

Decision **ALTERNATE PROPOSED DECISION OF COMMISSIONER
 PEEVEY** (Mailed 7/14/2014)

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF
 CALIFORNIA**

Application of San Diego Gas & Electric Company (U 902 E) for Authority to Enter into Purchase Power Tolling Agreements with Escondido Energy Center, Pio Pico Energy Center and Quail Brush Power.

Application 11-05-023
 (Filed May 19, 2011)

**DECISION GRANTING COMPENSATION TO THE NATURAL
 RESOURCES DEFENSE COUNCIL FOR SUBSTANTIAL
 CONTRIBUTION TO DECISION 13-03-029**

Claimant: Natural Resources Defense Council (NRDC)	For contribution to Decision (D.) 13-03-029
Claimed (\$): \$17,774.00	Awarded (\$): \$17,774.00 (0% reduction)
Assigned Commissioner: Michael R. Peevey	Assigned ALJ: Hallie Yacknin

PART I: PROCEDURAL ISSUES

A. Brief Description of Decision:

Decision (D.) 13-03-029 determines a local capacity requirement need and directs San Diego Gas & Electric Company (SDG&E) to procure up to 298 megawatts of local generation capacity beginning in 2018. It grants SDG&E authority to enter into a purchase power tolling agreement with Escondido Energy Center, but denies the purchase power tolling agreements with Pio Pico Energy Center and with Quail Brush Power, without prejudice to a renewed application for their approval if amended to match the timing of the identified need, or upon a different showing of need.

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):	January 31, 2012	Verified
2. Other Specified Date for Notice of Intent (NOI):	n/a	Yes
3. Date NOI Filed:	March 1, 2012	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.) 10-07-007 and A.11-09-016	Verified
6. Date of ALJ ruling:	February 21, 2013	Verified
7. Based on another California Public Utilities Commission (CPUC) determination (specify):	n/a	
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.10-07-007 and A.11-09-016	A.11-05-017
10. Date of ALJ ruling:	February 21, 2013	October 28, 2011
11. Based on another CPUC determination (specify):	n/a	
12. Has the Claimant demonstrated significant financial hardship?		Yes, <i>see</i> comment below
Timely request for compensation (§ 1804(c)):		
13. Identify Final Decision:	D.13-03-029	Verified
14. Date of Issuance of Final Order or Decision:	03/28/2013	Verified
15. File date of compensation request:	05/24/2013	Verified
16. Was the request for compensation timely?		Yes

C. Additional Comments on Part I:

#	Claimant	CPUC	Comments
12		X	<p>NRDC provides a date for its finding of significant financial hardship issued on February 21, 2013 from ALJ Rulings issued in A.10-07-007 and A.11-09-016.</p> <p>Though this finding of significant financial hardship is relatively recent it does not meet the requirement under Pub. Util. Code §1804(b)(1), “which states [a] finding of significant financial hardship shall create a rebuttable presumption of eligibility for compensation in other commission proceedings commencing within one year of the date of that finding.” (<i>Emphasis added</i>). The proceeding, A.11-05-023, was filed on May 19, 2011, over a year prior to the February 21, 2013, finding of significant financial hardship, making the finding insufficient for the period at issue.</p> <p>In NRDC’s NOI it provided a finding of significant financial hardship from A.11-05-017 et al, issued on October 28, 2011. The finding of significant financial hardship in the ruling from A.11-05-017 et al meets the requirements of Pub. Util. Code §1804(b)(1) for NRDC’s significant financial hardship requirement in the current proceeding.</p>

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 Comments
<p>1. <i>Implementing the State's Loading Order for preferred resources (A)</i></p> <p>NRDC advocated throughout the proceeding to ensure that any authorization for long term procurement in the local areas comply with the State’s Loading Order, which requires that all cost-effective EE be procured before any conventional resources. NRDC strongly advocated for compliance with the Loading Order a cornerstone of the proposed authorizations. The Commission agreed, noting its grant of procurement authority must account for EE first, before procuring non-preferred resources.</p>	<p>D.13-03-029, Findings of Fact (FOF) 9: “The California Energy Action Plan established the “loading order” for how new resources are prioritized.”</p> <p>D.13-03-029, at 9: “For the Commission’s purposes, it is appropriate to take into account reasonable forecasts of uncommitted energy efficiency . . . in determining whether to authorize the procurement of additional generation resources. Such action is consistent with the California Energy Action Plan, which established the “loading order” for how new resources are prioritized.”</p> <p>NRDC, Opening Testimony of Sierra Martinez on Behalf of NRDC, (May 18, 2012) at 2: “The loading order established in the Energy Action Plan II correctly identifies energy efficiency as the state’s top priority resource and is the standard against which the Commission should consider the long-term plans.”</p> <p>NRDC, Opening Brief of the Natural Resources Defense Council, (July 13, 2012) at 2: “In order to comply with the State’s loading order, the Commission must include a reasonable estimate of energy efficiency before making a determination of local capacity need.”</p>	<p>Showing accepted.</p> <p>NRDC’s presentation challenged SDG&E’s assumptions regarding uncommitted energy efficiency (EE) and advocated that the assumed amounts of EE should be the standardized planning assumptions from the 2010 Long-Term Procurement Plan (LTPP) Joint Scoping Memo.</p> <p>NRDC’s challenge to the California Independent System Operator’s (CAISO’s) assumption of zero EE substantially contributed to D.13-03-029’s determination to adjust the results</p>

		<p>of the Once-Through Cooling (OTC) study by SDG&E's assumed amounts of these resources.</p>
<p>2. <i>Whether California ISO's model results contain a reasonable amount of energy efficiency (B)</i></p> <p>NRDC advocated that ISO's model results from its 2021 OTC Study omitted substantial amounts of uncommitted EE that was "reasonably expected to occur." NRDC advocated that the CPUC should instead adopt a need determination that did include a reasonable amount of EE. In the final decision, the Commission agreed with this recommendation.</p>	<p>D.13-03-029, FOF 5: "The CAISO's OTC study did not model forecasted additions of uncommitted EE or demand response, or incremental Clean Hydrogen Power (CHP)."</p> <p>NRDC, Opening Brief of the Natural Resources Defense Council, at 3; "CAISO claims a need for new procurement in the San Diego local area based on this 2009 California Energy Commission (CEC) Demand Forecast. However, CAISO omits all uncommitted efficiency, which is unjustifiable."</p> <p>D.13-03-029, at 10: "it is reasonable to subtract conservative forecasts of uncommitted EE and demand response from the OTC study results for purposes of determining the Local Capacity Rules (LCR)."</p> <p>NRDC, Opening Testimony of Sierra Martinez on Behalf of NRDC, at 3-4: "The "uncommitted Demand-Side Management" in the CEC's 2009 Incremental Impacts Report is what the CEC stated should be subtracted from its 2009 base forecast, (which is the base forecast that CAISO used in its assessment of local capacity need)."</p> <p>COL 5: "The CAISO's modeling assumptions, other than with respect to uncommitted EE and demand response and incremental CHP, are reasonable."</p> <p>NRDC, Opening Testimony of Sierra Martinez on Behalf of NRDC, at 4: "CAISO's estimate of zero savings for uncommitted efficiency is both</p>	<p>Showing accepted.</p>

<p>3. <i>Ensuring that authorization in the San Diego local area relies on a reasonable amount of energy efficiency (C)</i></p> <p>NRDC proposed that the CPUC should authorize local capacity resources in the San Diego local area that based on calculations that subtract a reasonable forecast of EE, a position with which the Commission agreed.</p>	<p>unreasonable and factually incorrect.”</p> <p>COL 4: “In the absence of a power flow modeling study that models these resources, it is reasonable to account for conservative but reasonable forecasts of uncommitted EE and demand response and for incremental CHP by subtracting them from the results of the OTC study.”</p> <p>NRDC, Opening Testimony of Sierra Martinez on Behalf of NRDC, at 1: “In order to comply with the State’s loading order, a reasonable estimate of EE must be included before making a determination of local capacity need.”</p> <p>D.13-03-029, at 9: “For the Commission’s purposes, it is appropriate to take into account reasonable forecasts of uncommitted EE and demand response, as well as incremental demand-side CHP, in determining whether to authorize the procurement of additional generation resources. . . . These resources can reasonably be expected to occur as a result of State and Commission policies, and to reduce LCR needs in the San Diego area.”</p> <p>NRDC, Reply Brief of the NRDC, (July 27, 2012) at 4: “Therefore, the Commission should reject CAISO’s argument that the uncertainty over the quantity of future EE savings warrants an omission of all future EE.”</p>	<p>Showing accepted.</p>
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B. Duplication of Effort (§§ 1801.3(f) & 1802.5):

	Claimant	CPUC Verified
<p>a. Was the Office of Ratepayer Advocates (ORA)¹ a party to the proceeding?</p>	<p>Yes</p>	<p>Verified</p>

¹ The Division of Ratepayer Advocates 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 26, 2013.

<p>b. Were there other parties to the proceeding with positions similar to yours?</p>	<p>Yes</p>	<p>Verified</p>
<p>c. If so, provide name of other parties: To some extent; Sierra Club California, Center for Energy Efficiency and Renewable Technologies, California Environmental Justice Alliance, Clean Coalition, and the Vote Solar Initiative.</p>		<p>Verified</p>
<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>NRDC worked with other environmental and consumer stakeholders throughout the proceeding to avoid redundancy, find common ground, and put forth positions that resolved issues before reaching the formal Commission process. This was in accordance with general Commission direction for the parties to work together to advocate as effectively and efficiently as possible in the proceeding. NRDC worked cooperatively with other parties to ensure no duplication in our separate comments and NRDC developed unique recommendations for consideration in the proceeding. In particular, we coordinated with DRA and other environmental organizations to discuss our positions in the proceeding, and to avoid duplicating work. NRDC claims zero hours for work coordinating with other parties and only claims for time writing actual testimony, briefs, and reviewing parties' briefs and testimony.</p> <p>In addition, NRDC's advocacy was spearheaded by Sierra Martinez, with substantial contributions from Devra Wang who provided substantive additions to both written and oral work testimony, briefs, and comments. This enhanced NRDC's contributions and minimized any internal duplication. However, we claim no hours for Ms. Wang's contributions, nor for other staff members who supported Martinez's work throughout this proceeding, even though those hours were substantive.</p>		<p>Verified</p>

PART III: REASONABLENESS OF REQUESTED COMPENSATION

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

<p>a. How the cost of Claimant’s participation bears a reasonable relationship with benefits realized through participation:</p> <p>Throughout the proceeding, NRDC advocated for policies to ensure that the need determinations for the SDG&E local area in this application would rely on an energy forecast that includes a reasonable amount of EE. Including EE assumptions is critical to make a well-informed decision about whether new local resources are needed, and if so, what resources will best meet the Commission’s criteria.</p> <p>NRDC’s participation in these proceedings directly contributed to CPUC decision to rely on uncommitted EE (which describes efficiency that is not yet funded) in the SDG&E local needs assessment. The original proposal from CAISO was to completely omit this efficiency and thus authorize additional conventional power, which would have been more costly and polluting. NRDC provided detailed information about the ability of EE to reduce expected demand and therefore the need for local resources, which the Commission ultimately adopted and will save customers money and reduce pollution.</p> <p>The contribution of NRDC was substantive and required significant staff hours to ensure productive recommendations. NRDC presented unique recommendations to advance customer and environmental interests, which was distinct from other competing proposals in the proceeding. When recommendations overlapped or where there were opportunities for resolving issues prior to formal filings, NRDC worked with other parties as noted above. This ultimately reduced the need for NRDC to respond to these parties in formal comments, reducing the hours (and therefore costs) of participation and thus increasing the benefit to customers. This also ensured a robust record from which the Commission had sufficient information to determine a local needs assessment that included estimated EE to reduce the amount of conventional power being authorized.</p> <p>As shown above, NRDC’s contribution to the record and final decision in this proceeding vastly exceeds the cost of NRDC’s participation.</p>	<p style="text-align: center;">CPUC Verified</p> <hr/> <p>The cost of NRDC’s participation in A.11-05-023 bears a reasonable relationship with the benefits realized in its contribution to D.13-03-029.</p>
<p>b. Reasonableness of Hours Claimed. <i>NRDC’s Claims are Reasonable and Conservative</i></p> <p>Sierra Martinez led NRDC’s efforts in this proceeding, but worked closely with other NRDC staff who consulted regularly on the issues at stake in the proceeding, provided substantive work, technical support, and/or guidance particular to their area of expertise. However, and to be extremely conservative, we claim no hours for staff time other than Martinez.</p>	<p>Verified. NRDC’s hours claimed were reasonable in light of their</p>

<p>The rates requested by NRDC are purposefully conservative and low on the ranges approved by the Commission, even though the levels of expertise of would justify higher rates. NRDC maintained detailed time records indicating the number of hours that were devoted to proceeding activities. All hours represent only substantive work related to this proceeding. No hours were claimed for proof reading, quality checks, or filing of comments.</p> <p>The amounts claimed are further conservative for the following reasons: (1) No time is claimed for internal coordination, only for substantive policy development; (2) although NRDC spent substantial time developing and coordinating positions with other stakeholders, we claim no hours for this coordination over the entire proceeding (only for actual writing of testimony as noted above); (3) we do not claim time for substantive review by other NRDC staff, even though their expertise was critical to ensuring productive recommendations; (4) we do not claim time for regulatory requirements associated with our advocacy (e.g., time spent writing ex parte notices for the proceeding), and (5) no time was claimed for advocacy blogs to influence the outcome of the Commission’s final decision, even though they were used as advocacy similar to comment writing in the formal proceeding.</p> <p>In addition, we do not claim all the time needed to prepare for this claim. We also do not claim for ongoing timekeeping or maintenance related to intervenor compensation, even though it is extremely time consuming.</p> <p>The amount requested preparing this claim is also conservative because NRDC is only claiming time spent by Martinez - who was the main author of the claim - even though others helped compile various sections of the claim. We also use Martinez’s lowest rate (2012) as the basis for the preparation portion of this claim (as identified in Comment 1 below).</p> <p>In sum, NRDC made numerous and significant contributions on behalf of environmental and customer interests, all of which required extensive research, analysis, and development of policy recommendations. As noted above, we took every effort to coordinate with other stakeholders to reduce duplication and increase the overall efficiency of the proceeding. Since our work was efficient, hours extremely conservative, and billing rates judiciously low, NRDC’s request for compensation should be granted in full.</p>	<p>contribution to D.13-03-029.</p>
<p>c. Allocation of Hours by Issue: <i>See Attachment 1</i></p>	<p>NRDC’s allocation of hours in Attachment 1 accurately reflects the work found</p>

	in the submitted timesheet.
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B. Specific Claim:*

CLAIMED						CPUC AWARD		
ATTORNEY, EXPERT, AND ADVOCATE FEES								
Item	Year	Hours	Rate	Basis for Rate*	Total \$	Hours	Rate	Total \$
S. Martinez	2012	74.60	\$215	Comment 2, Res ALJ 267, D0804010.	\$16,039.00	74.60	\$215 ²	\$16,039.00
S. Martinez	2013	4.50	\$290	Comment 2, Res ALJ 267, D0804010.	\$1,305.00	4.50	\$290 ³	\$1,305.00
Subtotal:					\$17,344.00	Subtotal:		\$17,344.00
INTERVENOR COMPENSATION CLAIM PREPARATION **								
Item	Year	Hours	Rate	Basis for Rate*	Total \$	Hours	Rate	Total \$
S. Martinez	2013	4	½ of \$215 (which is 2012 rate)	Res ALJ 287 1/2 of normal rate	\$430	4	\$110	\$430
Subtotal:					\$430	Subtotal:		\$17,774.00
TOTAL REQUEST \$:					\$17,774.00	TOTAL AWARD \$:		\$17,774.00

*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 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

² Adopted in D.13-05-032.

³ The rate reflects the application of the cost of living adjustment (COLA), outlined in Resolution ALJ-287 and a move to a higher experience range.

Attorney	Date Admitted to CA BAR ⁴	Member Number	Actions Affecting Eligibility (Yes/No?) If "Yes", attach explanation
Sierra Martinez	December 4, 2008	260510	No

c. CPUC Disallowances & Adjustments:

#	Reason
2012-2013 Hourly Rate for Sierra Martinez	<p>NRDC requests an hourly rate of \$215 for Sierra Martinez’s 2012 work and \$290 for Martinez’s 2013 work in A.11-05-023. Martinez was previously awarded a 2011 hourly rate of \$200 in D.13-02-013 for work done in Rulemaking 09-11-014. Martinez was a fourth year attorney in 2012.</p> <p>The Commission applies the 2.2% COLA for 2012 pursuant to Resolution ALJ 281 to adopt a 2012 hourly rate of \$215 for Martinez in 2012. For 2013, Martinez moved to the 5-7 years of experience range for attorneys. The Commission adopts a 2013 rate of \$290 for Martinez to reflect movement into the next experience range and application of the 2% COLA pursuant to Resolution ALJ 287.</p>

PART IV: OPPOSITIONS AND COMMENTS

A. Opposition: Did any party oppose the Claim? No

B. Comment Period: Was the 30-day comment period waived (See Rule 14.6(c)(6))? No

No comments were filed.

⁴ This information may be obtained at: <http://www.calbar.ca.gov/>.

FINDINGS OF FACT

1. Natural Resources Defense Council has made a substantial contribution to Decision 13-03-029.
2. The hourly rates for the Natural Resources Defense Council's representative is comparable to market rates paid to experts and advocates having comparable training and experience offering similar services.
3. The total of reasonable compensation is \$17,774.00

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 \$17,774.00.
2. Within 30 days of the effective date of this decision, San Diego Gas and Electric Company shall pay Natural Resources Defense Council (NRDC) the total award. 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 August 07, 2013, the 75th day after the filing of the NRDC's request, and continuing until full payment is made.
3. Application 11-05-023 is closed.

This order is effective today.

Dated _____, at San Francisco, California.

APPENDIX

Compensation Decision Summary Information

Compensation Decision:		Modifies Decision?	No
Contribution Decision(s):	D1303029		
Proceeding(s):	A1105023		
Author:	Commissioner Michael R. Peevey		
Payer(s):	San Diego Gas and Electric Company		

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
Natural Resources Defense Council (NRDC)	5/24/13	\$17,774.00	\$17,774.00	No	N/A

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Sierra	Martinez	Attorney	Natural Resources Defense Council	\$215	2012	\$215
Sierra	Martinez	Attorney	Natural Resources Defense Council	\$290	2013	\$290

(END OF APPENDIX)