

Decision 09-11-027 November 20, 2009

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 CONTRIBUTIONS
TO DECISION 09-06-018**

This decision awards L. Jan Reid \$14,106.25 for his substantial contributions to several issues addressed in Decision 09-06-018. This represents a decrease of \$3,043.25, or 18% from the amount requested due to his failure to make a substantial contribution on one issue. Today's award will be allocated to the three largest affected utilities for payment. This rulemaking remains open to address other matters.

1. Background

Senate Bill (SB) 1078 established the California Renewables Portfolio Standard (RPS) Program effective January 1, 2003.¹ Pursuant to the RPS Program, several procurement plans have been implemented, and solicitations held, by Southern California Edison Company (SCE), Pacific Gas and Electric Company (PG&E), and San Diego Gas & Electric Company (SDG&E).

¹ Stats. 2002, Ch. 516, Sec. 3, codified as Pub. Util. Code §§ 399.11, et seq., as amended by SB 107 (Stats. 2006, Ch. 464, Sec 13, effective January 1, 2007). All subsequent references are to the Public Utilities Code unless noted otherwise.

On September 15, 2008, the three largest Investor-Owned Utilities (IOUs) filed and served their 2009 RPS Procurement Plans for Commission review and acceptance. On October 15, 2008, comments on the 2009 Plans and Supplements were filed by nine parties, including Reid.

On December 18, 2008, Decision (D.) 08-12-058 granted a Certificate of Public Convenience and Necessity for the construction of the Sunrise Powerlink Transmission Project (Sunrise) and noted the relationship of certain Sunrise issues to the 2009 RPS Procurement Plans, and directed the assigned Commissioner to put forth specific proposals for comment in this proceeding. On February 3, 2009, an Assigned Commissioners' Ruling identified the proposals, and, to address certain issues, also included a Staff Proposal to refine the methodology used to assess project viability. On or about February 27, 2009, comments were filed by 13 parties, including Reid. On March 6, 2009, reply comments were filed by eight parties, including Reid.

On June 8, 2009, we addressed these matters in D.09-06-018. On August 6, 2009, Reid filed a request for an award for substantial contribution. We address Reid's claim by first assessing whether the requirements for an award have been met.

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).)
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.) The Commission provided here that a party expecting to request intervenor compensation shall file an NOI within 30 days of the

mailing date of the Order Instituting Rulemaking (OIR). (OIR 08-08-009, Ordering Paragraph 10.)

Reid filed an NOI on September 25, 2008, within 30 days of the mailing date of the OIR, and amended the NOI on October 6, 2008 (to correct a typographical error). Reid's unopposed NOI was timely.

In his NOI, Reid asserted significant financial hardship. On November 19, 2008, Administrative Law Judge (ALJ) Mattson ruled that Reid met the financial hardship condition pursuant to § 1804(b)(1) by rebuttable presumption, having established significant financial hardship in an earlier proceeding.²

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 issued a ruling that found Reid a customer pursuant to § 1802(b)(1)(A).

In view of the above, we affirm the ALJ's ruling. Regarding the timeliness of the request for compensation, Reid filed his request for compensation on August 6, 2009, within 60 days of D.09-06-018 being issued.³ No party opposed

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. The instant rulemaking commenced within one year of the date of ALJ Kenney's ruling.

³ D.09-06-018 was issued on June 8, 2009.

the request. We find that Reid has satisfied all the procedural requirements necessary to make his request for compensation in this rulemaking.

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.

Reid claims that he made a substantial contribution on seven issues in four areas. The four areas are: Imperial Valley, Project Viability, RPS Plans, and General. We examine these contribution areas individually based on the issues

⁴ D.98-04-059, 79 CPUC2d 628 at 653.

in the September 26, 2008 Scoping Memo and Ruling of Assigned Commissioner, and Reid's contribution to these issues via Energy Division's workshops on Project Viability (which were held on February 17, 2009 and April 7, 2009).

PG&E's Pilot Program

Reid recommended that the "Commission should reject PG&E's proposed 'pilot program' for contract pre-approval."⁵ Reid contends the Commission agreed by stating that "PG&E's proposal is therefore not accepted as part of its 2009 RPS procurement plan, and should be removed from the Amended Plan to be filed pursuant to this order."⁶ In further support of his contribution, Reid offers the Commission's statement that "[t]hese disputes will not be resolved here, but in a separate proposed decision that addresses the streamlining of RPS contracting."⁷

Reid contends that the Commission effectively agreed with his recommendation to reject the PG&E Pilot Program. That is incorrect. The Commission eliminated the PG&E Pilot Program from PG&E's 2010 Procurement Plan because the Commission moved the issue to a different decision, not because the Commission considered the substance of Reid's recommendations here. The matter was decided in D.09-06-050. If Reid later submits a claim for significant contributions to D.09-06-050, Reid may include his request for compensation on this issue there, and the Commission will examine it at that time. For purposes of this claim, we disallow all 13.35 hours that Reid

⁵ Comments of L. Jan Reid on PG&E's Draft 2009 Renewable Energy Procurement Plan and Solicitation Protocol at 1-4, filed October 15, 2008.

⁶ D.09-06-018 at 54-55.

⁷ D.09-06-018 at 54.

requests for his time on PG&E's Pilot Program (itemized in Reid's request as RPS Plans). This represents a reduction of 18% of Reid's issue specific hours in this proceeding. Accordingly, we also reduce Reid's general hours by 3.10 hours, equal to the same 18% disallowance for lack of substantial contribution.

Remedial Measures for 2010 Solicitation

The Commission identified three remedial measures relative to Imperial Valley renewables project and asked for parties' comments.⁸ The measures were:

- Require utilities to automatically shortlist all Imperial Valley proposals that are received in the solicitation so that the projects receive special consideration;
- Include an Imperial Valley bid evaluation metric in the least cost-best fit methodology to give preference to Imperial Valley resources, and;
- Require each utility to conduct a special Imperial Valley RPS solicitation.

Reid argued that the "proposals were unnecessary because Imperial Valley RPS projects already have a build-in advantage (access to transmission) in the contract evaluation process."⁹ The Commission agreed, and specifically cited his rationale in the decision.¹⁰ Moreover, Reid addressed consideration of remedial measures generally, the record was informed by Reid's comments, and he contributed to the Commission's consideration of the issues.

⁸ D.09-06-018 at 16-17.

⁹ D.09-06-018 at 18, citing Reid Sunrise Comments at 7.

¹⁰ D.09-06-018 at 18.

Credit Attributes

Reid claims he made a substantial contribution on the issue of credit attributes. In support he references our decision, which states that:

Reid is concerned with PG&E's use of qualitative assessments as part of its bid evaluation. To particularly address this concern, Reid recommends the use of commercially available software to assess, and quantify, the probability of default as part of the credit attribute item in bid evaluation.¹¹

We declined to adopt Reid's specific recommendation regarding the use of commercially available software to address project default as it related to credit and bid evaluation. The Commission, however, said:

Nonetheless, the concept of quantifying and more objectively assessing the probability of default has merit. We encourage parties to continue to explore the subject and bring us additional proposals if and when reasonable.¹²

We find that Reid contributed to the consideration of the issue. Even if his specific proposal was not adopted, his comments helped inform the Commission on the subject matter, with the Commission saying that the subject matter had merit and should continue to be explored.

Project Viability Calculator

Staff proposed a project viability calculator, and suggested project development security be linked to the output of the calculator. In response to an Energy Division discovery request, Reid addressed refinement to the calculator

¹¹ D.09-06-018 at 46.

¹² *Id.*

and limitations on its use. Reid contends that he made a substantial contribution to the resolution of this issue by filing comments on the item. Our decision says:

We agree with staff and parties that the current project viability assessment tools can be improved by adopting a requirement for a more transparent and uniform approach. Among other things, this will increase the public's confidence that projects with demonstrated indicia of viability are given appropriate weight.¹³

We find that Reid's comments, elicited by Commission staff, were beneficial to the Commission in its understanding and consideration of reasonable use of the project viability calculator.

Development Security

In response to the Energy Division's discovery request, Reid states that he argued in his comments on the project viability calculator that:

Our goal should be to decrease the failure rate and to attempt to ensure that all projects selected are successful in meeting their on-line dates. I do not support the UCS [Union of Concerned Scientists] proposal because the UCS proposal is not consistent with this goal. Under the UCS proposal, different projects would pay significantly different levels of development security. This will place more financial pressure on marginal projects and may effectively discriminate against small developers. Thus, the UCS proposal would tend to place additional financial pressure on marginal projects and increase the project failure rate.¹⁴

The Commission declined to adopt Reid's recommendation to charge the same development security to each project, which Reid describes as having been

¹³ D.09-06-018 at 21.

¹⁴ See Responses of L. Jan Reid to the Energy Division's Discovery Request, May 5, 2009 at 4.

advanced during staff development of the calculator in May 2009. In fact, the Commission found it conceptually reasonable to vary development security based on project-specific facts (e.g., project viability) and concluded that such variations are available within the current RPS structure.¹⁵ Reid contributed to the consideration of this issue, however, even though his recommendation was not specifically adopted.

Contract Approval

Reid contends he made a substantial contribution in his reply comments on the issue of contract approval. In particular, Reid argued:

The Commission should not set up two levels of contract approval, based on inherently arbitrary project viability scores. At best, project viability scores are an estimate of the probability of project failure. Project viability should be weighed against other factors such as price, on-line date, length of contract, project location, and credit and collateral in the contract selection process. To do otherwise, constitutes poor public policy to the detriment of California ratepayers.¹⁶

The Commission found that “[t]he project viability calculator should be used as a screening tool, not to determine the exact merit of a project or contract.”¹⁷ Reid made a substantial contribution on this issue.

¹⁵ D.09-06-018 at 27.

¹⁶ Reply Comments of L. Jan Reid on Imperial Valley Renewables Development and Evaluation of all Renewable Procurement Contracts, filed on March 6, 2009 at 3.

¹⁷ D.09-06-018, Conclusion of Law 12 at 79.

Flexible Compliance

Finally, on the issue of flexible compliance, Reid argued that:

If the Commission approves a contract, the IOU should be able to amend the contract, earmark the project for flexible compliance purposes, and use the contract to justify a compliance deficit in the event such justification becomes necessary. If the Commission believes that a particular contract is not viable, the Commission should protect ratepayers by rejecting the contract.¹⁸

Reid asserted that the Commission should protect ratepayers by rejecting non-viable contracts rather than making other compensating adjustments and changes in the contract. In support of his contribution, Reid cites the Commission's rejection of a proposal to link flexible compliance rules with project viability and quotes our order, which found that "[f]lexible compliance rules should not be linked to scores from the project viability calculator at this time."¹⁹ We agree with Reid's claim of substantial contribution on this issue.

5. Duplication

Section 1801.3(f) provides that an intervenor will not be compensated for participation that (1) duplicated that of other parties representing similar interests, or (2) is unnecessary for a fair determination of the proceeding. However, if there is overlapping participation between parties, § 1802.5 provides that an intervenor may be eligible for compensation if its participation materially supplements, complements, or contributes to the presentation of other parties.

¹⁸ Reply Comments on L. Jan Reid on Imperial Valley Development and Evaluation of all Renewable Procurement Contracts, filed March 6, 2009 at 3.

¹⁹ D.09-06-018, Conclusion of Law 14 at 79.

We find that Reid neither duplicated the work of other parties representing similar interests nor participated in this proceeding in a way that was unnecessary for a fair determination of the proceeding.

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

6. Reasonableness of Requested Compensation

Reid requests \$17,149.50 for participation in this proceeding, as follows:

Work on Proceeding				
Attorney/Staff	Year	Hours	Hourly Rate	Total
L. Jan Reid	2008	27.0	\$185	\$ 4,995.00
L. Jan Reid	2009	65.7	\$185	\$12,154.50
Subtotal Hourly Compensation:				\$17,149.50
Total Requested Compensation				\$17,149.50

6.1. Hours and Costs Related to and Necessary for Substantial Contribution

To determine whether the requested compensation is reasonable, we first assess whether the hours claimed are related to the work performed and necessary for the substantial contribution.

Reid documented his claim of 92.7 hours by presenting a daily listing of the hours he spent on this proceeding, accompanied by a brief description of each task and the specific issue the task addressed. Reid's breakdown of claimed hours by issue is as follows:

Reid's Allocation of Time by Major Issue			
Issue Category	2008 Hours	2009 Hours	Total
General Work	.30	16.9	17.2
Imperial Valley Renewables		36.7	36.7
Project Viability		12.1	12.1
RPS Plans		26.7	26.7
Total Hours	.30	92.4	92.7

The 92.7 hours claimed by Reid represents all of the time spent on this proceeding for which he seeks compensation. Reid voluntarily excludes time for the preparation of his NOI and the request for intervenor compensation.

Although we find in general that Reid made several substantial contributions to this proceeding, Reid failed to itemize his time in a way that allows us to easily or readily determine what portion of his 92.7 hours are related to his substantial contributions. With some effort here we are able to draw the necessary relationships and the resulting reduction in hours is described above. In future claims, however, we urge Reid to be more diligent in his allocation of time by issue, to avoid the potential for erroneous disallowances, or disallowances based on our difficulty with the claim.²⁰

6.2. Intervenor Hourly Rates

We next consider if Reid's claimed fees are comparable to the market rates paid to experts with comparable training and experience and offering similar services. Reid requests hourly rates of \$185 for work performed in 2008 and

²⁰ Parties may discuss presentation of intervenor compensation claims with the Commission's Public Advisor.

2009. We previously approved Reid's 2008 hourly rate of \$185 in D.08-11-053. Pursuant to ALJ-235, which disallows cost of living adjustment increases for the 2009 work of intervenors, we apply the 2008 rate to Reid's work performed in 2009.

6.3. Direct Expenses

Reid has no direct expenses for which he seeks compensation.

7. Productivity

Reid submits that his participation in the proceeding was productive and will result in benefits to ratepayers that exceed the costs of his participation. Reid contends that he made a substantial contribution to Imperial Valley and other issues. Reid claims that it is reasonable to assume that the resolution of these issues will benefit ratepayers in the future.²¹

The benefits of Reid's contributions are essentially intangible and, therefore, the monetary benefits cannot be readily and precisely quantified. While it is difficult to quantify the benefits of Reid's contributions, we believe they will exceed the amount awarded to Reid by today's decision.

²¹ In support of the asserted benefit, Reid says "[i]f the Commission had allowed the PVC [project viability calculator] to be used as a contract approval tool and this had resulted in an increase of just \$1/megawatt-hour [MWh] for a plant which produced 40,000 MW [megawatts] of electricity annually, ratepayers would have paid an additional \$40,000 annually, or over twice the compensation that I [Reid] have requested in this proceeding." (Request for Award at 8.) We agree in principle, considering a hypothetical example of \$0.001/kWh for a 10 MW plant at a 65% capacity factor (producing 56,940,000 kilowatt-hours per year), yielding a result of \$56,940, or over three times Reid's request.

We approve Reid's requested hours as follows:

Cost Category	Requested Hours	Approved Hours
General Work (reduced 18%)	17.2	14.1
Imperial Valley Renewables		
-Remedial Measures (100%)	36.7	36.7
Energy Workshops		
-Project Viability (100%)		
-Development Security (100%)	12.1	12.1
RPS Plans		
-PG&E Pilot Program (zero%)		
-Credit Attributes (100%)		
-Contract Approval (100%)		
-Flexible Compliance (100%)	26.7	13.35
Total Hours	92.7	76.25

This represents a reduction of 18% in general work related to the disallowance of work on the PG&E Pilot Program, as explained above.

8. Award

As set forth in the table below, we award Reid \$14,106.25.

Work on Proceeding				
Attorney/Staff	Year	Hours	Hourly Rate	Total \$
L. Jan Reid	2008	.25	\$185	46.25
L. Jan Reid	2009	76.00	\$185	14,060.00
TOTAL AWARD				\$14,106.25

Pursuant to § 1807, we order PG&E, SCE, and SDG&E, the three largest affected utilities, to pay this award. 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 October 20, 2009, the 75th day after Reid filed his compensation request, and continuing until full payment of the award is made.

We direct PG&E, SCE, and SDG&E to allocate payment responsibility among themselves based upon their California-jurisdictional electric revenues for the 2009 calendar year, the year in which the proceeding was primarily litigated.

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.

9. Waiver of Comment Period

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

10. Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner, and Burton W. Mattson is the assigned ALJ in this proceeding.

Findings of Fact

1. Reid has satisfied all the procedural requirements necessary to claim compensation in this proceeding. Reid made a substantial contribution to D.09-06-018 as described herein.
2. Reid requested hourly rates which are reasonable when compared to the market rates for persons with similar training and experience.
3. The total of the reasonable compensation is \$14,106.25.
4. 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 incurred in making substantial contributions to D.09-06-018.
2. Reid should be awarded \$14,106.25 for his contribution to D.09-06-018.
3. This order should be effective today so that Reid may be compensated without delay.
4. This proceeding remains open to address other matters.

O R D E R

IT IS ORDERED that:

1. L. Jan Reid is awarded \$14,106.25 as compensation for his substantial contributions to Decision 09-06-018.
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 Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company to allocate payment responsibility

among themselves, based on their California-jurisdictional electric revenues for the 2009 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 October 20, 2009, the 75th day after the filing date of Reid's request for compensation, and continuing until full payment is made.

3. Rulemaking 08-08-009 remains open to address other related matters.

This order is effective today.

Dated November 20, 2009, 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**

Compensation Decision:	D0911027	Modifies Decision? No
Contribution Decision(s):	D0906018	
Proceeding(s):	R0808009	
Author:	ALJ Mattson	
Payer(s):	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	08-06-2009	\$17,149.50	\$14,106.25	No	Lack of Substantial Contribution.

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
L. Jan	Reid	Analyst/Policy Expert	Self	\$185	2008	\$185
L. Jan	Reid	Analyst/Policy Expert	Self	\$185	2009	\$185

(END OF APPENDIX)