

Decision 23-11-118 November 30, 2023

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

Application of Pacific Gas and Electric Company for Adoption of Electric Revenue Requirements and Rates Associated with its 2023 Energy Resource Recovery Account (ERRA) and Generation Non-Bypassable Charges Forecast and Greenhouse Gas Forecast Revenue Return and Reconciliation. (U39E).	Application 22-05-029 (Filed May 31, 2022)
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**DECISION GRANTING COMPENSATION TO SMALL BUSINESS UTILITY FOR
CONTRIBUTIONS TO DECISION 22-12-044**

Intervenor: Small Business Utility Advocates	For contribution to Decision (D.) 22-12-044
Claimed: \$59,946.38	Awarded: \$56,861.13
Assigned Commissioner: John Reynolds	Assigned ALJ: Douglas M. Long

PART I: PROCEDURAL ISSUES

A. Brief description of Decision:	D.22-12-044 (Decision) “adopts the 2023 Energy Resource Recovery Account (ERRA) and related energy costs, as well as the amortization of energy related balancing accounts, and the 2023 electric sales forecast to be used by Pacific Gas and Electric Company (PG&E) to recover these costs.” (Decision at 2.)
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B. Intervenor must satisfy intervenor compensation requirements set forth in Pub. Util. Code §§ 1801-1812¹:

¹ All statutory references are to California Public Utilities Code unless indicated otherwise.

	Intervenor	CPUC Verification
Timely filing of notice of intent to claim compensation (NOI) (§ 1804(a)):		
1. Date of Prehearing Conference:	July 18, 2022	Verified
2. Other specified date for NOI:	N/A	
3. Date NOI filed:	Aug. 17, 2022	Verified
4. Was the NOI timely filed?		Yes
Showing of eligible customer status (§ 1802(b) or eligible local government entity status (§§ 1802(d), 1802.4):		
5. Based on ALJ ruling issued in proceeding number:	R.22-02-005, <i>et. al.</i>	Verified. SBUA's eligibility was verified in Application (A.) 22-02-005.
6. Date of ALJ ruling:	August 2, 2022	Verified
7. Based on another CPUC determination (specify):		
8. Has the Intervenor demonstrated customer status or eligible government entity status?		Yes
Showing of "significant financial hardship" (§1802(h) or §1803.1(b)):		
9. Based on ALJ ruling issued in proceeding number:	R.22-02-005, <i>et. al.</i>	Verified. SBUA's eligibility was verified in Application (A.) 22-02-005.
10. Date of ALJ ruling:	August 2, 2022	Verified
11. Based on another CPUC determination (specify):		
12. Has the Intervenor demonstrated significant financial hardship?		Yes
Timely request for compensation (§ 1804(c)):		
13. Identify Final Decision:	D.22-12-044	Verified
14. Date of issuance of Final Order or Decision:	Dec. 19, 2022	Verified
15. File date of compensation request:	Feb. 16, 2023	Verified
16. Was the request for compensation timely?		Yes

PART II: SUBSTANTIAL CONTRIBUTION

A. Did the Intervenor substantially contribute to the final decision (see § 1802(j), § 1803(a), 1803.1(a) and D.98-04-059):

TABLE 1

Intervenor's Claimed Contribution(s)	Specific References to Intervenor's Claimed Contribution(s)	CPUC Discussion
<p><u>Appropriateness of 2023 Sales Forecast and Methodology</u></p> <p>SBUA made substantial contributions by focusing on PG&E's sales forecast and methodology. SBUA's expert submitted detailed testimony (designated SBUA-1) based on research, analysis and PG&E's responses to SBUA's data requests (entered into the record as SBUA-2 and SBUA-3 (confidential and public version)). The testimony explained that even though Pandemic-related stay-at-home orders were lifted, Pandemic-period load shift from commercially meters to residential meters has not reversed; work-from-home choices and policies and technological changes enable the load shift to endure into the foreseeable future. (SBUA-1 at 5-6.) Yet, PG&E's forecast methodology does not take into account these behavioral changes. (<i>Id.</i> at 4, 8-9.) The testimony included detailed graphed comparisons of residential and commercial usage from before the Pandemic and through the beginning of 2022 showing ongoing load shift from commercial meters to residential meters; SBUA's expert also used PG&E's confidential data to make projections showing probably persistence of the shift. (<i>Id.</i> at 7, 11-12.)</p> <p>The testimony also explained that inaccurate forecasts can result in unfair rate impacts:</p> <p style="padding-left: 40px;">If the forecast fails to recognize the shift in sales away from</p>	<p>Decision Section 4.1.2 discusses in great detail SBUA's testimony and opening and reply briefs and PG&E's responses. (<i>Id.</i> at 10-14.) The Commission concluded that "SBUA has reasonably demonstrated that PG&E's current methodology may well under-reflect COVID-19 impacts." (<i>Id.</i> at 12.) The Decision concurred with SBUA's main point that "forecast arguably must be robust and should fully explore more precisely which customers are being served and when they are being served in order to fairly allocate costs." (<i>Id.</i> at 13.)</p> <p>As requested by SBUA, "[d]ummy variables' are not a suitable long-term substitute for performing a full-scale analysis of data and observable trends" and a utility cannot refuse to "do the analytical work to test" or investigate common-sense "anecdotal" evidence. (<i>Id.</i> at 10-11.)</p> <p>Directly in line with SBUA's arguments, the Decision rejects PG&E's excuses for avoiding addressing COVID-19 Pandemic-related impacts in its next ERRA forecast. (<i>Id.</i> at 21-22; <i>see also</i>, <i>id.</i> at 11 ("For its next ERRA forecast application, PG&E must</p>	<p>Verified</p>

<p>commercial uses and overstates commercial peak loads, this would lead to inaccurate attribution of cost causation and higher than justified rates for small commercial customers.</p> <p>(<i>Id.</i> at 14.)</p> <p>SBUA’s opening brief presented the evidence in SBUA-1, SBUA-2 and SBUA-3. It also argued that PG&E’s assertions that updating the forecast “would be time and resource intensive” and should be put off until GRC Phase 2 were unjustified. (SBUA Opening Brief at 8 (Oct. 14, 2022).)</p> <p>In response to PG&E’s legal brief, SBUA filed public and confidential versions of the reply brief identifying deficiencies in PG&E’s regression model and use of dummy variables. (SBUA Reply Brief at 8-9 (Oct. 21, 2022).)</p> <p>Given the completeness of and lack of errors in the Proposed Decision, SBUA saw no need to file opening comments and only filed reply comments to rebut PG&E’s objections to the Proposed Decision. SBUA provided detailed citations to the record demonstrating errors in PG&E’s reading of the Proposed Decision (SBUA Reply Comments on PD at 2 (Dec. 8, 2022)) and the strong evidentiary support for the Proposed Decision’s direction to conduct workshops in preparation for the 2024 ERRRA forecasts. (<i>Id.</i> at 3-4.)</p>	<p>provide a complete and robust sales forecast for 2024. PG&E must reexamine its sales forecast methodology to fully recognize and incorporate the actual changes – whatever they are – in sales by customer class and location to reflect their impact on total sales in its next ERRRA forecast application.”.)</p> <p>Further, the Decision orders PG&E to hold workshops to evaluate Pandemic-related impacts into its 2024 ERRRA sales forecast. (FOF No. 5; COL No. 6; OP No. 5.)</p> <p>“In addition, we accept the clarifications made by PG&E in its briefs and reply to the Fall Update in response to issues raised by CalCCA and SBUA.” (Decision at 9.)</p>	
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B. Duplication of Effort (§ 1801.3(f) and § 1802.5):

	Intervenor's Assertion	CPUC Discussion
a. Was the Public Advocate's Office of the Public Utilities Commission (Cal Advocates) a party to the proceeding?	Yes.	Verified
b. Were there other parties to the proceeding with positions similar to yours?	No.	Noted
c. If so, provide name of other parties: N/A		
d. Intervenor's claim of non-duplication: While Cal Advocates and Agricultural Energy Consumers Association filed responses to PG&E's application, SBUA was only one of four active parties—the applicant (PG&E), California Community Choice Association (CalCCA) and Direct Access Customer Coalition (DACC). SBUA intervened to narrowly to address PG&E's failure to consider load shift away from commercial customers and into traditional residential locations due to long-term changes resulted from the COVID 19 pandemic. SBUA avoided undue duplication with other parties by focusing its efforts on this issue, which is particularly relevant to small business customers.		Noted

PART III: REASONABLENESS OF REQUESTED COMPENSATION**A. General Claim of Reasonableness (§ 1801 and § 1806):**

	CPUC Discussion
<p>a. Intervenor's claim of cost reasonableness:</p> <p>SBUA seeks compensation for actively participating in this proceeding by filing motion for party status, attending the prehearing conference, engaging in discovery, submitting the testimony into the record, providing testimony, and filing opening and reply legal briefs and reply comments on the proposed decision.</p> <p>SBUA's involvement significantly improved the record and outcome of the proceeding by forcing PG&E to seriously consider load shift from commercial meters to residential meters. SBUA's contributions are thoroughly reflected in Decision and the record.</p> <p>There will be benefits for small business ratepayers based SBUA's advocacy, although precise quantitative dollar values are difficult to attribute. SBUA advocated for more accurate load forecasting, which</p>	Noted

<p>should ultimately result in lower electricity rates for small commercial customers. As our expert James Wilson testified, the failure to account for the pandemic's impact very likely understates residential load and overstates commercial load, likely raising rates for small commercial customers; and this deficiency should be rectified in future applications. Given the importance of accurate ERRA forecasts, the benefits to customers will be substantial and clearly justify SBUA's hours on behalf of this otherwise underrepresented class of ratepayers.</p> <p>For these reasons, the Commission should find that SBUA's efforts have been valuable and approve the request for fees.</p>	
<p>b. Reasonableness of hours claimed:</p> <p>SBUA expended hours efficiently in this proceeding and successfully focused its efforts on a single, important issue not adequately addressed by other parties. SBUA's hours were spent on analyzing the application, attending the prehearing conference, engaging in discovery, submitting testimony, participating in meet-and-confers, negotiating to avoid the need for evidentiary hearings, drafting legal briefs, and commenting on the proposed decision. SBUA submits that all of the hours claimed were reasonably efficiently expended and should be fully compensated.</p>	Noted
<p>c. Allocation of hours by issue:</p> <p>SBUA has assigned the following issue codes:</p> <ol style="list-style-type: none"> 1. Discovery and related activities – 15.5 hours or 11.4% 2. Testimony and related activities – 43 hours or 32.7% 3. Legal Briefs - 38 hours or 36.5 % 4. Comments on Proposed Decision – 8.4 hours or 6.4 % 5. Hearings, Workshops, and Conferences, Meet and Confers - 7 hours or 5.3 % 6. General Participation (substantive participation not covered elsewhere, including initial analysis of application, motion for party status) – 8.25 hours or 6.3 % 7. Procedural Participation – 1.5 hours or less than 5% <p>SBUA asserts that the categories above are well suited for this particular proceeding and to capture SBUA's advocacy. Should the Commission wish to see different information on this point or some other breakdown of SBUA's hourly work, SBUA requests that we be so informed and provided an opportunity to supplement this request accordingly.</p>	<p>Noted, totals approximately 100%.</p> <p>However, Intervenor must apportion the hours according to the substantive issues it addressed. <i>See</i> Intervenor Compensation Program Guide Part III.B.3.a.iii; <i>see also</i> D.98-04-059 at 87, Finding of Fact no. 20. Here, Intervenor allocated hours according to procedural tasks.</p> <p>Despite the Intervenor's failure to allocate hours according to substantive tasks,</p>

	<p>however, we will not make a disallowance. It is clear from Part II.A of Intervenor's claim that Intervenor focused on the reasonableness of PG&E's 2023 ERRRA forecast (Issue no. 1 in the Scoping Memo). Thus, the Intervenor avoided the ambiguity that typically results in a failure to allocate time spent by substantive issue.</p> <p>In the future, SBUA must allocate its time according to substantive issues, not procedural issues (e.g., discovery, legal briefs, general participation). This is because mere work on discovery or legal briefs does not in and of itself demonstrate how much time Intervenor spent contributing to relevant issues.</p> <p>We also note that the times provided here differ from the times provided in Intervenor's timesheet. We calculated the total allocated of time based on the timesheet as 17.75</p>
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	hours for No. 1; 36.5 hours for No. 2; 20.4 hours for No. 3; 7.6 hours for No. 4; 4.5 hours for No. 5; 8.25 hours for No. 6; and 2.05 for No. 7.
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B. Specific Claim:*

CLAIMED						CPUC AWARD		
ATTORNEY, EXPERT, AND ADVOCATE FEES								
Item	Year	Hours	Rate \$	Basis for Rate*	Total \$	Hours	Rate \$	Total \$
James Wilson	2022	27.0	\$300	Res. ALJ-393, plus a 3.31% COLA for 2022; see Comment #1 below.	\$11,070	27	\$300 [1]	\$8,100.00 [2]
James Birkelund	2022	58.2	\$705	D.23-02-016	\$41,031	57.95 [3]	\$705	\$40,854.75
Ariel Strauss	2022	12.1	\$465	D.23-02-016	\$5,626.50	12.1	\$465	\$5,626.50
Subtotal: \$57,727.50						Subtotal: \$54,581.25		
INTERVENOR COMPENSATION CLAIM PREPARATION **								
Item	Year	Hours	Rate \$	Basis for Rate*	Total \$	Hours	Rate	Total \$
James Birkelund	2022	2.25	\$352.5	50% of 2022 rate.	\$720.75	2.25	\$352.50	\$793.13 [4]
James Birkelund	2023	2.0	\$352.5	50% of 2023 rate.	\$793.13	2.0	\$367.50 [5]	\$735.00
Ariel Strauss	2023	3.1	\$233	50% of 2023.	\$715	3.1	\$242.50 [6]	\$751.75
Subtotal: \$2,218.88						Subtotal: \$2,279.88		
TOTAL REQUEST: \$59,946.38						TOTAL AWARD: \$56,861.13		
*We remind all intervenors that Commission staff may audit the records and books of the intervenors to the extent necessary to verify the basis for the award (§1804(d)). Intervenors must make and retain adequate accounting and other documentation to support all claims for intervenor compensation.								

Intervenor's records should identify specific issues for which it seeks compensation, the actual time spent by each employee or consultant, the applicable hourly rates, fees paid to consultants and any other costs for which compensation was claimed. The records pertaining to an award of compensation shall be retained for at least three years from the date of the final decision making the award.

****Travel and Reasonable Claim preparation time are typically compensated at ½ of preparer's normal hourly rate**

ATTORNEY INFORMATION

Attorney	Date Admitted to CA BAR ²	Member Number	Actions Affecting Eligibility (Yes/No?) If "Yes", attach explanation
James M. Birkelund	March 2000	206328	No
Ariel S. Strauss	March 2012	282230	No

C. Attachments Documenting Specific Claim and Comments on Part III: *(attachments not attached to final Decision)*

Attachment or Comment #	Description/Comment
Comment # 1	SBUA seeks an hourly rate for the work of expert James Wilson of \$300 for his work in 2022 based on Resolution ALJ-393 and a 3.31% Cost of Living Adjustment for 2022. SBUA sought a 2021 rate of \$290 for Mr. Wilson in our compensation request filed in A.21-08-010 on May 16, 2022. Pending a decision on that earlier claim, the requested 2021 hourly rate of \$290 will be adjusted by the 2022 COLA ($\$290 \times 1.0331 = \299.59), rounded to the nearest \$5, which results in a rate of \$300.
Comment #2	For 2023 hourly rates, SBUA requests that the Commission apply any approved annual escalation in rates to SBUA's attorneys and experts. Resolution ALJ-393 provides for an annual rate escalator that is automatically applicable (<i>see</i> p. 4); however, at the time of this filing, SBUA is not aware of the Commission having published or ruled on the escalator for 2023.
Attachment 1	Certificate of Service (<i>see</i> attachment under separate cover)
Attachment 2	Time Sheet Records with Allocation of Hours by Issue

D. CPUC Comments, Disallowances, and Adjustments

Item	Reason
[1] Wilson's 2022 Rate	We apply the 3.31% escalation factor to SBUA's requested 2021 rate of \$290 for Mr. Wilson, leading to a 2022 rate for Mr. Wilson of \$300.

² This information may be obtained through the State Bar of California's website at <http://members.calbar.ca.gov/fal/MemberSearch/QuickSearch>.

[2] Mathematical Correction	We fixed a mathematical error. Mr. Wilson spent a total of 27 hours at a rate of \$300/hour. The total is \$8,100.00.
[3] Mathematical Correction	Intervenor requested 58.2 hours in its claim but presented 57.95 hours of work for Mr. Birkelund in its timesheet. We adopt 57.95 hours as correct.
[4] Mathematical Correction	We fixed a mathematical error. Mr. Birkelund spent a total of 2.25 hours on intervenor compensation claim preparation in 2022 at a rate of \$352.50/hour. The total is \$793.13.
[5] Birkelund's 2023 Rate	We applied the 2023 escalator of 4.46% to Mr. Birkelund's 2022 rate to establish a 2023 rate of \$735. 50% is awarded for intervenor compensation preparation work, which is \$367.50.
[6] Strauss's 2023 Rate	We applied the 2023 escalator of 4.46% to Mr. Strauss's 2022 rate to establish a 2023 rate of \$485. 50% is awarded for intervenor compensation preparation work, which is \$242.50.

PART IV: OPPOSITIONS AND COMMENTS

Within 30 days after service of this Claim, Commission Staff or any other party may file a response to the Claim (*see* § 1804(c))

A. Opposition: Did any party oppose the Claim?	No
B. Comment Period: Was the 30-day comment period waived (<i>see</i> Rule 14.6(c)(6))?	Yes

FINDINGS OF FACT

1. Small Business Utility Advocates has made a substantial contribution to D.22-12-044.
2. The requested hourly rates for Small Business Utility Advocates' representatives, as adjusted herein, are comparable to market rates paid to experts and advocates having comparable training and experience and offering similar services.
3. The claimed costs and expenses, as adjusted herein, are reasonable and commensurate with the work performed.
4. The total reasonable compensation is \$56,861.13.

CONCLUSION OF LAW

1. The Claim, with any adjustment set forth above, satisfies all requirements of Pub. Util. Code §§ 1801-1812.

ORDER

1. Small Business Utility Advocates is awarded \$56,861.13.
2. Within 30 days of the effective date of this decision, Pacific Gas and Electric Company shall pay Small Business Utility Advocates the total award. 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 May 2, 2023, the 75th day after the filing of Small Business Utility Advocates' request, and continuing until full payment is made.
3. The comment period for today's decision is waived.

This decision is effective today.

Dated November 30, 2023, at Sacramento, California.

ALICE REYNOLDS
President
GENEVIEVE SHIROMA
DARCIE L. HOUCK
JOHN REYNOLDS
KAREN DOUGLAS
Commissioner

APPENDIX

Compensation Decision Summary Information

Compensation Decision:	D2311118	Modifies Decision?	No
Contribution Decision(s):	D2212044		
Proceeding(s):	A2205029		
Author:	ALJ Long		
Payer(s):	Pacific Gas and Electric Company		

Intervenor Information

Intervenor	Date Claim Filed	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
Small Business Utility Advocates	Feb. 16, 2023	\$59,946.38	\$56,861.13	N/A	See CPUC Comments, Disallowance, and Adjustments in Part III.D above.

Hourly Fee Information

First Name	Last Name	Labor Role	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
James	Wilson	Expert	\$300	2022	\$300
James	Birkelund	General Counsel	\$705	2022	\$705
James	Birkelund	General Counsel	\$705	2023	\$735
Ariel	Strauss	Attorney	\$465	2022	\$465
Ariel	Strauss	Attorney	\$465	2023	\$485

(END OF APPENDIX)