

Decision 05-01-053 January 27, 2005

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Implement the California Renewables Portfolio Standard Program.

Rulemaking 04-04-026
(Filed April 22, 2004)

OPINION GRANTING INTERVENOR COMPENSATION TO GREEN POWER INSTITUTE FOR SUBSTANTIAL CONTRIBUTIONS TO DECISION (D.) 04-06-014, D.04-06-015, AND D.04-07-029

This decision awards Green Power Institute (Green Power) \$104,864.25 in compensation for its contribution to Decision (D) 04-06-014, D.04-06-015, and D.04-07-029.

1. Background

In the Renewable Portfolio Standards (RPS) phase of Rulemaking (R) 01-10-024 and in this proceeding, the Commission has issued a series of decisions in its ongoing implementation of Senate Bill 1078, the legislation which created the RPS program. The three decisions for which Green Power seeks compensation are part of that series. D.04-06-014 adopted standard contract terms and conditions for participants in the RPS program, D.04-06-015 adopted a methodology for determining the market price referent, and D.04-07-029 adopted criteria for the selection of least-cost and best-fit resources. Green Power was an active participant in the RPS phase of R.01-10-024, and continues as an active participant in this proceeding.

2. Requirements for Awards of Compensation

The intervenor compensation program, enacted by the Legislature in Pub. Util. Code §§ 1801-1812, requires California jurisdictional utilities to pay the reasonable costs of an intervenor's participation if the intervenor makes a substantial contribution to the Commission's proceedings. The statute provides that the utility may adjust its rates to collect the amount awarded from its ratepayers. (Subsequent statutory references are to the Public Utilities Code, unless otherwise indicated.)

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

- a. The intervenor must satisfy certain procedural requirements including the filing of a sufficient notice of intent (NOI) to claim compensation within 30 days of the prehearing conference (or in special circumstances, at other appropriate times that we specify). (§ 1804(a).)
- b. The intervenor must be a customer or a participant representing consumers, customers, or subscribers of a utility subject to our jurisdiction. (§ 1802(b).)
- c. The intervenor should file and serve a request for a compensation award within 60 days of our final order or decision in a hearing or proceeding. (§ 1804(c).)
- d. The intervenor must demonstrate "significant financial hardship." (§§ 1802(g), 1804(b)(1).)
- e. The intervenor's presentation must have made a "substantial contribution" to the proceeding, through the adoption, in whole or in part, of the intervenor's contention or recommendations by a Commission order or decision. (§§ 1802(i), 1803(a).)

- f. The claimed fees and costs are comparable to the market rates paid to experts and advocates having comparable training and experience and offering similar services. (§ 1806.)

For discussion here, the procedural issues in Items 1-4 above are combined, followed by separate discussions on Items 5 and 6.

3. Procedural Issues

Green Power timely filed its NOI to Claim Compensation on June 4, 2004. Green Power was found to be a Category 3 customer under the Public Utilities Code in D.04-01-046 in R.01-10-024, and we confirm that finding here. Green Power filed its request for compensation on July 26, 2004, within the required 60 days of the issuance of the three decisions for which it seeks compensation. No party opposes the request.

In its request for compensation, Green Power has asserted financial hardship. We have reviewed Green Power's assertion, and consistent with our finding in D.04-01-046, we find that Green Power has met the significant financial hardship condition. Green Power has satisfied all the procedural requirements necessary to make its request for compensation.

4. Substantial Contribution

In evaluating whether a customer made a substantial contribution to a proceeding we look at several things. First, did the Administrative Law Judge (ALJ) or Commission adopt one or more of the factual or legal contentions, or specific policy or procedural recommendations put forward by the customer? (See §1802(i).) Second, if the customer's contentions or recommendations paralleled those of another party, did the customer's participation materially supplement, complement, or contribute to the presentation of the other party or

to the development of a fuller record that assisted the Commission in making its decision? (See §§ 1802(i) and 1802.5.) As described in § 1802(i), the assessment of whether the customer made a substantial contribution requires the exercise of judgment.

In assessing whether the customer meets this standard, the Commission typically reviews the record, composed in part of pleadings of the customer and, in litigated matters, the hearing transcripts, and compares it to the findings, conclusions, and orders in the decision to which the customer asserts it contributed. It is then a matter of judgment as to whether the customer's presentation substantially assisted the Commission.¹

Should the Commission not adopt any of the customer's recommendations, compensation may be awarded if, in the judgment of the Commission, the customer's participation substantially contributed to the decision or order. For example, if a customer provided a unique perspective that enriched the Commission's deliberations and the record, the Commission could find that the customer made a substantial contribution. With this guidance in mind, we turn to the claimed contributions Green Power made to the proceeding.

Green Power states that it made many substantial contributions to D.04-06-014, D.04-06-015, and D.04-07-026, as well as to this ongoing Rulemaking. Specifically, Green Power identifies 1) its recommendation for the use of a single, all-in cost with time-of-delivery profiling as an approach to valuing different types of electrical products (Compensation Request, pp. 6-7); 2) its contribution to the adopted definition of a Renewable Energy Credit, or

¹ D.98-04-059, 79 CPUC2d, 628 at 653.

REC (*id.*, pp. 7-8); its recommendations regarding the definition, establishment, and reporting of baselines and annual and incremental procurement targets (*id.*, p. 8); its approach to accounting for capital costs in the proxy plant approach to calculating the market price referent (*id.*, pp. 8-9); its recommendations regarding bid sequencing and multiple bids (*id.*, p. 10); and on consideration of qualitative factors in the least cost and best fit ranking process (*id.*, pp. 10-11).

We find Green Power participated extensively in both RPS proceedings leading to the three decisions cited. While Green Power was not 100% successful on every argument presented, the decisions reflect the significant impacts of Green Power's advocacy.

The Commission has awarded full compensation even where the intervenor's positions were not adopted in full, especially in proceedings with a broad scope and comprehensive participation by the intervenor. (*See* D.98-04-028, 79 CPUC2d 570, 573-574.) Here, Green Power achieved a high level of success on the issues it raised, and in the areas where we did not adopt Green Power's position, we nevertheless benefited from Green Power's analysis and discussion of the issues it raised.

We note that Green Power is seeking compensation for work it performed in R.01-10-024, as well as in this proceeding, R.04-04-026. Because all open RPS issues that were being addressed in R.01-10-024 were subsumed into R.04-04-026 (see OIR, p. 1), this is the proper proceeding for Green Power to seek compensation for its RPS work in R.01-10-024.

Green Power made a substantial contribution as described above. After we have determined the scope of a customer's substantial contribution, we then look at whether the compensation requested is reasonable.

5. Reasonableness of Requested Compensation

Green Power requests \$105,648 for its participation in this proceeding, as follows:

GPI Staff Time, Morris, 2003 hrs	129 hrs @ \$200 /hr	\$ 25,800
GPI Staff Time, Morris, 2004 hrs	343 hrs @ \$210 /hr	\$ 72,030
Comp Request Prep Time, Morris	42 hrs @ \$105 /hr	\$ 4,410
Document Filing and Serving		\$ 273
Legal Consulting on Regulatory Policy	8.25 hrs @\$380/hr	\$ 3,135
Total Compensation Request		\$105,648

The components of this request must constitute reasonable fees and costs of the customer’s preparation for and participation in a proceeding that resulted in a substantial contribution. Thus, only those fees and costs associated with the customer’s work that the Commission concludes made a substantial contribution are reasonable and eligible for compensation.

To assist us in determining the reasonableness of the requested compensation, D.98-04-059 directed customers to demonstrate productivity by assigning a reasonable dollar value to the benefits of their participation to ratepayers. The costs of a customer’s participation should bear a reasonable relationship to the benefits realized through their participation. This showing assists us in determining the overall reasonableness of the request.

In a rulemaking proceeding such as this one, it is not practical or realistic to assign a dollar value to the benefits of an intervenor’s participation. Nevertheless, we will generally look at the costs of a customer’s participation in light of the nature and scope of the proceeding. This is a major proceeding of broad scope that is moving quickly to implement the legislation creating the RPS

program, which is intended to have significant social, economic, and other benefits. The fact that Green Power is seeking compensation for its contribution to three separate decisions, all issued within the span of 30 days, shows the scope of the proceeding. Given this scope, the significant potential societal benefits of the RPS program, and our finding of substantial contribution, the costs of Green Power's participation bear a reasonable relationship to the benefits realized through its participation. We find that Green Power's efforts have been productive.

Next, we must assess whether the hours claimed for the customer's efforts that resulted in substantial contributions to Commission decisions are reasonable.

Green Power documented its claimed hours by presenting a daily breakdown of the hours of its staff, accompanied by a brief description of each activity. The hourly breakdown reasonably supports the claim for total hours.² Since we found that Green Power's efforts made a substantial contribution to the delineated decisions, we need not exclude from Green Power's award compensation for certain issues.

The requested 2003 rate of \$200 per hour for Dr. Gregory Morris (Morris), Green Power's Director and witness, was approved in D.04-01-046 for his earlier work on RPS issues, resulting in a substantial contribution to D.03-06-071. Green Power requests an increase in Morris' rate to \$210 per hour for his work in 2004. We find this increase reasonable, particularly given Morris' increasing familiarity

² Green Power separated the hours associated with preparation of this compensation request, and correctly requests compensation at half its requested hourly rate for this time.

with the Commission’s Rules of Practice and Procedure. Accordingly, we award compensation to Morris’ time at the rates of \$200 for 2003 and \$210 for 2004.

The itemized direct expenses submitted by Green Power include costs for legal consulting and document preparation, service, and filing, and total \$3,408. These costs include 8.25 hours of legal work by Jon Welner (Welner), an attorney who was admitted to the bar in 1995 and in practice since. Welner billed Green Power at a rate of \$380 for all hours.³ This rate is high compared to the rates we normally award for attorneys with similar work experience. For example, in D.04-08-025, we awarded Jeffrey Gray, also an attorney who received his JD and passed the bar in 1995, a rate of \$285/hour, noting that his significant level of responsibility in the case led us to award him a rate in the upper end of the associate range. We will adopt the same rate for all of Welner’s work in this case. The cost breakdown included with the request shows the miscellaneous expenses to be commensurate with the work performed. We find these costs reasonable.

6. Award

As set forth in the table below, we award Green Power \$104,864.25

GPI Staff Time, Morris, 2003 hrs	129 hrs @ \$200 /hr	\$ 25,800
GPI Staff Time, Morris, 2004 hrs	343 hrs @ \$210 /hr	\$ 72,030
Comp Request Prep Time, Morris	42 hrs @ \$105 /hr	\$ 4,410
Document Filing and Serving		\$ 273
Legal Consulting on Regulatory Policy	8.25 hrs @\$285/hr	\$ 2,351.25
Total Compensation Request		\$104,864.25

³ Welner’s work was performed in December 2003, and in February and March 2004.

Consistent with previous Commission decisions, we order that interest be paid on the award amount (at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release H.15) commencing the 75th day after Green Power filed its compensation request and continuing until full payment of the award is made.

We direct Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison to allocate payment responsibility among themselves based upon their California-jurisdictional electric revenues for the 2004 calendar year, to reflect the year in which the proceeding was primarily litigated.

We remind all intervenors that Commission staff may audit their records related to this award and that intervenors must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. Green Power's records should identify specific issues for which it requested compensation, the actual time spent by each employee or consultant, the applicable hourly rate, fees paid to consultants, and any other costs for which compensation was claimed.

7. Waiver of Comment Period

This is an intervenor compensation matter. Accordingly, as provided by Rule 77.7(f)(6) of the Commission's Rules of Practice and Procedure, we waive the otherwise applicable 30-day comment period for this decision.

8. Assignment of Proceeding

Michael R. Peevey is the Assigned Commissioner and Peter V. Allen and Julie M. Halligan are the assigned ALJs in this proceeding.

Findings of Fact

1. Green Power made a substantial contribution to Decision (D.) 04-06-014, D.04-06-015, and D.04-07-029.
2. Green Power requested hourly rates for its expert and attorney that are reasonable, as adjusted herein, when compared to the market rates for persons with similar training and experience.
3. The total of the reasonable compensation is \$104,864.25.

Conclusions of Law

1. Green Power has fulfilled the requirements of Pub. Util. Code §§ 1801-1812, which govern awards of intervenor compensation, and is entitled to intervenor compensation for its claimed compensation incurred in making substantial contributions to Decision (D.) 04-06-014, D.04-06-015, and D.04-07-029.
2. Green Power should be awarded \$104,864.25 for its contribution to Decision (D.) 04-06-014, D.04-06-015, and D.04-07-029.
3. Per Rule 77.7(f)(6), the comment period for this compensation decision may be waived.
4. This order should be effective today so that Green Power may be compensated without further delay.

O R D E R

IT IS ORDERED that:

1. Green Power Institute (Green Power) is awarded \$104,864.25 as compensation for its substantial contributions to Decision (D.) 04-06-014, D.04-06-015, and D.04-07-029.

2. Within 30 days of the effective date of this decision, Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison shall pay Green Power their respective shares of the award. Each utility's share shall be calculated based on their California-jurisdictional electric revenues for the 2004 calendar year, as described above. 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 October 9, 2004, the 75th day after the filing date of Green Power's request for compensation, and continuing until full payment is made.

3. The comment period for this decision is waived.

This order is effective today.

Dated January 27, 2005, at San Francisco, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
SUSAN P. KENNEDY
Commissioners

Comr. Grueneich recused herself from this agenda item and was not part of the quorum in its consideration.

Compensation Decision Summary Information

Compensation Decision:	D.05-01-053	Modifies Decision? No
Contribution Decision(s):	D0406014, D0406015, D0407029	
Proceeding(s):	R0110024, R0404026	
Author:	ALJ Allen	
Payer(s):	Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company	

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
Green Power Institute	7/26/04	\$105,648	\$104,864.25	No	Failure to justify hourly rate

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Gregory	Morris	Policy Expert	Green Power Institute	\$200	2003	\$200
Gregory	Morris	Policy Expert	Green Power Institute	\$210	2004	\$210
Jon	Welner	Attorney	Green Power Institute	\$380	2003-2004	\$285