

Decision 09-02-028 February 20, 2009

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Promote Policy and Program Coordination and Integration in Electric Utility Resource Planning.

Rulemaking 04-04-003
(Filed April 1, 2004)

Order Instituting Rulemaking to Promote Consistency in Methodology and Input Assumptions in Commission Applications of Short-run and Long-run Avoided Costs, including Pricing for Qualifying Facilities.

Rulemaking 04-04-025
(Filed April 22, 2004)

**DECISION GRANTING INTERVENOR COMPENSATION
TO UNION OF CONCERNED SCIENTISTS FOR
SUBSTANTIAL CONTRIBUTION TO DECISION 06-02-032**

This decision awards Union of Concerned Scientists (UCS) \$19,776.37 in compensation for its substantial contributions to Decision 06-02-032. This represents a decrease of \$47.48 from the amount requested due to the removal of one unjustified expense. Today's award payment will be made by Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E), and Southern California Edison Company (SCE).

1. Background

The California Public Utilities Commission ("Commission") committed itself to minimizing the energy sector's impact on climate change in the 2003 Energy Action Plan. To explore a cap-and trade procurement framework in furtherance of that commitment, the Commission opened Rulemaking (R.)

R.04-04-003. An en banc Commission meeting on reducing greenhouse gases (GHG) took place on February 23, 2005, and a three-day workshop was held March 7-9, 2005, for which pre-workshop comments and alternate frameworks were invited. The Commission staff released a report on the workshop on March 29, 2005, after which various parties in this proceeding filed comments and reply comments as directed by the assigned ALJ.

Against the foregoing backdrop, Governor Schwarzenegger set out statewide GHG reduction targets on June 1, 2005, in Executive Order S-3-05, and in September and October of 2005 the Commission and the California Energy Commission (CEC) adopted Energy Action Plan II. On October 6, 2005, a Policy Statement on Greenhouse Gas Performance Standards (GHG Policy Statement) was adopted by the Commission, expressing in part an intention to explore the integration of its GHG emissions standards and its procurement policies.

The instant rulemaking (R.04-04-003) resulted in the Procurement Incentives Framework Decision (Decision) D.06-02-032, on February 16, 2006. The proceeding was closed by D.07-09-040.

2. Requirements for Awards of Compensation

The intervenor compensation program, which is set forth in Pub. Util. Code §§ 1801-1812,¹ requires California jurisdictional utilities to pay the reasonable costs of an intervenor's participation if that party makes a substantial contribution to the Commission's proceedings. The statute provides that the utility may adjust its rates to collect the amount awarded from its ratepayers.

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

¹ All subsequent statutory references are to the Public Utilities Code unless otherwise indicated.

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 (PHC), pursuant to Rule 17.1 of the Commission's Rules of Practice and Procedure (Rules), or at another appropriate time 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) and 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 or as otherwise found by the Commission. (§§ 1802(i) and 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).

In the discussion below, the procedural issues in Items 1-4 above are combined and a separate discussion of Items 5-6 follows.

2.1. Preliminary Procedural Issues

Under § 1804(a)(1) and Rule 17.1(a)(1), a customer who intends to seek an award of intervenor compensation must file an NOI before certain dates. UCS filed its NOI on June 1, 2004.

In its NOI, UCS asserted financial hardship. Section 1802(b)(1) of the Public Utilities Code defines a "customer" as: (A) a participant representing consumers, customers or subscribers of a utility; (B) a representative who has

been authorized by a customer; or (C) a representative of a group or organization authorized pursuant to its articles of incorporation or bylaws to represent the interests of residential or small business customers. (§ 1802(b)(1)(A) through (C).) On July 27, 2004, the ALJ issued a ruling that found UCS a customer pursuant to § 1802(b)(1)(C) and eligible to receive intervenor compensation as a Category 3 customer under the standard of significant financial hardship. In its Request for an Award of Compensation (at p. 2). UCS has represented that it's "circumstances with respect to such eligibility have not changed."

UCS filed its request for compensation on November 21, 2007, within 60 days of the mailing date of D.07-09-040, September 25, 2007. No party opposed the request. In view of the above, we affirm the ALJ's ruling and find that UCS has satisfied all the procedural requirements necessary to make its request for compensation in this proceeding.

3. Substantial Contribution

In evaluating whether a customer made a substantial contribution to a proceeding, we look at several things. First, we look at whether the Commission adopted one or more of the factual or legal contentions, or specific policy or procedural recommendations put forward by the customer. (§ 1802(i).) Second, if the customer's contentions or recommendations paralleled those of another party, we look at whether the customer's participation unnecessarily duplicated or materially supplemented, complemented, or contributed to the presentation of the other party. (§§ 1801.3(f) and 1802.5.)

As described in § 1802(i), the assessment of whether the customer made a substantial contribution requires the exercise of judgment.

In assessing whether the customer meets this standard, the Commission typically reviews the record, composed in part of

pleadings of the customer and, in litigated matters, the hearing transcripts, and compares it to the findings, conclusions, and orders in the decision to which the customer asserts it contributed. It is then a matter of judgment as to whether the customer's presentation substantially assisted the Commission.²

With this guidance in mind, we turn to the claimed contributions UCS made to the proceeding.

UCS alleges that it made substantial contributions to D.06-02-032 through pre-workshop opening comments, participation in the workshop, post-workshop opening and reply comments, and joint opening and reply comments on the Commission's proposed decision.

It states that it contributed particularly to the proceeding record on the subjects of GHG capping, emission baselines, over-time adjustments to GHG reduction requirements, interagency coordination and policy integration, role of financial incentives and penalties, interaction of GHG and financial incentives, allocation of GHG allowances. We find that it made a substantial contribution on those subjects. In addition, UCS takes credit for responding to the Commission's questions and interest relative to several matters the Commission either decided not to pursue or to defer to subsequent phases.

UCS' comments on the primary issues of whether GHG caps ought to be established and be load-based in a procurement incentive framework were reflected in the Decision at 15, 18-19. On the subject of emission baselines, UCS argued in post-workshop comments against the Commission staff's proposal to use the IOU's current resource plan as the baseline. The Commission expressly cited, and agreed with, UCS' position that a past baseline ought to be used,

² D.98-04-059, 79 CPUC2d 628 at 653.

providing for a lower emissions cap and avoiding reduction disincentives (Decision at 38).

The issue of adjusting GHG reduction requirements over time was addressed by UCS at the workshop and in comments. The Commission highlighted for future exploration during the implementation phase UCS' suggestion that a "supply curve" of GHG reduction measures be developed concerning each utility's resource portfolio (Decision at 39). On the issue of inter-agency coordination and policy integration, UCS' workshop and pre-and post-workshop comments urging such coordination and integration were in accord with the Commission's ultimate decision (Decision at 16).

The Commission stated that "UCS was the main party arguing that penalties are essential for program success." (Decision at 46.) The Commission stated its preference for structuring penalties as alternative compliance payments (ACPSs) pursuant to UCS' suggestion (Decision at 47). In pondering whether portfolio-wide incentives could be implemented in a timely manner, the Commission noted UCS' position urging category-specific incentives. (Decision at 27 and 31.) The Commission committed itself "to evaluate shareholder risk/reward incentive mechanisms in resource-specific proceedings." (Decision at 32.) As to the allocation of GHG allowances, the Commission sided with UCS' position by stating that its initial preference was for administrative allocation, rather than an auction system, but acknowledged that the topic needed more evaluation which could occur in the next phase of its investigation. (Decision at 43.)

We find that UCS made a substantial contribution to the proceeding record in each of the above subject areas.

We note that UCS filed opening and reply comments on the proposed decision jointly with the Natural Resources Defense Council (NRDC). Section 1801.3(f) requires an intervenor to avoid participation that duplicates that of similar interests otherwise adequately represented by another party, or participation unnecessary for a fair determination of the proceeding. Section 1802.5, however, allows an intervenor to be eligible for full compensation where its participation materially supplements, complements, or contributes to the presentation of another party if that participation makes a substantial contribution to the Commission order.

In this instance the joint effort by UCS and NRDC, and the coordination underlying it, materially benefited the proceedings. None of the related time put in by UCS appears to have been duplicative and it meets the test of having materially supplemented, complemented, or contributed to the presentation of the other party, NRDC. (§§ 1801.3(f) and 1802.5.) We find that UCS actively took steps to avoid duplication.

5. Reasonableness of Requested Compensation

UCS requests \$19,823.85 for its participation in this proceeding, as follows:

Work on Proceeding				
Attorney/Staff	Year	Hours	Hourly Rate	Total
John Galloway	2006	12.75	\$125	\$ 1,593.75
Clyde Murley	2005	81.75	\$173	\$14,142.75
Clyde Murley	2006	13.20	\$180	\$ 2,376.00
Subtotal:				\$18,112.50
Preparation of NOI and Compensation Request				
Attorney/Staff	Year	Hours	Houly Rate	Total
Clyde Murley	2006	16.7	\$90	\$ 1,503.00
Subtotal Hourly Compensation:				\$ 19,615.50
Expenses				\$ 208.35
Total Requested Compensation				\$ 19,823.85

In general, the components of the request must constitute reasonable fees and costs of the customer's preparation for and participation in a proceeding that resulted in a substantial contribution. The issues we consider to determine reasonableness are discussed below:

5.1. Hours and Costs Related to and Necessary for Substantial Contribution

We first 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. UCS believes that the total number of hours claimed is reasonable given the scope of this proceeding and the complexity of the issues. UCS did not allocate its time and costs among issues, making it difficult to determine the reasonableness of the aggregate hours claimed. The total aggregate hours claimed, however, are commensurate with the contribution made. We caution UCS, as we have done in connection with intervenor compensation claims it has filed in other Commission proceedings, that future claims will include disallowances for failure to allocate time and costs by issue.

5.2. Intervenor Hourly Rates

We next take into consideration 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. The Commission authorized a 2005 hourly rate of \$120 for John Galloway (D.06-04-022). Applying a 3% increase for 2006 Galloway's rate raised the rate to \$125 (D.07-06-032). Clyde Murley's authorized rate for 2005 was \$173 (D.06-06-056). While that same rate was applied in 2006 (D.07-06-032), it was based on Murley's work on

decisions that preceded D.07-01-009 which set out the 3% COLA. We here apply that COLA and determine that Murley's rate for his 2006 work in this proceeding is \$180.

5.3. Direct Expenses

The itemized direct expenses submitted by UCS include the following:

Photocopying	\$43.64
Courier Delivery	\$164.71
Total Expenses	\$208.35

The cost breakdown included with the request shows the miscellaneous expenses to be commensurate with the work performed, excluding \$49.37 for re-filing comments due to messenger delay for which no justification was given. We therefore find \$160.87 of the claimed costs reasonable.

6. Productivity

D.98-04-059 directed customers to demonstrate productivity by assigning a reasonable dollar value to the benefits of their participation to ratepayers. (D.98-04-059, pp. 34-35.) The costs of a customer's participation should bear a reasonable relationship to the benefits realized through its participation. This showing assists us in determining the overall reasonableness of the request. The societal and economic value of reducing GHG is recognized in the initiatives of the Commission and of the State of California highlighted above in the Background section. Reduced GHG emissions can protect ratepayers from enormous environmental, public health and financial risks. UCS' participation in R.04-04-003 was productive in that the impact of that participation in the development of a procurement incentives framework far exceeds the cost of its participation.

7. Award

As set forth in the table below, we award UCS \$19,776.37.

CALCULATION OF FINAL AWARD

Work on Proceeding				
Attorney/Staff	Year	Hours	Hourly Rate	Total
John Galloway	2006	12.75	\$125	\$ 1,593.75
Clyde Murley	2005	81.75	\$173	\$14,142.75
Clyde Murley	2006	13.20	\$180	\$ 2,376.00
Subtotal:				\$18,112.50
Preparation of NOI and Compensation Request				
Attorney/Staff	Year	Hours	Houly Rate	Total
Clyde Murley	2006	16.7	\$90	\$ 1,503.00
Subtotal Hourly Compensation:				\$19,615.50
Expenses				\$ 160.87
TOTAL AWARD				\$19,776.37

Consistent with previous Commission decisions, we order that interest be paid by PG&E, SDG&E, and SCE 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 4, 2008, the 75th day after UCS filed its compensation request, and continuing until full payment of the award is made.

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

compensation shall be retained for at least three years from the date of the final decision making the award.

8. Waiver of Comment Period

This is an intervenor compensation matter. Accordingly, as provided by Rule 14.6(c)(6) of our Rules of Practice and Procedure, we waive the otherwise applicable 30-day comment period for this decision.

9. Assignment of Proceeding

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

Findings of Fact

1. UCS has satisfied all the procedural requirements necessary to claim compensation in this proceeding.
2. UCS made a substantial contribution to D.06-02-032 as described herein.
3. UCS requested hourly rates for its representatives that are reasonable when compared to the market rates for persons with similar training and experience.
4. UCS requested related expenses, as adjusted herein, that are reasonable and commensurate with the work performed.
5. The total of the reasonable compensation is \$19,776.37.
6. The Appendix to this decision summarizes today's award.

Conclusions of Law

1. UCS has fulfilled the requirements of §§ 1801-1812, which govern awards of intervenor compensation, and is entitled to intervenor compensation for its claimed expenses, as adjusted herein, incurred in making substantial contributions to D.06-02-032.

2. UCS should be awarded \$19,776.37 for its contribution to D.06-02-032.
3. This order should be effective today so that UCS may be compensated without further delay.

O R D E R

IT IS ORDERED that:

1. Union of Concerned Scientists is awarded \$19,776.37 as compensation for its substantial contributions to Decision 06-02-032.
2. Within 30 days of the effective date of this decision, Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E), and Southern California Edison Company (SCE) shall pay the Union of Concerned Scientists their respective shares of the award. We direct PG&E, SDG&E, and SCE to allocate payment responsibility among themselves, based on their California-jurisdictional electric revenues for the 2006 calendar year, to reflect the year in which the proceeding was primarily litigated. Payment of the award shall include interest at the rate earned on prime, three-month commercial paper as reported in Federal Reserve Statistical Release H.15, beginning February 4,

R.04-04-003, R.04-04-025 ALJ/CAB/tcg

2008, the 75th day after the filing date of the Union of Concerned Scientist's request for compensation, and continuing until full payment is made.

This order is effective today.

Dated February 20, 2009, 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:	D0902028	Modifies Decision? No
Contribution Decision(s):	D0602032	
Proceeding(s):	R0404003	
Author:	ALJ Brown	
Payer(s):	Pacific Gas and Electric Company, San Diego Gas & Electric Company, and SouthernCalifornia Edison Company	

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
Union of Concerned Scientists	11-21-07	\$19,823.85	\$19,776.37		Unjustified expense

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
John	Galloway	Staff	Union of Concerned Scientists	\$125	2006	\$125
Clyde	Murley	Consultant	Union of Concerned Scientists	\$173	2005	\$173
Clyde	Murley	Consultant	Union of Concerned Scientists	\$180	2006	\$180

(END OF APPENDIX)