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**Date of Issuance 7/21/2011**

Decision 11-07-025 July 14, 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)

**DECISION GRANTING INTERVENOR COMPENSATION  
TO THE GREEN POWER INSTITUTE FOR SUBSTANTIAL  
CONTRIBUTION TO DECISION (D.) 07-07-044, D.08-08-028,  
D.08-10-026, D.10-03-021, AND D.11-01-025**

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APPENDIX

**DECISION GRANTING INTERVENOR COMPENSATION  
TO THE GREEN POWER INSTITUTE FOR SUBSTANTIAL  
CONTRIBUTION TO DECISION (D.) 07-07-044, D.08-08-028,  
D.08-10-026, D.10-03-021, AND D.11-01-025**

This decision awards the Green Power Institute \$88,334.52 for its substantial contributions to Decision (D.) 07-07-044, D.08-08-028, D.08-10-026, D.10-03-021, and D.11-01-025. This represents a decrease of \$4,080.48 or 4.40% from the amount requested to reflect work claimed but which did not contribute to our resolution of issues in D.11-01-025, and some unjustified direct expenses. Today's award payment will be allocated to the affected utilities.

**1. Background**

The rulemaking (R.) 06-02-012 was initiated to develop rules, procedures, and policies for Renewable Portfolio Standard (RPS) implementation. The RPS program was initiated by Senate Bill 1078 (Sher), Stats, 2002, ch. 516.<sup>1</sup> Decision (D.) 03-06-071 set the framework for implementation of the program but deferred several important issues. R.06-02-012, among other questions, addressed the issue of whether the Commission should consider trading of renewable energy credit (REC) for RPS compliance. D.07-05-028 issued in this rulemaking, amongst other things, required load-serving entities (LSEs) obligated under the RPS program to enter into long term contracts and/or short-term contracts with new facilities for energy deliveries equivalent to at least one-quarter of one percent of that LSE's prior year's retail sales if such LSE intends, for any RPS

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<sup>1</sup> RPS legislation is codified in Public Utilities Code §§ 399.11-399.20. All subsequent references to sections are to the Public Utilities Code unless otherwise specified.

compliance purpose, to count deliveries from short-term contracts with existing RPS-eligible facilities. In addition, D.07-05-028 contained language denying those deemed to be “non-market participants” and Commission staff, access to contracts and other compliance filings under § 399.14 that have been deemed to be confidential. D.07-07-044 modified D.07-05-028 in the areas of access of non-market participants to confidential information, in order to bring the provisions of that decision into compliance with relevant statutes and Commission rules. D.08-08-028 specified and defined the attributes of a REC for compliance with the California RPS program. D.08-10-026 refined the methodology for the market price referent (MPR) for use in the RPS program in 2008 and later years in order to improve the accuracy, transparency, and simplicity of the modeling for the MPR proxy plant. D.10-03-021 authorized the procurement and use of tradable RECs (TRECs) for compliance with the California RPS program. It also delineated the structure and rules for a TREC market and for the integration of TRECs into the RPS flexible compliance system. D.10-05-018 stayed D.10-03-021 pending resolution of two petitions for modification of that decision, filed by the three investor-owned utilities (IOUs), jointly, and by Independent Energy Producers Association (IEPA). D.11-01-025 made technical corrections to D.10-03-021 and denied the petitions to modify in all other respects.

The Green Power Institute (GPI) actively participated in the proceedings leading to D.07-07-044, D.08-08-028, D.08-10-026, D.10-03-021, and D.11-01-025.

## 2. Requirements for Awards of Compensation

The intervenor compensation program, which is set forth in Pub. Util. Code §§ 1801-1812,<sup>2</sup> requires California jurisdictional utilities to pay the reasonable costs of an intervenor's participation if that party makes a substantial contribution to the Commission's proceedings. The statute provides that the utility may adjust its rates to collect the amount awarded from its ratepayers.

All of the following procedures and criteria must be satisfied for an intervenor to obtain a compensation award:

1. The intervenor must satisfy certain procedural requirements including the filing of a sufficient notice of intent (NOI) to claim compensation within 30 days of the prehearing conference (PHC), pursuant to Rule 17.1 of the Commission's Rules of Practice and Procedure (Rules), or at another appropriate time that we specify. (§ 1804(a).)
2. The intervenor must be a customer or a participant representing consumers, customers, or subscribers of a utility subject to our jurisdiction. (§ 1802(b).)
3. To seek a compensation award, the intervenor must file and serve a request for a compensation award within 60 days of our final order or decision in a hearing or proceeding. (§ 1804(c).)
4. The intervenor must demonstrate "significant financial hardship." (§§ 1802(g) and 1804(b)(1).)
5. The intervenor's presentation must have made a "substantial contribution" to the proceeding, through the adoption, in whole or in part, of the intervenor's contention or recommendations by a Commission order or decision or as otherwise found by the Commission. (§§ 1802(i) and 1803(a).)

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<sup>2</sup> All subsequent statutory references are to the Public Utilities Code unless otherwise indicated.

6. The claimed fees and costs must be reasonable (§ 1801), necessary for and related to the substantial contribution (D.98-04-059), comparable to the market rates paid to others with comparable training and experience (§ 1806), and productive (D.98-04-059).

In the discussion below, the procedural issues in Items 1-4 above are combined and a separate discussion of Items 5-6 follows.

### **2.1. Preliminary Procedural Issues**

Under § 1804(a)(1) and Rule 17.1(a)(1), a customer who intends to seek an award of intervenor compensation must file an NOI before certain dates. In a proceeding in which a PHC is held, the intervenor must file and serve its NOI between the date the proceeding was initiated until 30 days after the PHC is held. (Rule 17.1(a)1.) The PHC in this matter was held on April 7, 2006. GPI timely filed its NOI on May 1, 2006. In its NOI, GPI asserted financial hardship. The September 14, 2006 ruling found that GPI meets the financial hardship condition pursuant to § 1802(g).

Section 1802(b)(1) defines a “customer” as: (A) a participant representing consumers, customers or subscribers of a utility; (B) a representative who has been authorized by a customer; or (C) a representative of a group or organization authorized pursuant to its articles of incorporation or bylaws to represent the interests of residential or small business customers. (§ 1802(b)(1)(A) through (C).) The September 14, 2006 ruling found GPI a customer pursuant to § 1802(b)(1)(C).

GPI filed its request for compensation within 60 days of D.11-01-025 being issued.<sup>3</sup> The request was timely, and no opposition was filed.

### **3. Substantial Contribution**

In evaluating whether a customer made a substantial contribution to a proceeding, we look at several things. First, we look at whether the Commission adopted one or more of the factual or legal contentions, or specific policy or procedural recommendations put forward by the customer. (§ 1802(i).) Second, if the customer's contentions or recommendations paralleled those of another party, we look at whether the customer's participation unnecessarily duplicated or materially supplemented, complemented, or contributed to the presentation of the other party. (§§ 1801.3(f) and 1802.5.)

As described in § 1802(i), the assessment of whether the customer made a substantial contribution requires the exercise of judgment.

In assessing whether the customer meets this standard, the Commission typically reviews the record, composed in part of pleadings of the customer and, in litigated matters, the hearing transcripts, and compares it to the findings, conclusions, and orders in the decision to which the customer asserts it contributed. It is then a matter of judgment as to whether the customer's presentation substantially assisted the Commission.<sup>4</sup>

With this guidance in mind, we turn to the claimed contributions GPI made to the proceeding.

We agree with the majority of GPI's claims of substantial contributions. GPI was a very helpful participant, providing excellent analytical work, and its

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<sup>3</sup> D.11-01-025 issued on January 14, 2011.

<sup>4</sup> D.98-04-059, 79 CPUC2d 628 at 653.

participation was critical to the outcomes of the proceeding. GPI's many arguments were either approved or adopted with modifications or considered in the decisions. Even where the Commission did not adopt the GPI's position, GPI presented original, clear and thought-out arguments and models that gave the Commission more legitimate options from which to choose in making its findings.

Decision D.07-07-044, Modifying D.07-05-028. We find that GPI made substantial contributions to D.07-07-044 by being one of the applicants for rehearing that led to D.07-07-044. D.07-07-044 states that the arguments presented in the application for rehearing had merit, and therefore grants a limited rehearing and makes corrections to the original Decision, D.07-05-028. GPI's substantial contribution was in bringing this error to the Commission's attention, and eliciting the needed corrections.

Decision D.08-08-028, Definition and Attributes of RECs. We find that GPI made several substantial contributions to D.08-08-028. It provided the Commission with the rationale for how to handle the combination of inherent renewable attributes and avoided fossil emissions in a REC, helped carve out the exclusion for the waste-disposal benefits of biomass and biogas resources, and urged the Commission to fix language in standard terms and conditions (STCs), STC no. 2, in order to conform to language in SB 107.

Decision D.08-10-026, Decision Refining the Methodology for the MPR. We find that GPI made several substantial contributions to D.08-10-026. It provided valuable analysis and criticism of the utilities' time-of-delivery factors. While GPI's proposal ultimately was not adopted, it significantly enriched the decision-making process. GPI urged that the greenhouse gas adder be adopted permanently, which was accomplished. GPI persuasively opposed the utilities'

efforts to invoke confidentiality considerations to suppress the public release of the MPR.

Decision D.10-03-021, Decision Authorizing Limited Use of TRECs. We find that GPI made numerous substantial contributions to D.10-03-021. It contributed to the development of the definitions of bundled and REC-only transactions, and to the development of market rules that allowed more TRECs to be used for compliance than was in the original Proposed Decision, pushed the price cap for TRECs to equivalency with the fine level for under-procurement, opposed imposing a time limit on the forward banking of TRECs, and opposed earmarking of contracts for TRECs.

Decision D.11-01-025, Decision Addressing Petitions for Modification of D.10-03-021. We find that GPI made substantial contributions to D.11-01-025 by successfully opposing the IOUs' petition for modification. We find, however, that no substantial contributions were made by GPI's position in support for the IEPA's petition for modification. D.11-01-025 rejected the issues brought up by the IEPA's petition ("While these issues may be important and worthwhile, they are not appropriately addressed by modification of D.10-03-21.")<sup>5</sup> and denied the IEPA's petition "[b]ecause D.10-03-021 already has in place processes to address the two issues<sup>6</sup> raised by IEP in its petition."<sup>7</sup> The GPI's input on the IEPA's petition for modification was not useful: it did not give the Commission any

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<sup>5</sup> D.11-01-025 at 11.

<sup>6</sup> IEPA's proposals to consider bundled certain firm transmission transactions and to expand the review of Least Cost/Best Fit methodology for RPS procurement that is ordered in D.10-03-021.

<sup>7</sup> D.11-01-025 at 11.

good reason to abandon a process set out in D.10-03-021. Therefore, we disallow GPI's hours spent on the IEPA's petition.

#### **4. Contributions of Other Parties**

Section 1801.3(f) requires an intervenor to avoid participation that duplicates that of similar interests otherwise adequately represented by another party, or participation unnecessary for a fair determination of the proceeding. Section 1802.5, however, allows an intervenor to be eligible for full compensation where its participation materially supplements, complements, or contributes to the presentation of another party if that participation makes a substantial contribution to the Commission order.

In a proceeding involving multiple participants, it is virtually impossible to completely avoid some duplication of the work of other parties; however, GPI states that it coordinated its efforts in this proceeding with other parties in order to avoid duplication of effort to the extent possible, and tried to minimize it where it was unavoidable. Among other things, GPI coordinated its work with Union of Concerned Scientists (UCS), The Utility Reform Network (TURN), and other parties, including participating with TURN and UCS in the joint filing of the June 4, 2007 application for rehearing of D.07-05-028, and helping to organize an informal collaborative workgroup among parties. These activities can be traced in Dr. Morris's time records. Also, GPI presented a distinctive position on or approach to, the proceeding's issues. We find that GPI's participation did not unnecessarily duplicate efforts of other parties.

After we have determined the scope of a customer's substantial contribution, we then look at whether the amount of the compensation request is reasonable.

## 5. Reasonableness of Requested Compensation

GPI requests \$92,315.00 for its participation in this proceeding phases leading to D.07-07-044, D.08-08-028, D.08-10-026, and D.10-03-021, as follows:

<b>Work on Proceeding</b>				
<b>Experts/Staff</b>	<b>Year</b>	<b>Hours</b>	<b>Hourly Rate</b>	<b>Total</b>
Gregory Morris	2007	114	\$225.00	\$25,650.00
Gregory Morris	2008	175.50	\$230.00	\$40,365.00
Gregory Morris	2009	21.50	\$240.00	\$5,160.00
Gregory Morris	2010	75.50	\$240.00	\$18,120.00
<b>Subtotal:</b>				<b>\$89,295.00</b>
<b>Preparation of Compensation Request<sup>8</sup></b>				
<b>Experts/Staff</b>	<b>Year</b>	<b>Hours</b>	<b>Hourly Rate</b>	<b>Total</b>
Gregory Morris	2011	20.00	\$120	\$2,400 <sup>9</sup>
<b>Subtotal:</b>				<b>\$2,400</b>
<b>Expenses</b>				\$720.00
<b>Total Requested Compensation</b>				<b>\$92,415.00</b>

The components of the request must constitute reasonable fees and costs of the customer's preparation for and participation in a proceeding that resulted in a substantial contribution. The issues we consider to determine reasonableness are discussed below.

### 5.1. Hours and Costs Related to and Necessary for Substantial Contribution

We first assess whether the hours claimed for the customer's efforts that resulted in substantial contributions to Commission decisions are reasonable by

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<sup>8</sup> Reasonable claim preparation time typically compensated at ½ of preparer's normal hourly rate.

<sup>9</sup> We correct GPI's error here and in the rest of this table (the amount requested for the intervenor compensation matters was \$2,300, and the total request, accordingly, was \$100.00 less than the correct amount).

determining to what degree the hours and costs are related to the work performed and necessary for the substantial contribution. GPI documented its claimed hours by presenting a daily breakdown of the hours of Dr. Morris, the GPI director and expert on renewable energy matters. The hourly breakdown reasonably supports the claim for total hours.

GPI asserts that a number of the requested hours is reasonable given the scope of this proceeding and the strong participation by GPI. We agree, with several exceptions. We, first, make a partial reduction in the area of GPI's work related to D.11-01-025. GPI assesses that out of the total 28.00 hours of its work on the petitions for modification of D.10-03-021 approximately 55% (or 15.40 hours) were spent on the issues raised in the IEPA's petition.<sup>10</sup> As we have indicated earlier, GPI's response to the IEPA's petition included issues that were rejected in D.11-01-025, and GPI's work in this area did not contribute to D.11-01-025. We disallow 15.40 hours spent on the IEPA's petition.

We also noticed that a number of the hours spent preparing the request for intervenor compensation exceeds our reasonableness standards for this type of work. However, considering the length of the proceeding and the quality of the claim, we don't make disallowances in this area. At the same time, we strongly encourage GPI to make intervenor compensation claim preparation more efficient by using the Commission standardized forms. The forms and instructions can be found on the Commission's web site, the Intervenor Compensation Program page, at <http://www.cpuc.ca.gov/PUC/IntervenorCompGuide/standardized.htm>.

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<sup>10</sup> GPI's e-mail of June 7, 2011, providing this information can be found in the "Correspondence" file for this proceeding.

## **5.2. Intervenor Hourly Rates**

We next take into consideration whether the claimed fees and costs are comparable to the market rates paid to experts and advocates having comparable training and experience and offering similar services.

We approve the requested hourly rates that have been adopted previously for Dr. Morris's work in 2007, 2008, and 2009. For his work in 2010, Dr. Morris, in accordance with Resolution ALJ-247, requests the same rate of \$240 that was approved for his work in 2009. We adopt this rate.

## **5.3. Direct Expenses**

The itemized direct expenses submitted by GPI include courier services and Federal Express, in the total amount of \$384.48. We find these expenses unjustified, since GPI electronically filed its documents, which should eliminate a need to use these services. We disallowed these costs in the past,<sup>11</sup> and we follow the same practice here.<sup>12</sup>

## **6. Productivity**

D.98-04-059 directed customers to demonstrate productivity by assigning a reasonable dollar value to the benefits of their participation to ratepayers. (D.98-04-059, at 34-35.) The costs of a customer's participation should bear a

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<sup>11</sup> D.09-12-041 at 20.

<sup>12</sup> For example, in D.10-03-020: "Excluding the disallowance of \$428.50 from GPI's request for courier services, all other miscellaneous expenses are reasonable and commensurate with the work performed. We approve courier services only for GPI's October 13, 2006 and November 3, 2006 pleadings in R.06-05-027 as they were not filed electronically. With these two exceptions, all other filings of GPI's were served electronically, so the use of courier services is not justified [D.09-12-041, at 20-21]".

reasonable relationship to the benefits realized through its participation. This showing assists us in determining the overall reasonableness of the request.

GPI indicates that the decisions in this rulemaking do not offer the intervenor the opportunity to demonstrate specific monetary benefits to residential customers. However, the enactment of the Commission’s RPS program is premised, in part, on the assumption of reduced risks of price spikes to ratepayers. In addition, some of the most important benefits of the RPS program are in the areas of environmental and health improvements, and these benefits will only arise should the rules and procedures adopted in this proceeding eventually lead to the achievement of the RPS program goals. GPI’s work in this proceeding, therefore, can be expected to save ratepayers many times the cost of GPI’s participation. We find that, with adjustments made in this decision, GPI’s participation was productive.

**7. Award**

As set forth in the table below, we award GPI the total of \$88,334.52.

<b>Work on Proceeding</b>				
<b>Experts/Staff</b>	<b>Year</b>	<b>Hours</b>	<b>Hourly Rate</b>	<b>Total</b>
Gregory Morris	2007	114.00	\$225.00	\$25,650.00
Gregory Morris	2008	175.50	\$230.00	\$40,365.00
Gregory Morris	2009	21.50	\$240.00	\$5,160.00
Gregory Morris	2010	60.10	\$240.00	\$14,424.00
<b>Subtotal:</b>				<b>\$85,599.00</b>
<b>Preparation of Compensation Request<sup>13</sup></b>				
<b>Experts/Staff</b>	<b>Year</b>	<b>Hours</b>	<b>Hourly Rate</b>	<b>Total</b>
Gregory Morris	2011	20.00	\$120	\$2,400 <sup>14</sup>

<sup>13</sup> Reasonable claim preparation time typically compensated at 1/2 of preparer’s normal hourly rate.

<b>Subtotal:</b>		<b>\$2,400</b>
<b>Expenses</b>		<b>\$335.52</b>
<b>Total Award</b>		<b>\$88,334.52</b>

Pursuant to § 1807, we order Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company to pay the total amount of the award. Consistent with previous Commission decisions, we order that interest be paid on the award amount (at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release H.15) commencing on May 18, 2011, the 75<sup>th</sup> day after UCS filed its compensation request of March 4, 2011, and continuing until full payment of the award is made. We direct Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company to allocate payment responsibility among themselves based upon their California-jurisdictional electric revenues for the 2008 calendar year, to reflect the year in which the proceeding was primarily litigated.

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. GPI'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

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<sup>14</sup> We correct GPI's error here and in the rest of this table (the amount requested for the intervenor compensation matters was \$2,300, and the total request, accordingly, was \$100.00 less than the correct amount).

compensation shall be retained for at least three years from the date of the final decision making the award.

### **8. Waiver of Comment Period**

This is an intervenor compensation matter. Accordingly, as provided by Rule 14.6(c)(6) of our Rules of Practice and Procedure, we waive the otherwise applicable 30-day comment period for this decision.

### **9. Assignment of Proceeding**

Mark J. Ferron is the assigned Commissioner, and Burton W. Mattson and Anne E. Simon are the assigned Administrative Law Judges in this proceeding.

#### **Findings of Fact**

1. GPI has satisfied all the procedural requirements necessary to claim compensation in this proceeding.
2. GPI made substantial contributions to D.07-07-044, D.08-08-028, D.08-10-026, D.10-03-021, and D.11-01-025 as described herein.
3. GPI requested hourly rates for its representatives that are reasonable when compared to the market rates for persons with similar training and experience.
4. GPI requested related expenses that, as adjusted herein, are reasonable and commensurate with the work performed.
5. The total of the reasonable compensation is \$88,334.52.
6. Appendix to this decision summarizes today's award.

#### **Conclusions of Law**

1. GPI has fulfilled the requirements of §§ 1801-1812, which govern awards of intervenor compensation, and is entitled to intervenor compensation for its claimed expenses, as adjusted herein, incurred in making substantial contributions to D.07-07-044, D.08-08-028, D.08-10-026, D.10-03-021, and D.11-01-025.

2. GPI should be awarded \$88,334.52 for its contribution to D.07-07-044, D.08-08-028, D.08-10-026, D.10-03-021, and D.11-01-025.

3. This order should be effective today so that GPI may be compensated without further delay.

## **O R D E R**

### **IT IS ORDERED** that:

1. Green Power Institute is awarded \$88,334.52 as compensation for its substantial contributions to Decision (D.) 07-07-044, D.08-08-028, D.08-10-026, D.10-03-021, and D.11-01-025.

2. Within 30 days of the effective date of this decision, Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company shall pay Green Power Institute their respective shares of the award. We direct these utilities to allocate payment responsibility among themselves, based on their California-jurisdictional electric revenues for the 2008 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 May 18, 2011, the 75<sup>th</sup> day after the filing date of Green Power Institute's request for compensation of March 4, 2011, and continuing until full payment is made.

This order is effective today.

Dated July 14, 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>	D1107025	<b>Modifies Decision?</b> No
<b>Contribution Decision(s):</b>	D0707044, D0808028, D0810026, D1003021, and D1101025	
<b>Proceeding(s):</b>	R0602012	
<b>Author:</b>	ALJ Anne Simon	
<b>Payer(s):</b>	Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company	

**Intervenor Information**

<b>Intervenor</b>	<b>Claim Date</b>	<b>Amounts Requested</b>	<b>Amount Awarded</b>	<b>Multiplier ?</b>	<b>Reason Change/Disallowance</b>
Green Power Institute	3/4/11	92,415.00	\$88,334.52	No	Failure to make substantial contribution; unjustified direct costs

**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>
Gregory	Morris	Expert	Green Power Institute	\$225	2007	\$225
Gregory	Morris	Expert	Green Power Institute	\$230	2008	\$230
Gregory	Morris	Expert	Green Power Institute	\$240	2009	\$240
Gregory	Morris	Expert	Green Power Institute	\$240	2011	\$240

**(END OF APPENDIX)**