

Decision 11-10-040 October 20, 2011

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Continue Implementation and Administration of California Renewables Portfolio Standard Program.	Rulemaking 08-08-009 (Filed August 21, 2008)
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DECISION AWARDING COMPENSATION TO COMMUNITY ENVIRONMENTAL COUNCIL FOR SUBSTANTIAL CONTRIBUTION TO DECISION 10-12-048

Claimant: Community Environmental Council (Council)	For contribution to D.10-12-048
Claimed: \$12,893 ¹	Awarded: \$6,165 (52%)
Assigned Commissioner: Mark J. Ferron	Assigned ALJ: Burton W. Mattson

PART I: PROCEDURAL ISSUES

A. Brief Description of Decision:	D.10-12-048 authorizes a new procurement process called the Renewable Auction Mechanism, or RAM, for the procurement of smaller renewable energy projects that are eligible for the California Renewables Portfolio Standard (RPS) Program. The RAM is a simplified and market-based procurement mechanism for large investor-owned utilities (IOU).
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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:	N/A	Correct
2. Other Specified Date for NOI:	4/8/2011 ²	Correct
3. Date NOI Filed:	4/5/2011	Correct

¹ See footnote 5 at 9.² Council's motion to late file its NOI and claim for compensation was granted in an April 8, 2011 ALJ ruling. The deadline to file these documents was April 8, 2011. See ALJ Ruling issued on March 24, 2011.

4. Was the notice of intent timely filed? No, but an extension was granted by the ALJ		Yes
Showing of customer or customer-related status (§ 1802(b)):		
5. Based on ALJ ruling issued in proceeding number:	R.08-08-009	Correct
6. Date of ALJ ruling:	06/03/11	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.08-08-009	Correct
10. Date of ALJ ruling:	06/03/11	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.10-12-048	Correct
14. Date of Issuance of Final Decision:	Dec. 17, 2010	Correct
15. File date of compensation request:	April 7, 2011	Correct
16. Was the request for compensation timely? No, but extension granted by ALJ (no opposition)		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. The Council made many recommendations that the Commission adopted in the Decision. ³ We attended the	Efficacy of RPS for smaller projects The Decision states (p. 9, citations omitted): “Parties present	We agree with the Council’s claimed contribution outlined here,

³ As is the case with all proceedings in which multiple parties are active, it is generally impossible to know which party’s comments were dispositive on any given issue unless the decision actually states which party’s recommendations it is following (and this is generally not the case).

<p>prehearing conference on Dec. 14, 2005.⁴ We submitted two rounds of comments on the staff feed-in tariff (FIT) proposal in April of 2009. In opening comments, the Council stated that it:</p> <ul style="list-style-type: none"> • Supports expansion of the existing must-take feed-in tariff to 10 megawatts (MW) • Urges the Commission to go further and allow projects up to 20 MW to be eligible for the must-take feed-in tariff. There are no discernible downsides to this expansion if the Commission requires that all FIT projects be Rule 21-compliant (and thus distribution line capacity is considered in each case) and requires that for each FIT facility that is not Rule 21-compliant the facility developer must pay for the cost of any required distribution line upgrades. • Urges the Commission to include pricing considerations in this phase of the proceeding, adopting the Energy Commission’s recommendations regarding a cost-based feed-in tariff as soon as possible, and not defer this extremely important issue. With natural gas prices below \$4 per Million British Thermal Units (MMbtu), it is all but certain that the Market Price Referent will tumble this year – surely leading to a very substantial impact on the Assembly Bill (AB) 1969 feed-in tariff, RPS 	<p>differing views on the efficacy of the current RPS program for small projects. For example, Environmental Council, CEERT, DRA, First Solar, GPI, IEP and others assert that the RPS program is currently not working successfully for small projects, while TURN initially argued that it is successful and no change is necessary.”</p> <p>The Decision also states, citing the Council in footnote 11 (p. 10, citations omitted): “Many parties also argue that renewable system-side distributed generation (DG) projects that interconnect on the utility side of the meter present unique value to California ratepayers that is not captured in the annual RPS solicitations.”</p> <p>The Commission agreed with the Council on this key issue (p. 11):</p> <p>We agree that it is desirable to simplify the procurement process for relatively smaller RPS projects and that these projects provide unique value to the RPS program because of their potential to be deployed quickly with a relatively smaller environmental footprint and minimal transmission need. Such streamlining should also facilitate development of projects up to 20 MW by mitigating costs and</p>	<p>excluding its work in 2005 and 2006. This time is identified as work on an RPS procurement plan. The decision here adopted The Renewable Auction Mechanism. This proceeding was initiated by an Amended Scoping Memo dated June 5, 2008. The Council has failed to show a sufficient link for these hours to D.10-12-048. Absent this information, we do not find that this work in 2005 and 2006 reasonably led to a substantial contribution to D.10-12-048. We disallow these hours</p>
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⁴ There was no prehearing conference held in this proceeding. We believe that the Council has confused some of its work here with another proceeding relative to an RPS procurement plan.

<p>projects and Qualifying Facilities, all of which are tied to the price of natural gas</p> <ul style="list-style-type: none"> • Urges the Commission to preserve the excess sales option for all FIT projects, up to the first 1.5 MW for each project. As discussed in D.07-07-027, the decision implementing the initial AB 1969 FIT, there are many good reasons for allowing onsite load to be met first, with excess production sold to the utility. Green tags (renewable energy credits or RECs) for onsite load will be retained by the facility owner and all excess sales will include green tags. This excess sales option will be a substantial tool for cities, counties and businesses that have set their own carbon reduction goals because without this option, claiming credit for FIT projects will result in “double dipping.” 	<p>administrative burdens on projects, developers, utilities, and regulators. Further, the majority of parties support a simplified procurement process if there is the right balance of terms, conditions, and prices. We agree. All elements of the procurement process must be considered, and we do so in adopting the right balance of terms, conditions, and prices here in the form of the RAM.</p> <p>RAM project size limit</p> <p>The Decision states (p. 40): “IEP, DRA, Sierra Club, Environmental Council, and others recommend that a streamlined RPS procurement process be available for projects up to 20 MW.”</p> <p>The Commission agreed, stating at p. 41:</p> <p>For all projects, whether utilizing the full/buy sell or excess sales option, we adopt a project size limit of 20 MW. We do this as part of our goal to streamline the entire RPS program for smaller RPS generators where feasible and reasonable. This can be done here for projects up to 20 MW. We adopt this limit for</p>	
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	<p>many reasons.</p> <p>Full buy/sell option</p> <p>The Decision states (p. 45): “Solar Alliance, IEP, TURN, CEERT, GPI, FuelCell Energy, Sustainable Conservation, SFUI, Redwood Renewables, and Environmental Council support having the option of either (a) excess sales, or (b) the customer having the choice of either full buy/sell or excess.”</p> <p>The Commission agreed with the Council’s recommendation, stating (p. 46, citations omitted): “No evidence has been presented that this policy has been unworkable over the last 30 years. Second, in D.07-07-027, we adopted both options for the Existing FIT. Thus, we allow both the full buy/sell and excess sales transactions for the RAM. For both types of transactions, the full project capacity should apply to an IOU’s capacity cap.”</p>	
<p>2. In reply comments, the Council stated that it:</p> <ul style="list-style-type: none"> • Reiterates the urgency of revising the Market Price Referent as the pricing benchmark for FIT projects – an issue raised by many parties • Supports the Sierra Club’s suggestion of providing Community Choice Aggregators with the right of first refusal for FIT projects within their territorial jurisdiction, with some caveats • Disagrees with TURN’s analysis of the RPS and its relationship to small project developers, as well as the 	<p>Insurance requirements</p> <p>The Decision states (p. 63, citations omitted): “Environmental Council asserts insurance requirements are overly burdensome, and that there is limited need for insurance because of existing CAISO requirements. It also says the threat of losing queue position and forfeiting deposits limits the need for insurance.”</p> <p>The Commission disagreed with this recommendation (p. 63):</p> <p>We are not convinced by Environmental Council’s claims that insurance requirements</p>	<p>We agree with the Council’s contribution as outlined here. Where the Council failed to prevail on the outcome, its participation provided information and argument that allowed the Commission to consider the full range of positions, which assisted the Commission’s informed judgment based on a more</p>

<p>expected cost of an expanded FIT</p> <ul style="list-style-type: none"> • Recommends that deposit requirements, insurance requirements, and performance assurances be reduced 	<p>are overly burdensome. Environmental Council presents no credible data showing that the level of insurance premium for a \$2 million policy is an overly burdensome percentage of either investment or operating cost. Nor does it show that the threat of losing queue position and deposits adequately changes behavior to offset or eliminate the risk of insured loss, or that the level of deposits adequately addresses potential losses covered by general liability insurance.</p> <p>The Commission acknowledged the Council’s concerns, however, by urging the utilities to take into account when setting insurance requirements the limitations facing smaller projects and project developers (p. 64): “[W]e encourage the IOUs to develop ‘tiered’ insurance requirements, as appropriate, to address the circumstances of smaller projects or those using different technologies.”</p>	<p>complete record.</p>
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A. Duplication of Effort (§§ 1801.3(f) & 1802.5):

Claimant		CPUC Verified
a. Was Division of Ratepayer Advocates (DRA) a party to the proceeding?	Yes	Correct
b. Were there other parties to the proceeding?	Yes	Correct

<p>c. If so, provide name of other parties:</p> <p>Comments were filed by PG&E, Southern California Edison, SDG&E, PacifiCorp, Sierra Pacific Power Company, The Utility Reform Network, Green Power Institute, Sustainable Conservation, California Farm Bureau Federation, Independent Energy Producers, Center for Energy Efficiency and Renewable Technologies, Alliance for Retail Energy Markets, Vote Solar Initiative, REcurrent Energy, Solar Alliance, California Solar Energy Industries Association, GreenVolts, Los Angeles Community College District.</p>	<p>Correct</p>
<p>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:</p> <p>The Council’s compensation in this proceeding should not be reduced for duplication of the showings of other parties. In a proceeding involving multiple participants (and there were many in this proceeding), it would have been virtually impossible for the Council to completely avoid some duplication of the work by other parties. Moreover, the Commission has noted that duplication may be practically unavoidable in a proceeding such as this where many stakeholder groups are encouraged to participate.</p> <p>In this case, the Council took all reasonable steps to keep such duplication to a minimum, and to ensure that when it did happen, our work served to complement and assist the showings of the other parties. In reviewing other parties’ comments we also note that the Council’s comments were unique on most issues. Moreover, the fact that the Commission cited the Council’s comments numerous times indicates the non-duplicative nature of our comments.</p> <p>In summary, any incidental duplication that may have occurred here should be found to be more than offset by the Council’s unique contributions to the proceeding. Under these circumstances, no reduction to our compensation due to duplication is warranted.</p>	<p>We agree that the Council’s took reasonable steps to avoid unnecessary duplication of efforts with other parties.</p>

PART III: REASONABLENESS OF REQUESTED

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>The Commission should treat this compensation request as it has treated similar past requests with regard to the difficulty of establishing specific monetary benefits associated with the Council’s participation.</p> <p>The Council cannot identify precise monetary benefits to ratepayers stemming from our contributions to this proceeding because our contributions were directed primarily at policy matters, rather than the establishment of specific rates, funding levels or targets, or disputes over particular dollar amounts. Indeed, much of the policy discussion concerning renewable energy centers on the difficulty of quantifying the environmental and other benefits because these benefits are not generally internalized by electricity markets at this time. The Decision puts in place a new program for 20 MW and under renewable energy projects to bid their price to the utilities. As such, we won’t know the actual cost impacts to ratepayers for some time. Moreover, the Council did not focus on cost issues in its comments. Rather, our comments focused on improving the proposed feed-in tariff program such that it would be the most effective program and help to achieve the state’s existing greenhouse gas emission reduction and renewable energy goals in an optimal manner.</p>	<p>After the disallowances we make to the Council’s claim, the remaining hours are reasonable and should be compensated.</p> <p>We agree with the Council that while policy and procedural contributions from its work here is difficult to quantify in monetary terms, the Council contributed to the adoption of D.10-12-048, in developing the RAM policy. The improvement of feed-in tariff programs will in time assist the state in achieving reductions in GHG emission’s and achieving renewable energy goals. The Council’s participation was productive.</p>

B. Specific Claim:*

CLAIMED						CPUC AWARD			
ATTORNEY AND ADVOCATE FEES									
Item	Year	Hours	Rate \$	Basis for Rate*	Total \$	Year	Hours	Rate \$	Total \$
T. Hunt	2005	17.7	205	D.06-05-037	3,629	2005	-0-	205	-0-
T. Hunt	2006	6.5	210	D.07-07-012	1,365	2006	-0-	210	-0-
T. Hunt	2009	18.3	330	D.09-08-022 Res. ALJ-235	6,039 ⁵	2009	17.3	300 ⁶	5,190
T. Hunt** (travel)	2006	7.0	105	½ D.07-07-012	735	2006	-0-	105	-0-
Subtotal: \$11,768						Subtotal: \$5,190			
INTERVENOR COMPENSATION CLAIM PREPARATION **									
Item	Year	Hours	Rate \$	Basis for Rate*	Total \$	Year	Hours	Rate \$	Total \$
T. Hunt	2011	6.5	173	D.09-08-022 Res. ALJ-267	1,125	2011	6.5	150	975
Subtotal: \$1,125						Subtotal: \$975			
TOTAL REQUEST: \$12,893						TOTAL AWARD: \$6,165			
<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 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.</p> <p>**Reasonable travel and claim preparation time typically compensated at ½ of preparer's normal hourly rate.</p>									

⁵ The council incorrectly totals Hunt's 2009 hours as \$6,023. The corrected amount is \$6,039. We correct this error here. In addition, we exclude one hour of clerical work.

⁶ The Council requests an increase in Hunt's hourly rate for 2009 (to \$330), but fails to provide any justification. Absent justification, we apply the last previously approved rate (\$300 for 2008), without any adjustment, consistent with Commission practice. See requirements as outlined in D.08-04-010 at 12.

C. CPUC Adoptions and Disallowances:

The Council does not identify any reimbursable time for work related to various recommended reductions (e.g., deposit requirements, insurance requirements, performance assurance). Our review indicates that the Council spent no measurable amount of time developing this issue, and we do not exclude any time for this work. Nonetheless, we have said many times that such recommendations without evidence generally fail to be convincing, and we have urged parties to bring forward necessary specific evidence if they expect to prevail on the issue. (See D.11-04-030 at 42-44; D.09-06-018 at 55-57 and 63; D.07-02-011 at 16-22.) We do so again here.

Item	Reason
2005/2006 Hunt hours	We disallow these hours for reasons outlined in Part II Section A.
Disallowance of clerical work	We disallow 1 hour of Hunt’s work spent on 4/9/2009 and 4/10/2009 filing Council’s briefs. This is a non-compensable clerical task subsumed in the fees paid to attorneys.

PART IV: OPPOSITIONS AND COMMENTS

A. Opposition: Did any party oppose the claim?	No
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B. Comment Period: Was the 30-day comment period waived (see Rule 14.6(c)(6))?	No
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If not:

Party	Comment	CPUC Disposition

The proposed decision of the ALJ in this matter was mailed to the parties in accordance with Section 311 of the Pub. Util. Code and comments were allowed under Rule 14.3 of the Commission’s Rules of Practice and Procedure. No comments were filed.

FINDINGS OF FACT

1. Claimant has made a substantial contribution to Decision (D.)10-12-048.
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 \$6,165.

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 \$6,165.
2. Within 30 days of the effective date of this decision, Southern California Edison Company, Pacific Gas and Electric Company, and San Diego Gas & Electric Company shall each pay claimant their respective shares of the award. We direct Southern California Edison Company, Pacific Gas and Electric Company, and San Diego Gas & Electric Company to allocate payment responsibility amongst them, based on their 2010 California-jurisdictional electric revenues, 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 June 19, 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 was not waived.

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:	D1110040	Modifies Decision? No
Contribution Decision(s):	D1012048	
Proceeding(s):	R0808009	
Author:	Burton W. Mattson	
Payer(s):	Southern California Edison Company, Pacific Gas and Electric Company, and San Diego Gas & Electric Company	

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
Community Environmental Council	04-05-11	\$12,877	\$6,165	No	Disallowance of hours unrelated to this proceeding; disallowance of clerical work

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Tamlyn	Hunt	Attorney	Community Environmental Council	\$205	2005	\$205
Tamlyn	Hunt	Attorney	Community Environmental Council	\$210	2006	\$210
Tamlyn	Hunt	Attorney	Community Environmental Council	\$330	2009	\$300
Tamlyn	Hunt	Attorney	Community Environmental Council	\$346	2011	\$300

(END OF APPENDIX)