

Decision 24-05-019 May 9, 2024

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Revisit Net Energy Metering Tariffs Pursuant to Decision 16-01-044, and to Address Other Issues Related to Net Energy Metering.

Rulemaking 20-08-020

DECISION GRANTING COMPENSATION TO SIERRA CLUB FOR SUBSTANTIAL CONTRIBUTION FOR DECISION 23-11-068

Intervenor: Sierra Club	For contribution to Decision (D.) 23-11-068
Claimed: \$24,686.50	Awarded: \$24,683.00
Assigned Commissioner: Alice Reynolds	Assigned ALJ: Kelly A. Hymes

PART I: PROCEDURAL ISSUES

A. Brief description of Decision:	Decision 23-11-068 addresses several issues remaining in the net metering reform proceeding. These issues included: (1) adoption of a virtual net billing (“VNEM”) tariff; (2) adoption of an aggregation net billing subtariff; (3) improvement of the project developer Watch List process; (4) establishment of processes for evaluation of the net billing tariff, the VNEM tariff, and the aggregation net billing tariff; (5) implementation of the net energy metering fuel cell (“NEM-FC”) greenhouse gas emission standards; and (6) adoption of a plan to implement Pub. Util. Code § 769.2’s prevailing wage requirements for certain contractors and projects.
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B. Intervenor must satisfy intervenor compensation requirements set forth in Pub. Util. Code §§ 1801-1812:¹

	Intervenor	CPUC Verification
Timely filing of notice of intent to claim compensation (NOI) (§ 1804(a)):		
1. Date of Prehearing Conference:	November 2, 2020	Verified
2. Other specified date for NOI:		
3. Date NOI filed:	December 2, 2020	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:	A.21-12-009	A.20-08-002
6. Date of ALJ ruling:	May 18, 2022	December 9, 2020
7. Based on another CPUC determination (specify):	n/a	
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:	A.21-12-009	A.20-08-002
10. Date of ALJ ruling:	May 18, 2022	December 9, 2020
11. Based on another CPUC determination (specify):	n/a	
12. Has the Intervenor demonstrated significant financial hardship?		Yes
Timely request for compensation (§ 1804(c)):		
13. Identify Final Decision:	D.23-11-068	Verified
14. Date of issuance of Final Order or Decision:	December 18, 2023	Verified
15. File date of compensation request:	January 19, 2023	January 12, 2024
16. Was the request for compensation timely?		Yes

C. Additional Comments on Part I:

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

#	Intervenor’s Comment(s)	CPUC Discussion
	Sierra Club notes that its most recent ALJ ruling finding eligibility and significant financial hardship is over one year old, and requests the Commission make such findings here based on the information contained in Sierra Club’s NOI.	On November 2, 2020, Sierra Club also requested a showing of significant hardship in their NOI filed in A.20-08-002. The ALJ Ruling on that NOI granted a finding of significant financial hardship as of December 9, 2020. We use this finding throughout this claim.

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):

Intervenor’s Claimed Contribution(s)	Specific References to Intervenor’s Claimed Contribution(s)	CPUC Discussion
<p>NEM-FC Greenhouse Gas Emissions Standard</p> <p>Throughout this proceeding, Sierra Club has advocated for adoption of guardrails on the participation of polluting fuel cells in the net metering tariffs and has provided factual and legal analysis that have contributed to a robust record both on issues where the Commission ultimately agreed with Sierra Club and on issues where the Commission ultimately did not take Sierra Club’s position.</p> <p>Sierra Club provided legal and factual analysis to support adoption of a greenhouse gas emissions standard for fuel cells participating in NEM-FC that is appropriately stringent and climate-protective, consistent with California’s climate and public health objectives.</p>	<p>“Sierra Club asserts that the Staff Proposal does not present a robust compliance regime that avoids loopholes and the opportunity for gaming.” D.23-11-068 at 138.</p> <p>“Sierra Club requests the Commission to require Utilities to publish the anonymized performance data submitted by the Performance Data Provider. Sierra Club asserts that ‘actual carbon dioxide performance data on fuel cells is necessary to help inform future fuel cell policy and understand the extent to which fuel cell efficiency degrades over time.’ . . . The Commission agrees that providing this monthly data to the public on an annual basis will be useful to inform future policy.” <i>Id.</i> at 149.</p>	<p>Verified</p>

<p>For example, Sierra Club highlighted verification, reporting, and compliance issues related to directed biogas as a compliance mechanism for greenhouse gas emissions standards. Sierra Club also explained the tenuous greenhouse gas emissions reductions to be gained by relying on biomethane for compliance, and pointed out the Staff Proposal’s failure to account for the varying carbon intensity of biomethane sources. To the extent that directed biogas would be permitted as a compliance pathway, Sierra Club argued that verification requirements should be at least as stringent as those included in the Self-Generation Incentive Program (“SGIP”).</p> <p>Sierra Club Opening Comments on Staff Proposal to Implement Net Energy Metering Fuel Cell Greenhouse Gas Emission Standard, at 3–7, 10–11 (May 6, 2021) (“Sierra Club 2021 Opening Comments”).</p> <p>Sierra Club Reply Comments on Staff Proposal to Implement Net Energy Metering Fuel Cell Greenhouse Gas Emission Standard, at 1–2 (May 17, 2021) (“Sierra Club 2021 Reply Comments”).</p> <p>Sierra Club Opening Comments on Proposed Decision Addressing Remaining Proceeding Issues,</p>	<p>“Sierra Club opposes the proposal to allow use of biogas as a compliance mechanism due to serious verification and compliance issues identified in the Self-Generation Incentive Mechanism proceeding.” <i>Id.</i></p> <p>“Sierra Club concurs [with concerns regarding biomethane in NEMFC], cautioning that ‘carbon intensity of biomethane varies considerably depending on its source, simply assuming zero emissions from directed biogas does not accurately reflect its carbon intensity.’ The Staff Proposal does not ask for the reduction from a baseline as it assumes the carbon intensity of a renewable fuel is zero. Sierra Club asserts that the Low Carbon Fuel Standards program can be a starting point for determining reductions for biogas sources, but it applies to displacement of transportation fuel. Because NEMFC projects displace less carbon-intensive grid energy, Sierra Club recommends the diminished benefits of using biomethane for a behind-the-meter end use must be taken into account.” <i>Id.</i> at 155.</p> <p>“Sierra Club maintains that allowing customer-generators to use directed biogas contracts to meet greenhouse gas emissions eligibility requirements conflicts with AB 1637 and Commission policies . . . Sierra Club states that AB 1637 requires that the eligible fuel cell customer-generator ‘uses technology the commission has determined will achieve reductions in emissions of greenhouse gases’ and asserts that ‘biomethane is not a technology’ but rather a type of fuel and thus does not comply with AB 1637.</p>	
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<p>at 4–5 (Aug. 22, 2023) (“Sierra Club Opening Comments on PD”).</p> <p>Sierra Club Reply Comments on Proposed Decision Addressing Remaining Proceeding Issues, at 1–3 (Aug. 28, 2023).</p>	<p>Sierra Club contends the Commission concluded it was unreasonable to adopt the inclusion of renewable natural gas and hydrogen into the BUILD and TECH programs because these programs ‘are not focused on particularized infrastructure or fuels.’” <i>Id.</i> at 155–156.</p> <p>“Sierra Club references D.20-01-012 that discusses ‘a concerning level of missing or inaccurate records that rendered it infeasible to determine the compliance status of ‘numerous’ onsite and directed biogas projects.’ . . . Sierra Club objects to a utility review of invoices with no clear criteria or consequence for non-compliance. Further, Sierra Club submits the audit does not appear to require inspection of the project’s fuel sources in contrast to CARB’s Low Carbon Fuel Standards for biomethane. Sierra Club contends that if the Commission does allow directed biogas contracts to enable compliance with greenhouse gas emissions eligibility standards, requirements should be no less stringent than those adopted in the Self-Generation Incentive Program proceeding.” <i>Id.</i> at 158–159.</p> <p>“Sierra Club questions that the Staff Proposal does not require demonstration that environmental attributes of procured biogas were both obtained and not used elsewhere. While ‘directed biogas contracting can require the seller to provide all environmental attributes to the buyer – with the buyer retiring those attributes,’ Sierra Club asserts ‘there is no assurance attributes will not be double counted because there is no nationwide tracking.’ . . . The Commission finds that use of a</p>	
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<p>Sierra Club also suggested that unannounced drop-in inspections should be used to verify compliance rather than allowing customer-generators to simply self-certify compliance. Sierra Club also explained that Public Utilities Code Section 2827.10 requires annual compliance verification, rather than a three-year cycle.</p> <p>Sierra Club 2021 Opening Comments at 7, 9.</p> <p>Sierra Club 2021 Reply Comments at 3–4.</p>	<p>contractual obligation may provide the best assurance of compliance until []any tracking system is broadly used. Hence, the Commission concludes it should require documentation of contractual obligation. Accordingly, the Staff Proposal is revised to require documentation of the seller’s contractual obligation to provide all environmental attributes to the buyer.” <i>Id.</i> at 161–162.</p> <p>“Furthermore, Sierra Club contends the use of compliance through attestation does not provide adequate assurance of compliance and recommends onsite inspections by an independent third party retained by the Commission and funded by customer-generators.” <i>Id.</i> at 138–139.</p> <p>“Sierra Club and PCF support requiring the use of onsite monitoring systems rather than relying on customer-generation self-certification . . .” <i>Id.</i> at 146.</p> <p>“Specific to the requirements for renewable fuel blending, discussed in Section 3.5.3.6 below, Sierra Club points to an absence in the Staff Proposal of a discussion of the consequences for noncompliance with accounting for the use of renewable fuels. The Commission agrees that there must be consequences for noncompliance.” <i>Id.</i> at 152.</p> <p>“Sierra Club opposes PG&E’s proposal [for verification and penalties], especially if the Commission would</p>	
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<p>In addition, Sierra Club refuted industry claims that a letter from an individual legislator about his intent for retroactive applicability of AB 1637</p>	<p>limit review to every three years. Sierra Club contends this is inconsistent with the Pub. Util. Code §2827.10 which requires compliance with the CARB Standards for eligibility. The Commission agrees that PG&E’s proposal for a lengthy deficiency cure period does not comply with the statute.” <i>Id.</i> at 151.</p> <p>“Sierra Club references D.21-06-005 . . . which institutes periodic no-warning spot checks of fuel sources and retention of environmental attributes by the host generator and review of commits during fuel source verification spot checks . . . Cal Advocates and Sierra Club underscore that CARB has classified biomethane as having a high potential for misreporting . . . The Commission recognizes that [SGIP reporting requirements for directed biogas] are more stringent than the Staff Proposal . . . The Commission should align the requirements in the Staff Proposal with those of the Self-Generation Incentive Program. It is the Commissions’ intention that these more stringent requirements will improve future compliance. The Commission finds it reasonable that customer-generators fund these requirements, which will eliminate any ratepayer burden.” <i>Id.</i> at 159–160.</p> <p>“In comments to the proposed decision, Sierra Club alleges legal error. Sierra Club asserts that the reference to the letter from the author of AB 1637 should not dictate applicability of the</p>	
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<p>should be treated as determinative evidence of the statute’s applicability. While the Commission did not ultimately adopt Sierra Club’s interpretation of AB 1637 as applicable retroactively to fuel cell systems brought online prior to its enactment, the Commission declined to base its decision on the bill author’s letter.</p> <p>Sierra Club 2021 Opening Comments at 12.</p> <p>Sierra Club Opening Comments on PD at 2–3.</p> <p>While all of Sierra Club’s proposals were not ultimately adopted, the Commission has previously recognized that “[e]ven where the Commission does 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.” (D.04-12-054 at 8).</p>	<p>statute . . . [T]he Commission does not rely upon the letter to make its determination. As stated above, the Commission relies upon the legislation itself, and the lack of a retroactive clause to make the determination that the statute is only applicable to fuel cell systems installed as of the effective date of the legislation.”</p> <p><i>Id.</i> at 141–142.</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	Verified
c. If so, provide name of other parties: Sierra Club was one of the few non-fuel cell or utility parties to engage on NEM-FC provisions. Sierra Club’s provided a unique perspective on a range of issues on NEM-FC implementation.		Verified
d. Intervenor’s claim of non-duplication: Sierra Club uniquely contributed with regard to the NEM-FC Greenhouse Gas Emissions Standard, and was instrumental in providing a robust record on NEM-FC implementation that contrasted with positions taken by Bloom Energy and other fuel cell parties.		Noted

PART III: REASONABLENESS OF REQUESTED COMPENSATION

A. General Claim of Reasonableness (§ 1801 and § 1806):

	CPUC Discussion
a. Intervenor’s claim of cost reasonableness: After adoption of the net billing tariff in D.22-12-056, several issues related to net metering reform beyond the main tariff remained outstanding. Sierra Club’s focused additions to the record at this stage of the proceeding regarding NEM-FC were targeted at the issues for which Sierra Club could meaningfully contribute, and provided insight and analysis to help ensure that the NEM-FC tariff is consistent with Commission and state objectives for greenhouse gas emissions reductions, public health, environmental justice, and equity concerns. Because the remaining issues at this stage of the proceeding were narrower than the overall NEM reform adopted earlier in the proceeding, parties’ focused contributions were reasonable and necessary to ensure a robust record on each sub-issue.	Noted
b. Reasonableness of hours claimed: Sierra Club participated in all opportunities to engage on NEM-FC throughout this proceeding. Through its filings, Sierra Club provided detailed legal and substantive analysis to inform D.23-11-068’s findings. The number of hours claimed is reasonable based on the number of filings and the complexity of the proceeding.	Noted

c. Allocation of hours by issue: NEM-FC Issues – 100%	Noted
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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 \$
Matt Vespa	2021	32	\$500	Comment 1	\$16,000	32	\$500 [1]	\$16,000.00
Matt Vespa	2023	8.9	\$540	Comment 1	\$4,806	8.9	\$540 [1]	\$4,806.00
Rebecca Barker	2021	5.2	\$215	Comment 2	\$1,118	5.2	\$215 [2]	\$1,118.00
Rebecca Barker	2023	7.1	\$245	Comment 2	\$1,739.50	7.1	\$245 [2]	\$1,739.50
Subtotal: \$23,663.50						Subtotal: \$23,663.50		
INTERVENOR COMPENSATION CLAIM PREPARATION **								
Item	Year	Hours	Rate \$	Basis for Rate*	Total \$	Hours	Rate \$	Total \$
Matt Vespa	2024	1.4	\$282.50	See Comment 3	\$395.50	1.4 [1]	\$280 [1]	\$392.00
Rebecca Barker	2023	2	\$122.50	½ of the rate	\$245	2	\$122.50 [2]	\$245.00
Rebecca Barker	2024	3	\$127.50	See Comment 3	\$382.50	3	\$127.50 [2]	\$382.50
Subtotal: \$1,023						Subtotal: \$1,019.50		
TOTAL REQUEST: \$24,686.50						TOTAL AWARD: \$24,683.00		
<p>*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. Intervenors' 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.</p> <p>**Travel and Reasonable Claim preparation time are typically compensated at ½ of preparer's normal hourly rate</p>								

ATTORNEY INFORMATION

Attorney	Date Admitted to CA BAR ²	Member Number	Actions Affecting Eligibility (Yes/No?) If “Yes”, attach explanation
Matt Vespa	12/6/2002	222265	No
Rebecca Barker	6/23/2020	331672	No

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

Attachment or Comment #	Description/Comment
Attachment 2	Timesheet for Matt Vespa
Attachment 3	Timesheet for Rebecca Barker
Comment 1	<p><u>2021 and 2023 Rates for Matthew Vespa</u> Sierra Club requests rates of \$500 per hour for work performed in 2021 and \$540 per hour for work performed in 2023 by Matthew Vespa. No work was performed in 2022 on the issues contained in D.23-11-068.</p> <p>The 2021 rate for Mr. Vespa of \$500 per hour was adopted by the Commission in D.23-09-020. The 2023 rate of \$540 per hour for Mr. Vespa was adopted by the Commission in D.24-01-017.</p>
Comment 2	<p><u>2021 and 2023 Rates for Rebecca Barker</u> Sierra Club requests rates of \$215 per hour for work performed in 2021 and \$245 per hour for work performed in 2023 for Rebecca Barker. No work was performed in 2022 on the issues contained in D.23-11-068.</p> <p>The Commission adopted the rates of \$215 per hour for Ms. Barker’s work performed in 2021 and \$245 per hour for work performed in 2023 in D.24-01-017.</p>
Comment 3	<p><u>Intervenor Compensation Preparation Rates for 2024</u> To estimate a rate for intervenor compensation claim preparation hours in 2024, Sierra Club has applied the 4.6% escalation rate from 2023 to the 2023 rates proposed for</p>

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

	<p>adoption by Commission staff for Mr. Vespa and Ms. Barker in A.22-02-005 (https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M521/K339/521339413.PDF).</p> <p>For Mr. Vespa: $\\$540 \times 1.0446 = \\564.08 Rounding to the nearest \$5 increment = \$565 $\\$565 / 2 = \\282.50 for intervenor compensation claim preparation hours in 2024</p> <p>For Ms. Barker: $\\$245 \times 1.0446 = \\255.93 Rounding to the nearest \$5 increment = \$255 $\\$255 / 2 = \\127.50 for intervenor compensation claim preparation hours in 2024</p>
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D. CPUC Comments, Disallowances, and Adjustments

Item	Reason
[1] Matthew Vespa (Vespa) Hourly Rates	<p>D.23-09-020 authorized a 2021 hourly rate of \$500 for Vespa.</p> <p>Although Sierra Club requests a 2024 hourly rate for Vespa of \$565, we ultimately adopt the rate of \$560. D.24-01-017 authorized a 2023 hourly rate of \$540 for Vespa, we apply the 2024 annual escalation rate of 4.07% in accordance with Resolution ALJ-393 and round to the nearest \$5. We note that hours spent on Intervenor Compensation Claim Preparation are compensated at half the preparer’s hourly rate.</p>
[2] Rebecca Barker (Barker) Hourly Rates	<p>D.24-01-017 authorized a 2021 hourly rate of \$215 for Barker.</p> <p>D.24-01-017 authorized a 2023 hourly rate of \$245 for Barker, we apply the 2024 annual escalation rate of 4.07% in accordance with Resolution ALJ-393 and round to the nearest \$5. Therefore, we adopt the hourly rate Sierra Club requested of \$255 for Barker. We note that hours spent on Intervenor Compensation Claim Preparation are compensated at half the preparer’s hourly rate.</p>

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 (see Rule 14.6(c)(6))?	Yes

FINDINGS OF FACT

1. Sierra Club has made a substantial contribution to D.23-11-068.
2. The requested hourly rates for Sierra Club’s 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 of reasonable compensation is \$24,683.00.

CONCLUSION OF LAW

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

ORDER

1. Sierra Club is awarded \$24,683.00.
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 Sierra Club their respective shares of the award, based on their California-jurisdictional electric revenues for the 2021 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 27, 2024, the 75th day after the filing of Sierra Club’s request, and continuing until full payment is made.
3. The comment period for today’s decision is waived.

This decision is effective today.

Dated May 9, 2024, at Sacramento, California.

ALICE REYNOLDS
President
DARCIE L. HOUCK
JOHN REYNOLDS
KAREN DOUGLAS
Commissioners

Commissioner Matthew Baker recused himself from this agenda item and was not part of the quorum in its consideration.

APPENDIX**Compensation Decision Summary Information**

Compensation Decision:	D2405019	Modifies Decision?	No
Contribution Decision(s):	D2311068		
Proceeding(s):	R2008020		
Author:	ALJ Hymes		
Payer(s):	Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company		

Intervenor Information

Intervenor	Date Claim Filed	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
Sierra Club	1/12/2024	\$24,686.50	\$24,683.00	N/A	Adjusted Hourly Rates.

Hourly Fee Information

First Name	Last Name	Attorney, Expert, or Advocate	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Matthew	Vespa	Attorney	\$500	2021	\$500
Matthew	Vespa	Attorney	\$540	2023	\$540
Matthew	Vespa	Attorney	\$565	2024	\$560 ¹
Rebecca	Barker	Attorney	\$215	2021	\$215
Rebecca	Barker	Attorney	\$245	2023	\$245
Rebecca	Barker	Attorney	\$255	2024	\$255 ²

(END OF APPENDIX)

¹ Vespa's 2024 hourly fee information was missing; therefore, we created an entry for it here.

² Barker's 2024 hourly fee information was also missing; therefore, we created an entry for it here.