

Decision \_\_\_\_\_

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

Order Instituting Rulemaking to Oversee the Resource Adequacy Program, Consider Program Refinements, and Establish Annual Local Procurement Obligations	Rulemaking 11-10-023 (Filed October 20, 2011)
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**INTERVENOR COMPENSATION CLAIM OF SIERRA CLUB AND DECISION ON INTERVENOR COMPENSATION CLAIM OF SIERRA CLUB**

<b>Claimant: Sierra Club</b>	<b>For contribution to D.13-06-024</b>
<b>Claimed: \$ \$39,161.10</b>	<b>Awarded: \$</b>
<b>Assigned Commissioner: Mark J. Ferron</b>	<b>Assigned ALJ: David M. Gamson</b>
I hereby certify that the information I have set forth in Parts I, II, and III of this Claim is true to my best knowledge, information and belief. I further certify that, in conformance with the Rules of Practice and Procedure, this Claim has been served this day upon all required persons (as set forth in the Certificate of Service attached as Attachment 1).	
<b>Signature:</b>	/s/ Matthew Vespa
<b>Date: 8/23/13</b>	<b>Printed Name: Matthew Vespa</b>

**PART I: PROCEDURAL ISSUES (to be completed by Claimant except where indicated)**

<b>A. Brief Description of Decision:</b>	Decision 13-06-024 adopted local procurement obligations for 2014 and an interim “flexible capacity” framework for 2015-2017. The flexible capacity framework is intended to address the need to ensure the operational availability of resources with flexible attributes to meet future ramping needs in the late evening. Ramping needs are projected to increase with higher penetration of solar resources. The Decision declined to adopt a flexible capacity requirement in 2014 due to lack of need. The Decision provided that in the coming year, prior to implementation of flexible capacity procurement requirements, the Commission would develop rules to allow participation by preferred resources and energy storage.
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**B. Claimant must satisfy intervenor compensation requirements set forth in Public Utilities Code §§ 1801-1812:**

	<b>Claimant</b>	<b>CPUC Verified</b>
<b>Timely filing of notice of intent to claim compensation (NOI) (§ 1804(a)):</b>		
1. Date of Prehearing Conference:	n/a	
2. Other Specified Date for NOI:	Nov. 28, 2011	
3. Date NOI Filed:	Dec. 19, 2012 (Sierra Club concurrently filed and served a Motion to Late File an NOI and the NOI on December 19, 2012. However, Sierra Club recently discovered that only the Motion was docketed, not the NOI. Pursuant to direction by the Docketing office, Sierra Club re-filed and served the NOI on August 20, 2013. )	
4. Was the NOI timely filed? <b>No, but motion to late-file granted by ALJ Gamson on May 21, 2013 (Included as Attachment 2)</b>		
<b>Showing of customer or customer-related status (§ 1802(b)):</b>		
5. Based on ALJ ruling issued in proceeding number:	R 12-06-013	
6. Date of ALJ ruling:	Feb. 25, 2013	
7. Based on another CPUC determination (specify):	n/a	
8. Has the Claimant demonstrated customer or customer-related status?		
<b>Showing of “significant financial hardship” (§ 1802(g)):</b>		
9. Based on ALJ ruling issued in proceeding number:	R. 12-06-013	
10. Date of ALJ ruling:	Feb. 25, 2013	

11. Based on another CPUC determination (specify):	n/a	
12. Has the Claimant demonstrated significant financial hardship?		
<b>Timely request for compensation (§ 1804(c)):</b>		
13. Identify Final Decision:	D.13-06-024	
14. Date of Issuance of Final Order or Decision:	July 3, 2013	
15. File date of compensation request:	August 23, 2013	
16. Was the request for compensation timely?		

**C. Additional Comments on Part I (use line reference # as appropriate):**

#	Claimant	CPUC	Comment
	Sierra Club		Sierra Club is a non-profit public benefit corporation with over 600,000 members nationwide, and more than 140,000 members living in California. Our mission includes promotion of the responsible use of the earth's ecosystems and resources, and education of the public about the need to protect and restore the quality of the natural and human environment. Sierra Club advocates on behalf of its members for clean, renewable energy to reduce air pollution, water pollution, and the effects of climate disruption resulting from fossil fuel extraction and combustion. Sierra Club works to pass laws and develop regulations needed to decarbonize California's economy and achieve and strengthen the State's environmental and clean energy objectives.

**PART II: SUBSTANTIAL CONTRIBUTION (to be completed by Claimant except where indicated)**

**A. In the fields below, describe in a concise manner Claimant's contribution to the final decision (see § 1802(i), § 1803(a) & D.98-04-059). (For each contribution, support with specific reference to the record.)**

Contribution	Specific References to Claimant's Presentations and to Decision	Showing Accepted by CPUC
1. CAISO Need Analysis for Flexible Capacity Procurement – accounting for fixed/tracking solar.  <ul style="list-style-type: none"> <li>⊗ Sierra Club argued that CAISO's estimates overstated the need for flexible capacity procurement by failing to</li> </ul>	Sierra Club and Vote Solar Comments on Resource Adequacy and Flexible Capacity Procurement Joint Parties Proposal (Dec. 26, 2012) at 3-6.  CAISO, Updated Flexible	

<p>accurately estimate the ratio of fixed v. tracking solar resources. “Based on input from the Sierra Club...” the CAISO updated its solar profiles and lowered its estimates for flexible capacity need during the shoulder months when need was greatest. Lowering of CAISO estimates translated into lower procurement requirements in the Commission decision, which was based off CAISO updated projections. Reduced procurement need as a result of Sierra Club’s analysis reduced ratepayers’ costs of flexible capacity procurement.</p>	<p>Capacity Requirements based on Updated RPS Profiles, March 22, 2013 (Included as Attachment 3). D.13-06-024, A2.</p>	
<p>2. Lack of Immediate Need for Flexible Capacity Procurement.</p> <ul style="list-style-type: none"> <li>⌘ Sierra Club argued that, contrary to assertions by the CAISO, SDG&amp;E, and SCE (Joint Parties), flexible capacity procurement was not needed in the near term due to significant existing supply of flexible resources and minimal near term need. The Commission declined to adopt flexible capacity procurement in 2014 as advocated by the Joint Parties.</li> </ul>	<p>Sierra Club and Vote Solar Comments on Resource Adequacy and Flexible Capacity Procurement Joint Parties Proposal (Dec. 26, 2012) at 2-14.</p> <p>Sierra Club Opening Comments (April 5, 2013) at 2-4.</p> <p>Sierra Club Reply Comments (April 15, 2013) at 1-3.</p> <p>Decision 13-06-024 at 23 (“Vote Solar and Sierra Club contend there is no need for a flexible capacity procurement program in 2014, and instituting an interim program in 2014 provides, at best, speculative benefits.”)</p> <p>Decision 13-06-024 at 35 (“we do not adopt a flexible capacity requirement for RA year 2014 in this decision.”)</p>	



<p>3. Inclusion of Preferred Resources.</p> <ul style="list-style-type: none"> <li>⊗ Sierra Club argued that a flexible capacity procurement regime must include meaningful participation of preferred resources and that the proposed flexible capacity procurement mechanism was inconsistent with the loading order because “flexibility” was defined in a manner that excluded meaningful participation by energy storage and demand response. The Decision agreed with Sierra Club and green energy advocates that definitions should be developed prior to program implementation to allow meaningful participation by these resources.</li> </ul>	<p>Sierra Club and Vote Solar Comments (Dec. 26, 2012) at 1-2, 15-16.</p> <p>Sierra Club Opening Comments (April 5, 2013) at 4-6.</p> <p>Sierra Club Reply Comments (April 15, 2013) at 4-5.</p> <p>Decision 13-06-024 at 48 (“Sierra Club states that ‘[d]espite the paramount importance of these concerns, the Proposals are highly dependent on fossil fuels to meet renewable integration needs and exclude demand response and energy storage.’”)</p> <p>Decision 13-06-024 at 51 (“we agree with parties who advocate for a mechanism to allow preferred resources to participate in the flexible capacity framework we approve today.”)</p>	
<p>4. Remove biases in proposed decision toward meeting flexibility from “generating resources.”</p> <ul style="list-style-type: none"> <li>⊗ The Proposed Decision contained several references to the need for “generating resources” to fill flexible capacity needs. Sierra Club argued that use of the qualifier “generating” created an improper bias toward fossil fuels as opposed to other solutions, such as energy storage or demand response, that may not “generate” energy but nonetheless can be used to meet flexibility needs. References to “generating resources” were modified in the final decision.</li> </ul>	<p>Sierra Club Opening Comments on Proposed Decision 2-3.</p> <p>Compare Proposed Decision with Final Decision at 12, Finding of Fact #4 (removing “generating” resources).</p>	

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

	<b>Claimant</b>	<b>CPUC Verified</b>
<b>a. Was the Division of Ratepayer Advocates (DRA) a party to the proceeding?</b>	Yes	
<b>b. Were there other parties to the proceeding with positions similar to yours?</b>	Yes	
<b>c. If so, provide name of other parties:</b> Sierra Club was the only environmental group in this proceeding. Clean energy/distributed generation advocates included Vote Solar, CEERT, DECA and Clean Coalition.		
<b>d. Describe how you coordinated with DRA and other parties to avoid duplication or how your participation supplemented, complemented, or contributed to that of another party:</b> Sierra Club spoke frequently with DRA regarding CAISO analysis to coordinate and complement positions on need for flexible capacity procurement and to work through technical issues. Sierra Club filed joint opening comments and subsequently coordinated with Vote Solar on positions. Sierra Club was one of the only parties to provide expert opinion on need and the only party to analyze the solar load profile issue. When similar issues were covered, Sierra Club provided its own analysis and unique perspective as an environmental group. The result was a complementary showing in which parties built off each other toward common objectives. A review of the final decision reveals that when multiple parties worked on an issue, the results were cumulative, not duplicative. Multi-party participation was necessary in light of the several parties (CAISO, SCE, SDG&E and others) advocating opposing positions.		

**C. Additional Comments on Part II (use line reference # or letter as appropriate):**

<b>#</b>	<b>Claimant</b>	<b>CPUC</b>	<b>Comment</b>
	Sierra Club		Sierra Club contributed substantially to the development of the record by conducting discovery on CAISO analysis and filing a Motion for Evidentiary Hearings jointly with The Utility Reform Network. This proceeding was characterized by delayed and incomplete disclosure of relevant data necessary to assess the timing and need for flexible capacity procurement. While the Motion for Evidentiary Hearings was ultimately denied by the Commission because flexible capacity procurement was not adopted for 2014, Sierra Club believes it served its ultimate purpose in pressuring CAISO to disclose relevant information in a more timely and complete manner. However, because the Motion was ultimately denied by the Commission, Sierra Club's intervenor compensation request does not seek recovery for time associated with drafting the Motion and Amended Motion for Evidentiary hearings.

**PART III: REASONABLENESS OF REQUESTED COMPENSATION (to be completed by Claimant except where indicated)**

**A. General Claim of Reasonableness (§§ 1801 & 1806):**

<p><b>a. Concise explanation as to how the cost of Claimant’s participation bears a reasonable relationship with benefits realized through participation (include references to record, where appropriate)</b></p> <p>Sierra Club requests \$39,161.10 in fees and costs for its advocacy in this proceeding. Sierra Club participated in all major aspects of this Phase, including filing multiple comments, conducting discovery, providing expert opinion on CAISO estimates, filing a motion for evidentiary hearings, and participating in workshops. In general, the Sierra Club advocated for a lower finding of need, a delay in flexible capacity procurement implementation, and the inclusion of preferred resources in a flexible capacity procurement mechanism. Sierra Club achieved each of these objectives and its analysis was relied upon to lower flexible capacity need.</p> <p>Sierra Club’s request is likely a very small portion of the benefits that utility customers will ultimately realize due to the reduction in unnecessary procurement.</p>	<p><b>CPUC Verified</b></p>
<p><b>b. Reasonableness of Hours Claimed.</b></p> <p>Sierra Club participated in all major aspects of this Phase, including filing multiple comments, conducting discovery, providing expert opinion on CAISO estimates, filing a motion for evidentiary hearings, and participating in workshops. Total hours Sierra Club spent in this proceeding are much higher than the hours for which Sierra Club now seeks recovery. Sierra Club does not include hours spent on issues for which it did not prevail (e.g. drafting and researching Motion and Amended Motion for Evidentiary hearing) or issues the Commission ultimately did not address (e.g. CEQA analysis of flexible capacity procurement regime). Hours claimed directly relate to work performed where Sierra Club made a substantial contribution to an outcome.</p> <p>In addition, Sierra Club work in this docket was performed by one attorney and one expert. This avoided internal duplication of time.</p>	
<p><b>c. Allocation of Hours by Issue</b></p> <p>Sierra Club has divided its work into three issues: (1) timing and extent of need of flexible capacity procurement (first two above identified contributions); (2) inclusion of preferred resources and energy storage (second two above identified contributions); and (3) hearings, review hearing materials and party comment. Breakdown of time spent on these issues is identified in the time sheets of Matthew Vespa and Bill Powers.</p>	

**B. Specific Claim:**

<p><b>CLAIMED</b></p>	<p><b>CPUC AWARD</b></p>
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ATTORNEY, EXPERT, AND ADVOCATE FEES								
Item	Year	Hours	Rate \$	Basis for Rate*	Total \$	Hours	Rate \$	Total \$
Matthew Vespa	2012	18	\$315	Resolution ALJ-287	\$5,670			
Matthew Vespa	2013	63.6	\$330	Resolution ALJ-287	\$20,988			
Bill Powers	2012-13	75.5	\$150	Resolution ALJ-287	\$11,325			
[Expert 2]								
[Advocate 1]								
[Advocate 2]								
<b>Subtotal: \$ \$37,983</b>						<b>Subtotal: \$</b>		
OTHER FEES								
Describe here what OTHER HOURLY FEES you are Claiming (paralegal, travel **, etc.):								
Item	Year	Hours	Rate \$	Basis for Rate*	Total \$	Hours	Rate	Total \$
[Person 2]								
<b>Subtotal: \$</b>						<b>Subtotal: \$</b>		
INTERVENOR COMPENSATION CLAIM PREPARATION **								
Item	Year	Hours	Rate \$	Basis for Rate*	Total \$	Hours	Rate	Total \$
Matthew Vespa	2013	7.1	\$165	½ of attorney rate,	\$1,178.10			
[Preparer 2]								
<b>Subtotal: \$1,178.10</b>						<b>Subtotal: \$</b>		
COSTS								
#	Item	Detail			Amount	Amount		
<b>TOTAL REQUEST: \$ 39,161.10</b>						<b>TOTAL AWARD: \$</b>		
<p>When entering items, type over bracketed text; add additional rows as necessary.                      *If hourly rate based on CPUC decision, provide decision number; otherwise, attach rationale.                      **Travel and Reasonable Claim preparation time are compensated at ½ of preparer's normal hourly rate.</p>								
Attorney		Date Admitted to CA BAR <sup>1</sup>		Member Number		Actions Affecting Eligibility (Yes/No?) If "Yes", attach explanation		
Matthew Vespa		2002		222265		No		

<sup>1</sup> This information may be obtained at: <http://www.calbar.ca.gov/>.




**C. Attachments Documenting Specific Claim and Comments on Part III (Claimant completes; attachments not attached to final Decision):**

Attachment or Comment #	Description/Comment
1	Certificate of Service
2	May 21, 2013 Email from ALJ Gamson Granting Late-Filed Motion to File NOI
3	CAISO, Updated Flexible Capacity Requirement, March 22, 2013
4	Time Sheets of Matthew Vespa and Bill Powers
5	Resumes of Matthew Vespa and Bill Powers

**D. CPUC Disallowances, Adjustments, and Comments (CPUC completes):**

Item	Reason

**PART IV: OPPOSITIONS AND COMMENTS**

Within 30 days after service of this Claim, Commission Staff or any other party may file a response to the Claim (see § 1804(c))

(CPUC completes the remainder of this form)

<b>A. Opposition: Did any party oppose the Claim?</b>	
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If so:

Party	Reason for Opposition	CPUC Disposition

<b>B. Comment Period: Was the 30-day comment period waived (see Rule 14.6(2)(6))?</b>	
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If not:

Party	Comment	CPUC Disposition

**FINDINGS OF FACT**

1. Claimant [has/has not] made a substantial contribution to Decision (D.) \_\_\_\_\_.
2. The requested hourly rates for Claimant’s representatives [,as adjusted herein,] are comparable to market rates paid to experts and advocates having comparable training and experience and offering similar services.
3. The claimed costs and expenses [,as adjusted herein,] are reasonable and commensurate with the work performed.
4. The total of reasonable contribution is \$\_\_\_\_\_.

**CONCLUSION OF LAW**

1. The Claim, with any adjustment set forth above, [satisfies/fails to satisfy] all requirements of Public Utilities Code §§ 1801-1812.

**ORDER**

1. Claimant is awarded \$\_\_\_\_\_.
2. Within 30 days of the effective date of this decision, \_\_\_\_\_ shall pay Claimant the total award. [for multiple utilities: “Within 30 days of the effective date of this decision, ^, ^, and ^ shall pay Claimant their respective shares of the award, based on their California-jurisdictional [industry type, for example, electric] revenues for the ^ 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 non-financial commercial paper as reported in Federal Reserve Statistical Release H.15, beginning [date], the 75<sup>th</sup> day after the filing of Claimant’s request, and continuing until full payment is made.
3. The comment period for today’s decision [is/is not] waived.
4. This decision is effective today.

Dated \_\_\_\_\_, at San Francisco, California.