

Decision 08-05-020      May 14, 2008

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 06-03-004  
(Filed March 2, 2006)

**ORDER CORRECTING ERROR**  
**IN DECISION (D.) 08-04-060**

A clerical error has been discovered in a sentence on pages 7, lines 9-12, of Decision (D.) 08-04-060 which was mailed May 1, 2008.<sup>1</sup> This sentence states:

“Consistent with this objective, among other things, D.05-11-031 established pay ranges for attorneys and expert witnesses based on years of experience, and found a 3% cost of living increase to be appropriate in some circumstances. (2005 Hourly Rate Decision [D.05-11-031], supra, at p. 28 (slip op.).)”

It appears that the decision contains an inadvertent omission of a reference to D.07-01-009, as it relates to the 3% cost of living increase. Therefore, D.08-04-060 is corrected as set forth below in Ordering Paragraph 1.

Also, in D.08-04-060, page 9, line 15, the word “challenge” is corrected to “challenged”. This correction is set forth in Ordering Paragraph 2 below.

Pursuant to Resolution A-4661, **IT IS ORDERED** that:

1. The above referenced sentence on page 7, lines 9-12, of D.08-04-060 is corrected to read as follows:

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<sup>1</sup> D.08-04-060 was originally mailed on April 28, 2008. However, the mailing date for this decision was subsequently corrected, and issued (mailed) on May 1, 2008.

"Consistent with this objective, among other things, D.05-11-031 established pay ranges for attorneys and expert witnesses based on years of experience (*2005 Hourly Rate Decision* [D.05-11-031], *supra*, at p. 29 (slip op.)), and D.07-01-009 found a 3% cost of living increase to be appropriate in some circumstances. (*2007 Hourly Rate Decision* [D.07-01-009], *supra*, at pp. 1, 3, 12-14 (slip op.).)"

2. The word "challenge": in D.08-04-060, page 9, line 15, is corrected to "challenged".

3. A corrected version of page 7 of D.08-04-060 is provided with this order as an attachment.

This order is effective today.

Dated May 14, 2008 at San Francisco, California.

/s/ PAUL CLANON

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Paul Clanon  
Executive Director

# **ATTACHMENT**

on new compensation data and proposed rates from intervenors.” (See Res ALJ-184, issued August 25, 2004, p. 1; *2005 Hourly Rate Decision* [D.05-11-031], *supra*, at p. 3 (slip op.); and *Order Instituting Rulemaking to Set Hourly Rates for Purposes of Calculating Intervenor Compensation Awards Pursuant to Public Utilities Code Section 1801 and Following, for Work Performed in Calendar Year 2006* (“*2007 Hourly Rate Decision*”) [D.07-01-009] p. 2 (slip op.)) (2007) \_\_\_ Cal.P.U.C.3d \_\_\_) Through this “process” interested parties are afforded the opportunity to introduce evidence going to, but not limited to, the appropriate market rates, practice categories, and cost of living increases. Consistent with this objective, among other things, D.05-11-031 established pay ranges for attorneys and expert witnesses based on years of experience (*2005 Hourly Rate Decision* [D.05-11-031], *supra*, at p. \_\_\_ (slip op.)), and D.07-01-009 found a 3% cost of living increase to be appropriate in some circumstances. (*2007 Hourly Rate Decision* [D.07-01-009], *supra*, at pp. 1, 3, 12-14 (slip op.))

In addition to considering evidence regarding the market rates established for attorney practice groups, this Commission has consistently afforded intervenors the opportunity to modify their individual hourly rate. For example, in addition to adopting an annual process for setting and updating hourly rates for intervenors seeking compensation, Resolution ALJ-184 provides that:

[A]n intervenor may request an adjustment to an adopted hourly rate but must show good cause for doing so. For example, if a court or regulatory agency awarded the advocate a higher hourly rate for work in the same calendar year, the intervenor may ask us to use the higher rate. The burden is on the intervenor to justify the higher rate, and in the example just given, we would expect the intervenor to address, among other things, the standard used by the court or agency in setting the higher rate and the comparability of the work performed at the Commission to the work performed at the court or agency. (*Id.* at pp. 2-4, emphasis added.)

Resolution ALJ-184 is thus clear that, in addition to showing good cause for an hourly rate increase, such as a being awarded a higher hourly rate by a court or other regulatory agency, the intervenor requesting the higher rate bears the additional burden of justifying the higher rate requested.

(Code of Regs., tit. 20, §16.3, subd. (a).)

The rehearing applicants seek oral argument on claims that their application for rehearing “presents legal issues of exceptional public importance.” Specifically, CARE asserts that:

The Commission’s current rate setting mechanism unconstitutionally limits recovery by CARE and other similarly-situated intervenors. This imbalance creates an uneven playing field for participants in Commission proceedings and discourages, rather than encourages public participation in the Commission’s important decision making processes. (Rehrg. Application, pp.11-12.)

The merits of the Commission’s current rate setting mechanism was not the subject of D.07-12-007, that mechanism was adopted in D.05-11-031 and Resolution ALJ-184, and updated in subsequent Commission decisions (e.g. D.07-01-009). Oral argument on issues not in the decision being challenged is inappropriate. We will therefore deny CARE’s request for oral argument.

**THEREFORE, IT IS ORDERED** that:

1. Rehearing of D.07-12-007 is hereby denied.
2. The request for oral argument is hereby denied.
3. This proceeding, Rulemaking 06-03-004, is closed.

This order is effective today.

Dated April 24, 2008, at San Francisco, California.

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