Date of Issuance 10/24/2011

Decision 11-10-041 October 20, 2011

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Southern California Edison Company (U338E) for a Certificate of Public Convenience and Necessity for the Eldorado-Ivanpah Transmission Project.	Application 09-05-027 (Filed May 28, 2009)

DECISION AWARDING COMPENSATION TO CENTER FOR BIOLOGICAL DIVERSITY FOR SUBSTANTIAL CONTRIBUTION TO DECISION 10-12-052

Claimant: Center For Biological Diversity (CBD)	**For contribution to Decision (D.) 10-12-052**
Claimed: $40,482.50[1]	**Awarded: $32,120.50 (reduced 20.6%)**
Assigned Commissioner: Michael R. Peevey	**Assigned ALJ: Regina DeAngelis**

PART I: PROCEDURAL ISSUES

A. Brief Description of Decision: This Decision approves Southern California Edison's (SCE) application for a certificate of public convenience and necessity (CPCN) for the Eldorado-Ivanpah Transmission Project (EITP). The approval includes: (1) the construction of a new 220/115 kV substation, the Ivanpah Substation, in San Bernardino County in the Eastern Mojave Desert/Ivanpah Dry Lake Area; (2) removal of 35 miles of an existing 115 kV transmission line and the construction of a double-circuit 220 kV line, and (3) construction of two separate telecommunication routes.

[1] CBD makes a minor miscalculation error in totaling Evans' 2009 hours. We correct this error and re-calculate CBD's requested claim.

B. Claimant must satisfy intervenor compensation requirements set forth in Public Utilities Code §§ 1801-1812: 10/02/2009

Claimant		CPUC Verified
Timely filing of notice of intent (NOI) to claim compensation (§ 1804(a)):		
1. Date of Prehearing Conference:	12/02/2009	Correct
2. Other Specified Date for NOI:		
3. Date NOI Filed:	12/23/2009	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:	A 09-05-027	Correct
6. Date of ALJ ruling:	1/27/2010	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:	A.09-05-027	A rebuttable presumption pursuant to §1804(b)(1) is applied to CBD's participation here, as a substantive finding on significant financial hardship (referenced above) was issued within a year of the commencement of this proceeding.
10. Date of ALJ ruling:	1/27/2010	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.10-12-052	Correct
14. Date of Issuance of Final Decision:	12/27/2010	Correct
15. File date of compensation request:	2/25/2011	Correct
16. Was the request for compensation timely?		Yes

PART II: SUBSTANTIAL CONTRIBUTION

A. Claimant's claimed contribution to the final decision:

Contribution	Citation to Decision or Record	Showing Accepted by CPUC
1. CBD made substantial contributions to this matter and raised significant issues regarding the application that were addressed in the ALJ's Proposed Decision and the final Decision (which largely followed the Alternate Propose Decision) including but not limited to the following:		Yes
• Significance of the impacts to biological resources including specifically the desert tortoise and its habitat;	D.10-12-052 at 42 ALJ Proposed Decision at 26-28 CBD Opening Brief at 6-10 *See* CBD Reply at 5	
• Balance of the environmental costs and benefits of the project when looked at in light of feasible alternatives and whether override findings should be adopted;	ALJ Proposed Decision at 30 CBD Opening Brief at *passim*. CBD Reply at 5-10	
• The scope of the "project as a whole" reviewed in the EIR;	D.10-12-052 at 38-39 CBD Opening Brief at 5-6 CBD Reply at 4-5, 7	
• The feasibility of alternatives to the project including a "non-wires" alternative to address the RPS goals;	D.10-12-052 at 23-24 ALJ Proposed Decision at 24, 27-28 CBD Opening Brief at 14-19. CBD Reply at 4-5, 7	
• Issues regarding the "need" for additional transmission in the area and the reliance on PPAs to show that alleged need;	D.10-12-052 at 51-53 ALJ Proposed Decision at 22, 25-28,29	

• Issues regarding whether the scope of the environmental review was consistent with the scope of the PPAs relied on to show "need".	CBD Opening Brief at 13-14 CBD Reply at 8-10 D.10-12-052 at 51-53 ALJ Proposed Decision at 14-19 *See* CBD Opening at 13 CBD Reply Brief at 8-9	
2. CBD submitted extensive scoping comments on August 20, 2009 regarding the project. After reviewing the Draft EIR, CBD found that the DEIR failed to adequately address the environmental impacts of the project and specifically failed to address many issues raised in scoping comments from CBD. Accordingly, on July 16, 2010 CBD filed a motion seeking to Reconsider and Revise the Scoping Order and leave to file testimony. CBD proffered expert testimony addressing the inadequacies of the CEQA process specifically as to: 1) the analysis of impacts to biological resources in the area where the project is proposed in the EIR; 2) alternatives to the project; and 3) alternative transmission available in the area. Although the ALJ denied CBD's motion and the testimony was not accepted, CBD's experts provided relevant testimony and spent considerable time preparing detailed testimony, preparing exhibits, responding to data requests, and preparing to appear at hearing to provide evidence and submit to cross examination. CBD's experts also provided assistance in reviewing briefs, the proposed decisions, and comments submitted.	*See* D.10-12-052 at 8-9	Yes
3. CBD has continued to engage in the CPUC process by filing a motion for reconsideration on January 26, 2011 addressing issues of law and new information regarding cumulative impacts.		We decline to compensate CBD for these efforts as the request for rehearing was denied.

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

Claimant		CPUC Verified
a. Was Division of Ratepayer Advocates (DRA) a party to the proceeding?	Yes	Yes
b. Were there other parties to the proceeding?	Yes	Yes
c. If so, provide name of other parties: See Service List.		Yes
d. Claimant's description of how it coordinated with DRA and other parties to avoid duplication, or how claimant's participation supplemented, complemented, or contributed to that of another party: CBD's focus was largely outside the scope of DRA's focus except regarding the availability of reasonable alternatives and CBD is unaware of any duplication of effort between CBD and DRA. For most of the proceeding, CBD was the only environmental intervenor so there was no need to coordinate with any other intervenor to avoid duplication.		We make no reductions to CBD's claim based upon unnecessary duplication of effort.

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
The compensation sought by CBD is reasonable because CBD contributed to the proceedings and raised issues that were not raised by other parties. Issues raised by CBD played a key role in framing the Commission's decision and in the ALJ's Proposed decision. Although CBD was precluded from providing expert testimony in the hearing, CBD relied on those experts and their extensive analysis to frame the issues in briefing and in providing important factual background and context throughout the case. The decision paid particular attention to the need for transmission in this area, the availability of alternative transmission, alternatives, and environmental impacts all of which were raised by CBD in comments and briefing and therefore CBD contributed to the care paid to these issues in the final Decision. The following issues were identified by CBD and discussed in the Decision and ALJ's proposed decision: the impact of the project on habitat in the Ivanpah Valley, the scope of the "whole of the project", cumulative impacts, the potential availability of alternate transmission capacity on existing lines, and the availability of feasible alternatives. CBD comments and briefing "go to the heart" of many of the issues	We agree with CBD that although it is difficult to assign a dollar value to its participation in this proceeding, its participation assisted the Commission in developing a complete record on the need for transmission in this area, the availability of transmission and alternatives, and also the environmental impacts of such a project, all of which were raised by CBD in its comments and

identified and considered in the proceeding. CBD was involved in ensuring that a wider range of issues were given consideration.	briefings and contributed to the final Decision. After the reductions we make to this claim, the remaining CBD hours should be compensated. CBD's participation was productive and will likely results in future benefits to ratepayers, which will exceed the cost of CBD's participation here.

B. Specific Claim:*

CLAIMED						CPUC AWARD			
ATTORNEY AND ADVOCATE FEES									
Item	**Year**	**Hours**	**Rate $**	**Basis for Rate**	**Total $**	**Year**	**Hours**	**Rate $**	**Total $**
J. Evans	2009	0.6	230	Adopted here	138	2009	0.6	225	135.00
J. Evans	2010	6.9	240	Adopted here	1,656	2010	6.9	235	1,621.50
L. Belenky	2009	1.7	365	Adopted here	620.50	2009	1.7	330	561.00
L. Belenky	2010	64.9	380	Adopted here	24,662	2010	64.9	345	22,390.50
L. Belenky	2011	11.2	395	Adopted here	4,424	2011	0.0	355	-0-
					***Subtotal:* $31,500.50**				***Subtotal:* $24,708**
EXPERT FEES									
Item	**Year**	**Hours**	**Rate $**	**Basis for Rate**	**Total $**	**Year**	**Hours**	**Rate $**	**Total $**
B. Powers	2010	23.0	200	Adopted here	4,600	2010	23.0	200	4,600.00
I. Anderson	2010	14.5	80	Adopted here	1,160	2010	14.5	80	1,160.00
					***Subtotal:* $5,760.00**				***Subtotal:* $5,760.00**
**INTERVENOR COMPENSATION CLAIM PREPARATION ** **									
Item	**Year**	**Hours**	**Rate $**	**Basis for Rate**	**Total $**	**Year**	**Hours**	**Rate $**	**Total $**
J Evans	2009	8.2	115	½ rate adopted	943[2]				

[2] CBD makes a minor miscalculation in computing Evans 2009 totals for work on compensation matters. The correct amount is $943, not $874 as indicated by CBD. We correct CBD's error and re-compute its total request.

				here		2009	0.50	112.50	56.25
J. Evans	2011	4.5	125	½ rate adopted here	562.50	2011	4.5	140	630.00
L. Belenky	2009	.8	182.50	½ rate adopted here	146	2009	.8	165	132.00
L. Belenky	2011	7.8	197.50	½ rate adopted here	1,540.50	2011	4.7	177.50	834..25
					***Subtotal*: $3,192**				***Subtotal:* $1,652.50**
					TOTAL REQUEST: $40,452.50				**TOTAL AWARD: $32,120.50**

*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.

**Reasonable claim preparation time typically compensated at ½ of preparer's normal hourly rate.

C. CPUC Adoptions, Adjustments and Disallowances:

Adoptions	
2009-2011 Belenky hourly rates	CBD requests an hourly rate of $365 for Lisa Belenky's 2009 work with a 1st time step increase applied to equal $380 for Belenky's 2010 work and a 2nd step increase applied to equal $395 for Belenky's 2011 work. Belenky was admitted to practice law in California in December 1999. According to CBD, Belenky has extensive experience working in federal litigation and environmental law for over 10 years. Belenky has worked with CBD since 2005 and was an environmental fellow at Shute, Mihaly and Weinberger from 1999 – 2001. In addition, Belenky spent several years focusing on federal litigation under the Employee Retirement Income Security Act in other years. CBD's requested rate for Belenky in 2009 exceeds the maximum of rates allowed for attorneys with 8 to 12 years of experience as specified in D.08-04-10. From 2009-2010, Belenky was a practicing attorney with 10 years of experience, with work experience seemingly outside the scope of work before the Commission. CBD's request of $365 for Belenky's 2009 work is unreasonable and higher than the range of $300-$355 established for attorneys with 8-12 years of experience approved in D.08-04-010. Given Belenky's background and relative lack of legal experience in the practice of matters before the Commission, we approve a more reasonable rate of $330 for Belenky's 2009

	work. To compute Belenky's 2010 rate, we add a first time step increase of 5% to her 2009 rate with a resultant hourly rate of $345[3] for Belenky's 2010 work. Similarly, we add a second time step increase of 3% to Belenky's 2010 rate with a resultant hourly rate of $355 for Belenky's 2011 work, the maximum of the range of $300-$355 approved for attorneys with these years of experience. We apply no additional cost-of-living allowances (COLA) for intervenor work from 2009-2011 as Resolutions ALJ-235, ALJ-247 and ALJ-267 disallow COLA increases for intervenor work during these periods.
2009-2011 Evans hourly rates	CBD requests an hourly rate of $230 for Johnathan Evans' 2009 work with a 1st time step increase applied to equal $240 for Evans' 2010 work and a 2nd step increase applied to equal $250 for Evans' 2011 work. Evans was admitted to practice in California in December 2006 and is a graduate of the University of Oregon School of Law. Evans has worked as an attorney with CBD since 2006. According to CBD, Evans has extensive experience in litigating environmental cases under the California Environmental Quality Act and the federal Endangered Species Act. In 2009, Evans had three years of experience. The rate of $230 per hour as requested by CBD is at the maximum rate of $200-$235 approved for attorneys with 3-4 years of experience in D.08-04-010. We approve a more reasonable amount of $225 for Evan's 2009 work here and apply a 1st time step increase of 5% to his 2009 rate with a resultant hourly rate of $235 for Evans' 2010 work. In 2011, Evans moved into a new rate range of $280-$300 approved for attorneys with 5-7 years of experience.[4] We adopt a rate of $280 for Evans 2011 work here. The rates we adopt here are more reasonable than the rates requested by CBD given Evans' relative newness in the practice of matters before the Commission. We apply no additional cost-of-living allowances (COLA) for intervenor work from 2009-2011 as Resolutions ALJ-235, ALJ-247 and ALJ-267 disallow COLA increases for intervenor work during these periods.
2010 Powers hourly rate	CBD requests an hourly rate of $200 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 CPUC proceedings. Powers has previously adopted rates for his work as an expert before the Commission dating as far back as 2003. We find CBD's hourly rate request of $200 for Powers' 2010 work to be reasonable and apply this rate to his work in this proceeding.

[3] D.08-04-010 outlines the process for requesting step increases and also confirms our long standing practice of rounding hourly rate figures to the nearest $5.00 increment.

[4] *Ibid.*

2010 Anderson hourly rate	CBD requests an hourly rate of $80 for Ilene Anderson's 2010 work in this proceeding. Anderson is a biologist who has worked for CBD since 2005. Ms. Anderson has more than 20 years experience with plant biology and regional habitat planning. The requested rate represents a 5% step increase over the previously adopted rate of $75 for Anderson's work in D.09-10-054. The hourly rate request is reasonable and adopted here.
Disallowances	
2009-Evans hours	CBD requests 21.3 hours, equal to 17% of its total hours for preparing its NOI and compensation claim. This amount is excessive given the scope of the work and the fact that the hours relate to only one decision. We allow 12 hours, equal to 10% for these matters, and disallow the remaining hours. We adjust CBD's hours to achieve the approved time by removing 6.2 hours from Evans' 2009 hours and by removing 3.1 hours from Belenky's 2011 hours. The adjusted allowance more closely reflects our standards on reasonableness of hours.
Hours on compensation preparation	We also disallow for unproductiveness, 1.5 hours of Evans work on 12-24-09 and 12-28-09 for "refiling and service of notice of intent to claim intervenor comp" and "refiling and service of notice of intent to claim intervenor comp and correspondence thereof with CPUC".
2011-Belenky hours	We disallow 11.2 hours of Belenky's professional hours spent preparing CBD's notice of rehearing and conferring with clients regarding CBD's rehearing request. CBD's request for rehearing was denied on April 15, 2011.

PART IV: OPPOSITIONS AND COMMENTS

A. Opposition: Did any party oppose the claim?	No
B. Comment Period: Was the 30-day comment period waived?	Yes

FINDINGS OF FACT

1. Claimant has made a substantial contribution to Decision (D.)10-12-052.

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 $32,120.50.

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 $32,120.50.

2. Within 30 days of the effective date of this decision, Southern California Edison 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 May 11, 2011, 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 proceeding is closed.

5. This decision is effective today.

Dated October 20, 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

Compensation Decision:	D1110041	**Modifies Decision?** No
Contribution Decision:	D1012052	
Proceeding:	A0905027	
Author:	ALJ Regina DeAngelis	
Payer:	Southern California Edison Company	

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
Center for Biological Diversity	02-25-11	$40,482.50	$32,120.50	No	adjusted hourly rates; unproductive effort; disallowance of excessive work on compensation matters; and the disallowance of work on an application for rehearing which was denied

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Lisa	Belenky	Attorney	Center for Biological Diversity	$365	2009	$330
Lisa	Belenky	Attorney	Center for Biological Diversity	$380	2010	$345
Lisa	Belenky	Attorney	Center for Biological Diversity	$395	2011	$355
Johnathan	Evans	Attorney	Center for Biological Diversity	$230	2009	$225
Johnathan	Evans	Attorney	Center for Biological Diversity	$240	2010	$235
Johnathan	Evans	Attorney	Center for Biological Diversity	$250	2011	$280
Bill	Powers	Expert	Center for Biological Diversity	$200	2010	$200
Ilene	Anderson	Expert	Center for Biological Diversity	$ 80	2010	$ 80

(END OF APPENDIX)