

Decision 11-04-026 April 14, 2011

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the Commission's Own Motion to Consider Revising Energy Utility Tariff Rules Related to Deposits and Adjusting Bills as They Affect Small Business Customers.

Rulemaking 10-05-005
(Filed May 6, 2010)

**DECISION AWARDING INTERVENOR COMPENSATION
TO THE GREENLINING INSTITUTE
FOR SUBSTANTIAL CONTRIBUTION TO DECISION 10-10-032**

Claimant: The Greenlining Institute	For contribution to Decision (D.) 10-10-032
Claimed: \$9,299.75	Awarded: \$9,299.75
Assigned Commissioner: Michael R. Peevey	Assigned ALJ: Bruce DeBerry

PART I: PROCEDURAL ISSUES**A. Brief Description of Decision:**

The decision revised certain tariff rules for "small business" customers of electric and gas utilities. One tariff rule revision provides that small business customers may be only back-billed¹ for a maximum of three months instead of the current three-year back-billing rule. A second tariff revision establishes deposits at two times the average monthly bill, rather than two times the maximum monthly bill. This decision also addresses a discrepancy between overcharges for billing errors and overcharges for metering errors, re-establishment of service deposits, refunds due to billing and metering errors, service discontinuation notice requirements, potential costs of tariff revisions, and provides direction to the utilities on implementing the adopted tariff changes.

¹ Back-billing results when the utility overcharges or undercharges a customer as the result of a billing or metering error. The utility may render an adjusted bill for the amount of the undercharge, and issue a refund or credit to the customer for the amount of the overcharge.

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

	Claimant	CPUC Verified
Timely filing of Notice of Intent (NOI) to claim compensation (§ 1804(a)):		
1. Date of Prehearing Conference:	N/A	Correct
2. Other Specified Date for NOI:	June 11, 2010	Correct
3. Date NOI Filed:	June 11, 2010	Correct
4. Was the NOI timely filed?		Yes
Showing of customer or customer-related status (§ 1802(b)):		
5. Based on ALJ ruling issued in proceeding number:	Rulemaking (R.) 09-08-009	Correct
6. Date of ALJ ruling:	January 10, 2011	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:	R.09-08-009	Correct
10. Date of ALJ ruling:	January 10, 2011	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.10-10-032	D.10-10-032
14. Date of Issuance of Final Decision:	October 28, 2010	November 2, 2010
15. File date of compensation request:	December 20, 2010	December 20, 2010
16. Was the request for compensation timely?		Correct

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
Issue A – Definition of Small Business Greenlining was the first party to propose the hybrid approach adopted in the decision, that	D.10-10-032 (“Decision”) defines	Yes

<p>would allow a customer to establish eligibility based on either usage or satisfaction of the Government Code definition of micro-business (with help from the Sempra Energy Utilities, which provided input on what specific level of usage would be an appropriate demarcation point). (Reply Comments on the OIR, filed June 28, p. 3; Opening Comments on the Business and Community Outreach (“BCO”) Staff Workshop Report, pp. 2-3; Reply Comments on the BCO Staff Workshop Report, pp. 2-3; Opening Comments on the Proposed Decision, p. 2; Reply Comments on the PD, pp. 2-3.)</p>	<p>a small business customer for purposes of its provisions as a non-residential electric customer using no more than 40,000 kWh/year, or with a demand of 20 kW or less; or b) a non-residential gas customer using no more than 10,000 therms per year; or c) a non-residential customer who meets the definition of “micro-business” as provided in CA Government Code Section 14837. (P. 1 fn. 1; p. 7; p. 13 Findings of Fact (“FOFs”) 1, 2, and 3; pp. 14-15 Ordering Paragraph (“OP”) 1; p. 16 OP 3.)</p>	
<p>Issue B – Back-Billing</p> <p>In response to the OIR, when the question was whether a small business should be treated like a residential customer with respect to back-billing, Greenlining argued that it should, which in this instance meant a back-billing period of only three months, consistent with residential tariffs. (Opening Comments on the OIR, filed June 14, pp. 5-6; Reply Comments on the OIR, pp. 3-4; Opening Comments on the BCO Staff Report, pp. 3-4; Opening Comments on the PD, pp. 2-3; Reply Comments on the PD, p. 3.)</p> <p>When the Staff Report on the Workshop was issued, Greenlining supported its recommendation that back-billing should be limited to three months, and that slow-payment of a back-billed amount should not trigger a reestablishment</p>	<p>When a small business has been inadvertently under-billed, D.10-10-032 reduced the maximum period of time for which back-billing is allowed from three years to three months. (P. 8; p. 13 FOFs 5 and 6; pp. 14-15 OP 1.a.)</p> <p>In declining to waive all re-establishment of service deposits, the Decision did</p>	<p>Yes</p>

<p>of credit deposit. (Opening Comments on the BCO Staff Report, pp. 3-4; Opening Comments on the PD, pp. 2-3; Reply Comments on the PD, pp. 3-4.)</p>	<p>make an exception for instances in which “re-establishment of service is due to failure to pay charges related to back-billing. (P. 9; p. 13 FOF 11; pp. 14-15 OP 1.d.)</p>	
<p>Issue C – Refunds</p> <p>From the outset, Greenlining noted the tenuous and often inconsistent distinction between billing errors and metering errors, and recommended that both be treated the same, with a maximum refund period of three years. (Opening Comments on the OIR, p. 7; Reply Comments on the OIR, p. 5; Reply Comments on the BCO Staff Report, p. 3; Opening Comments on the PD, p. 3.)</p>	<p>D.10-10-032 modifies the refund period for metering errors from 6 months to 3 years, to be consistent with the refund period for billing errors. (P. 8; pp. 14-15 OP 1.c.)</p>	<p>Yes</p>
<p>Issue D – Deposit Amounts</p> <p>Greenlining initially proposed that reestablishment of credit deposits be waived at least for the duration of the rulemaking process, as was the case for residential customers at the time comments were filed. (Opening Comments on the OIR, pp. 8-9.)</p> <p>Greenlining further submitted that reestablishment of credit deposits should be waived for small businesses, and that establishment of credit deposits should be limited to twice the average monthly bill, rather than twice the maximum, to bring policies for small businesses in line with those for residential customers. In the alternative, should the Commission find that reestablishment of credit deposits are necessary; Greenlining argued that they too should be limited to twice the average</p>	<p>D.10-10-032 reduced small business deposits from twice the maximum to twice the average monthly bill. In so doing, it specifically noted Greenlining’s argument that businesses may have aberrant spikes in their usage over the course of a year, and that it would be unreasonable to base a customer’s deposit on one unusually high-usage month. (Pp. 8-9; p. 13 FOFs 7 and 8; pp. 14-15, OP 1.b.)</p> <p>The Decision declined to waive all</p>	<p>Yes</p>

<p>monthly bill, instead of twice the maximum. (Reply Comments on the OIR, pp. 5-6; Opening Comments on the BCO Staff Report, pp. 4-6; Reply Comments on the BCO Staff Report, pp. 4-5; Opening Comments on the PD, pp. 3-6; Reply Comments on the PD, pp. 3-4.)</p> <p>Greenlining advocated for the availability of alternatives to cash deposits, such as direct pay plans, etc. (Opening Comments on the BCO Staff Report, pp. 4-6; Opening Comments on the PD, pp. 3-4; Reply Comments on the PD, p. 4.)</p>	<p>re-establishment of credit deposits, but did eliminate them when the need to re-establish credit was based on slow-payment or non-payment of a back-billed amount resulting from a billing or metering error. (P. 9; p. 13 FOF 11; pp. 14-15 OP 1.d.)</p> <p>The Decision also recommends, but does not require, alternative credit mechanisms in lieu of deposits, such as automatic or direct pay plans. (P. 9; p. 13 FOF 9; pp. 14-15, OP 1.b.)</p>	
<p>Issue E – Sunset Date</p> <p>This issue arose mid-proceeding, when it was proposed by some of the utility parties in response to the BCO Staff Workshop Report, and subsequently denied in the Proposed Decision. In response to the PD, Greenlining supported the Commission in declining to impose a sunset date, providing more in-depth reasoning in Reply Comments. (Opening Comments on the PD, p. 6; Reply Comments on the PD, pp. 4-5.)</p>	<p>D.10-10-032 found it would be inappropriate to set a sunset date for the Decision’s provisions, owing to the difficulties in running a small business, especially during an economic slump of unpredictable duration. It also noted that as a matter of ongoing policy, it is appropriate to treat small business customers like residential customers</p>	<p>Yes</p>

	<p>in the event of back-billing, because small businesses cannot pay large back-bills on short notice, and are generally unable to detect or prevent potential billing or metering errors. The Decision specifically cited Greenlining’s contribution on p. 11. (Pp. 10-11; p. 14 FOFs 13-16; p. 16 OP 4.)</p>	
<p>Issue F – Cost Recovery The Decision specifically notes Greenlining’s argument (along with that of DRA) that the cost impacts will likely be minimal, and that the GRC is the best mechanism for cost recovery. As such, it adopted Greenlining’s argument on this point without modification. (Reply Comments on the BCO Staff Report, p. 5; Opening Comments on the PD, p. 6; Reply Comments on the PD, p. 5.)</p>	<p>D.10-10-032 noted that since the measures adopted elsewhere in the decision are new, there is little information available to assist in estimating their potential costs. However, the decision expressly does not anticipate major financial impact as a result of implementing its provisions, and allows the utilities to request any additional funds they believe are necessary in their GRCs. (Pp. 11-12; p. 14 FOF 17.)</p>	<p>Yes</p>

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>	<p>Yes</p>	<p>Correct</p>
<p>b. Were there other parties to the proceeding?</p>	<p>Yes</p>	<p>Correct</p>

<p>c. If so, provide names of other parties: Southwest Gas Company, Golden State Water Company, Pacific Gas and Electric Company, PacifiCorp, Southern California Edison Company, Southern California Gas Company, San Diego Gas & Electric Company, The Utility Reform Network (TURN), California Small Business Roundtable / California Small Business Association (CSBRT/CSBA).</p>	<p>Correct</p>
<p>d. Claimant’s description 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:</p> <p>Greenlining coordinated with the Division of Ratepayer Advocates and with other consumer advocates to ensure that our efforts were not duplicated. Where our issues overlapped, we sought to coordinate strategies to minimize duplication and maximize efficacy. Specifically, Greenlining worked with DRA to compile a list of questions to be asked of the utilities, to better assess the scope of the problems faced by small businesses and the potential impact of the proposed measures on utility operations and costs.</p> <p>Further, much of the substantive progress that took place in this proceeding was galvanized in a workshop conducted by the Business and Community Outreach Staff midway through the proceeding. This exercise brought all interested parties to the table and helped to identify many points of agreement between parties. It allowed for face-to-face discussion of several options for small business assistance, many of which were adopted in the Decision. This collaborative effort helped to ensure that party efforts were streamlined and non-duplicative.</p>	<p>We make no reductions to Greenlining’s claim for unnecessary duplication of effort.</p>

C. Greenlining’s Additional Comments on Part II:

Item #	Claimant	CPUC	Comment
Part II(A)	X		There were aspects of Greenlining’s position that the Commission chose not to adopt. For example, Greenlining encouraged requiring the utilities to provide alternative credit mechanisms in addition to cash deposits. The Commission ultimately elected to encourage alternative credit mechanisms, rather than requiring them. (See Part II(A) above, Issue D.) Even where the Commission did not ultimately agree with Greenlining’s position, the availability of alternatives for consideration provided a fuller, robust debate on the issues at hand. This range of options and perspectives allows the Commission to reach a sound, well reasoned decision, and thus constitutes a substantial contribution to the record and the decision-making process.

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
<p>It is difficult to assign a precise dollar value to Greenlining’s participation. As mentioned above, it is difficult to predict how many small businesses might find themselves over- or under-billed in the years to come, and how much money the policies enacted in D.10-10-032 would save them. However, these policies will not sunset, so the benefits will continue to accrue to affected customers year after year.</p> <p>The benefits to small business customers who find themselves over- or under-billed will add up quickly in terms of dollars, but they will be compounded by the impact of these dollars on the health of their business. Small businesses typically operate on a tight cash-flow cycle, and unexpected debts (such as those resulting from a long period of under-billing) could very well place the business’ survival in jeopardy.</p> <p>As such, Greenlining submits that the costs of its participation are reasonable because its benefits exceed its costs.</p>	<p>We agree that Greenlining’s hours and costs as requested for its participation in this Rulemaking bears a reasonable relationship with benefits realized for small business customers which in time will outweigh the costs of Greenlining’s participation.</p>

B. Specific Claim:

CLAIMED						CPUC AWARD			
ATTORNEY AND ADVOCATE FEES									
Item	Year	Hours	Rate \$	Basis for Rate*	Total \$	Year	Hours	Rate \$	Total \$
A. Miller	2010	51.2	150	D.10-07-048	7,680.00	2010	51.2	150	7,680.00
S. Chen	2010	5.7	185	D.10-11-029	1,054.50	2010	5.7	185	1,054.50
Subtotal: \$8,734.50						Subtotal: \$8,734.50			
INTERVENOR COMPENSATION CLAIM PREPARATION **									
Item	Year	Hours	Rate \$	Basis for Rate*	Total \$	Year	Hours	Rate \$	Total \$
A. Miller	2010	1.0	75	½ D.10-07-048 rate	75.00	2010	1.0	75.00	75.00
S. Chen	2010	5.3	92.50	½ D.10-11-029 rate	490.25	2010	5.3	92.50	490.25
Subtotal: \$565.25						Subtotal: \$565.25			
TOTAL REQUEST: \$9,299.75						TOTAL AWARD: \$9,299.75			
<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</p>									

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. CPUC Disallowances & Adjustments: None

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.10-10-032.
2. The claimed fees and costs 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 \$9,299.75.

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 \$9,299.75.
2. Within 30 days of the effective date of this decision, Pacific Gas and Electric Company, Southern California Edison Company, Southern California Gas Company, San Diego Gas & Electric Company, PacifiCorp, Mountain Utilities, Southwest Gas Company, and Golden State Water Company, shall pay their respective shares of the award. We direct Pacific Gas and Electric Company, Southern California Edison Company, Southern California Gas Company, San Diego Gas & Electric Company, PacifiCorp, Mountain Utilities, Southwest Gas Company, and Golden State Water Company, to allocate payment responsibility among themselves, based on their California-jurisdictional gas and electric revenues for the 2010 calendar year, to reflect the year in which the proceeding was primarily litigated.

3. The comment period for today's decision is waived.

This order is effective today.

Dated April 20, 2011, at San Francisco, California.

MICHAEL R. PEEVEY

President

TIMOTHY ALAN SIMON

CATHERINE J.K. SANDOVAL

MARK FERRON

Commissioners

I abstain.

/s/ MICHEL PETER FLORIO

Commissioner

APPENDIX**Compensation Decision Summary Information**

Compensation Decision:	D1104026	Modifies Decision? No
Contribution Decision:	D1010032	
Proceeding:	R1005005	
Author:	ALJ Bruce DeBerry	
Payer(s):	Pacific Gas and Electric Company, Southern California Edison Company, Southern California Gas Company, San Diego Gas & Electric Company, PacifiCorp, Mountain Utilities, Southwest Gas Company, and Golden State Water Company ¹	

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
The Greenlining Institute	12-20-10	\$9,299.75	\$9,299.75	No	None

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Alicia	Miller	Attorney	The Greenlining Institute	\$150	2010	\$150
Stephanie	Chen	Attorney	The Greenlining Institute	\$185	2010	\$185

(END OF APPENDIX)

¹ Golden State Water Company owns and operates its Bear Valley Electric Service.