Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on The Commission's Own Motion to Amend General Order 77-K.	Rulemaking 03-08-019 (Filed August 21, 2003)

OPINION GRANTING INTERVENOR COMPENSATION TO THE GREENLINING INSTITUTE FOR SUBSTANTIAL CONTRIBUTIONS TO DECISION 05-09-021

This decision awards The Greenlining Institute (GL) $31,425.00 in compensation for its substantial contributions to Decision (D.) 05-09-021. Today's award will be paid from the Commission's intervenor compensation program fund. This proceeding is closed.

1. Background

In December 2002, GL and the Latino Issues Forum (LIF) jointly filed Petition for Rulemaking (P.) 02-12-039 requesting modifications to General Order (GO) 77-K regarding the reporting of executive compensation data by utilities. The petition sought to increase the compensation levels that trigger reporting under the general order and to require regulated utilities and their holding companies to disclose executive diversity/ethnicity, compensation and philanthropic contributions in the GO 77 reports. The subject rulemaking closed P.02-12-039 by granting that portion regarding compensation levels that trigger reporting, and by denying the other portions. The rulemaking scope was limited to three specific issues: (1) should the compensation levels that trigger reporting

be increased; (2) should Competitive Local Exchange Carriers (CLECs) and Nondominant Interexchange Carriers (NDIECs) be exempt from the general order; and (3) should utilities be allowed to file information on employee names as confidential under Pub. Util. Code § 583.

2. Requirements for Awards of Compensation

The intervenor compensation program, enacted in Pub. Util. Code §§ 1801-1812, requires California jurisdictional utilities to pay the reasonable costs of an intervenor's participation if the intervenor 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. (Subsequent statutory references are to the Public Utilities Code unless otherwise indicated.)

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), or in special circumstances at other appropriate times 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 should 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), 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. (§§ 1802(i), 1803(a).)

6. The claimed fees and costs are 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).

For discussion here, the procedural issues in Items 1-4 above are combined, followed by separate discussions on Items 5-6.

3. Procedural Issues

In this proceeding, no PHC was held and no other date was set for the filing of NOI's. GL timely filed its request for compensation on October 27, 2005, within 60 days of D.05-09-021 being issued. GL filed all of the necessary procedural information, normally contained in an NOI, in its request for compensation.[1]

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 it articles of incorporation or by-laws to represent the interests of residential or small business customers. GL provided information in its request showing that it qualifies as a customer as defined in paragraph C, above.

GL asserted financial hardship in its compensation request. GL references its by-laws that authorize representation of low-income, inner-city, and

[1] The request is unopposed.

underserved ratepayers. GL previously was found to have met the financial hardship condition, pursuant to § 1804(b)(1), through a rebuttable presumption of eligibility, because GL met this requirement in another proceeding within one year of the commencement of this proceeding (Administrative Law Judge (ALJ) Ruling dated March 25, 2003, in Application 02-07-050).

In view of the above, we find that GL has satisfied all the procedural requirements necessary to make its request for compensation.

4. Substantial Contribution

In evaluating whether a customer made a substantial contribution to a proceeding, we look at several things. First, did the ALJ or Commission adopt one or more of the factual or legal contentions, or specific policy or procedural recommendations put forward by the customer? (See § 1802(i).) Second, if the customer's contentions or recommendations paralleled those of another party, did the customer's participation materially supplement, complement, or contribute to the presentation of the other party or to the development of a fuller record that assisted the Commission in making its decision? (See §§ 1802(i) 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.[2]

Should the Commission not adopt any of the customer's recommendations, compensation may be awarded if, in the judgment of the Commission, the customer's participation substantially contributed to the decision or order. For example, if a customer provided a unique perspective that enriched the Commission's deliberations and the record, the Commission could find that the customer made a substantial contribution. With this guidance in mind, we turn to the claimed contributions GL made to the proceeding.

GL was responsible in part for initiating this proceeding, and actively participated throughout by filing briefs and comments. As directed in the rulemaking, GL and the other parties filed opening and reply comments in October 2003. On January 30, 2004, Pacific Gas and Electric Company (PG&E) and GL filed a joint petition to modify the rulemaking by expanding its scope to: additionally require the large utilities operating in California (those with over $1 billion operating revenue) to report holding company executive compensation; report bonuses awarded but not paid in the reporting year; provide written verification by an independent auditor on disclosure of these elements; and provide an internet site-link to all related documents filed with the Securities and Exchange Commission (SEC).

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[2] D.98-04-059, 79 CPUC2d, 628 at 653.

In March 2004, the five other large utilities[3] filed responses opposing the PG&E/GL petition generally. They stated that this information is unneeded for the purposes of ratemaking, that holding company executive compensation was addressed and denied in the rulemaking, that executive compensation awarded in the prior year but not yet received was not within the scope of the rulemaking, and that most of the requested additional information can be easily obtained from other sources.

D.04-08-055 adopted GO 77-L, superseding GO 77-K with revised rules in the three scoped areas. This decision granted, in part, the PG&E/GL petition to modify the rulemaking by expanding its scope and soliciting further comments on the issues of large utilities reporting holding company executive compensation and bonuses awarded but not paid in the reporting year. The decision further states that utilities may redact the individual names of all employees required to report compensation, but not the names of executive officers or attorneys.

D.05-09-021 addressed the expanded scope of the rulemaking. It did not further amend GO 77, but does require all large utilities to include in all future GO 77 reports an internet site-link to all publicly available documents filed with the SEC that relate to executive compensation.

In view of GL's formative role and activities in this proceeding, we find that it made a substantial contribution to D.05-09-021, and was instrumental in the resulting modifications made to GO 77 and the internet site-link directive.

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[3] Southern California Edison Company, Southern California Gas Company, San Diego Gas & Electric Company, SBC California (now AT&T), and Verizon California, Inc.

5. Reasonableness of Requested Compensation

GL requests $31,895 for its participation in this proceeding for the work of attorneys Robert Gnaizda and Itzel Berrio, project director Chris Vaeth, and expert Michael Phillips, as follows:

Attorneys	Year	Hours	Rate	Total
Robert Gnaizda	2004	20.5	$490.00	$10,045.00
Robert Gnaizda	2005	8	$505.00	$4,040.00
Itzel Berrío	2003	11.5	$275.00	$3162.50
Itzel Berrío	2004	26.8	$300.00	$8040.00
Itzel Berrío	2005	3.9	$325.00	$1267.50
		Subtotal:		**$26,555.00**

Staff	Year	Hours	Rate	Total
Chris Vaeth	2005	2	$75.00*	$150.00
		Subtotal:		**$150.00**

Expert	Year	Hours	Rate	Total
Michael Phillips	2004	14	$360.00	$5040.00
		Subtotal:		**$5040.00**

Direct Expenses	Total
Photocopying and postage costs	$150.00
Subtotal:	**$150.00**
Request Total:	**$31,895.00**

* 50% of requested rate of $150/hour, per existing Commission policy.

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:

a. 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.

GL documented its claimed hours by presenting a daily breakdown of the hours of its representatives and a brief description of each activity. The hourly breakdown reasonably supports the claim for total hours, and we find GL's hours reasonable and related to its substantial contribution to D.05-09-021.

b. Market Rate Standard

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.

In Resolution ALJ-184, dated August 19, 2004, we set forth guidelines for setting rates for work performed in 2004. In D.05-11-031, we adopted guidelines and principles for setting intervenors' hourly rates for work performed in 2005. Generally, these guidelines do not authorize increases from previously authorized 2004 rates for work performed in 2005, and sets a reasonable range of rates for 2005. GL filed its compensation request one month prior to the issuance of D.05-11-031 and therefore some of its requested rates may not reflect the 2005 guidelines. Some of GL's requested rates are reduced, as described below, in conformance with Resolution ALJ-184 and D.05-11-031.

GL requests hourly rates for attorney Gnaizda of $490 for 2004, and $505 for 2005. The maximum rate for 2005 set forth in D.05-11-031 for attorneys with Gnaizda's experience is $490. We previously approved a $490/hour rate for Gnaizda for 2004 in D.05-08-015, and adopt that rate here for both years.

GL request hourly rates for attorney Berrio of $275 for 2003, $300 for 2004, and $325 for 2005. We previously approved these rates for the same years in D.05-08-015, and adopt them here.

GL requests an hourly rate of $150 for project director Chris Vaeth for two hours time spent preparing the subject compensation request. Per existing Commission policy, GL discounted Vaeth's rate by 50%, to $75/hour, for request preparation. We authorize the $150/hour rate (discounted here to $75) as reasonable in this proceeding for the two hours of request preparation time. However, GL is directed to include more specific and detailed justification for Vaeth should he participate as an expert or technical representative in any future proceedings.

GL requests an hourly rate for expert Phillips of $360 for work performed in 2004. We previously approved a rate of $335 for Phillips for 2004 in D.05-08-025, and adopt it here.

c. 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.

This proceeding did not involve setting rates or other factors that would allow a direct dollar amount or benefit to be determined from an intervenor's participation. However, GL's participation led to two major modifications in all future GO 77 reports; 1) an increased salary reporting level threshold; and 2) an internet site-link to all publicly available documents filed with the SEC relating to executive compensation. Improving public access to this kind of utility financial information furthers our policy objectives, although assigning a dollar value to this improvement is difficult. In view of its contributions to improved public access, we find GL's participation was productive.

d. Direct Expenses

The itemized direct expenses of $150 submitted by GL include costs for photocopying and postage. We find these expenses to be commensurate with the work performed and reasonable.

6. Award

We award GL $31,425.00. This amount is $470 less than GL requested due to the reduction of certain hourly rates (Gnaizda's 2005 rate to $490, and Phillip's 2004 rate to $335) previously discussed.

This rulemaking proceeding affected a broad array of utilities. As such, we find it appropriate to authorize payment of the compensation award from the intervenor compensation program fund described in D.00-01-020.

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 January 10, 2006, the 75th day after GL 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. GL'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.

7. Waiver of Comment Period

This is an intervenor compensation matter. Accordingly, as provided by Rule 77.7(f)(6) of our Rules of Practice and Procedure, we waive the otherwise applicable 30-day comment period for this decision.

8. Assignment of Proceeding

Michael R. Peevey is the Assigned Commissioner, and Kenneth L. Koss is the assigned ALJ in this proceeding.

Findings of Fact

1. GL has satisfied all the procedural requirements necessary to claim compensation in this proceeding.
2. GL made a substantial contribution to D.05-09-021, as described herein.
3. GL 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.
4. GL requested related expenses that are reasonable and commensurate with the work performed.
5. The total of the reasonable compensation is $31,425.00.
6. It is appropriate to pay today's award from the Commission's intervenor compensation program fund.
7. The appendix to this opinion summarizes today's award.

Conclusions of Law

1. GL has fulfilled the requirements of Pub. Util. Code §§ 1801-1812, which govern awards of intervenor compensation, and is entitled to intervenor compensation for its substantial contributions to D.05-09-021, as adjusted herein.
2. GL should be awarded $31,425.00 for its contribution to D.05-09-021.

3. This award should be paid from the Commission's intervenor compensation program fund established in D.00-01-020.

4. Per Rule 77.7(f)(6), the comment period for this compensation decision may be waived.

5. This order should be effective today so that GL may be compensated without further delay.

6. This proceeding should be closed.

O R D E R

IT IS ORDERED that:

1. The Greenlining Institute (GL) is awarded $31,425.00 as compensation for its substantial contributions to Decision (D.) 05-09-021.

2. Within 30 days of the effective date of this decision, GL's award shall be paid from the intervenor compensation program fund, as described in D.00-01-020. 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 January 10, 2006, the 75th day after the filing date of GL's request for compensation, and continuing until full payment is made.

3. The comment period for today's decision is waived.

4. This proceeding is closed.

This order is effective today.

Dated _____, at San Francisco, California.

Compensation Decision Summary Information

Compensation Decision:		**Modifies Decision?**
Contribution Decision(s):	D0509021	
Proceeding(s):	R0308019	
Author:	ALJ Koss	
Payer(s):	Intervenor Compensation Program Fund (D0001020)	

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
The Greenlining Institute	10/27/05	$31,895.00	$31,425.00	No	Hourly rate adjustments

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Robert	Gnaizda	attorney	Greenlining Institute	$490	2004	$490
Robert	Gnaizda	"	"	$505	2005	$490
Itzel	Berrio	"	"	$275	2003	$275
Itzel	Berrio	"	"	$300	2004	$300
Itzel	Berrio	"	"	$325	2005	$325
Chris	Vaeth	project director	"	$150	2005	$150
Michael	Phillips	expert	"	$360	2004	$335