

Decision 11-03-025 March 10, 2011

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company for Approval of 2008 Long-Term Request for Offer Results and for Adoption of Cost Recovery and Ratemaking Mechanisms (U 39 E).

Application 09-09-021
(Filed September 30, 2009)

DECISION AWARDING INTERVENOR COMPENSATION TO PACIFIC ENVIRONMENT FOR SUBSTANTIAL CONTRIBUTION TO DECISION 10-07-045

Claimant: Pacific Environment (PE)	For contribution to Decision (D.) 10-07-045
Claimed: \$76,915.31	Awarded: \$57,557.31 (reduced 25%)
Assigned Commissioner: Michael R. Peevey	Assigned ALJ: Darwin E. Farrar

PART I: PROCEDURAL ISSUES

A. Brief Description of Decision: This decision granted, in part, the application of Pacific Gas and Electric Company (PG&E) for approval of its 2008 Long-Term Request for Offer results and adopts a cost recovery and ratemaking mechanism related thereto. In particular: it approved PG&E's Marsh Landing, Contra Costa 6 & 7, and Midway Sunset procurement agreements, it denied the Oakley Project with instructions on possible future approval, and it approved a multi-party settlement agreement that provides for recovery of the costs associated with the above procurement.

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

Claimant		CPUC Verified
Timely filing of notice of intent (NOI) to claim compensation (§ 1804(a)):		
1. Date of Prehearing Conference:	December 2, 2009	Correct
2. Other Specified Date for NOI:		
3. Date NOI Filed:	December 10, 2009	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:	Application (A.) 09-09-021	
6. Date of ALJ ruling:		
7. Based on another CPUC determination (specify):	PE's NOI states why it qualifies as a category 3 customer pursuant to Section 1802(b). <i>See</i> NOI, Attachment 2 at 1-4.	This decision
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.09-09-021
10. Date of ALJ ruling:		
11. Based on another CPUC determination (specify):	PE's NOI describes its showing of significant financial hardship pursuant to Public Utilities Code Section 1802(g). <i>See</i> NOI at 6-7.	This decision
12. Has the claimant demonstrated significant financial hardship?		Yes
Timely request for compensation (§ 1804(c)):		
13. Identify Final Decision:	D.10-07-045	Correct
14. Date of Issuance of Final Decision:	August 4, 2010	Correct
15. File date of compensation request:	September 30, 2010	Correct
16. Was the request for compensation timely?		Yes

C. Additional Comments on Part I:

#	Claimant	CPUC	Comment
7, 11	X		<p>The ALJ has not yet ruled on PE's NOI to Claim Intervenor Compensation in A.09-09-021.</p> <p>PE's NOI details why it qualifies for intervenor compensation.</p> <p>In particular, the NOI describes that PE's customer-related status is based on its historic and current interests in environmental and ratepayer protection of local communities around the Pacific Rim which are consistent with its work to influence the outcome of A.09-09-021. PE, consistent with its governing documents and Strategic Plan, appropriately represents the environmental, environmental justice, and energy rate interests of its supporters. It therefore, asserts that it qualifies as a Category 3 customer pursuant to Section 1802(b) of the</p>

			<p>Public Utilities Code and the Commission’s repeated decisions applying this Section to environmental organizations. <i>See</i> Attachment 2 (NOI from PE) at 1-4.</p> <p>The NOI also describes that PE’s financial hardship is based on: (1) facilitating the activities of Ratepayers for Affordable Clean Energy, a coalition of over 30 organizations that has been found eligible to receive intervenor compensation, <i>see</i> D.09-09-024, and (2) the fact that the average utility bill of PE’s individual California supporters are small compared to the costs of effective participation in this proceeding, which entitles PE to a finding of significant financial hardship pursuant to Public Utilities Code Section 1802(g). <i>See</i> Attachment 2 (NOI from PE) at 6-7.</p>
7		X	<p>We rule on PE’s customer status as follows:</p>
			<p>PE is a non-profit, tax-exempt California corporation that has over 5,000 supporters¹ that live and purchase utility services in California, many² of whom are residential customers of PG&E. Over 500 of its supporters live in the East Bay Area where this application would have the greatest impact. Further, the majority of PE’s Board of Directors are California residents and ratepayers reflecting PE’s connection to ratepayer’s environmental interests.</p> <p>According to PE’s by-laws, the mission of the organization is to “protect the living environment of the Pacific Rim by promoting grassroots activism, strengthening communities and reforming international policies.” To facilitate the accomplishment of these purposes, its bylaws provide that:</p> <p style="padding-left: 40px;">the corporation may engage in, sponsor (or co-sponsor) or otherwise be associated with the creation, development, administration and funding of</p> <p style="padding-left: 40px;">(a) programs and activities that (i) support environmental struggles; (ii) hold banks and corporations accountable; (iii) promote best practices; (iv) build a global movement to deal with global environmental threats; and (v) build civil society; (b) conferences and other educational programs and events; and (c) fundraising programs, activities and events.</p> <p>PE’s bylaws authorize it to participate in environmental legal actions to advance its mission, including administrative proceedings. PE has participated in several environmental lawsuits and administrative proceedings to advance its mission.</p> <p>PE’s concerns related to California energy policy represent the concerns of California residents and ratepayers. These concerns include issues related to the rates and reliability of energy, as well as the impact that this energy has on health, the climate, and the environment. PE believes its role is to monitor and influence these activities to ensure that ratepayers have access to the energy with the least harmful environmental impacts at reasonable rates.</p>

¹ Supporters include individuals that are either registered on PE’s mailing list, volunteer with the organization, or provide financial support to PE.

² D.98-04-059 (See Finding of Fact 12) states that groups should indicate in the NOI the percentage of its membership that are residential (vs. business) ratepayers. We remind Frontlines, since it is new to Commission proceedings, that future NOIs must include this information.

In sum, PE states that its historic and current interests in environmental and ratepayer protection of local communities around the Pacific Rim are consistent with its work to influence the outcome of this application. PE, consistent with its governing documents and Strategic Plan, the environmental, environmental justice, and energy rate interest of its supporters.

As the Commission has recognized: “With respect to environmental groups, we have concluded they were eligible in the past with the understanding that they represent customers whose environmental interests include the concern that, e.g., regulatory policies encourage the adoption of all cost-effective conservation measures and discourage unnecessary new generating resources that are expensive and environmentally damaging. (D.88-04-066.)

Rule 17.1(d) requires an NOI to demonstrate that the intervenor is a “customer” as defined in Section 1802(b) by providing the following information:

The notice of intent shall provide either (1) verification of the intervenor’s customer status pursuant to Public Utilities Code Section 1802(b)(1)(A) or (B), or (2) a copy of articles of incorporation or bylaws demonstrating the intervenor’s customer status pursuant to California Public Utilities Code Section 1802(b)(1)(C). If current articles or bylaws have already been filed with the Commission, the notice of intent need only make a specific reference to such filings.

PE has attached a copy of its bylaws to its NOI.

Section 1802(b) defines three categories customers known as Category 1, Category 2, and Category 3. Frontlines meets the definition of a Category 3 customer under § 1802(b)(1)(C).

11		X	We rule on PE’s showing of “significant financial hardship” as follows:
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Section 1804(a)(2)(B) permits an NOI to include a showing of significant financial hardship, which PE has elected to do.

Section 1802(g) defines “significant financial hardship” as follows:
 “Significant financial hardship” means either that the customer cannot afford, without undue hardship to pay the costs of effective participation, including advocate fees, expert witness fees, and other reasonable costs of participation, or that, in the case of a group or organization, the economic interest of the individual members of the group or organization is small in comparison to the costs of effective participation in the proceeding.

PE affirmatively states in its NOI that participation in this proceeding will cause its members financial hardship, and that the cost of effective participation, including fees paid to attorneys and expert witnesses and other reasonable costs of participation, are far greater that both the value to individual members of the PE and the cost to each member of effective participation in the proceeding.” (NOI at 7.)

In the instant proceeding, PE submits that the average utility bills of PE’s individual California supporters are small compared to the costs of effective participation in this proceeding.

PE has satisfied the “comparison test” required of Category 3 customers. Pursuant to Section 1802(g), we find that it would be a significant financial hardship for PE to participate in this proceeding without an award of fees or costs. A finding of significant financial hardship however, in no way ensures compensation.

PART II: SUBSTANTIAL CONTRIBUTION

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

Contribution	Citation to Decision or Record	Showing Accepted by CPUC
<p>1. Authorization of projects or contracts, in any other proceeding, pursuant to the authorization granted in D.07-12-052:</p> <p>PE provided an overview of all the megawatts (MW) including the novation contracts that should count against PG&E’s procurement total. The Final Decision agreed that the novation contracts should count against PG&E’s procurement total.</p>	<p>D.10-07-045 at 10-15, 39;</p> <p>D.10-07-045 Findings of Fact #4;</p> <p>D.10-07-045 Conclusions of Law #5-7;</p> <p>PE Opening Brief at 4-7, Appendix A;</p> <p>PE Reply Brief at 2-3; and</p> <p>Exhibit 500: Testimony of B. Powers at 9-12.</p>	<p>Yes</p>
<p>2. PG&E’s conduct of the 2008 Long-Term Request for Offer (LTRFO):</p> <p>PE argued that PG&E’s conduct of the 2008 LTRFO did not appropriately consider disproportionate resource siting and environmental impacts. The Final Decision found that “PG&E could and should have provided greater transparency in the evaluation process and more accurately reflected the Commission's stated priorities by giving greater weight to environmental factors and enhancing definitions related to environmental scoring.”</p>	<p>D.10-07-045 at 20;</p> <p>D.10-07-045 Findings of Fact #2, 6, 7;</p> <p>PE Opening Brief at 22-23;</p> <p>PE Reply Brief at 13-15; and</p> <p>Exhibit 501: Testimony of R. Cox at 6, 17-19.</p>	<p>Yes</p>
<p>3. Compliance with Commission-Mandated Planning Reserve Margin Requirements:</p> <p>PE asserted that PG&E should not be allowed to procure any of the MW allowed under D.07-12-052 because the reserve margins held by PG&E (44%) were well above the margins required (15-17%). PE’s expert, Mr. Powers, performed this calculation. The Final</p>	<p>D.10-07-045 at 24-25;</p> <p>D.10-07-045 Findings of Fact #10-11;</p> <p>PE Opening Brief at 8-9;</p> <p>PE Reply Brief at 1, 4-5;</p> <p>Exhibit 501: Testimony of R. Cox at 5; and</p>	<p>Yes</p>

<p>Decision noted that the high reserve margin showed that MW need had decreased.</p>	<p>Exhibit 502: Reply Testimony of B. Powers and R. Cox at 3.</p>	
<p>4. The 2009 California Energy Commission’s (CEC) Demand Forecast:</p> <p>PE argued that the 2007 CEC draft forecast used for D.07-12-052 was used because it provided a better outlook than the older demand forecasts. PE argued that the CEC 2009 Demand Forecast could be used for the same reason, and would show lower need than the 2007 forecast. The final decisions used the 2009 CEC Demand Forecast as a basis to set MW need at the lower end approved by the 2006 Long Term Procurement Plan (LTPP). The concurrence of Commissioner Grueneich also supported PE’s argument that the CEC 2009 Demand Forecast showed decreased need.</p>	<p>D.10-07-045 at 26-28, 33;</p> <p>D.10-07-045 Findings of Fact #9-10, 12;</p> <p>Concurrence of Commissioner Dian M. Grueneich at 2-3;</p> <p>PE Opening Brief at 9-10; and</p> <p>Exhibit 500: Testimony of B. Powers at 3.</p>	<p>Yes</p>
<p>5. Export Assumptions in D.07-12-052:</p> <p>PE argued that a CEC report showed the amount of energy used in Path 26 was overestimated. The Final Decision notes that even if they accept PG&E’s argument about the assumptions of Path 26 being based on generation surplus, the criticism had merit. This was a factor in deciding to set the MW need at the lower end of the range approved in the 2006 LTPP. The concurrence of Commissioner Grueneich also supported PE’s argument that the CEC report on Path 26 showed decreased need.</p>	<p>D.10-07-045 at 28-29, 33;</p> <p>D.10-07-045 Findings of Fact #12;</p> <p>Concurrence of Commissioner Dian M. Grueneich at 2-3;</p> <p>PE Opening Brief at 10;</p> <p>PE Reply Brief at 5; and</p> <p>Exhibit 501: Testimony of R. Cox at 5.</p>	<p>Yes</p>
<p>6. Energy Efficiency Considerations:</p> <p>PE asserted that PG&E should not be allowed to procure any of the MW allowed under D.07-12-052 because of several reasons including increases in energy efficiency gains since the 2006</p>	<p>D.10-07-045 at 29-30, 33;</p> <p>D.10-07-045 Findings of Fact #12;</p> <p>Concurrence of Commissioner Dian M. Grueneich at 2-3;</p>	<p>Yes</p>

<p>LTPP, which were not included in the 2009 forecast. PG&E argued that all energy efficiency gains were counted in the 2009 forecast. The final decision disagreed with PG&E and found that the 2009 forecast did not include all the efficiency gains. In addition, the concurrence of Commissioner Grueneich supported PE's argument that the increases in energy efficiency will lead to decreased need.</p>	<p>PE Opening Brief at 11; and Exhibit 500: Testimony of B. Powers at 3.</p>	
<p>7. The 2010 LTPP Proceeding: PE argued that PG&E should be required to demonstrate actual need in the 2010 LTPP before it is allowed to procure any more MWs. The Final Decision agreed that the 2010 LTPP was the appropriate venue to address these concerns.</p>	<p>D.10-07-045 at 30-31; PE Opening Brief at 14-16; and PE Reply Brief at 4.</p>	<p>Yes</p>
<p>8. The Retirement Schedule in D.07-12-052: PE asserted that the effect of retiring once-through-cooling (OTC) facilities is overestimated because many of the OTC facilities run far below capacity as discussed in its testimony. The Final Decision pointed out that this point had merit.</p>	<p>D.10-07-045 at 31-32; PE Opening Brief at 11-12; and Exhibit 501: Testimony of R. Cox at 6.</p>	<p>Yes</p>
<p>9. The Need for Conventional Generation to Integrate Renewable Resources: PE provided expert testimony and briefing to rebut PG&E's argument that new natural gas facilities are needed to integrate renewable resources. The Decision did not weigh this argument in PG&E's favor.</p>	<p>D.10-07-045 at 31-32; PE Opening Brief at 13-15; PE Reply Brief at 9; and Exhibit 501: Testimony of R. Cox at 6-7, 10-11.</p>	<p>Yes</p>
<p>10. The reasonableness and best interest of the customers regarding PG&E's proposed power purchase agreements (PPA) and purchase and sale agreement (PSA):</p>	<p>D.10-07-045 at 39; D.10-07-045 Findings of Fact #18; D.10-07-045 Conclusions of Law #13;</p>	<p>Yes</p>

<p>PE asserted that the Marsh Landing PPA and Oakley Generating Station PSA were not reasonable or in the best interest of PG&E’s customers because there is no reasonable need. One of the factors the Final Decision used in denying the Oakley Project was need determination. The concurrence of Commissioner Grueneich supported PE’s assessment that there was no reasonable need.</p>	<p>Concurrence of Commissioner Dian M. Grueneich at 2-4; PE Opening Brief at 16-19; PE Reply Brief at 10-12; and Exhibit 501: Testimony of R. Cox at 11.</p>	
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B. Duplication of Effort (§§ 1801.3(f) & 1802.5):

	Claimant	CPUC Verified
<p>a. Was Division of Ratepayer Advocates (DRA) a party to the proceeding?</p>	Yes	Correct
<p>b. Were there other parties to the proceeding?</p>	Yes	Correct
<p>c. If so, provide name of other parties: PG&E, Californians for Renewable Energy (CARE), Communities for a Better Environment, California Unions for Reliable Energy/Coalition of California Utility Employees, The Utility Reform Network (TURN), Contra Costa Generating Station, LLC, Sierra Club, San Diego Gas & Electric Company, Alliance For Retail Energy Market, The Independent Energy Producers Association, and California Municipal Utilities Association.</p>		Correct
<p>d. Claimant’s explanation of how it coordinated with DRA and other parties to avoid duplication or claimant’s participation supplemented, complemented, or contributed to that of another party: PE coordinated regularly with other parties to avoid duplication. When similar issues were covered, PE provided analysis, studies, and expert materials which highlighted its own arguments and added to other common arguments. For example, PE’s expert Bill Powers provided a calculation of the reserve margin last summer that was relied on by other parties including DRA. In addition, PE made arguments regarding over procurement and need assumptions that were not addressed by other parties including energy efficiency impacts and a rebuttal of PG&E’s claim that it needed energy to back up renewables. In the end, the Final Decision found that several parties made contributions: “CARE, DRA, TURN and PE present ample evidence that our prior range was based on faulty data in support of the position that procurement should only be allowed at the lower end of the range established in D.07-120-52.”</p>		We agree that PE took reasonable steps to minimize duplication and to combine its efforts with other parties with similar positions. We make no reductions for duplication of effort.

PART III: REASONABLENESS OF REQUESTED COMPENSATION

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

Claimant’s explanation of how the cost of claimant’s participation bore a reasonable relationship with benefits realized through claimant’s participation	CPUC Verified
<p>PE is seeking \$78,005.31 in fees and costs for advocating against unneeded over procurement, a practice which costs ratepayers millions of dollars per year. PE’s arguments were a factor in preventing PG&E from over procuring unneeded energy and thus saving ratepayers millions of dollars in construction costs, maintenance costs, and increased rates. The costs associated with a new unneeded natural gas power plant, such as the facility rejected here, far exceed what PE requests.</p> <p>PE and the Environmental Law and Justice Clinic (ELJC) were conscious of using staff with the appropriate amount of work experience for the tasks they performed; tasks that were appropriate for law students were mainly handled by law students, while tasks that required more experience were handled by the more experienced attorneys or experts. This kept fees reasonable. In addition, the hours claimed do not include time spent on issues ultimately not addressed in the decision and time spent mentoring or assisting students. The rates requested for these tasks are at the low end of the ranges authorized by the Commission for attorneys, experts and law students. The above considerations are reflected in the timesheets attached.</p>	<p>We make several disallowances to PE’s claim where we find the hours and efforts to be excessive, inefficient and/or unproductive given the scope of the work or the document produced. After the reductions we make to PE’s claim, the remaining hours and costs are reasonable and should be compensated.</p>

B. Specific Claim:

CLAIMED						CPUC AWARD			
ATTORNEY AND ADVOCATE FEES									
Item	Year	Hours	Rate \$	Basis for Rate*	Total \$	Year	Hours	Rate \$	Total \$
D. Behles	2009-2010	176.0	280	Adopted here	49,140	2009-2010	117.4	280	32,872
L. Williams	2009-2010	43.9	150	Adopted here	6,585	2009-2010	33.5	150	5,025
Subtotal: \$55,725						Subtotal: \$37,897			
EXPERT FEES									
Item	Year	Hours	Rate \$	Basis for Rate*	Total \$	Year	Hours	Rate \$	Total \$
B. Powers	2010	25.0	225	Adopted here	5,625	2010	25.0	225	5,625
R. Cox	2009-2010	33.0	180	Adopted here	5,940	2009-2010	30.0	155	4,650
Subtotal: \$11,565						Subtotal: \$10,275			

OTHER FEES (Law Students)									
Item	Year	Hours	Rate \$	Basis for Rate*	Total \$	Year	Hours	Rate \$	Total \$
Law Students	2010	96.3	100	Adopted here	9,630	2010	83.0	100	8,300
Subtotal: \$9,630					Subtotal: \$8,300				
INTERVENOR COMPENSATION CLAIM PREPARATION **									
Item	Year	Hours	Rate \$	Basis for Rate*	Total \$	Year	Hours	Rate \$	Total \$
D. Behles	2010	0.5	140	½ rate adopted here	70	2010	0.5	140	70
Law Students	2010	9.9	100	½ rate adopted here	990	2010	9.9	100 ³	990
Subtotal: \$1,060					Subtotal: \$1,060				
COSTS									
#	Detail				Amount \$	Amount \$			
1.	Postage Costs				25.31	25.31			
Subtotal: \$25.31					Subtotal: \$25.31				
TOTAL REQUEST: \$78,005.31					TOTAL AWARD: \$57,557.31				

**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.

C. PE’s Comments Documenting Specific Claim:

Comments	Description/Comment
#1	D.04-04-012 approved ELJC law students for a rate of \$90 per hour for work done in 2003. The rate took into account that the ELJC law students received academic credits for the work they did. D.07-04-032 approved \$100 per hour for work a law student did in 2006 (the decision deemed it within the guidelines set forth in D.07-10-014). We are asking for a rate of \$100 per hour for work done in 2010; it is a slight increase of the rate approved in 2003 for work done by ELJC students with the same level of experience and in the same circumstances (second and third year law students who are getting academic credits for the work they do). The \$10 increase reflects increases in cost of living expenses since the approval of the 2003 rate, and is also equal to the rate approved in 2006 for work a law student performed. For the above reasons, this rate is reasonable and at the lower end of the acceptable range.

³ See D.04-04-012 which awarded full rate for law students for time spent on intervenor compensation matters.

#2	D.04-04-012 cites the usual method of cutting in half the approved rate of an attorney for work they do on applications for intervenor compensation because the task does not need the expertise of an attorney. However, D.04-04-012 did award the full rate approved for ELJC law students for time spent on the application for intervenor compensation. Accordingly, we have cut the attorney rate for time spent on the application for intervenor compensation in half, while leaving the law student rate the same.
#3	Bill Powers is an engineering expert with an emphasis on energy related issues and has 30 years of experience in the field. <i>See</i> Attachment 3. Bill Powers has provided expert testimony in nine separate matters involving power plant technology, emissions, and cooling system assessments. <i>See</i> Attachment 3. Resolution ALJ-247 sets rates for experts with 13+ years of experience at \$155 to \$390 per hour. We request a rate of \$225 per hour for Bill Powers because of his extensive expertise and experience with the issues PE addressed in A.09-09-021, and because his years of experience doubles the minimum number of years needed to qualify for this rate range.
#4	Rory Cox is the California Program Director for PE and has worked in the environmental field for 11 years. Rory Cox has over a decade of experience with environmental issues. <i>See</i> Attachment 4. Resolution ALJ-247 sets rates for experts with 7-12 years of experience at \$155 to \$270 per hour. Rory Cox’s rate is \$180 due to his 11 years of work at PE and his previous experience with environmental justice issues. The rate is at the lower end of the range for experts with 7-12 years of experience.
#5	PE, consistent with and in furtherance of its environmental justice approach, retained outside counsel, the ELJC, which has previously been found by the Commission to bring specific environmental justice expertise to Commission proceedings. D.04-04-012; D.99-09-023; D.99-01-020. Deborah Behles and Lucas Williams were the attorneys at the ELJC who worked on A.09-09-021. Deborah Behles has been practicing environmental law for 9 years and has been practicing at the ELJC for 2 years. <i>See</i> Attachment 5. Lucas Williams has been practicing environmental law as a graduate law fellow at the ELJC for over a year. <i>See</i> Attachment 6. The ELJC attorneys’ rates are set at the lowest end of the range established in ALJ-247 for attorneys with the same years of experience.
#6	<p>The ELJC is not requesting compensation for work done in areas that it did not substantially contribute. This includes work that was clerical in nature, work below the experience level of the time keeper, and excessive hours on specific tasks. Specifically we are not requesting compensation for our work regarding the settlement agreement, work organizing community groups, drafting/filing notices of ex-parte communication, excessive time for work done on the application for intervenor compensation and excessive time for work done by law students. The time entries that reflect this work have been removed from Attachment 7.</p> <p>Table of abbreviations for EJLC time sheets: DB = Deborah Behles EF-1 = Lucas Williams, ELJC Fellow LS = ELJC Law Student</p>

#7	We are not asking for compensation for work Rory Cox did in reviewing the NOI to request intervenor compensation, and the application for intervenor compensation. The time entries that reflect this work have been removed from Attachment 8.
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D. CPUC Adoptions and Disallowances:

Adoptions	
2009-2010 hourly rate request for D. Behles	PE requests an hourly rate of \$280 for Deborah Behles’ 2009-2010 work in this proceeding. Behles was admitted to the California Bar Association in December 2001. Behles has been practicing environmental law for over 9 years and has been practicing at the ELJC for 2 years. Behles is presently an associate professor and staff attorney with Golden Gate University School of Law. Prior to this appointment, Behles taught an ELJC and seminar that taught students to litigate and solve problems in complex settings. Behles worked as a trial attorney for the U.S. Department of Justice for over 6 years where she litigated civil environmental claims, worked with numerous health, energy and engineering experts, conducted cross and direct examinations of experts at trial and wrote discovery and summary judgment motions and briefs, and negotiated judicial settlements. Behles graduated magna cum laude and has a J.D. from the University of Minnesota. PE’s hourly rate request of \$280 is at the lowest end of the range of \$280-\$300 adopted for attorneys with 5-7 years of experience in D.08-04-010. Resolutions ALJ-235 and ALJ-247 disallow cost-of-living (COLA) increases for 2009-2010 intervenor work. PE’s hourly rate request for Behles is reasonable and adopted here.
2009-2010 hourly rate request for L. Williams	PE requests an hourly rate of \$150 for Lucas Williams’ 2009-2010 work in this proceeding. Williams was admitted to the California Bar Association in November 2009 and has been practicing environmental law as a graduate law fellow at the ELJC for over a year. Williams received a B.A. from California State University, Sonoma in 2003 and received his J.D. with a Certificate of Specialization with Distinction in Environmental Law in May 2008. PE’s hourly rate request of \$150 is at the lowest end of the range of \$150-\$205 adopted for attorneys with 0-2 years of experience in D.08-04-010. Resolutions ALJ-235 and ALJ-247 disallow COLA increases for 2009-2010 intervenor work. PE’s hourly rate request for Williams is reasonable and adopted here.
2010 hourly rate request for Law Students	D.07-04-032 approved an hourly rate of \$100 per hour for work as a law student. This rate takes into account that law students received academic credits for the work they perform. Generally speaking, these are second and third year law students. PE requests this same hourly rate for 2010 work performed by ELJC law students here. We find the requested hourly rate to be reasonable and adopt it here.
2010 hourly rate request for B. Powers	PE requests an hourly rate of \$225 for Bill Powers’ 2010 work in this proceeding. Powers holds a Master’s degree in Public Health from the University of North Carolina and a B.S. in Mechanical Engineering from Duke University. Powers is an engineering expert with an emphasis on energy related issues and has 30 years of experience in: California regional energy planning, power-plant technology, emission, and cooling system assessments, oil and gas technology assessment and emissions evaluation and as an photovoltaic expert in Commission proceedings. Powers has previously adopted

	<p>rates for his work as an expert before the Commission. We find PE’s hourly rate request of \$225 for Powers’ work here to be within the lower range of \$155-\$390 adopted for experts with 13 years or more of experience. PE’s hourly rate request for Powers is reasonable and adopted here.</p>
<p>2009-2010 hourly rate request for R. Cox</p>	<p>PE requests an hourly rate of \$180 for Rory Cox’s 2010 work in this proceeding. Cox is the California Program Director for PE and has worked as an expert in the environmental field for 11 years. Cox received a B.A. in Mass communication from California State University, Chico in 1984 and a M.A. in International Relations from San Francisco State University in 2001. PE states that Cox has over 20 years of writing, research, editorial and publishing experience spanning non-profit, academic and business environments with experience specializing in energy policy analysis, greenhouse gas law and advocacy. Cox has authored numerous reports, articles and opinion pieces on energy policy and markets, especially natural gas and Liquefied Natural Gas. D.09-09-024 at 20 states “it appears that Cox’s experience in the issues within the Commission’s jurisdiction probably began in 2006, when Cox became PE’s Program Director (although it is not clear what program), which would bring him within the range of experts with 0-6 years of experience, according to D.08-04-010.” Cox has a previously adopted rate of \$140 for his 2008 work as an expert in D.09-09-024. To establish Cox’s 2009-2010 rates, we apply to his 2008 rate, two 5% step increases, the maximum authorized in D.08-04-010 within a given range. Resolutions ALJ-235 and ALJ-247 disallow COLA increases for 2009-2010 intervenor work. We adopt here the resulting rates of \$155 for the Cox’s 2009-2010 work.</p>
<p>Disallowances</p>	
<p>2009 hours for L. Williams</p>	<p>Williams logs 9.5 hrs on 11/24 “researching Public Utilities Code Section 365.1.” PE’s work on this issue comprises a total of 1 page of comments contained in its prehearing conference statement and in sum states that this section is relevant and within the scope of the hearing and provides a definition of the requirements of the section. PE’s time spent on this issue is excessive given the scope of the work produced as a result of the time spent researching this matter. We disallow 7.5 hours of Williams time spent on this matter. The disallowance more closely reflects our standards on reasonableness of hours.</p>
<p>Disallowance of time related to “clerical tasks”</p>	<p>We do not compensate for time spent on clerical tasks as they are subsumed in the fees paid to attorneys. We find four incidences in Behles’ timesheets where PE requests reimbursement for this type of work. See time entries on 10/30/09, 2/2/10, 4/22/10 and 6/21/10 for “finalizing and sending” PE’s work. We disallow approximately 5.3 hrs of Behles time spent on clerical tasks. Where PE has combined work on several issues on its timesheet, we have elected to approximate the amount of time spent on each individual issue by dividing the total time by the number of issues listed. We admonish PE here since it is new to Commission proceedings, that the practice of combining several tasks in one timesheet entry violates the provision of Rule 17.4 as well as the Commission’s decisions setting guidelines for intervenor compensation matters (see, for example, D.98-04-059, at 51). Future claims may include disallowances for continuance of this practice.</p>

<p>PE's 2009 hours spent preparing its prehearing conference statement</p>	<p>PE requests a total of 40 hrs (36 hrs for Behles and 4 hrs for Cox) spent preparing its prehearing conference statement. This document is 16 pages in length. In contrast, PE requests approximately 21 hrs (13.8 hrs for Behles and 7 hrs for Cox) to prepare its 18 page protest, which contained more research information and analytical work. This document represents some of PE's most efficient work. We disallow 50% of the time (Behles 18 hrs and Cox 2 hrs) for excessiveness that PE spent preparing its prehearing conference statement.</p>
<p>PE's 2010 time spent preparing its Opening Brief</p>	<p>PE requests a total of 57.4 hrs (18.9 hrs Behles, 4.5 hrs Williams, 31 hrs Law Student, and 3 hrs Cox). The timesheet entries indicated numerous entries by multiple parties for "drafting, re-working, evaluating, analyzing, revising, reviewing, proof-reading, finishing up and adding cites" to PE's Opening Brief (32 pages). While we do not discount PE's contribution on issues, we find the hours associated in preparing its opening brief to involve duplication of effort and inefficiencies leading to PE's excessive request for compensation. We disallow 17.4 hours of PE's time spent on this document. We subtract proportionately the disallowance of time for all individuals we list above (5.7 hrs Behles, 1.4 hrs Williams, 9.3 Law Student and 1 hr Cox).</p>
<p>2010 hours for Behles</p>	<p>PE requests compensation of 12.8 hrs for Behles' time spent preparing PE's comments of the Proposed Decision. Behles' time is excessive given the scope of the work and the length of the document. In contrast, other intervenors accomplished this same task and produced documents similar in scope and length to PE's in 3.5 hours. We disallow 6.8 hrs of Behles' time for excessiveness.</p> <p>PE requests 21.3 hrs of compensation for Behles' time spent "editing, reading, evaluating, inserting language and finalizing" the testimony of Cox. In contrast, Cox logs 3 hrs to prepare this testimony. We find PE's efforts in this area to be excessive and inefficient and disallow 18 hrs of Behles' time spent reviving the efforts of Cox.</p>
<p>Disallowance of 2010 work which had no bearing on substantial contribution</p>	<p>4.8 hrs of Behles' time spent "researching reply issues."</p> <p>1.5 hrs of William's time spent on 3/10 "reviewing file."</p> <p>4.0 hrs of Law Student's time spent researching "significant error."</p>

PART IV: OPPOSITIONS AND COMMENTS

A. Opposition: Did any party oppose the claim?

No

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 D.10-07-045.
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 \$57,557.31.

CONCLUSION OF LAW

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

ORDER

1. Claimant is awarded \$57,557.31.
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 14, 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 March 10, 2011, at San Francisco, California.

MICHAEL R. PEEVEY
President
TIMOTHY ALAN SIMON
CATHERINE J.K. SANDOVAL
Commissioners

I abstain.

/s/ MICHEL PETER FLORIO
Commissioner

APPENDIX
Compensation Decision Summary Information

Compensation Decision:	D1103025	Modifies Decision? No
Contribution Decision(s):	D1007045	
Proceeding:	A0909021	
Author:	ALJ Darwin E. Farrar	
Payer:	Pacific Gas and Electric Company	

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
Pacific Environment	09-30-10	\$76,915.31	\$57,557.31	No	adjusted hourly rate; excessiveness hours; duplication of effort; lack of substantial contribution; inefficient effort

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Deborah	Behles	Attorney	Pacific Environment	\$280	2009/2010	\$280
Lucas	Williams	Attorney	Pacific Environment	\$150	2009/2010	\$150
Bill	Powers	Expert	Pacific Environment	\$225	2010	\$225
Rory	Cox	Expert	Pacific Environment	\$180	2009/2010	\$150
	Law Students		Pacific Environment	\$100	2010	\$100

(END OF APPENDIX)