PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

December 26, 2003

Agenda ID #3083
Ratesetting

TO: PARTIES OF RECORD IN APPLICATION 01-03-036

This is the draft decision of Administrative Law Judge (ALJ) Cooke. It will not appear on the Commission's agenda for at least 30 days after the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the draft decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Pursuant to Rule 77.7(f)(6) of the Commission's Rules of Practice and Procedure, the otherwise applicable 30-day period for public review and comment could be waived. However, we are allowing 30-days comment on the decision because it does not award the requested compensation in full and because San Diego Gas & Electric Company has contested the request. Parties to the proceeding may file comments on the draft decision as provided in Article 19 of the Commission's "Rules of Practice and Procedure." These rules are accessible on the Commission's website at http://www.cpuc.ca.gov. Pursuant to Rule 77.3 opening comments shall not exceed 15 pages. Finally, comments must be served separately on the ALJ and the assigned Commissioner, and for that purpose I suggest hand delivery, overnight mail, or other expeditious method of service.

/s/ ANGELA K. MINKIN
Angela K. Minkin, Chief
Administrative Law Judge

ANG:jva

Attachment

Decision **DRAFT DECISION OF ALJ COOKE (Mailed 12/26/2003)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of San Diego Gas & Electric Company (U 902-E) for a Certificate Of Public Convenience & Necessity Valley-Rainbow 500kV Inter-Connect Project.	Application 01-03-036 (Filed March 23, 2001)

DECISION AWARDING INTERVENOR COMPENSATION TO SAVE SOUTHWEST RIVERSIDE COUNTY (SSRC) IN RESPONSE TO SECOND REQUEST FOR COMPENSATION

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DECISION AWARDING INTERVENOR COMPENSATION TO SAVE SOUTHWEST RIVERSIDE COUNTY (SSRC) IN RESPONSE TO SECOND REQUEST FOR COMPENSATION

I. Summary

This decision awards Save Southwest Riverside County (SSRC) $43,867.65 for time spent on rehearing applications related to and a petition for modification of Decision (D.) 02-12-066. The Commission resolved the applications for rehearing in D.03-05-038, and the petition for modification in D.03-06-030. This amount is $18,384.10 less than SSRC's requested amount of $62,251.75. We have reduced SSRC's request because we find that SSRC worked inefficiently, and thus did not meet the requirement that requested intervenor compensation be "reasonable," and spent a small amount of time on a non-compensable activity – communicating with the press.

II. Background

A. SSRC's Request

The underlying proceeding for which SSRC seeks compensation related to San Diego Gas & Electric Company's (SDG&E) request to construct a new electric transmission line called the Valley-Rainbow Project (Project). We denied the application in D.02-12-066, reasoning that the Project was not needed.

SSRC filed two requests for compensation related to its work opposing the Project. The Commission resolved the first request, for almost $670,000, in a separate decision. SSRC separated out time related to the applications for rehearing and petition for modification at the behest of the assigned Administrative Law Judge (ALJ) and included that time in this request. This decision relates only to expenses SSRC incurred in connection with the applications for rehearing resolved in D.03-05-038 and the petition for modification resolved in D.03-06-030.

SSRC seeks $25,084.98 for its contribution to D.03-05-038 regarding SDG&E's and the Independent System Operator's (ISO) applications for rehearing. SSRC seeks $37,166.77 for its contribution to D.03-06-030 concerning SDG&E's petition for modification.

B. SDG&E's Opposition

SDG&E advocates that we substantially reduce or wholly disallow SSRC's request. First, it states that the Commission should not force SDG&E's ratepayers to pay for work SSRC performed on behalf of entities not eligible for, or needing, intervenor compensation. It explains that in dividing the work between SSRC, the City of Temecula, and the Pechanga Development Corporation, SSRC, the one entity eligible for intervenor compensation, performed virtually all of the work and had the two entities not eligible for intervenor compensation (and furthermore not needing intervenor compensation) simply review and comment on the pleadings SSRC drafted (with one exception). SDG&E claims this division of labor is an abuse of the intervenor compensation statute.

Second, SDG&E claims that the Commission should not allow SSRC double recovery of its costs by allowing it to keep hundreds of thousands of dollars in private donations it received to fight the Valley-Rainbow transmission line, and also to collect intervenor compensation. SDG&E states that if the "windfall" is used to fight other battles, use of ratepayer funds for this purpose would be improper.

Third, SDG&E asks the Commission to reduce SSRC's request substantially because it reflects gross inefficiency. SDG&E notes that SSRC seeks to be compensated for approximately seven weeks of time – 274.8 hours – spent on, in essence, drafting one response to SDG&E's rehearing application, one

response to SDG&E's petition for modification, comments on two short draft decisions, and associated lobbying. According to SDG&E, such a large amount of time spent in producing a small work product reflects gross inefficiencies. SDG&E notes that Pub. Util. Code § 1801 only allows parties "reasonable" advocates' fees.

Fourth, SDG&E asks the Commission to reduce the request for including time spent addressing non-compensable issues. SDG&E notes that time spent communicating with the press or lobbying non-Commission governmental officials or their staffs is not time compensable under the intervenor compensation statute. SDG&E also notes that SSRC's logs include a few entries for other proceedings, and asks us to disallow this time.

III. Requirements for Awards of Compensation

Intervenors who seek compensation for their contributions in Commission proceedings must file requests for compensation pursuant to Pub. Util. Code §§ 1801-12. (Unless otherwise noted, all statutory citations are to the Public Utilities Code.)

A. Notice of Intent

Section 1804(a) requires an intervenor to file a notice of intent (NOI) to claim compensation within 30 days after the prehearing conference (PHC) or by a date established by the Commission. The NOI must present information regarding the nature and extent of the customer's planned participation and an itemized estimate of the compensation the customer expects to request. The NOI may request a finding of eligibility.

SSRC received a finding of eligibility in both this proceeding and in Investigation (I.) 00-11-001 and was awarded compensation in D.02-05-005 and D.03-10-056. Because SDG&E continues to raise issues about SSRC's customer

status and financial hardship, we review the standards and findings the ALJ made regarding SSRC's eligibility.

1. Timeliness of NOI

SSRC filed a timely NOI on July 20, 2001. An ALJ ruling dated August 9, 2001 found SSRC eligible to claim compensation in this proceeding.

2. Customer Status

The assigned ALJ found that SSRC qualified as a "customer" under Section 1802(b). Section 1802(b) defines the term "customer" as:

> [A]ny participant representing consumers, customers, or subscribers of any electrical, gas, telephone, telegraph, or water corporation that is subject to the jurisdiction of the commission; any representative who has been authorized by a customer; or any representative of a group or organization authorized pursuant to its articles of incorporation or bylaws to represent the interests of residential customers. . . .

Thus, there are three categories of customers: (1) a participant representing consumers; (2) a representative authorized by a customer; and (3) a representative of a group or organization authorized in its articles of incorporation or bylaws to represent the interests of residential customers. The Commission requires a participant to specifically identify in its NOI how it meets the definition of customer and, if it is a group or organization, provide a copy of its articles or bylaws, noting where in the document the authorization to represent residential ratepayers can be found.[1]

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[1] D.98-04-059, *mimeo.*, at 30-32 & n. 13-16. Further, a group or organization should indicate the percentage of its membership comprised of residential ratepayers. *See* D.98-04-059, *mimeo.*, at 83, 88.

The ALJ found that according to SSRC's NOI, "SSRC represents residential utility customers concerned about the impacts of overhead transmission lines, including impacts on public health and safety and on property values and scenic quality in the region. SSRC's interests in the proceeding are in discouraging unnecessary and damaging transmission facilities and in promoting alternatives that are cost-effective, environmentally friendly, and consistent with community values." The ALJ found that all of SSRC's Directors live in communities in southwest Riverside County and are residential utility customers, and that two of its Directors are also small business customers. The ALJ noted that, "SSRC expects that residential utility customers will continue to constitute nearly all of its membership."

The ALJ also noted that on May 21, 2001, SSRC was found eligible to claim compensation in Investigation 00-11-001 as a Category 3 customer. SSRC is an unincorporated nonprofit association registered with the State of California Secretary of State and is authorized pursuant to its bylaws to represent and advocate the interests of customers of electric utilities in southwest Riverside County. SSRC attached a copy of its bylaws to its NOI.

Thus, the ALJ found that SSRC's interests in this proceeding arise directly from its representation of customers and clearly qualify as customer interests. We affirm that SSRC's showing is adequate to establish its status as a Category 3 customer.

3. Financial Hardship

Second, the assigned ALJ found in ruling on SSRC's NOI that the organization had established financial hardship. The ALJ found that SSRC's members are residential customers whose individual interests in this proceeding are small relative to the costs of participation and that the cost of SSRC's

participation in Commission proceedings substantially outweighs the benefit to any individual customer it represents. The ALJ also found that no economic benefit from participation inures because SSRC's interest in the proceeding is in maintaining the status quo.

In opposing SSRC's request in its NOI for a finding of financial hardship, SDG&E incorporated by reference its objections to SSRC's claim of financial hardship raised in I.00-11-001.[2] SSRC made a showing of significant financial hardship in I.00-11-001 (ALJ Ruling of May 21, 2001). This proceeding commenced within one year of the date of that finding, so the ALJ here found that the rebuttable presumption applies in this case.

In addition, the ALJ for this proceeding found that that the potential financial gain to individual SSRC members from participation in this proceeding is small:

> Because SSRC is opposing the construction of a transmission line through Southwest Riverside County, it is essentially advocating for the status quo, and thus, there will be limited tangible benefits. Consistent with Commission precedent, in this and related proceedings, SSRC must demonstrate not only that the transmission line it opposes should be rejected but that there are other viable alternatives to addressing SDG&E's energy need. SSRC intends to retain experts to study and evaluate the transmission and environmental impacts of both the proposed transmission line and alternative projects. Thus, SSRC's participation also has a broader environmental and societal interest that is not easily

[2] In ruling on SSRC's notice of intent in I.00-11-001, the assigned ALJ in the investigation found that SSRC is a customer eligible for compensation within the meaning of § 1802(b) and has shown that its uncompensated participation would impose on it significant financial hardship as required by § 1803(b).

> further monetized. SSRC's participation also benefits a wide range of customers.

The assigned ALJ concluded that SSRC had satisfied the showing of significant financial hardship.

SDG&E raises a novel issue in response to SSRC's request for compensation. As noted above, the assigned ALJ found that SSRC had satisfied the financial hardship test in ruling on SSRC's NOI. SDG&E claims that SSRC received hundreds of thousands of dollars in donations to stop SDG&E's Project. It questions whether SSRC truly needs the compensation in view of these contributions.

While SSRC refutes the amounts and sources of its contributions to some extent, it does not dispute that it received substantial private donations. In a declaration filed in support of its first request for compensation, the President of SSRC, Barbara Wilder, clarified the nature of those donations:

> SSRC did not receive financial contributions from the City of Temecula, the City of Hemet, the City of Murrieta, or any other governmental entities. SSRC did not receive financial contributions from the Pechanga Development Corporation . . . .
>
> SSRC raised money to pay its legal bills and other costs and expenses by holding fundraisers and collecting donations from residents and homeowners associations. SSRC's contributions were primarily in the form of many, small contributions from private residents and larger contributions by homeowners associations in southwest Riverside County.[3]

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[3] *Supplemental Declaration of Barbara Wilder in Support of SSRC's Request for Award of Intervenor Compensation*, dated and filed April 10, 2003, ¶¶ 4-5.

SDG&E characterizes SSRC's receipt of private donations as a question of first impression before this Commission. This is incorrect. Intervenors commonly raise private donations (often through membership dues) to fund their participation while awaiting a decision on intervenor compensation in their work in Commission proceedings.

In responding to SDG&E, SSRC focuses on the statutory language relevant to group participation, which requires that the economic interest of the individual members of the group be small in comparison to the costs of effective participation in the proceeding. The NOI ruling found this standard met because "SSRC's members are residential customers whose interests in this proceeding are small relative to the costs of participation and the cost of SSRC's participation in Commission proceedings substantially outweighs the benefit to any individual customer it represents."[4] Similarly, in I.00-11-001 ALJ Gottstein rejected SDG&E's identical argument regarding SSRC: "Nor does SDG&E cite any authority for the proposition that we should consider SSRC's fundraising capabilities in determining financial hardship. This proposition fails . . . . "

SDG&E provides no authority demonstrating that we cannot issue an award to a group that meets the statutory test but that also has a demonstrated ability to raise other funding. We suspect that many groups that appear before us and receive intervenor compensation also have fundraising capabilities. While we believe there is some cause for concern in this case – where we are awarding funding after-the-fact to a group that may already have been able to

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[4] *ALJ Cooke's Ruling Regarding Notices of Intent to Claim Compensation*, Aug. 6, 2001, at 6. *ALJ Gottstein's Ruling Regarding Notice of Intent to Claim Intervenor Compensation (in I.00-11-001)*, May 21, 2001, at 11.

raise funds to cover its costs and shows no plans to remain in business for future efforts – we do not see any way around the statutory requirements.

SDG&E has provided no evidence refuting the assigned ALJ's finding that SSRC's residential customer members have interests that are small relative to the costs of participation. Nor has it made any argument that we may look to a different financial hardship test for SSRC than we use for other groups and organizations. Therefore, we do not find that SSRC's fundraising ability is relevant to a determination of its financial hardship or other eligibility for intervenor compensation. We affirm that SSRC has met the financial hardship requirement.

B. Timeliness of Compensation Request

Section 1804(c) requires an eligible customer to file a request for an award within 60 days of issuance of a final order or decision by the Commission in the proceeding. The Commission issued D.03-05-038 on May 8, 2003 and D.03-06-030 on June 5, 2003. With regard to both decisions, SSRC timely filed its request for an award of compensation on July 3, 2003.

IV. Substantial Contribution to Resolution of Issues

Under § 1804(c), an intervenor requesting compensation must provide "a detailed description of services and expenditures and a description of the customer's substantial contribution to the hearing or proceeding." Section 1802(h) states that "substantial contribution" means that,

> in the judgment of the commission, the customer's presentation has substantially assisted the commission in the making of its order or decision because the order or decision has adopted in whole or in part one or more factual contentions, legal contentions, or specific policy or procedural recommendations presented by the customer. Where the customer's participation has resulted in a

> substantial contribution, even if the decision adopts that customer's contention or recommendations only in part, the commission may award the customer compensation for all reasonable advocate's fees, reasonable expert fees, and other reasonable costs incurred by the customer in preparing or presenting that contention or recommendation.

Section 1804(e) requires the Commission to issue a decision that determines whether the customer has made a substantial contribution and what amount of compensation to award. The level of compensation must take into account the market rate paid to people with comparable training and experience who offer similar services, consistent with § 1806.

As provided in § 1802(h), a party may make a substantial contribution to a decision in one of several ways. It may offer a factual or legal contention upon which the Commission relied in making a decision, or it may advance a specific policy or procedural recommendation that the ALJ or Commission adopted. A substantial contribution includes evidence or argument that supports part of the decision even if the Commission does not adopt a party's position in total.

None of SDG&E's arguments address SSRC's claim that it made a substantial contribution to D.03-05-038 and D.03-06-030, and we find that SSRC's contribution was indeed substantial. We discuss each decision in turn.

A. D.03-05-038 Re Applications for Rehearing

The Commission denied SDG&E's and the ISO's applications for rehearing. SSRC notes that because SSRC's counsel had obtained the expertise with regard to need issues in the evidentiary hearing and other proceedings below, SSRC's counsel took the lead, on behalf of the three intervenors (SSRC, the City of Temecula, and the Pechanga Development Corporation) in preparing responses to the rehearing applications and the petition for modification.

SSRC argues, and we agree, that the Commission's decision adopted nearly every position by SSRC in its briefing, as follows:

Deference issue: Did the Commission err in determining that it is not legally obligated to defer to the ISO's determination regarding need? *See* D.03-05-038, *mimeo.*, at 3-12. SDG&E and the ISO advanced numerous arguments for why the Commission was obligated to and should defer to the ISO's need determination in this case. SSRC's briefing provided the Commission with comprehensive legal research and reasoning responding to each of those arguments. The Commission's decision adopted nearly all of the positions advocated by SSRC. *Id.* at 3-12. With regard to several of these issues, SSRC was the only party opposed to the rehearing that offered briefing.

Planning horizon issue: Did the Commission err by adopting a five- year planning horizon to assess project need in this case? *See* D.03-05-038, *mimeo.*, at 12-13. The Commission's decision agreed with SSRC's position that: (1) there was sufficient evidence in the record to support adoption of the five-year planning horizon; and (2) the Commission's adoption of a five-year planning horizon in this case did not, as SDG&E and the ISO asserted, establish a new universally applicable policy. *Id.*

Official notice issue: Did the Commission err by declining to take official notice of documents regarding Duke Energy's South Bay Unit No. 4? *See* D.03-05-038, *mimeo.*, at 14, 19-20. SSRC argued in its brief, and the Commission concluded in its decision, that the Commission properly denied SDG&E's procedurally deficient request for official notice of those documents. *Id.* The Commission also concurred with SSRC that it was appropriate to count the output of Duke Energy's South Bay Units for purposes of the need assessment in this case. *Id.* at 16.

RAMCO contracts issue: Did the Commission err by considering the output of two existing generating units in San Diego owned by RAMCO? *See* D.03-05-038, *mimeo.*, at 15-16. The Commission concurred with SSRC that it had properly noted the conflicting evidence in the record on this issue and decided to count the output of the RAMCO units based on the weight of evidence presented. *Id.*

Otay Mesa issue: Did the Commission improperly include the output of the Otay Mesa power plant in the resource tally for its reliability analysis? *See* D.03-05-038, *mimeo.*, at 16-17. Citing SSRC's brief, the Commission concluded that there was substantial evidence in the record to support its conclusion in D.02-12-066 that Otay Mesa should be assumed to come online in 2005 as scheduled and as required by contract. *Id.* at 17 (citing SSRC Brief at 42-48).

Economic displacement issue: Did the Commission err by rejecting the SDG&E/ISO argument that construction of new generation in San Diego would lead inevitably to the retirement of existing generation? *See* D.03-05-038, *mimeo.*, at 18. SSRC argued, and the Commission concluded, that D.02-12-066 properly considered and rejected the economic displacement argument based on standard industry practice and based on the fact that SDG&E and the ISO failed to introduce adequate evidence to support the argument. *Id.*

Economic benefits issue: Did the Commission commit legal error in its consideration of SDG&E's economic justifications for the Project? *See* D.03-05-038, *mimeo.*, at 18-19. SSRC argued, and the Commission agreed, that neither SDG&E nor the ISO introduced adequate, reliable evidence in support of an economic justification for the Project. *Id.*

SDG&E load forecast issue: Did the Commission err by failing to acknowledge the ISO's argument -- raised for the first time in its application for rehearing -- that SDG&E's load forecast might be too low? *See* D.03-05-038,

mimeo., at 20. The Commission agreed with SSRC that there was no legal error because the ISO supported adoption of SDG&E's load forecast throughout the proceeding and introduced no evidence that the forecast was too low. *Id.* at 7.

Mexico issue: Did the Commission err by characterizing its reliability analysis as "conservative" based in part on the fact that it elected not to count on the potential availability of reliability support from Mexico? *See* D.03-05-038, *mimeo.*, at 21. Both the Commission and SSRC concluded that the record contains sufficient evidence to support the Commission's characterization of its analysis as "conservative." *Id.*

Based on the foregoing list of issues, it is clear that SSRC made a substantial contribution to D.03-05-038.

B. D.03-06-030 Re Petition for Modification

SSRC also claims that it made a substantial contribution to the Commission's consideration of SDG&E's petition for modification, as shown below, and we agree.

Procedural issues: SSRC argued that SDG&E's petition for modification was procedurally improper because, among other things, it asked the Commission to rely on SDG&E's allegedly new evidence without first providing other parties the opportunity to contradict and / or test that evidence. SSRC also argued the petition contravened clear direction in D.02-12-066 that SDG&E should file a new CPCN application if it believed that it had new evidence of need. *See* D.02-12-066, *mimeo.*, at 71. The Commission's decision acknowledged and rejected SDG&E's petition for modification based on these procedural arguments. D.03-06-030, *mimeo.*, at 2-4.

Substantive issues: SDG&E's petition cited allegedly new evidence relating to the status of (1) the Otay Mesa power plant, (2) Duke's South Bay Unit No. 4,

and (3) its reliability-must-run costs. Commissioner Peevey's draft decision proposed to grant SDG&E's petition for modification based on an assessment that those substantive arguments were new and potentially meritorious. SSRC's opposition to the petition and its comments on Commissioner Peevey's draft decision provided significant legal and factual arguments to support its position that SDG&E's evidence was not actually new and that its arguments based on the evidence lacked merit.

Request for clarification issue: SSRC noted that SDG&E's filings had mischaracterized D.02-12-066 as concluding that the Project would be needed in 2008. Counsel for SSRC filed a request asking the Commission to make clear that D.02-12-066 actually contained no such conclusion. *See* Community Intervenors' Request for Clarification (February 24, 2003). The Commission's decision denying SDG&E's petition for modification resolves the request for clarification by noting that D.02-12-066 "does not conclude when SDG&E will experience a capacity deficiency after the adopted five-year planning horizon ends." *See* D.03-06-030, *mimeo*., at 1.

Thus, we find that SSRC made a substantial contribution to D.03-06-030.

C. Division of Labor With Other Parties

As it did in SSRC's prior request for compensation, SDG&E asserts that it was unjust for SSRC to bear the lion's share of the workload given that it partnered with the City of Temecula and the Pechanga Development Corporation, entities that were ineligible for compensation. D.03-10-056 concluded that no new rule governing allocations of work between parties eligible for intervenor compensation and those with similar positions who are not eligible should be adopted. We do not disturb that finding today.

Thus, we make no reduction to SSRC's award based on the claim that it should have allocated more of the work to other parties.

V. The Reasonableness of Requested Compensation

SSRC seeks compensation for its attorneys, law clerks and costs as depicted in the following three tables:

Table 1. Total number of hours for which SSRC seeks compensation

Attorneys	**Total**
M. Mihaly	20.1
O. Armi	204.8
J. Schue	33.1
Law clerks	16.8
TOTAL	**274.8**

Table 2. Breakdown of hours for which SSRC seeks compensation

	Applications for Rehearing Decision 03-05-038	Petition for **Modification** Decision 03-06-030
Attorneys		
M. Mihaly	9.6	10.5
O. Armi	72.9	131.9
J. Schue	21.2	11.9
Law clerks	15.3	1.5
TOTAL	119.0	**155.8**

Table 3. Summary Table of SSRC's Fees and Expenses

	Hours	**Rate**	**Amount**
Decision 03-05-038			
M. Mihaly	9.6	$325/hr	$3,120.00
O. Armi	72.9	$230/hr	16,767.00
J. Schue	21.2	$175/hr	3,710.00
Law clerks	15.3	$ 60/hr	918.00
Attorney Subtotal			**24,515.00**
Expenses			**569.98**
TOTAL			**25,084.98**
Decision 03-06-030			
M. Mihaly	10.5	$325/hr	3,412.50
O. Armi	131.9	$230/hr	30,337.00
J. Schue	11.9	$175/hr	2,082.50
Law clerks	1.5	$60/hr	90.00
Attorney Subtotal			**35,922.00**
Expenses			**1,244.77**
TOTAL			**37,166.77**

GRAND TOTAL			**$62,251.75**

In accordance with Commission requirements, SSRC is seeking compensation for only half of its attorney travel time and half of the time spent preparing its request for intervenor compensation.

A. Overall Benefits of Participation

In D.98-04-059, the Commission adopted a requirement that a customer must demonstrate that its participation was "productive," as that term is used in § 1801.3, where the Legislature gave the Commission guidance on program administration. In that decision, we discuss the requirement that participation must be productive in the sense that the costs of participation should bear a reasonable relationship to the benefits realized through such participation. Customers are directed to demonstrate productivity by assigning a reasonable dollar value to the benefits of their participation to ratepayers. This exercise assists us in determining the reasonableness of the request and in avoiding unproductive participation.

SSRC does not discuss the productivity requirement in its request. While it should have done so, it is not difficult to find that its efforts were productive in this case. According to D.02-12-066, the underlying decision denying the Valley-Rainbow Project and the decision SSRC was trying to protect with its opposition to the applications for rehearing and petition for modification, the Project cost estimate was in excess of $341 million.[5] Had the Commission granted SDG&E's application, ratepayers would have borne this expense. By contrast, SSRC spent approximately $62,000 on opposing motions that would have changed the outcome of D.02-12-066, a fraction of the amount it saved ratepayers by helping

[5] D.02-12-066, *mimeo.*, at 57.

convince the Commission that the Project was not needed. We find SSRC's work was productive.

B. Hours Claimed

1. Excessive Hours

SDG&E questions why it took SSRC approximately seven weeks of time – 274.8 hours – to draft one response to SDG&E's rehearing application, one response to SDG&E's petition for modification comments on two short draft decisions, and associated lobbying.

SSRC states that its counsel was principally responsible for preparing a comprehensive 49-page brief addressing each of the legal and factual issues raised by SDG&E and the ISO in their applications for rehearing. It also filed a 20-page brief, which attached documentary evidence, addressing SDG&E's petition for modification. SSRC also filed reply comments on ALJ Cooke's draft decision denying SDG&E's petition for modification, and comments on Commissioner Peevey's draft decision granting SDG&E's petition for modification.

Because of SSRC's earlier participation much of the content in these four filings derives from facts and arguments SSRC had made earlier in the proceeding. Organizing these facts and arguments, and doing the modest amount of new work needed to respond to SDG&E's petition and application for rehearing, should not consume seven weeks of attorney time. For this reason, we agree with SDG&E that a charge of $60,000 for fees for two briefs and two sets of comments seems excessive. As SDG&E notes, Pub. Util. Code § 1801 only allows parties "reasonable" advocates' fees. In the past, we have reduced a party's award where it reflects inefficiency. For example, in D.02-07-030, we reduced an

intervenor's award by 30% because it was far out of line with the awards requested by other intervenors.

For the foregoing reasons, we reduce SSRC's attorneys' fee request by 30%, and award SSRC $42,305.90 for fees, as set out in the table below. This amount is still generous given that SSRC is seeking time here only for post-decision briefing and comments.

Table 4: Reduction for Inefficiency

Fees in D.03-05-038	$24,515.00
Fees in D.03-06-030	$35,922.00
Subtotal	$60,437.00
Less 30% for inefficiency	($18,131.10)
Total fee award	$42,305.90

2. Compensation for Press/Lobbying Time, Other Matters

In our decision addressing the majority of SSRC's compensation request related to this proceeding, we disallowed SSRC's request for compensation for time spent communicating with the press or lobbying other governmental officials. SDG&E again opposes such charges, and we again disallow them. As we stated in D.96-06-029, "Communicating with the news media does not constitute participation in our proceedings within the meaning of Section 1801 *et seq*. Accordingly, we shall not grant compensation for time spent on these activities."

In our decision on SSRC's first request for compensation, we also disallowed SSRC compensation for time spent on lobbying non-CPUC officials. Such conduct does not meet the definition of "participation" or "intervention" in Commission proceedings.

With respect to time spent communicating with the press, SSRC filed a supplemental brief explaining that its total time used for this purpose was 1.1 hours of Armi's time.[6] We therefore reduce its award by this amount. SSRC clarified in its supplemental brief that it spent no time communicating with non-Commission officials and that the entry SDG&E identified (for May 22, 2003) related to time Armi spent attending the Commission's May 22, 2003 hearing, at which a non-Commission official made public remarks. SSRC also clarified that the entries SDG&E identified that appeared to relate to other cases refer to Armi's review of pleadings and transcripts of other proceedings in order to identify issues relevant to this proceeding. We thus make no adjustment for time spent communicating with non-Commission officials or time spent on other proceedings.

We reduce SSRC's award as follows:

O. Armi	1.1 hours (comm. with press)	$230.00/hr	($253.00)

C. Hourly Rates

1. Attorneys

All of the attorneys' work leading up to D.03-05-038 and D.03-06-030 occurred in 2003. SSRC notes that we set hourly rates for its attorneys in 2001 of $315 per hour for Marc Mihaly, $220 per hour for Osa Armi, and $165 per hour for Janette Schue.

For 2003, SSRC requests small increases for each attorney on the grounds that SSRC's law firm raised its rates modestly after 2001, the new rates are more reflective of rates charged by other firms in the same practice areas, and the

[6] *Response to ALJ Thomas' Inquiry Regarding SSRC's Request for Intervernor Compensation in Connection with Commission Decisions 03-05-038 and 03-06-030*, filed October 13, 2003.

attorneys gained substantial additional experience. SSRC seeks a $10 per hour rate increase for each attorney, to $325 per hour for Mihaly, $230 per hour for Armi, and $175 per hour for Schue. SDG&E does not oppose these increases. As discussed below, we find the increases reasonable based on hourly rates we have awarded in 2002 and 2003 to attorneys with comparable education and experience.

With regard to Mihaly, we look to hourly rates awarded to a comparably qualified senior lawyer to determine the reasonableness of the requested increase. We awarded attorney Randy Wu $385 per hour for his 2002 work before this Commission. As we explained in D.02-09-040, Wu was admitted to the California bar in 1977 after receiving his law degree from Boalt Hall at the University of California, Berkeley. From 1977 through 1981, Wu served as staff counsel at the Commission. In 1981, he became an ALJ at the Commission, serving in that role until 1988, and presiding over a variety of gas and electric matters. In 1988, Wu joined El Paso Natural Gas, representing that company before state and federal regulatory agencies. From 1997 through 2000, Wu engaged in merchant plant development for El Paso Merchant Energy, focusing on the development and financing of two plants in Massachusetts and Connecticut. He joined TURN in an of-counsel role in 2001.

Mihaly is a partner at the law firm of Shute, Mihaly & Weinberger, LLP. He received his law degree in 1974 from Boalt Hall, and was admitted to the California bar. Before co-founding his law firm, Mihaly worked for the Legal Aid Society of San Mateo County for two years (1974-76), and as a California Deputy Attorney General in the Environmental Unit from 1976-80. He has practiced predominantly in the fields of administrative, land use, and environmental law since co-founding his firm in 1980. He has specialized experience in development agreements and planning issues related to complex

developments; air quality permitting and litigation; all aspects of growth limitation; and the California Environmental Quality Act.

While Mihaly does not have the same level of experience before this Commission as Wu,[7] this difference is made up in the difference between Wu's approved hourly rate of $385 and Mihaly's requested rate of $325. We find that SSRC has justified a $10 increase in Mihaly's rate for 2002-03 from $315 to $325.

As for Armi, who requests an increase from $220 to $230, we also find the new rate to be justified. In D.03-04-050, we compared Armi's experience to that of two other attorneys, Itzel Berrio and Enrique Gallardo, and found the three to have comparable experience.[8] Armi, like Berrio and Gallardo, is a 1997 law school graduate. Because we increased the 2002 rate for Berrio and Gallardo to $235, Armi's requested increase to $230 is also justified and we thereby adopt it.

SSRC requests that we increase Schue's rate from $165 to $175. We also find this request reasonable based on the $175 hourly rate we approved for Caroline Jacobs in D.03-01-075. Both Schue and Jacobs graduated from law school in 2000. Schue has been with the Shute, Mihaly firm since 2000, and has focused on litigation and non-litigation matters involving state and federal environmental laws, administrative law, state planning and zoning law, and regulatory matters. She has practiced before this Commission in three proceedings in addition to this one. We find the requested increase to $175 for 2002-03 to be reasonable.

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[7] Mihaly states that in the early 1980s, he represented in court a community group challenging an approval by this Commission of a power line. He has also represented this Commission's Low Income Governing Board. He also appeared before this Commission in connection with Rulemaking (R.) 00-01-005 and A.01-01-050.

[8] D.03-04-050, *mimeo.*, at 9.

2. Law Clerks

SSRC seeks compensation for law clerk time in 2003 at $60 per hour. SSRC explains that its law clerks are generally second-semester second- or third-year law students selected through a highly competitive application process. While SSRC does not identify the law clerks by name, the Commission has allowed a range of rates for law student interns from $55[9] to $85[10] per hour. Shute, Mihaly bills clients $100 per hour for law clerk work. Based on our precedent and the fact that SSRC has significantly discounted its law clerk rate, we find SSRC's $60 per hour request reasonable.

D. Costs

SSRC requests $1,814.75 for costs — $569.98 for D.03-05-038 and $1,244.77 for D.03-06-030. The costs represent charges for photocopies, facsimile transmission, Lexis-Nexis computerized legal research, postage, telephone and messenger service. The costs are reasonable and we award SSRC full recovery of them.

VI. Award

We award SSRC $43,867.65, as follows and as shown in Appendix A to this decision:

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[9] D.99-01-020.

[10] D.03-04-050.

Requested Amounts			
Decision 03-05-038	**Hours**	**Rate**	**Amount**
M. Mihaly	9.6	$325/hr	$ 3,120.00
O. Armi	72.9	$230/hr	16,767.00
J. Schue	21.2	$175/hr	3,710.00
Law clerks	15.3	$60/hr	918.00
Attorney Subtotal			**24,515.00**
Expenses			**569.98**
TOTAL			**25,084.98**
Decision 03-06-030			
M. Mihaly	10.5	$325/hr	3,412.50
O. Armi	131.9	$230/hr	30,337.00
J. Schue	11.9	$175/hr	2,082.50
Law clerks	1.5	$60/hr	90.00
Attorney Subtotal			**35,922.00**
Expenses			**1,244.77**
TOTAL			**37,166.77**
GRAND TOTAL			**$62,251.75**

Deduction for Inefficiency	
Fees in D.03-05-038	$24,515.00
Fees in D.03-06-030	$35,922.00
Subtotal	**$60,437.00**
Less 30% for inefficiency	($18,131.10)
Total fee award	**$42,305.90**

Deduction for Disallowed Press Communication			
	Hours	**Rate**	**Amount to Deduct**
O. Armi	1.1 (comm. with press)	$230/hr	($253.00)

Fees Awarded	$42,305.90
Less Time Communicating with Press	(253.00)
Subtotal	$42,052.90
Plus Costs	1,814.75
Total Award	**$43,867.65**

Consistent with previous Commission decisions, we will order that interest be paid on the award amount (calculated at the three-month commercial paper rate), commencing on September 16, 2003, the 75th day after SSRC filed its compensation request, and continuing until the utility makes its full payment of award.

As in all intervenor compensation decisions, we put SSRC on notice that the Commission staff may audit SSRC's records related to this award. Thus, SSRC must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. SSRC's records should identify specific issues for which it requests compensation, the actual time spent by each employee, the applicable hourly rate, fees paid to consultants, and any other costs for which compensation may be claimed.

VII. Comments on Draft Decision

Pursuant to Rule 77.7(f)(6) of the Commission's Rules of Practice and Procedure, the otherwise applicable 30-day period for public review and comment could be waived. However, we are allowing 30-days comment on the decision because it does not award the requested compensation in full and because SDG&E has contested the request.

VIII. Assignment of Proceeding

Susan P. Kennedy is the Assigned Commissioner and Michelle Cooke is the assigned ALJ in this proceeding.

Findings of Fact

1. SSRC has made a timely request for compensation for its contribution to D.03-05-038 and D.03-06-030.

2. SSRC has made a showing of significant financial hardship by demonstrating the economic interests of its individual members would be extremely small compared to the costs of participating in this proceeding.

3. SSRC's requested attorneys' hours are excessive.

4. SSRC has requested hourly rates for attorneys that are no greater than the market rates for individuals with comparable training and experience.

5. The hourly rates SSRC seeks for law clerks/law students are consistent with Commission precedent and lower than Shute, Mihaly's market rates.

6. The costs incurred by SSRC are reasonable.

Conclusions of Law

1. SSRC has fulfilled the requirements of §§ 1801-12 which govern awards of intervenor compensation.

2. The fact that SSRC raised funds from private donors does not render it ineligible for compensation or undermine a finding that it meets the financial hardship test.

3. SSRC should not recover compensation for time spent communicating with the press, because such time does not relate directly to its participation in this proceeding.

4. We should increase the hourly rates for Attorneys Mihaly, Armi, and Schue by $10.00 each for 2003, to $325, $230, and $175 per hour, respectively.

5. We should award SSRC $60 per hour for work by its law clerks in 2003.

6. SSRC should receive compensation for its reasonable costs.

7. SSRC should not receive compensation for excessive attorneys' fees, based on excessive hours, as such fees are not reasonable pursuant to Pub. Util. Code § 1801. With the adjustment shown in Table 4 of the foregoing decision, SSRC's fees are reasonable.

8. SSRC should be awarded $43,867.65 for its substantial contribution to D.03-05-038 and D.03-06-030.

9. This order should be effective today so that SSRC may be compensated without unnecessary delay.

O R D E R

IT IS ORDERED that:

1. Save Southwest Riverside County (SSRC) is awarded $43,867.65 in compensation for its substantial contribution to Decisions 03-05-038 and 03-06-030.

2. San Diego Gas and Electric Company (SDG&E) shall pay SSRC $43,867.65 within 30 days of the effective date of this order. SDG&E shall also pay interest on the award at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release H.15, with interest, beginning on September 16, 2003, and continuing until full payment is made.

3. This proceeding is closed.

This order is effective today.

Dated _____, at San Francisco, California.

APPENDIX A

Compensation Decision Summary Information

Compensation Decision(s):	
Contribution Decision(s):	D0305038, D0306030
Proceeding(s):	A0103036
Author:	ALJ Cooke
Payer(s):	San Diego Gas & Electric Company

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Reason Change/Disallowance
Save Southwest Riverside County	July 3, 2003	$62,251.75	$43,867.65	Excessive hours; communicating with press not compensable

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Marc	Mihaly	Attorney	Save Southwest Riverside County	$325	2003	$325
Osa	Armi	Attorney	Save Southwest Riverside County	$230	2003	$230
Janette	Schue	Attorney	Save Southwest Riverside County	$175	2003	$175
		Law Clerks	Save Southwest Riverside County	$60	2003	$60

(END OF APPENDIX A)