

Decision **PROPOSED DECISION OF PRESIDENT PEEVEY** (Mailed 10/11/2012)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking on the Commission's own motion to consider alternative-fueled vehicle tariffs, infrastructure and policies to support California's greenhouse gas emissions reduction goals.

Rulemaking 09-08-009  
(Filed August 20, 2009)

**DECISION GRANTING REQUEST OF NATURAL RESOURCES DEFENSE COUNCIL  
FOR INTERVENOR COMPENSATION FOR CONTRIBUTIONS  
TO DECISION 11-07-029**

<b>Claimant:</b> Natural Resources Defense Council (NRDC)	<b>For contribution to</b> Decision 11-07-029
<b>Claimed:</b> \$64,935.00	<b>Awarded:</b> \$42,324.95 (reduced 34.6%)
<b>Assigned Commissioner:</b> Michael Peevey	<b>Assigned Administrative Law Judge:</b> Regina DeAngelis
<b>Claim Filed:</b>	<b>September 23, 2011</b>

**PART I: PROCEDURAL ISSUES**

<b>A. Brief Description of Decision (D.):</b>	D.11-07-029 establishes policies to overcome barriers to electric vehicle deployment and complies with Public Utilities Code section 740.2.
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**B. Claimant must satisfy intervenor compensation requirements set forth in Public Utilities Code §§ 1801-1812:**

	<b>Claimant</b>	<b>CPUC Verified</b>
<b>Timely filing of notice of intent to claim compensation (§ 1804(a)):</b>		
1. Date of Prehearing Conference:	November 18, 2009	Correct
2. Other Specified Date for NOI:	n/a	E-mail ruling of September 8, 2011, that NOI is due 30 days from ruling.
3. Date NOI Filed:	December 18, 2010	December 18, 2009

4. Was the notice of intent timely filed?		Yes
<b>Showing of customer or customer-related status (§ 1802(b)):</b>		
5. Based on Administrative Law Judge's (ALJ) ruling issued in proceeding number:	R.09-08-009	Correct
6. Date of ALJ ruling:	January 28, 2010	Correct
7. Based on another CPUC determination:	n/a	
8. Has the claimant demonstrated customer or customer-related status? Yes		Correct
<b>Showing of "significant financial hardship" (§ 1802(g)):</b>		
9. Based on ALJ ruling issued in proceeding number:	See Part I.C #1	D.11-06-013
10. Date of ALJ ruling:	See Part I.C #1	6-10-2011
11. Based on another CPUC determination:	n/a	
12. Has the claimant demonstrated significant financial hardship?		Yes
<b>Timely request for compensation (§ 1804(c)):</b>		
13. Identify Final Decision	D.11-07-029	Correct
14. Date of Issuance of Final Decision:	July 25, 2011	Correct
15. File date of compensation request:	September 23, 2011	Correct
16. Was the request for compensation timely?		Yes

## PART II: SUBSTANTIAL CONTRIBUTION

### A. Claimant's description of its contributions to the final decision (*see* § 1802(i), § 1803(a) & D.98-04-059)

Contribution	Citation to Decision or Record	Showing Accepted by CPUC
<p><i>For the purposes of this claim: "PD" = Proposed Decision, "FOF" = Finding of Fact, "COL" = Conclusion of Law, "OP" = Ordering Paragraph</i></p> <p><i>See Attachment 1 for a list of NRDC<sup>1</sup> documents referenced by short name in this section:</i></p> <p>1. Environmental Goals (EG)</p>	<p>Section two of D.11-07-029 (pp. 3-8) places the CPUC's actions in R.09-08-009 within the context of the state's broader climate and environmental goals and articulates electric vehicle specific goals which largely mirror those recommended in our comments. This section was absent from the PD.</p>	Accepted

<sup>1</sup> Natural Resources Defense Council.

<p>As the only environmental group that has responded to all of the Commission’s twelve requests for comments in R.09-08-009, NRDC has repeatedly stressed the importance of placing the Commission’s electric vehicle policy development within the broader context of the state’s environmental goals. Our opening comments in the Fall of 2009 articulated over-arching environmental policy goals for R.09-08-009. All of our written comments (six sets of comments in Phase One and six sets of comments in Phase Two) were written to further these overarching goals. Our comments on the Phase Two PD placed particular stress on the need to reflect state electric vehicle goals. (See <i>Comments on PD</i>, pp. 1-5; <i>Reply Comments on PD</i>, pp. 1-3.)</p>		
<p><b>2. Utility Education and Outreach (ED)</b></p> <p>NRDC argued repeatedly for the importance of utility outreach “to educate customers as to the financial, social, and environmental benefits of PEVs<sup>2</sup> and effective load management.” (Additional Comments, p. 5.)</p> <p>We objected to several restrictions the PD placed on utility education and outreach and suggested alternative directives:</p> <p>“...the restrictions the Proposed Decision places on education and outreach contradict repeated legislative enactments and may cripple utility efforts at this critical juncture in the electrification of the transportation sector. Subparts (b), (c), and (d) of “Ordering Paragraph 8” should be struck and replaced with the following:</p> <p><u>b. Consistent with Public Utilities Code § 740.8, utilities should educate customers about the environmental and societal benefits of plug-in electric vehicles and the safety, reliability, and cost benefits of responsible charging.”</u></p> <p>(Comments on PD, pp3-5; see also Reply Comments on PD, pp. 2-3.)</p>	<p>D.11-07-029 underscored the importance of utility education and outreach and adopted NRDC’s specific recommendation to delete the PD’s restrictions and replaced the original recommendations with language similar to that proposed by NRDC instructing utilities to educate their customers about the benefits of electric vehicles:</p> <p>“Regarding the utilities’ role in education and outreach, we agree with those parties that suggest that utilities have an important role to play in customer education and outreach.” p. 59. This language was absent in the PD.</p> <p>FOF 27: “Utilities have a role in education and outreach consistent with their primary responsibilities and the State is environmental goals.” This FOF was not included in the PD.</p> <p>The PD’s subparts (b),(c), and (d) of OP 8 were struck and replaced with new subparts (a) and (b) that reflect NRDC’s comments and language:</p>	<p>Accepted</p>

<sup>2</sup> Plug-in hybrid and electric vehicles.

	<p>“a. Each utility has an obligation to use funds to provide its customers with information regarding the choices available for metering arrangements, rates, demand response programs, charging equipment, installation, safety, reliability, and off-peak charging.</p> <p>b. Each utility has an obligation to use funds for targeted PEV education and outreach to educate customers about the environmental and societal benefits of PEVs consistent with the state’s policy goals related to the reduction of greenhouse gas emissions set forth in AB 32.”</p>	
<p><b>3. Statutory Directives (SD)</b></p> <p>We argued that the PD’s restrictions placed on utility education and outreach contradicted statutory directives in §§ 740.2, 740.3 and 740.8:</p> <p>“Three bills, passed over a span of nearly two decades, direct the Commission, and the “electrical corporations” under its authority, to promote alternative fueled vehicles because of their societal and environmental benefits. Contrary to these directives, the Proposed Decision states these corporations ‘have no role in actively and broadly promoting plug-in hybrid and electric vehicle adoption or the societal or environmental benefits of plug-in hybrid and electric vehicle adoption.’<sup>3</sup> This statement contradicts the plain language of three separate statutes articulating the importance of utilities in promoting the use of alternative fuel vehicles.” (Comments on PD, p. 4.)</p> <p>(See also Reply Comments on PD, pp. 1-3.)</p>	<p>The PD’s restrictions were not included in the final decision (see above Contribution #2 Citation) and the guidelines were altered to be consistent with the statutory guidelines identified by NRDC in our comments:</p> <p>“...the guidelines we adopt today are consistent with our obligations under § 740.2 and the earlier enacted legislation set forth in §§ 740.3 and 740.8. To promote the directives set forth in these statutes, we adopt education and outreach guidelines that seek to engage utilities in reducing barriers to the widespread deployment of Electric Vehicles...” p. 66.</p> <p>This language was not in the PD.</p>	Accepted
<p><b>4. Rate Design Principles (RD)</b></p> <p>NRDC advocated that EV load should be on non-tiered time-variant rates to align customer incentives to maximize the displacement of gasoline and minimize the costs of charging: “NRDC recommends that PEV loads that are</p>	<p>D.11-07-029 adopted this rate design principle:</p> <p>COL 6: “The rates for Electric Vehicle residential separately metered customers should be opt-in, non-tiered and time-of-</p>	Accepted

<sup>3</sup> Proposed Decision, p. 73.

<p>actually segregated through dedicated metering be placed on <i>non-tiered</i>, time-of-use rates.” (<i>Comments on Rates Paper</i>, p. 14.)</p>	<p>use.”</p>	
<p><b>5. Cost Allocation (CA)</b></p> <p>We argued that electric vehicle load should be “new load” under Tariff Rules 15 and 16:</p> <p>“In the near-term, residential Level 1 and Level 2 charging of PEV load should continue to be designated as ‘new load’ and current allowance formulas should apply... it would seem arbitrary to alter the Rules in order to declare that a PEV load caused the need for a given system upgrade, while ignoring other loads that result in similar system impacts or contribute to the PEV load’s impact.” (<i>Comments on Rates Paper</i>, p. 9.)</p>	<p>D.11-07-029 concluded that electric vehicle load should be “new load” under Tariff Rule 15 and 16.</p> <p>FOF 24: “Electric Vehicle load is designated as new and permanent load under Tariff Rules 15 and 16 and customers should be afforded the standard Tariff Rule 16 allowance to cover the costs of any required customer specific facilities upgrades.”</p> <p>COL 22: “Designating Electric Vehicle load as new and permanent load under Tariff Rules 15 and 16 reflects the State’s goal under AB 32 to encourage the electrification of the transportation sector as a means of reducing overall greenhouse gas emissions...”</p>	<p>Accepted</p>
<p><b>6. Sub-metering Protocol (SP)</b></p> <p>We argued that the sub-metering protocol was needed:</p> <p>“NRDC encourages the Commission to facilitate the development of sub-metering as a viable option” (<i>Comments on Utility Role Paper</i>, p. 2, pp. 4-6; <i>See also Comments on Rates Paper</i> p. 9, 13)</p> <p>We also argued that the sub-metering protocol should be technologically-neutral:</p> <p>“The Commission should assure that such standards do not prejudice technological options. It is not yet clear whether stand-alone sub-meters, or sub-meters embedded in EVSE, in vehicles, or elsewhere will prove to be the most efficient option...” (<i>Additional Comments</i>, p. 4.)</p> <p>We also argued that a wide spectrum of parties, including automakers should be invited so no technology is prematurely foreclosed:</p>	<p>D.11-07-029 adopted these sub-metering protocol recommendations, and cited to our comments in doing so:</p> <p>“We agree that a process is needed to develop an Electric Vehicle submetering protocol. We also agree with NRDC that the Electric Vehicle submeter protocol should create a framework that can incorporate emerging metering technologies and encourage innovation.” p. 41</p> <p>“NRDC and PG&amp;E<sup>4</sup> stated that the process to develop an Electric Vehicle submeter protocol should include a range of stakeholders, including electric vehicle service providers, utilities, and government agencies” p. 40</p> <p>OP 4: The sub-metering protocol “...shall include in the working group, at a minimum, Commission Staff, California Department of Food and Agriculture,</p>	<p>Accepted</p>

<sup>4</sup> Pacific Gas and Electric Company.

<p>“NRDC ... notes the importance of inviting automakers, in addition to utilities and electric vehicle service providers (“EVSPs”), to join such workshops. As NRDC has previously stated, sub-metering protocols should not pre-judge technological solutions, but should be agnostic as to the location of the sub-meter. With this in mind, automakers should be at the table to assure that sub-metering embedded in vehicles is not foreclosed as a possibility.” (<i>Additional Reply Comments</i>, p. 2.)</p>	<p>automakers, and electric vehicle service providers...”</p>	
<p><b>7. Multiple Metering Options (MM)</b>          The Staff Utility Role Paper recommended the Commission “encourage” single metering. We noted:          “The Commission should reserve judgment on the issue of whether utilities should encourage single metering or separate metering as preferred options at this time. These options represent the “status-quo” and could occur absent encouragement” (<i>Comments on Utility Role Paper</i>, p. 4)</p>	<p>As opposed to the <i>Utility Role Paper</i>, which recommended that utilities “encourage” single metering, D.11-07-029 recommended that all options be made available:          FOF 16 “Despite benefits of single metering in terms of keeping initial equipment costs low, utilities should continue to make available all existing metering options to customers as it is importance to preserve customer choice in Electric Vehicle meter arrangements at this early market development stage...”</p>	<p>Accepted</p>
<p><b>8. The Need for Utility Notification (NF)</b>          We argued repeatedly for a scalable solution to provide utility notification:          “utilities have a real need for notification in order facilitate installation and service planning” (<i>Comments on Utility Role Paper</i>, p. 3.)          “the Commission could endorse the voluntary customer notification agreements being developed by automakers and utilities.” (<i>Comments on Utility Role Paper</i>, p. 10)          “NRDC supports (the) intention to foster a scalable solution for utility notification...” (<i>Comments on PD</i>, p. 1.)          See also <i>Additional Reply Comments</i>, pp. 1-2.</p>	<p>D.11-07-029 noted our support for a notification process and ordered utilities to work on developing a more scalable solution:          “NRDC expressed support for a notification process.” p. 11.          FOF 1: “If the utility obtains timely notification that an Electric Vehicle will be charging in its service territory, the utility can address potential reliability problems, keep infrastructure costs down, and assist, as appropriate, with ensuring that Electric Vehicle owners have positive experiences with their vehicles.”          OP 1: the IOUs “shall collaborate with stakeholders to prepare an assessment report that sets forth the notification options to track the location and re-location of plug-in hybrid and electric vehicle charging on the electric grid, the merits of each option, the</p>	<p>Accepted</p>

	projected costs of these options, and implementation scenarios.”	
<p>9. The Potential of Smart Load Management <b>(SM)</b></p> <p>We argued that the Commission should underscore the importance of intelligent load management and suggested modifying the relevant FOF to read:</p> <p>“Intelligent load management and smart charging have the potential to lower costs for all customers and facilitate the integration of intermittent renewable generation.” (<i>Comments on PD</i>, p. 11.)</p>	<p>D.11-07-029 notes its agreement with our argument and adopted our suggested language:</p> <p>“We also agree with NRDC that the potential benefits of enabling demand response for Electric Vehicle charging offers benefits that include lowering energy procurement costs and supporting integration of intermittent renewables resources.” p 66.</p> <p>Our suggested language was adopted in FOF 28: “...intelligent load management and smart charging have the potential to lower costs for all customers and facilitate the integration of renewable energy.”</p>	Accepted
<p>10. Residential Demand Charges <b>(DC)</b></p> <p>“The use of demand charges in the residential setting appears to be unprecedented. As stated with regards to existing electric rules, NRDC believes it is premature to single out PEV load for purposes of levying special charges in the residential context.” (<i>Comments on Rates Paper</i>, p. 18)</p>	<p>D.11-07-029 agreed it is premature to impose residential demand charges, and noted our comments arguing as much:</p> <p>“..NRDC ...stated that residential demand charges may not be necessary since time-of-use rates can accomplish capacity cost recovery” p. 23</p> <p>COL 8: “Adding demand charges to residential Electric Vehicle rates would be too great a change to residential rates at this time ...”</p>	Accepted
<p>11. The Need to Revisit Rate Design <b>(RR)</b></p> <p>We argued that the Commission will need to revisit rate design well in advance of 2015:</p> <p>“The Commission will have to revisit PEV rates in the immediate future to assure that new tariffs are in place by 2015.” (<i>Additional Comments</i>, p. 7.)</p>	<p>D.11-07-029 establishes a timeline that parallels our recommendation:</p> <p>FOF 11: “In approximately 2013, Electric Vehicle rate design should be revisited because additional information will exist about Electric Vehicle charging load profiles, the costs and benefits of Electric Vehicle charging and information concern how consumer charging behavior responds to Electric Vehicle time-of-use price differentials.”</p> <p>COL 7: “The Commission should revisit the suitability of the utilities’ Electric Vehicle residential rate schedules in 2013-2014.”</p>	Accepted

	OP 3 (Ordering utilities to submit revised electric vehicle rates in accordance with the timeframe discussed above)	
<p>12. The Need for a Single Future Proceeding (SI)</p> <p>We disagreed with the PD’s closure of the rule-making and argued that a single proceeding would be needed to resolve remaining issues:</p> <p>“A single proceeding, initiated before 2013, will be needed to coalesce various unresolved issues, as well as the appropriate stakeholders, to ensure Commission efforts are not duplicated and California’s goals for the electrification of the transportation sector are met.” (<i>Comments on PD</i>, p. 11.)</p> <p>“Whether this proceeding remains open or a second proceeding is opened, the Commission needs a single proceeding to bring together the relevant PEV issues and parties in order to prevent duplication of Commission efforts and ensure continued leadership.” (<i>Reply Comments on PD</i>, 5.)</p>	<p>Whereas the PD closed the rule-making, D.11-07-029 kept it open:</p> <p>OP 10: “Rulemaking 09-08-009 remains open.”</p>	Accepted

**B. Duplication of Effort (§§ 1801.3(f) & 1802.5):**

	Claimant	CPUC Verified
<b>a. Was DRA a party to the proceeding?</b>	Yes	Correct
<b>b. Were there other parties to the proceeding?</b>	Yes	Correct
<p><b>c. If so, provide name of other parties:</b></p> <p>PG&amp;E, Southern California Edison Company, San Diego Gas &amp; Electric Company, Southern California Gas Company, Sacramento Municipal Utility District, EV Service Provider Coalition, Better Place, Coulomb Technologies, Clean Energy Fuels Corporation, Western States Petroleum Association, The Utility Reform Network, CALifornians for Renewable Energy (CARE), North Coast Rivers Alliance, Interstate Renewable Energy Council, Green Power Institute, Environmental Defense Fund, Walmart, Ecotality, Greenlining Institute, General Motors, International Council on Clean Transportation, Consumer Federation of California, Center for Energy Efficiency and Renewable Technologies, Nissan.</p>	Yes	

<p><b>d. Describe how you coordinated with DRA and other parties to avoid duplication or how your participation supplemented, complemented, or contributed to that of another party:</b></p> <p>Throughout both phases of this rule-making, NRDC has been singularly active in efforts to coordinate stakeholders in order to improve efficiency, avoid duplication, and bring about a timely resolution of important issues. During Phase One, NRDC reached out to the various stakeholders and convened an “EV Working Group”. The group included utilities, third party electric vehicle service providers, ratepayer advocates, and automakers. NRDC actively coordinated and led regular meetings. As Phase Two began, NRDC continued to lead this effort and expanded the EV Working Group membership to include additional parties, again with the purpose of identifying areas of agreement and to minimize the number of contested issues during the proceeding in order to help facilitate streamlined and timely CPUC action. Specific to Phase Two, this working group also convened to craft solutions that might not emerge outside the context of real-time confidential discussions.</p> <p>When possible, NRDC worked cooperatively with other parties (in addition to the working group) to address as many concerns as feasible prior to submitting our comments and/or adjust our comments when appropriate to address other party concerns.</p> <p>NRDC’s compensation should not be reduced for duplication of the showing of other parties.</p>	<p>Yes</p>
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**PART III: REASONABLENESS OF REQUESTED COMPENSATION**

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

<p><b>Explanation as to how the cost of Claimant’s participation bore a reasonable relationship with benefits realized through participation</b></p>	<p><b>CPUC Verified</b></p>
<p>Our Phase Two advocacy focused on the following eight issues that should result in lower bills for all customers: minimizing costs and maximizing environmental benefits (contribution #1), utility education and outreach as to the benefits of electric vehicles and the importance of off-peak charging (contribution #2&amp;#3), the need to move customers onto non-tiered time-of-use rates (contribution #4), fair cost allocation principles that do not discriminate against electric vehicle drivers (contribution #5), low-cost metering solutions (contribution #6), customer choice in metering options (contribution #7), utility notification to facilitate efficient service planning (contribution #8), and smart charging and demand response programs (contribution #9). NRDC’s policy recommendations should minimize the costs associated with electric vehicle adoption, while maximizing the number of vehicles. This should spread only marginally greater fixed costs over substantially more kilowatt-hours, reducing rates for all customers.</p> <p>NRDC has been monitoring efforts by utility regulators across the country to prepare for the widespread adoption of plug-in vehicles. <i>NRDC’s Claims are Reasonable and Conservative</i></p> <p>When staff ‘reviewed’ other staff work, this involved detailed comments, additional language, clarity of position, and effectiveness of recommendations, to ensure that the</p>	<p>With the reductions and adjustments made in this decision, the claim is reasonable.</p>

<p>work product delivered to the Commission was substantive and useful. When we claim two staff for attending the same working group meeting, we do so because each staff member possesses a distinct area of expertise. In particular, having both Mr. Baumhefner (a lawyer) and Mr. Mui (a scientist) actively participate in the EV working group meetings and provide unique comments and direction to the group enables the working group to benefit from a full range of information.</p> <p>The amounts claimed are conservative for the following reasons: (1) None of the hours were claimed from time spent by Senior NRDC staff who consulted regularly on this proceeding, (2) NRDC was careful within our team to assign specific issues to one team member as the lead, (3) NRDC assigned primary writing responsibility to a specific individual, with the other team members providing substantive review (in addition to quality control review), which required further incorporation of additional policy recommendations, new language, and technical expertise, (4) We do not claim Ms. London's hours for attending meetings when another NRDC staff is present, but note her expertise was also valuable in the process, (5) We claim only Mr. Baumhefner's hours for meetings with Commissioners and their advisors, although other staff were often present providing critical input, (6) we do not claim all the hours for informal conversations with CPUC staff or other stakeholders throughout the proceeding, and (7) we do not claim hours for the comments and participation in conversations surrounding the petition for rehearing.</p>	
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### B. Specific Claim:\*

CLAIMED						CPUC AWARD			
ATTORNEY AND ADVOCATE FEES									
Item	Year	Hours	Rate	Basis for Rate*	Total \$	Year	Hours	Rate	Total
Max Baumhefner	2010	158.25	\$175	Res. ALJ-267	\$27,693.75	2010	115.63	\$175	\$20,235.25
Max Baumhefner	2011	77.75	\$185	Res. ALJ-267	\$14,383.75	2011	47.83	\$185	\$8,848.55
<b>Subtotal:</b>					<b>\$42,077.50</b>	<b>Subtotal:</b>			<b>\$29,083.80</b>
EXPERT FEES									
Item	Year	Hours	Rate	Basis for Rate	Total \$	Year	Hours	Rate	Total
Simon Mui	2010	73.00	\$165	D.11-06-013, Res. ALJ-247	\$12,045.00	2010	58.45	\$165	\$9,644.25
Simon Mui	2011	16.50	\$165	See, above; Res. ALJ-267	\$2,722.50	2011	9.50	\$165	\$1,567.50
Jody London	2010	20.00	\$200	D.12-07-016	\$4,000.00	2010	4.86	\$190	\$923.40
Jody London	2011	14.50	\$200	See, above	\$2,900.00	2011	1.43	\$200	\$286.00
<b>Subtotal:</b>					<b>\$21,667.50</b>	<b>Subtotal:</b>			<b>\$12,421.15</b>
INTERVENOR COMPENSATION CLAIM PREPARATION**									

Item	Year	Hours	Rate	Basis for Rate	Total	Year	Hours	Rate	Total
Jody London	2011	1.00	\$100	½ hourly rate	\$100.00	2011	1.00	\$100	\$100.00
Simon Mui	2011	2.00	\$82.50	½ hourly rate	\$165.00	2011	2.00	\$82.50	\$165.00
Max Baumhefner	2011	10.00	\$92.50	½ hourly rate	\$925.00	2011	6.00	\$92.50	\$555.00
<b>Subtotal:</b>					<b>\$1,190.0</b>	<b>Subtotal:</b>			<b>\$820.00</b>
<b>TOTAL REQUEST \$:</b>					<b>\$64,935.00</b>	<b>TOTAL AWARD \$:</b>			<b>\$42,324.95</b>

\* We remind all intervenors that Commission staff may audit their records related to the award and that intervenors must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. Claimant's records should identify specific issues for which it requested 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.

\*\* Reasonable claim preparation time typically compensated at ½ of preparer's normal hourly rate.

### C. Claimant's Additional Comments on Part III:

#### Description/Comment

**Rationale for Jody London's hourly rate.** In D.11-06-13, the Commission approved an hourly rate for Ms. London of \$190 for work performed in Phase One of R.09-08-009 which began in 2009. For Phase Two, which began in 2010 and culminated in 2011, we request a step increase of 5%, bringing Ms. London's rate to \$200.

D.08-08-010 (§ 4.3.3) states that experts with a previously adopted rate qualify for two annual step increases of 5% within any given level of experience. D.11-06-036 granted Ms. London one of the two step increases allowed within each experience band for her work in 2009 and 2010. She could have requested another step increase for her 2010 work in both R.08-08-009 and her work in Phase One of R.09-08-009, but choose not to do so in order to minimize the associated claims. For work performed in Phase Two of R.09-08-009, which spanned 2010 and 2011, NRDC requests Ms. London's second step increase of 5%, resulting in a rate of \$200. This is the rate at which Ms. London bills NRDC.

The Commission's adopted range for experts with more than 13 years of experience is \$155-\$390. Ms. London has well over 20 years' experience in the energy industry and extensive experience before the Commission. Therefore the requested \$200 rate for Ms. London is extremely conservative.

**Rationale for Simon Mui's hourly rates.** In D.11-06-13, the Commission approved an hourly rate for Dr. Mui of \$155 for work performed in Phase One of R.09-08-009 which began in 2009. For Phase Two, which began in 2010 and culminated in 2011, we request a step increase of 5%, bringing Dr. Mui's rate to \$165. D.08-04-010 (§ 4.3.3) states that experts with a previously adopted rate qualify for two annual step increases of 5% within any given level of experience.

Dr. Mui is an expert on clean vehicles and fuels, and has over a decade of relevant experience. His background includes work on energy policy, electric vehicle policy, as well as practical experience developing a lithium ion battery with application in plug-in electric vehicles. Prior to joining NRDC, Dr. Mui worked at the U.S. EPA's

Transportation & Climate Division, where he authored studies on plug-in hybrid electric vehicles and on climate mitigation strategies for the transportation sector. Dr. Mui has also served as a fellow at Harvard’s Kennedy School of Government. Dr. Mui received his M.S. in Technology & Policy and Ph.D. in Materials Engineering from MIT with a focus on electrochemistry and lithium ion batteries. Resolution ALJ-267 approves rates for experts with 7-12 years of experience between \$155 and \$270. Dr. Mui’s requested rate of \$165 falls on the low end of the approved rates.

**Rationale for Max Baumhefner’s hourly rates.** For Mr. Baumhefner, the sole attorney involved in NRDC’s Phase Two efforts, NRDC requests a rate of \$175 in 2010, and step increase of 5% for 2011, resulting in a 2011 rate of \$185. D. 08-04-010 (§ 4.3.3) states that attorneys qualify for two annual step increases of 5% within any given level of experience.

Despite the fact Mr. Baumhefner passed the California Bar Association’s entrance exam in 2009 and was sworn in as a member in 2010, NRDC claimed his time in Phase One, which spanned 2009 and 2010, as an expert, not an attorney. [D.11-06-013 approved Mr. Baumhefner’s non-attorney rate of \$125 for his contributions in Phase One] NRDC chose to claim a non-attorney rate to minimize the total amount of the claim and because Danielle Fugere, a senior attorney from Friends of the Earth, supervised his legal work. In Phase Two, which spanned 2010 and 2011, Mr. Baumhefner was the principal attorney involved in NRDC’s efforts. Accordingly, NRDC requests an attorney rate for his Phase Two work. Mr. Baumhefner consulted with other senior NRDC attorneys with much higher rates.

Mr. Baumhefner received a B.A. from Pomona College in 2001. Mr. Baumhefner gained experience directly applicable to advocacy before the CPUC during his tenure in Commissioner Timothy Simon’s office in 2008. In 2009, he received a J.D. from Boalt Hall at U.C. Berkeley. The Commission’s adopted range for attorneys with 0-2 years of experience is \$150-\$205. Mr. Baumhefner is an attorney with 1-2 years of experience; therefore the requested rates of \$175 and \$185 are authorized by the Commission.

**D. CPUC Comments, Disallowances & Adjustments:**

<p><b>1. Reasonableness Analysis</b></p>	<p>a. The Commission awards reasonable fees and costs, pursuant to § 1803. We find that the costs of NRDC’s participation were unnecessarily excessive.</p> <p>There were other intervenors in this proceeding: The Utility Reform Network (TURN), Green Power Institute (GPI), Consumer Federation of California (CFC), and CARE that received reasonable compensation for their contributions to D.10-07-044 and D.11-07-029. For example, TURN received compensation for 262 hours and GPI – 156 hours, for their respective contributions to D.10-07-044 and D.11-07-029. CFC received compensation for 94 hours for its contributions to D.11-07-029. NRDC has received compensation for 299 hours of work for the contributions to D.10-07-044, and claims now 360 hours for its contributions to D.11-07-029. The total of NRDC’s hours disproportionately exceeds other active participants’ awarded hours taken together. While we have found that NRDC’s comments and role in the workshops and working groups contributed to D.11-07-029, we also find that NRDC fails to justify its excessive hours. We only compensate reasonable hours required to provide NRDC’s contributions.</p>
	<p>b. There were three NRDC’s representatives participating in Phase 2 of the proceeding.</p>

Baumhefner coordinated NRDC's transportation and utility advocacy, and was primarily responsible for drafting comments.<sup>5</sup> His time records also show that he took a lead role in working group activities (prepared agenda, outlined key issue, led working group meetings and e-mailed and called the group members); coordination of work within NRDC; and coordination with other parties. Mui's area of the expertise in this proceeding was transportation and environment, and London's - policy issues.<sup>6</sup>

Our review of the time records raises the following concerns with the work efficiency:

- NRDC representatives worked in practically identical issues areas throughout Phase 2, which led to the unnecessary duplication and inefficient efforts within the team.
- The attorney summarized rulings and comments for the experts. We see no critical need for this task that is closer to being paralegal in nature (we also note that for certain documents, the time spent on the summaries was clearly excessive).<sup>7</sup> We believe that experts give their expert guidance based on their review of the relevant portions of the actual documents, not summaries, especially in the context of this proceeding and the NRDC's role in it.
- The time records reflect an extensive information exchange ("brainstorming", discussions or preparation of the "talking points" for other team members) among NRDC's team members prior to their participation in various events (workshops, meetings with the CPUC staff or other parties, or telephone calls with other parties). This would be more justified if, afterwards, only one representative was delegated to participate in these events. Where meetings or calls were attended by more than one representatives (which was the case, most of the time), we find the time spent on the pre-event activities excessive.
- Incorporating, reviewing and editing each other's comments, and discussing them with the team took more hours than was needed to prepare these documents. We find hours spent on these tasks excessive.
- London's time records reflected, mostly, her reading of the summaries and memoranda prepared by Baumhefner, phone calls and e-mail exchange with the team members, and reviewing and editing comments prepared by Baumhefner and Mui. We find that this level of participation involved excessive hours, considering that one attorney and one expert had already been working on these matters.

To conclude, we find that the internal coordination and duplicative or overlapping tasks performed by the team members went far beyond what would be required for the reasonable internal coordination and information exchange.

<sup>5</sup> The subject claim at 11.

<sup>6</sup> The subject claim at 11.

<sup>7</sup> For example, see, Baumhefner's time records of 11/1/10 or 4/15/11.

	<p>In its past decisions,<sup>8</sup> the Commission brought to NRDC's attention the excessive hours and internal duplication of effort issues, and gave the appropriate warning. Now we reduce hours for the similar deficiencies, as follows:<sup>9</sup> Baumhefner's, Mui's, and London's hours spent on the internal communications<sup>10</sup> by 75%; hours spent performing work for the team members (summarizing, internal memo writing and revising, talking points drafting, etc.)<sup>11</sup> – by 85% for Baumhefner and by 50% for Mui and London; and Baumhefner's, Mui's, and London's hours spent reviewing, editing, integrating each other's comments<sup>12</sup> by 85%. This results in the following hourly reductions: Baumhefner (2010) – 40.37; Baumhefner (2011) – 29.42; Mui (2010) – 12.55; Mui (2011) – 7.00; London (2010) – 14.14; and London (2011) – 12.44.</p>
	<p>c. We find costs of the preparation of the intervenor compensation claim excessive, as weighed against the complexity of the document and fees awarded for the substantive work – especially, the expert fees. We reduce Baumhefner's claim preparation time by 4.00 hours.</p>
<b>2. Non-Compensable Tasks</b>	<p>a. We do not compensate administrative, technical, and clerical tasks, such as formatting, filing and proofreading of the documents, requesting a meeting with the commissioners, etc. We reduce hours spent on these matters, as follows: Baumhefner's 0.25 hour (8/22/10 time records), and London – 1.00 hour (9/20 and 11/12/2010 time records) and 0.63 hour (4/5 and 11/2011 time records). We also note that tasks related to the event organizing, work management (for example, resolving staffing issues), and other matters<sup>13</sup> that do not constitute a professional attorney's or expert's work on the substantive issues of the proceeding are, as such, non-compensable (we have incorporated disallowances of this type in our reductions, in subsection 1, above).</p>
	<p>b. Finally, after cross-referencing with the proceeding's record, we remove excessive hours recorded for participation in the proceeding's events, as follows: Baumhefner and Mui (2010) – 2.00 hours each (September workshops); and Baumhefner (2011) – 0.50 (all-party meeting).</p>
<b>3. Hourly Rates</b>	<p><u>Expert Simon Mui</u>. NRDC requests the rate of \$165 for expert Mui's work in 2010 and 2011. According to the information provided earlier in the proceeding,<sup>14</sup> Mui, before joining NRDC, worked as a consultant for the Center for Technology, Policy, and Industrial Development at the Massachusetts Institute of Technology (2002-2005), where he did research on the history and development of air pollution regulations for mobile sources;</p>

<sup>8</sup> For example, in D.09-05-018 at 15 or D.11-06-013 at 16 – 17.

<sup>9</sup> When one timesheet entry contains descriptions of several distinct tasks, we have estimated the time spent on a single task.

<sup>10</sup> In 2010, Baumhefner spent on these tasks 10.75 hours; Mui – 8.0 hours, London – 7.0 hours; in 2011, Baumhefner spent on these tasks 8.63 hours, Mui – 6.50 hours, and London – 10 hours.

<sup>11</sup> In 2010, Baumhefner spent on these tasks 15.88 hours; Mui – 3.75 hours, London – 3.75 hours; in 2011, Baumhefner spent 12.75 hours, Mui – 4.25 hours, and London – 3.50 hours.

<sup>12</sup> In 2010, Baumhefner on these tasks 22.13 hours, Mui – 5.50 hours, and London – 8.25 hours; in 2011, Baumhefner spent 14.25 hours, and London – 3.75 hours)

<sup>13</sup> See, for example, tasks described in the combined time records of 8/22 and 9/8/10.

<sup>14</sup> See, March 2, 2011 e-mail and the attached resume, in the "Correspondence" file in this proceeding.

	<p>examined environmental statutes, regulations, agency decision-making process, and role of technological innovation; and evaluated the technology-forcing role of the California Zero Emission Vehicle mandates. Mui worked as a senior engineer and policy analyst in the Transportation and Climate Division of the U. S. Environmental Protection Agency (2005-2008), doing analysis of potential measures to reduce greenhouse gas emissions and energy demand in the transportation sector. The requested rate is at the lower end of the CPUC rate range of \$155 - \$270 for experts with 7 to 12 years of the relevant experience.<sup>15</sup> We adopt the rate of \$165, as requested.</p> <p><u>Expert Jody London</u>. NRDC requests the rate of \$200 for London's work in 2010 and 2011. Her previously adopted rates were \$190 for 2010, and \$200 for 2011. These rates already represented the first and second 5% step increases requested then by NRDC,<sup>16</sup> authorized in D.08-04-010. We are not authorized to apply more than two step increases within each experience level. We approve the previously adopted hourly rates to London's work in this proceeding.</p> <p><u>Attorney Max Baumhefner</u>. NRDC requests the rate of \$175 for Baumhefner's work in 2010, and the rate of \$185 for his work in 2011 (with the 5% step increase applied to his 2010 rate). Baumhefner was awarded the rate of \$125 for his legal fellow's work in 2010.<sup>17</sup> In July of 2010, he became a member of the California Bar Association.<sup>18</sup> The CPUC's hourly rate range for attorneys with 0 – 2 years of experience is \$150 – \$205.<sup>19</sup> Based on the leading role Baumhefner had in these proceedings, and the applicable rate range for his level of experience, we approve the requested rate of \$175 for his work in 2010, and of \$185 (applying the first 5% step increase) for his work in 2011.</p>
<p><b>Insufficient Information in Support of the Claim</b></p>	<p>We note several deficiencies of the intervenor compensation claim itself.</p> <ul style="list-style-type: none"> <li>• NRDC fails to allocate its hours by the proceeding's substantive issues, as the Commission requires.<sup>20</sup></li> <li>• Each task in NRDC's time records is identified by more than one issue, with no time allocation for each issue<sup>21</sup> (we have brought this problem to the intervenor's attention in the past<sup>22</sup>).</li> <li>• Inconsistent with the Rule 17.4(b) requirements, time records combine several distinct tasks in one timesheet entry.<sup>23</sup></li> </ul>

<sup>15</sup> See, Resolutions ALJ-247 at 4.

<sup>16</sup> D.11-06-036 at 10 (application of the 1<sup>st</sup> step increase), and D.12-07-016 (application of the 2<sup>nd</sup> step increase).

<sup>17</sup> D.11-06-013 at 15.

<sup>18</sup> See, the State Bar attorney database at <http://members.calbar.ca.gov/fal/MemberSearch/QuickSearch>.

<sup>19</sup> Resolution ALJ-247 at 4.

<sup>20</sup> D.98-04-059 at 47-48.

<sup>21</sup> This practice violates the provisions of Rule 17.4(b).

<sup>22</sup> D.09-05-018 at 7, 14.

<sup>23</sup> See, for example, Baumhefner's time records of August 22, 26, November 1, 2010, etc.

	<ul style="list-style-type: none"> <li>In Part III.B, hours for Mui and London were not broken down by years. We have corrected that deficiency.</li> </ul> <p>We are giving NRDC a warning that the claimed amounts in its future claims will be reduced for these deficiencies. In addition to the provisions of the Public Utilities Code and CPUC Rules of Practice and Procedure, we encourage the intervenor to review the CPUC Intervenor Compensation Program webpage materials, including the Guide, at <a href="http://www.cpuc.ca.gov/PUC/IntervenorCompGuide/">http://www.cpuc.ca.gov/PUC/IntervenorCompGuide/</a> explaining our requirements in more detail.</p>
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#### **PART IV: OPPOSITIONS AND COMMENTS**

<b>A. Opposition: Did any party oppose the claim?</b>	No
<b>B. Comment Period: Was the 30-day comment period waived (see Rule 14.6(c)(6))?</b>	No
<p>This is an intervenor compensation matter. As provided in Rule 14.6(c)(6) of our Rules of Practice and Procedure, we normally waive the otherwise applicable 30-day comment period for this proposed decision. However, because the Commission here is sizably reducing the requested amount, we allowed comments on this proposed decision.</p> <p>No comments were filed.</p>	

#### **FINDINGS OF FACT**

1. Natural Resources Defense Council has made a substantial contribution to D.11-07-029.
2. The claimed fees and costs, as adjusted herein, are comparable to market rates paid to experts and advocates having comparable training and experience and offering similar services.
3. The total of reasonable contribution is \$42,324.95.

#### **CONCLUSION OF LAW**

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

#### **ORDER**

1. Natural Resources Defense Council is awarded \$42,324.95.

2. Within 30 days of the effective date of this decision, Pacific Gas & Electric Company, Southern California Edison Company, San Diego Gas & Electric Company and Southern California Gas Company shall pay Natural Resources Defense Council their respective shares of the award. We direct these utilities to allocate payment responsibility among themselves, based on their California-jurisdictional gas and electric revenues for the 2010 calendar year, to reflect the year in which phase 2 of the proceeding was primarily litigated. 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 December 7, 2011, the 75th day after the filing date of Natural Resources Defense Council's request for compensation, and continuing until full payment is made.
3. The comment period for today's decision was not waived.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.

**APPENDIX****Compensation Decision Summary Information**

<b>Compensation Decision:</b>		<b>Modifies Decision?</b>	<b>No</b>
<b>Contribution Decision:</b>	D1107029		
<b>Proceeding:</b>	R0908009		
<b>Author:</b>	Commissioner Peevey		
<b>Payers:</b>	Pacific Gas and Electric Company, Southern California Edison Company, San Diego Gas & Electric Company, and Southern California Gas Company		

**Intervenor Information**

<b>Intervenor</b>	<b>Claim Date</b>	<b>Amount Requested</b>	<b>Amount Awarded</b>	<b>Multiplier?</b>	<b>Reason Change/Disallowance</b>
Natural Resources Defense Council	9/23/11	\$64,935.00	\$42,324.95	No	Inefficient effort (internal duplication); excessive hours, non-compensable costs, discrepancies as compared to the record.

**Advocate Information**

<b>First Name</b>	<b>Last Name</b>	<b>Type</b>	<b>Intervenor</b>	<b>Hourly Fee Requested</b>	<b>Year Hourly Fee Requested</b>	<b>Hourly Fee Adopted</b>
Max	Baumhefner	Attorney	Natural Resources Defense Council	\$175	2010	\$175
Max	Baumhefner	Attorney	Natural Resources Defense Council	\$185	2011	\$185
Simon	Mui	Expert	Natural Resources Defense Council	\$165	2010	\$165
Simon	Mui	Expert	Natural Resources Defense Council	\$165	2011	\$165
Jody	London	Expert	Natural Resources Defense Council	\$200	2010	\$190
Jody	London	Expert	Natural Resources Defense Council	\$200	2011	\$200

**(END OF APPENDIX)**