

Decision 10-10-030 October 28, 2010

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

Application of Pacific Gas and Electric Company to  
Implement and Recover in Rates the Costs of its  
Photovoltaic (PV) Program (U39E).

Application 09-02-019  
(Filed February 24, 2009)

**DECISION AWARDING INTERVENOR COMPENSATION TO CALIFORNIANS  
FOR RENEWABLE ENERGY FOR SUBSTANTIAL CONTRIBUTION TO  
DECISION 10-04-052**

<b>Claimant: Californians for Renewable Energy (CARE)</b>	<b>For contribution to Decision 10-04-052</b>
<b>Claimed: \$84,363.50</b>	<b>Awarded: \$23,237 (reduced 72%)</b>
<b>Assigned Commissioner: Michael R. Peevey</b>	<b>Assigned ALJ: Maryam Ebke</b>

**PART I: PROCEDURAL ISSUES****A. Brief Description of  
Decision:**

The decision adopted a five-year solar photovoltaic program (PV) program to develop up to 500 MWs of PV facilities in Pacific Gas and Electric Company (PG&E's) service territory. The PV program includes 250 megawatt (MWs) of utility-owned generation (UOG) and 250 MWs furnished through power purchase agreements (PPAs).

**B. Claimant must satisfy intervenor compensation requirements set forth in Public Utilities Code §§ 1801-1812:**

	<b>Claimant</b>	<b>CPUC Verified</b>
<b>Timely filing of notice of intent to claim compensation (§ 1804(a)):</b>		
1. Date of Prehearing Conference:	May 14, 2009	Yes
2. Other Specified Date for NOI:		
3. Date NOI Filed:	June 1, 2009	Yes
4. Was the notice of intent timely filed?		Yes

**Showing of customer or customer-related status (§ 1802(b)):**

5. Based on ALJ ruling issued in proceeding number:	A.09-02-019	Yes
6. Date of ALJ ruling:	September 1, 2009	Yes
7. Based on another CPUC determination (specify):		
		Yes
<b>Showing of “significant financial hardship” (§ 1802(g)):</b>		
9. Based on ALJ ruling issued in proceeding number:	A.09-02-019	Yes
10. Date of ALJ ruling:	September 1, 2009	Yes
11. Based on another CPUC determination (specify):		
12. Has the claimant demonstrated significant financial hardship?		Yes
<b>Timely request for compensation (§ 1804©):</b>		
13. Identify Final Decision	D.10-04-052	Yes
14. Date of Issuance of Final Decision:	April 28, 2010	Yes
15. File date of compensation request:	June 27, 2010	Yes
16. Was the request for compensation timely?		Yes

**PART II: SUBSTANTIAL CONTRIBUTION****Claimant’s description of its claimed contribution to the final decision:**

<b>Contribution</b>	<b>Citation to Decision or Record</b>	<b>Showing Accepted by CPUC</b>
1. CARE endorsed cost-of-service ratemaking in its testimony and in its briefs. CARE supported cost-of-service ratemaking in Oral Argument.	P. 25 of D.10-04-052	While the Decision does not specifically reference CARE’s contribution on this issue, we agree that CARE’s work in this area clearly influenced the Commission’s decision making process in “whole or in part” as defined in Section 1802.
2. CARE recommended a financial incentive to minimize program costs.	P. 31-32 of D.10-04-052	Yes
3. CARE recommended accelerating	P. 51 of D.10-04-052	We do not agree with CARE’s claim of substantial

<p>the PPA portion of the proposed PG&amp;E solar PV Program to take advantage of the federal tax grant program pursuant to section 1603 of the American Recovery and Reinvestment Act of 2009.</p>		<p>contribution on this issue. The decision at 51 states “we also reject CARE’s proposal to allow all 250 MW of capacity on the PPA side of the program to be developed in 2010 in order to take advantage of the Investment Tax Credit (ITC) grant program. Were market conditions, including access to capital and PV prices, to remain unchanged, CARE’s assertion that allowing all of this capacity to begin development in 2010 would be reasonable as it would reduce costs to ratepayers. However, as already stated we do not believe this to be the case. In addition to expectations of future declines in PV costs, we also believe that as the economy recovers, the availability of tax equity investment will be restored. CARE’s argument implies that unless PPA projects begin construction this year, ratepayers will forgo the benefits of the ITC grant program. While strictly speaking they may forgo the grant, we believe that these grant monies will be largely replaced by tax equity investment as investors with tax appetite take advantage of the ITC as well as the Modified Accelerated Cost Recovery System (MACRS) which allows for the accelerated depreciation of solar assets</p>
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		<p>and the associated tax benefits this provides. Given these considerations, we will adopt the schedule for an annual solicitation of 50 MWs for PPAs. For the same reasons, we will adopt a 50 MW per year for the UOG portion of the PV Program. We also allow PG&amp;E to accrue unbuilt MWs from a given year to the next year. In other words, if PG&amp;E elects to build less than the authorized annual capacity, or if the PPA solicitation results in the selection of less MW than allotted, the remaining MWs for that year will be added to the next year's solicitation. This will ensure that ratepayers will receive the benefits of potential price decreases in the future."</p> <p><i>See</i> disallowances Section III, Part C at 7.</p>
4. CARE recommended restricting construction of ground-mount solar PV arrays on agricultural lands.	P.10 of D.10-04-052	Yes
5. CARE states that the PV Program would allow additional electric generation during peak demands eliminating the need to operate fossil-fueled plants that are often cited in lower-income residential neighborhoods. For that reason, CARE supports the application.	P.13 of D.10-04-052	Yes

**A. Duplication of Effort (§§ 1801.3(f) & 1802.5):**

	<b>Claimant</b>	<b>CPUC Verified</b>
<b>a. Was DRA a party to the proceeding?</b>	Yes	Correct
<b>b. Were there other parties to the proceeding?</b>	Yes	Correct
<b>c. If so, provide name of other parties:</b> <p>The Utility Reform Network, Greenlining Institute, Consumer Federation, San Diego Gas And Electric Company, Direct Access Customer Coalition/Western Power Trading Forum/The Alliance For Retail Energy Markets, Coalition of California Utility Employees, Southern California Edison Company, First Solar, The Solar Alliance, The California Solar Industries Association, Agricultural Energy Consumers Association, California Farm Bureau Federation and California Large Energy Consumers Association.</p>		Correct
<b>d. Describe how you coordinated with DRA and other parties to avoid duplication or how your participation supplemented, complemented, or contributed to that of another party:</b> <p>CARE met with the Division of Ratepayer Advocates (DRA), TURN and PG&amp;E to discuss the issues. The meetings generally took place during public meetings scheduled for all parties. However, there was an additional meeting on March 27, 2009, and a conference call on April 26, 2009.</p>		Correct

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

<b>Claimant's explanation of how its participation bore a reasonable relationship with benefits realized through claimant's participation</b>	<b>CPUC Verified</b>
<p>CARE's recommendations were part of the basis for the Commission's approval of cost-of-service ratemaking for the UOG portion of the application. PG&amp;E claimed that it would not be able to construct the UOG portion of the PV program without cost-of-service ratemaking; reimbursement by payments comparable to the costs achieved by PPAs may not be adequate. CARE supported the application because CARE represents the people who live near the fossil-fueled power plants that would be operated for more hours if the PG&amp;E Solar PV Program is not implemented. Therefore, there is a public benefit of reduced Green House Gas emissions as well as other air emissions by the Commission's decision. Some other interveners: DRA, TURN, and the Greenlining Institute all opposed cost-of-service ratemaking.</p>	<p>After the reductions and disallowances we make to this claim, the remainder of CARE's hours are reasonable and should be compensated.</p>

**B. Specific Claim :**

CLAIMED						CPUC AWARD			
ATTORNEY AND ADVOCATE FEES									
Item	Year	Hours	Rate \$	Basis for Rate*	Total \$	Year	Hours	Rate \$	Total \$
Martin Homec	2009	93.0	551	D.08-04-010	51,243	2009	43.2	185	7,992
Martin Homec	2010	17.0	551	D.08-04-010 <sup>1</sup>	9,336	2010	15.0	185	2,775
Subtotal: \$60,579						Subtotal: \$10,767			
EXPERT FEES									
Item	Year	Hours	Rate \$	Basis for Rate*	Total \$	Year	Hours	Rate \$	Total \$
Juliette Anthony	2009	80.0	135	Adopted here	10,800	2009	46.45	125	5,806
Juliette Anthony	2010	15.0	135	Adopted here	2,025	2010	15.0	125	1,875
Michael Boyd	2009	46.5	145	D.10-05-046	6,742.50	2009	11.1	135	1,499
Michael Boyd	2010	19.0	145	D.10-05-046	2,775	2010	15.1	135	2,039
Lynne Brown	2010	2.0	135	D.10-05-047	270	2010	2.0	125	250
Subtotal: \$22,612.50						Subtotal: \$11,489			
INTERVENOR COMPENSATION CLAIM PREPARATION **									
Item	Year	Hours	Rate \$	Basis for Rate*	Total \$	Year	Hours	Rate \$	Total \$
Martin Homec	2009	3.0	275	D.08-04-010	825	2009	3.0	92.50	278
Martin Homec	2010	6.0	275	D.08-04-010	1,650	2010	4.0	92.50	370
Juliette Anthony	2010	2.0	67.50	D.07-12-007	135	2010	2.0	67.50	135
Michael Boyd	2009	1.0	72.50	D.10-05-046	72.50	2009	1.0	72.50	73
Michael Boyd	2010	2.0	72.50	D.10-05-046	145	2010	2.0	72.50	145
Subtotal: \$2,832						Subtotal: \$1,001			

<sup>1</sup> CARE's requests for rehearing of D.09-08-021 and D.09-05-012 challenging, among other things, the hourly rates established for Homec, were denied in D.09-07-053 and D.10-06-050. Here, we apply the previously adopted rate of \$185 to his 2009 and 2010 work. Resolution ALJ-247 disallows COLA increases for 2010 intervenor work, so we apply the same hourly rate of \$185 to his 2010 work in this proceeding.

<b>TOTAL REQUEST: \$86,023.50</b>	<b>TOTAL AWARD: \$23,237<sup>2</sup></b>
<p>*If hourly rate based on CPUC decision, provide decision number; otherwise, attach rationale.</p> <p>**Reasonable claim preparation time typically compensated at ½ of preparer's normal hourly rate.</p> <p>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. Claimant's records should identify specific issues for which it seeks compensation, the actual time spent by each employee or consultant, the applicable hourly rates, fees paid to consultants and any other costs for which compensation was claimed. The records pertaining to an award of compensation shall be retained for at least three years from the date of the final decision making the award.</p>	

### **C. CPUC Adoptions, Disallowances & Adjustments:**

<p><i>We have carefully reviewed CARE's timesheets and its claim of how the hours spent by its attorney and experts did not duplicate efforts and were necessary in this proceeding. We make adjustments and disallowances here where we disagree with these assertions and find that duplication of efforts remain, the hours spent on tasks are excessive, or in areas where we find that a substantial contribution was not made.</i></p>	
<b>Substantive Issues</b>	
Reading and reviewing PG&E Solar PV application	On 03/06/09 and 03/24/09 CARE logs a total of 6 hrs for reading PG&E's Solar PV Program application between three participants (2 hrs Homec, 2 hrs Anthony and 2 hrs for Boyd). We find these efforts to be duplicative and excessive. Two other intervenors in this proceeding accomplished this task in 2.25 hrs and 3.5 hrs. We approve 3.5 hrs for this task. To achieve this adjustment, we reduce the 2009 hours for each participant by .83 hrs.
Reviewing application for PG&E meeting	On 03/27/09, CARE again requests 4 hrs for reviewing application for PG&E meeting between three participants (2 hrs Homec, 1 hr Anthony and 1 hr Boyd). We disallow all of these hours. As listed above, we have compensated CARE for these efforts.
Meeting with PG&E	On 03/27/07, CARE logs a total 4.5 hrs (1.5 Homec, 1.5 Anthony and 1.5 Boyd) for its attorney and two experts to attend a meeting with PG&E. We allow the attendance of CARE's attorney Homec and expert Anthony and disallow the 1.5 hrs for Boyd's attendance at the same meeting. We find the attendance of three participants at the same meeting to be excessive. The adjusted hours more closely represents our standards on reasonableness of hours.
2009 Anthony	We disallow 1.5 hours of Anthony's time participating in a PG&E workshop on 4/27/09. We have previously compensated Homec for his attendance at the same workshop.
2009 Anthony	We disallow 2 hrs of Anthony's time spent on issue #3. We have previously determined (see page 4) that CARE did not make a substantial contribution on this issue.
Prehearing conference	CARE requests a total of 11 hours (3 hrs Homec, 4 hrs Anthony and 4 hrs Boyd) for drafting and editing its Prehearing Conference Statement. We find the hours spent on this task excessive given the brevity of the document-4 pgs). We

<sup>2</sup> Totals rounded to nearest dollar amount.

statement	approve a more reasonable amount of time of 8 hrs. To achieve this disallowance, we reduce by 1 hr. all participant hours.
Filing and Serving of CARE's NOI	CARE requests 1 hr for Homec's time spent for the "filing and serving" of CARE's NOI on 05/27/09. We disallow this time as it is clerical in nature and is subsumed in the fess paid to attorneys.
CARE's hours spent on its rebuttal testimony to Joint Solar Parties	CARE requests compensation for 35 hrs (16 hrs Homec, 14 hrs Anthony and 5 hrs Boyd) for "researching, writing and reviewing" rebuttal testimony filed on September 2, 2009. On September 8, 2009, PG&E filed a motion to strike the rebuttal testimony of Juliette Anthony and Michael Boyd. The motion was granted by ALJ Ebke on record on September 10, 2010. The motion struck 95 % of the rebuttal testimony filed by CARE. We apply the same 95% reduction to the hours CARE's participants spent on this task(15.2 hrs Homec, 13.3 hrs Anthony and 4.75 hrs Boyd).
CARE's attendance at evidentiary hearings	CARE requests 8 hrs of compensation each for Homec and Anthony for attendance at an evidentiary hearing held on 09/10/09. We reduce this time by one hour for each of participants, equal to the same amount of time compensated to other intervenors in attendance at the same hearing.  CARE requests 8 hrs of compensation each for Homec and Anthony at an evidentiary hearing held on 9/14/09. We reduce this time by 3 hrs for each of these participants, equal to the same amount of time compensated to other intervenors in attendance at the same hearing.
CARE's 2009 hours preparing its opening brief	CARE requests 17 hrs (7 hr. Homec, 6 hrs. Anthony and 4 hrs Boyd) to prepare its opening brief. We find CARE's hours to be excessive given the scope of the document (6 pages). We approve 12 hrs for this task. To achieve this disallowance, we reduce each participant by 1.67 hrs.
Preparation and review of Exparte Notice	CARE requests 5 hrs (Homec 1 hr, Boyd 2 hrs and 2 hrs Brown) for preparation of a 2 page Exparte Notice filed on 04/17/10. We find this time to be excessive. We allow all of Brown's hours, as the author of the document, and disallow Homec and Boyd's time spent on this task.
CARE's hours categorized as "1-5", "All" and other non-allocated hours	CARE has several "1-5", "All" and other non-allocated hours which were assumingly devoted to "general preparation" work rather than issue specific work. We reduce these hours for Homec, Anthony and Boyd to be proportionately equal to the disallowances we outline above.  <div style="display: flex; justify-content: space-between;"> <div> Homec 2009 (27%)=25.1 hrs.  Anthony 2009 (21%)=16.8 hrs  Boyd 2009 (25%)=11.6 hrs. </div> <div> Homec 2010 (6%)=1.0 hrs  Boyd 2010 (10%)=1.9 hrs </div> </div>



Hourly Rates	
2009-Boyd hourly rate	In D.10-05-047, the Commission approved a rate of \$135 for Boyd's 2008 work. ALJ-235 disallows Cost of Living Allowance (COLA) increases for 2009 intervenor work. As such, we apply the same 2008 hourly rate to Boyd's 2009 work
2010-Boyd hourly rate	ALJ 247 disallows COLA increases for 2010 intervenor work. As such, we apply Boyd's 2009 rate of \$135 to Boyd's 2010 work here.
2010-Brown hourly rate	In D.09-08-021, the Commission approved a rate of \$125 for Brown's 2009 work. ALJ-235 disallows COLA increases for 2010 intervenor work. As such, we apply Brown's 2009 rate of \$125 to Brown's 2010 work here.
2009-Anthony hourly rate	The Commission has previously awarded compensation to Anthony as a community advocate at \$115/ hour for work in 2006 ( <i>See</i> D.07-12-007, at 32.) CARE requests rates of \$135 for Anthony's 2009 and 2010 work, but CARE provides no biographical statement for Anthony other than its request for a 17% increase over the past 4 years. Absent this information, we apply 3% COLA increases to Anthony's previously adopted rate for years 2007 and 2008 and then apply the 2008 rate of \$125 to her work in 2009 and 2010 here. <sup>3</sup>
2010-Anthony hourly rate	ALJ 247 disallows COLA increases for 2010 intervenor work. As such, we apply Anthony's 2009 rate of \$125 to her 2010 work here.
<b>Boyd and Brown hourly rates</b>	<b>Intervenors relying on previous Commission decisions to justify hourly rate requests are specifically instructed to provide the decision number in support of their request or to otherwise, attach rationale for the rates they are requesting. Rather than citing to decisions that adopted the hourly rates requested here, CARE instead cited to decisions that addressed claims in which it requested the same hourly rates, but where the requested hourly rates were NOT adopted. We find this practice to be deceptive. In D.07-12-007 at 26 in R.06-03-004, CARE was warned that if they engaged in this practice in the future, "an intervenor risks sanctions, particularly where rates sought are higher than the rates the Commission previously found to be reasonable". These same conditions exist here. Rather than impose a sanction at this time we caution CARE that future claims submitted after the date of this decision that include this deceptive practice will be reduced by the amount of a sanction. We will deduct from any future award a sanction based on the following formula: S=(X-Y) H where S= \$Sanction, X= \$/hour improperly requested, Y= \$/hour most recently approved, H= hours claimed.</b>
Compensation Preparation	
2010 Homec Intervenor Compensation	We have considered the reasonableness of the 14 hours CARE request for preparation of its NOI and compensation request. We find them excessive considering the claim covers a period of time just over a year and relates to only

<sup>3</sup> Resolution ALJ-235 disallows COLA increase for 2009 intervenor work and ALJ-247 disallows COLA increases for 2010 intervenor work.

Preparation	one decision. Of the 14 hours CARE requests, 9 hrs are logged for Homec. CARE's advocates Anthony and Boyd spent less time for claim preparation even though CARE's timesheets indicate that both parties were fully involved in this proceeding from the onset. Given their knowledge of this proceeding, either of these two individuals could have prepared the claim. CARE should not engage in the practice of assigning claim preparation to its senior attorney as this is not the type of task that requires such expertise. We allow a more reasonable amount of time of 12 hours. To achieve the 2 hour disallowance, we reduce Homec's hours. The adjusted allowance is a more reasonable amount of time given a project of this complexity and is comparable to the same amount of hours we approve for other intervenors in this same proceeding.
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#### **PART IV: OPPOSITIONS AND COMMENTS**

**A. Opposition: Did any party oppose the claim?**

No

**B. Comment Period: Was the 30-day comment period waived (*see* Rule 14.6@ (6))?**

No

**No comments were filed.**

#### **FINDINGS OF FACT**

1. Claimant has made a substantial contribution to Decision 10-04-052.
2. The claimed fees and costs, as adjusted herein, are comparable to market rates paid to experts and advocates having comparable training and experience and offering similar services.
3. The total of reasonable contribution is \$23,237.

#### **CONCLUSION OF LAW**

1. The claim, with any adjustment set forth above, satisfies all requirements of Public Utilities Code §§ 1801-1812.

**ORDER**

1. Claimant is awarded \$23,237.
2. Within 30 days of the effective date of this decision, Pacific Gas and Electric Company shall pay claimant the total award. 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 11, 2010, the 75<sup>th</sup> day after the filing of claimant's request, and continuing until full payment is made.
3. The comment period for today's decision is not waived.

This decision is effective today.

Dated October 28, 2010, at San Francisco, California.

MICHAEL R. PEEVEY

President

JOHN A. BOHN

TIMOTHY ALAN SIMON

NANCY E. RYAN

Commissioners

Commissioner Dian M. Grueneich, being  
necessarily absent, did not participate.

**APPENDIX****Compensation Decision Summary Information**

<b>Compensation Decision:</b>	D1010030	<b>Modifies Decision?</b> No
<b>Contribution Decision(s):</b>	D1004052	
<b>Proceeding(s):</b>	A0902019	
<b>Author:</b>	ALJ Maryam Ebke	
<b>Payer(s):</b>	Pacific Gas and Electric Company	

**Intervenor Information**

<b>Intervenor</b>	<b>Claim Date</b>	<b>Amount Requested</b>	<b>Amount Awarded</b>	<b>Multiplier?</b>	<b>Reason Change/Disallowance</b>
CALifornians for Renewable Energy	06-28-10	\$84,363.50	\$23,237	No	adjusted hourly rates; unproductive effort; excessive hours; failure to make a substantial contribution.

**Advocate Information**

<b>First Name</b>	<b>Last Name</b>	<b>Type</b>	<b>Intervenor</b>	<b>Hourly Fee Requested</b>	<b>Year Hourly Fee Requested</b>	<b>Hourly Fee Adopted</b>
Martin	Homec	Attorney	CALifornians for Renewable Energy	\$551	2009	\$185
Martin	Homec	Attorney	CALifornians for Renewable Energy	\$551	2010	\$185
Juliette	Anthony	Advocate	CALifornians for Renewable Energy	\$135	2009	\$125
Juliette	Anthony	Advocate	CALifornians for Renewable Energy	\$135	2010	\$125
Michael	Boyd	Expert	CALifornians for Renewable Energy	\$145	2009	\$135
Michael	Boyd	Expert	CALifornians for Renewable Energy	\$145	2010	\$135
Lynne	Brown	Advocate	CALifornians for Renewable Energy	\$135	2010	\$125

**(END OF APPENDIX)**