

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Continue
Implementation and Administration of
California Renewables Portfolio Standard
Program.

Rulemaking 08-08-009
(Filed August 21, 2008)

**DECISION GRANTING INTERVENOR COMPENSATION
TO L. JAN REID FOR SUBSTANTIAL CONTRIBUTION
TO DECISIONS 10-12-048 AND 11-04-030**

This decision awards L. Jan Reid \$17,880.89 for his substantial contributions to Decisions 10-12-048 and 11-04-030. This represents a decrease of \$580.20 or 3% from the amount requested due to excessive hours and costs. Today's award will be allocated to the three largest affected electrical utilities for payment.

1. Background

Senate Bill 1078 established the California Renewables Portfolio Standard Program (RPS Program) effective January 1, 2003.¹ Decision (D.) 10-12-048 authorized a new, streamlined procurement process called the Renewable Auction Mechanism, or RAM, for procurement of smaller RPS-eligible projects. D.11-04-030 conditionally accepted the RPS procurement plans (Plans) filed by Southern California Edison Company, Pacific Gas and Electric Company

(PG&E), and San Diego Gas & Electric Company, and Supplements to Integrated Resource Plans filed by the California Pacific Electric Company, LLC (previously, Sierra Pacific Power Company) and PacifiCorp.

Reid actively participated in this rulemaking by filing comments on issues addressed in D.10-12-048 and D.11-04-030.

2. Requirements for Awards of Compensation

The intervenor compensation program, which is set forth in §§ 1801-1812, requires California-jurisdictional utilities to pay the reasonable costs of an intervenor's participation if that party 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 (NOI) to claim compensation within 30 days of the prehearing conference (PHC), pursuant to Rule 17.1 of the Commission's Rules of Practice and Procedure (Rules), or at another appropriate time 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).)
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).)

¹ Stats. 2002, Ch. 516, Sec. 3, codified as Pub. Util. Code §§ 399.11, et seq. All subsequent references are to the Public Utilities Code unless noted otherwise.

4. The intervenor must demonstrate “significant financial hardship.” (§§ 1802(g) and 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 or as otherwise found by the Commission. (§§ 1802(i) and 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).

In the discussion below, the procedural issues in Items 1-4 above are combined, and a separate discussion of Items 5-6 follows.

3. Preliminary Procedural Issues

An intervenor who intends to seek compensation for participation in a Commission proceeding must file an NOI to Claim Intervenor Compensation no later than 30 days after the PHC, or a date otherwise set by the Commission. (§ 1804(a)(1) and Rule 17.1.) The Commission provided here that a party expecting to request intervenor compensation file an NOI within 30 days of the mailing date of the order. (Order Instituting Rulemaking (R.) 08-08-009, Ordering Paragraph 10 at 16-17.) The order was mailed on August 26, 2008. Reid filed an NOI on September 25, 2008, within 30 days of the mailing date of the order. No party filed an opposition to the NOI. On November 19, 2008, Administrative Law Judge (ALJ) Mattson ruled that the NOI was timely.

Reid's NOI asserted significant financial hardship based on a similar finding made earlier in 2008.² On November 19, 2008, ALJ Mattson ruled that Reid met the financial hardship condition by rebuttable presumption.³

Section 1802(b)(1) defines a "customer" as: (A) a participant representing consumers, customers or subscribers of a utility; (B) a representative who has been authorized by a customer; or (C) a representative of a group or organization authorized pursuant to its articles of incorporation or bylaws to represent the interests of residential or small business customers. (§ 1802(b)(1)(A) through (C).) On November 19, 2008, ALJ Mattson ruled that Reid is a customer for intervenor compensation purposes pursuant to § 1802(b)(1)(A). We affirm these rulings on NOI timeliness, financial hardship, and customer category.

Regarding the timeliness of the request for compensation, R.08-08-009 was closed by a successor proceeding, R.11-05-005, issued May 10, 2011. Reid filed his request for compensation on July 11, 2011, within 60 days of the closure of R.08-08-009. No party opposed Reid's request for compensation. The request for compensation is timely.

We find that Reid has satisfied these four pre-requisite requirements necessary to request compensation in this proceeding.

² On April 15, 2008, ALJ Kenney issued a ruling in Application 07-12-021 which found that Reid was a customer and met the significant financial hardship requirement. R.08-08-009 commenced within one year of the date of ALJ Kenney's ruling.

³ Section 1804(b)(1) provides that a finding of significant financial hardship in one proceeding creates a rebuttable presumption of eligibility for compensation in other Commission proceedings that commence within one year of the date of that finding.

4. Substantial Contribution

In evaluating whether a customer made a substantial contribution to a proceeding, we look at several things. First, we look at whether the Commission adopted one or more of the factual or legal contentions, or specific policy or procedural recommendations put forward by the customer. (§ 1802(i).) Second, if the customer's contentions or recommendations paralleled those of another party, we look at whether the customer's participation unnecessarily duplicated or materially supplemented, complemented, or contributed to the presentation of the other party. (§§ 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.

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.⁴

With this guidance in mind, we turn to the contributions Reid claims he made to the proceeding.

We find that Reid made contributions to D.10-12-048, as he describes, in the areas of bid evaluation, revenue requirement, resource mix, program cap, program adjustment, price cap, number of auctions, development deposits, and correction of errors in the proposed decision. Although very few of his specific

⁴ D.98-04-059, 79 CPUC2d 628 at 653.

recommendations were adopted, Reid provided valuable suggestions and information in these complex and controversial areas of the rulemaking. Reid contributed by broadening the record and helping the Commission to critically assess strengths and weaknesses of various ideas presented in this proceeding. In the areas where we did not adopt Reid's position in whole, or in part, we nonetheless benefited from his unique perspective, analysis, input, and discussion of other views. We also find that Reid contributed to D.11-04-030 by making important recommendations concerning PG&E's amended RPS Plan, specifically, in the resolution of the tradable renewable energy credits (TREC) issues.

The Commission has awarded full compensation even where the intervenor's positions were not adopted in full, especially in proceedings with a broad scope. (D.09-06-016 at 22-23, referring to D.98-04-028). We do so here, with a small adjustment.

5. Contributions of Other Parties

Section 1801.3(f) requires an intervenor to avoid participation that duplicates that of similar interests otherwise adequately represented by another party, or participation unnecessary for a fair determination of the proceeding. Section 1802.5, however, allows an intervenor to be eligible for full compensation where its participation materially supplements, complements, or contributes to the presentation of another party if that participation makes a substantial contribution to the Commission order.

Reid states that he contributed to this proceeding in a manner that did not repeat the work of other parties. He explains that in this rulemaking, he and The Utility Reform Network (TURN) have been the sole active parties that represent only residential and small commercial customers. The Division of Ratepayer

Advocates (DRA) was an active party, but it represents the interests of all customers, not just residential and small commercial customers. (§ 309.5.) Reid states that he conferred with TURN and DRA throughout the course of the proceeding. We find that Reid's work did not unnecessarily duplicate work of other parties, and the award should not be reduced for duplication.

After we have determined the scope of a customer's substantial contribution, we then look at whether the amount of the compensation request is reasonable.

6. Reasonableness of Requested Compensation

Reid requests \$18,461.09 for his participation in this proceeding, as follows:

Reid's Work on Proceeding			
Year	Hours	Hourly Rate	Total (\$)
2009	49.90	\$185	\$9,231.50
2010	43.20	\$185	\$7,992.00
2011	1.80	\$185	\$333.00
Subtotal:			
Reid's Preparation of Intervenor Compensation Request			
2011	9.3	\$92.50	\$860.25
Expenses			
Copying and Mailing			\$44.34
Total Requested Compensation			\$18,461.09

In general, the components of this request must constitute reasonable fees and costs of the customer's preparation for and participation in a proceeding that resulted in substantial contribution. The issues we consider to determine reasonableness are discussed below.

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 the substantial contribution.

Reid documented this claim by presenting a daily breakdown of his hours, accompanied by a brief description of each activity, in compliance with Rule 17.4 (b). The requested hours are, in general, reasonable as weighed against Reid's substantial contributions to the decisions.

We disallow as excessive 3.0 hours spent on the October 7, 2010 reply comments (regarding the RAM proposed decision). Reid logged 10.5 hours for this work. The reply comments address only one topic (development deposits) and are less than 2 pages in length. We find that 6.3 hours spent reviewing opening comments and 1.2 hours writing the reply to those comments are reasonable. The additional 3.0 hours spent writing the reply comments were excessive given their narrow focus and analytical content.

6.2 Intervenor Hourly Rates

Reid requests and we approve the hourly rate of \$185 for Reid's work in 2009, 2010, and 2011. This rate has been approved in decisions D.09-11-028, D.10-10-015, and D.12-01-029, and we use it here.

6.3 Direct Expenses

The itemized direct expenses submitted by Reid include the following:

Item	\$ Amount
Postage (10/7/2010)	\$4.32
Copies (10/7/2010)	\$4.32
Copies (07/10/2011)	\$25.20
Postage (07/10/2011)	\$10.50

Given that the Commission adopted the electronic filing protocol in this proceeding, we disallow expenses incurred on July 10, 2011, for the making of 315 copies.⁵ The number of parties that did not have electronic addresses was too small to require a large number of paper copies. Otherwise, the cost breakdown included with the request shows the miscellaneous expenses to be commensurate with the work performed.

7. Productivity

D.98-04-059 directed customers to demonstrate productivity by assigning a reasonable dollar value to the benefits of their participation to ratepayers. (D.98-04-059, at 34-35). The costs of a customer's participation should bear a reasonable relationship to the benefits realized through its participation. This showing assists us in determining the overall reasonableness of the request.

Reid asserts that he contributed to this proceeding in a manner that was productive, and that his contributions will result in benefits to ratepayers that exceed the costs of his participation. Reid contributed to more than eight subjects, as noted above. It is reasonable to conclude that the resolution of these subjects will benefit future ratepayers. For example, if program improvements relative to his contributions save ratepayers as little as \$0.001 per kilowatt-hour (kWh), as few as 20,000,000 kWh at this rate of savings would more than cover

⁵ See, the Order Instituting Rulemaking 08-08-009, at 12: "All participants are encouraged to use electronic service." Practically all parties on the service list provided their electronic addresses.

Reid's costs here.⁶ Reid's costs of participation bore a reasonable relationship with benefits realized through his participation.

⁶ A savings of one-tenth of a cent (\$0.001) per kWh for 20,000,000 kWh would save \$20,000. This amount of energy is produced annually by a 5.8 megawatt facility operating at a 40% capacity factor. D.10-12-048 involves 1,000 MW, and D.11-04-030 involves more than 1,000 MW.

7.1 Award

As set forth in the table below, we award Reid \$17,880.89.

Reid's Work on Proceeding			
Year	Hours	Hourly Rate	Total (\$)
2009	49.90	\$185	\$9,231.50
2010	40.20	\$185	\$7,437.00
2011	1.80	\$185	\$333.00
Subtotal :			
Reid's Preparation of Intervenor Compensation Request			
2011	9.3	\$92.50	\$860.25
Expenses			
Copying and Mailing			\$19.14
Total Award:			\$17,880.89

We remind all 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. Reid's records should identify specific issues for which he requested 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.

8. Waiver of Comment Period

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

9. Assignment of Proceeding

Mark J. Ferron is the assigned Commissioner, and Regina DeAngelis, Burton W. Mattson, and Anne E. Simon are the assigned ALJs in this proceeding.

Findings of Fact

1. Reid has satisfied all the procedural requirements necessary to claim compensation in this proceeding.
2. Reid made a substantial contribution to D.10-12-048 and D.11-04-030 as described herein.
3. Reid requested hourly rates that are reasonable when compared to the market rates for persons with similar training and experience.
4. Reid requested expenses that, as adjusted herein, are reasonable and commensurate with the work performed.
5. The total amount of the reasonable compensation is \$17,880.89.
6. The Appendix to this decision summarizes today's award.

Conclusions of Law

1. Reid has fulfilled the requirements of §§ 1801-1812, which govern awards of intervenor compensation, and is entitled to intervenor compensation for his claimed expenses, as adjusted herein, incurred in making substantial contributions to D.10-12-048 and D.11-04-030.
2. Reid should be awarded \$17,880.89 for his contribution to D.10-12-048 and D.11-04-030.
3. This order should be effective today so that Reid may be compensated without delay.

O R D E R

IT IS ORDERED that:

1. L. Jan Reid is awarded \$17,880.89 as compensation for his substantial contributions to Decisions 10-12-048 and 11-04-030.
2. 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 L. Jan Reid their respective shares of the award. We direct these utilities to allocate payment responsibility among themselves, based on their California-jurisdictional electric revenues for the 2010 calendar year, to reflect the year in which the proceeding was primarily litigated. 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 September 24, 2011, the 75th day after the filing date of Reid's request for compensation, and continuing until full payment is made.

This order is effective today.

Dated _____, at San Francisco, California.

APPENDIX**Compensation Decision Summary Information**

Compensation Decision:		Modifies Decision? No
Contribution Decisions:	D1012048, D1104030	
Proceeding:	R0808009	
Author:	ALJ Burton W. Mattson	
Payers:	Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company	

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
L. Jan Reid	7/11/11	\$18,461.09	\$17,880.89	No	Excessive hours and costs

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
L. Jan	Reid	Expert	L. Jan Reid	\$185	2009	\$185
L. Jan	Reid	Expert	L. Jan Reid	\$185	2010	\$185
L. Jan	Reid	Expert	L. Jan Reid	\$185	2011	\$185

(END OF APPENDIX)