

Decision 08-09-036 September 18, 2008

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

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

Rulemaking 06-02-012  
(Filed February 16, 2006)

**DECISION GRANTING INTERVENOR COMPENSATION TO AGLET  
CONSUMER ALLIANCE AND GREEN POWER INSTITUTE FOR  
SUBSTANTIAL CONTRIBUTIONS TO DECISION  
(D.) 06-10-019 AND D.07-05-028**

This decision awards \$7,048.12 to Aglet Consumer Alliance (Aglet) and \$36,164 to the Green Power Institute (GPI) in compensation for their substantial contributions to Decision (D.) 06-10-019 and D.07-05-028. This represents a decrease from the requested amount of \$7,503.99 for Aglet to reflect our policy of not compensating commuting time and costs, and a minor decrease from the requested amount of \$36,789 for GPI to reflect time for purely clerical tasks that should not be compensated and an hourly rate adjustment. This proceeding remains open.

**1. Background**

These two decisions are part of our implementation of the renewables portfolio standard (RPS) program. D.06-10-019 established ground rules for the participation of energy service providers and community choice aggregators in the RPS program. It also examined contracting requirements for all RPS-obligated load-serving entities, and briefly addressed the use of unbundled renewable energy credits (RECs) for RPS compliance. D.07-05-028 implemented

the requirements of new Public Utilities Code Section 399.14(b),<sup>1</sup> regarding the use of contracts of less than 10 years' duration for the procurement of electricity from eligible renewable resources under the RPS program.

Intervenors Aglet and GPI actively participated in this proceeding. Aglet was already awarded intervenor compensation for substantial contributions to D.06-10-019 and now requests compensation for substantial contributions to D.07-05-028. GPI requests compensation for its contributions to both decisions, D.06-10-019 and D.07-05-028.

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

The intervenor compensation program, enacted in §§ 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.

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 to claim compensation within 30 days of the prehearing conference, or in special circumstances at other appropriate times that we specify. (§ 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).)

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<sup>1</sup> Subsequent statutory references are to the Public Utilities Code unless otherwise indicated.

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. (§ 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 must be 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).

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

### **3. Procedural Issues**

The first prehearing conference in this matter was held on April 7, 2006. GPI filed a notice of intent to claim compensation on May 1, 2006. Aglet was found eligible for compensation in the March 30, 2006 ruling in R.04-04-026, the predecessor to this proceeding. On September 14, 2006, Administrative Law Judge (ALJ) Simon issued a ruling in this proceeding on notices of intent to claim compensation by various intervenors, including Aglet and GPI. The ruling of September 14, 2006, found GPI eligible to claim intervenor compensation. The ruling adopted the prior findings regarding Aglet’s intent to claim compensation but directed Aglet to file an updated notice in this proceeding. On September 20, 2006, Aglet filed an updated notice of intent, as directed in the ruling, containing a revised itemized estimate of costs of participation.

Both intervenors, Aglet and GPI, claimed financial hardship in their notices of intent. The September 14, 2006 ruling found that each intervenor had established significant financial hardship, as required under § 1804(a).

D.07-05-028 was mailed May 4, 2007. Aglet filed its request for compensation on July 2, 2007. GPI filed its request for compensation on July 3, 2007. Both requests are timely. No parties opposed the requests.

Aglet and GPI have satisfied all procedural requirements necessary to claim compensation in this proceeding.

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

In evaluating whether a customer made a substantial contribution to a proceeding, we first look at whether the Commission adopted, in whole or in part, one or more of the factual or legal contentions or specific policy or procedural recommendations put forward by the customer. (§ 1802(i).) Second, we look at whether the customer's contentions or recommendations paralleled those of another party, and, if so, 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. (§§ 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. The Commission has elaborated, as follows:

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. (D.98-04-059, 79 CPUC2d 628 at 653.)

Should the Commission not adopt any of the customer's recommendations, compensation may still 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 record and aided the Commission in its deliberations, the Commission could find that the customer made a substantial contribution.

#### **4.1. D.06-10-019**

GPI identifies three areas of substantial contribution: contracting issues; unbundled RECs; and the need for a short-term market price referent (MPR) to judge prices of short-term RPS contracts.

With respect to RPS contracting issues, GPI sponsored a witness at the evidentiary hearing and provided useful additional analysis. Phillip Reese testified that, based on his experience as a renewable energy project developer, it was essential that a new project obtain a long-term contract in order to secure financing. In reviewing the testimony of other witnesses, GPI's analysis provided needed perspective on RPS project development. GPI's contribution on this issue was substantial.

With respect to unbundled RECs, GPI's explanation of the limits of the possible uses of unbundled RECs was an important element in the Commission's decision not to authorize unbundled REC transactions in D.06-10-019. This contribution was substantial.

With respect to the need for a method of evaluating prices of short-term RPS contracts, GPI urged that no immediate action was required. This position

was adopted in the Commission's decision. On this issue, GPI's contribution, though reflected in a deferral of action, was also substantial.

#### **4.2. D.07-05-028**

##### **4.2.1. Aglet**

Aglet asserts that it made a substantial contribution by arguing that the same "minimum quantity" of long-term contracts and contracts with new facilities should apply to all LSEs seeking to use short-term contracts for RPS compliance. The Commission adopted this position, and Aglet made a substantial contribution.

Aglet also states that it made a substantial contribution through its advocacy that the minimum quantity should be greater than zero. Although the Commission did not accept Aglet's proposed method for determining the value of the minimum quantity, Aglet did make a substantial contribution with its more general arguments in favor of a minimum quantity greater than zero.

##### **4.2.2. GPI**

GPI asserts that its analysis of the impact of imposing a minimum quantity requirement and its suggested value for the minimum quantity made a substantial contribution to the decision. GPI's argument that the imposition of a minimum quantity requirement would not be an important driver of RPS procurement did inform the decision's approach. GPI's analysis was also linked to its advocacy of a particular value for the minimum quantity, which was substantially adopted in the decision. With respect to both points, GPI made a substantial contribution.

## **5. Contributions by Other Parties**

Aglet asserts that it contributed to the proceeding in a manner that did not repeat the work of other parties. In this proceeding, Aglet represents customer interests that would otherwise be underrepresented. Aglet emphasizes that it made efforts to avoid duplication in its showing with the Division of Ratepayers Advocates' (DRA) work, such as conferring with the DRA on the minimum contracting issue in a conference call.

GPI states that it coordinated its efforts in this proceeding with other parties in order to avoid duplication of effort. GPI correctly notes that some amount of duplication has occurred in this proceeding on all sides of contentious issues, but GPI avoided duplication to the extent possible, and tried to minimize it where it was unavoidable.

We find that both Aglet and GPI effectively sought to avoid unnecessary duplication of effort with other parties and that no such duplication occurred.

## **6. Reasonableness of Requested Compensation**

In general, the components of each of these requests 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.

Aglet's request includes professional time of James Weil, Aglet's Director, and Jan Reid, Aglet's financial and regulatory consultant, time related to travel and preparation of the request for compensation, and Aglet's direct expenses, in the total amount of \$7,503.99, as follows:

Item	Year	Hourly Rate	Hour	\$Amount
Weil professional time	2006	\$260.00	5.3	\$1,378.00
Weil work on compensation request	2007	\$140.00	2.8	\$392.00
Reid professional time	2006	\$155.00	29.9	\$4,634.50
Reid travel	2006	\$77.50	4.8	\$372.00
Reid work on compensation request	2007	\$85.00	7.4	\$629.00
Subtotal				\$7,405.50
<b>OTHER EXPENSES</b>				
Copies				\$8.80
Postage				\$5.82
Reid travel expenses (parking, mileage)				\$83.87
Subtotal				\$98.49
<b>Total:</b>				<b>\$7,503.99</b>

Green Power requests compensation in the amount of \$36,789, as follows:

Item	Year	Rate	Hour	Amount
Green Power Director Dr. Gregory Morris, energy analyst and consultant	2006	\$220/hr	150.5	\$33,110.00
	2007	\$230/hr	10.5	\$2,415.00
Compensation request preparation	2007	\$115	9.0	\$1,035.00
Document filing and serving (copying, postage and mailing)				\$229.00
<b>Total</b>				<b>\$36,789.00</b>

### **6.1. 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 substantial contribution.

**6.1.1. Aglet**

As set forth in Attachments A-1 and A-2 to Aglet's request for compensation, Aglet documented its claimed hours by presenting a daily breakdown of the hours of its consultant Jan Reid (Attachment A-1) and its Director James Weil (Attachment A-2), accompanied by brief descriptions of each activity. Aglet provides an allocation of the time by issues, showing that 24.7 hours of professional work were spent on the minimum percentage of long-term contracts issue, the major issue addressed in D.07-05-028, 10.5 hours were spent on general work. The hourly breakdown and allocation of time reasonably support the total hours claimed, with the exception of Reid's time, spent traveling between Reid's office in Santa Cruz, California and Commission headquarters in San Francisco (Request, pp. 8 and 9). As we stated in D.07-04-010, this kind of routine commuting is not compensable:

An intervenor's fees are assumed to cover such overhead costs [including routine commuting], just as they cover administrative costs. If an intervenor has extraordinary travel costs that are reasonable and justified, such as might be incurred to attend hearings in another area of the state or to bring in a consultant with special expertise from another part of the country, we will continue to compensate them. (D.07-04-010, p. 12.)

In D.07-05-037, we explained with respect to Aglet's situation:

...we deny compensation for hours and expenses for travel. Although we are willing to compensate necessary and reasonable travel, Aglet seeks reimbursement for commuting. Absent extenuating circumstances, ratepayers should not have to bear the cost of individuals' commute from their homes to attend Commission hearings... We will continue to pay for travel required for hearings outside of San Francisco and to bring in experts from out of the area where such expertise is not available locally. (D.07-05-037, p. 11, see also D.08-04-053, p. 14.)

### **6.1.2. GPI**

Attachment A to GPI's request for compensation includes a detailed breakdown of the hours of Gregory Morris, director of GPI, and a daily log reflecting work he did and hours spent on each activity. The request also includes allocation of time by major issues. All this information reasonably supports GPI's claim for compensation, with the exception of a small amount of time spent on purely clerical tasks.<sup>2</sup>

### **6.2. Intervenor Hourly Rates**

We next take into consideration whether 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. Travel time and work on intervenor compensation request is charged based on half of the professional hourly rate.

#### **6.2.1. Aglet**

A professional rate requested for James Weil's work in 2006 in the amount of \$260.00 per hour was adopted in D.06-10-018. James Weil's rate for his work on intervenor compensation request in 2007 is based on the professional rate of \$280.00 per hour, approved in D.07-05-037. We adopt the same rate here. For Jan Reid's work in 2006, Aglet requests an hourly rate of \$155.00. This rate was approved in D.06-11-032 and we confirm it here. For Jan Reid's work performed in 2007, Aglet seeks a rate of \$170.00. This rate was adopted in D.07-05-037 and we apply it here.

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<sup>2</sup> We also remove .5 hours of time that GPI counts for November 2006 but that is not found in the detailed breakdown of work performed.

### **6.2.2. GPI**

GPI requests an hourly rate of \$220.00 for work performed by Gregory Morris in 2006. This rate was already adopted in D.06-08-013 and we apply it here. For the work performed in 2007, GPI requests a rate of \$230, and explains that this rate reflects a 3% cost-of-living adjustment (COLA) (rounded to the nearest \$5.00), consistent with the guidelines set forth in D.07-01-009. However, with the 3% COLA and rounded to the nearest \$5.00, the rate should be \$225.00. We approve this rate.

### **6.3. Direct Expenses**

Aglet's itemized direct expenses of \$98.49 include photocopying, postage, and travel (parking and mileage). We disallow travel expenses for the reasons stated above. GPI requests \$229.00 for copying, postage and mailing, which we find to be reasonable.

The cost breakdowns included with each of the requests show these expenses to be commensurate with the work performed by the intervenors. We find these costs reasonable.

## **7. Productivity**

In D.98-04-059, the Commission adopted a requirement that a customer must demonstrate that its participation was "productive," as that term is used in Section 1801.3. (See D.98-04-059, pp. 31-33, and Finding of Fact 42.) In that decision, the Commission discusses the fact that participation must be productive in the sense that the costs of participation should bear a reasonable relationship to the benefits realized through such participation. Intervenors are directed to demonstrate productivity by assigning a reasonable dollar value to the benefits of their participation to ratepayers. This exercise assists the

Commission in determining the reasonableness of these requests and in avoiding unproductive participations.

### **7.1. Aglet**

Aglet provided information and arguments that affected the implementation of RPS procurement, which involves hundreds of millions of ratepayer dollars. As we have noted in prior awards of compensation in RPS proceedings, it is difficult to assign precise monetary benefits to ratepayers resulting from the admittedly substantial contributions of intervenors such as Aglet.<sup>3</sup> We generally expect that monetary benefits from an effective RPS program in the areas of environment and health improvements, and reduced price volatility, for example, are likely to be significant over time, but not readily ascertainable now. We find that the participation of Aglet in D.07-05-028 was productive.

### **7.2. GPI**

In relation to both decisions, GPI has provided information and insights about many aspects of the process of RPS implementation. As we note above with respect to Aglet, it is difficult to assign precise monetary benefits to ratepayers resulting from the admittedly substantial contributions of intervenors such as GPI. For the same reasons, we conclude that GPI's costs of participation in this proceeding are exceeded by the overall benefits to ratepayers of an effective RPS program, and thus that its participation is productive.

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<sup>3</sup> Aglet proposes a method of estimating the benefits of its participation quantitatively, but in view of our analysis of the benefits of participation, it is unnecessary to evaluate the validity of Aglet's specific proposal.

## 8. Award

### 8.1. Aglet

As set forth in the table below, we award Aglet \$7,048.12 for its substantial contribution to D.07-05-028:

Item	Year	Hours	Hourly Rate	Total
Weil professional time	2006	5.30	\$260.00	\$1,378.00
Weil work on compensation request	2007	2.80	\$140.00	\$392.00
Reid professional time	2006	29.90	\$155.00	\$4,634.50
Reid work on compensation request	2007	7.40	\$85.00	\$629.00
<b>Subtotal</b>				<b>\$7,033.50</b>
<b>Direct Expenses</b>				
Copies				\$8.80
Postage				\$5.82
<b>Subtotal</b>				<b>\$14.62</b>
<b>TOTAL AWARD:</b>				<b>\$7,048.12</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 September 15, 2007, the 75<sup>th</sup> day after Aglet filed its compensation request, and continuing until full payment of the award is made.

### 8.2. GPI

As set forth in the table below, we award GPI \$36,164 for its substantial contribution to D.06-10-019 and D.07-05-028:

Item	Year	Hours	Hourly Rate	Amount
Green Power Director Dr. Gregory Morris, energy analyst and consultant	2006	148.00	\$220.00	\$32,560.00
	2007	10.50	\$225.00	\$2,362.50
Compensation request preparation	2007	9.00	\$112.50	\$1,012.50
Document filing and serving (copying, postage and mailing)				\$229.00
<b>Total Award:</b>				<b>\$36,164.00</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 September 16, 2007, the 75<sup>th</sup> day after GPI filed its compensation request, and continuing until full payment of the award is made.

The ratepayers of Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company will benefit from Aglet's and GPI's participation, and therefore, we direct the three companies to allocate payment responsibility among themselves based upon their California-jurisdictional electric revenues for the 2006 calendar year, to reflect the year in which the proceeding was primarily litigated.

We remind the 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. Aglet's and GPI's records should identify specific issues for which it requested compensation, the actual time spent by each employee or consultant, and any other costs for which compensation was claimed.

## **9. Waiver of Comment Period**

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

## **10. Assignment of the Proceeding**

Michael R. Peevey is the assigned Commissioner. Burton W. Mattson and Anne E. Simon are the assigned ALJs in this proceeding.

### **Finding of Facts**

1. Aglet has satisfied all the procedural requirements necessary to claim compensation in this proceeding.
2. Aglet made substantial contributions to D.07-05-028, as described herein.
3. Aglet requested hourly rates for its representatives that we have previously approved.
4. Aglet requested compensation for hours expended by its representatives that, as adjusted herein, are reasonable and commensurate with the work performed.
5. Aglet requested related expenses, as adjusted herein, that are reasonable and commensurate with the work performed.
6. Aglet's total reasonable compensation is \$7,048.12.
7. GPI has satisfied all the procedural requirements necessary to claim compensation in this proceeding.
8. GPI made substantial contributions to D.06-10-019 and D.07-05-028, as described herein.
9. GPI requested hourly rates for its representatives that either were previously approved by the Commission or, if they were not previously approved, are reasonable, as adjusted herein.
10. GPI requested compensation for hours expended by its representatives that, as adjusted herein, are reasonable and commensurate with the work performed.
11. GPI requested related expenses that are reasonable and commensurate with the work performed.
12. GPI's total reasonable compensation is \$36,164.

13. The Appendix to this opinion summarizes today's awards.

**Conclusions of Law**

1. Aglet has fulfilled the requirements of Pub. Util. Code §§ 1802-1812, which govern award of intervenor compensation, and is entitled to intervenor compensation for its claimed expenses, as adjusted herein, incurred in making substantial contributions to D.07-05-028.

2. Aglet should be awarded \$7,048.12 in compensation for its contributions, as described herein.

3. GPI has fulfilled the requirements of Pub. Util. Code §§ 1802-1812, which govern award of intervenor compensation, and is entitled to intervenor compensation for its claimed expenses, as adjusted herein, incurred in making substantial contributions to D.06-10-019 and D.07-05-028.

4. GPI should be awarded \$36,164 in compensation for its contributions, as described herein.

5. Pursuant to Rule 14.6(c)(6), the comment period for today's decision may be waived.

6. This order should be effective today so that Aglet and GPI may be compensated without further delay.

7. This proceeding should remain open for consideration of the remaining issues.

**O R D E R**

**IT IS ORDERED** that:

1. Aglet Consumer Alliance (Aglet) is awarded \$7,048.12 in compensation for its substantial contribution to Decision (D.) 07-05-028.

2. Green Power Institute (GPI) is awarded \$36,164 in compensation for its substantial contribution to D.06-10-019 and D.07-05-028.

3. Within 30 days of the effective date of this decision, Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company shall pay Aglet and GPI the total award, as described herein. 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 for Aglet on September 15, 2007, and for GPI on September 16, 2007, the 75<sup>th</sup> days after the filing dates of Aglet and GPI's respective requests for compensation and continuing until full payment is made.

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

5. Rulemaking 06-02-012 remains open for consideration of the remaining issues.

This order is effective today.

Dated September 18, 2008, 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>	D0809036	<b>Modifies Decision?</b> No
<b>Contribution Decision(s):</b>	D0610019, D0705028	
<b>Proceeding(s):</b>	R0602012	
<b>Author:</b>	ALJ Simon	
<b>Payer(s):</b>	Pacific Gas and Electric Company, Southern California Edison Company, San Diego Gas & Electric Company	

### Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
Aglet Consumer Alliance	7/2/07	\$7,503.99	\$7,048.12	No	Travel time and expenses for routine commuting disallowed
Green Power Institute	7/3/07	\$36,789	\$36,164	No	Clerical time disallowed, hourly rate adjusted

### Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
James	Weil	Expert	Aglet Consumer Alliance	\$260	2006	\$260
James	Weil	Expert	Aglet Consumer Alliance	\$280	2007	\$280
Jan	Reid	Expert	Aglet Consumer Alliance	\$155	2006	\$195
Jan	Reid	Expert	Aglet Consumer Alliance	\$170	2007	\$170
Gregory	Morris	Expert	Green Power Institute	\$220	2006	\$220
Gregory	Morris	Expert	Green Power Institute	\$230	2007	\$225

(END OF APPENDIX )