

**PUBLIC UTILITIES COMMISSION**505 VAN NESS AVENUE  
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TO PARTIES OF RECORD IN RULEMAKING 08-07-011 AND APPLICATION 08-06-004

This is the proposed decision of Administrative Law Judge (ALJ) David M. Gamson. It will not appear on the Commission's agenda for at least 30 days after the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the proposed decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the proposed decision as provided in Article 14 of the Commission's Rules of Practice and Procedure (Rules), accessible on the Commission's website at [www.cpuc.ca.gov](http://www.cpuc.ca.gov). Pursuant to Rule 14.3, opening comments shall not exceed 15 pages.

Comments must be filed either electronically pursuant to Resolution ALJ-188 or with the Commission's Docket Office. Comments should be served on parties to this proceeding in accordance with Rules 1.9 and 1.10. Electronic and hard copies of comments should be sent to ALJ Gamson at [dmg@cpuc.ca.gov](mailto:dmg@cpuc.ca.gov) and the assigned Commissioner. The current service list for this proceeding is available on the Commission's website at [www.cpuc.ca.gov](http://www.cpuc.ca.gov).

/s/ PHILIP S. WEISMEHL for  
Karen V. Clopton, Chief  
Administrative Law Judge

KVC:avs

Attachment

Decision PROPOSED DECISION OF ALJ GAMSON (Mailed 4/21/2009)

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Develop the Commission’s Energy Efficiency Strategic Plan.

Rulemaking 08-07-011  
(Filed July 10, 2008)

Joint Application of Pacific Gas and Electric Company (U39E), Southern California Edison Company (U338E), San Diego Gas & Electric Company (U902E), and Southern California Gas Company (U904G) Submitting the California Energy Efficiency Strategic Plan.

Application 08-06-004  
(Filed June 2, 2008)

**DECISION GRANTING INTERVENOR COMPENSATION TO NATIONAL RESOURCES DEFENSE COUNCIL, GREENLINING INSTITUTE, AND WOMEN’S ENERGY MATTERS FOR SUBSTANTIAL CONTRIBUTION TO DECISION 08-09-040 AND TO COMMUNITY ENVIRONMENTAL COUNCIL FOR CONTRIBUTION TO DECISION 08-09-040 AND DECISION 08-07-047**

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**DECISION GRANTING INTERVENOR COMPENSATION  
TO NATIONAL RESOURCES DEFENSE COUNCIL, GREENLINING  
INSTITUTE, AND WOMEN’S ENERGY MATTERS FOR SUBSTANTIAL  
CONTRIBUTION TO DECISION 08-09-040 AND TO COMMUNITY  
ENVIRONMENTAL COUNCIL FOR CONTRIBUTION TO DECISION 08-09-040  
AND DECISION 08-07-047**

This decision awards National Resources Defense Council (NRDC) \$15,692.50, Greenlining Institute (Greenlining) \$7,688.70, Women’s Energy Matters (WEM) \$11,432.50 for their substantial contributions to Decision (D.) 08-09-040 and to Community Environmental Council (CEC) \$55,753.75 for its substantial contribution to D.08-07-047 and D.08-09-040. The request by The Utility Reform Network (TURN) is resolved by separate decision.

**1. Background**

In 2005, the Commission and the California Energy Commission issued California’s Energy Action Plan II, which reflected the policy that energy efficiency was to be the resource of first choice to meet California’s growing energy demand, and the requirement of Public Utilities Code Section 454.5(b)(9)(C) that utilities first meet their “unmet resource needs through all available energy efficiency and demand reduction resources that are cost effective, reliable, and feasible.”

Energy efficiency was also projected to deliver a large portion of the greenhouse gas emissions reductions necessary to achieve the goals of the California Global Warming Solutions Act of 2006.<sup>1</sup>

In April 2006, the Commission initiated a rulemaking (Rulemaking (R.) 06-04-010) to review and update energy efficiency programs and policies that

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<sup>1</sup> California Health & Safety Code, §§ 38500 *et seq.* (AB 32).

anticipated six Phases for the proceeding: (1) Shareholder Risk/Reward Incentive Mechanism, (2) Evaluation, Measurement and Verification (EM&V), (3) Refinements to Policy Rules and Reporting Requirements, (4) Updates to Energy Efficiency Potentials Studies and Savings Goals, (5) Implementation of 2006-2008 Portfolio Plans and Planning Process for 2009-2011 Program Cycle, and (6) Transition Issues and Filings Related to Pre-2006 Programs.

(May 24, 2006 Scoping Memo (Scoping Memo) at 2.) The Commission set immediate schedules for Phases 1 and 2, and delayed the other phases which by nature required a slower development process. (Scoping Memo at 24.) Phase 5, covering the energy efficiency planning process for 2009-2011, was among phases considered at a PHC in February 2007. After the PHC, assigned Commissioner Grueneich issued a Scoping Memo and Ruling covering Phases 3, 4 and 5.

On October 18, 2007, the Commission issued D.07-10-032, an Interim Opinion in R.06-04-010 from Phase 5 that “created a framework for sustainable energy efficiency and other demand-reducing programs and a process for accomplishing extensive energy savings through long-term strategic planning.” (D.07-10-032 at 4.) The regulated energy utilities were required, *inter alia*, to:

- Engage in long-term strategic planning, in particular to develop a single, statewide Investor-Owned Utility (IOU) strategic plan for energy efficiency through 2020 and beyond to be included with each utility’s application for approval of 2009-2011 energy efficiency portfolios;
- Collaborate with others who engage in planning and delivery of energy efficiency related goods and services, or who receive such services; and

- Integrate customer demand-side programs, such as energy efficiency, self-generation, advanced metering, and demand response, in a coherent and efficient manner. (D.07-10-032 at 5, 138.)

With substantial detail, the Commission stated the Strategic Plan was to identify specific activities and program areas, including focus on new residential and commercial construction and heating/ventilation/air conditioning (HVAC) programs, as well as provide implementation milestones for the 2009-2011 program cycle. (D.07-10-032 at 6.) The Commission provided comprehensive direction to IOUs, other stakeholders, staff, and others involved as to the process for, and content of, the Strategic Plan, including discussion of Program Initiatives, Marketing, Education, Outreach and Training, Portfolio Design, and Measurements of Success. The Commission also set forth a schedule for development of the 2009-2011 Utility Portfolio Applications and Review. (D.07-10-032 at 130.)

During November and December 2007 and January 2008, working groups for four “vertical” market sectors - residential, including low income, commercial, industrial, and agricultural - and seven cross-cutting areas - Heating, Ventilation and Air Conditioning (HVAC) systems; Demand Side Management (DSM) Coordination and Integration; Workforce Education and Training (WET); Marketing Education and Outreach (ME&O); Research and Technology; Codes and Standards; and Local Governments - held 36 public stakeholder workshops. The objective of these workshops was to facilitate information exchange and develop an action plan for each market sector and each cross-cutting sector. In January 2008, these “Convener Reports” were provided to the IOUs to inform their strategic planning efforts.

Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), Southern California Gas Company (SCG), and San Diego Gas and Electric Company (SDG&E) (collectively “Utilities”) presented an initial draft of their California Energy Efficiency Strategic Plan (IOU Draft) to Commission staff and other interested parties in February 2008, and subsequently revised it.

On June 2, 2008, the Utilities jointly filed Application (A.) 08-06-004 seeking approval of their California Energy Efficiency Strategic Plan (CEESP). As directed by the Commission in D.07-10-032, the proposal included goals, outcomes, and strategies to positively affect California energy market decisions and was the result of an extensive collaborative process with the California Energy Commission and included dozens of workshops and hundreds of participants.

However, the Commission concluded it wanted to incorporate the efforts made by all participants in developing the CEESP “into a Commission-approved plan on behalf of the state of California.” (R.08-07-011 at 2.) On July 10, 2008, the Commission opened a new rulemaking, R.08-07-011, to develop a Commission-sponsored California Strategic Plan for Energy Efficiency through 2020 and beyond (now called the California Long-Term Energy Efficiency Strategic Plan) and consolidated the proceeding with A.08-06-004. The rulemaking was to provide a procedural vehicle to consider the CEESP application as part of a larger Commission Strategic Plan. “This rulemaking will allow for development of a record and consideration of ideas above and beyond the detailed strategies and implementation plans discussed in the Utilities’ CEESP application.” (R.08-07-011 at 3.)

On July 9, 2008, the Division of Ratepayer Advocates (DRA) and The Utility Reform Network (TURN) filed protests to the IOU's CEESP, while the Natural Resources Defense Council (NRDC) filed a response.

On July 14, 2008, assigned Commissioner Dian Grueneich and Administrative Law Judge (ALJ) David Gamson issued a Ruling in the consolidated proceeding seeking comments on a Commission draft Long-Term Energy Efficiency Strategic Plan (Commission Draft) that drew from the joint utility filing in A.08-06-004, the July 9 comments on that filing, and the Commission directives in D.07-10-032.

The Commission Draft described four specific goals, known as the "Big Bold Energy Efficiency Strategies (BBEES)," or programmatic initiatives, established by the Commission in D.07-10-032 and D.07-12-051:<sup>2</sup>

1. All new residential construction in California will be zero net energy by 2007;
2. All new commercial construction in California will be zero net energy by 2030;
3. Heating, ventilation and air conditioning will be transformed to ensure that its energy performance is optimal for California's climate; and
4. All eligible low-income customers will have a meaningful opportunity to participate in the Low-Income Energy Efficiency program and will be provided all cost-effective energy efficiency measures in their residences by 2020.

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<sup>2</sup> Decision 07-12-051 (December 20, 2007) is a companion to D.07-10-032, titled Decision Providing Direction for Low-Income Energy Efficiency Policy Objectives, Program Goals, Strategic Planning and the 2009-2011 Program Portfolio and Addressing Renter Access and Assembly Bill 2140 Implementation.

At a prehearing conference and workshop held on July 18, 2008 the issues in the proceeding were identified in a series of questions for parties to address. On July 31, 2008, the joint utilities filed replies. Also on July 31, 2008, over a dozen additional parties filed initial comments on the Commission Draft. On August 7, 2008, parties filed replies to comments on the Commission Draft. Parties' comments and replies to the Commission's Draft are summarized, respectively, in Appendixes 1 and 2 to D.08-09-040.

### **1.1. California Long-Term Energy Efficiency Strategic Plan**

On September 19, 2008, in D.08-09-040, the Commission adopted the California Long-Term Energy Efficiency Strategic Plan (Plan) and required that the strategies be incorporated into energy efficiency program planning and implementation beginning in 2009. The Plan sets forth a roadmap for energy efficiency in California through the year 2020 and beyond. It articulates a long-term vision and goals for each economic sector and identifies specific near-term, mid-term and long-term strategies to assist in achieving those goals.

The decision was the result of an extensive collaborative process that involved the major regulated energy utilities (IOUs) in addition to more than 500 individuals and organizations. The utilities, stakeholders, parties, and other interested persons primarily contributed to the Commission's decision-making process by their participation in workshops and meetings, and by filing protests, comments, and responses particularly those related to the questions proffered in the July 14, 2008 Ruling. Those questions are as follows:

- What strategies encompassed in the CEESP application should be adopted in a Commission Strategic Plan?
- What strategies delineated in the CEESP application should be modified for adoption in a Commission Strategic Plan, and how?

- What strategies not discussed in the CEESP application should be added and adopted in a Commission Strategic Plan?
- What strategic roles should the Commission take in working with other governmental agencies and other non-jurisdictional stakeholders in support of a Commission Strategic Plan?
- What market transformation strategies, including new or different organizational structures, should a Commission Strategic Plan address or contemplate?
- How should a Commission Strategic Plan coordinate energy efficiency plans with demand response plans and solar programs?
- What specific low-income energy efficiency strategies should be encompassed in a Commission Strategic Plan?
- What process should be used to update the Commission Strategic Plan?

In D.08-09-040, the Commission discussed all of these topics in light of the comments received and how the matters were treated in the final Plan. The Plan, Attachment A to D.08-09-040, implements the Commission's prior direction that "a key element of the Strategic Plan would be that it articulates how energy efficiency programs are or will be designed with the goal of transitioning to the marketplace without ratepayer subsidies, or codes and standards." (D.07-10-032 at 33.) It affirms that market transformation is a unifying objective of the Plan, but due to time constraints the Commission postponed any decision on identifying the process to track progress of program efforts and the metrics to measure that progress. (D.08-09-040 at 10.)

The Plan incorporates the four "Big Bold" energy efficiency program goals and delineates strategies, technologies and an implementation plan for the

residential -- including low income, commercial, industrial, agricultural, and HVAC sectors. It also identifies goals, strategies and implementation plans for:

1. improvement of energy codes and standards;
2. demand side management coordination and integration;
3. workforce education and training;
4. research and technology;
5. marketing, education and outreach; and
6. involvement of local governments, state agencies and other stakeholders.

Finally, the Commission stated the Plan adopted in D.08-09-040 has elements that should be initiated between 2009 and 2011. The utilities have now filed applications seeking authorization for over \$3.7 billion worth of energy efficiency programs for 2009-2011, including many programs consistent with the June 2, 2008 joint CEESP application. The Commission directed the utilities to file amendments to their 2009-2011 program applications to “achieve closer integration with the Plan” as directed by the assigned Commissioner and ALJ in the other proceedings. (D.08-09-040 at 17.)

## **2. Requirement for Awards of Compensation**

The intervenor compensation program, which is set forth in Pub. Util. Code §§ 1801-1812,<sup>3</sup> requires California jurisdictional utilities to pay the reasonable costs of an intervenor’s participation if that party 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.

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<sup>3</sup> All 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), pursuant to Rule 17.1 of the Commission's Rules of Practice and Procedure (Rules), or at another appropriate time 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 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." (§§ 1802(g) and 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 or as otherwise found by the Commission. (§§ 1802(i) and 1803(a).)
6. The claimed fees and costs must be 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).

In the discussion below, the procedural issues in Items 1-4 above are combined and a separate discussion of Items 4-6 follows.

### **2.1. Preliminary Procedural Issues**

Under § 1804(a)(1) and Rule 17.1(a)(1), a customer who intends to seek an award of intervenor compensation must file an NOI before certain dates. In a proceeding initiated by a petition for rulemaking, the intervenor must file its

NOI between the date the petition was filed and 30 days after the time for filing responsive pleadings, *e.g.*, protests, responses, answers, or comments.

(Rule 17.1(a)(3).) This is a consolidated proceeding in which the rulemaking petition was filed July 10, 2008 and a pre-hearing conference was held for both the rulemaking and the application on July 18, 2008. Under Rule 17.1(a)(1) related to an application, the NOI could be filed up to 30 days after the pre-hearing conference, or August 17, 2008. Since this falls on a Sunday, NOIs would be timely through August 18, 2008. In the alternative, under Rule 17(a)(3) applicable to rulemaking, the NOI could be filed up to 30 days after the petition is filed, or August 9, 2008. Because the proceedings were consolidated, we refer to the later date of August 17, 2008 as the final date for a timely NOI to be filed.

Requests for Intervenor Compensation in this consolidated proceeding must be filed on or before November 18, 2008, within 60 days after the final decision issued September 19, 2008.

#### **2.1.1. NRDC**

NRDC timely filed a NOI on August 15, 2008. It also meets the definition under § 1802(b)(C) of a Category 3 customer eligible to claim intervenor compensation as it is a formally organized group authorized pursuant to its bylaws to represent the interests of its members, more than 124,000 of whom are residential customers dispersed throughout California. The interest of NRDC's members is to preserve environmental quality while minimizing the societal costs of providing electric service through energy efficiency, renewable resources and other cost effective alternative energy resources as reflected in its Certificate of Incorporation. Furthermore, NRDC represents customers with a concern for the environment that distinguishes their interests from those represented by other consumer advocates that have intervened in this case.

NRDC meets the requirements of the financial hardship test in § 1802(g) because, as a Category 3 customer, it has shown the economic interest of individual NRDC members is small when compared to the costs of effective participation. For example, NRDC asserts an average residential member's annual electricity bill is likely to be less than one thousand dollars a year and savings achieved in this proceeding would be substantially less than this amount for an individual member. This sum is far exceeded by the \$15,692.00 cost of participation claimed by NRDC in this case. NRDC timely filed its Request for Compensation (RFC) on November 18, 2008 and no party opposed the request.

### **2.1.2. CEC**

CEC is a regional membership organization, based in Santa Barbara with over 2,000 members, representing solely the interests of residential and small commercial electricity and natural gas customers in the Central Coast region of California. It filed its NOI late on August 21, 2008 with the permission of ALJ Gamson. In the NOI, CEC asserted it is a "Category 1 customer" and incorrectly stated the Commission had supported this determination in several cited proceedings. However, this claim is in error. In R.03-10-003, I.05-09-005, R.06-04-009, and R.06-04-010, the Commission instead found CEC to be a Category 3 customer. (§ 1802(b)(C).) We agree with that characterization.

As for "significant financial hardship," CEC attempts to rely on a finding in D.08-06-018 (R.06-04-010) that it had shown "significant financial hardship" in order to establish a rebuttable presumption of eligibility pursuant to § 1804(b)(1) in this proceeding. This argument fails. Although the decision was issued within one year of the commencement of these proceedings, we note that the finding was based on June 28, 2006 ruling in that proceeding which itself was based on a March 2006 ruling in I.05-09-005, yet another proceeding, which

also was based on a prior ruling to establish the presumption. This continuous bootstrapping of one showing many years ago is not what is contemplated by the rebuttable presumption provisions in § 1804(b)(1). Thus, we re-examine here the question of “significant financial hardship.”

Similar to the analysis above for NRDC, we find that CEC meets the requirements of the financial hardship test in § 1802(g) because, as a Category 3 customer, the economic interest of individual CEC residential members is small when compared to the costs of effective participation. The savings achieved for its members in this proceeding would be substantially less than the \$64,838.00 cost of participation claimed by CEC in this case. CEC timely filed its RFC on October 17, 2008 and no party opposed the request.

### **2.1.3. WEM**

WEM timely filed its NOI on August 18, 2008 in which it claimed it would take “an active role in this proceeding,” had already attended the PHC and filed Comments on July 31, 2008, would file additional Comments, and that it would claim about 60 hours of time for Barbara George’s at her 2008 rate of \$175 per hour for a total of \$10,500. (WEM RFC at 3.) WEM also said it might need to hire an expert and might incur additional costs depending on the future course of the proceeding. (WEM RFC at 3.) WEM meets the definition under § 1802(b) of a Category 3 customer eligible to claim intervenor compensation as it is a formally organized group authorized by its bylaws to represent the interests of consumers in administrative and judicial proceedings concerning public utilities matters. In its NOI, WEM claimed would be one of a very few parties representing the interests of residential and small commercial customers (particularly women and low-income customers), the vast majority of utility

customers, and the interests of customers located in the territories of “Community Choice Aggregators” in California.

WEM satisfies the criteria for a finding of “significant financial hardship” pursuant to § 1802(g), through a rebuttable presumption of eligibility, pursuant to § 1804(b)(1), because the assigned ALJ found WEM satisfied this condition in A.07-02-032 (D.08-01-017) within one year of the commencement of this proceeding.<sup>4</sup> WEM timely filed its Request for Compensation on October 20, 2008. On November 19, 2008, Southern California Edison Company (SCE) filed a Response to WEM’s request disputing that WEM made a substantial contribution to the proceeding. This matter will be discussed further below.

#### **2.1.4. Greenlining**

Greenlining timely filed its NOI on August 14, 2008. It also meets the definition under § 1802(b) of a Category 3 customer eligible to claim intervenor compensation as it is a formally organized group authorized by its bylaws to represent, among others, low-income communities and residential ratepayers before regulatory agencies and courts. The interests that Greenlining represents, specifically low-income, minority and limited-English speaking communities, have often been underrepresented in Commission proceedings.

Greenlining meets the requirements of the financial hardship test in § 1802(g) because, as a Category 3 customer, the economic interest of individual members is small when compared to the costs of effective participation. Furthermore, it is entitled to a presumption based on a finding in another

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<sup>4</sup> D.08-01-017 was issued January 11, 2008.

proceeding within one year of the commencement of this proceeding<sup>5</sup>.

Greenlining timely filed its request for Compensation on November 18, 2008 and no party opposed the request.

### **3. Substantial Contribution**

Initially, we note that CEC, NRDC and WEM all seek compensation here for work done in R.06-04-010, where all were found eligible for intervenor compensation primarily relating to Phases 1 and 2.<sup>6</sup> This raises some challenges to our review and we note that factually they are situated somewhat differently. Both general and an individualized discussions follow below, based on our review of the record in both R.06-04-010 and this proceeding.

After the February 27, 2007 PHC in R.06-04-010 on Phases 3-5, the assigned Commissioner issued a Scoping Memo and Ruling that, *inter alia*, identified the deadline for filing an NOI related to these phases as March 29, 2007, 30 days after the PHC, and required RFCs to allocate hours to each specific issue.<sup>7</sup> Thus, the assigned Commissioner contemplated that RFCs for work in Phases 3-5 would be filed in R.06-04-010, every claimant's activity would be clearly identified as to which Phase it applied, and the activity would be linked to the Decision issued on that Phase. Only NRDC filed a new NOI for these phases prior to March 29, 2007.

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<sup>5</sup> Ruling on Notices of Intent to Claim Compensation issued September 8, 2008 in A.08-03-015.

<sup>6</sup> WEM and CEC were found eligible to claim intervenor compensation in a June 28, 2006 ruling and CEC and NRDC were both awarded intervenor compensation in D.08-06-018.

<sup>7</sup> Assigned Commissioner's Scoping Memo and Ruling issued April 13, 2007 in R.06-04-010 at 10-11.

There is no dispute that activity in Phases 4 and 5 led to the IOU's CEESP submitted in A.08-06-004, the Commission Draft provided in R.08-07-011, and the final Plan approved in D.08-09-040. The CEESP was the foundation upon which the Commission crafted the Plan adopted in D.08-09-040 to extend energy efficiency strategic planning on a statewide basis.

Therefore, it is possible that some of the parties' work in the prior rulemaking may have substantially contributed to D.08-09-040 and that seeking compensation in this proceeding rather than the prior rulemaking might reasonably follow given the unusual evolution of the strategic planning process. The question is where to draw the line. We caution that seeking compensation for contribution to a decision in another proceeding that has not been consolidated is a rare exception warranted only by extraordinary circumstances. Parties should not assume it is appropriate, should procedurally protect their claims in the first proceeding, and should seek permission from the presiding officer of both proceedings to permit review of the linkage between the proceedings, provide notice to other parties, and to avoid an expiration of intervenor rights.

Even where a claim for compensation in this proceeding might be allowed for work in R.06-04-010, some challenges arise in determining which work should be included and the value of that work. Here, D.07-10-032 launched a series of post-decision meetings, workshops, and other activity aimed at developing an IOU strategic plan beginning after the decision was issued on October 18, 2007 and continuing until the IOUs filed A.08-06-004 on June 2, 2008. CEC and NRDC only assert claims for strategic planning activities after October 18, 2007. On the other hand, WEM requests compensation for activities

beginning in March 2007, including some that led to D.07-10-032 and after that decision as the process evolved into D.08-09-040.

Another challenge arises because the work by parties, before and after D.07-10-032, was largely done in meetings and workshops outside the record of either R.06-04-010 or this consolidated proceeding. In addition, because both NRDC and CEC filed RFCs in R.06-04-010, we must review these awards to be sure there is no overlap or inconsistency between what was previously claimed and what is now claimed.

### **3.1. R.06-04-010**

We begin with a review of compensation awarded to these parties in R.06-04-010. CEC filed requests for compensation for contributions to D.07-10-032 (Phase 5 -Goals and Programs 2009-2011), D.07-09-043 (Phase 1-shareholder risk/reward incentives), D.08-07-047 (Phase 4 - 2009-2011 savings goals 2012-2020), and for D.08-09-040 which was issued in this proceeding. In D.08-06-018, the Commission found CEC had not made a substantial contribution to D.07-09-043 but awarded compensation for its contribution to the strategic planning decision D.07-10-032. There has been no decision in R.06-04-010 as to the other pending requests which become moot upon adoption of this decision. CEC says it received permission from ALJ Gamson to make a combined request for compensation in this proceeding that included its efforts towards D.08-07-047.

Neither WEM nor NRDC asked for, or received permission to file combined compensation requests. WEM filed no RFCs in R.06-04-010. NRDC filed an RFC for its contributions to D.07-10-032, D.08-07-047 and also for D.08-09-040. In D.08-06-018, the Commission found NRDC's contributions to the strategic planning decision, D.07-10-032, was largely not substantial and reduced

the compensation claim by 80% but allowed compensation for work related to Program Advisory and Peer Review Groups. There has been no decision in R.06-04-010 as to the other pending requests, however, the RFC related to D.08-09-040 becomes moot upon adoption of this decision.

In evaluating whether a customer made a substantial contribution to a proceeding, we look at several things. First, we look at whether the Commission adopted one or more of the factual or legal contentions, or specific policy or procedural recommendations put forward by the customer. (§ 1802(i).) Second, if the customer's contentions or recommendations paralleled those of another party, we look at whether the customer's participation unnecessarily duplicated or materially supplemented, complemented, or contributed to the presentation of the other party. (§§ 1801.3(f) 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.<sup>8</sup>

With this guidance in mind, we turn to the claimed contributions each intervenor made to the proceeding.

Formal participation by parties occurred in this consolidated application and rulemaking proceeding through filing of Opening Comments

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<sup>8</sup> D.98-04-059, 79 CPUC2d 628 at 653.

and Reply Comments on the Commission Draft, participation in the PHC and workshop held on July 18, 2008, and Comments and Reply Comments to the Proposed Decision. To the extent that compensation is claimed for work in R.06-04-010 we will examine the facts of each claim separately.

### **3.1.1. NRDC**

NRDC asserts the IOU's CEESP, the Commission's Plan, and D.08-09-040 all reflect its recommendations on various issues and seeks compensation for its participation and comments "throughout all related proceedings" leading to D.08-09-040. (Request For Compensation (RFC) at 3.) NRDC participated in the development of the IOU Draft Plan, and in this consolidated proceeding where the IOU's CEESP was submitted for approval, and R.08-07-011 which provided the Commission Draft statewide strategic plan, all leading up to D.08-09-040 which adopted the Plan on September 18, 2008.

NRDC claims it made a substantial contribution to D.08-09-040 in the particular areas described below, beginning after D.07-10-032 was issued.

#### 1. Contribution to IOU's Draft Plan and CEESP

After D.07-10-032 was issued on October 18, 2007, NRDC continued its participation in the planning process which began in R.06-10-040. During late 2007 and early 2008, NRDC actively participated in the development of the IOU Draft and the CEESP. NRDC attended the November 5, 2007 PHC ordered by the Commission in D.07-10-032, various workshops, and working groups for the four "vertical" market sectors which all contributed to the development of the IOU Draft Plan released in February 2008.

In March 2008, NRDC submitted recommendations to the IOUs regarding the IOU Draft and the 2009-2011 energy efficiency program portfolios and applications. NRDC states the CEESP released in June 2008 reflected

modifications or additions to various components of the IOU Draft based on its input. As part of the CEESP submitted for Commission approval in A.08-06-004, the utilities provided a summary of recommendations received, IOU response, and the disposition of the issue in Appendix C. NRDC's accepted recommendations include:

- Commercial Section: a whole building approach (Application for Approval of CEESP, Appendix C (Appendix C) at 6); incorporate California Energy Commission as an essential participant (Appendix C at 8); target tenant move-ins for energy efficiency upgrades (Appendix C at 6);
- Local Government Section: work with local governments to increase code compliance (Appendix C at 26);
- Residential Section: explore programs to incorporate a single master switch in new construction (Appendix C at 33); expand efforts to promote energy efficiency improvements at early stages of building design (Appendix C at 36); design programs to encourage whole-house retrofits (Appendix C at 38).

NRDC made many other comments that were acknowledged, joined by other parties, or otherwise likely had some impact on the final result. We agree that NRDC's participation made a substantial contribution to the development of the CEESP submitted for approval in A.08-06-004.

## 2. Contribution to D.08-09-040 and the Final Plan

NRDC states it was extensively involved in the process that began with the release of the CEESP in June 2008 and ended with D.08-09-040 on September 18, 2008 in the consolidated proceeding. After the IOUs filed a Joint Application for approval of the CEESP in A.08-06-004, NRDC filed

Response Comments on July 9, 2008 which included several recommendations for improvement.

After the Commission initiated R.08-07-011 to develop the Commission's own long-term energy efficiency strategic plan, a ruling was issued on July 14, 2008 that sought Comments on the Commission Draft. NRDC participated in the PHC and submitted Opening Comments on July 31, 2008 and Reply Comments on August 7, 2008. After the Commission issued a PD on August 19, 2008, NRDC submitted Reply Comments on the PD.

NRDC claims the decision and Plan adopted by the Commission include several modifications that resulted from NRDC's participation and are summarized in Appendices 1 and 2 of D.08-09-040. For example, based on party comments, including NRDC's, the Decision included an expanded discussion of the lighting market and emerging lighting technologies, as well as defined new strategies within the Residential and Commercial sections. (D.08-09-040 at 10; Plan at 3-40, 3-41.) The Plan also reflects NRDC's recommendation that it strengthen language related to plug loads and to use consistent language across market sectors. (NRDC 7/31/08 Comments at 4; Plan at 3-34.) Additionally, the Plan added a reference to the "loading order" to further emphasize that cost-effective energy efficiency is the state's top energy resource. (NRDC 7/31/08 Comments at 3; Plan at 1-1.)

As described above, we concur that NRDC's participation made a substantial contribution to the development of the Plan adopted in D.08-09-040, beginning (for purposes of this RFC) after D.07-10-032 was issued and we find NRDC has successfully shown the linkage between the post-D.07-10-032 work with the results in D.08-09-040. The Commission has awarded full compensation even where the intervenor's positions were not adopted in full, especially in

proceedings with a broad scope. (D.98-04-028, 79 CPUC 2d 570, 573-574.) Here, NRDC achieved a high level of success on the issues it raised in a wide-ranging and evolving proceeding. In the areas where we did not adopt NRDC's position in whole or in part, we benefited from NRDC's participation, analysis and discussion of all of the issues it raised.

### **3.1.2. CEC**

CEC says its major goal is to wean the Central Coast region off fossil fuels by 2033, acting as a model for other parts of California and the country. CEC asserts it made a substantial contribution to the Plan and D.08-09-040 in this proceeding, and D.08-07-047 (issued July 31, 2008 in R.06-04-010) which adopted interim energy efficiency savings goals for 2012 through 2020. CEC obtained permission to request compensation in this proceeding for concurrent work related to D.08-07-047 due to the relationship between long-term savings goals and long-term strategic planning. CEC has already received compensation in the prior proceeding for work through October 15, 2007 related to D.07-10-032 which set the course for IOU development of the CEESP. (D.08-06-018.)

CEC states its participation in this and the prior proceeding was "substantial and extensive, including oral testimony at hearings, workshops, and pre-hearing conferences," in addition to Comments and Reply Comments filed on both proposed decisions before the Commission adopted the final versions. (CEC RFC at 1.) CEC acknowledges it was not successful on every point it made, but contends it prevailed on key issues and the final decisions reflect its advocacy. CEC claims it made a substantial contribution in the particular areas described below.

1. D.08-07-047 addressed two areas related to energy efficiency savings goals. First, it set interim energy efficiency savings goals for 2012 through 2020

for electricity and natural gas. Second, the decision clarified the Commission's currently adopted energy efficiency savings goals for 2009 through 2011 to assist the utilities in developing portfolios consistent with the long-term energy efficiency strategic plan developed as a result of D.07-10-032. The IOUs contracted with an outside consultant, Itron, to develop savings goals from both utility and non-utility efforts, rather than utility-only based goals used in the past. The Itron Report had two types of goals by service territory: (1) Total Market Gross (TMG) including market transformation programs such as the BBEES program initiatives identified in D.07-10-032, and (2) an updated IOU Program-Specific Goal. The Report presented three levels of potential savings scenarios identified as low-case, mid-case, and high-case to reflect additional savings from non-utility sources.

A portion of the Report was released in March 2008. The assigned Commissioner and ALJ issued a ruling on March 25, 2008 seeking comments on the Report and its draft goals, as well as Energy Division's recommendations for similar savings goals through 2020 achieved through a hybrid structure incorporating both TMG and utility program-specific goals. The decision adopted the 2012 through 2020 TMG mid-level goals on an interim basis consistent with the intention to adopt a statewide long-term energy efficiency strategic plan.

CEC filed Comments on April 25, 2008, Reply Comments on May 5, attended the PHC and concurrent workshop on May 14, participated in a workshop on June 2, filed Comments on the final Itron Report on June 11, and filed Comments on the PD on July 21.

CEC contends that D.08-07-047 reflects its comments and involvement on various issues, as described below.

- TMG goals adopted for ARB to use in draft Scoping Plan (D.08-07-047 at 17, 21).
- IOUs are required to use 100% of interim TMG goals in future long-term procurement proceedings (D.08-07-047 at 26, 33).
- Decision acknowledges concerns of CEC and others about whether the Report used the most recent data and recommends updating (CEC 4/25/08 Comments at 2; D.08-07-047 at 17, 21).
- Against use of “expansive net” goals recommended by Energy Division (CEC 4/25/08 Comments at 4-6; D.08-07-047 at 23).
- Although Commission adopted gross goals for 2009-2011 rather than continue use of net goals supported by CEC and others, Commission directed staff to review risk/reward incentive mechanism and other ratepayer impacts as CEC suggested (CEC 4/25/08 Comments at 4-6; D.08-07-047 at 27-28, 30-31.)

Based on the foregoing, we agree that CEC made a substantial contribution to D.08-07-047.

2. D.08-09-040 CEC states it was “very active in the process” that resulted in adoption of the Plan beginning with its early call for long term planning in R.06-04-010, and recognized by the Commission when it granted intervenor compensation to CEC for D.07-10-032. (D.08-06-018.) In particular, between November 2007 and March 2008 CEC attended six workshops and several meetings on strategic planning, local government and energy efficiency, residential energy efficiency, Marketing, Education and Outreach, and Integrated Demand Side Management. It also submitted Comments, as follows:

- On March 17, 2008 on Integrated Demand Side Management some of which were identified in Appendix C to the IOU’s Application in A.08-06-004 “Responses to Comments” (“Appendix C”) and

- included (1) support for IOU Demand Side Management but also non-utility efforts (Appendix C at 14); (2) proposed “one stop shop” or “whole house” option to combine various energy efficiency options for customers (Appendix C at 14); (3) opined that PG&E’s ClimateSmart program should not be considered a DSM program (Appendix C at 14) ; and (4) sought more transparency of the IOU internal selection process for pilot projects (Appendix C at 15);
- On March 24, 2008 on the IOU Draft included asking for market transformation details and metrics, early start-up of DSM pilot programs, inclusion of off-site renewable energy sources to meet “zero net energy” (ZNE) goals;
  - On July 31, 2008 on the Commission Draft (*see also*, Appendix 1 to D.08-09-040 “Summary of Comments” at 4-5) that included (1) revision of definition of ZNE for some commercial buildings and inclusion of offsite renewable energy sources toward ZNE; (2) expanded discussion of market transformation; (3) Commission leadership in market transformation ( D.08-09-040 at 10); and “one-stop shop” or “whole house” approach to DSM;
  - September 8, 2008 Comments on the PD, some of which are mentioned in the decision, that (1) supported expanded lighting section; (2) supported new language on market transformation, but more is required (D.08-09-040 at 9); and (3) notes growing support for modifying definition of ZNE for certain commercial buildings, and (4) disputes Commission’s view that it lacks authority to create a broad interagency energy efficiency alliance (D.08-09-040 at 10); and
  - Submitted Reply Comments on PD (inadvertently omitted from Appendix 2 to D.08-09-040) that included responses to PD Comments about a cost-effectiveness analysis and IOU fears about market transformation and lighting programs.

CEC contends D.08-09-040 adopted many recommendations in either the decision or the Plan itself that reflect CEC input primarily:

- “Whole house” approach adopted to provide all integrated DSM services through one interfacing entity with homeowners (Plan at 2-18);
- Market transformation discussion expanded, definition added, affirmed as unifying objective of Plan, and acknowledged need for progress metrics (Plan at 1-4, 1-5; D.08-09-040 at 9, 10);
- Continuing and expanded commitment to local government partnerships for their own energy efficiency, regulatory authority, and leadership (Plan at 12-89); and
- Adopted “zero net energy” for all new buildings by 2030, only a slight change from “carbon neutral” proposed by CEC (Plan at 3-31).

In the areas where we did not adopt CEC’s position in whole or in part, we benefited from its participation, analysis and discussion of all of the issues it raised. Based on the foregoing, we agree that CEC made a substantial contribution to D.08-09-040.

### **3.1.3. WEM**

In the RFC, WEM states it made a substantial contribution to long term strategic planning by attending meetings, prehearing conferences, and workshops, submitting comments, and working with other parties to advance its procedural and substantive recommendations in both R.06-04-010 and this proceeding. The first matter is to clarify which work done in R.06-04-010 does WEM seek intervenor compensation for in this RFC. WEM filed an NOI in R.06-04-010 in June 2006 stating it intended to participate in all phases of the proceeding, including initiation of the 2009-2011 planning cycle. WEM was

found eligible in a June 28, 2006 Ruling. The work claimed prior to issuance of D.07-10-032 on October 18, 2007 can be summarized as attendance at a BBES workshop and four sets of filed Comments on the February 16, 2007 Scoping Memo, Phase 4 Energy Savings Goals, Phase 3 Refinements to Policy Rules and Reporting Requirements, and on the Draft PD which became D.07-10-032. WEM also seeks compensation for activities between November 5, 2007 and May 8, 2008, prior to commencement of A.08-06-004.

There is no dispute that WEM participated at all these steps of the energy efficiency planning process. The threshold question is over the propriety of seeking compensation in this proceeding. In order to claim compensation in another proceeding there must be extraordinary circumstances. As discussed previously, we agree the unusual evolution of the long-term energy efficiency strategic planning process yielded a post-decision period in which directed activities continued into the IOU application and the Commission's rulemaking. As we have stated above for NRDC and CEC, we will consider herein compensation for all strategic planning activities claimed for post-D.07-10-032 directed activities.

However, work done previous to that decision should be, or have been, filed in R.06-04-010 because the assigned Commissioner's Ruling provided for the claims to be filed in that proceeding, WEM's NOIs indicated it would file separately in each proceeding, and, therefore, that is the record serving as notice to the public. Furthermore, WEM was on notice that NRDC and CEC had both claimed intervenor compensation for strategic planning activities in R.06-04-010 and a decision had been issued on June 12, 2008 partially granting those requests. Unlike NRDC and CEC, WEM failed to timely act in R.06-04-010 to request compensation for the groundwork to D.07-10-032 or work underlying other

decisions in that proceeding. This is more than an oversight, it is a procedural defect as to work WEM did in connection with the decisions issued in that proceeding. The Commission declines to provide WEM with a second bite at the apple in this proceeding.

It is possible WEM may have become aware at some point that CEC got permission to submit a combined Request for Compensation in this proceeding for its contribution to D.08-07-047, issued July 31, 2008 in R.06-04-010. WEM may have independently concluded its own request would be similarly treated. Given this possibility, we examine WEM's request and find it distinguishable.

Setting aside the question of what WEM knew and when, WEM's request is distinguishable from CEC's. CEC's request was narrowly defined, with concurrent activities in R.06-04-010 that were specifically tied to a decision (D.08-07-047) involving long-term energy efficiency savings goals that CEC linked to the strategic planning in this consolidated proceeding. In contrast, WEM lumps together work in R.06-04-010 on several topics and phases into a "planning process" that purportedly evolved into the Plan adopted in D.08-09-040. This mischaracterizes the wide scope of R.06-04-010 because not every topic considered was part of the ultimate Commission Plan adopted in D.08-09-040.

The possibility that WEM made an erroneous assumption about its eligibility to file a claim in one proceeding for work related to decisions issued in another, underscores the need for any party that intends to seek intervenor compensation to do so in the original proceeding and link it to a particular decision, or seek permission from the presiding officers to file the request in another proceeding based on extraordinary circumstances.

We now turn to WEM's Request and note that SCE filed a Response and argued WEM made no substantial contribution to D.08-09-040, and instead duplicated others' work, wasted time admonishing the parties and the Commission, and raised issues outside the scope of the proceeding that resulted in unnecessary work by other parties and the ALJ.

D.08-09-040 affirms that the Commission will lead energy efficiency strategic planning for the state. WEM initially argued strategic planning was premature, IOU planning process violated state and federal law, IOU-run workshops violated due process, and IOU long term planning was deficient because publicly-owned utilities and entities like Community Choice Aggregators (CCA) were not involved. (WEM's 3/24/08 Motion to Accept Comments at 1-2.) The IOUs contend the future role for CCAs is not within the scope of this proceeding. (Appendix C at 27.)

If long term planning were to occur, WEM strongly advocated for Commission, rather than utility, leadership because it thought IOUs should not control the planning process, are motivated by shareholder rather than ratepayer concerns, and have no authority over non-utility stakeholders. Parts of this argument are viewed as unhelpful by SCE. After the IOUs filed a joint application for approval of the CEESP, the Commission decided to assume leadership and opened this rulemaking to take charge of the planning process and expand it into a statewide plan through 2020. (R.08-07-011.) Other parties suggested broader involvement and leadership, but WEM appears to have made a substantial contribution in pushing for Commission leadership early on, in part by pointing out the need to create a record to support the resulting plan.

WEM also identifies several recommendations it made during the development process in R.06-04-010 which were restated as the post-D.07-10-032

planning continued. (WEM's Late Comments filed in R.06-04-010 on March 24, 2008; Appendix C.) These are:

- Better integrate DSM, link energy efficiency to procurement to reduce peak demand<sup>9</sup> (Appendix C at 15);
- Force IOUs to reveal where energy efficiency is located (Appendix C at 33);
- Expand Workforce Education and Training (WE&T) beyond utility-controlled programs due to identified problems (Appendix C at 40-41);
- Expand on-bill financing to all sectors (Appendix C at 10);
- Expand HVAC discussion to include impacts on peak load by air conditioning and examine other cooling measures (Appendix C at 19); and
- Commission should have controls on funds for Marketing, Education and Outreach (ME&O) to prevent misapplication by IOUs (Appendix C at 31).

The IOUs incorporated WEM's comments into the CEESP on disclosure of energy efficiency locations, on-bill financing, and impact of air conditioning on various sectors. They did not use the other WEM recommendations because they said adequate controls existed for ME&O funds, DSM is a base not a peak resource, and WEM comments were primarily opinion rather than constructive information, underscoring an objection raised by SCE.

D.08-09-040 itself does not mention WEM in the text. However, Appendix 1 identifies a few comments on the Commission's Draft plan submitted by WEM that echo its prior positions and add support of bridge

funding for pilot programs and inquire how energy efficiency can participate in the Forward Capacity Market and qualify as peak resources. (Appendix 1 at 8.) WEM contends the Plan adopted in D.08-09-040 incorporated its views on expanding WE&T beyond the IOUs (Plan at 9-74), on-bill-financing, exploring air-cooling impacts on HVAC (Plan at 6-57 to 6-58), and Commission oversight of ME&O funds (D.08-09-040 at 10.)

SCE contends that D.08-09-040 does not mention WEM because its participation provided no substantial contribution and indeed, little benefit. For example, discussion of the Forward Capacity Market and bridge funding for 2009 programs were both clearly outside the scope of the Plan. To the extent that WEM raised issues about DSM and energy efficiency coordination, SCE says it merely echoed comments of other parties who raised the issue more substantively. Therefore, SCE argues that WEM should at best receive nominal compensation, mostly for participation in some workshops.

We agree with SCE that some of WEM's post-D.07-10-032 participation did not provide a substantial contribution to D.08-09-040. However, we disagree that all or nearly all of its effort should be disallowed. The Commission values the participation of a wide range of stakeholders in order to develop the best ideas and information from which to craft its decisions, and appreciates that WEM offers a unique view. However, the intervenor compensation process requires that participation alone is insufficient and a party must become a useful advocate of a unique position that substantially contributes to the resulting decision.

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<sup>9</sup> WEM cited Comments it filed on July 31, 2008, however, no WEM Comments were filed on or near that date in either proceeding.

We benefited from WEM's participation, analysis and discussion which improved the dialogue in this proceeding, even if some of its input was unnecessary or outside the scope. We find that WEM's comments and recommendations did substantially contribute in the following areas: Commission-sponsored statewide planning, linking integrated DSM with procurement, and expanding discussion of ways to address peak load caused by air conditioning.

#### **3.1.4. Greenlining**

Greenlining does not request any compensation for time or activities prior to July 18, 2008. Greenlining's first claimed appearance in this proceeding was at the workshop held July 18, 2008 after the PHC.<sup>10</sup> Greenlining states it filed Opening and Reply Comments on the Commission's Draft Plan and Comments on the PD all of which focused on a narrow set of issues relative to diverse participation and energy efficiency planning obstacles for low-income and minority households.<sup>11</sup>

Greenlining states it was the only group dedicated to representing the interests of low-income and minority ratepayers and was involved at every stage

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<sup>10</sup> There is no evidence Greenlining participated in the long term strategic planning activities undertaken in R.06-04-010 before or after D.07-10-032. The July 14, 2008 Order Instituting Rulemaking (OIR) in this proceeding identified strategies for low income energy efficiency as an issue based on comments in the preceding IOU planning activities. (OIR at 4.)

<sup>11</sup> Opening Comments on the Commission draft were due July 31, 2008. No Opening Comments on the Commission Draft from Greenlining are listed in the docket for A.08-06-004 or R.08-07-011. Greenlining initially filed a motion on August 6, 2008 seeking permission to file late Opening Comments. According to the Docket, Greenlining instead filed timely "Reply Comments" on August 7, 2008.

of this proceeding by attending the PHC, filing comments, performing research on the Plan's implications, communicating with Commission staff, and collaborating with other parties to avoid duplication. Greenlining asserts its advocacy on behalf of its constituencies addressed specific issues under consideration and provided a substantial contribution to D.08-09-040.

Specifically, Greenlining claims it made a substantial contribution to D.08-09-040 on all of the following issues which are discussed in their Reply Comments on the PD.

- get more diverse participation in a slower paced proceeding;
- strategies for multi-family households should not be deferred;
- existing homes and buildings should not be excluded from "ZNE" targets;
- do a rigorous cost-benefit analysis for energy efficiency programs;
- expand LIEE to include education, outreach and financing; and
- support goals that minority, low-income and disadvantaged communities get full access to training and education programs; Greenlining is identified as an important partner.

In the Plan, the Commission recognized there are large numbers of households in multi-family structures that qualify for low-income energy efficiency (LIEE) programs but don't get them. The Plan set a goal of reaching all LIEE households by 2020 using better marketing, better delivery, better savings, and more education and training in LIEE communities. (Plan at 2-25 to 2-29.) These goals and strategies meet many of the concerns expressed by Greenlining. However, some of these issues were raised prior to Greenlining's appearance in

the proceeding and, notably, Greenlining was left out of a list of parties in D.08-09-004 that were concerned about LIEE issues. (D.08-09-040 at 11.)

Despite the omission of Greenlining as a source of input in the decision, Greenling has had the somewhat unique role of placing low-income issues front and center in Commission proceedings and did so again here. It successfully pushed for a separate analysis of the impact of energy efficiency efforts on low-income households, particularly multi-family buildings which is reflected in the Low Income Residential Segment of the Plan at 2-25 and offered specific suggestions for identifying new and existing low-income home buyers for marketing purposes. (Reply Comments at 5-6.)

Based on the foregoing, we find that Greenlining made a substantial contribution to D.08-09-040.

#### **4. Contributions of Other Parties**

Section 1801.3(f) requires an intervenor to avoid participation that duplicates that of similar interests otherwise adequately represented by another party, or participation unnecessary for a fair determination of the proceeding. Section 1802.5, however, allows an intervenor to be eligible for full compensation where its participation materially supplements, complements, or contributes to the presentation of another party if that participation makes a substantial contribution to the Commission order. In this proceeding, more than 500 participants worked together over an eleven month period initiated by D.07-10-032 in October 2007 to develop a roadmap for energy efficiency through 2020 and beyond. Many of the parties had been involved in the planning process that led to D.07-10-032 which provided both substantive and scheduling guidance for long-term strategic planning. In the OIR, issued July 10, 2008, the parties were asked to comment on specific questions about the Plan,

Commission's planning role, market transformation, low-income households, and other matters. Not unexpectedly, many parties had similar comments on particular issues especially as parties worked together to find common ground. Thus it was nearly impossible to completely avoid some duplication of work by other parties.

#### **4.1. NRDC**

We agree that NRDC made an effort to coordinate with other parties, avoid duplication, and ensure that its work served to supplement, complement, or contribute to the comments of other active parties in the proceeding. For example, NRDC offered some recommendations which were not addressed by other parties, to enhance or clarify strategies and include additional participants throughout the various iterations of the Strategic Plan (both IOU and CPUC). NRDC also made unique arguments for the California Energy Commission to be a participant in the planning, for targeting commercial tenant renovations, for broader discussion of plug loads and loading order, and offered numerous energy efficiency ideas, incentives, and collaborations, most of which were not adopted nor even discussed in the decision. However, this is the type of participation the Commission sought when it ordered the rulemaking.

On some issues, NRDC's input echoed those of other participants. For example, NRDC joined DRA and TURN in calling for greater attention to lighting measures and market changes and an expanded discussion of these topics was added to the plan in both the Residential and Commercial sections. (NRDC 9/15/08 Comments on PD at 3-4; D.08-09-040 at 10.) NRDC also joined several parties in making Comments on low-income energy efficiency (LIEE) aspects of the plan which were addressed in the Plan. (D.08-09-040 at 11-12.)

Overall, NRDC analyzed comments by other parties and provided additional input that reflects analysis of those comments. NRDC also added its voice to other parties on some substantial issues and the combined effort yielded results in the decision. This process evolved over time and NRDC was able to provide useful input to the Commission in advancing the public discussion and contributing to its conclusions in D.08-09-040. We agree that NRDC made a contribution that was neither unnecessary nor duplicative of the work of another party.

#### **4.2. CEC**

CEC says it “took all reasonable steps to keep duplication to a minimum” but also worked closely with other parties, particularly discussing key ideas with DRA, TURN, and NRDC. (CEC’s RFC at 19.) This is reflected by the few areas in which CEC made written comments that were not echoed by another party. For example, CEC joined NRDC, DRA, and others on the “whole house” approach and expanded discussion of market transformation. CEC took the common idea of encouraging local governments to enforce code compliance and expanded it to promote additional energy efficiency ordinances by local governments that go beyond basic building codes.

CEC was also out front on problems with application of the definition of ZNE as it applied to some commercial buildings and seeking long-term planning in the lighting sector. CEC also led the focus on the IOU’s pilot programs including a call for transparency, critiques of existing programs, and for expanding non-utility efficiency programs. CEC’s comments were sometimes less substantive than those by other parties including DRA and TURN. Yet, we agree that CEC made a contribution which was, in part, unique and neither unnecessary nor redundant.

### **4.3. WEM**

WEM states it “took all reasonable steps to keep duplication to a minimum, and to ensure that when it did happen, our work served to complement and assist the showings of the other parties.” (WEM Request at 10.) WEM emphasizes the Commission’s view that duplication may be unavoidable in a proceeding such as this where many stakeholder groups are encouraged to participate.

Most of WEM’s comments were not duplicative, sometimes because they were beyond the scope of the proceeding or a proffer of accusations against the utilities. In the areas of moving statewide planning from IOUs to a Commission-sponsored proceeding with a formal record, linking integrated DSM with procurement, and expanding discussion of ways to address peak load caused by air conditioning we find that WEM’s contribution was not duplicative of other participants.

### **4.4. Greenlining**

Greenlining asserts it collaborated with other consumer protection groups “to ensure robust yet non-redundant advocacy” and is entitled to full compensation. (Greenlining Request at 2.) It also points out the Commission has awarded compensation even where a decision does not adopt an intervenor’s recommendations. (Greenlining Request at 2, citing D.04-08-025.)

Greenlining’s comments and issues focused on diverse participation and energy efficiency planning obstacles for low-income and minority households. The Commission itself sought diverse participation at the beginning stages of development of the strategic plan in R.06-04-010 which led to the large number of participants ultimately involved in that proceeding, the interim work on the IOU CEESP and this consolidated proceeding. However the issue was

raised again in this proceeding by Greenlining, Latino Issues Forum, Community Action Agency of San Mateo County, and others related to involving more low-income participants. This is an important matter to the Commission and although Greenlining's efforts built on the groundwork laid by others, their voice added substantial input for under-represented communities.

Because the development of strategic planning had been underway since early 2007, the parties and the Commission had already determined that the plan should include discussion of low-income energy efficiency issues by the time Greenlining became involved in July 2008 with the Commission's Draft Plan. For example, DRA suggested separate discussion on low-income multi-family housing, and raised LIEE issues in Residential, Local Government, ME&O, and WE&T sections in its comments on the IOU Draft Plan. (Appendix C at 36-39.) Other parties including the Latino Issues Forum and Community Action Agency of San Mateo County discussed issues of energy efficiency education and outreach to low income and minority neighborhoods, especially large families and multi-family buildings. Additionally, D.08-09-040 identified several parties as raising LIEE issues but did not include Greenlining.

Nonetheless, as we stated before, Greenlining brought a uniquely focused viewpoint about how long term energy efficiency strategic planning would face some particular challenges regarding low-income, minority, and disadvantaged households. We find that Greenlining made a substantial contribution by its developed comments on financing, marketing, and strategies for engaging low-income communities in energy efficiency that were unique and not duplicative.

## 5. Reasonableness of Requested Compensation

NRDC requests \$15,692.50 for its participation in this proceeding, as follows:

Work on Proceeding				
Attorney/Staff	Year	Hours	Hourly Rate	Total
Audrey Chang	2007	6.5	\$150.00	\$ 975.00
Audrey Chang	2008	6.5	\$155.00	\$ 1,007.50
Lara Ettenson	2007	20.5	\$120.00	\$ 2,460.00
Lara Ettenson	2008	87	\$125.00	\$10,875.00
<b>Subtotal:</b>				<b>\$15,317.50</b>
Preparation of NOI and Compensation Request				
Attorney/Staff	Year	Hours	Hourly Rate	Total
Lara Ettenson	2008	6	\$62.50 (½ rate)	\$ 375.00
<b>Subtotal Hourly Compensation:</b>				<b>\$15,692.50</b>
<b>Expenses</b>				<b>\$ 0.00</b>
<b>Total Requested Compensation</b>				<b>\$15,692.50</b>

CEC requests \$64,838.00 for its participation in this proceeding, as follows:

Work on D.08-07-047				
Attorney/Staff	Year	Hours	Hourly Rate	Total <sup>12</sup>
Tam Hunt	2007	18.5	\$270.00	\$ 4,995.00
Tam Hunt	2008	29.75 <sup>13</sup>	\$300.00	\$ 8,925.00
Tam Hunt-travel	2007	5.75	\$135.00 (½ rate)	\$ 776.25
Tam Hunt-travel	2008	6.25	\$150.00 (½ rate)	\$ 937.50
<b>Total Requested Compensation</b>				<b>\$15,634.00<sup>14</sup></b>

<sup>12</sup> CEC failed to include a breakdown of Total hourly rate calculations by decision in its request and the combined Sub-Total matches neither the actual nor the erroneous hours claimed. (See FN12.) We have supplied the calculations for the benefit of the reader.

<sup>13</sup> CEC's total is incorrect. The actual number of itemized hours claimed is 21.

<sup>14</sup> This subtotal is wrong. If the total hours were corrected the total would be \$15,633.75 but the total hours are incorrect. (See fn. 12.)

## Work on D.08-09-040

Attorney/Staff	Year	Hours	Hourly Rate	Total <sup>15</sup>
Tam Hunt	2007	49.5	\$270.00	\$13,365.00
Tam Hunt	2008	84.5	\$300.00	\$25,350.00
Tam Hunt -travel	2008	6.0	\$150.00 (½ rate)	\$ 900.00
Tam Hunt -travel	2007	21.25	\$135.00 (½ rate)	\$ 2,868.75
<b>Subtotal:</b>				<b>\$42,483.75</b>

## Preparation of NOI and Compensation Request

Attorney/Staff	Year	Hours	Hourly Rate	Total
Tam Hunt	2008	9.5	\$150.00 (½ rate)	\$ 1,425.00
<b>Subtotal Hourly Compensation:</b>				<b>\$43,909.00<sup>16</sup></b>
<b>Expenses</b>				\$7,920.10
<b>Total Requested Compensation</b>				\$51,828.85
<b>Total Requested Compensation both decisions</b>				<b>\$64,838.00<sup>17</sup></b>

WEM requests \$26,392.50 for its participation in this proceeding, as follows:

## Work on Proceeding

Attorney/Staff	Year	Hours	Hourly Rate	Total
Barbara George	2007	68.75 <sup>18</sup>	\$170	\$12,197.50
Barbara George	2008	71.75	\$170	\$12,197.50
<b>Subtotal:</b>				<b>\$24,395.00</b>

## Preparation of NOI and Compensation Request

Attorney/Staff	Year	Hours	Hourly Rate	Total
Barbara George	2008	23.5	\$ 85.00	\$ 1,997.50
<b>Subtotal Hourly Compensation:</b>				<b>\$ 1,997.50</b>
<b>Expenses</b>				\$ 0.00

<sup>15</sup> CEC failed to include Total hourly rate calculations by decision in its request and we have supplied them for the benefit of the reader.

<sup>16</sup> The correct subtotal is \$43,908.75.

<sup>17</sup> CEC's Total is incorrect. Using CEC's hours and rates claimed, the actual claim would be \$67,462.85, the total of \$15,634.00 + \$51,828.85.

<sup>18</sup> WEM's total hours are wrong. The actual number of 2007 hours claimed by WEM is 71.75 and the Total of \$12,197.50 is correct.

Total Requested Compensation \$26,392.50

Greenlining requests \$11,352.82 for its participation in this proceeding, as follows:

Attorney/Staff	Work on Proceeding			Total
	Year	Hours	Hourly Rate	
Robert Gnaizda	2008	1.5	\$540.00	\$ 810.00
Samuel Kang	2008	44.65	\$235.00	\$10,492.75
<b>Subtotal:</b>				<b>\$11,302.75<sup>19</sup></b>
<b>Expenses</b>				<b>\$ 50.07</b>
<b>Total Requested Compensation</b>				<b>\$11,352.82</b>

In general, the components of this request 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.

### **5.1. 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.

#### **5.1.2. NRDC**

NRDC documented its claimed hours by presenting a daily breakdown of the hours of its attorneys, accompanied by a brief description of each activity. However, some hours included at full rate should have been claimed at half rate because they relate to travel and seeking intervenor

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<sup>19</sup> This Subtotal is in error because it includes unsegregated time spent on travel and preparation of this Request for Compensation.

compensation. The hourly breakdown reasonably supports the claim for total hours.

### 5.1.3. CEC

CEC documented its claimed hours by presenting a daily breakdown of the hours of its attorney segregated by decision, accompanied by a brief description of each activity. The travel time awarded at half rate is appropriate because CEC is based in Santa Barbara and represents residential and small commercial customers in that area. Thus, travel to San Francisco is not “routine” travel. Hunt attended some meetings and workshops by telephone conference, apparently limiting his travel to San Francisco and Sacramento for the times he had a presentation or it was otherwise significant for him to attend.

However, there are errors and omissions in the presentation of the claim as follows:

- CEC hours are totaled by rate per year but not separated by decision;
- The itemized 2008 full-rate hours for D.08-07-047 total 21 not 29.75 as claimed in the compensation section;
- The total amounts claimed per decision do not match the hours and rates identified for both decisions;
- 27 hours related to drafting, discussing, editing, and reviewing Comments on “EE goals” and drafting and finalizing Reply Comments, and reviewing other’s reply Comments from April 16 to May 5, 2008 are incorrectly identified as related to D.08-09-040 when they are related to D.08-07-047;
- No supporting documentation for \$3,605.10 in expenses claimed for flights, hotel, parking and BART and which appear to be related to D.08-09-040. The Commission will compensate for reasonable travel costs with proper documentation, but not

routine parking and local transportation. Here, CEC claims \$2,844.41 for five flights which may or may not be reasonable but no receipts were submitted. Similarly, no receipts were submitted in support of five hotel stays, two in excess of \$175.00 per night, a \$57 cab ride, and \$159 for parking and BART; and

- No supporting documentation or verification for \$4,315.00 claimed for Westlaw research, nor is there any explanation of the nature of the research, its relationship to a particular issue in a particular decision.

We have reviewed the record and make the following changes to CEC's claim:

- For D.08-07-047 we correct the total 2008 full-rate hours to 21;
- Move 27 hours related to Comments and Reply Comments on energy efficiency long term goals from D.08-09-040 to D.08-07-047 where the comments were filed;
- Deny \$3,605.10 in claimed travel expenses for lack of documentation; and
- Deny \$4,315.00 in Westlaw research expenses due to lack of documentation or justification.

Otherwise, the hourly breakdown reasonably supports the claim for total hours.

#### **5.1.4. WEM**

WEM documented its claimed hours by presenting a daily breakdown of the hours of its expert, accompanied by a brief description of each activity. The claim has a calculation error and is excessive. The calculation error is the erroneous total of 68.75 hours for 2007, when the actual total is 71.75. The total amount claimed at full rate for 2008 is 71.75 hours. WEM claims a total of 143.5 hours at full rate and 23.5 hours at half rate.

The claim is excessive in two ways. First, as discussed above, WEM may only seek compensation in this proceeding for activities related to long-term strategic planning that occurred after October 18, 2007, the date D.07-10-032 was issued. Therefore, we deny compensation for 65.25 hours claimed prior to that date and note that some of the identified activities during that period related to issues considered under the broad scope and multiple phases of R.06-04-010, and beyond the scope of D.08-09-040 (*e.g.*, reporting and review requirements for existing IOU energy efficiency programs.)

For strategic planning activities from November 5, 2007 through September 4, 2008, WEM claim 6 hours in 2007 related to the ME&O workshop and the balance in 2008. Before the IOUs applied for approval of the CEESP on June 2, 2008, George's timesheets identify:

- 13.75 hours related to ME&O;
- 21.25 hours attending a strategic plan workshop, and reviewing and discussing the IOU draft; and
- 17.25 hours drafting WEM's March 25, 2008 Comments and getting them filed.

The March 25, 2008 Comments, filed in R.06-04-010, are slim.

Despite 35 hours of background work and 17.75 hours to draft and file them (along with short motions to allow their filing), the Comments contained only about two pages of issue discussion primarily focused on process rather than the particulars of the IOU draft. On the other hand, the IOU draft acknowledged WEM input on several points, some of which were incorporated into the CEESP, and others that were not. Even so, the time claimed prior to filing of the CEESP is excessive given the few identified points of substantial contribution. We reduce the 35 hours of background time by 10% to 31.5 hours to account for activities that did not substantially contribute to the IOU draft and CEESP (*e.g.*,

attacks on planning process, opinion, undisputed facts, etc.). We also reduce the 14.75 hours claimed to draft the comments and motions by 1.5 hours, about 10%, to 13.25 hours because the comments were short, often general, and not directed at the particulars of the IOU draft. Furthermore, we disallow three hours claimed to straighten out filing problems with the Docket Office. Thus, after a reduction of eight hours, we allow 44.25 hours related to strategic planning after D.07-10-032 and before commencement of this proceeding.

After this proceeding opened on June 2, 2008, WEM claimed work that substantially contributed to D.08-09-040 and 23.5 hours related to seeking intervenor compensation. WEM claims to have spent 13 hours drafting Comments filed on July 31, 2008 regarding the Commission draft, yet according to the Commission Docket Office, WEM did not file any comments, briefs or motions in this proceeding, only the NOI and Request for Compensation.<sup>20</sup> Therefore, we deny compensation for 13 hours between July 29 and July 31 related to drafting comments that were not filed and one additional hour claimed on September 2, 2008 for “review Docket rejection of 7/31 filing; refile” because it is a party’s responsibility to make correct filings, there is no evidence the comments were filed, and the claimed activity did not make a substantial contribution to D.08-09-040. To summarize, the 143.5 hours claimed by WEM at full rate are reduced 65.25 hours for activity in R.06-04-010 prior to D.07-10-032, by eight hours for pre A.08-06-004 activity that did not make a substantial contribution, and by 14 hours related to unfiled comments to 56.25 hours which are approved at full rate.

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<sup>20</sup> WEM also did not file any Comments on July 31, 2008 in R.06-04-010.

We also examine the claim of 4.5 hours to prepare the NOI which is excessive given that less than two pages contained useful information about WEM's anticipated participation and it failed to notify the assigned Commissioner that WEM would try to seek compensation in this proceeding for work done on a variety of issues in R.06-04-010, prior to issuance of D.08-10-032. The 4.5 hours claimed are reduced by one-third to 3.0 hours resulting in 22 hours for compensation related matters.

Finally, regarding SCE's objections, we previously discussed that some of the comments made by WEM were outside the scope of the Commission's long-term strategic plan and some comments were rhetorical and not useful to the Commission in drafting its decision. The preceding reductions account for that portion of WEM's participation which did not make a substantial contribution to D.08-09-040.

#### **5.1.5. Greenlining**

Greenlining documented its claimed hours by presenting a daily breakdown of the hours of its attorneys, accompanied by a brief description of each activity. However, the claim erroneously requests full rate compensation for Kang's strategic planning activities "including travel time" in 2008, as follows: 2.7 hours on July 18; 1.3 hours on July 22; and 3.7 hours on August for a total of 7.7 hours. Routine commuting to participate in Commission proceedings is generally not compensated because "[a]n intervenor's fees are assumed to cover such overhead costs [routine commuting], just as they cover administrative costs." (D.07-04-010 at 12.) It is the burden of the intervenor, as the requesting party and the party with access to the relevant information, to demonstrate the reasonableness of its travel expenses, and whether these costs go beyond those compensated in hourly rates. (Decision 07-10-014 at 5.) Greenlining has

presented no such evidence to justify compensation for what otherwise appears to be routine travel in the Bay Area from its Berkeley office to San Francisco. Absent an actual breakdown of the travel time we find it reasonable to evenly split the time and allow 3.85 hours at full rate and disallow 3.85 hours attributable to routine travel.

In addition, time claimed by an attorney for time related to preparation of documents seeking compensation is also compensated at half rate. Greenlining requested full rate compensation for Kang's time preparing the NOI and request, as follow: 1.5 hours on August 14; 3.7 hours on November 1; and 1.2 hours on November 14 for a total of 4.9 hours and .25 of Gnaizda's time on August 14 which should only be compensated at half their hourly rates.

Therefore, Greenlining's claim of 44.65 hours at Kang's full hourly rate is reduced by 3.85 hours disallowed for routine travel, and 4.9 hours related to the compensation claim which will be allowed at half Kang's rate. Gnaizda's full rate claim of 1.5 hours is reduced by 0.25 hours to 1.25 hours. The deduction is compensable at half Gnaizda's approved hourly rates. Greenlining's claim for \$50.07 in postage costs is reasonable.

## **5.2. Intervenor Hourly Rates**

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.

### **5.2.1. NRDC**

NRDC has extensive experience participating in Commission proceedings for over 25 years, particularly promoting cost-effective energy efficiency, resource diversity, and other measures to increase the sustainability and mitigate environmental and economic impacts of electricity production and

use. It contends the rates requested are purposely conservative, and not only reflect rates far below market for expertise at similar levels, but also far below other requests received by the Commission.

Audrey Chang is an energy expert with over seven years of experience. NRDC seeks an hourly rate of \$150 for Chang's work performed in 2007. The Commission previously awarded Chang a 2007 hourly rate of \$150 in D.08-10-011 in R.06-02-013. NRDC requests a 2008 hourly rate for Chang of \$155.00, which reflects a 3% cost of living adjustment to her previously awarded rate for 2007, rounded to the nearest \$5 as directed by D.08-04-010. These requested rates are at the low end of the 2007 and 2008 rates adopted by D.08-04-010 for experts with 7-12 years of experience. There is adequate basis to support the 2007 hourly rate of \$150 for Chang's work in 2007 and an hourly rate of \$155 for her work in 2008 and they are approved.

Lara Ettenson is an energy expert with over three years of experience. NRDC seeks an hourly rate of \$120.00 for Ettenson work performed in 2007 and an hourly rate of \$125.00 for work performed in 2008. These rates are at the lowest end of the 2007 and 2008 ranges adopted by D.08-04-010 for experts with 0-6 years of experience. There is adequate basis to support the 2007 hourly rate of \$120.00 for Ettenson's work in 2007 and an hourly rate of \$125.00 for her work in 2008 and they are approved.

### **5.2.2. CEC**

CEC is a non-profit environmental with a long history in environmental issues, and a recent shift in focus to renewable energy and energy efficiency policy. Tam Hunt is an attorney who, as of 2007, had five years experience working in the areas of energy efficiency, long-term procurement, Community Choice Aggregation, climate change and in renewable energy. CEC

seeks an hourly rate of \$270 for 2007 and an hourly rate of \$300 for 2008. The Commission previously approved an hourly rate of \$270 for work performed by Hunt in 2007 in D.08-06-018.

As of 2008, Hunt is an attorney with six years' experience, much of it working in with the Commission on various issues and proceedings.

D.08-04-010 provides that lawyers with five to seven years' experience should be compensated between \$280 and \$300 per hour for work performed in 2008.

Although CEC argues Hunt is entitled to the top end of compensation for a five to seven-year attorney, Hunt's practice with the Commission is more limited, and \$300 represents an 11% increase over 2007. We find that if the 3% COLA and 5% "step increase were applied to the 2007 rate, it would result in a 2008 rate of \$290. There is adequate basis to support the 2007 hourly rate of \$270.00 for Hunt's work in 2007 and an hourly rate of \$290.00 for his work in 2008 and they are approved.

### **5.2.3. WEM**

WEM was actively involved in the process and substance of strategic planning process, regardless of its procedural problems in properly claiming compensation. Barbara George is an expert with eight years experience in Commission proceedings, particularly working on energy efficiency and electricity system design. WEM seek an hourly rate of \$170 for both 2007 and 2008. There is adequate basis to support that rate for both years claimed.

### **5.2.4. Greenlining**

Greenlining also has a long history working with the Commission on behalf of underserved communities. Robert Gnaizda is an attorney with over 20 years' experience before the Commission and Greenlining states the Commission has previously awarded him an hourly rate of \$540, but offered no

supporting citation for such an award. We find the requested hourly rate for 2008 to be excessive. The Commission previously awarded Gnaizda an hourly rate of \$505.00 for work performed in 2006. (D.07-11-009.) D.08-04-010 sets forth ranges of hourly rates and establishes the maximum attorney rate for 2008 is \$535 which we award to Gnaizda for work in 2008.

Greenlining seeks an hourly rate of \$235 for Kang, the top of the range for an attorney with three years' experience, which we find excessive. We note that Kang has previously been awarded intervenor compensation as a paralegal at a rate of \$110.00 in 2005<sup>21</sup> and \$115.00 in 2006,<sup>22</sup> thus, confirming his past experience working on Commission matters. Kang was admitted to the bar in December 2007 and thus became eligible for compensation at attorney rates.

We acknowledge that Kang has three years of experience with Commission proceedings based his internship at the Commission and our own records of intervenor compensation awards. Further, his pre-attorney experience can be taken into account when determining a reasonable compensation rate for a new attorney.<sup>23</sup> However, we find that \$180 per hour is a more reasonable rate than that claimed as it represents the middle of the range for attorneys with 0-2 years of experience. (D.08-04-010 at 5.)

## **6. Productivity**

Decision 98-04-059 directed customers to demonstrate productivity by assigning a reasonable dollar value to the benefits of their participation to ratepayers. (D.98-04-059, pp. 34-35.) The costs of a customer's participation

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<sup>21</sup> D.06-10-013.

<sup>22</sup> D.07-07-017.

<sup>23</sup> D.04-05-048 at 18.

should bear a reasonable relationship to the benefits realized through its participation. This showing assists us in determining the overall reasonableness of the request. We also note that in a proceeding involving hundreds of participants, it is virtually impossible for any party to completely avoid some duplication of the work of other parties. The Commission has noted that duplication may be practically unavoidable in a proceeding such as this where many stakeholder groups are encouraged to participate.

### **6.1. NRDC**

NRDC's says its focus in this and other proceedings is on policies that ensure a reliable, affordable, and environmentally sustainable energy resource portfolio that has lasting benefits to ratepayers. NRDC acknowledges it can be difficult to quantify its contribution in monetary terms, but argues its contributions to the ambitious goals set forth in the strategic plan will result in energy and monetary savings to ratepayers. Therefore, we find that NRDC's participation in this proceeding was demonstrably productive.

### **6.2. CEC**

CEC says the guiding principle in its work is to ensure that the Commission's EE programs achieve real energy savings, thus reducing greenhouse gas emissions, reducing the need for new fossil fuel generation, and saving ratepayers money. Although CEC cannot identify precise monetary benefits to ratepayers stemming from its contributions to these proceedings, it contends that the long-term energy efficiency savings goals adopted by the Commission will, if implemented by the IOUs wisely, save ratepayers considerable sums. Therefore, we find that CEC's participation in this proceeding was demonstrably productive.

### **6.3. WEM**

WEM says it would be impossible to assign an exact amount of ratepayer dollar value to WEM's participation, so the Commission should treat this compensation request as it has treated similar past requests with regard to the difficulty of establishing specific monetary benefits associated with other parties' participation.

Nonetheless, WEM points to some specific recommendations that will likely yield ratepayer savings. The primary WEM recommendations were for the Commission to take charge of developing the Strategic Plan to avoid cost of litigation if the utilities had remained in charge and promoting energy efficiency in reducing the need for more expensive supply-side resources. Other recommendations that will likely lead to greater energy savings include involving public, nonprofit agencies to avoid the need for utility incentives, and reducing peak load, HVAC and lighting demands. WEM also states there are non-monetary benefits for providing for more inclusive collaboration amongst all California entities in energy efficiency. Therefore, we find that WEM's participation in this proceeding was demonstrably productive.

### **6.4. Greenlining**

Greenlining did not specifically address its productivity and is cautioned that in future RFCs it must explicitly address this requirement. We are able to infer from Greenling's NOI and Request similar elements to the productivity discussions above. Greenlining submits it provided unique and critical advocacy at all phases addressing consumer protections for low-income and minority ratepayers. To the extent that it cannot identify precise monetary benefits to ratepayers stemming from its contributions to these proceedings, the Commission has recognized above that the long-term energy efficiency savings

goals adopted by the Commission will, if implemented by the IOUs wisely, save ratepayers considerable sums. This will have a disproportionately positive impact on the low-income ratepayers on whose behalf Greenling advocates. Therefore, we find that Greenling's participation in this proceeding was demonstrably productive.

## 7. Award

As set forth in the table below, we award NRDC \$15,692.50.

Work on Proceeding				
Attorney/Staff	Year	Hours	Hourly Rate	Total
Audrey Chang	2007	6.5	\$150.00	\$ 975.00
Audrey Chang	2008	6.5	\$155.00	\$ 1,007.50
Lara Ettenson	2007	20.5	\$120.00	\$ 2,460.00
Lara Ettenson	2008	87.0	\$125.00	\$10,875.00
<b>Work on Proceeding Total:</b>				<b>\$15,317.50</b>

Preparation of NOI and Compensation Request				
Attorney/Staff	Year	Hours	Hourly Rate	Total
Lara Ettenson	2008	6	\$62.50 (½ rate)	\$ 375.00
NOI and Compensation Request Total:				\$ 375.00

### CALCULATION OF FINAL AWARD

Work on Proceeding	\$15,317.50
NOI and Compensation Request Preparation	\$ 375.00
Expenses	\$ 0.00
<b>TOTAL AWARD</b>	<b>\$15,692.50</b>

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 February 1, 2009, the 75th day after NRDC filed its compensation request, and continuing until full payment of the award is made.

As set forth in the table below, we award CEC \$55,801.25:

#### Work on D.08-07-047 (R.06-04-010)

Attorney/Staff	Year	Hours	Hourly Rate	Total
Tam Hunt	2007	18.5	\$270.00	\$ 4,995.00
Tam Hunt	2008	48.0	\$290.00	\$13,920.00
Tam Hunt-travel	2007	5.75	\$135.00 (½ rate)	\$ 776.25
Tam Hunt-travel	2008	6.25	\$145.00(½ rate)	\$ 906.25
<b>Work on Proceeding Total:</b>				<b>\$20,597.50</b>

**Work on D.08-09-040**

Attorney/Staff	Year	Hours	Hourly Rate	Total
Tam Hunt	2007	49.5	\$270.00	\$13,365.00
Tam Hunt	2008	57.5	\$290.00	\$16,675.00
Tam Hunt-travel	2007	21.25	\$135.00 (½ rate)	\$ 2,868.75
Tam Hunt-travel	2008	6.0	\$145.00(½ rate)	\$ 870.00

**Preparation of NOI and Compensation Request**

Attorney/Staff	Year	Hours	Hourly Rate	Total
Tam Hunt	2008	9.5	\$145.00 (½rate)	\$ 1,337.50

**CALCULATION OF FINAL AWARD**

Work on D.08-07-047 (R.06-04-010)	\$20,597.50
Work on D.08-09-040	\$33,778.75
NOI and Compensation Request Preparation	\$ 1,337.50
Expenses	\$ 0.00
<b>TOTAL AWARD</b>	<b>\$55,753.75</b>

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 January 1, 2009, the 75<sup>th</sup> day after CEC filed its compensation request, and continuing until full payment of the award is made.

As set forth in the table below, we award WEM \$11,432.50:

**Work on Proceeding**

Attorney/Staff	Year	Hours	Hourly Rate	Total
Barbara George	2007	6.5	\$170.00	\$ 1,105.00
Barbara George	2008	49.75	\$170.00	\$ 8,457.50
<b>Work on Proceeding Total:</b>				<b>\$ 9,562.50</b>

**Preparation of NOI and Compensation Request**

Attorney/Staff	Year	Hours	Hourly Rate	Total
Barbara George	2008	22	\$85.00(½rate)	\$ 1,870.00
NOI and Compensation Request Total:				\$ 1,870.00

**CALCULATION OF FINAL AWARD**

Work on Proceeding	\$ 9,562.50
NOI and Compensation Request Preparation	\$ 1,870.00
Expenses	\$ 0.00
<b>TOTAL AWARD</b>	<b>\$11,432.50</b>

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 January 4, 2009, the 75th day after WEM filed its compensation request, and continuing until full payment of the award is made.

As set forth in the table below, we award Greenlining \$7,688.70:

**Work on Proceeding**

Attorney/Staff	Year	Hours	Hourly Rate	Total
Robert Gnaizda	2008	1.25	\$535.00	\$ 668.75
Samuel Kang	2008	35.9	\$180.00	\$ 6,462.00
<b>Work on Proceeding Total:</b>				<b>\$ 7,130.75</b>

**Preparation of NOI and Compensation Request**

Attorney/Staff	Year	Hours	Hourly Rate	Total
Robert Gnaizda	2008	0.25	\$267.50 (½rate)	\$ 66.88
Samuel Kang	2008	4.9	\$90.00 (½rate)	\$ 441.00
NOI and Compensation Request Total:				\$ 507.88

**CALCULATION OF FINAL AWARD**

Work on Proceeding	\$ 7,130.75
NOI and Compensation Request Preparation	\$ 507.88
Expenses	\$ 50.07
<b>TOTAL AWARD</b>	<b>\$ 7,688.70</b>

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 February 1, 2009, the 75<sup>th</sup> day after Greenlining filed its compensation request, and continuing until full payment of the award is made.

We direct PG&E, SDG&E, SoCalGas, SCE to allocate payment responsibility among themselves based upon their California-jurisdictional gas and electric revenues for the 2008 calendar year, to reflect the year in which the work primarily occurred.

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. Each intervening party's records should identify specific issues for which it requested 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.

## **8. Comments on Proposed Decision**

This is an intervenor compensation matter. Accordingly, as provided by Rule 14.6(c)(6) of our Rules of Practice and Procedure, we normally waive the otherwise applicable 30-day comment period for this decision. However, given that we have reduced compensation for CEC, WEM, and Greenlining, we have issued the Proposed Decision for Comment. Comments were received on \_\_\_\_\_.

## **9. Assignment of Proceeding**

Dian M. Gruenich is the assigned Commissioner and David Gamson is the assigned ALJ in this proceeding.

**Findings of Fact**

1. NRDC has satisfied all the procedural requirements necessary to claim compensation in this proceeding.
2. CEC has satisfied all the procedural requirements necessary to claim compensation in this proceeding.
3. WEM has satisfied all the procedural requirements necessary to claim compensation in this proceeding.
4. Greenlining has satisfied all the procedural requirements necessary to claim compensation in this proceeding.
5. NRDC made a substantial contribution to D.08-09-040 as described herein.
6. CEC made a substantial contribution to D.08-09-040 as described herein.
7. CEC made a substantial contribution to D.08-07-047 as described herein.
8. WEM made a substantial contribution to D.08-09-040 as described herein.
9. Greenlining made a substantial contribution to D.08-09-040 as described herein.
10. NRDC requested hourly rates for its representatives that are reasonable when compared to the market rates for persons with similar training and experience.
11. CEC requested an hourly rate for its representative that was not reasonable when compared to the market rates for persons with similar training and experience. A reasonable 2008 hourly rate for June is \$290.
12. WEM requested hourly rate for its representative that was not reasonable when compared to the market rates for persons with similar training and experience. A reasonable 2008 hourly rate for Hunt is \$290.
13. Greenlining requested hourly rates for its representatives that are not reasonable when compared to the market rates for persons with similar training

and experience. A reasonable 2008 hourly rate for Gnaizda is \$535 and for Kang is \$180.

14. The total of the reasonable compensation to NRDC is \$15,692.50.
15. The total of the reasonable compensation to CEC is \$55,753.75.
16. The total of the reasonable compensation to WEM is \$11,432.50.
17. The total of the reasonable compensation to Greenlining is \$7,688.70.
18. The appendix to this decision summarizes today's reward.

### **Conclusions of Law**

1. NRDC has fulfilled the requirements of §§ 1801-1812, which govern awards of intervenor compensation, and is entitled to intervenor compensation for its claimed expenses incurred in making substantial contributions to D.08-09-040.

2. NRDC should be awarded \$15,692.50 for its contribution to D.08-09-040.

3. CEC has fulfilled the requirements of §§ 1801-1812, which govern awards of intervenor compensation, and is entitled to intervenor compensation for its claimed expenses incurred in making substantial contributions to D.08-09-040 and D.08-07-047.

4. CEC should be awarded \$55,753.75 for its contributions to D.08-07-047 and D.08-09-040.

5. WEM has fulfilled the requirements of §§ 1801-1802, which govern awards of intervenor compensation, and is entitled to intervenor compensation for its claimed expenses incurred in making substantial contributions to D.08-09-040.

6. WEM should be awarded \$11,432.50 for its contribution to D.08-09-040.

7. Greenlining has fulfilled the requirements of §§ 1801-1802, which govern awards of intervenor compensation, and is entitled to intervenor compensation

for its claimed expenses incurred in making substantial contributions to D.08-09-040.

8. Greenlining should be awarded \$7,688.70 for its contribution to D.08-09-040.

9. This order should be effective today so that the intervenors may be compensated without further delay.

**O R D E R**

**IT IS ORDERED** that:

1. National Resources Defense Council is awarded \$15,692.50 as compensation for its substantial contribution to Decision (D.) 08-09-040.

2. Community Environmental Council is awarded \$55,753.75 as compensation for its contributions to D.08-09-040 and D.08-07-047.

3. Women's Energy Matters is awarded \$11,432.50 as compensation for its contribution to D.08-09-040.

4. Greenlining Institute is awarded \$7,688.70 as compensation for its contribution to D.08-09-040.

5. Within 30 days of the effective date of this decision, Pacific Gas and Electric Company, San Diego Gas & Electric Company, Southern California Gas Company, and Southern California Edison Company shall pay National Resources Defense Council, Community Environmental Council, Women's Energy Matters and Greenlining Institute their respective shares of the award. We direct Pacific Gas and Electric Company, San Diego Gas & Electric Company, Southern California Gas Company, and Southern California Edison Company to allocate payment responsibility among themselves, based on their California-jurisdictional gas and electric revenues for the 2008 calendar year, to

reflect the year in which the work primarily occurred. 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 January 1, 2009 for CEC, January 4, 2009 for Women's Energy Matters, and February 1, 2009 for National Resources Defense Council and Greenlining Institute, the 75<sup>th</sup> day after the filing date of each intervenor's request for compensation, and continuing until full payment is made.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.

## APPENDIX

## Compensation Decision Summary Information

<b>Compensation Decision:</b>		<b>Modifies Decision? NO</b>
<b>Contribution Decision(s):</b>	D.0807047; D. 08-07-047	
<b>Proceeding(s):</b>	A0806-004/R0807011 (D0809040); R0604010 (D0807047)	
<b>Author:</b>	ALJ David Gamson	
<b>Payer(s):</b>	Pacific Gas and Electric Company, San Diego Gas & Electric Company, Southern California Gas Company, and Southern California Edison Company	

## Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
National Resources Defense Council	11/18/08	\$15,692.50	\$15,692.50		
Community Environmental Council	10/17/08	\$64,838.00	\$55,801.25		Reduced hourly rate; Undocumented costs; calculation error
Womens Energy Matters	10/20/08	\$26,392.50	\$11,432.50		Hours claimed prior to 10/18/08 in R0604010 should be claimed in that proceeding; lack of substantial contributing to decision; excessive time for NOI
Greenlining Institute	11/18/08	\$11,352.82	\$7,688.70		Hourly rates; disallowed routine travel; claim preparation time reduced to half rate

## Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Audrey	Chang	expert	National Resources Defense Council	\$150.00	2007	\$150.00
Audrey	Chang	expert	National Resources Defense Council	\$155.00	2008	\$155.00
Lara	Ettenson	expert	National Resources Defense Council	\$120.00	2007	\$120.00
Lara	Ettenson	expert	National Resources Defense Council	\$125.00	2008	\$125.00
Tam	Hunt	attorney	Community Environmental Council	\$270.00	2007	\$270.00
Tam	Hunt	attorney	Community Environmental Council	\$300.00	2008	\$290.00
Barbara	George	expert	Women's Energy Matters	\$170.00	2007-2008	\$170.00
Robert	Gnaizda	attorney	Greenlining Institute	\$540.00	2008	\$535.00
Samuel	Kang	attorney	Greenlining Institute	\$235.00	2008	\$180.00

**(END OF APPENDIX)**

**INFORMATION REGARDING SERVICE**

I have provided notification of filing to the electronic mail addresses on the attached service list.

Upon confirmation of this document's acceptance for filing, I will cause a Notice of Availability of the filed document to be served upon the service list to this proceeding by U.S. mail. The service list I will use to serve the Notice of Availability of the filed document is current as of today's date.

Dated April 21, 2009, at San Francisco, California.

/s/ ANTONINA V. SWANSEN  
Antonina V. Swansen

\*\*\*\*\* PARTIES \*\*\*\*\*

\*\*\*\*\* SERVICE LIST \*\*\*\*\*

**Last Updated on 21-APR-2009 by: RC4  
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