



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

FILED

Order Instituting Rulemaking on the Commission’s Own Motion into Addressing the Commission’s Water Action Plan Objective of Setting Rates that Balance Investment, Conservation, and Affordability for the Multi-District Water Utilities of: California- American Water Company (U210W), California Water Service Company (U60W), Del Oro Water Company, Inc. (U61W), Golden State Water Company (U133W), and San Gabriel Valley Water Company (U337W).

12-22-11
04:59 PM

Rulemaking 11-11-008
(Filed November 10, 2011)

**NOTICE OF INTENT TO CLAIM INTERVENOR COMPENSATION
AND, IF REQUESTED (and ¹ checked), ADMINISTRATIVE LAW JUDGE’S
RULING ON THE NATURAL RESOURCES DEFENSE COUNCIL’S SHOWING OF
SIGNIFICANT FINANCIAL HARDSHIP**

Natural Resources Defense Council (“NRDC”)			
Assigned Commissioner: Sandoval		Assigned ALJ: Weatherford	
I hereby certify that the information I have set forth in Parts I, II, III and IV of this Notice of Intent (NOI) is true to my best knowledge, information and belief. I further certify that, in conformance with the Rules of Practice and Procedure, this NOI has been served this day upon all required persons.			
		Signature: /s Doug Obegi	
Date:	12/22/2011	Printed Name:	Doug Obegi

PART I: PROCEDURAL ISSUES

(To be completed by the party (“customer”) intending to claim intervenor compensation)

A. Status as “customer” (see Pub. Util. Code § 1802(b)): The party claims “customer” status because the party (check one):	Applies (check)
1. Category 1: Represents consumers, customers, or subscribers of any electrical, gas, telephone, telegraph, or water corporation that is subject to the jurisdiction of the Commission (§ 1802(b)(1)(A)).	
2. Category 2: Is a representative who has been authorized by a “customer” (§ 1802(b)(1)(B)).	
3. Category 3: Represents a group or organization authorized pursuant to its articles of incorporation or bylaws to represent the interests of residential customers, to represent “small commercial customers” (§ 1802(h)) who	X

¹ DO NOT CHECK THIS BOX if no finding of significant financial hardship is needed (in cases where there is a valid rebuttable presumption of eligibility (Part III(A)(3)) or significant financial hardship showing has been deferred to the intervenor compensation claim).

receive bundled electric service from an electrical corporation (§ 1802(b)(1)(C)), or to represent another eligible group.

4. The party’s explanation of its customer status, with any documentation (such as articles of incorporation or bylaws) that supports the party’s “customer” status. Any attached documents should be identified in Part IV.

NRDC falls within the third category listed in Section 1802(b) because it is a “representative of a group or organization authorized pursuant to its articles of incorporation or bylaws to represent the interests of residential customers....”

NRDC is a non-profit membership organization with a long-standing interest in minimizing the societal costs of the reliable energy services that a healthy California economy requires. We have participated in numerous California Public Utilities Commission proceedings over the last 30 years with a particular focus on representing our California members’ interests in the equitable and efficient delivery of utility services and the reduction of the environmental impacts of such service.

NRDC is a formally organized group authorized pursuant to our bylaws to represent the interests of our members, nearly all of whom are residential customers. NRDC’s bylaws state in Section 1.02(a) that: “Individual membership in the Corporation shall constitute an authorization for the Corporation to represent members’ interests in regulatory and judicial proceedings within the scope of the activities of the Corporation.” The Certificate of Incorporation of the Natural Resources Defense Council, Inc., states that: “The purposes for which the corporation is formed are: To preserve, protect and defend natural resources, wildlife and environment against encroachment, misuse and destruction” and “[t]o take whatever legal steps may be appropriate and proper to carry out the foregoing purposes.” Attachment 1 includes the relevant section of the Certificate. The relevant section of the bylaws is included in Attachment 2. Nearly 100,000 of NRDC’s members live and purchase utility services in California. NRDC’s members live across the state, including in the areas served by investor-owned water utilities that the CPUC regulates and that are parties to this proceeding. This qualifies NRDC as a Category 3 customer pursuant to Section 1802(b) of the Public Utilities Code.

The NRDC members who are customers have unique interests that the other parties in this rulemaking do not adequately represent. NRDC’s members highly prioritize the need to preserve environmental quality while minimizing the societal costs of providing utility service. Water conservation is an important objective for these members, who thus have an interest in the adoption of conservation pricing that encourages equitable and efficient water use while ensuring that current and future water supplies are sufficient to preserve environmental quality and economic vitality.

In Interim Opinion Revising the Intervenor Compensation Program and Inviting Legislative Amendment Proposals, D. 98-04-059, at 30 n.14 (April 23, 1998), the Commission reaffirmed its “previously articulated interpretation that compensation be proffered only to customers whose participation arises directly from their interests as customers.” The Commission explained that “[w]ith respect to environmental groups, we have concluded they were eligible in the past with the understanding that they represent customers whose environmental interests include the concern that, e.g., regulatory policies encourage the adoption of all cost-effective conservation measures and

discourage unnecessary new generating resources that are expensive and environmentally damaging . . . They represent customers who have a concern for the environment which distinguishes their interests from the interests represented by Commission staff, for example.” *Id.* at 30 fn.14. Consistent with this articulation, NRDC represents customers with a concern for the environment that distinguishes their interests from the interests represented by other consumer advocates who have intervened in this case.

B. Timely Filing of Notice of Intent (NOI) (§ 1804(a)(1)):	Check
1. Is the party’s NOI filed within 30 days after a Prehearing Conference? Date of Prehearing Conference: <u> N/A </u>	Yes <u> </u> No <u> X </u>
2. Is the party’s NOI filed at another time (for example, because no Prehearing Conference was held, the proceeding will take less than 30 days, the schedule did not reasonably allow parties to identify issues within the timeframe normally permitted, or new issues have emerged)?	Yes <u> X </u> No <u> </u>
2a. The party’s description of the reasons for filing its NOI at this other time: There was no prehearing conference. The Order Instituting Rulemaking in R.11-11-008 was issued on November 18, 2011, and Section 11 of that OIR instructed parties to file a NOI within 30 days of mailing. On December 15, 2011, ALJ Weatherford granted NRDC’s motion to become a party to this proceeding and granted NRDC an extension of time until January 1, 2012 to file its NOI in this proceeding.	
2b. The party’s information on the proceeding number, date, and decision number for any Commission decision, Commissioner ruling, ALJ ruling, or other document authorizing the filing of NOI at that other time: On December 15, 2011, ALJ Weatherford granted NRDC’s motion to become a party to this proceeding and granted NRDC an extension of time until January 1, 2012 to file its NOI in this proceeding.	

PART II: SCOPE OF ANTICIPATED PARTICIPATION

(To be completed by the party (“customer”) intending to claim intervenor compensation)

A. Planned Participation (§ 1804(a)(2)(A)(i)):
<ul style="list-style-type: none"> • The party’s statement of the issues on which it plans to participate. The focus of our participation will be on the effects that creating a “High Cost” fund, changes to the consolidation guidelines, or other changes through the rulemaking process would have on water conservation, including effects on conservation rate design, price signals and subsidies. • The party’s explanation as to how it plans to avoid duplication of effort with other parties and intervenors. NRDC has substantial expertise on the effect of pricing and rate structures on water efficiency and conservation. This expertise gives NRDC a unique perspective on the issues in this proceeding. NRDC will work with other parties and intervenors to avoid duplication, including consideration of filing joint comments, participation in workshops, and settlement discussions, as appropriate.

- The party’s description of the nature and extent of the party’s planned participation in this proceeding (as far as it is possible to describe on the date this NOI is filed).

NRDC plans to participate fully in this rulemaking, including filing initial and reply comments, participating in workshops, and providing comments on any proposed decision.

B. The party’s itemized estimate of the compensation that the party expects to request, based on the anticipated duration of the proceeding (§ 1804(a)(2)(A)(ii)):

Item	Hours	Rate \$	Total \$	#
ATTORNEY, EXPERT, AND ADVOCATE FEES				
Doug Obegi (Attorney)	15	\$280	\$4,200.00	1
Edward Osann (Expert)	15	\$250	\$3,750.00	2
		Subtotal:	\$7,950.00	
OTHER FEES				
[Person 1]				
[Person 2]				
		Subtotal:	0	
COSTS				
Travel			\$1,000.00	3
[Item 2]				
		Subtotal:	\$1,000.00	
TOTAL ESTIMATE \$:			\$8,950.00	4

Estimated Budget by Issues:

Comments/Elaboration (use reference # from above):

The rates above are reasonable because staff in NRDC’s Santa Monica and San Francisco offices have extensive experience in promoting reliable, affordable utility services at the lowest environmental impact. The Commission’s recognition of NRDC’s role as a leading stakeholder has been demonstrated by repeated invitations to appear at full panel hearings. Public Utilities Code § 1806 directs the Commission to consider “the market rates paid to persons of comparable training and experience who offer similar services” when computing a compensation award. The rates requested by NRDC for its expert staff are consistent with D.07-01-009, which established rate ranges for experts based on years of experience, and with Resolution ALJ-267, March 24, 2011, which adopted hourly intervenor rate ranges for 2011. Historically, the rates that NRDC has requested have been purposely conservative, and not only reflected rates far below market for expertise at similar levels, but also far below other requests received by the Commission. We have revised our requested rates to be consistent with the Commission-adopted rate ranges, but continue to request conservative rates at the low to middle part of those ranges. [References 1

and 2]

NRDC expects to be an active participant in this proceeding, although it is difficult to estimate with certainty the magnitude of our expected request at this early stage of the proceeding. The amount of any future claim to compensation is dependent upon our contribution to the Commission's final decision in this proceeding, as well as the resources NRDC has to devote to this proceeding over time. NRDC has not included claim preparation time in this estimate and will address the reasonableness of the listed hourly rates in our request for compensation, if a request for compensation is filed.

1. Doug Obegi, a staff attorney with NRDC, will be representing NRDC in this proceeding. NRDC is requesting an hourly rate of \$280/hour for Mr. Obegi, which is at the bottom of the range adopted in Resolution ALJ-267. In 2010, NRDC previously requested a rate of \$220 for Mr. Obegi in NRDC's NOI for A.10-07-007, but has yet to request compensation. Resolution ALJ-267 adopts a range for attorneys with five to seven years of experience of \$280/hr to \$300/hr. Mr. Obegi has a J.D. from the University of California, Hastings College of the Law. He has been practicing law for more than five years – about one and a half years with the environmental law firm of Shute, Mihaly & Weinberger and the rest of that time with NRDC. Prior to going to law school, Mr. Obegi worked as a policy analyst for the Ocean Conservancy for five years.
2. NRDC is requesting an hourly rate for Mr. Osann of \$275/hour. NRDC previously requested an hourly rate of \$250 for Mr. Osann in our NOI for A.10-07-007, but has yet to request compensation. Resolution ALJ-267 adopts a range for experts with more than 13 years experience of \$155/hr to \$390/hr. Mr. Osann is a Senior Policy Analyst in NRDC's Western Water Project. He has over 25 years experience as a water expert. Prior to joining NRDC, Mr. Osann worked on water development projects and policy for the National Wildlife Federation, and served on the first board of the California Urban Water Conservation Council. He briefly served in the Clinton Administration as Policy Director for the Bureau of Reclamation and then left government to run a consulting practice on energy and water efficiency for 13 years. Mr. Osann joined NRDC in 2010, after consulting with NRDC for many years on water conservation issues. NRDC has requested comparable rates for similarly situated staff.
3. Assumes 1 trip from Los Angeles to San Francisco for Mr. Osann to attend a Commission meeting in Northern California. Assumes travel to 2 public workshops or meetings. Depending upon where the public workshops and meetings are located, NRDC will attempt to have staff located closest to the hearing location participate, to minimize travel costs and time.
4. NRDC recognizes that the rulemaking process involves uncertainty and that it cannot predict the exact amount of resources it will need to contribute to ensure that it adequately represents the interests of its members. Given this, the eventual total cost may prove to be higher than this initial estimate.

PART III: SHOWING OF SIGNIFICANT FINANCIAL HARDSHIP

(To be completed by party (“customer”) intending to claim intervenor compensation; see Instructions for options for providing this information)

A. The party claims “significant financial hardship” for its Intervenor Compensation Claim in this proceeding on the following basis:	Applies (check)
1. “[T]he customer cannot afford, without undue hardship, to pay the costs of effective participation, including advocate’s fees, expert witness fees, and other reasonable costs of participation” (§ 1802(g)); or	
2. “[I]n the case of a group or organization, the economic interest of the individual members of the group or organization is small in comparison to the costs of effective participation in the proceeding” (§ 1802(g)).	
3. A § 1802(g) finding of significant financial hardship in another proceeding, made within one year prior to the commencement of this proceeding, created a rebuttable presumption of eligibility for compensation in this proceeding (§ 1804(b)(1)).	X
ALJ ruling (or CPUC decision) issued in proceeding number: A.11-05-017 et al Date of ALJ ruling (or CPUC decision): October 28, 2011	

B. The party’s explanation of the factual basis for its claim of “significant financial hardship” (§ 1802(g)) (necessary documentation, if warranted, is attached to the NOI):
<p>The economic interest of individual NRDC members is small when compared to the costs of effective participation. NRDC is representing the interests of its members in California who are customers of utilities under the jurisdiction of the Commission. These customers share an interest in the environmental and economic impacts of this proceeding. While some of these California-resident members will likely experience lower and/or more stable utility bills because of NRDC’s contribution in this proceeding to a rulemaking that preserves economic incentives for water conservation and efficiency, the economic interest represented by such savings is very small in comparison to the expenses incurred by the organization to present its views in this proceeding.</p>

PART IV: ATTACHMENTS DOCUMENTING SPECIFIC ASSERTIONS MADE IN THIS NOTICE

(The party (“customer”) intending to claim intervenor compensation identifies and attaches documents; add rows as necessary)

Attachment No.	Description
1	Certificate of Incorporation
2	Relevant Bylaws

ADMINISTRATIVE LAW JUDGE RULING²

	Check all that apply
1. The Notice of Intent (NOI) is rejected for the following reasons:	
a. The NOI has not demonstrated the party's status as a "customer" for the following reason(s):	
b. The NOI has not demonstrated that the NOI was timely filed (Part I(B)) for the following reason(s):	
c. The NOI has not adequately described the scope of anticipated participation (Part II, above) for the following reason(s):	
2. The NOI has demonstrated significant financial hardship for the reasons set forth in Part III of the NOI (above).	
3. The NOI has not demonstrated significant financial hardship for the following reason(s):	
4. The ALJ provides the following additional guidance (see § 1804(b)(2)):	

IT IS RULED that:

	Check all that apply
1. The Notice of Intent is rejected.	
2. Additional guidance is provided to the customer as set forth above.	
3. The customer has satisfied the eligibility requirements of Pub. Util. Code § 1804(a).	
4. The customer has shown significant financial hardship.	
5. The customer is preliminarily determined to be eligible for intervenor compensation in this proceeding. However, a finding of significant financial hardship in no way ensures compensation.	

Dated _____, at San Francisco, California.

ADMINISTRATIVE LAW JUDGE

² An ALJ Ruling needs not be issued unless: (a) the NOI is deficient; (b) the ALJ desires to address specific issues raised by the NOI (to point out similar positions, areas of potential duplication in showings, unrealistic expectations for compensation, or other matters that may affect the customer's Intervenor Compensation Claim); or (c) the NOI has included a claim of "significant financial hardship" that requires a finding under § 1802(g).

**Attachment 1:
Certificate of Incorporation**

CERTIFICATE OF INCORPORATION
OF
NATURAL RESOURCES DEFENSE COUNCIL, INC.

Pursuant to the Membership Corporations Law

We, the undersigned, for the purpose of forming a membership corporation, pursuant to the Membership Corporations Law of the State of New York, do hereby certify as follows:

FIRST: The name of the corporation shall be Natural Resources Defense Council, Inc.

SECOND: The purposes for which the corporation is to be formed are:

To preserve, protect and defend natural resources, wildlife and environment against encroachment, misuse and destruction.

To conduct research and to collect, compile and publish facts, information and statistics concerning natural resources, wildlife and environment and to conduct public education programs with respect thereto.

To take whatever legal steps may be appropriate and proper to carry out the foregoing purposes.

Attachment 2: Relevant Bylaws

AMENDED AND RESTATED BY-LAWS

of

NATURAL RESOURCES DEFENSE COUNCIL, INC.

A New York Not-for-Profit Corporation

(as amended through December 9, 1999)

ARTICLE I.

Members

Section 1.01. Membership Qualification. Membership in the Corporation shall be open to such persons, corporations, partnerships and other organizations as may be determined by the Board of Trustees.

Section 1.02. Classes of Members. The Corporation shall have such classes of members as are provided for in or pursuant to these By-Laws.

(a) Individual, Family and Honorary Members. The Corporation shall have the following classes of members: Individual Members, Family Members and Honorary Members. Each Individual Member shall be entitled to one vote, Family Members shall be entitled to one vote per family and Honorary Members shall not be entitled to vote. Individual Membership in the Corporation shall constitute an authorization for the Corporation to represent members' interests in regulatory and judicial proceedings within the scope of the activities of the Corporation.

(b) Other Classes of Members. The Board of Trustees may from time to time create other classes of membership,

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