Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Examine the Commission's Future Energy Efficiency Policies, Administration and Programs.	Rulemaking 01-08-028 (Filed August 23, 2001)

DECISION AWARDING INTERVENOR COMPENSATION TO THE NATURAL RESOURCES DEFENSE COUNCIL (NRDC)

This decision awards the NRDC $23,665.00 for its contribution to several energy efficiency decisions issued by the Commission in the past few years, Decision (D.) 01-11-066, D.02-03-056, D.03-04-055, D.03-07-034, and D.03-08-067. While NRDC also provided the Commission input on D.02-05-046 and D.02-06-026, as outlined below, it does not seek compensation for this work due to a lack of contemporaneous time records.

1. Background

This energy efficiency rulemaking has resulted in many large decisions: some that rule on specific utility and non-utility requests for energy efficiency funding, and others that state or revise the Commission's general energy efficiency policies. We describe those decisions in more detail in the body of this decision.

NRDC states that it has acted as the sole participant in the proceeding that addressed energy efficiency from an environmental perspective.

No party opposes NRDC's request for compensation.

2. Requirement for Awards of Compensation

Intervenors who seek compensation for their contributions in Commission proceedings must file requests for compensation pursuant to Pub. Util. Code §§ 1801-12. (Unless otherwise noted, all statutory citations are to the Public Utilities Code.)

A. Notice of Intent

Section 1804(a) requires an intervenor to file a notice of intent (NOI) to claim compensation within 30 days after the prehearing conference (PHC) or by a date established by the Commission. NRDC filed its NOI timely and was found eligible for compensation by ruling dated November 1, 2001. Thus, NRDC has met the requirements of § 1804(a).

B. Timeliness of Compensation Request

Section 1804(c) requires an eligible customer to file a request for an award within 60 days of issuance of a final order or decision by the Commission in the proceeding. The mailed date of D.03-08-067 was August 26, 2003. NRDC filed its request for compensation as to D.03-08-067 on October 24, 2003, so its request is timely as to that decision.

NRDC does not address how its request is timely as to the decisions issued in this docket prior to the 60-day deadline. We find that NRDC's request is also timely as to those decisions, because the 60-day deadline only applies when the Commission issues "a final order or decision." The real question is whether NRDC's request is premature, since the Commission has not yet closed R.01-08-028. The statute does not address whether a party may seek compensation before the Commission issues its final decision in a proceeding. Section 1804(c) does not directly preclude such an award, and is intended, in our view, simply to preclude *late* fillings.

Early filings, especially in a case such as this one that has been pending since 2001, seem entirely consistent with the intervenor compensation statute. The purpose of the statute is to "provide compensation for reasonable advocate's fees . . . and other reasonable costs to public utility customers of participation or intervention in any proceeding of the Commission."[1] Moreover, the statute provides that "it is the intent of the Legislature that, . . . [i]ntervenor compensation should be awarded to eligible intervenors in a timely manner, within a reasonable period after the intervenor has made the substantial contribution to a proceeding that is the basis for the compensation award."[2]

Thus, the Legislature intended for us to award compensation in a timely fashion, and we see no reason for NRDC to wait any longer for compensation for which it is eligible.

Moreover, our rules on intervenor compensation liberally construe "final order or decision" for purposes of determining when an intervenor may seek compensation for contributions to a decision that is not necessarily the last decision in a proceeding. Specifically, Rule 76.72 of our Rules of Practice and Procedure says that "final order or decision" means an order or decision that either closes the proceeding or "resolves an issue on which the customer believes it made a substantial contribution." Our several interim decisions so far in this rulemaking have resolved the issues that are the basis of NRDC's compensation request. Consequently, we conclude that request is not premature.

We find that NRDC has timely sought compensation.

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[1] § 1801.

[2] § 1801.3(e).

3. Substantial Contribution to Resolution of Issues

Under § 1804(c), an intervenor requesting compensation must provide "a detailed description of services and expenditures and a description of the customer's substantial contribution to the hearing or proceeding." Section 1802(h) states that "substantial contribution" means that,

> in the judgment of the commission, the customer's presentation has substantially assisted the commission in the making of its order or decision because the order or decision has adopted in whole or in part one or more factual contentions, legal contentions, or specific policy or procedural recommendations presented by the customer. Where the customer's participation has resulted in a substantial contribution, even if the decision adopts that customer's contention or recommendations only in part, the commission may award the customer compensation for all reasonable advocate's fees, reasonable expert fees, and other reasonable costs incurred by the customer in preparing or presenting that contention or recommendation.

Section 1804(e) requires the Commission to issue a decision that determines whether the customer has made a substantial contribution and what amount of compensation to award. The level of compensation must take into account the market rate paid to people with comparable training and experience who offer similar services, consistent with § 1806.

As provided in § 1802(h), a party may make a substantial contribution to a decision in one of several ways. It may offer a factual or legal contention upon which the Commission relied in making a decision, or it may advance a specific policy or procedural recommendation that the ALJ or Commission adopted. A substantial contribution includes evidence or argument that supports part of the decision even if the Commission does not adopt a party's position in total.

NRDC alleges, and we find, that it made a substantial contribution to each of the following Commission decisions in the following ways:

A. Decision 01-11-066

In D.01-11-066, the Commission established the policy guidelines and process for the utilities and third parties to propose energy efficiency programs for 2002 and 2003. The Commission adopted NRDC's (and other parties') recommendations to 1) proceed cautiously in having the Commission (rather than the utilities) bid out energy efficiency programs, and 2) establish a procedural schedule and process for the Commission's examination of future energy efficiency program administration. As to the latter point, NRDC coordinated a joint *ex parte* letter to the assigned Commissioner, which was signed by more than fifty organizations representing a wide range of energy efficiency stakeholders.

B. Decision 02-03-056

In response to the Commission's draft decision approving the 2002 statewide energy efficiency programs, NRDC once again helped coordinate a joint *ex parte* letter to the assigned Commissioner critiquing the penalty mechanism proposed in the draft decision. The final Commission decision clarified the penalty process and provided more detail about what was expected of program providers.

C. Decision 02-05-046

In D.02-05-046, the Commission approved the majority of the local programs for 2002-03. NRDC submitted detailed comments on the draft decision. The Commission's final decision reflects several of NRDC's (and other parties') recommendations, including the following:

- NRDC's comments noted several problems with the draft decision's statement that "third parties shall not

receive profit . . . for carrying out energy efficiency activities." The final decision "deleted the section that prohibits profits for third party program implementers," and provided additional detail on how the Commission would monitor and release profits for these implementers.

- NRDC raised concerned regarding the draft decision's discussion of programs to measure and evaluate energy efficiency program results. The final decision clarified the measurement and evaluation requirements and the responsibilities of various program participants.
- NRDC asked that the Commission clarify the end date for third-party contracts, and the Commission did so.
- NRDC urged the Commission not to hire Market Assessment and Evaluation (MA&E) contractors itself. The final decision opted to have the utilities carry out certain MA&E and Evaluation, Measurement and Verification (EM&V) studies for statewide programs for 2002.[3]

D. Decision 02-06-026

In D.02-06-026, the Commission grappled with the question of whether to exclude "out-of-state" companies in awarding local energy efficiency program funding. The Commission considered both a draft decision and an alternate draft decision. NRDC (and many others) provided comments examining some of the problems with trying to exclude "out-of-state" providers from the

[3] Despite NRDC's substantial contribution to D.02-05-046 andD.02-06-026, NRDC does not request compensation for its contribution to these decisions due to a lack of contemporaneous time records. We include a description of its work on the decisions nonetheless to show that NRDC was conservative in its compensation request. *NRDC Request* at 13.

Commission's process, and the Commission opted not to exclude these providers.

E. Decision 03-04-055

D.03-04-055 adopted the following recommendations by NRDC (and other parties):

- NRDC argued against the draft decision's proposal to change the administration of EM&V and MA&E activities. The final decision adopted, in part, NRDC's recommendation to involve the California Measurement Advisory Committee (CALMAC), among others, in coordination of the evaluation process. The final decision also stated that the Commission would "consider the structure of MA&E activities comprehensively with our consideration of other administrative issues related to energy efficiency."
- NRDC also commented on the draft decision's proposal to require the utilities to establish separate bank accounts, held in trust for the Commission, for funds collected for their programs. The Commission did not include this requirement in the final decision.

F. Decision 03-07-034

In D.03-07-034, the Commission implemented the provisions of Assembly Bill (AB) 117 relating to energy efficiency programs in the context of community aggregation territories. The Commission provided many opportunities for public input leading up to its final decision, and NRDC was an active participant. The Commission solicited comments and reply comments in response to an initial ALJ Ruling, followed by a workshop and supplemental comments and reply comments. NRDC also filed comments on the draft decision.

The Commission's final decision reflects input from NRDC (and many others) asking that community choice aggregators (CCAs) acting under AB 117

be required to follow the Commission's existing energy efficiency procedures, schedules, selection criteria and EM&V requirements; and that the "proportional share" funding for CCAs not diminish investments in, and the effectiveness of, broader statewide or regional programs.

G. Decision 03-08-067

In D.03-08-067, the Commission established the policy guidelines and process for the utilities and third parties to propose energy efficiency programs for 2004 and 2005. NRDC provided detailed comments on the Administrative Law Judge's draft decision and the Assigned Commissioner's alternate draft decision, examining the key differences between the two and suggesting modifications to the draft decision.

While NRDC's input mirrored that of the utilities, NRDC is correct that the Commission adopted some of its comments, reflecting 1) the proper interpretation of AB 117, Public Utilities Code § 381.1, and 2) the need for continuity and stability in currently successful energy efficiency programs.

H. Relationship to the Showing of Other Parties

NRDC claims its compensation in this proceeding should not be reduced for duplication of the showing of other parties. (*See* § 1801.3(f).) It states that it coordinated with other parties in this proceeding to avoid duplication and coordinated the filing of joint letters with a broad group of stakeholders on two separate occasions. NRDC states that it was the only participant representing environmental interests in this proceeding and offered unique perspectives and views.

NRDC's input for this rulemaking has often closely resembled the positions taken by the utilities. In some instances, NRDC coordinated a joint position to which many parties subscribed. Section 1802.5 guides the

Commission when a compensation claimant has taken positions similar to those of other parties. In relevant part, the statute says that a customer's participation "may be fully eligible for compensation" despite similarity to "the presentation of another party" if the customer's participation "materially supplements, complements, or contributes to the [other party's] presentation . . . ." Indeed D.03-03-031 directs us to focus on the party's meaningful contribution and whether that contribution materially supplemented or complemented the presentation of others.

We find that NRDC's participation here has been thoughtful and vigorous, and that where consensus was reached it took a leading role. While NRDC generally was not alone in advancing the contentions or recommendations that we find constitute its substantial contribution (*see* § 1802(h)), NRDC's participation materially supplemented or complemented the presentation by other parties, and hence is fully eligible for compensation.

4. The Reasonableness of Requested Compensation

NRDC requests $23,665.00 as follows:

	Time by Decision (hours)							Rate ($/hour)	Requested Comp
	D.01-11-066	**D.02-03-056**	**D.03-04-055**	**D.03-07-034**	**D.03-08-067**	**General**	**Subtotal**		
Miller	27.6	17.9	3			4.6	53.1	$150	$7,965
Carter				10.5	32		42.5	$150	$6,375
Bachrach				34	42	17.25	93.25	$100	$9,325
Subtotals	27.6	17.9	3	44.5	74	21.85			
						TOTAL	**188.85**		**$23,665**

A. Overall Benefits of Participation

In D.98-04-059, the Commission adopted a requirement that a customer must demonstrate that its participation was "productive," as that term is used in § 1801.3, where the Legislature gave the Commission guidance on program administration. In that decision, we discuss the requirement that participation

must be productive in the sense that the costs of participation should bear a reasonable relationship to the benefits realized through such participation. Customers are directed to demonstrate productivity by assigning a reasonable dollar value to the benefits of their participation to ratepayers. This exercise assists us in determining the reasonableness of the request and in avoiding unproductive participation.

On this point, NRDC states that its emphasis in this proceeding has been to improve the effectiveness of the energy efficiency programs and increase net benefits to customers. It concedes it cannot identify precise monetary benefits to ratepayers. However, NRDC claims, its focus on policies that ensure a reliable, affordable and environmentally sustainable energy resource portfolio should have lasting benefits to ratepayers.

We agree that to the extent energy usage is lowered through energy efficiency programs, ratepayers benefit monetarily by avoiding energy costs. We also agree that these programs, improved through NRDC's participation, have other social benefits which, though hard to quantify, are substantial. Thus, we find that NRDC's efforts have been productive.

B. Hours Claimed

NRDC documents its claimed hours by presenting a daily breakdown of the hours of its staff representatives, accompanied by a brief description of each activity. The hourly breakdown reasonably supports the claim for total hours. We find that NRDC's contribution on all issues was substantial; however, we note gratefully that NRDC broke down its efforts by decision, so that if we needed to eliminate its work on certain issues from the award, this breakdown would have facilitated the process.

C. Hourly Rates

All of NRDC's requested hourly rates are reasonable, as we discuss below.

1. Peter Miller

NRDC seeks an hourly rate of $150 for scientist Peter Miller's time. According to his time records, Miller worked on this proceeding in 2001, 2002 and 2003.

Miller received his Master of Science degree in Resource Systems and Policy Design from Dartmouth College in 1984, and is a Senior Scientist with NRDC's California Energy Program. Miller has over ten years of experience in the development and analysis of energy efficiency programs. Miller has previously prepared testimony for the U.S. Senate and House of Representatives, the Northwest Power Planning Council, the Ontario Select Committee on Energy, and other administrative and legislative bodies, on energy conservation and efficiency. He has also published widely on these matters. Miller was awarded the rate of $150/hour for work in 1998 in D.99-11-006.

Given his qualifications, and our finding in D.99-11-006 that Miller was eligible for a $150 hourly rate for work in 1998, NRDC has amply demonstrated that NRDC is eligible for the same rate for Miller for work in 2001, 2002 and 2003. We grant Miller $150 per hour for work in those years, without prejudice to its right to seek a higher rate for those years in future requests for compensation.

2. Sheryl Carter

NRDC seeks an hourly rate of $150 for work performed by policy expert Sheryl Carter. Carter has a Masters Degree in Public Affairs, Technology,

Energy and Environmental Policy from the University of Minnesota, and has 11 years of experience in energy policy and utility regulation.

According to her time records, all of Carter's work on this proceeding took place in 2003. We very recently approved a $150 hourly rate for Carter for work in 2003 in D.03-12-009. We adopt this rate again here.

3. Devra Bachrach

NRDC seeks an hourly rate of $100 for work performed by engineer Devra Bachrach. According to her time records, all of Bachrach's work on this proceeding took place in 2003. We very recently approved a $100 hourly rate for Bachrach for work in 2003 in D.03-12-009. We adopt this rate again here.[4]

D. Costs

NRDC requests no costs.

5. Award

We award NRDC $23,665.00, the full amount of NRDC's request. This amount is reflected in the following table and in Appendix A to this decision:

Request

	Time by Decision (hours)							Rate ($/hour)	Requested Comp
	D.01-11-066	**D.02-03-056**	**D.03-04-055**	**D.03-07-034**	**D.03-08-067**	**General**	**Subtotal**		
Miller	27.6	17.9	3			4.6	53.1	$150	$7,965
Carter				10.5	32		42.5	$150	$6,375
Bachrach				34	42	17.25	93.25	$100	$9,325
Subtotals	27.6	17.9	3	44.5	74	21.85			
						TOTAL	**188.85**	$400	**$23,665**

[4] While Bachrach did not halve her hourly rate for the 17.25 hours she spent on NRDC's intervenor compensation request, we generally do not require halving where an individual with a low hourly rate prepares the request (D.03-12-014, *mimeo.*, at 7 n.5), so we allow Bachrach the full amount of her request here.

Consistent with previous Commission decisions, we will order that interest be paid on the award amount (calculated at the three-month commercial paper rate), commencing the 75th day after NRDC filed its compensation request and continuing until full payment of the award is made. We direct Pacific Gas and Electric Company, San Diego Gas & Electric Company, Southern California Gas Company, and Southern California Edison to allocate payment responsibility among themselves based upon their California-jurisdictional gas and electric revenues for the 2002 calendar year, to reflect the year in which the proceeding was primarily litigated.

As in all intervenor compensation decisions, we put NRDC on notice that the Commission staff may audit NRDC's records related to this award. Thus, NRDC must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. NRDC's records should identify specific issues for which it requests compensation, the actual time spent by each employee, the applicable hourly rate, fees paid to consultants, and any other costs for which compensation may be claimed.

6. Waiver of Comment Period

Pursuant to Rule 77.7(f)(6) of the Commission's Rules of Practice and Procedure, the otherwise applicable 30-day period for public review and comment may be waived because this is an intervenor compensation decision.

7. Assignment of Proceeding

Susan P. Kennedy is the Assigned Commissioner and Kim Malcolm is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. NRDC has made a timely request for compensation for its contribution to D.01-11-066, D.02-03-056, D.03-04-055, D.03-07-034, and D.03-08-067.

2. NRDC has requested hourly rates for scientist Peter Miller, policy expert Sheryl Carter and engineer Devra Bachrach that are consistent with rates we have approved in prior Commission decisions.

3. NRDC is not seeking compensation for its work on D.02-05-046 and D.02-06-026 due to the lack of contemporaneous time records.

Conclusions of Law

1. NRDC has fulfilled the requirements of §§ 1801-12, which govern awards of intervenor compensation.

2. NRDC should be awarded $23,665.00 for its contribution to D.01-11-066, D.02-03-056, D.03-04-055, D.03-07-034, and D.03-08-067.

3. This order should be effective today so that NRDC may be compensated without unnecessary delay.

O R D E R

IT IS ORDERED that:

1. The Natural Resources Defense Council (NRDC) is awarded $23,665.00 in compensation for its substantial contribution to Decision (D.) 01-11-066, D.02-03-056, D.03-04-055, D.03-07-034, and D.03-08-067.

2. Pacific Gas and Electric Company (PG&E), Southern California Edison (SCE), San Diego Gas & Electric Company (SDG&E) and Southern California Gas Company (SoCalGas) shall allocate the award based upon their California-jurisdictional gas and electric revenues for the 2002 calendar year. Each shall make its proportionate award payment within 30 days of the effective date of this order. PG&E, SCE, SDG&E and SoCalGas shall also pay interest on the award at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release H.15, with interest, beginning

January 7, 2004, the 75th day after NRDC filed its compensation request and continuing until full payment of the award is made.

This order is effective today.

Dated _____, at San Francisco, California.

Compensation Decision Summary Information

Compensation Decision(s):	
Contribution Decision(s):	D0111066, D0203056, D0304055, D0307034, D0308067
Proceeding(s):	R0108028
Author:	ALJ Malcolm
Payer(s):	Pacific Gas and Electric Company, Southern California Edison Company, San Diego Gas & Electric Company, and Southern California Gas Company

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Reason Change/Disallowance
Natural Resources Defense Council	October 24, 2003	$23,665.00	$23,665.00	N/A

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Peter	Miller	Scientist	Natural Resources Defense Council	$150	2001	$150
Peter	Miller	Scientist	Natural Resources Defense Council	$150	2002	$150
Peter	Miller	Scientist	Natural Resources Defense Council	$150	2003	$150
Sheryl	Carter	Policy Expert	Natural Resources Defense Council	$150	2003	$150
Devra	Bachrach	Engineer	Natural Resources Defense Council	$100	2003	$100