Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of PacifiCorp (U-901-E) and MidAmerican Energy Holdings Company for Exemption Under Section 853(b) from the Approval Requirements of Section 854(a) of the Public Utilities Code with Respect to the Acquisition of PacifiCorp by MidAmerican.	Application 05-07-010 (Filed July 15, 2005)

DECISION GRANTING INTERVENOR COMPENSATION TO AMERICAN RIVERS, CALIFORNIA TROUT, AND TROUT UNLIMITED FOR SUBSTANTIAL CONTRIBUTIONS TO DECISION 06-02-033

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O P I N I O N

1. Summary

This decision awards $54,680.76 to American Rivers, California Trout, and Trout Unlimited (collectively, "the Conservation Groups") for their substantial contributions to Decision (D.) 06-02-033. This proceeding is closed.

2. Background

D.06-02-033 authorized MidAmerican Energy Holdings Company (MEHC) to acquire PacifiCorp pursuant to Pub. Util. Code § 854(a),[1] subject to the conditions in Appendix D of D.06-02-033. Appendix D was based, in large part, on a Settlement Agreement signed by PacifiCorp, MEHC, and 15 protestants, including the Conservation Groups. The conditions included the so-called "California Commitments," which consisted of the following:

C-1 The transaction will not diminish PacifiCorp's ability or willingness to perform its legal obligations associated with its Klamath River hydroelectric system or PacifiCorp's ability to recover associated costs.

C-2 In implementing Commitment 36, PacifiCorp will make cost-effective investments in California as reasonably required to serve load.[2]

C-3 PacifiCorp will continue to offer cost-effective demand side management programs in California, subject to such costs being recoverable on a timely basis.

C-4 PacifiCorp will take the following actions to extend electric service to unserved Indian communities located in PacifiCorp's service territory. Within 30 days of receiving a request for service by the

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[1] All statutory references are to the Public Utilities Code.

[2] Commitment 36 requires PacifiCorp to spend nearly $160 million on transmission and distribution infrastructure, operations, and maintenance.

Tribe(s), PacifiCorp will initiate discussions with the Tribe(s) and other appropriate stakeholders regarding the extension of electric service. Within 1 year PacifiCorp will file an application or other pleading that: (A) seeks permission to extend electric service to specified areas, or (B) states its reasons for not extending electric service.

C-5 PacifiCorp will provide $150,000 per year for three years to fund a study by an independent consultant to identify the presence, distribution, and possible causes of toxic algae, and their toxins, in the Klamath River basin. The study will be designed and overseen in cooperation with the appropriate federal and state agencies.

C-6 PacifiCorp will provide an opportunity for the Settlement Parties to discuss implementation of Commitment 44.[3]

C-7 PacifiCorp will file an annual report regarding the California Commitments. If any Commitment is not being met, the report will propose corrective measures.

D.06-02-033 closed this proceeding.[4]

3. Requirements for Intervenor Compensation

The intervenor compensation program set forth in §§ 1801-1812 enables an intervenor to obtain compensation for participating in a Commission proceeding if all of the following requirements are satisfied:

1. The intervenor must be a customer or a participant representing consumers, customers, or subscribers of a utility subject to the Commission's jurisdiction. (§ 1802(b).)
2. The intervenor must file and serve a sufficient notice of intent (NOI) to claim compensation within 30 days of the prehearing conference (PHC) or other appropriate times. (§ 1804(a).)

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[3] Commitment 44 requires PacifiCorp to invest approximately $812 million to reduce emissions at its existing coal-fired generation plants.

[4] Requests for compensation were also filed by the Karuk Tribe and the Yurok Tribe. These requests will be addressed in separate decisions.

3. The intervenor must file and serve a request for a compensation award within 60 days of a final order or decision. (§ 1804(c).)
4. The intervenor must demonstrate significant financial hardship. (§ 1804(b)(1).)
5. The intervenor 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. (§ 1803(a).)
6. The claimed fees and costs must be reasonable and comparable to the market rates paid to experts and advocates having similar training and experience and offering similar services. (§ 1806.)

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

4. Procedural Requirements

To receive compensation, § 1802(b) requires an intervenor to be a utility customer or a participant representing customers. 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 bylaws to represent the interests of residential or small business customers. On October 28, 2005, the assigned Administrative Law Judge (ALJ) ruled that the Conservation Groups are a customer pursuant to § 1802(b)(1)(C).

Section 1804(a) requires an NOI to be filed within 30 days of the PHC. A PHC was held on September 9, 2005. The Conservation Groups filed a timely NOI on October 11, 2005.[5]

Section 1804(c) requires a request for compensation to be filed within 60 days of the final decision or order. The Conservation Groups filed their request on April 17, 2006, within 60 days of D.06-02-033 being issued.[6]

Finally, Section 1804(2)(g) requires a demonstration of significant financial hardship. On October 28, 2005, the assigned ALJ ruled that the Conservation Groups satisfied this requirement.

Based on the foregoing, we affirm the ALJ's ruling and find that the Conservation Groups have satisfied all of the procedural requirements necessary to claim compensation in this proceeding.

5. Substantial Contribution Requirement

To obtain compensation for participating in a Commission proceeding, a customer must make a substantial contribution to the proceeding. A substantial contribution occurs if the assigned ALJ or Commission adopts one or more of the customer's factual or legal contentions, or specific policy or procedural recommendations.[7] A substantial contribution may also occur if the customer's participation materially supplements, complements, or contributes to the presentation of another party.[8] Should the Commission not adopt any of the customer's recommendations, compensation may still be awarded if, in the

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[5] Because of weekends and a State Holiday, the last day to file an NOI was October 11, 2005.

[6] The request is unopposed.

[7] § 1802(i).

[8] §§ 1802(i) and 1802.5.

judgment of the Commission, the customer's participation substantially contributed to the decision or order.[9] 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. The Commission has also held that active participation in settlements might justify compensation.[10]

With this guidance in mind, we turn to the substantial contributions claimed by the Conservation Groups. In their compensation request, the Conservation Groups describe their significant contributions as follows:

> [The] Conservation Groups had a leadership responsibility in the negotiation of the Settlement. Prior to the Prehearing Conference, [the Conservation Groups] proposed such negotiation to Applicants and other protestants. [The Conservation Groups] expressed their commitment to such negotiation at the [PHC]. They convened multiple telephone conferences and other meetings with protestants to prepare for negotiation with Applicants. They largely drafted the first and subsequent settlement offers by the protestants. They…proposed that any settlement should state, in enforceable form, the many representations of the Application relevant to protection of the public interest, as well as additional commitments. [The Conservation Groups] were primary advocates of…[California Commitments] C1 (performance of legal obligations associated with Klamath River Project), C2 (cost-effective…transmission improvements), C3 (continuation of cost-effective demand-side management programs in California), C6 (stakeholder participation in system improvements), and C7 (reporting and enforcement of commitments). They assisted in drafting

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[9] § 1802(i).

[10] D.05-09-010, 2005 CA. PUC LEXIS 349, *4 – 5.

> Commitments C4 (consideration for extending transmission service to…tribal communities) and C5 (study of causes of toxic…algae in Klamath River) – both advocated primarily by the Tribes…

The Conservation Groups state that they coordinated closely with other protestants to prevent unnecessary duplication of effort. Thus, when the Conservation Groups drafted a settlement offer, others reviewed it. They established a similar relationship with the Applicants, who were largely responsible for drafting the General Commitments, while the Conservation Groups focused on the California-Specific Commitments.

We agree with the Conservation Groups that they were instrumental in drafting the settlement agreement that formed the basis for the conditions adopted by the Commission in Appendix D of D.06-02-033. Overall, we find the Conservations Groups made substantial contributions to D.06-02-033, particularly with respect to the Commission's adoption of the California Commitments C-1, C-2, C-3, C-6, and C-7.

6. Reasonable Compensation Requirement

The Conservation Groups request $56,039.51 for the following costs they incurred for their substantial contributions to D.06-02-033:

Attorney Fees	**Year**	**Hours**	**Rate**	**Total**
Charlton Bonham	2005	60.5	$240	$14,520.00
Charlton Bonham	2006	2	$120	$240.00
Richard Roos-Collins	2005-6	114.5	$350	$40,075.00
Richard Roos-Collins	2006	4	$175	$700.00
Subtotal Hours & Fees		***181***		***$55,535.00***
Expenses				
Telephone				$0.14
Postage and Delivery				$173.18

Photocopies	$317.21
Westlaw	$13.98
Subtotal Expenses	***$504.51***
Total	**$56,039.51**

Intervenors may be compensated for the reasonable costs they incur for their substantial contribution. The criteria we use to assess reasonableness are addressed below.

A. Claimed Hours

Customers must document the number of hours claimed and show that the claimed hours were related to, and necessary for, the substantial contribution. The Conservation Groups claim a total of 181 hours for two attorneys. Their work included the preparation of several pleadings and briefs, participation in the PHC, coordination with other protestants, preparation of settlement offers, editing or drafting of the iterative drafts of the Settlement, and participation in the negotiations held from September 13 to October 7, 2005.

The Conservation Groups supported their claimed hours with a time sheet of daily hours and a brief description of how the daily hours related to this proceeding. This documentation adequately supports the claimed hours.

B. Market Rate Standard

We next consider whether the claimed hourly rates are comparable to the market rates paid to advocates with similar training and experience.

The Conservation Groups request an hourly rate of $350 for attorney Roos-Collins for work performed in 2005-06. The Commission previously adopted an hourly rate of $325 for Roos-Collins for work performed in 2003.[11]

[11] D.04-08-025.

The requested hourly rate of $350 for 2005-06 is equal to the authorized 2003 rate of $325, escalated by 8%. Roos-Collins is the Director of Legal Services for the Natural Heritage Institute, a public interest law firm. He was previously a California Deputy Attorney General (1989-1991), and Attorney-Advisor, Office of General Counsel, U.S. Environmental Protection Agency (1987-1989). Roos-Collins graduated from law school in 1986.

In D.05-11-031, the Commission determined that it is reasonable to pay an hourly rate in 2005 in the range of $270-$490 to intervenor attorneys with 13+ years of experience since completion of law school.[12] The requested hourly rate for Roos-Collins falls within this range. However, the Commission also held that if the last authorized hourly rate was for work done before 2004, an increase is reasonable, but should be limited to 3% per year.[13] The Conservation Groups request an increase of 8% for Roos-Collins' hourly rate in 2005 compared to 2003, which exceeds the 3% annual increase authorized by D.05-11-031. Therefore, consistent with D.05-11-031, we will limit the hourly rate for Roos-Collins in 2005 to a 3% annual increase over 2003, rounded to the nearest dollar. The adopted 2005 hourly rate is $345.[14] We do not adjust the requested hourly rate of $350 for 2006, as this rate is only 1.4% higher than the adopted rate for 2005 and, therefore, is reasonable pending the Commission's issuance of guidance for market rates in 2006.[15]

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[12] D.05-11-031, *mimeo*., p. 16.

[13] D.05-11-031, *mimeo*., p. 17.

[14] $325 x 1.03 x 1.03 = $344.79.

[15] Ordering Paragraph 6 of D.05-11-031 established an annual process for determining market rates. That process has not yet been completed for 2006. Today's decision does not prejudge the outcome of that process. Also, the

Footnote continued on next page.

The Conservation Groups request an hourly rate of $240 for attorney Bonham for work performed in 2005-06. Bonham is Trout Unlimited's Senior Attorney and California Director. The Commission previously adopted an hourly rate of $220 for Bonham in 2003.[16] The requested hourly rate of $240 for 2005-06 is equal to the authorized 2003 rate of $220, escalated by 8%. Bonham received a law degree in 2000.

In D.05-11-031, the Commission determined that a reasonable hourly rate in 2005 for intervenor attorneys with 5-7 years of experience since law school is $250-$270.[17] The requested hourly rate for Bonham falls below this range. Although the requested hourly rate for 2005 is 8% higher than 2003, which exceeds the 3% annual increase authorized by D.05-11-031, that decision also recognized that an increase of more than 3% annually is appropriate when, as is the case here, the requested hourly rate falls below the range of acceptable rates.[18] For this reason, we will grant the requested hourly rate of $240 for 2005-06.

Consistent with Commission precedent, the Conservation Groups request one-half of the approved hourly rates for the time spent by their attorneys preparing the claim for intervenor compensation. However, the Conservation Groups request the full hourly rates for the time spent preparing the NOI. Roos-Collins spent four hours and Bonham one hour preparing the NOI. In general, the Commission awards compensation for time spent by an attorney preparing an NOI at one-half the approved hourly rate, unless the NOI involved

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outcome of that process should govern additional intervenor compensation awards to the Conservation Groups for work in 2006, if any.

[16] D.04-08-025.

[17] D.05-11-031, *mimeo*., pp. 16-17.

[18] D.05-11-031, *mimeo*., pp. 17-18.

novel legal issues or complex legal analysis. There is no indication that the Conservation Groups' NOI involved such matters. Therefore, we will award one-half of the approved hourly rates for the time spent by the Conservation Groups' attorneys on the preparation of the Groups' NOI.

C. Productivity

D.98-04-059 requires customers to demonstrate productivity by showing that the benefits of their participation exceeded the cost of their participation. The Conservation Groups assert their participation provided several benefits to PacifiCorp's California ratepayers. First, as the Conservation Groups advocated, D.06-02-033 incorporates, in enforceable form, the representations in A.05-07-010, which (in combination with additional conditions proposed in the Settlement or otherwise imposed by the Commission) ensure that the transaction will not impair PacifiCorp's ability to provide utility service. Second, D.06-02-033 adopts California Commitments C2, C3, and C6 that ensure California will benefit from PacifiCorp's investments in transmission and other system assets. Finally, D.06-02-033 adopts California Commitment C1, which ensures that the transaction will not impair PacifiCorp's ability to operate its Klamath River hydroelectric facilities in an environmentally responsible manner.

We find that the Conservation Groups' productivity is not easily quantified. Their contributions to D.06-02-033 were directed primarily at policy matters, and did not involve issues relating to specific dollar amounts, rates, or funding levels. Despite the absence of quantifiable benefits, the Conservation Groups' contributions to D.06-02-033 were substantial, as described previously in today's decision, while the cost of their participation was relatively modest. In light of the substantial benefits and modest costs, we find that the Conservation Group's participation was productive.

D. Direct Expenses

The Conservation Groups request $504.51 for telephone, postage, photocopying, and Westlaw use. These direct expenses are commensurate with the work performed, and we find these costs to be reasonable.

7. Award

We award $54,680.76 to the Conservation Groups as set forth in the following Table:

Attorney Fees	Year	Hours	Rate	Total
Charlton Bonham	2005	59.5	$240	$14,280.00
Charlton Bonham*	2005-6	3	$120	$ 360.00
Richard Roos-Collins	2005	105.75	$345	$36,483.75
Richard Roos-Collins	2006	4.75	$350	$1,662.50
Richard Roos-Collins*	2005	4	$ 172.50	$ 690.00
Richard Roos-Collins*	2006	4	$175	$ 700.00
Subtotal Hours & Fees		***181***		***$54,176.25***
Expenses				
Telephone				$0.14
Postage and Delivery				$173.18
Photocopies				$317.21
Westlaw				$13.98
Subtotal Expenses				***$504.51***
Total				**$54,680.76**

** Time spent preparing the NOI and compensation request.*

PacifiCorp is responsible for paying the award. In conformance with instructions provided by the Conservation Groups, PacifiCorp shall pay the entire award to the Natural Heritage Institute (NHI). NHI, in turn, shall (1) distribute the fees awarded between American Rivers/California Trout (AR/CT) and Trout Unlimited (TU) in exact conformity with the fees awarded

by today's Decision; and (2) distribute the expenses awarded between AR/CT and TU in proportion to the fees awarded.[19]

Consistent with Commission precedent, interest shall be paid on the award (at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release H.15) commencing on July 1, 2006, the 75th day after the Conservation Groups filed their compensation request on April 17, 2006, and continuing until full payment of the award is made.

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

8. 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 today's Decision.

9. Assignment of Proceeding

John A. Bohn is the Assigned Commissioner and Timothy Kenney is the assigned ALJ in this proceeding.

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[19] The instructions are contained in the Conservation Groups' email to the service list on May 15, 2006.

Findings of Fact

1. The Conservation Groups have satisfied all the procedural requirements to claim compensation in this proceeding.

2. The Conservation Groups substantially contributed to D. 06-02-033, as set forth in the opinion.

3. The Conservation Groups request hourly rates for their attorneys in 2005-06 that are 8% higher than the hourly rates approved for 2003.

4. D.05-11-031 limited increases in the approved hourly rates for work prior to 2004 to 3% annually. However, a higher annual increase is acceptable if the resulting hourly rate falls below the range of rates authorized by D.05-11-031 for attorneys with comparable education, experience, and expertise.

5. An hourly rate for Roos-Collins in 2005-06 that reflects a 3% annual increase over the 2003 rate previously approved by the Commission falls within the range of rates authorized by D.05-11-031 for attorneys with comparable education, experience, and expertise.

6. The requested hourly rate for Bonham falls below the range of rates authorized by D.05-11-031 for attorneys with comparable education, experience, and expertise.

7. The Conservation Groups seek compensation for the time spent by their attorneys preparing the Groups' NOI at the attorneys' full hourly rates. There is no indication that the preparation of the NOI involved novel legal issues or complex legal analysis.

8. The direct expenses claimed by Conservation Groups are reasonable, and when added to the amount of reasonable fees, the total reasonable compensation for the Conservation Groups is $54,680.76.

9. The appendix of today's decision shows the components of this amount.

Conclusions of Law

1. The Conservation Groups have fulfilled the requirements of Pub. Util. Code §§ 1801-1812, which govern awards of intervenor compensation, and are entitled to receive intervenor compensation for the reasonable costs they incurred with respect to their substantial contributions to D.06-02-033.

2. Commission precedent requires that the compensable time spent by intervenor attorneys preparing an NOI be compensated at one-half the approved hourly rate(s) unless the preparation of the NOI involves novel legal issues or complex legal analysis.

3. The time spent by the Conservation Groups' attorneys preparing the NOI should be compensated at one-half of the hourly rates authorized herein.

4. The requested hourly rate for Roos-Collins for 2005 should be reduced from $350 to $345 to conform to D.05-11-031.

5. Today's decision does not prejudge the determination of intervenor market rates for 2006 that will be established pursuant to the process set forth in Ordering Paragraph 6 of D.05-11-031.

6. The comment period for today's decision should be waived pursuant to Rule 77.7(f)(6).

7. The following order should be effective immediately so that the Conservation Groups may receive compensation promptly.

O R D E R

IT IS ORDERED that:

1. American Rivers, California Trout, and Trout Unlimited (collectively, "the Conservation Groups") are awarded $54,680.76 for their substantial contributions to Decision 06-02-033. PacifiCorp shall pay the award to the

Natural Heritage Institute (NHI) within 30 days from the effective date of this order.

2. NHI shall (i) distribute the fees awarded by this order to American Rivers/California Trout (AR/CT) and Trout Unlimited (TU) in exact conformity with the attached Award section of this order; and (ii) distribute the direct expenses awarded by this order to AR/CT and TU in proportion to the fees awarded.

3. PacifiCorp's 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 July 1, 2006, the 75th day after the Conservation Groups' filed their request for compensation, and continuing until full payment of the award is made.

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

This Order is effective today.

Dated _____, 2006, at San Francisco, California.

APPENDIX

Compensation Decision Summary Information

Compensation Decision:		**Modifies Decision?** No
Contribution Decision(s):	D0602033	
Proceeding(s):	A0507010	
Author:	ALJ Kenney	
Payer(s):	PacifiCorp	

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
American Rivers, California Trout, and Trout Unlimited	4/17/05	$56,039.51	$54,680.76		1. One-half authorized hourly rate applied to time spent preparing NOI. 2. Requested hourly rate for 2005 reduced to conform to D0511031.

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Richard	Roos-Collins	Attorney	American Rivers and California Trout	$350	2005	$345
Richard	Roos-Collins	Attorney	American Rivers and California Trout	$350	2006	$350
Charlton	Bonham	Attorney	Trout Unlimited	$240	2005-06	$240

(End Appendix)