

Decision \_\_\_\_\_

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

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

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

**OPINION AWARDING INTERVENOR COMPENSATION  
TO THE NATURAL RESOURCES DEFENSE COUNCIL  
FOR SUBSTANTIAL CONTRIBUTIONS TO MOHAVE  
ALTERNATIVES/COMPLEMENTS STUDY  
FOLLOWING DECISION 04-12-016**

This decision awards the Natural Resources Defense Council (NRDC) \$34,308.29 in compensation for its substantial contribution to the Mohave Alternatives/Complements Study (MACS Study) that was part of the follow-up work ordered by the Commission in Decision (D.) 04-12-016 in Application (A.) 02-05-046, a proceeding now closed. D.04-12-016 directed that the MACS Study, and any related intervenor compensation awards, would be addressed in Rulemaking (R.) 04-04-003, our open “umbrella” proceeding for addressing ongoing procurement matters. Today’s award is granted in R.04-04-003.

**A. Background**

In May 2002, Southern California Edison Company (SCE) filed A.02-05-046, requesting authorization from the Commission to either retrofit its Mohave Generating plant (Mohave) with pollution controls to allow its continuing operations as a coal-burning plant, or otherwise to make preparations to close the plant by the end of 2005. In December 2004, the Commission issued

D.04-12-016. Though it closed A.02-05-046, D.04-12-016 also directed SCE and the other stakeholders (as a “post-decision” activity) to study alternatives to Mohave continuing operation as a coal-fired plant [the MACS Study] and to report on the study in R.04-04-003.

NRDC was previously awarded intervenor compensation in both A.02-05-046, and R.04-04-003.<sup>1</sup> NRDC is seeking compensation here for its work in the MACS Study. NRDC reviewed data and other materials, and actively participated in the related meetings and negotiations.

### **B. Requirements for Awards of Compensation**

The intervenor compensation program, enacted in Pub. Util. Code §§ 1801-1812,<sup>2</sup> requires California jurisdictional utilities to pay the reasonable costs of an intervenor’s participation if the intervenor makes a substantial contribution to the Commission’s proceeding. The statute provides that the utility may adjust its rates to collect the amount awarded from its ratepayers.

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

1. The intervenor must satisfy certain procedural requirements including the filing of a sufficient notice of intent (NOI) to claim compensation within 30 days of the prehearing conference (PHC), or in special circumstances at other appropriate times that we specify. (Section 1804(a).)

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<sup>1</sup> NRDC was granted awards of approximately \$220,000 in A.02-05-046 (D.05-06-024); and \$56,000 in R.04-04-003 (D.05-10-007 and D.06-08-013).

<sup>2</sup> Statutory references are to the California Public Utilities Code and rule references are to the Commission’s Rules of Practice and Procedure, unless otherwise indicated.

2. The intervenor must be a customer or a participant representing consumers, customers, or subscribers of a utility subject to our jurisdiction. (Section 1802(b).)
3. The intervenor should file and serve a request for a compensation award within 60 days of our final order or decision in a hearing or proceeding. (Section 1804(c).)
4. The intervenor must demonstrate “significant financial hardship.” (Sections 1802(g), 1804(b)(1).)
5. The intervenor’s presentation must have made a “substantial contribution” to the proceeding, through the adoption, in whole or in part, of the intervenor’s contention or recommendations by a Commission order or decision. (Sections 1802 (h), 1803(a).)
6. The claimed fees and costs are reasonable (Section 1801), necessary for and related to the substantial contribution (D.98-04-059), comparable to the market rates paid to experts and advocates having comparable training and experience (Section 1806), and productive (D.98-04-059).

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

### **C. Procedural Requirements**

Rule 17.2 of the Rules of Practice and Procedure (Rules) states that a party found eligible for intervenor compensation in one phase of a proceeding remains eligible in later phases. NRDC earlier was found eligible and granted compensation in both A.02-05-046 and R.04-04-003. NRDC additionally filed a supplemental NOI to give notice that it intended to seek compensation for its

post-decision participation in the MACS Study and, on March 7, 2006, was found eligible for intervenor compensation for this work.<sup>3</sup>

We did not establish a schedule or process for submitting intervenor compensation requests for work on the MACS Study. NRDC filed its subject request for compensation within 60 days of the transmittal of the MACS Study<sup>4</sup> to the Commission. We therefore find the request timely filed.

In view of the above, we find that NRDC has satisfied all the procedural requirements necessary to make its subject request for compensation.

#### **D. Substantial Contribution**

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

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<sup>3</sup> R.04-04-003, Administrative Law Judge's (ALJ) Ruling Regarding NRDC's Supplemental NOI, March 7, 2006.

<sup>4</sup> On February 28, 2006, SCE filed its Mohave Monthly Status Report that included a copy of the MACS report.

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>5</sup>

Should the Commission not adopt any of the customer's recommendations, compensation may be awarded if, in the judgment of the Commission, the customer's participation substantially contributed to the decision or order.<sup>6</sup> With this guidance in mind, we turn to the claimed contributions NRDC made.

The post-decision phase of the Mohave proceeding did not result in a subsequent decision by the Commission, so the typical method of analyzing an intervenor's contributions to determine if they assisted the Commission in making a decision is not applicable. Instead, NRDC's contributions were tailored to the nature of the post-decision assignment: SCE was ordered to undertake a study to explore alternatives to Mohave continuing as a coal-fired plant, to work with the other stakeholders to design this study, and to jointly determine who

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<sup>5</sup> D.98-04-059, 79 CPUC 2d 628 at 653.

<sup>6</sup> See D. 03-12-019, discussing D.89-03-063 (31 CPUC 2d 402) (awarding San Luis Obispo Mothers for Peace and Rochelle Becker compensation in the Diablo Canyon Rate Case because their arguments, although ultimately unsuccessful, forced the utility to thoroughly document the safety issues involved).

should conduct the study.<sup>7</sup> NRDC was actively involved in the study from the first meeting sponsored by SCE to obtain input from stakeholders on the structure of the study and the type of contractors it should retain to perform it. As a stakeholder, NRDC provide written and oral comments on SCE's plans for the study, participated in all meeting of the stakeholders with the contractors, submitted written comments on three drafts of the study, provided oral input to the contractors, and coordinated with other stakeholders to avoid duplication of effort. Following are specific examples of NRDC's contributions:

**1. NRDC Recommendation re: Contractor Expertise and Study Framework**

SCE initially planned that only contractors with expertise in the engineering and maintenance of power plants would conduct the MACS Study. NRDC recommended that SCE broaden its search to consider firms with expertise in the alternatives analysis that was to be part of the test ordered by the Commission and suggested several firm names, including Synapse, the firm chosen.

In terms of the MACS Study framework, NRDC provided oral and written recommendations that were adopted including: options both on and off tribal

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<sup>7</sup> D.04-12-016, OP 3. "Edison is to explore alternatives to Mohave continuing as a coal-fired plant. The focus of this study should be on exploring the specifics of these possible options so they may either be compared with Edison's [share of the Mohave output] in a subsequent proceeding, or considered as alternatives to replace the power from Mohave in the scenario where the plant is permanently closed or compliment the generation from Mohave if Mohave returns to service. The alternatives investigated should include options that provide economic stability to the Hopi Tribe and the Navajo Nation, and where appropriate, utilize renewable resources for generation. Edison is directed to work with other stakeholders to design this study and to jointly determine who should conduct the study."

lands, carbon values of alternatives, energy efficiency analysis of options outside of California where the Mohave plant owners could invest in return for contracts for displaced generation, and government support and the potential revenue stream from selling carbon dioxide for enhanced oil recovery. The final MACS Study included all of these NRDC suggestions.<sup>8</sup>

## **2. NRDC Recommendation re Drafts of the Study**

NRDC provided three rounds of written comments on different versions of the MACS Study making specific recommendations on each draft. In particular, NRDC provided input on the following issues: operating characteristics, cost estimates and other aspects of a potential integrated gasification combined cycle plant (IGCC); costs and other aspects of solar technology; financing options and other aspects of potential wind projects; energy efficiency opportunities, in particular how to structure an energy efficiency power purchase agreement between SCE and a utility in New Mexico or Arizona; technology readiness costs and other aspects of carbon sequestration; overall tone, structure and content of the tribal issues chapter; ways to better highlight the information in the financial issues chapter; presentation of the data on generation and demand profiles; presentation and clarification of the information on transmission issues; and overall presentation of the Executive Summary, and in particular the need for a table that provides comparisons of the different options examined.

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<sup>8</sup> Study, pp. 2-19, 3-7, 4-1- 4-8, 8-9 - 8-15, Appendix D, Emissions Valuation.

**3. Contributions of Other Parties**

NRDC states that it coordinated its efforts with other public interest advocates participating in the MACS Study, specifically the Grand Canyon Trust, Sierra Club, and The Utility Reform Network. We agree with NRDC that it took all reasonable steps to keep duplication to a minimum and to ensure that its work served to supplement, complement or contribute to the work of other parties.

**4. Summary**

In summary, NRDC was an active participant in all phases of the MACS Study, and the work product reflects much of its contributions. Overall, we find that NRDC made substantial contributions to the MACS Study, a post-decision assignment directed by the Commission in D.04-12-016.

**E. Reasonableness of Requested Compensation**

NRDC claimed compensation here for the work of attorney Tim Gabriel and expert Dr. Daniel Lashoff; and outside consultants Jim Lazar of Microdesign Northwest and Jody London of Jody London Consulting. The total amount requested is \$34,308.29, as outlined in the table below.

<b>Fees</b>	<b>Hours</b>	<b>Amount</b>
Tim Gabriel	7.3 @ 220/hr.	\$ 1,606.00
Jim Lazar	58.75 @ \$200/hr.	\$11,700.00
Daniel Lashof	1.7 @ \$215/hr.	\$ 365.50
Jody London	75 @ \$175/hr.	\$13,125.00
<b><u>Travel and Intervenor Compensation Claim Preparation @1/2 authorized hourly rate per year</u></b>		
Jim Lazar	19 @ \$100/hr.	\$ 1,900.00

Jody London	30 @ \$87.50	\$ 2,625.00
<b><u>Expenses</u></b>		
Microdesign Northwest		\$ 1,438.97
Jody London Consulting		\$ 1,547.82
<b>TOTAL</b>		<b>\$34,308.29</b>

The components of this request must constitute reasonable fees and costs of the intervenor's preparation for and participation in a proceeding that resulted in a substantial contribution. The issues we consider to determine reasonableness are discussed below.

### **1. Hours and Costs Related to and Necessary for Substantial Contribution**

NRDC documented its claimed hours by presenting a daily breakdown of the hours of its attorneys, policy analysts and experts, along with a brief description of each activity. The hourly breakdown reasonably supports the claim for total hours.<sup>9</sup> Given the scope of NRDC's participation and the work products prepared,<sup>10</sup> the number of claimed hours is reasonable.

### **2. Market Rate Standard**

NRDC is seeking hourly rates of \$200 for Lazar, \$215 for Lashoff, and \$175 for London for work performed in 2005 and 2006. We previously approved these

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<sup>9</sup> NRDC separated the hours associated with the preparation of this compensation request and (consistent with Commission practice) requests compensation at half the usual hourly rate for this time.

<sup>10</sup> NRDC included an Attachment A that listed all of the NRDC filings in the proceeding from October 4, 2002 through November 15, 2004.

same rates in D.05-06-024 and D.06-06-056<sup>11</sup> for work performed in 2004. We adopt these rates here for 2005 and 2006 work.

NRDC requests an hourly rate of \$220 for attorney Gabriel for work performed in 2005 and 2006. Gabriel has three years experience and works in NRDC's environmental justice project. Gabriel provided analysis and input on the tribal impacts and financial section of the draft MACS Study. The requested hourly rate is within the rate range identified in D.05-11-031 for attorneys with 3-4 years experience (\$220-\$230), and we adopt it here.

### **3. Productivity**

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

NRDC states that its participation in this proceeding ensured that the MACS Study adequately evaluated all the technologies being considered and that the study provided a comprehensive overview of financial incentives and business structures that might be used to increase the likelihood of tribal involvement in the development of new and innovative technologies. NRDC concedes it cannot identify precise monetary benefits to ratepayers, however claims that its efforts on the MACS Study and the full exploration of alternatives to coal produced energy should bring lasting benefits to ratepayers. We agree that exploring environmentally sustainable energy resource options has social

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<sup>11</sup> D.06-06-056 adopted \$173/hour for London. We adopt \$175 here.

benefits which, though hard to quantify, are substantial. We find here that NRDC's efforts have been productive.

#### **4. Direct Expenses**

The incidental costs of \$2,986.79 included telephone charges, facsimile charges, postage, messenger deliveries, photocopying, and travel. These expenses are commensurate with the work performed, and we find them reasonable.

#### **F. Award**

We award NRDC \$34,308.29, the full amount of its request, as set forth in the previous table.

Consistent with previous Commission decisions, we will order that interest be paid on the award amount<sup>12</sup> commencing on July 12, 2006, the 75<sup>th</sup> day after NRDC filed its compensation request, and continuing until full payment of the award is made.

We remind all intervenors that Commission staff may audit their records related to this award, and that intervenors 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 requested compensation, the actual time spent by each employee, the applicable hourly rate, fees paid to consultants, and any other costs for which compensation was claimed.

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<sup>12</sup> At the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release H.15.

**G. Waiver of Comment Period**

This is an intervenor compensation matter. Accordingly, as provided by Rule 14.6(c)(6) of the Commission's Rules of Practice and Procedure, we waive the otherwise applicable 30-day public review and comment period for this decision.

**H. Assignment of Proceeding**

Michael R. Peevey is the Assigned Commissioner and Carol A. Brown is the assigned ALJ in this proceeding.

**Findings of Fact**

1. NRDC has satisfied all the procedural requirements necessary to claim compensation in the subject proceeding for its post-decision work in D.04-12-016.
2. NRDC made a substantial contribution to the MACS Study that was directed by the Commission to be conducted post-decision in D.04-12-016.
3. NRDC requested hourly rates for attorneys and experts that are reasonable when compared to the market rates for persons with similar training and experience.
4. NRDC requested related expenses that are reasonable and commensurate with the work performed.
5. The total of these reasonable fees and expenses is \$34,308.29.
6. The appendix to this opinion summarizes today's award.

**Conclusions of Law**

1. NRDC has fulfilled the requirements of Pub. Util. Code §§ 1801-1812, which govern awards of intervenor compensation, and is entitled to intervenor compensation for its claimed fees and expenses.
2. NRDC should be awarded \$34,308.29 for its substantial contributions to the MACS Study ordered in D.04-12-016.

3. Per Rule 14.6(c)(6), the comment period for this compensation decision may be waived.

4. Today's order should be made effective immediately, so that NRDC may be compensated without further delay.

**O R D E R**

**IT IS ORDERED** that:

1. Natural Resources Defense Council (NRDC) is awarded \$34,308.29 as compensation for its substantial contributions to the Mohave Alternatives/Complements Study ordered by the Commission in Decision 04-12-016.

2. Within 30 days of the effective date of this decision, Southern California Edison Company (SCE) shall pay this award to NRDC.

3. SCE shall also pay interest on the award beginning July 12, 2006, at the rate earned on prime, three-month commercial paper as reported in Federal Reserve Statistical Release H.15, and continuing until full payment is made.

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

This order is effective today.

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

## APPENDIX

## Compensation Decision Summary Information

<b>Compensation Decision:</b>		<b>Modifies Decision?</b>
<b>Contribution Decision(s):</b>	D0412016	
<b>Proceeding(s):</b>	R0404003	
<b>Author:</b>	ALJ Brown	
<b>Payer(s):</b>	Southern California Edison Company	

## Intervenor Information

<b>Intervenor</b>	<b>Claim Date</b>	<b>Amount Requested</b>	<b>Amount Awarded</b>	<b>Multiplier?</b>	<b>Reason Change/Disallowance</b>
Natural Resources Defense Council	4/28/06	\$34,308.29	\$34,308.29	No	

## Advocate Information

<b>First Name</b>	<b>Last Name</b>	<b>Type</b>	<b>Intervenor</b>	<b>Hourly Fee Requested</b>	<b>Year Hourly Fee Requested</b>	<b>Hourly Fee Adopted</b>
Tim	Gabriel	Attorney	Natural Resources Defense Council	\$220	2005-06	\$200
Jim	Lazar	Expert	Natural Resources Defense Council	\$200	2005-06	\$200
Daniel	Lashoff	Expert	Natural Resources Defense Council	\$215	2005-06	\$215
Jody	London	Expert	Natural Resources Defense Council	\$175	2005-06	\$175

(END OF APPENDIX)