



PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

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November 25, 2024

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Ratesetting

TO PARTIES OF RECORD IN APPLICATION 15-09-010:

This is the proposed decision of Administrative Law Judge Division. Until and unless the Commission hears the item and votes to approve it, the proposed decision has no legal effect. This item may be heard, at the earliest, at the Commission's January 16, 2025 Business Meeting. To confirm when the item will be heard, please see the Business Meeting agenda, which is posted on the Commission's website 10 days before each Business Meeting.

Parties to the proceeding may file comments on the proposed decision as provided in Rule 14.3 of the Commission's Rules of Practice and Procedure. Electronic copies of comments should also be sent to the Intervenor Compensation Program at icompcoordinator@cpuc.ca.gov.

/s/ AVA TRAN for
Michelle Cooke
Chief Administrative Law Judge

MLC:jnf
Attachment

Decision **PROPOSED DECISION OF ALJ A. TRAN** (mailed 11/25/2024)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of San Diego Gas & Electric Company (U902E) for Authorization to Recover Costs Related to the 2007 Southern California Wildfires Recorded in the Wildfire Expense Memorandum Account. (WEMA.)

Application 15-09-010

**DECISION GRANTING COMPENSATION TO
PROTECT OUR COMMUNITIES FOUNDATION FOR
SUBSTANTIAL CONTRIBUTION TO
THE UNITED STATES SUPREME COURT'S DENIAL OF
PETITION FOR REVIEW OF DECISION 17-11-033**

Intervenor: Protect Our Communities Foundation	For contribution to Decision (D.) 17-11-033 in the judicial review proceeding before the United States Supreme Court
Claimed: \$28,131.40	Awarded: \$17,298.60 ¹
Assigned Commissioner: Alice Reynolds	Assigned ALJ: ALJ Division

PART I: PROCEDURAL ISSUES

A. Brief description of Decision:	D.17-11-033 denies San Diego Gas & Electric Company's (SDG&E) request to recover \$379 million in costs incurred by settling litigation resulting from three massive fires, because recovery would result in rates that would not be just or reasonable. The Court of Appeal denied SDG&E's Petition for writ of review of the Commission's decision. The California Supreme Court then denied SDG&E's petition for review of the Court of Appeal's decision. Most recently, the Supreme Court of the United States denied SDG&E's petition for review of the Court of Appeal's decision.
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¹ Of this award, \$14,612.40 was previously awarded and paid to POC pursuant to D.21-02-027; the remaining amount of \$2,686.20 is payable, as set forth in Part III(B).

B. Intervenor must satisfy intervenor compensation requirements set forth in Pub. Util. Code §§ 1801-1812:

	Intervenor	CPUC Verified
Timely filing of notice of intent to claim compensation (NOI) (§ 1804(a)):		
1. Date of Prehearing Conference:	2/22/2016	Verified
2. Other specified date for NOI:	n/a	
3. Date NOI filed:	3/22/2016	Verified
4. Was the NOI timely filed?		Yes
Showing of eligible customer status (§ 1802(b)):		
5. Based on ALJ ruling issued in proceeding number:	I.17-02-002	R.13-12-010
6. Date of ALJ ruling:	10/26/2017 and 1/18/2018	09/26/2014
7. Based on another CPUC determination (specify):	D.18-07-034 issued in A.15-09-010 on 7/30/2018; D.18-09-039 issued in R.16-02-007 on 10/5/2018; D.19-05-035 issued in A.15-09-010 on 5/31/2019.	D.18-07-034 did not make a finding of financial hardship pursuant to Pub. Util. Code Section 1802(h): it applied an earlier determination under the rebuttable presumption of eligibility rule of §1804(b)(1). <i>See</i> D.18-07-034 at 2-3. Similarly, D.18-09-039 and D.19-05-035 did not make a finding under §1802(h). A correct reference to POC's eligibility finding applicable to this proceeding is to the Ruling of September 26, 2014. ²
8. Has the Intervenor demonstrated customer status?		Yes

² Administrative Law Judge's Ruling on Protect Our Communities Foundation's Amended Showing of Significant Financial Hardship, issued in R.13-12-010 on September 26, 2014, at 4-5.

	Intervenor	CPUC Verified
Showing of “significant financial hardship” (§1802(h) or §1803.1(b))		
9. Based on ALJ ruling issued in proceeding number:	R.13-12-010	Verified
10. Date of ALJ ruling:	9/26/2014	Verified
11. Based on another CPUC determination (specify):	D.18-07-034 issued in A.15-09-010 on 7/30/2018; D.18-09-039 issued in R.16-02-007 on 10/5/2018; D.19-05-035 issued in A.15-09-010 on 5/31/2019.	The applicable finding was made in the Ruling of September 26, 2014. <i>See</i> Rule 17.2 of the Commission Rules of Practice and Procedure.
12. Has the Intervenor demonstrated significant financial hardship?		Yes
Timely request for compensation (§ 1804(c)):		
13. Identify Final Decision:	Supreme Court Case No. 18-1368, Denial of Petition for Writ of Certiorari (D.17-11-033)	Verified: The United States Supreme Court summarily denied San Diego Gas & Electric’s petition for writ of certiorari on October 7, 2019.
14. Date of issuance of Final Order or Decision:	10/7/2019 (12/6/2017)	Verified
15. File date of compensation request:	12/4/2019	Verified. Also, on June 26, 2024, Protect Our Communities Foundation (POC) filed a Supplement to the Claim documenting the claim and requested attorney fees.
16. Was the request for compensation timely?		Yes

C. Additional Comments on Part I:

#	Intervenor's Comment(s)	CPUC Discussion
1.	<p>Participation in this proceeding posed a substantial financial hardship for POC because the economic interest of POC's constituents and supporters is small in comparison to the costs of POC's effective participation. <i>See</i> Pub. Util. Code § 1802(h). POC represents the interests of a specific constituency: San Diego area residential and small business ratepayers, including ratepayers in smaller communities whose interests are often not adequately represented in Commission proceedings. POC represents the interests of this constituency and POC's supporters within this constituency. POC's constituents and supporters are SDG&E ratepayers.</p> <p>SDG&E sought to recover \$379 million from ratepayers in this proceeding. POC's goal in this proceeding was to make a substantial contribution that would prevent an increase in rates for POC's constituents and supporters. While the total sum that SDG&E sought to recover was large, for any individual POC constituent or supporter the costs of participating in this proceeding individually would have far outweighed the individual ratepayer impacts of the proposed rate increases.</p>	Noted
2.	<p>POC sought intervenor compensation for its contributions to Decision D.17-11-033, issued on November 30, 2017. The Commission issued a final decision compensating POC \$76,936.31 on July 26, 2018. <i>See</i> D.18-07-034. POC also requested intervenor compensation for its work associated with the Commission's denial of the applications for rehearing of D.17-11-033 submitted by SDG&E, SCE, and PG&E. <i>See</i> D.18-07-025. The Commission compensated POC \$6,604.25 on May 31, 2019. <i>See</i> D.19-05-035.</p> <p>On November 13, 2018, the Court of Appeal denied SDG&E's Petition for writ of review of the Commission's decision. The Court of Appeal agreed with the stance POC took on inverse condemnation in its answer to SDG&E's petition. POC requested \$17,693.89 for its work before the Court of Appeal. On January 30, 2019, the California Supreme Court denied SDG&E's petition for writ of review of the Court of Appeal's decision. POC requested \$13,989.99 for its work before the California Supreme Court.</p>	Noted, with the following update: The Commission compensated POC's work before the Court of Appeal. <i>See</i> D.19-12-017. The Commission compensated POC's work before the California Supreme Court. <i>See</i> D.20-04-021.

#	Intervenor’s Comment(s)	CPUC Discussion
3.	On October 7, 2019, the United States Supreme Court denied SDG&E’s petition for writ of review of the Court of Appeal’s decision. POC should therefore be found eligible for compensation in the amount of \$28,131.40 for its work opposing the petition for a writ of review in the United States Supreme Court.	Verified as to the summary of the case before the United States Supreme Court. <i>See</i> Part III (D), below.

PART II: SUBSTANTIAL CONTRIBUTION

A. Did the Intervenor substantially contribute to the final decision (see § 1802(j), § 1803(a), 1803.1(a) and D.98-04-059):

Intervenor’s Claimed Contribution(s)	Specific References to Intervenor’s Claimed Contribution(s)	CPUC Discussion
<p>The Supreme Court summarily denied SDG&E’s petition for review. Under Rule 10 of the Rules of the Supreme Court of the United States, the Court may grant review of a petition when a state court “has decided an important federal question in a way that conflicts with relevant decisions” of the Supreme Court. POC made a substantial contribution by persuasively arguing that the Court of Appeal decision did not conflict with any Supreme Court precedent nor involve an important question of federal law, thus defending the Commission’s decision (D.17-11-033).</p> <p>POC argued that review was not necessary because the Commission’s decision—and the Court of Appeal’s decision declining to review it—did not</p>	<p>Case No. 18-1368, “The petition for a writ of certiorari is denied.”</p> <p>POC’s Brief in Opposition, Case No. 18-1368, at pp. 5-8.</p>	<p>Noted. <i>See</i> CPUC’s discussion in Part III (D).</p>

Intervenor’s Claimed Contribution(s)	Specific References to Intervenor’s Claimed Contribution(s)	CPUC Discussion
<p>conflict with Supreme Court precedent.</p> <p>SDG&E argued that the Commission’s denial of its application created a conflict with prior cases interpreting the Constitution’s Takings Clause because, SDG&E asserted, principles of fairness and justice underlying the Takings Clause require the state to spread wildfire liability costs to ratepayers. POC demonstrated that SDG&E’s argument was flawed. POC showed that no prior cases had held that a taking had occurred based on abstract principles of fairness and justice alone; but rather, prior cases relied on specific tests to identify whether a taking had occurred. POC further demonstrated that principles of fairness and justice did not require the Commission to pass SDG&E’s costs to ratepayers in this instance. SDG&E, POC argued, had acted imprudently. Fairness and justice do not require a state agency to impose the costs of a utility’s negligence on innocent ratepayers.</p> <p>POC also refuted SDG&E’s argument that the Court of Appeal’s decision conflicted with the Supreme Court’s regulatory takings precedent. POC argued that the Commission had correctly applied the three-factor test from <i>Penn Central Transportation Co. v. City of New York</i>, 438 U.S. 104 (1978) to determine that no taking had</p>	<p>POC’s Brief in Opposition, Case No. 18-1368, at pp. 8-11.</p>	

Intervenor’s Claimed Contribution(s)	Specific References to Intervenor’s Claimed Contribution(s)	CPUC Discussion
<p>occurred. POC argued that SDG&E failed to correctly identify what “property” had been allegedly taken from it—a prerequisite to a takings claim. POC also argued that (1) SDG&E had not demonstrated an economic impact sufficient to establish a taking, (2) SDG&E did not have reasonable investment-backed expectation in automatic recovery of wildfire liability costs resulting from its own negligence, and (3) the character of the governmental action did not favor a taking.</p> <p>Finally, in a concise section of less than a page, POC argued that Supreme Court review was unnecessary because the California legislature is engaged in an ongoing evaluation of the state’s approach to wildfire liability, and the Court should not interfere with ongoing legislative activities.</p>	<p>POC’s Brief in Opposition, Case No. 18-1368, at pp. 12-13.</p>	

A. Duplication of Effort (§ 1801.3(f) and § 1802.5):

	Intervenor’s Assertion	CPUC Discussion
<p>a. Was the Public Advocates Office of the Public Utilities Commission (Cal Advocates) a party to the proceeding?³</p>	<p>Yes⁴</p>	<p>Verified</p>
<p>b. Were there other parties to the proceeding with positions similar to yours?</p>	<p>Yes</p>	<p>Verified</p>

³ The Office of Ratepayer Advocates was renamed the Public Advocates Office of the Public Utilities Commission pursuant to Senate Bill No. 854, which the Governor approved on June 27, 2018.

⁴ The Public Advocates Office participated before the Commission, but did not file any briefs in the California courts or in the United States Supreme Court.

	Intervenor’s Assertion	CPUC Discussion
<p>c. If so, provide name of other parties: Ruth Henricks, California Public Utilities Commission (“Commission”)</p>		Verified
<p>d. Intervenor’s claim of non-duplication: POC initially waived its right to file an opposition to SDG&E’s petition in an effort to reduce costs. However, on May 30, 2019, the Supreme Court requested that POC file a response to the petition.</p> <p>To avoid duplication of effort, POC’s attorneys communicated with counsel for Ruth Henricks and counsel for the Commission. POC further adopted portions of the brief filed by Ruth Henricks, allowing POC to avoid briefing some of the same subjects that had been thoroughly addressed by other parties. <i>See, e.g.</i>, POC’s Brief in Opposition, Case No. 18-1368, at p. 4. POC also sought to coordinate with the Commission through the Commission’s outside counsel in Washington, D.C. (Paul Weiss firm). The Commission’s attorneys provided a general overview of topics they planned to cover, but informed POC that they were not in a position to share their brief with other parties until shortly before the filing deadline. It was thus not feasible for POC to either coordinate with or to adopt portions of the Commission’s brief, particularly in light of filing and printing deadlines.</p> <p>POC’s brief focused on issues different from those emphasized by Ruth Henricks and the Commission. For example, while the Commission also addressed the absence of a conflict with Supreme Court precedent interpreting the Takings Clause, POC explained specifically why the principles of fairness and justice cited by SDG&E (a) were not a valid “test” for identifying a taking, and (b) would not implicate a taking in this circumstance, in any event. POC was also the only party that explained in detail why the Commission did not err in its application of the <i>Penn Central</i> factors relevant to whether a regulatory taking had occurred. And POC was the only party to address the arguments filed by <i>amici curiae</i> Pacific Gas & Electric and Southern California Edison Co. and identify their flaws. <i>See</i> POC’s Brief in Opposition, Case No. 18-1368, at pp. 6-7.</p> <p>Finally, to avoid duplication of effort, POC filed a concise answer brief of only 3,113 words, approximately 3,000 fewer words than the petition filed by SDG&E, 2,000 fewer words than the brief filed by the Commission, and 1,300 fewer words than the brief filed by Ruth Henricks.</p>		Noted. <i>See</i> Part III(D).

PART III: REASONABLENESS OF REQUESTED COMPENSATION

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

	CPUC Discussion
<p>a. Intervenor’s claim of cost reasonableness:</p> <p>POC’s advocacy, reflected in this request for compensation of \$28,131.40, contributed to the Supreme Court’s decision denying SDG&E’s Petition for review involving D.17-11-033. POC’s rebuttal of SDG&E’s arguments provided valuable context for the Supreme Court’s evaluation of whether SDG&E’s petition and the Court of Appeal’s decision presented any conflicts in decisional law.</p> <p>The resources POC expended to secure the Supreme Court’s denial of the petition for review are minimal relative to the resulting ratepayers savings. More specifically, had the Supreme Court granted the petition for review and ultimately overturned the Commission’s decision, ratepayers could have been on the hook for \$379 million of wildfire liability costs incurred by SDG&E.</p>	Noted
<p>b. Reasonableness of hours claimed:</p> <p>POC engaged outside counsel to address the complex and controversial issues raised in this proceeding.</p> <p>Where possible, research and drafting work associated with the opposition brief was performed by a junior attorney at a lower billing rate. Senior attorneys supervised and provided strategic guidance. Although two senior attorneys were involved in supervising work on the opposition brief, the two senior attorneys brought different expertise to the effort. Catherine Engberg had litigated this matter at each stage of the proceeding and was deeply familiar with the facts and legal issues. Matthew Zinn, a member of the United States Supreme Court bar, was brought on as Supreme Court counsel.</p> <p>All of the hours claimed in this request were reasonably necessary to the achievement of POC’s substantial contributions, and no unnecessary duplication of effort is reflected in the attached timesheets. As mentioned above, POC efficiently endeavored to keep its answer brief concise. Further, POC is not requesting compensation for any time incurred by paralegals, law clerks, or attorneys who spent less than five hours contributing to the brief.</p>	Noted. <i>See</i> Discussion in Part III (D), below.
<p>c. Allocation of hours by issue:</p> <p>Brief in Opposition to SDG&E’s Petition for Writ of Review in the Supreme Court (100%)</p>	Noted

B. Specific Claim: *

CLAIMED						CPUC AWARD		
ATTORNEY, EXPERT, AND ADVOCATE FEES								
Item	Year	Hours	Rate	Basis for Rate*	Total	Hours	Rate	Total
Catherine Engberg (senior attorney)	2019	25.7	\$440	D.18-07-034; D.19-05-035; ALJ-357	\$11,308.00	15.42 [5]	\$440 [6]	\$6,784.80
Aaron Stanton (associate attorney)	2019	41.8	\$230	ALJ-357	\$9,614.00	25.08 [5]	\$230 [6]	\$5,768.40
Matthew Zinn (senior attorney)	2019	14.0	\$440	ALJ-357	\$6,160.00	8.40 [5]	\$440 [6]	\$3,696.00
Subtotal: \$27,082.00						Subtotal: \$16,249.20		
INTERVENOR COMPENSATION CLAIM PREPARATION **								
Item	Year	Hours	Rate	Basis for Rate*	Total	Hours	Rate	Total
Aaron Stanton	2019	6	\$115	½ 2019 rate of \$230/hour	\$690.00	6.00	\$115	\$690.00
Subtotal: \$690						Subtotal: \$690.00		
COSTS								
#	Item	Detail			Amount	Amount		
1	Photocopying	Photocopy charges @ \$.10 per page			\$20.40	\$20.40		
2	Cockle Legal Briefs	Publisher			\$220.00	\$220.00		
3	Cockle Printing Company	Publisher			\$119.00	\$119.00		
Subtotal: \$359.40						Subtotal: \$359.40		
TOTAL REQUEST: \$28,131.40						TOTAL AWARD: \$17,298.60		
						Reduced by the Amount previously awarded and paid to POC pursuant to D.21-02-027: \$14,612.40		
						Total Award Remaining Due: \$2,686.20		
<p>*We remind all intervenors that Commission staff may audit the records and books of the intervenors to the extent necessary to verify the basis for the award (§1804(d)). Intervenors must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. Intervenors' records should identify specific issues for which it seeks 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>**Travel and Reasonable Claim preparation time are typically compensated at ½ of preparer's normal hourly rate</p>								
ATTORNEY INFORMATION								

CLAIMED			CPUC AWARD
Attorney	Date Admitted to CA BAR ⁵	Member Number	Actions Affecting Eligibility (Yes/No?) If “Yes”, attach explanation
Catherine Engberg	2002	220376	No
Aaron Stanton	2016	312530	No
Matthew Zinn	2001	214587	No

C. Attachments Documenting Specific Claim and Comments on Part III

Attachment or Comment #	Description/Comment
1	Certificate of Service
2	Attorney Time Sheet Detail & Categorization for United States Supreme Court Work
3	Attorney Resumes
4	Expense Detail

D. CPUC Disallowances and Adjustments:

Item	Reason
[1]	<p>Substantial Contribution</p> <p>Protect Our Community Foundation (POC) was one of the parties opposing SDG&E’s petition for a writ of certiorari (Petition) at the United States Supreme Court (Court) requesting a review of D.17-11-033. The Court summarily denied the Petition.⁶ POC claimed that its advocacy at the Court contributed to D.17-11-033. Our decision on the claim, D.21-02-027 disallowed 50% of this claim because it found no evidence showing the Court’s reliance on POC’s input; and POC appealed this decision. D.21-12-064 vacated D.21-02-027 because “it is the Commission decision, not the court’s decision, that matters for purposes of satisfying the substantial contribution requirement.” (D.21-12-064 at 5.)</p> <p>D.21-12-064 directed us to apply the correct legal standard for substantial contribution, and to determine a reasonable award. (D.21-12-064 at 2 and 10.) Under this guidance, we find that POC’s work before the Court “related to ... the</p>

⁵ This information may be obtained through the State Bar of California’s website at <http://members.calbar.ca.gov/fal/MemberSearch/QuickSearch>.

⁶ See US Supreme Court Docket at: <https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/18-1368.html>.

Item	Reason
	<p>substantial contribution made in the Commission decision for which compensation is sought,”⁷ contributed to D.17-11-033.</p> <p>We also note that the opposing parties – the Commission, Ruth Henricks, and POC focused on similar arguments (that D.17-11-033 did not conflict with the law, that the utility lacked due care, and that no unconstitutional taking took place). However, because POC’s Brief might add to the substance of the co-opponents’ briefs, we do not reduce the award for unnecessary duplication of other parties’ participation here (<i>See</i> § 1802.5).</p>
[2]	<p style="text-align: center;">Reasonableness of the Claim</p> <p><u>Legal Framework</u></p> <p>The statute mandates the Commission to administer the Intervenor Compensation Program (Program) “in a manner that encourages the effective and efficient participation of all groups that have a stake in the public utility regulation process.” (§ 1801.3(b)). The statute stresses that only reasonable costs of participation are compensable (<i>See</i> §§1801, 1802(a), (e), and (j), and 1803(a)). We have found that POC’s participation before the Court contributed to D.17-11-033 but must also assess the reasonableness of the costs.</p> <p><u>POC’s Work Was Internally Duplicative and Inefficient</u></p> <p>POC engaged three attorneys in this case: (1) Aaron Stanton, a junior attorney, who conducted research and drafted the Brief, and (2) Matthew Zinn and (3) Catherine Engberg, two senior attorneys who supervised and provided strategic guidance. Mr. Zinn was brought on board because of his experience before the Court, and Ms. Engberg – because she was “deeply familiar” with the proceeding’s facts and legal issues.” (Claim at 12).</p> <p>We find that POC’s work on this case was internally duplicative and inefficient. The record indicates that prior to the certiorari case, Mr. Stanton had devoted to the proceeding almost the same amount of time as Ms. Engberg.⁸ Therefore, it can be reasonably expected that his knowledge of the proceeding’s “facts and legal issues” would be no less deep than Ms. Engberg’s. Also, Mr. Stanton’s past participation focused, specifically, on similar challenges to D.17-11-033 that are essential to POC’s opposition to SDG&E in the certiorari case. Accordingly, Catherine Engberg’s hours necessary to supervise and guide Aaron Stanton in this case should be minimal. However, the time spent on strategizing and supervising was almost the same as the time spent on drafting the Brief.⁹ We also note that some of the tasks</p>

⁷ D.03-04-034 at 5; D.21-12-064 at 5.

⁸ According to POC’s Intervenor Compensation Claims of February 2, 2018, July 30, 2018, January 14, 2019, and April 2, 2019, Stanton spent approximately 103.00 and Engberg 107.00 hours on POC’s participation and contribution to D.17-11-033.

⁹ Almost 40 hours for the senior attorneys’ work and almost 42 for the junior attorney’s work.

Item	Reason
	<p>performed by Catherine Engberg were duplicative of the tasks assigned to Mr. Stanton.¹⁰ Also, the Claim does not state any specific challenges – either procedural or legal – presented in this case that would require engaging more than two attorneys and incurring more than 80 hours of work on the same issues that had already been compensated for in this proceeding. Our reductions to the award reflect the duplication and inefficiency of POC’s work.</p> <p><u>POC’s Past Work in this Proceeding on the Same or Closely Related Issues</u></p> <p>The record shows that throughout this proceeding POC had addressed the same or closely related and similar substantive issues of A.15-09-010, including challenges to D.17-11-033, that POC was faced with before the Court. POC’s advocacy on these matters remained consistent,¹¹ and POC has been compensated for more than 420 hours for that work.¹² Despite having the advantage of its past work, POC spent an additional 80 hours advocating same or closely related and similar issues, only this time in a different venue. This difference may explain the engagement of Mr. Zinn but not the expenditure of 80 hours on one substantive document prepared by POC. Also, POC does not point to any unusual or new challenges, either procedural or legal, facing POC, and we find none to support the claim of this size. We find the time claimed for this work to be excessive given that POC has already been compensated for its advocacy on these matters.</p>
[3]	<p><u>POC’s Brief Preparation Was Unnecessarily Time-Consuming</u></p> <p>POC allocates all its hours of work to a single “issue” – the Brief (Claim Part III(c) at 13).¹³ It is a 13-page document, where 4.5 pages summarize POC’s position and adopt the contents of Ruth Henricks’s brief with respect “to the factual and procedural background of the case,”¹⁴ and the remaining 8 pages focus on the facts and/or arguments well familiar to the POC from the proceeding’s prior stages.¹⁵ The Brief was filed on July 31, 2019 so that POC had an additional advantage – the opportunity to familiarize itself with the work done by Henricks and CPUC in their briefs filed on May 30 and July 26, 2019, respectively, addressing the same issues of SDG&E’s petition. Under these circumstances, we should expect more efficiency on the POC’s part.</p>

¹⁰ See POC’s Intervenor Compensation Claim of December 4, 2019 at 12.

¹¹ See POC’s Intervenor Compensation Claims for contributions to D.17-11-033 filed at the various stages of this proceeding on February 2 and July 30, 2018; and January 14, April 2, and December 4, 2019.

¹² POC’s Intervenor Compensation Claims, above, and POC’s Application for Rehearing of D.21-02-027 filed on March 19, 2021, at 5-6.

¹³ We note that Part III(c) of the claim requires an intervenor to allocate its hours by the proceeding’s substantive issues. A brief is not a substantive issue.

¹⁴ POC’s Brief at 4.

¹⁵ See POC’s Application for Rehearing of D.21-02-027 filed on March 19, 2021, at 5-6, describing POC’s arguments on these issues.

Item	Reason
	<p>POC asserts that some of its contributions to D.17-11-033 were unique: it was the only party explaining in detail why the Commission did not err in applying the <i>Penn Central</i> factors on regulatory taking; identifying flaws of the arguments in amici curiae briefs; and explaining why the principles of fairness and justice cited by SDG&E were not a valid “test” for identifying a taking, and would not, in any event, implicate a taking.¹⁶ Our careful review of the corresponding portions of the Brief, however, does not explain a need to accumulate dozens of hours of work: contributions POC claims here were either the same or very similar to the contributions the Commission already acknowledged and compensated; and the claimed hours do not correspond to the amount of the additional research and analysis required to produce the contents of the Brief.</p> <p>With respect to the argument that D.17-11-033 did not err in applying <i>Penn Central Transportation Co. v. City of New York</i>,¹⁷ the Brief indeed argued that the decision did not <i>conflict</i> with this case. We find that this argument contributed to D.17-11-033. However, from the legal analysis standpoint, the level of the Brief’s critique of SDG&E’s argument should not require extensive research and writing. Plus, POC had a chance to familiarize itself with the similarly minded parties’ work,¹⁸ including research revealing, among other things, that D.17-11-033 did “not conflict with any decision of this Court, a federal court of appeals, or a state court of last resort” [Emphasis added.]¹⁹ The Brief also appears to recycle the work done previously by SDG&E’s opponents, including POC itself, related to SDG&E’s inverse condemnation argument. While this argument contributed to our decision, it does not justify the excessive number of hours allocated to the Brief.</p> <p>With respect to POC’s claim that it was the only party that addressed the amici curiae briefs, we find that POC contributed to the decision; however, the Brief focused on the selected portion of the amici briefs and POC’s short feedback on the issue did not require extensive research and analysis. POC also engaged the same arguments (the lack of the utility’s due care, etc.) previously.</p> <p>With respect to POC’s contentions that it uniquely contributed by explaining why the principles of fairness and justice cited by SDG&E were not a valid “test” for identifying a taking, and would not, in any event, implicate a taking under the circumstances of the case, this presentation should not require extensive research and analysis. The few sentences POC provided on the subject appear to, mostly,</p>

¹⁶ Claim at 11.

¹⁷ 438 U.S. 104 (1978).

¹⁸ See, for example, CPUC’s Brief at 12.

¹⁹ CPUC Brief at 2-3.

Item	Reason
	<p>rephrase its own as well as Henricks’ and the Commission’s previous explanations as to why the unconstitutional taking argument was invalid, which should not require a significant number of hours to draft.</p> <p>POC also credits itself with arguing that D.17-11-033 and the Court of Appeal’s decision did not conflict with precedent, the review by the Court was not necessary, no taking had occurred, and the Court should not interfere with the State’s ongoing legislative activities in the wildfire liability area. POC’s similar arguments had been presented, commented on and/or briefed by SDG&E’s opponents (including Ruth Henricks, Commission, and POC itself) to SDG&E’s application and petitions for judicial review and, therefore, should not require extensive efforts to draft.</p> <p>According to the time records, writing, editing and revising 8 pages of the Brief by three attorneys took approximately 52 hours. POC also spent approximately 26 hours strategizing, coordinating, e-mailing, talking on the phone, reviewing filings,²⁰ outlining, researching, and other related activities. The above review of the record shows that the preparation of the Brief and completion of other tasks were inexplicably time-consuming. Below, we provide more examples of unproductive and inefficient non-compensable efforts.</p>
[4]	<p><u>Other Inefficient and Unproductive Activities</u></p> <p>On May 22, 2019, POC and the Commission filed their respective waivers from filing a response to the Petition. POC spent 5.5 hours strategizing, emailing, making calls, etc., regarding the waiver. This included 1.20 hours spent by POC’s attorney on the clerical task of completing a simple waiver form.²¹</p> <p>Senior attorney Catherine Engberg spent, approximately, 4.40 hours on research and cite-checking which was purported to be the junior attorney Aaron Stanton’s work.²² Both Mr. Stanton and Mr. Zinn engaged in “strategizing.”²³ POC’s joinder with the Commission did not realize – accordingly, Ms. Engberg’s joinder-related hours²⁴ did not contribute to D.17-11-033. 1.50 hours was spent communicating and coordinating with Ruth Henricks’ attorney on the same date her brief was filed and thereafter appears unnecessary as POC’s Brief was filed two months later.²⁵ As we</p>

²⁰ There were six pleadings filed of approximately 20 pages each (a petition, two briefs, and three amici briefs).

²¹ In D.14-09-013 we found excessive 1.1 hours allocated to the motion for party status that contained only six substantive sentences (D.14-09-013 at 23).

²² See Engberg’s time records of 05/15/19, 05/16/19, 7/9/19, and 7/22/19. Where a single time record combines several tasks, we divide the claimed hours by the number of tasks, to allocate hours to the task being disallowed.

²³ See Aaron Stanton’s time records of 05/08 and 05/24/19; and Zinn’s records of 05/06-07/08/19.

²⁴ See Engberg’s time records of 06/26/19.

²⁵ See Engberg’s time records of 05/30/19, 06/03 and 06/07/19.

Item	Reason
	have mentioned, each attorney spent hours reviewing the same record ²⁶ and working on the same matters.
[5]	<p data-bbox="331 365 1377 432"><u>Determining the Appropriate Reductions for Inefficient Work and Excessive Hours</u></p> <p data-bbox="331 453 1414 632">To implement the statutory requirement of reasonable costs, the Commission has applied different methods of reduction to the claimed hours. It appears that under the circumstances similar to the ones surrounding POC's participation the Commission has applied across-the-claim percentile reductions, or a combination of the hour/task-specific reductions and across-the-claim percentile ones.</p> <p data-bbox="331 674 1390 852">In one example, D.11-01-021 weighted the hours claimed against the actual contribution, and determined that they were excessive. To award hours that were reasonable in relation to the specific contribution, the decision prescribed a percentile adjustment, in addition to the task/hour-specific reductions.²⁷ The award was reduced by 40%. The decision explains that it:</p> <p data-bbox="428 873 1312 1052">“... identified several areas of concern, which warrant further reductions of the requested amount. Because of a multitude of the problems, we, instead of doing multi-tiered and piecemeal reductions for specific activities, apply percentile reductions to the requested hours...”</p> <p data-bbox="428 1073 1312 1283">We observe that while PACE's referenced documents, in general, contributed to the final decision, the requested time does not measure up to the actual direct contributions. PACE produced for the record less than 40 pages of the substantive text and supporting documents. Of these pages, approximately only 20-25 relate to the PACE's contributions.</p> <p data-bbox="428 1304 1312 1451">Considering PACE's actual input, we view hours PACE requests for its contributions as excessive. To achieve a reasonable compensation, reflective of the actual direct contributions on this issue, we adjust PACE's hours.”²⁸</p> <p data-bbox="331 1482 1325 1625">Here, we also find that the intervenor contributed to the final decision, but the requested time is not commensurate with the effort required to make the contribution, for the stated reasons. Additionally, POC has already been compensated for the same or very similar contributions to the final decision.</p>

²⁶ See Zinn's time records of July 18, Engberg's time records of May 1, May 30 and 31, and June 7, 2019; and Stanton's time records of May 30, 2019.

²⁷ See D.11-01-021 at 11-16.

²⁸ See D.11-01-021 at 11.

Item	Reason
	<p>In another example, D.10-04-022 applied hour/task-specific reductions before reducing the requested hours for inefficient efforts by 5% and by “an additional 12% of the time NRDC requests for its work on the merits.”²⁹ Among other things, that decision also assessed, as we do here, the “...amount and complexity of research and analysis necessary to prepare documents for the formal records ...”³⁰</p> <p>In another example, D.04-02-026 found that approximately 275 hours spent preparing four pleadings and on the associated participation were excessive, and reduced the claim by 30%. That decision stated that among other things, the Commission stated that judging by the intervenor’s earlier participation, much of the content in the four filings derived from facts and arguments SSRC had made earlier in the proceeding. Organizing those facts and arguments, and doing the modest amount of new work needed to respond to SDG&E’s petition and application for rehearing, should not have consumed seven weeks of attorney time. That decision found the effort inefficient and applied a 30% reduction to the request.³¹</p> <p>We find that the circumstances surrounding POC’s participation before the Court are similar to those in D.04-02-026, because much of the content in the Brief mirror facts and arguments already made in previous filings.</p> <p>Therefore, we find it reasonable to reduce the claim by 40% of the requested hours. This adjustment accounts for the fact that POC was already compensated for the same or similar contributions to D.17-11-033, that POC’s Brief did not require extensive research and analysis, that POC’s participation was internally duplicative and inefficient, and that the case did not appear to present any new legal or procedural challenges that would require extra effort.</p>

²⁹ D.10-04-022 at 34-36. The Commission states in this decision:

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%. D1004022 at 35.

³⁰ D.10-04-022 at 36.

³¹ D.04-02-026 at 18-19.

Item	Reason
[6] Rates ³²	<p>POC requests an hourly rate of \$440 for Catherine Engberg’s work in 2019. D.19-05-035 adopted the hourly rate of \$430 for her work in 2018. To establish the appropriate rate for Ms. Engberg’s work in 2019, we apply 2.35% cost of living adjustment adopted in Resolution ALJ-357, which results in the hourly rate of \$440, which we adopt here.</p> <p>POC requests an hourly rate of \$230 for Aaron Stanton’s work in 2019. D.20-04-021 adopted an hourly rate of \$225 for Mr. Stanton’s work in 2018. To establish the appropriate rate for Mr. Stanton’s work in 2019, we apply 2.35% cost of living adjustment adopted in Resolution ALJ-357, which results in the hourly rate of \$230, which we adopt here.</p> <p>POC requests an hourly rate of \$440 for Matthew Zinn’s work in 2019. Mr. Zinn was admitted to the California Bar Association’s membership in September of 2001, and in 2019 had 18 years of the attorney experience. Pursuant to Resolution ALJ-357, attorneys with 13+ years of experience may be awarded between \$350 and \$615 for their work in 2019. We find the requested hourly rate reasonable and adopt it here.</p>

PART IV: OPPOSITIONS AND COMMENTS
Within 30 days after service of this Claim, Commission Staff or any other party may file a response to the Claim (see § 1804(c))

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

Party	Comment	CPUC Discussion

³² In accordance with our practice, all adopted rates are rounded to the nearest \$5.00 increment.

FINDINGS OF FACT

1. Through its participation before the United States Supreme Court in the petition for a writ of certiorari proceeding, intervenor Protect Our Communities Foundation has made a substantial contribution to D.17-11-033.
2. The requested hourly rates for Protect Our Communities Foundation's representatives are comparable to market rates paid to experts and advocates having comparable training and experience and offering similar services.
3. The claimed costs and expenses, as adjusted herein, are reasonable and commensurate with the work performed.
4. The total of reasonable compensation is \$17,298.60. D.21-02-027 previously awarded POC \$14,612.40 of this amount.
5. The amount due to the Protect Our Communities Foundation is \$2,686.20, as set forth.

CONCLUSION OF LAW

1. The Claim, with any adjustment set forth above, satisfies all requirements of Pub. Util. Code §§ 1801-1812.

ORDER

1. Protect Our Communities Foundation (POC) is awarded \$17,298.60, however \$14,612.40 was previously awarded and paid to POC pursuant to Decision 21-02-027. The remaining amount of \$2,686.20 is payable, as set forth.
2. Within 30 days of the effective date of this decision, San Diego Gas & Electric Company shall pay Protect Our Communities Foundation the amount of \$2,686.20 of the award. Payment of the award shall include compound interest at the rate earned on prime, three-month non-financial commercial paper as reported in Federal Reserve Statistical Release H.15, beginning February 17, 2020, the 75th day after the filing of Protect Our Communities Foundation's request, and continuing until full payment is made.

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

This decision is effective today.

Dated _____, at San Francisco, California.

APPENDIX**Compensation Decision Summary Information**

Compensation Decision:		Modifies Decision?	No
Contribution Decision(s):	D1711033		
Proceeding(s):	A1509010		
Author:	ALJ Division		
Payer(s):	San Diego Gas & Electric Company		

Intervenor Information

Intervenor	Date Claim Filed	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
Protect Our Communities Foundation	12/04/19	\$28,131.40	\$2,686.20	N/A	Inefficient effort, duplication of the past work; hours claimed are not commensurate with the actual contribution; and the fact that the award must be reduced by the amount already received by the intervenor pursuant to the decision on the same claim.

Hourly Fee Information

First Name	Last Name	Attorney, Expert, or Advocate	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Catherine	Engberg	Senior Attorney	\$440	2019	\$440
Aaron	Stanton	Associate Attorney	\$230	2019	\$230
Matthew	Zinn	Senior Attorney	\$440	2019	\$440

(END OF APPENDIX)