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Decision 88 07 025 JUL 8 1988

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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Rulemaking Proceeding on the )  
Commission's Own Motion to Revise )  
Electric Utility Rate-making )  
Mechanisms in Response to Changing )  
Conditions in the Electric Industry. )

I.86-10-001  
(Filed October 1, 1986)

OPINION ON NRDC'S REQUEST FOR COMPENSATION

SUMMARY

Natural Resources Defense Council (NRDC) requests compensation of \$14,004.31 for its contribution to Decision (D.) 88-03-008. We find that NRDC made a substantial contribution to this decision, and we award compensation of \$14,004.31

Introduction

NRDC filed its initial request for compensation on September 16, 1987, for its contribution up to that date in this proceeding. The initial request was filed before we found NRDC eligible for compensation. NRDC supplemented its request for compensation on April 4, 1988, and on April 27, we found NRDC eligible for compensation in D.88-04-066.

Rule 76.56 of the Commission's Rules of Practice and Procedure governs requests for compensation:

"Following issuance of a final order or decision by the Commission in the hearing or proceeding, a customer who has been found by the Commission...to be eligible for an award of compensation may file within 30 days a request for an award. The request shall include, at a minimum, a detailed description of services and expenditures and a description of the customer's substantial contribution to the hearing or proceeding...."

NRDC points out that Rule 76.52(h) defines "final order or decision" to mean "an order or decision that resolves the issue(s) for which compensation is sought." Although D.88-03-008 was designated as an interim opinion, NRDC says that the decision resolved the issues for which NRDC seeks compensation. We agree.

D.88-03-008 was issued on March 9, 1988. NRDC's filing of April 4 was therefore made within 30 days of the decision.

NRDC submits that its efforts led the Commission to adopt a variation of NRDC's proposal to include conservation measures as an option for customers negotiating special contracts. NRDC groups its participation leading up to the Commission's decision into three general categories.

First, in the early stages of this proceeding NRDC submitted written comments on ideas that the Commission presented in R.86-10-001, the order that started this proceeding. NRDC's representative also made oral presentations at a two-day en banc hearing on issues raised by the various parties' comments. NRDC argues that in an interim decision, D.87-05-071, we supported its position on the need to limit the special contracts program's potential for adversely affecting the interests of other rate-payers. In addition, the decision also called for proposals on how to carry out NRDC's ideas.

Second, NRDC states that it participated extensively in the workshops on guidelines for special contracts, which included NRDC's conservation proposals. NRDC submitted comments on the proposed guidelines, prepared an outline of its ideas for distribution at the workshop, made an oral presentation of its ideas, and responded to the questions and comments of other participants. NRDC notes that it submitted additional written comments to follow-up on points raised in the workshop.

Third, NRDC responded to the failure of the draft decision of the Administrative Law Judge (ALJ) to adopt its proposals; the draft decision called for further workshops to

consider how to overcome some specific problems with NRDC's proposals. NRDC submitted written comments on the draft decision, and the Commission altered this portion of the decision to adopt a variation of NRDC's original proposal.

Pacific Gas and Electric Company (PG&E) and Southern California Edison Company (Edison) filed responses to NRDC's request. PG&E's response, filed October 16, 1987, commented only on the first stage of NRDC's participation and argued that the time claimed by NRDC was excessive. According to PG&E, NRDC's level of participation should not have required more than 50% of the claimed hours. PG&E points out that "NRDC's participation was limited to only one proposal. The workshop discussion made clear that this proposal was vague, poorly defined and inadequately thought through." PG&E asserts that NRDC should receive no compensation, but if the Commission decides that NRDC has made a substantial contribution, the compensation should be no more than \$5,431.94.

Edison's response was filed on May 4, 1988, after NRDC submitted its supplemental request. Edison notes that NRDC failed to allocate its time on an issue-by-issue basis, as the Commission has required. This failure becomes important because NRDC made two proposals, only one of which could be construed as having contributed to D.88-03-008. Edison concedes that NRDC's first proposal, calling for utilities to present conservation options to customers negotiating special contracts, may entitle it to some compensation. But the Commission called NRDC's second proposal, which would have required customers with special contracts to self-generate or go on interruptible rates at the end of the contract, "interesting but perhaps undeveloped" and declined to adopt this proposal in D.88-03-008. Because only one of NRDC's two proposals was adopted and because NRDC failed to allocate its time between these proposals, Edison argues that NRDC's claimed hours should be allocated pro rate between the proposals and that NRDC's compensation should be limited to one-half of the amount requested.

Issue To Be Decided

Rule 76.58 requires the Commission not only to determine whether NRDC made a substantial contribution to D.88-03-008 but also to describe that substantial contribution and to set the amount of the compensation to be awarded. According to Rule 76.52(g), an intervenor has made a "substantial contribution" when:

"...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 had adopted in whole or in part one or more factual contentions, legal contentions, or specific policy or procedural recommendations presented by the customer."

Substantial Contribution

We agree with NRDC's assertion that it has made a substantial contribution to D.88-03-008. NRDC's initial comments stimulated the recognition of the potentially adverse effects of the special contracts program, and in D.87-05-071, we asked for specific proposals for integrating future flexibility into the special contracts program. NRDC responded with two proposals. In D.88-03-008, we stated, "NRDC has identified an important problem and has proposed a novel solution to that problem." We adopted a guideline that we acknowledged was a variation of NRDC's proposal.

We conclude that NRDC made a significant contribution and that its proposals led to the conservation guideline we adopted in D.88-03-008.

Compensation

Rule 76.60 sets the bounds for the calculation of compensation:

"[The calculation] shall take into consideration the compensation paid to persons of comparable training and experience who offer similar services. The compensation awarded may not, in any case, exceed the market value of services paid by the Commission or the public utility, whichever is greater, to persons of comparable

training and experience who are offering similar services."

NRDC requests compensation for 91.2 hours of Senior Staff Attorney Ralph Cavanagh's time at the rate of \$150 per hour, or \$13,680.00, and for \$324.31 of its photocopying and postage expenses, for a total request of \$14,004.31.

Mr. Cavanagh has an impressive resume and over 10 years' experience as an attorney, including about nine years in his present position with NRDC. He has extensive experience as both an attorney and a witness on energy and conservation topics before various regulatory agencies. We find that the requested hourly rate of \$150 per hour is reasonable and does not exceed the market rate for an attorney of Mr. Cavanagh's training, experience, and expertise.

PG&E and Edison have disputed the reasonableness of the amount of these hours, and both urge that the awarded compensation should be no more than half the amount requested. Edison, in particular, argued that NRDC's contribution was limited to only one of its two issues and that NRDC failed to allocate its time between these issues in its request. In similar cases, the Commission has allowed recovery of only the proportion of successful issues to total issues the party addressed, according to Edison. Applying that approach to this proceeding would limit NRDC's recovery to one-half of its request.

We have two reservations about Edison's argument. First, since the NRDC's two proposals arose first at the workshop of July 27 & 28, 1987, it would not be fair to apply the suggested allocation to hours expended before these proposals were conceived. In addition, it is not clear that expenses for mailing and the like would have been reduced by one-half if NRDC had omitted the less successful portion of its presentation. Second, our previous treatment of unallocated time applied to issues; NRDC's two proposals were related to the same issue, which we had described as

how to carry out the goal of intergrating special contracts with the utility's expected resource needs (D.87-05-071, mimeo. pp. 14-15). The two proposals were related in Mr. Cavanagh's presentation and, apparently, in his mind, and it is difficult to see how his time could have been allocated between the two proposals in these circumstances.

We also disagree with the assertion that the claimed hours are excessive. We do not dispute the underlying assumption that when intervenors receive market-based compensation they should be held to the market's standards of efficiency, and we acknowledge that the time claimed for some items in NRDC's request sometimes seems to approach the limits of reasonableness. However, NRDC's written and oral presentations reveal the thought and care that went into their preparation. We certainly do not want to penalize intervenors for thoughtfully considering the issues they address or for taking the time to craft a clear and comprehensible presentation of their positions. After reviewing NRDC's written and oral statements in this case, we are convinced that the hours claimed are not excessive.

In part the appearance that the claimed hours were excessive may derive from NRDC's sketchy descriptions of its activities on an individual day. The assessment of the reasonableness of NRDC's time would be much simpler if NRDC kept more complete records of its activities. We urge NRDC to improve its timekeeping practices for its participation in our proceedings.

We conclude that the time claimed for NRDC's contribution is within the bounds of reasonableness. We also find that NRDC's requested expenses are reasonable and should be included in its compensation.

NRDC is therefore entitled to compensation of \$14,004.31.

### Allocation

Neither NRDC, PG&E, nor Edison addressed the question of how to allocate NRDC's compensation among the utilities involved in this proceeding. The proceeding has so far focused on revising ratemaking mechanisms for PG&E, Edison, and San Diego Gas & Electric Company (SDG&E). It is reasonable to allocate the responsibility for paying NRDC's compensation equally among these three utilities.

### Conclusion

NRDC is entitled to compensation of \$14,004.31, to be paid by PG&E (\$4,668.11), Edison (\$4,668.10), and SDG&E (\$4,668.10).

As discussed in previous Commission decisions, this order will provide for interest commencing on June 18, 1988 (the 75th day after NRDC filed its request) and continuing until full payment of the award is made.

NRDC is placed on notice it may be subject to audit or review by the Commission Advisory and Compliance Division. Therefore, adequate accounting records and other necessary documentation must be maintained and retained by the organization in support of all claims for intervenor compensation. Such record-keeping systems should identify specific issues for which compensation is being requested, the actual time spent by each employee, the hourly rate paid, fees paid to consultants and any other costs for which compensation may be claimed.

### Findings of Fact

1. NRDC has requested compensation totaling \$14,004.31 for its participation in this proceeding.
2. NRDC was found eligible for compensation in D.88-04-066.
3. NRDC's participation stimulated the recognition of the potentially adverse effects of the special contracts program. NRDC responded to our request in D.87-05-071 for specific proposals for

integrating future flexibility into the special contracts program with two specific proposals.

4. In D.88-03-008, we adopted a guideline on conservation that was a variation on NRDC's proposal.

5. An hourly rate of \$150 is a reasonable fee for an attorney of Mr. Cavanagh's training, experience, and expertise.

6. The time claimed for NRDC's participation in this proceeding is reasonable.

7. The other costs claimed in connection with NRDC's participation in this proceeding are reasonable.

8. Since its inception, this proceeding has focused on the revision of ratemaking mechanisms for only PG&E, Edison, and SDG&E.

#### Conclusions of Law

1. NRDC made a substantial contribution to D.88-03-008.

2. PG&E should be ordered to pay NRDC \$4,668.11, plus any interest accrued after June 18, 1988.

3. Edison should be ordered to pay NRDC \$4,668.10, plus any interest accrued after June 18, 1988.

2. SDG&E should be ordered to pay NRDC \$4,668.10, plus any interest accrued after June 18, 1988.

#### ORDER

IT IS ORDERED that:

1. Pacific Gas and Electric Company (PG&E) shall pay Natural Resources Defense Council (NRDC) \$4,668.11 within 15 days as compensation for NRDC's substantial contribution to D.88-03-008. PG&E shall also pay NRDC interest on this amount, calculated at the



three-month commercial paper rate, beginning June 18, 1988, and continuing until full payment of the award is made.

2. Southern California Edison Company (Edison) shall pay NRDC \$4,668.10 within 15 days as compensation for NRDC's substantial contribution to D.88-03-008. Edison shall also pay NRDC interest on this amount, calculated at the three-month commercial paper rate, beginning June 18, 1988, and continuing until full payment of the award is made.

3. San Diego Gas & Electric Company (SDG&E) shall pay NRDC \$4,668.10 within 15 days as compensation for NRDC's substantial contribution to D.88-03-008. SDG&E shall also pay NRDC interest on this amount, calculated at the three-month commercial paper rate, beginning June 18, 1988, and continuing until full payment of the award is made.

This order is effective today.

Dated JUL 8 1988, at San Francisco, California.

STANLEY W. HULETT  
President  
DONALD VIAL  
C. MITCHELL WILK  
JOHN B. OHANIAN  
Commissioners

Commissioner Frederick R. Duda,  
being necessarily absent, did not  
participate.

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We conclude that the time claimed for NRDC's contribution is within the bounds of reasonableness. We also find that NRDC's requested expenses are reasonable and should be included in its compensation.

NRDC is therefore entitled to compensation of \$14,004.31.