Decision 05-10-030 October 27, 2005

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Promote Consistency in Methodology and Input Assumptions in Commission Applications of Short-Run and Long-run Avoided Costs, Including Pricing for Qualifying Facilities.	Rulemaking 04-04-025 (Filed April 22, 2004)

OPINION GRANTING INTERVENOR COMPENSATION TO THE NATURAL RESOURCES DEFENSE COUNCIL AND THE GREEN POWER INSTITUTE FOR SUBSTANTIAL CONTRIBUTIONS TO DECISION 05-04-024

This decision awards the Green Power Institute (GPI) and the Natural Resources Defense Council (NRDC), $15,466.00 and $3,110.00, respectively, in compensation for their contributions to Decision (D.) 05-04-024.

1. Background

The Commission opened the subject rulemaking to continue its ongoing efforts to develop avoided costs in a consistent and coordinated manner across Commission proceedings. The rulemaking serves as the consolidated forum for developing consistent methods, input assumptions, and updating procedures for avoided cost calculations and forecasts for use in Rulemaking (R.) 01-08-028 (Energy Efficiency), R.02-06-001 (Demand Response), and R.04-03-017 (Distributed Generation).

Recognizing that significant work had already taken place in the above proceedings before R.04-04-025 was opened, and intending to build on the avoided cost issues and workshop processes already developed, the Commission

incorporated into the subject rulemaking the schedule and review process established in the February 6, 2004 Assigned Commissioner Ruling (ACR) issued in R.01-08-028. The Commission as also ruled that the record developed to date on updating avoided costs would be incorporated into the record of this rulemaking, and would include all further development of a record on avoided costs calculations and forecasts.[1]

A significant part of the record developed prior to the issuance of this rulemaking consists of an avoided cost updating process adopted in D.03-04-055, in our Energy Efficiency Rulemaking (R.01-08-028). In D.03-04-055, we directed the Energy Division to initiate an avoided cost updating process to "assess externalities to reflect the societal costs of energy."[2] A draft report on this issue, dated January 8, 2004, was prepared by Energy and Environmental Economics, Inc. (E3), under the direction of the Commission's Energy Division. This report, entitled "*A Forecast of Cost Effectiveness – Avoided Cost and Externality Adders* was designed to: (1) updated the current cost-effectiveness inputs used in evaluating energy efficiency programs to better reflect current conditions, and (2) provide the Commission with a method and model for updating cost-effectiveness inputs on an ongoing basis. Among other things, the report presented an avoided cost forecast for the years 2004-2023 for use in quantifying the benefits of demand-reduction programs, proposed a time dependent valuation method that is location specific and varies by hour, day and season.

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[1] R.04-04-025, Ordering Paragraph 3.

[2] D.03-04-055, Section VI.D and Conclusion of Law 9.

The report also established a forecast of externality adders for use in quantifying demand side resource program benefits.

In this rulemaking, we directed the Energy Division to conduct a workshop on the draft E3 report to allow parties to comment on the application of the E3 methodology and resulting forecasts for use in energy efficiency as well as other resource areas. Among other things, the workshop participants were directed to address whether the Commission should adopt the E3 methodology for updating avoided costs for the purposes of evaluating the resource value of energy efficiency programs, and if not, what aspects of the E3 methodology should be refined or modified. The Energy Division workshops were conducted in mid-2004 and pre- and post-workshop comments on the report were filed in June, 2004, and August, 2004, respectively.

D.05-04-024, an interim decision in this proceeding, adopted the new avoided cost forecast methodology described in the final E3 report, *Methodology and Forecast of Long-Term Avoided Cost(s) for the Evaluation of California Energy Efficiency Programs*, (E3 report).[3] The forecast methodology, and associated spreadsheet models, describe and generate 20-year forecasts of (1) hourly wholesale electricity costs, and (2) monthly wholesale natural gas costs.

Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E), Southern California Edison Company (SCE) and Southern California Gas Company (SoCalGas), were directed to use the adopted E3 methodology to generate avoided cost energy forecasts for use in cost-

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[3] *Methodology and Forecast of Long-Term Avoided Cost(s) for the Evaluation of California Energy Efficiency Programs*, E3 Research Report Submitted to the CPUC Energy Division, October 25, 2004. (www.ethree.com/cpuc_avoidedcosts.html.)

effectiveness tests to evaluate energy efficiency programs, beginning with program year 2006, until further order by the Commission. GPI and NRDC request compensation awards of $15,631, and $3,170, respectively, for their substantial contributions to D.05-04-024.

2. Requirements for Awards of Compensation

The intervenor compensation program, enacted by the Legislature in Pub. Util. Code §§ 1801-1812, requires California jurisdictional utilities to pay the reasonable costs of an intervenor's participation if the intervenor makes a substantial contribution to the Commission's proceedings. The statute provides that the utility may adjust its rates to collect the amount awarded from its ratepayers. (Subsequent statutory references are to the Public Utilities Code unless otherwise indicated.)

All of the following procedures and criteria must be satisfied for an intervenor to obtain a compensation award:

1. The intervenor must satisfy certain procedural requirements including the filing of a sufficient notice of intent (NOI) to claim compensation within 30 days of the prehearing conference (PHC). (§ 1804(a).)
2. The intervenor must be a customer or a participant representing consumers, customers, or subscribers of a utility subject to our jurisdiction. (§ 1802(b).)
3. The intervenor should file and serve a request for a compensation award within 60 days of our final order or decision in a hearing or proceeding. (§ 1804(c).)
4. The intervenor must demonstrate "significant financial hardship." (§§ 1802(g), 1804(b)(1).)
5. The intervenor's presentation must have made a "substantial contribution" to the proceeding, through the adoption, in whole or in part, of the intervenor's contention or

recommendations by a Commission order or decision. (§§ 1802(h), 1803(a).)

6. The claimed fees and costs are comparable to the market rates paid to experts and advocates having comparable training and experience and offering similar services. (§ 1806.)

For discussion here, the procedural issues in Items 1-4 above are combined, followed by separate discussions on Items 5-6.

3. Procedural Issues

The PHC in this matter was held on November 9, 2004. GPI and NRDC timely filed NOIs on December 6, 2004, and December 9, 2004, respectively. On August 24, 2005, Administrative Law Judge (ALJ) Halligan ruled that: GPI and NRDC are customers, pursuant to § 1802(b)(1)(c), as their bylaws authorize them to represent customers; and that both meet the financial hardship condition through a rebuttable presumption of eligibility, pursuant to § 1804(b)(1), because both met this requirement in another proceeding within one year of the commencement of this proceeding (ALJ Ruling dated July 27, 2004 in R.04-04-003). GPI and NRDC timely filed requests for compensation on May 31, 2005, and June 3, 2005, respectively; both within 60 days of D.05-04-024 being issued.

In view of the above, we find that GPI and NRDC have met all the procedural requirements to claim compensation in this proceeding.

4. Substantial Contribution

In evaluating whether a customer made a substantial contribution to a proceeding we look at several things. First, did the ALJ or Commission adopt one or more of the factual or legal contentions, or specific policy or procedural recommendations put forward by the customer? (See §1802(h).) Second, if the

customer's contentions or recommendations paralleled those of another party, did the customer's participation materially supplement, complement, or contribute to the presentation of the other party or to the development of a fuller record that assisted the Commission in making its decision? (See §§1802(h) and 1802.5.) As described in §1802(h), the assessment of whether the customer made a substantial contribution requires the exercise of judgment.

> In assessing whether the customer meets this standard, the Commission typically reviews the record, composed in part of pleadings of the customer and, in litigated matters, the hearing transcripts, and compares it to the findings, conclusions, and orders in the decision to which the customer asserts it contributed. It is then a matter of judgment as to whether the customer's presentation substantially assisted the Commission.[4]

Should the Commission not adopt any of the customer's recommendations, compensation may be awarded if, in the judgment of the Commission, the customer's participation substantially contributed to the decision or order. For example, if a customer provided a unique perspective that enriched the Commission's deliberations and the record, the Commission could find that the customer made a substantial contribution. With this guidance in mind, we turn to the claimed contributions GPI and NRDC made in this proceeding.

GPI

GPI participated by attending workshops and filing comments on the draft E3 report. GPI claims it made substantial contributions to D.05-04-024 in the following areas: (1) the application of cost and other information about

Combined Cycle Generation Turbines (CCGTs) on the record; in R.04-04-026 to the proxy in the E3 report; (2) the use of an all-in combined energy and capacity price with Time-of-Delivery (TOD) profiling; and (3) the validity of the environmental adder component of the E3 avoided cost forecast.

GPI's participation added to the record on each issue. First, with respect to the CCGT proxy used to represent the future cost of electricity production, GPI argued successfully that the Commission should take advantage of the record amassed in R.01-10-024 and its successor R.04-04-026, on many aspects of the subject of using the CCGT as a proxy in determining future market costs. While GPI was not the only party addressing this issue, D.05-04-024 found that "[F]or the evaluation of Program Year (PY) 2006-2008 energy efficiency proposals, it is reasonable to require the utilities to update the E3 methodology with the applicable Combined Cycle Generation Turbine (CCGT) capital cost assumptions approved for use in calculating the MPR [Market Price Referent] in R.04-04-026."[5]

The Commission also agreed with GPI's position that an all-in energy and capacity price, as developed and presented in the E3 avoided cost methodology and forecast, was reasonable for purposes of evaluating energy efficiency programs. The Commission also adopted air quality environmental adders for nitrous oxide (NOx), PM-10 and carbon dioxide emissions (CO2). While NOx and PM-10 are regulated under the federal Clean Air Act and corresponding state legislation, CO2 is not consistently regulated at either level. GPI was one of several parties that argued that utilities should be required to calculate avoided costs using a methodology that incorporates a CO2 adder. While GPI was not

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[4] D.98-04-059, 79 CPUC2d, 628 at 653.

alone in recommending the use of a CO2 adder, D.05-04-024 benefited from GPI's analysis and discussion of this issue.

In view of the above, we find that GPI made substantial contributions to D.05-04-024, and should receive an award of compensation.

NRDC

NRDC states that it has participated actively in this proceeding by filing comments on the draft E3 report, participating in workshops and relevant meetings, and filing comments and replies on the draft decision. NRDC also states that it contributed to the development of the methodology described in the E3 report through a series of meetings called by the Energy Division in August and September 2003, pursuant to D.03-04-055 issued in R.01-08-028, the record of which was incorporated into this proceeding.

NRDC focused on three primary recommendations. First, NRDC successfully recommended that the Commission bifurcate the issues under consideration in this proceeding in order to allow new avoided costs to be adopted in early 2005, concurrent with the next energy efficiency program cycle. D.05-04-024 specifically states that the values and forecasts are intended to be used for program years 2006 through 2008.

Second, NRDC urged the Commission to maintain the E3 reports' avoided cost value for the financial risk associated with CO2. Through its comments, NRDC explained why the avoided cost value in the report was necessary, and responded to arguments to the contrary presented by SCE and SDG&E. D.05-04-24 adopts the avoided costs of CO2, noting that "[W] with regard to CO2, SCE and SDG&E/SoCalGas argue that it is inappropriate to include a

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[5] D.05-04-024, Finding of Fact 6.

separate adder for non-regulated pollutants because future regulation is speculative. Other parties, such as TURN and NRDC disagree, as do we." Further the Commission agreed with NRDC that "it would be illogical to conclude that carbon emissions costs will be zero over the timeframe of the E3 report, as suggested by the SCE."[6]

Finally, in comments on the draft decision, NRDC recommended that the Commission clarify that the avoided cost values for carbon dioxide adopted as part of the E3 report would be the "greenhouse gas adder" established in F.04-12-048. NRDC proposed a Conclusion of Law (COL), which the Commission adopted, stating: "The utilities should use the avoided cost values for CO2 adopted herein as the "greenhouse gas adder" pursuant to D.04-12-048 in long-term resource procurement planning."[7] NRDC was an active and productive participant in this proceeding and has substantially assisted the Commission in the making of D.05-04-024.

In view of the above, we find that NRDC made substantial contributions to D.05-04-024, and should receive an award of compensation.

5. Reasonableness of Requested Compensation

After we have determined the scope of a customer's substantial contribution, we then look at whether the compensation requested is reasonable.

GPI and NRDC request $15,631 and $3,170 respectively, for their participation in this proceeding, as follows:

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[6] *Id.*, p. 29

[7] *Id.*, COL 7.

GPI

Expert

Gregory Morris	2004	68 hours @ $210/hour	$14,280
	2005	11 hours @ $120/hour[8]	$ 1,320
Document Filing and Serving			$ 31
		Total:	$15,631

NRDC

Expert

Devra Bachrach	2003/2004	24.5 hours @ $100/hour	$ 2,450
	2005	6 hours @ $120/hour[9]	$ 720
		Total:	$ 3,170

The components of this request must constitute reasonable fees and costs of the customer's preparation for and participation in a proceeding that resulted in a substantial contribution. Thus, only those fees and costs associated with the customer's work that the Commission concludes made a substantial contribution are reasonable and eligible for compensation.

To assist us in determining the reasonableness of the requested compensation, D.98-04-059 directed customers to demonstrate productivity by assigning a reasonable dollar value to the benefits of their participation to ratepayers. The costs of a customer's participation should bear a reasonable

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[8] The hourly rate claimed for 2005 for Morris is $240 per hour. The only hours claimed for 2005 were spent on the preparation of the request for compensation and are charged at one-half of the $240 rate.

[9] Time spent preparing the compensation request is compensable at one-half of the professional rate. NRDC's task descriptions (Attachment A to NRDC's request) properly describe when time was spent preparing the request, reducing by half the number of hours (2 hours reduced to 1).

relationship to the benefits realized through their participation. This showing assists us in determining the overall reasonableness of the request.

GPI and NRDC each acknowledge that they cannot identify precise monetary benefits to ratepayers related to their participation in this proceeding; however, they both note that their focus on policies that ensure a reliable, affordable and environmentally sustainable energy resource portfolio will have lasting benefits to ratepayers. The new avoided costs adopted in D.05-04-024 will assist in the accurate evaluation of potential energy efficiency programs for program years 2006-2008. To the extent energy usage is lowered through cost-effective energy efficiency programs, ratepayers benefit monetarily by avoiding energy costs. We conclude the effect of the participation by GPI and NRDC far exceed their requested fees and other costs. Thus, we find that the efforts of GPI and NRDC have been productive.

Next, we must assess whether the hours claimed for the customer's efforts that resulted in substantial contributions to Commission decisions are reasonable.

We conclude that the documentation reasonably supports the claim for total hours. The bulk of the work in this proceeding occurred in 2004; however, NRDC's request includes 8 hours claimed for work performed by Bachrach in 2003, prior to the issuance of this rulemaking. This work consisted of participating in avoided cost and externality update presentations and meetings with the Energy Division and E3 as part of the avoided cost updating process required by D.03-04-055, issued in R.01-08-028. This avoided cost updating effort was consolidated into R.04-04-025 in the Order Instituting Investigation and culminated in the issuance of D.05-04-024, therefore is it reasonable to compensate NRDC for work performed in 2003 related to this proceeding.

NRDC also claims a total of 16.5 hours for writing and reviewing comments on the draft E3 report and attending the workshop conducted by the Energy Division, and writing a PHC statement. NRDC's hours for 2005 include five hours spent reading and preparing comments and reply comments on the draft decision. The claimed total hours are reasonable.

GPI requests compensation for 68 hours of Morris' professional time in 2004 and 11 hours in 2005. The eleven hours claimed by GPI in 2005 were spent on the request for compensation, and are charged at 50 percent of the full requested rate. GPI's claimed hours are reasonable.

Finally, in determining compensation, we take into consideration the market rates for similar services from comparably qualified persons.

Dr. Gregory Morris is the Director of GPI and its energy policy expert. He was GPI's sole participant in this proceeding, acting as a policy witness and as a participating party. GPI seeks an hourly rate of $210 for work performed by Morris in 2004. The Commission has previously approved this rate for work performed by Morris in 2004, and we find this rate reasonable.[10]

For 2005, GPI seeks an hourly rate for Morris of $240 based on one additional year of experience. Morris spent a small amount of time in May 2005 preparing the request for compensation and we will use the $210 rate here for his work in 2005. This rate shall not necessarily set a precedent for other work performed in 2005.

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[10] See D.05-01-053.

NRDC seeks a rate for Bachrach of $100/hour for work performed in 2003 and 2004. We previously authorized a $100/hour rate for Bachrach for 2002 and 2003,[11] and adopt that rate for 2003 and 2004 work in this proceeding.

For 2005 work, NRDC is requesting a rate of $120/hour for Bachrach, based on an 8% annual escalation factor deemed reasonable in Resolution ALJ-184.[12] The resolution addresses rates only for work performed in 2004, and does not apply to 2005. However, since Bachrach has not received an increase in hourly rates since 2002, we find it reasonable here to adopt a rate of $110/hour for her work in 2005. This rate shall not necessarily set a precedent for other work performed in 2005.

The itemized direct expenses of $31 submitted by GPI include minimal costs for document filing and service. We find these costs reasonable.

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[11] See D.05-06-027.

[12] See Resolution ALJ-184, adopted August 19, 2004, page 9, Finding 4.

6. Award

As set forth in the table below, we award GPI $15,466.00 and NRDC $3,110.00 for substantial contribution to D.05-04-024.

GPI	**AMOUNT**
68 hours of Morris' professional time at $210 per hour	$14,280.00
11 hours of compensation time at $105 per hour	1,155.00
Business Expenses (document filing and serving)	31.00
GPI Total	**$15,466.00**
NRDC	
24.5 hours of Bachrach's professional time at $100 per hour	$ 2,450.00
6 hours of Bachrach's professional time at $110 per hour	$ 660.00
NRDC Total	**$ 3,110.00**

Consistent with previous Commission decisions, we order that interest be paid on the award amount (at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release H.15) commencing on August 14, 2005 for GPI, and August 17, 2005 for NRDC, the 75th day after each intervenor filed compensation requests, and continuing until full payment of the award is made.

We direct PG&E, SDG&E, SCE, and SoCalGas, to allocate payment responsibility for the awards among themselves based upon their California-jurisdictional gas and electric revenues for the 2004 calendar year, to reflect the year in which this phase of the proceeding was primarily litigated.

We remind all intervenors that Commission staff may audit their records related to this award and that intervenors must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. GPI's and NRDC's records should identify specific issues for which it requested compensation, the actual time spent by each employee or

consultant, the applicable hourly rate, fees paid to consultants, and any other costs for which compensation was claimed.

7. Waiver of Comment Period

This is an intervenor compensation matter. Accordingly, as provided by Rule 77.7(f)(6) of our Rules of Practice and Procedure, we waive the otherwise applicable 30-day comment period for this decision.

8. Assignment of Proceeding

Susan Kennedy is the Assigned Commissioner and Julie Halligan is the assigned ALJ in this proceeding.

Findings of Fact

1. GPI made a substantial contribution to D.05-05-024 as described herein.
2. NRDC made a substantial contribution to D.05-05-024 as described herein.
3. GPI requested hourly rates for attorneys and experts that, as adjusted herein, are reasonable when compared to the market rates for persons with similar training and experience.
4. NRDC requested hourly rates for attorneys and experts that, as adjusted herein, are reasonable when compared to the market rates for persons with similar training and experience.
5. The total of the reasonable compensation is $15,466 for GPI and $3,110 for NRDC.
6. The Appendix to this opinion summarizes today's award.

Conclusions of Law

1. GPI and NRDC have each fulfilled the requirements of Pub. Util. Code §§ 1801-1812, which govern awards of intervenor compensation, and each is entitled to intervenor compensation for its claimed compensation, as set forth herein, incurred in making substantial contributions to D.05-04-024.

2. GPI should be awarded $15,466 for its contribution to D.05-04-024.

3. NRDC should be awarded $3,110 for its contribution to D.05-04-024.

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

5. This order should be effective today so that GPI and NRDC may be compensated without further delay.

O R D E R

IT IS ORDERED that:

1. The Green Power Institute (GPI) is awarded $15,466.00 as compensation for its substantial contributions to Decision (D.) 05-04-024. The Natural Resources Defense Council (NRDC) is awarded $3,110.00 as compensation for its substantial contributions to D.05-04-024.

2. Within 30 days of the effective date of this decision, Pacific Gas and Electric Company, San Diego Gas and Electric Company, Southern California Edison Company, and Southern California Gas Company shall pay GPI and NRDC their respective shares of the award. Each utility's share shall be calculated based on their California-jurisdictional gas and electric revenues for the 2004 calendar year. Payment of the award shall include interest at the rate earned on prime, three-month commercial paper as reported in Federal Reserve Statistical Release H.15, beginning on August 14, 2005 for GPI, and on August 17, 2005 for NRDC,

the 75th day after the filing date of each intervenor's request for compensation, and continuing until full payment is made.

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

This order is effective today.

Dated October 27, 2005, at San Francisco, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
SUSAN P. KENNEDY
JOHN A. BOHN
Commissioners

Comr. Dian M.Grueneich recused herself
from this agenda item and was not
part of the quorum in its consideration.

Compensation Decision Summary Information

Compensation Decision:	D.05-10-030
Contribution Decision(s):	D.05-04-024
Proceeding(s):	R.04-04-025
Author:	ALJ Halligan
Payer(s):	Pacific Gas and Electric Company, San Diego Gas and Electric Company, Southern California Edison Company

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
Green Power Inc.	5/31/05	$15,631.00	$15,466.00	No	failure to justify hourly rate
Natural Resources Defense Council	6/3/95	$3,170.00	$3,110.00	No	failure to justify hourly rate

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Gregory	Morris	Policy Expert	Green Power Inc.	$210	2004	$210
Gregory	Morris	Policy Expert	Green Power Inc.	$240	2005	$210
Devra	Bachrach	Policy Expert	Natural Resources Defense Council	$100	2003,2004	$100
Devra	Bachrach	Policy Expert	Natural Resources Defense Council	$120	2005	$110