

Decision 08-06-018 June 12, 2008

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Examine the Commission's Post-2005 Energy Efficiency Policies, Programs, Evaluation, Measurement and Verification, and Related Issues.

Rulemaking 06-04-010
(Filed April 13, 2006)

**DECISION GRANTING INTERVENOR COMPENSATION
TO THE NATURAL RESOURCES DEFENSE COUNCIL AND THE
COMMUNITY ENVIRONMENTAL COUNCIL FOR SUBSTANTIAL
CONTRIBUTIONS TO DECISION (D.) 07-10-032 AND D.07-09-043**

This decision awards compensation to the Natural Resources Defense Council (NRDC) and the Community Environmental Council (CE Council) for their respective contributions to Decision (D.) 07-10-032, D.07-09-043, and other work in this rulemaking. We herein award NRDC \$31,007.01 and award CE Council \$38,858.03. These awards are less than requested by each intervenor and include adjustments in conformance with state law and Commission decisions governing intervenor compensation in Commission proceedings.

1. Background

The Commission opened this rulemaking to consider several issues related to the design, delivery and management of utility energy efficiency programs. Relevant to the subject compensation requests are matters relating to the long-term strategies for energy efficiency program emphasis, the focus of 2009-2011 utility energy efficiency program and budget applications, meetings

concerning the implementation of energy efficiency programs and work leading to the resolution of evaluation, measurement and verification (EM&V) protocols.

D.07-10-032 directed the utilities to prepare a single, comprehensive, statewide strategic plan; adopted three programmatic initiatives; provided direction for the “next generation” of California utility energy efficiency programs for 2009-2011; committed in the near term to adopting utility energy efficiency goals through 2020; reaffirmed the previously adopted 2009-2011 goals; and established new collaborative processes with key stakeholders. D.07-09-043 established parameters that would govern awards of incentive payments to the utilities for their energy efficiency program accomplishments.

NRDC here requests \$54,867.81¹ for its work in several areas relating to our ongoing development and oversight of utility energy efficiency programs, including D.07-10-032. CE Council requests \$75,098.64 for its contributions to D.07-10-032 and D.07-09-043.

2. Requirements for Awards of Compensation

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

¹ NRDC makes a computation error when calculating this amount. We correct the error in Section 5 of the decision to \$54,365.01.

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

1. The intervenor must satisfy certain procedural requirements including the filing of a sufficient notice of intent (NOI) to claim compensation within 30 days of the prehearing conference, or in special circumstances at other appropriate times that we specify. (§ 1804(a).)
2. The intervenor must be a customer or a participant representing consumers, customers, or subscribers of a utility subject to our jurisdiction. (§ 1802(b).)
3. The intervenor must file and serve a request for a compensation award within 60 days of our final order or decision in a hearing or proceeding. (§ 1804(c).)
4. The intervenor must demonstrate “significant financial hardship.” (§§ 1802(g), 1804(b)(1).)
5. The intervenor’s presentation must have made a “substantial contribution” to the proceeding, through the adoption, in whole or in part, of the intervenor’s contention or recommendations by a Commission order or decision. (§§ 1802(i), 1803(a).)
6. The claimed fees and costs must be reasonable (§ 1801), necessary for and related to the substantial contribution (D.98-04-059), comparable to the market rates paid to others with comparable training and experience (§ 1806), and productive (D.98-04-059).

We address each in turn.

3. Procedural Issues

NRDC and CE Council filed timely NOIs in this proceeding. Both received findings of significant financial hardship. Both are “customers” for purposes of qualifying for intervenor compensation, consistent with Section 1804(b).

NRDC satisfies the criteria for a finding of financial hardship, pursuant to § 1802(g) through a rebuttable presumption of eligibility, pursuant to § 1804(b)(1), because the assigned Administrative Law Judge (ALJ) found NRDC satisfied this condition in A.07-01-024 et al.² within one year of the commencement of this proceeding.

CE Council was found eligible to claim compensation by a ruling issued in this proceeding dated June 28, 2006.

NRDC and CE Council filed their requests for compensation within 60 days of the issuance of D.07-10-032:³ NRDC, on December 17, 2007, and CE Council on November 19, 2007. In view of the above, NRDC and CE Council have satisfied all the procedural requirements necessary to make their requests for compensation in this proceeding.

4. NRDC’s Substantial Contributions

In evaluating whether a customer made a substantial contribution to a proceeding, we consider whether the Commission adopted one or more of the factual or legal contentions, or specific policy or procedural recommendations put forward by the customer. If the customer’s contentions or recommendations

² Ruling issued April 3, 2007.

³ No party opposes the requests.

paralleled those of another party, we consider whether the customer's participation materially supplemented, complemented, or contributed to the presentation of the other party or to the development of a fuller record that assisted the Commission in making its decision. The assessment of whether the customer made a substantial contribution requires the exercise of judgment.

Should the Commission not adopt any of the customer's recommendations, compensation may be awarded if, in the judgment of the Commission, the customer's participation substantially contributed to the decision or order. For example, if a customer provided a unique perspective that enriched the Commission's deliberations and the record, the Commission could find that the customer made a substantial contribution.

Section 1801.3(f) precludes compensation where an intervenor duplicates the work of similar interests otherwise adequately represented by another party, or work that is unnecessary for a fair determination of the proceeding. Section 1802.5, however, allows an intervenor to be eligible for full compensation if its participation materially supplements, complements, or contributes to that of another party if that participation makes a substantial contribution to the commission order.

NRDC's request for compensation includes three components:⁴

(1) contributions to D.07-10-032, (2) work on ongoing EM&V issues overseen by the Energy Division, and (3) participation in the Program Advisory Groups (PAG) and Peer Review Groups (PRG) during the compliance phase of the proceeding. NRDC's request includes an account of expenditures for each of these components separately, as well as a description of NRDC's substantial contribution to D.07-10-032. We address each issue area separately below.

4.1. Contributions to D.07-10-032

NRDC states it contributed substantially to many parts of the proceeding leading up to this decision, and several aspects of the final decision reflect NRDC's positions and incorporate its suggestions. For example, NRDC states it commented on the need to improve local government partnerships and count related energy savings towards utility energy efficiency saving goals, provide the utilities funding flexibility and needed consistency to carry-out longer term projects, and address the potential to count embedded energy savings in water conservation towards the utility goals. NRDC states it recommended that the Commission maintain the previously established 2009-2011 utility goals, the "counting" of 50% of pre-2006 and 100% of post-2006 codes and standards advocacy work towards the utilities' savings goals, and the current mid-cycle budget request process. NRDC further suggested extending the post-2013 goals out to 2020 to match the AB 32 timeline. In addition, NRDC states that several of

⁴ NRDC describes its request as including two components by including its informal work with Energy Division staff on EM&V protocols as work that contributed to D.07-10-032. The two types of work are not related in any meaningful way for purposes of NRDC's intervenor compensation request, and we therefore address them separately here.

its suggestions for changing the proposed decision were reflected in the final decision, such as provision of utility-specific workshops to receive input from stakeholders on the development of the utilities' 2009-2011 portfolios, clarification of the role of the PRGs going forward, and establishment of the due date for PRG assessment reports to be due 30 days after the utilities' 2009-2011 portfolio applications are filed.

NRDC did contribute to D.07-10-032. However, its contributions were mostly duplicative of the work of other parties and its written products were mostly perfunctory. NRDC did not present any unique analysis, insights or perspectives. NRDC's contributions in workshops were limited. While NRDC takes credit for influencing changes to the proposed decision, those changes were either of limited significance or advocated by other parties. We accept that some duplication may occur in our proceedings and have consistently compensated intervenors whose contributions somehow complemented or supplemented other work. However, we cannot justify ratepayer support for an intervenor that merely recommends ideas that are presented by several other parties and does not provide any new ideas or analysis.

While we wish to encourage participation of diverse consumer representatives, we are also mindful that intervenor compensation is funded through utility rates. Requests for intervenor compensation must demonstrate that the intervenor's participation was meaningful and in some way unique or complementary. NRDC's request for compensation does not make that case, instead merely asserting that a handful of its proposals were adopted, thereby placing the burden on the Commission to research the breadth and depth of NRDC's work in the proceeding.

We find that some of NRDC's work toward D.07-10-032 merits compensation. We discount the hours NRDC claims for work leading to D.07-10-032 and authorize compensation for one-fifth of the hours its claims. We value NRDC's participation in our proceedings. We hope NRDC's contributions in the future will provide more unique perspectives. In addition, its future requests for compensation should address the ways its contributions were unique or complementary and should provide more information about how the Commission's decision made use of those contributions.

4.2. Contributions to PRG/PAG Work

NRDC seeks compensation for its work in informal processes designed to oversee energy efficiency contracting and energy efficiency program development and delivery. It states its request is consistent with D.07-11-024, which clarified the criteria applicable to intervenor compensation for PRG and PAG work.

NRDC states it has attended almost every PAG and PRG meeting for each utility.⁵ As members of the PAGs, NRDC states it monitored the utilities' program and portfolio performance, and suggested ways to improve customer outreach, cost-effectiveness, and program design.

NRDC states it also played a "key role" in developing a report directed by D.05-01-055 and that was submitted to Energy Division on August 31, 2006. NRDC states it worked with other PRG members to select a contractor that would collect PAG member input, develop a questionnaire to be asked of the PAG members, and compile and edit the joint report to present independent

⁵ D.07-04-008 awarded NRDC intervenor compensation for its substantial contribution as members of the utilities' PAGs and PRGs through April 13, 2006.

views of PAG members. NRDC believes this report informed several parties' comments in this proceeding regarding the usefulness of the PAG and PRG, and therefore the record of D.07-10-032.

Its work in the PRG included observing the utilities' ongoing competitive solicitation processes and advised the utilities as to the fairness and transparency of the processes. NRDC states it reviewed the utilities' scoring and ranking of third-party proposals, encouraged the utilities to better define "innovation," and ensured open communication by the utilities with third-parties throughout the solicitation and contracting process.

NRDC states that although its participation in the PAGs and PRGs did not result in contributions to a Commission decision, NRDC assisted with the implementation activities of the PAGs and PRGs as described in D.05-01-055 and D.05-09-043.

We appreciate the work of NRDC in the ongoing implementation of energy efficiency programs. We have stated our intent to reimburse intervenors for their participation in PAGs and PRGs and have provided compensation for that work in the past. However, we have concerns that some of NRDC's work as it is described in NRDC's subject compensation request is not consumer representation for which compensation is authorized under Section 1801-1812 and not the type of activities we stated would be eligible for compensation in D.05-01-055. Nevertheless, we give NRDC the benefit of the doubt and compensate most of NRDC's work on the PRGs and PAGs because our orders have not until very recently addressed the type of work that might not be compensable. We expect its future work with PRGs and PAGs will be limited to advocating positions on behalf of ratepayers.

We do not compensate one type of activity; namely, work on a report D.05-01-055 directed our staff to conduct. D.07-10-032 clarified that the Commission may not compensate work that is appropriately the work of Commission staff. Doing so could be considered an infringement on state contracting laws or labor laws. Moreover, California ratepayers already pay for the reasonable costs of energy efficiency program staffing and management and should not have to pay for them twice.

NRDC claims it had a “key role” and seeks compensation for 15 hours of work on a report that D.05-01-055 assigned to Energy Division staff and that would assess the usefulness of the PRGs and PAG. D.05-01-055 states:

We also require Energy Division to provide the Assigned Commissioner with a written assessment of the effectiveness of the advisory group structure we establish in this proceeding, on an annual basis. Energy Division may conduct this assessment itself or hire an independent contractor for this purpose, whose costs will be paid for out of energy efficiency program funds.⁶

It also stated:

Energy Division shall provide the Assigned Commissioner and assigned ALJ with a written assessment of the effectiveness of the advisory group structure on an annual basis. Energy Division may conduct this assessment itself or hire an independent contractor for this purpose, whose costs will be paid for out of energy efficiency program funds. The first Energy Division assessment shall be due 14 months from the effective date of this decision, and every year thereafter unless otherwise directed by the Assigned Commissioner. The Assigned Commissioner may direct the assigned ALJ to serve

⁶ D.05-01-055, p. 99.

the Energy Division assessments on the parties, issue them for comment, or take other steps as appropriate with this information.⁷

We assigned this report to staff or its consultants and did not delegate this work to intervenors. NRDC was not authorized to work on the report and should have had no expectation of remuneration. To compensate NRDC for this work, which is appropriately the work of staff or its consultants, could represent a violation of state contracting law and labor law. Moreover, we would not have assigned a PRG/PAG member the task of supervising the creation of report on its own performance. Doing so could arguably create a conflict of interest or an appearance of conflict.

We herein find that NRDC made substantial contributions to the PRG and PAG processes. We authorize compensation for NRDC's work on PAGs and PRGs except that we disallow compensation for 15.5 hours of work on the report required by Ordering Paragraph 10 of D.05-01-055.

4.3. Contributions to EM&V Protocols

NRDC states it worked on the development of the EM&V protocols for the 2006-2008 program cycle that was overseen by Energy Division. It states it provided Energy Division comments on the draft EM&V protocols and annual reporting requirements, attended workshops, and informally consulted with Energy Division staff and consultants. NRDC explains that these contributions were not recognized in a Commission decision, NRDC's contributions were recognized in the EM&V protocols, "California Energy Efficiency Evaluation

⁷ D.05-01-055, Ordering Paragraph 10.

Protocols: Technical, Methodological, and Reporting Requirements for Evaluation Professionals,” approved by ALJ ruling on April 25, 2006.

D.05-04-051 directed staff to develop EM&V protocols and to do so using an expedited review process whereby staff would submit draft protocols to the assigned ALJ. The final protocols would be approved by ALJ ruling in consultation with the assigned Commissioner after soliciting and considering written comments from interested parties.⁸ The Commission specifically directed staff to hold public workshops to obtain and incorporate feedback from interested parties into the staff proposal before submitting the draft protocols to the ALJ.⁹

NRDC’s work on EM&V protocols is reasonable and NRDC made a substantial contribution to the EM&V protocols, consistent with D.05-04-051.

5. NRDC’s Requested Compensation

NRDC requests \$54,365.01 for its participation in this proceeding as follows.

⁸ D.05-04-051, p. 67.

⁹ This process is distinguished from the EM&V ad hoc technical review committees convened by Energy Division staff pursuant to D.05-01-055. D.07-10-032 found that intervenor work on these committees would not be eligible for compensation.

REQUEST				
Work Towards D.07-10-032				
Item	Year	Hours	Rate	Total
Audrey Chang	2006	10.25	\$115.00	\$1,178.75
Audrey Chang	2007	72.75*	\$150.00	\$10,912.50
Eric Wanless	2007	117.25	\$120.00	\$14,070.00
Peter Miller	2005	40.50	\$100.00	\$4,050.00
Peter Miller	2006	49.00	\$100.00	\$4,900.00
Peter Miller	2007	6.50	\$100.00	\$650.00
Total:				\$35,761.25
Work in PAG and PRG				
Audrey Chang	2006	49.00	\$115.00	\$5,635.00
Audrey Chang	2007	7.00	\$150.00	\$1,050.00
Eric Wanless	2006	39.75	\$115.00	\$4,571.25
Eric Wanless	2007	45.75	\$120.00	\$5,490.00
Total:				\$16,746.25
Intervenor Compensation Claim Preparation				
Audrey Chang	2007	12	\$75.00	\$900.00
Costs				
Description		Cost Amount		
Related to PAG/PRG (Audrey Chang)		\$502.80**		
Related to PAG/PRG (Eric Wanless)		\$454.71		
Total:				\$957.51
TOTAL REQUEST				\$54,365.01

* In its tables summarizing the requested amount of compensation, NRDC combines hours of work on the merits of the proceeding with the time spent on intervenor compensation matters. In these tables, we separate these two different types of work. Information regarding NRDC's time spent on intervenor compensation matters is provided based on timesheets attached to the Request for Compensation.

** In its tables summarizing the requested compensation, NRDC enters the amount of \$502.80 twice — as expenses related to the work towards D.07-10-032 and as expenses related to the PRG/PAG activities. The second time, the expenses are properly itemized in the attachment to the Request for Compensation. It is apparent that the duplication of the amount in the tables occurred in error. We correct the error in these tables, by entering this amount one time.

In general, the components of this request must constitute reasonable fees and costs of the customer's preparation for and participation in a proceeding that resulted in a substantial contribution. We assess whether the hours claimed for the customer's efforts that resulted in substantial contributions to Commission decisions are reasonable by determining to what degree the hours and costs are related to the work performed and necessary for the substantial contribution.

5.1. Attorney and Expert Rates

We consider here whether the claimed fees and costs are comparable to the market rates paid to experts and advocates having comparable training and experience and offering similar services.¹⁰

Audrey Chang. NRDC seeks an hourly rate of \$115 for 2006 and \$150 for 2007. NRDC states the Commission previously approved a 2006 rate for Chang of \$110, which had not included a 3% cost-of-living increase approved in D.07-01-009. NRDC seeks an increase for Chang's work in 2007 that exceeds the 3% increase authorized in D.07-01-009. NRDC explains it believes Chang's rate should be increased substantially because her rate is at the low end of the rate range adopted in D.07-01-009.

NRDC does not make a case for increasing Chang's rate by almost 40%. If we were to increase hourly rates solely on the basis that they are at the low end of an adopted range, the range would be meaningless. A request for a significant increase in an intervenor's rate should be accompanied by evidence that the expert or attorney has extraordinary skills or knowledge, which NRDC's request

¹⁰ NRDC appropriately seeks half of the adopted rates for work on the compensation request.

does not provide. We note here that Chang has only two years of relevant regulatory experience, which suggests that her rate should be at the low end of the range. We apply the 3% cost-of-living increase to the hourly rates for 2006 and 2007. Accordingly, Chang's rate would be \$115 for 2006 and \$120 for 2007.

Eric Wanless. NRDC seeks a rate of \$115 for Wanless' work in 2006 and \$120 for work performed in 2007, which NRDC observes are at the low end of rates for experts with Wanless' experience. We adopt those rates here.

Peter Miller. NRDC seeks an hourly rate of \$100 an hour for Peter Miller's consulting services, which is the rate Miller billed and which is below the range adopted in R.07-01-009 for experts with Miller's experience. We apply that rate here.

5.2. Hours Claimed

We discuss above reductions in hours claimed by NRDC for work that was either outside the scope of work NRDC was authorized to do on behalf of the PRG/PAG or for work that did not contribute substantively to a Commission decision. We grant NRDC 20% of the hours claimed for work leading to D.07-10-032 and all hours claimed for PRG and PAG work except for 15.5 hours spent on a report assigned to Energy Division. We authorize all hours NRDC's consultant spent on EM&V protocols.

D.98-04-059 directed customers to demonstrate productivity by assigning a reasonable dollar value to the benefits of their participation to ratepayers. The costs of a customer's participation should bear a reasonable relationship to the benefits realized through their participation. NRDC states it cannot assign a value to its participation in a proceeding like this. We agree with NRDC, however, that the benefits to customers of NRDC's participation are likely to outweigh the costs.

5.3. Direct Expenses

NRDC seeks \$957.51 for expenses, mostly related to travel to PRG and PAG meetings. These costs are reasonable and we authorize their recovery.

6. NRDC's Award of Compensation

As set forth in the table below, we award \$31,007.01 in compensation to NRDC.

AWARDS				
Work Towards D.07-10-032				
Item	Year	Hours	Rate	Total
Audrey Chang	2006	2.05	\$115.00	\$235.75
Audrey Chang	2007	14.55	\$120.00	\$1,746.00
Eric Wanless	2007	23.45	\$120.00	\$2,814.00
Peter Miller	2005	40.50	\$100.00	\$4,050.00
Peter Miller	2006	49.00	\$100.00	\$4,900.00
Peter Miller	2007	6.50	\$100.00	\$650.00
Total:				\$14,395.75
Work in PAG and PRG				
Audrey Chang	2006	33.50	\$115.00	\$3,852.50
Audrey Chang	2007	7.00	\$120.00	\$840.00
Eric Wanless	2006	39.75	\$115.00	\$ 4,571.25
Eric Wanless	2007	45.75	\$120.00	\$5,490.00
Total:				\$14,753.75
Intervenor Compensation Claim Preparation				
Audrey Chang	2007	12	\$75.00	\$900.00
Costs				
Related to PAG/PRG (Audrey Chang)				\$502.80
Related to PAG/PRG (Eric Wanless)				\$454.71
Total Costs:				\$957.51
TOTAL AWARD				\$31,007.01

Consistent with previous Commission decisions, we order that interest be paid on the award amount (at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release H.15) commencing on March 1, 2008, the 75th day after NRDC filed its compensation request, and continuing until full payment of the award is made.

Commission staff is authorized to audit an intervenor's records related to the award. Intervenors must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. NRDC's records should identify specific issues for which it requested compensation, the actual time spent by each employee or consultant, the applicable hourly rate, fees paid to consultants, and any other costs for which compensation was claimed.

7. CE Council's Substantial Contribution

CE Council seeks compensation for work on D.07-09-043 and D.07-10-032, which are addressed separately below.

7.1. Contribution to D.07-09-043

CE Council attended the Phase 1 workshops, filed a proposal for a specific incentive mechanism and an opening brief, and filed opening comments on the proposed decision. Although CE Council was active in the work leading to D.07-09-043, we conclude that CE Council did not make a substantial contribution to D.07-09-043.

D.07-09-043 did not adopt any of the major elements of the incentive mechanism proposed by CE Council and specifically rejected CE Council's position and arguments on these and other design issues. The decision rejects CE Council's allegations that energy efficiency incentives have historically had little or no impact on related utility performance. We rejected CE Council's legal analysis that suggested we did not have authority to adopt incentive ratemaking

and CE Council's proposal on the costs that should be included in measuring portfolio performance. Finally, D.07-09-043 rejected CE Council's proposal to adopt earnings rates that would vary according to the level of performance.

D.07-09-043 notes that several parties, including CE Council, proposed a hybrid approach for calculating whether a utility achieved minimum performance standards (MPS). While CE Council supported this approach to determining MPS, it did so with specific parameters that differed substantially from the MPS and minimum floor levels adopted in D.07-09-043. CE Council's support for one design feature of the adopted incentive mechanism does not constitute a substantial contribution absent analysis or evidence to support the approach.

CE Council also asserts that the adopted cap for earnings and penalties was influenced in part by CE Council's comments on the proposed decision.¹¹ However, CE Council's comments on the proposed decision refer to previous comments and the testimony presented by DRA and TURN to argue that low risks to the utilities justify a much lower opportunity to earn than the range suggested by a comparable earnings analysis.¹² CE Council's mere reference to the work of others does not constitute a substantial contribution.

CE Council's participation in Phase 1 of this proceeding did not contribute substantially to D.07-09-043. We therefore deny compensation for the requested hours of work on activities related to Phase 1. This represents 158 hours of

¹¹ *Request of the Community Environmental Council for an Award of Compensation*, November 13, 2007, p. 11.

¹² *Community Environmental Council Comments on Proposed Interim Decision on Phase 1 Issues*, August 29, 2007, pp. 5-7.

Mr. Hunt's time during 2006 (including travel time) and 6.25 hours during 2007, for a total of 164.25 hours.

7.2. Contributions to D.07-10-032

CE Council states it participated extensively in the activities leading to D.07-10-032. It states it attended workshops, filed comments and prevailed on key issues, as follows:

- The requirement that the utilities develop an energy efficiency strategic plan that identifies program strategies through 2020.
- The adoption of three energy efficiency program initiatives that promote policies and practices with the following goals:
 - All new residential construction will be "zero net energy" by 2020
 - Half of new residential construction will incorporate solar technologies 2011
 - All new commercial construction will be "zero net energy" by 2030
- The rejection of a program emphasis in the industrial sector.

CE Council states it was the first and only party to call for a state-wide strategic plan at a workshop on June 13, 2007. In comments submitted with TURN, CE Council elaborated on the format and purposes of the plan (also referred to as an "action plan").

Similarly, CE Council states it was the only party to raise the possibility of the Commission making the full name AIA 2030 Challenge its own, originally in a workshop and subsequently in written comments. The Commission adopted CE Council's recommendations on this and other considered programmatic initiatives. It also adopted CE Council's recommendation to adopt "zero net energy" as a building design and construction goal rather than "carbon neutrality."

Energy Division staff confirm that CE Council's involvement in the informal processes of this proceeding greatly assisted the Commission in its deliberations regarding the energy efficiency planning process and other issues addressed in D.07-09-032. We find that CE Council made a substantial contribution to that decision.

8. CE Council's Requested Compensation

CE Council requests \$74,269.80¹³ for its participation in this proceeding, as follows:

Work on Issues of the Proceeding				
Attorney	Year	Hours	Rate	Total
Tamlyn Hunt	2006	127.50	\$210.00	\$26,775.00
Tamlyn Hunt	2007	130.30 ¹⁴	\$280.00	\$36,484.00
Attorney Subtotal				\$63,259.00
Staff				
Megan Birney	2007	1.00	\$75.00	\$75.00
Megan Diaz	2007	2.00	\$75.00	\$150.00
Staff Subtotal				\$225.00
Intervenor Compensation Claim Preparation				
Tamlyn Hunt	2007	13.50	\$140.00	\$1,890.00
Other Fees (Travel)				
Tamlyn Hunt	2006	30.50	\$105.00	\$3,202.50
Tamlyn Hunt	2007	14.75	\$140.00	\$2,065.00
Travel Subtotal				\$5,267.50
Costs				
Travel Expenses (transportation, lodging) ¹⁵				\$3,628.30
TOTAL REQUEST				\$74,269.80

¹³ In CE Council's calculation of the requested amount, it is \$75,098.64. However, CE Council made a few calculation errors that we correct in the table below. The correct amount, in accordance with the timesheets attached to the request and information on the travel expenses additionally provided by CE Council in its letter of January 2, 2008, is \$74,269.80 and we indicate it here.

¹⁴ In CE Council's summary of the requested compensation (tables on pages 16-17 of the Request), a number of hours spent in 2007 on the issues of the proceeding is 133.75, and on travel - 11.25. However, CE Council erroneously includes in the time spent on substantive issues 3.5 hours described in the timesheets as "return to Santa Barbara" (see, timesheet for 6/8/2007), and we re-designate here these hours as "travel" at half rate. Accordingly, the amount of the time spent in 2007 on the issues of the proceeding is 130.30 hours and on travel - 14.75 hours.

¹⁵ In CE Council's summary of the requested compensation (tables on pages 16-17 of the Request), the intervenor indicates a different amount -- \$3,981.14. However, in its letter of January 2, 2008, providing, at the request of the judge, a breakdown of the travel costs, CE Council indicates the amount of \$3,628.30, and we include it here.

In general, the components of this request must constitute reasonable fees and costs of the customer's preparation for and participation in a proceeding that resulted in a substantial contribution. We consider whether the hours claimed are reasonable by determining to what degree the hours and costs are related to the work performed and necessary for the substantial contribution.

8.1. Attorney Rates

We consider here whether the claimed fees and costs are comparable to the market rates paid to experts and advocates having comparable training and experience and offering similar services.

In requesting this rate, CEC relies on attorney Tamlyn Hunt's experience (six years, including 2.5 years of practicing before the Commission) and on D.07-01-009 establishing for attorneys with five to seven years of experience a rate range of \$270-\$290 per hour for work performed in 2007. However, for 2007, that decision only allows two kinds of increases of the previous year rates: 3% cost of living adjustment and 5% step increase. Application of these two factors to his 2006 rate does not bring Hunt's 2007 rate within the rate range mentioned above.

In D.05-11-031, setting 2005 rates for intervenors' representatives, we stated:

Where additional experience since the last authorized rate would move a representative to a higher level of qualification (e.g., from intermediate to senior), an increase is reasonable to bring the representative's hourly rate within the range of the representative's peers at the higher level.

Although this provision was set forth for the year 2005 rates and although Hunt in 2007 remained at the same level experience level (5 to 7 years) as he did in 2006, we consider here CEC's request to bring his 2007 hourly rate in line with

rates as we set in D.07-01-009. We base our consideration on the fact that it would not be fair to deny Hunt bringing his rate in accord with the rates set for attorneys with his level of experience, while at the same time for an attorney for the first time appearing before the Commission in 2007, we would approve a requested rate if it would correspond with his experience level. Based on this consideration, we approve the rate of \$270.00 for Hunt's work in 2007.

CE Council also proposes \$75 for two of its staff, Megan Birney and Megan Diaz. CE Council does not identify these staff members' professional qualifications or justify their respective rates. The Commission does not compensate intervenors for the services of support staff because those costs are presumed to be covered by attorney and expert rates as overhead costs. We therefore do not compensate the hours of Diaz or Birney. Future requests for compensation should provide more specific information and justification for work that would be compensated.

8.2. Hours Claimed

We have already stated our intent to disallow work leading to D.07-09-043 because we find that CE Council did not make a substantial contribution to that decision. We therefore disallow 158 hours in 2006 and 6.25 hours in 2007 CE Council claims for work leading to D.07-09-043.

We find that the hours CE Council claims for Hunt's work leading to D.07-10-032 are reasonable and we herein authorize compensation for them. CE Council appropriately billed half of the hours spent on travel and on drafting the compensation request. CE Council's hours are reasonable for the work CE Council conducted in this proceeding.

D.98-04-059 directed customers to demonstrate productivity by assigning a reasonable dollar value to the benefits of their participation to ratepayers. The

costs of a customer's participation should bear a reasonable relationship to the benefits realized through their participation. It would be difficult to assign a value to CE Council's participation in a proceeding like this. However, the benefits to customers of CE Council's participation surely outweigh the costs.

8.3. Direct Expenses

CE Council seeks \$3,628.30 in expenses for work in this proceeding, which is primarily travel from Santa Barbara, where CE Council's office is located.¹⁶ We disallow travel and other expenses for 2006, when CE Council was working exclusively on the phase of the proceeding leading to D.07-09-043, work we have found did not make a substantial contribution. For expenses regarding work on D.07-10-032, CE Council seeks \$2,023.28 for four days of travel from Santa Barbara to attend a hearing and workshops in San Francisco. These costs are reasonable and we will authorize their recovery.

¹⁶ CE Council's travel time from Santa Barbara is reasonable because CE Council states most of the work of its organization involves representing the community in and around Santa Barbara.

9. CE Council's Award of Compensation

As set forth in the table below, we award \$38,858.03 in compensation to CE Council.

AWARD				
Work on Issues of the Proceeding				
Attorney	Year	Hours	Rate	Total
Tamlyn				
Hunt	2006	0.00	\$210.00	\$0.0
Tamlyn				
Hunt	2007	124.05	\$270.00	\$33,493.50
Attorney Subtotal				\$33,493.50
Other Fees (Travel)				
Tamlyn				
Hunt	2006	0.00	\$105.00	\$0.00
Tamlyn				
Hunt	2007	11.25	\$135.00	\$1,518.75
Travel Subtotal				\$1,518.75
Intervenor Compensation Claim Preparation				
Tamlyn				
Hunt	2007	13.50	\$135.00	\$1,822.50
Costs				
Travel Expenses				\$2,023.28
TOTAL AWARD				\$38,858.03

Consistent with previous Commission decisions, we order that interest be paid on the award amount (at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release H.15) commencing on February 2, 2008, which is the 75th day after CE Council filed its compensation request, and continuing until full payment of the award is made.

Commission staff is authorized to audit an intervenor's records related to the award. Intervenors must make and retain adequate accounting and other

documentation to support all claims for intervenor compensation. CE Council's records should identify specific issues for which it requested compensation, the actual time spent by each employee or consultant, the applicable hourly rate, fees paid to consultants, and any other costs for which compensation was claimed.

10. Comments on Proposed Decision

The proposed decision of the ALJ in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were received from NRDC and CE Council on May 7, 2008.

11. Assignment of Proceeding

Dian Grueneich is the assigned Commissioner, and David Gamson is the assigned ALJ in this proceeding.

Findings of Fact

1. NRDC has satisfied all the procedural requirements necessary to claim compensation in this proceeding.

2. NRDC made a substantial contribution to D.07-10-032 as described herein, although some of its contributions were limited in scope and mostly duplicated the work of other parties. NRDC made a substantial contribution to the PRG and PAG processes, and to the EMF protocols approved by ALJ Ruling in this docket.

3. NRDC's requested hourly rates for its representatives are reasonable and consistent with D.07-01-009 with the exception that its rate for Chang should be increased by 3% for work accomplished in 2007. NRDC's work on the report D.05-01-055 directed Commission staff to conduct is not compensable.

4. NRDC's requested related expenses that are reasonable and commensurate with the work performed.

5. CE Council has satisfied all the procedural requirements necessary to claim compensation in this proceeding.

6. CE Council did not make a substantial contribution to D.07-09-043 as described herein.

7. CE Council made a substantial contribution to D.07-10-032 as described herein.

8. CE Council's requested hourly rates for Hunt's work in 2006 has been approved by the Commission. The 2007 rate for Hunt should be increased to \$270.

9. CE Council's requested expenses for 2007 are reasonable and commensurate with the work performed.

Conclusions of Law

1. NRDC has fulfilled the requirements of Pub. Util. Code §§ 1801-1812, which govern awards of intervenor compensation, and is entitled to intervenor compensation for its contributions to D.07-09-043 in the amount of \$31,007.01.

2. CE Council has fulfilled the requirements of Pub. Util. Code §§ 1801-1812, which govern awards of intervenor compensation, and is entitled to intervenor compensation for its contributions to D.07-10-032 in the amount of \$38,858.03

3. This order should be effective today so that NRDC and CE Council may be compensated without further delay.

O R D E R

IT IS ORDERED that:

1. Natural Resources Defense Council (NRDC) is awarded \$31,007.01 as compensation for its substantial contributions to Decision (D.) 07-10-032 and its

work on related matters as set forth herein. Within 30 days of the effective date of this decision, Southern California Edison Company (SCE), San Diego Gas & Electric Company (SDG&E), Southern California Gas Company (SoCalGas) and Pacific Gas and Electric Company (PG&E) shall pay NRDC the award granted herein in shares proportional to their 2007 revenues. Payment of the award shall include interest at the rate earned on prime, three-month commercial paper as reported in Federal Reserve Statistical Release H.15, beginning on March 1, 2008, the 75th day after the filing date of Community Environmental Council's (CE Council) request for compensation, and continuing until full payment is made.

2. CE Council is awarded \$38,858.03 as compensation for its substantial contributions to D.07-10-032. Within 30 days of the effective date of this decision, SCE, SDG&E, SoCalGas and PG&E shall pay CE Council the award granted herein in shares proportional to their respective 2007 revenues. Payment of the award shall include interest at the rate earned on prime, three-month commercial paper as reported in Federal Reserve Statistical Release H.15, beginning on February 2, 2008, the 75th day after the filing date of CE Council's request for compensation, and continuing until full payment is made.

3. This proceeding remains open for the Commission's consideration of additional issues relating to energy efficiency programs and policies.

This order is effective today.

Dated June 12, 2008, at San Francisco, California.

MICHAEL R. PEEVEY

President

DIAN M. GRUENEICH

JOHN A. BOHN

RACHELLE B. CHONG

TIMOTHY ALAN SIMON

Commissioners

APPENDIX

Compensation Decision Summary Information

Compensation Decision:	D0806018	Modifies Decision? No
Contribution Decision(s):	D0709043 and D0710032	
Proceeding(s):	R0604010	
Author:	ALJ Malcolm	
Payer(s):	PG&E, SCE, SDG&E, SoCalGas	

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
Natural Resources Defense Council	12/17/07	\$54,365.01	\$31,007.01	No	Majority of work failed to provide substantial contributions; conducted improper work; miscalculations
Community Environmental Council	11/19/07	\$74,269.80	\$38,858.03	No	No significant contribution to one of the decisions; adjusted hourly rate; misallocation of intervenor compensation and travel time

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Audrey	Chang	Expert	NRDC	\$115	2006	\$115
Audrey	Chang	Expert	NRDC	\$150	2007	\$120
Eric	Wanless	Expert	NRDC	\$115	2006	\$115
Eric	Wanless	Expert	NRDC	\$120	2007	\$120
Peter	Miller	Expert	NRDC	\$100	2005	\$100
Peter	Miller	Expert	NRDC	\$100	2006	\$100
Peter	Miller	Expert	NRDC	\$100	2007	\$100
Tamlyn	Hunt	Attorney	CE Council	\$210	2006	\$210
Tamlyn	Hunt	Attorney	CE Council	\$280	2007	\$270

(END OF APPENDIX)