

Decision 11-06-013 June 9, 2011

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

Order Instituting Rulemaking on the Commission's own motion to consider alternative-fueled vehicle tariffs, infrastructure and policies to support California's greenhouse gas emissions reduction goals.	Rulemaking 09-08-009 (Filed August 20, 2009)
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**DECISION GRANTING REQUEST OF NATURAL RESOURCES  
DEFENSE COUNCIL AND FRIENDS OF THE EARTH  
FOR INTERVENOR COMPENSATION FOR  
SUBSTANTIAL CONTRIBUTIONS TO DECISION 10-07-044**

<b>Claimant(s):</b> Natural Resources Defense Council, Friends of the Earth	<b>For contribution to:</b> D.10-07-044
<b>Claimed (\$):</b> 52,981.16	<b>Awarded (\$):</b> \$39,055.49 (26% reduction)
<b>Assigned Commissioner:</b> Michael R. Peevey	<b>Assigned ALJ:</b> Regina DeAngelis
<b>Claim Filed:</b> September 27, 2010	

**PART I: PROCEDURAL ISSUES**

<b>A. Brief Description of Decision:</b>	D.10-07-044 addresses the regulatory authority of the California Public Utilities Commission ("CPUC") over entities that sell electric vehicle charging services to the public.
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**B. Claimant must satisfy intervenor compensation requirements set forth in Public Utilities Code §§ 1801-1812:**

	<b>Claimant</b>	<b>CPUC Verified</b>
<b>Timely filing of notice of intent to claim compensation (§ 1804(a)):</b>		
1. Date of Prehearing Conference:	November 18, 2009	Correct
2. Other Specified Date for NOI:		

3. Date NOI Filed:	December 18, 2010	Correct
4. Was the notice of intent timely filed?		Yes
<b>Showing of customer or customer-related status (§ 1802(b)):</b>		
5. Based on ALJ ruling issued in proceeding number:	R.09-08-009	Correct
6. Date of ALJ ruling:	January 28, 2010	Correct
7. Based on another CPUC determination (specify):		
8. Has the claimant demonstrated customer or customer-related status?		Yes
<b>Showing of “significant financial hardship” (§ 1802(g)):</b>		
9. Based on ALJ ruling issued in proceeding number:	D.10-05-014, in A.08-07-021, p. 2	R.09-01-019
10. Date of ALJ ruling:	May 10, 2010	June 24, 2009
11. Based on another CPUC determination:		Yes
12. Has the Claimant demonstrated significant financial hardship?		Yes
<b>Timely request for compensation (§ 1804(c)):</b>		
13. Identify Final Decision	D.10-07-044	Correct
14. Date of Issuance of Final Decision:	August 2, 2010	Correct
15. File date of compensation request:		September 27, 2010
16. Was the request for compensation timely?		Yes

**C. Additional Comments on Part I:**

#	Claimant	CPUC	Comment
9-12	Friends of the Earth		<p>The CPUC has yet to issue a ruling on the showing of significant financial hardship for Friends of the Earth (“FoE”); this is the first CPUC proceeding in which Friends of the Earth has participated.</p> <p>The Notice of Intent to Claim Intervenor Compensation filed on December 18, 2009 provided information on why FoE has a significant financial hardship:</p> <p>“FoE is representing the interests of its members in California who are customers of utilities under the jurisdiction of the Commission. The economic benefit to an individual FoE electricity customer of participating in the proceeding is too small when compared to the costs of effective participation. These customers share an interest in the environmental and</p>

			<p>economic impacts of this proceeding and ensuring that electric vehicles are promoted in a manner that ensures the continued provision of a reliable and cost-effective grid and potentially increases the use of renewable power resources. While some of these California-resident members may eventually benefit from FoE’s contribution in this proceeding toward the promotion of clean and efficient electric vehicles in a manner that ensures grid reliability and does not unnecessarily increase the need for new capacity development, the economic interest represented by such savings is minute in comparison to the expenses incurred by the organization to present its views in this proceeding.</p> <p>For example, the average residential FoE’s annual electricity bill is likely to be less than one thousand dollars a year. Savings achieved in this proceeding would be substantially less than this amount for an individual member. This sum is far exceeded by the estimated cost of FoE participation in this case of \$ 27,300.” (NOI, December 18, 2009, pp. 3-4.)</p>
9-10		X	Information provided here by the filer concerns Natural Resources Defense Council (NRDC) only.
9-10		X	D.10-05-014 does not make a finding of significant financial hardship with regard to NRDC; instead, it refers to the June 24, 2009 ruling of ALJ Pulsifer in R.09-01-019 that made this finding. Therefore, here it is more appropriate to provide a reference to that ruling.
12		X	The finding of significant financial hardship with regard to NRDC is made based on the rebuttable presumption created in the June 24, 2009 ruling. With regard to FoE, the finding of significant financial hardship is made based on the substantial finding under §1802(g) for a “group or organization”: FoE has satisfactorily shown that the economic interest of the FoE’s individual members is small in comparison to the costs of effective participation in the proceeding.

**PART II: SUBSTANTIAL CONTRIBUTION**

**A. Claimant’s description of its contribution to the final decision (see § 1802(i), § 1803(a) & D.98-04-059)**

<b>Contribution</b>	<b>Citation to Decision or Record (Provided by Claimant)</b>	<b>Showing Accepted by CPUC</b>
<p>1. NRDC/FoE provided comprehensive opening and reply comments in October and November 2009, as directed in the opening OIR.<sup>1</sup> NRDC/FoE identified jurisdictional issues over third party providers as a key issue in the proceeding (NRDC/FoE Comments, 10/5/09, p. 57).</p>	<p>The January 12, 2010 Scoping Memo (in R.09-08-009) identified jurisdiction as key issue for Phase 1.</p> <p>Scoping Memo, p. 3: “At the November 18, 2009 prehearing conference and in comments, parties requested the Commission address issues related to the provision of electric vehicle charging services by entities other than the electrical corporations currently regulated by the Commission as public utilities. Parties described the resolution of these issues as “critical” to bringing private investment to California for electric vehicle charging infrastructure and requested the Commission address these issues as soon as possible. I agree.”</p> <p>Scoping Memo, p.3: Accordingly, the scope of this proceeding will include the question of whether such providers of electric charging services for use as a transportation fuel are electrical corporations and public utilities under Pub. Util. Code §§ 216 and 218.”</p>	<p>Yes</p>
<p>2. NRDC/FOE argued that in addition to Public Utilities Code §§ 216 and 218, the CPUC has other sources of regulatory authority over third party providers of electric vehicle charging services.</p> <p>“Specifically, § 740.2 <i>et seq</i>, requires the Commission, by July 1, 2011, to</p>	<p>The Commission agreed and highlighted additional references that can be interpreted to provide the Commission with regulatory authority over third party providers of electric vehicle charging services:</p> <p>D.10-07-044, p. 35: “DRA, NRDC and FOE, and SCE contend that the</p>	<p>Yes</p>

<sup>1</sup> Order Instituting Rulemaking [09-08-009].

<p>adopt rules to address, among other things:</p> <p>(a) The impacts upon electrical infrastructure... and the role and development of public charging infrastructure.</p> <p>(b) The impact of plug-in hybrid and electric vehicles on grid stability and the integration of renewable energy resources.</p> <p>(d) The existing code and permit requirements that will impact the widespread use of plug-in hybrid and electric vehicles. . .</p> <p>(e) The role the state should take to ensure that technologies employed in plug-in hybrid and electric vehicles work in a harmonious manner and across service territories.”</p> <p>NRDC/FoE also noted that Section 740.3 further requires the Commission to “evaluate and implement policies to promote the development of equipment and infrastructure needed to facilitate the use of electric power and natural gas to fuel low-emission vehicles” and to do so in a way that protects the ratepayer interest (§ 740.3(c)), including the ratepayer’s interest in a safe and reliable grid (§ 740.8). This enactment by the Legislature signals an intent that the Commission use the full extent of its jurisdiction and authority to promote the widespread use of plug-in hybrid and electric vehicles while, at the same time, ensuring the integrity of the electrical infrastructure system. If the Commission were to abdicate authority over providers of electric vehicle charging systems, it would not only hamper the Commission in exercising this clear Legislative mandate, but would likely thwart its goals.”</p>	<p>decision needs to state that the Commission retains jurisdiction in a number of areas that will be important to protect consumers and the environment and ensure a successful expansion of electric vehicle use. In response, we have added a new Section 4.3, which lays out important sources of regulatory authority that the Commission will consider using as we develop policies in Phase 2.”</p> <p>D.10-07-044, pp. 21-22, highlights how the CPUC looked to additional sources to determine their authority on regulating electric vehicles: “Instead, we must rely on other important sources of regulatory authority as summarized in Section 4.3 below.”</p> <p>D.10-07-044, Section 4.3 states: “This section amplifies that we retain all authority granted to use under the California Constitution and Public Utilities Code, and discusses specific types of regulatory authority that could be important as we develop policies in this rulemaking.”</p> <p>D.10-070-44, Section 4.3.1 specifically discusses § 740.2, stating in part § 740.2 “...granted the Commission specific authority to implement rules necessary to facilitate the widespread deployment of electric vehicles in California.”</p>	
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<p>(NRDC/FoE Opening Brief, 2/8/10, pp. 5-6.)</p>		
<p>3. NRDC/FoE urged the CPUC to ensure that charging points are deployed in a manner that preserves a safe, reliable, and efficient grid and allows for efficiency load management. CPUC must have an oversight role in plug-in electric vehicle (“PEV”) deployment. Throughout opening and reply comments on the OIR, NRDC/FoE emphasized the policy goals that also will minimize electricity grid impacts, and ensure cost-effective service.</p> <p>In Opening Comments on the OIR, October 5, 2009, pp. 13-15, we urged the Commission to “...establish policies that create incentives for improved load management, thereby avoiding increased peak load charging and the need to build new capacity peaker plants.”</p> <p>In those same Opening Comments, pp. 15-16, we reminded the Commission of its obligation to ensure cost-effective service for utility customers.</p> <p>NRDC/FoE reiterated the Commission’s obligation to ensure a safe, reliable grid in our Opening Brief, February 8, 2010, p. 6: “This enactment by the Legislature [of SB 626] signals an intent that the Commission use the full extent of its jurisdiction and authority to promote the widespread use of plug-in hybrid and electric vehicles while, at the same time, ensuring the integrity of the electrical infrastructure system.”</p> <p>Also in that brief, on pp. 10 – 13, NRDC/FoE discussed the need for a well-planned and coordinated</p>	<p>D.10-07-044 recognizes the CPUC’s statutory responsibility to meet these goals of a safe, reliable, and efficient grid throughout Section 4.3 I particular. In addition, the Findings of Fact and Conclusions of Law capture NRDC/FoE’s points:</p> <p>FOF 4. Section 740.2 requires the Commission to develop policies to overcome barriers to the widespread deployment and use of plug-in hybrid and electric vehicles.</p> <p>FOF 5. Section 740.2 directs the Commission to focus on the potential impacts of vehicle charging on electrical infrastructure and grid operations.</p> <p>COL 10. Pub. Util. Code § 8362(a) directs the Commission to adopt standards and protocols to ensure functionality and interoperability developed by public and private entities.</p>	<p>Yes</p>

deployment of PEVs.		
4. NRDC/FoE maintained that the CPUC has a statutory obligation to ensure that vehicle charging must be managed in order to ensure the integrity of the electrical grid. (NRDC/FoE Comments on Proposed Decision, 6/10/10, p. 7.)	D.10-07-044, p. 36 “NRDC and FOE also emphasize that vehicle charging must be properly managed to fulfill the Commission’s statutory obligations to ensure safe and reliable electric services. We agree.”	Yes
5. NRDC/FOE argued that third party providers that procure electricity directly, at wholesale, should be subject to California requirements governing the procurement of electricity, including the Renewable Portfolio Standard, systems benefit charge, greenhouse gas emissions performance standards, and resource adequacy (NRDC/FoE Brief, p. 14; Reply Brief, p. 3; Comments on Proposed Decision, 6/10/10, pp. 5 – 9).	<p>The Commission agreed and included specific language that reminds all third party providers of their obligations:</p> <p>D.10-07-044, p. 25: “To the extent a provider of electric vehicles charging services procures electricity on the wholesale market for sale to its customers, we intend to exercise our procurement-related jurisdiction to ensure compliance will all applicable requirements.” [sic]</p> <p>D.10-07-044, Conclusion of Law 5. “If a provider of electric vehicles charging services procures electricity on the wholesale market the Commission has jurisdiction to enforce procurement requirements and other laws and rules that apply to direct transactions including Pub. Util. Code § 365.1.”</p>	Yes
6. NRDC/FoE urged the Commission to require that charging providers must coordinate with utilities on technical issues to ensure streamlined PEV charging, including interoperability standards, notification, and grid communication (NRDC/FoE Comments, 10/5/2009, p. 35; Reply Brief, pp. 5-7.)	<p>D.10-07-044, Section 4.3.6, p.29 acknowledges this obligation, and concludes: “The Commission’s authority to adopt interoperability standards, granted by Senate Bill 17, will be an important tool to ensure that electric vehicles and electric vehicle charging providers can integrate smoothly into the electric grid.”</p> <p>D.10-07-044, Conclusion of Law 10 states:</p> <p>“Pub. Util. Code § 8362(a) directs the Commission to adopt standards and protocols to ensure the functionality and interoperability developed by</p>	Yes

<p>7. NRDC/FoE urged the Commission to re-evaluate in the May 21, 2010 Proposed Decision its interpretation that there are no pertinent connections between state environmental policies and electric vehicles.</p> <p>Our Opening Brief, pp.14-15, states: “Nonetheless, the Commission should conclude that, at minimum, environmental performance requirements, the systems benefit charge, and RPS mandates would apply.”</p> <p>We emphasized this again in Comments on the Proposed Decision, 6/10/10, pp. 5-6:</p> <p>“The Commission should amend the Proposed Decision to explicitly acknowledge the linkage between alternative-fueled vehicles, renewable energy, and greenhouse gas emissions.”</p>	<p>public and private entities.”</p> <p>The Commission acknowledged the need for a reinterpretation of this topic and revised the language in the final decision accordingly:</p> <p>D.10-07-044, Section 4.3.2, p. 25: “The Commission has extensive jurisdiction to enforce procurement requirements. The Renewable Portfolio Standard (RPS), Resource Adequacy (RA), and the Emissions Performance Standard (EPS) are just several examples of such jurisdiction.”</p> <p>D.10-07-044, p. 36: “NRDC and FOE request that the Commission explicitly acknowledge the linkages between alternative-fueled vehicles, renewable energy, and greenhouse gas emissions...The decision has been revised to explicitly state this and emphasize that the Commission will continue to implement applicable environmental laws and regulations as electric transportation expands in the state.”</p>	<p>Yes</p>
<p>8. NRDC and FoE advocated that the Commission reinterpret the Phase 1 Proposed Decision in terms of assuming minimal CPUC jurisdiction over third party providers of electric vehicle services under §§ 216 and 218. Specifically, NRDC/FoE believe that these sections identify clear CPUC jurisdiction over the aforementioned EV policy matters and subsequently identified several flaws in the arguments offered to support the CPUC statutory interpretation of §§ 216 and 218 offered in the Proposed Decision. (NRDC/FoE Comments on Proposed Decision, 6/10/10, pp. 3-4).</p>	<p>The Commission agreed with NRDC/FoE and removed the flawed arguments from the final decision. D.10-07-044 recognized this contribution, on p. 35: “Several parties including CARE and NCRA, DRA, NRDC and FOE, PG&amp;E and TURN commented on the decision’s analysis of § 216 and related sections. The decision has been revised in response to parties’ arguments.”</p>	<p>Yes</p>

**B. Duplication of Effort (§§ 1801.3(f) & 1802.5):**

	<b>Claimant</b>	<b>CPUC Verified</b>
<b>a. Was the Division of Ratepayer Advocates (DRA) a party to the proceeding?</b>	<b>Yes</b>	<b>Correct</b>
<b>b. Were there other parties to the proceeding?</b>	<b>Yes</b>	<b>Correct</b>
<b>c. If so, provide name of other parties:</b> PG&E, Southern California Edison, SDG&E, Southern California Gas, Sacramento Municipal Utility District, EV Service Provider Coalition, Better Place, Coulomb Technologies, Clean Energy Fuels Corporation, Western States Petroleum Association, The Utility Reform Network, Californians for Renewable Energy, North Coast Rivers Alliance, Interstate Renewable Energy Council, Green Power Institute, Environmental Defense Fund.		<b>Correct</b>
<b>d. Describe how you coordinated with DRA and other parties to avoid duplication or how your participation supplemented, complemented, or contributed to that of another party:</b>  NRDC and Friends of the Earth coordinated their participation from the outset precisely to complement each other in the proceeding. During the development of the Opening and Reply Comments over the latter half of 2009, NRDC did not have an attorney working on the proceeding. Friends of the Earth provided input on all legal questions pertaining to the proceeding for the Opening Comments while NRDC took the lead on policy issues. In the beginning of 2010, Max Baumhefner joined NRDC as a new attorney and took the lead for both NRDC and FoE on Phase 1 of the Proceeding related to the jurisdictional issue, including reviewing legal comments from other parties, developing outlines for responses, and replying to legal questions. Friends of the Earth provided substantive, high-level review of the legal arguments, including areas such as legal review of SB 695, development of alternative sources of regulatory authority, and outreach to other parties including utilities and third-party electric vehicle service providers.  In the initial stage of the proceeding prior to the issuance of the Scoping Memo, NRDC/FoE submitted comments jointly with the Center for Energy Efficiency and Renewable Technologies (“CEERT”). CEERT participated in the development of the Opening and Reply Comments by providing an advisory role, helping to review and formulate arguments particularly pertaining to the integration of renewable generation, and signing on to the Comments. No hours are claimed for either CEERT’s contributions or time provided.  NRDC and FoE, filing jointly, were two of the most consistently active environmental organizations in Phase 1 of R.09-08-009, focusing mainly on the perspective of customers who highly prioritize environmental protection and the objective to promote the market for plug-in electric vehicles while also		

<p>maintaining the CPUC’s ability to meet its statutory obligation to ensure grid safety and reliability and maximize environmental benefits. When possible and appropriate, NRDC and FoE worked cooperatively with other parties to address as many concerns as possible prior to submitting our comments. The NRDC/FoE team consulted with DRA and TURN during the development of Opening and Reply comments in the fall of 2009 to identify areas of potential agreement and ensure that other groups were addressing issues beyond those of key importance to the NRDC/FoE team. We again consulted with these parties during the preparation of briefs and reply briefs in Phase 1. Hence, NRDC/FoE have been primary advocates for acknowledging the link between electric vehicles and the State’s various policies designed to address renewable energy and greenhouse gas emissions.</p> <p>NRDC and FoE also, during this period, initiated an <i>ad hoc</i> working group of utilities, third party electric vehicle service providers, ratepayer advocates, and automakers that met (and continues to meet) with the purpose of identifying areas of agreement and disagreement on issues in this proceeding, and to better understand each other’s positions. The working group began meeting prior to the issuance of the Proposed Decision in Phase 1, and worked to coordinate where possible approaches to the CPUC jurisdictional issues.</p> <p>As a result of the efforts described above, NRDC’s and FoE’s compensation in this proceeding should not be reduced for duplication of the showing of other parties.</p>	
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**C. Additional Comments on Part II:**

#	Claimant	CPUC	Comment
II.A	NRDC/FoE		<p>NRDC and FoE maintained detailed time records indicating the number of hours that were devoted to proceeding activities. All hours represent substantive work related to this proceeding. These hours are conservative; for example, NRDC staff from other groups provided input on technical issues, but we do not request compensation for their time, even though the consultation with them is noted in the attached time records. Additionally, the NRDC was careful within our team to assign specific issues to one team member as the lead, and also to assign primary writing responsibility to a specific individual, with the other team members providing review.</p> <p>It is also reasonable that each representative of an organization claims hours for the same conference call or meeting with other parties as each organization has a slightly different perspective on the issues in the proceeding. Each representative was therefore required on the phone call to ensure consistency and consensus before developing positions and drafting comments or briefs.</p> <p>The energy program staff in NRDC's San Francisco office has participated in Commission proceedings for over 25 years and has extensive experience in promoting cost-effective energy efficiency,</p>

			resource diversity, and other measures that provide economic benefits and increase the sustainability and mitigate environmental impacts of electricity production and use. As the issues before the Commission expand, NRDC finds it necessary to bring in staff from other disciplines to provide the best policy advice and advocacy possible. The rates requested by NRDC are purposely conservative, and not only reflect rates below market for expertise at similar levels, but also below other requests received by the Commission.
II.B.d	NRDC/FoE		As this proceeding has progressed, the FoE staff member has been less involved due other responsibilities and NRDC has taken a larger role with the issues that were initially being addressed by FoE. FoE has reduced the size of its staff recently and due to resources, will not be involved moving in to Phase 2.

**PART III: REASONABLENESS OF REQUESTED COMPENSATION**

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

<b>Explanation by Claimant of how the cost of Claimant’s participation bore a reasonable relationship with benefits realized through participation</b>	<b>CPUC Verified</b>
<p>NRDC’s and FoE’s focus on policies that ensure a reliable, affordable and environmentally sustainable energy resource portfolio should have lasting benefits to billpayers. While our policy and procedural contributions can be difficult to quantify in monetary terms, we submit that NRDC and FoE contributed substantially to the adoption of the final decision determining the extent of the Commission’s jurisdiction over third party electric vehicle charging providers, as discussed above, which will help the state achieve its greenhouse gas and renewable energy goals (as noted on p. 2 of D.10-07-044).</p> <p>NRDC and FoE advocated throughout Phase 1 for CPUC policies on plug-in electric vehicles that: reduce barriers for customers to switch to these vehicles; maximize environmental benefits of plug-in electric vehicles; minimize electricity grid impacts and maximize grid benefits; and ensure cost-effective service for utility customer. In addition, because of NRDC/FoE’s advocacy, the Commission will be better able to regulate the widespread deployment of electric vehicles to ensure it is in a manner that is safe, reliable, and cost-effective.</p>	<p>With the adjustments and reductions made in this decision, the costs of the intervenors’ participation bear a reasonable relationship with benefits realized through participation.</p>

**B. Specific Claim\*:**

CLAIMED						CPUC AWARD			
ATTORNEY AND ADVOCATE FEES									
Item	Year	Hours <sup>2</sup>	Rate	Basis for Rate	Total \$	Year	Hours	Rate	Total \$
Danielle Fugere	2009 2010	69.25	\$200	Res ALJ-247	\$13,850.00	2009 2010	55.13	\$200	\$11,026.00
Max Baumhefner	2010	148.90	\$125	Res ALJ-247; D.10-09-014	\$18,612.50	2010	107.77	\$125	\$13,470.83
				<b>Subtotal:</b>	<b>\$32,462.50</b>			<b>Subtotal:</b>	<b>\$24,496.83</b>
EXPERT FEES									
Item	Year	Hours <sup>3</sup>	Rate	Basis for Rate	Total \$	Year	Hours	Rate	Total \$
Simon Mui	2009 2010	104.20	\$155	Res ALJ-247	\$16,151.00	2009, 2010	87.06	\$155	\$13,494.30
Jody London	2009 2010	75.70	\$189	Res ALJ-247	\$14,307.30 less \$11,000 grant funds: \$3,307.30	2009, 2010	48.85	\$190	\$0.00 <sup>4</sup>
				<b>Subtotal:</b>	<b>\$19,458.30</b>			<b>Subtotal:</b>	<b>\$13,494.30</b>
INTERVENOR COMPENSATION CLAIM PREPARATION**									
Item	Year	Hours	Rate	Basis for Rate	Total \$	Year	Hours	Rate	Total \$
Jody London	2009 2010	8	\$94.50	Half professional rate	\$ 756.00	2009, 2010	8.00	\$95	\$760.00
Simon Mui	2009 2010	1	\$77.50	-/-	\$ 77.50	2009, 2010	1.00	\$77.50	\$77.50
Max Baumhefner	2010	1	\$62.50	-/-	\$ 62.50	2010	1.00	\$62.50	\$62.50

<sup>2</sup> We have made corrections here because the hours originally requested by the intervenors did not correspond to the actual total hours in the time records. To cure these discrepancies, we corrected hours in this column by providing the total hours based on the time records.

<sup>3</sup> See, the previous footnote.

<sup>4</sup> The grant funds of \$11,000 given to London for her participation in this proceeding cover the allowed hours and corresponding dollar amount of \$9,281.50. This amount is not included in the award.

Danielle Fugere	2010	1	\$100	-/-	\$100.00	2010	1.00	\$100	\$100		
					<b>Subtotal:</b>	\$ 996.00				<b>Subtotal:</b>	<b>\$1,000.00</b>
<b>COSTS</b>											
<b>#</b>	<b>Item</b>	<b>Detail</b>			<b>Amount</b>	<b>Amount</b>					
	Reproduction	Copies.			\$ 51.36			\$51.36			
	Postage	Mailing documents to ALJ and Assigned Commissioner			\$ 13.00			\$13.00			
					<b>Subtotal:</b>	<b>\$ 64.36</b>			<b>Subtotal:</b>	<b>\$64.36</b>	
					<b>TOTAL REQUEST \$:</b>	<b>\$52,981.16</b>			<b>TOTAL AWARD \$:</b>	<b>\$39,055.49</b>	
<p>* We remind all intervenors that Commission staff may audit their records related to the award and that intervenors must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. Claimant's records should identify specific issues for which it 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.</p> <p>** Reasonable claim preparation time typically compensated at ½ of preparer's normal hourly rate (the same applies to the travel time).</p>											

**C. Additional Comments on Part III:**

#	Claimant	CPUC	Comment
1	X		Even though work in this phase of the proceeding spans two year, NRDC and FoE are requesting the same hourly rate for all experts and staff.
2	X		<p><b>Rationale for Jody London's hour rates:</b> In D.09-12-039, the Commission approved an hourly rate for Ms. London \$180 for work performed in 2007 and 2008. That authorized rate reflected a 3% cost of living adjustment from the prior rate approved for Ms. London of \$175 in D.09-09-045. For 2009 and 2010, the Commission suspended cost living adjustments. (Resolutions ALJ-235 and ALJ-247). Resolution ALJ-247 authorized rates ranging from \$155 - \$390 for experts with 13 or more years experience. London has 20 years experience in the energy industry. Her work in this proceeding is frequently in lieu of work that would otherwise be performed by an attorney with equivalent experience, at a significantly higher rate. Therefore the requested \$189 rate for Ms. London is extremely conservative and reasonable.</p> <p>As stated in the 12-18-09 Notice of Intent to Claim Intervenor Compensation, NRDC has funded the first \$11,000 of Ms. London's time</p>

			through a grant and is not seeking compensation for this amount. Absent the grant amount, the total requested for Ms. London would be \$14,307.30.
3	X		<p><b>Rationale for Simon Mui’s hourly rates.</b> NRDC requests an hourly rate of \$155 for Dr. Mui. R.09-08-009 is Dr. Mui’s first appearance before the CPUC. Dr. Mui is an expert on clean vehicles and fuels, and has over 10 years of experience. His background includes work on energy policy, electric vehicle policy, as well as practical experience developing a lithium ion battery with application in plug-in electric vehicles. Prior to joining NRDC, Dr. Mui worked at the U.S. EPA’s Transportation &amp; Climate Division, where he authored studies on plug-in hybrid electric vehicles and on climate mitigation strategies for the transportation sector. Dr. Mui has also served as a fellow at Harvard’s Kennedy School of Government and has worked in other various capacities, including as an engineer developing lithium-ion batteries at a start-up company and as a consultant. Dr. Mui received his M.S. in Technology &amp; Policy and Ph.D. in Materials Engineering from MIT with a focus on electrochemistry and lithium ion batteries. He holds a B.S. and B.A. from U.C. Berkeley.</p> <p>The requested rate of \$155 falls at the low end of the range of hourly intervention rates established by the Commission for experts with 7-12 years experience (the range is \$155 - \$270). The Commission has awarded comparable rates to other experts with similar experience. In D.10-05-014, the Commission awarded \$155/hour for NRDC expert Audrey Chang for work performed in 2008 and 2009. Ms. Chang at the time had 8 years experience. She does not have a Ph.D. The requested rate for Dr. Mui is reasonable given his subject area expertise and qualifications.</p>
4	X		<p><b>Rationale for Danielle Fugere’s hourly rates.</b> Friends of the Earth requests an hourly rate of \$200 for Danielle Fugere, J.D. R.09-08-009 is Ms. Fugere’s first appearance before the CPUC. Ms. Fugere is the West Coast Regional Program Director for Friends of the Earth. Her work focuses on advancing transportation solutions and reducing pollution from vehicles and vessels, including promoting clean and efficient vehicle technologies and sustainable alternative fuels. Ms. Fugere also oversees Friends of the Earth’s climate change litigation, spearheading innovative legal strategies to reduce greenhouse gas pollution. Prior to joining Friends of the Earth, Ms. Fugere practiced environmental law on behalf of non-profit environmental groups across California. Her work helped secure broad compliance with environmental laws, including a \$2.1 billion settlement with the City of Los Angeles to improve its sewage collection system. She holds a J.D. from the University of California, Berkeley and a B.A. in political economics from the University of California, Berkeley.</p>

		<p>Ms. Fugere draws on her legal training and background for her work in this proceeding, providing analysis of legal options, work on California’s Zero Emission Vehicle Program and California’s Vehicle GHG Emission Program.</p> <p>The hourly rate approved by the Commission for lawyers with 8-12 years experience is \$300-\$355. The requested rate of \$200 is therefore extremely reasonable.</p>
4	X	<p><b>Rationale for Max Baumhefner’s hourly rates.</b> NRDC requests an hourly rate of \$125 for Max Baumhefner, J.D. Mr. Baumhefner is a legal fellow working on energy issues. He has taken the lead for NRDC in the legal research and analysis on jurisdiction, and related matters. The Commission recently approved the hourly rate of \$125 for Mr. Baumhefner in D.10-09-014 for his contributions to D.10-04-029, in A.08-07-021 et al.</p>
III.B.	X	<p>For any award that NRDC and FoE receive as a result of this request, NRDC is designated as the organization that will receive the awarded amount. NRDC will then distribute the awarded amount as ordered by the Commission between the two organizations.</p>

**D. CPUC Disallowances & Adjustments:**

#	Reason
1. Rates	<p>Attorney Danielle Fugere. Fugere represented FoE in this proceeding. Based on the information<sup>5</sup> NRDC/FoE provided to support the requested rate of \$200 for her work in 2009 and 2010, we adopt this rate.</p> <p>Expert Simon Mui. Mui represented NRDC in this proceeding. Based on the information<sup>6</sup> NRDC/FoE provided to support the requested rate of \$155 for his work in 2009 and 2010, we adopt this rate.</p> <p>Expert Jody London. London requests the rate of \$189 for her work in 2009 and 2010. Her previously adopted rate was \$180 in 2008, which was the result of 3% cost-of-living adjustment applied to her 2006 rate of \$175. We agree with NRDC’s rationale for the present rate increase and adopt the requested rate, rounded to the nearest \$5.00, in accordance with our practice, or \$190 for her work in 2009 and 2010.</p> <p>Legal fellow Max Baumhefner. For NRDC legal fellow Max Baumhefner we approve the requested and previously adopted (in D.10-09-014) rate of \$125.00 for his work in 2010.</p>
Reasonableness Analysis.	<p>NRDC/FoE spent, approximately, 85.25 hours on the October 5, 2009 opening comments on the Order Instituting Rulemaking (OIR), and 35 hours on the</p>

<sup>5</sup> Information regarding Fugere’s professional experience was provided in the letter of February 28, 2011. The letter can be found in the “Correspondence” file for this proceeding.

<sup>6</sup> Information regarding Mui’s professional experience was provided in the letter of March 2, 2011. The letter can be found in the “Correspondence” file for this proceeding.

November 6, 2009 reply comments on the OIR; 82.00 hours on the February 8, 2010 opening brief, and 49.40 hours on the March 1, 2010 reply brief; 38.10 hours on the June 10, 2010 comments on the proposed decision (PD), and 15.20 on the June 15, 2010 reply comments on the PD. In our reasonableness analysis we, first, weigh these hours against the complexity of issues considered in the documents, and the research and analytical work required to produce them. Then we analyze the time records. We compensate “reasonable [work] in preparing or presenting [the] contention or recommendation” found to be a substantial contribution. (Pub. Util. Code §1802(i).)

In several past decisions on the NRDC intervenor compensation claims we found the requested hours excessive. In D.09-05-018, we stated, as follows:

The time NRDC spent on most of the comments is not commensurate with the comments’ substantive contents. **While we find that NRDC substantially contributed to D.08-07-047, the time NRDC spent on its comments is excessive in comparison to their contents.** [Emphasis added] D.09-05-018 at 7.

Similar observations were made in D.10-04-022, at 36. Based on our analysis of the documents and the timesheets in this proceeding, we determine here that the requested hours exceeded the hours reasonably required to perform a research, review of the materials, and analytical writing necessary to produce the NRDC/FoE’s documents that substantially contributed to the decision.

Excessive internal duplication of efforts and communications were also subjects of our discussions in the past (see, D.09-05-018 at 15-16 and D.10-04-022<sup>7</sup> at 33-34). When unreasonably high number of the internal communications or internal duplicative efforts took place we reduced the requested hours.

We have analyzed the timesheets attached to the claim and observed the same pattern of the excessive internal duplicative activities. In 2009, NRDC and FoE were represented by one attorney, Fugere, and two experts, Mui and London. In 2010, they were joined by Baumhefner, who was a legal fellow at that time. The request shows<sup>8</sup> that NRDC’s and FoE’s positions on the proceeding’s issues were similar if not the same, and the group members’ roles clearly defined. For example, according to the request, Fugere provided substantive, high-level review of the legal arguments for both intervenors. Still, the majority of timesheet entries describe work on the same issues, participation in the same events, and performance of the same or similar

<sup>7</sup> In R.06-04-009 (where D.10-04-022 issued, NRDC requested compensation jointly with another intervenor (the Union of Concerned Scientists).

<sup>8</sup> See, Request, part II.B(d).

<sup>9</sup> NRDC’s May 4, 2011 comments on the PD, at 8-13.

<sup>10</sup> May 4, 2011 comments on the PD, at 8-9.

<sup>11</sup> May 4, 2011 comments on the PD at 9-10.

<sup>12</sup> We note that, according to the workshop transcript (54:26-55:20), Fugere participated in the workshop. NRDC explains, in its May 4, 2011 comments, that it did not claim her hours as her billing rate was the highest of the three participants.

<sup>13</sup> This includes a preparation for the meeting.

tasks, such as discussions, conference calls, meetings, and editing/reviewing each other's documents. More than a half of the requested time was devoted to these activities. While internal coordination of efforts and "collaboration"<sup>9</sup> among the group's members are necessary for any activity involving more than one participant, the amount of the time spent on such coordination and collaboration should not be significant, especially, when individual participants take mutually non-controversial positions (which allowed them to join their efforts, in the first place) and have specific roles. A preparation of any document by NRDC/FoE typically falls into two categories: (1) document preparation, including research, review of the relevant record, and analytical writing, and (2) internal meetings, conferences and discussions among the NRDC/FoE team concerning that document, as well as reviewing and editing each other's drafts. 58% of the document-related hours were spent on the Category 2 work and only 42% – on Category 1, as illustrated in Table 1. We find that the disproportionate internal coordination and collaboration effort exceeded a reasonable work normally required to coordinate the intervenors' joint participation and to make their joint contribution to the decision.

We have also reviewed time records for a non-document-specific work and found some excessive duplicative tasks by NRDC/FoE's representatives and unnecessary efforts in this area, as well. Where, like here, several representatives with closely aligned positions and interests participated in the same activity or event, our practice was to allow hours of one or two professionals (for example one attorney and one expert). Here, we follow our practice and compensate a work of one or two professionals that was essential to achieving a specific activity's goals: for example, we compensate hours of a person who wrote a document or performed a research or possessed the related experience or, when it is not clear whose participation was indispensable, we compensate participants who requested lower hourly rates.

In the past, we remedied the excessive hours and internal duplication by reducing the NRDC's claims, on average, by 21 percent. Here, our analysis of the intervenors' filings and timesheets warrants deeper disallowances of more than one third of the requested hours. However, we consider that joining the forces of two intervenors was a decisive step towards the efficient participation. NRDC also explains that without the "collaboration among staff" it could not produce "solid policy recommendations" and "actively participate" in the proceeding, and emphasizes that the requested professional hourly rates were modest.<sup>10</sup> In addition, NRDC states that it voluntarily omitted from the request some of the hours devoted to this proceeding.<sup>11</sup> We have considered these factors and adjusted our reductions. We disallow only some of the Category 2 hours to eliminate excessiveness and compensate a more reasonable amount of work required to produce NRDC/FoE's documents. As we have explained, we forego deeper disallowances. We note, however, that in the future, a full extent of the disallowances will be considered.

Table 1. Document-Specific Time Distribution (Category 1 work – 42%; Category 2 work – 58%) and Disallowances

<b>Hours:</b>	<b>Mui</b>	<b>London</b>	<b>Fugere</b>	
<b>1. Opening Comments on the OIR (10/5/2009)</b>				
Category 1 hours	28.50	4.10	22.15	
Category 2 hours	10.30	11.00	9.20	
Disallowance (1/4 Category 2)	3.43	3.67	3.07	
<b>2. Reply Comments on the OIR (11/6/09)</b>				
Category 1 hours	4.50	4.90	1.00	
Category 2 hours	8.70	8.10	7.40	
Disallowance (2/3 Category 2)	5.80	5.40	4.93	
<b>3. Opening Brief (2/8/10)</b>				
<b>Hours:</b>	<b>Mui</b>	<b>London</b>	<b>Baumhefner</b>	<b>Fugere</b>
Category 1 hours	-	-	11.80	4.60
Category 2 hours	10.10	9.60	41.10	4.50
Disallowance (1/3 Category 2)	3.37	3.20	13.70	1.50
<b>4. Reply Brief (March 1/10/10)</b>				
Category 1 hours	1.50	4.00	21.40	-
Category 2 hours	5.30	1.90	11.20	4.10
Disallowance (2/3 Category 2)	3.53	1.27	7.47	2.73
<b>5. Opening Comments on the PD (6/10/10)</b>				
<b>Hours:</b>	<b>Mui</b>	<b>London</b>	<b>Baumhefner</b>	<b>Fugere</b>
Category 1 hours	-	-	13.40	0.00
Category 2 work	5.00	8.80	5.60	5.30
Disallowance (1/3 Category 2)	1.67	2.93	1.87	1.77
<b>6. Reply Comments on the PD (June 15, 2010)</b>				
Category 1 hours	-	-	6.80	-
Category 2 hours	-	2.20	6.20	-
Disallowance (1/2 Category 2)		1.10	3.10	

Table 3. Non-Document-Specific Hours and Disallowances (highlighted in bold).

Timesheet Information	Mui	London	Fugere	Baumhefner
2/2-2/4/10 Prepare for and participate in, telephone calls	2.00			<b>2.00</b>

3/8/10, internal conference re next step	1.00	<b>1.00</b>	1.00	<b>1.00</b>
3/16/10, workshop <sup>12</sup>	3.00			<b>3.00</b>
4/5/10, meeting with the Commission staff	1.50 <sup>13</sup>		1.00	<b>1.00</b>
4/19-4/20/10 research on jurisdiction		<b>0.40</b>		0.40
4/22/10 telephone call re April 23 <sup>rd</sup> meeting	1.00	<b>1.00</b>	1.00	<b>1.00</b>
4/23/10 meeting with utilities	2.00	<b>2.00</b>	2.00	<b>2.00</b>
4/30/10 internal conference	0.50	<b>0.50</b>	0.50	<b>0.50</b>
5/20/10 meeting with utilities	2.50	<b>2.50</b>	2.50	<b>2.50</b>
6/23/10 preparation for, and meeting, with Commissioner	1.50	<b>1.50</b>	1.50	<b>1.50</b>
6/30/10, 7/6/10 Review and Summary of the revised PD	0.75/ <b>0.20</b>	0.20	0.20	2.60
7/6/10 Review revised PD		<b>0.6</b>		
7/6/10 Meeting with Commissioner	0.5	<b>0.5</b>	0.50	<b>0.5</b>

Table 4. Summary of Disallowed Hours

Mui	London	Fugere	Baumhefner
17.14	26.85	14.12	41.13

**PART IV: OPPOSITIONS AND COMMENTS**

<b>A. Opposition: Did any party oppose the claim?</b>	No
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<b>B. Comment Period: Was the 30-day comment period waived (see Rule 14.6(c)(6))?</b>	No
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If not:

<b>Party</b>	<b>Comment</b>	<b>CPUC Disposition</b>
NRDC	B. The Rulemaking has addressed novel legal and policy questions, requiring extensive research, deliberation, and effort	The PD has been revised to clarify that the compensable Category 1 work includes research, review of the record and analytical writing.
	C. The Commission should recognize the necessity and interdependence of research, deliberation, and	See, above

	review in crafting and effectively communicating original recommendations	
	D. The conservative nature of the request should be noted and the full amount should be granted.	Disallowances made in the PD have been adjusted and 15% of the hours restored.

**FINDINGS OF FACT**

1. Claimant has made a substantial contribution to Decision 10-07-044.
2. The claimed fees and costs, as adjusted herein, are comparable to market rates paid to experts and advocates having comparable training and experience and offering similar services.
3. The total of reasonable compensation is \$39,055.49.

**CONCLUSION OF LAW**

The claim, with any adjustment set forth above, satisfies all requirements of Public Utilities Code §§ 1801-1812.

**ORDER**

1. Claimant is awarded \$39,055.49.
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 Natural Resources Defense Council the final award, which will be distributed by the recipient between the Natural Resources Defense Council and Friends of the Earth in accordance with this decision. Pacific Gas and Electric Company, Southern California Edison Company, San Diego Gas & Electric Company, and Southern California Gas Company shall allocate the payment responsibility among themselves based on their California-jurisdictional electric and gas revenues for the 2010 calendar year (to reflect the year in which the proceeding was primarily litigated). Payment of the award shall include interest at the rate earned on prime, three-month commercial paper as reported in Federal Reserve Statistical Release H.15, beginning December 11, 2010, the 75<sup>th</sup> day after the filing of claimant's request, and continuing until full payment is made.

3. The comment period for today's decision is not waived.
4. This decision is effective today.

Dated June 9, 2011, at San Francisco, California.

MICHAEL R. PEEVEY  
President  
TIMOTHY ALAN SIMON  
CATHERINE J.K. SANDOVAL  
MARK J. FERRON  
Commissioners

I abstain.

/s/ MICHEL PETER FLORIO  
Commissioner

## APPENDIX

## Compensation Decision Summary Information

<b>Compensation Decision:</b>	D1106013	<b>Modifies Decision?</b> No
<b>Contribution Decision(s):</b>	D1007044	
<b>Proceeding(s):</b>	R0908009	
<b>Author:</b>	ALJ Regina DeAngelis	
<b>Payer(s):</b>	Pacific Gas and Electric Company, Southern California Edison Company, Southern California Gas Company, and San Diego Gas & Electric Company.	

## Intervenor Information

<b>Intervenor</b>	<b>Claim Date<sup>1</sup></b>	<b>Amount Requested</b>	<b>Amount Awarded</b>	<b>Multiplier?</b>	<b>Reason Change/Disallowance</b>
Natural Resources Defense Council, Friends of the Earth	9/27/10	\$52,981.16	\$39,055.49	No	Excessive hours, excessive internal duplication of efforts, adjusted hourly rates..

## 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>
Danielle	Fugere	Attorney	Friends of the Earth	\$200	2009-10	
Max	Baumhefner	Attorney	Natural Resources Defense Council	\$125	2010	
Simon	Mui	Expert	Natural Resources Defense Council	\$155	2009-10	
Jody	London	Regulatory Consultant	Natural Resources Defense Council	\$189	2009-10	

(END OF APPENDIX)

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<sup>1</sup> Their claims were filed jointly, combined in one claim.