

Decision 06-08-013 August 24, 2006

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Promote Policy
and Program Coordination and Integration in
Electric Utility Resource Planning.

Rulemaking 04-04-003
(Filed April 1, 2004)

**OPINION ON INTERVENOR COMPENSATION TO THE GREEN POWER
INSTITUTE AND NATURAL RESOURCES DEFENSE COUNCIL FOR
SUBSTANTIAL CONTRIBUTIONS TO DECISION 06-02-032**

I. Summary

This decision awards the Green Power Institute (Green Power) \$18,735, and the Natural Resources Defense Council (NRDC) \$20,477.50 for their respective substantial contributions to Decision (D.) 06-02-032.

II. Background

The original Energy Action Plan (EAP) adopted in 2003 articulates the commitment of the California Public Utilities Commission (CPUC or Commission) and the California Energy Commission (CEC) to, among other things, "minimizing the energy sector's impact on climate change." In the EAP, the CPUC and the CEC committed to decreasing per capita energy use and reducing toxic emissions and gases through increased conservation, efficiency, and renewable resources. The EAP established a "loading order" of energy resources, with energy efficiency and conservation first, followed by demand response, renewable generation, distributed generation, and then other conventional generation and transmission investments.

In D.04-12-048, the Commission discussed expectations regarding the development of a Greenhouse Gas (GHG) reduction policy. On February 23, 2005, the Commission convened an en banc meeting to discuss best practices for reducing GHG emissions and to encourage the Commission-regulated entities to think “beyond procurement.” On March 7-9, 2005, the CPUC convened a three-day workshop in this proceeding to consider the potential interactions between strategies for GHG reduction and financial incentives for procurement performance that would apply to the three major electric utilities operating in California,¹ collectively the investor-owned utilities (IOUs). On March 29, 2005, staff issued a workshop report detailing the contents of these workshops.²

D.06-02-032 stated our intent to develop a load-based cap on GHG emissions for the IOUs, and non-utility load serving entities (LSEs) that provide electric power to customers within these respondents’ service territories. As discussed in the decision, we will establish a baseline for the GHG emissions cap on a historical year basis, with 1990 as our preferred reference year. We stated our intention to create a load-based GHG emissions cap that is compatible with any other GHG cap-and-trade regime that may be developed in the future, either in the Western Region, nationally, or internationally. This proceeding remains open to address further energy procurement and related issues.

¹ Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), and San Diego Gas and Electric Company (SDG&E).

² See *Procurement Incentive Framework, R.04-04-003, Workshop Report, March 7-9, 2005*, prepared by Commission Workshop staff, March 29, 2005 (Workshop Report). This document can be viewed on the Commission’s Website at: www.cpuc.ca.gov/static/hottopics/1energy/r0404003.htm.

III. Requirements for Awards of Compensation

The intervenor compensation program, enacted in Pub. Util. Code §§ 1801-1812,³ requires California jurisdictional utilities to pay the reasonable costs of an intervenor's participation if the intervenor makes a substantial contribution to the Commission's proceedings. The statute provides that the utility may adjust its rates to collect the amount awarded from its ratepayers. (Subsequent statutory references are to the Public Utilities Code unless otherwise indicated.)

All of the following procedures and criteria must be satisfied for an intervenor to obtain a compensation award:

1. 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 (PHC), or in special circumstances at other appropriate times that we specify. (§ 1804(a).)
2. The intervenor must be a customer or a participant representing consumers, customers, or subscribers of a utility subject to our jurisdiction. (§ 1802(b).)
3. The intervenor should 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." (§§ 1802(g), 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. (§§ 1802(i), 1803(a).)

³ All statutory references to the Public Utilities Code, unless otherwise noted.

6. The claimed fees and costs are reasonable (§ 1801), necessary for and related to the substantial contribution (D.98-04-059), comparable to the market rates paid to others with comparable training and experience (§ 1806), and productive (D.98-04-059).

For discussion here, the procedural issues in Items 1-4 above are combined, followed by separate discussions on Items 5-6.

IV. Procedural Issues

The first PHC in this case was held on April 30, 2004. Green Power and NRDC timely filed their NOIs on May 28, 2004 and June 1, 2004, respectively. In their NOIs, Green Power and NRDC asserted financial hardship.

Section 1802(b)(1) defines a “customer as: A) a participant representing consumers, customers or subscribers of a utility; B) a representative who has been authorized by a customer; or C) a representative of a group or organization authorized pursuant to its articles of incorporation or bylaws to represent the interests of residential or small business customers.

On July 27, 2004, Administrative Law Judge (ALJ) Wetzell ruled that Green Power and NRDC are customers pursuant to § 1802(b)(1)(C), and that both meet the financial hardship condition, pursuant to § 1802(g).

Green Power filed its request for compensation on April 18, 2006, and NRDC filed its request on April 17, 2006, both within 60 days of D.06-02-032 being issued.⁴ In view of the above, we find that Green Power and NRDC have satisfied all the procedural requirements necessary to make their requests for compensation.

⁴ No party opposes the requests.

V. Substantial Contribution

In evaluating whether a customer made a substantial contribution to a proceeding we look at several things. First, did the ALJ or Commission adopt one or more of the factual or legal contentions, or specific policy or procedural recommendations put forward by the customer? (*See* § 1802(i).) Second, if the customer's contentions or recommendations paralleled those of another party, did the customer's participation materially supplement, complement, or contribute to the presentation of the other party or to the development of a fuller record that assisted the Commission in making its decision? (*See* §§ 1802(i) and 1802.5.) As described in § 1802(i), the assessment of whether the customer made a substantial contribution requires the exercise of judgment.

In assessing whether the customer meets this standard, the Commission typically reviews the record, composed in part of pleadings of the customer and, in litigated matters, the hearing transcripts, and compares it to the findings, conclusions, and orders in the decision to which the customer asserts it contributed. It is then a matter of judgment as to whether the customer's presentation substantially assisted the Commission.⁵

Should the Commission not adopt any of the customer's recommendations, compensation may be awarded if, in the judgment of the Commission, the customer's participation substantially contributed to the decision or order. For example, if a customer provided a unique perspective that enriched the Commission's deliberations and the record, the Commission could

⁵ D.98-04-059, 79 CPUC2d, 628 at 653.

find that the customer made a substantial contribution.⁶ With this guidance in mind, we turn to the claimed contributions Green Power and NRDC made to the proceeding.

Green Power

Green Power points to its active participation in March, 2005 workshops, through specific comments and reply comments on issues raised in the course of this portion of the proceeding, as well as comments on the proposed decision. Green Power claims that it made substantial contributions in the subject areas of: 1) deciding the threshold issue of whether to create a greenhouse gas program, and setting the baseline year; 2) ensuring that the program is compatible with regional, national and international programs; 3) designing a program based on load, accounting for the variability of intermittent resources; and 4) constructing effective flexible compliance tools. D.06-02-032 specifically notes the value of Green Power's assistance on many of these issues. In the areas where we did not adopt Green Power's position in whole or in part, we benefited from its analysis and discussion of all of the issues it raised.

NRDC

NRDC likewise participated in workshops, filed comments on workshop issues and filed comments and reply comments on the draft decision. NRDC also filed a response to Applications for Rehearing of D.06-02-032. NRDC

⁶ See D.03-12-019, discussing D.89-03-063 (31 CPUC2d 402) (awarding San Luis Obispo Mothers for Peace and Rochelle Becker compensation in the Diablo Canyon Rate Case because their arguments, although ultimately unsuccessful, forced the utility to thoroughly document the safety issues involved).

claims that its participation made a substantial contribution in the subject areas of a cap on greenhouse gas emissions, including successfully arguing in favor of a load-based cap, an integrated strategy for reducing GHG emissions in 2006 procurement plans, and registration of emissions with the California Climate Action Registry. NRDC also says it significantly contributed in discussing carbon dioxide emission contributions of the natural gas sector, and federal preemption of Commission authority on GHG emissions. NRDC claims a significant contribution in the area of financial incentive mechanisms, including risk and reward mechanisms, shareholder financial incentives, and the need for a system of rewards and penalties. D.06-02-032 specifically notes the value of NRDC's assistance on many of these issues. NRDC achieved a high level of success on the issues it raised.

Overall, we find that Green Power and NRDC both made substantial contributions to D.06-02-032. Each party represents that it took efforts to ensure efficiency and to avoid and minimize duplication of effort. The record developed supports these assertions.

After we have determined the scope of a customer's substantial contribution, we then look at whether the compensation requested is reasonable.

VI. Reasonableness of Requested Compensation

Green Power requests \$21,353 and NRDC requests \$20,522.50 for their participation as outlined in the tables below.

Green Power

Green Power documented its claimed hours by presenting a daily breakdown of the hours of its witness, Dr. Gregory Morris, accompanied by a brief description of each activity. Green Power is requesting an hourly rate of

\$240 for Morris, but also included a column calculating a \$210/hour rate, should the \$240 rate not be adopted.

	<u>@ \$210</u>	<u>@ \$240</u>
Staff Time 2005 (71 hours)	\$ 14,910	17,040
Staff Time 2006 (10 hours)	\$ 2,184	2,496
Comp Request Prep Time*	\$ 1,420	1,622
Document Filing and Serving	\$ 195	195
Total Compensation Request	\$ 18,709	21,353

NRDC

NRDC documented its claimed hours by presenting a daily breakdown of the hours of its expert witnesses, Devra Wang and Audrey Chang, accompanied by a brief description of each activity.

Expert	Year	Time (hours)	Rate (\$/hour)	Requested Comp
Wang	2005	114.75	\$120.00	\$ 13,770.00
	2006	9.00	\$130.00	\$ 1,170.00
Chang	2005	19.50	\$110.00	\$ 2,145.00
	2006	31.25	\$110.00	\$ 3,437.50
TOTAL				\$ 20,522.50

In general, the components of these requests must constitute reasonable fees and costs of the customer’s preparation for and participation in a proceeding that resulted in a substantial contribution. The issues we consider to determine reasonableness are discussed below:

Hours and Costs Related to and Necessary for Substantial Contribution

We first assess whether the hours claimed for the customer’s efforts that resulted in substantial contributions to Commission decisions are reasonable by determining to what degree the hours and costs are related to the work performed and necessary for the substantial contribution.

The hourly breakdowns provided by Green Power and NRDC reasonably support their claims for total hours. Since we found that Green Power and NRDC made substantial contributions to the delineated decision, we need not exclude from their awards compensation for certain issues. Green Power's award is adjusted slightly to correct computational errors.

Market Rate Standard

We next take into consideration whether 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.

Green Power

Green Power seeks an hourly rate of \$240 for Morris, for work performed in 2005, an increase from his previously authorized 2004 rate of \$210/hour. Green Power states that \$240/hour is warranted for 2005 because Morris' accumulated experience has moved him to a higher level of qualification. In D.05-11-031, we adopted guidelines and principles for setting intervenors' hourly rates for work performed in 2005. Except under specific conditions, D.05-11-031 generally does not authorize rate increase above previously approved 2004 rates. In D.06-04-002, we adopted a rate of \$210 for Morris for 2005 work, and adopt that same rate here.

We have not yet determined intervenors' 2006 rates. In this case, we will grant a 3% increase for 2006 for Morris based more recent government reports of general inflation than the lower reports cited in D.05-11-031. With rounding, this results in a \$220/hour rate for 2006 work.

NRDC

NRDC seeks an hourly rate of \$120 for 2005, and \$130 in 2006, for Wang; and an hourly rate of \$110 for both 2005 and 2006 for Chang. D.06-04-005 adopted a 2005 hourly rate of \$120 for Wang and \$110 for Chang.

NRDC requests an increase for 2006 to \$130/hour for Wang because a) the rate requested is at the low end of the \$110 - \$360 range of 2005 hourly rates for experts set forth in D.05-11-031, b) Wang received a promotion from NRDC in 2005 from Staff Scientist to Director of NRDC's California Energy Program, and c) a \$130/hour rates falls more appropriately within the range of expert rates.

As noted, we have not yet determined intervenors' 2006 rates. In this case, as with Green Power's Morris, we will grant a 3% increase for 2006 for Wang. With rounding, this results in a \$125/hour rate for Wang's 2006 work.

Productivity

D.98-04-059 directed customers to demonstrate productivity by assigning a reasonable dollar value to the benefits of their participation to ratepayers. The costs of a customer's participation should bear a reasonable relationship to the benefits realized through their participation. This showing assists us in determining the overall reasonableness of the request.

Green Power

Green Power states that it coordinated efforts with other parties to avoid duplication, and tried to minimize duplication where it was unavoidable. Green Power admits it cannot demonstrate specific monetary benefits to residential customers. However, Green Power believes the Commission's GHG reduction program reduces risk of future energy price increased related to proactive measures that can be taken now to decrease the intensity of GHG emissions, before long-term commitments lock-in higher emitting

resources. In addition, GHG reductions provide benefits in the areas of health and environmental improvement. We agree that there are multiple and substantial indirect benefits to ratepayers through GHG reductions, as well as potential ratepayers benefits from avoiding future energy cost increases. We also agree that Green Power's participation improved the design of our GHG programs, increasing potential benefits. Thus, we find that Green Power's efforts have been productive.

NRDC

NRDC that a reliable, affordable and environmentally sustainable energy resources portfolio will have a lasting benefit to ratepayers. It concedes it cannot identify precise monetary benefits to ratepayers. However, NRDC argues that establishing of a cap on GHG emissions will help protect customers from the financial risk they face due to the likely federal regulation of greenhouse gases. NRDC also states that the establishment of a risk/reward performance incentive mechanism for energy efficiency will help ensure that the benefits of the utilities' 2006-8 energy efficiency portfolios will be maximized. We agree that to the extent energy usage is lowered through energy efficiency programs, ratepayers benefit monetarily by avoiding energy costs. We also agree that these programs, improved through NRDC's participation, have other social benefits which, though hard to quantify, are substantial. Thus, we find that NRDC's efforts have been productive.

Direct Expenses

The itemized direct expenses submitted by Green Power include costs for photocopying, postage, and messenger services and total \$195.19 for Green Power. NRDC itemizes no direct expenses. The cost breakdown included

with the request shows the miscellaneous expenses for Green Power to be commensurate with the work performed. We find these costs reasonable.

VII. Award

As set forth in the table below, we award Green Power \$18,735 and NRDC \$20,477.50.

Green Power

Staff Time 2005 (71 hours @ \$210)	\$ 14,910
Staff Time 2006 (10 hours @ \$220)	\$ 2,200
Comp Request Prep Time (13 hours @ \$110)	\$ 1,430
Document Filing and Serving	\$ 195
 Total Compensation Request	 \$ 18,735

NRDC

Expert	Year	Time (hours)	Rate (\$/hour)	Requested Comp
Wang	2005	114.75	\$120.00	\$ 13,770.00
	2006	9.00	\$130.00	\$ 1,170.00
Chang	2005	19.50	\$110.00	\$ 2,145.00
	2006	31.25	\$110.00	\$ 3,437.50
TOTAL				\$ 20,522.50

Consistent with previous Commission decisions, we order that interest be paid on the award amount (at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release H.15) commencing on the 75th day after Green Power and NRDC filed their compensation requests, and continuing until full payment of the awards is made.

We direct PG&E, SCE, and SDG&E to allocate payment responsibility among themselves based upon their California-jurisdictional electric revenues for the 2005 calendar year, to reflect the year in which the proceeding was primarily litigated.

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. Green Power and NRDC's records should identify specific issues for which they requested compensation, the actual time spent by each employee or consultant, the applicable hourly rate, fees paid to consultants, and any other costs for which compensation was claimed.

VIII. 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.

IX. Assignment of Proceeding

Michael Peevey is the Assigned Commissioner, and Meg Gottstein is the assigned ALJ in this proceeding.

Findings of Fact

1. Green Power and NRDC have satisfied all the procedural requirements necessary to claim compensation in this proceeding.
2. Green Power and NRDC made substantial contributions to D.06-02-032, as described herein.
3. Green Power and NRDC requested hourly rates for its representatives that, as adjusted herein, are reasonable when compared to the market rates for persons with similar training and experience.
4. Green Power requested related expenses that are reasonable and commensurate with the work performed.
5. The total of the reasonable compensation for Green Power is \$18,735.
6. The total of the reasonable compensation for NRDC is \$20,477.50.
7. The appendix to this opinion summarizes today's award.

Conclusions of Law

1. Green Power and NRDC have fulfilled the requirements of Pub. Util. Code §§ 1801-1812, which govern awards of intervenor compensation, and are entitled

to intervenor compensation for their claimed compensation, as adjusted herein, incurred in making substantial contributions to D.06-02-032.

2. Green Power should be awarded \$18,735 for its contributions to D.06-02-032.

3. NRDC should be awarded \$20,477.50 for its contributions to D.06-02-032.

4. Per Rule 77.7(f)(6), the comment period for this compensation decision may be waived.

5. This order should be effective today so that Green Power and NRDC may be compensated without further delay.

O R D E R

IT IS ORDERED that:

1. The Green Power Institute (Green Power) is awarded \$18,735 as compensation for its substantial contributions to Decision (D.) 06-02-032.

2. The Natural Resources Defense Council (NRDC) is awarded \$20,477.50 as compensation for its substantial contributions to D.06-02-032.

3. Within 30 days of the effective date of this decision, Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison shall pay Green Power and NRDC their respective shares of the award. Each utility's share shall be calculated based on their California-jurisdictional gas and electric revenues for the 2005 calendar year. Payment of the award shall include interest at the rate earned on prime, three-month commercial paper as reported in Federal Reserve Statistical Release H.15, beginning July 1, 2006 for NRDC, and July 2, 2006 for Green Power, the 75th day after the respective filing dates of their requests for compensation, and continuing until full payment is made.

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

This order is effective today.

Dated August 24, 2006, at San Francisco, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
Commissioners

APPENDIX

Compensation Decision Summary Information

Compensation Decision:	D0608013	Modifies Decision? N
Contribution Decision(s):	D0602032	
Proceeding(s):	R0404003	
Author:	ALJ Gottstein	
Payer(s):	Pacific Gas and Electric Company, Southern California Edison Company, San Diego Gas & Electric Company	

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
Natural Resources Defense Council	4/17/06	\$20,522.50	\$20,477.50	No	Reduced 2006 rate
Green Power	4/18/06	\$21,353	\$18,735	No	Reduced 2005/6 rate

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Devra	Wang	Policy Expert	NRDC	\$120	2005	\$120
Devra	Wang	Policy Expert	NRDC	\$130	2006	\$125
Audrey	Chang	Scientist	NRDC	\$110	2005	\$110
Audrey	Chang	Scientist	NRDC	\$110	2006	\$110
Gregory	Morris	Policy Expert/Scientist	Green Power	\$240	2005	\$210
Gregory	Morris	Policy Expert/Scientist	Green Power	\$240	2006	\$220

(END OF APPENDIX)