

**PUBLIC UTILITIES COMMISSION**505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298**FILED**12-21-11
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December 21, 2011

Agenda ID #10931
Ratesetting

TO PARTIES OF RECORD IN APPLICATION 08-07-021 et al

This is the proposed decision of Administrative Law Judge (ALJ) David M. Gamson. It will not appear on the Commission's agenda sooner than 30 days from 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. Pursuant to Rule 14.3, opening comments shall not exceed 15 pages.

Comments must be filed pursuant to Rule 1.13 either electronically or in hard copy. 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 and the assigned Commissioner. The current service list for this proceeding is available on the Commission's website at www.cpuc.ca.gov.

/s/ KAREN V. CLOPTON
Karen V. Clopton, Chief
Administrative Law Judge

KVC:gd2

Attachment

Decision **PROPOSED DECISION OF ALJ GAMSON** (Mailed 12/21/2011)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of Southern California Edison Company (U338E) for Approval of its 2009-2011 Energy Efficiency Program Plans And Associated Public Goods Charge (PGC) And Procurement Funding Requests.

Application 08-07-021
(Filed July 21, 2008)

And Related Matters.

Application 08-07-022
Application 08-07-023
Application 08-07-031

DECISION AWARDING COMPENSATION TO NATURAL RESOURCES DEFENSE COUNCIL FOR SUBSTANTIAL CONTRIBUTION TO DECISION (D.) 11-07-030

Claimant: Natural Resources Defense Council (NRDC)	For contribution to D.11-07-030
Claimed: \$13,475	Awarded: \$8,370 (reduced 38%)
Assigned Commissioner: Michel Peter Florio	Assigned ALJ: David M. Gamson

PART I: PROCEDURAL ISSUES**A. Brief Description of Decision:**

D.11-07-030 adopted modifications and clarifications regarding energy efficiency portfolios for 2010-2012 including resolution of remaining issues related to ex ante savings estimates.

B. Claimant must satisfy intervenor compensation requirements set forth in Public Utilities Code §§ 1801-1812:

	Claimant	CPUC Verified
Timely filing of notice of intent (NOI) to claim compensation (§ 1804(a)):		
1. Date of Prehearing Conference:	August 11, 2008	Correct
2. Other Specified Date for NOI:		
3. Date NOI Filed:	September 10, 2008	Correct
4. Was the notice of intent timely filed?		Yes
Showing of customer or customer-related status (§ 1802(b)):		

5. Based on ALJ ruling issued in proceeding number:	R.09-08-009	Correct
6. Date of ALJ ruling:	January 28, 2010	Correct
7. Based on another CPUC determination (specify):		
8. Has the claimant demonstrated customer or customer-related status?		Yes
Showing of “significant financial hardship” (§ 1802(g)):		
9. Based on ALJ ruling issued in proceeding number:	See Part I.C #1	N/A
10. Date of ALJ ruling:	See Part I.C #1	N/A
11. Based on another CPUC determination (specify):		D.10-09-014, D.10-05-014, and Rule 17.2
12. Has the claimant demonstrated significant financial hardship?		Yes
Timely request for compensation (§ 1804(c)):		
13. Identify Final Decision	D.11-07-030	Correct
14. Date of Issuance of Final Decision:	July 14, 2011	Correct
15. File date of compensation request:	September 12, 2011	Correct
16. Was the request for compensation timely?		Yes

C. Additional Comments on Part I:

Claimant’s Comments
<p>While NRDC has repeatedly been found to show financial hardship, none of the findings are within the required one-year time frame of this claim. In NRDC’s recent notices of intent to claim compensation in R.11-03-012 and A.11-05-017 et al., we provide our full bylaws and articles of incorporation and request a ruling of financial hardship. Here, we provide a link to the R.11-03-012 Notice to File Intervenor Compensation, filed August 22, 2011: http://docs.cpuc.ca.gov/efile/NOTICE/142492.pdf</p>

PART II: SUBSTANTIAL CONTRIBUTION**A. Claimant’s claimed contribution to the final decision:**

Contribution	Citation to Decision or Record	Showing Accepted by CPUC
<p>1. Gross Realization Rate Energy Division (ED), with the support of TURN and DRA, recommended the application of a</p>	<p>“We will adopt a GRR of 0.90. While ED’s determination of a 0.80 GRR was included in the E3 calculator as</p>	<p>Yes</p>

<p>Gross Realization Rate (GRR) discount to all unreviewed custom measures. The specific values for the GRR recommended by ED shifted over the course of the proceeding, ranging from 0.6 to 0.8.</p> <p>NRDC argued against the application of a generic GRR for unreviewed projects, a position that was equivalent to a GRR of 1.0. In support of this position, NRDC argued that because there was no evidentiary support for the ED recommendation, imposition of the proposed GRR would be arbitrary and capricious. NRDC also argued that the proposed GRR would result in less accurate impact estimates and lower benefits to customers. While other parties also argued against the proposed GRR, NRDC highlighted the lack of evidentiary support which was cited by the Commission in support of resolution of this issue.</p> <p>The Commission ultimately adopted a GRR of 0.9 which was not recommended by any party, but was intermediate to the values recommended by ED/TURN/DRA and NRDC. While the Commission’s adopted value of 0.9 was lower than that recommended by NRDC, the explanation of why the ED/DRA/TURN values were not adopted relied on arguments put forward by NRDC.</p> <p><i>(Case Management Statement, at 27-28).</i></p> <p><i>(NRDC Comments on PD at 9).</i></p> <p><i>(NRDC Reply Comments on PD at 2).</i></p>	<p>envisioned by D.09-09-047, and is in the record of this proceeding, there is no analytical support for this value in the record beyond the reference to the E3 calculator.” (D.11-07-030 at 37).</p>	
<p>2. Baseline</p> <p>Energy Division (ED) recommended that a “dual baseline” calculation be utilized for cost effectiveness calculations as well as utility annual</p>	<p>“We agree with NRDC and the utilities that the compelling evidence determination in the Energy Division Methodology for Determination of</p>	<p>Yes</p>

<p>and cumulative savings reporting. ED also proposed that the baseline calculation assume no remaining useful life for replaced equipment, unless there was compelling evidence to the contrary.</p> <p>NRDC argued in support of the dual baseline approach recommended by ED. However, NRDC opposed the proposal to assume no remaining useful life absent compelling evidence to contrary. NRDC instead recommended that the Commission adopt a balanced approach designed to provide an accurate estimate of savings that is reflective of current market conditions.</p> <p>The Commission adopted NRDC’s recommendation and specifically cited NRDC’s advocacy in adopting this policy.</p> <p><i>(Case Management Statement at 17 & 34).</i></p> <p><i>(NRDC Comments on PD at 9).</i></p>	<p>Baseline for Gross Savings Estimate flow chart diagram (Appendix I in the Custom Review Process document) appears to be one-sided. We clarify that the compelling evidence determination applies both ways. There needs to be compelling evidence to determine whether a project is ‘replace on burnout’ or ‘early retirement’.” (D.11-07-030 at 41).</p>	
<p>3. DEER 2008.2.05</p> <p>ED recommended that the utilities should use measure-specific NTGR values from the 2006-2008 EM&V studies rather than values provided in DEER 2008.2.05.</p> <p>NRDC disagreed with ED’s recommendation and argued that Commission policy adopted in D.09-09-047 required the use of NTGR values in DEER 2008.2.05 regardless of whether more recent values were available.</p> <p>The Commission agreed with NRDC and directed utilities to use the NTGR values in DEER 2008.2.05.</p> <p><i>(Case Management Statement at 5).</i></p> <p><i>(NRDC Comments on PD at 4).</i></p>	<p>“In D.10-012-054, we adopted DEER 2008.2.05. That decision modified D.09-09-047 specifically to clarify the appropriate DEER dataset to use for the 2010-2012 portfolio. The adopted DEER dataset includes specified or default NTG ratio values for all energy efficiency measures. We will not change this determination here.” (D.11-07-030 at 18).</p> <p>“D.10-12-054 adopted 2008 DEER version 2.05, including net-to-gross ratio values. Therefore, the adopted net-to-gross ratio values in the 2008 DEER version 2.05 should be used for determining ex ante values for the 2010-2012 energy efficiency portfolios.” (D.11-07-030 at 46).</p>	<p>Yes</p>

<p>4. ED Record Keeping</p> <p>ED’s proposed review process for custom measures included a set of record-keeping requirements for the utilities to ensure that records of impact estimates were complete and accessible.</p> <p>Because ED would be developing its own set of impact estimates for a subset of custom projects, NRDC recommended that ED should also be responsible for effective record keeping and documentation of its analyses and recommended changes to savings calculations.</p> <p>The Commission adopted NRDC’s recommendation and directed ED to maintain a publicly accessible database of its custom project reviews and decisions.</p> <p><i>(Case Management Statement at 37-8).</i></p> <p><i>(NRDC Comments on PD at 4).</i></p>	<p>“We agree with parties that a public archive should be available for stakeholders to access ED’s project review comments and lessons learned. We will require ED to maintain a public archive database with a summary of issues identified in its custom applications and projects reviews, and the ED dispositions of those issues.” (D.11-07-030 at 40-41).</p>	<p>Yes</p>
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B. Duplication of Effort (§§ 1801.3(f) & 1802.5):

	Claimant	CPUC Verified
<p>a. Was Division of Ratepayer Advocates (DRA) a party to the proceeding?</p>	<p>Yes</p>	<p>Yes</p>
<p>b. Were there other parties to the proceeding?</p>	<p>Yes</p>	<p>Yes</p>
<p>c. If so, provide name of other parties:</p> <p>PG&E, SCE, SDG&E, Southern California Gas, The Utility Reform Network, EnerNOC, NAESCO, Women’s Energy Matters, Small Business California, Global Energy Partners, and Ecology Action.</p>	<p>Yes</p>	
<p>d. Claimant’s description of how it coordinated with DRA and other parties to avoid duplication or how claimant’s participation supplemented, complemented, or contributed to that of another party:</p> <p>NRDC is the only consistently active environmental organization in A.08-07-021 et al., focusing mainly on the environmental perspective to maximize overall cost-effective energy savings and ensuring that customers will benefit from the most comprehensive set of energy savings options possible. When possible, NRDC worked cooperatively with other parties to</p>	<p>Yes</p>	

<p>address as many concerns as feasible prior to submitting our comments. We participated in scheduled workshops and minimized our participation in cases where our concerns were adequately represented by other parties. For example, following a brief review of the draft reply from EnerNOC to the DRA motion, we chose to cosign the joint reply rather than draft our own reply which would have largely covered the same issues. Furthermore, NRDC worked closely with other parties in the development of the Case Management Statement to ensure that whichever issues could be resolved were done so before the submission of the final report.</p>	
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PART III: REASONABLENESS OF REQUESTED COMPENSATION:

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

<p>Claimant’s explanation as to how the cost of claimant’s participation bears a reasonable relationship with benefits realized through claimant’s participation</p>	<p>CPUC Verified</p>
<p>Throughout A.08-07-021 (and during the past 30 years of participation in CPUC proceedings) NRDC has advocated for policies that support programs to maximize cost-effective energy efficiency. NRDC’s continued focus in this and other proceedings on policies that ensure a reliable, affordable and environmentally sustainable energy resource portfolio should have lasting benefits to billpayers. NRDC contributed substantially to the resolution of the outstanding issues addressed in D.11-09-030, which will allow the utilities to carry out a significant portion of their energy efficiency portfolio previously on hold in anticipation of this decision.</p> <p>If the utilities meet the energy savings goals as adopted by D.09-09-047, we estimate savings from 2010-2012 will reduce greenhouse gas emissions by approximately 3 million metric tons of carbon dioxide (also noted in the CPUC Press Release on September 24, 2009), equivalent to the emissions from nearly 600,000 cars a year, an important contribution to meeting the state’s 2020 greenhouse gas emissions limit required by Assembly Bill 32, the Global Warming Solutions Act of 2006. Moreover, D.09-09-047 notes on p.4 that the peak savings will reach above 1500 MW, which avoids the construction of 3 large (500 MW) power plants. Assuming a cost of \$30/ton, savings to customers would total an estimated \$90 million in avoided regulatory costs due to reductions in GHG emissions alone. In addition, if the energy efficiency goals are met, the energy savings will produce \$1 billion in net benefits, benefits to customers <i>after</i> accounting for the cost of the programs. Specifically to this claim, the programs affected by D.11-07-030 make up over a third of the portfolio net benefits and therefore our contribution to ensure effective policies to support implementation of these programs will provide direct monetary and environmental benefits to California billpayers.</p> <p>NRDC maintained detailed time records indicating the number of hours that were devoted to proceeding activities. All hours represent substantive work related to this proceeding. The amounts claimed are conservative. Other NRDC staff members were consulted regularly, but none of their hours are claimed here. In addition, hours were only included for formal meetings and key tasks and omitted time spent on brief tasks like phone calls and emails.</p>	<p>Yes</p>

The rates requested by NRDC are purposely low, well within the ranges approved by the Commission, and not only reflect rates below market for expertise at similar levels, but also well below other requests received by the Commission.

In sum, NRDC made numerous and significant contributions to D.11-07-030. Our consistent engagement ensured that the environmental perspective was adequately represented and we worked with other stakeholders whenever possible to minimize duplication. Our work was efficient, our hours conservative, and our billing rates low. For these reasons, our request should be granted in full.

B. Specific Claim*:

CLAIMED						CPUC AWARD			
EXPERT FEES									
Item	Year	Hours	Rate \$	Rate rationale	Total \$	Year	Hours	Rate \$	Total \$
Peter Miller	2011	46.0	275	Adopted here	12,650	2011	41.0 ¹	180	7,380
<i>Subtotal: \$12,650</i>						<i>Subtotal: \$7,380</i>			
OTHER FEES: TRAVEL									
Item	Year	Hours	Rate \$	Rate rationale	Total \$	Year	Hours	Rate \$	Total \$
<i>See footnote 1</i>						2011	5.0	90	450
						<i>Subtotal: \$450</i>			
INTERVENOR COMPENSATION CLAIM PREPARATION **									
Item	Year	Hours	Rate \$	Rate rationale	Total \$	Year	Hours	Rate \$	Total \$
Peter Miller	2011	6.0	137.50		\$825	2011	6.0	90	540
<i>Subtotal: \$13,475</i>						<i>Subtotal: \$540</i>			
TOTAL REQUEST: \$13,475						TOTAL AWARD: \$8,370			
<p>*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. Claimant's records should identify specific issues for which it seeks compensation, the actual time spent by each employee or consultant, the applicable hourly rates, fees paid to consultants and any other costs for which compensation was claimed. The records pertaining to an award of compensation</p>									

¹ We have removed 5 hours of Millers time listed for travel and have reallocated them to the correct area of the form for tasks which are compensated at ½ professional time.

shall be retained for at least three years from the date of the final decision making the award.
 **Reasonable claim preparation time typically compensated at ½ of preparer’s normal hourly rate.

C. Comments Documenting Specific Claim:

Comment #	Description/Comment
#1	<p>Rationale for Peter Miller’s hourly rates:</p> <p>The rate proposed for Peter Miller is in the middle of the range adopted in Res ALJ-267 for experts with 13 years of experience for 2011 (\$155-390). Peter is a Senior Scientist at NRDC focusing on renewable energy, energy efficiency, and climate policies. He has worked on energy and environmental policy for 25 years. Mr. Miller is currently a board member of the Climate Action Reserve and has served on the California Board for Energy Efficiency, as well as both Independent Review Panels evaluating the Public Interest Energy Research program at the California Energy Commission. Mr. Miller has participated in utility advisory committees in California, Hawaii, and the Pacific Northwest, in numerous proceedings before the California Energy Commission, the California Public Utilities Commission, the California Air Resources Board, and the Northwest Power Planning Council, and in rulemakings before the U.S. Department of Energy. Mr. Miller served on the California Board for Energy Efficiency from April 1997 to January 2000. Mr. Miller holds a Physics degree from Reed College and a Master’s degree from Dartmouth College.</p>

D. CPUC Adoptions and Adjustments:

Item	Adoptions
Miller’s 2011 Hourly Rate	<p>NRDC requests an hourly rate for Peter Miller (Miller) of \$275, which is the mid-point of the approved 2011 range for experts established in Resolution ALJ-267 dated March 25, 2011. NRDC does not present any other rationale for such a substantial rate increase other than a resume and a list of Miller’s experience. NRDC did not provide any comparison of peers or intervenors with similar expertise and hourly rates.</p> <p>Miller most recently was compensated at an hourly rate of \$100 for 2008, approved in D.09-05-018. Miller’s highest hourly compensation rate of \$150 was approved in D.06-04-005 for the year 2005.</p> <p>D.08-04-010 addresses the CPUC policy and procedure for increases in hourly rates, including cost of living adjustments (COLAs) and step increases, for intervenors with previously adopted rates, within the past four years, such as Miller.</p> <p>D.08-04-010 states, in relevant part, beginning on page 8 under the section titled “Rates for Representatives with a Recently Adopted Rate:”</p> <p style="padding-left: 40px;">“Intervenor representatives (attorneys and experts) with an hourly rate previously adopted by the Commission (an existing rate in place from a prior or recent year) normally would qualify for a rate increase under the following five circumstances:</p> <ol style="list-style-type: none"> 1) Annual COLA: includes any other type of annual increase adopted by the Commission generally applicable to all representatives; 2) Step increases: limited to two annual increases of no more than 5% each year within any given level of experience for each individual;

	<p>3) Moving to a higher experience level: where additional experience since the last authorized rate moves a representative to a higher level of experience (e.g., an attorney with 12 years experience, in the 8-12 year experience level, would be eligible for an increase the following year, apart from any COLA or step increase, by virtue of moving up to the 13-plus year level);</p> <p>4) Rate below rate range: any rate below the range of rates for a given experience level in a given year may be increased to at least the bottom of the rate range (cannot exceed the rates intervenors actually pay their outside consultants); and</p> <p>5) Rate historically sought at low end of a given range: an intervenor representative who has historically sought rates at the low end of an applicable rate range may request an increase within that range if the representative can clearly demonstrate in the compensation request that the representative’s previously adopted rate is significantly less than that of close peers (those with closely comparable training and experience and performing closely similar services). Such requests will be judged on a case-by-case basis, but at a minimum must show the previously adopted rate of the peer(s), and must include a detailed description of the work involved, to the degree that a comparison readily can be made.”</p> <p>To assign an appropriate hourly rate using the steps listed above, we apply the following logic. First, according to #4 above, Miller’s rate should be adjusted at least to the bottom end of the range for an expert with his length of experience. The established hourly rates for 2011 according to Resolution ALJ-267 are \$155-\$390 for individuals with 13+ years of experience. Thus, Miller’s hourly rate should be at least raised to \$155 per hour.</p> <p>We then turn to eligibility for step increases within each experience range. According to Miller’s resume, in 2005 when his original compensation rate was established, he already had 13 years of experience at that time. Thus, during all of his intervenor compensation history, his experience range falls into the 13+ category. According to #2 above, within this category, he is eligible for two step increases of 5% each.</p> <p>In addition, D.07-01-009 allows a 3% COLA for 2007 intervenor work and D.08-04-010 allows a 3% COLA for 2008 intervenor work, for which Miller is also eligible. No other COLAs have been authorized for 2009-2011 intervenor work.</p> <p>Given that NRDC did not provide any comparison of peers or intervenors with similar expertise and hourly rates, as required by #5 above, the rationale provided for a rate of \$275 is insufficient to justify such a large increase over previously-adopted Commission rates.</p> <p>However, using all of the above steps, including an increase to the minimum of the range, two 5% step increases, and two 3% COLA, we can logically and reasonably justify an hourly compensation rate of \$180 per hour.</p>
Item	Adjustments
2011 Travel Time	On January 24, 2011, Miller claims 5 hours of travel time to and from a workshop in Los Angeles. Although this is non-routine travel because of the distance being 120 miles or greater, we compensate these hours at 1/2 of Miller’s professional rate.

PART IV: OPPOSITIONS AND COMMENTS

A. Opposition: Did any party oppose the claim?

No

B. Comment Period: Was the 30-day comment period waived (see Rule 14.6(c)(6))?

No

FINDINGS OF FACT

1. Claimant has made a substantial contribution to Decision 11-07-030.
2. The claimed fees, as adjusted herein, are comparable to market rates paid to experts and advocates having comparable training and experience and offering similar services.
3. The total of reasonable contribution is \$8,370.

CONCLUSION OF LAW

1. The claim, with the adjustments set forth above, satisfy all requirements of Public Utilities Code §§ 1801-1812.

ORDER

1. Claimant is awarded \$8,370.
2. Within 30 days of the effective date of this decision, Pacific Gas and Electric Company, Southern California Edison Company, San Diego Gas & Electric Company, and Southern California Gas Company shall pay claimant their respective shares of the total award, based on their California-jurisdictional electric and gas revenues for the 2010 calendar year, to reflect the year in which the proceeding was primarily litigated. 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 November 27, 2011, the 75th day after the filing of claimant’s request, and continuing until full payment is made.
3. The comment period for today’s decision was not waived. This is an intervenor compensation matter. As provided in Rule 14.6(c)(6) of our Rules of Practice and Procedure, we normally waive the otherwise applicable 30-day comment period for this proposed decision. Because the Commission is sizably reducing the amount requested in this award we allow comments on this proposed decision. Comments were filed on _____ by _____.

4. This decision is effective today.

Dated _____, at San Francisco, California.

APPENDIX**Compensation Decision Summary Information**

Compensation Decision:		Modifies Decision? No
Contribution Decision(s):	D1107030	
Proceeding(s):	A0807021, et. al.	
Author:	ALJ David M. Gamson	
Payer(s):	Pacific Gas and Electric Company, Southern California Edison Company, Southern California Gas Company, and San Diego Gas & Electric Company	

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
Natural Resources Defense Council	9/12/11	\$13,475	\$8,370	No	Increase in hourly rate request unjustified; non-routine travel compensated at ½ professional rate

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Peter	Miller	Expert	Natural Resources Defense Council	\$275	2011	\$180

(END OF APPENDIX)