

Decision 08-12-015 December 4, 2008

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

In the Matter of the Application of SOUTHERN CALIFORNIA EDISON (U 338-E) for Approval of Results of Summer 2007 Track of its New Generation Request for Offers and for Cost Recovery.

Application 06-11-007  
(Filed November 15, 2006)

**DECISION GRANTING INTERVENOR COMPENSATION  
TO CALIFORNIANS FOR RENEWABLE ENERGY, INC. FOR SUBSTANTIAL  
CONTRIBUTION TO DECISION 07-01-041**

This decision awards CALifornians for Renewable Energy, Inc. (CARE) \$20,729.50 in compensation for its substantial contributions to Decision (D.) 07-01-041. This is a decrease of \$15,642.50 (43%) from the amount requested by CARE, due to excessive hours, lack of substantial contribution to D.07-04-049, and incorrect hourly rates.

Today's award payment will be paid by Southern California Edison Company (SCE). This proceeding is closed.

**1. Background**

In Application 06-11-007, SCE requested authorization to enter into a 10-year power purchase agreement (PPA) with Long Beach Generation, LLC (LBG) with a delivery period of August 1, 2007 through July 31, 2017. D.07-01-041 granted SCE's request and ordered SCE to apply the cost sharing mechanism from D.06-07-029 and allocate the benefits and costs of the LBG PPA

to all benefiting customers.<sup>1</sup> D.07-04-049 denied the application filed jointly by The Utility Reform Network (TURN) and the Division of Ratepayer Advocates (DRA) for rehearing of D.07-01-041. CARE also filed an application for rehearing of D.07-01-041, but on April 26, 2007, CARE filed a motion requesting to withdraw its application for rehearing. This motion was granted and the proceeding was closed.

## **2. Requirements for Awards of Compensation**

The intervenor compensation program, set forth in Pub. Util. Code §§ 1801-1812,<sup>2</sup> 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, 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).)

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<sup>1</sup> D.07-01-041, p. 1.

<sup>2</sup> All subsequent statutory references are to the Public Utilities Code unless otherwise indicated.

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**

Under § 1804(a)(1) and Rule 17.1(a)(1), a customer who intends to seek an award of intervenor compensation must file an NOI before certain dates.

The prehearing conference in this matter was held on November 27, 2006. CARE filed a timely NOI on December 11, 2006.

On May 16, 2006, Administrative Law Judge (ALJ) Dorothy J. Duda issued a ruling in Rulemaking 06-03-004 determining that CARE was a customer pursuant to § 1802 (b)(1)(C) and that CARE had also demonstrated significant financial hardship according to 1804(b)(1). D.07-01-041 commenced within a year of this ruling, thus establishing a rebuttable presumption of eligibility.

CARE filed its request for compensation on July 23, 2007, within 60 days of D.07-04-049, issued on May 24, 2007. On August 22, 2007, SCE filed an opposition to CARE’s request for intervenor compensation citing both the

unreasonableness of hours claimed and arguing that CARE failed to make a substantial contribution in the proceeding. In response to SCE's opposition, CARE filed a rebuttal statement in support of its request for an award of intervenor compensation. CARE 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).) Secondly, 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.<sup>3</sup>

With this guidance in mind, we turn to the claimed contributions CARE made to the proceeding.

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<sup>3</sup> D.98-04-059, 79 CPUC2d 628 at 653.

CARE participated in all phases of the proceeding actively representing the interest of its low-income and people of color members. In particular, CARE challenged the cost of the PPA to ratepayers, as well as the environmental and socioeconomic impacts the plant would have on its members and the public based on: (1) its costs to SCE ratepayers; and (2) CARE's concern about the potential environmental and socioeconomic impact. To address the environmental concerns, CARE requested a California Environmental Quality Act (CEQA) review of the Long Beach project before the Commission, before the Port of Long Beach, and the city of Long Beach.

CARE cites in support of its claim that it made a substantial contribution. (D.07-01-041 at pp. 17 and 18.) The decision describes CARE's efforts as follows:

As CARE succinctly states "SCE may be paying way to[o] much to get some old and inefficient peaker turbines back in operation. According to CARE, it may be significantly cheaper to bring new efficient simple-cycle turbines online instead."<sup>4</sup> In addition to the cost of the LBG project, CARE's other concern is the environmental consequences of repowering the Long Beach facility since the area where the units are located is contaminated with asbestos. CARE is understandably skeptical that LBG can meet all the environmental application and permitting milestones in time to have the units repowered and on-line by August 1, 2007. CARE even opines that the repowering may trigger review under the California Environmental Quality Act (CEQA) and that process can take as long as two to three years. CARE is also interested in LBG's credit worthiness and whether that poses a risk to ratepayers. In summary, CARE asks that the application be denied since the units are expensive and dirty.

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<sup>4</sup> CARE's Testimony, Exhibit 13, p. 3.

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LBG replied to CARE's arguments in its Reply Comments. In particular, LBG addresses the environmental challenges brought by CARE and states that LBG is pressing on with all applicable environmental permitting and review requirements in an expeditious manner, and if any permit or application is denied, then that lies with the other agency and not with this Commission. In addition, CARE makes numerous references to the Commission's deprivation of CARE's rights because the Commission is not undertaking a CEQA review. LBG asserts that the Port of Long Beach has a CEQA process underway that is expected to be concluded well before the August 1, 2007 on-line date for the project. As part of its CEQA review, the Port of Long Beach will conduct a public review process and CARE and its members may comment on CEQA issues during the comment period.

The issues raised by CARE served to supplement the record with evidence and material allowing the Commission to render its decision. CARE's perspective is unique from other intervenors because it represents the interests of low income residential customers of color who actually reside within, and who constitute the most directly and severely impacted communities in the Long Beach project area, as well as also representing the community interests of residential customers who live in Long Beach.

CARE filed an Application for Rehearing of D.07-01-041, but withdrew the request when it settled its outstanding issues with Southern California Edison and other parties outside of the proceeding.

CARE will not be allowed compensation for the Rehearing request because the filing repeated CARE's comments to the PD and because the settlement it entered into was not evaluated in this proceeding.

## 5. Contributions of Other Parties

Section 1801.3(f) requires an intervenor to avoid participation that unnecessarily 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 if its participation materially supplements, complements, or contributes to that of another party if that participation makes a substantial contribution to the Commission order.

CARE coordinated its efforts with other parties including TURN and DRA to avoid duplication. CARE worked with the Applicant both prior to intervening and also in the early stages of the proceeding. Additionally, CARE joined efforts with other public interest advocates, including the Coalition for a Clean and Safe Environment and Long Beach Citizens for Utility Reform.

## 6. Reasonableness of Requested Compensation

CARE requests \$36,372.00 for its participation in this proceeding, as follows:

Work on Proceeding				
Attorney/Staff	Year	Hours	Hourly Rate	Total
Michael Boyd	2006	76.5	\$130.00	\$ 9,945
Michael Boyd	2007	13.0	\$130.00	\$ 1,690
Lynne Brown	2006	28.0	\$110.00	\$ 3,080
Lynne Brown	2007	5.0	\$110.00	\$ 550
Bill Powers	2006	59.5	\$200.00	\$11,900
Cory Briggs	2007	33.0	\$250.00	\$ 8,250
<b>Subtotal:</b>				<b>\$35,415</b>
Preparation of NOI and Compensation Request				
Attorney/Staff	Year	Hours	Hourly Rate	Total
Michael Boyd	2007	10.0	\$ 65.00	\$ 650.00
<b>Subtotal Hourly Compensation:</b>				<b>\$ 650.00</b>

<b>Expenses</b>	\$ 307.00
<b>Total Requested Compensation</b>	<b>\$36,372.00</b>

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:

### **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's decisions are reasonable by determining to what degree the hours and costs are related to work performed and necessary for the substantial contribution.

CARE documented its claimed hours by presenting a breakdown of the hours of its attorneys and experts, accompanied by a brief description of each activity. Although CARE's participation in this proceeding was important and valuable, the number of hours claimed for compensation is excessive in light of the volume and complexity of certain tasks performed when compared to the volume, complexity and quality of the work the intervenor produced. A review of the record indicates that excessive hours have been requested for the following tasks, and the Commission has reduced them for purposes of reasonable compensation:

<b>TASK</b>	<b>Hours Requested</b>	<b>Hours Approved</b>
Review SCE's Application, Testimony, Declarations, and Exhibits (redacted and unredacted) November 2006	40.5	30.5
Prepare for Prehearing Conference November 2006	22.5	7.7
Prepare Testimony, Declarations, etc November 2006	52.0	32.0



<b>TASK</b>	<b>Hours Requested</b>	<b>Hours Approved</b>
Preparation of five-page opening brief December 2006 – excessive	16.0	10.0
Work on two-page reply comments on Proposed Decision (PD) – Reply comments failed to comply with Rule 14.5	12.0	2.0
Application for rehearing (9 pages). – application repeats CARE’s comments on PD/CARE withdrew its application for rehearing.	23.0	0

The reduction in compensation (84.0 hrs) was proportionally reduced for all participants in these activities based on time sheet records. As a result the hours upon which we award compensation are:

<b>Work on Proceeding</b>				
<b>Attorney/Staff</b>	<b>Year</b>	<b>Hours</b>	<b>Hourly Rate</b>	<b>Total</b>
Michael Boyd	2006	59.5	\$115.00	\$ 6,842.50
Michael Boyd	2007	6.0	\$125.00	\$ 750.00
Lynne Brown	2006	11.0	\$100.00	\$ 1,100.00
Lynne Brown	2007	3.0	\$110.00	\$ 330.00
Bill Powers	2006	42.5	\$200.00	\$ 8,500.00
Cory Briggs	2007	9.0	\$250.00	\$ 2,250.00
<b>Subtotal Hourly Compensation</b>				<b>\$19,772.50</b>
<b>Preparation of NOI and Compensation Request</b>				
<b>Attorney/Staff</b>	<b>Year</b>	<b>Hours</b>	<b>Hourly Rate</b>	<b>Total</b>
Michael Boyd	2007	10.0	\$ 65.00	\$ 650.00
<b>Subtotal Compensation Request:</b>				<b>\$ 650.00</b>
<b>Expenses</b>				<b>\$ 307.00</b>
<b>Total Award</b>				<b>\$20,729.50</b>

## **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 offering similar services.

CARE requests a single hourly rate of \$130 for work performed by Boyd for 2006 and 2007. The Commission has previously compensated Boyd in 2006 at an hourly rate of \$115 per hour in D.07-12-007, and that rate is adopted here. In 2007, using a formula of a 3% increase for a cost of living allowance in addition to a 5% step increase, hourly compensation at a rate of \$125 per hour is reasonable and we adopt it here. Brown has previously been compensated at a rate of \$100 per hour in 2006 for D.07-12-007 and we adopt this rate here. In 2007, using a formula of a 3% increase for a cost of living allowance in addition to a 5% step increase, compensation at a rate of \$110.00 per hour for 2007 is reasonable and is adopted here. In 2003, the Commission previously compensated Powers at a rate of \$185 per hour in D.06-04-018. Applying a formula of a 3% cost of living allowance, CARE's request for his compensation in 2006 at a rate of \$200 per hour is reasonable and is adopted here. In Boyd's email dated August 7, 2008 to the Commission, he indicates that Briggs is an attorney, licensed to practice law in the State of California since 1995. Briggs also holds a Masters of Law degree in environmental law and a Masters of Arts degree in philosophy. The majority of his law practice involves public-interest law, emphasizing litigation under CEQA. CARE's request for an hourly compensation rate of \$250 per hour for his work in 2007 is reasonable when compared to the market rates paid to experts and advocates having comparable training and experience and offering similar services, and we adopt it here.

### **6.3. Direct Expenses**

The itemized direct expenses submitted by CARE include the following:

Transportation and Parking	\$ 29.00
Travel	\$278.60
Total Expenses	\$307.60

The cost breakdown included with the request shows the miscellaneous expenses to be commensurate with the work performed. CARE's travel expenses are for its out-of-town expert and not related to routine commuting. We find these costs reasonable.

## **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, pp. 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.

It is important to note that in many instances, CARE claimed excessive hours for its work and our award reflects the unreasonableness of claimed hours. With the reductions in hours, CARE's efforts were productive although not quantifiable.

## **8. Award**

As set forth in the table above, we award CARE \$20,729.50.

We direct 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 October 6, 2007, the 75<sup>th</sup> day after CARE 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. CARE'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.

## **9. Comments on Proposed Decision**

This is an intervenor compensation matter. Accordingly, as provided by Rule 14.6(c)(6) of the Commission's Rules of Practice and Procedure, normally we waive the otherwise applicable 30-day public review and comment period. Because the Commission is significantly reducing the award, we provide parties with the opportunity to submit comments on this proposed decision. Comments were due by November 18, 2008. No comments were filed.

## **10. Assignment of Proceeding**

President Michael R. Peevey is the assigned Commissioner, and Carol A. Brown is the assigned ALJ in this proceeding.

## **Findings of Fact**

1. CARE has satisfied all the procedural requirements necessary to claim compensation in this proceeding.
2. CARE made a substantial contribution to D.07-01-041 as described herein.
3. CARE did not make a substantial contribution to D.07-04-049.
4. CARE requested hourly rates for its representatives that, as adjusted herein, are reasonable when compared to the market rates for persons with similar training and experience.
5. CARE's request for compensation has been reduced to reflect a more reasonable amount of hours for the work it performed.
6. CARE requested related expenses that are reasonable and commensurate with the work performed.
7. The total of the reasonable compensation is \$20,729.50.

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

**Conclusions of Law**

1. CARE 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 D.07-01-041.

2. CARE should be awarded \$20,729.50 for its contribution to D.07-01-041.

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

**O R D E R**

**IT IS ORDERED** that:

1. CALifornians For Renewable Energy, Inc. (CARE) is awarded \$20,729.50 as compensation for its substantial contributions to Decision 07-01-041.

2. Within 30 days of the effective date of this decision, Southern California Edison Company shall pay CARE 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 October 5, 2007, the 75<sup>th</sup> day after the filing date of CARE's request for compensation, and continuing until full payment is made.

3. Application 06-11-007 is closed.

This order is effective today.

Dated December 4, 2008, at San Francisco, California.

MICHAEL R. PEEVEY

President

DIAN M. GRUENEICH

JOHN A. BOHN

RACHELLE B. CHONG

TIMOTHY ALAN SIMON

Commissioners

**APPENDIX**

<b>Compensation Decision:</b>	D0812015	Modifies Decision? No
<b>Contribution Decision(s):</b>	D0701041	
<b>Proceeding(s):</b>	A0611007	
<b>Author:</b>	ALJ Brown	
<b>Payer(s)</b>	Southern California Edison 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, Inc.	07-23-07	\$36,372	\$20,729.50	No	incorrect hourly rates; lack of substantial contribution; excessive hours.

**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>
Michael	Boyd	Expert	CALifornians For Renewable Energy, Inc.	\$130	2006	\$115
Michael	Boyd	Expert	CALifornians For Renewable Energy, Inc.	\$130	2007	\$125
Lynne	Brown	Advocate	CALifornians For Renewable Energy, Inc.	\$110	2006	\$100
Lynne	Brown	Advocate	CALifornians For Renewable Energy, Inc.	\$110	2007	\$110
Bill	Powers	Engineer	CALifornians For Renewable Energy, Inc.	\$200	2006	\$200
Cory	Briggs	Attorney	CALifornians For Renewable Energy, Inc.	\$250	2007	\$250

**(END OF APPENDIX)**