

Decision 90-07-066 July 18, 1990

**ORIGINAL** JUL 20 1990

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Rulemaking Proceeding on the Commission's Own Motion to Revise Electric Utility Ratemaking Mechanisms in Response to Changing Conditions in the Electric Industry. (Filed October 1, 1986)

OPINION ON NRDC'S REQUEST FOR COMPENSATION

Summary

Natural Resources Defense Council (NRDC) requests compensation of \$27,206.80 for its contributions to Decision (D.) 89-05-067 and D.90-05-030. We find that NRDC made substantial contributions to these decisions, and we award compensation of \$23,293.66.

Introduction

On April 27, 1988, in D.88-04-066, we found NRDC eligible for compensation for its substantial contributions to decisions in this proceeding. In D.88-07-025, we awarded NRDC compensation of \$14,004.31 for its contribution to D.88-03-008, and in D.89-03-034, we awarded NRDC \$3,566.50 for its contribution to D.88-07-058.

NRDC filed its third supplemental request for compensation on September 20, 1989, for its contribution to D.89-05-067 and to the "appropriate order or decision" resulting from the collaborative group on demand-side management that emerged following the Commission's en banc hearing of July 20, 1989. D.90-05-030 is the decision that best fits that description.

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

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expenditures and a description of the customer's substantial contribution to the hearing or proceeding...."

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."

In its request, NRDC argues that this proceeding had "entered a final phase of indeterminate length" following the en banc hearing. NRDC requests that "the convening of the collaborative process be treated as the functional equivalent of a Commission "order or decision" under PUC Rule 76.26/76.56.

NRDC relies on the wrong article of the Commission's Rules of Practice and Procedure and arrives at an erroneous conclusion. Rule 76.26 is part of Article 18.6, which applies to proceedings initiated before 1985. Rule 76.56, quoted previously, is the corresponding rule of Article 18.7, which applies to proceedings initiated on or after January 1, 1985. Rule 76.56 allows requests for compensation to be filed following issuance of a final order or decision. The commencement of meetings by the collaborative group is not equivalent to the final order or decision contemplated in Rule 76.26.

In the alternative, NRDC asks that its request be held pending issuance of an appropriate order or decision. D.90-05-030 is the final order in this proceeding. NRDC's alternative request makes sense in the context of this case. The issuance of D.90-05-030 was the only noteworthy occurrence in this proceeding since NRDC's filing. NRDC states that its request for compensation "does not encompass any part of the collaborative process itself, and NRDC does not intend to seek compensation for its work in that forum." Thus, it appears that NRDC's request covers all of the remaining compensation it will claim in this proceeding and that NRDC's pending request is its final request in this case. The change in wording from the old Rule 76.26 to the new Rule 76.56 was

made to eliminate multiple filings in a single proceeding, and NRDC's alternative request removes the threat of further requests for compensation in this case.

Thus, under NRDC's alternative approach, the request was made within the limits of Rule 76.56. We will deem NRDC's request to have been filed on May 4, 1990, the date D.90-05-030 was issued. With this assumption, NRDC's request is timely.

NRDC states that its substantial contribution primarily took the form of two documents submitted to the Commission. First, NRDC responded to our invitation in D.88-12-041 for comments on topics raised in a stipulation approved in that decision and on questions that we posed in D.88-12-041. NRDC filed its comments on January 12, 1989. Second, NRDC submitted a report entitled "The Decline of Conservation at California Utilities: Causes, Costs and Consequences" as part of its presentation at the en banc hearing we called for in D.89-05-067.

NRDC believes that the Commission has adopted the three recommendations of its comments. NRDC's first recommendation was to refocus the proceeding "to address regulatory strategies for insuring that cost-minimizing investments in conservation and other energy resources are more profitable for utilities than investments in costlier alternatives." Second, NRDC urged the Commission to "reaffirm ERAM's goal of removing a powerful and inappropriate disincentive to utility-financed conservation" and not to abolish Electric Revenue Adjustment Mechanism (ERAM) without compensating for this feature of ERAM. Third, NRDC suggested holding an en banc hearing to consider the future of this proceeding.

NRDC states that the report it submitted in connection with the en banc hearing presented data on the decline of conservation investment by California's utilities. The report's primary recommendation was the commencement of a collaborative

process to develop consensus recommendations to rebuild utility-sponsored conservation programs and create incentives to operate them successfully."

D.89-05-067 addressed the comments filed in response to the invitation of D.88-12-041. D.90-05-030 referred to the report that resulted from the collaborative group.

No party responded to NRDC's request for compensation.

#### Issue To Be Decided

Rule 76.58 requires the Commission not only to determine whether NRDC made substantial contributions to D.89-05-067 and D.90-05-030, but also to describe the contributions and 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 made a substantial contribution to D.89-05-067. In that decision, we set up an en banc hearing along the lines recommended by NRDC (mimeo. pp. 6-7). We did not specifically endorse NRDC's recommendation on developing incentives for utilities' investments in conservation, but this idea received considerable attention at the en banc hearing, and eventually became the focus of the collaborative group. NRDC's contribution to the course our inquiries eventually took was substantial and deserves compensation.

Although we decided in D.89-05-067 to retain ERAM, our decision was based on various reasons presented by a number of parties, and not just on the points advocated by NRDC. NRDC's recommendation was grounded in ERAM's function of removing a

disincentive to conservation. D.89-05-067 does not explicitly refer to that function; rather, we decided to retain ERAM because the "unanticipated and extraordinary difficulties" of the partial removal of ERAM that we had contemplated outweighed the benefits that could be reasonably be expected from this revision (mimeo. p. 3). Yet, concerns over ERAM's removal of an important impediment to conservation was an important consideration in light of concerns over the state of utility DSM programs; in its comments, NRDC had argued that the drop in utilities' investment in conservation in California led to many lost opportunities to invest in cost-effective conservation and demand-side management. This argument was developed and supplemented in NRDC's report, and NRDC's contentions eventually led us to reemphasize the utilities' role in promoting demand-side management.

We also find that NRDC made a significant contribution to D.90-05-030. Although the decision makes no specific reference to NRDC or its report, the report received considerable attention at the en banc hearing. The report urged the Commission to "convene structured, time-constrained negotiations to rebuild utility-sponsored conservation programs and create incentives to operate them successfully." This recommendation evolved and led to the formation of the collaborative group, and the recommendations of the group resulted in proposals that made it possible for us to take the step of terminating Investigation (I.) 86-10-001 in D.90-05-030.

We conclude that NRDC made significant contributions, on the points we have just described, to D.89-05-067 and D.90-05-030.

#### 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 85.1 hours of Senior Staff Attorney Ralph Cavanagh's time at the rate of \$150 per hour, or \$12,765.00; for 175 hours of Research Associate Chris Calwell's time at a rate of \$80 per hour, or \$14,000.00; and for \$441.80 of its printing, mailing, and postage expenses, for a total request of \$27,206.80.

Compensable Hours

NRDC allocated its time between the comments and the report, but no allocation was made to specific issues addressed in those documents.

We have determined that two of NRDC's three recommendations in its comments substantially contributed to D.89-05-067. In addition, NRDC's comments on the decline of investment in energy efficiency influenced the course of this proceeding.

One of the time entries for NRDC's attorney, however, precedes the work on the comments by several months and predates D.88-12-041, which solicited the comments. The timing and description of this work appears to be not closely related to the topics of the comments, and we will not allow recovery for the 0.6 hours recorded in this entry.

Thus, we will allow compensation for 15.7 hours of Cavanagh's time in connection with the comments.

The hours claimed for work on NRDC's report also require adjustment. The report was apparently intended for a wider audience than the service list in this proceeding. The report concerns the conservation activities of four California utilities, including the Los Angeles Department of Water and Power (LADWP), a municipal utility not subject to our regulation and not a respondent in this proceeding. This portion of the report

obviously did not contribute to our decisions; the reports, evidence of significant declines in the DSM expenditures of the investor-owned utilities had a much greater effect than comparisons to the expenditures of LADWP. It is thus not appropriate for the ratepayers of regulated utilities to compensate NRDC for its work relating to a municipal utility. Although information on LADWP appears throughout the report, large passages address broader concerns, and reducing NRDC's hours by one-fourth is not justified. The NRDC's time recording practices do not allow us to do a precise allocation of its time. Based on our review of the report, we will reduce the time for which compensation will be awarded by 10% to reflect the work related to LADWP. This adjustment affects all of Calwell's time and 57.3 hours of Cavanagh's time. One other adjustment is necessary. NRDC requests compensation for time spent holding a press conference announcing the release of its report. This time is not a reasonable cost of participation in this proceeding, and we will not permit compensation for this time, which we estimate to be one hour. We will allow compensation for 63.1 hours of Cavanagh's time and 157.6 hours of Calwell's time in connection with the preparation of the report.

Thus, the total compensable hours are 78.8 hours of Cavanagh's time and 157.6 hours of Calwell's time.

#### Hourly Fee

In D.88-07-025, we approved an hourly rate of \$150 for Cavanagh's time. We find that the requested hourly rate of \$150 is reasonable and does not exceed the market rate for an attorney of Cavanagh's training, experience, and expertise.

NRDC requests an hourly rate of \$80 for Calwell's time.

Rule 76.52 defines "expert witness fees" as "recorded or billed costs incurred by a customer for an expert witness." Calwell is employed by NRDC, so apparently no fees were billed to NRDC, and NRDC does not state the costs it incurred for Calwell's

participation in this case. NRDC provides information on Calwell's background, but does not otherwise explain the basis for the rate requested hourly rate.

Calwell received his Master's degree in the area of Energy Resources in 1989, and he has been employed by NRDC since then. In determining an appropriate rate for his compensation, we have reviewed recent decisions awarding compensation to expert witnesses. In D.89-07-046, we awarded an hourly rate of \$100 to a witness with comparable education to Calwell's and 15 years' experience. (The same witness received \$55 per hour in D.89-10-032, but he apparently agreed to work for a reduced fee in this case.) In D.89-10-037, we awarded \$60 per hour to witnesses with experience and expertise that we found very helpful to our decision. In D.89-06-051 and D.89-08-030, a witness was awarded a daily fee of \$400, roughly the equivalent of \$50 per hour, and we again mentioned the witness' extensive experience.

Judged against these decisions, an hourly fee of \$80 for a witness with Calwell's experience seems too high. An hourly fee of \$70 is a reasonable rate for the contributions of someone with Calwell's education and experience.

#### Other Reasonable Costs

NRDC requests recovery of \$117.90 of copying and mailing costs for the comments, and \$323.90 for the printing, copying, and mailing costs of issuing the report.

We note that NRDC has misread the attached invoice for the costs of producing the report, requiring an adjustment to \$323.76. In addition, the invoice submitted with its request appears to be for reproduction of a later version of its report and not for the production of the report submitted in connection with the en banc hearing. Even if we take into account some handwritten corrections to the invoice, both the order date and the due date are too late for this invoice to be the bill for the reports distributed in connection with the en banc hearing. The written



comments for the en banc hearing were due (and submitted, according to NRDC's hourly records) before the corrected order date on this invoice.

Despite this discrepancy, the amount requested by NRDC is a reasonable estimate of the costs it incurred in issuing its report, and we will allow recovery of \$323.76 of costs related to the report.

Thus, NRDC is entitled to recover \$441.66 of the costs incurred in connection with its participation in this proceeding.

**Allocation**

No one addressed the question of how to allocate NRDC's compensation among the utilities involved in I.86-10-001. The proceeding focused on revising ratemaking mechanisms for Pacific Gas and Electric Company (PG&E), Southern California Edison Company (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 \$23,293.66, to be paid in equal shares of \$7,764.55 by PG&E, Edison, and SDG&E. The components of this award are set forth in the following table:

<u>Item</u>	<u>Hours</u>	<u>Amount</u>
Comments:		
Cavanagh	15.7	\$ 2,355.00
Costs		117.90
Report:		
Calwell	157.6	11,032.00
Cavanagh	63.1	9,465.00
Costs		<u>323.76</u>
Total		\$23,293.66

Since we deem NRDC to have made its filing on May 4, 1990, the date of the issuance of D.90-05-030, it is unnecessary to

provide for interest on amounts not paid until after the 75th day after filing, as we have in earlier decisions.

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 \$ 27,206.80 for its participation in this proceeding.
2. NRDC was found eligible for compensation in D.88-04-066.
3. NRDC made significant contributions to D.89-05-067 and D.90-05-030 on the issues of developing incentives for utilities' investments in conservation and demand-side management, the need for an en banc hearing on conservation, and the desirability of reemphasizing the utilities' roles in promoting demand-side management.
4. An hourly rate of \$150 is a reasonable fee for an attorney of Cavanagh's training, experience, and expertise.
5. An hourly rate of \$70 is a reasonable fee for someone of Calwell's training and experience.
6. Except as noted in this decision, 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, as corrected, 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 substantial contributions to D.89-05-067 and D.90-05-030.
2. PG&E should be ordered to pay NRDC \$7,764.55.
3. Edison should be ordered to pay NRDC \$7,764.55.
4. SDG&E should be ordered to pay NRDC \$7,764.55.

O R D E R

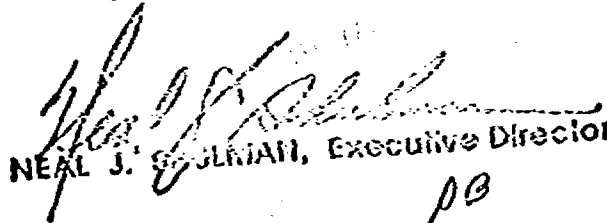
IT IS ORDERED that:

1. Pacific Gas and Electric Company shall pay Natural Resources Defense Council (NRDC) \$7,764.55 within 15 days as compensation for NRDC's substantial contributions to D.89-05-067 and D.90-05-030.
2. Southern California Edison Company shall pay NRDC \$7,764.55 within 15 days as compensation for NRDC's substantial contributions to D.89-05-067 and D.90-05-030.
3. San Diego Gas & Electric Company shall pay NRDC \$7,764.55 within 15 days as compensation for NRDC's substantial contributions to D.89-05-067 and D.90-05-030.

This order is effective today.

Dated July 18, 1990, at San Francisco, California.

I CERTIFY THAT THIS DECISION  
WAS APPROVED BY THE ABOVE  
COMMISSIONERS TODAY

  
NEAL J. SULLIVAN, Executive Director  
PB

G. MITCHELL WILK  
President  
FREDERICK R. DUDA  
STANLEY W. HULETT  
JOHN B. OHANIAN  
PATRICIA M. ECKERT  
Commissioners