Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Establish Policies and Cost Recovery Mechanisms for Generation Procurement and Renewable Resource Development.	Rulemaking 01-10-024 (Filed October 25, 2001)

OPINION GRANTING INTERVENOR COMPENSATION

This decision awards the Union of Concerned Scientists (UCS) $74,712 in compensation for its contribution to Decision (D.) 02-08-071 and D.02-10-062.

Background

During the energy crisis of 2000-2001, the state's large utilities were unable to directly purchase electricity, due in part to the demise of the Power Exchange and to the utilities' inability to secure financing, among other reasons. In response to this situation, the Legislature enacted ABX1 1, authorizing the California Department of Water Resources (DWR) to purchase electricity on behalf of the utilities, with the utilities acting as a billing and distribution agent. DWR's purchasing authority enacted by ABX1 1 expired on December 31, 2002.

The Commission opened Rulemaking (R.) 01-10-024 to establish ratemaking mechanisms to enable the state's three major electric utilities, Pacific Gas and Electric (PG&E), Southern California Edison (Edison) and San Diego Gas and Electric (SDG&E), to resume purchasing electricity. Recognizing that renewable energy resources would be an important recovery element, the rulemaking solicited proposals on the role and use of renewable

energy resources in procurement plans and new generation facilities and asked for comments on implementation of the state's Renewable Portfolio Standard (RPS), required by Senate Bill 1078 (2002). D.02-08-071 allowed the utilities to enter into interim short-term procurement contracts and D.02-10-062 allowed for longer-term interim procurement contracts. Both decisions also established policies and procedures relating to renewable energy procurement. UCS focused its participation in this proceeding on renewable energy issues and actively participated in the process.

Requirements for Awards of Compensation

The intervenor compensation program, enacted by the Legislature in Pub.Util. Code §§ 1801-1812, requires that the intervenor satisfy all of the following procedures and criteria to obtain a compensation award:

1. The intervenor must be a customer or a participant representing consumers, customers, or subscribers of a utility subject to our jurisdiction. (§ 1802(b.)
2. The intervenor must satisfy certain procedural requirements including the filing of a sufficient notice of intent (NOI) to claim compensation within 30 days of the prehearing conference (or in special circumstances, at other appropriate times that we specify). (§ 1804(a).)
3. The intervenor must file and serve a request for a compensation award within 60 days of our final order or decision in a hearing or proceeding. (§ 1804(c).)
4. The intervenor must demonstrate significant financial hardship. (§ 1804(b)(1).)
5. The intervenor's presentation must have made a substantial contribution to the proceeding, through the adoption, in whole or in part, of the intervenor's contention or recommendations by a Commission order or decision. (§ 1803(a).)

6. The claimed fees and costs are comparable to the market rates paid to experts and advocates having comparable training and experience and offering similar services. (§ 1806.)

For discussion here, the procedural issues in Items 1-3 above are combined, followed by separate discussions on Items 4-6.

Procedural Issues

The prehearing conference in this matter was held on January 8, 2002. On February 7, 2002, UCS served its NOI, but did not formally file it. On May 31, 2002, UCS filed a supplement to its NOI, but did not serve it on all parties. To correct these procedural deficiencies, UCS filed and served a motion on July 16, 2002, attaching the original and supplemental NOI documents. No protests were received. On August 20, 2002, Administrative Law Judge (ALJ) Walwyn, in consultation with the assigned Commissioner, ruled the NOI should be considered as timely and properly filed. In this same ruling, ALJ Walwyn ruled that UCS is a customer, in the category of a nonprofit environmental organization representing consumers, as defined in § 1802(b).

UCS filed its request for compensation on December 20, 2002, within the required 60 days of D.02-10-062. UCS has satisfied all the procedural requirements necessary to make its request for compensation.

Financial Hardship

An intervenor seeking compensation must show that, without undue hardship, it cannot pay the reasonable costs of effective participation in the proceeding. In the case of groups or organizations, significant financial hardship is demonstrated by showing that the economic interest of individual members is small compared to the overall costs of effective participation (Pub. Util. Code § 1802(g). Such a finding is normally made in the ALJ's preliminary ruling as to whether the customer will be eligible for compensation (§ 1804(b)).

In its May 31, 2002 supplement to the NOI, UCS asserted financial hardship, stating that all of its members are residential customers with annual electric bills of approximately $1,200 and that any economic interests of the members are small in comparison to the costs of participation. In the August 20, 2002 ruling mentioned above, ALJ Walwyn ruled that UCS met the significant financial hardship condition.

Substantial Contribution

UCS has been an active and productive participant in this proceeding. We further stated in D.02-10-062 that "participation in the procurement review process…. by non-market participants who are eligible to request intervenor compensation should be fully compensated because their active participation makes a significant contribution to this proceeding" (p. 3-4). UCS participated in meetings and conference calls, submitted comments and feedback to the utilities, made the appropriate filings and participated in oral argument and evidentiary hearings as part of its contribution to this proceeding.

This proceeding has many overlapping issues and involves many parties. Inevitably, intervenors took the same or similar positions on some issues. However, we believe UCS took reasonable steps to coordinate with other parties to complement and assist each other when possible. UCS offered different viewpoints or arguments that supplemented, complemented, or otherwise contributed to the presentation of other parties taking similar positions.

UCS was the only party to provide factual information on the environmental and public health benefits of renewable energy. UCS also provided useful information on the RPS and argued for the use of "all-in" procurement contracts. We agreed with UCS not to allow transitional procurement and also to require a competitive all-source solicitation along with a

separate solicitation for renewable resources. The participation of UCS provided an overall benefit to the Commission. Considering these factors, we find that UCS made a substantial contribution to D.02-08-071 and D.02-10-062.

Reasonableness of Requested Compensation

Amendments to Compensation Request

UCS filed its initial request for compensation on December 20, 2002, in the amount of $117,994. UCS filed an amendment on February 4, 2003, increasing the request to $124,179, to reflect expenses of $6,185 incurred in the preparation of a reply to a motion filed after the initial request. UCS filed a second amendment on May 5, 2003, decreasing its request to $74,712. In this second amendment, UCS asked to defer $49,467 from its request as a number of the issues for which it initially claimed compensation were subject to another phase of the rulemaking and still under consideration by the Commission. In D.03-10-085, UCS was awarded $132,691.92, which included the $49,467 deferred from this request, for its participation in another phase of the rulemaking. The total current request for compensation subject to this order is now $74,712.

Summary Compensation Requested

UCS engaged the services of Foresight Energy, a consulting firm, to assist in this phase of the rulemaking. The UCS motions of February 4 and May 5, 2003, provide the following revised totals of time and expenses incurred by UCS staff and its consultant, Foresight Energy:

Attorney Fees		
Julia Levin (UCS)	134.5 hours @ $250/hr.	$33,625
Steve Hammond (Foresight)	110.9 hours @ $110/hr.	$12,199
Policy Experts/Analysts		
Alan Nogee (UCS)	11.5 hours @ $200/hr.	$ 2,300
Steve Clemmer (UCS)	38.7 hours @ $150/hr.	$ 5,805
Warren Byrne (Foresight)	96.2 hours @ $150/hr	$14,430
Todd Thorner (Foresight)	45.1 hours @ $130/hr.	$ 5,863

Business Expenses	Copy/Delivery Costs	$ 490
Total		**$74,712**

Hours and Expenses Claimed

Attorney Julia Levin was the only legal counsel for UCS is this proceeding. She prepared legal arguments, pleadings and briefs and reviewed testimony and prepared witnesses for hearing. She also conducted cross-examination of utility witnesses, testified during oral argument and participated in all-party meetings. Alan Nogee , Director of the UCS Clean Energy Program, provided overall technical guidance and review on all issues, including pleadings and testimony. Steve Clemmer, UCS Senior Energy Analyst, reviewed briefs and testimony, worked closely with the UCS consultants, reviewed formal filings, responded to utility requests for information and coordinated testimony with RPS legislative directives.

Warren Byrne, Managing Director of Foresight, led the UCS consultant team in this proceeding. He was the primary expert witness for UCS and assisted Levin in preparing cross-examination questions of other witnesses. Steve Hammond and Todd Thorner, both with Foresight, assisted Byrne by reviewing transcripts, conducting legal research and attending hearings, when necessary.

UCS documented its claimed hours by presenting a daily breakdown of the hours accompanied by a brief description of each activity. The records reasonably support the claim for total hours.

In D.03-10-085, we found all of the above hourly rates to be reasonable for these same individuals, for work performed in the same year and in the same rulemaking. They remain reasonable. The amount claimed for business expenses constitute less than 1% of the total award, which we also consider reasonable.

Energy Foundation Grants

UCS filed its initial request for compensation on December 20, 2002. On January 17, 2003, the Southern California Edison Company (Edison) filed a response opposing the award asserting, among other issues, that UCS should not be eligible for compensation as it received various monetary grants from the Energy Foundation (EF)[1] for work on renewable energy issues in California. UCS filed its reply to Edison's opposition on February 3, 2003. Edison responded on February 19, 2003, then filed a withdrawal of its opposition on February 25, 2003.

The public website of EF shows that UCS received over $1.5 million in grants since 2000. Although Edison withdrew its opposition, we are concerned about the possibility that an intervenor might recover twice for the same expenses, first through grants from outside organizations, and second through intervenor compensation awards. A Commission ALJ issued a ruling on November 17, 2003, directing UCS to submit a clarification to its request for compensation explaining how the grant monies received from EF, or any related organizations, were used and to include a list projects. UCS submitted its response on December 23, 2003, explaining that no grant monies from any source were used to fund work for which UCS is requesting intervenor compensation from this Commission. UCS showed that a majority of the EF grants were used for work on federal energy policies and on Midwest and New England states. UCS further explained that EF funding specific to California was used for work

[1] The EF, founded in 1991, is a partnership developed to promote renewable and sustainable energy. Member groups include the MacArthur Foundation, the Pew Charitable Trusts, and the Rockefeller Foundation.

on development of the RPS, exclusive of this proceeding, that included public education programs, municipal utility advocacy and state legislative advocacy. UCS satisfactorily demonstrated that work described in its intervenor compensation request was not funded by outside grant monies. However, we will direct UCS to include in any future requests for compensation a statement whether costs or expenses contained therein were recovered form outside sources. To the extent UCS uses grants to fund its intervention at the Commission, UCS' works must account for such use, and UCS' compensation claim should be adjusted accordingly.

Award

We award UCS $74,712. This calculation is based on the hourly rates described above, plus other reasonable costs. Consistent with previous Commission decisions, we will order that, after March 5, 2003 (the 75th day after UCS filed its compensation request), interest be paid on UCS's award amount at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release H.15. Interest will continue on this award until the utilities make full payment.

We remind UCS that, like all intervenors, Commission staff may audit UCS' records related to this award, and that intervenors must make and retain adequate accounting and other documentation to support all claims for intervenor compensation.

The contributions of UCS to this proceeding have statewide implications. We direct that all three larger electric utilities (PG&E, Edison, and SDG&E) share proportionally in the payment of this award, based on their total retail sales of electricity (measured by California jurisdictional revenues) in 2002, which is the year when most costs were incurred.

Waiver of Comment Period

This is an intervenor compensation matter. Accordingly, as provided by Rule 77.7(f)(6) of our Rules of Practice and Procedure, we waive the otherwise applicable 30-day comment period for this decision.

Assignment of Proceeding

Michael R. Peevey is the Assigned Commissioner. Peter V. Allen, Christine M. Walwyn, Julie M. Halligan, and Carol A. Brown are the assigned ALJs in this proceeding.

Findings of Fact

1. UCS represents consumers, customers, or subscribers of PG&E, Edison, and SDG&E, all utilities regulated by the Commission.

2. UCS filed its NOI to claim compensation on February 7, 2002. Supplements were filed on May 31, 2002, and July 16, 2002.

3. UCS filed its request for compensation on December 20, 2002, requesting $117,994 for its contribution to this proceeding. UCS amended its request on February 4, 2003, increasing the total to $124,179, to reflect an additional $6,185 in related expenses. UCS again amended its request on May 5, 2003, deferring $49,467 in expenses to another phase of the rulemaking and decreasing the total of this request to $74,712.

4. In D.03-10-085, we awarded UCS $132,691.92, which included the above deferred expenses, for its contribution to another phase of the rulemaking.

5. UCS has explained that grant money from EF and other sources was not used to fund work subject to any intervenor compensation requests before this Commission.

6. The individual economic interests of UCS members are small in comparison to the costs incurred in effectively participating in these proceedings.

7. UCS substantially contributed to D.02-03-071 and D.02-10-062.

8. UCS requested hourly rates for attorneys and experts that are reasonable when compared to the market rates for persons with similar training and experience. We previously approved the same rates for the same attorneys and experts in D.03-10-085.

9. UCS requested other proceeding-related expenses that are reasonable.

10. The total reasonable fees and expenses awarded is $74,712.

Conclusions of Law

1. UCS has fulfilled the requirements of Pub. Util. Code §§ 1801-1812, which govern awards of intervenor compensation, and is entitled to intervenor compensation for its claimed fees and expenses incurred in making substantial contributions to D.02-08-071 and D.02-12-062.

2. The comment period should be waived, and today's order should be made effective immediately.

O R D E R

IT IS ORDERED that:

1. The Union of Concerned Scientists (UCS) is awarded $74,712 as compensation for its substantial contributions to Decision (D.) 02-08-071 and D.02-12-062.

2. Within 30 days of the effective date of this decision, Pacific Gas and Electric Company (PG&E), Southern California Edison Company (Edison), and San Diego Gas & Electric Company (SDG&E) shall each pay UCS the respective utility's share of the total award. The shares shall be computed on the basis of each utility's percentage of the total retail sales of electricity (measured by

California jurisdictional revenues) in 2002 (the year most costs were incurred) for all three utilities.

3. PG&E, Edison and SDG&E shall also pay interest on the award beginning March 5, 2003, at the rate earned on prime, three-month commercial paper as reported in Federal Reserve Statistical Release H.15, and continuing until full payment is made.

4. In any future requests before this Commission for intervenor compensation, UCS is directed to include a statement of whether costs or expenses contained therein were recovered from outside sources. To the extent UCS uses grants to fund its intervention at the Commission, UCS' works must account for such use, and UCS' compensation claim should be adjusted accordingly.

5. The comment period for today's decision is waived.

This order is effective today.

Dated _____, at San Francisco, California.

Compensation Decision Summary Information

Compensation Decision:	
Contribution Decisions:	D0208071 and D0212062
Proceeding:	R0110024
Author:	ALJ Allen
Payers:	Southern California Edison Company Pacific Gas and Electric Company San Diego Gas & Electric Company

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Reason Change/Disallowance
Union of Concerned Scientists	12/20/02	$74,712	$74,712	

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Julia	Levin	Attorney	Union of Concerned Scientists	$250	2002	$250
Alan	Nogee	Policy Expert	Union of Concerned Scientists	$200	2002	$200
Steve	Clemmer	Analyst	Union of Concerned Scientists	$150	2002	$150
Warren	Byrne	Policy Expert	Union of Concerned Scientists	$150	2002	$150
Todd	Thorner	Analyst	Union of Concerned Scientists	$130	2002	$130
Steve	Hammond	Attorney	Union of Concerned Scientists	$110	2002	$110