Decision 12-07-016 July 12, 2012

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking Regarding Policies, Procedures and Rules for the California Solar Initiative, the Self-Generation Incentive Program and Other Distributed Generation Issues.	Rulemaking 10-05-004 (Filed May 6, 2010)

DECISION GRANTING REQUEST OF SUSTAINABLE CONSERVATION FOR INTERVENOR COMPENSATION FOR SUBSTANTIAL CONTRIBUTIONS TO DECISION 11-09-015

Claimant(s): Sustainable Conservation	**For contribution to:** D.11-09-015
Claimed ($): $8,341.00[1]	**Awarded ($): $7, 212.50** (13.5% reduction)
Assigned Commissioner: Michael Peevey	**Assigned ALJ:** Dorothy Duda
Claim Filed: November 15, 2011	

PART I: PROCEDURAL ISSUES

A. Brief Description of Decision:	Decision (D.) 11-09-015 modifies the Self-Generation Incentive Program to conform to Senate Bill 412.

[1] Here, we have corrected the amount of $11,666.55, erroneously indicated in the original claim.

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

	As Stated by Claimant	CPUC Verified
Timely filing of notice of intent to claim compensation (§ 1804(a)):		
1. Date of Prehearing Conference (PHC):	8/12/2010	Correct
2. Other Specified Date for Notice of Intent (NOI):		
3. Date NOI Filed:	9/13/2010	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:	R.08-08-009	Yes
6. Date of ALJ ruling:	11/10/10	Correct
7. Based on another CPUC determination:		D.09-09-045, at 5-6
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:		
10. Date of ALJ ruling:		
11. Based on another CPUC determination:	D.09-09-045	Correct. D.09-09-045 made the significant financial hardship finding pursuant to § 1802(g)
12. Has the claimant demonstrated significant financial hardship?		Yes, based on the rebuttable presumption of eligibility created in D.09-09-045
Timely request for compensation (§ 1804(c)):		
13. Identify Final Decision	D.11-09-015	Correct
14. Date of Issuance of Final Decision:	9/16/11	Correct
15. File date of compensation request:	11/14/11	November 15, 2011
16. Was the request for compensation timely?		Yes

C. CPUC's Additional Comments on Part I:

#	Comment
	Sustainable Conservation claims compensation for its work performed in R.08-03-008, which was a predecessor of Rulemaking (R.) 10-05-004. In R.08-03-008, Sustainable Conservation filed its NOI on January 19, 2010, long after the due date for these filings (30 days from the Prehearing Conference (PHC) of April 22, 2008). With regards to the NOI timing, Sustainable Conservation explained that it decided to participate when the Commission opened a new phase in R.08-03-008 and conducted the January 7, 2010 workshop. The assigned ALJ authorized the late filing but no ruling on the intervenor's eligibility issued in that proceeding. The Commission stated[2] that parties that were found eligible to claim compensation in R.08-03-008 and have no material changes to their status remained eligible in this proceeding. We find that Sustainable Conservation is eligible to claim intervenor compensation for the work performed in R.08-03-008.

PART II: SUBSTANTIAL CONTRIBUTION

A. Claimant's description of its contribution to the final decision (*see* § 1802(i), § 1803(a) and D.98-04-059)

Contribution	Citation to Decision or Record (Provided by Claimant)	Showing Accepted by CPUC
Reinstate biogas digester technology as eligible for participation in SGIP. The core of our advocacy was to reinstate biogas digester technology as a technology eligible for participation in the program. When the program was first established, biogas had been eligible.	Sustainable Conservation, 1/19/2010 *Reply Comments on SB 412*, at 1-2, section titled "Methane Digesters Should Be Reinstated as an Eligible SGIP Technology." Sustainable Conservation, 8/9/10 *Prehearing Conference Statement*, throughout. D.11-09-015, at 27: "Storage, biogas, and fuel cells are three emerging technologies that have previously been eligible to receive SGIP incentives, and which have the potential to play an important role in California's energy future." Conclusion of Law 9: "Because fuel cells, biogas, and AES are emerging technologies that have to [sic] potential to make significant contributions to the State's energy and environmental goals, it is reasonable to adopt higher incentives for these technologies."	Yes.

[2] Order Instituting Rulemaking 10-05-004 at 12.

Prioritize SGIP eligibility for technologies that reduce greenhouse gas emissions. After passage of SB 412, Sustainable Conservation reminded the Commission of its statutory obligation to limit program eligibility to distributed resources that achieve reductions in greenhouse gas emissions.	Sustainable Conservation, 11/15/2010 *Comments on Staff Proposal*, at 2-3: "…electricity from methane digesters ... also provides an environmental benefit in the form of reduced methane emissions, and addresses other issues associated with operating a dairy farm." Sustainable Conservation, 12/10/2010 *Reply Comments on Staff Proposal*: "the Commission must ensure that limited SGIP funds are available to technologies that have the greatest impact on reducing greenhouse gas emissions." D.11-09-015, Finding of Fact 2 : Pub. Util. Code § 379.6 requires the Commission, in consultation with the California Air Resources Board, to determine what technologies should be eligible for SGIP based on GHG emissions reductions. Conclusion of Law 1: "Using the GHG emissions reduction test as a screen for SGIP eligibility is consistent with Pub. Util. Code § 379.6"	*See*, Part II(C), Comment 1.
Differentiated price structure. Sustainable Conservation explained why a differentiated price structure that recognizes the costs of different technologies is important, particularly for project financing.	Sustainable Conservation, 1/19/2010 *Reply Comments*,[3] at 2-3: "…a differentiated price structure is appropriate. The Commission must recognize that different technologies have different cost structures…the incentive must be material in size, predictable, and transparent in its calculation." Sustainable Conservation, 11/15/2010 *Comments on Staff Proposal*, at 3: "As the staff report details, the cost structure for potentially eligible SGIP technologies varies, as do operating costs. Commission recognition of this difference is important." D.11-09-015, Conclusions of Law: 7. It is reasonable to adopt an incentive structure that reflects the nature of the fuel rather than just the technology. 8. It is reasonable to adopt incentive levels of	*See*, Part II(C), Comment 2.

[3] These comments were filed in R.08-03-008, a predecessor to this proceeding.

	$1.25/Watt for renewable and waste heat capture technologies and $0.50/Watt for conventional fueled-based CHP technologies. 9. Because fuel cells, biogas and AES are emerging technologies that have to [sic] potential to make significant contributions to the State's energy and environmental goals, it is reasonable to adopt higher incentives for these technologies.	
Ability to export excess generation. Sustainable Conservation advocated that SGIP projects be allowed to be sized to meet the available fuel source, meaning the installed capacity of the project may be larger than usage at the site. While the Commission did not adopt the entirety of our recommendation, it did adopt a "compromise" limit of 25%. Absent our advocacy, this may not have happened.	11/15/2010 *Comments on Staff Report*, at 2-4: "In the case of biogas digesters on farm and food processing facilities, the amount of available fuel a generator may be able to provide is typically more than an excess 25% of electricity that is used on site, behind the meter … The Commission should not adopt this unnecessary ban on sizing projects to use only some of the available fuel stock." D.11-09-015 agrees that "Allowing SGIP facilities to export to the grid will facilitate optimal and efficient sizing of SGIP systems…" (at 59.) The decision rejects a suggested 10% limit as "overly restrictive." (at 60.) Conclusion of Law 19: "In order to encourage optimal sizing of CHP installations to achieve maximum efficiency, SGIP projects should be allowed to export up to 25% of their annual output to the grid."	*See*, Part II(C), Comment 3.
Payment Structure. Sustainable Conservation encouraged the CPUC to allow participants a choice between the payment structure in the staff report and taking the entire incentive upfront.	5/2/2011, *Comments on Revised Staff Proposal*, at 2-3: "While this payment structure may be suitable for some of the technologies that have recently participated in the SGIP, there may be other incentive structures that would better encourage participation in this program from *customers* …" 8/8/2011, *Comments on Proposed Decision*, at 3-4: "Parties continue to encourage the Commission to consider other incentive structures that would better encourage participation in this program from customer with potential to install renewable distributed generation." D.11-09-015 adopted a higher upfront payment – 50% -- than staff had recommended. "We believe the 25% upfront capacity payment may not be sufficient to assist many technologies to overcome the first cost hurdle." (at 32.)	*See*, Part II(C), Comment 4.

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

	Claimant	CPUC Verified
a. Was DRA a party to the proceeding?	**Yes**	Correct
b. Were there other parties to the proceeding?	**Yes**	Correct
c. If so, provide name of other parties: PG&E, Southern California Edison, SDG&E, The Utility Reform Network, Agricultural Energy Consumers Association (AECA), California Center for Sustainable Energy, BP Energy, UTC Power Corp., Foundation Windpower, Bloom Energy, California Energy Storage Alliance, Ice Energy, California Clean DG Coalition, Primus Power		Yes
d. Claimant's description of how Claimant coordinated with DRA and other parties to avoid duplication or how Claimant's participation supplemented, complemented, or contributed to that of another party: Over the course of the several years and multiple proceedings in which the issues that culminated in D.11-09-015 were debated, Sustainable Conservation coordinated with other parties. Sustainable Conservation initiated contact with other parties to determine areas of mutual interest and opportunities to file jointly[4] where appropriate, in order to streamline the Commission's review of similar positions.		Yes

C. CPUC's Additional Comments on Part II:

#	Comment
1	Sustainable Conservation's position on this issue was in line with the directions in the Staff Report. We find that Sustainable Conservation's input on this issue was not significant or unique.
2	Sustainable Conservation provided general recommendations on this issue, and supported the proposed $2.00/watt additional incentive for emerging technologies. We find that Sustainable Conservation contributed to this issue but its input was not significant or unique.
3	Although its position did not prevail, we find that Sustainable Conservation contributed to the decision-making on this issue by presenting to the Commission's consideration specific arguments and facts from the biogas digesters' perspectives.
4	Sustainable Conservation provided to the Commission's consideration specific arguments and analysis from the biogas digesters' perspectives. Sustainable Conservation advocated for

[4] Sustainable Conservation and AECA filed joint comments on the proposed decision on August 8, 2011.

	differentiated SGIP funds distribution and the entire finding upfront payment to biogas digesters. Although Sustainable Conservation's view did not prevail, we find that the intervenor contributed to the Commission's decision to increase to 50% SGIP upfront payments for all fuel types (versus 25% proposed by the Staff).

PART III: REASONABLENESS OF REQUESTED COMPENSATION

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

Explanation by Claimant of how the cost of Claimant's participation bore a reasonable relationship with benefits realized through participation	**CPUC Verified**
Sustainable Conservation is the only non-profit environmental organization actively promoting biogas digesters in these proceedings. Sustainable Conservation's focus on ensuring a diversity of renewable resources in California's electricity portfolio should provide numerous benefits to ratepayers. Biogas digesters provide baseload renewable power, which assists with peak demand and load management. Installing biogas digesters on farms and food processing facilities throughout California should relieve congestion on distribution lines and reduce the need to construct new transmission. Biogas digesters have the additional benefit of significantly reducing emissions of methane, a powerful greenhouse gas. While the policy and procedural contributions from Sustainable Conservation can be difficult to quantify in monetary terms, we submit that Sustainable Conservation contributed substantially to the adoption of D.10-12-048, over the course of several years as the Commission developed the RAM policy, as discussed above.	With the reductions set forth in this decision, we find the request reasonable.

B. Specific Claim:*

CLAIMED						CPUC AWARD			
EXPERT FEES									
Item	**Year[5]**	**Hours**	**Rate**	**Basis for Rate**	**Total $**	**Year**	**Hours**	**Rate**	**Total $**
Jody London	2009	0.30	$190	D.11-06-036	$57.00	2009	0.30	$190	$57.00
Jody London	2010	23.50	$190	D.11-06-036	$4,465.00	2010	22.10	$190	$4,199.00
Jody London	2011	8.3	$200	D.11-06-036, Res. ALJ-247, 267	$1,660.00	2011	8.30	$200	$1,660.00
Allen Dusault	2009	0.30	$230	D.11-06-036	$69.00	2009	0.20	$230	$46.00
Allen Dusault	2010	4.40	$230	D.11-06-036	$1,012.00	2010	1.75	$230	$402.50

[5] Sustainable Conservation's claim combined hours for the years 2009 – 2010 in one row of the table, in violation of our requirements. If Sustainable Conservation's future claims combine hours for several years in one row, we will reduce the amounts requested for the intervenor compensation claims preparation, for non-compliance.

Allen Dusault	2011	1.60	$230	D.11-06-036	$368.00	2011	0.60	$230	$138.00
				Subtotal:	***$7,631.00***			***Subtotal:***	***$6,502.50***
INTERVENOR COMPENSATION CLAIM PREPARATION **									
Item	**Year**	**Hours**	**Rate**	**Basis for Rate**	**Total $**	**Year**	**Hours**	**Rate**	**Total $**
Jody London	2010	2.9	$ 95	½ normal rate	$275.50	2010	2.90	$95	$275.50
Jody London	2011	4	$100	½ normal rate	$400.00	2011	4.00	$100	$400.00
Allen Dusault	2011	.3	$115	½ normal rate	$ 34.50	2011	0.30	$115	$34.50
				Subtotal:	***$710.00***			***Subtotal:***	$710.00
				TOTAL REQUEST $:	**8,341.00**			**TOTAL AWARD $:**	**$7,212.50**

* 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 requested compensation, the actual time spent by each employee or consultant, the applicable hourly rates, fees paid to consultants, and any other costs for which compensation was claimed. The records pertaining to an award of compensation shall be retained for at least three years from the date of the final decision making the award.
** Reasonable claim preparation time typically compensated at ½ of preparer's normal hourly rate (the same applies to the travel time).

C. Intervenor's Additional Comments on Part III:

#	Description/Comment
1	Sustainable Conservation is not claiming any costs in this request. This is due to the ability to file and serve comments and other documents electronically using the Commission's E-file system; postage costs were minimal and are not included in this claim. Sustainable Conservation has used electronic mail communication and conference calls to reduce the cost of meetings, and similarly is not including those costs in this claim. Sustainable Conservation has relied on Ms. London for the work usually performed by an attorney, further reducing costs. Sustainable Conservation has been fiscally prudent.
2	**Rationale for Jody London's hour rates.** Sustainable Conservation requests an hourly rate of $190 for Jody London for work performed in 2010. This is the rate approved for her in D.11-06-036. Resolution ALJ-247 authorized rates ranging from $155 - $390 for experts with 13 or more years experience. D.08-08-010 (§ 4.3.3) states that experts with a previously adopted rate qualify for two annual step increases of 5% within any given level of experience. D.11-06-036 granted Ms. London one of the two step increases allowed within each experience band for her work in 2009 and 2010. For work performed in 2011, Sustainable Conservation requests Ms. London's second step increase of 5%, resulting in a rate of $200. Ms. London has over 21 years experience in the energy industry.
3	**Rationale for Allen Dusault's hourly rates.** During this proceeding, Dusault managed

	Sustainable Conservation's Sustainable Agriculture program. He has nearly 25 years' experience in water quality issues, waste management, transportation, agriculture and energy generation that spans the public, private and non-profit sectors.

D. CPUC Comments, Disallowances & Adjustments:

#	Reason
Hourly Rate Increase for London's work in 2011	Sustainable Conservation requests an hourly rate of $190 for London's work in 2010 and of $200 for her work in 2011, which represents the second "step increase" of 5% applied to the rate of $190. We find Sustainable Conservation's 2011 hourly rate of $200 (rounded to nearest $5 increment) to be reasonable and adopt it here.
Undocumented Costs	We disallow 0.1 hour recorded by Dusault on 4/24/11 as undocumented (no description of the specific task performed is provided – *See*, Rule 17.4(b)(2) of the Commission Rules of Practice and Procedure).
Internal Duplication of Effort or Inefficient Effort	We analyzed Sustainable Conservation's contributions, task allocation between its representatives, their related professional experience, and the time record information. London has over 20 years of professional experience, including more than 17 years in the energy industry.[6] In this proceeding, London served as the primary analyst and representative for the intervenor. She performed the in-depth review and analysis, represented the organization at workshops and other meetings, had primary responsibility for coordinating with other parties, developed working drafts of documents to be submitted to the CPUC, and had final responsibility for integrating the input from Dusault to documents to be submitted to the CPUC. Mr. Dusault served as the subject matter technical expert. He reviewed reports from Ms. London and collaborated with her regarding strategy and issues in this proceeding, and he reviewed and signed off on formal documents.[7] Based on our review of Sustainable Conservation's work in this matter, task allocation between London and Dusault, their time records, their expertise in the subject areas, and the level of work performed by each of them, we find that Dusault's work was duplicative of the tasks performed by London and contained excessive and unproductive efforts. We disallow hours reflecting such efforts on Dusault's part (such as excessive hours spent on document review, internal discussions, and document editing), as follows: 2009 – 0.1 hours; 2010 – 2.65 hours; and 2011 – 0.90 hours.[8] The compensable hours reflect a reasonable amount of time necessary to discuss strategy and edit documents produced by the

[6] *See*, Sustainable Conservation's intervenor compensation claim filed on October 15, 2008, in R.06-05-027.

[7] This information was provided via Sustainable Conservation's e-mail of May 17, 2012, a copy of which can be found in the "Correspondence" file for this proceeding.

[8] *See*, tasks recorded on January 8 and 11, August 9, October 23, November 11 and 15, and December 10, 2010; and April 24, 29, and August 2 and 4, 2011.

	intervenor. For the same reasons of the unnecessary internal duplication of efforts, we disallow 1.40 of London's hours.[9]
Level of Substantial Contribution	With the above reductions, a number of the hours allocated to the proceeding's issues corresponds to the level of the intervenor's contributions discussed in Part II. We note that almost one third (more than 10 hours) of Sustainable Conservation's requested professional hours was spent in two workshops – of January 7, 2010, and November 1, 2010. We assume that the intervenor's participation in the workshop was productive and related to the intervenor's contributions. With this comment, we find the total number of the compensable professional hours reasonable.

PART IV: OPPOSITIONS AND COMMENTS

A. Opposition: Did any party oppose the claim?	No

B. Comment Period: Was the 30-day comment period waived (*see* Rule 14.6(c)(6))?	Yes

FINDINGS OF FACT

1. Sustainable Conservation has made a substantial contribution to Decision 11-09-015.

2. The claimed fees and costs, as adjusted herein, are comparable to market rates paid to experts having comparable training and experience and offering similar services.

3. The total of reasonable contribution is $7,212.50.

CONCLUSION OF LAW

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

[9] *See*, time records of November 15th and December 9th, 2010, and April 24, 2011.

ORDER

1. Sustainable Conservation is awarded $7,212.50.
Within 30 days of the effective date of this decision, Pacific Gas and Electric Company, Southern California Edison Company, Southern California Gas Company, and San Diego Gas & Electric Company shall pay Sustainable Conservation the total award. We direct Pacific Gas and Electric Company, Southern California Edison Company, Southern California Gas Company, and San Diego Gas & Electric Company to allocate payment responsibility among themselves based upon their California-jurisdictional gas and electric revenues for the 2010 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 January 29, 2012, the 75th day after the filing of claimant's request, and continuing until full payment is made.

2. The comment period for today's decision is waived.

This decision is effective today.

Dated July 12, 2012, 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:	D1207016	**Modifies Decision?**	**No**
Contribution Decision:	D1109015		
Proceeding:	R1005004		
Author:	ALJ Dorothy Duda		
Payers:	Pacific Gas and Electric Company, Southern California Edison Company, Southern California Gas Company, and San Diego Gas & Electric Company		

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
Sustainable Conservation	11/15/11	$8,341.00	$7,212.50	No	Inefficient effort and undocumented cost

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Jody	London	Expert	Sustainable Conservation	$190	2009	$190
Jody	London	Expert	Sustainable Conservation	$190	2010	$190
Jody	London	Expert	Sustainable Conservation	$200	2011	$200
Allen	Dusault	Expert	Sustainable Conservation	$230	2009	$230
Allen	Dusault	Expert	Sustainable Conservation	$230	2009	$230
Allen	Dusault	Expert	Sustainable Conservation	$230	2009	$230

(END OF APPENDIX)