

Decision 07-07-012 July 12, 2007

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

Order Instituting Rulemaking to Implement  
Portions of AB 117 Concerning Community  
Choice Aggregation.

Rulemaking 03-10-003  
(Filed October 2, 2003)

**OPINION GRANTING INTERVENOR COMPENSATION  
TO COMMUNITY ENVIRONMENTAL COUNCIL FOR SUBSTANTIAL  
CONTRIBUTION TO DECISION 05-12-041**

This decision awards Community Environmental Council (CEC) \$8,705.68 in compensation for its substantial contributions to Decision (D.) 05-12-041. The award is less than CEC requested to reflect reduced hourly rates and a reduction in the hours of work claimed. This proceeding is closed.

**Background**

The Commission opened this rulemaking to implement provisions of Assembly Bill (AB) 117. AB 117 permits local governments to purchase energy on behalf of local customers acting as community choice aggregators (CCAs). CCAs are governmental entities formed by cities and counties to serve the energy needs of their homes and businesses.

In addition to authorizing the creation of CCAs, AB 117 describes essential program elements, requires the state's utilities to provide certain services to CCAs, and establishes methods to protect existing utility customers from liabilities they might otherwise incur when a portion of the utility's customers transfer their energy services to a CCA. Cities and counties have become increasingly involved in implementing energy efficiency programs, advocating

for their communities in power plant and transmission line siting cases, and developing distributed generation and renewable resource energy supplies. The CCA program takes these efforts one step further by enabling communities to purchase power on behalf of the community.

D.04-12-046, which addressed Phase I of this proceeding, implemented certain portions of AB 117. D.04-12-046 adopted an interim cost recovery surcharge (CRS), a method for calculating CRS, and addressed a variety of cost issues. Phase II of this proceeding resolved issues relating to the accounting of the respective liabilities of utilities and CCAs for utility power purchases, details of utility services to CCAs, and other implementation issues. We issued D.05-12-041 at the conclusion of Phase II.

On February 14, 2006, CEC filed a \$54,874.00 request for compensation for its participation in Phase I and Phase II. We addressed CEC's request in D.06-05-037. In that decision, we approved a reduced award, \$39,534.85, based on CEC's level of efficiency and adjustments to CEC's requested hourly rates. CEC filed an amended request for compensation on December 27, 2006.<sup>1</sup> We address the merits of CEC's request in this decision.

This proceeding is closed.

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<sup>1</sup> The Commission's Docket Office modified the title of CEC's pleading from *Second Request of the Community Environmental Council for an Award of Compensation for Substantial Contribution in D.05-12-041 and R.03-10-003* to *Amended Request of the Community Environmental Council for an Award of Compensation for Substantial Contribution in D.05-12-041 and R.03-10-003*.

### **Requirements for Awards of Compensation**

The intervenor compensation program, which is set forth in Pub. Util. Code §§ 1801-1812,<sup>2</sup> requires California jurisdictional utilities to pay the reasonable costs of an intervenor's participation if that party makes a substantial contribution to a Commission proceeding. The statute provides that the utility may adjust its rates to collect the amount awarded from its ratepayers.

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 (PHC), pursuant to Rule 17.1, or at other appropriate time that we specify. (Pub. Util. Code § 1804(a).)
2. The intervenor must be a customer or a participant representing consumers, customers, or subscribers of a utility subject to our jurisdiction. (Pub. Util. Code § 1802(b).)
3. The intervenor must file and serve a request for a compensation award within 60 days of our final order or decision in a hearing or proceeding. (Pub. Util. Code § 1804(c).)
4. The intervenor must demonstrate "significant financial hardship." (Pub. Util. Code §§ 1802(g) and 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 or as otherwise found by the Commission. (Pub. Util. Code §§ 1802(i) and 1803(a).)

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<sup>2</sup> All subsequent statutory references are to the Public Utilities Code unless otherwise indicated.

6. The claimed fees and costs must be reasonable (Pub. Util. Code § 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 (Pub. Util. Code § 1806), and productive (D.98-04-059).

In the discussion below, the procedural issues in Items 1-4 above are combined and a separate discussion of Items 5 and 6 follows.

### **Procedural Issues**

Under § 1804(a)(1) and Rule 17.1(a)(1), customers who intend to seek an award of intervenor compensation must file the NOI before certain dates. In a proceeding in which a prehearing conference is held, the intervenor must file and serve its NOI between the date the proceeding was initiated until 30 days after the PHC is held. (Rule 17.1(a)(1).) According to the assigned Administrative Law Judge's (ALJ) March 22, 2005 Ruling, the Commission considered CEC's March 2, 2005 NOI filing as timely and we affirmed this finding in D.06-05-037.

### **Preliminary Procedural Requirements**

In its NOI, CEC asserted financial hardship. On March 22, 2005, the ALJ found that CEC met the financial hardship condition pursuant to § 1802(g). We affirmed this finding in D.06-05-037.

Regarding customer status, Section 1802(b)(1) defines a "customer" as:

- A) a participant representing consumers, customers or subscribers of a utility;
- B) a representative who has been authorized by a customer; or C) a representative of a group or organization authorized pursuant to its articles of incorporation or bylaws to represent the interests of residential or small business customers. (Pub. Util. Code § 1802(b)(1)(A) through (C).) The ALJ's March 22 Ruling found CEC a customer pursuant to § 1802(b)(1) (C) and we affirmed this finding in D.06-05-037.

In view of the above, we find that CEC has satisfied all the procedural requirements necessary to make its request for compensation in this proceeding.

### **Timeliness of Compensation Requests**

CEC filed its amended request for compensation on December 27, 2006. No party opposed the request. CEC made this amended filing because it failed to include all its hours in its first request for compensation filed on February 14, 2006. CEC's December 27, 2006 request also seeks compensation for additional hours spent on this proceeding after it filed its February 14, 2006 request. Although CEC filed its amended request beyond 60 days after the issuance of D.05-12-041, a request for compensation is timely if the intervenor files its request within 60 days of the issuance of a final decision in a proceeding. Because the Commission issued the last decision, D.07-04-007, in this proceeding on April 12, 2007, CEC's request falls within this 60 day period as required by Section 1804. Accordingly, we conclude that CEC's request for compensation is timely filed.

### **Substantial Contribution**

CEC seeks compensation for worked performed in this proceeding in 2005 and 2006. In evaluating whether a customer made a substantial contribution to a proceeding, we look at several things. First, whether the Commission adopted one or more of the factual or legal contentions, or specific policy or procedural recommendations put forward by the customer. (Pub. Util. Code § 1802(i).) Second, if the customer's contentions or recommendations paralleled those of another party, whether the customer's participation unnecessarily duplicated or 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. (Pub. Util. Code §§ 1801.3(f) 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.<sup>3</sup>

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 CEC made to the proceeding.

CEC claims substantial contribution to D.05-12-041 by submitting testimony and briefs. CEC relies heavy on the assertions made in its February 14, 2006 request regarding its substantial contribution to support this amended request. As we stated in D.06-05-037, CEC advocated in favor of tariffs drafted by Local Government Commission Coalition (LGCC); argued that CCAs should be subject to the same requirements for the renewable portfolio standard as other utilities; proposed the use of net metering; suggested certain customer education efforts; and presented a jurisdiction argument under AB 117. (See D.06-05-037, *mimeo.* at p. 6.)

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<sup>3</sup> D.98-04-059, 79 CPUC2d 628 at 653.

Since CEC relies on its February 14, 2006 request to establish substantial contribution, we turn to our findings on substantial contribution based on this February 14, 2006 request set forth in D.06-05-037. As we found in D.06-05-037, CEC presented thoughtful testimony and analysis in this proceeding and the Commission adopted a number of its proposals related to specific tariff provisions. However, much of what CEC proposed was simply supportive of the arguments presented by the CCAs represented by LGCC. Furthermore, this proceeding did not address many of the arguments presented by CEC and even rejected some of its arguments, including CEC's position on the extent of the Commission's jurisdiction over CCA. But some of CEC's work complemented that of LGCC. Accordingly, we find that CEC made a substantial contribution to D.05-12-041 and subsequent decisions on some issues. Our finding on substantial contribution is consistent with D.06-05-037.

Regarding CEC's work on implementation issues, we find that CEC's participation constitutes substantial contribution because we did take into consideration and even incorporated some of CEC's comments when preparing the Resolution E-4013, which implemented portions of D.05-12-041.

### **Contributions of Other Parties**

Section 1801.3(f) requires an intervenor to avoid participation that unnecessarily duplicates that of similar interests otherwise adequately represented by another party, or participation unnecessary for a fair determination of the proceeding. Section 1802.5, however, allows an intervenor to be eligible for full compensation if their participation materially supplements, complements, or contributes to that of another party if that participation makes a substantial contribution to the commission order.

As noted above, we find CEC made a substantial contribution in some areas of this proceeding. However, CEC’s contribution was unnecessarily duplicative in some areas, as discussed in D.06-05-037.

**Reasonableness of Requested Compensation**

We consider whether the CEC’s compensation request is reasonable. CEC requests \$12,963.59 for its participation. However, CEC incorrectly calculated its request to be \$11,763.59. CEC requests the following:

<b>Work on Proceeding and Preparation of NOI &amp; Request<sup>4</sup></b>				
<b>Attorney/Staff</b>	<b>Year</b>	<b>Hours</b>	<b>Hourly Rate</b>	<b>Total</b>
Tam Hunt	2006	20	\$240	\$4,800.00
Tam Hunt	2005 <sup>5</sup>	26.5	\$220 <sup>6</sup>	\$5,8305,830.00
<b>Paralegal/Law Clerks</b>				
Kelly Neumann	2006	2	\$70	\$140.00
<b>Subtotal:</b>				<b>\$140.00</b>
Direct Expenses				\$2,193.59
<b>Total Requested Compensation</b>				<b>\$12,963.59</b>

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:

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<sup>4</sup> Attorney and Expert Witness hourly rates are reduced 50% for preparation of the NOI and compensation request. CEC did not reduce these amounts. We correct this error in the final award.

<sup>5</sup> In its request for compensation, CEC incorrectly describes this line item as a 2006 cost. We corrected CEC’s error in our final award.

<sup>6</sup> CEC incorrectly claims that we previously approved an hourly rate of \$220 for Hunt for year 2005.

**Hours and Costs Related to and Necessary for Substantial Contribution**

We first assess whether the hours claimed for the customer's efforts that resulted in substantial contributions to Commission decisions are reasonable by determining to what degree the hours and costs are related to the work performed and necessary for the substantial contribution.

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. Consistent with D.06-05-037, we find that CEC's work was "duplicative of the work of many of the other parties" and that CEC "did not prevail on a number of its issues. See D.06-05-037, *mimeo.* at p. 15. Accordingly, we found that CEC's work was not highly productive. Consistent with D.06-05-037, we adopt a 20% reduction of CEC's request for compensation for work performed prior to the issuance of D.05-12-041.

It is unclear from CEC's request whether it appropriately claims half of Hunt's requested hourly rate for time spent on drafting its intervenor compensation request. CEC indicates that Hunt spent two hours on February 28, 2005 for a total of \$440, 4.5 hours on March 1, 2005, for a total of \$990, and three hours on March 2, 2005, for a total of \$660. For 2006, CEC indicates that Hunt spent 3.5 hours on December 19, 2006, for a total of \$420. No hourly rate discount is noted for this intervenor compensation. Accordingly, we make the required 50% reduction in the hourly rate for work related to CEC's intervenor compensation request.

In addition, CEC requests compensation on April 4, 2005 for two hours, \$440, to renegotiate its contract with its expert, Mike Nelson. We do not compensate intervenors for time spent developing employment contracts for staff or consultants. Accordingly, we will not compensate CEC for time spent on this matter.

Regarding hours spent after the issuance of D.05-12-041, we find those hours reasonable in light of CEC's contribution to Resolution, E-4012.

### **Intervenor Hourly Rates**

CEC seeks an hourly rate of \$220 for Hunt for work performed in 2005 and a rate of \$240 for work performed by Hunt in 2006. CEC claims that we approved a rate of \$220 for Hunt in a prior decision but provides no citation. Contrary to CEC's assertion, we have not approved a rate of \$220 for 2005. We approved a 2005 rate for Hunt of \$205 in D.06-05-037.

We have not adopted an hourly rate for Hunt for work conducted in 2006. In D.07-01-009, we adopted a 3% cost-of-living adjustment to hourly rates for work performed in calendar year 2006. Therefore, based on the guidance provided in D.07-01-009, we increase Hunt's 2005 hourly rate of \$205 by 3% for a 2006 hourly rate of \$210.

CEC also requests an hourly rate of \$70 for its Legal Assistant, Kelly Neumann. The \$70 hourly rate for Kelly Neumann is reasonable, and we adopt it here. CEC claims the full rate for Neumann for work related to its request for compensation. Unlike our policy for attorneys and consultants, we do not discount the rates for Legal Assistant/Paralegals for this type of work.

### **Direct Expenses**

The itemized direct expenses submitted by CEC include costs for the following:

<b>Litigation Support/Research</b>	\$1,750.00
<b>Travel (Air)</b>	\$407.58
<b>Food &amp; Parking &amp; Transit to CPUC</b>	\$36.01
<b>Total Expenses</b>	\$2,193.59

The litigation support/research expenses of \$1,750.00 for Westlaw computerized research and the air travel costs of \$407.58 to San Francisco are commensurate with the work performed. We find these costs reasonable. We do not, however, award compensation for an individual’s food expenses. Since it is unclear what portion of CEC’s requested \$36.01 may relate to costs other than food, we disallow the entire \$36.01. Therefore, we find reasonable \$2,157.58 in costs.

**Award**

As set forth in the table below, we award CEC \$8,705.68.

<b>Work on Proceeding</b>				
<b>Attorney/Staff</b>	<b>Year</b>	<b>Hours</b>	<b>Hourly Rate</b>	<b>Total</b>
Tam Hunt	2006	10	\$210	\$2,100.00
	2005	15	\$205	\$3,075.00
			2005 20% reduction	(\$615.00)
<b>Subtotal:</b>				<b>\$4,560.00</b>
<b>Preparation of NOI and Compensation Request<sup>7</sup></b>				
<b>Attorney/Staff</b>	<b>Year</b>	<b>Hours</b>	<b>Hourly Rate</b>	<b>Total</b>
Tam Hunt	2006	10	\$105	\$1,050.00
	2005	9.5	\$105	\$997.50
			2005 20%	(\$199.40)

<sup>7</sup> Hourly rates for attorneys/experts reduced by 50% for preparation of NOI and compensation request.

<b>Work on Proceeding</b>				
<b>Attorney/Staff</b>	<b>Year</b>	<b>Hours</b>	<b>Hourly Rate</b>	<b>Total</b>
			reduction	
Paralegal/Law Clerks				
Kelly Neumann	2006	2	\$70	\$140.00
<b>Subtotal:</b>				<b>\$1,988.10</b>
<b>Total</b>				<b>\$6,548.10</b>
<b>Total of Expenses</b>				<b>\$2,157.58</b>
<b>TOTAL Award</b>				<b>\$8,705.68</b>

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 on March 12, 2007, the 75th day after CEC filed its compensation request, and continuing until full payment of the award is made.

We direct the named respondents, Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company, to allocate payment responsibility among themselves based upon their California-jurisdictional gas and electric revenues for the 2006 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 the award and that intervenors must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. CEC'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.

### **Waiver of Comment Period**

This is an intervenor compensation matter. Accordingly, as provided by Rule 14.6(c)(6) of our Rules of Practice and Procedure, we waive the otherwise applicable 30 day comment period for this decision.

### **Assignment of Proceeding**

Michael R. Peevey is the assigned Commissioner, and Kim Malcolm is the assigned ALJ in this proceeding.

### **Findings of Fact**

1. CEC has satisfied all the procedural requirements necessary to claim compensation in this proceeding.
2. CEC made a substantial contribution to D.05-12-041, as described herein.
3. CEC requested hourly rates for its representatives that, as adjusted herein, are reasonable.
4. CEC's requested related expenses, as adjusted herein, are reasonable and commensurate with the work performed.
5. The total reasonable compensation is \$8,705.68.

### **Conclusions of Law**

1. CEC 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 adjusted herein, incurred in making substantial contributions to D.05-12-041.
2. CEC should be awarded \$8,705.68 for its contribution to D.05-12-041.
3. This order should be effective today so that CEC may be compensated without further delay.

**O R D E R**

**IT IS ORDERED** that:

1. Community Environmental Council is awarded \$8,705.68 as compensation for its substantial contributions to Decision 05-12-041.
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 Company shall pay Community Environmental Council their respective shares of the award. We direct Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison to allocate payment responsibility based on their California-jurisdictional gas and electric revenues for the 2006 calendar year, to reflect the year in which most of CEC's costs were incurred. 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 on March 12, 2007, the 75th day after CEC filed its compensation request, and continuing until full payment of the award is made.
3. Rulemaking 03-10-003 is closed.

This order is effective today.

Dated July 12, 2007, at San Francisco, California.

MICHAEL R. PEEVEY  
President  
DIAN M. GRUENEICH  
JOHN A. BOHN  
RACHELLE B. CHONG  
TIMOTHY ALAN SIMON  
Commissioners

**APPENDIX****Compensation Decision Summary Information**

<b>Compensation Decision:</b>	D0707012	<b>Modifies Decision?</b> No
<b>Contribution Decision(s):</b>	D0512041	
<b>Proceeding(s):</b>	R0310003	
<b>Author:</b>	ALJ Malcolm	
<b>Payer(s):</b>	Pacific Gas and Electric Company, San Diego Gas & Electric Company, Southern California Edison Company	

**Intervenor Information**

<b>Intervenor</b>	<b>Claim Date</b>	<b>Amount Requested</b>	<b>Amount Awarded</b>	<b>Multiplier?</b>	<b>Reason Change/Disallowance</b>
Community Environmental Council	12/27/06	\$12,963.59	\$8,705.68	No	reduced hourly rate; lack of substantial contribution; inefficiency; unreasonable costs.

**Advocate Information**

<b>First Name</b>	<b>Last Name</b>	<b>Type</b>	<b>Intervenor</b>	<b>Hourly Fee Requested</b>	<b>Year Hourly Fee Requested</b>	<b>Hourly Fee Adopted</b>
Tamlyn	Hunt	Attorney	Community Environmental Council	\$220	2005	\$205
Tamlyn	Hunt	Attorney	Community Environmental Council	\$240	2006	\$210
Kelly	Neumann	Legal Assist.	Community Environmental Council	\$70	2006	\$70

**(END OF APPENDIX)**