

Decision 06-09-004 September 7, 2006

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking Regarding Policies,  
Procedures and Incentives for Distributed  
Generation and Distributed Energy Resources.

Rulemaking 04-03-017  
(Filed March 16, 2004)

**OPINION GRANTING INTERVENOR COMPENSATION  
TO VOTE SOLAR INITIATIVE FOR SUBSTANTIAL  
CONTRIBUTIONS TO DECISIONS IN THIS PROCEEDING**

This decision awards Vote Solar Initiative (Vote Solar) \$22,809.00 in compensation for its substantial contributions to Decision (D.) 04-12-045, D.05-12-044, and D.06-01-024. Today's award will be paid from the Commission's intervenor compensation program fund. This proceeding is closed.

**1. Background**

This rulemaking implements a program to provide incentives for distributed generation, including those powered with solar technology. The program, called the Self-Generation Incentive Program (SGIP), is currently administered by Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), San Diego & Electric Company (SDG&E) and San Diego Regional Energy (SDRE) office. It provides monetary incentives for non-utility parties to install distributed generation, including solar photovoltaic technologies with capacity of 30 kilowatts (kW) or more. The program, adopted in D.01-03-073 in response to Assembly Bill (AB) 970 and modified in accordance

with AB 1685, has paid or reserved more than \$421 million in rebates to solar projects representing 113 megawatts (MW) of power.

The complementary objectives of the SGIP are to add clean energy to peak demand resources, reduce risk by diversifying the state's energy portfolio, and reduce the demand for transmission and distribution system additions. In 2004, we expanded the solar element of the program, partly in response to intense interest by the Governor and the State Legislature. D.04-12-045 refined existing program elements. D.05-12-044 committed an additional \$300 million to the 2006 budget for solar technologies. D.06-01-024 committed an additional \$3.2 billion to solar applications over ten years and developed policy and program guidelines for a much more aggressive solar development effort we titled the "California Solar Initiative" (CSI).

This proceeding is closed and related program issues have been transferred to Rulemaking (R.) 06-03-004 including issues relating to cost-effectiveness methodologies for Solar projects.

## **2. Requirements for Awards of Compensation**

The intervenor compensation program, enacted 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:

1. 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. (§ 1804(a).)
2. The intervenor must be a customer or a participant representing consumers, customers, or subscribers of a utility subject to our jurisdiction. (§ 1802(b).)
3. 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).)
4. The intervenor must demonstrate “significant financial hardship.” (§§ 1802(g), 1804(b)(1).)
5. 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).)
6. The claimed fees and costs are reasonable (§ 1801), necessary for and related to the substantial contribution (D.98-04-059), comparable to the market rates paid to others with comparable training and experience (§ 1806), and productive (D.98-04-059).

The procedural issues listed in Items 1-4 above are combined, followed by separate discussions of Items 5 and 6 below.

### **3. Procedural Issues**

The first prehearing conference in this matter was held on May 5, 2004 and a second prehearing conference was held on December 14, 2005. Vote Solar filed its NOI August 2, 2004, which was not within 30 days of the first prehearing conference. The ALJ's ruling of August 2, 2005, however, excused the lateness of Vote Solar's NOI because Vote Solar states it was unaware of the pendency of the proceeding until shortly before it filed its NOI.

Vote Solar filed its request for compensation on May 8, 2006, approximately two months after the due date. However, its late filing is excusable in this case. We permit intervenors to seek compensation for several orders in order to limit the number of such pleadings parties must make and the Commission must address. Vote Solar could have logically assumed that additional orders would be forthcoming in this proceeding because of our stated intent to further refine CSI program elements. However, the Commission instead decided to close this proceeding and open a new docket, R.06-03-004, for consideration of related program issues. Vote Solar filed this request for compensation within 60 days of our closure of this proceeding, that is, the date we opened R.06-03-004. We therefore find it reasonable to accept Vote Solar's late filing in this proceeding.

SCE protested Vote Solar's request. SCE believes Vote Solar is an organization created to represent the interests of the solar industry. In that regard, SCE believes that Vote Solar cannot demonstrate significant financial hardship. SCE observes that Vote Solar's website suggests it is an advocacy organization for industry by stating its goal as bringing solar technology into the mainstream.

The assigned ALJ ruled on August 2, 2004 that Vote Solar is eligible for compensation and that Vote Solar qualified as a customer as defined in § 1802(b)(1). Because the issue of Vote Solar's eligibility was originally raised in Vote Solar's NOI, SCE's pending objection to Vote Solar's request for compensation is not timely. Nevertheless, we consider SCE's concerns in the interest of protecting ratepayer funds, which support the intervenor compensation program.

Vote Solar was found to have made a showing of significant financial hardship in a ruling dated September 16, 2005 in R.05-05-023. We apply a rebuttable presumption that this finding remains valid for our purposes here. Having reviewed Vote Solar's reply to SCE's pleading, and materials relevant to Vote Solar's status, we find that Vote Solar qualifies for compensation in this proceeding. Vote Solar may not have been originally organized to represent utility customers directly and explicitly. However, Vote Solar's interests do overlap those of the state's utility customers, and we have awarded intervenor compensation to other organizations, including the Natural Resource Defense Council, with institutional objectives that do not explicitly refer to utility customers but nevertheless promote utility customer interests. Vote Solar is a non-profit organization. It has stated that about 1% of its funding comes from solar industry sources. This amount of financial support does not constitute Vote Solar an advocacy group representing industry members that have a financial stake in the outcome of the proceeding. We therefore find that Vote Solar qualifies as a "customer," consistent with the ALJ's August 2004 ruling in this proceeding and the ALJ's September 2005 ruling issued in R.05-05-023.

#### **4. Substantial Contribution**

In evaluating whether a customer made a substantial contribution to a proceeding, we look at several things. First, we consider whether the administrative law judge (ALJ) or Commission adopted 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, we consider whether the customer's participation materially supplemented, complemented, or contributed 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.

If the Commission does not adopt any of the customer's recommendations, it may still award compensation if the customer's participation substantially contributed to the decision or order in other ways.

Vote Solar describes its contributions to the three subject decisions issued in this proceeding. Vote Solar states the Commission adopted its positions on the eligibility of county fairs for incentives, gradually reducing rebate levels, the need for application fees to reduce frivolous applications, maintenance of a third-party administrative system in San Diego, the need to work toward a market transformation to solar technologies, performance-based incentives, and the long-term solar incentives budget level.

Clearly, Vote Solar made substantial contributions to the orders for which it seeks compensation and, as a non-profit organization advocating for increased solar deployment in California, provided an important and unique perspective in this proceeding.

In addition to seeking funding for contributions to three final orders, Vote Solar appears to seek funding for work conducted on cost-benefit methodologies for solar projects. The Commission held hearings on this issue. The assigned ALJ drafted and published a proposed decision, upon which parties, including Vote Solar, commented. The proposed decision was subsequently withdrawn from the Commission agenda. Normally, the Commission does not compensate an intervenor where the intervenor has not contributed to a Commission order. Nevertheless, the Commission may and has awarded funding in cases where the Commission never issued a final order (see, for example, D.04-10-033). In this case, although the Commission never issued a final order on the subject of cost-benefit methodologies, Vote Solar's contributions were substantial and thoughtful and may be useful at a later date. The ALJ considered Vote Solar's contributions in her proposed decision. Moreover, Vote Solar should not be penalized for the Commission's decision not to issue an order. We therefore permit compensation to Vote Solar for its contributions on the subject of cost-benefit methodologies. If and when the Commission resolves outstanding issues relating to the cost-effectiveness methodologies for distributed generation projects, Vote Solar may seek additional compensation for work that is not already compensated in this decision. For work accomplished in 2006, we will not consider increases to the rates adopted here for 2006. Vote Solar may not seek double recovery for work on these issues.

#### **5. Reasonableness of Requested Compensation**

After we have determined the scope of a customer's substantial contribution, we look at whether the compensation requested is reasonable.

Vote Solar requests \$22,809 for its participation in this proceeding, as follows:

<b>Advocate</b>	<b>Year</b>	<b>Hours</b>	<b>Rate</b>	<b>Amounts</b>
Adam Browning	2004	7	\$100	\$ 700
JP Ross	2004	26.5	\$100	\$ 2,650
	2005	71.25	\$120	\$ 8,550
	2006 (int. comp)	16	\$140	\$ 2,240
Ed Smeloff	2005	20	\$300	\$ 6,000
Expenses				\$ 2,669
<b>Total Request</b>				\$22,809

In general, 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. The issues we consider to determine reasonableness are discussed below.

**5.1 Claimed Hours**

The hours claimed for the customer’s efforts that resulted in substantial contributions to Commission decisions must be directly related to the work performed and necessary for the substantial contribution.

Vote Solar documented its claimed hours by presenting a daily breakdown of the hours of its attorneys and experts, accompanied by a brief description of each activity. It included under “expenses” \$2,500 for a report by its witness, Ed Smeloff, on cost-benefit methodologies. This report was used in hearings and is in the nature of testimony or comment, which is normally billed by the hour.

In addition to a flat rate for the report, Vote Solar billed 20 hours for Smeloff's preparation for hearings at an hourly rate. Smeloff's billed hours are modest, and his charge for the report is reasonable. Vote Solar's documentation supports its claims as reasonable.

## **5.2 Market Rate Standard**

The claimed fees and costs must be comparable to the market rates paid to experts and advocates having comparable training and experience and offering similar services.

Vote Solar seeks hourly rates for its attorneys and experts as follows.

**JP Ross.** Ross is an energy expert and director of programs for Vote Solar. Vote Solar seeks an hourly rate of \$100 for Ross in 2004, \$120 for 2005 and \$140 for 2006. Vote Solar states the 2004 rate, which is the first to be set for him in Commission proceedings, is the rate the Commission adopted for John Galloway and Devra Wang, who have comparable experience. Vote Solar seeks an increase to \$120 an hour for work in 2005, which is the rate awarded to Wang for work conducted in 2005. We agree that the rates Vote Solar seeks for Ross are modest and within the range the Commission found the utilities pay for experts (see D.05-11-031). We adopt them.

**Adam Browning.** Browning is the executive director of Vote Solar with 13 years of relevant experience. Vote Solar seeks \$100 an hour for Browning's work in 2004. We agree that this rate is modest considering Browning's experience and we adopt it here.

**Ed Smeloff.** Smeloff is an energy consultant with over 20 years of experience in energy policy and related topics. Vote Solar seeks \$300 an hour for Smeloff's work. We agree that this rate is reasonable for Smeloff in light of his experience.

### **5.3 Productivity**

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.

As is often the case, it is difficult to determine a dollar value to the work undertaken by intervenors in this proceeding. Clearly, however, Vote Solar contributed materially to each of the orders for which it seeks compensation and advanced our thinking on the important legal, technical and policy questions we addressed in related decisions. Moreover, the benefits of diversifying the State's energy resource mix and promoting the efficient development of a clean and renewable generation technology are significant, even though not easily quantified. We therefore find Vote Solar's participation productive.

### **5.4 Direct Expenses**

The itemized direct expenses submitted by intervenors include costs for travel, photocopying, postage, and telephone. As we stated earlier, Vote Solar includes as an expense \$2500 for a report presented at hearings, which we have found to be compensable. The remaining claim is \$169, which is reasonable considering the work accomplished in the proceeding.

## 6. Total Awards

As set forth in the tables below, we award intervenor compensation as follows:

<b>Advocate</b>	<b>Year</b>	<b>Hours</b>	<b>Rate</b>	<b>Amounts</b>
Adam Browning	2004	7	\$100	\$ 700
JP Ross	2004	26.5	\$100	\$ 2,650
	2005	71.25	\$120	\$ 8,550
	2006 (int. comp)	16	\$140	\$ 2,240
Ed Smeloff	2005	20	\$300	\$ 6,000
Expenses				\$ 2,669
<b>Total Request</b>				\$22,809

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 each filed its compensation request and continuing until full payment of the award is made.

This rulemaking proceeding affected a broad array of utilities and others in the energy field. As such, we find it appropriate to authorize payment of the compensation award from the intervenor compensation program fund, as described in D.00-01-020.

We remind all intervenors that Commission staff may audit records relevant to this award, and that intervenors must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. Vote Solar's records should identify specific issues for which

each 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 our 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 Kim Malcolm is the assigned ALJ in this proceeding.

#### **Findings of Fact**

1. Vote Solar qualifies for intervenor compensation in this proceeding, consistent with the ruling of the ALJ dated August 2, 2004.
2. Vote Solar made substantial contributions to the decisions described herein.
3. The total reasonable compensation for Vote Solar is \$22,809.

#### **Conclusions of Law**

1. Vote Solar 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, as set forth herein, incurred in making substantial contributions to the decisions described herein. If and when the Commission resolves outstanding issues relating to the cost-effectiveness methodologies for distributed generation projects, Vote Solar may seek additional compensation for work that is not already compensated in this

decision. It would be inconsistent with intervenor compensation statutes for Vote Solar to seek double recovery.

2. Per Rule 77.7(f)(6), the comment period for this compensation decision may be waived.

3. This order should be effective today so that Vote Solar may be compensated without further delay.

**O R D E R**

**IT IS ORDERED** that:

1. Vote Solar Institute (Vote Solar) is awarded \$22,809 in compensation for its contributions to Decision (D.) 04-12-045, D.05-12-044 and D.06-10-024.

2. Within 30 days of the effective date of this decision, the award described herein shall be paid by the Commission's intervenor program compensation fund. 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 the 75<sup>th</sup> day after the respective filing dates of Vote Solar's requests for compensation, and continuing until full payment is made.

3. Rulemaking 04-03-017 is closed.

This order is effective today.

Dated September 7, 2006, at San Francisco, California.

MICHAEL R. PEEVEY  
President  
GEOFFREY F. BROWN  
DIAN M. GRUENEICH  
JOHN A. BOHN  
RACHELLE B. CHONG  
Commissioners

## APPENDIX

## Compensation Decision Summary Information

<b>Compensation Decision:</b>	D0609004
<b>Contribution Decision(s):</b>	D0412045, D0512044, D0601024
<b>Proceeding(s):</b>	R0403017
<b>Author:</b>	ALJ Kim Malcolm
<b>Payer(s):</b>	Vote Solar Initiative

## Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
Vote Solar Institute	5/8/06	\$22,809	\$22,809	No	None

## Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Adam	Browning	Expert	Vote Solar Institute	\$100	2004	\$100
JP	Ross	Expert	Vote Solar Institute	\$100	2004	\$100
JP	Ross	Expert	Vote Solar Institute	\$120	2005	\$100
JP	Ross	Expert	Vote Solar Institute	\$140	2006	\$140
Ed	Smeloff	Expert	Vote Solar Institute	\$300	2005	\$300

(END OF APPENDIX)