Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Examine the Commission's Future Energy Efficiency Policies, Administration and Programs.	Rulemaking 01-08-028 (Filed August 23, 2001)

OPINION GRANTING INTERVENOR COMPENSATION TO NATURAL RESOURCES DEFENSE COUNCIL FOR SUBSTANTIAL CONTRIBUTIONS TO DECISIONS 03-12-060, 04-02-059, 04-09-060, 04-12-019, AND 05-01-055

This decision awards the Natural Resources Defense Council (NRDC) $64,325 in compensation for contributions to the above-referenced decisions.

I. Background

This rulemaking addressed the energy efficiency programs sponsored by California's investor-owned electric utilities. The Commission has issued numerous decisions, some of which rule on requests for funding a specific energy efficiency program, and others that state or revise the Commission's generally applicable energy efficiency policies.

NRDC participated in this proceeding and we have previously awarded NRDC intervenor compensation for its substantial contributions to an earlier series of decisions in this proceeding. *See* Decision (D.) 04-12-016. In this request, NRDC seeks intervenor compensation for its substantial contributions to

the most recent series of five decisions in this proceeding, listed above. No party opposes NRDC's request for compensation.

II. Requirements for Awards of Compensation

The intervenor compensation program, enacted by the Legislature 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 (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 comparable to the market rates paid to experts and advocates having comparable training and experience and offering similar services. (§ 1806.)

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

III. Procedural Issues

NRDC filed its timely NOI on October 4, 2001, and Administrative Law Judge (ALJ) Thomas issued a ruling dated November 1, 2001, that found NRDC to be eligible as a customer to request compensation, and that NRDC met the requirements for a showing of financial hardship. NRDC filed its request for compensation on March 25, 2005, within 60 days of D.05-01-055.

NRDC has satisfied all the procedural requirements necessary to make its request for compensation.

IV. 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.[1]

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 NRDC made to the five most recent decisions in this proceeding.

A. Decisions 03-12-060 and 04-02-059

In these decisions, the Commission approved the energy efficiency programs to be funded by the electric utilities in 2004 and 2005.

NRDC stated that it contributed to these decisions by successfully advocating for the draft decision, which allowed for timely implementation of the programs, rather than the alternate decision, which would have led to substantial delay. NRDC also contended that it significantly contributed by seeking and obtaining clarification from the Commission on the topics of evaluation, measurement, and verification. Finally, NRDC pointed to its joint application for rehearing which illuminated an error in D.03-12-060 that was corrected by the Commission in D.04-02-059.

---

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

B. Decision 04-09-060

In this decision, the Commission adopted aggressive energy saving targets for each of the utilities. NRDC stated that it proposed specific electricity and natural gas saving targets, and that the Commission largely adopted these targets, particularly the natural gas savings targets. NRDC also successfully convinced the Commission to explicitly reaffirm its policy of pursuing all cost-effective energy efficiency opportunities.

C. Decision 04-12-019

In this decision, the Commission granted the utilities' request to increase funding for natural gas efficiency programs, an increase long sought by NRDC. NRDC stated that it urged the Commission to approve the request. NRDC also obtained several important clarifications relating to the method for selecting third party implemented programs.

D. Decision 05-01-055

In this decision, the Commission adopted a post-2005 administrative structure for the energy efficiency programs. NRDC stated that it played a unique role in forging a coalition of parties, "Reaching New Heights," which ultimately grew to include the utilities. This coalition adopted a consensus proposal, significant portions of which were adopted by the Commission in the final decision.

In particular, NRDC participated fully in the Commission's extensive process to develop the new administrative structure including filing nearly a dozen sets of comments, and participating in the Commission's workshops and oral argument. Moreover, NRDC coordinated a coalition of parties, called the Reaching New Heights (RNH) Coalition (the Commission's final decision also refers to the RNH Coalition as the NRDC/LIF Coalition), which ultimately grew

to include more than two dozen parties including the original Integrated Portfolio Management Coalition (which the Decision also refers to as the IOUs Coalition). The RNH proposal was also supported by more than 100 other parties. NRDC thereby greatly aided the Commission in finding common ground among the parties and helped to focus the discussion and debate on the central issues.[2]

In addition to the RNH Coalition filings, NRDC also submitted individual comments on the various administrative structure proposals, the draft decision and Commissioner Brown's alternate decision.

As NRDC points out, the Commission's decision on administrative structure largely reflects NRDC's and the RNH Coalition's proposals in this proceeding, including finding that:

- The issue of administration should be considered in the context of California's regulatory framework for resource procurement (D.05-01-055, p. 57)
- The Commission's authority over an independent administrator is "potentially weaker, more complex, and less flexible than relying on [its] regulatory powers." (p. 59)
- The utilities should be placed in the role of "program choice and portfolio management" under the CPUC's oversight. (p. 66)
- It is unlikely that a "single purpose" entity exists or could be created to be the administrator under the Efficiency California model. (pp. 75-76)
- The Standard Offer approach may not be well suited to tapping the full potential of cost-effective efficiency. (p. 78)

[2] We also note that NRDC does not seek intervenor compensation for the numerous hours it spent coordinating the RNH, thereby purposely submitting a very conservative estimate of its participation.

- The Efficiency California and Standard Offer proposals would "introduce significant start-up costs, uncertainty and delays." (p. 79)
- Utility administration is consistent with AB 117. (p. 81)
- The Commission needs to consider a risk/reward mechanism for energy efficiency program administration in this proceeding. (p. 85)
- The portfolio of programs should include programs selected through competitive solicitation, partnerships and bilateral contracting arrangements. (p. 87)
- A minimum of 20% of funding for the entire portfolio will be put out to competitive bid. (p. 88)
- The utilities will design the portfolio of programs with input from regional advisory groups, and the Energy Division will work with a subset of the non-financially interested members of the advisory groups to ensure that the program selection process is fair. (pp. 91-98)
- Energy Division should coordinate EM&V activities with the implementers and administrators. (p. 110)
- The EM&V "firewall" will begin with a "clean slate" in 2006. (p. 118)
- The "pilot" of independent administration is rejected and the Commission intends to "put this debate behind us." (p. 130)
- The Executive Director should address efficiency staffing matters without delay. (p. 125)

In sum, we find that NRDC expended considerable effort to reach consensus with the majority of the efficiency stakeholders, and to present recommendations that were adopted in large part by the Commission. We conclude that NRDC's contribution to D.05-01-055 was substantial.

NRDC made a substantial contribution to each of these decisions, as described above.

After we have determined the scope of a customer's substantial contribution, we then look at whether the compensation requested is reasonable.

V. Reasonableness of Requested Compensation

NRDC requests $64,325 for its participation in this proceeding, as follows:

Experts	Hours	Rate	Year	Amount
Bachrach	420.75	$100	2002 and 2003	$42,075
General	81.50			$ 8,150
Carter	84.00	$150	2002 and 2004	$12,600
General	10.00			$ 1,500
TOTAL				**$64,325**

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. Thus, only those fees and costs associated with the customer's work that the Commission concludes made a substantial contribution are reasonable and eligible for compensation.

NRDC documented its claimed hours by presenting a daily breakdown of the hours of its experts, accompanied by a brief description of each activity. The hourly breakdown reasonably supports the claim for total hours. In determining compensation, we take into consideration the market rates for similar services from comparably qualified persons. NRDC seeks an hourly rate of $100 for work performed by Bachrach and $150 for Carter in 2003 and 2004. The Commission approved these same 2003 rates (for Bachrach and Carter) in D.05-01-028, and NRDC seeks no increases for 2004. We find these hourly rates reasonable.

To assist us in determining the reasonableness of the requested compensation, 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.

NRDC stated that it contributed substantially to adoption of energy efficiency targets, and projected that those programs are expected to provide customer about $10 billion in net benefits over the next decade. Thus, we find that NRDC's efforts have been productive.

VI. Award

As set forth in the table above, we award $64,325.

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 the 75th day after NRDC filed its compensation request and continuing until full payment of the award is made.

We direct Pacific Gas and Electric Company, San Diego Gas & Electric Company, Southern California Gas Company, and Southern California Edison to allocate payment responsibility among themselves based upon their California-jurisdictional gas and electric revenues for the 2003 and 2004 calendar years, to reflect the year in which the proceeding was primarily litigated.

We remind all intervenors that Commission staff may audit their records related to this award and that intervenors must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. NRDC'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.

VII. Waiver of Comment Period

This is an intervenor compensation matter. Accordingly, as provided by Rule 77.7(f)(6) of the Commission's Rules of Practice and Procedure, the otherwise applicable 30-day period for public review and comment is being waived.

VIII. Assignment of Proceeding

Susan P. Kennedy is the Assigned Commissioner and Kim Malcolm, Meg Gottstein, and Robert A. Barnett are the assigned Administrative Law Judges in this proceeding.

Findings of Fact

1. NRDC made a substantial contribution to D. 03-12-060, 04-02-059, 04-09-060, 04-12-019, and 05-01-055 as described herein.
2. NRDC requested hourly rates for experts that are reasonable when compared to the market rates for persons with similar training and experience.
3. The total of the reasonable compensation is $64,325.

Conclusions of Law

1. NRDC has fulfilled the requirements of Pub. Util. Code §§ 1801-1812, which govern awards of intervenor compensation, and is entitled to intervenor compensation for its claimed compensation incurred in making substantial contributions to D.03-12-060, 04-02-059, 04-09-060, 04-12-019, and 05-01-055.
2. NRDC should be awarded $64,325 for its contribution to these decisions.
3. Per Rule 77.7(f)(6), the comment period for this compensation decision may be waived.
4. This order should be effective today so that NRDC may be compensated without further delay.

O R D E R

IT IS ORDERED that:

1. Natural Resources Defense Council is awarded $64,325 as compensation for its substantial contributions to Decisions 03-12-060, 04-02-059, 04-09-060, 04-12-019, and 05-01-055.

2. Within 30 days of the effective date of this decision, Pacific Gas and Electric Company, San Diego Gas & Electric Company, Southern California Gas Company, and Southern California Edison shall pay their respective shares of the award. Each utility's share shall be calculated based on allocation set out above. 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 the 75th day after the filing date of NRDC's request for compensation, and continuing until full payment is made.

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

This order is effective today.

Dated _____, at San Francisco, California.

Compensation Decision Summary Information

Compensation Decision:		**Modifies Decision?**
Contribution Decision(s):	Decisions 03-12-060, 04-02-059, 04-09-060, 04-12-019, and 05-01-055	
Proceeding(s):	R.01-08-028	
Author:		
Payer(s):	Pacific Gas and Electric Company, San Diego Gas & Electric Company, Southern California Gas Company, and Southern California Edison	

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
NRDC	3/25/05	64,325	64,325	no	

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Devra	Bachrach	E	NRDC	100	2002, 2003	100
Sheryl	Carter	E	NRDC	150	2002, 2003	150