

Decision 11-05-043 May 26, 2011

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to develop additional methods to implement the California renewables portfolio standard program.	Rulemaking 06-02-012 (Filed February 16, 2006)
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**CLAIM AND DECISION ON REQUEST FOR INTERVENOR COMPENSATION**

<b>Claimant:</b> Aglet Consumer Alliance	<b>For contributions to D.10-03-021</b>
<b>Claimed (\$):</b> \$31,548.41	<b>Awarded (\$):</b> \$31,063.54
<b>Assigned Commissioner:</b> Michael Peevey	<b>Assigned Administrative Law Judges:</b> Anne Simon and Burton Mattson
<b>Claim Filed:</b> May 4, 2010	

**PART I: PROCEDURAL ISSUES**

<b>A. Brief Description of Decision:</b>	The decision authorizes the procurement and use of tradable renewable energy credits (TRECs) for compliance with the California renewables portfolio standard (RPS) program. It also sets forth the structure and rules for a TREC market and for integration of TRECs into the RPS flexible compliance system.
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**B. Claimant must satisfy intervenor compensation requirements set forth in Public Utilities Code §§ 1801-1812:**

	<b>As Stated by Claimant</b>	<b>CPUC Verified</b>
<b>Timely filing of notice of intent (NOI) to claim compensation (§ 1804(a)):</b>		
1. Date of Prehearing Conference:	12/10/07	Correct
2. Other Specified Date for NOI:		
3. Date NOI Filed:	1/11/06 in R.04-04-026	Correct. On September 20, 2006, Aglet updated its NOI in this proceeding (see, Comment 2)
4. Was the notice of intent timely filed?		Yes

<b>Showing of customer or customer-related status (§ 1802(b)):</b>		
5. Based on Administrative Law Judge's (ALJ) ruling issued in proceeding number:	R.04-04-026	Correct
6. Date of ALJ ruling:	3/30/06	Correct
7. Based on another CPUC determination (specify):		
8. Has the claimant demonstrated customer or customer-related status?		Yes
<b>Showing of "significant financial hardship" (§ 1802(g)):</b>		
9. Based on ALJ ruling issued in proceeding number:	R.04-04-026	Correct.
10. Date of ALJ ruling:	3/30/06	Correct. Also September 14, 2006 ruling in this proceeding (see, Comment 2)
11. Based on another CPUC determination (specify):		
12. Has the claimant demonstrated significant financial hardship?		Yes
<b>Timely request for compensation (§ 1804(c)):</b>		
13. Identify Final Decision	D.10-03-021	Correct
14. Date of Issuance of Final Decision:	3/16/10	Correct
15. File date of compensation request:	5/4/10	Correct
16. Was the request for compensation timely?		Yes

### C. Additional Comments on Part I:

#	Claimant	CPUC	Comment
1	Aglet		Three proposed decisions were issued in R.06-02-012 concerning TREC's. The dates of the proposed decisions were: October 29, 2008 (PD1); March 26, 2009 (PD2); and December 23, 2009 (PD3). Aglet refers to these abbreviations below.
2		X	Aglet was found eligible for compensation in the March 30, 2006 ruling in R.04-04-026, the predecessor to this proceeding. On September 14, 2006, ALJ Anne Simon issued a ruling in this proceeding on Aglet's NOI. The ruling of September 14, 2006, adopted the prior findings regarding Aglet's intent to claim compensation but directed Aglet to file an updated NOI in this proceeding. On September 20, 2006, Aglet filed an updated NOI, as directed. Aglet claimed financial hardship in the NOI. The September 14, 2006 ruling found that Aglet had established significant financial hardship, as required under § 1804(a).

**PART II: SUBSTANTIAL CONTRIBUTION**

**A. 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
<p>1. <u>Ratepayer Benefits</u>. Aglet argued that “reliance on TRECs rather than long-term bundled contracts will reduce what they describe as the physical hedging value of RPS procurement.” (D.10-03-021, p. 18.)</p> <p>The Commission found that “REC-only contracts are likely to provide fewer potential benefits to ratepayers than contracts for RPS procurement that include both RECs and RPS-eligible energy.” (D.10-03-021, Finding of Fact 10.)</p>	<p>D.10-03-021, p. 18. Finding of Fact 10.</p>	<p>Yes</p>
<p>2. <u>Procurement Limit</u>. Aglet supported a 25% limit on the TREC procurement of the IOUs during a given year. (D.10-03-021, p. 45.)</p> <p>The Commission found that “REC-only contracts are likely to provide fewer potential benefits to ratepayers than contracts for RPS procurement that include both RECs and RPS eligible energy. In light of this differential in potential benefits, it is reasonable to impose on the three large IOUs a temporary limit of 25% of APT annually on their use of TRECs for RPS compliance.” (D.10-03-021, Finding of Fact 10.)</p>	<p>(D.10-03-021, p. 45) Finding of Fact 10. Ordering Paragraph 17.</p>	<p>Yes, Aglet to a limited extent contributed to this issue. The contribution, however, did not go beyond supporting the 25% TREC procurement limit in Aglet’s comments on the proposed decision. Since Aglet opposed the TREC concept, Aglet did not propose the procurement limit.</p>

<p>3. <u>Price Cap</u>. Aglet argued, “The Commission should lower both the noncompliance penalty and the price cap to a more reasonable level of \$35/megawatt hour and \$35/REC respectively.” (Aglet PD2 Comments, p. 3, April 15, 2010<sup>1</sup>.)</p> <p>The Commission noted that “Information on recent TREC prices in markets in other states, provided by Aglet in its supplemental comments, shows that prices vary from a low range (less than \$5/REC) through a few in the range of \$25/REC, to, in one instance, a high of \$48/REC.” (D.10-03-021, p. 53, footnote 85.)</p> <p>The Commission found that “it is reasonable to impose a temporary price cap of \$50/REC for TREC purchases by IOUs.” (D.10-03-021, Finding of Fact 11.)</p> <p>Although the Commission set a higher price cap than the price cap recommended by Aglet, Aglet made a substantial contribution to the resolution of the price cap issue by introducing record evidence concerning REC prices in other states and by recommending a price cap of \$35 REC.</p>	<p>Finding of Fact 11. D.10-03-021, p. 53, footnote 85</p>	<p>Yes</p>
<p>4. <u>Reporting</u>. In reply comments to PD3, Aglet argued against limiting the reporting requirement to IOUs. (See Aglet PD3 Reply Comments, January 25, 2010, pp. 4-5.)</p> <p>The Commission stated that “all RPS-obligated LSEs should be required to file with Energy Division reports on TREC purchases, sales, and prices, with appropriate confidentiality protections.” (D.10-03-021, p. 73.)</p>	<p>D.10-03-021, p. 73</p>	<p>Yes</p>

<sup>1</sup> Corrections to this reference were made pursuant to Aglet’s email of April 12, 2011.

<p>5. <u>Sunset</u>. In reply comments to PD3, Aglet argued against the automatic expiration of TREC usage limits after 24 months. Aglet recommended, “Instead, the Commission should evaluate the TREC program during the next 24 months and decide whether or not to change or eliminate the usage restrictions.” (Aglet PD3 Reply Comments, January 25, 2010, p. 3.)</p> <p>The Commission ordered the Energy Division to prepare a report in sixteen months. The report must recommend “whether or not the applicable TREC usage limit and price cap should be retained or allowed to sunset.” (D.10-03-021, Conclusion of Law 26.)</p>	<p>D.10-03-021, Conclusion of Law 26</p>	<p>Yes</p>
<p>6. <u>Errors</u>. On November 18, 2008, Aglet filed comments to PD1. On January 19, 2010, Aglet filed comments to PD3. Some of Aglet’s comments sought to correct errors in the proposed decisions. In its PD1 Comments, Aglet pointed out that Aglet had not proposed a mitigation measure and thus the PD should be corrected. In its PD2<sup>2</sup> comments, Aglet suggested that the last sentence of footnote 60 should be deleted.</p> <p>D.10-03-021 adopted the two changes recommended by Aglet.</p>	<p>D.10-03-021</p>	<p>Yes</p>

<sup>2</sup> Corrections to this reference were made pursuant to Aglet’s e-mail of April 12, 2011.

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

	<b>Claimant</b>	<b>CPUC Verified</b>
<b>a. Was the Division of Ratepayer Advocates (DRA) a party to the proceeding?</b>	<b>Yes</b>	<b>Correct</b>
<b>b. Were there other parties to the proceeding?</b>	<b>Yes</b>	<b>Correct</b>
<b>c. If so, provide name of other parties: DRA; The Utility Reform Network (TURN)</b>		
<p><b>d. Describe how you coordinated with DRA and other parties to avoid duplication or how your participation supplemented, complemented, or contributed to that of another party:</b></p> <p>Aglet contributed to the proceeding in a manner that did not repeat the work of other parties. Aglet represents customer interests that would otherwise be underrepresented in this proceeding. As ALJ Angela Minkin noted in her eligibility ruling for Aglet in A.98-09-003 et al.:</p> <p style="padding-left: 40px;">"Participation in Commission proceedings by parties representing the full range of affected interests is important. Such participation assists the Commission in ensuring that the record is fully developed and that each customer group receives adequate representation." (Ruling dated July 7, 1999, p. 3.)</p> <p>As a matter of policy, Aglet does not participate in Commission proceedings where its showing is likely to be the same as showings of other consumer representatives such as TURN or DRA. For example, Aglet did not serve testimony in Phase 3 of the long term plan proceeding, R.06-02-013, because Aglet's showing would likely have duplicated the showings of TURN and DRA.</p> <p>Aglet and TURN have been the sole active parties that represent only residential and small commercial customers. DRA was an active party, but by its charter DRA must represent the interests of all customers, not only residential and small commercial customers. Aglet made conscious efforts to avoid duplication of DRA's and TURN's work in its showing. Aglet reduced its costs of participation by working with TURN to produce a joint filing, "Motion of TURN and AGLET to Request Evidentiary Hearings", November 28, 2007.</p> <p>Aglet conferred with TURN on July 13, 2007, November 27, 2007, and March 31, 2009 concerning TREC policy. (See Attachment A to this pleading.) Aglet conferred with DRA on December 6, 2007 and April 13, 2009 concerning TRECs. On December 6, 2009, Aglet participated in a meeting on TRECs with Noel Obiora of the DRA and Energy Division staff concerning the Energy Division's Straw Proposal. Additionally, Aglet consultant Jan Reid met with DRA and TURN on numerous occasions throughout the course of the proceeding.</p>		<b>Yes</b>

**C. Additional Comments on Part II:**

#	Claimant	CPUC	Comment
1	Aglet		A summary of the time spent by consultant Jan Reid on each issue is given in Attachment A, at the bottom of the spreadsheet. Aglet Director James Weil allocated his time to individual issues based on Reid's time because most of Weil's work was editing Aglet pleadings that Reid drafted. See Attachment B, at the bottom of the spreadsheet.

**PART III: REASONABLENESS OF REQUESTED COMPENSATION**

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

<b>Explanation by Claimant as to how the cost of Claimant's participation bore a reasonable relationship with benefits realized through participation</b>	<b>CPUC Verified</b>
<p>Aglet contributed to the proceeding in a manner that was productive and will result in benefits to ratepayers that exceed the costs of participation.</p> <p>In consolidated R.97-01-009 and Investigation 97-01-010, the Commission required intervenors seeking compensation to show that they represent interests that would otherwise be underrepresented and to present information sufficient to justify a finding that the overall benefits of a customer's participation will exceed the customer's costs. (D.98-04-059, Finding of Fact 13, slip op. at 83, discussion at 31 33, as modified by D.99-02-039.) The Commission noted that assigning a dollar value to intangible benefits may be difficult.</p> <p>As mentioned previously, Aglet supported a 25% limit on the TREC procurement of the IOUs during a given year. (D.10-03-021, p. 45) In other words, no more than 25% of an IOUs Annual Procurement Target may be met with TRECs. Aglet has previously calculated that ratepayers will lose at least \$16.29 million annually if a 100 MW plant is not built due to the lack of a long term contract. (R.06-02-012, Aglet Comments, December 1, 2006, pp. 5-6.) Thus, the displacement of a single MW of plant capacity by a REC would cost ratepayers roughly \$162,000 per year, or more than five times the award requested by Aglet.</p> <p>The Commission can safely find that the participation of Aglet in this proceeding was productive. Overall, the benefits of Aglet's contributions to D.10-03-021 justify compensation in the amount requested.</p>	<p>Yes</p>

**B. Specific Claim\*:**

CLAIMED						CPUC AWARD			
ATTORNEY AND ADVOCATE FEES									
Item	Year	Hours	Rate	Basis for Rate	Total \$	Year	Hours	Rate	Total \$
James Weil	2007	5.5	\$280	D.07-05-037, slip op. at 11	1,540.00	2007	5.50	\$280	1,540.00
James Weil	2008	4.8	\$300	D.08-05-033	1,440.00	2008	4.80	\$300	1,440.00
James Weil	2009	4.3	\$300	D.08-05-033	1,290.00	2009	4.30	\$300	1,290.00
James Weil	2010	3.8	\$300	D.08-05-033	1,140.00	2010	3.80	\$300	1,140.00
<i>Subtotal:</i>					<i>5,410.00</i>	<i>Subtotal:</i>			<i>\$5,410.00</i>
EXPERT FEES									
Item	Year	Hours	Rate	Basis for Rate	Total \$	Year	Hours	Rate	Total \$
Jan Reid	2007	43.8	\$170	D.07-05-037, slip op. at 11-12	7,446.00	2007	43.70	\$170	\$7,429.00
Jan Reid	2008	42.9	\$185	D.08-11-054, slip op. at 8	7,936.50	2008	42.90	\$185	\$7,936.50
Jan Reid	2009	30.0	\$185	D.08-11-054, slip op. at 8	5,550.00	2009	30.0	\$185	\$5,550.00
Jan Reid	2010	17.7	\$185	D.08-11-054, slip op. at 8	3,274.50	2010	17.60	\$185	\$3,256.00
<i>Subtotal:</i>					<i>24,207.00</i>	<i>Subtotal:</i>			<i>\$24,171.50</i>
OTHER FEES									
Item	Year	Hours	Rate	Basis for Rate	Total \$	Year	Hours	Rate	Total \$
Jan Reid, travel time	2007	4.3	\$85	D.07-05-037, slip op. at 11-12	\$365.50				
<i>Subtotal:</i>					<i>\$365.50</i>	<i>Subtotal:</i>			<i>0.00</i>
INTERVENOR COMPENSATION CLAIM PREPARATION **									
Item	Year	Hours	Rate	Basis for Rate	Total \$	Year	Hours	Rate	Total \$
Jan Reid	2010	7.3	\$92.50	D.08-11-054, slip op. at 8	675.25	2010	7.30	\$92.50	675.25
James Weil	2010	4.1	\$150	D.08-05-033	615.00	2010	4.1	\$150	\$615.00
<i>Subtotal:</i>					<i>1,290.25</i>	<i>Subtotal:</i>			<i>\$1,290.25</i>

<b>COSTS</b>					
#	Item	Detail	Amount	Amount	
1	Jan Reid Travel Expense	September 5, 2007, travel from Santa Cruz to San Francisco, 166 miles at 44.5 cents/mile. Attended an Energy Division Workshop on TRECs.	\$73.87		0.00
2	Jan Reid Travel Expense	September 5, 2007, parking, San Francisco. Attended an Energy Division Workshop on TRECs.	\$10.00		0.00
3	Copies	See Att. B; rate 8 cents per page	\$85.29		\$85.29
4	Postage	See Attachment B	\$106.50		\$106.50
<i>Subtotal:</i>			<b>\$275.66</b>	<i>Subtotal:</i>	<b>\$191.79</b>
<b>TOTAL REQUEST \$:</b>			<b>31,548.41</b>	<b>TOTAL AWARD \$:</b>	<b>\$31,063.54</b>
<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 (the same applies to the travel time).</p>					

**C. CPUC Disallowances & Adjustments:**

#	Reason
1	On July 12, 2007, Weil and Reid discussed REC workshop with each other but request slightly different amount of the time for this task: Reid – 0.5 hour, and Weil – 0.4 hour. To cure this discrepancy, we adjust Reid’s hours by 0.1 hour.
2	On May 1, 2010, Reid had a discussion with Barbara Barkovich, recorded under the “General” issue in the time records. We note that Barkovich was not a party to this proceeding and the task is not sufficiently identified to show a connection to Aglet contributions to the decision. We disallow the time spent on this task (0.1 hour) as unproductive.
3	We disallow 4.30 hours of Reid’s travel in 2007 from Santa Cruz to San Francisco, to attend REC workshop, and travel costs (\$83.873). We consider travel time and costs incurred by attorneys, consultants and other experts participating in Commission proceeding to be non-compensable if the one-way travel distance is 120 miles or less. (D.10-10-015 at 11).

<sup>3</sup> The costs include mileage (\$73.87) and parking (\$10.00)

**PART IV: OPPOSITIONS AND COMMENTS**

<b>A. Opposition: Did any party oppose the claim?</b>	No
<b>B. Comment Period: Was the 30-day comment period waived (<i>see</i> Rule 14.6(c)(6))?</b>	Yes

**FINDINGS OF FACT**

1. Claimant has made a substantial contribution to Decision (D.) 10-03-021.
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 \$31,063.54.

**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 \$31,063.54.
- 2) Within 30 days of the effective date of this decision, Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company shall pay Aglet Consumer Alliance their respective shares of the total award. Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company shall allocate the payment responsibility among themselves, based on their California-jurisdictional electric revenues for the 2007 calendar year, to reflect the year in which the proceeding was primarily litigated. Payment of the award shall include interest at the rate earned on prime, three-month commercial paper as reported in Federal Reserve Statistical Release H.15, beginning July 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.

4) This decision is effective today.

Dated May 26, 2011, at San Francisco, California.

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

I abstain.

/s/ MICHEL PETER FLORIO  
Commissioner

**APPENDIX****Compensation Decision Summary Information**

<b>Compensation Decision:</b>	D1105043	<b>Modifies Decision?</b>	<b>No</b>
<b>Contribution Decision:</b>	D1003021		
<b>Proceeding:</b>	R0602012		
<b>Author:</b>	ALJ Anne E. Simon		
<b>Payer(s):</b>	Pacific Gas and Electric Company, Southern California Edison Company, San Diego Gas & Electric Company.		

**Intervenor Information**

<b>Intervenor</b>	<b>Claim Date</b>	<b>Amount Requested</b>	<b>Amount Awarded</b>	<b>Multiplier?</b>	<b>Reason Change/Disallowance</b>
Aglet Consumer Alliance	5/4/10	\$31,548.41	\$31,063.54	No	Minor adjustment, tasks not sufficiently identified as to demonstrate a relevance to the claimed contributions, routine travel time and costs disallowed.

**Advocate Information**

<b>First Name</b>	<b>Last Name</b>	<b>Type</b>	<b>Intervenor</b>	<b>Hourly Fee Requested</b>	<b>Year Hourly Fee Requested</b>	<b>Hourly Fee Adopted</b>
James	Weil	Advocate	Aglet Consumer Alliance	\$280	2007	\$280
James	Weil	Advocate	Aglet Consumer Alliance	\$300	2008	\$300
James	Weil	Advocate	Aglet Consumer Alliance	\$300	2009	\$300
James	Weil	Advocate	Aglet Consumer Alliance	\$300	2010	\$300
Jan	Reid	Expert	Aglet Consumer Alliance	\$170	2007	\$170
Jan	Reid	Expert	Aglet Consumer Alliance	\$185	2008	\$185
Jan	Reid	Expert	Aglet Consumer Alliance	\$185	2009	\$185
Jan	Reid	Expert	Aglet Consumer Alliance	\$185	2010	\$185

**(END OF APPENDIX)**