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Decision 03-10-085 October 30, 2003

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Establish Policies and Cost Recovery Mechanisms for Generation Procurement and Renewable Resource Development.	Rulemaking 01-10-024 (Filed October 25, 2001)

OPINION ON REQUEST FOR INTERVENOR COMPENSATION

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This decision awards $132,691.92 to the Union of Concerned Scientists (UCS) for its substantial contribution to Decision (D.) 03-06-071.

I. Background

Rulemaking (R.) 01-10-024 is ongoing and has produced several decisions thus far. In D.02-10-062, the Commission established, among other things, a procedural framework for implementing Senate Bill (SB) 1078. This legislation, which was signed by the Governor on September 12, 2002, enacted the California Renewables Portfolio Standard (RPS) program. The goal of the RPS program is to have 20% of California's electric power provided by renewable generation. SB 1078 requires the procurement of renewable energy to increase by at least 1% per year until the 20% goal is achieved.

In January 2003, the parties submitted comments on what steps should be taken to implement the RPS program. Workshops and evidentiary hearings were held in February and April 2003, respectively. Briefs and reply briefs were submitted in May 2003. In D.03-06-071, the Commission commenced the implementation of the RPS program by adopting (1) a process for determining the market price of renewable power; (2) criteria for the selection of least-cost and best-fit renewable power; (3) flexible rules for compliance with SB 1078; and (4) standard terms and conditions for the procurement of renewable power.

II. Eligibility to Claim Compensation

Pub. Util. Code Section 1801 et seq.,[1] provides for the award of reasonable compensation to intervenors that make a substantial contribution to a Commission proceeding. Section 1804(a) requires an intervenor to file a notice of

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

intent (NOI) to claim compensation. The NOI must state the nature and extent of the intervenor's planned participation, provide an itemized estimate of the compensation the intervenor expects to request, and demonstrate that the intervenor is a customer as defined by Section 1802(b). The NOI may also request a finding that the intervenor's participation would pose a significant financial hardship.[2]

On February 7, 2002, UCS filed an NOI that contained a showing of significant financial hardship, a demonstration that UCS met the definition of "customer," and information that indicated UCS met the other criteria for an award of intervenor compensation. On August 20, 2002, an Administrative Law Judge (ALJ) issued a ruling that found UCS eligible to claim compensation.

III. Timeliness of Request

Section 1804(c) requires an intervenor to file a request for compensation within 60 days of the final Commission decision for which the intervenor intends to claim compensation. On December 20, 2002, UCS filed a request for compensation with respect to D.02-10-062 and D.02-08-071.[3] The amount of the request was $117,994. On May 5, 2003, UCS filed a motion to amend the request that it had submitted in December 2002, to defer consideration of $49,467 of expenses associated with RPS implementation issues. There was no opposition to UCS's motion and we hereby grant it.[4]

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[2] Pursuant to Section 1804(a)(2)(B), an intervenor must demonstrate significant financial hardship in either the NOI or its request for compensation.

[3] On January 17, 2002, Southern California Edison Company (SCE) filed a response in opposition to UCS's request. UCS filed a reply on February 3, 2003. SCE withdrew its opposition on February 25, 2003.

[4] UCS's December 20, 2002 request for compensation in connection with D.02-10-062 and D.02-08-071, as amended, will be addressed in a separate decision.

The Commission mailed D.03-06-071 on June 23, 2003. UCS's filed a timely request for compensation with respect to D.03-06-071 on August 14, 2003. The request included $49,467 of expenses associated with RPS implementation issues described previously. There was no opposition to the request.

IV. Substantial Contribution

Under Section 1804(c), an intervenor requesting compensation must provide "a description of the customer's substantial contribution to the hearing or proceeding." Section 1804(e) requires the Commission to issue a decision that determines whether the intervenor has made a substantial contribution.

An intervenor may make a substantial contribution in one of several ways. It may offer a policy or procedural recommendation that is adopted by an ALJ or the Commission. An intervenor may also provide evidence or argument that supports part of a decision, even if the Commission does not adopt an intervenor's position in total. The Commission may award compensation even when the position advanced by an intervenor is rejected.

In the phase of the proceeding leading to D.02-10-062, UCS provided evidence on SB 1078 and RPS implementation issues. In D.02-10-062, the Commission determined that RPS implementation issues should be addressed in the next phase of the proceeding and identified several RPS implementation issues to be considered. Therefore, even though D.02-10-062 deferred consideration of RPS implementation issues, we find that UCS's participation helped frame the RPS implementation issues identified in D.02-10-062 and lay the groundwork for the subsequent RPS phase of the proceeding.

In the RPS phase of the proceeding that commenced after the issuance of D.02-10-062, UCS submitted testimony, cross examined witnesses, filed briefs, and submitted comments on the ALJ's proposed decision and a Commissioner's

alternate proposed decision. While not all of UCS's positions were adopted by D.03-06-071, we find that UCS made a substantial contribution in eight areas. First, UCS recommended the adoption of an accounting system for renewable energy credits (RECs) to verify compliance with the RPS program. Although the California Energy Commission (CEC) is responsible for selecting the accounting system that will be used to verify compliance with the RPS program, the Commission concluded in D.03-06-071 that an REC-based accounting system has several advantages and recommended that it be adopted by the CEC.[5]

Second, D.03-06-071 adopted a process for determining the market price of electricity provided by renewable generation, which the Decision refers to as the "market price referent" (MPR). UCS argued that the MPR should not be based on existing long-term, fixed-price contracts for renewable power because no such contracts existed. The Commission agreed, stating in Finding of Fact 10 that there "is no evidence . . . that truly comparable utility procurement contracts presently exist."

Third, UCS recommended that the MPR be based on the "all-in" cost of producing electricity by a natural gas power plant, including the cost to finance, permit, construct, operate, and maintain such a facility in California. The Commission concurred, stating in Ordering Paragraph 10 that the MPR "will be calculated as an all-in cost, with an exception for as-available capacity."

Fourth, the Commission determined in D.03-06-071 that the CEC's draft report *Comparative Cost of California Central Station Electricity Generation Technologies* provided a reasonable starting point for developing the MPR.[6]

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[5] D.03-06-071, Ordering Paragraph 3.

[6] D.03-06-071, *mimeo*., p. 20, and Finding of Fact 19.

However, UCS advised the Commission to consider several factors not included in the CEC report. The Commission agreed, stating in D.03-06-071 that "a significant amount of detail remains to be developed."[7]

Fifth, UCS recommended that the MPR include gas hedge costs. The Commission concurred, stating in Finding of Fact 17 that gas hedge costs "are a reasonable part of the proxy for long-term natural gas supply contracts."

Sixth, D.03-06-071 adopted criteria for the selection of renewable resources based on "least cost" and "best fit." The Decision defines best fit "as being those renewable resources that best meet the utility's energy, capacity, ancillary service, and local reliability needs."[8] This is consistent with UCS's proposal that a best fit resource be defined as providing an optimal balance of specific quantities of electricity delivered at specific times and locations.

Seventh, D.03-06-071 adopted flexible rules for compliance with RPS program mandates. In particular, D.03-06-071 requires each utility to increase its procurement of renewable power by 1% per year. The Decision allows utilities to bank excess procurement or, conversely, to carry over an annual deficit for three years. Procurement for any year is to be applied first to that year's target, with any excess procurement being used to make up a prior year's deficit or banked for future use.[9] These rules reflect UCS's recommendation that the utilities' procurement of renewable resources should result in a net increase of 1% per year, adjusting for any changes to existing renewable resources.

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[7] D.03-06-071, *mimeo.*, p. 20.

[8] D.03-06-071, *mimeo.*, p. 28.

[9] D.03-06-071, Ordering Paragraphs 19, 20, 21, and 22.

Finally, D.03-06-071 adopted an automatic penalty for utilities that fail to meet their RPS procurement targets.[10] Finding of Fact 42 states that "automatic penalty levels and a penalty cap can be set based on the experience of other states." UCS was the only party to introduce the complete language of Massachusetts' penalty mechanism.

Although we find that UCS made a substantial contribution to D.03-06-071, UCS did not prevail on two issues. First, UCS recommended that the Commission use a study prepared by the Lawrence Berkeley National Laboratory as an initial basis for setting the value of gas price hedges. The Commission found that the study was flawed and directed staff to "use the best available methodology and data to calculate a gas hedge value."[11] Second, UCS advocated that the MPR include the cost of complying with future environmental regulations that UCS believes will emerge from a worldwide effort to curb global climate change. The Commission declined to adopt this proposal, stating that the MPR will include future environmental compliance costs only "when they become more definite, both in likelihood and value."[12]

We find that UCS did not make a substantial contribution with respect to the two matters identified in the previous paragraph, and we will adjust the amount awarded to UCS accordingly.

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[10] D.03-06-071, Ordering Paragraphs 23 and 24.

[11] D.03-06-071, *mimeo.*, p. 23.

[12] D.03-06-071, *mimeo.*, p. 23.

V. Overall Benefits of Participation

An intervenor requesting compensation is required by D.98-04-059 to demonstrate that its participation was "productive" by showing that the benefits of the intervenor's participation exceeded the cost of participation.

It is not possible to quantify the benefits of UCS's participation with respect to RPS implementation issues. Nevertheless, UCS made a substantial contribution to D.03-06-071 as described previously. We conclude that the benefits from UCS's contribution likely exceeded the cost of its participation.

VI. Reasonableness of Requested Compensation

A. Amount Requested

UCS requests $149,943.54 for its substantial contribution to D.03-06-071. The details of UCS's request are as follows:

Legal, Professional & Other Fees	Hours	Hourly Rate	Year	Total
Union of Concerned Scientists				
Julia Levin	67.50	$250	2002	$16,875.00
Alan Nogee (**Note 1**)	71.89	$215	2003	$15,456.35
	5.00	$200	2002	$1,000.00
Steve Clemmer	19.80	$150	2002	$2,970.00
Subtotal	164.19			$36,301.35
Foresight Energy				
Warren Byrne	91.30	$150	2002	$13,695.00
Todd Thorner	41.90	$130	2002	$5,447.00
Steve Hammond	83.10	$110	2002	$9,141.00
Subtotal	216.30			$28,283.00
Synapse Energy Economics				
Bruce Biewald	13.00	$150	2003	$1,950.00
Timothy Woolf	131.00	$150	2003	$19,650.00
David White	18.00	$135	2003	$2,430.00
Cliff Chen	18.00	$105	2003	$1,890.00
Alex Moffett	3.00	$105	2003	$ 315.00
Travel: Timothy Woolf	- -	- -	2003	$2,691.53
Subtotal	183.00			$28,926.53

Legal, Professional & Other Fees	Hours	Hourly Rate	Year	Total
Grueneich Resource Advocates				
Dian Grueneich	17.60	$385	2003	$6,776.00
Theresa Cho	4.60	$290	2003	$1,334.00
Jody London	109.48	$190	2003	$20,801.20
Clyde Murley	105.96	$190	2003	$20,132.40
Michael McCormick	27.30	$100	2003	$2,730.00
Jack McGowan	19.00	$60	2003	$1,140.00
Travel & Claim Prep. Time: London	11.69	$95	2003	$1,110.55
Travel & Claim Prep Time: McCormick	10.30	$50	2003	$ 515.00
Subtotal	305.93			$54,539.15
Copying, Postage, and Other Costs				$1,893.51
TOTAL CLAIM	869.42			**$149,943.54**

Note 1: UCS's claim for Alan Nogee included 0.75 hours billed at half of the requested hourly rate. The above table shows 0.38 hours billed at the full hourly rate.

B. Hours Claimed

Section 1804(c) requires intervenors requesting compensation to provide a detailed description of services and expenditures. Decision 85-08-012 requires intervenors to allocate activities and costs by issue when intervenors address more than one issue in a proceeding.[13]

UCS requests compensation for the time spent on this proceeding by its own staff and by outside attorneys and consultants hired by UCS. UCS documented its claimed hours with timesheets that show hours allocated by activity, such as writing testimony, preparing cross-examination, and writing comments on draft decisions. Importantly, UCS did not allocate its time among issues. According to UCS, it devoted all of its efforts to just one issue - - RPS implementation. We disagree that "RPS implementation" may be viewed as a

[13] See also D.99-12-005, *mimeo.*, pp. 7 - 9.

single issue. In D.03-06-071, the Commission decided many issues related to RPS implementation. We concluded that UCS should have allocated its activities, time, and costs among these many issues as required by Commission precedent.

UCS believes that the total number of hours claimed is reasonable given the scope of this proceeding and the complexity of the issues. With two exceptions, we agree. The first exception concerns the time spent by UCS on two issues for which it failed to make a substantial contributions (i.e., the use of the Lawrence Berkeley study to determine gas hedge costs and the inclusion of future environmental compliance costs in the MPR). We conclude that UCS should not be compensated for the costs it incurred with respect to these two issues. However, because UCS did not allocate its time and costs among issues, we cannot determine the amount to disallow. Therefore, we will use our discretion and reduce the amount awarded to UCS by 5% percent. We caution UCS that we may make even larger disallowances in the future if it again fails to allocate its time and costs among issues.

The second exception concerns the hours claimed by UCS for travel. We note that Jody London's travel time includes 3.30 hours to prepare for, travel to, and follow up on a meeting with UCS on July 15, 2003, regarding "energy activities." We find that the time spent by London on July 15 regarding "energy activities" is unrelated to UCS's substantial contribution to D.03-06-071, which was issued on June 19, 2003. Accordingly, we will disallow 3.30 hours of London's travel time.

UCS also appears to have double counted one-half hour of travel time incurred by London on May 19, 2003, to meet with Commissioner Advisors. In particular, it appears that UCS requested one-half hour for travel at London's requested hourly rate or $190, and requested the same one-half hour again at half

of London's requested hourly rate. To avoid double counting, we will reduce the hours adopted for London at her full hourly rate by one-half hour.

Finally, UCS appears to have charged the full hourly rate for time spent by Alan Nogee to travel to a meeting with Commission Advisors on May 19, 2003. We assume that Nogee spent one-half hour traveling to the meeting, which is the same amount of travel time to this meeting claimed by London. To reflect the Commission's policy of awarding one-half the hourly rate for travel time, we will reduce the adopted hours for Nogee by one-quarter hour (one-half hour x ½).

C. Hourly Rates

UCS requests compensation for 17 individuals. Section 1804(c) requires intervenors requesting compensation to provide a detailed description of services and expenditures. Section 1804(e) requires the Commission to determine what amount of compensation to award. Pursuant to Section 1806, the level of compensation must take into account the market rate paid to people with comparable training and experience who offer similar services.

1. Julia Levin

UCS requests an hourly rate of $250 for Julia Levin's participation in 2002. Levin is an attorney for UCS. In this proceeding, she helped to draft UCS's testimony, pleadings, and briefs. She also conducted cross-examination of utility witnesses, presented oral argument, and participated in all-party meetings. UCS also seeks compensation for the time that Levin spent preparing its request for compensation filed in December 2002. Levin spent approximately 22 hours preparing the request. However, because the Commission generally finds that compensation requests do not require preparation by an attorney, UCS seeks compensation for only 10 hours, or slightly less than half of Levin's time (which is equivalent to asking for compensation at half of Levin's usual hourly rate).

UCS believes the requested hourly rate of $250 is reasonable in comparison to the hourly rate of $200 that the Commission approved for TURN staff attorney Mathew Freedman. UCS states that Levin has more than double the years of legal experience as Freedman and assumed a far greater level of responsibility in this rulemaking since she was UCS's primary attorney.

Levin was admitted to the California Bar in 1991. She has worked for government agencies and environmental organizations on environmental, public health, and energy issues. She also has many years of experience as a legislative advocate and policy analyst focusing on environmental and energy issues. Additionally, Levin is a board member of the Center for Energy Efficiency and Renewable Technologies. Levin has a law degree from the University of California, Hastings, and a bachelor's degree from Brown University.

We conclude that Levin's qualifications, experience, and level of responsibility in this proceeding justify the requested hourly rate of $250.

2. Alan Nogee

UCS requests an hourly rate of $200 for Alan Nogee in 2002 and $215 in 2003. Alan Nogee is the director of UCS's national Clean Energy Program. He directed UCS's overall participation in this proceeding, including the development of UCS's testimony, briefs, and comments. UCS believes the requested hourly rates for Nogee are reasonable compared to the hourly rate of $230 that was awarded by D.03-05-065 to William Ahern for work in 2002. Ahern is currently the Executive Director of the Commission. At the time, Ahern was an energy analyst for Consumers Union.

Nogee has more than 24 years of experience with renewable energy issues. He has testified as an expert witness on renewable energy issues before Congress, state legislatures, and regulatory agencies. Nogee has also published

extensively on renewable energy issues. He currently serves on the Green-e Advisory Board as well as the Board of the Renewable Energy Policy Project. Nogee has bachelor's degree in psychology from Brandeis University.

Given Nogee's experience, expertise, and responsibilities in this proceeding, we conclude that it is reasonable to award an hourly rate of $200 in 2002 and $215 in 2003.

3. Steve Clemmer

UCS requests an hourly rate of $150 for Steve Clemmer's participation in 2002. Clemmer works for UCS as a senior energy analyst. During this proceeding, Clemmer helped to develop testimony, review filings, and respond to utility data requests.

Clemmer has worked on renewable energy issues for more than a decade. Prior to joining UCS, he was an energy policy coordinator and energy research analyst for the Wisconsin Department of Administration. Clemmer has also published extensively on renewable energy issues; testified before Congressional committees and state legislative committees; and participated in state regulatory proceedings related to renewable energy. Clemmer has a Masters of Science in Land Resources and Master's Certificate in Energy Analysis and Policy from the University of Wisconsin-Madison.

In D.03-05-065, we adopted an hourly rate of $160 for Eric Woychick's participation in another proceeding in 2002. Woychick has almost 20 years of energy experience. In the same decision, we adopted a 2003 rate of $160 for Jody London, who has 13 years of energy experience. In light of these recent awards, we find the requested hourly rate of $150 for Steve Clemmer to be reasonable, and we grant the request.

4. Warren Byrne

UCS requests an hourly rate of $150 for Warren Byrne's participation in 2002. Byrne, who is the managing director of Foresight Energy Company, served as UCS's expert witness on RPS implementation issues through D.02-10-062. In this capacity, Byrne prepared testimony, appeared as an expert witness, drafted cross-examination questions, and helped write UCS's briefs.

Byrne has 14 years of energy-related experience. He co-founded Foresight Energy Company in 1996 after working as an energy analyst for Booz, Allen & Hamilton. Byrne also worked for the Environmental Defense Fund, Caithness Corp., and the Natural Resources Defense Council (NRDC). Byrne has a Masters of Environmental Management from Yale University and a bachelor's degree from the University of California, Santa Barbara.

We find the requested 2002 hourly rate of $150 for Warren Byrne to be reasonable, and we grant the request.

5. Todd Thorner

UCS requests an hourly rate of $130 for Todd Thorner's participation in 2002.[14] Thorner works for Foresight Energy Company. In order to keep expenses down, Foresight employed Thorner whenever possible to help draft comments and pleadings, conduct research, review utility pleadings and testimony, review hearing transcripts, conduct legal research, and attend hearings when renewable energy issues were on the agenda.

Thorner has eight years of energy-related experience. Prior to joining Foresight, Thorner was a senior energy analyst at Pace Global Energy Services

[14] We note that the text of UCS's request seeks $120/hour for Thorner while the table in UCS's request shows $130/hour. Today's decision relies on the $130/hour figure shown in the table.

where he assisted independent power producers with market analysis, power purchase agreements, project finance, and acquisitions. Thorner also worked for the World Bank's Industry & Energy Group where he helped to integrate energy and environmental issues; and for Energy Technologies Enterprises Corp as an energy economist responsible for developing cost-benefit models, software for power plant optimization, and economic analyses of world energy and gas markets. Thorner has a Masters Degree in International Energy and Environmental Economics from the Johns Hopkins School of Advanced International Studies and a bachelor's degree from Wesleyan University.

We find the requested hourly rate of $130 for Todd Thorner to be reasonable, and we grant the request.

6. Steve Hammond

UCS requests an hourly rate of $110 for Steve Hammond's participation in 2002. Hammond has worked for Foresight Energy Company since he received his law degree from Lewis and Clark Northwestern School of Law in May 2001. In order to keep expenses down, Foresight employed Hammond whenever possible to help draft comments and pleadings, conduct research, review utility pleadings and testimony, review hearing transcripts, and conduct legal research. Hammond also provided backup legal counsel for Julia Levin on the one day of hearings that Levin was unavailable.

We have previously adopted higher hourly rates for new attorneys than the $120 rate requested for Steve Hammond.[15] Thus, we find the requested hourly rate of $110 for Hammond to be reasonable, and we grant the request.

7. Bruce Biewald

UCS requests an hourly rate of $150 for Bruce Biewald's participation in 2003. Biewald is the president of Synapse Energy Economics. In this proceeding, he assisted UCS in developing strategy and preparing testimony.

Biewald has twenty years of experience advising state agencies, consumer and environmental advocates, utilities, and others on issues related to the production and consumption of energy. He has testified in more than 70 regulatory proceedings in twenty-five states and two Canadian provinces. Additionally, Biewald has co-authored approximately one hundred reports,

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[15] See, for example, D.03-01-075.

including studies for the Electric Power Research Institute, the U.S. Department of Energy, the U.S. Environmental Protection Agency, the Office of Technology Assessment, the New England Governors' Conference, the New England Conference of Public Utility Commissioners, and the National Association of Regulatory Utility Commissioners. His papers have also been published in journals and numerous conference proceedings. Prior to founding Synapse, Biewald worked for the Energy Systems Research Group (later the Tellus Institute) where he consulted on regulatory and economic issues. Biewald studied architecture at the Massachusetts Institute of Technology (MIT).

Decision 00-09-068 adopted an hourly rate of $110 for Bruce Biewald in 2000. In light of Biewald's extensive experience, we find the requested hourly rate of $150 in 2003 to be reasonable, and we grant the request.

8. Timothy Woolf

UCS requests an hourly rate of $150 for Timothy Woolf's participation in 2003. Woolf , who is vice president of Synapse Energy Economics, served as UCS's expert witness during the RPS implementation phase of this proceeding.

Woolf has nineteen years of experience with energy issues. He has testified as an expert witness in state regulatory proceedings and has published articles on electric utility regulation. Prior to joining Synapse, Woolf was manager of the Electricity Program at the Tellus Institute, where he worked for consumer and environmental advocates throughout the United States. He also served as the research director for the Association for the Conservation of Energy in London, as a staff economist for the Massachusetts Department of Telecommunications and Energy, and as a policy analyst for the Massachusetts Division of Energy Resources. He began his career by working for UCS and the Massachusetts Public Interest Research Group. Woolf has an MBA from Boston

University, a Diploma in Economics from the London School of Economics, and a B.S. in mechanical engineering and a B.A. in English from Tufts University.

We find the requested hourly rate of $150 for Timothy Woolf to be reasonable, and we grant the request.

9. David White

UCS requests an hourly rate of $135 for David White's participation in 2003. White works for Synapse Energy Economics. In this proceeding, White performed research on the hedge value of renewable resources.

White has 20 years of experience with energy systems and computer software, including 5 years at the MIT Energy Laboratory. He has run electricity market simulation models for most markets in the United States. White has a Ph.D in engineering systems from MIT.

We find the requested hourly rate of $135 for David White to be reasonable, and we grant the request.

10. Cliff Chen

UCS requests an hourly rate of $105 for Cliff Chen's participation in 2003. Chen works for Synapse Energy Economics. In this proceeding, Chen performed research on the hedge value of renewable resources and the regulation of multi-state pollutants. UCS asserts that the requested hourly rate of $105 is reasonable compared to a request dated March 4, 2003, by NRDC of $100/hour for work by a staff scientist in R.02-10-001. UCS also cites D.03-04-050, which adopted an hourly rate of $85 for work performed by a law clerk in 2001.

Chen previously worked as an intern at the City of San Jose Environmental Services Department, as a volunteer in the U.S. Peace Corps, and at NRDC. Chen has a B.S. in earth sciences from Stanford University.

In D.03-05-065, we adopted an hourly rate of $95 for work performed by a law clerk in this proceeding during 2002. Using this as a benchmark, we conclude that it is appropriate to adopt an hourly rate of $100 for Chen's work in this proceeding during 2003.

11. Alex Moffett

UCS requests an hourly rate of $105 for Alex Moffett's participation in 2003. Moffett works for Synapse Energy Economics. In this proceeding, Moffett performed research on fuel prices projected by the U.S. Department of Energy. He has a B.A. in philosophy from Stanford University.

In D.03-05-065, we adopted an hourly rate of $95 for work performed by a law clerk in this proceeding during 2002. Using this as a benchmark, we conclude that it is appropriate to adopt an hourly rate of $100 for Moffett's work in this proceeding during 2003.

12. Dian Grueneich

UCS requests an hourly rate of $385 for Dian Grueneich's participation in 2003. Grueneich is an attorney and the principal of Grueneich Resource Advocates (GRA), which provided legal and regulatory representation for UCS in the RPS implementation phase of this proceeding. UCS believes the requested hourly rate is reasonable in light of the previously adopted hourly rate of $385 for Michael Florio, an attorney for The Utility Reform Network (TURN), and for Randy Wu, who was an attorney for TURN at the time.[16]

In order to evaluate the reasonableness of UCS's request, we must compare the qualifications and experience of Grueneich with those of Florio and

[16] D.03-05-065 awarded Florio and Wu an hourly rate of $385 for work in 2002.

Wu. Grueneich has over 25 years experience with California energy issues. She began her career as an attorney at the CEC where she worked on a variety of issues, including power plant siting, energy efficiency, and renewable resources. As an attorney in private practice for the past twenty years, Grueneich has focused on assisting public and non-profit clients on a range of energy issues, including transactional work, strategic planning, and regulatory advocacy. Grueneich has testified before the California Legislature and state regulatory agencies, and has practiced before the Commission. She is currently on the Board of the American Council for an Energy-Efficient Economy. Grueneich has a J.D. from Georgetown University and a B.A. from Stanford University.

Florio has a law degree from New York University School of Law and a master's degree in public affairs from Princeton. He has worked as an attorney for TURN and practiced before the Commission on energy-related issues for more than 20 years. He was named TURN's senior attorney in 1990, with supervisory responsibility for all of TURN's legal advocacy. Florio is a highly skilled, experienced, and effective advocate, with substantial expertise in the complex substance and process of litigation before the Commission. In recent years, Florio was selected by Governor Davis to serve on the governing boards for both the Power Exchange and the Independent System Operator.

Like Florio, Wu has been continuously worked on energy-related issues for more than 20 years. He was admitted to the California bar in 1977 after receiving his law degree from 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 and presided over a variety of gas and electric proceedings. In 1988, Wu joined El Paso Natural Gas, representing that company before state and federal regulatory agencies. From 1997 through 2000, Wu

worked for El Paso Merchant Energy, focusing on the development and financing of two plants in Massachusetts and Connecticut. Wu joined TURN in 2001, and re-joined the Commission as General Counsel in 2003.

We find that Grueneich's qualifications and experience on energy-related matters are comparable to Florio's and Wu's. Given that we have previously adopted an hourly rate of $385 for Florio and Wu, we conclude that it is reasonable to adopt an hourly rate of $385 for Grueneich.[17]

13. Theresa Cho

UCS requests an hourly rate of $290 for Theresa Cho's participation in 2003. Cho is the general counsel for GRA. In this proceeding, Cho helped UCS prepare for hearings and develop UCS's case. UCS asserts that the requested rate is reasonable because the Commission has previously adopted an hourly rate of $340 for TURN attorney Robert Finkelstein.

Cho has 11 years of experience in providing legal advice to public and private sector clients on energy, environmental, contract, and construction matters, and representing clients before state and federal courts and administrative agencies. Prior to joining GRA, Cho served as counsel at PG&E Energy Services where she was involved in the development of direct service energy agreements. She also worked as an associate at Cameron McKenna, in the California energy group, and was associate general counsel for the City of Emeryville Redevelopment Agency. Cho has a J.D. from the University of California, Berkeley, and a B.A. from Wesleyan University.

We find that Cho's qualifications, experience, and level of responsibility in this proceeding appear to be similar to those of Julia Levin, which were described previously. UCS requests $250/hour for Levin's work in this proceeding during 2002. We conclude that Cho should receive the same hourly rate as Levin, except that Cho's rate should be increased to $265 (i.e., an increase of 6%) to reflect inflation and the higher hourly rates paid to attorneys in 2003 compared to 2002.

This is the first time we have reviewed a request for compensation for Theresa Cho. Her work in this proceeding was limited to 4.60 hours. Because of our limited first impression, today's decision does not constitute a binding precedent on Cho's hourly rate for 2003. UCS (and other intervenors) may request a higher hourly rate for 2003 in other phases of this proceeding (or in other proceedings), but UCS will have the burden of demonstrating that a higher hourly rate is justified.

14. Jody London

UCS requests an hourly rate of $190 for Jody London's participation in 2003. London is a senior policy analyst and project manager at GRA. She managed most aspects of UCS's participation in the RPS phase of this proceeding, helped develop case strategy, and was the lead author of UCS's opening brief, reply brief, and comments on the proposed and alternate decisions. UCS states that the requested hourly rate is reasonable compared to (1) the hourly rate of $220 that was approved by D.03-02-017 for James Weil of

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[17] In D.03-06-065 and D.02-06-014, the Commission adopted an hourly rate of $220 for Grueneich in 2001. Because this was a below-market rate (D.02-06-014, *mimeo.*, pp. 7-8), it does not provide useful guidance in determining the market-based rate adopted by today's decision.

Aglet Consumer Alliance, and (2) the hourly rate of $340 that was approved by D.03-01-074 for TURN supervising attorney Robert Finkelstein. UCS also believes the requested hourly rate for London is reasonable given her experience and expertise, and because much of the work she performed is usually done by senior attorneys who bill at rates at least $100/hour higher.

Jody London has over 15 years of experience, including 13 years in the energy industry. London's experience includes six years on the staff of the Commission, during which time she served as an advisor to one of the five Commissioners. London left the Commission to work for a telecommunications provider that was exploring opportunities to provide renewable energy to residential customers. In this capacity she represented her company at the Commission, the CEC, and the Legislature. She then joined GRA where she manages projects for public sector and non-profit clients on a range of issues. London has a Masters of Public Administration from Columbia University and a B.A. in English from the University of California, Berkeley.

In D.03-06-065, we adopted an hourly rate of $160 for London in 2003. We will adopt the same hourly rate here. We note that the adopted hourly rate of $160 appears to be generous when compared to the hourly rate of $150 that was adopted previously in today's decision for Steve Clemmer, Warren Byrne, Bruce Biewald, and Timothy Woolf. Each of these individuals has qualifications that easily match those of Jody London. The adopted hourly rate for London also appears to be generous when compared to the hourly rate of $135 that was adopted for Trevor Roycroft in D.03-06-010. Roycroft, who served as an expert witness for TURN, is a tenured associate professor at the School of Communications Systems Management at Ohio University. He has been with the university since 1994. Previously, he was chief economist for the Indiana Office of Consumer Counselor, responsible for research and testimony in gas, water, electric, and telecommunications cases. He has a Ph.D. (1989) and master's degree (1986) in economics from the University of California at Davis,

and has published numerous articles on telecommunications regulatory policy.[18] We find that Roycroft's qualifications easily match London's. We caution UCS that in the future we may reduce London's hourly rate to more closely match the hourly rates awarded to other individuals with similar qualifications.

15. Clyde Murley

UCS requests an hourly rate of $190 for Clyde Murley's participation in 2003. Murley is a senior policy analyst and project manager at GRA. During this proceeding, Murley served as UCS's lead representative in the RPS implementation hearings. In this capacity, Murley reviewed the testimony of UCS and other parties, developed and performed cross-examination, and helped prepare UCS's expert witness. Murley also helped to draft UCS's opening brief.

Clyde Murley has nearly 20 years of experience with energy and environmental issues. At GRA, he works with clients on various issues, including renewable development, demand response, and energy procurement. Murley's experience includes three years on the staff of the Commission where he managed environmental studies and advised the Commission on integrated resource planning and energy efficiency matters. Murley also worked for four years as a senior energy scientist with NRDC. Following this, Murley became the founding director of a graduate environmental and energy economics study program at Antioch University. Murley also worked for PG&E as a research manager. Murley has an M.A. in Energy and Resources and a B.A. in Environmental Sciences from the University of California, Berkeley.

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[18] D.03-06-010, *mimeo.*, p 12.

UCS requests an hourly rate of $190 for both Clyde Murley and Jody London. We agree with UCS that Murley's hourly rate should be the same as London's. Accordingly, we adopt an hourly rate of $160 for Murley, which is the same hourly rate we adopted for London previously in today's decision.

16. Michael McCormick

UCS requests an hourly rate of $100 for Michael McCormick's participation in 2003. McCormick is a policy analyst at GRA. In this proceeding, he provided research assistance, worked on UCS's opening and reply briefs, and helped prepare its request for compensation submitted on August 14, 2003.

McCormick is currently working on an M.S. in Environmental Management at the University of San Francisco. He has a B.A. in philosophy from St. John's College.

We find the requested hourly rate of $100 for Michael McCormick to be reasonable, and we grant the request.

17. Jack McGowan

UCS requests an hourly rate of $60 for Jack McGowan, the firm administrator at GRA. McGowan helped prepare UCS's request for compensation submitted in August 2003. UCS believes the requested hourly rate is a reasonable rate for a senior administrator. McGowan has 17 years of business management experience and a B.S. in business administration from California State University, Hayward.

The hourly rate we award for the time spent preparing a request for compensation depends on whether the requested rate is relatively high or low. For highly compensated persons, such as a senior attorney, we award halve the

hourly rate. For persons who receive a relatively low hourly rate, we may award the full hourly rate.[19] Here, UCS requests a relatively low hourly rate of $60 for the time spent by Jack McGowan on UCS's request for compensation. We find the requested hourly rate to be reasonable, and we grant the request.

D. Travel and Other Costs

UCS requests $2,691.53 in travel-related costs for Timothy Woolf. However, UCS provided no description, itemization, or justification for the travel costs incurred by Woolf. Without such information, we cannot determine if Woolf's travel costs are reasonable and meet Commission requirements (e.g., seeks reimbursement for time spent on travel at half the normal hourly rate). Accordingly, we disallow all of Woolf's travel costs.

UCS requests compensation in the amount of $1,893.51 for photocopying, postage, and other miscellaneous costs. The request includes $320 for "file management costs." In prior decisions, including D.03-05-065 and D.00-07-013, the Commission found that professional fees assume administrative overhead costs and are set accordingly. We find that file management costs are an administrative overhead and are included in the professional fees awarded by today's decision. We find the remainder of the costs that UCS claimed for postage, photocopying, and other miscellaneous items to be reasonable, and we award $1,573.51 to UCS for these expenses (i.e., $1,893.51 – 320.00).

E. Duplication of Effort

Section 1801.3(f) states that the intervenor compensation program should be administered to avoid "unnecessary participation that duplicates the

[19] See D.03-01-075 and D.98-12-953.

participation of similar interests." UCS states that it coordinated closely with other parties in this proceeding. For example, UCS filled in the Matrix of Renewables Issues prepared by the parties to clarify parties' positions and avoid unnecessary duplication. UCS also focused its participation on a limited set of

issues where UCS has expertise, and avoided those issues that other participants would be better qualified to address.

We find that UCS's position on many issues was similar to that of other parties. We also find that UCS took reasonable steps to coordinate participation and avoid duplication where possible. We conclude, therefore, that there was no unnecessary duplication of effort with respect to UCS's participation.

VII. Award

Consistent with our previous findings regarding the claimed hours, hourly rates, and expenses, we award $132,691.92 to UCS as follows:

Legal, Professional, & Other Fees	**Hours**	**Hourly Rate**	**Year**	**Total**
Union of Concerned Scientists				
Julia Levin	67.50	$250	2002	$16,875.00
Alan Nogee	71.64	$215	2003	$15,402.60
	5.00	$200	2002	$1,000.00
Steve Clemmer	19.80	$150	2002	$2,970.00
Subtotal	163.94			$36,247.60
Foresight Energy				
Warren Byrne	91.30	$150	2002	$13,695.00
Todd Thorner	41.90	$130	2002	$5,447.00
Steve Hammond	83.10	$110	2002	$9,141.00
Subtotal	216.30			$28,283.00
Synapse Energy Economics				
Bruce Biewald	13.00	$150	2003	$1,950.00
Timothy Woolf	131.00	$150	2003	$19,650.00
David White	18.00	$135	2003	$2,430.00
Cliff Chen	18.00	$100	2003	$1,800.00
Alex Moffett	3.00	$100	2003	$ 300.00
Travel: Timothy Woolf	- -	- -	2003	$ 0.00
Subtotal	183.00			$26,130.00

Legal, Professional, & Other Fees	**Hours**	**Hourly Rate**	**Year**	**Total**
Grueneich Resource Advocates				
Dian Grueneich	17.60	$385	2003	$6,776.00
Theresa Cho	4.60	$265	2003	$1,219.00
Jody London	108.98	$160	2003	$17,436.80
Clyde Murley	105.96	$160	2003	$16,953.60
Michael McCormick	27.30	$100	2003	$2,730.00
Jack McGowan	19.00	$60	2003	$1,140.00
Travel & Claim Prep. Time: London	8.39	$80	2003	$ 671.20
Travel & Claim Prep Time: McCormick	10.30	$50	2003	$ 515.00
Subtotal	302.13			$47,441.60
Other Costs				
Copying, Postage, and Other Costs				$1,573.51
Total Award Before 5% Disallowance	865.37			$139,675.71
Less: 5% Disallowance for Failure to Make Substantial Contribution				($6,983.79)
Amount Awarded				**$132,691.92**

The compensation awarded to UCS by this decision exceeds UCS's initial estimate of $95,625 in its NOI by $37,066.92, or 39%.[20] This is a substantial difference; UCS should endeavor to be more accurate in future NOIs.

As in all intervenor compensation decisions, we put UCS on notice that (1) Commission Staff may audit UCS's records related to this award, (2) UCS must maintain records to support its claims for intervenor compensation, and (3) UCS's records should identify specific issues for which it requests compensation, the time spent by each employee, the applicable hourly rate, fees paid to consultants, and any other costs for which compensation may be claimed.

[20] The total amount of compensation requested by UCS in its two requests for compensation filed in December 2002 and August 2003 was $218,470.54 ($117,994 + $149,943.54 – 49,467), which exceeded the amount estimated in its NOI ($95,625) by $122,845.54, or $127%.

VIII. Waiver of Comment Period

This is a compensation matter per Section 1801 et seq. Therefore, 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 is waived.

IX. Assignment of Proceeding

The Assigned Commissioner is President Michael R. Peevey. The assigned Administrative Law Judges are Christine Walwyn and Peter Allen.

Findings of Fact

1. On December 20, 2002, UCS filed a request for compensation for its substantial contribution to D.02-10-062 and D.02-08-071.
2. On May 5, 2003, UCS filed a motion to defer consideration of $49,467 of costs associated with RPS implementation issues that were included in the request that it submitted in December 2002.
3. UCS filed a timely request for compensation in the amount of $149,943.54 for its contribution to RPS implementation issues decided in D.03-06-071. The request included $49,467 identified in the previous Finding of Fact.
4. UCS made a substantial contribution to D.03-06-071.
5. D.03-06-071 did not adopt UCS's recommendations to (i) use a Lawrence Berkeley study as the basis for determining the cost of gas hedges included in the MPR, or (ii) include possible future environmental compliance costs in the MPR.
6. UCS did not allocate its claimed activities, hours, and costs among issues as required by Commission precedent.
7. $250 an hour is a reasonable rate for Levin's work in 2002.
8. $215 an hour is a reasonable rate for Nogee's work in 2003.
9. $200 an hour is a reasonable rate for Nogee's work in 2002.
10. $150 an hour is a reasonable rate for Clemmer's work in 2002.

11. $150 an hour is a reasonable rate for Byrne's work in 2002.

12. $130 an hour is a reasonable rate for Thorner's work in 2002.

13. $110 an hour is a reasonable rate for Hammond's work in 2002.

14. $150 an hour is a reasonable rate for Biewald's work in 2003.

15. $150 an hour is a reasonable rate for Woolf's work in 2003.

16. $135 an hour is a reasonable rate for White's work in 2003.

17. $100 an hour is a reasonable rate for Chen's work in 2003.

18. $100 an hour is a reasonable rate for Moffett's work in 2003.

19. $385 an hour is a reasonable rate for Grueneich's work in 2003.

20. $265 an hour is a reasonable rate for Cho's work in 2003.

21. $160 an hour is a reasonable rate for London's work in 2003.

22. $160 an hour is a reasonable rate for Murley's work in 2003.

23. $100 an hour is a reasonable rate for McCormick's work in 2003.

24. $60 an hour is a reasonable rate for McGowan's work in 2003.

25. UCS did not substantiate or justify the travel costs incurred by Woolf.

26. The 3.3 hours of time incurred by London to prepare for, attend, and follow up a meeting with UCS on July 15, 2003, regarding "energy activities" was unrelated to UCS's substantial contribution to D.03-06-071, which was mailed on June 23, 2003.

27. UCS double counted one-half hour of travel time incurred by London on May 19, 2003.

28. UCS claimed the full hourly rate for one-half hour of travel time incurred by Alan Nogee on May 19, 2003, which is contrary to the Commission's policy of awarding one-half the normal hourly rate for travel time.

29. Except for matters identified in the previous four Findings of Fact, the travel costs claimed by UCS are reasonable.

30. UCS requests $320 in compensation for "file management costs."

31. The professional fees awarded to UCS by today's decision include compensation for administrative and clerical overhead costs, including $320 for file management costs described in the previous Finding of Fact.

32. Except for $320 in file management costs, the copying, postage, and other miscellaneous costs claimed by UCS are reasonable.

Conclusions of Law

1. UCS's motion to defer consideration of $49,467 of expenses associated with RPS implementation issues should be granted.

2. UCS has fulfilled the requirements of Sections 1801-1812, which govern awards of intervenor compensation.

3. For the reasons set forth in the body of this decision, UCS should be awarded $132,691.92 for its substantial contribution to D.03-06-071.

4. Pursuant to Rule 77.7(f)(6) of the Commission's Rules of Practice and Procedure, the comment period for this compensation decision may be waived.

O R D E R

IT IS ORDERED that:

1. The Union of Concerned Scientists (UCS) is awarded $132,691.92 in compensation for its substantial contribution to Decision 03-06-071.

2. The award shall be paid pursuant to Pub. Util. Code Section 1807 by Southern California Edison Company (SCE), Pacific Gas and Electric Company (PG&E), and San Diego Gas and Electric Company (SDG&E) based on the utilities' respective 2002 jurisdictional electric revenues. Payment shall be made within 30 days of the effective date of this order. SCE, PG&E, and SDG&E shall also pay interest on the award at the rate earned on prime three-month

commercial paper, as reported in the Federal Reserve Statistical Release H.15, beginning on the 75th day after the request was filed.

3. UCS's motion dated May 5, 2003, to amend the request for compensation that it submitted in December 2002 so as to defer consideration of $49,467 of expenses associated with the implementation of the California Renewables Standard program established by Senate Bill 1078 is granted.

4. The comment period for this Order is waived.

This order is effective today.

Dated October 30, 2003, at San Francisco, California.

MICHAEL R. PEEVEY
President
CARL W. WOOD
LORETTA M. LYNCH
GEOFFREY F. BROWN
SUSAN P. KENNEDY
Commissioners

Compensation Decision(s):	D0310085
Contribution Decision(s):	D0306071
Proceeding(s):	R0110024
Author:	ALJ Allen
Payer(s):	Pacific Gas and Electric Company, San Diego Gas and Electric Company, and Southern California Edison Company

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Reason Change/Disallowance
The Union of Concerned Scientists	8/14/03	$149,943.54	$132,691.92	Failure to prevail; failure to justify hourly rates; excessive hours; administrative time not compensable

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year	Hourly Fee Adopted
Julia	Levin	Attorney	The Union of Concerned Scientists	$250	2002	$250
Alan	Nogee	Policy Expert	The Union of Concerned Scientists	$215	2003	$215
Alan	Nogee	Policy Expert	The Union of Concerned Scientists	$200	2002	$200
Steve	Clemmer	Analyst	The Union of Concerned Scientists	$150	2002	$150
Warren	Byrne	Policy Expert	The Union of Concerned Scientists	$150	2002	$150
Todd	Thorner	Analyst	The Union of Concerned Scientists	$130	2002	$130
Steve	Hammond	Attorney	The Union of Concerned Scientists	$110	2002	$110
Bruce	Biewald	Policy Expert	The Union of Concerned Scientists	$150	2003	$150
Timothy	Woolf	Policy Expert	The Union of Concerned Scientists	$150	2003	$150
David	White	Analyst	The Union of Concerned Scientists	$135	2003	$135
Cliff	Chen	Analyst	The Union of Concerned Scientists	$105	2003	$100
Alex	Moffett	Analyst	The Union of Concerned Scientists	$105	2003	$100
Dian	Grueneich	Attorney	The Union of Concerned Scientists	$385	2003	$385
Theresa	Cho	Attorney	The Union of Concerned Scientists	$290	2003	$265
Jody	London	Analyst	The Union of Concerned Scientists	$190	2003	$160
Clyde	Murley	Analyst	The Union of Concerned Scientists	$190	2003	$160
Michael	McCormick	Analyst	The Union of Concerned Scientists	$100	2003	$100
Jack	McGowan	Other	The Union of Concerned Scientists	$60	2003	$60