claims. In total, these entries were a small portion of the total hours claimed. Therefore, rather than attempt to parse voluminous and sometimes multi-task time entries, we disallow 3% of Payne’s time in 2006, 2007, and 2008.</p> <p>William Stephenson: We note that he failed to explain the connection to applicant’s substantial contribution for some time sheet entries labeled</p>

Corrections:	<p>“Correspondence” and “Communication” which total 2.75 hours in 2006, 4.75 hours in 2007 and 1.0 hour in 2008. Although it is likely that these entries are relevant and necessary to the expert work Stephenson performed for applicant, they are disallowed because the connection was not explained as required. In addition, one hour in 2007 for “settlement” is disallowed because there is no evidence it provided a substantial contribution to D.08-12-058.</p> <p>Harvey Payne overstated his claimed hours for 2007 by 3.9 hours. The correct total is 483.3 hours.</p>
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PART IV: OPPOSITIONS AND COMMENTS

A. Opposition: Did any party oppose the claim (Y/N)?

No

B. Comment Period: Was the 30-day comment period waived (*see* Rule 14.6(c)(6)) (Y/N)?

Yes

FINDINGS OF FACT

1. Claimant has made a substantial contribution to Decision 08-12-058.
2. The claimed fees and costs, as adjusted herein, are comparable to market rates paid to experts and advocates having comparable training and experience and offering similar services.
3. The total of reasonable contribution is \$461,013.00.

CONCLUSION OF LAW

1. The claim, with any adjustment set forth above, satisfies all requirements of Public Utilities Code §§ 1801-1812.

ORDER

1. Claimant is awarded \$461,013.00.
2. Within 30 days of the effective date of this decision, San Diego Gas & Electric Company shall pay claimant the total award. 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 May 9, 2009, the 75th day after the filing of claimant's request, and continuing until full payment is made.
3. The comment period for today's decision is waived.
4. This proceeding remains open.

5. This decision is effective today.

Dated October 15, 2009, at 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**

Compensation Decision:	D0910024	Modifies Decision? No
Contribution Decision(s):	D0812058	
Proceeding(s):	A0608010	
Author:	ALJ Vieth	
Payer(s):	SDG&E	

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
Rancho Penasquitos Concerned Citizens	2/23/09	\$473,379.59	\$461,013.00		Clerical and administrative expenses not compensable, unproductive effort/excessive hours, undocumented hours, hours unrelated to the substantial contribution, miscalculation of the requested hours.

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Harvey	Payne	Attorney	Rancho Penasquitos Concerned Citizens	\$300	2006	\$300
Harvey	Payne	Attorney	Rancho Penasquitos Concerned Citizens	\$310	2007	\$310
Harvey	Payne	Attorney	Rancho Penasquitos Concerned Citizens	\$320	2008	\$320
Harvey	Payne	Attorney	Rancho Penasquitos Concerned Citizens	\$330	2009	\$320
William	Stephenson	Expert	Rancho Penasquitos Concerned Citizens	\$215	2006	\$215
William	Stephenson	Expert	Rancho Penasquitos Concerned Citizens	\$220	2007	\$220
William	Stephenson	Expert	Rancho Penasquitos Concerned Citizens	\$225	2008	\$225
William	Stephenson	Expert	Rancho Penasquitos Concerned Citizens	\$230	2009	\$225

(END OF APPENDIX)