

Decision 03-10-056 October 16, 2003

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of San Diego Gas
& Electric Company (U 902-E) for a Certificate Of
Public Convenience & Necessity Valley-Rainbow
500kV Inter-Connect Project.

Application 01-03-036
(Filed March 23, 2001)

**DECISION AWARDING INTERVENOR COMPENSATION
TO SAVE SOUTHWEST RIVERSIDE COUNTY (SSRC)**

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**DECISION AWARDING INTERVENOR COMPENSATION
TO SAVE SOUTHWEST RIVERSIDE COUNTY**

This decision awards Save Southwest Riverside County (SSRC) \$629,118.90¹ for its contribution to Decision (D.) 02-12-066. This amount is \$38,501.74 less than SSRC's requested amount of \$667,620.64. We have reduced SSRC's request because it 1) sought hourly rates for its experts that exceeded those we have awarded to other experts appearing before the Commission, 2) included uncompensable attorney time in its request, and 3) included in its \$43,330.64 cost request costs that are excessive and not directly related to its contentions or recommendations in this proceeding.

1. Background

In D.02-12-066, we denied San Diego Gas & Electric Company's (SDG&E) request for a certificate of public convenience and necessity (CPCN) to construct a proposed 500 kilovolt (kV) transmission project and associated upgrades, called the Valley-Rainbow Project (Project). We reasoned that SDG&E would continue to meet established reliability criteria under conservative supply and demand forecasts within the adopted five-year planning horizon, and therefore concluded that the proposed project was not needed for reliability purposes.

Because SDG&E could not justify the proposed project on the basis of reliability, we evaluated whether the Project would provide positive economic benefits to SDG&E ratepayers and California generally. We found that the proposed project was not cost-effective to ratepayers except under extreme assumptions that were insufficient to cause us to grant the application. Under all

¹ In its original request, SSRC sought \$692,362.64. It later revised this figure downward to \$667,620.64, the amount we consider in this decision.

other assumptions, the projected costs exceeded the projected benefits. Thus, we found that the proposed project could not be justified on economic grounds.

The Commission did not need to reach issues related to the environmental impact or siting of the Project in D.02-12-066 due to its rejection of the transmission line based on need criteria. Nonetheless, during Phase 1 of this proceeding, we took action to set the stage for such environmental and siting review in the event the Commission opted to approve the Project.

SSRC participated in each of the foregoing three aspects of the Project evaluation. It contributed to the Commission's consideration of the "reliability need" issue by offering testimony, cross-examination, oral argument and briefing on the issue, which had, according to SSRC, at least 16 sub-issues. SSRC provided testimony, cross-examination, oral argument, briefing and comments on the economic need issue. Finally, because the Commission initiated its environmental review of the Project during the first phase of the proceeding, SSRC provided substantial written comments on environmental issues and participated in public meetings related to the environmental impacts of and alternative routes for the Project. The Commission regularly cited the record SSRC provided, and the theories it advanced, in denying SDG&E's application.

SDG&E opposes certain aspects of SSRC's request. First, it claims that SSRC received more than \$300,000 in private donations, and urges the Commission to deduct these amounts from any compensation award to prevent double recovery. Second, it argues that in its notice of intent to seek compensation, SSRC grossly underestimated the amount it would spend on the case, and that the Commission should hold SSRC to its early estimate. Third, it claims SSRC's hours related to the reliability need and economic need issues are inflated. Fourth, it argues that because D.02-12-066 did not decide

environmental or siting issues, SSRC should not receive compensation for work on these matters. Fifth, it asks us to disallow or reduce unallocated time that SSRC did not attribute to the reliability need, economic need or environmental/alternates issues. Sixth, it asks us to disallow compensation for time spent communicating with the press or lobbying non-Commission governmental officials, and working on condemnation issues. Finally, it challenges SSRC's claimed costs as excessive because a large amount of the costs relate to fundraising activities, community organizing and travel. We will reach each of these issues in discussing our award. However, we first discuss the requirements for an award of intervenor compensation.

2. Requirements for Awards of Compensation

Intervenors who seek compensation for their contributions in Commission proceedings must file requests for compensation pursuant to Pub. Util. Code §§ 1801-12. (Unless otherwise noted, all statutory citations are to the Public Utilities Code.)

A. Notice of Intent

Section 1804(a) requires an intervenor to file a notice of intent (NOI) to claim compensation within 30 days after the prehearing conference (PHC) or by a date established by the Commission. The NOI must present information regarding the nature and extent of the customer's planned participation and an itemized estimate of the compensation the customer expects to request. The NOI may request a finding of eligibility.

1. Timeliness of NOI

SSRC filed a timely NOI on July 20, 2001. An Administrative Law Judge's (ALJ) ruling dated August 9, 2001 found SSRC eligible to claim compensation in this proceeding.

2. Financial Hardship

SDG&E raises a novel issue related to SSRC's financial hardship – a prerequisite to receiving compensation. Section 1802(g) defines financial hardship as a state in which the customer cannot afford, without undue hardship, to pay the cost of effective participation. For a group or organization, Section 1802(g) defines financial hardship as a state in which “the economic interest of the individual members of the group or organization is small in comparison to the costs of effective participation in this proceeding.” ALJ Cooke found that SSRC had satisfied the financial hardship test in her ruling on SSRC's NOI.

SDG&E claims that SSRC received more than \$300,000 in private donations and further financial backing from the Pechanga Development Corporation (Pechanga), another party to the proceeding. It questions whether SSRC truly needs the compensation in view of these contributions.

While SSRC refutes the amounts and sources of its contributions to some extent, it does not dispute that it received substantial private donations. This fact raises a question of first impression before this Commission. If an organization is formed for the sole purpose of intervening in a particular Commission proceeding, and then disbands, should we consider private donations the organization raises in determining whether the organization meets the financial hardship standard? This is an extremely narrow circumstance: most intervenors before the Commission are not formed solely to participate in a single proceeding, and use both private donations and intervenor compensation in their ongoing work on multiple Commission proceedings. However, if SSRC disbands, having already received donations to cover some or all of its expenses,

is it appropriate that it receive intervenor compensation that may not be channeled into future work on Commission proceedings?

SSRC focuses on the statutory language relevant to group participation, which requires that the economic interest of the individual members of the group be small in comparison to the costs of effective participation in the proceeding. ALJ Cooke's NOI ruling found this standard met because "SSRC's members are residential customers whose interests in this proceeding are small relative to the costs of participation and the cost of SSRC's participation in Commission proceedings substantially outweighs the benefit to any individual customer it represents."² Similarly, ALJ Gottstein rejected SDG&E's identical argument regarding SSRC: "Nor does SDG&E cite any authority for the proposition that we should consider SSRC's fundraising capabilities in determining financial hardship. This proposition fails"

SDG&E provides no authority demonstrating that we cannot issue an award to a group that meets the statutory test but that also has a demonstrated ability to raise other funding. We suspect that many groups that appear before us and receive intervenor compensation also have fundraising capabilities. While we believe there is some cause for concern in this case – where we are awarding funding after the fact to a group that may already have been able to raise funds to cover its costs and shows no plans to remain in business for future efforts – we do not see any way around the statutory requirements.

² *ALJ Cooke's Ruling Regarding Notices of Intent to Claim Compensation, Aug. 6, 2001, at 6. ALJ Gottstein's Ruling Regarding Notice of Intent to Claim Intervenor Compensation, May 21, 2001, at 11.*

SDG&E has provided no evidence refuting ALJ Cooke's finding that SSRC's residential customer members have interests that are small relative to the costs of participation. Nor has it made any argument that we may look to a different financial hardship test for SSRC than we use for other groups and organizations. Therefore, we do not find that SSRC's fundraising ability is relevant to a determination of its financial hardship or other eligibility for intervenor compensation. We affirm that SSRC has met the financial hardship requirement.

B. Timeliness of Compensation Request

Section 1804(c) requires an eligible customer to file a request for an award within 60 days of issuance of a final order or decision by the Commission in the proceeding. The Commission issued D.02-12-066 on December 24, 2002. SSRC timely filed its request for an award of compensation on February 24, 2003.

3. Substantial Contribution to Resolution of Issues

Under § 1804(c), an intervenor requesting compensation must provide "a detailed description of services and expenditures and a description of the customer's substantial contribution to the hearing or proceeding."

Section 1802(h) states that "substantial contribution" means that,

in the judgment of the commission, the customer's presentation has substantially assisted the commission in the making of its order or decision because the order or decision has adopted in whole or in part one or more factual contentions, legal contentions, or specific policy or procedural recommendations presented by the customer. Where the customer's participation has resulted in a substantial contribution, even if the decision adopts that customer's contention or recommendations only in part, the commission may award the customer compensation for all reasonable advocate's fees, reasonable expert fees, and other reasonable

costs incurred by the customer in preparing or presenting that contention or recommendation.

Section 1804(e) requires the Commission to issue a decision that determines whether the customer has made a substantial contribution and what amount of compensation to award. The level of compensation must take into account the market rate paid to people with comparable training and experience who offer similar services, consistent with § 1806.

As provided in § 1802(h), a party may make a substantial contribution to a decision in one of several ways. It may offer a factual or legal contention upon which the Commission relied in making a decision, or it may advance a specific policy or procedural recommendation that the ALJ or Commission adopted. A substantial contribution includes evidence or argument that supports part of the decision even if the Commission does not adopt a party's position in total.³

SSRC alleges it made a substantial contribution to each of the three main issues the Commission considered: reliability need, economic need, and environmental impact/alternative siting. We agree as to each issue, as we discuss below.

A. Reliability Need

With regard to reliability need, we agree with SSRC that the Commission decided at least 16 issues favorably to SSRC on this issue, and relied on SSRC's presentation in doing so.

³ The Commission has provided compensation even when the position advanced by the intervenor is rejected. *See* D.89-03-063 (awarding San Luis Obispo Mothers For Peace and Rochelle Becker compensation in Diablo Canyon Rate Case because their arguments, while ultimately unsuccessful, forced the utility to thoroughly document the safety issues involved).

SSRC's work on the following issues falls into this category: 1) whether the Commission is legally obligated to defer to the Independent System Operator's (ISO) determination regarding need; 2) the proper analytical approach to evaluation of the reliability need issue; 3) the appropriate time horizon within which to assess need; 4) whether the output of two existing generating units in San Diego owned by RAMCO should be included in the resource tally; 5) whether the output of two existing generating units in San Diego on Navy land should be included in the resource tally; 6) whether construction of new generation in San Diego would lead to the retirement of existing generation; 7) whether there is a standard industry practice for determining when to count the output from proposed new generation in a reliability analysis; 8) whether the output of the proposed and permitted Otay Mesa plant should be included in the resource tally for the reliability analysis; 9) the proper interpretation of Calpine's contract with the State of California; 10) how the Commission should address the potential availability of electricity from Sempra's Palomar Energy Project; 11) how the Commission should address the potential availability of electricity from additional RAMCO units; 12) how the Commission should address the potential availability of electricity from repowered generating units; 13) the impact of potential outages at the permitted Otay Mesa power plant; 14) whether electricity will flow through Mexico to San Diego in the case of certain outages; 15) determination of the appropriate demand forecast; and, ultimately 16) whether the Project was needed and whether SDG&E would have sufficient resources to meet its customer demand over the adopted planning horizon. On the reliability need issue, SSRC also contributed to the resolution of a number of procedural motions.

We agree with SSRC that it contributed substantially to the Commission's decision on reliability need.

B. Economic Need

On the economic need issue, SSRC's testimony provided a technical assessment of each of the economic rationales advanced for the Project by the ISO and SDG&E, and evaluated the reasonableness underlying SDG&E's expert analysis. SSRC's counsel cross-examined SDG&E's and the ISO's economic witness at the hearings and submitted approximately 31 pages of briefing on economic issues. The Commission's decision cites to and quotes at length from SSRC's contribution to the issue, quotes SSRC's evidence and expert analysis, and quotes SSRC cross-examination. SSRC also successfully contributed to several motions related to the economic need issue. We agree with SSRC that it contributed substantially to the Commission's decision on economic need.

C. Environmental Impact/Siting

On the issue of environmental impact and alternative siting, SDG&E opposes any award, and alternatively proposes a reduction. SSRC seeks to be compensated for over 400 hours for time spent addressing this issue. SDG&E states that because the Commission did not address environmental impact in its decision, SSRC did not make a substantial contribution on this issue.

We disagree with SDG&E's suggestion that SSRC may receive no compensation for work related to environmental/siting issues. As SSRC points out, the Commission initiated the environmental review process during Phase 1 of the proceeding. We held three scoping meetings in various locations near Temecula, which provided community members and other interested parties the opportunity to give input on environmental and siting issues. We also produced

a preliminary analysis of alternatives during Phase 1, which cited SSRC's contributions.

We agree with SSRC that it is appropriate for it to seek compensation for its contribution to the Commission's interim environmental process and analysis of alternatives because the only opportunity for parties to participate in the process occurred during Phase 1. We also agree with SSRC that in order to be prepared for the potential second phase of the proceeding, it was necessary for SSRC to participate in the environmental review process that occurred during Phase 1 of the proceeding.⁴

On other occasions we awarded compensation for work on issues the Commission did not decide, on the ground that the parties could not have known ahead of time that the Commission would not reach their issues. For example, in D.02-07-030,⁵ we made clear that intervenors who make a substantial contribution to a proceeding should not be denied compensation if, through no fault of their own, the issue they address does not appear in the final decision because the Commission is able to dispense with the application at an earlier stage in the analysis. In that case, parties contributed substantially to the Commission's consideration of a merger that ultimately was called off by the companies proposing it, and we granted the parties compensation for their work in opposing the merger. We stated:

In our view, the fact that the merger was called off should not militate against an award of compensation. If we denied compensation for substantial efforts on transactions that--

⁴ We discuss the amount of the request, and whether it is reasonable, in the section of this decision entitled "The Reasonableness of Requested Compensation," below.

⁵ 2002 Cal. PUC LEXIS 438.

through no fault of the intervenor--were not consummated, we would discourage Intervenor . . . from participating in such proceedings. Every large and controversial transaction presents some risk of not being consummated by virtue of its very largeness and level of controversy Such large transactions are precisely the ones on which the Commission most needs the views of Intervenor We should encourage such participation in proceedings of this magnitude.

Similarly, in D.02-08-061, we found that an intervenor should receive compensation for work in a proceeding that we dismissed without considering certain matters of substance. We found that the intervenor could not have foreseen or affected the circumstances leading to the dismissal at the time it made its substantial contribution. There, as here, the intervenor acted responsibly in assuming the Commission would reach the issues at hand, and submitted testimony accordingly. The intervenor committed significant resources with a reasonable expectation that successful participation would eventually entitle it to receive an award of compensation.

Consistent with our findings in the foregoing cases, we will not deny SSRC compensation for its work on environmental and siting issues in this proceeding where it could not have known at the time it provided input on these issues that the Commission would deny the application before reaching them. Had we approved the transmission line, we would have needed SSRC's analysis, and SSRC should not be faulted for participating in a process we initiated during a period when it was unclear whether we would grant or deny the application.

We address the reasonableness of the compensation amount SSRC requests for environmental and siting issues in the next section.

4. The Reasonableness of Requested Compensation

SSRC requested \$667,620.64 as follows:

Attorneys

	Hours	Rate	Amount
<u>2000-2001</u>			
M. Mihaly	218.4	\$315/hr	68,796.00
O. Armi	335.4	\$220/hr	73,788.00
J. Schue	404.6	\$165/hr	66,759.00
Law Clerks	15.5	\$60/hr	930.00
<u>2002-2003</u>			
M. Mihaly	299.2	\$325/hr	97,240.00
O. Armi	807.4	\$230/hr	185,702.00
J. Schue	422.0	\$175/hr	73,850.00
Law Clerks	72.5	\$60/hr	4,350.00
SUBTOTAL	2,575.0		571,415.00

Experts

	Hours	Rate	Amount
W. Schmus (2001)	19.5	\$225/hr	4,387.50
A. Smeedyk (2001-2002)	215.5	\$225/hr	48,487.50
SUBTOTAL	235.0		\$52,875.00

Expenses

Source	Amount
Shute, Mihaly & Weinberger LLP	16,325.44 ⁶
Anton Smeedyk	1,157.55
SSRC Board of Directors	25,847.65
SUBTOTAL	\$43,330.64

TOTAL	\$667,620.64
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⁶ SSRC revised this figure to \$13,763.31 in its comments on the draft decision, as we discuss below.

A. Overall Benefits of Participation

In D.98-04-059, the Commission adopted a requirement that a customer must demonstrate that its participation was “productive,” as that term is used in § 1801.3, where the Legislature gave the Commission guidance on program administration. In that decision, we discuss the requirement that participation must be productive in the sense that the costs of participation should bear a reasonable relationship to the benefits realized through such participation. Customers are directed to demonstrate productivity by assigning a reasonable dollar value to the benefits of their participation to ratepayers. This exercise assists us in determining the reasonableness of the request and in avoiding unproductive participation.

SSRC does not discuss the productivity requirement in its request. While it should have done so, it is not difficult to find that its efforts were productive in this case. According to D.02-12-066, the cost estimate for the Valley-Rainbow Project was in excess of \$341 million.⁷ Had the Commission granted SDG&E’s application, ratepayers would have borne this expense. By contrast, SSRC spent approximately \$667,000 on the case, a tiny fraction of the amount it saved ratepayers by helping convince the Commission that the Project was not needed. By any stretch of the imagination, SSRC’s work was productive.

B. Hours Claimed

1. Disparity Between NOI and Compensation Request

SDG&E states that the Commission should reduce SSRC’s award on the ground that SSRC underestimated how much it would spent on the case in its NOI. We agree with SDG&E that the disparity between SSRC’s NOI estimate

⁷ D.02-12-066, *mimeo.*, at 57.

(approximately \$377,500) and its compensation request of approximately \$667,000 is high.

However, SSRC gives us several convincing explanations for the difference. SSRC explains that it is a community group participating in Commission proceedings for the first time, and that estimating its time in such a case was difficult. It notes that it prepared its estimate before the Commission issued a scoping memo in the case, before any party had submitted testimony, and before SDG&E had provided much of the information, lacking in its Application, regarding Project need. Nor was SSRC able to find a model NOI for estimating its costs, because at the time it submitted its estimate, there had not been an award request filed by a “similar grass roots community group” opposing a major transmission project. We agree that each of SSRC’s points helps justify its uncertainty in preparing an estimate.

Moreover, SDG&E’s position is legally incorrect. We have not held that an intervenor must be bound to its NOI estimate in all cases, and indeed have said just the opposite in at least two Commission decisions.⁸ In both cases, circumstances that came to light after the intervenor filed its NOI justified the disparity in the estimate and the actual request for compensation. We find that SSRC’s factual explanations justify the disparity in this case.

Moreover, we agree with the principle underlying the cases allowing such a disparity. As SSRC explains, the purpose of an estimate in the NOI is for the ALJ to evaluate, in the context of the eligibility determination, whether a customer would have a significant financial hardship in light of the cost of

⁸ See D.03-01-070, *mimeo.*, at 10-11 and D.02-11-070, *mimeo.*, at 24-25.

participation in the proceeding. Because ALJ Cooke found such hardship if the cost of participation was \$377,000, it follows logically that participation costing \$667,000 would increase, rather than decrease, the financial hardship.

Finally, we also agree with SSRC that the intervenor compensation statute provides compensation for reasonable fees and costs incurred, not for those estimated in the NOI.⁹ Thus, to the extent we find SSRC's fees and costs reasonable and otherwise in conformity with the intervenor compensation statute, SSRC should be allowed to recover them regardless of a disparity between the NOI estimate and the compensation request.

2. Hours for Efforts Related to Reliability and Economic Need Issues

SDG&E states that SSRC's hours for the reliability need and economic issues are inflated. However, its sole basis for the argument is that SSRC's request – for 904.5 hours for time spent on reliability need issues and 464.7 hours for time spent on economic need issues – is out of proportion to SSRC's original estimate of 906 hours for the entire case. We reject this argument in the previous section of this decision.

We do not otherwise find a problem with SSRC's reliability need and economic need compensation request. The Commission squarely addressed both issues in D.02-12-066, and cited SSRC's efforts frequently in reaching its decision to reject SDG&E's application. The extent of SSRC's work on both areas was extensive, as we point out in the "substantial contribution" section of this discussion.

⁹ See Pub. Util. Code § 1803.

Furthermore, SSRC notes that it coordinated with other intervenors to avoid duplication. While we recently questioned the extent to which we may reduce an intervenor's award for duplication in D.03-03-031, even if there were cases in which reduction might be appropriate, this is not one of them. SSRC states that its attorneys coordinated with the Commission's Office of Ratepayer Advocates (ORA) at every stage in this proceeding to avoid duplication of effort, and the approach taken by SSRC differed significantly from the approach of ORA. For example, ORA's analysis focused on generating new power flow results and conducting independent economic modeling, whereas SSRC's approach was to focus on the problems in SDG&E's own studies and demonstrate that even those studies did not justify a need finding.

For the foregoing reasons, we award SSRC all of its requested compensation related to reliability need and economic need.

3. Unallocated Time

SDG&E states that because a significant amount of SSRC's time was unallocated to a particular issue, we should deduct that time from SSRC's request. SDG&E points out that the unallocated category is by far SSRC's largest request for compensation (1.150.2 hours, or approximately \$250,000 of the requested \$667,000). SDG&E states that SSRC fails to identify, as § 1802(h) requires, how any of this unallocated time resulted in Commission adoption of any of SSRC's factual contentions, legal contentions, or specific policy or procedural recommendations.

SSRC counters by explaining that the time at issue involved multiple issues that it could not allocate to a single issue. It explain that the time included such tasks as preparation of the protest, participation at prehearing conferences, preparation of prehearing conference statements, research regarding procedures

and practice before the Commission, Public Records Act requests to the Commission, preparing and drafting data requests, preparing responses to procedural motions, and preparing the NOI and request for compensation. We agree that each of these activities is compensable under the substantial contribution standard set forth above, even if it is not easily attributable to a single issue.

SSRC also states that because it made a substantial contribution to all of the issues in the proceeding – a position we adopt in this decision – allocation of time to specific issues is less crucial:

A primary purpose of the allocation of hours is to allow the Commission to readily identify the number of hours spent on issues to which an intervenor did not prevail or make a substantial contribution. Because SSRC largely prevailed on all of the issues in the proceeding, its submission of activity logs describing each day's activities for each attorney or expert provides the Commission with detailed information about the allocation of work effort.¹⁰

We agree that because we are not denying SSRC compensation on any of the three issues on which it focused, the parsing of hours is less critical in this case. Given the importance of the tasks with unallocated time, we reject SDG&E's argument and allow SSRC compensation for such time.

4. Compensation for Press/Lobbying Time, Other Matters

a. Press Time

SDG&E also challenges SSRC's request for compensation for time spent communicating with the press or lobbying other governmental officials. SDG&E

¹⁰ *Reply of SSRC to SDG&E's Response to SSRC's Request for Intervenor Compensation*, April 10, 2003, at 15 (*SSRC Reply*).

cites § 1801, which states that the purpose of the intervenor compensation statutes is to provide compensation for “participation” or “intervention” in Commission proceedings, and § 1802(a), which defines “compensation” as “payment for . . . [the reasonable fees and costs] of preparation for and participation in a proceeding.”

SSRC responds that it is not seeking compensation for activities such as press conferences, for which the Commission has not compensated intervenors in the past.¹¹ Instead, SSRC states, it seeks compensation for time spent by its attorneys in responding to questions from the press about procedures before the Commission and about the information in SSRC’s or SDG&E’s filings. It also states that SSRC’s members were only able to track the progress of the case through the local press, and that responding to questions from the media about the course of the proceedings was fundamental to the representation of the client.

We agree with SDG&E that such time is not compensable, even if spent as SSRC states. As we stated in D.96-06-029, “Communicating with the news media does not constitute participation in our proceedings within the meaning of Section 1801 *et seq.* Accordingly, we shall not grant compensation for time spent on these activities.” We see no distinction between the time SSRC claims and other press communication time, and deny SSRC the time it spent on such efforts.

We summarize the deductions for press time and lobbying time in the next section.

¹¹ See D.96-06-029, 1996 Cal. PUC LEXIS 717, at *24-25.

b. Lobbying Time

SDG&E also requests that we deny time to SSRC for lobbying efforts aimed at non-CPUC officials, on the basis that such conduct does not meet the definition of “participation” or “intervention” in Commission proceedings. SSRC notes that, “SDG&E does not challenge time spent by SSRC’s counsel with regard to the specific legislative proposals, both concerning routing of alternatives to the project, that directly impacted the course of the Commission’s proceedings.”¹²

We do not believe that any of this time is compensable. While communication with non-CPUC officials may have helped SSRC’s cause, it did not involve participation in our proceeding. We deny SSRC the hours it spent “meeting with non-Commission governmental officials.” We also deny SSRC the time it spent on specific legislative proposals, as we do not find that work on such proposals constituted participation in this proceeding.

According to declarations submitted with SSRC’s reply papers, SSRC’s attorneys spent the following time on the disallowed press and lobbying activities, which we deduct from SSRC’s total award.

M. Mihaly	0.5 (comm. with gov’t officials)	\$315/hr	(\$157.50)
M. Mihaly	1.8 (comm. with press)	\$325/hr	(585.00)
O. Armi	0.5 (comm. with gov’t officials)	\$230/hr	(115.00)
O. Armi	5.1 (comm. with press)	\$230/hr	(1,173.00)
J. Schue	1.9 (comm. with gov’t officials)	\$175/hr	(332.50)
J. Schue	2.7 (comm. with press)	\$175/hr	(472.50)

¹² *SSRC Reply* at 18, n.5.

Deductions	(\$ 2,835.50)
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c. Mr. Smeerdyk's Time

Finally, SDG&E states that the Commission should disallow 215.5 hours of time and expenses spent by SSRC's expert, Anton Smeerdyk, because he devoted most of his time to analyzing alternatives to the proposed Project. However, we have already found that even though the Commission did not reach environmental and siting issues, consideration of alternate routes was nonetheless an issue in Phase 1 for which SSRC is entitled to compensation.

Moreover, SSRC explains that Mr. Smeerdyk also spent considerable time on the reliability need issue. His activities included reviewing and analyzing data regarding long-term resources, load forecasts, and reviewing SDG&E, ISO and Southern California Edison (SCE) transmission planning documents. This is all work for which SSRC is entitled to compensation, as we have already found that the reliability need issue was directly addressed in D.02-12-066.

Finally, SDG&E states that SSRC had an agreement to share costs with the City of Temecula and the Pechanga, which did not cover Mr. Smeerdyk's time. SDG&E states that the fact that the agreement did not cover Mr. Smeerdyk's time and expenses "is a further and strong indication that SSRC's request for his time and expenses is not reasonable."¹³ SSRC explains that Mr. Smeerdyk's fees and expenses were not covered by the cost-sharing agreements with Temecula and the Pechanga because Mr. Smeerdyk agreed to represent SSRC on a contingency basis in recognition of the financial hardship to SSRC of participation.

¹³ *Response of San Diego Gas & Electric Company to Save Southwest Riverside County's Request for Intervenor Compensation*, March 26, 2003, at 15 (*SDG&E's Response*).

We do not believe that the fact that the cost sharing agreement did not include Mr. Smeerdyk is a reason to disallow compensation for his work. There is nothing in the statute that requires a party to enter into a cost sharing agreement or, once it has entered into such an agreement, to share costs on everything. Thus, all of Mr. Smeerdyk's time and expenses are compensable.

d. Condemnation Work

SDG&E states that SSRC may not recover for efforts spent researching SDG&E's right to condemn private property in order to make room for the Valley-Rainbow transmission line, and its right to enter private property for surveys and pre-condemnation work. The basis for SDG&E's claim is that the Commission should disallow time SSRC requests for all issues related to eminent domain and condemnation because SSRC's counsel took a voluntary reduction for some of this time.

SSRC responds that although its counsel voluntarily reduced the time spent investigating individual landowners' concerns regarding pre-condemnation notices they were receiving from SDG&E, SSRC's counsel did not reduce time for research of other eminent domain issues of direct relevance to the Commission's proceeding. These issues include the ability of utilities to exercise condemnation power for economic projects (Pub. Util. Code § 625); the Commission's authority over pre-condemnation activities; and the ability of utilities to condemn over tribal land.

We find that this time is related to the environmental and siting issue, for which we have already found that SSRC made a substantial contribution. SSRC has reduced time spent on individual landowners' issues, as was proper. The

remaining issues relate to issues of broad interest and relevance to the Commission's siting decision,¹⁴ and we grant SSRC's request in this area.

C. Hourly Rates

1. Attorneys

SSRC seeks a total of \$571,415 in attorneys' fees. For 2000 and 2001, SSRC requests hourly rates for its attorneys that are consistent with those the Commission has already found reasonable for each period in question.¹⁵ We will adopt these rates for this compensation award, as follows: \$315 per hour for Mr. Marc Mihaly, \$220 per hour for Ms. Osa Armi, and \$165 per hour for Ms. Janette Schue.

For 2002 and 2003, SSRC requests small increases for each attorney based on the grounds that SSRC's law firm raised its rates modestly after 2001, the new rates are more reflective of rates charged by other firms in the same practice areas, and the attorneys gained substantial additional experience. SSRC seeks a \$10 per hour rate increase for each attorney, to \$325 per hour for Mr. Marc Mihaly, \$230 per hour for Ms. Osa Armi, and \$175 per hour for Ms. Janette Schue. SDG&E does not oppose these increases.

We find the increases reasonable based on hourly rates we have awarded in 2002 and 2003 to attorneys with comparable education and experience. With regard to Mr. Mihaly, in D.03-05-027, we will look to compensation awarded a similarly situated lawyer to determine the reasonableness of the requested increase.

¹⁴ *See, e.g.*, D.01-05-059, 2001 Cal. PUC LEXIS 413 (discussing condemnation in context of consideration of which alternate route to choose for transmission project).

¹⁵ D.02-05-005, 2002 Cal. PUC LEXIS 230, at *12.

We awarded attorney Randy Wu \$385 per hour for his 2002 work before this Commission. As we explained in D.02-09-040, Wu was admitted to the California bar in 1977 after receiving his law degree from Boalt Hall at the University of California, Berkeley. From 1977 through 1981, Wu served as staff counsel at the Commission. In 1981, he became an ALJ at the Commission, serving in that role until 1988, presiding over a variety of gas and electric applications and cases. In 1988, Wu joined El Paso Natural Gas, representing that company before state and federal regulatory agencies. From 1997 through 2000, Wu engaged in merchant plant development for El Paso Merchant Energy, focusing on the development and financing of two plants in Massachusetts and Connecticut. He joined TURN in an of-counsel role in 2001.

Mr. Mihaly is a partner at the law firm of Shute, Mihaly & Weinberger, LLP. In 1974 (3 years before Mr. Wu), he received his law degree from the same school as Mr. Wu, Boalt Hall School of Law, and was admitted to the California bar. Before co-founding his law firm, Mr. Mihaly worked for the Legal Aid Society of San Mateo County for two years (1974-76). He worked as a California Deputy Attorney General in the Environmental Unit from 1976-80. He has practiced predominantly in the fields of administrative, land use, and environmental law since co-founding his firm in 1980. He has specialized experience in development agreements and planning issues related to complex developments; air quality permitting and litigation; all aspects of growth limitation; and the California Environmental Quality Act.

While Mr. Mihaly does not have the same level of experience before this Commission as Mr. Wu,¹⁶ this difference is made up in the difference between Mr. Wu's approved hourly rate of \$385 and Mr. Mihaly's requested rate of \$325. We find that SSRC has justified a \$10 increase in Mr. Mihaly's rate for 2002-03 to from \$315 to \$325.

As for Ms. Armi, who requests an increase from \$220 to \$230, we also find the new rate to be justified. In D.03-04-050, we compared Ms. Armi's experience to that of two other attorneys, Itzel Berrio and Enrique Gallardo, and found the three to have comparable experience.¹⁷ Ms. Armi, like Ms. Berrio and Mr. Gallardo, is a 1997 law school graduate. Because we increased the 2002 rate for Ms. Berrio and Mr. Gallardo to \$235, Ms. Armi's requested increase to \$230 is also justified and we thereby adopt it.

SSRC requests that we increase Ms. Schue's rate from \$165 to \$175. We also find this request reasonable based on the \$175 hourly rate we approved for Caroline Jacobs in D.03-01-075. Both Ms. Schue and Ms. Jacobs graduated from law school in 2000 – Ms. Schue from Stanford University School of Law. Ms. Schue has been with the Shute, Mihaly firm since 2000, and has focused on litigation and non-litigation matters involving state and federal environmental laws, administrative law, state planning and zoning law, and regulatory matters. She has practiced before this Commission on three proceedings in addition to this one. We find the requested increase to \$175 for 2002-03 to be reasonable.

¹⁶ Mr. Mihaly states that in the early 1980s, he represented a community group challenging an approval by this Commission of a power line in court. He has also represented this Commission's Low Income Governing Board. He also appeared before this Commission in connection with Rulemaking (R.) 00-01-005 and A.01-01-050.

¹⁷ D.03-04-050, *mimeo.*, at 9.

2. Experts

SSRC requests that time for experts Mr. Anton Smeerdyk and Mr. Wayne Schmus be compensated at the rate of \$225 per hour. SSRC seeks a total of \$53,875 in expert fees. SDG&E does not challenge these proposed rates. The Commission has not previously approved a compensation rate for these experts, so we must examine their experience and expertise to assess the reasonableness of the requested rate.

a. Mr. Smeerdyk

Mr. Smeerdyk devoted time to the proceeding in 2001 and 2002. Mr. Smeerdyk holds a B.S. in Electrical Engineering from California State University at Long Beach and is a licensed electrical engineer. Mr. Smeerdyk presently works as a consultant on electrical engineering projects. Mr. Smeerdyk is retired from SCE, where he worked for 27 years in engineering and management positions. At SCE, Mr. Smeerdyk worked in the Transmission & Distribution Department in the capacity of Manager of Division Engineering, Manager of Region Design and Engineering Centers, and Manager of Reliability Engineering. Mr. Smeerdyk's experience includes: serving on SCE Transmission Planning Committee, which is responsible for the review and approval of the capital improvement projects pertaining to the reinforcement and/or additions of all transmission, distribution and substation facilities; preparation of the 5-year and 10-year distribution substation planning programs; preparation of load forecasts; developing the system interface and agreements for the major renewable resource wind park generation developments in the Tehachapi Mountains; development of methods of service to many major cogeneration projects and to major industrial, commercial and residential developments; developing system performance and reliability enhancement

programs; developing a customer power quality monitoring and consultation program. Mr. Smeerdyk served on various inter-utility committees for review and rewriting of PUC rules applicable to new line and service extension.

SSRC does not state whether Mr. Smeerdyk usually bills his time at \$225 per hour, the requested amount. An examination of previous expert awards shows that this amount is in the uppermost range of expert hourly fees we have approved in intervenor compensation claims. For example, two parties that appear as experts constantly before this Commission, James Weil (an engineer) and William Marcus, currently receive \$220 and \$175 per hour, respectively.¹⁸ William Ahern, currently Executive Director of this Commission, received \$220 per hour when he worked as a policy expert for Consumers Union in 2002.¹⁹ While SSRC claims that the rate it has requested for Mr. Smeerdyk is reasonable and consistent with similarly experienced expert consultants, we do not believe the record bears out this claim.

The best expert for comparison to Mr. Smeerdyk, in our view, is James Weil. As we found in 1998 in D.98-10-007,²⁰ Weil has a master's degree and doctoral degree in engineering from the University of California at Berkeley. At that time – five years ago – he had more than 21 years of experience in the utility industry. His experience includes 14 years with the Commission staff, seven of which were as an administrative law judge (ALJ).

We do not find that Mr. Smeerdyk's experience matches that of Mr. Weil. While Mr. Weil has appeared in probably dozens of Commission proceedings,

¹⁸ D.03-05-013 (Weil), D.03-04-011 (Marcus).

¹⁹ D.03-05-065.

²⁰ 1998 Cal. PUC LEXIS 955, § 5.2.

Mr. Smeerdyk's Commission experience is far more limited. Mr. Smeerdyk holds a B.S. degree in engineering, while Mr. Weil has a doctoral degree in the same field. While the amount of industry experience demonstrated by Mr. Weil – with 26 years – and Mr. Smeerdyk – with 27 years – is equivalent, we believe the difference in their education and Commission experience warrants a different hourly rate. We will award Mr. Smeerdyk \$190 per hour for his work on this case in 2001 and 2002.

b. Mr. Schmus

Mr. Schmus performed work on the case in 2001. Mr. Schmus holds a B.S. in engineering from Harvey Mudd College and is a licensed professional electrical engineer. Mr. Schmus is a consultant on electrical engineering projects. Mr. Schmus is retired from SCE, where he worked for 34 years in engineering and management positions. Mr. Schmus has 24 years of experience in transmission planning. Mr. Schmus worked at SCE in the capacity of Manager of Transmission Planning, Manager of Protection Engineering, Chief Distribution Maintenance Engineer, Chief Distribution Design Engineer, and Chief Engineer Generation Planning.

Mr. Schmus' experience includes: preparing strategic and expansion plans for a 18,000 MW transmission system (500 kV to 69 kV); preparing feasibility and benefit/cost studies for interconnections with other utilities; appearing as a licensing witness before the Public Utilities Commission for transmission lines including the 240-mile 500,000 volt Devers-Palo Verde Line; performing system stability studies for the Pacific Intertie transmission network and transmission for major coal-fired generation stations in the Southwest; preparing strategies and recommendations for land and right-of-way purchasing and selling; modeling expert for generators, exciters, governors, damping systems, loads in

transient studies; preparing sub-synchronous resonance analysis and mitigation; coordinating the first use of induction generation connected to the SCE system for use in energy recovery plants; leading the program to recreate and predict major electrical disturbances and blackouts in the western United States; coordinating the interconnection of between 2000 and 3000 megawatts of renewable resource generation under the Qualifying Facility provisions of the California Public Utilities Commission; leading the team to rewrite the transmission reliability and performance criteria; designing remedial action schemes for control of stability and overload; and performing High Voltage Direct Current Transmission planning and performance evaluation.

Mr. Schmus is the author of several publications, including: "Transmission Voltage Recovery Delayed by Stalled Air Conditioning Compressors," (co-author) 1993 Prize Paper Award, IEEE PES; "Deterministic and Probabilistic Reliability Criteria Applications in Electric Power Transmission Planning," 1989, IEEE PES; "Subsynchronous Resonance and Torsional Stresses in Turbine-Generator Shafts," (co-author) 1973, IEEE PES; "Dynamic Modeling of Loads in Stability Studies," (co-author) 1969, IEEE PES. Mr. Schmus also served as Chairman of the Reliability Assessment Subcommittee of the North American Electric Reliability Council ("NERC"), which prepared the Ten-Year Reliability Assessment for North-American Utilities in 1987 and 1988.

Once again, SSRC does not state whether its requested hourly rate – \$225 – for Mr. Schmus is his usual hourly rate, so we do not know whether the rate is market based. Moreover, as we state with regard to Mr. Smeerdyk, \$225 is at the highest end of the range of expert rates we have awarded in Commission proceedings.

For the same reasons as we set forth with regard to Mr. Smeerdyk, we award Mr. Schmus \$190 per hour for his work on this case in 2001.

3. Law Clerks

SSRC seeks compensation for law clerk time at \$60 per hour. SSRC explains that its law clerks are generally second-semester second- or third-year law students selected through a highly competitive application process. While SSRC does not identify the law clerks by name, the Commission has allowed a range of rates for law student interns from \$55²¹ to \$85²² per hour. Shute, Mihaly bills clients \$100 per hour for law clerk work. Based on our precedent and the fact that SSRC has significantly discounted its law clerk rate, we find SSRC's request reasonable. We award it the entire amount it seeks for law clerk fees for 2001-03 at the requested \$60 per hour.

D. Costs

SSRC requests \$43,330.64 for costs.²³ This is a significant sum, and far more than we generally see in cost requests, which usually include only requests for incidentals such as photocopying and postage, faxes, telephone calls, and small amounts for travel expense. Here, by contrast, SSRC seeks costs incurred by its lawyers, Shute, Mihaly & Weinberger, and SSRC's own costs and costs incurred by SSRC's expert. We discuss each set of costs in turn.

²¹ D.99-01-020.

²² D.03-04-050.

²³ In its comments on the draft decision, SSRC revised this figure downward by \$2,562.13, as we discuss below.

1. Shute, Mihaly & Weinberger's Costs

The costs SSRC seeks for its lawyers amount to \$16,325.44 (reduced in comments to \$3,763.31), alone far in excess of all or virtually all cost awards we have made pursuant to the intervenor compensation statute. The cost figure includes charges for travel expenses, office supplies, messengers, facsimile transmission, telephone, and Lexis-Nexis computerized legal research.

The draft decision disallowed many of these costs, because they were not broken down by category and seemed otherwise excessive. As we detail in the section entitled “Waiver of Comment Period” below, SSRC has now justified recovery of \$13,763.31 in costs for Shute, Mihaly, and we award those costs.

2. SSRC's Costs

SSRC seeks \$25,847.65 for costs related to its own organizational work. While we have allowed recovery of attorneys' fees related to community organizing in the past,²⁴ we are unaware of a decision – and SSRC does not cite one – in which we awarded community-organizing costs.

SSRC estimates that incurred approximately \$30,324.68 for office supplies, and approximately \$1,000 for telephone charges. It halves the office supply figure and adds the telephone charges to seek a total of \$16,162.34 in office costs. It also seeks \$5,602.24 in airline flights, \$2,461.55 in hotels, and other incidental travel expenses, for a total of \$9,685.31 in travel costs. Thus, its total cost request for SSRC is \$25,847.65.

²⁴ For example, in D.03-03-031, we found that an intervenor's substantial contribution included efforts spent on community organizing and awarded compensation for efforts aimed at educating and mobilizing local community groups to urge Commission approval of the intervenor's proposal. D.03-03-031, *mimeo.*, at 8.

We find the office costs excessive. They clearly include copying, postage, and other supplies related to community organizing rather than simply participation in this proceeding (which costs appear as part of the Schue, Mihaly request). Indeed, we cannot discern any relationship between the expenses and participation in this proceeding, except to the extent that SSRC's existence as a community organization was required in order for it to participate here. However, we do not believe an organization's start-up funding is directly related to its participation in this proceeding.

As SDG&E points out, "other reasonable costs," are defined as "reasonable out-of-pocket expenses directly incurred by a customer that are directly related to the contentions or recommendations made by the customers." The expenses here bear no direct relationship to SSRC's "contentions or recommendations." Therefore, we disallow the entire \$16,162.34 request for office costs.

The travel expenses are also excessive. SSRC concedes that this expense includes travel for six SSRC Board members to attend a Commission meeting. While it states that the Board's "presence before the Commission, including its attendance at the December 12, 2002 [Commission] meeting, was an essential aspect of the group's advocacy," we do not believe that such attendance related "directly" to SSRC's "contentions or recommendations." Thus, we disallow \$8,716.77, 90 percent of the \$9,685.31 in requested travel expenses, leaving an award for these expenses of \$968.54.

3. Mr. Smeerdik's Costs

SSRC seeks \$1,157.55 in costs related to his testimony in the proceeding. The costs are for mileage, copying, postage and travel, and all appear reasonable. We award SSRC these costs in total.

5. Award

We award SSRC \$629,118.90, as follows and as shown in Appendix A to this decision:

Attorneys

	Hours	Rate	Amount Requested	Amount Awarded ²⁵
<u>2000-2001</u>				
M. Mihaly	218.4	\$315/hr	68,796.00	68,796.00
O. Armi	335.4	\$220/hr	73,788.00	73,788.00
J. Schue	404.6	\$165/hr	66,759.00	66,759.00
Law Clerks	15.5	\$60/hr	930.00	930.00
<u>2002-2003</u>				
M. Mihaly	299.2	\$325/hr	97,240.00	97,240.00
O. Armi	807.4	\$230/hr	185,702.00	185,702.00
J. Schue	422.0	\$175/hr	73,850.00	73,850.00
Law Clerks	72.5	\$60/hr	4,350.00	4,350.00
SUBTOTAL	2,575.0		\$571,415.00	\$571,415.00

Deductions for Disallowed Activities			
	Hours	Rate	Amount to Deduct
M. Mihaly	0.5 (comm. with gov't officials)	\$315/hr	(\$157.50)
M. Mihaly	1.8 (comm. with press)	\$325/hr	(585.00)
O. Armi	0.5 (comm. with gov't officials)	\$230/hr	(115.00)
O. Armi	5.1 (comm. with press)	\$230/hr	(1,173.00)
J. Schue	1.9 (comm. with gov't officials)	\$175/hr	(332.50)
J. Schue	2.7 (comm. with press)	\$175/hr	(472.50)
Deductions			(\$ 2,835.50)

²⁵ See deductions from requests for Mr. Mihaly, Ms. Armi and Ms. Schue below under "Deductions for Disallowed Activities."

Experts

	Hours	Rate	Amount Requested	Amount Awarded
W. Schmus (2001)	19.5	\$225/hr	4,387.50	\$3,705.00 ²⁶
A. Smeerdyk (2001-2002)	215.5	\$225/hr	48,487.50	\$40,945.00 ²⁷
SUBTOTAL	235.0		\$52,875.00	\$44,650.00

Expenses

Source	Amount Requested	Amount Awarded
Shute, Mihaly & Weinberger LLP	16,325.44	\$13,763.31
Anton Smeerdyk	1,157.55	\$1,157.55
SSRC Board of Directors	25,847.65	\$968.54
SUBTOTAL	\$43,330.64	\$15,889.40

SUBTOTAL	\$667,620.64	\$622,272.45
Less Deductions from above table		(\$2,835.50)

TOTAL		\$629,118.90
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Consistent with previous Commission decisions, we will order that interest be paid on the award amount (calculated at the three-month commercial paper rate), commencing the 75th day after SSRC filed its compensation request and continuing until the utility makes its full payment of award.

As in all intervenor compensation decisions, we put SSRC on notice that the Commission Staff may audit SSRC's records related to this award. Thus, SSRC must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. SSRC's records should identify

²⁶ We awarded Mr. Schmus \$190/hour rather than the \$225/hour SSRC requested.

specific issues for which it requests compensation, the actual time spent by each employee, the applicable hourly rate, fees paid to consultants, and any other costs for which compensation may be claimed.

Waiver of Comment Period

Pursuant to Rule 77.7(f)(6) of the Commission's Rules of Practice and Procedure, the otherwise applicable 30-day period for public review and comment could be waived. However, we are allowing 30-days comment on the decision because it does not award the requested compensation in full and because SDG&E has contested the request.

A. SSRC's Comments

SSRC filed comments on August 11, 2003. SSRC agrees with the draft decision except as to the awards for costs. It challenges the cost awards related to the efforts of its law firm, Shute, Mihaly, and to the efforts of SSRC itself. We examine each of its arguments in turn.

1. Shute, Mihaly Costs

While it did not do so with its original request, with its comments SSRC sorted the Shute, Mihaly costs by activity rather than by date. This change makes it far easier to determine how Shute, Mihaly's costs break down.

For unexplained reasons, the re-sorting resulted in a reduction of the Shute, Mihaly cost request from \$16,325.44 to \$13,763.31. In the original decision, we allowed SSRC 25 percent of the \$16,325.44 figure, or \$4,081.36.

²⁷ We awarded Mr. Smeerdyk \$190/hour rather than the \$225/hour SSRC requested.

Shute, Mihaly's revised summary shows that the costs break down as follows:

Shute, Mihaly Costs	
Item	Amount
Facsimile charges	\$410.00
Photocopying	\$5,182.43
Aerial photo	\$3,200.00
Poster reproductions	\$2,311.20
Telephone	\$787.48
Travel	\$1,612.04
Computerized legal research	\$260.16
Total Shute Mihaly Costs	\$13,763.31

While the costs are still higher than average, we find that SSRC has now adequately documented them by category. The draft decision expressed concern about the \$1.00 per page facsimile charge, but the comments establish that major copy centers charge at least this amount. SSRC explains that 32 faxes over a two-year period was reasonable, and that it only used facsimile transmission when the recipient did not have email access, electronic versions of the needed documents were unavailable, or signature pages needed to be transmitted. SSRC also explains and documents that it used commercial copy centers for much of the copying. The aerial photo and poster reproduction costs were out-of-pocket costs paid to SDG&E and a third party vendor to show the effects of the proposed transmission line. The telephone, travel and computerized legal research costs all represent reasonable, out-of-pocket charges. We therefore allow SSRC the full \$13,763.31 claimed in costs for Shute, Mihaly. This adds \$9,681.95 to SSRC's total.

2. SSRC Costs

SSRC offers no new reasons justifying recovery of the \$25,847.65 in its own costs. It explains – as did its request - that the efforts were related to community organizing. Were such efforts compensable in the intervenor compensation context, the costs could be extremely high, dependent only on the size of the “community” at issue. Using SSRC’s reasoning, were its outreach to extend to the entire population of the State, the compensation request for copying alone could be in the millions. Moreover, SSRC makes no argument that the community involvement was germane to the reliability need and economic need issues the Commission decided in D.02-12-066. While we welcome community involvement in all our proceedings, these expenses do not directly relate to SSRC’s participation in this proceeding, and disallow all but the \$968.54 the draft decision allowed.

B. SDG&E’s Comments

SDG&E addresses two issues: SSRC’s fundraising, and its division of efforts with the City of Temecula and the Pechanga, who were not eligible for intervenor compensation. Neither argument raises new issues, and we reject both. We address each in turn:

1. SSRC’s Fundraising

SDG&E continues to oppose an award to SSRC because it raised other funds. It cites two new legal theories. First, it notes that Public Utilities Code § 1802(h) states: “Where the customer’s participation has resulted in a substantial contribution . . . the commission *may* award the customer compensation . . . (emphasis added).” In this case, SDG&E asserts, the Commission should exercise its discretion and *not* award SSRC double recovery for expenditures already reimbursed through donations.

This interpretation could eviscerate the right to intervenor compensation, giving us discretion to disallow it for virtually any reason. If an intervenor is eligible for compensation and has made a substantial contribution, we do not believe the vague use of the word “may” undercuts an intervenor’s right to compensation simply because it has raised other funds. We suspect other intervenors have fundraising ability as well, and we have never required them to provide budgets or other sources of funding.

Second, SDG&E asserts that awarding SSRC a double recovery of its expenditures also would violate the Legislature’s requirement set forth in § 1802(h) that the Commission award only *reasonable* fees and costs. This is another overbroad interpretation of the statute. We believe the “reasonableness” limitation relates to the amount of fees and costs themselves, and not to the organization’s financial ability to pay. Financial hardship is dealt with elsewhere in the statute. Thus, we reject this argument as well.

2. Division of Labor With Non-Intervenors

SDG&E also asserts that it was unjust for SSRC to bear the lion’s share of the workload given that it partnered with the City of Temecula and the Pechanga Development Corporation, entities that were ineligible for compensation. However, one could look at the issue precisely the opposite way, and find that SSRC saved money by its voluntary partnership with a third party. It certainly was not obligated to share duties with anyone. SDG&E cites no basis for us to regulate how intervenors allocate their time and efforts to non-intervenor parties, and we are not prepared to carve out a new rule governing such allocations.

Assignment of Proceeding

Susan Kennedy is the Assigned Commissioner and Michelle L. Cooke is the assigned ALJ in this proceeding.

Findings of Fact

1. SSRC has made a timely request for compensation for its contribution to D.02-12-066.

2. SSRC has made a showing of significant financial hardship by demonstrating the economic interests of its individual members would be extremely small compared to the costs of participating in this proceeding.

3. D.02-12-066 dealt with the reliability need and economic need issues.

4. SSRC justified the hours it spent on the reliability need and economic need issues.

5. Although D.02-12-066 did not reach environmental issues or Project siting, the Commission invited input on those issues during Phase 1 of the proceeding.

6. SSRC justified the hours it spent on the environmental and Project sitting issues.

7. SSRC's unallocated time relates to activities compensable under the substantial contribution standard, even if it is not easily attributable to a single issue.

8. SSRC did not duplicate the efforts of other parties.

9. SSRC has requested hourly rates for attorneys that are no greater than the market rates for individuals with comparable training and experience.

10. SSRC has requested hourly rates for its experts that exceed the rates we have awarded in the past to experts of additional education.

11. The hourly rates SSRC seeks for law clerks/law students are consistent with Commission precedent and lower than Shute, Mihaly's market rates.

12. The costs incurred by Shute, Mihaly are reasonable.

13. The costs incurred by SSRC for community organizing are not reasonable.

14. The costs incurred by SSRC for travel are not reasonable and should be reduced by 90 percent.

15. The other costs incurred by SSRC are reasonable.

Conclusions of Law

1. SSRC has fulfilled the requirements of §§ 1801-12 which govern awards of intervenor compensation.

2. The fact that SSRC raised funds from private donors does not render it ineligible for compensation or undermine a finding that it meets the financial hardship test.

3. A party is not bound by its NOI estimate if it can demonstrate a reasonable basis for the difference between the NOI estimate and the compensation request.

4. SSRC demonstrated a reasonable basis for the difference between its NOI estimate and its compensation request.

5. SSRC should not recover compensation for time spent communicating with the press, because such time does not relate directly to its participation in this proceeding.

6. SSRC should not recover compensation for time spent lobbying non-Commission governmental officials, because such time does not relate directly to its participation in this proceeding.

7. SSRC should recover compensation for time spent on condemnation issues, which are related to the siting issues the Commission raised in Phase 1 of this proceeding.

8. SSRC should recover compensation for Mr. Smeedyk's work, which relates to the need issues and consideration of alternate routing.

9. We should increase the hourly rates for Attorneys Mihaly, Armi, and Schue by \$10.00 each for 2002-03, to \$325, \$230, and \$175 per hour, respectively.

10. We should set the hourly rates for experts Smeedyk and Schmus at \$190 per hour.

11. We should award SSRC \$60 per hour for work by its law clerks.

12. SSRC should recover \$13,763.31 for its attorneys' office costs.

13. SSRC should not recover full compensation for costs related to community organizing or travel.

14. SSRC should receive compensation for reasonable costs.

15. SSRC should be awarded \$629,118.90 for its contribution to D.02-12-066.

16. This order should be effective today so that SSRC may be compensated without unnecessary delay.

O R D E R

IT IS ORDERED that:

1. Save Southwest Riverside County (SSRC) is awarded \$629,118.90 in compensation for its substantial contribution to Decision 02-12-066.

2. San Diego Gas and Electric Company (SDG&E) shall pay SSRC \$629,118.90 within 30 days of the effective date of this order. SDG&E shall also pay interest on the award at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release H.15, with interest, beginning May 2, 2003, and continuing until full payment is made.

3. This proceeding is closed.

This order is effective today.

Dated October 16, 2003, at San Francisco, California.

CARL W. WOOD
LORETTA M. LYNCH

SUSAN P. KENNEDY
Commissioners

I dissent.

/s/ MICHAEL R. PEEVEY
President

I dissent.

/s/ GEOFFREY F. BROWN
Commissioner

Compensation Decision Summary Information

Compensation Decision(s):	D0310056
Contribution Decision(s):	D0212066
Proceeding(s):	A0103036
Author:	Cooke
Payer(s):	San Diego Gas & Electric Company

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Reason Change/Disallowance
Save Southwest Riverside County (SSRC)	February 24, 2003	\$667,620.64	\$629,118.90	Attorney, SSRC costs disallowed; expert hourly rate too high

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Marc	Mihaly	Attorney	Save Southwest Riverside County	\$315	2000	\$315
Marc	Mihaly	Attorney	Save Southwest Riverside County	\$315	2001	\$315
Marc	Mihaly	Attorney	Save Southwest Riverside County	\$325	2002	\$325
Marc	Mihaly	Attorney	Save Southwest Riverside County	\$325	2003	\$325
Osa	Armi	Attorney	Save Southwest Riverside County	\$220	2000	\$220
Osa	Armi	Attorney	Save Southwest Riverside County	\$220	2001	\$220
Osa	Armi	Attorney	Save Southwest Riverside County	\$230	2002	\$230
Osa	Armi	Attorney	Save Southwest Riverside County	\$230	2003	\$230
Janette	Schue	Attorney	Save Southwest Riverside County	\$165	2000	\$165
Janette	Schue	Attorney	Save Southwest Riverside County	\$165	2001	\$165
Janette	Schue	Attorney	Save Southwest Riverside County	\$175	2002	\$175
Janette	Schue	Attorney	Save Southwest Riverside County	\$175	2003	\$175
Anton	Smeerdyk	Engineer	Save Southwest Riverside County	\$225	2001	\$190
Anton	Smeerdyk	Engineer	Save Southwest Riverside County	\$225	2002	\$190
Wayne	Schmus	Engineer	Save Southwest Riverside County	\$225	2001	\$190