Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application Pacific Gas and Electric Company (U 39 E) for authority to increase revenue requirements to recover the costs to replace steam generators in Units 1 and 2 of the Diablo Canyon Power Plant.	Application 04-01-009 (Filed January 9, 2004)

OPINION GRANTING INTERVENOR COMPENSATION TO SAN LUIS OBISPO MOTHERS FOR PEACE, SIERRA CLUB, AND PUBLIC CITIZEN FOR SUBSTANTIAL CONTRIBUTIONS TO DECISION 05-02-052 AND DECISION 05-11-026

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OPINION GRANTING INTERVENOR COMPENSATION TO SAN LUIS OBISPO MOTHERS FOR PEACE, SIERRA CLUB, AND PUBLIC CITIZEN FOR SUBSTANTIAL CONTRIBUTIONS TO DECISION 05-02-052 AND DECISION 05-11-026

This decision awards San Luis Obispo Mothers for Peace, Sierra Club and Public Citizen (collectively MFP) $146,687.40 in compensation for its substantial contributions to Decision (D.) 05-02-052 and D.05-11-026. The request of Environment California (EC) filed jointly with MFP is denied. This is a decrease of $286,887.43 from the total amount requested. This proceeding is closed.

1. Background

Diablo Canyon Power Plant (Diablo) is a nuclear power plant owned and operated by Pacific Gas and Electric Company (PG&E) consisting of two units, Unit 1 and Unit 2, with a capacity of approximately 2,260 megawatts (MW). Each unit has four steam generators manufactured by Westinghouse Electric Corporation (Westinghouse). In each steam generator, the heat from water circulated through the reactor is used to turn another stream of water into steam that is used to run the turbines that drive the electric generators.

Diablo is currently licensed by the Nuclear Regulatory Commission (NRC) to operate until 2024 (Unit 1) and 2025 (Unit 2).[1] PG&E estimated that Diablo will likely shut down because of the degradation of the steam generators in 2013 (Unit 2) and 2014 (Unit 1). As a result, PG&E requested approval in this application for its steam generator replacement program (SGRP).

[1] This assumes recapture of the approximately three years of operating license for Unit 1 consumed prior to fuel loading and full-power operation. PG&E forecasts an 80% probability of NRC approval of its request for recapture.

Hearings were held from September 20 through October 1, 2004. The application was submitted upon the receipt of reply briefs on November 9, 2004. On February 24, 2005, the Commission adopted D.05-02-052, an interim decision which presented the Commission's preliminary findings as to the cost-effectiveness of the SGRP. The proceeding remained open to consider the results of the environmental review pursuant to the California Environmental Quality Act (CEQA). On November 18, 2005, the Commission adopted D.05-11-026, which approved the SGRP with specified conditions, and certified the Final Environmental Impact Report (Final EIR) pursuant to CEQA.

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 (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

The first prehearing conference in this matter was held on February 27, 2004. MFP timely filed its NOI on March 26, 2004. In its NOI, MFP asserted financial hardship.

Section 1802(b) (1) defines a customer as:

(A) A participant representing consumers, customers, or subscribers of any electrical, gas, telephone, telegraph, or water corporation that is subject to the jurisdiction of the commission.

(B) A representative authorized by a customer.

(C) A representative of a group or organization authorized pursuant to its articles of incorporation or bylaws to represent the interests of residential customers, or to represent small commercial customers who receive bundled electric service from an electric corporation.

In this case, MFP is a customer as defined in § 1802 (b)(1)(C) because it is authorized pursuant to its bylaws to represent the interests of consumers, a portion of whom are residential customers.[2]

On April 15, 2004, Administrative Law Judge (ALJ) O'Donnell ruled that MFP is a customer pursuant to § 1802(b)(1)(C), and meets the financial hardship condition pursuant to § 1802(g). MFP filed its request for compensation on January 20, 2006, within 60 days of D.05-11-026 being issued. In view of the above, we find MFP has satisfied all the procedural requirements necessary to make its request for compensation.

On June 17, 2004, EC filed a petition to intervene in this proceeding.[3] The petition did not include a notice of intent to claim compensation, and EC did not subsequently file such a notice. By a ruling dated July 9, 2004, the assigned ALJ granted the motion to intervene. The ruling stated that granting the motion did not confer eligibility to claim compensation. For the above reasons, we find EC is not eligible to claim compensation in this proceeding.

On February 3, 2006, PG&E filed a response to MFP's request stating the request should be denied or reduced substantially because MFP was not productive, efficient or effective, and made no substantial contribution to the decisions. On February 21, 2006, MFP filed a reply to PG&E's response which revised its requested compensation. On March 29, 2006, PG&E filed a notice of withdrawal of its response.

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[2] References to MFP are for San Luis Obispo Mothers for Peace, Sierra Club and Public Citizen unless otherwise indicated.

[3] EC participated in this proceeding jointly with MFP.

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.[4]

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 contributions MFP claims it made to the proceeding.

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[4] D.98-04-059, 79 CPUC2d, 628 at 643.

In its request for compensation, MFP did not attribute its claimed costs to specific issues. Additionally, it did not break down its costs between the issues raised in the evidentiary hearings regarding cost-effectiveness, and those related to the Final EIR. Therefore, we examine its contribution relative to the principal recommendations it made in the evidentiary hearings, and then address its contribution to the Final EIR.

Evidentiary Hearings

- **PG&E's Cost-Effectiveness Model**

PG&E conducted its cost-effectiveness modeling using a Monte Carlo simulation model. MFP recommended against the use of PG&E's model. We did not adopt MFP's recommendation, and find it did not make a substantial contribution regarding this recommendation.

- **Cost of the SGRP**

PG&E estimated the SGRP cost at $706 million. MFP opposed the use of PG&E's estimate and recommended the SGRP cost be increased by 10-20% based on the increase in the replacement steam generator procurement contract cost. The Commission adopted PG&E's estimate, but also determined that the cost could reach $815 million (15% higher) based on the increased procurement contract cost. We adopted MFP's recommendation in part, and find MFP made a substantial contribution regarding this recommendation.

- **Operations and Maintenance (O&M) Costs**

The Utility Reform Network (TURN) recommended that PG&E's O&M estimates for 2011 through 2024 should include additional escalation of 1% or 2%

over and above PG&E's estimates.[5] MFP provided substantial support for TURN's recommendation, and recommended an increase of 2%. The Commission adopted a 2% increase in PG&E's escalation rate based on TURN's recommendation. Since MFP's efforts supplemented TURN's, we find MFP made a substantial contribution regarding this recommendation.

- **Administrative and General (A&G) Costs**

MFP recommended the Commission require PG&E to indicate the portion of the A&G costs for Diablo included in its 2003 general rate case (GRC) that will be avoided if the SGRP is not performed. MFP's recommendation was not adopted, and we find it made no substantial contribution regarding this recommendation.

- **Capital Additions-General**

TURN stated PG&E's base capital additions estimate was not sufficient to cover the unexpected costs due to the aging of Diablo, and possible regulatory requirements. Aglet Consumer Alliance (Aglet) recommended that base capital additions be increased to $87 million escalated to future years in the same manner as PG&E's estimate.[6] MFP provided substantial support for Aglet's recommendation. The Commission adopted Aglet's proposal for the years after 2015. Since MFP's efforts supplemented Aglet's, we find MFP made a substantial contribution regarding this recommendation.

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[5] TURN was an intervenor in this proceeding.

[6] Aglet was an intervenor in this proceeding.

MFP recommended that an additional $88 million per year be added to PG&E's estimate of major capital additions, in addition to Aglet's recommendation concerning base capital additions discussed above. Since MFP's recommendation concerning major capital additions was not adopted, we find it did not make a substantial contribution regarding this recommendation.

- **Capital Additions-Security Measures**

MFP recommended increased O&M and capital additions to reflect its belief that more stringent security requirements will be imposed on Diablo by the Nuclear Regulatory Commission. The Commission did not adopt MFP's recommendation. However, the Commission stated the possibility of future increased security requirements supported its earlier conclusion that some increase in future capital additions and O&M expenses above the amount forecast by PG&E is appropriate. Therefore, we find MFP made a substantial contribution regarding this recommendation.

- **Capital Additions-Seismic Issues**

MFP recommended PG&E be required to provide an explanation of the range of uncertainties regarding the storage of spent fuel at Diablo, and the costs of possible seismic upgrades to Diablo. MFP's recommendation was not adopted. However, the Commission found that the possibility of future seismic upgrades supported its earlier conclusion that some increase in future capital additions and O&M expenses above the amount forecast by PG&E is

appropriate. Therefore, we find MFP made a substantial contribution regarding this recommendation.[7]

- **Extended Outage**

TURN recommended inclusion of a one-year outage in the cost-effectiveness analysis for the period after the replacement of the steam generators. MFP provided substantial support for this recommendation. TURN's recommendation was not adopted as likely, but was included in the Commission's cost-effectiveness analysis. Since MFP's efforts supplemented TURN's, we find MFP made a substantial contribution regarding this recommendation.

- **Capacity Factor**

PG&E estimated a future capacity factor for Diablo of 90.6%. TURN recommended a low case assumption of a 75-85% capacity factor should also be considered. MFP stated its support for TURN's recommendation. The Commission included 85% and 80% capacity factors in its cost-effectiveness analysis to test the sensitivity to reductions in the capacity factor, adopting TURN's recommendation in part. MFP did not materially enhance the record in support of TURN's recommendation or provide significant argument in its briefs or comments on the proposed decision that materially effected the Commission's decision regarding this recommendation. Therefore, we find MFP made no substantial contribution regarding this recommendation.

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[7] The testimony of Jay Namson, for which MFP requests compensation, concerned seismic issues. However, it was stricken. Therefore, it did not have a part in the substantial contribution regarding this recommendation.

- **Replacement Energy Prices**

TURN recommended a 30-year combined cycle generation facility life for use in the cost-effectiveness analysis. MFP stated that it supported TURN's recommendation. The Commission adopted TURN's recommendation. MFP did not materially enhance the record in support of TURN's recommendation or provide substantial argument in its briefs or comments on the proposed decision that materially effected the Commission's decision regarding this recommendation. Therefore, we find MFP made no substantial contribution regarding this recommendation.

TURN recommended use of the wind-powered generation cost contained in a November 2003 California Energy Commission staff report. MFP supported TURN's recommendation. Since TURN's recommendation was not adopted, we find MFP made no substantial contribution regarding this recommendation.

MFP recommended the consideration of energy efficiency options by the use of the energy efficiency goals and levelized cost estimates adopted in D.04-09-060. This recommendation was not adopted, and we find MFP made no substantial contribution regarding this recommendation.

- **Degradation and Plugging Assumptions**

MFP recommended that the Commission require PG&E to revise its tube degradation assumptions in its model to reflect the tube inspections taking place in the October-November 2004 refueling outage of Unit 2, the results of which would be available in the first quarter of 2005. This recommendation was adopted, and we find MFP made a substantial contribution regarding this recommendation.

- **Recovery of Capital Costs in the Event of an Early Shutdown**

TURN recommended the treatments of capital costs in the event of an early shutdown adopted in D.92-08-036 and D.85-08-046 be used in the cost-effectiveness analysis. MFP and other parties supported this recommendation. Since TURN's recommendation was not adopted, we find MFP made no substantial contribution regarding this recommendation.

Overall, we find MFP made substantial contributions regarding seven of its 15 principal recommendations addressed in the evidentiary hearings.

Final EIR

MFP was the only party to the application, other than PG&E, to participate in the CEQA process that led to the Final EIR. However, many other governmental entities, private organizations and individuals also participated in the CEQA process, and provided comments on the Draft EIR that are incorporated in the Final EIR. The Final EIR is required to include the comments on the Draft EIR and to respond to those comments. Therefore, the fact that the Final EIR includes MFP's comments and provides responses to them does not necessarily mean that MFP made a substantial contribution. We also note that many of the recommendations and comments made by MFP were also made by other participants. To properly analyze MFP's contribution, we look at its principal recommendations and comments on the Draft EIR, and resulting substantial contributions to the Final EIR.

- **Current License Lives of Diablo**

MFP recommended that the effects of continued operations of Diablo through the end of its license lives should not be included as part of the environmental baseline for the SGRP. The Commission found that the effects of

continued operation are properly included in the environmental baseline. Since this recommendation was not adopted, we find MFP made no substantial contribution regarding this recommendation.

- **License Renewal**

MFP recommended renewal of Diablo's operating licenses after the current licenses have expired is a reasonably foreseeable outcome of the SGRP, and should be considered in the CEQA evaluation. The Commission determined that such renewal was not a reasonably foreseeable outcome, and did not adopt MFP's recommendation. However, language was added to the Final EIR that provides a general analysis of plant-specific issues that PG&E may have to address if it applies for license renewal. Therefore, we find MFP made a substantial contribution regarding this recommendation.

- **Seismic Risks**

MFP recommended review of the seismic design of Diablo as part of the CEQA review. MFP attached the testimony of consultant Jay Namson to its comments in support of its recommendation.[8] The Commission determined that the seismic design of Diablo and the exposure of Diablo to seismic hazards is part of the environmental baseline, and the SGRP involves no change to the environmental setting of Diablo. This recommendation was not adopted, and we find MFP made no substantial contribution regarding this recommendation.

- **Terrorism Risks**

[8] Namson's testimony was not included in the record resulting from the evidentiary hearings because it was stricken by the ALJ.

MFP recommended the risk of a successful terrorist attack on Diablo be reviewed as part of the CEQA review. MFP attached the testimony of consultant Gordon Thompson to its comments in support of its recommendation.[9] Thompson's testimony was considered in the preparation of the Draft EIR.[10] The Commission found that the risks of a terrorist attack are part of the environmental baseline for the SGRP. Therefore, security measures to address those risks were found to be beyond the scope of the CEQA review. Since this recommendation was not adopted, we find MFP made no substantial contribution regarding this recommendation.

- **Decommissioning of the Original Steam Generators**

MFP recommended review of decommissioning of the original steam generators as part of the CEQA review. The Commission determined that decommissioning of the original steam generators is not part of the SGRP, and will be subject to its own environmental review and NRC approval process. This recommendation was not adopted, and we find MFP made no substantial contribution regarding this recommendation.

- **Air Quality Impacts**

MFP stated air quality impacts had not been appropriately considered in the Draft EIR. As a result of the comments, the Final EIR contains additional quantification of emissions. Although MFP's recommendations did not result in

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[9] Thompson's testimony was received into evidence in the evidentiary hearings.

[10] Fees for Thompson are included in costs related to the evidentiary hearings for which we find that MFP made a substantial contribution. Any contribution to the Draft EIR due to Thompson's testimony is excluded herein to avoid double counting of his fees.

the discovery of any substantial increase in air quality impacts, the additional quantification did make the Final EIR more comprehensive. Therefore, we find MFP made a substantial contribution regarding this recommendation.

- **Water Quality Impacts**

MFP stated water quality impacts of foreign barges leaching tributyltins will be significant, and recommended they be evaluated and mitigated. The Commission found that no such impacts were expected, and no mitigation is necessary. This recommendation was not adopted, and we find MFP made no substantial contribution regarding this recommendation.

- **Noise Impacts**

MFP stated noise impacts were not adequately considered. The Commission found otherwise, but a mitigation measure was revised in the Final EIR. Therefore, we find MFP made a substantial contribution regarding this recommendation.

- **Alternatives to the Project**

MFP stated that alternatives to the SGRP had not been properly considered. The Commission found that alternatives had been properly considered. However, additional information was included in the Final EIR to clarify the evaluation of the No Project Alternative.[11] Therefore, we find MFP made a substantial contribution regarding this recommendation.

- **Mitigation Measures**

[11] The No Project Alternative assumes the SGRP is not performed.

MFP stated mitigation measures regarding earthquake induced ground shaking on the storage facility for the original steam generators were inappropriately deferred in the Draft EIR. The Commission found otherwise, but provided clarification of a mitigation measure in the Final EIR. MFP also stated health risks due to diesel exhaust were not evaluated. The Commission found that the effects of diesel exhaust had been evaluated, but provided clarification in the Final EIR that such effects would not be significant. Therefore, we find MFP made a substantial contribution regarding these two comments.

- **Cumulative Impacts**

MFP stated cumulative impacts of past projects and current projects other than the SGRP were not appropriately considered. The Commission found the effects of prior projects were reflected in the environmental baseline, and the cumulative effects of the SGRP and foreseeable future projects were properly considered. Therefore, we find MFP made no substantial contribution regarding these comments.

- **Consistency with Existing Plans**

MFP stated existing applicable government general plans and regional plans were not appropriately considered. The Commission found consistency with applicable existing plans was properly considered. Therefore, we find MFP made no substantial contribution regarding these comments.

- **Use by Responsible Agencies**

MFP stated the Draft EIR did not provide the kind of analysis necessary to support its use by other responsible agencies. The Commission found other responsible agencies had been consulted and the types of information and analysis requested by other responsible agencies were included in the Draft EIR.

Therefore, we find MFP made no substantial contribution regarding this recommendation.

Overall, MFP made substantial contributions regarding five of its 13 principal recommendations addressed in the Final EIR.

5. Reasonableness of Requested Compensation

MFP requests $433,574.83 in compensation for its participation in this proceeding as follows:

Requested Compensation – 2004

Attorney Fees:	
Dian Grueneich	$68,724.00
Theresa Cho	$90,345.00
Consultant/Staff Fees:[12]	
Jay Namson	$9,450.00
Gordon Thompson	$26,100.00
Rochelle Becker	$11,669.00
Clyde Murley	$35,620.70
Jody London	$1,384.00
Seth Epstein	$57.00
Andrew Schwartz	$14,677.50
Jack McGowen	$325.00
Nancy Norris-London	$5,694.00
Travel and Compensation Request Preparation Fees:[13]	

[12] "Staff" refers to persons on the staff of MFP.

Rochelle Becker	$300.00
Theresa Cho	$142.50
Andrew Schwartz	$237.50
Expenses	$7,167.66
Total (2004)	$271,923.86

Requested Compensation – 2005

Attorney Fees:	
Roger Beers	$65,848.50
Consultant/Staff Fees:	
Clyde Murley	$68,216.91
Morgan Rafferty	$10,890.00
Phyllis Fox	$4,400.00
Travel and Compensation Request Preparation Fees:	
Roger Beers	$810.00
Clyde Murley	$4,283.75
Morgan Rafferty	$797.50
Expenses	$1,694.04
Total (2005)	$161,650.97
Total (2004 and 2005)	$433,574.83

[13] Travel time and time used to prepare the intervenor compensation request were billed at half the requested hourly rate. Although the intervenor compensation request was not filed until 2006, hours were spent in 2004 to document the claim.

In its reply to PG&E's response, MFP reduced its request for Becker by $2,224.00 (22.24 hours @ $110/hr).

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.

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.

MFP documented its claimed hours by presenting a daily breakdown of the hours spent by each attorney or consultant, accompanied by a brief description of each activity. The hourly breakdown reasonably documents the total hours spent.

In its request for compensation, MFP provided no allocation of hours to specific issues. On February 21, 2006, in its reply to PG&E's response to MFP's request for compensation, MFP provided an allocation of hours to general topics and witnesses. Therefore, we find that MFP's request was incomplete until February 21, 2006. As a result, we find that any interest due on the award granted herein should not begin until 75 days after February 21, 2006, rather than the date the claim was filed.

While MFP provided an allocation of hours on February 21, 2006, it was not sufficient to assign particular hours to substantial contributions. We caution MFP that any future requests should include an appropriate allocation.

The allocation included in MFP's February 21, 2006 reply did allow us to distinguish between hours related to the evidentiary hearings and those related to the Final EIR. The following table shows the total hours for 2004 and 2005 requested by MFP, including the reduced hours for Becker:

Requested Hours - Evidentiary Hearings

Attorney Hours	
Grueneich (2004)	162.80 hours
Cho (2004)	4.80 hours
Consultant/Staff Hours	
Namson (2004)	54.00 hours
Thompson (2004)	174.00 hours
Becker (2004)	94.75 hours
Murley (2004/5)	287.08 hours
London (2004)	8.00 hours
Epstein (2004)	.60 hours
Schwartz (2004)	154.50 hours
McGowen (2004)	5.00 hours
Norris-London (2004)	87.60 hours
Rafferty (2005)	8.86 hours

Requested Hours - Final EIR

Attorney Hours	
Grueneich (2004)	2.79 hours
Cho (2004)	12.20 hours
Beers (2005)	146.33 hours
Consultant/Staff Hours	

Murley (2004/5)	223.38 hours
Fox (2005)	16.00 hours
Rafferty (2005)	21.39 hours
<u>Travel and Compensation Request Preparation</u>	
Beers (2005)	3.60 hours
Cho (2004)	1.00 hours
Murley (2005)	63.80 hours
Rafferty (2005)	40.30 hours
Becker (2004)	6.00 hours
Schwartz (2004)	5.00 hours

Namson's prepared testimony was stricken by ALJ ruling dated August 31, 2004. The hours claimed by MFP for Namson occurred between July and September 2004, with only five hours occurring after the ruling. Although MFP attached Namson's testimony to its comments on the Draft EIR, we find no substantial contribution to the Final EIR. Therefore, Namson's hours and related expenses are excluded from any award.

Murley spent 1.8 hours in 2004 on a MFP press release that we find was unnecessary for its participation in these proceedings. These hours are excluded from any award.

EC was one of the four organizations jointly represented by MFP. Since EC is not eligible to claim compensation, we will exclude 25% of the hours claimed after EC joined MFP.

In order to determine the appropriate compensation, we first make the above adjustments to the requested hours. Then, since MFP made a substantial contribution regarding seven of the fifteen recommendations in the evidentiary

hearings, we award compensation for seven fifteenths of the hours allocated to the evidentiary hearings. Since MFP made a substantial contribution regarding five of the 13 comments on the Final EIR, we will award compensation for five-thirteenths of the hours allocated to the Final EIR.

For the reasons discussed above, the hours eligible for compensation are as follows:[14]

Evidentiary Hearings

Attorney Hours:	
Grueneich (2004)	57.33 hours
Cho (2004)	115.82 hours
Consultant/Staff Hours:	
Namson (2004)	0.00 hours
Thompson[15] (2004)	130.50 hours
Becker (2004)	34.05 hours
Murley (2004/5)	59.02 hours
London (2004)	3.40 hours
Epstein (2004)	.19 hours
Schwartz (2004)	56.37 hours
McGowen (2004)	1.61 hours
Norris-London (2004)	30.16 hours

[14] We do not separate 2004 hours from 2005 hours for Murley because, as noted later in this decision, we adopt the same rate for Murley for 2004 and 2005.

[15] All of Thompson's hours were related to a single recommendation (Capital Additions-Security Measures) for which MFP made a substantial contribution.

Rafferty (2005)	2.85 hours

Final EIR

Attorney Hours

Grueneich (2004)	.80 hours
Cho (2004)	3.52 hours
Beers (2005)	42.21 hours

Consultant/Staff Hours

Murley (2004/5)	64.43 hours
Fox (2005)	4.62 hours
Rafferty (2005)	6.17 hours

Travel and Preparing Compensation Request

Beers (2005)	3.60 hours
Cho (2004)	1.00 hours
Murley (2005)	3.80 hours
Rafferty (2005)	40.25 hours
Becker (2004)	6.00 hours
Schwartz (2004)	5.00 hours

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, the Commission approved an 8% increase in rates for 2004 over rates previously approved for intervenor compensation for 2003. D.05-11-031 set forth principles and guidelines for 2005, and did not authorize general increases above previously approved 2004 rates.

MFP seeks an hourly rate of $415 for work performed by Grueneich and $285 for work performed by Cho in 2004. We previously approved these rates in D.05-06-024, and adopt them here.

For 2004, MFP seeks an hourly rate of $173 for Murley. In D.03-10-085, we approved a rate of $160 for Murley for 2003. The requested 2004 rate is approximately 8% above the 2003 rate, and conforms to Resolution ALJ-184. Therefore, we adopt the requested rate of $173 for Murley for 2004.

For 2005, MFP seeks a rate of $230 for Murley. MFP provided an argument in support of the requested increase.[16] However, except for one additional year of experience, the argument presented by MFP applies to 2004. This is not persuasive and does not follow the guidelines set forth in D.05-11-031. Therefore, we adopt a rate of $173 for Murley for 2005.

MFP seeks an hourly rate of $173 for work performed by London in 2004. In D.04-05-010, we approved a rate of $160 for London for 2003. The requested 2004 rate is approximately 8% above the 2003 rate, and conforms to Resolution ALJ-184. Therefore, we adopt the requested rate of $173 for London for 2004.

MFP seeks an hourly rate of $95 each for work performed by Epstein and Schwartz in 2004. Both worked as policy/data analysts for Grueneich Resource Advocates (GRA). Epstein holds B.A. and M.S. degrees. Schwartz holds B.A. and Master of Public Policy degrees. In D.03-10-085, we approved a rate of $100 for work performed in 2003 by Michael McCormick, a policy analyst at GRA

[16] In a supplement to its request, dated June 16, 2006, MFP provided additional information regarding the rates for Murley. The supplement did not affect our analysis.

with similar qualifications. Therefore, we adopt a rate of $95 for Epstein and Schwartz for 2004.

MFP seeks an hourly rate of $65 for work performed by McGowen in 2004. In D.04-05-010, the Commission approved a rate of $60 for work performed by McGowen in 2003. The requested 2004 rate is approximately 8% above the 2003 rate, and conforms to Resolution ALJ-184. Therefore, we adopt a rate of $65 for McGowen for 2004.

MFP seeks an hourly rate of $65 for work performed by Norris-London in 2004. She holds B.A. and M.A. degrees. MFP represents that the work performed by Norris-London is similar to the work performed by McGowen for GRA. Therefore, we adopt a rate of $65 for Norris-London for 2004.

MFP seeks an hourly rate of $150 for work performed by Thompson in 2004. Thompson worked as an independent consultant on nuclear safety and security issues for MFP. He holds undergraduate degrees, and a Ph.D. in mathematics. He has over 27 years experience evaluating nuclear safety and security issues, performing technical analyses of safety, security and environmental issues for governmental and non-governmental organizations. The requested rate is within the range paid for other experts with similar experience. Therefore, we adopt a rate of $150 for Thompson for 2004.

MFP seeks an hourly rate of $175 for work performed by Namson in 2004. Since we do not award compensation for work performed by Namson, we need not determine an appropriate rate for him.

MFP seeks an hourly rate of $275 for work performed by Fox in 2005. Fox worked as an independent environmental consultant for MFP. She holds B.S., M.S. and Ph.D. degrees in physics and environmental engineering, has over 30 years experience in environmental engineering, and is registered as a

professional engineer in six states. Fox's training and experience slightly exceed Thompson's. Since D.05-11-031 does not grant general increases in rates for 2005 above those authorized for 2004, we find a rate of $175 reasonable for Fox for 2005.

MFP seeks an hourly rate of $450 for work performed by Beers in 2005. MFP represents that Beers is an attorney with over 37 years of experience, including experience in environmental litigation, and 24 years of experience of periodic participation before the Commission and the California Energy Commission. Beers did not appear in the evidentiary hearings, and the filings by MFP were the result of a team rather than his work alone. We believe a lower rate is appropriate for Beers, compared to attorneys with substantial documented experience before the Commission such as Grueneich. D.05-11-031 adopted rates for attorneys with in excess of 13 years of experience of $270-490. We find a rate of $400, which is still at the upper end of the range, reasonable for Beers for 2005.

MFP seeks an hourly rate of $100 for work performed by Becker in 2004. Since D.04-09-050 approved a rate of $100 for Becker for 2001-3, we find a rate of $100 reasonable for Becker for 2004.

MFP seeks an hourly rate of $110 for work performed by Rafferty in 2005. MFP represents that Rafferty has B.S. and M.S. degrees in accounting, and four years of experience with MFP. Rafferty took over the functions performed by Becker in 2005. Rafferty has more education than Becker, but less experience, and performed the same functions as Becker. Therefore, we adopt a rate of $100 for Rafferty for 2005.

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 set rates, and no direct dollar amount benefit from an intervenor's participation can be identified. The SGRP will cost ratepayers hundreds of millions of dollars over the remaining license lives of Diablo.[17] The purpose of this proceeding was to determine whether the SGRP should proceed. MFP made a substantial contribution to that determination. MFP's expenditures, given its substantial contribution to the Commission's analysis of risks and benefits, are miniscule in comparison to the SGRP costs. Therefore, we find MFP's participation was productive.

Direct Expenses

The itemized direct expenses submitted by MFP include costs for such things as travel, lodging, copying, postage, and telephone, and total $9,102.47. The cost breakdown included with the request shows these expenses to be commensurate with the work performed. As discussed above, we will not allow recovery of $441.02 in expenses attributable to Namson. As a result, we find the remaining direct expenses of $8,661.45 reasonable.

6. Award

As set forth in the table below, we award MFP $143,386.65.

Evidentiary Hearings

Attorney Hours

[17] Since the end of the operating licenses for each unit is different, the remaining life for each unit is different.

Grueneich	57.33 hours	@	$415/hr =	$23,792.29
Cho	115.82 hours	@	$285/hr =	$33,007.50
Consultant/Staff Hours				
Thompson[18]	130.50 hours	@	$150/hr =	$19,575.00
Becker	34.05 hours	@	$100/hr =	$3,404.69
Murley	59.02 hours	@	$173/hr =	$10,211.24
London	3.40 hours	@	$173/hr =	$588.55
Epstein	.19 hours	@	$95/hr =	$18.32
Schwartz	56.37 hours	@	$95/hr =	$5,355.01
McGowen	1.61 hours	@	$65/hr =	$104.47
Norris-London	30.16 hours	@	$65/hr =	$1,960.58
Rafferty	2.85 hours	@	$100/hr =	$284.80
Total				$98,302.46

Final EIR

Attorney Hours				
Grueneich	.80 hours	@	$415/hr =	$333.98
Cho	3.52 hours	@	$285/hr =	$1002.94
Beers	42.21 hours	@	$400/hr =	$16,883.64
Consultant/Staff Hours				
Murley	64.43 hours	@	$173/hr =	$11,147.08
Fox	4.62 hours	@	$175/hr =	$807.66
Rafferty	6.17 hours	@	$100/hr =	$616.99
Total				$30,792.29

[18] All of Thompson's hours were related to a single recommendation (Capital Additions-Security Measures) for which MFP made a substantial contribution.

Travel and Compensation Request Preparation

Beers	3.60 hours	@	$200.00/hr =	$720.00
Cho	1.00 hours	@	$142.50/hr =	$142.50
Murley	63.80 hours	@	$86.50/hr =	$5,518.70
Rafferty	40.25 hours	@	$50/hr =	$2,012.50
Becker	6.00 hours	@	$50/hr =	$300.00
Schwartz	5.00 hours	@	$47.50/hr =	$237.50
Total				$8,931.20
Expenses:				$8,661.45
Total Award				$146,687.40

As discussed above, and consistent with previous Commission decisions, we require interest to 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 May 7, 2006, the 75th day after MFP filed its February 21, 2006 reply to PG&E's response to the compensation request, and continuing until full payment of the award is made.

The award is to be paid by PG&E, the applicant in this proceeding.

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. MFP'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

Geoffrey F. Brown is the Assigned Commissioner and Jeffrey P. O'Donnell is the assigned ALJ in this proceeding.

Findings of Fact

1. MFP has satisfied all the procedural requirements necessary to claim compensation in the proceeding.
2. On June 17, 2004, EC filed a petition to intervene in this proceeding.
3. EC did not file a notice of intent to claim compensation.
4. On July 9, 2004, the assigned ALJ issued a ruling granting EC's motion to intervene but did not confer eligibility to claim compensation.
5. MFP's request for intervenor compensation was incomplete until February 21, 2006.
6. MFP made a substantial contribution to D.05-02-052 and D.05-11-026 as described herein.
7. MFP's requested hourly rates, as adjusted herein, are reasonable when compared to the market rates for persons with similar training and experience.
8. The total of the reasonable compensation is $146,687.40.
9. The appendix to this opinion summarizes today's award.

Conclusions of Law

1. MFP 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, as adjusted herein, incurred in making substantial contributions to D.05-02-052 and D.05-11-026.

2. MFP should be awarded $146,687.40 for its contributions to D. 05-02-052 and D.05-11-026.

3. Interest due on the award granted herein should not begin to accrue until 75 days after February 21, 2006, rather than the date the claim was filed.

4. EC is not eligible to claim compensation and its request for compensation should be denied.

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

6. This order should be effective today so that MFP may be compensated without further delay.

7. This proceeding should be closed.

O R D E R

IT IS ORDERED that:

1. San Luis Obispo Mothers for Peace, Sierra Club and Public Citizen (collectively MFP) are awarded $146,687.40 in compensation for their substantial contributions to Decision (D.) 05-02-052 and D.05-11-026.

2. The request of Environment California for compensation for substantial contributions to D.05-02-052, and D.05-11-026, filed jointly with MFP, is denied.

3. Within 30 days of the effective date of this decision, Pacific Gas and Electric Company shall pay MFP the total award. 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 May 7, 2006, the 75th day after February 21, 2006, and continuing until full payment is made.

4. The comment period for today's decision is waived.
5. Application 04-01-009 is closed.

This order is effective today.

Dated _____, at San Francisco, California.

APPENDIX

Compensation Decision Summary Information

Compensation Decision:		**Modifies Decision?** N
Contribution Decision(s):	D0502052 and D0511026	
Proceeding(s):	A0401009	
Author:	ALJ O'Donnell	
Payer(s):	Pacific Gas and Electric Company	

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
San Luis Obispo Mothers for Peace, Sierra Club and Public Citizen (Collectively MFP). Also Environment California	1/20/06	$433,574.83	$146,687.40	N	Failure to make substantial contribution. Environment California ineligible to claim compensation.

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Dian	Grueneich	Attorney	San Luis Obispo Mothers for Peace/Sierra Club/Public Citizen	$415	2004	$415
Theresa	Cho	Attorney	San Luis Obispo Mothers for Peace/Sierra Club/Public Citizen	$285	2004	$285
Jay	Namson	Policy Expert	San Luis Obispo Mothers for Peace/Sierra Club/Public Citizen	$175	2004	N/A[1]
Gordon	Thompson	Policy Expert	San Luis Obispo Mothers for Peace/Sierra Club/Public Citizen	$150	2004	$150
Rochelle	Becker	Analyst	San Luis Obispo Mothers for Peace/Sierra Club/Public Citizen	$100	2004	$100
Jody	London	Policy Expert	San Luis Obispo Mothers for Peace/Sierra Club/Public Citizen	$173	2004	$173
Seth	Epstein	Analyst	San Luis Obispo Mothers for Peace/Sierra Club/Public Citizen	$95	2004	$95
Andrew	Schwartz	Analyst	San Luis Obispo Mothers for Peace/Sierra Club/Public Citizen	$95	2004	$95
Jack	McGowen	Firm Administrator	San Luis Obispo Mothers for Peace/Sierra Club/Public Citizen	$65	2004	$65
Nancy	Norris-London	Firm Administrator	San Luis Obispo Mothers for Peace/Sierra Club/Public Citizen	$65	2004	$65
Roger	Beers	Attorney	San Luis Obispo Mothers for Peace/Sierra Club/Public Citizen	$450	2005	$400
Clyde	Murley	Analyst	San Luis Obispo Mothers for Peace/Sierra Club/Public Citizen	$173	2004	$173
Clyde	Murley	Analyst	San Luis Obispo Mothers for Peace/Sierra Club/Public Citizen	$230	2005	$173
Morgan	Rafferty	Analyst	San Luis Obispo Mothers for Peace/Sierra Club/Public Citizen	$110	2005	$100
Phyllis	Fox	Policy Expert	San Luis Obispo Mothers for Peace/Sierra Club/Public Citizen	$275	2005	$175

[1] No rate adopted because no award made for his time.

(END APPENDIX)