

Decision 11-01-024 January 13, 2011

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company for Approval of Agreements Related to the Novation of the California Department of Water Resources Agreement with GWF Energy LLC, Power Purchase Agreement with GWF Energy II LLC, and Associated Cost Recovery (U39E).

Application 09-10-022
(Filed October 16, 2009)

And Related Matter.

Application 09-10-034
(Filed October 30, 2009)

**DECISION GRANTING INTERVENOR COMPENSATION TO CALIFORNIANS
FOR RENEWABLE ENERGY FOR SUBSTANTIAL CONTRIBUTION
TO DECISION 10-07-042**

Claimant: CALifornians for Renewable Energy, Inc. (CARE)	For contribution to Decision (D.) 10-07-042
Claimed: \$19,059.60¹	Awarded: \$15,116.75 (reduced 28%)
Assigned Commissioner: Michael R. Peevey	Assigned ALJ: Timothy Kenney

PART I: PROCEDURAL ISSUES

A. Brief Description of Decision: The decision approves the Peakers Transaction under which PG&E will procure 502 megawatts (MW) of capacity, energy, and ancillary services from existing facilities through 2017, and 325 MW through 2021.

The decision grants conditional authority for PG&E to proceed with the Tracy Transaction and the Los Esteros Critical Energy Facility (LECEF) Transaction, which together provide 588 MW of capacity, including 254 MW of new capacity.

¹ We correct several of CARE's miscalculation errors here and readjust the claim accordingly.

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

	Claimant	CPUC Verified
Timely filing of notice of intent to claim (NOI) compensation (§ 1804(a)):		
1. Date of Prehearing Conference:	December 16, 2009	Yes
2. Other Specified Date for NOI:		
3. Date NOI Filed:	January 7, 2010	Yes
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:	R.08-12-009	Yes
6. Date of ALJ ruling:	May 13, 2009	Yes
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:	R.08-12-009	Yes
10. Date of ALJ ruling:	May 13, 2009	Yes
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.10-07-042	Yes
14. Date of Issuance of Final Decision:	August 4, 2010	Yes
15. File date of compensation request:	October 4, 2010	Yes
16. Was the request for compensation timely?		Yes

PART II: SUBSTANTIAL CONTRIBUTION

A. Claimant’s description of its claimed contribution to the final decision

Contribution	Citation to Decision or Record	Showing Accepted by CPUC
1. CARE presented an analysis of the cost of the Upgrade Purchase Power Agreements (PPAs). The details of the analyses and conclusions are confidential. In general, they state that	CARE provided confidential testimony that describes in detail why the cost of the Upgrade PPAs is above market and a poor deal for ratepayers. Based on	Yes

<p>the 254 MW of incremental capacity provided the Upgrade PPAs has a substantial negative market value (as calculated by the IE) in both absolute terms and relative to other projects.</p>	<p>this information, at this time, we find that the cost of each Upgrade project is above the market price and, therefore, unreasonable.</p> <p>CARE Exhibit 12-C at 2 – 4 Decision Finding of fact # 6. “The cost of the Upgrade PPAs is unreasonable when compared to the market price for capacity, energy, and ancillary services contained in the winning bids from PG&E’s 2008 long-term requests for offers (LTRFO).”</p>	
<p>2. CARE notes that PG&E has requested 1,743 MW of new capacity, including 254 MW from the Upgrade PPAs. CARE alleges that the amount of new capacity requested by PG&E violates the Mariposa settlement agreement, which limited PG&E to 1,512 MW of new capacity.</p>	<p>Section 7.2.7. The Upgrade PPAs Do Not Comply with the Mariposa Settlement Agreement and D.09-10-017. Decision Page 54</p>	<p>Yes</p>
<p>3. CARE presented an analysis that the Upgrades were not needed because of recent developments altering the forecast in D.07-12-052. California Energy Commission’s (CEC’s) more recent 2009 forecast shows that peak demand in 2015 will be 597 MW (4.48%) lower than the 2007 forecast, CEC issued a report which forecasts that exports will be 100 MW to 1,100 MW in 2015. The CEC issued and incremental demand forecast which showed additional energy efficiency savings not included in forecast in D. 07-12-052.</p>	<p>The Opposing Parties cite two reports which reinforce our conclusion that there is no risk of a supply shortage. Decision Page 46</p>	<p>Yes</p>

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

	Claimant	CPUC Verified
a. Was Division of Ratepayer Advocates (DRA) a party to the proceeding?	Yes	Correct
b. Were there other parties to the proceeding?	Yes	Correct
c. If so, provide name of other parties: The Utility Reform Network (TURN), California Unions for Reliable Energy (CURE), GWF Energy, LLC (GWF), Independent Energy Producers Association (IEAP), Alliance for Retail Energy Markets (AReM), California Large Energy Consumers Association (CLECA), Division of Ratepayers Advocates (DRA), Calpine Corporation (Calpine), Pacific Gas and Electric Company (PG&E).		Correct
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: CARE had numerous phone calls, emails, and conversations with DRA and TURN on the issues.		We disagree with CARE’s claim that it took reasonable steps to avoid duplicating the efforts of other parties. <i>See CPUC</i> disallowances in Part III, Section C.

PART III: REASONABLENESS OF REQUESTED COMPENSATION

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

Claimant’s explanation as to how the cost of claimant’s participation bore a reasonable relationship with benefits realized through claimant’s participation	CPUC Verified
As demonstrated by CARE’s contributions 1-3 listed in Part II, the cost of CARE’s participation demonstrates a reasonable relationship with benefits realized through its participation.	After the reductions we make to CARE’s claim, the remaining hours and costs are reasonable and should be compensated.

B. Specific Claim:

CLAIMED						CPUC AWARD			
ATTORNEY AND ADVOCATE FEES									
Item	Year	Hours	Rate \$	Basis for Rate*	Total \$	Year	Hours	Rate \$	Total \$
M. Homec	2009/2010	40.5 ²	185	D.10-05-046	7,492.50	2009/2010	27.87	185	5,156
Subtotal: \$7,492.50						Subtotal: \$5,156			
EXPERT FEES									
Item	Year	Hours	Rate \$	Basis for Rate*	Total \$	Year	Hours	Rate \$	Total \$
R. Sarvey	2009/2010	61.42 ³	155	D.10-05-046	9,520.10	2009/2010	47.75	155	7,014.25
Subtotal: \$9,520.10						Subtotal: \$7,014.25			
OTHER FEES (Advocate)									
Item	Year	Hours	Rate \$	Basis for Rate*	Total \$	Year	Hours	Rate \$	Total \$
M. Boyd	2009/2010	11.5	135	D.10-05-046	1,552.50	2009/2010	8.02	135	1,082.70
Subtotal: \$1,552.50						Subtotal: \$1,082.70			
INTERVENOR COMPENSATION CLAIM PREPARATION **									
Item	Year	Hours	Rate \$	Basis for Rate*	Total \$	Year	Hours	Rate \$	Total \$
M. Boyd	2009/2010	3.9	67.50	½ adopted rate	263.25 ⁴	2009/2010	3.9	67.50	263.25
M. Homec	2009/2010	2.5	92.50	½ adopted rate	231.25	2009/2010	2.5	92.50	231.25
Subtotal: \$494.50						Subtotal: \$495.50			
TOTAL REQUEST: \$19,059.60						TOTAL AWARD: \$15,116.75			
<p>**Reasonable claim preparation time typically compensated at ½ of preparer’s normal hourly rate. 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 seeks 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>									

² CARE requests compensation for 2.5 hours spent by Martin Homec on NOI-related tasks (i.e., 1 hour on January 7, 2010, and 1.5 hours on January 26, 2010). It appears that CARE seeks Homec’s full hourly rate of \$185 for time spent on NOI-related matters, instead of half his hourly rate as required by the Commission’s rules. We correct this error here, move these hours to the correct location on the claim and recalculate CARE’s total request for compensation at \$18,865.85.

³ As submitted, the correct total for Sarvey’s hours should be 61.42 not 61.17. We correct CARE’s error here, re-calculate Sarvey’s total and make adjustments to CARE’s requested award.

⁴ We correct CARE’s miscalculation error here.

C. CPUC Disallowances & Adjustments:

Item	Reason
<p>Lack of substantial contribution</p>	<p>CARE spent considerable time on issues that did not result in a substantial contribution to D.10-07-042. None of these issues are identified or otherwise addressed in CARE’s request for intervenor compensation. These issues include:</p> <p>1. D.10-07-042 did not address the environmental issues identified in CARE’s Opening Brief at page 2, first three paragraphs,⁵ and at page 14, last full paragraph (i.e., the paragraph that begins with the sentence that reads “The contracts approved should consider....”); and in CARE’s Reply Brief at page 4, last paragraph.</p> <p>2. D.10-07-042 rejected CARE’s recommendation that the Commission not approve “the novated contracts requested in these applications⁶” and “the Calpine 2 replacement and novated contracts....⁷” These rejected recommendations, which did not result in a substantial contribution to D.10-07-042, are addressed in CARE’s Opening Brief and Reply Brief at the following locations:</p> <ul style="list-style-type: none"> • Opening Brief at page 4, second to the last paragraph, through page 6, first paragraph. • Opening Brief at page 9, last full paragraph, though page 11, first paragraph.⁸ • Opening Brief at page 12, Section III.C, first two sentences. • Opening Brief at page 13, the entire first full paragraph (which starts with the sentence “The LECEF contract should not be approved....”). • Opening Brief at page 14, Section IV, the last sentence of the first paragraph (i.e., the sentence that reads “The LECEF, the Calpine 2 proposal, should not be approved.”). • Reply Brief at page 2, first two paragraphs. • Reply Brief at page 3, the entire two-paragraph section under the heading of “There is No Discussion Evaluating Approval of the A.09-10-022 and A.09-10-034 Proposals while Excluding the Novated Contracts.” • Reply Brief at page 4, one-sentence paragraph that reads “The LECEF, the Calpine 2 proposal, should not be approved.” <p>3. In D.10-07-04, Section 7.2.4, last paragraph, page 50, the Commission determined that one of the issues raised by CARE had no merit:</p> <p>Turning to a related issue, CARE alleges that the LECEF Upgrade project will have start times of up to four hours, which makes it unsuitable for providing load-following power that is needed to</p>

⁵ CARE’s opening brief does not have page numbers.

⁶ CARE Opening Brief at page 4, second to the last paragraph.

⁷ CARE Opening Brief at page 4, last paragraph.

⁸ The cited portions of CARE’s Opening Brief includes confidential information that was filed under seal.

	<p>integrate intermittent renewable power. We find that CARE’s claim of start times of up to four hours is unfounded, as it is contradicted by the start times specified in the LECEF Upgrade PPA.</p> <p>The above issue is addressed in CARE’s Opening Brief and Reply Brief at the following locations:</p> <ul style="list-style-type: none"> • Opening Brief at page 11, first full paragraph, second sentence that reads “The AFC Calpine filed with the California Energy Commission indicates that start up times could last as long as four hours.” • Opening Brief at page 13, first full paragraph that begins with the sentence “The LECEF contract should not be approved....” • Reply Brief at page 2, second paragraph and last paragraph. <p>Conclusion: We do not award compensation to CARE for any time associated with the previously identified issues. However, CARE did not itemize its time in a way that allows for a precise disallowance.</p> <p>CARE itemized its time into eight issues. It is reasonable to disallow all hours that CARE requests for what it labels as Issue 6 (which corresponds roughly to Item 2 above) and 5% of the hours that CARE requests for what it labels as Issues 1 – 5 and 7 – 8. (Disallow Homec 4.47 hrs, Sarvey 8.17 hrs and Boyd 2.48 hr)</p>
<p>Disallowance for duplication of effort <i>See Section II, Part B</i></p>	<p>CARE was one of several “Opposing Parties” who made similar arguments that (1) PG&E should not be allowed to procure more new capacity than authorized by D.07-12-052 (See D.10-07-042 at pages 25 – 26), and (2) the cost of the new capacity requested by PG&E is unreasonable (see D.10-07-042 at page 29, Section 5.5). In light of this duplication of effort, we disallow 20% of the time that CARE requests for time it has labeled as Issues 1 through 3. (Disallow Homec 2.85 hrs, Sarvey 5.5 hrs and Boyd 1.0 hr)</p>

PART IV: OPPOSITIONS AND COMMENTS

A. Opposition: Did any party oppose the claim?

<p>If so:</p>	<p>Yes</p>	
<p>Party</p>	<p>Reason for Opposition</p>	<p>CPUC Disposition</p>
<p>Calpine Corporation</p>	<p>On 11-3-10, Calpine Corporation filed an opposition to CARE’s request for compensation requesting that two actions be taken by the Commission: (1) denial of CARE’s intervenor compensation in this proceeding; and (2) institute an investigation to determine whether CARE had violated Commission Rule 1.1 by misleading the Commission with respect to CARE’s participation in the Commission’s intervenor program and/or through other misconduct.</p>	<p>We make no adjustments to CARE’s compensation request due to Calpine’s opposition. Calpine’s opposition is mostly without merit, as it largely attacks issues that are not directly raised in, or by, CARE’s request for compensation in this proceeding.</p>

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

Yes

FINDINGS OF FACT

1. Claimant has made a substantial contribution to Decision (D.)10-07-042.
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 \$15,116.75.

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 \$15,116.75.
2. Within 30 days of the effective date of this decision, Pacific Gas and 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 December 18, 2010, 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.

This decision is effective today.

Dated January 13, 2011, at San Francisco, California.

MICHAEL R. PEEVEY
President
TIMOTHY ALAN SIMON
NANCY E. RYAN
Commissioners

APPENDIX**Compensation Decision Summary Information**

Compensation Decision:	D1101024	Modifies Decision? No
Contribution Decision(s):	D1007042	
Proceeding(s):	A0910022 and A0910034	
Author:	ALJ Timothy Kenney	
Payer(s):	Pacific Gas and Electric Company	

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier ?	Disallowances
Californians for Renewable Energy, Inc	10-4-10	\$19,059.60	\$15,116.75	No	Lack of substantial contribution and duplication of effort

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Martin	Homec	Attorney	Californians for Renewable Energy, Inc	\$185	2009/2010	\$185
Robert	Sarvey	Expert	Californians for Renewable Energy, Inc	\$155	2009/2010	\$155
Michael	Boyd	Advocate	Californians for Renewable Energy, Inc	\$135	2009/2010	\$135

(END OF APPENDIX)