

Decision 10-05-010 May 6, 2010

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Southern California Edison Company (U338E)
for Authority to Implement and Recover in Rates the Cost of its
Proposed Solar Photovoltaic Program.

Application 08-03-015
(Filed March 27, 2008)

**DECISION GRANTING REQUEST OF THE GREENLINING INSTITUTE FOR
INTERVENOR COMPENSATION FOR SUBSTANTIAL CONTRIBUTIONS TO
DECISION 09-06-049**

Claimant: The Greenlining Institute	For contribution to D.09-06-049
Claimed (\$): \$75,321.01	Awarded (\$): \$48,626.61
Assigned Commissioner: Peevey	Assigned ALJ: Ebke
Claim Filed: August 14, 2009	

PART I: PROCEDURAL ISSUES

A. Brief Description of Decision:	Addresses a solar photovoltaic program for Southern California Edison Company (SCE).
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B. Claimant must satisfy intervenor compensation requirements set forth in Public Utilities Code Sections 1801-1812:

	Claimant	CPUC Verified
Timely filing of notice of intent to claim compensation (§ 1804(a)):		
1. Date of Prehearing Conference:	7/10/2008	Correct
2. Other Specified Date for NOI:	N/A	
3. Date NOI Filed:	8/11/2008	Correct
4. Was the notice of intent timely filed?		Yes
Showing of customer or customer-related status (§ 1802(b)):		
5. Based on ALJ ruling issued in proceeding number:	A.08-03-015	Correct
6. Date of ALJ ruling:	9/12/2008	Correct
7. Based on another CPUC determination (specify):		

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.08-03-015	Correct
10. Date of ALJ ruling:	9/12/2008	Correct
11. Based on another CPUC determination (specify):		
12. Has the claimant demonstrated significant financial hardship?		Yes
Timely request for compensation (§ 1804(c)):		
13. Identify Final Decision	D.09-06-049	Correct
14. Date of Issuance of Final Decision:	6/18/2009	6/22/2009
15. File date of compensation request:	8/14/2009	Correct
16. Was the request for compensation timely?		Yes

PART II: SUBSTANTIAL CONTRIBUTION

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

Contribution	Citation to Decision or Record	Showing Accepted by CPUC
1. Recommended that the Commission assess the SPVP’s ¹ cost-effectiveness annually (see Opening Brief, p. 3).	D.09-06-049, pp. 48-49 – requiring annual reporting on various elements of cost-effectiveness, including output, LCOE, ² capital and O&M ³ costs, among other things	Yes.
2. Recommended that the Commission apply a performance standard to the SPVP (see Opening Brief, pp. 4-5).	The ALJ’s Proposed Decision, Rev. 2, pp. 45-46, adopted an annual performance standard, upon the recommendation of Greenlining and other parties. D.09-06-049, pp. 48-49 – requires reporting on performance, including output and costs. While not a “standard” per se, regular assessment of performance constitutes partial adoption of Greenlining’s recommendation. Additionally, the performance standard was highly contested, rendering Greenlining’s contribution, among others, substantial with respect to the proceeding.	Yes.

¹ Solar photovoltaic program.

² Levelized Cost of Electricity.

³ Operations and maintenance.

4. Argued that comparison of the SPVP to CSI ⁴ is irrelevant (see Opening Brief, p. 6).	D.09-06-049, p. 31-33 – comparison to CSI is not reasonable	Yes.
5. Argued that SCE should not receive CSI credit for SPVP installations (see Opening Brief, pp. 6-7).	D.09-06-049, pp. 43-44 – denying SCE CSI credit for SPVP installations	Yes.
6. Recommended that the program be split 50-50 between UOG ⁵ and IPP ⁶ (see Opening Comments on ALJ’s Proposed Decision, p. 8-9).	D.09-06-049, pp. 16, 36-37 – splitting the project 50-50 between UOG and IPP (also ALJ’s Proposed Decision, Rev. 2, pp. 35-36)	Yes.
7. Recommended, along with other parties, that the IPP side of the program be subject to a cost cap (see Reply Comments on ALJ’s Proposed Decision, p. 4).	D.09-06-049, pp. 39-40 – capping IPP bids at no greater than SCE’s LCOE	Yes.

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

	As stated by Claimant	CPUC Verified
a. Was DRA a party to the proceeding? (Y/N)	Y	Correct
b. Were there other parties to the proceeding? (Y/N)	Y	Correct
c. If so, provide name of other parties: First Solar, Coalition of California Utility Employees, The Utility Reform Network, Recurrent Energy, Independent Energy Producers Assn., Solar Alliance, Californians for Renewable Energy, others that were not active/less active participants		Correct

⁴ California Solar Initiative.

⁵ Utility-owned generation.

⁶ Independent power producer.

<p>d. Claimant’s description of how it coordinated with DRA and other parties to avoid duplication or how claimant’s participation supplemented, complemented, or contributed to that of another party:</p> <p>Greenlining differs from other ratepayer advocates in that its constituency is communities of color and low income communities, rather than all ratepayers. As such, Greenlining’s perspective on issues differs from that of general ratepayer advocates, and supplements it by providing analysis specific to vulnerable and/or underserved segments of the ratepayer population. Where possible, Greenlining communicated with other ratepayer advocates to ensure that our efforts were not duplicated. Where parties made similar arguments, the reasoning in support of each differed, allowing the Commission a broader range of opinions on the issues.</p> <p>For example, after Opening Comments on Commissioner Bohn’s Alternate Proposed Decision, Greenlining and Division of Ratepayer Advocates discussed Greenlining’s complementary analyses of the APD’s interpretation of PU Code §2775.5, in part to ensure that our arguments were not duplicative. These efforts also ensure a more robust record for the Commission’s consideration. (See Greenlining’s Reply Comments on the Alternate Proposed Decision, p. 2.)</p>	<p>Yes</p>
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C. Additional Comments on Part II:

#	Claimant	CPUC	Comment
1-8		X	Although ultimately Greenlining’s position did not prevail, some of its recommendations were adopted (see, Part II). Greenlining’s participation substantially contributed to the decision by providing a meaningful opposition to other parties’ proposals as well as justification to certain alternative views on the proceeding’s major issues. Greenling brought to the proceeding perspectives of the low-income and minority ratepayers regarding the project.

PART III: REASONABLENESS OF REQUESTED COMPENSATION

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

<p>Concise explanation by claimant as to how the cost of claimant’s participation bears a reasonable relationship with benefits realized through participation</p>	<p>CPUC Verified</p>
<p>It is impossible to assign a dollar value to Greenlining’s participation. The items described above, along with other contributions that informed the record and the Commission’s decision-making process but were not ultimately adopted, are primarily measures to keep future costs under control. How much ratepayer money these measures ultimately save will not be known until the program is built out and annual reports are analyzed. However, from the nature of the recommendations Greenlining made, it is clear that our advocacy was designed to keep costs low and derive as many benefits to ratepayers as possible. Thus it can be reasonably assumed that Greenlining’s participation will create benefits to ratepayers.</p>	<p>As adjusted, Greenlining’s costs bear a reasonable relationship with benefits realized through its participation.</p>

B. Specific Claim:*

CLAIMED						CPUC AWARD			
ATTORNEY AND ADVOCATE FEES									
Item	Year	Hours	Rate	Basis for Rate*	Total \$	Year	Hours	Rate	Total \$
Samuel Kang	2008	74.4	\$235	See attached	\$17,484	2008	71.02	\$180	\$12,782.70
Samuel Kang	2009	12.4	\$235	See attached	\$2,914	2009	10.20	\$190	\$1,939.90
Stephanie Chen	2008	180.2	\$190	See attached	\$34,238	2008	172.30	\$125	\$21,531.75
Stephanie Chen	2009	86.1	\$205	See attached	\$17,650.50	2009	79.00	\$125	\$9,875.25
Subtotal:					\$72,286.50	Subtotal:			\$46,129.60
EXPERT FEES									
Item	Year	Hours	Rate	Basis for Rate	Total \$	Year	Hours	Rate	Total \$
Orson Aguilar	2008	8.5	\$200	See attached	\$1,700	2008	8.20	\$200	\$1,640.00
Subtotal:					\$1,700	Subtotal:			\$1,640.00
INTERVENOR COMPENSATION CLAIM PREPARATION **									
Item	Year	Hours	Rate	Basis for Rate	Total \$	Year	Hours	Rate	Total \$
Samuel Kang	2008	1.8	\$117.50	See attached	\$211.5	2008	1.80	\$90	\$162.00
Stephanie Chen	2009	10.7	\$102.50	See attached	\$1,096.75	2009	10.70	\$62.50	\$668.75
Subtotal:					\$1,308.25	Subtotal:			\$830.75
COSTS									
#	Item	Detail			Amount	Amount			
1	Postage	Service of documents on ALJ, Commissioner, and parties who could not be served electronically			\$26.26				\$26.26
Subtotal:					\$26.26	Subtotal:			\$26.20
TOTAL REQUEST \$:					\$75,321.01	TOTAL AWARD \$:			\$48,626.61
<p>*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.</p> <p>**Reasonable claim preparation time typically compensated at ½ of preparer's normal hourly rate.</p>									

C. CPUC Disallowances & Adjustments (CPUC completes):

Item	Reason
	<p>The awarded amount has been largely affected by the adjustment of the requested hourly rates. Greenlining's hours, in general, were reasonable. Some minor reduction of 5.80% was made to reflect our concerns, as described in more detail below, with some excessive or inefficient efforts spent on certain documents or events, and in order to reach a more reasonable amount of time.</p>
<p><u>Kang's Hours in 2008</u> 1. Preparing Aguilar's testimony: inefficiency and work on issue outside the scope of the proceeding</p>	<p>Aguilar's expert qualifications and experience made Kang's time (8.50 hours) spent on helping Aguilar with his testimony excessive given that Aguilar spent the same amount of time on his own testimony. In addition, a part of the testimony focused on the issues outside the scope of the matter (supplier and workforce diversity). To reflect these factors, we disallow 25% or 2.13 hours of Kang's time.</p>
<p>2. Internal communications and task duplication: excessive hours.</p>	<p>We disallow 10% (or 1.26 hours) of Kang's time (approximately 12.60 hours) spent communicating with Chen and helping her prepare documents. To the extent Chen prepared Greenlining's documents and participated in the proceeding's events, we find Kang's time spent on the same tasks excessive.</p>
<p><u>Kang's hours in 2009</u> 3. Internal communications and task duplication: excessive hours</p>	<p>We disallow 10% (or 0.59 hours) of Kang's time (approximately 5.90 hours) spent communicating with Chen and reviewing or editing her documents, as we have explained in item no. 2.</p>
<p>4. Motion for Judicial Notice: inefficient effort</p>	<p>We disallow, as an inefficient effort, Kang's 1.6 hours spent on the motion for official notice. The June 16, 2009 ruling denying the motion explained: "This proceeding was submitted ... after the final oral argument. Greenlining does not explain why the information is being presented late and why the proceeding should be reopened to receive this information into the record. Reopening the record at this late stage is inefficient and prejudicial to the other parties who cannot offer opposing evidence or comment on the information." (at 2)</p>
<p><u>Chen's hours in 2008</u> 5. Clerical tasks</p>	<p>We disallow as non-compensable 0.51 hours associated with clerical tasks. We note that Chen's timesheet describes clerical tasks (such as filing or serving on 10/02/08 or 4/7/09), sometimes separately, sometimes combined with professional tasks. We note that it is not appropriate to combine clerical tasks with professional ones.</p>
<p>6. Opening and Reply Briefs: Issues Outside the Scope; Excessive Hours</p>	<p>A portion of each brief focused on issues (supplier and workforce diversity) outside the scope of the proceeding. We reduce Chen's hours by 7.44 hours out of approximately 84.50 hours spent on the briefs to achieve the amount of time reasonably required to prepare documents limited to issues within the scope of the proceeding.</p>

<p><u>Chen's hours in 2009</u> 7. Clerical Tasks</p>	<p>We disallow 0.25 hours spent on clerical tasks as non-compensable.</p>
<p>8. Opening comments on Proposed Decision and on Alternate Proposed Decision: Issues outside the scope</p>	<p>Since a portion of the comments focused on the issues outside the scope of the proceeding (supplier and workforce diversity), we reduce by 4% or 1.75 hours Chen's time (out of approximately 43.70 hours) spent preparing the comments.</p>
<p>9. Motion for Judicial Notice: inefficient effort</p>	<p>We disallow 5.1 hours of Chen's time spent on the motion for official notice, as explained in item 6.</p>
<p><u>Aguilar's time in 2008</u> 10. Testimony: issues outside the scope</p>	<p>We reduce by 4% or 0.30 hours Aguilar's time (out of 8.50 hours) spent on his testimony, to reflect the fact that the same portion of the testimony concerned issues outside the scope of the proceeding (supplier and workforce diversity).</p>
<p>11. Time Records: failure to report issues</p>	<p>Greenlining's timesheets do not describe a task by the related issue, in violation of Rules 17.4(b)(3) and 17.4(b)(4) of the Commission Rules of Practice and Procedure. In the future, Greenlining must identify an individual task by the related issue.</p>
<p>12. Kang's 2008 and 2009 hourly rates</p>	<p>D.09-06-016 approved an hourly rate of \$180.00 for Samuel Kang's work in 2008. D.09-11-031 adopted an hourly rate of \$190 for Kang's work in 2009. We utilize the same rates here.</p>
<p>13. Chen's new 2008 and 2009 hourly rates</p>	<p>In D.09-11-031 we adopted an hourly rate of \$115 for the Stephanie Chen's work as a Legal Associate in 2008 and 2009 (D.09-11-031 at 20-21). Greenlining requests now the rate of \$190, and explains that in September of 2009, Chen became a legal counsel. We note that during the subject period of time Chen was not a legal counsel, and therefore her attorney rate is not justified. Normally, we would use a representative's already adopted rates. However, in this proceeding, Chen shouldered most of Greenlining's work: prepared all formal documents; handled discovery and witness cross-examination; and represented Greenlining at the evidentiary hearings, final oral argument and in ex parte communications. We believe the level of her responsibilities and work range entitles her to an advocate rate, higher than her previously adopted rate. We adopt a new hourly rate of \$125 for her advocacy in 2008 and 2009, which is within the rate range the Commission adopted for the advocate work. In future claims we will consider the appropriate rate for Chen after she became Legal Counsel.</p>

PART IV: OPPOSITIONS AND COMMENTS
 Within 30 days after service of this claim, Commission Staff
 or any other party may file a response to the claim (see § 1804(c))

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

No

If so:

Party	Reason for Opposition	CPUC Disposition

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

No

If not:

Party	Comment	CPUC Disposition
	No Comments were filed.	

FINDINGS OF FACT

1. Claimant has made a substantial contribution to Decision (D.)09-06-049.
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. The total of reasonable contribution is \$48,626.61.

CONCLUSION OF LAW

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

ORDER

1. Claimant is awarded \$48,626.61.
2. Within 30 days of the effective date of this decision, Southern California Edison 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 October 28, 2009, the 75th day after the filing of claimant's request, and continuing until full payment is made.

3. This decision is effective today.

Dated May 6, 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:	D1005010	Modifies Decision? No
Contribution Decision(s):	D0906049	
Proceeding(s):	A0803015	
Author:	ALJ Ebke	
Payer(s):	Southern California Edison Company	

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
Greenlining Institute	8/14/09	\$75,321.01	\$48,626.61	No	Failure to justify hourly rate; duplicative effort/excessive hours; non-compensable work (clerical).

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Samuel	Kang	Attorney	Greenlining Institute	\$235	2008	\$180
Samuel	Kang	Attorney	Greenlining Institute	\$235	2009	\$190
Stephanie	Chen	Advocate	Greenlining Institute	\$190	2008	\$125
Stephanie	Chen	Advocate	Greenlining Institute	\$205	2009	\$125
Orson	Aguilar	Expert	Greenlining Institute	\$200	2008	\$200

(END OF APPENDIX)