

**PUBLIC UTILITIES COMMISSION**505 VAN NESS AVENUE
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TO PARTIES OF RECORD IN APPLICATION 19-12-011:

This is the proposed decision of Administrative Law Judge (ALJ) John H. Larsen. Until and unless the Commission hears the item and votes to approve it, the proposed decision has no legal effect. This item may be heard, at the earliest, at the Commission's May 20, 2021 Business Meeting. To confirm when the item will be heard, please see the Business Meeting agenda, which is posted on the Commission's website 10 days before each Business Meeting.

Parties to the proceeding may file comments on the proposed decision as provided in Rule 14.3 of the Commission's Rules of Practice and Procedure.

Comments must be filed, pursuant to Rule 1.13, either electronically or in hard copy. Comments should be served on parties to this proceeding in accordance with Rules 1.9 and 1.10. Electronic and hard copies of comments should be sent to ALJ John H. Larsen at john.larsen@cpuc.ca.gov and to the Intervenor Compensation Program at icompcoordinator@cpuc.ca.gov. The current service list for this proceeding is available on the Commission's website at www.cpuc.ca.gov.

/s/ ANNE E. SIMONAnne E. Simon
Chief Administrative Law JudgeAES:jnf
Attachment

Decision **PROPOSED DECISION OF ALJ LARSEN** (Mailed 4/19/2021)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Solar Consumer
Advisor for Intervenor Compensation
for Substantial Contributions to
Resolution E-5030.

Application 19-12-011

**DECISION GRANTING INTERVENOR COMPENSATION TO THE
SOLAR CONSUMER ADVISOR FOR CONTRIBUTIONS TO
RESOLUTION E-5030**

Summary

The Solar Consumer Advisor is seeking \$63,700.00 in intervenor compensation for its contribution to Resolution E-5030 issued on September 19, 2019 and adopted on October 24, 2019. This resolution authorized the California Public Utilities Commission's Energy Division to oversee contracts for work required to maintain and expand the California Distributed Generation Statistics (DG Stats) website. We award the Solar Consumer Advisor \$13,690 plus interest, based on its contribution to the referenced resolution.

This proceeding is closed.

1. Background

California Public Utilities Commission (Commission or CPUC) Resolution E-5030 authorized the Commission's Energy Division to oversee contracts for work required to maintain and expand the California Distributed

Generation Statistics (DG Stats) website.¹ Resolution E-5030 was published as a draft on September 19, 2019, and adopted as final on October 24, 2019. Solar Consumer Advisor filed comments on the draft resolution.

On December 23, 2019, Solar Consumer Advisor (SCA) filed Application (A.) 19-12-011 seeking intervenor compensation (ICOMP) for its contribution to Resolution E-5030. Sections 1801-1812 define the requirements for compensation provided to intervenors that significantly contribute to decisions or other formal actions that are ratified by the full Commission and the process for applying for such compensation.

On March 2, 2021, the assigned Administrative Law Judge (ALJ) held a prehearing conference (PHC) to determine the parties, and to discuss the scope, the schedule, and other procedural matters. On March 23, 2021, assigned Commissioner Martha Guzman Aceves issued a Scoping Memo and Ruling (scoping memo) defining the scope of the proceeding.

2. Issues Before the Commission

The issues to be determined are:

1. Does Application (A.) 19-12-011 satisfy all the requirements of Public Utilities (Pub. Util.) Code Sections (Sections) 1801-1812?
2. Did Solar Consumer Advisor substantially contribute to Commission Resolution E-5030?
3. Is Solar Consumer Advisor's work contributing to the outcome of Resolution E-5030 eligible for intervenor compensation for the entire period of time requested?
4. Are the Solar Consumer Advisor's claimed costs and expenses reasonable and comparable to market rates paid

¹ www.californiadgstats.ca.gov/.

to experts and advocates having comparable training and experience and offering similar services?

3. Satisfaction of Requirements of Sections 1801-1812

3.1 Showing of Eligible Customer Status and Significant Financial Hardship

SCA filed its initial notice of intent (NOI) to claim ICOMP on January 10, 2019 in Rulemaking (R.) 14-07-002. On May 1, 2019, the Commission denied SCA's eligibility to claim intervenor compensation because SCA could not demonstrate its eligibility as a for-profit entity. As a result, SCA changed its legal status from a solar consulting Limited Liability Company (LLC) to a nonprofit organization representing residential solar customers.

On June 18, 2019, SCA filed an amended NOI. Based on its non-profit status and a preliminary showing of significant financial hardship, the Commission ruled on October 2, 2019, that SCA was eligible to claim compensation after June 18, 2019.

On May 5, 2020, SCA filed a Supplement to its application contending that the October 2, 2019 ruling denying compensation for SCA's work done prior to June 18, 2019, was in error. SCA believes the October 2, 2019 ruling in R.14-07-002 is in error, in part, because SCA had not "received any revenues from its solar activities for a long time" and that SCA provided unpaid help to the CPUC instead.

Although SCA did not appeal the Commission's October 2, 2019 ruling, the Commission confirms the reasoning discussed extensively within the May 1, 2019 and October 2, 2019 rulings, which is not repeated in its entirety here. These rulings hold that SCA must demonstrate eligible customer status²

² Section 1802(b)(1)(C).

and significant financial hardship.³ Regardless of how little SCA earned prior to June 18, 2019, the Commission cannot disregard these prior rulings and decisions. Nor should the Commission disregard the importance of an applicant's status as an entity that is legally entitled to make a profit versus one that is prohibited from doing so in determining whether an applicant demonstrates significant financial hardship.⁴ Accordingly, the Commission cannot make an exception for SCA to compensate it for contributions before June 18, 2019.

SCA also contends that it should be compensated for work for the CPUC prior to June 18, 2019, because 1) rulings were delayed, 2) SCA was improperly instructed, and 3) if SCA knew that it would not be found eligible at the very beginning of its intervenor compensation undertakings, it would have reorganized itself into an eligible entity much earlier.⁵ The Commission must reject this argument as well because the Commission cannot be prevented from applying the legal requirements limiting awards of compensation.⁶

The only applicable exception is the principle of equitable estoppel. For a party to demonstrate equitable estoppel, it must show 1) a promise clear and

³ Section 1802(h).

⁴ *See*, for example, Decision (D.) 00-04-026 or D.88-12-034. The Commission has even denied eligibility to entities with federal 501(c) 3 non-profit status with conflicts of interest.

⁵ Supplement to Request for Intervenor Compensation filed May 5, 2020.

⁶ In D.16-06-059, the Commission denied a claim for intervenor compensation based on "equitable estoppel": This Commission has explicitly held that estoppel principles cannot be invoked to prevent it from identifying and responding to legal requirements that prevent a party from being awarded compensation. The Commission has so ruled in cases where the ALJ preliminarily found eligibility to exist, and where we ourselves issued an order implying compensation could be awarded. (Denying Rehearing of D.07-12-006 (2008) [D.08-11-061], at 15, 2008 Cal.P.U.C.LEXIS 572, at 24-35; Denying Notices of Intent to Claim Compensation (2014) [D.14-05-030], 2014 Cal.P.U.C. LEXIS 217, at 23-28.) (*See also* D.14-05-030 (2014 Cal. PUC LEXIS 217).)

unambiguous in its terms; 2) reliance by the party to whom the promise was made; 3) the reliance was both reasonable and foreseeable; and 4) the party asserting estoppel must be injured by its reliance.⁷ SCA's argument does not meet the requirements of estoppel because SCA does not allege that any Commission staff made any clear and unambiguous promise regarding the extent of SCA's compensation, if any, as a for-profit consulting LLC.

SCA's claim for contribution includes 58 hours claimed prior to June 18, 2019, when SCA was ruled to be ineligible for compensation. While these 58 hours may have aided the work of the Commission, we must disallow them for being inconsistent with the requirements of intervenor compensation.

3.2 SCA's Contribution to Resolution E-5030

SCA's representative Dennis Emberling generally contributed to Resolution E-5030 by supporting CPUC's efforts to maintain, improve and expand Distributed Generation Statistics (DG Stats). More specifically, Mr. Emberling contributed to Resolution E-5030 by discovering errors, fixing them, finding missing data, spotting improvements needed, and making recommendations for improving the DG Stats databases. These contributions were made in the following documents:

1. SCA Comments on Res. E-5030, filed 10/14/19, at 3-13;
2. Attachment "SCA's Scrub of Residential Applications in 2018 NEM Currently Interconnected Data Set," sent to Brian Korpics & Chris Westling, CPUC Energy Division, on 10/2/19.

The above information led to modifications that improved the final language adopted by the Commission. Specifically, SCA asserts that its

⁷ Ernest Laks v. Coast Federal Savings and Loan (1976) 60 Cal.App.3d 385, 890.

comments and recommendations contributed to the following language, findings and orders of Resolution E-5030:

1. Page 9, Data Quality Issues: "SCA identifies data quality issues with the DG Stats data and offers suggestions concerning how to improve the data sets. The comments argue that improving data quality would promote the goal of providing information to solar customers. Energy Division shall share the identified data quality issues with the selected vendor once the new contract is executed."
2. Finding #1: The distribution-level interconnection data published on DG Stats provides valuable information to the Commission, other state agencies, program administrators, market participants, researchers, journalists, and the general public. Publishing DG Stats data provides:
 - a. Market suppliers with information about what equipment is being installed where and for how much;
 - b. Prospective customer-generators with information on pricing and which contractors are active in their area;
 - c. Dynamic information about the solar industry for academic researchers and journalists;
 - d. IOUs with information about grid impacts, needed resources, & the nature of distributed generation & energy storage;
 - e. CPUC and state government policy-makers with vital information about new technologies and market models; and
 - f. CPUC and other state agencies with information necessary for planning and forecasting
3. Finding #2: The Commission has an interest in ensuring that DG Stats receives proper direction and adequate funding going forward.
4. Order #10: the IOUs "must contract with a vendor to maintain and expand the California Distributed Generation

Statistics (DG Stats) website by December 31, 2019. The agreement must total \$990,000 to fund work performed on DG Stats from January 1, 2020 to December 31, 2022.”

5. Order #12: Energy Division Director to “define the scope of work and set the total contract amount for work required to maintain and expand the California Distributed Generation Statistics website,” and “may also send letters to amend existing agreements in the intervening years.”

As a result, SCA substantially contributed to Resolution E-5030,⁸ but we modify the time claimed and amount awarded based on Table 1.

3.3 Work Performed Not in Connection with the Resolution is Disallowed

The purpose of intervenor compensation “is to provide compensation for ... reasonable costs to public utility customers of participation or intervention in any proceeding of the commission.”⁹ This section has been held to only authorize participation in a proceeding,¹⁰ defined as “an application, complaint, or investigation, rulemaking, alternative dispute resolution procedures in lieu of formal proceedings as may be sponsored or endorsed by the commission, or other formal proceeding before the commission.”¹¹

In D.08-04-022, the Commission disallowed compensation for utility data analysis related to the purposes of a peer review group and program advisory group (PRG/PAG) performed prior to the issuance of the

⁸ Section 1802(j) defines “substantial contribution” as: in the judgment of the commission, the customer’s presentation has substantially assisted the commission in the making of its order or decision because the order or decision has adopted in whole or in part one or more factual contentions, legal contentions, or specific policy or procedural recommendations presented by the customer.

⁹ Section 1801.

¹⁰ Section 1801; D.90-09-080, 1990 Cal. PUC LEXIS 800; 37 CPUC2d 481.

¹¹ Section 1802(g).

decision authorizing such groups.¹² Eighty of the 106 hours of work requested by The Utility Reform Network's (TURN's) consultant was denied in D.08-04-022 because it was performed prior to the issuance of D.05-01-055, which authorized the work.¹³ Similarly, we find it improper to compensate the 28.5 hours of work performed prior to the publication of the draft resolution E-5030 on September 19, 2019.

3.4 Reasonableness of SCA's Claimed Costs Relative to Market Rates

SCA's representative Dennis Emberling contributed to Resolution E-5030 by supporting CPUC's efforts to maintain and expand Distributed Generation Statistics (DG Stats) by discovering and fixing errors, and making recommendations for improving the DG Stats databases. His experience qualifies him as an expert on residential photo-voltaic solar power databases.¹⁴

As a new representative, Dennis Emberling must make a showing that the requested hourly rate is within the range of rates established by Resolution ALJ-357 and consistent with the guidelines for compensating representatives

¹² 2008 Cal. PUC LEXIS 138, 18-19 (Cal. PUC 2008). Even if this work resulted in documents that The Utility Reform Network (TURN) subsequently presented to the PRG/PAG group and that were relevant to the issues being discussed in those meetings, we cannot award compensation for work conducted prior to the date in which the PRGs and PAGs were actually authorized by the Commission.

... [T]he remaining 26 hours ... are described as time that Mitchell spent revising and expanding a portfolio analysis she initiated prior to the issuance of D.05-01-055... These activities may well have improved the knowledge base and analytical capability of TURN's consultant in energy efficiency matters, and therefore enhanced her capability to serve as a PRG/PAG member. Nonetheless, we do not believe that such ... hours are properly charged to ratepayers for TURN's participation as a PRG/PAG advisory group member.

¹³ *Id.* at page 12.

¹⁴ Application of Solar Consumer Advisor for Intervenor Compensation for Substantial Contributions to Resolution E-5030, Attachment 3, Curriculum Vitae of Dennis Emberling.

with comparable training and experience, and performing similar services.¹⁵ SCA claims a rate of \$455 per hour at the top of the 13 plus years range and provides a list of hourly rates for experts SCA claims are comparable.¹⁶ But SCA has not shown how Dennis Emberling has comparable training and experience, and performed similar services to the experts SCA lists.

Resolution ALJ-357 sets forth the rate of compensation for experts performing work in 2019 by years of service as follows:

<u>Years</u>	<u>Rate Per Hour</u>
7-12	\$185 - \$305
13 +	\$185 - \$455

The range of compensation in Resolution ALJ-357 establishes a rate of \$185 to \$305 for 7-12 years and \$185 to \$455 for over 13 years of experience. Mr. Emberling claims that he has 13 plus years of expertise. But his curriculum vitae explains that from 2012 - 2018, he was "mentored in solar by ... solar experts."¹⁷ In other words, he was not an expert in residential solar data in 2012 or for more than 7 years. Consequently, Mr. Emberling has not demonstrated that a rate at the top of the 13 plus years range is appropriate. Mr. Emberling's experience of seven years with residential solar data qualifies him for a rate starting at the beginning of the 7-12-year range or \$185.00.

¹⁵ The compensation awarded may not, in any case, exceed the comparable market rate for services paid by the commission or the public utility, whichever is greater, to persons of comparable training and experience who are offering similar services. Pub. Util. Code § 1806. (See also D.05-11-031 and R.06-08-019.)

¹⁶ Application of Solar Consumer Advisor for Intervenor Compensation for Substantial Contributions to Resolution E-5030, Attachment 4, Support for Requested Rate of Dennis Emberling.

¹⁷ Application of Solar Consumer Advisor for Intervenor Compensation for Substantial Contributions to Resolution E-5030, Attachment 3, Curriculum Vitae of Dennis Emberling.

3.5 Claim Preparation

In D.16-11-019, section III.D.B., the Commission found 11.9 hours of preparation for a seven-page claim to be excessive. SCA claims 34 hours of time to prepare the request for compensation. This amount is excessive. Half the amount claimed or 17 hours to prepare a claim for one representative is not unreasonable, considering that it was SCA's first experience preparing such claim. The other 17 hours are disallowed.

3.6 Total Compensation

In accordance with the above findings, SCA's total compensation is calculated in Table 1 below.

Table 1

CLAIMED						CPUC AWARD		
ATTORNEY, EXPERT, AND ADVOCATE FEES								
Item	Year	Hours	Rate \$	Basis for Rate	Total	Hours	Rate \$	Total \$
Dennis Emberling	2019	94	\$455	First time request. Res. ALJ-357 p.5, Experts Table, 13+ years. See attached CV of Dennis Emberling and attached "Support for Requested Rate"	\$42,770.00	65.5	\$185	\$12,117.50
<i>Subtotal: \$42,770.00</i>						<i>Subtotal: \$12,117.50</i>		
INTERVENOR COMPENSATION CLAIM PREPARATION **								
Item	Year	Hours	Rate	Basis for Rate*	Total \$	Hours	Rate	Total \$
Dennis Emberling	2019	58.00	\$227.50		\$13,195.00	0	\$92.50	\$0.00
Dennis Emberling	2019	34.00	\$227.50		\$7,735.00	17	\$92.50	\$1,572.50

<i>Subtotal: \$20,930.00</i>	<i>Subtotal: \$1,572.50</i>
<i>TOTAL REQUEST: \$63,700.00</i>	<i>TOTAL AWARD: \$13,690.00</i>

4. Conclusion

Upon review of final Resolution E-5030 and SCA's comments, we find the appropriate compensation for SCAs contribution to be \$13,690.00, plus interest, recoverable from Pacific Gas and Electric, Southern California Edison, and San Diego Gas and Electric's ratepayers.

5. Comments on Proposed Decision

The proposed decision of ALJ John. H. Larsen in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on _____, and reply comments were filed on _____ by _____.

6. Assignment of Proceeding

Martha Guzman Aceves is the assigned Commissioner and John H. Larsen is the assigned ALJ in this proceeding.

Findings of Fact

1. Solar Consumer Adviser filed comments and other documents related to draft resolution E-5030 leading to its adoption by the Commission.
2. SCA's claimed 58 hours for work performed prior to June 18, 2019.
3. Solar Consumer Adviser performed 28.5 hours of work between June 18, 2019 and the publication of draft resolution E-5030 on September 19, 2019.
4. Solar Consumer Adviser's claim of 34 hours of work to prepare the request for compensation is excessive. Seventeen hours is a reasonable amount of time for preparing a claim for a representative to prepare an initial claim.

5. The rate claimed by Solar Consumer Advisor does not align with market rates paid to experts and advocates with comparable expertise conducting similar work.

6. The hourly rate for Solar Consumer Advisor's representative, as adjusted herein, is comparable to market rates paid to experts having comparable training and experience and offering similar services.

7. The claimed costs and expenses, as adjusted herein, are reasonable and commensurate with the compensable work performed as set forth.

8. The reasonable amount of compensation for Solar Consumer Advisor's contribution to Resolutions E-5030 is \$13,690.00.

Conclusions of Law

1. Solar Consumer Advisor has made a substantial contribution to Resolution E-5030.

2. Solar Consumer Advisor should not be compensated for work performed prior to applicant becoming eligible for compensation.

3. Solar Consumer Advisor should not be compensated for work performed prior to the publication of the draft resolution E-5030.

4. Solar Consumer Adviser should not be compensated for excessive time for claim preparation.

5. SCA's claim, with the adjustments established in Section 3 above, satisfy the requirements of Sections 1801-1812.

6. The hourly rate for Solar Consumer Advisor's representative, as adjusted herein, is comparable to market rates paid to experts having comparable training and experience and offering similar services.

O R D E R

IT IS ORDERED that:

1. The Solar Consumer Advisor shall be awarded \$13,690.00 for this application.
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 Solar Consumer Advisor their respective shares of the award, based on their California-jurisdictional electric revenues for the 2019 calendar year, to reflect the year in which the proceeding was primarily litigated. If such data is unavailable, the most recent electric revenue data shall be used. Payment of the award shall include compound interest at the rate earned on prime, three-month non-financial commercial paper as reported in Federal Reserve Statistical Release H.15, beginning March 7, 2020, the 75th day after the filing of Solar Consumer Advisor's request, and continuing until full payment is made.
3. The comment period for today's decision is not waived.
4. Application 19-12-011 is closed.

This order is effective today.

Dated _____, at San Francisco, California.