

BEFORE THE PUBLIC UTILITIES COMMISSION OF
THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the
Commission's Proposed Policies and
Programs Governing Post-2003 Low
Income Assistance Programs.

R. 04-01-006

**SUPPLEMENT TO THE REQUEST OF DISABILITY RIGHTS ADVOCATES
FOR AWARD OF INTERVENOR COMPENSATION**

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I. INTRODUCTION

Pursuant to Rule 2.6(a) of the Commission's Rules of Practice and Procedure, Disability Rights Advocates (Disab.R.A.)¹ files this amendment to our pending Request for Intervenor Compensation in order to supplement its request for compensation. In addition to its initial request of \$35,448.68, Disab.R.A. requests compensation for additional work in the amount of \$10,926.40 for a total requested award of \$46,375.08. Disab.R.A. is entitled to compensation for this additional work pursuant to California Public Utilities Code² § 1801 *et seq.* because (1) the Commission granted Disab.R.A. intervenor status for this proceeding; (2) without compensation, Disab.R.A. will experience significant financial hardship; (3) Disab.R.A.'s ongoing contributions in the implementation of Decision 05-10-044, arising from Rulemaking 04-01-006, have been substantial, and based on previous PUC decisions, can be compensated; and (4) Disab.R.A.'s request for fees and costs is reasonable.

II. DISAB.R.A. HAS BEEN GRANTED INTERVENOR STATUS IN THIS PROCEEDING.

As explained in Disab.R.A.'s initial request for compensation, Disab.R.A.'s Notice of Intent to Seek Compensation was filed on October 7, 2005 in conjunction with a Motion for Leave to Intervene in this proceeding. The Commission granted Disab.R.A. intervenor status on November 7, 2005, and on December 28, 2005, found that Disab.R.A. was eligible to seek compensation in this proceeding.³

¹ Due to the adoption of the name of Division of Ratepayer Advocates by the agency previously known as the Office of Ratepayer Advocate, Disability Rights Advocates is adopting the abbreviation "Disab.R.A."

² All statutory cites are to the California Public Utilities Code unless otherwise specified.

³ D.05-10-044, p. 28, fn. 12; Administrative Law Judge's Ruling on Several Notices of Intent to Request Compensation, Dec. 28, 2005, p 5.

III. WITHOUT COMPENSATION FOR ITS PARTICIPATION IN THIS PROCEEDING, DISAB.R.A. WILL EXPERIENCE SIGNIFICANT FINANCIAL HARDSHIP.

As detailed in Disab.R.A.'s initial request for compensation, participation in this proceeding constitutes a significant financial hardship for Disab.R.A.. Without Disab.R.A.'s participation, over 6 million Californians who are highly dependent on natural gas for disability-related heating and electric needs (i.e. life support, charging mobility devices and temperature-controlled environments) would not otherwise be adequately represented. However, as ALJ Weissman noted in his Ruling on Several Notices of Intent to Request Compensation, the economic interest of individual people with disabilities is small when compared to the costs of effective participation in PUC proceedings.⁴ Thus, Disab.R.A. meets the requirement of "significant financial hardship" as set forth in § 1802(g).⁵

Additionally, pursuant to D. 98-04-059, Finding of Fact 13, an intervenor must show that it will represent customer interests that would otherwise be underrepresented. Disab.R.A. satisfies this requirement because when Disab.R.A. joined this proceeding, no other party specifically represented the interests of disabled customers.⁶

⁴ Administrative Law Judge's Ruling on Several Notices of Intent to Request Compensation, Dec. 28, 2005, p.5.

⁵ "Significant financial hardship" means either that the customer cannot without undue hardship afford 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 the group or organization is small in comparison to the costs of effective participation in the proceeding.

⁶ While the consumer groups that were already parties to this proceeding may have many common interests with Disab.R.A., they are not likely to be as focused on the unique needs of people with disabilities, as evidenced by the fact that Commission staff specifically approached Disab.R.A. regarding participation in the *en banc* hearing that took place on October 6, 2005.

IV. DISAB.R.A.'S ONGOING CONTRIBUTIONS IN THE IMPLEMENTATION OF THE DECISION HAVE BEEN SUBSTANTIAL AND CAN BE COMPENSATED.

A. Continuing Implementation of the Decision Has Resulted In A Substantial Contribution.

Since January 6, 2006 when Disab.R.A. filed its initial request for compensation, Disab.R.A. has continued to work to implement Decision 05-10-044, as specifically directed in this decision. This work has focused on (1) continuing discussions with the utilities regarding the Medical Baseline Allowance program and accessibility issues, pursuant to the decision; and (2) monitoring the Winter Initiative Program through the monthly reports, which the decision directed the utilities to provide.

1. Medical Baseline and Accessibility Work

D.05-10-044 specifically directed the utilities and Disab.R.A. to continue the discussion they had previously initiated regarding the Medical Baseline Allowance program and accessibility issues.⁷ As Disab.R.A. detailed in its initial request for compensation, discussions with the utilities have resulted in a number of crucial changes to multiple services and activities.⁸ Since January 6, 2006, Disab.R.A. has continued this work by completing a guide to addressing the needs of persons with disabilities which was requested by the utilities during the second teleconference. (See Exhibit A). All the utilities have received a copy of this document and Disab.R.A. believes it will be useful in their continuing efforts to reach out to persons with disabilities.

Further, Disab.R.A. has continued to monitor the utilities' promised accessibility modifications. Disab.R.A. has tracked the availability of large print applications and the quality of TTY service. Through this monitoring, Disab.R.A. found that TTY numbers

⁷ D.05-10-044, p. 28: "We direct the utilities to continue with this process [discussions with Disab.R.A.] and report its results."

⁸ See DRA's Request for Intervenor Compensation, pp. 8 – 9.

were often not included on bill inserts about the Winter Initiative. Accordingly, Disab.R.A. raised this issue at the February 17, 2006 workshop.⁹ The utilities all offered assurances that the problem had been or was in the process of being corrected.

Also as a part of this monitoring, Disab.R.A. requested an update from the utilities on their progress in regards to accessibility and Medical Baseline issues. For the most part, Disab.R.A. was pleased with the progress. For example, Disab.R.A. was pleased to see that informing persons with disabilities about the availability of additional allotments of therms has made a substantial difference for the customers of Southwest Gas where the number of Medical Baseline customers receiving additional therm allotments has increased from 1 to 317. Disab.R.A., however, was concerned with the quality of the TTY service offered by PG&E, Southwest Gas and SDG&E. Disab.R.A. spoke individually to these utilities regarding their TTY service and was able to assist in finding ways to improve the quality of their TTY service. The situation and resolution for each is as follows:

- Calls to PG&E continue to be answered by voicemail when the one representative trained to answer TTY calls is assisting other customers. PG&E has agreed (1) to investigate the possibility of training another representative to answer TTY calls and (2) to inform customers in its voicemail message that it will return their call within thirty minutes of their leaving a message.
- Southwest Gas publicized a TTY number which actually connected the caller to the California Relay Service, causing confusion for hearing impaired customers. Southwest Gas will now use the standard California Relay Service number – 711 – and will not characterize the service as TTY.

⁹ Disab.R.A. first submitted a request to the ALJ on 2/9/06 asking that the TTY issue be included in the workshop. The ALJ agreed that the issue was important and asked the utilities to be prepared to discuss the issue at the workshop.

- Calls to SDG&E went unanswered. SDG&E confirmed that on these days, the TTY machine was erroneously turned off. SDG&E continues to investigate the issue to prevent reoccurrences of this problem.

At this point in the dialogue with the utilities, Disab.R.A. feels that the utilities have made substantial progress toward both improved Medical Baseline Allowance service and improved accessibility. Currently, Disab.R.A. has no plans for further information requests or conference calls. However, Disab.R.A. plans to keep the channels of communication open so that it can raise any potential problems which may arise in the future while the utilities can contact Disab.R.A. with any concerns/questions that they may have regarding accessibility issues.

2. Monitoring the Winter Initiative Work

As Disab.R.A. explained in its initial request for compensation, many of the low income proposals addressed by the Commission were vital for persons with disabilities this winter season because persons with disabilities are disproportionately low income and highly dependent on energy. Accordingly, Disab.R.A. has closely followed the implementation of the Winter Initiative, particularly through the monthly reports from the utilities. Disab.R.A. was the first of the consumer groups to raise concerns about shut-offs. Specifically, Disab.R.A. was disturbed by the large number of shut-offs by SCE and feared that the shut-off moratorium and the criteria for qualifying for the moratorium were not being fully publicized to consumers. Disab.R.A. contacted both TURN and Greenlining and as a result, TURN submitted a data request to SCE. Further, our concerns about shut-offs were also raised at the February 17, 2006 workshop, which led to a fruitful discussion about the shut-off processes of each of the utilities. In the coming months, Disab.R.A. will continue to monitor the shut-off data in order to ensure that low-income customers are given every chance possible to maintain electricity and gas service.

B. Ongoing Implementation Work Can Be Compensated.

In order to be compensable, work conducted by a qualified intervenor, must make a substantial contribution to the matter before the Commission. Section 1802(h) defines substantial contribution as occurring when:

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.

However, the Commission has recognizes that work done in the implementation of a decision can also be characterized as making a substantial contribution and accordingly can be compensated. In Decision 02-10-062, which involved setting up a procurement planning and implementation framework for electric utilities, the Commission explained that:

The regulatory framework we adopt in this decision requires for 2003, the active involvement and expertise of nonmarket participants, through continuing the procurement review group (PRG) process adopted in D.02-08-071 and providing intervenor compensation to those parties eligible to receive the awards for their work in this process and in the on-going review of procurement advice letters and expedited applications.

Accordingly, the Commission found that:

“[p]articipation in the procurement review group [by non-market participants] makes a significant contribution to effective implementation of this decision and parties eligible to receive intervenor compensation awards in this proceeding should be eligible to seek compensation for their work in these groups and in the on-going review of the procurement advice letters and expedited applications.”¹⁰

Similarly, in Decision 05-01-055, which involved designing an administrative structure for energy efficiency programs, the Commission followed the precedent of D.02-010-062 and held that “those parties eligible to receive intervenor compensation

¹⁰ D.02-10-062, p. 72; *see also* D.02-10-062, p. 3 -4.

awards in this proceeding should be eligible to seek compensation for their work as PAG [Program Advisory Group] members,” providing “advice and feedback to the IOUs” and “annual information to the Commission.”¹¹

In this proceeding, the Commission encouraged ongoing involvement by consumer groups, though it did not explicitly direct payment of intervenor compensation. Nevertheless, the Commission stated: “[w]e want this constructive conversation [between the consumer groups and utilities] to continue and will do what we can to help make this happen.”¹² Accordingly, the reasoning from D.02-10-062 and D.05-01-055 applies: the Commission recognized the value of non-market participants’ continued role in the proceeding in order to ensure effective implementation of the decision and sought to foster it. As a result, significant contributions to the effective implementation of the decision should be compensated. Since Disab.R.A.’s work on monitoring the shut-off moratorium initiated constructive conversation between the utilities and consumer groups, it was a significant contribution and it should be compensated.

DRA’s work on the Medical Baseline Allowance program also should be compensated. First, as in the above decisions, this work was conducted based on directions by the Commission. In the decision, the Commission explicitly directed “the utilities to continue with [discussions with Disab.R.A.] and report the results.”¹³ As reported in Disab.R.A.’s initial Request for Intervenor Compensation, participation in discussions with the utilities has resulted in a substantial contribution and, as a result, should be compensated. Further, the Commission has previously held that work on compliance issues is compensable. In D.00-09-068, the Commission granted compensation to James Weil for his work on a compliance filing – an advice letter –

¹¹ D.05-01-055, p. 101.

¹² *Id.* at p. 32

¹³ *Id.* at p. 29.

relating to the pending proceeding.¹⁴ Disab.R.A.'s work with the utilities regarding the Medical Baseline Allowance program and accessibility is similarly necessary for compliance with D.05-10-044. Accordingly, it should be compensated.

V. DISAB.R.A.'S REQUESTED COMPENSATION FOR SUPPLEMENTAL FEES AND COSTS IS REASONABLE

The additional amount of compensation being requested by Disab.R.A. for its continuing substantial contribution to this proceeding is reasonable. Though the total amount of compensation now sought is slightly over the estimates set forth in its NOI, Disab.R.A. could not have predicted the ongoing time required for implementation of the decision.¹⁵ Disab.R.A. undertook its ongoing participation in an efficient, non-duplicative and productive manner, and used minimal staffing. Disab.R.A.'s proposed hourly rates are reasonable and are within the limits prescribed by the Commission in D.05-11-031, authorizing for intervenor attorneys and experts the acceptable range of 2005 hourly rates.¹⁶ Accordingly, Disab.R.A. is requesting additional compensation in the total amount of \$10,926.40 for the time it reasonably devoted to the portion of this proceeding focused on the implementation of the protections for the 2005-2006 winter heating season. *See* Exhibit B for totals; *see also* Exhibits C and D, for Disab.R.A.'s detailed fee records.

A. The Number of Hours Disab.R.A. Devoted to Implementation Efforts in This Proceeding is Reasonable Because the Hours Were Undertaken in a Productive and Efficient Manner.

Full compensation for this additional amount is appropriate since Disab.R.A.'s substantial contributions to the implementation of D.05-10-044 continued to be

¹⁴ D.00-09-068, p. 18.

¹⁵ DRA estimated a total projected budget of approximately \$38,775. *See* Notice of Intent to Seek Compensation, Oct 7, 2005, p. 4.

¹⁶ While the implementation work detailed in this filing all took place in 2006, Disab.R.A. is seeking compensation at its 2005 rates.

undertaken in a productive and efficient manner. Staffing remained minimal in the implementation phase of the proceeding: only one supervising attorney and one junior attorney, with assistance from law clerks. As is evident from the chart below, the majority of lawyer time spent on the implementation in this proceeding was billed by a lower billing attorney, Mary-Lee Kimber. Following is a summary table and explanation of hours claimed for the additional compensation and hourly rates.

ATTORNEY/STAFF	HOURS	RATE
Melissa Kasnitz	9.80	\$425
Mary-Lee Kimber	30.90	\$170
Paralegals & Law Clerks	2.00	\$90

B. Disab.R.A.’s Hourly Rates Are Reasonable.

Disab.R.A. detailed the reasonableness of its rates for attorneys, paralegals and law clerks in its initial Request for Intervenor Compensation. No changes in these rates have occurred since filing its initial request. As with its initial request, DRA seeks compensation at half the usual hourly rate for the hours devoted to the preparation of this supplemental filing. *See* Exhibit D. This reduction is consistent with the Commission’s practice.

C. Disab.R.A.’s Request For Compensation of Costs Is Reasonable

Disab.R.A. incurred reasonable expenses of \$546.40, as detailed in the following summary table.

Photocopying	\$ 494.75
Postage & Delivery	\$ 14.40
Telephone & Fax (including conference call with PG&E on 3/9/06)	\$ 37.25
Total	\$546.40

These charges cover the cost of Disab.R.A.'s photocopying, postage, telephone/fax and travel expenses. *See* Exhibit E. As noted in its initial Request for Intervenor Compensation, Disab.R.A. inadvertently omitted an estimate for reasonable costs in its Notice of Intent to Claim Compensation, filed on October 7, 2005. However, given the modesty of these costs, they should be fully compensated.

VI. CONCLUSION

Disab.R.A. has satisfied all the requirements of § 1801 *et seq.* Disab.R.A. has been granted intervenor status and has demonstrated financial hardship. Disab.R.A. has made a substantial contribution in the implementation of D.05-11-029 in a productive, non-duplicative, and efficient manner. Disab.R.A. has provided a detailed itemization of its continuing participation and has previously demonstrated the reasonableness of the requested hourly rates and costs. Therefore, Disab.R.A. is entitled and respectfully requests the Commission to grant additional intervenor compensation for both its hourly fees and costs in the amount of \$10,926.40, for a total requested award of \$46,375.08.

Respectfully submitted,

Signed: March 21, 2006

DISABILITY RIGHTS ADVOCATES

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VERIFICATION

I, Melissa W. Kasnitz, am a representative of Disability Rights Advocates and am authorized to make this verification on the organization's behalf. The statements in the foregoing document are true to the best of my knowledge, except for those matters that are stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this the day of **March 21, 2006**, at Berkeley, California.

/s/ Melissa W. Kasnitz
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CERTIFICATE OF SERVICE

I certify that I have, by electronic mail to the parties to which an electronic mail address has been provided, served a true copy of “Supplement to the Request of Disability Rights Advocates for Award of Intervenor Compensation” on all known parties to R04-01-006.

Dated March 21, 2006, at Berkeley, California.

/s/Jenny Tsai
Jenny Tsai