

Decision 10-02-009 February 4, 2010

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Implement the Commission's Procurement Incentive Framework and to Examine the Integration of Greenhouse Gas Emissions Standards into Procurement Policies.

Rulemaking 06-04-009
(Filed April 13, 2006)

**DECISION GRANTING INTERVENOR COMPENSATION TO
COMMUNITY ENVIRONMENTAL COUNCIL FOR SUBSTANTIAL
CONTRIBUTIONS TO DECISION 08-10-037**

1. Summary

This decision awards Community Environmental Council \$9,563.00 for its substantial contributions to Decision 08-10-037. This award represents a decrease of \$3,150.00 or 24.8% from the amount requested due to excessive hours and unproductive efforts. Today's award payment will be allocated to the affected utilities. This proceeding remains open to address a pending petition for modification.

2. Background

This rulemaking was originally initiated to implement an emissions performance standard and a load-based emission cap. The rulemaking was subsequently modified several times to make it the venue for implementing Senate Bill (SB) 1368 and Assembly Bill (AB) 32.

In Phase 1 of the proceeding the Commission adopted an interim Greenhouse Gas (GHG) Emissions Performance Standard for new long-term financial commitments to baseload generation, consistent with the requirements and definitions of SB 1368 (Stats. 2006, ch. 598).

Phase 2 of the Rulemaking (R.) 06-04-009 served as the forum for considering a GHG emissions cap as the cornerstone of the procurement incentive framework adopted in Decision (D.) 06-02-032 in R.04-04-003. The Phase 2 Scoping Memo provided that the proceeding would be used for the California Public Utilities Commission (Commission) to provide, in collaboration with the California Energy Commission, recommendations to the California Air Resources Board (CARB). Pursuant to the Scoping Memo, Phase 2 would focus on development of guidelines that CARB can consider as it develops a GHG emissions cap for the California economy, including the electricity and natural gas sectors. (Scoping Memo and Ruling of February 2, 2007, at 2 and 8).

D.07-09-017, D.08-03-018, and D.08-10-037 addressed Phase 2 issues. In D.08-10-037 the Commission made recommendations concerning emissions reduction strategies and the allocation of allowances in a cap-and-trade system. We note that Community Environmental Council (CE Council) was awarded intervenor compensation for its contributions to D.07-09-017¹ and D.08-03-018.²

3. Requirements for Awards of Compensation

The intervenor compensation program set forth in Pub. Util. Code §§ 1801-1812,³ 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.

¹ See D.09-01-031 awarding the compensation.

² See D.09-01-033 awarding the compensation.

³ All subsequent statutory references are to the Public Utilities Code unless otherwise indicated.

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. To seek a compensation award, the intervenor must file and serve a request for a compensation 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 1-4 above are combined and a separate discussion of Items 5-6 follows.

3.1. Preliminary Procedural Issues

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

In a proceeding in which a PHC is held, the intervenor must file and serve its NOI between the date the proceeding was initiated until 30 days after the

PHC is held. (Rule 17.1(a)(1).) The Phase 1 PHC was held on May 10, 2006. The PHC on Phase 2 issues was held on November 28, 2006. CE Council filed its NOI on December 20, 2006. CE Council explained that it became involved late in Phase 1 of the proceeding due to the passage of AB 32 and SB 1368, and because of new information it obtained regarding GHG emissions from liquefied natural gas imports. Administrative Law Judge (ALJ) TerKeurst's ruling of April 6, 2007 accepted CE Council's explanations as to the timeliness of the NOI and considered that CE Council was eligible to file NOI related to both phases of the proceeding. In the NOI the intervenor asserted significant financial hardship on the rebuttable presumption theory. ALJ TerKeurst's ruling of April 6, 2007 extended the previous finding of significant financial hardship to this proceeding, pursuant to the provisions of § 1804(b)(1). (Ruling of April 6, 2007 at 4-5).

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).) The ruling of April 6, 2007, found that CE Council is a customer within the meaning of § 1802(b)(1)(C). The ruling found CE Council eligible to claim intervenor compensation in this proceeding.

Regarding the timeliness of the request for compensation, CE Council filed its request for compensation on December 22, 2008, within 60 days of D.08-10-037 being issued.⁴

We affirm the ALJ's ruling of April 6, 2007, and find that CE Council has satisfied all the procedural requirements necessary to request compensation.

4. Substantial Contribution

In evaluating whether a customer made a substantial contribution to a proceeding, we look at several things. First, we look at whether the Commission adopted one or more of the factual or legal contentions, or specific policy or procedural recommendations put forward by the customer. (§ 1802(i).) Second, if the customer's contentions or recommendations paralleled those of another party, we look at whether the customer's participation unnecessarily duplicated 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.⁵

⁴ D.08-10-037 issued on October 22, 2008.

⁵ D.98-04-059, 79 CPUC2d 628 at 653.

With this guidance in mind, we turn to the CE Council's claimed contributions to D.08-10-037.

CE Council claims that although it was not successful on every argument that it presented, it made substantial contributions to D.08-10-037 because its position prevailed on key issues and the decision reflects the significant impact of the CE Council's advocacy. CE Council indicates that it focused on areas where it had expertise: legal issues (Commerce Clause, Federal Power Act, etc.), Renewables Portfolio Standard modeling and assumptions, and natural gas issues as they relate to climate change. We note that during the subject stage of the proceeding, CE Council provided no comments on the legal issues.

D.08-10-037 adopted further recommendations to CARB regarding GHG regulations for the electricity and natural gas sectors, including information about the potential reductions and cost estimates associated with different GHG policy scenarios, and closed the proceeding. It also recommended a structure for allowance distributions to the electricity sector under a cap-and-trade system, and provided additional recommendations to CARB on cap-and-trade design and flexible compliance options. The record for D.08-10-037 was developed through Commission workshops and parties' comments.

CE Council's comments filed in the proceeding leading to D.08-10-037 focused on Energy and Environmental Economics (E3) modeling issues. CE Council asserted that the E3 calculator could be improved in many ways through better assumptions and inputs. CE Council claimed that the natural gas and coal prices used in the E3 scenarios were too low. CE Council also created a preferred set of input assumptions for the Reference Case. D.08-10-037 mentions CE Council's comments on two occasions (D.08-10-037 at 72 and 78). In connection with its support of a 33% renewables mandate, CE Council disagreed

with the cost assumptions used in the E3 model. CE Council asserted that the model overestimated the cost of achieving the 33% renewables target by overestimating the cost trajectories of renewable technology, underestimating the costs of natural gas, and ignoring the potential risk of natural gas price volatility. D.08-10-037 mentions CE Council's opinion on this matter (D.08-10-037 at 91).

D.08-10-037 disagrees with parties' (including CE Council) criticisms of the E3 model results. The decision finds that E3's analysis of estimating costs from reducing GHG emissions was reasonable for the purposes of informing the Commission's recommendations to CARB. (D.08-10-037, Finding of Fact 15 at 286). CE Council's critical approach to the E3 modeling did not prevail; however, we find that CE Council's comments, requested by the Commission, provided useful information that was considered by the Commission in reaching its decision in this area.

CE Council further contributed by supporting a proposed 33% renewables mandate. With several other parties, CE Council asserted that a higher renewables mandate would mitigate consumers' exposure to natural gas price risk likely to come as demand for natural gas intensifies and supply diminishes. D.08-10-037 mentions CE Council's argument (D.08-10-037 at 90). We find that CE Council's support of a 33% renewables mandate provided certain contributions to D.08-10-037.

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.

Regarding contributions by other parties, we agree with CE Council that in a proceeding involving multiple participants, it is virtually impossible to completely avoid some duplication of the work of other parties. We find, however, that CE Council took reasonable steps to keep duplication to a minimum and to ensure that its work served to supplement, complement, or contribute to the showing of the other active parties in this proceeding.

(§ 1802.5.) Given the limited scope of CE Council’s contributions focusing on the E3 modeling, we find that no unnecessary duplication of efforts took place.

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

CE Council requests \$12,713.00 for its participation in this proceeding, as follows:

	<u>Work On Proceeding</u>			
<u>Attorney/Staff</u>	<u>Year</u>	<u>Hours</u>	<u>Hourly Rate</u>	<u>Total</u>
Tamlyn Hunt	2008	38.00	\$300	\$11,400.00
Work on Proceeding Total:				\$11,400.00

	<u>Preparation Of NOI and Compensation Request⁶</u>			
<u>Attorney/Staff</u>	<u>Year</u>	<u>Hours</u>	<u>Hourly Rate</u>	<u>Total</u>
Tamlyn Hunt	2008	8.75	\$150	\$1,313.00
Intervenor Compensation Matters Total:				\$1,313.00
Total Requested Compensation:				\$12,713.00

⁶ Travel and intervenor compensation document preparation time is compensated at 1/2 the professional hourly rate.

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.

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 by CE Council. 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.

6.1. Hours and Costs Related to and Necessary for Substantial Contributions

CE Council documented its claimed hours by presenting a daily breakdown of the hours of its attorneys, accompanied by a brief description of each activity. In general, the hourly breakdown reasonably supports the claim for total hours but we have several concerns with information reflected in CE Council's timesheets.

CE Council's timesheets report its participation in the April 21, 2008 workshop and preparation of four sets of comments: June 2, 2008 comments on modeling issues, reply comments on modeling issues, October 2, 2008 comments on the proposed decision leading to D.08-10-037, and October 7, 2008 reply comments on the proposed decision.

The June 2, 2008 comments on modeling issues, as we stated in Section 4, provided contributions to D.08-10-037; however, CE Council's contributions were limited to two relatively minor issues. Based on our analysis, we consider

the time spent on the comments (19.5 hours) excessive. To match the comments' actual contributions to the decision with the amount of time that we consider sufficient to provide contributions of the same value, we reduce the time by 5.5 hours.

We note that CE Council claims 1.5 hours for the reply comments on modeling issues; however, we find no record of these comments having been filed, which constitutes a non-productive effort. Accordingly, we remove 1.5 hours from the compensation.

CE Council requests 9.5 hours for preparation of its October 2, 2008 comments on the proposed decision leading to D.08-10-037. The comments contain very little substantive analysis and we find the amount of the time to prepare the comments excessive. To achieve a more appropriate result, we reduce it by 3.5 hours. CE Council's time for the reply comments on the proposed decision seems appropriate, considering the large volume of the opening comments a party needed to read in order to produce its reply comments.

6.2. Intervenor Hourly Rates

CE Council requests an hourly rate of \$300 for its representative Tamlyn Hunt's work in 2008. We adopted this rate in D.09-08-022 and we affirm it here.

6.3. Direct Expenses

CE Council does not request direct expenses.

7. Productivity

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

(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.

In a policy proceeding concerned mostly with environmental issues it is difficult to estimate monetary benefits of an intervenor’s participation. However, the intervenor provided sufficient information for our findings.

We find that the costs of CE Council’s participation, with the reductions we have made in Section 6.1 of the decision, bear a reasonable relationship to its contributions, and that its overall participation was productive. We conclude that the overall benefits of CE Council’s participation exceeded the costs of its participation.

8. Award

As set forth in the table below, we award CE Council \$9,563.00.

<u>Work on Proceeding</u>				
<u>Attorney/Staff</u>	<u>Year</u>	<u>Hours</u>	<u>Hourly Rate</u>	<u>Total</u>
Tamlyn Hunt	2008	27.50	\$300	\$8,250.00
Work on Proceeding Total:				\$8,250.00

<u>Preparation of NOI and Compensation Request</u>				
<u>Attorney/Staff</u>	<u>Year</u>	<u>Hours</u>	<u>Hourly Rate</u>	<u>Total</u>
Tamlyn Hunt	2008	8.75	\$150	\$1,312.50
NOI and Compensation Request Total:				\$1,312.50

<u>CALCULATION OF FINAL AWARD</u>	
Work on Proceeding	\$8,250.00
NOI and Compensation Request Preparation	\$1,312.50
TOTAL AWARD:	\$9,563.00

Pursuant to § 1807, we order Pacific Gas and Electric Company, Southern California Edison Company, Southern California Gas Company, and San Diego Gas & Electric Company to pay this award. We direct these utilities to allocate payment responsibility among themselves based upon their

California-jurisdictional gas and electric revenues for the 2008 calendar year, to reflect the year in which the proceeding leading to D.08-10-037 was primarily litigated. Consistent with previous Commission decisions, we order that interest be paid on the award amount (at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release H.15) commencing on March 7, 2009, the 75th day after CE Council filed its compensation requests, 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. CE Council's records should identify specific issues for which it requested compensation, the actual time spent by each employee or consultant, the applicable hourly rates, fees paid to consultants, and any other costs for which compensation was claimed. The records pertaining to an award of compensation shall be retained for at least three years from the date of the final decision making the award.

9. Waiver of Comment Period

This is an intervenor compensation matter. Accordingly, as provided by Rule 14.6(c)(6) of our Rules of Practice and Procedure, we waive the otherwise applicable 30-day comment period for this decision.

10. Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner, and Charlotte F. TerKeurst (assigned to Phase 2) is the assigned ALJ in this proceeding.

Findings of Fact

1. CE Council has satisfied all the procedural requirements necessary to claim compensation in this proceeding.

2. CE Council made a substantial contribution to D.08-10-037 as described herein.
3. CE Council requested hourly rates for its representatives that are reasonable when compared to the market rates for persons with similar training and experience.
4. The total of the CE Council's reasonable compensation is \$9,563.00.
5. The Appendix to this decision summarizes today's awards.

Conclusions of Law

1. CE Council 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 Phase 2 of this proceeding in making substantial contributions to D.08-10-037.
2. CE Council should be awarded \$9,563.00 for its contributions to D.08-10-037.
3. This order should be effective today so that CE Council may be compensated without further delay.
4. This proceeding should remain open.

O R D E R

IT IS ORDERED that:

1. Community Environmental Council is awarded \$9,563.00 as compensation for its substantial contributions to Decision 08-10-037.
2. Within 30 days of the effective date of this decision, Pacific Gas and Electric Company, Southern California Edison Company, Southern California Gas Company, and San Diego Gas & Electric Company shall pay Community Environmental Council the utilities' respective shares of the award. We direct

Pacific Gas and Electric Company, Southern California Edison Company, Southern California Gas Company, and San Diego Gas & Electric Company to allocate payment responsibility among themselves, based on their California-jurisdictional gas and electric revenues for the 2008 calendar year, to reflect the year in which the proceeding leading to Decision 08-10-037 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 March 7, 2009, the 75th day after the filing date of Community Environmental Council's requests for compensation, and continuing until full payment is made.

3. This proceeding remains open to address a pending petition for modification.

This order is effective today.

Dated February 4, 2010, at San Francisco, California.

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
TIMOTHY ALAN SIMON
NANCY E. RYAN
Commissioners

APPENDIX

Compensation Decision Summary Information

Compensation Decision:	D1002009	Modifies Decision? No
Contribution Decision(s):	D0810037	
Proceeding(s):	R0604009	
Author:	ALJ TerKeurst	
Payer(s):	PG&E, SDG&E, SoCalGas, SCE	

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
Community Environmental Council	12/22/08	\$12,711.00	\$9,563.00	No	Excessive hours as they relate to the actual contributions; unproductive effort.

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Tamlyn	Hunt	Advocate	Community Environmental Council	\$300	2008	\$300

(END OF APPENDIX)