

Decision 16-07-010 July 14, 2016

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation on the Commission’s Own Motion into the Rates, Operations, Practices, Services and Facilities of Southern California Edison Company and San Diego Gas and Electric Company Associated with the San Onofre Nuclear Generating Station Units 2 and 3.

Investigation 12-10-013
(Filed October 25, 2012)

And Related Matters.

Application 13-01-016
Application 13-03-005
Application 13-03-013
Application 13-03-014

DECISION AWARDING COMPENSATION TO ALLIANCE FOR NUCLEAR RESPONSIBILITY FOR SUBSTANTIAL CONTRIBUTION TO DECISION 15-12-016

Intervenor: Alliance for Nuclear Responsibility (A4NR)	For contribution to Decisions (D.)15-12-016
Claimed: \$ 121,305.93	Awarded: \$83,346.85 (reduced 31.2%)
Assigned Commissioner: Catherine J.K. Sandoval	Assigned ALJ: Maribeth A. Bushey

PART I: PROCEDURAL ISSUES

A. Brief description of Decision:	Decision Affirming Violations of Rule 8.4 and Rule 1.1 and Imposing Sanctions on Southern California Edison Company.
--	---

B. Intervenor must satisfy intervenor compensation requirements set forth in Pub. Util. Code §§ 1801-1812:

	Intervenor	CPUC Verified
Timely filing of notice of intent to claim compensation (NOI) (§ 1804(a)):		
1. Date of Prehearing Conference (PHC):	01/08/13	Verified.
2. Other specified date for NOI:		
3. Date NOI filed:	02/06/13	Verified.

4. Was the NOI timely filed?		Yes, Alliance for Nuclear Responsibility (A4NR), timely filed the notice of intent to claim intervenor compensation.
Showing of customer or customer-related status (§ 1802(b)):		
5. Based on ALJ ruling issued in proceeding number:	A.14-12-007	Verified.
6. Date of ALJ ruling:	08/04/15	Verified.
7. Based on another CPUC determination (specify):		
8. Has the Intervenor demonstrated customer or customer-related status?		Yes, A4NR demonstrated appropriate status.
Showing of “significant financial hardship” (§ 1802(g)):		
9. Based on ALJ ruling issued in proceeding number:	A.14-12-007	Verified.
10. Date of ALJ ruling:	08/04/15	Verified.
11. Based on another CPUC determination (specify):		
12. Has the Intervenor demonstrated significant financial hardship?		Yes, A4NR demonstrated a rebuttable presumption of significant financial hardship.
Timely request for compensation (§ 1804(c)):		
13. Identify Final Decision:	D.15-12-016 (corrected by D.15-12-058)	Verified, D.15-12-016.
14. Date of issuance of Final Order or Decision:	12/31/15.	December 8, 2015
15. File date of compensation request:	02/19/16	Verified.
16. Was the request for compensation timely?		Yes.

C. Additional Comments on Part I:

#	Intervenor’s Comment(s)	CPUC Discussion
15	<p>A4NR had planned to file its compensation claim for its sanctions motion after the Commission’s final decision on A4NR’s still pending Petition for Modification, but D.15-12-058 clarified that D.15-12-016 has resolved the proceeding except for pending petitions for modification and an application for rehearing. A4NR has severed all PFM-related costs, and will defer seeking their reimbursement pending a final Commission decision on that matter.</p>	Verified.

PART II: SUBSTANTIAL CONTRIBUTION

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

Intervenor’s Claimed Contribution(s)	Specific References to Intervenor’s Claimed Contribution(s)	CPUC Discussion
<p>1. One day after SCE late-filed a Notice of Ex Parte Communication describing a meeting nearly two years earlier between its Exec. VP Steven Pickett and CPUC President Michael Peevey, A4NR filed a Motion requesting that the Commission investigate the extent of appropriate sanctions for violations of Rule 1.1 and its predicate, Rule 8.4.</p>	<p>A4NR 02/10/15 Motion. ALJs’ 04/14/15 Ruling noted A4NR Motion, p. 3, and agreed that SCE’s Notice “offered little information about the content of the meeting,” p. 5. ALJs’ 04/14/15 Ruling also agreed that the Commission has the authority to seek additional information regarding a late-filed or undisclosed ex parte communication for purposes of evaluating possible sanctions, including whether the breach of Rule 8.4, under the totality of circumstances, is also a breach of Rule 1.1, pp. 4-5.</p>	Verified.
<p>2. A4NR’s 02/10/15 Motion sought disclosure of SONGS-related communications between SCE and the Commission, as well as internal SCE communications discussing such</p>	<p>A4NR 02/10/15 Motion, p. 9. ALJs’ 04/14/15 Ruling ordered SCE to produce additional information and documents, including internal SCE communications, pp. 5-6.</p>	Verified.

communications.		
3. A4NR’s 02/10/15 Motion requested the opportunity to respond to any SCE submittal.	A4NR 02/10/15 Motion, pp. 9-10. ALJs’ 04/14/15 Ruling authorized any party to use SCE’s submittal in support of any otherwise compliant Petition for Modification, p. 6, and specifically authorized A4NR to file an Amended Motion for Sanctions within 5 business days of SCE’s submittal, p. 6 ¶2,	Verified.
4. A4NR’s 05/06/15 Amended Motion identified informational deficiencies in SCE’s response to the ALJs’ 04/14/15 Ruling.	A4NR 05/06/15 Amended Motion, pp. 10-16. ALJ’s 06/26/15 email Ruling directed SCE to submit additional information to supplement its earlier submittal, p. 8.	Verified.
5. A4NR’s 05/06/15 Amended Motion alleged multiple violations of Rule 8.4 and two violations of Rule 1.1, including false testimony by SCE President Ron Litzinger.	A4NR 05/06/15 Amended Motion, pp. 25-26. ALJ’s 08/05/15 Order to Show Cause Ruling found 10 violations of Rule 8.4, p. 35, and two “possible Rule 1.1 violations,” p. 43, including Litzinger’s “incorrect statements which misled the Commission,” p. 46. D.15-12-016 determined “SCE violated Rule 1.1 as a result of the false statement made by Mr. Litzinger under oath,” COL 8. D.15-12-016 imposed financial penalties for “eight Rule 8.4 violations and two Rule 1.1 violations,” COL 11.	Verified.
6. A4NR’s 05/06/15 Amended Motion argued that SCE’s failure to properly disclose the Pickett/Peevey communications in Poland should be treated as a continuing violation.	A4NR 05/06/15 Amended Motion, pp. 24-25. D.15-12-016 characterized “SCE’s grossly negligent acts and omissions” as “a continuing violation” (COL 7) and applied penalty against SCE for “826 days of the continuing violation arising from SCE’s acts and omissions related to Mr. Pickett’s meeting with Commissioner Peevey,” COL 14.	Verified.

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

	Intervenor’s Assertion	CPUC Discussion
a. Was the Office of Ratepayer Advocates (ORA) a party to the proceeding?¹	Yes.	Verified.
b. Were there other parties to the proceeding with positions similar to yours?	Yes, although these parties focused upon reopening the D.14-11-040 settlement rather than formal sanctions against SCE.	Verified.
c. If so, provide name of other parties: ORA, TURN, Ruth Hendricks, CDSO, and WEM.		Verified.
d. Intervenor’s claim of non-duplication: A4NR was the sole “Moving Party” (ALJs’ 04/14/15 Ruling) in seeking formal sanctions against SCE. None of the parties identified above joined A4NR’s sanctions effort or made responsive filings, although both ORA and Ruth Hendricks submitted comments on the ALJ’s 08/05/15 Order to Show Cause Ruling which were aimed at reopening the D.14-11-040 settlement.		Verified.

C. Additional Comments on Part:

#	Intervenor’s Comment	CPUC Discussion
II: d.	Because it is a separate matter still pending, A4NR does not address herein the much greater commonality among the parties identified in II: c. above regarding the question of reopening the D.14-11-040 settlement.	Verified. Verified.

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.

PART III: REASONABLENESS OF REQUESTED COMPENSATION

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

a. Intervenor’s claim of cost reasonableness:	CPUC Discussion										
<p>The question of appropriate sanctions, and proper construction of multiple statutes and Commission Rules, was litigated with considerable intensity between A4NR and SCE. The resulting outcome was a \$16,740,000 payment to the General Fund by SCE, some sixteen times larger than the highest previous Commission sanction for ex parte communication disclosure-related violations. By that measure, the A4NR’s litigation efforts were extremely cost-effective, and establish a significant Commission precedent.</p>	<p>Verified</p>										
<p>b. Reasonableness of hours claimed:</p> <p>Because of A4NR’s requests, SCE was required to turn over extensive documentation of its communications. Interpretation of that evidence, as well as painstaking efforts to properly construct multiple statutes and Commission Rules, were intensively litigated between SCE and A4NR. A4NR’s sanctions-related filings included (1) the 02/10/15 Motion Seeking Investigation of the Extent of Sanctions to be Ordered against Southern California Edison Company for Violation of Commission Rules 1.1 and 8.4; (2) the 03/09/15 Reply to SCE’s Response to A4NR’s Motion Seeking Investigation of the Extent of Sanctions to be Ordered; (3) the 05/06/15 Amended Motion for Sanctions; (4) the 06/01/15 Reply to SCE’s Response to A4NR’s Amended Motion for Sanctions; (5) A4NR’s 08/10/15 Response to the ALJ’s Order to Show Cause Ruling; (6) A4NR’s Opening Comments on the Proposed Decision Affirming Violations of Rule 8.4 and Rule 1.1 and Imposing Sanctions on SCE; and (7) A4NR’s Reply Comments on the Proposed Decision. A4NR’s ability to prevail required a careful marshalling of evidence as well as significant legal research, and the hours expended were reasonable.</p>	<p>Verified; but <i>see</i> CPUC Disallowances and Adjustments.</p>										
<p>c. Allocation of hours by issue:</p> <p>This compensation claim is supplementary to the one filed by A4NR for its contribution to D.14-11-040, and consequently the allocation of hours in Part III: A.c. of that earlier claim should be modified as follows:</p> <table data-bbox="232 1654 641 1833"> <tr> <td>Phase 1 issues:</td> <td>44%</td> </tr> <tr> <td>Phase 2 issues:</td> <td>26%</td> </tr> <tr> <td>Phase 3-4 issues:</td> <td>18%</td> </tr> <tr> <td>Motion for Sanctions:</td> <td>10%</td> </tr> <tr> <td>General:</td> <td>2%</td> </tr> </table>	Phase 1 issues:	44%	Phase 2 issues:	26%	Phase 3-4 issues:	18%	Motion for Sanctions:	10%	General:	2%	<p>Although A4NR claims that this Request is “supplementary” to the one A4NR filed on January 26, 2015, the Commission declines to modify the previous request for compensation. Decisions on both requests will be</p>
Phase 1 issues:	44%										
Phase 2 issues:	26%										
Phase 3-4 issues:	18%										
Motion for Sanctions:	10%										
General:	2%										

	independently adjudicated. Each request for compensation should reflect the allocation of hours by issue for that specific claim, not for the entire proceeding.
--	--

B. Specific Claim:*

CLAIMED						CPUC AWARD		
ATTORNEY, EXPERT, AND ADVOCATE FEES								
Item	Year	Hours	Rate \$	Basis for Rate*	Total \$	Hours [1]	Rate \$	Total \$
John Geesman	2015	205.33	570	ALJ-308	117,038.10	177.27	\$570	\$101,043.90
Rochelle Becker	2015	18.7	140	ALJ-308	2,618.00	7.45	\$140	\$1,043.00
Subtotal: \$ 119,656.10						Subtotal: \$102,086.90 20% Reduction: \$20,417.38 Revised Subtotal: \$81,669.52		
INTERVENOR COMPENSATION CLAIM PREPARATION **								
Item	Year	Hours	Rate \$	Basis for Rate*	Total \$	Hours	Rate \$	Total \$
John Geesman	2016	5.5	285	50% of 2015 rate pending COLA for 2016	1,567.50	5.5	\$290 ²	\$1,595.00
Subtotal: \$ 1,567.50						Subtotal: \$1,595.00		
COSTS								
#	Item	Detail			Amount	Amount		
	copying costs	provided in Appendix 4			1.75	\$1.75		

² Application of 1.28% Cost-of-Living-Adjustment (COLA) per Resolution ALJ-329 (May 2016). Resolution ALJ-329 adopts a 1.28% COLA for 2016 hourly rates. As such, we apply the COLA to Geesman’s 2015 hourly rate, to adopt the rate of \$580 (\$290 half-rate) per hour for Geesman’s 2016 hourly rate.

postage costs	provided in Appendix 5	80.58	\$80.58
Subtotal: \$82.33		Subtotal: \$82.33	
TOTAL REQUEST: \$ 121,305.93		TOTAL AWARD:\$83,346.85	

**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.

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

ATTORNEY INFORMATION			
Attorney	Date Admitted to CA BAR³	Member Number	Actions Affecting Eligibility (Yes/No?) If “Yes”, attach explanation
John Geesman	June 1977	74448	No

C. CPUC Disallowances and Adjustments:

Item	Reason
[1]	The Commission disallows 33.56 hours from Geesman’s claim. These hours were related to sending emails to clients, and did not contribute to the overall decision-making process.
[2]	Section 1801.3(f) provides that the Commission should administer the Intervenor Compensation Program ‘in a manner that avoids unproductive or unnecessary participation that duplicates the participation of similar interests otherwise adequately represented or participation that is not necessary for a fair determination of the proceeding.’ This Section creates three separate standards – productivity, uniqueness, and necessity – by which we measure participation. (D.00-02-044.) D.98-04-059 determined that we would carefully consider each of these three standards in making eligibility findings and in assessing compensability. Productivity general concerns the efficiency, competence, effectiveness, and reasonableness, in terms of the cost of participation; uniqueness, the non-duplication of effort; and necessity, the relevancy of the participation.” Here, A4NR’s participation was often unproductive. While its numerous filings related to sanctions and ex-parte violations substantially contributed to the Commission’s decision-making process, the filings were repetitive and excessive

³ This information may be obtained through the State Bar of California’s website at <http://members.calbar.ca.gov/fal/MemberSearch/QuickSearch> .

	in both length and scope. Therefore, the Commission reduces the hours in this claim by 20%.
[3]	Most of the hours claimed by Becker did not assist the Commission’s decision-making process and did not substantially contribute to the proceeding. Becker’s hours consisted of reviewing documents and sending emails. We compensate Becker for the work related to documents that A4NR filed with the Commission and for work that assisted A4NR in preparation of documents.

PART IV: OPPOSITIONS AND COMMENTS

A. Opposition: Did any party oppose the Claim?	No.
B. Comment Period: Was the 30-day comment period waived (see Rule 14.6(c)(6))?	No.

If not:

Party	Comment	CPUC Discussion
Alliance for Nuclear Responsibility	A4NR asserts that its claim should be considered as timely filed.	The Commission agrees and has made appropriate changes.

FINDINGS OF FACT

1. Alliance for Nuclear Responsibility has made a substantial contribution to D.15-12-016.
2. The requested hourly rates for Intervenor’s representatives 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 amount of reasonable compensation is \$83,346.85.

CONCLUSION OF LAW

1. The Claim, with any adjustment set forth above, satisfies all requirements of Pub. Util. Code §§ 801-1812.

ORDER

1. Alliance for Nuclear Responsibility shall be awarded \$83,346.85.

2. Within 30 days of the effective date of this decision, Southern California Edison Company and San Diego Gas & Electric Company shall pay Alliance for Nuclear Responsibility their respective shares of the award, based on their California-jurisdictional gas and electric revenues for the 2013 calendar year, to reflect the year in which the proceeding was primarily litigated. Payment of the award shall include compound interest at the rate earned on prime, three-month non-financial commercial paper as reported in Federal Reserve Statistical Release H.15, beginning May 4, 2016, the 75th day after the filing of Alliance for Nuclear Responsibility's request, and continuing until full payment is made.
3. The Comment period for today's decision is not waived.

This decision is effective today.

Dated July 14, 2016, at San Francisco, California.

MICHAEL PICKER

President

MICHEL PETER FLORIO

CATHERINE J.K. SANDOVAL

CARLA J. PETERMAN

LIANE M. RANDOLPH

Commissioners

APPENDIX
Compensation Decision Summary Information

Compensation Decision:	D1607010	Modifies Decision?	No
Contribution Decision(s):	D1512016		
Proceeding(s):	I1210013		
Author:	ALJ Bushey		
Payer(s):	San Diego Gas & Electric Company and Southern California Edison Company		

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
Alliance for Nuclear Responsibility	02/19/2016	\$121,305.93	\$83,346.85	No.	See CPUC Disallowances and Adjustments.

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
John	Geesman	Attorney	Alliance for Nuclear Responsibility	\$570	2015	\$570
John	Geesman	Attorney	Alliance for Nuclear Responsibility	\$570.	2016	\$580/\$290
Rochelle	Becker	Advocate	Alliance for Nuclear Responsibility	\$140	2015	\$140

(END OF APPENDIX)