

Decision 09-12-039 December 17, 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 SUSTAINABLE CONSERVATION FOR SUBSTANTIAL CONTRIBUTIONS TO
RESOLUTION E-4137 AND DECISION 08-02-010**

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**DECISION GRANTING INTERVENOR COMPENSATION TO SUSTAINABLE
CONSERVATION FOR SUBSTANTIAL CONTRIBUTIONS TO
RESOLUTION E-4137 AND DECISION 08-02-010**

1. Summary

This decision awards Sustainable Conservation \$11,680.56 in compensation for substantial contributions to Resolution E-4137 and Decision 08-02-010. The award is a decrease of 28% from the amount requested due to reductions for duplication of efforts with other parties, failure to make a substantial contribution on some issues and a miscalculation. Today's award payment is allocated to Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company for payment. This proceeding remains open.

2. Background

Assembly Bill 1969 (approved on September 29, 2006) added Pub. Util. Code § 399.20, requiring all electrical corporations to file a specific standard tariff with the Commission.¹ The tariff must provide payment for the purchase of renewable energy output produced at an eligible electric generation facility, as specified, at the market price determined by the Commission for a period of 10, 15 or 20 years. For purposes of § 399.20, the electric generation facility must be an eligible renewable energy resource² owned and operated by a public water or wastewater agency that is a retail customer of the electrical corporation, interconnected and operated in parallel with the electrical corporation's transmission and distribution system.

¹ All code references are to the Public Utilities Code unless otherwise stated.

² As defined in § 399.12.

On July 26, 2007, the Commission adopted Decision (D.) 07-07-027, which established rules and standard contracts for the purchase of electricity from water and wastewater customers as required by § 399.20. Specifically, we required Southern California Edison Company (SCE), Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E), PacifiCorp, Sierra Pacific Power Company (Sierra), Bear Valley Electric Service (BVES – a division of Golden State Water Company), and Mountain Utilities (MU) to file and serve advice letters to transmit tariffs and standard contracts consistent with the requirements set forth in D.07-07-027.³ Resolution E-4137 resolved the advice letter filings to implement D.07-07-027.

SCE and the Center for Energy Efficiency and Renewable Technologies (CEERT) filed applications for rehearing of D.07-07-027. Both Green Power Institute and Sustainable Conservation filed responses. D.08-02-010 disposed of both rehearing applications.

In this order we address Sustainable Conservation's contributions to Resolution E-4137 and D.08-02-010.

3. Requirements for Awards of Compensation

The intervenor compensation program, set forth in Pub. Util. Code §§ 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.

³ Sierra was not required to file a standard contract.

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.

3.1. Procedural Issues

Sustainable Conservation requests compensation for its participation in Rulemaking (R.) 06-05-027 related to D.08-02-010 and also for its work related to

the adoption of Resolution E-4137.⁴ Typically, NOIs are to be filed within 30 days of the PHC of a proceeding. Alternatively, in cases where the schedule would not otherwise reasonably allow parties to identify issues within the stated timeframe, or where new issues emerge subsequent to the time set for filing, the Commission or Administrative Law Judge (ALJ) may determine an appropriate procedure for accepting new or revised NOIs. (§ 1804(a)(1); Rule 17.1.)

In R.06-05-027, NOIs were due by July 21, 2006 (*i.e.*, 30 days after the PHC). Sustainable Conservation states, however, that the August 21, 2006 Scoping Memo specifically identified biomass for the first time as an issue upon which the Commission sought comment. Sustainable Conservation filed its NOI on October 10, 2006, concurrently with a petition to intervene and before the filing of initial comments. In its NOI, Sustainable Conservation asserted it is a Category 3 customer under § 1802(b)(C), and claimed significant financial hardship. No party objected to the NOI or asserted it was untimely. An ALJ Ruling dated October 30, 2006 found the NOI to be timely filed.

The October 30, 2006 ruling, however, found that Sustainable Conservation had not established eligibility for intervenor compensation as a Category 3 customer, nor demonstrated significant financial hardship. The ruling concluded that Sustainable Conservation could further address its eligibility in a subsequent pleading or request for compensation. D.09-09-045 has since found that Sustainable Conservation meets the eligibility standards for Category 3 customer status. We apply the same finding here. (§ 1802(b)(1)(C); Category 3.)

⁴ In D.09-09-045, the Commission stated this claim was to be handled in R.08-08-009 rather than R.06-05-027.

Regarding significant financial hardship, a

... notice of intent may also include a showing by the customer that participation in the hearing or proceeding would pose a significant financial hardship. Alternatively, such a showing shall be included in the request submitted pursuant to subdivision (c).

(§ 1804(a)(2)(B).)

As is permissible, Sustainable Conservation includes its showing of significant financial hardship in its October 15, 2008 claim.

In relevant part, “significant financial hardship” means that

... in the case of a group or organization, the economic interest of the individual member of the group or organization is small in comparison to the costs of effective participation in the proceeding.

(§ 1802(g).)

We found in D.09-09-045 that Sustainable Conservation had shown its participation without an award of intervenor compensation would pose a significant financial hardship. No new or different information is presented here. We apply the same result, and find that Sustainable Conservation has successfully made its significant financial hardship showing.

On October 15, 2008, Sustainable Conservation filed its intervenor compensation claim. On February 22, 2009, Sustainable Conservation amended and refiled its timesheets to clarify the allocation of time between participants. We use the amended claim and timesheets filed on February 23, 2009 for consideration of this award. The claim was timely filed within 60 days of the closing date in R.06-05-027 (§ 1804(c).)

In view of the above, we find that Sustainable Conservation has satisfied all the procedural requirements necessary to make its request for compensation in this proceeding.

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.⁵

With this guidance in mind, we turn to the claimed contributions Sustainable Conservation made to Resolution E-4137 and D.08-02-010.

4.1. Substantial Contributions to Resolution E-4137

Sustainable Conservation states that its contributions to Resolution E-4137 were numerous. The Resolution agreed with positions taken by Sustainable Conservation on the issues of requiring SCE to offer an excess sales option, restrictions on additional incentives, and the need to address the definition of

⁵ D.98-04-059, 79 CPUC2d 628 at 653.

green attributes. Additionally, the Resolution acknowledged the importance of other policy issues raised by Sustainable Conservation, even though the Resolution did not adopt those positions.

Excess Sales: Sustainable Conservation protested two components of the excess sales option. First, as discussed in the context of the application for rehearing, Sustainable Conservation advocated for SCE to offer the excess sales option, as required in D.07-07-020.⁶ Second, Sustainable Conservation protested the fact that SCE's tariff would have allowed SCE to obtain all the green attributes associated with the generating facility, instead of only those proportionate to electricity purchased from the facility. The Resolution agreed with Sustainable Conservation on both points:

Finding 6. No other purchase requirement or model was presented, so all tariffs should offer consistent "full buy/sell" or "excess sales" options. (E-4137 at 24.);

And

Absent a stated reason otherwise, the Commission-adopted "excess sales" approach is expected to be the same for all three IOUs. SCE is therefore ordered to come into compliance with the PG&E treatment. (E-4137 at 16.)

We find that Sustainable Conservation made a significant contribution on this matter.

Additional Incentives: Sustainable Conservation pointed out that the language in PG&E's tariff could be interpreted to prohibit a customer-generator

⁶ Protest of Sustainable Conservation, California Farm Bureau Federation and Western United Dairymen to SCE Advice Letter 2148-E, August 22, 2007 at 2-3, and Reply Comments of Sustainable Conservation and California Farm Bureau on Draft Resolution E-4137, December 12, 2007.

from taking advantage of utility incentives not related to generating facilities, for example energy efficiency programs.⁷ The Resolution agrees: “This protest is upheld and PG&E is ordered to make the necessary changes in AL 3100-E and AL 3098-E.” (E-4137 at 21.)

We find that Sustainable Conservation made a significant contribution on this matter.

Definition of Green Attributes: In its protest to the advice letters, as well as in focused filings in other related dockets, Sustainable Conservation pointed out problems with the definitions of renewable energy credits and green attributes. Specific to the Resolution, Sustainable Conservation identified in its protest and comments on the draft Resolution, problems with how those terms are used in practice in the tariff.⁸ Sustainable Conservation noted that these issues are being considered in another docket, R.06-02-012, and that the tariffs may need to be revised to accommodate any modifications in that proceeding. The Resolution finds: “The protest to change the definition of Green Attributes is denied here, with the caveat that the issue should be addressed in the appropriate venue” (Resolution E-4137 at 22) and “At this time, no accommodations are necessary, but the possibility is rightly noted in the Findings” (Resolution E-4137 at 23). Furthermore, Finding 10 states that: “Definitions of Green Attributes and the ownership of tradable GHG emission credits are outside the scope of this decision, but are considered by the

⁷ Protest of California Farm Bureau Federation, Sustainable Conservation and Western United Dairymen to Pacific Gas and Electric Company Advice Letter 3100-E, August 23, 2007 at 3-4.

⁸ See August 23, 2007 Protest to PG&E Advice Letter at 4-5; August 22, 2007 Protest to SCE Advice Letter at 3-4; December 7, 2005 Comments on Draft Resolution E-4137.

Commission in R.06-02-012 and *tariffs may need to be revised to accommodate any modifications ordered in this proceeding.*" (Emphasis added.)

Sustainable Conservation submits that it made a substantial contribution on this issue by raising concerns here that have kept the definitions of green attributes at the forefront for Commission consideration. Also, Sustainable Conservation asserts it has helped to facilitate the need to address these concerns in R.06-02-012, because the outcome in that proceeding affected the tariffs at issue here.

We disagree with this assessment because we addressed the matter in another proceeding. We find that Sustainable Conservation did not make a significant contribution on this matter in this proceeding.

Interconnection Procedures: Sustainable Conservation questioned PG&E's use of the Small Generator Interconnection Procedure (SGIP), governed by the Federal Energy Regulatory Commission, rather than the Commission's Rule 21 employed by other utilities in their tariffs.⁹ Sustainable Conservation's protest on this issue objected to the Federal Energy Regulatory Commission process as being more complex and burdensome for small generators whose primary business is farming, not energy generation, and as a violation of precedent that assigns the subject to State jurisdiction, rather than to the federal government. The Resolution declined to rule on legal arguments presented by Sustainable Conservation, instead finding that either process meets the "orderly and timely interconnection procedures and processes" requirement in

⁹ August 23, 2007 Protest to PG&E Advice Letter; September 6, 2007 Protest to PG&E Advice Letter.

D.07-07-027.¹⁰ The Resolution notes that the denial of the protest is “based on a narrow reading of D.07-07-027” (at 20).

Sustainable Conservation provided analysis on issues related to PG&E’s proposed interconnection tariffs. Sustainable Conservation attempted to reach an agreement with PG&E on this issue, and filed a protest on this topic when efforts to reach an agreement were not successful. Nearly every utility subject to the Commission’s jurisdiction, except PG&E, filed advice letters using Rule 21 as the right vehicle for interconnection. Sustainable Conservation successfully argued against PG&E’s position that the federal SGIP process should be the only interconnection process available.

Sustainable Conservation should be compensated for the time it spent on this issue. The organization’s persistence on this issue has highlighted the importance of interconnection for small renewable generators. It has further alerted the Commission that it should be ready to address any interconnection problems that may arise on a case-by-case basis.

Although we did not adopt Sustainable Conservation’s specific tariff-related recommendations, we acknowledge that they helped contribute to a more thorough analysis and made a substantial contribution on this matter.

Departing Load Charges: Sustainable Conservation protested SCE’s provision that could allow for departing load charges to be applied under this tariff, in direct contravention of SCE’s departing load tariff. Sustainable Conservation requested that the departing load provisions be deleted from the

¹⁰ D.07-07-027 at 41 and 56.

tariff.¹¹ The Resolution declined to make this change, but agreed that the provision is extraneous in light of SCE's departing load tariff: "While agreeing with the protestants that this type of generation is exempt from Departing Load tariffs, CPUC staff finds that there is no compelling reason to remove § 6.6 of SCE's filing." (Resolution E-4137 at 17.)

We do not find that Sustainable Conservation made a significant contribution on this issue because departing load charges are not applicable to this tariff.

In summary, we find that Sustainable Conservation made a substantial contribution to Resolution E-4137 in 3 out of 5 areas they supported and should be compensated proportionately for these efforts.

4.2. Substantial Contributions to D.08-02-010

Applications for rehearing of D.07-07-027 were filed by SCE and CEERT. SCE objected to the requirement in D.07-07-027 for utilities to offer eligible generators an option of "full buy/sell" or "excess sales" contracts. SCE also argued that the Commission did not have the authority to expand application of the tariff beyond public water and wastewater agencies.

Sustainable Conservation filed a response to SCE's application for rehearing and explained how D.07-07-027 was correctly based on the record and the law.¹² D.08-02-010 agreed with Sustainable Conservation that the excess sales option is legal:

¹¹ Protest of Sustainable Conservation, California Farm Bureau Federation and Western United Dairymen to SCE Advice Letter 2148-E, August 22, 2007 at 5.

¹² Response of Sustainable Conservation to Application for Rehearing of Decision 07-07-027 at 2-5, September 10, 2007.

Absent any language SCE erroneously reads into § 399.20, there is no conflict between the excess sales approach we set forth in D.07-07-027 and § 399.20. The excess sales option we set forth in D.07-07-027 therefore represents a reasonable interpretation that is consistent with the plain language of § 399.20.¹³

and

... by providing both the “full” and “excess” sales options in D.07-07-027, we are acting in a manner consistent with the plain language of § 399.02 and in furtherance of the broader scheme of which § 399.20 is a part.¹⁴

D.08-02-010 also agreed with Sustainable Conservation that the Commission has broad constitutional and statutory authority and can lawfully expand the program. D.08-02-010, at 9, cited the exact case law presented in Sustainable Conservation’s Response to the application for rehearing.

Sustainable Conservation supported the application for rehearing from CEERT, agreeing with CEERT that the Commission must determine the Market Price Referent (MPR) in the renewables portfolio standard program as a method for allocating costs between regular energy charges and public goods charges. Sustainable Conservation urged the Commission to make clear that the MPR used to establish the tariff rate does not reflect the value of renewable power alone. D.08-02-010 modified Finding of Fact in D.07-07-027 to note that the MPR “... is not intended to serve as either the floor or ceiling price paid for renewables procurement generally.” (Ordering Paragraph 1.)

We find that Sustainable Conservation made a significant contribution to D.08-02-010 as outlined above and should receive full compensation for its

¹³ D.08-02-010 at 6.

¹⁴ *Ibid.* at 8.

participation subject to our examination of its reasonableness of hours and productivity.

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.

Sustainable Conservation asserts that it coordinated its efforts with other parties to avoid duplication of effort. In particular, Sustainable Conservation says it coordinated with other parties that worked on agricultural biogas issues, including Western United Dairymen and the California Farm Bureau Federation. Additionally, Sustainable Conservation reports that it helped organize protests and comments. Although some redundancy may be unavoidable (due to the similarity of parties' interests), Sustainable Conservation states that it sought to avoid such duplication to the extent possible, and to mitigate it when it was unavoidable. By coordinating efforts with the parties listed above, Sustainable Conservation concludes that it assisted in consolidating the participation of several parties to help reduce the number of filings.

Because Sustainable Conservation, Western United Dairymen, and the California Farm Bureau Federation filed protests and comments jointly, and no explanation of their respective efforts was provided, it is difficult to confirm Sustainable Conservation's claim that there was no unnecessary duplication of effort on the issues between active parties. Western United Dairymen and the

California Farm Bureau Federation have not sought compensation for their efforts nor would they likely qualify for eligibility under intervenor compensation statutes. Western United Dairymen and the California Farm Bureau Federation could have filed the same protests and comments without Sustainable Conservation, made the same points, and won on the same issues, without ratepayers having to pay anything. Sustainable Conservation's claim does not identify how much effort was contributed by each entity.

We may award full compensation to an intervenor even when some duplication occurs when the intervenor demonstrates that its participation materially supplemented, complemented, or contributed to the presentation of another party, and helped develop the record, thereby making a substantial contribution. In this claim, however, Sustainable Conservation fails to adequately demonstrate the degree to which its work materially supplemented, complemented or contributed to the presentation of Western United Dairymen and the California Farm Bureau Farm Bureau.

Therefore, we reduce Sustainable Conservations claim for substantial contributions to Resolution E-4137 by 20% to address this issue of duplication with the other parties. Absent any explanations regarding responsibilities for preparation of joint documents, this is a reasonable assumption.¹⁵ We reduce the

¹⁵ We have similarly reduced claims by other intervenors. For example, "[i]n the past, when the level of duplication was difficult to ascertain, we have applied a 'duplication discount factor' of 10% to 26% to the hours claimed by intervenors." (D.96-06-029, cited in D.96-11-040, 69 CPUC2d 253, 258.) In June 1996, we reduced the compensation of The Utility Reform Network (TURN) by 10% not based on the certainty of duplication, but because "[o]ur concern with TURN's participation is that it may have duplicated to some extent the contributions of other parties." (*Id.*) We did so again in November 1996 on a subsequent claim for compensation based not on the actuality, but the

Footnote continued on next page

remaining time allocated to E-4137 by 40% to reflect the percentage of issues (2 out of 5 issues) where Sustainable Conservation failed to make a substantial contribution on E-4137.¹⁶

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

Sustainable Conservation requests \$16,292¹⁷ for its participation in Resolution E-4137 and D.08-02-010, along with the preparation of its NOI and claim as follows:

potential, of duplication. We said: "[i]n view of this high potential for duplication, we think the 10% discount we are applying to TURN's compensation is eminently reasonable." (D.96-11-040, 69 CPUC2d 253, 259.) Absent a showing by Sustainable Conservation of the amount of contribution made by those with whom it coordinated (*e.g.*, Western United Dairymen, California Farm Bureau Federation), we are unable to decipher the amount of duplication, or the degree to which Sustainable Conservation materially supplemented, complemented, or contributed to the presentation of these parties. We, therefore, apply a reduction here of 20%.

¹⁶ Sustainable Conservation failed to identify its work by issue, as required by Commission rules. (Rule 17.4(b).) We excuse this failure given that this is Sustainable Conservation's second claim for intervenor compensation. We also do this to promote a speedier and inexpensive determination of the issues given the time Sustainable Conservation and the Commission have already spent on this claim. (Rule 1.2.)

¹⁷ Sustainable Conservation's request for compensation was for \$16,272. We use the corrected total for consideration of this award.

Work on Resolution E-4137

| Attorney/Staff | Year | Hours | Hourly Rate | Total |
|-----------------------|-------------|--------------|--------------------|--------------------|
| Allen Dusault | 2007/2008 | 14.6 | \$220 | \$ 3,212.00 |
| Jody London | 2007/2008 | 7.0 | \$180 | \$ 1,260.00 |
| Don Liddell | 2007 | 1.5 | \$300 | \$ 450.00 |
| Subtotal: | | | | \$ 4,922.00 |

Work on D.08-02-010

| Attorney/Staff | Year | Hours | Hourly Rate | Total |
|-----------------------|-------------|--------------|--------------------|--------------------|
| Allen Dusault | 2007 | 2.1 | \$220 | \$ 462.00 |
| Jody London | 2007/2008 | 21.1 | \$180 | \$ 3,798.00 |
| Don Liddell | 2007 | 20.0 | \$300 | \$ 6,000.00 |
| Subtotal: | | | | \$10,260.00 |

Preparation of NOI and Compensation Request (1/2 Rate)

| Attorney/Staff | Year | Hours | Hourly Rate | Total |
|---|-------------|--------------|---------------------|--------------------|
| Allen Dusault | 2008 | 1.5 | \$110 | \$ 165.00 |
| Jody London | 2008 | 8.0 | \$ 90 | \$ 720.00 |
| Don Liddell | 2008 | 1.5 | \$150 ¹⁸ | \$ 225.00 |
| Subtotal for intervenor compensation preparation | | | | \$ 1,110.00 |
| Expenses | | | | \$.00 |

TOTAL REQUESTED COMPENSATION \$16,292.00

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 a substantial contribution. The issues we consider to determine reasonableness are discussed below.

¹⁸ Sustainable Conservation submits timesheets for Liddell totaling his time spent on the preparation of intervenor compensation to be 1.5 hours. His compensation rate for this type of work is \$150 an hour, for a total request of \$225, not the \$185 as requested by Sustainable Conservation. We correct this error (by increasing the request for \$40), and consider the corrected amount in our award.

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.

Sustainable Conservation has documented its claim by presenting a daily breakdown of hours for its participants. It fails, however, to identify its claimed hours by issue as required by Rule 17.4(b). Sustainable Conservation must comply with this requirement in future claims. We adjust the award for duplication and failure to make a substantial contribution to parts of Resolution E-4137 as described above.

6.2. Intervenor Hourly Rates

We next take into consideration whether the claimed fees and costs are comparable to the market rates paid to experts and advocates having comparable training and experience and offering similar services.

Sustainable Conservation requests an hourly rate of \$180 for Jody London's work in 2007 and 2008. We previously approved an hourly rate of \$180 for her 2007 work in D.09-09-045. The 2007/2008 rate request of \$180 for London is reasonable, and we adopt these rates here.

Allen Dusault was awarded an hourly rate of \$220 for work performed in 2006 and 2007 in D.09-09-045. Sustainable Conservation requests an hourly rate of \$220 for Dusault's work conducted in 2007/2008. We approve the hourly rate of \$220 for Dusault's work in 2008 as well.

Sustainable Conservation requests an hourly rate of \$300 for Don Liddell for his work in 2007/2008. Liddell is a partner in the law firm of Douglass &

Liddell, specializing in energy law issues, serving producers, marketers, and end-users in the electricity, natural gas, and independent power industries.

Liddell is a regular participant before the Commission, having active representation of clients, among others, in the following proceedings:

Application (A.) 06-03-005, A.06-08-010, Investigation (I.) 05-09-005, I.08-01-026, R.07-01-041 and R.08-03-008.

Liddell's sole professional focus is energy business transactions and regulatory proceedings involving a broad array of energy-related products and services, with over 30 years of experience in the private and government sectors of the industry. Liddell was formerly Assistant General Counsel for Sempra Energy. Liddell is an Adjunct Professor of Law, University of San Diego (USD) School of Law, teaching a course in Energy Law and Policy sponsored by the Energy Policy Initiatives Center of the USD School of Law. Liddell received an LL.M. from the London School of Economics (1975), his J.D. from the University of California Hastings College of the Law (1974) and his B.A. with honors from San Diego State University (1971).

Sustainable Conservation's request for an hourly rate of \$300 for Liddell is reasonable given the range of \$300-\$535 for attorneys with 13-plus years of experience and we adopt it here.

6.3. Direct Expenses

Sustainable Conservation has no direct expenses for which it seeks compensation.

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.

Sustainable Conservation submits that they worked efficiently through the electronic filing and serving of its documents by using the Commission's e-file system to reduce costs. Sustainable Conservation incurred minimal postage costs, but makes no request for reimbursement.

Sustainable Conservation states that its emphasis in this proceeding has been to represent customers with a concern for the environment and sustainable agricultural practices, particularly renewable energy that reduces methane emissions. This focus distinguished the organization's interest from the interests represented by other consumer and environmental advocates who intervened in this case, according to Sustainable Conservation. Through its participation, Sustainable Conservation enhanced the Commission's understanding of the issues that should be considered as the Commission deliberated on how to increase the amount of small renewable distributed generation in California. Although a monetary benefit to taxpayers cannot be precisely identified, we agree that through Sustainable Conservation's participation many social benefits were addressed which, though hard to quantify, are substantial. Thus, we find that Sustainable Conservation's efforts have been productive.

8. Award

As analyzed above and set forth in the table below, we award Sustainable Conservation \$11,680.56 as follows:

| Work on Resolution E-4137 | | | | |
|---|-------------|--------------|--------------------|---------------------|
| Attorney/Staff | Year | Hours | Hourly Rate | Total |
| Allen Dusault | 2007/2008 | 14.6 | \$220 | \$3,212.00 |
| Jody London | 2007/2008 | 7 | \$180 | \$1,260.00 |
| Don Liddell | 2007/2008 | 1.5 | \$300 | \$450.00 |
| Subtotal: | | | | \$4,922.00 |
| 20% Reduction for Duplication with other parties | | | | (\$984.40) |
| 40% Reduction for Lack of Substantial Contribution | | | | (\$1,575.04) |
| Adjusted Subtotal: | | | | \$2,362.56 |

| Work on D.08-02-010 | | | | |
|---|-------------|--------------|--------------------|---------------------|
| Attorney/Staff | Year | Hours | Hourly Rate | Total |
| Allen Dusault | 2007/2008 | 2.1 | \$220 | \$462.00 |
| Jody London | 2007/2008 | 21.1 | \$180 | \$3,798.00 |
| Don Liddell | 2007/2008 | 20 | \$300 | \$6,000.00 |
| Subtotal: | | | | \$10,260.00 |
| 20% Reduction for Duplication with other parties | | | | (\$2,052.00) |
| Adjusted Subtotal: | | | | \$8,208.00 |

| Preparation of NOI and Compensation Request (1/2 Rate) | | | | |
|---|-------------|--------------|--------------------|--------------------|
| Attorney/Staff | Year | Hours | Hourly Rate | Total |
| Allen Dusault | 2008 | 1.5 | \$110 | \$165.00 |
| Jody London | 2008 | 8 | \$90 | \$720.00 |
| Don Liddell | 2008 | 1.5 | \$150 | \$225.00 |
| Subtotal for intervenor compensation preparation | | | | \$1,110.00 |
| Expenses | | | | \$0.00 |
| TOTAL AWARDED COMPENSATION | | | | \$11,680.56 |

R.06-05-027 affected the following electrical corporations: SCE, PG&E, SDG&E, PacifiCorp, Sierra, BVES, and MU. To avoid imposing an administrative burden of allocating very small shares of the award to the smaller entities, we allocate responsibility of payment of the award to SCE, PG&E, and SDG&E. We direct SCE, PG&E, and SDG&E to allocate payment responsibility

amongst them based upon their California-jurisdictional electric revenues for the 2007 calendar year, to reflect the year in which the proceeding was primarily litigated.

Pursuant to § 1807, we order PG&E, SDG&E and SCE 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 December 29, 2008, the 75th day after Sustainable Conservation filed its compensation request, and continuing until full payment of the award is made.

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. Sustainable Conservation's records should identify specific issues for which it 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 public review and 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. Sustainable Conservation has satisfied all the procedural requirements necessary to claim compensation in this proceeding. Sustainable Conservation made a substantial contribution to Resolution E-4137 and D.08-02-010 as described above and adjusted herein.

2. Sustainable Conservation requested hourly rates for its representatives that are reasonable when compared to the market rates for persons with similar training and experience.

3. The amount of this award has been reduced for duplication with other parties and for failure to make a substantial contribution on some issues in Resolution E-4137.

4. The total of the reasonable compensation is \$11,680.56.

5. The Appendix to this decision summarizes today's award.

Conclusions of Law

1. Sustainable Conservation has fulfilled the requirements of §§ 1801-1812, which govern awards of intervenor compensation, and is entitled to intervenor compensation for its claimed expenses, as adjusted herein, incurred in making substantial contributions to Resolution E-4137 and D.08-02-010.

2. Sustainable Conservation should be awarded \$11,680.56 for its contribution to Resolution E-4137 and D.08-02-010.

3. This order should be effective today so that Sustainable Conservation may be compensated without further delay.

O R D E R

IT IS ORDERED that:

1. Sustainable Conservation is awarded \$11,680.56 for its contribution to Resolution E-4137 and Decision (D.) 08-02-010.
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 Sustainable Conservation their respective shares of the award. We direct the three utilities to allocate payment responsibility among them, based on their California-jurisdictional electric revenues for the 2007 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 December 29, 2008, the 75th day after the filing date of Sustainable Conservation's request for compensation, and continuing until full payment is made.

This order is effective today.

Dated December 17, 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: | D0912039 | Modifies Decision? N |
| Contribution Decision(s): | Resolution E-4137 and D0802010 | |
| Proceeding(s): | R0605027 | |
| Author: | ALJ Mattson | |
| Payer(s): | Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company | |

Intervenor Information

| Intervenor | Claim Date | Amount Requested | Amount Awarded | Multiplier? | Reason(s) Change/Disallowance |
|--------------------------|-------------------------------|-------------------------|-----------------------|--------------------|--|
| Sustainable Conservation | 10-15-08, amended on 02-23-09 | \$16,272 | \$11,680.56 | No | duplication; lack of substantial contribution; simple miscalculation |

Advocate Information

| First Name | Last Name | Type | Intervenor | Hourly Fee Requested | Year Hourly Fee Requested | Hourly Fee Adopted |
|-------------------|------------------|-------------|--------------------------|-----------------------------|----------------------------------|---------------------------|
| Allen | Dusault | Expert | Sustainable Conservation | \$220 | 2007 | \$220 |
| Allen | Dusault | Expert | Sustainable Conservation | \$220 | 2008 | \$220 |
| Don | Liddell | Attorney | Sustainable Conservation | \$300 | 2007 | \$300 |
| Don | Liddell | Attorney | Sustainable Conservation | \$300 | 2008 | \$300 |
| Jody | London | Expert | Sustainable Conservation | \$180 | 2007 | \$180 |
| Jody | London | Expert | Sustainable Conservation | \$180 | 2008 | \$180 |

(END OF APPENDIX)