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Decision 05-10-007 October 6, 2005

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Promote Policy and Program Coordination and Integration in Electric Utility Resource Planning.	Rulemaking 04-04-003 (Filed April 1, 2004)

OPINION GRANTING INTERVENOR COMPENSATION TO THE NATURAL RESOURCES DEFENSE COUNCIL FOR SUBSTANTIAL CONTRIBUTIONS TO DECISION 04-12-048

Summary

This decision awards the Natural Resources Defense Counsel (NRDC) $36,277.50 in compensation for its contribution to Decision (D.) 04-12-048.

Background

The Commission issued D.04-12-048, adopting Long-Term Procurement Plans (LTPP) for the largest three investor-owned electric utilities (IOUs), Pacific Gas and Electric Company (PG&E), Southern California Electric Company (SCE) and San Diego Gas & Electric Company (SDG&E). Principles judging the preparation and adoption of the LTPPs derive from Assembly Bill (AB) 57,[1] the Energy Action Plan (EAP), [2] D.03-12-062,[3] D.04-01-050,[4] the order initiating

[1] AB 57, (Stats.2002, Ch.850, Sec.3 Effective September 24, 2004). AB 57 added Section 454.5 to the Pub. Util. Code.

[2] The EAP issued jointly on May 8, 2003, by the CPUC, the California Energy Commission (CEC) and the California Consumer Power and Conservation Financing Authority (CPA). A copy of the complete EAP is available for downloading on the Commission's website at www.cpuc.ca.gov.

R.04-04-003, and the Assigned Commissioner Ruling/Scoping Memo (ACR) issued by Commissioner Peevey on June 16, 2004, as amended June 29, 2004,[5] in R.04-04-003. The guidance principles also were used by the utilities to draft and design their LTPPs.

Decision 04-12-048 gave the three IOUs authorization to plan for and procure the resources necessary to provide reliable service to their customer loads for 2005 through 2014. The decision must work in concert, to coordinate and incorporate Commission and legislative efforts, with other proceedings, in particular Community Choice Aggregation (CCA),[6] Demand Response (DR),[7] Distributed Generation (DG),[8] Energy Efficiency (EE),[9] Avoided Cost and Long-Term Policy for Expiring Qualifying Facility (QF) Contracts,[10] RPS,[11]

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[3] D.03-12-062, issued in R.01-10-024, gave the IOUs procurement authority (often referred to as "AB 57 authority") for 2004, including the authority to sign contracts for up to five years duration for 2005 procurement needs.

[4] D.04-01-050 gave continued procurement authority to the IOUs through the first three quarters of 2005, with authority to sign contracts for up to one year's duration for 2005 procurement needs. D.04-01-050 closed R.01-10-024, and established the parameters for R.04-04-003.

[5] In addition, a June 29, 2004, Administrative Law Judge (ALJ) Ruling augmented the June 16, 2004, ACR and directed the utilities to include in their LTPPs responses to specific questions regarding global climate change issues.

[6] R.03-10-003.

[7] R.02-06-001.

[8] R.04-03-017.

[9] R.01-08-028.

[10] R.04-04-025.

[11] R.04-04-026.

Transmission Assessment[12] and Transmission Planning.[13] Earlier, on October 28, 2004, the Commission also issued D.04-10-035, the Resource Adequacy (RA) decision, in this docket.

The OIR in R.04-04-003 instructed the utilities to incorporate the Commission's policy direction from these other proceedings into their LTPPs and to inform the Commission how the utilities intended to meet the established goals from the other proceedings through their procurement decisions between now and 2014. The utilities also were directed to prioritize their resource procurements following the "loading order" of preferred resources established in the EAP. The "loading order" framework identified those demand-side resources as "preferred" that work toward optimizing energy conservation and resource efficiency while reducing per capita demand. The identified loading order is: energy efficiency and demand response; renewables (including renewable DG); clean fossil-fueled DG; and lastly clean fossil-fueled central-station generation.

The Commission recognizes that utilities face many demands and resource uncertainties in planning for the next ten years, and the ACR instructed the utilities to prepare three supply/demand scenarios: high-, medium-and low-incremental need. The medium-load plan is to be the preferred resource plan of each utility that meets the needs identified in its Alternative Base Case load-forecast scenario, or its CEC Integrated Energy Policy Report (IEPR) base case scenario. The high-load plan should be a reasonable estimate of the burden of service under high future growth load and an optimistic view of economic

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[12] R.04-01-026.

growth. The low-load is based on reasonable assumptions about progress in conservation and pessimistic assumptions about the economy and generous assumptions about the development of core/non-core and CCA. The utilities were instructed to use these scenarios to accommodate the many possible outcomes and employ a risk management approach of future commitments by incorporating long-mid-and shorter-term contracts.

As mentioned above, the utilities filed their respective LTPPs on July 9, 2004. Intervenor testimony was received on August 6, 2004, from over 20 parties and rebuttals received from over 10 parties on August 20, 2004.

The four weeks of evidentiary hearings included extensive cross-examination of utility and intervenor witnesses with 128 documents received in to evidence. Post hearing briefs were received on October 18, 2004, and reply briefs were received on November 1, 2004. The proposed decision (PD) was mailed on November 16, 2004. On November 30, 2004, SCE filed a timely request for Final Oral Argument (FOA) before the whole Commission and FOA was held on December 13, 2004.

NRDC was an active participant in the LTPP phase of this proceeding and also participated in the Procurement Review Groups (PRG) formed to assist and review the LTPPs submitted by the three IOUs. In the LTTP phase, NRDC focused on environmental issues, particularly the financial risk that customers and utilities face due to the likely regulation of greenhouse gas (GHG) emissions, and provided detailed recommendations to the Commission to protect customers from that financial risk.

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[13] R.00-01-001.

Requirements for Awards of Compensation

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

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

1. The intervenor must satisfy certain procedural requirements including the filing of a sufficient notice of intent (NOI) to claim compensation within 30 days of the PHC (or in special circumstances, at other appropriate times that we specify). (Section 1804(a).)
2. The intervenor must be a customer or a participant representing consumers, customers, or subscribers of a utility subject to our jurisdiction. (Section 1802(b).)
3. The intervenor should file and serve a request for a compensation award within 60 days of our final order or decision in a hearing or proceeding. (Section 1804(c).)
4. The intervenor must demonstrate "significant financial hardship." (Sections 1802(g), 1804(b)(1).)
5. The intervenor's presentation must have made a "substantial contribution" to the proceeding, through the adoption, in whole or in part, of the intervenor's contention or recommendations by a Commission order or decision. (Sections 1802 (h), 1803(a).)
6. The claimed fees and costs must be reasonable and be based on hourly rates comparable to the market rates paid to experts and advocates having comparable training and experience and offering similar services. (Section 1806.)

Procedural Requirements

The initial PHC in this matter was held on April 30, 2004, and NRDC timely filed its NOI on June 1, 2004. In its NOI, NRDC addressed its anticipated scope of participation, estimated cost of participation, customer status and significant financial hardship. A customer pursuant to § 1802(b)(1)(c), meeting the financial hardship condition pursuant to § 1802(g), and ALJ ruling on July 27, 2004, NRDC was found to be eligible for intervenor compensation in this proceeding. NRDC timely filed its request for compensation on February 15, 2005, within 60 days D.04-12-048 being issued. NRDC has met all the procedural requirements to claim compensation.

Substantial Contribution

In evaluating whether a customer made a substantial contribution to a proceeding we look at several things. First, did the ALJ or Commission adopt one or more of the factual or legal contentions, or specific policy or procedural recommendations put forward by the intervenor? (*See* § 1802(h).) Second, if the customer's contentions or recommendations paralleled those of another party, did the customer's participation materially supplement, complement, or contribute to the presentation of the other party or to the development of a fuller record that assisted the Commission in making its decision? (*See* §§ 1802(h), 1802.5.) As described in § 1802(h), 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.[14]

NDRC claims that it made substantial contributions to D.04-12-048 by addressing 4 major issues: 1) the financial risk associated with GRG emissions; 2) energy efficiency; 3) renewables; and 4) core/non-core. We find that NDRC made substantial contributions related to these issues in D.04-12-048 as follows:

- <u>Financial Risk Associated with GHG Emissions</u>

  NDRC testified regarding the financial risks faced by customers and utilities because of the likely regulation of GRG emissions and provided detailed policy recommendations to protect customers from financial risk. D.04-12-048 adopted most of NDRC's recommendations in this area. For example:

  > NDRC argued in its opening brief that GHG emissions will be regulated within the timeframe addressed in the IOU's long-term plans and within the lifetime of their long-term resource commitments. NDRC's testimony also showed that due to likely future regulation, these emissions pose a real and substantial risk to customers. In order to address these concerns, NRDC recommended specific findings of fact in its comments on the ALJ's draft decision. The Commission adopted NRDC's recommended findings of fact as Findings 76 and 77.
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  > NRDC provided extensive evidence that realistic imputed costs for GHG emissions range from $8 to $50 per ton of carbon dioxide and recommended that the

[14] D.98-04-059, 79 CPUC 2d, 628 at 653.

Commission adopt an imputed cost of $12 per ton, beginning in 2008. D.04-12-048 adopted a range of $8 to $25 per ton of carbon dioxide, beginning in 2007, which is largely consistent with NRDC's recommendations. D.04-12-048 also cites NRDC's recommendations in its discussion of the appropriate range of values.

NRDC's witness presented evidence that the composition of the IOU's resource portfolio determines the level of financial risk that customers may face as a result of GHG emissions. In order to protect customers from this risk, NRDC recommended the Commission require the utilities to use an imputed cost of emissions in both the procurement bid evaluation process and in future long-term plan modeling processes. In its comments on the ALJ's draft decision, NRDC urged the Commission to clarify that the "GHG adder" is not an externality but represents the financial risk associated with GHG emissions, and to apply the GHG adder to future long-term plans as well as to bid evaluation processes. NRDC proposed specific modifications to the draft decision's finding of fact, conclusions of law, and ordering paragraphs. The Commission adopted nearly all of these recommendations in D.04-12-048.[15]

- Energy Efficiency

NRDC testified regarding the IOUs' proposed investments in energy efficiency. The Commission decision relied on NRDC's analysis of the IOUs' energy efficiency plans, citing NRDC's discussion of the differences in the IOU requests for funding for energy efficiency and referring to NRDC's comparison of the IOUs' plans with the Commission's new targets.

NRDC recommended that the Commission require the IOUs to provide information about energy efficiency in

[15] *See* Findings of Fact 78-80, Ordering Paragraph 17.

a consistent format in future long-term plans. D.04-12-048 adopted NRDC's proposed data list in full.[16]

- Renewables

  NRDC recommended that the Commission clarify that the RPS establishes a floor, rather than a ceiling, on IOU investments in renewable resources, and that the Commission require the IOUs to consider investments in all cost-effective renewable resources. D.04-12-048 adopted these recommendations by specifically finding that "RPS targets are a floor – not a ceiling" and requiring the IOUs to justify any selection of fossil generation over renewables in any competitive solicitation.[17]

- Core/Noncore

  In its brief, NRDC noted that continuing uncertainty regarding the structure of the retail market could result in less than optimal resource plans for existing customers. NRDC recommended that the Commission provide assurance that investments planned for and acquired by the IOUs in accordance with the loading order be recovered from all existing customers, in order to ensure that appropriate levels of investment in preferred resources are made. NRDC also refuted other parties' claims about capacity markets, noting that the existence of a capacity market alone does not ensure that necessary long-term investments are made. D.04-12-048 is consistent with these recommendations, because it allows the IOUs to recover stranded costs for

[16] *See* Ordering Paragraph 13

[17] D.04-12-048 at pp. 2, 87, Findings of Fact 53, 55.

> resource investments from departing load and refers consideration of capacity markets to the resource adequacy workshop process.

We find that NRDC achieved a high level of success on all of the issues it raised. The proceeding and the Commission's final decision benefited from NRDC's participation, and NRDC made a substantial contribution to the proceeding on each of the above issues.

Reasonableness of Requested Compensation

We now must determine whether NRDC's compensation request of $36,277.50 is reasonable. A summary of NRDC's compensation request follows:

NRDC Staff Member	Hours	Rate	Request
Devra Bachrach, Staff Scientist	277.5	$100/hr.	$27,750.00
Sheryl Carter, Director, Western Energy Programs	56.86	$150/hr.	$ 8,527.50
Total Compensation			**$36,277.50**

A. Productive Participation

The components of this request must constitute reasonable fees and costs of the intervenor's preparation for and participation in a proceeding that resulted in a substantial contribution. Thus, only those fees and costs associated with the intervenor's work that the Commission concludes made a substantial contribution are reasonable and eligible for compensation.

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

NRDC states that its emphasis in this proceeding was to focus on promoting policies that ensure a reliable, affordable, and environmentally sustainable energy resource portfolio that will have lasting benefits to ratepayers. NRDC concedes that it is difficult to quantify its contributions in precise monetary terms but states that its most substantial contribution in the proceeding focused on reducing the financial risks that ratepayers would face due to the likely regulation of GHG. In testimony, NRDC's witness estimated that ratepayers of all three utilities would face a financial risk of approximately $3 billion over the next decade due to the likely regulation of GHG. The Commission's new "greenhouse gas adder" policy, based on recommendations made primarily by NRDC and the Union of Concerned Scientists, will reduce the exposure of ratepayers to this financial risk.

We agree that to the extent the new "greenhouse gas adder" policy reduces the exposure of ratepayers to financial risks that would likely result from the regulation of GHG in the future, ratepayers would benefit monetarily. We also agree that the policies adopted in D.04-12-028, improved through NRDC's participation, have other social benefits which, though hard to quantify, are substantial. In view of the above, we find that NRDC's participation in the proceeding has been productive.

B. Reasonableness of Hours Claimed/Avoidance of Duplication

Next, we must assess whether the hours claimed for NRDC's efforts that resulted in substantial contributions to D.04-12-048 are reasonable.

NRDC documented its claimed hours by presenting a daily breakdown of the hours of its attorneys, policy analysts and experts, along with a brief description of each activity. The hourly breakdown reasonably supports the claim for total hours. Given the scope of NRDC's participation and the work

products prepared, the number of claimed hours is reasonable. Since we find that NRDC's efforts made a substantial contribution to the decision, we need not exclude from NRDC's award any compensation for specific issues.

In addition, we believe that NRDC made reasonable efforts to avoid duplication of effort with other parties, especially those promoting similar goals. To the extent NRDC overlapped the showings of other parties, we find that NRDC's showing supplemented or complemented those other showings. (*See* § 1802.5.)

C. Reasonableness of Hourly Rates

Finally, in determining compensation, we must determine whether the requested hourly rates for NRDC's staff are reasonable. In making this determination, we consider the market rates for similar services from comparably qualified persons.

NRDC has requested hourly rates of $100 for Debra Bachrach, staff scientist, for work performed in 2004 and 2005 and $150 for Sheryl Carter, Director, Western Energy Programs, for work performed in 2004. We have previously found these hourly rates reasonable, and we adopt them here.[18]

Award

As set forth in the table below, we award NRDC $36,102.50:

NRDC Staff Member	Hours	Hourly Rate	Amount Awarded
Devra Bachrach	274	$100	$27,400
			$8,527.50
Sheryl Carter	56.85	$150	
Total Amount Awarded			**$ 36,277.50**

[18] *See* D.05-01-028

Consistent with previous Commission decisions, we will order that interest be paid on the award amount on May 1, 2005, commencing the 75th day after NRDC filed its compensation request, and continuing until full payment of the award is made.[19]

We remind all intervenors that Commission staff may audit their records related to this award, and that intervenors must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. NRDC's records should identify specific issues for which it requested compensation, the actual time spent by each employee, the applicable hourly rate, fees paid to consultants, and any other costs for which compensation was claimed.

Waiver of Comment Period

This is an intervenor compensation matter. Accordingly, as provided by Rule 77.7(f)(6) of the Commission's Rules of Practice and Procedure, we waive the otherwise applicable 30-day comment period for this decision.

Assignment of Proceeding

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

Findings of Fact

1. NRDC filed a timely NOI following a PHC on June 1, 2004.

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[19] Bachrach did not have her hourly rate for the 3.5 hours she spent on NRDC's compensation request; however, we generally do not require halving where, as hers, an individual with a relatively low hourly rate prepares the request. (*See* D.04-02-016, where we also awarded Bachrach her full hourly rate for time spent on the compensation request.)

2. NRDC provided the Commission with all other information necessary to be eligible to claim intervenor compensation in its NOI.

3. NRDC timely filed its request for intervenor compensation on February 15, 2005, following the Commission's issuance of D.04-12-048 on December 16, 2004.

4. NRDC is eligible for intervenor compensation for its contribution to D.04-12-048.

5. No objection has been made to NRDC's NOI or claim for compensation.

6. NRDC made a substantial contribution to D.04-12-048.

7. NRDC's requested hourly rates for Bachrach and Carter are reasonable and have been previously approved by the Commission.

8. The total of these reasonable fees, as adjusted above, is $36,277.50.

Conclusions of Law

1. NRDC was found eligible for compensation on July 27, 2004.

2. NRDC has fulfilled the requirements of Pub. Util. Code §§ 1801-1812, which govern awards of intervenor compensation, and is entitled to intervenor compensation for its claimed fees and expenses incurred in making substantial contributions to D.04-12-048.

3. Public review and comment regarding a compensation decision may be waived.

4. Today's order should be made effective immediately.

O R D E R

IT IS ORDERED that:

1. National Resources Defense Council (NRDC) is awarded $36,277.50 as compensation for its substantial contributions to Decision 04-12-048.

2. Within 30 days of the effective date of this decision, Southern California Edison Company (SCE), Pacific Gas and Electric Company (PG&) and San Diego Gas & Electric Company (SDG&E) shall and pay its share of this award to NRDC. The respective shares shall be computed on the basis of the respective utilities' jurisdictional electric revenues for 2004.

3. PG&E, SCE and SDG&E shall also pay interest on the award beginning on May 1, 2005, at the rate earned on prime, three-month commercial paper as reported in Federal Reserve Statistical Release H.15, and continuing until full payment is made.

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

This order is effective today.

Dated October 6, 2005, at Los Angeles, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
SUSAN P. KENNEDY
Commissioners

Commissioner Dian M. Grueneich recused herself from this agenda item and was not part of the quorum in its consideration.

Commissioner John A. Bohn, being necessarily absent, did not participate.

Compensation Decision Summary Information

Compensation Decision:	D0510007	**Modifies Decision?**
Contribution Decision(s):	D0412048	
Proceeding(s):	R0404003	
Author:	ALJ Myra Prestidge	
Payer(s):	SDG&E, PG&E, Edison	

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
NRDC	2/15/05	$36,277.50	$36,277.50	No	Excessive hourly rate for compensation request

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Devra	Bachrach	Policy expert	NRDC	$100	2004-05	$100
Sheryl	Carter	Policy expert	NRDC	$150	2004	$150