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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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| Order Instituting Rulemaking on the Commission's own motion to determine the impact on public benefits associated with the expiration of ratepayer charges pursuant to Public Utilities Code Section 399.8. | Rulemaking 11-10-003 (Filed October 6, 2011) |
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**DECISION GRANTING COMPENSATION TO THE NATURAL RESOURCES DEFENSE
COUNCIL FOR SUBSTANTIAL CONTRIBUTION TO THE
JUDICIAL REVIEW OF DECISIONS 11-12-035 AND 12-05-037,
AS AMENDED BY DECISION 12-07-001**

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| Intervenor: Natural Resources Defense Council (NRDC) | For contribution to the judicial review of Decision (D.) 11-12-035 (Phase 1) and D.12-05-037, as amended by D.12-07-001 (Phase 2) |
| Claimed: \$143,433.60 | Awarded: \$126,224.61 (12% reduction) |
| Assigned Commissioner: Michael R. Peevey | Assigned Administrative Law Judges: David M. Gamson (Phase 1), Julie A. Fitch (Phase 2) |

PART I: PROCEDURAL ISSUES

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| A. Brief description of Decision: | <p>In this claim, NRDC seeks intervenor compensation for its litigation costs in defending the Electric Program Investment Charge (EPIC) in the Court of Appeal. In October 2011, the CPUC initiated Rulemaking 11-10-003 to establish an electricity-related research and development program. The CPUC ultimately issued two orders in the rulemaking, Decision 11-12-035 and Decision 12-05-037 (amended by Decision 12-07-001), which created EPIC.</p> <p>Southern California Edison challenged EPIC in the California Court of Appeal in early 2013. Although Edison filed two petitions, the court consolidated the cases. NRDC, The Vote Solar Initiative, and Union of Concerned Scientists, each of which had been a formal party in the administrative proceeding, appeared in that litigation as real parties in interest to defend EPIC. (<i>See</i> Cal. Rules of Court, rule 8.496(a) [“A real party in interest is one who was a party of record to the [CPUC] proceeding and took a position adverse to the petitioner.”].) All three real parties</p> |
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| | <p>were represented by NRDC attorneys.</p> <p>On May 28, 2014, the court denied Edison’s petitions on all grounds, upholding EPIC in its entirety. The court found that the CPUC had statutory and constitutional authority to adopt EPIC, that EPIC was not a tax, and that the CPUC did not unlawfully delegate authority to the California Energy Commission (CEC). On June 18, 2014, the court published its decision, meaning that the decision can now be cited by other parties and courts in the future.</p> |
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B. Intervenor must satisfy intervenor compensation requirements set forth in Pub. Util. Code §§ 1801-1812:

| | Intervenor | CPUC Verified |
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| Timely filing of notice of intent to claim compensation (NOI) (§ 1804(a)): | | |
| 1. Date of Prehearing Conference (PHC): | October 27, 2011 | Correct |
| 2. Other specified date for NOI: | N/A | |
| 3. Date NOI filed: | November 14, 2011 (original); January 30, 2014 (supplemental) | Correct. See CPUC’s comment I.B.4 in subsection C, below. |
| 4. Was the NOI timely filed? | | See CPUC’s comment I.B.4 in subsection C, below. |
| Showing of customer or customer-related status (§ 1802(b)): | | |
| 5. Based on 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 (specify): | | |
| 8. Has the Intervenor demonstrated customer or customer-related status? | | Yes |

| Showing of “significant financial hardship” (§ 1802(g)): | | |
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| 9. Based on ALJ ruling issued in proceeding number: | A.11-05-017 et al. | Correct |
| 10. Date of ALJ ruling: | October 28, 2011 | Correct |
| 11. Based on another CPUC determination: | N/A | |

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| 12. Has the Intervenor demonstrated significant financial hardship? | Yes | |
| Timely request for compensation (§ 1804(c)): | | |
| 13. Identify Final Decision: | Court of Appeal's order denying petitions | Correct. Opinion of the Court of Appeal of the State of California, Second appellate District, Case B246782 consolidated with B246786 |
| 14. Date of issuance of Final Order or Decision: | May 28, 2014 | Yes |
| 15. File date of compensation request: | July 25, 2014 | Correct |
| 16. Was the request for compensation timely? | Yes | |

C. Additional Comments on Part I:

| # | Intervenor's Comment(s) | CPUC's Comments |
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| I.A | NRDC seeks intervenor compensation for its litigation costs in defending EPIC in the Court of Appeal. A party that intervenes to defend a CPUC decision in court can seek intervenor compensation for the fees and costs it incurs in the litigation. (<i>S. Cal. Edison Co. v. Pub. Utils. Comm'n</i> (2004) 117 Cal.App.4th 1039, 1049-51 [upholding the CPUC's decision to award compensation to a party that intervened on behalf of the CPUC in federal court]; <i>see also</i> CPUC Rules of Practice and Procedure, rule 17.1(f); Pub. Util. Code § 1802(a).) As described in detail below in Part II, NRDC contributed substantially to the defense of EPIC in the Court of Appeal, both by filing briefs and by appearing at oral argument. | |
| I.B.4 | NRDC timely filed the original NOI in this matter on November 14, 2011, which was within 30 days of the CPUC's initiation of Rulemaking 11-10-003. Over the next year and a half, NRDC participated in the rulemaking, submitting numerous comments in support of the program. The CPUC awarded NRDC \$18,205 for its work on the EPIC rulemaking in Decision 13-06-023. Southern California Edison challenged EPIC in the California Court of Appeal in early 2013. NRDC appeared in that litigation as a real party in interest, filing an answer to Edison's petition on July 17, 2013. Under Rule 17.1(f), a party generally must file a supplemental NOI for litigation costs within 30 days after the party first appears in litigation. Once it became aware of Rule 17.1(f), NRDC filed a motion to late-file the supplemental NOI for litigation costs on January 30, 2014. However, the CPUC has yet to rule on NRDC's motion. | NRDC timely established its eligibility to claim intervenor compensation in this proceeding and was awarded the compensation in D.13-06-023. NRDC's motion to late-file its supplemental NOI presents a |

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| | <p>NRDC’s initial NOI satisfied all statutory requirements for intervenor compensation, as there is no statutory requirement that parties file supplemental NOIs to seek litigation costs. (<i>See</i> Pub. Util. Code § 1804(a)(1) [requiring an NOI only after the prehearing conference].) Furthermore, no party opposed the motion to late-file the supplemental NOI. Therefore, NRDC respectfully requests that the CPUC grant its pending motion to late-file the supplemental NOI and deem it filed as of January 30, 2014.</p> | <p>good cause to accept the NOI for filing. The supplemental NOI should be filed as of January 30, 2014.</p> |
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PART II: SUBSTANTIAL CONTRIBUTION

A. Did the Intervenor substantially contribute to the final decision (*see* § 1802(i), § 1803(a), and D.98-04-059)?

| <p>Intervenor’s Claimed Contribution(s)</p> | <p>Specific References to Intervenor’s Claimed Contribution(s)</p> | <p>Showing Accepted by CPUC</p> |
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| <p>Listed below are short descriptions of NRDC’s contribution to the court’s decision upholding EPIC and specific quotations from NRDC’s briefs.</p> | <p>Listed below are specific quotations from the Court of Appeal’s decision upholding EPIC: <i>Southern California Edison Co. v. Public Utilities Commission</i> (2014) 227 Cal.App.4th 172, 173 Cal.Rptr.3d 120, opn. mod. (June 18, 2014) [hereinafter “Court’s Decision”]. Because the opinion has not yet been paginated in the official reporter, citations are to West’s California Reporter (Cal.Rptr.), starting at page 120.</p> | |
| <p>1. NRDC argued that the CPUC had authority to adopt EPIC under section 701 of the Public Utilities Code. The court agreed.</p> <p>“Under section 701, the Commission ‘may supervise and regulate every public utility in the State and may <i>do all things</i>, whether specifically designated in this part <i>or in addition thereto</i>, which are necessary and convenient in the exercise of such power and jurisdiction.’ (§ 701 [italics added].) Because the Commission may ‘do all things’</p> | <p>“[T]he Legislature enacted section 701 which vests the PUC with ‘expansive’ authority . . . to ‘supervise,’ to ‘regulate every public utility,’ and ‘do all things . . . which are necessary and convenient in the exercise of such power and jurisdiction,’ regardless of whether it is specifically designated in the Public Utilities Code ‘or in addition thereto.’”</p> <p>Court’s Decision at 130.</p> <p>“Given the PUC’s vast, inherent power to take any action that is cognate and germane to utility regulation, supervision, and rate setting, unless</p> | <p>Accepted.</p> |

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| <p>designated in the Public Utilities Code or ‘in addition thereto,’ its ‘powers are not limited to those expressly conferred on it.’ . . . Its ‘authority under section 701 has been liberally construed,’ and its actions need only be ‘cognate and germane’ to utility regulation. . . . The Commission correctly determined that its broad authority under 701 allows it to adopt surcharges for electricity-related research and development.” July 17, 2013 Answer of Real Parties in Interest to the Petition for Writ of Review (“NRDC’s Answer”) at 14-15.</p> <p>“Given the Commission’s broad grant of authority, the courts will uphold actions that are cognate and germane to utility regulation unless there is a ‘specific legislative directive’ to the contrary.” NRDC’s Answer at 21.</p> <p>“Moreover, section 701 allows the PUC to ‘do all things’ necessary and convenient to regulating public utilities, a phrase the courts have consistently interpreted to authorize any PUC action that is ‘cognate and germane’ to utility regulation. . . . EPIC is cognate and germane to utility regulation because, over time, it promotes the utilities’ provision of affordable, safe, and reliable electricity service.” November 13, 2013 Supplemental Brief of Real Parties in Interest (“NRDC’s Supp. Brief”) at 4.</p> | <p>specifically barred by statute, there is no question that the PUC has the inherent authority to create EPIC and to impose fees necessary to carry out that program. EPIC directs electric utility corporations to invest in research into, and development of, renewable electric energy sources and technologies designed to lower costs, increase safety, and improve reliability of electricity service for the benefit of these corporations’ own customers, and fixes a surcharge on those same ratepayers to recover the cost.” Court’s Decision at 131.</p> | |
| <p>2. NRDC argued that the Legislature’s failure to extend the Public Goods Charge (section 399.8) had no bearing on EPIC’s legality. The court, citing the same cases, agreed.</p> | <p>“We can discern no particular intent from the Legislature’s failure to enact an extension of subdivision (c) of section 399.8. Courts ‘can rarely determine from the failure of the Legislature to pass a particular bill what the intent of the Legislature is</p> | <p>Accepted.</p> |

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| <p>“There is no such specific legislative directive prohibiting EPIC here. First, the Legislature’s failure to enact a proposed extension of the minimum funding levels in the Public Goods Charge was not a declaration that the Commission lacked authority to adopt EPIC. ‘Unpassed bills, as evidences of legislative intent, have little value.’ (<i>Dyna-Med, Inc. v. Fair Employment & Housing Com.</i> (1987) 43 Cal.3d 1379, 1396 [241 Cal.Rptr. 67, 743 P.2d 1323].) The courts ‘can rarely determine from the failure of the Legislature to pass a particular bill what the intent of the Legislature is with respect to existing law.’ (<i>Ingersoll v. Palmer</i> (1987) 43 Cal.3d 1321, 1349 [241 Cal.Rptr. 42, 743 P.2d 1299].)” NRDC’s Answer at 21.</p> <p>“The expiration of section 399.8(c) did not change the PUC’s preexisting, discretionary authority under sections 701 and 740 to adopt research and development programs for ratepayer benefit. Nor did section 399.8(c)’s expiration show a legislative intention to prohibit any similar programs. There may be many reasons the Legislature failed to pass the bill that would have extended section 399.8(c)’s sunset date. For example, that thirty-page bill would also have created an entirely new Clean Energy Innovation Program, with detailed requirements for spending the funds. (Sen. Bill No. 724 (2011–2012 Reg. Sess.) §§ 1, 3, 7, 10–12.) Legislators may have voted against the bill because they did not like other aspects of that new program, or for many other reasons. That is why ‘[u]npassed bills, as evidences of legislative intent, have little value.’</p> | <p>with respect to existing law.’ (<i>Ingersoll v. Palmer</i> (1987) 43 Cal.3d 1321, 1349, 241 Cal.Rptr. 42, 743 P.2d 1299, fn. omitted; <i>Grupe Development Co. v. Superior Court</i> (1993) 4 Cal.4th 911, 922–923, 16 Cal.Rptr.2d 226, 844 P.2d 545; <i>Dyna–Med, Inc. v. Fair Employment & Housing Com.</i> (1987) 43 Cal.3d 1379, 1396, 241 Cal.Rptr. 67, 743 P.2d 1323 [‘Unpassed bills, as evidences of legislative intent, have little value’].) Without an explicit and clear declaration that it intended to reverse itself on longstanding electric energy policy and directives to the PUC, we decline to infer from the failure to extend funding levels for the Public Goods Charge that the Legislature intended to repeal its repeated declarations of State policy and its directives to the PUC—in multiple parts of the Public Utilities Code—to invest in and develop safe, reliable, renewable energy, RD & D, and the system benefits charge. (§§ 381, 399, 399.8, subd. (a).)” Court’s Decision at 133.</p> <p>“We reject any suggestion by SCE that the failure to extend the funding mechanism in subdivision (c)(1) of section 399.8 functions to bar EPIC. Courts uphold actions cognate and germane to utility regulation ‘absent a <i>specific legislative directive prohibiting the PUC from enforcing conditions it is empowered to impose.</i>’ (<i>PG & E Corp. v. Public Utilities Com., supra</i>, 118 Cal.App.4th at p. 1201, 13 Cal.Rptr.3d 630, italics added.) The mere failure to pass legislation is manifestly not the equivalent of ‘a specific legislative directive prohibiting’ EPIC. (<i>PG & E Corp. v. Public Utilities Com., supra</i>, at p. 1201, 13 Cal.Rptr.3d 630.)” Court’s Decision at 133.</p> | |
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| <p>(<i>Grupe Dev. Co. v. Superior Court</i> (1993) 4 Cal.4th 911, 923 [citation omitted].)” NRDC’s Supp. Brief at 6.</p> | | |
| <p>3. NRDC argued that EPIC is virtually identical to the CPUC program upheld in the <i>Covalt</i> case. The court agreed and cited the pages of the court case and the underlying CPUC decision that NRDC provided in its briefs.</p> <p>“In <i>Covalt, supra</i>, the Commission ordered utilities to collect millions of dollars from ratepayers to fund a statewide educational and research program on electric and magnetic fields that would be administered by the Department Health Services. . . . Even though there was no specific grant of authority for the program or for the charge to fund it, the California Supreme Court determined that the Commission had constitutional and statutory authority, including authority under section 701, to adopt the program. . . . Similarly, here, the Commission’s far-reaching powers under section 701 include the authority to adopt EPIC. Like the surcharge in <i>Covalt</i>, EPIC will be collected from ratepayers to fund a statewide research and education program that will be administered in part by another state agency.” NRDC’s Answer at 15.</p> <p>“Edison also fails to explain why the Commission’s authority to adopt a research program turns on who will administer that program or conduct the research. (See <i>Covalt, supra</i>, 13 Cal.4th at pp. 933-35 [affirming the Commission’s authority to adopt a ratepayer-funded research program</p> | <p>“This is not a novel exercise of PUC authority. In <i>Covalt</i>, the Supreme Court established that section 701 and other statutes empowered the PUC to adopt policies about whether the conduct of electric utilities are a risk to public health; and to order utilities to participate in research into exposure patterns, engineering, and policy options, and to recover the cost of that research from ratepayers. (See <i>Covalt, supra</i>, 13 Cal.4th at pp. 923, 933–935, 55 Cal.Rptr.2d 724, 920 P.2d 669.) SCE’s suggestion that the research in <i>Covalt</i> was to be conducted only by the <i>utilities</i> is unsupported. The PUC in <i>Covalt</i> directed the utility corporations to ‘participate in education and research programs’ and ‘to participate in an experimental research program to be conducted by the federal government.’ (<i>Re Potential Health Effects of Electric and Magnetic Fields of Utility Facilities</i> (1993) 52 Cal.P.U.C.2d 1, 21, 26, & 30, [italics added]; see also <i>Covalt, supra</i>, at pp. 933–934, 55 Cal.Rptr.2d 724, 920 P.2d 669.) Clearly, therefore, EPIC, which directs utility corporations to administer research programs, falls within the PUC’s authority.” Court’s Decision at 136.</p> <p>“SCE contends that the PUC has no authority to establish EPIC to collect revenue from ratepayers <i>on behalf of the CEC or recipients of grants</i>, which are not utilities and which the PUC does not have the jurisdiction to regulate. The assertion is wrong. The programs the Supreme Court</p> | <p>Accepted.</p> |

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| <p>administered by the Department of Health Services].) . . . Edison claims the research in <i>Covalt</i> was conducted ‘by the utilities’ (Petr.’s MPA at p. 28), but there is no support for that claim in the opinion. In fact, the Commission directed the Department of Public Health, as the program manager, to ‘establish a separate account to collect utility funds’ to expend on program research. (D.93-11-013, <i>Re Potential Health Effects of Electric and Magnetic Fields of Utility Facilities</i> (Nov. 2, 1993) 1993 WL 561942 at p. *26; <i>id.</i> at p. *21.)” NRDC’s Answer at 17-18 & footnote 9.</p> <p>“This is <i>exactly</i> the type of charge that the California Supreme Court, in <i>Covalt</i>, held that the PUC had the power to adopt ‘on its own motion.’ (<i>Covalt, supra</i>, 13 Cal.4th at pp. 923, 929, 933-35.) Edison mistakenly tries to distinguish <i>Covalt</i> as involving research conducted by the utilities, but in reality, the PUC had directed the <i>Department of Health Services</i> to administer the program by collecting ratepayer funds from the utilities and spending that money on research. (<i>Id.</i> at p. 933 [stating that the program would be ‘managed by DHS’]; see also D.93-11-013, <i>In re Potential Health Effects of Elec. & Magnetic Fields of Util. Facilities</i> (Cal. P.U.C. Nov. 2, 1993) 1993 WL 561942 at pp. *21 [appointing DHS ‘program manager’ and stating it did not matter whether the research was ‘conducted by the utilities or some other entity’], *26 [directing DHS to ‘collect utility funds’ and ‘use such funds’ for program research].)” NRDC’s Supp. Brief at 4.</p> | <p>recognized in <i>Covalt</i> were administered by the <i>Department of Health Services</i> (DHS) and the federal government. (<i>Covalt, supra</i>, 13 Cal.4th at pp. 926, 933–935, 55 Cal.Rptr.2d 724, 920 P.2d 669; <i>Re Potential Health Effects of Electric and Magnetic Fields of Utility Facilities, supra</i>, 52 Cal.P.U.C.2d at pp. 14, 21 & 26 [‘The research and education programs which we are adopting today will be implemented in large part by the DHS, who we are naming as the research and education program managers’].)” Court’s Decision at 136-37.</p> | |
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| <p>4. NRDC argued that Assembly Bill 1338 does not prohibit EPIC because EPIC is not a research program for climate change. NRDC also pointed out that Edison was incorrectly citing the staff proposal for EPIC rather than the final adopted program. The court agreed.</p> <p>“The Legislature also did not prohibit EPIC when it adopted Assembly Bill (AB) 1338, which barred the Commission from establishing a climate change research institute. In 2008, the Commission created the California Institute for Climate Solutions (the Institute). . . . Shortly thereafter, the Legislature enacted AB 1338, which states, in relevant part: ‘The Public Utilities Commission shall not execute an order, or collect any rate revenues, in Rulemaking 07–09–008 (Order Instituting Rulemaking to establish the California Institute for Climate Solutions), and shall not adopt or execute any similar order or decision establishing a research program for climate change unless expressly authorized to do so by statute.’ . . .</p> <p>EPIC is not a research program for climate change. It is a program to fund electricity-related research and development activities that will provide ratepayer benefits by lowering costs, increasing safety, and promoting reliability of electricity service. . . . While a number of approved research projects may result in technological or process innovations that reduce greenhouse gases, there is no requirement that they have a goal of doing so. . . .</p> <p>Edison cites a portion of the</p> | <p>“A good example of a specific statutory directive <i>prohibiting</i> the PUC’s action is Assembly Bill No. 1338 (2007–2008 Reg. Sess.) chapter 760, section 27. By way of background, in April 2008, the PUC created the California Institute for Climate Solutions (the CICS) and directed the CICS to administer grants for research on reducing greenhouse gases and adapting to climate change. Three months later, the Legislature passed Assembly Bill 1338, section 27, which states: ‘The Public Utilities Commission <i>shall not</i> execute an order, or <i>collect any rate revenues</i>, in Rulemaking 07–09–008 (Order Instituting Rulemaking to establish the California Institute for Climate Solutions), <i>and shall not adopt or execute any similar order or decision establishing a research program for climate change unless expressly authorized to do so by statute.</i>’ (Italics added.) Assembly Bill 1338 specifically prohibits the CICS but does not address EPIC, SCE’s contention notwithstanding. Unlike the CICS, EPIC is not a research program for climate change. It is a program to fund electricity-related research and development activities to benefit the electricity corporations’ ratepayers. That some approved research projects may result in innovations that reduce greenhouse gases, does not transform EPIC into a research program for climate change prohibited by Assembly Bill No. 1338. Accordingly, although it prohibited the CICS, Assembly Bill No. 1338 does not even begin to bar EPIC.” Court’s Decision at 134.</p> <p>“SCE suggests that EPIC is prohibited by Assembly Bill No. 1338 because EPIC is similar to CICS. SCE argues: the PUC ‘expressly stated that activities</p> | <p>Accepted.</p> |
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| <p>Commission’s Phase 2 Decision stating that activities supported by EPIC ‘should’ advance the goals of AB 32 by reducing greenhouse gases. . . . However, that page is a summary of the staff proposal on this issue, which the Commission did not adopt. (Compare A-217 to A-218 [‘supported activities should advance the objectives of AB 32’] with A-224 [the Commission ‘will operate the EPIC program under the mandatory principle of providing electricity ratepayer benefits,’ while other benefits, such as greenhouse gas reductions, are merely ‘components’ of ratepayer benefits].) Although some EPIC research will certainly have beneficial climate change impacts, there is no indication that the Legislature intended AB 1338 to prohibit the Commission from funding research to reduce ratepayer costs simply because it would also have the effect of reducing greenhouse gases.” NRDC’s Answer at 22-24.</p> | <p>supported by EPIC “should advance the objectives of AB 32.” [Citation.] AB 32, the California Global Warming Solutions Act of 2006, was designed to reduce greenhouse gas emissions [citation], and hence EPIC is a “research program for climate change” similar to the CICS.’ But SCE’s quote here is from the staff proposal, which the PUC did not adopt. The PUC decided instead that greenhouse gas reduction merely ‘complements’ the benefits of EPIC. Simply because the reduction in greenhouse gas emissions is a complementary goal does not transform EPIC into a research program for climate change barred by Assembly Bill No. 1338.” Court’s Decision at 134, footnote 11.</p> | |
| <p>5. NRDC argued that section 740 of the Public Utilities Code also authorized EPIC. The court agreed, using language quite similar to that in NRDC’s brief.</p> <p>“Section 740 states that ‘[f]or purposes of setting the rates to be charged by every electrical corporation . . . for the services or commodities furnished by it, the commission may allow the inclusion of expenses for research and development.’ (§ 740.) By adding the EPIC surcharge to ratepayers’ bills, the Commission has included expenses for research and development in the rates charged by</p> | <p>“SCE disputes that section 740 provides PUC authority for EPIC. It reasons that together, sections 740, 740.1 and 740.3 ‘authorize the [PUC] to set rates to reimburse utilities for the costs <i>the utilities</i> incur for RD & D’ because, it argues, section 740.1 concerns ‘<i>programs proposed by electrical and gas corporations.</i>’ Section 740.1 reads, ‘The commission shall consider the following guidelines in evaluating the research, development, and demonstration programs <i>proposed by electrical and gas corporations.</i>’ (Italics added.) Nothing in these statutes limits the PUC to surcharging rates only for RD & D that is proposed by electrical</p> | <p>Accepted.</p> |

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| <p>electrical corporations.</p> <p>Edison argues that section 740 does not mean what it says because another section of the Public Utilities Code, section 740.1, requires the Commission to consider certain guidelines when evaluating the research and development programs ‘proposed by electrical and gas corporations.’ (Petr.’s MPA at pp. 22-23 [citing § 740.1].) Under Edison’s reading, it is entirely up to the utilities whether they propose and conduct research and development activities. But section 740.1 does not say that; it merely provides that <i>if</i> a utility proposes a research and development program, the Commission must consider those guidelines to ensure the program will be efficient and in the ratepayers’ best interests. (See § 740.1, subs. (a)-(d).) That does not mean that <i>all</i> research and development programs funded by rate surcharges must be proposed by utilities. If section 740 allowed only utility-proposed programs, the Legislature would not have needed to specify that section 740.1 applies to programs ‘proposed by electrical and gas corporations.’” NRDC’s Answer at 19.</p> | <p>corporations. Section 740.1 provides simply that <i>if</i> a utility corporation proposes an RD & D project, the PUC must consider the statute’s guidelines in evaluating that program. Nor is section 740 so specific or limited. As noted, section 740 reads, ‘For purposes of setting the rates to be charged by every electrical corporation, gas corporation, heat corporation or telephone corporation for the services or commodities furnished by it, <i>the commission may allow the inclusion of expenses for research and development.</i>’ (Italics added.) Read together, as SCE observes we must do . . . , section 740 authorizes the PUC to allow inclusion of expenses for research and development when setting rates and section 740.1 sets forth the criteria for the PUC to consider when evaluating RD & D proposals <i>made by the utilities</i>. These statutes do not limit the PUC to authorizing charges for utility-proposed RD & D only. Obviously, EPIC does not conflict with section 740; that statute permits the PUC to include RD & D costs in rate setting.” Court’s Decision at 135-36.</p> | |
| <p>6. NRDC argued that the CPUC’s adoption of EPIC constitutes “regulation,” even though it was not traditional ratemaking. The court agreed, referring, as NRDC did in its briefs, to a dictionary definition of the word “regulation.”</p> <p>“Edison, without citation, claims that ‘utility regulation’ means ‘regulation of the operations of the utilities, i.e., how utilities provide service to the</p> | <p>“SCE contends that the PUC lacks authority to establish EPIC because, it reasons, notwithstanding section 701 authorizes the PUC to regulate and supervise utilities, that utility regulation ‘means the regulation of the operation of the utilities,’ which regulation SCE asserts is really only ‘set[ting] rates.’ SCE argues that EPIC is different from traditional regulation because EPIC funds are paid to private parties for RD & D rather than to SCE, and so the</p> | <p>Accepted.</p> |

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| <p>public.’ But even under its own definition, Edison cannot dispute that the Commission regulates utilities when it adopts orders governing the cost, safety, and reliability of utility-provided electricity service. Although EPIC does not directly control the cost, safety, or reliability of electricity service, the Commission’s actions need only be ‘cognate and germane’ to utility regulation. . . . Because EPIC supports research and development activities designed to lower costs, increase safety, and improve reliability of electricity service, it is both cognate and germane to utility regulation.” NRDC’s Answer 15-16.</p> <p>“‘Regulate’ means ‘[t]o control, govern, or direct, esp. by means of regulations or restrictions.’ (Oxford English Dict. Online (3d ed. 2000; Online ed. Mar. 2013) <http://www.oed.com> [as of May 23, 2013].)” NRDC’s Answer at 15, footnote 7.</p> <p>“Edison’s complaint that EPIC does not <i>directly</i> regulate utility service (Supp. Br. at 11) misunderstands the scope of the PUC’s authority. The ‘cognate and germane’ test does not require PUC orders to directly regulate utility service.” NRDC’s Supp. Brief at 4-5.</p> | <p>PUC is not regulating the utility’s operations so much as its ‘billing operations.’ Thus, SCE argues, the EPIC revenues are not being used for purposes related to SCE’s utility operations or expenses.</p> <p>The PUC’s power is not as restricted as SCE paints it. The PUC’s authority extends beyond mere rate-making. . . . To ‘regulate’ means to ‘govern or direct according to rule’ or ‘to bring under the control of law or constituted authority.’ (Webster’s 3d New Internat. Dict. (16th ed. 1971) p. 1913, col. 3.) Regulating is exactly what the PUC is doing by acting pursuant to sections 701, 701.1, 701.3, 399.8 and 740 to implement a program for the research, development, and application of renewable electricity sources and technologies—activities directly related to SCE’s operations—for the benefit of the electricity corporations’ ratepayers and to recover the cost through a rate surcharge on those same ratepayers.” Court’s Decision at 136.</p> | |
| <p>7. NRDC argued that the Legislative Counsel opinion on EPIC is not entitled to deference. The court agreed, citing the same cases NRDC cited in its brief.</p> <p>“Finally, Edison’s reliance on a July 13, 2012, Legislative Counsel letter concerning the Commission’s lack of</p> | <p>“SCE also relies on a Legislative Counsel opinion written in July 2012 determining the PUC did not have the authority to impose EPIC. The opinions of the Legislative Counsel are not binding on this court. (<i>People v. \$31,500 United States Currency</i> (1995) 32 Cal.App.4th 1442, 1461, 38 Cal.Rptr.2d 836.) ‘Opinions of the</p> | <p>Accepted.</p> |

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| <p>authority to adopt EPIC is misplaced. . . . Opinions of the Legislative Counsel have value only because ‘they are prepared to assist the Legislature in its consideration of pending legislation, and it is assumed that the Legislature will take corrective measures if the opinion misstates the legislative intent.’ (<i>People v. \$31,500 U.S. Currency</i> (1995) 32 Cal.App.4th 1442, 1461 [38 Cal.Rptr.2d 836].) Here, the Legislative Counsel prepared this letter in response to the Commission’s Phase 2 Decision, not to assist the Legislature in considering any pending legislation. . . . Because it was not prepared to assist the Legislature in its consideration of pending legislation, the letter is ‘entitled to no more weight than the views of the parties.’ (See <i>St. John’s Well Child & Family Ctr. v. Schwarzenegger</i> (2010) 50 Cal.4th 960, 982 [116 Cal.Rptr.3d 195, 239 P.3d 651].)” NRDC’s Answer at 18.</p> | <p>Legislative Counsel ordinarily are “prepared to assist the Legislature in its consideration of <i>pending</i> legislation” [citation], and therefore such opinions often shed light on legislative intent.’ (<i>St. John’s Well Child & Family Center v. Schwarzenegger</i> (2010) 50 Cal.4th 960, 982, 116 Cal.Rptr.3d 195, 239 P.3d 651, italics added.) However, when the Legislative Counsel’s opinion addresses a matter other than pending legislation, such as when the opinion expresses a view concerning the constitutionality of an action taken by another branch of government, ‘it is entitled to no more weight than the views of the parties.’ (<i>Ibid.</i> [post-enactment opinion by Legislative Counsel that Governor exceeded his authority in vetoing items in bill entitled to ‘no more weight than the views of the parties’].) Here, the opinion SCE cites was written by the Legislative Counsel two weeks <i>after</i> the Legislature endorsed EPIC by creating the EPIC Fund . . . and the opinion discusses a view about the PUC’s authority, not that of the Legislature, to impose EPIC. . . . We give this Legislative Counsel opinion no more weight than the arguments of the parties here and disagree with its conclusions.” Court’s Decision at 137.</p> | |
| <p>8. NRDC argued that the CPUC did not unlawfully delegate authority to the CEC. The court, relying on the same cases, statutes, and facts, agreed.</p> <p>“Like the delegation in <i>Taylor</i>, the Commission’s delegation of EPIC’s administration to the Utilities and the CEC is lawful because the Commission retained its policymaking authority over the</p> | <p>“Nor is SCE's legal argument persuasive. Generally, ‘powers conferred upon public agencies and officers which involve the exercise of judgment or discretion are in the nature of public trusts and cannot be surrendered or delegated to subordinates in the absence of statutory authorization. [Citations.]’ (<i>California Sch. Employees Assn. v. Personnel Commission</i> (1970) 3 Cal.3d 139, 144, 89 Cal.Rptr. 620, 474 P.2d 436.)</p> | <p>Accepted.</p> |

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| <p>program. Every three years, the administrators must submit detailed investment plans to the Commission for approval. . . . These investment plans must set forth, among other things, the amount of funds the administrators will award in specific program areas, the types of funding mechanisms they plan to use, and eligibility criteria for awards. . . . The Commission will then review and, if necessary, modify the plans before adopting them. . . . By ratifying the triennial plans, the Commission retains all policymaking authority over EPIC. (See <i>Cal. School Employees Assn. v. Personnel Com.</i> (1970) 3 Cal.3d 139, 145 [89 Cal.Rptr. 620, 474 P.2d 436] [stating that an agency may exercise its authority by ratifying the decisions it delegates].) In fact, the Commission, after a six-month public process, recently issued a 125-page proposed decision modifying and adopting the administrators’ first triennial investment plans. . . . This was not a ‘total abdication’ of the Commission’s policymaking authority.</p> <p>Furthermore, just as there was no express prohibition against delegation in the city charter in <i>Taylor</i>, nothing in the Public Utilities Code or any other state law prohibits the Commission from delegating administrative authority to the Utilities or the CEC. To the contrary, in 2012, the Legislature adopted SB 1018, which states that the CEC ‘shall administer’ the Electric Program Investment Charge Fund. (Pub. Resources Code, § 25711, subd. (a); <i>id.</i>, § 25104.)</p> | <p>However, an agency’s delegation is lawful if ‘there has been no “total abdication” of ... authority.’ (<i>Taylor v. Crane</i> (1979) 24 Cal.3d 442, 452, 155 Cal.Rptr. 695, 595 P.2d 129.) Thus, ‘public agencies may delegate the performance of ministerial tasks’ (<i>California Sch. Employees Assn. v. Personnel Commission, supra</i>, at pp. 144–145, 89 Cal.Rptr. 620, 474 P.2d 436) while retaining for themselves general policymaking power to determine the terms and conditions. (<i>Taylor v. Crane, supra</i>, at p. 453, 155 Cal.Rptr. 695, 595 P.2d 129.) ‘Moreover, an agency’s subsequent approval or ratification of an act delegated to a subordinate validates the act, which becomes the act of the agency itself. [Citations.]’ (<i>California Sch. Employees Assn. v. Personnel Commission, supra</i>, at p. 145, 89 Cal.Rptr. 620, 474 P.2d 436.)</p> <p>Based on these authorities, the PUC has not unlawfully delegated authority to the CEC. EPIC designates <i>both</i> the CEC <i>and the</i> utilities as administrators of EPIC, while the PUC retains oversight and control of the funding, grants and loans, and policy. Under EPIC, the detailed investment plans of the dual administrators must be approved triennially by the PUC, who may modify the plans if necessary. Those plans must be presented with a ‘high level of detail’ and address specific items of mapping, the amount of funds to be allocated to particular programs, justifications for the allocation proposed, informational summaries, the type of funding mechanism, and eligibility criteria metrics, among other things. Additionally, there will be an ‘independent evaluation of the EPIC</p> | |
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| <p>Edison points out that the administrators may shift up to five percent of the funds between categories during each three-year period. (Petr.’s MPA at pp. 44-45.) The Commission did not relinquish its policymaking authority by allowing the CEC some administrative flexibility to account for real-world uncertainties. The grants and loans from that five percent of funds must still meet the detailed criteria approved by the Commission.” NRDC’s Answer at 36-37.</p> | <p>program to be conducted in 2016.’ The PUC only allows the extension of grants and loans showing the required nexus to program goals. That the CEC may shift up to 5 percent of the funds between <i>categories</i>, as SCE observes, for administrative flexibility undermines neither the CEC’s obligation to use the funds for EPIC purposes nor the PUC’s power to oversee the entire program. Shifted funds remain in EPIC and may only be shifted among pre-approved categories. Nor has SCE pointed to any statute that <i>prohibits</i> the PUC from delegating the day-to-day administration to the CEC. To the contrary, the Legislature has ratified EPIC (Pub. Resources Code, §§ 25710–25711), and specifies that the <i>CEC ‘shall administer’</i> the EPIC Fund (Pub. Resources Code, § 25711, subd. (a), italics added), and directs that the CEC follow very specific criteria in developing and implementing EPIC (Pub. Resources Code § 25711.5). In short, not only has the PUC retained its oversight authority, but its review and approval process functions as a ratification of the administrators’ actions. As a consequence, EPIC does not constitute an unlawful delegation of authority.” Court’s Decision at 138-39.</p> | |
| <p>9. NRDC argued that Proposition 26 does not apply because there had been no change in state statute. The court agreed, citing the same constitutional language and case law.</p> <p>“The problem with Edison’s Proposition 26 argument is simple: Proposition 26 applies only to ‘change[s] in state statute.’ (<i>Id.</i>, § 3, subd. (a).) The Commission’s adoption of EPIC made no change to</p> | <p>“We conclude EPIC is not a tax. Proposition 26 plainly defines a tax as a ‘<i>change in state statute</i> which results in . . . a higher tax’ (Cal. Const., art. XIII A, § 3, subd. (a), italics added), not to a commission’s decision to regulate utility corporations’ RD & D into renewable energy for their own electricity customers and to charge a fee to pay for that activity. (<i>Western States Petroleum Assn. v. Board of Equalization</i> (2013) 57 Cal.4th 401,</p> | <p>Accepted.</p> |

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| <p>any state statute. If the voters had wanted Proposition 26 to apply to charges adopted by state <i>agencies</i>, they would not have provided that the two-thirds vote requirement applies only to changes in ‘state statute’ passed by the ‘Legislature.’ (<i>Ibid.</i>)” NRDC’s Answer at 27.</p> <p>“Edison’s suggestion that Proposition 26 applies to <i>regulations</i> adopted after 2009 (Supp. Br. at 2-3) ignores the plain language of the California Constitution. Article 13A applies, on its face, only to ‘state statute[s].’ . . .</p> <p>The California Supreme Court has recently and squarely rejected Edison’s argument that article 13A applies to regulations. In <i>Western States Petroleum Association (WSPA)</i>, the Board of Equalization adopted a regulation that made petroleum refinery equipment taxable as real property. (<i>WSPA v. Bd. of Equalization</i> (2013) 57 Cal.4th 401, 408.) The court held that article 13A did not apply to the regulation because it applies only to statutes. (<i>Id.</i> at pp. 423-24.) Agencies simply do not exercise ‘taxing power’ for the purposes of article 13A, even when, as in <i>WSPA</i>, their regulations increase tax liability. (<i>Id.</i> at pp. 424, 412-13.) This is so even though an identical enactment by the Legislature would have been a ‘tax’ requiring a two-thirds vote. (See Cal. Const., art. 13A, § 3, subd. (a).)” NRDC’s Supp. Brief at 7-8.</p> | <p>423–424, 159 Cal.Rptr.3d 702, 304 P.3d 188 [Prop. 26 in Cal. Const., art. XIII A, § 3, subd. (a) ‘[b]y its terms ... applies only to a “<i>change in state statute</i> which results in any taxpayer paying a higher tax”’ not to ‘an agency’s decision to modify an administrative rule’ (italics added)].) EPIC was not created by a <i>change in a state statute</i>. To be sure, the Legislature recognized <i>it</i> could only extend the Public Goods Charge in section 399.8, subdivision (c) by a vote of at least two-thirds of both of its houses. But, EPIC is not the Public Goods Charge and not a state statute designed to ‘result in a higher tax.’” Court’s Decision at 141.</p> | |
| <p>10. NRDC, relying on the <i>Evans v. City of San Jose</i> case, argued that EPIC is not a tax because it is designed to benefit energy utility customers, not collect general</p> | <p>“Likewise, EPIC is a regulatory fee and not a tax. The PUC has demonstrated that the fees charged in connection with EPIC do not exceed that necessary to cover the RD & D into renewable</p> | <p>Accepted.</p> |

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| <p>revenue. The court agreed, also citing <i>Evans</i>.</p> <p>“Finally, even if <i>Sinclair Paint</i> were somehow applicable to this case, EPIC is not a tax under that test. EPIC is not levied for ‘unrelated revenue purposes’ and does not ‘exceed the reasonable cost of providing services necessary to the activity for which the fee is charged.’ . . . As explained above, all EPIC funds must be used for the research and development program or its administration. . . . While Edison argues that EPIC does not mitigate any ‘adverse’ effects . . . , <i>Sinclair Paint</i> imposes no such requirement: the charge need only bear ‘a fair or reasonable relationship to the payor’s burdens on <i>or benefits from</i> the regulatory activity.’ . . . Here, EPIC bears a reasonable relationship to the ratepayers’ benefits from the regulatory program because all EPIC research must provide ratepayer benefits.” NRDC’s Answer at 34-35.</p> <p>“In <i>Evans</i>, the city imposed a charge on downtown businesses to provide art and music in the downtown area, to attract more customers. (<i>Evans v. City of San Jose</i> (1992) 3 Cal.App.4th 728, 732.) Even though the charge was not a ‘true regulatory fee’ or a ‘true special assessment’ on real property, the court held it was not a tax because the ‘business license holder is specially benefitted.’ (<i>Id.</i> at p. 739.) The court also held that it did not matter that the ‘public as a whole may be incidentally benefitted’ by the downtown arts.</p> <p>. . . . The point of EPIC is to provide ratepayer benefits: to make utility</p> | <p>energy as the fees mirror the amounts in the Public Goods Charge minus the energy efficiency component Furthermore, the PUC demonstrated that EPIC bears a reasonable relationship to the ratepayers’ benefits because the charge is designed to benefit the utility corporation’s ratepayers only by making their electricity cheaper, safer, and more reliable. . . . Furthermore, the administrative procedure, tightly controlled by the PUC, describes how EPIC’s revenues will be allocated. Thus, the fees charged are directly ‘linked to the activities’ performed under EPIC and the scope of EPIC is related to the ‘<i>overall cost of the governmental regulation.</i>’</p> <p>SCE argues that EPIC is intended to benefit more than its ratepayers and asserts the PUC has declared that the program addresses statewide energy policy and social objectives. However, the possibility that some EPIC research may incidentally provide a social benefit to the public at large does not transform EPIC into a tax where a discrete group, namely the utility corporations’ ratepayers, is specifically benefitted. (<i>Evans v. City of San Jose, supra</i>, 3 Cal.App.4th at pp. 738–739, 4 Cal.Rptr.2d 601.) Permissible fees ‘need not be finely calibrated to the precise benefit each individual fee payor might derive. What a fee cannot do is exceed the reasonable cost of regulation with the generated surplus used for general revenue collection. An excessive fee that is used to generate general revenue becomes a tax.’ The policy SCE cites is simply the impetus for EPIC, while the EPIC charge is designed to specifically benefit a discrete group by reducing the</p> | |
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| <p>service cheaper, safer, and more reliable for ratepayers. . . . According to the evidence before the PUC . . . , these benefits are not speculative—certainly no more so than the benefits to businesses in <i>Evans</i> of funding downtown events in the hopes of attracting customers. The PUC acknowledged that some EPIC research may incidentally benefit the public . . . , but under <i>Evans</i>, that does not make EPIC a tax. . . .</p> <p>Contrary to Edison’s claim, EPIC does not generate ‘general revenue.’ . . . With the exception of administrative funds, which Edison acknowledges are not taxes, . . . <i>all</i> EPIC funds will be spent on research and development for ratepayer benefit. . . . Of course, ‘<i>all</i> regulatory fees are necessarily aimed at raising “revenue” to defray the cost of the regulatory program in question, but that fact does not automatically render those fees “taxes.”’ The relevant question is whether the charge raises money for ‘<i>unrelated</i> revenue purposes.’” NRDC’s Supp. Brief at 9-10.</p> <p>“EPIC provides specific benefits to the ratepayers of investor-owned utilities—a discrete group—so it is not a tax under the general definition used in <i>Evans v. City of San Jose</i> (1992) 3 Cal.App.4th 728 To be sure, the PUC acknowledged that EPIC would provide ‘complementary’ societal benefits, including reductions in greenhouse gases. . . . But incidental public benefits do not transform EPIC into a tax. There were surely immense benefits to the public from the downtown arts districts in <i>Evans</i> and</p> | <p>electricity costs borne solely by the utility corporations’ own ratepayers.</p> <p>Not only is the charge linked to the cost of the activity, but EPIC is not imposed to generate general revenue. . . . SCE’s contention is thus unavailing that there is no assurance that EPIC funds will be used solely to support RD & D with the result EPIC is a tax. EPIC funds are to be used for grants or loans for renewable electricity-related research and development and administration of such grants or loans for the ratepayers’ benefit. . . . EPIC revenues are not to be used for any purposes associated with publicly-owned utilities. The EPIC money is to be placed in the legislatively-created EPIC Fund for Epic-related purposes. . . . Accordingly, as EPIC is a regulatory fee, with the result it is not a tax.” Court’s Decision at 142-43.</p> | |
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| <p><i>Howard Jarvis</i>. Yet the courts in those cases found that the charges used to fund those arts were not taxes because they were designed to benefit the downtown business fee payers, not the public. . . . Here, the ratepayers will receive a special benefit—reductions in rates and improved service—over and above any benefits received by the general public.” December 5, 2013 Supplemental Sur-reply Brief of Real Parties in Interest (“NRDC’s Sur-reply”) at 2.</p> | | |
| <p>11. NRDC, relying on <i>In re Attorney Discipline System</i> and <i>Tomra Pacific</i>, argued that EPIC does not violate the separation of powers clause because the CPUC did not usurp the Legislature’s authority. The court agreed.</p> <p>“Edison fails to explain how the Commission’s adoption of EPIC exercised the Legislature’s <i>complete</i> taxing authority or otherwise usurped that authority. In a similar case, the California Supreme Court determined that the State Bar’s imposition of bar membership fees did not usurp the Legislature’s taxing authority, even though the Legislature had traditionally set bar dues. (<i>In re Attorney Discipline Sys., supra</i>, 19 Cal.4th at pp. 590, 596-97.) The court reasoned that the fees were not ‘taxes’ as that term is generally understood because they were not imposed for general revenue purposes and the amount collected would not exceed the reasonable costs of the attorney discipline system. . . .</p> <p>Similarly, here, the Commission’s adoption of EPIC did not violate the</p> | <p>“Likewise here, the PUC, a constitutional body with broad legislative and judicial powers, has not usurped the Legislature's authority over appropriations and taxation. As explained, EPIC <i>is not a tax or an appropriation</i>, but a proper regulatory fee that falls squarely within the PUC’s power. (<i>In re Attorney Discipline System, supra</i>, 19 Cal.4th at p. 595, 79 Cal.Rptr.2d 836, 967 P.2d 49; <i>Sinclair Paint, supra</i>, 15 Cal.4th at p. 876, 64 Cal.Rptr.2d 447, 937 P.2d 1350.) As analyzed above, the PUC has inherent authority and ‘plenary power’ to regulate and supervise electric corporations and to set electricity rates and assess various surcharges to fund research and development into renewable energy technology. (Cal. Const., art. XII, §§ 5 & 6.) Thus, the PUC is not exercising an ‘exclusive legislative function or usurping any legislative power’ by imposing regulatory fees to pay for this activity. (<i>In re Attorney Discipline System, supra</i>, at pp. 601–603, 79 Cal.Rptr.2d 836, 967 P.2d 49.)” Court’s Decision at 144-45.</p> <p>“In any event, at least one court has</p> | <p>Accepted.</p> |

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| <p>separation of powers clause by infringing on the Legislature’s taxing authority. Like the State Bar fees in <i>In re Attorney Discipline System</i>, EPIC was not imposed for general revenue purposes and will not become part of the state’s general fund. . . . Nor does EPIC exceed the reasonable cost of the regulatory program—all of the EPIC funds will go toward grants or loans for electricity-related research and development or to the reasonable costs of administering those grants and loans. . . .</p> <p>Edison claims the possibility that the Legislature could ‘raid’ EPIC funds for general revenue purposes shows that EPIC is a tax. (Petr.’s MPA at p. 33.) The courts have rejected that argument. (See <i>Tomra Pacific, Inc. v. Chiang</i> (2011) 199 Cal.App.4th 463, 486-88 [131 Cal.Rptr.3d 743] [‘Regulatory fees paid into the Recycling Fund were not converted into taxes when the Recycling Fund made loans to the General Fund.’].)” NRDC’s Answer at 29-30 & footnote 10.</p> | <p>rejected the argument that a regulatory fee is converted into taxes when revenue from the regulatory fee was loaned to the General Fund. (<i>Tomra Pacific, Inc. v. Chiang</i> (2011) 199 Cal.App.4th 463, 486–489, 131 Cal.Rptr.3d 743.)” Court’s Decision at 143, footnote 20.</p> | |
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B. Duplication of Effort (§ 1801.3(f) and § 1802.5):

| | Intervenor’s Assertion | CPUC Verified |
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| a. Was the Office of Ratepayer Advocates (ORA) a party to the proceeding? ¹ | No | Correct |
| b. Were there other parties to the proceeding with positions similar to yours? | Yes | Correct |
| c. If so, provide name of other parties: The CPUC was a respondent in the litigation, and the CEC was amicus curiae. | | Correct |

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: public resources), which was approved by the Governor on September 26, 2013.

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| <p>d. Intervenor’s claim of non-duplication: NRDC and the other real parties in interest represented by NRDC attorneys were the only defending parties that were not government agencies. Thus, there was no duplication of effort with other non-governmental organizations. NRDC provided the court with a unique perspective that could not be duplicated by the CPUC or amicus CEC. (<i>See S. Cal. Edison Co. v. Pub. Utils. Comm’n, supra</i>, 117 Cal.App.4th 1039, 1052 [“[I]n enacting the Intervenor Compensation Provisions, the Legislature recognized the importance of obtaining a customer perspective on matters before the PUC. For the very same reason, it is important that the customer perspective be fully represented when a matter shifts to a judicial forum.”].)</p> <p>NRDC also coordinated with the CPUC and CEC to avoid unnecessary duplication while drafting the briefs. Similarly, at oral argument, each party (NRDC, CEC, and CPUC) covered separate issues.</p> <p>Importantly, NRDC made a number of arguments that the agencies did not. In upholding EPIC, the court relied on authorities and facts cited only by NRDC. For example:</p> <ul style="list-style-type: none"> • The first paragraph of the court’s order describes EPIC as a surcharge designed to make electricity service “cheaper, safer, and more reliable” for the ratepayers of the investor-owned utilities. (<i>See Court’s Decision at 125.</i>) This language was taken directly from NRDC’s briefs. (<i>See NRDC’s Answer at 1, 16; NRDC Supplemental Brief at 1, 3, 9; see also NRDC Sur-reply at 1 [using similar language].</i>) The court used this concept throughout the opinion. (<i>See Court’s Decision at 126, 127, 128, 131, 132, 133, 135, 137, 142.</i>) • NRDC cited the underlying CPUC decision in <i>Covalt</i> (D.93-11-013) to successfully rebut Edison’s argument that the <i>Covalt</i> program was materially different from EPIC. Edison claimed that the CPUC administered the <i>Covalt</i> program and that the utilities carried out the research themselves. NRDC provided citations to the CPUC decision in <i>Covalt</i> (as well as specific citations to the court’s decision) to show that, in fact, the Department of Health Services administered the program and that the research was not conducted solely by the utilities. The court relied on those citations to rule that the <i>Covalt</i> program was, in all relevant respects, similar to EPIC, and thus legal. (<i>See #3 above.</i>) • NRDC pointed out that Edison repeatedly cited the CPUC’s summary of the staff proposal rather than the program itself in claiming that EPIC was a tax to provide societal benefits and a “research program for climate change,” rather than a program designed to provide ratepayer benefits. The court held that the program the CPUC actually adopted was not a research program for climate change or a program to provide societal, as | <p>Verified and confirmed.</p> |
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| <p>opposed to ratepayer, benefits. (See #4 and #10 above.)</p> <ul style="list-style-type: none"> • The court adopted NRDC’s specific argument for why section 740.1 of the Public Utilities Code, when read together with section 740, does not bar EPIC. NRDC argued that section 740.1 does not limit research and development programs to those proposed by utility companies; it simply provides that <i>if</i> a utility corporation proposes a research and development program, the CPUC must consider the statute’s guidelines in evaluating that program. The court adopted this reasoning, using similar language. (See #5 above.) • NRDC cited to the dictionary definition of “regulate” to argue that EPIC constituted regulation of the utilities. The court agreed and used a similar dictionary definition to support its conclusion. (See #6 above.) • NRDC cited <i>Western States Petroleum Association v. Board of Equalization</i> (2013) 57 Cal.4th 401 (<i>WSPA</i>) for the proposition that article 13A (Propositions 13 and 26) does not apply to regulations because it applies only when there is a change in state statute. The court agreed and cited <i>WSPA</i>. (See #9 above.) • NRDC, citing <i>Evans v. City of San Jose</i> (1992) 3 Cal.App.4th 728, argued that EPIC is not a tax because it provides benefits to ratepayers by making electricity service cheaper, safer, and more reliable. The court relied on <i>Evans</i> in holding that EPIC was not a tax. (See #10 above.) • NRDC cited <i>Tomra Pacific, Inc. v. Chiang</i> (2011) 199 Cal.App.4th 463 for the proposition that a regulatory fee is not transformed into a tax when revenue from the regulatory fee is loaned to the General Fund. The court cited <i>Tomra</i> with approval. (See #11 above.) | |
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C. Additional Comments on Part II:

| # | Intervenor’s Comment |
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| II.A, II.B | <p>To obtain intervenor compensation for litigation costs, NRDC need not show that its litigation efforts made a “substantial contribution” to the CPUC order, which, of course, pre-dated the litigation: “[O]nce a customer makes such a contribution to a PUC proceeding, that customer may obtain compensation for the fees and costs of obtaining judicial review, regardless whether that judicial review work made a substantial contribution to the PUC proceeding.” <i>S. Cal. Edison Co. v. Pub. Utils. Comm’n, supra</i>, 117 Cal.App.4th 1039, 1052-53. (“Obtaining judicial review” includes defending a CPUC order in court. (<i>Id.</i> at 1050-51.)) The relevant consideration is whether the party has assisted the CPUC in carrying out its statutory mandate.</p> |

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| | <p>NRDC has shown in Part II.A that it contributed substantially to the court’s decision upholding EPIC, and thus has assisted the CPUC in carrying out its statutory mandate. It is clear from the opinion that the court relied on NRDC’s briefs and oral argument in its decision-making process. NRDC has also shown in Part II.B that it did not unnecessarily duplicate the efforts of the CPUC and CEC.</p> <p>By contributing to the defense of EPIC in the Court of Appeal, NRDC has made a substantial contribution to conserving the CPUC’s resources. Had Edison prevailed, EPIC might have been significantly altered or dismantled, and the CPUC might have needed to open a new proceeding to address the court’s opinion. Therefore, by helping to protect the program, NRDC saved staff and stakeholder time and expense.</p> |
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PART III: REASONABLENESS OF REQUESTED COMPENSATION

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

| | CPUC Verified |
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| <p>a. Intervenor’s claim of cost reasonableness:</p> <p>The CPUC previously found that NRDC had contributed substantially to the administrative decisions establishing EPIC (D.11-12-035 (Phase 1) and D.12-05-037, as amended by D.12-07-001 (Phase 2)). In particular, the CPUC found that the cost of NRDC’s participation bore a reasonable relationship to the benefits realized through that participation. <i>See</i> Part III.A of D.13-06-023 (June 27, 2013).</p> <p>Likewise, the cost of NRDC’s participation in the litigation to defend EPIC is reasonable in light of the result. As described in Part II above, NRDC’s participation was crucial to the court’s decision to uphold EPIC. EPIC will provide up to \$162 million per year for electricity-related research and development. As the CPUC itself found in the Phase 2 Decision, there will be positive rate of return to customers from this research and development funding, meaning that the benefits to customers will actually far exceed \$162 million per year. Accordingly, the benefit to customers vastly exceeds the costs of NRDC’s participation in the litigation.</p> | <p>With reductions applied in this decision, the intervenor’s assessment is accepted.</p> |
| <p>b. Reasonableness of hours claimed:</p> <p>Given the complex and important nature of this litigation in front of the Court of Appeal, the overall time spent by NRDC on this matter is reasonable. Lasting over a year and four months, this case involved multiple rounds of briefing and an oral argument in Los Angeles. There were nearly 90 docket entries in this case, each of which required attention by NRDC attorneys.</p> <p>Because litigation is so time consuming, attorney fee awards for cases in</p> | <p>With reductions applied in this decision, the intervenor’s assessment is accepted.</p> |

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| <p>the Court of Appeal often exceed the amount requested by NRDC here. (<i>See, e.g., Building a Better Redondo, Inc. v. City of Redondo Beach</i> (2012) 203 Cal.App.4th 852, 873 [affirming an award of \$313,000 in attorney fees in a case decided two months after the petition was filed].) Indeed, because the court took the unusual step of requesting supplemental briefing after oral argument, this case required more resources than a typical Court of Appeal case. Furthermore, in the past, the CPUC has awarded far more than what NRDC seeks here as intervenor compensation for litigation work. (<i>See S. Cal. Edison Co. v. Pub. Utils. Comm'n, supra</i>, 117 Cal.App.4th 1039, 1046, 1054 [awarding \$256,000 to an intervenor for litigation costs].)</p> <p>NRDC maintained detailed time records indicating the number of hours that were devoted to litigation activities. All hours represent substantive work related to this litigation. When staff “reviewed” or “edited” other staff work, this involved providing substantive comments that added significant value to the end product. No time was claimed for copy editing, filing, or other administrative work.</p> <p>The amounts claimed by NRDC are further conservative for the following reasons: (1) NRDC exercised billing judgment by reducing the hours billed for certain tasks (for example, NRDC did not include the time spent supervising filing/service or the time spent recovering court costs); (2) whenever possible, tasks were delegated to attorneys with lower billing rates, (3) NRDC has not requested compensation for time spent by other NRDC staff (Peter Miller, Lara Ettenson, and Ralph Cavanagh) who consulted on this proceeding, and (4) NRDC has not requested compensation for the significant amount of time spent on this case by legal interns and paralegals.</p> <p>Furthermore, NRDC has significantly reduced the number of hours claimed for preparing this request for compensation, which required a detailed review of the voluminous filings in the Court of Appeal. NRDC also has not included any time spent preparing the motion to late-file the supplemental NOI.</p> <p>In sum, NRDC made numerous and significant contributions on behalf of environmental and customer interests, all of which required extensive research and analysis. We took every effort to coordinate with other parties to reduce duplication and increase overall efficiency. Since our work was efficient, hours extremely conservative, and billing rates low, NRDC’s request for compensation should be granted in full.</p> | |
| <p>c. Allocation of hours by issue: The issue raised by Edison in this litigation was whether the CPUC lawfully adopted EPIC. However, there were three major sub-issues raised</p> | |

| | |
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| <p>by Edison in its petition: (1) whether the CPUC had constitutional and statutory authority to adopt EPIC, (2) whether EPIC was an unlawful tax and violated the separation of powers clause, and (3) whether the CPUC improperly delegated authority to the CEC. Although there was considerable overlap in these issues as a legal matter, NRDC has attempted to allocated time by sub-issue in its timesheets. Time spent on general issues (e.g., legal research about writ proceedings and the standard of review, drafting filings that were procedural in nature, meetings on overall litigation strategy, review of entire documents, etc.), as well as time that could not reasonably be allocated to just one issue because of the overlapping nature of the claims, is listed under “general.”</p> <p>Overall, NRDC attorneys spent 14.9, 30.0, and 6.8 percent of their time on issues 1, 2, and 3, respectively. The remainder of the time was spent on general issues, or, as described above, issues that could not be separated because of the overlapping nature of the legal theories.</p> | |
|--|--|

B. Specific Claim:*

| CLAIMED | | | | | | CPUC AWARD | | |
|-------------------------------------|------|--------|---------|--|-----------|--------------------------------|----------|-------------|
| ATTORNEY, EXPERT, AND ADVOCATE FEES | | | | | | | | |
| Item | Year | Hours | Rate \$ | Basis for Rate* | Total \$ | Hours | Rate \$ | Total \$ |
| Jaclyn Prange, attorney | 2013 | 210.70 | 245 | Res ALJ-287; <i>see</i> comment 1 | 51,621.50 | 210.70 | \$235.00 | \$49,514.50 |
| Jaclyn Prange, attorney | 2013 | 196.10 | 245 | Res ALJ-287; <i>see</i> comment 1 | 48,044.50 | 196.10 | \$245.00 | \$48,044.50 |
| Noah Long, attorney | 2013 | 17.6 | 290 | D.13-06-023 and Res ALJ- 287; <i>see</i> comment 2 | 5,104 | 17.6 | \$290.00 | \$5,104.00 |
| Michael Wall, attorney | 2013 | 42.9 | 555 | Res ALJ-287; <i>see</i> comment 3 | 23,809.5 | 36.60 | \$490.00 | \$17,934.00 |
| Jaclyn Prange, attorney | 2014 | 9.2 | 290 | Res ALJ-287; <i>see</i> comment 1 | 2,668 | 3.30 | \$245.00 | \$808.50 |
| Noah Long, attorney | 2014 | 1.5 | 305 | D.13-06-023 and Res ALJ- 287; <i>see</i> comment 2 | 457.5 | 0.00 | N/A | \$0.00 |
| Michael Wall, attorney | 2014 | 2.6 | 555 | Res ALJ-287; <i>see</i> comment 3 | 1,443 | 0.00 | N/A | \$0.00 |
| Subtotal: \$ 133,148 | | | | | | Subtotal: \$ 121,405.50 | | |

| CLAIMED | | | | | | CPUC AWARD | | |
|-------------------------------------|------|-------|---------|----------------------------------|----------|-----------------------------|----------|------------|
| ATTORNEY, EXPERT, AND ADVOCATE FEES | | | | | | | | |
| OTHER FEES | | | | | | | | |
| Item | Year | Hours | Rate \$ | Basis for Rate* | Total \$ | Hours | Rate | Total \$ |
| Jaclyn Prange (travel) | 2013 | 8.5 | 122.50 | Half of 2013 rate (245/2=122.50) | 1,041.25 | 8.5 | \$122.50 | \$1,041.25 |
| Michael Wall (travel) | 2013 | 10.5 | 277.50 | Half of 2013 rate (555/2=277.50) | 2,913.75 | 0.00 | N/A | \$0.00 |
| Subtotal: \$3,955 | | | | | | Subtotal: \$1,041.25 | | |

| INTERVENOR COMPENSATION CLAIM PREPARATION ** | | | | | | | | |
|--|------|-------|---------|----------------------------------|----------|-----------------------------|----------|------------|
| Item | Year | Hours | Rate \$ | Basis for Rate* | Total \$ | Hours | Rate | Total \$ |
| Jaclyn Prange | 2013 | 3.7 | 122.50 | Half of 2013 rate (245/2=122.50) | 453.3 | 1.90 | \$122.50 | \$232.75 |
| Noah Long | 2013 | 0.5 | 145 | Half of 2013 rate (290/2=145) | 72.5 | 0.00 | \$145.00 | \$0.00 |
| Jaclyn Prange | 2014 | 22.7 | 145 | Half of 2014 rate (290/2=145) | 3,291.5 | 12.60 | \$122.50 | \$1,543.50 |
| Noah Long | 2014 | 2 | 152.50 | Half of 2014 rate (305/2=152.50) | 305 | 1.00 | \$152.50 | \$152.50 |
| Subtotal: \$4,122.25 | | | | | | Subtotal: \$1,928.75 | | |

| COSTS | | | | |
|-------|------------------------------|--|--------|----------|
| # | Item | Detail | Amount | Amount |
| 1 | Legislative history research | Actual amount billed for legislative history research conducted by firm specializing in California legislative history | 596.50 | \$565.50 |
| 2 | Travel | Airfare (SFO-LAX-SFO) for hearing (Jaclyn Prange) | 157.80 | \$157.80 |
| 3 | Travel | Cab to court in Los Angeles (Jaclyn Prange) | 29.81 | \$29.81 |
| 4 | Recording | Recording of oral argument | 40 | \$0.00 |
| 5 | Travel | Airfare (SFO-LAX-SFO) for hearing (Michael Wall) | 214.90 | \$0.00 |
| 6 | Travel | Cab to court from LAX (Michael Wall) | 64.34 | \$0.00 |
| 7 | Travel | Marin Airporter to SFO (Michael Wall) | 20 | \$0.00 |
| 8 | Travel | Marin Airporter from SFO (Michael Wall) | 20 | \$0.00 |
| 9 | Travel | Cab to LAX from court (Jaclyn Prange, Michael Wall) | 55 | \$55.00 |

PROPOSED DECISION

| 10 | Legislative history research | Actual amount billed for legislative history research conducted by firm specializing in California legislative history | 1,010 | \$1,010.00 |
|---|--------------------------------------|--|---|----------------------------------|
| Subtotal: \$2,208.35 | | | | Subtotal: \$1,849.11 |
| TOTAL REQUEST: \$143,433.60 | | | | TOTAL AWARD: \$126,224.61 |
| <p>*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. Intervenor'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.</p> <p>**Travel and Reasonable Claim preparation time typically compensated at ½ of preparer's normal hourly rate</p> | | | | |
| ATTORNEY INFORMATION | | | | |
| Attorney | Date Admitted to CA BAR ² | Member Number | Actions Affecting Eligibility (Yes/No?) If "Yes", attach explanation | |
| Jaclyn Prange | August 2010 | 270929 | No | |
| Noah Long | March 2009 | 262571 | No | |
| Michael Wall | June 1994 | 170238 | No | |

C. Intervenor's Additional Comments on Part III:

| # | Comment |
|---|--|
| 1 | <p>Jaclyn Prange is an attorney for NRDC and was lead counsel for this matter. She graduated from UCLA School of Law in 2009, where she was elected to the Order of the Coif (top 10% of graduating class). She also holds an MPH in Environmental Health Sciences from UCLA School of Public Health and a BS from University of Oregon. After law school, she clerked for a federal judge on the U.S. District Court for the Central District of California. (Although Ms. Prange passed the California Bar in 2009, she did not apply for admission until 2010 because she did not need to be admitted to serve as a judicial clerk.) She also worked at Shute, Mihaly & Weinberger, a boutique law firm specializing in land use and environmental law, before joining NRDC. Because Ms. Prange had four years of litigation experience in 2013, we request a rate of \$245, which is at the high end of the Res ALJ-287 range for attorneys with 3-4 years of experience (\$210-245). Similarly, because Ms. Prange has now moved into the 5-7 year range in 2014, we request a rate of \$290 for 2014, which is at the low end of the Res ALJ-287 range for attorneys with 5-7 years of experience (\$290-310). Intervenor can qualify for a rate increase when "moving to a higher experience level: where additional experience since the last authorized rate moved a representative to a higher level of experience." (D.08-04-010 at 8.)</p> |
| 2 | Noah Long is an attorney for NRDC. He holds a JD from Stanford University Law School (2008), an MS from the London School of Economics, and a BA from Bowdoin College. |

² This information may be obtained through the State Bar of California's website at <http://members.calbar.ca.gov/fal/MemberSearch/QuickSearch>.

| | |
|---|---|
| | <p>He has also worked in energy policy for more than eight years. Mr. Long was previously awarded intervenor compensation in Decision 13-06-023 at the hourly rate of \$200 for work done in 2011 when he had three years of experience, and \$215 for work done in 2012 when he had four years of experience. (D.13-06-023 at 27.) Since Mr. Long had five years of experience in 2013, we request a rate of \$290 for his work in 2013. Intervenors can qualify for a rate increase when “moving to a higher experience level: where additional experience since the last authorized rate moved a representative to a higher level of experience.” (D.08-04-010 at 8.) This rate is at the low end of the Res ALJ-287 range for attorneys with 5-7 years of experience (\$290-310). We also request a 5% step increase, consistent with Res ALJ-287, D.07-11-009, and D.08-04-010, for Mr. Long’s work in 2014, as he now has six years of experience. This is the first step increase requested for Mr. Long within the range for attorneys with 5-7 years of experience. We therefore request a rate of $290 * 1.05 = 304.5$, rounded to \$305, for work performed in 2014.</p> |
| 3 | <p>Michael Wall is a Senior Attorney and Deputy Litigation Director at NRDC and has been litigating complex environmental, constitutional and administrative law cases for 20 years. He graduated with high honors from Harvard College and with high honors from Harvard Law School, where he was an editor of the Harvard Law Review. Mr. Wall clerked on the Eleventh Circuit Court of Appeals. Before joining NRDC, he served as a trial attorney in the U.S. Department of Justice, Environment Division, where he received multiple awards from the federal government for his service. He also litigated at the San Francisco boutique firm of Altshuler, Berzon, Nussbaum, Berzon, and Rubin (now Altshuler Berzon LLP). Mr. Wall has extensive litigation experience, having argued in trial and appellate courts across the country, and was recently elected a Fellow of the American College of Environmental Lawyers, a professional association of the nation’s top environmental lawyers. In 2012, <i>The Recorder</i> identified NRDC as having one of the top environmental practice groups in the Bay Area—the only non-profit to be selected—and identified Mr. Wall as the leader of that team. Based on Mr. Wall’s more than 20 years of litigation experience, we request a rate of \$555, which is at the top end of the Res ALJ-287 range for attorneys with 13+ years of experience (\$310-555), but below the market rate for attorneys with his experience in the relevant legal market.</p> |
| 4 | <p>The requested hourly rates are reasonable and are below the market rates for attorneys with similar qualifications and experience. (<i>See, e.g., Prison Legal News v. Schwarzenegger</i> (9th Cir. 2010) 608 F.3d 446, 450, 454-55 [approving 2008 hourly rates in the Bay Area of \$740 for a partner and \$340 to \$370 for associates]; <i>id.</i> at 455 [citing evidence that Bay Area hourly rates in 2008 ranged from \$700 to \$875 for partners, and ranged from \$325 to \$425 for associates and staff attorneys]; <i>AD v. Cal. Highway Patrol</i> (N.D. Cal. 2013) 2013 WL 6199577, at *6 [citing 2013 San Francisco Bay Area market rates of \$700-\$910 for partners and \$325-\$625 for associates]; <i>In re Tobacco Cases I</i> (2013) 216 Cal.App.4th 570, 581 [affirming a 2012 fee award based on San Francisco Bay Area hourly rates of \$500-\$625 per hour for two attorneys].) Therefore, based on the qualifications described above, we respectfully request that the CPUC approve the requested rates for Ms. Prange, Mr. Long, and Mr. Wall.</p> |
| 5 | <p>In its opinion, the Court of Appeal awarded NRDC its court costs, which include filing fees, service expenses, and printing of briefs. Those costs totaled \$4,365.47. Edison has agreed to pay those costs, so they are not included in this claim.</p> |

D. CPUC's Comments, Disallowances and Adjustments:

| Item | Reason |
|--|--|
| Analysis of Efficiency | <p>The intervenor compensation program “shall be administered in a manner that encourages the effective and efficient participation of all groups that have a stake in the public utility regulation process” (§ 1801.3(b)). Below, we analyze the efficiency aspect of the NRDC’s participation in the judicial review.</p> <p>Three attorneys participated in this matter: Jaclyn Prange, Michael Wall, and Noah Long. Prange handled the main volume of NRDC’s work: performed legal research; reviewed files; developed, with other team members, strategies for NRDC’s participation; prepared NRDC’s oral argument; wrote all legal documents; and participated in oral argument before the court.</p> <p>Long had seven years of experience litigating before the Commission, and a familiarity with this proceeding, in which he was NRDC’s representative. Wall had years of experience litigating in trial and appellate courts. He also mentored and supervised new litigators at the NRDC.</p> <p>When several attorneys join their efforts working on the same issues, reviewing the same files, and participating in the same communications, hearings, etc., we must consider if it was necessary and reasonable, and if so, whether they effectively minimized a duplication of each other’s effort. Normally, the Commission reduces an intervenor compensation award where several representatives duplicated each other’s efforts excessively or unnecessarily.³</p> <p>We carefully reviewed NRDC’s time records and claim and conclude that, with a few exceptions, the joining of the efforts was efficient and necessary. We find it was reasonable and economical to delegate the work on the case to a new attorney with a lower billing rate. We find that limited participation of two other counsel, with more experience was, most of the time, narrowly focused, and justified. With several exceptions discussed below, we find that the number of hours presented for compensation is commensurate with substantial contributions made by NRDC.</p> |
| Analysis of Reasonableness. Reduction of Unreasonable Fees and Costs | <p>We have concerns with certain fees and costs requested by Wall for participation in the same events with Prange. There were three moot oral argument practices – two at NRDC (10/03; 10/11/13), and one at the Commission (10/08/13). Wall attended all of them, and he attended but did not participate in, an oral argument at the court (10/16/13). The time records show that Prange prepared the NRDC’s oral argument, presented it before the court on October 16th, and participated in the moot argument at the Commission prior to that date. Wall did moot oral argument for Prange twice at NRDC; and he had meetings and discussion with her in preparation for oral argument. We believe that,</p> |

³ See, for example, D.12-11-048 at 13-14 or D.09-05-018 at 14-16. Both decisions reduced NRDC’s requests for intervenor compensation for, among other things, inefficient efforts.

| | <p>through communications and moot argument practices at NRDC, Wall had ample opportunities to give his guidance and advice to his colleague, so that his presence at the moot argument at the Commission and oral argument before the court was an excessive effort and should not be compensated.</p> <p>We disallow Wall’s hours claimed for the moot on October 8, 2013 (2.5 hours) and oral argument on October 16, 2013 (3.8 hours), travel to oral argument (10.5 hours), and travel expenses.</p> | | | | | | | | | | | | | | | |
|--|--|------------------|-------|------------------|--------|-----------------------|------|--------|------------------------------------|-------|------|------------|------|------|----------|------|
| <p>Reduction of Hours That Did not Contribute to the Judicial Review</p> | <p>The Court of Appeal denied Edison’s petition on May 28, 2014. Tasks performed after the court’s opinion issued did not contribute to the judicial review. Therefore, they are not compensable (see, §1801.3(d)). We disallow the following hours (in 2014): Prange – 5.9; Wall – 2.6, and Long – 1.5.</p> | | | | | | | | | | | | | | | |
| <p>Undocumented Costs</p> | <p>We disallow \$40 requested for recording of oral argument. This cost is not supported by an invoice or receipt.</p> | | | | | | | | | | | | | | | |
| <p>Other concerns</p> | <p>Prange’s time records reflect more than 13 hours spent on drafting client memos regarding participation in litigation. These documents appear to be internal in nature: it is not clear how they contributed to the judicial review. We also note that Prange spent 3.4 hours performing legislative history research, and, in addition, NRDC delegated legislative history research to an outside firm.</p> <p>In the future, NRDC must explain what “client memo” represents and how it connects to NRDC’s contributions. NRDC must provide more detailed justification for unusual costs like the costs of the legislative history research by an outside firm, especially, when the intervenor also performed that task “in-house”.</p> | | | | | | | | | | | | | | | |
| <p>Reductions of Hours of Work on Intervenor Compensation Matters</p> | <p>NRDC requests the total of 28.90 hours for preparing documents required to claim intervenor compensation. We find the time claimed for this task excessive: these documents do not present challenging legal or factual matters. We have identified several daily time records reflecting tasks that appear superfluous, and made the following reductions:</p> <table border="1" data-bbox="475 1522 1442 1736"> <thead> <tr> <th data-bbox="475 1522 734 1556">Name</th> <th data-bbox="734 1522 1187 1556">Dates</th> <th data-bbox="1187 1522 1442 1556">Hours Disallowed</th> </tr> </thead> <tbody> <tr> <td data-bbox="475 1556 734 1596">Prange</td> <td data-bbox="734 1556 1187 1596">11/22 and 12/23, 2013</td> <td data-bbox="1187 1556 1442 1596">1.80</td> </tr> <tr> <td data-bbox="475 1596 734 1638">Prange</td> <td data-bbox="734 1596 1187 1638">1/7, 2/18, 7/1, 7/7, and 7/9, 2014</td> <td data-bbox="1187 1596 1442 1638">10.10</td> </tr> <tr> <td data-bbox="475 1638 734 1680">Long</td> <td data-bbox="734 1638 1187 1680">11/22/2013</td> <td data-bbox="1187 1638 1442 1680">0.50</td> </tr> <tr> <td data-bbox="475 1680 734 1736">Long</td> <td data-bbox="734 1680 1187 1736">7/9/2014</td> <td data-bbox="1187 1680 1442 1736">1.00</td> </tr> </tbody> </table> | Name | Dates | Hours Disallowed | Prange | 11/22 and 12/23, 2013 | 1.80 | Prange | 1/7, 2/18, 7/1, 7/7, and 7/9, 2014 | 10.10 | Long | 11/22/2013 | 0.50 | Long | 7/9/2014 | 1.00 |
| Name | Dates | Hours Disallowed | | | | | | | | | | | | | | |
| Prange | 11/22 and 12/23, 2013 | 1.80 | | | | | | | | | | | | | | |
| Prange | 1/7, 2/18, 7/1, 7/7, and 7/9, 2014 | 10.10 | | | | | | | | | | | | | | |
| Long | 11/22/2013 | 0.50 | | | | | | | | | | | | | | |
| Long | 7/9/2014 | 1.00 | | | | | | | | | | | | | | |
| <p>Hourly Rates for Prange’s Work</p> | <p>NRDC requests the hourly rate of \$245 for Prange’s work in 2013, and \$290 for the work in 2014. This is the first time we are establishing hourly rates for this attorney.</p> | | | | | | | | | | | | | | | |

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| | <p>The Commission sets hourly rates for intervenors' work based, among other things, on the years of attorney's experience. We exclude attorney's years of work prior to admission to the California Bar Association.</p> <p>Prange became a licensed attorney in August of 2010. By March of 2013, she had approximately 2 years and 7 months of attorney experience. We adopt an hourly rate of \$235 for Prange's work from March 2013 to July 31, 2013. This rate is at the higher end of the rate range (\$210 - \$245) established in Resolution ALJ-287 for attorneys with 3-4 years of experience. Between August 2013 and August 2014, Prange was in her fourth year of practicing law. We adopt an hourly rate of \$245 for her work during that time. The rate includes the first of the two 5% annual step increases authorized in ALJ-287.⁴</p> |
| Hourly Rate for Wall's work | <p>NRDC requests the hourly rate of \$555 for Wall's work. This is the first time we are establishing an hourly rate for this attorney.</p> <p>NRDC describes Wall's career in the legal field but does not state reasons why the work performed merits the requested hourly rate.⁵ Wall is a Senior Attorney and Deputy Litigation Director at NRDC, and has 20 years of litigation experience,⁶ which puts his work within the \$310-\$555 rate range for attorneys with 13+ years of experience. In this proceeding, however, his role as a litigator was limited: as it appears from the claim, he was a mentor to Prange, who [Prange] did the litigation work in the case. Wall has never appeared before the Commission or on the Commission's matters before.</p> <p>Intervenors who previously have not appeared before the Commission must make a showing to justify their proposed hourly rates. The requested rate must be within the established range of rates for any given level of experience and, consistent with the guidelines in D.05-11-031, must take into consideration the rates previously awarded other representatives with comparable training and experience, and performing similar services. (<i>See</i> § 1806.) D.08-04-010 at 7-8.</p> <p>The intervenor does not compare Wall's experience to that of other representatives, and the claim's reference to the market rate is not specific. Only two litigators before the Commission have been awarded the highest hourly rate of \$555 for their work in 2013: Robert Gnaizda, and Thomas Long.⁷ Robert Gnaizda had been a member of the California Bar Association for more than</p> |

⁴ Resolution ALJ-287 at 7.

⁵ *See*, the Intervenor Compensation Program Guide at 19, at www.cpuc.ca.gov.

⁶ According to the claim, in 2013 Wall had 19-20 years of the litigation experience.

⁷ *See* hourly rate tables on the Intervenor Compensation Program homepage at www.cpuc.ca.gov.

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| | <p>fifty years and has practiced before the Commission for more than forty-one years.⁸ Thomas Long had been a member of the California Bar since 1986, and had been litigating before the Commission since at least 1998.</p> <p>Although Wall's professional accomplishments presented in the claim are impressive, we decline to adopt the requested rate, and adopt a rate of \$490 for his work in 2013, which is on the higher end of the rate range for attorneys with 13+ years of experience.</p> |
| Hourly Rate for Long's work | <p>NRDC requests an hourly rate of \$290 for Long's work 2013 and \$305 for his work in 2014. In May of 2013, Long was in his fifth year of practicing law. The rate of \$290 is at the lowest end of the rate range for attorneys with 5–7 years of experience's work in 2013. We find the requested rate reasonable and adopt it here.</p> <p>Since we disallow his hours of work in 2014, we do not adopt a rate for his work in 2014.</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 (<i>see</i> Rule 14.6(c)(6))? | Yes |

FINDINGS OF FACT

1. Natural Resources Defense Council (Intervenor) has made a substantial contribution to the judicial review of D.11-12-035 and D.12-05-037, as amended by D.12-07-001.
2. The requested hourly rates for Intervenor's representatives, 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 \$ 126,224.61.

⁸ See D.14-07-025 at 8 and 9.

CONCLUSION OF LAW

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

ORDER

1. Natural Resources Defense Council's Motion to late-file a supplemental notice of intent to claim intervenor compensation submitted on January 30, 2014, is granted. The supplemental notice is formally filed as of January 30, 2014.
2. Natural Resources Defense Council is awarded \$ 126,224.61.
3. Within 30 days of the effective date of this decision, Southern California Edison Company, Pacific Gas and Electric Company, and San Diego Gas & Electric Company shall pay Natural Resources Defense Council their respective shares of the award, based on their California-jurisdictional electric revenues for the 2013 calendar year, to reflect the year in which this judicial review 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 October 8, 2014, the 75th day after the filing of Intervenor's request, and continuing until full payment is made.
4. The comment period for today's decision is waived.

This decision is effective today.

Dated _____, at Bakersfield, California.

APPENDIX**Compensation Decision Summary Information**

| | | | |
|----------------------------------|--|---------------------------|----|
| Compensation Decision: | | Modifies Decision? | No |
| Contribution Decision(s): | Judicial review of D1112035 and D1205037, as amended by D1207001 | | |
| Proceeding(s): | R1110003 | | |
| Author: | ALJ David Gamson | | |
| Payer(s): | Southern California Edison Company, Pacific Gas & Electric Company, and San Diego Gas & Electric Company | | |

Intervenor Information

| Intervenor | Claim Date | Amount Requested | Amount Awarded | Multiplier? | Reason Change/Disallowance |
|-----------------------------------|-------------------|-------------------------|-----------------------|--------------------|--|
| Natural Resources Defense Council | 07/25/2014 | \$143,433.60 | \$126,224.61 | No | Adjusted hourly rates, unnecessary effort, work that did not contribute to the proceeding; undocumented cost |

Advocate Information

| First Name | Last Name | Type | Intervenor | Hourly Fee Requested | Year Hourly Fee Requested | Hourly Fee Adopted |
|-------------------|------------------|-------------|-----------------------------------|-----------------------------|----------------------------------|---|
| Jaclyn | Prange | Attorney | Natural Resources Defense Council | \$245 | 2013 | \$235 (before August) \$245 (after August) |
| Jaclyn | Prange | Attorney | Natural Resources Defense Council | \$290 | 2014 | \$245 |
| Noah | Long | Attorney | Natural Resources Defense Council | \$290 | 2013 | \$290 |
| Michael | Wall | Attorney | Natural Resources Defense Council | \$555 | 2013 | \$490 |

(END OF APPENDIX)