

Decision 09-03-021 March 12, 2009

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to integrate procurement policies and consider long-term procurement plans.

Rulemaking 06-02-013
(Filed February 16, 2006)

**DECISION GRANTING INTERVENOR COMPENSATION
TO GREEN POWER INSTITUTE FOR SUBSTANTIAL CONTRIBUTION
TO DECISION 06-07-029 AND DECISION 07-12-052**

This decision awards \$55,870.50 to the Green Power Institute (GPI) in compensation for its substantial contributions to Decision (D.) 06-07-029 and D.07-12-052. This award is less (6%) than the \$59,361 requested by GPI. GPI's original request is reduced because the rate awarded to Gregory Morris is less than requested, the hourly rates awarded to Jon Welner and Michael Sharpless were lower than requested, and the hours spent preparing the compensation request were reduced. This proceeding remains open pending resolution of related issues.

1. Background

In D.06-07-029, we affirmed our commitment to the fundamental principles that have guided electricity market restructuring in California and elsewhere: competition and customer choice. Because our foremost responsibility was and is to assure continued reliable service at reasonable costs, we faced the urgent need to bring new capacity on line as soon as 2009, at least in Southern California. Given the urgent need for new capacity and the lengthy lead-times required both for new construction and to develop and implement

new market institutions, we concluded that immediate and affirmative Commission action was required to assure construction of adequate new capacity during the time in which we transitioned to more robust and durable market institutions.

In D.07-12-052, this Commission reviewed, critiqued, and adopted, with modifications, Pacific Gas and Electric Company's (PG&E), Southern California Edison Company's (SCE), and San Diego Gas & Electric Company's (SDG&E) Long-Term Procurement Plans (LTPP), for the 10-year period 2007 - 2016, and provided direction to the utilities on preparing their conformed 2006 LTPPs compliance filings.

Our primary focus in reviewing the LTPPs was whether the utilities are procuring preferred resources as set forth in the Energy Action Plan (EAP), in the order of energy efficiency, demand response, renewables, distributed generation, and clean fossil-fuel. In addition, we affirmed California's position as the pioneer in the nation, and in some areas of the world, by emphasizing and implementing policies that promote the reduction of Greenhouse Gases (GHG), especially in the production and delivery of electric resources by the utilities we regulate. Each LTPP prepared different candidate plans that indicated how the utility would meet its renewable portfolio standard targets, demand response as a percentage of resource adequacy requirements, energy efficiency savings from committed and uncommitted programs,¹ and then showed how each plan minimized environmental impacts, at what cost to ratepayers, and at what reliability level.

¹ See D.06-07-029, fn. 1, for a full discussion of the different usages of the terms "committed" and "uncommitted," and their agency specific meanings.

2. Requirements for Awards of Compensation

The intervenor compensation program, which is set forth in Pub. Util. Code §§ 1801-1812,² 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).)

² All subsequent statutory references are to the Public Utilities Code unless otherwise indicated.

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.

2.1. Preliminary Procedural Issues

A PHC in this Rulemaking was held on February 28, 2006. On March 27, 2006, GPI filed a NOI to Claim Compensation. GPI's NOI to Claim Compensation was filed within 30 days of the PHC and is therefore timely.

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.

Rule 17.2 states that a party found eligible in one phase of a proceeding remains eligible in later phases, including rehearing, in the same process. In D.07-12-007, we found that GPI met the definition of a customer pursuant to § 1802(b)(1)(C) and demonstrated significant financial hardship according to § 1802(g). As GPI notes that its circumstances with respect to eligibility have not changed since this decision, we concur with and affirm this finding.

GPI filed its request for compensation on February 14, 2008, within 60 days of D.07-12-052 being issued. No party filed in opposition to GPI's requests.

3. 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.³

With this guidance in mind, we turn to the claimed contributions GPI made to the proceedings.

3.1. D.06-07-029

GPI states that its contributions to D.06-07-029 relate to the inclusion of renewables in the interim cost-recovery request for proposals (RFP). GPI was active in this party of the proceeding. In addition to attending workshops, GPI prepared comments, and reviewed the draft decision leading to D.06-07-029. GPI and other parties assisted in our development of new, temporary cost-allocation mechanisms that divided the management of the energy and capacity

³ See D.98-04-059, 79 CPUC2d 628 at 653.

components of the newly acquired generation, so that the Investor-Owned Utilities (IOUs) are not responsible for the energy management of the new capacity by default. Instead, the energy component of new generation contracts will be managed by the entity that values the energy the most, as revealed through an auction or other bidding process. Specifically, GPI argued for the inclusion of renewables in any RFP that utilizes the interim cost-recovery mechanism approved in D.06-07-029. D.06-07-029 adopted GPI's recommendation and required that RFPs under the interim cost-recovery mechanisms must be all-source eligible consistent with the loading order.

3.2. D.07-12-052

GPI was active in this party of the proceeding. In addition to attending workshops, GPI submitted testimony, answered and issued data requests, filed opening and reply briefs, and reviewed the proposed decision leading to D.07-12-013. The analysis by GPI and others showed that all three LTPPs were deficient and spotty when it comes to filling their net short position with preferred resources from the EAP loading order and particularly inadequate in accounting for GHG emission reductions. The LTPPs showed the utilities, for the most part, filling and planning to fill their projected net short positions with conventional resources without providing a highly developed analysis to support this strategy. Among other things, going forward we required the utilities to reflect in the design of their requests for offers (RFO) compliance with the preferred resource loading order and with GHG reductions goals and demonstrate how each application for fossil generation comports with these goals. GPI provided essential analysis related to renewable procurement activities of the IOUs, implementation of Assembly Bill (AB) 32, and

implementation of the EAP goal to achieve 33% statewide renewable penetration by the year 2020.

GPI's substantive contribution is obscured by its complete failure to identify a Finding of Fact, Conclusion of Law, or Order that reflects a position they advocated. Instead, GPI repeatedly claims to have advocated a position (without reference to where in their documents this advocacy can be found) and asserts that the decision agreed with its position. At no point does GPI actually reference a specific part of the decision they contributed to. For example, though GPI repeatedly claims to have contributed to D.07-12-052, in every instance where supporting language in the decision is cited, that language is inexplicably attributed to D.06-02-013.⁴ GPI's request compounds this error by citing to the wrong pages in D.07-12-052 that they are actually attempting to quote from.

Though poorly referenced in the compensation request, it is readily apparent that GPI made a substantial contribution to D.07-12-052. For example, GPI's claim that it made a substantial contribution in the area of planning for compliance with AB 32, California's GHG legislation, is acknowledged in D.07-12-052 at page 241, and again at page 245 where, with regard to GHG's, "[w]e support GPI's assertion that the essential purpose of AB 32 is to change the state's electricity markets in fundamental ways." Our agreement with GPI's position is further reflected in Finding of Fact 9 wherein we state:

Going forward, the IOUs will be required to reflect in the design of their RFOs compliance with the preferred resource loading order and GHG reduction goals and to demonstrate how each application for fossil generation filed based on the

⁴ D.06-02-013 was an unrelated decision issued in Rulemaking 93-10-002 that modified D.97-09-045 to conform it to Federal Court Decisions.

procurement authority granted in this proceeding fits into each IOU's GHG reduction strategy.

Similarly, GPI's claim that it presented detailed analyses on the renewables procurement activities and prospects of the IOUs is confirmed in D.07-12-052 at pages 68 and 71. Specifically, GPI took issue with SCE's and PG&E's assumption of a 100% success rate for all renewables projects under development.⁵

D.07-12-052 acknowledges this concern in Finding of Fact 29 and states:

In addition, the plans could have been strengthened by fully providing the timing and parameters of the expected RFOs or other means to fill identified renewable needs; addressing the possibility of contract failure; providing for assessments that are informed by general and resource-specific uncertainties and risks; and making other resource need determinations based on "reasonable expectations" of renewable supply.

GPI also contributed to D.07-12-052 on issues related to attainment of the EAP's 2020 renewables goals (at 255), and long-term planning.⁶ Thus, on many issues in this proceeding, we find that GPI made substantial contributions to the decisions for which it seeks compensation.

4. 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

⁵ See D.07-12-013, p. 71.

⁶ See D.07-12-013, at 255 and 244, respectively.

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.

In a proceeding involving multiple participants, it is virtually impossible to completely avoid some duplication of the work of other parties. GPI states that it took all reasonable steps to keep duplication to a minimum and to ensure that its work served to supplement, complement, or contribute to the showing of the other active parties in this proceeding. (§ 1802.5.) GPI further states that it coordinated its efforts with those of the other parties. Given the unique contributions GPI made and the perspective they represented, we find no unnecessary duplication.

5. Reasonableness of Requested Compensation

After we have determined the scope of a customer's substantial contribution, we look at whether the compensation requested is reasonable. Below we review the reasonableness of GPI's request.

GPI requests compensation in the amount of \$59,361 for its participation in this proceeding as follows:

Advocate	Year	Hours	Rate	Amount
Dr. Gregory Morris, expert Comp. Req.	2006	29	\$220.00	\$6,380.00
	2007	190	\$230.00	\$43,700.00
	2008	16	\$115.00	\$1,840.00
Jon Welner, attorney	2007	5.50	\$570.00	\$3,135.00
Research Associates Valerie Morris Zoe Harrold	2007	41.00	\$32.00	\$1,312.00
	2007	84.00	\$32.00	\$2,688.00
Michael Sharpless, paralegal	2007	.75	\$265.00	\$198.75
Expenses				\$107.00
TOTAL REQUEST				\$59,360.75

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.

5.1. 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. While occasionally helpful, GPI's documentation is often inaccurate and/or inadequate. As a result GPI's request for compensation is not on par with the contribution to the proceeding that GPI actually made. For example, where Morris seeks compensation for time meeting with a research associate, the associate's time report does not reflect that this meeting took place. Similarly, while Morris and

attorney Welner both show that they met to confer, they report that this meeting took place on markedly different dates. Nor does GPI in any way explain how or why it claims postage costs and courier fees related to mailing its opening and reply briefs which were filed and served electronically. These deficiencies are, in a relative sense, minor. While we disallow the aforementioned postage costs, the hours claimed by GPI for substantive work are clearly reasonable.

Rather than any bad motive, it appears that these shortcomings are the result of inadequate work on the compensation request by GPI. That we do not equate the difficulty of preparing compensation requests with other aspects of the intervenor's participation should not be seen as either minimizing the importance of the compensation request or opening the door to pro-forma or perfunctory claims. While we are reluctant to reduce the already limited number of hours GPI spent on its compensation request, we are compelled to do so given the deficiencies in the research GPI should have done in support of its request. Because GPI's compensation request proved neither wholly accurate nor adequately detailed, we reduce the hours allowed for work on the compensation request by half to 8.0 from 16.0. Moreover, we admonish GPI that an intervenor seeking compensation bears the burden of making a clear, well substantiated showing that it has made a significant contribution. Cobbling claimed contentions to statements in decisions without accurate references to the decisions and the claimant's work in the proceeding falls short of meeting this burden.

5.2. 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. GPI seeks hourly rates for its attorneys and experts as follows:

Morris: GPI seeks \$220 and \$230 for work done by policy expert Morris in 2006 and 2007, respectively. GPI argues that the \$230 rate represents the next logical increase over the \$220 approved for G. Morris in D.06-08-013. However, subsequent to GPI's request for compensation in this proceeding, in D.08-09-036, the Commission awarded GPI compensation for work done by G. Morris in 2007 in the amount of \$225 per hour. As stated therein:

For the work performed in 2007, GPI requests a rate of \$230, and explains that this rate reflects a 3% cost-of-living adjustment (COLA) (rounded to the nearest \$5.00), consistent with the guidelines set forth in D.07-01-009. However, with the 3% COLA and rounded to the nearest \$5.00, the rate should be \$225.00.

We again approve this rate for Morris.

Welner: GPI includes a bill from the Paul Hastings law firm that includes work done by Welner at a rate of \$570 per hour. GPI makes no attempt to justify this rate and fails to acknowledge that in D.05-01-053, the Commission set a rate of \$285 per hour for work by Welner in 2004. We escalate \$285, the rate established for Welner in D.05-01-053 for 2004 by 0% for 2005,⁷ and by 3% for 2006 and another 3% for 2007 (see D.07-01-009), each time rounding the sum to the nearest \$5.00. The result is \$305 and we approve this rate for Welner's 2007 work. We caution GPI that by failing to recognize and report the hourly rates the

⁷ In D.05-11-031, we adopted guidelines and principles for setting intervenors' hourly rates for work performed in 2005. Except under specific conditions, D.05-11-031 generally does not authorize rate increase above previously approved 2004 rates.

Commission has set in the past it risks sanction, particularly where the rates sought are higher than the rates the Commission previously found to be reasonable.

Sharpless: The bill from the Paul Hastings law firm that GPI attached also includes work done by Sharpless at a rate of \$265 per hour. Again, GPI makes no attempt to justify this rate and provides no information about Sharpless other than the hours and rates charged for his services. In particular, GPI fails to acknowledge that in D.06-10-012 the Commission set a rate of \$110 per hour for work by Sharpless in 2005. Following the same formula used for Welner, we escalate \$110, the rate established for Sharpless in D.06-10-012 for 2005 by 3% for 2006, and another 3% for 2007 (see D.07-01-009), then round the sum to the nearest \$5.00. The result is \$120 and we approve this rate for Sharpless' 2007 work. Again, we caution GPI that by failing to recognize and report the hourly rates the Commission has set in the past it risks sanction, particularly where the rates sought are higher than the rates the Commission previously found to be reasonable.

V. Morris: D.06-10-012 adopted the rate of \$30 per hour requested by GPI for work performed by V. Morris in 2005. In D.07-12-007 we approved a 3% increase for work done by V. Morris in 2006, resulting in an award of \$31 per hour. GPI now request a rate of \$32 per hour. GPI's request is consistent with D.07-01-009. We therefore approve a rate of \$32 per hour for V. Morris.

Harrold: D.06-10-012 adopted the rate of \$30 per hour requested by GPI for work performed by Harrold in 2005. In D.07-12-007 we a approved a 3% increase for work done by Harrold in 2006, resulting in an award of \$31 per hour. GPI now request a rate of \$32 per hour. GPI's request is consistent with D.07-01-009. We therefore approve a rate of \$32 per hour for Harrold.

5.3. Direct Expenses

The itemized direct expenses submitted by GPI include the following:

Courier Services	\$69.18
Printing & Photocopying	\$8.06
Postage & Mailing	\$29.86
Telephone	\$0
Travel	\$0
Total Expenses	\$107.10

The itemized direct expenses submitted by GPI include costs for photocopying, postage, courier services, and Federal Express services. For the most part, the cost breakdown GPI included with the request shows the miscellaneous expenses to be commensurate with the work performed. Other than \$34.18 inexplicably spent on postage and courier services for documents that were filed electronically, we find these expenses (totaling approximately \$73.00) reasonable.

6. Productivity

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

As is often the case, it is difficult to determine a dollar value to the work undertaken by intervenors in this proceeding. Much of the work of the intervenors relates to long-term policy issues with the potential of millions of dollars of ratepayer savings. However, GPI clearly contributed materially to each of the decisions for which they now seek compensation and significantly

advanced our thinking on the important legal, technical, and policy questions we addressed in those decisions. We therefore find that GPI's work was productive.

7. Award

As set forth in the tables below, we award intervenor compensation for GPI as follows:

Advocate	Year	Hours	Rate	Amount
Morris (intervenor comp.)	2006	29	\$220.00	\$6,380.00
	2007	190	\$225.00	\$42,750.00
	2008	8	\$112.50	\$900.00
Welner	2007	5.50	\$305.00	\$1,677.50
Valerie Morris	2007	41	\$32.00	\$1,312.00
Harrold	2007	84.00	\$32.00	\$2,688.00
Sharpless	2007	.75	\$120.00	\$90.00
				\$55,797.50
Expenses				\$73.00
TOTAL AWARD				\$55,870.50

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 May 29, 2008, the 75th day after GPI filed its compensation request and continuing until full payment of the award is made.

We direct PG&E, SDG&E and SCE, the involved utilities, to allocate payment responsibility among themselves based on their California jurisdictional electric revenues for the 2007 calendar year during which the bulk of the work at issue here was performed.

We remind GPI that Commission staff may audit records relevant to this award, and that it must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. Among other things, GPI's records should identify specific issues for which it requested

compensation, the actual time spent by each employee or consultant, the applicable hourly rate, fees paid to consultants, and any other costs for which compensation was claimed. The records pertaining to an award of compensation shall be retained for at least three years from the date of the final decision making the award.

8. Waiver of Comment Period

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

9. Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and Carol A. Brown is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. GPI has met all the procedural requirements necessary to claim compensation in this proceeding.
2. GPI made substantial contributions to the decisions described herein.
3. GPI requested hourly rates and related charges for their representatives that, as adjusted herein, are reasonable when compared to the market rates for persons with similar training and experience.
4. The total reasonable compensation for GPI is \$55,870.50.

Conclusions of Law

1. GPI has fulfilled the requirements of Pub. Util. Code §§ 1801-1812, which govern awards of intervenor compensation, and is entitled to intervenor compensation for its claimed compensation, as set forth herein, incurred in making substantial contributions to the decisions described herein.

2. GPI should be awarded \$55,870.50 in compensation for its contributions, as described herein.

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

4. This proceeding should remain open pending resolution of related issues.

O R D E R

IT IS ORDERED that:

1. Green Power Institute (GPI) is awarded \$55,870.50 in compensation for its contribution to Decision (D.) 06-07-029 and D.07-12-052.

2. Within 30 days of the effective date of this decision, Southern California Edison Company (SCE), Pacific Gas and Electric Company (PG&E), and San Diego Gas & Electric Company (SDG&E) shall pay Green Power Institute their respective shares of the award. We direct SCE, PG&E, and SDG&E to allocate payment responsibility among themselves, 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 the Federal Reserve Statistical Release H.15, beginning May 29, 2008, the 75th day after the respective filing date of GPI's request for compensation, and continuing until full payment is made.

3. The comment period for today's decision is waived.
4. Rulemaking 06-02-013 remains open pending resolution of related issues.

This order is effective today.

Dated March 12, 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:	D0903021	Modifies Decision? None
Contribution Decision(s):	D0712052	
Proceeding(s):	R0602013	
Author:	Carol A. Brown [Darwin E. Farrar]	
Payer(s):	Southern California Edison Company, Pacific Gas and Electric Company, and San Diego Gas & Electric Company	

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
Green Power Institute	2.14.08	\$59,361	\$55,870.50	No	Hourly rate reductions;
					Reduction in hours for
					preparation of
					compensation request.

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Gregory	Morris	Expert	Green Power Inst.	\$230	2007	\$225
Valerie	Morris	Expert	Green Power Inst.	\$32	2007	\$32
Zoe	Harrold	Expert	Green Power Inst.	\$32	2007	\$32
Jon	Welner	Attorney	Green Power Inst.	\$570	2007	\$305
Michael	Sharpless	Attorney	Green Power Inst.	\$265	2007	\$120

(END OF APPENDIX)