

Decision 09-12-043 December 17, 2009

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

Application of San Diego Gas & Electric Company (U902M) for Authority to update its Gas and Electric Revenue Requirement and Base Rates effective on January 1, 2008.

Application 06-12-009  
(Filed December 8, 2006)

And Related Matters.

Application 06-12-010  
Investigation 07-02-013

**DECISION PARTIALLY GRANTING AND OTHERWISE DENYING  
INTERVENOR COMPENSATION TO THE GREENLINING INSTITUTE  
FOR SUBSTANTIAL CONTRIBUTION TO DECISION 08-07-046**

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**DECISION PARTIALLY GRANTING AND OTHERWISE DENYING  
INTERVENOR COMPENSATION TO THE GREENLINING INSTITUTE  
FOR SUBSTANTIAL CONTRIBUTION TO DECISION 08-07-046**

**Summary**

This decision awards The Greenlining Institute \$12,186.01 in compensation for its substantial contributions, on the issue of business office closures, to Decision 08-07-046, which is a decrease of \$417,027 (97% reduction) because the majority of the requested compensation was for activities which the Commission found to be beyond the scope of the proceeding and no order was necessary by the Commission. Today's award payment will be split equally between San Diego Gas & Electric Company and Southern California Gas Company. These proceedings are closed.

**1. Background**

San Diego Gas & Electric Company (SDG&E) filed Application (A.) 06-12-009, a general rate case (GRC) application, and Southern California Gas Company (SoCalGas) filed A.06-12-010, also a GRC application. They are related companies with some shared services. Decision (D.) 08-07-046 adopted a Test Year 2008 revenue requirement for each company, a mechanism for attrition adjustments until the next GRC, and performance and safety incentive mechanisms, which are reasonable and necessary to provide safe and reliable service to ratepayers.

The Test Year 2008 settlements adopted in D.08-07-046 provide a gas and electric revenue requirement of \$1.361 billion for SDG&E and a gas revenue requirement of \$1.685 billion for SoCalGas.

## 2. Requirements for Awards of Compensation

The intervenor compensation program, 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.

### **2.1. 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.

Section 1804 (a)(1) requires an intervenor who intends to seek a compensation award to file an NOI within 30 days after the PHC, if any is held. In accordance with D.06-12-041, which adopted amendments to Rule 17.1, the intervenor is also allowed to seek an earlier determination of eligibility. (D.06-12-041, at 3.) An intervenor can file an NOI any time after the start of the proceeding until 30 days after the PHC.

The Greenlining Institute (Greenlining) timely filed its NOI on January 3, 2007, prior to the February 9, 2007 PHC.

Section 1802(b)(1) defines a “customer” as: (A) a participant representing consumers, customers or subscribers of a utility; (B) a representative who has been authorized by a customer; or (C) a representative of a group or organization authorized pursuant to its articles of incorporation or bylaws to represent the interests of residential or small business customers. (§ 1802(b)(1)(A) through (C).) On March 13, 2007, Administrative Law Judge (ALJ) Long issued a ruling that found Greenlining is a customer pursuant to § 1802(b)(1)(C), because of its status as an organization authorized to represent the interests of its member, most of whom are residential customers.

Regarding the timeliness of the request for compensation, Greenlining filed its request for compensation on September 10, 2008, within 60 days of D.08-07-046 being issued.<sup>2</sup> No party opposed the request.

## **2.2. Financial Hardship**

Section 1804(b)(a) provides that a finding of significant financial hardship creates a rebuttable presumption of eligibility for compensation in other Commission proceedings commencing within one year of the date of that finding. In its NOI, Greenlining asserted that the rebuttable presumption under § 1804(b)(1) applies to its participation in this proceeding. In doing so, Greenlining refers to a finding of significant financial hardship in a joint Commissioners' ruling on April 1, 2004 in Investigation 04-02-007.

However, more than two years passed between the date of our prior finding and the date of the commencement of this proceeding, December 8, 2006. Therefore, the April 1, 2004 ruling did not serve to create a rebuttable presumption of significant financial hardship for Greenlining, in this docket. Accordingly, ALJ Long ruled on March 17, 2008<sup>3</sup> that Greenlining had failed to demonstrate "significant financial hardship" in its NOI, but allowed Greenlining to make a showing of "significant financial hardship" in its request for compensation to be eligible for an award. (Section 1804(a)(2)(B).)

In the subject request for compensation, Greenlining offers a more recent ruling in A.07-11-011, issued on March 17, 2008, confirming that Greenlining

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<sup>2</sup> D.08-07-046 was issued on August 1, 2008.

<sup>3</sup> Administrative Law Judge's Ruling Finding Utility Consumers' Action Network and The Greenlining Institute Eligible to Claim Compensation of March 13, 2007 in A.06-12-009 at 4-5.

satisfied a showing of significant financial hardship “as the members of Greenlining are largely residential customers. Accordingly, the economic interests of their members in any rate impact that might result from this proceeding, are small in comparison to the costs of effective participation in this Commission proceeding.”<sup>4</sup>

We extend that finding to Greenlining’s participation in this proceeding through a rebuttable presumption of eligibility pursuant to § 1804(b)(1).

### **3. Greenlining’s Assertion of a 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 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

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<sup>4</sup> Administrative Law Judge’s Ruling Regarding Notices of Intent to Claim Compensation Filed by Greenlining Institute, The Utility Reform Network, Disability Rights Advocates, and Inland Aquaculture Group, L.L.C. of March 17, 2008 in A.07-11-011.

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>5</sup>

With this guidance in mind, we turn to the contributions asserted by Greenlining.

Greenlining argues that it was the only intervenor to advocate on behalf of low-income and minority ratepayers in Sempra's service territory and was the only intervenor to raise issues regarding management diversity, workforce diversity, and corporate philanthropy. In support of this claim, it argues that Sempra ultimately accepted the vast majority of Greenlining's contentions in these areas and agreed to incorporate these contentions as the basis of the *Six-Year Leadership Agreement*.

Greenlining argues that D.08-07-046 adopted in whole or in part one or more of its factual contentions. For instance, Greenlining argued that closing branch offices could reduce access by low-income ratepayers to Sempra customer service representative and would negatively complicate the bill payment process. To avoid this potential situation, Greenlining advised against allowing any additional branch office closure and advocated for further study regarding additional non-utility payment locations. Greenlining argues that D.08-07-046 acknowledged its contribution. In support of this argument, Greenlining cites to "Finding of Fact 21, which stated "There are unresolved problems with non-utility payment locations. Some customers are likely to be precluded from access to utility service representatives and unable to pay the utility directly."

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<sup>5</sup> D.98-04-059, 79 CPUC2d 628 at 653.

And Finding of Fact 22, stated “A moratorium on closing branch offices and opening new non-utility payment locations at ‘payday lender’ businesses will allow an opportunity to reexamine how to reasonably provide services to all customers.” Further, D.08-07-046 suspended front-counter closures, stating “There is a moratorium imposed on SDG&E and SoCalGas precluding any further branch closures or new authorized payment locations within payday lenders.”<sup>6</sup>

Greenlining also submits that D.08-07-046 adopted in whole or in part one or more of Greenlining specific policy or procedural recommendations.<sup>7</sup> Throughout the proceeding, Greenlining focused its advocacy on increased management diversity and increased supplier diversity at Sempra. Greenlining argues that Finding of Fact 42 directly addresses this issue and states, “Diversity is good public policy, therefore SDG&E and SoCalGas should competently staff at all times the full forecast of positions for WMDVBE (Women, Minority, and Disabled Veteran Business Enterprises) activities and diversity.”<sup>8</sup> Greenlining argues that D.08-07-046 stated, “SDG&E and SoCalGas shall fully fund all G.O. 156 and diversity-related activities as included in the revenue requirements of the adopted Test Year 2008 Settlement for each company. SDG&E and SoCalGas shall report on its compliance with G.O. 156 and the achieved levels of diversity in testimony and work papers in the next general rate cases.”<sup>9</sup> Thus

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<sup>6</sup> D.08-07-046 at 104.

<sup>7</sup> The Greenlining Institute’s Request For Award of Compensation of September 10, 2008 at 10-11.

<sup>8</sup> *Id.* at 95.

Greenlining argues that the decision orders Sempra to fund all staff activities aimed at improving diversity.

Greenlining argues that although the decision does not adopt the *Six-Year Leadership Agreement* between Sempra and Greenling, Conclusion of Law 16 suggests that the settlement is valid as a policy recommendation, stating “SDG&E and SoCalGas may implement the settlement with Greenlining without an order of the Commission.”<sup>10</sup> Thus, Greenlining argues that D.08-07-046 adopts its contentions and recommendations in part, if not in full. Greenlining also points out that it believes § 1802(i) would allow the Commission to award the customer compensation for all Greenlining’s reasonable fees and costs incurred even if it finds that the decision adopts Greenlining’s contentions and recommendations only in part.

Finally, Greenlining argues that it convinced “Sempra to commit to improving workforce diversity and economic development in California.” Within this context, Greenlining submits that it made substantial contributions to D.08-07-046.<sup>11</sup>

#### **4. Greenlining’s Actual Contributions**

Recently, D.09-11-031 issued on November 20, 2009 in A.07-11-011, awarded compensation to Greenlining for its substantial contribution on issues of executive compensation, philanthropy, supplier diversity, and workforce

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<sup>9</sup> *Id.* at 107, (No. 29).

<sup>10</sup> *Id.* at 100.

<sup>11</sup> The Greenlining Institute’s Request For Award of Compensation of September 10, 2008 at 11.

diversity. Although the initial scoping memo did not include these issues for consideration in that proceeding, on March 4, 2008 in A.07-11-011, an Administrative Law Judge's Ruling Revising the Schedule Set Forth In the Scoping Memo and Clarifying the Scoping Memo was issued and indicates on page at 4, "the issue of shareholder philanthropy is excluded from the scope of this proceeding. However, to the extent Southern California Edison Company raises the issue of philanthropy in its testimony, Greenlining may seek to include testimony, engage in cross-examination, and brief this matter."

In this decision, we make a clear distinction between the facts used to determine an award for substantial contribution in that proceeding, versus the denial of substantial contribution here on similar issues advocated for by Greenlining. In A.06-12-009, on February 27, 2007, a Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judge was issued that did not include issues of corporate philanthropy, management diversity, workforce diversity, and supplier diversity. On July 30, 2007, Greenlining filed a motion to compel Applicants SDG&E and SoCalGas to provide a witness on philanthropy. The assigned ALJ denied the motion to compel by written ruling on August 2, 2007, On August 3, 2007, Greenlining filed a motion for review which the ALJ denied on August 6, 2007 during formal Hearings. (TR. pp. 108-111.) On August 8, 2007, Greenlining filed an amended motion for review of the ALJ's rulings. On August 22, 2007, an Assigned Commissioner and Administrative Law Judge's Joint Ruling Denying The Greenlining Institute's Motion on Philanthropy.

We draw our conclusions on Greenlining's claim of substantial contribution based on these facts and others we examine here.

There was an application for rehearing of D.08-07-046 filed by Greenlining and the Commission issued D.09-06-052 denying rehearing.<sup>12</sup> On rehearing, the Commission made the following specific changes to D.08-07-046 which nevertheless left intact the rejection of all of Greenlining's proposals, except for the issue of branch office closures. A portion of Ordering Paragraph 2 held:

"2. D.08-07-046 is modified as follows:

- a. The three paragraphs contained in Section 15.3 Diversity - Greenlining on pages 74-75 are deleted, and replaced with the following language:

We deny the proposed settlement on workforce and supplier diversity because [it] has no quantifiable effect on test year or post test year revenue requirements in this proceeding. We nevertheless emphasize that SDG&E and SoCalGas should continue to be guided by G.O. 156. We appreciate the companies' voluntary efforts to be good corporate citizens.

**No order by the Commission is necessary for an agreement to exist between the parties as to management and supplier diversity goals, and it is within the discretion of SDG&E and SoCalGas management to honor the diversity commitments made to Greenlining.**

- b. The first sentence of the second paragraph in Section 15.1 Summary on page 73 is deleted, and replaced with the following language:

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<sup>12</sup> A separate application was filed by the Commission's Division of Ratepayer Advocates and The Utility Reform Network; D.09-06-052 denied rehearing of both applications. (At 3.)

**As discussed below, we find that corporate philanthropic contributions are generally a shareholder matter, not a ratepayer issue, and thus, are not issues for resolution in this ratesetting proceeding. In addition, we find that the diversity portion of the settlement has no quantifiable effect on test year or post test year revenue requirements in this proceeding. Accordingly, we do not adopt the proposed settlement agreement.**

- c. The Decision is modified to remove the first paragraph on page 4, and replace this paragraph with the following language:

This decision addresses two other proposed settlements as follows:

1. **Six Year Leadership Agreement with The Greenlining Institute - on Corporate Philanthropy and Diversity of SDG&E and SoCalGas, with The Greenlining Institute. The philanthropy portion of the settlement is outside the scope of the proceeding and beyond the Commission's authority to impose a lawful order on SDG&E and SoCalGas.** The diversity portion of the settlement has no quantifiable effect on test year or post test year revenue requirements. Accordingly, we reject this proposed settlement; and
2. ...

d. ...

- e. A footnote is inserted after the word "recommendations," on page 16, at the end of the third sentence of the above modification to Section 4.4 Reasonable in light of the Whole Record (ordering paragraph d). The footnote text reads as follows:

We recognize that SDG&E and SoCalGas reached a settlement with Greenlining Institute. We take no position as to the reasonableness, consistency with the law, or public interest value of this settlement. However, as more fully discussed in this decision, **we deny the settlement with Greenlining Institute because the philanthropy portion of the settlement is outside the scope of the proceeding and beyond the Commission's authority to impose a lawful order on SDG&E and SoCalGas, and the diversity portion of the settlement has no quantifiable effect on test year or post test year revenue requirements.**

f. ...

g. Findings of Fact 40 and 41 on page 94 are modified to read as follows:

40. The proposed settlement with Greenlining on diversity has no quantifiable effect on test year or post test year revenue requirements.

41. **No order by the Commission is necessary for an agreement to exist between the parties as to management and supplier diversity goals**, and it is within the discretion of SDG&E and SoCalGas management to honor the diversity commitments made to Greenlining.

h. Conclusions of Law 7, 8, 9, 10, and 15 on pages 99-100 are modified to read as follows:

7. The settlements, except for the settlement with Local 483, are reasonable in light of the whole record. We take no position as to the reasonableness, consistency with the law, or public interest value of the settlement with Greenlining.

8. The settlement with Local 483 is not reasonable when examined in the light of the whole record. We take no position as to the reasonableness, consistency with the law, or public interest value of the settlement with Greenlining.
  9. The settlements, excluding the settlement with Local 483, are consistent with the law, and do not contravene or compromise any statutory provision or Commission decision. We take no position as to the reasonableness, consistency with the law, or public interest value of the settlement with Greenlining.
  10. The settlements, except for the settlement with Local 483, are in the public interest. We take no position as to the reasonableness, consistency with the law, or public interest value of the settlement with Greenlining.
  15. The proposed settlement with Greenlining on diversity has no quantifiable effect on test year or post test year revenue requirements in this proceeding.
- i. The second and third paragraphs contained in Section 15.5 Funding of G.O. 156-Related Efforts on pages 76-77 are deleted and replaced with the following language:

**We do not adopt the Greenlining settlement on diversity**, instead, we emphasize that expenses included in the adopted Test Year 2008 revenue requirements settlements that either support WMDVBE activities, or are associated with workforce diversity, must be fully and only utilized as adopted and not subject to diversion or reallocation as might reasonably happen with other funding to meet the actual operational needs of SDG&E and SoCalGas to provide safe and reliable service to ratepayers.

We expect the companies to make every effort to competently staff at all times the full forecast of positions for WMDVBE activities and efforts in diversity. Diversity is good public policy and we believe it is good for SDG&E and SoCalGas. Otherwise, any such diversion will be investigated in the companies' next GRC.

- j. Finding of Fact 42 is modified to read as follows:
  - 42. Diversity is good public policy, therefore SDG&E and SoCalGas should competently staff at all times the full forecast of positions for WMDVBE activities and efforts in diversity.
- k. Conclusions of Law 24 is modified to read as follows:
  - 24. The Commission has the discretion and authority to require that expenses included in the adopted Test Year 2008 revenue requirements settlements that either support WMDVBE activities, or are associated with workforce diversity, must be fully and only utilized by SDG&E and SoCalGas as adopted.
- l. Ordering Paragraph 29 on page 107 is modified to read as follows:
  - 29. Expenses included in the adopted Test Year 2008 revenue requirements settlements that either support WMDVBE activities, or are associated with workforce diversity, must be fully and only utilized as adopted. Such allocation is not subject to diversion or reallocation as might reasonably happen with other funding to meet the actual operational needs of SDG&E and SoCalGas to provide safe and reliable service to ratepayers. Otherwise, any such diversion will be investigated in the companies' next GRC." (Emphasis added, remainder of Ordering Paragraph 29 omitted.)

We will not compensate Greenlining for its asserted efforts on philanthropy and diversity. D.08-07-046, as modified by D.09-06-052, held that Greenlining's proposals on diversity and philanthropy were beyond the scope of the proceeding and no order was necessary by the Commission for SDG&E and SoCalGas to honor any voluntary commitments in the agreement with Greenlining. This is consistent with all rulings throughout the proceeding which consistently found shareholder philanthropy outside the scope of the proceeding and Greenlining's diversity objectives had no quantifiable effect on test year or post test year revenue requirements and thus did not contribute to the ratesetting proceeding. The ordering language in the decision ensured that funding for WMDVBE and diversity activities would not be diverted to other business functions accomplishing a practical, quantifiable, and meaningful commitment to the goals and objectives of General Order (G.O.) 156.

The decision, as modified, meaningfully enforces the commitment to ratepayer funding for WMDVBE programs in a manner within the scope of a GRC proceeding. A review of the decision shows that this language was included in the decision as a specific alternative to Greenlining's proposal:

We do not adopt the Greenlining settlement on diversity, instead, we emphasize that expenses included in the adopted Test Year 2008 revenue requirements settlements that either support WMDVBE activities, or are associated with workforce diversity, must be fully and only utilized as adopted. (D.09-06-052 Ordering Paragraph 2.i., emphasis added.)

Greenlining was an opponent of office closures and the decision did impose a moratorium with guidelines for future closures and the decision included a discussion on the need for business offices. Greenlining made a substantial contribution on the issue of office closures.

## 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.

In ALJ Long's March 13, 2007, ruling, he directed that eligible intervenors "must avoid duplication of efforts between themselves and other parties" and "must include in their requests for intervenor compensation a showing and accounting reflecting that the participation was efficiently coordinated with the participation of any other party with similar interests."

Greenlining provided in its NOI only very general statements regarding its intended participation. Greenlining stated that it anticipated significant costs (\$218,625) to participate in this proceeding, because of its expectation that it would be fully litigated. When contrasting Greenlining's expenses with other intervenors, it was noted that it expected to incur only modest expenses for hours for consultants (25 hours), compared to its forecast of hours for counsel (700 hours). In ALJ Long's ruling of March 13, 2007, Greenlining (like all other intervenors) was advised to "rigorously control its costs because the consumers the intervenors purport to represent ultimately pay intervenor compensation."<sup>13</sup>

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<sup>13</sup> Administrative Law Judge's Ruling Finding Utility Consumers' Action Network and The Greenlining Institute Eligible to Claim Compensation of March 13, 2007 in A.06-12-009 at 6.

Greenlining submits that it was the only group to intervene on behalf of low-income and minority ratepayers in Sempra's service territory and was the only intervenor to raise issues regarding management, workforce diversity, and corporate philanthropy.

Regarding contributions by other parties, we agree with Greenlining that in a proceeding involving multiple participants, it is virtually impossible to completely avoid some duplication of the work of other parties. Greenlining states that it took all reasonable steps to keep duplication to a minimum and to ensure that its work served to supplement, complement, or contribute to the showing of other parties. We affirm Greenlining's assessment that it made concerted efforts to avoid duplication.

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.

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

Greenlining requested \$429,213.01 for its participation in this proceeding. Included in the request was the following breakdown:

## REQUESTED HOURLY BILLING SUMMARY

<b>Attorney/Advocate</b>	<b>Year</b>	<b>Rate</b>	<b>Hours Billed</b>	<b>Total Fees \$</b>
Robert Gnaizda	2006	\$505	17.9	9,039.50
Robert Gnaizda	2007	\$520	382.0	198,640.00
Robert Gnaizda	2008	\$540	45.8	24,732.00
<b>Gnaizda</b>				<b>\$232,411.50</b>
Thalia Gonzalez	2006	\$195	17.0 <sup>14</sup>	3,315.00
Thalia Gonzalez	2007	\$205	453.2	92,906.00
Thalia Gonzalez	2008	\$215	51.5 <sup>15</sup>	11,072.50
<b>Gonzalez</b>				<b>\$107,293.50</b>
Jessie Raskin	2008	\$190	83.0 <sup>16</sup>	15,770.00
<b>Raskin</b>				<b>\$15,770.00</b>
Bobak Roshan	2007	\$110	161.0	17,710.00
<b>Roshan</b>				<b>\$17,710.00</b>
Stephanie Chen	2007	\$110	104.3	11,473.00
<b>Chen</b>				<b>\$11,473.00</b>
John Gamboa	2007	\$450	55.5	24,975.00
<b>Gamboa</b>				<b>\$24,975.00</b>
Orson Aguilar	2007	\$250	11.1	2,775.00
<b>Aguilar</b>				<b>\$2,775.00</b>
Michael Phillips	2007	\$390	43.0	16,770.00
<b>Phillips</b>				<b>\$16,770.00</b>
<b>Subtotal</b>				<b>\$429,178.00</b>
<b>Direct Expenses</b>				<b>\$35.01</b>
<b>Grand Total</b>				<b>\$429,213.01<sup>17</sup></b>

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<sup>14</sup> See footnote 17.

<sup>15</sup> See footnote 17.

<sup>16</sup> See footnote 17.

<sup>17</sup> In its claim, Greenlining fails to separate the hours spent preparing the NOI and the Request for Compensation which are compensated at ½ rate. Instead, Greenlining provides a footnote that the hours listed for the individuals involved in performing this type of work represent only ½ of the actual hours spent working on these documents. Apply this reasoning, the hours it claimed it worked on these documents would total 41.2. We consider this amount to be unreasonably excessive and discount these hours by 50% to equal 20.6 hours and separate the hours for Gonzalez (8.6 hours) and Raskin

*Footnote continued on next page*

In general, the components of this request must constitute reasonable fees and costs of the customer’s preparation for and participation in a proceeding that resulted in a substantial contribution. The issues we consider to determine reasonableness are discussed below.

**6.1. Reasonable Hourly Rates**

In determining compensation, we take into consideration the market rates for similar services from comparably qualified persons. Several of Greenlining’s participants have existing rates approved by the Commission for work performed in the same calendar years. We use the same rates for those individuals without further discussion.

<b>Previously Approved Rates - Requested by Greenlining</b>			
<b>Name</b>	<b>Year</b>	<b>Hourly Rate</b>	<b>Justification</b>
Robert Gnaizda	2006	\$505	D0707017
	2007	\$520	D0711013
	2008	\$535	D0906016
Bobak Roshan	2007	\$110	D0812057
Stephanie Chen	2007	\$110	D0812057

Greenlining requests hourly rates of \$195 in 2006 and \$205 in 2007 for the work of Thalia Gonzalez, Greenlining’s senior legal counsel, who has 3-4 years of legal experience. Gonzalez has previously established rates before the Commission of \$165 in 2006 in D.07-11-013 and \$195 in 2007 in D.08-05-015. We apply the same rates here. Greenlining requests an hourly rate of \$215 for her work in 2008, but provides no justification for this request. Absent any

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(12 hours) as being a more reasonable amount for compensation. We remove these hours from Greenlining’s totals and compensate at ½ hourly rate.

justification, we adopt a rate of \$200 for 2008 work, equal to the 2007 rate of \$195 plus a 3% Cost of Living Allowance (COLA) increase.

Greenlining requests an hourly rate of \$190 for the 2008 work of Jesse Raskin, an attorney with 1 year of experience before the Commission. Raskin had a 2007 rate approval of \$100 in D.08-05-015 for work he performed as a law clerk. We adopted a rate of \$180 for work performed in 2008 in D.09-11-031 (in A.07-11-011), and use the same rate here.

Greenlining requests an hourly rate of \$450 for Gamboa's work as an expert in 2007. We have previously approved a rate of \$380 for his 2007 work in D.07-11-013 and apply the same rate here.

Greenlining requests an hourly rate of \$250 for Aguilar's work in 2007 as an advocate. Aguilar has over 10 years of experience as an advocate for California's minority and low-income ratepayers, but has no previous set rate for appearance before the Commission. We adopt a more reasonable rate of \$230, which is within the mid-upper range of \$150-\$260 approved for experts with 7-12 years of experience.

Greenlining requests an hourly rate of \$390 for Phillips's work in 2007 as an expert, but provides no other justification for this request. Phillips has a previously established rate of \$345 for his 2006 work before the Commission in D.07-06-020. Absent any justification, we adopt a rate of \$355 for his 2007 work, equal to the 2006 rate of \$345 plus a 3% COLA increase.

### ADOPTED HOURLY BILLING RATES

Attorney/Advocate	Year	Rate Proposed	Adopted Rate
Robert Gnaizda	2006	\$505	\$505
Robert Gnaizda	2007	\$520	\$520
Robert Gnaizda	2008	\$540	\$535
Thalia Gonzalez	2006	\$195	\$165
Thalia Gonzalez	2007	\$205	\$195
Thalia Gonzalez	2008	\$215	\$200
Jessie Raskin	2008	\$190	\$180
Bobak Roshan	2007	\$110	\$110
Stephanie Chen	2007	\$110	\$110
John Gamboa	2007	\$450	\$380
Orson Aguilar	2007	\$250	\$230
Michael Phillips	2007	\$390	\$355

#### **6.2. The Hours and Costs Necessary for a Substantial Contribution**

We first assess whether the hours claimed for the customer's efforts that resulted in substantial contributions to Commission decisions are reasonable by determining to what degree the hours and costs are related to the work performed and necessary for the substantial contribution.

Greenlining has documented its claim by presenting a daily breakdown of the hours for its attorneys with a brief description of each activity, and a list of its consultant fees which were billed monthly. The detailed explanation of the hours Greenlining spent on the proceeding is not consistent with the scope and the complexity of the issues considered in the proceeding. The hourly breakdown does not reasonably support the claim for total hours. For example,

Greenlining fails to present any total for individual activities thus making it very difficult to determine the reasonableness of the request for compensation for any individual issue where Greenlining may have made a substantial contribution.

It is clear from Greenlining's records that it intended even before the applications were filed by SDG&E and SoCalGas to engage in a "settlement." Time records for Gnaizda show 14.8 hours (at a billing rate of \$505/hr totaling \$7,474) in July and August 2006 before the application was filed in December 2006. Our policy has never permitted recovery of costs incurred before applicants file, absent certain specific circumstances,<sup>18</sup> that are not present here. Further, Greenlining focused only on its proposed settlement and did not consider most issues which were established to be within the scope of the proceeding. Greenlining's interests in office closures were not a primary focus of its effort in this proceeding.

We find, as already discussed, Greenlining is not eligible for compensation for any aspect of the *Six-Year Leadership Agreement* on philanthropy and diversity because D.08-07-046, as modified by D.09-06-052, held that Greenlining's proposals on diversity and philanthropy were beyond the scope of the proceeding and no order was necessary by the Commission for SDG&E and SoCalGas to honor any voluntary commitment in the agreement to Greenlining.

We find that Greenlining is eligible for compensation on the issue of business office closures. Although the issue is closely linked to questions raised by Disability Rights Advocates on accessibility, we will not narrowly parse the compensation. Turning to Greenlining's request, we can identify only one

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<sup>18</sup> See, for example, D.04-08-025 at 14, D.05-05-046 at 7, or D.06-04-065 analysis at 17-20.

instance where Greenlining cites an example of working on the issue: 6 hours for Gonzalez on “08/12/07 Research and preparation with S. Chen for P. Petersilia examination; review of PG&E precedent re: counter closure issues 6.0 [hours].” (Request at 30.<sup>19</sup>) We note, however, that Chen records no time for any activity on August 12, 2007 although there are hours before and after the 12<sup>th</sup> which might apply to the same issue. Thus we find Greenlining’s records to be unreliable and inaccurate. Nevertheless, we will allow the following hours:

Gonzalez	Reviewing relevant testimony	18 hours <sup>20</sup>
	Preparing for hearings	6 hours (08/12/07)
	Hearing	4 hours
	Brief& Reply	8 hours
Chen	Paralegal Support – general	20 hours
Gnaizda	Policy/Supervision	2 hours

**Compensation for Office Closure Issue**

Gonzalez - 2007	36 hr @ \$195/hr	\$7,020
Chen - 2007	20 hr @ \$110/hr	2,200
Gnaizda - 2007	2 hr @ \$520/hr	1,040
Total		\$10,260

<sup>19</sup> Gonzalez’s time records incorrectly identify several days as 2008 when they were more likely to be 2007. (Request at 29–20.)

<sup>20</sup> Gonzalez (and the other Greenlining personnel) failed to track time by issue and this allowance is a generous assumption that some other amount of time would have been spent reading the application and testimony. Additionally, this minor issue of office closure would not have required extensive time to brief. Finally, we allow 2 hours for a very expensive senior attorney to review the policy position and provide some supervision over Gonzalez. Absent adequate time records by activity, we could withhold any compensation beyond the 6 hours identified for Gonzalez on August 12, 2007.

### **6.3. Direct Expenses**

Greenlining requests reimbursement of \$35.01 for postage costs. We find this amount to be reasonable and commensurate with the work performed and approve these costs.

### **6.4 Productivity**

The costs of a customer's participation should bear a reasonable relationship to the benefits realized through its participation. To achieve this goal, D.98-04-059 directed customers to demonstrate productivity by assigning a reasonable dollar value to the benefits of their participation to ratepayers.<sup>21</sup>

As set forth in the disallowances we make to this claim, we do not affirm that the majority of Greenlining's efforts were productive, except for the relatively minimal amount of activity it spent on the issue of branch office closure.

## **7. Award**

As set forth in the table below, we award Greenlining \$12,186.01.

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<sup>21</sup> D.98-04-059 at 34-35.

**CALCULATION OF FINAL AWARD**

<b>Attorney/Advocate</b>	<b>Year</b>	<b>Rate</b>	<b>Hours Billed</b>	<b>Total Fees \$</b>
Robert Gnaizda	2007	\$520	2.0	1,040
Thalia Gonzalez	2007	\$195	36.0	7,020
Stephanie Chen	2007	\$110	20.0	2,200
<b>Subtotal Hourly Compensation</b>				<b>\$10,260</b>

<b>Preparation of NOI and Compensation Request</b>	
2006-Gonzalez 2.8 hrs @ \$ 82.50 = \$ 231.00	
2008-Gonzalez 5.8 hrs @ \$100.00 = \$ 580.00	
2008-Raskin 12.0 hrs @ \$ 90.00 = \$1,080.00	
<b>Subtotal NOI and Intervenor Compensation Claim</b>	<b>\$1,891.00</b>
<b>Expenses</b>	<b>\$35.01</b>
<b>GRAND TOTAL OF AWARD</b>	<b>\$12,186.01</b>

We direct SDG&E and SoCalGas to pay Greenlining \$12,186.01, as required under § 1807.

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 November 24, 2008, the 75<sup>th</sup> day after Greenlining 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. Greenlining’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.

## **8. Comments on Proposed Decision**

The proposed decision of the ALJ in this matter was mailed to the parties in accordance with Pub. Util. Code § 311 and comments were allowed under Rule 14.3. No comments were filed.

## **9. Assignment of Proceeding**

John A. Bohn is the assigned Commissioner, and Douglas M. Long is the assigned ALJ in this proceeding.

## **Findings of Fact**

1. Greenlining has satisfied all the procedural requirements necessary to claim compensation in this proceeding. Greenlining has made a substantial contribution to D.08-07-046 only on the issue of office closures.

2. Greenlining did not make any substantial contribution on philanthropy and diversity issues which were beyond the scope of the proceeding and where no order was necessary by the Commission.

3. Greenlining requested hourly rates for its representatives, as adjusted herein, that are reasonable when compared to the market rates for persons with similar training and experience.

4. Greenlining's direct expenses are reasonable and commensurate with the work performed.

5. The total of the reasonable compensation is \$12,186.01.

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

## **Conclusions of Law**

1. Greenlining 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.08-07-046.

2. Greenlining should be awarded \$12,186.01 for its contribution to D.08-07-046.

3. This order should be effective today so that Greenlining may be compensated without further delay.

4. These proceedings should be closed.

## **O R D E R**

**IT IS ORDERED** that:

1. The Greenlining Institute is awarded \$12,186.01 as compensation for its substantial contributions to Decision 08-07-046.

2. Within 30 days of the effective date of this decision, San Diego Gas & Electric Company and Southern California Gas Company shall each pay The Greenlining Institute 50% of this award.

3. 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 November 24, 2008, the 75<sup>th</sup> day after the filing date of The Greenlining Institute's request for compensation, and continuing until full payment is made.

4. The comment period for today's decision is not waived.

5. Application (A.) 06-12-009, A.06-12-010, and Investigation 07-12-013 are closed.

This order is effective today.

Dated December 17, 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**

<b>Compensation Decision:</b>	D0912043	<b>Modifies Decision?</b> N
<b>Contribution Decision(s):</b>	D0807046	
<b>Proceeding(s):</b>	A0612009, A0612010, and I0702013	
<b>Author:</b>	ALJ Long	
<b>Payer(s):</b>	San Diego Gas & Electric Company and Southern California Gas Company	

**Intervenor Information**

<b>Intervenor</b>	<b>Claim Date</b>	<b>Amount Requested</b>	<b>Amount Awarded</b>	<b>Multiplier?</b>	<b>Reason Change/Disallowance</b>
The Greenlining Institute	09-10-08	\$429,213.01	\$12,186.01	No	adjusted hourly rates, lack of substantial contribution

**Advocate Information**

<b>First Name</b>	<b>Last Name</b>	<b>Type</b>	<b>Intervenor</b>	<b>Hourly Fee Requested</b>	<b>Year Hourly Fee Requested</b>	<b>Hourly Fee Adopted</b>
Robert	Gnaizda	Attorney	The Greenlining Institute	\$505 \$520 \$540	2006 2007 2008	\$505 \$520 \$535
Thalia	Gonzalez	Attorney	The Greenlining Institute	\$195 \$205 \$215	2006 2007 2008	\$165 \$195 \$200
Jesse	Raskin	Attorney	The Greenlining Institute	\$190	2008	\$180
Bobak	Roshan	Law clerk	The Greenlining Institute	\$110	2007	\$110
Stephanie	Chan	Law clerk	The Greenlining Institute	\$110	2007	\$110
John	Gamboa	Expert	The Greenlining Institute	\$450	2007	\$380
Orson	Aguilar	Advocate	The Greenlining Institute	\$250	2007	\$230
Michael	Phillips	Expert	The Greenlining Institute	\$390	2007	\$355

**(END OF APPENDIX)**