

Decision 12-04-041 April 19, 2012

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the Commission’s Own Motion to Determine Whether Sharing of Customer Information Between Regulated Water Utilities and Regulated Energy Utilities/Municipal Energy Providers Should be Required; and if so, to Develop the Rules and Procedures Governing Such Sharing.

Rulemaking 09-12-017
(Filed December 17, 2009)

DECISION AWARDING COMPENSATION TO THE NATIONAL CONSUMER LAW CENTER FOR SUBSTANTIAL CONTRIBUTION TO DECISION 11-05-020

Claimant: The National Consumer Law Center (NCLC)	For contribution to Decision (D.) 11-05-020
Claimed: \$12,682.50	Awarded: \$9,992.10 (reduced 21%)
Assigned Commissioner: Michael R. Peevey	Assigned ALJ: ALJ Division

PART I: PROCEDURAL ISSUES

A. Brief Description of Decision: D.11-05-020 creates an information sharing program between Commission-regulated water and energy utilities to increase the participation rates in water low income assistance programs. In addition, this decision creates a set of rules and data sharing guidelines for automatic enrollment into the low income rate assistance programs between the two types of utilities where there is overlapping serving territory.

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

	Claimant	CPUC Verified
Timely filing of notice of intent to claim compensation (§ 1804(a)):		
1. Date of Prehearing Conference:	N/A	Correct
2. Other Specified Date for (Notice of Intent) NOI:	May 3, 2010 ¹	Correct
3. Date NOI Filed:	April 30, 2010	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:	Rulemaking (R.) 10-02-005 ²	Correct
6. Date of ALJ ruling:	April 1, 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:	R.10-02-005	Correct
10. Date of ALJ ruling:	April 1, 2010	Correct
11. Based on another CPUC determination (specify):	NCLC received a finding of significant financial hardship in an ALJ’s Ruling issued on April 1, 2010. This proceeding commenced within one year of the date of those findings, so the rebuttable presumption applies in this case.	Yes. A rebuttable presumption pursuant to § 1804(b)(1) is applied to NCLC’s participation here, as a substantive finding on significant financial hardship was issued within a year of the commencement of this proceeding

¹ Pursuant to Rules of Practice and Procedure 17.1, the Administrative Law Judge (ALJ) has discretion to set the filing dates for NOIs. In this proceeding, the Order Instituting Rulemaking specified that NOIs should be filed “no later than 30 days after the scoping memo is issued.” The Scoping Memo was issued on April 1, 2010.

² The ALJ has not yet issued a Ruling on NCLC’s Notice of Intent to Claim Compensation filed in this docket. Therefore, NCLC relies upon previous Commission rulings to demonstrate its customer status and its significant financial hardship.

12. Has the claimant demonstrated significant financial hardship?		
Timely request for compensation (§ 1804(c)):		
13. Identify Final Decision	D.11-05-020	Correct
14. Date of Issuance of Final Decision:	May 10, 2011	Correct
15. File date of compensation request:	July 11, 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
<p>NCLC, as part of the Joint Consumers, has strongly supported the data sharing requirements in this proceeding in order to increase the participation rates for the low-income water assistance programs. In this proceeding, the Commission finds “that sharing of customer-information is necessary to increase participation in low-income ratepayer assistance programs and adopt guidelines to ensure such sharing.” (D.11-05-020 at 5.)</p> <p><u>Automatic Enrollment</u> In this proceeding, Joint Consumers have long endorsed automatically enrolling consumers who have been identified as eligible through data matches with similar utility assistance programs as long as these consumers have the opportunity to opt-out of the discount program. We noted the great value of using the data matches for targeted outreach, but urged the Commission take this opportunity to increase low-income program participation rates through an automatic enrollment requirement. D.11-05-020 requires automatic enrollment for Class A and B water companies with</p>	<p>Reply Comments of the Joint Consumers on the Proposed Decision (May 2, 2011) at 1, Comments of the Joint Consumers on the Proposed Decision (April 25, 2011) at 1, Comments of Joint Consumers on Issues Presented in Assigned Commissioner’s and ALJ’s Ruling (April 23, 2010) at 1-2.</p> <p>Comments of Joint Consumers on Issues Presented in Assigned Commissioner’s and ALJ’s Ruling (April 23, 2010) at 7, Comments of the Joint Consumers on the ALJ’s Ruling (February 1, 2011) at 1, D.11-05-020 at 14-16, Findings of Fact 3-4, 10-12, Conclusions of Law 1, Ordering Paragraph (OP) #1,#2, #4(b)(vi).</p>

<p>assistance programs.</p> <p><u>Standardizing Eligibility, Enrollment and Recertification</u></p> <p>Throughout this proceeding, Joint Consumers have urged standardizing eligibility criteria (program eligibility) to match the California Alternate Rates for Energy (CARE) eligibility criteria and to standardize the enrollment (self-certification) and recertification process to facilitate the maximum coordination between the water discount programs and the energy affordability programs. D.11-05-020 does all of these things.</p> <p><u>Master-Metered Tenants</u></p> <p>Joint Consumers have long raised concerns about the extension of low-income programs to low-income tenants in master-metered situations who pay for water in their rent. Early on, Joint Consumers recommended data reporting to gauge the size of this population for each water utility. D.11-05-020 requires the tracking of low-income master-metered customers within each water utility's service area.</p> <p><u>Coordinated Outreach</u></p> <p>Joint Consumers have consistently advocated for a coordinated outreach and education effort among the low-income utility assistance programs. Coordinated outreach can increase program participation levels and leverage utility costs. The Joint Consumers have also recommended standardized eligibility criteria and uniform enrollment policies to make it easier for consumers to understand the low-income assistance programs and make outreach on assistance programs</p>	<p>Comments of Joint Consumers on Issues Presented in Assigned Commissioner's and ALJ's Ruling (April 23, 2010) 2, 6-7, 10-11, Comments of the Joint Consumers on the ALJ's Ruling (February 1, 2011) at 1, 3-5, D.11-05-020 at 16-18, 25-26, 28-30, Findings of Fact 13-17, 25-28, Conclusions of Law ##1-2, Order OPs #1, #3, #4(f) - 4(h), #11, #12.</p> <p>Comments of Joint Consumers on Issues Presented in Assigned Commissioner's and ALJ's Ruling (April 23, 2010) at 8-9, Comments of the Joint Consumers on the ALJ's Ruling (February 1, 2011) at 16, Comments of the Joint Consumers on the Proposed Decision (April 25, 2011) at 6-7, Reply Comments of the Joint Consumers on the Proposed Decision (May 2, 2011) at 4, D.11-05-020 at 8-9, 36, Findings of Fact 5-6, Conclusion of Law #7, Order OP #10</p> <p>Comments of Joint Consumers on Issues Presented in Assigned Commissioner's and ALJ's Ruling (April 23, 2010) at 2, 7, 11-12, Comments of the Joint Consumers on the ALJ's Ruling (February 1, 2011) at 2, 12, D.11-05-020 Finding of Fact 23-24, Order OP #4(k), Attachment 1 at #12(b), Attachment 3.</p>
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<p>more efficient. While the Commission declined to mandate coordinated outreach in the guideline in order to focus on data sharing, D.11-05-020 cites Joint Consumers’ advocacy regarding robust outreach and states that they “encourage the water and energy utilities to further collaborate on outreach activities to low-income customers (D.11-05-020 at 27). The outreach encouragement is provided for in the guidelines (“description of other possible low-income collaboration efforts with energy and municipal energy utilities”), requiring provision of outreach materials in the case of “potential participants” from a partial match, and data reporting of the number of potential customers identified and service with outreach material in the Low Income reporting.</p>	
<p><u>Consumer Protection</u></p> <p>Joint Consumers have strongly supported strong provisions to give customers control over their own data, mainly in the form of affirmatively consenting to allowing personal data to be shared in a matching program and providing an opportunity to opt out of being enrolled in another low-income utility assistance program. D.11-05-020 incorporates privacy safeguards in the guidelines, requires customer authorization for the data match program, and requires that customers matched in the automatic enrollment program receive an opt-out letter.</p> <p>Joint Consumers also recommended that the guidelines include notice to consumers in the event of any unauthorized disclosure of confidential information. Joint Consumers argued</p>	<p>Comments of Joint Consumers on Issues Presented in Assigned Commissioner’s and ALJ’s Ruling (April 23, 2010) at 2-3, 4-6.</p> <p>Comments of the Joint Consumers on the ALJ’s Ruling (February 1, 2011) at 6-7, 9, Comments of the Joint Consumers on the Proposed Decision (April 25, 2011) at 3-4, 7, D.11-05-020 at 15, 18-19. 21-25, Finding of Fact 17 -19, 22, Order OPs #4(b)(i) and 4(b)(vi),4(i), Attachment 1, 4-12.</p> <p>Comments of Joint Consumers on Issues Presented in Assigned Commissioner’s and ALJ’s Ruling (April 23, 2010) at 6, Comments of the Joint Consumers on the ALJ’s Ruling (February 1, 2011) at 7, Comments of the Joint Consumers on the Proposed Decision (April 25, 2011) at 7-8,</p>

<p>that the combination of name and address along with CARE participation status converts this into sensitive personal information. The Commission does find that the “[d]isclosure of name and address plus additional data, including but not limited to enrollment in a low-income program, would constitute a disclosure of confidential information. The utilities should follow their internal privacy policies in handling any breach.” (D.11-05-020 at 24).</p> <p>Joint Consumers recommended that low-income consumer information be provided in different languages appropriate to the composition of languages spoken in the water utilities’ various districts and be accessible for consumers with disabilities. D.11-05-020 requires the identification of languages to be used in information sharing documents by district.</p>	<p>D.11-05-020 at 24, Attachment 1, #9.</p> <p>Comments of the Joint Consumers on the ALJ’s Ruling (February 1, 2011) at 10-11, Comments of the Joint Consumers on the Proposed Decision (April 25, 2011) at 4-5, D.11-05-020 Order OP #4(j).</p>
<p><u>Coordination With Other Entities</u></p> <p><i>Which Utilities Must Share Data</i></p> <p>In light of the very low participation rates in the low-income water discount programs, Joint Consumers recommended that all water utilities with low-income assistance programs be required to engage in data sharing with regulated energy utilities having overlapping territories. Joint Consumers also supported encouraging data sharing with municipal utilities. Joint Consumers opposed CWA’s recommendation to exempt all districts with less than 2,000 customers. D.11-05-020 did not accept CWA’s exemption request and instead requires Class A and B water utilities that offer low-income assistance programs to participate in data sharing with</p>	<p>Comments of Joint Consumers on Issues Presented in Assigned Commissioner’s and ALJ’s Ruling (April 23, 2010) at 2, 10, 11-12, Reply Comments of the Joint Consumers on the Proposed Decision (May 2, 2011) at 1-3, D.11-05-020 at 12-13, 22, Conclusions of Law 1, Order OPs #2, #4, #5</p>

<p>overlapping regulated energy utilities. D.11-05-020 also encourages water and municipal utilities to share data where their low-income programs have comparable income and eligibility requirements.</p>	
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Showing Accepted by CPUC
<p>We agree with NCLC’s claimed contribution as outlined above, except in one area. The Joint Consumers recommended that customers also be notified of any unauthorized disclosure of names and addresses alone. The Decision at 23 states “[w]e decline to adopt a customer notification safeguard for the disclosure of names and addresses. It is unlikely that the disclosure of names and addresses alone would constitute a disclosure of confidential information, because names and addresses generally are publicly available and existing best practices do not consider breach of name and address alone to trigger notification requirements.” We disallow 4% of NCLC’s time spent preparing its Joint Consumer Comments filed on April 23, 2010 and 8% of its time spent on preparing its Joint Consumer Comments filed on February 1, 2011. We disallow this time as it did not make a substantial contribution to the final decision.</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>	Yes	Correct
<p>b. Were there other parties to the proceeding?</p>	Yes	Correct
<p>c. If so, provide name of other parties: Southwest Gas Corporation; Sierra Pacific Power Co.; The Utility Reform Network (TURN); Disability Rights Advocates (DisabRA); Southern California Edison; Golden State Water Company; San Diego Gas & Electric Company; Pacific Gas & Electric Company; Pacificorp; Director of Revenue Requirements Park Water Company; San Gabriel Valley Water Company; California American Water Company; California Public Utilities Commission; Nossaman, LLP; Manatt Phelps & Phillips LLP.</p>		Correct
<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: NCLC worked closely with TURN and DisabRA to form a coalition to work in this docket. Each shared responsibilities for drafting each jointly filed pleading and coordinated our other work in this docket. We closely reviewed the DRA filings to ensure that we were not significantly duplicating work on issues and coordinated where necessary.</p>		<p>We make no reductions to NCLC’s claim for unnecessary duplication of effort with other parties.</p>

PART III: REASONABLENESS OF REQUESTED:

Claimant's explanation as to how the cost of claimant's participation bore a reasonable relationship with benefits realized through claimant's participation

D.11-05-020 focuses on low-income customer information sharing between regulated water and energy utilities to increase participation in the water and energy low-income assistance programs. NCLC is dedicated to promoting low-income consumer access to affordable utility service and thus, the issues raised in this proceeding are very important to NCLC. NCLC has also been very involved in automatic and coordinated enrollment efforts in other states, such as Massachusetts and in the federal policy arena with LIHEAP and Lifeline and this experience has informed our work in this proceeding. In this proceeding, the sharing of low-income customer information and automatic enrollment between the well-established low-income energy assistance programs and the fairly new low-income water assistance programs will increase low-income household participation in the water discount program. Issues such as notice, customer consent and privacy must be addressed with automatic enrollment. The automatic enrollment stemming from D.11-05-020 will benefit low-income consumers by dramatically streamlining the time and effort to enroll into similar utility assistance programs. Discounted water and energy bills will save low-income households money and allow scarce funds to be used for other necessities such as food, medicine, transportation and shelter. NCLC, as part of the Joint Consumers, worked to arrive at pragmatic unified consumer positions in the interest of efficiency and sound policy. NCLC, as part of the Joint Consumers, made a substantial contribution to the adoption of automatic enrollment. This contribution bears a reasonable relationship to the large benefit to the low-income consumers who will automatically be enrolled in their low-income water assistance program.

CPUC verification:

NCLC's participation through its joint filings with TURN assisted the Commission in adopting an information sharing program between the water and energy low income programs which will increase low-income household participation in the water discount program. The automatic enrollment stemming from D.11-05-020 will benefit low-income consumers by dramatically streamlining the time and effort to enroll into similar assistance programs. The creation of this program will not only benefit the water utilities' low-income customers, but all ratepayers by making outreach efforts more efficient and cost effective. We find that NCLC's participation will result in benefits to low-income consumers which outweigh the cost of NCLC's participation.

After some minor disallowances, we find the remainder of NCLC's hours and costs to be productive and warranting compensation.

A. Specific Claim*:

CLAIMED						CPUC AWARD			
ATTORNEY AND ADVOCATE FEES									
Item	Year	Hours	Rate \$	Basis for Rate*	Total \$	Year	Hours	Rate \$	Total \$
O. Wein	2010	22.25	285	Adopted here	6,341.25	2010	18.70	285	5,329.50
O. Wein	2011	15.25	285	Adopted here	4,346.25	2011	12.36	285	3,522.60
\$10,687.50						Subtotal: \$8,852.10			
INTERVENOR COMPENSATION CLAIM PREPARATION **									
Item	Year	Hours	Rate \$	Basis for Rate*	Total \$	Year	Hours	Rate \$	Total \$
O. Wein	2010	6.50	142.50	½ rate adopted here	926.25	2010	0.50	142.50	71.25
O. Wein	2011	7.50	142.50	½ rate adopted here	1,068.75	2011	7.50	142.50	1,068.75
1,995.00						Subtotal: \$1,140.00			
TOTAL REQUEST: \$12,682.50						TOTAL AWARD: \$9,992.10			
<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 claim preparation time typically compensated at ½ of preparer's normal hourly rate.</p>									

B. Comments Documenting Specific Claim:

Comments	
1	<p>Reasonableness of NCLC Hours:</p> <p>NCLC participated in all major aspects of this case, including filing pleadings at each opportunity in response to the Scoping Memo, ALJ Ruling and Proposed Decision. In light of the substantive role played by NCLC in this docket, NCLC's hours are reasonable. Ms. Wein was the primary advocate for TURN on this docket. NCLC's work in this case was as part of a coalition of consumer groups. This coalition allowed NCLC to share the workload of drafting pleadings and developing case strategy. NCLC took the lead in drafting the April 23, 2010 Joint Consumer Comments on the Issues Presented in Assigned Commissioner's and ALJ's Ruling Requesting Comment and Scoping Memo. Increasing participation in low-income assistance programs to promote access to affordable utility service is an important issue for NCLC, and the hours spent by NCLC are reasonable compared to the impact NCLC had on the docket.</p>

2	<p>Allocation of Hours: NCLC has allocated its hours by issue area for ease of reference. The issues are identified by activity code.</p> <p>Automatic Enrollment 43% Consumer Protection 31% Coordination With Other Entities 13% ### 13%</p> <p>NCLC uses the “###” to identify time entries that cannot easily be identified with a specific activity code.</p> <p>NCLC requests compensation for all of the time included in this request for compensation, and therefore does not believe allocation of the time associated with these entries is necessary. However, if such allocation needs to occur, the percentage distribution of hours is noted above.</p>
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C. Adoptions and Disallowances:

Adoptions	
2010 and 2011 Wein hourly rates	Wein has a previously adopted rate of \$280 for her 2008 work before the Commission in D.09-04-028. Resolutions ALJ-247 and ALJ-267 disallow cost-of-living increases for 2010 and 2011 intervenor work. We find NCLC’s requested hourly rate of \$280 for Wein’s 2010 and 2011 work to be reasonable and we adopt it here.
Disallowances	
Excessive hours for preparation of 4-23-10 and 2-1-11 comments filed by the Joint Consumers	We have compared the hours of the other Joint Consumers’ attorneys who participated in the joint preparation of these two documents and find Wein’s time to be excessive. We disallow 3.25 hrs of Wein’s 2010 hours ³ and 2.25 hours ⁴ of Wein’s 2011 time for excessiveness.

³ TURN and DisabRA (the other Joint Consumer intervenors) each requested less than 6 hrs for its work on preparing the April 23, 2010 Joint Comments on Issues Presented in the Assigned Commissioner’s and ALJ’s Ruling Requesting Comments and Scoping Memo. NCLC requests 9.25 hrs for its joint work.

⁴ TURN and DisabRA (the other Joint Consumer intervenors) each requested a total of 8 hrs for its work on preparing the February 1, 2011 Comments of the Joint Consumers on the ALJ’s Ruling Requesting Comments, and NCLC’s requests 10.25 for its joint work.

<p>2010/2011 hours spent recommending that customers be notified of any unauthorized disclosure of names and addresses alone</p>	<p>As outlined above, these hours did not result in making a substantial contribution to the final decision. The decision declined to adopt a customer notification safeguard for the disclosure of names and addresses.⁵</p> <p>4% disallowance of April 23, 2010 comments: .21 hrs 2010 Wein</p> <p>8% disallowance of February 1, 2011 comments: .64 hrs 2011 Wein</p>
<p>Excessive hours for compensation preparation</p>	<p>We find NCLC’s request of 14 hours for preparing its NOI and Compensation request to be excessive. We reduce the requested 2010 hours by 6 hrs, equal to the same allowance for other intervenors who filed its documents with the Joint Parties. This reduction more closely reflects our standards on reasonableness of hours.</p>

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 D.11-05-020.
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 \$9,992.10.

CONCLUSION OF LAW

1. The claim, with any adjustment set forth above, satisfies all requirements of Pub. Util. Code §§ 1801-1812.

⁵ See D.11-05-020 at 23.

ORDER

1. Claimant is awarded \$9,992.10.
2. Within 30 days of the effective date of this decision, San Diego Gas and Electric Company (SDG&E), Southern California Gas Company (SoCalGas), Southern California Edison Company (Edison), Pacific Gas and Electric Company (PG&E), California Water Service Company, Great Oaks Water Company, Suburban Water Systems, Valencia Water Company, Park Water Company, California-American Water Company, Golden State Water Company, San Jose Water Company, San Gabriel Valley Water Company and Apple Valley Ranchos Water Company shall pay the award. We direct San Diego Gas and Electric Company, Southern California Gas Company, Southern California Edison Company, Pacific Gas and Electric Company, California Water Service Company, Great Oaks Water Company, Suburban Water Systems, Valencia Water Company, Park Water Company, California-American Water Company, Golden State Water Company, San Jose Water Company, San Gabriel Valley Water Company and Apple Valley Ranchos Water Company to allocate payment responsibility among themselves, based on their California-jurisdictional gas and electric or water revenues for the 2011 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 September 24, 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. Rulemaking 09-12-017 is closed.

This decision is effective today.

Dated April 19, 2012, at San Francisco, California.

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

APPENDIX**Compensation Decision Summary Information**

Compensation Decision:	D1204041	Modifies Decision? No
Contribution Decision:	D1105020	
Proceeding:	R0912017	
Author:	ALJ Division	
Payees:	San Diego Gas and Electric Company, Southern California Gas Company, Southern California Edison Company, Pacific Gas and Electric Company, California Water Service Company, Great Oaks Water Company, Suburban Water Systems, Valencia Water Company, Park Water Company, California-American Water Company, Golden State Water Company, San Jose Water Company, San Gabriel Valley Water Company and Apple Valley Ranchos Water Company	

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
National Consumer Law Center	07-11-11	\$12,682.50	\$9,992.10	No	Lack of substantial contribution, excessive hours given the scope of the work

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Wein	Olivia	Attorney	National Consumer Law Center	\$280	2010 and 2011	\$280

(END OF APPENDIX)