

Decision 10-04-022 April 8, 2010

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Implement the Commission's Procurement Incentive Framework and to Examine the Integration of Greenhouse Gas Emissions Standards into Procurement Policies.

Rulemaking 06-04-009
(Filed April 13, 2006)

**DECISION GRANTING INTERVENOR COMPENSATION
TO UNION OF CONCERNED SCIENTISTS AND NATURAL RESOURCES
DEFENSE COUNCIL FOR SUBSTANTIAL CONTRIBUTION TO
DECISIONS (D.) 07-09-017, D.08-03-018, AND D.08-10-037**

TABLE OF CONTENTS

Title.....	Page
DECISION GRANTING INTERVENOR COMPENSATION TO UNION OF CONCERNED SCIENTISTS AND NATURAL RESOURCES DEFENSE COUNCIL FOR SUBSTANTIAL CONTRIBUTION TO DECISIONS (D.) 07-09-017, D.08-03-018, AND D.08-10-037	1
1. Background.....	2
2. Requirements for Awards of Compensation.....	3
2.1. Preliminary Procedural Issues	4
3. Substantial Contribution	6
3.1. UCS' and NRDC's Contributions to D.07-09-017.....	7
3.2. UCS' and NRDC's Contributions to D.08-03-018.....	9
3.3. UCS' and NRDC's Contributions to D.08-10-037.....	12
4. Contributions of Other Parties	20
5. Reasonableness of Requested Compensation	22
5.1. Hours and Costs Related to and Necessary for Substantial Contributions.....	24
5.1.1. UCS' Hours and Costs	24
5.1.2. NRDC's Hours and Costs.....	33
5.2. Intervenor Hourly Rates	36
5.2.1. Alan Nogee	36
5.2.2. John Galloway	37
5.2.3. Cliff Chen	37
5.2.4. Chris Busch	37
5.2.5. Laura Wisland	38
5.2.6. Audrey Chang	39
5.2.7. Kristin Grenfell.....	39
5.2.8. Noah Long	39
5.2.9. Peter Miller.....	40

TABLE OF CONTENTS
(Cont'd)

Title.....	Page
5.2.10.Devra Wang.....	40
5.3. Direct Expenses	40
6. Productivity	40
6.1. Union of Concerned Scientists	41
6.2. Natural Resources Defence Council.....	41
6.3. Conclusion	43
7. Award.....	43
8. Waiver of Comment Period	46
9. Assignment of Proceeding	46
Findings of Fact	46
Conclusions of Law.....	47
ORDER	47
Appendix A	

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This decision awards Union of Concerned Scientists (UCS) \$48,056.65 and Natural Resources Defense Council (NRDC) \$95,478.39 for their respective substantial contributions to Decisions (D.) 07-09-017, D.08-03-018, and D.08-10-037. This represents a decrease of \$13,204.85 or 21% from the amount requested by UCS and of \$28,831.61 or 23% from the amount requested by NRDC due to, among other things, unproductive effort, inefficient work, and excessive hours. Today's award payment will be allocated to the affected utilities. This proceeding remains open to address a petition for modification.

1. Background

This proceeding was originally initiated to implement an emissions performance standard and a load-based emission cap. The rulemaking was subsequently modified several times to make it the venue for implementing Senate Bill (SB) 1368¹ and Assembly Bill (AB) 32.²

In Phase 1 of the proceeding the California Public Utilities Commission (Commission) adopted an interim Greenhouse Gas (GHG) Emissions Performance Standard (EPS) for new long-term financial commitments to baseload generation, consistent with the requirements and definitions of SB 1368.

The Phase 2 Scoping Memo provided that the proceeding would be used for the Commission to provide, in collaboration with the California Energy

¹ Codified in Public Utilities Code Sections 8340 et seq.

² Codified in Health and Safety Code Sections 38500 et seq.

Commission (CEC), recommendations to the California Air Resources Board (ARB) regarding, among other things, a GHG emissions cap, and reporting and verification regulations that ARB should adopt pursuant to AB 32.

Decisions (D.) 07-09-017, D.08-03-018, and D.08-10-037 addressed Phase 2 issues.

D.07-09-017 recommended that ARB adopt the proposed regulations as reporting and verification requirements applicable to retail providers and marketers in the electricity sector. Phase 2 of the proceeding also addressed the appropriate regulatory model for GHG regulation in the electric sector, the appropriate mix of regulatory versus market strategies for regulating GHG emissions and the method for allocating allowances under a potential cap-and-trade system.

In D.08-03-018 the Commission recommended that the electric sector be included in a multi-sector cap-and-trade system with in-state generators and “first sellers” as the regulated entities. In D.08-10-037 the Commission made recommendations concerning emissions reduction strategies and the allocation of allowances in a cap-and-trade system.

2. Requirements for Awards of Compensation

The intervenor compensation program set forth in Pub. Util. Code §§ 1801-1812,³ 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.

³ 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. A customer requesting a compensation award must file and serve a request for compensation 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 5-6 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 in which a PHC is held, the intervenor must file and serve its NOI between the date the proceeding was initiated until 30 days after the PHC is held. (Rule 17.1(a)(1).) The PHC in Phase 2 was held on November 28, 2006. On December 28, 2006, NRDC and UCS timely filed their NOIs, where they asserted financial hardship on the rebuttable presumption theory. D.06-04-022 rendered on April 13, 2006, made a substantive finding of the significant financial hardship with respect to UCS. Pursuant to the provisions of § 1804(b)(1), that finding extends to this proceeding. The most recent substantive finding of significant financial hardship regarding NRDC was made in Administrative Law Judge (ALJ) Weissman's ruling of April 3, 2007, in Application (A.) 07-01-024, et al. Under the provisions of § 1804(b)(1), that finding extends to this proceeding.

Section 1802(b)(1) defines a "customer" as: (A) a participant representing consumers, customers or subscribers of a utility; (B) a representative who has been authorized by a customer; or (C) a representative of a group or organization authorized pursuant to its articles of incorporation or bylaws to represent the interests of residential or small business customers. (§ 1802(b)(1)(A) through (C).) A ruling of April 6, 2007, found that UCS and NRDC are customers within the meaning of § 1802(b)(1)(C).

Since in their NOIs, NRDC and UCS addressed their anticipated participation in Phase 2 of the proceeding, a ruling found that these intervenors were eligible to claim compensation in Phase 2 of this proceeding. (Ruling of April 6, 2007, at 1 and 11). The requests for compensation are for Phase 2.

Regarding the timeliness of the request for compensation, both parties filed their respective requests for compensation on December 22, 2008, within 60 days of D.08-10-027 being issued.⁴

We affirm the ALJ ruling of April 6, 2007, and find that UCS and NRDC have satisfied all the procedural requirements necessary to make their requests for compensation in this proceeding.

3. Substantial Contribution

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.⁵

⁴ D.08-10-037 issued on October 22, 2008.

⁵ D.98-04-059, 79 CPUC 2d 628 at 653.

With this guidance in mind, we turn to the claimed contributions NRDC and UCS made to the proceeding.

UCS claims it made substantial contributions to D.07-09-017 on the issues of reporting and tracking of GHG emissions and determination of default emissions factors; to D.08-03-018 on the overall strategy for regulating GHG emissions in the electricity and natural gas sectors, including the point of regulation for GHG emissions; and to D.08-10-037 on the issues of cost-effectiveness modeling, allowance allocation, 33% renewables mandate, and flexible compliance. UCS participated actively in these issues and asserts it made unique contributions to these decisions.

NRDC claims it contributed to this proceeding by actively participating in Phase 2. NRDC asserts that decisions D.07-09-017, D.08-03-018, and D.08-10-037 reflected NRDC's analysis on a number of substantive issues and adopted both the recommended course and portions of suggested language by NRDC.

In general, we agree with the above assessments. We analyze with more specificity UCS' and NRDC's claims below. We note that the intervenors filed most of the comments jointly, and that the decisions refer to the intervenors as "NRDC/UCS." We refer to them in the same manner below.

3.1. UCS' and NRDC's Contributions to D.07-09-017

D.07-09-017 focused on one principal issue: a proposal for an electricity sector GHG emissions reporting and verification protocol for recommendation to ARB as part of ARB's implementation of AB 32. In the proceedings leading to D.07-09-017, numerous comments were filed and a workshop on reporting and tracking was held.

D.07-09-017 refers to NRDC/UCS' opinion on several occasions.

On the issues of covered entities for the purpose of GHG reporting, NRDC/UCS reminded the Commission about the fact that the California Department of Water Resources (DWR) procures electricity to meet the needs of the State's water projects, but was not covered in the Joint Staff's⁶ proposal. In accordance with this, the Commission recommended that DWR, as well as any other state agencies that generate or procure power from entities other than retail providers to meet their electricity needs, report using the retail provider portion of the reporting Protocol. (D.07-09-017 at 11).

The Commission explored attributing GHG emissions to various sources of electricity. NRDC/UCS participated on several points. NRDC/UCS supported the adoption for "unspecified sources"⁷ of higher default emission factors than those recommended by the Joint Staff, in order to encourage retail providers to contract with low- and zero-emission resources. NRDC/UCS recommended that the emission factor for all natural gas plants be set at the emission factor for the least efficient natural gas plant (1,640 lbs. CO₂e/Mwh). The Commission discussed the NRDC/UCS proposal and agreed with the intervenors' recommendations: "In setting a default emissions factor, we are persuaded to use a higher, conservative value." (D.07-09-017 at 40-41).

Further, the Commission considered when to calculate default emission factors for unspecified sources. The Joint Staff recommended that default emission factors be calculated on an *ex ante* basis to provide greater market

⁶ Staff from the two agencies: the Commission and the CEC.

⁷ For purposes of reporting GHG emissions, the Joint Staff explained that the sources of power used to meet retail load fall into two categories: power that can be tracked to a specific facility (specified sources) and power that can only be tracked to a mix of power plants at one of various geographic levels (unspecified sources). D.07-09-017 at 12.

certainty to retail providers. NRDC/UCS argued that *ex post* calculation of emission factors would provide a higher level of precision. As a compromise, NRDC/UCS suggested that, to provide greater market certainty for retail providers, a hybrid approach could establish, on an *ex ante* basis, a range for allowable emission factors for each region. The specific emission factor would then be determined *ex post* on an annual basis, but would be limited by the adopted range. The Commission agreed with the Joint Staff, as a general policy, that default emission factors should be calculated on an *ex ante* basis to provide greater market certainty to retail providers.

While UCS/NRDC did not prevail on all of the issues, they did make substantial contributions to D.07-09-017 and our discussion leading to the decision.

3.2. UCS' and NRDC's Contributions to D.08-03-018

D.08-03-018 adopted recommendations to ARB for a mix of direct mandatory and regulatory requirements for the electricity and natural gas sectors and a cap-and-trade system for the electricity sector. D.08-03-018 recommended to ARB that "deliverers" be the point of regulation for GHG emissions in the electricity sector. The decision considered GHG regulatory approaches for the natural gas sector, and the distribution of emissions allowances in a cap-and-trade system. The record for D.08-03-018 was developed through Commission workshops and parties' comments.

NRDC/UCS along with several other parties urged the Commission to move forward with a cap-and-trade program without waiting for a resolution of GHG issues at the regional or federal level, and to create a cap-and-trade program for a 2012 implementation date. D.08-03-018 adopted that position (D.08-03-018 at 26, Finding of Fact 12 at 125, Ordering Paragraph 7 at 134).

On other emission reduction approaches, NRDC/UCS advocated for a dual approach, whereby a cap-and-trade system would be implemented at the same time that the stringency of existing programs such as Renewables Portfolio Standard (RPS), energy efficiency, and the EPS would be increased. NRDC/UCS further argued that both a cap-and-trade system and increased regulatory measures are necessary because regulatory policies in the absence of a cap on absolute emissions would not guarantee that the electric sector will meet the GHG reductions goals of the state for this sector. D.08-03-018 specifically discussed NRDC/UCS' view that the cap-and-trade system need only produce a relatively small portion of the overall emissions reductions in the short term. The Commission recommended that ARB design a cap-and-trade system as a complement to existing policies and their expansions, and incorporated this recommendation into Findings of Fact 6 and 7 (D.08-03-018 at 124).

On the point of GHG regulation in a cap-and-trade system, D.08-03-018 considered NRDC/UCS positions in several areas. While supporting, in general, any of three point of regulation options (retail provider, deliverer, or hybrid), NRDC/UCS emphasized that each has different strengths, and that a retail provider-based cap will produce stronger incentives for retail providers to invest in low-GHG emitting technologies. The Commission discussed but did not adopt this position. (D.08-03-018 at 44, 48, 50-51), D.08-03-018 concludes that the retail provider point of regulation would perform least well in terms of compatibility with a national or regional system. (See D.08-03-018 at 63).

We also considered allowance distribution, the manner in which auction proceeds should be used and the manner in which any free allowances should be allocated. NRDC/UCS and other parties asserted that auctions of the emissions allowances would provide revenues to invest in further carbon reductions or to

compensate consumers. NRDC/UCS stated that auction proceeds should be returned to the electricity sector and used in the public interest and to further the goals of AB 32. D.08-03-018 adopted this position. (Finding of Fact 30 at 128; Ordering Paragraph 9 at 135).

NRDC/UCS participated in the discussion on the policy design for the natural gas sector, and addressed the regulatory approach best suited for GHG emissions from large industrial end users. The decision referred to NRDC/UCS' support of lowering the threshold for regulating industrial end users as point sources to 10,000 metric tons of CO₂e⁸ per year but did not adopt NRDC/UCS' recommendations. (D.08-03-018 at 104 and 111).

NRDC/UCS supported including infrastructure emissions within the natural gas sector for purposes of GHG emissions regulation. (D.08-03-018 at 105). NRDC/UCS supported programmatic measures to address fugitive emissions (direct natural gas emissions through leaks and emergency maintenance operations), and urged that fugitive emissions be considered for inclusion in a cap-and-trade program at a later date if the reported data is accurate enough. NRDC/UCS also supported regulating natural gas vehicles as part of the transportation sector, rather than the natural gas sector. The Commission did not adopt these recommendations.

On attributing emissions from combined heat and power (CHP) facilities to the electricity and natural gas sectors, NRDC/UCS recommended further evaluation once the design of an overall GHG regulatory system has been developed. With respect to another source of GHG emissions, distributed

⁸ CO₂e means "carbon dioxide equivalent."

generation facilities where end users combust natural gas for the purpose of meeting on-site electricity needs, NRDC/UCS supported including these emissions within the electricity sector, but stated that this issue may need further investigation once the design of the overall GHG regulatory system has been determined.

NRDC/UCS advocated including the natural gas sector in a multi-sector cap-and-trade system. While the Commission recommended that the natural gas sector not be included in a multi-sector GHG emissions cap-and-trade system at this time, the decision did not reject Green Power Institute's (GPI) and NRDC/UCS' argument that eventual inclusion of all fossil fuels in a multi-sector cap-and-trade system could maximize its benefits. D.08-03-018 concluded that taking a programmatic approach for the natural gas sector now would not preclude its future inclusion in a multi-sector GHG emissions cap-and-trade system. (D.08-03-018, Findings of Fact 33, 40, 43, 44, and 45 at 129-130, and Ordering Paragraph 10 at 135).

We note that the Commission explored many of the above issues but left some of them open for future consideration. We find that NRDC/UCS provided some direct substantial contributions to D.08-03-018, where it adopted NRDC/UCS' position, or contributed through offering alternative views for our consideration leading to the decision.

3.3. UCS' and NRDC's Contributions to D.08-10-037

D.08-10-037 adopted further recommendations to ARB regarding GHG regulations for the electricity and natural gas sectors, including information about the potential reductions and cost estimates associated with different GHG policy scenarios. It also recommended a structure for allowance distributions to the electricity sector under a cap-and-trade system, and provided additional

recommendations to ARB on cap-and-trade design and flexible compliance options. The record for D.08-10-037 was largely developed through Commission workshops and parties' comments.

NRDC/UCS participated in the testing of the E3 model and provided the results to the Commission. They also submitted alternative scenarios, in support of their comments, based on the GHG Calculator. NRDC/UCS criticized certain aspects of the model (for example, NRDC/UCS found the model's assumed capital costs for combined cycle gas turbines (CCGT) too low, and had concerns about the low natural gas prices used by E3 in its scenarios). The decision approved the E3 model as a tool to obtain a general sense of the relative costs and emissions impacts of various policies. D.08-10-037 at 12. We find that the intervenors contributed to this finding.

In the emission reduction measures and overall contributions of electricity and natural gas sectors to AB 32 goals, NRDC/UCS argued in favor of mandating that 33% of California's electricity come from renewables as part of our package of recommendations to ARB. D.08-03-018 recommended that at least 33% of the electricity delivered to the State's customers be obtained by renewable resources by the year 2020. (D.08-10-037, Findings of Fact 12, 13, and 14 at 283; Ordering Paragraph 5 at 294). D.08-10-037 specifically relied on NRDC/UCS' recommendations.

NRDC/UCS recommended a number of emissions reduction measures (solar hot water heating, efficiency gains, including time-of-sale energy efficiency requirements, appliance feebates, water-use efficiency, and biomethane as a powerful abatement opportunity in the natural gas sector). The Commission agreed with some of these measures: "We agree with ARB, NRDC/UCS, and others that solar hot water is worthy of inclusion in the Scoping Plan, with

potential to go beyond current mandates.” (D.08-10-037 at 100). The decision directly referred to NRDC/UCS recommendations of several efficiency initiatives to help increase savings of energy and water: “These additional energy efficiency measures should be considered by both Commissions, and where advisable and within our jurisdictions, directly implemented. Some highly significant measures, such as time-of-sale efficiency upgrades, may need to be addressed by ARB or the Legislature.” (D.08-10-037 at 104).

On the mandatory and market-based approaches to emission reductions, NRDC/UCS advocated for a combination of additional mandates and a cap-and-trade program, to achieve incremental reductions within the electricity sector. D.08-10-037 adopted these recommendations. (D.08-10-037 at 111; Finding of Fact 2 at 285.)

On the issue of contributions of electricity and natural gas sectors to AB 32 goals, NRDC/UCS emphasized that allocation of responsibility to the sectors and annual cap recommendations should be important aspects of the Commission’s recommendations to ARB. D.08-10-037 adopted this approach (see for example, Findings of Fact 23-26 at 284-285).

NRDC/UCS participated on the issue of the distribution of GHG emission allowances in a cap-and-trade program, including evaluation criteria, principles, and goals. In the criteria, NRDC/UCS included a broad category (“Benefit consumers”) that contained four sub-criteria: avoid windfall profits, minimize costs/maximize benefit for consumers, benefit disadvantaged communities, and improve technology investment. The Commission considered minimizing costs to consumers among the criteria of the GHG emission allowances evaluation. The first criterion identified by the Commission focused on the first three of the NRDC/UCS’ sub-criteria. (D.08-10-037 at 133-134). NRDC/UCS also supported

the “administrative simplicity” criterion advanced by the Staff and approved by the Commission (D.08-10-037 at 135 and 147).

NRDC/UCS provided several recommendations on structuring allowance distributions in the electricity sector. They recommended all or most emissions allowances be auctioned, and argued that auctioning would improve market liquidity. (D.08-10-037 at 180). They argued against giving allowances to deliverers because it would result in windfall profits to independent deliverers, with significant transfers of wealth from consumers to those deliverers. NRDC/UCS opposed historical emissions-based distributions to deliverers, arguing that it would penalize entities that have already invested in low-GHG technologies and fuels, that some generators would receive an unearned windfall of the allocation value, and that clean utilities could pay twice under an emissions-based allocation: once for clean investments and a second time to generate what are more expensive emission reductions to meet the cap or obtain allowances (D.08-10-037 at 183). NRDC/UCS suggested that auction revenue distributions to retail providers in 2012 based partly on emissions and partly on sales adjusted for verified energy savings would provide some accommodation for those carbon-intensive retail providers that need to reduce their emissions the most, but at the same time would reward and not penalize those utilities that took early actions prior to the start of the program in 2012. NRDC/UCS recommended that the distribution approach for retail providers transition to 100% sales-based, adjusted for verified energy efficiency savings, by 2020 or earlier. NRDC/UCS urged the Commission, in determining allocation policies, to focus on the equity impacts for all entities involved. At the same time, NRDC/UCS expressed concerns that distributions to retail providers on an emissions basis would tend to reward the dirtier utilities while penalizing the

cleaner utilities, while sales-based distributions would have the opposite effect. (D.08-10-037 at 191). D.08-10-037 did not adopt NRDC/UCS's position and recommended to ARB that emission allowances be made available in a phased approach, with 20% of the emission allowances allocated to the electricity sector to be auctioned beginning in 2012, with 80% distributed administratively for free to electricity deliverers. The recommended goal is to transition by 2016 to 100% auctioning. The decision also recommended that each retail provider should receive all auction revenues from the sales of the allowances that were distributed to it, and that the distribution of allowances to individual retail providers for subsequent auctioning should transition over time from being based initially on historical emissions in the retail provider's portfolio to being allocated based on sales by 2020. (D.08-10-037 at 15-16).

NRDC/UCS also advocated allocating allowances to retail providers on a sales basis that includes verified energy efficiency savings. NRDC/UCS contended that any sales-based allocation of allowances to retail providers that does not include energy efficiency would deter energy efficiency savings. (D.08-10-037 at 217). The Commission expressed its intent to consider these issues at a later date. (D.08-10-037 at 218).

NRDC/UCS supported the use of auction revenues to fund energy efficiency and renewable development programs, as well as to maintain affordable electricity rates. The Commission agreed:

All auction revenues should be used for purposes related to AB 32, and all revenue from the auction of allowances allocated to the electricity sector should be used for the benefit of the electricity sector, including the support of investments in renewables, energy efficiency, new energy technology, infrastructure, customer bill relief, and other similar programs. (D.08-10-037 at 16).

NRDC/UCS recommended further that such investments be subject to oversight and verification that the investments meet appropriate criteria, with forfeiture of the revenues to the State if a retail provider does not use the revenues in appropriate ways and within a specified time limit. While the decision did not support the “use it or lose it” approach advocated by the NRDC/UCS, it recommended that ARB, in consultation with the Commission and the CEC, specify that free distribution of allowances to each retail provider would be conditioned on a demonstration of adequate progress in complying with energy efficiency and renewable energy procurement targets established for the retail provider. (D.08-10-037 at 228).

On the cap-and-trade market design and flexible compliance, NRDC/UCS warned against the excessive use of flexible compliance options. The Commission agreed that the need for flexible compliance options is tied directly to the size of the market, the emissions targets, and the trajectory of required reductions towards those targets. The Commission favored equal annual reductions in the multi-sector emissions cap between 2012 and 2020. (D.08-10-037 at 257). NRDC/UCS further participated in the discussion on linking the California cap-and-trade system with other cap-and-trade markets. NRDC/UCS pointed out that use of allowances from other systems could transfer economic activity and co-benefits outside of the State. NRDC/UCS supported linking only with cap-and-trade systems that have equally stringent rules. The Commission agreed with these recommendations with respect to the bilateral linkage (D.08-10-037, Finding of Fact 62 at 292).

On the issue of allowance borrowing, NRDC/UCS, along with other parties, argued that borrowing should not be allowed, and if allowed, should be

limited. The Commission agreed with the opposition to the borrowing option. (D.08-10-037 at 265).

On the issue of the use of a price trigger or safety valve in the cap-and-trade program, NRDC/UCS, along with other parties, argued that these measures would threaten the effectiveness of the program. NRDC/UCS explained that such mechanisms would have the potential to break the emissions cap, undermining the purpose of the State's emissions reduction law. They submitted that a safety value is unnecessary because the Governor already can suspend any part of the program under the authority of AB 32 in the event of extraordinary circumstances. The Commission agreed with these arguments:

We are convinced that price triggers and safety valves could very likely distort or defeat the cap-and-trade market by creating uncertainty that investments in emissions reduction technologies would achieve returns commensurate with the level of reductions needed to meet the State's emissions reduction goals. ...We therefore recommend that ARB, in developing a cap-and-trade system, avoid creating any price triggers, ceilings, floors, or safety valves. (D.08-10-037 at 266-267).

On the issue of unlimited banking, many parties supported a market feature that would allow parties to bank allowances and offsets for use in future compliance periods. NRDC/UCS, however, argued for restrictions in order to discourage allowance "hoarding" and market manipulation. NRDC/UCS, along with GPI and Sacramento Municipal Utility District, suggested that the number of allowances an entity is allowed to bank should be limited. They suggested limitations on the length of time that entities would be allowed to hold banked allowances. The Commission recognized and addressed these concerns:

We agree with those parties that suggest that allowance and offset banking likely would lead to greater market liquidity and

compliance flexibility. ...However, we recognize the concerns about “hoarding” and market manipulation, and strongly encourage ARB to ensure that there are adequate safeguards to reduce these risks. With such safeguards, we suggest that ARB allow unlimited banking of allowances and offsets by all market participants. (D.08-10-037 at 271).

On the issue of high-quality offsets, NRDC/UCS argued that an offset program should be approached “with an abundance of caution.” NRDC/UCS asserted that offsets would reduce incentives for investments in emissions reductions in sectors within the cap, and that ensuring that offsets actually achieve the reductions that they claim would be difficult and expensive. They also suggested that emissions in sectors outside the cap can be directly regulated or covered by another program. The Commission acknowledged these and other concerns, but encouraged ARB to allow covered entities to use offsets at levels that are appropriate given other program design parameters. (D.08-10-037 at 274). In support of geographic limits, NRDC/UCS argued that only offset projects within California would provide co-benefits to the State and would ensure that California’s high standards for quality are met. Regarding different perspectives on whether California should accept offsets from the Clean Development Mechanism, NRDC/UCS along with GPI asserted that the Clean Development Mechanism fails to guarantee that its offset projects provide real, truly additional, verifiable, permanent, and enforceable GHG reductions. The Commission acknowledged these concerns, but concluded that geographic limits are not consistent with the underlying goals of the offset program to contain costs and encourage reductions beyond those that are covered by an emissions cap. (D.08-10-037 at 276).

Among the legal issues related to the market design and flexible compliance, some parties took the position that an offset can only be accepted if it complies with the provisions of California Health and Safety Code Sections 38562(b) and 38570(b). NRDC/UCS recognized that the factors set out in these two sections apply to ARB's regulations, and not to individual projects, but expressed concern that "[i]t is not certain that offsets will achieve the...co-benefits for Californians as required by AB 32." (NRDC/UCS June 2, 2008, Comments at 25). Responding to these concerns, the decision explains that AB 32 required ARB to do certain things "to the extent feasible" and to balance a number of potentially conflicting goals, including minimizing costs (Section 38562(b)(1)). The Commission pointed out that using offsets is one way to minimize costs. The Commission concluded that NRDC/UCS had not shown⁹ that their concerns would apply to the offset program as a whole. (See discussion in D.08-10-037 at 281-282).

We conclude that although NRDC/UCS' position did not always prevail, they made substantial contributions to D.08-10-037 in several major areas.

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

⁹ NRDC/UCS argued that Section 38562(b)(8) means that the regulations should "prevent leakage of co-benefits outside of the state." (NRDC/UCS June 2, 2008, Comments at 28.) However, Section 38562(b)(8) refers to minimizing "leakage" and Section 38505(j) defines "leakage" as a "reduction in emissions of greenhouse gases within the state that is offset by an increase in emissions of greenhouse gases outside the state." The concern of NRDC/UCS, however, is not with an increase in GHGs outside of California, but rather with a reduction in GHGs outside California. (See NRDC/UCS June 2, 2008, Comments at 28).

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.

UCS claims that it consistently coordinated its efforts in this proceeding with other parties to avoid duplication of effort and ensure efficiency. Any duplication that occurred was unavoidable due to parties' sometimes similar interests, and the overwhelming number and scope of issues addressed in this proceeding. UCS coordinated with several parties over the course of this proceeding, and jointly filed its comments with Environmental Defense Fund (ED), Western Resource Advocates (WRA), and/or GPI but mostly with NRDC.

NRDC asserts that its compensation should not be reduced for duplication of the other parties' efforts. NRDC claims it was one of only a few non-profit environmental groups that participated in the proceeding, and NRDC made a concerted effort to avoid duplication with other parties with similar interests in environmental issues. NRDC coordinated and collaborated very closely with UCS, and coordinated with other groups whenever its views were similar enough to submit joint comments. NRDC asserts that even in the instances of the joint comments, it provided its expertise focused on issues unique to NRDC among environmental groups, such as energy efficiency.

We agree with NRDC and UCS that in a proceeding involving multiple participants, it is virtually impossible to completely avoid some duplication of the work of other parties. We find, however, that NRDC and UCS each and jointly took reasonable steps to keep duplication to a minimum and to ensure

that its work served to supplement, complement, or contribute to the showing of the other active parties in this proceeding. (Section 1802.5.)

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

5. Reasonableness of Requested Compensation

UCS requests \$61,261.50 for its participation in this proceeding, as follows:

Work on Proceeding				
Attorney/Staff	Year	Hours	Hourly Rate	Total
Alan Noguee	2006	0.50	\$240.00	\$120.00
Alan Noguee	2007	6.25	\$260.00	\$1,625.00
Alan Noguee	2008	3.50	\$270.00	\$945.00
John Galloway	2006	8.45	\$130.00	\$1,098.50
John Galloway	2007	9.25	\$140.00	\$1,295.00
Cliff Chen	2006	14.25	\$115.00	\$1,638.75
Cliff Chen	2007	219.25	\$120.00	\$26,310.00
Cliff Chen	2008	103.75	\$130.00	\$13,487.50
Chris Busch	2007	42.50	\$175.00	\$7,437.50
Chris Busch	2008	15.50	\$180.00	\$2,790.00
Laura Wisland	2008	15.50	\$125.00	\$1,937.50
Work on Proceeding Total:		438.70		\$58,684.75
Preparation of NOI and Compensation Request¹⁰				
Attorney/Staff	Year	Hours	Hourly Rate	Total
John Galloway	2006	5.00	\$65.00	\$325.00
John Galloway	2007	0.40	\$70.00	\$28.00
Cliff Chen	2006	1.00	\$57.50	\$57.50
Cliff Chen	2008	21.00	\$65.00	\$1,365.00
Laura Wisland	2008	2.50	\$62.50	\$262.50
Intervenor Compensation Matters Total:		29.90		\$1,931.75

¹⁰ Travel and intervenor compensation document preparation time is compensated at the ½ professional hourly rate.

Travel				
Attorney/Staff	Year	Hours	Hourly Rate	Total
Cliff Chen	2008	3.00	\$65.00	\$195.00
Laura Wisland	2008	3.00	\$62.50	\$187.50
Chris Busch	2007	3.00	\$87.50	\$262.50
Travel Total:		9.00		\$645.00
UCS' Total Requested Compensation:				\$61,261.50

NRDC requests \$ 124,310.00¹¹ for its participation in this proceeding, as follows:

Work on Proceeding				
D.07-09-017				
Attorney/Staff	Year	Hours	Hourly Rate	Total
Audrey Chang	2006	11.50	\$115.00	\$1,322.50
Audrey Chang	2007	71.00	\$150.00	\$10,650.00
Subtotal:		82.50		\$11,972.50
D.08-03-018				
Attorney/Staff	Year	Hours	Hourly Rate	Total
Audrey Chang	2007	162.25	\$150.00	\$24,337.50
Audrey Chang	2008	33.50	\$155.00	\$5,192.50
Kristin Grenfell	2007	106.25	\$170.00	\$18,062.50
Kristin Grenfell	2008	22.00	\$175.00	\$3,850.00
Peter Miller	2007	57.50	\$100.00	\$5,750.00
Devra Wang	2007	92.00	\$160.00	\$14,720.00
Devra Wang	2008	14.50	\$165.00	\$2,392.50
Subtotal:		488.00		\$74,305.00
D.08-10-037				
Attorney/Staff	Year	Hours	Hourly Rate	Total
Audrey Chang	2008	51.50	\$155.00	\$7,982.50
Kristin Grenfell	2008	105.25	\$175.00	\$18,418.75
Noah Long	2008	23.75	\$150.00	\$5,275.00
Peter Miller	2008	52.75	\$100.00	\$5,275.00

¹¹ Due to a calculation error, NRDC requests \$124,166.25. We correct the error here.

	Subtotal:	233.25		\$35,238.75
Work on Proceeding Total:		803.75		\$121,516.25
Preparing NOI and Request for Compensation				
Attorney/Staff	Year	Hours	Hourly Rate	Total
Audrey Chang	2006	2.50	\$57.50	\$143.75
Kristin Grenfell	2008	20.00	\$87.50	\$1,750.00
Noah Long	2008	12.00	\$75.00	\$900.00
Intervenor Compensation Matters Total:		34.50		\$2,793.75
				\$124,310.00

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

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 by UCS and NRDC. 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.

5.1. Hours and Costs Related to and Necessary for Substantial Contributions

5.1.1. UCS’ Hours and Costs

UCS documented its claimed hours by presenting a daily breakdown of the hours of its representatives, accompanied by a brief description of each activity. In general, the hourly breakdown reasonably supports the claim for total hours. We have several concerns with information reflected in UCS’ timesheets.

UCS routinely sent two representatives to attend the proceeding's events (conferences, meetings, workshops), which represents an inefficient effort on the part of UCS. We believe it is unreasonable to compensate costs incurred by the second or third person in these cases, and reduce UCS' time, as follows:

UCS' Table 1: Participation in the proceeding's events		
Name	Year	Hours Disallowed
John Galloway	2006	3.00
John Galloway	2007	1.00
Chris Busch	2007	21.50
Chris Busch	2008	2.00

These reductions are based on the staff's level of involvement in the proceeding. Cliff Chen, Senior Energy Analyst, led UCS' participation, prepared comments, developed policy positions and arguments, and performed modeling analysis. He devoted considerably more hours to the proceeding than the rest of the team, and we allow all of his hours for these events.

We note further that in the course of the proceeding, UCS staff spent a significant amount of time in internal communications discussing, coordinating, and planning its participation. In addition, UCS' representatives claim compensation for reviewing each other's documents. We assume that it was, in part, due to UCS' internal protocol and, in part, due to the fact that two new staff members, Wisland and Busch, needed some additional time for the information exchange with incumbent members. While these activities can help individual team members to come up with solutions or create a document, they also ring of duplication of each other's tasks and some unproductive efforts. As an example of this practice, we note Alan Noguee's claimed time for reviewing NRDC/UCS joint comments.

Certain inefficiency also appears, for example, in the area of UCS’ participation planning. Cliff Chen led UCS’ participation, planned, and coordinated work of the team, and developed its policy positions and arguments. He spent initially about 14 hours on the issues of planning UCS’ participation. However, several other representatives also planned UCS’ participation, which we consider to be a duplicative inefficient effort.

The table at Appendix B describes our findings and reductions in this area.

UCS’ Table 2: Excessive Internal Communications and Internal Duplicative or Non-Productive Efforts					
2006 Hours	Chen	Galloway	Nogee	Busch	Wisland
<i>4/19/06 (internal communication)</i>					
Requested		0.30	0.30		
Allowed		0.15	0.15		
Disallowed (50%)		0.15	0.15		
<i>4/19/06 (internal communication)</i>					
Requested		0.60			
Allowed		0.30			
Disallowed (50%)		0.30			
<i>11/7/06¹² (internal communication)</i>					
Requested	1.00	1.00			
Allowed	0.50	0.50			
Disallowed (50%)	0.50	0.50			
<i>11/13/06 (communication of Chen and Galloway (UCS) and Wang(NRDC))</i>					
Requested	0.75	0.75			
Allowed	0.37	0.37			

¹² Timesheets in this case combine the actual communication with other activities, and show 1.50 hours for Chen and 1.20 hours for Galloway. We assume the communication lasted 1 hour.

UCS' Table 2: Excessive Internal Communications and Internal Duplicative or Non-Productive Efforts					
Disallowed (50%)	0.38	0.38			
<i>11/13/06 (reading draft of PHC statement)</i>					
Requested		0.60			
Allowed		0.00			
Disallowed (100%)		0.60			
Disallowed in 2006	0.88	1.93	0.15		
2007 Hours	Chen	Galloway	Nogee	Busch	Wisland
<i>1/25/07 (internal communication)</i>					
Requested		0.50	0.50		
Allowed		0.25	0.25		
Disallowed (50%)		0.25	0.25		
<i>1/26/07 (internal communication)</i>					
Requested	0.50 ¹³	0.50			
Allowed	0.25	0.25			
Disallowed (50%)	0.25	0.25			
<i>2/7/07 (internal communication and case management¹⁴)</i>					
Requested	1.50	1.50+1.50			
Allowed	0.75	0.75			
Disallowed	0.75	2.25			
<i>3/27/09 (internal communication)</i>					
UCS' Table 2: Excessive Internal Communications and Internal					

¹³ Chen's timesheet shows 1 hour for the communication combined with other activities. We assume the actual communication was for the same length of time (0.50) for each participant.

¹⁴ Galloway's timesheet shows 3.00 hours for two different activities: a communication and an activity described as "case management." We assume the actual communication lasted the same time (1.50) for each participant. We compensate 50% of the communication time and we disallow the case management time.

UCS' Table 2: Excessive Internal Communications and Internal Duplicative or Non-Productive Efforts					
Duplicative or Non-Productive Efforts					
Requested		1.00			
Allowed		0.50			
Disallowed		0.50			
<i>5/25/07 (internal communication)</i>					
Requested	0.50	0.50			
Allowed	0.25	0.25			
Disallowed (50%)	0.25	0.25			
<i>10/26/07 (internal communication)</i>					
Requested	1.00		1.00	1.00 ¹⁵	
Allowed	0.33		0.33	0.33	
Disallowed (2/3)	0.67		0.67	0.67	
<i>10/31/07 (internal communication and review of NRDC/UCS' filing)</i>					
Requested				2.25 ¹⁶	
Allowed				0.0	
Disallowed (100%)				2.25	
<i>11/15/07(internal communication)</i>					
Requested	0.25		0.25		
Allowed	0.13		0.13		
Disallowed (50%)	0.13		0.13		
<i>8/5, 10/29, 12/3, and 12/29/07 Reviewing NRDC/UCS' comments</i>					

¹⁵ Busch's timesheet shows 5.00 hours for the communication combined with other activities. We assume the actual communication lasted the same amount of time (1.00 hour) for each participant.

¹⁶ Busch's timesheet combines several activities in his 10/31/07 entry (3.00 hours): reviewing a draft of the NRDC/UCS filing, meeting with Chen to discuss UCS positions, and conference call with NRDC to finalize. The 2.25 hours is calculated based on Chen's timesheet reflecting that the conference took 0.75 hours (3.00-0.75=2.25).

UCS' Table 2: Excessive Internal Communications and Internal Duplicative or Non-Productive Efforts					
Requested			4.50		
Allowed			0.00		
Disallowed (100%)			4.50		
<i>Disallowed in 2007</i>	2.05	3.5	5.55	2.92	
2008 Hours	Chen	Galloway	Nogee	Busch	Wisland
<i>2/22/08 (internal communication)</i>					
Requested	0.25		0.25		
Allowed	0.13		0.13		
Disallowed (50%)	0.13		0.13		
<i>5/28/08 (internal communication)</i>					
Requested	0.25		0.25		
Allowed	0.13		0.13		
Disallowed (50%)	0.13		0.13		
<i>9/15/08 (internal communication)¹⁷</i>					
Requested	0.50				0.50
Allowed	0.25				0.25
Disallowed (50%)	0.25				0.25
<i>9/19/08 (internal communication)</i>					
Requested	0.50				0.50
Allowed	0.00				0.00
Disallowed (100%)	0.50				0.50
<i>9/24/08 (internal communication)</i>					
Requested	0.75			0.75	0.75
Allowed	0.00			0.00	0.00
Disallowed (100%)	0.75			0.75	0.75

¹⁷ This and the following two discussions concerned NRDC/UCS opening comments that were prepared by Chen.

UCS' Table 2: Excessive Internal Communications and Internal Duplicative or Non-Productive Efforts					
<i>6/1 and 10/1/08 Reviewing NRDC/UCS' comments</i>					
Requested			3.0		
Allowed			0.00		
Disallowed (100%)			3.0		
<i>Disallowed in 2008</i>	<i>1.76</i>		<i>3.26</i>	<i>0.75</i>	<i>1.50</i>

The table below summarizes disallowances from Appendix B:

UCS' Table 2: Summary of UCS' Table 2		
Name	Year	Hours Disallowed
Cliff Chen	2006	0.88
Cliff Chen	2007	2.05
Cliff Chen	2008	1.76
John Galloway	2006	1.93
John Galloway	2007	3.50
Chris Busch	2007	2.92
Chris Busch	2008	0.75
Alan Nogee	2006	0.15
Alan Nogee	2007	4.55
Alan Nogee	2008	3.26
Laura Wisland	2008	1.50

Further, we cross-checked NRDC's and UCS' timesheets and noticed certain discrepancies in the entries related to communications between these intervenors or their participation in the same events (workshops, hearings, etc). We make reductions to achieve a consistency in this area, and adjust Cliff Chen's time, as follows:

UCS' Table 3: Consistency between NRDC's and UCS' timesheets and Coordination of Efforts			
Date (2007)	Hours Requested	Hours Allowed	Hours Disallowed
3/16/07	0.50	0.25	0.25
4/12/07	6.00	5.00	1.00
4/13/07	5.00	4.75	0.25
4/20/07	5.00	4.00	1.00
6/22/07	6.00	4.50	1.50
7/6-7/9/07 ¹⁸	8.50	6.50	2.00
8/21/07	7.50	5.25	2.25
9/21/07	3.75	3.50	0.25
10/31/07	0.75	0.50	0.25
11/14/07	4.25	3.00	1.25
2007 Total:	47.25	37.25	10.00
Date (2008)	Hours Requested	Allowed	Disallowed
5/6/08	7.00	4.00 ¹⁹	3.00
10/4/08	0.75	0.50	0.25
2008 Total:	7.75	4.50	3.25

We note that UCS failed to allocate its hours by issues, as we require.²⁰ In D.09-02-028, we directed UCS to comply in its future requests for intervenor compensation with our requirement to allocate the time by issues.

¹⁸ During this period of time, Chen was summarizing and reviewing opening comments on the Joint Staff GHG Reporting proposal. On July 7, 2007, Audrey Chang of NRDC read and summarized these comments and shared her summary of the comments with UCS. She claims two hours for these tasks. To cure certain duplication of the parties' efforts we reduce Chen's time by 2.00 in 2007.

¹⁹ We note that NRDC attended the May 6, 2008 workshop for just two hours.

²⁰ D.98-04-059 at 48.

The Commission stated:

UCS did not allocate its time and costs among issues, making it difficult to determine the reasonableness of the aggregate hours claimed. ...We caution UCS, as we have done in connection with intervenor compensation claims it has filed in other Commission proceedings, that future claims will include disallowances for failure to allocate time and costs by issue. (D.09-02-028 at 8).

In the absence of the proper time allocation, we have to analyze the reasonableness of the request based on, among other things, the amount and complexity of the research and analysis necessary to produce documents for the record, the fact that two or more intervenors were working on the jointly filed documents, and the fact that on some issues NRDC/UCS provided a limited contribution (see Section 3 of this decision). Our analysis of UCS' claims in terms of these factors warrant additional reduction to the number of hours claimed. In determining the necessary reductions, however, we also pay attention to the fact that UCS' requests rates at the low ranges and waives direct costs, and the fact that the claimed amount is modest compared to the proceeding's length and the overwhelming number of the issues, comments and events involved in it. Therefore, to produce a more reasonable result in terms of the time spent on preparing documents in this proceeding, we disallow only an additional 3% of the requested time spent on the proceeding's merits.

UCS claims almost 30 hours for the preparation of the notice of intent to claim intervenor compensation and for the request for compensation. We compensate 26.5 for these matters due to UCS' failure to provide allocation of the time by issues and to the fact that the NOI and claim do not appear to require

any extraordinary time consuming analysis or research that would justify excessive hours. Our reductions are reflected in the award.

UCS requests compensation for travel between its offices in Berkeley and Sacramento. We consider travels within the radius of approximately 120 miles (one way) to and from San Francisco Bay Area routine and not compensable.

After the reductions listed above, it appears that UCS' time devoted to the proceeding is reasonable and commensurate with UCS' contributions.

5.1.2. NRDC's Hours and Costs

In line with our analysis of UCS' time requested for compensation, we analyze NRDC's timesheets. NRDC documented its claimed hours by presenting a daily breakdown of the hours of its representatives, accompanied by a brief description of each activity. In general, the hourly breakdown reasonably supports the claim for total hours.

From the point of view of the efficiency of the NRDC team's work in this proceeding, there are a few areas of concern that we address in the award. The most apparent is internal repetitiveness of certain activities by the team members. For example, Noah Long's timesheets covering the period of time from 9/16/2008 to 10/7/2008 (claimed contributions to D.08-10-037) practically mirror entries in Kristin Grenfell's time records. Considering that Long contributed to the proceeding much less time than Grenfell, we disallow 19.75 hours of his time for the above period of time, to address the inefficiency problem.

Further, on June 1, 2007, Audrey Chang and Kristin Grenfell spent 1.50 hours each on reviewing a MAC report section on the electricity sector. We disallow 1.50 hours of Kristin Grenfell for that activity, since it appears that the related comments were prepared by Chang.

We also disallow the total of 8.25 hours of Kristin Grenfell’s time spent on activities that were not necessary for NRDC’s contributions to this proceeding. These hours include 2.0 hours (12/4/2007) spent on editing comments filed a day before on December 3rd, 4.0 hours (5/7/2008) spent on drafting a letter for possible GWAC sign-in regarding allowance allocation, 2.00 hours (10/17/2008) spent on attending the Commission’s voting on the final decision on GHG regulatory strategies, and 0.25 hours (10/20/2008), spent communicating with Commissioner Douglas regarding the interim opinion.

NRDC’s timesheets frequently fail to indicate the issue that the subject task addresses, in violation of the provisions of Rule 17.4(b). Miller often describes his communications simply as “calls” or “emails,” Chang and Wang often report communications with parties (“stakeholders”), without indicating issues addressed in the communications and the parties’ names or affiliation. All this precludes us from determining if these activities related to the work performed and were necessary for NRDC’s contributions claimed in this proceeding. To address these deficiencies, we disallow the time spent on communications where issues are not identified (and not easily identifiable), as reflected in the summary below:

NRDC’s Table 1: Summary of Hours Spent on Communications for Which Issues Are Not Identified			
Name	Year	Hours Requested	Disallowed
Chang	2006	5.50	5.50
Chang	2007	16.75	16.75
Chang	2008	4.75	4.75
Wang	2007	2.50	2.50
Miller	2007	2.00	2.00

Based on the cross-checking of NRDC's and UCS' timesheets, we make a few adjustments of Audrey Chang's time, as follows:

NRDC's Table 2: Consistency between UCS' and NRDC's timesheets and Coordination of Efforts			
Date/event (Chang (2007))	Hours Requested	Allowed	Disallowed
April 6th	1.25	1.00	0.25
April 19th	7.00	6.50	0.50
Total Disallowed (2007):			0.75

We also have efficiency concerns when NRDC claims compensation for two or more people when they prepare the same document. For example, October 31, 2007 comments on allowance allocation were prepared by three NRDC staff members: Chang, Grenfell, and Wang. Chang and Wang spent one hour each preparing an outline for the opening comments. These representatives also prepared the November 14, 2007 reply comments, and Chang and Wang each prepared an outline for the comments. While sometimes this is a legitimate practice, engaging several people to produce a single document results in duplication of their efforts. We do not make a conclusion as to whether engaging several people in creating one document was necessary for every document produced by NRDC, but we believe it is not fair to have ratepayers bear the burden of paying for this practice. Reading of the same documents, reviewing and editing each other's work, and, in addition, numerous internal meetings, discussions, and email exchanges that normally accompanied the preparation of NRDC's comments, created excessive efforts and required more time than would normally be needed for one person's work on a document. To cure the likely probability of excessive hours that resulted from the fact that team members appear to have been engaged in the same activities for the same documents, we reduce NRDC's hours by 5%.

Like UCS, NRDC failed to allocate its hours by issues. We direct NRDC to comply in its future requests for intervenor compensation with our requirement to allocate the time by issues. We are, therefore, confined, as in the case with UCS, to determining the reasonableness of the claim based on the amount and complexity of research and analysis necessary to prepare documents for the formal records, the extent of NRDC's contributions, and the fact that its positions did not always prevail. We also note that the documents were prepared by two or more intervenors jointly. Based on our considerations of these factors, we find NRDC's claimed hours excessive and disallow an additional 12% of the time NRDC requests for its work on the merits.

We allow 26.50 hours instead of the requested 34.50 for NRDC's preparation of the notice of intent to claim compensation and the request for compensation. We believe that the allowed time is what is reasonably required for a claim of limited complexity. We commend NRDC for providing detailed references to the record of the proceeding in support of the substantial contributions claims. We note, however, that NRDC did not allocate its time by issues. Our reductions are reflected in the award.

After the reductions listed above, it appears that NRDC's time devoted to the proceeding was reasonable.

5.2. Intervenor Hourly Rates

5.2.1. Alan Noguee

Alan Noguee is an Energy Program Director of the UCS. For his work in 2006, UCS requests the same rate (\$240) that we adopted in D.08-12-017. For his work in 2007, UCS requests two authorized increases: a 5% step increase and 3% cost-of-living adjustment (COLA). The resulting rate (rounded to the nearest

\$5.00) is \$260. For Nogee's work in 2008, UCS requests a 3% COLA, which results in the rate of \$270. We adopt the requested rates.

5.2.2. John Galloway

John Galloway is UCS' Senior Energy Analyst. Relying on D.08-12-017, UCS requests the rate of \$130 for Galloway's work in 2006, and \$140 for his work in 2007, relying on D.08-12-017. However, that decision approved the rates of \$125 and \$130 respectively, and we adopt the same rates here.

5.2.3. Cliff Chen

Cliff Chen is a Senior Energy Analyst for UCS. UCS requests for his work in 2006 the rate of \$115, adopted in D07-06-032. For his work in 2007, UCS requests the rate of \$120 adopted in D.08-12-017. For Chen's work in 2008, UCS requests two authorized increases: 5% step increase and 3% COLA, with the result of \$130. We approve the requested rates.

5.2.4. Chris Busch

Chris Busch is a Climate Economist for UCS. In this proceeding he appeared before the Commission for the first time. UCS requests the rates of \$175 and \$180 for his work in 2007 and 2008, respectively. Busch has a PhD (2006) in economics and nine years of professional experience. We adopt the rates of \$160 and \$165 for the years 2007 and 2008, respectively. In analyzing Busch's experience, we note his experience that had some degree of relevance to issues before the Commission occupied between five and six years. He worked as Senior Research Associate in a study analyzing GHG benefit estimates of a major carbon sequestration project in Costa Rica (1998-1999); as a graduate student researcher he co-authored two chapters of *Managing Greenhouse Gas Emissions in California* (2005-2006); and, as a Climate Economist, he analyzed climate policies in California and the Western United States and prepared

research documents for decision makers and policy makers (2006-2008). Busch also worked on the market impact of demand side management rebates for electronic ballasts in fluorescent lights (1997). Busch's work on the valuation of a Beach Recreation Project (2000-2002), and on modeling deforestation in the Yucatán (2000-2002) is not sufficiently relevant to issues before the Commission. We find that the rates of \$160 for his work in 2007) and \$170 for 2008 are reasonable, and we adopt them here.²¹

5.2.5. Laura Wisland

Laura Wisland is an Energy Analyst in the Clean Energy Program at UCS. She appeared before the Commission for the first time in this proceeding. UCS requests the rate of \$125 for her work in 2008. Laura Wisland joined UCS in 2008. She has an M.P.P. from the Goldman School of Public Policy at the University of California at Berkeley (2008), and a Bachelor's degree in Environmental Public Policy from the University of North Carolina. Prior to joining UCS, Wisland worked as a demand response analyst for Pacific Gas and Electric Company (PG&E) and worked on rules to develop a tradable energy credit market for the California RPS as an energy intern with the Commission. From 2003 to 2004, Laura Wisland served as an Assistant Director and from 2004 to 2006 as a Director, of the California Hydropower Reform Coalition. We approve the requested rate of \$125 and note that it is at the lower end for experts with comparable years of experience.

²¹ Compare to NRDC's expert Sheryl Carter, who appeared before the Commission since at least 2003, had 13+ years of the relevant experience, and received an hourly rate of \$175 in 2007 (D.09-02-026); or to expert Jim Helmich, who appeared before the Commission since at least 2003, had 13+ years of the relevant experience, and received the rate of \$175 in 2007 (D.09-04-027).

5.2.6. Audrey Chang

NRDC requests rates for Audrey Chang that we approved earlier, and we grant the request.²²

5.2.7. Kristin Grenfell

NRDC requests an hourly rate of \$170 for the year 2007 and \$175 for the year 2008 for attorney Kristin Grenfell. In D.09-05-018, we approved the rates of \$145 and \$150 for her work in 2007 and 2008, respectively, as NRDC requested in that proceeding (R.06-04-010). In this proceeding, NRDC provides more detail on Grenfell's experience. NRDC states that Grenfell had a year and a half of experience as an attorney when she began working for NRDC at the beginning of 2007, and that by mid-2008 she had a total of three years of experience as an attorney (NRDC does not specify what was Grenfell's attorney practice area prior to her work for NRDC). In addition, she has more than five years of work experience in energy and environmental issues. While working at a private law firm in 2005 and 2006, she billed out at over \$300 per hour. The requested rates are commensurate with Grenfell's experience and, although they are higher than her previously requested rates, they are still at the low end of the rate range adopted in D.08-04-010. We approve the requested rates.

5.2.8. Noah Long

NRDC requests an hourly rate of \$150 for this attorney's work in 2008. Long has not had an established hourly rate with the Commission. Long has a JD from Stanford University Law School, an MSc from the London School of Economics, and a BA in Government and Environmental Studies. He is a first

²² D.08-10-011 approved the rates of \$115 and \$150 for the years 2006 and 2007, respectively. D.09-05-018 approved the rate of \$155 for the year 2008.

year attorney but has been working in the energy policy area for five years. The rate of \$150 is at the lowest end of the 2008 hourly rate range set in D.08-04-010 for attorneys with up to two years of experience. We adopt the requested rate.

5.2.9. Peter Miller

NRDC requests an hourly rate of \$100 for its expert Peter Miller's work in 2007 and 2008. Miller has over 20 years of experience in the development and analysis of energy efficiency programs and policy. He served on the California Board for Energy Efficiency from 1997 to 2000 and has presented testimony on energy policy to the U.S. Senate and House of Representatives, the Northwest Power Planning Council, and other administrative and legislative bodies. In D.09-05-018 we approved the rate of \$100 for his work in 2008. We note that in D.06-04-005 we approved a higher rate of \$150 for his work in 2005. NRDC explains that Miller requests a substantially discounted non-profit billing rate in this proceeding. We adopt this rate.

5.2.10. Devra Wang

D.08-10-011 approved the rate of \$160 for expert Devra Wang's work in 2007. NRDC requests the same rate for 2007 and the rate of \$165 for her work in 2008, representing a 3% COLA, allowed in D.08-04-010. We adopt these rates, as NRDC requests.

5.3. Direct Expenses

Both parties waived direct expenses incurred in the course of their work on this proceeding.

6. Productivity

D.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 at 34-35.) The costs of a customer's participation should bear a

reasonable relationship to the benefits realized through its participation. This showing assists us in determining the overall reasonableness of the request.

In a policy proceeding concerned mostly with environmental issues it is difficult to estimate monetary benefits of an intervenor's participation. However, the intervenors provided sufficient information for our findings.

6.1. Union of Concerned Scientists

UCS submits that its contributions to the Commission's recommendations to ARB on regulating GHG emissions under AB 32 will help ensure that the GHG regulations for the electricity and natural gas sectors will minimize cost to customers and mitigate the potential for windfall profits to independent deliverers. Further, UCS' participation in this proceeding focused on maximizing the benefits to California customers from AB 32 regulations, and UCS advocated that allowance distributions to retail providers be invested in cost-effective emissions reduction measures that bring co-benefits to California customers, as well as rate relief for customers that may be impacted by higher costs under AB 32 regulations. The Commission's adoption of UCS' positions and recommendations regarding the auctioning of allowances and the distribution of allowance proceeds will help ensure that the GHG regulatory framework developed for the electricity and natural gas sectors will provide tangible benefits to California customers. Given the scale of investor-owned utilities' investments and customer costs that are likely to be influenced by the decision, UCS submits that its work in this phase of R.06-04-009 can be expected to save ratepayers many times the cost of UCS' participation.

6.2. Natural Resources Defence Council (NRDC)

NRDC emphasized that its continued focus on policies that ensure a reliable, affordable and environmentally sustainable energy resource portfolio

that should have lasting benefits to bill payers is productive, although such policy contributions are difficult to monetize.

NRDC asserts that its participation in D.07-09-017 was productive because its emphasis on environmental integrity and attention to the details of reporting requirements will ultimately protect consumers by ensuring functional GHG regulations.

NRDC notes that it was one of only a few non-profit environmental groups that contributed to D.08-03-018. NRDC emphasized that it contributed detailed suggestions, including an analysis of the appropriate numerical threshold for a cap-and-trade program, and a detailed legal analysis. NRDC explains that strengthened energy efficiency programs and standards to capture all cost-effective energy efficiency will ensure that net benefits will accrue to customers. Increased energy efficiency and renewable energy will also benefit customers through environmental and health improvements. In addition, one of the potential benefits to a cap-and-trade system is the reduced cost of compliance, which would lower the cost impacts to customers. With regards to the point of regulation for a cap-and-trade system, NRDC's recommendations were directed at ensuring that whatever system recommended by the Commission would minimize costs and maximize benefits to customers. NRDC's legal analysis will help to ensure that California's efforts to regulate GHG are not delayed by legal challenges, thereby helping California consumers to avoid the monetary and time costs of litigation and instead reap the benefits of a lower-GHG economy sooner.

NRDC was one of only a few non-profit environmental groups that contributed to the process leading to D.08-10-037. NRDC argues that its comments provided a number of emissions reduction measures that will

continue to be a part of the Commission’s strategy for meeting AB 32’s targets. Cost-effective energy efficiency, with its proven economic benefits to customers, is a negative cost solution. There are many benefits to customers of renewable energy, including reduced price volatility and environmental and health benefits. NRDC continually emphasized the importance of distribution of allowances in the public interest. NRDC’s contributions on flexible compliance help ensure that real emissions reductions will help minimize the cost of GHG regulations to customers.

6.3. Conclusion

We find that the costs of UCS’ and NRDC’s participation, with our reductions and adjustments explained earlier in this decision, bear a reasonable relationship to their contributions, and that their overall participation was productive. We conclude that the overall benefits of UCS’ and NRDC’s participation will exceed the costs of their participation.

7. Award

As set forth in the tables below, we award UCS \$48,056.65 and NRDC \$95,478.39.

UCS’ Award Calculation

Work on Proceeding				
Attorney/Staff	Year	Hours	Hourly Rate	Total
Alan Nogee	2006	0.35	\$240.00	\$84.00
Alan Nogee	2007	1.70	\$260.00	\$442.00
Alan Nogee	2008	0.24	\$270.00	\$64.80
John Galloway	2006	3.52	\$125.00	\$440.00
John Galloway	2007	4.75	\$130.00	\$617.50
Cliff Chen	2006	13.37	\$115.00	\$1,537.55
Cliff Chen	2007	207.20	\$120.00	\$24,864.00
Cliff Chen	2008	98.74	\$130.00	\$12,836.20

Chris Busch	2007	18.08	\$165.00	\$2,983.20
Chris Busch	2008	12.75	\$170.00	\$2,167.50
Laura Wisland	2008	14.00	\$125.00	\$1,750.00
Work on Proceeding Total:		374.70		\$47,786.75
Total minus 3% reduction				\$46,353.15

Preparation of NOI and Compensation Request

Attorney/Staff	Year	Hours	Hourly Rate	Total
John Galloway	2006	2.50	\$62.50	\$156.25
John Galloway	2007	0.40	\$65.00	\$26.00
Cliff Chen	2008	21.00	\$65.00	\$1,365.00
Laura Wisland	2008	2.50	\$62.50	\$156.25
NOI and Compensation Request Total:		26.40		\$1,703.50

CALCULATION OF FINAL AWARD

Work on Proceeding	\$46,353.15
NOI and Compensation Request Preparation	\$1,703.50
TOTAL AWARD	\$48,056.65

NRDC's Award Calculation

Work on Proceeding

Attorney/Staff	Year	Hours	Hourly Rate	Total
Audrey Chang	2006	6.00	\$115.00	\$690.00
Audrey Chang	2007	215.75	\$150.00	\$32,362.50
Audrey Chang	2008	80.25	\$155.00	\$12,438.75
Kristin Grenfell	2007	102.75	\$170.00	\$17,467.50
Kristin Grenfell	2008	121.00	\$175.00	\$21,175.00
Peter Miller	2007	55.50	\$100.00	\$5,550.00
Peter Miller	2008	50.25	\$100.00	\$5,025.00
Devra Wang	2007	92.00	\$160.00	\$14,720.00
Devra Wang	2008	14.50	\$165.00	\$2,392.50
Noah Long	2008	4.00	\$150.00	\$600.00
Work on Proceeding Total:		742.00		\$112,421.25

Work on Proceeding Total with 17% reduction (5% due to inefficiency and 12% due to excessive hours) **\$93,309.64**

Preparation of NOI and Compensation Request

Attorney/Staff	Year	Hours	Hourly Rate	Total
Audrey Chang	2006	2.50	\$57.50	\$143.75
Kristin Grenfell	2008	18.00	\$87.50	\$1,575.00

Noah Long	2008	<u>6.00</u>	\$75.00	<u>\$450.00</u>
NOI and Compensation Request Total:		26.50		<u>\$2,168.75</u>

CALCULATION OF FINAL AWARD

Work on Proceeding				\$93,309.64
NOI and Compensation Request Preparation				<u>\$2,168.75</u>
TOTAL AWARD				<u><u>\$95,478.39</u></u>

Pursuant to § 1807, we order PG&E, Southern California Edison Company (SCE), Southern California Gas Company (SoCalGas), and San Diego Gas & Electric Company to pay these awards. We direct these utilities to allocate payment responsibility among themselves based upon their California-jurisdictional gas and electric revenues for the 2007 calendar year, to reflect the year in which the proceeding was primarily litigated. 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 March 7, 2009, the 75th day after UCS and NRDC filed their respective compensation requests, and continuing until full payment of the award is made.

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. UCS' and NRDC's records should identify specific issues for which the group 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. 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 comment period for this decision.

9. Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner, and Charlotte F. TerKeurst (assigned to Phase 2) and Jean Vieth (assigned to Phase 1) are the assigned ALJs in this proceeding.

Findings of Fact

1. UCS has satisfied all the procedural requirements necessary to claim compensation in this proceeding.
2. UCS made a substantial contribution to D.07-09-017, D.08-03-018, and D.08-10-037 as described herein.
3. UCS requested hourly rates for its representatives that, as adjusted herein, are reasonable when compared to the market rates for persons with similar training and experience.
4. The total of UCS' reasonable compensation is \$48,056.65.
5. NRDC has satisfied all the procedural requirements necessary to claim compensation in this proceeding.
6. NRDC made a substantial contribution to D.07-09-017, D.08-03-018, and D.08-10-037 as described herein.
7. NRDC requested hourly rates for its representatives that are reasonable when compared to the market rates for persons with similar training and experience.
8. The total of the reasonable compensation for NRDC is \$95,478.39.

9. Appendix to this decision summarizes today's awards.

Conclusions of Law

1. UCS 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 Phase 2 of this proceeding in making substantial contributions to D.07-09-017, D.08-03-018, and D.08-10-037.

2. UCS should be awarded \$48,056.65 for its contributions to D.07-09-017, D.08-03-018, and D.08-10-037.

3. 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 Phase 2 of this proceeding in making substantial contributions to D.07-09-017, D.08-03-018, and D.08-10-037.

4. NRDC should be awarded \$95,478.39 for its contributions to D.07-09-017, D.08-03-018, and D.08-10-037.

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

6. This proceeding should remain open.

O R D E R

IT IS ORDERED that:

1. Union of Concerned Scientists is awarded \$48,056.65 and Natural Resources Defense Council \$95,478.39 as compensation for their substantial contributions to Decision (D.) 07-09-017, D.08-03-018, and D.08-10-037.

2. Within 30 days of the effective date of this decision, Pacific Gas and Electric Company, Southern California Edison Company, Southern California Gas Company, and San Diego Gas & Electric Company shall pay Union of

Concerned Scientists and Natural Resources Defense Council the utilities' respective shares of the award. We direct Pacific Gas and Electric Company, Southern California Edison Company, Southern California Gas Company, and San Diego Gas & Electric Company to allocate payment responsibility among themselves, based on their California-jurisdictional gas and electric revenues for the 2007 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 March 7, 2009, the 75th day after the filing date of Union of Concerned Scientists' and Natural Resources Defense Council's requests for compensation, and continuing until full payment is made.

This order is effective today.

Dated April 8, 2010, at San Francisco, California.

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
TIMOTHY ALAN SIMON
NANCY E. RYAN
Commissioners

APPENDIX A

Compensation Decision Summary Information

Compensation Decision:	D1004022	Modifies Decision? No
Contribution Decision(s):	D0709017, D0803018, D0810037	
Proceeding(s):	R0604009	
Author:	ALJ TerKeurst	
Payer(s):	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
Union of Concerned Scientists	12/22/08	\$61,261.50	\$48,056.65		Unproductive effort, inefficient work, excessive hours, travel time, failure to justify hourly rates
Natural Resources Defense Council	12/22/08	\$124,310.00	\$95,478.39		Miscalculation, unproductive effort, inefficient work, excessive hours, undocumented hours

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Alan	Nogee		Union of Concerned Scientists	\$240	2006	\$240
Alan	Nogee	Expert	Union of Concerned Scientists	\$260	2007	\$260
Alan	Nogee	Expert	Union of Concerned Scientists	\$270	2008	\$270
John	Galloway	Expert	Union of Concerned Scientists	\$130	2006	\$125
John	Galloway	Expert	Union of Concerned Scientists	\$140	2007	\$130
Cliff	Chen	Expert	Union of Concerned Scientists	\$115	2006	\$115
Cliff	Chen	Expert	Union of Concerned Scientists	\$120	2007	\$120
Cliff	Chen	Expert	Union of Concerned Scientists	\$130	2008	\$130
Chris	Busch	Expert	Union of Concerned Scientists	\$175	2007	\$165
Chris	Busch	Expert	Union of Concerned Scientists	\$180	2008	\$170
Laura	Wisland	Expert	Union of Concerned Scientists	\$125	2008	\$125
Audrey	Chang	Expert	Natural Resources Defense Council	\$115	2006	\$115
Audrey	Chang	Expert	Natural Resources Defense Council	\$150	2007	\$150
Audrey	Chang	Expert	Natural Resources Defense Council	\$155	2008	\$155

Kristin	Grenfell	Attorney	Natural Resources Defense Council	\$170	2007	\$170
Kristin	Grenfell	Attorney	Natural Resources Defense Council	\$175	2008	\$175
Peter	Miller	Expert	Natural Resources Defense Council	\$100	2007	\$100
Peter	Miller	Expert	Natural Resources Defense Council	\$100	2008	\$100
Devra	Wang	Expert	Natural Resources Defense Council	\$160	2007	\$160
Devra	Wang	Expert	Natural Resources Defense Council	\$165	2008	\$165
Noah	Long	Attorney	Natural Resources Defense Council	\$150	2008	\$150

(END OF APPENDIX A)