

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Integrate and Refine
Procurement Policies and Consider Long-Term
Procurement Plans.

Rulemaking 12-03-014
(Filed March 22, 2012)

**CALIFORNIA ENVIRONMENTAL JUSTICE ALLIANCE'S
REPLY TO SOUTHERN CALIFORNIA EDISON'S RESPONSE TO
INTERVENOR COMPENSATION CLAIM**

SHANA LAZEROW
Staff Attorney
Communities for a Better Environment
Franklin Street, Suite 600
Oakland, CA 94612
Telephone: (510) 302-0430
Facsimile: (510) 302-0437
slazerow@cbeocal.org

Dated: May 23, 2013

DEBORAH BEHLES
Environmental Law and Justice Clinic
Golden Gate University School of Law 1904
536 Mission Street
San Francisco, CA 94105-2968
Telephone: (415) 369-5336
Facsimile: (415) 896-2450
dbehles@ggu.edu

Attorneys for California Environmental
Justice Alliance

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Integrate and Refine
Procurement Policies and Consider Long-Term
Procurement Plans.

Rulemaking 12-03-014
(Filed March 22, 2012)

**CALIFORNIA ENVIRONMENTAL JUSTICE ALLIANCE'S
REPLY TO SOUTHERN CALIFORNIA EDISON'S RESPONSE TO
INTERVENOR COMPENSATION CLAIM**

Pursuant to Article 17 of the Commission's Rules of Practice and Procedure, the California Environmental Justice Alliance ("CEJA") respectfully submits this reply to the Response of Southern California Edison Company to the Intervenor Compensation Claim of the California Environmental Justice Alliance ("SCE's Response"), which was filed on May 13, 2013. This reply is timely submitted within fifteen days of SCE's Response.¹ SCE's Response does not question whether CEJA substantially contributed to the final decision. Nor does SCE challenge the hourly rates CEJA claims for its attorneys and experts or the detailed time entries that CEJA attached to its request. Rather, SCE broadly questions whether work by law students should be compensated. As discussed below, SCE's suggestion that law student work should not be compensated is inconsistent with Commission precedent and should be rejected.

I. The Commission Should Uphold Longstanding Precedent and Reject SCE's Challenge to Reasonable Compensation for Law Student Work.

SCE asks the Commission to reverse years of Commission precedent, and analogous precedent in state and federal jurisdictions, allowing recovery of fees for the work of law students at nonprofits such as Golden Gate University School of Law's Environmental Law and Justice Clinic ("ELJC"). SCE fails to cite a single case that would prohibit this category of compensable legal work, instead asserting that in all of these years the matter was not fully litigated, and therefore the Commission presumably has not taken a hard look at this issue.

¹ Cal. Public Utility Commission Rules of Practice and Procedure, Rule 17.4(h) (providing that replies to responses to requests for intervenor compensation must be filed within 15 days after filing the response).

Strong policy considerations recognized by our highest court and ample precedent from the Commission and lower state and federal courts rebut SCE's unsupported argument. Judge Steven Wilson in the Central Federal District Court of California, citing a United States Supreme Court precedent, addressed this issue squarely in asserting the cost-effectiveness of allowing unpaid law students to be compensated in statutes allowing access to justice:

Defendants argue that Plaintiffs may not recover fees for law clerks because the law clerks were presumably student volunteers, and because their work required supervision. The argument is not persuasive. The Supreme Court has held that a fee award under the Civil Rights Attorney's Fee Award Act should include compensation for the services of paralegals and law clerks if the custom is not to cover services in the hourly rates of attorneys. *Missouri v. Jenkins*, 491 U.S. 274, 286-287, 109 S. Ct. 2463, 105 L. Ed. 2d 229 (1989). As the Supreme Court explained, "by encouraging the use of lower cost paralegals rather than attorneys whenever possible, permitting market rate billing of paralegal hours encourages cost-effective delivery of legal services and, by reducing the spiraling cost of civil rights litigation, furthers the policies underlying civil rights statutes." *Id.* at 288. It is irrelevant whether the paralegals or law clerks were paid staff or unpaid volunteers. In *Skinner v. Uphoff*, 324 F. Supp. 2d 1278, 1285 (D. Wyo. 2004), the court permitted recovery of fees for an unpaid law student intern, because it saved the defendants from being charged at the higher rates of an attorney. There is no reason to think that the same rationale does not apply to the instant ADA action.²

The Ninth Circuit Federal Court of Appeals agrees that whether legal representation is paid is irrelevant in statutory attorney fee awards:

The United States Supreme Court clarified long ago that the award of attorneys' fees under civil rights fee-shifting statutes is not cost-based, and that the award of prevailing market rates -- regardless whether the claimant is represented by private counsel or a non-profit legal services organization -- should not be viewed as an unjustified "windfall" profit to the attorney. *See Blum v. Stenson*, 465 U.S. 886, 892-95, 104 S. Ct. 1541, 79 L. Ed. 2d 891 (1984); *Hensley*, 461 U.S. at 433 n.7 (standards applicable to § 1988 awards "are generally applicable in all cases where Congress has authorized an award of fees to a 'prevailing party' "); *see also INS v. Jean*, 496 U.S. 154, 161, 110 S. Ct. 2316, 110 L. Ed. 2d 134 (1990) (applying *Hensley* to EAJA award). . . . The government's argument that the expenses associated with private representation "would far exceed those expended by a non-for-profit group," including the inference that the fees awarded should not exceed the legal workers' salaries, is unavailing.³

² *Bancroft v. Trizechahn Corp.*, Civ. No. 02-2373, 2006 U.S. Dist. LEXIS 100929 at pages 11-12, 2006 Westlaw 5878143 (C.D. Cal. 2006).

³ *Nadarajah v. Holder*, 569 F.3d 906, 916 (9th Cir. 2009).

The California Supreme has similarly approved the awarding of fees for law students under California's private attorney general statute.⁴ California courts have also rejected reducing a lodestar fee claim based upon the fact that that a nonprofit did not charge its clients for fees.⁵

Consistent with this analogous federal and state case law, the Commission's precedents demonstrate the Commission has thoughtfully and carefully examined the role law students may play in representing ratepayers who would normally not be able to secure representation. In Decision 99-01-020, the Commission awarded fees to a law clinic explicitly for students who provided work for academic credit:

SAEJ requests an hourly rate of \$ 75 per hour for each of four law students working at ELCC. ELCC is a clinical training placement, primarily for students at the University of California, Berkeley School of Law (Boalt Hall), and also for students attending other law schools. Law students receive course credit by working under the supervision of Simmons (*sic*). The Commission has consistently awarded law clerks \$ 55 per hour. (*See* D.96-06-029, D.95-12-049.) However, in D.98-05-014, in the Commission's most recent decision awarding compensation for work by a law clerk, the Commission awarded an hourly rate of \$ 10 per hour as requested. We find SAEJ's requested hourly rate of \$ 75 for law clerks excessive and reduce the hourly rate to \$ 55 per hour which is consistent with those rates we have approved in the past.⁶

Later, in Decision 04-04-012, the Commission again considered the issue of unpaid law students in a case involving ELJC's representation of the Southeast Alliance for Environmental Justice:

SAEJ does not address whether it is appropriate for us to compensate for time spent by law students who are also using a law clinic as part of their own educational enrichment or curriculum. This appears to be an issue the Commission has not previously addressed. Indeed, we have granted awards in excess of \$ 90 per hour for law students in past decisions. In D.03-04-050, we awarded \$ 125 per hour for work a second year law student performed in 2001. In D.03-01-075, we awarded \$ 85 per hour for "summer associates" (law students) who performed work in 2001. We awarded a \$ 70 hourly rate for interns performing work in 2001 in D.03-02-023. In view of the fact that we have no information about the law students, they receive at least some educational credit

⁴ *See Serrano v. Priest*, 20 Cal.3d 25, 48-49 (1977).

⁵ *See Roel v. Lynwood Redevelopment Agency*, 194 Cal. App. 4th 1319, 1332-1333 (Cal. App. 2d Dist. 2011).

⁶ D.99-01-020 at pp. 11-12.

from the work, and the requested rate seems slightly too high for 2000, we will award a rate of \$ 80 per hour for work performed in 2000 and adopt the requested \$ 90 hourly rate for work performed in 2003.

And again, as recently as 2011, the Commission approved an award for unpaid law students in a case involving ELJC:

D.07-04-032 approved an hourly rate of \$100 per hour for work as a law student. This rate takes into account that law students received academic credits for the work they perform. Generally speaking, these are second and third year law students. PE requests this same hourly rate for 2010 work performed by ELJC law students here. We find the requested hourly rate to be reasonable and adopt it here.⁷

The Commission has also repeatedly rejected the argument that fees should not be awarded for attorneys that represent parties pro bono.⁸ The Commission has also previously examined the rate law students should be paid for preparing intervenor compensation claims and found that it is appropriate to compensate law student's time for work on intervenor compensation claims at the entire rate.⁹ In D.04-04-012, the Commission reasoned:

We ordinarily halve such time because we do not believe compensation requests ordinarily require the skill of an attorney to prepare. Thus, we will continue to halve the attorney time, but give SAEJ the full hourly rate for time its law students spent on the request.¹⁰

This reasoning continues to apply here. Consistent with Commission precedent, ELJC requests that law students receive compensation at their full rate for time spent on the intervenor compensation request.

Contrary to SCE's suggestion, these decisions demonstrate that the Commission has reviewed the issue of unpaid law students and in accord with longstanding federal precedent has awarded fees for their services when they met all other requirements for intervenor compensation. SCE cites no cases questioning this authority.

⁷ D.11-03-025 at p. 9.

⁸ See, e.g., D.05-01-059 at p. 3; D.03-11-021.

⁹ See, e.g., D.04-04-012; D.11-03-025.

¹⁰ D.04-04-012 at p. 3.

Using unpaid law students at clinics is a practice authorized and supported by the Supreme Court of California.¹¹ It allows law schools to leverage the expertise of their faculty to provide quality legal assistance to those who cannot afford attorneys:

[L]aw schools do have some obligation to contribute to the solution of the crisis in access to justice, and it seems obvious that the obligation is best accomplished by law school clinics assisting low-income individuals and communities that are underserved or have particular difficulty obtaining lawyers because of the nature of their legal problems.¹²

It is also a practice consistent with the intent of the Intervenor Compensation statute.¹³

By providing compensation for the Clinic's law students on this case, ELJC will have the funding necessary to continue to provide cost-effective and pro bono representation to those who are not able to afford an attorney in cases, including proceedings before the Commission. All of the fees awarded through the Commission's intervenor compensation program in this case will be used solely to maintain the ELJC's staff attorneys who are not otherwise funded through the law school. ELJC depends on awards such as these to continue providing its services to the community year after year.

Finally, ELJC's student clinician hours in this proceeding were reasonable and should be compensated. ELJC law students took a significant role in the research and drafting of the briefs, testimony and other filings submitted. An ELJC law student also performed a cross-examination in the hearing, and ELJC law students drafted the majority of the intervenor compensation claim. All of these functions were performed at a fraction of the cost to ratepayers considering the low law student rate. ELJC also removed hundreds of law student hours from its claim to account for

¹¹ See California Rules of Court, Rule 9.42.

¹² Stephen Wizner and Jane Aiken, *Teaching and Doing: The Role of Law School Clinics in Enhancing Access to Justice*, 73 FORDHAM L. REV. 997 (2004); Am. Bar Ass'n, Section of Legal Education and Admissions to the Bar, Legal Education and Professional Development — An Educational Continuum, Report of the Task Force on Law Schools and the Profession: Narrowing the Gap (1992).

¹³ Cal. Public Utilities Code §1801.3b ("The provisions . . . shall be administered in a manner that encourages the effective and efficient participation of all groups that have a stake in the public utility regulation process.")

training, duplication, and excessive hours.¹⁴ ELJC law students saved attorneys significant research and writing time. This, in turn, reduced hours and ultimately reduced the amount of the compensation request. The work that ELJC law students did contributed significantly to the ultimate decision as many aspects of briefs and testimony that they worked on advanced the positions ultimately decided in the final decision.¹⁵

CONCLUSION

For all the reasons described above, CEJA respectfully requests that the Commission reject SCE's broad arguments and compensate CEJA for the amount requested in its request.

Respectfully submitted,

May 23, 2013

/s/ Deborah Behles
DEBORAH BEHLES
Environmental Law and Justice Clinic
Golden Gate University School of Law
536 Mission Street
San Francisco, CA 94105-2968
(415) 442-6647 (Telephone)
dbehles@ggu.edu

SHANA LAZEROW
Communities for a Better Environment
1904 Franklin Street, Suite 600
Oakland, CA 94612
(510) 302-0430 (Telephone)
slazerow@cbeocal.org

Attorneys for
CALIFORNIA ENVIRONMENTAL JUSTICE
ALLIANCE

¹⁴ See CEJA Request for Intervenor Compensation at p. 10 (discussing how hundreds of student clinician time was removed for the request).

¹⁵ See generally CEJA Request for Intervenor Compensation at pp. 3-7 (discussing the substantial contributions to the proceeding).