

Decision 00-04-011 April 6, 2000

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Rulemaking on the Commission's Own Motion to Solicit Comments and Proposals on Distributed Generation and Competition in Electric Distribution Service.

Rulemaking 98-12-015
(Filed December 17, 1998)

OPINION AWARDING COMPENSATION

This decision grants Greenlining Institute and Latino Issues Forum an award of \$15,030.45 in compensation for their contribution to Decision (D.) 99-10-065.

1. Background

Rulemaking (R.) 98-12-015 was initiated in December 1998 to consider whether the California Public Utilities Commission (Commission) should pursue reforms in the regulatory framework governing electricity distribution service. In particular, the rulemaking focused on gathering information about issues concerning distributed generation and distribution competition. Instead of creating new policies in the rulemaking, the intent was to identify the range of issues associated with these concepts, and to allow development of a roadmap to address these issues.

On March 17, 1999, parties filed opening and reply comments on the topics set forth in the rulemaking. A full panel hearing was held on June 1, 1999, in San Francisco. Members of the Commission, the California Energy Commission, and the Executive Director of the Electricity Oversight Board attended the full panel hearing. An opportunity was provided to all parties to file written responses to the questions that each panel was asked to address at the full panel hearing. A

draft decision was issued September 21, 1999. Comments and reply comments to the draft decision were filed.

In D.99-10-025, we established a roadmap which outlines how the Commission, in cooperation with the California Energy Commission, the Electricity Oversight Board, and the Legislature, plans to address the issues surrounding distributed generation, distribution competition, and the role of the utility distribution company in the competitive retail electricity market. The decision bifurcated the issues raised in R.98-12-015 into two tracks. The first track addresses issues pertaining to distributed generation through a new rulemaking, R.99-10-025. The second track will address distribution competition issues and the role of the utility distribution company in a competitive retail electric market.

2. Requirements for Awards of Compensation

Intervenors who seek compensation for their contributions in Commission proceedings must file requests for compensation pursuant to Pub. Util. Code Sections 1801-1812. (All statutory citations are to Public Utilities Code.) Section 1804(a) requires an intervenor to file a notice of intent (NOI) to claim compensation within 30 days of the prehearing conference or by a date established by the Commission. The NOI must present information regarding the nature and extent of the customer's planned participation and an itemized estimate of the compensation the customer expects to request. The NOI may request a finding of eligibility.

Other code sections address requests for compensation filed after a Commission decision is issued. Section 1804(c) requires an intervenor requesting compensation to provide "a detailed description of services and expenditures

and a description of the customer's substantial contribution to the hearing or proceeding." Section 1802(h) states that "substantial contribution" means that,

"in the judgment of the Commission, the customer's presentation has substantially assisted the Commission in the making of its order or decision because the order or decision has adopted in whole or in part one or more factual contentions, legal contentions, or specific policy or procedural recommendations presented by the customer. Where the customer's participation has resulted in a substantial contribution, even if the decision adopts that customer's contention or recommendations only in part, the commission may award the customer compensation for all reasonable advocate's fees, reasonable expert fees, and other reasonable costs incurred by the customer in preparing or presenting that contention or recommendation."

Section 1804(e) requires the Commission to issue a decision that determines whether the customer has made a substantial contribution and what amount of compensation to award. The level of compensation must take into account the market rate paid to people with comparable training and experience who offer similar services, consistent with Section 1806.

3. NOI to Claim Compensation

Greenlining Institute and Latino Issues Forum timely filed their NOI on May 17, 1999 and were found to be a customer under Section 1802(b) by a ruling dated July 1, 1999. Greenlining Institute and Latino Issues Forum seek a finding of significant financial hardship in this compensation request. Section 1802(g) defines "significant financial hardship" to mean:

"either that the customer cannot afford, without undue hardship, to pay the costs of effective participation, including advocate's fees, expert witness fees, and other reasonable costs of participation, or that, in the case of a group or organization, the economic interest of the individual members of that group or organization is small in comparison to the costs of effective participation in the proceeding."

Greenlining Institute and Latino Issues Forum filed their compensation request on December 23, 1999, which is within the 60-day period following the issuance of D.99-10-065 and therefore timely.¹ They assert continued status as non-profit organizations whose efforts are directed at low-income, inner city and minority communities. Greenlining Institute and Latino Issues Forum base their claim of significant financial hardship on this non-profit status, as well as their stated inability to otherwise compensate their advocates for their time. Greenlining Institute submits financial information for the period December 1, 1996 through November 30, 1997 which illustrates a zero balance after adjusted income is offset by expenses. For Latino Issues Forum, income exceeded expenses by \$133,416 for the same period. In D.98-12-058, we awarded Greenlining Institute and Latino Issues Forum compensation for their contribution to D.98-03-073 on a showing of financial hardship for the prior year very similar to the one they make here.

With respect to a group or organization, Section 1802(g) defines "significant financial hardship" to mean that "...the economic interest of the individual members of that group or organization is small in comparison to the costs of effective participation in the proceeding. We conclude that the potential economic interest of Greenlining Institute and Latino Issues Forum members in this proceeding is insignificant compared to the costs of their participation. Accordingly, we find that both Greenlining Institute and Latino Issues Forum

¹ Greenlining Institute and Latino Issues Forum amended the compensation request on January 24, 2000. The amendment requests compensation for time spent by Robert Gnaizda in this proceeding. In response to an ALJ request for additional information, Greenlining Institute and Latino Issues Forum submitted a letter to ALJ Cooke on February 11, 2000, which was also served on parties to R.98-12-015.

have each made a sufficient showing of significant financial hardship within the meaning of the statute and we will consider further their joint request for compensation.

4. Contributions to Resolution of Issues/Overall Benefits of Participation

A party may make a substantial contribution to a decision in one of several ways.² It may offer a factual or legal contention upon which the Commission relied in making a decision,³ or it may advance a specific policy or procedural recommendation that the Administrative Law Judge (ALJ) or Commission adopted.⁴ A substantial contribution includes evidence or argument that supports part of the decision even if the Commission does not adopt a party's position in total.⁵ The Commission has provided compensation even when the position advanced by the intervenor is rejected.⁶

In addition, in D.98-04-059, the Commission adopted a requirement that a customer must demonstrate that its participation was "productive," as that term is used in Section 1801.3, where the Legislature gave the Commission guidance on program administration. (See D.98-04-059, mimeo. at 31-33, and Finding of Fact 42). In that decision we discuss the fact that participation must be productive in the sense that the costs of participation should bear a reasonable

² Pub. Util. Code §1802(h).

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ D.89-03-96 (awarding San Luis Obispo Mothers For Peace and Rochelle Becker compensation in Diablo Canyon Rate Case because their arguments, while ultimately unsuccessful, forced the utility to thoroughly document the safety issues involved).

relationship to the benefits realized through such participation. Customers are directed to demonstrate productivity by assigning a reasonable dollar value to the benefits of their participation to ratepayers. This exercise assists us in determining the reasonableness of the request and in avoiding unproductive participation.

D.99-10-065 discusses many issues without resolving them. After reviewing the recommendations and positions of the parties, including intervenors, the decision adopted a procedural roadmap laying out the steps by which issues will be resolved or further studied. For this reason, an intervenor in this proceeding may have difficulty in establishing that it prevailed on a given issue. In some ways, participation in R.98-12-015 is similar to participation in workshops and working groups that this Commission has encouraged in the past. The participation of intervenors was beneficial because it engaged all stakeholders in examining important issues. Therefore, for purposes of finding substantial contribution in this proceeding, we will broadly interpret Section 1801.3(b) in order to support the underlying legislative intent. Likewise, because D.99-10-065 neither adopted substantive rule changes, nor dealt with utility revenue requirements or cost allocation issues, it is difficult to assign a dollar value to the results of intervenors' participation. Therefore, this decision does not compare quantitatively the costs of participation against the benefits realized.

Greenlining Institute and Latino Issues Forum believe they have made a substantial contribution through ensuring the Commission adequately reviews the effects of distribution competition on public purpose programs, safety and reliability issues, and system reliability. Greenlining Institute and Latino Issues Forum believe their participation contributed to the bifurcation of distributed generation and distribution competition issues. Greenlining Institute and Latino

Issues Forum also believe their participation promoted inclusion of irrigation district authority and obligation to serve/default service issues in the staff study. D.99-10-065 cites Greenlining Institute and Latino Issues Forum's position on these topics and includes them in the staff study.

Because D.99-10-065 did not resolve disputed issues, it is difficult to identify how arguments of a specific party influenced the outcome of the decision. However, it is clear that in the areas addressed, Greenlining Institute and Latino Issues Forum's positions contributed to the Commission's decision-making process by ensuring a full discussion of different substantive positions. We agree that Greenlining Institute and Latino Issues Forum have made substantial contributions to D.99-10-065 in the areas identified. However, there is some duplication regarding the positions presented by Greenlining Institute and Latino Issues Forum and other parties. We will address duplication issues under "Hours Claimed" below.

5. Reasonableness of Requested Compensation

Greenlining Institute and Latino Issues Forum request compensation in the amount of \$24,882.50⁷ as follows:

Attorney Costs

Susan Brown (18.5 hours @ \$260 ⁸ /hour)	\$ 4,810.00
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⁷ Greenlining Institute and Latino Issues Forum amended their original request for compensation on January 24, 2000, adjusting the request from \$22,913.75 to \$25,219. However, both the original request and the adjustment contained calculation errors and the total should have been \$25,288.75. On February 11, 2000, Greenlining Institute and Latino Issues Forum reduced the professional hours claimed by Ms. Figueroa by 3.25 hours, making the total request \$24,882.50.

⁸ Greenlining Institute and Latino Issues Forum include hours spent preparing the compensation request in their total hours for Brown, but add only half of them in the

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Robert Gnaizda (8.75 hours @ \$275/hour)	\$ 2,406.25
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Expert Costs

Roxanne Figueroa (85 hours @ \$125/hour)	\$10,625.00
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Jose Atilio Hernandez (56.75 hours @ \$95/hour)	<u>\$ 5,391.25</u>
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Subtotal	<u>\$23,232.50</u>
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Other Costs:

Copies	\$ 910.78
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Postage	\$ 667.00
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Fax/Telephone	\$ 49.47
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Travel	<u>\$ 22.75</u>
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Total Other Costs	\$1,650.00	<u>\$ 1,650.00</u>
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Total	<u>\$ 24,882.50</u>
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5.1 Hours Claimed

Greenlining Institute and Latino Issues Forum's compensation request includes detailed time records for Susan Brown, Roxanne Figueroa, and Jose Atilio Hernandez which span the timeframe of this proceeding and describe the activities of each, the date and the number of hours expended. The amendment includes similar time records for Robert Gnaizda. In addition, the February 11, 2000 letter clarifies certain claimed hours. Unlike other intervenors in this proceeding, Greenlining Institute and Latino Issues Forum did not reduce

calculation for Brown. In the future, Greenlining Institute and Latino Issues Forum should list those hours separately, and apply a rate of half that allowed for the individual's professional work, rather than multiplying the hours by half and adding them into Brown's professional time. Greenlining Institute and Latino Issues Forum accounted for travel and compensation request time for experts Figueroa and Hernandez in the same way. Although in some cases this calculation may end up with the same result, because compensation granted may differ from that requested for numerous reasons, including adjustment for duplication, separation of these hours is important in order to allow the Commission to evaluate the compensation request.

their request for duplication. Because Greenlining Institute and Latino Issues Forum's contributions were not unique in this proceeding, we will reduce all of Greenlining Institute and Latino Issues Forum's authorized professional hours by 25% to account for duplication. This reduction is consistent with the reduction proposed by the other intervenors in this proceeding.⁹

Greenlining Institute and Latino Issues Forum requested 8.75 hours for Gnaizda. Greenlining Institute and Latino Issues Forum documented the claimed hours by presenting a breakdown of daily activities and hours. The hourly breakdown reasonably supports the claim for Gnaizda's professional hours. We find that, after adjustment for duplication, these hours are reasonable. Therefore we authorize 6.56 hours for Gnaizda.

Greenlining Institute and Latino Issues Forum requested 18.5 hours for Brown. The supporting materials submitted by Greenlining Institute and Latino Issues Forum show that Brown spent 19 hours on compensable activities related to this proceeding, including 0.5 hours preparing this compensation request. However, Greenlining Institute and Latino Issues Forum only claim 18.5 hours for Brown. We find, as we did for Gnaizda, that Brown's professional hours should be adjusted for duplication and that 13.88 hours are reasonable.

⁹ In D.00-03-005 we clarified that "duplication by itself does not result in an automatic reduction to the compensation award. Rather, the party requesting compensation must show that notwithstanding any duplication, its position is distinguishable from the others, and its argument was uniquely persuasive in the Commission's adoption of the joint position of the parties." (p. 15.)

In this case, because of the number of parties involved and the fact that unique contributions were not easily identifiable, adjustment for duplication is appropriate. We adopt the same adjustment as we did for other intervenors in D.00-03-051.

We will also authorize 0.5 hours for preparation of the compensation request, to be billed at half the authorized professional rate.

Greenlining Institute and Latino Issues Forum requested 85 hours for Figueroa, as updated in their February 11, 2000 letter. Seventy-eight hours of the 85 claimed are professional hours, 0.25 are travel, and 6.75 are for administrative activities. The hourly records reasonably support the claim for Figueroa's professional hours. As we did for Gnaizda and Brown, we find that Figueroa's professional hours should be adjusted for duplication and that 58.5 hours are reasonable. With respect to administrative hours, in prior decisions, we have held that professional fees assume administrative and clerical overhead costs and are set accordingly. The compensation request does not identify what type of administrative work Figueroa was performing. We therefore deny recovery for administrative hours claimed for Figueroa. Figueroa spent 0.5 hours traveling for this proceeding. We will authorize the full 0.5 hours, to be billed at half the authorized professional rate.

Greenlining Institute and Latino Issues Forum requested 56.75 hours for Hernandez.¹⁰ A review of Hernandez's time records show that he spent 36.25 hours on professional activities, 8.5 hours on administrative tasks, 1.5 hours on travel related to this proceeding, and 21 hours preparing the compensation request. We find that the documentation reasonably supports Hernandez's professional hours. After adjustment for duplication, we authorize 27.19 professional hours. As we discussed for Figueroa, we do not approve any

¹⁰ Hernandez's time records show 56 hours claimed for the proceeding but the request for compensation claims 56.75 hours. For purposes of authorizing hours, we will work from Hernandez's time records.

administrative hours. We approve Hernandez's time spent traveling and will apply half his authorized hourly rate. With respect to time spent preparing the compensation request, Greenlining Institute and Latino Issues Forum claims only 10.5 hours of the 21 hours spent by Hernandez, rather than applying half the hourly rate to the full hours. We authorize the 21 hours spent by Hernandez on the compensation request.

5.2 Hourly Rates

Greenlining Institute and Latino Issues Forum request attorneys fees for Gnaizda at \$275/hour and for Brown at \$260/hour. They request expert witness fees for Figueroa of \$125/hour and for Hernandez at \$95/hour.

In D.98-12-048 we set an hourly rate for Gnaizda at \$270/hour. Greenlining Institute and Latino Issues Forum have provided no justification for the requested increase in hourly rates. Therefore, we set Gnaizda's hourly rate for work in this proceeding at \$270/hour. Likewise, Greenlining Institute and Latino Issues Forum provide no justification for the increase in hourly rate requested for Brown. Therefore, consistent with the rate adopted in D.98-12-048, we retain \$250/hour as the hourly rate for Brown's work in this proceeding. Time spent by Brown on the compensation request will be awarded at half her hourly rate.

Next we consider rates for the expert witnesses, Figueroa and Hernandez. Greenlining Institute and Latino Issues Forum request an hourly rate of \$125 for the services of Figueroa. We previously set a rate for Figueroa at \$75/hour in D.98-12-048. Greenlining Institute and Latino Issues Forum provide no justification for this increase in hourly rate, therefore we continue the \$75/hour rate set in D.98-12-048 for Figueroa.

Greenlining Institute and Latino Issues Forum request an hourly rate of \$95 for the services of Hernandez. We have not previously set a rate for

Hernandez. Greenlining Institute and Latino Issues Forum support this request with the declaration of Hernandez, who states that he is a 1998 graduate of the University of California at Berkeley. He is a Senior Policy Analyst at Greenlining Institute and Latino Issues Forum, where he has been involved in educating community leaders, formulating energy and telecommunications policies for limited-English speaking and vulnerable populations, and in advocating for those policies before the Commission and the Legislature. In the past, we have awarded compensation for similar services performed by recent college graduates at \$75/hour. (See, e.g., D.96-08-040, D.98-04-025, and D.98-12-048.) It is reasonable to establish an hourly rate for services performed by Hernandez in this proceeding at \$75. Time spent traveling for both Figueroa and Hernandez will be awarded at half their hourly rates.

Because compensation requests are not generally considered to require the skills of senior level attorneys or experts, we normally apply half the hourly rate to time spent preparing compensation requests. In this case, Hernandez, a relatively new staff member, performed the bulk of the work preparing the request. In these situations, we have awarded the hours spent at the full hourly rate. (See, for example, D.98-12-058.) We will allow the full number of hours spent preparing the compensation request at Hernandez's full hourly rate.

5.3 Other Costs

Greenlining Institute and Latino Issues Forum seek \$1,650.00 in other costs. The request for compensation itemizes travel, copying, postage, and telephone/fax costs. We find the expenses reasonable.

6. Award

Greenlining Institute and Latino Issues Forum are awarded \$15,030.45 as calculated below.

Brown

Professional Time (13.88 hrs @ \$250/hr) \$ 3,470.00

Travel/Compensation Request (0.5hrs @ \$125/hr) \$ 62.50

Gnaizda

Professional Time (6.56 hrs @ \$270/hr) \$ 1,771.20

Figueroa

Professional Time (58.5 hrs @ \$75/hr) \$ 4,387.50

Travel (0.5 hrs @ \$37.50/hr) \$ 18.75

Hernandez

Professional Time (27.19 hrs @ \$75/hr) \$ 2,039.25

Travel (1.5 hrs @ \$37.50/hr) \$ 56.25

Compensation Request (21 hrs @ \$75.00/hr) \$ 1,575.00

Other Costs \$ 1,650.00

Total \$15,030.45

6.1 Summary

We award Greenlining Institute and Latino Issues Forum \$15,030.45, calculated as described above. We will assess responsibility for payment in accordance with their respective 1998 California jurisdictional revenues.¹¹

¹¹ Southern California Edison Company (Edison) filed a response to the compensation request on January 21, 2000. Edison does not challenge the request for compensation but points out concerns over the proper funding source for intervenor compensation in quasi-legislative proceedings. The Commission considered this issue recently in D.00-01-020. That decision established that effective July 1, 2001, in quasi-legislative rulemaking proceedings affecting an industry or multiple industries, we will require all

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Consistent with previous Commission decisions, we will order that interest be paid on the award amount (calculated at the three-month commercial paper rate), commencing April 25, 2000 (the 75th day after Greenlining Institute and Latino Issues Forum submitted their complete compensation request), and continuing until the utilities make full payment, respectively, of the award.

As in all intervenor compensation decisions, we put Greenlining Institute and Latino Issues Forum on notice that Commission staff may audit their records related to this award. Thus, they must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. Their records should identify specific issues for which compensation is requested, the actual time spent by each employee, the applicable hourly rate, fees paid to consultants, and any other costs for which compensation may be claimed.

Comments on Draft Decision

The draft decision of the ALJ in this matter was mailed to the parties in accordance with Pub. Util. Code Section 311(g)(1) and Rule 77.1 of the Rules of Practice and Procedure. No comments were filed.

energy, telecommunications and water utilities in the affected industry to pay any compensation award, regardless of whether that utility participated in the proceeding. The program will be funded through the fees collected on an annual basis from regulated energy, telecommunications, and water utilities under authority conferred by Public Utilities Code § 401 et seq. In the interim, we continue our practice of requiring those larger utilities participating in a rulemaking proceeding to pay any compensation awards.

Findings of Fact

1. Greenlining Institute and Latino Issues Forum have made a timely request for compensation for their contribution to D.99-10-065.

2. Greenlining Institute and Latino Issues Forum have made a showing of significant financial hardship by demonstrating the economic interests of their individual members would be extremely small compared to the costs of participating in this proceeding.

3. Greenlining Institute and Latino Issues Forum contributed substantially to D.99-10-065.

4. Greenlining Institute and Latino Issues Forum have requested hourly rates for attorneys Gnaizda and Brown and experts Figueroa and Hernandez that are higher than those already approved by the Commission.

5. Two hundred seventy dollars (\$270) per hour is a reasonable compensation rate for Gnaizda's professional services considering his experience, effectiveness, and rates paid other attorneys.

6. Two hundred fifty dollars (\$250) per hour is a reasonable compensation rate for Brown's professional services considering her experience, effectiveness, and rates paid other attorneys.

7. Seventy five dollars (\$75) per hour is a reasonable compensation rate for Figueroa's professional services considering her experience, effectiveness, and rates paid other experts.

8. Seventy five dollars (\$75) per hour is a reasonable compensation rate for Hernandez's professional services considering his experience, effectiveness, and rates paid other experts.

9. The miscellaneous costs incurred by Greenlining Institute and Latino Issues Forum are reasonable.

Conclusions of Law

1. Greenlining Institute and Latino Issues Forum have fulfilled the requirements of Sections 1801-1812 which govern awards of intervenor compensation.
2. Greenlining Institute and Latino Issues Forum jointly should be awarded \$15,030.45 for their contribution to D. 99-10-065.
3. This order should be effective today so that Greenlining Institute and Latino Issues Forum may be compensated without unnecessary delay.

O R D E R

IT IS ORDERED that:

1. Greenlining Institute and Latino Issues Forum are jointly awarded \$15,030.45 in compensation for their substantial contribution to Decision 99-10-065.
2. Pacific Gas and Electric Company (PG&E), Southern California Edison Company (Edison), and San Diego Gas & Electric Company (SDG&E) shall pay Greenlining Institute and Latino Issues Forum a total of \$15,030.45 in proportion to their respective 1998 jurisdictional revenues within 30 days of the effective date of this order. PG&E, Edison, and SDG&E shall also pay interest on the award at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release G.13, with interest, beginning April 25, 2000, and continuing until full payment is made.

R.98-12-015 ALJ/MLC/eap

3. This proceeding is closed.
4. This order is effective today.

Dated April 6, 2000, at San Francisco, California.

LORETTA M. LYNCH
President
HENRY M. DUQUE
JOSIAH L. NEEPER
RICHARD A. BILAS
CARL W. WOOD
Commissioners