



PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

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May 9, 2014

Agenda ID #12988
Ratesetting

TO PARTIES OF RECORD IN APPLICATION 11-05-017 ET AL.

This is the proposed decision of Administrative Law Judge Kim. Until and unless the Commission hears the item and votes to approve it, the proposed decision has no legal effect. This item may be heard, at the earliest, at the Commission's June 12, 2014 Business Meeting. To confirm when the item will be heard, please see the Business Meeting agenda, which is posted on the Commission's website 10 days before each Business Meeting.

Parties of record may file comments on the proposed decision as provided in Rule 14.3 of the Commission's Rules of Practice and Procedure.

/s/ TIMOTHY J. SULLIVAN

Timothy J. Sullivan,
Chief Administrative Law Judge (Acting)

TJS:avs

Attachment

Decision **PROPOSED DECISION OF ALJ KIM** (Mailed 5/9/2014)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of Southern California Edison Company (U338E) for Approval of its 2012-2014 California Alternate Rates for Energy (CARE) and Energy Savings Assistance Programs and Budgets.	Application 11-05-017 (Filed May 16, 2011)
And Related Matters.	Application 11-05-018 Application 11-05-019 Application 11-05-020

DECISION GRANTING COMPENSATION TO NATIONAL CONSUMER LAW CENTER FOR SUBSTANTIAL CONTRIBUTION TO DECISION 12-08-044

Claimant: National Consumer Law Center	For contribution to D.12-08-044
Claimed (\$): \$224,945	Awarded (\$): \$90,245 (reduced by 59.88%)
Assigned Commissioner: Michael Peevey	Assigned ALJ: Kimberly Kim

PART I: PROCEDURAL ISSUES

A. Brief Description of Decision:	Decision (D.) 12-08-044 approved approximately \$5 billion to continue two energy-related low income programs, the Energy Savings Assistance (ESA) and the California Alternate Rates for Energy (CARE) Programs for Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), San Diego Gas & Electric Company (SDG&E), and Southern California Gas Company (SoCalGas), for the 2012-2014 program cycle.
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B. Claimant must satisfy intervenor compensation requirements set forth in Public Utilities Code §§ 1801-1812:

	Claimant	CPUC Verified
Timely filing of notice of intent to claim compensation (NOI) (§ 1804(a)):		
1. Date of Prehearing Conference (PHC):	August 8, 2011	Two PHCs were held on August 8 and September 6, 2011.
2. Other Specified Date for NOI:		
3. Date NOI Filed:	Sept. 2, 2011	Verified
4. Was the NOI timely filed?		Yes
Showing of customer or customer-related status (§ 1802(b)):		
5. Based on Administrative Law Judge (ALJ) ruling issued in proceeding number:	Application (A.) 11-05-017	Verified
6. Date of ALJ ruling:	October 20, 2011	Verified
7. Based on another CPUC determination (specify):		
8. Has the Claimant demonstrated customer or customer-related status?		Yes
Showing of "significant financial hardship" (§ 1802(g)):		
9. Based on ALJ ruling issued in proceeding number:	A.11-05-017	Verified
10. Date of ALJ ruling:	October 20, 2011	Verified
11. Based on another CPUC determination (specify):		
12. Has the Claimant demonstrated significant financial hardship?		Yes
Timely request for compensation (§ 1804(c)):		
13. Identify Final Decision:	Decision (D.) 12-08-044	Verified
14. Date of Issuance of Final Order or Decision:	8/30/2012	Verified
15. File date of compensation request:	10/23/12	Verified
16. Was the request for compensation timely?		Yes

C. Additional Comments on Part I :

#	Claimant	CPUC	Comment
5	National Consumer Law Center (NCLC)	Verified	The ALJ's 10/20/11 Ruling, at 5, also refers to the prior ruling, Rulemaking (R.) 10-02-005 (4/1/11), in which NCLC was also "found to be eligible to claim intervenor compensation".

9	NCLC	Verified	The ALJ’s 10/20/11 Ruling, at 14 states: “NCLC has made the required showing of significant financial hardship.”
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PART II: SUBSTANTIAL CONTRIBUTION

A. Claimant’s contribution to the final decision (see § 1802(i), § 1803(a) & D.98-04-059).

Intervenor’s Claimed Contribution	Specific References to Claimant’s Presentations and to Decision	CPUC Comment
<p>1. Lifting the legal prohibition on ESAP assisting multifamily rental buildings on common-area measures, especially heat and hot water systems: NCLC (coordinating closely with the California Housing Partnership Corporation [CHPC] and National Housing Law Project [NHLP]) legally contended that the Commission should reverse prior rulings in D.07-12-051 and D.08-11-031 that held -- due to Civil Code s. 1941.1 -- ESAP was barred from providing assistance to owners of multifamily rental housing, especially assistance for common systems such as heating or hot water. NCLC sought a ruling that Section 1941.1 does not legally bar ESAP from assisting multifamily rental units (including for heat and hot water measures) and that the relevant holdings in D.07-12-051 and D.08-11-031, to the extent based on Section 1941.1, should be reversed or revised.</p>	<p>CLAIMANT’S PRESENTATIONS:</p> <p>1. (a) NCLC raised the issue of limitations on ESAP assisting multifamily buildings for heat and hot water measures in Responses filed 6/14/11 in the four then-separate IOU dockets. (<i>See, e.g.,</i> “Response of the National Consumer Law Center” in A.11-05-017, 6/14/11, a 2; at 3 (contending that companies should “deliver such important energy savings measures as efficient heating and hot water systems” in multifamily buildings; urging inclusion of “work on heating and hot water systems.”))</p> <p>(b) In the “Prehearing Conference Statement of the National Consumer Law Center,” 7/28/11, at 2, “NCLC respectfully request[ed] that the scope of [this case] include reconsideration of the prohibition of ‘utility ratepayers. . . assuming the costs of heating and hot water system repairs and replacements,’ as first articulated in D.07-12-051 and affirmed in D.08-11-031, at 39.” Argument in support of this legal contention appears on at 2-3.</p> <p>(c) NCLC also raised the issue at the second Prehearing Conference</p>	<p>Verified</p>

	<p>on 9/6/11, <i>see</i>, e.g. Tr. at 86, l. 11-15 (“... we may well propose that heating and hot water measures be included in multifamily tenanted properties”).</p> <p>(d) NCLC briefed this issue, contending in the “Initial Brief of the National Consumer Law Center” et al., 2/2/12, at 36-42, that “The Commission Ruling That Prohibits Heating and Hot Water System Repair and Replacement in Rented Housing Should be Revised.” NCLC further addressed this issue in the “Reply Brief of National Consumer Law Center” et al., 2/16/12, at 7-8 (seeking to “lift the current prohibition on replacing or repairing heating or hot water systems in rental property” and noting the support of other parties for this position.</p> <p>(e) The “Comments of the National Consumer Law Center on the May 4, 2012 Proposed Decision of ALJ Kim,” 5/23/12, at 6-11 again contended that the “Prior Commission Ruling Prohibiting Heating and Hot Water System Repair and Replacement in Rental Housing Is Legally Erroneous and Should Be Reversed.”</p> <p>PROPOSED DECISION/FINAL DECISION:</p> <p>1. (f) The Proposed Decision (PD) of ALJ Kim, 5/4/12, addressed the legal issues briefly, on PD at 86 & n. 52 (reaffirming prior decisions that “furnace repair and replacement or hot water repair and replacement work” in rental units cannot legally be supported through ESAP); at 226 (similarly reaffirming D.08-11-031).</p> <p>(g) The “Comments” of NCLC et al.</p>	
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	<p>on the PD (<i>see</i> 1.(e), above) urged the Commission to revise the PD. The Final Decision in fact did so. In D.12-08-044 (issued 8/30/12), at 103, the Commission noted that it had previously “recognized that furnace...or water heater repair and replacement work in renter-occupied units as the legal responsibility of the landlord,” citing D.07-12-051, D.08-11-031, and Civil Code Section 1941.1. At 104, the Commission stated: “The Civil Code Section 1941.1 merely creates landlords’ legal responsibility to maintain habitable rental property. . . . It also does not prohibit the use of ratepayer funds to provide assistance to the landlords to invest in energy efficient rental units.” (Emphasis added.) This is precisely the legal ruling that NCLC sought in its briefs and comments (<i>see</i> 1.(a) to (e), above).</p> <p>(h) D.1208-044, at 336, Finding of Fact 163 & 164 (Code Section 1941.1 also does not prohibit the use of ratepayer funds to provide assistance to the landlords to invest in energy efficient rental units.)</p>	
<p>2. As a policy matter, multifamily rental buildings should be allowed to receive assistance under ESAP: NCLC (coordinating closely with CHPC and NHLP) contended that if the prior legal holdings based on Section 1941.1 were reversed or revised (<i>see</i> 1, above), then, as a policy matter, the Commission should consider allowing ESAP to assist multifamily rental buildings more fully, especially as to common area heating and hot water systems.</p>	<p>CLAIMANT’S PRESENTATIONS</p> <p>2. (a) In its initial Responses filed in the four then-separate IOU dockets, NCLC urged the Commission to broaden the extent to which ESAP would support energy efficiency improvements in multifamily rental housing. <i>See, e.g.</i>, “Response of the National Consumer Law Center,” 6/14/11, at 2 (seeking review of “delivery of energy efficiency services to affordable multifamily</p>	<p>Verified, but this contribution falls under the previously stated issue (1) in D.12-08-044 and will not be separately compensated.</p>

<p>NCLC (along with CHPC and NHLP) argued that heating and hot water measures should be allowed as part of an audit-driven, whole-house approach under which ESAP would provide assistance (but not necessarily paying 100% of the costs) for all cost-effective measures in a multifamily buildings.</p> <p>The Commission has opened a second phase of the proceeding – including the hiring of a multifamily segment study consultant – in which these issues will be more fully explored.</p>	<p>buildings”); at 3 (recommending that a revised ESAP include “inclusion of all cost-effective measures – including working on heating and hot water systems.”)</p> <p>(b) In the “Prehearing Conference Statement of the National Consumer Law Center,” 7/28/11, NCLC noted (at 2-3) that “many states that are seen as leaders in energy efficiency ... explicitly allow their utilities to repair or replace these [heating and hot water] systems in rental properties, when cost-effective” and that “there are important factual and legal issues regarding the exclusion, or inclusion, of heating and hot water systems as an allowable measure in rental properties that should be considered by the Commission.” NCLC “ask[ed] that this issue be included in the scoping memo.” The 9/26/11 “Assigned Commissioner and ALJ’s Joint Scoping Memo and Ruling,” at 3, subsequently included “Review of multi-family sector needs, proposals, and any related operational concerns” as within the scope of the proceeding.</p> <p>(c) NCLC’s 9/2/11 “Notice of Intent” listed “the inclusion of heat and hot water measures in tenanted, multifamily properties” (at 4) among the issues that NCLC intended to address.</p> <p>(d) NCLC, in coordination with the intervenors CHPC and NHLP, submitted the testimony of several witnesses in support of its policy contention that ESAP should provide greater assistance to common systems/common area equipment in multifamily rental properties, especially for heating and</p>	
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	<p>hot water measures:</p> <ul style="list-style-type: none"> - “Testimony of Matt Schwartz on Behalf of NCLC, NHLP and CHPC,” 11/18/11, <i>see</i> especially at MS-7 (noting that for multifamily buildings, ESAP “does not include those [measures] with the highest levels of energy savings ... such as hot water systems and in some instances, heating”); at MS-10 (“Commission should revise its current prohibition on providing assistance to heating and hot water systems in multifamily rental housing”); at MS-16 to 17 (ESAP “makes it ... difficult to achieve significant savings relating to heat and hot water systems”); at MS 17-18 (offering “policy opinions as to why the Commission should reconsider that portion of D.08-11-031” prohibiting ESAP assistance for heating and hot water systems in multifamily buildings”). - “Testimony of Dan Levine on Behalf of NCLC, NHLP and CHPC,” 11/18/11, <i>see</i> especially at DL-7 (“ESAP offers only a limited number of energy efficiency measures that exclude building systems like heating and hot water”). - “Reply Testimony of Matt Schwartz on Behalf of NCLC, NHLP and CHPC,” 12/9/11, <i>see</i> especially at MS-8 (a proposed multifamily pilot “fails to acknowledge the exclusion of common area measures, particularly domestic hot water with high energy savings potential”); at MS-8 (describing savings from installation of high-efficiency DHW boilers). 	
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	<ul style="list-style-type: none"> - “Reply Testimony of Ann Silverberg on Behalf of NCLC, NHLP and CHPC,” 12/9/11, <i>see</i> especially at AS-4 (highlighting the “proposed treatment of large central system and hot water systems” in a proposed multifamily pilot); - “Reply Testimony of Charles Harak on Behalf of NCLC, NHLP and CHPC,” 12/9/11, <i>see</i> especially at CH-6 (“ESAP [should] be allowed to provide assistance for cost-effective centrally-provided heat and hot water systems in low-income multifamily buildings”); at CH-8 (Massachusetts multifamily program fully pays for “repair or replacement of heating systems and hot water systems and/or their controls (including common systems);” at CH-13 (Rhode Island’s and New Jersey’s multifamily program provides assistance for common area measures.) - “Responses of NCLC, CHPC and NHLP to ALJ’s Ruling Seeking Comments,” 1/13/12, at 2-14 (providing extensive information regarding the multifamily measures that these parties seek to have covered by ESAP and their costs). - “Initial Brief of NCLC, CHPC and NHLP,” 2/2/12, at 25-43 (“ESAP Should Take An Audit-Based ‘Whole Building’ Approach to Multifamily Properties in Which No Measures are Arbitrarily Excluded”). - “Reply Brief of NCLC, CHPC and NHLP,” 2/16/12, at 7-10 (urging, <i>inter alia</i>, a “whole building” approach that would allow ESAP to “improve the efficiency of heating and hot water systems in rental 	
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	<p>housing”).</p> <p>- “Comments of the National Consumer Law Center on the May 4, 2012 Proposed Decision of ALJ Kim,” 5/23/12, at 7-8 (discussing policy reasons why the ban on ESAP assisting with common-area measures such as heating and hot water should be lifted).</p> <p>FINAL DECISION:</p> <p>D.12-08-044, at 6 (“direct[ing] several of the more complex issues be further investigated ... during the second phase of this consolidated proceeding [including] a comprehensive multifamily segment strategy”); at 12 (discussing “Comprehensive Multifamily Segment Strategies”); at 104-105 (discussing the scope of the “multifamily work during the second phase of the proceeding” including potential changes regarding ESAP’s rules for multifamily buildings); at 141-144 (“Multifamily Comments and Proposals of NCLC et al.”); at 156 (citing/analyzing “NCLC et al.’s own figures”); at 166 (“The Final Report [of the multifamily segment study] shall include ... how multifamily segment measure offerings should be modified (including central system needs) and develop possible co-pay or financing frameworks that comply [with] the ESA cost-effectiveness approach”).</p>	
<p>3. Expedited enrollment: NCLC, in coordination with CHPC and NHLP, contended that the Commission should consider adoption of “Expedited Enrollment” in order to save the time and expense now incurred in IOUs certifying each individual’s income.</p>	<p>CLAIMANT’S PRESENTATIONS:</p> <p>3. (a) “Response of NCLC,” 6/14/11, at 3 (seeking “review of the income eligibility rules”)</p> <p>(b) “Testimony of Matt Schwartz on</p>	<p>Verified</p>

<p>NCLC (along with CHPC and NHLP) presented testimony that “expedited enrollment” is currently used in the Weatherization Assistance Program (WAP) operated by the state’s Department of Community Services and Development (CSD), under a memorandum of understanding signed by the federal Department of Housing and Urban Development and Department of Energy, and that “expedited enrollment” could help ESAP reach more multifamily buildings, at lower administrative cost.</p>	<p>Behalf of NCLC, NHLP and CHPC”, 11/18/11, <i>see</i> especially at MS-7 (“Requiring eligibility determinations for each individual household in a multifamily building” identified as one of the “key barriers for multifamily housing accessing” ESAP); at MS-9 (recommending that “the Commission should adopt an expedited multifamily enrollment process”).</p> <p>(c) “Testimony of Dan Levine” on behalf of NCLC, NHLP and CHPC, 11/18/11, at DL-5 (“we recommend an expedited multifamily enrollment process”); at DL-7 (describing the barriers created by “requiring tenants” to individually prove they are “income-eligible”); at DL-9 (recommending “Expedited multifamily enrollment”).</p> <p>(d) “Testimony of Wayne Waite Re: Expedited Enrollment” on behalf of NCLC, NHLP and CHPC, 11/18/11 (“shar[ing] the experience that HUD (working closely with the Department of Energy ... and the California Department of Community Services) have had in using what I will here call ‘expedited enrollment’”).</p> <p>(e) “Initial Brief of NCLC, CHPC and NHLP,” 2/2/12, at 17-25 (“The Commission Should Adopt an Expedited Enrollment Process for Multifamily Rental Buildings”).</p> <p>(f) “Reply Brief of NCLC, CHPC and NHLP,” 2/16/12, at 4-6 (“An Expedited Enrollment Process for Multifamily Rental Buildings ...”)</p> <p>(g) “Comments of NCLC on the May 4, 2012 Proposed Decision of ALJ Kim,” 5/23/12, pp. 2-6 (“The Commission Should Directly</p>	
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	<p>Address and Adopt Expedited Enrollment for Multifamily Buildings.”</p> <p>FINAL DECISION:</p> <p>D.12-08-044, at 13 (“the Commission intends to further examine and develop an informed record regarding ... NCLC’s proposed multifamily expedited enrollment process”); at 167 (same); at 325, Finding of Fact 84 (same); at 355, Conclusion of Law 86 (same).</p>	
<p>4. Housing Subsidies: NCLC (coordinating closely with CHPC and NHLP) factually contended that the value of many housing subsidies (public housing low-income housing tax credit and project-based section 8) cannot be quantified and, as a policy matter, that the value of housing subsidies should not be counted as income in determining ESAP eligibility.</p>	<p>CLAIMANT’S PRESENTATIONS</p> <p>4. (a) “Testimony of Wayne Waite Re: Counting of Housing Subsidies As Income” on behalf of NCLC, NHLP and CHPC, 11/18/11, at WW A-2 to A-6 (As a Manager at the Department of Housing and Urban Development [“HUD”], Mr. Waite described HUD’s various housing subsidy programs, noting that “a household living in HUD-subsidized does not receive any direct assistance from HUD”; that “HUD provides subsidies for property owners;” that the “Housing Benefit received by the tenant” cannot “be easily quantified”; and because HUD’s “housing subsidies are not assistance given directly to the tenant,” the “assistance programs [he is] familiar with do not value housing subsidies in income calculations.”)</p> <p>(b) The “Initial Brief of NCLC, CHPC and NHLP,” 2/2/12, at 8-17, argued that “The Non-Cash Value of Housing Subsidies Should Not be Counted as Income,” including a summary of: the five major housing subsidy programs; of Mr. Waite’s</p>	<p>Verified, but this contribution falls under the previously stated issue (3) in D.12-08-044 and will not be separately compensated.</p>

	<p>testimony; and of relevant statutes and regulations.</p> <p>(c) “Comments of CHPC and NHLP” on the May 2, 2012 Proposed Decision of ALJ Kim, 5/24/12, at 2-5. (Note that NCLC explicitly “endorse[d] and support[ed]” the CHPC/NHLP comments, in the separate NCLC Comments filed 5/23/12, at 1.</p> <p>(d) Discovery responses to NCLC data requests PGE 3-1, SCG 3-1, SDG&E 3-1 & 3-2, SCE 3-2 (discussed in the 5/24/12 “Comments of CHPC and NHLP” on the May 4 Proposed Decision, at 4).</p> <p>FINAL DECISION:</p> <p>D.12-08-044: at 13 (discussion of “Expedited Enrollment Proposal, Housing Subsidy and Income Definition,” stating that “NCLC’s proposed multifamily expedited enrollment process” including “housing subsidy” issues will be “further examine[d]” in the “second phase”); at 167 (same); at 355, Conclusion of Law 86 (same).</p>	
<p>5. General multifamily issues, including “whole house” approach, single point-of-contact, overcoming the barriers multifamily buildings face in accessing ESAP and ensuring that these buildings are equitable served.</p> <p>NCLC, in coordination with CHPC and NHLP, raised several issues which generally address the barriers that multifamily buildings face in accessing ESAP.</p> <p>1. NCLC factually contended that multifamily buildings are underserved.</p>	<p>CLAIMANT’S PRESENTATIONS:</p> <p>Regarding the contention that multifamily buildings are underserved:</p> <p>5. (a) “Response of NCLC,” 6/14/11, at 2 (citing an NCLC report which concluded “that most utility energy efficiency programs do not equitably serve multifamily properties” and SCE’s own application, which noted that “multifamily properties have been less responsive to energy efficiency efforts”).</p>	<p>Verified, but this contribution falls under the previously stated issue (3) in D.12-08-044 and will not be separately compensated.</p>

<p>2. NCLC recommended that ESAP should provide a single point-of-contact/“one-stop shopping” for multifamily buildings seeking ESAP services, to overcome the barriers that currently exist due to tenants and owners having to apply separately to ESAP, the general energy efficiency program, and possibly other programs.</p> <p>3. NCLC similarly contended that ESAP should take a “whole house” approach so that all cost-effective measures will be delivered once a multifamily building seeks services.</p>	<p>(b) “Prehearing Conference Statement of NCLC,” 7/28/11, at 1-2 (citing KEMA study showing that 43% of ESAP eligible households live in multifamily housing, but only 24% of those served live in multifamily).</p> <p>(c) “Testimony of Matt Schwartz on Behalf of NCLC, NHLP and CHPC,” 11/18/11, at MS-7 to MS-9 (citing KEMA data and responses to NCLC and CHPC data requests).</p> <p>(d) “Initial Brief of NCLC, CHPC and NHLP,” 2/2/12, at 25-29 (summarizing relevant testimony and filings and discussing the barriers which lead to the multifamily sector being underserved).</p> <p>(e) “Reply Brief of NCLC, CHPC and NHLP,” 2/16/12, at 2-4 (discussing data from DRA’s brief supporting the contention that multifamily buildings are underserved).</p> <p>Regarding the contention that ESAP should take a more integrated, “whole house” approach:</p> <p>(f) “Response of NCLC,” 6/14/11, at 2-3 (urging better “program integration” and a “whole building” approach).</p> <p>(g) “Testimony of Matt Schwartz on Behalf of NCLC, NHLP and CHPC,” 11/18/11, at MS-3, MS-10, MS-12 to MS-16.</p> <p>(h) “Testimony of Dan Levine on Behalf of NCLC, NHLP, and CHPC,” 11/18/11, at DL-7 to DL-9 (citing problems with the limited measures currently offered by ESAP).</p>	
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	<p>(i) “Testimony of Wayne Waite Re: Tenant Benefits” on behalf of NCLC, NHLP and CHPC, 11/18/11, at WW C-3 to WW C-5 (explaining how a “whole building approach” that addresses landlord-metered loads can provide benefits to tenants).</p> <p>(j) “Reply Testimony of Matt Schwartz on Behalf of NCLC, NHLP and CHPC,” 12/9/11, at MS-4.</p> <p>(k) “Initial Brief of NCLC, CHPC and NHLP,” 2/2/12, at 25-26, at 33-36, 43-46.</p> <p>(l) “Reply Brief of NCLC, CHPC and NHLP,” 2/16/12, at 7-10 (noting the support of other parties for a “whole-building” approach.)</p> <p>Regarding the recommendation that ESAP adopt a single point-of-contact/ “one-stop shopping”:</p> <p>(m) “Response of NCLC,” 6/14/11, at 3.</p> <p>(n) “Testimony of Matt Schwartz on Behalf of NCLC, NHLP and CHPC,” 11/18/11, pp. MS-3, MS-7, MS-10, MS-12 to MS-16.</p> <p>(o) “Testimony of Dan Levine on Behalf of NCLC, NHLP, and CHPC,” 11/18/11, at DL-4, DL-7 to DL-9.</p> <p>(p) “Reply Testimony of Matt Schwartz on Behalf of NCLC, NHLP and CHPC,” 12/9/11, at MS-4, MS-11 to MS-12.</p> <p>(q) “Reply Testimony of Ann Schwartz on Behalf of NCLC, NHLP and CHPC,” 12/9/11, at AS-4, AS-7.</p> <p>(r) “Initial Brief of NCLC, CHPC</p>	
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	<p>and NHLP,” 2/2/12, at 30-33, 43.</p> <p>FINAL DECISION:</p> <p>Regarding whether multifamily sector is underserved:</p> <p>D.12-08-044, at 138-139 (discussing “CHPC et al.’s observation” regarding the “multifamily segment issue” and noting that the “ESA Program must undertake reasonable efforts to remedy” the concern that the segment may be underserved;</p> <p>at 154-155 (discussing the data from the KEMA study and noting “that the ESA Program can certainly be improved to better serve this multifamily housing segment”);</p> <p>at 155 (referring to the same data discussed in the NCLC/CHPC/NHLP Reply Brief [see para. 5.(e), above], noting that “with the exception of SDG&E, each IOU’s multifamily homes treated figure dipped during the last program cycle”).</p> <p>at 324-325, Finding of Fact 79 (drawing on an argument made in the Reply Brief of NCLC et al., 2/16/12, at 2-4).</p> <p>Regarding whole house approach and one-stop shopping/single point of contact:</p> <p>D.12-08-044, at 141-144 (summarizing NCLC and CHPC’s positions on these issues), at 161 (“the proposed concept of single point of contact is approved”).</p> <p>Regarding overcoming the barriers that the multifamily segment faces in accessing ESAP:</p> <p>D.12-08-044, at 164-167 (establishing a Multifamily Segment Study with a budget of \$400,000 and</p>	
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	<p>setting strict deadlines; requiring evaluation of “programs administered in other jurisdictions” [note that the reply testimony of Charles Harak on behalf of NCLC reviewed programs in MA, RI and NJ]; requiring examination of “comments, objections and proposals from parties to the proceeding” and of the “single point of contact” approach”).</p> <p>at 324-325, Findings of Fact 80-84 (discussing steps to identify “if the ESA Program is not effectively reaching the multifamily segment” and describing “eight immediate strategies ... to immediately begin improving the penetration rate for the multifamily segment.”)</p> <p>at 388-389, Ordering paragraphs 70-72 (regarding “eight immediate Multifamily Segment Strategies” and “Multifamily Segment Study”).</p>	
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B. Duplication of Effort (§§ 1801.3(f) & 1802.5):

	Claimant	CPUC Verified
a. Was the Office of Ratepayer Advocates (ORA) a party to the proceeding?¹	Yes	Yes
b. Were there other parties to the proceeding with positions similar to yours?	Yes	Yes
c. If so, provide name of other parties: California Housing Partnership Corporation (CHPC), National Housing Law Project (NHLP), TURN, Green for All, Center for Accessible Technology, National Asian American Coalition, Latino Business Chamber of Greater Los Angeles, Black Economic Council (the prior three known as “Joint Parties”), Natural Resources Defense Council (NRDC).		Verified

¹ The Division of Ratepayer Advocates (DRA) was renamed the Office of Ratepayer Advocates effective September 26, 2013, pursuant to Senate Bill No. 96 (Budget Act of 2013), which was approved by the Governor on September 28, 2013.

<p>d. Describe how you coordinated with ORA and other parties to avoid duplication or how your participation supplemented, complemented, or contributed to that of another party:</p> <p>NCLC worked very closely with DRA and with other intervenors who addressed similar issues. We worked especially closely with NHLP and CHPC, as described more fully below, to avoid duplication.</p> <p>In terms of avoiding duplication with DRA, the intervenors CHPC/NCLC/NHLP (three intervenors) acted as a unified team and, through one or more of these three intervenors, had numerous phone calls and meetings with DRA. In those discussions, the three intervenors kept DRA fully abreast of the issues we intended to address in our workshop presentations, testimony, discovery and brief so that DRA would not need to duplicate any of our own work on multifamily issues. The intervenor team also elicited from DRA the extent to which it would be addressing any of the issues we sought to address. As the briefs and other documents filed in this case make clear, DRA largely did not address the multifamily issues that were the focus of our efforts. Some of the references in DRA’s briefs to the issues we raised support positions taken by the three intervenors, reflecting our conversations with DRA in which we sought to coordinate with, but not duplicate, DRA’s own efforts. (<i>See, e.g., DRA Opening Brief, 2/2/12, at 10, 59-60.</i>)</p> <p>Similarly, the three intervenors had numerous phone calls and e-mail exchanges with several of the other intervenors (especially NRDC, TURN, Center for Accessible Technology, the Joint Parties and Green for All) to advise them of the positions we would be taking, to avoid their duplicating our efforts or us duplicating theirs. The results of these coordination calls and e-mails can partially be seen in the “Testimony of Matt Schwartz on behalf of NCLC, NHLP and CHPC,” 11/18/11, at MS11, which includes a table showing which other parties support the positions taken by the three intervenors. The same testimony, at MS-11 and MS-12, similarly shows the three intervenors’ support for positions of other parties which, due to coordinating with other parties, required almost no expenditure of additional time on those issues; the three intervenors deferred to the work of other parties.</p> <p>In a similar vein, the briefs of other intervenors demonstrate support for positions the three intervenors took, reflecting our coordination efforts, and avoiding those other intervenors duplicating any of our testimony, discovery or other efforts. (<i>See, e.g., “Reply Brief of NCLC, CHPC and NHLP” 2/16/12 at 8 (citing support by NRDC and the Joint Parties in their briefs for positions taken by the three intervenors).</i>)</p>	<p>NCLC largely, if not exclusively, provided joint testimony and substantive comments in A.11-05-017 et al. with California Housing Partnership Corporation (CHPC) and the National Housing Law Project (NHLP). This coordination is noted in NCLC’s timesheets. The time billed by NCLC showed duplication of effort and lack of efficiency given the collaborative nature and narrow scope of their filings.</p>
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<p>The three intervenors – CHPC, NCLC, and NHLP – had numerous calls and e-mails among ourselves to avoid duplication. Examples of this include: (1) dividing up which companies each intervenor drafted discovery against, with NCLC focusing its discovery efforts on PG&E and SoCalEd, and CHPC drafting discovery of SoCalGas and SDG&E); (2) dividing up preparation for – and presentations at -- the multifamily workshops; (3) dividing up coverage of the other workshops (NCLC attended only one workshop, due to this coordination); (4) drafting separate sections of comments and briefs filed to avoid duplication of writing efforts; (5) dividing up the responsibility for answering the several questions propounded by the ALJ.</p> <p>As another example of how the intervenor team avoided duplication of the work of other intervenors, NCLC, which had originally planned to take an active role on CARE-related issues (<i>see</i> Sept. 2, 2011 Notice of Intent, at 3-4), in fact spent very little time on CARE issues once it learned the very active role that DRA, TURN, Center for Accessible Technology and other intervenors planned.</p>	
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PART III: REASONABLENESS OF REQUESTED COMPENSATION

A. General Claim of Reasonableness (§§ 1801 & 1806):

<p>a. Concise explanation as to how the cost of Claimant’s participation bears a reasonable relationship with benefits realized through participation</p> <p>Note: A precise dollar value cannot be provided at this time for benefits realized, as the Commission has deferred to the second phase of this proceeding further consideration of the changes NCLC has proposed to be made to ESAP’s service of multifamily buildings.</p> <p>However, D.12-08-044 unquestionably initiates major changes to how ESAP serves multifamily properties. Thirty full pages of the decision (section 3.10, at 137 to 167) are devoted to the “Multifamily Housing Segment.” The Commission has already required the adoption of eight “Multifamily Segment Strategies” and has also mandated the retention of a multifamily segment consultant to further explore the many multifamily issues raised by NCLC/CHPC/NHLP and other parties. The decision overturns the legal barrier to ESAP providing assistance for heat and hot water measures in multifamily housing, even if it remains for the second phase to determine if such assistance will actually be provide, and the extent of such assistance. The decision also already mandates a whole house approach and a single point of contact for multifamily buildings. The mandated consideration of expedited enrollment may allow many more multifamily buildings to access ESAP.</p>	<p>CPUC Verified</p> <p>The cost of NCLC’s participation, over \$200,000, does not bear a reasonable relationship with results realized through its participation. NCLC has not demonstrated how the cost of NCLC’s participation is small in relation to the benefits ratepayers receive because of its participation. Much of the time</p>
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<p>ESAP will expend \$1.1 billion over the next three years (D.12-08-044, at 6), yet as NCLC noted in its 2/16/12 Reply Brief, at 2-4, each of the IOU's (with the exception of SDG&E) is under-serving multifamily households relative to the company's own estimate of the percentage of ESAP-eligible households living in multifamily housing. Similarly, the Decision, at 155, notes that "each IOU's multifamily homes [percentage] treated figures" (with the exception of SDG&E) is falling, comparing 2007-2010 to prior periods. If the changes urged by NCLC and that will be reviewed in Phase 2 result in even a 1% increase in total ESAP funding going to the multifamily sector, that would result in a \$10 million increase in efficiency services in the multifamily sector. It is not at all unreasonable to assume that the changes initiated in D.12-08-044 will lead to much more than a 1% increase in total expenditures in the multifamily segment, given the focus of the Decision on that segment.</p>	<p>claimed by NCLC is unreasonable given the narrow scope of issues it focused on, primarily in the multifamily sector, in a large proceeding with a wide array of issues. A substantial contribution was made in this narrow scope and has been compensated accordingly. Excessive amounts of time were spent on travel that was unnecessary. Additionally, the hourly rate requested for NCLC's representative is unreasonable and has been reduced. (See Part III.C.)</p>
<p>b. Reasonableness of Hours Claimed.</p> <p>The hours claimed by NCLC should be reviewed in the context of a case that spanned 14 months from the initial "Response" NCLC filed until the Final Decision. Under the ALJ's 7/21/11 Ruling, the case was initially scheduled to result in a final decision in October, 2011. The case eventually encompassed eight workshops, extensive questions propounded by the ALJ, discovery and lengthy briefs, and a decision in August, 2012. The unanticipated length and complexity of the proceeding largely explain the difference between the estimate contained in NCLC's 9/2/11 Notice of Intent and the actual claim being submitted now.</p> <p>NCLC (in coordination with CHPC and NHLP) engaged in presenting the testimony of six witnesses (with Mr. Schwartz filing initial and reply testimony); serving three rounds of data requests; co-leading the multifamily workshop; responding to questions posed by the ALJ that</p>	<p>Even with viewing NCLC's hours in the context of a proceeding that spanned 14 months, NCLC's contribution had a very narrow focus. Though we applaud NCLC for collaborating with other parties, this effort is not evidenced by the numbers of hours that it claims.</p>

<p>required amassing significant data; and filing 65 pages of briefs.</p> <p>NCLC/CHPC/NHLP were able to arrange for the testimony of five expert witnesses at no cost, including HUD official Wayne Waite, who has expertise of both housing and energy efficiency programs, and others who have expertise in how ESAP actually works in the field for owners and operators of multifamily housing.</p> <p>As a matter of billing discretion and in recognition of the size of this claim, NCLC has chosen not to submit a claim for the time put in by John Howat (1.5 hours), Darlene Wong (1.5 hours), Olivia Wein (3 hours) and Jillian McLaughlin (19 hours) even though each of those individuals was included in NCLC’s 9/2/11 NOI.</p> <p>As noted above, section II.B., regarding duplication of efforts, NCLC strove to coordinate closely with other parties and put in extremely minimal time on various issues it had intended to address more fully, once it learned that other parties would be covering those issues. NCLC, CHPC and NHLP also made sure that other parties with similar interests were aware of our planned efforts, so that they could simply voice their support for our positions, without having to spend time themselves on factually and legally developing those issues.</p> <p>NCLC attorney Charles Harak prides himself on working efficiently. Throughout his legal career, he has generally put in fewer hours on particular tasks compared to others working on the same projects. In his last claim before the Commission, he was awarded 100% of his hours claimed. (See D.06-11-009, 11/9/2006, at 28) (NCLC’s daily time records show its activities were appropriate to the tasks and its hours commensurate with its contributions. No adjustments are needed.)</p>	<p>Reductions have been made for duplication and excessive hours claimed. (See Part III.C.) Additionally, travel hours claimed for NCLC’s representative to travel cross country for the October 2011 workshop are unreasonable given the availability of teleconference for workshop participation.</p>
<p>c. Allocation of Hours by Issue</p> <p>(A) The legal ban based on S. 1941.1 should be reversed – 20%</p> <p>(B) Heat/hot water measures in multifamily buildings should be allowed – 23%</p> <p>(C) Allow expedited enrollment – 16%</p> <p>(D) Exclude housing subsidies as countable income – 15%</p> <p>(E) General multifamily issues – 21%</p> <p>(F) General legal work (e.g, reviewing various rulings of the ALJ and filings of other parties, etc.) – 5%</p> <p>(See Excel spreadsheet/timesheet for fuller description of each issue.)</p>	<p>The issues listed by NCLC in their “Allocation of Hours by does not accurately reflect the issues designated in the scoping memo for D.12-08-044 or the decision itself.</p>

B. Specific Claim:

CLAIMED						CPUC AWARD		
ATTORNEY, EXPERT, AND ADVOCATE FEES								
Item	Year	Hours	Rate	Basis for Rate*	Total \$	Hours	Rate	Total \$
Charles Harak Attorney	2011	234.1	\$500	Attachment #3	\$117,050	117.05	\$390	\$45,649.50
Charles Harak Attorney	2012	163.2	\$500	Attachment #3	\$ 81,600	81.6	\$400	\$32,640
Subtotal:					\$198,650	Subtotal:		\$78,289.50
OTHER FEES								
Describe here what OTHER HOURLY FEES you are Claiming (paralegal, travel **, etc.):								
Item	Year	Hours	Rate	Basis for Rate*	Total \$	Hours	Rate	Total \$
Charles Harak Attorney, travel	2011	36	\$250	Attachment #3 (1/2 of full rate)	\$9,000	24	\$195	\$4,680
Charles Harak Attorney, travel	2012	12	\$250	Attachment #3 (1/2 of full rate)	\$3,000	12	\$200	\$2,400
Subtotal:					\$12,000	Subtotal:		\$7,080
INTERVENOR COMPENSATION CLAIM PREPARATION **								
Item	Year	Hours	Rate	Basis for Rate*	Total \$	Hours	Rate	Total \$
Charles Harak, Attorney, claim prep.	2012	42.3	\$250	Attachment #3 (1/2 of full rate)	\$10,575	10	\$200	\$2,000
Subtotal:						Subtotal:		
COSTS								
#	Item	Detail			Amount	Amount		
1	Travel to PUC	Hotel costs			\$946.25	\$657.50		
2	Travel to PUC	Airfare			\$2774.40	\$2,218		
Subtotal:					\$3720.65	Subtotal:		\$2,875.50
TOTAL REQUEST \$:					\$224,945	TOTAL AWARD :		\$90,245.00

* We remind all intervenors that Commission staff may audit its records related to the award and that intervenors must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. Claimant's records should identify specific issues for which it seeks compensation, the actual time spent by each employee or consultant, the applicable hourly rates, fees paid to consultants and any other costs for which compensation was claimed. The records pertaining to an award of compensation shall be retained for at least three years from the date of the final decision making the award.

** Travel and Reasonable Claim preparation time typically compensated at ½ of preparer's normal hourly rate.

C. CPUC Disallowances, Adjustments, and Comments:

#	Reason
Disallowance for Travel expenses and time	<p>Party participation in workshops may occur via conference call and reductions to this claim have been made for both travel time and expenses. Though NCLC was a co- presenter at the October workshops, the workshops were managed by Commission staff. Physical presence at the workshop (instead of participation via teleconference) was not necessary. Claimant did not minimize travel time and expenses.</p> <p>As such, time and costs associated with Harak's cross country travel and lodging are disallowed. Time actually spent attending the workshop is compensated. The NCLC representative had already spent thousands to travel to San Francisco for the two prehearing conferences and also traveled to San Francisco for the all-party meeting. NCLC has not shown how physical attendance at the workshop was necessary given the high costs of travel. Additionally, the workshop was not particularly productive or engaging and did not substantially contribute to D.12-08-044.</p>
Disallowance for lack of efficiency and duplication	<p>The number of hours that NCLC has claimed is excessive, given the amount of collaboration that went into almost all of its filings and the very narrow scope of issues, primarily the multifamily sector, that it focused on. Most filings that NCLC worked on were submitted in collaboration with California Housing Partnership Corporation and National Housing Law Project. Two of NCLC's comments were filed independently but were highly duplicative of California Housing Partnership Corporation's positions without concurrently complementing, supplementing, or contributing to a material degree. These filings were very brief and the number of hours billed to those activities is excessive given the experience of its representative. The Commission awards NCLC compensation for 117.05 hours in 2011 and 81.6 hours in 2012 for work contributing to D.12-08-044</p>
Claimed Hours for Intervenor Compensation Claim Preparation	<p>National Consumer Law Center claims 43 hours in 2012 to prepare its intervenor compensation claim. The hours are expensive. Accordingly, 30.3 hours are disallowed.</p>

<p>2011 and 2012 Hourly Rate for Charles Harak</p>	<p>National Consumer Law Center requests a new hourly rate for Harak in 2011 and 2012. Harak’s hourly rate was last authorized in 2005, nine years ago. Individuals without a recently authorized rate may justify a new rate as if the representative were new to Commission proceedings.² We reject Claimant’s comparison of Harak’s experience to that of The Utility Reform Network’s representative, California licensed attorney Robert Finkelstein, whose rate is set within the range of hourly rates for attorneys with 13+ years of experience. Finkelstein, a representative who has been awarded an hourly rate of \$470, has admission before the California state bar and has been practicing extensively before the Commission for over 20 years. An eligibility requirement for the 2011 range of \$300- \$535 an hour and the 2012 range of \$305-\$545 for the 13+ years of experience level, is being a licensed California attorney. Although Harak has 35 years of level experience in this sector, that experience is not as a licensed California attorney, nor is all of that experience practicing before the Commission. As such, Harak is eligible for rates under the Expert category, as allowed in Resolution ALJ-281.</p> <p>In recognition of Harak’s 35 years of experience on a broad range energy and utility issues and current position as managing attorney in the energy unit at the National Consumer Law Center, we set his hourly rate for work in 2011 at \$390. This rate is at the top of the range for experts in the 13+ years of experience range, as allowed in Resolution ALJ-281. For 2012 we adopt an hourly rate for Harak of \$400 to include a Cost-of Living Adjustment increase of 2.2% (rounded to the nearest \$5 increment), as allowed in Resolution ALJ-281.</p>
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PART IV: OPPOSITIONS AND COMMENTS

Within 30 days after service of this Claim, Commission Staff or any other party may file a response to the Claim (see § 1804(c))

A. Opposition: Did any party oppose the Claim?	No
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B. Comment Period: Was the 30-day comment period waived (see Rule 14.6(2)(6))?	No
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If not:

Party	Comment	CPUC Disposition

² D.07-01-009 at 7-8.

FINDINGS OF FACT

1. National Consumer Law Center has made a substantial contribution to Decision 12-08-044.
2. The requested hourly rates for National Consumer Law Center's representative, as adjusted herein, are comparable to market rates paid to experts and advocates having comparable training and experience and offering similar services.
3. The claimed costs and expenses, as adjusted herein, are reasonable and commensurate with the work performed.
4. The total of reasonable compensation is \$90,245.

CONCLUSION OF LAW

1. The Claim, with any adjustment set forth above, satisfies all requirements of Public Utilities Code §§ 1801-1812.

ORDER

1. National Consumer Law Center is awarded \$90,245.
2. Within 30 days of the effective date of this decision, Pacific Gas and Electric Company, Southern California Edison Company, San Diego Gas & Electric Company, and Southern California Gas Company shall pay National Consumer Law Center their respective shares of the award, based on their California-jurisdictional gas and electric revenues for the 2012 calendar year, to reflect the year in which the proceeding was primarily litigated. Payment of the award shall include compound interest at the rate earned on prime, three-month non-financial commercial paper as reported in Federal Reserve Statistical Release H.15, beginning January 6, 2013, the 75th day after the filing of National Consumer Law Center's request, and continuing until full payment is made.

3. The comment period for today's decision is not waived.

This decision is effective today.

Dated _____, at San Francisco, California.

APPENDIX**Compensation Decision Summary Information**

Compensation Decision:		Modifies Decision? No
Contribution Decision(s):	D1208044	
Proceeding(s):	A1105017, A1105018, A1105019, A1105020	
Author:	ALJ Kimberly H. Kim	
Payer(s):	Pacific Gas and Electric Company, Southern California Edison Company, San Diego Gas & Electric Company, Southern California Gas Company	

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier	Reason Change/Disallowance
National Consumer Law Center	10/23/2012	\$224,945	\$90,245	No	Lower hourly rate than requested, disallowance of travel time and expenses, reductions for duplication and lack of efficiency

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Charles	Harak	Expert	National Consumer Law Center	\$500	2011	\$390
Charles	Harak	Expert	National Consumer Law Center	\$500	2012	\$400

(END OF APPENDIX)