Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Pacific Gas and Electric Company (U 39-E), for approval of the 2006 – 2008 Energy Efficiency Programs and Budget.	Application 05-06-004 (Filed June 1, 2005)
Southern California Gas Company (U 904-G), for approval of Natural Gas Energy Efficiency Programs and Budgets for Years 2006 through 2008.	Application 05-06-011 (Filed June 1, 2005)
Southern California Edison Company (U 338-E), for approval of its 2006 – 2008 Energy Efficiency Program Plans and associated Public Goods Charge (PGC) and Procurement Funding Requests.	Application 05-06-015 (Filed June 2, 2005)
San Diego Gas & Electric Company (U 902-E), for approval of Electric and Natural Gas Energy Efficiency Programs and Budgets for Years 2006 through 2008.	Application 05-06-016 (Filed June 2, 2005)

OPINION GRANTING INTERVENOR COMPENSATION TO THE NATURAL RESOURCES DEFENSE COUNCIL FOR ITS SUBSTANTIAL CONTRIBUTION TO DECISION 05-09-043

This decision awards the Natural Resources Defense Council (NRDC) $64,918.78 in compensation for its substantial contribution to Decision (D.) 05-09-043.

I. Background

This consolidated application proceeding addresses funding levels and portfolio plans for energy efficiency activities over the 2006-2008 program cycle. The application process for this three-year program cycle was initiated in our generic energy efficiency proceeding, Rulemaking (R.) 01-08-028. More specifically, by D.05-01-055 we established the administrative structure for post-2005 energy efficiency that returned Pacific Gas and Electric Company, Southern California Edison Company, San Diego Gas & Electric Company, and Southern California Gas Company (collectively, "the utilities") to the lead role of portfolio management.

As part of the post-2005 administrative structure, the utilities are each required to form program advisory groups (PAGs) to assist them in the development and implementation of their portfolio plans. They are additionally required to identify non-financially interested members from each PAG to serve on a subgroup, referred to as the "peer review group" or PRG. Among other things, the PRG is responsible for preparing a written assessment of the utility's proposed portfolio plans and funding levels, reviewing the utility's bid selection process for program implementers and reviewing the utility's compliance filings. Consistent with the treatment of advisory groups on the supply-side, the Commission determined in D.05-01-055 that those parties eligible to receive intervenor compensation for awards in energy efficiency proceedings should be eligible to seek compensation for their work as utility advisory group members.[1]

[1] D.05-01-055, *mimeo.*, p. 95.

As directed by the Commission, the utilities worked closely with their PAGs and PRGs to develop portfolio plans and funding levels for 2006-2008, and filed the above-captioned applications on June 1, 2005. The utilities selected representatives from NRDC to participate on each of their respective PAGs and PRGs. In addition, NRDC participated in this proceeding as an individual intervenor.[2] No party opposes NRDC's request for compensation. The subject proceedings remain open to address ongoing issues in the 2006-2008 portfolio plans.

II. 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). (§ 1804(a).)

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[2] In establishing the advisory group structure, the Commission specifically stated that participation on the PRG or PAG would not prohibit a member from also participating in the Commission's energy efficiency proceedings as an individual intervenor. See D.05-01-055, *mimeo.*, p. 96.

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 and are at rates 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

A PHC was held on June 22, 2005. NRDC timely filed its NOI on July 22, 2005. On November 10, 2005, Administrative Law Judge (ALJ) Gottstein ruled that NRDC is a customer, pursuant to § 1802(b)(1)(C), and meets the requirement for financial hardship through a rebuttable presumption of eligibility, pursuant to § 1804(b)(1), because NRDC met this requirement in another proceeding within one year of the commencement of this proceeding (ALJ Ruling dated July 27, 2004, in R.04-04-003). NRDC filed its request for compensation on November 18, 2005, within 60 days of D.05-09-043 being issued.

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

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.[3]

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

[3] D.98-04-059, 79 CPUC 2d, 628 at 653.

mind, we turn to the claimed contribution NRDC made to D.05-09-043 in this proceeding.

A. Contribution as an Individual Intervenor

In D.05-09-043, the Commission authorized the 2006-2008 energy efficiency portfolio plans and funding levels for the utilities. As an individual intervenor, NRDC filed five rounds of comments: opening and reply comments on the utilities' June 1 applications; comments on the utilities' joint submittal on energy savings for codes and standards work; and opening and reply comments on the draft decision.

NRDC states that it contributed substantially to many parts of the proceeding leading up to D.05-09-043, and that several aspects of the final decision reflect NRDC's positions and incorporate its suggestions. We have reviewed NRDC's filings in this proceeding and compensation request, and concur with this assessment.

In particular, NRDC presented statewide summary tables with consolidated information about cost-effectiveness, energy savings, and environmental benefits across all the utilities, and supplied preliminary estimates of anticipated carbon dioxide emissions that would be avoided.[4] We note that the draft and final decisions incorporated tables that were largely based on the tables presented in NRDC's initial comments.[5]

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[4] *Comments of the Natural Resources Defense Council (NRDC) on Pacific Gas and Electric Company, Southern California Gas Company, Southern California Edison Company, and San Diego Gas and Electric Company's Applications for Approval of Their 2006-2008 Energy Efficiency Programs and Budgets*, June 30, 2005, Figures 1 and 2, pp. 3-4.

[5] See Tables 1 and 2 in D.05-09-043.

As directed by the ALJ, several Case Management Statement (CMS) meetings were held to discuss the various positions of all the parties regarding the utilities' applications and to try to reach consensus on as many issues as possible. NRDC was a full participant in all of these meetings, which were successful in achieving agreement in most areas. After the CMS meetings, one remaining unresolved issue among the parties was whether the utilities' portfolios needed rebalancing with a greater emphasis on peak savings. In its reply comments, NRDC argued for the need for base load as well as peak savings.[6] The final decision supported NRDC's position, stating, "We agree with NRDC that the Commission should continue to require that efficiency programs target both peak and base load savings" (p. 105).

In comments on the draft decision, NRDC noted that the bill impacts of the IOUs' energy efficiency portfolios would in fact be long-term reductions, instead of the slight increases mentioned (a short-term effect).[7] Consistent with NRDC's recommendation, the final decision emphasizes that the energy efficiency programs will result in an overall decrease in customer bills (p. 50).

In addition, NRDC encouraged the Commission to develop protocols and allow for "counting" the embedded energy in water efficiency measures so that

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[6] *Reply Comments of the Natural Resources Defense Council (NRDC) on Pacific Gas and Electric Company, Southern California Gas Company, Southern California Edison Company, and San Diego Gas and Electric Company's Applications for Approval of their 2006-2008 Energy Efficiency Programs and Budgets*, July 21, 2005, pp. 4-5.

[7] *Comments of the Natural Resources Defense Council (NRDC) on the Draft "Interim Opinion: Energy Efficiency Portfolio Plans and Program Funding Levels For 2006-2008 – Phase 1 Issues,"* September 6, 2005, p. 5.

the state may achieve even greater energy savings.[8] Although the Commission did not adopt this recommendation in the final decision, it did recognize the potential importance of the matter and directed the Assigned Commissioner of R.01-08-028 to examine the issue further.[9]

B. Contribution as PAG and PRG Members

NRDC points out that it attended almost every one of the multitude of PAG and PRG meetings for each utility, as well as many of the "optional" subgroups of the PAGs (known as "PAGettes"). NRDC states that its participation played a substantial role in the PAG and PRG process that led to D.05-09-043 in numerous ways, including the following:

- By actively contributing program ideas of new measures and approaches for the utilities to consider.[10]
- By working as a PRG member with Energy Division to help create the summary table templates the utilities submitted in their applications as Appendices I and II, which then facilitated the development of statewide figures included in the decision.

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[8] See *Comments of the Natural Resources Defense Council (NRDC) on Pacific Gas and Electric Company, Southern California Gas Company, Southern California Edison Company, and San Diego Gas and Electric Company's Applications for Approval of Their 2006-2008 Energy Efficiency Programs and Budgets*, June 30, 2005, p. 7-8; and *Comments of the Natural Resources Defense Council (NRDC) on the Draft "Interim Opinion: Energy Efficiency Portfolio Plans and Program Funding Levels For 2006-2008 – Phase 1 Issues,"* September 6, 2005, pp. 4-5.

[9] D.05-09-043, pp. 170-171 and Ordering Paragraph 24.

[10] As an example, NRDC refers to "NRDC Energy Efficiency Program Ideas," March 29, 2005, available at: http://www.californiaenergyefficiency.com/pagdocs/WP_NRDCEERecommendations.doc.

- By providing input as a member of the PRGs on numerous aspects of the utility applications as they were being developed, including the bid evaluation criteria and fund-shifting rules.
- By working closely with each of the PRGs to write the PRG assessment reports required by the Commission to be submitted along with each of the utilities application submissions.

As discussed in D.05-01-055, the advisory group and PRG members "all burned the midnight oil for many weeks to develop and analyze portfolio plans that were responsive to the new energy efficiency rules adopted in April, 2005." We also noted that "the advisory group process established by D.05-01-055 was constructive and collaborative." Based on the submittals in this proceeding, we concluded that the process "has served the Commission well" in reaching our determinations in D.05-09-043.[11] We agree with NRDC's assessment that it played a substantial role in the PAG and PRG process, and that the input from these advisory groups in turn substantially shaped the utilities' applications and the Commission's final decision on those applications.

In sum, we find that NRDC contributed substantially to D.05-09-043 as an individual intervenor as well as through its active participation in the utilities' advisory groups. Having established substantial contribution, we next consider whether the compensation that NRDC requests is reasonable.

V. Reasonableness of Requested Compensation

NRDC requests $62,173.78 for its participation in this proceeding, as follows:

Contributions to D.05-09-043 as an Individual Intervenor

[11] D.05-09-043, *mimeo.*, p. 93.

	Time (hours)	Rate ($/hour)	Labor	Expenses	Requested Comp
Wang	33.50	$120.00	$4,020.00	$0.00	$4,020.00
Chang	66.50	$100.00	$6,650.00	$657.20	$7,307.20
Miller	31.75	$150.00	$4,762.50	$0.00	$4,762.50
TOTAL	131.75		$15,432.50	$657.20	**$16,089.70**
Contribution to D.05-09-043 as PAG and PRG members					
	Time (hours)	**Rate ($/hour)**	**Labor**	**Expenses**	**Requested Comp**
Wang	181.75	$120.00	$21,810.00	$3,474.08	$25,284.08
Chang	208.00	$100.00	$20,800.00	$0.00	$20,800.00
TOTAL	389.75		$42,610.00	$3,474.08	**$46,084.08**
				GRAND TOTAL	**$62,173.78**

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 its 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. The issues we consider to determine reasonableness are discussed below.

A. Claimed Hours and Expenses

NRDC documented its claimed hours by presenting a daily breakdown of the hours of its experts, accompanied by a brief description of each activity. NRDC also itemized the expenses it is claiming for its contribution to D.05-09-043. We have carefully reviewed this documentation and find that the hourly breakdown reasonably supports the claim for total hours. Consistent with our policies, we note that NRDC claimed 50% of the hours (i.e., the equivalent of half the hourly rate) for time spent preparing its compensation request. NRDC claimed no time for travel. Overall, we find the hours claimed to be reasonable.

We also find NRDC's claimed expenses, which consist of travel-related costs necessary for its participation in the CMS and advisory group meetings, to be commensurate with the work performed and reasonable.

B. Market Rate Standard

In determining compensation, we take into consideration the market rates for similar services from comparably qualified persons. NRDC states its requested rates are purposely conservative, and far below market rates for expertise at similar levels. NRDC engaged the services of two of its own staff scientists (Devra Wang and Audrey Chang), and energy consultant Peter Miller. All of the work was performed in 2005. We discuss the requested hourly rates below.

B.1. Devra Wang

Wang (formerly Bachrach) is the Director of NRDC's California Energy Program. NRDC is requesting an hourly rate of $120 for Wang in this proceeding. We previously awarded Wang a rate of $100 for work in 2002-2004 (D.05-06-027, and D.05-10-030). NRDC requested no rate increases for Wang during this three-year period. In D.05-10-030, we awarded Wang a rate of $110 for 2005 work, but held that "[t]his rate shall not necessarily set a precedent for other work performed in 2005."

In D.05-11-031, we set principles and guidelines for establishing hourly rates for intervenors' representatives for work performed in 2005. In that decision, we set the range of rates for experts at $110-$360/hour. NRDC states the increase to $120 in this proceeding is reasonable considering that Wang has gained significant additional experience and substantially increased her skills and expertise since 2002. NRDC points out that Wang has participated actively in numerous Commission proceedings through the preparation and filing of

expert testimony and briefs, presented oral argument and cross-examination, and participated in various workshops. In addition, Wang has published several articles in respected industry journals. NRDC points out that Wang was a Project Scientist when she was awarded the rate of $100/hour, then promoted to a Staff Scientist, then recently promoted to Director of NRDC's California Energy Program. NRDC contends that the $120 rate for work in this proceeding is reasonable and conservative, and below other rates approved by the Commission for advocates with similar expertise and experience.

Overall, we find the $120 hourly rate for Wang to be reasonable, and at the extreme lower end of the rate range set forth in D.05-11-031 in light of her experience and education. We therefore adopt the $120 rate for Wang for work performed in 2005 in this proceeding.

B.2. Audrey Chang

Chang has a Master's degree in Energy Engineering and a Bachelor's degree in Earth Systems, both from Stanford University. Chang has six years of experience working on energy and environmental issues. Prior to joining NRDC in 2005, Chang worked on energy efficiency and green buildings at Energy Solutions and at Stanford University.

NRDC requests an hourly rate of $100 for Chang's participation in this proceeding. As described above, D.05-11-031 sets the hourly rate range for experts for work performed in 2005 at $110-$360.[12] We will therefore adopt a rate

[12] D.05-11-031 was mailed on November 29, 11 days after NRDC filed its compensation request. Thus, the request did not reflect the fee ranges for experts we approved in D.05-11-031.

of $110 for Chang for 2005, and adjust NRDC's award accordingly (an increase of $2,745 to the total amount requested).

B.3. Peter Miller

NRDC requests an hourly rate of $150 for Miller's participation in this proceeding. Miller was previously awarded this same rate in D.99-11-006, and we adopt it here. We note this rate is within the range prescribed in D.05-11-031.

C. Productivity

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 customers' 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.

In its request, NRDC describes how it coordinated closely with other intervenors and during the CMS process to present consensus recommendations wherever possible, in a manner that did not duplicate efforts. Although its policy contribution can be difficult to quantify in monetary terms, NRDC notes that the adopted utility program plans are expected to produce $2.7 billion in net benefits to customers over the life of the measures. In addition, the Commission projects that these efforts are capable of avoiding the equivalent of three giant (500 megawatt) power plants over the next three years. The Commission also estimates that the energy savings resulting from the measures installed during the program cycle would reduce global warming pollution by an estimated

3.4 million tons of carbon dioxide in 2008, equivalent to taking about 650,000 cars off the road.[13] Overall, we find that NRDC's efforts have been productive.

VI. Award

As set forth in the table below, we award NRDC $64,918.78.

Representative	Time (hours)	Rate ($/hour)	Labor	Expenses	Compensation
Devra Wang - expert	215.25	$120.00	$25,830.00	$3,474.08	$29,304.08
Audrey Chang - expert	274.50	$110.00	$30,195.00	$657.20	$30,852.20
Peter Miller - consultant	31.75	$150.00	$4,762.50	$0.00	$4,762.50
TOTAL			$60,787.50	$4,131.28	**$64,918.78**

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 31, 2006, the 75th day after NRDC filed its compensation request, and continuing until full payment of the award is made.

We direct PG&E, SDG&E, SoCalGas, and SCE to allocate payment responsibility among themselves based upon their California-jurisdictional gas and electric revenues for the 2005 calendar year, to reflect the year in which the proceeding was primarily litigated.

We remind NRDC that Commission staff may audit its records related to this award and that NRDC 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

[13] D.05-09-043, *mimeo.*, p. 3.

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.

Finally, we note that NRDC continues to participate as a PAG and PRG member during the compliance and implementation phases of this proceeding throughout the three-year program cycle. Consistent with the direction given by the ALJ, NRDC may submit future requests for compensation related to its ongoing advisory group participation in our generic rulemaking, R.01-08-028, or its successor proceeding.[14]

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 (Rules), the otherwise applicable 30-day period for public review and comment is being waived.

VIII. Assignment of Proceeding

Michael R. Peevey is the Assigned Commissioner and Meg Gottstein is the assigned ALJ in this proceeding.

Findings of Fact

1. NRDC has met all of the procedural requirements necessary to claim compensation in this proceeding
2. NRDC made a substantial contribution to D.05-09-043, as described herein.

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[14] *Administrative Law Judge's Ruling Addressing Eligibility For Compensation Award of Utility Consumers' Action Network*, April 4, 2005, pp. 8-9.

3. NRDC requested hourly rates for its representatives that are reasonable when compared to the market rates for persons with similar training and experience.

4. NRDC requested related expenses that are reasonable and commensurate with the work performed.

5. The total of the reasonable compensation is $64,918.78.

6. The Appendix to the opinion summarizes today's award.

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 a substantial contribution to D.05-09-043.

2. NRDC should be awarded $64,918.78 for its contribution to D.05-09-043.

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 (NRDC) is awarded $64,918.78 as compensation for its substantial contribution to Decision 05-09-043.

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 Company 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 on January 31, 2006, 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.

APPENDIX

Compensation Decision Summary Information

Compensation Decision:		**Modifies Decision?**
Contribution Decision(s):	D0509043	
Proceeding(s):	A0506004, A0506011, A0506015, and A0506016	
Author:	ALJ Meg Gottstein	
Payer(s):	Pacific Gas and Electric Company, Southern California Edison Company, San Diego Gas & Electric Company, and Southern California Gas Company	

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
the Natural Resources Defense Council	11/18/05	$62,173.78	$64,918.78	No	Increase Hourly Rate per D.05-11-031

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Devra	Wang	Expert	the Natural Resources Defense Council	$120	2005	$120
Audrey	Chang	Expert	the Natural Resources Defense Council	$100	2005	$110
Peter	Miller	Consultant	the Natural Resources Defense Council	$150	2005	$150

(END OF APPENDIX)